

Article 15.

Department of Information Technology.

Part 1. General Provisions.

**§ 143B-1320. Definitions; scope; exemptions.**

- (a) Definitions. – The following definitions apply in this Article:
- (1) CGIA. – Center for Geographic Information and Analysis.
  - (2) Repealed by Session Laws 2021-180, s. 19A.7A(d), effective January 1, 2022.
  - (3) Community of practice. – A collaboration of organizations with similar requirements, responsibilities, or interests.
  - (4) Cooperative purchasing agreement. – An agreement between a vendor and one or more states or state agencies providing that the parties may collaboratively or collectively purchase information technology goods and services in order to increase economies of scale and reduce costs.
  - (4a) Cybersecurity incident. – An occurrence that:
    - a. Actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or
    - b. Constitutes a violation or imminent threat of violation of law, security policies, privacy policies, security procedures, or acceptable use policies.
  - (5) Department. – The Department of Information Technology.
  - (6) Distributed information technology assets. – Hardware, software, and communications equipment not classified as traditional mainframe-based items, including personal computers, local area networks, servers, mobile computers, peripheral equipment, and other related hardware and software items.
  - (7) Enterprise solution. – An information technology solution that can be used by multiple agencies.
  - (8) Exempt agencies. – An entity designated as exempt in subsection (b) of this section.
  - (9) GDAC. – Government Data Analytics Center.
  - (10) GICC. – North Carolina Geographic Information Coordinating Council.
  - (11) Information technology or IT. – Set of tools, processes, and methodologies, including, but not limited to, coding and programming; data communications, data conversion, and data analysis; architecture; planning; storage and retrieval; systems analysis and design; systems control; mobile applications; and equipment and services employed to collect, process, and present information to support the operation of an organization. The term also includes office automation, multimedia, telecommunications, and any personnel and support personnel required for planning and operations.
  - (12) Recodified as subdivision (a)(4a) at the direction of the Revisor of Statutes.
  - (13) Local government entity. – A local political subdivision of the State, including a city, a county, a local school administrative unit as defined in G.S. 115C-5, or a community college.

- (14) Participating agency. – Any agency that has transferred its information technology personnel, operations, projects, assets, and funding to the Department of Information Technology. The State CIO shall be responsible for providing all required information technology support to participating agencies.
- (14a) Ransomware attack. – A cybersecurity incident where a malicious actor introduces software into an information system that encrypts data and renders the systems that rely on that data unusable, followed by a demand for a ransom payment in exchange for decryption of the affected data.
- (15) Recodified as subdivision (a)(16a) at the direction of the Revisor of Statutes.
- (16) Separate agency. – Any agency that has maintained responsibility for its information technology personnel, operations, projects, assets, and funding. The agency head shall work with the State CIO to ensure that the agency has all required information technology support.
- (16a) Significant cybersecurity incident. – A cybersecurity incident that is likely to result in demonstrable harm to the State's security interests, economy, critical infrastructure, or to the public confidence, civil liberties, or public health and safety of the residents of North Carolina. A significant cybersecurity incident is determined by the following factors:
  - a. Incidents that meet thresholds identified by the Department jointly with the Department of Public Safety that involve information:
    - 1. That is not releasable to the public and that is restricted or highly restricted according to Statewide Data Classification and Handling Policy; or
    - 2. That involves the exfiltration, modification, deletion, or unauthorized access, or lack of availability to information or systems within certain parameters to include (i) a specific threshold of number of records or users affected as defined in G.S. 75-65 or (ii) any additional data types with required security controls.
  - b. Incidents that involve information that is not recoverable or cannot be recovered within defined time lines required to meet operational commitments defined jointly by the State agency and the Department or can be recovered only through additional measures and has a high or medium functional impact to the mission of an agency.
- (17) State agency or agency. – Any agency, department, institution, commission, committee, board, division, bureau, office, unit, officer, or official of the State. The term does not include the legislative or judicial branches of government or The University of North Carolina.
- (18) State Chief Information Officer or State CIO. – The head of the Department, who is a Governor's cabinet level officer.
- (19) State CIO approved data center. – A data center designated by the State CIO for State agency use that meets operational standards established by the Department.

(b) Exemptions. – Except as otherwise specifically provided by law, the provisions of this Chapter do not apply to the following entities: the General Assembly, the Judicial Department, and The University of North Carolina and its constituent institutions. These entities may elect to

participate in the information technology programs, services, or contracts offered by the Department, including information technology procurement, in accordance with the statutes, policies, and rules of the Department. The election must be made in writing, as follows:

- (1) For the General Assembly, by the Legislative Services Commission.
- (2) For the Judicial Department, by the Chief Justice.
- (3) For The University of North Carolina, by the Board of Governors.
- (4) For the constituent institutions of The University of North Carolina, by the respective boards of trustees.

(c) Deviations. – Any State agency may apply in writing to the State Chief Information Officer for approval to deviate from the provisions of this Chapter. If granted by the State Chief Information Officer, any deviation shall be consistent with available appropriations and shall be subject to such terms and conditions as may be specified by the State CIO.

(d) Review. – Notwithstanding subsection (b) of this section, any State agency shall review and evaluate any deviation authorized and shall, in consultation with the Department of Information Technology, adopt a plan to phase out any deviations that the State CIO determines to be unnecessary in carrying out functions and responsibilities unique to the agency having a deviation. The plan adopted by the agency shall include a strategy to coordinate its general information processing functions with the Department of Information Technology in the manner prescribed by this act and provide for its compliance with policies, procedures, and guidelines adopted by the Department of Information Technology. Any agency receiving a deviation shall submit its plan to the Office of State Budget and Management as directed by the State Chief Information Officer. (2015-241, s. 7A.2(b); 2019-200, s. 6(d); 2021-180, ss. 19A.7A(d), 38.13(b).)

**§ 143B-1321. Powers and duties of the Department; cost-sharing with exempt entities.**

- (a) The Department shall have the following powers and duties:
- (1) Provide information technology support and services to State agencies.
  - (2) Provide such information technology support to local government entities and others, as may be required.
  - (3) Establish and document the strategic direction of information technology in the State.
  - (4) Assist State agencies in meeting their business objectives.
  - (5) Plan and coordinate information technology efforts with State agencies, nonprofits, and private organizations, as required.
  - (6) Establish a consistent process for planning, maintaining, and acquiring the State's information technology resources. This includes responsibility for developing and administering a comprehensive long-range plan to ensure the proper management of the State's information technology resources.
  - (7) Develop standards and accountability measures for information technology projects, including criteria for effective project management.
  - (8) Set technical standards for information technology, review and approve information technology projects and budgets, establish and enforce information technology security standards, establish and enforce standards for the procurement of information technology resources, and develop a schedule for the replacement or modification of information technology systems.
  - (9) Implement enterprise procurement processes and develop metrics to support this process.

- (10) Manage the information technology funding for State agencies, to include the Information Technology Fund for statewide information technology efforts and the Information Technology Internal Service Fund for agency support functions.
- (11) Support, maintain, and develop metrics for the State's technology infrastructure and facilitate State agencies' delivery of services to citizens.
- (12) Operate as the State enterprise organization for information technology governance.
- (13) Advance the State's technology and data management capabilities.
- (14) Prepare and present the Department's budget in accordance with Chapter 143C of the General Statutes, the State Budget Act.
- (15) Obtain, review, and maintain, on an ongoing basis, records of the appropriations, allotments, expenditures, revenues, grants, and federal funds for each State agency for information technology.
- (16) Adopt rules for the administration of the Department and implementing this Article, pursuant to the Administrative Procedure Act, Chapter 150B of the General Statutes.
- (17) Require reports by State agencies, departments, and institutions about information technology assets, systems, personnel, and projects and prescribing the form of such reports.
- (18) Prescribe the manner in which information technology assets, systems, and personnel shall be provided and distributed among agencies, to include changing the distribution when the State CIO determines that is necessary.
- (19) Prescribe the manner of inspecting or testing information technology assets, systems, or personnel to determine compliance with information technology plans, specifications, and requirements.
- (20) Submit all rates and fees for common, shared, and State government-wide technology services provided by the Department to the Office of State Budget and Management for approval.
- (21) Establish and operate, or delegate operations of, centers of expertise (COE) for specific information technologies and services to serve two or more agencies on a cost-sharing basis, if the State CIO, after consultation with the Office of State Budget and Management, decides it is advisable from the standpoint of efficiency and economy to establish these centers and services.
- (22) Identify and develop projects to facilitate the consolidation of information technology equipment, support, and projects.
- (23) Identify an agency to serve as the lead (COE) for an enterprise effort, when appropriate.
- (24) Require any State agency served to transfer to the Department or COE ownership, custody, or control of information-processing equipment, software, supplies, positions, and support required by the shared centers and services.
- (25) Charge each State agency for which services are performed its proportionate part of the cost of maintaining and operating the shared centers and services, subject to approval by the Office of State Budget and Management.

- (26) Develop performance standards for shared services in coordination with supported State agencies and publish performance reports on the Department Web site.
- (27) Adopt plans, policies, and procedures for the acquisition, management, and use of information technology resources in State agencies to facilitate more efficient and economic use of information technology in the agencies.
- (28) Develop and manage career progressions and training programs to efficiently implement, use, and manage information technology resources throughout State government.
- (29) Provide local government entities with access to the Department's services as authorized in this section for State agencies. Access shall be provided on the same cost basis that applies to State agencies.
- (30) Support the operation of the CGIA, GICC, GDAC, and 911 Board.
- (31) Repealed by Session Laws 2016-94, s. 7.14(d), effective July 1, 2016.
- (32) Provide geographic information systems services through the Center for Geographic Information and Analysis on a cost recovery basis. The Department and the Center for Geographic Information and Analysis may contract for funding from federal or other sources to conduct or provide geographic information systems services for public purposes.
- (33) Support the development, implementation, and operation of an Education Community of Practice.
- (34) Prepare and maintain statewide broadband maps incorporating current and future federal data along with State data collected by the Department or provided to the Department from other sources to identify the capabilities and needs related to broadband distribution and access and serve as the sole source provider of broadband mapping for State agencies.

(b) Cost-Sharing with Other Branches. – Notwithstanding any other provision of law to the contrary, the Department shall provide information technology services on a cost-sharing basis to exempt agencies, upon request.

(c) Such information technology information protected from public disclosure under G.S. 132-6.1(c), including, but not limited to, security features of critical infrastructure, information technology systems, telecommunications networks, or electronic security systems, including hardware or software security, passwords, or security standards, procedures, processes, configurations, software, and codes, shall be kept confidential. (2015-241, s. 7A.2(b); 2016-94, s. 7.14(d); 2019-200, s. 6(c); 2021-180, ss. 19A.7A(e), 38.8(a).)

**§ 143B-1322. State CIO duties; Departmental personnel and administration.**

(a) State CIO. – The State Chief Information Officer (State CIO) is the head of the Department, a member of the Governor's cabinet, and may also be referred to as the Secretary of the Department of Information Technology. The State CIO is appointed by and serves at the pleasure of the Governor. The State CIO shall be qualified by education and experience for the office. The salary of the State CIO shall be set by the Governor. The State CIO shall receive longevity pay on the same basis as is provided to employees of the State who are subject to the North Carolina Human Resources Act.

(b) Departmental Personnel. – The State CIO may appoint one or more deputy State CIOs, each of whom shall be under the direct supervision of the State CIO. The salaries of the deputy

State CIOs shall be set by the State CIO. The State CIO and the Deputy State CIOs are exempt from the North Carolina Human Resources Act. Subject to the approval of the Governor and limitations of the G.S. 126-5, the State CIO may appoint or designate additional managerial and policy making positions, including, but not limited to, the Department's chief financial officer and general counsel, each of whom shall be exempt from the North Carolina Human Resources Act.

(c) Administration. – The Department shall be managed under the administration of the State CIO. The State CIO shall have the following powers and duty to do all of the following:

- (1) Ensure that executive branch agencies receive all required information technology support in an efficient and timely manner.
- (2) Ensure that such information technology support is provided to local government entities and others, as appropriate.
- (3) Approve the selection of the respective agency chief information officers.
- (4) As required, plan and coordinate information technology efforts with State agencies, nonprofits, and private organizations.
- (5) Ensure the security of State information technology systems and networks, as well as associated data, developing standardized systems and processes.
- (6) Prepare and present the Department's budget in accordance with Chapter 143C of the General Statutes, the State Budget Act.
- (7) Establish rates for all goods and services provided by the Department within required schedules.
- (8) Identify and work to consolidate duplicate information technology capabilities.
- (9) Identify and develop plans to increase State data center efficiencies, consolidating assets in State-managed data centers.
- (10) Plan for and manage State network development and operations.
- (11) Centrally classify, categorize, manage, and protect the State's data.
- (12) Obtain, review, and maintain, on an ongoing basis, records of the appropriations, allotments, expenditures, and revenues of each State agency for information technology.
- (13) Be responsible for developing and administering a comprehensive long-range plan to ensure the proper management of the State's information technology resources.
- (14) Set technical standards for information technology, review and approve information technology projects and budgets, establish information technology security standards, provide for the procurement of information technology resources, and develop a schedule for the replacement or modification of information technology systems.
- (15) Require reports by State departments, institutions, or agencies of information technology assets, systems, personnel, and projects; prescribe the form of such reports; and verify the information when the State CIO determines verification is necessary.
- (16) Prescribe the manner in which information technology assets, systems, and personnel shall be provided and distributed among agencies.
- (17) Establish and maintain a program to provide career management for information technology professionals.

- (18) Prescribe the manner of inspecting or testing information technology assets, systems, or personnel to determine compliance with information technology plans, specifications, and requirements.
- (19) Supervise and support the operations of the CGIA, GICC, GDAC, and 911 Board.
- (20) Oversee and coordinate an Education Community of Practice.
- (21) Repealed by Session Laws 2016-94, s. 7.14(d), effective July 1, 2016.
- (22) Coordinate with the Department of Public Safety to manage statewide response to cybersecurity incidents, significant cybersecurity incidents, and ransomware attacks as defined by G.S. 143B-1320.

(d) **Budgetary Matters.** – The Department's budget shall incorporate information technology costs and anticipated expenditures of State agencies identified as participating agencies, together with all divisions, boards, commissions, or other State entities for which the principal departments have budgetary authority.

(e) **State Ethics Act.** – All employees of the Department shall be subject to the applicable provisions of the State Government Ethics Act under Chapter 138A of the General Statutes. (2015-241, s. 7A.2(b); 2015-268, s. 2.2; 2016-94, s. 7.14(d); 2016-96, s. 1; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1; 2019-200, s. 6(a); 2021-180, ss. 19A.7A(f), 38.13(d).)

**§ 143B-1323. Departmental organization; divisions and units; education community of practice.**

(a) **Organization.** – The Department shall be organized by the State CIO into divisions and units that support its duties.

(b) **Education Community of Practice.** – There is established an Education Community of Practice to promote collaboration and create efficiencies between and among The University of North Carolina and its constituent institutions, the North Carolina Community Colleges System Office, the constituent institutions of the Community College System, the Department of Public Instruction, and local school administrative units.

(c) **Other Units.** – Other units of the Department include the following:

- (1) Center for Geographic Information and Analysis.
- (2) Repealed by Session Laws 2021-180, s. 19A.7A(d), effective January 1, 2022.
- (3) Government Data Analytics Center.
- (4) North Carolina 911 Board.
- (5) North Carolina Geographic Information Coordinating Council. (2015-241, s. 7A.2(b); 2021-180, s. 19A.7A(d).)

**§ 143B-1324. State agency information technology management; deviations for State agencies.**

Each State agency shall have tools and applications specific to their respective functions in order to effectively and efficiently carry out the business of the State with respect to all of the following:

- (1) Administrative support.
- (2) Facilities management.
- (3) Internal auditing.
- (4) Boards administration.
- (5) Departmental policies and procedures. (2015-241, s. 7A.2(b).)

**§ 143B-1325. State information technology consolidated under Department of Information Technology.**

(a) Consolidation Completed. – Effective July 1, 2018, the consolidation of enterprise information technology functions within the executive branch is completed with the Secretary heading all of the information technology functions under the Department's purview, including all of the following:

- (1) Information technology architecture.
- (2) State information technology strategic plan that reflects State and agency business plans and the State information technology architecture.
- (3) Information technology funding process to include standardized, transparent rates that reflect market costs for information technology requirements.
- (4) Information technology personnel management.
- (5) Information technology project management.
- (6) Information technology procurement.
- (7) Hardware configuration and management.
- (8) Software acquisition and management.
- (9) Data center operations.
- (10) Network operations.
- (11) System and data security, including disaster recovery.

(b) Phased Transitions. – The State CIO shall develop detailed plans for the phased transition of participating agencies to the Department, as well as a plan that defines in detail how information technology support shall be provided to agencies that are not participating agencies. These plans shall be coordinated, in writing, with each agency and shall address any issues unique to a specific agency.

(c) Participating Agencies. – The State CIO shall prepare detailed plans to transition each of the participating agencies. As the transition plans are completed, the following participating agencies shall transfer information technology personnel, operations, projects, assets, and appropriate funding to the Department of Information Technology:

- (1) Department of Natural and Cultural Resources.
- (2) Department of Health and Human Services.
- (3) Repealed by Session Laws 2018-5, s. 37.5(b), effective June 12, 2018.
- (4) Department of Environmental Quality.
- (5) Department of Transportation.
- (6) Department of Administration.
- (7) Department of Commerce.
- (8) Governor's Office.
- (9) Office of State Budget and Management.
- (10) Office of State Human Resources.
- (11) Repealed by Session Laws 2016-94, s. 7.11(a), effective July 1, 2016.
- (12) Department of Military and Veterans Affairs.
- (13) Department of Public Safety, with the exception of the following:
  - a. State Bureau of Investigation.
  - b. State Highway Patrol.
  - c. Division of Emergency Management.



The State CIO shall ensure that State agencies' operations are not adversely impacted under the State agency information technology consolidation.

(d) Report on Transition Planning. – The Department of Public Instruction and the Bipartisan State Board of Elections and Ethics Enforcement shall work with the State CIO to plan their transition to the Department. The information technology transfer and consolidation from the Department of Revenue to the Department shall not take place until the Secretary of the Department of Revenue determines that the system and data security of the Department meets the heightened security standards required by the federal government for purposes of sharing taxpayer information. By October 1, 2018, the Department of Public Instruction and the Bipartisan State Board of Elections and Ethics Enforcement, in conjunction with the State CIO, shall report to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on their respective transition plans.

(e) Separate agencies may transition their information technology to the Department following completion of a transition plan.

(f) Secretaries of Departments listed in subsection (c) of this section may delegate to the Chief Information Officer for that Department the authority for budgetary decisions that fall below a dollar threshold set by that Department. (2015-241, s. 7A.2(b); 2015-268, s. 2.8; 2016-94, s. 7.11(a); 2017-6, s. 3; 2017-57, s. 37.4(b); 2017-204, s. 4.8; 2018-5, s. 37.5(b), (c); 2018-77, s. 4.5(a); 2018-97, s. 10.4; 2018-146, ss. 3.1(a), (b), 6.1; 2019-235, s. 3.8(a).)

§ 143B-1326: Reserved for future codification purposes.

§ 143B-1327: Reserved for future codification purposes.

§ 143B-1328: Reserved for future codification purposes.

§ 143B-1329: Reserved for future codification purposes.

## Part 2. Information Technology Planning, Funding, and Reporting.

### § 143B-1330. Planning and financing State information technology resources.

(a) The State CIO shall develop policies for agency information technology planning and financing. Agencies shall prepare and submit such plans as required in this section, as follows:

- (1) The Department shall analyze the State's legacy information technology systems and develop a plan to document the needs and costs for replacement systems, as well as determining and documenting the time frame during which State agencies can continue to efficiently use legacy information technology systems, resources, security, and data management to support their operations. The plan shall include an inventory of legacy applications and infrastructure, required capabilities not available with the legacy system, the process, time line, and cost to migrate from legacy environments, and any other information necessary for fiscal or technology planning. The State CIO shall have the authority to prioritize the upgrade and replacement of legacy systems. Agencies shall provide all requested documentation to validate reporting on legacy systems and shall make the systems available for inspection by the Department.

- (2) The State CIO shall develop a biennial State Information Technology Plan (Plan), including, but not limited to, the use of cloud-based utility computing for use by State agencies.
- (3) The State CIO shall develop one or more strategic plans for information technology. The State CIO shall determine whether strategic plans are needed for any agency and shall consider an agency's operational needs, functions, and capabilities when making such determinations.

(b) Based on requirements identified during the strategic planning process, the Department shall develop and transmit to the General Assembly the biennial State Information Technology Plan in conjunction with the Governor's budget of each regular session. The Plan shall include the following elements:

- (1) Anticipated requirements for information technology support over the next five years.
- (2) An inventory of current information technology assets and major projects. As used in this subdivision, the term "major project" includes projects costing more than five hundred thousand dollars (\$500,000) to implement.
- (3) Significant unmet needs for information technology resources over a five-year time period. The Plan shall rank the unmet needs in priority order according to their urgency.
- (4) A statement of the financial requirements, together with a recommended funding schedule and funding sources for major projects and other requirements in progress or anticipated to be required during the upcoming fiscal biennium.
- (5) An analysis of opportunities for statewide initiatives that would yield significant efficiencies or improve effectiveness in State programs.
- (6) As part of the plan, the State CIO shall develop and periodically update a long-range State Information Technology Plan that forecasts, at a minimum, the needs of State agencies for the next 10 years.

(c) Each participating agency shall actively participate in preparing, testing, and implementing an information technology plan required under subsection (b) of this section. Separate agencies shall prepare biennial information technology plans, including the requirements listed in subsection (b) of this section, and transmit these plans to the Department by a date determined by the State CIO in each even-numbered year. Agencies shall provide all financial information to the State CIO necessary to determine full costs and expenditures for information technology assets and resources provided by the agencies or through contracts or grants. The Department shall consult with and assist State agencies in the preparation of these plans; shall provide appropriate personnel or other resources to the participating agencies and to separate agencies upon request. Plans shall be submitted to the Department by a date determined by the State CIO in each even-numbered year. (2015-241, s. 7A.2(b); 2015-268, s. 2.11; 2016-94, s. 7.4(h).)

#### **§ 143B-1331. Business continuity planning.**

The State CIO shall oversee the manner and means by which information technology business and disaster recovery plans for the State agencies are created, reviewed, and updated. Each State agency shall establish a disaster recovery planning team to work with the Department, or other resources designated by the State CIO, to develop the disaster recovery plan and to administer implementation of the plan. In developing the plan, all of the following shall be completed:

- (1) Consider the organizational, managerial, and technical environments in which the disaster recovery plan must be implemented.
- (2) Assess the types and likely parameters of disasters most likely to occur and the resultant impacts on the agency's ability to perform its mission.
- (3) List protective measures to be implemented in anticipation of a natural or man-made disaster.
- (4) Determine whether the plan is adequate to address information technology security incidents.

Each State agency shall submit its disaster recovery plan to the State CIO on an annual basis and as otherwise requested by the State CIO. (2015-241, s. 7A.2(b).)

#### **§ 143B-1332. Information Technology Fund.**

There is established a special revenue fund to be known as the Information Technology Fund, which may receive transfers or other credits as authorized by the General Assembly. Money may be appropriated from the Information Technology Fund to support the operation and administration that meet statewide requirements, including planning, project management, security, electronic mail, State portal operations, early adoption of enterprise efforts, and the administration of systemwide procurement procedures. Funding for participating agency information technology projects shall be appropriated to the Information Technology Fund and may be reallocated by the State CIO, if appropriate, following coordination with the impacted agencies and written approval by the Office of State Budget and Management. Any redirection of agency funds shall immediately be reported to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division with a detailed explanation of the reasons for the redirection. Expenditures involving funds appropriated to the Department from the Information Technology Fund shall be made by the State CIO. Interest earnings on the Information Technology Fund balance shall be credited to the Information Technology Fund. (2015-241, s. 7A.2(b).)

