

EXEMPT

(Reprinted with amendments adopted on June 1, 2019)
FIRST REPRINT **S.B. 287**

SENATE BILL NO. 287—SENATORS PARKS, HANSEN, SPEARMAN;
CANCELA, DENIS, KIECKHEFER, SCHEIBLE AND
WOODHOUSE

MARCH 15, 2019

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public records.
(BDR 19-648)

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 relating to the manner of providing copies of public records; revising provisions governing the actions taken by governmental entities in response to requests for public records; revising provisions relating to the relief provided for a requester of a public record who prevails in a legal proceeding; revising provisions governing the fees that governmental entities are authorized to charge for a copy of a public record; providing civil penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that all public books and public records of a state or local governmental entity, unless otherwise declared by law to be confidential, are required to be open at all times during office hours for the public to inspect, copy or receive a copy thereof. Existing law also authorizes a person to request a copy of a public record in any medium in which the public record is readily available. (NRS 239.010) The purpose of the existing law governing public records, as stated in the legislative declaration for that law, is, in part, 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. (NRS 239.001) **Section 2** of this bill provides that the legislative intent is for such access to be provided promptly. **Sections 2 and 4** of this bill make changes to conform with existing law which provides that, in addition to the right to inspect and copy a public record, members of the public have the right to receive a copy of a public record upon request.

With certain exceptions, existing law prohibits a governmental entity from charging a fee for providing a copy of a public record that exceeds the actual cost to the governmental entity to provide the copy. (NRS 239.052) **Section 3** of this bill



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clarifies that the actual cost to a governmental entity includes such direct costs as the cost of ink, toner, paper, media and postage. **Section 13** of this bill eliminates the authority of a governmental entity to charge an additional fee for providing a copy of a public record when extraordinary use of personnel or resources is required. (NRS 239.055)

Section 5 of this bill specifically authorizes the electronic redaction of public books and records. **Section 5** also requires, with limited exception, a governmental entity, if requested, to provide a copy of a public record in an electronic format by means of an electronic medium unless the public record was requested in a different medium.

Under existing law, if a person requests to inspect or copy a public book or record or receive a copy of a public book or record which the governmental entity is unable to make available by the end of the fifth business day after the request was received, the governmental entity is required to provide written notice of that fact to the person who made the request and the date and time after which the public record or the copy of the public book or record will be available. (NRS 239.0107) **Section 6** of this bill clarifies that the date and time provided to the requester must reflect the earliest date and time after which the governmental entity reasonably believes the public book or record will be available. If the public book or record is not made available by this date and time, **section 6** requires the governmental entity to provide to the requester, in writing, an explanation of the reason the public book or record is not available and a date and time after which the governmental entity reasonably believes the public book or record will be available. **Section 6** also requires a governmental entity that is unable to provide access to a public book or record within the prescribed time period to make a reasonable effort to assist the requester to focus the request in such a manner as to maximize the likelihood the requester will be able to inspect, copy or receive a copy of the public book or record as expeditiously as possible.

If a request for inspection, copying or copies of a public book or record is denied, existing law authorizes a requester to apply to a district court for an order permitting the requester to inspect or copy the record or requiring the person who has legal custody or control of the public record to provide a copy to the requester. Existing law provides that if the requester prevails in such a proceeding, the requester is entitled to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record. (NRS 239.011) **Section 7** of this bill authorizes a requester of a public record to apply to a district court for a similar order if a request for inspection, copying or copies of a public record is unreasonably delayed or if a person who requests a copy of a public book or record believes that the fee charged by the governmental entity for providing the copy of the public book or record is excessive or improper. **Section 1** of this bill provides that if a court determines that a governmental entity failed to comply with the existing law governing public books and records concerning a request to inspect, copy or receive a copy of a public book or record, the court must impose on the governmental entity a civil penalty.

Section 11 of this bill provides that the provisions of the bill apply to actions filed on and after October 1, 2019, which is the effective date of this bill.



