

SENATE BILL NO. 288

INTRODUCED BY FRITZ, SQUIRES
BY REQUEST OF THE SECRETARY OF STATE

IN THE SENATE

FEBRUARY 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LOCAL GOVERNMENT.
	FIRST READING.
FEBRUARY 19, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 22, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 48; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LOCAL GOVERNMENT.
	FIRST READING.
MARCH 26, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 30, 1993	SECOND READING, CONCURRED IN.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 87; NOES, 10.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 5, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 6, 1993	THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *288*
 2 INTRODUCED BY *Fitch*
 3 *Agnew* BY REQUEST OF THE SECRETARY OF STATE
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE
 6 DISPOSITION OF LOCAL GOVERNMENT RECORDS; ESTABLISHING A
 7 LOCAL GOVERNMENT RECORDS COMMITTEE AND A LOCAL GOVERNMENT
 8 RECORDS DESTRUCTION SUBCOMMITTEE; GRANTING THE SECRETARY OF
 9 STATE RULEMAKING AUTHORITY; AMENDING SECTIONS 2-6-302,
 10 7-5-2132, 7-5-4124, 15-1-104, 20-1-212, 20-9-215, 30-9-403,
 11 30-9-407, 71-3-206, 71-3-705, AND 71-3-810, MCA; AND
 12 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 13
 14 WHEREAS, proper maintenance and disposition of local
 15 government records are an essential function of government;
 16 and
 17 WHEREAS, certain local government records are of
 18 substantial historical value to the state and should be
 19 retained and preserved, rather than destroyed; and
 20 WHEREAS, coordination of local government recordkeeping
 21 policies and procedures will increase their effectiveness
 22 and efficiency; and
 23 WHEREAS, it is the view of the Legislature that these
 24 goals pertaining to local government records can be best
 25 accomplished through the creation of a state-level body; and

1 WHEREAS, the Legislature of the State of Montana finds
 2 it desirable and appropriate to create a local government
 3 records committee.
 4

5 STATEMENT OF INTENT

6 A statement of intent is required for this bill because
 7 [section 4] grants rulemaking authority to the secretary of
 8 state.

9 It is the intent of the legislature that the secretary
 10 of state have authority to adopt rules to implement and
 11 enforce [section 3], including specific authority to adopt
 12 rules regarding procedures and criteria:

13 (1) for determining which local government records must
 14 be preserved because they presently or may at some point in
 15 the future have significant historical value;

16 (2) for determining which local government records must
 17 be approved for destruction; and

18 (3) for evaluating proposed schedules for retention and
 19 disposition of local government records.
 20

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

22 NEW SECTION. **Section 1. Definitions.** For the purposes
 23 of [sections 1 through 4], the following definitions apply:

24 (1) "Local government" means any city, town, county,
 25 consolidated city-county, or school district.

1 (2) "Public records" includes any paper,
 2 correspondence, form, book, photograph, microfilm, magnetic
 3 tape, computer storage media, map, drawing, or other
 4 document, including all copies of the record, regardless of
 5 physical form or characteristics, that has been made or
 6 received by any local government, in connection with the
 7 transaction of official business, and preserved for
 8 informational value or as evidence of a transaction and all
 9 other records or documents required by law to be filed with
 10 or kept by any local government in the state of Montana.

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

14 **NEW SECTION. Section 2. Local government records**
 15 **committee -- creation.** (1) There is a local government
 16 records committee.

17 (2) The committee consists of the following seven
 18 members:

19 (a) the state archivist;

20 (b) the state records manager;

21 (c) the bureau chief of the local government services
 22 bureau of the department of commerce;

23 (d) two local records custodians, appointed by the
 24 secretary of state from a list of names submitted by the
 25 director of the Montana historical society; and

1 (e) two additional local records custodians, appointed
 2 by the secretary of state.

3 (3) Committee members subject to appointment shall hold
 4 office for a period of 2 years beginning on January 1 of the
 5 year following their appointment.

6 (4) Any vacancies must be filled in the same manner
 7 they were filled originally.

8 (5) The committee shall elect a presiding officer and a
 9 vice presiding officer.

10 (6) The committee shall meet periodically upon the call
 11 of the secretary of state or the presiding officer.

12 (7) Members of the committee not serving as part of
 13 their compensated government employment must be compensated
 14 in accordance with 2-18-501 through 2-18-503 for each day in
 15 committee attendance. Members who serve as part of their
 16 compensated government employment may not receive additional
 17 compensation, but the employing governmental entity shall
 18 furnish, in accordance with the prevailing per diem rates, a
 19 reasonable allowance for travel and other expenses incurred
 20 in attending committee meetings.

21 **NEW SECTION. Section 3. Duties and responsibilities.**

22 (1) The local government records committee shall approve,
 23 modify, or disapprove proposals for local government records
 24 retention and disposition schedules.

25 (2) The committee shall appoint a subcommittee, known

1 as the local government records destruction subcommittee, to
 2 handle requests for disposal of records. The subcommittee
 3 consists of the state archivist and the bureau chief of the
 4 local government services bureau of the department of
 5 commerce. Unless specifically authorized by statute, a local
 6 government public record may not be destroyed or otherwise
 7 disposed of without the unanimous approval of the
 8 subcommittee. When approval is required, a request for the
 9 disposal or destruction of any local government records must
 10 be submitted to the subcommittee by the entity concerned.

11 (3) The local government records committee may by
 12 unanimous approval establish categories of records for which
 13 a disposal request is not required, providing that those
 14 records are retained for the designated retention period.

15 (4) The committee shall respond to requests for
 16 technical advice on matters relating to local government
 17 records.

18 (5) The committee shall provide leadership and
 19 coordination in matters affecting the records of multiple
 20 local governments.

21 NEW SECTION. **Section 4. Rulemaking authority.** The
 22 secretary of state shall adopt rules to implement [sections
 23 2 and 3].

24 **Section 5.** Section 2-6-302, MCA, is amended to read:

25 "2-6-302. Official records ~~management~~ -- powers and

1 duties. In order to insure the proper management and
 2 safeguarding of official records, the Montana historical
 3 society shall:

4 (1) establish and operate the state archives as
 5 authorized by appropriation for the purpose of storing and
 6 servicing official records transferred to the custody of the
 7 state archives;

8 (2) in cooperation with the secretary of state, the
 9 local government records committee provided for in [section
 10 2], and the state records committee provided for in
 11 2-15-1013, establish guidelines for the inventorying,
 12 cataloging, retention, and transfer of all official records;

13 (3) maintain and enforce restrictions on access to
 14 official records in the custody of the state archives in
 15 accordance with the provisions of this part;

16 (4) provide adequate housing and care of official
 17 records in the custody of the state archives to insure their
 18 proper preservation and use by the public;

19 (5) in accordance with the guidelines established
 20 pursuant to subsection (2), remove and destroy duplicate
 21 official records and official records of insignificant
 22 historical value from the records deposited in the state
 23 archives."

24 **Section 6.** Section 7-5-2132, MCA, is amended to read:

25 "7-5-2132. Destruction of old county records. (1) Upon

the order of the board of county commissioners and with the approval of the department--of--commerce, local government records destruction subcommittee provided for in [section 3], a county officer may destroy old worthless reports, papers, or records in his the office that have served their purpose and that are substantiated by permanent records.

(2) (a) The board of county commissioners may, with the approval of the department--of--commerce, local government records committee provided for in [section 2], adopt retention schedules for claims, warrants, vouchers, bonds, treasurer's general receipts, and similar records created or kept by the county. The destruction of such the records must be done in accordance with the provisions of such the schedules and only with the approval of the local government records destruction subcommittee provided for in [section 3].

(b) If a schedule has not been adopted and approved under the provisions of subsection (2)(a), such the records may be destroyed by any county officer, upon approval by the local government records destruction subcommittee, after a period of 25 years."

Section 7. Section 7-5-4124, MCA, is amended to read:

"7-5-4124. Destruction of old municipal records. (1) Except as provided in subsection (2), upon the order of the city or town council or commission and with the approval of

the department--of--commerce, local government records destruction subcommittee provided for in [section 3], a city or town officer may destroy old worthless reports, papers, or records in his the office that have served their purpose and that are substantiated by permanent records.

{2}--Records--relating--to--the--operation-of-any-public utility-by-a-city-or--town--may--be--destroyed--without--the approval--of--the--department-of-commerce-after-the-expiration of-the-period-during-which-they-must-be-kept-by-said-city-or town-as-specified-in--the--appropriate--regulations--of--the public-service-commission-of-Montana.

{3}{2} (a) The city or town council or commission may, with the approval of the department--of--commerce, local government records committee provided for in [section 2], adopt retention schedules for claims, warrants, vouchers, bonds, treasurer's general receipts, and similar records created or kept by the city or town. The destruction of such the records must be done in accordance with the provisions of such the schedules and only with the approval of the local government records destruction subcommittee provided for in [section 3].

(b) If a schedule has not been adopted and approved under the provisions of subsection {3}{a} {2}(a), such the records may be destroyed by any city or town officer, upon approval by the local government records destruction

1 subcommittee, after a period of 5 years."

2 **Section 8.** Section 15-1-104, MCA, is amended to read:

3 "15-1-104. ~~Treasurers-to-destroy~~ Destruction of certain
4 tax records -- approval. The treasurer of each county, city,
5 or town in the state of Montana may destroy all tax records
6 in ~~his~~ the treasurer's possession more than 30 years old,
7 with the approval of the local government records
8 destruction subcommittee provided for in [section 3]."

9 **Section 9.** Section 20-1-212, MCA, is amended to read:

10 "20-1-212. Destruction of old records by officer. (1)
11 Unless destruction may be otherwise required by federal law,
12 a school officer may destroy old worthless reports, papers,
13 or records in ~~his~~ the office:

14 (a) that have served their purpose and that are
15 substantiated by permanent records, upon the order of the
16 board of trustees and with the approval of the department-of
17 ~~commerce~~ local government records destruction subcommittee
18 provided for in [section 3]; and

19 (b) after a retention period of 5 years.

