HJR 2 Electronic Records Management Work Group
Report and Recommendations

Prepared for the Education and Local Government Interim Committee
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BACKGROUND

House Joint Resolution No. 2 (Hollenbaugh, 2013) requested a study to investigate electronic records management (ERM) by state and local government and was assigned by the Legislative Council to the Education and Local Government Interim Committee (ELG). After receiving background information on the topic from Patti Borsberry, State Records Manager for the Secretary of State; Jodie Foley, State Archivist at the Montana Historical Society (MHS); Tammy Lavigne, Chief Intergovernmental Relations Officer for the State Information Technology Services Division (SITSD); and committee staff at its June and September 2014 meetings, ELG determined to form a work group of interested parties to contribute to the investigation requested in HJR 2 and have the work group report back to the committee.

Committee staff invited the participation of representatives of all branches and state agencies, as well as associations representing local governments, and on October 23, 2013, the HJR 2 work group convened for the first time. The work group met monthly through March 2014 and was joined beginning in January by two members of ELG appointed by ELG Chairman, Sen. Tom Facey: Reps. Jean Price and Don Jones. Following the January meeting the work group formed two subgroups to focus on statutory changes and funding possibilities respectively. Summaries of the full work group meetings are included in Appendix C beginning on page 17 and include lists of participants and links to audio and video recordings of the work group meetings. A webpage for HJR 2 was also created with background and meeting materials.

The work group began its efforts with a brief survey of state agencies and local governments in an attempt to capture the current state of affairs and identify needs related to electronic records management (ERM). The work group also identified several states that are leading efforts to address ERM and reviewed information and surveyed records managers from those states to help guide work group efforts. These undertakings and work group discussions provided the initial framework for the findings and recommendations that follow.

The work group emphasizes that all findings and recommendations reflect that Montana needs to ensure that public records and information are managed to uphold the rights in Article II, sections 8, 9, and 10, of the Montana Constitution—the right of participation, the right to know, and the right to privacy.

There was discussion and debate about the merits and effectiveness of the different recommendations, and the list did evolve over time, but the recommendations included in this report all received full work group support at the final work group meeting in March 2014.

FINDINGS AND RECOMMENDATIONS[1]

Finding #1: **Improving ERM needs to be viewed as a long-term effort, and strategies for improving ERM need to utilize information technology (IT) and records management (RM) best practices and to be coordinated, effective, implemented, and sustained with collaboration between the IT and RM communities.** Montana will not "fix" ERM overnight; it will require a multifaceted, multibiennial approach. Effectively managing information and records in a rapidly changing environment of "big data" will require leveraging the best use of the technological tools available. The increase in the volume of information being collected and saved is staggering, and it must be managed. Agencies, programs, and local governments have all developed methods of managing records, some more effective than others, but these methods largely exist in isolation, making it more difficult to access and share information. Montana's previous strategic planning efforts related to ERM emphasize the need for the information technology and records management communities to work together to improve electronic records management. The management of electronic records cannot be addressed in isolation from traditional records management.

>Recommendation 1.1 **The state should seek an enterprise technological solution for ERM and permanent archiving of state records, and when implemented, Executive Branch agencies should plan to utilize the enterprise solution unless there is a compelling technical and/or business case to implement an alternate solution.** In order to achieve economies of scale, maximize efficiency, and minimize unwarranted duplication, electronic records management technology systems and data management applications should be selected, implemented, and managed in a coordinated manner at the enterprise level. Collaboration between information technology and records management communities at the enterprise, agency, and program level will help ensure successful implementation. An assessment tool cooperatively developed by these stakeholders will allow agencies and programs to gauge their readiness to implement and address any gaps that may exist in their readiness prior to implementation. An enterprise solution can satisfy the majority of agency needs for ERM and provide the greatest return on investment. Ideally, the enterprise solution would be made available to other branches and local governments.

>Recommendation 1.2 **Require the Department of Administration to consult with the Secretary of State regarding the acquisition of ERM systems (2-6-214 (2) and 2-6-203, MCA).** Current law requires the Department of Administration to "approve all acquisitions of executive agency records management equipment or systems used to electronically capture, store, or retrieve public records". The work group recommends this statutory change to ensure that collaboration between the IT and RM communities takes place and that RM needs are identified and addressed by RM experts.

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[1] Please note that the findings and recommendations are not listed in order of importance or prioritization of the work group. All findings and recommendations included in this report received full work group support at the final work group meeting in March 2014 and are summarized in Appendix A beginning on page 8 of this report.

Recommendation 1.3 **Revise the membership, duties, and structure of the State Records Committee (SRC) to create a broader group that is consulted in matters related to statewide records management (development of rules, standards, and guidelines; strategic planning; acquisition of ERM systems) (2-6-208, MCA).** The work group finds that having representatives from state agencies, local government, MHS, SOS, SITSD, and the legal community "at the table" discussing this issue has been invaluable and that the scope of addressing records management at the enterprise level will require an ongoing effort. An earlier iteration of this recommendation called for the creation of a new Records and Information Management Advisory Council, but the work group determined at its final meeting that this concept could be achieved through modifying the existing SRC. Regardless of structure, sustained collaboration is required. By amending the composition of the SRC to include experts in the fields of records management and information technology, and by strengthening the role and responsibilities of the SRC, Montana will be able to leverage these experts' experience and knowledge to provide technical guidance and training for state and local government (see Finding #5).

