

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

HOUSE BILL 1578
RATIFIED BILL

AN ACT TO REPEAL THE POWERS AND DUTIES OF THE SECRETARY OF COMMERCE REGARDING INFORMATION TECHNOLOGY MATTERS AND TO REESTABLISH THOSE POWERS AND DUTIES WITHIN THE OFFICE OF THE GOVERNOR, AND TO MAKE OTHER CHANGES IN THE LAWS REGARDING INFORMATION TECHNOLOGY RELATED STATE GOVERNMENT FUNCTIONS.

The General Assembly of North Carolina enacts:

Section 1. Part 16 of Article 10 of Chapter 143B of the General Statutes is repealed.

Section 2. Chapter 147 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3D.

"OFFICE OF INFORMATION TECHNOLOGY SERVICES.

"PART 1. TRANSFER AND ORGANIZATION OF OFFICE.

"§ 147-33.75. Transfer to the Office of the Governor.

(a) The Office of Information Technology Services (" Office") of the Department of Commerce and the Information Resource Management Commission are hereby transferred to the Office of the Governor by a Type II transfer, as defined in G.S. 143A-6.

(b) The Governor has the authority, powers, and duties over the Office that are assigned to the Governor and the head of department pursuant to Article 1 of Chapter 143B of the General Statutes, G.S. 143A-6(b), and the Constitution and other laws of this State.

"§ 147-33.76. Head of the Office of Information Technology Services; qualification and appointment of State Chief Information Officer.

(a) The Office of Information Technology Services shall be managed and administered by the State Chief Information Officer. The State Chief Information Officer shall be qualified by education and experience for the office and shall be appointed by the Governor after consultation with the Senate Committee on Information Technology and the House Committee on Technology meeting jointly (or by similar committees designated by the rules of each house).

(b) The Governor shall submit the name of the person to be appointed for review by the entities specified in subsection (a) of this section.

(c) The salary of the State Chief Information Officer shall be set by the General Assembly in the Current Operations Appropriations Act. The State Chief Information Officer shall receive longevity pay on the same basis as is provided to employees of the State who are subject to the State Personnel Act.

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

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

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

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

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

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

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

"§ 147-33.78. Information Resource Management Commission.

(a) Creation; Membership. – The Information Resource Management Commission is established and shall be located within the Office for organizational, budgetary, and administrative purposes. The Commission consists of the following members:

- (1) Four members of the Council of State, appointed by the Governor.
- (2) The Secretary of State.
- (3) The Secretary of Administration.
- (4) The State Budget Officer.
- (5) Two members of the Governor's cabinet, appointed by the Governor.
- (6) One citizen of the State of North Carolina with a background in and familiarity with information systems or telecommunications, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
- (7) One citizen of the State of North Carolina with a background in and familiarity with information systems or telecommunications, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
- (8) The Chair of the Information Technology Management Advisory Council.
- (9) The Chair of the Criminal Justice Information Network Governing Board.
- (10) The State Controller.
- (11) The Director of the Administrative Office of the Courts or the Director's designee.
- (12) The President of The University of North Carolina or the President's designee.
- (13) The President of the Community Colleges System Office or the President's designee.
- (14) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee, who shall be a nonvoting member.
- (15) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee, who shall be a nonvoting member.

(16) The State Chief Information Officer, who shall be a nonvoting member.

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

The initial appointed members of the Commission shall be the members appointed to the Information Resource Management Commission who are serving unexpired terms as of July 1, 2000, who shall serve for a period equal to the remainder of their current terms on the Information Resource Management Commission. Upon the expiration of the current terms of the appointed members, their successors shall be appointed for four-year terms, commencing July 1. Members of the Governor's cabinet shall be disqualified from completing a term of service on the Commission if they are no longer cabinet members. Members of the Council of State shall be disqualified from completing a term of service on the Commission if they are no longer members of the Council of State.

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

The Commission chair shall be elected in the first meeting of each calendar year from among the appointees of the Governor from the Council of State and shall serve a term of one year. The State Chief Information Officer shall be secretary to the Commission.