#### **§ 143B-1333. Internal Service Fund.**

(a) The Internal Service Fund is established within the Department as a fund to provide goods and services to State agencies on a cost-recovery basis. The Department shall establish fees for subscriptions and chargebacks for consumption-based services. The Information Technology Strategic Sourcing Office shall be funded through a combination of administrative fees as part of the IT Supplemental Staffing contract, as well as fees charged to agencies using their services. The State CIO shall establish and annually update consistent, fully transparent, easily understandable fees and rates that reflect industry standards for any good or service for which an agency is charged. These fees and rates shall be prepared and submitted by the Department to the Office of State Budget and Management and Fiscal Research Division on the date agreed upon by the State Budget Director and the Department's Chief Financial Officer. The rates shall be approved by the Office of State Budget and Management. The Office of State Budget and Management shall ensure that State agencies have the opportunity to adjust their budgets based on any rate or fee changes prior to submission of those budget recommendations to the General Assembly. The approved Information Technology Internal Service Fund budget and associated rates shall be included in the Governor's budget recommendations to the General Assembly.

(b) Repealed by Session Laws 2016-94, s. 7.4(d), effective July 1, 2016.

(c) Receipts shall be used solely for the purpose for which they were collected. In coordination with the Office of the State Controller and the Office of State Budget and Management, the State CIO shall ensure processes are established to manage federal receipts, maximize those receipts, and ensure that federal receipts are correctly utilized. (2015-241, s. 7A.2(b); 2016-94, s. 7.4(d); 2017-102, s. 44.1; 2021-180, s. 38.2.)

§ 143B-1334: Repealed by Session Laws 2016-94, s. 7.4(e), effective July 1, 2016.

**§ 143B-1335. Financial reporting and accountability for information technology investments and expenditures.**

The Department, along with the Office of State Budget and Management and the Office of the State Controller, shall develop processes for budgeting and accounting of expenditures for information technology operations, services, projects, infrastructure, and assets for State agencies, notwithstanding any exemptions or deviations permitted pursuant to G.S. 143B-1320(b) or (c). The budgeting and accounting processes may include hardware, software, personnel, training, contractual services, and other items relevant to information technology and the sources of funding for each. Annual reports regarding information technology shall be coordinated by the Department with the Office of State Budget and Management and the Office of the State Controller and submitted to the Governor and the General Assembly on or before October 1 of each year.

The State CIO shall not enter into any information technology contracts requiring agency financial participation without obtaining written agreement from participating agencies regarding apportionment of the contract costs.

The State CIO shall review the information technology budgets for participating agencies and shall recommend appropriate adjustments to support requirements identified by the State CIO. (2015-241, s. 7A.2(b).)

**§ 143B-1336. Information technology human resources.**

(a) The State CIO may appoint all employees of the Department necessary to carry out the powers and duties of the Department. All employees of the Department are under the supervision, direction, and control of the State CIO, who may assign any function vested in his or her office to any subordinate employee of the Department.

(b) The State CIO shall establish a detailed, standardized, systemic plan for the transition of participating agency personnel to the new organization. This shall include the following:

- (1) Documentation of current information technology personnel requirements.
- (2) An inventory of current agency information technology personnel and their skills.
- (3) Analysis and documentation of the gaps between current personnel and identified requirements.
- (4) An explanation of how the Department plans to fill identified gaps.
- (5) The Department's plan to eliminate positions no longer required.
- (6) The Department's plan for employees whose skills are no longer required.

For each person to be transferred, the State CIO shall identify a designated position with a job description, determine the cost for the position, identify funding sources, and establish a standardized rate.

(c) Participating agency information technology personnel performing information technology functions shall be moved to the Department. The State CIO shall consolidate

participating agency information technology personnel following the time lines established in the plans required by G.S. 143B-1325(b) once a detailed plan has been developed for transitioning the personnel to the new agency.

(d) The State CIO shall establish standard information technology career paths for both management and technical tracks, including defined qualifications, career progression, training requirements, and appropriate compensation. For information technology procurement professionals, the State CIO shall establish a career path that includes defined qualifications, career progression, training requirements, and appropriate compensation. These career paths shall be documented by February 1, 2016, and shall be provided to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division by February 1, 2016, but may be submitted incrementally to meet Department requirements. The career paths shall be updated on an annual basis.

(e) Any new positions established by the Department shall be exempt from the North Carolina Human Resources Act; provided, however, that nonexempt employees transferred from participating agencies to a newly established position in the Department shall not become exempt solely by virtue of that transfer.

(f) The State CIO may, subject to the provisions of G.S. 147-64.7(b)(2), obtain the services of independent public accountants, qualified management consultants, and other professional persons or experts to carry out the powers and duties of this Article if the Department does not have any personnel qualified to perform the function for which the professionals would be engaged and if the requirement has been included in the Department's budget for the year in which the services are required.

(g) Criminal Records Checks. – The State CIO shall require background investigations of any employee or prospective employee, including a criminal history record check, which may include a search of the State and National Repositories of Criminal Histories based on the person's fingerprints. A criminal history record check shall be conducted by the State Bureau of Investigation upon receiving fingerprints and other information provided by the employee or prospective employee. If the employee or prospective employee has been a resident of the State for less than five years, the background report shall include a review of criminal information from both the State and National Repositories of Criminal Histories. The criminal background report shall be provided to the State CIO and is not a public record under Chapter 132 of the General Statutes. (2015-241, s. 7A.2(b); 2015-268, ss. 2.12, 2.13.)

#### **§ 143B-1337. Information Technology Strategy Board.**

(a) Creation; Membership. – The Information Technology Strategy Board is created in the Department of Information Technology. The Board consists of the following members:

- (1) The State Chief Information Officer.
- (2) The State Budget Officer.
- (3) The President of The University of North Carolina.
- (4) The President of the North Carolina Community College System.
- (5) The Secretary of Administration.
- (6) Two citizens of this State with a background in and familiarity with business system technology, information systems, or telecommunications appointed by the Governor.
- (7) Two citizens of this State with a background in and familiarity with business system technology, information systems, or telecommunications appointed by

the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

- (8) Two citizens of this State with a background in and familiarity with business system technology, information systems, or telecommunications appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
- (9) The State Auditor, who shall serve as a nonvoting member.

Members of the Board appointed by the Governor shall serve terms of four years with the initial term expiring January 1, 2021. Members of the Board appointed by the General Assembly shall serve terms of two years with the initial term expiring January 1, 2021. Members of the Board shall not be employed by or serve on the board of directors or other corporate governing body of any vendor providing information systems, computer hardware, computer software, or telecommunications goods or services to the State. The State CIO shall serve as the chair of the Board. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Members of the Board who are employees of State agencies or institutions shall receive subsistence and travel allowances authorized by G.S. 138-6. A majority of the Board constitutes a quorum for the transaction of business. The Department of Information Technology shall provide all clerical and other services required by the Board.

(b) Board Powers and Duties. – The Board shall have the following powers and duties:

- (1) To advise the State CIO on policies and procedures to develop, review, and update the State Information Technology Plan.
- (2) To establish necessary committees to identify and share industry best practices and new development and to identify existing State information technology problems and deficiencies.
- (3) To establish guidelines regarding the review of project planning and management, information sharing, and administrative and technical review procedures involving State-owned or State-supported technology and infrastructure.
- (4) To establish ad hoc technical advisory groups to study and make recommendations on specific topics, including work groups to establish, coordinate, and prioritize needs.
- (5) To assist the State CIO in recommending to the Governor and the General Assembly a prioritized list of enterprise initiatives for which new or additional funding is needed.
- (6) To recommend business system technology projects to the Department and the General Assembly that meet the following criteria:
  - a. A defined start and end point.
  - b. Specific objectives that signify completion.
  - c. Designed to implement or deliver a unique product, system, or service pertaining to business system technology.
- (7) To develop and maintain a five-year prioritization plan for future business system technology projects.

(c) Meetings. – The Board shall adopt bylaws containing rules governing its meeting procedures. The Board shall meet at least quarterly.

(d) Reports. – The Board shall submit a report on projects that have been recommended, the status of those projects, and the most recent version of its five-year prioritization plan to the

Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on or before January 1 of each year. (2019-200, s. 11.)

§ 143B-1338: Reserved for future codification purposes.

§ 143B-1339: Reserved for future codification purposes.

### Part 3. Information Technology Projects and Management.

#### § 143B-1340. Project management.

(a) Overall Management. – All information technology projects shall be managed through a standardized, fully documented process established and overseen by the State CIO. The State CIO shall be responsible for ensuring that participating agency information technology projects are completed on time, within budget, and meet all defined business requirements upon completion. For separate agency projects, the State CIO shall ensure that projects follow the Department's established process and shall monitor schedule, budget, and adherence to business requirements. For all projects, the State CIO shall establish procedures to limit the need for change requests and shall report on this process to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division by January 1, 2016.

The State CIO shall also ensure that agency information technology project requirements are documented in biennial information technology plans. If an agency updates a biennial information technology plan to add a new project, the State CIO shall immediately report to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on the reasons for the new requirement, the costs, and the sources of funding.

An agency that utilizes the system or software shall be designated as the sponsor for the information technology project or program and shall be responsible for overseeing the planning, development, implementation, and operation of the project or program. The Department and the assigned project managers shall advise and assist the designated agency for the duration of the project.

(b) Project Review and Approval. – The State CIO shall review, approve, and monitor all information technology projects for State agencies and shall be responsible for the efficient and timely management of all information technology projects for participating agencies. Project approval may be granted upon the State CIO's determination that (i) the project conforms to project management procedures and policies, (ii) the project does not duplicate a capability already existing in the State, (iii) the project conforms to procurement rules and policies, and (iv) sufficient funds are available.

(c) Project Implementation. – No State agency, unless expressly exempt within this Article, shall proceed with an information technology project until the State CIO approves the project. If a project is not approved, the State CIO shall specify in writing to the agency the grounds for denying the approval. The State CIO shall provide this information to the agency and the Office of State Budget and Management within five business days of the denial.

(d) Suspension of Approval/Cancellation of Projects. – The State CIO may suspend the approval of, or cancel, any information technology project that does not continue to meet the applicable quality assurance standards. The State CIO shall immediately suspend approval of, or cancel, any information technology project that is initiated without State CIO approval. Any project suspended or cancelled because of lack of State CIO approval cannot proceed until it completes all required project management documentation and meets criteria established by the

State CIO for project approval, to include a statement from the State CIO that the project does not duplicate capabilities that already exist within the executive branch. If the State CIO suspends or cancels a project, the State CIO shall specify in writing to the agency the grounds for suspending or cancelling the approval. The State CIO shall provide this information to the agency within five business days of the suspension.

The Department shall report any suspension or cancellation immediately to the Office of the State Controller, the Office of State Budget and Management, the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division. The Office of State Budget and Management shall not allow any additional expenditure of funds for a project that is no longer approved by the State CIO.

(e) General Quality Assurance. – Information technology projects authorized in accordance with this Article shall meet all project standards and requirements established under this Part.

(f) Performance Contracting. – All contracts between the State and a private party for information technology projects shall include provisions for vendor performance review and accountability, contract suspension or termination, and termination of funding. The State CIO may require that these contract provisions include a performance bond, monetary penalties, or require other performance assurance measures for projects that are not completed within the specified time period or that involve costs in excess of those specified in the contract. The State CIO may utilize cost savings realized on government vendor partnerships as performance incentives for an information technology vendor.

(g) Notwithstanding the provisions of G.S. 114-2.3, any State agency developing and implementing an information technology project with a total cost of ownership in excess of five million dollars (\$5,000,000) may be required by the State CIO to engage the services of private counsel or subject matter experts with the appropriate information technology expertise. The private counsel or subject matter expert may review requests for proposals; review and provide advice and assistance during the evaluation of proposals and selection of any vendors; and review and negotiate contracts associated with the development, implementation, operation, and maintenance of the project. This requirement may also apply to information technology programs that are separated into individual projects if the total cost of ownership for the overall program exceeds five million dollars (\$5,000,000). (2015-241, s. 7A.2(b).)

#### **§ 143B-1341. Project management standards.**

(a) The State CIO shall establish standardized documentation requirements for agency projects to include requests for proposal and contracts. The State CIO shall establish standards for project managers and project management assistants. The State CIO shall develop performance measures for project reporting and shall make this reporting available through a publicly accessible Web site.

(b) Participating Agency Responsibilities. – The State CIO shall designate a Project Manager who shall select qualified personnel from the Department staff to participate in information technology project management, implementation, testing, and other activities for any information technology project. The Project Manager shall provide periodic reports to the project management assistant assigned to the project by the State CIO under subsection (d) of this section. The reports shall include information regarding the agency's business requirements, applicable laws and regulations, project costs, issues related to hardware, software, or training, projected and



actual completion dates, and any other information related to the implementation of the information technology project.

(c) **Separate Agency Responsibilities.** – Each agency shall provide for one or more project managers who meet the applicable quality assurance standards for each information technology project that is subject to approval by the State CIO. Each project manager shall be subject to the review and approval of the State CIO. Each agency project manager shall provide periodic reports to the project management assistant assigned to the project by the State CIO under this subsection. The reports shall include information regarding project costs; issues related to hardware, software, or training; projected and actual completion dates; and any other information related to the implementation of the information technology project.

(d) **State CIO Responsibilities.** – The State CIO shall provide a project management assistant from the Department for any approved separate agency project, whether the project is undertaken in single or multiple phases or components. The State CIO may designate a project management assistant for any other information technology project.

The project management assistant shall advise the agency with the initial planning of a project, the content and design of any request for proposals, contract development, procurement, and architectural and other technical reviews. The project management assistant shall also monitor progress in the development and implementation of the project and shall provide status reports to the agency and the State CIO, including recommendations regarding continued approval of the project.

The State CIO shall establish a clearly defined, standardized process for project management that includes time lines for completion of process requirements for both the Department and agencies. The State CIO shall also establish reporting requirements for information technology projects, both during the planning, development, and implementation process and following completion of the project. The State CIO shall continue to monitor system performance and financial aspects of each project after implementation. The State CIO shall also monitor any certification process required for State information technology projects and shall immediately report any issues associated with certification processes to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division. (2015-241, s. 7A.2(b).)

#### **§ 143B-1342. Dispute resolution.**

(a) **Agency Request for Review.** – In any instance where the State CIO has denied or suspended the approval of an information technology project, has cancelled the project, or has denied an agency's request for deviation, the affected State agency may request that the Governor review the State CIO's decision. The agency shall submit a written request for review to the Governor within 15 business days following the agency's receipt of the State CIO's written grounds for denial, suspension, or cancellation. The agency's request for review shall specify the grounds for its disagreement with the State CIO's determination. The agency shall include with its request for review a copy of the State CIO's written grounds for denial or suspension.

(b) **Review Process.** – The Governor shall review the information provided and may request additional information from either the agency or the State CIO. The Governor may affirm, reverse, or modify the decision of the State CIO or may remand the matter back to the State CIO for additional findings. Within 30 days after initial receipt of the agency's request for review, the Governor shall notify the agency and the State CIO of the decision in the matter. The notification shall be in writing and shall specify the grounds for the Governor's decision.

The Governor may reverse or modify a decision of the State CIO when the Governor finds the decision of the State CIO is unsupported by substantial evidence that the agency project fails to meet one or more standards of efficiency and quality of State government information technology as required under this Article. (2015-241, s. 7A.2(b).)

**§ 143B-1343. Standardization.**

The State CIO shall establish consistent standards for the purchase of agency hardware and software that reflect identified, documented agency needs. (2015-241, s. 7A.2(b).)

**§ 143B-1344. Legacy applications.**

Participating agency legacy applications shall be moved to the Department once a detailed plan is coordinated and in place for the successful transition of a specific application to the Department. The Department shall identify situations where multiple agencies are using legacy systems with similar capabilities and shall prepare plans to consolidate these systems. (2015-241, s. 7A.2(b); 2016-94, s. 7.4(c).)

**§ 143B-1345:** Reserved for future codification purposes.

**§ 143B-1346:** Reserved for future codification purposes.

**§ 143B-1347:** Reserved for future codification purposes.

**§ 143B-1348:** Reserved for future codification purposes.

**§ 143B-1349:** Reserved for future codification purposes.

Part 4. Information Technology Procurement.

**§ 143B-1350. Procurement of information technology.**

(a) The State CIO is responsible for establishing policies and procedures for information technology procurement for State agencies.

Notwithstanding any other provision of law, the Department shall procure all information technology goods and services for participating agencies and shall approve information technology procurements for separate agencies. The State CIO may cancel or suspend any agency information technology procurement that occurs without State CIO approval.

(b) The Department shall review all procurements to ensure they meet current technology standards, are not duplicative, meet business objectives, are cost-effective, and are adequately funded. G.S. 143-135.9 shall apply to information technology procurements.

(c) The Department shall, subject to the provisions of this Part, do all of the following with respect to State information technology procurement:

- (1) Purchase or contract for all information technology for participating State agencies.
- (2) Approve all technology purchases for separate agencies.
- (3) Establish standardized, consistent processes, specifications, and standards that shall apply to all information technology to be purchased, licensed, or leased by State agencies and relating to information technology personal services contract requirements for State agencies.

- (4) Establish procedures to permit State agencies and local government entities to use the General Services Administration (GSA) Cooperative Purchasing Program to purchase information technology (i) awarded under GSA Supply Schedule 70 Information Technology and (ii) from contracts under the GSA's Consolidated Schedule containing information technology special item numbers.
- (5) Establish procedures to permit State agencies and local government entities to use multiple award schedule contracts and other cooperative purchasing agreements.
- (6) Comply with the State government-wide technical architecture, as required by the State CIO.
- (7) Utilize the purchasing benchmarks established by the Secretary of Administration pursuant to G.S. 143-53.1.
- (8) Provide strategic sourcing resources and detailed, documented planning to compile and consolidate all estimates of information technology goods and services needed and required by State agencies.
- (9) Develop a process to provide a question and answer period for vendors prior to procurements.

(d) Each State agency shall furnish to the State CIO when requested, and on forms as prescribed, estimates of and budgets for all information technology goods and services needed and required by such department, institution, or agency for such periods in advance as may be designated by the State CIO. When requested, all State agencies shall provide to the State CIO on forms as prescribed, actual expenditures for all goods and services needed and required by the department, institution, or agency for such periods after the expenditures have been made as may be designated by the State CIO.

(e) Confidentiality. – Contract information compiled by the Department shall be made a matter of public record after the award of contract. Trade secrets, test data, similar proprietary information, and security information protected under G.S. 132-6.1(c) or other law shall remain confidential.

(f) Electronic Procurement. – The State CIO may authorize the use of the electronic procurement system established by G.S. 143-48.3, or other systems, to conduct reverse auctions and electronic bidding. For purposes of this Part, "reverse auction" means a real-time purchasing process in which vendors compete to provide goods or services at the lowest selling price in an open and interactive electronic environment. The vendor's price may be revealed during the reverse auction. The Department may contract with a third-party vendor to conduct the reverse auction. "Electronic bidding" means the electronic solicitation and receipt of offers to contract. Offers may be accepted and contracts may be entered by use of electronic bidding. All requirements relating to formal and competitive bids, including advertisement, seal, and signature, are satisfied when a procurement is conducted or a contract is entered in compliance with the reverse auction or electronic bidding requirements established by the Department.

(f1) Multiple-Award Schedule Contracts. – The procurement of information technology may be conducted using multiple award schedule contracts. Contracts awarded under this subsection shall be periodically updated as directed by the State CIO to include the addition or deletion of particular vendors, goods, services, or pricing.

(g) The State CIO shall establish efficient, responsive procedures for the procurement of information technology. The procedures may include aggregation of hardware purchases, the use

of formal bid procedures, restrictions on supplemental staffing, enterprise software licensing, hosting, and multiyear maintenance agreements. The State CIO may require agencies to submit information technology procurement requests on a regularly occurring schedule each fiscal year in order to allow for bulk purchasing.

(h) All offers to contract, whether through competitive bidding or other procurement method, shall be subject to evaluation and selection by acceptance of the most advantageous offer to the State. Evaluation shall include best value, as the term is defined in G.S. 143-135.9(a)(1), compliance with information technology project management policies, compliance with information technology security standards and policies, substantial conformity with the specifications, and other conditions set forth in the solicitation.

(h1) All contracts subject to the provisions of this Part shall include a limitation on the contractor's liability to the State for damages. Except as otherwise provided in this subsection, the limitation of liability shall be for damages arising from any cause whatsoever, regardless of the form of action. The amount of liability shall be determined based on the nature of the goods or services covered by the contract; however, there shall be a presumptive limitation of no more than two times the value of the contract. Limitation of liability pursuant to this subsection shall specifically include, but not be limited to, the contractor's liability for damages and any other losses relating to the loss of, unauthorized access to, or unauthorized disclosure of data.

The amount of liability for damages and any other losses relating to the loss of, unauthorized access to, or unauthorized disclosure of data may be raised to no more than three times the value of the contract if all of the following apply:

- (1) The State CIO completes a risk assessment prior to the bid solicitation or request for proposal.
- (2) The risk assessment determines that an increase in the liability amount is necessary to protect the State's best interests.
- (3) The bid solicitation or request for proposal indicates that increased liability will be required for the resulting contract.

The State CIO shall report annually to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight Committee on Information Technology no later than March 1 regarding the contracts containing liability amounts of more than two times the value of the contract.

Prior to entering into any contract subject to the provisions of this Part, the Department or the separate agency, as applicable, shall reasonably determine that the contractor possesses sufficient financial resources, either independently or through third-party sources, such as insurance, to satisfy the agreed upon limitation of liability. The limitation of liability required by this subsection shall not apply to liability of the contractor for intentional or willful misconduct, damage to tangible personal property, physical injuries to persons, or any notification costs resulting from compliance with G.S. 132-1.10(c1). Nothing in this subsection (i) limits the contractor's liability directly to third parties or (ii) affects the rights and obligations related to contribution among joint tortfeasors established by Chapter 1B of the General Statutes and other applicable law.

(i) Exceptions. – In addition to permitted waivers of competition, the requirements of competitive bidding shall not apply to information technology contracts and procurements:

- (1) In cases of pressing need or emergency arising from a security incident.
- (2) In the use of master licensing or purchasing agreements governing the Department's acquisition of proprietary intellectual property.

- (3) In the procurement of cybersecurity and infrastructure security products, consistent with Best Value procurement principles as provided in G.S. 143-135.9.

Any exceptions shall immediately be reported to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division.

(j) Information Technology Innovation Center. – The Department may operate a State Information Technology Innovation Center (iCenter) to develop and demonstrate technology solutions with potential benefit to the State and its citizens. The iCenter may facilitate the piloting of potential solutions to State technology requirements. In operating the iCenter, the State CIO shall ensure that all State laws, rules, and policies are followed.

Vendor participation in the iCenter shall not be construed to (i) create any type of preferred status for vendors or (ii) abrogate the requirement that agency and statewide requirements for information technology support, including those of the Department, are awarded based on a competitive process that follows information technology procurement guidelines.

(k) No contract subject to the provisions of this Part may be entered into unless the contractor and the contractor's subcontractors comply with the requirements of Article 2 of Chapter 64 of the General Statutes. (2015-241, s. 7A.2(b); 2015-268, ss. 2.14, 2.20; 2016-85, s. 1; 2019-200, s. 1; 2020-78, s. 19.2(a).)

**§ 143B-1351. Restriction on State agency contractual authority with regard to information technology.**

(a) All State agencies covered by this Article shall use contracts for information technology to include enterprise licensing agreements and convenience contracts established by the Department. The State CIO shall consult the agency heads prior to the initiation of any enterprise project or contract. Notwithstanding any other statute, the authority of State agencies to procure or obtain information technology shall be subject to compliance with the provisions of this Part.

