

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3071
OFFERED BY M .

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the
 “Presidential and Federal Records Act Amendments of
 2011”.

5 (b) TABLE OF CONTENTS.—The table of contents for
6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. National Archives and Records Administration.
- Sec. 3. Presidential records.
- Sec. 4. Records management.
- Sec. 5. Records management by Federal agencies.
- Sec. 6. Disposal of records.
- Sec. 7. Procedures to prevent unauthorized removal of classified records from
National Archives.
- Sec. 8. Technical and conforming amendments.
- Sec. 9. Pronoun amendments.

7 SEC. 2. NATIONAL ARCHIVES AND RECORDS ADMINISTRA-
8 TION.

9 (a) ACCEPTANCE OF RECORDS FOR HISTORICAL
10 PRESERVATION.—Section 2107 of title 44, United States
11 Code, is amended to read as follows:

1 **“§ 2107. Acceptance of records for historical preser-**
2 **vation**

3 “(a) IN GENERAL.—When it appears to the Archivist
4 to be in the public interest, the Archivist may—

5 “(1) accept for deposit with the National Ar-
6 chives of the United States the records of a Federal
7 agency, the Congress, the Architect of the Capitol,
8 or the Supreme Court determined by the Archivist
9 to have sufficient historical or other value to warrant
10 their continued preservation by the United States
11 Government;

12 “(2) direct and effect the transfer of records of
13 a Federal agency determined by the Archivist to
14 have sufficient historical or other value to warrant
15 their continued preservation by the United States
16 Government to the National Archives of the United
17 States, as soon as practicable, and at a time mutu-
18 ally agreed upon by the Archivist and the head of
19 that Federal agency not later than thirty years after
20 such records were created or received by that agen-
21 cy, unless the head of such agency has certified in
22 writing to the Archivist that such records must be
23 retained in the custody of such agency for use in the
24 conduct of the regular business of the agency;

25 “(3) direct and effect, with the approval of the
26 head of the originating Federal agency, or if the ex-

1 istence of the agency has been terminated, with the
2 approval of the head of that agency's successor in
3 function, if any, the transfer of records, deposited or
4 approved for deposit with the National Archives of
5 the United States to public or educational institu-
6 tions or associations; title to the records to remain
7 vested in the United States unless otherwise author-
8 ized by Congress; and

9 “(4) transfer materials from private sources au-
10 thorized to be received by the Archivist by section
11 2111 of this title.

12 “(b) EARLY TRANSFER OF RECORDS.—The Archi-
13 vist—

14 “(1) in consultation with the head of the origi-
15 nating Federal agency, is authorized to accept for
16 deposit the records described in subsection (a)(2)
17 that have been in existence for less than thirty
18 years; and

19 “(2) may not disclose any such records until
20 the expiration of—

21 “(A) the thirty-year period described in
22 paragraph (1);

23 “(B) any longer period established by the
24 Archivist by order; or

1 “(C) any shorter period agreed to by the
2 originating Federal agency.”.

3 (b) MATERIAL ACCEPTED FOR DEPOSIT.—Section
4 2111 of title 44, United States Code, is amended to read
5 as follows:

6 **“§ 2111. Material accepted for deposit**

7 “(a) IN GENERAL.—When the Archivist considers it
8 to be in the public interest the Archivist may accept for
9 deposit—

10 “(1) the papers and other historical materials
11 of a President or former President of the United
12 States, or other official or former official of the Gov-
13 ernment, and other papers relating to and contem-
14 porary with a President or former President of the
15 United States, subject to restrictions agreeable to
16 the Archivist as to their use; and

17 “(2) recorded information (as such term is de-
18 fined in section 3301(a)(2) of this title) from private
19 sources that are appropriate for preservation by the
20 Government as evidence of its organization, func-
21 tions, policies, decisions, procedures, and trans-
22 actions.

23 “(b) EXCEPTION.—This section shall not apply in the
24 case of any Presidential records which are subject to the
25 provisions of chapter 22 of this title.”.