20 (2) For the purposes of subsection (1), old worthless
21 reports, papers, or records do not include student records
22 and records of employment. Such The records or copies of
23 such the records must be permanently kept."

24 **Section 10.** Section 20-9-215, MCA, is amended to read:

25 "20-9-215. Destruction of certain financial records.

1 Any claim, warrant, voucher, bond, or treasurer's general
2 receipt may be destroyed by any county or school district
3 officer after a period of 5 years, upon approval by the
4 local government records destruction subcommittee provided
5 for in [section 3]."

6 **Section 11.** Section 30-9-403, MCA, is amended to read:

7 "30-9-403. What constitutes filing -- duration of
8 filing -- fees -- effect of lapsed filing -- duties of
9 filing officer -- computerized farm statement system.
10 (1) (a) Presentation for filing of a financing statement and
11 tender of the filing fee or acceptance of the statement by
12 the filing officer constitutes filing under this chapter.

13 (b) The secretary of state may treat a facsimile copy
14 of a document and the signatures on the facsimile copy in
15 the same manner as an original for purposes of 30-9-402 and
16 subsection (1)(a), provided that ~~he~~ the secretary of state
17 receives the original document within 5 working days of the
18 receipt of the facsimile copy. If all other requirements are
19 met, the date of filing relates back to the date of receipt
20 of the facsimile copy. A facsimile copy may be filed under
21 subsection (1)(a) if it:

22 (i) is produced by a method of transmission of images
23 in which the image is scanned at the transmitter,
24 reconstructed at the receiving station, and duplicated on
25 paper at the receiving station; and

(ii) is legible and the same size as the original.

(c) During the 5-day period referred to in subsection (1)(b), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(d) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1)(b), the filing of the facsimile copy is void.

(e) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

(2) Except as provided in ~~subsections~~ subsection (6) ~~and--(11)~~, a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until 60 days after termination of the insolvency proceedings or until expiration of the 5-year period, whichever occurs later. Upon lapse the security interest becomes unperfected unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against

a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective, whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to ~~such~~ the lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he the filing officer has retained a microfilm or other photographic record or a record produced according to rules adopted by

the secretary of state, or in other cases after 1 year after the lapse, upon approval by the local government records destruction subcommittee provided for in [section 3]. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he the filing officer physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing. The filing officer shall hold the statement or a microfilm or other photographic copy or a copy produced according to rules adopted by the secretary of state for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fees for filing, indexing, and stamping a copy furnished by the filing party to show the date and place of filing ~~shall~~ must be set pursuant to subsection ~~(11)~~ (12).

(6) If the debtor is a transmitting utility and a filed financing statement so states, it is effective until a

termination statement is filed. A real estate mortgage that is effective as a fixture filing under 30-9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5) or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he the secured party were the mortgagee thereunder, or if indexing is by description, in the same fashion as if the financing statement were a mortgage of the real estate described.

(8) When a financing or continuation statement filed by a financial institution covers farm products or accounts, livestock, general intangibles arising from or relating to the sale of farm products by a farmer, crops growing or to be grown, or equipment used in farming operations, the fee for filing must be established by the secretary of state in an amount commensurate with the costs of establishing and

operating the computerized access system described in subsection (9).

(9) Within 1 working day of receipt of a financing or continuation statement, the secretary of state shall record the information contained in the statement on a centralized computer system that he the secretary of state shall establish. The computer system must allow access to financing statement information by any type of communications which conform to standards used by the state central computer. The system must have safeguards to allow only access to UCC data and to prevent alteration, addition, or deletion of the UCC data. The computer must be accessible whenever the state computer system is available. A perfected security interest is not created until the financing statement information is recorded on the system. A printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement. The secretary of state shall maintain adequate errors and omissions liability coverage to protect against input errors causing loss to a secured party.

(10) The secretary of state shall, upon request of a clerk and recorder, mail a certified copy of a financing statement, continuation statement, assignment, amendment, or termination covering collateral described in subsection (8) to the clerk and recorder in the county of the principal

debtor's residence. The secretary of state shall mail the requested copies at least once each week. This subsection does not require the secretary of state to mail a copy of any document which does not specifically indicate the county of the principal debtor's residence on its face.

~~(11) When--a--financing-or-continuation-statement-covers property-described--in--subsection--(8)--its--effectiveness lapses--on--July-17-1986--unless-prior-to-that-date-there-is filed-in-the-office-of-the-secretary-of--state--a--certified copy--of-the-statement-on-file-with-the-county-clerk-and-all related-documents.~~

~~{12}~~ Financing statement information in the computer system constitutes public writings within the meaning of 2-6-101, but the information may not be used to compile mailing lists.

~~{13}~~(12) The secretary of state, with advice from the county clerk and recorders, shall by administrative rule establish fees as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall deposit all fees in the general fund in the state treasury ~~all-fees he-collects~~. The secretary of state shall disseminate the uniform fee schedule to the county clerk and recorders for their use."

Section 12. Section 30-9-407, MCA, is amended to read:

"30-9-407. Information from filing officer. (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release furnishes the filing officer a copy thereof of the statement, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such the person.

(2) Upon request of any person, the filing officer shall issue his a certificate showing whether there is on file on the date and hour stated therein in the certificate, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and, if there is, giving the date and hour of filing of each such statement and the name and address of each secured party therein in the statement. For financing statements recorded on the system described in 30-9-403(9), the filing officer shall, upon request of any person, also furnish written information concerning the collateral described for any presently effective financing statement covering collateral described in 30-9-403(8). However, such the information is not a part of the filing officer's certificate and may not constitute a complete description of the collateral covered by the financing statement. The

uniform fee for such a certificate and description of collateral shall must be set pursuant to 30-9-403. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of 50 cents per page.

(3) A computer printout from the system described in 30-9-403(9) constitutes the certificate of the secretary of state as to whether there is on file, on the date and hour stated thereon on the printout, such a financing statement covering the collateral described in 30-9-403(8). The fee for requesting a printout from the secretary of state must cover the cost of the printout. If a certificate is made on a requestor's own computer using telephone dial-up access, a fee commensurate with costs must be charged.

~~(4) Within 30 days after July 17, 1987, the secretary of state shall provide a listing of all financing statements recorded on the system described in 30-9-403(9) covering collateral described in 30-9-403(8) to each county clerk and recorder. The secretary of state shall compile the listing alphabetically by debtor's name and may distribute the listing on microfilm or microfiche. The secretary of state shall provide the listing without charge to the county.~~

(5) The secretary of state shall ensure that the system described in 30-9-403(9) complies with the requirements for a central filing system as defined by 7 U.S.C. 1631 as that

statute read on January 1, 1987. The secretary of state shall distribute portions of the master list to registered buyers at least once each month. ~~He~~ The secretary of state may distribute portions of the master list more frequently if he--determines it is determined necessary to improve the flow of agricultural credit."

Section 13. Section 71-3-206, MCA, is amended to read:

"71-3-206. Fees. (1) The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien must be established and deposited in accordance with the provisions of 30-9-403~~(13)~~.

(2) The officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them."

Section 14. Section 71-3-705, MCA, is amended to read:

"71-3-705. Destruction of records -- when allowed. (1) All seed liens ~~which have heretofore or shall hereafter be~~ filed for record in the office of any county clerk and recorder ~~of the several counties in the state shall~~ must be retained by such the county clerk in a file kept ~~by him~~ for ~~such purposes~~ that purpose for a period of 8 years from the time when ~~said the~~ seed lien has ceased to be a lien on the property described ~~therein~~ in the lien.

(2) Upon the expiration of the period of time specified in subsection (1), the county clerk and recorder may destroy

all seed liens which that have been preserved for the period of time specified in this section, upon approval by the local government records destruction subcommittee provided for in [section 3]."

Section 15. Section 71-3-810, MCA, is amended to read:

"71-3-810. Destruction of records -- when allowed. (1) All threshers' liens ~~which have heretofore or shall hereafter be~~ filed for record in the office of any county clerk and recorder ~~of the several counties in the state shall~~ must be retained by such the county clerk in a file kept ~~by him~~ for ~~such purposes~~ that purpose for a period of 8 years from the time when ~~said the~~ threshers' lien has ceased to be a lien on the property described ~~therein~~ in the lien.

(2) Upon the expiration of the period of time specified in subsection (1), the county clerk and recorder may destroy all threshers' liens which have been preserved for the period of time specified in this section, upon approval by the local government records destruction subcommittee provided for in [section 3]."

NEW SECTION. Section 16. Codification instruction.

[Sections 1 through 4] are intended to be codified as an integral part of Title 2, chapter 6, and the provisions of Title 2, chapter 6, apply to [sections 1 through 4].

NEW SECTION. Section 17. Effective date. [This act] is effective on passage and approval.

-End-

-20-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0288, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act regulating the disposition of local government records.

ASSUMPTIONS:

1. There is no fiscal impact on the Secretary of State's Office or other state agencies.
2. It is assumed that there will be minimal fiscal impact on local governments for travel and incidental expenses for local records custodians.

FISCAL IMPACT:


None to state agencies.

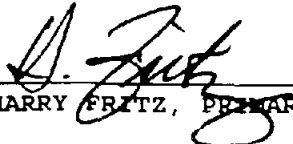
EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Minimal expenses for member participation may be incurred by local governments.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

There may be reductions in long term liability exposure for local governments due to improved records management.


DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2/8/93
HARRY FRITZ, PRIMARY SPONSOR DATE
Fiscal Note for SB0288, as introduced
5B 288

APPROVED BY COMM.
ON LOCAL GOVERNMENT

SENATE BILL NO. 288

INTRODUCED BY FRITZ, SQUIRES

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE DISPOSITION OF LOCAL GOVERNMENT RECORDS; ESTABLISHING A LOCAL GOVERNMENT RECORDS COMMITTEE AND A LOCAL GOVERNMENT RECORDS DESTRUCTION SUBCOMMITTEE; GRANTING THE SECRETARY OF STATE RULEMAKING AUTHORITY; AMENDING SECTIONS 2-6-201, 2-6-302, 7-4-2221, 7-4-2222, 7-4-2223, 7-4-2612, 7-4-2613, 7-5-2131, 7-5-2132, 7-5-4124, 15-1-104, 20-1-212, 20-9-215, 22-3-201, 22-3-202, 22-3-203, 30-9-403, 30-9-407, 71-3-206, 71-3-705, AND 71-3-810, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, proper maintenance and disposition of local government records are an essential function of government; and

WHEREAS, certain local government records are of substantial historical value to the state and should be retained and preserved, rather than destroyed; and

WHEREAS, coordination of local government recordkeeping policies and procedures will increase their effectiveness and efficiency; and

WHEREAS, it is the view of the Legislature that these

goals pertaining to local government records can be best accomplished through the creation of a state-level body; and

WHEREAS, the Legislature of the State of Montana finds it desirable and appropriate to create a local government records committee.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] grants rulemaking authority to the secretary of state.

It is the intent of the legislature that the secretary of state have authority to adopt rules to implement and enforce [section 3], including specific authority to adopt rules regarding procedures and criteria:

(1) for determining which local government records must be preserved because they presently or may at some point in the future have significant historical value;

(2) for determining which local government records must be approved for destruction; and

(3) for evaluating proposed schedules for retention and disposition of local government records.

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

NEW SECTION. **Section 1.** Definitions. For the purposes of [sections 1 through 4], the following definitions apply:

(1) "Local government" means any city, town, county, consolidated city-county, or school district.

(2) "Public records" includes any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies of the record, regardless of physical form or characteristics, that has been made or received by any local government, in connection with the transaction of official business, and preserved for informational value or as evidence of a transaction and all other records or documents required by law to be filed with or kept by any local government in the state of Montana.

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

NEW SECTION. Section 2. Local government records committee -- creation. (1) There is a local government records committee.

(2) The committee consists of the following seven members:

- (a) the state archivist;
- (b) the state records manager;
- (c) the bureau chief of the local government services bureau of the department of commerce;
- (d) two local records custodians, appointed by the

~~secretary-of-state-from-a-list-of-names-submitted-by-the~~
director of the Montana historical society; and

(e) two additional local records custodians, appointed by the secretary of state.

(3) Committee members subject to appointment shall hold office for a period of 2 years beginning on January 1 of the year following their appointment.

(4) Any vacancies must be filled in the same manner they were filled originally.

(5) The committee shall elect a presiding officer and a vice presiding officer.

(6) The committee shall meet periodically TWICE A YEAR upon the call of the secretary of state or the presiding officer.

(7) Members of the committee not serving as part of their compensated government employment must be compensated in accordance with 2-18-501 through 2-18-503 for each day in committee attendance. Members who serve as part of their compensated government employment may not receive additional compensation, but the employing governmental entity shall furnish, in accordance with the prevailing per diem rates, a reasonable allowance for travel and other expenses incurred in attending committee meetings.

NEW SECTION. Section 3. Duties and responsibilities.

(1) The local government records committee shall approve,

1 modify, or disapprove proposals for local government records
2 retention and disposition schedules.

3 (2) The committee shall appoint a subcommittee, known
4 as the local government records destruction subcommittee, to
5 handle requests for disposal of records. The subcommittee
6 consists of the state archivist and the bureau chief of the
7 local government services bureau of the department of
8 commerce. Unless specifically authorized by statute, a local
9 government public record may not be destroyed or otherwise
10 disposed of without the unanimous approval of the
11 subcommittee. When approval is required, a request for the
12 disposal or destruction of any local government records must
13 be submitted to the subcommittee by the entity concerned.

14 (3) The local government records committee may by
15 unanimous approval establish categories of records for which
16 a disposal request is not required, providing that those
17 records are retained for the designated retention period.

18 (4) The committee shall respond to requests for
19 technical advice on matters relating to local government
20 records.

21 (5) The committee shall provide leadership and
22 coordination in matters affecting the records of multiple
23 local governments.

24 NEW SECTION. Section 4. Rulemaking authority. The
25 secretary of state shall adopt rules to implement [sections

1 2 and 3].

2 **SECTION 5.** SECTION 2-6-201, MCA, IS AMENDED TO READ:

3 "2-6-201. Purpose. The purpose of this part is to
4 create an effective records management program for executive
5 branch agencies of the state of Montana and political
6 subdivisions by establishing guidelines and procedures for
7 the efficient and economical control of the creation,
8 utilization, maintenance, and preservation of state and
9 local records."

10 **Section 6.** Section 2-6-302, MCA, is amended to read:

11 "2-6-302. Official records management -- powers and
12 duties. In order to insure the proper management and
13 safeguarding of official records, the Montana historical
14 society shall:

15 (1) establish and operate the state archives as
16 authorized by appropriation for the purpose of storing and
17 servicing official records transferred to the custody of the
18 state archives;

19 (2) in cooperation with the secretary of state, the
20 local government records committee provided for in [section
21 2], and the state records committee provided for in
22 2-15-1013, establish guidelines for the inventorying,
23 cataloging, retention, and transfer of all official records;

24 (3) maintain and enforce restrictions on access to
25 official records in the custody of the state archives in

accordance with the provisions of this part;

(4) provide adequate housing and care of official records in the custody of the state archives to insure their proper preservation and use by the public;

(5) in accordance with the guidelines established pursuant to subsection (2), remove and destroy duplicate official records and official records of insignificant historical value from the records deposited in the state archives."

SECTION 7. SECTION 7-4-2221, MCA, IS AMENDED TO READ:

"7-4-2221. Manner of keeping records and storing documents. ~~{1}~~ Whenever any officer of any county is required or authorized by law to record, copy, file, recopy, or replace any document, plat, paper, written instrument, or book on file or of record in ~~his~~ the officer's office, ~~he~~ the officer may do so by ~~photostatic, microphotographic, microfilm photographic, micrographic, electronic, or other mechanical process which that produces a clear, accurate, and permanent copy or reproduction of the original document, plat, paper, written instrument, or record in accordance with standards not less than those now approved for permanent records by the national bureau of standards.~~

~~{2}--Nothing--in--7-4-2613---shall---be---construed---as preventing-the-recording-or-photographing-or-copying-of-such instruments--separately-upon-a-single-or-loose-page-or-pages~~

~~of--a--book-if-such-page-or-pages-shall-immediately-become-a part-of-such-book-or-volume-which,when-completed,shall--be firmly-bound-and-the-pages-thereof-securely-locked-or-sealed into-the-volume."~~

SECTION 8. SECTION 7-4-2222, MCA, IS AMENDED TO READ:

"7-4-2222. Substitution of reproduction for original document. (1) Any such document, plat, paper, written instrument, or book reproduced as provided in 7-4-2221~~{1}~~, ~~the--original-of-which-is-not-less-than-10-years-old,~~ can be disposed of or destroyed only upon order of the district or probate court having jurisdiction, and the reproductions may be substituted therefor as public records.

(2) The ~~photostatic, microphotographic, or microfilmed~~ copy of any such record destroyed or disposed of as herein authorized in this section or a certified copy thereof ~~shall~~ be ~~is~~ admissible as evidence in any court or proceeding and ~~shall-have~~ has the same force and effect as though the original record had been produced and proved.

(3) It ~~shall--be~~ is the duty of the custodian of such the records to prepare enlarged typed or photographic copies of the records whenever their production is required by law."

SECTION 9. SECTION 7-4-2223, MCA, IS AMENDED TO READ:

"7-4-2223. Duplicate records -- safe storage of one copy. (1) Whenever any record or document is copied or

1 reproduced by---microphotographic,---microfilm,---or---other
2 mechanical-process as provided in 7-4-2221, it shall must be
3 made in duplicate.

4 (2) The custodian thereof of the record or document
5 shall place one the master copy, the contents thereof of the
6 copy being first duly identified and indexed, in a fireproof
7 vault or fireproof storage place. He The custodian shall
8 retain the other copy in his the office with suitable
9 equipment for displaying--such-record-by-projection-to-not
10 less-than-its-original-size-or-for-preparing-copies--of--the
11 record reproducing the record or document for persons
12 entitled thereto to the record or document."

13 **SECTION 10.** SECTION 7-4-2612, MCA, IS AMENDED TO READ:

14 "7-4-2612. Books for recording documents. The county
15 clerk, as ex officio recorder, must shall procure such books
16 or other recording materials for records as that the
17 business of his the office requires, but orders for the same
18 books or materials must first be obtained from the board of
19 county commissioners."

20 **SECTION 11.** SECTION 7-4-2613, MCA, IS AMENDED TO READ:

21 "7-4-2613. Documents subject to recording. The county
22 clerk must shall, upon payment of his the appropriate fees
23 for---the--same, record,---photograph,---or---correctly---copy,
24 separately, in large and well-bound or to be bound--separate
25 books, either in a fair hand or by printing, typewriting, or

1 photographic, micrographic, or electronic process or by the
2 use of prepared blank forms:

3 (1) deeds, grants, transfers, certified copies of final
4 judgments or decrees partitioning or affecting the title or
5 possession of real property any part of which is situated in
6 the county, contracts to sell or convey real estate and
7 mortgages of real estate, releases of mortgages, powers of
8 attorney to convey real estate, leases which have been
9 acknowledged or proved, and abstracts of such the
10 instruments which that have been acknowledged or proved;

11 (2) notices of buyer's interest in real property,
12 notwithstanding any other requirement of law or rule
13 relating to eligibility for recording of the deed, contract
14 for deed, or other document relating to the notice of
15 buyer's interest; however, if the instrument of conveyance
16 underlying a notice of buyer's interest would be
17 unrecordable, the clerk and recorder shall notify the buyer
18 by certified mail that the underlying instrument is
19 unrecordable and may be void;

20 (3) a document on a form provided by the department of
21 revenue certifying that the holder of a nonprobate interest
22 in real property is deceased and that his the deceased's
23 interest is terminated. A nonprobate interest in real
24 property is a joint tenancy interest, a life estate
25 interest, or any other interest not requiring probate. The

document may be on the form used by the department of revenue for responding to the application for determination of inheritance or estate tax. It ~~shall~~ must contain:

(a) a statement that the holder of the nonprobate interest has died and that ~~his~~ the deceased's interest in the property is terminated;

(b) a certification by the county treasurer that the inheritance or estate tax, if any tax was due, has been paid or that no inheritance or estate tax was due;

(c) a description of the property;

(4) certificates of births and deaths;

(5) wills devising real estate admitted to probate;

(6) official bonds;

(7) transcripts of judgments ~~which~~ that by law are made liens upon real estate;

(8) instruments describing or relating to the individual property of married persons;

(9) all orders and decrees made by the district court in probate matters affecting real estate and ~~which~~ that are required to be recorded;

(10) notice of preemption claims;

(11) notice and declaration of water rights;

(12) assignments for the benefit of creditors;

(13) affidavits of annual work done on mining claims;

(14) notices of mining locations and declaratory

statements;

(15) estrays and lost property;

(16) a book containing appraisement of state lands; and

(17) ~~such~~ other writings as that are required or permitted by law to be recorded."

