

1 HOUSE BILL NO. 47
 2 INTRODUCED BY J. DOOLING
 3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA INFORMATION
 6 TECHNOLOGY ACT; REVISING TERMINOLOGY; ~~REVISING RULEMAKING AUTHORITY;~~ PROVIDING THE
 7 DEPARTMENT OF ADMINISTRATION SOLE AUTHORITY TO TERMINATE AN AGENCY'S INFORMATION
 8 TECHNOLOGY RESOURCE AND REQUIRING THE USE OF AN ALTERNATIVE INFORMATION
 9 TECHNOLOGY RESOURCE; AND AMENDING SECTIONS 2-4-302, 2-6-1102, 2-17-505, 2-17-506, 2-17-512,
 10 2-17-513, 2-17-514, 2-17-515, 2-17-516, ~~2-17-518~~, 2-17-521, 2-17-523, 2-17-524, 2-17-526, 2-17-532, 2-17-
 11 533, 2-17-534, 2-17-546, 2-17-551, 2-17-552, 2-17-1101, 2-17-1102, 2-17-1103, 2-18-101, 7-22-2151, 10-3-
 12 106, 61-3-346, 61-3-347, 61-11-105, 75-10-805, AND 87-1-272, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **Section 1.** Section 2-4-302, MCA, is amended to read:

17 **"2-4-302. Notice, hearing, and submission of views.** (1) (a) Prior to the adoption, amendment, or
 18 repeal of any rule, the agency shall give written notice of its proposed action. The proposal notice must include
 19 a statement of either the terms or substance of the intended action or a description of the subjects and issues
 20 involved, the reasonable necessity for the proposed action, and the time when, place where, and manner in
 21 which interested persons may present their views on the proposed action. The reasonable necessity must be
 22 written in plain, easily understood language.

23 (b) The agency shall state in the proposal notice the date on which and the manner in which
 24 contact was made with the primary sponsor as required in subsection (2)(e). If the notification to the primary
 25 sponsor was given by mail, the date stated in the proposal notice must be the date on which the notification
 26 was mailed by the agency. If the proposal notice fails to state the date on which and the manner in which the
 27 primary sponsor was contacted, the filing of the proposal notice under subsection (2)(a) is ineffective for the
 28 purposes of this part and for the purposes of the law that the agency cites in the proposal notice as the

1 contact the primary sponsor by using less than all of these three methods of contact, the other methods need
2 not be used.

3 (9) This section applies to the department of labor and industry adopting a rule relating to a
4 commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of
5 department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704."
6

7 **Section 2.** Section 2-6-1102, MCA, is amended to read:

8 **"2-6-1102. Department of administration -- powers and duties.** (1) To ensure compatibility with the
9 information technology systems of state government and to promote adherence to records management
10 principles and best practices, the department of administration, in consultation with the secretary of state, shall
11 establish standards for technological compatibility for state agencies for records management equipment or
12 systems used to electronically capture, store, or retrieve public records through computerized, optical, or other
13 electronic methods.

14 (2) The department of administration, in consultation with the secretary of state, shall approve all
15 acquisitions of executive branch agency records management equipment or systems used to electronically
16 capture, store, or retrieve public records through computerized, optical, or other electronic methods to ensure
17 compatibility with the standards developed under subsection (1).

18 (3) The department of administration is responsible for the management and operation of
19 equipment, systems, facilities, and processes integral to the department's central computer center and
20 statewide telecommunications system information technology resources and the state telecommunications
21 network."
22

23 **Section 3.** Section 2-17-505, MCA, is amended to read:

24 **"2-17-505. Policy.** (1) It is the policy of the state that information technology be used to improve the
25 quality of life of Montana citizens by providing educational opportunities, creating quality jobs and a favorable
26 business climate, improving government, and protecting individual privacy and the privacy of the information
27 contained within information technology systems resources.

28 (2) It is the policy of the state that the development of information technology resources in the

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1 state must be conducted in an organized, deliberative, and cost-effective manner.

2 (3) It is the policy of the state that information technology is essential and vital to the people of the
3 state of Montana, and the services, systems, and infrastructure are therefore considered to be an asset of the
4 state.

