

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR
HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 291

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO INFORMATION TECHNOLOGY; ENACTING THE ELECTRONIC
GOVERNMENT ACT; GRANTING DUTIES AND POWERS.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Electronic Government Act".

Section 2. DECLARATION OF PUBLIC POLICY.--Recognizing
that a representative government is dependent upon an informed
electorate, the intent of the legislature in enacting the
Electronic Government Act is to ensure, and it is declared to
be the public policy of this state, that all persons are
entitled to the greatest possible information regarding the
affairs of government and the official acts of public officers
and employees. It is the further intent of the legislature,
and it is declared to be the public policy of this state, that

.151372.5

underscoring material = new
[bracketed material] = delete

1 to provide persons with such information is an essential
2 function of a representative government and an integral part of
3 the routine duties of public officers and employees. The
4 Electronic Government Act shall not be construed to limit any
5 existing public access to public records or services.

6 Section 3. PURPOSE.--The purpose of the Electronic
7 Government Act is to:

8 A. establish an electronic government and
9 management structure to provide oversight, review, fiscal
10 monitoring, strategic planning and policy development for the
11 state's electronic government initiatives;

12 B. define the electronic government powers and
13 duties of the information technology commission;

14 C. establish an electronic government lead agency
15 and define its powers and duties;

16 D. establish a basis for the allocation of revenues
17 generated by electronic government initiatives;

18 E. promote the digital provision of state
19 information, services and business and financial transactions
20 to constituents, businesses and other governmental entities;
21 and

22 F. promote and protect the privacy of nonpublic
23 data distributed through the state's portal as provided by law,
24 and promote the security of the state's data records and
25 electronic information and services.

.151372.5

1 Section 4. DEFINITIONS.--As used in the Electronic
2 Government Act:

3 A. "commercial entity" means a private for-profit
4 business enterprise; provided that nonprofit business
5 enterprises and the media are not commercial entities for
6 purposes of the act;

7 B. "commission" means the information technology
8 commission;

9 C. "contract portal developers or operators" means
10 companies that offer portal development, maintenance and
11 ongoing operations under contract with the state;

12 D. "consumer" means a person or entity that is
13 eligible under the Electronic Government Act to be charged a
14 fee in exchange for the receipt of electronic information or
15 services through the state portal or the state's electronic
16 government activities;

17 E. "convenience fee" means a fee charged to a
18 consumer to purchase a data record electronically when that
19 purchase is optional and for the convenience of the consumer;

20 F. "data record" means a collection of related data
21 fields in a computer data base consisting of a group of facts
22 about a particular subject, individual or event;

23 G. "electronic business" means the conduct of
24 digital business transactions, usually nongovernmental, over
25 the internet;

.151372.5

1 H. "external electronic transactions" means digital
2 electronic government transactions between state agencies and
3 entities that are not state agencies;

4 I. "internal electronic transactions" means digital
5 electronic government transactions between two or more state
6 agencies;

7 J. "internet" means the worldwide, digital networks
8 external to the state's networks;

9 K. "intranet" means the state's internal digital
10 networks;

11 L. "lead agency" means the state agency designated
12 by the governor to supervise and coordinate the day-to-day
13 operations of the state's portal and electronic government
14 initiatives;

15 M. "portal" means a virtual, digital, single port-
16 of-entry to provide access to state information, services and
17 business and financial transactions;

18 N. "portal fee" means a fee authorized by the
19 commission that the state charges to a consumer to obtain
20 certain data records electronically or to complete certain
21 business transactions with the state through the portal;

22 O. "state agency" means any executive branch agency
23 of state government;

24 P. "subscription fee" means a fee charged to a
25 consumer for specific, recurring electronic government services

.151372.5

1 and information provided electronically to the consumer at the
2 consumer's request; and

3 Q. "transaction fee" means a fee charged to a
4 consumer upon the purchase of certain data records to help
5 defray the costs of providing the record electronically; the
6 fee is charged by and retained by the contract portal
7 developers or operators.

8 Section 5. ELECTRONIC GOVERNMENT OVERSIGHT AND
9 GOVERNANCE.--The commission shall provide oversight and
10 governance for the electronic government operations of the
11 state's portal and state agency electronic government
12 activities.

13 Section 6. COMMISSION--ELECTRONIC GOVERNMENT POWERS AND
14 DUTIES.--The commission shall:

15 A. adopt and promulgate rules necessary for the
16 administration of the Electronic Government Act, including
17 operational procedures for the commission;

18 B. adopt and promulgate rules for state agencies to
19 conduct business by electronic means over the internet or
20 intranet, including financial transactions;

21 C. adopt and promulgate rules governing external
22 electronic transactions through the portal;

23 D. adopt and promulgate rules governing internal
24 electronic transactions through the portal;

25 E. adopt and promulgate rules for prioritizing the

.151372.5

1 rollout for portal access for state services and information;

2 F. adopt and promulgate rules authorizing the
3 collection of fees, including portal, transaction, subscription
4 and convenience fees, through the portal;

