MICROFILM DIVIDER

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

ROLL NUMBER

DESCRIPTION

1074

2005 HOUSE APPROPRIATIONS

HB 1074

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1074

House Government Performance Division

☐ Conference Committee

Hearing Date January 12, 2005

Tape Number	Side A	Side B	Meter #
1		X	1105-4600

Committee Clerk Signature Stephanie N Thomas

Minutes:**Chairman Carlson** opened the hearing on HB1074 relating to audits of computer systems by the state auditor.

Ed Nagel, State Auditor, in support of this bill. **(SEE ATTACHED TESTIMONY)**

Rep. Skarphol: I attended a IT conference, where this particular issue was discussed, and I thought it would be valuable for the state of North Dakota to probably utilize this. In that discussion there was a particular state auditor who utilized this type of practice. One of the requirements was that the entity that they hired to do the hacking had a requirement in the contract that they not be subject to potential liability in the event it caused a problem within the computer system. Does this legislation give you the ability to sign that type of waiver?

Ed: It's not discussed specifically in this legislation here, but any contract that we would execute with a contract we would first run by the AG's office to determine that it met their legal requirements. We would also run it by Risk Management to see if they had any specific language that they wanted incorporated into it so that all parties would be covered.

Rep. Skarphol: I think it's important that this particular issue be addressed in some fashion in this legislation. In the event that somebody does penetrate a system, and does do incidental damage, its a requirement of whatever professional firms you hire to try to do this. If we can't do it, can't give them that waiver, then we would lose the ability to do this. I think a discussion with the AG's office needs to take place to determine if in fact we can do something like that at this point in time, and if we cannot if we're willing to put that in this legislation.

Chair Carlson: The fiscal note shows zero on the bill, but then in your other proposal this morning what you were asking for enhancements, it was 100,000 dollar figure in there for hiring of information systems consultants to test security at ITD. Is it $100,000 or is it zero. Is it or is it not in the budget?

Ed: These are viewed as two separate items, for instance, if this bill passes and we don't get any money for consultants we probably wouldn't be able to hire any consultants. However we could, using our own expertise, do the things that are envisioned in this bill. We could test computer systems to the extent that we felt necessary, and to the extent that we had the expertise to do that. However, if we do get the money to hire a contractor, we also want to have the statutory authority to have that contractor go in and try to hack into the state system.

Chair Carlson: If we were going to do this properly, we would require a consultant for $100,000, yes or no?

Ed: If we are looking to penetrate a system, we would have to hire a consultant.

Rep. Glassheim: I need a little more discussion on whether we're duplicating, and why IT isn't doing this or what is the difference between having IT do this and the auditors do this?

Rep. Skarphol: At the conference I attended in North Carolina, the head of the auditors office in cooperation with 23 state agencies, and the state agency heads were made aware of what was going to happen, the agency head were asked to meet in a hotel in North Carolina, and at that hotel they had two people from this hacking company who sat at computers and tried to penetrate various agencies. One of the state agency heads warned his IT people that this was going to happen, that agency was the first to be penetrated in. 22 out of the 23 were penetrated in an hour. I think its important to ensure that were safe by testing the system, and it has to be done on a regular basis.

Chair Carlson: We have an ITD department, why does the auditors department need to do this? Why isn't it the IT department?

Ed: If ITD wants to so it, I don't think we would say we want to do it instead, I don't think that's where we come from. However, if this would give us the authority to do that if ITD felt they didn't want to do it, and we felt it should be done. It would give us the authority if we had the money to do that. Even if we don't look at network penetration or security penetration, we still want to have specific authority to review the computer systems for other things. Correct processing of information, which we currently do.

Chair Carlson: On section 1, number 2, I need a better understanding of why at the state auditors discretion you can disclose any information to the chief information officer, or to any state official legislative committee. I haven't figured out why we need the discretion not to share with department heads or with the legislature the findings.

Ed: Actually, if you look at the current statute the way it sits, the state auditor can declare any part of our working papers confidential. So we don't need this specific language to keep

something confidential. However, I think this gives us more authority to certain information in the reports that we publish.

Rep. Skarphol: Is it not important that you be able to disclose some of it so that we can take corrective action, and not disclose some of it in order to protect the system?

Ed: Correct.

Rep. Monson: What I'm hearing is that section 2, actually gives you broader authority to share that with us, because without that you may be able to keep more or may have to keep more things confidential, is that what I'm hearing you say?

Ed: I think this makes it more clear, however as I stated earlier with the current statute that we have, we can disclose or keep confidential whatever we want.

Rep. Glassheim: You have the authority to not disclose findings to the legislature on financial and other audits that you do, not technology ones, but do you have that authority?

Ed: We do, we can keep any part of our working papers confidential that we want.

Chair Carlson: We just have concerns that it gets to the right place. I just want to make sure that all the right people get the right information. We need the authority to make sure it's going to the right places, and not to anybody else.

Rep. Glassheim: So I'm clear, a possible $100,000 should be attached to this as a cost if your actually going to do it, and is an additional $100,000 for IT in the other bill, or is it the same $100,000?

Rep. Skarphol: It's the same $100,000.

Kurt Wolf, CIO for the State, and ITD is in favor of this bill. We have conducted an external attempt for penetration that was done under discussions with the Bank of ND. We did use an out

of state contractor to do this. They did produce a report, and identify some things that we took corrective action on. So I think we accomplished what the intent was here, which is to have somebody attempt to do this and identify what the weaknesses are, and take corrective action to fix those. To further protect the network we have taken more action related to the fire walls. Whether ITD should be doing this, I think it's important to have an external party do this from time to time, for purposes of insuring that the proper protections are in place.

Rep. Monson: So your saying you've already done this to a limited extent, but you never shared those results with anybody else?

Kurt: No, the results belong to the bank, they paid the costs of it.

Rep. Skarphol: You said people attempt to get into the state network regularly, what does that mean. Do you know how many people try to penetrate it on a daily basis, weekly basis, monthly basis?

Kurt: I can get you those numbers, we certainly detect attempts all the time. It's a daily thing.

Rep. Skarphol: Do you have a higher security level for certain aspects of state government, for example Hippa and some of the real sensitive privacy areas?

Kurt: What were doing now for very sensitive information is encrypting the information. There is a cost to encrypting, so we don't know how much we will be doing. On the Hippa information, I don't believe at this time were doing any encryption, but our intent is to do it with criminal justice information.

Chair Carlson: Do I understand that you have three people that work on this area?

Kurt: Yes, we have three people that work on security constantly.

Sandi Tabor, Deputy Attorney General, Our office has had an opportunity to talk to the auditors office and Mr. Wolf about this bill. Our concern is, and in fact we sent a bill draft to the FBI for review, we're not sure how their going to feel about having a third party come in and try to hack into our system, which would immediately give them access perhaps to the NCIC system. Amendment. **(SEE WRITTEN TESTIMONY FOR AMENDMENT)**

Sandi: There is another amendment on page two, that ties confidentiality and the release of confidential information into the standard penalty which is a class C felony.

Rep. Monson: You probably have the right to prosecute them, but from some of these findings, I was wondering if you would take it a step further and go after them.

Sandi: Yes, and I think technically when confidential information is released there is an issue, because when you bring a 3rd party contractor in the statute right now under 12.1 is when a public servant releases confidential information. If we're bringing a 3rd party contractor in technically that probably wouldn't cover them, but if we just put the language in we'll be fine. We have a bill that's upstairs in Legislative Council, that deals with indemnification and contracts with the state vendors dealing with the software, and leasing of equipment for IT. It was generated over concerns that arose out of the Motorola Contract where our advice to IT and OMB was that they didn't have the authority to sign the contract, because there was no specific language to allow us to limit the liability of Motorola. This bill will cover that, and if you wish, we'll look at that language and see if we can tie this into it so we don't have two bills.

Chair Carlson: I think that would be a logical thing. I have one concern, when we have a piece of information liability that deals with this bill that's in another bill, is that we keep track that the other bill actually happened.

Sandi: We're sure hoping that you all will be supportive of that bill, because right now there is an issue that some of the people that signed the Motorola contract might have been doing it outside the scope of their duty.

Closed hearing on HB 1074.

1074

Dave: Exactly right.

Rep. Monson: An example of one that I think you should include in here would be the revenue that you get from your rent from your building, that you use to cover costs, repairs, or put it into a contingency fund for the day when you need to make those repairs. What do you do with the revenue from that?

Dave: The revenue is on # 2 on here, that does address the building operations, it's separate from the actual construction project itself.

Rep. Monson: So this one is actually done the way we expect with a positive balance?

Dave: This is the definition of an actual fund. It is accounted for separately.

Chair Swedjan: Do you need the continuing appropriation? Has continuing appropriation for that lived its life?