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

(b) Powers and Duties. – The Commission has the following powers and duties:

- (1) To develop, approve, and publish a statewide information technology strategy covering the current and following biennium that shall be updated annually and shall be submitted to the General Assembly on the first day of each regular session.
- (2) To develop, approve, and sponsor statewide technology initiatives and to report on those initiatives in the annual update of the statewide information technology strategy.
- (3) To review and approve biennially the information technology plans of the executive agencies and the Administrative Office of the Courts. This review shall include plans for the procurement and use of personal computers and workstations.
- (4) To recommend to the Governor and the Office of State Budget and Management the relative priorities across executive agency and Administrative Office of the Courts information technology plans.
- (5) To issue certification of any State agency information technology project that requires or is expected to require the expenditure of funds in excess of five hundred thousand dollars (\$500,000), whether the project is undertaken in a single phase or component or in multiple phases or components. The certification shall be issued when the Commission determines that the project complies with Commission policies, standards, and procedures. The Commission shall promptly report each certification to the Office of State Budget and Management, the Office of the State Controller, the Chairs of the Legislative Committees on Information Technology, and the Cochairs of the Joint Legislative Commission on Governmental Operations. No State agency, other than The University of North Carolina or any of its constituent institutions, shall allocate or expend funds in excess of five hundred thousand dollars (\$500,000) on any information technology project without prior certification as required by this subsection. If an agency cannot determine whether a project or series of projects will

require certification, the agency shall seek an opinion from the Commission. Upon review, the Commission may determine that a project is exempt from certification and shall advise the agency of its determination.

- (6) To establish a quality assurance policy for all agency information technology projects, information systems training programs, and information systems documentation. If at any time a certified agency information technology project is not in compliance with Commission policies, standards, or procedures, the Commission may suspend project certification and shall report the suspension to the Office of the State Controller, the Office of State Budget and Management, the Chairs of the Legislative Committees on Information Technology, and the Cochairs of the Joint Legislative Commission on Governmental Operations. Upon recommendation of the Commission, the Joint Legislative Commission on Governmental Operations may request the State Budget Office and the State Controller to take appropriate remedial action, up to and including the suspension of appropriations or the nonrelease of funds to the project.
- (7) To establish and enforce a quality review and expenditure review procedure for major agency information technology projects.
- (8) To review and approve expenditures from appropriations made to the Office of State Budget and Management for the purpose of creating a Computer Reserve Fund.
- (9) To develop and promote technical requirements for the fair and competitive procurement of information technology in cooperation with the Office of Information Technology Services where different information technology hardware, software, and networks operate together easily and reliably, while considering the cost-effectiveness of managing these assets.

(c) Meetings. – The Information Resources Management Commission shall adopt bylaws containing rules governing its meeting procedures. The Information Resources Management Commission shall meet at least monthly.

"§ 147-33.79. Information Resources Management Commission staff.

(a) There is established in the Office an independent staff for the Information Resources Management Commission. The staff shall consist of an executive director and such other professional, administrative, technical, and clerical personnel as authorized by the General Assembly as may be necessary to assist the Commission in carrying out its powers and duties.

(b) All independent staff shall be appointed, supervised, and directed by the Commission. The executive director shall be exempt from the provisions of Chapter 126 of the General Statutes, except for Articles 6 and 7 of Chapter 126 of the General Statutes. All other staff personnel shall be subject to the provisions of Chapter 126 of the General Statutes. The independent staff shall not be subject to the supervision, direction, or control of the Office.

(c) Except for the executive director, salaries and compensation of all staff personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State agencies.

(d) Expenses of the Commission and the salaries of the independent staff shall be paid out of funds from receipts available to the Office of Information Technology Services as requested by the Commission.

"PART 2. GENERAL POWERS AND DUTIES.

"§ 147-33.80. Exempt agencies.

Except as otherwise specifically provided by law, this Article shall not apply to the General Assembly, the Judicial Department, or The University of North Carolina and its constituent institutions. These agencies may elect to participate in the information

technology programs, services, or contracts offered by the Office, including information technology procurement, in accordance with the statutes, policies, and rules of the Office.

"§ 147-33.81. Definitions.

As used in this Article:

- (1) " Distributed information technology assets" means hardware, software, and communications equipment not classified as traditional mainframe-based items, including personal computers, local area networks (LANs), servers, mobile computers, peripheral equipment, and other related hardware and software items.
- (2) " Information technology" means electronic data processing goods and services and telecommunications goods and services, microprocessors, software, information processing, office systems, any services related to the foregoing, and consulting or other services for design or redesign of information technology supporting business processes.
- (3) " Information technology enterprise management" means a method for managing distributed information technology assets from acquisition through retirement so that total ownership costs (purchase, operation, maintenance, disposal, etc.) are minimized while maximum benefits are realized.
- (4) " Information technology portfolio management" means a business-based approach for analyzing and ranking potential technology investments and selecting those investments that are the most cost-effective in supporting the strategic business and program objectives of the agency.
- (5) " Office" means the Office of Information Technology Services as established in this Article.

"§ 147-33.82. Powers and duties of the Office of Information Technology Services.

