

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Chairman William E. Farrell, on March 6, 1989, at 10:00 a.m., Room 331, Capitol.

ROLL CALL

Members Present: Senator Hubert Abrams, Senator John Anderson, Jr., Senator Esther Bengtson, Senator William E. Farrell, Senator Ethel Harding, Senator Sam Hofman, Senator Paul Rapp-Svrcek, Senator Tom Rasmussen, Senator Eleanor Vaughn

Members Excused: None

Members Absent: None

Staff Present: Eddy McClure

HEARING ON HB 142

Presentation and Opening Statement by Sponsor:

Representative John Cobb stated this bill is at the request of the Legislative Audit Committee, and resulted from an audit on the Department of Administration. He indicated that, presently, the law requires the department to serially number and index all documents and forms printed, and permanently retain a copy. He noted that they are supposed to keep a copy of all documents, but have not been in compliance with that requirement because this law was enacted in 1923 but, in 1977, the Legislature enacted a public records management act, which applies to all state agencies, and provides for retention and destruction of public records. He stated that compliance with the act is sufficient to insure that adequate records and important records are maintained, and unnecessary ones are disposed of. He indicated that this law is in conflict with the 1977 law, because this law states copies of all documents are to be kept permanently, no matter what kind of document, and whether it is worth keeping, or not. He noted that, in 1977, the Legislature made a new law which says they only have to keep important ones, and there is a conflict between important documents and keeping all of them, adding they have

not been keeping all documents, because of the 1977 law, otherwise they would have huge storage problems. Representative Cobb indicated they are trying to clarify that they do not have to keep every document. He reported the 1977 law is 2-6-201, which is the public record management law, and which explains how they are supposed to sit down and figure out which documents are the most important ones to retain.

List of Testifying Proponents and What Group they Represent:

John Northey, Legislative Auditor's Office

Testimony:

Mr. Northey stated he believes that Representative Cobb has adequately explained the bill, and that he would be glad to answer any questions.

List of Testifying Opponents and What Group They Represent:

None.

Questions From Committee Members:

- Q. Senator Hofman asked how do they determine what is important, what should be kept, and what not.
- A. Mr. Northey responded that the records management act, which Representative Cobb referred to, created a records management committee made up of representatives of the Legislative Auditor's office, the Attorney General's office, the Historical Society, and the Department of Administration, and that the committee sets the record retention schedules from an audit standpoint, from a legal record-keeping standpoint, from a historical perspective, and from an accounting perspective. He reported that there is a bill currently before the Legislature that would add a representative from the Secretary of State's office to that committee. He indicated there are general records retention schedules established for all state agencies, noting that is personnel records, accounting records, that are similar across the board. He further indicated there are agency retention schedules for records unique to a particular agency, that the agency proposes those schedules and, if the committee concurs, those schedules are adopted, which sets the time-frame for which they keep the records.

Closing by Sponsor:

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Representative Cobb reported that, if this bill does pass, Senator Jacobson will carry it.

Chairman Farrell announced the hearing on HB142 as closed.

DISPOSITION OF HB 142

Discussion:

Senator Bengtson offered a motion that HB142 be concurred in.

Recommendation and Vote:

Motion passed by the committee that HB142 be concurred in.

HEARING ON HB 270

Chairman Farrell announced that the hearing on HB270 will be rescheduled for Friday, March 10, 1989, because Representative Jack Ramirez, the sponsor of HB270, could not attend the meeting today.

HEARING ON HB 487

Presentation and Opening Statement by Sponsor:

Representative Mary McDonough stated that HB487 is a simple bill that grants the Secretary of State's office rule-making authority to establish a method of archiving the documents stored in the office. She indicated that, because the technology of archiving documents is changing so quickly, this would allow this office to have the flexibility to meet this change, adding that one of the newest developments in this field are optical discs, which are similar to the record discs they are using now.

Representative McDonough stated this bill is not a request to purchase new equipment, and does not have any fiscal impact whatsoever, that it merely provides the Secretary of State the flexibility to establish, by rule, the method of archiving documents in that office. She indicated this rule-making authority is not without guidelines, that the statement of intent sets forth the minimum standards for archiving technology. She stated these standards will provide for the

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integrity of the archived documents, that the bill will not do away with the originals, and permits establishing the fastest and easiest way to store these documents. Representative McDonough reported the bill was amended, in the House, to include that any decisions they make would have to meet with the approval of the state records committee, as another method of making sure that things go smoothly. She again stated that the technology is changing so quickly, and the Secretary of State's office would appreciate the ability to investigate and update its methods of documenting.

List of Testifying Proponents and What Group they Represent:

Garth Jacobson, Secretary of State's office

Testimony:

Mr. Jacobson's written testimony is attached as Exhibit 2. He added that the amendments placed on the bill, in the House State Administration Committee, addresses their concerns to make sure there is a unified and consistent policy for archiving documents.

List of Testifying Opponents and What Group They Represent:

None.

