

**SENATE JOURNAL  
60TH LEGISLATURE**

**ADDENDUM**

Helena, Montana  
2007

Senate Chambers  
State Capitol

**MESSAGES FROM THE GOVERNOR**

April 28, 2007

The Honorable Brad Johnson  
Secretary of State  
State Capitol  
Helena, MT 59620

Dear Secretary Johnson:

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) 552, **“AN ACT AUTHORIZING A \$100 INCOME TAX CREDIT FOR QUALIFIED VOLUNTEER FIREFIGHTERS AND EMERGENCY MEDICAL TECHNICIANS; PROVIDING QUALIFICATIONS TO CLAIM THE CREDIT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.”**

SB 552 grants a tax credit to volunteer firefighters and emergency medical technicians. Like the legislators who voted for this bill, words do not express the heartfelt appreciation I have for the men and women who perform these volunteer emergency services for their friends, neighbors, and communities. However, the fiscal impact of the bill has been estimated at close to \$1 million per biennium. As Chief Executive for the State of Montana, I am ultimately responsible to the people of Montana for the sound management of the state’s fiscal resources – resources derived from the taxpayer’s pockets.

Ninety days ago, pursuant to the constitutional and statutory requirements, I submitted a balanced budget to the Legislature for its consideration. Yesterday, the 60<sup>th</sup> Legislature adjourned, *sine die*, without fulfilling its constitutional mandate to enact a balanced budget. The Legislature failed to enact either a comprehensive spending package or a comprehensive revenue package. I will receive no general appropriation bill from the Legislature appropriating money for the ordinary expenses of Montana’s executive, legislative, and judicial branches of government or for Montana’s public schools. I will receive no comprehensive tax legislation.

In my faithful execution of the laws, it would be fiscally irresponsible for me to sign SB 552 in the absence of receiving from the Legislature a comprehensive, balanced state budget.

Because this bill passed with the constitutional majorities, you will be polled by the Secretary of State as to whether to override my veto of SB 552. I urge you to do as I have done here - exercise fiscal responsibility and consider your own constitutional mandates - and sustain my veto.

Sincerely,

BRIAN SCHWEITZER  
GOVERNOR

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April 28, 2007

The Honorable Brad Johnson  
Secretary of State  
State Capitol  
Helena, MT 59620

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Sincerely,

BRIAN SCHWEITZER  
GOVERNOR

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May 3, 2007

The Honorable Brad Johnson  
Secretary of State  
State Capitol  
Helena, MT 59620

Dear Secretary Johnson:

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) 537, **“AN ACT REVISING LAWS RELATING TO PREPAID LEGAL SERVICES; DEFINING ‘LEGAL SERVICE EXPENSE PLAN’; PROVIDING THAT LEGAL SERVICE EXPENSE PLANS ARE NOT SUBJECT TO THE INSURANCE CODE; AMENDING SECTIONS 33-1-102, 33-1-206, AND 33-17-504, MCA; REPEALING SECTION 33-1-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.”**

SB 537 amends Montana laws related to prepaid legal service plans, which are contracts for the provision of legal services between plan administrators and individuals or groups. In 2001, the Legislature first passed legislation to regulate prepaid legal service plans as a type of casualty insurance. The legislation arose because of questions and complaints by both consumers and the marketers involved in the multi-level marketing operations under which the plans often are sold. The 2001 legislation helped provide the consumer protection necessary to assure that the plans were of value and that they were marketed by those licensed to market insurance products.

Now, six years later, SB 537 would remove the classification of these services as a type of casualty insurance. Instead, they would be regulated generally under Montana’s consumer protection laws, but those laws do not provide assurance at the front end that the person marketing the product has the proper professional training to sell the product and that the product being sold has the value that it is represented to have.

I do not believe that SB 537 serves the best interests of Montana’s consumers. I am concerned that if prepaid legal service plans are no longer regulated under Montana’s insurance code, the same complaints and questions about them that arose prior to the 2001 legislation will again arise.

Sincerely,

BRIAN SCHWEITZER  
GOVERNOR

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May 8, 2007

The Honorable Brad Johnson  
Secretary of State  
State Capitol  
Helena, MT 59620

Dear Secretary Johnson:

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) 407, a bill entitled "AN ACT REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ISSUE A GENERAL PERMIT GOVERNING THE AUTHORIZATION FOR LIMITED DISCHARGES OF WATER PRODUCED FROM COAL BED METHANE EXTRACTION INTO EXISTING IMPOUNDMENTS FOR WATER FOR LIVESTOCK AND WILDLIFE; PROVIDING A WATER QUALITY STANDARD; REQUIRING REPORTS TO THE LEGISLATURE; AND PROVIDING A CONTINGENT EFFECTIVE DATE."

