

116TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To amend chapter 22 of title 44, United States Code, to ensure Presidential records are preserved, duly created when non-official electronic messaging accounts are used, and made available to the public and the next administration in a timely fashion to advance national security and accountability, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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Mr. MURPHY introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend chapter 22 of title 44, United States Code, to ensure Presidential records are preserved, duly created when non-official electronic messaging accounts are used, and made available to the public and the next administration in a timely fashion to advance national security and accountability, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Promoting Account-  
5 ability and Security in Transitions Act of 2020” or the  
6 “PAST Act”.

1 **SEC. 2. SENSE OF CONGRESS.**

2 The sense of Congress is the following:

3 (1) The preservation of Presidential records (as  
4 defined in section 2201 of title 44, United States  
5 Code) is a legal obligation for every Presidential ad-  
6 ministration, as Presidential records are the most  
7 important and widely-used source for studying how  
8 the executive branch of the Federal Government  
9 works, how it has changed over time, and how it  
10 might evolve to serve the needs of a new era.

11 (2) The preservation of Presidential records is  
12 therefore vital for—

13 (A) the public to be able to understand  
14 and learn from the past;

15 (B) future policy-making to build on the  
16 past administration's successes and experience;

17 (C) ensuring accountability for results,  
18 performance, and conduct; and

19 (D) other purposes that serve to strength-  
20 en American democracy.

21 (3) Any effort to destroy, alter, or remove Pres-  
22 idential records in violation of chapter 22 of title 44,  
23 United States Code—

24 (A) threatens the values described in para-  
25 graph (2); and

1 (B) may subject a person engaging in such  
2 efforts to other criminal penalties under section  
3 641 or 2071 of title 18, United States Code.

4 (4) The lawful disposal of Presidential records  
5 that no longer have administrative, historical, infor-  
6 mational, or evidentiary value must follow a process  
7 as described in section 2203 of title 44, United  
8 States Code.

9 (5) What constitutes a Presidential record is  
10 determined solely by whether the record relates to  
11 the “carrying out of constitutional, statutory, or  
12 other official or ceremonial duties of the President”,  
13 as indicated in the definition of the term “Presi-  
14 dential records” in section 2201 of title 44, United  
15 States Code, and by the content of the information  
16 contained in the record.

17 (6) For communication between agencies and  
18 the Executive Office of the President, the copy of  
19 the record belonging to the agency is retained as an  
20 agency record pursuant to section 3301 of title 44,  
21 United States Code.

22 (7) Consistent with section 2203 of title 44,  
23 United States Code, any Presidential records created  
24 with non-official electronic media shall be “pre-  
25 served,” which includes a comprehensive documenta-

1       tion of all records and associated metadata and at-  
2       tachments.

3               (8) Applications or software with an automatic  
4       deleting functionality are antithetical to the legal  
5       and historical obligations described under chapter 22  
6       of title 44, United States Code.

7               (9) Periods of Presidential transition are mo-  
8       ments where the national security of the United  
9       States is most vulnerable, necessitating an early,  
10      good faith, and consistent commitment by the out-  
11      going administration to ensure continuity of oper-  
12      ations as it relates to national security and pro-  
13      tecting critical infrastructure, among other reasons.

14              (10) Agencies and the Executive Office of the  
15      President are required by law to cooperate with the  
16      Archivist of the United States and the Federal  
17      Transition Coordinator of the General Service Ad-  
18      ministration, who is tasked with ensuring agencies  
19      comply with all statutory requirements relating to  
20      transition planning under section 4(c) of the Presi-  
21      dential Transition Act of 1963 (3 U.S.C. 102 note).

22              (11) During a Presidential transition, Presi-  
23      dential records, which contain valuable information  
24      regarding agreements or negotiations with foreign  
25      governments and international organizations and the

1 actions and beliefs of foreign nations or actors are  
2 of enormous value to the national security.

3 (12) Any effort to delay briefings, coordination,  
4 and sharing information regarding key national se-  
5 curity relationships, threats, and operations with an  
6 incoming administration or the destruction, removal,  
7 or alteration of Presidential records that attest to  
8 the information described in this section could pose  
9 a grave danger to the national security.

