

Amendment - 1st Reading-white - Requested by: Julie Dooling - (S) Energy and Telecommunications

- 2023

68th Legislature 2023

Drafter: Joe Carroll, 406-444-3804

HB0047.002.001

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

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1 register when providing sponsor contact.

2 (b) An agency has complied with the primary bill sponsor contact requirements of this section
3 when the agency has attempted to reach the primary bill sponsor at the legislator's address, e-mail address,
4 and telephone number on file with the secretary of state pursuant to subsection (8)(a). If the agency is able to
5 contact the primary sponsor by using less than all of these three methods of contact, the other methods need
6 not be used.

7 (9) This section applies to the department of labor and industry adopting a rule relating to a
8 commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of
9 department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704."
10

10

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

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

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

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

26

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

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

5 (2) It is the policy of the state that the development of information technology resources in the
6 state must be conducted in an organized, deliberative, and cost-effective manner.

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

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

12 ~~(4)(5)~~ The following principles must guide the development of state information technology resources:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 agencies.

2 ~~(5)(6)~~ It is the policy of the state that the department must be accountable to the governor, the
3 legislature, and the citizens of Montana."

4

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

6 **"2-17-506. Definitions.** In this part, unless the context requires otherwise, the following definitions
7 apply:

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

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

11 ~~(3)(2)~~ "Chief information officer" means a person appointed by the director of the department to carry
12 out the duties and responsibilities of the department relating to information technology.

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

16 ~~(4)(3)(4)~~ "Data" means any information stored on information technology resources.

17 ~~(5)(4)(5)~~ "Department" means the department of administration established in 2-15-1001.

18 ~~(5)(6)~~ "Digital" means electronic data and the information technology resources used to store,
19 retrieve, and send data.

20 ~~(6)(7)~~ ~~"Electronic-Digital access system" means a system capable of making data accessible by~~
21 means of an information technology facility in a voice, video, or electronic data form, including but not limited to
22 the internet resource.

23 ~~(7)(8)~~ "Information technology resource" means any hardware, software, and associated services,
24 and infrastructure including state and third-party platforms, networks, systems, or facilities, used to store or
25 transmit information in any form, ~~including voice, video, and electronic data.~~

26 ~~(8)(9)~~ "Long-range information technology capital project" means a discrete long-range information
27 technology system or application, including the replacement or upgrade to existing systems.

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1 ~~(9)(10)~~ "Private safety agency" has the same meaning as provided in 10-4-101.

2 ~~(10)(11)~~ "Public safety agency" has the same meaning as provided in 10-4-101.

3 ~~(11)(12)~~ "State agency" means any entity of the executive branch, including the university system.

4 ~~(12)(13)~~ "Statewide State telecommunications network" means ~~any telecommunications facilities,~~

5 ~~circuits, equipment, software, and associated contracted services~~ information technology resources

6 administered by the department for the transmission of voice, video, or electronic data from one device to

7 another."

8

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

10 **"2-17-512. Powers and duties of department.** (1) The department is responsible for carrying out the
11 planning and program responsibilities for information technology for state government, except the national
12 guard. The department shall:

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

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

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

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

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

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

24 (g) coordinate with the office of budget and program planning to evaluate budget requests that
25 include information technology resources. The department shall make recommendations to the office of budget
26 and program planning for the approval or disapproval of information technology budget requests, including an
27 estimate of the useful life of the asset proposed for purchase and whether the amount should be expensed or

