State Records Management Laws

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SLRM
STATE AND LOCAL RECORDS MANAGEMENT

STATE AGENCY BULLETIN NUMBER FOUR
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For questions regarding this publication, please contact:
Texas State Library and Archives Commission
State and Local Records Management Division
PO Box 12927
Austin, Texas 78711-2927
(512) 421-7200; Fax (512) 421-7201

Comments or complaints regarding the programs and services of the Texas State Library and Archives Commission may be addressed to: Director and Librarian, PO Box 12927, Austin, Texas 78711-2927, 512-463-5460; FAX 512-463-5436.

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4 State Records Management Laws

STATE AGENCY BULLETIN NUMBER FOUR

CURRENT THROUGH THE 81st LEGISLATURE, 2009

Laws affecting records management aid decision making regarding the control of records activity in state agencies. By being aware of the statutes pertaining to records management in your agency, you help ensure that all records procedures are in compliance with those laws.

This bulletin contains laws and excerpts from laws that agencies encounter most often in the course of managing state records. In addition, most agencies must comply with statutes specific to their mission and authority. Consult your legal department or legal counsel about these laws and how they may affect the management of records within your agency.

Note: For the most current edition of the *Texas Public Information Handbook,* which contains the text of Government Code, Chapter 552, as well as other information on the Public Information Act, contact the Attorney General's Office at 512-936-6736.

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Section 441.180. Definitions.

(1) "Agency head" means the appointed or elected official who serves by the state constitution, state statute, or action of the governing body of a state agency as the chief executive and administrative officer of a state agency.

(2) "Archival state record" means a state record of enduring value that will be preserved on a continuing basis by the Texas State Library and Archives Commission or another state agency until the state archivist indicates that based on a reappraisal of the record it no longer merits further retention.

(3) "Commission" means the Texas State Library and Archives Commission.

(4) "Confidential state record" means any state record to which public access is or may be restricted or denied under Chapter 552 or other state or federal law.

(5) "Director and librarian" means the chief executive and administrative officer of the Texas State Library and Archives Commission.

(6) "Historical resources" means any manuscript, map, photograph, artistic depiction, printed material, flag, or other recorded information, or copies of that information, in the possession of this state, an individual, a private institution, another state, or another nation relating to the history and culture of Texas as a province, colony, republic, or state.

(7) "Records management" means the application of management techniques to the creation, use, maintenance, retention, preservation, and destruction of state records for the purposes of improving the efficiency of recordkeeping, ensuring access to public information under Chapter 552, and reducing costs. The term includes:

(A) the development of records retention schedules;

(B) the management of filing and information retrieval systems in any media;

(C) the adequate protection of state records that are vital, archival, or confidential according to accepted archival and records management practices;

(D) the economical and space-effective storage of inactive records;

(E) control over the creation and distribution of forms, reports, and correspondence; and

(F) maintenance of public information in a manner to facilitate access by the public under Chapter 552.

(8) "Records management officer" means the person who administers the records management program established in each state agency under Section 441.183.

(9) “State agency” means:

(A) any department, commission, board, office, or other agency in the executive, legislative, or judicial branch of state government created by the constitution or a statute of this state, including an eleemosynary institution;

(B) any university system and its components and any institution of higher education as defined by Section 61.003, Education Code, except a public junior college, not governed by a university system board;

(C) the Texas Municipal Retirement System and the Texas County and District Retirement System; and

(D) any public nonprofit corporation created by the legislature whose responsibilities and authority are not limited to a geographical area less than that of the state.

(10) “State archivist” means the person designated by the director and librarian to administer the state archives program under Section 441.181.

(11) “State record” means any written, photographic, machine-readable, or other recorded information created or received by or on behalf of a state agency or an elected state official that documents activities in the conduct of the state business or use of public resources. The term includes any recorded information created or received by a Texas government official in the conduct of official business, including officials from periods in which Texas was a province, colony, republic, or state. The term does not include:

(A) library or museum material made or acquired and maintained solely for reference or exhibition purposes:

(B) an extra copy of recorded information maintained only for reference; or

(C) a stock of publications or blank forms.

(12) “State records administrator” means the person designated by the director and librarian to administer the state records management program under Section 441.182.

(13) “Vital state record” means any state record necessary to:

(A) the resumption or continuation of state agency operations in an emergency or disaster;

(B) the re-creation of the legal and financial status of the agency; or

(C) the protection and fulfillment of obligations to the people of the state.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2009, 81st Leg., eff. Sept. 1, 2009.

Section 441.181. State Archives Program.

