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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2688

Mr. Speaker, Mr. Kiss, and Ashley

(By Delegate _____ [By Request of the Executive] _____)



Passed _____ April 12, _____ 1997

In Effect _____ July 1, 1997 _____ Passage

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SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

H. B. 2688

(BY MR. SPEAKER, MR. KISS, AND DELEGATE ASHLEY)
[BY REQUEST OF THE EXECUTIVE]

[Passed April 12, 1997; in effect July 1, 1997.]

AN ACT to repeal article eighteen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter five of said code by adding thereto two new articles, designated articles one-b and one-c; and to amend and reenact section four, article seven, chapter five-a of said code, all relating generally to information technology; setting forth findings and purpose; defining terms; creating the position of chief technology officer within the office of the governor; appointment and qualification of the chief technology officer; powers and duties of the chief technology officer; requiring spending units to notify chief technology officer of proposed purchases of certain goods and services; biannual report; moving the science and technology council to the office of the governor; setting forth legislative purposes; reappointment, terms and compensation of members of the council; powers and duties of council; the responsibilities of the executive director of the council; requiring a comprehensive strategic plan that must be reported; providing for public and private partnerships; changing the powers and duties of the information services and communications division; authority of chief technology

officer to obtain assistance from the division; allowing certain assessments against spending units; and transfer of proceeds of assessments to office of chief technology officer.

Be it enacted by the Legislature of West Virginia:

That article eighteen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that chapter five of said code be amended by adding thereto two new articles, designated articles one-b and one-c; and that section four, article seven, chapter five-a of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES,
PROGRAMS, ETC.**

ARTICLE 1B. CHIEF TECHNOLOGY OFFICER.

§5-1B-1. Findings and purposes.

1 The Legislature finds and declares that information
2 technology is essential to finding practical solutions to the
3 everyday problems of government, and that the
4 management goals and purposes of government are
5 furthered by the development of compatible, linked
6 information systems across government. Therefore, it is
7 the purpose of this article to create, as an integral part of
8 the office of the governor, the office of chief technology
9 officer with the authority to advise and make
10 recommendations to all state spending units on their
11 information systems.

§5-1B-2. Definitions.

1 As used in this article:

2 (a) "Information systems" means computer-based
3 information equipment and related services designed for
4 the automated transmission, storage, manipulation and
5 retrieval of data by electronic or mechanical means;

6 (b) "Information technology" means data

7 processing and telecommunications hardware, software,
8 services, supplies, personnel, maintenance and training,
9 and includes the programs and routines used to employ
10 and control the capabilities of data processing hardware;

11 (c) "Information equipment" includes central
12 processing units, front-end processing units,
13 miniprocessors, microprocessors and related peripheral
14 equipment such as data storage devices, networking
15 equipment, services, routers, document scanners, data entry
16 equipment, terminal controllers, data terminal equipment,
17 computer-based word processing systems other than
18 memory typewriters and equipment and systems for
19 computer networks;

20 (d) "Related services" include feasibility studies,
21 systems design, software development and time-sharing
22 services whether provided by state employees or others;

23 (e) "Telecommunications" means any transmission,
24 emission or reception of signs, signals, writings, images or
25 sounds of intelligence of any nature by wire, radio or
26 other electromagnetic or optical systems. The term
27 includes all facilities and equipment performing those
28 functions that are owned, leased or used by the executive
29 agencies of state government; and

30 (f) "Chief technology officer" means the person
31 holding the position created in section three of this article
32 and vested with authority to assist state spending units in
33 planning and coordinating information systems that serve
34 the effectiveness and efficiency of the individual state
35 spending units, and further the overall management goals
36 and purposes of government.

**§5-1B-3. Creation of the office of chief technology officer;
appointment and qualifications.**

1 There is hereby created the office of chief
2 technology officer within the office of the governor. The
3 chief technology officer shall be appointed by and shall
4 serve at the will and pleasure of the governor. The chief
5 technology officer shall have knowledge in the field of
6 information technology, experience in the design and

7 management of information systems and an
8 understanding of the special demands upon government
9 with respect to budgetary constraints, the protection of
10 privacy interests and federal and state standards of
11 accountability.

§5A-1B-4. Powers and duties; professional staff.

