

THE PUBLIC COMMISSION ON THE OREGON LEGISLATURE
HUMAN RESOURCES COMMITTEE

December 12, 2005
1:00 P.M.

Hearing Room A
Tapes 6 - 8

MEMBERS PRESENT: **John Lattimer, Chair**
 Dave Barrows
 Daniel Bernstine
 Jim Hill
 Delores Pigsley

MEMBERS EXCUSED: **Carolyn Chambers**

STAFF PRESENT: **Marjorie Taylor, Committee Administrator**
 Kellie Whiting, Committee Assistant

PROPOSALS/ISSUES HEARD:

Discuss the Seven Frohnmayer Points as Guiding Principles for the Committee - Informational Meeting
Review of Proposals and Issues Assigned to the Committee and Issues of Interest to Committee Members - Informational Meeting
Discussion of Committee Priorities and Development of Committee Work Plan – Informational Meeting
Overview of Public Records Retention in the Legislative Branch – Informational Meeting

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 6, A		
002	Chair Lattimer	Calls the meeting to order at 1:05 p.m.
<u>DISCUSS THE SEVEN FROHNMAYER POINTS AS GUIDING PRINCIPLES FOR THE COMMITTEE - INFORMATIONAL MEETING</u>		
009	Chair Lattimer	Refers to the list of problems and principles developed by Dave Frohnmayer and Susan Leeson (EXHIBIT A). Asks if the committee could use the list as guiding principles.
037		The Committee concurs.
<u>REVIEW OF PROPOSALS AND ISSUES ASSIGNED TO THE COMMITTEE AND ISSUES OF INTEREST TO COMMITTEE MEMBERS – INFORMATIONAL MEETING</u>		
035	Chair Lattimer	Refers to the memo from Ramona Kenady regarding staff and salary (EXHIBIT B) and a legislative compensation chart (EXHIBIT C). Refers to the list of proposals (EXHIBIT D). Briefly talks about proposals # 052, 022 and 007.

- 105 Marjorie Taylor Commission Administrator. Provides information about the Process Committee's and the Management Committee's work plan. Suggests using a work plan that works together with the Management Committee.
- 132 Chair Lattimer Continues to discuss proposals on **(EXHIBIT D)**.
- 140 Pigsley Suggests removing proposal # 038 (*the removal of Indian Services from the Legislative Branch*) from the list.
- 157 Chair Lattimer States it will be placed on the agenda for a work session. Requests information on the implications regarding proposal #145 (*Per Diem for non-legislative members*).
- 181 Barrows Regarding proposal #145, asks if it includes work groups, taskforces, commissions and boards within the executive branch.
- 187 Chair Lattimer Asks about the relevancy of proposal #145 to the Public Commission on the Oregon Legislature.
- 198 Bernstine Inquires about the percentage of persons serving on executive appointed committees and legislative appointed committees.
- 202 Barrows Inquires if the commission members on the Transportation Commission receive per-diem.
- 207 Taylor Responds that it varies between board to board and commission to commission.
- 212 Bernstine Responds about the percentage.
- 220 Chair Lattimer Comments on the relevant statutes. Suggests removing proposal #145 on the next agenda.
- 230 Pigsley Requests more information about non-members receiving per diem.
- 236 Taylor Responds the information will be gathered and distributed to the committee members.
- 240 Barrows Suggests reviewing the information before removing proposal #145 from the list.
- 257 Chair Lattimer Requests more information before a work session. Asks for a progress report on the Management Committee.
- 270 Taylor Explains what took place during the Management Committee meeting on December 12, 2005. Describes the conversation and testimony concerning staffing levels and functions of the legislative offices.
- 284 Chair Lattimer Inquires if the Management Committee is assuming that the offices will still exist.
- 297 Taylor Responds that as the Process Committee is talking about structure, the Management and Human Resources Committee are gathering information and talking about different staffing alternatives with witnesses.
- 300 Chair Lattimer Inquires if the Management Committee has taken up the issue of staffing.
- 302 Taylor Responds the committee has requested information about staffing issues, if annual sessions were recommended. States that the information is being gathered.

