

Testimony on HB 2101
by Toby Nixon, President, Washington Coalition for Open Government

House Committee on Rules, April 25, 2017, 3:00PM, HR 50

Thank you Madame Chair and Members of the Committee. I am Toby Nixon, from Kirkland, Washington. I am president of the Washington Coalition for Open Government, a statewide non-partisan non-profit organization dedicated to protecting the public's right to know what their government is doing. I previously served three terms in the Washington State House of Representatives, including serving as Ranking Member of the House Committee on State Government which has responsibility for Washington's open government laws. I now serve on the City Council of Kirkland, Washington.

In 2007, Washington established our Public Records Exemption Accountability Committee – also known as the Sunshine Committee – in response to the growth in public records exemptions from 10 in 1972 to over 400 by 2007. Many of these exemptions were created by obscure sections buried in obscure bills that were never reviewed by the legislative committees with expertise in the public records law. The Sunshine Committee is charged with reviewing whether each exemption throughout state law is working as intended, and recommending to the legislature whether each should be retained, repealed, or modified in some way.

The vast majority of Sunshine Committee recommendations have been to *retain* exemptions, once the public interest in them was fully understood. There have been several recommendations to modify exemptions, usually to improve clarity or extend their scope to newer technology that didn't exist when the exemptions were originally adopted. Very few exemptions have been recommended for repeal once the context of the exemption was understood by the committee.

Some people have complained that the fact that few exemptions have been repealed means that the committee has been a failure. *This is not true.* It was *not* the purpose of the committee to *repeal* exemptions. The purpose was to *increase public confidence* in the law and in government by ensuring that all exemptions have been thoroughly reviewed by all stakeholders and that no unnecessary exemptions had been adopted.

In addition to its role in reviewing existing exemptions, the committee has also become a place where people who are considering new exemptions or amendments to exemptions can receive an objective review and feedback prior to introducing them in the legislature. This has allowed stakeholder

concerns to be worked out in advance before spending time arguing in front of legislative committees.

Regarding House Bill 2101, I have had an opportunity to review the discussion draft dated April 11, and have the following observations.

I very much like the idea of the *Open Government Impact Statement*. We have no such provision in Washington, and so our organization, WCOG, ends up having to do that work instead of it being done by legislative staff. Having an analysis of impacts provided in a bill analysis up front would be a very positive step, although the staff observations would necessarily be subject to review by stakeholders. **I would suggest that the impact statement also be required when a bill proposes any change to an existing exemption, including narrowing or repealing, so that all stakeholders would be on notice of all changes.**

My key area of concern with the current proposal is the degree of stakeholder involvement. While it is good that the subcommittee meetings would be open to the public and that the subcommittee would “cooperate with and invite comment” from the public, this falls short of what we’ve done in Washington, which is to have representatives of various stakeholder groups be at the table as *voting members* of the committee, including representatives from the news media and other users of the public records law, as well as representatives of state and local agencies who implement the law. **I would encourage you to consider expanding the membership of the committee to include stakeholders with direct experience using and implementing the law**, or otherwise provide a vote or mechanism for “minority reports” to be included in the recommendations of the subcommittee. This would increase public confidence that all interests are being fairly considered.

Thank you for considering these comments.

Toby Nixon
12113 NE 141st Street
Kirkland, Washington 98034-1411
(206) 790-6377
president@washingtoncog.org