HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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House Bills 2273 & 2406

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House Judiciary Committee

Room 140, Majority Caucus
Main Capitol Building
Harrisburg, Pennsylvania

Thursday, July 9, 1998 - 10:00 a.m.

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BEFORE:

Honorable Thomas Gannon, Majority Chairperson
Honorable Jerry Birmelin
Honorable Craig Dally
Honorable Brett Feese
Honorable Thomas Caltagirone,
        Minority Chairperson
Honorable Andrew Carn
Honorable Kathy Manderino
Honorable Joseph Petrarca

ALSO PRESENT:

Judy Sedesse
   Majority Administrative Assistant

James Mann
   Majority Research Analyst

David Krantz
   Minority Executive Director

John Ryan, Esquire
   Minority Chief Counsel

Carolyn Snyder
   Director Democratic Data Processing

C O N T E N T S

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1   CHAIRPERSON GANNON: Public hearing

2   on House Bills 2273 and 2406 will come to

3   order. Our first witness is Heather S.

4   Heidelbaugh, Esquire, Burns, White & Hickton,

5   LLC. Heather, you may proceed when you're

6   ready.

7   MRS. HEIDELBAUGH: Thank you,

8   Representative Gannon, Chairman.

9   Good morning. Let me begin by

10 thanking this committee for holding these

11 hearings and specifically for inviting me today

12 to attend and testify regarding one of the most

13 important issues facing our time, the year 2000

14 computer problems.

15   Let me also introduce my colleague,

16 Brian Silver. He is a law clerk at our firm

17 and is currently attending his third year of

18 law school, and is assisting me today in the

19 technological aspects of my presentation.

20   Let me begin my remarks today,

21 Chairman, because I am the first speaker today

22 at the hearings, by providing a very simple

23 definition and overview as I see of the year

24 2000 problem.

25   Many computers on January 1, in the

year 2000, and actually before--it may begin on

January 1, 1999--will not be able to recognize

a double zero or a double ninety-nine as a

correct date because the underlying programming

language does not recognize those digits. And

the failure to recognize those numbers will

either prevent the input or transmission of

data, or at the very worst, crash the entire

system and related systems.

Clearly, the biggest issue for those

of us who have been dealing with this issue and

care about the effects on our society is

communicating the reality of the problem.

There are many of those in our society, people

of means, education, and wherewithal to become

acquainted with the problem, simply are not

dealing with the problem; and I commend you,

Chairman, for having these hearings in regard

to this. Hopefully, it will produce some more

information in the state.

We must communicate that we must act

now to fix or remediate the year 2000 problem,

and we must communicate the urgency to act now.

While I have devoted a considerable

amount of time and resources to learning about

the year 2000 problem and the wide-spread

ramifications, both legal, business, and

technological, and I partner and chairperson my

firm's year 2000 practice. My opinions, while

well reasoned, I think, and well considered may

not carry as much weight with this committee if

they do not echo the opinions of other experts

in this country who have spent an enormous

amount of time and effort becoming acquainted

with this issue.

For that reason, let me take a few

moments of my testimony to review with you what

the experts are saying in regard to the year

2000 issue and its ramifications.

Edward Yardeni is the Chief Economist

at Deutsche Bank Securities. He is widely

quoted in the press and in government as a

world authority on the year 2000 issue. He was

named by the Wall Street Journal as the top

U.S. Economic Forecaster in 1997.

And he has stated, "I can no longer

say with any confidence that there is enough

time to avoid a global Y2k recession." And he

stated that this month. He also stated that,

"The probability of a global recession has

1   increased to 70 percent.

2   The well-regarded and well-known

3   watchdog of the computer industry, the Gartner

4   Group, conservatively estimates that 50 billion

5   computer chips will fail as a result of the

6   year 2000 problem. And the Gartner Group is

7   known as the world's largest information

8   technology research and advisory firm.

9   Unites States Senator Christopher

10   Kit Bond, Chairman of the Senate Small Business

11   Committee, said in May 1998, "We have found

12   there is significant likelihood that the Y2k

13   issue will affect many small businesses and

14   will most likely cause many small businesses to

15   close, playing a larger role in Federal Reserve

16   Chairman Alan Greenspan's prediction of a 40

17   percent chance of recession.

18   So, we have the Chairman of the

19   Federal Reserve indicating that his prediction

20   is there's a 40 percent chance of recession

21   because of the Y2k problem, and Mr. Yardeni,

22   who is the Chief Economist at Deutsche Bank

23   indicating a 70 percent chance of recession.

24   The Gartner Group estimates that only

25   50 percent of enterprises worldwide will reach

1   *operational sustainability by the year 2000.*

2   Operational sustainability is not total Y2k

3   compliance. It's mission-critical systems that

4   will allow the company to continue to operate.

5   The Giga Information Group which is

6   also widely quoted in the press and deals with

7   information technology issues, projects legal

8   damages will be more than 1 trillion worldwide.

9   And since I have been intimately involved with

10 this, those numbers continue to climb.

11   Computer World Magazine randomly

12 tested 500 personal computers for year 2000

13 readiness this spring. The magazine said that

14 47 percent flunked, including nine out of ten

15 designed before 1997.

16   Windows 95 is not totally compliant.

17 There are three areas of problems in Windows

18 95; and that was just released by Microsoft on

19 their web page.

20   Fixing lines of code in mainframe

21 computers with millions of lines of code

22 written in COBOL can cost anywhere from 40

23 cents to one dollar per line of code.

24 Taking up the worldwide estimate of millions

25 and millions of lines of code times a dollar

1   you can quickly see why this is going to cost

2   the globe millions and billions of dollars.

3   The Giga Information Group estimates

4   that up to 70 percent of PCs might need help

5   rolling over to the year 2000. So, even if

6   they appear to be year 2000 compliant, they may

7   need manual assistance.

8   The Gartner Group, a consulting

9   company that advised nearly 12,000 clients

10   about the year 2000 problem, surveyed 2,300

11   companies in 17 countries and found that nearly

12   30 percent had not even started to address the

13   year 2000 problem. That was as of March 1998.

14   Some of the problem with

15   communicating the severity of this is a

16   two-pronged opinion that this year 2000 problem

17   is an attempt by computer hardware, software

18   manufacturers, and consulting companies to

19   increase sales for a magic bullet that will

20   arrive on the marketplace.

21   There is no magic bullet. No one has

22   any evidence that there's a magic bullet that

23   can be inserted and this problem can be fixed.

24   The Senior Manager of Ernst and Young stated

25   the year 2000 issue is not an industry scam

created to sell more hardware, software, and
services.

The CIA Director, George Tenet, is
concerned about the year 2000 fixes. The
federal government now is in a massive attempt
to overhaul their systems, many of which are
written in COBOL and require line-by-line
manipulation.

He is concerned about the defense of
our country because of the opening up of the
federal computers and that many of the overhaul
projects are being done by non-Americans and
foreign nationals. There are more than
$1 trillion in global foreign exchange
transactions a day, and more than 80 percent
involve U.S. dollars reported by Representative
John LaFalce, Democrat from New York.

Of course, our worry is that the
financial markets aren't ready, and the sale of
our dollars occurs on a nightly and weekend
basis. We'll receive our funds back after the
year 2000, or if we have to shut down the
financial markets, what effect will that have?

The Health Care Financing
Administration which runs the health program

for the elderly has asked Congress to delay

payment increases for the year 2000, which was

a major component of the budget negotiations in

regard to budgeting for the health care.

It has to seek a postponement of

increasing the reimbursements because they are

overhauling all of their computers. The Health

Care Financing Administration relies on 60

contractors to operate and maintain data bases

and software programs to process 900 million

payments each year for 33 million Medicare

beneficiaries all based on computer

information. There's 22 million lines of

software code and they're not done yet, June

28, 1998.

The Gartner Group estimates that the

fix is 600 billion and rising to fix the Y2k

problem. The United Nations recognizes that

there is a global problem, and that most of the

countries outside of Europe and North America

will not, cannot, and will be -- will not and

cannot be ready.

And they have adopted a resolution

urging all countries to attach a high priority

to solving the Y2k problems. A survey of

1   businesses, government agencies, and

2   information technology researchers in 16

3   countries suggest many nations are only now

4   beginning to realize that there may be a

5   problem.

6   Edward Yardeni, again, the Chief

7   Economist of Deutsche, said: If we have

8   everything fixed in the United States, but

9   there's major disruptions in Europe and total

10 calamity in Asia because they're diverted by

11 their own financial crisis in Latin America,

12 we're going to be affected in a very, very

13 adverse fashion.

14   Germany is lagging behind, Japan

15 remarkably is lagging behind, and Russia is

16 just beginning to realize it might be a

17 problem.

18   Edward Yardeni again believes it will

19 be impossible to make a phone call from the

20 United States to Korea, Indonesia, Malaysia, or

21 maybe even Japan in the first days of the year

22 2000. He and others are recommending that

23 there be a global shutdown the first week of

24 the year 2000, the costs of which are

25 unimaginable because of the stress on the

system.

A survey by the Gartner Group found
that half of 6,000 companies in 47 countries
will not have at least 20 percent of their
mission-critical systems fixed and tested in
time for 2000. The problem with many of these
companies is that they are suppliers to larger
companies. So, even if the larger company is
completely and totally compliant, if they can
get no supplies, they can't make their product
or provide their services.

Three trillion is transferred
electronically every day on global markets, and
the computer is an integral portion of that
transfer.

And the most frightening quote and
the one that sort of sent shivers up my spine
as a mother of two children, one of Russia's
most sensitive industries seems not yet to even
understand the issue. We don't have any
problem yet, the Atomic Energy Ministry's
spokesman, Vladislav Petrov, said. We'll deal
with the problem in the year 2000; Baltimore
Sun, July 6, 1998.

On June 2nd of this year, the Center

1 for Strategic and International Studies held a

2 conference in Washington, D.C. regarding the

3 year 2000 computer problem, and one of the

4 speakers was United States Senator Robert

5 Bennett, Republican from Utah, who is Chair of

6 the Banking Committee who have began to hold

7 hearings on the financial readiness -- on the

8 Y2k readiness of the financial institutions in

9 the United States.

10   Since then, he has been appointed by

11 the Majority as Chair of the Special

12 Select -- Senate Special Select Committee on

13 the year 2000 computer technology because he

14 and Christopher Dodd were able to convince the

15 leadership that this was a problem of such

16 global magnitude, second only to World War --

17 the readiness for World War II, that the Senate

18 needed to begin a special select committee.

19   Senator Bennett began his remarks

20 with a story which, I think, artfully describes

21 the scope and severity of the problem, and I

22 would like to play a very small portion of his

23 remarks at this conference.

24   (Video presentation occurred)

25   MRS. HEIDELBAUGH: The year 2000

1   problem is not only a company, local, state,

2   and national concern; but also a global one.

3   The strategy must first be to communicate the

4   problem, which hopefully this hearing will

5   assist in accomplishing.

6   Second, an individual entity must fix

7   their only internal computer system whether

8   they be a sole proprietorship, a local

9   government, the Commonwealth of Pennsylvania, a

10   large Pittsburgh corporation, or a

11   multinational conglomerate.

12   Third, each entity must encourage and

13   then demand all entities with whom they do

14   business, including suppliers, vendors, and

15   customers become Y2k compliant. This includes

16   government. Therefore, citizens must demand

17   that the governmental units by whom they are

18   governed, including local, state, and federal

19   agencies are Y2k compliant.

20   And fourth, corporations in the

21   federal government must work with foreign

22   corporations and governments to demand their

23   compliance because we are interconnected as a

24   globe. And we realize that now, perhaps more

25   so than we ever have before.

1   Failure to follow this four-step

2   strategy will lead us all to uncertainty with

3   minor disruptions at the very least, or

4   wholesale panic and collapse at the worst.

5   The effect that panic can have on the

6   populace was theatrically displayed in the film

7   called "It's a Wonderful Life" when George

8   Bailey, on his wedding day, is summoned away

9   from his honeymoon because of a run on the

10   Bailey Brothers Building & Loan.

11   In this short scene, Jimmy Stewart,

12   who is, of course, a hometown boy from Indiana,

13   Pennsylvania, displays reason, logic, and

14   candor which not only saves the Building &

15   Loan, but his depositors' savings. This is a

16   two-minute take which displays what could

17   happen.

18   (Video presentation occurred)

19   MRS. HEIDELBAUGH: That concludes

20   that portion of my remarks which provided an

21   overview of the problems that we as a society

22   are facing. This is an opportune time for me

23   to issue a personal bias -- is what I'm calling

24   a personal bias disclaimer. Although it has

25   been widely circulated in the press that

lawyers are relishing this opportunity in order

to make a bundle on the inevitable litigation

explosion, as a mother of two small children, a

wife, a citizen of the United States, a

resident of the Commonwealth, I don't relish

financial collapse or the interruption of the

food supply.

When advising clients on this issue,

I tell them that they must use candor. They

must use reason and logic, and basically,

litigation will be meaningless in the face of

widespread catastrophe; and they must become

compliant.

In regard to one of the Y2k issues,

one of the responses many state governments now

are proposing is to immunize Commonwealth

agencies and employees and sometimes others for

any damages that may be caused by the Y2k

problem.

I was kindly invited here today to

testify in regard to the pending House Bills

2273 titled, Immunity For Certain Erroneous

Computer Information, and 2406 titled, Certain

Computer Problems which have been modeled

after, quote/unquote, model legislation in the

1   past in the State of Nevada.

2   I have four comments in regard to my

3   review and analysis of the pending legislation.

4   One, the Commonwealth of

5   Pennsylvania, as the sovereign, has immunity

6   from lawsuits unless it specifically waives its

7   immunity from lawsuits. Up until 1980 the

8   Commonwealth enjoyed immunity from all suits

9   until the legislature deemed it good public

10   policy to enact certain well-defined and

11   limited exceptions to its immunity.

12   Those exceptions, as you all know,

13   are outlined in 42 Pa. C.S.A. 8522. A fair

14   reading of the current exceptions in my opinion

15   would allow no lawsuit to proceed as a result

16   of damages that may occur as a result of the

17   failure of a computer to properly read the

18   correct date.

19   Therefore, I question the necessity

20   of House Bill 8531, because I believe the

21   current rule of law that grants sovereign

22   immunity absent an exception is sufficient to

23   protect the Commonwealth, its agencies, and its

24   employees.

25   However, if in the interest of

1   prudence or caution it's the desire of the

2   legislature to clarify the exceptions to

3   immunity contained in 8522, proposed 8531, I

4   believe, should be changed to be an additional

5   paragraph C at the end of current Section 8522

6   with some minor changes.

7   Point two. Proposed House Bill 8531,

8   however, seeks to grant immunization to more

9   than the Commonwealth, its agencies, and its

10   employees. And because of that provision, I

11   have some real questions. Section A titled,

12   "General Rule" immunizes an entity called an

13   immune contractor. And although the Nevada

14   legislation defines the term immune contractor,

15   the proposed Pennsylvania legislation provides

16   no definition whatsoever.

17   In my research of all Pennsylvania

18   cases through West Law Search and all

19   Pennsylvania statutes, there is no definition

20   of immune contractor. Therefore, that would

21   have to be defined by a court in a lawsuit.