Dave: That first one had a sunset clause that expired June 30, 2003. The building was complete at that time, however last payments weren't actually made until August of 2003.

Sandy Tabor, Deputy Attorney General: The language on the amendment, paragraph 4, seems to be the rewrite of the language we submitted. It seems to cover the concern we had. What's not included is the penalty. If you recall, in order to make consistent the penalty for the release of confidential information for a third party, non government entity, we need to have language that says, and any unauthorized release of information will be a Class C felony.

begin general discussion 1074

Don Wolf, Legislative Council: The Class C felony, it would already be a Class C felony, so it would kind of be like a duplication.

Don Lafleur, State Auditors Office: On page 1, line 14, replace at the state auditors discretion disclose, with just disclose. The one problem with that is this thing would now read to disclose

1074

any findings to the chief information officer of this state, or to any state official, or legislative committee. The last one, if we disclose it to a legislative committee, it's now public information, and there may be certain findings we don't want to be public information. The finding itself might allow people in our state to hack into our system.

Rep. Monson: I have another note here a 100,000 dollars is needed if we require this, in section three.

Don: That 100,000 is in the State Auditors appropriation bill.

Closed General Discussion Hearing.

General Discussion

Govt Performance 1074

- ☐ Committee on Committees
- ☐ Rules Committee
- ☐ Confirmation Hearings
- ☐ Delayed Bills Committee
- ☒ House Appropriations
- ☐ Senate Appropriations
- ☐ Other

Date January 21, 2005			
Tape Number	Side A	B Side	Meter #
1	X		1-680

Committee Clerk Signature Stephanie N Thomas

Minutes: **Rep. Skarphol** opened General Discussion hearing on HB1074.

Rep. Skarphol: Went to Legislative Council and spoke with Mr. Biorenson, informed him that we needed an addition to the amendment, with regard to the waiver of liability. He took the language of this in Sen Trenbeth's bill, as we discussed, and inserted it as #5 on the proposed amendment. Then he added to the top that there were references to the fact that there are penalties. Mr. Biorenson was adamant about the fact that he thought the current penalty language, in statute, does cover what's needed, and that we did not need an additional statement of penalty here.

Gordy Smith: In the second area, the first line page 1 line 6, as long as that word "may" stays in there, that's our biggest concern.

1074

Rep. Skarphol: With that do I have a motion to accept the amendment?

Rep. Monson: I move the adoption of amendment # 58052.0103.

Rep. Glassheim: I second the motion.

Rep Skarphol: Motion carries.

Rep. Monson: I move a do pass, as amended on HB 1074.

Rep. Glassheim: I second the motion.

HB 1074 carried by Rep. Monson.

Closed General Discussion hearing.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1074
State Auditor / Computers

House Appropriations Full Committee

☐ Conference Committee

Hearing Date January 25, 2005

Tape Number	Side A	Side B	Meter #
1	X		#14.9 - 25.8

Committee Clerk Signature Chris Alexander

Minutes:

Rep. Ken Svedjan, Chairman opened the hearing, roll call was taken, and the clerk read the bill title.

Rep. David Monson explained that this bill would allow the State Auditor and ITD to work together to run security checks to find out how secure our system is by hiring professionals to come in and attempt to hack into our system. The amendment added to the bill by the Government Performance subcommittee added a penalty to anyone who knowingly discloses confidential information. Rep Monson noted that there was a related bill introduced in the Senate. Rep Monson moved that the amendment #LC58052.0103 be accepted.

Rep. Al Carlson seconded the motion.

Rep. Ole Aarsvold asked where the appropriations was in this bill and continued by asking if the amendment wasn't a major policy issue rather than an appropriations issue.

Rep. David Monson explained that the appropriations was $100,000 in the State Auditor's budget and that it is the prerogative of the Government Performance subcommittee to add policy amendments.

Rep. Ken Svedjan, Chairman further explained that what the subcommittee added further clarifies the responsibilities as it relates to doing these security audits and that the amendment has no impact on the $100,000 that is in the Auditor's budget. (meter #19.1)

Rep. Ole Aarsvold asked if this amendment shouldn't have come from the policy committee who originally dealt with this bill.

Rep. Ken Svedjan, Chairman explained that this bill was assigned directly to Appropriations and did not have any other Standing Committee dealing with the policy part.

Rep. Ron Carlisle asked Sheila Peterson if this $100,000 was in the Governor's budget.

Ms Sheila Peterson from OMB answered that this money was not in the Budget as far as she knew.

Rep. Ron Carlisle continued by asking if the plan then was to amend the Auditor's budget to allow for this.

Rep. David Monson answered yes.

Rep. Jeff Delzer asked why the fiscal note was zero when the plan was to add the $100,00 to the Auditor's budget.

Rep. Bob Skarphol answered that the Auditor's office would like the bill passed whether or not they get the money. This bill allows them the authority for hiring the people needed to run the checks. They'd like to hire an independent third party, its not ITD, to work at an off-site location to check if our system is secure enough to protect confidential information.

Rep. Ron Carlisle asked why this discussion was not raised in the Auditor's office during the budget preparations.

Rep. Bob Skarphol answered that he did not know why it wasn't put in the budget, but did know that the Auditor didn't add the fiscal note because they didn't want to jeopardize the bill because they wanted the bill passed regardless of the money.

Rep. Ken Svedjan, Chairman explained that Appropriations will get the chance to ask questions concerning the budget when that bill comes before the committee.

Rep. Al Carlson commented that the Attorney General's office mentioned that no one would want to do these checks unless there was some immunity from liability since they might do some damage to the system as they try to hack into it. And we need an outside group doing this since ITD was the one who built the fire walls. These checks are crucial because there is very sensitive information in this system.

Rep. Ralph Metcalf asked if there was a report required and to whom.

Rep. Bob Skarphol the original bill has language in it that says the Auditor has the discretion of what information is released concerning these checks and to whom since we don't want it to come out if it is easy to hack into our system.

Rep. Ralph Metcalf commented that he understood the sensitive issues but still thought there ought to be a report that says the tests were done, without disclosing any details, and be held accountable to someone.

Rep. Bob Skarphol answered that there will be information released in collaboration with ITD, the Attorney General's Office, and the Auditor, that the tests were accomplished but there won't be any specific detail in the report. Rep Skarphol also mentioned that it will be decided later

which agencies need to be secured and which ones have lesser priority since the information they carry is less confidential, but we need to secure the really sensitive information now.

Rep. David Monson commented again on the importance of this bill for securing sensitive information.

Rep. Ken Svedjan, Chairman called for a voice vote to accept amendment #LC58052.0103. Motion carried with 1 nay vote.

Rep. David Monson moved a do pass as amended on HB1074

Rep. Bob Skarphol seconded.

Rep. Ken Svedjan, Chairman called for a roll call vote. Motion carried with a vote of 19 yeas, 2 neas, and 2 absent. Rep Monson will carry the bill to the House Floor.

Rep. Ken Svedjan, Chairman closed the discussion on HB1074.

58052.0102
Title.

Prepared by the Legislative Council staff for
Representative Skarphol
January 19, 2005

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1074

Page 1, line 6, after the boldfaced period insert:

"1."

Page 1, line 7, replace "1." with "a."

Page 1, line 14, replace "2. At the state auditor's discretion, disclose" with "b. Disclose"

Page 1, line 22, replace "3." with "c."

Page 1, after line 24, insert:

"2."

Page 2, after line 2, insert:

"3. The state auditor shall notify the executive officer of any state agency or political subdivision of the date, time, and location of any test conducted in connection with a review and assessment of computer systems or related security systems. The executive officer or a designee of the executive officer shall attend and observe the test. An executive officer or designee of an executive officer receiving notice of any test conducted under this section may not inform any other individual of the scheduling and conduct of the test.

4. The state auditor shall notify the attorney general of the date, time, and location of any test conducted in connection with a review and assessment of computer systems or related security systems. The attorney general may designate an individual to participate in the test. The designee of the attorney general may order the test to be terminated if the individual believes a sensitive system is being breached, a sensitive system may be breached, or sensitive information may be revealed."

Renumber accordingly

58052.0103
Title.

Prepared by the Legislative Council staff for
Representative Skarphol
January 20, 2005

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1074

Page 1, line 2, after "auditor" insert "; and to provide a penalty"

Page 1, line 6, after "**systems**" insert "**- Penalty**" and after the boldfaced period insert:

"1."

Page 1, line 7, replace "1." with "a."

Page 1, line 14, replace "2. At the state auditor's discretion, disclose" with "b. Disclose"

Page 1, line 22, replace "3." with "c."

Page 1, after line 24, insert:

"2."

Page 2, line 2, after the period insert "Any individual who knowingly discloses confidential information is subject to the provisions of section 12.1-13-01.

