

## **CHAPTER 54-59**

### **INFORMATION TECHNOLOGY DEPARTMENT**

#### **54-59-01. Definitions.** As used in this chapter:

1. "Agency" or "entity" does not include any agricultural commodity promotion group or any occupational or professional board.
2. "Department" means the information technology department.
3. "Information technology" means the use of hardware, software, services, and supporting infrastructure to manage and deliver information using voice, data, and video.
4. "Network services" means the equipment, software, and services necessary to transmit voice, data, or video.

**54-59-02. Information technology department - Responsibility - Public policy.** The information technology department is established with the responsibility for all wide area network services planning, selection, and implementation for all state agencies, including institutions under the control of the board of higher education, counties, cities, and school districts in this state. With respect to a county, city, or school district, wide area network services are those services necessary to transmit voice, data, or video outside the county, city, or school district. In exercising its powers and duties, the department is responsible for computer support services, host software development, statewide communications services, standards for providing information to other state agencies and the public through the internet, technology planning, process redesign, and quality assurance. The department may not exercise its powers and duties in a manner that competes or otherwise interferes with the provision of telecommunications service to a private, charitable, or nonprofit entity by a privately or cooperatively owned telecommunications company.

**54-59-02.1. Prioritization of proposed major information technology projects.** The department shall 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 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 committee regarding the prioritization of major information technology projects to the information technology committee, the office of management and budget, and the appropriations committees of the legislative assembly. The judicial and legislative branches shall notify biennially the committee on their major information technology projects and priorities.

**54-59-03. Chief information officer of the state.** The governor shall appoint the chief information officer of the state. The governor shall appoint the chief information officer on the basis of education, experience, and other qualifications in information technology and administration. The position of chief information officer is not a classified position. The chief information officer serves at the pleasure of the governor. The governor shall set the salary of the chief information officer within the limits of legislative appropriations.

#### **54-59-04. Duties of chief information officer.** The chief information officer shall:

1. Administer the department.
2. Employ any personnel determined to be necessary to carry out the responsibilities of the department and duties as prescribed by law.

3. Fix the salaries of all employees within the department, within the limits of legislative appropriation. All personnel within the department are entitled to actual and necessary travel expenses at the same rate as for other employees of the state.

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

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the board of higher education.
2. Shall provide network services in a way that ensures the network requirements of a single entity do not adversely affect the functionality of the whole network, facilitates open communications with the citizens of the state, minimizes the state's investment in human resources, accommodates an ever-increasing amount of traffic, supports rapid detection and resolution of problems, protects the network infrastructure from damage and security breaches, provides for the aggregation of data, voice, video, and multimedia into a statewide transport mechanism or backbone, and provides for the network support for the entity to carry out its mission.
3. May review and approve additional network services that are not provided by the department.
4. May purchase, finance the purchase, or lease equipment, software, or implementation services or replace, including by trade or resale, equipment or software as may be necessary to carry out this chapter. An agreement to finance the purchase of software, equipment, or implementation services may not exceed a period of five years. The department shall submit any intended financing proposal for the purchase of software, equipment, or implementation services under this subsection, which is in excess of one million dollars, to the budget section of the legislative management or the legislative assembly before executing a financing agreement. If the budget section or the legislative assembly does not approve the execution of a financing agreement, the department may not proceed with the proposed financing arrangement. The department may finance the purchase of software, equipment, or implementation services only to the extent the purchase amount does not exceed seven and one-half percent of the amount appropriated to the department during that biennium.
5. Shall review requests for lease, purchase, or other contractual acquisition of information technology as required by this subsection. Each executive branch agency or institution, excluding the institutions under the control of the board of higher education, shall submit to the department, in accordance with guidelines established by the department, a written request for the lease, purchase, or other contractual acquisition of information technology. The department shall review requests for conformance with the requesting entity's information technology plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the department may disapprove the request or require justification for the departure from the plan or statewide policy or standard.
6. Shall provide information technology, including assistance and advisory service, to the executive, legislative, and judicial branches. If the department is unable to fulfill a request for service from the legislative or judicial branch, the information technology may be procured by the legislative or judicial branch within the limits of legislative appropriations.
7. Shall request and review information, including project startup information summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout information summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, regarding any major information technology project

of an executive branch agency. The department shall present the information to the information technology committee on request of the committee.

