

**RETENTION, STORAGE AND DISPOSAL
OF STATE RECORDS**

**REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
to
THE GOVERNOR
and
THE GENERAL ASSEMBLY OF VIRGINIA**



SD 4, 1962

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1961

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RETENTION, STORAGE AND DISPOSAL OF STATE RECORDS

REPORT

OF THE

VIRGINIA ADVISORY LEGISLATIVE COUNCIL

RICHMOND, VIRGINIA, August 19, 1961.

To:

HONORABLE J. LINDSAY ALMOND, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

On June 20, 1960, Your Excellency sent the following letter to the Chairman of the Virginia Advisory Legislative Council, requesting the Council to make a study of retention, storage and disposal of State records:

COMMONWEALTH OF VIRGINIA

GOVERNOR'S OFFICE

RICHMOND, June 20, 1960.

Honorable Robert Y. Button
Culpeper, Virginia

Dear Senator Button:

I dislike very much to impose any additional burdens on the heavy program of the Virginia Advisory Legislative Council.

I believe, however, that the interests of the State would be promoted through a Virginia Advisory Legislative Council study of matters relating to retention, storage and disposal of State Records. The Virginia State Library, operated under the Executive order of the Governor, maintains a Record Management Division. This Division inventories microfilms and handles the disposal of current State records. This matter is of such vital importance as to require, in my judgment, legislative action relative thereto.

Pursuant to Section 30-30 of the Code of Virginia, I respectfully request that the Virginia Advisory Legislative Council study the laws relating to the disposition, retention and microfilming of current State records with the view of recommending needed legislation.

I further request that a study be made of the desirability of establishing a central record center for the storage of noncurrent records pending their microfilming or disposal.

It would be most helpful if this study and report with recommendations could be made to the Governor and the General Assembly not later than September 1, 1961.

Sincerely yours,

/s/ J. LINDSAY ALMOND, JR.

J. Lindsay Almond, Jr.

In accordance with this request the Council undertook consideration of the matters set forth therein. Due to the policy questions involved, the Council decided to make the study itself. Considerable information was collected concerning the statutes of other states dealing with records management.

Randolph W. Church, the State Librarian, appeared before the Council at its request and outlined the work of the Library in assisting agencies in records management and microfilming. He stated that there is a need for legislation to permit the Library to deal more effectively with the problems of records management and submitted a draft bill for consideration of the Council. That bill is largely the model records management bill prepared by the Council of State Governments' Committee of State Officials on Suggested State Legislation.

The principal effects of the adoption of this legislation in Virginia would be to grant authority to the State Library to maintain and operate a records center to meet the needs of the localities for storage of records; to provide a direct appropriation to the State Library to encourage microfilming of the State agencies' records by the Library; to give complete control over destruction of unnecessary records of State agencies to the State Librarian, Comptroller and Agency head acting in concert, and to grant the State Librarian authority to require certain procedures governing records management throughout the State government.

Because of the far-reaching effect which this bill would have on the operation of every department and agency of State government, the Council set a hearing to provide these departments and agencies an opportunity to make known their views concerning the proposed bill. All were furnished a copy of the proposed legislation and were asked to submit their reaction to each section in writing.

The hearing was set for December 7, 1960, and the Council invited all agencies and departments to appear before the Council in order to give their views concerning the proposed legislation. The State Librarian was also invited to be present at this meeting.

Many objections were offered to the bill suggested by the State Librarian. Its provisions relating to the control of purchases of filing and microfilming equipment by the State Librarian were said to be impractical. Many agencies expressed the view that they are in a better position to determine the best procedures for the destruction and disposition of their records than any other agency of the State. Other features of the bill, if put into practice, would be both costly and time consuming. The person in charge of the program would not have sufficient knowledge of the records from other agencies to determine their research or historical value as the Act would require him to possess in passing on their destruction or retention. The foregoing represents only a scattering of the numerous objections raised by the State's departments and agencies. The following is an extract from a letter which is representative of those agencies opposed to the bill:

"The proposed bill in its present form defines 'records' in the broadest terms, and the word will include almost everything.

"It defines 'agency', 'public officer' and 'public officers' as including almost everyone except officers and agencies of the legislative and judicial branches.

"The bill requires the appointment of an agency records officer in each agency. This might well mean the creation of new and unnecessary jobs.

"The State Librarian, or an employee of his, on questions of economy and efficiency, is given veto power over the heads of departments and institutions with respect to storage, care and servicing of records.

"The State Librarian, or an employee of his, is required to make continuing surveys of State records and records management and disposal practices. State agencies must report to him or his employee.

"The State Librarian or his employee may inspect any records of any agency however confidential such records may be under the laws of this State.

"The State Librarian's opinion with respect to various matters pertaining to 'records' in State agencies is given controlling force and his judgment with respect to whether a so-called record is useless or not is made superior to the judgment of the department or institution head.

