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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO PUBLIC RECORDS -- PUBLIC RECORDS ADMINISTRATION

Introduced By: Representative Jose F. Batista

Date Introduced: February 26, 2021

Referred To: House State Government & Elections

(Secretary of State)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 38-3-2, 38-3-3, 38-3-4, 38-3-5.1, 38-3-6 and 38-3-7 of the General
2 Laws in Chapter 38-3 entitled "Public Records Administration" are hereby amended to read as
3 follows:

4 **38-3-2. Definitions.**

5 ~~For the purpose of this chapter~~ As used in this chapter:

6 (1) "Administrator" means the public records administrator who coordinates and manages
7 the activities and responsibilities of the public records administration program. The administrator
8 shall be appointed by and serve at the pleasure of the secretary of state.

9 ~~(1)(2)~~ (2) "Agency" or "public body" ~~shall mean~~ means any executive, legislative, judicial,
10 regulatory, administrative body of the state, or any political subdivision thereof; including, but not
11 limited to, any department, division, agency, commission, board, office, bureau, authority, any
12 school, fire, or water district, or other agency or quasi-public agency of state or local government
13 which exercises governmental functions, or any other public or private agency, person, partnership,
14 corporation, or business entity acting on behalf of any public agency.

15 (3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
16 optical, electromagnetic, or similar capabilities.

17 ~~(4) "Public records repository" shall mean the establishment maintained by the program~~
18 ~~for preservation of those public records determined by the program to have permanent value~~
19 ~~warranting their continued preservation and which has been accepted by the program for transfer~~

1 ~~to its custody.~~

2 (4) "Electronic record" means a record created, generated, sent, communicated, received,
3 or stored by electronic means.

4 ~~(2)(5)~~ "Program" ~~shall mean~~ means the public records administration program of the
5 secretary of state.

6 ~~(3)(6)~~ "Public record" or "public records" ~~shall mean~~ means all documents, papers, letters,
7 maps, books, tapes, photographs, films, sound recordings, electronic records, or other material
8 regardless of physical form or characteristics made or received pursuant to law or ordinance or in
9 connection with the transaction of official business by any agency.

10 (7) "Record copy" means the record that an agency designates as the official record for
11 legal and business purposes, and to which the agency applies records management policy measures
12 for the protection, security, maintenance and/or preservation thereof.

13 (8) "Record series" means a collection of records maintained as a group and derived from
14 or related to a particular subject, activity or function of an agency.

15 ~~(5)(9)~~ "Records center" ~~shall mean~~ means ~~an establishment~~ a facility, under the direction
16 of the administrator, maintained by the program for the that provides storage, processing, servicing,
17 and security of public records that must be retained for varying periods of time but need not be
18 retained in an agency's office equipment or space.

19 ~~(6)(10)~~ "Records control schedule" ~~shall mean~~ means the document or documents
20 establishing the official retention, maintenance, and disposal requirements for a record or record
21 series, ~~or type of record~~ based ~~on~~ upon any administrative, legal, fiscal, and/or historical ~~values~~
22 value for the scheduled records related to that record or record series.

23 (11) "Records officer" means the representative designated by an agency as responsible for
24 the operation of the records management program for the agency and related communications with
25 the public records administration.

26 (12) "Retention" means the duration of time that a record, record series, or other
27 information shall be maintained in its original form.

28 (13) "Secretary" means the Rhode Island secretary of state.

29 (14) "State archives" means the official state repository or any other repository approved
30 by the state archivist for long-term or permanent records.

31 (15) "State archivist" means the individual who coordinates, directs, and administers the
32 activities and responsibilities of the state archives.

33 **38-3-3. Public records administration program.**

34 (a) The public records administration program shall be organized as deemed necessary by

1 the secretary ~~of state~~ for the proper discharge of its duties and responsibilities under this chapter.
2 All personnel, furnishings, equipment, finances, property, and contractual arrangements of the
3 public records administration shall be the responsibility of the secretary ~~of state~~.

