House Rules Committee
HB 2101-14

Testimony Submitted April 23, 2017, for April 25, 2017 Public Hearing & Poss. Work Session

I support HB 2101, *provided* the amendments designated HB 2101-14 are substituted for the text of the printed bill.

Representative Huffman, the sponsor of the printed bill, has helped create momentum that puts this Assembly on the verge of the first comprehensive improvement in nearly five decades of success in open governance in Oregon. HB 2101-14 can form the third leg — the others being SB 106 (introduced at the request of Governor Brown) and SB 481 (introduced at the request of Attorney General Rosenblum) — of what Representative Huffman has aptly described as a "three-legged stool" of comprehensive Public Records Law reform. I thank the Rules Committee for having scheduled the measure for a further public hearing and possible work session. I urge the Rules Committee to seize this moment.

My previously-submitted testimony on HB 2101 provides deep background on the necessity of HB 2101-14. I have attached a one page section-by-section analysis of the -14 amendments. I make this submission on my own behalf. I have no client and represent no one's views other than my own.

The only known substantive objection to HB 2101-14 rests on one misguided contention: The Assembly should not proceed with HB 2101-14 until it substitutes a "Sunshine Committee" for the Legislative subcommittee required by Section 4 of HB 2101-14. The specific alleged deficiency is that HB 2101-14 does not eliminate the existing privilege or broader ORS 173.230 covering communications between Members and Legislative Counsel. The contention is wrong for two reasons.

First, it is wrong because it does not cure the alleged deficiency of HB 2101-14. A "Sunshine Committee" that includes any non-legislator cannot lawfully exercise any power of the Legislative Assembly or of any of the Assembly's committees or subcommittees. Nearly all of the 500+ exemptions are statutes. However diligent or insightful, none of the "Sunshine Committee's" recommendations to repeal or narrow exemptions could become law until the Assembly exercised the law-making power. In exercising that power, the law would continue to allow Members to consult with Legislative Counsel within the scope of the privilege. Thus, even if the substitution is made as they wish, the opponents of HB 2101-14 would still face the same problem. Holding the rest of HB 2101-14 hostage to a further amendment that does not solve the alleged problem pointlessly undermines the cause of open government. This self-defeating result brings to mind the ironic message of an iconic cartoon, a copy of which is attached.

Second, the contention is wrong because it unwisely diffuses the Assembly's accountability for deciding not to amend or repeal an existing exemption. If a non-Legislative "Sunshine Committee" chooses not to recommend narrowing or repealing of an existing exemption, whom should an editorialist or an individual citizen hold accountable, and how? How am I to cast a vote to unseat the publisher, reporter, local government association lobbyist, private citizen, union leader, or other non-Legislator who may populate the "Sunshine Committee" and who makes a decision with which I disagree? In contrast, explicit accountability and an electoral remedy will exist for every decision made under HB 2101-14. Each of the Members of the subcommittee responsible for establishing the schedule of review will be electorally accountable for choices about which exemptions will be reviewed first and which will be delayed. Each of the Members of the subcommittee will be electorally accountable for their choice not to recommend to the full Legislative Counsel committee the amendment or repeal of any given exemption. And each Member of the full committee will be electorally accountable for having acted, or failed to act, on the subcommittee's report.

Respectfully submitted,
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