

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

INFORMATION TECHNOLOGY COMMITTEE

Tuesday, September 8, 1998
Harvest Room, State Capitol
Bismarck, North Dakota

Senator Larry J. Robinson, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Larry J. Robinson, Karen K. Krebsbach, Carolyn Nelson, Ken Solberg, Rod St. Aubyn; Representatives Ken Svedjan, Rich Wardner

Members absent: Representatives Rex R. Byerly, Eliot Glasheim, Robin Weisz

Others present: See attached appendix

MINUTES

It was moved by Senator Nelson, seconded by Senator St. Aubyn, and carried on a voice vote that the minutes of the July 7, 1998, meeting be approved as distributed.

STATEMENT BY SENATOR SOLBERG

Senator Solberg said he did not know that his daughter-in-law was interviewing for a job with Wolfe & Associates when the committee requested the Legislative Council to enter a contract with Wolfe & Associates. After the initial contract was entered, he said, she became employed by Wolfe & Associates. He said he was bringing this relationship to the attention of the committee so this knowledge is known by the Legislative Council, committee members, and others.

YEAR 2000 (Y2K) COMPLIANCE EFFORTS Y2K Agency Assessment

Chairman Robinson recognized Mr. Robert J. Pope, Wolfe & Associates, for presentation of the Y2K Agency Assessment provided under contract with the Legislative Council. Mr. Pope distributed a draft copy of the assessment. A copy of the assessment is on file in the Legislative Council office.

Mr. Pope said the assessment is of four state agencies--State Department of Health, State Radio, Workers Compensation Bureau, and State Hospital. He introduced Mr. Scott Kost, Wolfe & Associates, who presented the assessment.

Mr. Kost said the scope of the assessment was to determine whether the selected agencies have established processes to prepare the agencies for the year 2000. He said the recognized process includes

awareness, assessment, remediation, validation, implementation, and contingency or business continuation planning.

Mr. Kost summarized the results of the survey of the four agencies. He said the agencies share a number of strengths that will facilitate the Y2K process:

- Awareness - Managers in the agencies were aware of the need to develop methodologies to address Y2K issues.
- Personnel - The agencies have strong personnel who are knowledgeable in the application of technology for their agency.
- Mainframe compliance schedule - The agencies have applications on the mainframe processing unit in the Information Services Division which are being handled on schedule.
- Training - The Information Services Division has held several meetings with agency personnel to provide Y2K training, discussion, and coordination.
- Staff interest - The overall reaction to the assessment showed agencies were open to receiving assistance.

Mr. Kost described these concerns, which resulted from the assessment of the agencies:

- Y2K methodology - Due to lack of overall direction at the state level, each agency has created its own methodology for addressing Y2K issues.
- Project management plans - Lack of documentation defining the impact of Y2K issues on the specific agency could result in problems if a staff member knowledgeable about Y2K issues terminates employment.
- Inventory analysis - No agency has a complete inventory of hardware, systems, equipment, facilities, and applications owned or maintained by the agency or its contractors.
- Test strategy - No agency has defined or documented its test strategy and approach to testing for Y2K compliance and functionality.
- Contingency planning - No agency has developed a documented contingency plan addressing how it will handle Y2K issues on the critical horizon failure dates that could occur before and after January 1, 2000.

- Facility impact - No agency has considered the impact of year 2000 on facilities, including the impact of loss of electrical service.
- Embedded systems impact - Although some agencies could be impacted if systems containing embedded processors fail, no agency has completed an inventory of these systems.
- Duplicated efforts - Coordination of efforts to avoid unnecessary duplication is important to maximize efficiencies.
- Immovable, fast-approaching deadline - It is common for information technology projects to be delivered late, but the year 2000 date is not negotiable.
- Financial impact - Due to the current level of preparedness, it is not possible to determine the overall Y2K financial impact for any agency.

Mr. Kost presented these recommendations:

- Appoint a state Y2K director - Agencies are looking for leadership and do not want to waste valuable resources reinventing the wheel. The Information Services Division has provided more and more assistance to agencies at the information technology coordinator level, but one of the key challenges in the next six months is to assure that senior management is involved in the Y2K process.
 - Appoint agency Y2K directors - Accountability or responsibility for Y2K efforts should be assigned to a senior management individual in each agency. This individual should be responsible for establishing awareness at the senior management level.
 - Assess statewide readiness - The state should conduct additional enterprisewide assessments for Y2K readiness across departments to ensure there are no surprises. The Information Services Division has employed an individual who will be assigned this task.
 - Formalize Y2K planning - All agencies should formalize their project management, testing, and contingency plans for their Y2K issues to facilitate improved status tracking and communication with senior managers. The Information Services Division's web page contains a Y2K plan guideline <http://www.state.nd.us/isd/y2k/> to assist agencies with the planning process.
 - Financial contingencies - Financial contingencies should be established at the state and agency level, based on each agency's assessment and the overall risk of failure. Each agency should finish its assessment in time for the 1999 Legislative Assembly to appropriate additional funds to the Emergency Commission to distribute as unforeseen emergencies arise due to Y2K complications.
- Establish public affairs programs - Public confidence in the state's ability to mitigate Y2K issues will become increasingly vital as the date draws closer. The state Y2K director should establish proactive communication channels with the citizens of the state to assure solid public confidence and should serve as a clearinghouse of information by expanding the state Y2K web page to provide information for taxpayers as well as state agencies.
 - Purchasing standards - All vendors providing goods and services to the state should provide written assurances that they comply with Y2K requirements. This includes service contract renewals and leases for equipment or facilities.
 - Impact of new legislation - Legislators must be cognizant of the potential impact of legislation that is passed during the 1999 legislative session on an agency's Y2K remediation efforts.
 - Contract review - All contracts should be reviewed to determine which party is responsible for Y2K compliance, and specific assignment of responsibility should be included in contracts renewed before January 1, 2000.
 - Private sector leadership - The state has a platform from which to educate and motivate the private sector to take steps to prepare for the year 2000.
 - Best practices - The state Y2K director should continue to develop material available on the state Y2K web site to avoid duplication of effort and achieve the highest quality processes.

