

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2053

2007 SENATE POLITICAL SUBDIVISIONS

SB 2053

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2053

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: January 4, 2007

Recorder Job Number: 611

Committee Clerk Signature



Minutes:

Chairman Cook called the Political Subdivisions Committee to order. All members (5) were present.

Chairman Cook opened the hearing on SB 2053 relating to audits of computer systems performed by the state auditor.

Ed Nagel, Director of the State Auditors Office, testified in support of House Bill 2053. (see attached testimony) In addition to the physical problems of having agency heads of ND State Directors on site at the time the testing is being done is the section of the century code in its current form, prohibits the director from advising or notifying anyone else of the testing that is going on. This means they cannot advise anyone else from their department to observe the testing other than their deputy. The problem being that the deputy is not an IT specialist and they will not really know what is going on.

Chairman Cook asked if there had been any testing going on since 2005.

Ed Nagel answered that they did do one test in 2005 with the consulting firm. The amount of testing was quite limited as the testing consulting firm was not able to set up shop in the capital building and perform their tests and they could not so the testing had to be done from their location in Maryland. The amount of testing they were able to do was very restricted.

Chairman Cook asked if we have gained any experience since 2005 as far as the security of our various systems.

Ed Nagel answered no we have not, except for that one test.

Senator Warner asked if it would be possible to monitor their work from their remote location from here.

Ed Nagel said that he did not feel it would be possible to actually see what they are doing here as they are doing it off site. We do not feel that is a concern as all the firms that we consult with are reputable firms and before they can do any work what so ever, every member of their team has to go through an FBI check which was done by the DPI division of the Attorney Generals Office.

Senator Olafson asked why any firm contracted to do this work would not be able to come here to perform the testing.

Ed Nagel answered because the physical equipment probably resides at their home base location and he did not know what would be involved in bringing all of that equipment here. Even if it was possible and they could bring all the equipment here, we still have the problem of requiring an agency head in the department to be physically present when they do any tests. The tests last time ran approximately two weeks. Are you going to require an agency head to be there eight hours a day for two weeks to observe what is going on and not know what is going on anyhow? It is not very practical.

Senator Cook wondered if there was communication among agency heads.

Ed Nagel indicated there was no communication with agencies other than the attorney generals office.

Don LaFleur, Technology Manager for Auditors Office, appeared to answer questions. He is actually in charge of hiring the guys for 2005 and overseeing the testing. One of the ways the

testing works is they run with a recall script which is a program that just runs. These things can run for days or weeks at a time. A consultant will just start them and let them run on the computer and technically that is considered hacking. It does have the potential to breach and get into confidential information. That is why it is impractical to have an agency head sitting there because they are just watching a script that is not really doing anything until it actually finds something and normally the consultants are not really watching. They just get a file at the end to go through and see if they find anything. The other reason they want to audit from their home base and not physically here in the state is they have a lot of their experts on different operating systems or programs at their home base that they would physically bring here so that they are available to help them when they get in certain areas. It is impractical for them and too costly to bring all those people here.

Chairman Cook asked if when you test for security you are actually hiring a company and that is all this company does is check for security.

Don LaFleur answered that this company has a number of other areas but in this particular area they just do net work security audits.

Senator Hacker asked when you get to interview this consultant agency and some of their employees and are doing the background checks are any of these employees felons?

Senator Olafson asked if there was an option to hire any capable and competent firms closer than Maryland.

Ed Nagel answered that there were only two firms that were finalist, one in Denver, Colorado and then the Maryland firm. There were no applications from North Dakota.

No further testimony in favor, in opposition or neutral on SB 2053.

Chairman Cook closed the hearing on SB 2053.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2053 (Action)**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **January 12, 2007**

Recorder Job Number: **978**

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook called the Political Subdivisions Committee to order. All members (5) were present.

Committee work on SB 2053:

Senator Hacker presented the amendments and explained them.

Senator Hacker moved the amendments be accepted.

Senator Warner seconded the motion.

All members (5) in favor of the motion.

Senator Hacker moved a Do Pass on SB 2053 as amended.

Senator Olafson seconded the motion.

No discussion.

Roll call vote: Yes 5 No 0 Absent 0

Carrier: **Senator Hacker**

Date: 1-12-07
Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2053

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number 78049.0101 Title .0200

Action Taken DO Pass As Amended

Motion Made By Senator Hacker Seconded By Senate Olafson

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X		Senator Arden C. Anderson	X	
Senator Curtis Olafson, ViceChair	X		Senator John M. Warner	X	
Senator Nicholas P. Hacker	X				

Total Yes 5 No 0

Absent 0

Floor Assignment Senator Hacker

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2053: Political Subdivisions Committee (Sen. Cook, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2053 was placed on the Sixth order on the calendar.

