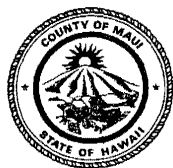


ALAN M. ARAKAWA
Mayor



BRIAN T. MOTO
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740 FAX 270-7152

March 7, 2006

DAIN P. KANE
Chair
Budget and Finance Committee
Maui County Council
200 South High Street
Wailuku, Hawai'i 96793

Re: The Records Disposition Committee

Dear Chair Kane:

This correspondence is in response to a request for legal advice made by Ken Fukuoka, your designee on the Records Disposition Committee, regarding the legal status of the Records Disposition Committee.

In 2005, the State Legislature passed Act 177, relating to government records. Enclosed for your reference is a copy of Act 177. Among other things, Act 177 amended Hawaii Revised Statutes ("HRS") Section 46-43, relating to destruction of vouchers, documents, and other records or papers, and repealed HRS Section 46-44, relating to destruction of warrants and bonds.

Section 1 of Act 177 states that the purpose of the Act is to allow state and county agencies to create and maintain records in electronic format as an alternative to paper and microfilmed records.

Before the adoption of Act 177, HRS Section 46-43 required counties to have a committee, composed of the director of finance, the county's legal advisor, and members of the finance committee of the legislative body of the county, to review matters relating to document retention and destruction. Act 177 amended HRS Section


Dain P. Kane
Chair
Budget and Finance Committee
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46-43 by deleting the reference to such committee and assigning the responsibility of determining the care, custody, and disposition of county records to the director of finance, "with the approval of the county legislative body and the county's legal advisor."

County's existing ordinance on the management of records, Chapter 2.84, Maui County Code, was adopted in 1983 pursuant to Ordinance No. 1332 and amended in 1998 pursuant to Ordinance No. 2691. As a result of Act 177, portions of Chapter 2.84, Maui County Code, have been rendered obsolete and in need of either revision or repeal. For example, Section 2.84.020, Maui County Code, designates the managing director as having "overall program responsibility for record management activities in the executive branch departments and agencies", not the director of finance. Further, Section 2.84.060, Maui County Code, provides for a records disposition committee consisting of the managing director, director of finance, corporation counsel, county clerk, and chairperson of the finance committee of the Council; however, as discussed above, Act 177 amended HRS Section 46-43 and deleted the requirement for such a committee.

In light of Act 177, we recommend that Chapter 2.84, Maui County Code, be reviewed and amended as necessary to ensure consistency with current HRS provisions regarding the management and disposition of records, including electronic records.

Very truly yours,



JOHN D. KIM
Deputy Corporation Counsel

JDK:epg

Enclosure

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cc: Keith Regan, Managing Director
Kalbert Young, Director of Finance
Traci F. Villarosa, First Deputy Corporation Counsel
Michelle White, Legal Assistant

Dain P. Kane
Chair
Budget and Finance Committee
Maui County Council
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APPROVED FOR TRANSMITTAL:



BRIAN T. MOTO
Corporation Counsel

Report Title:

Government Records

Description:

Allows state and county agencies to create, accept, retain, or store electronic records, and convert its paper and microfilm records to an electronic format (SD1)

HOUSE OF REPRESENTATIVES
TWENTY-THIRD LEGISLATURE, 2005
STATE OF HAWAII

H.B. NO. 515
S.D. 1

A BILL FOR AN ACT

relating to government records.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Act 6, Session Laws of Hawaii 2002, authorized the supreme court to create and retain court case, fiscal, and administrative records in electronic format and to convert existing records to electronic form.

Numerous state laws require records retention by state and county agencies, either in paper form or by means of microfilm or microfiche. Many current laws do not recognize alternative record creation and storage media that are available, in particular, electronic records retention.

The State is constantly examining ways in which its operations may be streamlined and made more efficient and cost effective. The legislature finds that allowing the creation, use, and storage of government records in electronic format, as well as the conversion of existing paper and microfilm documents to electronic documents, will effectively reduce the significant paperwork and associated costs in the daily operations of state government.

The purpose of this Act is to allow state and county agencies to create and maintain their records in electronic format as an alternative to paper and microfilmed records.

SECTION 2. Section 46-43, Hawaii Revised Statutes, is amended to read as follows:

~~"§46-43 [Destruction of vouchers, documents, etc. Any county officer, or the officer's authorized subordinate, may with the consent of a committee composed of the director of finance, the county's legal advisor, and members of the finance committee of the legislative body of the county, or the authorized representatives of the officers,]~~
County records. (a) Notwithstanding the provisions of any other law to the contrary, the county legislative body shall determine whether, and the extent to which, the county shall create, accept, retain, or store in electronic form any records and convert records to electronic form.

