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February 18, 2025

Representative Bowman, Chair
House Committee on Rules
900 Court St. NE
Salem, OR 97301

Chair Bowman, Vice-Chairs Elmer and Pham, and Members of the Committee,

Thank you for the opportunity to submit testimony concerning HB 4177. Oregon Public Broadcasting (OPB) believes that the public's right to know how government business is conducted is fundamental. In that spirit, changes to open government laws require true open process.

This bill makes significant changes to our open meetings law that fall short of clarity and create concerning new loopholes. We are especially concerned that it was developed with limited public input for consideration in this short session. **For these reasons, OPB respectfully urges you to oppose HB 4177 at this time, and to refer these issues to full and inclusive review ahead of the 2027 full session.**

OPB joins other Oregon journalism organizations in opposing this rushed process, and we believe that key public stakeholders must be consulted to get this policy right.

<u>The HB 4177 Workgroup Left Out Journalists and Public Interest Advocates</u>

This bill is being rushed through a short session without significant input from necessary stakeholders. Indeed, the outside public has been largely sidelined in this process. Our understanding is that the workgroup that debated and drafted this measure was comprised primarily of legislators and government body representatives, with very little inclusion of media or other public interest advocates until it was a done deal. Nor have efforts by outside advocates to engage on changes or amendments been fruitful.

We are even more concerned after hearing February 17 testimony from OGEC Exec. Dir. Susan Myers expressing her concerns about Section 5 of this bill, which greatly expands topics and discussions that are exempt from the open meetings law entirely. It appears that in a "working group" process already dominated by local public bodies, those groups overrode concerns of regulators in pushing through some of the most concerning and contentious aspects of this bill.

We emphasize that the key stakeholders for the open meetings bill are not local governments, or even journalists, but the public at large. Open meetings laws are not meant to carry out government prerogatives, but to ensure the right of the public to oversee their government's taxpayer-funded business.

As a public media organization, OPB's goal is to act on behalf of Oregonians as a trustworthy

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conduit of accurate information. We help ensure that people can see, understand, and trust the decisions made by their government. Open government laws are essential tools for public democratic participation, and efforts to amend these laws have long recognized the crucial interests of the public in shaping open meetings processes.

This rushed, largely closed process is not the right way to proceed with such consequential changes to the open meetings law. Honoring the public interest behind open government laws requires taking a pause to truly consult and include non-governmental stakeholders.

The Specific Rationale for Significant Changes Has Not Been Made Public

We don't doubt that this bill is intended to address specific needs and problems that proponents have identified as they see them. However, much of that basis has not been made publicly available for journalists and other community advocates to vet. Key legal opinions that supposedly drive this amendment have not been made public. Approaching these hearings, media stakeholders working in the public interest have had to rely on second-hand information and telephone games in the highly compressed context of short session in order to assess the true legal need.

This bill simply makes too many changes to key aspects of public meetings law to be rushed through in a short session. At this time, we are not even able to fully vet the rationales for it. More time and process are needed to vet the issues, consider narrower alternatives, and give the public a chance to constructively engage in these deliberations.

HB 4177 May Create New Loopholes Around Open Meeting Rules

This bill as drafted reflects a significant revision of open meeting requirements, rewriting standards around serial communications, and greatly expanding the kinds of conversations and communications that are entirely exempt from coverage under the public meetings law. While we believe this law was intended to address narrow specific circumstances, these revisions introduce significant uncertainty and may prove to be very messy in practice.

This Law Greenlights Problematic and Risky Communications

Far from adding clarity, the Section 5 carveouts from public meeting laws create a wide new swath of topics and correspondence that are shielded from public meeting requirements entirely. Yet the outer margins remain unclear, and this bill serves as a green light to engage in risky conversations that may readily cross the line.

Under current law and guidance, governing boards are advised to be cautious. A meeting convened for a valid purpose may cross the line as it unfolds if it ventures into improper deliberations. By writing in a longer list of green-lit topics that are exempt from coverage entirely, many kinds of governing body communications now visible to the public may go dark. This revision also invites decisionmakers to have conversations that could readily turn risky, and set officials up for violations that could have been avoided.

We believe that narrower language could readily be drafted to meet true needs for clarity –

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particularly if groups outside government play a meaningful role in the revision process.

