

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 492 (Delegate Saab, *et al.*)
 Health and Government Operations

Public Bodies - Use and Retention of E-Mail - Requirements

This bill requires each “public body” to retain “government e-mail” for a minimum of seven years, or permanently if the email was sent or received by a senior employee. The bill also (1) prohibits an employee of a public body from creating or maintaining government email by using a personal email account and (2) requires that government email sent to a personal email account of an employee by a third party be forwarded to the employee’s “official e-mail account” within five days. The State Archivist must adopt regulations governing which employees are considered senior employees under the bill.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$3.7 million in FY 2017 for hardware, software, and other costs associated with the bill’s email retention requirement. Future year expenditures (general/special funds) reflect annualization and inflation. Agencies that contract with the Department of Information Technology (DoIT) for email support can implement the bill with existing resources. Revenues are not affected.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	3,719,100	726,300	677,600	689,200	701,200
SF Expenditure	0	264,000	269,300	274,700	280,200
Net Effect	(\$3,719,100)	(\$990,300)	(\$946,900)	(\$963,900)	(\$981,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local government expenditures increase significantly for additional data storage and hardware. Local revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: An employee of a public body may not delete a government email that is (1) required to be retained for a longer period of time under another provision of law; (2) subject to a Public Information Act request; (3) subject to an Open Meetings Act complaint; (4) part of a separate records retention schedule; or (5) subject to any obligation to preserve records relating to anticipated or filed litigation.

“Government e-mail” means electronic mail, including metadata, sent or received by a public body in accordance with law or in connection with the transaction of public business. It includes electronic mail sent or received by a public body that contains evidence of the public body’s organization, functions, policies, decisions, procedures, operations, or other activities or that is relevant and useful to the execution and implementation of the ongoing work of the public body.

“Official e-mail account” means an electronic mail address and accompanying account on any computer network configured to send and/or receive electronic mail that is provided to an employee of a public body by the public body.

A “public body” is any entity that (1) consists of at least two individuals and (2) is created by the Maryland Constitution; a State statute; a county or municipal charter; a memorandum of understanding or a master agreement to which a majority of the county boards of education and the Maryland State Department of Education are signatories; an ordinance; a rule, resolution, or bylaw; or an executive order of the Governor or of the chief executive authority of a political subdivision. Exclusions from the definition of “public body” include juries, the Governor’s Cabinet and Executive Council, judicial nominating commissions, and single-member entities, among others.

Current Law: There is no specific email retention requirement for public bodies under current law. Generally, each unit of State government is required to establish a program for the continual and efficient management of its records. The program must include record retention and disposal schedules. Public bodies that maintain written meeting minutes must retain those records for at least one year.

State Expenditures: General fund expenditures increase by at least \$3,719,106 in fiscal 2017 for various State agencies to comply with the bill’s email retention requirements, as discussed below. Future year expenditures reflect annualization and inflation.

DoIT and several State agencies supported by DoIT use a Google-based email platform designed for government users. DoIT advises that it can comply with the bill's email retention requirements with existing budgeted resources. Thus, those agencies supported by DoIT do not incur any additional costs under the bill. However, those agencies not supported by DoIT incur increased expenditures to the extent that the bill's email retention requirements exceed an agency's current retention schedule. In some cases, significant expenditures are incurred. Examples of State agency impacts are provided below.

Judiciary (Administrative Office of the Courts)

General fund expenditures for the Judiciary increase by \$3.2 million in fiscal 2017 for hardware and software acquisition and maintenance of additional servers for storage of emails. According to the Judiciary, the one-time cost for additional hardware, software, and installation is \$2.8 million in fiscal 2017; in addition, the Judiciary incurs an annual maintenance cost of \$400,000. Future year expenditures are adjusted for inflation and reflect only ongoing maintenance.

