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SENATE DRS85122-LR-86E* (03/07)

Short Title: Omnibus State IT Governance Changes.

(Public)

Sponsors: Senator Brock (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT MAKING OMNIBUS CHANGES TO THE LAWS RELATING TO STATE
3 INFORMATION TECHNOLOGY GOVERNANCE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 143-135.9(a)(3) is repealed.

6 SECTION 2. G.S. 147-33.72C(e) reads as rewritten:

7 "(e) Performance Contracting. – All contracts between a State agency and a private party
8 for information technology projects shall include provisions for vendor performance review
9 and accountability. The State CIO may require that these contract provisions require a
10 performance bond, include monetary ~~penalties~~ penalties, or require other performance
11 assurance measures for projects that are not completed or performed within the specified time
12 period or that involve costs in excess of those specified in the contract. The State CIO may
13 ~~require contract provisions requiring a vendor to provide a performance bond~~ utilize cost
14 savings realized on government-vendor partnerships, as defined in G.S. 143-135.9, as
15 performance incentives for an information technology project vendor."

16 SECTION 3. G.S. 147-33.91(a) reads as rewritten:

17 "(a) With respect to State agencies, the State Chief Information Officer shall exercise
18 general coordinating authority for all telecommunications matters relating to the internal
19 management and operations of those agencies. In discharging that responsibility, the State
20 Chief Information Officer, in cooperation with affected State agency heads, may:

21 (1) Provide for the establishment, management, and operation, through either
22 State ownership, contract, or commercial leasing, of the following systems
23 and services as they affect the internal management and operation of State
24 agencies:

- 25 a. Central telephone systems and telephone networks.
26 b. Repealed by Session Laws 2004-129, s. 23, effective July 1, 2004.
27 c. Repealed by Session Laws 2004-129, s. 23, effective July 1, 2004.
28 d. Satellite services.
29 e. Closed-circuit TV systems.
30 f. Two-way radio systems.
31 g. Microwave systems.
32 h. Related systems based on telecommunication technologies.
33 i. The "State Network", managed by the Office, which means any
34 connectivity designed for the purpose of providing Internet Protocol
35 transport of information to any building.



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- 1 (2) Coordinate the development of cost-sharing systems for respective user
2 agencies for their proportionate parts of the cost of maintenance and
3 operation of the systems and services listed in subdivision (1) of this
4 subsection.
- 5 (3) Assist in the development of coordinated telecommunications services or
6 systems within and among all State agencies and recommend, where
7 appropriate, cooperative utilization of telecommunication facilities by
8 aggregating users.
- 9 (4) Perform traffic analysis and engineering for all telecommunications services
10 and systems listed in subdivision (1) of this subsection.
- 11 (5) ~~Pursuant to G.S. 143-49, establish~~ Establish telecommunications
12 specifications and designs so as to promote and support compatibility of the
13 systems within State agencies.
- 14 (6) ~~Pursuant to G.S. 143-49 and G.S. 143-50, coordinate~~ Coordinate the review
15 of requests by State agencies for the procurement of telecommunications
16 systems or services.
- 17 (7) ~~Pursuant to G.S. 143-341 and Chapter 146 of the General Statutes,~~
18 ~~coordinate~~ Coordinate the review of requests by State agencies for State
19 government property acquisition, disposition, or construction for
20 telecommunications systems requirements.
- 21 (8) Provide a periodic inventory of telecommunications costs, facilities,
22 systems, and personnel within State agencies.
- 23 (9) Promote, coordinate, and assist in the design and engineering of emergency
24 telecommunications systems, including, but not limited to, the 911
25 emergency telephone number program, Emergency Medical Services, and
26 other emergency telecommunications services.
- 27 (10) Perform frequency coordination and management for State agencies and
28 local governments, including all public safety radio service frequencies, in
29 accordance with the rules and regulations of the Federal Communications
30 Commission or any successor federal agency.
- 31 (11) Advise all State agencies on telecommunications management planning and
32 related matters and provide through the State Personnel Training Center or
33 the Office of Information Technology Services training to users within State
34 agencies in telecommunications technology and systems.
- 35 (12) Assist and coordinate the development of policies and long-range plans,
36 consistent with the protection of citizens' rights to privacy and access to
37 information, for the acquisition and use of telecommunications systems, and
38 base such policies and plans on current information about State
39 telecommunications activities in relation to the full range of emerging
40 technologies.
- 41 (13) ~~Work cooperatively with the North Carolina Agency for Public~~
42 ~~Telecommunications in furthering the purpose of this section."~~

