12

Information Technology

This session the North Carolina General Assembly enacted legislation to expand and safeguard the use of information technology to deliver public services. The changes implemented include the strengthening of punishments for identity fraud and misuse of governmental computers, a revision of the definition of electronic public records, an expansion in the opportunities for the use of the e-procurement program, and an improvement in the accessibility of information technology resources for persons with disabilities.

Damage to a Government Computer

S.L. 2002-157 (H 1501) adds new sections to G.S. Chapter 14 making the following subject to criminal penalties:

- willfully, directly or indirectly, accessing a government computer for fraudulent purposes;
- changing a grade or accessing testing material through electronic means;
- damaging or destroying a government computer;
- introducing a computer virus into software, computers, or computer networks.

See Chapter 6, "Criminal Law and Procedure," for a more thorough discussion of this topic.

Financial Identity Fraud

S.L. 2002-175 (H 1100) makes key changes to sections of G.S. 14-113 to strengthen laws against financial identity fraud. These changes are a direct response to identity theft, a growing problem that could potentially affect state and local governments with greater frequency as they conduct an increasing number of financial transactions with citizens on the Internet and through

other electronic means. The new law amends the statutes in several areas of interest to information technology (IT) professionals.

- It expands the definition of *financial transaction card theft* in G.S. 14-113.9 to include, with intent to defraud, (1) the use of a scanning device to access, read, obtain, memorize, or store information encoded on another person's financial transaction card, and (2) receipt of encoded information from another person's card.
- It adds biometric data, fingerprints, passwords, and parent's legal surname prior to marriage to the list of identifying information that could be used to commit financial identity fraud.
- It raises financial identity fraud from a Class H to a Class G felony (Class F if the victim suffers arrest, detention, or conviction as a proximate result of the offense or if the person committing the offense is in possession of identifying information pertaining to three or more separate persons).
- It adds new G.S. 14-113.20A to make it a Class E felony to (1) sell, transfer, or purchase another person's identifying information with the intent to commit financial identify fraud or (2) assist someone else in doing so.

These and other provisions are discussed in further detail in Chapter 6, "Criminal Law and Procedure."

Electronic Public Records

The primary purpose of S.L. 2002-171 (H 1402) is to protect the confidentiality of addresses of relocated victims of domestic violence, sexual offense, or stalking. In doing so, the act also has important implications for state and local government information systems. (Chapter 5, "Courts and Civil Procedure," provides further details about these and other related provisions.) Effective January 1, 2003, it creates new G.S. Chapter 15C establishing the Address Confidentiality Program in the Office of the Attorney General. A program participant may apply to the Attorney General to have a special address designated to serve as his or her "public" address. The act provides that when a program participant submits an authorization card to a state or local government agency, the agency shall use the address designation created by the Attorney General when creating new public records relating to that participant. The act further provides that the participant's actual address as maintained by a state or local government agency is not public record within the meaning of G.S. 132. Disclosure of an address other than the substitute address is prohibited except under designated circumstances, such as when the disclosure is requested by a federal, state, or local law enforcement agency for official use. The act also provides an exception for state and local government agencies if the Attorney General determines that an agency has a statutory or administrative requirement it is unable to fulfill without the participant's actual address and the agency will use the address only to satisfy that requirement. The substitute address is not to be used for purposes of listing, appraisal, and assessment of property and collection of property taxes or for purposes of indexing land in the register of deeds' office.

In summary, the implications of S.L. 2002-171 for electronic information systems will involve

- handling multiple addresses for the same person;
- preventing the inappropriate disclosure of victims' actual addresses;
- providing agencies with the means to ensure that correct addresses (substitute or actual) are used in any particular computer application;
- indicating whether an individual victim's address is actual—that is, an exception to the general rule that all addresses in a particular software application are public records;
- separating, in systems where the actual address is used, nonpublic from public addresses in response to a "request to inspect, examine, or obtain copies of public records." [G.S. 132-6(c)] As an example, local governments that publish property tax and land records

information on the Internet will no longer be able to publish the actual address on the Internet even though they must still use these addresses for tax and land records purposes.

