Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 648 of the Regular Session

State of Arkansas
87th General Assembly
Regular Session, 2009

A Bill

HOUSE BILL 2200

By: Representative Patterson

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS INFORMATION SYSTEMS ACT OF 1997, § 25-4-101 ET SEQ.; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE ARKANSAS INFORMATION SYSTEMS ACT OF 1997, § 25-4-101 ET SEQ.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 25-4-102 is amended to read as follows:

25-4-102. Legislative findings and declaration of intent.
(a) The General Assembly finds and declares information and information resources to be strategic assets of the State of Arkansas and that procedures must be established to ensure that:

(1) Information resources are used in an efficient manner;
(2) Departmental resources are used unless an exception is authorized;
(3) Information is administered and shared, consistent with requirements for security, privacy, and confidentiality;
(4) Information technology acquisitions meet state needs and are consistent with coordinated efforts to maximize standardization and cost effectiveness;
(5) State officials have timely access to information in useful forms; and
(6) The Department of Information Systems complies with
applicable state and federal statutory and regulatory provisions.

(b) The General Assembly further declares its intent to create a state agency to:

(1) Provide design and management services for the state’s core information technology infrastructures;

(2) Provide information technology services;

(3) Implement appropriate technologies to exchange and share information; and

(4) Develop technical standards and specifications and provide technical leadership and guidance to support the state’s enterprise architecture subject to the written approval of the Chief Fiscal Officer of the State.

(c) It is also the intent of the General Assembly that the department achieve certain objectives that will better support information technology utilization by other state agencies. These objectives are to:

(1) Implement increased capabilities for communication and exchange of information; and

(2) Develop and publish mechanisms for more timely acquisition of information technology.

(d)(1) The General Assembly further finds and determines that:

(A) Information technology services are readily available in the private sector;

(B) The public interest would be well served by competition for the provision of such services to the state;

(C) Public-private partnerships or joint ventures for the provision of such services may be appropriate in certain instances; and

(D) Emphasis will be given to encouraging and enabling competition among:

(i) Suppliers of such services whenever possible in the administration of this chapter; and

(ii) Women-owned and minority-owned suppliers of such services whenever possible in the administration of this chapter.

(2) The department shall consider in the development of the department plan and the Joint Committee on Advanced Communications and Information Technology shall emphasize in its recommendations and policies the availability in the private sector of information technology resources
upon a competitive bid basis with a view to assuring the state of the highest reasonable quality of resources at the lowest reasonable cost.

(e)(1) In exercising its authority under § 25-4-105, the department shall competitively procure information technology except as provided in this subsection.

(2) The department is not authorized by § 25-4-105 to provide information technology services, including telecommunications and broadband services, to the general public, other than nongovernmental first responder entities, in competition with private sector telecommunications and cable communications providers.

(3) Customers of the department are not authorized to use information technology facilities and services provided by the department to provide telecommunications and broadband services to the general public in competition with private sector telecommunications and cable communications providers.

SECTION 2. Arkansas Code §25-4-103 is amended to read as follows:

25-4-103. Definitions.

As used in this chapter:

(1) “Application” means a separately identifiable and interrelated set of information technology resources that allows information processing to support specifically defined objectives;

(2) “Chief Technology Officer” means the Director of the Department of Information Systems;

(3) “Core information technology infrastructure” means the state data, state network and application interfaces, state security, and disaster recovery;

(4) “Customer” means a state agency, other governmental entity, or nongovernmental first responder entity that purchases or uses services under this chapter;

(5) “Department” means the Department of Finance and Administration;

(6)(5) “Equipment” means the machines, devices, and transmission facilities used in information processing, including computers, word processors, terminals, telephones, cables, software, and related services;

