

And that is another side effect of this legislation.

I can't agree more with you that it is important to take this step now so that we can start to send a message that we are serious about improved transparency in our communications with our constituents, and I think that it is great that we are moving forward in a bipartisan step to do that.

Mr. BILBRAY. Reclaiming my time, I would actually even ask the gentleman to take a look at the fact that it is sad that in the United States, that if you go to the translated interpretations of our government regs, they tend to be much more simply put and much easier to understand than the so-called English legalese that is being put out there. So I think the challenge is really one that is long and weighty, and so I thank you very much for it.

I reserve the balance of my time.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Ms. DEGETTE). Members are gently reminded to address their remarks to the Chair.

Mr. CLAY. Madam Speaker, I would like to now yield 3 minutes to the distinguished chairman of the House Oversight and Government Reform Committee, the gentleman from New York (Mr. TOWNS).

Mr. TOWNS. Madam Speaker, I would like to first thank the chair of the subcommittee, and of course the ranking member of the full committee, Congressman ISSA, and of course Congressman CLAY who chairs the subcommittee, and Congressman BILBRAY who is the ranking member of the subcommittee, and Congressman BRALEY who was really responsible for us being here today to move this legislation forward.

This is Sunshine Week, and this is sunshine legislation. This bill requires government documents to be in plain writing. The bill defines plain writing as writing that the intended audience can readily understand and use because it is clear, concise, well-organized, and follows other best practices of plain writing.

Requiring government documents to be written clearly will make it easier for Americans to understand government communications, and it will make the Federal Government more accountable.

President Clinton issued a memo in 1998 directing the agencies to write documents in plain language. Twelve years have passed since that memo was written, and most agencies are still not taking the issue very seriously. But I think this legislation will let them know that this is something that we are not going to walk away from. It is important that they follow through.

In a letter supporting this bill, the American College of Physicians Foundation wrote: "We frequently hear from our members that they have trouble understanding some government letters and forms. Our intent is to ensure that government documents cre-

ated for consumers are clearly and plainly written."

H.R. 946 was amended during committee consideration to focus the scope of the bill on the type of documents that are most in need of attention. As amended, the bill requires agencies to use plain writing in documents that deal with the Federal benefits or services. This means, for example, that the Department of Health and Human Services will have to use plain writing when it issues instructions under the Medicare prescription drug program; and I think that is so important.

The bill also requires the IRS to write tax documents in plain writing, and it requires agencies to use plain writing in documents that explain how to comply with the Federal requirements. This will make it easier for Americans, especially small businesses, to comply with the law.

In a letter supporting H.R. 946, a group of small business organizations wrote: "Small business owners strive to adhere to a vast array of Federal obligations but often have difficulty deciphering what is being required of them."

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. CLAY. Madam Speaker, I yield an additional 30 seconds.

Mr. TOWNS. The use of plain language is a commonsense approach to saving the Federal Government money, and small business owners time, effort, and money. This legislation makes good sense, it is good government, and I encourage my colleagues to support it.

Mr. BILBRAY. Madam Speaker, I yield myself such time as I may consume.

I just want to use this instance to thank Chairman TOWNS. At a time when the American people are crying out for bipartisan effort, I think his leadership on a very critical committee, the Oversight Committee, has been stellar in a manner that the rest of America I think would love to see the rest of this town operate as well as your committee does, Mr. Chairman. And thank you very much for that bipartisan effort, including everyone in the process.

I reserve the balance of my time.

Mr. CLAY. Madam Speaker, I am prepared to close.

Mr. BILBRAY. Madam Speaker, I yield myself such time as I may consume.

Again, I call on all of us to vote together to support this bill and to use it as a marker for more progress at clarifying and opening up the government process and allowing the average citizen to participate. And the only way to do that is for Washington to change the way we do business.

I yield back the balance of my time.

Mr. CLAY. Madam Speaker, in closing, let me first thank the gentleman from California for his comments and remarks about common sense and disclosure.

The bill requires each agency to train its employees in plain writing and to report annually on the agency's efforts to comply with this act.

Under this bill, each agency must devote a section of its Web site to its plain writing efforts. Agencies also must provide a way for members of the public to provide input. This will allow small businesses or other members of the public to highlight particular documents that are complex or confusing. This bill will make the government more transparent and efficient, and I urge my colleagues to support it.

Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Missouri (Mr. CLAY) that the House suspend the rules and pass the bill, H.R. 946, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the yeas have it.

Mr. CLAY. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

ELECTRONIC MESSAGE PRESERVATION ACT

Mr. CLAY. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 1387) 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, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1387

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Electronic Message Preservation Act".

SEC. 2. PRESERVATION OF ELECTRONIC MESSAGES.

