

**Amendment - 1st Reading/2nd House-blue - Requested by: Ed Stafman - Free Conference
Committee on SB 40**

- 2025

69th Legislature 2025

Drafter: Rachel Weiss,

SB0040.003.006

SENATE BILL NO. 40

INTRODUCED BY G. HERTZ

BY REQUEST OF THE SENATE SELECT COMMITTEE ON JUDICIAL OVERSIGHT AND REFORM

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PUBLIC RECORD LAWS RELATING TO THE

SUPREME COURT AND THE LEGISLATURE; REQUIRING THE RECORDING OF A CLOSED JUDICIAL

DELIBERATION MEETING; PROVIDING FOR THE DISCLOSURE OF JUDICIAL DELIBERATIONS AND

CASE INFORMATION AFTER A CASE IS FINAL; PROVIDING THAT LEGISLATIVE BILL DRAFTING FILES

ARE PUBLIC RECORDS THAT ARE AVAILABLE ON REQUEST PURSUANT TO MONTANA'S PUBLIC

RECORDS LAWS; AMENDING SECTIONS 2-3-203, 2-3-212, AND 2-6-1002, MCA; AND PROVIDING AN

EFFECTIVE DATE DATES."

WHEREAS, Montana has a deeply rooted commitment to the transparency and accountability of government, as demonstrated by the protections offered by the right to know in Article II, section 9, and the right of participation in the operations of government agencies in Article II, section 8, of the Montana Constitution; and

WHEREAS, the Montana Constitution has enshrined access to public information in the right to know in Article II, section 9, which states that "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure"; and

WHEREAS, these fundamental rights are the foundation on which every Montanan is able to exercise the power to hold elected officials accountable for their actions and decisions; and

WHEREAS, in recognition of its commitment to the principles of transparency and accountability, the Montana Legislature has had a long-standing policy of allowing public access to the information collected in legislative bill drafting files; and

WHEREAS, THE RIGHT TO KNOW CLAUSE FOUND IN ARTICLE II, SECTION 9, OF THE MONTANA CONSTITUTION FORMS THE BASIS OF THIS BILL, AND ARTICLE II, SECTION 9, OF THE MONTANA CONSTITUTION DOES NOT CONTAIN A

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JUDICIAL EXCEPTION; AND

WHEREAS, THE MONTANA CONSTITUTION'S GRANT OF THE GENERAL "LEGISLATIVE POWER" TO THE MONTANA STATE LEGISLATURE IS SUBJECT TO THE PEOPLE'S RIGHTS OF INITIATIVE AND REFERENDUM. IT IS CLEAR THAT PART OF THE LEGISLATIVE POWER IS THE AUTHORITY TO ADOPT LAWS PROTECTING THE INDIVIDUAL RIGHTS LISTED IN THE MONTANA CONSTITUTION; and

WHEREAS, restoring and maintaining public access to bill drafting files will encourage the public's assertion of the right to know and facilitate more meaningful participation under the right of participation in the legislative process; and

WHEREAS, bill drafting files often contain communications between a bill drafter and parties that are not legislators, which are clearly not protected from disclosure under the Montana Constitution, whether or not a legislator is included in the communications.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-3-203, MCA, is amended to read:

"2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

(4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating

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1 position of the public agency.

2 (b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only
3 parties are public bodies or associations described in subsections (1) and (2).

4 (5) (a) The Subject to subsections (5)(b) and (5)(c), the supreme court may close a meeting that
5 involves judicial deliberations in an adversarial proceeding.

6 (b) All closed meetings of the supreme court must be recorded by electronic means with the
7 recording constituting the official record of the meeting. A written record of the meeting must also be made and
8 must include the information specified in 2-3-212(2) and (3), including all documents considered by the
9 supreme court.

10 (c) The electronic recording and written record provided for in subsection (5)(b) must be available
11 for inspection by the public after the case that was subject to closed judicial deliberations becomes final. The
12 supreme court may redact confidential information when the demands of individual privacy of a party or witness
13 clearly exceed the merits of public disclosure.

14 (6) Any committee or subcommittee appointed by a public body or an association described in
15 subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to
16 the requirements of this section.

17 (7) A case becomes final after the time to appeal FOR ANY FURTHER REVIEW OF the supreme court's
18 order to the United States supreme court has expired. If an appeal is pursued, a case becomes final when all
19 the issues on appeal are settled and no other issues can be appealed to any other court. If the supreme court
20 remands a case in whole or in part to a lower court, the case becomes final when all the issues on appeal are
21 settled and no other issues can be appealed to any other court. OR THE TIME FOR ANY FURTHER REVIEW BY ANY
22 OTHER COURT WITH SUBJECT-MATTER JURISDICTION OVER THE CASE HAS EXPIRED. IF ANOTHER COURT UNDERTAKES
23 REVIEW OF THE CASE, IT BECOMES FINAL WHEN ALL THE ISSUES REVIEWED ARE SETTLED AND NO OTHER ISSUES CAN BE
24 REVIEWED FURTHER IN ANY OTHER COURT."

