

ASSEMBLY BILL NO. 31—COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2012

Referred to Committee on Government Affairs

SUMMARY—Revises various provisions relating to public records.
(BDR 19-211)

FISCAL NOTE: Effect on Local Government: No.
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; revising provisions governing requests for books and records of certain agencies of the Executive Department of the State Government; codifying a common law balancing test by which governmental entities determine whether to disclose certain books and records of the entity; revising provisions governing the information that a governmental entity is required to provide upon the denial of a request for a book or record of the entity; providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, all public books and records of a governmental entity, the
2 contents of which are not otherwise declared by law to be confidential, are required
3 to be open at all times during office hours for inspection and copying by the public.
4 (NRS 239.010) The Nevada Supreme Court has established a balancing test for a
5 governmental entity to apply to determine whether to disclose a book or record
6 when the law is silent with respect to the confidentiality of the book or record.
7 Under this balancing test, the governmental entity is required to determine whether
8 the private or governmental interest served by withholding the book or record
9 clearly outweighs the right of the public to inspect or copy the book or record.
10 (*Donrey v. Bradshaw*, 106 Nev. 630 (1990); *DR Partners v. Board of County*
11 *Comm'rs*, 116 Nev. 616 (2000); *Reno Newspapers, Inc. v. Haley*, 126 Nev. Adv.
12 Op. 23, 234 P.3d 922 (2010); *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. Adv.
13 Op. 79, 266 P.3d 623 (2011)) The legislative declaration for the Nevada Public
14 Records Act (chapter 239 of NRS) requires that the Act be construed liberally to



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foster democratic principles by providing the public with access to inspect and copy public books and records and that any restriction on the disclosure of public books and records be construed narrowly. (NRS 239.001) Existing law imposes the burden of proof on a governmental entity that withholds a record to prove, by a preponderance of the evidence, that the record, or a part thereof, is confidential. (NRS 239.0113)

Section 1 of this bill requires the head of each agency, bureau, board, commission, department, division or any other unit of the Executive Department of State Government except the Nevada System of Higher Education to designate one or more employees to act as records manager for the agency, whose duties relate to handling requests for public books or records of the agency. **Section 1** requires the Attorney General to prescribe: (1) the form for requesting to inspect a copy of a public book or record of such an agency; (2) the form to be used by such an agency to respond to such a request; and (3) the procedures with which a records manager is required to comply in carrying out his or her duties. **Section 1** also requires each such agency to make those forms and procedures available on any website maintained by the agency on the Internet.

Section 3 of this bill compiles all the statutory provisions that prohibit the disclosure of or specifically declare public books and records confidential. **Section 3** also codifies the common law balancing test established by the Nevada Supreme Court for a governmental entity to apply to determine whether to disclose a book or record when the law is silent with respect to the confidentiality of the book or record.

Under existing law, if a governmental entity denies a request to inspect a public book or record because all or a portion of the book or record is confidential, the governmental entity is required to provide the requester with written notice of that fact and a citation to the legal authority that makes the book or record, or portion thereof, confidential. (NRS 239.0107) **Section 4** of this bill revises the contents of the written notice to require, in most circumstances, a general factual description of the withheld public book or record, or portion thereof, and a specific explanation for the denial of the request.

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 a new section to read as follows:

1. The head of each agency of the Executive Department shall designate one or more employees of the agency to act as records manager for the agency.

2. A records manager designated pursuant to subsection 1 shall carry out the duties imposed pursuant to this chapter on the agency of the Executive Department that designated him or her with respect to a request to inspect or copy a public book or record of the agency.

3. The Attorney General shall prescribe:

(a) The form for a request by a person to inspect or copy a public book or record of an agency of the Executive Department pursuant to NRS 239.0107;



(b) *The form for the written notice required to be provided by an agency of the Executive Department pursuant to paragraph (b), (c) or (d) of subsection 1 of NRS 239.0107; and*

(c) *By regulation the procedures with which a records manager must comply in carrying out his or her duties.*

4. *Each agency of the Executive Department shall make available on any website maintained by the agency on the Internet or its successor the forms and procedures prescribed by the Attorney General pursuant to subsection 3.*

Sec. 2. 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. *"Agency of the Executive Department" means an agency, board, commission, bureau, council, department, division, authority or other unit of the Executive Department of the State Government. The term does not include the Nevada System of Higher Education.*

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

~~3-1~~ 4. "Division" means the Division of State Library and Archives of the Department of Administration.

~~14-1~~ 5. "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, *including, without limitation, an agency of the Executive Department*, or of a political subdivision of this State;

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

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

~~15-1~~ 6. "Privatization contract" means a contract executed by or on behalf of a governmental entity which authorizes a private entity to provide public services that are:

(a) Substantially similar to the services provided by the public employees of the governmental entity; and

(b) In lieu of the services otherwise authorized or required to be provided by the governmental entity.



