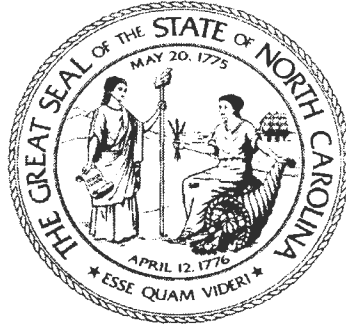


**NORTH CAROLINA GENERAL ASSEMBLY**



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**JOINT LEGISLATIVE OVERSIGHT  
COMMITTEE ON INFORMATION  
TECHNOLOGY**

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**REPORT TO THE  
2016 SESSION  
of the  
2015 GENERAL ASSEMBLY  
OF NORTH CAROLINA**

**APRIL 7, 2016**

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# TRANSMITTAL LETTER

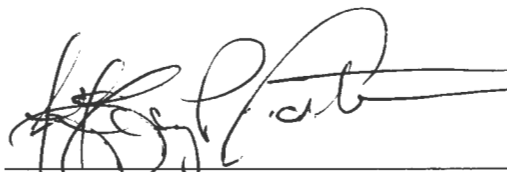
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April 7, 2015

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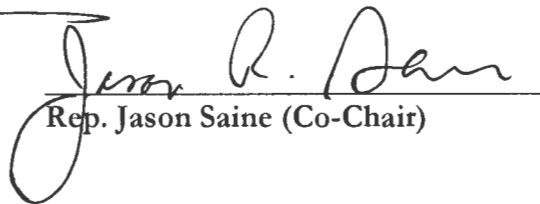
TO THE MEMBERS OF THE 2016 REGULAR SESSION  
OF THE 2015 GENERAL ASSEMBLY

The **JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON INFORMATION TECHNOLOGY**, respectfully submits the following report to the 2016 Regular Session of the 2015 General Assembly.



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Sen. Jeffery Tarte (Co-Chair)



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Rep. Jason Saine (Co-Chair)

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## COMMITTEE PROCEEDINGS

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The Joint Legislative Oversight Committee on Information Technology met in Raleigh, North Carolina, three times after the 2015 Regular Session on the following dates: February 4, 2016, March 3, 2016, and April 7, 2016.

Informational materials and resources for each committee meeting are posted online at <http://www.ncleg.net/gascripts/DocumentSites/browseDocSite.asp?nID=4>. The detailed minutes from each Committee meeting are available in the Legislative Library.

The following is a brief summary of the Committee agendas for its proceedings:

February 4, 2016

- **Department of Information Technology Overview & Briefing by the State Chief Information Officer**

*Keith Werner*

- **Data Security, Data Breaches, and Related Issues**

*Shannon H. Tufts*

UNC School of Government,  
Center for Public Technology

*Brooks Raiford*

North Carolina Technology Association

*John Boswell*

SAS Chief General Counsel

March 3, 2016

- **Information Technology – Contracts/Insurance/Liability**

*Ben Popkin*

Department of Insurance

*Phyllis Pickett*

Legislative Drafting Division, Committee Co-Counsel

*Matt Meinig*

Legislative Drafting Division, Committee Co-Counsel

- **Procurement – Innovation Center**

*Eric Ellis*

Director

- **State Data Security Laws & Government Data Breaches**

*Susan Sitze*

Legislative Analysis Division, Committee Co-Counsel

- **Best Practices/Data Loss Prevention**

*Maria Thompson*

Department of Information Technology

State Chief Risk Officer

- **Committee Review & Approval of Report to the 2016 Regular Session of the 2015 General Assembly**

April 7, 2016

- **Adopted Report to the 2016 Regular Session of the 2015 General Assembly**



## Matters Considered

The Joint Legislative Oversight Committee on Information Technology (Committee) started its deliberations with a status report from the State Chief Information Officer on the creation of the Department of Information Technology (DIT) established in Part VII-A of S.L. 2015-241, the Current Operations and Capital Improvements Act of 2015.