(b) Notwithstanding any other provision of law, local governmental entities may use the information technology programs, services, or contracts offered by the Department, including information technology procurement, in accordance with the statutes, policies, and rules of the Department. Local governmental entities are not required to comply with otherwise applicable competitive bidding requirements when using contracts established by the Department.

(c) Any other State entities exempt from Part 3 or Part 5 of this Article may also use the information technology programs, services, or contracts offered by the Department, including information technology procurement, in accordance with the statutes, policies, and rules of the Department. (2015-241, s. 7A.2(b).)

**§ 143B-1352. Unauthorized use of public purchase or contract procedures for private benefit prohibited.**

(a) It is unlawful for any person, by the use of the powers, policies, or procedures described in this Part or established hereunder, to purchase, attempt to purchase, procure, or attempt to procure any property or services for private use or benefit.

(b) This prohibition shall not apply if:

- (1) The State agency through which the property or services are procured had theretofore established policies and procedures permitting such purchases or procurement by a class or classes of persons in order to provide for the mutual

benefit of such persons and the department, institution, or agency involved or the public benefit or convenience; and

- (2) Such policies and procedures, including any reimbursement policies, are complied with by the person permitted thereunder to use the purchasing or procurement procedures described in this Part or established thereunder.
- (c) Any violation of this section is a Class 1 misdemeanor.
- (d) Any employee or official of the State who violates this Part shall be liable to the State to repay any amount expended in violation of this Part, together with any court costs. (2015-241, s. 7A.2(b).)

**§ 143B-1353. Financial interest of officers in sources of supply; acceptance of bribes; gifts and favors regulated.**

(a) Neither the State CIO, any deputy State CIO, or any other policy-making or managerially exempt personnel shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any information technology, nor in any firm, corporation, partnership, or association furnishing any information technology to the State government or any of its departments, institutions, or agencies. Violation of this section is a Class F felony, and any person found guilty of a violation of this section shall, upon conviction, be removed from State office or employment.

(b) The provisions of G.S. 133-32 shall apply to all Department employees. (2015-241, s. 7A.2(b); 2019-200, s. 5.)

**§ 143B-1354. Certification that information technology bid submitted without collusion.**

The State CIO shall require bidders to certify that each bid on information technology contracts overseen by the Department is submitted competitively and without collusion. False certification is a Class I felony. (2015-241, s. 7A.2(b).)

**§ 143B-1355. Award review.**

(a) When the dollar value of a contract for the procurement of information technology equipment, materials, and supplies exceeds the benchmark established by subdivision (1) of subsection (c) of this section, an award recommendation shall be submitted to the State CIO for approval or other action. The State CIO shall promptly notify the agency or institution making the recommendation, or for which the purchase is to be made, of the action taken.

(b) Prior to submission for review pursuant to this section for any contract for information technology being acquired for the benefit of an agency authorized to deviate from this Article pursuant to G.S. 143B-1320(c), the State CIO shall review and approve the procurement to ensure compliance with the established processes, specifications, and standards applicable to all information technology purchased, licensed, or leased in State government, including established procurement processes, and compliance with the State government-wide technical architecture and standards established by the State CIO.

(c) The State CIO shall provide a report of all contract awards approved through the Statewide Procurement Office as indicated below. The report shall include the amount of the award, the contract term, the award recipient, the using agency, and a short description of the nature of the award, as follows:

- (1) For contract awards greater than twenty-five thousand dollars (\$25,000), to the cochairs of the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division as requested.
- (2) For all contract awards outside the established purchasing system, to the Department of Administration, Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division on March 1 and September 1 of each year. (2015-241, s. 7A.2(b); 2016-94, s. 7.4(a).)

**§ 143B-1356. Multiyear contracts; Attorney General assistance.**

(a) Notwithstanding the cash management provisions of G.S. 147-86.11, the Department may procure information technology goods and services for periods up to a total of three years where the terms of the procurement contracts require payment of all or a portion of the contract price at the beginning of the contract agreement. All of the following conditions shall be met before payment for these agreements may be disbursed:

- (1) Any advance payment can be accomplished within the IT Internal Service Fund budget.
- (2) The State Controller receives conclusive evidence that the proposed agreement would be more cost-effective than a multiyear agreement that complies with G.S. 147-86.11.
- (3) The procurement complies in all other aspects with applicable statutes and rules.
- (4) The proposed agreement contains contract terms that protect the financial interest of the State against contractor nonperformance or insolvency through the creation of escrow accounts for funds, source codes, or both, or by any other reasonable means that have legally binding effect.

The Office of State Budget and Management shall ensure the savings from any authorized agreement shall be included in the IT Internal Service Fund rate calculations before approving annual proposed rates. Any savings resulting from the agreements shall be returned to agencies included in the contract in the form of reduced rates.

(b) At the request of the State CIO, the Attorney General shall provide legal advice and services necessary to implement this Article. (2015-241, s. 7A.2(b).)

**§ 143B-1357. Purchase of certain computer equipment and televisions by State agencies and governmental entities prohibited.**

(a) No State agency, local political subdivision of the State, or other public body shall purchase computer equipment or televisions, as defined in G.S. 130A-309.131, or enter into a contract with any manufacturer that the State CIO determines is not in compliance with the requirements of G.S. 130A-309.134 or G.S. 130A-309.135 as determined from the list provided by the Department of Environmental Quality pursuant to G.S. 130A-309.138. The State CIO shall issue written findings upon a determination of noncompliance. A determination of noncompliance by the State CIO is reviewable under Article 3 of Chapter 150B of the General Statutes.

(b) The Department shall make the list available to local political subdivisions of the State and other public bodies. A manufacturer that is not in compliance with the requirements of G.S. 130A-309.134 or G.S. 130A-309.135 shall not sell or offer for sale computer equipment or televisions to the State, a local political subdivision of the State, or other public body. (2015-241, ss. 7A.2(b), 14.30(c).)

**§ 143B-1358. Refurbished computer equipment purchasing program.**

(a) The Department of Information Technology and the Department of Administration, with the administrative support of the Information Technology Strategic Sourcing Office, shall offer State and local governmental entities the option of purchasing refurbished computer equipment from registered computer equipment refurbishers whenever most appropriate to meet the needs of State and local governmental entities.

(b) State and local governmental entities shall document savings resulting from the purchase of the refurbished computer equipment, including, but not limited to, the initial acquisition cost as well as operations and maintenance costs. These savings shall be reported quarterly to the Department of Information Technology.

(c) The Information Technology Strategic Sourcing Office shall administer the refurbished computer equipment program by establishing a competitive purchasing process to support this initiative that meets all State information technology procurement laws and procedures and ensures that agencies receive the best value.

(d) Participating computer equipment refurbishers must meet all procurement requirements established by the Department of Information Technology and the Department of Administration. (2015-241, s. 7A.2(b).)

**§ 143B-1359. Configuration and specification requirements same as for new computers.**

Refurbished computer equipment purchased under this act must conform to the same standards as the State may establish as to the configuration and specification requirements for the purchase of new computers. (2015-241, s. 7A.2(b).)

**§ 143B-1360. Data on reliability and other issues; report.**

The Department of Information Technology shall maintain data on equipment reliability, potential cost savings, and any issues associated with the refurbished computer equipment initiative and shall report the results of the initiative to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division by March 1, 2016, and then annually thereafter. (2015-241, s. 7A.2(b); 2016-94, s. 7.4(b).)

**§ 143B-1361. Information technology procurement policy; reporting requirements.**

(a) Policy. – In order to further the policy of the State to encourage and promote the use of small, minority, physically handicapped, and women contractors in State purchasing of goods and services, all State agencies shall cooperate with the Department in efforts to encourage the use of small, minority, physically handicapped, and women contractors in achieving the purposes of this Article, which is to provide for the effective and economical acquisition, management, and disposition of information technology.

(b) Bids. – A vendor submitting a bid shall disclose in a statement, provided contemporaneously with the bid, where services will be performed under the contract sought, including any subcontracts and whether any services under that contract, including any subcontracts, are anticipated to be performed outside the United States. Nothing in this section is intended to contravene any existing treaty, law, agreement, or regulation of the United States. The State CIO shall retain the statements required by this subsection regardless of the State entity that awards the contract and shall report annually to the Secretary of Administration on the number of contracts which are anticipated to be performed outside the United States.



(c) Reporting. – Every State agency that makes a direct purchase of information technology using the services of the Department shall report directly to the Department of Administration all information required by G.S. 143-48(b).

(d) Data from Department of Administration. – The Department of Administration shall collect and compile the data described in this section and report it annually to the Department of Information Technology, the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division. (2015-241, s. 7A.2(b).)

**§ 143B-1362. Personal services contracts subject to Article.**

(a) Requirement. – Notwithstanding any other provision of law, information technology personal services contracts for executive branch agencies shall be subject to the same requirements and procedures as information technology service contracts, except as provided in this section.

(b) Certain Approvals Required. – Notwithstanding any provision of law to the contrary, no information technology personal services contract, nor any contract that provides personnel to perform information technology functions regardless of the cost of the contract, may be established or renewed without written approval from the Department of Information Technology. To facilitate compliance with this requirement, the Department of Information Technology shall develop and document a process to monitor all State agency information technology personal services contracts, as well as any other State contracts providing personnel to perform information technology functions and a process for obtaining approval of contractor positions.

(c), (d) Repealed by Session Laws 2019-200, s. 2, effective August 21, 2019.

(e) Reporting Required. – The Department of Information Technology shall report biennially to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on the number of information technology service contractors in each State agency, the cost for each, and the comparable cost, including benefits, of a State employee serving in that capacity rather than a contractor.

(f) Information Technology Personal Services Contract Defined. – For purposes of this section, the term "personal services contract" means a contract for services provided by a professional individual as an independent contractor on a temporary or occasional basis.

(g) Repealed by Session Laws 2019-200, s. 2, effective August 21, 2019. (2015-241, s. 26.2(b); 2019-200, s. 2.)

**§ 143B-1363:** Reserved for future codification purposes.

**§ 143B-1364:** Reserved for future codification purposes.

Part 5. Data Centers.

**§ 143B-1365. Data centers.**

(a) The State CIO shall create an inventory of data center operations in the executive branch and shall develop and implement a detailed, written plan for consolidation of agency data centers in the most efficient manner possible. By May 1, 2016, the State CIO shall present a report on the data center consolidation plan to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division.

(b) State agencies shall use the State infrastructure to host their projects, services, data, and applications. The State Chief Information Officer may grant an exception if the State agency can demonstrate any of the following:

- (1) Using an outside contractor would be more cost-effective for the State.
- (2) The Department does not have the technical capabilities required to host the application.
- (3) Valid security requirements preclude the use of State infrastructure, and a vendor can provide a more secure environment. (2015-241, s. 7A.2(b).)

§ 143B-1366: Reserved for future codification purposes.

§ 143B-1367: Reserved for future codification purposes.

§ 143B-1368: Reserved for future codification purposes.

§ 143B-1369: Reserved for future codification purposes.

#### Part 6. Communications and Portal Services.

##### § 143B-1370. **Communications services.**

(a) The State CIO shall exercise authority for telecommunications and other communications included in information technology relating to the internal management and operations of State agencies. In discharging that responsibility, the State CIO shall do the following:

- (1) Develop standards for a State network.
- (2) Develop a detailed plan for the standardization and operation of State communications networks and services.
- (3) Establish an inventory of communications systems in use within the State and ensure that the State is using the most efficient and cost-effective means possible.
- (4) Identify shortfalls in current network operations and develop a strategy to mitigate the identified shortfalls.
- (5) Provide for the establishment, management, and operation, through either State ownership, by contract, or through commercial leasing, of the following systems and services as they affect the internal management and operation of State agencies:
  - a. Central telephone systems and telephone networks, including Voice over Internet Protocol and Commercial Mobile Radio Systems.
  - b. Satellite services.
  - c. Closed-circuit TV systems.
  - d. Two-way radio systems.
  - e. Microwave systems.
  - f. Related systems based on telecommunication technologies.
  - g. The "State Network," managed by the Department, which means any connectivity designed for the purpose of providing Internet Protocol transport of information for State agencies.
  - h. Broadband, including serving as the sole source of agency broadband maps.

- (6) Coordinate the development of cost-sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in subdivision (5) of this subsection.
- (7) Assist in the development of coordinated telecommunications services or systems within and among all State agencies and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.
- (8) Perform traffic analysis and engineering for all telecommunications services and systems listed in subdivision (5) of this subsection.
- (9) Establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State agencies.
- (10) Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State agencies.
- (11) Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including, but not limited to, the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.
- (12) Perform frequency coordination and management for State agencies and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.
- (13) Advise all State agencies on telecommunications management planning and related matters and provide through the State Personnel Training Center or the Department training to users within State agencies in telecommunications technology and systems.
- (14) Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems, and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.

(b) The provisions of this section shall not apply to the Judicial Information System in the Judicial Department. (2015-241, s. 7A.2(b); 2021-180, s. 38.8(b).)

**§ 143B-1371. Communications services for local governmental entities and other entities.**

(a) The State CIO shall provide cities, counties, and other local governmental entities with access to communications systems or services established by the Department under this Part for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

(b) The State CIO shall establish broadband communications services and permit, in addition to State agencies, cities, counties, and other local government entities, the following organizations and entities to share on a not-for-profit basis:

- (1) Nonprofit educational institutions as defined in G.S. 116-280.
- (2) MCNC and research affiliates of MCNC for use only in connection with research activities sponsored or funded, in whole or in part, by MCNC, if such research activities relate to health care or education in North Carolina.

- (3) Agencies of the United States government operating in North Carolina for use only in connection with activities that relate to health care, education, or FirstNet in North Carolina.
- (4) Hospitals, clinics, and other health care facilities for use only in connection with activities that relate to health care, education, or FirstNet in North Carolina.

(c) Any communications or broadband telecommunications services provided pursuant to this section shall not be provided in a manner that would cause the State or the Department to be classified as a public utility as that term is defined in G.S. 62-3(23)a.6., nor as a retailer as that term is defined in G.S. 105-164.3. Nor shall the State or the Department engage in any activities that may cause those entities to be classified as a common carrier as that term is defined in the Communications Act of 1934, 47 U.S.C. § 153(11). Provided further, authority to share communications services with the non-State agencies set forth in subdivisions (1) through (4) of subsection (b) of this section shall terminate not later than one year from the effective date of a tariff for such service or federal law that preempts this section. (2015-241, s. 7A.2(b).)

**§ 143B-1372. Statewide electronic web presence; annual report.**

(a) The Department shall plan, develop, implement, and operate a statewide electronic web presence, to include mobile, in order to (i) increase the convenience of members of the public in conducting online transactions with, and obtaining information from, State government and (ii) facilitate the public's interactions and communications with government agencies. The State CIO shall have approval authority over all agency Web site funding, to include any agency contract decisions. Participating agency Web site and content development staff shall be transferred to the Department in accordance with the schedule for their agency.

(b) Beginning January 1, 2016, and then annually thereafter, the State CIO shall report to the General Assembly and to the Fiscal Research Division on the following information:

- (1) Services currently provided and associated transaction volumes or other relevant indicators of utilization by user type.
- (2) New services added during the previous year.
- (3) Services added that are currently available in other states.
- (4) The total amount collected for each service.
- (5) The total amount remitted to the State for each service.
- (6) The total amount remitted to the vendor for each service.
- (7) Any other use of State data by the vendor and the total amount of revenue collected per each use and in total.
- (8) Customer satisfaction with each service.
- (9) Any other issues associated with the provision of each service. (2015-241, s. 7A.2(b); 2015-268, s. 2.16.)

**§ 143B-1373. Growing Rural Economies with Access to Technology (GREAT) program.**

(a) As used in this section, the following definitions apply:

- (1) Agriculture. – Activities defined in G.S. 106-581.1.
- (2) Broadband service. – For the purposes of this section, terrestrially deployed Internet access service with transmission speeds of at least 25 megabits per second (Mbps) download and at least 3 megabits per second upload (25:3).

- (2a) Business. – Any lawful trade, investment, or other purpose or activity, whether or not conducted or undertaken for profit. The term also includes community anchor points, agricultural operations, and agricultural processing facilities.
- (3) Coastal Plain Region. – The portion of the State lying east of the eastern boundaries of Franklin, Lee, Moore, Wake, and Warren Counties.
- (4) Cooperative. – An electric membership corporation, organized pursuant to Article 2 of Chapter 117 of the General Statutes, or a telephone membership corporation, organized pursuant to Article 4 of Chapter 117 of the General Statutes.
- (5) Eligible economically distressed area. – A county designated as a development tier one or tier two area, as defined in G.S. 143B-437.08, or a rural census tract, as defined in G.S. 143B-472.127(a)(2), located in any other county. For the purposes of this section, the tier designation that is in effect as of the beginning of a fiscal year shall be applied for all grants awarded for that fiscal year.
- (6) Eligible project. – An eligible project is a discrete and specific project located in an unserved economically distressed area seeking to provide broadband service to homes, businesses, and community anchor points not currently served. Eligible projects do not include middle mile, backhaul, and other similar projects not directed at broadband service to end users. If a contiguous project area crosses from one eligible county into one or more eligible adjacent counties, for the purposes of this section, the project shall be deemed to be located in the county where the greatest number of unserved households are proposed to be served.
- (7) Eligible recipient. – Eligible grant recipients are private providers of broadband services, including cooperatively organized entities, or any partnerships formed between cooperatively organized entities, private providers, or any combination thereof.
- (8) Household. – A house, apartment, single room, or other group of rooms, if occupied or intended for occupancy as separate living quarters, and where the occupants do not live with any other persons in the structure and there is direct access from the outside or through a common hall.
- (8a) Infrastructure. – Existing facilities, equipment, materials, and structures that an entity has installed either for its core business or public enterprise purposes. Examples include, but are not limited to, copper wire, coaxial cable, optical cable, loose tube cable, communication huts, conduits, vaults, patch panels, mounting hardware, poles, generators, battery and cabinet, network nodes, network routers, network switches, microwave relay, microwave receivers, site routers, outdoor cabinets, towers, easements, rights-of-way, and buildings or structures owned by the entity that are made available for location or collocation purposes.
- (9) Infrastructure costs. – Costs directly related to the construction of broadband infrastructure for the extension of broadband service for an eligible project, including installation, acquiring or updating easements, backhaul infrastructure, and testing costs. The term also includes engineering and any other costs associated with securing a lease to locate or collocate infrastructure

on public or private property or structures, but not including the actual monthly lease payment. The term does not include overhead or administrative costs.

- (10) Mountain Region. – The portion of the State lying west of and including Alleghany, Burke, Caldwell, Rutherford, and Wilkes Counties.
- (11) Office. – The Broadband Infrastructure Office in the Department of Information Technology.
- (11a) Partnership. – A project for which an Internet service provider affirms that a formalized agreement exists between the provider and one or more unaffiliated partners where the partner is one of the following:
  - a. A separate Internet service provider.
  - b. A nonprofit or not-for-profit, or a for-profit subsidiary of either, and the Internet service provider is being allowed access and use of the partner's infrastructure, on special terms and conditions designed to facilitate the provision of broadband services in unserved areas, or is utilizing a financial contribution provided by one or more partners where the total contribution is not less than ten percent (10%), but not more than forty-nine percent (49%), of the match required by this section. A county that is not engaged in providing consumer broadband service may qualify as a nonprofit for the purpose of this section.
- (12) Piedmont Region. – The portion of the State lying west of and including Franklin, Lee, Moore, Richmond, Wake, and Warren Counties, to the eastern boundaries of Alleghany, Burke, Caldwell, Rutherford, and Wilkes Counties.
- (12a) Prospective broadband recipient. – A household, home, business, community anchor point, agricultural operation, or agricultural processing facility that is currently unserved and is identified in an application submitted in accordance with this section.
- (13) Secretary. – The Secretary of the Department of Information Technology.
- (14) Unserved area. – A designated geographic area that is presently without access to broadband service, as defined in this section, offered by a wireline or fixed wireless provider. Areas where a private provider has been designated to receive funds through other State- or federally funded programs designed specifically for broadband deployment shall be considered served if such funding is intended to result in construction of broadband in the area within 18 months or for the duration of the federal funding program for that area, or if the funding recipient is otherwise in good standing with the funding agency's regulations governing the funding program.
- (15) Unserved household or business. – A household or business that does not presently have access to broadband service, as defined in this subsection.

(b) The Growing Rural Economies with Access to Technology Fund is established as a special revenue fund in the Department of Information Technology. The Secretary may award grants from the Growing Rural Economies with Access to Technology Fund to eligible recipients for eligible projects. The funds shall be used by the recipient to pay for infrastructure costs associated with an eligible project. State funds appropriated to this Fund shall be considered an information technology project within the meaning of G.S. 143C-1-2.

(c) A private provider receiving State or federal funds to deploy broadband service in unserved areas may qualify such area for protection by submitting a listing of the census blocks, or

portions thereof, comprising the State- or federally funded project areas in a manner prescribed by the Office. The Office shall only utilize this data to update maps of census blocks to reflect these census blocks, or portions thereof, as being served. Failure on the part of a provider to submit the listing of census blocks by the cutoff date shall result in those areas being eligible for inclusion under this program during subsequent program years. The Office shall use the census block data provided only for mapping of unserved areas. A project area shall remain protected for a period of 18 months from the submission of the listing information required under this subsection; provided, however, a private provider that has received protection for a project area shall submit written documentation by April 30 of the year following the program year that broadband deployment has begun or been completed, or is otherwise in good standing, in the census blocks, or portions thereof, that have been deemed ineligible by the Office under this subsection. Upon submission of documentation satisfactory to the Office, a protected project area shall remain protected until project completion. A project area where a private provider has forfeited or otherwise defaulted on an agreement in connection with receipt of funds to deploy broadband service shall be eligible for inclusion in this program in subsequent program years. Information provided to the Office pursuant to this subsection is not a public record, as that term is defined in G.S. 132-1.

(d) Applications for grants will be submitted at times designated by the Secretary and will include, at a minimum, the following information:

- (1) An attestation to the Office that the proposed project area is eligible.
- (2) The identity of the applicant and its qualifications and experience with deployment of broadband.
- (3) The total cost and duration of the project.
- (4) The amount to be funded by the applicant.
- (5) An illustration or description of the area to be served, identifying the number of homes and businesses that will have access to broadband as a result of the project, including any available addresses, or other identifying information satisfactory to the Office, for the foregoing. In the event that the Office is unable to identify the proposed project area with specificity, the Office may require the applicant to submit additional information. If construction of the proposed project would result in the provision of broadband service to areas that are not eligible for funding, those ineligible areas should be identified in the application along with the eligible areas.
- (6) An assessment of the current level of broadband access in the proposed deployment area.
- (7) The proposed construction time line.
- (8) A description of the services to be provided, including the proposed upstream and downstream broadband speeds to be delivered and any applicable data caps, provided that any applicant proposing a data cap below 150 Gigabytes of usage per month shall provide justification to the satisfaction of the Office that the proposed cap is in the public interest and consistent with industry standards.
- (9) Any other information or supplementary documentation requested by the Office.
- (10) A plan to encourage users to connect that incorporates, at a minimum, community education forums, multimedia advertising, and marketing programs.

- (11) For the proposed area to be served, the infrastructure cost per household or business for the project.
- (12) Evidence of support for the project from citizens, local government, businesses, and institutions in the community.
- (13) The proposed advertised speed to be marketed to end users.
- (14) An explanation of the scalability of the broadband infrastructure to be deployed for higher broadband speeds in the future.

(d1) An application submitted pursuant to this section shall include a project area map that provides location-specific data in a format required by the Office. A provider submitting an application pursuant to this section shall bear the burden of proof that the proposed area to be served can, in fact, be served using the proposed technology. The burden of proof may be satisfied by the submission of data, maps, and any other information satisfactory to the Office, demonstrating that the area and number of prospective broadband recipients proposed to be served can be provided the minimum upload and download speeds indicated in the application.