5 (4) It is the policy of the state that commercial off-the-shelf information technology resources be
6 used whenever feasible, rather than the commissioning of custom solutions.

7 ~~(4)(5)~~ The following principles must guide the development of state information technology resources:

8 (a) There are statewide information technology ~~policies, standards, procedures, and guidelines~~
9 policies, framework, controls, standards, procedures, and guidelines applicable to all state agencies and other
10 entities using ~~the state network~~ an information technology resource.

11 (b) Mitigation of risks is a priority in order to protect individual privacy and the privacy of
12 information contained within information technology ~~systems~~ resources as they become more interconnected
13 and as the liabilities stemming from the risk to information technology, ~~also known as cyber risk~~, have
14 increased.

15 (c) Whenever feasible and not an undue ~~cyber~~ risk, common data is entered once and shared
16 among government entities at any level or political subdivision.

17 (d) Third-party providers of data, such as citizens, businesses, and other government entities, are
18 responsible for the accuracy and integrity of the data provided to government entities.

19 (e) Third-party providers of information technology resources, such as infrastructure as a service,
20 platform as a service, and software as a service, shall comply with state security and information technology
21 policies, risk management framework, controls, standards, procedures, and guidelines when providing
22 information technology resources to government entities.

23 ~~(e)(f)~~ Government entities are required to conduct business through open, transparent processes to
24 ensure accountability to the citizenry, and information technology provides access to information through simple
25 and expeditious procedures.

26 ~~(f)(g)~~ In order to minimize ~~unwarranted~~ duplication, shared or similar information technology ~~systems~~
27 resources and data management applications ~~are~~ must be implemented and managed in a coordinated
28 manner.

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1 ~~(g)~~(h) Planning and development of information technology resources are conducted in conjunction
2 with budget development and approval.

3 ~~(h)~~(i) Information technology ~~systems~~resources are deployed aggressively whenever it can be
4 shown that it will provide improved services to Montana citizens.

5 ~~(i)~~(j) Public-private partnerships are used to deploy information technology ~~systems~~resources when
6 practical and cost-effective.

7 ~~(j)~~(k) ~~State information technology systems~~ Information technology resources are developed in
8 cooperation with the federal government and local governments with the objective of providing seamless
9 access to information and services to the greatest degree possible.

10 ~~(k)~~(l) ~~State information technology systems~~ Information technology resources are able to
11 accommodate ~~electronic~~digital transmissions between the state and its citizens, businesses, and other
12 government entities, including providing ~~financial~~ incentives for citizens and businesses to use ~~electronic~~digital
13 government services.

14 ~~(l)~~(m) ~~State information technology systems~~ Information technology resources are able to embrace
15 the economics of digitized records to avoid duplication and transport costs.

16 ~~(m)~~(n) ~~Electronic~~Digital record creation, management, storage, and retrieval processes and
17 procedures are used to create and deliver professional records management experiences for the citizens of
18 Montana.

19 ~~(n)~~(o) ~~State information technology systems~~ Information technology resources are able to embrace
20 continuous process improvement initiatives in order to keep pace with new and emerging technologies and
21 delivery channels in order to allow citizens to determine when, where, and how they interact with government
22 agencies.

23 ~~(5)~~(6) It is the policy of the state that the department must be accountable to the governor, the
24 legislature, and the citizens of Montana."

25

26 **Section 4.** Section 2-17-506, MCA, is amended to read:

27 **"2-17-506. Definitions.** In this part, unless the context requires otherwise, the following definitions
28 apply:

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

2 (2) ~~"Central computer center" means any stand-alone or shared computer and associated equipment,~~
3 ~~software, facilities, and services administered by the department for use by state agencies.~~

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

9 ~~(3)(2)(3)~~ "Chief information officer" means a person appointed by the director of the department
10 to carry out the duties and responsibilities of the department relating to information technology.

11 (3)(4) "Commercial off-the-shelf information technology resources" means commercially available
12 information technology resources that are ready-made, are primarily configurable, and can be adapted after
13 purchase to meet the needs of the state.

14 ~~(4)(3)(5)~~ "Data" means any information stored on information technology resources.

15 ~~(5)(4)(6)~~ "Department" means the department of administration established in 2-15-1001.

