

MITA Review

A REVIEW OF THE EFFECTIVENESS OF THE MONTANA INFORMATION TECHNOLOGY ACT

SEPTEMBER 22, 2009

Pertinent Statute with Comments

<u>Item</u>	<u>Statute</u>	<u>Comment</u>	<u>Corrective Action</u>
1.	2-17-505. Policy. (1) It is the policy of the state that information technology be used to improve the quality of life of Montana citizens by providing educational opportunities, creating quality jobs and a favorable business climate...	Minor Issue: CIO has no constitutional responsibility over education at the OPI or University level Minor Issue: Creating quality jobs is beyond the scope of IT since there is no capital investment strategy – we are a rate recovery organization.	
2.	2-17-505. Policy. (1) It is the policy of the state that information technology be used to...protecting individual privacy and the privacy of the information contained within information technology systems. (2) It is the policy of the state that the development of information technology resources in the state must be conducted in an organized, deliberative, and cost-effective manner.	Working well.	
3.	2-17-505. Policy. (2)(a) There are statewide information technology policies, standards, procedures, and guidelines applicable to all state agencies and other entities using the state network.	Minor Issue: Not all entities are funded or have the resources to comply i.e. Counties or small agencies	

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4.	<p>2-17-505. Policy. (2)(b) Whenever feasible and cost-effective, common data is entered once and shared among agencies.</p> <p>(c) In order to minimize unwarranted duplication, similar information technology systems and data management applications are implemented and managed in a coordinated manner.</p> <p>(d) Planning and development of information technology resources are conducted in conjunction with budget development and approval.</p>	<p>Working well: The agencies are just starting to address this in the state strategic plan</p>	
5.	<p>2-17-505. Policy. (2)(e) Information technology systems are deployed aggressively whenever it can be shown that it will provide improved services to Montana citizens</p>	<p>Minor Issue: Aggressive deployment is up to four years due to the legislative budgeting process and the existing purchasing process.</p>	
6.	<p>2-17-505. Policy. (2)(f) Public-private partnerships are used to deploy information technology systems when practical and cost-effective.</p>	<p>Working well: Becoming more prevalent. Minor Issue: Companies have expressed an interest in partnering with ITSD in making capital investment in the state's IT infrastructure but there are no provisions in the law to allow for such private investment.</p>	
7.	<p>2-17-505. Policy. (2)(g) State information technology systems are developed in cooperation with the federal government and local governments with the objective of providing seamless access to information and services to the greatest degree possible</p>	<p>Minor Issue: To the best of our ability – many times there are conflicting objectives and lack of information or communication from the federal side.</p>	
8.	<p>2-17-505. Policy. (2)(h) State information technology systems are able to accommodate electronic transmissions between the state and its citizens, businesses, and other government entities.</p> <p>(3) It is the policy of the state that the department must be accountable to the governor, the legislature, and the citizens of Montana.</p>	<p>Working well.</p>	
9.	<p>2-17-506. Definitions.</p> <p>(1) "Board" means the information technology board established in 2-15-1021.</p>	<p>Working well.</p>	
10.	<p>2-17-506. Definitions.(2) "Central computer center" means any stand-alone or shared computer and associated equipment, software, facilities, and services administered by the department for use by state agencies.</p>	<p>Major Problem: The term “central computer center” needs to be better defined.</p>	

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11.	2-17-506. Definitions. (4) "Data" means any information stored on information technology resources.	Major Problem: The term "data" needs to be better defined.	
12.	2-17-506. Definitions. (6) "Electronic access system" means a system capable of making data accessible by means of an information technology facility in a voice, video, or electronic data form, including but not limited to the internet.	Minor Issue: Need to expand to meet today's criteria	
13.	2-17-506. Definitions. (7) "Information technology" means hardware, software, and associated services and infrastructure used to store or transmit information in any form, including voice, video, and electronic data.	Minor Issue: Need to expand to meet today's criteria	
14.	2-17-506. Definitions. (8) "State agency" means any entity of the executive branch, including the university system	Major Problem: Need to clarify status of agencies with elected officials. i.e. AG – DOJ/OPI/etc. University system is outside the authority of the CIO	
15.	2-17-506. Definitions. (9) "Statewide telecommunications network" means any telecommunications facilities, circuits, equipment, software, and associated contracted services administered by the department for the transmission of voice, video, or electronic data from one device to another.	Minor Issue: Need to expand to meet today's criteria	
16.	2-17-511. Chief information officer -- duties. The duties of the chief information officer include but are not limited to: (1) carrying out all powers and duties of the department as assigned by the director of the department; (2) serving as the chief policy advisor to the director of the department on statewide information technology issues; and (3) assisting and advising the director of the department on the enforcement responsibilities provided in 2-17-514 .	Minor Issue: Does not truly reflect the duties of the CIO as they are currently being executed.	
17.	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.	Major Problem: The term state government is very broad and exceed the boundaries outlined in 2-17-506 i.e. agencies	

