

ASSEMBLY BILL NO. 31—COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2012

Referred to Committee on Government Affairs

SUMMARY—Revises various provisions relating to public records.
(BDR 19-211)

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; revising provisions governing requests for books and records of certain agencies of the Executive Department of the State Government; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, all public books and records of a governmental entity, the
2 contents of which are not otherwise declared by law to be confidential, are required
3 to be open at all times during office hours for inspection and copying by the public.
4 (NRS 239.010) The Nevada Supreme Court has established a balancing test for a
5 governmental entity to apply to determine whether to disclose a book or record
6 when the law is silent with respect to the confidentiality of the book or record.
7 Under this balancing test, the governmental entity is required to determine whether
8 the private or governmental interest served by withholding the book or record
9 clearly outweighs the right of the public to inspect or copy the book or record.
10 (*Donrey v. Bradshaw*, 106 Nev. 630 (1990); *DR Partners v. Board of County*
11 *Comm’rs*, 116 Nev. 616 (2000); *Reno Newspapers, Inc. v. Haley*, 126 Nev. Adv.
12 *Op. 23, 234 P.3d 922* (2010); *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. Adv.
13 *Op. 79, 266 P.3d 623* (2011)) The legislative declaration for the Nevada Public
14 Records Act (chapter 239 of NRS) requires that the Act be construed liberally to
15 foster democratic principles by providing the public with access to inspect and copy
16 public books and records and that any restriction on the disclosure of public books
17 and records be construed narrowly. (NRS 239.001) Existing law imposes the
18 burden of proof on a governmental entity that withholds a record to prove, by a
19 preponderance of the evidence, that the record, or a part thereof, is confidential.
20 (NRS 239.0113)

21 **Section 1** of this bill requires the head of each agency, bureau, board,
22 commission, department, division or any other unit of the Executive Department of



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23 State Government except the Nevada System of Higher Education to designate one
24 or more employees to act as records official for the agency, whose duties relate to
25 handling requests for public books or records of the agency. **Section 1** requires the
26 State Library and Archives Administrator, in cooperation with the Attorney
27 General, to prescribe: (1) the form for requesting to inspect a copy of a public book
28 or record of such an agency; (2) the form to be used by such an agency to respond
29 to such a request; and (3) the procedures with which a records official is required to
30 comply in carrying out his or her duties. **Section 1** also requires each such agency
31 to make those forms and procedures available on any website maintained by the
32 agency on the Internet.

33 **Sections 3 and 3.5** of this bill compile all the statutory provisions that prohibit
34 the disclosure of or specifically declare public books and records confidential.

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

1 **Section 1.** Chapter 239 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

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

6 *2. A records official designated pursuant to subsection 1 shall*
7 *carry out the duties imposed pursuant to this chapter on the*
8 *agency of the Executive Department that designated him or her*
9 *with respect to a request to inspect or copy a public book or record*
10 *of the agency.*

11 *3. The State Library and Archives Administrator, pursuant to*
12 *NRS 378.255 and in cooperation with the Attorney General, shall*
13 *prescribe:*

14 *(a) The form for a request by a person to inspect or copy a*
15 *public book or record of an agency of the Executive Department*
16 *pursuant to NRS 239.0107;*

17 *(b) The form for the written notice required to be provided by*
18 *an agency of the Executive Department pursuant to paragraph (b),*
19 *(c) or (d) of subsection 1 of NRS 239.0107; and*

20 *(c) By regulation the procedures with which a records official*
21 *must comply in carrying out his or her duties.*

22 *4. Each agency of the Executive Department shall make*
23 *available on any website maintained by the agency on the Internet*
24 *or its successor the forms and procedures prescribed by the State*
25 *Library and Archives Administrator and the Attorney General*
26 *pursuant to subsection 3.*

27 **Sec. 2.** NRS 239.005 is hereby amended to read as follows:
28 239.005 As used in this chapter, unless the context otherwise
29 requires:



1 1. "Actual cost" means the direct cost related to the
2 reproduction of a public record. The term does not include a cost
3 that a governmental entity incurs regardless of whether or not a
4 person requests a copy of a particular public record.

