

SENATE BILL NO. 123—SENATOR CARE

FEBRUARY 20, 2007

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions relating to public records. (BDR 19-462)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public records; providing that certain records of a nongovernmental entity are public books or records under certain circumstances; requiring a governmental entity to take action within a certain period in response to a request to inspect or copy a public book or record; making various changes regarding the confidentiality of records; providing in skeleton form a mechanism pursuant to which a person may apply to a district court for an order to allow the person to inspect or copy a confidential public book or record that has been in the custody of a governmental entity for at least 10 years; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, all public books and records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours for inspection and copying. (NRS 239.010)

Section 4 of this bill provides that if a governmental entity receives a request to inspect or copy a public book or record, the governmental entity must, within 2 business days after the date on which the request was received, allow the requester to inspect or copy the public book or record, or provide to the requester written notice to explain why the public book or record may not presently be inspected or copied. If a governmental entity is unable to release a public book or record to a requester because it has been declared by law to be confidential and the governmental entity fails within 2 business days to provide notice of that fact to the requester, the governmental entity shall be deemed to have waived its right to claim that the book or record is confidential, and must allow the requester to inspect or



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copy that public book or record. If a person is proximately harmed by such a deemed waiver of confidentiality, the person may bring an action for damages against the governmental entity.

Section 6 of this bill provides that, notwithstanding any provision of law that has declared a public book or record, or a part thereof, to be confidential, once the public book or record has been in the custody of one or more governmental entities for a period of at least 10 years, a person may apply to the appropriate district court for an order allowing him to inspect or copy the public book or record. **Section 10** of this bill provides that a person may not apply for such an order until October 1, 2017, thus beginning the 10-year waiting period on October 1, 2007, the effective date of the bill.

Section 5 of this bill provides that in any judicial or administrative proceeding in which the confidentiality of a public book or record is at issue and the governmental entity that has custody of the public book or record asserts that the public book or record is confidential, the governmental entity has the burden of proving such confidentiality.

Sections 3 and 7 of this bill provide that although a nongovernmental entity which performs certain functions for or on behalf of a governmental entity is considered a governmental entity for the purposes of Nevada's public records law (chapter 239 of NRS), the records of a nongovernmental entity are public records that must be open for inspection and copying only if such records: (1) are created, obtained, maintained or preserved in the course of administering, managing or regulating an activity, program, institution or facility for or on behalf of a governmental entity; and (2) would otherwise be considered public records within the meaning of NRS 239.010.

Section 8 of this bill provides that a governmental entity shall not deny a request to inspect or copy a public book or record because the public book or record contains information that has been declared by law to be confidential if the governmental entity can redact the confidential information.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 239 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. *The Legislature hereby finds and declares that:*

1. The purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law;

2. The provisions of this chapter must be construed liberally to carry out this important purpose; and

3. Any exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly.

Sec. 3. *Records of a nongovernmental entity are public records that must be open for inspection and copying only if such records:*



1 1. Are created, obtained, maintained or preserved by the
2 nongovernmental entity in the course of administering, managing
3 or regulating an activity, program, institution or facility for or on
4 behalf of a governmental entity; and

5 2. Would otherwise be considered public records within the
6 meaning of NRS 239.010 if the records were created, obtained,
7 maintained or preserved by a governmental entity that is described
8 in paragraphs (a) to (d), inclusive, of subsection 4 of
9 NRS 239.005.

10 Sec. 4. 1. Not later than the end of the second business day
11 after the date on which it receives a request from a person to
12 inspect or copy a public book or record, a governmental entity
13 shall do one of the following, as applicable:

14 (a) Allow the person to inspect or copy the public book or
15 record.

16 (b) If the governmental entity does not have custody of the
17 public book or record, provide to the person, in writing:

18 (1) Notice of that fact; and

19 (2) The name and address of the governmental entity that
20 has custody of the public book or record, if known.

21 (c) If extraordinary circumstances exist which make it
22 impossible for the governmental entity to allow the person to
23 inspect or copy the public book or record by the end of the second
24 business day after the date on which the person made his request,
25 provide to the person, in writing:

26 (1) Notice of that fact; and

27 (2) A date and time after which the public book or record
28 will be available for the person to inspect or copy. Such date and
29 time must be not later than the end of the 10th business day after
30 the date on which the notice described in this paragraph is
31 provided by the governmental entity.

32 (d) If the governmental entity must deny the person's request
33 to inspect or copy the public book or record because the public
34 book or record, or a part thereof, has been declared by law to be
35 confidential, provide to the person, in writing:

36 (1) Notice of that fact; and

37 (2) A citation to the specific legal authority that declares
38 the public book or record, or a part thereof, to be confidential.

