_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: “AN ACT ELIMINATING THE INFORMATION TECHNOLOGY BOARD; ELIMINATING REPORTING REQUIREMENTS RELATED TO THE INFORMATION TECHNOLOGY BOARD; AMENDING SECTIONS 2-17-506, 2-17-512, 2-17-516, 2-17-521, 44-15-108, AND 44-15-111, MCA; REPEALING SECTIONS 2-15-1021 AND 2-17-513, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 2-17-506, MCA, is amended to read:

"**2-17-506. Definitions.** In this part, unless the context requires otherwise, the following definitions apply:

~~(1) "Board" means the information technology board established in 2-15-1021.~~

~~(2)~~ (1) "Chief data privacy officer" means a person appointed by the department to serve as chief data policy advisor to the director of the department on privacy protection issues, including the implementation of data privacy protections, compliance with federal laws, regulations, and policies relating to data privacy, management of data privacy risks at the department, and development and evaluation of legislative, regulatory, and other policy proposals.

~~(3)~~ (2) "Chief information officer" means a person appointed by the director of the department to carry out the duties and responsibilities of the department relating to information technology.

~~(4)~~ (3) "Commercial off-the-shelf information technology resources" means commercially available information technology resources that are ready-made, are primarily configurable, and can be adapted after purchase to meet the needs of the state.

~~(5)~~ (4) "Data" means any information stored on information technology resources.

~~(6)~~ (5) "Department" means the department of administration established in 2-15-1001.

~~(7)~~ (6) "Digital" means electronic data and the information technology resources used to store, retrieve, and send data.

~~(8)~~ (7) "Digital access system" means a system capable of making data accessible by means of an information technology resource.

~~(9)~~ (8) "Information technology resource" means any hardware, software, and associated services, including state and third-party platforms, networks, systems, or facilities, used to store or transmit information in any form.

~~(10)~~ (9) "Long-range information technology capital project" means a discrete long-range information technology system or application, including the replacement or upgrade to existing systems.

~~(11)~~ (10) "State agency" means any entity of the executive branch, including the university system.

~~(12)~~ (11) "State telecommunications network" means information technology resources administered by the department for the transmission of voice, video, or electronic data from one device to another."

**Section 2.** Section 2-17-512, MCA, is amended to read:

"**2-17-512. Powers and duties of department.** (1) The department is responsible for carrying out the planning and program responsibilities for information technology for state government, except the national guard. The department shall:

(a) encourage and foster the use of new and innovative information technology within state government;

(b) promote, coordinate, and approve the procurement or development of shared information technology application software, management systems, and information that provide similar functions for multiple state agencies;

(c) cooperate with the office of economic development to promote economic development initiatives based on information technology;

(d) establish and enforce a state strategic information technology plan as provided for in 2-17-521;

(e) establish and enforce statewide information technology policies, framework, controls, standards, procedures, and guidelines;

(f) review and approve state agency information technology plans provided for in 2-17-523;

(g) coordinate with the office of budget and program planning to evaluate budget requests that include information technology resources. The department shall make recommendations to the office of budget and program planning for the approval or disapproval of information technology budget requests, including an estimate of the useful life of the asset proposed for purchase and whether the amount should be expensed or capitalized, based on state accounting policy established by the department. An unfavorable recommendation must be based on a determination that the request is not provided for in the approved agency information technology plan provided for in 2-17-523.

~~(h) staff the information technology board provided for in 2-15-1021;~~

~~(i) fund the administrative costs of the information technology board provided for in 2-15-1021;~~

~~(j)~~ (h) review the use of information technology resources for all state agencies;

~~(k)~~ (i) review and approve state agency specifications and procurement methods for the acquisition of information technology resources;

~~(l)~~ (j) review, approve, and sign all state agency contracts and shall review and approve other formal agreements for information technology resources provided by the private sector and other government entities;

~~(m)~~ (k) broker, operate, and maintain information technology resources for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;

~~(n)~~ (l) operate and maintain a state telecommunications network for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;

~~(o)~~ (m) ensure that the state telecommunications network is properly maintained. The department may establish a centralized maintenance program for the state telecommunications network.

