



NEW YORK STATE SENATOR

Liz Krueger

## Senator Krueger, Assembly Member O'Donnell Introduce Bill To Regulate Email Deletion By State Officials

LIZ KRUEGER March 12, 2015

| ISSUE: **ETHICS, GOVERNMENT OPERATIONS**

**New York** – State Senator Liz Krueger and Assembly Member Daniel O'Donnell today introduced a bill to regulate email retention policy for New York State officials and extend existing Freedom of Information Act requirements to the state legislature. The legislation is based on the Federal “Capstone” email retention policy, which was adopted after extensive study of best practices for handling electronic records. It would establish strict standards for permanent preservation of the records of policymakers, including statewide public officials, state legislators and senior agency positions, among others, and prohibit deletion of emails from other government officials for at least seven years.

“With growing numbers of New Yorkers losing faith in our democratic process, it’s more important than ever that we shine a bright light on Albany,” said **Senator Krueger**. “The people of New York are our bosses, and they must have access to the resources and information they need to hold their elected officials accountable. This bill provides a rational, comprehensive, 21st century approach to retaining all forms of communication, including email, and I look forward to working with my legislative colleagues and the Governor to make sure we get this right.”

“There should never be an expiration date on accountability,” said **Assembly Member O’Donnell**. “The FOIL process and litigation take time, and we may not know for months -- perhaps even years -- if some emails may be critical to such proceedings. Senator Krueger's and my bill to maintain emails for more lengthy and reasonable periods of time would spark a real effort to increase transparency and accountability. I look forward to working with Senator Krueger and my colleagues in the Assembly to pass this bill.”

The legislation comes in response testimony by NYS Chief Information Officer Maggie Miller at a budget hearing in February, after it was revealed that Governor Cuomo’s office has fully implemented a policy to automatically delete emails after 90 days unless they have been proactively flagged for retention. This policy further places enormous responsibility on each state employee to know complicated sections of state FOIA and retention laws and correctly manually "save from auto deletion" the emails falling into many broad legal categories. This is extraordinarily labor intensive.

Such a policy has the potential to severely limit the public availability of vital information regarding the operations of government. The consequences of this policy are illustrated in a 2015 court case in which former Deputy Secretary for Gaming and Racing Bennett Liebman indicated he was “aghast” to find that emails dating from 2013 relevant to the case had been deleted. As state Record Service and Development Manager Ann Marie Przybyla wrote in a 2010 memorandum on government emails, “purging all emails after a defined time period is not an acceptable retention and disposition strategy.”

Similarly, the exemption of the legislature from the Freedom of Information Law also undermines transparency and accountability. The public should have access to the same types of information from the legislature that it can already access from the Executive

branch through the FOIL process. Recent scandals involving legislators only highlight the need for increasing the availability of information regarding legislative records. Sen. Krueger and Assembly Member O'Donnell's bill would establish the same standards for treating the Executive and Legislative branches under FOIL. The bill would also extend to the legislature the various exemptions from disclosure in the FOIL law, including records that would compromise the personal privacy rights of constituents and internal communications within government agencies.

Next week is Sunshine Week in Albany, and this legislation will help bring much needed sunlight to the capitol. In the past, Governor Cuomo has recognized the importance of transparency. In 2008, then Attorney General Cuomo said, "by definition, government is only as good as the trust citizens place in it. That trust can be earned when information that can empower the citizenry is pulled from the shadows and made open and accessible.... I urge all public officials to embrace Sunshine Week not only with the rhetoric of the support of openness, but with the reality of specific plans to break down the barriers that exist to the public's access to governmental decisions."

[Click here to view the bill memo.](#)

[Click here to view the full text of the bill.](#)

## **Links**

*Poughkeepsie Journal*, "Cuomo's email policy draws criticism."

<http://www.poughkeepsiejournal.com/story/news/local/new-york/2015/03/07/cuomos-email-policy-draws-criticism/24569775/>

NYS Attorney General's Office, "Attorney General Andrew M. Cuomo Named Honorary N.Y. Chairman Of Sunshine Week." <http://www.ag.ny.gov/press-release/attorney-general-andrew-m-cuomo-named-honorary-ny-chairman-sunshine-week>

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