Finding #2: **Records management needs to be a higher priority.** Montana's Constitution provides strong guarantees of citizens' rights to know about and participate in their government. The work group believes that while some agencies, programs, and local governments manage records effectively, a significant number do not, and all could do better in a rapidly evolving technological environment. In some cases it may be that leadership is not emphasizing records management enough; in others it may be a lack of understanding or resources. Government "plates" have grown fuller, but the management of records and information cannot be ignored on a back burner.

Recommendation 2.1 **Require agencies to provide scalable records management training for all employees (2-6-213, MCA).** It's difficult to imagine a state employee who does not produce documents, information, or records that are assets of the state and that need to be managed accordingly. The proliferation of e-mail as a means of correspondence and of conducting business may provide the most compelling example of this. The work group thinks that training will raise awareness of records management and provide the understanding to help employees manage records effectively. Agencies would be given the flexibility to scale this training based on the records an employee produces.

Recommendation 2.2 **Strengthen qualification requirements of agency records custodians (2-6-213, MCA).** Current law requires each agency to "designate an agency records custodian to manage [records management functions]" but does not describe any qualifications. The work group feels that adding qualifications for records custodians will help ensure that records custodians have sufficient understanding of records management principles and make records management a higher priority within agencies.

Recommendation 2.3 **Make department heads responsible for records managment (2-6-213, MCA).** Current law states that "Each executive branch agency of state government shall administer its records management function". Work group participants think that this language diffuses responsibility for records management

and placing that responsibility clearly with the department head will ensure top-level support and make records management a higher priority. Some participants felt this minor statutory change might not warrant inclusion, but others felt that while it is somewhat symbolic, simply calling attention to this by amending statute would help with the prioritization of records management at the agency level.

Recommendation 2.4 **Add records management requirements to agency IT planning (2-6-213 and 2-17-524, MCA).** Senate Bill No. 312 (Sonju, 2013) added the following to the principles that must guide the development of state information technology resources: "Electronic record creation, management, storage, and retrieval processes and procedures are used to create and deliver professional records management experiences for the citizens of Montana" (2-17-505(4)(m), MCA). Requiring records management to be included in agency IT plans will help ensure adherence to this principle, facilitate greater collaboration between IT and RM, and contribute to higher prioritization of records management.

Recommendation 2.5 **Create rule requirements for records management so that compliance can be monitored.** Previous strategic planning efforts for addressing ERM in Montana have identified compliance as an issue. The work group thinks that enhancing requirements through rule will help prioritize records management and give agencies and local governments greater guidance (see Finding #5) and increase the ability to assess their own compliance. This recommendation complements Rec. 5.2 asking SOS and DOA to further exercise their rule, standard, and guideline authority.

Recommendation 2.6 **The State Records Committee should collaborate with the State Human Resources Division (SHRD) to address ways in which SHRD can assist in establishing records management standards and duties.** In a rapidly evolving field like records management, business processes and the required skills of records and information professionals are changing quickly. Working collaboratively, the SRC and SHRD can provide support to agencies in crafting job descriptions, and can explore expanded training opportunities to support improved records management.

Finding #3: **Statutes for records management need to be clarified.** One work group participant compared Montana's current statutes for public records to a cabin that has been added on to so many different times as different needs arise that the entire structure has become an impractical and unusable labyrinth. Many respondents to the work group's survey pointed to confusing definitions in particular. To continue the cabin analogy, the current definitions may provide an unstable foundation upon which this hodgepodge has been built.

Recommendation 3.1 **Statutes need to address both public records and public information.** Current law includes sections addressing public writings, public records, and electronic information and nonprint records, while the Montana Constitution declares the "right to examine documents" in Article II, section 9. The work group desires to simplify the definitions in public records law but also acknowledges the need to clarify the management of records as well as nonrecord information that documents the transaction of official business.

Recommendation 3.2 **MT Public records law should be reorganized.** (See Appendix B beginning on page 10, statutory revision option C.)The work group identified numerous sections of current law that need clarification but determined that making these changes as part of a larger reorganization would yield a much better end result.

Finding #4: **Any ERM improvements need to be adequately funded with dedicated resources (capital/technology, human).** The volume of information and records being produced and the evolving expectations of accessibility will require new management tools and increased employee understanding to utilize them effectively. If selected and implemented well, these tools will improve ERM and efficiency in government. These tools will cost money and require new administrative practices and procedures, as well as training of all public employees. If little or no money is invested in improving ERM, it's hard to see that any significant improvement will occur.

Recommendation 4.1 **The Legislature should realize that improvements to ERM at the state and local level will have initial and ongoing costs.** The Select Committee on Efficiency in Government (2011-2012) saw the opportunity for greater efficiency in improved ERM, and the Legislature as a whole prioritized this issue by devoting an interim study to it. The work group believes that ERM must continue to be seen as a priority as agency budgets are debated in subsequent legislative sessions.