5 G. establish pricing structures for data records
6 provided through the portal, unless the pricing is otherwise
7 authorized in law; the commission, when determining pricing,
8 shall make the price for an industry proportional to that
9 industry's use of the portal;

10 H. audit data records released to the public over
11 the internet to ascertain compliance with state and federal
12 privacy laws and rules, and report violations to the office of
13 the attorney general;

14 I. adopt and promulgate rules necessary to protect
15 the privacy and security of data records that may be released
16 to the public over the internet, ensure compliance with state
17 and federal security laws and rules and report violations to
18 the office of the attorney general;

19 J. provide oversight and review of state agencies'
20 electronic government activities, including the state's
21 electronic government portal and any contract portal developers
22 or operators that may be retained by the state;

23 K. perform a monthly financial review, as well as a
24 review of the annual independent fiscal audit of the revenue
25 generated by the state's electronic government portal through

.151372.5

1 any contract portal developers or operators that may be
 2 retained by the state, to ensure that the portal is generating
 3 appropriate revenues and that the contract portal developers or
 4 operators are fulfilling the terms of their contracts with the
 5 state;

6 L. provide oversight and direction to the lead
 7 agency regarding the management of any contract portal
 8 developers or operators retained by the state and, with the
 9 chief information officer, approve or reject the lead agency's
 10 and contract portal developers' or operators' plans or
 11 implementations for the portal;

12 M. develop and update annually by September 1 an
 13 electronic government strategic plan for the state that is in
 14 conformance with the state's information technology strategic
 15 plan;

16 N. provide regular oversight and review of state
 17 agency electronic government initiatives that are not conducted
 18 through the state's portal to ensure that such initiatives are
 19 in compliance with the state's electronic government strategic
 20 plan and the state's information technology strategic plan;

21 O. designate committees and subcommittees as
 22 appropriate to assist in the conduct of commission business,
 23 including an electronic government committee;

24 P. provide oversight and review of the lead
 25 agency's performance as the portal operations and contract

.151372.5

underscoring material = new
 [bracketed material] = delete

1 manager for the state and deliver semiannual reports of the
2 findings to the information technology oversight committee, the
3 department of finance and administration and the legislative
4 finance committee;

5 Q. review monthly the financial situation and the
6 operational status of the state's electronic government portal
7 and other non-portal electronic government activities of state
8 agencies and deliver semiannual reports of the findings to the
9 information technology oversight committee, the department of
10 finance and administration and the legislative finance
11 committee;

12 R. submit proposed rules to the information
13 technology oversight committee for review and comment prior to
14 adoption;

15 S. authorize the initial fee structure for the
16 portal, and thereafter, review the fee structure semiannually;
17 the commission may adjust the fee structure at the time of the
18 semiannual review, subject to the terms of contract with
19 contract portal developers or operators; and

20 T. establish an opt-out provision for the release
21 of information defined by federal or state law as "private" or
22 "confidential".

23 Section 7. ELECTRONIC GOVERNMENT LEAD AGENCY--POWERS AND
24 DUTIES.--

25 A. The governor shall designate a state agency as

.151372.5

underscoring material = new
[bracketed material] = delete

1 the lead agency for state electronic government activities.

2 B. The lead agency shall:

3 (1) provide day-to-day operational supervision
 4 and control of the state's electronic government portal and any
 5 contract portal developers or operators that may be retained by
 6 the state;

7 (2) accept direction from the commission
 8 regarding the management of the portal and contracts with
 9 contract portal developers or operators;

10 (3) provide necessary staff to supervise and
 11 manage the state's relationship and contract with any contract
 12 portal developers or operators that may be retained by the
 13 state;

14 (4) review the annual independent fiscal
 15 audits of the state's electronic government portal and present
 16 the results to the commission;

17 (5) provide any required staffing to the
 18 commission;

19 (6) recommend procedures and rules to the
 20 commission for improved oversight of the state's electronic
 21 government initiatives;

22 (7) provide monthly reports to the commission
 23 detailing the financial situation and the operational status of
 24 the state's electronic government portal and other such
 25 information as may be requested by the commission;

.151372.5

underscored material = new
 [bracketed material] = delete

1 (8) provide semiannual reports to the
2 commission for transmittal to the department of finance and
3 administration, the information technology oversight committee
4 and the legislative finance committee detailing the financial
5 situation and the operational status of the state's electronic
6 government portal and other non-portal electronic government
7 activities of state agencies; and

8 (9) perform any other function assigned by the
9 commission.

10 C. The lead agency may:

11 (1) obtain information, copies of documents
12 and records that are not confidential by law from any state
13 agency as necessary to carry out the provisions of the
14 Electronic Government Act;

15 (2) enter into contracts;

16 (3) perform reviews of state agency electronic
17 government projects or electronic government management
18 processes;

19 (4) pursuant to the Personnel Act, hire staff
20 as necessary to carry out the provisions of the Electronic
21 Government Act; and

22 (5) when requested, offer assistance or
23 expertise on electronic government to the judiciary,
24 legislature, institutions of higher education, counties,
25 municipalities, public school districts and other political

.151372.5

1 subdivisions of the state.