16 (5)(7) "Digital" means electronic data and the information technology resources used to store,
17 retrieve, and send data.

18 ~~(6)(8) "Electronic-Digital access system" means a system capable of making data accessible by~~
19 ~~means of an information technology facility in a voice, video, or electronic data form, including but not limited to~~
20 ~~the internet resource.~~

21 (7)(9) "Information technology resource" means any hardware, software, and associated services,
22 and infrastructure including state and third-party platforms, networks, systems, or facilities, used to store or
23 transmit information in any form, including voice, video, and electronic data.

24 (8)(10) "Long-range information technology capital project" means a discrete long-range information
25 technology system or application, including the replacement or upgrade to existing systems.

26 ~~(9)(11)~~ "Private safety agency" has the same meaning as provided in 10-4-101.

27 ~~(10)(12)~~ "Public safety agency" has the same meaning as provided in 10-4-101.

28 ~~(11)(13)~~ "State agency" means any entity of the executive branch, including the university system.

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1 ~~(12)(14)~~"Statewide State telecommunications network" means any telecommunications facilities,
2 circuits, equipment, software, and associated contracted services information technology resources
3 administered by the department for the transmission of voice, video, or electronic data from one device to
4 another."

5

6 **Section 5.** Section 2-17-512, MCA, is amended to read:

7 **"2-17-512. Powers and duties of department.** (1) The department is responsible for carrying out the
8 planning and program responsibilities for information technology for state government, except the national
9 guard. The department shall:

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

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

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

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

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

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

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

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

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- 1 (i) fund the administrative costs of the information technology board provided for in 2-15-1021;
- 2 (j) review the use of information technology resources for all state agencies;
- 3 (k) review and approve state agency specifications and procurement methods for the acquisition of
4 information technology resources;
- 5 (l) review, approve, and sign all state agency contracts and shall review and approve other formal
6 agreements for information technology resources provided by the private sector and other government entities;
- 7 (m) broker, operate, and maintain a central computer center information technology resources for
8 the use of state government, political subdivisions, and other participating entities under terms and conditions
9 established by the department;
- 10 (n) operate and maintain a statewide state telecommunications network for the use of state
11 government, political subdivisions, and other participating entities under terms and conditions established by
12 the department;
- 13 (o) ensure that the statewide state telecommunications network is properly maintained. The
14 department may establish a centralized maintenance program for the statewide state telecommunications
15 network.
- 16 (p) coordinate public safety communications on behalf of public and private safety agencies as
17 provided for in 2-17-543 through 2-17-545;
- 18 (q) manage the state 9-1-1 program as provided for in Title 10, chapter 4, part 3;
- 19 (r) provide ~~electronic access to~~ digital information and services of the state as provided for in 2-17-
20 532;
- 21 (s) provide assistance to the legislature, the judiciary, the governor, and state agencies relative to
22 state and interstate information technology matters;
- 23 (t) establish rates and other charges for services provided by the department;
- 24 (u) accept federal funds granted by congress or by executive order and gifts, grants, and
25 donations for any purpose of this section;
- 26 (v) dispose of personal property owned by it in a manner provided by law when, in the judgment of
27 the department, the disposal best promotes the purposes for which the department is established;
- 28 (w) implement this part and all other laws for the use of information technology in state

1 government;

2 (x) provide a biennial report to the state administration and veterans' affairs interim committee and

3 to the legislature as provided in 5-11-210 on the information technology activities of the department; ~~and~~

4 (y) represent the state with public and private entities on matters of information technology; and

5 (z) provide full oversight authority over all custom-developed code for all state agencies.

6 (2) If it is in the state's best interest, the department may contract with qualified private

7 organizations, foundations, or individuals to carry out the purposes of this section.

8 (3) The director of the department shall appoint the chief information officer to assist in carrying out

9 the department's information technology duties."

