

GENERAL ASSEMBLY OF NORTH CAROLINA

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SENATE BILL 222

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Short Title: Electronic Payment/Info Tech Management.

(Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR STATE AND LOCAL GOVERNMENTS TO ACCEPT CREDIT CARDS, CHARGE CARDS, DEBIT CARDS, AND ELECTRONIC FUNDS TRANSFERS FOR PAYMENT OF GOVERNMENT FEES, COSTS, AND DEBTS, TO ALLOW LOCAL GOVERNMENTS TO ACCEPT CREDIT CARDS, CHARGE CARDS, DEBIT CARDS, AND ELECTRONIC FUNDS TRANSFERS FOR PAYMENT OF PROPERTY TAXES, AND TO CREATE THE OFFICE OF INFORMATION TECHNOLOGY TO STRENGTHEN THE MANAGEMENT OF INFORMATION TECHNOLOGY IN STATE GOVERNMENT, ENHANCE ACCOUNTABILITY OF INFORMATION TECHNOLOGY EXPENDITURES, IMPROVE COST-EFFECTIVE INFORMATION TECHNOLOGY INVESTMENTS, INCREASE INFORMATION TECHNOLOGY EFFICIENCIES, AND CLARIFY AREAS OF RESPONSIBILITY FOR STATE INFORMATION TECHNOLOGY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-86.20 is amended by adding a new subdivision to read:

1 "(2a) Electronic payment. – Payment by charge card, credit card, debit
2 card, or by electronic funds transfer as defined in this subsection."

3 Section 2. G.S. 147-86.10 reads as rewritten:

4 "**§ 147-86.10. Statement of policy.**

5 It is the policy of the State of North Carolina that all agencies, institutions,
6 departments, bureaus, boards, ~~commissions~~ commissions, and officers of the State,
7 whether or not subject to the Executive Budget Act, Chapter 143, Article 1 of the General
8 Statutes, shall devise techniques and procedures for the receipt, deposit, and disbursement
9 of moneys coming into their control and custody which are designed to maximize
10 interest-bearing investment of cash, and to minimize idle and nonproductive cash
11 balances. This policy shall apply to the General Court of Justice as defined in Article IV
12 of the North Carolina Constitution, the public school administrative units, and the
13 community colleges with respect to the receipt, deposit, and disbursement of moneys
14 required by law to be deposited with the State Treasurer and with respect to moneys
15 made available to them for expenditure by warrants drawn on the State Treasurer. This
16 policy shall include the acceptance of electronic payments in accordance with G.S. 147-
17 86.22 to the maximum extent possible consistent with sound business practices."

18 Section 3. G.S. 147-86.22(b) reads as rewritten:

19 "~~(b) Credit Card Electronic Payment. – Notwithstanding the provisions of G.S. 147-~~
20 ~~86.20 and G.S. 147-86.21, this subsection applies to debts owed a community college, a~~
21 ~~local school administrative unit, an area mental health, developmental disabilities, and~~
22 ~~substance abuse authority, and the Administrative Office of the Courts, and to debts~~
23 ~~payable to or through the office of a clerk of superior court or a magistrate, as well as to~~
24 ~~debts owed to other State agencies as defined in G.S. 147-86.20. The~~

25 The State Controller may shall establish policies that allow accounts receivable to be
26 payable under certain conditions, with the concurrence of the State Treasurer, by credit card.
27 conditions by electronic payment. These policies shall be established with the
28 concurrence of the State Treasurer. In addition, any policies that apply to debts payable
29 to or through the office of a clerk of superior court or a magistrate shall be established
30 with the concurrence of the Administrative Officer of the Courts. The Administrative
31 Officer of the Courts may also establish policies otherwise authorized by law that apply
32 to these debts as long as those policies are not inconsistent with the Controller's policies.

33 A condition of payment by ~~credit card~~ electronic payment is receipt by the appropriate
34 State agency of the full amount of the account receivable owed to the State agency. A
35 debtor who pays by ~~credit card~~ electronic payment ~~shall may~~ be required to ~~include an~~
36 ~~amount equal to any fee charged by a depository financial institution for processing the credit~~
37 ~~card payment.~~ pay any fee or charge associated with the use of electronic payment. Fees
38 associated with processing electronic payments may be paid out of the General Fund and
39 Highway Fund if the payment of the fee by the State is economically beneficial to the
40 State and the payment of the fee by the State has been approved by the State Controller
41 and State Treasurer.

42 The State Controller and State Treasurer shall consult with the Joint Legislative
43 Commission on Governmental Operations before establishing policies that allow

1 accounts receivable to be payable by electronic payment and before authorizing fees
2 associated with electronic payment to be paid out of the General Fund and Highway
3 Fund. A State agency must also consult with the Joint Legislative Commission on
4 Governmental Operations before implementing any program to accept payment under the
5 policies established pursuant to this subsection.

6 A payment of an account receivable that is made by ~~credit card~~ electronic payment and
7 is not honored by the issuer of the ~~credit card~~ or the financial institution offering
8 electronic funds transfer does not relieve the debtor of the obligation to pay the account
9 receivable."

10 Section 4. G.S. 147-86.11 reads as rewritten:

11 "**§ 147-86.11. Cash management for the State.**

12 (a) Uniform Plan. – The State Controller, with the advice and assistance of the
13 State Treasurer, the State Budget Officer, and the State Auditor, shall develop, implement
14 and amend as necessary a uniform statewide plan to carry out the cash management
15 policy for all State agencies. The State Auditor shall report annually to the Advisory
16 Budget Commission and the General Assembly on the implementation of the plan as
17 shown in the audits completed during the prior fiscal year. The State Treasurer shall
18 recommend periodically to the General Assembly any implementing legislation necessary
19 or desirable in the furtherance of the State policy. When used in this section, 'State
20 agency' means any agency, institution, bureau, board, commission or officer of the State;
21 however, except as provided in G.S. 147-86.12, 147-86.13, ~~and 147-86.14, 147-86.14, and~~
22 147-86.22, this Article ~~shall does~~ not apply to the agencies, institutions, bureaus, boards,
23 commissions and officers of the General Court of Justice as defined in Article IV of the
24 North Carolina Constitution or to the local school administrative units and community
25 colleges and their officers and employees.

