

Union Calendar No. 237

111TH CONGRESS
2^D SESSION

H. R. 1387

[Report No. 111-406]

To amend title 44, United States Code, to require preservation of certain electronic records by Federal agencies, to require a certification and reports relating to Presidential records, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2009

Mr. HODES (for himself, Mr. TOWNS, and Mr. CLAY) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

JANUARY 27, 2010

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Insert the part printed in italic]

A BILL

To amend title 44, United States Code, to require preservation of certain electronic records by Federal agencies, to require a certification and reports relating to Presidential records, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Electronic Message
3 Preservation Act”.

4 **SEC. 2. PRESERVATION OF ELECTRONIC MESSAGES.**

5 (a) REQUIREMENT FOR PRESERVATION OF ELEC-
6 TRONIC MESSAGES.—

7 (1) IN GENERAL.—Chapter 29 of title 44,
8 United States Code, is amended by adding at the
9 end the following new section:

10 **“§ 2911. Electronic messages**

11 “(a) REGULATIONS REQUIRED.—

12 “Not later than 18 months after the date of the
13 enactment of this section, the Archivist shall promul-
14 gate regulations governing agency preservation of
15 electronic messages that are records. Such regula-
16 tions shall, at a minimum—

17 “(1) require the electronic capture, manage-
18 ment, and preservation of such electronic records in
19 accordance with the records disposition requirements
20 of chapter 33 of this title;

21 “(2) require that such electronic records are
22 readily accessible for retrieval through electronic
23 searches;

24 “(3) establish mandatory minimum functional
25 requirements for electronic records management sys-

1 tems to ensure compliance with the requirements in
2 paragraphs (1) and (2);

3 “(4) establish a process to certify that Federal
4 agencies’ electronic records management systems
5 meet the functional requirements established under
6 paragraph (3); and

7 “(5) include timelines for agency compliance
8 with the regulations that ensure compliance as expe-
9 ditiously as practicable but not later than four years
10 after the date of the enactment of this section.

11 “(b) COVERAGE OF OTHER ELECTRONIC
12 RECORDS.—To the extent practicable, the regulations pro-
13 mulgated under subsection (a) shall also include require-
14 ments for the capture, management, and preservation of
15 other electronic records.

16 “(c) COMPLIANCE BY FEDERAL AGENCIES.—Each
17 Federal agency shall comply with the regulations promul-
18 gated under subsection (a).

19 “(d) REVIEW OF REGULATIONS REQUIRED.—The
20 Archivist shall periodically review and, as necessary,
21 amend the regulations promulgated under this section.

22 “(e) REPORTS ON IMPLEMENTATION OF REGULA-
23 TIONS.—

24 “(1) AGENCY REPORT TO ARCHIVIST.—Not
25 later than four years after the date of the enactment

1 of this section, the head of each Federal agency shall
2 submit to the Archivist a report on the agency's
3 compliance with the regulations promulgated under
4 this section.

5 “(2) ARCHIVIST REPORT TO CONGRESS.—Not
6 later than 90 days after receipt of all reports re-
7 quired by paragraph (1), the Archivist shall submit
8 to the Committee on Homeland Security and Gov-
9 ernmental Affairs of the Senate and the Committee
10 on Oversight and Government Reform of the House
11 of Representatives a report on Federal agency com-
12 pliance with the regulations promulgated under this
13 section.”.

14 (2) CLERICAL AMENDMENT.—The table of sec-
15 tions for chapter 29 of title 44, United States Code,
16 is amended by adding after the item relating to sec-
17 tion 2910 the following new item:

“2911. Electronic messages.”.

18 (b) DEFINITIONS.—Section 2901 of title 44, United
19 States Code, is amended—

20 (1) by striking “and” at the end of paragraph
21 (14);

22 (2) by striking the period at the end of para-
23 graph (15) and inserting a semicolon; and

24 (3) by adding at the end the following new
25 paragraphs:

1 “(16) the term ‘electronic messages’ means
2 electronic mail and other electronic messaging sys-
3 tems that are used for purposes of communicating
4 between individuals; and

5 “(17) the term ‘electronic records management
6 system’ means a software system designed to man-
7 age electronic records within an information tech-
8 nology system, including by—

9 “(A) categorizing and locating records;

10 “(B) ensuring that records are retained as
11 long as necessary;

12 “(C) identifying records that are due for
13 disposition; and

14 “(D) the storage, retrieval, and disposition
15 of records.”.

16 **SEC. 3. PRESIDENTIAL RECORDS.**

17 (a) **ADDITIONAL REGULATIONS RELATING TO PRESI-**
18 **DENTIAL RECORDS.—**

19 (1) **IN GENERAL.—**Section 2206 of title 44,
20 United States Code, is amended—

21 (A) by striking “and” at the end of para-
22 graph (3);

23 (B) by striking the period at the end of
24 paragraph (4) and inserting “; and”; and

25 (C) by adding at the end the following:

1 “(5) provisions for establishing standards nec-
2 essary for the economical and efficient management
3 of Presidential records during the President’s term
4 of office, including—

5 “(A) records management controls nec-
6 essary for the capture, management, and pres-
7 ervation of electronic messages;

8 “(B) records management controls nec-
9 essary to ensure that electronic messages are
10 readily accessible for retrieval through elec-
11 tronic searches; and

12 “(C) a process to certify the electronic
13 records management system to be used by the
14 President for the purposes of complying with
15 the requirements in subparagraphs (A) and
16 (B).”.

