

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Enrolled

Senate Bill 44

(Chair, Education, Health, and Environmental Affairs
Committee)(By Request - Departmental - Maryland State
Archives)

Education, Health, and Environmental Affairs

Health and Government Operations

**Records Management and Preservation - State Units and Public Officials -
Responsibilities**

This departmental bill alters the procedures for records management programs applicable to units of the State and public officials. The bill requires units of State government to establish record retention and disposal schedules that facilitate (1) accurate and complete records inventories; (2) the prompt disposition of *electronic records*; and (3) the transfer of permanent records to the custody of the Maryland State Archives (MSA). Each head of a unit of State government must also designate a records officer from its executive staff to develop and oversee a records management program and serve as a liaison to MSA and the Records Management Division of the Department of General Services (DGS). The bill also clarifies the types of records that may be transferred by a public official to MSA and requires specified documentation.

Fiscal Summary

State Effect: The bill's changes can be handled with existing budgeted resources.

Local Effect: The bill's changes do not materially affect local operations or finances.

Small Business Effect: MSA has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: “Record” means any documentary material in any form created or received by any agency in connection with the transaction of public business. “Records inventory” means a survey of all records series maintained by an agency resulting in an itemized compilation of the records in the possession of the agency. A “records officer” is any executive officer so designated by the head of a unit of State government to serve as a liaison to MSA and the Records Management Division and to develop and oversee the unit’s records management program.

In addition to specified records that may be offered by a public official to MSA pursuant to current law, records considered for transfer may include any written or recorded material regardless of physical form or characteristics. Records accepted for transfer to MSA must be accompanied by a records inventory.

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 procedures to ensure the security of records and record retention and disposal schedules. The Records Management Division of DGS and the State Archivist are jointly required by State law to adopt regulations that (1) define the character of records of archival quality; (2) determine the quantity of those records; (3) set standards for the development of record retention and disposal schedules; and (4) provide for the periodic transfer to the State Archivist or disposal of records, in accordance with the schedules. The division must study the records management practices of each unit. Although these statutory requirements apply to units of State government, current regulations relating to records retention and dispositions schedules apply to units of local government as well.

Destruction of Obsolete Records: A public official, which includes an official of the State, or of a county, city, or town, must offer to MSA any public record of the official that is no longer needed in accordance with the record retention and disposal schedule. A public record includes (1) an original paper; (2) a book; (3) a file; (4) a record of a court of record for which an accurate transcript is in use; or (5) a record that relates to the internal management of or otherwise is a housekeeping record for an office of a clerk of court or register of wills. With the written approval of the State Archivist, a public official may destroy the record that the public official offers but that MSA declines to accept.

Destruction of Original Records: A public official may destroy original material that has been photographed, photocopied, or microphotographed if the State Archivist has declined to accept the original material. The copy must be made in a manner that meets the standard of quality of MSA for permanent photographic records and placed in an adequately accessible container. Provision must be made for the preservation, examination, and use of the copy in a manner that MSA approves and, as to a record that a statute otherwise

expressly requires to be kept permanently, for the copy to be available, on request, in the same manner as the original material.

After records are destroyed, the public official must send to MSA (1) a list of the records that were destroyed and (2) a certificate of destruction. The State Archivist must keep each list of the records destroyed and make the list available for public inspection at reasonable times.

Background: In a 2013 records management report submitted to the budget committees, MSA and DGS recommended that Maryland's executive and legislative branches follow the lead of the federal government and mandate that State agencies update records management practices for the digital age in order to improve performance, promote openness and accountability, minimize cost, and increase efficiency. The 2014 *Joint Chairmen's Report* required MSA and DGS, in consultation with the Department of Information Technology, to submit a report indicating the steps necessary to reach electronic creation, maintenance, and management of State records. In its June 2015 report to the House Appropriations Committee and the Senate Budget and Taxation Committee, DGS and MSA recommended, among other things, that agency heads be required in statute to designate a records officer from the agency's executive staff.

While current regulations require all State agencies (which includes any office, department, board, commission, or other unit of the executive, legislative, or judicial branch) and all political subdivisions to designate at least one records officer to serve as a liaison with MSA and the Records Management Division of DGS, MSA advises that, in practice, the records officer position often goes unfulfilled or is assigned to an employee with insufficient authority or training.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Aging; cities of Baltimore, Salisbury, and Westminster; Baltimore, Carroll, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Maryland Association of Counties; Maryland Municipal League; Town of Bel Air; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; University System of Maryland; Department of General Services; Maryland Department of Planning; Maryland Department of Transportation; Maryland State Archives; Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2017
md/mcr Third Reader - March 28, 2017
Revised - Amendment(s) - March 28, 2017
Enrolled - May 10, 2017

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Records Management and Preservation - Agency Responsibilities

BILL NUMBER: SB 44

PREPARED BY: Elizabeth Newell, Legislative Liaison

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

 WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

None. The bill addresses governmental agency responsibilities for records management and preservation and requires the appointment of a records management officers.