1 (c) PRESERVATION OF AUDIO AND VISUAL
2 RECORDS.—

3 (1) IN GENERAL.—Section 2114 of title 44,
4 United States Code, is amended to read as follows:

5 **“§ 2114. Preservation of audio and visual records**

6 “The Archivist may make and preserve audio and vis-
7 ual records, including motion-picture films, still photo-
8 graphs, and sound recordings, in analog, digital, or any
9 other form, pertaining to and illustrative of the historical
10 development of the United States Government and its ac-
11 tivities, and provide for preparing, editing, titling, scoring,
12 processing, duplicating, reproducing, exhibiting, and re-
13 leasing for non-profit educational purposes, motion-picture
14 films, still photographs, and sound recordings in the Ar-
15 chivist’s custody.”.

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions at the beginning of chapter 21 of title 44,
18 United States Code, is amended by striking the item
19 for section 2114 and inserting the following:

“2114. Preservation of audio and visual records.”.

20 (d) REPORTS; CORRECTION OF VIOLATIONS.—Sec-
21 tion 2115 of title 44, United States Code, is amended—

22 (1) in subsection (a)—

23 (A) by striking “their respective” and in-
24 serting “the”;

1 (B) by striking “and the Administrator”;
2 and
3 (C) by striking “each”; and
4 (2) in subsection (b)—
5 (A) by striking “either”;
6 (B) by striking “or the Administrator”,
7 each place it appears; and
8 (C) by striking “inaugurated” and insert-
9 ing “demonstrably commenced”.

10 (e) **LEGAL STATUS OF REPRODUCTIONS; OFFICIAL**
11 **SEAL; FEES FOR COPIES AND REPRODUCTIONS.**—Section
12 2116(a) of title 44, United States Code, is amended by
13 inserting “digital,” after “microphotographic,” each place
14 it appears.

15 **SEC. 3. PRESIDENTIAL RECORDS.**

16 (a) **DEFINITIONS.**—Section 2201 of title 44, United
17 States Code, is amended—

18 (1) in paragraph (1)—

19 (A) by striking “memorandums” and in-
20 serting “memoranda”;

21 (B) by striking “audio, audiovisual” and
22 inserting “audio and visual records”; and

23 (C) by inserting “, whether in analog, dig-
24 ital, or any other form” after “mechanical
25 recordations”; and

1 (2) in paragraph (2), by striking “advise and
2 assist” and inserting “advise or assist”.

3 (b) MANAGEMENT AND CUSTODY OF PRESIDENTIAL
4 RECORDS.—Section 2203 of title 44, United States Code,
5 is amended—

6 (1) in subsection (b), by striking “advise and
7 assist” and inserting “advise or assist”;

8 (2) in subsection (d), by striking “does intend”
9 and inserting “does not intend”;

10 (3) by redesignating subsection (f) as sub-
11 section (g);

12 (4) by inserting after subsection (e) the fol-
13 lowing new subsection:

14 “(f) During a President’s term of office, the Presi-
15 dent may transfer Presidential records, including records
16 in digital or electronic form, to the Archivist for purposes
17 of continued maintenance and preservation. The Archivist
18 may not disclose any such records until the conclusion of
19 a President’s term of office, if a President serves consecu-
20 tive terms upon the conclusion of the last term, or such
21 other period provided for under section 2204 of this
22 title.”; and

23 (5) in subsection (g), as so redesignated—

24 (A) in paragraph (1), by striking “Act”
25 and inserting “title”; and

1 (B) by adding at the end the following:

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

9 “(A) the volume and format of electronic Presi-
10 dential records deposited into that President’s Presi-
11 dential archival depository; and

12 “(B) whether the electronic records manage-
13 ment controls of that President met the require-
14 ments under sections 2203(a) and 2206(5) of this
15 title.”.

16 (c) RESTRICTIONS ON ACCESS TO PRESIDENTIAL
17 RECORDS.—Section 2204 of title 44, United States Code,
18 is amended by adding at the end the following new sub-
19 section:

20 “(f) The Archivist shall not make available any origi-
21 nal Presidential records to any individual claiming access
22 to any Presidential record as a designated representative
23 under section 2205(3) of this title if that individual has
24 been convicted of a crime relating to the review, retention,
25 removal, or destruction of records of the Archives.”.

