

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.2.204 pertaining to access to) PROPOSED AMENDMENT
documents and fees for copies)

TO: All Concerned Persons

1. On August 14, 2017, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on August 8, 2017, to advise us of the nature of the accommodation that you need. Please contact Jeff Hindoien, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-6197; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail Jeffrey.Hindoien@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

44.2.204 ACCESS TO DOCUMENTS PUBLIC INFORMATION AND FEES FOR COPIES (1) Pursuant to Article II, section 9, of the Montana Constitution, and 2-6-1003, MCA, government documents and public information may be examined and copies provided to the public, with a few exceptions where privacy and security concerns outweigh the public's right to know.

(a) This rule pertains to public information documents and ~~electronic and nonprint records~~ made available or copied pursuant to the public's right to know.

(b) Fees charged for other services provided by the Secretary of State's office are not affected by this rule, including but not limited to document and record services provided by the Business Services Division, Administrative Rules Services, Notarial Services, and Records and Information Management Services.

~~(2) Documents in the Secretary of State's office are available for public inspection between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.~~

~~(3) (2) Requests to examine public information in the Secretary of State's Office will be granted by appointment.~~ There is no charge for examination of documents public information in the office, but fees for research and preparing public information for examination or copying will be charged in accordance with (5).

~~(4) (3) The Secretary of State will determine on a case-by-case basis whether a staff person must be present to observe and supervise the examination of documents and whether documents can be removed from the office shall maintain the integrity of original records. If in the opinion of the Secretary of State any~~

requested record might be altered, stolen, or is irreplaceable, a staff person will supervise any examination or copying of that record.

~~(5)~~ (4) Requests to examine and/or for copies of documents public information will be processed and completed as soon as possible depending on upon the workload and availability of staff. Agency staff will be responsible for gathering and providing the requested copies utilizing office equipment and resources.

~~(6) A Secretary of State staff person will provide the copies requested utilizing office equipment and resources.~~

~~(7)~~ (5) The Secretary of State will determine the form in which a copy of public information will be provided, i.e., certain election records will only be provided as digital images on a compact disk. In accordance with 2-6-1006, MCA, the Secretary of State is not required to alter or customize any public information to provide it in a form specified to meet the needs of any requesting person. A request for a customized record request response will be reviewed in accordance with 2-6-1006, MCA.

~~(8) The following fees will be charged for copies of documents:~~

~~(a) Photocopies, \$.50 per page;~~

~~(b) Digital images provided on a compact disk, \$.15 per page.~~

~~(6) In accordance with 2-6-1006, MCA, the Secretary of State will charge fees for fulfilling requests for public information, not to exceed the actual costs directly incident to fulfilling the request in the most cost-efficient and timely manner possible. The fees will include the staff time required to review and gather the public information, including but not limited to legal review, research, IT services, gathering, and copying. Payment of the fees will be required in advance in accordance with 2-6-1006, MCA, and will be as follows:~~

~~(a) photocopies, \$.50 per page~~

~~(b) digital images, \$.15 per page~~

~~(c) staff time to gather and prepare documents for copying – actual cost~~

~~(d) records recalled from offsite storage – actual cost~~

~~(e) staff time for gathering and copying electronic files – actual cost~~

~~(f) digital media – actual cost~~

~~(g) legal review – actual cost~~

~~(h) research / analysis apart from simple collection – actual cost~~

~~(i) additional services required of Information & Technology Services Division – actual cost~~

~~(7) Agency staff will record and document all time and expenses associated with a public information request, and a fee for staff time will be charged only when it exceeds one-half hour of time.~~

~~(9) Fees charged for electronic information and nonprint records will be determined on a case-by-case basis pursuant to 2-6-1006, MCA.~~

AUTH: 2-15-405, 2-6-1006, MCA

IMP: Article II, section 9, Montana Constitution, 2-6-1003, 2-6-1006, MCA

REASON: In 2015, the Montana Legislature completely revised the public records statutes contained in Title 2, chapter 6, MCA through HB 123. These amendments

are necessary to both (1) update the statutory references and language contained within the rule and (2) to set the fees to be charged for fulfilling public information requests as specifically contemplated by HB 123.

In proposed (1), the terms "electronic records" and "non-print records" were contained in the now-repealed 2-6-110, MCA (2013). The generally operative terms under the new HB 123 structure are "public information" and "public records." See 2-6-1002(11) and (13), MCA. In proposed (2), the Secretary of State is authorized to charge fees for fulfilling requests for public information in the same manner as all other public agencies, but is also specifically required under 2-6-1006(6)(a), MCA to set and deposit those fees in accordance with 2-15-405, MCA. The latter statute requires that the Secretary of State set its fees through administrative rule, and this rule amendment is necessary to set and establish the fees contained therein.

The proposed new content of the rule is based on the newest policies adopted by other executive branch agencies to implement the provisions of 2-6-1003 and 2-6-1006, MCA. See e.g., Montana Department of Administration Public Records Request Policy and Fee Schedule, 1/23/17; Montana Department of Commerce Guidelines, Public Records Request Policy and Fee Schedule, 1/25/2017.

4. With regard to the requirements of 2-4-302(1)(c), MCA, the Secretary of State has received anywhere from 15 to 30 requests for public information per year for the period 2015 through present. However, those requests have varied significantly in terms of the volume of information requested and the relative difficulty in gathering and preparing the information to provide in response to the request. The Secretary of State does not anticipate that the fee changes will have any material impact on small-scale public information requests, but estimates that larger-scale public information requests will result in charges that may average \$100 to \$300 per request. Assuming 5 to 10 larger-scale public information requests per year, the cumulative amount for all persons from the new fee structure will likely range from \$2000 to \$3000 per year.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jeff Hindoien, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing Jeffrey.Hindoien@mt.gov, and must be received no later than 5:00 p.m., August 18, 2017.

6. Jeff Hindoien, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules,

corporations, elections, notaries, records, uniform commercial code, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter on July 18, 2017.

9. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ JEFFREY M. HINDOIEN
Jeffrey M. Hindoien
Rule Reviewer

/s/ COREY STAPLETON
Corey Stapleton
Secretary of State

Dated this 10th day of July, 2017.