26 (b) Duties of Auditor. – The State Auditor pursuant to ~~his~~ authority under G.S.
27 147-64.6 shall monitor agency compliance with this Article, and make any comments,
28 suggestions, and recommendations ~~he~~ the Auditor deems advisable to the agencies.

29 (c) Treasurer's Report. – The State Treasurer shall publish a quarterly report on all
30 funds in the control or custody of the State Treasurer showing cash balances on hand,
31 investments of cash balances and a comparative analysis of earnings and investment
32 performances.

33 (d) Earnings on Trust Funds. – The statewide cash management plan shall provide
34 that any net earnings on invested funds, whose beneficial owner is not the State or a local
35 governmental unit, shall be paid to the beneficial owners of the funds. 'Net earnings' are
36 the amounts remaining after allowance for the cost of administration, management, and
37 operation of the invested funds.

38 (e) Elements of Plan. – For moneys received or to be received, the statewide cash
39 management plan shall provide at a minimum that:

- 40 (1) Except as otherwise provided by law, moneys received by
41 employees of State agencies in the normal course of their
42 employment shall be deposited as follows:

- 1 a. Moneys received in trust for specific beneficiaries for which the
2 employee-custodian has a duty to invest shall be deposited with
3 the State Treasurer under the provisions of G.S. 147-69.3.
- 4 b. All other moneys received shall be deposited with the State
5 Treasurer pursuant to G.S. 147-77 and G.S. 147-69.1.
- 6 (2) Moneys received shall be deposited daily in the form and amounts
7 received, except as otherwise provided by ~~statute;~~ statute.
- 8 (3) Moneys due to a State agency by another governmental agency or by
9 private persons shall be promptly billed, collected and ~~deposited;~~
10 deposited.
- 11 (4) Unpaid billings due to a State agency shall be turned over to the
12 Attorney General for collection no more than 90 days after the due
13 date of the billing, except that a State agency need not turn over to
14 the Attorney General unpaid billings of less than five hundred
15 dollars (\$500.00), or (for institutions where applicable) amounts
16 owed by all patients which are less than the federally established
17 deductible applicable to Part A of the Medicare program, and instead
18 may handle these unpaid bills pursuant to agency debt collection
19 ~~procedures; and~~ procedures.
- 20 (5) Moneys received in the form of warrants drawn on the State
21 Treasurer shall be deposited by the State agency directly with the
22 State Treasurer and not through the banking system, unless
23 otherwise approved by the State Treasurer.
- 24 (6) State agencies shall accept payment by electronic payment in
25 accordance with G.S. 147-86.22 to the maximum extent possible
26 consistent with sound business practices.
- 27 (f) Disbursement Requirements. – For the disbursement of money, the statewide
28 cash management plan shall provide at a minimum that:
- 29 (1) Moneys deposited with the State Treasurer remain on deposit with
30 the State Treasurer until final disbursement to the ultimate ~~payee;~~
31 payee.
- 32 (2) The order in which appropriations and other available resources are
33 expended shall be subject to the provisions of G.S. 143-27 regardless
34 of whether the State agency disbursing or expending the moneys is
35 subject to the Executive Budget ~~Act;~~ Act.
- 36 (3) Federal and other reimbursements of expenditures paid from State
37 funds shall be paid immediately to the source of the State ~~funds;~~
38 funds.
- 39 (4) Billings to the State for goods received or services rendered shall be
40 paid neither early nor late but on the discount date or the due date to
41 the extent ~~practicable; and~~ practicable.
- 42 (5) Disbursement cycles for each agency shall be established to the
43 extent practicable so that the overall efficiency of the warrant

1 disbursement system is maximized while maintaining prompt
2 payment of bills due.

3 (g) Interest Maximized. – The interest earnings of the General Fund and Highway
4 Fund shall be maximized to the extent practicable. To this end:

5 (1) Interest earnings shall not be allocated to an account by the State
6 Treasurer unless all of the moneys in the account are expressly
7 eligible by law for receiving interest ~~allocations~~; allocations.

8 (2) State officers and employees who received moneys in trust or for
9 investment shall be solely responsible for properly segregating such
10 funds for investment in the manner prescribed by law. The officer or
11 employee charged with the responsibility for these moneys shall be
12 under a duty to segregate the funds in a timely manner. No
13 investment income shall be allocated by the State Treasurer to trust
14 or other investment accounts until properly segregated into
15 investment accounts as provided by law and the rules of the State
16 Treasurer.

17 (h) New Technologies. – The statewide cash management plan shall consider new
18 technologies and procedures whenever the technologies and procedures are economically
19 beneficial to the State as a whole. Where the new technologies and procedures may be
20 implemented without additional legislation, the technologies and procedures shall be
21 implemented in the plan.

22 (i) Penalty. – A willful or continued failure of an employee paid from State funds
23 or employed by a State agency to follow the statewide cash management plan is sufficient
24 cause for immediate dismissal of the employee."

