

2021 Regular Session

SENATE BILL NO. 146

BY SENATOR POPE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

SECRETARY OF STATE. Provides relative to the preservation of public records. (gov sig)

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AN ACT

To amend and reenact R.S. 44:36, 39, the introductory paragraph of 411(A) and (A)(2) and (C), and 422, relative to preservation of public records; to provide relative to retention schedules; to provide for source document maintenance and conversion standards; to provide for accessibility of records; to provide for annual designation of records officers; to provide relative to investigations; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 44:36, 39, the introductory paragraph of 411(A) and (A)(2) and (C), and 422 are hereby amended and reenacted to read as follows:

§36. Preservation of records

A. All persons and public bodies having custody or control of any public record, other than conveyance, probate, mortgage, or other permanent records required by existing law to be kept for all time, shall exercise diligence and care in preserving the public record for the period or periods of time specified **by law** for such public records, ~~in formal records retention schedules developed and approved by the state archivist and director of the division of archives, records management,~~

1 and history of the Department of State. However, in In all instances in which a  
2 formal retention schedule has not been executed, where the law does not specify a  
3 particular period, such public records shall be preserved and maintained for a  
4 period of at least three years from the date on which the public record was made.  
5 However, where Where copies of an original record exist, the original alone shall  
6 be kept; when only duplicate copies of a record exist, only one copy of the duplicate  
7 copies shall be required to be kept. Where an appropriate form of the  
8 microphotographic process has been utilized to record, file, and otherwise preserve  
9 such public records with microforms ~~produced in compliance with the provisions of~~  
10 ~~R.S. 44:415~~, the microforms shall be deemed originals in themselves, as provided by  
11 ~~R.S. 44:39(B)(C)~~, and ~~disposition of original documents which have been~~  
12 ~~microphotographically preserved and of duplicates and other copies thereof shall~~  
13 ~~proceed as provided in R.S. 44:411.~~

14 **B. All agencies, as defined in R.S. 44:402, shall keep all records for a**  
15 **time specified in records retention schedules developed and approved by the**  
16 **state archivist and director of the division of archives, records management,**  
17 **and history of the Department of State.**

18 BC. All existing records or records hereafter accumulated by the Department  
19 of Revenue may be destroyed after five years from the thirty-first day of December  
20 of the year in which the tax to which the records pertain became due; provided that  
21 these records shall not be destroyed in any case where there is a contest relative to  
22 the payment of taxes or where a claim has been made for a refund or where litigation  
23 with reference thereto is pending.

24 ED. All existing records or records hereafter accumulated by the various  
25 services of the state or its subdivisions which participate in federal programs or  
26 receive federal grants may be destroyed after three years from the date on which the  
27 records were made in those cases where this provision is not superseded by  
28 guidelines for the operative federal program or grant requiring longer retention  
29 periods for the records in question; provided that these records shall not be destroyed

1 in any case where litigation with reference thereto is pending, or until the appropriate  
2 state or federal audits have been conducted.

3 ~~D~~E. All existing records or records hereafter accumulated by the Department  
4 of Public Safety and Corrections, corrections services, pertaining to any adult  
5 offender shall be retained and may not be destroyed until after six years from the  
6 date the full term sentence imposed upon such offender expires, or six years from the  
7 date of death of the offender, whichever occurs first.

8 ~~E~~F.(1) The public records of a prosecuting agency, pertaining to a criminal  
9 prosecution that results in a conviction, in a manner other than a plea, shall be  
10 retained for a period of three years from the date on which a court of appeal affirms  
11 the conviction, the Louisiana Supreme Court denies writs, or the Louisiana Supreme  
12 Court makes its final ruling on the appeal, whichever occurs last.

13 (2) The provisions of this Subsection shall not apply to any records expunged  
14 as provided by law.

15 (3) Nothing in this Subsection shall be construed in any manner to affect or  
16 alter the provisions of R.S. 44:3 regarding the records of prosecuting agencies.

17 ~~F~~G. All existing records or records hereafter accumulated pursuant to R.S.  
18 42:23 shall be preserved and maintained for a period of at least two years from the  
19 date on which the public record was made.

20 \* \* \*

21 §39. Microfilm and electronic digitized records; use as evidence

22 A.~~(1)~~ All persons and public bodies having custody or control of any public  
23 records of the state of Louisiana or any of its subdivisions may utilize any  
24 appropriate form of the microphotographic process, or an electronic digitizing  
25 process capable of reproducing an unalterable **and accessible** image of the original  
26 source document, for the recordation, filing, and preservation of all existing public  
27 records, ~~forms, and documents or records, forms, and documents hereafter~~  
28 ~~accumulated which pertain to their functions and operations in order to maintain~~  
29 ~~efficient and economical records management programs and to conserve storage~~

1 ~~space~~, provided that the use of such microphotographic or electronic digitizing  
2 processes are not otherwise prohibited by law ~~and that all microforms produced~~  
3 ~~comply with standards established by the division of archives, records management,~~  
4 ~~and history of the Department of State in accordance with the provisions of R.S.~~  
5 ~~44:415.~~

6 (2)(a) ~~However, when electronic digitizing is utilized, the original source~~  
7 ~~document or microfilm of such source document shall be maintained until such time~~  
8 ~~as electronic digitizing is recognized as an acceptable means of records preservation.~~

9 (b) ~~Notwithstanding the provisions of this Subsection, the agencies and~~  
10 ~~entities set forth in this Subparagraph shall not~~ **B.(1) All agencies, as defined in R.S.**  
11 **44:402, shall comply with all document conversion standards established by the**  
12 **division of archives, records management, and history of the Department of**  
13 **State in accordance with the provisions of R.S. 44:415.**

14 **(2) All agencies shall** be required to maintain the original source document  
15 or microfilm thereof when such document has been preserved utilizing electronic  
16 digitizing **except:** ~~pursuant to written operating standards providing for retention~~  
17 ~~and back-up schedules in accordance with recognized computer operating practices~~  
18 ~~which at a minimum provide the technical equivalent of back-up copies~~

19 ~~(i)(a)~~ **(a)** Public safety services within the Department of Public Safety and  
20 Corrections.