These details matter. This bill exempts conversations about information that "share the views of someone other than a member of the governing body," which is an easy and tempting setup for deliberation on those views. Existing law draws a clearer line between exchanging factual informational material and deliberation. By erasing those lines and inviting broader conversation, yet retaining consequences for crossing a line, this bill sets officials up to fail.

Removing "Serial Communications" from the "Meetings" definition creates a circular mess

This bill is pitched as restating the prohibition on serial communications to conduct government business, but the way it is drafted threatens confusion and moves us away from a cautious approach to risky communications. This is not a restatement of current law, or a rollback to prior understanding, but a novel and significant new approach that requires more work to get right.

By its text, HB 4177 expressly removes serial communications from the definition of "meetings" – only "contemporaneous" communications would count as a "meeting" as used in the statute. Because of this, the application of requirements *for meetings* to serial communications is now unclear under the text itself. Instead, this bill creates a novel textual mechanism for addressing serial communications that is not certain to fill the gap.

Serial communications occur when members of a public body communicate one-on-one or in small groups, in sequence, to deliberate or move toward a decision outside of a public meeting. For example, if one board member calls another to discuss an issue, and then that person calls a third, and so on, a collective decision can be formed without ever convening in public. Existing law recognizes that this type of communication can effectively function as a meeting, even if everyone is not present at the same time.

HB 4177 is not a mere restatement of law on serial communications, nor a roll-back to older understandings that a meeting might be "convened" through serial or intermediary communications. Before "serial electronic" communications were added expressly to statute in 2023, they were recognized as one method of possibly "convening" a meeting – and violating requirements for open meetings. "Convening" was not separately defined. In 2023, a separate definition of "convening" was added to statute, which expressly listed serial electronic communications to codify that understanding.

HB 4177 keeps a separate definition of "convening," but expressly excludes serial communications from that definition. Now, serial communications cannot result in "convening," and therefore cannot be considered a meeting as used in the statute, so requirements for open *meetings* arguably would not apply to communications in this format.

HB 4177 seeks to address serial communications instead by adding new prohibitions on using serial communications to deliberate, or to use them for the purpose of circumventing the requirement that all meetings be open to the public. It is not at all clear that these replacements adequately fill the gap left by the erasure described above, as their function and scope are distinct.

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Just as the Section 5 carveouts give a greenlight for risky conversations, this new approach gives a green light to eschew caution and engage in communications that may later cross the line into matters that the public should see, so long as they were not initially intended badly. This creates significant new risks that public business may be conducted outside public view.

Open Government is a Crucial Right, and Amending These Laws Requires Open Process

The principle of open government is essential infrastructure for participatory democracy. Our open government laws have been drafted and interpreted to embody this principle. They are about the public's rights to supervise their government. The stakeholders for open government laws include every resident of this state, and the need for broad participation and sunshine in the revision process is just as vital as it is for the substantive law itself.

We are very concerned about a growing trend of public bodies taking shortcuts around proper process for proposed changes to open government laws. We are doubly concerned where working groups favor regulated public bodies themselves without significant public interest participation. We do not doubt that this bill was inspired by real issues, and that the drafters are working in good faith to meet earnest needs as they see them. Nonetheless, limited private workgroups and truncated legislative processes leave out public stakeholders.

In 2017, after an extended task force process, the Legislature passed sweeping amendments to the Oregon Public Records Law. Advocates addressed a law showing its age, where myriad tweaks over decades resulted in a law that was not meeting its fundamental purpose. For the most part, this was simply the call-and-response of emerging issues that happen in public policy over time. Yet over time that death by a thousand cuts had real impact.

Reforms in 2017 recognized this cycle and addressed it by creating infrastructure to prevent this creep of narrow-issue shortcuts. The Legislature created the Public Records Advisory Council and tasked it with providing the broad stakeholder engagement and deliberation required to meet the broad public interest, rather than closed-door lobbying that shut the public out. Since 2017, we have nonetheless seen a growing trend of open government revision bills proposed each legislative session, often purporting to push narrow-purpose issues through narrow lobbying paths. Often, on full examination, these proposals prove far more impactful and complicated.

It is critical that Oregon lawmakers hold themselves accountable to the public they serve, and that Oregonians understand how decisions that impact their lives are made. The public's right to know is crucial for democratic accountability. Open government laws ensure that essential right to know and participate, and those laws should be drafted in the same spirit.

Respectfully,

Rachel Smolkin

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CEO, Oregon Public Broadcasting