

## **CHAPTER 54-59**

### **INFORMATION TECHNOLOGY DEPARTMENT**

#### **54-59-01. Definitions.**

As used in this chapter:

1. "Agency" or "entity" does not include any agricultural commodity promotion group or any occupational or professional board.
2. "Cybersecurity" means processes or capabilities, wherein, systems, communications, and information are protected and defended against damage, unauthorized use or modification, and exploitation.
3. "Cybersecurity strategy" means a vision, plan of action, or guiding principles. Unless otherwise defined in this chapter, the term does not mean an associated operational plan.
4. "Department" means the information technology department.
5. "Information technology" means the use of hardware, software, services, and supporting infrastructure to manage and deliver information using voice, data, and video.
6. "Network services" means the equipment, software, and services necessary to transmit voice, data, or video.

#### **54-59-02.1. Prioritization of proposed major information technology projects.**

The department shall submit information regarding proposed major information technology projects for executive branch state agencies, departments, and institutions, excluding institutions under control of the state board of higher education and agencies of the judicial and legislative branches to the state information technology advisory committee. The committee shall review the projects and rank those projects that receive the committee's affirmative recommendation. The chief information officer shall submit recommendations of the committee regarding the prioritization of major information technology projects to the information technology committee, the office of management and budget, and the appropriations committees of the legislative assembly. The judicial and legislative branches shall notify biennially the committee on their major information technology projects and priorities.

#### **54-59-02.2. Distributed ledger technologies - Authorization - Pilot program - Report.**

The department shall research and develop the use of distributed ledger-enabled platform technologies, such as blockchains, for computer-controlled programs, data transfer and storage, and program regulation to protect against falsification, improve internal data security, and identify external hacking threats. Research must include efforts to protect the privacy of personal identifying information maintained within distributed ledger programs. The department shall select a state agency, upon the request of the state agency, to serve as a pilot program for the implementation and use of distributed ledger-enabled platform technologies. Before June first of each even-numbered year, the chief information officer shall report to the legislative management regarding the implementation of distributed ledger technologies.

#### **54-59-02. Information technology department - Responsibility - Public policy.**

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

**54-59-03. Chief information officer of the state.**

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

**54-59-04. Duties of chief information officer.**

The chief information officer shall:

1. Administer the department.
2. Employ any personnel determined to be necessary to carry out the responsibilities of the department and duties as prescribed by law.
3. Fix the salaries of all employees within the department, within the limits of legislative appropriation. All personnel within the department are entitled to actual and necessary travel expenses at the same rate as for other employees of the state.

**54-59-05. Powers and duties of department. (Effective through July 31, 2023)**

The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the state board of higher education and the veterans' home.
2. Shall provide network services in a way that ensures the network requirements of a single entity do not adversely affect the functionality of the whole network, facilitates open communications with the citizens of the state, minimizes the state's investment in human resources, accommodates an ever-increasing amount of traffic, supports rapid detection and resolution of problems, protects the network infrastructure from damage and security breaches, provides for the aggregation of data, voice, video, and multimedia into a statewide transport mechanism or backbone, and provides for the network support for the entity to carry out its mission.
3. May review and approve additional network services that are not provided by the department.
4. May purchase, finance the purchase, or lease equipment, software, or implementation services or replace, including by trade or resale, equipment or software as may be necessary to carry out this chapter. With the exception of agreements entered related to the statewide interoperable radio network, an agreement to finance the purchase of software, equipment, or implementation services may not exceed a period of five years. The department shall submit any intended financing proposal for the purchase of software, equipment, or implementation services under this subsection, which is in excess of one million dollars, to the legislative assembly or the budget section if the legislative assembly is not in session before executing a financing agreement. Any request considered by the budget section must comply with section 54-35-02.9. If the legislative assembly or the budget section does not approve the execution of a financing agreement, the department may not proceed with the proposed financing arrangement. With the exception of financing for the statewide interoperable radio network, the department may finance the purchase of software, equipment, or implementation services only to the extent the purchase amount does not exceed seven and one-half percent of the amount appropriated to the department during that biennium.
5. Shall review requests for lease, purchase, or other contractual acquisition of information technology as required by this subsection. Each executive branch agency or institution, excluding the institutions under the control of the board of higher education, shall submit to the department, in accordance with guidelines established by the department, a written request for the lease, purchase, or other contractual acquisition of information technology. The department shall review requests for conformance with the requesting entity's

information technology plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the department may disapprove the request or require justification for the departure from the plan or statewide policy or standard.

