

Legislative Analysis



RECORDS MEDIA ACT UPDATE

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House Bill 5550 as enrolled
Public Act 572 of 2004
Sponsor: Rep. Rich Brown

House Bill 5657 as enrolled
Public Act 574 of 2004
Sponsor: Rep. Bill Huizenga

Senate Bill 1409 as enrolled
Public Act 550 of 2004
Sponsor: Sen. Bruce Patterson

House Committee: Local Government and Urban Policy
Senate Committee: Technology and Energy

Third Analysis (3-31-05)

BRIEF SUMMARY: The tie-barred bills would update the Records Media Act to allow for the use of a wider range of media for the storage and reproduction of public records. The Department of History, Arts, and Libraries (HAL) would be responsible for developing technical standards and promulgating rules to govern the reproduction of public records.

FISCAL IMPACT: The fiscal impact on state or on local governmental units is indeterminate. The use of digital imaging for the storage and reproduction of records has implied long-term cost savings, but may have large up-front costs. It is difficult to determine the volume of use, the future costs of digitization hardware and software for the prediction of actual savings.

THE APPARENT PROBLEM:

As the demand for information and its subsequent retention grows, local governments have been faced with the requirement to establish long-term archival systems capable of maintaining the integrity and accessibility of information—information that has varying “life cycles.”

The Records Media Act of 1992 and the rules promulgated under that act in 1998 are inadequate in at least three ways: First, the law and rules allow for microfilm and microfiche storage, but prohibit a wider variety of storage media such as magnetic media, thus making retrieval and searching of documents slow. Second, the rules require a human-readable copy of records that are retained beyond 10 years; however, they prohibit creation of those documents from digital imaging. Third, the rules fail to take into account the manner in which many original documents are now created—that is, by computerized and networked word processors. Legislation has been introduced to update the Records Media Act, in order to take advantage of recent advances in technology.

THE CONTENT OF THE BILLS:

House Bill 5550 would update the Records Media Act (MCL 24.402) in order to allow for a wider range of media and kinds of storage when official records are reproduced. Under the bill, the responsibilities for developing technical standards and promulgating rules would rest with the Department of History, Arts, and Libraries (HAL).

Currently under the law, a governmental official may reproduce records using any of the following media: photograph, photocopy, microcopy, or optical storage disc (under certain conditions). The bill would retain these media, except it would redefine “optical storage disc” more broadly to mean “optical media,” and then add the following categories: data transfer, digitization, digital migration, digital imaging, magnetic media, printing, and any other reproduction method or medium approved by the department under the act.

Current law also requires that HAL, together with the Department of Management and Budget (DMB), jointly promulgate rules to govern recordkeeping. Under the bill, this responsibility would fall to HAL. The bill would allow the department to adopt technical standards, issue directives, or promulgate rules with respect to the methods and mediums listed above. Those standards would have to a) ensure continued accessibility and usability of the records throughout their retention period; and b) ensure the integrity and authenticity of records maintained by governmental entities, officials, and employees.

The bill specifies that a governmental official could not use certain methods or mediums—including micro-production, digitization, digital migration, and digital imaging—for storage or reproduction until the department had adopted a standard, issued a directive, or had promulgated a rule governing the method or medium. Further, the department could enter into a pilot agreement with a governmental entity to test new equipment, technology, methods, or mediums. A record reproduced under a pilot agreement would have the same force and effect as a record stored or reproduced by other approved methods and mediums.

The bill specifies that the act would not prohibit the use of an optical disc or magnetic imaging system purchased by the Department of Labor and Economic Growth before and in use prior to the effective date of this legislation, unless the department determined that the system was incapable of creating reproduced records that met the act’s requirements.

The bill is tie-barred to Senate Bill 1409 and House Bill 5657, so that it could not take effect unless both of those bills also were enacted.

Senate Bill 1409 would amend the Records Media Act (MCL 24.403) to specify that a record reproduced under the act would have the same force and effect as a true paper copy of the record. Further, all copies, when certified as true copies by the officer in whose office the original had been filed or recorded, would have the same force and effect as an original for all legal purposes, and would be admissible in court, administrative proceedings, and elsewhere, as evidence.

House Bill 5657 would also amend the Records Media Act (MCL 24.401 and 24.404). The bill provides definitions under the act, including the following: "Department" would be defined to mean the Department of History, Arts, and Libraries. The bill would define "board" to mean the State Historical Records Advisory Board. Further, the bill would define "data transfer" to mean the copying or transmission of electronic information that does not alter the content, context, or structure of a record from one medium to another medium. "Digitization" would mean the conversion of information into digitally coded electronic images suitable for electronic storage. "Digital migration" would mean the conversion of digital information from an existing format to another format that maintains the content, context, and structure of a record. "Digital imaging" would mean the techniques for capturing, recording, processing, storing, transferring, and using images of records electronically.

House Bill 5657 also would require the State Historical Records Advisory Board, within 60 days of a proposed technical standard from HAL, to approve, disapprove, or revise the proposed technical standard. Before submitting a proposed standard to the board, HAL would be required to seek advice and comment from the Department of Information Technology, and at least one representative from each of the following: a) county government; b) city, township, or village government; and c) the information technology industry. Both proposed and final standards would be published in the Michigan Register, and they would not take effect until their publication date.

ARGUMENTS:

For:

By allowing for additional storage media, the proposed changes to the Records Media Act would remove a primary impediment to creating cost-effective document management systems. According to committee testimony, allowing the use of additional storage media, such as magnetic media, will make public records digitally accessible to all who require them, in a shorter time and at lower cost.

As local governments continue to provide a central source of information for their constituents and the business community, local officials often find themselves overwhelmed with paper-based storage systems. Further, retrieval of information from those paper-based information systems is desperately slow. Although microfilm and microfiche continue to provide a long-term archive for important records, these two storage media do not provide a speedy method of searching for information, routing information, or providing simultaneous access to the same records. New document management technologies are needed to advance the inefficiency and cost of paper-based records storage systems.

An April 1999 article in *Michigan Counties* noted, "Records management exists to bring order out of chaos, to assure preservation of pertinent material which serves as the institutional memory and lifeblood of county government. Good records management results in the protection of valuable records and information; improved public service (citizens and agencies can get the right information at the right time at the right place);

cost savings through proper use of space, equipment, procedures, and supplies; and, greater efficiency and accountability of government operations.”

Local governments are anxious to reduce their record storage costs, protect the integrity of public records, and, improve accessibility to their records--both to agency personnel and to the general public. These bills would help local units of government meet all three of these aims.

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