

Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES

Chapter 6: STATE ARCHIVIST

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Maine Revised Statutes
Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES
Chapter 6: STATE ARCHIVIST

§91. SHORT TITLE

This chapter shall be known and may be cited as the "Archives and Records Management Law."
[1973, c. 625, §16 (NEW).]

SECTION HISTORY

1973, c. 625, §16 (NEW).

§92. DECLARATION OF POLICY

The Legislature declares that it is the policy of the State to make the operations of State Government and local government more efficient, more effective and more economical through records management; and, to the end that the people may derive maximum benefit from a knowledge of state affairs, preserve its records of permanent value for study and research. [1997, c. 636, §1 (AMD).]

SECTION HISTORY

1973, c. 625, §16 (NEW). 1995, c. 148, §2 (AMD). 1997, c. 636, §1 (AMD).

§92-A. DEFINITIONS

The following definitions are established for terms used in this chapter. [1973, c. 625, §16 (NEW).]

1. Agency records. "Agency records" means records of government agencies to which they retain legal title, but that have been transferred to the custody of the Maine State Archives to effect economies and efficiency in their storage and use pending their ultimate disposition as authorized by law.

[1997, c. 636, §2 (AMD) .]

2. Archives. "Archives" means government records that have been determined by the State Archivist to have sufficient value to warrant their continued preservation and that are in the physical and legal custody of the Maine State Archives.

[1997, c. 636, §2 (AMD) .]

2-A. Local government. "Local government" means a municipality, county, school district or other special-purpose district or multi-purpose district.

[1999, c. 12, §1 (AMD) .]

3. Record center. "Record center" means facilities maintained by the State Archivist for the storage, security, servicing and other processing of agency records that must be preserved for varying periods of time and need not be retained in office equipment and space.

[1973, c. 625, §16 (NEW) .]

4. State agency or agency. "State agency" or "agency" means any unit of State Government or local government, including any state board or commission, except the Legislature and its committees and subcommittees, the Judicial Department, the University of Maine System, the Maine Community College System and the Maine Maritime Academy.

[1995, c. 148, §4 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

5. Record. "Record" means all documentary material, regardless of media or characteristics and regardless of when it was created, made or received or maintained by an agency in accordance with law or rule or in the transaction of its official business. "Record" does not include extra copies of printed or processed material of which official or record copies have been retained, stocks of publications and processed documents intended for distribution or use or records relating to personal matters that may have been kept in an office for convenience.

"Record" includes records of historic and archival value to the State, regardless of the date of their generation, including all documents determined to have such value to the State by statute and, when appropriate, by the State Archivist.

[2009, c. 509, §1 (AMD) .]

6. Electronic record. "Electronic record" means a record whose content is not readable unless retrieved by means of an electronic device such as a computer or an audio or video player.

[1997, c. 636, §4 (NEW) .]

SECTION HISTORY

1973, c. 625, §16 (NEW). 1991, c. 837, §A8 (AMD). 1995, c. 148, §§3,4 (AMD). 1997, c. 636, §§2-4 (AMD). 1999, c. 12, §1 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2009, c. 509, §1 (AMD).

§93. STATE ARCHIVIST

The Secretary of State shall appoint a State Archivist subject to review by the joint standing committee of the Legislature having jurisdiction over state and local government and to confirmation by the Legislature. The State Archivist shall be chosen without reference to party affiliation and solely on the ground of professional competence to perform the duties of that office. The State Archivist shall hold office for a term of 6 years from the date of the appointment and until a successor has been appointed and qualified. The compensation of the State Archivist shall be fixed by the Governor. [1995, c. 148, §5 (AMD) .]

This section shall not affect the term of the person holding office as State Archivist on October 1, 1977. [1977, c. 674, §2 (RPR) .]

SECTION HISTORY

1973, c. 625, §16 (NEW). 1975, c. 771, §33 (AMD). 1977, c. 674, §2 (RPR). 1995, c. 148, §5 (AMD).

