State Records Laws

Bulletin No. 2

Records Management Program
State Records Laws
Nevada State Library and Archives

Laws affecting records aid decision making regarding the control of records activity in state government. Each governmental entity must know the statutes pertaining to public records and official records to help ensure that all records-based procedures are in compliance with these laws. This bulletin contains laws and excerpts from laws that agencies encounter most often in the course of managing records.

Consult your legal counsel about these laws and how they may affect the management of records within your entity.

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Definitions

NRS 239.005  Definitions.
As used in this chapter, unless the context otherwise requires:
1. “Actual cost” means the direct cost related to the reproduction of a public record. The term does not include a cost that a governmental entity incurs regardless of whether or not a person requests a copy of a particular public record.
2. “Committee” means the Committee to Approve Schedules for the Retention and Disposition of Official State Records.
3. “Division” means the Division of State Library and Archives of the Department of Administration.
4. “Governmental entity” means:
   (a) An elected or appointed officer of this State or of a political subdivision of this State;
   (b) An institution, board, commission, bureau, council, department, division, authority or other unit of government of this State or of a political subdivision of this State;
   (c) A university foundation, as defined in NRS 396.405; or
   (d) An educational foundation, as defined in NRS 388.750, to the extent that the foundation is dedicated to the assistance of public schools.

Public Records

NRS 239.010 Public books and public records open to inspection; confidential information in public books and records; copyrighted books and records; copies to be provided in medium requested.

1. Except as otherwise provided in subsection 3, all public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.
2. A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.
3. A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy a public book or record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that is not otherwise confidential.
4. A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has legal custody or control of a public record shall not refuse to provide a copy of that public record in a readily available medium because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.
Executive Branch Records

State Records Management Program

NRS 378.230 Declaration of legislative intent.

It is the intent of the Legislature that the Division, in carrying out its functions, follow accepted:
2. Procedures for the management of records to increase the efficiency of the system of governmental records and reduce the administrative costs associated with the maintenance, use, retention and disposition of records.

NRS 378.255 Management and retention of records; recovery of records.

The State Library and Archives Administrator may:
1. Adopt regulations and establish standards, procedures and techniques for the effective management of records.
2. Make continuing surveys of current practices for the management of records and recommend improvements in those practices, including the use of space, equipment and supplies to create, maintain and store records.
3. Establish standards for the preparation of schedules providing for the retention of state records of continuing value and for the prompt and orderly disposition of state records which no longer possess sufficient administrative, fiscal, legal or research value to warrant their further retention.
4. Establish, maintain and operate a center for storing and retrieving records for state agencies pending the acceptance of the records by the Division or the disposition of the records in any other manner prescribed by law.
5. Establish a program for the control and management of forms, files, reports, directives and correspondence.
6. Establish a program of planning and preparation to assist state agencies and local governments in providing protection for records essential for the continuation or re-establishment of government in the event of a disaster.
7. Provide advice and technical assistance to state agencies, local governmental entities and, if requested, the Legislative and Judicial Branches of State Government concerning any aspect of managing records.

Department of Transportation

NRS 378.280 Maintenance of records of Executive Branch; management of records of Department of Transportation.

2. The Director of the Department of Transportation may establish a program for the management of the Department’s records, if the Director confers with the State Library and Archives Administrator regarding the program. The program must incorporate generally accepted practices for managing records.

NRS 239.085 State records: Disposition by Department of Transportation.

1. The Director of the Department of Transportation shall, in cooperation with the Division, develop a schedule for the retention and disposition of each type of official state record in the care, custody and control of the Department of Transportation.
NRS 239.073  Committee to Approve Schedules for the Retention and Disposition of Official State Records: Creation; composition; meetings; rules and regulations.

1. The Committee to Approve Schedules for the Retention and Disposition of Official State Records, consisting of six members, is hereby created.
2. The Committee consists of:
   (a) The Secretary of State;
   (b) The Attorney General;
   (c) The Director of the Department of Administration;
   (d) The State Library and Archives Administrator;
   (e) The Administrator of the Division of Enterprise Information Technology Services of the Department of Administration; and
   (f) One member who is a representative of the general public appointed by the Governor.

   All members of the Committee, except the representative of the general public, are ex officio members of the Committee.
3. The Secretary of State or a person designated by the Secretary of State shall serve as Chair of the Committee. The State Library and Archives Administrator shall serve as Secretary of the Committee and prepare and maintain the records of the Committee.
4. The Committee shall meet at least quarterly and may meet upon the call of the Chair.
5. An ex officio member of the Committee may designate a person to represent the ex officio member at any meeting of the Committee. The person designated may exercise all the duties, rights and privileges of the member that the person represents.
6. The Committee may adopt rules and regulations for its management.

