

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.**

**S. 4042**

To amend title 44, United States Code, to reform the management of Federal records, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. PETERS

Viz:

1 Strike all after the enacting clause and insert the following:  
2

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Strengthening Oversight of Federal Records Act of  
6 2024”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for  
8 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—FEDERAL RECORDS REFORM**

Sec. 101. Preservation of Federal electronic records.

Sec. 102. Whistleblower protections.

Sec. 103. Preservation of electronic messages of certain officials.

Sec. 104. Proactive disclosure of records retention schedules.

Sec. 105. Certification regarding preservation of records.



1           “(B) the account is subject to records  
2 management controls to create and preserve  
3 readable records; and

4           “(C) the officer or employee—

5                 “(i) copies an official electronic mes-  
6 saging account of the officer or employee  
7 in the original creation or transmission of  
8 the record; or

9                 “(ii) forwards a complete copy of the  
10 record to an official electronic messaging  
11 account of the officer or employee not later  
12 than 20 days after the original creation or  
13 transmission of the record.”;

14           (2) in subsection (b), by inserting “, unless the  
15 violation involves a disclosure, as defined in section  
16 2302(a)(2) of title 5” before the period at the end;  
17 and

18           (3) in subsection (c)(1), by inserting “, includ-  
19 ing social media and digital applications and plat-  
20 forms,” after “messaging systems”.

21           (b) SAFEGUARDS.—Section 3105 of title 44, United  
22 States Code, is amended, in the matter preceding para-  
23 graph (1), by striking “against” and inserting “to ensure  
24 the adequate and proper documentation of the organiza-

1 tion, functions, policies, decisions, procedures, and essen-  
2 tial transactions of the Federal agency and to prevent”.

3 (c) DEFINITIONS.—Section 2901 of title 44, United  
4 States Code, is amended—

5 (1) in paragraph (15), by striking “and” at the  
6 end;

7 (2) in paragraph (16)(D), by striking the period  
8 at the end and inserting a semicolon; and

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

10 “(17) the term ‘complete copy’ means a copy of  
11 all of the contents of a record, including the  
12 metadata with respect to the record; and

13 “(18) the term ‘readable’ means media that is  
14 retrievable and usable for as long as needed to con-  
15 duct Government business and to transfer perma-  
16 nent email records to the National Archives and  
17 Records Administration.”.

18 **SEC. 102. WHISTLEBLOWER PROTECTIONS.**

19 (a) DEFINITIONS.—In this section the term “whistle-  
20 blower protections” has the meaning given that term in  
21 section 2302(c)(1) of title 5, United States Code.

22 (b) WHISTLEBLOWER PROTECTIONS.—Nothing in  
23 section 2911(a)(2) of title 44, United States Code, as  
24 amended by section 101, shall prevent or impair an officer

1 or employee of an executive agency from receiving whistle-  
2 blower protections.

3 **SEC. 103. PRESERVATION OF ELECTRONIC MESSAGES OF**  
4 **CERTAIN OFFICIALS.**

5 (a) IN GENERAL.—Chapter 29 of title 44, United  
6 States Code, is amended by adding at the end the fol-  
7 lowing:

8 **“§ 2913. Preservation of electronic messages of cer-**  
9 **tain officials**

10 “(a) REGULATIONS REQUIRED.—

11 “(1) IN GENERAL.—The Archivist shall promul-  
12 gate regulations governing Federal agency preserva-  
13 tion of electronic messages of employees, which shall,  
14 at a minimum—

15 “(A) require that the electronic messages  
16 of senior officers or senior employees of Federal  
17 agencies be designated as a permanent record,  
18 as defined in section 1220.18 of title 36, Code  
19 of Federal Regulations, or any successor there-  
20 to;

21 “(B) require that the electronic messages  
22 of senior officers or senior employees—

23 “(i) be stored in accordance with  
24 guidelines prescribed by the Archivist; and

1                   “(ii) are readily accessible for retrieval  
2                   through electronic searches;

3                   “(C) establish general categories of posi-  
4                   tions in Federal agencies that constitute senior  
5                   officers and employees; and

6                   “(D) allow for the culling of transitory  
7                   messages, messages that are not records, and  
8                   personal messages as appropriate.

