1   _____ BILL NO. _____

2   INTRODUCED BY _____
                                                                   (Primary Sponsor)

3

4   A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PUBLIC RECORDS LAWS; PROVIDING

5   A DEADLINE FOR GOVERNMENT AGENCIES TO RESPOND TO A REQUEST FOR INFORMATION;

6   ALLOWING A PERSON TO RECOVER COSTS AND ATTORNEY FEES FOR ENFORCEMENT OF THE

7   DEADLINE TO RESPOND; AMENDING SECTIONS 2-6-1006 AND 2-6-1009, MCA; AND PROVIDING AN

8   IMMEDIATE EFFECTIVE DATE."

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10   WHEREAS, Article II, section 9, of the Montana Constitution provides that the public is guaranteed a

11   fundamental right to access and examine the documents of all public bodies and agencies of state government

12   and its subdivisions; and

13   WHEREAS, this right to know is essential to ensure that government is accountable to its citizens; and

14   WHEREAS, unreasonable delay of information requested by the public impedes the fundamental right

15   to access government documents; and

16   WHEREAS, a failure on the part of government agencies to timely respond to information requests has

17   resulted in public information and public documents not being available for public review until long after the

18   underlying or related decision by a public agency has been made and potentially implicating other constitutional

19   rights.

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21   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22

23   **Section 1.** Section 2-6-1006, MCA, is amended to read:

24   "**2-6-1006.   Public information requests -- fees.** (1) A person may request public information from a

25   public agency. A public agency shall make the means of requesting public information accessible to all persons.

26   (2)   Upon receiving a request for public information, a public agency shall respond ~~in a timely manner~~

27   ~~to the requesting person~~ by acknowledging to the requesting person that the request has been received within

28   5 days of receiving the request for information and:

1   (a)   making the public information maintained by the public agency available for inspection and

2   copying by the requesting person; or

3   (b)   providing the requesting person with an estimate of the time it will take to fulfill the request if the

4   public information cannot be readily identified and gathered and any fees that may be charged pursuant to

5   subsection ~~(3)~~ (5).

6   (3)   A public agency shall fulfill a public information request within 30 days of the date by which:

7   (a)   the fee is paid by the requester pursuant to subsection (5); or

8   (b)   the agency has acknowledged receipt of the request pursuant to subsection (2) if a fee is not

9   required.

10   (4)   A public agency's response to a public information request is fulfilled when the public agency:

11   (a)   provides access to or copies of all public information within the possession or custody of the public

12   agency for which the public agency does not assert an exemption from public disclosure;

13   (b)   asserts any exemption from disclosure that the public agency believes applies to the requested

14   information; or

15   (c)   to the extent that the public agency does not have possession or custody of the public information

16   requested, provides a written statement to that effect to the requester.

17   ~~(3)~~(5)   A public agency may charge a fee for fulfilling a public information request. Except where a fee

18   is otherwise provided for by law, the fee may not exceed the actual costs directly incident to fulfilling the request

19   in the most cost-efficient and timely manner possible. The fee must be documented. The fee may include the

20   time required to gather public information. The public agency may require the requesting person to pay the

21   estimated fee prior to identifying and gathering the requested public information and shall provide the estimated

22   fee to the requesting person within 5 days of the date the request was received.

23   ~~(4)~~(6)   A public agency is not required to alter or customize public information to provide it in a form

24   specified to meet the needs of the requesting person.

25   ~~(5)~~(7)   If a public agency agrees to a request to customize a records request response, the costs of

26   the customization may be included in the fees charged by the agency.

27   ~~(6)~~(8)   (a)   The secretary of state is authorized to charge fees under this section. The fees must be set

28   and deposited in accordance with 2-15-405. The fees must be collected in advance.

1   (b)   The secretary of state may not charge a fee to a member of the legislature or public officer for any

2   search relative to matters pertaining to the duties of the member's office or for a certified copy of any law or

3   resolution passed by the legislature relative to the member's official duties."

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5   **Section 2.** Section 2-6-1009, MCA, is amended to read:

6   "**2-6-1009.   Written notice of denial -- failure to meet response deadline -- civil action -- costs to**

7   **prevailing party in certain actions to enforce constitutional or statutory rights.** (1) A public agency that

8   denies an information request to release information or records shall provide a written explanation for the

9   denial.

10   (2)   If a person who makes an information request receives a denial from a public agency and believes

11   that the denial violates the provisions of this chapter, the person may file a complaint pursuant to the Montana

12   Rules of Civil Procedure in district court.

13   (3)   If a person who makes an information request does not receive a response from the agency within

14   the deadline provided for in 20-6-1006(3), the person may file a complaint in district court.

15   (4)   A person alleging a deprivation of rights under subsection (2) or (3) who prevails in an action

16   brought in district court to enforce the person's rights under Article II, section 9, of the Montana constitution or

17   under the provisions of Title 2, chapter 6, parts 10 through 12, may be awarded costs and reasonable attorney

18   fees."

19

20   NEW SECTION. **Section 3.   Effective date.** [This act] is effective on passage and approval.

21   - END -