Questions From Committee Members:

- Q. Senator Bengtson asked Mr. Jacobson who is on the state records committee, if they work in concert with the historical society, and how many tie-ins does the state records committee have.
- A. Mr. Jacobson responded that the state records committee is comprised of, presently, 4 members; a representative from the Legislative Auditor's office, a representative from the Attorney General's office, a representative from the Historical Society, and a representative from the Department of Administration, primarily in the records archiving bureau or division, noting that might not be the correct phraseology, but it is someone from that area. He added there is a bill, as was mentioned earlier today, which would authorize the Secretary of State to also be a member of that committee. He stated that, as far as how they determine archiving methods and other such things, they generally review the documents to try and decide what value it has. He indicated that, obviously, the Attorney General reviews it for the legal

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value, the Historical Society reviews it for the historical value, the Legislative Auditor makes sure that it is something that does not need to be kept for financial audit purposes or, if it does, he asks that it be retained, and the people from the Department of Administration primarily handle it from the technological aspect of the proper methods for storing documents.

- Q. Senator Bengtson then stated there has to be someone with a technical background on the newer methods of preserving those documents, and indicated she supposes these people would call in someone to present them with what is the latest.
- A. Mr. Jacobson responded that this bill establishes the rule-making authority to do that. He indicated that a person named Ed Eaton, of the Department of Administration, who is the archiving czar of the state, keeps track of all the latest technological changes in this area. He stated they have been in consultation with Eddy about this, and Ed believes and agrees with this bill, in so far as establishing rule-making authority for optical disc archiving, and that he seems to be satisfied with this. Mr. Jacobson indicated they are going to be working with him to develop the rules, if the authority is granted in the Secretary of State's office.
- Q. Senator Bengtson stated that, someplace down the road, there will be some new equipment needed, of course.
- A. Mr. Jacobson responded that it is quite likely that will be required, although, presently, they are paying people to come in to microfilm documents, and it will probably be a transfer of spending money for one method of archiving to another method. He stated that, as far as the fiscal impact goes, he does not know if it will be that significant, adding that they are not asking, at this point, for the authority to go out and buy new-fangled equipment. He indicated they just want to begin the planning stage so that, the next time around, if they do come in and ask for equipment, or for the authority to transfer from one method of archiving to another, and use the existing money available for that, they have their ducks in order.
- Q. Senator Harding indicated that was her question, regarding the equipment, noting there is no fiscal note with this. She asked, if they do look at new equipment, do they have any idea of the cost.

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- A. Mr. Jacobson responded that, at this point, he does not have an answer for that question. He stated he does know that they are probably looking at something comparable to what they are paying now for the cost of microfilming, and indicated the problem, noting he should not say the problem, that maybe it's a great thing, is that the cost of equipment is going down. He indicated that, just a few years ago, the cost of computers and other equipment was incredibly expensive, but now, because of the competition in the market, and the incredibly cheap methods of developing technology, the cost of the equipment is going down. He noted that, if he told the committee a figure of \$10,000 or \$15,000 now, it may be several thousand dollars less than that, and that, in all honesty, he can not answer that question. He indicated he can assure the committee that, before that happens, the committee will have an opportunity to say yes or no to that decision.
- Q. Senator Rapp-Svrcek asked Mr. Jacobson, if they keep the original of these documents now, and intend to keep the original of the documents, even under the new technology, what is the advantage of the technology, noting they still have to file those originals, and he assumes, get them out when they want to make copies.
- A. Mr. Jacobson responded that he wishes he could take the committee down to the Secretary of State's office and give them a quick tour of the office, to show them how the documents are archived and stored there. He stated there is room about the size of this (meeting room), which has files that go up to the ceiling, and that those are all the corporate documents. He indicated that, when a person needs to get a copy of a document, they sometimes have to climb up on a ladder, reach out, and pull out the file on XYZ corporation. He stated that this would be laying the groundwork for this technology, which would be to simply type in to a computer, requesting the articles of incorporation of XYZ corporation, and out would come a photocopy of the original, which would be as clear as the original and, instead of having to go search those files, they would actually have a photocopy of the document. He indicated the advantage is that they could then move all these documents to another place where they will be better preserved, noting the originals will still be kept, that the archiving of the originals will be available. He noted there are tremendous advantages to this and, as he mentioned in his testimony

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earlier, the next phase would be to have modem hook-up, so that people could literally zap an original document, or a copy of the original document, to their office, wherever it might be in the State of Montana, or throughout the country, adding that the advantages are tremendous.

Q. Senator Harding asked if they presently have the corporation records on microfilm.

A. Mr. Jacobson responded that the corporation records are not on microfilm, that the UCC records are on microfilm, and indicated the project to put all the corporation records on microfilm has not been done yet. He reported that, when Secretary of State Mike Cooney came into office, they, were talking about scrapping the micro-filming project, and going to the next technology because there has been a leap-frogging of technologies. He indicated the latest, and probably the best, technology is this optical disc, but, if something were to come up in the immediate future that is even better than that, they need the flexibility to draft the rules to enable that. He stated it is difficult to get a handle on these things, but he thinks the only way to do that is to have rule-making authority, which enables them to have the flexibility to do this. Mr. Jacobson stated that, before any money is expended, it has to go through the Legislature.