22   However, beyond that, here are some

23   of my questions which I think this bill does

24   not answer and which are important.

25   Is an immune contractor only a

1   company that contracts with the Commonwealth?

2   Who will decide who's immune? Will it be the

3   legislature in a further bill, or will it be

4   with the courts? If it's the courts, you may

5   be defeating your purpose of preventing

6   lawsuits.

7   Philosophically, why are companies

8   that don't win favorable contracts with the

9   Commonwealth subject to lawsuits of Y2k

10   failures; but companies that do do businesses

11   with the Commonwealth are immune? Why do

12   companies who may have acted in bad faith by

13   failure to devote an applicable labor and

14   monetary resources to fixing the problem and

15   failing to exercise reasonable business

16   judgment going to receive a grant of immunity

17   as an immune contractor, when other companies

18   in Pennsylvania who have been prudent, extended

19   resources that are not -- will not bring in one

20   more customer or make one more product, not

21   immune from lawsuits? Does this proposed bill

22   prevent the Commonwealth, itself, from suing

23   immune contractors if the Commonwealth has been

24   damaged?

25   It appears that the immunity, once

1   attached, applies to all potential plaintiffs

2   including the Commonwealth. Will taxpayers be

3   angry if contractors supplying noncompliant Y2k

4   products or services have to pay for those

5   products anyway under general revenue, but then

6   the contractor can't be sued because they are

7   immune?

8   And then, of course, what message

9   does this send to companies and Commonwealth

10   agencies and employees regarding their

11   incentive to complete their Y2k projects if

12   they know they're going to be immune; which

13   leads me to point number three.

14   All immunity legislation has a

15   psychological effect on the behavior of those

16   immunized. Mr. Justice Brandeis, a Justice in

17   the United States Supreme Court, in the case of

18   Olmstead v. United States, in a dissenting in

19   1928 said, "Our government is the potent, the

20   omnipresent teacher. For good or ill, it

21   teaches the whole people by its example."

22   Some immunity legislation advances

23   public policy. For instance, in good Samaritan

24   legislation, the behavior the legislature wants

25   to encourage is individual behavior for the

1 good of society that may result in a lawsuit if

2 it wasn't performed perfectly.

3   For instance, doctors providing

4 medical assistance to emergency victims that

5 they find on the side of road, some states

6 immunize that behavior. That promotes a good

7 thing. That's a good public policy. Where

8 now, restaurants can donate food that they

9 haven't used to homeless shelters, and they are

10 immune from lawsuits regarding food that's been

11 tainted.

12   The greater societal good is

13 outweighed by the potential losses that may be

14 incurred by the Samaritan's acts. However, in

15 this proposed legislation my question is, is

16 the legislation promoting action which will

17 serve a societal goal, or is it, in fact,

18 promoting inaction failure to quickly remediate

19 the year 2000 problem? If the agency's

20 employees of the Commonwealth are immune from

21 lawsuits, doesn't that encourage less than

22 diligent efforts on their part and, of course,

23 the same applies for immune contractors.

24   The largest thing that we have to

25 keep considering in the year 2000 problems is

1   the ripple effect. The stone is thrown in the

2   pond. Just because someone is compliant

3   doesn't save them from financial ruin. If

4   everyone they contract with or contact with is

5   not compliant, they will fail. Therefore, the

6   societal goal has to be to get everyone to

7   become compliant. Then we'll all survive.

8   And my last point in regard to the

9   proposed legislation is, I believe it is overly

10   broad for the purposes that are trying to be

11   served. The language states that the

12   Commonwealth or its contractor would be immune,

13   caused by an incorrect date being produced,

14   calculated, or generated by a computer

15   regardless of the cause or the error.

16   There is much more concrete language

17   that can be used that are in other state bills,

18   and it's in the literature that clearly defines

19   what the year 2000 problem is. And in

20   shorthand, it's the problem a computer has in

21   recognizing the dates; the ninety-nine, and the

22   zero zero. And you don't want to just say zero

23   zero because the problem may well cost during

24   ninety-nine. But this language indicates that

25   any incorrect date, whether by computer

1 programmer error or even bad faith or

2 intentional conduct would be immunized. I

3 think it's too broad.

4   In summation, it's my opinion that

5 the sovereign is already immune from the year

6 2000 related lawsuits based on the current

7 state of the law. If the legislature believes

8 otherwise and further believes immunization is

9 needed to protect the resources of the

10 Commonwealth, Section 8522 should be amended to

11 clarify that the Commonwealth, its agencies,

12 and employees are clearly immune and no

13 exception applies to waive that immunity.

14   The legislature as a matter of public

15 policy and fairness to those devoting

16 substantial resources to correcting the problem

17 should not immunize private-sector entities

18 from lawsuits for damages that result from

19 their failure to remediate the Y2k problem.

20 The severity of the year 2000 problem and the

21 interconnectedness of all of us to each other

22 requires instead of granting immunity to

23 noncompliant entities, we demand as a society

24 that they become compliant.

25   It is clear from Senator Bennett's

1   remarks that even the vigor and responsibility

2   of a company to become compliant will not save

3   it from ruin, if its trading partners and

4   customers are not compliant. And as George

5   Bailey said, we have to have faith and all

6   stick together. To me that means we must all

7   diligently work toward compliance without the

8   buffer of immunity as a safety net.

9   Thank you for this opportunity to

10   address this important issue, and I welcome any

11   comments or questions.

12   CHAIRPERSON GANNON: Thank you, Mrs.

13   Heidelbaugh. Just a clarification. In your

14   testimony you refer to Bill 8531. I think

15   you're referring to Section 8531 --

16   MRS. HEIDELBAUGH: Correct.

17   CHAIRPERSON GANNON: -- in the House

18   Bill 2271?

19   MRS. HEIDELBAUGH: I apologize.

20   CHAIRPERSON GANNON: I just wanted

21   to make sure. That's what I thought your

22   meaning was. Representative Birmelin.

23   REPRESENTATIVE BIRMELIN: Now you

24   have me scared just like the Senator. And one

25   of the things that I really took note of in

1   your testimony as you were speaking is the fact

2   you were talking about the possibility of

3   shortages and things, food among them.

4   We certainly don't want to panic as

5   did the 1947-48 Bailey Savings & Loan people

6   did. But, what in your realistic view of this

7   is going to be -- Assuming that people catch on

8   to this and really try to resolve this problem

9   but don't by the year 2000, what's your

10 realistic assessment of things like shortages,

11 things that would affect people substantially

12 in their everyday living?

13   MRS. HEIDELBAUGH: A lot of people

14 ask me that question, and it is my hope that

15 we're going to have what would be known as a

16 brownout. I don't believe we'll have a total

17 blackout where we have no telecommunications,

18 no financial institution availability, no food.

19 However, I do think there will be major

20 disruptions.

21   Unfortunately, there are too many

22 companies who have not taken this issue

23 seriously and only are beginning now to begin

24 to remediate their problems. There are

25 approximately 530 plus days left to remediate

1   the problem. It is an immutable deadline. If

2   people and companies, CEOs specifically, don't

3   begin now to take this as the most urgent

4   management problem that they will face in the

5   next year and a half, we as a citizenry will

6   feel the effects of all of that. We are very

7   interconnected on an information technology

8   basis.

9   REPRESENTATIVE BIRMELIN: Aside from

10   maybe buying up a lot of these things, do you

11   think you might need insurance for a brownout

12   on them? What do you recommend to the general

13   public that they do to prepare themselves,

14   though they may personally not be business or

15   in a situation where they have a computer

16   system of their own that they are running, they

17   are just an employee; they are just an average

18   state representative or something of that sort?

19   MRS. HEIDELBAUGH: Well, Senator

20   Bennett had some great comments. And my

21   comments are based on the review of the

22   literature and a lot of other people who have

23   given this a lot of time and effort, and I'm

24   blending that with my own knowledge and common

25   sense.

1   One, it is not prudent for any of us

2 to recommend that there be a panic mode that

3 sets in when people start stockpiling or

4 withdrawing funds. That certainly will behoove

5 none of us, and it will create a panic. So,

6 just like Franklin Roosevelt said, The only

7 thing we have to fear, is fear itself. Fear

8 can produce damage.

9   So, what I have recommended to people

10 is that they first make sure their own house is

11 clean; meaning, their own company. And even if

12 you're a blue-collar worker or a secretary, it

13 would behoove you and this country to make sure

14 that your company is aware of this problem and

15 that your company is doing something.

16   Then I would, as a state

17 representative, I would make sure that the

18 major companies in my district if you have the

19 time -- Senator Bennett did in Utah. He called

20 personally the major companies in Utah and

21 spoke to the CEOs and said, this is a major

22 problem. What are you doing? I want you to

23 know I care about this issue. Please tell me

24 what you're doing. So, you, sir, could have an

25 enormous impact with the businesses and the

corporations in your district.

And then on a personal level, many advisors are recommending that the individuals have some cash reserves; and that does not mean going to the bank and withdrawing, or going to the stock market and pulling completely out. But, it would not be imprudent to have two weeks of cash reserves. That's what many people are recommending.

REPRESENTATIVE BIRMELIN: One last comment, when we got here today, there was this booklet on our desks called Executive Survival Guide for the Year 2000. Are you familiar with this?

MRS. HEIDELBAUGH: I have not seen that, sir.

REPRESENTATIVE BIRMELIN: Apparently, you didn't hand them out then.

MRS. HEIDELBAUGH: No.

REPRESENTATIVE BIRMELIN: I just breezed through it, and it looked like it was pretty comprehensive in a lot of the areas which you have just indicated some things that should be done.

One of the things I intend to do --

1   And whoever handed these out or brought these

2   today, I want to see you before I leave. One

3   of the things I intend to do is to go back home

4   tonight, and I have four chambers of commerce

5   in my district, and I intend to give them a

6   copy of this and ask that they make it known to

7   their members and have them access it as well.

8   Because I can understand the problem is not

9   just with large companies, because they are

10   dependent on smaller companies. Smaller

11   companies that I represent are all in

12   Pennsylvania. It would seem to me, that as you

13   said earlier, that everybody has to be a part

14   of this solution. Only a large company if they

15   lose all of their suppliers, they're out of

16   business anyway.

17   So, lastly, I just want to thank you

18   for your effort in coming here today and the

19   advice that you've given us. And, Mr.

20   Chairman, I would encourage you, if you could,

21   to make sure that members of the General

22   Assembly get copies of this. It's the first

23   time I've seen it, and I'm aware of the Y2k

24   problem. This would

25   appear to be something that all members of the

1   House of Representatives and the Senate could

2   use.

3   MRS. HEIDELBAUGH: I could just offer

4   to you, Representative, that part of the reason

5   I guess I'm here today is, I'm the author of

6   this notebook, which is called The Year 2000

7   Compliance, Is Your Company Ready? And it is a

8   notebook that companies can use that I

9   represent to become compliant and to think

10   about all of the issues.

11   For instance, one of the issues that

12   a lot of people haven't thought about is

13   employee benefits. ERISA requires that the

14   plan administrator be personally liable for any

15   failure to pay employee benefits. If the funds

16   are deposited in financial institutions that do

17   not survive the year 2000 crisis and the

18   employee retirement funds are lost, the plan

19   administrator will be personally liable. And

20   most companies have a plan administrator now;

21   and the experts are saying that that plan

22   administrator, in order to be prudent, must

23   exercise due diligence by finding out whether

24   the funds are invested in institutions which

25   are Y2k compliant.

1   REPRESENTATIVE BIRMELIN: Thank you

2   very much for your testimony.

3   CHAIRPERSON GANNON: Thank you,

4   Representative Birmelin. Representative Dally.

5   REPRESENTATIVE DALLY: No.

6   CHAIRPERSON GANNON: All right.

7   Representative Manderino.

8   REPRESENTATIVE MANDERINO: Thank you.

9   I hope I'm not asking something that I missed

10   the first few minutes I wasn't here. I

11   actually have a problem. Okay. Here's what I

12   don't understand. Do we know how to fix it?

13   I'm a novice at this. I assumed that

14   sometime between now and the year 2000 I was

15   going to walk into a software store, buy some

16   piece of software, load it on my home computer,

17   and it was going to fix the year 2000 problem.

18   Now, that's a very simplistic view of something

19   in somebody's own home.

20   I had this impression that the

21   problem was something out there that the

22   computer-tech folks were figuring out how to

23   make adjustments to their software and then

24   give it to people. But, obviously that's not

25   it. And even if I call all these businesses in

1   my district and say, are you aware of the year

2   2000 problem, they're going to say to me, yeah.

3   What do I do about it? And I don't know what

4   to tell them.

5   MRS. HEIDELBAUGH: That's an

6   excellent question, Representative Manderino,

7   and let me try to answer that in two-prong

8   fashion. Let's talk about small companies that

9   are PC based and large companies that are

10 mainframe based. Take a company like Aetna

11 Life Insurance Company. They have mainframes.

12   When we were young, may I be so bold,

13 as to say that we learned in college that a

14 computer was the size of this room, and there

15 was the little cards. And each little card had

16 a line of code. Those are mainframe computers,

17 and those are COBOL languages. Each line of

18 code has to be checked. It's technologically

19 very easy to do. The hard part is the labor to

20 do it.

21   The answer to your question is,

22 people know how to do the problem. The problem

23 is more not technologically based, it's labor

24 and resource base. The time it takes to go

25 through millions of lines of code of the large

1   Aetna mainframe-type computer, and the cost is

2   about a dollar per line of code. Aetna spent

3   140 million getting it mainframe computers Y2k

4   compliant. That's the hard issue. So, when

5   you talk to a company that has a mainframe,

6   they know what to do.

7   When you talk to a company that's a

8   small distributing manufacturer's rep company

9   in your district, they have PCs. Windows 95 is

10   basically compliant with some problems. They

11   can go out and buy Windows 98. If they wanted

12   to chuck their entire system, spend $15,000 and

13   buy new programming language. All right.

14   So, to answer your question directly,

15   the technological aspect of the problem is not

16   difficult to computer geeks, computer people.

17   You and I maybe are not computer people.

18   Here's the real problem. The real problem is

19   getting the companies to focus on the business,

20   management, legal aspects of this problem.

21   If the problem isn't fixed, they

22   won't be able to operate their company. If

23   they can't operate their company, they're going

24   to affect an unknown stream of suppliers in

25   their horizontal line or in their vertical

line. That's what we all have to be worried

about.

REPRESENTATIVE MANDERINO: So, as a

follow-up in a very practical sense, if I have

the smaller concerns in my district who are

PC based and are using a Windows operating

system; if I say to them, you better make sure

that you have Windows 98 and all your systems

complying with that, because that fixes the

year 2000 problem, am I telling them correct or

incorrect information?

MRS. HEIDELBAUGH: The best

information you could tell them if they have a

computer, is to go to the web page of the

manufacturer of their hardware or their

software which will indicate whether the

program that they have is Y2k compliant. And

then the second thing you want to tell them is

to test their applications.

REPRESENTATIVE MANDERINO: So, then

they would do that for every system that they

were using. They would do that for the

software system they're using, for their

accounting programs, the software system that

they are using for their word processing

1   programs, the software that they might be using

2   for their purchasing or whatever?