~~(p)~~ (n) provide access to digital information and services of the state as provided for in 2-17-532;

~~(q)~~ (o) provide assistance to the legislature, the judiciary, the governor, and state agencies relative to state and interstate information technology matters;

~~(r)~~ (p) establish rates and other charges for services provided by the department;

~~(s)~~ (q) accept federal funds granted by congress or by executive order and gifts, grants, and donations for any purpose of this section;

~~(t)~~ (r) dispose of personal property owned by it in a manner provided by law when, in the judgment of

the department, the disposal best promotes the purposes for which the department is established;

~~(u)~~ (s) implement this part and all other laws for the use of information technology in state government;

~~(v)~~ (t) provide a biennial report to the state administration and veterans' affairs interim committee and to the legislature as provided in 5-11-210 on the information technology activities of the department;

~~(w)~~ (u) represent the state with public and private entities on matters of information technology; and

~~(x)~~ (v) provide full oversight authority over all custom-developed code for all state agencies.

(2) If it is in the state's best interest, the department may contract with qualified private organizations, foundations, or individuals to carry out the purposes of this section.

(3) The director of the department shall appoint the chief information officer to assist in carrying out the department's information technology duties."

**Section 3.** Section 2-17-516, MCA, is amended to read:

"**2-17-516. Exemptions -- department of justice -- secretary of state -- university system -- state auditor -- office of public instruction -- national guard.** (1) Unless the proposed activities would detrimentally affect the operation of any information technology resource or the state telecommunications network, the office of public instruction, the office of the state auditor, and the secretary of state are exempt from 2-17-512~~(1)(k)~~(1)(i) and ~~(1)(l)~~(1)(j).

(2) Unless the proposed activities would detrimentally affect the operation of any information technology resource or the state telecommunications network, the department of justice and the university system are exempt from:

(a) the enforcement provisions of 2-17-512(1)(d) and (1)(e) and 2-17-514;

(b) the approval provisions of 2-17-512(1)(f), 2-17-523, and 2-17-527;

(c) the budget approval provisions of 2-17-512(1)(g); and

(d) the provisions of 2-17-512~~(1)(k)~~(1)(i) and ~~(1)(l)~~(1)(j).

(3) The department of justice, the secretary of state, the university system, the office of the state auditor, and the office of public instruction shall notify the department of proposed activities by using the department's approved process, and the department shall determine if any information technology resource or

the state telecommunications network would be detrimentally affected by the proposed activity.

(4) (a) For purposes of this section, a proposed activity affects the operation of any information technology resource or the state telecommunications network if it detrimentally affects the processing workload, reliability, cost of providing service, or support service requirements of any information technology resource or the state telecommunications network or fails to meet the minimum security policies and standards set by the department.

(b) Potential loss of revenue from fees paid by the department of justice, the secretary of state, the university system, the office of the state auditor, or the office of public instruction for not utilizing services offered by the department are not considered a detrimental effect to any information technology resource or the state telecommunications network. If the department of justice, the secretary of state, the university system, the office of the state auditor, or the office of public instruction does not utilize a service program after the department's rate was set for the biennium, the agency shall continue to pay any fees associated with the service or program for the remainder of the biennium.

(5) When reviewing proposed activities of the university system, the department shall consider and make reasonable allowances for the unique educational needs and characteristics and the welfare of the university system as determined by the board of regents.

(6) When reviewing proposed activities of the office of public instruction, the department shall consider and make reasonable allowances for the unique educational needs and characteristics of the office of public instruction to communicate and share data with school districts.

(7) When reviewing proposed activities of the department of justice or the office of the state auditor, the department shall consider and make reasonable allowances for the unique safety and security needs and characteristics of the department of justice or the office of the state auditor to communicate and share data with federal, state, and local law enforcement entities.

(8) Section 2-17-512~~(1)(s)~~(1)(q) may not be construed to prohibit the university system from accepting federal funds or gifts, grants, or donations related to information technology or telecommunications.

(9) The national guard, as defined in 10-1-101(3), is exempt from 2-17-512."

