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SENATE BILL 244

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Pete Campos

FOR THE LEGISLATIVE FINANCE COMMITTEE AND THE INFORMATION
TECHNOLOGY OVERSIGHT COMMITTEE

AN ACT

RELATING TO INFORMATION TECHNOLOGY; CLARIFYING PROVISIONS OF
THE INFORMATION TECHNOLOGY MANAGEMENT ACT; REVISING THE
MEMBERSHIP OF THE INFORMATION TECHNOLOGY COMMISSION; EXTENDING
THE TERMINATION DATE FOR THE COMMISSION; PROVIDING STAFF FOR
THE COMMISSION; PROVIDING CRIMINAL PENALTIES FOR NONCOMPLIANCE
BY PUBLIC OFFICIALS OR EMPLOYEES; AMENDING AND ENACTING
SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION; DECLARING
AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 15-1C-1 NMSA 1978 (being Laws 1999,
Chapter 16, Section 1) is amended to read:

"15-1C-1. SHORT TITLE. -- [~~Sections 1 through 9 of this
act~~] Chapter 15, Article 1C NMSA 1978 may be cited as the
"Information Technology Management Act". "

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1 Section 2. Section 15-1C-2 NMSA 1978 (being Laws 1999,
2 Chapter 16, Section 2) is amended to read:

3 "15-1C-2. PURPOSE. --The purpose of the Information
4 Technology Management Act is to:

5 A. coordinate policies and procedures for e-
6 government;

7 [~~A.~~] B. assess and inventory current information
8 [~~systems~~] technology services and resources;

9 [~~B.~~] C. coordinate [the] central and individual
10 executive agency information [systems] technology in a manner
11 that ensures compliance with state information architecture and
12 that ensures that the most cost-effective and efficient
13 information and communication systems and resources are being
14 used by executive agencies;

15 [~~C.~~] D. develop a [five-year] three-year state
16 information technology strategic plan for information and
17 communication management that is updated annually by the
18 information technology commission; and

19 [~~D.~~] E. promote data sharing between governmental
20 entities and provide a mechanism for information technology
21 expertise to be shared between the branches of state government
22 and local governments. "

23 Section 3. Section 15-1C-3 NMSA 1978 (being Laws 1999,
24 Chapter 16, Section 3) is amended to read:

25 "15-1C-3. DEFINITIONS. --As used in the Information

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1 Technology Management Act:

2 A. "agency plan" means an executive agency's annual
3 information technology plan;

4 B. "commission" means the information technology
5 commi ssi on;

6 [~~C. "development project" means the period from~~
7 ~~when funding is made available for information technology~~
8 ~~development until after system implementation;~~]

9 C. "e-government" means the provision of
10 constituent access to government information and services via
11 the internet through a state portal that complies with state
12 information architecture;

13 D. "executive agency" means a state agency of the
14 executive branch of government;

15 E. "information technology" means computer and
16 voice and data communication software and hardware, including
17 imaging systems, terminals and communications networks and
18 facilities, staff information systems services and professional
19 services contracts for information systems services;

20 F. "information technology project" means the
21 purchase, replacement, development or modification of a
22 hardware or software system;

23 [~~F.~~] G. "office" means the [information technology
24 management] office of the chief information officer;

25 [~~G.~~] H. "state information architecture" [includes

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1 ~~the standards, guidelines, policies and protocols to implement~~
2 ~~information technology]~~ means a logically consistent set of
3 principles, policies and standards that guides the engineering
4 of state government's information technology systems and
5 infrastructure in a way that ensures alignment with state
6 government's business needs; and

7 [H-] I. "state information technology strategic
8 plan" means the [executive] information technology planning
9 document for the state that spans a [~~three-to-five-year~~]
10 three-year period. "

11 Section 4. Section 15-1C-4 NMSA 1978 (being Laws 1999,
12 Chapter 16, Section 4) is amended to read:

13 "15-1C-4. COMMISSION CREATED--MEMBERSHIP.--

14 A. The "information technology commission" is
15 created. The commission consists of [~~thirteen~~] fourteen
16 members as follows:

17 (1) [~~five~~] four members appointed by the
18 governor, three of whom are from agencies whose primary funding
19 is not from internal service funds;

20 (2) one staff member with telecommunications
21 regulatory experience appointed by the chairman of the public
22 regulation commission;

23 (3) two members representing education, one
24 appointed by the commission on higher education and one
25 appointed by the president of the state board of education;

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1 (4) two members from the national
2 laboratories; ~~[and]~~

3 (5) three members appointed by the governor to
4 represent the public with information technology and management
5 experience, but who are not employees of the state or a
6 political subdivision of the state and who do not have any
7 financial interest in the state information systems or state
8 contracts. The public members shall serve for staggered three-
9 year terms; and

10 (6) two members representing local government,
11 one appointed by the New Mexico association of counties and one
12 appointed by the New Mexico municipal league.