<u>Item</u>	<u>Statute</u>	<u>Comment</u>	<u>Corrective Action</u>
18.	2-17-512. Powers and duties of department. (1)(a) shall encourage and foster the development of new and innovative information technology within state government; (1)(b) shall promote, coordinate, and approve the development and sharing of shared information technology application software, management systems, and information that provide similar functions for multiple state agencies; (1)(c) shall cooperate with the office of economic development to promote economic development initiatives based on information technology;	Working well.	
19.	2-17-512. Powers and duties of department. (1)(d) shall establish and enforce a state strategic information technology plan as provided for in 2-17-521;	Major Problem: Does not define and provide for enforcement activities	
20.	2-17-512. Powers and duties of department. (1)(e) shall establish and enforce standards statewide information technology policies...	Major Problem: Does not define and provide for enforcement activities	
21.	2-17-512. Powers and duties of department. (1) (g) shall 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 .	Working well.	
22.	2-17-512. Powers and duties of department. (1) (j) shall review the use of information technology resources for all state agencies;	Minor Issue: Law does not define review and provide authority for corrective action. The CIO can only advise.	
23.	2-17-512. Powers and duties of department. (1) (k) shall review and approve state agency specifications and procurement methods for the acquisition of information technology resources;	Working well.	
24.	2-17-512. Powers and duties of department. (1)(l) shall 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;	Minor Issue: CIO cannot comment on private sector and other entity agreements such as university etc.	

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25.	2-17-512. Powers and duties of department. (1) (m) shall operate and maintain a central computer center for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;	Minor Issue: Does not define central computer center. The term the definitions section needs to be better defined.	
26.	2-17-512. Powers and duties of department. (1) (n) shall operate and maintain a statewide telecommunications network for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department; (o) shall ensure that the statewide telecommunications network is properly maintained. The department may establish a centralized maintenance program for the statewide telecommunications network. (p) shall coordinate public safety communications on behalf of all state agencies as provided for in 2-17-541 through 2-17-543 ; (q) shall manage the state 9-1-1 program as provided for in Title 10, chapter 4, part 3;	Working well.	
27.	2-17-512. Powers and duties of department. (1) (r) shall provide electronic access to information and services of the state as provided for in 2-17-532 ;	Minor Issue: There is no defined electronic records management process in the state at this time.	
28.	2-17-512. Powers and duties of department. (1)(s) shall provide assistance to the legislature, the judiciary, the governor, and state agencies relative to state and interstate information technology matters; (1)(t) shall establish rates and other charges for services provided by the department; (1) (u) must accept federal funds granted by congress or by executive order and gifts, grants, and donations for any purpose of this section; (1) (v) shall 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	Working well. There is no guarantee of budgetary authority to execute funds being granted.	
29.	2-17-512. Powers and duties of department. (1) (w) shall implement this part and all other laws for the use of information technology in state government;	Minor Issue: The term state government need to be better defined.	

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30.	<p>2-17-512. Powers and duties of department. (1) (x) shall report to the appropriate interim committee on a regular basis and to the legislature as provided in 5-11-210 on the information technology activities of the department; and (1)(y) shall represent the state with public and private entities on matters of information technology.</p>	<p>Working well. The term state needs to be defined</p>	
31.	<p>2-17-512. Powers and duties of department. (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</p>	<p>Working well.</p>	
32.	<p>2-17-513. Duties of board. The board shall: (1) provide a forum to: (a) guide state agencies, the legislative branch, the judicial branch, and local governments in the development and deployment of intergovernmental information technology resources;</p>	<p>Minor Issue: How does the board guide entities outside of the executive branch.</p>	
33.	<p>2-17-513. Duties of board. The board shall: (1) provide a forum to: (b) share information among state agencies, local governments, and federal agencies regarding the development of information technology resources;</p>	<p>Minor Issue: There is no provision for including or identifying those federal agencies.</p>	

