

## INFORMATION TECHNOLOGY COMMITTEE - BACKGROUND MEMORANDUM

North Dakota Century Code Section 54-35-15.1 requires the Legislative Management, during each biennium, to appoint an Information Technology Committee in the same manner as the Legislative Management appoints other interim committees. The committee is to consist of six members of the House of Representatives and five members of the Senate. The Chief Information Officer of the state serves as an ex officio nonvoting member of the committee.

### COMMITTEE STATUTORY AND ASSIGNED RESPONSIBILITIES

Section 54-35-15.2 requires the committee to:

1. Meet at least once each calendar quarter.
2. Receive a report from the Chief Information Officer of the state at each meeting.
3. Review the business plan of the Information Technology Department.
4. Review macro-level issues relating to information technology.
5. Review the activities of the Information Technology Department.
6. Review statewide information technology standards.
7. Review the statewide information technology plan.
8. Review information technology efficiency and security.
9. Review established or proposed information technology programs and information technology acquisitions by the executive and judicial branches.
10. Receive and review information, including a project startup report summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout report summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, from the Information Technology Department and the affected agency regarding any major information technology project of an executive branch agency. A major project is a project with a total cost of \$250,000 or more.
11. Receive and review information, including a project startup report summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout report summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, from the Information Technology Department and the affected institution regarding any major project of the

State Board of Higher Education or any institution under the control of the State Board of Higher Education. A major project is a project that significantly impacts the statewide wide area network, impacts the statewide library system, or is an administrative project and is a project with a cost of \$250,000 or more in one biennium or a total cost of \$500,000 or more.

12. Receive and review information from the Information Technology Department and the affected agency regarding any information technology project of an executive branch agency with a total cost of between \$100,000 and \$250,000 as determined necessary by the Information Technology Department.
13. Receive a report from the Chief Information Officer regarding the recommendation of the State Information Technology Advisory Committee relating to the prioritization of proposed major information technology projects and other information technology issues.
14. Receive and review information, including a project startup report summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout report summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, from the affected legislative or judicial branch agency regarding any information technology project of the legislative or judicial branch with a total cost of \$250,000 or more.
15. Receive information from the State Board of Higher Education regarding higher education information technology planning, services, and major projects.

Section 54-35-15.3 authorizes the Information Technology Committee to review any information technology project or information technology plan. The section provides that if the committee determines that a project or plan is at risk of failing to achieve its intended results, the committee may recommend to the Office of Management and Budget (OMB) the suspension of the expenditure or funding appropriated for a project or plan. The Office of Management and Budget may suspend the expenditure authority if the office agrees with the recommendation of the committee.

Section 54-35-15.4 provides that the Information Technology Committee may request the State Auditor to conduct an information technology compliance review. The review may consist of an audit of an agency's information technology management,

information technology planning, compliance with information technology plans, and compliance with information technology standards and policies or an audit of statewide compliance with specific information technology standards and policies.

The committee has the responsibility for reviewing the activities of the Information Technology Department, the business plan of the department, statewide information technology standards, the statewide information technology plan, and major information technology projects as provided in Section 54-35-15.2, as discussed earlier; for determining information technology compliance reviews to be conducted by the State Auditor as provided in Section 54-35-15.4; and for receiving:

- A report from the State Board of Higher Education regarding higher education information technology planning, services, and major projects (Sections 15-10-44 and 54-35-15.2).
- A report from the Statewide Longitudinal Data System Committee on the status of the statewide longitudinal data system, including recommendations for further development, cost proposals, proposals for legislation, and data sharing governance (Section 15.1-02-18).
- A report from the Chief Information Officer regarding the recommendations of the State Information Technology Advisory Committee relating to the prioritization of proposed major information technology projects and other information technology issues (Section 54-35-15.2).
- A report from the Chief Information Officer regarding the coordination of services with political subdivisions and a report from the Chief Information Officer and the commissioner of the State Board of Higher Education regarding coordination of information technology between the Information Technology Department and higher education (Section 54-59-12).
- A report from the Information Technology Department regarding any executive branch agency or institution that does not agree to conform to its information technology plan or comply with statewide policies and standards (Section 54-59-13).
- The annual report from the Information Technology Department (Section 54-59-19).

