

**Department of State  
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## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Tennessee Department of State
<b>Division:</b>	
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
1360-10-01	Access to Public Records Maintained by the Department of State
Rule Number	Rule Title
1360-10-01-.01	Purpose and Scope
1360-10-01-.02	Definitions
1360-10-01-.03	Requests for Access to Records
1360-10-01-.04	Requests for Reproduction of Records
1360-10-01-.05	Fees and Costs for Reproduction of Public Records
1360-10-01-.06	Payment for Reproduction of Public Records
1360-10-01-.07	Waiver of Fees

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

## SUBSTANCE OF PROPOSED NEW RULES

### CHAPTER 1360-10-01 ACCESS TO PUBLIC RECORDS MAINTAINED BY THE DEPARTMENT OF STATE

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#### NEW RULES

##### **1360-10-01-.01 PURPOSE AND SCOPE.**

- (1) These rules are promulgated for the purpose of providing procedures to allow access to records made or received by the Department of State that are subject to inspection and reproduction pursuant to the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501, *et seq.*, while preserving the confidentiality of confidential records and/or information as provided by federal or state law. These rules are also promulgated for the purpose of implementing and establishing procedures and standard fees to be charged for the compilation, redaction, reproduction and/or duplication of public records maintained by the Department of State. These rules do not govern charges for the reproduction or duplication of public records when separate statutory authority exists establishing the fee to be charged or the formula for charging.

Statutory Authority: Tenn. Code Ann. §§ 8-3-104 and 10-7-501 *et seq.*

##### **1360-10-01-.02 DEFINITIONS.** As used in these rules, the following terms are defined as follows:

- (1) "Secretary" means the Secretary of State.
- (2) "Department of State" means any of the divisions, sections or offices under the authority of the Department of State.
- (3) "Confidential record" means any record of the Department of State that is considered confidential, privileged, or protected under law.
- (4) "Public Record" means any record of the Department of State that is open to inspection by any citizen of the State of Tennessee under the provisions of the Public Records Act, and is not otherwise considered a confidential record.
- (5) "Public Records Act" or "TPRA" means the Tennessee Public Records Act as codified in Tenn. Code Ann. § 10-7-501, *et seq.*
- (6) "Record" means a document, paper, letter, map, book, photograph, microfilm, electronic data processing file and output, film, sound recording, or other material, regardless of physical form or characteristic, made or received pursuant to law or ordinance or in connection with the transaction of official business by the Department of State, and that is maintained by the Department of State; a "record" may or may not be subject to disclosure under the TPRA.
- (7) "Records Custodian" means an employee of the Department of State who has direct supervisory authority over the specific division, section or office of the Department of State wherein the requested records are maintained.

- (8) "Redact" or "Redaction" means to black out, remove or otherwise protect from viewing, a portion of a record.

Statutory Authority: Tenn. Code Ann. §§ 8-3-104 and 10-7-501 et seq.

**1360-10-01-.03 REQUEST FOR INSPECTION OF RECORDS.**

- (1) An inspection of records shall take place during the regular business hours of the Department of State from 8:00 AM to 4:30 PM, Monday through Friday, except for holidays, and shall be scheduled at a time that is mutually agreeable between the Department of State and the requestor.
- (2) Requests for inspection of records may be made orally or in writing to the appropriate division within the Department of State, and shall identify with sufficient detail the record which is requested.
- (3) All requestors are required to present a valid (current) Tennessee driver's license to staff at the time of making the request for inspection of records. If a requestor does not have a valid Tennessee driver's license, but does have photo identification with a home address that has been issued by a Tennessee governmental entity, such identification will be accepted. If a requestor has government issued photo identification without a home address, then additional documentation of Tennessee citizenship must be presented. The sufficiency of such documentation will be determined on a case by case basis, after consultation with the General Counsel for the Secretary of State.
- (4) All requests for access to or inspection of records will be processed promptly and in accordance with all applicable time frames enumerated in the TPRA. If the request for access is not sufficiently detailed for the records custodian to determine what records are being requested, the custodian of records or his or her representative will contact the requestor to advise of same, and will not begin complying with the request until an amended request is made that is sufficiently detailed. If, after attempting to clarify the request, the records custodian is still unable to determine what is being requested, the request will be denied.
- (5) Prior Review and Assessment for Confidential, Privileged or Protected Information or Data.
  - (a) Review, Assessment and Redaction of Records Prior to Inspection.
    1. Before providing access to the requested record, the records custodian or his or her representative shall review the requested record as quickly as reasonably possible, and make an assessment of the scope and accessibility of the requested record.
    2. Upon review and prior to providing access to any record or portion of a record, the records custodian or his or her representative shall redact any data or information that he or she has reason to believe is or may be a confidential record or otherwise protected by law.
  - (b) If the Department of State determines after this review and assessment that access to the requested public record can be provided, the Department of State shall do so as promptly as possible.
  - (c) If it appears from the Department of State's review and assessment that access to the requested public record cannot be made available for inspection within the time frame enumerated within the TPRA, the records custodian shall notify the requestor in accordance with the provisions of the TPRA contained in Tenn. Code Ann. § 10-7-503 (a)(1)(B). Additionally, when a large volume of records is requested, the Department of State may provide an estimated production schedule and make records available for inspection in segments.
  - (d) If it appears from the Department of State's review and assessment that limited or no access to the requested record can be provided, the Department of State shall communicate this fact as promptly as possible.