9                   “(2) SCOPE.—The regulations promulgated  
10                  under paragraph (1) shall, at a minimum, apply to  
11                  electronic messages of—

12                   “(A) the head of each Federal agency;

13                   “(B) the principal assistant to the head of  
14                   each Federal agency, including a member of the  
15                   Armed Forces serving in a comparable position;

16                   “(C) an officer or employee serving as a  
17                   deputy, or equivalent position, of an officer, em-  
18                   ployee, or member described in subparagraph  
19                   (A) or (B);

20                   “(D) an employee serving as a staff assist-  
21                   ant to an officer, employee, or member de-  
22                   scribed in subparagraph (A) or (B), including a  
23                   special assistant, confidential assistant, military  
24                   assistant, and aide;

1           “(E) an officer or employee serving in a  
2 principal management position at a Federal  
3 agency, including the Chief Operating Officer,  
4 the Chief Information Officer, the Chief Knowl-  
5 edge Officer, the Chief Technology Officer, the  
6 Chief Financial Officer, and an equivalent of  
7 such an officer;

8           “(F) the director, or equivalent position, of  
9 a significant program office of a Federal agen-  
10 cy;

11           “(G) a principal regional officer of a Fed-  
12 eral agency, including a regional administrator,  
13 or equivalent position;

14           “(H) an officer or employee serving in a  
15 position that routinely provide advice to or over-  
16 sight of a Federal agency, including advice to  
17 or oversight of the activities of an officer, em-  
18 ployee, or member described in subparagraph  
19 (A), (B), (C), (E), (F), or (G), including an of-  
20 ficer or employee serving as a general counsel,  
21 chief of staff, or inspector general;

22           “(I) an officer or employee appointed by  
23 the President, by and with the advice and con-  
24 sent of the Senate;

1           “(J) any other officer or employee serving  
2           in a position that predominantly creates perma-  
3           nent records related to mission critical func-  
4           tions or policy decisions of a Federal agency or  
5           that are of historical significance; and

6           “(K) any officer or employee serving in a  
7           position described in subparagraph (A), (B),  
8           (C), (D), (E), (F), (G), (H), (I), or (J) in an  
9           acting capacity.

10          “(b) AGENCY REPORT TO ARCHIVIST.—

11           “(1) IN GENERAL.—Not later than the date  
12           specified in paragraph (2), and every 5 years there-  
13           after, the head of each Federal agency shall submit  
14           to the Archivist a report on the compliance of the  
15           Federal agency with subsection (a), including statis-  
16           tics on—

17           “(A) the number of senior officers and sen-  
18           ior employees of the Federal agency whose elec-  
19           tronic messages are being stored as permanent  
20           records in accordance with guidelines prescribed  
21           by the Archivist;

22           “(B) the volume of electronic messages of  
23           senior officers and senior employees of the Fed-  
24           eral agency designated as a permanent record  
25           that are held by the Federal agency; and



1           “(C) the volume of total electronic mes-  
2           sages of officers and employees of the Federal  
3           agency that are held by the Federal agency.

4           “(2) DEADLINE FOR INITIAL REPORTS.—The  
5           date specified in this paragraph is the earlier of—

6           “(A) the date that is 210 days after the  
7           date on which the Archivist promulgates regula-  
8           tions under subsection (a); or

9           “(B) the date that is 1 year after the date  
10          of enactment of this section.

11          “(3) PUBLIC AVAILABILITY.—Not later than 30  
12          days after submitting a report required under para-  
13          graph (1) to the Archivist, the head of a Federal  
14          agency shall make the report publicly available in an  
15          accessible electronic format on the website of the  
16          Federal agency.”.