Next, the Committee focused on data security, data breaches and related issues, particularly as those issues arise in the context of State information technology procurement. Presentations by the Director of the UNC Center for Public Technology, the President of the North Carolina Technology Association and the General Counsel of SAS, Incorporated, framed a public-private context for the Committee's consideration. Committee counsel provided, as background, a collection of resources on data security laws and government data breaches.

The DIT State Chief Risk Officer gave a high-level outline of the types of measures taken by DIT to protect the State's data and infrastructure, however, not at a level of detail that might compromise those efforts. The Committee learned about the success of the Innovation Center in providing "test drives" of technology products and services that result in efficiencies due to the "try before you buy" opportunities the Center affords to both State and local agencies.

Given its charge to review information technology contract liability and insurance issues under Section 7.20 of S.L. 2015-241, the Committee heard a presentation from the Department of Insurance regarding the Department's analysis of the feasibility of developing a surplus line insurance policy and rate schedule for data breach liability coverage in North Carolina. Further, the Committee received information from Committee counsel on sovereign immunity, the statutory procurement process set forth in G.S. 143B-1350, and related State and vendor liability issues concerning risk allocation.

The Committee provided the Department of Information Technology with the opportunity to offer any needed statutory technical corrections. One technical change was submitted by the Department.

Committee discussions ranged from the importance of State data security and breach prevention to ways to improve information technology contracting/procurement practices such that the best vendors are available to the State.

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## FINDINGS AND RECOMMENDATIONS

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**The Joint Legislative Oversight Committee on Information Technology (Committee) finds that:**

- The State's information technology procurement laws should contain consistent processes, specifications, and standards that apply to all information technology to be purchased, licensed, or leased by State.
- It is in the best interest of the State to have multiple qualified vendors, including small businesses, compete to provide information technology goods and services to the State.
- Contract terms relating to contractor liability should not deter qualified vendors and the State should contract with vendors on commercially reasonable terms and incorporate terms that encourage competition.
- And, further, that the State Chief Information Officer, as the head of the Department of Information Technology, acts as the Secretary of that Department.

**Therefore,** the Committee recommends that:

(i) The State information technology procurement contract include standard terms and conditions that, inter alia, contain a general limitation of liability that limits damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, to two times the value of the contract; and

(ii) The State Chief Information Officer may be referred to as Secretary of that Department.

*(See Legislative Proposals 1 and 2 infra in APPENDIX C.)*

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## COMMITTEE MEMBERSHIP & STAFF

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2015-2016

**President Pro Tempore of the Senate**  
**Appointments:**

Sen. Jeffery Tarte (Co-Chair)

Sen. John Barefoot  
Sen. Andrew Brock  
Sen. Robert Clark  
Sen. Ralph Hise  
Sen. Daniel Soucek  
Sen. J. Woodard

**Speaker of the House of Representatives**  
**Appointments:**

Rep. Jason Saine (Co-Chair)

Rep. L. Arp  
Rep. John Bell  
Rep. Jeffrey Elmore  
Rep. John Fraley  
Rep. Edward Hanes  
Rep. Christopher Millis  
Rep. Paul Tine

**Staff:**

Peter Capriglione, Technologist  
Information Systems Division

Phyllis Pickett, Co-Counsel  
Matt Meinig, Co-Counsel  
Legislative Drafting Division

Susan Sitze, Co-Counsel  
Legislative Analysis Division

Lanier McRee, Fiscal Analyst  
Daniel Sater, Fiscal Analyst  
Fiscal Research Division

Clark Riemer, Clerk  
Office of Rep. Saine

Lisa Kennedy, Clerk  
Office of Sen. Tarte



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## COMMITTEE CHARGE

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### **I. S.L. 2015-214, SECTION 7.20: DATA SECURITY STUDY**

The Joint Legislative Oversight Committee on Information Technology shall study liability issues associated with data security in both the public and private sectors. The Committee shall report its findings and any legislative proposals pertaining to liability issues associated with data security to the General Assembly on or before April 1, 2016.

