

**PROPOSED REGULATION OF THE STATE**  
**LIBRARY AND ARCHIVES ADMINISTRATOR**

**LCB File No. R118-12**

October 22, 2012

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1, 13-31, 57 and 58, NRS 239.125, 378.255 and 378.280; §§2-5 and 32-40, NRS 239.125 and 378.255; §§6-12 and 41-56, NRS 378.255 and 378.280.

A REGULATION relating to public records; setting forth conditions for the storage of certain records; amending the procedures for sealing certain records; providing for the retention and disposition of certain sealed records; authorizing the transfer of certain electronic records of historical value to the State Archives; setting forth the requirements for a system for electronic records established within a records management program; amending provisions relating to the disposal of records of state agencies and local governmental entities; amending provisions relating to the records management program of state agencies and local governmental entities; setting forth the duties of the records officer of each state agency; making various other changes relating to public records; and providing other matters properly relating thereto.

**Section 1.** Chapter 239 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 31, inclusive, of this regulation.

**Sec. 2.** *“Administrative value” means the usefulness or significance of a record in supporting the management and operations of a local governmental entity.*

**Sec. 3.** *“Convenience copy” means a duplicate of a record.*

**Sec. 4.** *“Local governmental entity” has the meaning ascribed to it in NRS 239.121.*

**Sec. 5.** *“Record series” means records that are kept or filed in a unified or sequential arrangement, having similar characteristics or relating to a similar function or activity.*

**Sec. 6.** *“Authorized personnel” includes, without limitation:*

*1. The records officer, legal counsel and appointing authority of a state agency;*

2. *Any person who is designated by the appointing authority of a state agency; and*
3. *For the purpose of creating a schedule, the State Library and Archives Administrator or a designee thereof.*

**Sec. 7.** *“Convenience copy” means a duplicate of a record.*

**Sec. 8.** *“Disposition” means the destruction of a record or the transfer of a record to the State Archives for permanent retention.*

**Sec. 9.** *“Record series” means records that are kept or filed in a unified or sequential arrangement, having similar characteristics or relating to a similar function or activity.*

**Sec. 10.** *“Retention value” means the value of a record to a state agency as determined by an appraisal of the record by the Division.*

**Sec. 11.** *For the purposes of chapter 239 of NRS and as used in NAC 239.570 to 239.750, inclusive, and sections 6 to 12, inclusive, of this regulation, “historical value” means the long-term research or archival value remaining in a record after the administrative value of the information contained in the record has expired.*

**Sec. 12. 1.** *Any records stored by a state agency in a space or facility other than the records center must be stored under the conditions specified in this section.*

**2.** *The space or facility in which records are stored must:*

- (a) Have storage areas that meet all applicable building, fire and safety codes;*
- (b) Be clear of dust, dirt, insects, birds, mold, mildew, rodents or other environmental hazards to records;*
- (c) Be constructed and maintained to minimize the risk of damage to records from floods, fires, earthquakes, winds and other natural disasters or dangers;*
- (d) Have insulation and wrapping around any pipes used to carry water;*

*(e) Have a security system that is connected to a central station for fire and intrusion monitoring which monitors the space or facility 24 hours per day;*

*(f) Have a fire suppression system that is monitored 24 hours per day and uses cross-zone detection;*

*(g) Prohibit the storage of combustible materials, food or industrial supplies within the space or facility; and*

*(h) Prohibit smoking or the use of any open flame within the space or facility.*

*3. The temperature in the area of the space or facility that is used to store records which are kept on paper or microfilm must be between 65 degrees Fahrenheit and 75 degrees Fahrenheit.*

*4. Only authorized personnel of a state agency that stores records in a space or facility may have access to the area of the space or facility where the records are stored.*

*5. A state agency that stores records at a space or facility shall establish and maintain:*

*(a) A list of all the records stored at the space or facility;*

*(b) Procedures for authorized personnel to access any records stored at the space or facility; and*

*(c) Procedures for ensuring that the records stored at the space or facility are disposed of only in accordance with the schedule.*

**Sec. 13.** *As used in sections 13 to 31, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 13 to 28, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 14.** *“Authorized personnel” includes, without limitation:*

*1. The records officer, legal counsel and appointing authority of the governmental entity;*

2. *Any person who is designated by the appointing authority of the governmental entity;*  
*and*

3. *For the purpose of creating a schedule, the State Library and Archives Administrator or a designee thereof.*

Sec. 15. *“Disposition” means the destruction of a record or the transfer of a record to the State Archives for permanent retention.*

Sec. 16. *“Electronic record” means a record of a governmental entity that is stored by the governmental entity in an electronic format, such that a computer or machine is required to access or process the record.*

Sec. 17. *“Governmental entity” means:*

1. *A local governmental entity;*

2. *A state agency; or*

3. *The Board of Regents.*

Sec. 18. *“Historical value” has the meaning ascribed to it in section 11 of this regulation.*

Sec. 19. *“Local governmental entity” has the meaning ascribed to it in NRS 239.121.*

Sec. 20. *“Migration” means the transfer of an electronic record from one hardware, software or database structure to another or from one generation of computer technology to another for the purpose of assuring the preservation, usability and integrity of the record.*

Sec. 21. *“Official state record” has the meaning ascribed to it in NAC 239.705.*

Sec. 22. *“Record” includes, without limitation, a record of a local governmental entity and an official state record.*

Sec. 23. *“Record of a local governmental entity” has the meaning ascribed to it in NAC 239.101.*

**Sec. 24.** *“Records management” means the systematic control and management of a record throughout the life cycle of the record, including, without limitation, the creation, use, maintenance, retention and ultimate disposition of the record.*

**Sec. 25.** *“Records officer” means:*

*1. In the case of a state agency, the person designated by a state agency pursuant to NAC 239.700 to manage the records of the state agency; or*

*2. In the case of the Board of Regents or a local governmental entity, a person, if any, designated to manage the records of the Board or the local governmental entity.*

**Sec. 26.** *“Schedule” means, as applicable:*

*1. A schedule for the retention of records approved by the State Library and Archives Administrator pursuant to NAC 239.155; or*

*2. A schedule for the retention and disposition of official state records developed by a state agency and approved by the Committee pursuant to NRS 239.080.*

**Sec. 27.** *“State agency” has the meaning ascribed to it in NAC 239.690.*

**Sec. 28.** *“State Archives” has the meaning ascribed to it in NAC 239.692.*

**Sec. 29.** *1. If a governmental entity is required by any statute or court of competent jurisdiction to seal a record which is in its legal custody, the governmental entity must make the record accessible only to authorized personnel of the governmental entity, a person possessing a court order authorizing the person to access the record or any other person authorized by law to access the record.*

*2. A governmental entity shall:*

*(a) Place a sealed record in a place which is not accessible to the general public, such as a filing cabinet or drawer which can be locked; or*

*(b) Send a sealed record to:*

*(1) The records center; or*

*(2) A space or facility that meets the requirements set forth in section 12 of this regulation.*

*3. If a sealed record is an electronic record, the governmental entity must:*

*(a) Transfer the sealed record to:*

*(1) A directory in which the sealed record is protected from unauthorized access;*

*(2) An off-line media format, including, without limitation, a compact disc or tape; or*

*(3) A computer system in which the sealed record is protected from unauthorized access; or*

*(b) Indicate on the sealed record that it has been sealed and may be accessed only by authorized personnel.*

*4. Unless prohibited by a specific statute or a court order, a governmental entity may place an image of a sealed record on microfilm or convert the sealed record to an electronic record so that the physical version of the sealed record may be destroyed.*

*5. A governmental entity shall make a notation in its records management program that a record has been sealed. The notation must include, without limitation, the name of the record, the date on which it was sealed and a cite of the legal authority for sealing the record. The governmental entity shall place a copy of the court order or a copy of the statutory authority pursuant to which the record is sealed with the sealed record.*

*6. Authorized personnel of the governmental entity may disclose to the public whether a record is in the legal custody of the governmental entity and that the record is sealed and may*

*be accessed only by authorized personnel. No other details relating to the sealed record may be disclosed to the public.*

*7. If a record is sealed, authorized personnel of the governmental entity may review the record for administrative purposes only.*

*8. The governmental entity shall keep an access log for each sealed record. The log must detail who accesses the sealed record, when a sealed record is accessed, for what purpose the sealed record is accessed and the authority pursuant to which the sealed record is accessed.*

*9. A sealed record may be disposed of only as authorized by the schedule.*

**Sec. 30.** *1. A state agency or the Board of Regents may transfer an electronic record of historical value to the State Archives in accordance with procedures established by the State Library and Archives Administrator.*

*2. A local governmental entity may transfer an electronic record of historical value to a space or facility that:*

*(a) Meets the standards set forth in section 12 of this regulation;*

*(b) Has been approved by the governing body of the local governmental entity; and*

*(c) Is located in this State.*

**Sec. 31.** *1. A system for electronic records within the records management program of a governmental entity must be designed and maintained so that the system is able to:*

*(a) Manage each electronic record in the system throughout the life cycle of the electronic record, from its creation or receipt until its ultimate disposition, including, without limitation:*

*(1) Allowing only authorized personnel to access and retrieve each electronic record;*

*(2) Creating an electronic index or other searchable database for electronic records;*

*(3) Preserving electronic records and preventing the unauthorized alteration, erasure or destruction of electronic records;*

*(4) Creating a backup system that allows for the recovery of electronic records in the case of the failure of the system;*

*(5) Correlating electronic records maintained in the system with related records that are not maintained in the system; and*

*(6) Allowing for the migration of electronic records;*

*(b) Distinguish between an electronic record and nonrecord materials;*

*(c) Match each electronic record to the appropriate schedule;*

*(d) Indicate:*

*(1) Whether the governmental entity is still amending the electronic record; and*

*(2) The last date on which the governmental entity amended the electronic record;*

*(e) Identify the date, if any, of the disposition of the electronic record;*

*(f) If an electronic record is destroyed, ensure that the electronic record is destroyed in accordance with the appropriate schedule and in a manner which ensures that the information contained in the electronic record cannot be retrieved or reconstructed; and*

*(g) Transfer each electronic record with historical value to the State Archives.*

*2. A governmental entity that establishes a system for electronic records within the records management program of the governmental entity shall:*

*(a) Ensure that no electronic record, portion thereof, or any other information in the system is lost or destroyed because of changing or deteriorating technology;*

*(b) Retain each electronic record in a usable format for the period required pursuant to the appropriate schedule;*

*(c) Ensure that the migration of an electronic record does not prevent the authorized disposition of the electronic record; and*

*(d) Establish procedures to ensure the validity of the electronic records managed by the system and the disposition of such electronic records. Such procedures must include, without limitation:*

*(1) The regular copying and reformatting of each electronic record in the system and regular performance of any other actions necessary to ensure the retention, usability and completeness of each electronic record in the system throughout the existence of each electronic record, from its creation or receipt until its final disposition; and*

*(2) Standardizing the methods for creating and retrieving similar types of electronic records;*

*(e) Provide an ongoing training program regarding the use of the system for the staff of the governmental entity, including, without limitation, training in:*

*(1) The operation, care and handling of the equipment, software and media used in the system;*

*(2) Recognizing the distinction between an electronic record and nonrecord materials;*

*(3) Safeguarding confidential, restricted or otherwise sensitive electronic records; and*

*(4) Managing electronic mail.*

*3. As used in this section, “nonrecord materials” means published materials printed by a governmental printer, worksheets, unused blank forms except ballots, brochures, newsletters, magazines, catalogues, pricelists, drafts, convenience copies, ad hoc reports, reference materials not relating to specific projects and any other documentation that does not serve as the record of an official action of a governmental entity.*

**Sec. 32.** NAC 239.011 is hereby amended to read as follows:

239.011 As used in NAC 239.011 to 239.165, inclusive, *and sections 2 to 5, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 239.022 to ~~239.121,~~ *239.106*, inclusive, *and sections 2 to 5, inclusive, of this regulation* have the meanings ascribed to them in those sections.

**Sec. 33.** NAC 239.041 is hereby amended to read as follows:

239.041 “Legal custody” means all rights and responsibilities ~~[relating to the maintenance]~~ of ~~[and]~~ access to *and maintenance of* a record or *record* series ~~[of records]~~ *which* are vested in an office or department of a local governmental entity . ~~[and the official or head of the department is charged with the care, custody and control of that record or series of records.]~~ The term does not include the ownership of the record.

**Sec. 34.** NAC 239.051 is hereby amended to read as follows:

239.051 “Nonrecord ~~[“]~~ *materials*” means published ~~[books and pamphlets, books and pamphlets]~~ *materials* printed by a governmental printer, worksheets, ~~[used to collect or compile data after it has been included in a record, answer pads for a telephone or other informal notes,]~~ unused *blank* forms except ballots, brochures, newsletters, magazines, ~~[newspapers except those newspapers received pursuant to the provisions of NRS 247.070 or parts of newspapers retained as evidence of publication, scrapbooks, and property left or deposited with an office or department which would otherwise be defined as a record except that the ownership of that property does not reside with]~~ *catalogues, pricelists, drafts, convenience copies, ad hoc reports, reference materials not relating to a specific project and any other documentation that does not serve as the record of an official action of* a local governmental entity.

**Sec. 35.** NAC 239.101 is hereby amended to read as follows:

239.101 “Record of a local ~~[government”]~~ *governmental entity” or “record”* means information that is created or received pursuant to a law or ordinance, or in connection with the transaction of the official business of any office or department of a local governmental entity, including, without limitation, all documents, papers, letters, ~~[unpublished books,]~~ *bound ledger volumes*, maps, charts, blueprints, drawings, photographs, films, ~~[computer printouts,]~~ newspapers received pursuant to NRS 247.070, ~~[artifacts entered as exhibits in any proceeding in any court, information stored on a magnetic tape, computer, laser disc or optical disc, or on material which is capable of being read by a machine, including microforms and audio and visual materials, and any other evidence, including all copies thereof.]~~ *recorded media, financial statements, statistical tabulations and other documentary materials or information, regardless of physical form or characteristic.*

**Sec. 36.** NAC 239.106 is hereby amended to read as follows:

239.106 “Records management” means the systematic control and management of ~~[information]~~ *a record* throughout the life cycle of the ~~[information,]~~ *record*, including, without limitation, the creation, use, maintenance, retention and ultimate disposition of the ~~[information.]~~ *record.*

**Sec. 37.** NAC 239.131 is hereby amended to read as follows:

239.131 ~~[A nonrecord]~~ *Nonrecord materials* may, if not otherwise prohibited by law, be destroyed at any time by an official or the head of a department without being scheduled for destruction by the ~~[State Library and Archives]~~ Administrator.

**Sec. 38.** NAC 239.155 is hereby amended to read as follows:

239.155 1. A local governmental entity shall not dispose of any ~~[public]~~ record except in accordance with ~~[a]~~ :

(a) A schedule for the retention of ~~[such records]~~ *the record* approved by the State Library and Archives Administrator ~~[pursuant to this section.]~~; *or*

(b) *The schedule for the retention of the record set forth in the Local Government Records Management Program Manual established by the State Library and Archives Administrator pursuant to NRS 239.125.*

2. ~~[Before]~~ *Except as otherwise provided in subsection 5, before* adopting a schedule for the retention of ~~[public]~~ *the* records, ~~[a]~~ *the* local governmental entity shall submit ~~[a]~~ *the* proposed schedule to the State Library and Archives Administrator for review and approval.

3. The proposed schedule must include:

(a) The title of each *record* series ; ~~[of records;]~~

(b) A brief description of the contents and purpose of each *record* series ; ~~[of records;]~~

(c) The proposed minimum period of retention for each *record* series ; ~~[of records;]~~ and

(d) The proposed method of disposition.

4. After review, the State Library and Archives Administrator will return the proposed schedule to the local governmental entity with a signed and dated cover sheet.

5. *A local governmental entity may adopt a schedule for the retention of a record without the approval of the State Library and Archives Administrator if the local governmental entity adopts the schedule for the retention for the record that is set forth in the Local Government Records Management Program Manual established by the State Library and Archives Administrator pursuant to NRS 239.125.*

6. The local governmental entity shall adopt ~~[the]~~ *a* schedule ~~[approved pursuant to this section]~~ by ordinance or regulation.

**Sec. 39.** NAC 239.161 is hereby amended to read as follows:

239.161 1. The State Library and Archives Administrator will:

(a) Publish the schedules for the retention of ~~[public]~~ records established pursuant to NRS

239.125 in the *Local Government Records Management Program Manual*; and

(b) Provide a current copy of the *Manual* to each local governmental entity.

2. The periods established in the *Local Government Records Management Program Manual* indicate the minimum length of time that ~~[an original]~~ *a* record of a local ~~[government]~~ *governmental entity* must be retained in legal custody by the custodian of the record, regardless of its physical location.

3. ~~[All duplicates of records]~~ *A convenience copy* maintained within ~~[a]~~ *an office of a* local governmental ~~[office or within the files of a department, except those that must be kept until completion of an annual audit, may]~~ *entity*:

(a) *May* be disposed of ~~[as provided by the local governmental entity or department]~~ unless ~~[periods]~~ *a period* of minimum retention for the ~~[duplicates are]~~ *convenience copy is* specifically ~~[imposed by]~~ *set forth in* the *Local Government Records Management Program Manual* ~~[ ]~~; *and*

(b) *Must be disposed of at the time that the record from which the convenience copy was made is disposed of in accordance with the schedule adopted by the local governmental entity pursuant to NAC 239.155.*

**Sec. 40.** NAC 239.165 is hereby amended to read as follows:

239.165 ~~[1.]~~ To protect the confidentiality of *the* records of *a* local ~~[governments]~~ *governmental entity* that are declared by law to be confidential, such records must be destroyed in accordance with the applicable schedule ~~[ ]~~:

~~—(a) By shredding in a manner that ensures the information cannot be reconstructed;~~

~~—(b) By burning if allowed by federal, state and local regulations;~~

~~or~~

~~—(c) As] for the retention of the record and:~~

1. *In the manner* required by the laws, regulations, established standards, policies and procedures of the State or Federal Government ~~].~~

~~—2.— An electronic record must be destroyed in accordance with the applicable schedule] ; or~~

2. *If no laws, regulations, established standards, policies or procedures are applicable*, in a manner that ensures the information *contained in the record* cannot be retrieved or reconstructed. ~~[, including, without limitation, overwriting, degaussing and the physical destruction of the storage media.~~

~~—3.— All copies of a record must be destroyed at the same time without regard to the type of media used for the physical storage of such record.]~~

**Sec. 41.** NAC 239.570 is hereby amended to read as follows:

239.570 As used in NAC 239.570 to ~~[239.764,]~~ *239.750*, inclusive, *and sections 6 to 12, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 239.575 to ~~[239.695,]~~ *239.692*, inclusive, *and sections 6 to 10, inclusive, of this regulation* have the meanings ascribed to them in those sections.

**Sec. 42.** NAC 239.575 is hereby amended to read as follows:

239.575 “Administrative value” means the ~~[value found in records that help an agency perform its function.]~~ *usefulness or significance of a record in supporting the management and operations of a state agency.*

**Sec. 43.** NAC 239.620 is hereby amended to read as follows:

239.620 “Legal custody” means all rights and responsibilities of access to and maintenance of a record or *record* series ~~[of records]~~ which are vested in a state agency. The term does not ~~[mean]~~ *include* the ownership of the record.

**Sec. 44.** NAC 239.660 is hereby amended to read as follows:

239.660 “Received” means the receipt of records by personnel of a state agency, whether in person, by messenger, mail ~~[.]~~ *or* electronic transmission or by any other method. ~~[The term does not refer to misdirected materials.]~~

**Sec. 45.** NAC 239.670 is hereby amended to read as follows:

239.670 “Records officer” means the person designated, pursuant to NAC 239.700, by ~~[an]~~ *the head of a state* agency to manage ~~[its]~~ *the* records ~~[.]~~ *of the state agency.*

**Sec. 46.** NAC 239.692 is hereby amended to read as follows:

239.692 “State ~~[archives”]~~ *Archives*” means the program within the Division responsible for the selection, preservation and accessibility of records with ~~[research or archival]~~ *historical* value.

**Sec. 47.** NAC 239.697 is hereby amended to read as follows:

239.697 ~~[.]~~ The records management program established pursuant to NAC 239.696 must include ~~[:~~

~~—(a) A directive which establishes the objectives, authority, standards, guidelines and instructions of the records management program.~~

~~—(b) Controls]~~ *controls* for the creation, maintenance, use, security and distribution of the records of the *state* agency to ensure that the *state* agency:

~~[(1)]~~ *1.* Refrains from accumulating unnecessary records or gathering information which is not essential to the proper functioning of the *state* agency;

~~[(2)]~~ 2. Adheres to the appropriate schedule ~~[developed and approved in accordance with NRS 239.080;~~

~~——(3) Refrains from creating any form or report which inefficiently or unnecessarily collects information;~~

~~——(4) Annually reviews each of its forms and reports to determine whether the form or report needs to be improved or eliminated;~~

~~——(5) Designs and revises each of its forms and reports so that the form or report:~~

~~——(I) Is easy to use;~~

~~——(II) Is easy to read and process;~~

~~——(III) Presents the information in a manner that provides for the easy retrieval of the information; and~~

~~——(IV) Refrains from requesting information which is not needed for the proper functioning of the agency;~~

~~——(6) To reduce cost, eliminates each unnecessary form and report and limits the distribution of a form or report to only those persons or other governmental agencies which need the information contained on that report;~~

~~——(7)] ;~~

3. Maintains its records in a manner which is cost-effective and which allows for the rapid retrieval and protection of the information contained within that record;

~~[(8) If the record is recorded by electronic means, provides for the security of the record in a manner which is consistent with established policies, standards and procedures for security and recovery of an electronic record in a disaster as established by the Information Technology Strategic Planning Committee or its successor;~~

~~—(9)~~ 4. Establishes *and documents standards for* a ~~[written-organized]~~ filing system ~~[which:]~~ *for the state agency;*

~~[(I) Is standardized for each of the divisions or bureaus within the state agency; and~~

~~—(II) Provides for an ongoing training program in the use of the filing system for the staff of the agency;~~

~~—(10)~~ 5. Provides for the transfer of its records which are of ~~[research and archival]~~ *historical* value to the State Archives in accordance with NRS 239.080, 239.085, 239.090 and 378.250 and NAC ~~[239.760;]~~ *239.740 and sections 30 and 31 of this regulation;* and

~~[(11)]~~ 6. Establishes written *policies and* procedures for the proper access or denial of access to the public or other governmental agencies to records which have been declared by law to be confidential ~~[-~~

~~—(c) Written policies and procedures to protect access to and the use of personal identifying information. Such written policies and procedures must:~~

~~—(1) Identify the use and need for collecting the personal identifying information in accordance with applicable state and federal law;~~

~~—(2) Restrict the access to personal identifying information within the agency to staff authorized to access such information;~~

~~—(3) Reduce the exposure of personal identifying information in electronic format in accordance with the policies, standards and procedures established by the Information Technology Strategic Planning Committee or its successor;~~

~~—(4) Reduce the exposure of personal identifying information in paper files by never leaving such information unattended by an authorized person except when in a secure storage area;~~

~~— (5) Store personal identifying information that is in paper files in a secure manner, including:~~

~~— (I) A locked and monitored room;~~

~~— (II) A locked file cabinet;~~

~~— (III) A locked box; or~~

~~— (IV) As otherwise required by a regulation or a law of this State or the Federal Government;~~

~~— (6) Create and maintain an access log detailing, for all unauthorized staff, the general public and representatives of other governmental entities, who accessed the personal identifying information, when access was granted and for what purpose the information was accessed;~~

~~— (7) Produce and maintain a procedure whereby a file containing personal identifying information must be replaced with an insert which indicates that the file is out, the person who took the file and the date on which the file was removed; and~~

~~— (8) Include any requirements of a law of this State and the Federal Government relating to who may access personal identifying information, how such information may be accessed and where access may be granted.~~

~~— 2. Each state agency shall establish a training program for all staff, to be provided on an ongoing basis, concerning all laws, regulations, policies and procedures relating to accessing, using, maintaining, storing and disposing of personal identifying information.~~

~~— 3. As used in this section, “personal identifying information” has the meaning ascribed to it in NRS 205.4617.] *or otherwise restricted.*~~

**Sec. 48.** NAC 239.699 is hereby amended to read as follows:

239.699 1. A state agency shall take such measures as are necessary to ensure that the records in its legal custody are protected from unlawful removal, misuse, damage, alteration, destruction or loss. The state agency shall notify the appropriate prosecuting attorney or law enforcement agency of any actual, impending or threatened unlawful acts toward the records in the custody of the *state* agency.

2. A state agency shall provide for ongoing training for its employees on the measures which the *state* agency has taken pursuant to subsection 1. The training must include:

(a) Instruction in procedures which ensure that the records in the legal custody of the *state* agency will not be destroyed or otherwise disposed of except in accordance with the provisions of NRS 239.080; and

(b) A review of the penalties for the unlawful removal, misuse, damage, alteration, destruction or loss of records, as set forth in chapter 205 of NRS and NRS 239.300 to 239.330, inclusive, 281.180, 281.190, 603.080 and 603.090.

3. The head of the state agency is responsible for taking such measures as are possible to protect the records in the legal custody of the *state* agency from any natural or other disaster. The head of the state agency shall notify the State Library and Archives Administrator of any damage to a record in the legal custody of the state agency as a result of a natural or other disaster.

~~[4.—A state agency shall protect and preserve an electronic record in its legal custody by:  
—(a) Ensuring that an official record in electronic format remains accessible and unalterable during the period required for retention of the record; and  
—(b) Making provisions for an electronic record with research or archival value to be reproduced pursuant to NRS 239.051 or placed on alkaline reserve paper.]~~

**Sec. 49.** NAC 239.700 is hereby amended to read as follows:

239.700 1. ~~[Each]~~ *Except as otherwise provided in subsection 3, the head of each* state agency shall designate a records officer . ~~[and]~~

2. *A records officer shall:*

(a) *Act as a liaison between the state agency and the Division on issues relating to the retention and disposition of the records of the state agency;*

(b) *Oversee and administer the records management program of the state agency;*

(c) *Approve or disapprove the documentation for each transfer of records from the state agency to the records center;*

(d) *Approve or disapprove all requests for the disposition of a record pursuant to the appropriate schedule;*

(e) *Attend training classes offered by the Division on the retention and disposition of records; and*

(f) *Coordinate the training of officers, employees and agents of the state agency on the retention and disposition of records.*

3. *If the head of a state agency does not appoint a records officer, the head of the state agency is ex officio the records officer of the state agency.*

4. *The head of each state agency:*

(a) *May designate a new records officer at any time; and*

(b) *Shall* notify the Division, in writing, ~~[when its]~~ *if the* records officer has been replaced.

~~[2.]~~ 5. The Division shall ~~[cooperate with the agency's records officer and shall keep him or her informed concerning all phases of the scheduling of the agency's records.]~~ :

(a) *Maintain a current list of the records officer of each state agency;*

*(b) Provide to each records officer any publications of the Division relating to the retention and disposition of records; and*

*(c) Direct any correspondence with a state agency relating to the retention and disposition of records to the records officer of the state agency.*

**Sec. 50.** NAC 239.705 is hereby amended to read as follows:

239.705 1. For the purposes of NRS 239.080, ~~and~~ *and as used in NAC 239.570 to 239.750, inclusive, and sections 6 to 12, inclusive, of this regulation*, “official state record” or “*record*” means information created or received by a state agency under authority of law, regulation or other legal mandate or in connection with the transaction of public business that is ~~preserved or appropriate for preservation~~ *maintained* by the *state* agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the state agency, including, without limitation, all papers, ~~unpublished books,~~ maps, photographs, ~~machine-readable materials including audio and audiovisual materials, or~~ *financial statements, statistical tabulations, recorded media and* other documentary materials, regardless of physical form or characteristics.

2. The phrase does not include nonrecord materials. Nonrecord materials include, without limitation ~~:~~

~~—(a) Published books and pamphlets, books and pamphlets,~~ *published materials* printed by a governmental printer, ~~answer pads for a telephone or other~~ informal notes, ~~desk calendars, stenographers’ notebooks after the information contained therein has been transcribed,~~ unused *blank* forms except ballots, ~~and as indicated in a retention schedule,~~ brochures, newsletters, magazines, ~~newspapers except those excerpts used as evidence of publication, scrapbooks, physical property, artifacts, library and museum material made or acquired and preserved solely~~

~~for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, or stocks of publications and processed documents.~~

~~—(b) Workpapers used to collect or compile data, or drafts developed from those workpapers, unless an appraisal conducted by the Division indicates that the workpapers or drafts have legal, fiscal, research or archival value.] catalogues, pricelists, drafts, convenience copies, ad hoc reports, reference materials not relating to specific projects and any other documentation that does not serve as the record of an official action of a state agency.~~

**Sec. 51.** NAC 239.711 is hereby amended to read as follows:

239.711 ~~[A nonrecord]~~ ***Nonrecord materials*** may, if not otherwise prohibited by law, be destroyed at any time by a state agency without being scheduled for destruction by the ~~[State Library and Archives Administrator.]~~ ***Committee.***

**Sec. 52.** NAC 239.722 is hereby amended to read as follows:

239.722 1. A public book or public record which has been declared confidential pursuant to NRS 239.010 must be disposed of only in accordance with ~~[a]~~ ***the applicable*** schedule ~~[approved pursuant to NRS 239.080]~~ and:

(a) ~~[By shredding in a manner that ensures the information cannot be reconstructed;~~  
~~—(b) By burning if allowed by federal, state and local regulations; or~~  
~~—(c) As]~~ ***In the manner*** required by the laws, regulations, established standards, policies and procedures of the State or Federal Government ~~[;]~~ ***; or***

***(b) If no laws, regulations, established standards, policies or procedures are applicable, in a manner which ensures that the information contained in the public book or public record cannot be retrieved or reconstructed.***

2. ~~[An electronic record must be destroyed in accordance with:~~

~~—(a) The applicable schedule in a manner which ensures that the information cannot be retrieved or reconstructed, including, without limitation, overwriting, degaussing and the physical destruction of the storage media; and~~

~~—(b) The established standards, policies and procedures of the Information Technology Strategic Planning Committee or its successor.~~

~~—3.]~~ All *convenience* copies of a record must be destroyed at the same time *that the record from which the convenience copy is made*, without regard to the type of media used for the physical storage of such record.

**Sec. 53.** NAC 239.740 is hereby amended to read as follows:

239.740 1. ~~[Fø]~~ *A state agency may transfer a record to the records center.*

2. *Except as otherwise provided in subsection 3, to* the extent allowed by legislative appropriation, a state agency shall store official state records *that are not transferred to the record center* in a ~~[facility which meets the standards set forth in the most recently adopted edition of NFPA 232: Standards for the Protection of Records, which is hereby adopted by reference, unless the Division gives notice that the most recent revision is not suitable for this State pursuant to this subsection. The publication is available from the National Fire Protection Association at 1 Batterymarch Park, Quincy, Massachusetts 02169-7471, at the Internet address <http://www.nfpa.org> or by telephone at (800) 344-3555, for the price of \$28.80 for members and \$32 for nonmembers. The Division shall review each revision of NFPA 232: Standards for the Protection of Records to ensure its suitability for this State. If the Division determines that a revision is not suitable for this State, the Division shall hold a public hearing to review its determination within 180 days after the date of the publication of the revision and give notice of that hearing. If, after the hearing, the Division does not revise its determination, the Division~~

~~shall give notice within 30 days after the hearing that the revision is not suitable for this State. If the Division does not give such notice, the revision becomes part of the publication adopted by reference pursuant to this subsection.~~

~~—2.] *space or facility that meets the standards set forth in section 12 of this regulation.*~~

3. A state agency shall not store such records in a *space or* facility not owned by the State without the written permission of the person designated by the State Library and Archives Administrator to manage official state records. He or she shall determine whether the private facility meets with the standards set forth in ~~[this section.~~

~~—3.— If a state agency stores official state records at a facility which is not located at the same physical location as the state agency and which is not owned by the State, the state agency shall ensure that the security system used by the facility:~~

~~—(a) Is connected to a central station for fire and intrusion monitoring that monitors the facility 24 hours a day;~~

~~—(b) Has audible alarms for fire and intrusion;~~

~~—(c) Has physical intrusion protection devices, including, without limitation, high grade locks, gates and window bars on all entries, including, without limitation, all doors, windows, stairwells, ramps, docks and roof ports; and~~

~~—(d) Has motion detectors on the interior of the building.~~

~~↪ When choosing a facility for the storage of official state records, a state agency shall give preference to a facility that has a system for the detection of leaks of water.] *section 12 of this regulation.*~~

**Sec. 54.** NAC 239.745 is hereby amended to read as follows:

239.745 1. The Board of Regents shall establish a records management program. The Board of Regents shall provide a facility for the storage of the records on each campus of the Nevada System of Higher Education. The records of each institution must remain with and be ~~preserved~~ *maintained* by that institution. ~~The Board of Regents shall furnish the Division with general information relating to the operation of the facilities, such as the names, addresses and telephone numbers of the persons managing the program on each campus.~~ Under such a program, each *record* series ~~of records~~ produced and stored by an institution of the Nevada System of Higher Education must be inventoried, appraised and scheduled on forms approved by the ~~Division. The results of the inventory and appraisal must be submitted to the Division for review. The Division~~ *Committee. Each institution* shall submit the schedules ~~of the Nevada System of Higher Education~~ to the Committee for approval.

2. The Board of Regents shall provide for the preservation of records from the Nevada System of Higher Education with ~~legal, research or archival~~ *retention* value ~~. Except as otherwise provided in this subsection, these~~, *and such* records must be stored in ~~facilities~~ *a space or facility* which ~~meet~~ *meets* the standards set forth in ~~NAC 239.740~~ *section 12 of this regulation* or transferred to the State Archives.

3. Records of the Board of Regents with ~~legal, research or archival~~ *historical* value must be transferred to the State Archives.

**Sec. 55.** NAC 239.750 is hereby amended to read as follows:

239.750 1. Upon receiving notice that a state agency is being abolished or disbanded, the head of the *state* agency, whether elected or appointed, shall take such actions as may be necessary to transfer the records of the *state* agency to the Division for appraisal and preservation. Upon receipt, the Division acquires legal custody of these records. The records

center shall maintain the records of defunct state agencies which have administrative ~~[, fiscal]~~ or ~~[legal]~~ *retention* value until the scheduled period for retention has passed. Thereafter, any long-term record or record with ~~[research or archival]~~ *historical* value must be transferred to the State Archives.

2. If a defunct state agency is reorganized or reinstated, the Division shall transfer the *defunct state* agency's records with ~~[administrative, fiscal or legal]~~ *retention* value into the legal custody of ~~[that]~~ *the* state agency ~~[ ]~~ *that is reorganized or reinstated*. Records with ~~[research or archival]~~ *historical* value must remain with the State Archives.

**Sec. 56.** NAC 239.850 is hereby amended to read as follows:

239.850 1. For the purposes of subsection 2 of NRS 241.035, the minutes of a public body, including agendas, exhibits and other related records, may be transferred for archival preservation and continued public access to:

(a) For a state agency, the State Archives.

(b) For the Nevada System of Higher Education and each local governmental entity:

(1) The Nevada Historical Society;

(2) The Nevada State Museum Las Vegas;

(3) An archival program or special collections of the Nevada System of Higher Education;

or

(4) An archival repository that:

(I) ~~[Complies with the requirements]~~ *Meets the standards* set forth in ~~[NAC 239.740;]~~ *section 12 of this regulation;*

(II) Has been approved by the governing body that created the minutes or its successor;

and

(III) Is located in this State.

2. Except for the purposes of display or special exhibits, minutes created in accordance with NRS 241.035 must remain in this State.

3. An archival repository that accepts minutes from a public body pursuant to subsection 1 receives legal custody of the minutes.

4. If an archival repository has accepted minutes from a public body pursuant to subsection 1 and finds itself no longer able to retain those minutes, the archival repository shall return the minutes to the public body from which the minutes originated or to the successor of that public body. If the public body or its successor ceases to exist, the records must be transferred to an archival repository pursuant to the provisions of subsection 1.

5. As used in this section, “archival repository” means a facility, professional staff and written program established to select, preserve and provide access to records containing research or archival value.

**Sec. 57.** Chapter 378 of NAC is hereby amended by adding thereto a new section to read as follows:

*For the purposes of this chapter and chapter 378 of NRS, “historical value” has the meaning ascribed to it in section 11 of this regulation.*

**Sec. 58.** NAC 239.031, 239.035, 239.091, 239.121, 239.590, 239.593, 239.600, 239.605, 239.625, 239.636, 239.637, 239.638, 239.655, 239.675, 239.685, 239.695, 239.698, 239.721, 239.755, 239.760, 239.762 and 239.764 are hereby repealed.

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**TEXT OF REPEALED SECTIONS**

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**239.031 “Duplicate” defined. (NRS 239.125, 378.255)** “Duplicate” means any accurate and unabridged copy of a record or series of records which is not an original.

**239.035 “Electronic record” defined. (NRS 239.125, 378.255)** “Electronic record” means a representation of a record of a local governmental entity in electronic format containing information, knowledge, facts, concepts or instructions which is being prepared or has been formally prepared and is intended to be processed, is being processed or has been processed in a system or network.

**239.091 “Public record” defined. (NRS 239.125, 378.255)** “Public record” means a record of a local governmental entity that is created, received or kept in the performance of a duty and paid for with public money.

**239.121 “Series of records” defined. (NRS 239.125, 378.255)** “Series of records” means records that are kept or filed in a unified or sequential arrangement, having similar characteristics or relating to a similar function or activity.

**239.590 “Duplicate” defined. (NRS 378.255, 378.280)** “Duplicate” has the meaning ascribed to it in NRS 52.195.

**239.593 “Electronic record” defined. (NRS 378.255, 378.280)** “Electronic record” means a representation of an official state record in electronic format containing information,

knowledge, facts, concepts or instructions which is being prepared or has been formally prepared and is intended to be processed, is being processed or has been processed in a system or network.

**239.600 “Fiscal value” defined. (NRS 378.255, 378.280)** “Fiscal value” means the value found in a record relating to the financial transactions and the auditing, budgeting and accounting functions of a state agency.

**239.605 “Image” defined. (NRS 378.255, 378.280)** “Image” means an exact duplicate of an original document.

**239.625 “Legal value” defined. (NRS 378.255, 378.280)** “Legal value” means the value found in a record which contains proof of enforceable rights, obligations or other legal standing.

The term includes any record establishing:

1. Ownership, such as in titles or deeds;
2. Rights or privileges, such as in marriage licenses or drivers’ licenses;
3. Obligations, such as in contracts, leases and agreements;
4. Legal conditions, such as court rulings, approved laws and regulations; or
5. Action taken by a governing body which affects the public, such as minutes of meetings or proclamations.

**239.636 “Microform” defined. (NRS 378.255, 378.280)** “Microform” means any form of micrographic material, including, without limitation, microfiche, microcards or microfilm contained on reels, cartridges or cassettes.

**NAC 239.637 “Micrographics” defined. (NRS 378.255, 378.280)** “Micrographics” means the production of printed information in miniature form.

**NAC 239.638 “Micrographics equipment” defined. (NRS 378.255, 378.280)**

“Micrographics equipment” means any equipment used in micrographics, including, without limitation:

1. Planetary or rotary cameras for microfilm;
2. Machines for processing or duplicating microforms;
3. Readers and printers of microforms;
4. Scanners used to convert microforms to an optical format or compact disc; and
5. Systems used to convert microforms to digital or electronic images.

**NAC 239.655 “Preserved” defined. (NRS 378.255, 378.280)** “Preserved” means the filing, storage or other method of systematically maintaining records by an agency. The term also applies to records while they are temporarily removed from established filing systems.

**NAC 239.675 “Research or archival value” defined. (NRS 378.255, 378.280)**

“Research or archival value” means the long-term historical value remaining in a record in which the administrative, fiscal or legal value may have expired.

**NAC 239.685 “Series of records” defined. (NRS 378.255, 378.280)** “Series of records” means records that are kept or filed in a unified or sequential arrangement, having similar characteristics or relating to a similar function or activity.

**NAC 239.695 “Vital record” defined. (NRS 378.255, 378.280)** “Vital record” means an official state record which contains information:

1. Required for a state agency to continue functioning during a disaster;
2. Required for a state agency to reestablish operations after a disaster has ended; or
3. Representing the particulars of an obligation incurred by the State Government.

**NAC 239.698 Records management program: Electronic records. (NRS 378.255, 378.280)** Before establishing a system for electronic records within the records management program pursuant to NAC 239.696, the head of the state agency shall:

1. Consult with the Division of Enterprise Information Technology Services of the Department of Administration, in accordance with chapter 242 of NRS and chapter 242 of NAC, on the implementation of its system, including, but not limited to, a strategic plan for the use of information resources and information technology, the purchase and use of hardware and software, and the establishment of programs relating to training in the use of and security for the system.

2. Work with the Division of State Library and Archives to:

(a) Ensure the proper use, maintenance, retention, preservation and disposition of the records of the state agency; and

(b) Carry out the procedures required for the retention of records in accordance with the provisions of chapters 239 and 378 of NRS, and the regulations adopted pursuant thereto.

3. Establish in writing a strategy for migration. As used in this subsection, a “strategy for migration” means a plan which ensures that the:

(a) Records of the state agency will be preserved and accessible for a period of retention established in accordance with NRS 239.080;

(b) Long-term records can be used with or transferred to updated technological advances; and

(c) State agency adheres to all policies, standards and procedures adopted by the Information Technology Strategic Planning Committee or its successor.

4. Establish measures which provide for access into and security backup of all of its electronic records.

**239.721 Procedures for sealing records; management and disposal of sealed records.**

**(NRS 378.255, 378.280)**

1. A state agency which is required by any statute or court of competent jurisdiction to seal a record which is in the legal custody of the agency shall seal the record by physically removing the record from the filing system of the agency and placing the record in a separate file which is not accessible to the general public, including, but not limited to, a filing cabinet or drawer which can be locked.

2. The state agency shall make a notation in its filing system that the record has been removed. The notation must include the name of the record which has been removed, the date that it was removed and a cite of the legal authority for its removal. The agency shall place the record to be sealed and the court order or a copy of the statutory authority pursuant to which the record is being sealed into an envelope or closable file and place on the outside of the envelope or file a statement which is substantially in the following form:

Sealed by the authority of (cite the court order or statutory authority pursuant to which the record has been sealed). Access by authorized personnel or by court order only.

3. The state agency shall establish within its filing system a separate confidential file for the purpose of locating and retrieving the sealed records in the legal custody of the agency. The separate file may contain only such information as may be necessary to facilitate the location and retrieval of the sealed record. The authorized personnel of the agency may disclose to the public whether a record is in the legal custody of the state agency, but no other details relating to the sealed record may be disclosed to the public.

4. Once a record is sealed, the authorized personnel of the state agency may review the record for administrative purposes only. The actual contents of a sealed record may be disclosed only upon the order of a court of competent jurisdiction.

5. The state agency shall keep a log to monitor the access to the sealed record. The log must include, without limitation:

- (a) The name of each person who accesses the sealed record;
- (b) The time and date on which that access was made;
- (c) The purpose for accessing the sealed record; and
- (d) The authority pursuant to which the person is accessing the sealed record.

6. If the record to be sealed is on microfiche, a microfilm jacket, an aperture card or a microcard, the state agency shall:

(a) Remove the microfiche, microfilm jacket, aperture card or microcard and place it into an envelope or a closable file in accordance with this section; and

(b) Replace the microfiche, microfilm jacket, aperture card or microcard removed pursuant to paragraph (a) with an index or other similar card which includes the name of the record which has been removed and the date that it was removed and cites the legal authority for its removal.

7. If the record to be sealed is on a roll of microfilm, including, without limitation, a reel, cartridge or cassette of microfilm, the state agency shall:

(a) Remove the entire roll of microfilm and place the roll into an envelope or closable file in accordance with this section; or

(b) Cut from the roll of microfilm that portion of the record which is to be sealed and place the portion of the record which has been removed into an envelope or closable file in accordance with this section. A target, a certification and a copy of the court order or statutory citation

pursuant to which the record is being removed must be spliced between the ends of the cut roll of microfilm, in accordance with the following standards of the American National Standards Institute (ANSI) and the Association for Information and Image Management (AIIM), which are hereby adopted by reference:

(1) ANSI/AIIM MS18-1992, Micrographics—Splices for Imaged Film—Dimensions and Operational Constraints;

(2) ANSI/AIIM MS19-1993, Identification of Microforms, Recommended Practice for Identification of Microforms; and

(3) ANSI/AIIM MS42-1989, Information and Image Management—Recommended Practice for the Expungement, Deletion, Correction or Amendment of Records on Microforms.

↪ A copy of the standards set forth in this paragraph is available from the Association for Information and Image Management, 1100 Wayne Avenue, Suite 1100, Silver Spring, Maryland 20910, or at the Internet address <http://www.aiim.org>, for the price of \$25 for members or \$33 for nonmembers.

8. A state agency shall not dispose of a sealed record unless the record appears on a schedule for retention and disposition approved pursuant to NRS 239.080.

9. As used in this section, “authorized personnel” includes, without limitation:

(a) The records officer, the legal counsel and the appointing authority of the state agency;

(b) Any person who is so designated by the appointing authority of the state agency; and

(c) For the purpose of creating a schedule for retention and disposition pursuant to NRS 239.080, the State Library and Archives Administrator or a designated agent thereof.

**239.755 Priority for microfilming and protection of long-term records and vital records. (NRS 378.255, 378.280)** Each state agency shall give priority to the microfilming and

protection of its long-term records and vital records within the limits of the agency's budget. If money has been appropriated for the microfilming or storage of records, the microfilming of long-term records and vital records must be given priority.

**239.760 Treatment of electronic records. (NRS 378.255, 378.280)**

1. A state agency which produces an electronic record shall include the entire record or image. Each electronic record must include:

- (a) The date the record was produced;
- (b) The date any alteration was produced;
- (c) Evidence that the record was authorized for issue or signature;
- (d) The name of the person who authorized the record for issue or signature; and
- (e) The name of any person, business, organization, governmental agency or any other entity

to which the record was sent by the state agency.

2. The temperature in the area used to store an electronic record must be maintained at or above 50 degrees Fahrenheit, but not more than 75 degrees Fahrenheit.

3. The agency's personnel shall transfer electronic mail records to a medium which will ensure retention until the minimum period for retention has passed.

4. Except as otherwise provided in this subsection, an electronic record that has been appraised and scheduled to be transferred to the State Archives must not be sent via electronic communication or on electronic storage media. The agency shall transfer the electronic record onto alkaline reserve paper, microfilm or microfiche before transferring it to the State Archives. Audio and audiovisual recordings may be transferred in their original storage media.

**239.762 Micrographics and imaging: Written approval required for acquisition and upgrading of equipment and for contracts for conversion of records. (NRS 378.255,**

**378.280)** A state agency shall obtain the written approval of the State Library and Archives Administrator before the agency:

1. Purchases micrographics and imaging equipment;
2. Leases micrographics and imaging equipment;
3. Rents micrographics and imaging equipment;
4. Upgrades any micrographics or imaging equipment; or
5. Contracts with any person for the conversion of the records of that agency to microform or digital image.

**239.764 Program for converting records to microform: Written policy and program of training required. (NRS 378.255, 378.280)** A state agency which operates a program for converting its records to microform shall:

1. Prepare and maintain a written policy relating to the program which includes, without limitation:
  - (a) The procedure for the preparation of records to be converted to microform;
  - (b) Any procedure required to ensure that the quality of the records is maintained during conversion of the records to microform;
  - (c) An explanation of the operation of the micrographics equipment maintained by the agency; and
  - (d) The procedure for the storage and use of microforms.
2. Establish a program of training for those members of the agency who convert the agency's records to microform which includes instruction relating to the requirements of the written policy set forth in subsection 1.

3. Review the written policy and program of training annually to ensure that the program for converting the agency's records to microform complies with the requirements of this chapter.