17          (b) CONFORMING AMENDMENT.—The table of sec-  
18          tions for chapter 29 of title 44, United States Code, is  
19          amended by adding at the end the following:

          “2913. Preservation of electronic messages of senior officials.”.

20   **SEC. 104. PROACTIVE DISCLOSURE OF RECORDS RETEN-**  
21                                   **TION SCHEDULES.**

22          (a) PROACTIVE DISCLOSURE OF RECORDS RETEN-  
23          TION SCHEDULES.—Section 3303 of title 44, United  
24          States Code, is amended—

1           (1) by striking “The head” and inserting “(a)  
2       The head”; and

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

4       “(b)(1) For each list or schedule of records issued  
5       under subsection (a) that is approved by the Archivist, the  
6       Archivist shall—

7           “(A) not later than 30 days after the date on  
8       which the Archivist approves the list or schedule,  
9       make the list or schedule available for public inspec-  
10      tion;

11          “(B) make available and maintain the list or  
12      schedule in an accessible electronic database on a  
13      website of the National Archives and Records Ad-  
14      ministration, including the relevant crosswalk and  
15      appraisal memo; and

16          “(C) ensure the list or schedule, and all related  
17      materials, are organized in such fashion as to—

18              “(i) facilitate public understanding of the  
19              operations of the records management program  
20              of the Federal agency; and

21              “(ii) assist the Archivist in cataloging dis-  
22              position authorities.

23      “(2) Not later than 60 days after the date of enact-  
24      ment of the Strengthening Oversight of Federal Records  
25      Act of 2024, the head of each Federal agency shall submit

1 to the Archivist each list or schedule of records issued  
2 under subsection (a) before such date of enactment that  
3 is in effect on such date of enactment, and all related ma-  
4 terials, for immediate publication in the database de-  
5 scribed in paragraph (1).

6 “(3) The database described in paragraph (1) shall  
7 be searchable and maintained as an open Government  
8 data asset, as defined in section 3502.”.

9 (b) REGULATION.—Section 3302 of title 44, United  
10 States Code, is amended—

11 (1) in paragraph (1), by striking the comma at  
12 the end and inserting a semicolon;

13 (2) in paragraph (2), by striking “, and” and  
14 inserting a semicolon;

15 (3) in paragraph (3), by striking the period at  
16 the end and inserting “; and”; and

17 (4) by adding at the end the following:

18 “(4) procedures and minimum standards of  
19 ease-of-use for public inspection and online mainte-  
20 nance of lists, schedules, and related materials pur-  
21 suant to section 3303(b).”.

1 **SEC. 105. CERTIFICATION REGARDING PRESERVATION OF**  
2 **RECORDS.**

3 (a) IN GENERAL.—Chapter 29 of title 44, United  
4 States Code, as amended by section 103, is amended by  
5 adding at the end the following:

6 **“§ 2914. Certification regarding preservation of**  
7 **records**

8 “The head of each Federal agency shall establish  
9 policies and procedures under which each employee of the  
10 Federal agency shall, prior to separating from service as  
11 an employee of the Federal agency, submit to the head  
12 of the Federal agency a certification indicating whether  
13 the employee has complied with the requirements under  
14 this chapter relating to the preservation of records.”.

15 (b) CONFORMING AMENDMENT.—The table of sec-  
16 tions for chapter 29 of title 44, United States Code, as  
17 amended by section 103, is amended by adding at the end  
18 the following:

“2914. Certification regarding preservation of records.”.