The study shall include all of the following:

- (1) State liability issues.
- (2) State and vendor financial liability for data security breaches.
- (3) Methods of allocating risk for the State's vendors and IT contractors, including, but not limited to, the feasibility of maximum liability limits.
- (4) In consultation with the Department of Insurance, an analysis of the feasibility of developing a surplus line insurance policy and rate schedule for data breach liability coverage.
- (5) Federal government requirements.
- (6) State response to data security threats and breaches.
- (7) Third party liability issues.
- (8) Recommendations for managing data liability for the State.
- (9) Data breach liability allocation best practices in the public and private sectors.

### **II. Article 26 of Chapter 120 of the General Statutes**

#### **§ 120-230. Creation and purpose of the Joint Legislative Oversight Committee on Information Technology.**

There is established the Joint Legislative Oversight Committee on Information Technology. The Committee shall review current information technology that impacts public policy, including electronic data processing and telecommunications, software technology, and information processing. The goals and objectives of the Committee shall be to develop electronic commerce in the State and to coordinate the use of information

technology by State agencies in a manner that assures that the citizens of the State receive quality services from all State agencies and that the needs of the citizens are met in an efficient and effective manner. The Committee shall examine, on a continuing basis, systemwide issues affecting State government information technology, including, but not limited to, State information technology operations, infrastructure, development, financing, administration, and service delivery. The Committee may examine State agency or enterprise-specific information technology issues. The Committee shall make ongoing recommendations to the General Assembly on ways to improve the effectiveness, efficiency, and quality of State government information technology. (1999-237, s. 22(a); 2004-129, s. 7A(b).)

**§ 120-231. Committee duties; reports.**

- (a) The Joint Legislative Oversight Committee on Information Technology may:
- (1) Evaluate the current technological infrastructure of State government and information systems use and needs in State government and determine potential demands for additional information staff, equipment, software, data communications, and consulting services in State government during the next 10 years. The evaluation may include an assessment of ways technological infrastructure and information systems use may be leveraged to improve State efficiency and services to the citizens of the State, including an enterprise-wide infrastructure and data architecture.
  - (2) Evaluate information technology governance, policy, and management practices, including policies and practices related to personnel and acquisition issues, on both a statewide and project level.
  - (3) Study, evaluate, and recommend changes to the North Carolina General Statutes relating to electronic commerce.
  - (4) Study, evaluate, and recommend action regarding reports received by the Committee.
  - (5) Study, evaluate, and recommend any changes proposed for future development of the information highway system of the State.

(b) The Committee may consult with the State Chief Information Officer on statewide technology strategies and initiatives and review all legislative proposals and other recommendations of the State Chief Information Officer.

(c) The Committee shall submit annual reports to the General Assembly on or before the convening of the regular session of the General Assembly each year. The Committee may submit interim reports at any time it deems appropriate. (1999-237, s. 22(a); 2004-129, ss. 7A(c), 36; 2006-264, s. 10.)

**§ 120-232. Committee membership; terms; organization; vacancies.**

- (a) The Committee shall consist of 16 members as follows:
- (1) Eight members of the Senate at the time of their appointment, appointed by the President Pro Tempore of the Senate. At least two appointees shall be members of the Senate Appropriations Committee.
  - (2) Eight members of the House of Representatives at the time of their appointment, appointed by the Speaker of the House of

Representatives. At least two appointees shall be members of the House of Representatives Appropriations Committee.

(3), (4) Repealed by Session Laws 2004-129, s. 7A(d), effective July 1, 2004.

(b) Members of the Committee shall serve terms of two years beginning at the convening of the General Assembly in each odd-numbered year, with no prohibition against being reappointed, except initial appointments shall begin on appointment and end on the day of convening of the 2005 General Assembly.

(c) Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected, but resignation or removal from service constitutes resignation or removal from service on the Committee.

(d) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each select a legislative member from their appointees to serve as cochair of the Committee.

(e) The Committee shall meet at least once a quarter and may meet at other times upon the call of the cochairs. A majority of the members of the Committee shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Committee shall be necessary for action to be taken by the Committee.