Senator St. Aubyn said the responsibilities of the recommended position of a state Y2K director appear to require a full-time position. Mr. Pope said some of the responsibilities identified in the recommendations are in effect now. He said the assessment was done in July and substantial progress has been made in this area since then.

Y2K Liability Bill Draft

Mr. John D. Bjornson, Counsel, Legislative Council, reviewed a bill draft relating to the liability of the state and political subdivisions for claims resulting from failure of computer equipment as the result of the Y2K date change. He said the bill draft provides for immunity for any claim arising upon contract or tort as the result of failure of any computer hardware, software, or processors to account for a date compatible with the year 2000 date change if the public entity has made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor (embedded chip) compliant with the date change. He said the definition of compliant with the date change was developed by the Information Services Division and the Attorney General's office.

In response to a question from Senator St. Aubyn, Mr. Bjornson said "good-faith effort" is not defined. He said a court would determine what was a good-faith effort based on the circumstances of a particular case.

Ms. Jo Zschomler, Director, Risk Management Division, Office of Management and Budget, distributed a prepared statement concerning the state's liability exposures for Y2K claims and lawsuits. A copy of the statement is on file in the Legislative Council office.

Ms. Zschomler said tort and contract claims are areas of liability exposure for state agencies failing to make Y2K compliance. She said an example of contract exposure is a local bakery contracting with the Mill and Elevator to provide a certain amount of flour by a specific date; because of failure of an undetected embedded chip, the mill does not meet that obligation; the bakery is unable to produce its product; and the bakery seeks to recover damages from the mill. She said she is aware of four states that have passed legislation providing the state and political subdivisions immunity from lawsuits based on an error caused by a system that is not Y2K compliant.

Ms. Zschomler said a concern the Risk Management Division has regarding the proposed bill draft is the reference to a good-faith effort. She said state agencies are working to address Y2K issues, but there can be no guarantee that the state will not experience adverse effects from undetected errors or failure of some systems. She said conditioning the immunity on a good-faith effort will require the risk management fund to incur expenses in trying to establish that a good-faith effort was made. She presented proposed language patterned after legislation in other states providing no cause of action may be brought against any public entity on the basis that any information technology system, embedded chip, or device containing a computer processor failed to recognize or process an incorrect date or time regardless of the cause of the error. The proposed language would also provide that any contract on behalf of the state or a political subdivision must include a provision that provides immunity to the state or political subdivision for any breach of contract based on any information technology system or device containing a computer processor failing to process a correct date or time regardless of the cause of the error, and after the effective date of the legislation, a contract automatically includes the immunity. She said the language "regardless of the cause of the error" could be replaced with language "if the error was caused by an act or omission constituting reckless or grossly negligent conduct, malfeasance, or willful or wanton misconduct," but such a revision would require expenses to be incurred to determine if the condition has been met.

Senator St. Aubyn expressed concern about the constitutionality of legislation adding immunity provisions to existing contracts. Also, he said, if blanket

immunity is given, agencies may feel no pressure to make any effort to establish or continue Y2K compliance efforts.

Representative Svedjan inquired about the kind of message being sent to private business by giving the state blanket immunity without doing anything for liability faced by private sector enterprises. Ms. Zschomler said that type of immunity could be considered, but she has not heard of any state that has provided such immunity.

Y2K Compliance Efforts

State Agency Defense

Ms. Rosellen Sand, General Counsel, Attorney General's office, distributed prepared testimony regarding the office of Attorney General's activities to prepare for defense of state agencies on Y2K issues. A copy of her testimony is on file in the Legislative Council office.

Ms. Sand said the Attorney General's office provides legal representation for all state agencies. She said the first line of legal defense is existing staff and full-time employees appointed as special assistants in various state agencies. She said the second line of defense is the Attorney General's ability to appoint private attorneys as special assistant attorneys general. Depending upon a number of factors, including the agency, the type of action, and conflicts, she said, the funding to pay for attorneys to represent the agency comes from either the Attorney General's budget or the budget of the agency that is being sued. When preparing for legal challenges, she said, the Y2K issue does not present a unique situation in terms of resources. She said the state is always faced with the possibility of extensive litigation.