1 (d) ADDITIONAL REGULATIONS RELATING TO PRESI-
2 DENTIAL RECORDS.—

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

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

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

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

10 “(5) provisions for establishing standards nec-
11 essary for the economical and efficient management
12 of electronic Presidential records during the Presi-
13 dent’s term of office, including—

14 “(A) records management controls nec-
15 essary for the capture, management, and pres-
16 ervation of electronic messages;

17 “(B) records management controls nec-
18 essary to ensure that electronic messages are
19 readily accessible for retrieval through elec-
20 tronic searches; and

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

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

4 “(6) The term ‘electronic messages’ has the
5 meaning provided in section 2901(15) of this title.

6 “(7) The term ‘electronic records management
7 system’ has the meaning provided in section
8 2901(16) of this title.”.

9 (3) EFFECTIVE DATE.—The amendments made
10 by this subsection shall take effect one year after the
11 date of the enactment of this Act.

12 (e) PROCEDURES FOR CONSIDERATION OF CLAIMS
13 OF CONSTITUTIONALLY BASED PRIVILEGE AGAINST DIS-
14 CLOSURE.—

15 (1) AMENDMENT.—Chapter 22 of title 44,
16 United States Code, is amended by adding at the
17 end the following:

18 **“§ 2208. Claims of constitutionally based privilege**
19 **against disclosure**

20 “(a)(1) When the Archivist determines under this
21 chapter to make available to the public any Presidential
22 record that has not previously been made available to the
23 public, the Archivist shall—

24 “(A) promptly provide notice of such deter-
25 mination to—

1 “(i) the former President during whose
2 term of office the record was created; and

3 “(ii) the incumbent President; and

4 “(B) make the notice available to the public.

5 “(2) The notice under paragraph (1)—

6 “(A) shall be in writing; and

7 “(B) shall include such information as may be
8 prescribed in regulations issued by the Archivist.

9 “(3)(A) Upon the expiration of the 60-day period (ex-
10 cepting Saturdays, Sundays, and legal public holidays) be-
11 ginning on the date the Archivist provides notice under
12 paragraph (1)(A), the Archivist shall make available to the
13 public the Presidential record covered by the notice, except
14 any record (or reasonably segregable part of a record) with
15 respect to which the Archivist receives from a former
16 President or the incumbent President notification of a
17 claim of constitutionally based privilege against disclosure
18 under subsection (b).

19 “(B) A former President or the incumbent President
20 may extend the period under subparagraph (A) once for
21 not more than 30 additional days (excepting Saturdays,
22 Sundays, and legal public holidays) by filing with the Ar-
23 chivist a statement that such an extension is necessary
24 to allow an adequate review of the record.

1 “(C) Notwithstanding subparagraphs (A) and (B), if
2 the 60-day period under subparagraph (A), or any exten-
3 sion of that period under subparagraph (B), would other-
4 wise expire during the 6-month period after the incumbent
5 President first takes office, then that 60-day period or ex-
6 tension, respectively, shall expire at the end of that 6-
7 month period.

8 “(b)(1) For purposes of this section, the decision to
9 assert any claim of constitutionally based privilege against
10 disclosure of a Presidential record (or reasonably seg-
11 regable part of a record) must be made personally by a
12 former President or the incumbent President, as applica-
13 ble.

14 “(2) A former President or the incumbent President
15 shall notify the Archivist, the Committee on Oversight and
16 Government Reform of the House of Representatives, and
17 the Committee on Homeland Security and Governmental
18 Affairs of the Senate of a privilege claim under paragraph
19 (1) on the same day that the claim is asserted under such
20 paragraph.

21 “(c)(1) If a claim of constitutionally based privilege
22 against disclosure of a Presidential record (or reasonably
23 segregable part of a record) is asserted under subsection
24 (b) by a former President, the Archivist shall consult with
25 the incumbent President, as soon as practicable during the

1 period specified in paragraph (2)(A), to determine whether
2 the incumbent President will uphold the claim asserted by
3 the former President.

4 “(2)(A) Not later than the end of the 30-day period
5 beginning on the date of which the Archivist receives noti-
6 fication from a former President of the assertion of a
7 claim of constitutionally based privilege against disclosure,
8 the Archivist shall provide notice to the former President
9 and the public of the decision of the incumbent President
10 under paragraph (1) regarding the claim.