6. Shall provide information technology, including assistance and advisory service, to the executive, legislative, and judicial branches. If the department is unable to fulfill a request for service from the legislative or judicial branch, the information technology may be procured by the legislative or judicial branch within the limits of legislative appropriations.
7. Shall request and review information, including project startup information summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout information summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, regarding any major information technology project of an executive branch agency. The department shall present the information to the information technology committee on request of the committee.
8. May request and review information regarding any information technology project of an executive branch agency with a total cost of between one hundred thousand and five hundred thousand dollars as determined necessary by the department. The department shall present the information to the information technology committee on request of the committee.
9. Shall study emerging technology and evaluate its impact on the state's system of information technology.
10. Shall develop guidelines for reports to be provided by each agency of the executive, legislative, and judicial branches, excluding the institutions under the control of the board of higher education, on information technology in those entities.
11. Shall collaborate with the state board of higher education on guidelines for reports to be provided by institutions under control of the state board of higher education on information technology in those entities.
12. Shall perform all other duties necessary to carry out this chapter.
13. May provide wide area network services to a state agency, city, county, school district, or other political subdivision of this state. The information technology department may not provide wide area network service to any private, charitable, or nonprofit entity except the information technology department may continue to provide the wide area network service the department provided to the private, charitable, and nonprofit entities receiving services from the department on January 1, 2003.
14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.
15. Notwithstanding subsection 13, may provide wide area network services for a period not to exceed four years to an occupant of a technology park associated with an institution of higher education or to a business located in a business incubator associated with an institution of higher education.
16. Shall advise and oversee cybersecurity strategy for all executive branch state agencies, including institutions under the control of the state board of higher education, counties, cities, school districts, or other political subdivisions. For purposes of this subsection, the department shall consult with the attorney general on cybersecurity strategy.
17. Shall advise and consult with the legislative and judicial branches regarding cybersecurity strategy.
18. Notwithstanding chapter 54-40.2, may enter a memorandum of understanding with other state, local, tribal, or territorial governments of the United States for purposes of ensuring the confidentiality, availability, and integrity of state, local, and tribal information systems and data, including consulting, developing cybersecurity strategy, prevention of cybersecurity incidents, and response strategies to cybersecurity incidents. The department may charge an amount equal to the cost of the services rendered by the department to all agencies that receive and expend moneys from other than the general fund.

19. Notwithstanding chapter 54-40.2, may enter a mutual aid agreement with other state, local, tribal, or territorial governments of the United States agreeing to the reciprocal exchange of resources and services for mutual benefit of the parties related to cybersecurity efforts for the purposes of responding to or mitigating active cybersecurity incidents. The department may receive in-kind benefits that reduce cybersecurity risks to information technology or shall charge an amount equal to the cost of the services rendered by the department to all agencies that receive and expend moneys from other than the general fund.

**Powers and duties of department. (Effective after July 31, 2023)**

The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the state board of higher education and the veterans' home.
2. Shall provide network services in a way that ensures the network requirements of a single entity do not adversely affect the functionality of the whole network, facilitates open communications with the citizens of the state, minimizes the state's investment in human resources, accommodates an ever-increasing amount of traffic, supports rapid detection and resolution of problems, protects the network infrastructure from damage and security breaches, provides for the aggregation of data, voice, video, and multimedia into a statewide transport mechanism or backbone, and provides for the network support for the entity to carry out its mission.
3. May review and approve additional network services that are not provided by the department.
4. May purchase, finance the purchase, or lease equipment, software, or implementation services or replace, including by trade or resale, equipment or software as may be necessary to carry out this chapter. An agreement to finance the purchase of software, equipment, or implementation services may not exceed a period of five years. The department shall submit any intended financing proposal for the purchase of software, equipment, or implementation services under this subsection, which is in excess of one million dollars, to the legislative assembly or the budget section if the legislative assembly is not in session before executing a financing agreement. Any request considered by the budget section must comply with section 54-35-02.9. If the legislative assembly or the budget section does not approve the execution of a financing agreement, the department may not proceed with the proposed financing arrangement. The department may finance the purchase of software, equipment, or implementation services only to the extent the purchase amount does not exceed seven and one-half percent of the amount appropriated to the department during that biennium.
5. Shall review requests for lease, purchase, or other contractual acquisition of information technology as required by this subsection. Each executive branch agency or institution, excluding the institutions under the control of the board of higher education, shall submit to the department, in accordance with guidelines established by the department, a written request for the lease, purchase, or other contractual acquisition of information technology. The department shall review requests for conformance with the requesting entity's information technology plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the department may disapprove the request or require justification for the departure from the plan or statewide policy or standard.
6. Shall provide information technology, including assistance and advisory service, to the executive, legislative, and judicial branches. If the department is unable to fulfill a request for service from the legislative or judicial branch, the information technology may be procured by the legislative or judicial branch within the limits of legislative appropriations.
7. Shall request and review information, including project startup information summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout information summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, regarding any major

- information technology project of an executive branch agency. The department shall present the information to the information technology committee on request of the committee.
8. May request and review information regarding any information technology project of an executive branch agency with a total cost of between one hundred thousand and five hundred thousand dollars as determined necessary by the department. The department shall present the information to the information technology committee on request of the committee.
  9. Shall study emerging technology and evaluate its impact on the state's system of information technology.
  10. Shall develop guidelines for reports to be provided by each agency of the executive, legislative, and judicial branches, excluding the institutions under the control of the board of higher education, on information technology in those entities.
  11. Shall collaborate with the state board of higher education on guidelines for reports to be provided by institutions under control of the state board of higher education on information technology in those entities.
  12. Shall perform all other duties necessary to carry out this chapter.
  13. May provide wide area network services to a state agency, city, county, school district, or other political subdivision of this state. The information technology department may not provide wide area network service to any private, charitable, or nonprofit entity except the information technology department may continue to provide the wide area network service the department provided to the private, charitable, and nonprofit entities receiving services from the department on January 1, 2003.
  14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.
  15. Notwithstanding subsection 13, may provide wide area network services for a period not to exceed four years to an occupant of a technology park associated with an institution of higher education or to a business located in a business incubator associated with an institution of higher education.
  16. Shall advise and oversee cybersecurity strategy for all executive branch state agencies, including institutions under the control of the state board of higher education, counties, cities, school districts, or other political subdivisions. For purposes of this subsection, the department shall consult with the attorney general on cybersecurity strategy.
  17. Shall advise and consult with the legislative and judicial branches regarding cybersecurity strategy.
  18. Notwithstanding chapter 54-40.2, may enter a memorandum of understanding with other state, local, tribal, or territorial governments of the United States for purposes of ensuring the confidentiality, availability, and integrity of state, local, and tribal information systems and data, including consulting, developing cybersecurity strategy, prevention of cybersecurity incidents, and response strategies to cybersecurity incidents. The department may charge an amount equal to the cost of the services rendered by the department to all agencies that receive and expend moneys from other than the general fund.
  19. Notwithstanding chapter 54-40.2, may enter a mutual aid agreement with other state, local, tribal, or territorial governments of the United States agreeing to the reciprocal exchange of resources and services for mutual benefit of the parties related to cybersecurity efforts for the purposes of responding to or mitigating active cybersecurity incidents. The department may receive in-kind benefits that reduce cybersecurity risks to information technology or shall charge an amount equal to the cost of the services rendered by the department to all agencies that receive and expend moneys from other than the general fund.

