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Information Technology

The General Assembly continued to provide for the increased use of information technology to deliver public services by modifying established purchasing laws to allow for e-procurement and electronic signatures. The responsibilities of the state Chief Information Officer (CIO) were increased, thereby further consolidating information technology (IT) planning, procurement, and management under the auspices of the Office of Information Technology Services.

Electronic Procurement

S.L. 2001-328 (H 1169) makes numerous changes in the local government purchasing statutes. Three changes that relate specifically to information technology are highlighted below. (These and other provisions are discussed in further detail in Chapter 21, “Purchasing and Contracting.”)

The act authorizes the use of electronic advertisements for construction and purchasing contracts at the option of the local government. The use of electronic rather than newspaper advertisement requires governing board approval. The act also clarifies the “minimum time for advertisement” of bid opportunities in newspapers and electronic format.

S.L. 2001-328 adds new G.S. 143-129.8 establishing an optional “request for proposals” procedure for IT goods and services to provide flexibility in procuring these potentially complex contracts. A separate piece of local legislation, S.L. 2001-54 (S 675), authorizes Forsyth County and the City of Winston-Salem to purchase or lease telecommunications, data processing, and data communications equipment, software, supplies, and services on a request for proposals basis.

The act also adds new subsection (c) to G.S. 160A-270, authorizing municipalities to hold electronic auctions of real or personal property.

Several items in the Appropriations Act, S.L. 2001-424 (S 1005), also relate to electronic procurement. Section 27.9(a) authorizes the Department of Transportation to accept bids by electronic means and to issue rules governing the acceptance of these bids. For purposes of this

section, *electronic means* is defined as relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Section 15.6(e) allows The University of North Carolina (UNC) Board of Governors to exempt The University of North Carolina at Chapel Hill (UNC-CH) and North Carolina State University (NCSU) from the North Carolina E-Procurement Service until May 2003 to allow time for a study of the e-procurement system. Section 15.6(f) allows any state entity, local school administrative unit, or community college that was operating an electronic procurement system prior to September 2001 to continue its operation until May 2003. However, each entity must report to the Information Resource Management Commission (IRMC) by January 2002 and annually thereafter of its intent to participate in the e-procurement program.

Section 15.6(d) of the Appropriations Act amends G.S. 143-49 by adding a new subdivision concerning the establishment and maintenance of a procurement card program for use by state agencies, community colleges, the UNC System, and local school administrative units. The Secretary of the Department of Administration is authorized to adopt rules for the program, which should be tightly integrated with the North Carolina E-Procurement Service. NCSU and UNC-CH may use procurement cards consistent with the rules adopted by the secretary, provided that the procurement cards have a purchase limit of \$250 per month.

Uniform Electronic Transactions

S.L. 2001-295 (S 1023) revises legislation passed last year that authorized the use of “electronic signatures” on a voluntary basis in most types of transactions and contracts. This new statute conforms state law to recent federal legislation—the Electronic Signatures in Global and National Commerce Act—and makes clarifying changes to the existing statutes.

The act adds a list of notices and documents for which the statute does not apply. It also provides that the law will not recognize an electronic record transaction as being “in writing” if the electronic record is not capable of being accurately reproduced for later reference by all parties entitled to retain it. The act provides that a consumer transaction will be deemed to have been entered into in North Carolina if the consumer is located in the state and the transaction is subject to a state statute, regulation, or law requiring that information relating to the transaction be provided or made available to the consumer in writing, and such information is created or documented by an electronic record. Other language clarifies when an electronic record is considered received, what constitutes consent to use electronic records, when hard copy documents are required, and when a recording of an oral communication qualifies as an electronic record.

The act also amends Article 40 of Chapter 66 of the North Carolina General Statutes by adding a section that clarifies the conditions under which North Carolina law, as opposed to the laws of a state that has enacted the Uniform Computer Information Transactions Act, can be used in computer information agreements.