3. The state auditor shall notify the executive officer of any state agency or political subdivision of the date, time, and location of any test conducted in connection with a review and assessment of computer systems or related security systems. The executive officer or a designee of the executive officer shall attend and observe the test. An executive officer or designee of an executive officer receiving notice of any test conducted under this section may not inform any other individual of the scheduling and conduct of the test.

4. The state auditor shall notify the attorney general of the date, time, and location of any test conducted in connection with a review and assessment of computer systems or related security systems. The attorney general may designate an individual to participate in the test. The designee of the attorney general may order the test to be terminated if the individual believes a sensitive system is being breached, a sensitive system may be breached, or sensitive information may be revealed.

5. Notwithstanding any provision in chapter 32-12.2 to the contrary, if the attorney general and the director of the office of management and budget determine it is in the best interest of the state, the state auditor may agree to limit the liability of a contractor performing a review and assessment under this section. The liability limitation must be approved by the attorney general and director of the office of management and budget in writing. For any uninsured losses, the director of the office of management and budget may approve the risk management fund to assume all or part of the contractor's liability to the state in excess of the limitation."

Renumber accordingly

Date: Jan 21, 2005
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1074

House Government Performance Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 58052.0103

Action Taken Do Pass As Amended

Motion Made By Rep. Monson Seconded By Rep. Glassheim

Representatives	Yes	No	Representatives	Yes	No
Chairman Carlson			Rep. Glassheim	X	
Vice Chairman Skarphol	X				
Rep. Monson	X				

Total (Yes) 3 No 0

Absent 1

Floor Assignment Rep. Monson

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

Have MR. Biorenson, Legislative Council, Present at Full Committee.

Date: **January 25, 2005**
Roll Call Vote #: **1**

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1074

House Appropriations - Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number **58052.0103**

Action Taken **DO PASS AS AMENDED**

Motion Made By **Rep Monson** Seconded By **Rep Skarphol**

Representatives	Yes	No	Representatives	Yes	No
Rep. Ken Svedjan, Chairman	X		Rep. Bob Skarphol	X	
Rep. Mike Timm, Vice Chairman	X		Rep. David Monson	X	
Rep. Bob Martinson	X		Rep. Eliot Glassheim	X	
Rep. Tom Brusegaard	AB		Rep. Jeff Delzer	X	
Rep. Earl Rennerfeldt	X		Rep. Chet Pollert	X	
Rep. Francis J. Wald	AB		Rep. Larry Bellew	X	
Rep. Ole Aarsvold		X	Rep. Alon C. Wieland	X	
Rep. Pam Gulleson	X		Rep. James Kerzman		X
Rep. Ron Carlisle	X		Rep. Ralph Metcalf	X	
Rep. Keith Kempenich	X				
Rep. Blair Thoreson	X				
Rep. Joe Kroeber	X				
Rep. Clark Williams	X				
Rep. Al Carlson	X				

Total Yes **19** No **2**

Absent **2**

Floor Assignment **Rep Monson**

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

REPORT OF STANDING COMMITTEE

HB 1074: Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (19 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). HB 1074 was placed on the Sixth order on the calendar.

Page 1, line 2, after "auditor" insert "; and to provide a penalty"

Page 1, line 6, after "**systems**" insert "**- Penalty**" and after the boldfaced period insert:

"1."

Page 1, line 7, replace "1." with "a."

Page 1, line 14, replace "2. At the state auditor's discretion, disclose" with "b. Disclose"

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4. The state auditor shall notify the attorney general of the date, time, and location of any test conducted in connection with a review and assessment of computer systems or related security systems. The attorney general may designate an individual to participate in the test. The designee of the attorney general may order the test to be terminated if the individual believes a sensitive system is being breached, a sensitive system may be breached, or sensitive information may be revealed.

5. Notwithstanding any provision in chapter 32-12.2 to the contrary, if the attorney general and the director of the office of management and budget determine it is in the best interest of the state, the state auditor may agree to limit the liability of a contractor performing a review and assessment under this section. The liability limitation must be approved by the attorney general and director of the office of management and budget in writing. For any uninsured losses, the director of the office of management and budget may approve the risk management fund to assume all or part of the contractor's liability to the state in excess of the limitation."

Renumber accordingly

2005 SENATE POLITICAL SUBDIVISIONS

HB 1074

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1074

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date February 10, 2005

Tape Number	Side A	Side B	Meter #
1	X		0 - 3528

Committee Clerk Signature Shirley Borg

Minutes:

Chairman Cook called the Political Subdivisions Committee to order. All members (6) present.

Chairman Cook opened the hearing on HB 1074 relating to audits of computer systems by the state auditor.

Ed Nagel, Director of State Auditors Office, introduced SB 1074. (Testimony and amendment - attachment #1)

Senator Dever: Is access to and handling confidential information in the bill consistent with the way they handle information otherwise?

Ed Nagel: Yes, I believe that it is. The language concerning confidential information and making it disclose that information subject to provisions of Section 12.1-13.01, that language was included by the Attorney Generals Office.

Senator Gary Lee: In your third paragraph in your testimony, why would you need to use discretion in terms of what is available to the public and what isn't?

Ed Nagel: What happens with our audit is if we do an audit and we end up issuing an audit report and those audit reports are presented to the legislature audit and fiscal review committee. What we want the ability to do is, as part of that audit, exclude from that audit which becomes a public document, the specific tests that we use to try and hack into a system especially if those tests were sucessful. We don't want to put the details of our testing into the report. Instead we would just say in our report; we were able to hack into the system of xyz agency and we feel they need to improve their security. We don't want to have any of that detailed information which would be included in our working papers to become public and be used inappropriately.

Senator Dever: Do individual agencies have responsibility for their security systems or is that an ITD function?

Ed Nagel: It could be both. There are agencies that have there own system that ITD are not responsible for.

Senator Hacker: Do you have the expertise within your department to do real hacking into these systems and my other question was are you going to allow things such as bugs, worms and viruses to take down fire walls that may endanger the system because of viruses that were planted into the system to try and hack into the system that may disturb how things are run currently.

Ed Nagel: It would not be our intent to introduce any viruses or worms into the system. We are not looking to do any damage to the systems. That is the reason for some of the language in the bill.

Senator Fairfield: ITD is currently doing security check that you are talking about or are they not or would these be on separate entities that they are not doing the checks on? Are we doubling up?

Ed Nagel: No we are not doubling up. ITD has people on staff that try to prevent hacking from occurring. However, they do not go around I don't believe and try to hack into other agency systems.

Chairman Cook : I would think that we as legislatures set policies that we certainly expect ITD to accomplish and what you are is a extension or service of the legislature to go out and audit their work and make sure that they are accomplishing what we expect them to do. Is this correct?

Ed Nagel: That is correct.

Mike Ressler, Deputy CIO with Information Technology Department, testified in support of HB 1074. (See attachment #2)

Chairman Cook: All this technology makes me nervous as to how it could just shut down everything. Should we have great concern over what could happen to our computer systems?

Mike Ressler: About five years before 9/11 happened we were convinced that the US would be the first terrorist attach and that it would be a computer attach. There is such an awareness that there are a lot of smart people trying to stop this from happening, so I am not that worried that they could come in and shut the whole thing down. If it could be done I am sure they would have accomplished it by now.

Jerry Hjelmstad, North Dakota League of Cities appeared with questions. He certainly sees the need for this bill. He was asked to monitor this bill for the League of Cities and the first question is, how is it determined when this is going to be an additional part of the audit? The other thing is what type of additional costs might they be looking at?

Chairman Cook: Jerry, do cities across the state have the same concern. Would you look at this as a welcome service that would be available?

Jerry Hjelmstad: For the most part it would be. The question was what type of cost, at some point it would not be welcome, if the cost overrides the benefits. The other thing is how do they determine when this will be done, as some of the cities have their audits through the state auditors office.

Cheri Gieser, Job Service of North Dakota, testified in support of HB 1074. I am coming here today on behalf of the Business Unit. Our Director John would like to have been here today but had another hearing. We would like to see one additional step and that is to include the agencies in the contract negotiations, if there is going to be any limited liability. John had specific language when talking to the attorney general and we would probably confer with them before getting the specific language but it would be on Page 2, Subsection 5, Line 28; just adding a sentence that you would confer with the agency if you were going to do any limited liability because we have federal grants that we have to have specific language in and we need to get federal approval for that.

No further testimony for or against HB 1074.

Chairman Cook closed the hearing on HB 1074.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1074

Senate Political Subdivisions Committee

❑ Conference Committee

Hearing Date: March 4, 2005

Tape Number	Side A	Side B	Meter #
1	X		3915 - 4896

Committee Clerk Signature Shirley Borg

Minutes:

Chairman Cook opened the discussion on HB 1074. All members (6) present.

This is the bill relating to the audit of computer systems.

Senator Triplett: I have a note that Job Service and the Attorney Generals Office were planning to upgrade an amendment. Did that every come through?