(e) Applications shall be made publicly available by posting on the Web site of the Department of Information Technology for a period of at least 20 days prior to award. During the 20-day period, any interested party may submit comments to the Secretary concerning any pending application. A broadband service provider currently providing broadband service in a project area proposed in an application may submit a protest of any application on the grounds the proposed project covers an area that is a protected area under subsection (c) of this section, or that the proposed project area contains ten percent (10%) or more of total households with access to broadband service as defined in this section. Protests shall be submitted in writing, accompanied by all credible and relevant supporting documentation, including specific addresses, and detailed mapping demonstrating that the protesting broadband provider has installed infrastructure sufficient to provide broadband service to the specific addresses provided in the protest, along with an attestation that broadband service is available in the public right-of-way at the specific addresses indicated. The protest shall be considered by the Office in connection with the review of the application. Upon submission of evidence satisfactory to the Office that the proposed project area includes a protected area or prospective broadband recipients that are presently served, as measured using a methodology satisfactory to the Office, the Office may work with an applicant to amend an application to reduce the number of unserved prospective broadband recipients in the project area to reflect an accurate level of current broadband service. The Office may revise application scores in accordance with amended applications; however, the Office may reject any amended application resulting in a lower application score to the extent that the lower score would have impacted the ranking of the application in the initial scoring process. For applications with filed protests, the Secretary shall issue a written decision to the protesting party at least 15 days prior to the approval of that application. Following a protest that is granted for a portion of the application, the Office may release to an applicant the locations or areas declared ineligible. The information released to the applicant is not a public record, as that term is defined under G.S. 132-1, and shall remain confidential. Any provider submitting a protest shall verify that the information in the protest is accurate and that the protest is submitted in good faith. The Office may deny any protest or application that contains inaccurate information.

As a means of resolving a protest, the Office may utilize speed tests to determine if the protested area or individual households or businesses currently have access to broadband service as defined in this section. The Department shall publish the speed test methodology it uses to assess speed levels pursuant to this section. All decisions regarding the speed test to be utilized and the



manner by which the speed tests are applied shall be made by the Secretary or the Secretary's designee.

(f) The Office may consult with the Department of Commerce to determine if a broadband project proposed under this section will benefit a potential economic development project relevant to the proposed area outlined in the broadband project.

(g) Applications shall be scored based upon a system that awards a single point for criteria considered to be the minimum level for the provision of broadband service with additional points awarded to criteria that exceed minimum levels. The Office shall score project applications in accordance with the following:

- (1) Partnership. – Projects proposing a partnership shall be given points in their application score. A proposed partnership shall (i) be in writing, (ii) provide the specific terms and conditions of the partnership, and (iii) be signed and attested to by the parties. A county or nonprofit may enter into proposed agreements with more than one applicant. For the purposes of scoring under this subdivision, one point shall be given for a proposed partnership that will make available existing infrastructure that has been installed for the partner's enterprise, nonconsumer broadband purposes, or any other property, buildings, or structures owned by the partner, for a proposed project under this section. A county or nonprofit entity that proposes to provide a financial match shall be given one point. Notwithstanding Article 8 of Chapter 143 of the General Statutes, or any provision of law to the contrary, a county may use unrestricted general funds or federal funding allocated to it for the purpose of improving broadband infrastructure for a financial match. Funds received from the federal American Rescue Plan Act (P.L. 117-2) may not be used for the purposes of this subdivision. Nothing in this subdivision shall be deemed to authorize a county to provide broadband service.
- (2) Unserved households. – The Office shall give additional points to projects based upon the estimated number of unserved households within the eligible economically distressed county, as determined by the most recent data published by the Federal Communications Commission or any other information available to the Office. Points shall be given to projects that will be located in counties with estimated unserved households as follows:

Unserved Households	Points Given
500 or less	1
501-1400	2
Over 1400	

- (3) Unserved households to be served. – The Office shall give additional points to projects that will provide broadband service based upon the percentage of the total unserved households within the eligible economically distressed county that the project will serve. The number of unserved households shall be determined using the most recent data published by the Federal Communications Commission or any other information available to the Office. Points shall be given to projects that will serve a percentage of unserved households within the project area as follows:

% Unserved Households To Be Served	Points Given
Under Less than 15%	1
15% to 25%	2
Over 25%	3

(4) Unserved businesses. – The Office shall give additional points to projects that will provide broadband service to unserved businesses located within the eligible economically distressed county, as determined by the most recent data published by the Federal Communications Commission or any other information available to the Office. Points shall be given to projects that serve unserved businesses within the project area as follows:

- a. Projects proposing to serve between 1 and 4 businesses shall receive 1 point.
- b. Projects proposing to serve between 5 and 10 businesses shall receive 2 points.
- c. Projects proposing to serve either (i) more than 10 businesses or (ii) a business with 31 or more full-time employees shall receive 3 points.

(5) Cost per household or business. – The Office shall give additional points to projects that minimize the infrastructure cost of the proposed project per household or business, based upon information available to the Office. Points shall be given to projects based upon the estimated cost per household or business as follows:

- a. For projects proposed in the Piedmont or Coastal Plain Regions:

Est. Cost per Household/Business	Points
Up to \$3,500	9
\$3,500, up to \$5,000	8
\$5,000, up to \$6,000	7
\$6,000 and over	0

- b. For projects located in the Mountain Region:

Est. Cost per Household/Business	Points
Up to \$4,500	9
\$4,500, up to \$6,000	8
\$6,000, up to \$7,000	7
\$7,000 and over	0

(6) Base speed multiplier. – Projects that will provide minimum download and minimum upload speeds shall have the aggregate points given under subdivisions (1) through (5) of this subsection multiplied by a factor at the level indicated in the table below:

Minimum Download:

Minimum Upload	Score Multiplier
100:20 Mbps.	1.35
Greater than 100:20 Mbps. up to 200:20 Mbps.	1.75
200:20 Mbps., up to 100:100 Mbps.	2.00
100:100 Mbps., up to 400:400 Mbps.	3.00
400:400 Mbps.	4.00
Greater than 400:400 Mbps.	5.00

(h) The Office shall score applications based upon the metrics provided in subsection (g) of this section. In awarding grants based upon the scoring metrics, the Office shall also award an additional point to projects where a county has a Community Broadband Planning Playbook that meets the guidelines established by the Office.

(i) Applications receiving the highest score shall receive priority status for the awarding of grants pursuant this section. As a means of breaking a tie for applications receiving the same score, the Office shall give priority to the application proposing to serve the highest number of new households at the lowest cost per household or business. Applicants awarded grants pursuant to this section shall enter into an agreement with the Office. The agreement shall contain all of the elements outlined in subsection (d) of this section and any other provisions the Office may require. The agreement shall contain a provision governing the time line and minimum requirements and thresholds for disbursement of grant funds measured by the progress of the project. For projects where the application includes a proposed partnership, the agreement shall contain a provision requiring a certification of the existence of the partnership prior to disbursement of grant funds. Grant funds shall be disbursed only upon verification by the Office that the terms of the agreement have been fulfilled according to the progress milestones contained in the agreement. At project completion, the grant recipient shall certify and provide to the Office evidence consistent with Federal Communications Commission attestation that either speeds greater than those identified in the application guidelines or the proposed upstream and downstream broadband speeds identified in the application guidelines, and for which a base speed multiplier was awarded pursuant to subdivision (6) of subsection (g) of this section, are available throughout the project area prior to any end user connections. A single grant award shall not exceed four million dollars (\$4,000,000). No combination of grant awards under this section involving any single county may exceed eight million dollars (\$8,000,000) in a fiscal year. If funds remain available after all top scoring projects have been awarded a grant, then the next highest scoring projects may be awarded a grant even if the project is located in a county where a grant has been awarded in that fiscal year provided the total award associated with that county does not exceed eight million dollars (\$8,000,000) in that fiscal year.

No more than one-half of the funds appropriated to the fund established in subsection (b) of this section shall be disbursed for eligible projects located in a development tier two or tier three county. If the Office has not received enough grant applications for projects located in a development tier one county to disburse one-half of the funds appropriated to the fund established in subsection (b) of this section as of March 1 of each year, then the Office may allocate any unencumbered funds in the fund for eligible projects located in a development tier two or tier three county.

Any project that is applied for and not funded in an award round under this section shall be eligible for funding under the Completing Access to Broadband program pursuant to G.S. 143B-1373.1.

(j) Grant recipients are required to provide matching funds based upon the application scoring pursuant to this section in the following minimum amounts:

<b>Score</b>	<b>Matching Requirement</b>
12.0 points or less	50%
Greater than 12.0 points, but less than 17.5 points	45%
17.5 points, up to 22.0 points	40%
Greater than 22.0 points	30%

Up to fifty percent (50%) of matching funds paid by the grant recipient may be comprised of third-party funding including funds from other grant programs. Funds from the Universal Service Fund shall not be used for any portion of the required matching funds. Any other current or future federal funds may be used, including any future phase of the Connect America Fund, for the required matching funds within the parameters of this program.

(k) The Office shall require that grant recipients offer the proposed advertised minimum download and minimum upload speeds identified in the project application for the duration of the five-year service agreement. At least annually, a grant recipient shall provide to the Office evidence consistent with Federal Communications Commission attestation that the grant recipient is making available the proposed advertised speed, or a faster speed, as contained in the grant agreement. For the duration of the agreement, grant recipients shall disclose any changes to data caps for the project area that differ from the data caps listed in the grant application to the Office.

(l) The Office may cancel an agreement and the grant recipient shall forfeit the amount of the grant received if it fails to perform, in material respect, the obligations established in the agreement. The Office may also cancel an agreement if the grant recipient reduces or proposes to reduce the scope of the project to the extent that the reduction would result in either a lower score and reduced ranking for funding consideration or the amount of State matching funds the project would receive. Grant recipients that fail to provide the minimum advertised connection speed for which a reduction in matching funds was applied shall forfeit that amount. A grant recipient that forfeits amounts disbursed under this section is liable for the amount disbursed plus interest at the rate established under G.S. 105-241.21, computed from the date of the disbursement. The number of subscribers that subscribe to broadband services offered by the provider in the project area shall not be a measure of performance under the agreement for the purposes of this subsection. Within 60 days of the cancellation of the agreement for failure to perform, the Office may conduct a special application period. The Office may select a new grant recipient, in accordance with this section, to complete a project that is substantially similar in location and scope to the project described in the cancelled agreement. The portions of any new project selected that are identical to the project described in the cancelled agreement shall not be subject to the protest period described in subsection (e) of this section.

(m) The Office of Broadband Infrastructure in the Department of Information Technology (Office) shall be the designated agency for receipt and disbursement of federal grant funds intended for the State for broadband expansion and shall seek available federal grant funds for that purpose. All federal grant funds received for the purpose of broadband expansion shall be disbursed in accordance with this section. The Office shall serve as the designated agency for the receipt of all State, federal, and private grants, gifts, or matching funds for broadband mapping, as provided by G.S. 143B-1370(a)(5)h. Funds received under this subsection shall remain unexpended until appropriated by an act of the General Assembly.

(n) Grant recipients shall submit to the Office an annual report for each funded project for the duration of the agreement. The report shall include a summary of the items contained in the grant agreement and level of attainment for each and shall also include (i) the number of households and businesses that have broadband access as a result of the project; (ii) the percentage of end users in the project area who have access to broadband service and actually subscribe to the broadband service; and (iii) the average monthly subscription cost for broadband service in the project area.

(o) The Department of Information Technology shall submit an annual report to the Joint Legislative Oversight Committee for Information Technology and the Fiscal Research Division on or before September 1. The report shall contain at least all of the following:

- (1) The number of grant projects applied for and the number of grant agreements entered into.
- (2) A time line for each grant agreement and the number of households and businesses expected to benefit from each agreement.
- (3) The amount of matching funds required for each agreement and the total amount of investment.
- (4) A summary of areas receiving grants that are now being provided broadband service and the advertised broadband speeds for those areas.
- (5) Any breaches of agreements, grant fund forfeitures, or subsequent reductions or refunds of matching funds.
- (6) Any recommendations for the grant program, including better sources and methods for improving outcomes and accountability.

(p) The Department may use up to one percent (1.0%) of State funds appropriated each fiscal year to administer the program established under this section. (2018-5, s. 37.1(b); 2018-97, s. 10.1(a), (b); 2019-230, ss. 1-5; 2020-97, s. 3.14(a), (b), (e); 2021-180, ss. 38.1(a), 38.8(c); 2022-74, s. 38.1(f).)

#### **§ 143B-1373.1. Completing Access to Broadband program.**

(a) As used in this section, the following definitions apply:

- (1) Broadband service. – Terrestrially deployed internet access service with transmission speeds of at least 25 megabits per second (Mbps) download and at least 3 megabits per second upload (25:3).
- (2) Department. – The Department of Information Technology.
- (3) Eligible area. – An area that is unserved or underserved in a county. With the exception of funds expended under this section, or under Section 38.4 or Section 38.5 of S.L. 2021-180, a county that has utilized federal funding for broadband infrastructure projects on or after May 1, 2021, is not eligible.
- (4) Office. – The Broadband Infrastructure Office within the Department of Information Technology.
- (5) Project area. – An eligible area that is jointly determined by a requesting county and the Broadband Infrastructure Office within the Department of Information Technology as requiring project funding under this section to further complete the deployment of broadband service in the county.
- (6) Unserved or underserved. – A location within a county that has no deployment of broadband service or that has internet access service that does not meet the definition of broadband service. Areas where a private provider has been

designated to receive funds through other State- or federally funded programs designed specifically for broadband deployment shall be considered served if such funding is intended to result in construction of broadband in the area within 18 months or for the duration of the federal funding program for that area, or if the funding recipient is otherwise in good standing with the funding agency's regulations governing the funding program.

(b) The Completing Access to Broadband Fund (CAB Fund) is established as a special revenue fund in the Department of Information Technology. The Secretary may award grants from the CAB Fund projects meeting the criteria established under this section. State funds appropriated to this Fund shall be considered an information technology project within the meaning of G.S. 143C-1-2. The Office shall establish procedures in accordance with this section that allow every county in the State to participate in the Completing Access to Broadband program. Monies awarded from the CAB Fund shall be used for infrastructure and infrastructure costs, as those terms are defined in G.S. 143B-1373(a). The State shall not be obligated for funds committed for project costs from the CAB Fund in excess of those sums appropriated by the General Assembly to the CAB Fund.

(c) In collaboration with the Broadband Infrastructure Office, a county may request funding under this section for either a defined eligible project area that is mutually identified by the county and the Office or for a project that was not awarded a grant in the most recent round of grant awards under G.S. 143B-1373. All identified projects shall be subject to the bid process requirements in this subsection. In selecting project areas to receive funding, the Office shall give priority to eligible areas that a county has requested funding for based upon utilizing the Office's Community Broadband Planning Playbook and those counties that meet the criteria established in subsection (e) of this section. The Department shall utilize its authority under Part 4 of this Article to develop competitive bid processes for the procurement of the construction, installation, and operation of broadband infrastructure. Notwithstanding Article 8 of Chapter 143 of the General Statutes, or any other provision of law to the contrary, the Department may delegate to a county the authority to select a provider for the project area in accordance with Part 4 of this Article. The Department shall reserve the authority to approve the selection of a county pursuant to this subsection. Unless the county has bid processes acceptable to the Office, the Office shall utilize customizable forms and procedures developed by the Department for the purposes of this subsection. Selections made pursuant to this subsection are not subject to the Department's administrative review authority under Article 3A of Chapter 150B of the General Statutes or the Department's administrative rules regarding information technology bid protests and contested case procedures. Selection of project areas shall be subject to the protections provided in G.S. 143B-1373(c). In conjunction with the bid process, a proposed project area shall be posted on the Department's website for a period of at least 10 days. Upon submission of credible evidence, a broadband service provider may request a project scope adjustment to the Office in accordance with G.S. 143B-1373(e). Upon a finding that the evidence submitted by the broadband service provider is credible, the Office shall work with the county to amend the scope of the project. The Office shall develop and administer any agreement entered into pursuant to this section. Nothing in this subsection shall be deemed to grant authority for a county to own, operate, or otherwise control broadband infrastructure contracted for under this section.

(d) A broadband service provider selected for a project under this section may provide up to thirty percent (30%) of the total estimated project cost. The Office may commit up to thirty-five percent (35%) of the total estimated project cost from monies in the CAB Fund. The county

requesting the project shall be responsible for at least thirty-five percent (35%) of the total estimated project cost and shall utilize federal American Rescue Plan Act (P.L. 117-2) funds or nonrestricted general funds for that purpose. In the event CAB Fund monies are insufficient to fund a project, a county may increase its share of the total estimated project cost, or the Office may adjust the scope of the project to meet the level of available funding. No county may receive more than eight million dollars (\$8,000,000) in aggregate funding from the CAB Fund in any single fiscal year.

(e) Notwithstanding the project cost responsibility allocations in subsection (d) of this section, for a county receiving from the federal government less than an aggregate of eight million dollars (\$8,000,000) in federal American Rescue Plan Act (P.L. 117-2) funds, a broadband service provider selected for a project shall provide not less than fifteen percent (15%) of the total estimated project cost. If a broadband service provider provides more than fifteen percent (15%) of the total estimated project cost, the State and county cost responsibilities shall be equally apportioned. The following cost responsibility allocations for counties meeting the requirements of this subsection and the State apply:

Direct Federal Funds Received	County Responsibility	State Responsibility
\$250,000, up to \$4,000,000	5%, minimum	Up to 80%
\$4,000,000, up to \$8,000,000	10%, minimum	Up to 75%

(f) A broadband service provider selected for a project under this section shall enter into an agreement with the Office that shall include the project description, time lines, benchmarks, proposed broadband speeds, and any other information and documentation the Office deems necessary. All proposed broadband speeds must meet or exceed the federal guidelines for use of American Rescue Plan Act (P.L. 117-2) funds. Upon execution of an agreement, the county shall provide its portion of the total estimated project costs to the Office to be combined with CAB Funds awarded for the project and placed in a separate project account. The Office shall provide project oversight, and, upon completion of established benchmarks in the project agreement, the Office shall disburse funds from the project account to the broadband service provider. The forfeiture provisions in G.S. 143B-1373(l) shall apply to agreements entered into under this section. (2021-180, s. 38.6; 2022-6, s. 16.2; 2022-74, s. 38.1(d).)

**§ 143B-1373.2. G.R.E.A.T. program fixed wireless and satellite broadband grants.**

(a) The following definitions apply in this section:

- (1) Broadband service. – Internet access service provided by low-orbit geostationary satellites or fixed wireless networks with (i) a latency of 500 milliseconds or less and (ii) transmission speeds that are equal to or greater than the requirements for the minimum performance tier, as provided by the Federal Communications Commission in Paragraph 39 of the report and order adopted January 30, 2020, and released February 7, 2020.
- (2) Equipment. – The antenna and any necessary hardware provided by a broadband service provider to a subscriber that enables the subscriber to connect to the broadband service. The term does not include a modem.

- (3) Fixed wireless provider. – A broadband service provider that provides internet access to a subscriber via fixed antenna that receives a radio link from the provider's network to the subscriber.
- (4) Grantee. – A broadband provider that has been awarded a grant pursuant to this section.
- (5) Office. – The Broadband Infrastructure Office in the Department of Information Technology.
- (6) Satellite broadband provider. – A broadband service provider that provides Internet access directly to consumers via satellite technology.
- (7) Secretary. – The Secretary of the Department of Information Technology.
- (8) Unserved household. – A household located in this State that does not have access to broadband service from a wireline or wireless service provider. A household that is included in an area where a grant from a State broadband grant program has been awarded is not eligible for a grant under this section.

(b) Applications for grants will be submitted at times designated by and on forms prescribed by the Secretary. Notwithstanding any other provision of law, if the Secretary deems some of the information in an application to contain proprietary information, the Secretary may provide that such information is not a public record, as that term is defined in G.S. 132-1, subject to public records or other laws requiring the disclosure of such information and have that portion of the application redacted. An application shall include, at a minimum, the following information:

- (1) The identity of the applicant.
- (2) The specific address of the subscriber.
- (3) A description of the services provided, including the upstream and downstream broadband speeds delivered, latency metrics, and any applicable data caps. Any applicant proposing a data cap below 150 Gigabytes of usage per month shall also provide justification to the satisfaction of the Office that the proposed cap is in the public interest and consistent with industry standards.
- (4) The cost to be charged to the unserved household for the equipment needed to connect to the broadband service for the next two years.
- (5) Evidence of a contract with the subscriber, including the amount charged for the equipment and the installation of the equipment, necessary for providing broadband service to the subscriber.
- (6) The terms and conditions imposed upon the subscriber, including restrictions on use and possession of equipment used for broadband service connection.
- (7) Any other information or supplementary documentation requested by the Office.

(c) The Office shall determine eligibility for a grant pursuant to this section based upon the information provided in the application of a broadband service provider and any other information or supplementary documentation requested by the Office. As a measurement of the provision of broadband equipment to an unserved household, the Office shall award grants to applicants that demonstrate the provision of equipment that has provided broadband service to an unserved household. The Office shall provide grants to eligible broadband service providers for providing broadband service equipment to unserved households as follows:

- (1) Up to one thousand one hundred dollars (\$1,100) for the provision of satellite broadband equipment to any single unserved household, or up to seven hundred dollars (\$700.00) for the provision of fixed wireless broadband equipment to



any single unserved household, providing broadband speeds of 50 megabits per second download and 3 megabits per second upload or greater.

- (2) Up to seven hundred dollars (\$700.00) for the provision of satellite broadband equipment to any single unserved household, or up to five hundred dollars (\$500.00) for the provision of fixed wireless broadband equipment to any single unserved household, providing less than 50 megabits per second download and 3 megabits per second upload.

The grants awarded by the Office shall not exceed the cost of the broadband provider's equipment, including any installation costs, necessary to provide broadband service to the unserved household.

(d) Eligibility for a grant award is dependent upon the household maintaining broadband service with the grantee for at least 24 consecutive months. No grant shall be awarded for providing broadband service at an address that the Office has previously awarded a grant under this section. A grantee shall submit documentation to the Office annually that will provide information sufficient for the Office to verify eligibility of subscriptions, including that the household was unserved. Payment of grant funds is subject to documentation showing eligibility of subscriptions.

(e) The Office shall require a grantee to enter into an agreement. The agreement shall contain at least all of the following:

- (1) An address of the household subscribing for broadband service for which the grant is sought.
- (2) A provision that requires the grantee to maintain its service for the subscriber for at least 24 consecutive months.
- (3) A provision establishing the conditions under which the grant agreement may be terminated and under which grant funds may be recaptured by the Office.
- (4) A provision stating that unless the agreement is terminated pursuant to its terms, the agreement is binding and constitutes a continuing contractual obligation of the State and the grantee.
- (5) A provision that establishes any allowed variation in the terms of the agreement that will not subject the grantee to grant reduction, amendment, or termination of the agreement.
- (6) A provision describing the manner in which the amount of the grant will be measured and administered to ensure compliance with the agreement and this section.
- (7) A provision stating that any recapture of a grant and any reduction in the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.
- (8) A provision describing the methodology the Office will use to verify subscriptions and the types of information required to be submitted by the grantee.
- (9) A provision stating that the grantee may not impose data caps upon any eligible subscription, for the term of the agreement.
- (10) A provision stating that the equipment necessary for a subscriber to receive broadband service from the grantee shall be deemed a fixed asset upon the property of the eligible subscription and shall transfer with the property to any successors.

(11) Any other provision the Office deems necessary.

(f) If the grantee fails to meet or comply with any condition or requirement set forth in an agreement, the Office shall reduce the amount of the grant or the term of the agreement, may terminate the agreement, or both. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition with respect to which the failure occurred. If the Office finds that the grantee has manipulated or attempted to manipulate data with the purpose of increasing the amount of a grant, the Office shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Office finds the grantee manipulated or attempted to manipulate data with the purpose of increasing the amount of a grant.

