

HOUSE BILL NO. 722

INTRODUCED BY B. BARKER, A. NICASTRO, S. MANESS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A RETENTION PERIOD OF NOT LESS THAN 1 YEAR FROM THE LAST DATE OF EMPLOYMENT AT A PUBLIC AGENCY FOR THE ELECTRONIC COMMUNICATIONS IN AN E-MAIL ACCOUNT OF A PUBLIC EMPLOYEE; PROVIDING REQUIREMENTS FOR THE STATE RECORDS RETENTION AND DISPOSITION SUBCOMMITTEE; PROVIDING REQUIREMENTS FOR THE LOCAL GOVERNMENT RECORDS COMMITTEE AND THE LOCAL GOVERNMENT RECORDS DESTRUCTION SUBCOMMITTEE; AND AMENDING SECTIONS 2-6-1012, 2-6-1109, 2-6-1202, 7-5-2132, 7-5-4124, 20-1-212, 71-3-705, AND 71-3-810, MCA."

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

Section 1. Section 2-6-1012, MCA, is amended to read:

"2-6-1012. Management of public records -- disposal and destruction. (1) (a) 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 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) (a) 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.

(b) A public officer shall ensure that electronic communications sent and received by a public employee employed by a public agency using an e-mail account provided and maintained by the public agency are properly managed and retained by the public employee and by the public agency. When a public employee's employment with a public agency ends, the public agency shall retain all electronic communications associated with that employee's e-mail account for a period of not less than 1 year or for the retention period approved by the retention and disposition subcommittee pursuant to 2-6-1109(5).

Section 2. Section 2-6-1109, MCA, is amended to read:

"2-6-1109. Retention and disposition subcommittee -- approval required for record disposal. (1)

There is a subcommittee of the state records committee to be known as the retention and disposition subcommittee. The subcommittee is composed of the members of the state records committee who represent the following offices:

- (a) the department of administration;
- (b) the legislative auditor;
- (c) the attorney general;
- (d) the secretary of state; and
- (e) the Montana historical society.

(2) The subcommittee shall approve, modify, or disapprove the recommendations on retention schedules of all public records.

(3) Except as provided in subsection (4), no public record may be disposed of or destroyed without the unanimous approval of the subcommittee. When approval is required, a request for the disposal or destruction must be submitted to the subcommittee by the agency concerned.

1 (4) The subcommittee may by unanimous approval establish categories of records for which no
2 disposal request is required if those records are retained for the designated retention period.

3 (5) (a) Pursuant to subsection (4), the subcommittee may designate a public employee's electronic
4 communications at the end of employment as a category of records for which a disposal request is not required.
5 The subcommittee shall designate a retention period of not less than 1 year from a public employee's last date
6 of employment at a public agency for all electronic communications contained in the employee's e-mail account
7 provided and maintained by the public agency. A public agency may not dispose of or delete the electronic
8 communications before the end of the retention period designated by the subcommittee.

9 (b) This subsection (5) does not apply to electronic communications in an e-mail account assigned
10 to or associated with a constitutional officer or a public officer."
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12 **Section 3.** Section 2-6-1202, MCA, is amended to read:

13 **"2-6-1202. Local government records committee -- duties and responsibilities.** (1) The local
14 government records committee shall:

15 (4) (a) approve, modify, or disapprove proposals for local government records retention and
16 disposition schedules;

17 (2) (b) ~~appoint a subcommittee, known as the members of the local government records destruction~~
18 ~~subcommittee, provided for in [section 4], to handle requests for disposal of records that are not listed on an~~
19 ~~approved retention schedule. The subcommittee consists of the state archivist, one of the local government~~
20 ~~records managers, and the representative of the department of administration. Unless specifically authorized by~~
21 ~~statute or by the retention and disposition schedule, a local government public record may not be destroyed or~~
22 ~~otherwise disposed of without the unanimous approval of the subcommittee. When approval is required, a~~
23 ~~request for the disposal or destruction of local government records must be submitted to the subcommittee by~~
24 ~~the entity concerned. If there is not unanimous approval of the subcommittee, the issue of the disposition of a~~
25 ~~record must be referred to the local government records committee for approval. When approval is obtained~~
26 ~~from the subcommittee or from the local government records committee for the disposal of a record, the local~~
27 ~~government records committee shall consider the inclusion of a new category of record for which a disposal~~
28 ~~request is not required and shall update the schedule as necessary.~~

1 (3) (c) establish a retention and disposition schedule for categories of records for which a disposal
2 request is not required. The local government records committee shall publish the retention and disposition
3 schedules. Updates to those schedules, if any, must be published at least annually.

4 (4) (d) develop guidance for local governments to identify, maintain, and secure their essential
5 records;

6 (5) (e) respond to requests for technical advice on matters relating to local government records; and

7 (6) (f) provide leadership and coordination in matters affecting the records of multiple local
8 governments.