1 (a) With respect to all state spending units the chief
2 technology officer may:

3 (1) Develop an organized approach to information
4 resource management for this state;

5 (2) Provide, with the assistance of the information
6 services and communications division of the department
7 of administration, technical assistance to the administrators
8 of the various state spending units in the design and
9 management of information systems;

10 (3) Evaluate, in conjunction with the information
11 services and communications division of the department
12 of administration, the economic justification, system
13 design and suitability of information equipment and
14 related services, and review and make recommendations
15 on the purchase, lease or acquisition of information
16 equipment and contracts for related services by the state
17 spending units;

18 (4) Develop a mechanism for identifying those
19 instances where systems of paper forms should be
20 replaced by direct use of information equipment and
21 those instances where applicable state or federal standards
22 of accountability demand retention of some paper
23 processes;

24 (5) Develop a mechanism for identifying those
25 instances where information systems should be linked and
26 information shared, while providing for appropriate
27 limitations on access and the security of information;

28 (6) Create new technologies to be used in
29 government, convene conferences and develop incentive
30 packages to encourage the utilization of technology;

31 (7) Engage in any other activities as directed by the

32 governor; and

33 (8) Charge a fee to be assessed by the director of the
34 information services and communications division to the
35 state spending units for evaluations performed and
36 technical assistance provided under the provisions of this
37 section. All fees collected by the chief technology officer
38 shall be deposited in a special account in the state treasury
39 to be known as the "Chief Technology Officer
40 Administration Fund". Expenditures from the fund shall
41 be made by the chief technology officer for the purposes
42 set forth in this article and are not authorized from
43 collections but are to be made only in accordance with
44 appropriation by the Legislature and in accordance with
45 the provisions of article three, chapter twelve of this code
46 and upon the fulfillment of the provisions set forth in
47 article two, chapter five-a of this code. Amounts collected
48 which are found from time to time to exceed the funds
49 needed for purposes set forth in this article may be
50 transferred to other accounts or funds and redesignated
51 for other purposes by appropriation of the Legislature.

52 (b) With respect to executive agencies only, the chief
53 technology officer may:

54 (1) Develop a unified and integrated structure for
55 information systems for all executive agencies;

56 (2) Establish, based on need and opportunity,
57 priorities and time lines for addressing the information
58 technology requirements of the various executive agencies
59 of state government;

60 (3) Exercise such authority inherent to the chief
61 executive of the state as the governor may, by executive
62 order, delegate, to overrule and supersede decisions made
63 by the administrators of the various executive agencies of
64 government with respect to the design and management of
65 information systems and the purchase, lease or acquisition
66 of information equipment and contracts for related
67 services;

68 (4) Draw upon staff of other executive agencies for
69 advice and assistance in the formulation and

70 implementation of administrative and operational plans
71 and policies; and

72 (5) Recommend to the governor transfers of
73 equipment and human resources from any executive
74 agency and the most effective and efficient uses of the
75 fiscal resources of executive agencies, to consolidate or
76 centralize information-processing operations.

77 (c) The chief technology officer may employ the
78 personnel necessary to carry out the work of the office
79 and may approve reimbursement of costs incurred by
80 employees to obtain education and training.

**§5-1B-5. Notice of request for proposals by state spending
units required to make purchases through the
state purchasing division.**

1 Any state spending unit that is required to submit a
2 request for proposal to the state purchasing division prior
3 to purchasing goods or services shall notify the chief
4 technology officer, in writing, of any proposed purchase
5 of goods or services related to its information and
6 telecommunication systems. The notice shall contain a
7 brief description of the goods and services to be
8 purchased. The state spending unit shall provide the
9 notice to the chief technology officer at the same time it
10 submits its request for proposal to the state purchasing
11 division.

**§5-1B-6. Notice of request for proposals by state spending units
exempted from submitting purchases to the state
purchasing division.**

1 (a) Any state spending unit that is not required to
2 submit a request for proposal to the state purchasing
3 division prior to purchasing goods or services shall notify
4 the chief technology officer, in writing, of any proposed
5 purchase of goods or services related to its information or
6 telecommunication systems. The notice shall contain a
7 detailed description of the goods and services to be
8 purchased. The state spending unit shall provide the
9 notice to the chief technology officer a minimum of ten
10 days prior to the time it requests bids on the provision of

11 the goods or services.

12 (b) If the chief technology officer evaluates the
13 suitability of the information and telecommunication
14 equipment and related services under the provisions of
15 subdivision (3), subsection (a), section four of this article
16 and determines that the goods or services to be purchased
17 are not suitable, he or she shall, within ten days of
18 receiving the notice from the state spending unit, notify
19 the state spending unit, in writing, of any
20 recommendations he or she has regarding the proposed
21 purchase of the goods or services. If the state spending
22 unit receives a written notice from the chief technology
23 officer within the time period required by this section, the
24 state spending unit shall not put the goods or services out
25 for bid less than fifteen days following receipt of the
26 notice from the chief technology officer.

§5-1B-7. Biannual report.