Page 2, line 7, remove the overstrike over "~~The state auditor shall notify the executive officer of any state agency~~"

Page 2, line 8, remove the overstrike over "~~of the date, time, and location of any~~"

Page 2, remove the overstrike over line 9

Page 2, line 10, remove the overstrike over "~~or related security systems. The executive officer of~~"

Page 2, line 11, after "~~shall~~" insert "the officer's designee may" and remove the overstrike over "~~attend and observe~~"

Page 2, line 12, remove the overstrike over "~~any test during which confidential information may be accessed or controlled.~~"

Page 2, line 16, remove the overstrike over "4."

Page 2, line 23, remove the overstrike over "~~5.~~" and remove "4."

Renumber accordingly

2007 HOUSE POLITICAL SUBDIVISIONS

SB 2053

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. SB 2053

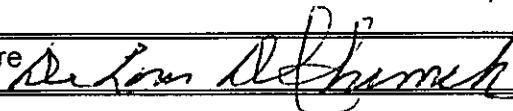
House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 22, 2007

Recorder Job Number: 3630

Committee Clerk Signature



Minutes:

Chairman Herbel opened the hearing on SB 2053.

Ed Nagel, Director, And Office Of The State Auditor: (see attached testimony #1) Our bill will remove all references to the political subdivisions since our intent is only to remove the state computer systems. This bill will allow allows state officials to be present, if they desire to be during our hacking of the state system; however, they do not have to be present, if they do not want to be. Also allows our office to invite, not only the executive director of the agency, or their deputy but also their information systems experts, which currently the bill prohibits. The statue in its present form only allows the executive director or deputy to be present during the testing. It is not a big surprise to be head of an agency is not the most technical savvy person in the department.

Rep. Kim Koppelman: Why is the city auditor involved in the testing of the computer systems?

Ed Nagel: The information technology department is responsible for security of the state computer network system. However, when it comes to hiring consultants to try to hack into the system that is more of an audit function that ITD would prefer our office do as opposed to them. That is why this legislation was drafted in the 2005 legislation session as part of our

audit of the state agency we also audit systems of those state agencies including the statewide network and we then hire consultants to assist us.

Rep. Kim Koppelman: We talked about hacking into the system. What is the purpose of the audit as it pertains to computers? Is it security or to audit the way they are set up? What are you after when you do that?

Ed Nagel: This specific section of the code is the security around the system to determine how secure the system is or is not.

Cathie Forsd: Director of Operations for the Tax Department: We support this bill. We are asking you hold this in the committee for a period of time to give us an opportunity to work with the state auditor's office and the IRS over IRS issues with disclosure. Under IRA statute 6103 d we are provided, the State of ND, through the office of state tax commissioner provided federal disclosure laws. They have very stringent disclosure laws and we want to follow them. If we do not follow them we are in violation and we could be held responsible. We are working with the state commissioner so that they are a party to the contract that the state auditors would have to do the audit. So if hackers were able to penetrate and get to federal tax information, we would not be in violation of the federal statutes.

Rep. Lee Kaldor: Current law would affect you the same way, am I not correct?

Cathie Forsd: You are correct. It was last year when this bill went through; there were two audits. The tax department was currently on the mainframe and we believe that the bill did get through the mainframe to get your federal tax information, which is probably not going to happen. Secondly, we missed the fact that we would have problems with it. When they took out the wording that the director of the agency would be present we thought we would have been covered.

Rep. Kim Koppelman: You said it was an IRS statue. IRS doesn't have a separate federal law?

Cathie Forsd: I believe it is the Treasury Department. It would be a federal regulation 5103 d.

Rep. Kim Koppelman: We have a lot of records that are confidential or exempt in the state. I would suspect that hackers can get some information there somewhere. Maybe this issue is broader than the tax department?

Cathie Forsd: I believe on this bill item #2 covers the confidentiality. We don't have an issue with that. It doesn't cover the federal confidentiality under that wording.

Rep. Kim Koppelman: there is other federal information that might be compromised other than IRS tax related stuff the state would be in possession of or example?

Cathie Forsd: I would not be aware of that.

Ed Nagel: The state auditor's office has asked us for all information that the state agency has whether it is confidential or not; however we do have sections in our code that it says it must remain confidential. We hire a consultant who is subject to that same confidentiality so we don't think there is an issue there. It appears the IRS wants to be super super confidential whatever? If IRS really had an issue with this they would have contacted us. There are several other states who do this and you would think they would want to see how secure their information is too.

