

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 86th General Assembly
3 Regular Session, 2007
4

A Bill

HOUSE BILL 2419

5 By: Representative L. Smith
6
7

For An Act To Be Entitled

9 AN ACT CONCERNING THE PRESERVATION OF PUBLIC
10 RECORDS IN THE STATE OF ARKANSAS; AND FOR OTHER
11 PURPOSES.
12

Subtitle

14 AN ACT CONCERNING THE PRESERVATION OF
15 PUBLIC RECORDS IN THE STATE OF ARKANSAS.
16
17

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

20 SECTION 1. Arkansas Code Title 13, Chapter 4 is amended to add an
21 additional subchapter to read as follows:
22

23 13-4-101. Short title.

24 This subchapter shall be known and may be cited as the "Arkansas State
25 Records Management and Archives Act of 2007".
26

27 13-4-102. Purpose.

28 The purpose of this subchapter is to:

29 (1) Establish methods and procedures for the designation and
30 classification of agency records and archives;

31 (2) Provide for the permanent preservation in the archives of
32 this state of those agency records having permanent informational or
33 evidential value for administrative, legal, fiscal, or historical purposes;

34 (3) Provide for the systematic and efficient management and
35 safekeeping of the agency records and archives in the offices of the several
36 state agencies, in records storage centers, and in other places designated by



1 the appropriate officials;

2 (4) Assist state agencies in classifying, maintaining, storing,
 3 and preserving agency records and documents;

4 (5) Establish an orderly procedure to relieve agency officials
 5 of duties and responsibilities for the preservation and storage of agency
 6 records that have significant public value, yet no longer serve any useful
 7 purpose in the office in which originally preserved;

8 (6) Provide for the lawful disposition of noncurrent agency
 9 records having negligible permanent informational or evidential value for
 10 administrative, legal, fiscal, or historical purposes;

11 (7) Prohibit the estrangement, expropriation, alienation,
 12 secretion, or premature destruction of agency records and archives; and

13 (8) Provide for the recovery of agency records and archives as
 14 may have been or may be unlawfully estranged, expropriated, alienated, or
 15 secreted.

16
 17 13-4-103. Definitions.

18 As used in this subchapter:

19 (1) "Agency official" means the head or principal official of
 20 any agency, either elected or appointed, who is the custodian of all agency
 21 records and is accountable for the management and safekeeping of agency
 22 records;

23 (2) "Agency records" means public records commonly found in most
 24 state agencies;

25 (3) "Archives" means those agency records that have permanent
 26 informational or evidential value for administrative, legal, fiscal, or
 27 historical purposes for preservation in the state archives;

28 (4)(A) "Current agency records" means those agency records
 29 needed to conduct current agency business.

30 (B) Agency records shall be immediately accessible and
 31 appropriately maintained;

32 (5) "Noncurrent agency records" means those agency records no
 33 longer needed by the agency and that are retained or disposed of under
 34 retention schedules;

35 (6) "Public records" means the same as defined in § 25-19-
 36 103(5)(A);

1 (7) "Records center" means a centralized area established and
 2 maintained by the Arkansas History Commission for housing and servicing
 3 semicurrent and noncurrent agency records whose reference rate or volume does
 4 not warrant their retention in office space or equipment;

5 (8) "Records officer" means the person who is responsible for
 6 the overall implementation of the records management activities in his or her
 7 agency;

8 (9) "Retention schedule" means a listing of agency records
 9 specifying the length of time each type of agency record is to be maintained
 10 in an office area or a records center and when such records shall be
 11 transferred to the state archives or disposed of. The retention schedule may
 12 also specify the method of disposition;

13 (10) "Semicurrent records" means those agency records no longer
 14 needed in agency office space to conduct current business and that are
 15 retained under retention schedules in records centers;

16 (11)(A) "State agency" means a state department, board, or
 17 commission.

18 (B) "State agency" does not include:

19 (i) The elected constitutional officers and their
 20 staffs;

21 (ii) The General Assembly and its committees and
 22 staffs;

23 (iii) The Arkansas Supreme Court;

24 (iv) The Court of Appeals;

25 (v) The Administrative Office of the Courts; and

26 (vi) Public institutions of higher education with
 27 respect to academic research, health care, and existing information and
 28 technology applications and underlying support; and

29 (12) "State Historian" means the State Historian selected by the
 30 Arkansas History Commission.

