

HOUSE BILL No. 2549

By Committee on Judiciary

1-26

1 AN ACT concerning preservation of public records; relating to electronic
2 records; amending K.S.A. 45-402, 45-403, 45-404, 45-405, 45-408 and
3 75-104 and repealing the existing sections.

4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 45-402 is hereby amended to read as follows: 45-
7 402. As used in this act:

8 (a) "State agency" means any department, board, commission; or
9 authority of the executive branch of state government.

10 (b) "Local agency" means any department, board, commission,
11 officer or authority of a county, city, township, school district or other tax-
12 supported governmental subdivision of the state.

13 (c) "Board" means the state records board established pursuant to
14 K.S.A. 75-3502, and amendments thereto.

15 (d) "Government records" means all volumes, documents, reports,
16 maps, drawings, charts, indexes, plans, memoranda, sound recordings,
17 microfilms, photographic records, *e-mail, texting or other electronic*
18 *records* and other data, information or documentary material, regardless of
19 physical form or characteristics, storage media or condition of use, made
20 or received by an agency *or public official* in pursuance of law or in
21 connection with the transaction of official business or bearing upon the
22 official activities and functions of any governmental agency. Published
23 material acquired and preserved solely for reference purposes, extra copies
24 of documents preserved only for convenience of reference and stocks of
25 publications, blank forms and duplicated documents are not included
26 within the definition of government records.

27 (e) "Noncurrent government records" means all government records
28 which no longer are necessary for the handling of ordinary official public
29 business by the agency and which are not required by law to be retained in
30 the immediate custody of the agency for a longer period of time.

31 (f) "Government records with enduring value" means all government
32 records which merit preservation for historical, legal, fiscal or
33 administrative reasons, or for research purposes.

34 (g) "Retention and disposition schedules" means lists of series of
35 government records, prepared pursuant to K.S.A. 45-404 and subsections
36 (c) and (d) of K.S.A. 45-406, and amendments thereto, specifying which

1 series of records have enduring value, authorizing disposition of certain
2 other series of records, and indicating how long certain series of records
3 should be retained before disposition of them.

4 (h) *"Electronic records" means government records made or received*
5 *in a form relating to technology, having electrical, digital, magnetic,*
6 *wireless, optical, electromagnetic or similar capabilities.*

7 Sec. 2. K.S.A. 45-403 is hereby amended to read as follows: 45-403.

8 (a) All government records made or received by and all government
9 records coming into the custody, control or possession of a state or local
10 agency *or public official*, in the course of ~~its~~ *such agency's or public*
11 *official's* public duties, and all government records deposited in the state
12 archives, shall be public property and shall not be mutilated, destroyed,
13 transferred, removed, damaged or otherwise disposed of, in whole or in
14 part, except as provided by law, or as may be authorized in the retention
15 and disposition schedules.

16 (b) Authority for the disposition of records on a continuing basis
17 approved for state agencies by the state records board, or for county
18 officers by the state archivist, prior to adoption of this act shall be null and
19 void, after adoption of the appropriate retention and disposition schedules.

20 Sec. 3. K.S.A. 45-404 is hereby amended to read as follows: 45-404.
21 The state records board shall:

22 (a) Approve or modify retention and disposition schedules and
23 records manuals prepared pursuant to subsections (c) and (d) of K.S.A. 45-
24 406, and amendments thereto. Once approved by the board the retention
25 and disposition schedules for state agencies shall be filed with the
26 secretary of state. Without further action by the board, noncurrent records
27 of state agencies scheduled for disposition may be disposed of as provided
28 in the schedules and noncurrent records scheduled for retention may be
29 transferred to the state archives, subject to approval by the state archivist
30 and in accordance with procedures to be established by the state archivist.

31 (b) Pass upon any proposed revisions in the retention and disposition
32 schedules and upon requests for authority to dispose of records of state
33 agencies or counties not listed in the schedules. No records of state
34 agencies ~~or counties~~, *counties or public officials* shall be disposed of
35 before the retention periods designated in the schedules have elapsed
36 without the approval of the board. No state agency ~~or county~~, *county or*
37 *public official* shall be required to destroy records which ~~it~~ *such agency or*
38 *public official* chooses to retain, even though the retention and disposition
39 schedules authorize their destruction. The retention and disposition
40 schedules for all local agencies except counties shall be recommendations
41 and shall not alter or replace current statutes authorizing or restricting the
42 disposition of government records by local agencies.

