

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

A Bill

HOUSE BILL 2681

5 By: Representative Mahony
6
7

For An Act To Be Entitled

8
9 AN ACT TO ENSURE THAT PUBLIC RECORDS ARE RETAINED
10 FOR PUBLIC ACCESS UNDER THE FREEDOM OF
11 INFORMATION ACT; AND FOR OTHER PURPOSES.
12

Subtitle

13
14 AN ACT TO ENSURE THAT PUBLIC RECORDS ARE
15 RETAINED FOR PUBLIC ACCESS UNDER THE
16 FREEDOM OF INFORMATION ACT.
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. The General Assembly has determined that:

22 (1) There is a major gap in the Freedom of Information Act of 1967, in
23 that while the law guarantees the public open access to public records, there
24 is no general requirement for state agencies to preserve the records;

25 (2) This problem has become acute with the widespread use of
26 electronic records;

27 (3) Electronic messages are increasingly:

28 (A) Getting longer and contain more information;

29 (B) Being used to debate important agency decisions; and

30 (C) Being used by state agencies for official business.

31 (4) State agencies have an obligation to make employees aware that
32 electronic records, like paper records, are to be retained and destroyed
33 according to established records management procedures.
34

35 SECTION 2. Definitions.

36 (a) "Public records" shall have the same meaning as defined in the



1 Freedom of Information Act of 1967, §§ 25-19-103(5) and 25-19-105;

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

8 (c) "Transitory" means e-mail or other electronic records that are not
9 received or created in the course of state business, including but not
10 limited to:

11 (1) Personal messages, publications, promotional material from
12 vendors, and similar materials that are publicly available to anyone;

13 (2) Unsolicited promotional material;

14 (3) Files copied or downloaded from internet sites; and

15 (4) Other electronic mail, voice mail, telephone messages, and
16 other records that have short-lived or no administrative value.

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18 SECTION 3. Retention Requirement.

19 (a) The Chief Information Officer shall develop regulations and
20 guidelines governing electronic records and the management and retention of
21 public records for promulgation and submitted the regulations to the Chairs
22 of the House and Senate Interim Committees State Agencies and Governmental
23 Affairs Committee no later than July 1, 2004.

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

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32 SECTION 4. Agency discretion.

33 (a) Until the Chief Information Officer's regulations are finalized,
34 agencies shall have discretion as to how to preserve electronic public
35 records, whether they are downloaded to CD rom, diskette, hard disk, tape,
36 optical disks, magnetic tape, paper or some other medium, or published to the

1 internet, provided the method chosen enables the agency to adequately respond
 2 to requests from the public under the Freedom of Information Act of 1967.

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 4 SECTION 5. Minimum retention schedule.

5 In developing its regulations, the Chief Information Officer shall
 6 consult with representatives of media, the Legislative Council, and other
 7 state agencies.

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 9 SECTION 6. Contingencies.

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

14 (b) If regulations are not finalized by July 1, 2004, state agencies
 15 shall preserve all records of more than transitory value for a minimum of
 16 five years.

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 18 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the
 19 General Assembly of the State of Arkansas that a loophole exists in the
 20 Arkansas Freedom of Information Act in that there is not a general
 21 requirement that agencies retain public records; that some agencies are not
 22 preserving electronic records; and that this act is immediately necessary to
 23 eliminate the loophole that currently exists and to preserve public records
 24 that could be lost permanently without this act. Therefore, an emergency is
 25 declared to exist and this act being immediately necessary for the
 26 preservation of the public peace, health, and safety shall become effective
 27 on:

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

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

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