§94. MAINE STATE ARCHIVES

The office of the State Archivist is a bureau within the Department of the Secretary of State and consists of at least 2 organizational units as the State Archivist and the Secretary of State determine best suited to the accomplishment of the functions and purposes of this chapter. One organizational unit consists of the State Archivist and immediate support staff. The office is known as the Maine State Archives. The State Archivist is the official custodian of the archival resources of the State. [1989, c. 716, (AMD) .]

SECTION HISTORY

1973, c. 625, §16 (NEW). 1989, c. 716, (AMD).

§95. POWERS AND DUTIES OF STATE ARCHIVIST

The State Archivist has, upon consent of the Secretary of State, the duties and powers established under the following provisions governing the creation, use, maintenance, retention, preservation and disposal of state records: [1991, c. 837, Pt. A, §9 (AMD).]

1. Administration. To administer the office of the State Archivist. In exercising the administration of the office, the State Archivist shall formulate policies, establish organizational and operational procedures and exercise general supervision. The State Archivist shall employ, with the approval of the Secretary of State subject to the Civil Service Law, such assistants as are necessary to carry out this chapter. The State Archivist shall adopt a seal for use in the official business of the office. The State Archivist has custody and control of the facilities provided for the administration of this chapter;

[1991, c. 837, Pt. A, §9 (AMD) .]

2. Examination of public records. To have the right of reasonable access to and examination of all state and local government records in Maine;

[1995, c. 148, §6 (AMD) .]

3. Rules. To adopt such rules as are necessary to effectuate the purposes of this chapter. No restrictions or limitations may be imposed on the use of records that are defined by law as state and local government records or as records open to public inspection, unless necessary to protect and preserve them from deterioration, mutilation, loss or destruction. Restrictions or limitations imposed by law on the examination and use of records transferred to the archives under subsection 7, paragraph C and subsection 8 remain in effect until the records have been in existence for 50 years, unless removed or relaxed by the State Archivist with the concurrence in writing of the head of the agency from which the records were transferred or the successor in function, if any. The State Archivist shall adopt rules governing the transfer of records from the custody of one agency to that of another subject to any applicable provision of law;

[1995, c. 148, §6 (AMD) .]

4. Acceptance of gifts and bequests. To accept gifts, bequests and endowments for purposes consistent with the objectives of this chapter. Such funds, if given as an endowment must be invested in securities by the Treasurer of State according to the laws governing the investment of trust funds. All gifts, bequests and proceeds of invested endowment funds must be used solely to carry out the purposes for which they were made;

[1991, c. 837, Pt. A, §9 (AMD) .]

5. Publication. To publish archival material, reports, bulletins and other publications that promote the objectives of this chapter. The State Archivist shall establish the price at which publications, photocopies and photoduplication services may be sold and delivered. The income received under this subsection and subsection 12 must be credited to a special revenue account, which is carried forward and expended by the agency for these purposes;

[1991, c. 837, Pt. A, §9 (AMD) .]

6. Biennial report. To report biennially to the Governor and Legislature facts and recommendations related to the work and needs of the office of State Archivist;

[1991, c. 837, Pt. A, §9 (AMD) .]

7. Records management program. To establish and administer in the executive branch of State Government an active, continuing program for the economical and efficient management of state and local government records, and for the proper disposition of local government records. Upon request, the State Archivist shall assist and advise in the establishment of records management programs in the legislative and judicial branches of State Government and shall, as required by them, provide program services similar to those available to the executive branch. The State Archivist shall, with due regard for the functions of the agencies concerned:

A. Provide standards, procedures and techniques for effective management of state and local government records in the conduct of business; [1997, c. 636, §5 (AMD).]

B. Recommend improvements in records management practices, including the use of space, equipment and supplies employed in creating, maintaining, storing and servicing state and local government records; [1997, c. 636, §5 (AMD).]

C. Establish schedules, in consultation with the heads of state agencies and local government agencies, under which each agency shall retain records of continuing value, and dispose, as provided by this chapter, of records no longer possessing sufficient administrative, legal or fiscal value to warrant their further keeping for business purposes; and [1997, c. 636, §5 (AMD).]

