**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 6 TO CHAPTER 3, TITLE 1 SO AS TO ESTABLISH THE DEPARTMENT OF THE STATE CHIEF INFORMATION OFFICER TO BE HEADED BY THE STATE CHIEF INFORMATION OFFICER WHO IS APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE, TO PROVIDE FOR THE POWERS, DUTIES, AND FUNCTIONS OF THE DEPARTMENT; TO AMEND SECTION 11‑35‑310, RELATING TO DEFINITIONS IN REGARD TO THE CONSOLIDATED PROCUREMENT CODE, SO AS TO DELETE CERTAIN DEFINITIONS PERTAINING TO INFORMATION TECHNOLOGY; AND TO REPEAL SECTIONS 11‑35‑820 AND 11‑35‑1580 RELATING TO THE OFFICE OF INFORMATION TECHNOLOGY OF THE STATE BUDGET AND CONTROL BOARD AND INFORMATION TECHNOLOGY SERVICES PROVIDED BY THE STATE BUDGET AND CONTROL BOARD.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “South Carolina Chief Information Officer Restructuring Act”.

SECTION 2. Chapter 3, Title 1 of the 1976 Code is amended by adding:

“Article 6

State Chief Information Officer

Section 1‑3‑300. It is the intent of the General Assembly to create an instrumentality that provides leadership and direction for the use of information technology within government in South Carolina. The General Assembly recognizes the critical role information technology plays in providing cost‑effective and efficient services to the citizens of this State. The General Assembly envisions an enterprise information system that provides an easily accessible, reliable, and accurate information infrastructure to enhance both the quality and delivery of services.

Section 1‑3‑305. There is created the Department of the State Chief Information Officer. The department is headed by the State Chief Information Officer appointed by the Governor with the advice and consent of the Senate. The State Chief Information Officer serves at the pleasure of the Governor.

Section 1‑3‑310. The department may be organized in a manner the State Chief Information Officer considers most appropriate to carry out various duties, responsibilities, and authorities assigned to the department.

Section 1‑3‑315. As used in this article:

(1) ‘Council’ means the South Carolina Information Technology Council as established in this article.

(2) ‘Department’ means the Department of the State Chief Information Officer.

(3) ‘Governmental body’ means a state government department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch. Governmental body does not include a public institution of higher learning as defined in Section 59‑103‑5, the legislative branch or the judicial branch.

(4) ‘Information technology’ means electronic data processing goods and services, telecommunications goods and services, information security goods and services, information management, microprocessors, software, information processing, office systems, any services related to these, and consulting or other services for design or redesign of information technology supporting business processes.

(5) ‘Political subdivision’ means the counties, municipalities, school districts, special purpose districts, special service districts, commissioners of public works, and any other local authority, board, commission, agency, department, or political body.

(6) ‘Telecommunications’ means the provision, transmission, conveyance, or routing of voice, data, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, or other medium or method now in existence or devised after this article takes effect. Telecommunications includes, but is not limited to, local telephone services, toll telephone services, telegraph services, teletypewriter services, teleconferencing services, private line services, channel services, Internet protocol telephony, cable services, and mobile telecommunications services, and includes all facilities and equipment performing these functions.

Section 1‑3‑320. (A) There is created the South Carolina Information Technology Council.

(B) The council consists of the following twelve members:

(1) the Chief Justice of the South Carolina Supreme Court;

(2) one member of the South Carolina Senate appointed by the President Pro Tempore of the Senate;

(3) one member of the South Carolina House of Representatives appointed by the Speaker of the House of Representatives;

(4) two cabinet agency directors appointed by the Governor;

(5) one noncabinet agency director appointed by the Governor upon recommendation of the President of the State Agency Directors Organization;

(6) one representative of county government appointed by the Governor upon recommendation of the South Carolina Association of Counties;

(7) one representative of municipal government appointed by the Governor upon recommendation of the Municipal Association of South Carolina;

(8) one citizen member from the private sector appointed by the Governor;

(9) one citizen member from the private sector appointed by the President Pro Tempore of the Senate;

(10) one citizen member from the private sector appointed by the Speaker of the House of Representatives; and

(11) the State Chief Information Officer.

(C) The State Chief Information Officer serves as chairman of the council.

(D) Appointed members serve at the pleasure of the appointing authority. Members who serve by virtue of an office serve on the council while they hold that office.

