HOUSE BILL NO. 618

INTRODUCED BY W. MCKAMEY, R. FITZGERALD, K. HOLMLUND, D. SKEES, S. VINTON

A BILL FOR AN ACT ENTITLED: “AN ACT REQUIRING LEGISLATORS TO RETAIN ELECTRONIC MAIL AND TEXT MESSAGES PERTAINING TO LEGISLATIVE BUSINESS FOR ESTABLISHED TIMELINES; PROVIDING DEFINITIONS; AMENDING SECTIONS 2-6-1012 AND 2-6-1013, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Legislator public records -- timelines. (1) (a) A legislator shall retain all electronic mail involving legislative business for a period of 2 years from the date the electronic mail was sent to or received by the legislator.

(b) A legislator shall retain text messages involving legislative business for a period of 60 days from the date the text message was sent to or received by the legislator.

(c) At the expiration of the timelines included in subsections (1)(a) and (1)(b), a legislator may dispose of electronic mail, text messages, or both.

(2) Nothing in this section requires a legislator to retain copies of electronic mail or text messages that do not involve legislative business.

(3) The legislative council may adopt guidance to identify further categories or types of electronic mail or text messages that do not need to be retained.

(4) (a) For the purposes of this section, “legislative business” means business that relates to the duties or position of a legislator.

(b) The term does not include personal business, political activity, or business pertaining to nonlegislative employment.

Section 2. Section 2-6-1012, MCA, is amended to read:

“2-6-1012. Management of public records -- disposal and destruction. (1) (a) Each Subject to
[section 1], each public officer is responsible for properly managing the public records within the public officer’s 
possession or control through an established records management plan that satisfies the requirements of this 
chapter.

(b) Executive branch agencies shall manage public records according to the provisions of Title 2, 
chapter 6, part 11, and the rules and guidelines established by the secretary of state, the state records 
committee, and the Montana historical society.

(c) Local governments shall manage public records according to the provisions of Title 2, chapter 6, 
part 12, and the rules and guidelines established by the secretary of state, the local government records 
committee, and the Montana historical society.

(d) Pursuant to [section 1] and pursuant to 5-2-503 and 5-11-105, the legislative council shall 
administer the records management plan for the legislative branch. The legislative branch shall cooperate with 
the secretary of state, the state records committee, the local government records committee, and the Montana 
historical society in the development, implementation, and administration of the legislative records management 
plan using Title 2, chapter 6, part 11, as guidance.

(e) The judicial branch shall establish a records management plan. The judicial branch may seek 
assistance from the secretary of state, the state records committee, the local government records committee, 
and the Montana historical society regarding development, implementation, and administration of the judicial 
records management plan.

(2) When a public record has reached the end of its retention period, the public officer shall ensure 
the record is disposed of, destroyed, or transferred according to the provisions of this chapter.”

Section 3. Section 2-6-1013, MCA, is amended to read:

“2-6-1013. Preservation of public records -- possession of public records. (1) All public records 
are and remain the property of the public agency possessing the records. The Subject to [section 1], the public 
records must be delivered by outgoing public officers and employees to their successors and must be 
preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the 
provisions of this chapter.

(2) If an outgoing public officer or employee refuses or fails to deliver to the current public officer or
employee any public records that pertain to that public office, the current public officer or employee may file a
complaint in the district court of the county where the outgoing public officer or employee resides, pursuant to
the Montana Rules of Civil Procedure, to compel the outgoing public officer or employee to deliver any public
records still in the outgoing public officer or employee's possession to the current public officer or employee."

NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an
integral part of Title 5, and the provisions of Title 5 apply to [section 1].

NEW SECTION. Section 5. Severability. If a part of [this act] is invalid, all valid parts that are
severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 7. Retroactive applicability. [This act] applies retroactively, within the
meaning of 1-2-109, to electronic mail and text messages produced on or after January 4, 2021.

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