**54-59-06. Business plan.**

The department shall develop and maintain a business plan. The business plan must:

1. Define the department's overall organization, mission, and delivery of services.

2. Define the department's short-term and long-term goals and objectives based on customer needs.
3. Outline the strategies and activities necessary to meet the goals and objectives of the department while improving the efficiency of the department and improving service to customers.
4. Define rates and funding mechanisms necessary to finance the proposed activities of the department.
5. Define a method for evaluating progress toward the goals outlined in the business plan.
6. Determine the specific strategies and processes to ensure that agencies share information, systems, and the statewide network.
7. Address the processes that will be put in place to ensure that the department exercises its powers and duties with minimal delay, cost, and procedural burden to an entity receiving services from the department; to ensure that the department provides prompt, high-quality services to an entity receiving services from the department; to ensure that an entity receiving services from the department is aware of the technology available and to ensure training on its use; and to foster information technology innovation by state entities.

**54-59-07. State information technology advisory committee.**

The state information technology advisory committee consists of the chief information officer; the commissioner of higher education or the commissioner's designee; the attorney general or the attorney general's designee; the secretary of state or the secretary of state's designee; the tax commissioner or the commissioner's designee; the chief justice of the supreme court or the chief justice's designee; two members of the legislative assembly appointed by the legislative management, of which one member must be the chairman of the information technology committee; a minimum of eight members representing state agencies, appointed by the governor; and two members with technology management expertise representing private industry, appointed by the governor. The appointees of the governor serve at the pleasure of the governor. The chief information officer and chairman of the information technology committee shall serve as co-chairmen of the state information technology advisory committee. Additional members may be asked to participate at the request of the chairmen. The department shall provide staff services to the committee. The members of the committee representing private industry are entitled to be compensated for time spent in attendance at meetings of the committee and for other travel as approved by the chairmen of the committee at the rate of sixty-two dollars and fifty cents per day and are entitled to reimbursement for actual and necessary expenses incurred in the same manner as other state officials. The compensation and expenses are to be paid from appropriations for the department. The committee shall advise the department regarding statewide information technology planning and budgeting, services of the information technology department, and statewide information technology initiatives and policy and shall review reports on major information technology projects as required by this chapter and policies, standards, and guidelines developed by the department. The chief information officer shall submit recommendations of the committee regarding information technology issues to the information technology committee for its consideration.

**54-59-08. Required use of wide area network services.**

Each state agency and institution that desires access to wide area network services and each county, city, and school district that desires access to wide area network services to transmit voice, data, or video outside that county, city, or school district shall obtain those services from the department. The chief information officer may exempt from the application of this section a county, city, or school district that demonstrates its current wide area network services are more cost-effective for or more appropriate for the specific needs of that county, city, or school district than wide area network services available from the department. For purposes of enhanced 911 and next generation 9-1-1 communications services, governmental entities are exempt from the provisions of this section. In selecting enhanced 911 and next generation 9-1-1 communication network providers, governmental

entities shall select providers that are cost-effective, demonstrably reliable, and which follow interoperable standards set by the emergency services communications coordinating committee.

**54-59-09. Information technology standards.**

Based on information from state agencies and institutions, the department and the office of management and budget shall develop statewide information technology policies, standards, and guidelines. The policies, standards, and guidelines must recognize the uniqueness of certain agencies and state which agencies are included or exempted from the policies, standards, and guidelines. The policies, standards, and guidelines must be reviewed by the state information technology advisory committee. Each executive branch state agency and institution, excluding the institutions under the control of the board of higher education, shall comply with the policies and standards developed by the department and the office of management and budget unless the chief information officer exempts an agency from the policies, standards, and guidelines to address situations unique to that agency. Unless an exemption is granted by the chief information officer, each entity receiving wide area network services provided by the department shall comply with the policies and standards developed by the department with respect to access to or use of wide area network services.

**54-59-10. Information technology coordinators.**

Each agency or institution shall appoint an information technology coordinator. The coordinator shall maintain liaison with the department and assist the department in areas related to making the most economical use of information technology.

**54-59-11.1. Information technology project planning.**

Each executive branch state agency, excluding entities under the control of the state board of higher education, considering the development of an information technology project with an estimated cost of one hundred thousand dollars or more shall involve the information technology department in the planning and study of the project. A state agency must receive a recommendation from the information technology department prior to proceeding with any study relating to the project.