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34.	<p>2-17-513. Duties of board. (3) review and advise the department on:</p> <ul style="list-style-type: none"> (a) statewide information technology standards and policies; (b) the state strategic information technology plan; (c) major information technology budget requests; (d) rates and other charges for services established by the department as provided in 2-17-512(1)(t); (e) requests for exceptions as provided for in 2-17-515; (f) notification of proposed exemptions by the university system and office of public instruction as provided for in 2-17-516; (g) action taken by the department as provided in 2-17-514(1) for any activity that is not in compliance with this part; (h) transfer of information technology funds, resources, and employees as provided for in 2-17-531; and (i) the implementation of major information technology projects and advise the respective governing authority of any issue of concern to the board relating to implementation of the project; <p>(4) study state government's present and future information technology needs and advise the department on the use of emerging technology in state government; and</p> <p>(5) request information and reports that it considers necessary from any entity using or having access to the statewide telecommunications network or central computer center.</p>	Working well.	
35.	<p>2-17-514. Department -- enforcement responsibilities. (1) If the department determines that an agency is not in compliance with the state strategic information technology plan provided for in 2-17-521, the agency information technology plan provided for in 2-17-523, or the statewide information technology policies and standards provided for in 2-17-512, the department may cancel or modify any contract, project, or activity that is not in compliance.</p> <p>(2) Prior to taking action provided for in subsection (1), the department shall review with the board any activities that are not in compliance.</p> <p>(3) Any contract entered into by an agency that includes information technology resources must include language developed by the department that references the department's enforcement responsibilities provided for in subsection (1). A contract that does not contain the required language is considered to be in violation of state law and is voidable pursuant to subsection (1). The language developed by the department may not be varied pursuant to 18-4-224.</p>	<p>Minor Issue: All enforcement capability is contract centered – other enforcement actions are not provided for in statute.</p>	

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36.	<p>2-17-515. Granting exceptions to state agencies. Subject to 2-17-516, the department may grant exceptions to any policy, standard, or other requirement of this part if it is in the best interests of the state of Montana. The department shall inform the board, the office of budget and program planning, and the legislative finance committee of all exceptions that are granted and of the rationale for granting the exceptions. The department shall maintain written documentation that identifies the terms and conditions of the exception and the rationale for the exception.</p>	Working well.	

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37.	<p>2-17-516. Exemptions -- university system -- office of public instruction -- national guard. (1) Unless the proposed activities would detrimentally affect the operation of the central computer center or the statewide telecommunications network, the office of public instruction is exempt from 2-17-512(1)(k) and (1)(l). (2) Unless the proposed activities would detrimentally affect the operation of the central computer center or the statewide telecommunications network, the university system is 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); (d) the provisions of 2-17-512(1)(k) and (1)(l); and (e) the transfer provisions of 2-17-531. (3) The department, upon notification of proposed activities by the university system or the office of public instruction, shall determine if the central computer center or the statewide telecommunications network would be detrimentally affected by the proposed activity. (4) For purposes of this section, a proposed activity affects the operation of the central computer center or the statewide telecommunications network if it detrimentally affects the processing workload, reliability, cost of providing service, or support service requirements of the central computer center or the statewide telecommunications network. (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) Section 2-17-512(1)(u) may not be construed to prohibit the university system from accepting federal funds or gifts, grants, or donations related to information technology or telecommunications.</p>	<p>Minor Issue: This section in differs with the scope of MITA outline in sect 2-17-512 and differs from the blanket exception granted 2-17-546</p>	
38.	<p>2-17-517. Legislative and judicial branch information sharing. The legislative branch and the judicial branch shall provide their information technology plans to the department.</p>	<p>Working well.</p>	