25 Section 5. Article 3 of Chapter 159 of the General Statutes is amended by
26 adding a new section to read:

27 "**§ 159-32.1. Electronic payment.**

28 A unit of local government, public hospital, or public authority may, in lieu of
29 payment by cash or check, accept payment by electronic payment as defined in G.S. 147-
30 86.20 for any tax, assessment, rate, fee, charge, rent, interest, penalty, or other receivable
31 owed to it. A unit of local government, public hospital, or public authority may pay any
32 negotiated discount, processing fee, transaction fee, or other charge imposed by a credit
33 card, charge card, or debit card company, or by a third-party merchant bank, as a
34 condition of contracting for the unit's or the authority's acceptance of electronic payment.
35 A unit of local government, public hospital, or public authority may impose the fee or
36 charge as a surcharge on the amount paid by the person using electronic payment."

37 Section 6. G.S. 105-357(b) reads as rewritten:

38 "(b) ~~Acceptance of Checks and Credit Cards.~~ Checks and Electronic Payment. – The
39 tax collector may accept ~~checks, credit cards,~~ checks and electronic payments, as defined
40 in G.S. 147-86.20, or both in payment of ~~taxes.~~ taxes, as authorized by G.S. 159-32.1.
41 Acceptance of a check or ~~credit card~~ electronic payment is at the tax collector's own risk.
42 A tax collector who accepts ~~credit cards in payment~~ electronic payment of taxes may add a
43 fee to each ~~credit card~~ electronic payment transaction to offset the service charge the

1 taxing unit pays for ~~credit card~~ electronic payment service. A tax collector who accepts a
2 ~~credit card~~ electronic payment or check in payment of taxes may issue the tax receipt
3 immediately or withhold the receipt until the check has been collected or the ~~credit card~~
4 electronic payment invoice has been honored by the issuer.

5 If a tax collector accepts a check or a ~~credit card~~ an electronic payment and issues a tax
6 receipt and the check is returned unpaid (without negligence on the part of the tax
7 collector in presenting the check for payment) or the ~~credit card~~ electronic payment
8 invoice is not honored by the issuer, the taxes for which the check or ~~credit card~~ electronic
9 payment was given shall be deemed unpaid; the tax collector shall immediately correct
10 the copy of the tax receipt and other appropriate records to show the fact of nonpayment,
11 and shall give written notice by certified or registered mail to the person to whom the tax
12 receipt was issued to return it to the tax collector. After correcting the records to show
13 the fact of nonpayment, the tax collector shall proceed to collect the taxes by the use of
14 any remedies allowed for the collection of taxes or by bringing a civil action on the check
15 or ~~credit card~~ electronic payment.

16 A financial institution with which a taxing unit has contracted for receipt of payment
17 of taxes may accept a check in payment of taxes. If the check is honored, the financial
18 institution shall so notify the tax collector, who shall, upon request of the taxpayer, issue
19 a receipt for payment of the taxes. If the check is returned unpaid, the financial
20 institution shall so notify the tax collector, who shall proceed to collect the taxes by use
21 of any remedy allowed for collection of taxes or by bringing a civil action on the check.

22 (1) Effect on Tax Lien. – If the tax collector accepts a check or ~~credit~~
23 ~~card~~ electronic payment in payment of taxes on real property and
24 issues the receipt, and the check is later returned unpaid or the ~~credit~~
25 ~~card~~ electronic payment invoice is not honored by the issuer, the
26 taxing unit's lien for taxes on the real property shall be inferior to the
27 rights of purchasers for value and of persons acquiring liens of
28 record for value if the purchasers or lienholders acquire their rights
29 in good faith and without actual knowledge that the check has not
30 been collected or the ~~credit card~~ electronic payment invoice has not
31 been honored, after examination of the copy of the tax receipt in the
32 tax collector's office during the time that record showed the taxes as
33 paid or after examination of the official receipt issued to the taxpayer
34 prior to the date on which the tax collector notified the taxpayer to
35 return the receipt.

36 (2) Penalty. – In addition to interest for nonpayment of taxes provided
37 by G.S. 105-360 and in addition to any criminal penalties provided
38 by law for the giving of worthless checks, the penalty for giving in
39 payment of taxes a check that is returned because of insufficient
40 funds or nonexistence of an account of the drawer is ten percent
41 (10%) of the amount of the check, subject to a minimum of one
42 dollar (\$1.00) and a maximum of one thousand dollars (\$1,000).
43 This penalty does not apply if the tax collector finds that, when the

1 check was presented for payment, the drawer of the check had
2 sufficient funds in an account at a financial institution in this State to
3 pay the check and, by inadvertance, the drawer of the check failed to
4 draw the check on the account that had sufficient funds. This
5 penalty shall be added to and collected in the same manner as the
6 taxes for which the check was given."

7 Section 7. G.S. 132-1.2 reads as rewritten:

8 **"§ 132-1.2. Confidential information.**

9 Nothing in this ~~Article~~ Chapter shall be construed to require or authorize a public
10 agency or its subdivision to disclose any information ~~which~~ that:

11 (1) Meets all of the following conditions:

12 (+) a. Constitutes a "trade secret" as defined in G.S. 66-152(3); G.S. 66-
13 152(3).

14 (2) b. Is the property of a private "person" as defined in G.S. 66-152(2); G.S.
15 66-152(2).

16 (3) c. Is disclosed or furnished to the public agency in connection with the
17 owner's performance of a public contract or in connection with a bid,
18 application, proposal, industrial development project, or in compliance
19 with laws, regulations, rules, or ordinances of the United States, the
20 State, or political subdivisions of the State; and State.

21 (4) d. Is designated or indicated as "confidential" or as a "trade secret" at the
22 time of its initial disclosure to the public agency.

23 (2) Reveals an account number for electronic payment as defined in
24 G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of
25 Chapter 147 of the General Statutes or G.S. 159-32.1."

