

ASSEMBLY BILL NO. 371—ASSEMBLYMAN DALY

MARCH 20, 2019

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public records.
(BDR 19-16)

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; revising provisions governing the inspection, copying or receipt of a copy of public records; abrogating any common-law exemption or exception to providing such access to public records; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, all public books and records of a governmental entity are required to be open at all times during office hours for inspection and copying or receipt of a copy unless the records are otherwise declared by law to be confidential. (NRS 239.010) **Section 2** of this bill specifies that “by law” means only by specific statute or regulation.

The Nevada Supreme Court has established a balancing test 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 this balancing test, the governmental entity is required to determine whether the private or governmental interest served by withholding the book or record clearly outweighs the right of the public to inspect or copy the book or record. (*Donrey v. Bradshaw*, 106 Nev. 630 (1990); *DR Partners v. Board of County Comm'rs*, 116 Nev. 616 (2000); *Reno Newspapers, Inc. v. Haley*, 126 Nev. Adv. Op. 23, 234 P.3d 922 (2010); *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. Adv. Op. 79, 266 P.3d 623 (2011)) The legislative declaration for the provisions in existing law governing public records requires that those provisions be construed liberally to foster democratic principles by providing the public with access to inspect and copy public books and records and that any exemption or exception or balancing of interests which limits or restricts such access be construed narrowly. (NRS 239.001) **Section 1** of this bill provides that the only exemptions or exceptions to providing access to inspect, copy or receive of a copy of public books and records are those provided by statute or regulation. **Section 1** also abrogates any common-law exemption or exception to providing such access, including, without limitation, any balancing of interests.



* A B 3 7 1 *

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

Section 1. NRS 239.001 is hereby amended to read as follows:

239.001 **1.** The Legislature hereby finds and declares that:

~~H-1~~ (a) 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;

~~F-2~~ (b) The provisions of this chapter must be construed liberally to carry out this important purpose;

~~F-3~~ (c) Any exemption ~~F-1~~ or exception ~~for balancing of interests~~ *provided by statute or regulation* which limits or restricts access to public books and records by members of the public must be construed narrowly;

~~F-4~~ (d) The use of private entities in the provision of public services must not deprive members of the public access to inspect and copy books and records relating to the provision of those services; and

~~F-5~~ (e) If a public book or record is declared by law to be open to the public, such a declaration does not imply, and must not be construed to mean, that a public book or record is confidential if it is not declared by law to be open to the public and is not otherwise declared by law to be confidential.

2. *In interpreting and applying the provisions of this chapter, the only exemptions or exceptions limiting or restricting access to inspect, copy or receive a copy of public books and records are those provided by statute or regulation. Any common-law exemption or exception to providing such access, including, without limitation, any balancing of interests, is hereby abrogated.*

3. *As used in this section, "regulation" means a regulation adopted by a governmental entity pursuant to express statutory authority allowing the governmental entity to create an exemption or exception to this chapter or otherwise provide confidentiality for a record.*

Sec. 2. NRS 239.010 is hereby amended to read as follows:

239.010 **1.** Except as otherwise provided in this section and NRS 1.4683, 1.4687, 1A.110, 3.2203, 41.071, 49.095, 49.293, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100, 75A.150, 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, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130,



1 127.140, 127.2817, 128.090, 130.312, 130.712, 136.050, 159.044,
2 159A.044, 172.075, 172.245, 176.01249, 176.015, 176.0625,
3 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691,
4 179.495, 179A.070, 179A.165, 179D.160, 200.3771, 200.3772,
5 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3925,
6 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131,
7 217.105, 217.110, 217.464, 217.475, 218A.350, 218E.625,
8 218F.150, 218G.130, 218G.240, 218G.350, 228.270, 228.450,
9 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300, 239.0105,
10 239.0113, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210,
11 239C.230, 239C.250, 239C.270, 240.007, 241.020, 241.030,
12 241.039, 242.105, 244.264, 244.335, 247.540, 247.550, 247.560,
13 250.087, 250.130, 250.140, 250.150, 268.095, 268.490, 268.910,
14 271A.105, 281.195, 281.805, 281A.350, 281A.680, 281A.685,
15 281A.750, 281A.755, 281A.780, 284.4068, 286.110, 287.0438,
16 289.025, 289.080, 289.387, 289.830, 293.4855, 293.5002, 293.503,
17 293.504, 293.558, 293.906, 293.908, 293.910, 293B.135, 293D.510,
18 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379,
19 338.1593, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205,
20 353A.049, 353A.085, 353A.100, 353C.240, 360.240, 360.247,
21 360.255, 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180,
22 370.257, 370.327, 372A.080, 378.290, 378.300, 379.008, 379.1495,
23 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259,
24 388.501, 388.503, 388.513, 388.750, 388A.247, 388A.249, 391.035,
25 391.120, 391.925, 392.029, 392.147, 392.264, 392.271, 392.315,
26 392.317, 392.325, 392.327, 392.335, 392.850, 394.167, 394.1698,
27 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535,
28 396.9685, 398A.115, 408.3885, 408.3886, 408.3888, 408.5484,
29 412.153, 416.070, 422.2749, 422.305, 422A.342, 422A.350,
30 425.400, 427A.1236, 427A.872, 432.028, 432.205, 432B.175,
31 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 432B.5902,
32 433.534, 433A.360, 437.145, 439.840, 439B.420, 440.170,
33 441A.195, 441A.220, 441A.230, 442.330, 442.395, 442.735,
34 445A.665, 445B.570, 449.209, 449.245, 449A.112, 450.140,
35 453.164, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050,
36 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993,
37 463.240, 463.3403, 463.3407, 463.790, 467.1005, 480.365, 480.940,
38 481.063, 481.091, 481.093, 482.170, 482.5536, 483.340, 483.363,
39 483.575, 483.659, 483.800, 484E.070, 485.316, 501.344, 503.452,
40 522.040, 534A.031, 561.285, 571.160, 584.655, 587.877, 598.0964,
41 598.098, 598A.110, 599B.090, 603.070, 603A.210, 604A.710,
42 612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341,
43 618.425, 622.310, 623.131, 623A.137, 624.110, 624.265, 624.327,
44 625.425, 625A.185, 628.418, 628B.230, 628B.760, 629.047,
45 629.069, 630.133, 630.30665, 630.336, 630A.555, 631.368,