(a) REQUIREMENT FOR PRESERVATION OF ELECTRONIC MESSAGES.—

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

"§ 2911. Electronic messages

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

"(1) require the electronic capture, management, and preservation of such electronic records in accordance with the records disposition requirements of chapter 33 of this title;

"(2) require that such electronic records are readily accessible for retrieval through electronic searches;

"(3) establish mandatory minimum functional requirements for electronic records

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

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

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

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

“(c) COMPLIANCE BY FEDERAL AGENCIES.—Each Federal agency shall comply with the regulations promulgated under subsection (a).

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

“(e) REPORTS ON IMPLEMENTATION OF REGULATIONS.—

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

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

(2) CLERICAL AMENDMENT.—The table of sections for chapter 29 of title 44, United States Code, is amended by adding after the item relating to section 2910 the following new item:

“2911. Electronic messages.”.

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

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

(2) by striking the period at the end of paragraph (15) and inserting a semicolon; and

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

“(16) the term ‘electronic messages’ means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals; and

“(17) the term ‘electronic records management system’ means software designed to manage electronic records, including by—

“(A) categorizing and locating records;

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

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

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

SEC. 3. PRESIDENTIAL RECORDS.

(a) ADDITIONAL REGULATIONS RELATING TO PRESIDENTIAL RECORDS.—

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

(A) by striking “and” at the end of paragraph (3);

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

(C) by adding at the end the following:

“(5) provisions for establishing standards necessary for the economical and efficient management of electronic Presidential records during the President’s term of office, including—

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

“(B) records management controls necessary to ensure that electronic messages are readily accessible for retrieval through electronic searches; and

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

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

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

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

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

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

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

“(a) ANNUAL CERTIFICATION.—The Archivist shall annually certify whether the electronic records management controls established by the President meet requirements under sections 2203(a) and 2206(5) of this title.

“(b) REPORT TO CONGRESS.—The Archivist shall report annually to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives on the status of the certification.”.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 22 of title 44, United States Code, is amended by adding at the end the following new item:

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

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

“(4) One year following the conclusion of a President’s term of office, or if a President serves consecutive terms one year following the conclusion of the last term, the Archivist shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on—

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

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

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

SEC. 4. PROCEDURES TO PREVENT UNAUTHORIZED REMOVAL OF CLASSIFIED RECORDS FROM NATIONAL ARCHIVES.

(a) IN GENERAL.—The Archivist of the United States shall prescribe internal procedures to prevent the unauthorized removal of classified records from the National Archives and Records Administration or the destruction or damage of such records, including when such records are accessed or searched electronically. The procedures shall apply to all National Archives and Records Administration facilities authorized to store classified records and include the following prohibitions:

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

(2) No person, other than covered personnel, shall at any time be left alone with classified records, unless that person is under video surveillance.

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

(4) All persons seeking access to review classified records, as a precondition to such access, must consent to a search of their belongings upon conclusion of their records review.

(5) All notes and other writings prepared by persons other than covered personnel during the course of a review of classified records shall be retained by the National Archives and Records Administration in a secure facility until such notes and other writings are determined to be unclassified, are declassified, or are securely transferred to another secure facility.

(b) DEFINITIONS.—In this section:

(1) The term “records” has the meaning provided in section 3301 of title 44, United States Code.

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

(A) who has an appropriate and necessary reason for accessing classified records, as determined by the Archivist; and

(B) who is either—

(i) an officer or employee of the Federal Government with appropriate security clearances; or

(ii) any personnel with appropriate security clearances of a Federal contractor authorized in writing to act for purposes of this section by an officer or employee of the Federal Government.

SEC. 5. RESTRICTIONS ON ACCESS TO PRESIDENTIAL RECORDS.

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

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

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

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

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Missouri (Mr. CLAY) and the gentleman from California (Mr. BILBRAY) each will control 20 minutes.

The Chair recognizes the gentleman from Missouri.

GENERAL LEAVE

Mr. CLAY. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. CLAY. Madam Speaker, I yield myself such time as I may consume.

H.R. 1387, the Electronic Message Preservation Act, is another open-government bill that we are considering in celebration of Sunshine Week. This bill modernizes the requirements of the Federal Records Act and the Presidential Records Act to ensure that Federal agencies and the White House preserve emails and other electronic messages. H.R. 1387 was introduced by Representative HOLT, and it is substantially similar to H.R. 5811, a bill that passed the House last year with bipartisan support.

This bill requires agencies and the White House to adopt and maintain records management and retention policies that are consistent with modern technology. Under current law, Federal agencies have broad discretion to determine how electronic messages are preserved.

In a 2008 report, the Government Accountability Office found that many agencies rely on unreliable "print and file" systems for preserving electronic records, including email. GAO reviewed the practices of senior agency officials and determined that emails were not retained in adequate recordkeeping systems, making the email records easier to lose or delete and harder to find and use.