### **PREVIOUS COMMITTEE RECOMMENDATIONS 2005-06 Interim**

The 2005-06 interim Information Technology Committee recommended the following two bills, both of which were approved by the Legislative Assembly in 2007:

1. Senate Bill No. 2037:

- a. Provided that the Chief Information Officer may require as a condition of contracting with the Information Technology Department or other state agencies or departments with respect to an information technology project that any individual employed by the contractor or subcontractor to perform the work under the contract submit to a criminal history record check.
  - b. Revised the powers and duties of the Information Technology Committee and the Information Technology Department, including requiring the committee to receive and review project startup reports and project closeout reports for any major information technology project of an executive branch agency, the State Board of Higher Education, or any institution under the control of the State Board of Higher Education.
  - c. Provided that information technology plans are subject to acceptance by the Information Technology Department.
  - d. Revised the contents of the statewide information technology plan and the Information Technology Department annual report.
  - e. Provided that only entities approved by the Criminal Justice Information Sharing Board may access the criminal justice system.
2. Senate Bill No. 2038 required the Information Technology Department and OMB to develop policies, standards, and guidelines based on information from state agencies and institutions. Executive branch state agencies, excluding entities under the control of the State Board of Higher Education, must comply with the policies and standards unless the Chief Information Officer exempts an agency to address situations unique to that agency. The bill also provided that the State Information Technology Advisory Committee is to review policies, standards, and guidelines developed by the Information Technology Department and prioritize proposed major information technology projects of executive branch state agencies, excluding institutions under the control of the State Board of Higher Education and agencies of the judicial and legislative branches.

The 2005-06 interim Information Technology Committee considered, but did not recommend, a bill draft relating to higher education information technology planning services and major projects and a bill draft relating to the exclusion of policies, standards, and guidelines from compliance with the Administrative Agencies Practice Act. The Legislative Assembly in 2007 did however approve House Bill No. 1461 relating to higher education information

technology planning, services, and major projects. The bill:

- Provided that the State Board of Higher Education is responsible for managing and regulating information technology planning and services for institutions under its control; collaborating with the Information Technology Department to coordinate higher education information technology planning with statewide information technology planning; providing advice to the Information Technology Department regarding the development of policies, standards, and guidelines relating to access to or use of wide area network services; and presenting information regarding information technology planning, services, and major projects to the Information Technology Committee.
- Provided that the North Dakota University System may use the Northern Tier Network infrastructure only for the purpose of supporting the research and education missions of the University System. The University System may not use the Northern Tier Network infrastructure for traditional Internet, voice, video, or other telecommunications services beyond those required for research networks, and the University System may not resell any portion of the Northern Tier Network infrastructure to nonuniversity entities other than research collaborators.
- Exempted institutions under the control of the State Board of Higher Education from complying with policies, standards, and guidelines developed by the Information Technology Department.
- Provided that institutions under the control of the State Board of Higher Education are not required to prepare information technology plans.

#### **2007-08 Interim**

The 2007-08 interim Information Technology Committee recommended Senate Bill No. 2041 (2009), which was approved by the Legislative Assembly. The bill amended Section 54-59-21 relating to the Criminal Justice Information Sharing Board to expand the board's membership to include the existing three members--the Chief Justice of the Supreme Court, the Attorney General, and the Chief Information Officer--and nine additional members, including the director of the Department of Emergency Services, the director of the Department of Corrections and Rehabilitation, the superintendent of the Highway Patrol, the chief of the Bureau of Criminal Investigation, the director of the Department of Transportation, a representative of a city police department, a representative of a county sheriff's office, a state's attorney, and one at-large member appointed by the Governor. The bill also provided that board members who are not state employees are

entitled to compensation of \$75 per day and mileage and expenses as provided by law for state employees to be paid by the Information Technology Department.