43 (c) Any board of county commissioners may order disposition of any

1 noncurrent county government records after minimum retention periods
2 set forth in the schedules prepared pursuant to subsection (d) of K.S.A. 45-
3 406, and amendments thereto. Any board of county commissioners may
4 petition the state records board for amendments to the schedules, for
5 authority to depart from specific provisions of the schedules or for
6 authority to implement schedules applicable to only a single county.

7 (d) With the approval of the state archivist, the board of county
8 commissioners of any county may transfer any noncurrent county
9 government records to the custody of the state historical society. The
10 board of county commissioners of any county may transfer any noncurrent
11 county government records which have been determined by the state
12 archivist to be records, which are not required by law to be confidential or
13 restricted, to the custody of a county historical society, a genealogical
14 society, a public library, a college or university library or another local or
15 regional repository in Kansas, determined by the state archivist to be
16 suitable, which will accept such records, except that under authority of this
17 subsection no records relating to the mental or physical health of any
18 person shall be so transferred.

19 (e) Pass upon recommendations by the state archivist for transfer to
20 the state archives of any noncurrent government records with enduring
21 value which are held by a state agency opposing such a transfer. When the
22 state archivist makes such a recommendation, the state agency opposing
23 the transfer shall defend before the board its reasons for wanting to retain
24 the records in its custody, and the board shall determine whether the
25 transfer shall occur.

26 (f) Approve or modify recommended microphotographic standards
27 prepared by the state archivist and pass upon requests for authority to
28 dispose of original government records of state agencies following
29 reproduction on film, as provided in K.S.A. 45-412, and amendments
30 thereto.

31 Sec. 4. K.S.A. 45-405 is hereby amended to read as follows: 45-405.

32 (a) The state historical society shall serve as the official state archives and
33 shall assist state and local agencies *and public officials* in the preservation
34 of government records with enduring value.

35 (b) Any state or local agency *or public official* may transfer to the
36 state archives any noncurrent government records accepted by the state
37 archivist and all state agencies shall transfer to the state archives any
38 noncurrent government records when directed to do so by the state records
39 board. With the approval of the state archivist, noncurrent legislative and
40 judicial records also may be deposited in the state archives for
41 preservation.

42 (c) The secretary of state shall not be prevented by any statute from
43 depositing in the state archives any noncurrent government records

1 accepted by the state archivist.

2 (d) The provisions of this act shall not prohibit discarding or
3 otherwise disposing of extraneous, worthless or duplicate material found
4 in government records when processed by the state archives staff. Any
5 records placed in the state archives may be disposed of in any manner
6 approved by the board and the state archivist upon a determination that
7 such records no longer have enduring value.

8 Sec. 5. K.S.A. 45-408 is hereby amended to read as follows: 45-408.
9 Each agency of state government shall:

10 (a) Obtain authority from the state records board before disposing of
11 any government record, unless the disposition is authorized by statute or in
12 the retention and disposition schedules, or unless the record is being
13 deposited in the state archives; obtain authority from the board before
14 disposing of any government record prior to termination of the minimum
15 retention period listed in the retention and disposition schedules.

16 (b) Provide storage conditions for all government records with
17 enduring value which are not seriously adverse to their preservation and
18 which will not prevent providing proper public access to the records; adopt
19 reasonable security measures to protect government records from theft or
20 damage.

21 (c) Cooperate with efforts by the state archivist or representatives of
22 the state archivist to inspect records and the conditions in which they are
23 stored, to prepare comprehensive inventories of government records, to
24 microfilm noncurrent records with enduring value and to improve the
25 arrangement, storage and physical condition of noncurrent government
26 records with enduring value in accordance with appropriate archival
27 techniques. Agencies shall not be required to provide funds or staff time
28 for these purposes, but they shall give careful consideration to requests and
29 recommendations made by the state archivist.

30 (d) *Retain electronic records in electronic format, to remain usable,*
31 *searchable, retrievable and authentic for the length of the designated*
32 *retention period.*

33 (e) *Maintain a security backup of active records which is compatible*
34 *with the current system configuration in use by the agency.*

35 (f) Comply with rules and regulations, standards and procedures
36 adopted by the state records board and the state archivist pursuant to the
37 provisions of this act.

38 New Sec. 6. (a) E-mails and texts created and received by a state or
39 local agency or public official in the transaction of public business are
40 subject to all the laws and regulations governing the retention, disclosure,
41 destruction and archiving of public records. The e-mails and texts of all
42 elected government officials and public employees are subject to the
43 records retention periods and disposition promulgated by the state records

1 board. Any and all e-mails and texts with archival value must be retained.