Ms. Sand said in considering the Y2K issue, the Attorney General's office has followed its usual mechanism for determining how to assure there are adequate resources available to defend the state agencies. She said the office considered and rejected the option of submitting a request to the 1999 Legislative Assembly for specific funding of Y2K issues. She said the reasons for this decision include the fact that a Y2K claim will either be brought as an action in tort or for a claim under contract. In the case of a tort claim, she said, representation would be provided by the risk management fund. With respect to a contract claim, she said, existing staff or full-time special assistant attorneys general in the respective agencies could defend the agency, such as when other contract claims are brought. If resources are insufficient to pursue either option, she said, funds would be sought from the Emergency Commission. She said the office also considered the fact there is no consensus to the degree of threat of litigation in the current legal climate. She said the extent of that threat depends on the actions taken by state agencies and any action the Legislative Assembly takes to address liability.

Income Tax Revenues

Mr. Rick Clayburgh, Tax Commissioner, distributed a prepared statement analyzing the potential income tax revenue loss to the state due to the deductibility of expenses incurred by businesses as they strive to become Y2K compliant. A copy of this statement is on file in the Legislative Council office. Mr. Clayburgh said he will be appointing a department Y2K coordinator, and he said the department has a very good relationship with the Information Services Division.

Commissioner Clayburgh said of the 10,000 corporation income tax returns filed each year, only 500 have incomes in excess of \$200,000, and these corporations account for 80 percent of the combined North Dakota corporation income and 90 percent of the total corporate income tax. He said it is this group that is likely to incur any measurable costs associated with Y2K preparedness. Assuming that five percent of the combined income of the top 500 corporations would be used next year solely for Y2K preparedness, he said, the costs would total \$30 million. Assuming that 50 percent of the costs are expensed in the current year, and 50 percent are deducted equally over five years, and using a marginal tax rate of 6.83 percent, he said, the fiscal consequences are minus \$1.4 million for 1999 and minus \$205,000 for subsequent years.

Commissioner Clayburgh said businesses that file on an individual income tax basis would result in a corresponding worst case scenario of a loss of individual income tax revenues of minus \$450,000 in the first year and negligible in subsequent years. He said the loss in financial institutions tax revenue could be an additional \$200,000.

Securities Regulation

Mr. Syver Vinje, Securities Commissioner, distributed a prepared statement describing the activities of the securities industry in dealing with Y2K compliance issues. He also distributed a report from the Securities and Exchange Commission on the securities industry's state of readiness for the year 2000 and Y2K information from the National Association of Securities Dealers. A copy of the statement and the information is on file in the Legislative Council office.

Mr. Vinje said the Securities and Exchange Commission and the National Association of Securities Dealers are reasonably satisfied with progress on Y2K issues. In August, he said, it was reported that tests of organizations handling approximately 89 percent of all securities transactions in the United States had a success rate of 99 percent. He said that his office will be in contact with each registered investment advisor in the state before year's end to determine the level of compliance. He said he will be issuing an advisory that registration or renewal for the year 2000 will be denied for any registered investment advisor who has not demonstrated preparation for Y2K compliance. He said he expects that all

investment advisors will be in compliance, and he does not anticipate there will be any nonrenewal orders.

Mr. Vinje said investor advisories will be issued regarding safeguarding against fraud or abuse. He said it is reasonable to expect that con artists will try to take advantage of Y2K issues, and Y2K compliance technology investment scams will probably occur, and the office will deal with those as they are encountered.

State Investments

Mr. Gary Vetter, Supervisor, Information Services, Retirement and Investment Office, distributed the office's response to the Y2K survey by the Information Services Division. A copy of the survey response is on file in the Legislative Council office. The survey shows 10 hours remaining for Y2K compliance of internal applications and an \$8,000 request in the 1999-2001 budget request for replacement of four personal computers not Y2K compliant.

Mr. Steve Cochrane, Investment Director, Retirement and Investment Office, said most vendors are in validation and implementation phases of Y2K compliance and will be in the testing phase during 1999.

North Dakota Healthcare Association

Mr. Arnold R. Thomas, President, North Dakota Healthcare Association, said the association takes any threat to patient safety seriously. He said the association has been planning Y2K compliance efforts for over a year. He said these efforts include written and oral reports, capital expense planning, and facility planning. He said the major concern is with water and sewage utility service, and the association is working with the State Department of Health to ensure adequate planning for evacuation of facilities in case operations cannot be continued. He said they have had mixed results with respect to contacting vendors and insurance carriers regarding vendor compliance and liability coverage.

In response to a question from Representative Svedjan, Mr. Thomas said the evacuation planning includes all patient resident facilities, including nursing homes.

Y2K County Assessment

Mr. Pope reviewed the *Year 2000 County Assessment* prepared by Wolfe & Associates under contract with the North Dakota Association of Counties and the Legislative Council. A copy of the assessment is on file in the Legislative Council office.