(E) Members serve without compensation, but citizen members of the council are allowed the usual per diem and mileage as provided by law for members of boards, commissions, and committees while on official business of the council.

(F) The powers and duties of the council include the following:

(1) review and approve the coordinated statewide strategic plan for information technology prepared by the department;

(2) review and approve statewide strategic information technology directions, standards, and enterprise architecture prepared by the department;

(3) approve the criteria developed by the department for the review and approval of information technology plans and information technology projects of governmental bodies;

(4) review and approve the procedures developed by the department for the allocation and distribution of funds from the Information Technology Innovation Fund;

(5) upon recommendation of the department, the council may grant the department and governmental bodies exemptions from the requirements in this article;

(6) upon recommendation of the department, the council may terminate any information technology project of a governmental body or governmental bodies; and

(7) upon request of a governmental body, the council may review decisions of the department concerning whether the information technology plans and projects of the governmental body conform to statewide information technology plans, strategies, and standards.

Section 1‑3‑325. (A) The State Information Technology Director’s Committee is created to advise the State Chief Information Officer on matters relating to the development and implementation of information technology standards, policies, and procedures and facilitate the exchange of information among the information technology directors of governmental bodies and political subdivisions. The committee includes representatives from governmental bodies and political subdivisions and must be chosen in a manner and number determined by the State Chief Information Officer.

(B) The State Chief Information Officer may establish other standing or ad hoc advisory committees to provide assistance relating to any other matters within the department’s authority.

(C) Members of the advisory committees appointed pursuant to subsections (A) and (B) are allowed the usual per diem and mileage as provided by law for members of boards, commissions, and committees while on official business of the committees. Members who are full‑time state employees may not receive per diem.

Section 1‑3‑330. The powers and duties of the department include the following:

(1) develop for approval of the council a coordinated statewide strategic plan for information technology;

(2) develop for approval of the council statewide strategic information technology directions, standards, and enterprise architecture. These directions, standards, and architecture must include, but are not limited to, information related to the privacy and confidentiality of data collected and stored by governmental bodies, website accessibility, and assistive technologies. The department shall implement necessary management processes to assure that governmental bodies fully comply with these directions, standards, and architecture;

(3) develop policies and procedures for the effective management of information technology investments throughout their entire life cycles, including, but not limited to, project definition, procurement, development, implementation, operation, performance evaluation, and enhancement or retirement;

(4) evaluate the information technology of governmental bodies and combine information technology and related resources when the department determines that it is advisable from the standpoint of efficiency and cost effectiveness;

(5) plan and forecast future needs for information technology and conduct studies and surveys of organizational structures and best management practices of information technology systems and procedures;

(6) evaluate the information technology plans and projects of governmental bodies to ensure that the plans and projects are consistent with statewide plans, strategies, and standards, including alignment with the state’s business goals, investments, and other risk management policies;

(7) assist the Secretary of Commerce in the development of information technology related industries in the State and the promotion of economic development initiatives based on information technology;

(8) assist governmental bodies in the development of guidelines concerning the qualifications and training requirements of information technology related personnel;

(9) collaborate with political subdivisions in the development of information technology plans that are consistent with statewide plans, strategies, and standards, and encourage political subdivisions to pursue information technology investments that are compatible with the state’s information technology infrastructure;

(10) secure all telecommunications equipment and services for governmental bodies under terms the department considers suitable and coordinate the supply of the equipment and services for use by governmental bodies;

(11) operate and manage a state consolidated data center, and other appropriate data centers, to be used by governmental bodies and political subdivisions under terms and conditions established by the department;

(12) develop information technology applications and services for entities requesting them;

(13) administer information technology related procurements and contracting activities for governmental bodies in accordance with the South Carolina Consolidated Procurement Code;

(14) enter into agreements and contracts with governmental bodies, political subdivisions, and other entities for goods and services. The department may establish fee schedules to be collectible from governmental bodies, political subdivisions, and other entities for services rendered and goods provided;

(15) hire necessary personnel and assign them duties and powers as the department prescribes; and

(16) exercise and perform other powers and duties as granted to it, imposed upon it by law or necessary to carry out the purposes in this article.