Senate Bill 407 would allow the discharge Coal Bed Methane (CBM) water into unlined ponds, an activity which, especially when coupled with precipitation events, destroys soil capability and threatens any downstream irrigated agriculture and thus threatens an industry that has been a vital to our state's economy for over a hundred years. In addition, the EPA has indicated that if SB 407 becomes law the state could be in violation of federal clean water standards.

Ponds that are used for discharge generally have leakage, and a channel below and between ponds is likely to have flows as a result of the leakage. The salty CBM water will ultimately find its way into designated state waters. For example, the high spring runoff into the Tongue River has an EC twice as high as usual for this time of year, and it is believed that a portion of the increased salt load may be coming from overflow of Coal Bed Methane discharge ponds into tributaries of the Tongue, or flushing of salts that CBM water has added to soils.

Furthermore, if SB 407 were to become law, Montana would likely be in violation of minimum federal water quality standards. EPA has warned us of this, stating that SB 407 "potentially raises concerns about whether important parts of the State's environmental programs meet federal requirements." Specifically, the bill removes beneficial use protections without going through the normally proscribed analysis required by the Environmental Protection Agency, and it exempts Coal CBM discharges into ephemeral channels from non-degradation review.

For these reasons, it is imprudent to allow SB 407 to become law.

Sincerely,

Brian Schweitzer  
GOVERNOR

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May 14, 2007

The Honorable Brad Johnson  
Secretary of State  
State Capitol  
Helena, MT 59620

Dear Secretary Johnson:

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 (HB) 577, **“AN ACT STANDARDIZING MEDICAL ASSISTANCE UNDER THE MONTANA MEDICAID PROGRAM TO CHILDREN UNDER 19 YEARS OF AGE; AND AMENDING SECTION 53-6-131, MCA.”**

HB 577 expands the federal poverty level threshold of children for Medicaid from 100% to 133% for children 6 years of age and older and under 19. Currently, only children under age 6 are covered by Medicaid up to 133% of the federal poverty level. The primary reason for my veto of HB 577 is that the Medicaid program is an entitlement program, but state funding for the expansion required under the bill is not included in HB 2 - now being considered by the special session of the Legislature. Despite the fact it is not funded, if HB 577 were to become law, it is estimated that the ongoing cost to the state general fund would be close to \$1.5 million in the coming biennium and would exceed \$2 million/biennium by fiscal years 2010 and 2011 and thereafter.

Despite my decision to veto this bill, there is good news for children in Montana, as HB 577 was not the only bill passed by the 60<sup>th</sup> Legislature addressing children’s health insurance. Notably, SB 22 expands CHIP (the Children’s Health Insurance Program) eligibility to children whose combined family income is 175% of the federal poverty level, from the current level of 150%. Contemporaneous to issuing this veto of HB 577, I have signed into law SB 22. It is anticipated that under SB 22, 2,100 new children will obtain coverage under the CHIP program. Moreover, funding for the expansion of the CHIP program contained in SB 22 is included in HB 2 – the state budget bill – which is now under consideration by the Legislature in this special session. Additionally, the 60<sup>th</sup> Legislature passed and I signed into law HB 198, expanding dental care benefits under CHIP to cover significant dental needs beyond those covered in the basic plan.

As well, the Legislature passed and I signed into law HB 406, which will provide state assistance for the creation or expansion of community health centers through state funded grants to the centers. Community health centers serve not only Montana’s children but their entire families. Finally, HB 2, in the version currently being considered by this special session of the Legislature, includes nearly \$20 million of increased funding for caseload growth in Medicaid-supported children’s mental health services.

In conclusion, while my decision to veto HB 577 was not an easy one, absent funding for the expanded entitlement program under the bill, I believe I had no other choice. On the brighter side, I believe there were many other positive actions taken by the Legislature, which received my support, that will be improve the health and lives of Montana’s children, and for this I believe we should all be proud.

Sincerely,

BRIAN SCHWEITZER  
GOVERNOR

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May 15, 2007

The Honorable Brad Johnson  
Secretary of State  
State Capitol  
Helena, MT 59620

Dear Secretary Johnson:

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) 65, a bill entitled "AN ACT PROVIDING THAT APPROPRIATIONS FROM THE HEALTH AND MEDICAID INITIATIVES ACCOUNT MAY NOT BE INCREASED BY PROGRAM TRANSFERS FROM OTHER STATE SPECIAL REVENUE ACCOUNTS; AMENDING SECTION 53-6-1201, MCA; AND PROVIDING AN EFFECTIVE DATE."

While I agree with the concept behind SB 65 of preserving and utilizing State Special Revenue Accounts for specific purposes, the bill may unreasonably prevent the Executive Branch from addressing a potential financial problem in the future. More specifically, SB 65 restricts the ability of DPHHS to transfer state special revenue authority between appropriations within a biennium to maintain programs. It may, within a biennium, result in the reduction of services or the creation of waiting lists. Appropriation transfers from unrestricted Health and Medicaid Initiative Account funded programs or general fund appropriation, if available, would be the only source of additional funding. This would be too restrictive when it comes to resolving an unforeseen financial issue in a DPPHS program that impacts services to citizens of the State of Montana.