**54-59-11. Information technology plans.**

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

**54-59-12. Coordination of activities - Reports.**

The department shall cooperate with each state entity providing access to any computer database or electronically filed or stored information under subsection 4 of section 44-04-18 to assist in providing economical, efficient, and compatible access. The chief information officer shall conduct conferences and meetings with political subdivisions to review and coordinate information technology. The chief information officer and the chief information officer of the North Dakota university system shall meet at least twice each year to plan and coordinate their information technology. The chief information officer and the chief information officer of the North Dakota university system shall consider areas in which joint or coordinated information technology may result in more efficient and

effective state government operations. Upon request, the chief information officer shall report to the legislative management regarding the coordination of services with political subdivisions, and the chief information officer and the chief information officer of the North Dakota university system shall report to the legislative management regarding their findings and recommendations.

**54-59-13. Compliance reviews.**

Repealed by S.L. 2003, ch. 665, § 21.

**54-59-14. Information technology operating account.**

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

**54-59-15. Acceptance of funds.**

The department may accept federal or other funds, which must be deposited in the information technology operating account or other accounts specified by the office of management and budget and which may be spent subject to legislative appropriation. The department may apply for any public or private grants available for the improvement of information technology.

**54-59-16. Confidentiality.**

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

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

Repealed by S.L. 2019, ch. 144, § 4.

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

Repealed by S.L. 2019, ch. 144, § 4.

**54-59-19. Information technology department annual report.**

The department shall prepare and present an annual report to the information technology committee. The report must contain:

1. A list of all projects for which financing agreements have been executed.
2. A comparison of the department's rates charged for services compared to rates charged for comparable services in other states and in the private sector.
3. Information regarding the delivery of services to agencies, including service dependability, agency complaints, and information technology department responsiveness.



4. A description of the status and progress of programs established pursuant to chapter 54-46 and as specifically required by section 54-46-11.

**54-59-20. Security background information.**

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

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

Repealed by S.L. 2015, ch. 37, § 15.

**54-59-22.1. Required use of centralized desktop support services.**

1. The following state agencies shall obtain centralized desktop support services from the information technology department:
  - a. Office of administrative hearings.
  - b. Office of the governor.
  - c. Commission on legal counsel for indigents.
  - d. Public employees retirement system.
  - e. North Dakota university system office.
  - f. Department of career and technical education.
  - g. Department of financial institutions.
  - h. Department of veterans' affairs.
  - i. Aeronautics commission.
  - j. Council on the arts.
  - k. Agriculture commissioner.
  - l. Department of labor and human rights.
  - m. Indian affairs commission.
  - n. Protection and advocacy project.
  - o. Secretary of state.
  - p. State treasurer.
  - q. State auditor.
  - r. Securities department.
2. The office of management and budget, after receiving advice from the information technology department, shall establish policies and guidelines for the delivery of desktop support services, including the transition from existing systems to functional consolidation, with consideration given to the creation of efficiencies, cost-savings, and improved quality of service. For purposes of this section "desktop support services" means technical assistance and device management relating to the use of personal computers and peripheral devices.

**54-59-22. Required use of electronic mail, file and print server administration, database administration, application server, and hosting services.**

Each state agency and institution, excluding the legislative and judicial branches, the institutions under the control of the state board of higher education, the attorney general, the veterans' home, and any entity exempted by the office of management and budget after advisement by the information technology department, shall obtain electronic mail, file and print server administration, database administration, storage, application server, and hosting services through a delivery system established

by the information technology department in conjunction with the office of management and budget. The office of management and budget, after receiving advice from the information technology department, shall establish policies and guidelines for the delivery of services, including the transition from existing systems to functional consolidation, with consideration given to the creation of efficiencies, cost-savings, and improved quality of service.

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

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

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

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

**54-59-25. Health information technology advisory committee - Duties. (Effective through August 31, 2022)**

1. The health information technology advisory committee consists of the state chief information officer or the chief information officer's designee, the state health officer or the state health officer's designee, the governor or the governor's designee, the executive director of the department of human services or the executive director's designee, the chairman of the house human services committee and the chairman of the senate human services committee or if either or both of them are unwilling or unable to serve then the chairman of the legislative management shall appoint a replacement who is a member of the same legislative chamber as the individual being replaced, and individuals appointed by the governor to represent a broad range of public and private health information technology stakeholders. A committee member who is not an ex officio member, designee of an ex officio member, state

employee, or legislator is entitled to mileage and expenses as provided by law for state officers and employees, to be paid by the health information technology office. A committee member who is an ex officio member, designee of an ex officio member, state employee, or legislator is entitled to receive that member's regular salary and receive mileage and expenses, to be paid by the employing agency.