11 “(B) If the incumbent President upholds the claim
12 of privilege asserted by the former President, the Archivist
13 shall not make the Presidential record (or reasonably seg-
14 regable part of a record) subject to the claim publicly
15 available unless—

16 “(i) the incumbent President withdraws the de-
17 cision upholding the claim of privilege asserted by
18 the former President; or

19 “(ii) the Archivist is otherwise directed by a
20 final court order that is not subject to appeal.

21 “(C) If the incumbent President determines not to
22 uphold the claim of privilege asserted by the former Presi-
23 dent, or fails to make the determination under paragraph
24 (1) before the end of the period specified in subparagraph
25 (A), the Archivist shall release the Presidential record sub-

1 ject to the claim at the end of the 90-day period beginning
2 on the date on which the Archivist received notification
3 of the claim, unless otherwise directed by a court order
4 in an action initiated by the former President under sec-
5 tion 2204(e) of this title or by a court order in another
6 action in any Federal court.

7 “(d) The Archivist shall not make publicly available
8 a Presidential record (or reasonably segregable part of a
9 record) that is subject to a privilege claim asserted by the
10 incumbent President unless—

11 “(1) the incumbent President withdraws the
12 privilege claim; or

13 “(2) the Archivist is otherwise directed by a
14 final court order that is not subject to appeal.

15 “(e) The Archivist shall adjust any otherwise applica-
16 ble time period under this section as necessary to comply
17 with the return date of any congressional subpoena, judi-
18 cial subpoena, or judicial process.”.

19 (2) RESTRICTIONS.—Section 2204 of title 44,
20 United States Code (relating to restrictions on ac-
21 cess to presidential records) is amended by adding at
22 the end the following new subsection:

23 “(f) The Archivist shall not make available any origi-
24 nal Presidential records to any individual claiming access
25 to any Presidential record as a designated representative

1 under section 2205(3) if that individual has been convicted
2 of a crime relating to the review, retention, removal, or
3 destruction of records of the Archives.”.

4 (3) CONFORMING AMENDMENTS.—(A) Section
5 2204(d) of title 44, United States Code, is amended
6 by inserting “, except section 2208,” after “chap-
7 ter”.

8 (B) Section 2205 of title 44, United States
9 Code, is amended by striking “section 2204” and in-
10 serting “sections 2204 and 2208 of this title”.

11 (C) Section 2207 of title 44, United States
12 Code, is amended in the second sentence by insert-
13 ing “, except section 2208,” after “chapter”.

14 (4) CLERICAL AMENDMENT.—The table of sec-
15 tions at the beginning of chapter 22 of title 44,
16 United States Code, is amended by adding at the
17 end the following:

“2208. Claims of constitutionally based privilege against disclosure.”.

18 (5) RULE OF CONSTRUCTION.—Nothing in the
19 amendment made by paragraph (3)(C) shall be con-
20 strued to—

21 (A) affect the requirement of section 2207
22 of title 44, United States Code, that Vice Presi-
23 dential records shall be subject to chapter 22 of
24 that title in the same manner as Presidential
25 records; or

1 (B) affect any claim of constitutionally
2 based privilege by a President or former Presi-
3 dent with respect to a Vice Presidential record.

4 (f) CERTIFICATION OF PRESIDENT'S MANAGEMENT
5 OF PRESIDENTIAL RECORDS.—

6 (1) CERTIFICATION REQUIRED.—Chapter 22 of
7 title 44, United States Code, as amended by sub-
8 section (e)(1), is further amended by adding at the
9 end the following new section:

10 **“§ 2209. Certification of the President's management**
11 **of Presidential records**

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

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

21 (2) CLERICAL AMENDMENT.—The table of sec-
22 tions at the beginning of chapter 22 of title 44,
23 United States Code, as amended by subsection
24 (e)(4), is further amended by adding at the end the
25 following new item:

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

1 (3) EFFECTIVE DATE.—The amendments made
2 by this subsection shall take effect one year after the
3 date of the enactment of this Act.

