

HOUSE BILL NO. 167
INTRODUCED BY C. SCHRUMPF
BY REQUEST OF THE SECRETARY OF STATE

ABILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PUBLIC RECORDS MANAGEMENT LAWS; REVISING THE DEFINITION OF "PUBLIC RECORDS" WITH RESPECT TO THE RETENTION AND STORAGE OF STATE AND LOCAL GOVERNMENT MATERIALS; AUTHORIZING THE STORAGE OF PERMANENT PUBLIC RECORDS AT LOCATIONS OTHER THAN THE STATE ARCHIVES OR STATE RECORDS CENTER; REQUIRING EACH STATE AGENCY TO DESIGNATE AN AGENCY RECORDS CUSTODIAN; AND AMENDING SECTIONS 2-6-202, 2-6-206, 2-6-211, 2-6-213, AND 2-6-401, MCA."

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

Section 1. Section 2-6-202, MCA, is amended to read:

"2-6-202. Definitions. As used in this part, the following definitions apply:

(1) (a) "Public records" includes:

(i) any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including ~~all~~ copies of the record required by law to be kept as part of the official record, regardless of physical form or characteristics, that:

(A) ~~has been made or received by a state agency in connection with~~ to document the transaction of official business;

(B) ~~is a public writing of a state agency pursuant to 2-6-101(2)(a); and preserved for informational value or as evidence of a transaction~~

(C) is designated by the state records committee for retention pursuant to this part; and

(ii) all other records or documents required by law to be filed with or kept by any agency of the state of Montana.

(b) The term includes electronic mail sent or received in connection with the transaction of official business.

(c) The term does not include any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other type of document that is for reference purposes only, a preliminary draft, a telephone messaging slip, a routing slip, part of a stock of publications or of preprinted forms,

or a superseded publication.

(2) "State records committee" or "committee" means the state records committee provided for in 2-15-1013."

Section 2. Section 2-6-206, MCA, is amended to read:

"2-6-206. Protection and storage of essential records. (1) In order to provide for the continuity and preservation of civil government, each elected and appointed officer of the executive branch shall designate certain public records as essential records needed for an emergency or for the reestablishment of normal operations after ~~any such~~ the emergency. A list of ~~such~~ essential records ~~shall must~~ be forwarded to the secretary of state. The list ~~shall must~~ be reviewed from time to time by the elected or appointed officers to ~~insure~~ ensure its accuracy. Any changes or revisions ~~shall must~~ be forwarded to the secretary of state.

(2) Each elected and appointed officer of state government shall ~~insure~~ ensure that the security of essential records is accomplished by the most economical means possible. Protection and storage of essential records may be by vaulting, planned or natural dispersal of copies, storage in the state archives or in an alternative location provided pursuant to 2-6-211(2), or any other method approved by the secretary of state.

(3) Reproductions of essential records may be by photocopy, magnetic tape, microfilm, or other methods approved by the secretary of state."

Section 3. Section 2-6-211, MCA, is amended to read:

"2-6-211. Transfer and storage of public records. (1) All public records not required in the current operation of the office where they are made or kept and all records of each agency, commission, committee, or any other activity of the executive branch of state government ~~which that~~ may be abolished or discontinued ~~shall must~~ be, in accordance with approved records retention schedules, either transferred to the state records center or transferred to the custody of the state archives if ~~such the~~ records are considered to have permanent administrative or historical value.

(2) Subject to approval by the secretary of state pursuant to 2-6-206, the state records center and the state archives may store transferred permanent public records in locations other than in the buildings occupied by the state records center or the state archives when it is in the best interests of the state.

~~(2)(3)~~ When records are transferred to the state records center, the transferring agency ~~so doing loses~~ none of does not lose its rights of control and access. The state records center is only a custodian of the agency records, and access ~~will is~~ is only be by agency approval. Agency records for which the state records center acts

as custodian may not be subpoenaed from the state records center but must be subpoenaed from the agency to which the records belong. Fees may be charged to cover the cost of records storage and servicing.

~~(3)~~(4) If an agency does not wish to transfer records as provided in an approved retention schedule, the agency shall, within 30 days, notify the secretary of state and request a change in the schedule."

Section 4. Section 2-6-213, MCA, is amended to read:

"2-6-213. Agency responsibilities and transfer schedules. Each executive branch agency of state government shall administer its records management function and shall:

- (1) coordinate all aspects of the agency records management function;
- (2) manage the inventorying of all public records within the agency for disposition, scheduling, and transfer action in accordance with procedures prescribed by the secretary of state and the state records committee;
- (3) analyze records inventory data, examine and compare divisional or unit inventories for duplication of records, and recommend to the secretary of state and the state records committee minimal retentions for all copies of public records within the agency;
- (4) approve all records disposal requests ~~which that~~ are submitted by the agency to the state records committee; ~~and~~
- (5) review established records retention schedules to ~~insure~~ ensure that they are complete and current; and
- (6) officially designate an agency records custodian to manage the functions provided for in this section."

Section 5. Section 2-6-401, MCA, is amended to read:

"2-6-401. Definitions. For the purposes of this part, the following definitions apply:

- (1) "Local government" means:
 - (a) any city, town, county, consolidated city-county, or school district; and
 - (b) any subdivision of an entity named in subsection (1)(a).
- (2) (a) "Public records" includes:
 - (i) any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including ~~all~~ copies of the record required by law to be kept as part of the official record, regardless of physical form or characteristics, that:
 - (A) has been made or received by any local government in connection with the to document the

transaction of official business;

(B) is a public writing of the local government pursuant to 2-6-101(2)(a); and preserved for informational value or as evidence of a transaction

(C) is designated for retention by the local government records committee established in 2-6-402; and

(ii) all other records or documents required by law to be filed with or kept by any local government in the state of Montana.

(b) The term includes electronic mail sent or received in connection with the transaction of official duties.

(c) The term does not include any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other type of document that is for reference purposes only, a preliminary draft, a telephone messaging slip, a routing slip, part of a stock of publications or of preprinted forms, or a superseded publication.

(3) "Records custodian" means any individual responsible for the proper filing, storage, or safekeeping of any public records."

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