Chairman Cook: No, Sandy Tibor talked to me and they can't find a way to amend this but they have set down and talked with Job Service and Job Service is understandable to that. If this bill gets signed by the Governor they will be working with Job Service on the system.

Senator Dever: Ed Nagel did offer an amendment to change shall to may.

Chairman Cook: That is right. Do you want to make a motion on that amendment.

Senator Dever moved the amendment on Page 2 Line 12 to change shall to may.

Senator Triplett seconded the motion.

Roll call Vote: 6 Yes 0 no 0 Absent

Senator Hacker: moved a Do Pass as Amended.

Senator Gary Lee seconded the motion.

Discussion

Roll Call Vote: 5 Yes 1 No 0 Absent

Carrier: **Senator Hacker**

FISCAL NOTE

Requested by Legislative Council

12/22/2004

Bill/Resolution No.: HB 1074

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$0	$0	$0
Appropriations	$0	$0	$0	$0	$0	$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Passage of this bill would have no fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Passage of this bill would have no fiscal impact.

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Passage of this bill would have no fiscal impact.

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Passage of this bill would have no fiscal impact.

Name:	Ed Nagel	**Agency:**	Office of the State Auditor
Phone Number:	328-4782	**Date Prepared:**	12/23/2004

58052.0201
Title.0300

Adopted by the Political Subdivisions Committee

March 4, 2005

3-4-5

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1074

Page 2, line 12, replace "shall" with "may"

Renumber accordingly

Date: 3-4-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1074

Senate **Political Subdivisions** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Moved Amendment - change shall to may

Motion Made By Senator Dever Seconded By Senator Triplett

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X				
Senator Nicholas P. Hacker, VC	X				
Senator Dick Dever	X				
Senator Gary A. Lee	X				
Senator April Fairfield	X				
Senator Constance Triplett	X				

Total **Yes** 6 **No** 0

Absent

Floor Assignment

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

Date: 3-4-05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1074

Senate **Political Subdivisions** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 58052.0201 Title 0300

Action Taken Do Pass as Amended

Motion Made By Senator Hacker Seconded By Senator Gary Lee

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X				
Senator Nicholas P. Hacker, VC	X				
Senator Dick Dever	X				
Senator Gary A. Lee	X				
Senator April Fairfield		X			
Senator Constance Triplett	X				

Total **Yes** 5 **No** 1

Absent 0

Floor Assignment Senator Hacker

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

REPORT OF STANDING COMMITTEE

HB 1074, as engrossed: Political Subdivisions Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1074 was placed on the Sixth order on the calendar.

Page 2, line 12, replace "shall" with "may"

Renumber accordingly

2005 HOUSE APPROPRIATIONS

CONFERENCE COMMITTEE

HB 1074

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1074

House Appropriations Committee
Education and Environment Division

☒ Check here for Conference Committee

Hearing Date March 29, 2005

Tape Number	Side A	Side B	Meter #
1	X		0-9.5

Committee Clerk Signature Robin Pursley

Minutes: Chairman Skarphol opened hearing on HB1074. Roll call was taken, everyone was present - Chairman Skarphol, Rep. Svedjan, Rep. Glassheim, Chairman Hacker, Sen. Cook, Sen. Triplett.

Rep. Skarphol I understand the Senate amendments, changing the "shall" to "may", I think I understand the reason why. Trying to make it permissive, right?

Sen. Hacker What the "shall" to "may" will essentially do it allow them to run a test, sometimes these tests take more than a couple of minutes. So with the "shall", the executive officer does mean will have to observe the test. They would be notified about the test and it would be up to them to their discretion to attend. I don't know how long that would take, but I don't think it is a good use of our time for the people we pay to just sit.

Rep. Skarphol I was at a conference where the Auditor for the state of North Carolina hire hackers to test their security. Followed the provisions outline here, notified the agency head.

Twenty-two agencies were breached in the first ½ hour. My point being, in listening to that assessment of their situation, it is important that, at least at the outset, to require agency heads to be there so they see the potential vulnerability. I'm have difficulty with the designee portion of this because I prefer deputy and in talking to the Attorney General's office, I think they also prefer deputy. But in the instance of local political subdivisions, there usually is not a deputy involved. We'd have to find some language to accomplish that. I think, originally, in our discussion of this as a committee and with the auditor's office, it was our intent not to test all that many but test some of the most critical. Thought is was critical that someone other than the IT person, in fact the agency head, at all possible.

Rep. Svedjan When I evaluated this, whether it should be "shall" or "may", my focus was, it was less on the cost of the person being there, whether it's 15 minutes or three hours. More so was on what the relative cost would be if penetration was allowed and what kind of cost would that carry with it for the state. I felt it was better, in this case, that we require this time, either involving the person at the top or their designee and that it would be time well spent.

Sen. Triplett On your topic about having agency head there at the first go around, seems to be implication in your statement that it would not be as important in subsequent times. It does seem to me that an agency would be most interested in this process the first time it goes around and even if we don't mandate that they be there, if we leave the permissive language, that they "may" be there, I can't imagine an agency head going through this for the first time not be very interested in not being present. So by leaving the "may" in place, it is very likely they will turn up anyway. After that, they can not, depending on how significant it seems.

Rep. Glassheim This seems to me of high importance, they should be there. I think it would be instructive to be there - it does not seem to be to be too burdensome.

Sen. Cook I'm trying to recall, in looking through the minutes, as to who or where we got the "shall" to "may". Ed Nagel's testimony - it did not come from a state agency but the Auditor's Office, "we believe the current language is too burdensome on state agencies and necessary". I don't have a lot of heartburn over this I just want it to work, that's what we all do. I don't want to see an agency head, it says "shall", what if he has to leave can he leave and come back?

Rep. Skarphol That is why the designation of a designee.

Rep. Svedjan Would it be helpful for you, Mr. Chairman, to indicate what the priority agencies might be in this case and what kinds of sensitive information might be at risk? Are we talking about the Bank of North Dakota, personal information, protect privacy information, within Human Services...

Rep. Skarphol That's the type of information I think we should be testing first. Confidential information in Industrial Commission, Health Department, Human Resources, the Bank - some of those that we could be libel for if there were some revelations of that information.

Sen. Hatcher "Shall" or "may", referring to Sen. Triplett's comments - it probably would be in their best interest to be there when they do this. I don't see what the difference would be in the value of a report saying I hacked into your system and here are the steps you want to take to prevent this in the future, whether this is in a report or somebody watching.

Rep. Skarphol I don't feel compelled to come to a decision today. I'd like to see us change the language with regards to executive officer or designee to be more specific simply because we

want the agency head or deputy or in the case of political subdivision, one of the commissioners or whatever would be appropriate.

Rep. Glassheim I notice that Mr. Nagel did not object to this on our side. He objected to it as State Auditor - did any other agency heads, he like objected to it on behalf of other agency heads, did any other agency heads think that would be burdensome or just him say that?

Sen. Cook I'll find out.

Rep. Skarphol adjourned hearing on HB1074.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1074

House Appropriations Committee
Education and Environment Division

☒ Check here for Conference Committee

Hearing Date April 8, 2005

Tape Number	Side A	Side B	Meter #
1	X		0-14.9

Committee Clerk Signature Robin Pursley

Minutes: Chairman Skarphol opened hearing on HB1074. Roll call was taken with all members present - Chairman Skarphol, Rep. Svedjan, Rep. Glassheim, Sen. Hacker, Sen. Cook, Sen. Triplett.

Sen. Hacker As they go through this computer hacking process, there are points and time in this process where it would be of value for the director or designee to observe. However in the process of collecting information, sending virus through e-mail, some parts of the process, it is maybe not so necessary for the director to be there until information is being disclosed. Finding the way to word that into terms of the bill is where the committee needs to go. I agree that when there is sensitive information starting to be observed, at that point in time the director shall be present. However in the bill, "shall" pertains to, when do you need to be there? The whole time? The whole process may take time for them to collect the information and how are they going to

get in the system. That is the part I was uncomfortable with them spending the time on that part of it.

Chairman Skarphol I did not observe one of these. It was a presentation given by the auditor's office from North Carolina telling us about their experience in doing it. The time frame they established for doing this, for 23 agencies, start to finish, was an hour and half. I think that when we are talking about the potential liability that we as a state could face if we were perceived to not have a secure enough situation would probably warrant, at least in my opinion, on the initial test at least, mandating that they be there.

Sen. Cook What do you mean by initial test?

Chairman Skarphol This will be the first time we have done this. I would anticipate that in this next biennia that there would be one or maybe two tests done and probably involve different agencies. After agencies have been exposed to the procedure and seeing the potential vulnerability, then it is a different scenario, then it maybe less necessary for agency head or deputy be there. In the first round of these, I think it is important for them to be there.