3   MRS. HEIDELBAUGH: Correct.

4   REPRESENTATIVE MANDERINO: Thank you.

5   MRS. HEIDELBAUGH: Thank you.

6   CHAIRPERSON GANNON: Representative

7   Caltagirone.

8   REPRESENTATIVE CALTAGIRONE: Thank

9   you. Attorney Heidelbaugh, for the members of

10   the public that are going to be viewing this

11   live now and later today and maybe later this

12   week, can you boil it down to some of the

13   basics as to what really is the problem? What

14   is going to cause the problem with the double

15   zeros?

16   MRS. HEIDELBAUGH: It all started

17   back in the '50's when they made lines of code.

18   They didn't have enough computer space to put

19   in four digits for a date back in the '50's.

20   They put in two digits. Instead of putting

21   1950, they put 50 in their lines of code.

22   Many computers do what's called date

23   arithmetic. So, when they're inputting

24   information, the line of code will tell the

25   computer to add or subtract or to calculate.

1   Now, when the line of code has a date

2   arithmetic, if it hits the zero zero, it will

3   revert back to the only zero zero it was

4   programmed to understand, which is 1900. Some

5   of the newer computers were not programmed to

6   understand even 1900. When they hit zero zero,

7   it will go back to 1980 or 1984.

8   The same thing would happen when it

9   hits ninety-nine. April 9th, '99 is the 99th

10 day of the year. It could hit on April 9th.

11 It could hit on September 9th, '99.

12   Further, the year 2000, if you want

13 to really flip out on this one, the year 2000

14 is a leap year. February 29th is the leap day.

15 In 1542, the Papacy enacted a law that required

16 leap years would only occur on years that ended

17 in zero zero divisible by 400.

18   Most computers have not been

19 preprogrammed to recognize the year 2000 as a

20 leap year, so they will go from February 28th

21 to March 1st. So, all of these dates are

22 potentially going to cause a problem because

23 the computers are not capable of reading that

24 date.

25   REPRESENTATIVE CALTAGIRONE: Okay.

That pretty well explains that, I think, for a

lot of people that aren't familiar with exactly

what the problems are going to be. And they

probably even have it on the computers.

The other thing is, the legislation

that both Chairman Gannon and myself

introduced, and you as an attorney know that we

live in an indigenous society that, just drop a

hat and somebody is ready to start a lawsuit.

Don't you feel though, that there should be

some type of protection for the governmental

units both at the state, county, and local

levels?

MRS. HEIDELBAUGH: I have no

philosophical problem with immunizing the state

and its agencies and employees because I

believe that it's already in place, and you

would have to do something affirmatively to

deimmunize the sovereign. However, you'd have

to keep in mind that immunization tends to send

a message. And I think more so than any other

area of law where there's immunity, this is not

the message that we want to be sending to our

state agencies.

We want to send a message to the

executive branch that has to allocate the

resources, and the legislature that has to vote

on the resources that the state has to be

ready. We live in a culture where people,

whether they be republicans or democrats, in

times of crisis look for the government to

assist them.

The state has to be ready. What if

the worst would happen? What if there would be

a blackout? What if there would be wholesale

disruptions in the financial industries, in

food supply, in telecommunications? Where

would the first place be that the normal

citizenry would look to? They would look to

the State of Pennsylvania and their local

governments.

If the local government and the

Commonwealth of Pennsylvania isn't ready

because we've sent a message that they're not

going to be sued, then where are the citizens

going to turn to?

REPRESENTATIVE CALTAGIRONE: Thank

you.

CHAIRPERSON GANNON: Are there any

simulations that have been done to simulate the

consequence of a system if it was compliant or was not compliant or somewhere in between?

MRS. HEIDELBAUGH: You mean is there testing going on?

REPRESENTATIVE CALTAGIRONE: Well, no. Has anybody actually taken the system or systems and simulated the year --

MRS. HEIDELBAUGH: Oh, absolutely.

CHAIRPERSON GANNON: -- to see what the consequence was when -- For example, I have a mainframe computer, and my programmers ran a simulation that this was January 1st, 2000 to see what would happen with this computer?

MRS. HEIDELBAUGH: The computer stops. Absolutely. The computer stops, or it will keep running and the information and data that is received is incorrect. A manual check will reveal that it's incorrect. This is not pie-in-the-sky theorizing of what's going to happen.

Godiva Chocolates cannot take a credit card with zero zero as an expiration date through their computer system. They can't swipe your card. They have to take a manual, like when we were kids, they have to write

1   everything down, send it to their corporate

2   headquarters, and it has to be processed

3   manually.

4   There's currently six lawsuits

5   pending in America that we were able to take

6   off the Internet. All courts are not

7   computerized. One of the very first lawsuits,

8   Produce Palace International, filed in

9   Michigan, and what happened was a customer at

10   the grocery store had a zero zero expiration

11   date on their credit card and went to the

12   checkout, the cash register swiped the card.

13   Not only did the computer where you check out

14   went down, the whole line of cash registers

15   went down. So, a lawyer sued the company that

16   had supplied the cash registers.

17   CHAIRPERSON GANNON: Is there a

18   program that's been developed specifically

19   designed to check a computer to see whether or

20   not it's fully Y2k compliant or at least

21   partially?

22   MRS. HEIDELBAUGH: There are a lot of

23   software programs out there. They are touted

24   with all kinds of different skills and what

25   they can do. Clearly, there are software

programs that you can put on the PC that

markets its ability to tell you where date code

arithmetic exists in a line of code.

However, programmers who then test

and run that program based on fixing the tagged

lines of code will tell you that they missed

one out of four lines of data arithmetic code.

So, some of the those programs were scrapped

and manual review of lines of code.

Now, the other problem is

well-reported in the press is that folks that

programmed in the '50's were 30 years old. So,

they're now 70. So, for instance, if that

programmer at Aetna programmed the basic

program that Aetna runs on for its life

insurance policies, they're trying to find that

programmer, find the documents that would read

what he meant when he went 00/100/ and recreate

that. That's part of the manpower problem of

fixing.

These mainframe computers that run

the multi-national organizations and the

financial institutions and the

telecommunications industries are not PCs that

you can throw out and begin again. These are

programs that have been built and added onto

and added onto, and the supporting

documentation for what the line of code

actually means sometimes just doesn't exist.

REPRESENTATIVE CALTAGIRONE: What

percentage, if you know, of the issue is

generated from hard code as on a chip as

opposed to software? Actually, on the boards,

are there chip problems?

MRS. HEIDELBAUGH: That's an

excellent point which I didn't bring up in my

testimony because it doesn't really affect the

legislation, but embedded chips are a whole

'nother issue.

What I'm advising my clients, my

corporate clients, is that, if you plug

something in the wall, you have to check it for

an embedded chip, which states nothing about

the embedded chips that have been implanted by

the medical device industries; the pacemakers

that have computer date arithmetic; your HVAC

system in your buildings, your elevator, your

escalator, your traffic lights. There are

billions of embedded computer systems, embedded

chips, PCPs -- or PCL, programmable logic

chips. They have to be found. It has to be

determined whether there's date arithmetic in

them. If there is, they have to be extracted

and replaced.

REPRESENTATIVE CALTAGIRONE: Are

there newer chips from the PC, like the Pentium

and the A and D series?

MRS. HEIDELBAUGH: I don't know the

answer to that.

REPRESENTATIVE CALTAGIRONE: You

don't know whether they have addressed this

issue. It seems to me also that you have a

customer, a middleman, and then a supplier.

That if the middleman has his system 2k

compliant, the supplier does not, and he's got

a middleman that has to do something with a

customer, he's going to run into a problem down

the line. It just seems to me that this is not

something you can do in isolation.

MRS. HEIDELBAUGH: Well, it's the

ripple effect which is well documented in the

literature. And what's going on in America

today is that every manufacturer, supplier,

business is receiving Y2k compliance letters

and surveys, and they're being asked basically

two questions. One, are you internally Y2k

compliant? We want you to sign a document that

certifies that you are; meaning, your company

is compliant.

Number two, have you done a survey of

your major suppliers, vendors, and customers,

and are they Y2k compliant? General Motors,

Ford, and Chrysler entered into a consortium in

1996, wherein, they agreed to share Y2k

information and remediation information, and

they sent out jointly to all of their

suppliers, because they share suppliers in the

automobile industry Y2k surveys and

certification. There's millions of suppliers

to the auto industry, and they ought to be

required to certify that they are compliant.

The Big Three auto makers plan is

after receipt of the surveys and

certifications. If their suppliers are not

compliant, they will move on to other

suppliers.

REPRESENTATIVE CALTAGIRONE: It also

seems to me that probably the two days that are

going to be the biggest problem will be New

Year's Day 2000 and New Year's Eve. That's

1   always a problem; and also leap year, February

2   29th, because you're going to have some parts

3   of the world that are going to be different

4   years as opposed to different days. I mean,

5   Asia might be December 31st, 1999, and someone

6   else in the world January 1st, 2000. We'll

7   have computers doing transactions because New

8   Year's Day is not a holiday in every part of

9   the world. Has anyone looked at that

10 situation?

11   MRS. HEIDELBAUGH: That's what

12 everyone is enormously concerned about. Asia,

13 right now, as you know, is going through a

14 major financial readjustment, shall we say?

15 And their resources are being devoted both in

16 time, energy, and money to try to fix that

17 circumstance. They're not devoting their time,

18 energy, and resources to discussing the Y2k

19 problem.

20   And, for instance, one of my quotes

21 from the newspapers is that the London Markets

22 are enormously concerned that if they wire

23 transfer their money to Japan overnight, will

24 they ever receive it back. And one other

25 point I didn't make in my testimony, but that

1   I'm personally concerned about and I'd

2   recommend for all of my corporations is that,

3   everyone should have a contingency plan.

4   If X, Y, and Z doesn't work, what are

5   you going to do? We all know this problem is

6   coming. We all know it's coming on January 1,

7   2000. We should all have a contingency plan.

8   And I have recommended to Senator Murphy, one

9   of your colleagues, that the Commonwealth of

10   Pennsylvania to protect its citizens, should

11   there be major disruptions, that there be a

12   contingency plan. What will the Commonwealth

13   do? What if there's a disruption in food?

14   What if there's a disruption in the delivery of

15   gas and electricity? It will be January.

16   CHAIRPERSON GANNON: Getting to the

17   specifics of the bill, on the one bill the

18   scheme was that the Commonwealth would be

19   immune from any liability, but also what we'll

20   call immune contractors. Let's assume that the

21   Commonwealth has absolute immunity. We don't

22   waive our sovereign immunity, but we do decide

23   that other people including contractors

24   in the Commonwealth should have some liability,

25   what would be the recommended standard of care?

1   I think you put it'd be like a

2 reasonable and prudent person as a standard for

3 determining whether a person or company would

4 be liable if there was a problem because their

5 computers were not compliant or, perhaps, one

6 of their suppliers or contractors were not

7 compliant and causing a problem for a customer.

8   MRS. HEIDELBAUGH: This is all going

9 to be evolving law because a reasonable person

10 is judged by what's going on in the times. Our

11 law evolves. What's reasonable? Was it

12 reasonable for a very small, two-person

13 manufacturing company in rural Pennsylvania to

14 address this issue in 1996? Maybe not.

15   Was it reasonable for, to use one of

16 the major financial institutions, would it be

17 reasonable for Mellon Bank to have begun in

18 '96? Probably unreasonable; should have begun

19 early '90's because of the scope of the

20 problem.

21   In conjunction, Mr. Chairman, we

22 would have to take into consideration the

23 Supreme Court adoption of the business judgment

24 rule in regard to the review of officers and

25 directors' actions as they apply to the

corporation and the business judgment rule

which is well-known in Delaware law and

throughout the country is, was it reasonable

and prudent that the officers and directors

undertook this course of action for the

corporation?

It doesn't require a perfect

standard. No corporation would ever take a

move, but it requires judgment, and that's

decided on a case-by-case basis. And it's

decided on a factual basis. What did they

consider? What resources did they devote?

As I said, my personal belief is that

it would be unwise for our Commonwealth as a

whole society to immunize nonstate entities.

CHAIRPERSON GANNON: Well, what I'm

getting to is, perhaps, there should be some

standard of care enumerated in the legislation

if we're going to have -- if we're going to let

liability stand. Because I'm envisioning, you

know, we've got maybe 20, 30 people in this

room right now, maybe less. I would venture to

say that if Welfare checks weren't being

received, and Medicare payments, Medicaid

payments weren't being made and we were holding

1   this hearing, they'd be outside the door and

2   standing in the rotunda, and every major

3   network would have cameras here and everybody

4   would say, why didn't somebody see this was

5   going to happen? And that would be the

6   standard that we'd be judging then, and that

7   liability would be all over the place.

8   So, it may be considerate to set up a

9   standard now when we're a little more reasoned

10   and less emotional and there's no panic to say

11   if you're not compliant, you may be liable if

12   you didn't conduct yourself a certain way as

13   opposed to having a, you know, attorneys

14   arguing, well, you should have seen this

15   coming. Look at the chaos that's out there.

16   MRS. HEIDELBAUGH: Which is what's

17   going to happen. I appreciate your point, and

18   I would do you and the Commonwealth disservice

19   to give you a standard of care off the top of

20   the head as I sit here.

21   CHAIRPERSON GANNON: Yeah. I'm not

22   asking you to do that.

23   MRS. HEIDELBAUGH: However, based on

24   my memory which doesn't serve me too well at

25   times, I believe that some of the pending state

1 legislation has some of those considerations

2 regarding the standard of care and what action

3 should have been taken. And I believe you

4 could with some time and some consideration and

5 thought regarding and review of the literature,

6 which there's so much out there now about this,

7 you could develop a standard of care of what

8 you would expect corporations to have done in

9 order to receive the immunity from the

10 Commonwealth.

11   CHAIRPERSON GANNON: Thank you very

12 much for testifying before the committee today.

13 We are going to take a little five-minute

14 break.

15   (A short recess was taken)

16   CHAIRPERSON GANNON: All right. Our

17 next witness is Mr. John Haldeman, Assistant

18 Executive Director of Legislative Data

19 Processing. Mr. Haldeman, you may proceed when

20 you're ready.

21   MR. HALDEMAN: Thank you. Some of

22 this is already covered, but I'll give a brief

23 overview of what the problems are and how they

24 are corrected, what we at LDPC are doing to

25 prepare for the year 2000.

1   The year 2000 challenge spans the

2   entire information technology industry. It

3   arises from the nearly universal practice over

4   the years of using two digits rather than four

5   to designate a calendar year.

6   The computer programs used a

7   two-digit notation to save valuable storage

8   space and data entry time. Although this

9   practice is common, it can lead to incorrect

10   results whenever software performs arithmetic

11   operations, comparisons, or data field sorting

12   involving years later than 1999.

13   It is primarily a software

14   application problem, but both hardware and

15   software are involved. After determining that

16   the hardware and operating systems are year 2K

17   compliant in that order, hardware has to be

18   compliant first, operating system has to be

19   compliant, and at that point then, the

20   applications have to be Y2k compliant.

