

**HOUSE COMMITTEE ON STATE AND FEDERAL AFFAIRS**

**July 19, 2005 Hearing Room 357**

**10:00 A.M. Tapes 39 - 40**

**MEMBERS PRESENT:**        **Rep. Rep. Wayne Krieger, Chair**

**Rep. Rep. Jeff Barker, Vice-Chair**

**Rep. Brian Boquist, Vice-Chair**

**Rep. Linda Flores**

**Rep. Greg Macpherson**

**STAFF PRESENT:**        **Janet Adkins, Committee Administrator**

**Sandy Thiele-Cirka, Committee Administrator**

**Louann Rahmig, Committee Assistant**

**MEASURES/ISSUES HEARD:**

**SB 173 – Public Hearing and Work Session**

**SB 358A – Work Session**

**SB 1062A – Work Session**

**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.**

<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
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## **TAPE 39, A**

003            Chair Krieger            Calls the meeting to order at 10:16 a.m. and opens a public hearing and work session on SB 173.

### **SB 173 - PUBLIC HEARING AND WORK SESSION**

006            Janet Adkins            Committee Administrator. Explains SB 173 which creates a two-tier system for certification of emerging small businesses.

017            Rep. Boquist            **MOTION: Moves SB 173 to the floor with a DO PASS recommendation.**

**VOTE: 5-0-0**

**AYE: In a roll call vote, all members present vote Aye.**

023            Chair Krieger            **The motion CARRIES.**

**REP. BOQUIST will lead discussion on the floor.**

025            Chair Krieger            Closes the work session on SB 173 and opens a work session on SB 358A.

### **SB 358A – WORK SESSION**

026            Janet Adkins            Committee Administrator. Explains SB 358A which creates the Oregon Quality Jobs Task Force appointed by the Governor to coordinate and assist in the development and evaluation of at least two demonstration projects involving natural resource management and restoration. States there is a subsequent referral to the budget committee.

035            Rep. Boquist            **MOTION: Moves SB 358A to the floor with a DO PASS recommendation and BE REFERRED to the House Committee on Budget.**

**VOTE: 5-0-0**

**AYE: In a roll call vote, all members present vote Aye.**

040            Chair Krieger            **The motion CARRIES.**

042	Chair Krieger	Closes the work session on SB 358A and opens a work session on SB 1062A.
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**SB 1062A – WORK SESSION**

052	Chair Krieger	Refers to previous discussion on retention period of records. Requests overview of situation.
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057	Dave Heynderickx	Acting Legislative Counsel. Explains that SB 1062A establishes a retention period for records of legislative assembly members and certain others hired by members, the caucus offices, Senate President's office, and office of the Speaker of the House. Discusses coverage by the Public Records Law and the Public Meetings Law. Continues that SB 1062A applies to member records rather than committee information and explains what records are subject to the Public Records Law. States that SB 1062A establishes a one-year retention period from the time the record is created. Advises that members have the option of keeping the records or turning them over to the Legislative Administration Committee (LAC), except when they cease to be a member at which time the records must be turned in within 60 days. Concludes that the LAC can adopt exceptions to the retention period to build in flexibility.
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163	Chair Krieger	Cites an example and asks for clarification of retention.
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169	Heynderickx	Responds that at any given time there will be communications to be retained or purged.
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172	Chair Krieger	Asks if hard copies are to be made of information on a computer to retain.
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174	Heynderickx	Answers that is acceptable.
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176	Rep. Macpherson	Asks about retention period requirements in other settings.
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179	Heynderickx	Responds that within the Executive Branch, all have retention periods.
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191	Rep. Boquist	Inquires if "spam" e-mail is a record.
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195	Heynderickx	Answers that "spam" is usually not related to the conduct of the public's business. Continues that members can make a decision at the
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time of receipt of e-mail communications whether to keep or delete depending on content.

214	Rep. Boquist	Asks if under the -2 amendments “spam” e-mail can be deleted.
218	Heynderickx	Replies not because of the -2 amendments but because of the Public Records Law.
220	Rep. Boquist	Inquires if “chain” e-mails can be deleted.
225	Heynderickx	Responds yes.
227	Rep. Boquist	Asks about “information papers.”
229	Heynderickx	Responds that decision can be made at the time of receipt. Discusses information placed in bill files.
240	Rep. Flores	Inquires about information that does not go into a bill file but into a policy administrative file.
246	Heynderickx	Replies that once a decision is made to retain and use in consideration of a legislative proposal, it becomes a public record.
250	Rep. Flores	Asks if used as reference on an issue it is criteria for policy consideration.
254	Heynderickx	Answers correct. States that legislators are different from other public agencies because of specific language in the Public Records Law which says they are not subject to the requirements of disclosure to the extent that they are protected under the “speech and debate clause” of the Oregon Constitution. Explains that under that clause legislators cannot be sued for comments on the floor, in committee or in any other communication with respect to the conduct of the public’s business. Continues that based on that exception, things written about a given piece of legislation are probably not subject to disclosure.
280	Rep. Boquist	Asks about e-mails received and subsequent responses. Cites an example.

288	Heynderickx	Responds with the question of whether it is a public record that needs to be retained as opposed to a public record that needs to be disclosed. Provides examples.
310	Rep. Boquist	Restates the question about e-mails and replies and refers to the -2 amendments.
323	Heynderickx	Replies that if the response indicates the information will be used, it becomes a public record. Provides additional clarification.
354	Rep. Boquist	Cites two different examples of a response and seeks clarification on which to keep.
360	Heynderickx	Clarifies which type of reply would need to be retained.
368	Rep. Barker	Seeks clarification whether this law is needed or if the same could be accomplished by legislative rule.
374	Heynderickx	Answers this could be done by rule. Adds, however, that SB 1062A clarifies the relationship with existing laws on “legislative records” which could also be done by rule.
387	Rep. Barker	Comments on what prompted this bill. Is not sure SB 1062A is needed.
394	Heynderickx	Answers that was the initial impetus.
399	Chair Krieger	Asks if telephone conversations are private.
402	Heynderickx	Replies yes as there is no record of those.
404	Chair Krieger	Comments that many people communicate by e-mail now, and the law was written before the technology was developed.
407	Heynderickx	Responds correct.
410	Chair Krieger	Comments that the committee members appear uncomfortable.

**TAPE 40, A**

020	Rep. Boquist	Notes that SB 1062A is unclear. Believes a rule is the better option.
027	Rep. Macpherson	Comments that SB 1062A doesn't address the public record issue but only sets up a retention period. Doesn't believe a flat one-year retention requirement should be established as there is an implied retention depending on the period of time information is relevant.
043	Rep. Boquist	Has a problem knowing how to define the "record" in order to determine retention period.
047	Chair Krieger	Offers that some correspondence is handled by staff so legislators may be unaware of it.
053	Rep. Boquist	Expresses concern about a fiscal impact to monitor records for retention or disposal.
060	Heynderickx	Points out that Oregon is not the only legislature struggling with this problem.
068	Chair Krieger	Closes the work session on SB 1062A. Announces SB 704B is pulled from the agenda as it is contained in SB 781. Adjourns the meeting at 10:47 a.m.

## **EXHIBIT SUMMARY**

**NO EXHIBITS.**