

**FIRST ENGROSSMENT
with Conference Committee Amendments****ENGROSSED SENATE BILL NO. 2037**

Introduced by

Legislative Council

(Information Technology Committee)

1 A BILL for an Act to create and enact a new section to chapter 15-10 and new section to
2 chapter 54-59 of the North Dakota Century Code, relating to higher education information
3 technology and information technology planning; and to amend and reenact subsection 11 of
4 section 28-32-01 and sections 54-35-15.2, 54-59-02.1, 54-59-05, 54-59-07, 54-59-09,
5 54-59-11, 54-59-19, 54-59-21, and 54-59-22 of the North Dakota Century Code, relating to
6 exclusion of certain policies, standards, and guidelines of the information technology
7 department from compliance with the Administrative Agencies Practice Act, powers and duties
8 of the information technology committee and the information technology department,
9 prioritization of proposed major information technology projects, access to the criminal justice
10 information sharing system, and information technology plans and reports.

11 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

12 **SECTION 1.** A new section to chapter 15-10 of the North Dakota Century Code is
13 created and enacted as follows:

14 Higher education information technology - Reports.

- 15 1. The state board of higher education shall manage and regulate information
16 technology planning and services for institutions under its control, including:
- 17 a. Development of information technology policies, standards, and guidelines in
18 coordination with the information technology department.
 - 19 b. Implementation of a process for project management oversight and reporting.
 - 20 c. Integration of higher education information technology planning and reporting
21 with the board's strategic planning process and annual performance and
22 accountability report required by section 15-10-14.2.
 - 23 d. Participation in internet2 or other advanced higher education or
24 research-related networking projects as provided in section 54-59-08.

e. Development of an annual report concerning higher education information technology planning and services.

2. The state board of higher education shall collaborate with the information technology department to coordinate higher education information technology planning with statewide information technology planning.
3. The state board of higher education shall provide advice to the information technology department regarding the development of policies, standards, and guidelines relating to access to or use of wide area network services as provided by section 54-59-09.
4. The state board of higher education shall present information regarding higher education information technology planning, services, and major projects to the information technology committee on request of the committee.

SECTION 2. AMENDMENT. Subsection 11 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

11. "Rule" means the whole or a part of an agency statement of general applicability which implements or prescribes law or policy or the organization, procedure, or practice requirements of the agency. The term includes the adoption of new rules and the amendment, repeal, or suspension of an existing rule. The term does not include:
- a. A rule concerning only the internal management of an agency which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public.
 - b. A rule that sets forth criteria or guidelines to be used by the staff of an agency in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if the disclosure of the statement would:
 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the state.

- c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.
- d. A rule concerning only the physical servicing, maintenance, or care of agency-owned or agency-operated facilities or property.
- e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.
- f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.
- g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.
- h. An agency budget.
- i. An opinion of the attorney general.
- j. A rule adopted by an agency selection committee under section 54-44.7-03.
- k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, which is explanatory and not intended to have the force and effect of law.
- l. A policy, standard, and guideline adopted by the information technology department under chapter 54-59, including any product and service standard and best practice standard, which does not materially affect the public and is not intended to have the force and effect of law, and with respect to access to or use of wide area network services, institutions under the control of the board of higher education, counties, cities, and school districts if the policy, standard, or guideline has been approved by the state information technology advisory committee.

SECTION 3. AMENDMENT. Section 54-35-15.2 of the North Dakota Century Code is amended and reenacted as follows:

54-35-15.2. Information technology committee - Powers and duties. The information technology committee has continuing existence and may meet and conduct its

business during the legislative session and in the interim between sessions. The committee shall:

1. Meet at least once each calendar quarter.
2. Receive a report from the chief information officer of the state at each meeting.
3. Review the business plan of the information technology department.
4. ~~Address~~ Review macro-level ~~questions~~ issues relating to the information technology department.
5. Review the activities of the information technology department.
6. Review statewide information technology standards.
7. Review the statewide information technology plan.
8. ~~Conduct studies of~~ Review information technology efficiency and security.
9. ~~Make recommendations regarding~~ Review established or proposed information technology programs and information technology acquisition by the executive and judicial branches.
10. Except as provided in subsection 11, receive and review the information, including a cost-benefit analysis of, a projected schedule, and cost projections, from the information technology department and the affected agency regarding any major information technology project of an executive, legislative, or judicial branch agency. A major project is a project with a cost of two hundred fifty thousand dollars or more in one biennium or a total cost of five hundred thousand dollars or more.
11. ~~Review the~~ Receive and review information, including a cost-benefit analysis of, a projected schedule, and cost projections, from the information technology department and the affected institution regarding any major project of the state board of higher education or any institution under the control of the state board of higher education if the project:
 - a. Significantly impacts the statewide wide area network, including the campus access routers;
 - b. Impacts the statewide library system; or
 - c. Is an administrative project. An administrative project is a project that directly collects, aggregates, modifies, stores, or reports institutional student,

financial, or human resources records or data and is provided primarily for administrative purposes.

12. ~~Perform periodic reviews to ensure that a major information technology project is on its projected schedule and within its cost projections.~~ Receive a report from the chief information officer regarding the recommendations of the state information technology advisory committee relating to the prioritization of proposed major information technology projects and other information technology issues.

13. Receive information from the state board of higher education regarding higher education information technology planning, services, and major projects.

SECTION 4. AMENDMENT. Section 54-59-02.1 of the North Dakota Century Code is amended and reenacted as follows:

54-59-02.1. ~~Department shall establish certain standards for agencies—Advisory committee—Exceptions~~ Prioritization of proposed major information technology projects. The department shall ~~appoint an advisory committee consisting of representatives of state agencies for the purposes of prioritizing major computer software projects and establishing policies, standards, and guidelines~~ submit information regarding proposed major information technology projects for executive branch state agencies, departments, and institutions, excluding institutions under control of the state board of higher education and agencies of the judicial and legislative branches ~~with respect to the purchase of computer software and computer systems,~~ to the state information technology advisory committee. The committee shall review the projects and rank those projects that receive the committee's affirmative recommendation. The chief information officer shall submit recommendations of the ~~advisory~~ committee regarding the prioritization of major software information technology projects to the information technology committee for consideration by the committee and the drafting of appropriate legislation to implement the recommendations, the office of management and budget, and the appropriations committees of the legislative assembly. The judicial and legislative branches shall ~~annually~~ biennially notify the state information technology advisory committee and the information technology committee on their major ~~computer software~~ information technology projects and priorities. ~~The chief information officer may exempt an agency from the policies, standards, and guidelines established by the committee to address situations unique to that agency.~~

1 **SECTION 5. AMENDMENT.** Section 54-59-05 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **54-59-05. Powers and duties of department.** The department:

- 4 1. Shall provide, supervise, and regulate information technology of all executive
5 branch state entities, excluding the institutions under the control of the board of
6 higher education.
- 7 2. Shall provide network services in a way that ensures the network requirements of
8 a single entity do not adversely affect the functionality of the whole network,
9 facilitates open communications with the citizens of the state, minimizes the state's
10 investment in human resources, accommodates an ever-increasing amount of
11 traffic, supports rapid detection and resolution of problems, protects the network
12 infrastructure from damage and security breaches, provides for the aggregation of
13 data, voice, video, and multimedia into a statewide transport mechanism or
14 backbone, and provides for the network support for the entity to carry out its
15 mission.
- 16 3. May review and approve additional network services that are not provided by the
17 department.
- 18 4. May purchase, finance the purchase, or lease equipment, software, or
19 implementation services or replace, including by trade or resale, equipment or
20 software as may be necessary to carry out this chapter. An agreement to finance
21 the purchase of software, equipment, or implementation services may not exceed
22 a period of three years. The department shall submit any intended financing
23 proposal for the purchase of software, equipment, or implementation services
24 under this subsection, which is in excess of one million dollars, to the budget
25 section of the legislative council before executing a financing agreement. If the
26 budget section does not approve the execution of a financing agreement, the
27 department may not proceed with the proposed financing arrangement. The
28 department may finance the purchase of software, equipment, or implementation
29 services only to the extent the purchase amount does not exceed seven and
30 one-half percent of the amount appropriated to the department during that
31 biennium.