D. Obtain such reports from state or local government agencies as are required for the administration of the program. [1997, c. 636, §5 (AMD).]

The head of each state agency or local government agency shall establish and maintain an active, continuing program for the economical and efficient management of any records in compliance with the standards, procedures and regulations issued by the State Archivist.

[1997, c. 636, §5 (AMD) .]

8. Transfer of state records. To provide for the transfer to the archives of state records, disposed of under subsection 7, paragraph C, that have archival value;

[1991, c. 837, Pt. A, §9 (AMD) .]

9. Destruction of state records. To authorize and receive confirmation of the destruction of the state records of any state or local agency that, in the opinion of the head of the agency, are no longer of value to the state or local government agency, and that, in the opinion of the State Archivist and the Archives Advisory Board, have no archival value to the State;

[1995, c. 148, §8 (AMD) .]

10. Transfer of state and official records. To receive all state records transferred to the Maine State Archives under subsection 8 and to negotiate for the transfer of official records from the custody of any public official not governed by subsection 7. The State Archivist shall charge a fee sufficient to cover the cost of receiving and processing all transfers from the custody of any public official not governed by subsection 7. The fees collected must be deposited in the General Fund. Any public officer in Maine is authorized to turn over to the State Archivist those official records legally in that public official's custody that are not needed for the transaction of the business of that office, whenever the State Archivist is willing and able to receive them. Whenever such a transfer is made, the State Archivist shall transmit to the office from which the records are transferred a memorandum in which such records are described in terms sufficient to identify them, which must be preserved in the transferring office. Unless otherwise directed by law, the state records of any public office, commission or committee in the State must, upon the termination of its existence or functions, be transferred to the custody of the State Archivist;

[1997, c. 636, §6 (AMD) .]

10-A. Records of Secretary of State. To preserve the records of the Secretary of State to the extent the Secretary of State determines desirable under the Constitution and the regulations of the State Archivist;

[1991, c. 837, Pt. A, §9 (AMD) .]

10-B. Permanent state records of agency administration. To establish such standards concerning the establishment, maintenance and operation of state or local government administered computerized and auxiliary automated information handling as are necessary to ensure the preservation of adequate and permanent records of the organization, functions, policies, procedures, decisions and essential transactions of the agencies of State Government or local government;

[1995, c. 148, §8 (AMD) .]

10-C. Legislative records. To receive legislative records. The Secretary of the Senate and the Clerk of the House of Representatives shall obtain the noncurrent records of the Legislature and of each legislative committee at the close of each Legislature and transfer them to the Maine State Archives for preservation, subject to the orders of the Senate or the House of Representatives, respectively, and subject to schedules established in consultation with the Executive Director of the Legislative Council;

[2005, c. 683, Pt. A, §4 (AMD) .]

11. Archives available for public use. To make archival material under the archivist's supervision available for public use at reasonable times. The archivist shall carefully protect and preserve the materials from deterioration, mutilation, loss or destruction. State records maintained by the archivist that contain information related to the identity of an archives patron relative to the patron's use of materials at the archives are confidential. Those state records and the information contained in them may only be released with the express written consent of the patron involved or as a result of a court order;

[1991, c. 837, Pt. A, §9 (AMD) .]

12. Copies. To furnish copies of archival material upon the request of any person, on payment in advance of such fees as may be required. Copies of state records transferred pursuant to law from the office of their origin to the custody of the State Archivist, when certified by the State Archivist, under the seal of that office, have the same legal force and effect as if certified by their original custodian. A facsimile of the signature of the State Archivist imprinted by or at the direction of the State Archivist upon any certificate issued by the State Archivist has the same validity as the written signature of the State Archivist;

[2009, c. 509, §2 (AMD) .]

13. Photoreproduction and restoration. To provide centralized photoreproduction and records preservation services for government agencies to the extent the State Archivist determines advisable in the administration of the state program and facilities. Such services must be furnished to such agencies at cost. Fees collected under this subsection must be deposited in the General Fund; and

[2009, c. 509, §3 (AMD) .]