1 **TITLE II—ADDITIONAL RE-**  
2 **FORMS TO PRESERVE AND**  
3 **PROTECT RECORDS AND GOV-**  
4 **ERNMENT INTEGRITY**

5 **SEC. 201. UNLAWFUL REMOVAL, DESTRUCTION OF**  
6 **RECORDS.**

7 Section 3106 of title 44, United States Code, is  
8 amended—

9 (1) by striking subsection (a) and inserting the  
10 following:

11 “(a) **FEDERAL AGENCY NOTIFICATION OF UNLAW-**  
12 **FUL REMOVAL OR DESTRUCTION OF RECORDS.—**

13 “(1) **IN GENERAL.—**The head of each Federal  
14 agency shall notify the Archivist if the head of the  
15 Federal agency knows or has reason to believe that  
16 there is—

17 “(A) any actual, impending, or threatened  
18 unlawful failure to create or removal, defacing,  
19 alteration, corruption, deletion, erasure, or  
20 other destruction of records in the custody of  
21 the Federal agency; or

22 “(B) any other repeated non-compliance by  
23 any employee of the Federal agency with Fed-  
24 eral record-keeping requirements that the head

1 of the Federal agency has been unable to fully  
2 address.

3 “(2) REMEDY.—With the assistance of the Ar-  
4 chivist, the head of each Federal agency shall ini-  
5 tiate action through the Attorney General for—

6 “(A) fully recovering or restoring records  
7 unlawfully removed from the Federal agency,  
8 including records of another Federal agency  
9 that have been transferred to the legal custody  
10 of that Federal agency, or records that are de-  
11 faced, altered, corrupted, deleted, erased, or de-  
12 stroyed, to the extent practicable; and

13 “(B) remedying any other repeated non-  
14 compliance by any employee of the Federal  
15 agency with record-keeping requirements.”;

16 (2) in subsection (b), by striking “shall request  
17 the Attorney General” and all that follows and in-  
18 serting the following: “shall—

19 “(1) request the Attorney General to initiate  
20 such an action;

21 “(2) notify the Committee on Homeland Secu-  
22 rity and Governmental Affairs of the Senate and the  
23 Committee on Oversight and Accountability of the  
24 House of Representatives;

1           “(3) include with the notification under para-  
2           graph (2) any relevant evidence, analysis, and sup-  
3           porting documentation pertinent to the incident; and

4           “(4) in coordination with the Attorney General,  
5           make regular updates to the committees specified in  
6           paragraph (2) on the status of efforts to remedy the  
7           unlawful action or noncompliance.”; and

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

9           “(c) OTHER RECORDKEEPING VIOLATIONS.—

10           “(1) IN GENERAL.—If the Archivist becomes  
11           aware of an alleged violation by an employee of a  
12           Federal agency of his or her recordkeeping obliga-  
13           tions, the Archivist shall—

14           “(A) notify the head of the Federal agency  
15           and coordinate with the Federal agency to de-  
16           termine whether a violation took place; and

17           “(B) subject to paragraph (2), refer the  
18           matter to the head of the Federal agency for  
19           corrective action, as necessary.

20           “(2) AGENCIES WITH INSPECTORS GENERAL.—

21           If the Archivist makes a referral described in para-  
22           graph (1)(B) to a Federal agency that has an In-  
23           specter General (as defined in section 401 of title 5),  
24           the Archivist shall make a joint referral to the head

1 of the Federal agency and to the Inspector General  
2 of the Federal agency.”.

3 **SEC. 202. RECORDS MANAGEMENT INCORPORATION INTO**  
4 **PERFORMANCE PLANS.**

5 Section 4302 of title 5, United States Code, is  
6 amended—

7 (1) by redesignating subsections (c) and (d) as  
8 subsections (d) and (e), respectively; and

9 (2) by inserting after subsection (b) the fol-  
10 lowing:

11 “(c) The head of each agency, in consultation with  
12 the Director of the Office of Personnel Management and  
13 the Archivist of the United States, shall develop criteria  
14 that incorporates records management requirements that  
15 should be included in employees’ performance standards  
16 and reviews.”.