SECTION 12. SECTION 7-5-2131, MCA, IS AMENDED TO READ:

"7-5-2131. Records to be available to public. The books, records, and accounts must be kept at the office of the clerk, and must be open at--all--times for public inspection free of charge."

Section 13. Section 7-5-2132, MCA, is amended to read:

"7-5-2132. Destruction of old county records. ~~{1}~~ Upon the order of the board of county commissioners and with the WRITTEN approval of the department--of--commerce, local government records destruction subcommittee provided for in [section 3], a county officer may destroy old-worthless ~~reports, papers, or records in--his~~ the office--that--have served-their-purpose-and-that-are-substantiated-by-permanent records THAT HAVE MET THE RETENTION PERIOD, AS CONTAINED IN THE LOCAL GOVERNMENT RECORDS RETENTION AND DISPOSITION SCHEDULES, AND THAT ARE NO LONGER NEEDED BY THE OFFICE.

~~{2}--{1}--The-board-of-county-commissioners-may, with-the approval-of-the-department--of--commerce, local--government records--committee--provided--for--in--{section--2},~~ adopt retention-schedules-for-claims, warrants,--vouchers,--bonds,

treasurer's general receipts, and similar records created or kept by the county. The destruction of such the records must be done in accordance with the provisions of such the schedules and only with the approval of the local government records destruction subcommittee provided for in {section 3}.

(b) If a schedule has not been adopted and approved under the provisions of subsection (2)(a), such the records may be destroyed by any county officer, upon approval by the local government records destruction subcommittee, after a period of 25 years."

Section 14. Section 7-5-4124, MCA, is amended to read:

"7-5-4124. Destruction of old municipal records. (1) Except as provided in subsection (2), upon UPON the order of the city or town council or commission and with the WRITTEN approval of the department of commerce, local government records destruction subcommittee provided for in [section 3], a city or town officer may destroy old worthless reports, papers, or records in his the office that have served their purpose and that are substantiated by permanent records THAT HAVE MET THE RETENTION PERIOD, AS CONTAINED IN THE LOCAL GOVERNMENT RECORDS RETENTION AND DISPOSITION SCHEDULES, AND THAT ARE NO LONGER NEEDED BY THE OFFICE.

(2) Records relating to the operation of any public utility by a city or town may be destroyed without the

approval of the department of commerce after the expiration of the period during which they must be kept by said city or town as specified in the appropriate regulations of the public service commission of Montana.

(3)(2)(a) The city or town council or commission may, with the approval of the department of commerce, local government records committee provided for in {section 2}, adopt retention schedules for claims, warrants, vouchers, bonds, treasurer's general receipts, and similar records created or kept by the city or town. The destruction of such the records must be done in accordance with the provisions of such the schedules and only with the approval of the local government records destruction subcommittee provided for in {section 3}.

(b) If a schedule has not been adopted and approved under the provisions of subsection (3)(a) (2)(a), such the records may be destroyed by any city or town officer, upon approval by the local government records destruction subcommittee, after a period of 5 years."

Section 8. Section 15-1-104, MCA, is amended to read:

"15-1-104. Treasurers to destroy Bestruction of certain tax records approval. The treasurer of each county, city, or town in the state of Montana may destroy all tax records in his the treasurer's possession more than 30 years old, with the approval of the local government records

~~destruction-subcommittee-provided-for-in-(section-3)-"~~

Section 15. Section 20-1-212, MCA, is amended to read:

"20-1-212. Destruction of old records by SCHOOL officer. (1) ~~Unless destruction may be otherwise required by federal law, a school officer may destroy old worthless reports, papers, or records in his~~ the office:

(a) ~~that have served their purpose and that are substantiated by permanent records, upon~~ UPON the order of the board of trustees and with the WRITTEN approval of the ~~department of commerce~~ local government records destruction subcommittee provided for in [section 3] and

(b) ~~after a retention period of 5 years, a school officer may destroy records that have met the retention period, as contained in the local government records retention and disposition schedules, and that are no longer needed by the office.~~

(2) ~~For the purposes of subsection (1), old worthless reports, papers, or records do not include student records and records of employment. Such~~ The records or copies of such the STUDENT records must be permanently kept, AND EMPLOYMENT RECORDS MUST BE KEPT FOR 10 YEARS AFTER TERMINATION."

Section 16. ~~Section 20-9-215, MCA, is amended to read:~~

"20-9-215. ~~Destruction of certain financial records. Any claim, warrant, voucher, bond, or treasurer's general~~

~~receipt may be destroyed by any county or school district officer after a period of 5 years, upon approval by the local government records destruction subcommittee provided for in (section 3)."~~

SECTION 16. SECTION 22-3-201, MCA, IS AMENDED TO READ:

"22-3-201. Public policy. The legislature declares that it is the public policy of the state of Montana that noncurrent records of permanent value to the state and to local governments should be preserved and protected; that the operations of state government should be made more efficient, more effective, and more economical through current records management; and that to the end that the people may receive maximum benefit from a knowledge of state and local government affairs, the state and local governments should preserve its noncurrent records of permanent value for study and research."

SECTION 17. SECTION 22-3-202, MCA, IS AMENDED TO READ:

"22-3-202. Archives created -- appointment, duties, and compensation of archivist. There is a state archives in the Montana historical society for the preservation of noncurrent records of permanent value to the state and local governments and for records management. The director of the Montana historical society shall appoint a state archivist, who serves at the pleasure of the director, define his the archivist's duties, and fix his the archivist's compensation

with the approval of the board of trustees of the Montana historical society."

SECTION 18. SECTION 22-3-203, MCA, IS AMENDED TO READ:

"22-3-203. Preservation of noncurrent records of permanent value. The state archivist shall preserve noncurrent records of permanent value to the state and is responsible for the ultimate preservation of local government records of permanent value. Upon request, he the archivist shall assist and advise in the establishment of records management programs in the executive, legislative, and judicial branches of state government and in local governments, with due regard to the functions of the officers and agencies involved."

Section 19. Section 30-9-403, MCA, is amended to read:

"30-9-403. What constitutes filing -- duration of filing -- fees -- effect of lapsed filing -- duties of filing officer -- computerized farm statement system.

(1) (a) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(b) The secretary of state may treat a facsimile copy of a document and the signatures on the facsimile copy in the same manner as an original for purposes of 30-9-402 and subsection (1)(a), provided that he the secretary of state receives the original document within 5 working days of the

receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under subsection (1)(a) if it:

(i) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(ii) is legible and the same size as the original.

(c) During the 5-day period referred to in subsection (1)(b), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(d) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1)(b), the filing of the facsimile copy is void.

(e) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

(2) Except as provided in subsections subsection (6) ~~and--(11)~~, a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5- year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by

filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until 60 days after termination of the insolvency proceedings or until expiration of the 5-year period, whichever occurs later. Upon lapse the security interest becomes unperfected unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective, whereupon it lapses in the same manner as provided in subsection (2) unless another continuation

statement is filed prior to ~~such~~ the lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if ~~he~~ the filing officer has retained a microfilm or other photographic record or a record produced according to rules adopted by the secretary of state, or in other cases after 1 year after the lapse, upon approval by the local government records destruction subcommittee provided for in [section 3]. The filing officer shall ~~so~~ arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if ~~he~~ the filing officer physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing. The filing officer shall hold the statement or a microfilm or other photographic copy or a copy produced according to rules adopted by the secretary of state for public inspection. In addition, the filing officer shall index the statements according to the

1 name of the debtor and shall note in the index the file
2 number and the address of the debtor given in the statement.

3 (5) The uniform fees for filing, indexing, and stamping
4 a copy furnished by the filing party to show the date and
5 place of filing shall must be set pursuant to subsection
6 ~~(11)~~ (12).

7 (6) If the debtor is a transmitting utility and a filed
8 financing statement so states, it is effective until a
9 termination statement is filed. A real estate mortgage that
10 is effective as a fixture filing under 30-9-402(6) remains
11 effective as a fixture filing until the mortgage is released
12 or satisfied of record or its effectiveness otherwise
13 terminates as to the real estate.

14 (7) When a financing statement covers timber to be cut
15 or covers minerals or the like (including oil and gas) or
16 accounts subject to 30-9-103(5) or is filed as a fixture
17 filing, the filing officer shall index it under the names of
18 the debtor and any owner of record shown on the financing
19 statement in the same fashion as if they were the mortgagors
20 in a mortgage of the real estate described and, to the
21 extent that the law of this state provides for indexing of
22 mortgages under the name of the mortgagee, under the name of
23 the secured party as if he the secured party were the
24 mortgagee thereunder, or if indexing is by description, in
25 the same fashion as if the financing statement were a

1 mortgage of the real estate described.