2 Section 8. ELECTRONIC GOVERNMENT FUNDS--FEES.--

3 A. Money collected from providing data records,
4 services or information through the state's portal shall be
5 distributed to the general fund, unless otherwise provided by
6 law.

7 B. Fees for providing data records, services or
8 information that are otherwise authorized in law shall not be
9 affected by the Electronic Government Act, whether or not those
10 fees are collected through the state's portal.

11 C. Transaction fees that are authorized by the
12 commission for the sale of data records, services or
13 information through the state's portal and specified in the
14 contract with contract portal developers or operators shall be
15 retained according to contract terms by the contract portal
16 developers or operators unless otherwise authorized in law.

17 D. There are several categories of consumers who
18 may be charged fees for receipt of certain data records,
19 information or services through the state's portal:

20 (1) a person or entity that obtains data
21 records, information or services for which a portal,
22 convenience, transaction or subscription fee has been
23 authorized by statute or other law;

24 (2) commercial entities that obtain data
25 records from the motor vehicle division of the taxation and

.151372.5

underscoring material = new
[bracketed material] = delete

1 revenue department for use in business but do not resell the
2 data records or reports derived from the data records; fees for
3 this class of users shall be capped at no more than two dollars
4 (\$2.00) per data record, including both a portal fee and a
5 transaction fee, if applicable;

6 (3) commercial entities that obtain data
7 records from the motor vehicle division for use in business and
8 that resell the data records or reports derived from the data
9 records; fees for these commercial entities shall be set at
10 three dollars (\$3.00) per data record for the first twelve
11 months that motor vehicle records are available through the
12 portal, at four dollars (\$4.00) per data record beginning
13 twelve months after motor vehicle records are available through
14 the portal and at a fee to be determined by the commission that
15 does not exceed five dollars (\$5.00) per data record beginning
16 twenty-four months after motor vehicle records are available
17 through the portal;

18 (4) commercial entities that obtain data
19 records, information or services from state agencies other than
20 the motor vehicle division but do not resell the data records,
21 information or services; portal, transaction, convenience or
22 subscription fees for this class of users shall be determined
23 by the commission;

24 (5) commercial entities that want to obtain
25 monthly monitoring and status change reports from the motor

.151372.5

underscoring material = new
[bracketed material] = delete

1 vehicle division regarding the driving records of specific
2 individuals through the portal shall pay a monthly fee of not
3 more than twenty-five cents (\$0.25) per month per name, plus
4 the cost of one baseline motor vehicle record per individual
5 per year at the fee established in Paragraph (3) of this
6 subsection; each additional motor vehicle record provided by
7 the motor vehicle division to the commercial entity for
8 monitoring activity during the course of the year shall be
9 charged at the fee for motor vehicle records established in
10 Paragraph (3) of this subsection;

11 (6) media, including print publications, radio
12 or television stations or news organizations, may be charged
13 portal and transaction fees to cover the actual cost of
14 reproduction and delivery of the data records, information or
15 services requested by the entity and delivered by the portal;
16 and

17 (7) nonprofit entities may be charged portal
18 and transaction fees to cover the actual cost of reproduction
19 and delivery of the data records, information or services
20 requested by the entity and delivered by the portal.

21 Section 9. SALE OR RESALE OF ELECTRONIC DATA RECORDS,
22 INFORMATION AND SERVICES.--

23 A. A person or entity that obtains state data
24 records, information or services provided through the state's
25 portal is permitted to sell or resell the data records,

.151372.5

1 information or services only under the terms of a legal and
2 valid contract between the state and the purchasing entity.

3 B. Media entities and nonprofit entities that
4 obtain data records for the actual cost of reproduction and
5 delivery pursuant to Paragraphs (6) and (7) of Subsection D of
6 Section 8 of this act shall not sell, resell or deliver the
7 data records to any other person or entity for sale or resale.
8 The prohibition in this subsection does not apply to
9 publication or use of the data records in the ordinary course
10 of business of a media entity.

11 Section 10. ENFORCEMENT.--The commission may adopt and
12 promulgate reasonable rules to enforce the Electronic
13 Government Act.

14 Section 11. ELECTRONIC GOVERNMENT PLANS AND PROJECTS.--

15 A. The commission on higher education, the judicial
16 branch of government, the legislative branch of government and
17 municipalities and counties are encouraged to submit their
18 electronic government plans and projects to the commission, the
19 lead agency, the legislative finance committee and the
20 information technology oversight committee for review and
21 comment by those entities.

22 B. The commission on higher education, the judicial
23 branch of government, the legislative branch of government and
24 municipalities and counties are encouraged to coordinate their
25 electronic government plans and projects with the executive

.151372.5

1 branch and each other whenever possible in order to leverage
2 resources and optimize services to constituents.

3 - 15 -
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

underscored material = new
[bracketed material] = delete