Chairman Herbel: How long will it take for the IRS to get this information back to us?

Ed Nagel: They are notorious for not getting stuff back to you. We would not like to see this bill held up forever waiting for a response from the IRS.

Chairman Herbel: We are required to have all bills out of committee by March 9th.

Ed Nagel: We would like to see the bill pass as presented here.

Cathie Forsd: IRS did tell us that they would get back to us by Tuesday so we already have a record they are late. The legal counsel for the tax department is working on this and she requested it be held for a week, at least.

Chairman Herbel: You will have something for us by next Thursday or Friday?

Cathie Forsd: Position of the legal people is we would want something in the law to make sure that when the state auditors to be sure they are hacker proof. I think the IRS wants everyone systems to be hacker proof.

Rep. Lee Kaldor: Unfortunately that is probably another bill. Did this discussion take place in the Senate?

Cathie Forsd: I do not believe it took place in the senate.

Opposition: None

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. SB 2053

House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 8, 2007

Recorder Job Number: 4713

Committee Clerk Signature



Minutes:

Chairman Herbel reopened the hearing on SB 2053.

Gordy Smith passed out the proposed amendment. Last session we were given a bill to hire a consultant is to security test the state system. They are trying to hack in and see how they could do this. The State Tax Department had some concerns about the IRS regulation about accessing the state tax information. This amendment says that any agency that has excess to that federal taxing information may enter into a contract with the vender selected by the state auditor under Subsection C of Section 1 to conduct a review and assessment of the state agency computer system and related security system and vulnerability. (see proposed amendment)

Chairman Herbel:

Motion Made to move the amendment by Rep. William Kretschmar Seconded By Rep. Kim Koppelman

Further discussion on the amendment.

Voice vote carried.

Do Pass As Amended Motion Made By Rep. Pat Hatlestad Seconded By Rep. Kari Conrad

Discussion:

Donnita Wald, Tax Department: Thank you for holding the bill and I hope you give this bill a do pass.

Chairman Herbel: We appreciate the two of you got together and worked our an amendment that is best for the state of ND and its citizens.

Vote: 13 Yes 0 No 1 Absent Carrier: Rep. Pat Hatlestad

Hearing closed.

Date: 3-8-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2053

House Political Subdivisions Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Rep. Hatlestad Seconded By Rep. Conrad

Representatives	Yes	No	Representatives	Yes	No
Rep. Gil Herbel-Chairman	✓		Rep. Kari Conrad	✓	
Rep. Dwight Wrangham-V. Chair	✓		Rep. Chris Griffin	✓	
Rep. Donald Dietrich	✓		Rep. Lee Kaldor		
Rep. Patrick Hatlestad	✓		Rep. Louis Pinkerton	✓	
Rep. Nancy Johnson	✓		Rep. Steve Zaiser	✓	
Rep. Lawrence Klemin	✓				
Rep. Kim Koppelman	✓				
Rep. William Kretschmar	✓				
Rep. Vonnie Pietsch	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Hatlestad

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2053, as engrossed: Political Subdivisions Committee (Rep. Herbel, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2053 was placed on the Sixth order on the calendar.

Page 2, after line 31, insert:

"6. A state agency receiving federal tax information under section 6103 of the Internal Revenue Code, as amended [26 U.S.C. 6103], in conjunction with the state auditor, may enter a contract with the vendor selected by the state auditor under subdivision c of subsection 1 to conduct a review and assessment of the state agency's computer systems and related security systems, including an assessment of system vulnerability, network penetration, potential security breach, and susceptibility to cyber attack or cyber fraud."

Renumber accordingly

2007 TESTIMONY

SB 2053

2053
41

STATE AUDITOR
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**TESTIMONY BEFORE THE SENATE
POLITICAL SUBDIVISIONS COMMITTEE**
January 4, 2007

Senate Bill No. 2053

Testimony - Presented by Ed Nagel
Director

Chairman Cook, members of the committee, I am here to testify in support of Senate Bill No. 2053.

This bill will delete one subsection of Section 54-10-29 relating to audits of computer systems. Section 54-10-29 was passed during the 2005 Legislative Session.

In its current form, Section 54-10-29 is impractical, if not impossible to follow. Currently this section requires an executive officer or their deputy to attend and observe any test which could access confidential information of their agency. Tests of security on the state's computer systems include testing done by consultants from locations outside of the state. It would not be practical to require state officials to travel to other states so that they would be present during these tests.

This bill will remove these impractical restrictions, while still requiring our office to notify the Attorney General's Office of security related testing of computer systems.

