

SENATE BILL NO. 220

INTRODUCED BY

*Bartlett Lash Feland*

*Amott  
Zindler  
Trent Brady*

BY REQUEST OF THE MONTANA SUPREME COURT

*Kulas  
Bishop Beck*

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING COURTS TO KEEP COURT RECORDS BY MEANS OF ELECTRONIC FILING AND STORAGE; AND AMENDING SECTIONS 3-2-402, 3-5-501, 3-6-302, 3-10-501, 3-10-503, 3-10-511, 3-10-512, AND 3-11-206, MCA."

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

NEW SECTION. Section 1. Definitions. As used in [sections 1 and 2], the following definitions apply:

(1) "Document" means all contents in the file or record of any case or matter docketed by a court, including decisions, administrative orders, court records, court books, court minutes and minute books, court dockets, court ledgers, registers of actions, court indexes, and other documents, instruments, or papers required by law to be filed with a court.

(2) "Electronic filing of documents" means the transmission of data to a court by the communication of information that is originally displayed in written form and then converted to digital electronic signals, transformed by computer, and stored by the clerk of the court on microfilm, magnetic tape, optical disc, or other medium.

(3) "Electronic storage of documents" means the recording, storage, retention, maintenance, and reproduction of court documents, using microfilm, microfiche, data processing, computers, or other electronic processes that correctly and legibly store and reproduce documents.

NEW SECTION. Section 2. Electronic filing and storage of documents -- rules. (1) The supreme court may make rules establishing procedures for electronic filing of documents and electronic storage of documents.

(2) Courts may, but are not required to, institute procedures for electronic filing of documents and electronic storage of documents to further the efficient administration and operation of the courts. Electronically filed or stored documents may be kept in lieu of any paper documents. Electronic filing of

1 documents and electronic storage of documents must be in conformity with rules adopted by the supreme  
2 court.

3 (3) The provisions of [sections 1 and 2] may not be construed to repeal any other provision of  
4 existing law that requires or provides for the maintenance of official written documents, records, dockets,  
5 books, ledgers, or proceedings by a court or clerk of the court in those courts that do not institute  
6 electronic filing of documents and electronic storage of documents.

7 (4) The procedures for electronic storage of documents may require but are not limited to the  
8 following:

9 (a) all original documents to be recorded and released into the court's electronic filing and storage  
10 system within a specified minimum time period after presentation to the court;

11 (b) the use of original paper records during the pendency of any legal proceeding;

12 (c) standards for organizing, identifying, coding, indexing, and reproducing an original document  
13 so that an image produced from electronically stored information can be certified as a true and correct copy  
14 of the original and can be retrieved rapidly; and

15 (d) retention of the original documents consistent with other law and security provisions to guard  
16 against physical loss, alterations, and deterioration.

17

18 **Section 3.** Section 3-2-402, MCA, is amended to read:

19 **"3-2-402. Duties -- electronic filing and storage of court records.** (1) It is the duty of the clerk  
20 to:

21 ~~(1)~~(a) keep the seal of the supreme court, its records and files, and the roll of attorneys and  
22 counselors at law;

23 ~~(2)~~(b) adjourn the court from day to day at the beginning of any term in the absence of any justice  
24 and until the arrival of a majority of the justices;

25 ~~(3)~~(c) file all papers or transcripts required by law to be filed;

26 ~~(4)~~(d) issue writs and certificates and approve bonds or undertakings when ~~so~~ required;

27 ~~(5)~~(e) make out all transcripts to the supreme court of the United States;

28 ~~(6)~~(f) make copies of papers or records when demanded by law or the rules of the court; and

29 ~~(7)~~(g) perform ~~such~~ other duties as may be required ~~of him~~ by law and the rules and practice of  
30 the supreme court.

1           (2) The clerk may elect to keep court documents by means of electronic filing or storage, or both,  
 2 as provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."

3  
 4           **Section 4.** Section 3-5-501, MCA, is amended to read:

5           **"3-5-501. General duties -- electronic filing and storage of court records.** (1) The clerk of the  
 6 district court, in addition to keeping the records and performing the duties prescribed elsewhere, shall:

7           ~~(1)(a)~~ take charge of and safely keep or dispose of according to law all books, papers, and records  
 8 ~~which~~ that are filed or deposited in ~~his~~ the clerk's office;

9           ~~(2)(b)~~ act as clerk of the district court and attend each term or session ~~thereof~~ of the court and  
 10 upon the judges at chambers when required;

11           ~~(3)(c)~~ issue all process and notices required to be issued;

12           ~~(4)(d)~~ enter all orders, judgments, and decrees proper to be entered;

13           ~~(5)(e)~~ keep in each court a register of actions, as provided in 3-5-504;

14           ~~(6)(f)~~ keep for the district court two separate indexes, one labeled "General Index--Plaintiffs" and  
 15 the other labeled "General Index--Defendants", which ~~shall~~ must be in the form prescribed in 3-5-502;

16           ~~(7)(g)~~ keep a minute book, which must contain the daily proceedings of court, which may be signed  
 17 by the clerk;

18           ~~(8)(h)~~ keep a fee book, in which must be shown in an itemized form all fees ~~that he has~~ received  
 19 for any services rendered in ~~his~~ the capacity as clerk.