2 (8) When a financing or continuation statement filed by
3 a financial institution covers farm products or accounts,
4 livestock, general intangibles arising from or relating to
5 the sale of farm products by a farmer, crops growing or to
6 be grown, or equipment used in farming operations, the fee
7 for filing must be established by the secretary of state in
8 an amount commensurate with the costs of establishing and
9 operating the computerized access system described in
10 subsection (9).

11 (9) Within 1 working day of receipt of a financing or
12 continuation statement, the secretary of state shall record
13 the information contained in the statement on a centralized
14 computer system that he the secretary of state shall
15 establish. The computer system must allow access to
16 financing statement information by any type of
17 communications which conform to standards used by the state
18 central computer. The system must have safeguards to allow
19 only access to UCC data and to prevent alteration, addition,
20 or deletion of the UCC data. The computer must be accessible
21 whenever the state computer system is available. A perfected
22 security interest is not created until the financing
23 statement information is recorded on the system. A printout
24 of information from the system is prima facie evidence of
25 the existence or nonexistence of the filing of a financing

statement. The secretary of state shall maintain adequate errors and omissions liability coverage to protect against input errors causing loss to a secured party.

(10) The secretary of state shall, upon request of a clerk and recorder, mail a certified copy of a financing statement, continuation statement, assignment, amendment, or termination covering collateral described in subsection (8) to the clerk and recorder in the county of the principal debtor's residence. The secretary of state shall mail the requested copies at least once each week. This subsection does not require the secretary of state to mail a copy of any document which does not specifically indicate the county of the principal debtor's residence on its face.

~~(11) When--a--financing-or-continuation-statement-covers property-described--in--subsection--(8)--its--effectiveness lapses--on--July-17-1986--unless-prior-to-that-date-there-is filed-in-the-office-of-the-secretary-of-state--a--certified copy--of-the-statement-on-file-with-the-county-clerk-and-all related-documents--~~

†12) Financing statement information in the computer system constitutes public writings within the meaning of 2-6-101, but the information may not be used to compile mailing lists.

†13) (12) The secretary of state, with advice from the county clerk and recorders, shall by administrative rule

establish fees as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall deposit all fees in the general fund in the state treasury ~~all-fees he-collects~~. The secretary of state shall disseminate the uniform fee schedule to the county clerk and recorders for their use."

Section 20. Section 30-9-407, MCA, is amended to read:

"30-9-407. Information from filing officer. (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release furnishes the filing officer a copy thereof of the statement, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such the person.

(2) Upon request of any person, the filing officer shall issue ~~his~~ a certificate showing whether there is on file on the date and hour stated ~~therein~~ in the certificate, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and, if there is, giving the date and hour of filing of each such statement and the name and address of each secured party ~~therein~~ in the statement. For financing statements

1 recorded on the system described in 30-9-403(9), the filing
 2 officer shall, upon request of any person, also furnish
 3 written information concerning the collateral described for
 4 any presently effective financing statement covering
 5 collateral described in 30-9-403(8). However, such the
 6 information is not a part of the filing officer's
 7 certificate and may not constitute a complete description of
 8 the collateral covered by the financing statement. The
 9 uniform fee for such a certificate and description of
 10 collateral ~~shall~~ must be set pursuant to 30-9-403. Upon
 11 request the filing officer shall furnish a copy of any filed
 12 financing statement or statement of assignment for a uniform
 13 fee of 50 cents per page.

14 (3) A computer printout from the system described in
 15 30-9-403(9) constitutes the certificate of the secretary of
 16 state as to whether there is on file, on the date and hour
 17 stated thereon on the printout, such a financing statement
 18 covering the collateral described in 30-9-403(8). The fee
 19 for requesting a printout from the secretary of state must
 20 cover the cost of the printout. If a certificate is made on
 21 a requestor's own computer using telephone dial-up access, a
 22 fee commensurate with costs must be charged.

23 (4) ~~Within 30 days after July 17, 1987, the secretary of~~
 24 ~~state shall provide a listing of all financing statements~~
 25 ~~recorded on the system described in 30-9-403(9) covering~~

1 ~~collateral described in 30-9-403(8) to each county clerk and~~
 2 ~~recorder. The secretary of state shall compile the listing~~
 3 ~~alphabetically by debtor's name and may distribute the~~
 4 ~~listing on microfilm or microfiche. The secretary of state~~
 5 ~~shall provide the listing without charge to the county.~~

6 (5) The secretary of state shall ensure that the system
 7 described in 30-9-403(9) complies with the requirements for
 8 a central filing system as defined by 7 U.S.C. 1631 as that
 9 statute read on January 1, 1987. The secretary of state
 10 shall distribute portions of the master list to registered
 11 buyers at least once each month. He The secretary of state
 12 may distribute portions of the master list more frequently
 13 if ~~he determines~~ it is determined necessary to improve the
 14 flow of agricultural credit."

15 **Section 21.** Section 71-3-206, MCA, is amended to read:

16 "71-3-206. **Fees.** (1) The fee for filing and indexing
 17 each notice of lien or certificate or notice affecting the
 18 tax lien must be established and deposited in accordance
 19 with the provisions of 30-9-403(13).

20 (2) The officer shall bill the district directors of
 21 internal revenue or other appropriate federal officials on a
 22 monthly basis for fees for documents filed by them."

23 **Section 22.** Section 71-3-705, MCA, is amended to read:

24 "71-3-705. **Destruction of records -- when allowed.** (1)
 25 All seed liens which have heretofore or shall hereafter be

1 filed for record in the office of any county clerk and
 2 recorder ~~of-the-several-counties-in-the-state-shall~~ must be
 3 retained by ~~such the~~ county clerk in a file kept ~~by-him~~ for
 4 ~~such--purposes~~ that purpose for a period of 8 years from the
 5 time when ~~said the~~ seed lien has ceased to be a lien on the
 6 property described ~~therein in the lien~~.

7 (2) Upon the expiration of the period of time specified
 8 in subsection (1), the county clerk and recorder may destroy
 9 all seed liens ~~which that~~ have been preserved for the period
 10 of time specified in this section, upon approval by the
 11 local government records destruction subcommittee provided
 12 for in [section 3]."

13 **Section 23.** Section 71-3-810, MCA, is amended to read:

14 "71-3-810. Destruction of records -- when allowed. (1)
 15 All threshers' liens ~~which--have--heretofore---or---shall~~
 16 ~~hereafter--be~~ filed for record in the office of any county
 17 clerk and recorder ~~of-the--several--counties--in--the--state~~
 18 ~~shall~~ must be retained by ~~such the~~ county clerk in a file
 19 kept ~~by-him~~ for ~~such-purposes~~ that purpose for a period of 8
 20 years from the time when ~~said the~~ threshers' lien has ceased
 21 to be a lien on the property described ~~therein in the lien~~.

22 (2) Upon the expiration of the period of time specified
 23 in subsection (1), the county clerk and recorder may destroy
 24 all threshers' liens which have been preserved for the
 25 period of time specified in this section, upon approval by

1 the local government records destruction subcommittee
 2 provided for in [section 3]."

3 NEW SECTION. **Section 24.** Codification instruction.
 4 [Sections 1 through 4] are intended to be codified as an
 5 integral part of Title 2, chapter 6, and the provisions of
 6 Title 2, chapter 6, apply to [sections 1 through 4].

7 NEW SECTION. **Section 25.** Effective date. [This act] is
 8 effective on passage and approval.

-End-

1 SENATE BILL NO. 288

2 INTRODUCED BY FRITZ, SQUIRES

3 BY REQUEST OF THE SECRETARY OF STATE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE
6 DISPOSITION OF LOCAL GOVERNMENT RECORDS; ESTABLISHING A
7 LOCAL GOVERNMENT RECORDS COMMITTEE AND A LOCAL GOVERNMENT
8 RECORDS DESTRUCTION SUBCOMMITTEE; GRANTING THE SECRETARY OF
9 STATE RULEMAKING AUTHORITY; AMENDING SECTIONS 2-6-201,
10 2-6-302, 7-4-2221, 7-4-2222, 7-4-2223, 7-4-2612, 7-4-2613,
11 7-5-2131, 7-5-2132, 7-5-4124, 15-1-104, 20-1-212, 20-9-215,
12 22-3-201, 22-3-202, 22-3-203, 30-9-403, 30-9-407, 71-3-206,
13 71-3-705, AND 71-3-810, MCA; AND PROVIDING AN IMMEDIATE
14 EFFECTIVE DATE."

15
16 WHEREAS, proper maintenance and disposition of local
17 government records are an essential function of government;
18 and

19 WHEREAS, certain local government records are of
20 substantial historical value to the state and should be
21 retained and preserved, rather than destroyed; and

22 WHEREAS, coordination of local government recordkeeping
23 policies and procedures will increase their effectiveness
24 and efficiency; and

25 WHEREAS, it is the view of the Legislature that these

1 goals pertaining to local government records can be best
2 accomplished through the creation of a state-level body; and
3 WHEREAS, the Legislature of the State of Montana finds
4 it desirable and appropriate to create a local government
5 records committee.

7 STATEMENT OF INTENT

8 A statement of intent is required for this bill because
9 [section 4] grants rulemaking authority to the secretary of
10 state.

11 It is the intent of the legislature that the secretary
12 of state have authority to adopt rules to implement and
13 enforce [section 3], including specific authority to adopt
14 rules regarding procedures and criteria:

15 (1) for determining which local government records must
16 be preserved because they presently or may at some point in
17 the future have significant historical value;

18 (2) for determining which local government records must

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.

HOUSE STANDING COMMITTEE REPORT

March 26, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that Senate Bill 288 (third reading copy -- blue) be concurred in as amended .

Signed: 

Norm Wallin, Chair

And, that such amendments read:

Carried by: Rep. Squires

1. Page 3, line 1.

Following: "means"

Insert: ": (a)"

2. Page 3, line 2.

Following: "district"

Insert: "; and

(b) any subdivision of an entity named in subsection
(1) (a) "

-END-

Committee Vote:
Yes 14, No 0.

