

# Union Calendar No. 450

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5811

[Report No. 110-709]

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.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 2008

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

JUNE 11, 2008

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

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on April 15, 2008]

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## 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 Pres-*  
3 *ervation 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, United*  
8 *States Code, is amended by adding at the end the fol-*  
9 *lowing new section:*

10 **“§2911. Electronic messages**

11       “(a) *REGULATIONS REQUIRED.—Not later than 18*  
12 *months after the date of the enactment of this section, the*  
13 *Archivist shall promulgate regulations governing agency*  
14 *preservation of electronic messages that are records. Such*  
15 *regulations shall, at a minimum—*

16           “(1) *require the electronic capture, management,*  
17 *and preservation of such electronic records in accord-*  
18 *ance with the records disposition requirements of*  
19 *chapter 33 of this title;*

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

23           “(3) *establish mandatory minimum functional*  
24 *requirements for electronic records management sys-*  
25 *tems to ensure compliance with the requirements in*  
26 *paragraphs (1) and (2);*

1           “(4) establish a process to certify that Federal  
2 agencies’ electronic records management systems meet  
3 the functional requirements established under para-  
4 graph (3); and

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

9           “(b) *COVERAGE OF OTHER ELECTRONIC RECORDS.*—  
10 To the extent practicable, the regulations promulgated  
11 under subsection (a) shall also include requirements for the  
12 capture, management, and preservation of other electronic  
13 records.

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

17           “(d) *REVIEW OF REGULATIONS REQUIRED.*—The Ar-  
18 chivist shall periodically review and, as necessary, amend  
19 the regulations promulgated under this section.

20           “(e) *REPORTS ON IMPLEMENTATION OF REGULA-*  
21 *TIONS.*—

22           “(1) *AGENCY REPORT TO ARCHIVIST.*—Not later  
23 than four years after the date of the enactment of this  
24 section, the head of each Federal agency shall submit

1       to the Archivist a report on the agency's compliance  
2       with the regulations promulgated under this section.

3           “(2) *ARCHIVIST REPORT TO CONGRESS.*—Not  
4       later than 90 days after receipt of all reports required  
5       by paragraph (1), the Archivist shall submit to the  
6       Committee on Homeland Security and Governmental  
7       Affairs of the Senate and the Committee on Oversight  
8       and Government Reform of the House of Representa-  
9       tives a report on Federal agency compliance with the  
10      regulations promulgated under this section.”.

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

      “2911. *Electronic messages.*”.

15           (b) *DEFINITIONS.*—Section 2901 of title 44, United  
16      States Code, is amended—

17           (1) by striking “and” at the end of paragraph  
18      (14);

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

21           (3) by adding at the end the following new para-  
22      graphs:

23           “(16) the term ‘electronic messages’ means elec-  
24      tronic mail and other electronic messaging systems

1 *that are used for purposes of communicating between*  
2 *individuals; and*

3 *“(17) the term ‘electronic records management*  
4 *system’ means a software system designed to manage*  
5 *electronic records within an information technology*  
6 *system, including by—*

7 *“(A) categorizing and locating records;*

8 *“(B) ensuring that records are retained as*  
9 *long as necessary;*

10 *“(C) identifying records that are due for*  
11 *disposition; and*

12 *“(D) the storage, retrieval, and disposition*  
13 *of records.”.*

14 **SEC. 3. PRESIDENTIAL RECORDS.**

15 *(a) ADDITIONAL REGULATIONS RELATING TO PRESI-*  
16 *DENTIAL RECORDS.—*

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

19 *(A) by striking “and” at the end of para-*  
20 *graph (3);*

21 *(B) by striking the period at the end of*  
22 *paragraph (4) and inserting “; and”; and*

23 *(C) by adding at the end the following:*

24 *“(5) provisions for establishing standards nec-*  
25 *essary for the economical and efficient management of*

1       *Presidential records during the President’s term of of-*  
2       *fice, including—*

3               “(A) records management controls necessary  
4               for the capture, management, and preservation  
5               of electronic messages;

6               “(B) records management controls necessary  
7               to ensure that electronic messages are readily ac-  
8               cessible for retrieval through electronic searches;  
9               and

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

14              (2) *DEFINITION.*—Section 2201 of title 44,  
15              United States Code, is amended by adding at the end  
16              the following new paragraphs:

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

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

22              (b) *CERTIFICATION OF PRESIDENT’S MANAGEMENT OF*  
23              *PRESIDENTIAL RECORDS.*—

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

4   **“§2208. Certification of the President’s management**  
5                 **of Presidential records**

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

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

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

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

19          (c) *REPORT TO CONGRESS.*—Section 2203(f) of title  
20          44, United States Code, is amended by adding at the end  
21          the following:

22          “(4) One year following the conclusion of a President’s  
23          term of office, or if a President serves consecutive terms one  
24          year following the conclusion of the last term, the Archivist  
25          shall submit to the Committee on Homeland Security and

1 *Governmental Affairs of the Senate and the Committee on*  
2 *Oversight and Government Reform of the House of Rep-*  
3 *resentatives a report on—*

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

7           “(B) *whether the records management controls of*  
8 *that President met the requirements under sections*  
9 *2203(a) and 2206(5) of this title.”.*

10       *(d) EFFECTIVE DATE.—The amendments made by this*  
11 *section shall take effect one year after the date of the enact-*  
12 *ment of this Act.*





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