(7)(6) “Information processing” means the electronic capture,
collection, storage, manipulation, transmission, retrieval, and presentation
of information in the form of data, text, voice, or image and includes
telecommunications and office automation functions;
(8)(7) "Information technology" means any component related to
information processing and wired and wireless telecommunications, including
data processing and telecommunications hardware, software, services,
planning, personnel, facilities, and training;
(9)(8) "Information technology resources" means the procedures,
equipment, and software that are designed, built, operated, and maintained to
collect, record, process, store, retrieve, display, and transmit information,
and the associated personnel, including consultants and contractors;
(10)(9) "Network infrastructure" means the shared portions of
the state's telecommunications transmission facilities, including all
transmission lines and all associated equipment and software components
necessary for the management and control of the state network;
(11)(10) "Nongovernmental first responder entity" means state
and law enforcement personnel, fire department personnel, and emergency
medical personnel who will be deployed to bioterrorism attacks, terrorist
attacks, catastrophic or natural disasters, and other emergencies;
(12)(11) "Other governmental entities" means state-elected
constitutional officers and their staffs, the Supreme Court and the
Administrative Office of the Courts, the General Assembly or its committees
or staffs, the Arkansas State Highway and Transportation Department, the
Arkansas State Game and Fish Commission, the federal government, cities,
counties, municipalities, and public school districts, and other publicly
funded governmental entities;
(13)(12) "Project" means a program to apply information
technology resources to functions within or among elements of a state agency
that ideally is characterized by well-defined parameters, specific
objectives, common benefits, planned activities, a scheduled completion date,
and an established budget with a specified source of funding;
(14)(13) "Project management" means principles, practices, and
techniques applied to lead projects and teams and the control of project
schedules, costs, and performance risks with the goal of satisfying
customers’ requirements;
(15)(14) "Public instrumentality" means any statutorily created
entity charged with the responsibility of providing information or services through the use of information technology;

(16) "State agencies" means all state departments, boards, and commissions but shall not include the elected constitutional officers and their staffs, the General Assembly and its committees and staffs, or the Supreme Court and the Administrative Office of the Courts, and public institutions of higher education with respect to academic, research, healthcare, and existing information technology applications and underlying support therefor;

(17) "State of Arkansas enterprise architecture" means the structure of program or system components, a description of the elements of business processes and supporting technologies, policies, standards, procedures, solutions, and infrastructures that:

(A) Makes up an enterprise; and

(B) Documents how the components described in this subdivision relate to one another, and the principles that govern their design and evolution over time;

(18) "Telecommunications" means all forms of communications devices and transport media for the conveyance by electronic or electrical means of voice, words, data, signals, or images; and

(19) "Working group" means a group of subject matter experts convened for the purpose of collaborating and devising strategies.

SECTION 3. Arkansas Code § 25-4-105 is amended to read as follows:

25-4-105. Department of Information Systems — General powers and duties.

(a)(1) The Department of Information Systems shall be vested with all the powers and duties necessary to administer the department and to enable it to carry out fully and effectively the regulations and laws relating to the department.

(2) These powers and duties relate to information technology and include, but are not limited to without limitation:

(1) Conceptualizing, designing, developing, building, and maintaining common information technology infrastructure elements used by state agencies and governmental entities;
(2) Providing information technology services to state agencies, other governmental entities, and nongovernmental first responder entities, and other quasi-governmental entities;

(3) Entering into contracts with state agencies, other governmental entities, and nongovernmental first responder entities for the purpose of providing information technology services;

(4) (A) Establishing fair and reasonable schedules of rates or fees to be paid by customers that are provided service to enable the department to recover all allowable costs of providing the services as provided in this chapter.

(B) The same rate or fee structure will apply to all customers receiving services;

(5)(A) Establishing estimated billing rates to be developed for a two-year period to coincide with the budgeting process.

(B) The department shall have the authority to adjust billing as necessary to effect compliance with applicable state and federal statutory and regulatory provisions.

(C) Billing adjustments shall be subject to the approval of the Chief Fiscal Officer of the State and review by the Legislative Council;

(6) Acquiring information technology on behalf of state agencies, the cost of which shall be recovered through customer billings or through direct funding;

(7) Promulgating rules and regulations that are necessary for efficient administration and enforcement of the powers, functions, and duties of the department as provided in this chapter;

(8) Developing a departmental plan to support the goals and objectives set forth for it in the state information technology plans and strategies;

(9) Implementing systems to ensure the security of state data and state data processing assets, to provide for disaster recovery and continuity of operations to the state agencies served, and to recover its costs from the customers benefited;

(10) Performing any additional powers, functions, and duties that are necessary and appropriate for the proper administration of the provisions of this chapter;
(11) Monitoring Providing a State Cyber Security Office to monitor information resource security issues, coordinating all security measures that could be used to protect resources by more than one (1) governmental entity, and acting as an information technology resource to other state agencies;

(12) Assisting in the development of an information technology security policy for state agencies;

(13) Developing the information technology security policy for state agencies;

(14) Advising agencies in acquiring information technology service;

(15) Developing the information technology policies, standards, and specifications for state agencies when requested and ensuring agencies' compliance with those policies, procedures, and standards;

(16) Participating in the development of information technology state contracts as requested by a state agency, including without limitation the identification of requirements, contract negotiation, and vendor evaluation;

(17) With respect to their technology functions and applications, all state departments, boards, commissions, and public institutions of higher education, consulting and cooperating with the Department of Information Systems in the formation and implementation of security policies for the state core information technology infrastructure; and

(18) Assisting in the development of Developing a state information technology plan that shall establish a state-level mission, goals, and objectives for the use of information technology;

(19) Identifying and establishing information technology solutions that can support more than one (1) agency in providing governmental services;

(20) Advising agencies regarding information technology contracts and agreements;

(21) Developing policies to promote and facilitate electronic access to government information and interoperability of information systems; and

(22) Reviewing and approving agencies’ information technology
plans and requests.