Mr. Pope said the assessment of one medium-size county--Stutsman and one small-size county--Adams was to obtain a "snapshot" of Y2K readiness. Based on the assessments, he said, the strengths are:

- Personnel - The staff members in both counties are very willing to address and solve the issues.
- Simplicity - The majority of counties do not have a very high level of complex automation in their operations.
- State/county cooperation - The relationships between counties and the state agencies are strong and have the potential to simplify the process for those counties lacking technical expertise and Y2K project management skills or knowledge.
- Vendor support - Both counties have received strong support and quality service from their software vendors.
- Known issues - Both counties do not have any huge Y2K issues now.

Mr. Pope said boards of county commissioners can significantly alter the negative impacts of the year 2000 date rollover if they immediately address the following concerns:

- Project management plans - Neither county has sufficient documentation that defines the resources and schedules that could be impacted by Y2K issues.
- Inventory analysis - Neither county has a complete inventory of hardware, systems, equipment, facilities, and applications that are owned or maintained by the county or their contractors.
- Y2K methodology - Each county is creating its own methodology for addressing Y2K issues which is inefficient and provides for the likelihood of overlooking key issues.
- Duplicated efforts - There is a need for coordination of efforts to avoid a situation where 53 counties duplicate efforts.
- Test strategy - Neither county has defined or documented the test strategy and approach to testing systems for Y2K compliance.
- Contingency planning - Neither county has developed documented contingency plans addressing how Y2K issues will be handled on the critical horizon failure dates that could occur before and after January 1, 2000.
- Facility impact - County facilities vary throughout the state from very basic to very modern, and both counties need to consider the impact of year 2000 on facilities, including the impact of loss of heating systems and electrical facilities.
- Embedded systems impact - Neither county has completed an inventory of systems containing embedded processors.
- Immovable, fast-approaching deadline - It is common for information technology projects to be delivered late and the year 2000 date is not negotiable.

- Financial impact - Counties are just beginning to prepare for Y2K compliance, and county budgets for fiscal year 1999 are nearly due without the counties being far enough along in the Y2K process to establish solid dollar figures for Y2K compliance.

Mr. Pope made these recommendations for counties:

- Appoint a county Y2K director - Each county should appoint a senior manager to lead Y2K efforts for the county, to establish awareness of Y2K issues at all levels of the county, and to provide guidance to each department.
- Formalize Y2K planning - Each county should formalize its project management, testing, and contingency planning for Y2K compliance to more closely track project status and enhance communication with senior managers.
- Financial contingencies - Financial contingencies, based on each county's assessment and the overall failure risk, should be established at the county and departmental level.
- Establish a public affairs program - The North Dakota Association of Counties should put a proactive public affairs program in place to assure solid public confidence in North Dakota's ability to mitigate Y2K issues.
- Purchasing standards - Every vendor providing goods and services to a county should provide written assurances the vendor complies with Y2K requirements.
- Impact of new legislation/directives - County officials need to be cognizant of the potential impact of decisions made between now and January 1, 2000, on the county's Y2K remediation efforts.
- Contract review - All contracts should be reviewed to determine which party is responsible for Y2K compliance. Contracts renewed before January 1, 2000, should include language clearly specifying that responsibility.
- Project coordination - While some Y2K projects need to be carried out on an individual basis, it would be helpful for counties to have strong coordination, especially with documentation efforts and sample remediation plans and contingency plans for departments within each county.

Senator Robinson inquired how realistic is the recommendation that each county appoint a Y2K director in light of fiscal constraints in most counties. Senator St. Aubyn suggested counties could pool their resources. Mr. Mark A. Johnson, North Dakota Association of Counties, said the assessment is the impetus for the association to urge counties to move forward and a possibility is for counties to pool their resources. Senator Krebsbach said some counties are well along on Y2K compliance efforts and maybe those counties can work with counties that are not.

Mr. Pope said he sees the need for state agencies with links to counties to take the lead in ensuring Y2K compliance with respect to areas of those shared systems and resources.

STATEWIDE TELECOMMUNICATIONS NETWORK

Strategic Telecommunications Plan

Mr. James R. Stepp, Wolfe & Associates, presented the draft of the *Strategic Telecommunications Plan* developed by Wolfe & Associates. Mr. Stepp distributed a draft of the plan which is on file in the Legislative Council office.

Mr. Stepp said the plan resulted from reviewing the development of communication networks in five leading states--Arizona, Kansas, North Carolina, Oklahoma, and Washington. He acknowledged the assistance provided by telecommunications directors of those states. While visiting with those states and discussing their telecommunications initiatives, he said, these observations were made:

- Technology is not the most difficult problem. The most difficult problems are setting policies and developing mechanisms that encourage all the key parties to work together.
- Each state had a person at the cabinet level who was in charge of technology deployment for state government.
- Economic improvement and industry attraction and retention was the primary reason for investing in the statewide network.
- Creative legislation always preceded becoming a leading telecommunications state.

Mr. Stepp said the following trends mandate that the state take a different approach to the distribution of information among its agencies and to the citizens:

- The need to encourage economic development in the state through the use of a high-speed statewide communication network.
- The increased demand by citizens and companies for improved government services at decreased costs.
- The increased demand by citizens and companies for better access to government information using the Internet.
- The technologies and mediums used to provide high-speed communications are changing very rapidly but are merging to provide all services over one set of fiber, cable, or radio.
- The need to ensure that government services are provided at the most cost-effective level possible.
- The increased demand for high-speed data, voice, and video communications.