10

11 **Section 6.** Section 2-17-513, MCA, is amended to read:

12 **"2-17-513. Duties of board.** The board shall:

13 (1) provide a forum to:

14 (a) guide state agencies, the legislative branch, the judicial branch, and local governments in the
15 development and deployment of intergovernmental information technology resources;

16 (b) share information among state agencies, local governments, and federal agencies regarding
17 the development of information technology resources;

18 (2) advise the department:

19 (a) in the development of cooperative contracts for the purchase of information technology
20 resources;

21 (b) regarding the creation, management, and administration of electronic-digital government
22 services and information on the internet;

23 (c) regarding the administration of electronic-digital government services contracts;

24 (d) on the priority of government services to be provided electronically digitally;

25 (e) on convenience fees prescribed in 2-17-1102 and 2-17-1103, if needed, for electronic-digital
26 government services; and

27 (f) on any other aspect of providing electronic-digital government services;

28 (3) review and advise the department on:

1 and recommendations that the board presented to the department."

2

3 **Section 7.** Section 2-17-514, MCA, is amended to read:

4 **"2-17-514. Department -- enforcement responsibilities.** (1) If the department determines that an
5 agency is not in compliance with the state strategic information technology plan provided for in 2-17-521, the
6 agency information technology plan provided for in 2-17-523, or the statewide information technology policies,
7 framework, controls, and standards, procedures, and guidelines provided for in 2-17-505 and 2-17-512, the
8 department may cancel or modify any contract, project, or activity that is not in compliance.

9 ~~(2) Prior to taking action provided for in subsection (1), the department shall review with the board any~~
10 ~~activities that are not in compliance.~~

11 (2) If the department determines that an agency is not in compliance with the state security
12 policies, framework, controls, standards, procedures, and guidelines provided for in 2-17-534, the department
13 may take appropriate action, in its sole discretion, up to and including terminating the information technology
14 resource and requiring the use of an alternative information technology resource.

15 (3) Any contract entered into by an agency that includes information technology resources must
16 include language developed by the department that references the department's enforcement responsibilities
17 provided for in subsection (1). A contract that does not contain the required language is considered to be in
18 violation of state law and is voidable pursuant to subsection (1). The language developed by the department
19 may not be varied pursuant to 18-4-224."

20

21 **Section 8.** Section 2-17-515, MCA, is amended to read:

22 **"2-17-515. Granting exceptions to state agencies.** Subject to 2-17-516, the department may grant
23 exceptions to any policy, standard, or other requirement of this part if it is in the best interests of the state of
24 Montana. The department shall inform the ~~board~~ governor, the office of budget and program planning, and the
25 legislative finance committee of all exceptions that are granted and of the rationale for granting the exceptions.
26 The department shall maintain written documentation that identifies the terms and conditions of the exception
27 and the rationale for the exception. If an exception is granted, the department shall provide the written
28 documentation in accordance with 5-11-210."

1

2 **Section 9.** Section 2-17-516, MCA, is amended to read:

3 **"2-17-516. Exemptions -- department of justice -- secretary of state -- university system -- STATE**

4 **AUDITOR -- office of public instruction -- national guard.** (1) Unless the proposed activities would

5 detrimentally affect the operation of ~~the central computer center or the statewide~~ state ~~ANY INFORMATION~~

6 ~~TECHNOLOGY RESOURCE OR THE STATE~~ telecommunications network, the office of public instruction, ~~THE OFFICE~~

7 ~~OF THE STATE AUDITOR,~~ and the secretary of state are exempt from 2-17-512(1)(k) and (1)(l).

8 (2) Unless the proposed activities would detrimentally affect the operation of ~~the central computer~~

9 ~~center or the statewide~~ any information technology resource or the state telecommunications network, the

10 department of justice and the university system are exempt from:

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

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

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

14 (d) the provisions of 2-17-512(1)(k) and (1)(l).

15 (3) ~~The department, upon notification of proposed activities by the~~ THE department of justice, the

16 secretary of state, the university system, ~~or~~ THE OFFICE OF THE STATE AUDITOR, AND the office of public

17 instruction; ~~SHALL NOTIFY THE DEPARTMENT OF PROPOSED ACTIVITIES BY~~ SUBMITTING AN INFORMATION TECHNOLOGY

18 PROCUREMENT REQUEST AND THE DEPARTMENT ~~using the department's approved process, and the department~~

19 shall determine if ~~the central computer center or the statewide~~ any information technology resource or the state

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

21 (4) (a) For purposes of this section, a proposed activity affects the operation of ~~the central~~

22 ~~computer center or the statewide~~ any information technology resource or the state telecommunications network

23 if it detrimentally affects the processing workload, reliability, cost of providing service, or support service

24 requirements of ~~the central computer center or the statewide~~ any information technology resource or the state

25 telecommunications network or fails to meet the minimum security policies and standards set by the

26 department.