10 (13) An expeditious ascertainment of the plau-  
11 sible President-elect and Vice-President-elect by the  
12 Administrator of General Services plays a vital role  
13 in ensuring continuity of Government and protecting  
14 national security such that the risk of redundant ex-  
15 penditure is overwhelmed by the advantages of an  
16 early access to transition resources to allow for tran-  
17 sition planning.

18 (14) The National Archives and Records Ad-  
19 ministration plays an essential role in ensuring the  
20 official proceedings of Government are documented  
21 to improve democracy in the United States, protect  
22 national security, provide continuity of Government  
23 during a transition, and promote accountability for  
24 actions taking during a Presidency.

1           (15) The robust funding of the National Ar-  
2           chives and Records Administration and protection of  
3           its officers and employees from political interference  
4           is a national imperative and must be a priority for  
5           Congress.

6 **SEC. 3. DEFINITIONS.**

7           Section 2201 of title 44, United States Code, is  
8           amended—

9           (1) in paragraph (1), by inserting “, and in-  
10          cludes the metadata associated with all such mate-  
11          rial” before the period; and

12          (2) by adding at the end the following:

13           “(6) The term ‘electronic messaging account’  
14          includes electronic mail, chat or instant messaging,  
15          text messaging, voicemail messaging, and other mes-  
16          saging platforms or apps, such as social media or  
17          mobile applications, among other applications.

18           “(7) The term ‘official electronic messaging ac-  
19          count’ includes electronic messaging accounts pro-  
20          vided by an executive agency or the Executive Office  
21          of the President.

22           “(8) The term ‘dispose’, with respect to docu-  
23          mentary material, means to remove, deface, alter,  
24          corrupt, delete, erase, or otherwise destroy the docu-  
25          mentary material.”.

1 **SEC. 4. MANAGEMENT AND CUSTODY OF PRESIDENTIAL**  
2 **RECORDS.**

3 (a) IN GENERAL.—Section 2203 of title 44, United  
4 States Code, is amended—

5 (1) by redesignating subsections (e), (f), and  
6 (g) as subsections (g), (h), and (i), respectively;

7 (2) by redesignating subsection (d) as sub-  
8 section (e);

9 (3) by striking subsection (e) and inserting the  
10 following:

11 “(c) The President shall obtain the advice of the Ar-  
12 chivist in applying standards, procedures, and techniques  
13 designed to—

14 “(1) improve the management of records;

15 “(2) promote the maintenance and security of  
16 records determined appropriate for preservation; and

17 “(3) facilitate the segregation and disposal of  
18 records of temporary value.

19 “(d)(1) During the President’s term of office, if the  
20 President wishes to dispose of those Presidential records  
21 of such President that no longer have administrative, his-  
22 torical, informational, or evidentiary value—

23 “(A) the President shall request, in writing, the  
24 views of the Archivist concerning the proposed dis-  
25 posal of such Presidential records; and

1           “(B) the Archivist shall indicate, in writing,  
2           whether the Archivist intends to take any action  
3           under subsection (g) of this section with respect to  
4           the Presidential records.

5           “(2) Not later than 5 business days after the date  
6           on which the Archivist provides a written indication under  
7           paragraph (1)(B), the Archivist shall make publicly avail-  
8           able on a website any communications received or sent by  
9           the Archivist regarding the potential disposal of Presi-  
10          dential records under paragraph (1).”;

11           (4) in subsection (e), as so redesignated—

12                   (A) by striking “subsection (c)” and in-  
13                   serting “subsection (d)”; and

14                   (B) by striking “subsection (e)” and in-  
15                   serting “subsection (g)”; and

16           (5) by inserting after subsection (e), as so re-  
17          designated, the following:

18           “(f) In January of each even-numbered year, the Ar-  
19          chivist shall, in coordination with the Office of Administra-  
20          tion of the Executive Office of the President, submit to  
21          the Chairman and Ranking Member of each committee of  
22          jurisdiction of either House of Congress, of the Committee  
23          on Appropriations of the Senate, and of the Committee  
24          on Appropriations of the House of Representatives and to  
25          the President a report that—



1           “(1) is based on inspections conducted by the  
2           Archivist, in coordination with the Office of Admin-  
3           istration of the Executive Office of the President, of  
4           the Presidential records management programs of  
5           the Executive Office of the President; and

6           “(2) evaluates—

7                   “(A) the records management activities  
8                   and training conducted and standard operating  
9                   procedures and guidance issued pursuant to  
10                  this section; and

11                   “(B) responses to any recommendations  
12                   resulting from inspections or studies conducted  
13                   under this section.”.