Persons with Disabilities

Although S.L. 2002-163 (S 866) deals mainly with general changes to the state's Persons with Disabilities Act (G.S. 168A), several provisions will have a direct impact on state and local government information systems. First, the act amends GS 168A-7 to provide that the prohibition against "discrimination in public services," "including but not limited to education, health, social services, recreation, and rehabilitation" by the state and its political subdivisions and any person that contracts with these entities, now applies to "equivalent services provided via information technology" as well. The act defines *information technology* as "electronic data processing goods and services and telecommunications goods and services, microprocessors, software, information processing, office systems, any services related to the foregoing, and consulting or other services for design or redesign of information technology supporting business processes" and specifically includes "information transaction machines" within its definition.

While the act grandfathers information technology placed into service prior to January 1, 2004, after that date agencies cannot "refuse to provide reasonable aids and adaptations necessary for a known qualified person with a disability to use or benefit from" government services delivered through information technology. As one example, e-government services furnished through public Web sites and public terminals will need to be accessible to those with disabilities, beginning in 2004.

Electronic Procurement

S.L. 2002-107 (S 1170) expands the opportunities for state and local government to use advanced information technology to improve the purchasing process. Several of these changes relate specifically to information technology. (Chapter 20, "Purchasing and Contracting," describes these and other provisions in greater detail.) First, the act authorizes local governments to conduct reverse auctions—vendors bidding in real time in an open and interactive environment—for the purchase of goods and materials in the formal bid range, excluding construction aggregates. An electronic reverse auction (carried out exclusively over the Internet) may be conducted by a political subdivision, a third party under contract with a political subdivision, or through the state electronic procurement system. Second, the act permits the state Office of Information Technology Services to purchase through reverse auctions and the state Department of Administration to conduct a pilot of reverse auctions for local school system purchases of supplies and materials. Finally, the act authorizes local governments, public school systems, and state government to use *electronic bidding*, the submission and acceptance of sealed bids through electronic means, in addition to or instead of traditional paper bidding. Local government procedures for receipt of formal electronic bids must be designed to ensure bid security, authenticity, and confidentiality to at least the same extent as that provided for paper bids.

Universal Service

S.L. 2002-14 (S 641) revises G.S. 62-110 to authorize the North Carolina Utilities Commission, as a part of its rule-making authority, to consider within the definition of universal service evolving telecommunications trends and consumer need to access high-speed Internet and communications networks at reasonable costs.

Miscellaneous Provisions

The budget bill, S.L. 2002-126, includes several provisions relating to information technology.

- Section 27.2 amends G.S. 147-33.82(d) to add a new subdivision requiring state agencies to obtain the approval of the State Chief Information Officer (CIO) prior to entering into any contract to assess network security. The CIO must refer these contract requests to the State Auditor so that the State Auditor can determine if the assessment and testing can be performed by the auditor's office rather than being contracted out. The State Auditor is also authorized to contract with state agencies, to perform assessments of network vulnerability on a cost-reimbursement basis.
- Section 27.3 requires the Office of Administrative Hearings to report on the cost and feasibility of developing or acquiring an enterprise-wide automated system to be used in its rule-making process.
- Section 27.4 authorizes the Governor or the Governor's designee to coordinate state implementation of the federal Health Insurance Portability and Accountability Act (HIPAA).
- Section 27.5 requires the Legislative Research Commission to review how IT solutions might streamline the state's human resource management system—including processes related to personnel, benefits, leave reporting, and payroll—and how such solutions might eliminate unnecessary or duplicative paperwork. The commission also must (1) consider how an enterprise approach will improve the effectiveness and efficiency of the state's human resource management system and the state administration of retirement and employee benefits and (2) research any other matters relating to the state's use of information technology for personnel, retirement, and benefits administration.

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