

Amendment No. 135

Senate Amendment to Senate Bill No. 90 (BDR 19-468)

Proposed by: Senate Committee on Government Affairs

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

HAC/JWP



Date: 4/8/2013

S.B. No. 90—Revises provisions relating to certain confidential information.
(BDR 19-468)



SENATE BILL NO. 90—SENATOR SETTELMAYER

FEBRUARY 6, 2013

JOINT SPONSORS: ASSEMBLYMEN GRADY; AND ELLISON

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to certain confidential information.
(BDR 19-468)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

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

AN ACT relating to confidential information; establishing a procedure for the submission to a local governmental entity of records which are claimed to be confidential and which are required by the entity as a condition of its consideration of an application for a license, permit or similar approval; providing for the determination of such a claim of confidentiality and the status and disposition of the records; ~~authorizing an agency of a county to request a copy of certain confidential records from the Department of Business and Industry under certain circumstances; establishing the procedures by and conditions under which the Department must review and approve such a request;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Various provisions of existing law provide for the confidentiality of records submitted to an official or agency of the State or Federal Government. For example, NRS 534A.031 provides that exploration or subsurface information obtained as a result of a geothermal project must be filed with the Division of Minerals of the Commission on Mineral Resources and further provides that this information is confidential for 5 years after the date of filing. However, there is no similar provision making this information confidential if it is submitted to a county or other political subdivision of the State in connection with an application for a special use permit or any other license, permit or similar approval.

Where the submission to a local governmental entity of records that are otherwise declared bylaw to be confidential is required by the local governmental entity as a condition of its consideration of an application for a license, permit or similar approval, **sections 6 and 7** of this bill establish an expedited process by which the applicant may assert a claim of confidentiality with respect to the records and obtain a determination of that claim from the chief legal officer or attorney of the local governmental entity. If the chief legal officer or attorney agrees that the records are confidential, **section 8** of this bill requires the local governmental entity to maintain the records in confidence. If the records are determined not to be confidential, **section 8** gives the applicant the choice of withdrawing the records from the

possession of the local governmental entity, with the result that the application may likewise be deemed to have been withdrawn, or waiving any claim of confidentiality and proceeding with the application.

~~Additionally, no provision of existing law authorizes an agency of a county to request confidential information from the Department of Business and Industry for the purposes of economic development within the county. Section 9 of this bill authorizes an agency of a county to make such a request. Section 9 requires an agency that submits such a request to include with the request a statement of the basis for the request as it relates to economic development and to provide a copy of the request to the board of county commissioners of the county. Section 9 establishes the procedure by which the Department must review, approve and fulfill such a request from an agency and requires the Department to provide notice of the request to the person or governmental entity that originally submitted to the Department the confidential record which is the subject of the request. Section 9 prohibits the Department from releasing to an agency any record or portion thereof that is maintained confidentially pursuant to a provision of federal statute or regulation and requires an agency, upon receipt of a confidential record from the Department, to maintain the record confidentially in the manner provided by any applicable provision of statute or regulation.~~

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 8, inclusive, of this act.

Sec. 2. *As used in sections 2 to 8, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Applicant” means a person or governmental entity that submits an application to a local governmental entity.*

Sec. 4. *“Application” means a request submitted by an applicant to a local governmental entity for a license, permit or any similar approval involving the exercise of governmental authority.*

Sec. 5. *“Local governmental entity” has the meaning ascribed to it in NRS 239.121.*

Sec. 6. *The records of a local governmental entity are confidential and not public books or records within the meaning of NRS 239.010 or any other provision of statute or regulation if ~~if~~ the records meet all of the following requirements:*

1. The records are specifically declared by a statute or regulation of this State or a federal statute or regulation to be confidential when submitted to an elected or appointed officer, institution, board, commission, bureau, council, department, division or other official or agency of the State or Federal Government;

2. The records are submitted to the local governmental entity by an applicant in connection with an application to the local governmental entity; and

3. The submission of the records is required by the local governmental entity as a condition of its consideration of the application.