5 2. *"Agency of the Executive Department" means an agency,*
6 *board, commission, bureau, council, department, division,*
7 *authority or other unit of the Executive Department of the State*
8 *Government. The term does not include the Nevada System of*
9 *Higher Education.*

10 3. "Committee" means the Committee to Approve Schedules
11 for the Retention and Disposition of Official State Records.

12 ~~3-1~~ 4. "Division" means the Division of State Library and
13 Archives of the Department of Administration.

14 ~~1-1~~ 5. "Governmental entity" means:

15 (a) An elected or appointed officer of this State or of a political
16 subdivision of this State;

17 (b) An institution, board, commission, bureau, council,
18 department, division, authority or other unit of government of this
19 State, *including, without limitation, an agency of the Executive*
20 *Department,* or of a political subdivision of this State;

21 (c) A university foundation, as defined in NRS 396.405; or

22 (d) An educational foundation, as defined in NRS 388.750, to
23 the extent that the foundation is dedicated to the assistance of public
24 schools.

25 ~~1-1~~ 6. "Privatization contract" means a contract executed by
26 or on behalf of a governmental entity which authorizes a private
27 entity to provide public services that are:

28 (a) Substantially similar to the services provided by the public
29 employees of the governmental entity; and

30 (b) In lieu of the services otherwise authorized or required to be
31 provided by the governmental entity.

32 **Sec. 3.** NRS 239.010 is hereby amended to read as follows:

33 239.010 1. Except as otherwise provided in ~~subsection 3-1~~
34 *this section and NRS 1.4683, 1A.110, 49.095, 62D.420, 62D.440,*
35 *62E.516, 62E.620, 62H.030, 62H.220, 62H.320, 76.160, 78.152,*
36 *80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413,*
37 *87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345,*
38 *88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270,*
39 *116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280,*
40 *119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130,*
41 *125B.140, 126.061, 126.141, 126.161, 126.163, 127.007, 127.057,*
42 *127.130, 127.140, 127.2817, 130.312, 159.044, 172.075, 172.245,*
43 *176.015, 176.0625, 176.156, 176A.630, 178.39801, 178.4715,*
44 *178.5691, 179.495, 179A.070, 179A.165, 179A.450, 200.3771,*
45 *200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392,*



