

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Department for Libraries and Archives

Archives and Records Management Division

(Amendment)

725 KAR 1:025. Transfer of public records.

RELATES TO: KRS 61.878, 171.420, 171.470, 171.480, 171.500, 171.520, 171.550, 171.580, 171.590

STATUTORY AUTHORITY: KRS 171.520(1), (3), 171.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.560 requires the department to promulgate administrative regulations governing the transfer of public records. This administrative regulation establishes the requirements for the transfer of public records from governmental agencies to the department.

Section 1. Definitions.

- (1) "Intellectual custody" means legal ownership and responsibility for governing access to materials, regardless of their physical location.
- (2) "Physical custody" means actual care and control of records for storage, security, and preservation.
- (3) "Public record" is defined by KRS 171.410(1).
- (4) "Transmittal documentation" means a list of records being transferred from an agency to the State Archives or the State Records Centers.

Section 2. For physical transfer of public records from government agencies to one (1) of the facilities of the Department for Libraries and Archives, the agency shall follow the standards and procedures in Transfer of Public Records: A Procedural Guide. Transmittal documentation shall confirm the transfer of government records in all instances.

Section 3.

- (1) Intellectual custody of records in the physical custody of the State Records Center shall remain with the originating agency.
- (2) Physical and intellectual custody of records in the State Archives Center and the Kentucky State Digital~~Electronic~~ Archives shall be transferred to the Department for Libraries and Archives upon accession into the Archives, in accordance with KRS 171.590.
- (3) Records fifty (50) years or older that are not in the department's custody may be directed for transfer for continuing preservation and public access in accordance with KRS 171.580(2), subject to the exemptions of KRS 61.878.

Section 4. Incorporation by Reference.

- (1) "Transfer of Public Records: A Procedural Guide", January 2010, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Archives and Records Management Division~~Public Records Division~~, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Monday through Friday, 9:00 a.m.~~8 a.m.~~ to 4:00 p.m.~~4:30 p.m.~~ (36 Ky.R. 1398; Am. 2060-M; eff. 4-2-2010; 48 Ky.R. 559; eff. 5-3-2022.)

TERRY MANUEL, Commissioner

APPROVED BY AGENCY: July 2, 2021

FILED WITH LRC: July 6, 2021 at 11:30 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2021, at 10:00 a.m. Eastern Time at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Commission Room. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Terry Manuel, Commissioner, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601. phone 502-564-8303. fax 502-564-5773. email Terry.Manuel@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Terry Manuel

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the processes for the transfer of public records from a public agency to the Department for Libraries and Archives.

(b) The necessity of this administrative regulation:

KRS 171.560 requires the department to promulgate administrative regulations governing the transfer of public records.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 171.560 requires the department to promulgate administrative regulations governing the transfer of public records. This administrative regulation establishes the requirements for the transfer of public records from governmental agencies to the department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation facilitates the safe storage and permanent retention of public records by establishing procedures for their transfer to the State Archives Center, the State Records Center, or the Kentucky State Digital Archives.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amendment updates the name of the division, changing it from Public Records Division to Archives and Records Management Division.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to ensure the regulation is current and up-to-date.

(c) How the amendment conforms to the content of the authorizing statutes:

The statute requires the department to promulgate administrative regulations governing the transfer of public records.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment of this regulation will ensure that agencies have the most complete information in carrying out their records management programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

All state and local government agencies must follow this regulation, as all have a responsibility to establish a sound records management program, including safe storage of records and preservation of records with ongoing historical value.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

There will be no new responsibilities added to those already existing for public agencies under this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There will be no new costs added to those already existing for public agencies under this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Agencies who comply with this regulation will recognize more effective and efficient business practices and will document agency history more effectively.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There will be no costs for agencies to implement this regulation. This regulation

(b) On a continuing basis:

Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The activities involved in this regulation are already undertaken by public agencies.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No required increase is projected.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This regulation does not establish or increase, directly or indirectly, any fees.

(9) TIERING: Is tiering applied?

Tiering is not applied because this regulation applies uniformly to all public agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

All state and local government entities are required to follow the procedures established in this regulation in order to be compliant with the public records law.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 171.560 requires the department to promulgate administrative regulations governing the transfer of public records.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

There will be no net effect on agencies' expenditures and revenues, unless agencies choose to transfer records to the State Records Center. In those cases, the agency will have to pay forty-three cents (\$.43) per cubic foot per month for as long as the box is stored at the State Records Center. Continued good records management results in cost savings for government and in more efficient operation of government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

There will be no additional revenues generated for the first year because of this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

There will be no additional revenues generated for subsequent years because of this regulation.

(c) How much will it cost to administer this program for the first year?

There will be no additional costs generated for the first year because of this regulation.

(d) How much will it cost to administer this program for subsequent years?

There will be no additional costs generated for subsequent years because of this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):\$0.00

Expenditures (+/-):\$0.00

Other Explanation:

N/A