

TESTIMONY RE: H.111 (Vital Records)

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As Vermont State Archivist and the Director of the Vermont Archives and Records Administration (VSARA), which issues directives for management of public records by public agencies, maintains and preserves permanent records of the state (regardless of format), and is responsible for providing access to and issuing certified and informational copies for the majority of state vital certificates (1760s – 2011), I wear three hats when it comes to providing testimony on a bill such as this one:

- Records Management
- State Archives
- Business Processes

Therefore I have organized my comments accordingly, which I will only summarize for my testimony today.

Records Management

One of the study committee's recommendation was to use clear and concise language. I recognize and appreciate the effort has been made to consolidate and provide consistency in terminology in the bill. As the statewide authority on records management best practices and standards and guiding agencies to compliance with recordkeeping requirements, however, the choice in not only terms but also definitions within the bill makes me uncomfortable.

Long-standing and common records-related terms such as certified, noncertified, original, official, system, etc. are so narrowly defined in the draft that they sometimes contradict the true definition of the term, thus creating an unnecessary quagmire for not only vital records but all public records. This is because it not uncommon for public agencies to look and see how certain terms are defined or have been used in statute to make management decisions with their own records.

For example, the practice of authenticating a document, by definition, "is an attestation made by a proper officer, by which he certifies that a record is in due form of law, and that the person who certifies it is the officer appointed by law to do so as a true and accurate copy is, by default, to certify." In other words, to authenticate a record means to provide a certified copy.

In this bill, however, the term "Certified" is defined in the bill as a "*copy of a vital event certificate issued and certified by a person with authority to attest to the authenticity of the certificate in accordance with the law in effect at the time the certificate is issued*" but later states that vital records dating 1909 or earlier cannot be "*certified*" but can be "*authenticated as a true and accurate copy*."

Another example is the term "Original." By definition, an original record is a record that is neither a copy nor an imitation. In the bill, "Original" is defined and limited to "*a vital event certificate registered prior to July 1, 2018 in the case of birth, death, and civil union certificates,*

and prior to 2019 in the case of marriage certificates, and required to be preserved in town offices under section 5007 of this title.” Yet, in reality, every vital event registered, regardless of when, how, or where, is truly an “original” record.

Last, the Vermont Public Records Act, the definition of a public record is a “any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business.” Therefore the phrase is synonymous with “government record” and has no bearing on accessibility under state law. However, the bill introduces the concept that a public record exempt from public inspection and copying is “not a public record” (page 18, line 1). Related, the bill appears to provide provisions for which the State Register can make his or her decisions on what is exempt and not exempt. This is highly unusual as the decision to create an exemption has always been a matter decided by the Legislature and vetted before the public.

I believe there is easier and simpler language that can be used to make this bill concise and clear without using or, in this case misusing, long-standing and common records-related terminology.

State Archives

As the primary public-facing agency for providing access to and issuing certified and informational copies for the majority state vital certificates (1760s – 2011) – and also knowing the widespread availability of Vermont vital records, whether through microfilm distributed to libraries throughout the country and world and also available digitally, online, through FamilySearch.org and Ancestry – I find it difficult to justify (1) requiring an application for informational copies dating 1909 to present and (2) charging a fee for an informational copy.

As one of the few states that has never closed or restricted access to basic vital event information, Vermont is a strong use case for showing that access to basic vital information – which sometimes pales in comparison to more detailed information that is readily available and published elsewhere online – is rather innocuous. Having to apply for an informational copy not only provides an unnecessary barrier but impedes the research value of the value of the records. This appears to be a step backwards, especially when Vermont vital records are widely available

My recommendation to the study committee, which is not in the report, was for the Legislature to clearly define what should appear on an informational and certified copies of vital record certificates for civil registration purposes as, I believe, the additional information collected about an event for public health purposes tends to overshadow the purpose and reason for having a civil vital registry system and what the public, when it comes to specific events, needs.

