

AMENDMENT TO H.R. 5170

(SLW__111.XML)

OFFERED BY MR. CUMMINGS OF MARYLAND

At the end of the bill, add the following new sections
(and amend the table of contents accordingly):

1 **SEC. 6. PRESERVATION OF ELECTRONIC MESSAGES AND**
2 **OTHER RECORDS.**

3 (a) REQUIREMENT FOR PRESERVATION OF ELEC-
4 TRONIC MESSAGES.—Chapter 29 of title 44, United
5 States Code, as amended by section 3(b), is further
6 amended by adding at the end the following new section:
7 “§ 2912. Preservation of electronic messages and
8 other records

9 “(a) REGULATIONS REQUIRED.—Not later than 18
10 months after the date of the enactment of this section,
11 the Archivist shall promulgate regulations governing Fed-
12 eral agency preservation of electronic messages that are
13 determined to be records (as such term is defined under
14 section 3301 of this title). Such regulations shall, at a
15 minimum—

16 “(1) require the electronic capture, manage-
17 ment, and preservation of such electronic records in

1 accordance with the records disposition requirements
2 of chapter 33 of this title;

3 “(2) require that such electronic records are
4 readily accessible for retrieval through electronic
5 searches;

6 “(3) establish mandatory minimum functional
7 requirements for electronic records management sys-
8 tems to ensure compliance with the requirements in
9 paragraphs (1) and (2);

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

14 “(5) include timelines for Federal agency com-
15 pliance with the regulations that ensure compliance
16 as expeditiously as practicable but not later than 2
17 years after the date of the enactment of this section.

18 “(b) COVERAGE OF OTHER ELECTRONIC
19 RECORDS.—To the extent practicable, the regulations pro-
20 mulgated under subsection (a) shall also include require-
21 ments for the capture, management, and preservation of
22 other electronic records.

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

1 “(d) REVIEW OF REGULATIONS REQUIRED.—The
2 Archivist shall periodically review and, as necessary,
3 amend the regulations promulgated under subsection (a).

4 “(e) REPORTS ON IMPLEMENTATION OF REGULA-
5 TIONS.—

6 “(1) AGENCY REPORT TO ARCHIVIST.—Not
7 later than 3 years after the date of the enactment
8 of this section, the head of each Federal agency shall
9 submit to the Archivist a report on the agency’s
10 compliance with the regulations promulgated under
11 this section.

12 “(2) ARCHIVIST REPORT TO CONGRESS.—Not
13 later than 90 days after receipt of all reports re-
14 quired by paragraph (1), the Archivist shall submit
15 to the Committee on Homeland Security and Gov-
16 ernmental Affairs of the Senate and the Committee
17 on Oversight and Government Reform of the House
18 of Representatives a report on Federal agency com-
19 pliance with the regulations promulgated under sub-
20 section (a).”.

21 (b) CLERICAL AMENDMENT.—The table of sections
22 at the beginning of chapter 29 of title 44, United States
23 Code, as amended by section 3(c)(2), is further amended
24 by adding after the item relating to section 2911 the fol-
25 lowing new item:

“2912. Preservation of electronic messages and other records.”.

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

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

5 (2) by striking paragraph (15) and inserting
6 the following new paragraphs:

7 “(15) the term ‘electronic messages’ means
8 electronic mail and other electronic messaging sys-
9 tems that are used for purposes of communicating
10 between individuals; and

11 “(16) the term ‘electronic records management
12 system’ means software designed to manage elec-
13 tronic records, including by—

14 “(A) categorizing and locating records;

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

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

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

21 **SEC. 7. PRESIDENTIAL RECORDS.**

22 (a) ADDITIONAL REGULATIONS RELATING TO PRESI-
23 DENTIAL RECORDS.—

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

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

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

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

6 “(5) provisions for establishing standards nec-
7 essary for the economical and efficient management
8 of electronic Presidential records during the Presi-
9 dent’s term of office, including—

10 “(A) records management controls nec-
11 essary for the capture, management, and pres-
12 ervation of electronic messages;

13 “(B) records management controls nec-
14 essary to ensure that electronic messages are
15 readily accessible for retrieval through elec-
16 tronic searches; and

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

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

1 “(6) The term ‘electronic messages’ has the
2 meaning given that term under section 2901(15) of
3 this title.

4 “(7) The term ‘electronic records management
5 system’ has the meaning given that term under sec-
6 tion 2901(16) of this title.”.

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

9 (1) CERTIFICATION REQUIRED.—Chapter 22 of
10 title 44, United States Code, as amended by section
11 3(a), is further amended by adding at the end the
12 following new section:

13 **“§ 2209. Certification of the President’s management**
14 **of Presidential records**

15 “(a) ANNUAL CERTIFICATION.—The Archivist shall
16 annually certify whether the electronic records manage-
17 ment controls established by the President meet require-
18 ments under sections 2203(a) and 2206(5) of this title.

19 “(b) REPORT TO CONGRESS.—The Archivist shall re-
20 port annually to the Committee on Homeland Security and
21 Governmental Affairs of the Senate and the Committee
22 on Oversight and Government Reform of the House of
23 Representatives on the status of the certification.”.

24 (2) CLERICAL AMENDMENT.—The table of sec-
25 tions at the beginning of chapter 22 of title 44,

1 United States Code, as amended by section 3(c)(1),
2 is further amended by adding at the end the fol-
3 lowing new item:

“2209. Certification of the President’s management of Presidential
records.”.

4 (c) REPORT TO CONGRESS.—Section 2203(f) of title
5 44, United States Code, is amended by adding at the end
6 the following:

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

14 “(A) the volume and format of electronic Presi-
15 dential records deposited into that President’s Presi-
16 dential archival depository; and

17 “(B) whether the electronic records manage-
18 ment controls of that President met the require-
19 ments under sections 2203(a) and 2206(5) of this
20 title.”.

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