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

**Health information technology advisory committee - Duties. (Effective after August 31, 2022)**

1. The health information technology advisory committee consists of the state chief information officer or the chief information officer's designee, the state health officer or the state health officer's designee, the governor or the governor's designee, the executive director of the department of health and human services or the executive director's designee, the chairman of the house human services committee and the chairman of the senate human services committee or if either or both of them are unwilling or unable to serve then the chairman of the legislative management shall appoint a replacement who is a member of the same legislative chamber as the individual being replaced, and individuals appointed by the governor to represent a broad range of public and private health information technology stakeholders. A committee member who is not an ex officio member, designee of an ex officio member, state employee, or legislator is entitled to mileage and expenses as provided by law for state officers and employees, to be paid by the health information technology office. A committee member who is an ex officio member, designee of an ex officio member, state employee, or legislator is entitled to receive that member's regular salary and receive mileage and expenses, to be paid by the employing agency.
2. The health information technology advisory committee shall collaborate with and make recommendations to the health information technology office, as provided under sections 6-09-43, 54-59-26, and 54-59-27.
3. As requested by the health information technology advisory committee, the department shall provide or arrange for administrative services to assist the health information technology advisory committee.
4. The health information technology advisory committee may employ an executive director who serves at the pleasure of and under the direct supervision of the health information technology advisory committee. The executive director may employ personnel as necessary for the administration of this section.
5. The health information technology advisory committee may accept private contributions, gifts, and grants from any source to carry out the purposes of the committee and the health information technology office.

**54-59-26. Health information technology office - Duties - Loan and grant programs. (Effective through August 31, 2022)**

1. The health information technology office is created in the department. The health information technology advisory committee shall make recommendations to the health information

- technology office for implementing an interoperable health information infrastructure that is consistent with emerging national standards; promote the adoption and use of electronic health records and other health information technologies; and promote interoperability of health information systems for the purpose of improving health care quality, patient safety, and the overall efficiency of health care and public health services.
2. The health information technology office director, in collaboration with the health information technology advisory committee, shall:
    - a. Apply for federal funds that may be available to assist the state and health care providers in implementing and improving health information technology.
    - b. Implement and administer a health information exchange that utilizes information infrastructure and systems in a secure and cost-effective manner to facilitate the collection, storage, and transmission of health records.
    - c. Adopt rules under chapter 28-32 for the use of health information, use of the health information exchange, and participation in the health information exchange.
    - d. Adopt rules under chapter 28-32 for accessing the health information exchange to ensure appropriate and required privacy and security protections and relating to the authority of the director to suspend, eliminate, or terminate the right to participate in the health information exchange.
    - e. Establish a health information technology planning loan program to provide low-interest loans to health care entities to assist those entities in improving their health information technology infrastructure under section 6-09-43.
    - f. Facilitate and expand electronic health information exchange in the state, directly or by awarding grants.
    - g. Establish an application process and eligibility criteria for and accept and process applications for loans and grants under subdivisions e and f. The eligibility criteria must be consistent with federal requirements associated with federal funds received under subdivision a. The eligibility criteria for loans under subdivision f must include a requirement that the recipient's approved health information technology be strategically aligned with the state's health information technology plan and the associated federal standards and that the recipient has passed an onsite electronic medical record readiness assessment conducted by an assessment team determined by the health information technology advisory committee and the health information technology office director.
    - h. Determine fees and charges for access and participation in the health information exchange. Any moneys collected under this subdivision must be deposited in the electronic health information exchange fund.
    - i. Consult and coordinate with the state department of health and the department of human services to facilitate the collection of health information from health care providers and state agencies for public health purposes, including identifiable health information that may be used by state agencies, departments, or institutions to comply with applicable state or federal laws.
  3. If the health information technology advisory committee determines that establishing a health information exchange with another state or states will assist in providing health information exchange services in a cost-effective manner, the health information technology office director, in collaboration with the health information technology advisory committee, may join with another state or states to establish, implement, and administer a health information exchange consistent with other provisions of this chapter.

**Health information technology office - Duties - Loan and grant programs. (Effective after August 31, 2022)**

1. The health information technology office is created in the department. The health information technology advisory committee shall make recommendations to the health information technology office for implementing an interoperable health information infrastructure that is consistent with emerging national standards; promote the adoption and use of electronic

- health records and other health information technologies; and promote interoperability of health information systems for the purpose of improving health care quality, patient safety, and the overall efficiency of health care and public health services.
2. The health information technology office director, in collaboration with the health information technology advisory committee, shall:
    - a. Apply for federal funds that may be available to assist the state and health care providers in implementing and improving health information technology.
    - b. Implement and administer a health information exchange that utilizes information infrastructure and systems in a secure and cost-effective manner to facilitate the collection, storage, and transmission of health records.
    - c. Adopt rules under chapter 28-32 for the use of health information, use of the health information exchange, and participation in the health information exchange.
    - d. Adopt rules under chapter 28-32 for accessing the health information exchange to ensure appropriate and required privacy and security protections and relating to the authority of the director to suspend, eliminate, or terminate the right to participate in the health information exchange.
    - e. Establish a health information technology planning loan program to provide low-interest loans to health care entities to assist those entities in improving their health information technology infrastructure under section 6-09-43.
    - f. Facilitate and expand electronic health information exchange in the state, directly or by awarding grants.
    - g. Establish an application process and eligibility criteria for and accept and process applications for loans and grants under subdivisions e and f. The eligibility criteria must be consistent with federal requirements associated with federal funds received under subdivision a. The eligibility criteria for loans under subdivision f must include a requirement that the recipient's approved health information technology be strategically aligned with the state's health information technology plan and the associated federal standards and that the recipient has passed an onsite electronic medical record readiness assessment conducted by an assessment team determined by the health information technology advisory committee and the health information technology office director.
    - h. Determine fees and charges for access and participation in the health information exchange. Any moneys collected under this subdivision must be deposited in the electronic health information exchange fund.
    - i. Consult and coordinate with the department of health and human services to facilitate the collection of health information from health care providers and state agencies for public health purposes, including identifiable health information that may be used by state agencies, departments, or institutions to comply with applicable state or federal laws.
  3. If the health information technology advisory committee determines that establishing a health information exchange with another state or states will assist in providing health information exchange services in a cost-effective manner, the health information technology office director, in collaboration with the health information technology advisory committee, may join with another state or states to establish, implement, and administer a health information exchange consistent with other provisions of this chapter.