NRS 239.077  Committee to Approve Schedules for the Retention and Disposition of Official State Records: Duties.

The Committee shall:
1. Review and approve or disapprove the schedules for the retention and disposition of the official state records of each agency, board and commission which is required to develop those schedules pursuant to NRS 239.080.
2. Advise the Division concerning the development and use of schedules for the retention and disposition of official state records.

Records Retention Schedules

NRS 239.080  State records: Schedules for retention and disposition.

1. An official state record may be disposed of only in accordance with a schedule for retention and disposition which is approved by the Committee.
2. In cooperation with the Division, each agency, board and commission shall develop a schedule for the retention and disposition of each type of official state record.
3. The Division shall submit the schedules described in subsection 2 to the Committee for final approval.
4. As used in this section, “official state record” includes, without limitation, any:
   (a) Papers, unpublished books, maps and photographs;
   (b) Information stored on magnetic tape or computer, laser or optical disc;
   (c) Materials which are capable of being read by a machine, including microforms and audio and visual materials; and
   (d) Materials which are made or received by a state agency and preserved by that agency or its successor as evidence of the organization, operation, policy or any other activity of that agency or because of the information contained in the material.
NRS 239.085  State records: Disposition by Department of Transportation.
1. The Director of the Department of Transportation shall, in cooperation with the Division, develop a schedule for the retention and disposition of each type of official state record in the care, custody and control of the Department of Transportation.

NRS 239.077  Committee to Approve Schedules for the Retention and Disposition of Official State Records: Duties.
The Committee shall:
1. Review and approve or disapprove the schedules for the retention and disposition of the official state records of each agency, board and commission which is required to develop those schedules pursuant to NRS 239.080.

Destruction of Records

NRS 239.080  State records: Schedules for retention and disposition.
1. An official state record may be disposed of only in accordance with a schedule for retention and disposition which is approved by the Committee.

NRS 378.320  Destruction of records transferred to Division by agency of State.
Except for documents which have been accepted into the archives and over which the State Library and Archives Administrator is vested with the right of control and possession, the State Library and Archives Administrator shall not destroy a record transferred to the Division by a state agency unless:
1. The State Library and Archives Administrator first consults with the proper official of the transferring agency; and
2. The destruction is carried out in accordance with a schedule for retention and disposal which has been approved by the Committee to Approve Schedules for the Retention and Disposition of Official State Records created pursuant to NRS 239.073.

Disaster Recovery of Essential Records

NRS 378.255  Management and retention of records; recovery of records.
The State Library and Archives Administrator may:
6. Establish a program of planning and preparation to assist state agencies and local governments in providing protection for records essential for the continuation or re-establishment of government in the event of a disaster.

Electronic and Microfilmed Records

NRS 239.051  Requirements before destruction.
1. Unless destruction of a particular record without reproduction is authorized by a schedule adopted pursuant to NRS 239.080 or 239.125, any custodian of public records in this State may destroy documents, instruments, papers, books and any other records or writings in the custodian’s custody only if an image of those records or writings has been placed on microfilm or has been saved in an electronic recordkeeping system which permits the retrieval of the information contained in the records or writings and the reproduction of the records or writings. A reproduction of an image of a record or writing that has been placed on microfilm or saved pursuant to this section shall be deemed to be the original record or writing, regardless of whether the original exists.
2. A microfilmed image made pursuant to this section must be made on film which complies with minimum standards of quality approved by the American National Standards Institute and the Association for Information and Image Management.
3. Any image of a record or writing which is saved in an electronic recordkeeping system pursuant to this section must comply with any applicable regulations adopted by the State Library and Archives Administrator pursuant to NRS 378.255 relating to the management of records.

4. A microfilmed image of a record or writing made pursuant to this section or an image of the record or writing saved in an electronic recordkeeping system pursuant to this section must be durable, accurate, complete and clear.

5. If, pursuant to this section, an image of a record or writing is placed on microfilm or is saved in an electronic recordkeeping system, the custodian of the record or writing shall:
   (a) Promptly store at least one copy of the microfilm or any tape, disc or other medium used for the storage of the saved image in a manner and place:
      (1) Such as to protect it reasonably from loss or damage; and
      (2) Which complies with any applicable regulations adopted by the State Library and Archives Administrator pursuant to NRS 378.255 relating to the management of records; and
   (b) Maintain for the use of authorized persons a copy of a reproduction of the record or writing.

