



# MONTANA LEGISLATIVE BRANCH

## Legislative Fiscal Division

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DATE: December 10, 2009  
TO: LFC, IT Workgroup  
FROM: Catherine Duncan, LRP Analyst  
RE: IT Capital Projects

Per the request of Rep. Hollenbaugh, this report provides an analysis of the Long-Range Information Technology Projects (LRITP) appropriations included in HB 645 and whether the appropriation authority will continue if the information technology projects are not completed in the 2011 biennium. Additionally, this report will provide an analysis of the authority of the state CIO to eliminate projects and use appropriation authority from a project which has been canceled for another information technology capital project. This analysis contains simple readings of the laws that relate to the questions at hand.

### Summary

Generally, transferring appropriation authority between capital projects and between agencies would not be an acceptable practice. If the appropriations for information technology (IT) projects contained in HB 645 are not fully expended by the end of the 2011 biennium, the funds will be reverted to the state general fund. The appropriation authority cannot be used to fund another project unless the department requests changes through the budget change amendment process.

### Background

In the past two legislative sessions, the appropriations for major IT projects that could be defined as capital projects have been provided in a capital projects bill. In this setting, IT capital projects are given the authority provided in 2-17-560, MCA which states, "The remaining balances for long-range information technology capital projects previously approved by the legislature and identified as long-range information technology capital projects in an appropriation act are reappropriated for the purposes of the original appropriation until the projects are completed."

### Circumstances

HB 645, "Implement receipt of and appropriate federal stimulus and recovery funds", passed in the 2009 Legislative session, contained two direct general fund appropriations for major IT projects. The appropriations include:

<u>Project Appropriation Title</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
Enterprise System Services Center Equipment (DOA)	\$1,750,000	\$1,750,000	\$3,500,000
Interoperability Montana (DOA)	500,000	500,000	1,000,000

Unlike appropriations existing in a capital project bill, there is nothing in HB 645 to suggest that these appropriations are for long-range capital IT projects or that these projects are held to the provisions of 2-17-560, MCA. Consequently, these appropriations are considered “normal” appropriations and are considered two year appropriations. There is language in HB 645 which makes these “biennial” appropriations. As a result, the appropriations or any part of the appropriation authority for FY 2010 that might be unexpended in FY 2010 could be “transferred” to FY 2011. If the appropriations are not fully expended in the 2011 biennium, then any unexpended funds would be reverted to the general fund. If the project is not completed and if additional funding is required to complete the project, the Department of Administration would be required to request another appropriation in the 2013 biennium.

### **Authority of the CIO**

In his arsenal of authority, the state CIO has two statutory tools to cancel, modify, or transfer funds from an IT project. The first example is seen in subsection (1) of 2-17-512, MCA, which states:

“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.”

As stated, this section of MITA provides the authority for the department (or the CIO) to eliminate or change the scope or nature of any project that is not in compliance of the strategic IT plan or does not align with the states IT policy.

The second example of code which would allow the state CIO to eliminate a project is seen in subsection (1) of 2-17-531, MCA which states:

“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.”

In this section of code, the state CIO may transfer appropriated funds from a project only if the project would create a duplication of efforts.

The CIO does have some limited authority to eliminate LRITP projects, however, the CIO can only change the use of appropriated funds under 2-17-531, and then the CIO must establish an account and provide a credit in the amount of the appropriation, or remaining appropriation, to

the department for which the appropriation was originally provided. There is nothing in this statute that allows the CIO to use the funds appropriated one project for a different project.

The Long-Range Information Technology Program (LRITP) bill, HB 10, provides a statement of the intent from the legislature, prior to the appropriations in Section 2, subsection (3), which states, “The following money is appropriated to the department of administration to be used only for the indicated information technology capital projects”. The legislation also provides two “exemptions” to this rule. The first exemption is for the Department of Public Health and Human Services and allows the department to transfer appropriation and authority within the fund types of the LRITP projects in this agency (DPHHS) only. The allowance was provided with the condition that the department would keep the Legislative Finance Committee (LFC) advised of changes in the use of the appropriation. The second exemption was provided to the Department of Labor and Industry and allows the transfer of appropriations between federal and state special revenue funds as necessary for the purposes of funding the unemployment insurance tax modernization project. Neither of these conditions would allow the CIO to use the appropriation authority for one project for a project in another agency.

### **Legislative Authority and Budget Change Documents**

The legislature is provided the power to make appropriations. The executive is charged with assuring that appropriations made by the legislature are expended as intended. While the state CIO may have the power to stop the spending of an appropriation, as shown in the codes quoted above, he does not have the power to apply the appropriation to another project.

The budget director is given authority in section 17-7-139, MCA to make transfers of appropriated funds between programs within each fund type within each fiscal year. The legislative fiscal analyst must be informed of such changes (commonly known as budget change documents or BCD's) and may, when necessary, inform the LFC of the changes.

### **Conclusion**

If the appropriations for IT projects contained in HB 645 are not fully expended by the end of the 2011 biennium, the funds will be reverted to the state general fund. The appropriation authority cannot be used to fund another project unless the department requests a budget change amendment. A budget change amendment to change the use of appropriation authority from one project to a different project would amount to a significant change in the scope in the appropriation, and could potentially create significant concerns that could be raised by the members of the LFC.

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