



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 1409 (as reported without amendment)
House Bill 5657 (Substitute S-1 as reported)
Sponsor: Senator Bruce Patterson (S.B. 1409)
Representative Bill Huizenga (H.B. 5657)
Committee: Technology and Energy

Date Completed: 10-19-04

RATIONALE

The Records Media Act was enacted in 1992 to regulate how government records are stored. Technological advances have occurred since then, and more options for records storage now are available. It has been suggested that the Act be updated to recognize these new media, and also to accommodate technologies developed in the future.

CONTENT

Senate Bill 1409 and House Bill 5657 (S-1) would amend the Records Media Act to do the following:

- **Expand the media that may be used to store and reproduce government records.**
- **Allow the Department of History, Arts and Libraries (HAL) to approve new storage media.**
- **Authorize HAL to adopt technical standards, issue directives, and promulgate rules.**
- **Require the State Historical Records Advisory Board to approve, disapprove, or revise a proposed technical standard.**
- **Allow HAL to enter into a pilot agreement with a governmental entity to test new media.**
- **Provide that a record reproduced under the Act would have the same force and effect as the original or a paper copy.**
- **Rename the Act as the "Records Reproduction Act".**

House Bill 5657 (S-1) is tie-barred to Senate Bill 1409.

Under the Act, a governmental entity or a governmental official acting in his or her official capacity may reproduce a record by using photograph, photocopy, microcopy, and, subject to promulgated rules, optical storage disc. The bills would replace "microcopy" with "microreproduction", and refer to "optical media" instead of optical storage disc. Additionally, the bills would allow the use of data transfer, digitization, digital migration, magnetic media, printing, and any other reproduction method or medium approved by HAL under the Act. House Bill 5657 (S-1) also would allow the use of digital imaging.

(The bills would define "data transfer" as the copying or transmission of electronic information that does not alter the content, context, or structure of a record from one medium to another. "Digital migration" would mean the conversion of digital information from an existing format to another format that maintains a record's content, context, and structure. "Digitization" would mean the conversion of information into digitally coded electronic images suitable for electronic storage. Under House Bill 5657 (S-1), "digital imaging" would mean a system used to store information electronically by recording a digital reproduction of a scanned record onto an optical storage disk.)

Currently, HAL and the Department of Management and Budget (DMB) jointly must

promulgate rules that govern the creation, processing, indexing, storage, retrieval, durability, and inspection of reproductions by a governmental entity or governmental official. The bills would delete this provision, and instead allow HAL to adopt technical standards, issue directives, or promulgate rules governing the storage and reproduction of records.

Under the Act, the rules related to information systems that use digital data must set forth data interchangeability standards, and ensure continued maintenance of and access to the records by requiring the conversion of the digital data medium or the modification or replacement of the computer hardware or computer software before the digital data medium, algorithms, computer hardware, or computer software become obsolete. Under the bills, HAL's rules, standards, or directives would apply to all of the storage methods and media listed in the Act. The rules, standards, or directives would have to ensure continued accessibility and usability of the records throughout their retention period, and ensure the integrity and authenticity of records maintained by governmental entities, officials, and employees.

The bills would prohibit a governmental entity or official from using microreproduction, digitization, or digital migration (or digital imaging under the House bill) until HAL adopted a standard, issued a directive, or promulgated a rule governing the method or medium.

The bills would allow HAL to enter into a pilot agreement with a governmental entity to test new equipment, technology, methods, or media. A record reproduced by a governmental entity operating under a pilot agreement would have the same force and effect as a record stored or reproduced by an approved method or media under the Act.

Within 60 days of receiving a proposed technical standard from HAL, the State Historical Records Advisory Board would have to approve, disapprove, or revise the proposed standard. Before submitting a proposed standard to the Board, HAL would have to seek advice and comment from the Department of Information Technology and at least one representative each from a

county government; a city, township, or village government; and the information technology industry.

Proposed and final technical standards would have to be published in the *Michigan Register*. A technical standard could not take effect before its publication.

The bills state that a record reproduced under the Act would have the same force and effect as a true paper copy of a record. All copies, when certified as true by the officer in whose office the original was 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 in the same manner as an original.

MCL 24.401 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Technology has changed since the Records Media Act was enacted, and will continue to evolve in the future. Manufacturers constantly improve their products, or introduce new ones. Often, new systems are not compatible with previous generations of hardware or software. It is vital that State agencies and local governments be granted the flexibility to keep up with technology and continue providing access to important records. While the Act currently allows HAL and the DMB to promulgate rules governing record storage and reproduction, the rules' promulgation process under the Administrative Procedures Act can be lengthy. The bills would allow HAL, in addition to promulgating rules, to adopt technical standards and issue directives, which would be less time-consuming and would enable the Department to move more quickly to allow local governments to use new technologies, which often are more efficient and cost-effective.

Additionally, under the bills, documents reproduced using the existing or expanded media would have to be certified as authentic in order to be recognized in law as

originals. Various statutes provide that document copies have legal standing if their authenticity is protected and they are reproduced using one of the methods currently recognized under the Records Media Act: photograph, photocopy, microfilm, and, if the copy is stored on an optical storage disk, digital imaging. Copies made using certain methods, such as digital imaging, can be easy to alter. Therefore, it is important that safeguards be put in place to maintain the credibility of the reproductions.

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bill would have an indeterminate fiscal impact. Costs for State and local governments would depend on the level of usage and the condition and size of documents, as well as vendor selection.

Fiscal Analyst: Maria Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.