

**MINUTES OF THE
PUBLIC UTILITIES AND TECHNOLOGY INTERIM COMMITTEE**

Wednesday, October 23, 2002 – 2:00 p.m. – Room 129 State Capitol

Members Present:

Sen. Leonard M. Blackham, Senate Chair
Rep. John E. Swallow, House Chair
Sen. Mike Dmitrich
Sen. Scott K. Jenkins
Sen. John L. Valentine
Rep. Douglas C. Aagard
Rep. J. Stuart Adams
Rep. Sheryl L. Allen
Rep. Chad E. Bennion
Rep. Eric Hutchings
Rep. Brent H. Goodfellow
Rep. Ty McCartney
Rep. Gordon E. Snow
Rep. Michael R. Styler
Rep. Stephen H. Urquhart

Members Absent:

Rep. Ralph Becker
Speaker Martin R. Stephens
Rep. David Ure

Staff Present:

Mr. Richard North, Research Analyst
Ms. Patricia Owen, Associate General Counsel
Ms. Glenda S. Whitney, Legislative Secretary

Note: A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or by contacting the committee secretary, Jennifer Markham or Glenda Whitney, at 538-1032.

1. Call to Order

Chair Blackham called the meeting to order at 2:25 p.m.

MOTION: Rep. McCartney moved to approve the minutes of the September 18, 2002 meeting. The motion passed unanimously with Rep. Adams, Rep. Allen, and Rep. Urquhart absent for the vote.

2. Enterprise Management of Information Technology

Chair Blackham noted that the Committee will receive a report from the chairs of the Information Technology Commission (ITC) concerning the management of state information technology resources. Following the report, he said, the Committee will hear from those that are responsible for the information technology and will have an opportunity to ask questions of the appropriate department, division directors, and the chief information officer. Chair Blackham indicated that the Executive Appropriation Committee recently had this item on their agenda where it discussed the audit portion that was done by the legislative auditor, and also discussed the inconsistencies that existed in hiring practices. He suggested follow-up on other items of concern that was not addressed at that meeting.

Sen. David Steele, Information Technology Commission Chair, said the ITC is committed in a focused way to deal with the exchange of information, the availability of information, and the utilization of information for the purpose of making government more effective. He said they have been asking for the last several years, what are the barriers that exist in government as far as electronic dissemination of

information. He mentioned code, policy, procedure, and asked are there things that can be better handled if it is identified and then treat the problems.

Sen. Steele distributed and reviewed the handout "Principles Followed by the Information Technology Commission in its Study of the Management of State Information Technology," that summarized the need to study the information technology as it further promotes the mission and goal of eGovernment. He recognized that all branches of government must be represented in this process. He reviewed the fiscal responsibility and explained that cross-agency cooperation is essential. He said the ITC as it meets wants to support this Committee and its legislative efforts. He concluded that the management of information technology could be improved by clarifying in statute the roles and responsibilities of the following in the budget process: the chief information officer, the director of the Division of Informational Technology Services, committees established in statute, chief administrative officers of different agencies, the Governor, and the Legislature. After his presentation, Sen. Steele responded to Committee questions.

Chair Blackham asked what is there now that has that duty to correlate together all these different groups.

Sen. Steele responded that statutorily this is the direct mission of the ITC. He explained within the chief information officer's responsibility, there is a coordinating effort through legislation to prescribe that positions responsibility. The Legislature put together a mechanism to bring all the branches together. He said the executive branch has mirrored cross-agencies, and in fact on a cabinet level position has that interchange with the agencies themselves.

Chair Blackham asked if the statute reads that the ITC serves in an advisory to the informational technology services director, the chief information officer, and does it define well the connection between the two.

Sen. Steele said the ITC's role and responsibility is to make recommendations directly to the Legislature which is its reporting mechanism. To provide good information and good recommendations to the Legislature as it was established in its coordinating role and bring all these players into one arena. He said the budget coordination has been one that notably has been most significant as it moved into the role and relationship of that coordination with the Fiscal Analyst's Office.

Mr. Phillip Windley, Ph.D., Chief Information Officer, Mr. Steve Fulling, Director, Division of Information Technology Services, and Mr. Dave Fletcher, Deputy Director, Department of Administrative Services, addressed the Committee and responded to concerns.

Rich, the following is not in minute format but is in record keeping form for future use.

Mr. Windley said with the state of information technology that we have now, they have made great strides in coordinating and being able to coordinate budgets and technology. He said there is some confusion regarding reporting relationships and coordination. That there have been several times where

the executive branch has had a policy which has caused the legislative branch some difficulty, or perceived difficulty. He said they usually get that worked out before there is actual difficulty, but said there does need to be better coordination there and a better mechanism to work together. One of the things that he would like to say is that technology does not necessarily understand how we set government up, and so we like to have a single network for the state which is the most cost effective way to do it. But what that means is that the security on that network is only as good as the security everywhere on that network. So if we have three different security policies on that network for the legislative, the executive, and the judicial branch, the security on that network is only as good as whatever the weakest security policy is. So there does need to be some way for them to coordinate it. ITC is the current place where that happens and we need to make better use of it and probably some statutory changes to make that more clear.