- 327 Chair Lattimer Explains that the Management Committee will be talking about the role and function of staff, and the Human Resources Committee will be talking about standards, requirements and payment of staff.
- 349 Taylor Concurs. Explains that the recommendations can be made back and forth between the Management and Human Resources Committees to share the information and to prepare a package for the full commission.
- 352 Chair Lattimer Inquires if the Management Committee has discussed the Legislative Audit Function.
- 360 Taylor Answers no. Continues to describe the Management Committee meeting in terms of reviewing alternatives to staffing offices and the role of the offices.
- 380 Chair Lattimer Invites members to add items onto a future agenda.
- 387 Barrows Inquires about the work load of the Process Committee.
- 390 Taylor Responds that Chair Lang feels comfortable with the workload of the Process Committee and briefly describes their work plan. Invites any commission member to participate in the Process Committee meetings.

TAPE 7, A

- 015 Chair Lattimer Reiterates the issues before the committee and asks if there is any other issue to be added. Refers to the work plan, illustrating proposed meetings A, B, and C (**EXHIBIT E**). Suggests having the topics of personnel regulations and legislator compensation on the agenda for the next meeting.
- 100 Taylor Reminds the committee that the full commission will meet Monday February 13th, 2006. Suggests setting the next meeting date.
- 142 Chair Lattimer States that the Human Resources Committee will meet January 23, 2006.

OVERVIEW OF PUBLIC RECORDS RETENTION IN THE LEGISLATIVE BRANCH – INFORMATIONAL MEETING

- 163 David Heynderickx Acting, Legislative Counsel (LC). Submits and refers to an informational packet including SB 1062-2 (2005) and ORS 171.410 - 171.430 (**EXHIBIT F**), which pertain to legislative record retention laws. Notes that the statutes address legislative records and committee records, not legislative members. Refers to page three and four and describes the existing statutes regarding legislative record retention. Testifies that the committee records are given to the State Archives. Comments that the outstanding issue is if the public record law applies to the individual members of the Legislative Assembly.
- 277 Heynderickx Continues to describe the general definition of the public record law and the speech and debate clause. Explains how the public record laws apply to e-mails in writing and letters from constituents. Discusses the detailed and complex retention periods for different state agencies. Comments on the centralized storage facility project for state records. States the two pieces of the records law are the disclosure of requests that relate to the conduct of the peoples' business that are not exempt, and the retention schedule.
- 392 Heynderickx Refers to SB 1062-2 (2005) (**EXHIBIT F**) and describes the intent to

establish a one year legislative record retention period for members, members' staff and the caucus offices.

TAPE 6, B

- 008 Heynderickx Explains the members' concerns about what had to be kept, including faxes, e-mails, letters and items in the in-box. Testifies that Legislative Counsel explained there is some control over the issues, because the public records law applies to documents in which any public official retains and uses in making decisions about the people's business.
- 039 Chair Lattimer Inquires if ephemeral documents were discussed.
- 044 Heynderickx Responds about the scope of ephemeral documents. Provides examples of what documents are considered ephemeral. States he believes that the intent of SB 1062 (2005) could be done by rule.
- 102 Hill Expresses concern about the assumption that the public is aware their letter to a legislator could be made public.
- 128 Heynderickx Responds about the agency guidelines and the rules for legislators.
- 153 Hill Comments on the scope of the open public records law.
- 164 Heynderickx Provides clarification that there is a decision that can be made about what is used and kept for conducting the public's business. Explains that most individual legislators keep a bill file.
- 187 Chair Lattimer Asks how long legislators keep their bill files and if they are submitted to archives.
- 187 Heynderickx Answers that the members usually keep the bill files until the next session and do not submit their individual bill files to archives.
- 189 Pigsley Inquires if Mr. Heynderickx has a recommendation for the committee.
- 191 Heynderickx Explains he is not making a recommendation and is involved due to a large number of people making record requests in the 2005 session and a number of members asking what needs to be open to the public, what is exempt and what is the retention period.
- 208 Chair Lattimer Summarizes Mr. Heynderickx's testimony.
- 222 Heynderickx Provides clarification about the speech and debate clause. States that most members keep bill files and are made available, but the question is how long they need to be kept.
- 235 Chair Lattimer Comments there might be a need to have a retention schedule and have a standard or rule about record retention that can be followed.
- 244 Heynderickx Explains the concerns about e-mail communication. States there is not a standardized schedule concerning e-mails.
- 253 Chair Lattimer Inquires if a recommendation to have a set of standards and a retention schedule for members would be useful.
- 258 Heynderickx Responds.
- 269 Hill Asks if the records retention process is clear to members.
- 274 Heynderickx Responds that documents in writing that are retained and used for purposes of decision making or used in the conduct of the people's business, do fall under the open records law and should be retained.
- 297 Dave Henderson Legislative Administrator, Legislative Administration. Explains the

