

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to access to) PROPOSED ADOPTION
documents and fees for copies of)
public records)

TO: All Concerned Persons

1. On June 29, 2011, at 11:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 206 of the State Capitol Building, at Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process 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 June 23, 2011, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I ACCESS TO DOCUMENTS AND FEES FOR COPIES

(1) Pursuant to Article II, section 9, of the Montana Constitution, and 2-6-102, MCA, government documents may be examined and copies provided to the public, with a few exceptions where privacy concerns outweigh the public's right to know.

(a) This rule pertains to 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.

(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) There is no charge for examination of documents.

(4) 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.

(5) Requests to examine and/or for copies of documents will be processed and completed as soon as possible depending on the workload and availability of staff.

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

(7) The Secretary of State will determine the form in which a copy will be provided, i.e., certain election records will only be provided as digital images on a compact disk.

(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.

(9) Fees charged for electronic information and nonprint records will be determined on a case-by-case basis pursuant to 2-6-110, MCA.

AUTH: 2-15-405, MCA

IMP: Article II, section 9, Montana Constitution, 2-6-102, 2-6-103, 2-6-104, 2-6-110, MCA

REASON: The Secretary of State has a statutory duty to allow access to and provide copies of documents and electronic and nonprint records to the public. Section 2-6-102, MCA, gives the Secretary of State the ability to charge a fee for these copies. Section 2-15-405, MCA, requires that the Secretary of State set by administrative rule each fee charged by the Secretary of State and that such fees be commensurate with the overall costs of the Office of the Secretary of State and reasonably reflect the prevailing rates charged in the public and private sectors for similar services. In determining the fees to charge, the Secretary of State relied on guidelines provided by former Governor Marc Racicot and Governor Schweitzer's Chief Legal Counsel. Because the Secretary of State has determined that a staff person will make the copies using office equipment and resources, the charges reflect staff time in compiling the information and making the copies as well as the actual cost of the materials. These charges are commensurate with rates charged by other agencies and the courts for similar services. Therefore, the Secretary of State is adopting this rule to comply with the mandate that an administrative rule be adopted for each fee charged. The Secretary of State received five requests in the past year to provide copies of documents pursuant to the public's right to know. The new fee schedule would result in approximately \$55.00 per year in increased revenue for hard copies of documents. Since the fee for copies of digital images remains the same at \$.15 per page, the revenue for copies of digital images is expected to remain the same.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., July 7, 2011.

5. Jorge Quintana, Secretary of State's Office, has been designated to preside over and conduct this hearing.

6. 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 that includes the

name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. 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 contact person in 4 above or may be made by completing a request form at any rules hearing held by the Secretary of State.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 31st day of May, 2011.