

HJR 2 Work Group recommendations to ELG: options for statutory change

Option A

NUDGE RECORDS FORWARD WITH MINOR CHANGES

- Option A is aimed at making initial improvements on records management issues
- From the list of identified statutory issues, the workgroup has identified a subset of the statutory amendments that would be relatively straightforward to achieve
- These changes would help maintain the forward momentum being built around records management issues

level of intensity: LOW
bill draft readability: FAIR

Option B

ADDRESS ALL STATUTORY ISSUES IDENTIFIED

- Option B stops short of reorganizing the structure of the public records chapter
- All of the identified issues would be addressed (see Option B table)
- Definitions would be condensed and updated
- Duties, responsibilities, and opportunities for collaboration would be strengthened for the Secretary of State, DOA, state and local agencies, records custodians, etc.
- Create a Records and Information Management Advisory Council

level of intensity: MEDIUM
bill draft readability: HARD

Option C

REORGANIZE THE PUBLIC RECORDS LAWS

- Option C would involve reorganizing the existing public records statutes – through amending and repealing and renumbering existing laws for better organization
- All of the issues identified on the Option B table would be addressed
- The first part of the public records chapter would be rewritten and strengthened to emphasize universal records management principles to be followed by all government entities in Montana

level of intensity: HIGH
bill draft readability: EASY

Minor Changes Recommended for Option A

Definitions (2-6-101, 2-6-202, 2-6-301, 2-6-401):

Leave the definitions where they currently are, but update them to make them easier to understand and reflect the current environment.

Secretary of State's Powers and Duties (2-6-203): Address the straightforward issues - e.g. make the microfilm unit permissive; review and update or repeal outdated requirements; require the SOS to adopt records management standards.

State and Local Government Records Committees (2-6-204, 2-6-208, 2-6-212, 2-6-402, 2-6-403):

Revise and update the current committee duties to strengthen the role this committee has in records management. Use these subject matter experts to develop best practices for all phases of a record's lifecycle. Require committee members to meet certain qualifications. Ensure these committees have sufficient resources.

Agency Responsibilities (2-6-213):

Move the responsibility for records management from the agency to the department head; require records custodians to meet certain qualifications; require agencies to incorporate records management into their strategic and budget planning processes; require regular employee training in records management.

Dept. of Administration's Powers and Duties (2-6-214):

Create a joint approval authority between DOA and SOS regarding the acquisition or creation of electronic records management systems by agencies; require DOA and SOS to collaborate on developing records management criteria used in assessing and approving proposed projects.

Management of Official Records (2-6-302):

Revise this section with an emphasis on the role of MHS and the State Archives related to preservation; clarify or rename the term "official records" to avoid confusion; official records should be a subset of MHS's role related to public records and records management.

Statutory Issues Identified and Recommendations for Option B

STATUTE	CATCHLINE	FINDINGS	RECOMMENDATIONS
2-6-101 2-6-202 2-6-301 2-6-401	Definitions.	Definitions are confusing and outdated.	Update and clarify definitions.
		Definitions are located throughout the chapter instead of in a single section.	Consolidate definitions.
		Some key terms have not been defined.	Add definitions for key terms, which may include terms such as "information," "record," "public information," "data," etc.
2-6-102	Citizens entitled to inspect and copy public writings.	The process outlined in this section is outdated.	See below.
		The balance between a citizen's right to know (when, how) and an agency's resources (time, materials) could be better defined.	Update the process to ensure strong public access to public records and information balanced against protections for individual privacy. Bring in updated and simplified fee provisions from 2-6-110.
2-6-109	Prohibition on distribution or sale of mailing lists -- exceptions -- penalty.	The prohibition against "mailing lists" is being exploited by entities seeking a loophole by requesting other lists (e.g. cell phone numbers; emails).	Update this section to close this "loophole," up to possibly repealing this section and addressing the privacy concerns/balance of privacy vs. right to know in other sections.
2-6-110	Electronic information and nonprint records - - public access -- fees.	This section refers to "public information" which is not defined anywhere.	See 2-6-102.
		This section treats electronic records as different or distinct from other records.	See 2-6-102.
		The fee formula is confusing and difficult to follow, and does not truly capture fees commensurate with costs.	See 2-6-102.
2-6-203	Secretary of state's powers and duties -- rulemaking authority.	The SOS's authority could be strengthened and made more specific.	Require the SOS to adopt standards and develop records management training materials.
		The SOS is required to operate a central microfilm unit.	Make this duty permissive to allow flexibility as technology and demand change.
		Some of the requirements described in this section are outdated or no longer meaningful as written.	Review each of the requirements and update or repeal them as appropriate.