13 B. Additionally, the following advisory members may
14 ~~[be appointed at the request of]~~ serve on the commission:

15 (1) two members from the judicial information
16 systems council appointed by the chairman of ~~[the]~~ that
17 council;

18 ~~[(2) two members from the house of~~
19 ~~representatives and two members from the senate appointed by~~
20 ~~the New Mexico legislative council; and~~

21 ~~(3) two members representing local~~
22 ~~governments, one appointed by the New Mexico association of~~
23 ~~counties and one appointed by the New Mexico municipal league]~~

24 (2) one staff member from the legislative
25 council service and one staff member from the legislative

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1 finance committee, appointed by their respective directors; and
2 (3) the chief information officer.

3 C. Members of the commission, except the three
4 public members appointed by the governor, may select designees
5 to represent them and vote on their behalf. The chief
6 information officer shall not select a designee to represent
7 him during commission meetings.

8 [~~E.~~] D. The members of the commission who are not
9 supported by public money, or their designees, may receive per
10 diem and mileage pursuant to the Per Diem and Mileage Act, but
11 shall receive no other compensation, perquisite or allowance.

12 [~~D. For the initial year of operation, the chief~~
13 ~~information officer shall act as chairman. Thereafter, the~~
14 ~~commission shall elect a chairman and vice chairman for a two-~~
15 ~~year term.]~~

16 E. The commission shall elect a chairman and vice
17 chairman from the active membership of the commission for two-
18 year terms.

19 [~~E.~~] F. The commission shall meet at least
20 semiannually and may meet at the call of the chairman or a
21 majority of the members. "

22 Section 5. Section 15-1C-5 NMSA 1978 (being Laws 1999,
23 Chapter 16, Section 5) is amended to read:

24 "15-1C-5. COMMISSION-- POWERS AND DUTIES. --The commission
25 shall:

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1 A. adopt and promulgate rules that [~~specify~~]
2 delineate the state information architecture [~~to implement~~] as
3 a framework for the state information technology strategic
4 plan;

5 B. adopt and promulgate other rules necessary for
6 the administration of the Information Technology Management Act
7 and the conduct of the affairs of the office;

8 C. develop and annually review strategies for
9 identifying [~~and managing development~~] information technology
10 projects that [~~involve multiple agencies to ensure appropriate~~
11 ~~and timely resolution of system development problems~~] are
12 statewide in their scope and ensuring that those information
13 technology projects are not developed independently by a single
14 agency or duplicated by separate agencies;

15 D. provide information technology planning
16 guidelines for agency annual plans;

17 E. update state information architecture and the
18 state information technology strategic plan annually, including
19 identifying areas of noncompliance with the state information
20 technology strategic plan; [~~and~~]

21 F. submit proposed rules to the information
22 technology oversight committee for its review prior to
23 adoption;

24 G. review and approve information technology
25 appropriation requests presented to it by the chief information

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1 officer and report to the legislative finance committee and the
2 information technology oversight committee regarding those
3 requests;

4 H. establish policies, procedures and rules to
5 ensure that information technology projects are scheduled and
6 funded in phases and that an agency's authority to proceed to
7 the next phase of an information technology project is
8 contingent upon successful completion of the prior phase. The
9 policies, procedures and rules shall require the identification
10 of one or more specific deliverables for each phase of an
11 information technology project, for the purpose of assessing
12 whether a phase has been successfully completed; and

13 I. adopt and promulgate rules that authorize an
14 agency to appeal to the commission regarding a decision made by
15 the chief information officer pursuant to Paragraph (3) or (5)
16 of Subsection B of Section 15-1C-7 NMSA 1978. "

17 Section 6. Section 15-1C-6 NMSA 1978 (being Laws 1999,
18 Chapter 16, Section 6) is amended to read:

19 "15-1C-6. [~~INFORMATION TECHNOLOGY MANAGEMENT~~] OFFICE OF
20 THE CHIEF INFORMATION OFFICER CREATED-- ADMINISTRATIVE
21 ATTACHMENT-- CHIEF INFORMATION OFFICER-- QUALIFICATIONS-- STAFF. --

22 A. The [~~information technology management~~] "office
23 of the chief information officer" is created. The office is
24 administratively attached to the office of the governor.

