

Notice of Rule Making Hearing

Notice is hereby given that the Nebraska State Records Board and the Nebraska Secretary of State will hold a public hearing for rule-making pursuant to Neb. Rev. Stat. §84-907 on September 13, 2022, at 10:00 a.m. at the Center On N, 1221 N Street, 2nd Floor Conference Room, Lincoln, NE.

The purpose of the hearing is to receive public comment regarding the amendment of Title 431, Nebraska Administrative Code, Chapters 1 and 2 relating to organization and practice and procedure of the State Records Board.

There is no expected fiscal impact on state agencies, political subdivisions, and persons regulated.

Copies of the proposed rules and regulations and fiscal impact statement are available at the offices of the Secretary of State, 1201 N Street, Suite 120, Lincoln, Nebraska 68508.

Interested persons are invited to attend and testify at the hearing. Interested persons may also submit written comments prior to the hearing which will be made part of the hearing record at the time of the hearing. Written comments should be directed to Libby Elder, Executive Director to the State Records Board, Secretary of State's Office, 1221 N Street, Suite 103, Lincoln, Nebraska, 68508, FAX (402) 471-7834, email libby.elder@nebraska.gov. Comments may also be posted online through the Secretary of State's website. To view a copy of the proposed rule or to comment online, go to: <http://www.sos.ne.gov/rules-and-regs/regtrack/index.cgi>.

If auxiliary aids or reasonable accommodations are needed for attendance at the hearing, please call the Secretary of State's Office at (402) 471-2745. For persons with hearing/speech impairments, please call the Nebraska Relay System at (800) 833-7352 (TDD) or (800) 833- 0320 (Voice). Advance notice of at least seven days is needed when requesting an interpreter.

This notice is provided pursuant to the Administrative Procedure Act.



STATE OF NEBRASKA

NEBRASKA STATE RECORDS BOARD

ROBERT B. EVNEN
SECRETARY OF STATE

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EXPLANATORY STATEMENT

TITLE: 431

CHAPTERS: 1 and 2

SUBJECT: State Records Board Rules and Regulations

PREPARED BY: Libby Elder, Executive Director, State Records Board

DATE: August 1, 2022

The Nebraska State Records Board and the Nebraska Secretary of State are proposing to amend regulations as provided by law, and hereby submit this explanatory statement to accompany the rules and regulations and describe their purpose.

Pursuant to applicable provisions of the Records Management Act, Neb. Rev. Stat. §84-1201 to 84-1227, Title 431, Chapters 1 and 2 impacting the State Records Board will be amended as follows:

Chapter 1 currently pertains to organization of the State Records Board. Items contained in current rules and regulations already addressed in statute will be stricken from the rules and regulations. Pursuant to Neb. Rev. Stat. §84-1204, Chapter 1 will address meetings of the State Records Board.

Chapter 2 pertains to practice and procedure of the State Records Board. The State Records Board will replace Chapter 2 with adoption of the Model Rules of Agency Procedure promulgated by the Attorney General's Office in Title 53, Chapters 1 through 4.



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FISCAL IMPACT STATEMENT

TITLE: 431
CHAPTERS: 1 and 2
SUBJECT: State Records Board Rules and Regulations
PREPARED BY: Libby Elder, Executive Director, State Records Board
DATE: August 1, 2022

<u>TYPE OF FISCAL IMPACT</u>	STATE AGENCY	POLITICAL SUBDIVISION	REGULATED PUBLIC
NO FISCAL IMPACT	X	X	X
INCREASED COSTS			
DECREASED COSTS			
INCREASED REVENUE			
DECREASED REVENUE			
INDETERMINABLE			

DESCRIPTION OF IMPACT

No fiscal impact. See above.

TITLE 431 - STATE RECORDS BOARD

Chapter 1 - STATE RECORDS BOARD ~~ORGANIZATION~~ MEETINGS

~~001 Members. The State Records Board shall consist of the State Records Administrator, 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, the Director of the Nebraska State Historical Society, the State Archivist, and the Director of the Records Management program, or their personally designated representatives.~~

~~002 Officers. The State Records Administrator shall be the Chairman of the Board. The Director of the Records Management program shall be the Secretary to the Board.~~

~~003 Meeting Schedule. The Board shall convene upon call by the State Records Administrator. Such meetings shall be called as frequently as necessary to perform the duties of the Board and not less than once every three months.~~

~~004 Quorum and Board Action. A majority of the members shall constitute a quorum and no meeting shall be held with less than a quorum present. No action shall be taken by less than a majority of members present and voting.~~

~~005 Definitions. The definitions found in the Rules and Regulations of the State Records Administrator shall define the terms in these rules.~~

001. MEETINGS. The State Records Board will convene upon call by the Administrator. Meetings will be called at least quarterly unless there is no business for consideration by the State Records Board.