Recommendation 4.2 **Agencies should emphasize records management through the budget planning process.** Finding #2 states that records management simply needs to be a higher priority within government. This can be reflected through the budget planning process. Higher prioritization will likely require an increased investment in such areas as better technology, more human resources, and improved training opportunities. As more attention is focused on ERM, agencies will need to determine their resource needs and make these needs known.

Finding #5: **State and local governments need more guidance related to ERM.** State agencies and local governments vary greatly in size and available resources in addressing ERM. The complexity of ERM is daunting and those tasked with managing records need more guidance in the form of clear statutes, updated rules, adopted standards, and published guidelines and informational resources.

Recommendation 5.1 **The Secretary of State, in consultation with the State Records Committee, should improve web-based resources and increase training opportunities.** In its review of how other states are addressing electronic records management, the work group noted websites from several states that provided guidance for state and local government. Working with the broader coalition in the revised State Records Committee (Rec. 1.3) can help ensure end-user needs are met and provide a venue for review and dissemination of resources.

Recommendation 5.2 **The Secretary of State and Department of Administration, in consultation with the State Records Committee, should further exercise their rule, standard, and guideline authority.** Both SOS and DOA have authority to adopt rules, standards, and guidelines that can clarify expectations and best practices

for agencies, branches, and local governments. Working with the revised State Records Committee (Rec. 1.3) can help ensure adopted or amended rules, standards, and guidelines are clear and practical for state and local government.

Finding #6: **Montana needs a way to permanently archive electronic records that are deemed to be of permanent value, both at agencies and at the Montana Historical Society.** Montana values its history. Current law requires that the Montana Historical Society and State Archivist "preserve noncurrent records of permanent value to the state" (22-3-203, MCA). However, the MHS does not have the means to receive electronic records of permanent value from agencies or local governments. As more and more records are born paperless and live paperless, the MHS will require the ability to receive, archive, preserve, and provide access to electronic records.

> Recommendation 6.1 **The Legislature should appropriate sufficient funding to MHS for the purpose of utilizing an independent consultant to develop a plan to create a digital archives, contract with a vendor, and/or pursue cooperative opportunities with other states in order to permanently archive electronic records (per 22-3-203, MCA) according to archival best practices and professional standards.** MHS should be supported in efforts to gain preservation capabilities to capture, store, and provide access to electronic records in a manner that meets the standards of historical archiving. Those capabilities should be coordinated with enterprise or agency records management systems to allow for compatibility and transfer of records. Collaboration is once again a key to success in this area.

> Recommendation 6.2 **SOS and DOA should ensure agency ERM systems have permanent archiving capability through the approval process pursuant to 2-6-214(2), MCA (see Rec. 1.2).** There are records with enduring historical value to the state that remain in use at agencies; there are also records that have enduring historical value for an agency. Both circumstances require having a permanent archiving capability within the agency's ERM system, be it enterprise or otherwise. The revised approval process in 2-6-214(2), MCA, can help ensure that systems have this capability.

CONCLUSION

Montanans are rightfully proud of the principles embodied in our Constitution's Declaration of Rights: the right to participate in our government, the right to know what our government is doing, and the right to privacy. Ensuring these rights is fundamentally what records management, electronic or otherwise, is about. Expectations of transparency and access are rapidly evolving due to advancing technology. Witnessing a legislative hearing once required a trip to Helena; now it is available from any Internet device in the world. What once required a trip to a clerk's office and involved papers passed across a desk is now available with a handful of keystrokes and clicks of a mouse. Our ability to gather, store, and utilize data is seemingly without limit. One study found that 90% of the world's data was generated in the past 2 years.[2] Managing records and information in this milieu is an incredibly daunting task. Businesses and governments of every size are struggling to get

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[2] SINTEF. "Big Data, for better or worse." ScienceDaily, 22 May 2013.

a handle on this, and the field of "records management" is broadening to one of "information governance" to reflect the changing environment.

In acknowledging the struggle involved in addressing electronic records management, it is worth at least touching on the consequences of inaction. As mentioned above, a fundamental consequence is the failure to live up to the standards we've set for ourselves as self-governing people and have outlined in Montana's Constitution. On a less lofty level, the consequences hit all of us in our collective pocketbook through inefficiency and increased costs of fulfilling records and information requests and litigation. Examples of the costs of Montana's status quo were shared by the work group and include:

- an e-mail records request during the Schweitzer administration took three IT staff 3 weeks and three attorneys 3 days to fulfill;
- a recent records request of the Board of Public Education (Montana's smallest state agency with three employees) took 40 hours to fulfill;
- numerous records requests do not go forward when requesters are informed of the time and cost of fulfilling the request; and
- DNRC averages 2.4 significant records requests per month; some requests can be fulfilled in a few hours, some take 100 or more hours to fulfill.

In addition to staff time and expense of records management inefficiencies, there is also the potential for losing the historical record of the functions and decisions of government.