43 **SECTION 4.** G.S. 147-33.92(b) reads as rewritten:

44 "(b) The State Chief Information Officer shall establish ~~switched~~ broadband
45 telecommunications services and permit, in addition to State agencies, cities, counties, and
46 other local government entities, the following organizations and entities to share on a
47 not-for-profit basis:

- 48 (1) Nonprofit educational institutions.
- 49 (2) ~~MCNC.~~
- 50 (3) ~~Research~~ MCNC, and research affiliates of MCNC for use only in
51 connection with research activities sponsored or funded, in whole or in part,

- 1 by MCNC, if such research activities relate to health care or education in
2 North Carolina.
- 3 (4) Agencies of the United States government operating in North Carolina for
4 use only in connection with activities that relate to health care or education
5 in North Carolina.
- 6 (5) Hospitals, clinics, and other health care facilities for use only in connection
7 with activities that relate to health care or education in North Carolina.

8 Provided, however, that sharing of the ~~switched~~ broadband telecommunications services by
9 State agencies with entities or organizations in the categories set forth in this subsection shall
10 not cause the State, the Office of Information Technology Services, or the MCNC to be
11 classified as a public utility as that term is defined in G.S. 62-3(23) a.6. Nor shall the State, the
12 Office of Information Technology Services, or the MCNC engage in any activities that may
13 cause those entities to be classified as a common carrier as that term is defined in the
14 Communications Act of 1934, 47 U.S.C. § 153(10). Provided further, authority to share the
15 ~~switched~~ broadband telecommunications services with the non-State agencies set forth in
16 subdivisions (1) through (5) of this subsection shall terminate one year from the effective date
17 of a tariff that makes the broadband services available to any customer."

18 **SECTION 5.** G.S. 150B-2(8a) reads as rewritten:

19 **"§ 150B-2. Definitions.**

20 As used in this Chapter,

21 ...

- 22 (8a) "Rule" means any agency regulation, standard, or statement of general
23 applicability that implements or interprets an enactment of the General
24 Assembly or Congress or a regulation adopted by a federal agency or that
25 describes the procedure or practice requirements of an agency. The term
26 includes the establishment of a fee and the amendment or repeal of a prior
27 rule. The term does not include the following:
- 28 a. Statements concerning only the internal management of an agency or
29 group of agencies within the same principal office or department
30 enumerated in G.S. 143A-11 or 143B-6, including policies and
31 procedures manuals, if the statement does not directly or
32 substantially affect the procedural or substantive rights or duties of a
33 person not employed by the agency or group of agencies.
- 34 b. Budgets and budget policies and procedures issued by the Director of
35 the Budget, by the head of a department, as defined by G.S. 143A-2
36 or G.S. 143B-3, by an occupational licensing board, as defined by
37 G.S. 93B-1, or by the State Board of Elections.
- 38 c. Nonbinding interpretative statements within the delegated authority
39 of an agency that merely define, interpret, or explain the meaning of
40 a statute or rule.
- 41 d. A form, the contents or substantive requirements of which are
42 prescribed by rule or statute.
- 43 e. Statements of agency policy made in the context of another
44 proceeding, including:
- 45 1. Declaratory rulings under G.S. 150B-4.
46 2. Orders establishing or fixing rates or tariffs.
- 47 f. Requirements, communicated to the public by the use of signs or
48 symbols, concerning the use of public roads, bridges, ferries,
49 buildings, or facilities.
- 50 g. Statements that set forth criteria or guidelines to be used by the staff
51 of an agency in performing audits, investigations, or inspections; in

1 settling financial disputes or negotiating financial arrangements; or in
2 the defense, prosecution, or settlement of cases.

3 h. Scientific, architectural, or engineering standards, forms, or
4 procedures, including design criteria and construction standards used
5 to construct or maintain highways, bridges, or ferries.

6 i. Job classification standards, job qualifications, and salaries
7 established for positions under the jurisdiction of the State Personnel
8 Commission.

9 j. Establishment of the interest rate that applies to tax assessments
10 under G.S. 105-241.21 and the variable component of the excise tax
11 on motor fuel under G.S. 105-449.80.

