

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



MIKE COONEY
LT. GOVERNOR

May 10, 2019

The Honorable Corey Stapleton
Secretary of State
State Capitol
Helena, MT 59601

Dear Secretary Stapleton:

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 532 (HB 532), “AN ACT REVISING LAWS RELATED TO PRIVACY AND THE PUBLIC RIGHT TO KNOW; PROVIDING REQUIREMENTS FOR THE COMPROMISE AND SETTLEMENT OF CLAIMS; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO CREATE AND MAINTAIN A WEBSITE PUBLISHING INFORMATION ON COMPROMISE AND SETTLEMENTS; PROVIDING RECORDS RELATED TO A COMPROMISE OR SETTLEMENT OF CLAIMS AGAINST THE STATE MUST BE RETAINED FOR 20 YEARS; PROVIDING LEGISLATIVE INTENT; AMENDING SECTION 2-9-303, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.”

House Bill 532 is an unfortunate casualty of the decision by Republican leaders in the legislature to hold bills from my desk until the legislative session adjourns. This is a tactic designed to prevent me from exercising the constitutional power to return bills with amendments. This session, Republican leaders withheld roughly 300 bills from my desk until they left town, HB 532 among them.

I would have liked to return HB 532 with amendments and ultimately to sign it into law. In principle, I agree with many of the aims of the bill’s sponsor. I do not believe that the State of Montana should enter into confidential settlements, unless there is a compelling personal privacy interest. And I believe that information about settlements with public dollars should be kept consistently and be easily accessible online.

Unfortunately, from the start, HB 532 went far beyond these goals. As originally drafted, it shifted litigation responsibility for nearly all claims in state government to the Department of Administration—effectively allowing the Governor to make decisions about personnel matters that properly belong to other separate constitutional officers. And the bill included bizarre, draconian criminal penalties for state employees who did not meet an arbitrary reporting deadline.

Throughout the session, HB 532 underwent a series of changes. My office offered my input, hoping to arrive on a bill that would secure our mutual goals without creating unintended consequences for taxpayers, our separation of powers, or the privacy of third parties.

The version of HB 532 that reached my desk is superior to the drafts that came before it. But it is still drafted in a way that falls short of the standard necessary to approve it into law.

On its face, the bill requires the state to gather and report *all* civil and administrative complaints filed—regardless of whether they have anything to do with the State of Montana. Even if the bill were limited to court actions against the state, state employees would be required on a regular basis to monitor *all* court filings (including presumably those in other states), to accurately complete the quarterly report. I do not believe this was the sponsor's intent, because the bill includes no additional resources to accomplish this nearly limitless new task—a task that has little to do with employee settlements. But it would be the law under HB 532 as written.

The bill also puts state employees in the possible position of publishing information that some courts have ordered to remain confidential. Court-ordered mediations often require that initial requests for settlement and other demands be confidential. For example, in the Second Judicial District Court, Butte-Silver Bow County, "All communications made in connection with the settlement conference are confidential and will not be disclosed to anyone."¹ House Bill 532 does not specify how the report should address this conflict with a court rule that the parties must follow.

House Bill 532 also includes a requirement that all settlement agreements contain a "description of the alleged acts or omissions forming the basis of the compromise or settlement agreement." This would be a highly unusual practice for settlement agreements. If a settlement is reached to dismiss a case based on false allegations, for example, the state would nonetheless be required to memorialize and publicize the false allegations under this provision. I do not believe this was the sponsor's intent, either. But it would be the law under HB 532.

Finally, HB 532 has an ambiguous codification instruction that forces the Code Commissioner to decide whether the bill's amendments to public records laws apply only to the state or to local governments as well. This is an unlawful delegation of authority to legislative staff. The choice to expand the liability of local governments must be made by the legislature—not its staff.

Each of these defects could have been fixed with simple amendments, leaving a bill that I could approve and that would accomplish our shared goals for transparency. But there is still an avenue for enacting the positive elements of HB 532 while shedding the bill's unintended consequences: action by executive order.

Accordingly, today I also approve an executive order that enacts the best elements of HB 532 into law. Executive Order No. 6-2019 bars confidential employee settlements. The only exception is where the employee or a third party has an individual right to privacy. State agencies may not assert a right to individual privacy under the Order.

¹ Second Judicial District Court Rules, Rule 36-Settlement Conferences.

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The Order also requires state agencies to keep employee settlement information in a consistent, accessible manner and publish it on the transparency.mt.gov website. Along with other laws enacted this session to extend the retention period for settlements, this executive order will secure what HB 532 and its proponents hoped to achieve, without the unintended consequences of the bill as written.

For these reasons, I veto HB 532 and enact Executive Order No. 6-2019.

Sincerely,



STEVE BULLOCK
Governor

cc: Legislative Services Division
Greg Hertz, Speaker of the House
Scott Sales, President of the Senate