Sec. 7. *1. An applicant who submits to a local governmental entity any records that the applicant believes are confidential for the purposes of sections 2 to 8, inclusive, of this act shall clearly mark the records as confidential and submit with the records a written statement describing the records and specifically identifying each provision of statute or regulation, other than section 6 of this act, that declares the records to be confidential. Regardless of whether the records are determined to be confidential, the statement prepared pursuant to*

1 *this subsection is a public record for the purposes of NRS 239.010 and any other*
2 *provision of statute or regulation applicable to public books or records. The*
3 *statement must also include the mailing address of the applicant, which is the*
4 *applicant's address of record for the purposes of sections 2 to 8, inclusive, of this*
5 *act. If that address changes at any time while the records remain in the*
6 *possession of the local governmental entity, the applicant shall so notify the local*
7 *governmental entity in writing.*

8 2. *Upon its receipt of the records and the written statement required by*
9 *subsection 1, the local governmental entity shall transmit the records and the*
10 *statement to its chief legal officer or attorney or to the person designated by the*
11 *chief legal officer or attorney to conduct the review required by this subsection.*
12 *Within 5 business days after he or she receives the records and the statement of*
13 *the applicant, the chief legal officer or attorney or his or her designee shall*
14 *review the records and the statement, conduct any additional investigation or*
15 *analysis he or she deems appropriate, and determine whether the records are*
16 *confidential for the purposes of sections 2 to 8, inclusive, of this act. Pending this*
17 *determination, the records must not be revealed in whole or in part to any person*
18 *or governmental entity except to the extent necessary to carry out the provisions*
19 *of this section, or upon the order of a court of competent jurisdiction. The records*
20 *are presumed not to be confidential unless the chief legal officer or attorney or*
21 *his or her designee finds that the records, or any part thereof, are confidential*
22 *based on the review of the records and the statement, and any additional*
23 *investigation or analysis.*

24 3. *The chief legal officer or attorney or his or her designee may determine*
25 *for the purposes of sections 2 to 8, inclusive, of this act that the records are*
26 *confidential in part and not confidential in part, in which case those records*
27 *determined to be confidential and those records determined not to be confidential*
28 *are subject, respectively, to the provisions of sections 2 to 8, inclusive, of this act*
29 *applicable to records of that kind.*

30 Sec. 8. 1. *Upon making the determination required by section 7 of this*
31 *act, the chief legal officer or attorney of the local governmental entity or his or*
32 *her designee shall cause written notice of the determination, including a*
33 *statement of the basis for the determination, to be mailed to the applicant at the*
34 *applicant's address of record. Regardless of whether the records are determined*
35 *to be confidential, the notice prepared pursuant to this subsection is a public*
36 *record for the purposes of NRS 239.010 and any other provision of statute or*
37 *regulation applicable to public books or records. If the records are determined*
38 *not to be confidential for the purposes of sections 2 to 8, inclusive, of this act, the*
39 *notice must also include a copy of this section. If the records are determined to be*
40 *confidential in part and not confidential in part, the notice must identify the*
41 *records that have been determined not to be confidential.*

42 2. *If the records are determined to be confidential for the purposes of*
43 *sections 2 to 8, inclusive, of this act:*

44 (a) *The records must not be revealed in whole or in part to any person or*
45 *governmental entity except:*

46 (1) *To the extent necessary to consider and act upon the application;*

47 (2) *As authorized or required by the statute or regulation pursuant to*
48 *which the records are determined to be confidential; or*

49 (3) *Upon the order of a court of competent jurisdiction.*

50 (b) *The local governmental entity shall cause the records to be mailed to the*
51 *applicant at the applicant's address of record:*

1 (1) Upon the expiration of any period of confidentiality specified in the
2 statute or regulation pursuant to which the records are determined to be
3 confidential; or

4 (2) At such time as the records are no longer required by the local
5 governmental entity for any purpose connected with the application,

6 ↳ whichever is earlier.

7 3. If the records are determined not to be confidential for the purposes of
8 sections 2 to 8, inclusive, of this act:

9 (a) The applicant may elect to:

10 (1) Withdraw the records from the possession of the local governmental
11 entity, which withdrawal may be deemed by the local governmental entity to
12 constitute a withdrawal of the application; or

13 (2) Waive any claim of confidentiality in the records, proceed with the
14 application and authorize the local governmental entity to retain possession of
15 the records.

16 ↳ The applicant must give written notice of the applicant's election to the local
17 governmental entity within 10 business days after the date of mailing of the
18 notice required by subsection 1.

19 (b) Notwithstanding the determination, unless the local governmental entity
20 has received written notice of the applicant's waiver of any claim of
21 confidentiality in the records, the records must not be revealed in whole or in part
22 to any person or governmental entity except to the extent necessary to carry out
23 the provisions of this section, or upon the order of a court of competent
24 jurisdiction.

25 (c) If notice of the applicant's election pursuant to paragraph (a) is not
26 received from the applicant by the local governmental entity within 15 business
27 days after the date of mailing of the notice required by subsection 1, the local
28 governmental entity shall cause the records to be mailed to the applicant at the
29 applicant's address of record, and the local governmental entity may thereupon
30 deem the application to be withdrawn.