Maryland State Archives

General fund expenditures for the Maryland State Archives increase by \$345,102 in fiscal 2017, which accounts for the bill's October 1, 2016 effective date. This estimate reflects the cost of hardware, software, and hiring four part-time contractual information technology specialists for initial set-up and maintenance of electronic archival systems. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Out-year expenditures could increase if the ongoing archiving workload requires any full-time positions.

Contractual Positions	4
Salaries and Fringe Benefits	\$81,404
Additional Equipment	261,892
Other Operating Expenses	<u>1,806</u>
FY 2017 State Archives Expenditures	\$345,102

The Maryland State Archives is the central depository for government records of permanent value. Preservation of email records requires converting the electronic files to PDF format, scanning the records into electronic archival systems, and providing access to the archived documents.

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Maryland Department of Transportation (MDOT)

General fund expenditures for MDOT increase by \$264,000 annually beginning in fiscal 2018 for cloud-based archiving of email. According to MDOT, existing operational plans include moving its email host system to Microsoft starting in fiscal 2018. The additional fee for unlimited email storage is \$22,000 monthly. Future year expenditures are adjusted for inflation and reflect only ongoing costs.

Department of Legislative Services (DLS)

General fund expenditures for DLS increase by \$169,802 in fiscal 2017, which accounts for the bill's October 1, 2016 effective date. This estimate reflects the cost of hiring one email administrator as well as costs for hardware acquisition, installation, and maintenance. Future year expenditures reflect a full salary with annual increases and employee turnover as well as ongoing operating costs.

Position	1
Salary and Fringe Benefits	\$73,387
Additional Equipment	81,863
Other Operating Expenses	<u>15,052</u>
FY 2017 DLS Expenditures	\$169,802

Baltimore City Community College (BCCC)

General fund expenditures for BCCC increase by \$60,547 in fiscal 2018 for acquisition and maintenance of additional servers for storage of email. BCCC anticipates that current email server capacity will be exhausted sometime in fiscal 2018, at which time additional storage capacity is needed. This estimate reflects a one-time cost of \$60,000 in fiscal 2018 for additional storage and an annual maintenance cost of \$542. Future year expenditures are adjusted for inflation and reflect only ongoing maintenance costs.

Other Agencies

All other State agencies contacted by DLS for information regarding the fiscal impact of this bill advise that the bill has minimal or no impact.

Local Expenditures: Many local jurisdictions currently use tape backup storage for electronic records, including email. The bill's email retention requirement increases local

general fund expenditures significantly. For example, Cecil County advises that an additional \$164,625 is needed in fiscal 2017 to comply with the bill. This estimate includes costs for additional tape data storage, additional physical storage, and hardware. Counties with similar data storage systems likely also incur significant costs.

According to the Judiciary, some judges and Judiciary employees are on county email platforms rather than the Maryland Judiciary's email platform. Thus, courts in those counties, which include Anne Arundel, Baltimore, Carroll, Montgomery, and Prince George's counties, incur additional costs.

Additional Information

Prior Introductions: None.

Cross File: SB 155 (Senator Reilly) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Information Technology; Department of Commerce; Maryland Department of Aging; Office of the Attorney General; Comptroller's Office; Governor's Office; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Maryland Higher Education Commission; Baltimore City Community College; University System of Maryland; St. Mary's College of Maryland; Maryland Department of Agriculture; Department of Budget and Management; Department of Disabilities; Maryland Department of the Environment; Department of General Services; Department of Health and Mental Hygiene; Department of Housing and Community Development; Department of Juvenile Services; Department of Labor, Licensing, and Regulation; Department of Natural Resources; Maryland Department of Planning; Department of Public Safety and Correctional Services; Board of Public Works; Department of State Police; Maryland Department of Transportation; Department of Veterans Affairs; Maryland State Archives; State Department of Assessments and Taxation; Maryland Insurance Administration; Maryland State Lottery and Gaming Control Agency; Military Department; Secretary of State; Maryland Association of Counties; Maryland Municipal League; Cecil County; Department of Legislative Services

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