1 The chief technology officer shall report biannually
2 to the legislative joint committee on government and
3 finance on the activities of his or her office.

§5-1B-8. Exemptions.

1 The provisions of this article do not apply to the
2 Legislature or the judiciary.

ARTICLE 1C. SCIENCE AND TECHNOLOGY COUNCIL.

§5-1C-1. Legislative purpose.

1 (a) The Legislature hereby finds that a pressing need
2 exists for a strategy based upon science and technology
3 which promotes a scientifically literate citizenry, enhances
4 government efficiency, encourages the creation of higher-
5 paying jobs and enhances the growth of West Virginia's
6 gross state product. To that end, the state recognizes the
7 need for collaborative research and development efforts
8 among institutions of higher education, industry,
9 government and private organizations which will advance
10 the state's scientific and technological development. The
11 Legislature further finds that focused research and
12 technical assistance efforts related to West Virginia

13 industry will speed such development, improve technology
14 transfer, assist companies in becoming growth leaders and
15 link basic research and technological development to
16 economic advancement.

17 (b) The Legislature therefore declares that creation
18 of a science and technology advisory council will be
19 advantageous to the state by working to move West
20 Virginia into a strong competitive position in science and
21 technology and by improving the efficiency of
22 government. The council shall provide policy advice to
23 the Legislature and to the chief technology officer in the
24 office of the governor on scientific and technology
25 subjects and issues and provide policy advice to the
26 council for community and economic development on
27 science and technology issues that will serve to foster
28 economic growth. The council shall also develop a state
29 science and technology strategic plan for submission to
30 the Legislature and the governor.

**§5-1C-2. Science and technology advisory council; members,
appointment and expenses; appointment, duties,
and compensation of director.**

1 (a)(1) The science and technology advisory council
2 created by chapter one hundred twenty, acts of the
3 Legislature, regular session, one thousand nine hundred
4 ninety-six, which is a body corporate and politic,
5 constituting a public corporation and government
6 instrumentality, is hereby abolished and a new science and
7 technology advisory council is created within the office of
8 the governor.

9 (2) The council shall consist of eleven members who
10 have professional, labor or managerial knowledge in
11 science and technology development and operations and
12 shall be appointed as follows:

13 (A) The governor shall appoint five members, with
14 the advice and consent of the Senate. No more than three
15 of the five members may belong to the same political
16 party. Three of the five members shall also be from
17 different congressional districts of the state, and, shall
18 provide a broad state geographical distribution of

19 members of the council;

20 (B) The governor shall appoint one member, with the
21 advice and consent of the Senate, from a list of two
22 persons recommended by the speaker of the House of
23 Delegates;

24 (C) The governor shall appoint one member, with the
25 advice and consent of the Senate, from a list of two
26 persons recommended by the president of the Senate;

27 (D) The governor shall appoint two members, with
28 the advice and consent of the Senate, from a list of four
29 persons recommended by the chancellor of the university
30 of West Virginia system;

31 (E) The governor shall appoint one member, with the
32 advice and consent of the Senate, from a list of two
33 persons recommended by the chancellor of the state
34 college system of West Virginia; and

35 (F) The governor shall appoint one member, with the
36 advice and consent of the Senate, from a list of two
37 persons recommended by the council for community and
38 economic development.

39 (b) The terms of the council members first taking
40 office on or after the effective date of this legislation
41 expire as designated by the governor at the time of their
42 appointment, with three terms expiring at the end of the
43 first year, four terms expiring at the end of the second
44 year, and four terms expiring at the end of the third year.
45 As the original appointments expire, each subsequent
46 appointment is for a full three-year term. Any member
47 whose term has expired shall serve until a successor has
48 been duly appointed and qualified. Any person
49 appointed to fill a vacancy shall serve only for the
50 unexpired term. In cases of any vacancy in the office of a
51 member, the vacancy shall be filled by the governor in the
52 same manner as the original appointment was made.

53 (c) Members of the council are not entitled to
54 compensation for services performed as members, but are
55 entitled to reimbursement for all reasonable and necessary
56 expenses actually incurred in the performance of their

57 duties. A majority of serving members constitutes a
58 quorum for the purpose of conducting business. The
59 governor shall designate a chair, who is not a public
60 official, for a term to run concurrently with the term of
61 office of the member designated as chair. The council
62 shall conduct all meetings in accordance with the open
63 meeting law pursuant to article nine-a, chapter six of this
64 code.

65 (d) The council shall prepare and publish an annual
66 report of its activities and accomplishments and submit it
67 to the governor and to the legislative joint committee on
68 government and finance on or before the fifteenth day of
69 December of each year.

