

**Testimony before the Budget and Taxation Committee
Maryland State Senate**

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**In Support of Senate Bill 340
Task Force on Reducing State Budget Expenditures for Record Management and Retention**

Mr. Chairman, Members of the Committee, good afternoon.

My name is Ed Papenfuse, State Archivist and Commissioner of Land Patents. With me are my Deputy, Tim Baker, and our Legislative Liaison, Elizabeth Newell. I am appearing today in support of SB 340, a bill to establish a Task Force on Reducing State Budget Expenditures for Record Management and Retention.

Records management is a core and fundamental function of government. Like sound fiscal management, records management ensures that tax payer dollars are most effectively spent. Failure in these core areas not only wastes tax dollars, but also erodes the confidence of the public in its government and, indeed, potentially undermines democracy itself.

The purpose of this task force is to review the current records management practices of Maryland State Government and to make recommendations on how to improve the efficiencies of those practices while reducing overall the costs of creating, accessing, and preserving information vital to the delivery of government services.

Good records management provides a route to ensuring that the government of Maryland adheres to its legal, professional and ethical responsibilities. It improves efficiency by cutting down retrieval time and maintaining control over what is held, how and why. The cost of Government is significantly reduced because resources are not wasted on retaining unnecessary records. It also ensures information and records are not duplicated needlessly, which not only provides cost savings, but also maintains version control and accuracy. Finally, good records management ensures that historically significant records are preserved permanently for research and reflection.

If you can't control and manage the information vital to the decision making processes of government, if vital electronic data disappears for whatever reason, and paper clutters the offices, hallways and basements of government offices, it not only wastes the public's money, it significantly reduces the effectiveness of government and erodes public trust. As the philosopher George Santayana writes: **Those who cannot remember the past are condemned to repeat it.**

Almost every activity of government is accomplished or documented through some form of record. Information, instructions, directives, and other communications routinely are circulated through government agencies. In the past, such information was circulated in paper form. Now, electronic communications are more commonly used, such as email or voicemail, a world that is increasingly

fragile and easily disrupted as the most recent Blackberry outage demonstrated only too well. Regardless of how records are created or circulated, they multiply in such quantities that government becomes buried in them unless proper controls are established to manage their distribution and limit the amount of record material kept. These controls should be embodied in an agency's records management program through simple and uniform rules of retention and disposal implemented on a daily basis.

An effective records management program provides guidelines and procedures for efficient and economical control of records and information created, received, used, and kept by agencies of State, county and municipal government. The program manages paper (or other records media) through its life cycle - from its creation to its transfer to the State Archives for permanent retention or its final disposition (destruction by recycling, burning, shredding, etc.).

In Maryland, the responsibility for setting the standards to develop record retention schedules and to determine the quality and character of the records by statute is shared between the Records Management Division of the Department of General Services and the Maryland State Archives. Working with the Department of General Services and the Archives, it is the responsibility of state agencies to initiate retention and disposal schedules. We know from the schedules on file with DGS and the Archives that whole divisions of State government do not have any retention policies at all, and many agencies that do, have not revised or revisited them in years.

Informed decisions about records disposition cannot be made based on outdated schedules. In fact, it is illegal to destroy or alienate a public record without the authority of an approved schedule. It is probable that vital public records not covered by schedule are in danger of being destroyed or retained in expensive office space. In addition, recent court rule changes and legal decisions have drawn attention to the importance of effective records management in limiting government liability and exposure in matters of court ordered discovery.

Complicating this even further is the fact that many agencies do not treat information in electronic format as a public record at all. The electronic record *is* the public record of the 21st Century. Many agencies have not grasped the concept of proper life cycle management of databases, email, electronic document imaging and other forms of data too numerous to describe. The White House, as recently as this week, is under Federal District Court order to disclose whether or not it has preserved the emails it is required by the Presidential Records Act to maintain permanently. By turning their email system over to a private third party company responsible for the daily audits of the email system, and the e-mail archiving process, not only may federal statutes been violated, but also information critical to the decision making process of government may have been lost altogether. Apart from the Freedom of Information issues which the court must decide, the possible lack of accountability for what to save and how to save it, is a disturbing trend at every level of government fueled by the sheer volume of information it has to cope with on a day to day basis and the lack of safe guards for retention and disposal built into electronic delivery systems.

This task force provides a much needed opportunity to review the record keeping practices of Maryland State Government.

Several aspects of law that deal with records management need to be brought into the 21st Century. A committee composed of DGS, State Archives, the Office of the Attorney General and the Office of Information Technology (DBM) has been developing guidance on records management procedures. In addition to drafting guidance, this working group has begun to explore the most efficient and effective ways to utilize technology to enhance a records management program. This group's efforts will neatly dovetail into the work of the task force, and help guide its findings.

The task force established by this legislation will help us address the issue of poor records management on the part of State agencies and will result in greater efficiencies and cost savings by:

- ❑ ensuring that permanent records are safeguarded and preserved in the most cost effective and space efficient manner;
- ❑ raising agency awareness of how an effective records management program increases the efficiency of their operation;
- ❑ ensuring agency compliance with DGS and MSA promulgated guidelines and standards;
- ❑ reducing the quantity and retention period required for agencies to keep record material in costly office space;
- ❑ exploring the possibilities for public / private partnerships and / or more effective consolidation of agency record material in record center facilities and consolidated server rooms; and
- ❑ providing adequate security and authentication for the public record.

The Archives has worked closely with the Judiciary over the last few years developing *mdlandrec.net*, a model program to make accessible and manage permanent electronic records. *mdlandrec.net* not only safeguards permanent land records at over 20% below original estimates of implementation, but also provides a cost effective model for the on-going care and retrieval of vital government information in electronic form.

Government has tended to manage records by waiting until a critical mass accumulates and scrambling for expedient solutions, leading to uninformed and misguided, if well intentioned, actions costing far more than thoughtful management of the records from the outset would have cost. If we do our job well and look prospectively at the State's records management needs now, we can be more successful in carrying out our legal mandates as well as preserving our collective memory.

I urge the Committee to give Senate Bill 340 a favorable report. I will be happy to answer any questions.