20           (2) The clerk of the district court may elect to keep court documents by means of electronic filing  
 21 or storage, or both, as provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."

22  
 23           **Section 5.** Section 3-6-302, MCA, is amended to read:

24           **"3-6-302. Records -- electronic filing and storage.** (1) The records of the court ~~shall~~ must be kept  
 25 by the clerk. ~~Such~~ The records in civil causes ~~shall~~ must conform as nearly as possible to the records of  
 26 district courts. In criminal causes, in cases arising under city ordinances, and in cases mentioned in  
 27 3-11-103, the records ~~shall~~ must be similar to the records now kept in justices' courts.

28           (2) The clerk may elect to keep court documents by means of electronic filing or storage, or both,  
 29 as provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."

1           **Section 6.** Section 3-10-501, MCA, is amended to read:

2           "**3-10-501. Contents of docket -- electronic filing and storage of court records.** (1) ~~Every~~ Each

3 justice ~~must shall~~ keep a book, denominated a "docket", in which ~~he~~ the justice ~~must shall~~ enter:

4           ~~(1)(a)~~ (a) the title of ~~every~~ each action or proceeding;

5           ~~(2)(b)~~ (b) the object of the action or proceeding and, if a sum of money ~~be is~~ claimed, the amount  
6 thereof;

7           ~~(3)(c)~~ (c) the date of the summons and the time of its return and, if an order to arrest the defendant  
8 ~~be is~~ made or a writ of attachment ~~be is~~ issued, a statement of the fact;

9           ~~(4)(d)~~ (d) the time when the parties or either of them appear or their nonappearance if default ~~be is~~  
10 made; a minute of the pleading and motions, if in writing, referring to them, if not in writing, a concise  
11 statement of the material parts of the pleadings;

12           ~~(5)(e)~~ (e) every each adjournment, stating on whose application and to what time;

13           ~~(6)(f)~~ (f) the demand for a trial by jury, when the ~~same~~ demand is made, and by whom made; the  
14 order for the jury; and the time appointed for the return of the jury and for the trial;

15           ~~(7)(g)~~ (g) the names of the jurors who appear and are sworn and the names of all witnesses sworn  
16 and at whose request;

17           ~~(8)(h)~~ (h) the verdict of the jury and when received; if the jury disagree and ~~are is~~ discharged, the fact  
18 of ~~such~~ disagreement and discharge;

19           ~~(9)(i)~~ (i) the judgment of the court, specifying the costs included and the time when rendered, and  
20 an itemized statement of the costs;

21           ~~(10)(j)~~ (j) the issuing of the execution, when issued, and to whom; the renewals ~~thereof~~ of the  
22 execution, if any, and when made; and a statement of any money paid to the justice, when paid, and by  
23 whom;

24           ~~(11)(k)~~ (k) the receipt of a notice of appeal, if any ~~be is~~ given, and of the undertaking on appeal, if any  
25 ~~be is~~ filed.

26           (2) The justice may elect to keep court documents by means of electronic filing or storage, or both,  
27 as provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."

28

29           **Section 7.** Section 3-10-503, MCA, is amended to read:

30           "**3-10-503. Index to ~~the~~ docket -- electronic filing and storage of court records.** (1) A justice ~~must~~

1 shall keep an alphabetical index to ~~his~~ the docket, in which must be entered the names of the parties to  
 2 each judgment, with a reference to the page of entry. The names of the plaintiffs and defendants must be  
 3 entered in the index in the alphabetical order of the first letter of the family name.