distinction between legislative assembly records and legislative committee records. Asserts that legislative committee records, including meeting minutes and audio tapes are compiled and sent to States Archives after session. States that administrator bill files are maintained in Committee Records. Explains that the legislative administration records including financial and personnel records for legislators, are maintained in Employee Services and Financial Services under a ridged retention schedule. Notes the record retention schedule for the Legislative Administration Committee will be updated this interim.

382 Rich Englis Manager, Information Systems. Describes the three categories of data pertaining to the legislature: legislative business data; personal computing information; and video and audio data.

TAPE 7, B

002 Englis Explains how legislative business data is stored and notes that the data is currently stored online, three sessions back. Describes the retention for e-mails. Explains the retention for audio and video recordings. Notes all floor session recordings are kept forever on VHS, DVD or on a hard drive. Asserts there is not a uniform format for data retention and explains the Recording and Archiving Project.

104 Henderson Comments the project was originally funded by the 2001-2003 budget, but because of reductions that all state agencies faced, the funding was lost. Notes the project is something that clearly needs to be done, and will be in the budget request for 2007-09. Expresses that having the support of the commission is important.

116 Barrows Inquires about the cost of the project that was lost.

120 Henderson Responds the ballpark figure was \$500,000.

121 Barrows Asks how much money is needed to replace the audio tapes at State Archives.

126 Englis Responds he cannot answer at this time.

131 Hill Asks where do people inquire or make public records requests in terms of financial statements.

139 Henderson Answers all requests that come to Legislative Administration come across Mr. Henderson's desk and adds that he has to sign off on releasing the records.

140 Hill Inquires if there is a repository for legislators regarding e-mails.

144 Englis Responds the email accounts have a mailbox in which they can be stored.

147 Hill Asks if there was a request for an e-mail, would it be made available.

150 Henderson Answers that if the document was subject to disclosure of the public records law, and was available, it would be released.

160 Chair Lattimer Asks what e-mail server the legislature uses.

162 Englis Answers Microsoft Outlook.

167 Chair Lattimer Asks if a member of the public wanted every e-mail regarding a specific piece of legislation, would it be available.