14. Records explanation available. To prepare a detailed explanation of what constitutes a "record" pursuant to section 92-A, subsection 5 and "records belonging to the State or to a local government or any agency of the State" pursuant to section 95-A, subsection 1. The State Archivist shall include in the

explanation practical examples of such records in plain language. Upon request, the State Archivist shall provide the explanation to interested parties at no cost to the requestor and shall post the explanation on a publicly accessible website.

[2009, c. 509, §4 (NEW) .]

SECTION HISTORY

1973, c. 625, §16 (NEW). 1981, c. 456, §§A17,A18 (AMD). 1985, c. 785, §B10 (AMD). 1989, c. 235, §§1,2 (AMD). 1989, c. 501, §L4 (AMD). 1991, c. 172, §1 (AMD). 1991, c. 837, §A9 (AMD). 1995, c. 148, §§6-8 (AMD). 1997, c. 636, §§5,6 (AMD). 2005, c. 683, §A4 (AMD). 2009, c. 509, §§2-4 (AMD).

§95-A. PROTECTION AND RECOVERY OF PUBLIC RECORDS

1. Ownership and possession; notice and demand of return. A record created by or belonging to the State, to a local or county government in the State or to any agency of the State remains the property of the State until ownership and possession are formally relinquished in accordance with statute and rules. Whenever the State Archivist has reasonable grounds to believe that records belonging to the State or to a local government or any agency of the State or to which the State or its agencies have a lawful right of possession are in the possession of a person or entity not authorized by the State Archivist, other lawful custodian or by law to possess those records, the State Archivist may issue a written notice and demand to that person or entity for the immediate return of the records. The notice and demand must be sent by certified or registered mail, return receipt requested. The notice and demand must identify the records claimed to belong to the State or local government with reasonable specificity. Upon receipt of the notice and demand, the person or entity in the possession of records claimed to belong to the State or local government may not destroy, alter, transfer, convey or otherwise alienate those records unless authorized in writing by the State Archivist or by an order issued by a court of competent jurisdiction. The notice and demand must specifically state that any transfer, conveyance or other alienation of the records after receipt of the notice and demand constitutes a Class E crime in violation of section 97.

[2009, c. 509, §5 (AMD) .]

2. Petition; hearing. Following the issuance of a notice and demand in accordance with subsection 1, the State Archivist, with the assistance of the Attorney General, may petition the Superior Court of Kennebec County or the Superior Court in the county in which records are located for the return of state records that are in the possession of a person or entity not authorized by the State Archivist, other lawful custodian or by law to possess those records. After hearing, the court shall order the records to be delivered to the State Archivist, or other custodian designated by the State Archivist, upon a finding that the materials in question are records and that the records are in the possession of a person or entity not authorized by the State Archivist, other lawful custodian or provision of law to possess the records. The court may issue all orders necessary to protect the records from destruction, alteration, transfer, conveyance or alienation by the person or entity in possession of the materials and may also order the person or entity in possession of the materials to surrender the records into the custody of the State Archivist pending the court's decision on the petition.

[1997, c. 636, §7 (AMD) .]

3. Presumption. In any proceeding pursuant to subsection 2, there is a rebuttable presumption that records that were once in the custody of the State or a local government were not lawfully alienated from that custody.

[1997, c. 636, §7 (AMD) .]

4. Definition.

[1997, c. 636, §7 (RP) .]

5. Sale or transfer of record prohibited. A person may not sell or transfer a record unless specifically authorized by law. A person who violates this subsection commits a Class D crime.

[2003, c. 365, §1 (NEW) .]

SECTION HISTORY

1989, c. 283, (NEW). 1995, c. 148, §9 (AMD). 1997, c. 636, §7 (AMD).
2003, c. 365, §1 (AMD). 2009, c. 509, §5 (AMD).

§95-B. LOCAL GOVERNMENT RECORDS

The following provisions apply to local government records. [1995, c. 148, §10 (NEW).]