In an early background brief, committee staff analyzed a decade of previous efforts to address electronic records management and described this issue as a "stubborn elephant," ending the brief with the hopeful, perhaps naïve vision of the elephant being ridden off into the sunset. After 6 months of exploring this topic, it might be suggested that nudging this elephant a bit towards the west is a more practical, yet still worthy, goal. Progress is progress, and with a task this large it is sometimes better to go slow initially to be able to go faster later. The key tenets of the work group findings and recommendations—prioritization, collaboration, and utilization of technology—will nurture this progress, and their importance is supported by similar efforts to address electronic records management in other states and at the federal level. The work group has provided specific and actionable recommendations that move Montana forward.

Appendix A

Findings and Recommendations	MCA section (if applicable)	Included in statutory options A, B, or C?	Committee options	Pursue?	Notes/questions
Finding #1: Improving electronic records management (ERM) needs to be viewed as a long-term effort, and strategies for improving ERM need to utilize information technology (IT) and records management (RM) best practices and to be coordinated, effective, implemented, and sustained with collaboration between the IT and RM communities.	N/A	N/A	Adopt for committee report		
1.1 The state should seek an enterprise technological solution for ERM and permanent archiving of state records, and when implemented, executive branch agencies should plan to utilize the enterprise solution unless there is a compelling technical and/or business case to implement an alternate solution.	N/A	N/A	Adopt for committee report		
1.2 Require the Department of Administration to consult with the Secretary of State regarding the acquisition of ERM systems	2-6-214 (2) 2-6-203	A, B, C	Bill draft		
1.3 Revise the membership, duties, and structure of the State Records Committee (SRC) to create a broader group that is consulted in matters related to statewide records management (development of rules, standards, and guidelines; strategic planning; acquisition of ERM systems)	2-6-208	A, B, C	Bill draft		
Finding #2: Records management needs to be a higher priority.	N/A	N/A	Adopt for final report		
2.1 Require agencies to provide scalable records management training for all employees	2-6-213	A, B, C	Bill draft		
2.2 Strengthen qualification requirements of agency records custodians	2-6-213	A, B, C	Bill draft		
2.3 Make department heads responsible for RM	2-6-213	A, B, C	Bill draft		
2.4 Add ERM requirements to agency IT planning	2-17-524	A, B, C	Bill draft		
2.5 Create rule requirements for records management so that compliance can be monitored	N/A	N/A	Adopt for committee report		
2.6 The State Records Committee should collaborate with the State Human Resources Division (SHRD) to address ways in which SHRD can assist in establishing records management standards and duties.	N/A	N/A	Adopt for committee report		
Finding #3: Statutes for records management need to be clarified.	N/A	N/A	Adopt for final report		
3.1 Statutes need to address both public records and public information.	Several	A, B, C	Bill draft		

Findings and Recommendations	MCA section (if applicable)	Included in statutory options A, B, or C?	Committee options	Pursue?	Notes/questions
3.2 MT Public records law should be reorganized (see Appendix B: "Statutory revision recommendations")	numerous	C	Bill draft		
Finding #4: Any ERM improvements need to be adequately funded with dedicated resources (capital/technology, human).	N/A	N/A	Adopt for committee report		
4.1 The Legislature should realize that improvements to ERM at the state and local level will have initial and ongoing costs.	N/A	N/A	Adopt for committee report		
4.2 Agencies should emphasize records management through the budget planning process.	N/A	N/A	Adopt for committee report		
Finding #5: State and local governments need more guidance related to records management.	N/A	N/A	Adopt for committee report		
5.1 The Secretary of State, in consultation with the State Records Committee, should improve web-based resources and increase training opportunities for records management.	N/A	N/A	Adopt for committee report; write letter		
5.2 The Secretary of State and Department of Administration, in consultation with the State Records Committee, should further exercise their rule, standard, and guideline authority.	N/A	N/A	Adopt for committee report		
Finding #6: Montana needs a way to permanently archive electronic records that are deemed to be of permanent value, both at agencies and at MHS.	N/A	N/A	Adopt for committee report		
Recommendation 6.1 The Legislature should appropriate sufficient funding to MHS for the purpose of utilizing an independent consultant to develop a plan to create a digital archives, contract with a vendor and/or pursue cooperative opportunities with other states in order to permanently archive electronic records (per 22-3-203, MCA) according to archival best practices and professional standards.	N/A	N/A	Bill draft		
6.2 SOS and DOA should ensure agency ERM systems have permanent archiving capability through the approval process pursuant to 2-6-214(2), MCA (see Rec. 1.2).	N/A	N/A	Adopt for committee report		

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 work group 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.
- Strengthen the duties and responsibilities of the State Records Committee

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 – most sections would simply be renumbered and reorganized for clarity
- The statutes contained on the Option B table would be amended to address the issues identified
- 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 reflective of 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 committees' duties to strengthen the role these committees have 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.