Mr. Stepp said the Information Services Division has historically done a great job in deploying voice, data, and video networks throughout the state. However, he said, meeting these new goals requires

a new approach to deploying and supporting technology and communication networks in the state. He emphasized that for purposes of the plan, telecommunications is broadly defined as the wide area networks that carry voice, data, and video from one state government building to another and includes the personnel that deploy and manage those wide area networks and the equipment necessary to hook the local offices to the wide area network, but it does not include the local area networks that reside within an agency.

Mr. Stepp said the practices of those five states were reviewed, and the plan is based on the best practices of those states. He summarized the project recommendations:

- Establish a statewide communications infrastructure agency for all telecommunications planning, selection, implementation, and management for all state agencies, higher education, and public schools.
- Establish the director of the agency as the chief information officer for the state as a cabinet level position reporting directly to the Governor.
- Establish a state communications infrastructure board that includes representatives from the three branches of government, private enterprise, and local government with the overall responsibility to approve standards and policies related to network technologies in the state.
- Mandate that the agency develop a strategic business plan defining rate plans, missions, goals, policies, transition plan, business objective, measurements, and general procedures.
- Establish a group within the agency for improving personnel productivity and workflow processes for customers.
- Establish a technology development fund to establish the statewide network and to evaluate emerging technologies and implement common, shared components for users of the network.
- Require each entity that uses the statewide network or is a user of agency services to file a strategic information technology plan.
- Establish a project quality assurance process to provide an independent assessment of the status of major projects.
- Create a separate department within the agency to plan and administer access to state information primarily through the Internet.

Mr. Stepp said the plan provides a framework for proactively deploying technology more efficiently and effectively. He said the recommendations establish a centrally managed statewide network with clearly defined accountabilities for communications within the state. Also, he said, the recommendations establish policies that will streamline procedures, staffing, and

costs, and make government data and services more accessible to the citizens of the state.

In response to a question from Senator Krebsbach, Mr. Stepp said Wolfe & Associates did not work with the Information Services Division or higher education in developing the plan. He emphasized that the overall charge was to review five states recognized as leaders in deployment of telecommunications networks and make recommendations to upgrade North Dakota's system based on those other states. If the recommendation is to proceed, he said, the Information Services Division and higher education need to be brought into the process for finalizing the recommendations.

Mr. Stepp said the recommendation to establish a statewide communications infrastructure agency for all telecommunications planning and implementation for all state agencies, higher education, and public schools should be viewed as consolidating telecommunications functions rather than creating a new agency.

Senator Robinson asked the extent to which the plan is building and refining on what is currently in place in the state. Mr. Stepp said North Dakota is not alone; every state has something in place. He said there are newer technologies that allow older technologies to work. He said when the term "network design" is used, what is included is the necessity to retrofit most existing equipment to new networks. He said this requires deployment on a gradual basis, but as quickly as possible. He said the recommendation is for a fully operational agency by July 1, 2000, but it may take up to six years for full deployment of the network as proposed.

Representative Svedjan asked whether there are networks already in place that can be used. Mr. Stepp said local telephone companies and others have networks in place, and the question is one to be addressed as a design issue.

Mr. Stepp observed that as the committee reviews current bill drafts under consideration, it should look at the recommendations of the plan and merge the concepts. Regarding use of the state network, he said, this is an evolutionary process, and if the decision is to proceed with the plan, the main benefit is the strategy for a long-term plan for telecommunications development. With respect to the relationship with the concern that new directives not impede Y2K compliance efforts, Mr. Kost said the intent behind that recommendation from the Y2K assessment is the need to consider the impact on Y2K compliance efforts and is directed more toward new applications rather than organizational structure.

In response to a question from Senator Robinson, Mr. Stepp said examples of economic development include the Raleigh-Durham area in North Carolina, known as the technology triangle, where businesses use high-speed networks, and Washington, home of Microsoft.

In response to a question from Senator Solberg, Mr. Stepp said the statewide network is not a stand-alone network, but is a network provided by telephone companies or others based on state contracts to provide the required services, and the state contracts for its use as other entities would contract for use.

In response to a question from Senator Nelson, Mr. Stepp said a difficulty in recruiting high-level information technology personnel may be because the current structure does not have a cabinet level position of chief information officer.

In response to a question from Representative Svedjan, Mr. Stepp said Arizona excepted higher education from required participation in the network, but Arizona personnel indicated that if they could go back, they would not make that exception.

Mr. Stepp summarized the estimated unrecoverable costs per biennium at \$17,506,000 during the 1999-2001 biennium, \$25,937,000 during the 2001-03 biennium, \$31,699,000 during the 2003-05 biennium, and \$26,099,000 during the 2005-07 biennium. He emphasized that actual costs can only be determined after a network design has been completed and the determination is made regarding the sites for interactive video and after determination is made regarding the rate of migration to the new network. He said the committee would need to establish the baseline because the current cost estimates emulate the leading states, i.e., provide remote hookups to rural sites.