9 (2) Pursuant to subsection (1)(c), the local government records committee may designate a public
10 employee's electronic communications at the end of employment as a category of records for which a disposal
11 request is not required. The committee shall designate a retention period of not less than 1 year from a public
12 employee's last date of employment at a public agency for all electronic communications contained in the
13 employee's e-mail account provided and maintained by the public agency. A public agency may not dispose of
14 or delete the electronic communications before the end of the retention period designated by the committee.

15 (b) This subsection (2) does not apply to electronic communications in an e-mail account assigned
16 to or associated with a public officer."

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18 NEW SECTION. Section 4. Local government records destruction subcommittee. (1) There is a
19 subcommittee of the local government records committee to be known as the local government records
20 destruction subcommittee. The subcommittee shall handle requests for disposal of records that are not listed on
21 an approved retention schedule.

22 (2) The subcommittee members are:

23 (a) the state archivist;

24 (b) one of the local government record managers from the local government records committee;

25 and

26 (c) the representative of the department of administration from the local government records
27 committee.

28 (3) Unless specifically authorized by statute or by the retention and disposition schedule, a local

1 government public record may not be destroyed or otherwise disposed of without the unanimous approval of
2 the subcommittee. When approval is required, a request for the disposal or destruction of local government
3 records must be submitted to the subcommittee by the entity concerned. If there is not unanimous approval of
4 the subcommittee, the issue of the disposition of a record must be referred to the local government records
5 committee for approval.

6 (4) When approval is obtained from the subcommittee or from the local government records
7 committee for the disposal of a record, the local government records committee shall consider the inclusion of a
8 new category of record for which a disposal request is not required and shall update the schedule as
9 necessary.

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11 **Section 5.** Section 7-5-2132, MCA, is amended to read:

12 **"7-5-2132. Destruction of county records.** Upon the order of the board of county commissioners
13 and with the written approval of the local government records destruction subcommittee provided for in 2-6-
14 4202 [section 4], a county officer may destroy records that have met the retention period, as contained in the
15 local government records retention and disposition schedules, and that are no longer needed by the office."

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17 **Section 6.** Section 7-5-4124, MCA, is amended to read:

18 **"7-5-4124. Destruction of municipal records.** (1) Except as provided in subsection (2), on the order
19 of the city or town council or commission and with the written approval of the local government records
20 destruction subcommittee provided for in 2-6-4202 [section 4], a city or town officer may destroy records that
21 have met the retention period, as contained in the local government records retention and disposition
22 schedules, and that are no longer needed by the office.

23 (2) If the city or town council or commission has adopted a retention schedule that has been
24 approved by the local government records committee, a city or town officer may destroy records that have met
25 the retention period without the written approval of the local government records destruction subcommittee."

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27 **Section 7.** Section 20-1-212, MCA, is amended to read:

28 **"20-1-212. Destruction of records by school officer.** (1) Upon the order of the board of trustees, a

1 school officer may destroy records that have met the retention period, as contained in the local government
2 records retention and disposition schedules, and, with written approval of the local government records
3 destruction subcommittee provided for in 2-6-1202 [section 4], any records not referenced in the retention and
4 disposition schedule that are no longer needed by the office.

5 (2) Each student's permanent file, as defined by the board of public education, must be
6 permanently kept in a secure location. Other student records must be maintained and destroyed as provided in
7 subsection (1). Personnel files must be kept for 10 years after termination."

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9 **Section 8.** Section 71-3-705, MCA, is amended to read:

10 **"71-3-705. Destruction of records -- when allowed.** (1) All seed liens filed for record in the office of
11 any county clerk and recorder must be retained by the county clerk in a file kept for that purpose for a period of
12 8 years from the time when the seed lien has ceased to be a lien on the property described in the lien.

13 (2) Upon the expiration of the period of time specified in subsection (1), the county clerk and
14 recorder may destroy all seed liens that have been preserved for the period of time specified in this section,
15 upon approval by the local government records destruction subcommittee provided for in 2-6-1202 [section 4]."

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17 **Section 9.** Section 71-3-810, MCA, is amended to read:

18 **"71-3-810. Destruction of records -- when allowed.** (1) All threshers' liens filed for record in the
19 office of any county clerk and recorder must be retained by the county clerk in a file kept for that purpose for a
20 period of 8 years from the time when the threshers' lien has ceased to be a lien on the property described in the
21 lien.

22 (2) Upon the expiration of the period of time specified in subsection (1), the county clerk and
23 recorder may destroy all threshers' liens that have been preserved for the period of time specified in this
24 section, upon approval by the local government records destruction subcommittee provided for in 2-6-1202
25 [section 4]."

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27 **NEW SECTION. Section 10. Codification instruction.** [Section 4] is intended to be codified as an
28 integral part of Title 2, chapter 6, part 12, and the provisions of Title 2, chapter 6, part 12, apply to [section 4].

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