(a) The commission shall take legal custody of and preserve archival state records and shall endeavor to collect and preserve other historical resources determined by the director and librarian to possess sufficient value to warrant continued preservation in the state archives.

(b) The director and librarian shall appoint a state archivist to administer the state archives program.

(c) Under the direction of the director and librarian, the state archivist shall:

(1) identify and designate archival state records and arrange for their transfer to the custody of the commission in accordance with Section 441.186;

(2) according to accepted archival practices, arrange, describe, and preserve archival state records and historical resources that come into the possession of the commission through gift, purchase, or other means that the director and librarian determines shall be included in the state archives program;

(3) prepare inventories, indexes, catalogs, or other research aids to state archival records and other historical resources held by the program;

(4) encourage public use of state archival records and other historical resources held by the program and provide public access to them in accordance with rules adopted by the commission under Section 441.193;

(5) cooperate with and, when practicable, provide training and consultative assistance to state agencies, libraries, organizations, and individuals on projects designed to preserve original source materials relating to Texas history, government, and culture.

(6) advise the director and librarian and the commission on all matters concerning the acquisition and preservation of archival state records and other historical resources; and

(7) perform other duties as this subchapter or the director and librarian may require.

(d) Under the direction of the director and librarian, the state archivist shall also assist in carrying out the duties of the commission and the director and librarian relating to the preservation of local government records of permanent value under Subtitle C, Title 6, Local Government Code, and Subchapter J.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997.

Section 441.182. State Records Management Program.

(a) The commission shall assist state agencies in managing state records in accordance with this subchapter and rules adopted under this subchapter.

(b) The director and librarian shall designate a state records administrator to administer the state records management program.

(c) Under the direction of the director and librarian, the state records administrator shall:

(1) provide training, consultative services, and informational material to agency heads, records management officers, and other staff to assist them in establishing and administering records management programs in each state agency as required under Section 441.183;

(2) review and recommend to the director and librarian the approval or disapproval of state agency records retention schedules submitted under Section 441.185 and records destruction requests submitted under Section 441.187;

(3) advise the director and librarian and the commission on all matters concerning the management of state records;

(4) maintain in a safe and secure manner all state records in the physical custody of the program under Subsection (e);

(5) preserve the confidentiality of all confidential state records in the physical custody of the program under Subsection (e); and

(6) perform other duties as this subchapter or the director and librarian may require.

(d) Under the direction of the director and librarian, the state records administrator shall also assist in carrying out the duties of the commission and the director and librarian relating to the management of local government records under Subtitle C, Title 6, Local Government Code, and Subchapter J.

(e) As part of the records management program established under this section, the commission shall:

(1) operate the state records center for the economical and efficient storage, accessibility, and preservation of state records;

(2) perform micrographic and other imaging services for the protection, accessibility, and preservation of state records;

(3) provide a mandatory or optional, as determined by the commission, training and continuing education program to records management officers to assist them in administering records management programs in each state agency as required under this subchapter; and

(4) provide, with the cooperation of the Department of Information Resources, training for records management and information technology staff to assist them in managing records in an electronic format.

(f) In addition to the duties prescribed by Subsection (e), the commission may provide for or oversee other records storage, micrographics, and imaging services as may become necessary to manage state records efficiently and economically.

(g) The commission may recover costs through the assessment of fees for services provided under Subsections (c)(1), (e), and (f).

(h) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31 (15).

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 321, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 285, Sec. 31, eff. Sept. 1, 2003.

Section 441.183. Records Management Programs in State Agencies.

The agency head of each state agency shall:

(1) establish and maintain a records management program on a continuing and active basis;

(2) create 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 financial and legal rights of the state and any person affected by the activities of the agency;

(3) make certain that all records of the agency are passed to the agency head's successor in the position of agency head;

(4) identify and take adequate steps to protect confidential and vital state records;

(5) cooperate with the commission in the conduct of state agency records management surveys; and

(6) cooperate with the commission, the director and librarian, and any other authorized designee of the director and librarian in fulfilling their duties under this subchapter.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997.

Section 441.184. Records Management Officers.

(a) Each state agency head shall act as or appoint a records management officer for the state agency to administer the agency's records management program. An employee of an agency is eligible to be appointed as the agency's records management officer only if the employee holds a position in which the employee reports directly to the agency head or to a person with a title functionally equivalent to deputy executive director.

