

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 1396

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H.P. 988

House of Representatives, April 20, 1995

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**An Act to Abolish the Local Government Records Board and to Assign  
Its Functions to the Archives Advisory Board.**

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Submitted by the Department of the Secretary of State pursuant to Joint Rule 24.

Received by the Clerk of the House on April 18, 1995. Referred to the Committee on State and Local Government and ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative DAGGETT of Augusta.  
Cosponsored by Senator: MICHAUD of Penobscot.

2  
3 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 3 MRSA §927, sub-§3, ¶B,** as repealed and replaced by  
5 PL 1993, c. 600, Pt. A, §1, is amended to read:

6 B. Independent agencies:

7 (1) Maine State Pilotage Commission;

8 (2) State Board of Registration for Professional  
9 Engineers;

10 (3) Board of Licensure for Professional Land Surveyors;

11 ~~(4) Local Government Records Board;~~

12 (5) Maine High-Risk Insurance Organization. This  
13 subparagraph is repealed January 1, 1997;

14 (6) Driver Education and Evaluation Programs; and

15 (7) State Soil and Water Conservation Commission.

16 **Sec. 2. 5 MRSA §92,** as enacted by PL 1973, c. 625, §16, is  
17 amended to read:

18 **§92. Declaration of policy**

19 The Legislature declares that it is the policy of the State  
20 to make the operations of State Government and local government  
21 more efficient, more effective and more economical through  
22 current records management; and, to the end that the people may  
23 derive maximum benefit from a knowledge of state affairs,  
24 preserve its noncurrent records of permanent value for study and  
25 research.

26 **Sec. 3. 5 MRSA §92-A, sub-§2-A** is enacted to read:

27 **2-A. Local government.** "Local government" means a  
28 municipality, school district or other special-purpose district  
29 or multi-purpose district

30 **Sec. 4. 5 MRSA §92-A, sub-§§4 and 5,** as enacted by PL 1991, c.  
31 837, Pt. A, §8, are amended to read:

32 **4. State agency or agency.** "State agency" or "agency"  
33 means any unit of State Government or local government, including  
34 any state board or commission, except the Legislature and its  
35 committees and subcommittees, the Judicial Department, the

University of Maine System, the Maine Technical College System  
and the Maine Maritime Academy.

**5. Record.** ~~"State--record"~~ "Record" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of the State and has been received or prepared for use in connection with the transaction of public or governmental business or contains information related to the transaction of public or governmental business.

**Sec. 5. 5 MRSA §93, first ¶,** as repealed and replaced by PL 1977, c. 674, §2, is amended to read:

The Secretary of State shall appoint a State Archivist subject to review by the ~~Joint--Standing--Committee--on--State Government~~ joint standing committee of the Legislature having jurisdiction over state and local government and to confirmation by the Legislature. ~~He~~ The State Archivist shall be chosen without reference to party affiliation and solely on the ground of professional competence to perform the duties of ~~his~~ that office. ~~He~~ The State Archivist shall hold office for a term of 6 years from the date of ~~his~~ the appointment and until ~~his~~ a successor has been appointed and qualified. The compensation of the State Archivist shall be fixed by the Governor.

**Sec. 6. 5 MRSA §95, sub-§§2 and 3,** as amended by PL 1991, c. 837, Pt. A, §9, are further amended to read:

**2. Examination of public records.** To have the right of reasonable access to and examination of all state and local government records in Maine;

**3. Rules.** To adopt such rules as are necessary to effectuate the purposes of this chapter. No restrictions or limitations may be imposed on the use of records that are defined by law as state and local government records or as records open to public inspection, unless necessary to protect and preserve them from deterioration, mutilation, loss or destruction. Restrictions or limitations imposed by law on the examination and use of state records transferred to the archives under subsection 7, paragraph C and subsection 8 remain in effect until the records have been in existence for 50 years, unless removed or relaxed by the State Archivist with the concurrence in writing of the head of the agency from which the records were transferred or the successor in function, if any. The State Archivist shall adopt rules governing the transfer of state records from the