4 (2) The justice may elect to keep the index by means of electronic filing or storage, or both, as  
 5 provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."  
 6

7 **Section 8.** Section 3-10-511, MCA, is amended to read:

8 **"3-10-511. Records delivered to successor.** ~~Every~~ Each justice of the peace, upon the expiration  
 9 of ~~his~~ the term of office, ~~must~~ shall deposit with ~~his~~ the justice's successor ~~his~~ the official dockets and all  
 10 papers or electronically filed or stored documents that were filed in ~~his office~~ the court, ~~his own as well as~~  
 11 ~~those of his predecessors or any other which may be in his custody~~ during the justice's term of office or  
 12 before, to be kept as public records."  
 13

14 **Section 9.** Section 3-10-512, MCA, is amended to read:

15 **"3-10-512. Proceedings when office becomes vacant.** If the office of a justice becomes vacant  
 16 because of ~~his~~ death or ~~his~~ removal from the county or for any other cause before ~~his~~ a successor is  
 17 appointed, the docket and papers or electronically filed or stored documents that were in ~~his~~ the justice's  
 18 possession ~~shall~~ must be deposited in the office of some other justice in the county, who shall deliver them  
 19 to the successor of the former justice. If there is no other justice in the county, the docket and papers or  
 20 electronically filed or stored documents ~~shall~~ must be deposited in the office of the county clerk, who shall  
 21 deliver them to the successor in office of the former justice."  
 22

23 **Section 10.** Section 3-11-206, MCA, is amended to read:

24 **"3-11-206. City to provide facilities -- conduct of court business -- electronic filing and storage of**  
 25 **court records.** (1) The governing body of the city in which the judge has been elected or appointed shall  
 26 provide for the judge:

27 (a) the office space, courtroom, and clerical assistance necessary to enable ~~him~~ the judge to  
 28 perform ~~his~~ the judge's duties in dignified surroundings;

29 (b) the books, records, forms, papers, stationery, postage, office equipment, and supplies  
 30 necessary for the proper keeping of the records and files of the judicial office and the transaction of

1 business;

2 (c) one copy of the latest edition of the Montana Code Annotated and all official supplements  
3 ~~thereto~~ or immediate access to the code and supplements.

4 (2) (a) Except as provided in subsection (2)(b), the provisions of 3-6-301 through 3-6-303  
5 concerning conduct of municipal court business apply to the city court.

6 (b) If the governing body of a city establishes by ordinance the position of clerk of city court,  
7 3-6-301 does not apply to the city court.

8 (3) The records of the court may be kept by means of electronic filing or storage, or both, as  
9 provided in [sections 1 and 2], in lieu of or in addition to paper records."

10

11 NEW SECTION. Section 11. Codification instruction. [Sections 1 and 2] are intended to be  
12 codified as an integral part of Title 3, chapter 1, part 1, and the provisions of Title 3, chapter 1, part 1,  
13 apply to [sections 1 and 2].

14

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0220, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act authorizing courts to keep court records by means of electronic filing and storage.

ASSUMPTIONS:

1. No fiscal impact projected.

*Dave Lewis 1-25-95*

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

*Sue Bartlett*

SUE BARTLETT, PRIMARY SPONSOR      DATE

Fiscal Note for SB220, as introduced

SB 220

SENATE BILL NO. 220

INTRODUCED BY Bartlett Tash Feland

BY REQUEST OF THE MONTANA SUPREME COURT Kulas

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING COURTS TO KEEP COURT RECORDS BY MEANS OF ELECTRONIC FILING AND STORAGE; AND AMENDING SECTIONS 3-2-402, 3-5-501, 3-6-302, 3-10-501, 3-10-503, 3-10-511, 3-10-512, AND 3-11-206, MCA."

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(1) "Document" means all contents in the file or record of any case or matter docketed by a court, including decisions, administrative orders, court records, court books, court minutes and minute books, court dockets, court ledgers, registers of actions, court indexes, and other documents, instruments, or papers required by law to be filed with a court.

(2) "Electronic filing of documents" means the transmission of data to a court by the communication of information that is originally displayed in written form and then converted to digital electronic signals, transformed by computer, and stored by the clerk of the court on microfilm, magnetic tape, optical disc, or other medium.

(3) "Electronic storage of documents" means the recording, storage, retention, maintenance, and reproduction of court documents, using microfilm, microfiche, data processing, computers, or other electronic processes that correctly and legibly store and reproduce documents.

**NEW SECTION. Section 2. Electronic filing and storage of documents -- rules.** (1) The supreme court may make rules establishing procedures for electronic filing of documents and electronic storage of documents.

(2) Courts may, but are not required to, institute procedures for electronic filing of documents and electronic storage of documents to further the efficient administration and operation of the courts. Electronically filed or stored documents may be kept in lieu of any paper documents. Electronic filing of





1 documents and electronic storage of documents must be in conformity with rules adopted by the supreme  
2 court.

3 (3) The provisions of [sections 1 and 2] may not be construed to repeal any other provision of  
4 existing law that requires or provides for the maintenance of official written documents, records, dockets,  
5 books, ledgers, or proceedings by a court or clerk of the court in those courts that do not institute  
6 electronic filing of documents and electronic storage of documents.

