

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1241 (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 one year. 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* \$169,300 in FY 2018, which only reflects the costs for the Maryland General Assembly to comply with the bill’s requirements; future year expenditures, which range from \$115,900 in FY 2019 to \$129,600 in FY 2022, reflect annualization and ongoing costs. Most State agencies can comply with the bill’s requirements with existing resources, but State expenditures may increase for those agencies whose electronic mail systems are not hosted by the Department of Information Technology (DoIT). Revenues are not affected.

Local Effect: Local government expenditures may 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 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 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* \$169,250 in fiscal 2018, which reflects only the costs for the Department of Legislative Services (DLS) to comply with the bill’s email retention requirements, as discussed below. Future year expenditures reflect annualization and ongoing operating expenses. State expenditures increase further to the extent other agencies are also affected.

Department of Legislative Services

General fund expenditures for DLS increase by \$169,250 in fiscal 2018, which accounts for the bill's October 1, 2017 effective date. This estimate reflects the cost of hiring one email administrator as well as costs for hardware acquisition, installation, and maintenance. DLS advises that its current email system is backed up on a nightly basis. However, as emails are received, individual users can delete those emails prior to the backup occurring, making them unrecoverable. Thus, DLS needs a new email server that captures and retains all incoming messages.

Position	1
Salary and Fringe Benefits	\$74,541
Additional Equipment	79,640
Other Operating Expenses	<u>15,069</u>
FY 2018 DLS Expenditures	\$169,250

Future year expenditures, which range from \$115,927 in fiscal 2019 to \$129,603 in fiscal 2022, reflect a full salary with annual increases and employee turnover as well as ongoing operating costs.

Other Agencies

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.

Those agencies not supported by DoIT may incur increased expenditures to the extent that the bill's email retention requirements exceed the agency's current retention schedule or storage capacity. For example, Baltimore City Community College advises that it likely needs to purchase additional storage to comply with the bill. Based on information provided in 2016 for a similar bill, the Judiciary and the Maryland Department of Transportation could also be affected.

Local Expenditures: Many local jurisdictions currently use tape backup storage for electronic records, including email. The bill's email retention requirement may increase local expenditures significantly for additional data storage capacity.

Additional Information

Prior Introductions: HB 492 of 2016, a similar bill, received a hearing in the House Health and Government Operations Committee, but was subsequently withdrawn. Its cross file, SB 155, received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee.

Cross File: None.

Information Source(s): Department of Information Technology; Department of Commerce; Maryland Association of Counties; Maryland Municipal League; Office of the Attorney General; Comptroller's Office; Governor's Office; Secretary of State; Maryland State Department of Education; Baltimore City Community College; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Maryland Department of Agriculture; Maryland Department of the Environment; Department of General Services; Department of Health and Mental Hygiene; Department of Housing and Community Development; Department of Labor, Licensing, and Regulation; Department of Public Safety and Correctional Services; Department of State Police; Maryland State Archives; State Department of Assessments and Taxation; Maryland State Lottery and Gaming Control Agency; Department of Legislative Services

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