

1 House BILL NO. 643
 2 INTRODUCED BY O. Kuyf
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO BE KNOWN AS "THE
 5 MONTANA FREEDOM OF INFORMATION ACT"; TO GUARANTEE ACCESS TO
 6 FULL AND COMPLETE INFORMATION REGARDING THE OFFICIAL AFFAIRS
 7 OF GOVERNMENT, PUBLIC OFFICIALS, AND EMPLOYEES."
 8

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

10 Section 1. Short title. This act may be cited as "The
 11 Montana Freedom of Information Act".

12 Section 2. Purpose. The purpose of this act is to
 13 ensure all persons in Montana full and complete information
 14 regarding the affairs of government and the official acts of
 15 those who represent them as public officials and employees.
 16 To this end, the provisions of this act shall be construed
 17 in every instance with a view toward complete public access
 18 to records in the possession or control of the government
 19 and the minimization of costs and time delays to persons
 20 requesting information.

21 Section 3. Definitions. As used in this act, the
 22 following definitions apply:

- 23 (1) "Adjudication" means the agency process for the
- 24 formulation of an order.
- 25 (2) "Public body" means any political or governmental

- 1 subdivision of the state and includes but is not limited to:
- 2 (a) an officer, agency, department, division, bureau,
- 3 board, or body in the executive branch of government;
- 4 (b) an officer, board, commission, council, or
- 5 committee in the legislative branch of government; and
- 6 (c) an officer, judge, court, board, department,
- 7 commission, council, or agency in the judicial branch of
- 8 government.

9 (3) "Person" means an individual, partnership,
 10 corporation, association, or public or private organization.

11 (4) "Record" means a book, paper, map, photograph,
 12 film, card, tape, recording, or other documentary material,
 13 regardless of physical form or characteristics, prepared,
 14 owned, used, in the possession of, or retained by a public
 15 body.

16 Section 4. Right of access to records — allowable
 17 costs — time limits. (1) A person has a right to inspect
 18 and copy a record of a public body, except as otherwise
 19 provided in [section 8], in accordance with reasonable rules
 20 concerning time and place of access that may be issued by a
 21 public body after public notice and comment.

22 (2) Each public body, upon a request for a record,
 23 shall within 15 working days of the receipt of the request
 24 notify the person making the request of its determination
 25 and the reasons therefor. The determination is the final

1 opinion of the public body as to the public availability of
2 the requested record. A failure on the part of a public body
3 to respond to a request made under subsection (1) within the
4 time provisions of this subsection is a denial of the
5 request.

6 (3) If a determination is made to comply with a
7 request, the records shall be made available when the
8 requester is notified of the determination or immediately
9 thereafter.

10 (4) A public body may establish and collect fees not
11 to exceed the actual, direct cost of searching for and
12 making copies of records. A fee may not be charged for
13 examination and review to determine whether records or
14 portions of records are subject to disclosure. Records shall
15 be furnished without charge or at a reduced charge when
16 furnishing the information can be considered as primarily
17 benefiting the general public and shall be furnished without
18 charge when the information is about the individual
19 requesting it.

20 Section 5. Administrative appeals and enforcement. (1)
21 A person denied the right to inspect a record of a public
22 body may petition the attorney general to review the record
23 to determine whether the record may be withheld from public
24 inspection. This determination must be made within 15
25 working days of the submission of the petition.

1 (2) If the attorney general determines that the record
2 may be withheld, the person seeking disclosure may institute
3 proceedings for injunctive or declaratory relief in the
4 district court.

5 (3) If the attorney general determines that the record
6 may not be withheld, he shall order the public body to
7 disclose the record immediately.

8 (4) If the public body continues to withhold the
9 record, the person seeking disclosure may:

10 (a) bring suit in district court to enjoin the public
11 body from withholding the record and to compel the
12 disclosure of the requested record; or

13 (b) demand in writing that the attorney general bring
14 suit in the name of the state in district court for the
15 purposes outlined in (a). If the demand is made, the
16 attorney general shall bring suit within 10 working days of
17 its receipt. The requester has a right to intervene as a
18 full party in the suit at any time.

19 (5) In a suit filed under [section 5(1)], the court
20 has jurisdiction to enjoin the public body from withholding
21 records, to order the disclosure of any records improperly
22 withheld from the person seeking disclosure, and to grant
23 other equitable relief that may be proper. The court shall
24 determine the matter de novo and the burden is on the public
25 body to sustain its action. The court may view the records

1 in controversy in camera before reaching a decision, and in
2 the discretion of the court, other persons, including the
3 requester, counsel, and necessary expert witnesses may be
4 permitted to view the records, subject to necessary
5 protective orders.

6 (6) Upon motion and consent of all parties, if the
7 court makes a written finding, with a statement of reasons,
8 that extraordinary circumstances require a portion of the
9 proceedings to be closed to the general public and that
10 closing the portion of the proceedings is necessary to
11 achieve the overriding purpose of this act, the court may
12 order that that portion of the proceedings be held in the
13 presence of all parties, counsel, and necessary witnesses
14 with the general public excluded. Any noncompliance with an
15 order of the court may be punished as contempt of court.

16 (7) Except for cases the court considers of greater
17 importance, proceedings under [section 5], including
18 appeals, take precedence on the docket over all other cases
19 and shall be assigned for hearing, trial, or argument at the
20 earliest practicable date and expedited in every way.

21 (8) If a person seeking the right to inspect or to
22 receive a copy of a public record substantially prevails in
23 such a suit, he shall be awarded reasonable attorney fees
24 and other costs of litigation.