(b) The records management officer for each state agency shall:

(1) administer the records management program established under Section 441.183;

(2) assist the agency head in fulfilling all of the agency head's duties under this subchapter and rules adopted under this subchapter;

(3) disseminate to employees of the agency information concerning state laws, administrative rules, and agency policies and procedures relating to the management of state records; and

(4) fulfill all duties required of records management officers under this subchapter and rules adopted under this subchapter.

(c) A records management officer designated under this section continues to serve in that capacity until:

(1) the officer ceases employment with the state agency;

(2) the agency head chooses to act as the records management officer for the agency; or

(3) the agency head appoints another person as the records management officer.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 321, Sec. 1, eff. Sept. 1, 1999.

Section 441.185. Record Retention Schedules.

(a) Each records management officer, with the cooperation of any staff of a state agency that the officer considers necessary, shall survey the state records of the agency and prepare and submit a records retention schedule to the state records administrator.

(b) The records retention schedule must list the state records created and received by the agency, propose a period of time each record shall be maintained by the agency, and provide other information necessary for the operation of an effective records management program.

(c) The state records administrator and the state archivist shall review the schedule and recommend the schedule's approval or disapproval to the director and librarian and the state auditor. The state auditor, based on a risk assessment and subject to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, may review the schedule.

(d) If the director and librarian and the state auditor, if the state auditor reviewed the schedule under Subsection (c), approve the schedule, the schedule may be used as the basis for the lawful disposition of state records under Section 441.187 for a period to be determined by the commission.

(e) The commission shall adopt rules concerning the submission of records retention schedules to the state records administrator.

(f) The commission may by rule prescribe a minimum retention period for any state record unless a minimum retention period for the record is prescribed by another federal or state law, regulation, or rule of court.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 785 Sec. 14, eff. Sept. 1, 2003.

Section 441.186. Archival State Records.

(a) The state archivist, through review of state records retention schedules submitted to the state records administrator under Section 441.185 and other means available under this section, shall identify and designate which state records are archival state records or which state records of potential archival value shall be subject to the review of the state archivist prior to their destruction.

(b) Records management officers shall submit to the state archivist any information concerning a state record that the state archivist considers necessary to determine the archival value of a record.

(c) The state archivist may inspect any state record to determine if the record is an archival state record and the inspection is not a release of a record to a member of the public under Chapter 52.

(d) Archival state records shall be transferred to the custody of the commission when they are no longer needed for the administration of the state agency unless state law requires that the records remain in the custody of the agency.

(e) If the commission cannot accept immediate custody of an archival state record, the record shall remain in the custody of the state agency and shall be preserved in accordance with this subchapter, rules adopted under this subchapter, and other terms on which the director and librarian and the agency head may agree.

(f) Instead of transferring archival state records under this section, the components of university systems and other institutions of higher education may retain and preserve the archival state records of the component or institution in accordance with this subchapter and rules adopted under this subchapter if the records are preserved in an archives established in a library or research center directly controlled by the university.

(g) Except when permitted under state law, an archival state record may not be transferred from one state agency to another without the consent of the director and librarian.

(h) With the approval of the director and librarian, the state archivist may remove the designation of a state record as an archival state record and permit destruction of the record under this subchapter and rules adopted under this subchapter.

(i) In the event of a disagreement between the commission and a state agency over the custody of an archival record, the attorney general shall decide the issue of custody.

(j) In the event of a disagreement between the commission and the attorney general over custody of an archival state record in the possession of the office of the attorney general, the commission may petition a district court in Travis County to decide the issue of custody. On request, the attorney general shall provide the commission with legal counsel to represent the commission in the matter.

(k) If a disagreement exists between an institution of higher education, as defined by Section 61.003, Education Code, and a county over custody of a record that has been in existence for more than 50 years and if the commission determines that further negotiations between the institution and the commission are unlikely to resolve the disagreement, the record shall be transferred to the custody of the commission and treated as an archival state record.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997. Amended by: Acts 2007, 80th Leg., R.S., Ch. 251, Sec. 8, eff. September 1, 2007.

Section 441.187. Destruction of State Records.

(a) A state record may be destroyed by a state agency if:

(1) the record appears on a records retention schedule approved under Section 441.185 and the record's retention period has expired;

(2) a records destruction request is submitted to the state records administrator and approved by the director and librarian, or the designee of the director and librarian, for a state record that does not appear on the approved records retention schedule of the agency; or

(3) the record is exempted from the need to be listed on a records destruction request under rules adopted by the commission.

(b) A state record may not be destroyed if any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the record is initiated before the expiration of a retention period for the record set by the commission or in the approved records retention schedule of the agency until the completion of the action and the resolution of all issues that arise from the action, or until the expiration of the retention period, whichever is later.

