

STATUTORY FINDINGS -- PRELIMINARY DRAFT

DEFINITIONS

1. The public records chapter has numerous definitions that are vague, confusing, and possibly not broad enough to cover all of the technologies available and being used today.
2. The public records chapter does not define "record."
3. Section 2-6-110 refers to "public information," which isn't defined anywhere.
4. "Public writing" and "public record" are almost circular definitions.
5. "Private writing" is confusing and unclear.

GOVERNANCE STRUCTURE

1. Agencies aren't doing their due diligence to ensure they comply with all of the requirements in 2-6-213 and elsewhere.
2. The statutes lack clear authority for someone to enforce compliance and no repercussions for non-compliance.
3. Statute doesn't currently impose any requirements regarding strategic and budget planning and reporting (compare to MITA).

ADMINISTRATIVE RULES AND RULEMAKING AUTHORITY

1. The Secretary of State has rulemaking authority to "adopt rules regarding management of public records" but elsewhere is authorized to establish guidelines, which an agency may choose to follow or not.
2. Statute does not explicitly identify authority to adopt records management standards or authority to enforce compliance with standards.

ESSENTIAL RECORDS

1. This statute is outdated – for example, it does not reflect the current existence of the Living Disaster Recovery Planning Software (LDRPS) provided by SITSD's Security and Continuity Services section.
2. The Secretary of State does not have much of a role other than as a keeper of the list of agencies' designated essential records.

DUTIES AND FOCUS OF STATE AND LOCAL GOVERNMENT RECORDS COMMITTEES

1. The current composition of the committees includes records "worker bees" who have experience and knowledge about records management practices but do not have the influence that would come with participation of director-level authority.

2. These committees' duties as currently defined in statute are limited, e.g. to record retention and disposal for the state records committee – could their duties be made more meaningful; would a separate records advisory committee or board be able to fill in that gap?

AGENCY RESPONSIBILITIES AND AGENCY RECORDS CUSTODIANS

1. Section 2-6-213 doesn't describe or require any specific or professional qualifications of the designated records custodians.
2. The responsibility to administer the records management function lies with "each executive branch agency of state government," which is vague and hard to enforce.
3. Agencies need sufficient resources and training to manage the functions identified in this section.

PRESERVATION OF RECORDS

1. Preservation is a critical component of the record lifecycle and is not sufficiently explicit or emphasized throughout these sections.
2. The statutes don't address migration or obsolescence.
3. The State Archives do not currently have the capability to accept electronic records
4. The statutes do not explicitly address an agency's duties regarding preservation and records management for the records that are historical value to the agency (so don't transfer to the state archives), and are kept by the agency (for ongoing business needs, to meet other statutory requirements, as an agency historic record, etc.).

PUBLIC ACCESS

1. Section 2-6-110 separates out electronic records from other records, which may contradict the tenet that "a record is a record is a record."
2. The "formula" or authority for developing fees is complicated and confusing.

RECORDS MANAGEMENT AS AGENCY MISSION/CRITICAL FUNCTION

1. The statutes currently do not emphasize that agencies need to incorporate and promote records managements in support of their critical functions and as something that needs to be incorporated into daily operations/budgets/strategic planning or other resource management (i.e. privacy and right to know, risk management, financial obligations, public safety, and services).