Chair Blackham said there seems to be a substantial problem even between the executive branch and you folks on this issue and the legislative offices in our charge. We seem to have a great deal of confusion going on and trouble in trying to go through this transition. At this point, he was not sure where the coordination is even occurring or if it has occurred. He believes that is one of the issues before the Committee. How do we get that resolved, or have we by not exploring this issue sufficiently simply sort of passed that onto you and not established a procedure or process to get the details worked out or the coordination so that our staff is comfortable with what is being proposed. If we want one system on a 7-24 for the public for their benefit, and for the dollar savings we hope to occur, then that is where we want to be. It appears that we are in a total undefined arrangement here of how to get this job done. He asked the Committee to respond.

Mr. Windley said one of the things that we have had some specific discussions with legislative staff on is some of the roles of committees that have been put together in statute. As CIO over the last 18 months, he has been particularly frustrated at times not exactly knowing or having spelled out what the procedures should be for doing certain things. For example, Information Technology Policy and Steering Committee is made up of members of each of the agencies in the executive branch, appointed by their executive director. The CIO is chair and it also contains representatives of the legislature if the legislature appoints members, and it contains members of the judiciary if the judiciary appoints members, and it contains members from local governments if the association of counties and leagues of town and cities appoint members. However, the statute also clearly spells out that the only voting members of that body are members of the executive branch and any policy that comes out of that committee is only binding on the executive branch. And so the other bodies outside of the executive branch don't participate as fully as they might because nothing that happens there is binding on them and they don't vote. So consequently, what happens is he thought that body probably through his direction has turned mostly into a policy body for the executive branch. But then what happens is what he described early, is they will decide this is our security policy and naturally the legislative branch will say, what does that mean to us. We are on the same network, and his response has been you are not bound by that policy but that does not quite solve the problem. It solves the problem of where the branch authority ends but it does not solve the problem of what that security policy should be doing and what that means to the network. That is a specific example of where there has been some confusion on his part and would appreciate some clarification in statute of exactly how to do the coordination and what the authorities are and where it stops and where it begins.

Sen. Valentine said it goes to the issue of who should be making that policy. Whether the Legislature needs to have a joint say in that policy making or whether we have sort of abrogated the whole policy decision to the executive branch. It seems like that without expressed release of that authority we ought to be in the mix, we ought to be right at the table helping make the policy and use the example of the security issue on the same net. It seems like people from our staff ought to be meeting with people from the executive branch staff and then coming back to the respective agencies for approval of the policy before it is adopted. Maybe that is cumbersome, but democracy is cumbersome.

Mr. Windley agreed with Sen. Valentine's suggestion and indicated that he would welcome that kind of structure.

Mr. Fulling also agreed with Sen. Valentine's comments. He said the fact of the matter is, he thought what was really at the core of that issue was whether or not the executive branch is deciding what software the legislative branch should or could use. The fact of the matter is, that wasn't really what was happening at all. There has not been any judgement made by the executive branch in terms of what the legislative branch should be using. If you look at some historical issues associated with getting that contract back in place, there was a much deeper issue at hand than just the renewing of that contract. Case and point, the first time as director of ITS that he heard about this issue was through a reporter. He said that was not a healthy effective communication vehicle to try to get a problem solved. Had he known about this earlier, he could have solved it much earlier. There is no question that there was significant mistakes that were made by ITS. ITS made commitments on behalf of purchasing that frankly they were not in a position to make nor should have. That contract was actually in purchasing hands and had very little to do with. ITS actually played very little in the way of controlling whether or not that contract was being worked on. The point is, there are some serious communication issues and he thought that at the heart of the issues are some of these questions in terms of authority with which branch and who has responsibility of that.

Chair Blackham expressed concern with the email system and charters.

Mr. Windley responded to Sen. Blackham's concerns. He said the state was finally able to build a single directory tree, which is a single place where they can associate user names to email addresses. That is universal throughout the state now and is a good thing. That has enabled them to administer email in a more consolidated fashion. He said there is some confusion between the administration of email and what they are trying to accomplish there and the email system itself. Their goal on their email consolidation was never to force the Legislature into anything. They clearly still have the ability to operate the way they always have and they would always maintain that unless they have specific agreement to change something. The email process they saw is primarily an implementation issue that could be taken independent of other branches of government without necessarily affecting them. There has been some confusion about that. The way the Governor would like to do cross-agency projects is through the process of "charters." Mr. Windley explained that "charter" is a memorandum of understanding between cooperating parties, and agencies enter into memorandum of understanding with each other and with federal agencies, and cities and towns frequently. So it is not an unusual thing for agencies to enter into a memorandum of understanding where they are committing to do certain things, and other agencies are committing to do certain things in order for them to cooperate. The Governor just called it a "charter."

There is plenty of opportunity there for voluntary participation by any branch of government or even by local government and the federal government.

Back to minute format.

Chair Blackham asked the Committee for direction regarding this issue. He said they could suggest for ITC to come back with recommendations on a way to coordinate better along with proposed legislation.