Intellectual Property

Section 15.1 of S.L. 2001-424 requires that prior to the transfer of any patentable intellectual property or the release of any state funds to develop patentable intellectual property, the transferring entity shall submit to the Governor, the Joint Legislative Commission on Governmental Operations, and the chairs of the House of Representatives Science and Technology Committee and the Senate Information Technology Committee a written statement describing the value of the intellectual property and the state’s interest in the property. This evaluation should also include information about how the state’s interests are being protected by the transfer as well as assurances that state funds used for the development of the property have not inappropriately benefited any person or entity. This requirement does not apply to the University of North

Carolina or the North Carolina Community Colleges Systems or to their employees. Further, the Board of Science and Technology is directed to study the transfer and use of intellectual property developed with state resources and report to the Governor and the 2002 regular session of the General Assembly.

Electronic Public Records

Four pieces of legislation that passed this session impact the gathering or disclosure of public information that is or is likely to be in electronic format, often on governmental Web sites. S.L. 2001-279 (S 365) allows a board of county commissioners to provide, by resolution, for the electronic listing of business personal property for ad valorem taxes and to extend the time for electronic listing of such property to June 1. The act provides that electronic listings may be signed electronically in accordance with the Electronic Commerce Act and will be considered filed when received in the office of the assessor.

S.L. 2001-473 (S 774) amends G.S. 132-1.1 to stipulate that billing information compiled and maintained by a city or county or other public entity providing utility services in connection with the ownership or operation of a public enterprise is not a public record. This act specifies that it does not limit disclosure by a city or county of billing information useful or necessary to the issue of bonds or other obligations or necessary to maintain the integrity and quality of services or to assist law enforcement or other public safety officers or judicial officers in the performance of their duties.

S.L. 2001-256 (H 998) adds new Article 3F, entitled "State Privacy Act," to G.S. Chapter 143, making it unlawful for any state or local government agency to deny to any individual any right, benefit, or privilege provided by law because of the individual's refusal to disclose his or her social security number. Exceptions occur when (1) the disclosure is required or permitted by federal statute or (2) the disclosure is to a state or local agency whose system of records was in existence and operating before January 1, 1975, and the disclosure was required by statute or regulation adopted prior to that date to verify identity. Agencies that request social security numbers must inform individuals whether the disclosure is mandatory or voluntary, inform them of the authority for the request, and describe what uses will be made of the requested information. (G.S. 143-64.60.)

Finally, in response to the heightened awareness of the dangers of detailed security and infrastructure information being easily available to terrorists, S.L. 2001-516 (H 1284) adds a new section to Chapter 132 of the General Statutes entitled "Sensitive Public Security Information." This section provides that *public records* as defined in Chapter 132 shall not include information containing specific details of public security plans and arrangements or detailed plans and drawings of public buildings and infrastructure facilities. Information relating to the general adoption of public security plans and budgetary information concerning either the implementation of security plans or the construction, renovation, or repair of public buildings and infrastructure remain public records. (G.S. 132-1.6.) This section applies to public records in existence on or after January 4, 2002.

Office of Information Technology Services

A number of special provisions in the budget bill, S.L. 2001-424, affect the finances of the Office of Information Technology Services (ITS). The act provides that ITS must transfer a total of \$10 million from its operating account to the General Fund in three separate payments during fiscal year 2001–2002 [sec. 2.2(i)]. ITS may not increase its rates to offset any reductions required by this act.

Section 15.2 rewrites portions of G.S. 147-33.81–82 to require the state CIO to establish information technology enterprise-wide security standards to maximize the functionality, security,

and interoperability of the state's distributed IT assets. The IRMC and the Joint Legislative Commission on Governmental Operations must approve these standards. As part of creating these standards, the state CIO shall periodically review existing security standards and practices in place among various state agencies to determine whether those standards and practices meet enterprise-wide security and encryption requirements. If a state agency fails to adhere to the established security standards, the state CIO may assume direct responsibility for providing for the IT security for that agency. Any actions taken by the CIO must be reported to the IRMC. Section 15.2 also adds a new subdivision to G.S. 147-64.6(c) requiring the State Auditor to assess, confirm, and report on the security practices of IT systems.