Q. Senator Vaughn asked if she understands him to say that they could read copies of these records without coming into the office, if they have the equipment to do that.

A. Mr. Jacobson responded yes, indicating he believes that would be possible, noting they have talked with some of the technology people representing computer companies, who have indicated that, in the not so distance future, probably just a couple of years, this will be possible. He indicated that, referring to television ads, they do talk about that type of operation, in some circumstances, adding that it, perhaps, is here now.

Closing by Sponsor:

Representative McDonough thanked the committee for their time and consideration.

Discussion:

Senator Bengtson offered a motion that HB487 be concurred in.

Recommendation and Vote:

Motion passed by the committee that HB487 be concurred in.

HEARING ON HB 345

Presentation and Opening Statement by Sponsor:

Representative Fred Thomas reported that this bill is at the request of the Secretary of State's office, and that it asks to update their services to the public, in Montana, in allowing the use of fax documents in meeting deadlines for necessary filings in the Secretary of State's office. He indicated that, as we see the growth and the almost demand for fax machines in the business world today, the growth of them, and the necessity of them, is just unreal. He stated that we should try our best, at the state level, to keep up with the available technological advances. Representative Thomas stated this would mean that a fax document would be accepted in meeting deadlines, and that the original, and the fees, would have to be transmitted in 5 working days. He noted there would, of course, be a fee for acceptance of the fax, also. He stated this would not eliminate the current system of mailing things in, but would allow the use of those machines to speed up, and meet deadlines that everyone out there is having to meet. He noted he does not know why but, in the real world, everybody is pushed up to deadlines, that things need to happen today. He added they don't happen in 2 or 3 weeks, when you get your mail back and forth; things need to happen today.

Representative Thomas stated that, in his office, they have so many requests that their ego was getting blown every other day, because people ask them to fax things to them. He reported they did not have a fax, but they bought one, and that it has paid for itself, probably, already. He indicated this is simply an attempt to keep up with the available technology that is out there today. He stated he would suggest that a faxed document actually provides more than an original document, because a fax document, on the top, has the date and the time, and usually where it came to, noting that it specifies when the document came, and who received it. He indicated it is really more than just getting something in

the mail, because, in the mail, you throw that envelope away, and you don't know when it was mailed, or where it came from, where it is mailed from. He stated there is a lot to this, and that the Secretary of State's office is attempting to keep up with the technology that is available.

List of Testifying Proponents and What Group they Represent:

Garth Jacobson, Secretary of State's office

Testimony:

Mr. Jacobson stated he is here to testify in support of HB345. He indicated there is an inscription on a tombstone located on Boot Hill, somewhere in a southwestern town in the states, which says; "I knew it would happen, but I didn't think it would happen this soon." He stated that office automation is one of those things that everybody knew was going to happen, but they really didn't think it was going to happen this soon. Mr. Jacobson reported that HB345 is one of the bills that addresses the automation, the technology revolution, that is happening in the 1980's. He stated that, as Representative Thomas mentioned, facsimile machines are becoming more of a part of our corporate culture. He reported that, during the course of the research, he came across some interesting fax facts which will illustrate, clearly, just how enamored we have become with this particular machine. He noted, for example, Donald Trump has a fax machine in his car and on his boat, and that radio stations WNEW and WXRK, in New York, welcome fax requests for music played on the radio. He also reported that Time Magazine accepts its letters to the editor via fax machine, and that the Los Angeles Lakers travel with a fax machine, so they can get accurate box scores while they are on the road. Mr. Jacobson added that last, and possibly most remarkably, over half of the telephone calls made between the United States and Japan were made from fax to fax. He indicated that, currently, about 2% of their filings are received via Federal Express, or other, similar, overnight express companies, noting the cost to the user for this service ranges from \$10 to \$15. He indicated that HB345 would allow them to immediately improve the service provided to these users, by giving them same-day service instead of next-day service and, at the same time, the consumer would save the expense of an overnight carrier. Mr. Jacobson testified that HB345 can be implemented immediately, with no adverse affect upon the current office structure, or the financial standing of the state. He stated the process is necessary for acceptance of the provisional filings of the fax document already in use, and the equipment necessary has been included in the

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FY90 budget, as recommended by the LFA in the executive and corporation subcommittee. He indicated that, in fact, the levy of a \$3 filing fee for fax documents, assuming a 2% figure, which reflects the current number of overnight filings, would pay for the increase in office supplies and the potential phone charges, and still yield a surplus in the general fund. He stated these figures are represented in the fiscal note submitted by their office to the executive budget office.