For this reason, I hope you will sustain my veto.

Sincerely,

Brian Schweitzer  
GOVERNOR

May 17, 2007

The Honorable Brad Johnson  
Secretary of State  
State Capitol  
Helena, MT 59620

Dear Secretary Johnson:

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) 8, "**AN ACT REVISING THE LAWS GOVERNING THE SALE, EXCHANGE, AND TRANSFER OF STATE LAND; REQUIRING THE BOARD OF LAND COMMISSIONERS TO CONTRACT WITH A QUALIFIED LAND APPRAISER AND AN ATTORNEY TO PROVIDE INDEPENDENT INFORMATION AND ANALYSIS AS REQUIRED BY THE BOARD; PROVIDING FOR THE PAYMENT OF**

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**CONTRACT EXPENSES FROM THE TRUST LAND ADMINISTRATION ACCOUNT; REQUIRING THE BOARD OF LAND COMMISSIONERS TO USE THE CONTRACTED SERVICES IN THE SALE, PURCHASE, EXCHANGE, AND TRANSFER OF STATE LAND; AMENDING SECTIONS 77-1-108, 77-1-121, AND 77-1-202, MCA; AND PROVIDING AN EFFECTIVE DATE.”**

SB 8 would require the Board of Land Commissioners to contract with a land appraiser and an attorney for all sales, purchases, exchanges, and transfers of state land. Additionally, the appraiser under contract would be required to contract with another “regional appraiser” and supervise the work of the “regional appraiser.” The bill imposes duties upon the “board lawyer,” although it is unclear whether the “board lawyer” is the contracted lawyer or current in-house legal counsel. The cost to the Trust Administration Account under SB 8 would be \$270,000 in the coming biennium and a little more than that in the following biennium.

I have issued this veto of SB 8 because I believe its requirements are unnecessary and the intent of the bill can be accomplished in a more cost-effective manner. The Land Board is already able to contract with independent appraisers for all sales, purchases, exchanges, and transfers of state land, and in fact does contract with outside appraisers. More importantly, the Department of Natural Resources and Conservation has indicated to me that it intends to recommend to the Land Board the adoption of rules to contract with outside land appraisers. If the Land Board concurs, a primary objective of SB 8 would be accomplished through the rule-making process.

A difference, however, is that SB 8 would require the Land Board to not only contract with an outside appraiser, but further would require the contracted appraiser to contract with and supervise another appraiser. Given that the Department has an in-house appraiser, SB 8 would result in the involvement of three appraisers (one in-house and two contracted) for every state land sale, purchase, or exchange. I believe this requirement for an additional level of oversight in the work of the contracted appraiser, and the cost to the Trust Administration Account, is unnecessary and not justified by any past experience or any future circumstance I can anticipate.

Finally, with regard to the requirement that the Land Board contract with outside legal counsel for all land sales, purchases, exchanges, and transfers, the Land Board already has in-house legal counsel with specialized knowledge of state land sales. In instances in which the Land Board has a need to contract for outside legal counsel, there is nothing under current law that prevents it from doing so. To require the Land Board to contract for outside legal counsel in all instances would impose an expense on the Trust Administration Account which I believe is unnecessary.

Because this bill passed by the required majorities, you will be polled on whether to sustain or override my veto. I ask you to sustain my veto and save the Trust Administration Account expenditures that I do not believe are necessary. Please be aware that no current member of the Land Board testified in support of SB 8.

Sincerely,

BRIAN SCHWEITZER  
GOVERNOR

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May 17, 2007

The Honorable Brad Johnson  
Secretary of State  
State Capitol  
Helena, MT 59620

Dear Secretary Johnson:

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) 393, **“AN ACT REQUIRING A COURT TO ORDER MEDIATION IN A MARRIAGE DISSOLUTION IN WHICH PARENTING OF MINOR CHILDREN IS DISPUTED AND THE PARTIES CANNOT AGREE ON THE TERMS OF PARENTING; AND AMENDING SECTION 40-4-301, MCA.”**

Currently, Montana law authorizes district courts to allow mediation of family law cases where the court considers mediation to be advisable or where the parties request mediation be ordered. Mont. Code Ann. § 40-4-301. SB 393 amends this statute by requiring courts to order mediation in cases in which the parents are unable to agree upon a parenting plan. The bill contains some limited exceptions to the mandatory mediation requirements, such as in cases involving domestic abuse.

I am a strong supporter of mediation as a method to resolve disputes, including parenting disputes. Agreements voluntarily reached by parties through the give and take of negotiations generally are more satisfactory to the parties than decisions imposed by judges in which there are often winners and losers.