#### **2009-10 Interim**

The 2009-10 interim Information Technology Committee recommended the following two bills for consideration by the Legislative Assembly in 2011:

1. Senate Bill No. 2036, which was defeated by the Legislative Assembly, amended Sections 54-59-02 and 54-59-05(13) relating to the responsibilities and powers and duties of the Information Technology Department to provide that the department may connect to a wide area network service for health information exchange in accordance with federal requirements for health information technology exchange.
2. Senate Bill No. 2037, which was approved by the Legislative Assembly, relates to the establishment and participation in the health information exchange. The bill:
  - a. Creates four new sections of North Dakota Century Code relating to the confidentiality of health information under the health information exchange and participation in the health information exchange.
  - b. Amended Section 23-06.5-19 to transfer responsibilities associated with the health care record registry from the Secretary of State to the Information Technology Department.
  - c. Amended Sections 54-59-25 and 54-59-26 relating to the Health Information Technology Advisory Committee and the Health Information Technology Office.

### **2011 LEGISLATIVE ASSEMBLY - RELATED LEGISLATION**

#### **House Bill No. 1021 -**

#### **2011-13 Bank of North Dakota Transfer**

Section 4 provides that the Industrial Commission transfer up to \$5 million from the current earnings and accumulated undivided profits of the Bank of North Dakota to the health information technology planning loan fund or to the health information technology loan fund for the 2011-13 biennium.

#### **House Bill No. 1021 - Statewide Longitudinal Data System Expenditures**

Section 5 amends Section 7 of Chapter 49 of the 2009 Session Laws to provide that the Department of Public Instruction may spend only the federal funds appropriated in the 2009-11 biennium and carried forward to the 2011-13 biennium for costs associated with the statewide longitudinal data system upon approval of the expenditures by the Information Technology Department.

**House Bill No. 1021 -  
2009-11 Bank of North Dakota Transfer**

Section 6 amends Section 9 of Chapter 519 of 2009 Session Laws to provide that the Industrial Commission transfer during the 2009-11 or 2011-13 biennium up to \$8 million from the current earnings and accumulated undivided profits of the Bank to the health information technology loan fund or to the electronic health information exchange fund to meet any required match for federal funds or for ongoing operating expenditures of the health information exchange.

**House Bill No. 1214 -  
Statewide Longitudinal Data System**

House Bill No. 1214:

- Amends Section 15.1-02-18 relating to the Statewide Longitudinal Data System Committee.
- Provides that the Information Technology Department, at the direction of the Statewide Longitudinal Data System Committee, is to maintain a statewide longitudinal data system among education, workforce, and training entities.
- Provides that the Information Technology Department may request information from any state agency that is required for a longitudinal data system to comply with state or federal law.
- Repeals Section 44-04-18.14 relating to the followup information on North Dakota education and training system.

**Senate Bill No. 2015 -  
Information Technology Projects**

Section 11 of Senate Bill No. 2015 provides that during the 2011-13 biennium each executive branch state agency, excluding entities under the control of the State Board of Higher Education, considering the development of an information technology project with an estimated cost of \$100,000 or more is to involve the Information Technology Department in the planning and study of the project. A state agency must receive a recommendation from the Information Technology Department prior to proceeding with any study relating to the project.

**Senate Bill No. 2037 -  
Health Information Technology**

Senate Bill No. 2037:

- Changes the membership of the Health Information Technology Advisory Committee by adding the chairman of the House Human Services Committee and the chairman of the Senate Human Services Committee or if either or both of them are unwilling or unable to serve, a replacement selected by the chairman of the Legislative Management.