The legislative and judicial branches of state government, the UNC System, local school administrative units, and the North Carolina Community Colleges System are authorized to develop their own security standards.

Section 15.3 of S.L. 2001-424 adds a new subsection to G.S. 143-6 that requires any department, bureau, division, officer, board, commission, institution, or other state agency requesting state funds of more than \$100,000 for the acquisition or maintenance of IT services or equipment to submit to the state CIO, prior to requesting funds, a statement of its needs and other additional information as required by the CIO. The CIO shall then review the statement of needs, certify them, and report to the Governor on their merit and compliance with Article 3D of Chapter 147 of the General Statutes.

Sections 15.4–5 require the Office of the State Controller, the Office of State Budget and Management (OSBM), the Office of Information Technology Services, and the Office of State Personnel to develop common definitions and tracking mechanisms to monitor computer networking and telecommunications costs. In addition, these agencies are instructed to study the use of IT contractors and the feasibility of a pilot program to allow budget flexibility to convert IT contractors to state employees.

Sections 15.7(a)–(d) direct ITS to continue funding the same North Carolina Information Highway (NCIH) sites that received funding from ITS operating cash during fiscal year 2000–2001. The total amount of ITS funding for NCIH sites, for fiscal year 2001–2002 only, is in excess of \$3 million. In addition, ITS is to work with the Department of Community Colleges and the Department of Public Instruction to evaluate the use of the NCIH by schools and to recommend reallocation of funds from schools not using the site. The Appropriations Subcommittee on Education is to review the use of the NCIH and recommend a mechanism for funding the sites beyond year 2001–2002.

Sections 15.8(a)–(b) direct the OSBM to administer reductions in ITS telephone, telecommunications data, and computer data processing expenditure accounts in an amount equal to \$4 million of individual agency General Fund appropriations. Reductions in expenditures are to match rate reductions proposed by ITS.

A separate piece of legislation, S.L. 2001-142 (S 1070), establishes a dispute resolution panel and procedures to assist ITS in the collection of fees related to IT services it provides to state government agencies. The State Auditor is to adopt rules for the dispute resolution process, and the decisions of the panel are to be final in the settlement of all fee disputes that come before it.

Health Insurance Portability and Accountability Act

In this year's budget bill, the General Assembly set aside \$15 million in a reserve fund managed by OSBM to initiate Health Insurance Portability and Accountability Act (HIPAA) implementation. OSBM, in consultation with the state CIO and the Secretary of Health and Human Services, is to develop a strategic plan for state agency compliance. The North Carolina Department of Health and Human Services (DHHS) has had HIPAA compliance project management office in place for two years and has estimated that efforts to comply with federal regulations could approach \$92 million in state funding needs.

OSBM's strategic plan must document HIPAA requirements relative to state agencies, assess the state's administrative and technology systems in light of HIPAA requirements, and develop a time frame and cost analysis for compliance efforts. A number of House and Senate committees, including the Joint Legislative Commission on Governmental Operations and the Legislative Fiscal Research Division, must oversee and approve plans for reserve funds disbursement. Recognizing that specialized technical assistance may be needed to help with DHHS HIPAA compliance efforts, the General Assembly enacted a special budget provision to allow DHHS to establish time-limited positions not subject to the State Personnel Act or the state's salary schedule. These positions would staff HIPAA IT project to prepare for and implement federal requirements for HIPAA medical records privacy standards.

DHHS Automation Efforts

Several special budget provisions direct DHHS automation efforts in the areas of long-term care, childhood immunization, and AIDS/HIV drug assistance. To help create a continuum of long-term care for the elderly and disabled, DHHS may begin development and implementation of a comprehensive data system that tracks long-term care expenditures, services, and consumer profiles and preferences, if the department can identify nonstate funds to be used for this purpose.