21   After that, the change is fairly

22   straightforward. Users must first determine

23   whether the data that represent year is stored

24   as two digits, and then find all the

25   applications that use that data, and convert

1   that two digits to four digits and solve the

2   problem. It's not always that easy to do.

3   At LDPC we have been converting all

4   two-digit dates to four digits in the software

5   that the center has written. Most of our

6   software has been written by the center, so

7   it's a little easier for us. And I've been

8   there 30 years, so I'm familiar with most of

9   it. It makes it easy.

10   Software could either be rewritten by

11   converting to a four-digit year or by

12   converting using a windowing technique.

13   Windowing is converting all two-digit years

14   greater than 50 to 1900, and less than 50 to

15   2000. We're doing that on some of the

16   applications that are going to be rewritten in

17   the next few years, but that wouldn't be a

18   permanent fix; but it's a temporary fix to

19   speed up the process.

20   Applications that we have written in

21   the last five years have been developed using

22   four-digit years. Most of LDPC's applications

23   are -- use a standard date routine which has

24   made it easier for us, and this standard date

25   routine we converted about five years ago. And

all new -- All new programs we have written and
all programs that we have made changes to we
have implemented either a new date routine and
also converting the year to four digits.

And because of this date we have --
And we do make a lot of changes, so that quite
a bit of our programs have been converted. I'd
say 90 percent of ours have been converted
already, and the rest will be converted way
before the end of -- or, hopefully, by the
beginning of 1999.

Application software programs are
written to work in a specific operating system
such as IBM. If the operating system is not
the year 2000 compliant, applications software
will not work properly. Most of our
information is on the mainframe yet.

We maintain and update most of it
through the mainframe, but we are converting it
and displaying it through our Internet and we
rarely have to accomodate it that way. I'm
more familiar with mainframe, so that's easy
for us. The conversion's a little easier there
because there's a lot more involved when you're
getting into numeral technology. And we're

1   just getting into it, so recently, most of it

2   is compliant.

3   We are in the process of now updating

4   our mainframe software to be the year 2k

5   compliant. You might ask, why just now? Well,

6   it's only been since 1996, probably early 1997

7   that most software was really compliant; so,

8   and it's expensive having to maintain the

9   operating systems and so forth, so we had to

10   put new features -- coordinate new features

11   along with the year 2k problem.

12   PCs: Not all PCs are compliant.

13   Everybody now, including all our people, have

14   PCs. There is software available to check PCs

15   to see if they're year 2k compliant, and we are

16   in the process of doing that.

17   Older models, the way I understand --

18   I have a Gateway that we bought in October of

19   '96 and that's not compliant. So, the way I

20   understand most of them, late, late '96 is when

21   they are becoming compliant, so you are not

22   guaranteed. So they all, PCs, the structure of

23   PCs are easy to check.

24   There is software available. I think

25   you can download it from the Internet. And

1   there's also fixes available, and that can be

2   downloaded from the Internet. And for us and

3   our users we are doing that now.

4   Internally, we only have about 30

5   users that we buy PCs for. We have about 2000

6   users that use our system. And they all have

7   to be checked. If the PC is noncompliant you

8   can upgrade the BIOS. And as I said before,

9   there is software that can be downloaded to do

10   this. I'm told though, that if the models are

11   too old, that probably wouldn't be a good idea.

12   You are better off just buying a new PC. Even

13   though you can upgrade them, it can lead to

14   problems because then you're down the road.

15   Most software you buy now is

16   compliant. As was stated earlier, Microsoft

17   Windows 95, the earlier versions are not

18   compliant; the newer ones are. You really need

19   to check all your software starting with the

20   PC. The software that the operating system is

21   on is on there, and any applications that you

22   might run on there and up through.

23   Networking software needs to be

24   brought up to grade too. We are in the process

25   of upgrading our network. Some of the old --

All the TCPIT term is pretty much compliant,

and some of the older connections the SNA

connections, to the mainframe is not; but we're

converting all ours over to TCPIT and make them

compliant. But it still has to be looked at.

Not everything is converted. That software

also had to be brought up.

And as was stated earlier, it is a

problem. It's easy to fix, but you do have to

look at the code. You have to -- And we have

probably 2,000 programs and most of them have

been addressed. We have ways to search and

you'll find out what uses a date and what

doesn't.

So a lot of our applications are in

this report and right now they print out month,

day, and year, and the year the last two

digits. They'll still print okay. They'll

have zero zero on them. If it's a work report

or something like that, we're not really

concerned about it; but any time you do a date

comparison you have to be concerned, and all of

those have been converted and you need to deal

with four digits to do it properly, and we have

done that. And our administrative

applications, most of those have been rewritten

for four digits; so we are in good shape for

those.

January 1st, 2000 is on Saturday;

Saturday morning. In case there's problems, it

gives us the weekend. We'll be here checking

things out, making sure everything is converted

properly. I think we will be in good shape,

but you never know.

What happens if there is a problem?

Well, I'm not fearful that anything will crash.

Now, I'm speaking just for our software and

hardware. If it doesn't work it will be a data

problem. Maybe we can't bring up some data

that looks like it's lost, but it's not. We

have to change the software to be able to

access that data. I don't, you know, if we do

our job properly, we won't have that problem.

I don't expect that.

It's always standard practice to back

everything up, and we do that on a daily basis.

So in the remote possibility that something

would crash, maybe it wouldn't have to be

because of our software or something like that.

We have the data; it's maintained, and we can

1   recover from it.

2   And at that point we're -- I think

3   our center's in good shape in dealing with the

4   work we do. I can't vouch for any other. I

5   think every company has to address the issue

6   themselves, and it has to be addressed because

7   there are problems out there.

8   And I'm open for questions.

9   CHAIRPERSON GANNON: I thank you, Mr.

10   Haldeman. I'm delighted to see that our LDP

11   has recognized this problem early on and is

12   addressing it. And, hopefully, we won't see

13   any problems January 1st, 2000, and after.

14   Representative Caltagirone.

15   REPRESENTATIVE CALTAGIRONE: I'm just

16   wondering, they just spent a ton of money at

17   the House buying new computers in our district

18   offices and Harrisburg offices. Are they

19   ready?

20   MR. HALDEMAN: Well, that's a

21   different caucus that's taking care of this.

22   But if they just bought them, they probably

23   would be. I would suppose the newer --

24   Anything bought this year, I think, is pretty

25   much compliant. If it's the newer software,

1   it would be compliant. It's just earlier

2   than --

3   REPRESENTATIVE CALTAGIRONE: Compaq.

4   MR. HALDEMAN: They probably, you

5   know, they still need to be checked. I mean it

6   still has to be verified; but I would say they

7   probably would be.

8   REPRESENTATIVE CALTAGIRONE: I'm

9   sure that our caucus is fine.

10   MR. HALDEMAN: It's just getting back

11   into 1996, any software that you have that you

12   didn't update you really need to. I still

13   would recommend verifying it, but you know if

14   it's 1996 or earlier we will have problems.

15   CHAIRPERSON GANNON: Representative

16   Dally.

17   REPRESENTATIVE DALLY: No.

18   CHAIRPERSON GANNON: It just seems to

19   me that the old adage that the chain is only as

20   strong as its weakest link applies, if

21   anywhere, it applies here. Because you can

22   have -- You have what, 200 programs?

23   MR. HALDEMAN: 2,000.

24   CHAIRPERSON GANNON: 2,000. Well,

25   you have 1999 programs that are compliant and

1   one that's not, that's going to affect the

2   other 1999.

3   MR. HALDEMAN: No, no. They're not

4   all tied together. It might be a hundred that

5   are tied together, something like that.

6   CHAIRPERSON GANNON: I was thinking

7   in terms of the network. If you have a

8   network --

9   MR. HALDEMAN: Well, within a

10   network, yeah, well, right. If one piece in

11   the network -- One of the servers is not up to

12   grade or something like that, you might have a

13   problem on the network. I mean our data is

14   still (inaudible word) because that's back

15   somewhere else, but individual people might

16   have problems, yes.

17   CHAIRPERSON GANNON: How about

18   vendors that supply services to LDP? Do you

19   have any outside programmers that provide

20   commercial software that go off the shelf, and

21   how are you determining compliance on that?

22   MR. HALDEMAN: Well, we do have

23   outside software we purchase, and most of the

24   vendors we deal with you can verify whether

25   their software is compliant or not, and we're

making sure what versions we are using are

compliant. But right now, like I said, we are

operating our mainframe software now and we

are -- what they we call using an L-par

(phonetic) system where we can bring the

mainframe into pieces. Once that's upgraded,

we are going to test everything to 2000, bring

it in, change the date to the year 2000, and

pretty much test all of our applications.

CHAIRPERSON GANNON: To your

knowledge, is there any industry, software

industry, or hardware industry certification

that a particular software or particular

hardware is compliant? A customer/consumer can

say, oh, great, this has the seal of approval

or something like that?

MR. HALDEMAN: Other than from

individual vendors, no.

CHAIRPERSON GANNON: So you just have

to rely upon representation by the individual?

MR. HALDEMAN: Right.

CHAIRPERSON GANNON: There's no

standard for certification of compliance.

MR. HALDEMAN: Yeah, most of them, I

mean they tell you they're compliant. You can

1   usually access all that through the web

2   nowadays.

3   CHAIRPERSON GANNON: It just seems to

4   me that even though technologically this isn't

5   a complex problem, it seems to me that there

6   are a lot of nuances to this Y2k issue. It's

7   not simply, you know, zero zero; it varies.

8   Software handles things differently --

9   MR. HALDEMAN: That's correct.

10   CHAIRPERSON GANNON: -- for different

11   reasons. So that compliance, does that mean,

12   well, yeah, you know, that this computer's zero

13   zero means 2000; but if you're going to use

14   some fairly complex mathematical formula it may

15   not recognize it. I mean, there seems to be

16   degrees of compliance here or potential degrees

17   of compliance.

18   MR. HALDEMAN: There are. I mean, if

19   it's compliant, it's going to treat it as a

20   four digit. I'm not sure how they handle their

21   PCs and so forth.

22   CHAIRPERSON GANNON: I just envision

23   a vendor saying, well, you have a problem here

24   with this program. You said it was going to be

25   compliant. He says, well, you didn't tell me

1   you wanted a program to do that. It's

2   compliant if you're calculating change, but if

3   you're going to do a more complex it's not.

4   That's my concern about that.

5   MR. HALDEMAN: I suppose that's

6   possible. I mean, depending on what you're

7   doing, you won't have the same effect. In

8   displaying dates, and so forth, you wouldn't

9   have a problem. Your date would display wrong,

10   but it wouldn't have any effects. But if

11   you're doing calculations or sortings, and so

12   forth, it needs to be --

13   CHAIRPERSON GANNON: Again, to the

14   liability issue, if you had a vendor who --

15   Let's suppose the vendor told you that this was

16   compliant, and it turns out that it's not.

17   What would you expect would be the obligation

18   once you determine that this software is not

19   compliant, even though it was represented to be

20   compliant? And I don't mean it's totally

21   noncompliant. I mean partially or something,

22   but it didn't fulfill your particular needs

23   because of the Y2k problem. What would you

24   expect that the obligation of that vendor to be

25   to you in that situation?

1   MR. HALDEMAN: We would expect the

2   vendor to give us an upgrade to make it

3   compliant.

4   CHAIRPERSON GANNON: Would you expect

5   the vendor to reimburse you for any cost that

6   you might incur to work around the problem as

7   it's presented to you until you had software

8   that's upgraded?

9   MR. HALDEMAN: Well, it's not

10   normally the way it works because, in data

11   processing it seems like there's always -- I

12   don't care what software you get, there's

13   always data versions and there's always

14   problems with it, and they'll give you new

15   versions to fix it; but there's never -- you're

16   never reimbursed for your time put in to fixing

17   it. It's seems to be a standard practice.

18   CHAIRPERSON GANNON: Well, thank you

19   very much, Mr. Haldeman, for appearing before

20   the committee and sharing your testimony with

21   us. It's been very helpful.

22   Our next witness is Mr. Larry Olson,

23   Deputy Secretary for Information Technology,

24   Office of Information Technology for the

25   Commonwealth of Pennsylvania, and Charles F.

1   Gerhards, Director of the Commonwealth

2   Technology Center. Welcome, gentlemen, and you

3   may proceed when you're ready.

4   MR. OLSON: Thank you very much,

5   Chairman. A few things I might want to cover

6   here at the very beginning. I certainly

7   enjoyed Heather Heidelbaugh's discussion this

8   morning. I think it was very on-line as it

9   relates to a lot of the year 2000 issues.

10   One thing I would like to add at this

11 time is that, as a lot of people discuss, well,

12 we have until December '99 or January 1st, year

13 2000, we do not believe that is the case.

14   As far as we're concerned, we feel

15 the deadline is December 31st, 1998. We feel

16 most programs, once you get into January of

17 '99, start having data rising calculations of

18 zero zero and beyond, and at that time the

19 computer programs will start to fail or you'll

20 start getting incorrect information from that.

21   So, I did want to kind of stress

22 that; that a lot of people feel we do have a

23 year and a half left. We do not feel there is

24 a year and a half left for computer systems. I

25 also want to reinforce what she had mentioned

as it relates to what this problem is.

We feel this is also a management and leadership issue. It is not a technology issue. The technology actually is the least part of the whole response to the year 2000 we feel, and I'll talk more about that later. I also agree that it is a global issue. The supply chain impact to businesses, governments, whoever is significant, both to the suppliers, your tier one, tier two, tier three suppliers and also to your customer base.

One example I like to use to get people to understand what this really means is the impact that the two-week UPS strike had on non-UPS workers. During that two-week period, people completely unrelated to UPS started to be affected; customers of UPS, suppliers to UPS were affected. You start seeing those stories. So that kind of gives an idea of the ripple effect; that one major company, if they don't operate for a week to two-week period will have on the overall economy.

A couple examples that I have seen recently in a recent discussion with the chief information officer for General Motors. He was

telling me that in '95 they went to one of

their factories in Canada and tested over the

weekend what would happen to their systems,

complete systems in their entire factory on the

year 2000 if they mainly pushed up the clock to

zero zero. The factory completely shut down,

and they learned a very good lesson at that

time.

        We've also seen in a couple of

examples as it relates to embedded technology,

the chips within different systems. One

Pennsylvania corporation that we talked to, the

CIO of that corporation had tested out a

security system where you went through a

secured door with some kind of security card,

it opened up; you went through; it recorded who

came in, made sure it was the right people.

        They went ahead and tested that,

moved up the date to see what would happen. It

completely fried the system, and they still

don't have it working after three or four

months. So, they now go through an unsecured

door because they still can't get it fixed.

So, when you test out especially embedded

technologies, we strongly advise you to be very

1 very careful on the impact because it could, in

2 essence, ruin your entire system; so that's one

3 thing that I would like to mention.

4   What I'd like to kind of mention,

5 kind of go through right now is where we are in

6 Pennsylvania state government. We started in

7 1996, in working on the year 2000. Frankly, I

8 think it was probably a little late, but we

9 galvanized very quickly. And the reason that I

10 think we are where we are right now, and I'll

11 mention that in a minute, is that it was a

12 priority from the very beginning, a very vocal

13 priority by the Governor, by the Cabinet, and

14 by ITR organizations within state government.