2 custody of one agency to that of another subject to any  
applicable provision of law;

4 **Sec. 7. 5 MRSA §95, sub-§7**, as amended by PL 1991, c. 837, Pt.  
A, §9, is further amended to read:

6  
8 **7. Records management program.** To establish and administer  
program for the economical and efficient management of state and  
10 local government records, and for the proper disposition of local  
12 government records. Upon request, the State Archivist shall  
assist and advise in the establishment of records management  
14 programs in the legislative and judicial branches of State  
Government and shall, as required by them, provide program  
services similar to those available to the executive branch. The  
16 State Archivist shall, with due regard for the functions of the  
agencies concerned:

18  
20 A. Provide standards, procedures and techniques for  
effective management of state and local government records  
in the conduct of current business;

22  
24 B. Recommend improvements in current records management  
practices, including the use of space, equipment and  
supplies employed in creating, maintaining, storing and  
26 servicing state and local government records;

28 C. Establish schedules, in consultation with the heads of  
state agencies and local government agencies, under which  
30 each state agency shall retain state records of continuing  
value, and dispose, as provided by this chapter, of state  
32 records no longer possessing sufficient administrative,  
legal or fiscal value to warrant their further keeping for  
34 current business; and

36 D. Obtain such reports from state or local government  
agencies as are required for the administration of the  
38 program;

40 The head of each state agency or local government agency shall  
establish and maintain an active, continuing program for the  
42 economical and efficient management of ~~the-state~~ any records of  
~~the-state-agency~~ in compliance with the standards, procedures and  
44 regulations issued by the State Archivist.

46 **Sec. 8. 5 MRSA §95, sub-§§9 and 10-B**, as amended by PL 1991, c.  
837, Pt. A, §9, are further amended to read:

48  
50 **9. Destruction of state records.** To authorize and receive  
confirmation of the destruction of the state records of any state

2 or local agency that, in the opinion of the head of the agency,  
are no longer of value to the state or local government agency,  
4 and that, in the opinion of the State Archivist and the Archives  
Advisory Board, have no archival value to the State;

6 **10-B. Permanent state records of agency administration.** To  
establish such standards concerning the establishment,  
8 maintenance and operation of state or local government  
administered computerized and auxiliary automated information  
10 handling as are necessary to ensure the preservation of adequate  
and permanent state records of the organization, functions,  
12 policies, procedures, decisions and essential transactions of the  
agencies of State Government or local government;

14 **Sec. 9. 5 MRSA §95-A, sub-§§1 to 3,** as enacted by PL 1989, c.  
16 283, are amended to read:

18 **1. Notice and demand of return.** Whenever the State  
Archivist has reasonable grounds to believe that documents or  
20 records belonging to the State or to a local government or any  
agency of the State or to which the State or its agencies have a  
22 lawful right of possession are in the possession of the person or  
entity not authorized by the State Archivist, other lawful  
24 custodian or by law to possess those documents or records, the  
State Archivist may issue a written notice and demand to that  
26 person or entity for the immediate return of the documents or  
records. The notice and demand shall must be sent by certified  
28 or registered mail, return receipt requested. The notice and  
demand shall must identify the documents or records claimed to  
30 belong to the State or local government with reasonable  
specificity. Upon receipt of the notice and demand, the person  
32 or entity in the possession of documents or records claimed to  
belong to the State shall or local government may not destroy,  
34 alter, transfer, convey or otherwise alienate those documents or  
records unless authorized in writing by the State Archivist or by  
36 an order issued by a court of competent jurisdiction. The notice  
and demand shall must specifically state that any transfer,  
38 conveyance or other alienation of the documents or records after  
receipt of the notice and demand shall-~~constitute~~ constitutes a  
40 Class E crime in violation of section 97.