26 Section 8. G.S. 143B-472.43 is repealed.

27 Section 9. Part 16 of Article 10 of Chapter 143B of the General Statutes is
28 amended by adding the following sections to read:

29 **"§ 143B-472.40. Legislative intent.**

30 It is the purpose of this Article to strengthen the management of information
31 technology in State government by enhancing the accountability for expenditures,
32 providing for more cost-effective investments, improving operational efficiencies, and
33 clarifying responsibilities for maximizing benefits from related assets.

34 **"§ 143B-472.40A. Definitions.**

35 As used in this Part:

36 (1) 'Distributed information technology assets' means hardware,
37 software, and communications equipment not classified as
38 traditional mainframe-based items, including personal computers,
39 local area networks (LANs), servers, mobile computers, peripheral
40 equipment, and other related hardware and software items.

41 (2) 'Information technology' means electronic data processing goods and
42 services and telecommunications goods and services,
43 microprocessors, software, information processing, office systems,

1 any services related to the foregoing, and consulting or other
2 services for design or redesign of information technology supporting
3 business processes.

4 (3) 'Information technology portfolio management' means a business-
5 based approach for analyzing and ranking potential technology
6 investments and selecting those investments that are the most cost-
7 effective in supporting the strategic business and program objectives
8 of the agency.

9 (4) 'Information technology enterprise management' means a method for
10 managing distributed information technology assets from acquisition
11 through retirement so that total ownership costs (purchase,
12 operation, maintenance, disposal, etc.) are minimized while
13 maximum benefits are realized.

14 (5) 'Office' means the Office of Information Technology Services as
15 established in this Part."

16 Section 10. Part 16 of Article 10 of Chapter 143B of the General Statutes is
17 amended by adding the following sections to read:

18 **"§ 143B-472.50. Office of Information Technology Services; State Chief**
19 **Information Officer.**

20 (a) There is established the Office of Information Technology Services as a
21 division of the Department of Commerce. The Office may also be referred to as 'ITS'.

22 (b) The Office of Information Technology Services shall be managed and
23 administered by the State Chief Information Officer who shall be appointed by the
24 Secretary of Commerce. The State Chief Information Officer shall report to the
25 Secretary.

26 **"§ 143B-472.51. Powers and duties of Office of Information Technology Services.**

27 (a) The Office of Information Technology Services has the following powers and
28 duties:

29 (1) Procure all information technology for State agencies, except The
30 University of North Carolina and its constituent institutions.

31 (2) Submit for approval of the Information Resources Management
32 Commission all rates and fees for common, shared State
33 government-wide technology services provided by the Office.

34 (3) Submit for approval of the Information Resources Management
35 Commission recommended State government-wide, enterprise-level
36 policies for information technology.

37 (4) Develop standards, procedures, and processes to implement policies
38 approved by the Information Resources Management Commission.

39 (5) Assure that State agencies implement and manage information
40 technology portfolio-based management of State information
41 technology resources, in accordance with the direction set by the
42 State Chief Information Officer.

1 (6) Assure that State agencies implement and manage information
2 technology enterprise management effort of State government, in
3 accordance with the direction set by the State Chief Information
4 Officer.

5 (b) Other State agencies and local governmental entities may use the information
6 technology programs, services, or contracts offered by the Office in accordance with the
7 policies, rules, standards, processes, and procedures adopted by the Office.

8 **"§ 143B-472.52. Information technology portfolio-based management.**

9 (a) The purposes of information technology portfolio-based management are to:

10 (1) Ensure agencies link agency information technology investments
11 with business plans.

12 (2) Facilitate risk assessment of information technology projects and
13 investments.

14 (3) Ensure agencies justify information technology investments on the
15 basis of sound business cases.

16 (4) Ensure agencies facilitate development and review of information
17 technology performance related to business operations.

18 (5) Identify projects that can cross agency and program lines in order to
19 leverage resources.

20 (6) Assist in State government-wide planning for common, shared
21 information technology infrastructure.

22 (b) The Office shall coordinate with the Office of State Budget and Management
23 and the Office of State Planning to integrate agency strategic and business planning,
24 technology planning and budgeting, and project expenditure processes into the Office's
25 information technology portfolio-based management. The Office shall provide
26 recommendations for agency annual budget requests for information technology
27 investments, projects, and initiatives to the Office of State Budget and Management.

28 (c) In cooperation with State agencies, the Office shall conduct and maintain a
29 continuous inventory of each State agency's current and planned investments in
30 information technology, a compilation of information about these assets, and the total life
31 cycle cost of these assets. In implementing the provisions of this subsection, the Office
32 shall submit State government-wide policies for review and approval to the Information
33 Resources Management Commission. The Office shall consult with the Office of State
34 Controller to establish and implement the State government-wide information technology
35 inventory. The Office shall develop and implement State government-wide standards,
36 processes, and procedures for the required inventory and for the management of the State
37 government-wide information technology portfolio. State agencies shall participate in
38 the information technology portfolio management and shall comply with the standards
39 and processes established by the Office in accordance with this subsection. The
40 provisions of this subsection shall not relieve any department, institution, or agency of
41 the State government from accountability for equipment, materials, supplies, and tangible
42 and intangible personal property under its control.

1 (d) No State agency information technology project shall proceed without the prior
2 certification by the Information Resources Management Commission of the project. The
3 Information Resources Management Commission may establish thresholds at an agency
4 level based on project cost, potential project risk, or agency size and budget.

5 **"§ 143B-472.53. Enterprise management of information technology assets.**

6 (a) The purpose of enterprise management is to create a plan and implement a
7 State government-wide approach for managing distributed information technology assets
8 to minimize total life cycle costs of assets, defined as total ownership costs from
9 acquisition through retirement, while realizing maximum benefits for transacting the
10 State's business and delivering services to its citizens.