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39.	<p>2-17-518. Rulemaking authority. (1) The department shall adopt rules to implement this part, including the following:</p> <ul style="list-style-type: none"> (a) rules to guide the review and approval process for state agency software and management systems that provide similar functions for multiple state agencies, which must include but are not limited to: <ul style="list-style-type: none"> (i) identifying the software and management systems that must be approved; (ii) establishing the information that state agencies are required to provide to the department; and (iii) establishing guidelines for the department's approval decision; (b) rules to guide the review and approval process for state agency acquisition of information technology resources, which must include but are not limited to processes and requirements for: <ul style="list-style-type: none"> (i) agency submissions to gain approval for acquiring information technology resources; (ii) approving specifications for information technology resources; and (iii) approving contracts for information technology resources; and (c) rules for granting exceptions from the requirements of this part, which must include but are not limited to: <ul style="list-style-type: none"> (i) a process for applying for an exception; and (ii) guidelines for determining the department's approval decision. <p>(2) The department may adopt rules to guide the development of state agency information technology plans. The rules may include:</p> <ul style="list-style-type: none"> (a) agency plan review procedures; (b) agency plan content requirements; (c) guidelines for the department's approval decision; and (d) dispute resolution processes and procedures. <p>(3) Adequate rules for the use of any information technology resources must be adopted by the:</p> <ul style="list-style-type: none"> (a) supreme court for judicial branch agencies; and (b) legislative council as a part of the legislative branch computer system plan, as provided for in 5-11-405, for the consolidated legislative branch, as provided for in 5-2-504. 	Working well.	

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40.	<p>2-17-521. State strategic information technology plan -- biennial report. (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:</p> <p>(a) an analysis of the state's information technology infrastructure, including its value, condition, and capacity;</p>	<p>Minor Issue: The state does not have an established accounting practice for valuing these types of assets. i.e. Purchase Value, Replacement Value, Depreciation Value, Residual Value, or Other.</p>	

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41.	<p>2-17-524. Agency information technology plans -- form and content - performance reports. (1) Each agency's information technology plan must include but is not limited to the following:</p> <ul style="list-style-type: none"> (a) a statement of the agency's mission, goals, and objectives for information technology, including a discussion of how the agency uses or plans to use information technology to provide mission-critical services to Montana citizens and businesses; (b) an explanation of how the agency's mission, goals, and objectives for information technology support and conform to the state strategic information technology plan required in 2-17-521; (c) a baseline profile of the agency's current information technology resources and capabilities that: <ul style="list-style-type: none"> (i) includes sufficient information to fully support state-level review and approval activities; and (ii) will serve as the basis for subsequent planning and performance measures; (d) an evaluation of the baseline profile that identifies real or potential deficiencies or obsolescence of the agency's information technology resources and capabilities; (e) a list of new projects and resources required to meet the objectives of the agency's information technology plan. The investment required for the new projects and resources must be developed using life-cycle cost analysis, including the initial investment, maintenance, and replacement costs, and must fulfill or support an agency's business requirements. (f) when feasible, estimated schedules and funding required to implement identified projects; and (g) any other information required by law or requested by the department, the governor, or the legislature. <p>(2) Each agency's information technology plan must project activities and costs over a 6-year time period, consisting of the biennium during which the plan is written or updated and the 2 subsequent bienniums.</p> <p>(3) Each agency shall prepare and submit to the department a biennial performance report that evaluates progress toward the objectives articulated in its information technology plan. The report must include:</p> <ul style="list-style-type: none"> (a) an evaluation of the agency's performance relating to information technology; (b) an assessment of progress made toward implementing the agency information technology plan; 	<p>Minor Issue: Successful accomplishment of the plan is often driven by availability of resources.</p>	

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42.	<p>2-17-524. Agency information technology plans -- form and content - performance reports. (3)(c) an inventory of agency information services, equipment, and proprietary software.</p> <p>(4) State agencies shall prepare agency information technology plans and biennial performance reports using standards, elements, forms, and formats specified by the department.</p>	<p>Minor Issue: Prescriptive in nature – business requirements should drive the agencies IT support plans and capital investment strategy.</p>	
43.	<p>2-17-526. Information technology project budget summary. (1) (a) The office of budget and program planning, in cooperation with the department, shall prepare a statewide summary of:</p> <p>(i) proposed major new information technology projects contained in the state budget; and</p> <p>(ii) proposed major information technology projects impacting another state agency or branch of government to be funded within the current operating budgets, including replacement of or upgrade to existing systems.</p> <p>(b) The office of budget and program planning and the department shall jointly determine the criteria for classifying a project as a major information technology project.</p> <p>(2) The information technology project summary must include:</p> <p>(a) a listing by institution, agency, or branch of all proposed major information technology projects described in subsection (1). Each proposed project included on the list must include:</p> <p>(i) a description of what would be accomplished by completing the project;</p>	<p>Working well.</p>	
44.	<p>2-17-526. Information technology project budget summary. (2)(a)(ii) a list of the existing information technology applications for all branches of government that may be impacted by the project;</p>	<p>Major Problem: Establishes a legal requirement that is impossible to meet. Does not define branches of government and requires a knowledge base that does not exist.</p>	