Mr. Jacobson stated he thinks a little explanation about how the process will work will clarify any further questions the committee may have after the testimony. He indicated that, if a bank wanted to make a UCC filing of a document, and they needed to close the deal on Friday afternoon, they could fax the document to the Secretary of State's office, who would receive the faxed document, and that document would be filed in a temporary situation. He indicated it will remain as a valid filing for 5 days and, if the original document does not come in in 5 days, it is treated as null and void. Mr. Jacobson stated that, to avoid mischief with the fax machine, there is a provision in the bill which provides for damages if someone files a fraudulent fax filing. He indicated that anyone wanting to cause mischief would be subject to damages, noting he is sure only people who are serious about filing their documents will use the fax machine. He stated that is not to dissuade people from filing via fax, that it is just to make sure that only people who are serious about using the fax machine will use it, and no one else.

Mr. Jacobson indicated there may be concerns, noting he is sure the committee will hear testimony, regarding the period of time where the document is in this temporary situation. He indicated the best way to explain it would be that it is simply an actual thing; it is, for all purposes, the actual document. He noted it will walk like a duck, will quack like a duck, will fly like a duck and, if the original does not come, it will be a dead duck. He indicated that explains the temporary period. He stated that people conducting a lien search will be told by the Secretary of State's office that it is a temporary filing, and they can treat it accordingly. He noted they can treat it as an exception, that they know it is there, and the Secretary of State's office will follow-up, and let them know what the final situation is on that temporary filing, so that they will not have to pay to conduct another search in 5 days. He indicated he thinks they have resolved most of the concerns, noting he thinks they have resolved all of the concerns, of the people who will be using these fax documents.

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Mr. Jacobson noted there may be some people who have problems with this new technology but, unfortunately for them, it is not going to go away. He stated HB345 enables them to get a handle on the new technology in a way that insures the authenticity and reliability of the process. He indicated that, if this legislation does not pass, the courts may be telling them how to handle fax filings. Mr. Jacobson urged the committee to recommend HB345 be concurred in, noting this good bill gives their office the ability to provide better service to all Montanans, noting that is what they are there for. He indicated he appreciates the opportunity to testify, and will be available to answer any questions.

List of Testifying Opponents and What Group They Represent:

Gene Phillips, Montana Land Title Association

Testimony:

Mr. Phillips stated they are opposed to the legislation, as drafted, indicating they do not have any problem with the position taken by Representative Thomas that this will help in meeting deadlines, and that there is more certainty with the filing date and time, because it shows up on the top of the document when it is actually received by a fax machine. He stated their problem is with the filings under the UCC laws, which require perfection of the security interest. He stated that perfection of the security interest is a very critical step in any loan transaction, noting any bank loaning money, which is secured by personal property, wants to have a perfected security interest in the collateral which is securing that loan. He indicated that perfection is obtained by filing a form with the Secretary of State's office, and the statute is perfectly clear on how that is done. He reported a signed financing statement, signed by the debtor, must be filed with the Secretary of State's office in order to perfect a security interest. He indicated the courts have taken a mixed view on whether a copy is, in fact, a signature, noting that is a Xerox copy, for example. He reported the fifth circuit in the federal court system has ruled it is not a signature, for purposes of perfecting that security interest. He further reported the State of Idaho has gone the other way, and have said a Xerox copy is sufficient. He noted that, nevertheless, there is a conflict in the law on that question, and all this will do is generate litigation to determine whether or not a fax can pass muster as a signed document.

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Mr. Phillips stated he raised this question at the hearing in the House, and they amended the bill. He referred the committee to page 1, following line 20, which states "the signatures on the facsimile copy shall be treated in the same manner as the original for the purpose of", and noted they have the wrong citation there, that it cites Section 39-9-402. He indicated the correct citation is Section 30-9-402, which is the section of the uniform commercial code which requires a signature in order to have a valid filing. He stated that, however, they have not gone far enough, and he pointed out to the committee that, in order to terminate a financing statement, which might happen if you are going to make a loan, the title company does a search, and lets them know if there is any existing financing stigmas covering the same collateral. He indicated that, at the same time, somebody does a fax filing of a termination statement, noting that Section 30-9-404 requires a signed termination statement, and submitted to the committee that a fax copy is not signed. He indicated that, if there was an assign of the security interest, and they try to do that by fax, Section 9-405 requires that the assignment form be signed, and that this is not covered by this proposed legislation. He stated that, in the case of release of collateral from the financing statement, as provided for in Section 9-406, that requires a signed statement of release. He noted that, if the committee is going to amend the Uniform Commercial Code, they have to go through and amend all the sections that require signatures, in order to have a fax filing be effective.