31 4. If the applicant waives any claim of confidentiality in the records
32 pursuant to subsection 3, the records are public books or records for the purposes
33 of NRS 239.010 and any other provision of statute or regulation applicable to
34 public books or records.

35 5. If the local governmental entity deems an application to be withdrawn
36 pursuant to this section, it shall cause written notice of that action to be mailed to
37 the applicant at the applicant's address of record within 5 business days after the
38 date of the action. Such an action is a denial of the application for the purposes
39 of any statute or regulation which provides for administrative or judicial review
40 of the denial of an application of that kind. In any such review, the propriety of a
41 determination that records are not confidential for the purposes of sections 2 to 8,
42 inclusive, of this act is an issue properly within the scope of review.

43 Sec. 9. ~~Chapter 232 of NRS is hereby amended by adding thereto a new~~
44 ~~section to read as follows:~~

45 ~~1. If a county agency for economic development believes that its access to a~~
46 ~~record which~~

47 ~~(a) Is in the possession of the Department; and~~

48 ~~(b) Is otherwise declared by a statute or regulation of this State to be~~
49 ~~confidential;~~

50 ~~↳ is reasonably necessary to enable the agency properly to perform its duties, the~~
51 ~~agency may submit a written request to the Department for a copy of the record.~~

52 ~~2. An agency that submits a request pursuant to subsection 1 must:~~

~~(a) Make the request on its official letterhead, which must include its mailing address;~~

~~(b) Include with the request a written statement of the basis for the request as it relates to the duties of the agency; and~~

~~(c) Contemporaneously cause a copy of the request to be mailed or delivered to the board of county commissioners of the county.~~

~~3. Within 5 business days after it receives the request, the Department shall:~~

~~(a) Review the request;~~

~~(b) Cause a copy of the request to be mailed to the last known address of the person or governmental entity that submitted to the Department the record which is the subject of the request; and~~

~~(c) Determine whether to grant or deny the request.~~

~~4. The Department shall grant the request unless the Department determines that the agency has failed reasonably to explain its need for the requested record or the Department is required to keep the record confidential pursuant to subsection 6.~~

~~4. Within 5 business days after making its determination, the Department shall cause written notice of the determination, including a statement of the basis for the determination, to be mailed to the agency and the person or governmental entity that submitted the record which is the subject of the request.~~

~~5. If the Department grants the request, it shall cause a sealed copy of the record to be mailed to the agency not less than 30 business days, but not more than 45 business days, after the date of mailing of the notice of determination. The Department shall include with the copy a written notice conspicuously stating that the record is confidential and providing a citation to each statute or regulation of this State declaring the record to be confidential. The agency shall keep the record confidential in the manner prescribed by the applicable statute or regulation, except to the extent necessary to enable the agency properly to perform its duties.~~

~~6. The Department shall not provide an agency with a copy of any record which the Department is required to keep confidential pursuant to any provision of federal statute or regulation. The Department may determine for the purposes of this subsection that a record is confidential in part and not confidential in part, in which case a copy of that portion of the record which is determined not to be confidential must be provided to the agency if otherwise required by this section. If the Department is prohibited from providing the agency with a copy of a confidential record or any portion of the record pursuant to this subsection, the Department shall identify in the notice of determination each record or portion of the record which is withheld pursuant to this subsection and each provision of federal statute or regulation requiring the Department to keep the record or portion of the record confidential.~~

~~7. Any request submitted by an agency and any notice provided by the Department pursuant to this section is a public record for the purposes of NRS 239.010 and any other provision of statute or regulation applicable to public books or records.~~

~~8. As used in this section:~~

~~(a) "County agency for economic development" or "agency" means any agency, board, bureau, commission, council, department, division, office or similar governmental unit of a county in this State whose duties include the consideration, development or implementation of any policy relating to economic development in the county;~~

~~(b) "Economic development" has the meaning ascribed to it in paragraph (a) of subsection 4 of NRS 244.2815.~~ (Deleted by amendment.)

1 **Sec. 10.** ~~NRS 232.505 is hereby amended to read as follows:~~
2 ~~232.505 As used in NRS 232.505 to 232.845, inclusive, and section 9 of this~~
3 ~~act, unless the context requires otherwise:~~

- 4 ~~1. "Department" means the Department of Business and Industry.~~
5 ~~2. "Director" means the Director of the Department.]~~ (Deleted by
6 amendment.)

7 **Sec. 11.** This act becomes effective on July 1, 2013.