4 ~~(b) There shall be a public records advisory commission consisting of seventeen (17)~~
5 ~~members, one of whom shall be a member of the senate chosen by the president of the senate, one~~
6 ~~of whom shall be a member of the house of representatives chosen by the speaker of the house, six~~
7 ~~(6) of whom shall be chosen by the governor, and seven (7) of whom shall be chosen by the~~
8 ~~secretary of state. The secretary of state or designee shall serve as a permanent member of the~~
9 ~~commission. The state archivist shall serve as a permanent member of the commission. The~~
10 ~~appointments shall consist of persons who are qualified by training and experience with proven~~
11 ~~interest in historical records and public records management. In the first instance, five (5) members~~
12 ~~shall be appointed for a one year term, two (2) by the governor and three (3) by the secretary of~~
13 ~~state; five (5) members shall be appointed for a two (2) year term, one by the speaker of the house,~~
14 ~~one by the president of the senate, two (2) by the governor, and one by the secretary of state; five~~
15 ~~(5) members shall be appointed for a three (3) year term, two (2) by the governor, and three (3) by~~
16 ~~the secretary of state. The members shall hold office until July 1, in the years in which their~~
17 ~~respective terms end. Thereafter, prior to July 1, successors shall be appointed to the commission~~
18 ~~to the members of the commission whose terms expired. Vacancy of a member shall be filled by~~
19 ~~appointment by the corresponding authority for the remainder of the unexpired terms.~~

20 ~~(c) The secretary of state or designee shall serve as the chairperson of the commission. The~~
21 ~~state archivist or designee shall serve as the secretary of the commission with voting rights.~~

22 ~~(d) It shall be the duty of the public records advisory commission to provide professional~~
23 ~~and technical assistance to the public records administration program, the state archives, and the~~
24 ~~local governments of the state in all matters relating to the administration of public records.~~
25 ~~Members of the commission shall serve without pay.~~

26 ~~(e) The secretary of state may appoint an administrator of the program and shall establish~~
27 ~~his or her qualifications other than the professional competence required. The administrator shall~~
28 ~~coordinate, direct, and administer the activities and responsibilities of the program. The~~
29 ~~administrator shall serve at the pleasure of the secretary of state.~~

30 (f) The program may make and enter into contracts and agreements with other agencies,
31 organizations, associations, corporations, and individuals, or federal agencies as it may determine
32 are necessary, expedient, or incidental to the performance of its duties or the execution of its powers
33 under this chapter.

34 (g) The program shall adopt rules and regulations deemed necessary to carry out its duties

1 and responsibilities under this chapter which rules shall be binding on all agencies and persons
2 affected thereby. The willful violation of any of the rules and regulations adopted by the program
3 shall constitute a misdemeanor.

4 (h) The program may accept gifts, grants, bequests, loans, and endowments for purposes
5 not inconsistent with its responsibilities under this chapter.

6 **38-3-4. Duties of administrator.**

7 ~~(a) It shall be the duty and responsibility of the administrator to render all services required
8 by the program herein set forth that can advantageously and effectively be centralized. The office
9 shall perform such other functions and duties as the secretary of state may direct.~~

10 ~~(b) The administrator shall supervise, direct, and coordinate the activities of the program.~~

11 ~~(c) The administrator shall be designated "the public records administrator".~~

12 It shall be the duty and responsibility of the administrator to:

13 (1) Establish and administer a public records management program, for public bodies
14 which shall be primarily responsible for assisting state agencies and cities and towns with the care
15 and management of public records, including the operation of a record center or centers, apply
16 efficient and economical management methods relating to the creation, utilization, retention,
17 preservation, and disposal of records.

18 (2) Analyze, develop, establish, and coordinate standards, procedures, and techniques of
19 record making and record keeping to ensure the access, security, and preservation of public records.

20 (3) Institute and maintain a training and information program, including, but not limited to,
21 the publication of educational materials on all phases of records management to bring to the
22 attention of all agencies approved and current practices, methods, procedures, and devices for the
23 efficient and economical management of records.

24 (4) Make continuous surveys of record keeping operations, to examine the condition of
25 public records and recommend improvements to public officials in current records management
26 practices, space, equipment, supplies, and personnel in creating, maintaining, and making available
27 the public records in their custody.

28 (5) Establish and maintain a program, in cooperation with each agency, for the selection
29 and protection of public records considered essential to the operation of government and to the
30 protection of the rights and privileges of citizens.

31 (6) Create forms for the development of the required records control schedules submitted
32 by an agency to the program.

33 (7) Create, analyze, and uphold records control schedules of public records in the custody
34 of state and local agencies.

1 (8) Collect fines for violations of any rules and regulations adopted to carry out the
2 purposes of this chapter.

3 (9) Establish safeguards against unauthorized or unlawful removal or loss of records.

4 (10) Initiate appropriate action to recover records removed unlawfully or without
5 authorization.