Agency Responsibilities (2-6-213):
Move the responsibility for records management from the agency itself 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):
Require collaboration 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."
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; e-mails).	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. Records committee -- composition and meetings. Disposal of public records.	The state records committee's duties are currently limited and could be expanded to add value.	Strengthen and update the state records committee's duties and responsibilities. Clearly define the role of the committee in advising the SOS and DOA on records and information management best practices and how to ensure that the state successfully addresses all phases of a record's lifecycle, etc.
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.	Require DOA to consult with SOS regarding the acquisition of ERM.
2-6-302	Official records management -- powers and duties.	This section addresses only 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. Duties and responsibilities.	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.
		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 public 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		Certain elements of a record's life cycle (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

KEY: [DOA] = Department of Administration
[EBAs] = Executive Branch Agencies
[MHS] = Montana Historical Society
[LCRC] = Local Government Records Committee
[SOS] = Secretary of State
[SRC] = State Records Committee

Potential Reorganization Recommendations for Option C

Possible Organization of New Table of Contents

Part 1
Address the generally applicable 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; strengthen and clarify the duties and responsibilities of the State Records Committee; address any requirements specific to the governor or other elected officials

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 the State Records Committee; 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 statutes and organizational structure to ensure that no current statutory duties are unintentionally excluded in the new outline.

Appendix C—Work Group Meeting Summaries

HJR 2 ERM Work Group Meeting Summary for 10/23/13
prepared for the Education and Local Government Interim Committee by Pad McCracken, Research Analyst
December 2013

Attendees:

Jim Kammerer	Montana State Library
Patti Borsberry	Office of the Secretary of State
Kathy Bramer	Office of the Secretary of State
Jodie Foley	Montana Historical Society
Tammy LaVigne	Department of Administration
Amy Sassano	Office of Budget and Program Planning
Pad McCracken	Legislative Services
Laura Sankey	Legislative Services
Cheryl Grey	Department of Administration
Miranda Keaster	Department of Administration
Anita Bangert	Department of Administration
Audrey Hinman	Department of Administration
Glynis Gibson	State Auditor's Office
Lisa Mader	Montana Supreme Court
Tammy Peterson	Montana Supreme Court
Shantil Siaperas	MACo
Denise Ulberg	MASBO
Bob Vogel	MTSBA
Kris Stockton	Board of Public Education
Margaret Kauska	Department of Revenue
Cheri Bergeron	Office of Public Instruction
Bev Marlow	Office of Public Instruction
Mandi Hinman	Public Service Commission
Cynthia Dingman	Department of Environmental Quality
Deb Butler	Legislative Audit Division
Elaine Taylor	Capitol Strategies
Bill Warden	Capitol Strategies
Kevin Nelson	Billings, self
Marty Rehbein	Missoula City Clerk

The meeting was held in Room 317 of the Montana State Capitol and began at 1:30 PM. The meeting was audio recorded and streamed, and the recording is available here.

The meeting began with opening remarks from Ron Baldwin, State CIO; Bruce Whittenberg, Director of the Montana Historical Society; and Linda McCulloch, Secretary of State. The remarks expressed appreciation for work group participants and stressed the importance of the topic.

Work group participants then introduced themselves and stated the agency or organization they represent. All participants were asked to answer the following question: What do you see as the biggest issue or top priority for your organization or constituency regarding ERM? Some of the recurrent themes included:
- The importance of **education and training** about records management for all public employees
- Questions about **e-mail**
- The need for improved **access** to records and better **searchability**
- Concerns about **security** and **confidentiality**

- Issues with **space** and **storage**
- The need for agency/entity/program **collaborative work flow** and **cost** to be considered as part of any solution
- Concerns about **migrating** electronic records as formats change
- The need for **resources** in order to place higher priority on records management

Kevin Nelson of Billings, representing himself, emphasized the Montana Constitution principles of Right to Know and Right of Participation. He expressed concern that meeting minutes of executive sessions of "some government entities" are not being kept, and specifically referenced the settlement of a dispute between the City of Billings and MMIA that took place "behind closed doors". He requested that state law regarding executive sessions and open meetings be reviewed and that minutes for all public meetings, including executive sessions, be recorded and made available to the public.

Kathy Bramer, Chief Deputy in the Office of the Secretary of State, acknowledged that this topic has been studied previously and encouraged the work group to lead this effort and not accept the way things have been done previously, ending her remarks with "Be bold, be specific, and good luck!"

Pad McCracken, ELG staff, reviewed the structure of the work group and ELG-approved work group plan and timeline and clarified the coordinated efforts between the work group to investigate strategies for improved ERM and the State CIO's survey of agencies and local governments regarding needs in advance of issuing an RFI related to ERM system solutions.

Laura Sankey, ELG staff attorney, presented the legal framework of records management, a similar presentation to the one made to ELG on September 24, 2013.

Patti Borsberry, State Records Manager in the Office of the Secretary of State, presented a handout of elements, rationale, and strategies summarizing a presentation made to ELG on September 24, 2013 and also mentioned the previous strategic planning efforts related to ERM in 2004 and 2008.