4 **SEC. 4. RECORDS MANAGEMENT.**

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

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

9 (2) by striking paragraph (15) and inserting
10 the following new paragraphs:

11 “(15) the term ‘electronic messages’ means
12 electronic mail and other electronic messaging sys-
13 tems that are used for purposes of communicating
14 between individuals; and

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

18 “(A) categorizing and locating records;

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

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

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

1 (b) OBJECTIVES OF RECORDS MANAGEMENT.—Sec-
2 tion 2902 of title 44, United States Code, is amended—

3 (1) in paragraph (4), by striking “creation and
4 of records maintenance and use” and inserting “cre-
5 ation, maintenance, transfer, and use”;

6 (2) in paragraph (6), by inserting after “Fed-
7 eral paperwork” the following: “and the transfer of
8 records from Federal agencies to the National Ar-
9 chives of the United States in digital or electronic
10 form to the greatest extent possible”; and

11 (3) in paragraph (7), by striking “the Adminis-
12 trator or”.

13 (c) GENERAL RESPONSIBILITIES FOR RECORDS
14 MANAGEMENT.—Section 2904 of title 44, United States
15 Code, is amended—

16 (1) in subsection (b), by striking “The Adminis-
17 trator” and inserting “The Archivist”;

18 (2) in subsection (c)—

19 (A) in the matter preceding paragraph

20 (1)—

21 (ii) by striking “their” and inserting
22 “the”;

23 (iii) by striking “subsection (a) or (b),
24 respectively” and inserting “subsections
25 (a) and (b)”;

1 (iv) by striking “and the Adminis-
2 trator”; and

3 (v) by striking “each”; and

4 (B) in paragraph (8), by striking “or the
5 Administrator (as the case may be)”; and

6 (3) subsection (d) is amended to read as fol-
7 lows:

8 “(d) The Archivist shall promulgate regulations re-
9 quiring all Federal agencies to transfer all digital or elec-
10 tronic records to the National Archives of the United
11 States in digital or electronic form to the greatest extent
12 possible.”.

13 (d) INSPECTION OF AGENCY RECORDS.—Section
14 2906(a)(1) is amended—

15 (1) in subsection (a)—

16 (A) in paragraph (1)—

17 (ii) by striking “their respective” and
18 inserting “the”;

19 (iii) by striking “the Administrator of
20 General Services and”;

21 (iv) by striking “of either”;

22 (v) by striking “solely”; and

23 (vi) by inserting after “for the im-
24 provement of records management prac-
25 tices and programs” the following: “and

1 for determining whether the records of
2 Federal agencies have sufficient value to
3 warrant continued preservation or lack suf-
4 ficient value to justify continued preserva-
5 tion”;

6 (B) in paragraph (2)—

7 (i) by striking “the Administrator
8 and”; and

9 (ii) by striking the second sentence;
10 and

11 (C) in paragraph (3)—

12 (i) in the matter preceding subpara-
13 graph (A), by striking “the Administrator
14 or” and “of either”; and

15 (ii) in subparagraph (A), by striking
16 “the Administrator, the Archivist,” and in-
17 serting “the Archivist”; and

18 (2) in subsection (b), by striking “the Adminis-
19 trator and” and “of either”.

20 (e) RECORDS CENTERS AND CENTRALIZED MICRO-
21 FILMING SERVICES.—Section 2907 of title 44, United
22 States Code, is amended—

23 (1) in the subject heading by inserting “**or**
24 **digitization**” after “**microfilming**”; and

1 (2) by inserting “or digitization” after “micro-
2 filming”.

3 (f) REQUIREMENT FOR PRESERVATION OF ELEC-
4 TRONIC MESSAGES.—

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

8 **“§ 2911. Preservation of electronic messages and**
9 **other records**

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

17 “(1) require the electronic capture, manage-
18 ment, and preservation of such electronic records in
19 accordance with the records disposition requirements
20 of chapter 33 of this title;

21 “(2) require that such electronic records are
22 readily accessible for retrieval through electronic
23 searches;

24 “(3) establish mandatory minimum functional
25 requirements for electronic records management sys-

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

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

7 “(5) include timelines for Federal agency com-
8 pliance with the regulations that ensure compliance
9 as expeditiously as practicable but not later than
10 four years after the date of the enactment of this
11 section.

