

111TH CONGRESS
2^D SESSION

H. R. 1387

IN THE SENATE OF THE UNITED STATES

MARCH 18, 2010

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

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.—Not later than 18
12 months after the date of the enactment of this section,
13 the Archivist shall promulgate regulations governing agen-
14 cy preservation of electronic messages that are records.
15 Such regulations shall, at a minimum—

16 “(1) require the electronic capture, manage-
17 ment, and preservation of such electronic records in
18 accordance with the records disposition requirements
19 of 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
3 meet the functional requirements established under
4 paragraph (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
10 RECORDS.—To the extent practicable, the regulations pro-
11 mulgated under subsection (a) shall also include require-
12 ments for the capture, management, and preservation of
13 other electronic 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
18 Archivist shall periodically review and, as necessary,
19 amend the regulations promulgated under this section.

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

22 “(1) AGENCY REPORT TO ARCHIVIST.—Not
23 later than four years after the date of the enactment
24 of this section, the head of each Federal agency shall
25 submit to the Archivist a report on the agency’s

1 compliance with the regulations promulgated under
2 this section.

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

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

“2911. Electronic messages.”.

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

18 (1) by striking “and” at the end of paragraph
19 (14);

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

22 (3) by adding at the end the following new
23 paragraphs:

24 “(16) the term ‘electronic messages’ means
25 electronic mail and other electronic messaging sys-

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

3 “(17) the term ‘electronic records management
4 system’ means software designed to manage elec-
5 tronic records, including by—

6 “(A) categorizing and locating records;

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

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

11 “(D) ensuring the storage, retrieval, and
12 disposition of records.”.

13 **SEC. 3. PRESIDENTIAL RECORDS.**

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

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

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

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

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

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

1 of electronic Presidential records during the Presi-
2 dent's term of office, including—

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

6 “(B) records management controls nec-
7 essary to ensure that electronic messages are
8 readily accessible for retrieval through elec-
9 tronic searches; 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
13 the requirements in subparagraphs (A) and
14 (B).”.

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

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

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

23 (b) CERTIFICATION OF PRESIDENT'S MANAGEMENT
24 OF 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 electronic records manage-
8 ment controls established by the President meet require-
9 ments under sections 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
13 on Oversight and Government Reform of the House of
14 Representatives 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 Presi-
23 dent’s term of office, or if a President serves consecutive
24 terms one year following the conclusion of the last term,
25 the Archivist shall submit to the Committee on Homeland

1 Security and Governmental Affairs of the Senate and the
2 Committee on Oversight and Government Reform of the
3 House of Representatives a report on—

4 “(A) the volume and format of electronic Presi-
5 dential records deposited into that President’s Presi-
6 dential archival depository; and

7 “(B) whether the electronic records manage-
8 ment controls of that President met the require-
9 ments under sections 2203(a) and 2206(5) of this
10 title.”.

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

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

17 (a) **IN GENERAL.**—The Archivist of the United
18 States shall prescribe internal procedures to prevent the
19 unauthorized removal of classified records from the Na-
20 tional Archives and Records Administration or the de-
21 struction or damage of such records, including when such
22 records are accessed or searched electronically. The proce-
23 dures shall apply to all National Archives and Records Ad-
24 ministration facilities authorized to store classified records
25 and include the following prohibitions:

1 (1) No person, other than covered personnel,
2 shall view classified records in any room that is not
3 secure except in the presence of National Archives
4 and Records Administration personnel or under
5 video surveillance.

6 (2) No person, other than covered personnel,
7 shall at any time be left alone with classified
8 records, unless that person is under video surveil-
9 lance.

10 (3) No person, other than covered personnel,
11 shall conduct any review of classified records while
12 in the possession of any cell phone or other personal
13 communication device.

14 (4) All persons seeking access to review classi-
15 fied records, as a precondition to such access, must
16 consent to a search of their belongings upon conclu-
17 sion of their records review.

18 (5) All notes and other writings prepared by
19 persons other than covered personnel during the
20 course of a review of classified records shall be re-
21 tained by the National Archives and Records Admin-
22 istration in a secure facility until such notes and
23 other writings are determined to be unclassified, are
24 declassified, or are securely transferred to another
25 secure facility.

1 (b) DEFINITIONS.—In this section:

2 (1) The term “records” has the meaning pro-
3 vided in section 3301 of title 44, United States
4 Code.

5 (2) The term “covered personnel” means any
6 individual—

7 (A) who has an appropriate and necessary
8 reason for accessing classified records, as deter-
9 mined by the Archivist; and

10 (B) who is either—

11 (i) an officer or employee of the Fed-
12 eral Government with appropriate security
13 clearances; or

14 (ii) any personnel with appropriate se-
15 curity clearances of a Federal contractor
16 authorized in writing to act for purposes of
17 this section by an officer or employee of
18 the Federal Government.

19 **SEC. 5. RESTRICTIONS ON ACCESS TO PRESIDENTIAL**
20 **RECORDS.**

21 Section 2204 of title 44, United States Code (relating
22 to restrictions on access to presidential records) is amend-
23 ed by adding at the end the following new subsection:

24 “(f) The Archivist shall not make available any origi-
25 nal presidential records to any individual claiming access

1 to any presidential record as a designated representative
2 under section 2205(3) of this title if that individual has
3 been convicted of a crime relating to the review, retention,
4 removal, or destruction of records of the Archives.”.

5 **SEC. 6. BUDGETARY EFFECTS OF PAYGO LEGISLATION FOR**
6 **THIS ACT.**

7 The budgetary effects of this Act, for the purpose of
8 complying with the Statutory Pay-As-You-Go-Act of 2010,
9 shall be determined by reference to the latest statement
10 titled “Budgetary Effects of PAYGO Legislation” for this
11 Act, submitted for printing in the Congressional Record
12 by the Chairman of the House Budget Committee, pro-
13 vided that such statement has been submitted prior to the
14 vote on passage.

Passed the House of Representatives March 17,
2010.

Attest: LORRAINE C. MILLER,
Clerk.