Jodie Foley, State Archivist at the Montana Historical Society, shared the perspective of MHS and the goal of preserving historically significant records and providing access

Tammy LaVigne, Chief Intergovernmental Relations Officer at SITSD, emphasized the goals of coming together to identify and implement the most cost-effective strategy for managing electronic records throughout state government.

Miranda Keaster from the Project Management Office at SITSD described her office's project to survey state agencies and local governments regarding their requirements related to ERM in advance of releasing an RFI to solicit information from vendors regarding possible solutions. Work group participants provided additional information about agency and local government contacts.

Members of the work group then split into two groups—one for local government representatives and the other for state agencies—to work on revising questions for a survey to be distributed to state and local government in order to gather a snapshot of the current state of affairs related to ERM. Upon reconvening, there were many suggestions and much discussion on how to improve and administer the survey. (Work group feedback was incorporated as much as possible and the survey was distributed beginning October 25, 2013; a summary of survey results is available.)

The meeting adjourned at 4:00 PM.

Attendees:

Jim Kammerer	Montana State Library
Patti Borsberry	Office of the Secretary of State
Jodie Foley	Montana Historical Society
Tammy LaVigne	Department of Administration
Amy Sassano	Office of Budget and Program Planning
Pad McCracken	Legislative Services
Laura Sankey	Legislative Services
Cheryl Grey	Department of Administration
Shantil Siaperas	MACo
Bob Vogel	MTSBA
Kris Stockton	Board of Public Education
Margaret Kauska	Department of Revenue
Cheri Bergeron	Office of Public Instruction
Bev Marlow	Office of Public Instruction
Ann Gilkey	Office of Public Instruction
Cynthia Dingman	Department of Environmental Quality
Deb Butler	Legislative Audit Division
Harold Bruce	DPHHS
Sonia Gavin	Legislative Services Division
Lucy Richards	DNRC
Jeff Sillick	MDT
John Tarr	Montana Lottery
Bonnie Ramey	Jefferson County/MACR
Geoff Feiss	Montana Telecom Association

The meeting was held in Room 137 of the Montana State Capitol and began at 1:30 PM. The meeting was audio and video recorded and streamed. The audio recording is available here and the video recording here.

The meeting began by participants introducing themselves; participants who did not attend the first work group meeting were invited to share the biggest issue or top priority for their organization related to ERM.

The first agenda item was a panel presentation by Jeff Sillick of MDT, Cynthia Dingman of DEQ, and Margaret Kauska of DOR. Each shared a bit about how they took stock of the current situation in their respective agencies and formulated a plan to make improvements to ERM and records management generally. Two of the agencies conducted assessments performed by third party consultants who compared the status quo at the agency with recognized benchmarks and made recommendations on how to most effectively bridge the gaps. A common point of emphasis was on the need to have solid records management fundamentals in place before attempting to implement a technological solution. A quote of note was: "Automating a broken system doesn't fix it: it just means you can spread the dysfunction faster."

The panelists voiced concern about acknowledging the scope of the problem, which they see as immense. The question was also raised about the role of the state legal community in efforts to improve ERM; they feel the legal community should be more involved as some of the greatest risks of the current state of affairs are related to litigation and discovery.

A robust discussion ensued among work group participants. Comments included a desire to be able to place a higher priority on records management and an acknowledgement that when resources, especially human

resources are stretched thin, priority is not likely to be placed on records management. A desire for greater and more widespread "buy-in" was voiced, as was the need for a common vision.

The panelists finished with a recommendation that the state procure professional services to ultimately develop a strategic plan for the state after performing a gap analysis of the current state of affairs against the desired future state. More discussion ensued, centering on opportunities and concerns related to an enterprise system. General consensus was that this recommendation be among the options the work group considers at subsequent meetings.

Pad McCracken, ELG staff, presented responses from the ERM survey of state and local governments, and work group participants offered suggestions in advance of presentation to ELG.

The work group discussed the approach for gathering information from states identified with exemplary records management. Jodie Foley, State Archivist at MHS, and Patti Borsberry, State Records Manager in the Office of the Secretary of State, shared how exemplary states were identified and provided updates on information gathered thus far. Work group participants offered suggestions for additional questions to ask of exemplary states.

Agenda items for the work group's December 18, 2013 meeting were discussed and the meeting adjourned at 4:00 PM.

Attendees:

Jim Kammerer	Montana State Library
Patti Borsberry	Office of the Secretary of State
Jodie Foley	Montana Historical Society
Tammy LaVigne	Department of Administration
Pad McCracken	Legislative Services
Laura Sankey	Legislative Services
Shantil Siaperas	MACo
Bob Vogel	MTSBA
Margaret Kauska	Department of Revenue
Cheri Bergeron	Office of Public Instruction
Bev Marlow	Office of Public Instruction
Cynthia Dingman	Department of Environmental Quality
Joyce Wittenberg	Department of Environmental Quality
Deb Butler	Legislative Audit Division
Sonia Gavin	Legislative Services Division
Lucy Richards	DNRC
Jeff Sillick	MDT
John Tarr	Montana Lottery
Bonnie Ramey	Jefferson County/MACR
Denise Williams	MASBO
Marty Rehbein	Clerk, City of Missoula
Dan Maronick	J&H Inc.
Joe Briggs	Commissioner, Cascade Co.
Matt Davison	DIS Technologies
Rep. Jean Price	
Rep. Don Jones	

The meeting was held in Room 102 of the Montana State Capitol and began at 1:30 PM. The meeting was audio and video recorded and streamed. The audio recording is available here and the video recording here.