State money is set aside for continued development of an automated immunization registry. Funding this registry is an approved use of part of the \$1 million appropriated in each year of the biennium to increase childhood immunization rates. DHHS may also spend up to \$50,000 to implement an AIDS/HIV management information system to track medication cost and utilization data and participant demographics in the department's AIDS Drug Assistance Program (ADAP).

Committee Membership

The 2001 General Assembly expanded, changed, and codified membership on a number of IT committees, beginning with expanded citizen representation on the IRMC. Under S.L. 2001-166 (H 331), House and Senate leaders are to appoint two citizens each to the commission, increased from one each, and as with current law, citizen representatives must have a background in and familiarity with information systems or telecommunications.

S.L. 2001-171 (H 1090) changes membership on the Rural Internet Access Authority (RIAA) by having the president of the Rural Economic Center, rather than the Rural Center's chair, serve as an ex officio member of the authority. The Rural Center houses the RIAA and its staff.

S.L. 2001-359 (S 895) legislatively authorizes the North Carolina Geographic Information Coordinating Council, an advisory intergovernmental body on geographic information systems (GIS) that had previously been authorized by executive act since its inception ten years ago. The Coordinating Council is responsible for GIS strategic planning, resolving GIS policy and technical issues, and overseeing and coordinating GIS efforts among state, federal, and local government and university and private agencies to improve GIS access, quality, efficiency, and use in North Carolina. Up to thirty-five members may serve on the council, including six gubernatorial appointments, three House and three Senate appointments, specific state agency secretaries and council of state members, the president of the UNC System, and local government representatives. The Center for Geographic Information and Analysis staffs the council and its committees.

Finally, a special provision in the budget bill—Section 23.6—amends membership on the Criminal Justice Information Network (CJIN) Governing Board by increasing the Governor's appointments from three to four members, to include an employee of the recently formed Department of Juvenile Justice and Delinquency Prevention.

Section 23.6 also requires the CJIN Governing Board to report to the General Assembly by April 1, 2002, on the board's operating budget, including board expenditures and reserve fund amounts. The board must also present at that time a long-term strategic plan and cost analysis for

statewide implementation of the CJIN, including initial cost estimates of each network component, funding sources to date, completion timetables, and remaining resources needed.

The General Assembly, having eliminated the State Planning Unit through a special budget provision (Section 12.2), moved two of the unit's functional divisions to other state agencies by enacting another special provision, Section 12.3. The Center for Geographic Information Analysis/Geodetic Survey is transferred to the Department of Environment and Natural Resources Division of Land Resources, and the Statewide Floodplain Mapping Unit is transferred to the Department of Crime Control and Public Safety Division of Emergency Management.

Use of 911 Funds Study

In response to a growing number of local bills to expand the use of 911 funds, the General Assembly has authorized the Joint Legislative Utility Review Committee to study clarifying and expanding the use of these local funds [S.L. 2001-491 (S 166), sec. 30.1]. The Review Committee is also authorized to report its findings to the 2002 General Assembly and may also report to the 2003 General Assembly as well.

In 1989 local governments were authorized to enact ordinances to impose a monthly 911 charge that would be used to provide a toll-free number for public safety aid access (G.S. Chapter 62A). The telephone exchange service provider collects the monthly fee from its telephone subscribers and remits the funds monthly to the local government, less an up to 1 percent administrative fee. Chapter 62A of the General Statutes restricts a local government's use of these funds to the "lease, purchase, or maintenance of emergency telephone equipment" to establish a 911 system and to pay the service supplier's 911 rates and its other 911 recurring charges. Further, Chapter 62A specifically prohibits the use of these funds to pay for real estate, cosmetic remodeling of dispatch centers, emergency response staff, and emergency response vehicles.

Local legislation introduced in the 2001 session generally would either eliminate these prohibitions entirely or permit some 911 funds (usually 50 percent) to be used for these expenditure categories, in order to offset some operating expenses. Other uses of these funds were also contemplated; the original version of Senate Bill 589 would have permitted the City of Charlotte to use its 911 funds to establish a nonemergency 311 service.

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