12 k. The State Medical Facilities Plan, if the Plan has been prepared with
13 public notice and hearing as provided in G.S. 131E-176(25),
14 reviewed by the Commission for compliance with
15 G.S. 131E-176(25), and approved by the Governor.

16 l. Standards adopted by the Office of Information Technology Services
17 applied to information technology as defined by G.S. 147-33.81."

18 **SECTION 6.** G.S. 147-33.72B(b)(1) reads as rewritten:

19 "(b) The Plan shall include the following elements:

20 (1) An inventory of current information technology assets and major projects
21 currently in progress. As used in this subdivision, the term "major project"
22 includes projects subject to review and approval under ~~G.S. 147-33.72C, or~~
23 ~~that cost more than five hundred thousand dollars (\$500,000) to~~
24 ~~implement G.S. 147-33.72C."~~

25 **SECTION 7.** G.S. 147-33.72C reads as rewritten:

26 **"§ 147-33.72C. Project approval standards.**

27 (a) Project Review and Approval. – The State Chief Information Officer shall:

28 (1) Review all State agency information technology ~~projects that cost or are~~
29 ~~expected to cost more than five hundred thousand dollars (\$500,000),~~
30 ~~whether the project is undertaken in a single phase or component or in~~
31 ~~multiple phases or components.~~ projects. If the State Chief Information
32 Officer determines a project meets the quality assurance requirements
33 established under this Article, the State Chief Information Officer shall
34 approve the project.

35 (2) ~~Establish thresholds for determining which information technology projects~~
36 ~~costing or expected to cost five hundred thousand dollars (\$500,000) or less~~
37 ~~shall be subject to review and approval under subdivision (a)(1) of this~~
38 ~~section. When establishing the thresholds, the State Chief Information~~
39 ~~Officer shall consider factors such as project cost, potential project risk,~~
40 ~~agency size, and projected budget.~~

41 (b) Project Implementation. – No State agency shall proceed with an information
42 technology project that is subject to review and approval under subsection (a) of this section
43 until the State CIO approves the project. If a project is not approved, the State CIO shall
44 specify in writing to the agency the grounds for denying the approval. The State CIO shall
45 provide this information to the agency within five business days of the denial.

46 (c) Suspension of Approval. – The State Chief Information Officer may suspend the
47 approval of any information technology project that does not continue to meet the applicable
48 quality assurance standards. ~~This authority extends to any information technology project that~~
49 ~~costs more than five hundred thousand dollars (\$500,000) to implement regardless of whether~~
50 ~~the project was originally subject to review and approval under subsection (a) of this section.~~ If
51 the State CIO suspends approval of a project, the State CIO shall specify in writing to the

1 agency the grounds for suspending the approval. The State CIO shall provide this information
2 to the agency within five business days of the suspension.

3 The Office of Information Technology Services shall report any suspension immediately to
4 the Office of the State Controller and the Office of State Budget and Management. The Office
5 of State Budget and Management shall not allow any additional expenditure of funds for a
6 project that is no longer approved by the State Chief Information Officer.

7 ~~(d) General Quality Assurance. Information technology projects that are not subject to~~
8 ~~review and approval under subsection (a) of this section shall meet all other standards~~
9 ~~established under this Article.~~

10 (e) Performance Contracting. – All contracts between a State agency and a private party
11 for information technology projects shall include provisions for vendor performance review
12 and accountability. The State CIO ~~may~~must require that these contract provisions include a
13 performance bond and may require that the contract provisions include monetary penalties or
14 other performance assurance measures for projects that are not completed or performed within
15 the specified time period or that involve costs in excess of those specified in the contract. ~~The~~
16 ~~State CIO may require contract provisions requiring a vendor to provide a performance bond.~~
17 The State CIO may utilize, as performance incentives, for an information technology projects
18 cost savings realized in government-vendor partnerships, as defined in G.S. 143-135.9.

19 (f) Notwithstanding the provisions of G.S. 114-2.3, any State agency developing and
20 implementing an information technology project with a total cost of ownership in excess of five
21 million dollars (\$5,000,000) shall engage the services of private counsel with the appropriate
22 information technology and intellectual property expertise. The private counsel shall review
23 requests for proposals; review and provide advice and assistance during the evaluation of
24 proposals and selection of any vendors; and review and negotiate contracts associated with the
25 development, implementation, operation, and maintenance of the project. This requirement
26 shall also apply to information technology programs that are separated into individual projects,
27 if the total cost of ownership for the overall program exceeds five million dollars
28 (\$5,000,000)."

