

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.

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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 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; 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



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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.

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 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*



1 *the records a written statement describing the records and*
2 *specifically identifying each provision of statute or regulation,*
3 *other than section 6 of this act, that declares the records to be*
4 *confidential. Regardless of whether the records are determined to*
5 *be confidential, the statement prepared pursuant to this subsection*
6 *is a public record for the purposes of NRS 239.010 and any other*
7 *provision of statute or regulation applicable to public books or*
8 *records. The statement must also include the mailing address of*
9 *the applicant, which is the applicant's address of record for the*
10 *purposes of sections 2 to 8, inclusive, of this act. If that address*
11 *changes at any time while the records remain in the possession of*
12 *the local governmental entity, the applicant shall so notify the*
13 *local governmental entity in writing.*

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

33 3. *The chief legal officer or attorney or his or her designee*
34 *may determine for the purposes of sections 2 to 8, inclusive, of this*
35 *act that the records are confidential in part and not confidential in*
36 *part, in which case those records determined to be confidential*
37 *and those records determined not to be confidential are subject,*
38 *respectively, to the provisions of sections 2 to 8, inclusive, of this*
39 *act applicable to records of that kind.*

40 **Sec. 8.** 1. *Upon making the determination required by*
41 *section 7 of this act, the chief legal officer or attorney of the local*
42 *governmental entity or his or her designee shall cause written*
43 *notice of the determination, including a statement of the basis for*
44 *the determination, to be mailed to the applicant at the applicant's*
45 *address of record. Regardless of whether the records are*



1 *determined to be confidential, the notice prepared pursuant to this*
2 *subsection is a public record for the purposes of NRS 239.010 and*
3 *any other provision of statute or regulation applicable to public*
4 *books or records. If the records are determined not to be*
5 *confidential for the purposes of sections 2 to 8, inclusive, of this*
6 *act, the notice must also include a copy of this section. If the*
7 *records are determined to be confidential in part and not*
8 *confidential in part, the notice must identify the records that have*
9 *been determined not to be confidential.*

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

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

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

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

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

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

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

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

28 *↳ whichever is earlier.*

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

31 (a) *The applicant may elect to:*

32 (1) *Withdraw the records from the possession of the local*
33 *governmental entity, which withdrawal may be deemed by the*
34 *local governmental entity to constitute a withdrawal of the*
35 *application; or*

36 (2) *Waive any claim of confidentiality in the records,*
37 *proceed with the application and authorize the local governmental*
38 *entity to retain possession of the records.*

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

42 (b) *Notwithstanding the determination, unless the local*
43 *governmental entity has received written notice of the applicant's*
44 *waiver of any claim of confidentiality in the records, the records*
45 *must not be revealed in whole or in part to any person or*



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1 *governmental entity except to the extent necessary to carry out the*
2 *provisions of this section, or upon the order of a court of*
3 *competent jurisdiction.*

4 *(c) If notice of the applicant's election pursuant to paragraph*
5 *(a) is not received from the applicant by the local governmental*
6 *entity within 15 business days after the date of mailing of the*
7 *notice required by subsection 1, the local governmental entity shall*
8 *cause the records to be mailed to the applicant at the applicant's*
9 *address of record, and the local governmental entity may*
10 *thereupon deem the application to be withdrawn.*

11 *4. If the applicant waives any claim of confidentiality in the*
12 *records pursuant to subsection 3, the records are public books or*
13 *records for the purposes of NRS 239.010 and any other provision*
14 *of statute or regulation applicable to public books or records.*

15 *5. If the local governmental entity deems an application to be*
16 *withdrawn pursuant to this section, it shall cause written notice of*
17 *that action to be mailed to the applicant at the applicant's address*
18 *of record within 5 business days after the date of the action. Such*
19 *an action is a denial of the application for the purposes of any*
20 *statute or regulation which provides for administrative or judicial*
21 *review of the denial of an application of that kind. In any such*
22 *review, the propriety of a determination that records are not*
23 *confidential for the purposes of sections 2 to 8, inclusive, of this*
24 *act is an issue properly within the scope of review.*

25 **Sec. 9.** (Deleted by amendment.)

26 **Sec. 10.** (Deleted by amendment.)

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