(a) The Office of Information Technology Services shall:

- (1) Procure all information technology for State agencies, as provided in Part 4 of this Article.
- (2) Submit for approval of the Information Resources Management Commission all rates and fees for common, shared State government-wide technology services provided by the Office.
- (3) Submit for approval of the Information Resources Management Commission recommended State government-wide, enterprise-level policies for information technology.
- (4) Develop standards, procedures, and processes to implement policies approved by the Information Resources Management Commission.
- (5) Assure that State agencies implement and manage information technology portfolio-based management of State information technology resources, in accordance with the direction set by the State Chief Information Officer.
- (6) Assure that State agencies implement and manage information technology enterprise management efforts of State government, in accordance with the direction set by the State Chief Information Officer.
- (7) Provide recommendations to the Information Resources Management Commission for its biennial technology strategy and to develop State government-wide technology initiatives to be approved by the Information Resources Management Commission.
- (8) Develop a project management, quality assurance, and architectural review process that adheres to the Information Resources Management Commission's certification program and portfolio-based management initiative.

(9) Establish and utilize the Information Technology Management Advisory Council to consist of representatives from other State agencies to advise the Office on information technology business management and technology matters.

(b) Notwithstanding any other provision of law, local governmental entities may use the information technology programs, services, or contracts offered by the Office, including information technology procurement, in accordance with the statutes, policies, and rules of the Office. For purposes of this subsection, "local governmental entities" includes local school administrative units, as defined in G.S. 115C-5, and community colleges. Local governmental entities are not required to comply with otherwise applicable competitive bidding requirements when using contracts established by the Office. Any other State entities may also use the information technology programs, services, or contracts offered by the Office, including information technology procurement, in accordance with the statutes, policies, and rules of the Office.

§ 147-33.83. Information resources centers and services.

(a) With respect to all executive departments and agencies of State government, except the Department of Justice if they do not elect at their option to participate, the Office of Information Technology Services shall have all of the following powers and duties:

- (1) To establish and operate information resource centers and services to serve two or more departments on a cost-sharing basis, if the Information Resources Management Commission decides it is advisable from the standpoint of efficiency and economy to establish these centers and services.
- (2) With the approval of the Information Resources Management Commission, to charge each department for which services are performed its proportionate part of the cost of maintaining and operating the shared centers and services.
- (3) With the approval of the Information Resources Management Commission, to require any department served to transfer to the Office ownership, custody, or control of information processing equipment, supplies, and positions required by the shared centers and services.
- (4) With the approval of the Information Resources Management Commission, to adopt reasonable rules for the efficient and economical management and operation of the shared centers, services, and the integrated State telecommunications network.
- (5) With the approval of the Information Resources Management Commission, to adopt plans, policies, procedures, and rules for the acquisition, management, and use of information technology resources in the departments affected by this section to facilitate more efficient and economic use of information technology in these departments.
- (6) To develop and promote training programs to efficiently implement, use, and manage information technology resources.
- (7) To provide cities, counties, and other local governmental units with access to the Office of Information Technology Services, information resource centers and services as authorized in this section for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

(b) No data of a confidential nature, as defined in the General Statutes or federal law, may be entered into or processed through any cost-sharing information resource center or network established under this section until safeguards for the data's security satisfactory to the department head and the State Chief Information Officer have been designed and installed and are fully operational. Nothing in this section may be construed to prescribe what programs to satisfy a department's objectives are to be undertaken, nor to remove from the control and administration of the departments the

responsibility for program efforts, regardless whether these efforts are specifically required by statute or are administered under the general program authority and responsibility of the department. This section does not affect the provisions of G.S. 147-64.6, 147-64.7, or 147-33.89. Notwithstanding any other provision of law, the Office of Information Technology Services shall provide information technology services on a cost-sharing basis to the General Assembly and its agencies as requested by the Legislative Services Commission.

"§ 147-33.84. Deviations authorized for Department of Revenue.

(a) The Department of Revenue is authorized to deviate from any provision in G.S. 147-33.83(a) that requires departments or agencies to consolidate information processing functions on equipment owned, controlled, or under custody of the Office of Information Technology Services. All deviations pursuant to this section shall be reported in writing within 15 days by the Department of Revenue to the Information Resources Management Commission and shall be consistent with available funding.

