

SENATE BILL NO. 232

INTRODUCED BY J. ELLIS, B. LER, S. O'BRIEN, D. LENZ, J. WELBORN, J. FITZPATRICK, D. ZOLNIKOV, B. BEARD

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PUBLIC RECORDS LAWS; ESTABLISHING A DEADLINE FOR PUBLIC AGENCIES TO ACKNOWLEDGE RECEIPT OF A PUBLIC INFORMATION REQUEST; ESTABLISHING A DEADLINE FOR CERTAIN EXECUTIVE BRANCH AGENCIES TO RESPOND TO A REQUEST FOR PUBLIC INFORMATION; ALLOWING FOR AN EXTENSION OF THE RESPONSE DEADLINE BY MUTUAL AGREEMENT BETWEEN THE REQUESTER AND THE AGENCY; ALLOWING A PERSON TO FILE AN ACTION IN DISTRICT COURT IF AN EXECUTIVE BRANCH AGENCY FAILS TO MEET THE RESPONSE DEADLINE; AND AMENDING SECTIONS 2-6-1006 AND 2-6-1009, MCA."

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

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

"2-6-1006. Public information requests -- fees. (1) A person may request public information from a public agency. A public agency shall make the means of requesting public information accessible to all persons.

(2) Upon receiving a request for public information, a public agency shall respond in a timely manner to the requesting person by acknowledging to the requesting person that the request was received within 5 days of receiving the request for information and:

(a) making the public information maintained by the public agency available for inspection and copying by the requesting person; or

(b) providing the requesting person with an estimate of the time it will take to fulfill the request if the public information cannot be readily identified and gathered and any fees that may be charged pursuant to subsection ~~(3)~~ (4).

(3) (a) Notwithstanding the estimate of response time required in subsection (2)(b) and except as provided in subsections (3)(b) and (3)(c), an executive branch agency shall provide the requested public information to the requesting person in a timely manner but no later than 20 working days from the date the

1 agency acknowledges receipt of the request for information under subsection (2)(a).

2 (b) The agency and the requester may mutually agree to extend the deadline for response in
3 subsection (3)(a) by an additional 20 working days.

4 (c) The department of corrections is not subject to the response deadline in subsection (3)(a).

5 ~~(3)~~(4) A public agency may charge a fee for fulfilling a public information request. Except where a fee
6 is otherwise provided for by law, the fee may not exceed the actual costs directly incident to fulfilling the request
7 in the most cost-efficient and timely manner possible. The fee must be documented. The fee may include the
8 time required to gather public information. The public agency may require the requesting person to pay the
9 estimated fee prior to identifying and gathering the requested public information.

10 ~~(4)~~(5) A public agency is not required to alter or customize public information to provide it in a form
11 specified to meet the needs of the requesting person.

12 ~~(5)~~(6) If a public agency agrees to a request to customize a records request response, the costs of
13 the customization may be included in the fees charged by the agency.

14 ~~(6)~~(7) (a) The secretary of state is authorized to charge fees under this section. The fees must be set
15 and deposited in accordance with 2-15-405. The fees must be collected in advance.

16 (b) The secretary of state may not charge a fee to a member of the legislature or public officer for
17 any search relative to matters pertaining to the duties of the member's office or for a certified copy of any law or
18 resolution passed by the legislature relative to the member's official duties."
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20 **Section 2.** Section 2-6-1009, MCA, is amended to read:

21 **"2-6-1009. Written notice of denial -- failure to meet response deadline -- civil action -- costs to**
22 **prevailing party in certain actions to enforce constitutional or statutory rights.** (1) A public agency that
23 denies an information request to release information or records shall provide a written explanation for the
24 denial.

25 (2) If a person who makes an information request receives a denial from a public agency and
26 believes that the denial violates the provisions of this chapter, the person may file a complaint pursuant to the
27 Montana Rules of Civil Procedure in district court.

28 (3) If a person who makes an information request to an executive branch agency does not receive

1 a response from the agency as required in 2-6-1006(3)(a) and (3)(b), the person may file a complaint in district
2 court.

3 ~~(3)~~(4) A person alleging a deprivation of rights who prevails in an action brought in district court to
4 enforce the person's rights under Article II, section 9, of the Montana constitution or under the provisions of Title
5 2, chapter 6, parts 10 through 12, may be awarded costs and reasonable attorney fees."

6
7 NEW SECTION. Section 3. Severability. If a part of [this act] is invalid, all valid parts that are
8 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
9 the part remains in effect in all valid applications that are severable from the invalid applications.

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