7 (4) The procedures for electronic storage of documents may require but are not limited to the  
8 following:

9 (a) all original documents to be recorded and released into the court's electronic filing and storage  
10 system within a specified minimum time period after presentation to the court;

11 (b) the use of original paper records during the pendency of any legal proceeding;

12 (c) standards for organizing, identifying, coding, indexing, and reproducing an original document  
13 so that an image produced from electronically stored information can be certified as a true and correct copy  
14 of the original and can be retrieved rapidly; and

15 (d) retention of the original documents consistent with other law and security provisions to guard  
16 against physical loss, alterations, and deterioration.

17

18 **Section 3.** Section 3-2-402, MCA, is amended to read:

19 **"3-2-402. Duties -- electronic filing and storage of court records. (1)** It is the duty of the clerk  
20 to:

21 ~~(1)~~**(a)** keep the seal of the supreme court, its records and files, and the roll of attorneys and  
22 counselors at law;

23 ~~(2)~~**(b)** adjourn the court from day to day at the beginning of any term in the absence of any justice  
24 and until the arrival of a majority of the justices;

25 ~~(3)~~**(c)** file all papers or transcripts required by law to be filed;

26 ~~(4)~~**(d)** issue writs and certificates and approve bonds or undertakings when ~~so~~ required;

27 ~~(5)~~**(e)** make out all transcripts to the supreme court of the United States;

28 ~~(6)~~**(f)** make copies of papers or records when demanded by law or the rules of the court; and

29 ~~(7)~~**(g)** perform ~~such~~ other duties as may be required ~~of him~~ by law and the rules and practice of  
30 the supreme court.

1           (2) The clerk may elect to keep court documents by means of electronic filing or storage, or both,  
 2 as provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."  
 3

4           **Section 4.** Section 3-5-501, MCA, is amended to read:

5           **"3-5-501. General duties -- electronic filing and storage of court records.** (1) The clerk of the  
 6 district court, in addition to keeping the records and performing the duties prescribed elsewhere, shall:

7           ~~(1)(a)~~ take charge of and safely keep or dispose of according to law all books, papers, and records  
 8 ~~which~~ that are filed or deposited in ~~his~~ the clerk's office;

9           ~~(2)(b)~~ act as clerk of the district court and attend each term or session ~~thereof~~ of the court and  
 10 upon the judges at chambers when required;

11           ~~(3)(c)~~ issue all process and notices required to be issued;

12           ~~(4)(d)~~ enter all orders, judgments, and decrees proper to be entered;

13           ~~(5)(e)~~ keep in each court a register of actions, as provided in 3-5-504;

14           ~~(6)(f)~~ keep for the district court two separate indexes, one labeled "General Index--Plaintiffs" and  
 15 the other labeled "General Index--Defendants", which ~~shall~~ must be in the form prescribed in 3-5-502;

16           ~~(7)(g)~~ keep a minute book, which must contain the daily proceedings of court, which may be signed  
 17 by the clerk;

18           ~~(8)(h)~~ keep a fee book, in which must be shown in an itemized form all fees ~~that he has~~ received  
 19 for any services rendered in ~~his~~ the capacity as clerk.

20           (2) The clerk of the district court may elect to keep court documents by means of electronic filing  
 21 or storage, or both, as provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."  
 22

23           **Section 5.** Section 3-6-302, MCA, is amended to read:

24           **"3-6-302. Records -- electronic filing and storage.** (1) The records of the court ~~shall~~ must be kept  
 25 by the clerk. ~~Such~~ The records in civil causes ~~shall~~ must conform as nearly as possible to the records of  
 26 district courts. In criminal causes, in cases arising under city ordinances, and in cases mentioned in  
 27 3-11-103, the records ~~shall~~ must be similar to the records now kept in justices' courts.

28           (2) The clerk may elect to keep court documents by means of electronic filing or storage, or both,  
 29 as provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."  
 30

1           **Section 6.** Section 3-10-501, MCA, is amended to read:

2           **"3-10-501. Contents of docket -- electronic filing and storage of court records. (1) Every Each**

3 justice ~~must~~ shall keep a book, denominated a "docket", in which ~~he~~ the justice ~~must~~ shall enter:

4           ~~(1)~~(a) the title of ~~every~~ each action or proceeding;

5           ~~(2)~~(b) the object of the action or proceeding and, if a sum of money ~~be~~ is claimed, the amount  
6 thereof;

7           ~~(3)~~(c) the date of the summons and the time of its return and, if an order to arrest the defendant  
8 ~~be~~ is made or a writ of attachment ~~be~~ is issued, a statement of the fact;