21 ~~(ii)(b)~~ **(b)** All public retirement systems, plans, and funds.

22 ~~(iii) Any further exceptions to the provision to maintain original source~~  
23 ~~documents or microfilm thereof under this Subsection must be~~ **(c) Any other agency**  
24 approved in writing by the state archivist.

25 **BC.** Any microfilm or electronically digitized copy, when satisfactorily  
26 identified, shall be deemed to be an original itself, and shall be admissible in  
27 evidence in all courts or administrative proceedings in any agency, whether the  
28 original document is in existence or not, and an enlargement or facsimile of a  
29 reproduction is likewise admissible in evidence, if the original reproduction is in

1 existence and available for inspection under direction of the court or the  
2 administrative agency. Original records shall remain subject to subpoena.

3 \* \* \*

4 §411. ~~Selective retention~~ **Retention** of records; actions for recovery of records

5 A. The secretary, acting through the state archivist, shall establish standards  
6 for the ~~selective~~ retention of records of continuing value, and monitor state and local  
7 agencies in the application of such standards to all records in their custody. To  
8 facilitate this application:

9 \* \* \*

10 (2) The head of each agency shall also submit to the state archivist lists of  
11 state records in the custody of that agency which are ~~not~~ **no longer** required for the  
12 transaction of current business and which lack sufficient administrative, legal, or  
13 fiscal value to warrant further retention and request that the state archivist authorize  
14 appropriate disposal.

15 \* \* \*

16 C. To insure that the above enumerated reports and notifications are  
17 submitted and implemented, the chief executive officer of each state agency shall  
18 designate **annually** a records officer to act as liaison between the division and the  
19 agency on all matters relating to records management.

20 \* \* \*

21 §422. Safeguards against removal or loss of records

22 A. The head of each agency of the state or its subdivisions shall establish  
23 such safeguards against removal or loss of records as he shall deem necessary and  
24 as may be required by rules and regulations issued under authority of this Chapter.  
25 Such safeguards shall include making it known to all officials and employees of the  
26 agency that no records are to be alienated or destroyed except in accordance with law  
27 and the policies, rules, and regulations developed therefrom by the state archivist and  
28 the division, and calling their attention to the penalties provided by law for the  
29 unlawful removal or destruction of records.

1                    **B. The secretary of state, acting through the state archivist, may refer**  
 2                    **any matter to the legislative auditor, inspector general, or attorney general as**  
 3                    **necessary for investigation relating to any instance of damaging, altering,**  
 4                    **tampering with, or falsifying records, including but not limited to fraudulent**  
 5                    **creation, distribution, or filing of records.**

6                    Section 2. This Act shall become effective upon signature by the governor or, if not  
 7                    signed by the governor, upon expiration of the time for bills to become law without signature  
 8                    by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 9                    vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 10                    effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Matt DeVille.

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#### DIGEST

SB 146 Engrossed

2021 Regular Session

Pope

Present law, relative to public records, defines "public body" to mean any branch, department, office, agency, board, commission, district, governing authority, political subdivision, or any committee, subcommittee, advisory board, or task force thereof, or any other instrumentality of state, parish, or municipal government, including a public or quasi-public nonprofit corporation designated as an entity to perform a governmental or proprietary function, or an affiliate of a housing authority.

Present law, relative to state archival, historical, and public records services, defines "agency" to mean any state, parish and municipal office, department, division, board, bureau, commission, authority, or other separate unit of state, parish, or municipal government created or established by the constitution, law, resolution, proclamation, or ordinance.

#### PUBLIC BODIES

Present law, relative to all public bodies including agencies, requires the preservation of public records for the times specified in approved formal retention schedules or for three years if there is no approved formal retention schedule. Requires an original record, if it exists, to be retained. Requires one duplicate to be retained if no original exists.

Proposed law retains present law for agencies.

Proposed law, applicable only to public bodies that are not agencies, deletes references to a formal retention schedule and instead requires all documents to be retained for three years or as provided by law.

Present law allows an appropriate microform, produced in compliance with present law by a public body including an agency, to be deemed an original. Requires the microform process to comply with conversion standards established by the division of archives, records management, and history of the Dept. of State. Requires disposal of the original and any copies to be in accordance with present law. Requires the process to reproduce an unalterable image of the source document.

Proposed law retains present law relative to agencies.

Proposed law, applicable to all public bodies, additionally requires that the image produced be accessible.

Proposed law, applicable only to public bodies that are not agencies, allows use of any microphotographic or other electronic document reproduction process that is not otherwise prohibited by law.

#### AGENCIES ONLY

Present law requires the Sec. of State through the state archivist to establish standards for selective retention of records and to monitor agencies' application of these standards.

Proposed law clarifies that the standards established and monitored apply to all agency records retention.

Present law requires each agency head to identify records that are not needed for current agency business and do not warrant further retention and to request the state archivist to authorize disposal of the identified records.

Proposed law clarifies that this process of identification and request for disposal authority applies to records that are no longer needed.

Present law requires each agency to have a designated records officer.

Proposed law requires a designation to occur every year.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 44:36, 39, 411(A)(intro para) and (A)(2) and (C), and 422)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Senate and Governmental Affairs to the original bill

1. Clarifies that all agencies as defined in R.S. 44:402 other than enumerated exceptions are subject to records retention schedules and document conversion standards developed by the state archivist.