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- 1 capitalized, based on state accounting policy established by the department. An unfavorable recommendation
2 must be based on a determination that the request is not provided for in the approved agency information
3 technology plan provided for in 2-17-523.
- 4 (h) staff the information technology board provided for in 2-15-1021;
- 5 (i) fund the administrative costs of the information technology board provided for in 2-15-1021;
- 6 (j) review the use of information technology resources for all state agencies;
- 7 (k) review and approve state agency specifications and procurement methods for the acquisition of
8 information technology resources;
- 9 (l) review, approve, and sign all state agency contracts and shall review and approve other formal
10 agreements for information technology resources provided by the private sector and other government entities;
- 11 (m) broker, operate, and maintain a central computer center information technology resources for
12 the use of state government, political subdivisions, and other participating entities under terms and conditions
13 established by the department;
- 14 (n) operate and maintain a statewide-state telecommunications network for the use of state
15 government, political subdivisions, and other participating entities under terms and conditions established by
16 the department;
- 17 (o) ensure that the statewide-state telecommunications network is properly maintained. The
18 department may establish a centralized maintenance program for the statewide-state telecommunications
19 network.
- 20 (p) coordinate public safety communications on behalf of public and private safety agencies as
21 provided for in 2-17-543 through 2-17-545;
- 22 (q) manage the state 9-1-1 program as provided for in Title 10, chapter 4, part 3;
- 23 (r) provide ~~electronic~~ access to digital information and services of the state as provided for in 2-17-
24 532;
- 25 (s) provide assistance to the legislature, the judiciary, the governor, and state agencies relative to
26 state and interstate information technology matters;
- 27 (t) establish rates and other charges for services provided by the department;

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- 1 (u) accept federal funds granted by congress or by executive order and gifts, grants, and
2 donations for any purpose of this section;
- 3 (v) dispose of personal property owned by it in a manner provided by law when, in the judgment of
4 the department, the disposal best promotes the purposes for which the department is established;
- 5 (w) implement this part and all other laws for the use of information technology in state
6 government;
- 7 (x) provide a biennial report to the state administration and veterans' affairs interim committee and
8 to the legislature as provided in 5-11-210 on the information technology activities of the department; ~~and~~
- 9 (y) represent the state with public and private entities on matters of information technology.; ~~and~~
10 (z) provide full oversight authority over all custom-developed code for all state agencies.
- 11 (2) If it is in the state's best interest, the department may contract with qualified private
12 organizations, foundations, or individuals to carry out the purposes of this section.
- 13 (3) The director of the department shall appoint the chief information officer to assist in carrying out
14 the department's information technology duties."

15
16 **Section 6.** Section 2-17-513, MCA, is amended to read:

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

- 18 (1) provide a forum to:
- 19 (a) guide state agencies, the legislative branch, the judicial branch, and local governments in the
20 development and deployment of intergovernmental information technology resources;
- 21 (b) share information among state agencies, local governments, and federal agencies regarding
22 the development of information technology resources;
- 23 (2) advise the department:
- 24 (a) in the development of cooperative contracts for the purchase of information technology
25 resources;
- 26 (b) regarding the creation, management, and administration of electronic-digital government
27 services and information on the internet;

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

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

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

11 **"2-17-516. Exemptions -- department of justice -- secretary of state -- university system -- STATE**
12 **AUDITOR -- office of public instruction -- national guard.** (1) Unless the proposed activities would
13 detrimentally affect the operation of ~~the central computer center or the statewide~~ state ~~ANY INFORMATION~~
14 ~~TECHNOLOGY RESOURCE OR THE~~ STATE telecommunications network, the office of public instruction, THE OFFICE
15 OF THE STATE AUDITOR, and the secretary of state are exempt from 2-17-512(1)(k) and (1)(l).

16 (2) Unless the proposed activities would detrimentally affect the operation of ~~the central computer~~
17 ~~center or the statewide~~ any information technology resource or the state telecommunications network, the
18 department of justice and the university system are exempt from:

- 19 (a) the enforcement provisions of 2-17-512(1)(d) and (1)(e) and 2-17-514;
20 (b) the approval provisions of 2-17-512(1)(f), 2-17-523, and 2-17-527;
21 (c) the budget approval provisions of 2-17-512(1)(g); and
22 (d) the provisions of 2-17-512(1)(k) and (1)(l).