- 1 5. Shall review requests for the lease, purchase, or other contractual acquisition of
2 information technology as required by this subsection. Each executive branch
3 agency or institution, excluding the institutions under the control of the board of
4 higher education, shall submit to the department, in accordance with guidelines
5 established by the department, a written request for the lease, purchase, or other
6 contractual acquisition of information technology. The department shall review
7 requests for conformance with the requesting entity's information technology plan
8 and compliance with statewide policies and standards. If the request is not in
9 conformance or compliance, the department may disapprove the request or
10 require justification for the departure from the plan or statewide policy or standard.
- 11 6. Shall provide information technology, including assistance and advisory service, to
12 the executive, legislative, and judicial branches. If the department is unable to
13 fulfill a request for service from the legislative or judicial branch, the information
14 technology may be procured by the legislative or judicial branch within the limits of
15 legislative appropriations.
- 16 7. Shall request and review ~~information on or review information technology,~~
17 ~~applications, system development projects, and application development projects~~
18 ~~of executive branch agencies,~~ including a cost-benefit analysis, a projected
19 schedule, and cost projections, regarding any major information technology project
20 of an executive, legislative, or judicial branch agency, the state board of higher
21 education, or any institution under the control of the state board of higher
22 education as provided in section 54-35-15.2. The department shall present the
23 information to the information technology committee on request of the committee.
- 24 8. Shall study emerging technology and evaluate its impact on the state's system of
25 information technology.
- 26 9. Shall develop guidelines for reports to be provided by each agency of the
27 ~~executive branch agency, institution, or department,~~ legislative, and judicial
28 branches, excluding the institutions under the control of the board of higher
29 education, ~~and agencies of the judicial and legislative branches~~ on information
30 technology in those entities.

10. Shall collaborate with the state board of higher education on guidelines for reports to be provided by institutions under control of the state board of higher education on information technology in those entities.

11. Shall review the information technology management of executive branch agencies or institutions.

~~44.~~ 12. Shall perform all other duties necessary to carry out this chapter.

~~42.~~ 13. May provide wide area network services to a state agency, city, county, school district, or other political subdivision of this state. The information technology department may not provide wide area network service to any private, charitable, or nonprofit entity except the information technology department may continue to provide the wide area network service the department provided to the private, charitable, and nonprofit entities receiving services from the department on January 1, 2003. The department shall file with the state auditor before September 1, 2003, a description of the wide area network service the department provided to each private, charitable, and nonprofit entity receiving services from the department on January 1, 2003.

~~43.~~ 14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.

~~44.~~ 15. Notwithstanding subsection ~~42~~ 13, the department may provide wide area network services for a period not to exceed four years to an occupant of a technology park associated with an institution of higher education or to a business located in a business incubator associated with an institution of higher education.

16. Shall establish specific standards, policies, and guidelines to support the migration to a small number of operating system platforms.

SECTION 6. AMENDMENT. Section 54-59-07 of the North Dakota Century Code is amended and reenacted as follows:

54-59-07. State information technology advisory committee. The state information technology advisory committee consists of the chief information officer; the commissioner of higher education or the commissioner's designee; the attorney general or the attorney general's designee; the secretary of state or the secretary of state's designee; the tax commissioner or the commissioner's designee; the chief justice of the supreme court or the chief justice's

designee; two members of the legislative assembly appointed by the legislative council; a minimum of eight members representing state agencies, appointed by the governor; and two members with technology management expertise representing private industry, appointed by the governor. The appointees of the governor serve at the pleasure of the governor. The governor shall designate the chairman of the committee. Additional members may be asked to participate at the request of the chairman. The department shall provide staff services to the committee. The members of the committee representing private industry are entitled to be compensated for time spent in attendance at meetings of the committee and for other travel as approved by the chairman of the committee at the rate of sixty-two dollars and fifty cents per day and are entitled to reimbursement for actual and necessary expenses incurred in the same manner as other state officials. The compensation and expenses are to be paid from appropriations for the department. The committee shall advise the department regarding statewide information technology planning and budgeting, services of the information technology department, and statewide information technology initiatives and policy; oversee the enterprise architecture process, including the makeup and responsibilities of domain teams, the architecture team, and the architecture review board; and review and approve or reject policies, standards, and guidelines developed through the enterprise architecture process. The chief information officer shall submit recommendations of the committee regarding information technology issues to the information technology committee for its consideration.