14           (b) CONFORMING AMENDMENTS.—

15                   (1) Section 2105(a)(2) of title 44, United  
16                   States Code, is amended by striking “paragraph  
17                   (f)(2)” and inserting “subsection (i)(2)”.

18                   (2) Chapter 22 of title 44, United States Code,  
19                   is amended—

20                           (A) in section 2204(b)(2)(A), by striking  
21                           “section 2203(d)(1)” and inserting  
22                           “2203(i)(1)”; and

23                           (B) in section 2206(1), by striking “sec-  
24                           tion 2203(f)(3)” and inserting “section  
25                           2203(i)(4)”.

1 **SEC. 5. RESTRICTIONS ON ACCESS TO PRESIDENTIAL**  
2 **RECORDS.**

3 Section 2204 of title 44, United States Code, is  
4 amended—

5 (1) in subsection (b)(3), by striking “shall not  
6 be subject to judicial review, except as provided” and  
7 inserting “shall be subject to judicial review, includ-  
8 ing as provided”; and

9 (2) in subsection (e)—

10 (A) by inserting “(1)” before “The United  
11 States”; and

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

13 “(2)(A) A person seeking access to a Presidential  
14 record to which access is restricted under subsection (a)  
15 may file an action in the United States District Court for  
16 the District of Columbia seeking release of the Presi-  
17 dential record.

18 “(B) In an action filed under subparagraph (A), the  
19 court shall direct the release of a Presidential record, or  
20 a reasonably segregable portion thereof, if the court deter-  
21 mines that the Presidential record, or the reasonably seg-  
22 regable portion thereof, is not within any of the categories  
23 specified in subsection (a) and there is not a valid claim  
24 of constitutionally based privilege against disclosure.”.

1 **SEC. 6. EXCEPTIONS TO RESTRICTED ACCESS.**

2 Section 2205(2)(C) of title 44, United States Code,  
3 is amended—

4 (1) by striking “to any committee or sub-  
5 committee thereof” and inserting “upon request by  
6 the Chairman or Ranking Member of a committee or  
7 subcommittee thereof, to such Chairman or ranking  
8 member,”; and

9 (2) by striking “its business” and inserting  
10 “the business of the committee or subcommittee”.

11 **SEC. 7. REGULATIONS.**

12 Section 2206 of title 44, United States Code, is  
13 amended—

14 (1) by inserting “(a)” before “The Archivist”;

15 (2) in subsection (a), as so designated—

16 (A) in paragraph (3), by striking “and” at  
17 the end;

18 (B) in paragraph (4), by striking the pe-  
19 riod and inserting a semicolon; and

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

21 “(5) provisions—

22 “(A) for what constitutes official and non-  
23 official electronic messaging accounts; and

24 “(B) establishing procedures for docu-  
25 menting—

1                   “(i) Presidential records created on  
2                   non-official electronic messaging accounts  
3                   (including emerging technologies, applica-  
4                   tions, and platforms); and

5                   “(ii) required metadata;

6                   “(6) provisions for the preservation of digital  
7                   media, including from social media accounts, that  
8                   may appear to be personal records or private prop-  
9                   erty but the preservation of which may be required  
10                  under this chapter; and

11                  “(7) provisions for the appropriate cir-  
12                  cumstances and controls for the use of messaging  
13                  applications and software with automatic deleting or  
14                  other similar functionalities.”; and

15                  (3) by adding at the end the following:

16                  “(b) The Archivist shall issue, and shall annually up-  
17                  date, implementation guidance with respect to the regula-  
18                  tions described in paragraphs (5) and (6) of subsection  
19                  (a).”.