Sen. Cook I think we all agree that, at any point, when the opportunity to break in exist, they would be there. The question was, yes, you have seen some, but there could be some time involved in getting ready. I thought we agreed, that when it happens we want somebody there. Is there any way we can massage or amend it to make it clear that is what we want? Any recommendations from IT or auditor's office.

Sen. Triplett I don't disagree with anything Sen. Cook just said. But I just have to add that I don't really care which way we go here. On the one hand putting this specific requirement "shall" here strikes me a little like trying to micro manage agency heads who ought to have some self

interest in doing what's right whether we say "shall" or "may". On the other hand I have notice in my first term here, a lot of agencies come in asking for housekeeping bills telling us they have written this bills to fix this up to accommodate the way they have been doing things for years anyway. So I don't care, either way works for me.

Rep. Svedjan I was at that same meeting where we listen to that gentleman from North Carolina and it just seems so clear to me that for the initial test that the presence of the executive or that persons' designee was really important. I would want to be there. In that first go around it is really important that they be present.

Rep. Glassheim If in section 3 on page 2 we put "shall for the initial test of vulnerability the chief person shall be there", would that make sense? If it takes 3 or 4 times, do you want them there each time? Going back to page one, the tests that are to be conducted are really not e-mail but assessment of system vulnerability in a network penetration, potential security breach, and susceptibility to cyber attack. I presume those are high level things and they would be in the initial test of vulnerability.

Chairman Sharphol The attempt here in testing, is for some entity to get in and get control of the information in the agency. That is what you are trying to prevent. They actually have to get in there far enough to control the information and then the Attorney General's Office is there to shut them down. The first time we do it, the security walls are in place are secure, we are going to be very comfortable after that about who needs to be there. I would assume we will continue to test periodically to be sure there is not some vulnerability. We are not going to test every agency but maybe an attempt a couple of times in the biennia to see if there are things that need to be resolved.

Rep. Svedjan If we were to retain the word "shall" on line 12 on page 2, "shall attend and observe the initial test". Just by inserting the word "shall".

Sen. Hacker Just a thought to run after that, "initial test and any test thereafter at which point the confidential information begins to be released."

Sen. Cook On that same thought process "shall be present before any attempt to breach security system".

Chairman Skarphol You mean on line 12, after "shall"? "Shall be present at any attempt to breach security system"?

Sen. Triplett Let's ask the folks in audience, if we are on the same page about what we want to do.

Chairman Skarphol I guess counsel is not here. One more thing that I think is important that we have not touch on is the word "designee". Every agency has a deputy and if there is difficulty with requiring the chief executive officer, I'm not sure I can fully appreciate designee. That could be anybody and the one person I don't want there is their IT person. I would much rather see "deputy" than "designee".

Sen. Cook I don't disagree. How did "designee" get put in? Was that in the original bill and get passed by both the House and Senate?

Chairman Skarphol Probably, just by oversight. Do we want to test a political subdivision? We have not made any reference to testing political subdivisions. Attorney General's Office suggest some language, to the effect, on line 12 if you took out "designee" of the chief executive officer and replaced it with "the executive officer of a political subdivision or the executive officer or

the deputy executive officer of a state agency". That would be the language that might be preferable there.

Sandy, Attorney General's office For the political subdivisions, what I had actually suggested was "an elected official" of a political subdivision because the Mayor might not be available but one of the other commissioners might be available. That would give a little more flexibility to political subdivisions.

Chairman Skarphol So "an elected official of a political subdivision or the executive officer...

Sandy, Attorney General's office Or deputy of the executive officer.

Chairman Skarphol And go on to say "shall attend and observe the initial test"?

Rep. Glassheim I like Sen. Cook's suggestion "shall be present at any attempt to breach the security system". Sen. Cook's language allows for more than once in a year.

Sen. Hacker Just a point on that - it is such a small word but it intends more than what it may seem. I wouldn't call it "the" but "a" breach of security considering there are many types of firewalls to get into a state system. Once you get into the system there is another firewall to get into the agency. With "a" that would require them to be there anytime they got into hacking a breach.

Chairman Skarphol "an elected official of a political subdivision" because that would mean any of the commissioners.

Sen. Cook Is that language too inclusive? Could it mean the auditor?

Chairman Skarphol Yes, we probably need to narrow that. "Of any city governing authority"? We will get council to figure that out. We will also have to have language to parallel line 13 where it refers to elected officers and designees. Mr. Wolf, do you mind answering a question for

me? In doing these security things, a breach of security of the outside security wall could provide an opportunity to further penetrate various entities. Under current scenario in state and city government, is each agency responsible for security beyond what you are responsible for?

Mr. Wolf Yes, there are two phases. First getting through the firewall and then there is security on the application. So to get to the data, you have to breach the security on the application. Many times that is left to the agency to define what level of security they want on their application. If we develop it, we will develop a security level appropriate to what the software warrants.

Chairman Skarphol Is your responsibility the main firewall and the agency's responsibility the application...

Mr. Wolf Working with an agency they will tell us what level of security they want on their application. It's done in concert with the agency.

Chairman Skarphol Those are my concerns. Simply a case of council to get the language right. If you trust me to get council to put together the amendments and then we will go over them to be sure that they adequately address what we are concerned about.

Sen. Cook Of course.

Chairman Skarphol adjourned hearing on HB1074.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1074

House Appropriations Committee
Education and Environment Division

☒ Check here for Conference Committee

Hearing Date April 11, 2005

Tape Number	Side A	Side B	Meter #
1	X		0-7

Committee Clerk Signature Robin Pursley

Minutes: Chairman Skarphol opened hearing on HB1074. Roll call was taken with all members present - Chairman Skarphol, Rep. Svedjan, Rep. Glassheim, Sen. Hacker, Sen. Cook and Sen. Triplett.

Chairman Skarphol Everybody look over amendment - are they OK?

Sen. Cook It seems to address House concerns but there is some missing language - "shall be present at any attempt to breach security" is all that is needed.

Chairman Skarphol How is that different than what is there?

Sen. Cook The way it is said is "shall attend and observe the test". We've had considerable discussion on the "shall" and "may" and try to find some way to address this. Our only difference is that we wanted them there when a system could be breached. We didn't feel it necessary to mandate them to be there during set up time that could lead up to an actual breach to occur.

Chairman Skarphol I would assume that the set up would take place prior to them having to be there and they would be there for the test. Roxanne, did you draft this amendment and were you present for the discussion?

Roxanne No to both.

Chairman Skarphol Allen would have to be the one to explain. Not sure why he did it that way.

Rep. Glassheim I do remember that Sen. Cook's language was discussed. I think it had something to do with the distinction between lower level tests and the big security breach tests. So the language that requires them to be there was just, when you are really trying to breach the security system. To say that clearly and positively and at other times that can be there or not, if there are other more minor test. That's what the discussion was, as I recall.

Rep. Svedjan Sen. Cook, can you read that one more time. It would start with "shall"...

Sen. Cook On page 2, line 12, we do have language on the amendments now, it would add to state agency "shall be present before any attempt to breach a security system". It would remove the existing language "attend and observe the test".

Rep. Glassheim You say "before", I wonder if we didn't talk about "at". Rather than before any attempt, they shall be present during or at any attempt.

Chairman Skarphol In thinking about it, I think that language makes it permissive. I don't think they can start the test before they get there. I don't want to test to wait for the state agency, I want the state agency there. I think there is a distinction between what you are saying and what's in the bill. If the language says they "shall be there before any attempt to breach security system" then the test can't proceed without them. If we leave the current language, "they shall attend and observe the test" then they need to be there.

Rep. Svedjan If you change the word "before" to "during" it would be clear. That they would need to be there during any attempt to breach.

Chairman Skarphol Again, what happens if they don't show up. Then they can't attempt to breach, right? I think if we hire a consultant for $50,000 to do these tests, that the option should not be whether or not the executive head of the agency or deputy are going to be there. The option should not lie with them deciding whether or not the test should proceed. The could use that as an opportunity to not...

Rep. Glassheim "Shall be present", same as "shall attend". They are required to be present at any breach.

Chairman Skarphol I'd like to hear Allan's explanation.

Sen. Cook The point that you are making, if that is a legitimate argument, then that same argument could be used the way it is written right now, the way you have it.

Sen. Triplett On the notion of specifically adding the C felony to this section, subsection 3, basically I implying that knowing about the upcoming test is confidential information and not to be shared. I have a problem with that from the prospective of local government. We do work by committee, like county commissioners, if one of our county commissioners is notified of a test upcoming and happens to mention it to another commissioner, that would be a felony by this terminology and I think that is really obnoxious. If the county commission or the city council are collectively the executive, then I think collectively they have a right to know that the test is going on. I would be offended if one would be made a felon by telling another.

Chairman Skarphol I don't disagree with that assessment and I would hope there is some way to rectify that. Any suggestions, Sen. Triplett?