15   Immediately we started looking at

16 exactly accessing what we had to do. We've

17 identified 45,502 programs that need to be

18 complete. That's both mission critical and

19 nonmission critical. We're anticipating

20 1,337,085 hours to complete all the work. That

21 relates to $39,227,995 to complete this work

22 of -- for state government; again, mission

23 critical and nonmission critical.

24   Sixty percent of that is being done

25 by Commonwealth employees. The other 40

1   percent is being done by 15 different vendors.

2   Of those 15 vendors, 88 percent of those

3   vendors are Pennsylvania companies or offices

4   here in Pennsylvania. So, most of the work is

5   being done within Pennsylvania. We're very

6   happy to say that.

7   As a lot of different companies and

8   state governments and federal agencies have

9   been complaining that there is a shortage of

10 people to respond to the work that's needed, we

11 have not seen that there is a shortage at least

12 for us. A lot of what we've seen is that,

13 companies have been very select on actually who

14 they contract for because of the liability

15 issue. If they think the client is someone

16 that doesn't have the management capabilities

17 to really accomplish their work, there is a

18 higher risk, liability risk for that vendor,

19 and so we've seen a lot of the different

20 companies being very select on who they work

21 with because there is a shortage out there.

22   In one case the state just north of

23 us had requested, I guess last fall, if they

24 could actually buy off of our contracts because

25 they still had not been able to get a contract

1   to do the work, and we kindly refused and said

2   we would like to keep our contractors within

3   Pennsylvania. So, we think they happened to

4   have some people to do some work for them.

5   The deadline that we imposed, the

6   Governor imposed back in '96 was to complete

7   mission-critical work. Again, out of the

8   45,502 programs, we've identified 27,297

9   programs that are mission critical, about 60

10   percent of the work. That deadline is June

11   31st, 1998, just this last month; and I'll talk

12   about the status of that.

13   The nonmission critical work our

14   deadline is December 31st, 1998. This is the

15   most aggressive deadline schedule of any state

16   or federal jurisdiction in the United States,

17   and also anywhere else that we've seen because

18   the U.S. is typically thought of as a leader as

19   it relates to responding in the year 2000.

20   Our approach, from the very beginning

21   we clearly understood that a strong management

22   approach was required. One that was common

23   throughout all agencies, really an enterprise

24   approach to managing this IT project which is

25   considered the largest IT project in history.

It certainly is for us.

As it relates to that, we developed an automated tracking system that would track every deliverable, every milestone that each agency would be working on. And we took -- Again, there's 45,000 programs, and identified three deliverables or milestones that we were tracking.

First was the correction of the program itself, the testing of the program, and the implementation of the program. So, from automated basis, we have been basically tracking on a monthly basis 136,506 deliverables every month completely electronically.

As other states and federal agencies have developed very large, let's say, bureaucratic central organizations to manage this, we've used technology to manage this. And basically, I have one person managing all state agencies because, again, we're using technology and management systems to know what's going on.

Each agency team meets with us on a monthly basis and reports all their completed

1   work by the 10th of the following month.

2   Again, that is submitted to us electronically.

3   We also do have quality assurance teams that go

4   out to verify agency results and performance,

5   and we have seen that agencies are pretty much

6   right on line with what they report. So we

7   feel very confident on the results that we've

8   been receiving.

9   This approach to managing the year

10   2000 has actually garnered quite a bit of

11   national attention. The director of G.A.O, the

12   General Accounting Office in Washington, D.C.,

13   Joel Rolinson, considers us the best practice

14   in the nation.

15   We have been advising both

16   Congressman Horn and Congressman Morella who

17   chairs the House committees in Washington on

18   the year 2000, and we've also been advising

19   Senator Bennett's office on the different

20   areas that they've requested information from

21   us on.

22   We've also been working quite closely

23   with some of the top federal CIOs of the

24   different federal agencies; mainly because,

25   they are probably our biggest data partners,

and it's a major concern to us. So we have a

very good relationship in Washington, and

actually, a year and a half ago I testified

before Congress. We have been the only state

that's been asked to testify before Congress in

Washington.

A little about where our status is.

We have preliminary June figures right now.

The finals are due out next week, and we will

be making a more formal presentation on our

results, I believe on July 22nd. The

preliminary figures that we have clearly shows

that we've maintained our budget down to the

line. Overall on our program, we are a hundred

and ten percent ahead of schedule. Again, it

is a very aggressive schedule I wanted to

reinforce.

Mission critical, it shows that we

have completed 96 to 98 percent of all our

mission-critical work including not only

correction, but testing and implementation.

This is by far the strongest statement that any

government jurisdiction has been able to make

to date whether in the U.S. or abroad from what

we've seen.

1   Overall, we are 83 percent complete.

2 Again, that is mission critical and non-mission

3 critical. And we feel extremely confident that

4 all of our work will be complete by our final

5 deadline of December 31st, 1998.

6   A couple of other areas that we've

7 monitored and we've been working on quite a

8 bit, you've heard today about the impact of

9 PCs; and a lot of PCs that do not work. We

10 have gone through working with each of the

11 state agencies and have tested our 47,000 PCs

12 in state government.

13   We've identified roughly around 7,000

14 PCs that could not be fixed or the BIOS chip

15 could not be fixed, and we had to have those

16 replaced. We have been doing that from just

17 the annual operating budgets, and currently I

18 think we now only have somewhere around a

19 thousand to be replaced out of the 7,000; so we

20 feel this is not a concern to us in state

21 government. And again, agencies will maintain

22 this through their normal operating budgets.

23   Embedded technologies as you heard

24 earlier is a major concern to us. We have been

25 working very closely with the Department of

1   General Services and each of the state agencies

2   to look at this.   There, as heard earlier,

3   there are millions of embedded chips out there.

4   Some have bigger effects than other ones.   You

5   heard about stoplights.   We've also looked at

6   issues for local government of sewer plants.

7   The valves that release sewer can be affected,

8   and so we've been discussing a lot of those

9   things.

10   We've been doing a lot of research on

11   this, working with universities and some of the

12   national groups to better understand the

13   embedded chip aspects.   We feel we are in good

14   shape on the embedded chips, but there's

15   certainly a lot to continue to do.

16   On the embedded chip technology, I

17   might add, we feel we do have until December

18   '99 because that basically does not get

19   affected until the actual move over to 2000.

20   So we have a little more time on that.

21   One of the areas that usually is not

22   considered, it has been a priority for us, has

23   also been the inuser applications.   You've

24   heard about the different software programs

25   that are compliant.

1   Microsoft does have a few things that

2   need to be fixed on Windows 95, and some of

3   their programs we've actually been working with

4   their top year 2000 person. So we feel very

5   confident as it relates to any Microsoft

6   product.

7   And we've also monitored -- We've

8   taken actually the top 100 programs used by

9   state agencies and used a computer program by

10   Datapro to run them to see if there is a

11   problem on that. So we feel confident that

12   generally the computer -- the PC base software

13   that's out there, that we're using we are

14   not -- we don't have a problem on it.

15   The one area that most people forget

16   about is that you might have, let's say,

17   Microsoft Excel for a spreadsheet, and that's

18   perfectly fine, there's no problems with it.

19   But, if the inusers when they made their

20   spreadsheets themselves only put in the

21   spreadsheet two digits for the year, that

22   spreadsheet will have a problem with that

23   calculation because they don't have a

24   four-digit category in the spreadsheet. So,

25   those are inuser applications, and a lot of

1   times just one person has developed that and is

2   running that on their own PC.

3   So, we have been working with all the

4   different agencies to better identify that.

5   And this fall we will start a new campaign

6   directed to each user of the PC within state

7   government for them to start looking at each of

8   their spreadsheets, each of their inuser

9   applications because it's really that

10   individual person is the only one that can fix

11   that.   So we're clearly aware of that, and

12   we're working very diligently with all the

13   different agencies to respond to that issue

14   too.

15   One of the additional reasons we felt

16   it was critical to be complete by the end of

17   '98 was that, not only did most of the computer

18   programs, but their mainframes have date

19   calculations beyond one year, so we had to

20   worry about that; but also, we knew that there

21   are going to be surprises.

22   You know, embedded chips, other

23   software programs that kind of pop up that

24   we're not aware of necessarily. You know, we

25   know there are going to be a few surprises.

1 And what we felt very critical about was that,

2 we needed to get the vast majority again, you

3 know, 98 percent of all our mission critical

4 were already done, everything else will be

5 complete.

6   We can get all that out of the way,

7 so as surprises come up in '99 whether it's

8 embedded chip, whether it's inuser

9 applications, whatever; that we will have the

10 resources and capacity to quickly and

11 proactively address those and not have to worry

12 about stopping other important IT applications

13 and state agencies to do -- to respond to that

14 or just forget about it and worry about the

15 business continuity and disaster recovery.

16 That's not acceptable to us.

17   From our discussions on the national

18 and international basis, we are the only

19 jurisdiction that really has looked at it that

20 comprehensively to date. And so, we feel

21 comfortable, we feel confident; but we also

22 recognize that surprises will occur and that we

23 will be on top of those and have the resources

24 to quickly respond to those.

25   And I would like to at this time

1   thank the General Assembly for their support in

2   our budget request and the different agency

3   budget request during the last two years

4   because that's made all the difference for us,

5   and I certainly appreciate their support.

6   Some of the lessons learned during

7   this period have been, and as I mentioned

8   earlier, that executive leadership in volume is

9   critical. And that is not only for a

10   government but for a business, anything else.

11   If an executive of an organization does not buy

12   into it, does not support it, the organization

13   will not succeed. We feel very strongly about

14   that.

15   We've seen a lot of different state

16   governments that have had no interest from the

17   top on responding in the year 2000, and those

18   states are in very bad shape. In general, we

19   feel there might be four to five states that

20   will be in very good condition, ours being one

21   of them. Ten states that are probably on

22   the -- kind of on the borderline, quite

23   frankly; that they will have some significant

24   disruptions probably, but there's good hope and

25   the other states will not be in very good shape

at all. You know, almost a write-off. And we

have done whatever we've been able to do to

assist those states.

We actually had been working for

about a year every month doing a teleconference

with 17 other states to give them advice and

give them suggestions on what we are doing.

We've also sent out our management tracking

template, a copy of that to, I think, 12 states

for them to use at no cost and also some of the

major counties around the U.S. at the same

time.

We also have -- One of the lessons

that we've learned is just how important

project management is to information

technology. In most project management that

you've seen has been in the construction

industry, in that area. IT has not really used

project management systems and tracking systems

very effectively. And one thing that we've

been able to show by having a strong project

management system, an automated management

system in place that IT projects can be held to

budgets, can be held to schedules, and can be

delivered as originally thought.

1   And I think the Cabinet, the state

2   agencies, their IT organizations should be

3   applauded by their actions in what they have

4   been able to do over the last two years on this

5   largest IT project in history, at least for a

6   state government and most other organizations.

7   And it's been a major accomplishment for us,

8   but it really has gone and showed all of us, I

9   think, the importance of project management and

10 really making sure that we know and manage and

11 track what we're doing both financially and

12 also deliverable wise too.

13   Some of the things that we've been

14 doing on average beyond state government,

15 because as you've heard earlier not everyone is

16 an island, you know, on this you are connected

17 to everyone. Whether it's local governments,

18 businesses, federal agencies, whatever, we are

19 all connected. It's a global issue, and we all

20 have to be concerned about that.

21   And again, I just want to stress the

22 supply chain issues for companies, for

23 governments, whatever, are so, so critical. In

24 a much earlier conversation with the Deputy

25 Secretary for Transportation they were talking

1   about how they made this such a high priority.

2   We started discussing some of the other

3   impacts, and in most times people think about

4   their partners as partners that share data.

5   And, you know, they're data partners

6   themselves. Well, we start talking about --

7   Well, you know, it's not just data partners.

8   What about if, let's say this is

9   going to be in December, January, all of a

10 sudden you need additional salt on the roads

11 because it's a major snowstorm, and you make a

12 call to the salt supplier up in New York only

13 to find out that their inventory control system

14 or their payroll personnel systems no longer

15 are working and they're shut down for a week or

16 two weeks or three weeks.

17   The salt's up there, but you can't

18 get it. So people need to understand that

19 food, different commodities like that, it's

20 not -- Again, it's not a technology problem.

21 It's a business (inaudible word) problem. So

22 we really like to stress that whenever we can.

23   As it relates to outreach, one of our

24 concerns a year and a half ago was, there was

25 very little communication between state

1 governments and federal agencies. Again, we

2 are so dependent upon our communications,

3 electronic communications with the federal

4 agencies and them with us. We have seen very

5 little communication really occurring as it

6 related to 2000.

7   I spend quite a bit of my time in

8 Washington, D.C., especially back then

9 advocating for stronger communications and more

10 cooperation. And actually, a year ago this

11 month Governor Ridge called for a state federal

12 CIO summit on year 2000 to really start

13 discussing and building the bridges between

14 states and federal agencies.

15   That was held in Pittsburgh in

16 October of '97 and we had CIOs or senior IT

17 executives from 43 states and 21 federal

18 agencies, including from Health and Human

19 Services in Washington, their chief financial

20 officer, the number two person in the entire

21 agency attend that.

22   That was an incredibly good first

23 step. It was the first time that that level of

24 IT officials from federal governments, state

25 governments had ever gotten together on any

1   issue at all. And we were able to produce

2   results in one day by the assistance from the

3   University of Pittsburgh, Penn State

4   University, and Carnegie Mellon University in

5   doing some collaborative interactive sessions

6   using computers, we were able to actually

7   accomplish work.

8   During that day, it was kind of

9   interesting. Again, these are extremely

10   important high-level people within their

11   different organizations. They all buckled down

12   and really got to work on it, and we actually

13   only gave them 15 minute lunch breaks. And at

14   the end of the day, at 4:30, we did a survey on

15   how they felt about that, you know, about the

16   entire day, and overall, the hundred and thirty

17   people rated it at a 92 percent of excellence,

18   and it was a great day for all of us I think.

19   One of the things that we've been

20   doing within Pennsylvania on awareness, over

21   the last two years we've been working very

22   closely with a number of local chambers and

23   also the state chamber to have different

24   conferences, regional conferences for awareness

25   conferences. Also universities, East

Stroudsburg University, Bloomsburg University

have had regional conferences that we have

supported sending speakers; myself, Charlie,

and other groups and we spread out around the

state. We have had 28 different events within

Pennsylvania that we've sent speakers to;

again, whether they're associations, township

supervisors associations,

university-sponsored organizations, local

meetings, chamber meetings, whatever. And now

we --

I might add, that was one of the top

priorities from the very beginning of our

program. Now quite a few other states are now

taking that lead and working within the

business community around their states. In two

weeks on the 22nd of July we will also start a

new statewide campaign, building awareness and

action.

One of the things that were discussed

earlier was the Executive Survival Guide that

you have at your desk. This is something that

we have completed recently in cooperation with

-- in partnership with the federal government

of Canada actually, and you'll see that on the

front.   Canada considers us the most prepared

jurisdiction on year 2000, and has partnered

with us in cooperating and finding out ways to

build awareness in Canada using a lot of what

we're doing here in Pennsylvania.   So we have

completed the <u>Executive Survival Guide.</u>

Some of the things that Canada has

done, which we will have complete access to

here in Pennsylvania, is a very detailed year

2000 workbook which will answer some of the

representatives questions about if you talk to

somebody and they say, yeah, we understand, but

what do we do?   This will have even much more

detail than the <u>Executive Survival Guide.</u>   And

we will be looking at making this available.

