

Legislative Council Service

Information Memorandum

DATE: December 16, 2010

DISCUSSION DRAFT

TO: Government Restructuring Task Force Members

FROM: Arthur J. Waskey

SUBJECT: REPEAL OF DEPARTMENT OF INFORMATION TECHNOLOGY AND
CREATION OF OFFICE OF CHIEF INFORMATION OFFICER

Following is a section-by-section explanation of a proposed bill to repeal the Department of Information Technology Act (DoITA) and to enact a new Information Technology Management Act (ITMA) that creates the Office of the Chief Information Officer (Office and CIO). Any opinions expressed are those of the author and do not necessarily reflect the opinions of the New Mexico Legislative Council or any other member of its staff.

The purpose of the bill is to place executive agency information technology services in an office administratively attached to the General Services Department (GSD) and to eliminate a cabinet-level department.

Section 1 (page 1). Short Title—Sections 1 through 22 of the bill are the ITMA; the remainder are the necessary temporary provisions and repeal sections. An initial question arises concerning the names of this new act, the Office and the CIO. The drafting direction was to repeal the DoITA and go back to the old ITMA, adopted in 1999, that was repealed and replaced by the DoITA in 2007. The discussion draft of the proposed bill does that with modifications that bring it up to date, but uses the same names (Information Technology Management Act, Office of Chief Information Officer and Chief Information Officer) as they were used in the old ITMA. There is the possibility of some confusion in the law using the old name anew; a recommendation is made to consider new names as the task force deems appropriate.

Section 2 (pages 1 and 2). Purpose—This is the same language as in the old ITMA: to have a central, coordinating office for executive agency information technology functions and

needs with the responsibility of preparing a three-year strategic plan.

Section 3 (pages 2-4). Definitions—Substantive definitions were the same in the old ITMA and DoITA, so there is not much change in the proposed bill. Terms defined include "agency plan", "commission", "e-government", "executive agency", "information technology", which definition is a combination of the definitions in the DoITA and the old ITMA, "information technology project", "office", "state information architecture" and "state information technology strategic plan".

Section 4 (page 4). Office of the Chief Information Officer; Administrative Attachment; Chief Information Officer; Qualifications; Staff—This section creates the "office of the chief information officer" that is administratively attached to the GSD and is headed by a qualified CIO with authority to hire staff. This section includes language that limits hiring to available appropriations.

Section 5 (pages 4-8). Office; Powers and Duties—The powers for the CIO in the old ITMA and the secretary in the DoItA are similar, so the discussion draft retains the same powers that include: preparing the state information technology strategic plan, reviewing agency plans, approving information technology contracts, coordinating executive agency information technology and developing rates and fees for information technology services provided by the Office to executive agencies. The authority of the CIO to approve agency contracts is limited to under \$500,000 or less; an amount over that must be approved by the Information Technology Commission. This is an arbitrary amount used merely as a placeholder for this split approval authority, which was part of the direction for the drafting of the proposed bill. Another amount, as directed by the task force, may be more appropriate. This section also includes the duty to do background checks of critical employees.

Section 6 (pages 8-10). Information Technology Commission Created; Membership—The commission in the old ITMA had 13 members and in the DoITA, it had 15 members. The discussion draft of the proposed bill has 11 members, because the direction was to eliminate members from the public at large. Otherwise, the membership is the same as the old ITMA and the DoITA. The commission meets quarterly or at the call of the chair or a majority of the members. There are also advisory members listed.

Section 7 (pages 10-11). Information Technology Commission; Powers and Duties—While stated differently in the old ITMA and the DoITA, the commission powers are

similar and language from the old ITMA is used in this section. Those powers and duties include rulemaking, reviewing agency information technology plans, providing information, updating the strategic plan, reporting to the Legislative Finance Committee and approving major executive agency information technology purchases.

Section 8 (pages 11-13). Information Technology Rate Committee; Membership; Duties—This language is the same as in the DoITA, because it is part of the mechanism for reimbursement for services from state executive agencies. This committee includes executive agency representatives, the secretary of finance and administration and the CIO. Its purpose is to review and approve a rate and fee schedule for the Office's services as recommended by the CIO.

Section 9 (page 13). Agency Invoices—This language is the same as in the DoITA, because it is part of the reimbursement scheme. It sets out a schedule for payment of fees and sets up the Department of Finance and Administration as the arbiter of disagreements over the amount in an invoice.

Section 10 (pages 13-15). Agency Plans; Certification; Noncompliance; Penalties; Background Checks—This section establishes the requirement for executive agencies to support information technology plans to the CIO and is consistent with both the old ITMA and the DoITA. It further requires the head of an executive agency to certify that an agency's information technology purchases are consistent with the state information technology strategic plan. There is a misdemeanor penalty imposed on an agency head who fails to make the certification. This penalty provision is the same as in the old ITMA.

Section 11 (pages 16-17). Equipment Replacement Plans; Equipment Replacement Revolving Funds—This section is retained from the DoITA. It provides for the Office to have equipment replacement plans for the goods and services it provides to agencies and to establish funds, with money appropriated by the legislature and from the fees it receives from the services it provides, to make capital and related software purchases.

Section 12 (pages 17-18). Human Resources; Accounting and Management Reporting—This section is retained from the DoITA. It involves a memorandum of understanding between the Office and the DFA for the implementation of the statewide human resources, accounting and management reporting system or a successor system. Also included is a direction to assess agencies per employee to maintain the system.

Section 13 (pages 18-19). Telecommunications Services—This section authorizes the

CIO to maintain a statewide telecommunications system for the state. These are functions that are currently under the secretary of information technology.

Section 14 (page 19). Radio Communications—This section gives the Office supervisory control over all the executive branch radio communications, including the need for equipment. These are functions that are currently under the secretary of information technology.

Section 15 (pages 19-20). Lease of Radio Communications Network; Conditions and Requirements—This section provides for leasing excess capacity relating to two-way radio communication to private entities. These are functions that are currently under the secretary of information technology.

Section 16 (page 20). Service Charge—This section allows the Office to charge a fee to executive agencies for providing radio communications services pursuant to Section 14. This is a function currently given to the secretary of information technology.

Section 17 (page 21). Exclusion from Jurisdiction—Excluded from the authority granted in Section 14 is the actual use of radio equipment, equipment of the Department of Military Affairs and radio equipment incidental to a telephone system unless the CIO directs otherwise.

Section 18 (page 21). Telecommunications; Duties—This section provides for the Office to maintain a central telephone system. This is a function currently given to the secretary of information technology.

Section 19 (pages 21-22). Central Telephone System; Staff; Budget—This section requires the Office to staff the central telephone system and put the cost in its budget. Currently, the secretary of information technology has this duty.

Section 20 (page 22). Charges for Central Telephone Services—This section gives the Office authority to charge executive agencies for telephone service. Currently, the secretary of information technology has this authority.

Section 21 (pages 22-23). Central Telephone Services Fund Created; Deposit of Money; Appropriation—This section creates the Central Telephone Services Fund and establishes the accounting for payment of telephone services.

Section 22 (page 23). Participation or Exclusion of Agency, Department or Institution—This section generally requires all departments, institutions and agencies of the state to participate in the central telephone system to the extent practicable.

Section 23 (pages 23-25). Temporary provision; Transfer of Functions, Personnel, Property, Contracts and References in Law—This is a standard provision that makes the necessary transfers of property and functions from the Department of Information Technology to the Office on the effective date of the repeal of the DoITA.

Section 24 (page 25). Repeal—This section repeals the DoITA.

Section 25 (page 25). Effective Date—The effective date of the proposed bill is July 1, 2011.