(b) The Department of Revenue is authorized to adopt and shall adopt plans, policies, procedures, requirements, and rules for the acquisition, management, and use of information processing equipment, information processing programs, data communications capabilities, and information systems personnel in the Department of Revenue. If the plans, policies, procedures, requirements, rules, or standards adopted by the Department of Revenue deviate from the policies, procedures, or guidelines adopted by the Office of Information Technology Services or the Information Resources Management Commission, those deviations shall be allowed and shall be reported in writing within 15 days by the Department of Revenue to the Information Resources Management Commission. The Department of Revenue and the Office of Information Technology Services shall develop data communications capabilities between the two computer centers utilizing the North Carolina Integrated Network, subject to a security review by the Secretary of Revenue.

(c) The Department of Revenue shall prepare a plan to allow for substantial recovery and operation of major, critical computer applications. The plan shall include the names of the computer programs, databases, and data communications capabilities, identify the maximum amount of outage that can occur prior to the initiation of the plan and resumption of operation. The plan shall be consistent with commonly accepted practices for disaster recovery in the information processing industry. The plan shall be tested as soon as practical, but not later than six months, after the establishment of the Department of Revenue information processing capability.

"§ 147-33.85. Information technology portfolio-based management.

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

- (1) Ensure agencies link agency information technology investments with business plans.
- (2) Facilitate risk assessment of information technology projects and investments.
- (3) Ensure agencies justify information technology investments on the basis of sound business cases.
- (4) Ensure agencies facilitate development and review of information technology performance related to business operations.
- (5) Identify projects that can cross agency and program lines in order to leverage resources.
- (6) Assist in State government-wide planning for common, shared information technology infrastructure.

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

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

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

"§ 147-33.86. Enterprise management of information technology assets.

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

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

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

"§ 147-33.87. Financial reporting and accountability for information technology investments and expenditures.

The Office of Information Technology Services, the Office of State Budget and Management, and the Office of the State Controller shall jointly develop a system for budgeting and accounting of expenditures for information technology operations, services, projects, infrastructure, and assets. The system shall include hardware, software, personnel, training, contractual services, and other items relevant to information technology, and the sources of funding for each. This system must integrate seamlessly with the enterprise portfolio management system. Annual reports regarding information technology shall be coordinated by the Office with the Office of State Budget and Management and the Office of the State Controller, and submitted to the Governor, General Assembly, and the Information Resources Management Commission on or before October 1 of each year.

"§ 147-33.88. Information technology reports.

(a) The Office shall develop an annual budget for review and approval by the Information Resources Management Commission prior to April 1 of each year. A copy of the approved budget shall be submitted to the Joint Select Committee on Information Technology and the Fiscal Research Division.

(b) The Office shall report to the Joint Select Committee on Information Technology and the Fiscal Research Division on the Office's Internal Service Fund on a quarterly basis, no later than the first day of the second month following the end of the quarter. The report shall include current cash balances, line-item detail on expenditures from the previous quarter, and anticipated expenditures for the upcoming quarter, projected year-end balance, and the status report on personnel position changes including new positions created and existing positions eliminated. The Office spending reports shall comply with the State Accounting System object codes.

"PART 3. TELECOMMUNICATIONS SERVICES.

"§ 147-33.89. Telecommunications services; duties of State Chief Information Officer with respect to State agencies.

With respect to State agencies, the State Chief Information Officer shall exercise general coordinating authority for all telecommunications matters relating to the internal management and operations of those agencies. In discharging that responsibility, the State Chief Information Officer may in cooperation with affected State agency heads, do such of the following things as the State Chief Information Officer deems necessary and advisable:

- (1) Provide for the establishment, management, and operation, through either State ownership or commercial leasing, of the following systems and services as they affect the internal management and operation of State agencies:
 - a. Central telephone systems and telephone networks;
 - b. Teleprocessing systems;
 - c. Teletype and facsimile services;
 - d. Satellite services;
 - e. Closed-circuit TV systems;
 - f. Two-way radio systems;
 - g. Microwave systems; and
 - h. Related systems based on telecommunication technologies.
- (2) With the approval of the Information Resources Management Commission, coordinate the development of cost-sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in subdivision (1) of this section.
- (3) Assist in the development of coordinated telecommunications services or systems within and among all State agencies and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.
- (4) Perform traffic analysis and engineering for all telecommunications services and systems listed in subdivision (1) of this subsection.
- (5) Pursuant to G.S. 143-49, establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State agencies.
- (6) Pursuant to G.S. 143-49 and G.S. 143-50, coordinate the review of requests by State agencies for the procurement of telecommunications systems or services.
- (7) Pursuant to G.S. 143-341 and Chapter 146 of the General Statutes, coordinate the review of requests by State agencies for State government property acquisition, disposition, or construction for telecommunications systems requirements.
- (8) Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State agencies.
- (9) Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including, but not limited to,

- the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.
- (10) Perform frequency coordination and management for State agencies and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.
 - (11) Advise all State agencies on telecommunications management planning and related matters and provide through the State Personnel Training Center or the Office of Information Technology Services training to users within State agencies in telecommunications technology and systems.
 - (12) Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems, and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.
 - (13) Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this section.

