2025 Session (83rd) A AB128 230

Amendment No. 230

Assembly Amendment to Assembly Bill No. 128 (BDR 19-400)

Proposed by: Assembly Committee on Government Affairs

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

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted ☐	Lost ☐		Adopted ☐	Lost ☐	
Concurred In ☐	Not ☐		Concurred In ☐	Not ☐	
Receded ☐	Not ☐		Receded ☐	Not ☐	

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) variations of **green bold underlining** is language proposed to be added 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 proposed to be retained in this amendment.

SLD/HAC Date: 4/13/2025

A.B. No. 128—Creates the Office of Public Records Ombudsman in the Executive Department of State Government. (BDR 19-400)

ASSEMBLY BILL NO. 128–COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE JOINT INTERIM STANDING
COMMITTEE ON GOVERNMENT AFFAIRS)

PREFILED JANUARY 28, 2025

Referred to Committee on Government Affairs

SUMMARY—Creates the ~~[Office of]~~ Public Records ~~[Ombudsman in the Executive Department of State Government.]~~ **Task Force.** (BDR ~~[19-400)]~~ **S-400)**

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; creating the ~~[Office of]~~ Public Records ~~[Ombudsman in the Executive Department of State Government; setting forth the powers and duties of the Ombudsman; authorizing a person to file a complaint with the Ombudsman; revising provisions governing judicial relief for actions relating to public records;]~~ **Task Force; setting forth the membership and duties of the Task Force;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that, unless otherwise declared by law to be confidential, all public books and records of a state or local governmental entity 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 book or record in any medium in which the book or record is available. (NRS 239.010) ~~[Section 2 of this bill creates the Office of Public Records Ombudsman as an independent agency in the Executive Department of State Government and requires the Governor to appoint a person as the Public Records Ombudsman. Section 5 of this bill defines the term "Ombudsman."~~

~~Section 3 of this bill sets forth the duties of the Ombudsman, which include establishing a mediation program for complaints relating to public books and records, investigating complaints relating to public books and records, and providing training, education and educational material relating to public books and records.~~

~~Section 4 of this bill authorizes a person to file a complaint with the Ombudsman. Upon receiving a complaint, section 4 requires the Ombudsman to notify the governmental entity of the complaint and offer the parties the opportunity to resolve the complaint through mediation. If a party refuses mediation or the mediation is unsuccessful, section 4 authorizes the Ombudsman to initiate an investigation into the complaint and issue a final determination not later than 90 days after initiating the investigation and, if warranted, provide relief in the form of: (1) denying the request for the release of the public book or record; (2) requiring the governmental entity to permit the requester to inspect or copy the public book or record; or (3)

~~waiving or reducing the fee charged by the governmental entity for providing a copy of the public book or record to the requester.~~

~~If a request for inspection, copying or copies of a public book or record is denied or unreasonably delayed, or if the person making the request believes that the fee charged by the governmental entity is excessive or improper, existing law authorizes a requester to apply to a district court for an order permitting the requester to make or receive a copy of the book or record or providing relief relating to the amount of the fee. (NRS 239.011) Sections 4 and 6 of this bill authorize a requester or governmental entity that is aggrieved by the final determination of the Ombudsman to seek judicial relief.~~ **This bill creates the Public Records Task Force to evaluate certain topics relating to requests for public records and make certain recommendations. This bill also: (1) prescribes the membership and duties of the Task Force; and (2) requires the Task Force to submit a written report describing its work and recommendations for transmittal to the Joint Interim Standing Committee on Government Affairs and the Senate and Assembly Standing Committees on Government Affairs for the 84th Session of the Legislature.**

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, 3 and 4 of this act.]~~ **(Deleted by amendment.)**

Sec. 2. ~~*[1. The Office of Public Records Ombudsman is hereby created as an independent agency in the Executive Department of State Government.*~~

~~*2. The Governor shall appoint the Public Records Ombudsman who must have experience with the laws of this State relating to public records. The Ombudsman is in the unclassified service of the State.*~~

~~*3. Within the limits of money available for such purpose, the Ombudsman may employ personnel to assist the Ombudsman in carrying out his or her duties.*~~