(b) Nothing in this chapter shall not be construed to deprive, transfer, limit, or in any way alter or change any of the powers vested in the board of trustees of any institution of higher education under existing constitutional and statutory provisions.

SECTION 4. Amend Arkansas Code § 25-4-106 to read as follows:

25-4-106. Reporting requirements.

(a)(1) The Director of the Department of Information Systems will report periodically to the Joint Committee on Advanced Communications and Information Technology regarding the status of the Department of Information Systems' information technology responsibilities in state government.

(2) The director will forward to the Joint Committee on Advanced Communications and Information Technology any statutory changes that the department may recommend sufficiently in advance of the convening of the regular session of the General Assembly.

(3)(2) The director may report any factors that are outside the scope of the department but are deemed to inhibit or to promote the department's responsibilities.

(b)(1) By October 31, January 31, April 30, and July 31 of each fiscal year, the director shall compile and submit a report to the:

(A) Legislative Council, if submitted between regular sessions of the General Assembly;

(B) Joint Budget Committee, if submitted during a session of the General Assembly; and

(C) Joint Committee on Advanced Communications and Information Technology.

(2) The report shall:

(A) Detail all requests from state agencies, boards, and commissions for advice regarding information technology planning, implementation, installation, rates or fees, utilization of products, services, and integrations or upgrades to be added to all existing technology plans; and

(B) Provide a full report of all corresponding recommendations made by the department to the requesting state agencies, boards, and commissions.
(3) The report shall include:

(A) The name of the state agency, board, or commission requesting the advice;

(B) The name and scope of the project for which advice is being sought;

(C) The type of advice sought, for example, technical, product or service utilization, planning, implementation, installation, integration, or upgrades;

(D) A detailed explanation of all recommendations provided by the department;

(E) How the recommendation fits into the information technology plan of the agency, board, or commission;

(F) How the recommendation fits into the state's information technology plan and shared technical state enterprise architecture; and

(G) Other information as may be useful for policy making decisions by the Legislative Council or the Joint Committee on Advanced Communications and Information Technology.

SECTION 5. Arkansas Code § 25-4-107 is repealed.

25-4-107. Department of Finance and Administration—General powers and duties.

The Department of Finance and Administration shall:

(1) Assist the Department of Information Systems in performing its duties;

(2) Review and approve agencies' information technology plans and requests;

(3) Advise agencies in acquiring information technology service;

(4) Advise agencies regarding information technology contracts and agreements;

(5) Develop and publish policies, procedures, and standards relating to information technology with advice and review from the Department of Information Systems and ensure agencies' compliance with those policies, procedures, and standards;

(6) Develop policies to promote and facilitate electronic access to government information and interoperability of information systems;
(7) Assist in developing a state information technology plan that shall establish a state-level mission, goals, and objectives for the use of information technology; and

(8) Foster interagency use of information technologies that is consistent with the established strategic direction of information technology and avoids unnecessary duplication.

SECTION 6. Amend Arkansas Code §25-4-110 as follows:

25-4-110. Information technology — Planning.
(a)(1) The Department of Finance and Administration shall assist in developing the state information technology plan.

(2) The Department of Information Systems shall submit monthly status reports annually or when requested to the Joint Committee on Advanced Communications and Information Technology.

(b) The Department of Finance and Administration with advice and review of the Department of Information Systems shall develop and maintain information technology policies.

(e)(1) Each state agency shall develop a biennial information technology plan that establishes state agency goals, objectives, and policies regarding the development and use of information technology.

(2)(A) Each state agency shall specifically include a policy regarding the use of the Internet.

(B) A statement of the agency’s policy regarding the use of the Internet shall include:

(i) The penalties for violations of the agency’s Internet policy;

(ii) The number of employees and computers that have access to the Internet and the percentage of those employees and computers to the total number of employees and computers;

(iii) The needs of the agency and how those needs relate to the use of the Internet; and

(iv) The responsibilities of the agency’s employees as those responsibilities relate to the efficient and responsible use of the Internet.

(3) Plans may be updated by agencies in a timely manner to remain current and must accommodate changes in the evolving state information
technology plan and standards.