25

26 **Section 2.** Section 2-3-212, MCA, is amended to read:

27 **"2-3-212. Minutes of meetings -- public inspection.** (1) Appropriate minutes of all meetings

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required by 2-3-203 to be open must be kept and must be available for inspection by the public. If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).

(2) Minutes must include without limitation:

(a) the date, time, and place of the meeting;

(b) a list of the individual members of the public body, agency, or organization who were in attendance;

(c) the substance of all matters proposed, discussed, or decided; and

(d) at the request of any member, a record of votes by individual members for any votes taken.

(3) If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting.

(4) Any time a presiding officer closes a public meeting pursuant to 2-3-203, the presiding officer shall ensure that minutes taken in compliance with subsection (2) are kept of the closed portion of the meeting. ~~The Except as provided in 2-3-203(5)(c), the minutes from the closed portion of the meeting may not be made available for inspection except pursuant to a court order.~~"

Section 3. Section 2-6-1002, MCA, is amended to read:

"2-6-1002. Definitions. As used in this chapter, the following definitions apply:

(1) "Confidential information" means information that is accorded confidential status or is prohibited from disclosure as provided by applicable law. The term includes information that is:

(a) constitutionally protected from disclosure because an individual privacy interest clearly exceeds the merits of public disclosure;

(b) related to judicial deliberations in adversarial proceedings of any court other than the supreme court;

(c) necessary to maintain the security and integrity of secure facilities or information systems

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1 owned by or serving the state; and

2 (d) designated as confidential by statute or through judicial decisions, findings, or orders; and OR

3 (e) related to judicial deliberations in adversarial proceedings of the supreme court until the case at
4 issue becomes final as provided in 2-3-203(7).

5 (2) "Constitutional officer" means the governor, lieutenant governor, attorney general, secretary of
6 state, superintendent of public instruction, or auditor, who are the constitutionally designated and elected
7 officials of the executive branch of government.

8 (3) "Constitutional officer record" means a public record prepared, owned, used, or retained by a
9 constitutional officer.

10 (4) "Essential record" means a public record immediately necessary to:

11 (a) respond to an emergency or disaster;

12 (b) begin recovery or reestablishment of operations during and after an emergency or disaster;

13 (c) protect the health, safety, and property of Montana citizens; or

14 (d) protect the assets, obligations, rights, history, and resources of a public agency, its employees
15 and customers, and Montana citizens.

16 (5) "Executive branch agency" means a department, board, commission, office, bureau, or other
17 public authority of the executive branch of state government.

18 (6) "Historic record" means a public record found by the state archivist to have permanent
19 administrative or historic value to the state.

20 (7) "Local government" means a city, town, county, consolidated city-county, special district, or
21 school district or a subdivision of one of these entities.

22 (8) "Local government records committee" means the committee provided for in 2-6-1201.

23 (9) "Permanent record" means a public record designated for long-term or permanent retention.

24 (10) "Public agency" means the executive, legislative, and judicial branches of Montana state
25 government, a political subdivision of the state, a local government, and any agency, department, board,
26 commission, office, bureau, division, or other public authority of the executive, legislative, or judicial branch of
27 the state of Montana.

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(11) "Public information" means information prepared, owned, used, or retained by any public agency relating to the transaction of official business, regardless of form, except for confidential information that must be protected against public disclosure under applicable law. The term includes information prepared, owned, or retained by the supreme court, regardless of form, relating to an adversarial proceeding after the case at issue becomes final as provided in 2-3-203(7).

(12) "Public officer" means any person who has been elected or appointed as an officer of state or local government.

(13) (a) "Public record" means public information that is:

(a)(i) fixed in any medium and is retrievable in usable form for future reference; and

(b)(ii) designated for retention by the state records committee, judicial branch, legislative branch, or local government records committee.

(b) The term includes judicial deliberations of the supreme court pursuant to 2-3-203(5).

(14) "Records manager" means an individual designated by a public agency to be responsible for coordinating the efficient and effective management of the agency's public records and information.

(15) "State records committee" means the state records committee provided for in 2-6-1107."

NEW SECTION. Section 4. Legislative bill drafting files. (1) Legislative bill drafting files are public records as defined in 2-6-1002 and must be provided on request pursuant to Title 2, chapter 6, part 10.

(2) A legislative bill drafting file contains the history of the drafting, preparation, and process from the request to the introduction of a bill draft. The contents of a bill drafting file may include but are not limited to:

(a) draft versions of a bill prior to introduction;

(b) bills or laws from other states;

(c) uniform acts or model legislation from any source;

(d) reports, articles, papers, or any other research conducted on the topic of the bill draft;

(e) legal analysis;

(f) e-mails and other communications between the legislator and the bill drafter;

(g) e-mails and other communications between the bill drafter and any third party, whether or not

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the legislator was included in those communications; and

(h) any other resources or materials collected or compiled during the course of drafting the bill.

(3) Nothing in this section may be construed to limit legislative privilege granted in Article V, section 8, of the Montana constitution.

NEW SECTION. Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 6. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 2, chapter 6, part 10, and the provisions of Title 2, chapter 6, part 10, apply to [section 4].

NEW SECTION. Section 7. Effective ~~date~~ dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [This act Sections 1 through 3] is are effective October 1, 2025.

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