42 **2. Petition; hearing.** Following the issuance of a notice  
and demand in accordance with subsection 1, the State Archivist,  
44 with the assistance of the Attorney General, may petition the  
Superior Court of Kennebec County or the Superior Court in the  
46 county in which documents or records are located, for the return  
of state documents or records that are in the possession of a  
48 person or entity not authorized by the State Archivist, other  
lawful custodian or by law to possess those documents or  
50 records. After hearing, the court shall order the state-

2 documents or records to be delivered to the State Archivist, or  
4 other custodian designated by the State Archivist, upon a finding  
6 that the materials in question are state- documents or records  
8 and that the documents or records are in the possession of a  
10 person or entity not authorized by the State Archivist, other  
12 lawful custodian or provision of law to possess the documents or  
14 records. The court may issue all orders necessary to protect  
state the documents or records from destruction, alteration,  
transfer, conveyance or alienation by the person or entity in  
possession of the materials and may also order the person or  
entity in possession of the material to surrender the documents  
or records into the custody of the State Archivist pending the  
court's decision on the petition.

16 **3. Presumption.** In any proceeding pursuant to subsection  
18 2, there shall-be is a rebuttable presumption that documents or  
records that were once in the custody of the State or a local  
government were not lawfully alienated from that custody.

20 **Sec. 10. 5 MRSA §95-B** is enacted to read:

22 **§95-B. Local government records**

24 The following provisions apply to local government records.

26 **1. Omissions or errors corrected.** When omissions or errors  
28 exist in local government records, those records must be  
corrected under oath by the person who was responsible for those  
30 local government records, whether or not that person remains in  
office.

32 **A.** If an original town meeting warrant is lost or  
34 destroyed, the return may be made or amended on a copy of it.

36 **2. Safe or vault for preservation.** Each local government  
shall provide a fireproof safe or vault for the preservation of  
38 all records that are not current records. The official having  
responsibility for those records shall deposit them in the safe  
40 or vault where those records must be kept except when required  
for use.

42 **3. Attestation.** The records of a local government official  
may be attested by volume. Each document is sufficiently  
44 attested when the volume in which it is recorded bears the  
attestation with the written signature of the official.

46 **4. Delivery to successor in office.** Local government  
48 officials shall deliver the records of their office to their  
successors in office upon the expiration of the officials' terms.

50

2 5. Records available for public use. Each local government  
official shall make records available for public use under that  
official's supervision at reasonable times unless the use of the  
4 records is otherwise restricted by law.

6 6. Protection of records. Local government officials shall  
carefully protect and preserve the records of their office from  
8 deterioration, mutilation, loss or destruction.

10 7. Disposition of records. Records may not be destroyed or  
otherwise disposed of by any local government official, except as  
12 provided by the Archives Advisory Board. Records that have been  
determined by the board to possess sufficient archival value must  
14 be preserved by the municipality or deposited with the State  
Archivist.

16 8. Regulations of Archives Advisory Board. Each local  
18 government official shall comply with the standards, procedures  
and regulations issued by the Archives Advisory Board.

20 **Sec. 11. 5 MRSA §12004-I, sub-§55-A,** as enacted by PL 1989, c.  
22 304, §2, is repealed.

24 **Sec. 12. 30-A MRSA c. 15,** as amended, is repealed.

26  
28 **STATEMENT OF FACT**

30 While the Local Government Records Board, successor to the  
Municipal Records Advisory Board and the County Records Advisory  
32 Board, has had an important role in the development of guidelines  
and schedules for local government records, its current workload  
has subsided. This is in large part due to its success, with the  
34 support of the records management program of the Maine State  
Archives, in creating retention schedules for a broad range of  
36 local government records. Retention schedules authorize the  
destruction of records after their administrative, legal, fiscal  
38 and research value has ended. The schedules also specify which  
important records must be kept indefinitely.

40 This bill repeals the Local Government Records Board and  
42 transfers the work to the Archives Advisory Board, which is  
already functioning to make retention recommendations about State  
44 Government records. While the Local Government Records Board  
incurred virtually no costs to the State, modest administrative  
46 burdens, difficulties in getting timely appointments to the board  
and the limited role of the board provide sufficient reason to  
48 transfer its functions to the Archives Advisory Board.