"The State Librarian is required to render aid in promoting the efficient and economical utilization of space, equipment and supplies; but the meaning of the word 'aid' is made clear by declaring that all requisitions for filing and microfilming equipment must be approved by the State Librarian in order that he may control purchases. This does not appear to be a proper function of the State Library.

"No so-called record may be disposed of by any agency of the State, wherever that agency may be located, unless written approval of the State Librarian and the State Comptroller is first obtained. These officers may act through employees. This appears to be entirely too cumbersome; it is the proverbial red tape.

"Regulations may be issued by the Library Board not inconsistent with the act. These are to be binding on all agencies, including the Governor's office, and no one, not even the Governor, is given veto power over such regulations.

"Heads of agencies are required to report to the State Librarian with respect to various matters, and he or an employee of his, is the one to decide what ought to be done in these matters in the operation of the various departments and institutions of the Commonwealth.

"This bill in its present form appears to look forward to the establishment of a large additional department in the State government in the years to come."

Some agencies expressed no objections; a few favored the bill.

After careful consideration of the facts the Council determined that the model bill goes far beyond the records management needs of Virginia. Consequently, it appointed a subcommittee to recommend an appropriate course to the Council. This subcommittee recommended legislation authorizing the State Librarian, on request of the heads of State departments, divisions, institutions, and agencies, to assist in photographing and microfilming their records and papers. The recommended bill authorizes the State Librarian to purchase equipment and employ assistance as required in connection with this work. A copy of the bill is attached to this report.

The bill offered by the State Librarian, based on the model law prepared by the Council of State Governments' Committee is set forth as Appendix A to this report. We feel that this bill is too extreme and would require the expenditure of large sums of money both for a records center (a new building sooner or later) and for salaries and supplies. It would

be restrictive and cumbersome in its operation, interfering unnecessarily and expensively in the work of the State agencies and departments.

We are of opinion that the need for records management in Virginia can be met with less expense and with greater harmony and efficiency by authorizing the State Librarian to microfilm and photograph State records and to store the film upon the request of the State department, division, institutional and agency heads. The short bill attached is designed to do this and we recommend its enactment.

The Council wishes to express its appreciation to all who assisted in connection with this study. We have been greatly aided by the contributions of time and thought made by the various department and agency heads and express our indebtedness to them.

The State Librarian is to be commended for bringing to the attention of the State government the need for an improved records management program before our records get out of hand.

Respectfully submitted,

ROBERT Y. BUTTON, Chairman
CHARLES K. HUTCHENS, Vice-Chairman
C. W. CLEATON
JOHN WARREN COOKE
JOHN H. DANIEL
CHARLES R. FENWICK
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A BILL to amend and reenact § 2-5 of the Code of Virginia relating to preservation of State records and papers, and to amend the Code of Virginia by adding a section numbered 42-58.1 authorizing the State Librarian to microfilm such records and papers and to assist State agencies, departments and institutions in such microfilming.

Be it enacted by the General Assembly of Virginia :

1. That § 2-5 of the Code of Virginia be amended and reenacted and that the Code of Virginia be amended by adding a section numbered 42-58.1, the amended and new sections being as follows :

§ 2-5. The respective heads of the several administrative departments, divisions, institutions and agencies of the State may, with the approval of the Governor, cause all or any part of the records and papers kept by or in their respective departments, divisions, institutions and agencies to be photographed or microphotographed, and may acquire, maintain and use such appropriate containers and files as shall be necessary to accommodate and to preserve the photographs and microphotographs so obtained, and such microphotoscopes and microphotoscopic facilities and equipment as shall be necessary for the purpose of examining and using such microphotographs, as well as such other microphotographic apparatus and equipment as shall be necessary or advisable for the purpose of making such microphotographs.

The State Librarian, on request of the heads of such departments, divisions, institutions and agencies may assist in the photographing, microphotographing and microfilming of their records and papers and, also at the request of such heads, may store such microfilmed or microphotographed records.

§ 42-58.1. *The State Librarian is authorized to microfilm, photograph and microphotograph State records and papers upon the request of the heads of the several administrative departments, divisions, institutions or agencies having custody of such records and papers; and also at the request of such heads to store such microfilmed, or microphotographed records. He may purchase such equipment and employ such assistants as may be required in connection therewith.*

APPENDIX A

PROPOSED STATE RECORDS MANAGEMENT ACT

An Act for the control and disposition of the public records of the Commonwealth vesting certain powers in the State Library Board and the State Librarian.

Be it enacted by the General Assembly of Virginia:

Section 1. This Act shall be known as "The State Records Management Act."

Section 2. For the purposes of this Act:

That when used in this Act, the word "Records" means any papers, books, photographs, film, microfilm, sound recordings, drawings or other documents that have been created by any agency of the State Government or received by it in connection with the transaction of public business, and which have been retained by that agency, or its successor, as evidence of its activities, or because of the information contained therein. Extra copies of documents preserved only for convenience of reference, library collections, and stocks of publications and of processed documents are not included within the definition of records as used in this Act.