Statutory Authority: Tenn. Code Ann. §§ 8-3-104 and 10-7-501 et seq.

#### **1360-10-01-.04 REQUESTS FOR REPRODUCTION OF RECORDS.**

- (1) Requests for reproduction of records must be made in writing and submitted to the appropriate records custodian within the Department of State. The request must identify with sufficient detail the record which is requested.
- (2) All requestors are required to present a valid (current) Tennessee driver's license to staff at the time the request is submitted. If a requestor does not have a valid Tennessee driver's license, but does have photo identification with a home address that has been issued by a Tennessee governmental entity, such identification will be accepted. If a requestor has government issued photo identification without a home address, then additional documentation of Tennessee citizenship must be presented. The sufficiency of such documentation will be determined on a case by case basis, after consultation with General Counsel for the Secretary of State.
- (3) All requests for reproduction of records will be processed promptly and in accordance with all applicable time frames enumerated in the TPRA. If the request for access is not sufficiently detailed for the records custodian to determine what records are being requested, the records custodian or his or her representative will contact the requestor to advise of same, and will not begin complying with the request until an amended request is made that is sufficiently detailed. If, after attempting to clarify the request, the records custodian is still unable to determine what is being requested, the request will be denied.
- (4) Prior Review and Assessment for Confidential, Privileged or Protected Information or Data.
  - (a) Review, Assessment and Redaction of Records for Reproduction Request.
    1. Before reproducing the requested record, the records custodian or his or her representative shall review the requested record as soon as practicable and make an assessment of the scope and accessibility of the requested record.
    2. Upon review and prior to reproducing the record, or portion of the record, the records custodian or his or her representative shall redact any data or information that he or she has reason to believe is or may be a confidential record or otherwise protected by law.
  - (b) If the records custodian determines after this review and assessment that reproduction of the requested public record can be provided, the records custodian shall do so as promptly as possible in accordance with Section 1360-10-01-.05 below.
  - (c) Staff, consultants, or contractors for the Department of State shall be responsible for the reproduction of any requested public record. A requestor does not have the right to reproduce requested public records through use of the requestor's own equipment.
  - (d) If it appears from the records custodian's review and assessment that reproduction of the requested public record cannot be produced either immediately or within the time frame enumerated within the TPRA, the records custodian shall notify the requestor in accordance with the provisions of the TPRA contained in Tenn. Code Ann. § 10-7-503 (a)(1)(B). Additionally, when a large volume of records is requested, the Department of State may provide an estimated production schedule and produce records in segments.

Statutory Authority: Tenn. Code .Ann. §§ 8-3-104 and 10-7-501 et seq.

#### **1360-10-01-.05 FEES AND COSTS FOR REPRODUCTION OF PUBLIC RECORDS.**

- (1) Prior to the reproduction of requested public records, the records custodian shall provide to the requestor a reasonable estimate of the fees and costs associated with the reproduction of the public record in writing. The estimate shall include the cost of delivery when applicable and any other necessary fee, including an estimate of labor charges, which shall be calculated as follows:
  - (a) Copy and delivery charges:

1. The Department of State may assess a charge of 15 cents per page for each standard 8 ½ x11 or 8 ½ x14 black and white copy produced. The Department of State may assess a requestor a charge for a duplex copy that is the equivalent of the charge for two (2) separate copies.
2. If a public record is maintained in color, the Department of State may assess a charge of 50 cents per page for each 8 ½ x11 or 8 ½ x14 color copy produced.
3. Delivery of copies of records to a requestor is anticipated to be by hand delivery when the requestor returns to the records custodian's office to retrieve the requested records. If the requestor chooses not to return to the records custodian's office to retrieve the copies, the records custodian may deliver the copies through means of the United States Postal Service, and the cost incurred in delivering the copies may be assessed in addition to any other permitted charge. It is within the discretion of the records custodian to deliver copies of records through other means, including electronically, and to assess the costs related to such delivery.
4. If the Department of State utilizes an outside vendor to produce copies of requested records because it is unable to produce the copies in its office, the cost assessed by the vendor to the Department of State shall be recoverable from the requestor.
5. If the Department of State is assessed a charge to retrieve requested records from archives or any other entity having possession of requested records, the Department of State may assess the requestor the cost assessed by the governmental entity for retrieval of the records.