**Section 4.** Section 2-17-521, MCA, is amended to read:

"**2-17-521. State strategic information technology plan -- biennial report.** (1) The department shall prepare a state strategic information technology plan. ~~The department shall seek the advice of the board in the development of the plan.~~

(2) The plan must:

(a) reflect the policies as set forth in 2-17-505 and 2-17-512 and be in accordance with statewide policies, framework, controls, standards, procedures, and guidelines established by the department;

(b) establish the statewide mission, goals, and objectives for the use of information technology, including goals for electronic access to government records, information, and services; and

(c) establish the strategic direction for how state agencies will develop and use information technology resources to provide state government services.

(3) The department shall update the plan as necessary. The plan and any updates must be distributed as provided in 2-17-522.

(4) The department shall prepare a biennial report on information technology based on agency information technology plans and performance reports required under 2-17-524 and other information considered appropriate by the department. The biennial report must include:

(a) an analysis of the state's information technology infrastructure, including its value, condition, and capacity;

(b) an evaluation of performance relating to information technology;

(c) an assessment of progress made toward implementing the state strategic information technology plan;

(d) an inventory of information technology resources;

(e) agency budget requests for major projects; and

(f) other information as determined by the department or requested by the governor or the legislature."

**Section 5.** Section 44-15-108, MCA, is amended to read:

"**44-15-108. Use of facial recognition technology by state and local government agencies -- when permitted -- restrictions on use -- exemption.** (1) A state or local government agency may use, or

contract with a third-party vendor for the use of, facial verification if the state or local government agency first provides a written use and privacy policy regarding facial recognition technology. The written policy must include, at a minimum:

(a) the specific purpose for facial verification by the state or local government agency;

(b) the length of term for which facial biometric data is being collected or stored; and

(c) notice that facial biometric data may not be collected on an individual without prior written consent by the individual.

(2) The state or local government agency must include an option for access to services without the use of facial verification.

(3) A third-party vendor who is contracted with a state or local government agency shall provide a copy of its written policies in accordance with 44-15-109 for use with the notice requirement outlined in subsection (1).

(4) A state or local government agency shall report the use of facial recognition technology pursuant to subsection (1) to the ~~information technology board created in 2-15-1021~~ criminal intelligence information section established in 44-5-501.

(5) This part does not apply to a state or local government agency that uses facial verification in association with a federal agency to verify the identity of individuals presenting themselves for travel at an airport or other port."

**Section 6.** Section 44-15-111, MCA, is amended to read:

"**44-15-111. Audit -- reporting.** (1) The criminal intelligence information section shall adopt an audit process to ensure that facial recognition technology is only used for legitimate law enforcement purposes, including audits of uses or requests made by law enforcement agencies.

(2) By June 30 of each year, a local law enforcement agency that utilized facial recognition technology shall submit a report to the criminal intelligence information section established in 44-5-501 containing all of the following information based on data from the previous calendar year:

(a) the number of facial recognition searches run;

(b) the offenses that the searches were used to investigate; and

(c) the number of arrests and convictions that resulted from the searches.

(3) By September 1 of each year, in accordance with 5-11-210, the department of justice shall submit a report to the economic affairs interim committee and the law and justice interim committee containing all the following information based on data from the previous calendar year:

(a) the information submitted to the department of justice pursuant to subsection (2);

(b) the names of the law enforcement agencies and other entities requesting facial recognition services;

(c) the number of searches run;

(d) the offenses that the searches were used to investigate; and

(e) the number of arrests and convictions that resulted from the searches.

(4) (a) By June 30 of each year, a third-party vendor providing facial recognition services to a state agency because of a contract under 44-15-108 shall submit a report to the state agency containing all the following information based on data from the previous calendar year:

(i) the number of warrants, subpoenas, or court orders received requesting facial recognition services; and

(ii) a summary of an audit completed by the third-party vendor.

(b) The state agency receiving the report from the third-party vendor shall submit a copy of the report to the economic affairs interim committee~~,~~ and the law and justice interim committee~~, and the information technology board created in 2-15-1021,~~ by September 1 of each year, in accordance with 5-11-210."

NEW SECTION. **Section 7. Repealer.** The following sections of the Montana Code Annotated are repealed:

2-15-1021. Information technology board -- membership -- qualifications -- vacancies -- compensation.

2-17-513. Duties of board.

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

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