Section 1‑3‑335. The department has the following additional powers and duties relating to planning and the management of information technology projects:

(1) oversee the development of any statewide and multiagency information technology enterprise projects;

(2) develop for the approval of the council an approval process for the information technology plans of governmental bodies. Each governmental body is required to develop an information technology plan and submit the plan to the department for approval. The department may reject or require modification to those plans that do not conform to statewide information technology plans, strategies, and standards;

(3) establish a methodology and process for conceiving, planning, scheduling, procuring, and providing appropriate oversight for information technology projects;

(4) develop for the approval of the council an approval process for information technology projects proposed by governmental bodies to ensure that all of these projects conform to statewide information technology plans, strategies, and standards, the information technology plan of the governmental body, and the project management methodology. All information technology projects proposed by governmental bodies that exceed an amount established by the council, initially set at four hundred thousand dollars but subject to adjustment by the council, are subject to department approval. Governmental bodies may not artificially divide these projects so as to avoid departmental approval;

(5) monitor information technology projects approved by the department. The department may modify and suspend any information technology project that is not in compliance with statewide information technology plans, strategies, and standards or that has not met the performance measures agreed to by the department and the sponsoring governmental body. The council may terminate projects upon recommendation of the department;

(6) establish minimum qualifications and training standards for project managers; and

(7) establish an information clearinghouse that identifies best practices and new developments and contains detailed information regarding the state’s previous experiences with the development of information technology projects.

Section 1‑3‑400. (A) The department has the following additional powers and duties relating to telecommunications:

(1) coordinate the various telecommunications facilities and services used by governmental bodies;

(2) acquire, lease, construct, or organize facilities and equipment as necessary to deliver comprehensive telecommunications services in an efficient and cost‑effective manner, and maintain these facilities and equipment;

(3) provide technical assistance to governmental bodies in areas such as:

(a) performing systems development services, including design, application programming, and maintenance;

(b) conducting research and sponsoring demonstration projects pertaining to all facets of telecommunications; and

(c) planning and forecasting for future needs in communications services.

(B) If requested by a political subdivision, the department, at its sole option, may supply telecommunications goods and services to the political subdivision under terms and conditions established by the department.

(C) A governmental body may not enter into an agreement or renew an existing agreement for telecommunications services or equipment unless approved by the department.

Section 1‑3‑405. The department has the following additional powers and duties relating to information technology procurements:

(1) ensure that information technology procurements are conducted in a manner consistent with the South Carolina Consolidated Procurement Code and related regulations;

(2) ensure that information technology procurements conform to statewide information technology plans, strategies, and standards. The department may reject any information technology procurement that does not conform to statewide information technology plans, strategies, and standards;

(3) recommend to the council categories of information technology procurement which must be exempted from the requirements of the South Carolina Consolidated Procurement Code and related regulations;

(4) enter into cooperative purchasing agreements with political subdivisions for the procurement of information technology and allow political subdivisions to participate in the department’s procurement of information technology under terms and conditions established by the department; and

(5) participate in, sponsor, conduct, or administer cooperative purchasing agreements for the procurement of information technology.

Section 1‑3‑410. The department has the following additional powers and duties relating to the security of government information and infrastructure:

(1) to protect the state’s critical information technology infrastructure and associated data systems if there is a major disaster, whether natural or otherwise, and to allow the services to the citizens of this State to continue if there is such an event, the department shall develop a Critical Information Technology Infrastructure Protection Plan which devises policies and procedures to provide for the confidentiality, integrity, and availability of, and to allow for alternative and immediate online access to data and information systems necessary to provide critical information to citizens and ensure the protection of state employees as they carry out their disaster‑related duties. All governmental bodies and political subdivisions of this State are directed to assist the department in the collection of data required for this plan;

(2) to oversee, plan, and coordinate periodic security audits of governmental bodies regarding the protection of government information and information technology infrastructure. These security audits may include, but are not limited to, on‑site audits as well as reviews of all written security procedures. The department may conduct the security audits or contract with a private firm or firms to conduct these security audits. Governmental bodies subject to a security audit shall cooperate fully with the entity designated to perform such audits.

Section 1‑3‑415. (A) The General Assembly shall appropriate funds sufficient for the development, implementation, and ongoing operation of the department’s information technology planning, project management, and security responsibilities. The General Assembly also shall appropriate funds necessary to carry out all other duties and responsibilities assigned to the department that are not reimbursable through a fee‑for‑service methodology. The department is authorized to provide to and receive from other governmental bodies, political subdivisions, and other entities goods and services. The department may charge and pay governmental bodies, political subdivisions, and other entities for the goods and services, the revenue from which must be deposited in the Office of the State Treasurer in a special account and expended only for the costs of providing the goods and services, and these funds may be retained and expended for the same purposes.