- Authorizes the Health Information Technology Advisory Committee to accept private contributions, gifts, and grants.
- Requires the director of the Health Information Technology Office to implement and administer a health information exchange that utilizes information infrastructure and systems in a secure and cost-effective manner to facilitate the collection, storage, and transmission of health records; adopt rules for the use of health information, use of the health information exchange, and participation in the health information exchange; and adopt rules for accessing the health information exchange to ensure appropriate and required privacy and security protections.
- Requires the director to determine fees and charges for access and participation in the health information exchange and to consult and coordinate with the State Department of Health and the Department of Human Services to facilitate the collection of health information from health care providers and state agencies for public health purposes.
- Requires each executive branch state agency and each institution of higher education that implements, acquires, or upgrades health information technology systems by January 1, 2015, to use health information technology systems and products that meet minimum standards adopted by the Health Information Technology Office for accessing the health information exchange.
- Provides that any individually identifiable health information submitted to, stored in, or transmitted by the health information exchange is confidential and any other information relating to patients, individuals, or individually identifiable demographic information contained in a master client index submitted to, stored in, or transmitted by the health information exchange is an exempt record.
- Provides immunity from criminal or civil liability for any health care provider that relies in good faith upon any information provided through the health information exchange in the treatment of a patient for any damages caused by that good-faith reliance.
- Provides that effective January 1, 2015, an executive branch state agency, an institution of higher education, and any health care provider or other person participating in the health information exchange may use only an electronic health record system for use in the exchange which is certified under rules adopted by the Office of National Coordinator for Health Information Technology.

## OTHER RELATED BACKGROUND INFORMATION

### Information Technology Department

The Information Technology Department was established by the Legislative Assembly in 1999 to assume the responsibilities of the Information Services Division of OMB. The department is responsible for all wide area network services, planning, selection, and implementation for all state agencies, including institutions under the control of the State Board of Higher Education, counties, cities, and school districts in the state. The department is also responsible for computer support services, host software development, statewide communications services, standards for providing information to other state agencies and the public through the Internet, technology planning, process redesign, and quality assurance. The department is headed by the Chief Information Officer of the state who serves at the pleasure of the Governor and is to be appointed on the basis of education, experience, and other qualifications in information technology and administration.

### Information Technology Department Funding

The Legislative Assembly in 2011 provided funding of \$164,328,887, of which \$19,252,204 is from the general fund and \$145,076,683 is from special funds, to the Information Technology Department for the 2011-13 biennium. The 2011-13 appropriation of \$164,328,887 represents a decrease in funding of \$65,212,952 from the 2009-11 appropriation of \$229,541,839. The following are summaries of the department's legislative appropriations for the 2009-11 and 2011-13 bienniums:

	<b>General Fund</b>	<b>Special Funds</b>	<b>Total</b>
2011-13 legislative appropriation	\$19,252,204	\$145,076,683	\$164,328,887
2009-11 legislative appropriation	19,170,785	210,371,054	229,541,839
Increase (decrease)	\$81,419	(\$65,294,371)	(\$65,212,952)

	<b>Ongoing General Fund Appropriation</b>	<b>One-Time General Fund Appropriation</b>	<b>Total General Fund Appropriation</b>
2011-13 legislative appropriation	\$17,294,580	\$1,957,624	\$19,252,204
2009-11 legislative appropriation	14,983,554	4,187,231	19,170,785
Increase (decrease)	\$2,311,026	(\$2,229,607)	\$81,419
Percentage increase (decrease)	15.4%	(53.2%)	0.4%

The following is a summary of the department's legislative appropriation for the 2011-13 biennium:

