

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON ACCOUNTABILITY AND ADMINISTRATIVE REVIEW
Cottie Petrie-Norris, Chair

AB 1759 (Committee on Accountability and Administrative Review) – As Introduced March 8,
2023

SUBJECT: State Archives

SUMMARY: This bill would update statutory duties of the State Archives to reflect contemporary standards and practices for records management and archiving; clarify current law requiring state agencies to notify the State Archives whenever a series of records is lost or destroyed, and clarify current law requiring a state agency to notify the State Archives when a series of records is digitized. Specifically, **this bill would:**

- 1) Update current law specifying the State Archives’ duties to reflect contemporary standards and practices for records management and archiving by changing references to “indexing” records to “describing” records and including a reference to a “Document Laboratory and a Record Processing Program” to facilitate the preservation and description of records and archives.
- 2) Clarify current law to require state agencies to notify the State Archives whenever a record is lost or destroyed outside of the agency’s approved record retention schedule, in addition to notification when a record is lost or destroyed by conflagration or other public calamity.
- 3) Clarify current law to effectuate the intent of prior legislation that a state agency is required to notify the State Archives whenever a series of records under an approved record retention schedule is digitized.

EXISTING LAW:

- 1) Establishes the State Archives as a division of the Secretary of State (“SOS”) to provide a repository for the state's permanent governmental records as well as other materials documenting California history under management of the Chief of Archives, also known as the State Archivist. (Gov. Code Sec. 12220-12237)
- 2) Requires the SOS to establish and administer a records management program that applies efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of state records. (Gov. Code Sec. 12270-12279)
- 3) Requires each state agency to appoint a records management coordinator and maintain a program for management, collection, retention, and storage of state agency records under record retention schedules and processes approved by the State Archives, including procedures for digitized records. (Gov. Code Sec. 12274, 12274.5)
- 4) Requires state agencies to notify the SOS when records are stored with a third-party vendor or digitized by a third-party vendor. (Gov. Code Sec. 12274(f))

- 5) Provides for the SOS to replace a state agency record or its substance if necessary when a record has been lost or destroyed by “conflagration or another public calamity.” (Gov. Code Sec. 12279)

FISCAL EFFECT: Unknown. This bill has not been analyzed by a fiscal committee.

COMMENTS:

- 1) Author’s Intent and Purpose. This bill is sponsored by California Secretary of State Shirley N. Weber, who states the following:

“AB 1759 clarifies records management procedures to promote transparent and efficient records management. This bill continues to build on the goals of the State Records Management Act to maintain an active records management program and to ensure that agencies have information easily accessible and maximize the use of information for state agencies and members of the public. Updating statutory language to reflect modern archives terms will coincide with the modernization of archives procedures. In addition, this bill will require state agencies to notify the Secretary of State’s office when a record is lost or destroyed outside of the agency’s specified retention schedule. It is important for the California State Archives within the Secretary of State’s office to collect information on lost or destroyed records. AB 1759 would also require state agencies to notify the Secretary of State’s office when a record is stored with a third-party vendor or digitized. By codifying procedures, agencies can continue to preserve records in line with the goals of the State Records Management Act and guidelines set by the Secretary of State Archives Division.”

- 2) Background. As required by the State Records Management Act, the State Archives, a division of the SOS, collects, catalogs, preserves, and provides access to historic records of state government and works with state agencies in overall records management. The Records Management and Appraisal (“RMA”) unit within the State Archives is responsible for the development and implementation of the state’s records management program. RMA is made up of the California Records and Information Management (“CalRIM”) program and the State Records Appraisal Program and the State Records Appraisal Program (“SRAP”). CalRIM reviews state agency records retention schedules; establishes guidelines, including those for the management of electronic records; provides consultation; evaluates the effectiveness of existing records management programs; and assists in the establishment of new records programs. SRAP reviews records retention schedules for records valuable to the history of California; appraises records sent to the State Archives; and maintains all state entity records retention schedules.

Each state agency is required to designate a records management coordinator with specified duties to coordinate its agency’s records management program; act as a liaison with CalRIM, SRC, and SRAP; review and approve records retention and schedules; review and approve destruction of records; and provide specified reports and notices to the State Archives.

- 3) Lost and Destroyed Records. Current law provides that, if a state agency record has been lost or destroyed by “conflagration or another public calamity,” the SOS may replace it if necessary. This authority is relevant, for example, when records are destroyed, such as after a July 2021 fire at the State Records Center. This bill clarifies and fills a gap in current law to ensure that state agencies notify the SOS if a record is lost or destroyed during the required time for retaining that record, including when *accidentally* lost or destroyed. According to the SOS, these clarifications will enable the State Archivist to assist agencies whenever records are lost or destroyed and

reflect that, with remote work outside a controlled office environment, state records could be subject to a variety of unanticipated threats of loss or destruction.

To effectuate this notice requirement, the proposed statutory change would be better placed within provisions related to state agency records management coordinators, with conforming changes in provisions related to the SOS's authority to replace lost or destroyed records. Thus, *the committee may wish to consider amending this bill to make these technical and conforming changes.*

4) Notice on Digitized Records. Current law requiring state agencies to notify the SOS when records are stored with a third-party vendor or "digitized by a third-party vendor." According to the SOS, notification is needed whenever a series of records included on an agency's approved retention schedule are digitized, whether by a third-party vendor or the agency. This will ensure that the State Archivist has full access to stored state records to fulfill her duties under the State Records Management Act. The required notification would be in alignment with an existing practice of state agencies amending their approved record retention schedules in CalRIM whenever a series of records previously stored in hard copy format is digitized. As with lost or destroyed records discussed in Comment 3, remote work being more common makes it especially critical to clarify that the notice on digitization apply regardless of what entity does the digitization, according to the SOS:

"Changing work environments from a physical office space to remote work has led agencies resorting to third party facilities for record storage. The CalRIM program, which assists state agencies with establishing records management programs outside of the preservation process, reviews and approves records retention schedules before they are sent to the State Archives for appraisal. Therefore, it is important for the State Archives to collect information on the disposition and retention of records."

This bill would make that clarification. Additional clean-up and technical changes are needed to reflect that this notice applies to records within a series of records under an approved record retention schedule, not to each individual digital record whenever it is first created. Thus, *the committee may wish to consider amending this bill to make these technical and conforming changes.*

PREVIOUS LEGISLATION

AB 469 (Petrie-Norris 2019) required the head of each state agency to appoint a records management coordinator with specified duties.

REGISTERED SUPPORT / OPPOSITION:

Support

California Secretary of State Shirley N. Webber, Sponsor

Opposition

None received.

Analysis Prepared by: Jacqueline Kinney / A. & A.R. / (916) 319-3600