Sen. Valentine asked staff to define the function of the ITC. Mr. North briefed the Committee on its function and responded to questions.

After Committee discussion, Chair Blackham said there is a communication problem and suggested forming a working group to make recommendations regarding clarification of responsibilities and other concerns that were addressed.

3. Energy Efficiency Programs and Tax Credits

Mr. Richard North, Research Analyst, said in response to questions at the last meeting, information was requested by the Committee regarding energy efficiency. He distributed three handouts "Energy Efficiency Progress and Potential," "State Incentives for Energy Efficiency in the State Agency and School District Sectors," and "State Incentives for Energy Efficiency in the Private Sector." He briefed the Committee on energy efficiency programs and related tax credits.

4. Personal Information Protection: Draft Legislation

Rep. David Aagard distributed a handout with amendments to the draft legislation "Protection of Nonpublic Personal Information," for the Committee to review. He explained the amendments to the bill and indicated that draft legislation will be presented to the Committee for its review at the November meeting.

Sen. Valentine suggested on page 4, line 104 to delete "or" and insert "and."

5. Amendments to Interlocal Cooperation Act: Draft Legislation

Sen. Leonard Blackham distributed draft legislation "Amendments to the Interlocal Cooperation Act," and explained that there are proposed technical changes to the bill.

Mr. Reed Sorel, Intermountain Power Agency, reviewed the draft legislation and explained the proposed amendments to the bill.

Sen. Valentine expressed concern with changes to page 2, lines 34 and 36 of the draft legislation. He said it had been discussed previously, the narrowing of the scope of this and the need to have it as a two-part test. He explained that the two-part test is found on lines 35 and 37 and by changing the "and" to the "or"

changes it to a single part test. He said it now violates what he thought was one of the predicates that they had to opening up this Interlocal Cooperative Act, to make it so that it had to have both the utilization side and the ownership side. He said that was a policy decision to make it be a two-part test to protect Utah consumers.

Mr. Reed explained the difficulty in changing the bill to keep it a two-part test because of the issue where the majority of power must be owned. He also expressed difficulty in dealing with bond counsel without making technical changes to the bill.

Chair Blackham suggested on line 34, to delete "of" and on line 36, insert "and" which would eliminate Sen. Valentine's argument.

Mr. Ted Rampton, UAMPS, said what it being talked about is a "graduated take" on the project that over the life of the project you increase. The consequence to that is to find someone on the other end of that transaction who is going to be willing to take a decreasing amount over the project. He said unfortunately folks today when they buy into a project, they want to have a surety of what that output is going to be over the life of the project.

Chair Blackham responded that was wrong because they are not buying in on a project. The outside consumer in not buying in on a project, they are buying a contract.

Mr. Rampton said the problem again is the life of the project and that the group is not interested in those kinds of contract provisions. That they want equity and most of the people that want part of these project participation want equity as well. They are not willing to go out on the market and risk that market position.

Mr. Reed said the objective of the bill as they understand it is that this be a Utah-driven project. That their opinion is that if UAMPS owns and utilizes 51 percent of the project that it is meeting the test which is the objective of the bill. He indicated if there is an obligation here to have 51 percent utilized, they have to have some way to measure that, and bond counsel has to have some way to measure it. He said they are willing to work on other language for the bill if it would satisfy the issue and suggested it should be done by the 2003 General Session.

Mr. Reed continued reviewing the draft legislation and explained the payment of fee in lieu of ad valorem property tax by certain energy suppliers, the method of calculating, collection, and the extent of the tax lien. He said they are presenting this concept to the tax commission in October to know if they are comfortable with this process.

Commissioner Draper, Chairman of the Millard County Commissioners, said there are a lot of the rural counties that are experiencing economic growth right now and would like to achieve some stability. He spoke in support of the draft legislation.

Chair Blackham said there have been concerns addressed on the first part of the draft legislation that will be addressed and that there was approval regarding the second part of the bill. He indicated that these issues will be addressed and draft legislation will be presented at the November meeting.

MOTION: Sen. Valentine moved to continue with the next agenda item. The motion passed unanimously with Rep. Adams, Rep. Bennion, Rep. Snow, and Rep. Swallow absent for the vote.

6. Energy Data Collection and Reporting: Draft Legislation

Rep. Ty McCartney, referred to the draft legislation "Energy Data Collection and Reporting," that was distributed in the Committee mailing packet. He indicated that a memorandum was distributed by Mr. John E. Massey, Legislative Fiscal Analyst, that explained the fiscal findings on the bill for the Committee to review.

MOTION: Rep. McCartney moved to pass draft legislation "Energy Data Collection and Reporting," out favorably as a committee bill. The motion passed unanimously with Rep. Adams, Rep. Bennion, Rep. Snow, and Rep. Swallow absent for the vote.

7. Other Items / Adjourn

MOTION: Rep. McCartney moved to adjourn the meeting. The motion passed unanimously with Rep. Adams, Rep. Bennion, Rep. Snow, and Rep. Swallow absent for the vote. Chair Blackham adjourned the meeting at 4:23 p.m. C:\Interim\html\20021023.input.mn.01.htm