- 168 Englis Responds it would be very difficult.
- 175 Henderson Responds the members are responsible for retention of their own records.
- 181 Barrows Inquires what would happen if the member did not want to release the document.
- 188 Henderson Responds if there is a document that constitutes as a public record and is subject to disclosure, they would work with the legislator. States the circumstance has never happened.
- 205 Barrows Asks what would happen if the member knowingly deleted a requested public record.
- 213 Heynderickx Responds there is law prohibiting the destruction of a public record and constitutes as a class A misdemeanor. Adds that the Attorney General's Manual sites that statute as one consequence of intentionally destroying a public record, subject to disclosure under the public records law.
- 239 Barrows Inquires about the scope of the statute.
- 240 Heynderickx Asserts that as far as he knows, no one has been prosecuted for destroying a public record under that statute.
- 248 Barrows Inquires if it would be helpful if the commission supported the re-introduction of SB 1062 (2005).
- 255 Heynderickx Responds the intent of SB 1062 could be done by rule.
- 270 Chair Lattimer Besides the speech and debate clause, asks if there is a difference between the public records requirements of the legislature and other public bodies.
- 276 Heynderickx Answers not for public officials. Comments that there are differences for committee records. Adds that members also do business on home personal computers. Asserts that members also need to respond because the request may only be available on the member's personal computer. States the question of records retention is about who the custodian of records is. Provides examples of some of the requests.
- 337 Hill Asks if the if public record requests are given to the legislators.
- 344 Henderson Responds Legislative Administration always shares the requests with the members.
- 351 Heynderickx Answers that some requests go directly to the members and they recommend taking the requests to Legislative Administration to coordinate the response.
- 361 Hill Inquires about how new legislators and legislator staff get up-to-speed with the process.
- 379 Henderson Answers that training is conducted prior to each legislative session.
- 389 Heynderickx Refers to a survey from NCSL about other states, which also have trouble with the issue, and notes that there is a policy argument exempting the legislature from the public records law and adds that some states do that.

TAPE 8, A

- 004 Chair Lattimer Inquires if there has been an attempt to review people who make requests at an unusual rate and an enormous cost to the public body.
- 010 Heynderickx Explains the reasonable fee associated with requests, which helps narrow the requests.
- 022 Henderson Responds about the charge associated with producing records. Notes that the charge is waived on a daily basis for small requests with minimal cost.
- 048 Bernstine Inquires if any information is redacted.
- 052 Henderson Responds some information is redacted, such as social security numbers, personal phone numbers and personal addresses, but notes most requests are can be fully disclosed.
- 064 Chair Lattimer Inquires if there is an exemption for attorney/client privileged information, and if it applies to bill information and discussions between members and Legislative Counsel.
- 068 Heynderickx Answers yes. Adds that not everything done by LC is confidential.
- 072 Chair Lattimer Inquires if there is any other state agency that has confidentiality provisions.
- 087 Heynderickx Responds he does not think so. Adds there is an exception to works in progress.
- 089 Barrows Asks that if Mr. Heynderickx, Mr. Henderson and Mr. Englis have suggestions, to submit them to the committee before the next committee meeting. States the topic is of importance.
- 105 Chair Lattimer Requests a list of issues and possible solutions in terms of managing the public records law.
- 116 Hill Inquires about the communication from palm pilots and blackberries.
- 127 Heynderickx Responds that it does not matter what form the writing takes. Asserts that if the writing is used and retained for decision-making purposes, it should be subject to disclosure.
- 145 Chair Lattimer Explains how his blackberry works.
- 156 Englis Responds the blackberries are used to access, store e-mail, and are in accord with PCs. Notes it will become more troublesome in the future.
- 171 Chair Lattimer Clarifies that information stored on a personal computer at home and relates to the conduct of public's business, it is subject to the public records law. Comments on the issue of public records and retention at the county level.
- 193 Hill Highlights the unique situation for legislators.
- 215 Chair Lattimer Comments on the work of county commissioners and city council members, and the expectations the public has. Suggests thinking about the list of problems and principles (**EXHIBIT A**) and the issues discussed.
- 240 Hill Comments on the exemptions to the open record law and the reasons thereof. Reiterates the situation's uniqueness.
- 280 Chair Lattimer Concurs that there are more difficulties for current elected officials and asserts that there needs to be a way to assist both the public and the

legislature. Adjourns the meeting at 3:21 p.m.

EXHIBIT SUMMARY

- A. Committee Discussion, list of problems and principles, staff, 1p**
- B. Committee Discussion, memo from Ramona Kenady, staff, 3 pp**
- C. Committee Discussion, legislator compensation chart, staff, 6 pp**
- D. Committee Discussion, list of proposals, staff, 15 pp**
- E. Review of Proposals, proposed work plan, staff, 3 pp**
- F. Proposal # 049, informational packet, David Heynderickx, 4 pp**