Records Management Consulting

NRS 378.255 Management and retention of records.
The State Library and Archives Administrator may:
7. Provide advice and technical assistance to state agencies, local governmental entities and, if requested, the Legislative and Judicial Branches of State Government concerning any aspect of managing records.

State Archives

NRS 378.230 Declaration of legislative intent.
It is the intent of the Legislature that the Division, in carrying out its functions, follow accepted:
1. Standards of archival practice to assure maximum accessibility for the general public;

NRS 378.255 Recovery of records.
The State Library and Archives Administrator may:
9. With the approval of the Committee to Approve Schedules for the Retention and Disposition of Official State Records created pursuant to NRS 239.073, bring an action to obtain possession of the records of a state or local governmental agency which are:
   (a) Of historical value and are not being properly cared for; or
   (b) Privately held.

In an action to recover a record which is privately held, it is rebuttably presumed that a governmental record which appears to be the original of a document received or the file copy of a document made by a governmental agency is governmental property.

NRS 378.300 Period of confidentiality of confidential public records.
Except as otherwise provided in NRS 239.0115, public records acquired by the Division which have been declared by law to be confidential must remain confidential for 30 years or, if the record relates to a natural person, until the death of the natural person, whichever is later, unless another period has been fixed by specific statute.

NRS 378.250 Archival material of historical value; disposition;
The State Library and Archives Administrator may:
1. Receive into the archives material from a state agency if the State Library and Archives Administrator finds that it is of historical value.
2. With the approval of the Committee to Approve Schedules for the Retention and Disposition of Official State Records created pursuant to NRS 239.073, return to the state agency from which it was
received, material in the archives which the State Library and Archives Administrator finds is not of historical value.
3. Receive into the archives material which has been directed to be deposited in the archives by an order or resolution of the governing body of a local governmental entity, if the State Library and Archives Administrator finds that it is of historical value.
4. With the approval of the Committee to Approve Schedules for the Retention and Disposition of Official State Records, turn over to:
   (a) Any agency in the Department; or
   (b) The Nevada System of Higher Education,
material in the archives which the State Library and Archives Administrator finds to be surplus, not properly in the archives or appropriate to be kept elsewhere.

NRS 239.090  State records: Preservation of obsolete and noncurrent records by Division; right to control records.
1. Subject to the provisions of subsection 2, a state official may, with the prior approval of the State Library and Archives Administrator, submit any obsolete official books, documents, original papers, newspaper files, printed books or other records not in current use in his or her office to the Division.
2. A state officer shall first obtain the consent and approval of the Governor. Any other state official shall obtain the consent of the department head under which the state official operates.
3. The Division may return a submission or any part thereof, if the submission has no historical or permanent value.
4. If the State Library and Archives Administrator finds that any record so submitted has historical or permanent value and accepts it as an accession to the archives, the right to control and possession of it vests in the State Library and Archives Administrator, and the submitting official is not entitled to reclaim it. If records are transferred to the Division by a state official only for the purpose of having the records stored safely on the state official’s behalf, the state official has constructive custody of the records and retains the right to control access to them.

Local Government Records

Definitions

NRS 239.121  Local governmental records: Definitions.
As used in NRS 239.121 to 239.125, inclusive:
1. “Custodian of records” means any person authorized to have the care, custody and control of any documents, instruments, papers, books, pamphlets or any other records or writings of a local governmental entity.
2. “Governing body” means the governing body of a local governmental entity.
3. “Local governmental entity” means a county, an incorporated city, an unincorporated town, a township, a school district or any other public district or agency designed to perform local governmental functions.
4. “Old records” means documents, instruments, papers, books, pamphlets or any other records or writings of a local governmental entity which are retained for any purpose by the local governmental entity beyond the minimum period for retention established by the Division or for 5 years or more, whichever is earlier.
Records Retention Schedules

NRS 239.125 Local governmental records: regulations of State Library and Archives Administrator.
2. The State Library and Archives Administrator shall adopt regulations to carry out a program to establish and approve minimum periods of retention for records of local governments. The proposed regulations or any amendment thereto must be submitted to the Committee on Local Government Finance, established pursuant to NRS 354.105, for its advice and recommendations.