(c) The director and librarian may destroy any state record in the physical custody of the commission under Section 441.182 whose minimum retention requirements have expired without the consent of the agency head if, in the opinion of the director and librarian and either the attorney general or the state auditor, there is no justification under this subchapter or other state law for the record's further retention.

(d) A state record may be destroyed before the expiration of its retention period on the approved records retention schedule of the state agency that has custody of the record only with the special consent of the director and librarian and, if the record possesses fiscal or financial value, with the concurrent consent of the state auditor.

(e) The commission may adopt rules prescribing the permissible means by which state records may be destroyed.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997.

Section 441.188. Microfilmed State Records.

(a) Any state record may be maintained on microfilm.

(b) The microfilming of any state record and the maintenance of a state record on microfilm must be in accordance with standards and procedures adopted as administrative rules of the commission.

(c) A microfilmed state record created in compliance with the rules of the commission is an original record and the microfilmed record or a certified copy of it shall be accepted as such by any court or administrative agency of this state.

(d) A microfilmed state record that was produced in accordance with any state law in force before September 1, 1997, is considered an original record.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997.

Section 441.189. Electronic State Records.

(a) Any state record may be created or stored electronically in accordance with standards and procedures adopted as administrative rules of the commission.

(b) Certified output from electronically digitized images or other electronic data compilations created and stored in accordance with the rules of the commission shall be accepted as original state records by any court or administrative agency of this state unless barred by a federal law, regulation, or rule of court.

(c) Certified output from electronically digitized images or other data compilations created before September 1, 1997, in accordance with any applicable prior law shall be accepted as original state records or, in the absence of an applicable prior law, at the discretion of the court or administrative agency.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997.

Section 441.190. Protection, Maintenance, and Storage of State Records.

(a) The commission may adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records.

(b) In the development and adoption of the rules, the commission shall pay particular attention to the maintenance and storage of archival and vital state records and may adopt rules as it considers necessary to protect them.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997.

Section 441.191. Alienation of State Records Prohibited.

(a) A state record may not be sold or donated, loaned, transferred, or otherwise passed out of the custody of the state by a state agency without the consent of the director and librarian.

(b) Subsection (a) does not apply to the temporary transfer of a state record to a person for the purposes of microfilming, duplication, conversion to electronic media, restoration, or similar records preservation or management procedures if the transfer is authorized by the agency head or designated records management officer.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997.

Section 441.192. Right of Recovery.

(a) The governing body of a state agency may demand the return of any state government record in the private possession of a person if the removal of the state record from the state agency or the agency's predecessor was not authorized by law.

(b) The director and librarian may demand the return of any state government record of permanent value in the private possession of any person.

(c) If the person in possession of the state government record refuses to deliver the record on demand, the director and librarian or the governing body of a state agency may ask the attorney general to petition a district court in Travis County for the recovery of the record as provided by this section. If the court finds that the record is a state government record, the court shall order the return of the record to the custody of the state. As part of the petition or at any time after its filing, the attorney general may petition to have the record seized pending the determination of the court if the director and librarian or governing body finds the record is in danger of being destroyed, mutilated, altered, secreted, or removed from the state.

(d) A state government record recovered under Subsection (c) shall be transferred to the custody of the commission or the state agency that originally demanded the return of the record.

(e) If the attorney general recovers a record under Subsection (c), the court shall award attorney's fees and court costs to the attorney general.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997.

Section 441.193. Custody of State Records and Other Historical Resources of Commission; Public Access.

(a) All archival state records transferred to the custody of the commission in accordance with this subchapter and all other historical resources acquired by the commission through gift or purchase become the property of the commission.

(b) The director and librarian, the state archivist, or their authorized designees may make certified copies of archival state records or other historical resources, and the certified copies shall have the same force and effect as if certified by their original custodian or owner.

(c) The commission shall adopt rules regarding public access to the archival state records and other historical resources in the possession of the commission.

(d) Except as provided in Subsection (e), any rules adopted under this section may not violate any requirements of Chapter 552 or any other state law regarding public access to state records or the terms of any agreement between the commission and a donor of other historical resources to the commission.

(e) In rules adopted under this section, the commission may restrict access to any original archival state record or other historical resource in its possession and provide only copies if, in the opinion of the state archivist, such access would compromise the continued survival of the original record.

(f) The commission shall ensure that the confidentiality established under Chapter 552 or any other state law of any archival state record transferred to the commission's custody under Section 441.186 shall be preserved until state law allows public access to the records.