27 (b) Potential loss of revenue from fees paid by the department of justice, the secretary of state, the

28 university system, THE OFFICE OF THE STATE AUDITOR, or the office of public instruction for not utilizing services

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1 offered by the department are not considered a detrimental effect to ~~the statewide telecommunications network~~
2 ~~or central computer center~~ any information technology resource or the state telecommunications network. If the
3 department of justice, the secretary of state, the university system, THE OFFICE OF THE STATE AUDITOR, or the
4 office of public instruction does not utilize a service program after the department's rate was set for the
5 biennium, the agency shall continue to pay any fees associated with the service or program for the remainder of
6 the biennium.

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

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

13 (7) When reviewing proposed activities of the department of justice OR THE OFFICE OF THE STATE
14 AUDITOR, the department shall consider and make reasonable allowances for the unique safety and security
15 needs and characteristics of the department of justice OR THE OFFICE OF THE STATE AUDITOR to communicate and
16 share data with federal, state, and local law enforcement entities.

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

19 (9) The national guard, as defined in 10-1-101(3), is exempt from 2-17-512."
20

21 **Section 10. Section 2-17-518, MCA, is amended to read:**

22 **"2-17-518. Rulemaking authority. (1) The department shall may adopt rules to implement this part,**
23 **including the following:**

24 **(a) ~~rules to guide the review and approval process for state agency software and management~~**
25 **~~systems that provide similar functions for multiple state agencies, which must include but are not limited to:~~**

26 **~~(i) identifying the software and management systems that must be approved;~~**

27 **~~(ii) establishing the information that state agencies are required to provide to the department; and~~**

28 **~~(iii) establishing guidelines for the department's approval decision;~~**

- 1 ~~(b) — rules to guide the review and approval process for state agency acquisition of information~~
- 2 ~~technology resources, which must include but are not limited to processes and requirements for:~~
- 3 ~~(i) — agency submissions to gain approval for acquiring information technology resources;~~
- 4 ~~(ii) — approving specifications for information technology resources; and~~
- 5 ~~(iii) — approving contracts for information technology resources; and~~
- 6 ~~(c) — rules for granting exceptions from the requirements of this part, which must include but are not~~
- 7 ~~limited to:~~
- 8 ~~(i) — a process for applying for an exception; and~~
- 9 ~~(ii) — guidelines for determining the department's approval decision.~~
- 10 ~~(2) — The department may adopt rules to guide the development of state agency information~~
- 11 ~~technology plans. The rules may include:~~
- 12 ~~(a) — agency plan review procedures;~~
- 13 ~~(b) — agency plan content requirements;~~
- 14 ~~(c) — guidelines for the department's approval decision; and~~
- 15 ~~(d) — dispute resolution processes and procedures.~~
- 16 ~~(3) — Adequate rules for the use of any information technology resources must be adopted by the~~
- 17 ~~supreme court for judicial branch agencies.~~
- 18 ~~(4) — The legislative council shall adopt enterprise principles and technical standards within an~~
- 19 ~~enterprise architecture program as a part of the legislative branch information technology plan, as provided for~~
- 20 ~~in 5-11-405, that will fulfill the intent of adequate rules for use of information technology resources for the~~
- 21 ~~consolidated legislative branch, as provided for in 5-2-504."~~

Section 10. 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

1 ~~standards and policies, framework, controls, standards, procedures, and guidelines~~ established by the
2 department;

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

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

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

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

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

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

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

17 (d) an inventory of ~~state information services, equipment, and proprietary software~~ information
18 technology resources;

19 (e) agency budget requests for major projects; and

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

22

23 **Section 11.** Section 2-17-523, MCA, is amended to read:

24 **"2-17-523. Agency information technology plans -- policy.** (1) Each state agency is required to
25 develop and maintain an agency information technology plan. The agency information technology plans must
26 reflect the content and format requirements specified in 2-17-524.

27 (2) An agency information technology plan must be submitted to and approved by the department
28 as described in 2-17-527.