

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

LCB File No. R107-13

November 1, 2013

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

AUTHORITY: §§1-37, NRS 239.008 and 378.255.

A REGULATION relating to public records; interpreting certain statutory terms relating to public records; setting forth requirements for a form to request to inspect, copy or receive a copy of certain public records; setting forth certain procedures for records officials; 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 11, inclusive, of this regulation.

Sec. 2. *For purposes of NRS 239.055, as applicable to an agency of the Executive Department, “extraordinary use of its personnel or technological resources” means that it is reasonable to believe that it will take an officer, employee or agent of an agency more than 30 minutes to retrieve or reproduce a public record.*

Sec. 3. *For purposes of NRS 239.0107, as applicable to an agency of the Executive Department, a public record is “readily available” if:*

- 1. The public record is easily retrievable by an officer, employee or agent of the agency who has legal custody or control of the record;*
- 2. The public record does not contain any confidential information; and*

3. The nature of the public record is such that an officer, employee or agent of the agency who has legal custody or control of the record is not required to review the record to determine whether the record includes confidential information.

Sec. 4. For purposes of NRS 239.010, as applicable to an agency of the Executive Department, “readily available medium” means any format in which a public record exists with the agency at the time that a person requests to inspect, copy or receive a copy of the public record.

Sec. 5. A records official of each agency of the Executive Department shall ensure that the agency makes available on the website maintained by the agency on the Internet or its successor:

- 1. The address and regular office hours of the principal office of the agency;*
- 2. The name of the records official;*
- 3. An explanation of any fees the agency charges for providing a copy of a public record;*
- 4. An explanation of how a person may request to inspect or copy a public record or receive a copy of a public record; and*
- 5. A link to the form described in section 6 of this regulation to request to inspect or copy a public record or to receive a copy of a public record.*

Sec. 6. 1. The form to request to inspect or copy a public record or to receive a copy of a public record of an agency of the Executive Department must include, without limitation:

- (a) The name, address and telephone number of the person submitting the request;*
- (b) The date that the request is submitted to the agency;*
- (c) A description of the public record that is sufficient to identify the record;*

(d) An indication of whether the person submitting the request wants to inspect, copy or receive a copy of the public record;

(e) If the person wants to receive a copy of the public record, an indication of:

(1) Whether the person wants a paper copy, an electronic copy or a certified copy of the record; and

(2) Whether the person will receive the copy of the record at the office of the agency or the person wants to receive the copy by mail, facsimile machine or electronic mail; and

(f) An oral or written affirmation by the person requesting to inspect, copy or receive a copy of the public record that the person understands that:

(1) There may be a fee to receive a copy of a public record, which the person must pay in full before receiving the copy; and

(2) He or she will receive from a records official a written estimate to reproduce the public record if the estimated actual cost of reproducing the record is more than \$25.

2. If a person indicates that he or she wants to receive a copy of the public record by facsimile machine or electronic mail, the person must include on the form a facsimile number or electronic mail address, as applicable.

Sec. 7. *If an agency of the Executive Department charges a fee for providing a copy of a public record:*

1. A records official shall provide a person who requests a copy of a public record with an estimate of the fee for the copy, if the estimated actual cost is more than \$25. The estimate of the fee must include, without limitation, the amount of postage that the agency will charge the person if the person requested to have the copy delivered by mail.

2. A records official:

(a) May require the person who requests a copy of a public record to pay a refundable deposit of not more than the estimate of the actual cost of providing the copy; and

(b) Shall require the person who requests a copy of a public record to pay the fee for providing the copy, including, without limitation, postage for mailing the copy, if applicable, before the person receives the copy.

Sec. 8. *A records official may request additional information or clarification from a person who has requested to inspect, copy or receive a copy of a public record to determine which public record the person is requesting to inspect, copy or receive a copy of, as applicable.*

Sec. 9. 1. *A records official of each agency of the Executive Department shall ensure that the agency provides a suitable space for a person to inspect a public record in a manner that does not cause excessive interference with the essential functions of the agency.*

2. A records official shall ensure that an employee of the agency observes the inspection of a public record.

3. A person who requests to inspect a public record shall not:

(a) Remove a document from the space provided pursuant to subsection 1; or

(b) Disassemble or alter the public record.

4. A records official may provide access to inspect a public record in installments if the person who requested to inspect the record agrees and the record is large enough that it would be reasonably practicable to provide access to the record in installments.

Sec. 10. *If a person requests to inspect, copy or receive a copy of a public record that does not exist, a records official or an agency of the Executive Department is not required to create a public record to satisfy the request.*

Sec. 11. 1. *Except as otherwise provided in subsection 2, if a person requests to inspect, copy or receive a copy of a public record, the records official of the agency of the Executive Department that possesses the record shall ensure that the agency does not dispose of the record until agency has complied with the request.*

2. *If a person requests to receive a copy of a public record, a records official may dispose of the copy 30 days after the copy is reproduced if the person who requested the copy does not:*

(a) Obtain the copy from the agency; or

(b) Notify the agency of when the person will obtain the copy.

Sec. 12. NAC 239.570 is hereby amended to read as follows:

239.570 As used in NAC 239.570 to 239.764, inclusive, *and sections 2 to 11, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 239.575 to 239.695, inclusive, have the meanings ascribed to them in those sections.

Sec. 13. NAC 239.575 is hereby amended to read as follows:

239.575 “Administrative value” means the value found in records that help an agency *of the Executive Department* perform its function.

Sec. 14. NAC 239.600 is hereby amended to read as follows:

239.600 “Fiscal value” means the value found in a record relating to the financial transactions and the auditing, budgeting and accounting functions of ~~{a state}~~ *an agency* ~~{.}~~ *of the Executive Department.*

Sec. 15. 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 series of records which are vested in ~~{a state}~~ *an agency* ~~{.}~~ *of the Executive Department.* The term does not mean the ownership of the record.

Sec. 16. NAC 239.655 is hereby amended to read as follows:

239.655 “Preserved” means the filing, storage or other method of systematically maintaining records by an agency ~~{}~~ *of the Executive Department*. The term also applies to records while they are temporarily removed from established filing systems.

Sec. 17. NAC 239.660 is hereby amended to read as follows:

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

Sec. 18. NAC 239.665 is hereby amended to read as follows:

239.665 “Records center” means the center created pursuant to subsection 4 of NRS 378.255 for storing and retrieving records of ~~{state}~~ agencies ~~{}~~ *of the Executive Department*.

Sec. 19. NAC 239.670 is hereby amended to read as follows:

239.670 “Records ~~{officer}~~ *official*” means ~~{the-person}~~ *an employee* designated ~~{}~~ pursuant to *NRS 239.008 and* NAC 239.700 ~~{}~~ *by the head of an agency of the Executive Department to ~~{manage-its}~~ act as a records ~~{}~~ official for that agency.*

Sec. 20. NAC 239.680 is hereby amended to read as follows:

239.680 “Schedule” means a schedule for the retention and disposition of official state records developed by ~~{a-state}~~ *an agency of the Executive Department* and approved by the Committee pursuant to NRS 239.080.

Sec. 21. NAC 239.695 is hereby amended to read as follows:

239.695 “Vital record” means an official state record which contains information:

1. Required for ~~{a-state}~~ *an agency of the Executive Department* to continue functioning during a disaster;

2. Required for ~~{a-state}~~ *an agency of the Executive Department* to reestablish operations after a disaster has ended; or

3. Representing the particulars of an obligation incurred by the State Government.

Sec. 22. NAC 239.696 is hereby amended to read as follows:

239.696 ~~{A-state}~~ *An agency of the Executive Department* shall establish a records management program which documents its organization, functions, policies, decisions, procedures and essential transactions.

Sec. 23. NAC 239.697 is hereby amended to read as follows:

239.697 1. The records management program established *by an agency of the Executive Department* 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 for the creation, maintenance, use, security and distribution of the records of the agency to ensure that the agency:

(1) Refrains from accumulating unnecessary records or gathering information which is not essential to the proper functioning of the agency;

(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) 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) Establishes a written organized filing system which:

(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) Provides for the transfer of its records which are of research and archival value to the State Archives in accordance with NRS 239.080, 239.085, 239.090 and 378.250 and NAC 239.760; and

(11) Establishes written 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 *of the Executive Department* 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.

Sec. 24. NAC 239.698 is hereby amended to read as follows:

239.698 Before establishing a system for electronic records within the records management program pursuant to NAC 239.696, the head of ~~{the-state}~~ *an agency of the Executive Department* 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}~~ *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.

Sec. 25. NAC 239.699 is hereby amended to read as follows:

239.699 1. ~~{A state}~~ *An agency of the Executive Department* 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 agency.

2. ~~{A-state}~~ *An agency of the Executive Department* shall provide for ongoing training for its employees on the measures which the 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 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}~~ *an agency of the Executive Department* is responsible for taking such measures as are possible to protect the records in the legal custody of the 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}~~ *An agency of the Executive Department* 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. 26. NAC 239.700 is hereby amended to read as follows:

239.700 1. Each ~~{state}~~ *head of an agency of the Executive Department* shall designate *as a records ~~{officer and}~~ official at least one employee who is knowledgeable about the laws relating to public records.*

2. *The head of each agency of the Executive Department shall* notify the Division, in writing, when ~~{its}~~ *a records ~~{officer}~~ official* has been *designated or* replaced.

~~{2.}~~ 3. The Division shall cooperate with ~~{the agency's}~~ *a records ~~{officer}~~ official* and shall keep him or her informed concerning all phases of the scheduling of the agency's records.

Sec. 27. NAC 239.705 is hereby amended to read as follows:

239.705 1. For the purposes of NRS 239.080, ~~{an}~~ *and as used in NAC 239.570 to 239.764, inclusive, and sections 2 to 11, inclusive, of this regulation,* “official state record ~~{?}~~,” “public record” or “record” means information created or received by ~~{a state}~~ *an agency of the Executive Department or the Nevada System of Higher Education* 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 agency *or the Nevada System of Higher Education,* or its legitimate successor, as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the ~~{state}~~ *agency ~~{}~~ or the Nevada System of Higher Education,* 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 “official state record,” “public record” or “record” 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.}~~ *catalogs, 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 an agency of the Executive Department or the Nevada System of Higher Education.*

Sec. 28. NAC 239.711 is hereby amended to read as follows:

239.711 A nonrecord may, if not otherwise prohibited by law, be destroyed at any time by ~~{a state}~~ *an agency of the Executive Department* without being scheduled for destruction by the State Library and Archives Administrator.

Sec. 29. NAC 239.721 is hereby amended to read as follows:

239.721 1. ~~{A state}~~ *An agency of the Executive Department* 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~~ *American National Standards Institute* at the Internet address ~~http://www.aiim.org,~~ <http://www.ansi.org> for the price of ~~\$25 for members or~~ \$33 ~~for nonmembers.~~ *each.*

8. ~~A state~~ *An agency of the Executive Department* 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,~~ *official*, 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.

Sec. 30. NAC 239.740 is hereby amended to read as follows:

239.740 1. To the extent allowed by legislative appropriation, ~~a state~~ *an agency of the Executive Department* shall store official state records 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]~~ \$36.45 for members and ~~[\$32]~~ \$40.50 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. ~~[A state]~~ *An agency of the Executive Department* shall not store such records in a 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]~~ *an agency of the Executive Department* 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}~~ *an* agency shall give preference to a facility that has a system for the detection of leaks of water.

Sec. 31. NAC 239.750 is hereby amended to read as follows:

239.750 1. Upon receiving notice that ~~{a-state}~~ *an* agency *of the Executive Department* is being abolished or disbanded, the head of the agency, whether elected or appointed, shall take such actions as may be necessary to transfer the records of the 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 value until the scheduled period for retention has passed. Thereafter, any long-term record or record with research or archival value must be transferred to the State Archives.

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

Sec. 32. NAC 239.755 is hereby amended to read as follows:

239.755 Each ~~{state}~~ agency *of the Executive Department* 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.

Sec. 33. NAC 239.760 is hereby amended to read as follows:

239.760 1. ~~{A-state}~~ *An agency of the Executive Department* 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.

Sec. 34. NAC 239.762 is hereby amended to read as follows:

239.762 ~~{A-state}~~ *An agency of the Executive Department* 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.

Sec. 35. NAC 239.764 is hereby amended to read as follows:

239.764 ~~{A state}~~ *An agency of the Executive Department* 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.

Sec. 36. 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 ~~the state~~ *an* agency ~~of~~ *of the Executive Department*, 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 set forth in NAC 239.740;

(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. 37. NAC 239.690 is hereby repealed.

TEXT OF REPEALED SECTION

239.690 “State agency” defined. (NRS 378.255, 378.280) “State agency” means an office, department, board, commission, committee, agency or any other subdivision of the Executive Branch of the Government of the State of Nevada where records are made, received or kept.