9           ~~(4)~~(d) the time when the parties or either of them appear or their nonappearance if default ~~be~~ is  
10 made; a minute of the pleading and motions, if in writing, referring to them, if not in writing, a concise  
11 statement of the material parts of the pleadings;

12           ~~(5)~~(e) ~~every~~ each adjournment, stating on whose application and to what time;

13           ~~(6)~~(f) the demand for a trial by jury, when the ~~same~~ demand is made, and by whom made; the  
14 order for the jury; and the time appointed for the return of the jury and for the trial;

15           ~~(7)~~(g) the names of the jurors who appear and are sworn and the names of all witnesses sworn  
16 and at whose request;

17           ~~(8)~~(h) the verdict of the jury and when received; if the jury disagree and ~~are~~ is discharged, the fact  
18 of ~~such~~ disagreement and discharge;

19           ~~(9)~~(i) the judgment of the court, specifying the costs included and the time when rendered, and  
20 an itemized statement of the costs;

21           ~~(10)~~(j) the issuing of the execution, when issued, and to whom; the renewals ~~thereof~~ of the  
22 execution, if any, and when made; and a statement of any money paid to the justice, when paid, and by  
23 whom;

24           ~~(11)~~(k) the receipt of a notice of appeal, if any ~~be~~ is given, and of the undertaking on appeal, if any  
25 ~~be~~ is filed.

26           **(2) The justice may elect to keep court documents by means of electronic filing or storage, or both,**  
27 **as provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."**

28

29           **Section 7.** Section 3-10-503, MCA, is amended to read:

30           **"3-10-503. Index to ~~the~~ docket -- electronic filing and storage of court records. (1) A justice ~~must~~**

1 shall keep an alphabetical index to ~~his~~ the docket, in which must be entered the names of the parties to  
 2 each judgment, with a reference to the page of entry. The names of the plaintiffs and defendants must be  
 3 entered in the index in the alphabetical order of the first letter of the family name.

4 (2) The justice may elect to keep the index by means of electronic filing or storage, or both, as  
 5 provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."  
 6

7 **Section 8.** Section 3-10-511, MCA, is amended to read:

8 **"3-10-511. Records delivered to successor.** ~~Every~~ Each justice of the peace, upon the expiration  
 9 of ~~his~~ the term of office, ~~must~~ shall deposit with ~~his~~ the justice's successor ~~his~~ the official dockets and all  
 10 papers or electronically filed or stored documents that were filed in his office the court, his own as well as  
 11 those of his predecessors or any other which may be in his custody during the justice's term of office or  
 12 before, to be kept as public records."  
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14 **Section 9.** Section 3-10-512, MCA, is amended to read:

15 **"3-10-512. Proceedings when office becomes vacant.** If the office of a justice becomes vacant  
 16 because of ~~his~~ death or ~~his~~ removal from the county or for any other cause before ~~his~~ a successor is  
 17 appointed, the docket and papers or electronically filed or stored documents that were in ~~his~~ the justice's  
 18 possession ~~shall~~ must be deposited in the office of some other justice in the county, who shall deliver them  
 19 to the successor of the former justice. If there is no other justice in the county, the docket and papers or  
 20 electronically filed or stored documents shall must be deposited in the office of the county clerk, who shall  
 21 deliver them to the successor in office of the former justice."  
 22

23 **Section 10.** Section 3-11-206, MCA, is amended to read:

24 **"3-11-206. City to provide facilities -- conduct of court business -- electronic filing and storage of**  
 25 **court records.** (1) The governing body of the city in which the judge has been elected or appointed shall  
 26 provide for the judge:

27 (a) the office space, courtroom, and clerical assistance necessary to enable ~~him~~ the judge to  
 28 perform ~~his~~ the judge's duties in dignified surroundings;

29 (b) the books, records, forms, papers, stationery, postage, office equipment, and supplies  
 30 necessary for the proper keeping of the records and files of the judicial office and the transaction of

1 business;

2 (c) one copy of the latest edition of the Montana Code Annotated and all official supplements  
3 ~~thereto~~ or immediate access to the code and supplements.

4 (2) (a) Except as provided in subsection (2)(b), the provisions of 3-6-301 through 3-6-303  
5 concerning conduct of municipal court business apply to the city court.

6 (b) If the governing body of a city establishes by ordinance the position of clerk of city court,  
7 3-6-301 does not apply to the city court.

8 (3) The records of the court may be kept by means of electronic filing or storage, or both, as  
9 provided in [sections 1 and 2], in lieu of or in addition to paper records."

10

11 NEW SECTION. Section 11. Codification instruction. [Sections 1 and 2] are intended to be  
12 codified as an integral part of Title 3, chapter 1, part 1, and the provisions of Title 3, chapter 1, part 1,  
13 apply to [sections 1 and 2].