STATUTE	CATCHLINE	FINDINGS	RECOMMENDATIONS
2-6-204 2-6-208 2-6-212	State records committee approval.	The state records committee's duties are currently limited and could be expanded to add value.	See below.
	Records committee -- composition and meetings.	The state records committee could be supported through the work of a Records and Information Management Advisory Council.	Create a Records and Information Management Advisory Council. Clearly define the relationship between these two committees: their respective duties, the necessary collaboration, how to ensure that the state addresses all phases of a record's lifecycle, etc.
	Disposal of public records.		
2-6-206	Protection and storage of essential records.	This section is outdated. The SOS's role could be clarified and strengthened.	Update this section to reflect current practices. Create an avenue for collaboration between SOS and the state's emergency services bureaus.
2-6-211	Transfer and storage of public records.	This section is out-of-date and does not accurately reflect current business practices.	Update this process to better reflect current practices.
		This section could be expanded to put more emphasis on record preservation.	Emphasize preservation as a key phase in record management.
2-6-213	Agency responsibilities and transfer schedules.	Records management is not a high priority.	Increase the profile of records. Incorporate records management into strategic and budget planning processes. Require regular employee training. Require biennial reporting on the state of records management.
		Records custodians are not required to have any specific qualifications.	Add qualification requirements.
		The agency itself is accountable for compliance with this section, rather than a specific person.	Make the department head responsible for administering records management function.
2-6-214	Department of administration -- powers and duties.	Effective electronic records management requires collaboration between technology and records management communities, which is currently missing from this section.	Create shared authority between DOA and SOS to approve acquisitions of systems or equipment and develop criteria for the records management components by which proposed acquisitions and developments are evaluated.
2-6-302	Official records management -- powers and duties.	This section only addresses the state archives' responsibility for "official records," instead of all noncurrent records of permanent value.	Address the role of MHS and emphasize preservation more throughout the chapter. Create a new section to describe MHS/State Archives' powers and duties and include these "official records" as a subset.

STATUTE	CATCHLINE	FINDINGS	RECOMMENDATIONS
2-6-402 2-6-403	Local government records committee -- creation.	Local governments currently face a bottleneck when submitting requests for the destruction or disposal of records.	Address the composition and resources available for the committee to improve workflow and decrease the time it takes to respond to the destruction requests.
	Duties and responsibilities.	There is potential risk in having state employees make disposal decisions about local government records.	Add a local records custodian to the subcommittee on records destruction.
2-6-405	Destruction of local government records prohibited prior to offering -- central registry -- notification.	The process for destroying records older than 10 years is onerous and creates a bottleneck for local governments that want to dispose of records that have reached the end of their retention schedule.	See below.
		The process requiring certain records to be made available creates inefficiencies in space and resources for local governments.	Shorten the noticing requirement from 180 days to, for example, 60 or 90 days, or, alternatively, determine if any of the named entities currently take advantage of this provision and if not, repeal this section.
No statute currently exists		There is not clear compliance or enforcement authority in the statutes.	Create statutory authority to assess and enforce compliance by state agencies with public records requirements.
		The public records statutes lack an audit function.	Develop a mechanism by which agency compliance may be measured and audited.
		Certain elements of a record's lifecycle (preservation; migration) are not emphasized in statute.	Address preservation by strengthening the role of MHS throughout the public records statutes. Require SOS to adopt rules specifically addressing electronic record migration and obsolescence.