(g) Requests for public access to state records of other state agencies in the physical custody of the records management program of the commission established by Section 441.182 shall be denied by the state records administrator unless the state agency having legal custody of the records provides written authorization.

(h) Authorization for public access under Subsection (g) may not provide for public access to the original microfilm of state records.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997.

Section 441.194. Records of Abolished State Agencies.

(a) Unless otherwise provided by law, the Comptroller shall take custody of the records of a state agency that is abolished by the legislature and whose duties and responsibilities are not transferred to another state agency.

(b) Unless the requirement is waived by the state records administrator, the records management officer of the Comptroller, or of another state agency that receives custody of the records pursuant to law,

shall prepare and submit to the state archivist and the state records administrator a list of the records of the abolished state agency within 180 days of the effective date of the agency's abolition.

(c) The state archivist shall determine which records of the abolished state agency are archival state records. Any archival state records of the abolished state agency shall be transferred to the custody of the commission in accordance with Section 441.186.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997.

Section 441.195. Contracting Authority.

(a) The commission may enter into any contract or agreement that it considers necessary or advisable to foster and assist the preservation and management of state records or other historical resources.

(b) A contract or agreement made by the commission may not bind the state for the payment of any funds that have not been authorized by an appropriation of the legislature.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997.

Section 441.196. Sale of Copies of State Archives.

(a) The commission may sell copies of state archival records and other historical resources in possession at a price not exceeding 25 percent above the cost of publishing or producing the copies.

(b) Any money paid to the commission under this section is subject to Subchapter F, Chapter 404.(c) This section is not intended to conflict with Chapter 552.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997.

Section 441.197. Sale of Duplicate or Unneeded Material.

(a) After certification by both the director and librarian and the state archivist that an archival state record or other historical resource in the custody of the commission is a duplicate or is not needed to document the history and culture of Texas as a province, colony, republic, or state, the commission may authorize its sale by auction or other means.

(b) Revenue from the sale of a duplicate or unneeded archival state record or other historical resource shall be used to preserve state archival records and other historical resources and to make the records and resources available for research.

(c) The sale of an archival state record under Subsection (a) does not constitute an alienation of a state record under Section 441.191.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997.

Section 441.198. Agreement with Mexico.

(a) The commission may negotiate an agreement with the appropriate authorities in Mexico under which this state will trade or lend to Mexico the flags of the Toluca Battalion, the Guerrero Battalion, and the Matamoros Battalion captured at the Battle of San Jacinto and Mexico will trade or lend to this state the flag of the New Orleans Greys captured at the Battle of the Alamo. An agreement under this section:

(1) may not affect title to the flags;

(2) may provide that this state will restore the San Jacinto flags to a suitable condition and Mexico will restore the Alamo flag to a suitable condition before the trade or loan of the flags as long as such conditioning does not alter the authenticity or integrity of the flags; and

(3) is not valid if it is not approved by the governor and by the appropriate authority for approval under the laws of Mexico.

(b) The commission may use only gifts or grants to restore the San Jacinto battle flags to a suitable condition under an agreement to trade or lend the flags made under Subsection (a).

(c) If an agreement to trade or lend the Alamo and San Jacinto battle flags made under Subsection (a) does not provide that Mexico will restore the Alamo battle flag to a suitable condition before the trade or loan of the flag, the commission may use only gifts or grants to restore the Alamo battle flag to a suitable condition after the trade or loan of the flags.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997.

Section 441.199. Rulemaking Authority.

In addition to other rulemaking authority granted in this subchapter, the commission may adopt other rules it determines necessary for cost reduction and efficiency of recordkeeping by state agencies and for the state's management and preservation of records.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997.

Section 441.200. Audit.

The state auditor may report on a state agency's compliance with this subchapter and rules adopted under this subchapter.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997.

Section 441.201. Records of Office of Governor.

In consultation with the commission, a governor may designate an institution of higher education or alternate archival institution in the state, in lieu of the Texas State Library and Archives, as the repository for the records of the executive office of the governor created or received during that

governor's term of office. Such alternative repository shall administer the records in accordance with normally accepted archival principles and practices and shall ensure that the records are available to the public. The terms of any such alternative repository arrangement shall be recorded by the commission through a memorandum of understanding, deposit agreement, or other appropriate documentation.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997.

Section 441.202. Archives of General Land Office.

(a) Any papers, including any book, transfer, power of attorney, field note, map, plat, legal proceeding, official report, or original document, that pertain to the land of the Republic or State of Texas and that have been deposited or filed in the General Land Office in accordance with any law of the republic or of this state constitute the archives of the General Land Office and are not subject to transfer to the commission under Section 441.186.