11 (b) With input and recommendations from State agencies, the Office shall develop
12 a plan for the State government-wide management of distributed information technology
13 assets. The plan shall prescribe the State government-wide infrastructure and services for
14 managing these assets. The plan shall be submitted to the Information Resources
15 Management Commission for approval.

16 (c) Upon receiving approval by the Information Resources Management
17 Commission, the Office shall ensure agency implementation of the plan, including the
18 development of appropriate standards, processes, and procedures. The implementation
19 effort shall follow Information Resources Management Commission project reporting
20 policies. State agencies must participate in the enterprise management of information
21 technology assets and must comply with the standards and processes of the Office.

22 **"§ 143B-472.54. Procurement of information technology.**

23 Notwithstanding any other provision of law, the Office shall procure all information
24 technology for State agencies except The University of North Carolina and its constituent
25 institutions. The Office shall integrate technological review, cost analysis, and
26 procurement for all information technology needs of those State agencies in order to
27 make procurement and implementation of technology more responsive, efficient, and
28 cost-effective.

29 **"§ 143B-472.55. Powers and duties for procurement of information technology.**

30 The Office shall have the authority and responsibility, subject to the provisions of this
31 Part, to:

- 32 (1) Purchase or to contract for, by suitable means in conformity with
33 G.S. 143-135.9, all information technology in the State government,
34 or any of its departments, institutions, or agencies covered by this
35 Part, or to authorize any department, institution, or agency covered
36 by this Part to purchase or contract for such information technology.
37 (2) Establish processes, specifications, and standards which shall apply
38 to all information technology to be purchased, licensed, or leased in
39 the State government or any of its departments, institutions, or
40 agencies covered by this Part.
41 (3) Comply with the State government-wide technical architecture, as
42 required by the Information Resources Management Commission.

1 **"§ 143B-472.56. Restriction on contractual authority of State agencies for**
2 **information technology.**

3 All State agencies covered by this Part shall use contracts for information technology
4 acquired by the Office for any information technology required by the State agency that
5 is provided by these contracts. Notwithstanding any other statute, the authority of State
6 agencies to procure or obtain information technology shall be subject to compliance with
7 the provisions of this Part. The Office shall have the authority to exercise the authority of
8 State agencies to procure or obtain information technology as otherwise provided by
9 statute.

10 **"§ 143B-472.57. Attorney General contract assistance.**

11 At the request of the State Chief Information Officer, the Attorney General shall
12 provide legal advice and services necessary to implement this Part.

13 **"§ 143B-472.58. Information technology procurement requirements.**

14 (a) Policy. – In order to further the policy of the State to encourage and promote
15 the use of small, minority, physically handicapped, and women contractors in State
16 purchasing of goods and services, all State agencies covered by this Part shall cooperate
17 with the Office in efforts to encourage the use of small, minority, physically handicapped,
18 and women contractors in achieving the purpose of this Part, which is to provide for the
19 effective and economical acquisition, management, and disposition of information
20 technology.

21 (b) Reporting. – Every State agency required by this Part to use the services of the
22 Office in the procurement of information technology which purchases information
23 technology directly shall report to the Office the information required by G.S. 143-48(b)
24 and the Office shall report to the Department of Administration in accordance with G.S.
25 143-48(b).

26 (c) The Department of Administration shall collect and compile the data described
27 in this section and report it annually to the Office.

28 **"§ 143B-472.59. Unauthorized use of public purchase or contract procedures for**
29 **private benefit.**

30 (a) It shall be unlawful for any person, by the use of the powers, policies, or
31 procedures described in this Part or established hereunder, to purchase, attempt to
32 purchase, procure, or attempt to procure any property or services for private use or
33 benefit.

34 (b) This prohibition shall not apply if:

35 (1) The department, institution, or agency through which the property or
36 services are procured had theretofore established policies and
37 procedures permitting such purchases or procurement by a class or
38 classes of persons in order to provide for the mutual benefit of such
39 persons and the department, institution, or agency involved, or the
40 public benefit or convenience; and

41 (2) Such policies and procedures, including any reimbursement policies,
42 are complied with by the person permitted thereunder to use the

1 purchasing or procurement procedures described in this Part or
2 established thereunder.

3 (c) A violation of this section is a Class 1 misdemeanor.

4 **"§ 143B-472.60. Financial interest of officers in sources of supply; acceptance of**
5 **bribes.**

6 The Secretary of Commerce, the assistants of the Secretary of Commerce, and the
7 State Chief Information Officer shall not be financially interested, or have any personal
8 beneficial interest, either directly or indirectly, in the purchase of, or contract for, any
9 information technology, nor in any firm, corporation, partnership, or association
10 furnishing any information technology to the State government, or any of its departments,
11 institutions, or agencies, nor shall any of these persons or any other Office employee
12 accept or receive, directly or indirectly, from any person, firm, or corporation to whom
13 any contract may be awarded, by rebate, gifts, or otherwise, any money or anything of
14 value whatsoever, or any promise, obligation, or contract for future reward or
15 compensation. Any violation of this section shall be deemed a Class F felony. Upon
16 conviction of a violation of this section, any person shall be removed from office or State
17 employment.

18 **"§ 143B-472.61. Certification that information technology bids were submitted**
19 **without collusion.**

20 The Office shall require bidders to certify that each bid on information technology
21 contracts overseen by the Office is submitted competitively and without collusion. False
22 certification is a Class I felony.

23 **"§ 143B-472.62. Penalties for violations.**

24 Any employee or official of the State who violates this Part shall be liable to the State
25 to repay any amount expended in violation of this Part, together with any court costs.