20 **SEC. 8. DISCLOSURE REQUIREMENT FOR OFFICIAL BUSI-**  
21 **NESS CONDUCTED USING NON-OFFICIAL**  
22 **ELECTRONIC MESSAGING ACCOUNTS.**

23                  (a) IN GENERAL.—Section 2209(a) of title 44,  
24                  United States Code, is amended—

1 (1) in the matter preceding paragraph (1), by  
2 striking “create or send” and inserting “create,  
3 send, or receive”;

4 (2) by redesignating paragraphs (1) and (2) as  
5 subparagraphs (A) and (B), respectively, and adjust-  
6 ing the margin accordingly; and

7 (3) by striking “The President,” and inserting  
8 the following:

9 “(1) LIMITATIONS.—Not later than 90 days  
10 after assuming office, the President shall publicly re-  
11 lease guidelines for officers and employees of the Ex-  
12 ecutive Office of the President who create or receive  
13 documentary material that—

14 “(A) prohibit the use of non-official elec-  
15 tronic messaging accounts that cannot be easily  
16 copied or forwarded to an official electronic  
17 messaging account for official business; and

18 “(B) prohibit the use of messaging ac-  
19 counts or software with automatic deleting or  
20 other similar functionalities.

21 “(2) REQUIREMENTS FOR USE.—The Presi-  
22 dent,”.

23 **SEC. 9. PRESIDENTIAL TRANSITION ACT OF 1963.**

24 The Presidential Transition Act of 1963 (3 U.S.C.  
25 102 note) is amended—

1 (1) in section 3—

2 (A) in subsection (a)(8)(A), by striking  
3 clause (v) and inserting the following:

4 “(v)(I)(aa) Activities under this paragraph shall in-  
5 clude the preparation of a detailed classified, compart-  
6 mented summary by the relevant outgoing executive  
7 branch officials of—

8 “(AA) specific strategic, tactical, and oper-  
9 ational threats to national security;

10 “(BB) major military or covert operations; and

11 “(CC) pending decisions on possible uses of  
12 military force or covert actions.

13 “(bb) The summary prepared under item (aa) shall  
14 be provided to the President-elect and members of office  
15 staff with appropriate clearances that are designated by  
16 the President-elect as soon as possible after the date of  
17 the general elections held to determine the electors of  
18 President and Vice President under section 1 or 2 of title  
19 3, United States Code.

20 “(II) The Archivist of the United States shall collabo-  
21 rate with the Federal Transition Coordinator and agen-  
22 cies, including the Executive Office of the President, to  
23 ensure that the President-elect and members of office staff  
24 with appropriate clearances that are designated by the  
25 President-elect can easily access national security informa-

1 tion (including documents, videos, audio, and briefings)  
2 created by the previous administration after the inaugura-  
3 tion of the President-elect.

4 “(III) The Archivist of the United States shall submit  
5 to the Chairman and Ranking Member of each committee  
6 of jurisdiction of either House of Congress, of the Com-  
7 mittee on Appropriations of the Senate, and of the Com-  
8 mittee on Appropriations of the House of Representatives  
9 a report if the Archivist of the United States believes there  
10 appears to be noncompliance with the requirements under  
11 this clause.”; and

12 (B) in subsection (c)—

13 (i) by inserting “(1)” before “The  
14 terms”; and

15 (ii) by adding at the end the fol-  
16 lowing:

17 “(2)(A) Not later than 6 days after the date of a gen-  
18 eral election described in paragraph (1), the Administrator  
19 shall make the ascertainment described in paragraph (1)  
20 without any interference or undue pressure from the  
21 President or a candidate for President, or any representa-  
22 tive thereof, based on provisional results from State elec-  
23 tion officials and expert analysis of results.