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

1. There is created an electronic health information exchange fund. The fund consists of moneys deposited in the fund from federal or other sources or moneys transferred into the fund as directed by the legislative assembly. The health information technology office shall administer this fund and shall distribute moneys in the fund accordingly. The moneys in the fund must be used to facilitate and expand electronic health information exchange. Moneys

in the fund may be used, subject to legislative appropriations, to provide services directly, for grants as provided under this section, and for the costs of administration of the fund.

2. A grant applicant shall submit an application to the health information technology office, which shall determine the applicant's eligibility based upon criteria established by the health information technology office director in collaboration with the health information technology advisory committee.
3. This section does not create an entitlement to any funds available for grants under this section. The health information technology office may award these grants to the extent funds are available and, within the office's discretion, to the extent such applications are approved.

**54-59-28. Participation in the health information exchange by executive branch state agencies and institutions of higher education.**

1. Before January 1, 2015, each executive branch state agency and each institution of higher education that implements, acquires, or upgrades health information technology systems shall use health information technology systems and products that meet minimum standards adopted by the health information technology office for accessing the health information exchange. A state agency or institution of higher education that participates in or has health information that supports or develops the health information exchange shall provide access to patient-specific data to complete the patient record within the health information exchange. Notwithstanding any other provision of law, each participating agency and institution shall provide patient-specific data to the health information exchange.
2. Participation in the health information exchange by a state agency or institution has no effect on the content, use, or disclosure of health information of patient participants which is held in locations other than the exchange. This section does not limit or change the obligation of an agency or institution to exchange health information in accordance with other applicable federal and state laws or rules.

**54-59-29. Health information exchange - Confidential and exempt records.**

Information submitted to, stored in, or transmitted by the health information exchange under this chapter and any such data or record in the possession of the health information technology office is an exempt record under chapter 44-04 unless the information is confidential under applicable federal or state law.

**54-59-30. Immunity for reliance on data from the health information exchange.**

A health care provider that relies in good faith upon any information provided through the health information exchange in the treatment of a patient is immune from criminal or civil liability arising from any damages caused by that good-faith reliance. The immunity granted under this section does not apply to acts or omissions constituting gross negligence or reckless, wanton, or intentional misconduct.

**54-59-31. Certified electronic health records systems.**

1. An executive branch state agency, an institution of higher education, and any health care provider or other person participating in the health information exchange may use only an electronic health record system for use in the exchange which is certified under rules adopted by the office of the national coordinator for health information technology.
2. Subsection 1 does not apply if:
  - a. The office of the national coordinator for health information technology does not require certification of the electronic health record system for that type of provider; or
  - b. The North Dakota health information technology director waives the certification requirement.

**54-59-32. Major information technology projects - Appointment of executive steering committees.**

1. An executive branch state agency, excluding institutions under the control of the state board of higher education, proposing to conduct a major information technology project as described in subsection 10 of section 54-35-15.2, the department, and the office of management and budget, in consultation with the attorney general, shall collaborate on the procurement, contract negotiation, and contract administration of the project. The agency, the department, and the office of management and budget, in consultation with the attorney general, shall approve the solicitation, contract, or agreement, and any amendments relating to the project before submission to the executive steering committee as provided in subsection 3.
2. The procurement officer and primary project manager for a major information technology project must meet the qualifications established by the department and the office of management and budget.
3. An executive steering committee must be appointed to oversee each major information technology project. The agency project sponsor shall serve as chairman of the committee. The executive steering committee must consist of the director of the office of management and budget or a designee of the director, the chief information officer or a designee of the officer, the head of the agency contracting for the project or a designee, the project sponsor, and a large project oversight analyst designated by the chief information officer. The executive steering committee shall monitor the overall status of the project and review project decisions, including negotiation and execution of contracts, approval of project budgets, implementation of project schedules, assessment of project quality, and consideration of scope changes. Any project decision declared by a member of the committee to be a major project decision requires at least four affirmative votes.
4. An agreement or contract, including an amendment, revision, or scope change, for a major information technology project may not be entered unless signed by the head of the contracting agency or a designee and the chief information officer or a designee of the officer.

**54-59-33. Statewide longitudinal data system committee - Membership. (Effective through August 31, 2022)**

1. The statewide longitudinal data system committee consists of:
  - a. The commissioner of the board of higher education or the commissioner's designee;
  - b. The superintendent of public instruction or the superintendent's designee;
  - c. The chief information officer or the officer's designee;
  - d. The director of the department of career and technical education or the director's designee;
  - e. The director of job service North Dakota or the director's designee;
  - f. The commissioner of commerce or the commissioner's designee;
  - g. The director of the department of human services or the director's designee;
  - h. The executive director of the North Dakota council of educational leaders or the executive director's designee;
  - i. The director of the North Dakota workforce development council or the director's designee; and
  - j. Two members of the legislative assembly appointed by the chairman of the legislative management.
2. The governor shall designate the chairman of the committee.