(b) A person owning land between the Nueces River and the Rio Grande under a grant or title from the former government that was issued before November 13, 1835, and, before the adoption of the constitution, was recorded in the county in which the land is situated but that has not been filed in the archives of the General Land Office shall submit the grant or title to the commissioner of the General Land Office who shall file the title or grant in the archives of the General Land Office. The act of filing does not invest the title or grant with any greater validity than it had as a title or grant recorded in the proper county, and it is subject to any defense or objection to which it would have been subject if not so filed.

(c) The commissioner of the General Land Office shall procure, accept, and file in the archives of the General Land Office the original papers relating to the survey of lands by virtue of certificates issued by this state to the Texas & Pacific Railway Company and its predecessors in title, including the maps, sketches, reports, and other papers that were drawn by the surveyors in making the original or corrected surveys of the land and that are in the custody of the railway company. If the commissioner cannot procure the original papers, the commissioner may procure, accept, and file verified copies. The commissioner shall verify the authenticity of the papers. If the commissioner can procure only a portion of the originals, the commissioner shall procure and accept that portion and take and file verified copies of those originals the commissioner cannot procure. The original papers or verified copies filed by the commission in the archive of the General Land Office are admissible in evidence as are other papers, documents, and records and certified copies of the office.

(d) This section does not give any papers named in this section any greater force or validity, because of being recognized as archives of the General Land Office, than was accorded the papers by the laws in force at the date of their execution and deposit in the General Land Office.

(e) A written instrument, including a deed, that was executed or issued before March 2, 1836, on stamped paper of the second or third seal and that is not an original instrument in the General Land Office or expressly declared by law to be part of the archives of that office do not constitute a part of the archives of that office. An owner of land to which the instrument relates may withdraw the instrument from the General Land Office on making a written, sworn application for the instrument to the commissioner. The application must state the fact of ownership of the land to which the instrument relates. If the commissioner is satisfied that the person applying is the owner, the commissioner may deliver the instrument to the applicant. The commissioner shall take a receipt for the instrument that describes the instrument delivered, summarizes its contents, and names the original grantee of land to which the instrument relates or refers.

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997.

Section 441.203. Records Management Interagency Coordinating Council.

(a) The Records Management Interagency Coordinating Council is composed of:

(1) permanent members, consisting of the following officers of the officer's designee:

(A) the secretary of state;

(B) the state auditor, who serves as a nonvoting member;

(C) the comptroller of public accounts;

(D) the attorney general;

(E) the director and librarian;

(F) and the executive director of the Department of Information Resources; and

(2) auxiliary voting members, consisting of:

(A) one faculty member of a public senior college or university, as defined by Section 61.003, Education Code, who has demonstrated knowledge of records and information management; and

(B) two individuals who serve as information resources managers, under Section 2054.071, for state agencies in the executive branch of government.

(a-1) The presiding officer of the council shall appoint auxiliary voting members in accordance with this section. To be appointed by the presiding officer as an auxiliary voting member for a full or partial term, a person must be nominated by the presiding officer and receive the approval of a majority of the permanent members listed under Subsection (a) (1).

(a-2) Auxiliary voting members serve two-year terms, with the terms expiring February 1 of each odd-numbered year. A person who is appointed as an auxiliary voting member or to fill a vacancy or an auxiliary voting member may continue to serve as a member only while the person continues to possess the qualifications for the category under which the person is appointed.

(a-3) The presiding officer shall fill a vacancy of an auxiliary voting member for the unexpired term by appointing a person who has the qualifications required under Subsection (a) (2) for the vacated position. A person appointed to fill a vacant position of an auxiliary voting member shall serve for the unexpired portion of the term for which the person s appointed.

(b) The position of presiding officer rotates among the permanent members of the council according to the procedures adopted by the council. A term as presiding officer is two years and expires on February 1 of each odd-numbered year.

(c) Service on the council is an additional duty of a member's office or employment. A member of the council is not entitled to compensation, but is entitled to reimbursement of travel expenses incurred by the member while conducting the business of the council, as provided in the General Appropriations Act.

(d) The council's permanent member agencies shall provide the staff for the council.

(e) The council shall:

(1) review the activities of each permanent member agency that affect the state's management of records;

(2) study other records management issues; and

(3) report its findings and any recommended legislation to the governor and the legislature not later than November 1 of each even-numbered year.

(f) The council shall adopt policies that coordinate the activities of each permanent member agency and that make other improvements in the state's management of records. The council shall adopt policies under this subsection using the rulemaking procedures prescribed by Chapter 2001.

