

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



MIKE COONEY
LT. GOVERNOR

November 24, 2017

The Honorable Corey Stapleton
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary Stapleton:

I will allow the following bills to become law without my signature: **House Bill 2** (HB 2), "AN ACT REVISING THE GENERAL APPROPRIATIONS ACT OF 2017 TO INCORPORATE CHANGES TO THE ACT MADE DURING THE 2017 REGULAR LEGISLATIVE SESSION WHILE REVISING APPROPRIATIONS TO INCORPORATE CHANGES WITHIN THE CALL OF THE 2017 SPECIAL SESSION AND ANY CONCURRENT SPECIAL SESSIONS; AMENDING CHAPTER 366, LAWS OF 2017; REPEALING SECTIONS 8, 9, AND 11, CHAPTER 364, LAWS OF 2017, SECTIONS 7, 13, 14, 15, 16, AND 17, CHAPTER 416, LAWS OF 2017, AND SECTIONS 12, 15, 16, 17, 18, 20, 21, 22, 24, AND 28, CHAPTER 429, LAWS OF 2017; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE," **House Bill 6** (HB 6), "AN ACT PROVIDING FOR FUND TRANSFERS; PROVIDING THAT CERTAIN ACCOUNTS AND FUNDS ARE SUBJECT TO LEGISLATIVE FUND TRANSFER; AMENDING SECTIONS 2-15-405, 15-70-125, 17-5-703, 17-7-205, 20-9-516, 20-9-525, 23-1-105, 30-10-115, 33-2-708, 33-28-120, 69-1-402, 75-25-101, 90-1-205, AND 90-4-617, MCA; AMENDING SECTION 3, CHAPTER 259, LAWS OF 2017; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE," and **Senate Bill 9** (SB 9), "AN ACT GENERALLY REVISING LAWS TO ONLY PROVIDE BUDGET STABILIZATION MEASURES; PROVIDING DEPOSIT RULES FOR FUNDS RECEIVED FROM CERTAIN CONTRACT RENEGOTIATIONS; PROVIDING FOR A CONTINGENT TRANSFER; CREATING A PRIVATE CORRECTIONAL FACILITY CONTRACT RENEGOTIATION STATE SPECIAL REVENUE ACCOUNT; PROVIDING FOR CONTINGENT REDUCTIONS TO THE CALCULATION OF THE PROJECTED ENDING GENERAL FUND BALANCE AND PROJECTED GENERAL FUND BUDGET DEFICIT; PROVIDING ALLOCATIONS WITH EXCESS REVENUE; ELIMINATING TRANSFERS FOR THE SECRETARY OF STATE, THE STATE AUDITOR'S OFFICE, AND THE PUBLIC SERVICE COMMISSION IN FISCAL YEAR 2019 IF EXCESS REVENUES ARE RECEIVED; PROVIDING FOR CONTINGENT VOIDNESS; AMENDING SECTION 17-7-140, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND TERMINATION DATES."

While I am pleased we were able to reach responsible solutions to address the State's budget shortfall, I have significant constitutional concerns about the cobweb of so-called "contingent voidness" provisions that seek to limit my veto power and bind together separate bills.

The web the legislature has constructed in these bills is complex. For example, as written, the language of HB 2 purports to tie my veto choices on that bill to effects elsewhere: in HB 6, SB 1, SB 2, SB 3, and

Secretary Stapleton
November 24, 2017
Page 2

SB 9. House Bill 6 and SB 9 have similar arrangements—each bill reaches beyond its own text and seeks to use my veto choices to cause changes in other bills after enactment.

Article V, Section 11(3) of the Montana Constitution requires that “bills developed by the Legislature contain only one subject.” *Mont. Ass’n of Counties (“MACo”) v. State*, 2017 MT 267, ¶ 21. The Montana Constitution also grants the Governor the ability to veto (1) whole bills or (2) items in appropriations bills. Mont. Const. art. VI, sec. 10.

There’s only one fair way to read these two requirements in unison: the Montana Constitution contemplates a process in which the legislature passes discrete bills on discrete topics—one by one. Then the Governor may make a choice to veto or approve each bill separately—one by one.

The cobweb of “contingent voidness” provisions in these bills is designed to do the opposite. As written, the bills seek to prevent me from issuing a clean “yes or no” on a single bill. These bills seek to create a domino effect whereby a decision on one bill affects a series of other bills.

This arrangement is constitutionally suspect.

First, it impermissibly limits the veto power, as guaranteed by the Constitution. The veto power has been described as “negative and destructive.” *County of Carbon v. Schweitzer*, No. BDV-2011-898 (Mont. First Jud. Dist. 2012). It is, fundamentally, the power to say no. The “either or” choice presented by this cobweb of intermingled bills is not a true *veto* choice as set forth in the Montana Constitution.

Second, the cobweb violates the Montana Constitution’s single-subject requirement. The whole purpose of this requirement is to prevent the legislature from linking the outcome of one subject to the outcome of another. Clearly, this arrangement does the opposite. My concerns are somewhat mitigated by the presence of severability clauses in this legislation, should it become subject to a challenge.

In a typical session, once the legislature adjourns, its work is complete. Through the cobweb strategy in this session, however, the legislature seeks to continue its discretionary work from my desk. The Constitution contemplates no such arrangement. For this reason, consistent with my oath to uphold the Constitution of the State of Montana, I will not sign these bills.

Given the importance of these bills in solving Montana’s budget shortfall, I am allowing them to become law without my signature. However, I have grave concerns about the legislature’s political maneuvering to encroach upon my constitutional authority to exercise the veto power on distinct, single-subject bills. I will look upon similar efforts in 2019 with great skepticism, and I will not hesitate to veto such legislation in the regular session.

Sincerely,



STEVE BULLOCK
Governor

Secretary Stapleton
November 24, 2017
Page 3

Enclosure

cc: Legislative Services Division
Scott Sales, President of the Senate
Austin Knudsen, Speaker of the House