

## 1 HOUSE BILL NO. 618

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

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

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

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

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

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

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

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

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

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

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27 **Section 2.** Section 2-6-1012, MCA, is amended to read:28 **"2-6-1012. Management of public records -- disposal and destruction.** (1) (a) ~~Each~~ Subject to

1 [section 1], each public officer is responsible for properly managing the public records within the public officer's  
2 possession or control through an established records management plan that satisfies the requirements of this  
3 chapter.

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

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

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

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

19 (2) When a public record has reached the end of its retention period, the public officer shall ensure  
20 the record is disposed of, destroyed, or transferred according to the provisions of this chapter."  
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22 **Section 3.** Section 2-6-1013, MCA, is amended to read:

23 **"2-6-1013. Preservation of public records -- possession of public records.** (1) All public records  
24 are and remain the property of the public agency possessing the records. ~~The~~ Subject to [section 1], the public  
25 records must be delivered by outgoing public officers and employees to their successors and must be  
26 preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the  
27 provisions of this chapter.

28 (2) If an outgoing public officer or employee refuses or fails to deliver to the current public officer or

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

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

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

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

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

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