8. May request and review information regarding any information technology project of an executive branch agency with a total cost of between one hundred thousand and two hundred fifty thousand dollars as determined necessary by the department. The department shall present the information to the information technology committee on request of the committee.
9. Shall study emerging technology and evaluate its impact on the state's system of information technology.
10. Shall develop guidelines for reports to be provided by each agency of the executive, legislative, and judicial branches, excluding the institutions under the control of the board of higher education, on information technology in those entities.
11. 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.
12. Shall perform all other duties necessary to carry out this chapter.
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.
14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.
15. Notwithstanding subsection 13, 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.

**54-59-06. Business plan.** The department shall develop and maintain a business plan. The business plan must:

1. Define the department's overall organization, mission, and delivery of services.
2. Define the department's short-term and long-term goals and objectives based on customer needs.
3. Outline the strategies and activities necessary to meet the goals and objectives of the department while improving the efficiency of the department and improving service to customers.
4. Define rates and funding mechanisms necessary to finance the proposed activities of the department.
5. Define a method for evaluating progress toward the goals outlined in the business plan.
6. Determine the specific strategies and processes to ensure that agencies share information, systems, and the statewide network.

7. Address the processes that will be put in place to ensure that the department exercises its powers and duties with minimal delay, cost, and procedural burden to an entity receiving services from the department; to ensure that the department provides prompt, high-quality services to an entity receiving services from the department; to ensure that an entity receiving services from the department is aware of the technology available and to ensure training on its use; and to foster information technology innovation by state entities.

**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 management; 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 and shall review reports on major information technology projects as required by this chapter and policies, standards, and guidelines developed by the department. The chief information officer shall submit recommendations of the committee regarding information technology issues to the information technology committee for its consideration.

**54-59-08. Required use of wide area network services.** Each state agency and institution that desires access to wide area network services and each county, city, and school district that desires access to wide area network services to transmit voice, data, or video outside that county, city, or school district shall obtain those services from the department. The chief information officer may exempt from the application of this section a county, city, or school district that demonstrates its current wide area network services are more cost-effective for or more appropriate for the specific needs of that county, city, or school district than wide area network services available from the department.

**54-59-09. Information technology standards.** Based on information from state agencies and institutions, the department and the office of management and budget shall develop statewide information technology policies, standards, and guidelines. 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 by the state information technology advisory committee. Each executive branch state agency and institution, excluding the institutions under the control of the board of higher education, shall comply with the policies and standards developed by the department and the office of management and budget unless the chief information officer exempts an agency from the policies, standards, and guidelines to address situations unique to that agency. Unless an exemption is granted by the chief information officer, each entity receiving wide area network services provided by the department shall comply with the policies and standards developed by the department with respect to access to or use of wide area network services.

**54-59-10. Information technology coordinators.** Each agency or institution shall appoint an information technology coordinator. The coordinator shall maintain liaison with the

department and assist the department in areas related to making the most economical use of information technology.

**54-59-11. Information technology plans.** Each executive branch state agency or institution, excluding the institutions under the control of the board of higher education, unless the chief information officer grants an exemption, shall participate in the information technology planning process based on guidelines developed by the department. The plan must be submitted to the department by August fifteenth of each even-numbered year unless the chief information officer grants an extension. The department shall review each entity's plan for compliance with statewide information technology policies and standards and may require an entity to change its plan to comply with statewide policies or standards or to resolve conflicting directions among plans. Agencies of the judicial and legislative branches shall file their information technology plans with the department by August fifteenth of each even-numbered year. 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. The statewide information technology plan must be developed with emphasis on long-term strategic goals, objectives, and accomplishments.

**54-59-12. Coordination of activities - Reports.** The department shall cooperate with each state entity providing access to any computer data base or electronically filed or stored information under subsection 4 of section 44-04-18 to assist in providing economical, efficient, and compatible access. The chief information officer shall conduct conferences and meetings with political subdivisions to review and coordinate information technology. The chief information officer and the commissioner of the board of higher education shall meet at least twice each year to plan and coordinate their information technology. The chief information officer and commissioner shall consider areas in which joint or coordinated information technology may result in more efficient and effective state government operations. Upon request, the chief information officer shall report to the legislative management regarding the coordination of services with political subdivisions, and the chief information officer and commissioner shall report to the legislative management regarding their findings and recommendations.