31
 32 13-4-104. Title to agency records.

33 (a) Agency records are declared to be the property of the people of
 34 this state, and they shall not be stolen, expropriated, alienated, secreted,
 35 nor destroyed except as provided in this subchapter.

36 (b) Agency records shall be preserved, stored, transferred, destroyed,

1 or otherwise disposed of only in accordance with the provisions of this
 2 subchapter.

3 (c)(1) Title to all current, semicurrent, and noncurrent agency
 4 records in the physical possession of an agency or those stored in a records
 5 center maintained by the state shall be vested in the agency.

6 (2) Title to all archives in the physical possession of the
 7 Arkansas History Commission shall be vested in the Arkansas History
 8 Commission.

9 (d)(1) Nothing in this subchapter shall be construed as in
 10 contravention of or in conflict with, nor as broadening or expanding,
 11 existing or subsequently enacted laws guaranteeing to the people of this
 12 state the rights of freedom of information or of public access to the records
 13 of the state.

14 (2) No current, semicurrent, or noncurrent agency records in the
 15 custody of any agency or in the state archives shall be designated,
 16 classified, regarded, or treated as confidential or as closed to public
 17 access, except in accordance with law.

18 (e) All agency records which by the laws of this state are declared to
 19 be confidential or restricted to specified use only shall not be open to the
 20 public except in the manner provided by law.

21

22 13-4-105. State Records Commission created.

23 (a) There is created a State Records Commission to be composed of the
 24 following members:

25 (1) The Governor or his or her designee;

26 (2) The Secretary of State or his or her designee;

27 (3) The Attorney General or his or her designee;

28 (4) The Commissioner of State Lands or his or her designee;

29 (5) The Chief Justice of the Arkansas Supreme Court or his or
 30 her designee;

31 (6) The Director of the Department of Finance and Administration
 32 or his or her designee;

33 (7) The Director of the Department of Arkansas Heritage or his
 34 or her designee;

35 (8) The State Historian or his or her designee;

36 (9) The President of the Arkansas Historical Association or his

1 or her designee; and

2 (10) One (1) member of the general public who shall be appointed
3 by and serve at the pleasure of the Governor.

4 (b)(1) The State Historian shall chair the State Records Commission.

5 (2) The State Records Commission shall meet at least one (1)
6 time every three (3) months but may meet more often at the call of the chair.

7 (3) The State Records Commission shall establish rules and
8 procedures for the conduct of its business.

9 (4) Members of the State Records Commission shall serve without
10 compensation but may receive expense reimbursement in accordance with § 25-
11 16-901 et seq.

12 (c)(1) The State Records Commission shall promulgate rules to
13 establish standards for the State Records Management and Archives Program.

14 (2) The areas in which standards shall be developed shall
15 include, but are not limited to, retention schedules for the control,
16 preservation, protection, retention, and disposition of agency records.

17 (3) In developing retention schedules, the State Records
18 Commission shall determine from the State Historian which noncurrent agency
19 records are of archival value. Such agency records shall be transferred to
20 the Arkansas History Commission.

21
22 13-4-106. State Records Management and Archives Program created.

23 (a) There is established within the Department of Parks and Tourism a
24 State Records Management and Archives Program to be administered by the
25 Arkansas History Commission and the State Historian, under the general
26 direction and supervision of the Director of the Department of Parks and
27 Tourism.

28 (b)(1) It shall be the duty of the State Historian to administer the
29 State Records Management Program in accordance with this chapter.

30 (2) The State Records Management and Archives Program shall:

31 (A) Include a designation by the State Records Commission
32 of those agency records which are to be maintained and preserved by agency
33 officials; and

34 (B) May include the designation of agency records centers
35 as shall be required from time to time for the storage of semicurrent and
36 noncurrent agency records of the agencies when the agency records have been

1 scheduled for retention and disposal in the manner provided for in this
 2 section.

3
 4 13-4-107. State Historian.

5 (a) The State Historian shall administer the state archives.

6 (b) The State Historian shall designate those noncurrent agency
 7 records which shall be retained in the state archives.