Sen. Triplett Maybe just a notification piece that we notify the entire body, the city council or county commission. The vague reference to "elected official" still give you the possibility that the person notified might be the sheriff. Notification should go to local governing body or board.

Chairman Skarphol Roxanne, can we address this?

Roxanne I will try my best to notify the person who drafted this amendment of your wishes.

Sen. Hacker Along the lines of Sen. Cook's "friendly amendment", if it is adopted, "shall be present during any attempt to breach security system" - there are all sorts of different breaches. The first one is the firewall, which doesn't give you any information anyway. I would possible look to further amend that to "...security system in which confidential information may be released..." Basically what we are doing in here is to protect confidential information, this should fall in line here.

Chairman Skarphol Anything else? I think we will wait until Allen is available. Hearing on HB1074 was adjourned.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1074

House Appropriations Committee
Education and Environment Division

☒ Check here for Conference Committee

Hearing Date April 12, 2005

Tape Number	Side A	Side B	Meter #
1	X		0-21.7

Committee Clerk Signature Robin Puroley

Minutes: Chairman Skarphol opened hearing on HB1074. Roll call was taken with all members present - Chairman Skarphol, Rep. Svedjan, Rep. Glassheim, Sen. Hacker, Sen. Cook and Sen. Triplett.

Chairman Skarphol Allan tells me he prepared amendments, I think, for Sen. Triplett and Sen. Hacker. Probably the ones we discussed yesterday that addresses some of the concerns we discussed. Do you have anything to share with us?

Sen. Triplett Not sure that I do. I expressed a thought at the meeting and did receive these amendments on my desk without specifically discussing them with anyone from Legislative Council other than our conversation in committee. They came back with still saying "Any individual who knowingly discloses information regarding the scheduling and conduct of the test in violation of this subsection is guilty of a class C felony" and I think that was not my intention so I will not share these with the group today.

Chairman Skarphol Did they not address the issue you brought forward about the commissioners or city council member - did they get language that adequately addresses that?

Sen. Triplett I think possibly. It references "the governing body" and so that is an improvement.

Chairman Skarphol May we see them?

Sen. Triplett Yes, I'll pass them out but not move them. (See attached amendment 58052.0205). I'll just repeat my thought on this - I think it is one thing that we are suggesting someone who gives confidential information outside the system to be guilty of a class C felony. But to suggest that any one of us would be felons for discussing among our selves, if even for example, if I, as a county commissioner talk to the State's Attorney in my county about this upcoming test, I'm a felon. That seem outrageous to me. Not happy with the felony part being in there at all.

Chairman Skarphol I don't think any of us disagree with that assessment.

Sen. Cook Yesterday on the Senate we passed another bill, 2251 and it deals with Chapter 51, other than what we are dealing with here. I noticed on the amendments on the Sixth Order that we had yesterday there was, for that chapter, a definition of "breach of the security system" means and it has a sentence in there and I wonder if we don't have to pursue something like that just for this chapter to solve the concern that Sen. Triplett raises. It references "good faith acquisition of personal affirmation by an employer or agent of the person is not a breach of security of the system if the personal information is not used or subject to further unauthorized disclosure". I think the key there is "good faith acquisition". I think Sen. Triplett raises a good question but maybe what we need is, as we deal with breaching of a security system here, maybe we need to pursue a definition of what that means regarding this chapter.

Sen. Hacker The only part in question is that this deals with personal information and a department or agency may have departmental or agency type information not just personal information, maybe financial statements, etc. I have given you a copy of what exactly it says in that other bill (See attached handout #1-1074). Bill 2251, some certain modifications such as "computerized data when access to personal, departmental or agency information..." Adjust when it gets into personal information to say departmental or agency information. We don't have amendments for it as we just pulled it together.

Chairman Skarphol I did have a discussion with Mr. Wolf about exactly what Sen. Triplett talked about. For example, if we were going to test the security system at the bank, who would get notified? Would the Industrial Commission get notified? Would they have the ability to notify the head of the Bank of North Dakota that he needed to be present? What are our expectations? There is a genuine need to try and define it securely in such a fashion that properly addresses what the concern is. The concern is that we don't have this knowledge widespread so everyone is scurrying to try to fix something at the time we are trying to run this test. We just want to have a test that has some integrity to see if it can be penetrated. How do we do that? What language can we come up with that adequately addresses the issue of who the governing body is and what rights do they have and at what level do they have a right to notify. I don't have any problem them notifying deputies but I don't think it is appropriate to go any deeper in the organization. I don't know what titles are and how do we address that.

Sandy Tabor, Deputy Attorney General With regards specifically with the Industrial Commission, each of the industrial commission members would get notified because of their elected position, so that takes care of that. We also thought Carleen would get notified because

she is the Executive Director, if you will, of the Industrial Commission. Then the questions was, what about the other entities? It seemed fairly clear to us that Eric would get it for the Bank of North Dakota because he is the President of the Bank of North Dakota and is an Executive Officer, Vance Taylor would get notified because of the similar position with Mill and Elevator. That Pat Freinke at Housing Finance would, again, serves in a similar position as Vance and Eric. The question we weren't sure about was Lynne Helmes because they are a division. It is not clear to us who else is in, and I'm not even sure who is at Lynne's level, within the Industrial Commission structure. There may be some gray area there that we would have to, as a group, give legislative intent we could do that and then it would be clear to Curt who we are talking about when we are talking about executive officer.

Chairman Skarphol I think, that my vision of this is, if we are going to do a test, we are probably not going to test the Industrial Commission and all the entities that are in it. We may want to test, for example, the Bank of North Dakota or Oil and Gas or Geological Survey. It would seem to me whoever heads that particular entity should be notified.

Sandy Tabor, Deputy Attorney General I think, again, if the legislative intent clearly indicates what our intent is, which you just made a statement of intent and if everybody makes sure to get it into the minutes, then if there is a question that arises later, as you all know, we often look to legislative intent and that will clarify who we are talking about. I don't think we can possible think up a term that is going to cover every body because, again, Pat Frienke is not the president of Housing Finance but is anybody in this room doubt that he is not at the same level as those people running major organizations as part of the Industrial Commission. If we can try to clarify

in the legislative history and make some statements of intent, I think that will help us and Curt and we should be OK. You said something about we may not test everybody in the Industrial Commission, but as I understand what we are going to do - there is an opportunity to test many things at once because the first thing we are going to try and do is breach the initial firewall and as I understand it they're all within that outside firewall. So everybody is vulnerable once you breach that firewall, if you breach it. Then it is just a matter of deciding what groups we want to look at and you may do separate testing. It doesn't make sense to do separate testing once you're conducting that actually initial breach, I'd think you would go for it and see what else you could get into.

Chairman Skarphol Consultants are typically hired on a per agency basis. I think that is how it works. They sign a contract with the state to do X number of entities...

Sandy Tabor, Deputy Attorney General And once they can breach the firewall it is no big deal as how many times they come back to do.

Chairman Skarphol Then it's up to the negotiating parties to decide which ones would be the most appropriate to test based on what the potential liabilities maybe and the next time may test different ones.

Sandy Tabor, Deputy Attorney General In that case, I think if we leave executive officer or deputy, and I think that was one of the changes we've talked about, clearly defining who besides the executive officer of that entity could attend the test. If we leave it that way, with the recognition that if we are going to go the Bank of North Dakota or if we are going to go to Human Services that those executive officers of those agencies would be the ones notified and

then that executive officer or their deputy would be the ones to attend. If we just clarify that in the legislative history we can go with executive officer and comfortable with what we mean.

Chairman Skarphol You are suggesting that the language we talked about last time we met may be sufficient based on our discussion in this committee?

Sandy Tabor, Deputy Attorney General And the minutes, which I'm sure will accurately reflect our discussions.

Chairman Skarphol We talked about the sheriff or whatever, as an elected official, we don't envision that but rather the governing entities. For example, "the state auditor shall notify an elected official of a political subdivision", we may want to change that to "shall notify the elected governing body of a political subdivision". Then the same thing further down, where the amendment says "elected official of a political subdivision", "elected governing body" there as well. Are the committee members satisfied that would adequately address it based on the conversation today?

Sen. Hacker Might this just be a thought to possibly help clarify, basically, the entire section. What if it was just something "the governing body of the entity being tested"?

Sandy Tabor, Deputy Attorney General I think we have to make a distinction between local governing bodies and state agencies. We're pretty comfortable with the language we talked about the other day with regard to agencies. Sen. Triplett brought up a very good point the last time we met about "local governing body" being the correct language to be used for political subs.

Sen. Hacker I guess where I'm coming from, is that, the State Auditor would then notify, not the elected governing body, just the governing body of the entity being tested. So whether it's an

appointed position or elected or county commissioner, they would basically notify the person in charge of that department or agency and select on their own who should be notified.