(g) The grantee shall certify and provide to the Office evidence consistent with a Federal Communications Commission attestation that the proposed minimum upstream and minimum downstream broadband speeds and latency metrics identified in the application guidelines are and will be available throughout the project area during the term of the agreement prior to any end user connections. A grantee may receive a disbursement of a grant only after the Office has certified that the grantee has met the terms and conditions of the agreement. A grantee shall submit a certification of compliance with the agreement to the Office. The Office shall require the grantee to provide any necessary evidence of compliance to verify that the terms of the agreement have been met.

(h) The Office shall require that a grantee offer the proposed advertised minimum download and minimum upload speeds and subscription cost identified in the application for the duration of the 24 consecutive months provided in the agreement. Upon request, a grantee shall provide to the Office evidence consistent with a Federal Communications Commission attestation that the grantee is making available the proposed advertised speed, or a faster speed, as contained in the grant agreement. (2021-180, s. 38.7(a); 2022-74, s. 38.1(e).)

### **§ 143B-1373.3. Wireless broadband grants.**

(a) As used in this section, the definitions contained in G.S. 143B-1373(a) apply, with the exception of the following:

- (1) **Broadband service.** – For the purposes of this section, wireless internet access service with transmission speeds of at least 100 megabits per second (Mbps) download and at least 20 megabits per second upload (100:20), and a latency sufficient to support real-time, interactive applications. The term does not include satellite-based internet access service.
- (2) **Eligible project.** – An eligible project is a discrete and specific project located in an unserved economically distressed area seeking to provide broadband service to homes, businesses, and community anchor points not currently served. If a contiguous project area crosses from one eligible county into one or more eligible adjacent counties, for the purposes of this section, the project shall be deemed to be located in the county where the greatest number of unserved households are proposed to be served. End users that are capable of receiving broadband service outside of the project area shall not be counted for purposes of scoring project applications.
- (3) **Infrastructure.** – All equipment, machinery, supplies, or other tangible real or personal property used in connection with the provision of broadband service to end users. The term also includes easements, rights-of-way, and buildings or

structures owned or leased by the entity that are made available for location or collocation purposes.

- (4) Infrastructure costs. – Costs directly related to the construction of broadband infrastructure for the extension of broadband service for an eligible project, including installation, acquiring or updating easements, backhaul infrastructure, and testing costs. The term also includes engineering and any other costs associated with the initial procurement of a location or collocation site for the purpose of installing infrastructure on public or private property and costs required to be paid during the construction period of the project to secure leased location or collocation facilities to be used for the delivery of broadband to an end user. The term does not include overhead or administrative costs or annual lease payments for location or collocation sites that are (i) outside of the project area or (ii) within the project area but paid after construction is completed.
- (5) Unserved area. – A designated geographic area in which eighty percent (80%) or more of homes, businesses, and community anchor points lack access to broadband service. Areas where a private provider has been designated to receive funds through other State- or federally funded programs designed specifically for broadband deployment shall be considered served if such funding is intended to result in construction of broadband in the area within 18 months or for the duration of the federal funding program for that area, or if the funding recipient is otherwise in good standing with the funding agency's regulations governing the funding program.

(b) The Office shall accept and score applications and award grants for eligible projects under this section in the manner prescribed in G.S. 143B-1373, with the exception of the following:

- (1) Protests of applications made under this section may be submitted in accordance with the provisions in G.S. 143B-1373(e), except that a provider may protest that a proposed project area does not meet the definition of unserved provided in this section.
- (2) Cost per household or business. – The Office shall give additional points to projects that minimize the infrastructure cost of the proposed project per household or business, based upon information available to the Office. Points shall be given to projects based upon the estimated cost per household or business as follows:
  - a. For projects proposed in the Piedmont or Coastal Plain Region:

<b>Est. Cost per Household/Business</b>	<b>Points</b>
Up to \$1,000	9
\$1,000, up to \$2,000	8
\$2,000, up to \$3,500	7
\$3,500, up to \$5,000	6
\$5,000, up to \$6,000	5
\$6,000 and over	0

b. For projects located in the Mountain Region:

<b>Est. Cost per Household/Business</b>	<b>Points</b>
Up to \$1,500	9
\$1,500, up to \$2,500	8
\$2,500, up to \$4,500	7
\$4,500, up to \$6,000	6
\$6,000, up to \$7,000	5
\$7,000 and over	0

- (3) Speed to market. – The Office shall give additional points to projects that minimize the time to begin providing broadband service to end users. Points shall be given to projects based upon the estimated speed to market as follows:

<b>Service Time to End Users</b>	<b>Points</b>
Up to six months	9
Six months, up to one year	8
One year, up to two years	7
Two years and over	0

- (4) Base speed multiplier. – Projects that will provide minimum download and minimum upload speeds shall have the aggregate points given under subdivisions (2) and (3) of this subsection and subdivisions (1) through (4) of G.S. 143B-1373(g) multiplied by a factor at the level indicated in the table below:

<b>Minimum Download:</b>	
<b>Minimum Upload</b>	<b>Score Multiplier</b>
100:20 Mbps. up to 300:50 Mbps.	1.00
300:50 Mbps., or greater	3.00

- (5) The Office shall give additional points to projects as follows:
- Four points for a project that also provides customers mobile broadband within the same project area.
  - Ten points for projects that do not require new tower construction.
  - Five points for projects (i) constructing up to four new towers and (ii) that have an estimated cost per household or business under three thousand five hundred dollars (\$3,500) in the Piedmont or Coastal Plain Region or under six thousand dollars (\$6,000) in the Mountain Region.

(c) The Office shall allocate up to five million dollars (\$5,000,000) each fiscal year in State funds for grants under this section. The Office shall utilize ungranted funds under this section to award grants under G.S. 143B-1373. (2022-74, s. 38.2.)

#### **§ 143B-1374. Satellite-Based Broadband Grant Program.**

- (a) The following definitions apply in this section:

- (1) Broadband service. – Internet access service, regardless of the technology or medium used to provide the service, with transmission speeds that are equal to or greater than the requirements for the minimum performance tier and with latency equal to or lesser than the requirements for low latency, as both metrics are provided by the Federal Communications Commission in Paragraph 39 of the report and order adopted January 30, 2020, and released February 7, 2020.
- (2) Grantee. – A satellite-based provider that has been awarded a grant pursuant to this section.
- (3) Office. – The Broadband Infrastructure Office in the Department of Information Technology.
- (4) Project area. – An area identified by a grantee and defined in a grant agreement entered into pursuant to this section that contains unserved households. A project area may also cover areas that have broadband service.
- (5) Satellite-based provider. – A broadband service provider that provides Internet access directly to consumers via satellite technology.
- (6) Unserved household. – A household located in this State that does not have access to broadband service from a wireline or wireless service provider. A household that is included in an area where a grant from the Growing Rural Economies with Access to Technology (GREAT) program pursuant to G.S. 143B-1373 has been awarded is not eligible for a grant under this section.

(b) The Satellite-Based Broadband Grant Fund is created as a special revenue fund in the Department of Information Technology. Monies in the Fund do not revert but remain available to the Department for the purposes provided in this section. State funds appropriated to this Fund shall be considered an information technology project within the meaning of G.S. 143C-1-2.

(c) Applications for grants will be submitted at times designated by and on forms prescribed by the Secretary. Notwithstanding any other provision of law, if the Secretary deems some of the information in an application to contain proprietary information, the Secretary may provide that such information is not a public record, as that term is defined in G.S. 132-1, subject to public records or other laws requiring the disclosure of such information and have that portion of the application redacted. An application shall include, at a minimum, the following information:

- (1) The identity of the applicant.
- (2) An illustration or description of the project area to be served and the estimated number of unserved households in that area that will gain access to broadband service at the conclusion of deployment.
- (3) The proposed construction and deployment time line.
- (4) A description of the services to be provided, including the proposed upstream and downstream broadband speeds to be delivered, latency metrics, and any applicable data caps. Any applicant proposing a data cap below 150 Gigabytes of usage per month shall also provide justification to the satisfaction of the Office that the proposed cap is in the public interest and consistent with industry standards.
- (5) A plan to mitigate barriers to adoption by households.
- (6) The proposed advertised speed to be marketed to end users in the project area.
- (7) The proposed cost to be charged to an unserved household in the project area for subscribing to the broadband service.

- (8) Any other information or supplementary documentation requested by the Office.

(d) The Office shall determine eligibility for a grant pursuant to this section based upon the information provided in the application of a satellite-based provider, and any other information or supplementary documentation requested by the Office, and shall award grants to applicants that will provide access to the greatest number of unserved households. Applications of satellite-based providers that propose the provision of broadband service to the greatest number of unserved households situated in census tracts that have been identified as significantly unserved by the Office shall be given priority. The maximum aggregate amount of total liability for all grants awarded under this section is four million dollars (\$4,000,000). The maximum amount of total annual liability for grants awarded in any single calendar year under this section is two million five hundred thousand dollars (\$2,500,000). No agreement may be entered into that, when considered together with other existing agreements governing grants awarded during a single calendar year, could cause the State's potential total annual liability for grants awarded in a single calendar year to exceed the applicable amount. The amount of award per household for each grant year shall be equal to the product of two hundred fifty dollars (\$250.00) multiplied by a fraction, the numerator of which is the total number of full months all unserved households subscribed to and received broadband service from the grantee in the grant year and the denominator of which is 12. No broadband service to an unserved household beyond 24 months of service may be included in the calculation of an award.

Eligibility for a grant award is dependent upon the household maintaining broadband service with the grantee for at least eighty-three percent (83%) of the year in which the grantee seeks an award. No single subscription or full-year equivalent subscription may be used to calculate a grant award for more than the three-year term identified in the agreement. The total grant award for a single unserved household under this section shall not exceed five hundred dollars (\$500.00). A grantee shall submit documentation to the Office annually that will provide information sufficient for the Office to verify eligibility of subscriptions, including that the household was unserved. Payment of grant funds is subject to documentation showing eligibility of subscriptions.

(e) The Office shall require a grantee to enter into an agreement. The agreement shall contain at least all of the following:

- (1) A detailed description of the anticipated area where the grantee will deploy broadband service.
- (2) The current number of unserved households situated within the anticipated area.
- (3) The total number of unserved households the grantee anticipates subscribing to its broadband service.
- (4) A method for the grantee to report annually to the Office the number of households subscribing to broadband service offered by the grantee and for documenting that those households were previously unserved households.
- (5) A plan for the grantee to address barriers to adoption by households situated within the project area.
- (6) A provision that requires the grantee to maintain its service for the area, or another area approved by the Office, for at least five years.
- (7) A provision establishing the conditions under which the grant agreement may be terminated and under which grant funds may be recaptured by the Office.

- (8) A provision stating that unless the agreement is terminated pursuant to its terms, the agreement is binding and constitutes a continuing contractual obligation of the State and the grantee.
- (9) A provision that establishes any allowed variation in the terms of the agreement that will not subject the grantee to grant reduction, amendment, or termination of the agreement.
- (10) A provision describing the manner in which the amount of the grant will be measured and administered to ensure compliance with the agreement and this section.
- (11) A provision stating that any recapture of a grant and any reduction in the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.
- (12) A provision describing the methodology the Office will use to verify subscriptions and the types of information required to be submitted by the grantee.
- (13) A provision prohibiting a grantee from receiving a payment or other benefit under the agreement at any time when the grantee has received a notice of an overdue tax debt, as defined in G.S. 105-243.1, and the overdue tax debt has not been satisfied or otherwise resolved.
- (14) A provision stating that any disputes over interpretation of the agreement shall be submitted to binding arbitration.
- (15) A provision encouraging the business to contract with small businesses headquartered in the State for goods and services.
- (16) A provision encouraging the business to hire North Carolina residents.
- (17) A provision encouraging the business to use the North Carolina State Ports.
- (18) Any other provision the Office deems necessary.

An agreement entered into pursuant to this section is a binding obligation of the State and is not subject to State funds being appropriated by the General Assembly.

(f) If the grantee fails to meet or comply with any condition or requirement set forth in an agreement, the Office shall reduce the amount of the grant or the term of the agreement, may terminate the agreement, or both. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition with respect to which the failure occurred. If the Office finds that the grantee has manipulated or attempted to manipulate data with the purpose of increasing the amount of a grant, the Office shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Office finds the grantee manipulated or attempted to manipulate data with the purpose of increasing the amount of a grant.

(g) The grantee shall certify and provide to the Office evidence consistent with a Federal Communications Commission attestation that the proposed minimum upstream and minimum downstream broadband speeds and latency metrics identified in the application guidelines are and will be available throughout the project area during the term of the agreement prior to any end user connections. A grantee may receive an annual disbursement of a grant only after the Office has certified that the grantee has met the terms and conditions of the agreement, including documentation of eligible subscriptions by unserved households. A grantee shall annually submit a certification of compliance with the agreement to the Office. The Office shall require the grantee to

provide any necessary evidence of compliance to verify that the terms of the agreement have been met.

(h) Notwithstanding any other provision of law, grants made pursuant to this section shall be budgeted and funded on a cash flow basis. The Department shall disburse funds in an amount sufficient to satisfy grant obligations to be paid during the fiscal year. It is the intent of the General Assembly to appropriate funds annually to the Satellite-Based Broadband Grant Program established in this section in amounts sufficient to meet the anticipated cash requirements for each fiscal year.

(i) The Office shall require that a grantee offer the proposed advertised minimum download and minimum upload speeds and subscription cost identified in the application for the duration of the five-year service agreement. At least annually, a grantee shall provide to the Office evidence consistent with a Federal Communications Commission attestation that the grantee is making available the proposed advertised speed, or a faster speed, as contained in the grant agreement. For the duration of the agreement, a grantee shall disclose any changes to data caps for the project area that differ from the data caps listed in the grant application to the Office.

(j) A grantee shall submit to the Office an annual report for the duration of the agreement. The report shall include a summary of, and level of attainment for, the items contained in the grant agreement and shall also include (i) the number of households that have broadband access as a result of the project, (ii) the percentage of end users in the project area who have access to broadband service that actually subscribe to the broadband service, and (iii) the average monthly subscription cost for broadband service in the project area.

(k) The Department of Information Technology shall submit an annual report to the Joint Legislative Oversight Committee for Information Technology and the Fiscal Research Division on or before September 1. The report shall contain at least all of the following:

- (1) The number of grant projects applied for and the number of grant agreements entered into.
- (2) A time line for each grant agreement and the number of households expected to benefit from each agreement.
- (3) The total amount of investment for each agreement.
- (4) A summary of areas receiving grants that are now being provided broadband service and the advertised broadband speeds and subscription prices for those areas.
- (5) Any breaches of agreements, and any grant fund forfeitures or reductions.
- (6) Any recommendations for the grant program, including better data sources and methods for improving outcomes and accountability. (2020-81, s. 7(a).)

## Part 7. Security of Information Technology.

### § 143B-1375. Security.

Confidentiality. – No data of a confidential nature, as defined in the General Statutes or federal law, may be entered into or processed through any information technology system or network established under this Article until safeguards for the data's security satisfactory to the State CIO have been designed and installed and are fully operational. This section does not affect the provisions of G.S. 147-64.6 or G.S. 147-64.7. (2015-241, s. 7A.2(b).)

### § 143B-1376. Statewide security and privacy standards.



(a) The State CIO shall be responsible for the security and privacy of all State information technology systems and associated data. The State CIO shall manage all executive branch information technology security and shall establish a statewide standard for information technology security and privacy to maximize the functionality, security, and interoperability of the State's distributed information technology assets, including, but not limited to, data classification and management, communications, and encryption technologies. The State CIO shall review and revise the security standards annually. As part of this function, the State CIO shall review periodically existing security and privacy standards and practices in place among the various State agencies to determine whether those standards and practices meet statewide security, privacy, and encryption requirements. The State CIO shall ensure that State agencies are periodically testing and evaluating information security controls and techniques for effective implementation and that all agency and contracted personnel are held accountable for complying with the statewide information security program. The State CIO may assume the direct responsibility of providing for the information technology security of any State agency that fails to adhere to security and privacy standards adopted under this Article.

(b) The State CIO shall establish standards for the management and safeguarding of all State data held by State agencies and private entities and shall develop and implement a process to monitor and ensure adherence to the established standards. The State CIO shall establish and enforce standards for the protection of State data. The State CIO shall develop and maintain an inventory of where State data is stored. For data maintained by non-State entities, the State CIO shall document the reasons for the use of the non-State entity and certify, in writing, that the use of the non-State entity is the best course of action. The State CIO shall ensure that State data held by non-State entities is properly protected and is held in facilities that meet State security standards. By October 1 each year, the State CIO shall certify in writing that data held in non-State facilities is being maintained in accordance with State information technology security standards and shall provide a copy of this certification to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division.

(c) Before a State agency can contract for the storage, maintenance, or use of State data by a private vendor, the agency shall obtain the approval of the State CIO.

(d) With the approval of the State CIO, enterprise-level system owners may share data between their secure systems and other enterprise-level secure systems to maximize State government's effectiveness and productivity, unless sharing the data is expressly prohibited by State or federal law. Sharing of data under this subsection shall include the transfer of PII or other potentially sensitive data only when appropriate safeguards are in place for both the transfer of the data and storage of the data in the receiving system and when consistent with the Statewide Information Security Policy. For purposes of this subsection, the term "owner" means a State agency having both (i) possession or control of data with the ability to access, create, modify, transfer, or remove data and (ii) authority to assign access privileges to others. (2015-241, s. 7A.2(b); 2019-200, s. 6(f); 2021-180, s. 25.2(a).)

#### **§ 143B-1377. State CIO approval of security standards and risk assessments.**

(a) Notwithstanding G.S. 143-48.3, 143B-1320(b), or 143B-1320(c), or any other provision of law, and except as otherwise provided by this Article, all information technology security goods, software, or services purchased using State funds, or for use by a State agency or in a State facility, shall be subject to approval by the State CIO in accordance with security standards adopted under this Part.

(b) The State CIO shall conduct risk assessments to identify compliance, operational, and strategic risks to the enterprise network. These assessments may include methods such as penetration testing or similar assessment methodologies. The State CIO may contract with another party or parties to perform the assessments. Detailed reports of the risk and security issues identified shall be kept confidential as provided in G.S. 132-6.1(c).

(c) If the legislative branch or the judicial branch develop their own security standards, taking into consideration the mission and functions of that entity, that are comparable to or exceed those set by the State CIO under this section, then those entities may elect to be governed by their own respective security standards. In these instances, approval of the State CIO shall not be required before the purchase of information technology security devices and services. If requested, the State CIO shall consult with the legislative branch and the judicial branch in reviewing the security standards adopted by those entities.

(d) Before a State agency may enter into any contract with another party for an assessment of network vulnerability, the State agency shall notify the State CIO and obtain approval of the request. If the State agency enters into a contract with another party for assessment and testing, after approval of the State CIO, the State agency shall issue public reports on the general results of the reviews. The contractor shall provide the State agency with detailed reports of the security issues identified that shall not be disclosed as provided in G.S. 132-6.1(c). The State agency shall provide the State CIO with copies of the detailed reports that shall not be disclosed as provided in G.S. 132-6.1(c).

(e) Nothing in this section shall be construed to preclude the Office of the State Auditor from assessing the security practices of State information technology systems as part of its statutory duties and responsibilities. (2015-241, s. 7A.2.)

#### **§ 143B-1378. Assessment of agency compliance with cybersecurity standards.**

At a minimum, the State CIO shall annually assess the ability of each State agency, and each agency's contracted vendors, to comply with the current cybersecurity enterprise-wide set of standards established pursuant to this section. The assessment shall include, at a minimum, the rate of compliance with the enterprise-wide security standards and an assessment of security organization, security practices, security information standards, network security architecture, and current expenditures of State funds for information technology security. The assessment of a State agency shall also estimate the initial cost to implement the security measures needed for agencies to fully comply with the standards as well as the costs over the lifecycle of the State agency information system. Each State agency shall submit information required by the State CIO for purposes of this assessment. The State CIO shall include the information obtained from the assessment in the State Information Technology Plan. (2015-241, s. 7A.2(b); 2019-200, s. 6(g).)

#### **§ 143B-1379. State agency cooperation and training; liaisons; county and municipal government reporting.**

(a) The head of each principal department and Council of State agency shall cooperate with the State CIO in the discharge of the State CIO's duties by providing the following information to the Department:

- (1) The full details of the State agency's information technology and operational requirements and of all the agency's significant cybersecurity incidents within 24 hours of confirmation.

- (2) Comprehensive information concerning the information technology security employed to protect the agency's data, including documentation and reporting of remedial or corrective action plans to address any deficiencies in the information security policies, procedures, and practices of the State agency.
- (3) A forecast of the parameters of the agency's projected future cybersecurity and privacy needs and capabilities.
- (4) Designating an agency liaison in the information technology area to coordinate with the State CIO. The liaison shall be subject to a criminal background report from the State Repository of Criminal Histories, which shall be provided by the State Bureau of Investigation upon its receiving fingerprints from the liaison. Military personnel with a valid secret security clearance or a favorable Tier 3 security clearance investigation are exempt from this requirement. If the liaison has been a resident of this State for less than five years, the background report shall include a review of criminal information from both the State and National Repositories of Criminal Histories. The criminal background report shall be provided to the State CIO and the head of the agency. In addition, all personnel in the Office of the State Auditor who are responsible for information technology security reviews shall be subject to a criminal background report from the State Repository of Criminal Histories, which shall be provided by the State Bureau of Investigation upon receiving fingerprints from the personnel designated by the State Auditor. For designated personnel who have been residents of this State for less than five years, the background report shall include a review of criminal information from both the State and National Repositories of Criminal Histories. The criminal background reports shall be provided to the State Auditor. Criminal histories provided pursuant to this subdivision are not public records under Chapter 132 of the General Statutes.
- (5) Completing mandatory annual security awareness training and reporting compliance for all personnel, including contractors and other users of State information technology systems.

(b) The information provided by State agencies to the State CIO under this section is protected from public disclosure pursuant to G.S. 132-6.1(c).

(c) Local government entities, as defined in G.S. 143-800(c)(1), shall report cybersecurity incidents to the Department. Information shared as part of this process will be protected from public disclosure under G.S. 132-6.1(c). Private sector entities are encouraged to report cybersecurity incidents to the Department. (2015-241, s. 7A.2(b); 2019-200, s. 6(e); 2021-180, s. 38.13(c).)

§ 143B-1380: Reserved for future codification purposes.

§ 143B-1381: Reserved for future codification purposes.

§ 143B-1382: Reserved for future codification purposes.

§ 143B-1383: Reserved for future codification purposes.

§ 143B-1384: Reserved for future codification purposes.

Part 8. Government Data Analytics Center.

**§ 143B-1385. Government Data Analytics Center.**

(a) Definitions. – The following definitions apply in this section:

- (1) Business intelligence. – The process of collecting, organizing, sharing, and analyzing data through integrated data management, reporting, visualization, and advanced analytics to discover patterns and other useful information that will allow policymakers and State officials to make more informed decisions. Business intelligence also includes both of the following:
  - a. Broad master data management capabilities such as data integration, data quality and enrichment, data governance, and master data management to collect, reference, and categorize information from multiple sources.
  - b. Self-service query and reporting capabilities to provide timely, relevant, and actionable information to business users delivered through a variety of interfaces, devices, or applications based on their specific roles and responsibilities.
- (2) Data analytics. – Data analysis, including the ability to use the data for assessment and extraction of policy relevant information.
- (3) Enterprise-level data analytics. – Standard analytics capabilities and services leveraging data throughout all State agencies, departments, and institutions.
- (4) Operationalize. – The implementation process whereby a State agency, department, or institution integrates analytical output into current business processes and systems in order to improve operational efficiency and decision making.

(b) GDAC. – The Government Data Analytics Center is established as a unit of the Department.