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. In addition to any relief awarded pursuant to NRS 239.011, if a court determines that a governmental entity failed to comply with the provisions of this chapter concerning a request to inspect, copy or receive a copy of a public book or record, the court must impose on the governmental entity a civil penalty of:

(a) For a first violation, \$1,000.

(b) For a second violation, \$5,000.

(c) For a third or subsequent violation, \$10,000.

2. A civil penalty imposed pursuant to subsection 1 must be deposited in and accounted for separately in the State General Fund. The money in the account may be used only by the Division of State Library, Archives and Public Records of the Department of Administration to improve access to public records, and is hereby authorized for expenditure as a continuing appropriation for this purpose.

3. The rights and remedies recognized by this section are in addition to any other rights or remedies that may exist in law or in equity.

Sec. 2. NRS 239.001 is hereby amended to read as follows:

239.001 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 *prompt* access to inspect , ~~and~~ copy *or receive a copy of* 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;

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;

4. 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~~ *or receive a copy of books and* records relating to the provision of those services; and

5. 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.



Sec. 3. 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~~ *incurred by a governmental entity in the provision* of a public record ~~[]~~ *, including, without limitation, the cost of ink, toner, paper, media and postage.* 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.

4. "Division" means the Division of State Library, Archives and Public Records of the Department of Administration.

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;

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

(e) A library foundation, as defined in NRS 379.0056, to the extent that the foundation is dedicated to the assistance of a public library.

6. "Official state record" includes, without limitation:

(a) Papers, unpublished books, maps and photographs;

(b) Information stored on magnetic tape or computer, laser or optical disc;

(c) Materials that are capable of being read by a machine, including, without limitation, microforms and audio and visual materials; and

(d) Materials that are made or received by a state agency and preserved by that agency or its successor as evidence of the organization, operation, policy or any other activity of that agency or because of the information contained in the material.

7. "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. 4. NRS 239.008 is hereby amended to read as follows:

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

2. A records official 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, ~~for~~ copy *or receive a copy of* a public book or record of the agency.

3. The State Library, Archives and Public Records Administrator, pursuant to NRS 378.255 and in cooperation with the Attorney General, shall prescribe:

(a) The form for a request by a person to inspect, ~~for~~ copy *or receive a copy of* 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 official 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 State Library, Archives and Public Records Administrator and the Attorney General pursuant to subsection 3.

Sec. 5. 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, 127.140, 127.2817, 128.090, 130.312, 130.712, 136.050, 159.044, 159A.044, 172.075, 172.245, 176.01249, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3925,