~~*4. The Ombudsman may adopt regulations to carry out the provisions of this section and sections 3 and 4 of this act.]*~~ **(Deleted by amendment.)**

Sec. 3. ~~*[1. The Ombudsman shall:*~~

~~*(a) Establish a mediation program in accordance with section 4 of this act to facilitate the resolution of disputes relating to public books and records;*~~

~~*(b) Investigate complaints filed pursuant to section 4 of this act;*~~

~~*(c) Provide training on public books and records to governmental entities and the staff thereof;*~~

~~*(d) Educate the public on the rights of the public and the responsibilities of governmental entities under the public records laws of this State; and*~~

~~*(e) Prepare educational material relating to public books and records.*~~

~~*2. To carry out the duties set forth in subsection 1, the Ombudsman may:*~~

~~*(a) Notwithstanding any other provision of law, have access to all books and records of a governmental entity, including, without limitation, any confidential records of the governmental entity; and*~~

~~*(b) Issue subpoenas if necessary to compel the attendance and testimony of witnesses and the production of books, records, documents and other evidence to which the Ombudsman may need access.]*~~ **(Deleted by amendment.)**

Sec. 4. ~~*[1. If a person whose request to inspect or copy a public book or record is denied or unreasonably delayed, or if the person believes that the fee charged by the governmental entity for providing the copy of the public book or record is excessive or improper, the person may file a complaint with the Ombudsman within 60 days after the date of the denial or notice of fee. The complaint must be in writing and must include, without limitation, a copy of the*~~

~~*request to inspect or copy the public book or record and any responses from the governmental entity.*~~

~~*2. Upon receipt of a complaint filed pursuant to subsection 1, the Ombudsman shall notify the governmental entity of the complaint and offer the parties the opportunity to resolve the complaint through mediation. The Ombudsman shall prepare a mediation report with the results and any agreement resulting from the mediation.*~~

~~*3. If either party declines mediation or the mediation conducted pursuant to subsection 2 fails, the Ombudsman may, in his or her discretion, initiate an investigation into the complaint. The governmental entity may present the Ombudsman with any statement or information concerning the complaint as to the availability of the public book or record. Not later than 90 days after initiating an investigation, the Ombudsman shall issue a final determination. In a final determination, the Ombudsman may:*~~

~~*(a) Deny the request to release the public book or record;*~~

~~*(b) Require the governmental entity to permit the requester to inspect or copy the public book or record; or*~~

~~*(c) Waive or reduce any fees charged by the governmental entity for providing a copy of the public book or record.*~~

~~*4. If either party is aggrieved by the final determination of the Ombudsman, that party may seek judicial review of the decision pursuant to NRS 239.011.*~~]

(Deleted by amendment.)

Sec. 5. [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 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. *"Ombudsman" means the Public Records Ombudsman appointed pursuant to section 2 of this act.*~~

~~*8.* "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.~~**]** **(Deleted by amendment.)**

Sec. 6. ~~**[**NRS 239.011 is hereby amended to read as follows:~~

~~239.011 1. If a request for inspection, copying or copies of a public book or record open to inspection and copying is denied or 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 **[**,**]** *or if the requester is aggrieved by the final determination of the Ombudsman issued pursuant to section 4 of this act,* the requester may apply to the district court in the county in which the book or record is located for an order:~~

~~(a) Permitting the requester to inspect or copy the book or record;~~

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

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

~~* as applicable.~~

~~2. *If a governmental entity is aggrieved by the final determination of the Ombudsman issued pursuant to section 4 of this act, the governmental entity may apply to the district court in the county in which the book or record is located for an order denying the request to inspect or copy the book or record or approving the amount of the fee charged by the governmental entity for the public book or record.*~~

~~*3.* The court shall give this matter priority over other civil matters to which priority is not given by other statutes. If the requester prevails, the requester is entitled to recover from the governmental entity that has legal custody or control of the record his or her costs and reasonable attorney's fees in the proceeding.~~

~~**[**3.**]** *4.* If the governmental entity appeals the decision of the district court and the decision is affirmed in whole or in part, the requester is entitled to recover from the governmental entity that has legal custody or control of the record his or her costs and reasonable attorney's fees for the appeal.~~