Mr. Phillips stated that it may quack like a duck, and look like a duck, but it still ain't a duck, because you don't have a perfected financing statement, or a perfected security interest, for a period of 5 days; you are in limbo for 5 days, and don't have anything until the original comes in, within the 5 day time frame. He indicated that, if you have terminated a financing statement by filing a fax termination statement, and the original never comes in, the financing statement was never terminated, and subsequent creditors take subject to that prior existing interest in the collateral. He stated that all this is going to do is gum up the area of secured transactions that the title companies are giving opinions on daily. He indicated that they will simply note this is an exception in the title policy, and will have to go back in 5 days and do a second search, noting that nobody is going to know any more today than they will know 5 days later, as to whether or not that was, in fact, terminated, was, in fact, assigned, was, in fact, perfected. He indicated it may be a perfectly valid way to meet deadlines for corporate filings, for filing of fictitious names for business enter-

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prises, or doing many things in the area of corporate filings, but that, in the area of secured transactions, it simply will not work, unless you amend all of the sections of the Uniform Commercial Code that require signed filings, noting you still will have the problem of what to do with the 5 day period, when you are out in never-never land. He urged that the committee give this bill a do not concur.

Questions From Committee Members:

Q. Senator Harding stated that she thinks Mr. Phillips has answered all of her questions, but indicated that, when you fax it, you still have 5 days, and asked Representative Thomas what have they gained.

A. Representative Thomas responded that, in dealing with secured transactions, you have gained meeting the deadline, noting that you do have to wait for the original documents to close that aspect. He indicated the point is that the service is available to communicate these things, and that is really, very simply, what we are talking about; being able to communicate these things, that it is available out there, to communicate, on a right-now basis, not sending it in the mail, not getting it here tomorrow, but right now. He stated that, obviously, there are some changes that will come about. He indicated that, outside the area of UCC filings, getting into corporate bank statements, and all kinds of things, director changes, the current state law requires, if a change is made in a director, they have to notify the Secretary of State immediately. He asked how can you do that immediately, call them up? He answered his own question no, and stated that it has to be in writing. He indicated it could be faxed to them, now, that they could not in the past. He indicated immediately is taking a different term, noting that now, in communications, immediately is getting more and more right now. He stated he would say there are many things being gained, and noted that, in the area that Mr. Phillips brought up, he thinks it is a very valid thing to consider, noting there are options to eliminate that problem.

Q. Senator Harding asked, if there are areas that this would work in, fine, but asked, in the areas that it does not work in, shouldn't that be amended out.

A. Representative Thomas responded that they could exempt UCC filings, that fax filings would not satisfy UCC

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filings, but indicated they could go back to where they are at, that being, if they fax a document, and it is correctly received by the Secretary of State's office, and if, within 5 days, the originals are not received, that fax copy is void. He indicated they could go to that threshold, noting that we all know there are, in any title search, exemptions, that there are certain clarifying points, and they do have exceptions built into them. He stated that, if this bill were to pass, the title search would say a faxed security document is filed with the Secretary of State and, if the original is not received within 5 days, it is null and void.

- Q. Senator Hofman stated that he read an article in the paper about the abuses of the fax system, that someone can fax something you do not want, you did not ask for, and you really don't want to be responsible for, or pay for, and you have no control as to who is going to send you what. He noted that, if someone abuses this, which you have tried to address in the damages section, but someone really wanted to throw a monkey wrench in the works, they could do that, and asked Representative Thomas how they would know where it came from, if that is covered.
- A. Representative Thomas responded yes, that, anytime you send something, it is only business smarts to send a cover sheet with it. He pointed out it will have the date, who it is from and who it is going to, what it is regarding, the fax numbers, and phone numbers, etc. He indicated that the document is then filed, noting that is the typical way of doing business. He stated that, if a document comes into the Secretary of State's office, which does not say where it is from, or what it has to do with, it is really not a filing, that it is just a document. He noted that, anytime you send something, you have to tell them what you are doing, when and where, noting you can not just send something in that says, anonymously, someone owes somebody some money. He stated it is true, that a person can send anything they want to the Secretary of State's office right now, if they have the number, and it is plugged in, but that it does not mean it is going to make an automatic filing on something, nor would it, if it was mailed, and asked what would be the difference if that person mailed the same erroneous document to them, and they got it on time. He indicated that what Senator Hofman is talking about is, if he has a fax machine at home, or in his business, and receives a cartoon, or advertisement, or some undesirable

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material. He noted that it can happen, but indicated he does not think they are getting into a legal problem with fax filings.

