JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON INFORMATION TECHNOLOGY
2/04/2016
Room 544

The Joint Legislative Oversight Committee on Information Technology met on Thursday, February 4th at 1:06 pm. The meeting was held in Room 544. Members present were: Representative Jason Saine (Co-Chair) and Senator Jeff Tarte (Co-Chair), and Representative John Fraley, Representative Ed Hanes, Jr., Representative Paul Tine, Senator Chad Barefoot, Senator Ben Clark, Senator Ralph Hise, and Senator Mark Woodard. Also in attendance: Clark Riemer and Lisa Kennedy, committee clerks. A visitor's registration sheet is attached to the minutes. All documents and presentations are available on the committee website (http://www.ncleg.net/gascripts/DocumentSites/browseDocSite.asp?nID=4).

Chairman Saine presided. Chairman Saine called the meeting to order and welcomed guests, the committee staff, and the Sergeant at Arms serving the committee.

CIO Keith Werner

The first presentation was by the new state Chief Information Officer (CIO) Keith Werner who gave a presentation to the committee entitled, **FIRST 100 DAYS OF CIO & DIT TRANSITION UPDATE**, which is available at the committee's website (http://www.ncleg.net/DocumentSites/committees/JLOCIT/02-04-2016/IT%20Oversight%202-4-2016%20FINAL.pdf). CIO Werner discussed his background, first 100 days as CIO, Department of Information Technology (DIT) transition, and future plans for DIT. Following CIO Werner's presentation, Chairman Saine asked for any questions from the members.

Q1: Senator Ben Clark

Senator Clark asked about top priorities for DIT aside from transition. CIO Werner replied the top priorities were efficiency and reform, as well as critical initiates such as HIE and ERP.

Q2: Senator Ralph Hise

Senator Hise asked two questions about next steps for consolidations and budgeting. CIO Werner stated that budgets would remain in current departments for now and would be consolidated in the future. He stressed the importance of wage structuring of current staff.

Q3: Senator Jeff Tarte

Senator Jeff Tarte asked about Enterprise Architecture. CIO Werner stated that a report is due April 15th, and will provide the core of DIT's vision for enterprise architecture. He stated the current enterprise architecture is low on the maturity scale.

Q4: Senator Jeff Tarte
Senator Jeff Tarte asked about the previous history of current active projects being over-budget and past delivery due date, and the possibility of external quality review. CIO Werner stated the project management system is in a much better place than previously, and needs to be integrated with financial management.

Q5: Senator Ralph Hise
Senator Hise asked about where we stand on ERP, and what can we expect to be the ask during short session. CIO Werner stated that they are formalizing the strategy now, and that they will ask for money for a study and initial RFP during the short session.

Shannon H. Tufts
The second presentation was by Shannon H. Tufts, of the UNC School of Government, who gave a presentation to the committee entitled, **DATA SECURITY, DATA BREACHES, AND LIABILITY**, which is available at the committee's website (http://www.ncleg.net/DocumentSites/committees/JLOCIT/02-04-2016/data_security_april42016.pdf). Ms. Tufts discussed the need for a culture of security in state government, limited liability in contracting, and the inevitability of a data breach. Following Ms. Tufts presentation, Chairman Saine asked for any questions from the members.

Q1: Senator Ralph Hise
Senator Ralph Hise asked what level of sovereign immunity the state government has for liability on data breaches. Ms. Tufts stated Office of Personnel Management (OPM) hack will test sovereign immunity in relation to data breaches. The NC Ports Authority has had a breach and lost ability to take credit cards for a time. She does not believe that sovereign immunity will apply in these cases.

Q2: Senator Ralph Hise
Senator Ralph Hise asked if the Federal Government has individual liability for the OPM hack. Ms. Tufts stated she expects to see a class-action lawsuit in the near term.

Q3: Senator Jeff Tarte
Senator Jeff Tarte asked if the School of Government, or another entity, had a compilation of all the laws relating to security breaches. Ms. Tufts stated that she is working on compiling that information now, as well as information from other states.

Q4: Senator Jeff Tarte
Senator Jeff Tarte asked if there is a state or states we should look to for best practices in this area. Ms. Tufts stated that Washington State is always on the cutting edge because of Microsoft.