~~**[**4.**]** *5.* 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.~~**]** **(Deleted by amendment.)**

Sec. 7. **1. The Public Records Task Force is hereby created. The Task Force consists of the following 10 members:**

(a) One government representative and two transparency advocates appointed by the Majority Leader of the Senate;

(b) Two government representatives and one transparency advocate appointed by the Speaker of the Assembly;

(c) One government representative appointed by the Minority Leader of the Senate;

(d) One transparency advocate appointed by the Minority Leader of the Assembly; and

(e) One government representative and one transparency advocate appointed by the Governor.

2. The Task Force shall:

(a) Evaluate:

(1) Current exemptions to chapter 239 of NRS;

(2) The impact of broad requests for public records on governmental entities;

(3) The cost, burden and time constraint on governmental entities to redact confidential information;

(4) The financial burden on a person who requests a public record;

(5) Mechanisms to resolve disputes involving requests for public records, including, without limitation, mediation and other types of alternative dispute resolution; and

(6) Methods for collecting and sharing data related to requests for public records.

(b) Make recommendations, including, without limitation:

(1) To clarify the custodianship and control of public records;

(2) To protect sensitive information while promoting government transparency;

(3) To identify situations in which access to public records should be granted or denied;

(4) For penalties to impose against governmental entities for providing delayed or incomplete responses to a request for public records;

(5) For protocols to protect personal information and criminal investigations;

(6) For a standardized fee schedule; and

(7) For mechanisms to protect governmental entities from retaliatory litigation.

3. The members of the Task Force serve without compensation.

4. Each member of the Task Force who is an officer or employee of the State or local government must be relieved from his or her duties without loss of regular compensation so that the member may prepare for and attend meetings of the Task Force and perform any work necessary to carry out the duties of the Task Force in the most timely manner practicable. A state agency or local government shall not require an officer or employee who is a member of the Task Force to make up the time the member is absent from work to carry out his or her duties as a member, and shall not require the member to take annual, vacation or compensatory time for the absence.

5. The Task Force shall, at its first meeting, elect a Chair from the members who are transparency advocates and a Vice Chair from the members who are government representatives.

6. The Task Force shall meet:

(a) Upon the call of the Chair or a majority of the members of the Task Force; and

(b) At least four times.

7. A majority of the members of the Task Force constitutes a quorum for the transaction of business, and a majority of those members present at the meeting is sufficient for any official action taken by the Task Force.

8. The Task Force may apply for and accept any gift, donation, bequest, grant or other source of money to carry out the duties of the Task Force.

9. On or before October 31, 2026, the Task Force shall prepare and submit a written report to the Director of the Legislative Counsel Bureau for transmittal to the Joint Interim Standing Committee on Government Affairs

and the Senate and Assembly Standing Committees on Government Affairs for the 84th Session of the Legislature. The report must include, without limitation, a summary of the work and recommendations of the Task Force.

10. As used in this section:

(a) "Governmental entity" has the meaning ascribed to it in NRS 239.005.

(b) "Government representative" includes, without limitation, a representative:

(1) From the Nevada Association of Counties or a county;

(2) From the Nevada League of Cities or a local government;

(3) Who is a district attorney or city attorney;

(4) From a law enforcement agency;

(5) From a school district;

(6) From the Office of the Attorney General;

(7) From a public utility that is not regulated by the Public Utilities Commission of Nevada; and

(8) From the Division of State Library, Archives and Public Records of the Department of Administration.

(c) "Transparency advocate" includes, without limitation, a representative:

(1) From the Nevada Broadcasters Association;

(2) From the Nevada Press Association;

(3) From the Nevada Open Government Coalition;

(4) From the American Civil Liberties Union;

(5) Who is an attorney that specializes in requests for public records;

(6) From the Legal Aid Center of Southern Nevada; and

(7) Who is a member of the public and has experience related to public records.

Sec. 8. **The members of the Task Force must be appointed pursuant to section 7 of this act not later than October 31, 2025.**

Sec. 9. **This act becomes effective on July 1, 2025, and expires by limitation on June 30, 2027.**