

Hall of the House of Representatives
84th General Assembly - Regular Session, 2003
Amendment Form

Subtitle of House Bill No. 2681

"AN ACT TO ENSURE THAT PUBLIC RECORDS ARE RETAINED FOR PUBLIC ACCESS
UNDER THE FREEDOM OF INFORMATION ACT."

Amendment No. 1 to House Bill No. 2681.

Amend House Bill No. 2681 as originally introduced:

Page 1, delete lines 21 through 36 and insert the following:

"SECTION 1. (a) The General Assembly has determined that while the Arkansas Freedom of Information Act of 1967 provides disclosure guarantees for public records, and due to the 2001 Act to Repeal the Arkansas State Records Management and Archives Act of 1995, there is no general requirements for agencies to preserve the records.

(b) Therefore, there is a need for a general records retention policy that would indicate retention periods for public records that are common in most state agencies.

(c) The need has become more apparent with the widespread use of electronic records.

SECTION 2. This act shall not apply to city, county, or local governmental entities.

SECTION 3. Definitions.

(a)(1) "Public records" means writings, recorded sounds, films, tapes, electronic or computer-based information, or data compilations in any medium, required by law to be kept or otherwise kept, and which constitute a record of the performance or lack of performance of official functions that are or should be, carried out by state agencies.

(2) All records maintained in agency offices or by agency employees within the scope of their employment shall be presumed to be public records;

(b) "State agencies" means all state departments, boards, and commissions, but does not include the elected constitutional officers and their staffs, the General Assembly and its committees and staffs, the Supreme Court and the Administrative Office of the Courts, and public institutions of higher education with respect to academic, research, healthcare, and existing information and technology applications and underlying support; and

(c)(1) "Transitory" means records that are not received or created in the course of state business including, but not limited to:



(A) Personal messages, publications, promotional material from vendors, and similar materials that are publicly available to anyone;
(B) Unsolicited promotional material; and
(C) Other electronic mail, voice mail, telephone messages, and other records that have no administrative value.

(2) This definition shall expire on July 1, 2004 or on the date the retention regulations are finalized, if earlier.

SECTION 4. Retention Requirement.

(a) The Office of the Executive Chief Information Officer shall develop regulations and guidelines governing electronic records and the management and retention of public records for promulgation and submit the regulations to the Chairs of the House and Senate Interim Committees on State Agencies and Governmental Affairs no later than July 1, 2004.

(b)(1) Before July 1, 2004, the office of the Executive Chief Information Officer, in consultation with the head of each state agency shall develop a retention schedule for public records in any medium, including electronic records, preserving public records of more than transitory value at least until such time as the Chief Information Officer's regulations are finalized.

(2) After the Executive Chief Information Officer's regulations are finalized, each agency shall comply with the regulations.

(c) The scope of the regulations shall be limited to the state's public records that are found and are common in most state agencies.

(d) The record retention regulation would be used to advise agencies in creating and updating their own retention schedules.

(e) In developing the regulations, consideration shall be given to the benefits of retention or disposal and compare them to costs and risks to arrive at a reasonable business decision regarding record retention periods.

(f) Federal or state retention or disclosure statutes or regulations override this general retention regulation.

SECTION 5. Agency discretion.

Until the Executive Chief Information Officer's regulations are finalized, agencies shall have discretion as to how to preserve electronic public records, whether they are downloaded to CD ROM, diskette, hard disk, tape, optical disks, magnetic tape, paper or some other medium, or published to the Internet, provided the method chosen enables the agency to adequately respond to requests from the public.

SECTION 6. Process.

(a) The Office of the Executive Chief Information Officer will follow its established internal process framework for which all state agencies are able to participate in the formation of policies, standards, specifications, and guidelines for information technology in the state.

(b) After the regulation is complete, it will enter the notice and comment rulemaking process set out in the Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

(c) In developing its regulations, the Office of the Executive Chief Information Officer shall consult with representatives of media, the Legislative Council, and other state agencies.

SECTION 7. Contingencies.

If the General Assembly transfers the Office of the Executive Chief Information Officer's obligations to develop records retention regulations to any other person or entity, then state agencies shall retain public records of more than transitory value until that person or entity promulgates regulations.

SECTION 8. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that there is not a general requirement that agencies retain public records; that some agencies are not preserving electronic records; and that this act is immediately necessary to preserve public records that could be lost permanently without this act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

AND

Page 2, delete lines 1 through 36

AND

Page 3, delete lines 1 through 33

The Amendment was read
By: Representative Mahony
MTB/JGR - 040320031558
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Chief Clerk