14

-END-

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4  
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8  
9

SENATE BILL NO. 220

INTRODUCED BY

*Brother Lash Feland*

BY REQUEST OF THE MONTANA SUPREME COURT

*Kedlar*

*Quinn*  
*David Brady*  
*Hagan*

*Bishop Beck*

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING COURTS TO KEEP COURT RECORDS BY MEANS OF ELECTRONIC FILING AND STORAGE; AND AMENDING SECTIONS 3-2-402, 3-5-501, 3-6-302, 3-10-501, 3-10-503, 3-10-511, 3-10-512, AND 3-11-206, MCA."

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

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



## HOUSE STANDING COMMITTEE REPORT

March 2, 1995

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that Senate Bill 220 (third reading copy -- blue) be concurred in as amended.

Signed: *Dick Simpkins*  
Dick Simpkins, Chair

And, that such amendments read:

Carried by: Rep. Hagener

1. Page 6.  
Following: line 13  
Insert:

"NEW SECTION. Section 12. Coordination instruction. If Senate Bill No. 249 is passed and approved and if it includes a section amending 3-2-402 in a manner that eliminates the reference to the clerk of the supreme court and replaces the reference with a reference to the supreme court administrator, then the reference to the clerk of the supreme court in [section 3(2) of this act], amending 3-2-402, must be changed to refer to the supreme court administrator."

-END-

Committee Vote:  
Yes 16, No 0.

SB 220  
HOUSE  
491134SC.Hdh

## 1 SENATE BILL NO. 220

2 INTRODUCED BY BARTLETT, TASH, FELAND, JACOBSON, ARNOTT, QUILICI, KADAS, CLARK, TVEIT,

3 GRADY, HAGENER, BISHOP, BECK, HARPER

4 BY REQUEST OF THE MONTANA SUPREME COURT

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING COURTS TO KEEP COURT RECORDS BY MEANS  
7 OF ELECTRONIC FILING AND STORAGE; AND AMENDING SECTIONS 3-2-402, 3-5-501, 3-6-302,  
8 3-10-501, 3-10-503, 3-10-511, 3-10-512, AND 3-11-206, MCA."9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:11  
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15 including decisions, administrative orders, court records, court books, court minutes and minute books,  
16 court dockets, court ledgers, registers of actions, court indexes, and other documents, instruments, or  
17 papers required by law to be filed with a court.18 (2) "Electronic filing of documents" means the transmission of data to a court by the  
19 communication of information that is originally displayed in written form and then converted to digital  
20 electronic signals, transformed by computer, and stored by the clerk of the court on microfilm, magnetic  
21 tape, optical disc, or other medium.22 (3) "Electronic storage of documents" means the recording, storage, retention, maintenance, and  
23 reproduction of court documents, using microfilm, microfiche, data processing, computers, or other  
24 electronic processes that correctly and legibly store and reproduce documents.25  
26 NEW SECTION. **Section 2. Electronic filing and storage of documents -- rules.** (1) The supreme  
27 court may make rules establishing procedures for electronic filing of documents and electronic storage of  
28 documents.29 (2) Courts may, but are not required to, institute procedures for electronic filing of documents and  
30 electronic storage of documents to further the efficient administration and operation of the courts.



1 Electronically filed or stored documents may be kept in lieu of any paper documents. Electronic filing of  
 2 documents and electronic storage of documents must be in conformity with rules adopted by the supreme  
 3 court.

4 (3) The provisions of [sections 1 and 2] may not be construed to repeal any other provision of  
 5 existing law that requires or provides for the maintenance of official written documents, records, dockets,  
 6 books, ledgers, or proceedings by a court or clerk of the court in those courts that do not institute  
 7 electronic filing of documents and electronic storage of documents.

8 (4) The procedures for electronic storage of documents may require but are not limited to the  
 9 following:

10 (a) all original documents to be recorded and released into the court's electronic filing and storage  
 11 system within a specified minimum time period after presentation to the court;

12 (b) the use of original paper records during the pendency of any legal proceeding;

13 (c) standards for organizing, identifying, coding, indexing, and reproducing an original document  
 14 so that an image produced from electronically stored information can be certified as a true and correct copy  
 15 of the original and can be retrieved rapidly; and

16 (d) retention of the original documents consistent with other law and security provisions to guard  
 17 against physical loss, alterations, and deterioration.