The meeting began by participants introducing themselves; participants who did not attend previous work group meetings were invited to share the biggest issue or top priority for their organization related to ERM.

A panel of local government representatives shared their perspectives on electronic records management, including unique challenges and recommendations. Marty Rehbein, City Clerk for the City of Missoula, began and emphasized that local government subdivisions do not all file the same and that solutions need to be scalable from the largest cities and counties to the smallest. She raised specific concerns with current law dealing with local government record destruction request processes and an administrative rule requiring paper or microfilm copies of electronically stored long-term documents. Marty also emphasized the importance of funding, training, and guidance.

Cascade County Commissioner Joe Briggs and Jefferson County Clerk Bonnie Ramey spoke on unique situations for counties, but began by noting that counties shared many of the same concerns that Marty discussed. Commissioner Briggs noted the changing dynamic in fee structures when what used to be documents copied and exchanged across a desk has become documents accessed via the internet. Bonnie spoke about the natural turnover that occurs with elected officials and how procedures change frequently

resulting in challenges in educating about the importance of records; she also mentioned that the numerous small boards in a county often have little or no knowledge about records management.

Denise Williams from the Montana Association of School Business Officials (MASBO) talked about issues of space in schools and how the microfilm requirements exacerbate that situation. She also talked about the numerous pressing demands on school IT and business offices that increase the challenge of effective records management. Denise also recommended more education and training for records management best practices.

Matt Davison of DIS Technologies (Billings) provided a vendor's perspective and mentioned the wide variety he sees in local governments' abilities to manage records, emphasizing both funding and skillset differences. He described how systems designed by entities may work fine in the short run, but are often dependent on the original programmer, rendering those systems eventually obsolete and jeopardizing records.

The presentation was interspersed and followed by questions and discussion among participants. Topics included the requirement for microfilm and process for amending administrative rule, the role that the adoption of common standards might play as part of a solution, and the changing expectations of access in the internet age. Bob Vogel of MTSBA also suggested that the work group might need to start prioritizing recommendations as the effort to improve electronic records management will likely take a number of years.

Staff Attorney Laura Sankey presented a working document with preliminary findings of the statute review sub-group which has been meeting. Work group members offered input on several items and generally agreed that any clarifications that could be made in statute would help lessen confusion related to records management. The provisions identified during the local government presentation were added to the document.

Staff Pad McCracken briefly went over a restructured "platter" document that the work group had drafted previously. He explained that the "platter" was getting full and that eventually would need to be structured as "findings and recommendations". Work group members suggested a few minor changes. Pad also solicited volunteers to meet as a sub-group to look at funding strategies and discuss how any cost-benefit analyses might be accomplished.

The meeting adjourned at 4:05 PM.

<u>Attendees:</u>

Patti Borsberry	Office of the Secretary of State
Jodie Foley	Montana Historical Society
Tammy LaVigne	Department of Administration
Pad McCracken	Legislative Services
Laura Sankey	Legislative Services
Shantil Siaperas	MACo
Margaret Kauska	Department of Revenue
Cheri Bergeron	Office of Public Instruction
Bev Marlow	Office of Public Instruction
Cynthia Dingman	Department of Environmental Quality
Joyce Wittenberg	Department of Environmental Quality
Deb Butler	Legislative Audit Division
Sonia Gavin	Legislative Services Division
Lucy Richards	DNRC
Jeff Sillick	MDT
John Tarr	Montana Lottery
Bonnie Ramey	Jefferson County/MACR
Kris Stockton	Board of Public Education
Miranda Keaster	DOA/SITSD
Kyle Hilmer	DOA/SITSD
Rep. Don Jones	

The meeting was held in Room 137 of the Montana State Capitol and began at 1:30 PM. The meeting was audio and video recorded and streamed. The audio recording is available here and the video recording here.

Pad McCracken, ELG staff, provided a brief recap of the Feb 4 ELG meeting and the update on HJR 2 provided to the committee. Participants introduced themselves.

Miranda Keaster from the SITSD Project Management Office provided an update on the RFI that was issued as a part of the ERM/ECM Project sponsored by State CIO Ron Baldwin. Nineteen vendors responded to the RFI and Ms. Keaster distributed a table showing the responses to the specifications listed in the RFI. Keaster was joined by Kyle Hilmer of SITSD and Hilmer pointed out that most of the vendors responded affirmatively that their respective solutions would meet the specifications and that this made it difficult to distinguish between their products. Keaster mentioned that five of the vendors/products were considered "leaders" through Gartner's "Magic Quadrant" rating system and will provide a summary of that report to the work group. Work group participants had questions about what next steps would be and asked that prior to any decision about a product that a more thorough analysis of agency business needs be conducted. Keaster stated that she'd keep the work group updated about the process.