Actually, our <u>Executive Survival Guide</u> is

available now to be downloaded on our web site

www.oit.state.pa.us, and we'll be making this

available for anybody to reproduce also.

We already have the State of Michigan

wanting to reprint 10,000 of these.   Canada

actually will be taking our <u>Executive Survival</u>

<u>Guide</u>, again, with Pennsylvania on the front

cover, and they are tending to print one

million to be sent throughout Canada to people,

1   businesses, and local governments and schools

2   everywhere.

3   One of the areas that we've also

4   stressed is our schools. The Department of

5   Education has very uniquely had workshops

6   throughout Pennsylvania to start building

7   awareness for superintendents and also

8   principals about the impact of the year 2000

9   within their own systems; personal payroll

10   systems, also scheduling systems, things like

11   that. So, we will be working with the schools

12   in that area too.

13   One of the things that we also have

14   is -- I might like to just show you, and we do

15   have a couple of copies of this already; and

16   again, this is one of the parts of the

17   partnership. We have a series of five posters

18   to build awareness on year 2000, very

19   professional posters.

20   Again, Canada has done that; but they

21   actually have given us, as you can see, top

22   billing on it. And this is being distributed

23   throughout Canada and we'll be distributing

24   these throughout Pennsylvania also, and also be

25   making available to federal agencies in other

1 states for their -- you know, to reproduce and

2 send around the nation too.

3   One of the other areas in our

4 statewide awareness program is, next week we'll

5 have 80 community leaders from Team

6 Pennsylvania Center for Local Government and

7 also Penn State's outreach program coming into

8 Harrisburg. Charlie and his staff will be

9 going through a day-long Train the Trainer

10 Program to train them as community speakers on

11 year 2000 because, again, our staff is

12 extremely limited and this is one way that we

13 could get speakers out to more people around

14 Pennsylvania to talk about the need for

15 responding on year 2000.

16   Again, this campaign is only the

17 first phase of it. Over the next couple of

18 months we will be expanding this and trying to

19 build even more momentum throughout the state.

20 Again, because as Pennsylvania businesses

21 respond and get prepared, that is good news for

22 us because we feel it's an economic development

23 issue for states.

24   Actually, if anyone saw in Business

25 Week's special recently on the year 2000 zap,

what they're calling zap, how the computer bug

will hurt the economy, Pennsylvania was the

only state requested to be quoted. Both myself

and Governor Ridge was quoted in here, and the

Governor actually talked about that by making

Pennsylvania year 2000 friendly; in essence,

getting businesses prepared for it. As

businesses and other states fail, that this

could be a market opportunity for Pennsylvania

businesses that are prepared that we can go in

and take advantage of that. So, there's an

opportunity there I think.

One thing that just came out last

week, if you're familiar with it, <u>The National</u>

<u>Journal</u>, which is one of two publications that

are read very closely in Washington D.C. I did

a story on the year 2000, and I might just read

the headline, "House States Are Getting Ready;"

and the subtitle to it is, "In It's Beat the

Clock Struggle With The Milliennium Bug,

Pennsylvania Has Been Working at a Megahertz

Pace." And it goes on to really highlight

Pennsylvania as the top example in the nation

on responding to year 2000.

So, as it relates to what we're doing

within government, and also outside the

government, I think that gives you a better

idea of where we are. Some of the things that

I would suggest that you do consider as it

relates to the two bills that you're looking

at, one of the first things that I think about

is, and it sounds like it's shared with you, of

course, is that litigation, as it relates to

the year 2000, starts to really concern me.

You know, when we hear about Lloyd's

of London predicting $1.2 trillion worth of

litigation in the U.S. alone, and then only to

find out that that's probably a low estimate.

And also see different, you know -- Because we

work so much on a national basis, we also track

very closely the kind of litigation that's

happening. You know, the first lawsuit that

was filed in Detroit by the grocer against the

manufacturer of his light machine because it

wouldn't read zero zero, and he felt he was

losing business. So we certainly are concerned

about that.

The one thing, as you heard earlier,

too, that concerns us that any kind of

legislation, also, is so complex because

immunity or, you know, holding people harmless

or anything like that on this issue it is going

to be so, so complex. That's one thing to

really be very careful about if you do consider

legislation in this because the ripple effect

impact, you know, I think could be very

significant.

The Commonwealth, again, as you've

seen, we have 15 vendors that we're working

with. We do have very specific language in

that for accountability and performance on year

2000, and it actually lasts to the 2001 in case

anything that they do now doesn't seem to work

for that next year. So we would be somewhat

concerned about our ability to hold vendors

liable for any work that they do and

accountable for them.

Also some of the things to consider

are the effects on the marketplace. We clearly

see that there are a lot of very good

companies, very honest companies that are

working diligently to respond to our needs and

other clients' needs around Pennsylvania.

We would be somewhat concerned that

if there was a blanket immunity with that also

increase a lot of companies that really don't

have the expertise to pop up because they feel

that they might be protected. Again, I don't

know if that would happen or not, but that

would be something that you might want to

consider.

And also, as we heard before, to us

the most important thing that needs to occur is

action. And top-down priority leadership is

so, so critical. You know, so anything that

would lessen the priority of working on year

2000 would be a concern of mine. And it would

be something that, you know, hopefully it

wouldn't be the case; but in some states like

Washington, Nevada, that has a legislation, if

that would lessen the priority that year 2000

has in the business organization within

government, or whatever, that would be a

concern if all of a sudden they felt that they

didn't need to respond as effectively or as

fast.

Again, in state government, for

Pennsylvania, we feel we are very aggressive

and we will maintain our schedule no matter

what, so we feel confident that it won't affect

us in any way. Those are my basic comments.

I'd be happy to respond to any questions.

A lot of people do talk about silver

bullets, magic bullets. We feel the only

silver bullet that's out there is action and

the executive leadership. There is not going

to be a technology silver bullet that solves

all the problems automatically. It really

takes a lot of time.

The one thing I might just show you

just to better understand what the whole issue

is about, this is one of our programs. One of

the 45,000 programs that we have to fix, and

you see all the lines of code in this program.

Basically, you have to go through each line of

code and identify which line is affected by

year, date calculation. And it's a very time

consuming -- It's not a complex issue, but it's

a very time-consuming issue.

This is what we started working on

over two years ago. But this kind of gives you

an idea of what it might mean. And also, I'd

like to offer my office's assistance to your

staff, committee staff on anything as it

relates to year 2000. We'd be very happy to

1   help out in any way. I'd be very open to any

2   questions or comments. Thank you.

3   CHAIRPERSON GANNON: Thank you, Mr.

4   Olson. Do you have any comments, Mr. Gerhards?

5   MR. GERHARDS: No.

6   MR. OLSON: He's the technical guy.

7   In case you ask any real technical questions,

8   Charlie's going to take those.

9   CHAIRPERSON GANNON: Representative

10   Caltagirone.

11   REPRESENTATIVE CALTAGIRONE: Yes.

12   Responses to what you've been doing and the

13   costs, I'm curious if you may respond to that?

14   MR. OLSON: To the cost?

15   REPRESENTATIVE CALTAGIRONE: Yes.

16   MR. OLSON: Well, we feel -- Again,

17   we are looking at $39 million. That's

18   basically what we estimated. Actually, we

19   estimated around 42 million to start with and

20   we've been able to stay actually below that

21   cost. We've been able to maintain that. It's

22   not a guesstimate.

23   A lot of states you'll still see --

24   This is amazing. You'll still see states

25   estimate that their cost are going to run from

1 a hundred to $200 million. This late in the

2 game, if you don't have a really concrete

3 dollar amount, there's something wrong as far

4 as we're concerned.

5   California, just a month ago, they

6 had been showing a cost of $250 million and now

7 the CIO out there had to admit that now it

8 could be somewhere around $500 million. Again,

9 if you're off that much, by order of magnitude,

10 you know, cost isn't the problem; management is

11 the problem. You know, so we feel very

12 confident, and actually, ours is -- In a recent

13 publication, Pennsylvania's costs per program

14 was the second lowest in the nation.

15   REPRESENTATIVE CALTAGIRONE: You had

16 mentioned a number of people that attended the

17 conference and whatnot. I was just wondering

18 in response to what we have done in

19 Pennsylvania to those that have participated.

20   MR. OLSON: On the State Federal

21 Summit, again, that was a major -- Pennsylvania

22 acted basically as a national leader, as a

23 catalyst to make that happen. We've had very

24 good responses after that. The National

25 Association's State Information Resource

executives, the counterpart of the states' CIOs

had decided to go ahead and take a lead on a

national basis with the federal agencies on

working out interfaces within states and

federal government.

Since October they've only issued one

memo, and we've been a little concerned about

that, so we decided just to go directly to

federal agencies. And we've actually now been

partnering directly with federal agencies and

used Pennsylvania as their model on how to deal

with a state government, which obviously gives

us their top priority. And once they figure

out how to work with us because we are so far

ahead, then they have a better idea of how to

work with other states.

REPRESENTATIVE CALTAGIRONE: Some of

the arms of state governments and national

conferences of state legislatures will be

meeting this summer, and some of the other

statewide CIOs, counsel of state governments,

have you had any contact with them or will you

be making any presentations at their

conventions this summer?

MR. OLSON: I believe they have asked

1   us on that. Actually, in the last -- their

2   last publication that came out about a week ago

3   or whatever there's a year 2000 article. We

4   participated in that article and there's quite

5   a bit about Pennsylvania in that article, all

6   positive I might add. And I'm not really sure,

7   but I believe somebody from that organization

8   has talked to us. And we'd be happy, either

9   myself or Charlie, to participate in this if

10   they would like us to.

11   REPRESENTATIVE CALTAGIRONE: Thank

12   you. Thank you, Mr. Chairman.

13   CHAIRPERSON GANNON: Representative

14   Manderino.

15   REPRESENTATIVE MANDERINO: Thanks for

16   your testimony and congratulations on where we

17   are in Pennsylvania. I didn't know that.

18   That's encouraging to hear. And in light of

19   what you've said, I'm left with the impression

20   that we're as prepared as we're going to be and

21   that I don't know that legislation gets us

22   anywhere. And while you didn't say it

23   directly, I wondered if you shared the

24   concerns --

25   I don't know if you were here for the

earliest speaker, Mrs. Heidelbaugh, when she

said she thought legislation granting immunity

would send the wrong message. And I wondered

if you had any thoughts on that.

MR. OLSON: As it relates to state

government, it's my feeling -- I mean, we're

going to be complete. Again, we're 98 percent

complete for mission critical right now, and

everything else will be finished by December.

So, I think that's the message that we'll be

sending; that we will be prepared no matter

what.

As it relates to local governments

and other jurisdictions, I'm not really sure.

I do know that a lot of county governments and

local governments are not anywhere close to the

level of preparedness that we are, and that's

why we're starting our campaign, awareness

campaign. We start building action and we try

to help out any way we can; myself, Charlie. A

lot of my staff have been meeting at different

associations around Pennsylvania, and

we will continue to do that as much as we can.

So, I'm not really sure. Not being

an attorney, I'm not really that up-to-speed as

1   it relates to sovereign immunity, and what the

2   impacts would be, so I can't really respond to

3   that portion. But, as it relates to state

4   government I think our message will be that we

5   will be prepared.

6   And again, I think we're in very good

7   shape; but I do want to caution that we also

8   clearly know that there are going to be

9   surprises, and we're going to do whatever we

10   have to do to respond to that and be very

11   direct as it relates to working with our state

12   agencies.

13   REPRESENTATIVE MANDERINO: Thank you.

14   Thank you, Mr. Chairman.

15   CHAIRPERSON GANNON: It seems to me

16   that there's really a two-prong issue. One is

17   the technical and the other one is what you

18   called leadership in management issue. The

19   technical one seems to be pretty easy to solve.

20   And with respect to the liability, we

21   have been rolling around the standard that we

22   would apply because I can envision you would

23   have a company or an organization that would

24   have good leadership and good management; but

25   the technical person they hired didn't have a

clue, and they'd end up with a disaster. Then

you'd have a company that was just totally

clueless as to the management and leadership

side, which it did nothing. And I just wonder

if the results of both of those are the same,

whether we should have the same standard of

liability for each or have a degree with

respect to that company acting in good faith

and good management and good leadership but

poor technical expertise where the company just

said or the organization, whether it be a local

government or state government said, we'll

address it when it happens and worry about it

then.

I know you said you weren't

attorneys, but I'm just commenting on what you

said. It brought out the fact that the -- and

the leadership and management problem is a

paramount issue here. And, of course, from

your testimony and what I've seen and heard, I

think the Commonwealth of Pennsylvania is light

years ahead of every other state in dealing

with this issue.

And you're to be commended on the

work that you've done and the work that

1   Governor Ridge has done on this because I don't

2   think -- I think there's a lot of people out

3   there even today that don't realize the

4   seriousness of this issue, and they're going to

5   find out the hard way.

6   MR. OLSON: I totally agree. We've

7   actually in one communication -- I don't know

8   if you saw the -- oh, about four months ago,

9   the big USA Today first page big year 2000 kind

10   of issue, and then two full pages within

11   Section A. One state, that will go nameless,

12   was listed that they were 25 percent complete

13   at that time, and actually that was one state

14   that we communicate with. One of my staff that

15   knows that state was thinking, geez, they're

16   not even close to 25 percent, you know, and

17   called down to the person down there and said

18   hey, what's going on? I thought you were like

19   four to five percent complete, and I see 25

20   percent there. And the person says, well, what

21   the heck was I going to do, you know, a

22   reporter from USA Today calls me. I'm going to

23   say four or five percent complete? I just

24   pulled something out of the air and said 25.

25   So I do think a lot of people are not

prepared, and in any way that we can help out,

we certainly will be there. Again, we have

limited resources. Certainly the top priority

is now, and will continue to be, Pennsylvania,

of course.

CHAIRPERSON GANNON: Is your

organization going to be in a position to help

local governments as this gets closer, or are

we past that date when problems present

themselves?

MR. OLSON: Well, what we're trying

to do -- Again, my organization really doesn't

have staff to do those kind of things.

Actually, I might add, that as other

state organizations and federal organizations

brought in new positions, in some case, in one

state 25 new people just to manage the central

organization. We have not increased our staff

at all to manage and to deliver what we've been

able to deliver.

So we are stretched, but what we've

been working on are ways -- instead of us just

doing it ourselves and being the bottleneck,

we've been working with the universities and

also especially Penn State's, their Outreach

1   and their Extension Service Group and also

2   other chambers. And again, this is part of our

3   train the trainer approach to start finding out

4   how we can -- Instead of having to come to us,

5   is there ways that we could bring some

6   expertise whether on-line like the Executive

7   Survival Guide, the workbook, and other areas

8   that we're going to be expanding on that will

9   make information available.