26 **"§ 143B-472.63. Board of Award review.**

27 (a) When the dollar value of a contract for the procurement of information
28 technology exceeds the benchmark established by the Secretary of Commerce, the
29 contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the
30 contract being awarded.

31 (b) Prior to submission of any contract for review by the Board of Awards
32 pursuant to this section for any contract for information technology being acquired for the
33 benefit of the Office and not on behalf of any other State agency, the Director of the
34 Budget shall review and approve the procurement to insure compliance with the
35 established processes, specifications, and standards applicable to all information
36 technology purchased, licensed, or leased in State government, including established
37 procurement processes, and compliance with the State government-wide technical
38 architecture as established by the Information Resources Management Commission.

39 **"§ 143B-472.64. Financial reporting and accountability for information technology**
40 **investments and expenditures.**

41 The Office, the Office of State Budget and Management, and the Office of State
42 Controller shall jointly develop a system for budgeting and accounting of expenditures
43 for information technology operations, services, projects, infrastructure, and assets. The

1 system shall include hardware, software, personnel, training, contractual services, and
2 other items relevant to information technology, and the sources of funding for each. This
3 system must integrate seamlessly with the enterprise portfolio management system.
4 Annual reports regarding information technology shall be coordinated by the Office with
5 the Office of State Budget and Management and the Office of State Controller, and
6 submitted to the Governor, General Assembly, and the Information Resources
7 Management Commission.

8 **"§ 143B-472.65. Rule-making authority.**

9 The Secretary of Commerce is authorized to adopt rules necessary to implement the
10 provisions of this Part.

11 **"§ 143B-472.66. Exempt agencies.**

12 Nothing in this Part shall apply to the General Assembly or The University of North
13 Carolina and its constituent institutions."

14 Section 11. G.S. 143B-472.41(b)(8) reads as rewritten:

15 "(8) To develop and promote a ~~policy and procedures~~ technical
16 requirements for the fair and competitive procurement of
17 information technology ~~consistent with the rules of the Department~~
18 ~~of Administration and consistent with published industry standards~~
19 ~~for open systems that provide agencies with a vendor neutral~~
20 ~~operating environment~~ in cooperation with the Office of Information
21 Technology Services where different information technology
22 hardware, software, and networks operate together easily and
23 ~~reliably.~~ reliably, while considering the cost-effectiveness of
24 managing these assets."

25 Section 12. G.S. 143-52 reads as rewritten:

26 **"§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary;**
27 **bids; awarding of contracts.**

28 As feasible, the Secretary of Administration will compile and consolidate all such
29 estimates of supplies, materials, printing, equipment and contractual services needed and
30 required by State departments, institutions and agencies to determine the total
31 requirements of any given commodity. Where such total requirements will involve an
32 expenditure in excess of the expenditure benchmark established under the provisions of
33 G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter
34 provided, sealed bids shall be solicited by advertisement in a newspaper widely
35 distributed in this State or through electronic means, or both, as determined by the
36 Secretary to be most advantageous, at least once and at least 10 days prior to the date
37 designated for opening. Except as otherwise provided under this Article, contracts for the
38 purchase of supplies, materials or equipment shall be based on competitive bids and
39 acceptance made of the lowest and best bid(s) most advantageous to the State as
40 determined upon consideration of the following criteria: prices offered; the quality of the
41 articles offered; the general reputation and performance capabilities of the bidders; the
42 substantial conformity with the specifications and other conditions set forth in the request
43 for bids; the suitability of the articles for the intended use; the personal or related services

1 needed; the transportation charges; the date or dates of delivery and performance; and
2 such other factor(s) deemed pertinent or peculiar to the purchase in question, which if
3 controlling shall be made a matter of record. Competitive bids on such contracts shall be
4 received in accordance with rules and regulations to be adopted by the Secretary of
5 Administration, which rules and regulations shall prescribe for the manner, time and
6 place for proper advertisement for such bids, the time and place when bids will be
7 received, the articles for which such bids are to be submitted and the specifications
8 prescribed for such articles, the number of the articles desired or the duration of the
9 proposed contract, and the amount, if any, of bonds or certified checks to accompany the
10 bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and
11 every bid conforming to the terms of the invitation, together with the name of the bidder,
12 shall be tabulated and that tabulation shall become public record in accordance with the
13 rules adopted by the Secretary. All contract information shall be made a matter of public
14 record after the award of contract. Provided, that trade secrets, test data and similar
15 proprietary information may remain confidential. A bond for the faithful performance of
16 any contract may be required of the successful bidder at bidder's expense and in the
17 discretion of the Secretary of Administration. When the dollar value of a contract for the
18 purchase, lease, or lease/purchase of equipment, materials, and supplies exceeds the
19 benchmark established by G.S. 143-53.1, the contract shall be reviewed by the Board of
20 Awards pursuant to G.S. 143-52.1 prior to the contract being awarded. After contracts
21 have been awarded, the Secretary of Administration shall certify to the departments,
22 institutions and agencies of the State government the sources of supply and the contract
23 price of the supplies, materials and equipment so contracted for. Prior to adopting other
24 methods of advertisement under this section, the Secretary of Administration may consult
25 with the Advisory Budget Commission. Prior to adopting rules and regulations under this
26 section, the Secretary of Administration may consult with the Advisory Budget
27 Commission."

28 Section 13. Article 3 of Chapter 143 is amended by adding the following new
29 section to read:

30 "**§ 143-52.1. Board of Awards.**

31 (a) There is created the Board of Awards. The Board shall consist of three
32 members at a time, appointed by the Chair of the Commission. Members of the Board
33 shall be appointed on a rotating basis from the membership of the Commission and the
34 Council of State. Two out of three members appointed for each meeting of the Board
35 shall constitute a quorum of the Board.