"Agency" means all parts, boards, and commissions of the executive branch of the Government including but not limited to all departments established by Acts of the General Assembly of the Commonwealth of Virginia, as heretofore or hereafter amended.

"Public Officer" or "public officers" means all officers of the executive branch of the State government, all officers created by Acts of the General Assembly of the Commonwealth of Virginia, as heretofore or hereafter amended, and all other officers and heads, presidents, or chairmen of boards, commissions, and agencies of the State government.

"Board" shall mean the State Library Board.

"State Librarian" shall mean the State Librarian or his authorized representative.

Section 3. The head of each agency shall cause to be preserved records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the State and of persons directly affected by the agency's activities.

This section shall not be construed to prevent the legal disposal of any records determined by the agency and by the State Librarian not to have sufficient value to warrant their continued preservation by the State or by the agency concerned.

Section 4. The head of each agency shall appoint an agency records officer who shall establish, and maintain an active continuing program for the economical and efficient management of the records of the agency.

Section 5. Whenever the head of an agency determines that substantial economies or increased operating efficiency can be effected thereby, he may, subject to the approval of the State Librarian, provide for the storage, care, and servicing of records that are appropriate therefor in a records center operated and maintained by the State Library.

Section 6. All records made or received by or under the authority of or coming into the custody, control or possession of public officials of this State in the course of their public duties are the property of the State and shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part, without official authorization, as provided by law.

Section 7. The State Librarian shall make continuing surveys of State records and records management and disposal practices and obtain reports thereon from agencies. The State Librarian may inspect the records of any agency and shall be given the full cooperation of officials and employees of such agencies in such inspections and surveys.

Section 8. The State Librarian, with due regard to the program activities of the agencies concerned, shall make provisions for the economical and efficient management

of records of State agencies by analyzing, developing, promoting, coordinating, and promulgating standards, procedures, and techniques designed to improve the management of records; to insure the maintenance and security of records deemed appropriate for preservation, and to facilitate the segregation and disposal of records of temporary value.

Section 9. The State Librarian shall aid also in promoting the efficient and economical utilization of space, equipment and supplies needed for the purpose of creating, maintaining, storing and servicing records.

All requisitions for filing and microfilming equipment shall be referred to the State Librarian for review to control purchases, to allow for interchange of equipment and to provide guidance as to the best equipment available.

Section 10. The Board shall establish standards for the selective retention of records of continuing value.

Section 11. The Board may establish, maintain and operate records centers for the storage, care and servicing of records of State agencies pending the disposition of such records in any manner authorized by law. The Board shall establish, maintain, and operate centralized microfilming services for agencies.

Section 12. Regardless of other authorization to the contrary, no record shall be disposed of by any agency of the State, unless written approval of the following is first obtained: the head of such agency, State Librarian, State Comptroller or his authorized representative. The Board shall issue regulations, not inconsistent with this Act, which shall be binding on all agencies. Such regulations shall establish procedures for compiling and submitting to the State Librarian lists and schedules of records proposed for disposal; procedures for the physical destruction or other disposition of records proposed for disposal; and standards for the reproduction of records by photography or microphotographic processes with the view to the disposal of the original records. Such standards shall relate to the quality of film used, preparation of the records for filming, proper identification matter on the records so that an individual document or series of documents can be located on the film with reasonable facility, and that the copies contain all significant record detail, to the end that the photographic or microphotographic copies will be adequate.

Any photograph or microphotograph of any record or paper photographed or microphotographed as hereinabove provided, and any photographic, microphotographic or photostatic copy of any such photograph or microphotograph, if duly authenticated, shall be admissible as evidence, in any court of this Commonwealth, for any purpose for which the record or paper so photographed or microphotographed might have been introduced, and with like effect.

Section 13. The head of each agency shall submit to the State Librarian, in accordance with the regulations of the Board, lists or schedules of records in his custody that are not needed in the transaction of current business and that do not have sufficient administrative, legal or fiscal value to warrant their further preservation. The head of each agency also shall submit lists or schedules proposing the length of time each record series warrants retention for administrative, legal or fiscal purposes after it has been received by the agency.

Section 14. All lists and schedules submitted to the State Librarian shall be examined to ascertain whether the records proposed for disposal have value to other agencies of the State or whether such records have research or historical value. The State Librarian may arrange for the transfer to the State Library or other institution or agency records proposed for disposal.

Section 15. Nonrecord materials or materials not included within the definition of records as contained in this Act may be destroyed at any time by the agency in possession of such materials without the prior approval of the State Librarian. The State Librarian may formulate advisory procedures and interpretation to guide in the disposition of nonrecord materials.

Section 16. Upon the termination of any State agency whose function or functions have not been transferred to another agency, the records of such terminated agency shall be deposited in the State Library. The State Librarian shall determine which records are of sufficient legal, historical, administrative, or fiscal value to warrant their continued preservation by the State. Records that are determined to be of insufficient value to warrant their continued preservation shall be disposed of.

Section 17. The invalidity of any section or part or portion of this Act shall not affect the validity of the remaining sections or parts thereof.