

SENATE BILL NO. 146

BY SENATOR POPE

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

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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, and history of the Department of State. However, in~~ **In** all instances in which a formal retention schedule has not been executed, **where the law does not specify a particular period,** such public records shall be preserved and maintained for a period of at least three years from the date on which the public record was made, **except when an agency, as defined in R.S. 44:402, has an approved retention schedule pursuant to Subsection B of this Section.** ~~However, where~~ **Where** copies

1 of an original record exist, the original alone shall be kept; when only duplicate  
 2 copies of a record exist, only one copy of the duplicate copies shall be required to be  
 3 kept. Where an appropriate form of the microphotographic process has been utilized  
 4 to record, file, and otherwise preserve such public records with microforms ~~produced~~  
 5 ~~in compliance with the provisions of R.S. 44:415,~~ the microforms shall be deemed  
 6 **considered** originals in themselves, as provided by R.S. 44:39(B)(C), and  
 7 ~~disposition of original documents which have been microphotographically preserved~~  
 8 ~~and of duplicates and other copies thereof shall proceed as provided in R.S. 44:411.~~

9 **B. All agencies, as defined in R.S. 44:402, shall keep all records for the**  
 10 **time specified in records retention schedules developed and approved by the**  
 11 **state archivist and director of the division of archives, records management,**  
 12 **and history of the Department of State, pursuant to the provisions of R.S.**  
 13 **44:411.**

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

20 ~~C~~D. All existing records or records hereafter accumulated by the various  
 21 services of the state or its subdivisions which participate in federal programs or  
 22 receive federal grants may be destroyed after three years from the date on which the  
 23 records were made in those cases where this provision is not superseded by  
 24 guidelines for the operative federal program or grant requiring longer retention  
 25 periods for the records in question; provided that these records shall not be destroyed  
 26 in any case where litigation with reference thereto is pending, or until the appropriate  
 27 state or federal audits have been conducted.

28 ~~D~~E. All existing records or records hereafter accumulated by the Department  
 29 of Public Safety and Corrections, corrections services, pertaining to any adult  
 30 offender shall be retained and may not be destroyed until after six years from the

1 date the full term sentence imposed upon such offender expires, or six years from the  
 2 date of death of the offender, whichever occurs first.

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

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

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

12 ~~FG~~. All existing records or records hereafter accumulated pursuant to R.S.  
 13 42:23 shall be preserved and maintained for a period of at least two years from the  
 14 date on which the public record was made.

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

17 A.~~(1)~~ All persons and public bodies having custody or control of any public  
 18 records of the state of Louisiana or any of its subdivisions may utilize any  
 19 appropriate form of the microphotographic process, or an electronic digitizing  
 20 process capable of reproducing an unalterable **and accessible** image of the original  
 21 source document, for the recordation, filing, and preservation of all existing public  
 22 records, ~~forms, and documents or records, forms, and documents hereafter~~  
 23 ~~accumulated which pertain to their functions and operations in order to maintain~~  
 24 ~~efficient and economical records management programs and to conserve storage~~  
 25 ~~space~~, provided that the use of such microphotographic or electronic digitizing  
 26 processes are not otherwise prohibited by law ~~and that all microforms produced~~  
 27 ~~comply with standards established by the division of archives, records management,~~  
 28 ~~and history of the Department of State in accordance with the provisions of R.S.~~  
 29 ~~44:415.~~

30 ~~(2)(a) However, when electronic digitizing is utilized, the original source~~

1 document or microfilm of such source document shall be maintained until such time  
2 as electronic digitizing is recognized as an acceptable means of records preservation.

3 ~~(b) Notwithstanding the provisions of this Subsection, the agencies and~~  
4 ~~entities set forth in this Subparagraph shall not~~ **B.(1) All agencies, as defined in R.S.**  
5 **44:402, shall comply with all document conversion standards established by the**  
6 **division of archives, records management, and history of the Department of**  
7 **State in accordance with the provisions of R.S. 44:415.**

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

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

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

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

19 **BC.** Any microfilm or electronically digitized copy, when satisfactorily  
20 identified, shall be deemed **considered** to be an original itself, and shall be  
21 admissible in evidence in all courts or administrative proceedings in any agency,  
22 whether the original document is in existence or not, and an enlargement or facsimile  
23 of a reproduction is likewise admissible in evidence, if the original reproduction is  
24 in existence and available for inspection under direction of the court or the  
25 administrative agency. Original records shall remain subject to subpoena.

26 \* \* \*

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

28 A. The secretary, acting through the state archivist, shall establish standards  
29 for the ~~selective~~ retention of records of continuing value, and monitor state and local  
30 agencies in the application of such standards to all records in their custody. To

1 facilitate this application:

2 \* \* \*

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

8 \* \* \*

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

13 \* \* \*

14 §422. Safeguards against removal or loss of records

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

23 B. The secretary of state, acting through the state archivist, may refer  
 24 any matter to the legislative auditor, inspector general, or attorney general as  
 25 necessary for investigation relating to any instance of damaging, altering,  
 26 tampering with, or falsifying records, including but not limited to fraudulent  
 27 creation, distribution, or filing of records.

28 Section 2. This Act shall become effective upon signature by the governor or, if not  
 29 signed by the governor, upon expiration of the time for bills to become law without signature  
 30 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
2 effective on the day following such approval.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_