- Q. Senator Vaughn asked Mr. Jacobson, regarding a lien search where there is a fax document, which is not legal until the original has been filed within the 5 days, noting that he stated their office would follow-up on the fax document with whoever is doing the lien search, if that was going to take additional office time, and add confusion to some of the records. She asked, if they go ahead and process a loan, because the fax document indicated this has been satisfied, or cleared, but, within the 5 days, something happens, and the original does not materialize, is that not going to cause extra time in filing for his office.
- A. Mr. Jacobson responded he does not believe so, and indicated they have a system where they deal with documents that come in which may have some defect in them and, even though they are not filed, they track them, and try to get something done so the document can be filed. He stated that, in that situation, they would track the document for those 5 days, and, if the original did not come in, the document would be treated as null and void. He stated that, when someone asks for a search, noting that he suspects this is something that will not happen all that frequently, and is told there is a provisional filing of the UCC lien, that the filing came in on Friday, and they have 5 working days in which to get the original in, their office will send them that lien search, and then send them the follow-up, whether that lien became valid, or not. He indicated that, as far as the extra work goes, he does not believe it is that much extra work, because the people in that office already handle those types of situations where they have incomplete filings, and they follow those. Mr. Jacobson stated this was discussed with the filers, and they do not believe there would be much more difficulty with that. He states he thinks it is a very easy process.
- Q. Senator Rasmussen asked Mr. Jacobson, in the area of UCC filings, what would his thoughts be, if that area was amended out of this bill.
- A. Mr. Jacobson responded that, ultimately, they would like the authority to have everything, but, if they can not have everything via fax, they would certainly accept part of the whole, instead of the whole process. He stated

he believes they could address the comments Mr. Phillips made by going through the statutes, in the UCC area, to make sure that they reference those areas correctly. He indicated he does not know how the 39 figure came in, noting it was supposed to be 30, and that, for some reason, that number must have been a typo in the bill, itself. He indicated he would definitely recommend an amendment be made to correct that. He stated that, as far as the other references go, he does not think there will be any problem with making the other references, or, perhaps, a slight language change could be made. He stated they certainly could live with not having UCC filings, but indicated the question then becomes are they doing the banks a disservice, because the banks want to close deals right now, and they do not want to wait for the mail to get to the Secretary of State's office, even if they send it overnight. He stated an example is with the Colstrip sale. He reported they had to hire a private jet to fly those documents up to the Secretary of State's office, and had a person hand-deliver the documents to the Secretary of State's office. He indicated that, if they had a fax machine, they could have sent those documents via fax, while everyone was sitting in the room, looking eye ball to eye ball at each other, trying to close this transaction. He stated there is a real need to be able to handle these UCC lien filings, via fax, because of the instantaneous nature of it. He indicated he believes a slight amendment would address Mr. Phillip's concern, as far as the 5 day period which he seems to be concerned about. Mr. Jacobson stated that he thinks it is a situation where the title companies can say that this is exempted out, noting they always err on the side of caution, and for good reason, and that they can write this as another exception. He indicated it will not cause them any problems, noting they may not be able to explain it in detail to their customers, but they can certainly exclude it out, without any problem.

- Q. Senator Rapp-Svrcek indicated Mr. Phillips talked about the 5 day limbo, and stated he is concerned about the limbo that might be created if they get a document by fax, and do not get the original until 6 days after the fax comes in. He asked Mr. Jacobson what kind of legal hassles are they opening up at that point, indicating a person could say it was in the mail on time, that it is the mail's fault, and they have the fax there. He asked, if the Secretary of State's office is going to accept the

SENATE COMMITTEE ON STATE ADMINISTRATION

March 6, 1989

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legality of a fax document for 5 days, why are they not just accepting the legality of a fax document.

- A. Mr. Jacobson responded that the language, the way it is now, is a compromise between those people who have absolute faith in fax documents, versus those people who still want to see an original document, with blue ink instead of black ink on it. He indicated they have tried to address that situation with the 5 day period, where the original will follow the fax. He stated that, if it were up to him, he would say they should just accept fax documents, and call it good, but noted it is a compromise to those people who still want to see the original document. To answer Senator Rapp-Svrcek's question about a document that is not received in the 5 days, but, on the 6th day, it comes in, Mr. Jacobson indicated that, in that situation, the document would be treated filed as of the date the mail came in, noting that the 5 day period would have elapsed, and the fax filing would have been void. He stated that, in the real life situation, whoever is making a filing makes sure the filing gets into the Secretary of State's office. He indicated that, if it were extremely important, they may still want to hand deliver it, if they were that concerned, but noted that, as far as speed goes, the fax addresses that. He added that, if they wanted to, they could still use overnight mail, but indicated that, if you can not trust the Post Office, the old system of business is going to be in trouble.
- Q. Senator Bengtson asked Mr. Jacobson what portion of their work deals with secured transactions that require they use the Uniform Commercial Code rules.
- A. Mr. Jacobson responded that their office has 3 general areas of operation, and the UCC is a bureau in itself. He indicated he believes about 70,000 documents are handled through that bureau, per year, adding that, on the corporate side, there are probably about 30,000 or 40,000 documents that are handled, noting he would have to check his figures, that he may be a little low. He stated there are about 4 people in the UCC side, versus 7 or 8 people in the corporate side, indicating it is probably about 1/3 of their office operation.
- Q. Senator Abrams asked Mr. Jacobson how effective is paragraph (E) on page 2, and asked if that is enforced by them. He pointed out that is the failsafe, indicating they would be liable for 3 times the damages.