12 “(b) COVERAGE OF OTHER ELECTRONIC
13 RECORDS.—To the extent practicable, the regulations pro-
14 mulgated under subsection (a) shall also include require-
15 ments for the capture, management, and preservation of
16 other electronic records.

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

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

23 “(e) REPORTS ON IMPLEMENTATION OF REGULA-
24 TIONS.—

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

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

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions at the beginning of chapter 29 of title 44,
18 United States Code, is amended by adding after the
19 item relating to section 2910 the following new item:

“2911. Preservation of electronic messages and other records.”.

20 **SEC. 5. RECORDS MANAGEMENT BY FEDERAL AGENCIES.**

21 Section 3106 of title 44, United States Code, is
22 amended to read as follows:

23 **“§ 3106. Unlawful removal, destruction of records**

24 “(a) FEDERAL AGENCY NOTIFICATION.—The head
25 of each Federal agency shall notify the Archivist of any

1 actual, impending, or threatened unlawful removal, defac-
2 ing, alteration, corruption, deletion, erasure, or other de-
3 struction of records in the custody of the agency, and with
4 the assistance of the Archivist shall initiate action through
5 the Attorney General for the recovery of records the head
6 of the Federal agency knows or has reason to believe have
7 been unlawfully removed from that agency, or from an-
8 other Federal agency whose records have been transferred
9 to the legal custody of that Federal agency.

10 “(b) ARCHIVIST NOTIFICATION.—In any case in
11 which the head of a Federal agency does not initiate an
12 action for such recovery or other redress within a reason-
13 able period of time after being notified of any such unlaw-
14 ful action described in subsection (a), or is participating
15 in, or believed to be participating in any such unlawful
16 action, the Archivist shall request the Attorney General
17 to initiate such an action, and shall notify the Congress
18 when such a request has been made.”.

19 **SEC. 6. DISPOSAL OF RECORDS.**

20 (a) DEFINITION OF RECORDS.—Section 3301 of title
21 44, United States Code, is amended to read as follows:

22 **“§ 3301. Definition of records**

23 “(a) RECORDS DEFINED.—

24 “(1) IN GENERAL.—As used in this chapter, the
25 term ‘records’—

1 “(A) includes all recorded information, re-
2 gardless of form or characteristics, made or re-
3 ceived by a Federal agency under Federal law
4 or in connection with the transaction of public
5 business and preserved or appropriate for pres-
6 ervation by that agency or its legitimate suc-
7 cessor as evidence of the organization, func-
8 tions, policies, decisions, procedures, operations,
9 or other activities of the United States Govern-
10 ment or because of the informational value of
11 data in them; and

12 “(B) does not include—

13 “(i) library and museum material
14 made or acquired and preserved solely for
15 reference or exhibition purposes; or

16 “(ii) duplicate copies of records pre-
17 served only for convenience.

18 “(2) RECORDED INFORMATION DEFINED.—For
19 purposes of paragraph (1), the term ‘recorded infor-
20 mation’ includes all traditional forms of records, re-
21 gardless of physical form or characteristics, includ-
22 ing information created, manipulated, commu-
23 nicated, or stored in digital or electronic form.

24 “(b) DETERMINATION OF DEFINITION.—The Archi-
25 vist’s determination whether recorded information, regard-

1 less of whether it exists in physical, digital, or electronic
2 form, is a record as defined in subsection (a) shall be bind-
3 ing on all Federal agencies.”.

4 (b) REGULATIONS COVERING LISTS OF RECORDS
5 FOR DISPOSAL, PROCEDURE FOR DISPOSAL, AND STAND-
6 ARDS FOR REPRODUCTION.—Section 3302(3) of title 44,
7 United States Code, is amended by striking “photographic
8 or microphotographic processes” and inserting “photo-
9 graphic, microphotographic, or digital processes”.

