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Testimony regarding HB3505

Chair Hoyle, Vice-Chairs Gilliam and Smith Warner, and Members of the Committee,

My name is Lee van der Voo and I am pleased to offer this testimony in support of HB 3505.

I am an Oregon journalist with a 15-year history of working with Oregon public records and I am an advocate for transparency. I am a former Sunshine Chair of the Society of Professional Journalists, Oregon and Southwest Washington Chapter, for which I built, administered and wrote a public records blog for three years up to 2010. I currently write Redacted, a column about transparency for InvestigateWest, and helped to build the Redacted app, a web-based application that catalogs 476 exemptions to Oregon Public Records Law at invw.org/redacted.

As part of the Transparency Initiative proposed by former Attorney General John Kroger in 2010, I led a workgroup of journalists that canvassed Oregon newsrooms for feedback on how Oregon Public Records Law was working. That effort produced 110-pages of examples and testimony that are still very relevant today. For this reason, I am attaching the Society of Professional Journalists 2010 testimony on the Kroger Transparency Initiative to bolster support for HB 3505.

I support this bill in its capacity to address two longstanding areas of concern in Oregon's Public Records Law: unreasonable delays in accessing public records, and obstructive and unclear fees for that access. I will address these issues by topic as they relate to HB 3505.

FEES

HB 3505 establishes caps on fees for physical copies of records at 5 cents, 50 cents for photos, 25 cents per minute for audio or video and once cent per kilobyte of electric records. I support those caps. Oregon law currently allows the recovery of the "actual cost" of making records available. However, that language has enabled high fees to be used as an obstructive tactic. Without any standardized fees for material, it's also a difficult standard to administer and near impossible for requesters to know when a fee-based appeal is appropriate.

At InvestigateWest, I am currently involved in a request for records for which the reporter has been charged \$1,200 for records. For several weeks the reporter has not been able to obtain the methodology used to arrive at that charge. If this bill were in place today, we would not be in the dark about what the appropriate billing for these records is, and the conversation between the reporter and the public official would be grounded in some standard for what is appropriate for fees. The example illustrates how broadly individuals can disagree about what “actual cost” means when there are no established metrics for calculating fees. HB 3505 establishes fees that would make this process easier for everyone.

For an example of how fees can be used to obstruct access to public records, I refer you to the SPJ testimony, in which you will find several. Of particular note is correspondence relating to a \$1.5 million charge for records later produced for an actual cost of \$194.03. Standardized fees would avoid such egregiousness.

DELAYS

Unreasonable delay for access to public records is the single most important issue raised in this bill. Section 3 of HB 3505 is also the only provision in any bill currently before the Oregon Legislature that speaks directly to why Oregonians have a governor in office that they did not vote for.

If Oregon voters had earlier opportunity to have clear information about the allegations involving former Governor Kitzhaber, he would not have been elected governor. The only reason voters did not have that information is because there is no provision in law that forced him to respond to requests for that information in a timely manner – requests made as early as July 2014.

Section 3, provisions (2) and (3) of HB 3505 address this problem. They require public agencies to respond to citizens’ requests for documents and to properly steward those requests. They have the support of near every private citizen in Oregon right now. And they ought to have the support of every public official.

Because foot-dragging is a chronic problem with response to Oregon Public Records Law – as our former governor has illustrated – I suggest that Section 3 (4)(b) be stricken. I fear that allowing six weeks before a request is formally considered denied will prompt many public agencies to simply not respond. There is already legal precedent on Oregon Public Records Law that sets 30 days as a standard for presumed denial, and based on my own experience I have found that it is already abused. The appeals process for Oregon Public Records Law is, in contrast, appropriately flexible and subjective. While not perfect, it provides an opportunity for the district attorneys and attorneys at the Oregon Attorney General’s Office to use their judgment about whether an appeal is appropriate.

OTHER MATTERS

Every denied public records request should be clearly explained with the citation of an applicable exemption, as provision (3)(b)(B) would require. That Section 3 (4)(a) provides disincentives for slow compliance with Oregon Public Records Law is a strength of the bill that should be encouraged in any transparency legislation. I support both.

The Society of Professional Journalists testimony of 2010 raised red flags about private email being used as a work-around for public employees looking to conduct public business outside the reach of public records law. That was five years ago. One need not look further than former Governor Kitzhaber and his use of private email to conduct public business to understand why this practice should have been curtailed sooner. For that reason, I support Section 5 of HB 3505, which can be effectively administered through the use of TRIM archiving software.

I also support Section 1. The Oregon Legislature should be subject to Oregon Public Records Law. I do think, however, that provision (2) should be greater than 3 years. Because many Oregon legislators seek higher office, during which time their legislative record should be available to the public, I suggest that provision (2) require Oregon legislators' records to remain available to the public for 10 years after their term of service in the legislature has ended.

In conclusion, thank you for this opportunity to testify, and thank you for holding this hearing. I trust that in doing so this committee is acknowledging that years of study of Oregon's transparency problem should effectively lead somewhere. I look forward to your effective and careful stewardship of this bill.

Best,
Lee van der Voo