8
 9 13-4-108. Agency records.

10 (a) Each agency official shall develop and implement an efficient and
 11 economical program for the management of agency records which shall be
 12 developed and implemented in accordance with uniform standards and principles
 13 set forth by the State Records Commission.

14 (b) The agency official shall schedule, in cooperation with the State
 15 Historian, in accordance with the procedures prescribed by the State Records
 16 Commission, the retention and ultimate disposition of agency records under
 17 this subchapter.

18 (c) The State Historian shall consult with agency officials in
 19 developing proposed retention schedules for submission to the State Records
 20 Commission.

21
 22 13-4-109. Agency records disposition.

23 (a)(1) At the expiration of their retention periods as provided in
 24 retention schedules, or as soon thereafter as shall be practicable, agency
 25 records designated by the State Historian as archives shall be transferred to
 26 the physical possession of the Arkansas History Commission.

27 (2) A list of agency records so transferred, together with a
 28 statement certifying transference signed by the agency official and the State
 29 Historian, shall be preserved in the office of the agency and the office of
 30 the State Historian.

31 (b)(1) All agency records not designated as archives shall be
 32 destroyed or otherwise disposed of in accordance with the retention
 33 schedules.

34 (2) A list of agency records so destroyed or disposed of,
 35 together with a statement certifying destruction or disposition signed by the
 36 agency official, shall be preserved in the office of the agency.

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13-4-110. Retention of agency records.

The retention of a record pursuant to this subchapter and the retention schedules promulgated by the State Records Commission shall not mean that the record is required by law to be kept pursuant to the Freedom of Information Act of 1967, § 25-19-101 et seq.

13-4-111. Enforcement and recovery.

(a)(1) In the event any record belonging to an agency is stolen, expropriated, alienated, or secreted in an unlawful manner, the agency official shall take appropriate action in a court of competent jurisdiction to recover the agency records.

(2) The Attorney General shall assist agency officials of state agencies in bringing legal actions required to recover as may be required for the recovery the agency records.

(b)(1) In the event any agency record is prematurely destroyed or lost and is not recovered, the agency official shall prepare, if possible, a duplicate copy of the record, to be certified by the agency official and restored to the agency records.

(2) In the event the agency official is not able to certify all facts pertinent to the record, he or she shall certify the identity of the lost record and shall certify to such facts as may be determined by him or her or employees of the agency and shall maintain the same in the agency record files.

13-4-112. Penalties.

(a)(1) It is unlawful for any person knowingly to steal, expropriate, alienate, secrete, or prematurely destroy agency records.

(2) It is unlawful for any public official knowingly to fail to maintain or preserve or to destroy any record of an agency except in the manner and in accordance with the retention schedules promulgated under this subchapter.

(b) A violation of this section is a Class A misdemeanor.

SECTION 2. Arkansas Code § 25-33-104(a), concerning the duties of the Executive Chief Information Officer, is amended to read as follows:

1 (a) The Executive Chief Information Officer shall:

2 (1) Utilize any personnel and resources of the Department of
 3 Information Systems as deemed necessary with the consent of the Governor,
 4 including, but not limited to, the functions currently performed by the
 5 Office of Information Technology;

6 (2)(A) Direct the formulation of promulgation of policies,
 7 standards, specifications, and guidelines for information technology in the
 8 state, including, but not limited to, those required to support state and
 9 local government exchange in a secure environment for the acquisition,
 10 storage, use, sharing, and distribution of core infrastructure components as
 11 defined by the State of Arkansas shared technical architecture.

12 (B) The areas in which standards, policies, and guidelines
 13 shall be developed shall include, but are not limited to, retention schedules
 14 for control, preservation, protection, and disposition of the electronic
 15 records of agencies;

16 (3) Develop a process for how all state agencies shall have
 17 input into the formation of these policies, standards, specifications, and
 18 guidelines and present the plan to the Governor and the General Assembly;

19 (4) If deemed necessary and appropriate, establish working
 20 groups to assist in the formulation of policies, standards, specifications,
 21 and guidelines and assure that all agencies have the opportunity to review
 22 and comment;

23 (5) Oversee the development of legislation and rules and
 24 regulations affecting electronic records management and retention, privacy,
 25 security, and related issues;

