



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

**HB4985**

Introduced 1/21/2010, by Rep. Thomas Holbrook

#### SYNOPSIS AS INTRODUCED:

New Act

5 ILCS 160/9

from Ch. 116, par. 43.12

5 ILCS 160/22d new

Creates the Government Electronic Records Act. Authorizes and requires the use of electronic records in the executive branch, rather than hard copy, if appropriate. Sets forth exceptions and opt-out provisions. Requires the adoption of rules. Amends the State Records Act concerning retention of electronic records. Effective July 1, 2011.

LRB096 19614 RCE 35008 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning electronic records.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Government Electronic Records Act.

6 Section 5. Policy. It is the policy of the State of  
7 Illinois to support efforts to reduce government use of our  
8 natural resources and to look for ways to implement  
9 efficiencies. To that end, this Act supersedes and supplants  
10 all statutes that require production and retention of paper  
11 documents. Government agencies should look for ways to employ  
12 practices that allow for either or both of the following: (1)  
13 electronic storage of documents and (2) electronic transfer of  
14 documents. These environmentally-friendly practices will  
15 reduce the State's reliance on paper and will ultimately save  
16 the State money by reducing costs associated with storage of  
17 paper documents.

18 Section 10. Definitions.

19 "Electronic transfer" means transfer of documents or  
20 reports by electronic means. Appropriate electronic transfer  
21 includes, but is not limited to, transfer by electronic mail,  
22 facsimile transmission, or posting downloadable versions on an

1 Internet website, with electronic notice of that posting.

2 "Government agency" means all agencies, departments,  
3 offices, parts, boards, and commissions of the executive branch  
4 of the State government, including but not limited to, State  
5 colleges and universities and their governing boards and all  
6 departments established under the Civil Administrative Code of  
7 Illinois.

8 "Record" has the meaning ascribed to it in the Illinois  
9 State Records Act (5 ILCS 160/).

10 Section 15. Electronic records.

11 (a) An electronic record is considered the same as and has  
12 the same force and effect as those records not produced by  
13 electronic means.

14 (b) Nothing in this Act requires any government agency or  
15 person to use an electronic record or an electronic signature  
16 if so doing could jeopardize the efficient operation of State  
17 government.

18 (c) Notwithstanding the requirements of this Act,  
19 government agencies that obtain, store, or use electronic  
20 records shall not refuse to accept hard copy, non-electronic  
21 forms, reports, and other paper documents for submission or  
22 filing, except as otherwise provided by law.

23 (d) Any government agency that uses electronic records  
24 shall allow any person or entity that uses the agency's  
25 services to obtain access to those records as permitted by the

1 Freedom of Information Act (5 ILCS 140/) or other applicable  
2 law in paper form in accordance with the fees prescribed by  
3 statute.

4 Section 20. Electronic transfer of records.  
5 Notwithstanding any statutory requirement to the contrary, all  
6 government agencies are encouraged to employ electronic means  
7 of transferring records when appropriate. Electronic transfer  
8 of records includes transmission by e-mail account and posting  
9 on an Internet website and allowing for download. In accordance  
10 with rules adopted by the Secretary of State, government  
11 agencies are required to send by electronic transmission any  
12 document, report, or record that State law would otherwise  
13 require to be placed in the U.S. mail, sent by certified mail,  
14 or otherwise delivered. Those electronic records are protected  
15 as required by the Electronic Commerce Security Act (5 ILCS  
16 175/).

17 Section 25. Electronic retention of documents.  
18 Notwithstanding any statutory requirement to the contrary, all  
19 government agencies are encouraged to employ electronic means  
20 of retaining State records, all in accordance with the State  
21 Records Act (5 ILCS 160/).

22 Section 30. Documents included.

23 (a) This Act applies to all records produced in relation to

1 any government agency activity or transaction, including, but  
2 not limited to, any record created, generated, sent, published,  
3 communicated, received, or stored by a government agency.

4 (b) This Act does not apply to any record or document  
5 specifically exempted from the scope of this Act by the State  
6 Records Commission.

7 Section 35. Application. This Act supersedes and supplants  
8 any State law requiring a government agency to transfer a  
9 record by mail or to retain a hard copy record. This Act does  
10 not affect any State law that requires publication of  
11 information in newspapers of general circulation.

12 Section 40. Opt-out for documents. Before January 1, 2012,  
13 each government agency shall publish on its Internet website a  
14 full list of all documents that are now available for  
15 electronic dissemination. The government agency shall also  
16 publish documentation showing its electronic record retention  
17 system, in conformity with the State Records Act (5 ILCS 160/).  
18 Government agencies shall further identify which statutory  
19 requirements will continue to remain in effect.

20 Section 45. Rulemaking. Within 6 months after the effective  
21 date of this Act, the Secretary of State shall promulgate rules  
22 to implement and administer this Act.

1 Section 90. The State Records Act is amended by changing  
2 Section 9 and by adding Section 22d as follows:

3 (5 ILCS 160/9) (from Ch. 116, par. 43.12)

4 Sec. 9. The head of each agency shall establish, and  
5 maintain an active, continuing program for the economical and  
6 efficient management of the records of the agency. Before  
7 January 1, 2012, each agency head shall develop a plan for  
8 retaining records produced as of that date and thereafter in  
9 electronic format. The plan must be in conformity with the  
10 requirements developed by the State Archives Advisory Board  
11 before July 1, 2012, pursuant to Section 22d of this Act. The  
12 plan shall be called the Electronic Retention of State Records  
13 Plan and shall be posted on the agency's Internet website. Each  
14 agency head shall retain the discretion to exempt from  
15 electronic storage any record that the agency head concludes is  
16 better suited to retention in paper format.

17 Such program:

18 (1) shall provide for effective controls over the creation,  
19 maintenance, and use of records in the conduct of current  
20 business and shall ensure that agency electronic records, as  
21 specified in Section 5-135 of the Electronic Commerce Security  
22 Act, are retained in a trustworthy manner so that the records,  
23 and the information contained in the records, are accessible  
24 and usable for reference for the duration of the retention  
25 period; all computer tape or disk maintenance and preservation

1 procedures must be fully applied and, if equipment or programs  
2 providing access to the records are updated or replaced, the  
3 existing data must remain accessible in the successor format  
4 for the duration of the approved retention period;

5 (2) shall provide for cooperation with the Secretary in  
6 appointing a records officer and in applying standards,  
7 procedures, and techniques to improve the management of  
8 records, promote the maintenance and security of records deemed  
9 appropriate for preservation, and facilitate the segregation  
10 and disposal of records of temporary value; and

11 (3) shall provide for compliance with the provisions of  
12 this Act and the rules and regulations issued thereunder.

13 (Source: P.A. 92-866, eff. 1-3-03.)

14 (5 ILCS 160/22d new)

15 Sec. 22d. Rules for electronic records. Before January 1,  
16 2012, the State Archives Advisory Board shall meet and  
17 promulgate rules for the safe retention of State records in an  
18 electronic format. Those rules shall be posted on the Internet  
19 website of the Secretary of State and shall be distributed to  
20 all government agencies, as that term is defined in the  
21 Government Electronic Records Act. Those rules must advise  
22 government agencies on the safest manner of electronic  
23 retention and provide alternatives for appropriate electronic  
24 record retention. Electronic records retention plans should  
25 allow for the creation of electronic records currently and in

1 the future and for converting past records of an agency into an  
2 electronic format.

3 Section 99. Effective date. This Act takes effect July 1,  
4 2011.