

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 521

H.P. 378

House of Representatives, January 31, 2019

An Act To Amend the Archives and Records Management Law

Submitted by the Secretary of State pursuant to Joint Rule 204.

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative JORGENSEN of Portland.

Cosponsored by Senator DAVIS of Piscataquis and

Representatives: BRADSTREET of Vassalboro, FARNSWORTH of Portland, GATTINE of Westbrook, HANDY of Lewiston, HANINGTON of Lincoln, MARTIN of Sinclair, MASTRACCIO of Sanford, McCREA of Fort Fairfield.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §92**, as amended by PL 1997, c. 636, §1, is further amended by
3 adding at the end a new paragraph to read:

4 It is also the policy of the State to ensure that operational, nonpermanent records of
5 agencies are preserved for the time required by approved records retention schedules
6 established pursuant to section 95-C, subsection 2, paragraph A, subparagraph (3) to meet
7 administrative use, legal, fiscal and audit requirements and to ensure compliance with
8 requests for public records under the Freedom of Access Act.

9 **Sec. 2. 5 MRSA §92-A, sub-§2**, as amended by PL 1997, c. 636, §2, is further
10 amended to read:

11 **2. Archives.** "Archives" means government records that have been determined by
12 the State Archivist, with advice from the Archives Advisory Board, to have sufficient
13 value to warrant their continued preservation and that are in the physical and legal
14 custody of the Maine State Archives.

15 **Sec. 3. 5 MRSA §92-A, sub-§4**, as amended by PL 1995, c. 148, §4 and PL 2003,
16 c. 20, Pt. OO, §2 and affected by §4, is further amended to read:

17 **4. State agency or agency.** "State agency" or "agency" means any unit of State
18 Government or local government, including any state board or commission, ~~except~~ the
19 Legislature and its committees and subcommittees; and the Judicial Department, judicial
20 branch but not including the University of Maine System, the Maine Community College
21 System and the Maine Maritime Academy.

22 **Sec. 4. 5 MRSA §92-A, sub-§6**, as enacted by PL 1997, c. 636, §4, is amended to
23 read:

24 **6. Electronic record.** "Electronic record" means a record whose content is not
25 readable unless retrieved by means of an electronic device such as a computer or an audio
26 or video player. An electronic record can be in a structured database or an individual file.

27 **Sec. 5. 5 MRSA §92-A, sub-§7** is enacted to read:

28 **7. Records retention schedule.** "Records retention schedule" means a policy
29 document that defines the minimum time a record must be retained and contains
30 disposition instructions on how the record must be handled when no longer needed for
31 agency business.

32 **Sec. 6. 5 MRSA §94**, as amended by PL 1989, c. 716, is further amended to read:

33 **§94. Maine State Archives**

34 The office of the State Archivist is a bureau within the Department of the Secretary of
35 State and consists of at least 2 organizational units as the State Archivist and the
36 Secretary of State determine best suited to the accomplishment of the functions and

1 purposes of this chapter. One organizational unit consists of ~~the State Archivist and~~
2 ~~immediate support staff~~ archives services and one organizational unit consists of records
3 management. The office is known as the Maine State Archives. The State Archivist is the
4 official custodian of the archival resources of the State and has, upon consent of the
5 Secretary of State, the duties and powers established under section 95-C governing the
6 creation, use, maintenance, retention, preservation and disposal of agency records.

7 **Sec. 7. 5 MRSA §95**, as amended by PL 2009, c. 509, §§2 to 4, is repealed.