36 (b) The Board shall meet weekly as called by the Chair of the Commission, except
37 in weeks when no contracts have been submitted to the Board for review.

38 (c) When the dollar value of a contract exceeds the benchmark established either
39 pursuant to G.S. 143-53.1 or G.S. 143B-472.63, the Board shall review and make a
40 recommendation on action to be taken by the Secretary of Administration on contracts to
41 be awarded under Article 3 of Chapter 143 of the General Statutes and on contracts to be
42 awarded by the Secretary of Commerce under Part 16 of Article 10 of Chapter 143B of
43 the General Statutes, prior to the awarding of the contract.

1 (d) The State Budget Officer shall designate a secretary for the Board. The
2 Secretaries of Administration and Commerce shall each submit their matters for
3 consideration to the secretary for inclusion on the Board's agenda. Records shall be kept
4 of each meeting and made public by the applicable Secretary of Administration or
5 Commerce unless the applicable Secretary determines a specific record of the meeting
6 needs to be confidential due to the nature of the contract. The applicable Secretary may
7 elect to proceed with the award of a contract without a recommendation of the Board in
8 cases of emergencies or in the event that a Board is not available. In those cases,
9 contracts awarded without Board review shall be reported to the next meeting of the
10 Board as a matter of record."

11 Section 14. G.S. 143-56 reads as rewritten:

12 **"§ 143-56. Certain purchases excepted from provisions of Article.**

13 Unless as may otherwise be ordered by the Secretary of Administration, the purchase
14 of supplies, materials and equipment through the Secretary of Administration shall be
15 mandatory in the following cases:

- 16 (1) Published books, manuscripts, maps, pamphlets and periodicals.
- 17 (2) Perishable articles such as fresh vegetables, fresh fish, fresh meat,
18 eggs, and others as may be classified by the Secretary of
19 Administration.

20 Purchase through the Secretary of Administration shall not be mandatory for
21 information technology purchased in accordance with Part 16 of Article 10 of Chapter
22 143B of the General Statutes, for a purchase of supplies, materials or equipment for the
23 General Assembly if the total expenditures is less than the expenditure benchmark
24 established under the provisions of G.S. 143-53.1, for group purchases made by hospitals
25 through a competitive bidding purchasing program, as defined in ~~G.S. 143-29~~ [G.S. 143-
26 ~~129~~], G.S. 143-129, by the University of North Carolina Health Care System pursuant to
27 G.S. 116-37(h), by the University of North Carolina Hospitals at Chapel Hill pursuant to
28 G.S. 116-37(a)(4), by the University of North Carolina at Chapel Hill on behalf of the
29 clinical patient care programs of the School of Medicine of the University of North
30 Carolina at Chapel Hill pursuant to G.S. 116-37(a)(4), or by East Carolina University on
31 behalf of the Medical Faculty Practice Plan pursuant to G.S. 116-40.6(c).

32 All purchases of the above articles made directly by the departments, institutions and
33 agencies of the State government shall, whenever possible, be based on competitive bids.
34 Whenever an order is placed or contract awarded for such articles by any of the
35 departments, institutions and agencies of the State government, a copy of such order or
36 contract shall be forwarded to the Secretary of Administration and a record of the
37 competitive bids upon which it was based shall be retained for inspection and review."

38 Section 15. G.S. 143-135.9(c) reads as rewritten:

39 "(c) The acquisition of information technology by the State of North Carolina shall
40 be conducted using the "Best Value" procurement method. For acquisitions which the
41 procuring agency and the Division of Purchase and Contracts or the Office of
42 Information Technology Services, as applicable, deem to be highly complex or determine
43 that the optimal solution to the business problem at hand is not known, the use of

1 Solution-Based Solicitation and Government-Vendor Partnership is authorized and
2 encouraged."

3 Section 16. G.S. 150B-21.1 is amended by adding a new subsection to read:

4 "(a4) Notwithstanding the provisions of subsection (a) of this section, the Secretary
5 of Commerce may adopt temporary rules to implement the information technology
6 procurement provisions of Part 16 of Article 10 of Chapter 143B of the General Statutes.
7 After having the proposed temporary rule published in the North Carolina Register and at
8 least 30 days prior to adopting a temporary rule pursuant to this subsection, the Secretary
9 shall:

10 (1) Notify persons on its mailing list maintained pursuant to G.S. 150B-
11 21.2(d) and any other interested parties of its intent to adopt a
12 temporary rule;

13 (2) Accept oral and written comments on the proposed temporary rule;
14 and

15 (3) Hold at least one public hearing on the proposed temporary rule.

16 When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary
17 must submit a reference to this subsection as the Secretary's statement of need to the
18 Codifier of Rules.

19 Notwithstanding any other provision of this Chapter, the Codifier of Rules shall
20 publish in the North Carolina Register a proposed temporary rule received from the
21 Secretary in accordance with this subsection."

22 Section 17. G.S. 150B-38(a) reads as rewritten:

23 "(a) The provisions of this Article shall apply to the following agencies:

24 (1) Occupational licensing agencies;

25 (2) The State Banking Commission, the Commissioner of Banks, the
26 Savings Institutions Division of the Department of Commerce, and
27 the Credit Union Division of the Department of Commerce; and

28 (3) The Department of Insurance and the Commissioner of Insurance.

29 (4) The Department of Commerce in the administration of the
30 provisions of Part 16 of Article 10 of Chapter 143B of the General
31 Statutes."

32 Section 18. G.S. 143B-472.41(a) reads as rewritten:

33 "(a) Creation; Membership. – The Information Resource Management Commission
34 is created in the Department of Commerce. The Commission consists of the following
35 members:

36 (1) Four members of the Council of State, appointed by the Governor.