6 (11) Preserve and administer such public records as shall be transferred to the state archives
7 according to approved conservation and security practices, and to permit them to be inspected,
8 examined, and copied at reasonable times and under supervision of the program; provided, that any
9 record placed in keeping of the program under special terms or conditions restricting their use shall
10 be made available only in accordance with the terms and conditions.

11 (12) Provide a public research room where, upon policies established by the program, the
12 records in the state archives may be studied.

13 (13) Make certified copies under seal of any records transferred to it upon the application
14 of any person, and sign the certificates which shall have the same force and effect as if made by the
15 agency from which the records were received. The program may charge a reasonable fee for this
16 service.

17 (14) Assist agencies in identifying, securing, and transferring records of permanent legal,
18 historical or enduring value to the state archives.

19 (15) Approve emergency destruction of public records which were damaged due to
20 catastrophic, environmental, or otherwise unforeseen circumstance but have not met their
21 established retention.

22 (16) Submit a yearly report on the progress of the local government records program to the
23 general officers and to the general assembly. The administrator shall be permitted to request
24 funding as part of the operating budget of the office of secretary of state to operate the program.

25 (17) Render all services required by the program herein set forth that can advantageously
26 and effectively be centralized.

27 (18) To perform such other functions and duties as the secretary may direct.

28 ~~**38-3-5.1. Reproduction of public records -- Destruction of original records.**~~

29 **Reproduction of public records.**

30 (a) If any department or agency of government, in the regular course of business or activity,
31 has kept or recorded any ~~memorandum, writing, state tax returns, report, application, payment,~~
32 ~~entry, print, representation, or combination thereof, or any act, transaction, occurrence, or event,~~
33 ~~and, in the regular course of business,~~ public record or, has caused any or all of the public records

34 to be recorded, copied, or reproduced by a photographic, ~~photostatic~~, microfilm, micro-card, ~~optical~~

1 ~~disk, miniature photographic,~~ electronic or other process which accurately reproduces or forms a
2 durable medium for reproducing the original;

3 (i) The original may be destroyed, and the reproduction established as the record copy,
4 in the regular course of business, provided the process meets standards established by the public
5 records administration, and provided all the provisions of § 38-3-6 concerning disposal of public
6 records and accessibility are fulfilled.

7 (ii) The reproduction, when satisfactorily identified, shall be admissible in evidence as the
8 original in any judicial or administrative proceeding whether or not the original exists or is available
9 and an enlargement or facsimile of the reproduction shall be likewise admissible in evidence if the
10 original is in existence and available for inspection under the direction of the court.

11 (b) The introduction of a reproduced record, enlargement, or facsimile into evidence shall
12 not preclude the admission into evidence of the original, if available.

13 (c) The duplicate of any record made pursuant to this chapter, and designated as a record
14 copy, shall have the same force and effect for all purposes as the original record.

15 (d) When provided in response to a request from the public, a certified copy shall have the
16 same force and effect for all purposes as the original record.

17 (e) This section shall not be construed to exclude from introduction into evidence any
18 document or copy thereof which is otherwise admissible under the Rhode Island general laws, as
19 amended.

20 **38-3-6. Public records custody and disposal.**

21 ~~(a) Each agency shall prepare and submit to the program, in accordance with the rules and~~
22 ~~regulations of the program, record control schedules for all public records in the custody of the~~
23 ~~agency.~~

24 (b) The offices of the attorney general and the auditor general will advise the program on
25 the legal and fiscal values of records covered by proposed records control schedules. Proposed
26 schedules not returned to the administrator within sixty (60) days will be deemed acceptable by the
27 offices of the attorney general and auditor general and shall be made final.

28 (c) Those records which are determined by an agency not to be needed in the transaction
29 of current business but which, for legal or fiscal requirements, must be retained for specific time
30 periods beyond administrative needs, shall be sent to the records center. The records will be kept
31 in the center until time for disposition as provided in record control schedules.

32 (d) Public records, with a minimum retention of twenty (20) years, possessing enduring
33 ~~permanent~~ value, as determined by the administrator in consultation with the state archivist, may
34 ~~approved records control schedules shall~~ be transferred to the state archives after the twentieth year

1 ~~public records repository when no longer needed by an agency in transaction of current business.~~

2 (e) Public records determined to be of permanent value according to the records retention
3 schedule and by the administrator in consultation with the state archivist, shall be transferred to the
4 state archives following assessment after the twentieth year if transfer of custody is in the best
5 interest of the record.