- (1) Purpose. – The purpose of the GDAC is to utilize public-private partnerships as part of a statewide data integration and data-sharing initiative and to identify data integration and business intelligence opportunities that will generate greater efficiencies in, and improved service delivery by, State agencies, departments, and institutions. The intent is not to replace transactional systems but to leverage the data from those systems for enterprise-level State business intelligence. The GDAC shall continue the work, purpose, and resources of previous data integration efforts and shall otherwise advise and assist the State CIO in the management of the initiative. The State CIO shall make any organizational changes necessary to maximize the effectiveness and efficiency of the GDAC.
- (2) Public-private partnerships. – The State CIO shall continue to utilize public-private partnerships and existing data integration and analytics contracts and licenses as appropriate to continue the implementation of the initiative. Private entities that partner with the State shall make appropriate contributions of funds or resources, including, but not limited to, knowledge transfer and education activities, software licensing, hardware and technical infrastructure resources, personnel resources, and such other appropriate resources as agreed upon by the parties.

- (3) Powers and duties. – The State CIO shall, through the GDAC, do all of the following:
- a. Manage and coordinate enterprise data integration efforts, including:
    1. The deployment, support, technology improvements, and expansion of the Criminal Justice Law Enforcement Automated Data System (CJLEADS) and related intelligence-based case management systems.
    2. The deployment, support, technology improvements, and expansion of the North Carolina Financial Accountability and Compliance Technology System (NCFACTS) in order to collect data that will create efficiencies and detect fraud, waste, and abuse across State government.
    3. The development, deployment, support, technology improvements, and expansion of the GDAC Enterprise Solutions.
    4. Individual-level student data and workforce data from all levels of education and the State workforce.
    5. The integration of all available financial data to support more comprehensive State budget and financial analyses.
    6. Other capabilities as developed by the GDAC.
  - b. Identify technologies currently used in North Carolina that have the capability to support the initiative.
  - c. Identify other technologies, especially those with unique capabilities that are complementary to existing GDAC analytic solutions that could support the State's business intelligence effort.
  - d. Compare capabilities and costs across State agencies.
  - e. Ensure implementation is properly supported across State agencies.
  - f. Ensure that data integration and sharing is performed in a manner that preserves data privacy and security in transferring, storing, and accessing data, as appropriate.
  - g. Immediately seek any waivers and enter into any written agreements that may be required by State or federal law to effectuate data sharing and to carry out the purposes of this section.
  - h. Coordinate data requirements and usage for State business intelligence applications in a manner that (i) limits impacts on participating State agencies as those agencies provide data and business knowledge expertise, (ii) assists in defining business rules so the data can be properly used, and (iii) ensures participating State agencies operationalize analytics and report outcomes.
  - i. Recommend the most cost-effective and reliable long-term hosting solution for enterprise-level State business intelligence as well as data integration, notwithstanding any other provision of State law or regulation.
  - j. Utilize a common approach that establishes standards for business intelligence initiatives for all State agencies and prevents the development of projects that do not meet the established standards.

- k. Create efficiencies in State government by ensuring that State agencies use the GDAC for agency business intelligence requirements.
  - l. Assist State agencies in developing requirements for the integration or creation of an interface with State agencies' workflow processes and transactional systems to operationalize GDAC analytic solutions.
  - m. Establish clear metrics and definitions with participating State agencies for reporting outcomes for each GDAC project.
  - n. Evaluate State agency business intelligence projects to determine the feasibility of integrating analytics and reporting with the GDAC and to determine what GDAC services may support the projects.
- (4) Application to State government. – The initiative shall include all State agencies, departments, and institutions, including The University of North Carolina, as follows:
- a. All State agency business intelligence requirements, including any planning or development efforts associated with creating business intelligence capability, as well as any master data management efforts, shall be implemented through the GDAC.
  - b. The Chief Justice of the North Carolina Supreme Court and the Legislative Services Commission each shall designate an officer or agency to advise and assist the State CIO with respect to implementation of the initiative in their respective branches of government. The judicial and legislative branches shall fully cooperate in the initiative mandated by this section in the same manner as is required of State agencies.
- (5) Project management. – The State CIO and State agencies, with the assistance of the Office of State Budget and Management, shall identify potential funding sources for expansion of existing projects or development of new projects. No GDAC project shall be initiated, extended, or expanded:
- a. Without the specific approval of the General Assembly, unless the project can be implemented within funds appropriated for GDAC projects.
  - b. Without prior consultation to the Joint Legislative Commission on Governmental Operations and a report to the Joint Legislative Oversight Committee on Information Technology if the project can be implemented within funds appropriated for GDAC projects.
- (c) Data Sharing. –
- (1) General duties of all State agencies. – Except as limited or prohibited by federal law, the head of each State agency, department, and institution shall do all of the following:
- a. Grant the State CIO and the GDAC access to all information required to develop and support State business intelligence applications pursuant to this section. The State CIO and the GDAC shall take all necessary actions and precautions, including training, certifications, background checks, and governance policy and procedure, to ensure the security, integrity, and privacy of the data in accordance with State and federal law and as may be required by contract.

- b. Provide complete information on the State agency's information technology, operational, and security requirements.
  - c. Provide information on all of the State agency's information technology activities relevant to the State business intelligence effort.
  - d. Forecast the State agency's projected future business intelligence information technology needs and capabilities.
  - e. Ensure that the State agency's future information technology initiatives coordinate efforts with the GDAC to include planning and development of data interfaces to incorporate data into the initiative and to ensure the ability to leverage analytics capabilities.
  - f. Provide technical and business resources to participate in the initiative by providing, upon request and in a timely and responsive manner, complete and accurate data, business rules and policies, and support.
  - g. Identify potential resources for deploying business intelligence in their respective State agencies and as part of the enterprise-level effort.
  - h. Immediately seek any waivers and enter into any written agreements that may be required by State or federal law to effectuate data sharing and to carry out the purposes of this section, as appropriate.
- (2) Specific agency requirements. – The following agency-specific requirements are designed to illustrate but not limit the type and extent of data and information required to be released under subdivision (1) of this subsection:
- a. The North Carolina Industrial Commission shall release to the GDAC, or otherwise provide electronic access to, all data requested by the GDAC relating to workers' compensation insurance coverage, claims, appeals, compliance, and enforcement under Chapter 97 of the General Statutes.
  - b. The North Carolina Rate Bureau (Bureau) shall release to the GDAC, or otherwise provide electronic access to, all data requested by the GDAC relating to workers' compensation insurance coverage, claims, business ratings, and premiums under Chapter 58 of the General Statutes. The Bureau shall be immune from civil liability for releasing information pursuant to this subsection, even if the information is erroneous, provided the Bureau acted in good faith and without malicious or willful intent to harm in releasing the information.
  - c. The Department of Commerce, Division of Employment Security (DES), shall release to the GDAC, or otherwise provide access to, all data requested by the GDAC relating to unemployment insurance coverage, claims, and business reporting under Chapter 96 of the General Statutes.
  - d. The Department of Labor shall release to the GDAC, or otherwise provide access to, all data requested by the GDAC relating to safety inspections, wage and hour complaints, and enforcement activities under Chapter 95 of the General Statutes.
  - e. The Department of Revenue shall release to the GDAC, or otherwise provide access to, all data requested by the GDAC relating to the registration and address information of active businesses, business tax

reporting, and aggregate federal tax Form 1099 data for comparison with information from DES, the Rate Bureau, and the Department of the Secretary of State for the evaluation of business reporting. Additionally, the Department of Revenue shall furnish to the GDAC, upon request, other tax information, provided that the information furnished does not impair or violate any information-sharing agreements between the Department and the United States Internal Revenue Service. Notwithstanding any other provision of law, a determination of whether furnishing the information requested by the GDAC would impair or violate any information-sharing agreements between the Department of Revenue and the United States Internal Revenue Service shall be within the sole discretion of the State Chief Information Officer. The Department of Revenue and the Office of the State CIO shall work jointly to assure that the evaluation of tax information pursuant to this sub-subdivision is performed in accordance with applicable federal law.

- f. The North Carolina Department of Health and Human Services, pursuant to this Part, shall share (i) claims data from NCTRACKS and the accompanying claims data warehouse and (ii) encounter data with the GDAC in order to leverage existing public-private partnerships and subject matter expertise that can assist in providing outcome-based analysis of services and programs as well as population health analytics of the Medicaid and LME/MCO patient population.
- (3) All information shared with the GDAC and the State CIO under this subsection is protected from release and disclosure in the same manner as any other information is protected under this subsection.
- (d) Provisions on Privacy and Confidentiality of Information.
  - (1) Status with respect to certain information. – The State CIO and the GDAC shall be deemed to be all of the following for the purposes of this section:
    - a. A criminal justice agency (CJA), as defined under Criminal Justice Information Services (CJIS) Security Policy. The State CJIS Systems Agency (CSA) shall ensure that CJLEADS receives access to federal criminal information deemed to be essential in managing CJLEADS to support criminal justice professionals.
    - b. With respect to health information covered under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and to the extent allowed by federal law:
      - 1. A business associate with access to protected health information acting on behalf of the State's covered entities in support of data integration, analysis, and business intelligence.
      - 2. Authorized to access and view individually identifiable health information, provided that the access is essential to the enterprise fraud, waste, and improper payment detection program or required for future initiatives having specific definable need for such data.
    - c. Authorized to access all State and federal data, including revenue and labor information, deemed to be essential to the enterprise fraud, waste,



and improper payment detection program or future initiatives having specific definable need for the data.

- d. Authorized to develop agreements with the federal government to access data deemed to be essential to the enterprise fraud, waste, and improper payment detection program or future initiatives having specific definable need for such data.
- (2) Release of information. – The following limitations apply to (i) the release of information compiled as part of the initiative, (ii) data from State agencies that is incorporated into the initiative, and (iii) data released as part of the implementation of the initiative:
- a. Information compiled as part of the initiative. – Notwithstanding the provisions of Chapter 132 of the General Statutes, information compiled by the State CIO and the GDAC related to the initiative may be released as a public record only if the State CIO, in that officer's sole discretion, finds that the release of information is in the best interest of the general public and is not in violation of law or contract.
  - b. Data from State agencies. – Any data that is not classified as a public record under G.S. 132-1 shall not be deemed a public record when incorporated into the data resources comprising the initiative. To maintain confidentiality requirements attached to the information provided to the State CIO and the GDAC, each source agency providing data shall be the sole custodian of the data for the purpose of any request for inspection or copies of the data under Chapter 132 of the General Statutes.
  - c. Data released as part of implementation. – Information released to persons engaged in implementing the State's business intelligence strategy under this section that is used for purposes other than official State business is not a public record pursuant to Chapter 132 of the General Statutes.
  - d. Data from North Carolina Rate Bureau. – Notwithstanding any other provision of this section, any data released by or obtained from the North Carolina Rate Bureau under this initiative relating to workers' compensation insurance claims, business ratings, or premiums are not public records, and public disclosure of such data, in whole or in part, by the GDAC or State CIO, or by any State agency, is prohibited.
- (e) Funding. – The Department of Information Technology, with the support of the Office of State Budget and Management, shall identify and make all efforts to secure any matching funds or other resources to assist in funding the GDAC. Savings resulting from the cancellation of projects, software, and licensing, as well as any other savings from the utilization of the GDAC, shall be returned to the General Fund and shall remain unexpended and unencumbered until appropriated by the General Assembly in a subsequent fiscal year. It is the intent of the General Assembly that expansion of the GDAC in subsequent fiscal years be funded with these savings and that the General Assembly appropriate funds for projects in accordance with the priorities identified by the State CIO.
- (f) Reporting. – The State CIO shall:

- (1) On or before March 1 of each year, submit and present a report on the activities described in this section to the Chairs of the House of Representatives Appropriations and Senate Base Budget/Appropriations Committees, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the General Assembly. The report shall include the following:
  - a. A description of project funding and expenditures, cost savings, cost avoidance, efficiency gains, process improvements, and major accomplishments. Cost savings and cost avoidance shall include immediate monetary impacts as well as ongoing projections.
  - b. A description of the contribution of funds or resources by those private entities which are participating in public-private partnerships under this section, including, but not limited to, knowledge transfer and education activities, software licensing, hardware and technical infrastructure resources, personnel resources, and such other resources as agreed upon by the State and the private entity.
- (2) Report the following information upon its occurrence or as requested:
  - a. Any failure of a State agency to provide information requested pursuant to this section. The failure shall be reported to the Joint Legislative Oversight Committee on Information Technology and to the Chairs of the House of Representatives Appropriations and Senate Base Budget/Appropriations Committees.
  - b. Any additional information to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight Committee on Information Technology that is requested by those entities. (2013-360, s. 7.10(d); 2013-363, s. 2.4(a); 2014-100, s. 7.6(a); 2014-115, s. 56.8(a); 2015-241, s. 7A.2(c).)

§ 143B-1386: Reserved for future codification purposes.

§ 143B-1387: Reserved for future codification purposes.

§ 143B-1388: Reserved for future codification purposes.

§ 143B-1389: Reserved for future codification purposes.

Part 9. Criminal Justice Information.

§§ 143B-1390 through 143B-1394: Recodified as Part 8 of Article 13 of Chapter 143B, G.S. 143B-1203 through 143B-1207, by Session Laws 2021-180, s. 19A.7A(b), effective January 1, 2022. (G.S. 143B-1390: 1996, 2nd Ex. Sess., c. 18, s. 23.3(a); 2015-241, s. 7A.3(1); recodified as N.C. Gen. Stat. s. 143B-1203 by 2021-180, s. 19A.7A(b); G.S. 143B-1391: 1996, 2nd Ex. Sess., c. 18, s. 23.3(a); 1998-202, s. 9; 1998-212, s. 18.2(b); 2001-424, s. 23.6(b); 2001-487, s. 90; 2003-284, s. 17.1(a); 2004-129, s. 42; 2011-145, ss. 6A.11(b), 19.1(g), (l); 2015-241, ss. 7A.2(d), 7A.3(1); 2017-186, s. 2(fffff), (qqqqqq); recodified as N.C. Gen. Stat. s. 143B-1204 by 2021-180, s. 19A.7A(b).; G.S. 143B-1392: 1996, 2nd Ex. Sess., c. 18, s. 23.3(a);

**2015-241, s. 7A.3(1); recodified as N.C. Gen. Stat. s. 143B-1205 by 2021-180, s. 19A.7A(b).; G.S. 143B-1393: 1996, 2nd Ex. Sess., c. 18, s. 23.3(a); 2003-284, s. 17.2(b); 2004-129, s. 43; 2015-241, ss. 7A.2(e), 7A.3(1), 7A.4(w); recodified as N.C. Gen. Stat. s. 143B-1206 by 2021-180, s. 19A.7A(b).; G.S. 143B-1394: 1996, 2nd Ex. Sess., c. 18, s. 23.3(a); 2003-284, s. 17.1(b); 2011-145, ss. 6A.11(c), 19.1(g); 2015-241, ss. 7A.2(f), 7A.3(1); recodified as N.C. Gen. Stat. s. 143B-1206 by 2021-180, s. 19A.7A(b).)**

§ 143B-1395: Reserved for future codification purposes.

§ 143B-1396: Reserved for future codification purposes.

§ 143B-1397: Reserved for future codification purposes.

§ 143B-1398: Reserved for future codification purposes.

§ 143B-1399: Reserved for future codification purposes.

#### Part 10. Emergency Telephone Service.

##### § 143B-1400. Definitions.

The following definitions apply in this Part.

- (1) 911 Board. – The 911 Board established in G.S. 143B-1401.
- (2) 911 Fund. – The North Carolina 911 Fund established in G.S. 143B-1403.
- (3) 911 State Plan. – A document prepared, maintained, and updated by the 911 Board that provides a comprehensive plan for communicating 911 call information across networks and among PSAPs, addresses all aspects of the State's 911 system, and describes the allowable uses of the 911 Fund, including, but not limited to, transfer of 911 calls between geographically dispersed PSAPs, increased aggregation and sharing of call taking data, resources, procedures, standards, and requirements to improve emergency response and implementation of a NG911 network.
- (4) 911 system. – An emergency communications system using any available technology that does all of the following:
  - a. Enables the user of a communications service connection to reach a PSAP by dialing the digits 911.
  - b. Provides enhanced 911 service.
  - c. Delivers 911 calls to the State ESInet as provided by G.S. 143B-1406(e1) or a Next Generation 911 Network.
- (5) 911 system provider. – An entity that provides an Enhanced 911 or NG911 system to a PSAP.
- (5a) Agent. – An agent is an authorized person, including an employee, contractor, or volunteer, who has one or more roles in a PSAP or for a communications service provider. An agent can also be an automaton in some circumstances.
- (6) Back-up PSAP. – The capability to operate as part of the 911 System and all other features of its associated primary PSAP. The term includes a back-up PSAP that receives 911 calls only when they are transferred from the primary

- PSAP or on an alternate routing basis when calls cannot be completed to the primary PSAP.
- (7) Call taking. – The act of processing a 911 call for emergency assistance by a primary PSAP, including the use of 911 system equipment, call classification, location of a caller, determination of the appropriate response level for emergency responders, and dispatching 911 call information to the appropriate responder.
  - (8) Commercial Mobile Radio Service (CMRS). – Defined in 47 C.F.R. § 20.3.
  - (9) Communications service. – Any of the following:
    - a. The transmission, conveyance, or routing of real-time communications to a point or between or among points by or through any electronic, radio, satellite, cable, optical, microwave, wireline, wireless, Internet protocol, or other medium or method, regardless of the protocol used.
    - b. The ability to receive and terminate voice calls, text-to-911, short message service (SMS) or other messages, videos, data, or other forms of communication to, from, and between the public switched telephone network, wireless networks, IP-enabled networks, or any other communications network.
    - c. Interconnected VoIP service.
  - (10) Communications service connection. – Each telephone number or trunk assigned to a residential or commercial subscriber by a communications service provider, without regard to technology deployed.
  - (11) Communications service provider. – An entity that provides communications service to a subscriber.
  - (12) CMRS connection. – Each mobile handset telephone number assigned to a CMRS subscriber with a place of primary use in North Carolina.
  - (13) CMRS provider. – An entity, whether facilities-based or nonfacilities-based, that is licensed by the Federal Communications Commission to provide CMRS or that resells CMRS within North Carolina.
  - (13a) Emergency medical dispatch. – The management of requests for emergency medical assistance by utilizing a system of:
    - a. A tiered response or priority dispatching of emergency medical resources based on the level of medical assistance appropriate for the victim; and
    - b. Pre-arrival first aid or other medical instructions given by trained telecommunicators responsible for receiving 911 calls and dispatching emergency response services.
  - (14) Enhanced 911 service. – Directing a 911 call to an appropriate PSAP by selective routing or other means based on the geographical location from which the call originated and providing information defining the approximate geographic location and the telephone number of a 911 caller, in accordance with the FCC Order.
  - (15) Exchange access facility. – The access from a subscriber's premises to the telephone system of a service supplier. The term includes service supplier provided access lines, private branch exchange trunks, and centrex network access registers, as defined by applicable tariffs approved by the North Carolina

- Utilities Commission. The term does not include service supplier owned and operated telephone pay station lines, Wide Area Telecommunications Service (WATS), Foreign Exchange (FX), or incoming only lines.
- (16) FCC Order. – The Order of the Federal Communications Commission FCC Docket No. 94-102, adopted on December 1, 1997, and any consent decrees, rules, and regulations adopted by the Federal Communications Commission pursuant to the Order.
  - (17) GIS. – Computerized geographical information that can be used to assist in locating a person who calls emergency assistance, including mapping elements such as street centerlines, ortho photography, or other imaging, and geospatial call routing to deliver 911 calls to an appropriate PSAP.
  - (18) Interconnected VoIP service. – Defined in 47 C.F.R. § 9.3.
  - (19) Local exchange carrier. – An entity that is authorized to provide telephone exchange service or exchange access in North Carolina.
  - (19a) Next generation 911 network. – Managed Internet Protocol based networks, gateways, functional elements, and databases that augment E-911 features and functions enabling the public to transmit digital information to public safety answering points replacing Enhanced 911, that maintains P.01 for Basic 911 or Enhanced 911 services or NENA i3 Solution standard for NG911 services, and that includes Emergency Service IP Network (ESInet), GIS, cybersecurity, and other system components.
  - (20) Next generation 911 system. – An Internet Protocol-enabled emergency communications system enabling the public or subscriber of a communications service to reach an appropriate PSAP by sending the digits 911 via dialing, text, or short message service (SMS), or any other technological means.
  - (21) Next generation 911 system provider. – An entity that provides a next generation or IP-enabled 911 system to a PSAP.
  - (22) Prepaid wireless telecommunications service. – A wireless telecommunications service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount.
  - (23) Primary PSAP. – The first point of reception of a 911 call by a public safety answering point.
  - (24) Proprietary information. – Subscriber lists, technology descriptions, technical information, or trade secrets that are developed, produced, or received internally by a communications service provider or by a communications service provider's employees, directors, officers, or agents.
  - (25) Public safety answering point (PSAP). – The public safety agency that receives an incoming 911 call and dispatches appropriate public safety agencies to respond to the call.
  - (25a) Regional PSAP. – Any of the following:
    - (1) A primary PSAP operated by or on behalf of two or more counties and any number of municipalities, approved by the Board, for 911 call taking.
    - (2) A PSAP operated by any combination of a county or city and a major military installation, as defined in G.S. 143-215.115, if operated subject

to an intergovernmental support agreement under 10 U.S. Code Section 2679.

- (26) Retail transaction. – The sale of prepaid wireless telecommunications service for any purpose other than resale.
- (27) Service supplier. – An entity that provides exchange telephone service or communications service to the public or a subscriber.
- (27a) State Emergency Services IP (ESInet) Network. – A NG911 network contracted by the 911 Board to one or more communications service providers for the purpose of securely receiving 911 calls, transferring 911 calls and all associated data, providing centralized network management and security monitoring, and enabling GIS call routing.
- (28) Subscriber. – A person who purchases a communications service and is able to receive it or use it periodically over time.
- (28a) Telecommunicator. – A person qualified to provide 911 call taking employed by a PSAP. The term applies to 911 call takers, dispatchers, radio operators, data terminal operators, or any combination of such call taking functions in a PSAP.
- (29) Voice communications service. – Any of the following:
  - a. The transmission, conveyance, or routing of real-time, two-way voice communications to a point or between or among points by or through any electronic, radio, satellite, cable, optical, microwave, wireline, wireless, or other medium or method, regardless of the protocol used.
  - b. The ability to receive and terminate voice calls to and from the public switched telephone network.
  - c. Interconnected VoIP service.
- (30), (31) Repealed by Session Laws 2015-261, s. 4(a), effective January 1, 2016.
- (32) VoIP provider. – An entity that provides interconnected VoIP service. (2007-383, s. 1(a); 2010-158, s. 1; 2011-122, s. 2; 2014-66, s. 1.1; 2015-241, s. 7A.3(2); 2015-261, ss. 1(a), 4(a); 2019-200, s. 7(a); 2019-214, s. 2(a).)