25 B. The head of the office is the "chief information

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1 officer", who is appointed by the governor with the advice and
2 consent of the senate. The chief information officer shall
3 have a minimum of seven years' experience in the management of
4 a large information technology enterprise. The chief
5 information officer serves at the pleasure of the governor.

6 C. The chief information officer may hire staff as
7 necessary to carry out the provisions of the Information
8 Technology Management Act. Staff of the office are subject to
9 the provisions of the Personnel Act. "

10 Section 7. A new section of the Information Technology
11 Management Act, Section 15-1C-6.1 NMSA 1978, is enacted to
12 read:

13 "15-1C-6.1. [NEW MATERIAL] COMMISSION STAFF-- EXECUTIVE
14 DIRECTOR. --

15 A. An independent staff for the commission is
16 established in the office. The commission staff shall consist
17 of an executive director and other professional,
18 administrative, technical or clerical personnel authorized by
19 the legislature as necessary to assist the commission in
20 carrying out its powers and duties.

21 B. The commission staff shall be appointed and
22 supervised by the commission. The executive director shall be
23 exempt from the provisions of the Personnel Act. The other
24 commission staff shall be subject to the provisions of the
25 Personnel Act. The commission staff shall not be subject to

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1 supervision or control by the chief information officer.

2 C. Except for the executive director, salaries and
3 benefits for commission staff shall be fixed in the manner
4 provided by law for regulating salaries and benefits of state
5 employees.

6 D. Commission expenses and the cost of salaries and
7 benefits for the executive director and other commission staff
8 shall be paid by the office, as requested by the commission. "

9 Section 8. Section 15-1C-7 NMSA 1978 (being Laws 1999,
10 Chapter 16, Section 7) is amended to read:

11 "15-1C-7. OFFICE--POWERS AND DUTIES. --

12 A. The office may:

13 (1) obtain information, documents and records
14 that are not confidential by law from an executive agency as
15 needed to carry out the provisions of the Information
16 Technology Management Act;

17 (2) enter into contracts;

18 (3) perform [~~performance or other audits or~~]
19 reviews of executive agency [~~development~~] information
20 technology projects or management processes; and

21 (4) when requested, offer assistance or
22 expertise to the judiciary, legislature, institutions of higher
23 education, counties, municipalities, public school districts
24 and other political subdivisions of the state.

25 B. The office shall:

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1 (1) provide oversight of e-government
2 implementation by providing the commission with certification
3 information and recommendations regarding e-government systems.
4 The office does not have the authority to develop and implement
5 e-government systems;

6 ~~[(1)]~~ (2) review agency plans and make
7 recommendations to the commission regarding prudent allocation
8 of information technology resources; reduction of data,
9 hardware and software redundancy; and improving system
10 interoperability and data accessibility [~~among~~] between
11 agencies;

12 ~~[(2)]~~ (3) approve executive agency information
13 technology requests for proposals and competitive vendor
14 requests that are subject to the Procurement Code, prior to
15 final approval;

16 (4) ensure that all hardware and software
17 purchases funded through an agency's base budget or pursuant to
18 an information technology funding recommendation shall be
19 procured by using consolidated purchasing administered by the
20 chief information officer, to achieve economies of scale and to
21 provide the state with the best unit price;

22 (5) approve executive agency information
23 technology [~~professional service~~] contracts [~~for technical~~
24 sufficiency as they pertain to information technology] and
25 subsequent revisions to those contracts, including emergency

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1 procurements, sole source contracts and price agreements, prior
2 to final execution;

3 (6) verify compliance with state information
4 architecture and commission rules before approving documents
5 referred to in Paragraphs (3) and (5) of this subsection;

6 ~~[(3)]~~ (7) monitor executive agency compliance
7 with its agency plan, the state information technology
8 strategic plan and state information architecture and report to
9 the governor, the commission and executive agency management on
10 noncompliance;

11 ~~[(4)]~~ (8) review information technology cost
12 recovery mechanisms and information systems rate structures of
13 executive agencies and make recommendations to the commission;

14 ~~[(5)]~~ (9) provide technical support to
15 executive agencies in the development of their agency plans;

16 ~~[(6)]~~ (10) review appropriation requests
17 related to ~~[executive agency]~~ information technology requests
18 to ensure compliance with agency plans and the state
19 information technology strategic plan and make written
20 recommendations to the ~~[department of finance and~~
21 ~~administration, the legislative finance committee and the~~
22 ~~information technology oversight committee]~~ commission by
23 November 30 of each year;

24 ~~[(7)]~~ (11) provide oversight of ~~[development]~~
25 information technology projects, including ensuring adequate