The work group then turned to its preliminary findings and recommendations document. ELG staff Pad McCracken presented the document and the work group discussed numerous changes and refinements. McCracken pointed out that a number of the recommendations address multiple findings and shared a table illustrating this that might be a supplement to the report made to ELG. Jeff Sillick of MDT commented that he would prefer collaboration that preceded joint approval of new IT systems by DOA and a TBD records authority, that the records community be involved well before final procurement decisions are made. Much of the subsequent discussion focused on ensuring collaboration, elevating the importance and awareness of

records management, and balancing meeting the needs of state agencies and local governments. State Archivist Jodie Foley suggested that creating occupational series or certifications for records management would be another way of making records management a higher priority.

ELG Staff Attorney Laura Sankey updated the group on the efforts of the subgroup working on statutory revisions. Sankey shared a document that lists the statutes that have been identified by the subgroup as needing revision and presented three options that the subgroup is considering presenting to ELG. The options are: 1) a complete overhaul of current public records law; 2) addressing all of the identified issues without reorganizing; and 3) addressing a limited number of the identified issues (a top 10 or top 5, for example). There was strong work group consensus for the complete overhaul option and a feeling that the opportunity to conduct this level of overhaul may not come again.

The meeting drew to a close with participants sharing various ideas of how to describe financial impacts and benefits of improving ERM. McCracken encouraged participants to e-mail any other ideas or to bring them to the funding subgroup. There was also a brief acknowledgment that the work group may need to meet more than just the one remaining scheduled meeting. McCracken will look at the calendar and update work group participants.

The meeting adjourned at 4:05 PM.

<u>Attendees:</u>

Patti Borsberry	Office of the Secretary of State
Tammy LaVigne	Department of Administration
Pad McCracken	Legislative Services
Laura Sankey	Legislative Services
Shantil Siaperas	MACo
Margaret Kauska	Department of Revenue
Cheri Bergeron	Office of Public Instruction
Cynthia Dingman	Department of Environmental Quality
Joyce Wittenberg	Department of Environmental Quality
Deb Butler	Legislative Audit Division
Sonia Gavin	Legislative Services Division
Lucy Richards	DNRC
Jeff Sillick	MDT
Jim Kammerer	Montana State Library
Stacy Ulmen	City of Bozeman
Sonia Powell	OBPP
Miranda Keaster	DOA/SITSD
Kyle Hilmer	DOA/SITSD
Ron Baldwin	State CIO
Rep. Don Jones	

The meeting was held in Room 152 of the Montana State Capitol and began at 1:00 PM. The meeting was audio and video recorded and streamed. The audio recording is available here and the video recording here.

Pad McCracken, ELG staff, reviewed the agenda and outlined the purpose for this final meeting. Participants introduced themselves.

State CIO Ron Baldwin provided an update on the ERM/ECM Project his office has been working on. Mr. Baldwin informed the work group that the "RFI Results and Analysis Report" has been posted to the SITSD website and that he will be meeting with the Governor soon to discuss pursuing an enterprise ERM system, as this will provide the most cost-effective technological solution to state ERM needs. When asked about the timeline for procurement, Mr. Baldwin stated that it depended on a number of factors, but that his hope was within this calendar year. Participants had a number of questions about development of an RFP and implementation, and Mr. Baldwin committed to an inclusive process that would encourage input. Mr. Baldwin acknowledged the importance that an ERM system be "scalable, configurable, and affordable" and shared some ideas for how to ensure affordability. He also stated that any system would be available to local governments.

Following the discussion with Mr. Baldwin, the work group turned its attention to the recommendations of the statutory review subgroup. ELG staff attorney Laura Sankey presented updated documents outlining those recommendations to the work group, and following some discussion, the work group agreed that its first choice would be for a reorganization of the public records laws. Two other options will also be presented to ELG for statutory revision, but it will be noted that the work group prefers the reorganization option as the time feels ripe to do this heavy lifting and clarify what is agreed to be a fairly confusing chapter of the MCA currently.

Mr. McCracken provided a brief update from the funding subgroup and requested participants send him examples of the costs of current records management in their respective agencies, for example, time spent on records and information requests.

After a short break, the work group began finalizing its findings and recommendations in advance of the upcoming ELG meeting on April 11. Mr. McCracken had solicited proposed changes and additions to the document prior to the meeting and the work group went through its recommendations and proposed changes one-by-one, discussing whether to make changes and also whether each recommendation had enough work group support to warrant inclusion. The information shared by Mr. Baldwin did shape the discussion and the work group did make several substantive changes to its recommendations, though the emphasis of its findings on the need for collaboratively addressing ERM and of records management to be a higher priority generally remained.

Mr. McCracken solicited volunteers to help present to ELG on April 11 on behalf of the work group and reminded others that they are welcome to share their thoughts during public comment. Members of the work group expressed their appreciation for the opportunity to participate in this effort over the previous five months and the emphasized the value of bringing people from different agencies and perspectives together to tackle a big and important topic.

The meeting adjourned at 5:05 PM.

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