10 (c) LISTS AND SCHEDULES OF RECORDS TO BE SUB-
11 MITTED TO THE ARCHIVIST BY HEAD OF EACH GOVERN-
12 MENT AGENCY.—Section 3303(1) of title 44, United
13 States Code, is amended by striking “photographed or
14 microphotographed” and inserting “photographed, micro-
15 photographed, or digitized”.

16 (d) EXAMINATION BY ARCHIVIST OF LISTS AND
17 SCHEDULES OF RECORDS LACKING PRESERVATION
18 VALUE; DISPOSAL OF RECORDS.—Section 3303a(c) of
19 title 44, United States Code, is amended by striking “the
20 Committee on Rules and Administration of the Senate and
21 the Committee on House Oversight of the House of Rep-
22 resentatives” and inserting “the Committee on Oversight
23 and Government Reform of the House of Representatives
24 and the Committee on Homeland Security and Govern-
25 mental Affairs of the Senate”.

1 (e) PHOTOGRAPHS OR MICROPHOTOGRAPHS OF
2 RECORDS CONSIDERED AS ORIGINALS; CERTIFIED RE-
3 PRODUCTIONS ADMISSIBLE IN EVIDENCE.—Section 3312
4 of title 44, United States Code, is amended—

5 (1) in the first sentence, by striking “Photo-
6 graphs and microphotographs of records” and in-
7 serting “Photographs, microphotographs of records,
8 or digitized records”; and

9 (2) in the second sentence, by striking “photo-
10 graphs or microphotographs” and inserting “photo-
11 graphs, microphotographs, or digitized records”,
12 each place it appears.

13 **SEC. 7. PROCEDURES TO PREVENT UNAUTHORIZED RE-**
14 **MOVAL OF CLASSIFIED RECORDS FROM NA-**
15 **TIONAL ARCHIVES.**

16 (a) CLASSIFIED RECORDS.—Not later than 90 days
17 after the date of the enactment of this Act, the Archivist
18 shall prescribe internal procedures to prevent the unau-
19 thorized removal of classified records from the National
20 Archives and Records Administration or the destruction
21 or damage of such records, including when such records
22 are accessed or searched electronically. Such procedures
23 shall include, at a minimum, the following prohibitions:

24 (1) An individual, other than covered personnel,
25 may not view classified records in any room that is

1 not secure, except in the presence of National Ar-
2 chives and Records Administration personnel or
3 under video surveillance.

4 (2) An individual, other than covered personnel,
5 may not be left alone with classified records, unless
6 that individual is under video surveillance.

7 (3) An individual, other than covered personnel,
8 may not review classified records while possessing
9 any cellular phone, electronic personal communica-
10 tion device, or any other devices capable of
11 photographing, recording, or transferring images or
12 content.

13 (4) An individual seeking access to review clas-
14 sified records, as a precondition to such access, must
15 consent to a search of their belongings upon conclu-
16 sion of their records review.

17 (5) All notes and other writings prepared by an
18 individual, other than covered personnel, during the
19 course of a review of classified records shall be re-
20 tained by the National Archives and Records Admin-
21 istration in a secure facility until such notes and
22 other writings are determined to be unclassified, are
23 declassified, or are securely transferred to another
24 secure facility.

25 (b) DEFINITIONS.—In this section:

1 (1) COVERED PERSONNEL.—The term “covered
2 personnel” means any individual—

3 (A) who has an appropriate and necessary
4 reason for accessing classified records, as deter-
5 mined by the Archivist; and

6 (B) who is either—

7 (i) an officer or employee of the
8 United States Government with appro-
9 priate security clearances; or

10 (ii) any personnel with appropriate se-
11 curity clearances of a Federal contractor
12 authorized in writing to act for purposes of
13 this section by an officer or employee of
14 the United States Government.

15 (2) RECORDS.—The term “records” has the
16 meaning given that term under section 3301 of title
17 44, United States Code.

18 **SEC. 8. TECHNICAL AND CONFORMING AMENDMENTS.**

19 (a) REPEAL OF PROVISIONS RELATED TO THE NA-
20 TIONAL STUDY COMMISSION ON RECORDS AND DOCU-
21 MENTS OF FEDERAL OFFICIALS.—

22 (1) IN GENERAL.—Sections 3315 through 3324
23 of title 44, United States Code, are repealed.