	<b>General Fund</b>	<b>Special Funds</b>	<b>Total</b>
Information Technology Department operations (salaries and wages, operating expenses, and capital assets)	\$705,020	\$113,086,223	\$113,791,243
Center for Distance Education	2,625,395	4,023,843	6,649,238
Statewide Longitudinal Data System Initiative	3,626,867		3,626,867
Educational Technology Council	1,000,403	75,000	1,075,403
EduTech	3,044,096	4,882,351	7,926,447
Wide area network	4,798,992	408,000	5,206,992
Geographic information system	1,037,065	75,000	1,112,065
Criminal Justice Information System Initiative	2,051,394	930,000	2,981,394
Health information technology	362,972	13,596,266	13,959,238
Federal fiscal stimulus funds		8,000,000	8,000,000
<b>Total</b>	<b>\$19,252,204</b>	<b>\$145,076,683</b>	<b>\$164,328,887</b>

The following is a summary of major appropriation increases and decreases included in the department's legislative appropriation for the 2011-13 biennium:

	<b>General Fund</b>	<b>Special Funds</b>	<b>Total</b>
Increased funding for the Center for Distance Education	\$1,375,891	(\$1,352,438)	\$23,453
Increased funding for the Statewide Longitudinal Data System Initiative	1,160,542		1,160,542
Increased funding for the geographic information system	322,387		322,387
Increased funding for health information technology	12,972	5,596,266	5,609,238
Increased funding for EduTech	(2,060,603)	2,233,448	172,845
Decreased funding for the wide area network	(769,978)		(769,978)
Decreased federal fiscal stimulus funding		(86,263,883)	(86,263,883)
Other	40,208	14,492,236	14,532,444
<b>Total</b>	<b>\$81,419</b>	<b>(\$65,294,371)</b>	<b>(\$65,212,952)</b>

The Legislative Assembly authorized a total of 326.3 full-time equivalent (FTE) positions for the 2011-13 biennium, a decrease of 1.9 FTE positions from the 2009-11 biennium authorized level of

328.2 FTE positions. The following is a summary of FTE position changes:

EduTech, including statewide deployment of the PowerSchool application	2.00
Statewide Longitudinal Data System Initiative	3.00
Health information technology	3.00
Center for Distance Education	(6.90)
Other - Positions not requested by the agency	(3.00)
<b>Total</b>	<b>(1.90)</b>

### Statewide Information Technology Funding

The Legislative Assembly in 2011 provided funding of \$35,041,603, of which \$9,672,923 is from the general fund and \$25,368,680 is from special funds, for information technology projects for the 2011-13 biennium. A summary of the funding is attached as an [appendix](#).

### Health Information Technology

#### Health Information Technology Advisory Committee

Section 54-59-25 establishes a Health Information Technology Advisory Committee consisting of the Chief Information Officer, the State Health Officer, the Governor, the executive director of the Department of Human Services, the chairman of the House Human Services Committee, the chairman of the Senate Human Services Committee, and individuals appointed by the Governor and the State Health Officer to represent a broad range of public and private health information technology stakeholders.

#### Health Information Technology Office

Section 54-59-26 establishes a Health Information Technology Office in the Information Technology Department. The Health Information Technology Advisory Committee is to make recommendations to the Health Information Technology Office for implementing a statewide interoperable health information infrastructure that is consistent with emerging national standards, promote the adoption and use of electronic health records and other health information technologies, and promote interoperability of health information systems.

The Health Information Technology Office director, in collaboration with the Health Information Technology Advisory Committee, is to:

- Apply for federal funds that may be available to assist the state and health care providers in implementing and improving health information technology.
- Implement and administer a health information exchange that utilizes information infrastructure and systems in a secure and cost-effective manner to facilitate the collection, storage, and transmission of health records.
- Adopt rules for the use of health information, use of the health information exchange, and participation in the health information exchange.

### Electronic Health Information Exchange Fund

Section 54-59-27 establishes an electronic health information exchange fund. The fund consists of the money deposited in the fund from federal or other sources or money transferred into the fund as directed by the Legislative Assembly. The Health Information Technology Office is to administer the fund. The money in the fund is to be used to facilitate and expand the electronic health information exchange. Money in the fund may be used, subject to legislative appropriations, to provide services directly for grants and for costs of administration of the fund.