39 2. If a governmental entity must deny a person's request to
40 inspect or copy a public book or record because the public book or
41 record, or a part thereof, has been declared by law to be
42 confidential but the governmental entity fails to comply with the
43 provisions of paragraph (d) of subsection 1, the governmental
44 entity shall be deemed to have waived its right to claim that the
45 public book or record is confidential and must allow the person to



1 *inspect or copy the public book or record, or a part thereof, unless*
2 *the governmental entity or the administrative head of the*
3 *governmental entity, as applicable, determines that:*

4 *(a) The failure of the governmental entity to comply with the*
5 *provisions of paragraph (d) of subsection 1 was due to excusable*
6 *neglect; or*

7 *(b) Allowing the person to inspect or copy the public book or*
8 *record, or a part thereof, would adversely affect personal privacy*
9 *rights.*

10 3. Any decision made pursuant to subsection 2 by a
11 governmental entity or the administrative head of a governmental
12 entity, as applicable, is a final decision for the purposes of judicial
13 review. A person aggrieved by such a final decision is entitled to
14 judicial review of the decision in the manner provided in NRS
15 233B.130 to 233B.150, inclusive, for the review of decisions of
16 administrative agencies in contested cases.

17 4. If, pursuant to subsection 2, a governmental entity is
18 deemed to have waived its right to claim that a public book or
19 record is confidential and a person suffers injury as the proximate
20 result of the release of that public book or record, or a part
21 thereof, the person may bring an action against the governmental
22 entity in a court of competent jurisdiction for the recovery of his
23 actual damages and any punitive damages which the facts may
24 warrant.

25 **Sec. 5.** *Except as otherwise provided in section 6 of this act,*
26 *if:*

27 1. *The confidentiality of a public book or record, or a part*
28 *thereof, is at issue in a judicial or administrative proceeding; and*

29 2. *The governmental entity that has custody of the public*
30 *book or record asserts that the public book or record, or a part*
31 *thereof, is confidential,*

32 *↳ the governmental entity has the burden of proving by a*
33 *preponderance of the evidence that the public book or record, or a*
34 *part thereof, is confidential.*

35 **Sec. 6.** 1. Notwithstanding any provision of law that has
36 declared a public book or record, or a part thereof, to be
37 confidential, if a public book or record has been in the custody of
38 one or more governmental entities for at least 10 years, a person
39 may apply to the district court of the county in which is located the
40 governmental entity that currently has custody of the public book
41 or record for an order directing that governmental entity to allow
42 the person to inspect or copy the public book or record, or a part
43 thereof.

44 2. There is a rebuttable presumption that a person who
45 applies for an order as described in subsection 1 is entitled to



inspect or copy the public book or record, or a part thereof, that he seeks to inspect or copy.

Sec. 7. NRS 239.005 is hereby amended to read as follows:

239.005 As used in this chapter, unless the context otherwise requires:

1. "Actual cost" means the direct cost related to the reproduction of a public record. The term does not include a cost that a governmental entity incurs regardless of whether or not a person requests a copy of a particular public record.

2. "Committee" means the Committee to Approve Schedules for the Retention and Disposition of Official State Records.

3. "Division" means the Division of State Library and Archives of the Department of Cultural Affairs.

4. "Governmental entity" means:

(a) An elected or appointed officer of this State or of a political subdivision of this State;

(b) An institution, board, commission, bureau, council, department, division, authority or other unit of government of this State or of a political subdivision of this State;

(c) A university foundation, as defined in NRS 396.405; ~~for~~

(d) An educational foundation, as defined in NRS 388.750, to the extent that the foundation is dedicated to the assistance of public schools ~~for~~; or

(e) Any other person or nongovernmental entity that administers, manages or regulates an activity, program, institution or facility for or on behalf of a governmental entity described in paragraphs (a) to (d), inclusive, of this subsection.

Sec. 8. NRS 239.010 is hereby amended to read as follows:

239.010 1. ~~For~~ *Except as otherwise provided in subsection 2, all* public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. *A governmental entity shall not deny a request made pursuant to subsection 1 to inspect or copy a public book or record on the basis that the requested public book or record contains*



1 *information that has otherwise been declared by law to be*
2 *confidential if the governmental entity can redact, delete, conceal*
3 *or separate the confidential information from the information*
4 *included in the public book or record that has not otherwise been*
5 *declared by law to be confidential.*

6 3. A governmental entity may not reject a book or record
7 which is copyrighted solely because it is copyrighted.

8 ~~3.1~~ 4. A person may request a copy of a public record in any
9 medium in which the public record is readily available. An officer,
10 employee or agent of a governmental entity who has custody of a
11 public record shall not refuse to provide a copy of that public record
12 in a readily available medium because he has already prepared or
13 would prefer to provide the copy in a different medium.

14 **Sec. 9.** NRS 239.012 is hereby amended to read as follows:

15 239.012 ~~1A~~ *Except as otherwise provided in subsection 4 of*
16 *section 4 of this act, a* public officer or employee who acts in good
17 faith in disclosing or refusing to disclose information , and his
18 employer , are immune from liability for damages, either to the
19 requester or to the person whom the information concerns.

20 **Sec. 10.** For the purposes of section 6 of this act, a person may
21 not apply to a district court before October 1, 2017, for an order
22 directing a governmental entity to allow the person to inspect or
23 copy a public book or record, or a part thereof, regardless of
24 whether the public book or record will have been in the custody of a
25 governmental entity for a period of 10 years or more before that
26 date.