(d)(c) The Department of **Finance and Administration Information Systems** shall distribute criteria, elements, form, and format for agency plans. Plans may include, but not be limited to, the following:

1. A statement of the agency's mission, goals, and objectives for information technology;
2. Goals and objectives for achieving electronic access to agency records, information, and services;
3. Consideration of a variety of information technologies, including those that help transcend geographic locations, standard business hours, economic conditions of users, and disabilities;
5. An explanation of how the state agency's mission, goals, and objectives for information technology support and conform to the state information technology plan developed by the office;
6. An implementation strategy to include:
   (A) Annual implementation objectives of the plan;
   (B) Methods to educate both state employees and the public in the effective use of access technologies; and
   (C) Agency activities to increase electronic access to public records and information to be implemented within available resources and existing state agency planning processes;
7. Projects and resources required to meet the objectives of the plan;
8. Estimated schedules and funding required to implement identified projects;
9. An evaluation of the agency's performance relating to information technology;
10. An assessment of progress made toward implementing the agency information technology plan;
11. A discussion of progress toward electronic access to public information and enabling citizens to have two-way interaction for obtaining information and services from state agencies; and
12. An inventory of state agency information technology.

(e)(d)(1) Plans developed or updated shall be submitted to the
Department of Finance and Administration Information Systems.

(2) The Department of Finance and Administration department may reject, require modification to, or approve plans as deemed appropriate.

(3) Plans shall be modified by the state agency as necessary.

(4) Plans developed or updated by public instrumentalities shall be submitted for review to the Joint Committee on Advanced Communications and Information Technology.

(5) The committee may seek the assistance of the Department of Finance and Administration Information Systems in conducting this review.

(6) Plans shall be modified by the public instrumentality as necessary.

SECTION 7. Arkansas Code § 25-4-111 is amended to read as follows:

25-4-111. Information technology — Prerequisites.

(a) Unless the agency first receives approval for a plan or an updated plan as provided for under § 25-4-110, no state agency shall not:

(1) Acquire by purchase or lease any new or additional information technology; or

(2) Enter into any contract for information technology.

(b) If an agency desires to acquire information technology not part of an information technology plan approved under § 25-4-110, the requesting agency shall submit a waiver request to the Director of the Department of Finance and Administration Information Systems that includes:

(1) Identification of necessary additional services or improvements in information technology;

(2) Relationship of the information technology improvements or additions to the overall goals of the agency;

(3) Resources needed to provide the additional services or improvements; and

(4) Measurement and evaluation criteria.

(c)(1) Upon evaluation of the waiver request, the Director of the Department of Finance and Administration Information Systems shall notify the agency in writing of his or her approval or rejection of the request and his or her reasons therefor.

(2) The Director of the Department of Finance and Administration Information Systems shall make his or her evaluation in a timely manner. If
the Director of the Department of Finance and Administration Information Systems requires more than thirty (30) days to complete the evaluation, he or she shall report in writing to the Governor his or her reasons for the delay in completion.

(3) If the Director of the Department of Finance and Administration Information Systems rejects a request for a waiver, no state agency shall not make any expenditure of public funds for the acquisition or expansion of information technology equipment or services.

(4) If the Director of the Department of Finance and Administration Information Systems determines that the agency needs additional information technology resources, he or she may:
   (A) Authorize the agency to acquire the requested information technology in accordance with the state enterprise architecture;
   (B) Authorize acquisition of a modified information technology configuration;
   (C) Notify the agency of the availability of department facilities to provide the requested information technology; or
   (D) Recommend that the information technology be provided through the facilities of some other designated state agency.

(d) All state agencies shall comply with the provisions of the Arkansas Procurement Law, § 19-11-201 et seq., and applicable provisions of the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., in the acquisition, purchase, contracting for the purchase of, and leasing of information technology.

SECTION 8. Arkansas Code § 25-4-114 is amended to read as follows:

25-4-114. Contracts and agreements for information technology.
(a) In the event a state agency and the Department of Information Systems are unable to resolve a dispute, the matter shall jointly be referred to the Director of the Department of Finance and Administration for resolution. Contracts and agreements for state agencies for information technology shall adhere to the state enterprise architecture.
(b) A state agency shall submit to the Director of the Department of Information Systems for review and approval a request for the state agency to enter into a technology contract or agreement that is not in compliance with the state enterprise architecture.
Contracts for the provision of information technology are interagency agreements and are exempt from the provisions of the Arkansas Procurement Law, § 19-11-201 et seq., and the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., nor are they required to be submitted to the Legislative Council for advice.

APPROVED: 3/27/2009