SECTION 7. AMENDMENT. Section 54-59-09 of the North Dakota Century Code is amended and reenacted as follows:

54-59-09. Information technology standards. ~~Based on information from state agencies and institutions, the~~ The department and the office of management and budget shall develop statewide information technology policies, standards, and guidelines using the enterprise architecture process and advice from state agencies and institutions. The policies, standards, and guidelines must recognize the uniqueness of certain agencies and state which agencies are included or exempted from the policies, standards, and guidelines. The policies, standards, and guidelines must be reviewed and approved by the state information technology advisory committee. Unless an exemption is granted by the chief information officer, each executive branch state agency and institution, excluding the institutions under the control of the board of higher education ~~with respect to academic and research uses of information~~

1 ~~technology~~, shall comply with the policies and standards developed ~~by the department and the~~
2 ~~office of management and budget~~ under this section. Unless an exemption is granted by the
3 chief information officer, each entity receiving wide area network services provided by the
4 department shall comply with the policies and standards developed ~~by the department~~ under
5 this section with respect to access to or use of wide area network services.

6 **SECTION 8. AMENDMENT.** Section 54-59-11 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **54-59-11. Information technology plans.**

- 9 1. Each executive branch state agency or institution, ~~including~~ excluding the
10 institutions under the control of the board of higher education, shall prepare an
11 information technology plan, subject to ~~approval~~ acceptance by the department.
12 The plan must be submitted to the department by July fifteenth of each
13 even-numbered year. The plan must be prepared based on guidelines developed
14 by the department; must provide the information technology goals, objectives, and
15 activities of the entity for the current biennium and the next two bienniums; and
16 must include ~~information regarding an asset management plan relating to the~~
17 inventory of information technology assets owned, leased, or employed by the
18 entity. The asset management plan must include data regarding each business
19 application asset of the entity, the age of the asset, and the planned replacement
20 cycle for the asset.
- 21 2. Each entity required to file a plan shall provide interim updates to its plan if major
22 information technology changes occur which affect its plan. The department shall
23 review each entity's plan for compliance with statewide information technology
24 policies and standards and may require an entity to change its plan to comply with
25 statewide policies or standards or to resolve conflicting directions among plans.
26 Agencies of the judicial and legislative branches shall file their information
27 technology plans with the department by July fifteenth of each even-numbered
28 year.
- 29 3. Each ~~state~~ entity required to file a plan shall prepare its budget request for the next
30 biennium based on its information technology plan. The agency's budget request
31 and the governor's budget recommendation must include supporting information

describing in detail how the information technology plan relates to the budget request and recommendation. Any budget adjustment by the budget office must include the corresponding change to the plan.

4. Based on the plans, the department shall prepare a statewide information technology plan and distribute copies of that plan to members of the legislative assembly as requested by the legislative council or its designee. The statewide information technology plan must be developed with emphasis on long-term strategic goals ~~and~~, objectives, and accomplishments. The statewide information technology plan must contain:

a. A list of major projects started, ongoing, and completed during the biennium, including related budgeted and actual costs and the estimated implementation date for each project, as well as the actual implementation date for completed projects.

b. Information regarding evaluations of cost-benefit analyses for completed projects.

c. Information regarding the information technology plans, including the department's plan review process, the number of plans reviewed, and the number of plans accepted.

d. A description of the benefits to the state resulting from its investment in information technology.

5. The department shall develop a long-term plan for the cost-effective, needs-based replacement or upgrade of all business applications over a period of ten years or more. The process must include participation of affected agencies and institutions and must incorporate the standards, policies, and guidelines developed by the enterprise architecture process. The state information technology advisory committee shall prioritize each application replacement project as provided in section 54-59-02.1.