**54-59-13. Compliance reviews.** Repealed by S.L. 2003, ch. 665, § 21.

**54-59-14. Information technology operating account.** The department shall establish a state information technology operating account in the state treasury to be used, in accordance with legislative appropriation, for procuring and maintaining information technology and network services and for providing information technology, network services, and central microfilm unit services to state entities and network services to users of the state network. Unless exempted by law, each agency or institution provided with information technology or network services shall pay to the department the charges as determined by the department. The department shall deposit the amounts received in the information technology operating account or the information technology development account, as appropriate.

**54-59-15. Acceptance of funds.** The department may accept federal or other funds, which must be deposited in the information technology operating account and which may be spent subject to legislative appropriation. The department may apply for any public or private grants available for the improvement of information technology.

**54-59-16. Confidentiality.** The department may receive from various agencies and various agencies may provide to the department any information from the agencies necessary to effect the purposes of this chapter without regard to the confidential nature of the information. Each agency shall notify the department regarding the confidential nature of any information submitted to the department. The department is subject to the same restrictions and penalties regarding the dissemination of this information as the entity involved. Except for a request for access authorized by section 54-10-22.1 or a request to access information collected to carry out section 54-59-09, 54-59-11, or 54-59-13, the department shall refer a request for access to or inspection of information provided by an agency to that agency for response. Referral to the agency satisfies any responsibility of the department to provide that information under open records requirements. Upon court order, the department shall provide access to or inspection of

this information in accordance with restrictions of that entity involved governing dissemination of that information.

**54-59-17. Educational technology council - Meetings - Compensation.**

1. The educational technology council is responsible for coordinating educational technology initiatives for elementary and secondary education.
2. The educational technology council consists of:
  - a. The chief information officer.
  - b. The superintendent of public instruction or the superintendent's designee.
  - c. The commissioner of higher education or the commissioner's designee.
  - d. A representative appointed by the state board for career and technical education.
  - e. A representative appointed by the governor from a list of three nominees submitted by the North Dakota association of technology leaders.
  - f. A representative appointed by the governor from a list of three nominees submitted by the North Dakota council of educational leaders.
  - g. A representative appointed by the governor from a list of three nominees submitted by the North Dakota school boards association.
  - h. A representative appointed by the governor from a list of three nominees submitted by the North Dakota association of special education directors.
  - i. A school district representative who is appointed by the governor and who represents a school district that has an enrollment in kindergarten through grade twelve of fewer than four hundred.
  - j. A school district representative who is appointed by the governor, who is licensed to teach by the educational standards and practices board, and who is employed by a public school district in this state as a classroom teacher.
  - k. The director of technology for the department of public instruction.
  - l. A representative appointed by the governor from a list of three nominees submitted by the state association of non public schools.
3. The council shall select a chairman from among its members.
4. The term of office for the members appointed by the governor is four years.
5. The members of the educational technology council appointed by the governor are entitled to receive as compensation sixty-two dollars and fifty cents per day and to reimbursement of expenses as provided by law for state officers while attending meetings of the council.

**54-59-18. North Dakota educational technology council - Powers and duties.** The educational technology council shall:

1. Coordinate the use of technology and the development of technology systems to enhance educational opportunities for elementary and secondary education.

2. Cooperate with state agencies and other organizations to develop statewide educational technology systems.
3. Adopt bylaws for the conduct of its affairs.
4. Publish the informational material it deems necessary.
5. Conduct a continuing study to assess the needs, resources, and facilities that are available or which may be required to establish educational technology systems throughout the state.
6. Solicit and receive moneys from public and private sources and expend the moneys for educational technology.
7. Appoint a technology director who shall serve at the will of the council.
8. Hire the director of the center for distance education.

**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. The report must contain:

1. A list of all projects for which financing agreements have been executed.
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.
3. Information regarding the delivery of services to agencies, including service dependability, agency complaints, and information technology department responsiveness.
4. A description of the status and progress of programs established pursuant to chapter 54-46 and as specifically required by section 54-46-11.