Sec. 3. NRS 239.010 is hereby amended to read as follows:

239.010 1. Except as otherwise provided in ~~subsection 3,~~
this section and NRS 1.4683, 62D.420, 62D.440, 62E.516,
62E.620, 62H.220, 62H.320, 76.160, 78.152, 80.113, 81.850,
82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580,
87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045,
89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026,
119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653,
119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.061,
126.141, 126.161, 126.163, 127.007, 127.057, 127.130, 127.140,
127.2817, 159.044, 172.075, 172.245, 176.015, 176.0625, 176.156,
176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.165,
179A.450, 200.3771, 200.3772, 200.5095, 200.604, 202.3662,
205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140,
213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464,
217.475, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350,
228.270, 228.450, 228.495, 228.570, 231.069, 233.190, 237.300,
239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140,
239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020,
241.030, 242.105, 244.264, 244.335, 250.087, 250.130, 250.140,
250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281A.440,
281A.470, 281A.550, 284.4068, 289.025, 289.080, 289.387,
293.5002, 293.503, 293.558, 293B.135, 293D.510, 331.110,
332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1725,
338.1727, 348.420, 349.597, 349.775, 353.205, 353A.085,
353A.100, 353C.240, 360.247, 360.255, 360.755, 361.044, 361.610,
365.138, 366.160, 368A.180, 372A.080, 378.290, 378.300, 379.008,
386.655, 387.626, 387.631, 388.5275, 388.528, 388.5315, 388.750,
389.015, 391.035, 392.029, 392.129, 392.147, 392.264, 392.271,
392.456, 392.4575, 392.652, 392.850, 394.167, 394.1698, 394.447,
394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 398.403,
408.3885, 408.3886, 412.153, 416.070, 422.305, 422A.350,
427A.1236, 427A.872, 432.205, 432B.175, 432B.280, 432B.290,
432B.407, 432B.430, 432B.560, 433.534, 433A.360, 439.270,
439.840, 439B.420, 441A.220, 441A.230, 442.330, 442.395,
445A.665, 445B.570, 449.209, 449.245, 449.720, 453.1545,
453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050,
459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993,
463.240, 463.3403, 463.3407, 463.790, 467.1005, 467.137, 481.063,
482.170, 482.5536, 483.340, 483.363, 483.800, 484E.070, 485.316,
522.040, 534A.031, 561.285, 571.160, 574.053, 584.583, 584.5835,
584.655, 598.0964, 598.0979, 598.098, 598A.110, 599B.090,
603.070, 604A.710, 612.265, 616B.012, 616B.015, 616B.315,
616B.350, 618.341, 618.425, 623.131, 623A.353, 624.110, 624.265,
624.327, 625.425, 625A.185, 628.418, 630.133, 630.30665,



630.336, 630A.555, 631.368, 632.121, 632.125, 632.405, 633.283,
633.301, 633.524, 634.212, 634.214, 634A.185, 635.158, 636.107,
637.085, 637A.315, 637B.288, 638.087, 638.089, 639.2485,
639.570, 640.075, 640A.220, 640B.730, 640C.400, 640C.745,
640C.760, 640D.190, 640E.340, 641.090, 641A.191, 641B.170,
641C.760, 642.524, 643.189, 644.446, 645.180, 645.625, 645A.050,
645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130,
645D.135, 645E.300, 645E.375, 645G.510, 645H.320, 645H.330,
648.033, 648.197, 649.065, 649.067, 652.228, 654.110, 656.105,
661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170,
673.430, 675.380, 676A.340, 676A.370, 677.243, 679B.122,
679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270,
681A.440, 681B.260, 681B.280, 683A.0873, 685A.077, 686A.289,
686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230,
688C.480, 688C.490, 692A.117, 692C.190, 692C.420, 693A.480,
693A.615, 686B.550, 703.196, 706.1725, 704B.320, 704B.325,
710.159, 711.600 and sections 35, 38 and 41 of chapter 478,
Statutes of Nevada 2011 and unless otherwise declared by law to
be confidential, 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 may withhold a public book or
record of the governmental entity if, on the facts of the particular
case, the public interest served by nondisclosure of the public book
or record clearly outweighs the public interest served by disclosure
of the public book or record.*

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

~~[-]~~ 4. A governmental entity that has legal custody or control
of a public book or record 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 information that is
confidential if the governmental entity can redact, delete, conceal or
separate the confidential information from the information included
in the public book or record that is not otherwise confidential.



~~14~~ 5. A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has legal custody or control of a public record shall not refuse to provide a copy of that public record in a readily available medium because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

Sec. 4. NRS 239.0107 is hereby amended to read as follows:

239.0107 1. Not later than the end of the fifth business day after the date on which the person who has legal custody or control of a public book or record of a governmental entity receives a written request from a person to inspect or copy the public book or record, a governmental entity shall do one of the following, as applicable:

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

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

(1) Notice of that fact; and

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

(c) Except as otherwise provided in paragraph (d), if the governmental entity is unable to make the public book or record available by the end of the fifth business day after the date on which the person who has legal custody or control of the public book or record received the request, provide to the person, in writing:

(1) Notice of that fact; and

(2) A date and time after which the public book or record will be available for the person to inspect or copy. If the public book or record is not available to the person to inspect or copy by that date and time, the person may inquire regarding the status of the request.

(d) If the governmental entity must deny the person's request to inspect or copy the public book or record because the public book or record, or a part thereof, is confidential, provide to the person, in writing:

(1) Notice of that fact; and

(2) A ~~citation to the specific statute or other legal authority that makes~~ *general factual description of* the public book or record, or a part thereof, ~~confidential~~ *and a specific explanation for the denial of the request unless the governmental entity demonstrates that the person requesting the public book or record has sufficient information to meaningfully contest the claim of*



- 1 *confidentiality of the public book or record by the governmental*
- 2 *entity without such a description and explanation.*
- 3 2. The provisions of this section must not be construed to
- 4 prohibit an oral request to inspect or copy a public book or record.