1. Omissions or errors corrected. When omissions or errors exist in local government records, those records must be corrected under oath by the person who was responsible for those local government records, whether or not that person remains in office.

A. If an original town meeting warrant is lost or destroyed, the return may be made or amended on a copy of it. [1995, c. 148, §10 (NEW).]

[1995, c. 148, §10 (NEW) .]

2. Safe or vault for preservation. Each local government shall provide a fireproof safe or vault for the preservation of all records that must be retained permanently but are not required for business purposes. The official having responsibility for those records shall deposit them in the safe or vault where those records must be kept except when required for use. Beginning in 2002, each local government shall respond to a survey distributed biennially by the State Archivist requesting:

A. A description of the fireproof safe or vault required by this section; [2001, c. 704, §1 (NEW) .]

B. A statement of the adequacy of the safe or vault for the preservation of records that must be retained permanently; and [2001, c. 704, §1 (NEW) .]

C. A plan, if any, for the establishment or enhancement of a safe or vault to comply with the requirements of this section. [2001, c. 704, §1 (NEW) .]

The State Archivist shall report the results of the survey, with recommendations, to the joint standing committees of the Legislature having jurisdiction over education and cultural affairs and over state and local government matters.

[2001, c. 704, §1 (AMD) .]

2-A. Retention of archival records currently in digital form. Beginning in 2002, each local government shall respond to a survey distributed biennially by the State Archivist requesting:

A. A description of the provisions currently in place for the preservation of records that must be retained permanently and are currently maintained in digital form; [2001, c. 704, §2 (NEW) .]

B. A statement of the adequacy of those provisions for the preservation of records that must be retained permanently; and [2001, c. 704, §2 (NEW) .]

C. A plan, if any, for the establishment or enhancement of those provisions to ensure the permanent retention of and access to these records. [2001, c. 704, §2 (NEW) .]

The State Archivist shall report the results of the survey, with recommendations, to the joint standing committees of the Legislature having jurisdiction over education and cultural affairs and over state and local government matters.

[2001, c. 704, §2 (NEW) .]

3. Attestation. The records of a local government official may be attested by volume. Each document is sufficiently attested when the volume in which it is recorded bears the attestation with the written signature of the official.

[1995, c. 148, §10 (NEW) .]

4. Delivery to successor in office. Local government officials shall deliver the records of their office to their successors in office upon the expiration of the officials' terms.

[1995, c. 148, §10 (NEW) .]

5. Records available for public use. Each local government official shall make records available for public use under that official's supervision at reasonable times unless the use of the records is otherwise restricted by law.

[1995, c. 148, §10 (NEW) .]

6. Protection of records. Local government officials shall carefully protect and preserve the records of their office from deterioration, mutilation, loss or destruction.

[1995, c. 148, §10 (NEW) .]

7. Disposition of records. Records may not be destroyed or otherwise disposed of by any local government official, except as provided by the Archives Advisory Board. Records that have been determined by the board to possess sufficient archival value must be preserved by the municipality or deposited with the State Archivist.

[1995, c. 148, §10 (NEW) .]

8. Regulations of Archives Advisory Board. Each local government official shall comply with the standards, procedures and regulations issued by the Archives Advisory Board.

[1995, c. 148, §10 (NEW) .]

SECTION HISTORY

1995, c. 148, §10 (NEW). 1997, c. 636, §8 (AMD). 2001, c. 704, §§1,2 (AMD).

§96. ARCHIVES ADVISORY BOARD

The Archives Advisory Board, established by section 12004-I, subsection 8, shall serve to advise the State Archivist in administration of this chapter and to perform such other duties as may be prescribed by law. The board shall consist of 9 persons especially interested in the history of the State appointed by the Governor as advisors for overlapping terms of 6 years. The 3 new advisors shall be first appointed one for one year, one for 3 years and one for 5 years. Their successors shall be appointed for terms of 6 years. Each advisor shall serve for the term of appointment and thereafter until a successor is appointed and qualified. In case of the

termination of an advisor's service during that advisor's term, the Governor shall appoint a successor for the unexpired term. Advisors shall be compensated as provided in chapter 379. [1989, c. 503, Pt. B, §9 (AMD).]