Representative Svedjan inquired why the plan does not contain a cost-benefit analysis. Mr. Stepp said it is difficult to do a cost-benefit analysis tied solely to dollars. He said other states are doing things not possible before, e.g., North Carolina has placed an interactive learning center in each school versus no learning centers before. Representative Svedjan said support for legislative action is dependent on a cost-benefit analysis. Senator Solberg said we need to look at the costs over the last five to ten years for not doing this type of planning earlier.

Senator St. Aubyn inquired why Oklahoma networking costs, as a percent of gross state revenue, was .07 percent, which was quite a bit lower than North Carolina's .2 percent. Mr. Stepp said Oklahoma reached an agreement with telecommunications companies under which the companies received free access to highway right of way in exchange for laying high-speed cable for state use.

Chairman Robinson requested Mr. Heck, Director, Information Services Division, to respond to the *Strategic Telecommunications Plan*. Mr. Heck said it was difficult for a complete response on short notice, and he both agreed and disagreed with aspects of the plan. He emphasized that there has not been enough opportunity to see the benefit of the provisions of House Bill No. 1034 (1997), e.g., strategic planning, project management quality assurance, and project coordination. He said there is a single contract for the

infrastructure of the Information Services Division and higher education. He said he is concerned with the amount of reporting by the chief information officer if there is a legislative information technology management committee and a state board reviewing the activities of the statewide communications infrastructure agency. He said he personally prefers working with a legislative committee, which is composed of legislators who are policymakers. He noted that legislators are generally representative of the private sector. He agreed that state web pages are not consistent from agency to agency. He agreed that acquisitions should be more consistent with statewide vision.

North Dakota University System

Ms. Laura Glatt, North Dakota University System, said the University System has not had a chance to review the recommendations and would like to have a dialogue with Wolfe & Associates and the Information Services Division.

Secretary of State Network Costs

Mr. Alvin A. Jaeger, Secretary of State, distributed a prepared statement describing substantially increased costs of operating the central indexing system. A copy of his statement is on file in the Legislative Council office. He said he is sharing this information with the committee for consideration during deliberations of a statewide technological network.

Mr. Jaeger said the central indexing system is operated through dedicated line connections with the state's 53 county registers of deeds. For the next biennium, he said, the monthly charge for the Secretary of State's share of the dedicated connections will increase from \$3,255 to \$15,625. Even with this substantial increase, he said, the Secretary of State's office still might not have direct contact with county auditors for election-related programs. He said this is all the more reason for the state to have a coordinated technology network.

In response to a question from Senator St. Aubyn, Mr. Heck said the cost increase is due to revisions of fees because mainframe charges were subsidizing dedicated line costs. He said the fees were changed last biennium, and the figures were given to the Appropriations Committees during the 1997 legislative session, but the revised fees were not applied to the Secretary of State. Senator Robinson requested Mr. Heck to provide detailed information on the rates at the next committee meeting.

Prairie Public Broadcasting Digital Television Presentation

Ms. Kathleen Pavelko, President/CEO, Prairie Public Broadcasting, provided a screen presentation of digital television requirements being applied to broadcasters. She said federal law requires all television stations to broadcast a digital signal no later than

2003. She said a digital signal dramatically increases the amount of information sent over the air, e.g., allows up to 40 channels of video conference quality, four to six channels with better quality than today's quality, or one high-definition channel. She said this new broadcast technology can reach virtually every home and school in the state. She said Prairie Public Broadcasting manages this technology as a public resource and will use this technology for public purposes, e.g., enhancing kindergarten through grade 12 and higher education, providing business training, and supporting economic competitiveness of the state. She said digital television can be a powerful and cost-effective extender of the state's existing networks.

In answer to a question from Senator Solberg, Ms. Pavelko said public television could tie in with a statewide plan.

REPORT ON COORDINATION OF INFORMATION TECHNOLOGY SERVICES WITH POLITICAL SUBDIVISIONS

Mr. Heck distributed a report on coordination of information technology services with political subdivisions, prepared as required under North Dakota Century Code (NDCC) Section 54-44.2-02(5). A copy of the report is on file in the Legislative Council office.

Mr. Heck said the Information Services Division, Association of Counties, and League of Cities formed a committee to review the coordination of technology between state government and political subdivisions. He said the committee includes representatives of the division, counties, and cities. He said the committee met on February 19 and July 15 and is scheduled to meet on October 7. He said the first meeting centered on the status of each group in the use of technology and those areas where sharing is working:

27 counties are connected to the state network for e-mail, Internet, and state government access; counties and cities may buy off the state telephone long-distance contract; the division contracts with the North Dakota Association of Counties to provide technical support at county locations; and records management provides guidelines for counties and cities to use in the management of their records. He said the second meeting reviewed the collaborative efforts by counties and cities in three potential areas--criminal justice, geographical information system, and year 2000.

INFORMATION SERVICES DIVISION INFORMATION Information Technology Purchasing Guidelines

Mr. Heck distributed a copy of *ISD Guideline G001-98*, dated September 2, 1998, which is the information technology guideline established by the division under authority of NDCC Section 54-44.2-02. A copy of the guideline is on file in the Legislative Council office.