Potential Reorganization Recommendations for Option C

Existing Public Records Laws Table of Contents

Part 1. Public Records Generally

- 2-6-101. Definitions.
- 2-6-102. Citizens entitled to inspect and copy public writings.
- 2-6-103. Filing and copying fees.
- 2-6-104. Records of officers open to public inspection.
- 2-6-105. Removal of public records.
- 2-6-106. Possession of records.
- 2-6-107. Proceedings to compel delivery of records.
- 2-6-108. Attachment and warrant to enforce.
- 2-6-109. Prohibition on distribution or sale of mailing lists -- exceptions -- penalty.
- 2-6-110. Electronic information and nonprint records -- public access -- fees.
- 2-6-111. Custody and reproduction of records by secretary of state.
- 2-6-112. Concealment of public hazards prohibited -- concealment of information related to settlement or resolution of civil suits prohibited.

Part 2. Public Records Management

- 2-6-201. Purpose.
- 2-6-202. Definitions.
- 2-6-203. Secretary of state's powers and duties -- rulemaking authority.
- 2-6-204. State records committee approval.
- 2-6-205. Preservation of public records.
- 2-6-206. Protection and storage of essential records.
- 2-6-207. Certified copies of public records.
- 2-6-208. Records committee -- composition and meetings.
- 2-6-209. and reserved.
- 2-6-211. Transfer and storage of public records.
- 2-6-212. Disposal of public records.
- 2-6-213. Agency responsibilities and transfer schedules.
- 2-6-214. Department of administration -- powers and duties.

Part 3. Records of Elected Executive Branch Officers

- 2-6-301. Definitions.
- 2-6-302. Official records management -- powers and duties.
- 2-6-303. Ownership of records -- transfer.
- 2-6-304. Outgoing officials -- records management duties.
- 2-6-305. Renumbered .
- 2-6-306. Renumbered .
- 2-6-307. Certified copies of official records.

Part 4. Local Government Records

- 2-6-401. Definitions.
- 2-6-402. Local government records committee -- creation.
- 2-6-403. Duties and responsibilities.
- 2-6-404. Rulemaking authority.
- 2-6-405. Destruction of local government public records prohibited prior to offering -- central registry -- notification.

Part 5. Agency Protection of Personal Information

- 2-6-501. Definitions.
- 2-6-502. Protection of social security numbers -- compliance.
- 2-6-503. Extensions.
- 2-6-504. Notification of breach of security of data system.

Potential Reorganization Recommendations for Option C

Possible Organization of New Table of Contents

Part 1

Address the overarching themes related to records management: identification (definitions); access, including any fees to be charged; balancing right-to-know vs. right-of-privacy; ownership; retention; preservation; migration; destruction/disposal; archival

Part 2

State-agency-specific duties related to records management: define the role of the Secretary of State, the Department of Administration, and the Montana Historical Society; address the duties of the State Records Committee; create and empower the Records and Information Management Advisory Council; address any executive-specific requirements

Part 3

Local-government-specific duties related to records management: address the duties and responsibilities of the Local Government Records Committee and how this committee dovetails with RIMAC; clarify and streamline the process by which local governments get permission to destroy/dispose of records at the end of their retention schedule

Part 4

Personal Information Protections: maintain the same level of protection of personal information; require agencies to continue to comply with requirements regarding social security numbers; ensure that the process by which entities are notified of breaches in data system security are maintained; review and update any outdated provisions

As part of the revision and reorganization process, we anticipate carefully reviewing the existing catchlines and organizational structure to ensure that no current statutory duties are unintentionally excluded in the new outline.