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45.	<p>2-17-526. Information technology project budget summary. (2)(a)(iii) an estimate, prepared in consultation with the impacted agencies, of the costs and resource impacts on existing information technology applications;</p> <p>(iv) the estimated cost of the project;</p> <p>(v) the source for funding the project, including funds within an existing operating budget or a new budget request; and</p> <p>(vi) the estimated cost of operating information technology systems.</p> <p>(b) a listing of internal service rates proposed for providing information technology services. Each internal service rate included on the list must include:</p> <p>(i) a description of the services provided; and</p> <p>(ii) a breakdown, aggregated by fund type, of requests included in the state budget to support the rate.</p> <p>(c) any other information as determined by the budget director or the department or as requested by the governor or the legislature.</p> <p>(3) The information technology project summary must be presented to the legislative fiscal analyst in accordance with 17-7-111(4).</p>	Working well.	
46.	<p>2-17-531. Transfer of funds, equipment, facilities, and employees. (1) The department shall provide for the cost-effective use of information technology resources. In order to ensure that needless duplication of efforts in this field do not occur, the department may order the transfer of appropriated funds, custody, and control of equipment and facilities and employees to the department as may be necessary to implement this program. Upon transfer, as authorized in this section, a credit account must be established in the name of the agency from which transfer is made in the amount of funds appropriated and the market value of equipment and facilities. A credit account must be used to defray the costs of associated charges from the department as provided in 2-17-512.</p> <p>(2) The provisions of this section may not affect the rights or privileges of any employee transferred to the department under the public employees' retirement system, the group insurance plan, or personnel system.</p>	Minor Issue: The political will does not exist to implement this section.	

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47.	<p>2-17-534. Security responsibilities of department. The department is responsible for providing centralized management and coordination of state policies for security of data and information technology resources and shall:</p> <p>(1) establish and maintain the minimum security standards and policies to implement 2-15-114, including the physical security of the central computer center, statewide telecommunications network, and backup facilities consistent with these standards;</p> <p>(2) establish guidelines to assist agencies in identifying information technology personnel occupying positions of special trust or responsibility or sensitive locations;</p> <p>(3) establish standards and policies for the exchange of data between any agency information technology resource and any other state agency, private entity, or public entity to ensure that exchanges do not jeopardize data security and confidentiality;</p> <p>(4) coordinate and provide for a training program regarding security of data and information technology resources to serve governmental technical and managerial needs;</p> <p>(5) include appropriate security requirements in the specifications for solicitation of state contracts for procuring data and information technology resources; and</p> <p>(6) upon request, provide technical and managerial assistance relating to information technology security.</p>	<p>Major Problem: This is a significant responsibility for which adequate resources have not been provided – Program funding, personnel, and SCIO</p>	
48.	<p>2-17-546. Exemption of law enforcement telecommunications system -- exception. The provisions of this part do not apply to the law enforcement telecommunications system or its successor except for the provisions dealing with the purchase, maintenance, and allocation of telecommunication facilities. However, the department of justice shall cooperate with the department to coordinate the telecommunications networks of the state.</p>	<p>Major Problem: There is no agreement on what constitutes the Law enforcement telecommunications system and its successor. Need to define the term “telecommunication facility” and the term “shall cooperate” is too vague to enforce.</p>	
49.	Not in Statute.	No purpose statement to provide scope and interpretation. What problem are we solving?	
50.	Not in Statute.	Project management is not addressed.	
51.	Not in Statute.	Dispute resolution is not addressed.	
52.	Not in Statute.	The lack of an information technology fund does not allow for an effective	

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		capital planning and investment strategy for economic development required by section 2-17-505 and 512.	
53.	Not in Statute.	Duties of the CIO are vague.	
54.	Not in Statute.	Need to define the scope and function of ITSD as it relates to its organizational alignment.	
55.	Not in Statute.	No provision for a Chief Security Officer and related staff (requires funding).	
56.	Not in Statute.	Need to make provision for a Chief Technology Officer.	
57.	Not in Statute.	No provisions for a Capital Planning and Investment Committee – separate for advisory.	
58.	Not in Statute.	REF: agency IT plans do not maximize data sharing and collaboration as communities of interest.	
59.	Not in Statute.	IT responsibilities for Disaster Recovery need to be addressed.	
60.	Not in Statute.	No provision for GIO and GIS staff.	