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1 risk management and disaster recovery practices and [~~monitor~~
2 monitoring compliance with strategies developed by the
3 commission for timely resolution of [~~development~~] information
4 technology project problems; and

5 [~~(8)~~] (12) perform any other function assigned
6 by the commission. "

7 Section 9. Section 15-1C-8 NMSA 1978 (being Laws 1999,
8 Chapter 16, Section 8) is amended to read:

9 "15-1C-8. AGENCY PLANS-- CERTIFICATION-- NONCOMPLIANCE--
10 PENALTIES. --

11 A. Agency plans shall:

12 (1) be consistent with the state information
13 technology strategic plan;

14 (2) demonstrate that the executive agency has
15 developed information technology objectives consistent with the
16 agency plan, the state information technology strategic plan
17 and the state information [~~technology~~] architecture;

18 (3) show appropriate coordination with other
19 executive agencies to improve customer service and reduce
20 redundant data, hardware and software;

21 (4) include information about information
22 technology objectives, inventories, data and expenditures for
23 each fiscal year;

24 (5) demonstrate consistency with
25 appropriations and budgets approved by the department of

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1 finance and administration; and

2 (6) include any other components required by
3 the office or the commission.

4 B. Prior to making information technology purchases
5 in excess of one hundred thousand dollars (\$100,000) and
6 regardless of the funding source, an executive agency shall
7 certify to the [office] commission that its proposed
8 information technology purchases are consistent with its agency
9 plan, the information architecture adopted by the commission
10 and the state information technology strategic plan. The
11 [office] commission may delay or stop a purchase if it believes
12 that the proposed purchase may not meet the requirements of the
13 agency plan, state information architecture or the state
14 information technology strategic plan.

15 C. A public official or employee who makes an
16 information technology purchase and intentionally fails to
17 comply with the certification requirements set forth in
18 Subsection B of this section is guilty of a fourth degree
19 felony and shall be sentenced pursuant to the provisions of
20 Section 31-18-15 NMSA 1978. The public official or employee
21 shall also be individually liable to the state for the amount
22 of the purchase."

23 Section 10. Section 15-1C-9 NMSA 1978 (being Laws 1999,
24 Chapter 16, Section 9) is amended to read:

25 "15-1C-9. TERMINATION OF AGENCY LIFE- -DELAYED

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1 REPEAL. --The information technology commission [~~and information~~
2 ~~technology management office are~~] is terminated July 1, [2005]
3 2009 pursuant to the Sunset Act. The commission [~~and office~~]
4 shall continue to operate according to the provisions of the
5 Information Technology Management Act until July 1, [2006]
6 2010. [~~Effective July 1, 2006, that act is repealed.~~]"

7 Section 11. Section 15-1C-11 NMSA 1978 (being Laws 1999,
8 Chapter 16, Section 11) is amended to read:

9 "15-1C-11. OVERSIGHT COMMITTEE DUTIES. --

10 A. The information technology oversight committee
11 shall hold one organizational meeting each year to develop a
12 work plan and budget for the ensuing interim. The work plan
13 and budget shall be submitted to the New Mexico legislative
14 council for approval.

15 B. The committee shall:

16 (1) monitor the work of the information
17 technology commission and the [~~information technology~~
18 ~~management~~] office of the chief information officer, including
19 reviewing the commission's rules setting out the policies,
20 standards, procedures and guidelines for information
21 architecture and development projects and the annual update of
22 the state information technology strategic plan;

23 (2) oversee the implementation of the
24 Information Technology Management Act, review the work of the
25 judicial information systems council and the judicial

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1 information division and oversee any other state-funded
2 systems;

3 (3) meet on a regular basis to receive and
4 evaluate periodic reports from the information technology
5 commission and [~~information technology management~~] office of of
6 the chief information officer; and

7 (4) perform such other related duties as
8 assigned by the legislative council.

9 C. The committee shall make a report of its
10 findings and recommendations for the consideration of each
11 session of the legislature. The report and any suggested
12 legislation shall be made available to the legislative council
13 by December 31 preceding that session. "

14 Section 12. APPROPRIATION.--Two hundred fifty thousand
15 dollars (\$250,000) is appropriated from the general fund to the
16 office of the chief information officer for expenditure in
17 fiscal years 2003 and 2004 to provide salaries and benefits for
18 three full-time employees who will serve as staff for the
19 information technology commission. Any unexpended or
20 unencumbered balance remaining at the end of fiscal year 2004
21 shall revert to the general fund.

22 Section 13. EMERGENCY.--It is necessary for the public
23 peace, health and safety that this act take effect immediately.