6 ~~(f)~~(f) Title to any record placed in the records center shall remain ~~in~~ with the agency placing
7 the record in the center.

8 ~~(g)~~(g) Title to any record transferred to the ~~public records repository~~ state archives, as
9 authorized in this chapter, shall be vested in the program.

10 ~~(h)~~(h) ~~The program shall preserve and administer such public records as shall be transferred~~
11 ~~to its custody according to approved conservation and security practices, and to permit them to be~~
12 ~~inspected, examined, and copied at reasonable times and under supervision of the program;~~
13 ~~provided that any~~ Any record placed in keeping of the program under special terms or conditions
14 restricting their use shall be made available only in accordance with the ~~terms and conditions~~
15 provisions of § 38-2-2.

16 ~~(i)~~(i) Provide a public research room where, upon policies established by the program, the
17 records in the ~~public records repository~~ state archives may be studied.

18 ~~(j)~~(j) The program may make certified copies under seal of any records transferred to it
19 upon the application of any person, and the certificates, signed by the administrator or his or her
20 designee, shall have the same force and effect as if made by the agency from which the records
21 were received. The program may charge a reasonable fee for this service.

22 ~~(k)~~(k) No public record shall be destroyed or otherwise disposed of by any agency without
23 prior notice to, and approval by, the program.

24 ~~(l)~~(l) The program shall adopt reasonable rules and regulations not inconsistent with this
25 chapter relating to the destruction and disposal of records. The rules and regulations shall provide
26 but not be limited to:

- 27 (1) Procedures for preparing and submitting record control schedules to the program.
28 (2) Procedures for the physical destruction or other disposal of records.
29 (3) Standards for the reproduction of records for security or with a view to the disposal of
30 the original record.

31 ~~(m)~~(m) The program shall:

- 32 (1) Establish safeguards against unauthorized or unlawful removal or loss of records; and
33 (2) Initiate appropriate action to recover records removed unlawfully or without
34 authorization.

1 ~~(m)~~(n) The program may prepare and publish handbooks, guides, indexes, and other
2 literature directed toward encouraging the management, preservation, and uses of the state's public
3 records resource.

4 **38-3-7. Agency responsibilities. Duties and responsibilities of agencies.**

5 It shall be the duty of each agency to:

6 (1) Cooperate with the program in complying with the provisions of this chapter.

7 (2) Establish and maintain ~~an~~ active and continuous ~~program~~ procedures for the economical
8 and efficient management of public records, including, but not limited to, working with the
9 administrator to create and update records control schedules.

10 (3) Submit a certificate of records destruction for approval by the program for each public
11 record the agency seeks to destroy once it has met its approved retention period. The certificate of
12 records destruction shall be the permanent replacement for duly approved destroyed public records.

13 (4) Not later than January 1, 2022, designate a records officer who has responsibility for
14 compliance with this chapter and has been provided orientation and training by the public records
15 administration regarding this chapter. The records officer:

16 (i) Shall establish and operate a records management program for the agency in cooperation
17 with the division of state archives;

18 (ii) May delegate responsibilities to an individual within the agency at his or her discretion;

19 (iii) Not later than March 1 of each year, shall certify the accuracy of the records control
20 schedule and approve destruction of records that have met retention periods at the state records
21 center;

22 (iv) May also serve as the agency forms management representative as required by § 42-
23 84-5.

24 SECTION 2. Chapter 38-3 of the General Laws entitled "Public Records Administration"
25 is hereby amended by adding thereto the following sections:

26 **38-3-8. Public records advisory commission.**

27 (a) There shall be a public records advisory commission consisting of seventeen (17)
28 members, one of whom shall be a member of the senate chosen by the president of the senate, one
29 of whom shall be a member of the house of representatives chosen by the speaker of the house, six
30 (6) of whom shall be chosen by the governor, and seven (7) of whom shall be chosen by the
31 secretary. The secretary or designee shall serve as a permanent member of the commission. The
32 state archivist shall serve as a permanent member of the commission. The appointments shall
33 consist of persons who are qualified by training and experience with proven interest in historical
34 records and public records management. In the first instance, five (5) members shall be appointed

1 for a one year term, two (2) by the governor and three (3) by the secretary; five (5) members shall
2 be appointed for a two (2) year term, one by the speaker of the house, one by the president of the
3 senate, two (2) by the governor, and one by the secretary; five (5) members shall be appointed for
4 a three (3) year term, two (2) by the governor, and three (3) by the secretary. The members shall
5 hold office until July 1, in the years in which their respective terms end. Thereafter, prior to July 1
6 of each year, successors shall be appointed to replace terms of commission members to the
7 members of the commission whose terms expired. A vacancy of the commission shall be filled by
8 appointment by the corresponding authority for the remainder of the unexpired terms.