37 (1a) **(Expires June 30, 2001.)** The Secretary of State.

38 (2) The Secretary of Administration.

39 (3) The State Budget Officer.

40 (4) Two members of the Governor's cabinet, appointed by the Governor.

41 (5) One citizen of the State of North Carolina with a background in and
42 familiarity with information systems or telecommunications,
43 appointed by the General Assembly upon the recommendation of the

- 1 President Pro Tempore of the Senate in accordance with G.S. 120-
2 121.
- 3 (6) One citizen of the State of North Carolina with a background in and
4 familiarity with information systems or telecommunications,
5 appointed by the General Assembly upon the recommendation of the
6 Speaker of the House of Representatives in accordance with G.S.
7 120-121.
- 8 (7) The Chair of the Governor's Committee on Data Processing and
9 Information Systems.
- 10 (8) The Chair of the State Information Processing Services Advisory
11 Board.
- 12 (9) The Chair of the Criminal Justice Information Network Governing
13 Board.
- 14 (10) **(Expires June 30, 2001.)** The State Controller.
- 15 (11) The Director of the Administrative Office of the Courts or the
16 Director's designee.
- 17 (12) The President of The University of North Carolina or the President's
18 designee.

19 Members of the Commission shall not be employed by or serve on the board of
20 directors or other corporate governing body of any information systems, computer
21 hardware, computer software, or telecommunications vendor of goods and services to the
22 State of North Carolina.

23 The two initial cabinet members appointed by the Governor and the two initial citizen
24 members appointed by the General Assembly shall each serve a term beginning
25 September 1, 1992, and expiring on June 30, 1995. Thereafter, their successors shall be
26 appointed for four-year terms, commencing July 1. Members of the Governor's cabinet
27 shall be disqualified from completing a term of service of the Commission if they are no
28 longer cabinet members.

29 The appointees by the Governor from the Council of State shall each serve a term
30 beginning on September 1, 1992, and expiring on June 30, 1993. Thereafter, their
31 successors shall be appointed for four-year terms, commencing July 1. Members of the
32 Council of State shall be disqualified from completing a term of service on the
33 Commission if they are no longer members of the Council of State.

34 Vacancies in the two legislative appointments shall be filled as provided in G.S. 120-
35 122.

36 The Commission chair shall be elected in the first meeting of each calendar year from
37 among the appointees of the Governor from the Council of State and shall serve a term of
38 one year. The Secretary of Commerce shall be secretary to the Commission.

39 No member of the Information Resource Management Commission shall vote on an
40 action affecting solely his or her own State agency."

41 Section 19. The Secretary of Commerce shall develop and implement no later
42 than December 31, 1999, policies and procedures to ensure the use of "Best
43 Value" Procurement and, as applicable, Solution-Based Procurement and Government-

1 Vendor Partnership, in the procurement of information technology by State agencies
2 under the provisions of this act.

3 Section 20. The Secretary of Commerce shall develop and implement no later
4 than December 31, 1999, policies, procedures, and/or programs to ensure that personnel
5 of State agencies covered by this act and the Office of Information Technology Services
6 involved in the development of solicitations, development of specifications, evaluation of
7 proposals, selection of vendors, administration of contracts, and management of
8 information technology projects receive high-quality training in the principles of "Best
9 Value" Procurement, Solution-Based Procurement, Government-Vendor Partnership,
10 contract administration, and project management.

11 Section 21. The Secretary of Commerce shall report to the Joint Select
12 Committee on Information Technology on the results of the implementation of this act on
13 or before April 1, 2000.

14 Section 22. The Joint Select Committee on Information Technology shall
15 study the governance of State government-wide information technology management by
16 the creation of a centralized agency that would be responsible for all information
17 technology-related issues. Further, the Committee shall study the feasibility and
18 advisability of alternative organizational structures, including a separate information
19 technology office in the Office of the Governor, a separate cabinet department or a
20 restructuring of the Department of Administration as the Department of Information
21 Technology and Administration. The Committee may make an interim report to the 2000
22 Session of the 1999 General Assembly and shall make a final report to the General
23 Assembly prior to the convening of the 2001 General Assembly on the plan of an
24 organizational structure and funding requirements that are required to implement it.

25 Section 23. The Office of the State Auditor shall audit the Office of
26 Information Technology Services, and in particular the additional powers conferred upon
27 the Office of Information Technology Services by this act, as provided in this section.
28 The issues to be addressed by the audits shall include:

- 29 (1) A determination of whether the Office of Information Technology
30 Services has established adequate rules and internal procedures to
31 exercise the powers granted to it under Part 16 of Article 10 of
32 Chapter 143B, and in particular the additional powers conferred
33 upon the Office of Information Technology Services by this act;
- 34 (2) A determination of whether the Office of Information Technology
35 Services has complied with applicable statutes, rules, and
36 regulations;
- 37 (3) The efficiency and effectiveness of the procurement policies and
38 operations of the Office of Information Technology Services; and
- 39 (4) Such other issues as deemed necessary or desirable by the State
40 Auditor.

41 The Office of the State Auditor shall issue an interim report on the Office of
42 Information Technology Services operations from January 1, 2000, through June 30,
43 2000, and an interim report on operations from January 1, 2000, through December 31,

1 2000. The final report shall cover operations from January 1, 2000, through June 30,
2 2001. The State Auditor is hereby requested to include in the reports any suggestions or
3 recommendations for improved operations as the State Auditor deems appropriate.

4 The Office of Information Technology Services shall reimburse the Office of
5 the State Auditor for the costs of performing the audits required by this section.

6 Section 24. Sections 1 through 7 and Sections 18 through 24 of this act are
7 effective when this act becomes law. The remaining sections of this act become effective
8 January 1, 2000.