(g) Each permanent member agency shall adopt the policies adopted under Subsection (f) as the member agency's own rules, except to the extent that the policies conflict with other state or federal law.

(h) Each permanent member agency shall report on the agency's adoption and implementation of rules under Subsection (g) to the council not later than October 1 of each even-numbered year.

(i) In this section, "permanent member agency" means each state officer who is a member of the council or an agency that has a representative who is a permanent member of the council.

(j) The council shall categorize state agency programs and telephone numbers by subject matter as well as by agency. The council shall cooperate with the Texas Information and Referral Network under Section 531.0312 to ensure that the council and the network use a single method of defining and organizing information about health and human services.

(k) A state agency shall cooperate with the council in the performance of its duties.

(l) Participation by the state auditor under Subsection (a) is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c).

Added by Acts 1997, 75th Leg., ch. 873, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1460, Sec. 3.07, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 79, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg. ch. 785, Sec. 15, eff. Sept. 1, 2003;Acts 2005, 79th Leg., Ch. 728, Sec. 23.001(31), eff. Sept. 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 937, Sec. 3.04, eff. September 1, 2007.

Section 441.204. Records of Office of Lieutenant Governor.

(a) Notwithstanding any other law, a lieutenant governor who vacates the office of lieutenant governor to complete the unexpired term of the governor as provided by Section 16 (d), Article IV, Texas Constitution, may transfer the records of the office of the lieutenant governor created or received during that lieutenant governor's term of office to the office of the governor.

(b) Records of the office of the lieutenant governor transferred under Subsection (a) must be maintained separate and distinct from records created or received from the office of the governor.

(c) Records transferred under Subsection (a) must be listed separately and distinctly on the records retention schedule of the office of the governor required by Section 441.185.

Added by Acts 2001, 77th Leg., ch. 771, Sec. 1, eff. June 13, 2001.

Texas Sunset Act
Government Code, Section 325.017

These provisions of the Texas Sunset Act determine the disposition of the records of state agencies abolished as the result of sunset review.

Section 325.017. Procedure After Termination.

(a) A state agency that is abolished in an odd-numbered year may continue in existence until September 1 of the following year to conclude its business. Unless the law provides otherwise, abolishment does not reduce or otherwise limit the powers and authority of the state agency during the concluding year. A state agency is terminated and shall cease all activities at the expiration of the one-year period. Unless the law provides otherwise, all rules that have been adopted by the state agency expire at the expiration of the one-year period.

(b), (c), (d), and (f) do not apply to records management.

(e) Unless the governor designates an appropriate state agency as prescribed by Subsection (f), property and records in the custody of an abolished state agency or advisory committee on September 1 of the even-numbered year after abolishment shall be transferred to the Comptroller. If the governor designates an appropriate state agency, the property and records shall be transferred to the designated state agency.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 582, Sec. 13, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 8.05, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 639, Sec. 1, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 928, Sec. 1.10, eff. June 15, 2007. Acts 2007, 80th Leg., R.S., Ch. 937 Sec. 1.44, eff. September 1, 2007.

Paper Supplies and Equipment
Government Code, Section 2051.021

Section 2051.021. Uniform Size of Paper Supply and Cabinet.

(a) A state agency may not purchase:

(1) forms, bond paper, stationery, pads, or similar paper supplies that exceed 8-1/2 inches by 11 inches in size; or

(2) a filing cabinet designed to store completed documents that exceed 8-1/2 inches by 11 inches in size.

(b) This section does not prohibit the purchase or use of:

(1) paper supplies that are perforated or otherwise designed to produce completed documents of 8-1/2 inches by 11 inches in size or smaller;

(2) fanfold paper designed for use in a computer peripheral device; or

(3) forms or paper supplies used for:

(A) a document prepared on a form developed by a national organization for use by a state or a form designed to be compatible with that document;

(B) preparation of a document required by the federal government;

(C) maintenance of an accounting or bookkeeping record;

(D) preparation of a financial report;

(E) a budget document;

(F) a nontextual computer report or document;

(G) a chart, graph, table, or map;

(H) artwork;

(I) an architectural or engineering draft or document;

(J) a diploma;

(K) an enlargement of small print materials for a person with a visual impairment;

(L) a resale purpose; or

(M) protection or preservation of a historically valuable document.

(c) In this section, “state agency” means a board, commission, department, office, institution, including an institution of higher education as defined by Section 61.003, Education Code, or other agency of the state government.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Tampering With Governmental Record
Penal Code, Section 37.10

Section 37.10. Tampering With Governmental Record.