24 “(B) Given the imperatives of an orderly transition,  
25 if there is a plausible chance that the apparent successful

1 candidate for the office of President and Vice President,  
2 respectively, are not the incumbent, or if the incumbent  
3 was not a candidate, the Administrator shall provide a  
4 portion of the services and facilities authorized to be pro-  
5 vided under this section to all parties with a plausible  
6 chance of being the successful candidate.”; and

7 (2) in section 4—

8 (A) in subsection (d)—

9 (i) in paragraph (2)—

10 (I) in subparagraph (B), by  
11 striking “and” at the end;

12 (II) in subparagraph (C), by  
13 striking the period at the end and in-  
14 sserting “; and”; and

15 (III) by adding at the end the  
16 following:

17 “(D) under the guidance of the Archivist  
18 of the United States, monitor compliance with  
19 chapter 22 of title 44, United States Code, in-  
20 cluding the preservation of all records and pre-  
21 vention of any records from being disposed un-  
22 less done in accordance with such chapter.”;

23 (ii) in paragraph (3)—



1 (I) by redesignating subpara-  
2 graphs (C) and (D) as subparagraphs  
3 (D) and (E), respectively; and

4 (II) by inserting after subpara-  
5 graph (B) the following:

6 “(C) the Archivist of the United States;”;

7 and

8 (iii) by adding at the end the fol-  
9 lowing:

10 “(5) ROLE OF THE ARCHIVIST.—

11 “(A) IN GENERAL.—Not later than 120  
12 days before the date of a Presidential election,  
13 the Archivist of the United States shall send a  
14 written communication to all officers and em-  
15 ployees of the Executive Office of the President  
16 who create or receive documentary material (as  
17 defined under section 2201 of title 44, United  
18 States Code)—

19 “(i) describing the requirements under  
20 chapter 22 of title 44, United States Code;  
21 and

22 “(ii) establishing a timeline for co-  
23 operation with the Archivist of the United  
24 States to ensure an orderly and timely

1 transition of records subject to such chap-  
2 ter if there is a Presidential transition.

3 “(B) REPORTING.—

4 “(i) IN GENERAL.—Not later than 30  
5 days after the date of a Presidential elec-  
6 tion which results in a Presidential transi-  
7 tion, the Archivist of the United States, in  
8 coordination with the Federal Transition  
9 Coordinator, shall submit to the Chairman  
10 and Ranking Member of each committee of  
11 jurisdiction of either House of Congress, of  
12 the Committee on Appropriations of the  
13 Senate, and of the Committee on Appro-  
14 priations of the House of Representatives a  
15 report discussing the status of the transi-  
16 tion activities of the White House Transi-  
17 tion Coordinating Council and identifying  
18 concerns, if any, regarding compliance with  
19 chapter 22 of title 44, United States Code.

20 “(ii) NONCOMPLIANCE.—The Archi-  
21 vist of the United States shall submit to  
22 the Chairman and Ranking Member of  
23 each committee of jurisdiction of either  
24 House of Congress, of the Committee on  
25 Appropriations of the Senate, and of the

1 Committee on Appropriations of the House  
2 of Representatives a report if the Archivist  
3 of the United States believes there appears  
4 to be noncompliance with the requirements  
5 or timeline described in subparagraph  
6 (A).”;

7 (B) in subsection (e)(2)—

8 (i) in subparagraph (D), by striking  
9 “and” at the end;

10 (ii) in subparagraph (E), by striking  
11 the period at the end and inserting “;  
12 and”; and

13 (iii) by adding at the end the fol-  
14 lowing:

15 “(F) under the guidance of the Archivist of  
16 the United States, monitor compliance with  
17 chapter 22 of title 44, United States Code, in-  
18 cluding the preservation of all records and pre-  
19 ventions of any records from being disposed un-  
20 less done in accordance with such chapter.”;

21 (C) by redesignating subsection (i) as sub-  
22 section (j); and

23 (D) by inserting after subsection (h) the  
24 following:

25 “(i) ROLE OF THE ARCHIVIST.—

1           “(1) IN GENERAL.—Not later than 120 days  
2 before the date of a Presidential election, the Archi-  
3 vist of the United States shall send a written com-  
4 munication to the head of each agency—

5                   “(A) describing the requirements under  
6 chapter 33 of title 44, United States Code; and

7                   “(B) establishing a timeline for coopera-  
8 tion with the Archivist of the United States to  
9 ensure an orderly and timely transition of  
10 records subject to such chapter if there is a  
11 Presidential transition.