My concern with SB 393, however, is that in requiring mediation, the one-size-fits-all approach may not always be appropriate. For example, mandatory mediation may not be appropriate if one parent suffers from mental illness or drug or alcohol addiction. It may not be feasible if one parent is out of state, or even, for example, if one parent is serving overseas in the military.

Most importantly, however, is that SB 393 no longer contains the financial feasibility exception amended into the bill by the Senate, but stripped off by the House. Without the financial feasibility exception, questions about the constitutionality of the bill under both the federal and state constitutions have been brought to my attention. Mediation, while often effective, can cost parties in family law cases hundreds if not thousands of dollars. In *Boddie v. Connecticut*, 401 U.S. 371 (1971), the United States Supreme Court held that a state denies due process of law to indigent persons by refusing to permit them to bring divorce actions except on payment of court fees and costs that they are unable to pay. Montana law currently contains fee-waiving provisions for the indigent who both file and defend lawsuits - including petitions for dissolution of marriage - in Montana's district courts. Mont. Code Ann. § 25-10-404. Without a comparable financial feasibility exception for the mandatory mediation provisions of SB 393, the bill poses constitutional concerns similar to those that were addressed by the United States Supreme Court in *Boddie*. Additionally, the bill appears to run counter to Montana's express constitutional guarantee of access to court.

While I commend Senator Gillan's efforts to encourage mediation in family law disputes, for the above-stated reasons, I have issued this veto of SB 393.

Sincerely,

BRIAN SCHWEITZER  
GOVERNOR



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May 17, 2007

The Honorable Brad Johnson  
Secretary of State  
State Capitol  
Helena, MT 59620

Dear Secretary Johnson:

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) 514, **“AN ACT REVISING CERTAIN PROVISIONS RELATED TO THE ADMINISTRATION OF INDIVIDUAL INCOME TAXES; REQUIRING THE DEPARTMENT OF REVENUE TO PROVIDE ONE NOTICE OF A TAX DEFICIENCY TO MARRIED TAXPAYERS FILING SEPARATELY ON THE SAME FORM; REQUIRING THE DEPARTMENT OF REVENUE TO REPORT TO THE INTERNAL REVENUE SERVICE THE NET AMOUNT OF STATE TAXES REFUNDED TO MARRIED TAXPAYERS FILING SEPARATELY ON THE SAME FORM; REVISING THE UNIFORM PENALTY ASSESSMENTS ON DELINQUENT INDIVIDUAL INCOME TAXES AND CERTAIN OTHER TAXES; PROVIDING THAT INTEREST ASSESSMENTS ON DELINQUENT INCOME TAXES ARE BASED ONLY ON THE FEDERAL UNDERPAYMENT RATE ASSESSED AGAINST INDIVIDUAL INCOME TAXPAYERS; CLARIFYING THE TAXATION OF FEDERAL INCOME TAX REFUNDS; CLARIFYING THAT UNDERPAYMENT INTEREST ON ESTIMATED INDIVIDUAL INCOME TAXES IS NOT REQUIRED UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 15-1-216, 15-30-111, 15-30-241, 15-39-105, AND 15-39-107, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.”**

SB 514 amends Montana statutes governing the administration of individual income taxes, primarily providing lower penalties to taxpayers who file late tax returns. Those advocating for the bill cast it as a measure that would bring Montana’s income tax laws in conformity with federal income tax laws.

My primary reason for vetoing SB 514 is its cost. The fiscal note for the bill estimates that SB 514 would cost the state general fund in excess of \$5 million in fiscal years 2008 and 2009 and in excess of \$8 million in the following biennium. This multi-million dollar impact on the state general fund is not part of the state budget passed by the Legislature meeting in special session. Because the bill would result in significant ongoing revenue reduction to the State without providing a replacement revenue source, it would be fiscally irresponsible for me to do anything but veto the bill.

Additionally, I comment on the substance of the bill. Although it was cast as a measure to conform Montana’s late filing income tax penalties to federal law, SB 514 “cherry picks” the provisions of federal law it mirrors to the disadvantage of the state treasury and taxpayers who pay their state income taxes on time. The late filing of income taxes costs the state, and therefore other taxpayers, through the higher administrative actions necessary to ensure proper collections. While SB 514 would require the state to impose a lower monthly penalty rate on late tax filers, equivalent to the federal rate, it fails to recognize and adopt other penalties imposed by the federal government against late income tax filers, which prevent a net loss to the federal treasury. Therefore, SB 514 does not mirror late filing provisions of federal tax law in their entirety, a feature that would be subsidized by those who pay their state income taxes on time.

With the \$8 million ongoing impact on the state general fund, I ask you to sustain my veto of SB 514.

Sincerely,

BRIAN SCHWEITZER  
GOVERNOR