24 (2) CLERICAL AMENDMENT.—The table of sec-
25 tions at the beginning of chapter 33 of title 44,

1 United States Code, is amended by striking the
2 items relating to sections 3315 through 3324.

3 (b) ADDITIONAL REMOVAL OF REFERENCES TO THE
4 ADMINISTRATOR OF GENERAL SERVICES.—

5 (1) RECORDS MANAGEMENT BY THE ARCHI-
6 VIST.—The heading for chapter 29 of title 44,
7 United States Code, is amended by striking “**AND**
8 **BY THE ADMINISTRATOR OF GENERAL**
9 **SERVICES**”.

10 (2) ESTABLISHMENT OF PROGRAM OF MANAGE-
11 MENT.—section 3102(2) of title 44, United States
12 Code, is amended by striking “the Administrator of
13 General Services and”.

14 **SEC. 9. PRONOUN AMENDMENTS.**

15 Title 44, United States Code, is amended—

16 (1) in section 2116(c), by striking “his” and in-
17 serting “the Archivist’s”;

18 (2) in section 2201(2), by striking “his” and in-
19 serting “the President’s”, each place it appears;

20 (3) in section 2203—

21 (A) in subsection (a), by striking “his” and
22 inserting “the President’s”;

23 (B) in subsection (b), by striking “his”
24 and inserting “the President’s”;

25 (C) in subsection (c)—

1 (i) in the matter preceding paragraph

2 (1)—

3 (I) by striking “his” and insert-
4 ing “the President’s”; and

5 (II) by striking “those of his
6 Presidential records” and inserting
7 “those Presidential records of such
8 President”; and

9 (ii) in paragraph (2), by striking “he”
10 and inserting “the Archivist”;

11 (D) in subsection (d), by striking “he” and
12 inserting “the Archivist”;

13 (E) in subsection (e), by striking “he” and
14 inserting “the Archivist”; and

15 (F) in subsection (g), as so redesignated,
16 by striking “he” and inserting “the Archivist”;

17 (4) in section 2204—

18 (A) in subsection (a)—

19 (i) in the matter preceding paragraph
20 (1), by striking “his” and inserting “a
21 President’s”; and

22 (ii) in paragraph (5), by striking
23 “his” and inserting “the President’s”; and

24 (B) in subsection (b)—

1 (i) in paragraph (1)(B), by striking
2 “his” and inserting “the President’s”; and

3 (ii) in paragraph (3)—

4 (I) by striking “he” and inserting
5 “the Archivist’s”; and

6 (II) by striking “his designee”
7 and inserting “the Archivist’s des-
8 ignee”;

9 (5) in section 2205—

10 (A) in paragraph (2)(B), by striking “his”
11 and inserting “the incumbent President’s”; and

12 (B) in paragraph (3), by striking “his”
13 and inserting “the former President’s”;

14 (6) in section 2901(11), by striking “his” and
15 inserting “the Archivist’s”;

16 (7) in section 2904(c)(6), by striking “his” and
17 inserting “the Archivist’s”;

18 (8) in section 2905(a)—

19 (A) by striking “He” and inserting “The
20 Archivist”; and

21 (B) by striking “his” and inserting “the
22 Archivist’s”;

23 (9) in section 3103, by striking “he” and in-
24 serting “the head of such agency”;

25 (10) in section 3104—

1 (A) by striking “he” and inserting “such
2 official’s”; and

3 (B) by striking “him or his” and inserting
4 “such official or such official’s”;

5 (11) in section 3105, by striking “he” and in-
6 serting “the head of such agency”;

7 (12) in section 3302(1), by striking “him” and
8 inserting “the Archivist”; and

9 (13) in section 3303a—

10 (A) in subsection (a)—

11 (i) by striking “him” and inserting
12 “the Archivist”, each place it appears; and

13 (ii) by striking “he” and inserting
14 “the Archivist”;

15 (B) in subsection (c), by striking “he” and
16 inserting “the Archivist”;

17 (C) in subsection (e), by striking “his” and
18 inserting “the Archivist’s”; and

19 (D) in subsection (f), by striking “he” and
20 inserting “the Archivist”.

