




Senate Fiscal Agency
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BILL  ANALYSIS

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Senate Bill 1409 (as enrolled)
House Bills 5550 and 5657 (as enrolled)
Sponsor: Senator Bruce Patterson (S.B. 1409)
Representative Rich Brown (H.B. 5550)
Representative Bill Huizenga (H.B. 5657)
Senate Committee: Technology and Energy
House Committee: Local Government and Urban Policy

PUBLIC ACT 550 of 2004
PUBLIC ACTS 572 & 574 of 2004

Date Completed: 1-19-05

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 was suggested that the Act be updated to recognize these new media, and also to accommodate technologies developed in the future.

The bills were tie-barred to each other and took effect January 3, 2005. They are described below in further detail.

House Bill 5550

Previously, under the Act, a governmental entity or a governmental official acting in his or her official capacity could reproduce a record by using photograph, photocopy, microcopy, and, subject to promulgated rules, optical storage disc. The bill retained this provision but replaced "microcopy" with "microreproduction", and refers to "optical media" instead of optical storage disc. Additionally, the bill allows the use of data transfer, digitization, digital migration, and digital imaging (as defined by House Bill 5657), as well as magnetic media, printing, and any other reproduction method or medium approved by HAL under the Act.

CONTENT

The bills amended 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 has the same force and effect as the original or a paper copy.**
- **Rename the Act the "Records Reproduction Act".**

Previously, HAL and the Department of Management and Budget (DMB) jointly had to promulgate rules that governed the creation, processing, indexing, storage, retrieval, durability, and inspection of reproductions by a governmental entity or governmental official. The bill deleted that requirement. Under the bill, HAL may adopt technical standards, issue directives, or promulgate rules governing the storage and reproduction of records.

Previously, the rules related to information systems that used digital data had to 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 became obsolete. Under the bill, HAL's rules, standards, or directives apply to all of the storage methods and media listed in the Act. The rules, standards, or directives must 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 bill prohibits a governmental entity or official from using microreproduction, digitization, digital migration, or digital imaging until HAL adopts a standard, issues a directive, or promulgates a rule governing the method or medium.

The bill allows 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 will have the same force and effect as a record stored or reproduced by an approved method or media under the Act.

The bill states that the Act does 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 before the bill's effective date, unless HAL determines that the system is incapable of creating reproduced records that meet the Act's requirements.

House Bill 5657

The bill defines "data transfer", "digital migration", "digitization", and "digital imaging". "Data transfer" means 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" means the conversion of digital information from an existing format to another format that maintains the content, context, and structure of a record. "Digitization" means the conversion of information into digitally coded electronic images suitable for electronic storage. "Digital imaging" means

the techniques for capturing, recording, processing, storing, transferring, and using images of records electronically.

The bill requires the State Historical Records Advisory Board to approve, disapprove, or revise a proposed standard within 60 days of receiving it from HAL. Before submitting a proposed standard to the Board, HAL must 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 must be published in the *Michigan Register*. A technical standard may not take effect before its publication.

Senate Bill 1409

The bill states that a record reproduced under the Act has 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 is filed or recorded, have the same force and effect as an original for all legal purposes and are admissible in court, administrative proceedings, and elsewhere as evidence in the same manner as an original.

MCL 24.403 & 24.406 (S.B. 1409)
24.402 & 24.405 (H.B. 5550)
24.401 & 24.404 (H.B. 5657)

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 previously required 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 allow HAL, in addition to promulgating rules, to adopt technical standards and issue directives, which will be less time-consuming and will 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 must 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 previously recognized under the Records Media Act: photograph, photocopy, microfilm, and, if the copy was 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 bills will have an indeterminate fiscal impact. Costs for State and local governments will 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.