Records Management Program

NRS 239.125 Local governmental records: Program for management; regulations of State Library and Archives Administrator.
1. A local governmental entity may establish a program for the management of records, including the adoption of schedules for the retention of records and procedures for microfilming, which must be approved by the governing body and comply with the applicable provisions of this chapter and any regulations adopted pursuant thereto.

Records Management Consulting

NRS 378.255 Management and retention of records.
The State Library and Archives Administrator may:
7. Provide advice and technical assistance to state agencies, local governmental entities and, if requested, the Legislative and Judicial Branches of State Government concerning any aspect of managing records.

State Archives

NRS 239.123 Local governmental records: Submission to Division; accounting; return or reclamation.
1. As an alternative to the destruction of old records, the records, with the consent of the governing body and the State Library and Archives Administrator, may be submitted to the Division.
2. The custodian of records shall maintain an accounting of all old records disposed of pursuant to subsection 1, indicating the nature or identity of the records as well as the date of submission to the Division.
3. The Division may return the records so submitted, or any part thereof, if they have no historical or permanent value.
4. Records so submitted may be reclaimed, in whole or in part, by the local government if:
   (a) The Division did not acquire title to them in an agreement between the State Library and Archives Administrator and the local government; and
   (b) The local government serves written notice upon the Division of its intention to reclaim the records and pays the cost of transportation for the return.

NRS 378.255 Recovery of records.
The State Library and Archives Administrator may:
9. With the approval of the Committee to Approve Schedules for the Retention and Disposition of Official State Records created pursuant to NRS 239.073, bring an action to obtain possession of the records of a state or local governmental agency which are:
   (a) Of historical value and are not being properly cared for; or
   (b) Privately held.
In an action to recover a record which is privately held, it is rebuttably presumed that a governmental record which appears to be the original of a document received or the file copy of a document made by a governmental agency is governmental property.

Electronic and Microfilmed Records

NRS 239.051 Requirements before destruction.
1. Unless destruction of a particular record without reproduction is authorized by a schedule adopted pursuant to NRS 239.080 or 239.125, any custodian of public records in this State may destroy documents, instruments, papers, books and any other records or writings in the custodian’s custody only if an image of those records or writings has been placed on microfilm or has been saved in an electronic recordkeeping system which permits the retrieval of the information contained in the records or writings and the reproduction of the records or writings. A reproduction of an image of a record or writing that has been placed on microfilm or saved pursuant to this section shall be deemed to be the original record or writing, regardless of whether the original exists.
2. A microfilmed image made pursuant to this section must be made on film which complies with minimum standards of quality approved by the American National Standards Institute and the Association for Information and Image Management.
3. Any image of a record or writing which is saved in an electronic recordkeeping system pursuant to this section must comply with any applicable regulations adopted by the State Library and Archives Administrator pursuant to NRS 378.255 relating to the management of records.
4. A microfilmed image of a record or writing made pursuant to this section or an image of the record or writing saved in an electronic recordkeeping system pursuant to this section must be durable, accurate, complete and clear.
5. If, pursuant to this section, an image of a record or writing is placed on microfilm or is saved in an electronic recordkeeping system, the custodian of the record or writing shall:
   (a) Promptly store at least one copy of the microfilm or any tape, disc or other medium used for the storage of the saved image in a manner and place:
      (1) Such as to protect it reasonably from loss or damage; and
      (2) Which complies with any applicable regulations adopted by the State Library and Archives Administrator pursuant to NRS 378.255 relating to the management of records; and
   (b) Maintain for the use of authorized persons a copy of a reproduction of the record or writing.

Destruction

NRS 239.124 Local governmental records: Exclusive procedures for destruction.
The procedures set forth in NRS 239.051, 239.110 and 239.123, and any procedure specifically authorized by the special charter of an incorporated city, constitute the procedures for disposition by a local governmental entity of any old records which have been retained by the entity for any purpose. The disposition thereof must not occur except in compliance with one of those procedures.

Disaster Recovery of Essential Records

NRS 378.255 Management and retention of records; recovery of records.
The State Library and Archives Administrator may:
6. Establish a program of planning and preparation to assist state agencies and local governments in providing protection for records essential for the continuation or re-establishment of government in the event of a disaster.
Legislative and Judicial Branches

Records Management Consulting

NRS 378.255 Management and retention of records.
The State Library and Archives Administrator may:
7. Provide advice and technical assistance to state agencies, local governmental entities and, if requested, the Legislative and Judicial Branches of State Government concerning any aspect of managing records.