SENATE COMMITTEE ON STATE ADMINISTRATION

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A. Mr. Jacobson responded that Senator Abrams is asking how effective that provision is, and stated he believes it would be very effective, particularly if someone is out trying to do mischief with documents. He stated that, if someone screws up a transaction that may be worth hundreds of thousands of dollars, and that is multiplied times 3, you are quickly into the millions level. He noted that, if it is a small type of thing, it could be a few to several thousand dollars, and stated that he thinks that will dissuade anybody from playing mischief with filing false documents.

Q. Senator Abrams asked about the enforcement of that.

A. Mr. Jacobson responded the enforcement of that would be a civil action, it would not be something the Secretary of State's office would do, that it would be between the two parties; the one person who was injured, against the other party who was causing the mischief. He indicated he thinks it would be a very effective method, noting, if the committee wanted to add in there that they would also recover attorney fees, there is no doubt about them going after that party, adding that he thinks that language would certainly stop any mischief that would occur. He stated triple damages gets someone's attention very fast.

Closing by Sponsor:

Representative Thomas thanked the committee, and asked them to decide if they want to exempt the UCC filings, noting he has no real problems with that. He stated that, to give the committee a good example of how the fax system works, last summer or fall, when the arguments were being made for the initiatives on the ballot, you have time to get your initial arguments in, and then respond to the opponents arguments. He reported that, in their case, they needed to get their arguments in on a particular case, very quickly, and the parties on their side were gone. He indicated that, in order to get this done, they needed to fax arguments to the individuals, have them more or less agree with what was being said, and then they faxed the argument to the Secretary of State's office, via the Legislative Council, adding they then had to mail the originals right to them. He stated it worked very well, indicating that shows the committee almost exactly what they are asking for in this situation, to mail in the stuff to meet the deadlines, and then follow it up with the original. He noted he thinks they may have sent their

SENATE COMMITTEE ON STATE ADMINISTRATION

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original argument in by fax, too. Representative Thomas indicated it gives time, noting that everybody is pushed for time these days, adding that this is advancement technology. He further indicated that how the committee feels about UCC is up to them, and they will live with what is done there. He again stated this is an advancement of technology, and he thinks it would be a mistake not to let them update along with what is going on out there.

Chairman Farrell announced the hearing on HB345 as closed.

Senator Bengtson noted that Mr. Jacobson stated the amendments regarding the Uniform Commercial Code probably could be put together quite easily, and asked if that is possible. She indicated she does not know how many places in the statutes refer to that, but that we can put away the feud, rather than amending UCC filings out of it, if we could address the entire statutes.

Representative Thomas asked the committee to give the Secretary of State's office a day to try and do that. He stated that, otherwise, they could exempt them, and asked if that would be fair, noting they would appreciate that. He added that he was sure Mr. Phillips would be glad to help with that.

Chairman Farrell asked Mr. Jacobson to work through the committee's staff attorney on that.

OTHER BUSINESS

Discussion: **HB 114**

Senator Harding offered a motion that HB114 be concurred in. She stated she feels bad that it costs money, but that she thinks we should not detour from the precedent already set for veterans, and that the committee should concur in this bill.

Senator Rasmussen asked what this will add to the present unfunded liability. Chairman Farrell responded it will add one year. Senator Rasmussen noted that will bring it up to 37. Senator Anderson stated that, as he remembers, the fiscal note indicated 125 members but, as he recalls, their research showed only about 6 members were involved. Chairman Farrell responded that is what the bill was written for, 6 people in the state that they know about now. He indicated the problem is, once you allow this, anybody transferring into the state would be eligible. Senator Anderson stated it could involve

SENATE COMMITTEE ON STATE ADMINISTRATION

March 6, 1989

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a lot of money. Chairman Farrell responded they are guessing 125.

Recommendation and Vote:

Motion passed by the committee that HB114 be concurred in, with Senator Bengtson opposed.

ADJOURNMENT

Adjournment At: 11:15 a.m.



WILLIAM E. FARRELL, Chairman

WEF/mhu
HB142.036

ROLL CALL

STATE ADMINISTRATION COMMITTEE

51ST LEGISLATIVE SESSION

DATE: March 6, 1989

NAME	PRESENT	ABSENT	EXCUSED
HUBERT ABRAMS	✓		
JOHN ANDERSON, JR.	✓		
ESTHER BENGTON	✓		
WILLIAM E. FARRELL	✓		
ETHEL HARDING	✓		
SAM HOFMAN	✓		
PAUL RAPP-SVRCEK	✓		
TOM RASMUSSEN	✓		
ELEANOR VAUGHN	✓		

SENATE STANDING COMMITTEE REPORT

March 6, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HB 142 (third reading copy -- blue), respectfully report that HB 142 be concurred in.

Sponsor: Cobb (Jacobson)

BE CONCURRED IN

Signed: William E. Farrell
William E. Farrell, Chairman

410
3/16/89
12:30
y.n.