70 (e) Each year, the council shall submit to the
71 governor a list of science and technology projects
72 recommended for funding. The projects shall serve to
73 fulfill the policies established by the science and
74 technology strategic plan. The recommendation shall
75 itemize the funds requested and shall identify any
76 expenditures that will be matched by federal funds, or
77 matched by foundation, corporate or by other funds.

78 (f) The chair of the council also shall serve as the
79 executive director of the council for his or her term of
80 office. He or she shall hold a graduate degree and have
81 professional experience in fields involving science and
82 technology research or development. The expenses of the
83 executive director shall be paid from funds provided by
84 foundation grants, in-kind contributions or other funds
85 obtained pursuant to subsection (b), section four of this
86 article. The executive director shall provide or obtain
87 scientific and technical information to support the
88 administrative work of the council, and to that end may
89 contract with the university system, a nonprofit
90 organization or any state spending unit for research and
91 administrative support.

92 (g) The executive director of the council shall be
93 available to the governor, the chief technology officer
94 within the office of the governor, the speaker of the House
95 of Delegates and the president of the Senate, to analyze
96 and comment upon proposed legislation and rules which

97 relate to or materially affect state scientific and technical
98 issues.

§5-1C-3. Powers and duties of science and technology council.

1 (a)(1) The council shall consult with the board of
2 trustees of the university system, the board of directors of
3 the college system and with state business leaders in the
4 exercise of its powers and duties, which include, but are
5 not limited to, the following:

6 (A) Preparation of a comprehensive strategic plan
7 and recommendation of programs in furtherance of the
8 comprehensive strategic plan that will support and foster
9 state science and technology research;

10 (B) Cooperation with appropriate state spending units
11 to retain and enlarge existing state industries through
12 technology expansion; and

13 (C) Formulation of plans to establish science and
14 technology research centers at state colleges and
15 universities.

16 (2) The council may seek public and private research
17 grants and contracts, matching funds and procurement
18 arrangements from the state and federal government,
19 private industry and other agencies, in furtherance of its
20 mission and programs.

21 (3) The council shall develop an initial
22 comprehensive strategic plan that will support and foster
23 economic growth in science and technology research and
24 development in the state and shall provide the initial plan
25 to the chief technology officer within the office of the
26 governor and the joint committee on government and
27 finance no later than the first day of July, one thousand
28 nine hundred ninety-seven. The initial comprehensive
29 strategic plan shall include, but not be limited to, the
30 following:

31 (A) A science and technology policy;

32 (B) The identification of strengths and weaknesses in
33 the basic science resources and research capabilities in the
34 state;

35 (C) The identification of methods that will coordinate
36 and engender collaborative research efforts between
37 research entities throughout the state, whether public or
38 private;

39 (D) The designation of areas for potential scientific
40 and technological development, including those related to
41 and having a direct impact upon the economic
42 development of the state;

43 (E) Recommendations on how to improve and
44 strengthen the partnership between the private sector,
45 institutions of higher education and government;

46 (F) Recommendations on how to improve the
47 infrastructure for research and research training;

48 (G) Recommendations on a system to transfer
49 technology to the private sector in the state;

50 (H) Recommendations on information systems that
51 serve the effectiveness and efficiency of state spending
52 units and higher education and further the overall
53 management goals and purposes of government;

54 (I) Recommendations on a tracking system for
55 special needs students enrolled in the public schools and
56 state colleges and universities, and the programs and
57 services provided for those students;

58 (J) Recommendations on legislative changes required
59 to improve the overall science and technology
60 environment in the state; and

61 (K) Other recommendations on science and
62 technology policy and programs as appropriate.

63 (4) The strategic plan may be updated and refiled on
64 or before the first day of July of each year. The council
65 shall submit an annual work plan each year beginning the
66 first day of July, one thousand nine hundred ninety-eight
67 to the chief technology officer and the joint committee on
68 government and finance.

69 (b) In developing its strategic plan, the science and
70 technology council shall utilize its resources as well as the

71 technical support available to it through the university of
72 West Virginia system, the state college system of West
73 Virginia, the West Virginia development office, the West
74 Virginia experimental program to stimulate competitive
75 research (EPSCoR), federal and state agencies, and other
76 appropriate organizations that have an interest in fostering
77 science and technology research and development in West
78 Virginia.

79 (c) The council shall undertake to keep abreast of
80 state and national scientific and technological
81 developments and work to establish, foster, and
82 successfully conclude university, college and other
83 scientific research projects or clusters.