2 (b) State and local agencies and public officials may be relieved of
3 the obligation to permanently retain archival e-mail and texts by
4 transmitting it to the custody of the state historical society.

5 (c) This section does not apply to state legislators or members and
6 records of the judiciary.

7 (d) This section shall be part of and supplemental to the government
8 records preservation act, K.S.A. 45-401 *et seq.*, and amendments thereto.

9 New Sec. 7. (a) Any record created with government provided digital
10 equipment shall be a public record under this act.

11 (b) Any electronic record made or received concerning government
12 business is a public record even if a public official uses his personal digital
13 or electronic equipment.

14 (c) The legislature recognizes that e-mail and texting are a dominant
15 means of communication today. Any exception carved out for e-mail or
16 texting communication is held to be bad public policy.

17 (d) This section shall be part of and supplemental to the government
18 records preservation act, K.S.A. 45-401 *et seq.*, and amendments thereto.

19 Sec. 8. K.S.A. 75-104 is hereby amended to read as follows: 75-104.

20 (a) The governor shall keep and maintain a full and complete record of the
21 following applications or petitions made to the governor:

22 (1) Applications or petitions for executive pardon, commutation of
23 sentence or clemency;

24 (2) applications or petitions for the appointment of a named
25 individual to public office when a vacancy occurs and when the governor
26 is restricted to the appointment of nominees so submitted;

27 (3) applications or petitions for the appointment of a person from a
28 list of persons submitted by an association, agency or committee where the
29 governor is limited to make an appointment only from that list;

30 (4) applications for the approval of grants where the governor's
31 approval is a condition precedent to the making of such grants either by a
32 state agency or by the federal government;

33 (5) applications or petitions for declarations of emergency;

34 (6) petitions for the calling of a special session of the legislature
35 pursuant to section 5 of article 1 of the constitution of the state of Kansas;
36 and

37 (7) applications or petitions directed to the governor and requesting
38 that the governor take action in accordance with subsection (c) of K.S.A.
39 75-3711, and amendments thereto, and exercise a function otherwise
40 specified by statute for the state finance council.

41 (b) The record required to be kept under subsection (a) and all
42 records of the financial affairs and transactions regarding the receipt and
43 expenditure of state moneys shall remain on file in the office of each

1 governor during the governor's term of office and for a period of three
2 years following the expiration of such term.

3 (c) Following the three-year period prescribed in subsection (b), all
4 records kept and maintained pursuant to subsection (a) shall be transferred
5 to the custody of the state historical society and the records of the financial
6 affairs and transactions kept and maintained pursuant to subsection (b)
7 shall be kept in the office of the governor, subject to disposal as may be
8 authorized by the state records board.

9 (d) Records, correspondence and other papers of the governor which
10 are not required to be kept and maintained under subsections (a) or (b)
11 shall not be subject to review or audit by the legislative post auditor under
12 the legislative post audit act.

13 (e) Upon completion of the term of office as governor, all records,
14 correspondence, *both electronic and nonelectronic, including e-mails and*
15 *texts*, and other papers of the former governor not required to be kept and
16 maintained under subsections (a) or (b) which relate to the former
17 governor's public duties while governor shall be transferred to the custody
18 of the state historical society. During the lifetime of the former governor,
19 no person shall have access to any such records, correspondence, *both the*
20 *electronic and nonelectronic, including e-mails and texts*, or other papers
21 which are not required to be disclosed under K.S.A. 45-221, and
22 amendments thereto, except upon consent of the former governor, and the
23 former governor shall be considered the official custodian of such records,
24 correspondence and other papers which are not required to be disclosed.

25 (f) Upon the death of a governor while in office, all records,
26 correspondence, *both electronic and nonelectronic, including e-mails and*
27 *texts*, and other papers of such deceased governor not required to be kept
28 and maintained under subsections (a) or (b) which relate to such governor's
29 duties while governor shall be transferred to the custody of the state
30 historical society.

31 (g) A person elected or succeeding to the office of governor shall be
32 governed by the provisions of this section as it existed at the time such
33 person was elected or succeeded to such office.

34 Sec. 9. K.S.A. 45-402, 45-403, 45-404, 45-405, 45-408 and 75-104
35 are hereby repealed.

36 Sec. 10. This act shall take effect and be in force from and after its
37 publication in the statute book.

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