8 **Sec. 8. 5 MRSA §95-B, sub-§2**, as amended by PL 2001, c. 704, §1, is further
9 amended to read:

10 **2. Safe or vault for preservation.** Each local government shall provide a fireproof
11 safe or vault for the preservation of all records that must be retained permanently but are
12 not required for business purposes. The official having responsibility for those records
13 shall deposit them in the safe or vault where those records must be kept except when
14 required for use. ~~Beginning in 2002, each local government shall respond to a survey~~
15 ~~distributed biennially by the State Archivist requesting:~~

16 ~~A. A description of the fireproof safe or vault required by this section;~~

17 ~~B. A statement of the adequacy of the safe or vault for the preservation of records~~
18 ~~that must be retained permanently; and~~

19 ~~C. A plan, if any, for the establishment or enhancement of a safe or vault to comply~~
20 ~~with the requirements of this section.~~

21 ~~The State Archivist shall report the results of the survey, with recommendations, to the~~
22 ~~joint standing committees of the Legislature having jurisdiction over education and~~
23 ~~cultural affairs and over state and local government matters.~~

24 **Sec. 9. 5 MRSA §95-B, sub-§2-A**, as enacted by PL 2001, c. 704, §2, is repealed.

25 **Sec. 10. 5 MRSA §95-B, sub-§§7 and 8**, as enacted by PL 1995, c. 148, §10, are
26 amended to read:

27 **7. Disposition of records.** Records may not be destroyed or otherwise disposed of
28 by any local government official, except as provided by the ~~Archives Advisory Board~~
29 records retention schedule established by the State Archivist pursuant to section 95-C,
30 subsection 2, paragraph A, subparagraph (3). Records that have been determined by the
31 ~~board~~ to possess sufficient archival value must be preserved by the municipality or
32 ~~deposited with the State Archivist.~~

33 **8. Rules adopted by State Archivist.** Each local government official shall comply
34 with the standards, procedures and ~~regulations issued~~ rules adopted by the ~~Archives~~
35 ~~Advisory Board~~ State Archivist.

36 **Sec. 11. 5 MRSA §95-C** is enacted to read:

1 **§95-C. Powers and duties**

2 **1. Archives services.** The State Archivist has, upon consent of the Secretary of
3 State, the following duties and powers regarding archives services:

4 A. To administer the office of the State Archivist. In exercising the administration of
5 the office, the State Archivist shall formulate policies, establish organizational and
6 operational procedures and exercise general supervision. The State Archivist shall
7 employ, with the approval of the Secretary of State, and subject to the Civil Service
8 Law, such assistants as are necessary to carry out this chapter. The State Archivist
9 shall adopt a seal for use in the official business of the office. The State Archivist has
10 custody and control of the facilities provided for the administration of this chapter;

11 B. To have the right of reasonable access to and examination of all state and local
12 government records in the State;

13 C. To adopt such rules as are necessary to effectuate the purposes of this chapter. No
14 restrictions or limitations may be imposed on the use of records that are defined by
15 law as state and local government records or as records open to public inspection,
16 unless necessary to protect and preserve them from deterioration, mutilation, loss or
17 destruction. Restrictions or limitations imposed by law on the examination and use of
18 records transferred to the archives under subsection 2, paragraph A, subparagraph (3)
19 remain in effect until the records have been in existence for 75 years unless removed
20 or relaxed by the State Archivist with the concurrence in writing of the head of the
21 agency from which the records were transferred or the successor in function, if any.
22 The State Archivist shall adopt rules governing the transfer of records from the
23 custody of one agency to that of another subject to any applicable provision of law.
24 Rules adopted pursuant to this paragraph are routine technical rules as described in
25 chapter 375, subchapter 2-A;

26 D. To accept gifts, bequests and endowments for purposes consistent with the
27 objectives of this chapter. The Treasurer of State shall invest such funds if given as
28 an endowment in securities according to the laws governing the investment of trust
29 funds. All gifts, bequests and proceeds of invested endowment funds must be used
30 solely to carry out the purposes for which they were made;

31 E. To publish archival material, reports, bulletins and other publications that promote
32 the objectives of this chapter. The State Archivist shall establish the price at which
33 publications, photocopies and photoduplication services may be sold and delivered.
34 The income received under this paragraph and paragraph M must be credited to a
35 special revenue account. Amounts in the account must be carried forward and
36 expended by the agency for these purposes;