12           “(2) REPORTING.—

13                   “(A) IN GENERAL.—Not later than 30  
14 days after the date of a Presidential election  
15 which results in a Presidential transition, the  
16 Archivist of the United States, in coordination  
17 with the Federal Transition Coordinator, shall  
18 submit to the Chairman and Ranking Member  
19 of each committee of jurisdiction of either  
20 House of Congress, of the Committee on Appro-  
21 priations of the Senate, and of the Committee  
22 on Appropriations of the House of Representa-  
23 tives a report discussing the status of the tran-  
24 sition activities of agencies and identifying con-

1           cerns, if any, regarding compliance with chapter  
2           33 of title 44, United States Code.

3                   “(B) NONCOMPLIANCE.—The Archivist of  
4           the United States shall submit to the Chairman  
5           and Ranking Member of each committee of ju-  
6           risdiction of either House of Congress, of the  
7           Committee on Appropriations of the Senate,  
8           and of the Committee on Appropriations of the  
9           House of Representatives a report if the Archi-  
10          vist of the United States believes there appears  
11          to be noncompliance with the requirements or  
12          timeline described in paragraph (1).”.

13 **SEC. 10. FORMER PRESIDENTS.**

14          The Act entitled “An Act to provide retirement, cler-  
15          ical assistants, and free mailing privileges to former Presi-  
16          dents of the United States, and for other purposes”, ap-  
17          proved August 25, 1958 (commonly known as the  
18          “Former Presidents Act of 1958”) (3 U.S.C. 102 note),  
19          is amended by adding at the end the following:

20               “(h) If the Archivist of the United States determines  
21          that a former President did not comply with major re-  
22          quirements under chapter 22 of title 44, United States  
23          Code, or the Presidential Transition Act of 1963 (3 U.S.C.  
24          102 note), the monetary amounts described in subsections  
25          (a) and (b) shall be withheld until the later of—

1           “(1) 1 year after the date on which the Archi-  
2           vist makes that determination; or

3           “(2) the date on which the Archivist determines  
4           the former President has adequately complied with  
5           the requirements.”.

6 **SEC. 11. PRESIDENTIAL ARCHIVAL DEPOSITORY.**

7           Section 2112 of title 44, United States Code, is  
8           amended—

9           (1) in subsection (b)—

10                   (A) by striking “When the Archivist” and  
11                   inserting “(1) Subject to paragraph (2), when  
12                   the Archivist”; and

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

14                   “(2) The Archivist may not deposit papers, doc-  
15                   uments, or other historical materials accepted under  
16                   section 2111 of this title or other Federal records  
17                   appropriate for preservation in a Presidential archi-  
18                   val depository relating to a former President under  
19                   paragraph (1) until after the date on which the Ar-  
20                   chivist determines that the former President has  
21                   adequately complied with the requirements under  
22                   chapter 22 relating to Presidential records (as de-  
23                   fined in section 2201).”;

24                   (2) in subsection (g), by adding at the end the  
25                   following:

1           “(6)(A) Notwithstanding paragraphs (3), (4) and (5)  
2 (to the extent that such paragraphs are inconsistent with  
3 this paragraph), this subsection shall be administered in  
4 accordance with this paragraph with respect to any Presi-  
5 dential archival depository created as a depository for the  
6 papers, documents, and other historical materials and  
7 Presidential records pertaining to any President who takes  
8 any action, including destruction, alteration, concealment,  
9 or removal, that threatens or damages the integrity and  
10 statutory preservation requirements under chapter 22 for  
11 Presidential records (as defined in section 2201).

12           “(B) For purposes of subparagraphs (A)(ii),  
13 (B)(i)(II), and (B)(ii)(II) of paragraph (3) the percentage  
14 of 100 percent shall apply instead of 60 or 20 percent.”;  
15 and

16           (3) by adding at the end the following:

17           “(h) None of the funds in the account in the National  
18 Archives Trust Fund that may be expended for the benefit  
19 and in the interest of a Presidential archival depository  
20 relating to a former President may be used for the cost  
21 of digitizing records the former President wishes to de-  
22 posit in and make available through the Presidential archi-  
23 val depository.”.