

# Legislative Analysis

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## RECORD STORAGE AND REPRODUCTION

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**Senate Bill 1409 (Substitute S-2)**

**Sponsor: Sen. Bruce Patterson**

**House Committee: Local Government and Urban Policy**

**Senate Committee: Technology and Energy**

**First Analysis (12-8-04)**

**BRIEF SUMMARY:** The bill specifies that a reproduced record would have the same force and effect as the original or a paper copy.

**FISCAL IMPACT:** This bill would not have a fiscal impact on the state or on local governmental units.

### **THE APPARENT PROBLEM:**

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.

### **THE CONTENT OF THE BILL:**

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

Senate Bill 1409 is tie-barred to both House Bills 5550 and to House Bill 5657 both of which have been ordered enrolled. Those two bills amend the Records Media Act to, among other things, do the following:

- Expand the media that may be used to store and reproduce government records.
- Allow HAL to approve new storage media.
- Authorize HAL to propose and adopt technical standards, issue directives, and promulgate rules.
- Require the State Historical Records Advisory Board to approve, disapprove, or revise a proposed technical standard within 60 days.

--Require that proposed and final standards be published in the Michigan Register.

-- Allow HAL to enter into a pilot agreement with a governmental entity to test new media.

-- Rename the Act as the "Records Reproduction Act".

See Background Information below for additional detail about House Bills 5550 and 5657.

MCL 24.403

#### ***HOUSE COMMITTEE ACTION:***

The members of the House Committee on Local Government and Urban Policy adopted the Senate-passed version of Senate Bill 1409 (S-2) without amendment. Some of the Information in this analysis was derived from the Senate Fiscal Agency's analysis dated 10-19-04

#### ***BACKGROUND INFORMATION:***

Currently, the Department of History, Arts, and Libraries (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. House Bills 5550 and 5657 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 micro-reproduction, 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.

### ***ARGUMENTS:***

#### ***For:***

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. As record storage and reproduction methods are updated, the reproductions that follow from true copies must be recognized as legal documents. This bill ensures that end.

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.

### ***POSITIONS:***

The Department of History, Arts, and Libraries supports the bill. (12-7-04)

The Office of the Secretary of State supports the bill. (12-7-04)

The Michigan Association of Counties supports the bill. (12-7-04)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.