1 632.121, 632.125, 632.405, 633.283, 633.301, 633.524, 634.055,
2 634.214, 634A.185, 635.158, 636.107, 637.085, 637B.288, 638.087,
3 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730,
4 640C.400, 640C.600, 640C.620, 640C.745, 640C.760, 640D.190,
5 640E.340, 641.090, 641.325, 641A.191, 641A.289, 641B.170,
6 641B.460, 641C.760, 641C.800, 642.524, 643.189, 644A.870,
7 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092,
8 645C.220, 645C.225, 645D.130, 645D.135, 645E.300, 645E.375,
9 645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033,
10 648.197, 649.065, 649.067, 652.228, 654.110, 656.105, 661.115,
11 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.450,
12 673.480, 675.380, 676A.340, 676A.370, 677.243, 679B.122,
13 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270,
14 681A.440, 681B.260, 681B.410, 681B.540, 683A.0873, 685A.077,
15 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010,
16 688C.230, 688C.480, 688C.490, 689A.696, 692A.117, 692C.190,
17 692C.3507, 692C.3536, 692C.3538, 692C.354, 692C.420,
18 693A.480, 693A.615, 696B.550, 696C.120, 703.196, 704B.320,
19 704B.325, 706.1725, 706A.230, 710.159, 711.600, sections 35, 38
20 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of
21 chapter 391, Statutes of Nevada 2013 and unless otherwise declared
22 by ~~Haw~~ *statute or regulation* to be confidential, all public books
23 and public records of a governmental entity must be open at all
24 times during office hours to inspection by any person, and may be
25 fully copied or an abstract or memorandum may be prepared from
26 those public books and public records. Any such copies, abstracts or
27 memoranda may be used to supply the general public with copies,
28 abstracts or memoranda of the records or may be used in any other
29 way to the advantage of the governmental entity or of the general
30 public. This section does not supersede or in any manner affect the
31 federal laws governing copyrights or enlarge, diminish or affect in
32 any other manner the rights of a person in any written book or
33 record which is copyrighted pursuant to federal law.

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

36 3. A governmental entity that has legal custody or control of a
37 public book or record shall not deny a request made pursuant to
38 subsection 1 to inspect or copy or receive a copy of a public book or
39 record on the basis that the requested public book or record contains
40 information that is confidential if the governmental entity can
41 redact, delete, conceal or separate the confidential information from
42 the information included in the public book or record that is not
43 otherwise confidential.

44 4. A person may request a copy of a public record in any
45 medium in which the public record is readily available. An officer,



1 employee or agent of a governmental entity who has legal custody
2 or control of a public record:

3 (a) Shall not refuse to provide a copy of that public record in a
4 readily available medium because the officer, employee or agent has
5 already prepared or would prefer to provide the copy in a different
6 medium.

7 (b) Except as otherwise provided in NRS 239.030, shall, upon
8 request, prepare the copy of the public record and shall not require
9 the person who has requested the copy to prepare the copy himself
10 or herself.

11 *5. As used in this section, "regulation" means a regulation*
12 *adopted by a governmental entity pursuant to express statutory*
13 *authority allowing the governmental entity to create an exemption*
14 *or exception to this chapter or otherwise provide confidentiality*
15 *for a record.*

16 **Sec. 3.** This act becomes effective on July 1, 2019.