HOUSE

SB 288

681038SC.Hss

SENATE BILL NO. 288

INTRODUCED BY FRITZ, SQUIRES

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE DISPOSITION OF LOCAL GOVERNMENT RECORDS; ESTABLISHING A LOCAL GOVERNMENT RECORDS COMMITTEE AND A LOCAL GOVERNMENT RECORDS DESTRUCTION SUBCOMMITTEE; GRANTING THE SECRETARY OF STATE RULEMAKING AUTHORITY; AMENDING SECTIONS 2-6-201, 2-6-302, 7-4-2221, 7-4-2222, 7-4-2223, 7-4-2612, 7-4-2613, 7-5-2131, 7-5-2132, 7-5-4124, 15-1-1047, 20-1-212, 20-9-2157, 22-3-201, 22-3-202, 22-3-203, 30-9-403, 30-9-407, 71-3-206, 71-3-705, AND 71-3-810, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, proper maintenance and disposition of local government records are an essential function of government; and

WHEREAS, certain local government records are of substantial historical value to the state and should be retained and preserved, rather than destroyed; and

WHEREAS, coordination of local government recordkeeping policies and procedures will increase their effectiveness and efficiency; and

WHEREAS, it is the view of the Legislature that these

goals pertaining to local government records can be best accomplished through the creation of a state-level body; and

WHEREAS, the Legislature of the State of Montana finds it desirable and appropriate to create a local government records committee.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] grants rulemaking authority to the secretary of state.

It is the intent of the legislature that the secretary of state have authority to adopt rules to implement and enforce [section 3], including specific authority to adopt rules regarding procedures and criteria:

(1) for determining which local government records must be preserved because they presently or may at some point in the future have significant historical value;

(2) for determining which local government records must be approved for destruction; and

(3) for evaluating proposed schedules for retention and disposition of local government records.

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

NEW SECTION. **Section 1.** Definitions. For the purposes of [sections 1 through 4], the following definitions apply:

1 (1) "Local government" means:
 2 (A) any city, town, county, consolidated city-county,
 3 or school district; AND
 4 (B) ANY SUBDIVISION OF AN ENTITY NAMED IN SUBSECTION
 5 (1)(A).
 6 (2) "Public records" includes any paper,
 7 correspondence, form, book, photograph, microfilm, magnetic
 8 tape, computer storage media, map, drawing, or other
 9 document, including all copies of the record, regardless of
 10 physical form or characteristics, that has been made or
 11 received by any local government, in connection with the
 12 transaction of official business, and preserved for
 13 informational value or as evidence of a transaction and all
 14 other records or documents required by law to be filed with
 15 or kept by any local government in the state of Montana.
 16 (3) "Records custodian" means any individual
 17 responsible for the proper filing, storage, or safekeeping
 18 of any public records.
 19 **NEW SECTION. Section 2. Local government records**
 20 **committee -- creation.** (1) There is a local government
 21 records committee.
 22 (2) The committee consists of the following seven
 23 members:
 24 (a) the state archivist;
 25 (b) the state records manager;

1 (c) the bureau chief of the local government services
 2 bureau of the department of commerce;
 3 (d) two local records custodians, appointed by the
 4 ~~secretary--of--state--from--a--list--of--names--submitted--by--the~~
 5 director of the Montana historical society; and
 6 (e) two additional local records custodians, appointed
 7 by the secretary of state.
 8 (3) Committee members subject to appointment shall hold
 9 office for a period of 2 years beginning on January 1 of the
 10 year following their appointment.
 11 (4) Any vacancies must be filled in the same manner
 12 they were filled originally.
 13 (5) The committee shall elect a presiding officer and a
 14 vice presiding officer.
 15 (6) The committee shall meet periodically TWICE A YEAR
 16 upon the call of the secretary of state or the presiding
 17 officer.
 18 (7) Members of the committee not serving as part of
 19 their compensated government employment must be compensated
 20 in accordance with 2-18-501 through 2-18-503 for each day in
 21 committee attendance. Members who serve as part of their
 22 compensated government employment may not receive additional
 23 compensation, but the employing governmental entity shall
 24 furnish, in accordance with the prevailing per diem rates, a
 25 reasonable allowance for travel and other expenses incurred.

in attending committee meetings.

NEW SECTION. Section 3. Duties and responsibilities.

(1) The local government records committee shall approve, modify, or disapprove proposals for local government records retention and disposition schedules.

(2) The committee shall appoint a subcommittee, known as the local government records destruction subcommittee, to handle requests for disposal of records. The subcommittee consists of the state archivist and the bureau chief of the local government services bureau of the department of commerce. Unless specifically authorized by statute, a local government public record may not be destroyed or otherwise disposed of without the unanimous approval of the subcommittee. When approval is required, a request for the disposal or destruction of any local government records must be submitted to the subcommittee by the entity concerned.

(3) The local government records committee may by unanimous approval establish categories of records for which a disposal request is not required, providing that those records are retained for the designated retention period.

(4) The committee shall respond to requests for technical advice on matters relating to local government records.

(5) The committee shall provide leadership and coordination in matters affecting the records of multiple

local governments.

NEW SECTION. Section 4. Rulemaking authority. The secretary of state shall adopt rules to implement [sections 2 and 3].

SECTION 5. SECTION 2-6-201, MCA, IS AMENDED TO READ:

"2-6-201. Purpose. The purpose of this part is to create an effective records management program for executive branch agencies of the state of Montana and political subdivisions by establishing guidelines and procedures for the efficient and economical control of the creation, utilization, maintenance, and preservation of state and local records."

Section 6. Section 2-6-302, MCA, is amended to read:

"2-6-302. Official records management -- powers and duties. In order to insure the proper management and safeguarding of official records, the Montana historical society shall:

(1) establish and operate the state archives as authorized by appropriation for the purpose of storing and servicing official records transferred to the custody of the state archives;

(2) in cooperation with the secretary of state, the local government records committee provided for in [section 2], and the state records committee provided for in 2-15-1013, establish guidelines for the inventorying,

1 cataloging, retention, and transfer of all official records;

2 (3) maintain and enforce restrictions on access to
3 official records in the custody of the state archives in
4 accordance with the provisions of this part;

5 (4) provide adequate housing and care of official
6 records in the custody of the state archives to insure their
7 proper preservation and use by the public;

8 (5) in accordance with the guidelines established
9 pursuant to subsection (2), remove and destroy duplicate
10 official records and official records of insignificant
11 historical value from the records deposited in the state
12 archives."

13 **SECTION 7.** SECTION 7-4-2221, MCA, IS AMENDED TO READ:

14 "7-4-2221. Manner of keeping records and storing
15 documents. ~~{1}~~ Whenever any officer of any county is
16 required or authorized by law to record, copy, file, recopy,
17 or replace any document, plat, paper, written instrument, or
18 book on file or of record in ~~his~~ the officer's office, he
19 the officer may do so by photostatic, ~~microphotographic,~~
20 microfilm photographic, micrographic, electronic, or other
21 mechanical process which that produces a clear, accurate,
22 and permanent copy or reproduction of the original document,
23 plat, paper, written instrument, or record in accordance
24 with standards not less than those now approved for
25 permanent records by the national bureau of standards.

1 ~~{2}~~ Nothing in 7-4-2613 shall be construed as
2 preventing the recording or photographing or copying of such
3 instruments separately upon a single or loose page or pages
4 of a book if such page or pages shall immediately become a
5 part of such book or volume which, when completed, shall be
6 firmly bound and the pages thereof securely locked or sealed
7 into the volume."

8 **SECTION 8.** SECTION 7-4-2222, MCA, IS AMENDED TO READ:

9 "7-4-2222. Substitution of reproduction for original
10 document. (1) Any such document, plat, paper, written
11 instrument, or book reproduced as provided in 7-4-2221~~{1}~~,
12 ~~the original of which is not less than 10 years old,~~ can be
13 disposed of or destroyed only upon order of the district or
14 probate court having jurisdiction, and the reproductions may
15 be substituted therefor as public records.

16 (2) The photostatic, ~~microphotographic,~~ or microfilmed
17 copy of any such record destroyed or disposed of as herein
18 authorized in this section or a certified copy thereof shall
19 be ~~is~~ admissible as evidence in any court or proceeding and
20 shall have has the same force and effect as though the
21 original record had been produced and proved.

22 (3) It ~~shall be~~ is the duty of the custodian of such
23 the records to prepare enlarged typed or photographic copies
24 of the records whenever their production is required by
25 law."

SECTION 9. SECTION 7-4-2223, MCA, IS AMENDED TO READ:

"7-4-2223. Duplicate records -- safe storage of one copy. (1) Whenever any record or document is copied or reproduced by ~~microphotographic, microfilm, or other mechanical process~~ as provided in 7-4-2221, it shall must be made in duplicate.

(2) The custodian thereof of the record or document shall place one the master copy, the contents thereof of the copy being first duly identified and indexed, in a fireproof vault or fireproof storage place. ~~He~~ The custodian shall retain the other copy in his the office with suitable equipment for ~~displaying such record by projection to not less than its original size or for preparing copies of the record reproducing the record or document~~ for persons entitled thereto to the record or document."

SECTION 10. SECTION 7-4-2612, MCA, IS AMENDED TO READ:

"7-4-2612. Books for recording documents. The county clerk, as ex officio recorder, ~~must~~ shall procure such books or other recording materials for records as that the business of his the office requires, but orders for the same books or materials must first be obtained from the board of county commissioners."