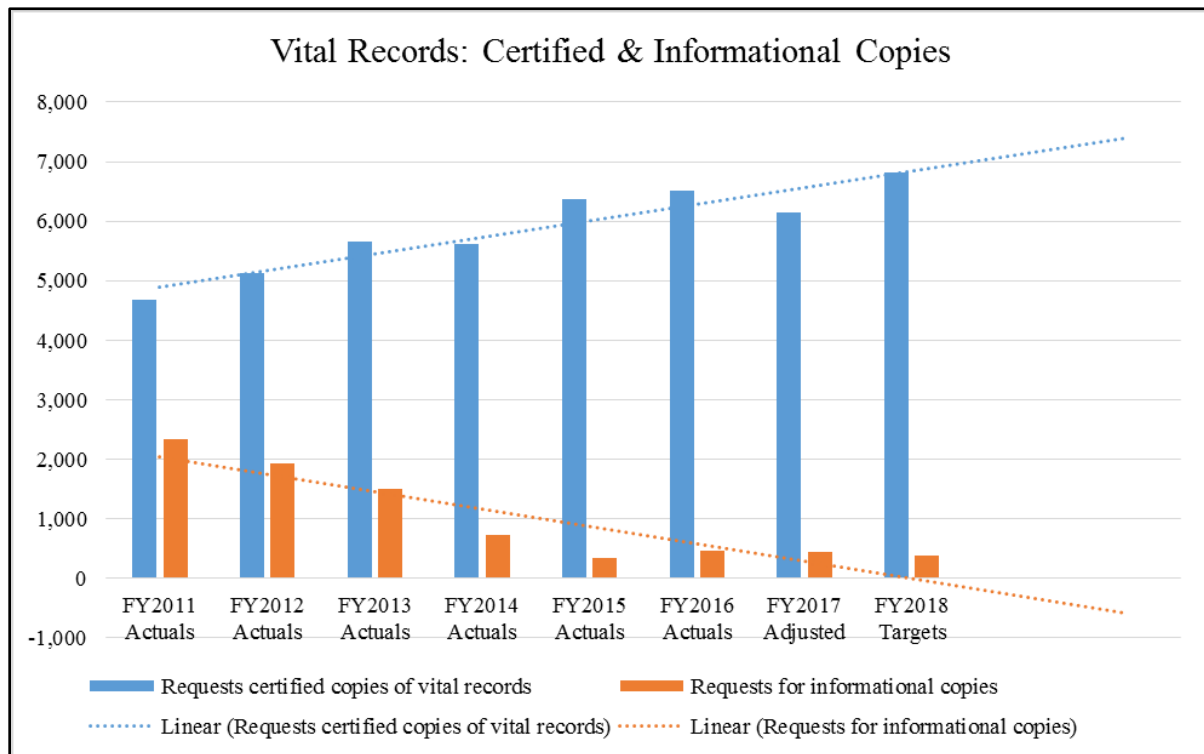
The bill draft has a section related to inspection but if limited to just viewing and not being able to print a copy, this seems to present is a huge disservice to the public, especially the research community. Also, as mentioned earlier, it is also highly unusual to delegate the decision to restrict inspection and copying to a public agency or official, in this case State Registrar, as this type of matter has always been decided by the Legislature and vetted before the public.

Business Processes

When we took over the handling of vital records requests from the Department of Buildings and General Services (BGS) in 2008, the average turnaround time for a request was 4-6 weeks. This was largely due to four reasons: (1) a mail-only option for requesting copies directly from BGS; (2) a cumbersome pass-through electronic request service from a third party vendor, VitalChek; (3) no electronic access to an index to vital records for staff; and (4) a time-consuming process of having to pull a microfilm copy or the paper original from storage for every request.