SECTION HISTORY

1973, c. 625, §16 (NEW). 1983, c. 812, §13 (AMD). 1989, c. 503, §B9 (AMD).

§97. VIOLATION

Violation of any provision of this chapter or any rules and regulations issued under section 95, subsection 3, except those violations for which specific penalties are provided, is a Class E crime. [1977, c. 696, §3 (RPR).]

SECTION HISTORY

1973, c. 625, §16 (NEW). 1977, c. 696, §33 (RPR).

§98. MAINE HISTORICAL RECORDS ADVISORY BOARD

The Maine Historical Records Advisory Board, established by section 12004-I, subsection 18-D and referred to in this section as the "board," is within the office of the State Archivist and serves to encourage the preservation of and access to historical records within the State. [2001, c. 704, §3 (NEW).]

1. Duties. In support of its mission, the board shall conduct the following activities:

A. Make recommendations to the National Historical Publications and Records Commission regarding the funding of proposals seeking support from that commission; [2001, c. 704, §3 (NEW).]

B. Develop, maintain and execute a strategic plan supporting the board's priorities for funding recommendations and other activities; [2001, c. 704, §3 (NEW).]

C. Seek, receive and administer nonstate funds to support its priority activities; [2001, c. 704, §3 (NEW).]

D. Work cooperatively with other state historical records advisory boards, especially those in New England; [2001, c. 704, §3 (NEW).]

E. Report biennially to the joint standing committees of the Legislature having jurisdiction over education and cultural affairs and over state and local government matters on the board's activities and on the condition of historical records in the State; and [2001, c. 704, §3 (NEW).]

F. Other activities it determines appropriate. [2001, c. 704, §3 (NEW).]

[2001, c. 704, §3 (NEW) .]

2. Authority. In order to carry out its mission, the board may make expenditures in accordance with the following:

A. Beginning with the 2004-2005 biennium, the Governor shall include in the budget submitted to the Legislature each biennium a line item to allow the expenditure by the board of any non-General Fund revenues received by the board, including federal funds, grants or gifts; and [2001, c. 704, §3 (NEW).]

B. Beginning with the 2004-2005 biennium, the Governor shall include in the budget submitted to the Legislature each biennium a line item to allow the expenditure by the board of any non-General Fund revenues received by the board to fund a full-time position. [2001, c. 704, §3 (NEW).]

[2001, c. 704, §3 (NEW) .]

3. Membership. The board consists of at least 7 and no more than 11 members who are appointed to serve as follows:

A. Except as provided in paragraph B, the Governor shall appoint all of the members, the majority of whom must have experience in the administration of historical records or in a field of research activity that makes extensive use of historical records; [2001, c. 704, §3 (NEW).]

B. The Director of the Maine Historical Society and the State Archivist are members ex officio and are voting members; and [2001, c. 704, §3 (NEW).]

C. The Governor shall appoint either the Director of the Maine Historical Society or the State Archivist to serve as the Maine Historical Records Coordinator and to serve as the chair of the board. The coordinator shall serve a term of 4 years and may not be compensated but may receive the reimbursements allowed members of the board. [2001, c. 704, §3 (NEW).]

All members, with the exception of the coordinator, serve 3-year terms. All members serve without compensation. All legally allowed expenditures incurred by the members in the performance of their duties may be reimbursed by the National Historical Publications and Records Commission or by other funds available to the board.

[2001, c. 704, §3 (NEW) .]

4. Maine Historical Records Advisory Board Fund. The Maine Historical Records Advisory Board Fund, referred to in this section as the "fund," is established for use by the board. Balances in the fund may not lapse and must be carried forward and used for the purposes of this section. The board may accept and deposit in the fund money from private and public sources.

[2001, c. 704, §3 (NEW) .]

SECTION HISTORY

2001, c. 704, §3 (NEW) .

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