(f) All members shall serve at the will of their appointing officer. A member continues to serve until the member's successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1999-237, s. 22(a); 2001-486, s. 2.7; 2004-129, s. 7A(d).)

#### **§ 120-233. Assistance; per diem; subsistence; and travel allowances.**

(a) The Committee may contract for consulting services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Committee. The professional staff shall include the appropriate staff from the Fiscal Research, Research, Legislative Drafting, and Information Systems Divisions of the Legislative Services Office of the General Assembly. Clerical staff shall be furnished to the Committee through the offices of the Senate and the House of Representatives Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Committee. The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) Members of the Committee shall receive per diem, subsistence, and travel allowances as follows:

- (1) Committee members who are members of the General Assembly, at the rate established in G.S. 120-3.1.
- (2) Committee members who are officials or employees of the State or of local government agencies, at the rate established in G.S. 138-6.
- (3) All other Committee members, at the rate established in G.S. 138-5. (1999-237, s. 22(a).)

#### **§ 120-234. Committee authority.**



The Committee may obtain information and data from all State officers, agents, agencies, and departments, while in discharge of its duties, under G.S. 120-19, as if it were a committee of the General Assembly. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee as if it were a committee of the General Assembly. Any cost of providing information to the Committee not covered by G.S. 120-19.3 may be reimbursed by the Committee from funds appropriated to it for its continuing study. (1999-237, s. 22(a).)

**§ 120-235. Committee subcommittees; noncommittee membership.**

The Committee cochairs may establish subcommittees for the purpose of making special studies pursuant to its duties, and may appoint noncommittee members to serve on each subcommittee as resource persons. Resource persons shall be voting members of the subcommittee and shall receive subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6. (1999-237, s. 22(a).)

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# LEGISLATIVE PROPOSAL 1.

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GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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D

BILL DRAFT 2015-LRz-148 [v.1] (03/21)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
03/21/2016 03:11:53 PM

Short Title: State IT Contracts/Contractor Liability.

(Public)

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Sponsors:

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Referred to:

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A BILL TO BE ENTITLED  
AN ACT SETTING THE LIMITS OF CONTRACTOR LIABILITY UNDER STATE  
INFORMATION TECHNOLOGY PROCUREMENT CONTRACTS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 143B-1350 is amended by adding a new subsection to read:

"(h1) All contracts subject to the provisions of this Part shall include a limitation on the contractor's liability for damages arising from any cause whatsoever, regardless of the form of action, of no more than two (2) times the value of the contract. The limitation shall specifically include but not be limited to the contractor's liability for damages and any other losses relating to the loss of, unauthorized access to, or unauthorized disclosure of data. The limitation of liability required by this subsection shall not be required to apply to liability of the contractor for intentional or willful misconduct, damage to tangible personal property, or physical injuries to persons."

**SECTION 2.** This act is effective when it becomes law and applies to contracts entered into on or after that date.

**LEGISLATIVE PROPOSAL 2.**

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015**

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D

**BILL DRAFT 2015-MQz-93 [v.2] (03/23)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
03/28/2016 09:52:46 AM**

Short Title: Designate State CIO as Secretary of Dept.

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED  
AN ACT TO PROVIDE THAT THE STATE CHIEF INFORMATION OFFICER MAY  
ALSO BE REFERRED TO AS SECRETARY OF THE DEPARTMENT OF  
INFORMATION TECHNOLOGY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 143B-1302(a) reads as rewritten:

**"§ 143B-1302. State CIO duties; Departmental personnel and administration.**

(a) State CIO. – The State Chief Information Officer (State CIO) is the head of the ~~Department and Department~~, a member of the Governor's ~~cabinet~~, and may also be referred to as the Secretary of the Department of Information Technology. The State CIO is appointed by and serves at the pleasure of the Governor. The State CIO shall be qualified by education and experience for the office. The salary of the State CIO shall be set by the Governor. The State CIO shall receive longevity pay on the same basis as is provided to employees of the State who are subject to the North Carolina Human Resources Act."

**SECTION 2.** This act is effective when it becomes law.