37 F. To report biennially to the Governor and Legislature facts and recommendations
38 related to the work and needs of the office of the State Archivist;

39 G. To authorize and receive confirmation of the destruction of the state records of a
40 state agency that, in the opinion of the head of the agency, are no longer of value to
41 the state agency and that, in the opinion of the State Archivist, with advice from the
42 Archives Advisory Board, have no archival value to the State;

1 H. To receive all agency records transferred to the Maine State Archives under
2 subsection 2 and to negotiate for the transfer of official records that in the opinion of
3 the State Archivist, with advice from the Archives Advisory Board, have archival
4 value from the custody of any public official. The State Archivist shall charge a fee
5 sufficient to cover the cost of receiving and processing all transfers from the custody
6 of any public official not governed by subsection 2. The fees collected must be
7 deposited in the General Fund. Any public official in the State is authorized to turn
8 over to the State Archivist those official records legally in that public official's
9 custody that are not needed for the transaction of the business of that office whenever
10 the State Archivist is willing and able to receive them. Whenever such a transfer is
11 made, the State Archivist shall transmit to the office from which the records are
12 transferred a memorandum in which the records are described in terms sufficient to
13 identify them. The memorandum must be preserved in the transferring office. Unless
14 otherwise directed by law, the state records of any public office, commission or
15 committee in the State must, upon the termination of its existence or functions, be
16 transferred to the custody of the State Archivist;

17 I. To preserve the records of the Secretary of State to the extent the Secretary of
18 State determines desirable under the Constitution of Maine and the rules of the State
19 Archivist adopted pursuant to paragraph C;

20 J. To establish such standards concerning the establishment, maintenance and
21 operation of state or local government administered electronic records as are
22 necessary to ensure the preservation of adequate and permanent records of the
23 organization, functions, policies, procedures, decisions and essential transactions of
24 agencies;

25 K. To receive legislative records. The Secretary of the Senate and the Clerk of the
26 House of Representatives shall obtain the noncurrent records of the Legislature and
27 of each legislative committee at the close of each Legislature and transfer them to the
28 Maine State Archives for preservation, subject to the orders of the Senate or the
29 House of Representatives, respectively, and subject to schedules established in
30 consultation with the Executive Director of the Legislative Council;

31 L. To make archival material under the State Archivist's supervision available for
32 public use at reasonable times. The State Archivist shall carefully protect and
33 preserve the materials from deterioration, mutilation, loss or destruction. State
34 records maintained by the State Archivist that contain information related to the
35 identity of a patron of the Maine State Archives relative to the patron's use of
36 materials at the Maine State Archives are confidential; those state records and the
37 information contained in them may be released only with the express written consent
38 of the patron involved or as a result of a court order;

39 M. To furnish copies of archival material upon the request of any person on payment
40 in advance of such fees as may be required. Copies of agency records transferred
41 pursuant to law from the office of their origin to the custody of the State Archivist, if
42 certified by the State Archivist, under the seal of that office, have the same legal force
43 and effect as if certified by their original custodian. A facsimile of the signature of
44 the State Archivist imprinted by or at the direction of the State Archivist upon any

1 certificate issued by the State Archivist has the same validity as the written signature
2 of the State Archivist;

3 N. To provide centralized photoduplication and records preservation services for
4 agencies to the extent the State Archivist determines advisable in the administration
5 of the programs under subsection 2 and facilities under paragraph A. The services
6 must be furnished to agencies at cost.

7 Fees collected under this paragraph must be deposited in the General Fund; and

8 O. To prepare a detailed explanation of what constitutes a record pursuant to section
9 92-A, subsection 5 and records belonging to the State or to a local government or any
10 agency of the State pursuant to section 95-A, subsection 1. The State Archivist shall
11 include in the explanation practical examples of such records in plain language. Upon
12 request, the State Archivist shall provide the explanation to an interested party at no
13 cost to the interested party and shall post the explanation on a publicly accessible
14 website.