17 **SEC. 203. ESTABLISHMENT OF AN ADVISORY COMMITTEE**  
18 **ON RECORDS AUTOMATION.**

19 (a) ESTABLISHMENT.—There is established within  
20 the National Archives and Records Administration an ad-  
21 visory committee to be known as the “Advisory Committee  
22 on Records Automation” (in this section referred to as the  
23 “Advisory Committee”).

24 (b) PURPOSES.—The purposes of the Advisory Com-  
25 mittee are—



1           (1) to encourage the efforts of the Government  
2           to manage records through greater use of automa-  
3           tion to make electronic recordkeeping more efficient;

4           (2) to encourage the efforts of the Government  
5           to more efficiently respond to access requests for  
6           records of executive agencies;

7           (3) to issue recommendations relating to  
8           records automation, including on how the Govern-  
9           ment should use automated software to—

10                   (A) automatically categorize records in  
11                   connection with the issuance of records sched-  
12                   ules required under chapter 33 of title 44,  
13                   United States Code;

14                   (B) search for responsive records; and

15                   (C) assist in determining whether records  
16                   may be exempt from public disclosure; and

17           (4) to receive expert advice from public and pri-  
18           vate sector sources with respect to the use of auto-  
19           mated software to make the management of and ac-  
20           cess to records of executive agencies more efficient.

21           (c) DUTIES.—The duties of the Advisory Committee  
22           include providing advice and recommendations to the Ar-  
23           chivist of the United States (in this section referred to  
24           as the “Archivist”) and agencies on strategic, technical,

1 financial, programmatic, and operational matters regard-  
2 ing records automation.

3 (d) MEMBERSHIP.—

4 (1) COMPOSITION.—The Advisory Committee  
5 shall be composed of not more than 15 members  
6 from the public and private sectors as follows:

7 (A) Three members shall be appointed by  
8 the Archivist, 1 of which shall be designated by  
9 the Archivist as the Chairperson of the Advi-  
10 sory Committee.

11 (B) Three members shall be appointed by  
12 the Director of the Office of Management and  
13 Budget.

14 (C) One member shall be appointed by the  
15 Attorney General of the United States.

16 (D) One member shall be appointed by the  
17 Administrator of General Services.

18 (E) Additional members shall appointed by  
19 the Archivist, as determined appropriate by the  
20 Archivist, in consultation with the Director of  
21 the Office of Management and Budget.

22 (2) PUBLIC SECTOR AND PRIVATE SECTOR BAL-  
23 ANCE.—The Archivist shall ensure that the Advisory  
24 Committee maintain a balance between members  
25 from the public sector and from the private sector.

1           (3) DEADLINE FOR APPOINTMENT.—Each  
2 member of the Advisory Committee shall be ap-  
3 pointed not later than 45 days after the date of en-  
4 actment of this Act.

5 (e) PERIOD OF APPOINTMENT; VACANCIES.—

6           (1) IN GENERAL.—A member of the Advisory  
7 Committee shall be appointed for the life of the  
8 Committee.

9           (2) VACANCIES.—A vacancy in the Advisory  
10 Committee—

11                   (A) shall not affect the powers of the Advi-  
12 sory Committee; and

13                   (B) shall be filled in the same manner as  
14 the original appointment.

15 (f) MEETINGS.—

16           (1) INITIAL MEETING.—Not later than 60 days  
17 after the date on which all members of the Advisory  
18 Committee have been appointed, the Advisory Com-  
19 mittee shall hold the first meeting of the Advisory  
20 Committee.

21           (2) FREQUENCY.—The Advisory Committee  
22 shall meet at the call of the Chairperson, but not  
23 less frequently than 3 times per year, at such time  
24 and place as determined by the Chairperson.

1           (3) QUORUM.—A majority of the members of  
2 the Advisory Committee shall constitute a quorum,  
3 but a lesser number of members may hold hearings.