The provisions of this section shall not apply to the Criminal Information Division of the Department of Justice or to the Judicial Information System in the Judicial Department.

"§ 147-33.90. Telecommunications services for local governmental units and other entities.

(a) The State Chief Information Officer shall provide cities, counties, and other local governmental units with access to a central telecommunications system or service established under G.S. 147-33.89 for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

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

- (1) Nonprofit educational institutions.
- (2) MCNC.
- (3) Research affiliates of MCNC for use only in connection with research activities sponsored or funded, in whole or in part, by MCNC, if such research activities relate to health care or education in North Carolina.
- (4) Agencies of the United States government operating in North Carolina for use only in connection with activities that relate to health care or education in North Carolina.
- (5) Hospitals, clinics, and other health care facilities for use only in connection with activities that relate to health care or education in North Carolina.

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

"PART 4. PROCUREMENT OF INFORMATION TECHNOLOGY.

"§ 147-33.91. Procurement of information technology.

(a) Notwithstanding any other provision of law, the Office of Information Technology Services shall procure all information technology for State agencies. For purposes of this section, agency means any department, institution, commission, committee, board, division, bureau, office, officer, or official of the State, unless specifically exempted in this Article. The Office shall integrate technological review, cost analysis, and procurement for all information technology needs of those State agencies in order to make procurement and implementation of technology more responsive, efficient, and cost-effective. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data, similar proprietary information, and security information protected under G.S. 132-6.1(c) may remain confidential.

(b) The Office shall have the authority and responsibility, subject to the provisions of this Part, to:

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

"§ 147-33.92. Restriction on State agency contractual authority with regard to information technology; local governments.

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

(b) Local governmental entities are not required to comply with otherwise applicable competitive bidding requirements when using contracts offered by the Office.

"§ 147-33.93. Information technology procurement policy; reporting requirements.

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

(b) Reporting. – Every State agency that makes a direct purchase of information technology using the services of the Office shall report directly to the Department of Administration all information required by G.S. 143-48(b).

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

"§ 147-33.94. Unauthorized use of public purchase or contract procedures for private benefit prohibited.

(a) It shall be unlawful for any person, by the use of the powers, policies, or procedures described in this Part or established hereunder, to purchase, attempt to

purchase, procure, or attempt to procure any property or services for private use or benefit.

(b) This prohibition shall not apply if:

- (1) The department, institution, or agency through which the property or services are procured had theretofore established policies and procedures permitting such purchases or procurement by a class or classes of persons in order to provide for the mutual benefit of such persons and the department, institution, or agency involved, or the public benefit or convenience; and
- (2) Such policies and procedures, including any reimbursement policies, are complied with by the person permitted thereunder to use the purchasing or procurement procedures described in this Part or established thereunder.

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

"§ 147-33.95. Financial interest of officers in sources of supply; acceptance of bribes.

Neither the State Chief Information Officer nor the Chief Deputy State Information Officer shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any information technology, nor in any firm, corporation, partnership, or association furnishing any information technology to the State government, or any of its departments, institutions, or agencies, nor shall either of these persons or any other Office employee accept or receive, directly or indirectly, from any person, firm, or corporation to whom any contract may be awarded, by rebate, gifts, or otherwise, any money or anything of value whatsoever, or any promise, obligation, or contract for future reward or compensation. Violation of this section is a Class F felony, and any person found guilty of a violation of this section shall, upon conviction, be removed from State office or employment.

"§ 147-33.96. Certification that information technology bid submitted without collusion.

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

"§ 147-33.97. Board of Awards review.

(a) When the dollar value of a contract for the procurement of information technology equipment, materials, and supplies exceeds the benchmark established by the Chief State Information Officer, the contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the contract being awarded.

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

"§ 147-33.98. Penalty for violations; costs.

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

"§ 147-33.99. Attorney General contract assistance; rule-making authority.

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

(b) The State Chief Information Officer is authorized to adopt rules deemed necessary to implement the provisions of this Part."

Section 3. This act becomes effective September 1, 2000.

In the General Assembly read three times and ratified this the 10th day of July, 2000.

Marc Basnight
President Pro Tempore of the Senate

James B. Black
Speaker of the House of Representatives

James B. Hunt, Jr.
Governor

Approved _____ .m. this _____ day of _____ , 2000