(b) Labor charges:

1. "Labor" is defined as the time reasonably necessary to produce the requested records and includes the time required to be spent locating, retrieving, reviewing, redacting, and reproducing the records.
2. "Labor threshold" is defined as the labor of the employee(s) reasonably necessary to produce requested material for the first hour incurred by the records custodian in producing the material.
3. The Department of State shall charge the requestor an amount equal to the hourly wage of the employee(s) for the labor reasonably necessary to produce the requested records above the "labor threshold." The hourly wage shall be derived from the base salary of the employee(s) and does not include benefits. If an employee is not paid on an hourly basis, the hourly wage shall be determined by dividing the employee's annual salary by the required hours to be worked per year.
4. In calculating the charge for labor, the records custodian shall determine the number of hours each employee spent processing a request then subtract the one (1) hour labor threshold from the number of hours the highest paid employee spent producing the request. The records custodian shall then multiply the total number of hours to be charged for the labor of each employee by that employee's hourly wage. Finally, the records custodian shall add together the totals for all the employees involved in the request and that will be the total amount of labor that may be charged.

Statutory Authority: Tenn. Code .Ann. §§ 8-3-104 and 10-7-501 et seq.

**1360-10-01-.06 PAYMENT FOR REPRODUCTION OF PUBLIC RECORDS.**

- (1) The Department of State may require estimated costs to be paid prior to reproduction of public records, or the extraction of requested information or data depending on the cost of fulfillment of the request. If pre-payment is required, payment should be made to "Tennessee Department of State" by

check, cashier's check or money order and directed to the General Counsel of the Department of State.

Statutory Authority: Tenn. Code .Ann. §§ 8-3-104 and 10-7-501 et seq.

**1360-10-01-.07 WAIVER OF FEES.**

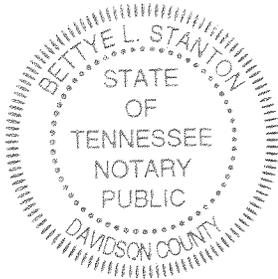
- (1) All fees associated with the reproduction of records, including any delivery and labor fees, will be waived when the total amount of such fees are equal to or less than Ten Dollars (\$10.00) per requestor per calendar year. Any fees associated with the reproduction of records above Ten Dollars (\$10.00) per requestor per year shall be charged as otherwise provided by this chapter.

Statutory Authority: Tenn. Code Ann. §§ 8-3-104 and 10-7-501 et seq.

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 3/10/2015 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: March 10, 2015  
 Signature: Mary Beth Thomas  
 Name of Officer: Mary Beth Thomas  
 Title of Officer: General Counsel Secretary of State  
 Subscribed and sworn to before me on: MARCH 10, 2015  
 Notary Public Signature: Bettye L. Stanton  
 My commission expires on: JULY 6, 2015

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Staty III  
 Herbert H. Staty III.  
 Attorney General and Reporter  
3/27/2015  
 Date

**Department of State Use Only**

Filed with the Department of State on: 4/1/15

Effective on: 6/30/15

Tre Hargett  
 Tre Hargett  
 Secretary of State

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**Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

These rules are not expected to have any adverse impact on small businesses.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rules are not expected to have any adverse impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules are promulgated for the purpose of providing procedures to allow access to records made or received by the Department of State that are subject to inspection and reproduction pursuant to the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501, *et seq.*, while preserving the confidentiality of confidential records and/or information as provided by federal or state law. These rules are also promulgated for the purpose of implementing and establishing procedures and standard fees to be charged for the compilation, redaction, reproduction and/or duplication of public records maintained by the Department of State.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. §10-7-501 *et seq.* governs the inspection and production of records. Tenn. Code Ann. § 10-7-506 permits records custodians to charge a fee for copies or duplication of records. The Office of Open Records Counsel, pursuant to Tenn. Code Ann. § 8-4-604(a)(1), has prepared a scheduled a reasonable charges that may be used as guidelines in establishing fees to be charged to citizens in requesting copies of public records.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule will uniformly affect all Tennessee citizens, and should have no greater impact than current practice and procedure. This rule restates the processes and procedures used by the Department of State in reliance on Tenn. Code Ann. § 10-7-501 *et seq.* and the Office of Open Records Counsel. The Department of State has not received any outside communications regarding these rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The Department of State does not anticipate an increase or decrease in revenues or expenditures. The fee structure contained in these rules is identical to the fee structure set forth by guidelines offered by the Office of Open Records Counsel, which the Department of State has followed to date.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Mary Beth Thomas  
General Counsel for the Department of State

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Mary Beth Thomas  
General Counsel for the Department of State

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.