**Statewide longitudinal data system committee - Membership. (Effective after August 31, 2022)**

1. The statewide longitudinal data system committee consists of:
  - a. The commissioner of the board of higher education or the commissioner's designee;
  - b. The superintendent of public instruction or the superintendent's designee;

- c. The chief information officer or the officer's designee;
  - d. The director of the department of career and technical education or the director's designee;
  - e. The director of job service North Dakota or the director's designee;
  - f. The commissioner of commerce or the commissioner's designee;
  - g. The executive director of the department of health and human services or the director's designee;
  - h. The executive director of the North Dakota council of educational leaders or the executive director's designee;
  - i. The director of the North Dakota workforce development council or the director's designee; and
  - j. Two members of the legislative assembly appointed by the chairman of the legislative management.
2. The governor shall designate the chairman of the committee.

**54-59-34. Statewide longitudinal data system committee - Duties.**

1. The statewide longitudinal data system committee shall manage a statewide longitudinal data system that:
  - a. Provides for the dissemination of management information to stakeholders and partners of state education, training, and employment systems;
  - b. Is required to provide on an annual basis to education and workforce development programs, to the extent permitted by federal law, the wage record interchange system 2 data sharing agreement and the state wage interchange system data sharing agreement and state performance reports that measure the aggregate outcomes of participants in the workforce and continuing education programs, including private workforce and education programs that request the reports; and
  - c. Uses data from educational and workforce systems as central sources of statewide longitudinal data.
2. The statewide longitudinal data system committee shall establish policies and adopt rules addressing access to and the collection, storage, and sharing of information and the systems necessary to perform those functions, subject to applicable federal and state privacy laws and interagency agreements and restrictions relating to confidential information required to conform to applicable federal and state privacy laws.
3. The statewide longitudinal data system committee shall provide operational oversight for information sharing activities and make recommendations for and provide oversight of information sharing budgets.
4. The statewide longitudinal data system committee in consultation with the information technology department shall:
  - a. Establish the terms and conditions under which a person may be authorized to access data through the statewide longitudinal data system;
  - b. Direct that all statewide longitudinal data system administrators implement approved data protection practices to ensure the security of electronic and physical data, provided that the practices include requirements for encryption and staff training;
  - c. Provide for biennial privacy and security audits of the statewide longitudinal data system;
  - d. Establish protocols, including procedures, for the notification of students and parents in the event of a data breach involving the statewide longitudinal data system;
  - e. Require that data retention and disposition by the statewide longitudinal data system be governed by the same policies as those instituted for the information technology department; and
  - f. Require the provision of annual training regarding data protection to any individuals who have access to the statewide longitudinal data system, including school district employees, employees of the North Dakota university system office and institutions



under the control of the state board of higher education, and elected or appointed state or local governmental officials.

**54-59-35. Statewide longitudinal data system committee - Powers.**

1. The statewide longitudinal data system committee may authorize studies to benefit and improve workforce training and education.
2. The statewide longitudinal data system committee may appoint additional work groups and task forces to serve in an advisory capacity.

**54-59-36. Statewide longitudinal data system committee - Report to legislative management.**

During each interim the statewide longitudinal data system committee shall provide a report regarding the statewide longitudinal data system to one or more committees designated by the legislative management and shall provide recommendations for further development, cost proposals, proposals for legislation, and recommendations for data sharing governance.

**54-59-37. Statewide longitudinal data system committee - Continuing appropriation.**

The statewide longitudinal data system committee may solicit and receive gifts, grants, and donations from public and private sources. Any moneys received in accordance with this section are appropriated on a continuing basis for the support of the statewide longitudinal data system.

**54-59-38. Statewide longitudinal data system committee - Information technology department.**

1. The information technology department, at the direction of the statewide longitudinal data system committee, shall maintain a statewide longitudinal data system among education, workforce, and training entities.
2. The information technology department and the statewide longitudinal data system committee may, subject to federal and state privacy laws, enter interagency agreements, including agreements designating authorized representatives of the educational agencies participating in the system, pursuant to the Family Educational Rights and Privacy Act [20 U.S.C. 1232G; 34 CFR 99].
3. The information technology department shall staff and provide other necessary support to the statewide longitudinal data system committee.

**54-59-39. State agencies - Mandatory provision of information - Confidentiality.**

1. The information technology department may request from any state agency:
  - a. All information required by 20 U.S.C. 9871(e)(2)(D);
  - b. Any other educational information the statewide longitudinal data system committee determines is required for a longitudinal data system to comply with state or federal law; and
  - c. Unemployment insurance wage data from job service North Dakota for education and workforce development program evaluations, except that the information technology department may not redisclose any data identifying an individual unless the redisclosure is expressly permitted by a written agreement between job service North Dakota and the department or is otherwise expressly permitted or required by federal or state law.
2. Subject to applicable restrictions on the use and disclosure of confidential information required to comply with federal and state privacy laws, any state agency receiving a request for information under subsection 1 shall provide the information at the time and in the manner required by the information technology department.