1 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131,
2 217.105, 217.110, 217.464, 217.475, 218A.350, 218E.625,
3 218F.150, 218G.130, 218G.240, 218G.350, 228.270, 228.450,
4 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300, 239.0105,
5 239.0113, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210,
6 239C.230, 239C.250, 239C.270, 240.007, 241.020, 241.030,
7 241.039, 242.105, 244.264, 244.335, 247.540, 247.550, 247.560,
8 250.087, 250.130, 250.140, 250.150, 268.095, 268.490, 268.910,
9 271A.105, 281.195, 281.805, 281A.350, 281A.680, 281A.685,
10 281A.750, 281A.755, 281A.780, 284.4068, 286.110, 287.0438,
11 289.025, 289.080, 289.387, 289.830, 293.4855, 293.5002, 293.503,
12 293.504, 293.558, 293.906, 293.908, 293.910, 293B.135, 293D.510,
13 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379,
14 338.1593, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205,
15 353A.049, 353A.085, 353A.100, 353C.240, 360.240, 360.247,
16 360.255, 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180,
17 370.257, 370.327, 372A.080, 378.290, 378.300, 379.008, 379.1495,
18 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259,
19 388.501, 388.503, 388.513, 388.750, 388A.247, 388A.249, 391.035,
20 391.120, 391.925, 392.029, 392.147, 392.264, 392.271, 392.315,
21 392.317, 392.325, 392.327, 392.335, 392.850, 394.167, 394.1698,
22 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535,
23 396.9685, 398A.115, 408.3885, 408.3886, 408.3888, 408.5484,
24 412.153, 416.070, 422.2749, 422.305, 422A.342, 422A.350,
25 425.400, 427A.1236, 427A.872, 432.028, 432.205, 432B.175,
26 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 432B.5902,
27 433.534, 433A.360, 437.145, 439.840, 439B.420, 440.170,
28 441A.195, 441A.220, 441A.230, 442.330, 442.395, 442.735,
29 445A.665, 445B.570, 449.209, 449.245, 449A.112, 450.140,
30 453.164, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050,
31 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993,
32 463.240, 463.3403, 463.3407, 463.790, 467.1005, 480.365, 480.940,
33 481.063, 481.091, 481.093, 482.170, 482.5536, 483.340, 483.363,
34 483.575, 483.659, 483.800, 484E.070, 485.316, 501.344, 503.452,
35 522.040, 534A.031, 561.285, 571.160, 584.655, 587.877, 598.0964,
36 598.098, 598A.110, 599B.090, 603.070, 603A.210, 604A.710,
37 612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341,
38 618.425, 622.310, 623.131, 623A.137, 624.110, 624.265, 624.327,
39 625.425, 625A.185, 628.418, 628B.230, 628B.760, 629.047,
40 629.069, 630.133, 630.30665, 630.336, 630A.555, 631.368,
41 632.121, 632.125, 632.405, 633.283, 633.301, 633.524, 634.055,
42 634.214, 634A.185, 635.158, 636.107, 637.085, 637B.288, 638.087,
43 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730,
44 640C.400, 640C.600, 640C.620, 640C.745, 640C.760, 640D.190,
45 640E.340, 641.090, 641.325, 641A.191, 641A.289, 641B.170,



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

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

31 3. A governmental entity that has legal custody or control of a
32 public book or record shall not deny a request made pursuant to
33 subsection 1 to inspect or copy or receive a copy of a public book or
34 record on the basis that the requested public book or record contains
35 information that is confidential if the governmental entity can
36 redact, delete, conceal or separate , *including, without limitation,*
37 *electronically,* the confidential information from the information
38 included in the public book or record that is not otherwise
39 confidential.

40 4. ~~[A person may request]~~ *If requested, a governmental entity*
41 *shall provide* a copy of a public record in ~~[any]~~ *an electronic*
42 *format by means of an electronic* medium . ~~[in which the public~~
43 ~~record is readily available.]~~ *Nothing in this subsection requires a*
44 *governmental entity to provide a copy of a public record in an*
45 *electronic format or by means of an electronic medium if:*



(a) *The public record:*

(1) *Was not created or prepared in an electronic format; and*

(2) *Is not available in an electronic format; or*

(b) *Providing the public record in an electronic format or by means of an electronic medium would:*

(1) *Give access to proprietary software; or*

(2) *Require the production of information that is confidential and that cannot be redacted, deleted, concealed or separated from information that is not otherwise confidential.*

5. An officer, employee or agent of a governmental entity who has legal custody or control of a public record:

(a) Shall not refuse to provide a copy of that public record in ~~the~~ readily available ~~the~~ medium *that is requested* because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

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

Sec. 6. 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 or oral request from a person to inspect, copy or receive a copy of the public book or record, a governmental entity shall do one of the following, as applicable:

(a) Except as otherwise provided in subsection 2, allow the person to inspect or copy the public book or record or, if the request is for the person to receive a copy of the public book or record, provide such a copy to the person.

(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~~ the fact ~~that~~ *that it does not have legal custody or control of the public book or record;* 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~~:

(1) *Provide* to the person, in writing ~~to~~



~~— (1) Notice~~ notice of ~~[that]~~ the fact ~~[:]~~ that it is unable to make the public book or record available by that date and

~~[(2) A]~~ the earliest date and time after which the governmental entity reasonably believes the public book or record will be available for the person to inspect or copy or after which a copy of the public book or record will be available to the person. If the public book or record or the copy of the public book or record is not available to the person by that date and time, the ~~[person may inquire regarding the status of the request.]~~ governmental entity shall provide to the person, in writing, an explanation of the reason the public book or record is not available and a date and time after which the governmental entity reasonably believes the public book or record will be available for the person to inspect or copy or after which a copy of the public book or record will be available to the person.