26 (6) Create a state security office to monitor information
 27 resource security issues, coordinate all security measures which could be
 28 used to protect resources by more than one (1) governmental entity, and act
 29 as an information technology resource to other state agencies;

30 (7) Oversee the development of information technology security
 31 policy for state agencies;

32 (8) In consultation with the CIO Council, direct the development
 33 of policies and procedures which state agencies shall follow in developing
 34 information technology plans and technology-related budgets and technology
 35 project justification;

36 (9) Establish criteria for enterprise projects and review

1 enterprise project plans and budget requests and recommend priorities to the
2 council;

3 (10)(A) Develop plans and implementation strategies to
4 promulgate state-level missions, goals, and objectives for the use of
5 information technology, with the review and advice of the council.

6 (B) These plans and strategies shall include, but not be
7 limited to:

8 (i) Business case development for information
9 technology applications;

10 (ii) Maximizing state purchasing power;

11 (iii) Increasing collaborative efforts for projects
12 of mutual interest; and

13 (iv) Creating opportunities to develop public and
14 private partnerships;

15 (11) Review procurements to ensure conformity with information
16 policies and standards and state-level plans and implementation strategies;

17 (12) Advise state agencies in acquiring information technology
18 service, as well as advise state agencies on information technology contracts
19 and agreements;

20 (13) Make a quarterly report to the Joint Committee on Advanced
21 Communications and Information Technology regarding the status of information
22 technology deployment to meet the goals set forth in this enabling
23 legislation;

24 (14) Solicit, receive, and administer funds from public and
25 private entities to be used for the purchase of information technology
26 resources; and

27 (15) Report to the committee and the Governor the total business
28 analysis prepared for information technology projects; ~~and~~

29 ~~(16) Develop and promulgate rules and guidelines governing the~~
30 ~~retention and management of public records commonly found in most state~~
31 ~~agencies.~~

32

33 SECTION 3. Arkansas Code § 25-18-603 is amended to read as follows:
34 25-18-603. Definitions.

35 As used in this subchapter:

36 ~~(1) "CIO Council" means the same as defined in § 25-33-102;~~

1 ~~(2) "Executive Chief Information Officer" means the Executive~~
2 ~~Chief Information Officer of the state appointed under § 25-33-103;~~

3 ~~(3)(1)~~ "Public records" means the same as defined in § 25-19-
4 103(5)(A); and

5 ~~(4)(2)(A)~~ "State agencies" means all state departments, boards,
6 and commissions.

7 (B) "State agencies" does not include:

8 (i) The elected constitutional officers and their
9 staffs;

10 (ii) The General Assembly and its committees and
11 staffs;

12 (iii) The Arkansas Supreme Court;

13 (iv) The Court of Appeals;

14 (v) The Administrative Office of the Courts; and

15 (vi) Public institutions of higher education with
16 respect to academic, research, health care, and existing information and
17 technology applications and underlying support.

18
19 SECTION 4. Arkansas Code § 25-18-604 is amended to read as follows:
20 25-18-604. Retention requirement.

21 ~~(a)(1)~~ The ~~Executive Chief Information Officer~~ State Records
22 Commission shall direct the development of rules and guidelines for the
23 retention of public records commonly found in most state agencies.

24 ~~(2) The CIO Council shall provide review and advice on the rules~~
25 ~~and guidelines developed pursuant to subdivision (a)(1) of this section.~~

26 ~~(b) Before January 1, 2006, the Executive Chief Information Officer~~
27 ~~shall promulgate pursuant to the Arkansas Administrative Procedure Act, § 25-~~
28 ~~15-201 et seq., rules and guidelines governing the retention and management~~
29 ~~of public records commonly found in most state agencies, including, but not~~
30 ~~limited to, electronic records.~~

31 ~~(e)(b)~~ Each state agency shall comply with the rules and guidelines
32 promulgated under this subchapter upon the earlier of:

33 (1) July 1, 2007; or

34 (2) The line-item appropriation to the agency in question of
35 funds to comply with this subchapter.

36 (c) The ~~Executive Chief Information Officer~~ State Records Commission

1 shall make periodic updates to the rules governing the retention and
2 management of public records commonly found in most state agencies pursuant
3 to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201
4 et seq.

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