Mr. Heck said the guideline was not adopted until September because the Central Services Division of the Office of Management and Budget was reviewing state purchasing procedures, which were adopted June 25, 1998. He said the guideline adopts the Central Services Division purchasing procedures.

Mr. Heck said state purchasing procedures do not cover the purchase of services, so the guideline specifically includes procedures for purchasing or leasing information technology services. He said all contracts or service agreements equaling or exceeding \$25,000 must be sent to the Information Services Division, with a copy to the Legislative Council. He said a letter of approval must be obtained from the division before proceeding with the contract or agreement.

In response to a question from Senator St. Aubyn, Mr. Heck said institutions of higher education are not subject to Section 54-44.2-02. If an agency is upgrading computers at a dollar level above the applicable threshold, he said, that agency must follow the purchasing guidelines, regardless of whether the upgrade is included in the agency's information technology plan. He said the dollar thresholds in the guidelines result in the review of 37 percent of the contracts, which cover 97 percent of total expenditures.

Information Technology Standards and Policies

Mr. Heck introduced Mr. Dennis Klipfel, Information Planning Division, Information Services Division, who presented an update on information technology standards developed by the division under authority of NDCC Section 54-44.2-09. Mr. Klipfel distributed a prepared statement and a copy of the standards. A copy of his statement and the standards is on file in the Legislative Council office.

Mr. Klipfel said the goal of standards and policies development is to provide a base on which to establish a common statewide information technology directive. He said the organizational structure of state government is complex, and agencies have different missions and stakeholders. Thus, he said, the technology infrastructure within state government is a mixed bag in terms of implementing the desired framework.

Mr. Klipfel said the purpose of the standards is that an agency consider the standards and policies when planning the development of a new system or a change in an existing system. He said the process in developing standards includes selecting a standard to be developed, researching and drafting the standard, presenting the draft to division personnel, presenting the draft to the review group, revising the standard, and presenting the approved standard to the Legislative Council. He said the standards format consists of three components--strategies, policy, and standard. He said strategies are points identifying the intent or preferred environment of the standard; policy is the

statement of policy used to implement the strategies; and the standard is the specific requirements supporting the policy. He reviewed these standards:

- Operating Systems and Platform, ISD Standard STD001-98.
- Network Services, ISD Standard STD002-98.
- Application Development, ISD Standard STD003-98.
- Data Management, ISD Standard STD004-98.
- Security, ISD Standard STD005-98.
- Office Automation, ISD Standard STD006-98.
- Document Imaging, ISD Standard STD007-98.
- Video Conferencing, ISD Standard STD.

HOUSE BILL NO. 1034 (1997) REVISION BILL DRAFT

The assistant director presented a bill draft relating to information technology planning and activities. He said the bill draft was prepared in consultation with Mr. Heck and reflects changes suggested throughout the interim to the committee. The bill draft:

- Excludes agricultural commodity promotion groups from the information technology provisions of NDCC Chapter 54-44.2.
- Replaces "telephone services" with "network services."
- Requires information technology plans to cover the current biennium and the next two bienniums rather than the next five years.
- Eliminates the specific month requirement for reports to the Legislative Council.
- Provides for noncompliance reports to the Legislative Council rather than the Legislative Audit and Fiscal Review Committee.
- Requires the Information Services Division, in consultation with the Legislative Council, to establish guidelines for requiring information technology project feasibility studies, and provides for analysis of the project and the procedure to follow for determining whether the project should proceed.

Chairman Robinson asked for comments on the bill draft. Mr. Heck suggested that occupational and professional licensing boards also be excluded from the application of Chapter 54-44.2. He also questioned whether the Information Services Division should be the entity that determines whether an agency may spend funds appropriated for a project for which a decision is made to not proceed as the result of the feasibility study. He suggested that the Office of Management and Budget may be more appropriate.

LEGISLATIVE COUNCIL INFORMATION TECHNOLOGY COMMITTEE BILL DRAFT

The assistant director presented a bill draft establishing a Legislative Council Information Technology Committee. He said the committee was patterned after Oregon's Joint Legislative Committee on

Information Management and Technology. The bill draft provides for a nine-member committee appointed by the Legislative Council. The powers and duties of the committee include establishing statewide goals regarding information systems and technology, reviewing the activities of the Information Services Division, and making recommendations regarding established or proposed information technology programs and information technology acquisitions. The committee would also have powers transferred from current authority of the Legislative Council with respect to involvement in information technology activities.

The assistant director said the description of the activities of the Oregon committee at the July meeting of the committee referred to authority to approve projects. He said this authority is implied, rather than specifically provided by Oregon statute, to avoid constitutional issues. He said the authority is provided in budget books and with the understanding that if review is unfavorable, the members of the Oregon Legislature will know about it when making any further decisions with respect to that agency.

Senator Solberg said although the bill draft appears good, if recommendations to implement the *Strategic Telecommunications Plan* are to be made, the committee should then review how this bill draft could fit into the new organizational structure.