Q5: Senator Jeff Tarte

Senator Tarte asked if there were any tools or policies that were particularly applicable to preventing HIPPA violations. Ms. Tufts said that Carneige-Mellon had put out a methodology related to Information Assurance, as well as resources from the federal government, and the Consortium of State Security Officers.

Brooks Raiford

The third presentation was by Brooks Raiford, of the North Carolina Technology Association, who gave a presentation to the committee about the **NORTH CAROLINA TECHNOLOGY ASSOCIATION**, which is available at the committee's website (http://www.ncleg.net/DocumentSites/committees/JLOCIT/02-04-2016/NCTA%20IT%20Oversight%20%20%20Feb%204,%202016.pdf). Mr. Raiford discussed the history of the NCTA, the membership of the NCTA, and principles of limited liability reform.

There were no questions from committee members for Mr. Raiford.

John Boswell

The fourth presentation was given by John Boswell, the Chief General Counsel at SAS. Mr. Boswell remarked on the history of SAS, and on their role as a long time vendor to the state. He stated that companies like SAS have to collect and analyze data in order to help state decision makers make better decision. He also discussed the limitation of liability in state contracts. Following Mr. Boswell's presentation, Chairman Saine asked for any questions from the members.

Q1: Senator Ralph Hise:

Senator Hise asked if the state placed a limitation of liability on vendors would the rest of the liability go to the state. Mr. Boswell replied that yes it would, assuming the state cannot rely on sovereign immunity.

Q2: Senator Ralph Hise:

Senator Hise asked how SAS liability differed when doing business with the state versus doing business with another private business. Mr. Boswell stated in reality there are very few differences, SAS is holding that data and doing their best to protect it. The difference is with other customers, both public and private, they have a limitation of liability.

Q3: Senator Ralph Hise

Senator Hise asked if there is value in NC developing a regulated line item insurance policy for data breaches. Mr. Boswell replied he was unqualified to answer that question.

Q4: Senator Jeff Tarte

Senator Tarte asked if contract provisions for gross neglect and fraud are allowed for limitation of liability. Mr. Boswell replied in the affirmative.

DRAFT

Q5: Senator Jeff Tarte
Senator Tarte asked if it makes sense for limitation of liability to be treated as a broader standard or if individual flexibility is needed. Mr. Boswell stated his gut reaction was that we need to consider different risks differently. Non-personal identifiable information should be treated differently than credit card information, for example.

Q6: Senator Jeff Tarte
Senator Tarte asked what provisions we could enact to mitigate the risks to all parties. Mr. Boswell responded that in the process of analyzing who the state does business with, they need to look at who has the right controls. However, given enough time and energy anyone can be breached, and that at some point and time vendors need to know what their liability is, so they can know if they should bid on the contract.

Q7: Senator Jeff Tarte
Senator Tarte asked if depending on the size of contract we may require different level of insurance. Mr. Boswell replied in the affirmative and stated it would be especially important for small vendors.

Q8: Senator Jeff Tarte
Senator Tarte asked if it would be reasonable to ask about fines and settlements due to data breaches in future RFPs. Mr. Boswell replied in the affirmative and stated SAS had been asked before. It is important to know from vendors what bad things have happened in the past and how have they responded to it. He stated that as of his when he left his office that morning that SAS had not experienced a data breach.

Q9: Representative Jason Saine
Representative Saine asked if we do not confront liability in a serious way, are we at risk of losing vendors. Mr. Boswell replied in the affirmative and stated he felt it had affected previous NC RFPs. He further stressed that it is in everybody's best interest that contracts be commercially reasonable and that vendors are willing to do business under them.

Committee Discussion
Chairman Saine asked if there were any members of the audience who wished to speak on the issue of vendor liability. Seeing none, he asked if any members of the committee had any further comments or questions.

Senator Ralph Hise
Senator Hise asked if the Department of Insurance could provide the process for a line item or umbrella policy for IT liability. Representative Saine asked staff to look into that possibility.

There being no further business, the meeting adjourned at 2:27 pm. The next meeting will be on March 3rd, 2016 at 1:00 pm in Room 544.

DRAFT

Representative Jason Saine
Presiding

Clark Riemer, Committee Clerk

DRAFT