(B) There is created an Information Technology Innovation Fund. This fund must provide incentives to governmental bodies to implement enterprise initiatives and electronic government projects. Use of the fund must encourage governmental bodies to pursue innovative and creative approaches using technology that provides needed citizens services more cost effectively and efficiently. The fund may not be used to replace or offset appropriations for on‑going technology expenditures and operations. The fund consists of those funds appropriated through the state budget process, grants, gifts, and other donations received by the State or otherwise available. The department, with the approval of the council, is responsible for developing appropriate procedures for the allocation and distribution of these funds.”

SECTION 3. A. Section 11‑35‑310 of the 1976 Code is amended to read:

“Section 11‑35‑310. Unless the context clearly indicates otherwise:

(1) ~~‘Information Technology (IT)’ means data processing, telecommunications, and office systems technologies and services:~~

~~(a)~~ ~~‘data processing’ means the automated collection, storage, manipulation, and retrieval of data including: central processing units for micro, mini, and mainframe computers; related peripheral equipment such as terminals, document scanners, word processors, intelligent copiers, off‑line memory storage, printing systems, and data transmission equipment; and related software such as operating systems, library and maintenance routines, and applications programs.~~

~~(b)~~ ~~‘telecommunications’ means voice, data, message, and video transmissions, and includes the transmission and switching facilities of public telecommunications systems, as well as operating and network software.~~

~~(c)~~ ~~‘office systems technology’ means office equipment such as typewriters, duplicating and photocopy machines, paper forms, and records; microfilm and microfiche equipment and printing equipment and services.~~

~~(d)~~ ~~‘services’ means the providing of consultant assistance for any aspect of information technology, systems, and networks.~~

~~(2)~~ ‘Board’ means State Budget and Control Board.

~~(3)~~(2) ‘Business’ means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.

~~(4)~~(3) ‘Change order’ means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

~~(5)~~(4) ‘Chief procurement officer’ means (a) ~~the management officer for information technology, (b)~~ the state engineer for areas of construction, architectural and engineering, construction management, and land surveying services, and ~~(c)~~ (b) the materials management officer for all other procurements.

~~(6)~~ ~~‘Information Technology Management Officer’ means the person holding the position as the head of the Information Technology Office of the State.~~

~~(7)~~(5) ‘Construction’ means the process of building, altering, repairing, remodeling, improving, or demolishing a public infrastructure facility, including any public structure, public building, or other public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of an existing public infrastructure facility, including structures, buildings, or real property.

~~(8)~~(6) ‘Contract’ means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, ~~information technology,~~ or construction.

~~(9)~~(7) ‘Contract modification’ means a written order signed by the procurement officer, directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor.

~~(10)~~(8) ‘Contractor’ means any person having a contract with a governmental body.

~~(11)~~(9) ‘Cost effectiveness’ means the ability of a particular product or service to efficiently provide goods or services to the State. In determining the cost effectiveness of a particular product or service, the appropriate chief procurement officer shall list the relevant factors in the bid notice or solicitation and use only those listed relevant factors in determining the award.

~~(12)~~(10) ‘Data’ means recorded information, regardless of form or characteristics.

~~(13)~~(11) ‘Days’ means calendar days. In computing any period of time prescribed by this code or the ensuing regulations, or by any order of the Procurement Review Panel, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the state or federal government, then the period shall run to the end of the next business day.

~~(14)~~(12) ‘Debarment’ means the disqualification of a person to receive invitations for bids, or requests for proposals, or the award of a contract by the State, for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance.

~~(15)~~(13) ‘Designee’ means a duly authorized representative of a person with formal responsibilities under the code.

~~(16)~~(14) ‘Employee’ means an individual drawing a salary from a governmental body, whether elected or not, and any nonsalaried individual performing personal services for any governmental body.

~~(17)~~ ~~(Reserved)~~

~~(18)~~(15) ‘Governmental Body’ means a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, agency, government corporation, or other establishment or official of the executive or judicial branch. Governmental body excludes the General Assembly or its respective branches or its committees, Legislative Council, the Office of Legislative Printing, Information and Technology Systems, and all local political subdivisions such as counties, municipalities, school districts, or public service or special purpose districts or any entity created by act of the General Assembly for the purpose of erecting monuments or memorials or commissioning art that is being procured exclusively by private funds.