17 (2) DEFINITION.—Section 2201 of title 44,
18 United States Code, is amended by adding at the
19 end the following new paragraphs:

20 “(5) The term ‘electronic messages’ has the
21 meaning provided in section 2901(16) of this title.

22 “(6) The term ‘electronic records management
23 system’ has the meaning provided in section
24 2901(17) of this title.”.

1 (b) CERTIFICATION OF PRESIDENT’S MANAGEMENT
2 OF PRESIDENTIAL RECORDS.—

3 (1) CERTIFICATION REQUIRED.—Chapter 22 of
4 title 44, United States Code, is amended by adding
5 at the end the following new section:

6 **“§ 2208. Certification of the President’s management**
7 **of Presidential records**

8 “(a) ANNUAL CERTIFICATION.—The Archivist shall
9 annually certify whether the records management controls
10 established by the President meet requirements under sec-
11 tions 2203(a) and 2206(5) of this title.

12 “(b) REPORT TO CONGRESS.—The Archivist shall re-
13 port annually to the Committee on Homeland Security and
14 Governmental Affairs of the Senate and the Committee
15 on Oversight and Government Reform of the House of
16 Representatives on the status of the certification.”.

17 (2) CLERICAL AMENDMENT.—The table of sec-
18 tions for chapter 22 of title 44, United States Code,
19 is amended by adding at the end the following new
20 item:

“2208. Certification of the President’s management of Presidential records.”.

21 (c) REPORT TO CONGRESS.—Section 2203(f) of title
22 44, United States Code, is amended by adding at the end
23 the following:

24 “(4) One year following the conclusion of a Presi-
25 dent’s term of office, or if a President serves consecutive

1 terms one year following the conclusion of the last term,
2 the Archivist shall submit to the Committee on Homeland
3 Security and Governmental Affairs of the Senate and the
4 Committee on Oversight and Government Reform of the
5 House of Representatives a report on—

6 “(A) the volume and format of Presidential
7 records deposited into that President’s Presidential
8 archival depository; and

9 “(B) whether the records management controls
10 of that President met the requirements under sec-
11 tions 2203(a) and 2206(5) of this title.”.

12 (d) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect one year after the date of
14 the enactment of this Act.

15 **SEC. 4. PROCEDURES TO PREVENT UNAUTHORIZED RE-**
16 **MOVAL OF CLASSIFIED RECORDS FROM NA-**
17 **TIONAL ARCHIVES.**

18 (a) *IN GENERAL.*—*The Archivist of the United States*
19 *shall prescribe internal procedures to prevent the unauthor-*
20 *ized removal of classified records from the National Ar-*
21 *chives and Records Administration or the destruction or*
22 *damage of such records, including when such records are*
23 *accessed or searched electronically. The procedures shall in-*
24 *clude the following prohibitions:*

1 (1) *No person, other than personnel of the Na-*
2 *tional Archives and Records Administration (in this*
3 *section hereafter referred to as “NARA personnel”),*
4 *shall view classified records in any room that is not*
5 *secure except in the presence of NARA personnel or*
6 *under video surveillance.*

7 (2) *No person, other than NARA personnel, shall*
8 *at any time be left alone with classified records, un-*
9 *less that person is under video surveillance.*

10 (3) *No person, other than NARA personnel, shall*
11 *conduct any review of documents while in the posses-*
12 *sion of any cell phone or other personal communica-*
13 *tion device.*

14 (4) *All persons seeking access to classified*
15 *records, as a precondition to such access, must con-*
16 *sent to a search of their belongings upon conclusion*
17 *of their records review.*

18 (5) *All notes and other writings prepared by per-*
19 *sons during the course of a review of classified records*
20 *shall be retained by the National Archives and*
21 *Records Administration in a secure facility.*

22 (b) *DEFINITION OF RECORDS.—In this section, the*
23 *term “records” has the meaning provided in section 3301*
24 *of title 44, United States Code.*

1 **SEC. 5. RESTRICTIONS ON ACCESS TO PRESIDENTIAL**
2 **RECORDS.**

3 *Section 2204 of title 44, United States Code (relating*
4 *to restrictions on access to presidential records) is amended*
5 *by adding at the end the following new subsection:*

6 *“(f) The Archivist shall not make available any origi-*
7 *nal presidential records to any individual claiming access*
8 *to any presidential record as a designated representative*
9 *under section 2205(3) of this title if that individual has*
10 *been convicted of a crime relating to the review, retention,*
11 *removal, or destruction of records of the Archives.”.*

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