25 Section 6. Recording of final votes. A public body

1 having more than one member must maintain a record of the
2 final votes of each member in each proceeding of that public
3 body. The records must be available for public inspection as
4 provided in [section 7(7)].

5 Section 7. Information which must be public. The
6 following categories of information are public information,
7 except where an exception from disclosure applies and the
8 reasons for that exception clearly outweigh the public
9 interest in disclosure in the particular case:

10 (1) the names, sex, race, ethnicity, salaries, title,
11 and dates of employment of all employees and officers of a
12 public body;

13 (2) administrative staff manuals and instructions to
14 staff that affect a member of the public;

15 (3) final opinions, including concurring and
16 dissenting opinions, as well as orders, made in the
17 adjudication of cases;

18 (4) those statements of policy and interpretations of
19 policy, statutes, and rules which have been adopted by a
20 public body;

21 (5) correspondence and material referred to by a
22 public body relating to any regulatory, supervisory, or
23 enforcement responsibilities of the public body, whereby the
24 public body determines or states an opinion upon, the rights
25 of the state, a subdivision of the state, the public, or any

1 private party;

2 (6) information in or taken from any account, voucher,
3 or contract dealing with the receipt or expenditure of
4 public or other funds by public bodies;

5 (7) the minutes of all proceedings of all public
6 bodies and all votes of each member of each public body at
7 such proceedings.

8 Section 8. Exceptions from mandatory disclosure. (1)
9 The following matters may be withheld from disclosure:

10 (a) confidential commercial or financial information,
11 but only to the extent that disclosure would:

12 (i) result in substantial and unfair competitive
13 injury to the submitter of that information to a public
14 body, if the submitter at the time of the submission
15 specifically requests that the information not be made
16 public or, if submitted prior to the effective date of this
17 statute, such a request is reasonably to be implied from the
18 circumstances of the submission; or

19 (ii) lead to financial speculations in currencies,
20 securities, or commodities which will seriously interfere
21 with a planned transaction of the state or cause substantial
22 financial injury to the state or national economy;

23 (b) information of a personal nature if the public
24 disclosure thereof would constitute a clearly unwarranted
25 invasion of personal privacy;

1 (c) records of law enforcement agencies, but only if
2 they were compiled as part of an investigation for law
3 enforcement purposes and the disclosure of the information
4 would harm law enforcement by:

5 (i) revealing the identity of informants not generally
6 known outside the government;

7 (ii) prematurely releasing information when this would
8 impede the government's enforcement efforts in a particular
9 prospective law enforcement action;

10 (iii) disclosing investigatory techniques not generally
11 known outside the government;

12 (iv) depriving a person of a right to a fair trial or
13 an impartial adjudication;

14 (v) endangering the life or safety of a law
15 enforcement officer;

16 (d) interpublic body and intrapublic body
17 communications, but only to the extent that such
18 communications do not fall within [section 7].

19 (e) facts, analysis or evaluation of facts, or
20 summaries of facts, involving:

21 (i) deliberations among judges or among judges and
22 their confidential aides concerning prospective judicial
23 decisions;

24 (ii) information routinely protected by the attorney
25 work-product or attorney-client privileges; and

1 (iii) recommendations made by advisers on
2 policy-making, adjudicatory, rule-making, or judicial
3 decisions.

4 (2) Subsection (1) (d) does not protect from disclosure
5 interpublic body communications between any two or three
6 branches of the state government as defined in subsections
7 (1), (2), and (3), of [section 3].

8 (f) Test questions and answers to be used in future
9 license, employment, or academic examinations, not including
10 previously administered examinations or answers to questions
11 thereon.

12 (3) Any reasonably segregable portion of a record
13 shall be provided to any person requesting such record after
14 deletion of those portions which may be withheld from
15 disclosure under subsection (1).

16 (4) No record may be withheld for any reason other
17 than those that are specifically enumerated in subsection
18 (1).

19 Section 9. Letters of denial. (1) Denial by a public
20 body of a request for records from that public body must be
21 in written form and contain at least the following:

22 (a) a description of the contents of the records
23 withheld and a statement of the specific reasons for the
24 denial, correlated to specific portions of the records,
25 including citations to the particular exception under

1 [section 8] relied on as authority for the denial;

2 (b) the name of the public official or employee
3 responsible for the decision to deny the request; and

4 (c) notification to the requester of any
5 administrative or judicial right of review under [section
6 5].

7 (2) Each public body shall maintain a file of all
8 letters of denial of requests for records and of denial of
9 requests for the waiver of fees from that public body. This
10 file shall be made available to any person on request.

11 Section 10. Penalties. Any public official or employee
12 who withholds records or denies a request for records
13 without a reasonable basis in law shall be fined not more
14 than \$1,000 for each offense.

-End-

STATE OF MONTANA

REQUEST NO. 351-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 3, 19 77, there is hereby submitted a Fiscal Note for House Bill 643 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

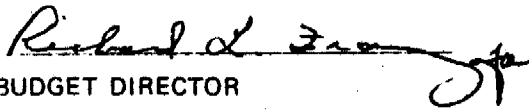
House Bill 643 proposes to guarantee access to full and complete information regarding the official affairs of government, public officials, and employees.

ASSUMPTIONS:

1. That the cost of the information received will be borne by the requestor of the information through a fee authorized by the legislation.
2. That unless large numbers of requests are made, the increased workload imposed by the requests can be absorbed within the respective governmental units.

FISCAL IMPACT:

None.


BUDGET DIRECTOR
Office of Budget and Program Planning

Date: 2-9-77