SECTION 9. AMENDMENT. Section 54-59-19 of the North Dakota Century Code is amended and reenacted as follows:

54-59-19. Information technology department annual report. The department shall prepare and present an annual report to the information technology committee. In addition to

the presentation of the annual report to the information technology committee, the department shall present a summary of the annual report to the budget section and to the legislative audit and fiscal review committee. The report must contain:

- ~~1. A list of major projects started, ongoing, and completed during the year including related budgeted and actual costs and the estimated implementation date for each project as well as the actual implementation date for completed projects.~~
- ~~2. A list of all projects for which financing agreements have been executed.~~
- ~~3. Information regarding evaluations of cost benefit analyses for completed projects.~~
2. A comparison of the department's rates charged for services compared to rates charged for comparable services in other states and in the private sector.
- ~~5. Information regarding the information technology plans including the department's plan review process, the number of plans reviewed, and the number of plans approved.~~
- ~~6. A description of the benefits to the state resulting from its investment in information technology.~~
3. Information regarding the delivery of services to agencies, including service dependability, agency complaints, and information technology department responsiveness.

SECTION 10. AMENDMENT. Section 54-59-21 of the North Dakota Century Code is amended and reenacted as follows:

54-59-21. Criminal justice information sharing board - Membership - Duties and powers. The criminal justice information sharing board consists of the chief justice of the supreme court or the chief justice's designee, the attorney general or the attorney general's designee, and the chief information officer of the state. The chief information officer is chairman of the board. The information technology department shall provide staff support to the board. The board shall set policy relating to the collection, storage, and sharing of criminal justice information and the systems necessary to perform those functions. The board shall provide operational oversight for criminal justice information sharing activities and shall approve and provide oversight of criminal justice information sharing budgets. Access to the criminal justice information sharing system is limited to entities within the criminal justice system and to

1 those entities approved by the board. The board may appoint an executive committee and an
2 advisory committee that would serve in an advisory capacity to the board.

3 **SECTION 11. AMENDMENT.** Section 54-59-22 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **54-59-22. Required use of electronic mail, file and print server administration,**
6 **data base administration, application server, and hosting services.** Each state agency
7 and institution, excluding the legislative and judicial branches, the institutions under the control
8 of the state board of higher education, ~~the public employees retirement system, the retirement~~
9 ~~and investment office,~~ the attorney general, and any entity exempted by the office of
10 management and budget after advisement by the information technology department, shall
11 obtain electronic mail, file and print server administration, data base administration, storage,
12 application server, and hosting services through a delivery system established by the
13 information technology department in conjunction with the office of management and budget.
14 The office of management and budget, after receiving advice from the information technology
15 department, shall establish policies and guidelines for the delivery of services, including the
16 transition from existing systems to functional consolidation, with consideration given to the
17 creation of efficiencies, cost-savings, and improved quality of service. This chapter does not
18 require or permit the public employees retirement system or the retirement and investment
19 office to engage in activities or make expenditures that may affect their compliance with the
20 qualification statutes and regulations promulgated by the internal revenue service.
21 Notwithstanding section 12 of this Act, an exemption granted to the oil and gas division and the
22 geological survey of the industrial commission, the public service commission, or the water
23 commission by the office of management and budget under this section before the effective
24 date of this Act must continue in effect until August 1, 2009.

25 **SECTION 12.** A new section to chapter 54-59 of the North Dakota Century Code is
26 created and enacted as follows:

27 **Information technology planning - Exemptions - Appeals.** Except as otherwise
28 provided in section 54-59-22, the department shall review any exemption granted under section
29 54-59-22 when the exempted agency or institution determines to replace an application or data
30 base. Based upon the information provided by the agency or institution, the chief information
31 officer shall determine whether to allow the continuation of the exemption. In making the

1 determination whether to continue an exemption, the chief information officer shall consider the
2 information provided in the technology plan of the agency or institution, the business case of
3 the agency or institution for the exemption, and the need to create overall government
4 efficiencies, cost-savings, and improvement of services. If the agency or institution disagrees
5 with the decision of the chief information officer, the agency or institution may appeal the
6 decision to the state information technology advisory committee. An agency or institution may
7 appeal a decision of the state information technology advisory committee to the director of the
8 office of management and budget, who may make a final decision regarding the continuation of
9 an exemption.