18

19 **Section 3.** Section 3-2-402, MCA, is amended to read:

20 **"3-2-402. Duties -- electronic filing and storage of court records.** (1) It is the duty of the clerk  
 21 to:

22 (1)(a) keep the seal of the supreme court, its records and files, and the roll of attorneys and  
 23 counselors at law;

24 (2)(b) adjourn the court from day to day at the beginning of any term in the absence of any justice  
 25 and until the arrival of a majority of the justices;

26 (3)(c) file all papers or transcripts required by law to be filed;

27 (4)(d) issue writs and certificates and approve bonds or undertakings when ~~so~~ required;

28 (5)(e) make out all transcripts to the supreme court of the United States;

29 (6)(f) make copies of papers or records when demanded by law or the rules of the court; and

30 (7)(g) perform ~~such~~ other duties as may be required ~~of him~~ by law and the rules and practice of

1 the supreme court.

2 (2) The clerk may elect to keep court documents by means of electronic filing or storage, or both,  
3 as provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."

4

5 **Section 4.** Section 3-5-501, MCA, is amended to read:

6 **"3-5-501. General duties -- electronic filing and storage of court records.** (1) The clerk of the  
7 district court, in addition to keeping the records and performing the duties prescribed elsewhere, shall:

8 ~~(1)(a)~~ take charge of and safely keep or dispose of according to law all books, papers, and records  
9 ~~which~~ that are filed or deposited in ~~his~~ the clerk's office;

10 ~~(2)(b)~~ act as clerk of the district court and attend each term or session ~~thereof~~ of the court and  
11 upon the judges at chambers when required;

12 ~~(3)(c)~~ issue all process and notices required to be issued;

13 ~~(4)(d)~~ enter all orders, judgments, and decrees proper to be entered;

14 ~~(5)(e)~~ keep in each court a register of actions, as provided in 3-5-504;

15 ~~(6)(f)~~ keep for the district court two separate indexes, one labeled "General Index--Plaintiffs" and  
16 the other labeled "General Index--Defendants", which ~~shall~~ must be in the form prescribed in 3-5-502;

17 ~~(7)(g)~~ keep a minute book, which must contain the daily proceedings of court, which may be signed  
18 by the clerk;

19 ~~(8)(h)~~ keep a fee book, in which must be shown in an itemized form all fees ~~that he has~~ received  
20 for any services rendered in ~~his~~ the capacity as clerk.

21 (2) The clerk of the district court may elect to keep court documents by means of electronic filing  
22 or storage, or both, as provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."

23

24 **Section 5.** Section 3-6-302, MCA, is amended to read:

25 **"3-6-302. Records -- electronic filing and storage.** (1) The records of the court ~~shall~~ must be kept  
26 by the clerk. ~~Such~~ The records in civil causes ~~shall~~ must conform as nearly as possible to the records of  
27 district courts. In criminal causes, in cases arising under city ordinances, and in cases mentioned in  
28 3-11-103, the records ~~shall~~ must be similar to the records now kept in justices' courts.

29 (2) The clerk may elect to keep court documents by means of electronic filing or storage, or both,  
30 as provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."

1           **Section 6.** Section 3-10-501, MCA, is amended to read:

2           **"3-10-501. Contents of docket -- electronic filing and storage of court records. (1) Every Each**

3 justice ~~must shall~~ keep a book, denominated a "docket", in which ~~he the justice must shall~~ enter:

4           ~~(1)(a)~~ (a) the title of ~~every each~~ action or proceeding;

5           ~~(2)(b)~~ (b) the object of the action or proceeding and, if a sum of money ~~be is~~ claimed, the amount  
6 thereof;

7           ~~(3)(c)~~ (c) the date of the summons and the time of its return and, if an order to arrest the defendant  
8 ~~be is~~ made or a writ of attachment ~~be is~~ issued, a statement of the fact;

9           ~~(4)(d)~~ (d) the time when the parties or either of them appear or their nonappearance if default ~~be is~~  
10 made; a minute of the pleading and motions, if in writing, referring to them, if not in writing, a concise  
11 statement of the material parts of the pleadings;

12           ~~(5)(e)~~ (e) every ~~each~~ adjournment, stating on whose application and to what time;

13           ~~(6)(f)~~ (f) the demand for a trial by jury, when the ~~same demand~~ is made, and by whom made; the  
14 order for the jury; and the time appointed for the return of the jury and for the trial;

15           ~~(7)(g)~~ (g) the names of the jurors who appear and are sworn and the names of all witnesses sworn  
16 and at whose request;

17           ~~(8)(h)~~ (h) the verdict of the jury and when received; if the jury disagree and ~~are is~~ discharged, the fact  
18 of ~~such~~ disagreement and discharge;

19           ~~(9)(i)~~ (i) the judgment of the court, specifying the costs included and the time when rendered, and  
20 an itemized statement of the costs;

21           ~~(10)(j)~~ (j) the issuing of the execution, when issued, and to whom; the renewals ~~thereof of the~~  
22 execution, if any, and when made; and a statement of any money paid to the justice, when paid, and by  
23 whom;

24           ~~(11)(k)~~ (k) the receipt of a notice of appeal, if any ~~be is~~ given, and of the undertaking on appeal, if any  
25 ~~be is~~ filed.