SECTION 11. SECTION 7-4-2613, MCA, IS AMENDED TO READ:

"7-4-2613. Documents subject to recording. The county clerk ~~must~~ shall, upon payment of his the appropriate fees

~~for the same, record, photograph, or correctly copy, separately, in large and well-bound or to be bound separate books, either in a fair hand or~~ by printing, typewriting, or photographic, micrographic, or electronic process or by the use of prepared blank forms:

(1) deeds, grants, transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property any part of which is situated in the county, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, leases which have been acknowledged or proved, and abstracts of such the instruments which that have been acknowledged or proved;

(2) notices of buyer's interest in real property, notwithstanding any other requirement of law or rule relating to eligibility for recording of the deed, contract for deed, or other document relating to the notice of buyer's interest; however, if the instrument of conveyance underlying a notice of buyer's interest would be unrecordable, the clerk and recorder shall notify the buyer by certified mail that the underlying instrument is unrecordable and may be void;

(3) a document on a form provided by the department of revenue certifying that the holder of a nonprobate interest in real property is deceased and that his the deceased's

1 interest is terminated. A nonprobate interest in real
2 property is a joint tenancy interest, a life estate
3 interest, or any other interest not requiring probate. The
4 document may be on the form used by the department of
5 revenue for responding to the application for determination
6 of inheritance or estate tax. It ~~shall~~ must contain:

7 (a) a statement that the holder of the nonprobate
8 interest has died and that ~~his~~ the deceased's interest in
9 the property is terminated;

10 (b) a certification by the county treasurer that the
11 inheritance or estate tax, if any tax was due, has been paid
12 or that no inheritance or estate tax was due;

13 (c) a description of the property;

14 (4) certificates of births and deaths;

15 (5) wills devising real estate admitted to probate;

16 (6) official bonds;

17 (7) transcripts of judgments which that by law are made
18 liens upon real estate;

19 (8) instruments describing or relating to the
20 individual property of married persons;

21 (9) all orders and decrees made by the district court
22 in probate matters affecting real estate and which that are
23 required to be recorded;

24 (10) notice of preemption claims;

25 (11) notice and declaration of water rights;

1 (12) assignments for the benefit of creditors;
2 (13) affidavits of annual work done on mining claims;
3 (14) notices of mining locations and declaratory
4 statements;
5 (15) estrays and lost property;
6 (16) a book containing appraisement of state lands; and
7 (17) such other writings as that are required or
8 permitted by law to be recorded."

9 **SECTION 12.** SECTION 7-5-2131, MCA, IS AMENDED TO READ:

10 "7-5-2131. Records to be available to public. The
11 books, records, and accounts must be kept at the office of
12 the clerk, and must be open at--all--times for public
13 inspection free of charge."

14 **Section 13.** Section 7-5-2132, MCA, is amended to read:

15 "7-5-2132. Destruction of old county records. {1} Upon
16 the order of the board of county commissioners and with the
17 WRITTEN approval of the department--of--commerce, local
18 government records destruction subcommittee provided for in
19 [section 3], a county officer may destroy old-worthless
20 reports, papers, or records in--his the office--that--have
21 served their purpose and that are substantiated by permanent
22 records THAT HAVE MET THE RETENTION PERIOD, AS CONTAINED IN
23 THE LOCAL GOVERNMENT RECORDS RETENTION AND DISPOSITION
24 SCHEDULES, AND THAT ARE NO LONGER NEEDED BY THE OFFICE.

25 {2}--{a}--The board of county commissioners may, with the

1 approval-of-the-department-of-commerce, local-government
 2 records-committee-provided-for-in-(section-2), adopt
 3 retention-schedules-for-claims, warrants, vouchers, bonds,
 4 treasurer's-general-receipts, and similar records created or
 5 kept by the county. The destruction of such the records must
 6 be done in accordance with the provisions of such the
 7 schedules and only with the approval of the local government
 8 records destruction subcommittee provided for in (section
 9 3).

10 (b) If a schedule has not been adopted and approved
 11 under the provisions of subsection (2)(a), such the records
 12 may be destroyed by any county officer, upon approval by the
 13 local government records destruction subcommittee, after a
 14 period of 25 years."

15 **Section 14.** Section 7-5-4124, MCA, is amended to read:

16 "7-5-4124. Destruction of old municipal records. (1)
 17 Except as provided in subsection (2), upon UPON the order of
 18 the city or town council or commission and with the WRITTEN
 19 approval of the department of commerce, local government
 20 records destruction subcommittee provided for in [section
 21 3], a city or town officer may destroy old worthless
 22 reports, papers, or records in his the office that have
 23 served their purpose and that are substantiated by permanent
 24 records THAT HAVE MET THE RETENTION PERIOD, AS CONTAINED IN
 25 THE LOCAL GOVERNMENT RECORDS RETENTION AND DISPOSITION

1 SCHEDULES, AND THAT ARE NO LONGER NEEDED BY THE OFFICE.

2 (2) Records relating to the operation of any public
 3 utility by a city or town may be destroyed without the
 4 approval of the department of commerce after the expiration
 5 of the period during which they must be kept by said city or
 6 town as specified in the appropriate regulations of the
 7 public service commission of Montana.

8 (3)(2)(a) The city or town council or commission may,
 9 with the approval of the department of commerce, local
 10 government records committee provided for in (section 2),
 11 adopt retention schedules for claims, warrants, vouchers,
 12 bonds, treasurer's general receipts, and similar records
 13 created or kept by the city or town. The destruction of such
 14 the records must be done in accordance with the provisions
 15 of such the schedules and only with the approval of the
 16 local government records destruction subcommittee provided
 17 for in (section 3).

18 (b) If a schedule has not been adopted and approved
 19 under the provisions of subsection (3)(a) (2)(a), such the
 20 records may be destroyed by any city or town officer, upon
 21 approval by the local government records destruction
 22 subcommittee, after a period of 5 years."

23 **Section 8.** Section 15-1-104, MCA, is amended to read:

24 "15-1-104. Treasurers to destroy Destruction of certain
 25 tax records approval. The treasurer of each county, city,

~~or--town-in-the-state-of-Montana-may-destroy-all-tax-records
in-his the-treasurer's possession-more-than--30--years--old,
with---the---approval---of---the--local--government--records
destruction-subcommittee-provided-for-in-{section-3};"~~

Section 15. Section 20-1-212, MCA, is amended to read:

"20-1-212. Destruction of old records by SCHOOL officer. (1) Unless destruction may be otherwise required by federal law, a school officer may destroy old worthless reports, papers, or records in his the office:

{a}--that--have--served--their--purpose--and--that---are
substantiated--by--permanent-records, upon UPON the order of the board of trustees and with the WRITTEN approval of the department--of-commerce local government records destruction subcommittee provided for in [section 3]; and

{b}--after-a-retention-period-of--5--years, A SCHOOL OFFICER MAY DESTROY RECORDS THAT HAVE MET THE RETENTION PERIOD, AS CONTAINED IN THE LOCAL GOVERNMENT RECORDS RETENTION AND DISPOSITION SCHEDULES, AND THAT ARE NO LONGER NEEDED BY THE OFFICE.

(2) ~~For-the-purposes-of-subsection-{1},--old--worthless reports,--papers,--or-records-do-not-include-student-records and-records-of-employment;--Such The records--or--copies--of such the STUDENT records must be permanently kept, AND EMPLOYMENT RECORDS MUST BE KEPT FOR 10 YEARS AFTER TERMINATION."~~

Section 10. ~~Section 20-9-215, MCA, is amended to read:~~

~~"20-9-215. Destruction--of--certain--financial--records, Any claim, warrant, voucher, bond,--or--treasurer's--general receipt--may--be--destroyed-by-any-county-or-school-district officer-after-a-period-of-5--years,--upon--approval--by--the local--government--records-destruction-subcommittee-provided for-in-{section-3};"~~

SECTION 16. SECTION 22-3-201, MCA, IS AMENDED TO READ:

"22-3-201. Public policy. The legislature declares that it is the public policy of the state of Montana that noncurrent records of permanent value to the state and to local governments should be preserved and protected; that the operations of state government should be made more efficient, more effective, and more economical through current records management; and that to the end that the people may receive maximum benefit from a knowledge of state and local government affairs, the state and local governments should preserve its noncurrent records of permanent value for study and research."

SECTION 17. SECTION 22-3-202, MCA, IS AMENDED TO READ:

"22-3-202. Archives created -- appointment, duties, and compensation of archivist. There is a state archives in the Montana historical society for the preservation of noncurrent records of permanent value to the state and local governments and for records management. The director of the

Montana historical society shall appoint a state archivist, who serves at the pleasure of the director, define his the archivist's duties, and fix his the archivist's compensation with the approval of the board of trustees of the Montana historical society."

SECTION 18. SECTION 22-3-203, MCA, IS AMENDED TO READ:

"22-3-203. Preservation of noncurrent records of permanent value. The state archivist shall preserve noncurrent records of permanent value to the state and is responsible for the ultimate preservation of local government records of permanent value. Upon request, he the archivist shall assist and advise in the establishment of records management programs in the executive, legislative, and judicial branches of state government and in local governments, with due regard to the functions of the officers and agencies involved."

Section 19. Section 30-9-403, MCA, is amended to read:

"30-9-403. What constitutes filing -- duration of filing -- fees -- effect of lapsed filing -- duties of filing officer -- computerized farm statement system.

(1) (a) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(b) The secretary of state may treat a facsimile copy of a document and the signatures on the facsimile copy in

the same manner as an original for purposes of 30-9-402 and subsection (1)(a), provided that he the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under subsection (1)(a) if it:

(i) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(ii) is legible and the same size as the original.

(c) During the 5-day period referred to in subsection (1)(b), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(d) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1)(b), the filing of the facsimile copy is void.

(e) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

(2) Except as provided in subsections subsection (6) and--(11), a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness

1 of a filed financing statement lapses on the expiration of
 2 the 5- year period unless a continuation statement is filed
 3 prior to the lapse. If a security interest perfected by
 4 filing exists at the time insolvency proceedings are
 5 commenced by or against the debtor, the security interest
 6 remains perfected until 60 days after termination of the
 7 insolvency proceedings or until expiration of the 5-year
 8 period, whichever occurs later. Upon lapse the security
 9 interest becomes unperfected unless it is perfected without
 10 filing. If the security interest becomes unperfected upon
 11 lapse, it is considered to have been unperfected as against
 12 a person who became a purchaser or lien creditor before
 13 lapse.