**54-59-20. Security background information.** The chief information officer shall require as a condition of employment with the department that individuals who have unescorted physical access to the facilities or other security-sensitive areas of the department designated by the chief information officer submit to a criminal history record check in accordance with section 12-60-24. The chief information officer may require as a condition of contracting with the department or other state agency or department with respect to an information technology project that any individual employed by the contractor or a subcontractor to perform the work under the contract submit to a criminal history record check in accordance with section 12-60-24.

**54-59-21. Criminal justice information sharing board - Membership - Duties and powers - Director - Exempt records.**

1. The criminal justice information sharing board consists of:
  - a. The chief justice of the supreme court or the chief justice's designee.
  - b. The attorney general or the attorney general's designee.
  - c. The chief information officer of the state.
  - d. The director of the department of emergency services or the director's designee.

- e. The director of the department of corrections and rehabilitation or the director's designee.
  - f. The superintendent of the state highway patrol or the superintendent's designee.
  - g. The chief of the bureau of criminal investigation.
  - h. The director of the department of transportation or the director's designee.
  - i. A representative of a city police department, appointed by the governor from a list of two or more nominees from the North Dakota chiefs of police association.
  - j. A representative of a county sheriff's office, appointed by the governor from a list of two or more nominees from the North Dakota sheriffs and deputies association.
  - k. A state's attorney, appointed by the governor from a list of two or more nominees from the North Dakota state's attorneys association.
  - l. One at-large member appointed by the governor.
2. The chief information officer is chairman of the board. Board members who are not permanent full-time state employees are entitled to compensation of seventy-five dollars per day and mileage and expenses as provided by law for state employees to be paid by the information technology department. A state employee who is a board member must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency. Board members who are appointed by the governor under this section serve for a term of three years.
  3. The information technology department, at the direction of the board, shall maintain a criminal justice data information sharing system to facilitate the exchange of criminal justice information among judicial, law enforcement, and emergency personnel. Only a criminal justice agency, as defined in section 12-60-16.1, and any other person designated by the board may access the system. The system only may be accessed for the purposes set forth by the board. Any law enforcement record in the possession of the department is an exempt record.
  4. The board may appoint and employ a director who serves at the pleasure of and under the direct supervision of the board. The information technology department shall provide staff and other necessary support to the board. The board or director may acquire support staff and employ personnel who are under the direct supervision of the director and the board.
  5. The board shall set policy and adopt rules relating to the access to and 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. The board may appoint such committees as it deems necessary.
  6. The director may contract with the bureau of criminal investigation for the processing of federal fingerprint identification.

**54-59-22. Required use of electronic mail, file and print server administration, data base administration, application server, and hosting services.** Each state agency and institution, excluding the legislative and judicial branches, the institutions under the control of the state board of higher education, the public employees retirement system, the retirement and investment office, the attorney general, and any entity exempted by the office of management



and budget after advisement by the information technology department, shall obtain electronic mail, file and print server administration, data base administration, storage, application server, and hosting services through a delivery system established by the information technology department in conjunction with the office of management and budget. The office of management and budget, after receiving advice from the information technology department, shall establish policies and guidelines for the delivery of services, including the transition from existing systems to functional consolidation, with consideration given to the creation of efficiencies, cost-savings, and improved quality of service.

**54-59-23. Information technology projects - Reports.**

1. An executive, legislative, or judicial branch agency, except for institutions under the control of the state board of higher education, shall report to the state information technology advisory committee according to guidelines developed by the department and reviewed by the state information technology advisory committee regarding the plan for and status of any information technology project that is estimated to cost more than two hundred fifty thousand dollars.
2. During the life of the project, the agency shall notify the state information technology advisory committee if:
  - a. At a project milestone, the amount expended on project costs exceeds the planned budget for that milestone by twenty percent or more; or
  - b. At a project milestone, the project schedule extends beyond the planned schedule to attain that milestone by twenty percent or more.
3. A report under subsection 2 must specify corrective measures being undertaken to address any cost or time of completion issue. If the agency has not taken adequate corrective measures within ninety days after the report, the agency shall submit a report to the legislative management's information technology committee regarding the project.
4. Upon completion of the project, the agency shall notify the state information technology advisory committee if:
  - a. The budget for the project exceeded the original budget by twenty percent or more; or
  - b. The final project completion date extended beyond the original project scheduled completion date by twenty percent or more.