#### **§ 143B-1401. 911 Board.**

(a) Membership. – The 911 Board is established in the Department of Information Technology. Neither a local government unit that receives a distribution from the fund under G.S. 143B-1406 nor a telecommunication service provider may have more than one representative on the 911 Board. The 911 Board consists of 17 members as follows:

- (1) Four members appointed by the Governor as follows:
  - a. An individual who represents a municipality where a primary PSAP is located, appointed upon the recommendation of the North Carolina League of Municipalities.
  - b. An individual who represents a county where a primary PSAP is located, appointed upon the recommendation of the North Carolina Association of County Commissioners.
  - c. An individual who represents a VoIP provider.
  - d. An individual who represents the North Carolina chapter of the National Emergency Number Association (NENA).
- (2) Six members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives as follows:

- a. An individual who is a sheriff, appointed upon the recommendation of the North Carolina Sheriffs' Association, Inc.
  - b. An individual who represents CMRS providers operating in North Carolina.
  - c. An individual who represents the North Carolina chapter of the Association of Public Safety Communications Officials (APCO).
  - d. Two individuals who represent local exchange carriers operating in North Carolina, one of whom represents a local exchange carrier with less than 50,000 access lines.
  - e. A fire chief with experience operating or supervising a PSAP or a director/manager of a fire-based PSAP, appointed upon the recommendation of the North Carolina State Firefighters' Association.
- (3) Six members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate as follows:
- a. An individual who is a chief of police, appointed upon the recommendation of the North Carolina Association of Chiefs of Police.
  - b. Two individuals who represent CMRS providers operating in North Carolina.
  - c. A Rescue or Emergency Medical Services Chief with experience operating or supervising a PSAP, appointed upon the recommendation of the North Carolina Association of Rescue and Emergency Medical Services.
  - d. Two individuals who represent local exchange carriers operating in North Carolina, one of whom represents a local exchange carrier with less than 200,000 access lines.
- (4) The State Chief Information Officer or the State Chief Information Officer's designee, who serves as the chair.

(b) Term. – A member's term is four years. No member may serve more than two terms. Members remain in office until their successors are appointed and qualified. Vacancies are filled in the same manner as the original appointment. The Governor may remove any member for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d).

(c) Meetings. – Members of the 911 Board serve without compensation. Members receive per diem, subsistence, and travel allowances at the rate established in G.S. 138-5. A quorum of the 911 Board is nine members. The 911 Board meets upon the call of the chair.

(d) Public Servants. – The members of the 911 Board are public servants under G.S. 138A-3 and are subject to the provisions of Chapter 138A of the General Statutes. (2007-383, s. 1(a); 2010-158, s. 2(a); 2013-286, s. 2; 2015-241, ss. 7A.3(2), 7A.4(f); 2015-264, s. 46; 2016-51, s. 6; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

**§ 143B-1402. Powers and duties of the 911 Board.**

- (a) Duties. – The 911 Board has the following powers and duties:
- (1) To develop the 911 State Plan. In developing and updating the plan, the 911 Board must monitor trends in communications service technology utilized for the 911 system and in enhanced 911 service technology, investigate and incorporate GIS resources into the plan, ensure individual PSAP plans incorporate a back-up PSAP and 911 call routing in an emergency, coordination

- with State emergency operations including Telecommunicator Emergency Response Taskforce (TERT), and formulate strategies for the efficient and effective delivery of enhanced 911 service.
- (2) To administer the 911 Fund and the monthly 911 service charge authorized by G.S. 143B-1403.
  - (3) To distribute revenue in the 911 Fund in accordance with this Part and advise CMRS providers and PSAPs of the requirements for receiving a distribution from the 911 Fund.
  - (4) To establish cooperative purchasing agreements or other contracts for the procurement of goods and services, to establish policies and procedures to fund advisory services and training programs including, but not limited to, Emergency Medical Dispatch and quality assurance of Emergency Medical Dispatch programs for PSAPs as authorized by this Part, to set operating standards for PSAPs and back-up PSAPs, including telecommunicator training and certification requirements as provided by G.S. 143B-1406(f), and to provide funds in accordance with these policies, procedures, and standards subject to the limitations of G.S. 143B-1406.
  - (5) To investigate the revenues and expenditures associated with the operation of a PSAP to ensure compliance with restrictions on the use of amounts distributed from the 911 Fund.
  - (6) To make and enter into contracts and agreements necessary or incidental to the performance of its powers and duties under this Part and to use revenue available to the 911 Board under G.S. 143B-1404 for administrative expenses to pay its obligations under the contracts and agreements.
  - (7) To use funds available to the 911 Board under G.S. 143B-1407 to pay its obligations incurred for statewide 911 projects.
  - (8) To accept gifts, grants, or other money for the 911 Fund.
  - (9) To undertake its duties in a manner that is competitively and technologically neutral as to all communications service providers.
  - (10) To design, create, or acquire printed or Web-based public education materials regarding the proper use of 911.
  - (11) To adopt rules to implement this Part. This authority does not include the regulation of any communications service, such as the establishment of technical standards for communications service providers to process 911 voice and data.
  - (12) To take other necessary and proper action to implement the provisions of this Part.
  - (13) To collect, manage, and analyze call taking data that is delivered to the State ESInet for use by the Board in performing call analytics and call routing. Such data shall be subject to the limitations of G.S. 132-1 et seq., and applicable federal privacy laws or regulations.
  - (14) To coordinate, adopt, and communicate all necessary technical and operational standards and requirements to ensure an effective statewide interconnected NG911 network, the State ESInet, including the following:
    - a. NG911 network design specifications;



- b. 911 call processing standards and requirements including system networks, PSAP equipment, GIS caller location routing, and database requirements;
  - c. Performance measures for data services necessary for the purposes of this Part.
- (15) To establish and operate a network management center for the State ESInet staffed by the Board. The center shall monitor PSAP and communications service provider compliance with technical and operational standards, requirements, and practices. The center shall monitor the State ESInet performance and security testing protocols in coordination with the Department of Information Technology.

(b) Prohibition. – In no event shall the 911 Board or any other State agency construct, operate, or own a communications network for the purpose of providing 911 service. The 911 Board may pay private sector vendors for provisioning a communications network for the purpose of providing citizens access to 911 services and completing call-taking processes through one or more PSAPs.

(c) The Secretary of the Department of Information Technology shall, with the advice of the 911 Board, select an Executive Director of the 911 Board. The Executive Director shall be the Board's chief administrative officer. The Executive Director shall have appropriate training and experience to assist the Board in the performance of its duties. The Executive Director shall be considered the State 911 coordinator for purposes of relevant State and federal law and program requirements.

The Executive Director shall be responsible for managing the work of the Board, including, but not limited to:

- (1) Preparing and submitting reports of the Board to the NC General Assembly, Governor, and Federal Communications Commission;
- (2) Drafting suggested legislation incorporating the Board's findings for submission to the General Assembly;
- (3) Administering, directing, and managing the affairs and business of the 911 Board, and for the supervision of all personnel serving the Board;
- (4) Contracting with such other persons, including subject matter experts and consultants, as deemed necessary; and
- (5) Executing the Board's policies, powers, and duties subject to appropriations, available funds, and State employment and procurement laws.

(d) The Board may meet in the offices of the Department of Information Technology or in facilities satisfactory for the Board's needs and Public Meeting laws. The Department of Information Technology shall provide office space for the Board's staff.

(e) To execute the powers and duties provided in this Part, the Board shall determine its policies, procedures, and rules by majority vote of the members of the Board, a quorum having been established. Once a policy or procedure is determined or a rule is adopted, the Board shall communicate it to the Executive Director, who shall have the authority to execute the policy, procedure, or rule of the Board. No individual member of the Board shall have the responsibility or authority to give operational directives to any employee of the Board other than the Executive Director. (2007-383, s. 1(a); 2010-158, s. 3; 2014-66, s. 1.2; 2015-241, s. 7A.3(2); 2015-261, ss. 1(b), (c), 2, 4(b); 2019-200, s. 7(b).)

**§ 143B-1403. Service charge for 911 service.**

(a) Charge Imposed. – A monthly 911 service charge is imposed on each active communications service connection that provides access to the 911 system through a voice communications service. The service charge for service other than prepaid wireless telecommunications service is seventy cents (70¢) or a lower amount set by the 911 Board under subsection (d) of this section. The service charge is payable by the subscriber to the provider of the voice communications service. The provider may list the service charge separately from other charges on the bill. Partial payments made by a subscriber are applied first to the amount the subscriber owes the provider for the voice communications service. If a subscriber is capable of making more than one simultaneous outbound 911 call through its communications service connections, then the total number of 911 service charges billed to the subscriber shall be (i) for CMRS providers, an amount equal to the number of CMRS connections and (ii) for all other communications service providers, an amount equal to the total number of simultaneous outbound 911 calls the subscriber can make using the North Carolina telephone numbers or trunks billed to their account.

(b) Prepaid Wireless. – A 911 service charge is imposed on each retail purchase of prepaid wireless telecommunications service occurring in this State of seventy cents (70¢) for each retail transaction of prepaid wireless telecommunications service or a lower amount set as provided by subsection (d) of this section. The service charge is collected and remitted as provided in G.S. 143B-1414.

(c) Remittance to 911 Board. – A communications service provider must remit the service charges collected by it under subsection (a) of this section to the 911 Board. The provider must remit the collected service charges by the end of the calendar month following the month the provider received the charges from its subscribers. A provider may deduct and retain from the service charges it receives from its subscribers and remits to the 911 Board an administrative allowance equal to the greater of one percent (1%) of the amount of service charges remitted or fifty dollars (\$50.00) a month.

(d) Adjustment of Charge. – The 911 Board must monitor the revenues generated by the service charges imposed by this section. If the 911 Board determines that the rates produce revenue that exceeds or is less than the amount needed, the 911 Board may adjust the rates. The 911 Board must set the service charge for prepaid wireless telecommunications service at the same rate as the monthly service charge for nonprepaid service. A change in the rate becomes effective only on July 1. The 911 Board must notify providers of a change in the rates at least 90 days before the change becomes effective. The 911 Board must notify the Department of Revenue of a change in the rate for prepaid wireless telecommunications service at least 90 days before the change becomes effective. The Department of Revenue must provide notice of a change in the rate for prepaid wireless telecommunications service at least 45 days before the change becomes effective only on the Department's Web site. The revenues must:

- (1) Ensure full cost recovery for communications service providers over a reasonable period of time; and
- (2) Fund allocations under G.S. 143B-1404 of this Part for monthly distributions to primary PSAPs and for the State ESInet.

(e) Collection. – A communications service provider has no obligation to take any legal action to enforce the collection of the service charge billed to a subscriber. The 911 Board may initiate a collection action, and reasonable costs and attorneys' fees associated with that collection action may be assessed against the subscriber. At the request of the 911 Board, but no more than

annually, a communications service provider must report to the 911 Board the amount of the provider's uncollected service charges. The 911 Board may request, to the extent permitted by federal privacy laws, the name, address, and telephone number of a subscriber who refuses to pay the 911 service charge.

(f) Restriction. – A local government may not impose a service charge or other fee on a subscriber to support the 911 system. (2007-383, s. 1(a); 2010-158, s. 4; 2011-122, ss. 1(a), 3; 2015-241, s. 7A.3(2); 2015-261, s. 4(c); 2018-5, s. 37.4(a); 2019-200, s. 7(c).)

#### **§ 143B-1404. 911 Fund.**

(a) Fund. – The 911 Fund is created as an interest-bearing special revenue fund within the State treasury. The 911 Board administers the Fund. The 911 Board must credit to the 911 Fund all revenues remitted to it from the service charge imposed by G.S. 143B-1403. Revenue in the Fund may only be used as provided in this Part.

(b) Allocation of Revenues. – The 911 Board may deduct and retain for its administrative expenses a percentage of the total service charges remitted to it under G.S. 143B-1403 for deposit in the 911 Fund. The percentage may not exceed three and one-half percent (3.5%). The percentage is one percent (1%) unless the 911 Board sets the percentage at a different amount. The 911 Board must monitor the amount of funds required to meet its duties under this Part and set the rate at an amount that enables the 911 Board to meet this commitment. The 911 Board must allocate a minimum of fifteen percent (15%) of the total service charges to the Next Generation 911 Reserve Fund to be administered as provided in G.S. 143B-1407. The 911 Board must allocate a minimum of five percent (5%) of the total service charges to the PSAP Grant and Statewide Projects Account to be administered as provided in G.S. 143B-1407. The remaining revenues remitted to the 911 Board for deposit in the 911 Fund are allocated for distribution to the primary PSAPs, CMRS providers, or the Accounts established in G.S. 143B-1407.

(c) Report. – In February of each odd-numbered year, the 911 Board must report to the Joint Legislative Commission on Governmental Operations and the Revenue Laws Study Committee. The report must contain complete information regarding receipts and expenditures of all funds received by the 911 Board during the period covered by the report, the status of the 911 system in North Carolina at the time of the report, and the results of any investigations by the Board of PSAPs that have been completed during the period covered by the report.

(d) Nature of Revenue. – The General Assembly finds that distributions of revenue from the 911 Fund are not State expenditures for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold revenue in the 911 Fund. (2007-383, s. 1(a); 2008-134, s. 1(a); 2010-158, s. 5; 2011-122, s. 4; 2011-291, s. 2.17; 2015-241, s. 7A.3(2); 2015-261, ss. 1(d), 4(d); 2019-200, s. 7(d).)

#### **§ 143B-1405. Fund distribution to CMRS providers.**

(a) Distribution. – CMRS providers are eligible for reimbursement from the 911 Fund for the actual costs incurred by the CMRS providers in complying with the requirements of enhanced 911 service. Costs of complying may include costs incurred for designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required to provide 911 communications service as well as the recurring and nonrecurring costs of providing the service. To obtain reimbursement, a CMRS provider must comply with all of the following:

(1) Invoices must be sworn.

- (2) All costs and expenses must be commercially reasonable.
- (3) All invoices for reimbursement must be related to compliance with the requirements of enhanced 911 service.
- (4) Prior approval must be obtained from the 911 Board for all invoices for payment of costs that exceed the lesser of:
  - a. One hundred percent (100%) of the eligible costs allowed under this section.
  - b. One hundred twenty-five percent (125%) of the service charges remitted to the 911 Board by the CMRS provider.
- (5) A CMRS provider may request reimbursement by presenting a request to the Board not later than six months prior to the end of the Board's fiscal year and identifying the provider's anticipated qualified expenses for reimbursement during the Board's next fiscal year.

(b) **Payment Carryforward.** – If the total amount of invoices submitted to the 911 Board and approved for payment in a month exceeds the amount available from the 911 Fund for reimbursements to CMRS providers, the amount payable to each CMRS provider is reduced proportionately so that the amount paid does not exceed the amount available for payment. The balance of the payment is deferred to the following month.

(c) **PSAP Grant and Statewide Project Reallocation.** – If the amount of reimbursements to CMRS providers budgeted by the 911 Board for a fiscal year exceeds the amount of funds disbursed for reimbursements to CMRS providers for that fiscal year, the 911 Board may reallocate the excess amount to the Accounts established under G.S. 143B-1407. The 911 Board may reallocate funds under this subsection only once each calendar year and may do so only within the three-month period that follows the end of the fiscal year.

The 911 Board must make the following findings before it reallocates funds to the PSAP Accounts established under G.S. 143B-1407:

- (1) There is a critical need for additional funding for PSAPs in rural or high-cost areas and ensure that NG911 service is deployed throughout the State.
- (2) The reallocation will not impair cost recovery by CMRS providers.
- (3) The reallocation will not result in the insolvency of the 911 Fund. (2007-383, s. 1(a); 2010-158, s. 6; 2015-241, s. 7A.3(2); 2019-200, s. 7(e).)

**§ 143B-1406. Fund distribution to PSAPs.**

(a) **Monthly Distribution.** – The 911 Board must make monthly distributions to primary PSAPs from the 911 Fund. A PSAP is not eligible for a distribution under this section unless it complies with the requirements of this Part, provides enhanced 911 service, and received distributions from the 911 Board in the 2008-2009 fiscal year. The Board may reduce, suspend, or terminate distributions under this subsection if a PSAP does not comply with the requirements of this Part. The Board must comply with all of the following:

- (1) **Administration.** – The Board must notify PSAPs of the estimated distributions no later than December 31 of each year. The Board must determine actual distributions no later than June 1 of each year. The Board must determine a method for establishing distributions that is equitable and sustainable and that ensures distributions for eligible operating costs and anticipated increases for all funded PSAPs. The Board must establish a formula to determine each PSAP's base amount. The formula must be determined and published to PSAPs

in the first quarter of the fiscal year preceding the fiscal year in which the formula is used. The Board may not change the funding formula for the base amount more than once every year.

- (2) Reports. – The Board must report to the Joint Legislative Commission on Governmental Operations and the Revenue Laws Study Committee within 45 days of a change in the funding formula. The report must contain a description of the differences in the old and new formulas and the projected distributions to each PSAP from the new formula.
- (3) Formula. – The funding formula established by the Board must consider all of the following:
  - a. The population of the area served by a PSAP.
  - b. PSAP reports and budgets, disbursement histories, and historical costs.
  - c. PSAP operations, 911 technologies used by the PSAP, compliance with operating standards of the 911 Board, level of service a PSAP delivers dispatching fire, emergency medical services, law enforcement, and Emergency Medical Dispatch.
  - d. The tier designation of the county in which the PSAP is located as designated in G.S. 143B-437.08.
  - e. Any interlocal government funding agreement to operate a regional PSAP, or between a primary PSAP and a secondary PSAP, if the secondary PSAP was in existence as of June 1, 2010, receives funding under the agreement, and is within the service area of the primary PSAP.
  - e1. Any expenditure authorized by the 911 Board for statewide 911 projects or the next generation 911 system.
  - f. Any other information the Board considers relevant.
- (4) Additional distributions. – In the first quarter of the Board's fiscal year, the Board must determine whether payments to PSAPs during the preceding fiscal year exceeded or were less than the eligible costs incurred by each PSAP during the fiscal year. If a PSAP receives less than its eligible costs in any fiscal year, the Board may increase a PSAP's distribution in the following fiscal year above the base amount as determined by the formula to meet the estimated eligible costs of the PSAP as determined by the Board. The Board may not distribute less than the base amount to each PSAP except as provided in subsection (c) of this section. The Board must provide a procedure for a PSAP to request a reconsideration of its distribution or eligible expenses.

(b) Percentage Designations. – The 911 Board must determine how revenue that is allocated to the 911 Fund for distribution to primary PSAPs and is not needed to make the base amount distribution required by subdivision (a)(1) of this section is to be used. The 911 Board must designate a percentage of the remaining funds to be distributed to primary PSAPs on a per capita basis and a percentage to be allocated to the Accounts established in G.S. 143B-1407. If the 911 Board does not designate an amount to be allocated to the Accounts, the 911 Board must distribute all of the remaining funds to regional or primary PSAPs on a per capita basis. The 911 Board may not change the percentage designation more than once each fiscal year.

(c) Carryforward. – A PSAP may carry forward distributions for eligible expenditures for capital outlay, capital improvements, or equipment replacement if shown pursuant to subsection (f) of this section. The 911 Board may allow a PSAP to carry forward a greater amount without

changing the PSAP's distribution. Amounts carried forward to the next fiscal year from distributions made by the 911 Board may not be used to lower the distributions in subsection (a) of this section, unless either of the following is true:

- (1) The amount is greater than twenty percent (20%) of the average yearly amount distributed to the PSAP in the prior two years.
- (2) The amount in subsection (a) of this section is modified based upon the Board's expenditures for statewide 911 projects or the PSAP's migration to a next generation 911 network.

(d) Use of Funds. – A PSAP that receives a distribution from the 911 Fund may not use the amount received to pay for the lease or purchase of real estate, cosmetic remodeling of emergency dispatch centers, hiring or compensating telecommunicators, or the purchase of mobile communications vehicles, ambulances, fire engines, or other emergency vehicles. Distributions received by a PSAP may be used only to pay for the following:

- (1) The lease, purchase, or maintenance of:
  - a. Emergency telephone equipment, including necessary computer hardware, software, and database provisioning.
  - b. Addressing, provided that addressing shall not be paid following the earlier of July 1, 2021, or compliance with subsection (e1) of this section.
  - c. Telecommunicator furniture.
  - d. Dispatch equipment located exclusively within a building where a PSAP or back-up PSAP is located, excluding the costs of base station transmitters, towers, microwave links, and antennae used to dispatch emergency call information from the PSAP or back-up PSAP.
  - e. Emergency medical, fire, and law enforcement pre-arrival instruction software.

- (1a) Any costs incurred by a city or county that operates a PSAP to comply with the terms of an intergovernmental support agreement if all of the following apply:
  - a. The city or county, or both, have an intergovernmental support agreement under 10 U.S. Code Section 2679, with a major military installation as defined in G.S. 143-215.115 that operates a PSAP.
  - b. The intergovernmental support agreement permits the parties to serve as a back-up PSAP or secondary PSAP for each other's 911 system.
  - c. The costs aid the PSAP operated by the city or county to establish and maintain the maximum amount of next generation 911 system compatibility with the PSAP operated by the major military installation.

(2) Repealed by Session Laws 2019-200, s. 7(f), effective August 21, 2019.

- (3) Expenditures for in-State training of 911 personnel regarding the maintenance and operation of the 911 system. Allowable training expenses include the cost of transportation, lodging, instructors, certifications, improvement programs, quality assurance training, training associated with call taking, and emergency medical, fire, or law enforcement procedures, and training specific to managing a PSAP or supervising PSAP staff. Training outside the State is not an eligible expenditure unless the training is unavailable in the State or the PSAP documents that the training costs are less if received out-of-state. Training specific to the receipt of 911 calls is allowed only for intake and related call

taking quality assurance and improvement. Instructor certification costs and course required prerequisites, including physicals, psychological exams, and drug testing, are not allowable expenditures.

- (4) Charges associated with the service supplier's 911 service and other service supplier recurring charges. The PSAP providing 911 service is responsible to the communications service provider for all 911 installation, service, equipment, operation, and maintenance charges owed to the communications service provider. A PSAP may contract with a communications service provider on terms agreed to by the PSAP and the provider. Service supplier 911 service and other recurring charges supplanted by the State ESInet costs paid by the Board shall not be paid from distributions to PSAPs following the earlier of July 1, 2021, or compliance with subsection (e1) of this section.

(e) Local Fund. – The fiscal officer of a PSAP to whom a distribution is made under this section must deposit the funds in a special revenue fund, as defined in G.S. 159-26(b)(2), designated as the Emergency Telephone System Fund. The fiscal officer may invest money in the Fund in the same manner that other money of the local government may be invested. Income earned from the invested money in the Emergency Telephone System Fund must be credited to the Fund. Revenue deposited into the Fund must be used only as permitted in this section.

(e1) State NG911 Emergency Service IP Network (ESInet). –

- (1) No later than July 1, 2021, the Board and local governments operating primary PSAPs shall develop and fully implement NG911 transition plans to migrate PSAPs to the State ESInet. To the extent practicable, the migration of PSAPs will be implemented on a sequential region-by-region basis for those PSAPs served by each legacy 911 selective router. The Board may extend the implementation date for a primary PSAP for good cause. For purposes of this section, "good cause" means an event or events reasonably beyond the ability of the Board to anticipate or control.
- (2) All communications service providers required to provide access to 911 service shall route the 911 calls of their subscribers to ESInet points of interconnection designated by the Board. The Board shall identify points of interconnection no later than July 1, 2019. The Board shall establish ESInet points of interconnection in a manner that minimizes cost to the communications service providers to the extent practicable while still achieving necessary 911 service and ESInet objectives.
- (3) The State ESInet service provider shall receive the 911 calls delivered by the communications service provider at the designated ESInet points of interconnection and deliver the calls to the appropriate PSAP. The State ESInet service provider shall not charge a communications service provider to connect to the State ESInet point of interconnection nor for the delivery of the 911 calls to the PSAP.

(f) Compliance. – A PSAP, or the governing entity of a PSAP, must comply with all of the following in order to receive a distribution under this section:

- (1) A county or municipality that has one or more PSAPs must submit in writing to the 911 Board information that identifies the PSAPs in the manner required by the FCC Order.