Sandy Tabor, Deputy Attorney General I think the concern that's always been raised by others about this whole process is that, especially in state government, a very limited be notified. Because of that, we have to be fairly clear who we are talking about. Governing body is just not a word we use when talking about who's in charge of state agencies. I suppose we could clarify it in legislative history but I think that the language about executive officer or deputy, for state agencies, we pretty much know who that is.

Rep. Glassheim In regard to the Industrial Commission, I like governing body because you want not only the head of the Bank of North Dakota to know they are being audited but you want the Industrial Commission to know as well. In that case I still think it works at the state level. But I understand, are we the governing body of all state agencies or does the Governor, does the Governor get notified of everything?

Sandy Tabor, Deputy Attorney General With the exception of the elected officials who might take exception to the fact that they don't think the Governor is their boss, I think that's the problem. With regards to the Industrial Commission, the governing body, in my opinion, of the Industrial Commission, are the three elected officials and they will get notice anyway.

Sen. Triplett I'm confident that we've got it work out and I could be happy with this as long as we remove the line "Any individual who knowingly discloses information regarding the scheduling and conduct of the test in violation of this subsection is guilty of a class C felony." If we took that line out, at least if some little mistake is made, nobody becomes a felon over it. We all know what we want and we all know what we expect but people are human, too. If one person

says something to one extra person who should not have been told, I don't care about that as much as if I would care that they are not made felons by the process. I think if we took your amendment from yesterday and deleted that last line and then replaced the word official in a couple of places with governing body, we probably have it.

Chairman Skarphol Well, I already scribbled out the part about the felony on the subsequent amendment. I agree with your assessment there. Committee members, are we amenable to that language change with regard to that portion of discussion? Now with regard to "shall attend and observe the test". From my perspective, we can complicate that language but, to me, that says it pretty succinctly. The expectation has never been, and again it is in the minutes, that they be there for the set up or any of the prior work but rather be there when the test commences. We will maybe test a dozen to a half dozen agencies at a time. They will get all set up and kick this thing off and I would see value as an agency head in seeing what happens at the beginning not merely for just my little segment of this. I don't have discomfort with the current language "shall attend and observe the test" My vision this may last the major portion of before noon.

Sen. Triplett If we are testing political subdivisions is the exception is are we going to be testing them in the place where the political subdivision is located or will that test happen from Bismarck? For those people it would be a day and a half long commitment of travel and time.

Chairman Skarphol I understand that. My thought is I never gave a lot of thought to testing political subdivisions. The major emphasis that I've focused on is state aspect of it and the potential liability we have.

Sen. Triplett We could solve that by deleting all references to political subdivision if noone cares that much about them and add them in later.

Sen. Hacker I do have amendments but they are not quite complete (See attached amendment #58052.0204) but not far off the mark. Deals with the same section, just as we spoke about last time we met. Only real changes are on page 2, line 13. According to the amendments after the period, "test during which confidential information may be released". Originally I had hope to get amendments that would have said "shall be present at any attempt to breach the security system during which confidential information may be released" but this gets close.

Chairman Skarphol I didn't envision information being released but rather accessed and controlled. If the test is a true test they have to get in to a point where they can control the information. I hope no information is released.

Sen. Hacker I have no problem with that.

Sen. Cook We seem to be struggling over what is our interpretation of the test involved. I've heard what you think it is and I agree with what you think it is. I'm trying to make sure that what it is. I guess the question we need to hear is from the Auditor's Office, IT and maybe Sandy from the Attorney General Office to step up and explain to me, us, what they think it means when we just have "the test".

Don McFluer, Information System Auditor with Auditor's Office Our concern about leaving "shall" in there is when it comes to testing there will be a lot of testing that consultant does for us when they are out there just kicking tires and gathering information and basically the background work that the agency head does not need to be there for. That last part when they get the set of machines they want to hack and start hacking, that's where we want the agency heads there.

Chairman Skarphol What you are saying is that you like the amendment that Sen. Hacker is talking about that would add the language "shall be present at any attempt to breach the security system during which confidential information may accessed and controlled"?

Don McFluer That would probably do it as far as the State Auditor's office regards. That is the critical part when the hacker is actually doing the penetration, which that language would cover. That's when we want the agency heads there.

Sen. Triplett Why don't we have all these amendments rolled into one and come back?

Curt I don't disagree with Don said. We have conducted one of these tests in the past and it was done in a similar fashion. We do want from the consultant a report that documents as what they found as vulnerabilities in both the firewalls as well as in system. We don't want the data is on the system but we do want to know what they did get access to in terms of agency applications because the we have to decide how much we want to spend to put higher layers of security in place. It one of the values here is learn what they did do and then we have to decide how much we want to prevent that from occurring again in the future.

Sandy Tabor, Deputy Attorney General Curt just brought something up that we need to cognitive of. When he says report, there's confidentiality language as to the preliminary draft of a report or the findings and how they can be used. I think that when we decide to do this we have to be careful how we structure the report to the legislature because your meetings are always open and no way to close them. It seems to me, we will have to be careful how we report because...

Chairman Skarphol Obviously that's important that information doesn't get out to the public in regards to certain aspects of it.

Sandy Tabor, Deputy Attorney General We think we've double check the confidentiality language on the first page with the open records people to make sure they were comfortable with it and they are. They are wondering how to report to you. That is something we will have to talk about because it will have to be fairly broad at your level because you can't close your meetings.

Sen. Hacker I'm not sure that there is any thing in the bill that requires them to report to the legislature, is there?

Rep. Svedjan There is reference in sub 1B, "that the state auditor may disclose any findings to the chief information officer of the state or to any state official or legislative committee".

Chairman Skarphol All right, it we get the proposed language put together and have it ready for our next meeting. Hearing adjourned on HB1074.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1074

House Appropriations Committee
Education and Environment Division

☒ Check here for Conference Committee

Hearing Date April 13, 2005

Tape Number	Side A	Side B	Meter #
1	X		0-1.3

Committee Clerk Signature Robin Puralay

Minutes: Chairman Skarphol opened hearing on HB1074. Roll call was taken with all members present - Chairman Skarphol, Rep. Svedjan, Rep. Glassheim, Sen. Hacker, Sen. Cook and Sen. Triplett.

Chairman Skarphol I have passed out amendment .0207. Sen. Hacker have you gone through it?

Sen. Hacker All three of us have been through the amendment. We seem to be happy. When you are ready for a motion?

Chairman Skarphol Sen. Hacker, based on my preliminary reading of this and the changes I see on the amendment, I'd be ready for a motion.

Sen. Hacker I move that the Senate recede from it's amendments and further amend.

Sen. Cook Second.

Chairman Skarphol It does incorporate the reference to the political subdivision and I think that is important simple because they are within network. Don, do you have any concerns about the amendment - have you seen it?

Don I glanced at the amendment briefly yesterday when you brought it and Sen. Cook provided me with what you are looking at today and I find nothing in there I disagree with.

VOTE: 6 YES and 0 NO with 0 absent and not voting. SENATE RECEDES FROM ITS AMENDMENTS AND AMENDS.

Prepared by the Legislative Council staff for
Representative Skarphol
April 8, 2005

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1074

That the Senate recede from its amendments as printed on page 1001 of the House Journal and page 756 of the Senate Journal and that Engrossed House Bill No. 1074 be amended as follows:

Page 2, line 9, after "notify" insert "an elected official of a political subdivision or" and remove "or political"

Page 2, line 10, remove "subdivision"

Page 2, line 12, replace "executive officer or a designee of the executive officer" with "elected official of a political subdivision or the executive officer or deputy executive officer of a state agency"

Page 2, line 13, after "An" insert "elected official," and replace "or designee of an" with ", or deputy"

Page 2, line 15, after the period insert "Any individual who knowingly discloses information regarding the scheduling and conduct of the test in violation of this subsection is guilty of a class C felony."

Renumber accordingly

58052.0204
Title.

Prepared by the Legislative Council staff for
Senator Hacker
April 11, 2005

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1074

That the Senate recede from its amendments as printed on page 1001 of the House Journal and page 756 of the Senate Journal and that Engrossed House Bill No. 1074 be amended as follows:

Page 2, line 9, after "or" insert "an elected official of any"

Page 2, line 12, replace "designee of the" with "deputy", after the second "officer" insert "or elected official of a political subdivision", and replace the second "the" with "any"

Page 2, line 13, after "test" insert "during which confidential information may be released", replace "or designee of an" with ", a deputy", and after the second "officer" insert ", or an elected official"

Page 2, line 15, after the period insert "Any individual who knowingly discloses information regarding the scheduling and conduct of the test in violation of this subsection is guilty of a class C felony."