(2) Make a reasonable effort to assist the requester to focus the request in such a manner as to maximize the likelihood the requester will be able to inspect, copy or receive a copy of the public book or record as expeditiously as possible, including, without limitation, by:

(I) Advising the requester regarding terms to be used or the applicable database in which to perform a search for the public book or record;

(II) Eliciting additional clarifying information from the requester that will assist the person who has legal custody or control of a public record in identifying the public book or record;

(III) Providing suggestions for overcoming any practical basis that would deny or otherwise limit access to the public book or record; and

(IV) Describing the manner in which the public book or record is stored, including, without limitation, whether the public book or record is stored electronically.

(d) If the governmental entity must deny the person's request 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 the public book or record, or a part thereof, confidential.

2. If a public book or record of a governmental entity is readily available for inspection or copying, the person who has legal custody or control of the public book or record shall allow a person who has submitted a request to inspect, copy or receive a copy of a public book or record ~~[:]~~ as expeditiously as practicable.



1 **Sec. 7.** NRS 239.011 is hereby amended to read as follows:

2 239.011 1. If a request for inspection, copying or copies of a
3 public book or record open to inspection and copying is denied ~~[]~~ *or*
4 *unreasonably delayed or if a person who requests a copy of a*
5 *public book or record believes that the fee charged by the*
6 *governmental entity for providing the copy of the public book or*
7 *record is excessive or improper*, the requester may apply to the
8 district court in the county in which the book or record is located for
9 an order:

10 (a) Permitting the requester to inspect or copy the book or
11 record; ~~[or]~~

12 (b) Requiring the person who has legal custody or control of the
13 public book or record to provide a copy to the requester ~~[]~~; *or*

14 (c) *Providing relief relating to the amount of the fee,*

15 ↪ as applicable.

16 2. The court shall give this matter priority over other civil
17 matters to which priority is not given by other statutes. If the
18 requester prevails, the requester is entitled to recover ~~[his]~~ *from the*
19 *governmental entity that has legal custody or control of the record*
20 *his* or her costs and reasonable attorney's fees in the proceeding .
21 ~~[from the governmental entity whose officer has custody of the book~~
22 ~~or record.]~~

23 3. *If the governmental entity appeals the decision of the*
24 *district court and the decision is affirmed in whole or in part, the*
25 *requester is entitled to recover from the governmental entity that*
26 *has legal custody or control of the record his or her costs and*
27 *reasonable attorney's fees for the appeal.*

28 4. *The rights and remedies recognized by this section are in*
29 *addition to any other rights or remedies that may exist in law or in*
30 *equity.*

31 **Sec. 8.** (Deleted by amendment.)

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

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

34 **Sec. 11.** The amendatory provisions of this act apply to all
35 actions filed on or after October 1, 2019.

36 **Sec. 12.** (Deleted by amendment.)

37 **Sec. 13.** NRS 239.055 is hereby repealed.



TEXT OF REPEALED SECTION

239.055 Additional fee when extraordinary use of personnel or resources is required; limitation.

1. Except as otherwise provided in NRS 239.054 regarding information provided from a geographic information system, if a request for a copy of a public record would require a governmental entity to make extraordinary use of its personnel or technological resources, the governmental entity may, in addition to any other fee authorized pursuant to this chapter, charge a fee not to exceed 50 cents per page for such extraordinary use. Such a request must be made in writing, and upon receiving such a request, the governmental entity shall inform the requester, in writing, of the amount of the fee before preparing the requested information. The fee charged by the governmental entity must be reasonable and must be based on the cost that the governmental entity actually incurs for the extraordinary use of its personnel or technological resources. The governmental entity shall not charge such a fee if the governmental entity is not required to make extraordinary use of its personnel or technological resources to fulfill additional requests for the same information.

2. As used in this section, "technological resources" means any information, information system or information service acquired, developed, operated, maintained or otherwise used by a governmental entity.

