

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

As Engrossed: H4/7/03
A Bill

HOUSE BILL 2681

5 By: Representative Mahony
6
7

8 **For An Act To Be Entitled**

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

13 **Subtitle**

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

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

29 (c) The need has become more apparent with the widespread use of
30 electronic records.
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32 SECTION 2. This act shall not apply to city, county, or local
33 governmental entities.
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35 SECTION 3. Definitions.

36 (a)(1) "Public records" means writings, recorded sounds, films, tapes,



1 electronic or computer-based information, or data compilations in any medium,
2 required by law to be kept or otherwise kept, and which constitute a record
3 of the performance or lack of performance of official functions that are or
4 should be, carried out by state agencies.

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

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

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

16 (A) Personal messages, publications, promotional material
17 from vendors, and similar materials that are publicly available to anyone;

18 (B) Unsolicited promotional material; and

19 (C) Other electronic mail, voice mail, telephone messages,
20 and other records that have no administrative value.

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

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24 SECTION 4. Retention Requirement.

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

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

36 (2) After the Executive Chief Information Officer's regulations

1 are finalized, each agency shall comply with the regulations.

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

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

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

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

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12 SECTION 5. Agency discretion.

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

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20 SECTION 6. Process.

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

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

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

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32 SECTION 7. Contingencies.

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

