

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

**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

1 JUDICIAL EXCEPTION; AND

2 WHEREAS, THE MONTANA CONSTITUTION'S GRANT OF THE GENERAL "LEGISLATIVE POWER" TO THE MONTANA

3 STATE LEGISLATURE IS SUBJECT TO THE PEOPLE'S RIGHTS OF INITIATIVE AND REFERENDUM. IT IS CLEAR THAT PART OF

4 THE LEGISLATIVE POWER IS THE AUTHORITY TO ADOPT LAWS PROTECTING THE INDIVIDUAL RIGHTS LISTED IN THE

5 MONTANA CONSTITUTION; and

6 WHEREAS, restoring and maintaining public access to bill drafting files will encourage the public's

7 assertion of the right to know and facilitate more meaningful participation under the right of participation in the

8 legislative process; and

9 WHEREAS, bill drafting files often contain communications between a bill drafter and parties that are

10 not legislators, which are clearly not protected from disclosure under the Montana Constitution, whether or not a

11 legislator is included in the communications.

12

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

14

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

16 **"2-3-203. Meetings of public agencies and certain associations of public agencies to be open**

17 **to public -- exceptions.** (1) All meetings of public or governmental bodies, boards, bureaus, commissions,

18 agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or

19 in part by public funds or expending public funds, including the supreme court, must be open to the public.

20 (2) All meetings of associations that are composed of public or governmental bodies referred to in

21 subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

22 (3) The presiding officer of any meeting may close the meeting during the time the discussion

23 relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands

24 of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived

25 by the individual about whom the discussion pertains and, in that event, the meeting must be open.

26 (4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to

27 be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating

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

(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

**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

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.

- END -