I urge your favorable consideration of this bill and I will answer any questions you may have.

Thank you.



Public Service Commission

State of North Dakota

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January 11, 2007

Honorable Dwight Cook, Chairman
Political Subdivisions Committee
North Dakota Senate
600 East Boulevard Avenue
Bismarck, ND 58505

Re: Senate Bill 2053

Dear Chairman Cook:

The Public Service Commission wishes to go on record in opposition to SB 2053 in its present form. We apologize for not providing our position at the hearing on January 4th. Please accept this letter as a record of our opposition.

The Public Service Commission is a constitutional agency headed by three statewide elected officials. The language in SB 2053 that is proposed to be deleted is language designed to respect the integrity of agencies that are the subject of a review and assessment of their computer system and security. It is both necessary and appropriate that the head of the agency subject to the review and assessment be informed of and attend the review.

As you know, the statute proposed for amendment in SB 2053 was enacted in the 2005 legislative session. In reviewing the legislative history of 2005 HB 1074, it is clear that the knowledge and presence of the executive officer of the agency subject to review was of paramount importance to the committee and others who studied and testified on the bill. There are many pages of legislative history recording testimony and the discussion of the committees emphasizing the importance of notification to and observation by the agency head. This history makes it clear that those who enacted the bill felt strongly that the head of an affected agency was entitled to have, and was responsible for having, first hand knowledge of any security breach the assessment might produce.

Honorable Dwight Cook, Chairman
Political Subdivisions Committee
Page 2
January 11, 2007

The provisions of SB 2053 gut these protections for agencies. The important provisions that the 2005 legislators added to the original proposal out of respect and concern for agencies are thrown out today in SB 2053 as 'impractical.' The need for an agency head to witness any security breach that a review and assessment might produce substantially outweighs any burdens the process might impose. Any such burdens can be overcome in other, less offensive, ways.

Thank you for the opportunity to present our concerns. We respectfully ask the committee to vote a Do Not Pass on SB 2053.

In the alternative, we would find it acceptable if the bill were amended to require notice to the affected agency head while allowing the agency head the discretion to attend, send a designee, or not attend at all. This alternative could preserve the agency's right and responsibility to know about the review, yet alleviate some of the concerns raised about impracticality. We would be happy to prepare such an amendment if the committee so wishes.

Thank you again for your consideration.

Best regards,


Ilona A. Jeffcoat-Sacco
Executive Director

c: Senator Curtis Olafson, Vice Chairman
Senator Nicholas P. Hacker
Senator Arden Anderson
Senator John M. Warner



Public Service Commission

State of North Dakota

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January 11, 2007

Honorable Dwight Cook, Chairman
Political Subdivisions Committee
North Dakota Senate
600 East Boulevard Avenue
Bismarck, ND 58505

Re: Senate Bill 2053

Dear Chairman Cook:

Thank you for your consideration of our letter noting concerns with SB 2053.

After distribution of the letter, Senator Hacker provided us with copies of proposed amendments that address the issues we raised and other issues with the bill. We have reviewed these proposed amendments and support them. The amendments make existing law better and fully address our concerns with SB 2053.

Thank you again for your work on this bill.

Best regards,


Illona A. Jeffcoat-Sacco
Executive Director

c: Senator Curtis Olafson, Vice Chairman
Senator Nicholas P. Hacker
Senator Arden Anderson
Senator John M. Warner

STATE AUDITOR
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**TESTIMONY BEFORE THE HOUSE
POLITICAL SUBDIVISIONS COMMITTEE**
February 22, 2007

Engrossed Senate Bill No. 2053

Testimony - Presented by Ed Nagel
Director

Chairman Herbel, members of the committee, my name is Ed Nagel. I am here to testify in support of Engrossed Senate Bill No. 2053.

This bill will delete language from subsection 3 of N.D.C.C. § 54-10-29 relating to audits of computer systems by the State Auditor's Office. N.D.C.C. § 54-10-29 was passed during the 2005 Legislative Session.

In its current form, N.D.C.C. § 54-10-29 is impractical, if not impossible to follow. Currently this section requires an executive officer of a state agency or their deputy, and a member of the governing body of a political subdivision to attend and observe any test which could access confidential information of their entity. Tests of security on the state's computer systems includes testing done by consultants from locations outside of the state. It would not be practical to require state or local officials to travel to other states so that they would be present during these tests.

This bill will remove all references to political subdivisions, since our intent is only to review state computer systems, and this bill will allow more flexibility during the testing of state computer systems.

I urge your favorable consideration of this bill and I will answer any questions you may have.

Thank you.