84 (d) To reduce and avoid duplication of research
85 work and expenditures, the council shall, as a part of its
86 comprehensive strategic plan, formulate methods that will
87 coordinate and generate collaborative efforts between
88 research entities throughout West Virginia, whether public
89 or private, and foster synergistic relationships among
90 them. Cooperating agencies may contract with the
91 council, as provided in section four of this article, so as to
92 participate in science and technology projects, jointly or
93 through the programs of the council with other
94 participating institutions, government units and private
95 business firms.

§5-1C-4. Public-private partnerships; funding.

1 (a) In furtherance of its mission, the science and
2 technology council is authorized to enter into contracts or
3 joint venture agreements with federal and state agencies;
4 with nonprofit corporations organized pursuant to the
5 corporate laws of this state or other jurisdictions that are
6 qualified under section 501(c)(3) of the Internal Revenue
7 Code; and with other organizations that conduct research,
8 make grants, improve educational programs and work for
9 the scientific, educational or economic development of
10 this state. The chief technology officer within the office of
11 the governor and the council, by a majority vote, shall
12 approve all contracts and joint venture agreements. The
13 council may also enter into contractual agreements for
14 consideration even though the entities are funded from

15 sources other than the state. Members of the council may
16 sit on the boards of directors of any contracting private
17 nonprofit corporation, foundation or firm: *Provided,*
18 That members of the council are not exempt from any of
19 the provisions of chapter six-b of this code.

20 (b) The council may receive and accept gifts or
21 grants from private foundations, corporations, individuals,
22 devises and bequests or from other lawful sources. The
23 funds shall be paid into a special account in the state
24 treasury for the use and benefit of the science and
25 technology advisory council.

§5-1C-5. Exemptions.

1 The provisions of this article do not apply to the
2 Legislature or the judiciary.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS DIVISION.

§5A-7-4. Powers and duties of division generally; professional staff; telephone service.

1 (a) The division is responsible for providing
2 technical services and assistance to the various state
3 spending units with respect to developing and improving
4 data processing and telecommunications functions. The
5 division may provide training and direct data processing
6 services to the various state agencies. The division shall,
7 upon request of the chief technology officer within the
8 office of the governor, provide technical assistance in
9 evaluating the economic justification, system design and
10 suitability of equipment and systems used in state
11 government. The director shall report to the secretary.

12 (b) The director is responsible for the development
13 of personnel to carry out the technical work of the
14 division and may approve reimbursement of costs
15 incurred by employees to obtain education and training.

16 (c) The director may assess each state spending unit
17 for the cost of any evaluation of the economic
18 justification, system design and suitability of equipment

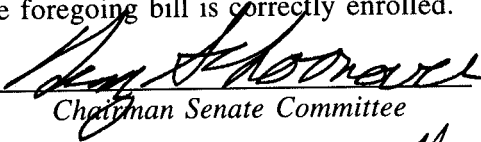
19 and systems used by the state spending unit or any other
20 technical assistance that is provided or performed by the
21 chief technology officer and the division under the
22 provisions of section four, article one-b of this chapter.

23 (d) The director shall transfer any moneys received
24 as a result of the assessments that he or she makes under
25 subsection(c) of this section to the office of chief
26 technology officer. The director shall report quarterly to
27 the joint committee on government and finance on all
28 assessments made pursuant to subsection (c) of this
29 section.

30 (e) The director shall maintain an accounting system
31 for all telephone service to the state.

32 (f) The provisions of this article do not apply to the
33 Legislature or the judiciary.

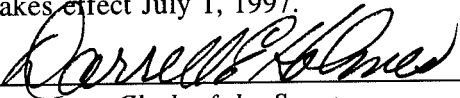
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

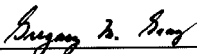

Chairman Senate Committee

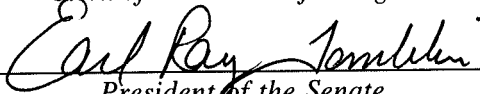

Chairman House Committee

Originating in the House.

Takes effect July 1, 1997.

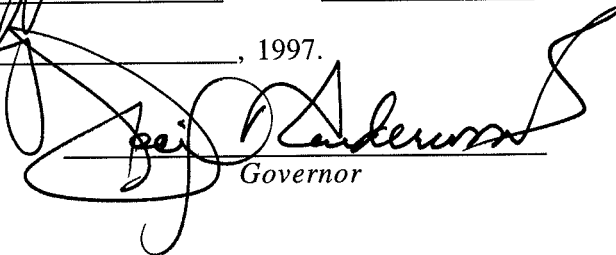

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 15th
day of March, 1997.


Governor

PRESENTED TO THE

GOVERNOR

Date

5/1/47

Time

3:46 pm