ELECTRONIC MAIL AND RECORDS MANAGEMENT POLICY DEVELOPMENT STUDY

North Dakota Open Records and Records Management Requirements

Mr. Bjornson reviewed a memorandum entitled *Open Records Requirements Affecting Electronic Mail and Records Management* and a memorandum entitled *Survey of Selected States' Electronic Mail Retention Policies*. The first memorandum reviews North Dakota law governing open records and North Dakota records management requirements and concludes that unless specifically exempted from the open records requirements, electronic mail in the custody of a public entity which has been received or prepared for use in connection with public business or contains information relating to public business is a public record and must be maintained in accordance with an agency's records management program. The second memorandum reviews selected states' electronic mail retention policies, which generally treat electronic mail in the same manner as any other record.

In response to a question from Senator Nelson, Mr. Bjornson said junk mail, including electronic mail, may or may not constitute public records, depending on the mail's relationship to public business. He said the Legislative Council staff is drafting guidelines to present to the Legislative Management Committee which will cover retention of legislative documents. Although state law provides procedures for records

retention for the executive branch, there is no similar law covering the legislative branch. As state law provides that it is a Class C felony to destroy a public record without lawful authority, the guidelines are intended to identify when an individual in the legislative branch may destroy certain records. The 1997 legislative session changed the definition of public records for purposes of the open records law to include preliminary drafts and working papers.

In answer to a question from Senator St. Aubyn, it was noted correspondence with a legislator is excluded from the open records law. However, it was noted that even if a record is not covered under the open records law, it may still be a public record that can only be destroyed if the person with custody has lawful authority to destroy it.

Mr. James Fleming, Assistant Attorney General, Attorney General's office, distributed a prepared statement discussing the effect of state law regarding open public records and records retention of e-mail created by state agencies. A copy of his statement is on file in the Legislative Council office.

Mr. Fleming said e-mail is treated the same as other items of recorded information for purposes of the open records law (NDCC Section 44-04-18) and the records retention law (NDCC Chapter 54-46). He emphasized that although e-mail is usually a "record," that fact does not establish a minimum retention period for that record.

Mr. Fleming said whether e-mail messages sent or received by public officials are public records is a question of fact and relevant factors include the content of the message, the identity of the recipient and sender, and whether public equipment was used to send or receive the message. He pointed out that not every item of information contained in an e-mail message will have a link or association with public business, and the test is whether each item of recorded information in an e-mail message has some link or association with public business.

Electronic Records Management Guidelines

Ms. Becky Lingle, State Records Administrator, distributed copies of the electronic records management guidelines developed by the Information Services Division. A copy of the guidelines is on file in the Legislative Council office. The guidelines cover electronic records management--creating electronic record systems, using electronic record systems, maintaining electronic records, disposing of electronic records, establishing a records management program, and security of electronic records.

Ms. Lingle said the guidelines were developed by an electronic records committee consisting of representatives from 34 state agencies. She said the purpose of the guidelines is to provide guidance on effective management of electronic records to North Dakota state agencies and county, city, and park district offices.

COMMITTEE DISCUSSION

Y2K Bill Draft and Recommendations

Senator St. Aubyn said he requested the immunity bill draft include a good-faith requirement, but he questions whether there should be a specific definition of good-faith effort.

Chairman Robinson requested the Legislative Council staff review the major recommendations of Wolfe & Associates as contained in the *Y2K Agency Assessment* and prepare the recommendations in a form the committee could approve as committee recommendations, recognizing any changes in Y2K activities since the assessment was completed.

Strategic Telecommunications Plan

Representative Svedjan said the plan looks at the big picture on a long-term basis. He said committee members are seeing the plan for the first time, and he suggested the plan be made available to state agencies for review and recommendation. He said if an agency opposes the plan, the agency should present its reasons to the committee.

Senator St. Aubyn suggested a bill draft could be prepared based on the recommendations in the plan. Once prepared, he said, the bill draft and a copy of the plan could be distributed to interested agencies for their comments. Chairman Robinson agreed and said the agencies could present their comments at the next committee meeting.

It was moved by Senator St. Aubyn, seconded by Representative Wardner, and carried on a voice vote that the Legislative Council staff be requested to prepare a bill draft implementing the substance of the recommendations in the *Strategic Telecommunications Plan* presented by

Wolfe & Associates, and that the bill draft and a copy of the plan be provided to the Governor's office, Office of Management and Budget, Information Services Division, the University System, and to any other agency on request. Chairman Robinson requested that the bill draft be distributed to committee members when the draft is completed.

Mr. Stepp inquired as to any further requests for completing the plan, particularly the fiscal estimate for maintaining current capabilities but revamping the organizational structure as a first step.

It was moved by Senator St. Aubyn, seconded by Representative Svedjan, and carried on a roll call vote that the chairman of the Legislative Council and the Legislative Council staff be requested to contract with Wolfe & Associates, as appropriate, to complete the recommendations as requested by the committee. Senators Robinson, Krebsbach, Solberg, and St. Aubyn and Representatives Svedjan and Wardner voted "aye." Senator Nelson voted "nay."

Chairman Robinson announced that the next meeting would be scheduled for October 1. No further business appearing, he adjourned the meeting at 4:45 p.m.

Jay E. Buringrud
Assistant Director

John D. Olsrud
Director

ATTACH:1