



Montana Legislative Services Division
Legal Services Office

TO: State Administration and Veterans' Affairs Interim Committee
FROM: K. Virginia Aldrich
DATE: July 19, 2017
RE: Legislative Administrative Rule Review Report

Pursuant to 5-5-228, MCA, the State Administration and Veterans' Affairs Interim Committee is responsible for reviewing administrative rules within its jurisdiction. Staff for the State Administration and Veterans' Affairs Interim Committee has prepared this report for informational purposes only. This report does not represent any action or opinion of the State Administration and Veterans' Affairs Interim Committee and does not preclude additional action that may be taken by the State Administration and Veterans' Affairs Interim Committee pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

MAR NOTICE NUMBER: 44-2-226

AGENCY/BOARD: Secretary of State

RULE CLASSIFICATION: (e.g. substantive/interpretive/emergency/temporary): Substantive

SUBJECT: Access to public information and fees for copies

NOTICE DESCRIPTION: (e.g. proposal notice/adoption notice): Notice of Public Hearing on Proposed Amendment

SUMMARY OF RULE(S):

The Secretary of State proposes to amend one rule pertaining to the access of public information and fees for copies. The Secretary of State proposes to change references within the rule to terms that were updated by HB 123 (Ch. 348, L. 2015). HB 123 reorganized and replaced the public records statutes. Under the current rule, the public information at the Secretary of State's office is "available for public inspection between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday." However, under the proposed amendments, this policy will be updated to require an appointment ("Requests to examine public information will be granted by appointment.").

The current rule allows the Secretary of State to determine on a case-by-case basis whether a staff person must be present to observe and supervise the documents, and the proposed amendments specify that the Secretary of State must "maintain the integrity of original records", allowing a staff member to observe any examination or copying of records if, in the opinion of the Secretary of State, "any requested record might be altered, stolen, or is irreplaceable."

The rule specifies that pursuant to 2-6-1006, MCA, the Secretary of State is not required to alter or customize public information to provide it in a form specified to meet the needs of a requesting person, and any custom record requests will be reviewed in accordance with that statute. The proposed amendments also expand upon the fee format for public information requests, noting that the fees will not exceed the actual costs directly incident to fulfilling the request "in the most cost-efficient and timely manner possible," and they will include staff time required to review and gather the public information. The proposed amendments require that staff time, records collected from offsite storage, digital media, legal review, any research and analysis required, and additional services required by the Information & Technology Services Division will be billed at their actual costs, but staff time will only be charged when it exceeds one half-hour of time.

The proposed amendments also update the statutory authority for the rule at issue and make minor changes in style and phrasing.

The Secretary of State notes that the office receives between 15 to 30 request for public information per year and they vary "significantly in terms of the volume of information requested and the relative difficulty in gathering and preparing the information to provide in response to the request." The Secretary of State "does not anticipate that the fee changes will have any material impact on small-scale public information requests, but estimates that larger-scale public information requests will result in charges that may average \$100 to \$300 per request." Presuming that there are 5 to 10 large-scale public information requests per year, the Secretary of State reports that the cumulative fee increase for all persons from the new fee structure would range from \$2,000 to \$3,000 per year.

NOTES: A public hearing is scheduled for August 14, 2017, at 9:30 a.m. in Room 260, State Capitol Building, Helena, Montana. The public comment period ends on August 18, 2017.

FULL TEXT OF NOTICE: The full text of the notice proposal may be found online at <http://www.mtrules.org/> shortly.