### Health Information Technology Loan Fund

Section 6-09-42 establishes a health information technology loan fund at the Bank of North Dakota for providing loans to health care providers to purchase and upgrade electronic health record technology, train personnel in its use, improve security of information technology exchange, and for other purposes as established by the Health Information Technology Office, in collaboration with the Health Information Technology Advisory Committee. This fund is a revolving loan fund. All money transferred into the fund, interest upon money in the fund, and collections of interest and principal on loans made from the fund are appropriated for disbursement. Annually, the Bank may deduct a service fee for administering the revolving loan fund.

An application for a loan must be made to the Health Information Technology Office. The Health Information Technology Office director, in collaboration with the Health Information Technology Advisory Committee, may approve the application of a qualified applicant that meets the criteria established by the Health Information Technology Office director. The Health Information Technology Office is to forward approved applications to the Bank of North Dakota. Upon approval of the application by the Bank, the Bank is to make the loan from the revolving fund. A loan made under this fund must be repayable over a period that may not exceed 10 years.

### Health Information Technology Planning Loan Fund

Section 6-09-43 establishes a health information technology planning loan fund at the Bank of North Dakota for providing low-interest loans to health care entities to assist those entities in improving health information technology infrastructure. This fund is a revolving loan fund. All money transferred into the fund, interest on money in the fund, and collections of interest and principal on loans made from the fund are appropriated for disbursement. Annually, the Bank may deduct a service fee for administering the revolving loan fund.

An application for a loan must be made to the Health Information Technology Office. The Health Information Technology Office director, in collaboration with the Health Information Technology Advisory Committee, may approve the application of a qualified applicant that meets the criteria established

by the Health Information Technology Office director. The Health Information Technology Office is to forward approved applications to the Bank of North Dakota. Upon approval of the application by the Bank, the Bank is to make the loan from the revolving loan fund.

### **PROPOSED STUDY PLAN**

The following is a proposed study plan for the committee's consideration relating to its statutory responsibilities and assigned study responsibilities:

1. Review the activities of the Information Technology Department, the business plan of the department, statewide information technology standards, the statewide information technology plan, and major information technology projects (Section 54-35-15.2).
2. Determine information technology compliance reviews to be conducted by the State Auditor and receive the results of those reviews (Section 54-35-15.4).
3. Receive a report from the Chief Information Officer regarding the recommendations of the State Information Technology Advisory Committee relating to the prioritization of proposed major information technology projects and other information technology issues (Section 54-35-15.2).
4. Receive reports from the Chief Information Officer of the state regarding the coordination of services with political subdivisions and the Chief Information Officer and the commissioner of the State Board of Higher Education regarding coordination of information technology between the Information Technology Department and higher education (Section 54-59-12).
5. Receive the following from the Information Technology Department:
  - a. A report regarding any executive branch agency or institution that does not agree to conform to its information technology plan or comply with statewide policies and standards (Section 54-59-13).
  - b. An annual report regarding information technology projects, services, plans, and benefits (Section 54-59-19).
  - c. Information regarding the statewide information technology budget for the 2011-13 and 2013-15 bienniums.
6. Review current information technology-related statutory provisions.
7. Receive reports from the State Board of Higher Education regarding higher education information technology planning, services, and major projects (Sections 15-10-44 and 54-35-15.2).
8. Receive a report from the Statewide Longitudinal Data System Committee on the status of the statewide longitudinal data system, including recommendations for further development, cost proposals, proposals for legislation, and data sharing governance (Section 15.1-02-18).
9. Receive periodic reports from the Health Information Technology Office and the Health Information Technology Advisory Committee on the status of the health information technology activities.
10. Develop recommendations and any necessary legislation to implement the committee's recommendations.
11. Prepare a final report for submission to the Legislative Council.

ATTACH:1