4           (4) RULES OF PROCEDURE.—The Advisory  
5 Committee may establish rules for the conduct of  
6 the business of the Advisory Committee if such rules  
7 are not inconsistent with this section or other appli-  
8 cable law.

9           (g) REPORTS.—

10           (1) IN GENERAL.—Not later than 2 years after  
11 the date of enactment of this Act, the Advisory  
12 Committee shall submit to the Archivist, the Com-  
13 mittee on Homeland Security and Governmental Af-  
14 fairs of the Senate, and the Committee on Oversight  
15 and Accountability of the House of Representatives  
16 a report providing a detailed statement of the find-  
17 ings and conclusions of the Advisory Committee, to-  
18 gether with any recommendations of the Advisory  
19 Committee for legislation or administrative actions.

20           (2) INTERIM REPORTS.—The Advisory Com-  
21 mittee may submit to the Archivist, the Committee  
22 on Homeland Security and Governmental Affairs of  
23 the Senate, and the Committee on Oversight and Ac-  
24 countability of the House of Representatives interim  
25 reports regarding the activities and findings of the

1       Advisory Committee, as determined appropriate by  
2       the Advisory Committee.

3       (h) POWERS.—

4             (1) INFORMATION FROM FEDERAL AGENCIES.—

5       The Advisory Committee may secure directly from a  
6       Federal department or agency such information as  
7       the Advisory Committee considers necessary to carry  
8       out this section, consistent with the protection of  
9       classified national security information and statu-  
10      torily protected information.

11            (2) POSTAL SERVICES.—The Advisory Com-  
12      mittee may use the United States mails in the same  
13      manner and under the same conditions as other de-  
14      partments and agencies of the Federal Government.

15            (3) DONATIONS.—The Advisory Committee may  
16      accept, use, and dispose of donations of services or  
17      property.

18       (i) ADVISORY COMMITTEE PERSONNEL MATTERS.—

19            (1) IN GENERAL.—A member of the Advisory  
20      Committee (other than a member who is appointed  
21      to the Advisory Committee in connection with an-  
22      other Federal appointment) shall not be considered  
23      an employee of the Federal Government by reason of  
24      any service as such a member, except for the pur-

1 poses of section 5703 of title 5, United States Code,  
2 relating to travel expenses.

3 (2) PAY NOT PERMITTED.—A member of the  
4 Advisory Committee described in paragraph (1) may  
5 not receive pay by reason of service on the Com-  
6 mittee.

7 (3) PROCUREMENT OF TEMPORARY AND INTER-  
8 MITTENT SERVICES.—The Chairperson of the Advi-  
9 sory Committee may procure temporary and inter-  
10 mittent services under section 3109(b) of title 5,  
11 United States Code, at rates for individuals that do  
12 not exceed the daily equivalent of the annual rate of  
13 basic pay prescribed for level V of the Executive  
14 Schedule under section 5316 of that title.

15 (j) TERMINATION OF ADVISORY COMMITTEE.—The  
16 Advisory Committee shall terminate on the date that is  
17 90 days after the submission of the report required under  
18 subsection (g)(1).

19 (k) AUTHORIZATION OF APPROPRIATIONS.—There is  
20 authorized to be appropriated \$500,000 to carry out this  
21 section for each of fiscal years 2025 and 2026.

22 (l) APPLICATION OF FACA.—Chapter 10 of title 5,  
23 United States Code, shall apply to the Advisory Com-  
24 mittee.

1 **SEC. 204. REGULATIONS.**

2 Section 2206 of title 44, United States Code, is  
3 amended—

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

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

6 (A) in paragraph (1), by striking  
7 “2203(f)(3)” and inserting “2203(g)(4)”;

8 (B) in paragraph (3), by striking “and” at  
9 the end;

10 (C) in paragraph (4), by striking the pe-  
11 riod and inserting “; and”; and

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

13 “(5) provisions for establishing procedures for  
14 documenting required metadata.”; and

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

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