29 **SECTION 8.** G.S. 147-33.72H reads as rewritten:

30 **"§ 147-33.72H. Information Technology Fund.**

31 There is established a special revenue fund to be known as the Information Technology
32 Fund, which may receive transfers or other credits as authorized by the General Assembly.
33 Money shall be appropriated from the Information Technology Fund to support the operation
34 and administration of the Office of the State Chief Information Officer. Money may be
35 appropriated from the Information Technology Fund to meet statewide requirements, including
36 planning, project management, security, electronic mail, State portal operations, and the
37 administration of systemwide procurement procedures. Expenditures involving funds
38 appropriated to the Office of Information Technology Services from the Information
39 Technology Fund shall be made by the CIO. By October 1 of each year, the State CIO shall
40 submit to the Joint Legislative Oversight Committee on Information Technology a report on all
41 expenditures involving funds appropriated to the Office of Information Technology Services
42 from the Information Technology Fund for the preceding fiscal year. Interest earnings on the
43 Information Technology Fund balance shall be credited to the Information Technology Fund."

44 **SECTION 9.** G.S. 147-33.76 reads as rewritten:

45 **§ 147-33.76. Qualification, appointment, and duties of the State Chief Information**
46 **Officer.Officer; role of chief deputy information officer.**

47 (a) The Office of Information Technology Services shall be managed and administered
48 by the State Chief Information Officer ("State CIO"). The State Chief Information Officer shall
49 be ~~qualified by education and experience for the office and shall be appointed by and serve at~~
50 ~~the pleasure of the Governor.~~appointed by the Governor and confirmed by joint resolution of

1 the General Assembly to serve a five-year term. The State Chief Information Officer shall be
2 qualified for the office by education and experience.

3 (b) Repealed by Session Laws 2004-129, s. 3.

4 (b1) The State CIO shall be responsible for developing and administering a
5 comprehensive long-range plan to ensure the proper management of the State's information
6 technology resources. The State CIO shall set technical standards for information technology,
7 review and approve major information technology projects, review and approve State agency
8 information technology budget requests, establish information technology security standards,
9 provide for the procurement of information technology resources, and develop a schedule for
10 the replacement or modification of major systems. The State CIO is authorized to adopt rules to
11 implement this Article.

12 (c) The salary of the State Chief Information Officer shall be set by the Governor. The
13 State Chief Information Officer is exempt from the State Personnel Act. The State Chief
14 Information Officer however, the State CIO shall receive longevity pay on the same basis as is
15 provided to employees of the State who are subject to the State Personnel Act.

16 (d) The State Chief Information Officer may appoint a chief deputy information officer.
17 The salary of the chief deputy information officer shall be set by the State CIO. The State CIO
18 may appoint all employees, including legal counsel, necessary to carry out the powers and
19 duties of the office. These employees are exempt from the State Personnel Act."

20 **SECTION 10.** G.S. 147-33.77 reads as rewritten:

21 **§ 147-33.77. Office of Information Technology Services; organization and operation.**

22 ~~(a) The State Chief Information Officer may appoint a Chief Deputy Information~~
23 ~~Officer. The salary of the Chief Deputy Information Officer shall be set by the State Chief~~
24 ~~Information Officer. The State Chief Information Officer may appoint all employees, including~~
25 ~~legal counsel, necessary to carry out the powers and duties of the office. These employees shall~~
26 ~~be subject to the State Personnel Act.~~

27 (b) All employees of the office shall be under the supervision, direction, and control of
28 the State Chief Information Officer. Except as otherwise provided by this Article, the State
29 Chief Information Officer may assign any function vested in the State Chief Information
30 Officer or the Office of Information Technology Services to any subordinate officer or
31 employee of the office.

32 (c) The State Chief Information Officer may, subject to the provisions of
33 G.S. 147-64.7(b)(2), obtain the services of independent public accountants, qualified
34 management consultants, and other professional persons or experts to carry out powers and
35 duties of the office.

36 (d) The State Chief Information Officer shall have legal custody of all books, papers,
37 documents, and other records of the office.

38 (e) The State Chief Information Officer shall be responsible for the preparation of and
39 the presentation of the office budget request, including all funds requested and all receipts
40 expected for all elements of the budget.

