**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “HONORING HISTORY BY PRESERVING PUBLIC OFFICIALS’ CORRESPONDENCE ACT”; TO AMEND SECTION 30‑1‑90, RELATING TO THE CREATION, FILING, AND PRESERVATION OF PUBLIC RECORDS BY THE DEPARTMENT OF ARCHIVES, SO AS TO PROHIBIT PUBLIC OFFICIALS FROM THE INTENTIONAL DELETION OF CERTAIN ELECTRONIC COMMUNICATIONS THAT CONSTITUTE PUBLIC RECORDS; AND TO REPEAL SECTION 30‑1‑110 RELATING TO THE DISCRETIONARY DESTRUCTION OF PUBLIC RECORDS.

Whereas, in a state proud of its rich history, public records provide a vital component for an honest and complete understanding of the role of government in our past, thus making the preservation of public records a duty we must tirelessly endeavor to honor; and

Whereas, pursuant to the fundamental philosophy of the American constitutional form of government and an indisputable duty to preserve historically significant information concerning the institutions and people to whom we entrust our government, it is declared to be the public policy of the State of South Carolina that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this act, and that this information must be carefully preserved in a manner appropriate to meet our obligation to provide this information to the public; and

Whereas, the General Assembly hereby declares that it is the public policy of the State of South Carolina that access by all persons to public records through this disclosure and continuous availability of these records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this act, and to preserve those records with great care for an appropriate period of time; and

Whereas, the integrity of this mandate of the government to provide access by all people to public records must be maintained by public officials through the careful preservation of any records of communications concerning the conduct of public business made by those officials, including communications conducted through existing and evolving technologies that have greatly enhanced our ability to interact and exchange ideas and information through cyberspace. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act must be known and may be cited as the “Honoring History by Preserving Public Officials’ Correspondence Act”.

SECTION 2. Section 30‑1‑90 of the 1976 Code is amended to read:

“Section 30‑1‑90. (A) The Archives may examine the condition of public records and give advice and assistance to public officials in the solutions of their problems in creating, filing, preserving, and making available the public records in their custody. When requested by the Archives, agencies and subdivisions must assist the Archives in preparing an inclusive inventory of records in their custody and establishing records schedules mandating a time period for the retention of each series of records. These schedules must be approved by the governing body of each subdivision or the executive officer of each agency or body having custody of the records and by the Director of the Archives.

(B) In addition, general schedules for records series common to agencies and subdivisions may be issued by the Archives. Agencies and subdivisions must be allowed to opt out of these general schedules and proceed pursuant to the provisions of subsection (A) in the establishment of specific records schedules.

(C) The Archives has express authority to review all public records for appraisal and scheduling purposes, including those records designated as closed, confidential, and restricted by law. However, in certain cases the department may waive its authority to review certain records after its approval of procedures developed by the executive officer or public official in charge of the records to provide the department with information needed for appraisal and scheduling purposes.

(D) No records of long term or enduring value created, including those filed, kept, or stored electronically, or those records converted from paper to magnetic, optical, film, or other media in the transaction of public business may be disposed of, destroyed, or erased without an approved records schedule. All records disposals that are carried out in accordance with duly approved records schedules must be documented and reported in accordance with procedures developed by the Archives.

(E)(1) No public record created by any correspondence or communication to, from, or at the direction of an elected public official from any branch of state government may be intentionally deleted, destroyed, rendered inaccessible, or rendered not viewable from the time the communication is created until ten years after the date on which the public official ceases to hold the office held when he created or received the correspondence or communication. This subsection includes, but is not limited to, any correspondence or communication transmitted electronically:

(a) with the use of privately or publicly owned equipment, software, or cyber technology; and

(b) by means, whether publicly or privately owned, such as private email, social networking, or other electronic or cyber communications account, profile, screen name, or similar means associated with the capacity to transmit electronic correspondence or communications between individual people. As new technologies emerge, the department may promulgate regulations to address their unique nature to ensure their use as a presentation, conduit, or source of storage of public records is encompassed within the scope of this article.

(2) Notwithstanding another provision of law, a person who violates this subsection shall pay a fine of two thousand five hundred dollars to the department for each violation.”

SECTION 3. Section 3‑1‑110 of the 1976 Code is repealed.

SECTION 4. This act takes effect upon approval by the Governor.

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