(a) A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of, a governmental record;

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;

(3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;

(4) possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully;

(5) makes, presents, or uses a governmental record with knowledge of its falsity; or

(6) possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

(b) It is an exception to the application of Subsection (a)(3) that the governmental record is destroyed pursuant to legal authorization or transferred under Section 441.204, Government Code. With regard to the destruction of a local government record, legal authorization includes compliance with the provisions of Subtitle C, Title 6, Local Government Code.

(c) (1) Except as provided by Subdivisions (2), (3) and (4) and by Subsection (d), an offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a state jail felony.

(2) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the governmental record was a public school record, report, or assessment instrument required under Chapter 39, Education Code, or was a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States, unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the second degree.

(3) An offense under this section is a Class C misdemeanor if it is shown on the trial of the offense that the governmental record is a governmental record that is required for enrollment of a student in a school district and was used by the actor to establish the residency of the student.

(4) An offense under this section is a Class B misdemeanor if it is shown on the trial of the offense that the governmental record is a written appraisal filed with an appraisal review board under Section 41.43(a-1), Tax Code, that was performed by a person who had a contingency interest in the outcome of the appraisal review board hearing.

(d) An offense under this section, if it is shown on the trial of the offense that the governmental record is described by Section 37.01(2)(D), is:

(1) a Class B misdemeanor if the offense is committed under Subsection (a)(2) or Subsection (a)(5) and the defendant is convicted of presenting or using the record;

(2) a felony of the third degree if the offense is committed under:

(A) Subsection (a)(1), (3), (4), or (6); or

(B) Subsection (a)(2) or (5) and the defendant is convicted of making the record; and

(3) a felony of the second degree, notwithstanding Subdivisions (1) and (2), if the actor's intent in committing the offense was to defraud or harm another.

(e) It is an affirmative defense to prosecution for possession under Subsection (a)(6) that the possession occurred in the actual discharge of official duties as a public servant.

(f) It is a defense to prosecution under Subsection (a)(1), (a)(2), or (a)(5) that the false entry or false information could have no effect on the government's purpose for requiring the governmental record.

(g) A person is presumed to intend to defraud or harm another if the person acts with respect to two or more of the same type of governmental records or blank governmental record forms and if each governmental record or blank governmental record form is a license, certificate, permit, seal, title, or similar document issued by government.

(h) If conduct that constitutes an offense under this section also constitutes an offense under Section 32.48 or 37.13, the actor may be prosecuted under any of those sections.

(i) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

Penal Code, Sections 32.48 and 37.13, referenced in subsection (h) above, concern simulating legal process and records of a fraudulent court, respectively.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 66, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 113, Sec. 4, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 565, Sec. 5, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 189, Sec. 6, eff. May 21, 1997; Acts 1997, 75th Leg., ch. 823, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 659, Sec. 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 718, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch.

771, Sec. 3, eff. June 13, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.139, eff. Sept 1, 2003; Acts 2003, 78th Leg., ch. 257, Sec. 16, eff. Sept. 1, 2003; Acts 2005, 79th Leg., Ch. 1364, Sec. 1, eff. June 18, 2005; Acts 2007, 80th Leg., R.S., Ch. 1085, Sec. 2, eff. Sept.1, 2007.

Alternative Dispute Resolution Records
Government Code, Section 441.031

Without reference to the repeal of Section 441.031 by the 75th Legislature in one Act, Subdivision (5) of the section was amended by the 75th Legislature in another Act to exclude records associated with alternative dispute resolutions from the definition of a state record. The definition of state record in the new state records law is in Section 441.180 (see page 5).

Section 441.031. Definition.

In this subchapter, "state record" means a document, book, paper, photograph, sound recording, or other material, regardless of physical form or characteristic, made or received by a state department or institution according to law or in connection with the transaction of official state business. The term does not include:

(1) library or museum material made or acquired and preserved solely for reference or exhibition purposes;

(2) an extra copy of a document preserved only for convenience of reference;

(3) a stock of publications or of processed documents; or

(4) any records, correspondence, notes, memoranda, or documents, other than a final written agreement, described by Section 2009.054(c), associated with a matter conducted under an alternative dispute resolution procedure in which personnel of a state department or institution, local government, special district, or other political subdivision of the state participated as a party, facilitated as an impartial third party, or facilitated as the administrator of a dispute resolution system or organization.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 40, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 31, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1352, Sec. 1, eff. Sept. 1, 1999.