9 (b) The secretary or designee shall serve as the chairperson of the commission. The state
10 archivist or designee shall serve as the secretary of the commission with voting rights.

11 (c) It shall be the duty of the public records advisory commission to provide professional
12 and technical assistance to the public records administration program, the state archives, and the
13 local governments of the state in all matters relating to the administration of public records.
14 Members of the commission shall serve without pay.

15 **38-3-9. Public reporting of compliance.**

16 Every year the secretary shall prepare a report summarizing the compliance with the
17 provisions of this chapter, which shall be submitted to the legislature and which shall be published
18 electronically on the department of state website.

19 **38-3-10. Violations.**

20 The administrator is hereby empowered to bring an action in superior court for restraining
21 orders and injunctive relief to restrain and enjoin violations or threatened violations of any
22 provision of this chapter.

23 **38-3-11. Severability.**

24 If any provision of this chapter or the application of this chapter to any person or
25 circumstances is held invalid, the invalidity shall not affect other provisions or applications of this
26 chapter which can be given effect without the invalid provision or application, and to this end the
27 provisions of this chapter are declared to be severable.

28 SECTION 3. Section 38-3-5 of the General Laws in Chapter 38-3 entitled "Public Records
29 Administration" is hereby repealed.

30 **~~38-3-5. Duties of program.~~**

31 ~~It shall be the duty and responsibility of the public records administration program to:~~

32 ~~(1) Establish and administer a public records management program, including the operation~~
33 ~~of a record center or centers, and appoint a director who will apply efficient and economical~~
34 ~~management methods relating to the creation, utilization, maintenance, retention, preservation, and~~

1 ~~disposal of records.~~

2 ~~(2) Analyze, develop, establish, and coordinate standards, procedures, and techniques of~~
3 ~~record making and record keeping.~~

4 ~~(3) Insure the maintenance and security of records which are deemed appropriate for~~
5 ~~preservation.~~

6 ~~(4) Institute and maintain a training and information program in all phases of records~~
7 ~~management to bring to the attention of all agencies approved and current practices, methods,~~
8 ~~procedures, and devices for the efficient and economical management of records.~~

9 ~~(5) Make available a centralized program of microfilming for the benefit of all agencies.~~

10 ~~(6) Make continuous surveys of record keeping operations.~~

11 ~~(7) Recommend improvements in current records management practices, including the use~~
12 ~~of space, equipment, supplies, and personnel in creating, maintaining, and servicing records.~~

13 ~~(8)(i) Establish and maintain a program, in cooperation with each agency, for the selection~~
14 ~~and protection of public records considered essential to the operation of government and to the~~
15 ~~protection of the rights and privileges of citizens.~~

16 ~~(ii) Make or to have made duplicates of essential records, or to designate existing record~~
17 ~~copies as essential records to be protected in the place and manner of safekeeping as prescribed by~~
18 ~~the program.~~

19 ~~(iii) The duplicate of any record made pursuant to this chapter shall have the same force~~
20 ~~and effect for all purposes as the original record. A transcript, exemplification, or certified copy of~~
21 ~~the duplicate shall be deemed, for all purposes, to be the original record.~~

22 SECTION 4. This act shall take effect upon passage.

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LC002132
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PUBLIC RECORDS -- PUBLIC RECORDS ADMINISTRATION

1 This act would update the public records administration act by designating a public records
2 administrator, amending the definition of records, adding various definitions to include, electronic,
3 records series, state archivist, and retention, modifying a records control schedule, designating a
4 records officer and establish procedures for the retention of public records and their transfer after
5 twenty (20) years to the state archives. It would also provide that a research room be established
6 for research of records, that the administrator submit yearly reports, provide certified copies,
7 approve emergency destruction of public records and perform other functions and duties as the
8 secretary of state may direct. It would require a public records advisory commission which would
9 establish a public reporting compliance and allow the administrator to bring violations to superior
10 court and apply for restraining orders.

11 This act would take effect upon passage.

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