15 **2. Records management.** The following provisions govern records management.

16 A. The State Archivist shall, upon consent of the Secretary of State, establish and
17 administer for all state agencies an active, continuing program for the economical and
18 efficient management of agency records and for the proper disposition of government
19 records. The State Archivist shall, with due regard for the functions of the agencies
20 concerned:

21 (1) Provide policies, procedures, standards and techniques for effective
22 management of state and local government records in the conduct of business;

23 (2) Recommend improvements in records management practices for electronic
24 records, including the use of electronic records management systems, and for
25 physical records, including the use of space, equipment and supplies employed in
26 creating, maintaining, storing and servicing state and local government records;

27 (3) Establish records retention schedules, in consultation with the heads of
28 agencies and their records officers appointed pursuant to paragraph B. The
29 records retention schedules must define the period of time for which each agency
30 must retain records based on the following 4 criteria:

31 (a) Administrative use;

32 (b) Legal requirements;

33 (c) Fiscal and audit requirements; and

34 (d) Historical and research value.

35 A state agency shall retain records of value, and transfer custody to the Maine
36 State Archives, or dispose, as provided by the records retention schedule, of
37 records no longer possessing sufficient administrative, legal or fiscal value to
38 warrant their further keeping for business purposes; and

39 (4) Obtain such reports from state agencies as are required for the administration
40 of the program, including a biennial assessment of agency records management

1 programs and currency of agency record schedules, in compliance with policies,
2 procedures and standards set by the Maine State Archives.

3 B. The head of each state agency shall establish and maintain an active, continuing
4 program for the economical and efficient management of records in compliance with
5 the standards, procedures and regulations issued by the State Archivist. The head of
6 each state agency shall appoint a records officer and the head of each large state
7 agency shall appoint a records officer assistant. The head of each state agency,
8 through that agency's records officer, shall enable and ensure the transfer to the
9 Maine State Archives of those records that, in the opinion of the State Archivist, with
10 advice from the Archives Advisory Board, have archival value.

11 **Sec. 12. 5 MRSA §96**, as amended by PL 1989, c. 503, Pt. B, §9, is repealed and
12 the following enacted in its place:

13 **§96. Archives Advisory Board**

14 **1. Established.** The Archives Advisory Board, established by section 12004-I,
15 subsection 8, shall serve to advise the State Archivist in administration of this chapter and
16 to perform such other duties as may be prescribed by law.

17 **2. Members.** The Archives Advisory Board consists of 9 voting members with
18 expertise in the administrative, fiscal, legal and historical value of records. Voting
19 members of the board must represent the spectrum of records in the State and are
20 appointed by the Secretary of State as follows:

21 A. Two public members representing the interests of public access to government
22 records, recommended by a public interest group;

23 B. Two members from municipal or county government with expertise in local
24 government records, recommended by local or county government entities;

25 C. One member representing a state or local historical society, recommended by a
26 state or local historical society;

27 D. One member with expertise in the legal requirements of records retention and
28 public records law, recommended by the Attorney General;

29 E. One member with expertise in the State's fiscal requirements of records retention,
30 recommended by the Governor;

31 F. One member from the executive branch with expertise in executive branch
32 records, recommended by the Governor; and

33 G. One member from the Department of Administrative and Financial Services,
34 Office of Information Technology with expertise in electronic records, electronic
35 records management systems and emerging technology related to electronic records,
36 recommended by the Governor.

37 The State Archivist serves as a nonvoting member.

38 **3. Terms; chair; compensation.** The voting members under subsection 2 serve a
39 3-year term and continue serving until either reappointed or replaced. In case of the

1 termination of a member's service during that member's term, the Secretary of State shall
2 appoint a successor for the unexpired term. The voting members shall elect a chair.
3 Voting members must be compensated as provided in chapter 379.

4 **Sec. 13. 5 MRSA §97**, as repealed and replaced by PL 1977, c. 696, §33, is
5 amended to read:

6 **§97. Violation**

7 Violation of any provision of this chapter or any rules ~~and regulations issued~~ adopted
8 under section ~~95~~ 95-C, subsection ~~3~~ 1, paragraph C, except those violations for which
9 specific penalties are provided, is a Class E crime.

10 **Sec. 14. 5 MRSA §98, sub-§1, ¶¶D and E**, as enacted by PL 2001, c. 704, §3,
11 are amended to read:

12 D. Work cooperatively with other state historical records advisory boards, especially
13 those in New England; and

14 E. Report biennially to the joint standing ~~committees~~ committee of the Legislature
15 having jurisdiction over ~~education and cultural affairs and over~~ state and local
16 government matters on the board's activities and on the condition of historical records
17 in the State; and.

18 **Sec. 15. 5 MRSA §98, sub-§1, ¶F**, as enacted by PL 2001, c. 704, §3, is
19 repealed.

20 **Sec. 16. 5 MRSA §98, sub-§2**, as enacted by PL 2001, c. 704, §3, is amended to
21 read:

22 **2. Authority.** In order to carry out its mission, the board may make expenditures in
23 accordance with the following:

24 A. Beginning with the 2004-2005 biennium, the Governor shall include in the budget
25 submitted to the Legislature each biennium a line item to allow the expenditure by
26 the board of any non-General Fund revenues received by the board, including federal
27 funds, grants or gifts; and.

28 ~~B. Beginning with the 2004-2005 biennium, the Governor shall include in the budget~~
29 ~~submitted to the Legislature each biennium a line item to allow the expenditure by~~
30 ~~the board of any non-General Fund revenues received by the board to fund a full-time~~
31 ~~position.~~

32 **SUMMARY**

33 This bill makes the following changes to the archives and records management laws:

34 1. Adds language to specify that it is the policy of the State to ensure that
35 nonpermanent records are preserved for the time required by an approved records
36 retention schedule;

1 2. Removes the University of Maine System, the Maine Community College System
2 and the Maine Maritime Academy from the definition of "state agency" for purposes of
3 the Archives and Records Management Law;

4 3. Adds language to include the advice from the Archives Advisory Board in the
5 State Archivist's consideration of what constitutes an archival record, to change the
6 definition of "state agency" or "agency" to include all government agencies that transmit
7 records to the Maine State Archives and to change the definition of "electronic records";

8 4. Adds language to specify the 2nd organizational unit within the Maine State
9 Archives is records management and adds language to the Maine Revised Statutes, Title
10 5, section 94 that was stricken from Title 5, section 95 regarding powers and duties of the
11 State Archivist;

12 5. Changes the laws governing the State Archivist to reflect the 2 organizational
13 units of the Maine State Archives: archives services and records management. It adds
14 language to strengthen the records management practices for all state and local
15 government agencies by using 4 criteria in the development of a guiding records retention
16 schedule: administrative use, legal requirements, fiscal and audit requirements and
17 historical and research value;

18 6. Specifies when local government records may be destroyed;

19 7. Repeals and replaces the laws governing the Archives Advisory Board to change
20 the expertise required of members, to provide that members are appointed by the
21 Secretary of State and to provide 3-year terms for members; and

22 8. Removes the requirement that the Maine Historical Records Advisory Board
23 report to the joint standing committee of the Legislature having jurisdiction over
24 education and cultural affairs but retains the requirement that the board report to the joint
25 standing committee of the Legislature having jurisdiction over state and local government
26 matters, which is the committee of oversight for the Maine State Archives. It also
27 removes a reference to funding a full-time position that was eliminated in Public Law
28 2015, chapter 480.