

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and amendment of ARM 44.5.122 pertaining to fees charged by the Secretary of State) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT)

TO: All Concerned Persons

1. On August 20, 2015, at 9:30 a.m., the Secretary of State will hold a public hearing in Room 260, State Capitol Building, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

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 August 6, 2015, 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, MT 59620-2801; telephone (406) 431-7718; fax (406) 444-4249; 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 FEES CHARGED BY THE SECRETARY OF STATE (1) Fees charged by the Secretary of State must be collected in advance and are only refundable in the following circumstances:

- (a) if it is determined that the Secretary of State made an error;
- (b) if payment received for a service is clearly an overpayment; or
- (c) if the Secretary of State determines that a refund is warranted based on a case-by-case review of the circumstances.

(2) If it is determined a refund is in order, federal regulatory requirements and state policy require that the refund recipient submit a completed W-9 tax form in order to receive payment. The form is available on the following web site link: <http://sfsd.mt.gov/SAB/AccountingFormsInfo>.

AUTH: 2-15-405, MCA
IMP: 2-15-405, MCA

REASON: In 1993, the Montana Legislature passed House Bill 549, which changed the funding structure for the Secretary of State's Office from an agency that operated on appropriated general fund dollars to an agency that operates as an enterprise account, thereby requiring it to operate on the fees it charges to the customers it serves. Every document filed with the Secretary of State or service performed by the Secretary of State requires staff time to process. Therefore, in general, except in unusual circumstances, fees charged by the office cannot be refunded because staff

time spent providing a service must be compensated. However, the Secretary of State does not charge full compensation for business documents that must be resubmitted to correct deficiencies. In that circumstance, the customer is only charged a 50 percent reprocessing fee. The Secretary of State is proposing this new rule to become effective October 1, 2015.

This rule is reasonably necessary based on the fact that the Secretary of State's office operates like a business and is funded by the fees it collects for the services it provides. Per 2-15-405, MCA, the fees charged must be commensurate with the overall costs of the office and must reasonably reflect the prevailing rates charged in the public and private sectors for similar services.

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

44.5.122 MANUAL AND ONLINE SEARCH FEES

(1) Principal search:

~~(a) State agency \$0.50 per search~~

~~(b) State university no charge~~

~~(c) All other customers 2.00 per search~~

(2) Individual name search:

~~(a) State agency 1.00 per search~~

~~(b) State university no charge~~

~~(c) All other customers 4.00 per search~~

(3) There is no charge for a member of the legislature or a public officer for any search relative to matters pertaining to the member's office.

AUTH: 2-15-403, 2-15-404, 2-15-405, MCA

IMP: 2-15-403, 2-15-404, 2-15-405, MCA, Chap. 348, Sec. 4, L. of 2015

REASON: House Bill 123 passed by the 2015 Montana Legislature prohibits the Secretary of State from charging the Legislature or a public officer for any search relative to matters pertaining to the member's office. This legislative change makes it reasonably necessary to amend this rule to reflect that legislative intent. The Secretary of State is proposing this rule amendment to become effective October 1, 2015.

5. 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, or by e-mailing jquintana@mt.gov, and must be received no later than 5:00 p.m., August 28, 2015.

6. Jorge Quintana, 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 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 combination thereof. 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. 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.

9. 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 17, 2015.

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 20th day of July, 2015.