

April 20, 2007

The Honorable Mike Cooney
President of the Senate
State Capitol
Helena, MT 59620

The Honorable Scott Sales
Speaker of the House
State Capitol
Helena, MT 59620

Dear President Cooney and Speaker Sales:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill (SB) 465, **“AN ACT EXEMPTING THE STATE COMPENSATION INSURANCE FUND AND ITS BOARD OF DIRECTORS FROM THE MONTANA ELECTRONIC GOVERNMENT SERVICES ACT AND CERTAIN PROVISIONS OF THE MONTANA INFORMATION TECHNOLOGY ACT; AMENDING SECTIONS 2-17-506, 2-17-513, 2-17-516, AND 2-17-532, MCA; AND PROVIDING AN EFFECTIVE DATE.”**

In 2001, the Montana Legislature passed the Montana Information Technology Act, because it recognized the importance of information technology (IT) in the 21st century. The 2001 Legislature recognized that information technology - hardware, software, and associated services and infrastructure – has become a key component of any large organization’s infrastructure, and the State of Montana is no exception. Montana citizens - taxpayers, licensees, business people, benefit recipients - depend on the state’s IT to be operational and efficient. The 2001 Legislature recognized the importance by declaring the state’s policy “that information technology be used to improve the quality of life of Montana citizens by providing educational opportunities, creating quality jobs and a favorable business climate, improving government, and protecting individual privacy and the privacy of the information contained within information technology systems.” Mont. Code Ann. § 2-17-505(1).

The central purpose of the Montana Information Technology Act (“MITA”) is to establish centralized management and control of information technology for the State of Montana and its agencies. The state policy, MITA continues, is that the “development of information technology resources in the state must be conducted in an organized, deliberative, and cost-effective manner.” Mont. Code Ann. § 2-17-505(2).

The Montana Information Technology Act sets high standards for the delivery of the state’s information technology. MITA declares that the Department of Administration, in providing IT services, “must be accountable to the governor, the legislature, and the citizens of Montana.” Mont. Code Ann. § 2-17-505(3). The Chief Information Officer is an appointed position and is accountable for the delivery of an efficient IT system that Montanans need and demand. As Governor, I not only expect that the state’s computers will operate effectively and efficiently so that the state can deliver its services to the people of Montana, I accept that as head of the executive branch of government, my Administration will be held accountable if it does not.

The Montana Information Technology Act was crafted by a legislative interim committee, which devoted two years to studying how to improve the delivery of information technology in state government. Prior to passage of MITA in 2001, Montana’s information technology system was

fragmented and prone to failures. Many of you recall the POINTS debacle, in which the State of Montana wasted a minimum of \$35 million contracting for a computer system for the Department of Revenue that was never delivered. Some estimate the loss to the State closer to \$60 million. This unfortunate experience was a major reason for the planning and procurement controls and oversight established in MITA.

The 2001 Legislature determined that oversight of state government's information technology should be consolidated under one roof. SB 131, sponsored by Sen. Mike Taylor by request of the Legislative Finance Committee, passed the 2001 Legislature with only one dissenting vote. The interim committee recommended that all executive branch agencies except those then excluded from governance by the Department of Administration come within the provisions of MITA.

As recently as November of 2005, the Legislative Auditor completed an audit of the enterprise IT management responsibilities of the Department of Administration. The auditors considered the legislative intent of MITA and discussed the many benefits of having one agency manage and lead the direction of IT. The audit report recommended the Department be more proactive in exerting centralized management and control, as required under the statutes. The Department, the Chief Information Officer, and the Governor's Office of Budget and Program Planning have worked diligently to implement the audit recommendations.

This legislative session, the State Fund came to you asking to be segregated from the planning and procurement controls of MITA. The State Fund is an agency in the executive branch of government subject to laws applicable to all other state agencies. The State Fund has presented its case that it is different than other state agencies, because it competes for business with the private sector and must operate like an insurance company.

The fatal flaw with the State Fund's argument is that every agency of government can make its case for being unique. The Department of Public Health and Human Services could argue that the confidentiality requirements of HIPAA (the Health Insurance Portability and Accountability Act) demand its own individualized information technology system. The Department of Revenue could argue that the need for an efficient tax system and the requirements for confidentiality of state taxpayer information under both state and federal law demand it be exempted from centralized management and control. The Department of Justice could demand that its criminal justice information warrants that it be segregated from the unified IT system.

The State Fund is the first state agency to request the legislature exempt it from MITA, based on its argument that its needs are special. SB 465 represents the first challenge to Montana's effort to establish a comprehensive, integrated IT strategy that promotes sound business management practices. Exempting the State Fund from MITA would set a dangerous precedent. If the legislature capitulates to this first effort, other agencies soon will follow. SB 465 will be the first chink in the determination made by the legislature a mere six years ago that what is best for Montana is an enterprise approach to IT management, control, and shared services.

Notable, too, is that, as enacted, MITA anticipated that there will be occasions when exceptions to the unified system may be appropriate, and MITA, itself, provides a mechanism for granting exceptions. The Act provides that "if it is in the best interests of the state," the Department of Administration may grant exceptions to any part of the state's information technology requirements. Mont Code Ann. § 2-17-515. Legislative oversight to the granting of exceptions is provided under statute. See 2-17-515 and 5-12-205. Therefore, statutorily exempting the State Fund from MITA, as proposed in SB 465, is inconsistent with the process established for the granting of exceptions already contained in MITA.

Prior to the 2007 legislative session, the Department of Administration attempted to negotiate with the State Fund pursuant to the provisions of 2-17-515. Rather than continuing to seek to resolve its differences pursuant to the statutory mechanism, the State Fund instead chose to seek an outright exemption from the IT laws by promoting SB 465. I can assure you that if my veto is sustained, the Department of Administration will continue to work with the State Fund within the existing statutory provisions to address and resolve the concerns of the State Fund.

Finally, I do not want to leave you with any false impressions. Computer systems are not foolproof. They can and do crash. You may have heard about two computer outages to the state's system that occurred in the last couple of years as justification for SB 465. The State Fund, too, suffered its own outage in 2006, when the State Fund installed a new switch on equipment under its control and disabled an important part of its agency network services.

Such outages, however, are not a reason for abandoning MITA. The real issue is whether an organization is prepared to respond when an outage occurs. It is my belief that centralized control of infrastructure – with all the necessary maintenance contracts and support structures in place to access vendor expertise – is better equipped to respond to the inevitable outage. MITA, in its current form, embodies this sound policy.

To conclude, the Montana Legislature enacted an enterprise approach for the delivery of information technology to the people of Montana. The public policy behind MITA is to promote operational effectiveness and efficiency. I believe SB 465 is contrary to this policy. SB 465 would create inefficiency and higher costs for IT operations both at the State Fund and the Department of Administration. I am not convinced that exempting the State Fund from MITA will benefit workers' compensation recipients or Montanans, generally. To the contrary, all arguments lead me to the conclusion that the State Fund should remain part of the state's information technology enterprise, for which my Administration is held accountable.

I return SB 465 to you with these reasons for my veto. I ask you to sustain this veto.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division