23 (3) ~~The department, upon notification of proposed activities by the~~ THE department of justice, the
24 secretary of state, the university system, ~~or~~ THE OFFICE OF THE STATE AUDITOR, AND the office of public
25 instruction; SHALL NOTIFY THE DEPARTMENT OF PROPOSED ACTIVITIES BY ~~SUBMITTING AN INFORMATION TECHNOLOGY~~
26 ~~PROCUREMENT REQUEST AND THE DEPARTMENT~~ using the department's approved process, and the department
27 shall determine if ~~the central computer center or the statewide~~ any information technology resource or the state

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

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

8 (b) Potential loss of revenue from fees paid by the department of justice, the secretary of state, the
9 university system, THE OFFICE OF THE STATE AUDITOR, or the office of public instruction for not utilizing services
10 offered by the department are not considered a detrimental effect to ~~the statewide telecommunications network~~
11 ~~or central computer center~~ any information technology resource or the state telecommunications network. If the
12 department of justice, the secretary of state, the university system, THE OFFICE OF THE STATE AUDITOR, or the
13 office of public instruction does not utilize a service program after the department's rate was set for the
14 biennium, the agency shall continue to pay any fees associated with the service or program for the remainder of
15 the biennium.

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

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

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

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

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

2

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

4 **"2-17-518. Rulemaking authority.** (1) The department ~~shall~~may adopt rules to implement this part,
5 including the following:

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

8 (i) identifying the software and management systems that must be approved;

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

10 (iii) establishing guidelines for the department's approval decision;

11 (b) rules to guide the review and approval process for state agency acquisition of information
12 technology resources, which must include but are not limited to processes and requirements for:

13 (i) agency submissions to gain approval for acquiring information technology resources;

14 (ii) approving specifications for information technology resources; and

15 (iii) approving contracts for information technology resources; and

16 (c) rules for granting exceptions from the requirements of this part, which must include but are not
17 limited to:

18 (i) a process for applying for an exception; and

19 (ii) guidelines for determining the department's approval decision.

20 (2) The department may adopt rules to guide the development of state agency information
21 technology plans. The rules may include:

22 (a) agency plan review procedures;

23 (b) agency plan content requirements;

24 (c) guidelines for the department's approval decision; and

25 (d) dispute resolution processes and procedures.

26 (3) Adequate rules for the use of any information technology resources must be adopted by the
27 supreme court for judicial branch agencies.

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1 (4) The legislative council shall adopt enterprise principles and technical standards within an
2 enterprise architecture program as a part of the legislative branch information technology plan, as provided for
3 in 5-11-405, that will fulfill the intent of adequate rules for use of information technology resources for the
4 consolidated legislative branch, as provided for in 5-2-504."
5

6 **Section 11.** Section 2-17-521, MCA, is amended to read:

7 **"2-17-521. State strategic information technology plan -- biennial report.** (1) The department
8 shall prepare a state strategic information technology plan. The department shall seek the advice of the board
9 in the development of the plan.

10 (2) The plan must:

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

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

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

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

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

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

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

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

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

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

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

6

7 **Section 12.** Section 2-17-523, MCA, is amended to read:

8 **"2-17-523. Agency information technology plans -- policy.** (1) Each state agency is required to
9 develop and maintain an agency information technology plan. The agency information technology plans must
10 reflect the content and format requirements specified in 2-17-524.

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

13 (3) New investments in information technology resources can be included in the governor's budget
14 only if the ~~project is contained in the approved technology~~ is in the agency information technology plan and is in
15 support of the state information technology strategic plan."

16

17 **Section 13.** Section 2-17-524, MCA, is amended to read:

18 **"2-17-524. Agency information technology plans -- form and content -- performance reports.** (1)
19 Each agency's information technology plan must include but is not limited to the following:

20 (a) a statement of the agency's mission, goals, and objectives for information technology, including
21 a discussion of how the agency uses or plans to use information technology to provide mission-critical services
22 to Montana citizens and businesses;

23 (b) an explanation of how the agency's mission, goals, and objectives for information technology
24 support and conform to the state strategic information technology plan required in 2-17-521;

25 (c) a baseline profile of the agency's current information technology resources and capabilities
26 that:

27 (i) includes sufficient information to fully support state-level review and approval activities; and