10   One of our parts with our partnership

11   with Canada is, they have produced a very

12   expanded web site on the year 2000, and will

13   actually be answering questions, a help-desk

14   type of thing. That will be available for

15   Pennsylvania companies and local governments

16   there too.

17   So, we're going to be looking at ways

18   that we can effectively help out, and I think

19   there are going to be ways. It's not just

20   going to be us. We'll be able to pull in a lot

21   of groups; actually, a lot of national groups.

22   The Gartner Group, which you heard

23   about earlier, I had met with their senior vice

24   president in charge of worldwide operations,

25   and they have offered any help to Pennsylvania

1   whatsoever; just name it. So we are looking at

2   actually producing a special local government

3   web site just to respond to issues and

4   assistance for local governments directed

5   toward Pennsylvania; but since it's on the

6   worldwide web, it would be available to anybody

7   else.

8   So we have a lot of major national

9   partners that are offering assistance in

10   Pennsylvania because we're a leader, and that's

11   going to help us out a lot.

12   CHAIRPERSON GANNON: Thank you.

13   Representative Manderino, did you have a

14   follow-up question?

15   REPRESENTATIVE MANDERINO: Yeah,

16   thank you. One of the things that you hinted

17   at and other staff is the embedded technology.

18   And it seems to me that that's where,

19   particularly in the local government level, we

20   may not even be prepared to think of where do

21   we have that?

22   People have mentioned stoplights that

23   I assume are synchronized or timed in such a

24   way that there's embedded technology. But are

25   there other kinds of obvious things that local

government is using, or some of our quasi

public or public authorities might have as

regular use that we should be, like, telling

people to check on? It's not just the

computers working the payroll in your office

but, you know, here's the other things and the

vendors you need to return to to see if it's

working or ready.

MR. OLSON: There's going to be quite

a bit. And this is the toughest part about it,

is that, as you're able to identify lines of

code and know that that has to be fixed, there

is no certainty at this time of what embedded

technology has to be corrected.

At one time there was a lot of

discussions that the chips in cars would

malfunction for maintenance and things like

that. But now, more research has happened and

that doesn't seem to be a concern. But as it

relates to traffic lights and other issues of

global positioning, GIS type of systems will be

affected. One thing I heard earlier, you know

as an embedded chip, this is certainly not

local government, but one question comes up

about what about all the satellites that are 20

and 25 years old? You know, do those chips --

Who's going to go up there and replace those

chips? I'm certainly glad that there's not a

U.S. representative on the MIR at this time

either. But one thing I might like to do is --

Charlie has been spending quite a bit

of time with the township supervisors' group

and some other local government groups to

concentrate on some of the issues that could

affect local governments. Charlie.

MR. GERHARDS: Some of the areas that

we recommend local government look at, there's

storage plants, water treatment plants have

flow controls on them. In some cases they are

managed electronically by computer. That is,

that they don't stick open and discharge waste

into streams, or close and not allow flow.

911 systems, many of those are

computerized, PC-based or technology-based with

embedded chips. Are they going to function

properly? Obviously, the traffic signals in

some cases they are synchronized. Maybe

they'll go out, may lose their pulse and go in

opposite direction. We aren't actually sure.

Elevators, prisons; county prisons,

1   obviously, have lots of security systems

2   involved, just to name a few.

3   MR. OLSON: I might mention one thing

4   on the prison. Luckily this was not a county

5   in Pennsylvania, it was one in New England.

6   Actually, last year released a prisoner because

7   the record showed that he had served his time

8   because it was a 06. So they went ahead -- It

9   was supposed to be 2006, but the computer

10   program read it as 1906, and that he should be

11   released and they released him. They did get

12   him again, but luckily, that was not a

13   Pennsylvania county though.

14   So that is an issue, and it's not an

15   issue that you can put your hands around. But,

16   we have been working again with Canada, with

17   other groups to try to better understand that.

18   And as soon as we get that information, we will

19   make that information available.

20   CHAIRPERSON GANNON: Thank you very

21   much, Mr. Olson and Mr. Gerhards, for appearing

22   before the committee today and sharing

23   information and testimony with us. We

24   appreciate it.

25   Our next witness is Mr. John

Berkheimer, President of Berkheimer &

Associates, Inc. I welcome Mr. Berkheimer, and

you may proceed when you're ready.

MR. BERKHEIMER: Okay. Thank you

very much. I would just like to say I am

certainly heartened and would like to commend

the legislature in Pennsylvania for certainly

being right out in front of this issue. That

makes me feel personally a lot better. That is

the good news.

Unfortunately, that is also the bad

news, as you've heard, because there are so

many other places that are not at the same

juncture. So going back to one of the remarks

of the committee before, the chain is only as

strong as its weakest link, I think that that

really is the crux of my remarks and concerns.

And primarily, that in my view based

on the interdependency of data both here and in

the nation, there is no way that we are going

to have a smooth transition from millennium

midnight into the next six, eight, ten, or

twelve months.

I have a few paragraphs of prepared

testimony, and I think you have a copy of the

1   complete packet with some appendixes, and I'll

2   just review those and take any questions.

3   My name is John Berkheimer. I am the

4   chief executive officer of Berkheimer

5   Associates, a firm that has specialized in

6   administration of local taxes for school

7   districts and municipal governments throughout

8   the Commonwealth since 1946.

9   I appreciate the opportunity to

10 testify today on the year 2000 indemnification

11 issue. I guess the title of my remarks is Year

12 2000: We need remediation; not retribution.

13   I can really jump right to the

14 conclusion here, and that is that the functions

15 performed by elected and appointed tax

16 administrators on a local level maintain the

17 flow of income to local government is, in my

18 opinion, no less important to the safety and

19 infrastructure of every locality, than the

20 Pennsylvania Department of Revenue is to the

21 state.

22   Without certainty provided by

23 specifically and narrowly delineated

24 indemnification, there is, in my opinion,

25 significant risk that potential problems

1   arising from Y2k may not be adequately

2   addressed, or worse, not addressed at all by

3   local tax offices who will be unwilling,

4   unable, or otherwise cease to function under

5   the dual burden of actual problem remediation

6   and defending against causes of action

7   resulting from real or perceived disruption.

8   In other words, if the impact of

9   events precipitated by the year 2000 problem

10   doesn't halt local government operation in some

11   way, left unchecked, the litigation aftershock

12   most certainly will.

13   The result of such a breakdown will

14   be a lack of predictable funding to grass roots

15   government necessary for the provision of

16   mission-critical services to constituents at a

17   time when they are most needed.

18   I guess you've heard a lot of the

19   background relative to the problem, and it's my

20   opinion that the committee certainly has a

21   pretty good understanding of it. But, when

22   thinking about it myself, the parallels between

23   the disease, cancer, and Y2k problems are

24   remarkable. Each can exist for a long time

25   unnoticed, the symptoms at onset can be both

1   rapid and painful, neither go away of their own

2   accord, and each have the capability to be

3   deadly. Many armed with a layman's knowledge

4   of cancer remain baffled that so many years

5   after putting a man on the moon, we can't

6   conquer this killer.

7   One of the reasons is that the

8   umbrella cancer covers many manifestations. In

9   fact, cancer is many diseases. I would submit

10   that Y2k computer problems are likewise; not

11   one problem, but literally millions that can't

12   be left to the techno-nerds to solve. Calling

13   in an army of bespectacled pocket protector

14   types won't stop this problem from happening.

15   My views are shared by some

16   internationally respected experts, not the

17   least of whom is Doctor Edward Yardeni, Ph.D.,

18   and Chief Economist at Deutsche Bank

19   Securities. Doctor Yardeni has been a

20   frequently relied-upon authority during

21   numerous federal government hearings on this

22   subject.

23   He has had the ability to distill a

24   building avalanche of data on the problem into

25   some very insightful information. I have

attached a copy of his just-released report on

exactly nine days ago as Appendix 1 to my

testimony.

Really, it all boils down to, as

you've heard before, does anybody really know

what time it is? Since hard data on the local

level is somewhere between scarce and

non-existent, and extrapolation from progress

and events experienced by the feds can be of

some guidance.

The following is an excerpt from

Doctor Yardeni's report on the subject of the

OMB, Office of Management and Budget, and their

report released in mid-June.

In May 1997, OMB reported that

roughly 21 percent of government's

mission-critical systems were ready for Y2k. A

year later, approximately 40 percent of the

7,336 such systems were compliant. Unless

remediation progress improves dramatically, a

significant number of mission-critical systems

will fail in 2000.

No one is even assessing the status

of the 1,020 mission-critical systems that are

being replaced. These are especially

vulnerable to missing deadlines, since new

information technology systems are rarely

finished on schedule. The fifth report by OMB

observed:

Nine of the 24 federal agencies have

renovated less than 40 percent of vital

systems, two having fixed less than 50 percent.

Five agencies, Department of Defense, Health

and Human Services, Justice, Transportation,

and Treasury have not even completed the

initial assessment phase, nearly a year behind

OMB's government-wide target of June 1997.

Only 11 of 24 agencies have completed

inventories and/or assessments of their

telecommunication systems. Only six reported

that they had completed inventories and/or

assessments of their embedded systems.

Given the above timeline and degree

of progress or lack thereof consider this: The

number of working days remaining to January

1st, 2000, allowing for annual leave, a few

sick days, and public holidays, about 340. If

a medium-sized enterprise commits 10 percent of

their time to this project, only 34 days remain

to completion. I think you get my point.

1   In my opinion, we are beyond the

2 juncture where any solution or group thereof

3 will eliminate the possibility of disruption.

4 The deadline is one that can't be moved. There

5 simply is not enough time to identify,

6 remediate code, and test prior to January 2000.

7   So, in my opinion the time has come

8 to insure that the correction of the inevitable

9 cascade of problems, not able to be solved in

10 time, will be a series of positive steps

11 forward to resolution and not a legal admission

12 of guilt.

13   There's no time left to completely do

14 things right. We must now resolve to do the

15 right thing. Cut the legal mercenaries out of

16 an already complicated equation to insure the

17 most rapid recovery possible from January 2nd,

18 2000 going forward.

19   We've included some specific language

20 to that effect in Appendix 2 relative to the

21 two bills that you're considering. I'd be

22 happy to take any questions.

23   CHAIRPERSON GANNON: Representative

24 Caltagirone:

25   REPRESENTATIVE CALTAGIRONE: No

1 questions.

2 CHAIRPERSON GANNON: Representative

3 Dally.

4 REPRESENTATIVE DALLY: Thank you, Mr.

5 Chairman, and thank you, Mr. Berkheimer, for

6 appearing today and testifying before the

7 committee.

8 As we heard from Mr. Olson before, it

9 appears that the Commonwealth is on target in

10 terms of being prepared for the year 2000.

11 Now, your line of work you deal with

12 local municipalities for the most part; is that

13 correct?

14 MR. BERKHEIMER: That's correct.

15 REPRESENTATIVE DALLY: And we had

16 Leroy, your clerk, assure that from Mr. Olson

17 and perhaps you can elaborate on your opinions

18 where these municipalities are as far as the

19 year 2000 is concerned.

20 MR. BERKHEIMER: Well, it's kind of

21 scary, in my opinion, because, first of all,

22 there is a lack of total information to assess

23 where the entire municipal community is,

24 whether it be municipalities, counties, or

25 school districts in Pennsylvania; and I think

1 we're working on that. But, there is a lack of

2 information out there.

3   I think the State is certainly moving

4 in a direction to solve that, to at least make

5 people aware. From our particular perspective,

6 the function, the narrow function that we

7 define and do which is basically the local

8 Department of Revenue function. Fortunately,

9 we control all of our source code. We have ten

10 full-time programmer analysts, and we had to do

11 that because the Department of Revenue's

12 software is not something that Microsoft has

13 yet shrink-wrapped. So, we've taken that

14 responsibility and remediated that code, and we

15 will be responsible for that.

16   Our concerns going forward kind of

17 broaden to the responsibilities and concerns of

18 every business that rely on networks,

19 shrink-wrapped software, and the integration;

20 and when you start looking at programs that

21 touch one another when you get from network to

22 network, it's logarithmic. So to the extent

23 that the municipalities are not in-house with a

24 number of these resources, I would still remain

25 concerned.

1   REPRESENTATIVE DALLY: Now, I

2   reviewed some of your language in your

3   appendixes as far as proposed amendments to

4   this legislation to expand immunity, certain

5   entities. How broad do you foresee this to be

6   or should it be?

7   MR. BERKHEIMER: I think the

8   committee certainly and the legislature has to

9   walk a very narrow balance, and I understand

10   that; but they'll have to decide what

11   specifically delineated things, boil down to

12   mission critical, and that may not be able to

13   be done at this juncture. But I think the

14   immunity would have to be limited in scope and,

15   in turn, the real request that we bring is

16   that, people who are responsible who are making

17   all the rights steps and, in fact, may be a

18   hundred percent Y2k compliant are going to be

19   impacted by data interchange from individuals

20   and their data partners that they have no

21   control over.

22   In our particular instance, when I

23   sit down and think about it, that could expand

24   as broadly as everybody in our world being

25   competent, complete, and tested except for the

1   Federal Reserve. Our product is money for the

2   municipalities. If I can't get it from my

3   office to their coffers, I failed.

4   REPRESENTATIVE DALLY: We talked

5   about the Commonwealth and local subdivisions.

6   What about private tax agencies such as yours?

7   Are they compliant with Y2k?

8   MR. BERKHEIMER: Well, as I said, in

9   our particular case we are compliant relative

10   to our own software. We are confident that we

11   will be compliant, remediated and tested for

12   all of our systems. Our problem is that we

13   have no control over other tax agencies and/or

14   data partners.

15   MR. DALLY: Thank you.

16   CHAIRPERSON GANNON: The thought

17   occurred to me in reading your comments and

18   also reading your suggested language with

19   respect to liability, limitation of liability

20   for private contractors that would work for the

21   state agency or a local taxing authority. It

22   seems to me that you want to extend the

23   liability immunization to that private

24   contractor to some extent.

25   Would it be fair to say that --

1 Because we don't really know, we have some

2 speculation here, some idea of what the

3 consequences involve. We won't know the

4 specifics until it actually occurs. And we'll

5 probably see some of the predictions come true,

6 and we'll also see probably some surprises that

7 nobody expected. But the thought occurred to

8 me as if we -- And your emphasis was

9 remediation, so the problem occurs, let's get

10 it corrected and get it fixed.

11   Then if we have a kick-in period --

12 In other words, we say, look, your liability --

13 you're immune from liability for a period of

14 time; and then, of course, if you're not fixed

15 by that time period, the attemps of remediation

16 would also come into play in terms by the

17 extent of what the liability would be. And

18 that's just a thought.

19   Rather than have a specific effective

20 date, you know, of 1/1/2000 to somehow put it

21 out later on and see how the problems arise and

22 provide some limited immunity for a period of

23 time with the expectation that companies who

24 were having a problem and knew that they were

25 going to be confronted with a liability

situation they'd fix it, would be encouraged to

fix it rather than just let it go.

And there also comes an issue of a

local government attempting to solve the

problem also understanding litigation because

of something that a contractor did or that they

did. Do you want to comment on that?

