AN ACT concerning preservation of public records; relating to electronic records; amending K.S.A. 45-402, 45-403, 45-404, 45-405, 45-408 and 75-104 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 45-402 is hereby amended to read as follows: 45-402. As used in this act:

(a) "State agency" means any department, board, commission, or authority of the executive branch of state government.

(b) "Local agency" means any department, board, commission, officer or authority of a county, city, township, school district or other tax-supported governmental subdivision of the state.

(c) "Board" means the state records board established pursuant to K.S.A. 75-3502, and amendments thereto.

(d) "Government records" means all volumes, documents, reports, maps, drawings, charts, indexes, plans, memoranda, sound recordings, microfilms, photographic records, e-mail, texting or other electronic records and other data, information or documentary material, regardless of physical form or characteristics, storage media or condition of use, made or received by an agency or public official in pursuance of law or in connection with the transaction of official business or bearing upon the official activities and functions of any governmental agency. Published material acquired and preserved solely for reference purposes, extra copies of documents preserved only for convenience of reference and stocks of publications, blank forms and duplicated documents are not included within the definition of government records.

(e) "Noncurrent government records" means all government records which no longer are necessary for the handling of ordinary official public business by the agency and which are not required by law to be retained in the immediate custody of the agency for a longer period of time.

(f) "Government records with enduring value" means all government records which merit preservation for historical, legal, fiscal or administrative reasons, or for research purposes.

(g) "Retention and disposition schedules" means lists of series of government records, prepared pursuant to K.S.A. 45-404 and subsections (c) and (d) of K.S.A. 45-406, and amendments thereto, specifying which
series of records have enduring value, authorizing disposition of certain
other series of records, and indicating how long certain series of records
should be retained before disposition of them.

(h) "Electronic records" means government records made or received
in a form relating to technology, having electrical, digital, magnetic,
wireless, optical, electromagnetic or similar capabilities.

Sec. 2. K.S.A. 45-403 is hereby amended to read as follows: 45-403.
(a) All government records made or received by and all government
records coming into the custody, control or possession of a state or local
agency or public official, in the course of its such agency's or public
official's public duties, and all government records deposited in the state
archives, shall be public property and shall not be mutilated, destroyed,
transferred, removed, damaged or otherwise disposed of, in whole or in
part, except as provided by law, or as may be authorized in the retention
and disposition schedules.

(b) Authority for the disposition of records on a continuing basis
approved for state agencies by the state records board, or for county
officers by the state archivist, prior to adoption of this act shall be null and
void, after adoption of the appropriate retention and disposition schedules.

Sec. 3. K.S.A. 45-404 is hereby amended to read as follows: 45-404.
The state records board shall:

(a) Approve or modify retention and disposition schedules and
records manuals prepared pursuant to subsections (c) and (d) of K.S.A. 45-
406, and amendments thereto. Once approved by the board the retention
and disposition schedules for state agencies shall be filed with the
secretary of state. Without further action by the board, noncurrent records
of state agencies scheduled for disposition may be disposed of as provided
in the schedules and noncurrent records scheduled for retention may be
transferred to the state archives, subject to approval by the state archivist
and in accordance with procedures to be established by the state archivist.

(b) Pass upon any proposed revisions in the retention and disposition
schedules and upon requests for authority to dispose of records of state
agencies or counties not listed in the schedules. No records of state
agencies or counties, counties or public officials shall be disposed of
before the retention periods designated in the schedules have elapsed
without the approval of the board. No state agency or county, county or
public official shall be required to destroy records which it such agency or
public official chooses to retain, even though the retention and disposition
schedules authorize their destruction. The retention and disposition
schedules for all local agencies except counties shall be recommendations
and shall not alter or replace current statutes authorizing or restricting the
disposition of government records by local agencies.

(c) Any board of county commissioners may order disposition of any
noncurrent county government records after minimum retention periods
set forth in the schedules prepared pursuant to subsection (d) of K.S.A. 45-
406, and amendments thereto. Any board of county commissioners may
petition the state records board for amendments to the schedules, for
authority to depart from specific provisions of the schedules or for
authority to implement schedules applicable to only a single county.
(d) With the approval of the state archivist, the board of county
commissioners of any county may transfer any noncurrent county
government records to the custody of the state historical society. The
board of county commissioners of any county may transfer any noncurrent
county government records which have been determined by the state
archivist to be records, which are not required by law to be confidential or
restricted, to the custody of a county historical society, a genealogical
society, a public library, a college or university library or another local or
regional repository in Kansas, determined by the state archivist to be
suitable, which will accept such records, except that under authority of this
subsection no records relating to the mental or physical health of any
person shall be so transferred.
(e) Pass upon recommendations by the state archivist for transfer to
the state archives of any noncurrent government records with enduring
value which are held by a state agency opposing such a transfer. When the
state archivist makes such a recommendation, the state agency opposing
the transfer shall defend before the board its reasons for wanting to retain
the records in its custody, and the board shall determine whether the
transfer shall occur.
(f) Approve or modify recommended microphotographic standards
prepared by the state archivist and pass upon requests for authority to
dispose of original government records of state agencies following
reproduction on film, as provided in K.S.A. 45-412, and amendments
thereto.
Sec. 4. K.S.A. 45-405 is hereby amended to read as follows: 45-405.
(a) The state historical society shall serve as the official state archives and
shall assist state and local agencies and public officials in the preservation
of government records with enduring value.
(b) Any state or local agency or public official may transfer to the
state archives any noncurrent government records accepted by the state
archivist and all state agencies shall transfer to the state archives any
noncurrent government records when directed to do so by the state records
board. With the approval of the state archivist, noncurrent legislative and
judicial records also may be deposited in the state archives for
preservation.
(c) The secretary of state shall not be prevented by any statute from
depositing in the state archives any noncurrent government records
accepted by the state archivist.