- (2) A participating PSAP must annually submit to the 911 Board a copy of its governing agency's proposed or approved budget detailing the revenues and expenditures associated with the operation of the PSAP. The PSAP budget must identify revenues and expenditures for eligible expense reimbursements as provided in this Part and rules adopted by the 911 Board.
- (3) A PSAP must be included in its governing entity's annual audit required under the Local Government Budget and Fiscal Control Act. The Local Government Commission must provide a copy of each audit of a local government entity with a participating PSAP to the 911 Board.
- (4) A PSAP must comply with all requests by the 911 Board for financial information related to the operation of the PSAP.
- (4a) On or before July 1, 2019, each primary PSAP dispatching emergency medical services shall develop policies and procedures for implementing an Emergency Medical Dispatch program approved by the Office of Emergency Medical Services. Emergency medical dispatch instructions must be offered by a telecommunicator who has completed an emergency medical dispatch course approved by the Office of Emergency Medical Services.
- (5) A primary PSAP must have a plan and means for 911 call-taking in the event 911 calls cannot be received and processed in the primary PSAP. This subdivision does not require a PSAP to construct an alternative facility to serve as a back-up PSAP.
- (5a) On or before July 1, 2020, each PSAP shall deploy equipment, products, and services necessary or appropriate to enable the PSAP to receive and process calls for emergency assistance sent via text messages in a manner consistent with FCC Order 14-118 and any other FCC order that affects the deployment of text-to-911.
- (5b) Persons employed as telecommunicators who are not required to be certified by the North Carolina Sheriffs' Education and Training Standards Commission shall successfully complete all of the following:
  - a. A minimum of 40 hours in a nationally recognized training course for 911 telecommunicators or a basic telecommunicator course offered by the North Carolina Sheriffs' Education and Training Standards Commission within one year of the date of their employment for any person beginning employment after July 1, 2019, or a substantially similar minimum training acceptable to the telecommunicator's employer.
  - b. A nationally recognized emergency medical dispatch course or an emergency medical dispatch course approved by the Office of Emergency Medical Services not later than July 1, 2020, or if employed subsequent to July 1, 2020, within six months of the date of employment.
- (6) A primary PSAP must comply with the rules, policies, procedures, and operating standards for primary PSAPs adopted by the 911 Board.
- (g) Application to Cherokees. – The Eastern Band of Cherokee Indians is an eligible PSAP. The Tribal Council of the Eastern Band is the local governing entity of the Eastern Band for purposes of this section. The Tribal Council must give the 911 Board information adequate to



determine the Eastern Band's base amount. The 911 Board must use the most recent federal census estimate of the population living on the Qualla Boundary to determine the per capita distribution amount.

(h) Every local government shall participate in a 911 system. The establishment and operation of regional PSAPs shall be a coordinated effort among local governments, local government agencies, and the Board. Nothing in this Article prohibits or discourages in any way the formation of regional PSAPs.

(i) Application to Major Military Installations. – If a PSAP is a party to an intergovernmental support agreement under 10 U.S. Code Section 2679 which includes a PSAP operated by a major military installation, as defined in G.S. 143-215.115, the 911 Board shall treat the population of the major military installation as part of the population of the PSAP and shall treat the intergovernmental support agreement under 10 U.S. Code Section 2679 as an interlocal agreement under sub-subdivision (a)(3)e. of this section for purposes of funding any city or county that is a party to the intergovernmental support agreement under the funding formula under subdivision (a)(3) of this section. (2007-383, s. 1(a); 2008-134, ss. 1(b), (c); 2010-158, ss. 7(a)-(d); 2011-291, s. 2.18; 2014-66, s. 1.3; 2015-219, s. 1; 2015-241, s. 7A.3(2); 2015-261, ss. 1(e), 4(e); 2019-200, s. 7(f); 2020-69, s. 5.2; 2020-78, s. 12.4(a).)

#### **§ 143B-1407. PSAP Grant and Statewide 911 Projects Account; Next Generation 911 Reserve Fund.**

(a) Account and Fund Established. – A PSAP Grant and Statewide 911 Projects Account is established within the 911 Fund for the purpose of making grants to PSAPs in rural and other high-cost areas and funding projects that provide statewide benefits for 911 service. The PSAP Grant and Statewide 911 Projects Account consists of revenue allocated by the 911 Board under G.S. 143B-1405(c) and G.S. 143B-1406. The Next Generation 911 Reserve Fund is established as a special fund for the purpose of funding the implementation of the next generation 911 systems as approved by the 911 Board.

(b) PSAP Grant and Statewide 911 Projects Grant Application. – A PSAP may apply to the 911 Board for a grant from the PSAP Grant and Statewide 911 Projects Account. An application must be submitted in the manner prescribed by the 911 Board. The 911 Board may approve a grant application and enter into a grant agreement with a PSAP if it determines all of the following:

- (1) The costs estimated in the application are reasonable and have been or will be incurred for the purpose of promoting a cost-effective and efficient 911 system.
- (2) The expenses to be incurred by the applicant are consistent with the 911 State Plan.
- (3) There are sufficient funds available in the fiscal year in which the grant funds will be distributed.
- (4) The costs for consolidating one or more PSAPs with a primary PSAP, the relocation costs of primary PSAPs, or capital expenditures that enhance the 911 system, including costs not authorized under G.S. 143B-1406(e) and construction costs.

(c) PSAP Grant and Statewide 911 Projects Grant Agreement. – A PSAP Grant and Statewide 911 Projects agreement between the 911 Board and a PSAP must include the purpose of the grant, the time frame for implementing the project or program funded by the grant, the amount of the grant, and a provision for repaying grant funds if the PSAP fails to comply with any of the terms of the grant. The amount of the grant may vary among grantees. If the grant is intended to

promote the deployment of enhanced 911 service in a rural area of the State, the grant agreement must specify how the funds will assist with this goal. The 911 Board must publish one or more notices each fiscal year advertising the availability of grants from the PSAP Grant and Statewide 911 Projects Account and detailing the application process, including the deadline for submitting applications, any required documents specifying costs, either incurred or anticipated, and evidence demonstrating the need for the grant. Any grant funds awarded to PSAPs under this section are in addition to any funds reimbursed under G.S. 143B-1406.

(d) Statewide 911 Projects. – The 911 Board may use funds from the PSAP Grant and Statewide 911 Projects Account and funds from the Next Generation 911 Reserve Fund for a statewide project if the Board determines the project meets all of the following requirements:

- (1) The project is consistent with the 911 plan.
- (2) The project is cost-effective and efficient when compared to the aggregated costs incurred by primary PSAPs for implementing individual projects.
- (3) The project is an eligible expense under G.S. 143B-1406(d).
- (4) The project will have statewide benefit for 911 service.

(e) Next Generation 911 Fund. – The 911 Board may use funds from the Next Generation 911 Fund to fund the implementation of next generation 911 systems. Notwithstanding Article 8 of Chapter 143C of the General Statutes, the 911 Board may expend funds from the Next Generation 911 Fund to provide for a single data network to serve PSAPs. The 911 Board may provide funds directly to primary PSAPs to implement next generation 911 systems. By October 1 of each year, the 911 Board must report to the Joint Legislative Commission on Governmental Operations on the expenditures from the Next Generation 911 Fund for the prior fiscal year and on the planned expenditures from the Fund for the current fiscal year.

(f) Application to State Highway Patrol. – The State Highway Patrol is an eligible PSAP for purposes of applying to the 911 Board for a grant from the PSAP Grant and Statewide 911 Projects Account. This subsection applies to funds collected on or after July 1, 2017. (2007-383, s. 1(a); 2010-158, s. 8; 2015-241, s. 7A.3(2); 2015-261, s. 1(f); 2017-57, s. 16B.7; 2019-200, s. 7(g).)

#### **§ 143B-1408. Recovery of unauthorized use of funds.**

The 911 Board must give written notice of violation to any communications service provider or PSAP found by the 911 Board to be using monies from the 911 Fund for purposes not authorized by this Part. Upon receipt of notice, the communications service provider or PSAP must cease making any unauthorized expenditures. The communications service provider or PSAP may petition the 911 Board for a hearing on the question of whether the expenditures were unauthorized, and the 911 Board must grant the request within a reasonable period of time. If, after the hearing, the 911 Board concludes the expenditures were in fact unauthorized, the 911 Board may require the communications service provider or PSAP to refund the monies improperly spent within 90 days. Money received under this Part must be credited to the 911 Fund. If a communications service provider or PSAP does not cease making unauthorized expenditures or refuses to refund improperly spent money, the 911 Board must suspend funding to the provider or PSAP until corrective action is taken. (2007-383, s. 1(a); 2015-241, s. 7A.3(2); 2015-261, s. 4(f); 2019-200, s. 7(h).)

#### **§ 143B-1409. Conditions for providing enhanced 911 service.**

No CMRS provider is required to provide enhanced 911 service until all of the following conditions are met:

- (1) The CMRS provider receives a request for the service from the administrator of a PSAP that is capable of receiving and utilizing the data elements associated with the service.
- (2) Funds for reimbursement of the CMRS provider's costs are available pursuant to G.S. 143B-1405.
- (3) The local exchange carrier is able to support the requirements of enhanced 911 service. (2007-383, s. 1(a); 2015-241, s. 7A.3(2); 2019-200, s. 7(i).)

**§ 143B-1410. Audit.**

The State Auditor may perform audits of the 911 Board pursuant to Part 5A of Chapter 147 of the General Statutes to ensure that funds in the 911 Fund are being managed in accordance with the provisions of this Part. The State Auditor must perform an audit of the 911 Board at least every two years. The 911 Board must reimburse the State Auditor for the cost of an audit of the 911 Board. (2007-383, s. 1(a); 2015-241, s. 7A.3(2).)

**§ 143B-1411. Subscriber records.**

Each CMRS provider must provide its 10,000 number groups to a PSAP upon request. This information remains the property of the disclosing CMRS provider and must be used only in providing emergency response services to 911 calls. CMRS communications service provider connection information obtained by PSAP personnel for public safety purposes is not public information under Chapter 132 of the General Statutes. No person may disclose or use, for any purpose other than the 911 system, information contained in the database of the telephone network portion of a 911 system. (2007-383, s. 1(a); 2015-241, s. 7A.3(2); 2015-261, s. 4(g).)

**§ 143B-1412. Proprietary information.**

All proprietary information submitted to the 911 Board or the State Auditor is confidential. Proprietary information submitted pursuant to this Part is not subject to disclosure under Chapter 132 of the General Statutes, and it may not be released to any person other than to the submitting communications service provider, the 911 Board, and the State Auditor without the express permission of the submitting communications service provider. Proprietary information is considered a trade secret under the Trade Secrets Protection Act, Article 24 of Chapter 66 of the General Statutes. General information collected by the 911 Board or the State Auditor may be released or published only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual communications service provider. (2007-383, s. 1(a); 2015-241, s. 7A.3(2); 2015-261, s. 4(h).)

**§ 143B-1413. Limitation of liability.**

(a) Except in cases of gross negligence or wanton or willful misconduct, a PSAP, regional PSAP, and their employees, directors, officers, vendors, and agents and employees of a law enforcement agency who are certified by the North Carolina Sheriffs' Education and Training Standards Commission are not liable for any damages in a civil action resulting from death or injury to any person or from damage to property incurred by any person in connection with implementing, maintaining, or operating the 911 system, including call taking, dispatching, radio operations, data terminal operations, or any combination of these call taking functions or in complying with emergency-related information requests from State or local government officials. This section does not apply to actions arising out of the operation or ownership of a motor vehicle

by an employee or agent of a PSAP or regional PSAP or an employee of a law enforcement agency. The acts and omissions described in this section include, but are not limited to, the following:

- (1) The release of subscriber information related to emergency calls or emergency services.
- (2) Repealed by Session Laws 2021-181, s. 1(a), effective November 18, 2021, and applicable to causes of action filed on or after that date.
- (3) Other matters related to 911 service, E911 service, or next generation 911 service.
- (4) Text-to-911 service.

(b) Except in cases of wanton or willful misconduct, neither a communication service provider, nor a 911 system provider, nor a next generation 911 system provider, nor the employees, directors, officers, vendors, or agents of any of the providers named in this subsection shall be liable for any damages in a civil action resulting from death or injury to any person in connection with developing, adopting, implementing, maintaining, or operating the 911 system. This subsection and the immunity provided herein does not apply to actions arising out of the operation or ownership of a motor vehicle by an employee, director, officer, vendor, or agent of a communications service provider, 911 system provider, or next generation 911 system provider.

(c) The limitation of liability described in subsection (a) of this section is waived to the extent a liability insurance policy provides coverage applicable to claims made against any of the following:

- (1) A PSAP.
- (2) A regional PSAP.
- (3) The employees, directors, or officers of a PSAP or regional PSAP.
- (4) The vendors or agents of a PSAP or regional PSAP, not including communications service providers, 911 system providers, or next generation 911 system providers.
- (5) The employees of a law enforcement agency who are certified by the North Carolina Sheriffs' Education and Training Standards Commission.

(d) Nothing in subsection (a) of this section shall be construed to serve as a bar to coverage under any applicable liability insurance policy to the entities referenced in subsection (c). (2007-383, s. 1(a); 2015-241, s. 7A.3(2); 2015-261, s. 3; 2019-200, s. 7(j); 2021-88, s. 15; 2021-181, s. 1(a).)

**§ 143B-1414. Service charge for prepaid wireless telecommunications service; seller collects 911 service charge on each retail transaction occurring in this State; remittances to Department of Revenue and transfer to 911 Fund.**

(a) Retail Collection. – A seller of prepaid wireless telecommunications service shall collect the 911 service charge for prepaid wireless telecommunications service from the consumer on each retail transaction occurring in this State. The 911 service charge for prepaid wireless telecommunications service is in addition to the sales tax imposed on the sale or recharge of prepaid telephone calling service under G.S. 105-164.4(a)(4d). The amount of the 911 service charge for prepaid wireless telecommunications service must be separately stated on an invoice, receipt, or other reasonable notification provided to the consumer by the seller at the time of the retail transaction. For purposes of this Part, a retail transaction is occurring in this State if the sale is sourced to this State under G.S. 105-164.4B(a).

(b) Administrative Allowance; Remittance to Department of Revenue. – A seller may deduct and retain from the 911 service charges it collects from consumers and remits to the Department of Revenue an administrative allowance of five percent (5%). A seller shall remit the 911 service charge for prepaid wireless telecommunications service collected by it under subsection (a) of this section in either of the following ways:

- (1) Monthly to the Department of Revenue. The service charges collected in a month are due by the 20th day of the month following the calendar month covered by the return.
- (2) Semiannually to the Department of Revenue. The service charges collected in the first six months of the calendar year are due by July 20. The service charges collected in the second six months of the calendar year are due by January 20.

(c) Administration. – Administration, auditing, requests for review, making returns, collection of tax debts, promulgation of rules and regulations by the Secretary of Revenue, additional taxes and liens, assessments, refunds, and penalty provisions of Article 9 of Chapter 105 of the General Statutes apply to the collection of the 911 service charge for prepaid wireless telecommunications service. An audit of the collection of the 911 service charge for prepaid wireless telecommunications service shall only be conducted in connection with an audit of the taxes imposed by Article 5 of Chapter 105 of the General Statutes. Underpayments shall be subject to the same interest rate as imposed for taxes under G.S. 105-241.21. Overpayments shall be subject to the same interest rate as imposed for taxes under G.S. 105-241.21(c)(2). Excessive and erroneous collections of the service charge will be subject to G.S. 105-164.11. The Department of Revenue shall establish procedures for a seller of prepaid wireless telecommunications service to document that a sale is not a retail transaction, and the procedures established shall substantially coincide with the procedures for documenting a sale for resale transaction under G.S. 105-164.28. The Secretary of Revenue may retain the costs of collection from the remittances received under subsection (b) of this section, not to exceed five hundred thousand dollars (\$500,000) a year of the total 911 service charges for prepaid wireless telecommunications service remitted to the Department. Within 45 days of the end of each month in which 911 service charges for prepaid wireless telecommunications service are remitted to the Department, the Secretary of Revenue shall transfer the total 911 service charges remitted to the Department less the costs of collection to the 911 Fund established under G.S. 143B-1404.

(d) Liability of Consumer. – The 911 service charge for prepaid wireless telecommunications service is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable for remitting to the Department of Revenue all 911 service charges for prepaid wireless telecommunications service that the seller collects from consumers as provided in subsection (b) of this section. (2011-122, s. 5; 2013-414, s. 30; 2014-66, s. 2.1; 2015-241, s. 7A.3(2); 2016-5, ss. 3.1, 5.)

#### **§ 143B-1415. Limitation of liability, prepaid wireless.**

In addition to the limitation of liability provided in subsection G.S. 143B-1413, each provider and seller of prepaid wireless telecommunications service is entitled to the following limitations of liability:

- (1) No provider or seller of prepaid wireless telecommunications service shall be liable for damages to any person resulting from or incurred in connection with the provision of or the failure to provide 911 service, or for identifying or failing

to identify the telephone number, address, location, or name associated with any person or device that is accessing or attempting to access 911 service.

- (2) No provider or seller of prepaid wireless telecommunications service shall be liable for damages to any person resulting from or incurred in connection with the provision of any lawful assistance to any investigative or law enforcement officer of the United States, this State or any other state, or any political subdivision of this State or any other state in connection with any lawful investigation or other law enforcement activity by the law enforcement officer. (2011-122, s. 5; 2015-241, s. 7A.3(2).)

**§ 143B-1416. Exclusivity of 911 service charge for prepaid wireless telecommunications service.**

The 911 service charge for prepaid wireless telecommunications service imposed by this Part is the only 911 funding obligation imposed with respect to prepaid wireless telecommunications service in this State, and no tax, fee, surcharge, or other charge shall be imposed in this State, any subdivision of this State, or any intergovernmental agency for 911 funding purposes upon any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service. (2011-122, s. 5; 2015-241, s. 7A.3(2).)

**§ 143B-1417:** Reserved for future codification purposes.

**§ 143B-1418:** Reserved for future codification purposes.

**§ 143B-1419:** Reserved for future codification purposes.

Part 11. North Carolina Geographic Information Coordinating Council.

**§ 143B-1420. Council established; role of the Center for Geographic Information and Analysis.**

(a) Council Established. – The North Carolina Geographic Information Coordinating Council ("Council") is established to develop policies regarding the utilization of geographic information, GIS systems, and other related technologies. The Council shall be responsible for the following:

- (1) Strategic planning.
- (2) Resolution of policy and technology issues.
- (3) Coordination, direction, and oversight of State, local, and private GIS efforts.
- (4) Advising the Governor, the General Assembly, and the State Chief Information Officer as to needed directions, responsibilities, and funding regarding geographic information.

The purpose of this statewide geographic information coordination effort shall be to further cooperation among State, federal, and local government agencies; academic institutions; and the private sector to improve the quality, access, cost-effectiveness, and utility of North Carolina's geographic information and to promote geographic information as a strategic resource in the State. The Council shall be located in the Department of Information Technology for organizational, budgetary, and administrative purposes.

(b) Role of CGIA. – The Center for Geographic Information and Analysis (CGIA) shall staff the Geographic Information and Coordinating Council and its committees. CGIA shall

manage and distribute digital geographic information about North Carolina maintained by numerous State and local government agencies. It shall operate a statewide data clearinghouse and provide Internet access to State geographic information. (2001-359, s. 1; 2004-129, s. 44; 2015-241, s. 7A.3(3); 2019-200, s. 4.)

**§ 143B-1421. Council membership; organization.**

(a) Members. – The Council shall consist of up to 35 members, or their designees, as set forth in this section. An appointing authority may reappoint a Council member for successive terms.

- (b) Governor's Appointments. – The Governor shall appoint the following members:
- (1) The head of an at-large State agency not represented in subsection (d) of this section.
  - (2) An employee of a county government, nominated by the North Carolina Association of County Commissioners.
  - (3) An employee of a municipal government, nominated by the North Carolina League of Municipalities.
  - (4) An employee of the federal government who is stationed in North Carolina.
  - (5) A representative from the Lead Regional Organizations.
  - (6) A member of the general public.
  - (7) Other individuals whom the Governor deems appropriate to enhance the efforts of geographic information coordination.

Members appointed by the Governor shall serve three-year terms. The Governor shall appoint an individual from the membership of the Council to serve as Chair of the Council. The member appointed shall serve as Chair for a term of one year.

(c) General Assembly Appointments. – The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint three members to the Council. These members shall serve three-year terms.

- (d) Other Members. – Other Council members shall include:
- (1) The Secretary of State.
  - (2) The Commissioner of Agriculture.
  - (3) The Superintendent of Public Instruction.
  - (4) The Secretary of Environmental Quality.
  - (5) The Secretary of the Department of Transportation.
  - (6) The Secretary of the Department of Administration.
  - (7) The Secretary of the Department of Commerce.
  - (8) The Secretary of the Department of Public Safety.
  - (9) The Secretary of the Department of Health and Human Services.
  - (10) The Secretary of the Department of Revenue.
  - (11) The President of the North Carolina Community Colleges System.
  - (12) The President of The University of North Carolina System.
  - (13) The Chair of the Public Utilities Commission.
  - (14) The State Budget Officer.
  - (15) The Executive Director of the North Carolina League of Municipalities.
  - (16) The Executive Director of the North Carolina Association of County Commissioners.
  - (17) One representative from the State Government GIS User Committee.

(18) One representative elected annually from the Local Government Committee established pursuant to subdivision (h)(2) of this section.

(19) The State Chief Information Officer who shall serve as a nonvoting member.

Council members serving ex officio pursuant to this subsection shall serve terms coinciding with their respective offices. Members serving by virtue of their appointment by a standing committee of the Council shall serve for the duration of their appointment by the standing committee.

(e) Meetings. – The Council shall meet at least quarterly on the call of the Chair. The Management and Operations Committee shall conduct the Council's business between quarterly meetings.

(f) Administration. – The Director of the CGIA shall be secretary of the Council and provide staff support as it requires.

(g) Reports. – The Council shall report at least annually to the Governor and to the Joint Legislative Commission on Governmental Operations.

(h) Committees. – The Council may establish work groups, as needed, and shall oversee the standing committees created in this subsection. Each standing committee shall adopt bylaws, subject to the Council's approval, to govern its proceedings. Except as otherwise provided, the Chair of the Council shall appoint the standing committee chairs from representatives listed in subsections (b), (c), or (d) of this section. The standing committees are as follows:

- (1) State Government GIS User Committee. – Membership shall consist of representatives from all interested State government departments. The Chair of the Council shall appoint the committee chair from one of the State agencies represented in subsection (d) of this section.
- (2) Local Government Committee. – Membership shall consist of representatives from organizations and professional associations that currently serve or represent local government GIS users, the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, and Lead Regional Organizations. The committee shall elect one of its members to the Council.
- (3) Federal Interagency Committee. – Membership shall consist of representatives from all interested federal agencies and Tribal governments with an office located in North Carolina. The appointed federal representative serving pursuant to subdivision (b)(4) of this section shall serve as the Chair of the Federal Interagency Committee.
- (4) Statewide Mapping Advisory Committee. – This committee shall consolidate statewide mapping requirements and attempt to gain statewide support for financing cooperative programs. The committee shall also advise the Council on issues, problems, and opportunities relating to federal, State, and local government geospatial data programs.
- (5) GIS Technical Advisory Committee. – This committee shall develop the statewide technical architecture for GIS and anticipate and respond to GIS technical opportunities and issues affecting State, county, and local governments in North Carolina.
- (6) Management and Operations Committee. – This committee shall consider management and operational matters related to GIS and other matters that are formally requested by the Council. The committee membership shall consist of



the Chair of the Council, the State Budget Officer, the chair of each of the standing committees of the Council, and other members of the Council appointed by the Chair. (2001-359, s. 1; 2003-340, s. 1.9; 2011-145, s. 19.1(g); 2012-120, s. 3.2; 2015-241, ss. 7A.3(3), 14.30(v).)

**§ 143B-1422. Compensation and expenses of Council members; travel reimbursements.**

Members of the Council shall serve without compensation but may receive travel and subsistence as follows:

- (1) Council members who are officials or employees of a State agency or unit of local government, in accordance with G.S. 138-6.
- (2) All other Council members at the rate established in G.S. 138-5. (2001-359, s. 1; 2015-241, s. 7A.3(3).)