Last week, the National Security Archive awarded its sixth annual Rosemary Award for worst open-government performance to the Chief Information Officers Council. The council was chosen because it has never addressed the failure of the government to save its email electronically.

H.R. 1387 directs the Archivist of the United States to issue regulations requiring agencies to preserve emails in an electronic format. These regulations must cover, at a minimum, the capture, management, preservation, and electronic retrieval of electronic messages.

□ 1415

The bill requires the Archivist to establish a process to certify the electronic records management systems used by the agencies.

At this time, Madam Speaker, I would urge my colleagues to join in passage of this bill, and I reserve the balance of my time.

Mr. BILBRAY. Madam Speaker, I rise in support of the bill. I yield myself such time as I may consume.

Madam Speaker, this is a classic example of trying to work together to open up the system, allow the transparency that the American people are demanding, and I strongly support its intention and its execution.

Madam Speaker, you may remember, when we got here in 1995, that there were Members of Congress who could not understand the concept of sending

electronic emails between offices or outside. It was alien to Washington to be so technologically plugged in. It just shows you how times have changed. Now we're finally starting to address the technology. I think the gentleman from Missouri even recognized that we need to really push harder at opening up the system, embracing the new technologies that allow not only the public to know better, but also the representatives of the public to be able to function in a much more efficient manner.

This bill is truly one that we have been trying to work on for years. It's one that was controversial in certain circles, but I think it's one that we need to move forward with. I hope, again, that this is another one of those steps that the Government Oversight Committee is looking to to set an example for the rest the Congress and the rest of Washington to find reasons to get to "yes," to find reasons to work together, and to find reasons to do it better. I think that that is one thing we can do here.

Madam Speaker, I have to say while speaking on this item that it's sad that, on the down side, we have been trying for over a decade to do something the new President has talked a lot about, and that's using e-technology for electronic medical records. And the fact is, the Federal Government has been trying to develop that for our veterans and our active duty military for over a decade and still has not been able to implement it. So I hope this is one step towards becoming comfortable with reviving, restoring, and really redesigning the way we approach e-technology and new technology and that we will embrace it rather than being terrified by it, like some people were in the nineties when we showed up.

I reserve the balance of my time.

Mr. CLAY. I couldn't agree more with my friend from California. We hope this is the impetus to spur the development—the successful development of electronic medical records, because we know what the savings would mean to our health care system and we know that it can possibly save lives by reducing errors.

So at this time, Madam Speaker, I'd like to yield 2 minutes to the distinguished chairman of the Oversight and Government Reform Committee, the gentleman from New York (Mr. TOWNS).

Mr. TOWNS. I thank the chair of the subcommittee for yielding and thank Congressman BILBRAY from California for his work on this committee, and Congressman HODES, and of course the ranking member of the full committee, Congressman ISSA. I think that when you work together, you can come up with strong legislation that can truly make a difference. I also would like to thank the staff who worked on this legislation as well.

I think that when we look at electronic records, when we look at infor-

mation that needs to be preserved, I really feel that this legislation gets us to where we need to go. I think now, more than ever, we have to make certain that this information is held at least for a certain period of time so people can make an assessment to see in terms of where we might have made mistakes, they can now correct them.

So I want to salute you for the work you have done, Chairman CLAY, and of course Ranking Member BILBRAY, and of course all the staff members who worked so hard to bring us to where we are today.

Mr. BILBRAY. Madam Speaker, I would like to close by thanking the ranking member and full committee chairman for allowing the minority to participate in the formation of this bill. There are so many committees that aren't allowing the minority to participate. I think this is really a nice example of the cooperation that I think the American people want to see and don't see enough of. I want to thank the chairman and ranking member for allowing us to participate in the process.

I yield back the balance of my time.

Mr. CLAY. Let me also thank the ranking member for his participation. As we have stated earlier, this is Sunshine Week. It's time for openness and accountability. I appreciate participating with you in these series of bills.

In closing, let me also mention that in this bill we are also considering an amendment that makes a number of drafting corrections suggested by the National Archives. For example, the amendment clarifies that the bill addresses electronic Presidential records rather than all Presidential records. H.R. 1387 will make the government more accountable by protecting an important part of the historical record, and I urge every Member to join me in supporting this legislation.

Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Missouri (Mr. CLAY) that the House suspend the rules and pass the bill, H.R. 1387, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

SENSIBLE STEPS TOWARD A BALANCED BUDGET ACT

Mr. BRADY of Pennsylvania. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 4825) to require any amounts remaining in a Member's Representational Allowance at the end of a fiscal year to be deposited in the Treasury and used for deficit reduction or to reduce the Federal debt.

The Clerk read the title of the bill.

The text of the bill is as follows: