

LEGISLATIVE BILL 559

Approved by the Governor May 18, 1979

Introduced by Appropriations Committee, Warner, 25,
Chmn.; Dworak, 22; Fowler, 27; Labeledz, 5;
Hasebroock, 18; Cope, 36; S. Marsh, 29

AN ACT to amend sections 81-161.04, 84-1202, 84-1204, 84-1207, 84-1211, 84-1212, 84-1213, and 84-1216 to 84-1220, Reissue Revised Statutes of Nebraska, 1943, and sections 84-1203, 84-1222, 84-1223, 84-1225, and 84-1226, Revised Statutes Supplement, 1978, relating to the Records Management Act; to redefine terms; to clarify provisions; to provide charges and user fees for micrographic equipment; to provide provisions relating to surplus property; to provide for credits and disbursements from the Records Management Micrographic Services Revolving Fund; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 84-1202, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1202. As used in sections 84-1201 to ~~84-1220~~
84-1226, unless the context otherwise requires:

(1) Agency shall mean any department, division, office, commission, court, board, or any other unit or body, however designated, of the executive, judicial, and legislative branches of the state government or of the government of any local political subdivision;

(2) Agency head shall mean the chief or principal official or representative in any such agency, or the presiding judge of any court, by whatever title known; and when an agency consists of a single official, the agency and the agency head are one and the same;

(3) State agency shall mean an agency of the state government; and a local agency shall mean an agency of a local political subdivision;

~~(4) State executive agency shall mean an agency of the executive branch of the state government. As such the term includes, among others, all administrative offices and bodies operating within the executive branch and when any administrative office or body is charged~~

~~with varied functions, some of which are essentially executive in character and others which are or tend to be of a legislative or judicial nature, the office or body shall be considered a state executive agency, unless expressly declared by general law to be an instrumentality of the legislative or judicial branch;~~

{5} (4) Local political subdivision shall mean any county, city, village, township, district, authority, or other public corporation or political entity, whether existing under charter or general law; except that a metropolitan class city or a district or other unit which by law is considered an integral part of the state government is not included in the term;

{6} (5) Record shall mean any book, document, paper, photograph, microfilm, sound recording, or other material regardless of physical form or characteristics, made or received pursuant to law, charter, ordinance or other authority, in connection with the transaction of official business;

{7} (6) State record shall mean a record which normally is maintained within the custody or control of a state agency, or any other record which is designated or treated as a state record according to general law;

{8} (7) Local record shall mean a record of a local political subdivision or of any agency thereof, unless designated or treated as a state record under general law;

~~{9} Court record shall mean a record maintained by any court existing pursuant to the Constitution or statutes of the State of Nebraska;~~

~~{10} Legislative record shall mean a record created or maintained by the legislature pursuant to the Constitution or statutes of the State of Nebraska;~~

{11} (8) Essential record shall mean a state, or local, court, or legislative record which is within one or the other of the following categories, and which shall be preserved pursuant to sections 34-1201 to 34-1229 84-1226:

(a) Category A. Records containing information necessary to the operations of government under all conditions, including a period of emergency created by a disaster; or

(b) Category B. Records not within Category A, but which contain information necessary to protect the

rights and interests of persons, or to establish or affirm the powers and duties of state or local governments in the resumption of operations after a disaster;

††2† (9) Preservation duplicate shall mean a copy of an essential record, which is used for the purpose of preserving the record pursuant to sections 84-1201 to 84-†220 84-1226; and

††3† (10) Disaster shall mean any occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage, or other conditions of extreme peril resulting in substantial injury or damage to persons or property within this state, whether such occurrence is caused by an act of nature or of man, including an enemy of the United States.

Sec. 2. That section 84-1203, Revised Statutes Supplement, 1978, be amended to read as follows:

84-1203. The Secretary of State is hereby designated the State Records Administrator, hereinafter called the administrator. The administrator shall establish and administer, within and for the ~~executive, judicial, and legislative branches of the state government and the executive branch of local governments~~ and local agencies, (1) a records management program which will apply efficient and economical methods to the creation, utilization, maintenance, retention, preservation, and disposal of state and local records, (2) a program for the selection and preservation of essential state, and local, ~~court, and legislative~~ records, (3) establish and maintain a depository for the storage and service of state ~~and legislative~~ records, and advise, assist, and govern by rules and regulations the establishment of similar programs in local political subdivisions ~~and judicial bodies~~ in the state, and (4) establish and maintain a central microfilm agency for state ~~and legislative~~ records and advise, assist, and govern by rules and regulations the establishment of similar programs in state agencies, and local political subdivisions, ~~and judicial bodies~~ in the State of Nebraska.

Sec. 3. That section 84-1204, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1204. A State Records Board, hereinafter called the board, is hereby established to advise and assist the administrator in the performance of the duties enjoined upon him or her by sections 84-1201 to 84-†220

84-1226, and to perform such other functions and duties as sections 84-1201 to 84-1229 84-1226 require. In addition to the administrator, the board shall consist of the Governor, the Attorney General, the Auditor of Public Accounts, the Chairman of the Judicial Council, the Clerk of the Legislature, the Director of Administrative Services, and the Director of the Nebraska State Historical Society, the state archivist, and the director of the records management program, who shall be appointed by the administrator with the approval of the board, or their personally-designated representatives. The administrator or his or her representative shall be chairman of the board, and the director of the records management program its secretary. Upon call by the administrator, the board shall convene periodically in accordance with its rules, or upon call by the administrator or his or her personally-designated representative.

Sec. 4. That section 84-1207, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1207. In accordance with general law, and with such rules and regulations as shall be promulgated by the administrator and the board as provided in section 84-1216, such head of any state agency, department, board, council, legislative or judicial branch, and political subdivision shall:

(1) Establish and maintain an active, continuing program for the efficient and economical management of the recordkeeping activities of the agency;

(2) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency, designed to furnish information to protect the legal and financial rights of the state, and of persons directly affected by the agency's activities;

(3) Make, and submit to the administrator, schedules proposing the length of time each record series warrants retention for administrative, legal, historical or fiscal purposes, after it has been made in or received by the agency, and lists of records in the custody or under the control of the agency which are not needed in the transaction of current business, and do not possess sufficient administrative, legal, historical or fiscal value to warrant their further retention;

(4) Inventory the records in the custody or under the control of the agency, and submit to the administrator a report thereon, containing such data as the administrator shall prescribe, and including his recommendations as to which if any such records should be determined to be essential records. He shall review his inventory and report periodically and, as necessary, shall revise his report so that it is current, accurate and complete; and

(5) Comply with the rules, regulations, standards and procedures issued and set up by the administrator and the board, and cooperate in the conduct of surveys made by the administrator pursuant to sections 84-1201 to ~~84-1220~~ 84-1226.

Sec. 5. That section 84-1211, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1211. (1) When an essential record is required by law to be treated in a confidential manner, the administrator, in effectuating the purposes of sections 84-1201 to ~~84-1220~~ 84-1226, shall protect its confidential nature, as well as that of any preservation duplicate or other copy thereof. Any hospital or medical record submitted to the administrator for microfilming or similar processing shall be made accessible in a manner consistent with the access permitted similar records under sections 83-109 and 83-1068, Reissue Revised Statutes of Nebraska, 1943.

(2) Nothing in this act shall be construed to affect the laws and regulations dealing with the dissemination, security, and privacy of criminal history information under Chapter 29, article 35, Revised Statutes Supplement, 1978.

Sec. 6. That section 84-1212, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1212. The administrator shall review periodically, and at least once each year, the program for the selection and preservation of essential records, including the classification thereof and the provisions for preservation duplicates and for the safeguarding of essential records and preservation duplicates to insure that the purposes of sections 84-1201 to ~~84-1220~~ 84-1226 are accomplished.

Sec. 7. That section 84-1213, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

84-1213. All records made or received by or under the authority of, or coming into the custody, control or possession of public officials and agencies in any of the three branches of the state government, or of any local political subdivision, in the course of their public duties, are the property of the government concerned, and shall not be mutilated, destroyed, transferred, removed, damaged, or otherwise disposed of, in whole or in part, except as provided by law.

Any person who shall willfully mutilate, destroy, transfer, remove, damage, or otherwise dispose of such records or any part of such records, except as provided by law, and any person who shall retain and continue to hold the possession of any such records, or parts thereof, belonging to the state government or to any local political subdivision, and shall refuse to deliver up such records, or parts thereof, to the proper official under whose authority such records belong, upon demand being made by such officer or, in cases of a defunct office, to the succeeding agency or to the state archives of the Nebraska State Historical Society, shall be guilty of a Class III misdemeanor, and shall ~~upon conviction thereof, be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not to exceed three months, or by both such fine and imprisonment for each violation.~~

Sec. 8. That section 84-1216, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1216. The administrator shall promulgate such rules and regulations as may be necessary or proper to effectuate the purposes of sections 84-1201 to ~~84-1229~~ 84-1226. Those portions thereof which relate to functions specifically delegated to the board shall be approved and concurred in by the board.

Sec. 9. That section 84-1217, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1217. All provisions of the Records Management Act shall apply to ~~the legislative and judicial branches of state government and~~ all agencies as defined in subdivision (1) of section 84-1202 and the administrator shall advise and assist in the establishment of programs for records management and for the selection and preservation of essential records of such branches, and, as required by such branches, shall

provide program services pursuant to the provisions of sections 84-1201 to ~~84-1220~~ 84-1226.

Sec. 10. That section 84-1218, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1218. The governing bodies of all local political subdivisions in this state, with the advice and assistance of the administrator and pursuant to the rules and regulations established by him, shall establish and maintain continuing programs to promote the principles of efficient records management for local records, and for the selection and preservation of essential local records, which programs, insofar as practicable, shall follow the patterns of the programs established for state records as provided in sections 84-1201 to ~~84-1220~~ 84-1226. Each such governing body shall promulgate such rules and regulations as are necessary or proper to effectuate and implement the programs so established, but nothing therein shall be in violation of the provisions of general law relating to the destruction of local records.

Sec. 11. That section 84-1219, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1219. The administrator shall prepare a biennial report on the status of programs established by him as provided in sections 84-1201 to ~~84-1220~~ 84-1226, and on the progress made during the preceding biennium in implementing and effectuating such programs. Copies of this report shall be furnished the Governor, the Speaker of the Legislature, and such other officials and agencies as the Governor or the board shall direct.

Sec. 12. That section 84-1220, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1220. Sections 84-1201 to ~~84-1220~~ 84-1226 shall be known and may be cited as the Records Management Act.

Sec. 13. That section 84-1222, Revised Statutes Supplement, 1978, be amended to read as follows:

84-1222. After May 18, 1977, no state agency shall purchase any microfilm system or equipment prior to the approval of the State Records Administrator. The administrator shall not approve internal microfilm activities of any state agency unless such activities may

not be feasibly provided by the central microfilming agency and are necessary to a particular operation within the state agency. Any equipment purchased under this section shall become the property of the State Records Administrator and shall be subject to the provisions of section 84-1223.

Sec. 14. That section 84-1223, Revised Statutes Supplement, 1978, be amended to read as follows:

84-1223. On July 1, 1979 the effective date of this act, all micrographic production, processing, and viewing equipment currently owned or subsequently acquired under the provisions of section 84-1222 by any state executive, judicial, or legislative agency, except the University of Nebraska or the state colleges, shall become the property of the State Records Administrator, with regardless of the fund source from which the equipment was originally purchased. Appropriate credit, against future charges, shall be given to-be-granted to all agencies for the fair market value of all equipment accepted which had been purchased with federal funds or trust funds.

Sec. 15. That section 84-1225, Revised Statutes Supplement, 1978, be amended to read as follows:

84-1225. The State Records Administrator shall provide for a system of charges for micropublishing services and computer output microfilm services rendered by the central microfilming agency to any other department or agency of the state when these charges are allocable to a particular project carried on by such microfilming agency. Such charges shall, as nearly as may be practical, reflect the actual cost of services provided by the central microfilming agency. On July 1, 1978, and thereafter the State Records Administrator shall extend this system of charges to include source document microfilming. The State Records Administrator shall extend this system of charges and user fees for all micrographic equipment which is the property of the administrator and which is used by any other state agency or department.

Sec. 16. That section 84-1226, Revised Statutes Supplement, 1978, be amended to read as follows:

84-1226. (1) There is hereby created a fund to be known as the Records Management Micrographics Services Revolving Fund. All charges received by the Secretary of State for providing micropublishing services and computer output microfilm services to state agencies, under section 84-1225 and legislative appropriations, shall be

credited to such fund. Whenever any micrographics equipment of any state agency, except the University of Nebraska or the state colleges, shall become surplus property and shall be sold pursuant to section 81-161.04, Reissue Revised Statutes of Nebraska, 1943, the proceeds from the sale of such equipment shall be deposited in the state treasury and shall be credited by the State Treasurer to the Records Management Micrographics Services Revolving Fund. Expenditures shall be made from such fund to finance the micropublishing services and the computer output microfilm services by the Secretary of State or his or her authorized agent in accordance with appropriations made by the Legislature. ~~After July 1, 1978, this fund may be used~~ and to receive and expend funds pursuant to section 84-1225 for the provision of source document microfilming and for procuring and replacing micrographic equipment provided to state agencies.

(2) By agreement between any state agency and the State Records Administrator, any state agency may be billed one full year's rental for equipment at the beginning of each fiscal year. The State Records Administrator may coordinate with the Director of Administrative Services to set up a separate subaccount within the fund for the purpose of accounting for micrographic equipment procurement and replacement.

Sec. 17. That section 81-161.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-161.04. Whenever any using agency shall have any personal property for which it no longer has any need or use, it shall notify the materiel division of the Department of Administrative Services in writing, setting forth a description of the property and the approximate length of time that such property has been in the possession of the using agency. The materiel division of the Department of Administrative Services shall appraise such property and send a bulletin to all other using agencies of the state, setting forth that he or she has such property for sale and that it can be bought at the appraised price. Such property shall not be sold until first offered to the using agencies as provided by this section, unless such property is unusable. If the materiel division of the Department of Administrative Services shall fail to receive an offer from any using agency, it may sell or dispose of such property by such method as is to the best advantage of the State of Nebraska, with priorities given to other political subdivisions of state government, including auction, sealed bid, private or public sale or trade-in for other

property. All sales shall be made in the name of the state and the proceeds of such sales shall be deposited with the State Treasurer and credited to the General Fund unless the agency shall certify to the materiel division of the Department of Administrative Services that the property was purchased in part or in total from either cash accounts or federal funds, or from a percentage of such accounts or funds, in which event the proceeds of the sale to that extent shall be credited to the cash or federal account in the percentage used in originally purchasing the property; Provided, that the cost of selling such surplus property shall be deducted from the proceeds of the property being sold; and provided further, that the proceeds received from the sale of passenger-carrying motor vehicles originally purchased with money from the General Fund, less the selling costs, shall be deposited in the state treasury and by the State Treasurer credited to the Transportation Services Bureau Revolving Fund and the proceeds received from the sale of micrographic equipment, other than that of the University of Nebraska and state colleges, less the selling costs, shall be deposited in the state treasury and by the State Treasurer credited to the Records Management Micrographics Services Revolving Fund.

Sec. 18. That original sections 81-161.04, 84-1202, 84-1204, 84-1207, 84-1211, 84-1212, 84-1213, and 84-1216 to 84-1220, Reissue Revised Statutes of Nebraska, 1943, and sections 84-1203, 84-1222, 84-1223, 84-1225, and 84-1226, Revised Statutes Supplement, 1978, are repealed.

Sec. 19. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.