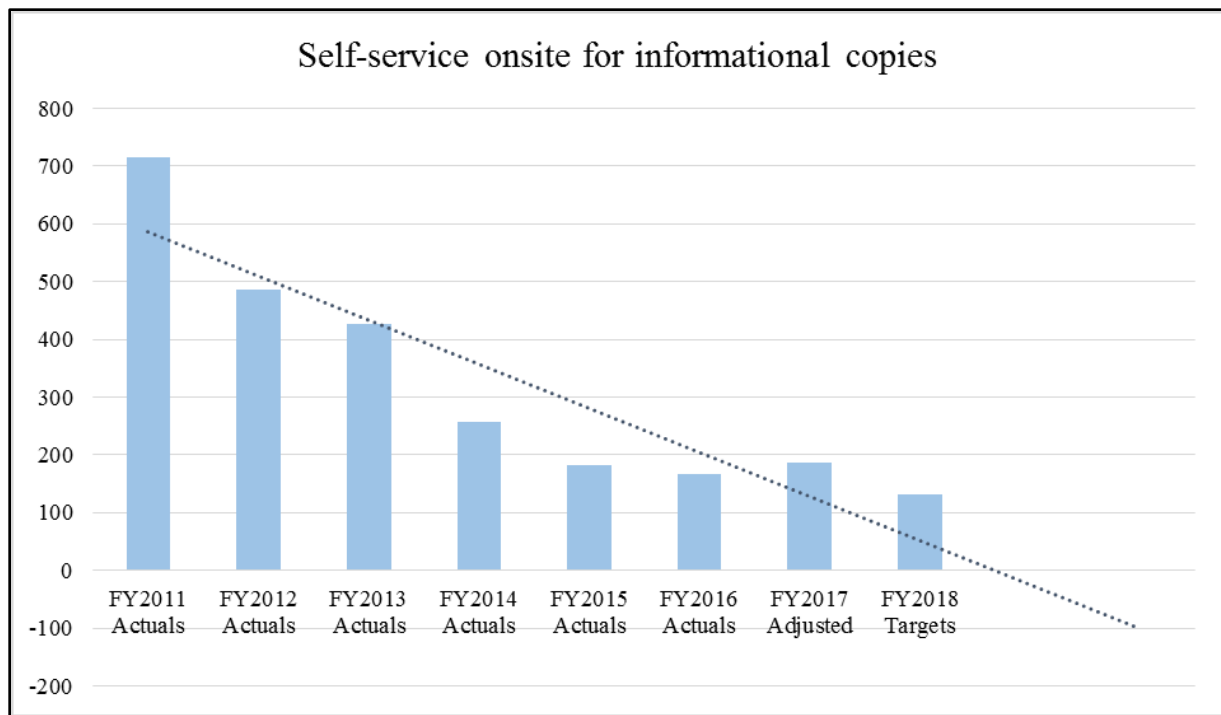
Today, VSARA processes requests for certified copies the day of receipt, often taking no more than 5-10 minutes to process each request. This is largely due to our decision to change over an online records request portal that we manage through the state portal (discontinuing VitalChek) and availability of a digital index and copies of vital record certificates through Ancestry.com (as of 2012).

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Certified	4,671	5,133	5,651	5,625	6,369	6511
Informational	2,339	1,925	1,496	733	348	473



While we cannot control the number of requests we receive for certified copies, we have been able to control the number of requests for informational copies submitted to us for manual processing. This has been largely due to the availability of microfilm and digital copies for the public to research and print their own informational copies from either our reference room or their own computers.

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017 Target	FY 2018 Target
Onsite ¹	714	487	427	258	182	167	171	133
Online ²	n/a	n/a	4,320,417	6,157,837	4,722,424	5,678,879	4,800,000	6,635,334