41 (f) The State Chief Information Officer may adopt regulations for the administration of
42 the office, the conduct of employees of the office, the distribution and performance of business,
43 the performance of the functions assigned to the State Chief Information Officer and the Office
44 of Information Technology Services, and the custody, use, and preservation of the records,
45 documents, and property pertaining to the business of the office.

46 (g) The State Chief Information Officer may require background investigations of any
47 employee or prospective employee, including a criminal history record check, which may
48 include a search of the State and National Repositories of Criminal Histories based on the
49 person's fingerprints. A criminal history record check shall be conducted by the State Bureau of
50 Investigation upon receiving fingerprints and other information provided by the employee or
51 prospective employee. If the employee or prospective employee has been a resident of the State

1 for less than five years, the background report shall include a review of criminal information
2 from both the State and National Repositories of Criminal Histories. The criminal background
3 report shall be provided to the State Chief Information Officer and is not a public record under
4 Chapter 132 of the General Statutes."

5 **SECTION 11.** G.S. 147-33.111 reads as rewritten:

6 "**§ 147-33.111. State CIO approval of security standards and security assessments.**

7 (a) Notwithstanding G.S. 143-48.3 or any other provision of law, and except as
8 otherwise provided by this section, all information technology security purchased using State
9 funds, or for use by a State agency or in a State facility, shall be subject to approval by the State
10 Chief Information Officer in accordance with security standards adopted under this Article.

11 (a1) The State Chief Information Officer shall conduct assessments of information
12 system security, network vulnerability, including network penetration or any similar procedure.
13 The State Chief Information Officer may contract with another party or parties to perform the
14 assessments. Detailed reports of the security issues identified shall be kept confidential as
15 provided in G.S. 132-6.1(c).

16 (b) If the legislative branch, the judicial branch, The University of North Carolina and
17 its constituent institutions, local school administrative units as defined by G.S. 115C-5, or the
18 North Carolina Community Colleges System develop their own security standards, taking into
19 consideration the mission and functions of that entity, that are comparable to or exceed those
20 set by the State Chief Information Officer under this section, then these entities may elect to be
21 governed by their own respective security standards, and approval of the State Chief
22 Information Officer shall not be required before the purchase of information technology
23 security. The State Chief Information Officer shall consult with the legislative branch, the
24 judicial branch, The University of North Carolina and its constituent institutions, local school
25 administrative units, and the North Carolina Community Colleges System in reviewing the
26 security standards adopted by those entities.

27 (c) Before a State agency may enter into any contract with another party for an
28 assessment of information system security and network vulnerability, the State agency shall
29 notify the State Chief Information Officer and obtain approval of the request. If the State
30 agency enters into a contract with another party for assessment and testing, after approval of the
31 State Chief Information Officer, the State agency shall issue public reports on the general
32 results of the reviews. The contractor shall provide the State agency with detailed reports of the
33 security issues identified that shall not be disclosed as provided in G.S. 132-6.1(c). The State
34 agency shall provide the State Chief Information Officer with copies of the detailed reports that
35 shall not be disclosed as provided in G.S. 132-6.1(c).

36 (d) Nothing in this section shall be construed to preclude the Office of the State Auditor
37 from assessing the security practices of State information technology systems as part of that
38 Office's duties and responsibilities."

39 **SECTION 12.** G.S. 147-33.112 reads as rewritten:

40 "**§ 147-33.112. Assessment of agency compliance with security standards.**

41 The State Chief Information Officer shall assess periodically the ability of each ~~agency~~
42 agency, and each agency's contracted vendors, to comply with the current security
43 enterprise-wide set of standards established pursuant to this section. The assessment shall
44 include, at a minimum, the rate of compliance with the enterprise-wide security standards in
45 ~~each agency~~ and an assessment of ~~each agency's~~ security organization, security practices,
46 security industry standards, network security architecture, and current expenditures of State
47 funds for information technology security. The assessment of an agency shall also estimate the
48 cost to implement the security measures needed for agencies to fully comply with the
49 standards. Each agency subject to the standards shall submit information required by the State
50 Chief Information Officer for purposes of this assessment. The State Chief Information Officer

- 1 shall include the information obtained from the assessment in the State Information Technology
2 Plan required under G.S. 147-33.72B."
3 **SECTION 13.** This act is effective when it becomes law.