Neb. Rev. Stat. §§84-1204 and 84-1216

TITLE 431 - STATE RECORDS BOARD

Chapter 2 - PRACTICE AND PROCEDURE OF THE STATE RECORDS BOARD

001—Petitions

~~001.01 All petitions directed to the Board shall be sent to and received by the Administrator as Chairman of the Board.~~

~~001.02 All petitions directed to the Board and received by the Administrator shall be referred to the Board at its next regular or special meeting, which shall be called within thirty days after receipt of the petition by the Administrator.~~

~~001.03 All petitions directed to the Board shall state the venue, the specific subject matter, and the names of the petitioner and respondent; shall clearly and concisely set forth all material facts in the matter, plus a statement of the type of relief or type of determination which is sought by the petitioner; and shall be signed by the petitioner.~~

002—Contested Cases

~~002.01 The State Archivist may petition the Board for the right to transfer to the State Archives material of historical significance which is in jeopardy of destruction or deterioration. The State Archivist shall be the petitioner and the custodian the historical material shall be the respondent.~~

003—Hearing

~~003.01 Except in contested cases, if the Board determines that a hearing is not necessary to answer a petition, that petition may be dismissed or answered without a formal hearing.~~

~~003.02 If the Board determines that a hearing is necessary, notice of such hearing shall be made by serving upon the respondent a copy of the petition and the date and place of hearing, and upon the petitioner the date and place of the hearing.~~

~~003.03 Evidence which is admissible in civil actions under the Revised Statutes of Nebraska is admissible before the Board. The Board is not bound to follow the technical rules of evidence, unless request is made pursuant to Section 84-914, R.R.S. 1943, but the record shall be supported by evidence which possesses probative value commonly accepted by reasonable men in the conduct of their affairs.~~

~~003.04 Opening statements and oral arguments may be permitted by the Board in its discretion.~~

~~004—Declaratory Ruling~~

~~004.01 A petition for a declaratory ruling may be filed by any interested person with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the Board.~~

~~004.02 The interested person shall be the petitioner and the Board shall be the respondent.~~

~~004.03 Within thirty days after considering the petition, the Board shall issue any ruling deemed necessary and proper, or shall state that it will not issue a ruling.~~

~~005—Promulgation, Amendment or Repeal of Rules~~

~~005.01 A petition for the promulgation, amendment or repeal of any rule subject to the authority or jurisdiction of the Board may be filed by an interested person~~

~~005.02 The interested person shall be the petitioner and the Board shall be the respondent.~~

~~005.03 Within thirty days after considering the petition, the Board shall take any action deemed necessary and proper.~~

001. NEGOTIATED RULEMAKING. This section establishes the rules and regulations to petition for negotiated rulemaking on controversial issues under the jurisdiction of the State Records Board.

001.01 The State Records Board hereby adopts the model rules of procedures for negotiated rulemaking promulgated by the Attorney General pursuant to Neb. Rev. Stat. §84-909.01, Title 53 *Nebraska Administrative Code*, Chapter 1, “Model Procedures for Negotiated Rulemaking,” including any amendments thereto.

002. PETITION FOR RULEMAKING. This section establishes the rules and regulations for a person or entity to petition for rulemaking to promulgate, amend, or repeal a rule or regulation regarding matters under the jurisdiction of the State Records Board.

002.01 The State Records Board hereby adopts the model rules of procedures for petitioning for rulemaking promulgated by the Attorney General pursuant to Neb. Rev. Stat. §84-909.01, Title 53, *Nebraska Administrative Code*, Chapter 2, “Petitioning for Rulemaking,” including any amendments thereto.

003. AGENCY DECLARATORY ORDERS. This section establishes the rules and regulations for a person seeking the issuance of a declaratory order regarding matters under the jurisdiction of the State Records Board.

003.01 The State Records Board hereby adopts the model rules of procedures for declaratory orders promulgated by the Attorney General pursuant to Neb. Rev. Stat. §84-909.01, Title 53, *Nebraska Administrative Code*, Chapter 3, “Model Regulations and Procedures Governing Agency Declaratory Orders,” including any amendments thereto.

004. HEARINGS IN CONTESTED CASES BEFORE THE AGENCY. This section establishes the rules and regulations for hearings to determine the legal rights, duties, or privileges of specific parties when required by law or constitutional right on matters under the jurisdiction of the State Records Board.

004.01 The State Records Board hereby adopts the model rules of procedures for contested case hearings promulgated by the Attorney General pursuant to Neb. Rev. Stat. §84-909.01, Title 53, *Nebraska Administrative Code*, Chapter 4, “Rules of Practice and Procedure for Hearings in Contested Cases Before an Agency,” including any amendments thereto.

Neb. Rev. Stat. §§ 84-1216 and 84-909.01