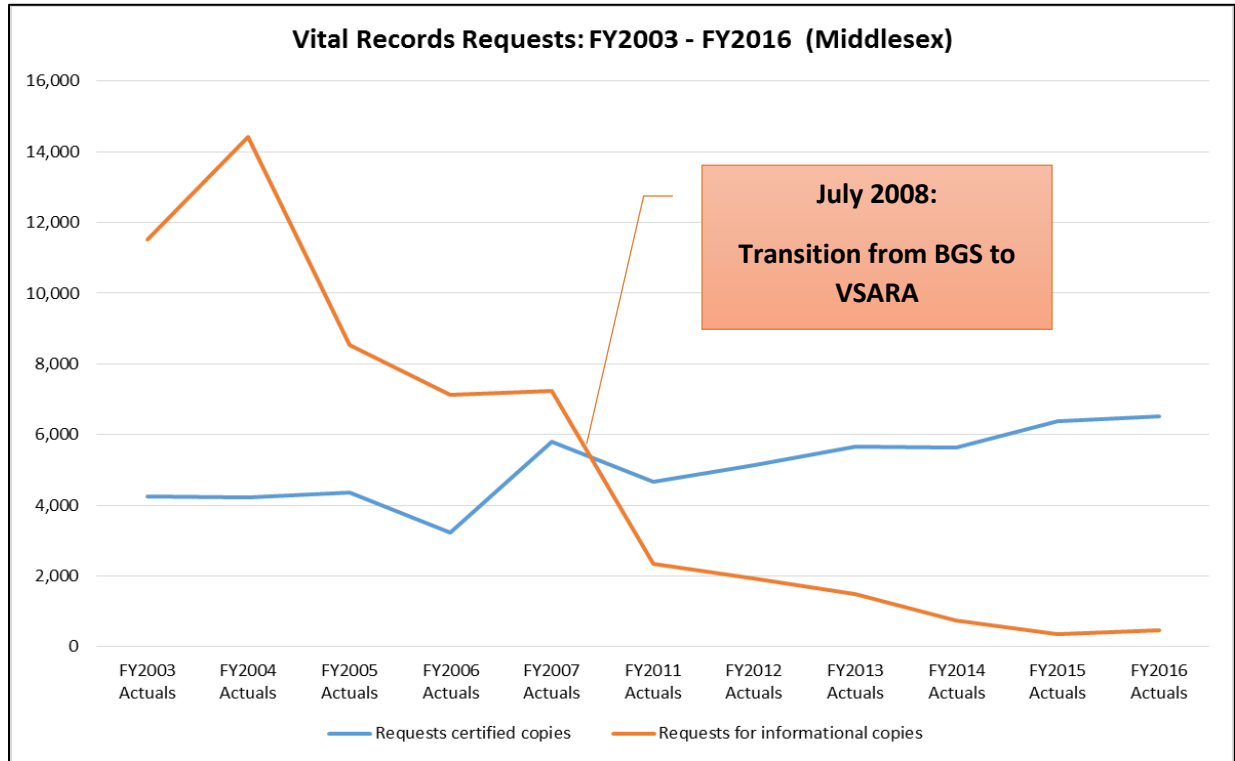


Under this bill, however, it appears that requests for both certified and informational copies will require additional administrative steps to process the applications. Furthermore, the self-service access for informational copies, whether through our reference or elsewhere, will no longer occur. If that is the case, the impact on VSARA would be significant and negative. Moreover, if

¹ Measured by research visit rather than individual records

² Measured by individual record page views per calendar vs. fiscal year. This number only reflects records accessed through Ancestry.com as FamilySearch.org does not provided statistical data that can be used for this measure.

we look at the volume of informational requests received today in comparison to requests in 2008 or even earlier, it is clear to see that we will be overwhelmed.



The number of staff hours spent on providing informational requests was reduced from 400+ hours a year in FY2011 to the just 58 hours a year it takes now.

I strongly feel that if this bill will result in changes that require VSARA to hire additional staff and resources and devote more time to vital records requests, it is time for the Secretary of State's Office and VSARA to bow out of serving as VDH's agent. There is nothing preventing VDH from managing its own function with its own tools and resources. Further, if town clerks are able to provide informational and certified copies of vital records for events that occurred throughout the state, and not just their own jurisdiction, Vermonters will have greater access – whether for certified copies or informational copies, provided that the concerns I have on continued public inspection and copying are thoughtfully addressed.