14 (3) A continuation statement may be filed by the
 15 secured party within 6 months prior to the expiration of the
 16 5-year period specified in subsection (2). Any continuation
 17 statement must be signed by the secured party, identify the
 18 original statement by file number, and state that the
 19 original statement is still effective. A continuation
 20 statement signed by a person other than the secured party of
 21 record must be accompanied by a separate written statement
 22 of assignment signed by the secured party of record and
 23 complying with 30-9-405(2), including payment of the
 24 required fee. Upon timely filing of the continuation
 25 statement, the effectiveness of the original statement is

1 continued for 5 years after the last date to which the
 2 filing was effective, whereupon it lapses in the same manner
 3 as provided in subsection (2) unless another continuation
 4 statement is filed prior to such the lapse. Succeeding
 5 continuation statements may be filed in the same manner to
 6 continue the effectiveness of the original statement. Unless
 7 a statute on disposition of public records provides
 8 otherwise, the filing officer may remove a lapsed statement
 9 from the files and destroy it immediately if he the filing
 10 officer has retained a microfilm or other photographic
 11 record or a record produced according to rules adopted by
 12 the secretary of state, or in other cases after 1 year after
 13 the lapse, upon approval by the local government records
 14 destruction subcommittee provided for in [section 3]. The
 15 filing officer shall ~~so~~ arrange matters by physical
 16 annexation of financing statements to continuation
 17 statements or other related filings, or by other means, that
 18 if he the filing officer physically destroys the financing
 19 statements of a period more than 5 years past, those which
 20 have been continued by a continuation statement or which are
 21 still effective under subsection (6) shall be retained.

22 (4) Except as provided in subsection (7), a filing
 23 officer shall mark each statement with a file number and
 24 with the date and hour of filing. The filing officer shall
 25 hold the statement or a microfilm or other photographic copy

1 or a copy produced according to rules adopted by the
2 secretary of state for public inspection. In addition, the
3 filing officer shall index the statements according to the
4 name of the debtor and shall note in the index the file
5 number and the address of the debtor given in the statement.

6 (5) The uniform fees for filing, indexing, and stamping
7 a copy furnished by the filing party to show the date and
8 place of filing ~~shall~~ must be set pursuant to subsection
9 ~~(13)~~ (12).

10 (6) If the debtor is a transmitting utility and a filed
11 financing statement so states, it is effective until a
12 termination statement is filed. A real estate mortgage that
13 is effective as a fixture filing under 30-9-402(6) remains
14 effective as a fixture filing until the mortgage is released
15 or satisfied of record or its effectiveness otherwise
16 terminates as to the real estate.

17 (7) When a financing statement covers timber to be cut
18 or covers minerals or the like (including oil and gas) or
19 accounts subject to 30-9-103(5) or is filed as a fixture
20 filing, the filing officer shall index it under the names of
21 the debtor and any owner of record shown on the financing
22 statement in the same fashion as if they were the mortgagors
23 in a mortgage of the real estate described and, to the
24 extent that the law of this state provides for indexing of
25 mortgages under the name of the mortgagee, under the name of

1 the secured party as if he the secured party were the
2 mortgagee ~~thereunder~~, or if indexing is by description, in
3 the same fashion as if the financing statement were a
4 mortgage of the real estate described.

5 (8) When a financing or continuation statement filed by
6 a financial institution covers farm products or accounts,
7 livestock, general intangibles arising from or relating to
8 the sale of farm products by a farmer, crops growing or to
9 be grown, or equipment used in farming operations, the fee
10 for filing must be established by the secretary of state in
11 an amount commensurate with the costs of establishing and
12 operating the computerized access system described in
13 subsection (9).

14 (9) Within 1 working day of receipt of a financing or
15 continuation statement, the secretary of state shall record
16 the information contained in the statement on a centralized
17 computer system that he the secretary of state shall
18 establish. The computer system must allow access to
19 financing statement information by any type of
20 communications which conform to standards used by the state
21 central computer. The system must have safeguards to allow
22 only access to UCC data and to prevent alteration, addition,
23 or deletion of the UCC data. The computer must be accessible
24 whenever the state computer system is available. A perfected
25 security interest is not created until the financing

statement information is recorded on the system. A printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement. The secretary of state shall maintain adequate errors and omissions liability coverage to protect against input errors causing loss to a secured party.

(10) The secretary of state shall, upon request of a clerk and recorder, mail a certified copy of a financing statement, continuation statement, assignment, amendment, or termination covering collateral described in subsection (8) to the clerk and recorder in the county of the principal debtor's residence. The secretary of state shall mail the requested copies at least once each week. This subsection does not require the secretary of state to mail a copy of any document which does not specifically indicate the county of the principal debtor's residence on its face.

~~(11) When--a--financing-or-continuation-statement-covers property-described--in--subsection--(8)--its--effectiveness lapses--on--July-17-1986--unless-prior-to-that-date-there-is filed-in-the-office-of-the-secretary-of--state--a--certified copy--of--the-statement-on-file-with-the-county-clerk-and-all related-documents--~~

{12} Financing statement information in the computer system constitutes public writings within the meaning of 2-6-101, but the information may not be used to compile

mailing lists.

{13}{12} The secretary of state, with advice from the county clerk and recorders, shall by administrative rule establish fees as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall deposit all fees in the general fund in the state treasury ~~all-fees he-collects~~. The secretary of state shall disseminate the uniform fee schedule to the county clerk and recorders for their use."

Section 20. Section 30-9-407, MCA, is amended to read:

"30-9-407. Information from filing officer. (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release furnishes the filing officer a copy thereof of the statement, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such the person.

(2) Upon request of any person, the filing officer shall issue ~~his~~ a certificate showing whether there is on file on the date and hour stated therein in the certificate, any presently effective financing statement naming a particular debtor and any statement of assignment thereof

1 and, if there is, giving the date and hour of filing of each
 2 such statement and the name and address of each secured
 3 party therein in the statement. For financing statements
 4 recorded on the system described in 30-9-403(9), the filing
 5 officer shall, upon request of any person, also furnish
 6 written information concerning the collateral described for
 7 any presently effective financing statement covering
 8 collateral described in 30-9-403(8). However, such the
 9 information is not a part of the filing officer's
 10 certificate and may not constitute a complete description of
 11 the collateral covered by the financing statement. The
 12 uniform fee for such a certificate and description of
 13 collateral ~~shall~~ must be set pursuant to 30-9-403. Upon
 14 request the filing officer shall furnish a copy of any filed
 15 financing statement or statement of assignment for a uniform
 16 fee of 50 cents per page.

17 (3) A computer printout from the system described in
 18 30-9-403(9) constitutes the certificate of the secretary of
 19 state as to whether there is on file, on the date and hour
 20 stated thereon on the printout, such a financing statement
 21 covering the collateral described in 30-9-403(8). The fee
 22 for requesting a printout from the secretary of state must
 23 cover the cost of the printout. If a certificate is made on
 24 a requestor's own computer using telephone dial-up access, a
 25 fee commensurate with costs must be charged.

1 (4) ~~Within 30 days after July 1, 1987, the secretary of~~
 2 ~~state shall provide a listing of all financing statements~~
 3 ~~recorded on the system described in 30-9-403(9) covering~~
 4 ~~collateral described in 30-9-403(8) to each county clerk and~~
 5 ~~recorder. The secretary of state shall compile the listing~~
 6 ~~alphabetically by debtor's name and may distribute the~~
 7 ~~listing on microfilm or microfiche. The secretary of state~~
 8 ~~shall provide the listing without charge to the county.~~

9 (5) The secretary of state shall ensure that the system
 10 described in 30-9-403(9) complies with the requirements for
 11 a central filing system as defined by 7 U.S.C. 1631 as that
 12 statute read on January 1, 1987. The secretary of state
 13 shall distribute portions of the master list to registered
 14 buyers at least once each month. He The secretary of state
 15 may distribute portions of the master list more frequently
 16 if ~~he determines~~ it is determined necessary to improve the
 17 flow of agricultural credit."

18 **Section 21.** Section 71-3-206, MCA, is amended to read:

19 "71-3-206. Fees. (1) The fee for filing and indexing
 20 each notice of lien or certificate or notice affecting the
 21 tax lien must be established and deposited in accordance
 22 with the provisions of 30-9-403(13).
 23

24 (2) The officer shall bill the district directors of
 25 internal revenue or other appropriate federal officials on a
 monthly basis for fees for documents filed by them."

Section 22. Section 71-3-705, MCA, is amended to read:

"71-3-705. Destruction of records -- when allowed. (1)

All seed liens ~~which have heretofore or shall hereafter be~~ filed for record in the office of any county clerk and recorder ~~of the several counties in the state shall~~ must be retained by ~~such the~~ county clerk in a file kept ~~by him~~ for ~~such purposes that purpose~~ for a period of 8 years from the time when ~~said the~~ seed lien has ceased to be a lien on the property described ~~therein in the lien~~.

(2) Upon the expiration of the period of time specified in subsection (1), the county clerk and recorder may destroy all seed liens ~~which that~~ have been preserved for the period of time specified in this section, upon approval by the local government records destruction subcommittee provided for in [section 3]."

Section 23. Section 71-3-810, MCA, is amended to read:

"71-3-810. Destruction of records -- when allowed. (1)

All threshers' liens ~~which have heretofore or shall~~ hereafter ~~be~~ filed for record in the office of any county clerk and recorder ~~of the several counties in the state~~ ~~shall~~ must be retained by ~~such the~~ county clerk in a file kept ~~by him~~ for ~~such purposes that purpose~~ for a period of 8 years from the time when ~~said the~~ threshers' lien has ceased to be a lien on the property described ~~therein in the lien~~.

(2) Upon the expiration of the period of time specified

in subsection (1), the county clerk and recorder may destroy all threshers' liens which have been preserved for the period of time specified in this section, upon approval by the local government records destruction subcommittee provided for in [section 3]."

NEW SECTION. Section 24. Codification instruction.

[Sections 1 through 4] are intended to be codified as an integral part of Title 2, chapter 6, and the provisions of Title 2, chapter 6, apply to [sections 1 through 4].

NEW SECTION. Section 25. Effective date. [This act] is effective on passage and approval.

-End-