

OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR

JOHN BOHLINGER
LT. GOVERNOR



May 12, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 585 (HB 585), **"AN ACT PROVIDING FOR THE REVIEW BY THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE OR A COMMISSION APPOINTED BY THE GOVERNOR OF CERTAIN CONTRACTS FOR THE PROCUREMENT OF THE SERVICES OF PRIVATE ATTORNEYS BY STATE AGENCIES; AMENDING SECTIONS 5-5-228 AND 18-4-302, MCA; AND PROVIDING AN APPLICABILITY DATE."**

I have vetoed HB 585, because under the guise of fiscal responsibility and transparency, the bill would – and appears intended to -- severely limit the ability of the State of Montana to pursue consumer protection litigation on behalf of Montanans, despite the fact that the State has pursued this type of litigation infrequently but successfully in the past. I object to HB 585 for other significant reasons, as well.

The State of Montana, as an entity subject to suit and authorized to bring suit, is involved in defending and prosecuting cases big and small on behalf of its citizens. It has defended prison riot litigation, appeared as defendant and then claimant in litigation involving PCB contamination, and has brought suit in tobacco, pharmaceutical, and other consumer protection litigation.

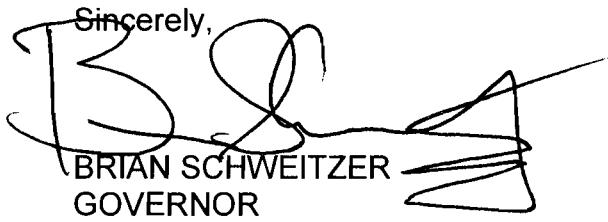
Under HB 585, prior to the retention of outside legal counsel by executive branch agencies in cases in which legal services are anticipated to exceed a statutory threshold of \$250,000, the agency would be required to explain and justify its contract to the legislative State Administration and Veterans' Affairs (SAVA) Interim Committee. HB 585 would require the SAVA Committee to hold a hearing on the executive agency's legal services contract, and within 60 days of the hearing, issue a report to the agency containing recommendations regarding the terms of the contract. The agency would then be required to make changes to the contract responsive to the SAVA Committee recommendations and report back to the committee within 14 days. Alternatively, if the agency rejected some or all of the SAVA Committee recommendations, within 60 days, SAVA could hold an additional hearing and issue another report. Should the SAVA Committee be unable to review a proposed contract for legal services within 60 days from its receipt, the Governor would be required to create a 5-member Commission, comprised of legislators, 4 of which would be appointed by legislative leadership. The bill also limits contingency fee contracts, prohibiting the payment of fees and expenses

at an hourly rate in excess of a dollar threshold. For a Legislature that professed a desire to reduce the size of government, HB 585 does not meet the test.

I list just a few of the reasons for my opposition to HB 585:

- The proponents of the bill failed to identify one example of a legal services contract entered by the State to demonstrate a questionable exercise of judgment warranting the bureaucratic process established in the bill prior to an agency's retention of outside counsel;
- The opponents to the bill identified numerous specific examples of obstacles that would be created by this new bureaucratic process, including delay in the retention of counsel that would impede the ability of state agencies to effectively advocate in litigation and best represent their client, the State of Montana (e.g., in some cases, state agencies must enter an appearance in court within 20 days of the service of a complaint, in other cases in 40 days);
- In consumer protection litigation, which the bill appears designed to target, the Attorney General would be prohibited from continuing the contingency fee arrangements with outside counsel it has used in the past, despite the fact that the State could not afford to finance the case absent a contingency fee arrangement, those contracts have been negotiated with beneficial terms to the State, and Montana taxpayers and consumers have benefited through an excellent rate on the State's investments with recoveries ranging in the millions of dollars and consumer protection measures being implemented;
- Although agencies generally would not run into problems retaining outside counsel for less than the \$400/hour cap imposed under HB 585, in specialized areas the statutory cap would limit agencies' ability to obtain quality legal representation, such as in out-of-state bankruptcy cases or in contracts entered by the State's retirement systems for highly specialized tax counsel; and
- The bill is an improper encroachment by the Legislature on powers properly held and decisions properly made by the Executive branch with respect to how to best prosecute and defend litigation on behalf of the State of Montana.

House Bill 585 is not about fiscal responsibility. Rather, it is a challenge to the sound decision-making of the executive branch when it has become involved in litigation on behalf of the State and its citizens.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division