~~(19)~~(16) ‘Grant’ means the furnishing by the State or the United States government of assistance, whether financial or otherwise, to a person to support a program authorized by law. It does not include an award, the primary purpose of which is to procure specified end products, whether in the form of supplies, services, ~~information technology,~~ or construction. A contract resulting from such an award must not be considered a grant but a procurement contract.

~~(20)~~(17) ‘Invitation for bids’ means a written or published solicitation issued by an authorized procurement officer for bids to contract for the procurement or disposal of stated supplies, services, ~~information technology,~~ or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.

~~(21)~~(18) ‘Materials Management Officer’ means the person holding the position as the head of the materials management office of the State.

~~(22)~~ ~~Reserved.~~

~~(23)~~(19) ‘Political subdivision’ means all counties, municipalities, school districts, public service or special purpose districts.

~~(24)~~(20) ‘Procurement’ means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, ~~information technology,~~ or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

~~(25)~~(21) ‘Procurement officer’ means any person duly authorized by the governmental body, in accordance with procedures prescribed by regulation, to enter into and administer contracts and make written determinations and findings with respect thereto. The term also includes an authorized representative of the governmental body within the scope of his authority.

~~(26)~~(22) ‘Purchasing agency’ means any governmental body other than the chief procurement officers authorized by this Code or by way of delegation from the chief procurement officers to enter into contracts.

~~(27)~~(23) ‘Real property’ means any land, all things growing on or attached thereto, and all improvements made thereto including buildings and structures located thereon.

~~(28)~~(24) ‘Request for proposals (RFP)’ means a written or published solicitation issued by an authorized procurement officer for proposals to provide supplies, services, ~~information technology,~~ or construction which ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be most advantageous to the State. The award of the contract must be made on the basis of evaluation factors that must be stated in the RFP.

~~(29)~~(25) ‘Services’ means the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance. This term includes consultant services other than architectural, engineering, land surveying, construction management, and related services. This term does not include employment agreements or services as defined in Section 11‑35‑310(1)(d).

~~(30)~~(26) ‘Subcontractor’ means any person having a contract to perform work or render service to a prime contractor as a part of the prime contractor’s agreement with a governmental body.

~~(31)~~(27) ‘Supplies’ means all personal property including, but not limited to, equipment, materials, printing, and insurance.

~~(32)~~(28) ‘State’ means state government.

~~(33)~~(29) ‘State Engineer’ means the person holding the position as head of the state engineer’s office.

~~(34)~~(30) ‘Suspension’ means the disqualification of a person to receive invitations for bids, requests for proposals, or the award of a contract by the State, for a temporary period pending the completion of an investigation and any legal proceedings that may ensue because a person is suspected upon probable cause of engaging in criminal, fraudulent, or seriously improper conduct or failure or inadequacy of performance which may lead to debarment.

~~(35)~~(31) ‘Term contract’ means contracts established by the chief procurement officer for specific supplies, or services~~, or information technology~~ for a specified time and for which it is mandatory that all governmental bodies procure their requirements during its term. As provided in the solicitation, if a public procurement unit is offered the same supplies, or services~~, or information technology~~ at a price that is at least ten percent less than the term contract price, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. The solicitation used to establish the term contract must specify contract terms applicable to a purchase from the vendor offering the lower price. If the vendor holding the term contract meets the lower price, then the governmental body shall purchase from the contract vendor. All decisions to purchase from the vendor offering the lower price must be documented by the procurement officer in sufficient detail to satisfy the requirements of an external audit. A term contract may be a multi‑term contract as provided in Section 11‑35‑2030.

~~(36)~~(32) ‘Using agency’ means any governmental body of the State which utilizes any supplies, services, ~~information technology,~~ or construction purchased under this code.

~~(37)~~(33) ‘Designated board office’ and ‘designated board officer’ means the office or officer designated in accordance with Section 11‑35‑540(5).”

B. Section 11‑35‑820 of the 1976 Code is repealed.

C. Section 11‑35‑1580 of the 1976 Code is repealed.

SECTION 4. This act takes effect July 1, 2011.

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