**54-59-24. Borrowing authority - E-rate funding - Emergency commission approval.**

Notwithstanding the limitations provided in section 54-59-05 and upon the approval of the emergency commission, the department may borrow from the Bank of North Dakota an amount necessary to pay telecommunications costs for connecting approved schools and libraries in the event e-rate funding is not received by the department from the schools and libraries division of the universal service administrative company. In addition to the principal repayment, the Bank of North Dakota is entitled to receive interest on the loan at a rate equal to other state agency borrowings. If at the end of the biennium a balance exists on any loan obtained pursuant to this section and funds are not anticipated to be available from the schools and libraries division of the universal service administrative company to repay the loan, the department shall request a deficiency appropriation from the legislative assembly to repay the loan.

**54-59-25. Health information technology advisory committee - Duties.**

1. The health information technology advisory committee consists of the state chief information officer or the chief information officer's designee, the state health officer or the state health officer's designee, the governor or the governor's designee, the

executive director of the department of human services or the executive director's designee, and individuals appointed by the governor and the state health officer to represent a broad range of public and private health information technology stakeholders.

2. The health information technology advisory committee shall collaborate with and make recommendations to the health information technology office, as provided under sections 6-09-42, 6-09-43, 54-59-26, and 54-59-27.
3. As requested by the health information technology advisory committee, the department shall provide or arrange for administrative services to assist the health information technology advisory committee.
4. The health information technology advisory committee may employ an executive director who serves at the pleasure of and under the direct supervision of the health information technology advisory committee. The executive director may employ personnel as necessary for the administration of this section.

**54-59-26. Health information technology office - Duties - Loan and grant programs.**

1. The health information technology office is created in the department. The health information technology advisory committee shall make recommendations to the health information technology office for implementing a statewide interoperable health information infrastructure that is consistent with emerging national standards; promote the adoption and use of electronic health records and other health information technologies; and promote interoperability of health information systems for the purpose of improving health care quality, patient safety, and the overall efficiency of health care and public health services.
2. The health information technology office director, in collaboration with the health information technology advisory committee, shall:
  - a. Apply for federal funds that may be available to assist the state and health care providers in implementing and improving health information technology.
  - b. Establish a health information technology loan program to provide loans to health care providers for the purpose of purchasing and upgrading certified electronic health record technology, training personnel in the use of such technology, and improving the secure electronic exchange of health information, and for any other purpose under section 6-09-42.
  - c. Establish a health information technology planning loan program to provide low-interest loans to health care entities to assist those entities in improving their health information technology infrastructure under section 6-09-43.
  - d. Facilitate and expand electronic health information exchange in the state, directly or by awarding grants.
  - e. Establish an application process and eligibility criteria for and accept and process applications for loans and grants under subdivisions b, c, and d. The eligibility criteria must be consistent with federal requirements associated with federal funds received under subdivision a. The eligibility criteria for loans under subdivision c must include a requirement that the recipient's approved health information technology be strategically aligned with the state's health information technology plan and the associated federal standards and that the recipient has passed an onsite electronic medical record readiness assessment conducted by an assessment team determined by the health information technology advisory committee and the health information technology office director.

**54-59-27. Health information technology office - Electronic health information exchange fund.**

1. There is created an electronic health information exchange fund. The fund consists of moneys deposited in the fund from federal or other sources or moneys transferred into the fund as directed by the legislative assembly. The health information technology office shall administer this fund and shall distribute moneys in the fund accordingly. The moneys in the fund must be used to facilitate and expand electronic health information exchange. Moneys in the fund may be used, subject to legislative appropriations, to provide services directly, for grants as provided under this section, and for the costs of administration of the fund.
2. A grant applicant shall submit an application to the health information technology office, which shall determine the applicant's eligibility based upon criteria established by the health information technology office director in collaboration with the health information technology advisory committee.
3. This section does not create an entitlement to any funds available for grants under this section. The health information technology office may award these grants to the extent funds are available and, within the office's discretion, to the extent such applications are approved.