SENATE STANDING COMMITTEE REPORT

March 6, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HB 487 (third reading copy -- blue), respectfully report that HB 487 be concurred in.

Sponsor: McDonough (Rapp-Svick))

BE CONCURRED IN

Signed: William E. Farrell

William E. Farrell, Chairman

Statement of Intent adopted.

W.E.F.
3/6/89
12:20 PM

SENATE STANDING COMMITTEE REPORT

March 6, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HB 114 (third reading copy -- blue), respectfully report that HB 114 be concurred in.

Sponsor: Gervais (Nathe)

BE CONCURRED IN

Signed: 
William E. Farrell, Chairman

J.C. 89
2/6/89
12:11

SENATE STATE ADMIN.

EXHIBIT NO. 1

DATE 3/6/89

STATE ADMINISTRATION COMMITTEE

BILL NO. HB 487, HB 345

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME:

DATE:

Garth Jacobson 3/6/89

Address:

Sec of States Office

Phone:

2034

Representing whom?

Sec of State

Appearing on which proposal?

HB 345, HB 487

Do you:

SUPPORT?

AMEND?

OPPOSE?

Comments:

Testimony provided to committee
see exhibit #2

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SECRETARY OF STATE
STATE OF MONTANA

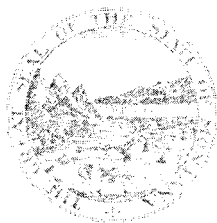
SENATE STATE ADMIN.

EXHIBIT NO. 2

DATE 3/6/89

BILL NO. HB 487 pg 1

Mike Cooney
Secretary of State



Montana State Capitol
Helena, Montana 59620

Testimony in Support of HB 487
Presented by Garth Jacobson
March 6, 1989
Before the Senate State Administration Committee

Mr. Chairman and members of the committee, for the record I am Garth Jacobson representing the Secretary of State's office. I am here today to testify in support of House Bill 487.

Picture this - A banker in Billings needs to see a copy of a certain UCC lien filing before a loan approval can be made.

An attorney in Sidney wants to check the language of the articles of incorporation of XYZ Corporation. A creditor in Missoula needs to see who is the responsible party behind a business using an assumed business name. Each one of these people contacts the Secretary of State's office via a computer modem hookup and obtains a copy of the original

document they are looking for to answer their concerns.

Does this sound like a scenario out of a science fiction movie. Well perhaps, but it is actually something that may be done within the foreseeable future. HB 487 lays the groundwork for the means to reach instant retrieval of archived documents for all of Montana's businesses.

What HB 487 does is permit the Secretary of State's office to establish by rule the method of archiving documents in its office. This bill would provide the flexibility to keep up with the technological changes that are occurring all the time in the office automation area. The microfilming technology specified in the statutes will soon be obsolete. It is therefore necessary to remove the references to antiquated methods of archiving in the statutes. It is now necessary to have flexibility in the statutes to serve the future needs of the Secretary of State's office. That in a nutshell is what HB 487 does.

I am not standing here today asking for the authority to buy

SENATE STATE ADMIN.

EXHIBIT NO. 2

DATE 3/6/89

BILL NO. HB 487 pg 3

new equipment that will do amazing things. But the first step in meeting the future needs of the office is to identify the standards and methods for change. This bill will do that.

I have met with most of the members of the state records committee about HB 487. They supported this legislation.

I believe you will see new and exciting things happening in the next five to ten years in the Secretary of State's office. This bill will lay the groundwork for the continued quality service Montana's expect from that office. I urge you to give HB 487 a be concurred in recommendation.

SENATE STATE ADMIN.

EXHIBIT NO. 3

DATE 3/6/89

BILL NO. HB345

STATE ADMINISTRATION COMMITTEE

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME:

DATE:

GENE PHILLIPS

3/6/89

Address:

Box 259

KALISPELL

Phone:

752-6644

Representing whom?

MLTA

Appearing on which proposal?

SB 345

Do you: SUPPORT? _____ AMEND? _____ OPPOSE? X

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SENATE STATE ADMIN.

EXHIBIT NO. 4

DATE 3/6/89

BILL NO. HB 270

STATE ADMINISTRATION COMMITTEE

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME: Phillip D. Brooks

DATE: 3-6-89

Address: Montana University System
33 S. East Chace Blvd

Phone: 444-6570

Representing whom?
Montana University System

· Appearing on which proposal?
HB 270

Do you: SUPPORT? AMEND? OPPOSE?

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SENATE STATE ADMIN.

EXHIBIT NO. 5

DATE 3/6/89

STATE ADMINISTRATION COMMITTEE

BILL NO. HB270

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME: Mike Trevor DATE: 3/6/89

Address: Rm 22, Sam Mitchell Bldg.

Phone: 444-2700

Representing whom? Dept. of Administration

Appearing on which proposal? HB270

Do you: SUPPORT? AMEND? OPPOSE?

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