MR. BERKHEIMER: I would agree with

that. I think that you don't want to set up a

scenario, whereby, the indemnification is so

broad that anybody can jump under it. And by

the same token, you don't want to have it out

there for such a length of time that it can be

a perpetual excuse. So there I think is part

of the challenge.

CHAIRPERSON GANNON: One of the prior

witnesses had said that if you throw out this

blanket of immunity, then this doesn't

encourage anybody to do anything. On the other

hand, we have a lot of enterprising attorneys

in Pennsylvania seeking damages, consequential

damages, cumulative damages. I'm not too sure

I want to subject this or our local governments

to those types of liabilities, or something

that they may not be able to deal with now or

1   may not have presented itself as yet in the

2   form that they would expect.

3   Thank you very much, Mr. Berkheimer,

4   for coming before the committee today and

5   sharing your testimony. We appreciate it.

6   Our next witness is Kathryn Keith,

7   News Media Director of the Pennsylvania

8   Newspaper Publishers' Association. Welcome,

9   and proceed when you are ready to proceed,

10   whenever the stenographer is ready.

11   MS. KEITH: Thank you very much for

12   allowing me to come and testify. I'm Kathryn

13   Keith and I'm the media director for the

14   Pennsylvania Newspaper Publishers' Association.

15   This is Joe Leighton. He's one of our lawyers

16   on staff, just in case I get in trouble.

17   I'm not going to go over what the

18   problem is. I mean, we've been sitting here

19   for hours. We know that it is a date-related

20   computer problem. One of the things that I

21   didn't hear mentioned was that September 9,

22   1999 is also a problem because some computers

23   recognize 9999 as end of file. So that's

24   another date.

25   You know, it kind of reiterates what

1   the OIT guy was saying that we're not okay

2   until January 1, 2000. This is going to start

3   happening now, and it already actually has

4   started happening now. Especially for software

5   programs that, you know, project dates out.

6   They can't function.

7   So the answer, as we've heard, is to

8   rewrite the code; and that's pretty simple.

9   The complexity arises out of the incredible

10   number of lines of code that needs to be

11   rewritten. And the problem's compounded, as

12   you heard, by embedded computer chip

13   technology, which is difficult to find and

14   expensive to replace.

15   I liked what the director, the OIT

16   was saying that it's a leadership and

17   management program. I believe that. Anyway,

18   I'm just going to continue reading.

19   While the physical problem is

20   relatively easy to fix with a little money and

21   a little persistence, but as you had said that

22   the real problem is in the supply chain. One

23   company can be compliant, and whoever supplies

24   that company could not, and then, incidentally,

25   it just breaks.

1   I have a hypothetical here that I

2   just kind of made up. The Pennsylvania

3   Newspaper Publishers' Association has a

4   for-profit organization which places

5   advertising in newspapers. Let's say that

6   we're compliant by September 8th, 1999, and on

7   January 3rd, a local car dealership is supposed

8   to run a full-page color ad in ten daily

9   newspapers in Pennsylvania.

10   The dealership's ad is created at an

11 ad agency in New York City. That ad agency is

12 an expert at electronic delivery of

13 advertising. They got it. They're compliant,

14 but the computer that is supposed to send the

15 ad -- It's all electronic, and it's worked up

16 until that point. The computer that's supposed

17 to send the ad doesn't send the ad. So the

18 newspaper doesn't receive the ad, and they're

19 forced to run some local promotion of some

20 obscure event that's going to happen, you know,

21 in February, a Valentine's Day parade or what

22 have you.

23   So, who's going to get the money?

24 Who's going to be paid for that mistake because

25 the ad agency was not compliant? We deserve

1   some, the newspaper deserves some. Now, should

2   the ad agency be able to turn around and sue

3   the computer company that told them that, yeah,

4   you'll be okay? I'm not sure. The car dealer,

5   he loses revenue too because the ad didn't get

6   placed and it was an ad for his New Year's

7   sale. You know, when he stocked his lot with

8   tons of cars, and now they're still sitting

9   there because the ad didn't go out and nobody

10   knew about the sale.

11   So, let's say that the ad agency is

12   aware of its electronic delivery problem, and

13   so they choose to use Federal Express. Now,

14   Federal Express is diligent and they tested and

15   they've implemented all their fixes, and

16   they've retested their fixes, and their

17   computer systems are great; but they missed

18   that one embedded chip that's in the delivery

19   truck. So the ad is on the truck and the

20   driver goes to turn the truck over, and it

21   doesn't work.

22   So, you know, we're back to the same

23   thing; the ad agency, Fed-Ex, PNPA, the ten

24   newspapers, and the car dealer were all working

25   in good conscience to fix this problem, one

1   embedded chip was missed and so the whole chain

2   is derailed.

3   So given the breadth of an expensive

4   Y2k, our association is taking proactive steps

5   to ensure that our operation is compliant. I'm

6   sure you've heard of the six-step action plan;

7   awareness, assessment, detailed analysis,

8   planing, system conversion, and testing,

9   implementation, and post-implementation.

10   We are currently in the assessment

11   phase, and we're sending out letters to our

12   suppliers, vendors, and customers, which

13   include our members. Just a little note on the

14   letters. They really don't mean anything. We

15   send out a letter, and somebody sends back a

16   form letter that says it may or may not work;

17   and we are working on it.

18   So the problem remains within PNP to

19   make sure -- It's our responsibility to make

20   sure that our computers are okay. Nobody,

21   nobody is going to say we guarantee, you know,

22   even Microsoft. We operate under Windows NT

23   server platform. And okay, they have a table

24   in which a lot of their ninety-nine dollar

25   software programs are compliant. Window NT's

really expensive and it's compliant with minor

issues.   Nowhere on their web site do they

define what minor issues are.   And our entire

network is on Windows NT platform, 4.0, newest

version.

So, we plan to conduct our analysis

by August 31, take necessary steps to convert

tests and implement, and test again.

Admittedly, we're late joining the Y2k

compliance game.   Last September I heard about

the Y2k problem.   I was in another position in

Washington State.

And then I came here, and in June I

heard a presentation given by the Office of

Information Technology in Pennsylvania; and

that's where I really opened my eyes and I

started asking questions around the office.

You know, are we compliant?   What's going to

happen if this ad doesn't get sent out?

I realize the scope and potential

role that PNP could play.   We could either be a

part of the problem or part of the solution.

And so, I chose to be a part of the solution.

My boss and my co-workers all support that.

We've done awareness programs within

our own association. A lot of our, you know,

we have outside sales people. They have cell

phones. They have cars that they need in order

to conduct business. They need to know about

this problem.

I think that PNP is typical of small

businesses in Pennsylvania. You know, I'm not

a computer expert. I just see that this is a

problem that needs to be taken care of, and so

I've taken the steps to insure that it will be.

A lot of people believe Y2k is computer only,

and they don't think it will affect them.

They don't understand that if a

supplier is not compliant, their business could

be affected. And I think these people need to

be educated. I just off the top of my head

wrote down a list of embedded technology.

Pacemakers is a big one, elevators, escalators,

sprinkler systems, VCRs, cell phones, 911,

parking meters, satellite dishes, fire alarms,

closed-captioned television. We're all in this

mess together.

You know, as I'm sure I don't have to

tell you, the economy is intertwined. We're

all linked somehow. And House Bill 2406 and

1   2273 which advocates governmental immunity, I

2   think represents an unfair advantage over the

3   rest of us in the boat down here.

4   Traditionally, the government can

5   claim sovereign immunity except when, as in the

6   case of real estate, highways, sidewalks,

7   potholes, and dangerous conditions, there was a

8   foreseeable risk of injury.

9   When I was home in Boston over the

10   4th of July weekend, I was speaking with

11   somebody who works in a fairly technical

12   literate company, he said they've been working

13   on the problem since 1986. I think this is a

14   foreseeable risk. So the government should not

15   excuse itself and leave the rest of the state

16   at risk.

17   I think everybody should enjoy some

18   level of protection. What good will come from

19   a liability feeding frenzy? When the supply

20   chain is disrupted, thousands of people in

21   businesses are affected. And as I said, it

22   won't matter if one business is compliant. If

23   the business in the supply chain is not

24   compliant, something will suffer. Businesses

25   will bankrupt. Some will be crippled. Why add

the burden of lawsuits to an already damaged

economy. And buying protection is not an

option. There's I think four companies,

insurance companies, now that are selling

coverage for the year 2000; and it's

prohibitedly expensive.

I have a friend who works at an

insurance company here who looked at buying

this for themselves, and they couldn't do it.

They have to spend, you know, hundreds of

thousands of dollars to make their own systems

compliant.

Some people are going to benefit from

this. There is a reference in a newsletter

that was brought to my attention. The

newsletter is called The Final Countdown and

EDS, which is local Electronic Data Systems, is

expecting more Y2k projects and will ramp up

for the workload by hiring 1,400 people

world-wide over the next two years. They

expect to generate $1.3 billion in business

from these Y2k projects, more than offsetting

its own internal Y2k costs of about $144

million.

The fact is that there are billions

of embedded computer chips in things that the

average Joe would never suspect. We've gone

over those. Vending machines is another one.

Automobiles is one.

Somebody told me a story about a

Buick automobile, and it is a 1998 model. A

lot of the automobiles now, as you know, are

run by an embedded chip. They have computers

that run the engine. So they did a test and

they forwarded the clock on this car and they

tried to turn it over, and it wouldn't turn

over. It wouldn't start. So they brought it

to a mechanic. The mechanic put in a new

engine. And they did it again. They forwarded

the clock and again, the car wouldn't start.

So they called the manufacturer and they said,

look, every time we forward the clock over to

January 1, 2000 the engine won't turn over, and

the manufacturer told them not to do that.

So obviously, it's quite possible

that embedded chips will be missed, and some

business will be disrupted. A cap on liability

for the general public should be considered.

The problem is everyone's. So everyone should

work to fix the problem and be encouraged to

fix the problem.

Large law firms have already established the year 2000 work groups to prepare clients for litigation. The focus should not be on who to blame, but how to persevere.

We're working with one law firm to conduct sessions for our members just to make them aware of the problem even more so than they are. And the title of the brochure that I made is, Who Will Pay? It's kind of sad. So here I think the Commonwealth of Pennsylvania can play a proactive role.

You already have an excellent year 2000 action plan as was discussed earlier by the OIT office, and its success is widely recognized in North America. The Commonwealth's Office of Information Technology is an expert, and they communicate the problem excellently. They were the ones that put on that conference in June.

And since the Commonwealth is ahead of schedule and was just awarded $10.9 million by the U.S. Department of Labor to upgrade its mission-critical systems, why not spread the

knowledge. After all, it's in the

Commonwealth's best interest if the majority of

Pennsylvania businesses survive the year 2000

bug.

Failed businesses result in lost tax

revenue, an influx on the welfare roles, thanks

to unemployment, and a general economic slump

complete with disgruntled workers. You have

the opportunity to help your constituents.

Part of Governor Ridge's year 2000 Action Plan

is a state-wide outreach program. And I

encourage you to help accelerate the program.

Add resources to OIT's staffs so that the

message is communicated to every Pennsylvania

business. And I'm not getting paid by them.

It's really good.

The Governor's year 2000 Action Plan

is excellent; and should be given the proper

amount of resources to continue aggressively

helping the citizens of Pennsylvania. Instead

of just taking care of itself, the Commonwealth

can take care of its constituents.

I think the potential monetary

windfall would be better spent prior to the

problem, rather than to fend off lawyers.

1   Education is the key. The citizens need to be

2   aware of this problem so that they can start

3   cleaning house and protecting themselves.

4   The lack of awareness is a daunting

5   one, but under the Commonwealth's leadership

6   that ignorance can be wiped out and the

7   citizens can be given the tools they need to

8   survive. I don't think I need to remind you,

9   but we're running out of time. And I'd be more

10 than happy to answer questions and help in any

11 way that I can. Thank you.

12   CHAIRPERSON GANNON: Thank you very

13 much, Ms. Keith. Well, there's no questions;

14 just a comment, though. It seems to me that

15 what you're suggesting is that, rather than

16 liability immunity for just the Commonwealth

17 that we extend that into all parties with

18 respect to this Y2k problem.

19   MS. KEITH: Well, that might have

20 come from the federal government, and maybe not

21 immunity but a cap definitely.

22   CHAIRPERSON GANNON: It seems to me

23 just going back briefly to what I said before

24 that we don't know exactly what the nature and

25 consequences of a lot of the problems

1   are. We can make some projections, but there

2   are a lot of speculation here also. That we

3   have maybe a time period when immunity would

4   expire. In other words, there would be

5   immunity during a certain time, and then that

6   would expire. Then we would have to consider

7   whether there would be a cap on damages or

8   limitation of liability because again you get

9   into several different standards here.

10   You had mentioned insurance, and I

11   really hadn't picked up on that. More likely

12   than not, even if I couldn't buy insurance,

13   first-party insurance for myself because the

14   cost prohibited it; if somebody I engage as a

15   contractor to write programs and make sure my

16   system was all right, but they were negligent

17   and it didn't solve the problem, and they have

18   some unexpected loss that their liability

19   insurance would have to pay me for the

20   consequences of their negligent conduct, so we

21   would have a negligent standard or some other

22   type of standard. That's something that we

23   have to consider, so that there are some

24   consequences for people who were negligent or

25   don't really want to address this issue or

1   they're just too lazy to do anything about it.

2   Figure, well, we wait until January 1st, 2000

3   and see what happens and then take a look at

4   it.

5   But on the other hand, there are a

6   lot of folks, like yours, that are out there

7   working very diligently to try to remediate or

8   prevent something from happening. Yet even for

9   all your work and, you know, something can go

10   wrong that you didn't anticipate or perhaps

11   missed, but not because you were not being

12   diligent. It's just something that went by the

13   boards.

14   When you mentioned the newspaper ads,

15   I think all of us up here have a very personal

16   interest in that because in the year 2000 is

17   going to be the primary election in the

18   beginning of the year. We want to make sure

19   that advertisement appears in the paper.

20   MS. KEITH: We're just down the

21   street, so you walk it down there.

22   CHAIRPERSON GANNON: We don't want

23   that ad to be missed. But with those comments,

24   I want to thank you for appearing before the

25   committee and sharing your testimony with us.

1   We appreciate it.

2   MS. KEITH: Thank you very much.

3   CHAIRPERSON GANNON: This meeting of

4   the public hearing on House Bills 2273 and 2406

5   is adjourned.

6   (At or about 12:56 the meeting

7   concluded)

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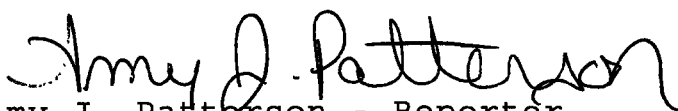
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C E R T I F I C A T E

I, Amy Patterson, Reporter, Notary Public, duly commissioned and qualified in and for the county of York, Commonwealth of Pennsylvania, hereby certify that the foregoing is a true and accurate transcript of my stenotyped notes taken by me and subsequently reduced to computer printout under my supervision, and that this copy is a correct record of the same.

This certification does not apply to any reproduction of the same by any means unless under my direct control and/or supervision.

Dated 17th this day of August, 1998

Amy J. Patterson - Reporter
Notary Public

My commission expires
5/21/01