(d) The provisions of this act shall not prohibit discarding or otherwise disposing of extraneous, worthless or duplicate material found in government records when processed by the state archives staff. Any records placed in the state archives may be disposed of in any manner approved by the board and the state archivist upon a determination that such records no longer have enduring value.

Sec. 5. K.S.A. 45-408 is hereby amended to read as follows: 45-408.

Each agency of state government shall:

(a) Obtain authority from the state records board before disposing of any government record, unless the disposition is authorized by statute or in the retention and disposition schedules, or unless the record is being deposited in the state archives; obtain authority from the board before disposing of any government record prior to termination of the minimum retention period listed in the retention and disposition schedules.

(b) Provide storage conditions for all government records with enduring value which are not seriously adverse to their preservation and which will not prevent providing proper public access to the records; adopt reasonable security measures to protect government records from theft or damage.

(c) Cooperate with efforts by the state archivist or representatives of the state archivist to inspect records and the conditions in which they are stored, to prepare comprehensive inventories of government records, to microfilm noncurrent records with enduring value and to improve the arrangement, storage and physical condition of noncurrent government records with enduring value in accordance with appropriate archival techniques. Agencies shall not be required to provide funds or staff time for these purposes, but they shall give careful consideration to requests and recommendations made by the state archivist.

(d) Retain electronic records in electronic format, to remain usable, searchable, retrievable and authentic for the length of the designated retention period.

(e) Maintain a security backup of active records which is compatible with the current system configuration in use by the agency.

(f) Comply with rules and regulations, standards and procedures adopted by the state records board and the state archivist pursuant to the provisions of this act.

New Sec. 6. (a) E-mails and texts created and received by a state or local agency or public official in the transaction of public business are subject to all the laws and regulations governing the retention, disclosure, destruction and archiving of public records. The e-mails and texts of all elected government officials and public employees are subject to the records retention periods and disposition promulgated by the state records
board. Any and all e-mails and texts with archival value must be retained.

(b) State and local agencies and public officials may be relieved of the obligation to permanently retain archival e-mail and texts by transmitting it to the custody of the state historical society.

c) This section does not apply to state legislators or members and records of the judiciary.

(d) This section shall be part of and supplemental to the government records preservation act, K.S.A. 45-401 et seq., and amendments thereto.

New Sec. 7. (a) Any record created with government provided digital equipment shall be a public record under this act.

(b) Any electronic record made or received concerning government business is a public record even if a public official uses his personal digital or electronic equipment.

c) The legislature recognizes that e-mail and texting are a dominant means of communication today. Any exception carved out for e-mail or texting communication is held to be bad public policy.

(d) This section shall be part of and supplemental to the government records preservation act, K.S.A. 45-401 et seq., and amendments thereto.

Sec. 8. K.S.A. 75-104 is hereby amended to read as follows: 75-104.

(a) The governor shall keep and maintain a full and complete record of the following applications or petitions made to the governor:

(1) Applications or petitions for executive pardon, commutation of sentence or clemency;

(2) applications or petitions for the appointment of a named individual to public office when a vacancy occurs and when the governor is restricted to the appointment of nominees so submitted;

(3) applications or petitions for the appointment of a person from a list of persons submitted by an association, agency or committee where the governor is limited to make an appointment only from that list;

(4) applications for the approval of grants where the governor's approval is a condition precedent to the making of such grants either by a state agency or by the federal government;

(5) applications or petitions for declarations of emergency;

(6) petitions for the calling of a special session of the legislature pursuant to section 5 of article 1 of the constitution of the state of Kansas; and

(7) applications or petitions directed to the governor and requesting that the governor take action in accordance with subsection (c) of K.S.A. 75-3711, and amendments thereto, and exercise a function otherwise specified by statute for the state finance council.

(b) The record required to be kept under subsection (a) and all records of the financial affairs and transactions regarding the receipt and expenditure of state moneys shall remain on file in the office of each
governor during the governor's term of office and for a period of three
years following the expiration of such term.

(c) Following the three-year period prescribed in subsection (b), all
records kept and maintained pursuant to subsection (a) shall be transferred
to the custody of the state historical society and the records of the financial
affairs and transactions kept and maintained pursuant to subsection (b)
shall be kept in the office of the governor, subject to disposal as may be
authorized by the state records board.

(d) Records, correspondence and other papers of the governor which
are not required to be kept and maintained under subsections (a) or (b)
shall not be subject to review or audit by the legislative post auditor under
the legislative post audit act.

(e) Upon completion of the term of office as governor, all records,
correspondence, both electronic and nonelectronic, including e-mails and
texts, and other papers of the former governor not required to be kept and
maintained under subsections (a) or (b) which relate to the former
governor's public duties while governor shall be transferred to the custody
of the state historical society. During the lifetime of the former governor,
no person shall have access to any such records, correspondence, both the
electronic and nonelectronic, including e-mails and texts, or other papers
which are not required to be disclosed under K.S.A. 45-221, and
amendments thereto, except upon consent of the former governor, and the
former governor shall be considered the official custodian of such records,
correspondence and other papers which are not required to be disclosed.

(f) Upon the death of a governor while in office, all records,
correspondence, both electronic and nonelectronic, including e-mails and
texts, and other papers of such deceased governor not required to be kept
and maintained under subsections (a) or (b) which relate to such governor's
duties while governor shall be transferred to the custody of the state
historical society.

(g) A person elected or succeeding to the office of governor shall be
governed by the provisions of this section as it existed at the time such
person was elected or succeeded to such office.

Sec. 9. K.S.A. 45-402, 45-403, 45-404, 45-405, 45-408 and 75-104
are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its
publication in the statute book.