## **CHAPTER 54-59.1 CYBERSECURITY INCIDENT REPORTING REQUIREMENTS**

### **54-59.1-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Breach" means unauthorized access or acquisition of computerized data that has not been secured by encryption or other methods or technology that renders electronic files, media, or databases unreadable or unusable. Good-faith acquisitions of personal information by an employee or agent of the employee is not a breach of security of the system if the personal information is not used or subject to further unauthorized disclosure.
2. "Criminal justice information" means private or sensitive information collected by federal, state, or local law enforcement including the following:
  - a. Fingerprints or other biometric information;
  - b. Criminal background and investigation information; and
  - c. Personal information.
3. "Denial of service attack" means an attack against a computer system designed to make the system inaccessible to users.
4. "Department" means the information technology department.
5. "Entity" means an executive branch state agency or a political subdivision within the state.
6. "Financial information" means banking, credit, or other account information that, if accessed without being authorized, may result in potential harm to an individual and includes:
  - a. Account numbers or codes;
  - b. Credit card expiration dates;
  - c. Credit card security codes;
  - d. Bank account statements; and
  - e. Records of financial transactions.
7. "Health insurance information" means an individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify an individual.
8. "Identity theft or identity fraud" means all types of crime in which an individual wrongfully obtains and uses another individual's personal data in a way that involves fraud or deception, most commonly for economic gain.
9. "Malware" means software or firmware intended to perform an unauthorized process that will have adverse effect on the confidentiality, integrity, or availability of an information system and includes a virus, worm, trojan horse, spyware, adware, or other code-based system that infects hosts.
10. "Medical information" means an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.
11. "Personal information" means an individual's first name or first initial and last name in combination with the following when names and data are not encrypted, but does not include information available to the public from federal, state, or local government records:
  - a. The individual's social security number;
  - b. The operator's license number assigned to an individual under section 39-06-14;
  - c. A nondriver photo identification card number assigned to the individual under section 39-06-03.1;
  - d. The individual's financial institution account number, credit card number, or debit card number in combination with required security codes, access codes, or passwords that permit access to an individual's financial accounts;
  - e. The individual's date of birth;
  - f. The maiden name of the individual's mother;
  - g. Medical information;
  - h. Health insurance information;

- i. An identification number assigned to the individual by the individual's employer in combination with security codes, access codes, or passwords; or
  - j. The individual's digitized or other electronic signature.
12. "Ransom" means a payment for services or goods to a malicious agent to:
    - a. Decrypt data on a computer system;
    - b. Retrieve lost or stolen data; or
    - c. Prevent the disclosure and dissemination of information.
  13. "Regulated information" means information and information technology resource protection requirements established by the federal government and regulating organizations.
  14. "Regulating organizations" means organizations that issue laws, regulations, policies, guidelines, and standards, including the:
    - a. Federal bureau of investigation;
    - b. Internal revenue service;
    - c. Social security administration;
    - d. Federal deposit insurance corporation;
    - e. United States department of health and human services;
    - f. Centers for Medicare and Medicaid services; and
    - g. Payment card industry security standards council.
  15. "Significant damage" means:
    - a. A degradation in or loss of mission capability to an extent and duration that the entity is not able to perform one or more of its primary functions;
    - b. Damages of ten thousand dollars or more to entity assets as estimated by the entity;
    - c. A financial loss of ten thousand dollars or more as estimated by the entity; or
    - d. Harm to individuals involving loss of life or serious life-threatening injuries.

**54-59.1-02. Immediate disclosure to the department.**

An entity shall disclose to the department an identified or suspected cybersecurity incident that affects the confidentiality, integrity, or availability of information systems, data, or services. Disclosure must be made in the most expedient time possible and without unreasonable delay. Cybersecurity incidents required to be reported to the department include:

1. Suspected breaches;
2. Malware incidents that cause significant damage;
3. Denial of service attacks that affect the availability of services;
4. Demands for ransom related to a cybersecurity incident or unauthorized disclosure of digital records;
5. Identity theft or identity fraud services hosted by entity information technology systems;
6. Incidents that require response and remediation efforts that will cost more than ten thousand dollars in equipment, software, and labor; and
7. Other incidents the entity deems worthy of communication to the department.

**54-59.1-03. Ongoing disclosure to the department during a cybersecurity incident.**

Until a cybersecurity incident is resolved, an entity shall disclose clarifying details regarding a cybersecurity incident to the department, including:

1. The number of potentially exposed records;
2. The type of records potentially exposed, including health insurance information, medical information, criminal justice information, regulated information, financial information, and personal information;
3. Efforts the entity is undertaking to mitigate and remediate the damage of the incident to the entity and other affected entities; and
4. The expected impact of the incident, including:
  - a. The disruption of the entity services;
  - b. The effect on customers and employees that experienced data or service losses;
  - c. The effect on entities receiving wide area network services from the department; and

- d. Other concerns that could potentially disrupt or degrade the confidentiality, integrity, or availability of information systems, data, or services that may affect the state.

**54-59.1-04. Disclosure to the department - Legislative and judicial branches.**

The legislative and judicial branches may disclose to the department cybersecurity incidents that affect the confidentiality, integrity, or availability of information systems, data, or services.

**54-59.1-05. Method of disclosure of cybersecurity incidents.**

The department shall establish and make known methods an entity must use to securely disclose cybersecurity incidents to the department.

**54-59.1-06. Statewide cybersecurity incident response.**

The department, to the extent possible, shall provide consultation services and other resources to assist entities and the legislative and judicial branches in responding to and remediating cybersecurity incidents.

**54-59.1-07. Disclosure to the legislative management.**

The department shall report to the legislative management all disclosed cybersecurity incidents as required by this chapter, including the status of the cybersecurity incident and any response or remediation to mitigate the cybersecurity incident. The department shall ensure all reports of disclosed cybersecurity incidents are communicated in a manner that protects victims of cybersecurity incidents, prevents unauthorized disclosure of cybersecurity plans and strategies, and adheres to federal and state laws regarding protection of cybersecurity information.