Renumber accordingly

Prepared by the Legislative Council staff for
Senator Triplett

April 11, 2005

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1074

That the Senate recede from its amendments as printed on page 1001 of the House Journal and page 756 of the Senate Journal and that Engrossed House Bill No. 1074 be amended as follows:

Page 2, line 9, after "or" insert "the governing body of any"

Page 2, line 12, replace "designee of the" with "deputy" and after the second "officer" insert "or a member of the governing body of a political subdivision"

Page 2, line 13, replace "or designee of an" with ", a deputy" and after the second "officer" insert ", or a member of the governing body of a political subdivision"

Page 2, line 15, after the period insert "Any individual who knowingly discloses information regarding the scheduling and conduct of the test in violation of this subsection is guilty of a class C felony."

Renumber accordingly

#1-1074

"Breach of the security system" means unauthorized acquisition of computerized data when access to personal information has not been secured by encryption or by any other method or technology that renders the electronic files, media, or data bases unreadable or unusable. Good-faith acquisition of personal information by an employee or agent of the person is not a breach of the security of the system, if the personal information is not used or subject to further unauthorized disclosure.

58052.0207
Title.0400

Prepared by the Legislative Council staff for
Conference Committee
April 12, 2005

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1074

That the Senate recede from its amendments as printed on page 1001 of the House Journal and page 756 of the Senate Journal and that Engrossed House Bill No. 1074 be amended as follows:

Page 2, line 9, after "or" insert "the governing body of any"

Page 2, line 12, replace "designee of the" with "deputy", after the second "officer" insert "or a member of the governing body of a political subdivision", and replace the second "the" with "any"

Page 2, line 13, after "test" insert "during which confidential information may be accessed or controlled", replace "or designee of an" with ", a deputy", and after the second "officer" insert ", or a member of the governing body of a political subdivision"

Renumber accordingly

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number HB1074 (, as (re)engrossed): Date: 4.13.05

Your Conference Committee House Appropriations

For the Senate:		YES / NO	**For the House:**	YES / NO	
here	Sen. Hacker	✓	Rep. Skarphol	✓	here
here	Sen. Cook	✓	Rep. Svedjan	✓	here
here	Sen. Triplett	✓	Rep. Glassheim	✓	here

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1001 -- _____

____, and place _____ on the Seventh order.

X (adopt) (further) amendments as follows, and place HB1074 on the Seventh order:

____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) HB1074 was placed on the Seventh order of business on the calendar.

DATE: 4.13.05
CARRIER: Rep. Skarphol

LC NO. 58052 of amendment .0207

LC NO. of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

MOTION MADE BY: Sen. Hacker

SECONDED BY: Sen. Cook

VOTE COUNT 6 **YES** 0 **NO** 0 **ABSENT**

Revised 4/1/05

REPORT OF CONFERENCE COMMITTEE

HB 1074, as engrossed: Your conference committee (Sens. Hacker, Cook, Triplett and Reps. Skarphol, Svedjan, Glassheim) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1001, adopt amendments as follows, and place HB 1074 on the Seventh order:

That the Senate recede from its amendments as printed on page 1001 of the House Journal and page 756 of the Senate Journal and that Engrossed House Bill No. 1074 be amended as follows:

Page 2, line 9, after "or" insert "the governing body of any"

Page 2, line 12, replace "designee of the" with "deputy", after the second "officer" insert "or a member of the governing body of a political subdivision", and replace the second "the" with "any"

Page 2, line 13, after "test" insert "during which confidential information may be accessed or controlled", replace "or designee of an" with ", a deputy", and after the second "officer" insert ", or a member of the governing body of a political subdivision"

Renumber accordingly

Engrossed HB 1074 was placed on the Seventh order of business on the calendar.

2005 TESTIMONY

HB 1074

STATE AUDITOR
ROBERT R. PETERSON

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(701) 328-2241
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STATE OF NORTH DAKOTA
OFFICE OF THE STATE AUDITOR
STATE CAPITOL
600 E. BOULEVARD AVE. - DEPT. 117
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TESTIMONY BEFORE THE HOUSE APPROPRIATIONS Government Performance Division Subcommittee

January 12, 2005

House Bill No. 1074

Testimony - Presented by Ed Nagel
Director

Chairman Carlson, members of the committee, my name is Ed Nagel. I am here to testify in support of this bill.

This bill will add a new section to the duties of the State Auditor to specifically spell out our authority to audit computer systems that are used by those entities that we audit.

Subsection 1, on lines 7 through 13 of the bill, would give the Auditor's Office the authority to conduct any tests of computer systems that we deem appropriate. This would include testing the security of the systems.

Subsection 2, on lines 14 through 21, provides that the State Auditor could use his discretion in determining what information from our audits would be disclosed to the various agencies and legislative committees that we report to. It would also provide that the tests we used in order to determine the vulnerabilities of computer systems, would not be subject to the open records law.

Subsection 3 of the bill allows the State Auditor to contract with specialists to assist us in reviewing computer systems, and would require the contractor to abide by the same confidentiality provisions as our office.

We believe that we currently have the authority to do the things that are spelled out in this bill. However, it is becoming a best practice around the country for state audit organizations to specifically spell out their authority concerning computer system audits.

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

Thank you.

SPECIAL FUND BALANCE

117 OFFICE OF THE STATE AUDITOR
Version: 2005-R-02-00117

Date: 12/21/2004
Time: 14:42:44

STATE AUDITORS OPERATING FUND 117F

	2003-2005		2005-2007	
Beginning Balance		175,373		171,432
Revenue and Net Transfers:				
POLITICAL SUBDIVISION AUD	885,000		1,150,185	
REPORT REVIEWS	85,000		85,000	
MISC. SERVICE	88,000		88,000	
FRAUD AUDITS	25,000		25,000	
Total Revenue and Net Transfers		1,083,000		1,348,185
Total Expenditures		1,086,941		1,441,970
Ending Balance		171,432		77,647

Amendment to HB 1074
Office of Attorney General
Sandi Tabor, Deputy Attorney General
January 12, 2005

1) Line 13, add the following after the last sentence:

Notice of any review and assessment will be provided to the attorney general. At the discretion of the attorney general, an individual from the office of attorney general will be designated to participate in the review and assessment process. The attorney general's designee has the authority to halt the review if the attorney general's designee believes a sensitive system is or may be breached or sensitive information is revealed.

Attachment # 1

STATE AUDITOR
ROBERT R. PETERSON

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BISMARCK, ND 58505

TESTIMONY BEFORE THE SENATE POLITICAL SUBDIVISIONS COMMITTEE

February 10, 2005

Engrossed House Bill No. 1074

Testimony - Presented by Ed Nagel
Director

This bill will add a new section to the duties of the State Auditor to spell out our authority to audit computer systems that are used by those entities that we audit.

Lines 9 through 15 on page 1, would give the Auditor's Office the authority to conduct any tests of computer systems that we deem appropriate. This would include testing the security of the systems.

Lines 16 through 23 on page 1, provide that the State Auditor could use his discretion in determining what information from our audits would be disclosed to the various agencies and legislative committees that we report to. It would also provide that the tests we used to determine the vulnerabilities of computer systems, would not be subject to the open records law.

Lines 1 through 4 on page 2, allow the State Auditor to contract with specialists to assist in reviewing computer systems. Lines 5 though 8 on page 2 would make the contractor subject to the same confidentiality provisions as our office.

Subsections 3 and 4 on page 2 require our office to notify the head of the agency and the Attorney General prior to our testing the security of a computer system. Subsection 4 also allows the Attorney General to terminate our testing of a computer system if the Attorney General believes a sensitive system is being breached or sensitive information might be revealed.

Subsection 5 on the bottom of page 2 provides for limiting the liability of a contractor performing a review under this section, at the discretion of the Attorney General and the Director of the Office of Management and Budget.

We have an amendment that we ask your favorable consideration on, concerning the language on line 12, page 2 of the bill. We believe the current language is too burdensome on agencies and is not necessary.

Thank you.

Prepared by the Office of the State Auditor
February 10, 2005

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1074

Page 2, line 12, overstrike "shall" and insert immediately thereafter "<u>may</u>"

Renumber accordingly

attachment 2

HB 1074 TESTIMONY
SENATE POLITICAL SUBDIVISIONS COMMITTEE
BY: MIKE J. RESSLER, DEPUTY CIO
INFORMATION TECHNOLOGY DEPARTMENT
FEBRUARY 10, 2005

Mr. Chairman and members of the committee, my name is Mike Ressler and I am the Deputy CIO with the Information Technology Department (ITD).

ITD is testifying in support of HB 1074.

We believe a test of the State's overall security is a proactive attempt at finding the weaknesses that exist. We understand there is a balance between the risk and the cost of deploying security measures around systems and infrastructure. This test will identify areas where further analysis can be conducted and provide all parties with an awareness of the current system as it exists today.

I would be happy to answer any questions you may have.