26           (2) The justice may elect to keep court documents by means of electronic filing or storage, or both,  
27 as provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."

28

29           **Section 7.** Section 3-10-503, MCA, is amended to read:

30           **"3-10-503. Index to the docket -- electronic filing and storage of court records. (1) A justice must**

1 shall keep an alphabetical index to ~~his~~ the docket, in which must be entered the names of the parties to  
 2 each judgment, with a reference to the page of entry. The names of the plaintiffs and defendants must be  
 3 entered in the index in the alphabetical order of the first letter of the family name.

4 (2) The justice may elect to keep the index by means of electronic filing or storage, or both, as  
 5 provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."

6  
 7 **Section 8.** Section 3-10-511, MCA, is amended to read:

8 **"3-10-511. Records delivered to successor.** ~~Every~~ Each justice of the peace, upon the expiration  
 9 of ~~his~~ the term of office, ~~must~~ shall deposit with ~~his~~ the justice's successor ~~his~~ the official dockets and all  
 10 papers or electronically filed or stored documents that were filed in ~~his office~~ the court, ~~his own as well as~~  
 11 ~~those of his predecessors or any other which may be in his custody~~ during the justice's term of office or  
 12 before, to be kept as public records."

13  
 14 **Section 9.** Section 3-10-512, MCA, is amended to read:

15 **"3-10-512. Proceedings when office becomes vacant.** If the office of a justice becomes vacant  
 16 because of ~~his~~ death or ~~his~~ removal from the county or for any other cause before ~~his~~ a successor is  
 17 appointed, the docket and papers or electronically filed or stored documents that were in ~~his~~ the justice's  
 18 possession ~~shall~~ must be deposited in the office of some other justice in the county, who shall deliver them  
 19 to the successor of the former justice. If there is no other justice in the county, the docket and papers or  
 20 electronically filed or stored documents ~~shall~~ must be deposited in the office of the county clerk, who shall  
 21 deliver them to the successor in office of the former justice."

22  
 23 **Section 10.** Section 3-11-206, MCA, is amended to read:

24 **"3-11-206. City to provide facilities -- conduct of court business -- electronic filing and storage of**  
 25 **court records.** (1) The governing body of the city in which the judge has been elected or appointed shall  
 26 provide for the judge:

27 (a) the office space, courtroom, and clerical assistance necessary to enable ~~him~~ the judge to  
 28 perform ~~his~~ the judge's duties in dignified surroundings;

29 (b) the books, records, forms, papers, stationery, postage, office equipment, and supplies  
 30 necessary for the proper keeping of the records and files of the judicial office and the transaction of

1 business;

2 (c) one copy of the latest edition of the Montana Code Annotated and all official supplements  
3 ~~thereto~~ or immediate access to the code and supplements.

4 (2) (a) Except as provided in subsection (2)(b), the provisions of 3-6-301 through 3-6-303  
5 concerning conduct of municipal court business apply to the city court.

6 (b) If the governing body of a city establishes by ordinance the position of clerk of city court,  
7 3-6-301 does not apply to the city court.

8 (3) The records of the court may be kept by means of electronic filing or storage, or both, as  
9 provided in [sections 1 and 2], in lieu of or in addition to paper records."

10

11 NEW SECTION. Section 11. Codification instruction. [Sections 1 and 2] are intended to be  
12 codified as an integral part of Title 3, chapter 1, part 1, and the provisions of Title 3, chapter 1, part 1,  
13 apply to [sections 1 and 2].

14

15 NEW SECTION. SECTION 12. COORDINATION INSTRUCTION. IF SENATE BILL NO. 249 IS  
16 PASSED AND APPROVED AND IF IT INCLUDES A SECTION AMENDING 3-2-402 IN A MANNER THAT  
17 ELIMINATES THE REFERENCE TO THE CLERK OF THE SUPREME COURT AND REPLACES THE REFERENCE  
18 WITH A REFERENCE TO THE SUPREME COURT ADMINISTRATOR, THEN THE REFERENCE TO THE CLERK  
19 OF THE SUPREME COURT IN [SECTION 3(2) OF THIS ACT], AMENDING 3-2-402, MUST BE CHANGED  
20 TO REFER TO THE SUPREME COURT ADMINISTRATOR.

21

-END-