(b) The director of finance of each county, with the approval of the legislative body and the legal advisor of the county, may authorize the destruction by burning, machine shredding, chemical disintegration, or other acceptable method of disposal of:

(1) All warrants of the county that have been paid and that bear any date ten years prior to the date of destruction; and

(2) All bonds and interest coupons of the county that have been canceled or paid and that bear any date two years prior to the date of destruction.

(c) The director of finance, with the approval of the county legislative body and the county's legal advisor, shall determine the care, custody, and disposition of other county records and may destroy all vouchers, documents, and other records or papers, exclusive of records required[✓] either by law or by the legislative body of the county[✓] to be permanently retained, [which] that have been on file or retained for a minimum period to be determined by the legislative body of the county by resolution."

SECTION 3. Section 92-29, Hawaii Revised Statutes, is amended to read as follows:

~~"§92-29 Reproduction of government records [on films]. Any public officer having the care and custody of any record, paper, or document may cause the same to be photographed, microphotographed, [or otherwise] reproduced on film[. The film shall be of durable material and the], or copied to an electronic format. Any device or electronic storage system used to copy or reproduce the record, paper, or~~

document ~~[on the film]~~ shall ~~[be one which]~~ accurately ~~[reproduces]~~ reflect the information in the original thereof in all details."

SECTION 4. Section 92-30, Hawaii Revised Statutes, is amended to read as follows:

"§92-30 [Film] Copy deemed original record. ~~[Such]~~ A photograph, microphotograph, ~~[or]~~ reproduction on film, or electronic copy of a government record shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification, facsimile, or certified copy thereof ~~[shall]~~, for all purposes recited ~~[herein,]~~ in this section, shall be deemed to be a transcript, exemplification, facsimile, or certified copy of the original record."

SECTION 5. Section 92-31, Hawaii Revised Statutes, is amended to read as follows:

"§92-31 Disposition of original ~~[—Such]~~ record. A photograph, microphotograph, ~~[or]~~ reproduction on film, or electronic form of a government record shall be placed in conveniently accessible files and provisions made for preserving, examining, and using the same. Thereafter, ~~[such]~~ a public officer, after having first received the written approval of the comptroller ~~[described]~~ as provided in section 94-3, may cause such record, paper, or document to be destroyed. The comptroller may require, as a prerequisite to the granting of such approval, that a reproduction or print of such photograph, microphotograph, or reproduction on film, or electronic form of the record be delivered into the custody of the public archives for safekeeping. The comptroller may also require the delivery into the custody of another governmental department or agency or a research library of any such record, paper, or document proposed to be destroyed under the provisions of this section."

SECTION 6. Section 94-3, Hawaii Revised Statutes, is amended to read as follows:

"§94-3 Disposal of government records generally. (a) Each public officer, except public officers of the judiciary~~[r]~~ and the legislative branch of government, having the care and custody of any government records shall submit to the state comptroller a list of records for disposal, which shall include the name of the office, department, or bureau, the subject of the records for disposal and the inclusive dates of the records. The comptroller shall determine the disposition of the records; stating whether ~~[such]~~ the records should be retained by the office, department, or bureau; be transferred to the public archives, the University of Hawaii, the Hawaiian Historical Society, or other agency; or be destroyed. The comptroller shall have full power of disposal of all records

submitted for [~~such~~] this purpose. The records of all records disposed of, including lists submitted by the public officers, and the action taken by the comptroller, shall be kept on proper forms, specified by the comptroller, one copy of which shall be filed in the office, department, or bureau where the records originated, one copy shall be filed in the office of the attorney general, and the original shall be filed in the public archives.

(b) If requested, the comptroller shall provide assistance to the legislative branch of government or any agency or entity therein in establishing policies relating to the disposal of government records."

SECTION 7. Section 46-44, Hawaii Revised Statutes, is repealed.

~~["§46-44 Destruction of paid or cancelled warrants, bonds and interest coupons. The director of finance of each county with the approval of the legislative body and the legal advisor of such county, may authorize the destruction by burning, machine shredding, chemical disintegration, or any acceptable method of disposal of (1) all warrants of the county which have been paid and which bear any date ten years prior to the date of destruction, and (2) all bonds and interest coupons of the county which have been cancelled or paid and which bear any date two years prior to the date of destruction. The director of finance shall submit such reports on the destruction as may be required by the legislative body."]~~

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2005.