1 209.3925, 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095,
2 213.131, 217.105, 217.110, 217.464, 217.475, 218E.625, 218F.150,
3 218G.130, 218G.240, 218G.350, 228.270, 228.450, 228.495,
4 228.570, 231.069, 233.190, 237.300, 239.0105, 239.0113,
5 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230,
6 239C.250, 239C.270, 240.007, 241.020, 241.030, 242.105, 244.264,
7 244.335, 250.087, 250.130, 250.140, 250.150, 268.095, 268.490,
8 268.910, 271A.105, 281.195, 281A.440, 281A.470, 281A.550,
9 284.4068, 286.110, 287.0438, 289.025, 289.080, 289.387, 293.5002,
10 293.503, 293.558, 293B.135, 293D.510, 331.110, 332.061, 332.351,
11 333.333, 333.335, 338.070, 338.1379, 338.1725, 338.1727, 348.420,
12 349.597, 349.775, 353.205, 353A.085, 353A.100, 353C.240,
13 360.247, 360.255, 360.755, 361.044, 361.610, 365.138, 366.160,
14 368A.180, 372A.080, 378.290, 378.300, 379.008, 386.655, 387.626,
15 387.631, 388.5275, 388.528, 388.5315, 388.750, 389.015, 391.035,
16 392.029, 392.129, 392.147, 392.264, 392.271, 392.456, 392.4575,
17 392.652, 392.850, 394.167, 394.1698, 394.447, 394.460, 394.465,
18 396.3295, 396.405, 396.525, 396.535, 398.403, 408.3885, 408.3886,
19 412.153, 416.070, 422.290, 422.305, 422A.320, 422A.350, 425.400,
20 427A.1236, 427A.872, 432.205, 432B.175, 432B.280, 432B.290,
21 432B.407, 432B.430, 432B.560, 433.534, 433A.360, 439.270,
22 439.840, 439B.420, 440.170, 441A.220, 441A.230, 442.330,
23 442.395, 445A.665, 445B.570, 449.209, 449.245, 449.720,
24 453.1545, 453.720, 453A.610, 453A.700, 458.055, 458.280,
25 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120,
26 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005,
27 467.137, 481.063, 482.170, 482.5536, 483.340, 483.363, 483.800,
28 484E.070, 485.316, 522.040, 534A.031, 561.285, 571.160, 574.053,
29 584.583, 584.5835, 584.655, 598.0964, 598.0979, 598.098,
30 598A.110, 599B.090, 603.070, 603A.210, 604A.710, 612.265,
31 616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425,
32 623.131, 623A.353, 624.110, 624.265, 624.327, 625.425, 625A.185,
33 628.418, 630.133, 630.30665, 630.336, 630A.555, 631.368,
34 632.121, 632.125, 632.405, 633.283, 633.301, 633.524, 634.212,
35 634.214, 634A.185, 635.158, 636.107, 637.085, 637A.315,
36 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075,
37 640A.220, 640B.730, 640C.400, 640C.745, 640C.760, 640D.190,
38 640E.340, 641.090, 641A.191, 641B.170, 641C.760, 642.524,
39 643.189, 644.446, 645.180, 645.625, 645A.050, 645A.082,
40 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135,
41 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 648.033,
42 648.197, 649.065, 649.067, 652.228, 654.110, 656.105, 661.115,
43 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.430,
44 675.380, 676A.340, 676A.370, 677.243, 679B.122, 679B.152,
45 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440,



1 **681B.260, 681B.280, 683A.0873, 685A.077, 686A.289, 686B.170,**
2 **686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480,**
3 **688C.490, 692A.117, 692C.190, 692C.420, 693A.480, 693A.615,**
4 **696B.550, 703.196, 706.1725, 704B.320, 704B.325, 710.159,**
5 **711.600 and sections 35, 38 and 41 of chapter 478, Statutes of**
6 **Nevada 2011 and unless otherwise declared by law to be**
7 **confidential,** all public books and public records of a governmental
8 entity ~~[-, the contents of which are not otherwise declared by law to~~
9 ~~be confidential,]~~ must be open at all times during office hours to
10 inspection by any person, and may be fully copied or an abstract or
11 memorandum may be prepared from those public books and public
12 records. Any such copies, abstracts or memoranda may be used to
13 supply the general public with copies, abstracts or memoranda of the
14 records or may be used in any other way to the advantage of the
15 governmental entity or of the general public. This section does not
16 supersede or in any manner affect the federal laws governing
17 copyrights or enlarge, diminish or affect in any other manner the
18 rights of a person in any written book or record which is
19 copyrighted pursuant to federal law.

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

22 3. A governmental entity that has legal custody or control of a
23 public book or record shall not deny a request made pursuant to
24 subsection 1 to inspect or copy a public book or record on the basis
25 that the requested public book or record contains information that is
26 confidential if the governmental entity can redact, delete, conceal or
27 separate the confidential information from the information included
28 in the public book or record that is not otherwise confidential.

29 4. A person may request a copy of a public record in any
30 medium in which the public record is readily available. An officer,
31 employee or agent of a governmental entity who has legal custody
32 or control of a public record shall not refuse to provide a copy of
33 that public record in a readily available medium because the officer,
34 employee or agent has already prepared or would prefer to provide
35 the copy in a different medium.

36 **Sec. 3.5.** NRS 239.010 is hereby amended to read as follows:

37 239.010 1. Except as otherwise provided in this section and
38 NRS 1.4683, 1A.110, 49.095, 62D.420, 62D.440, 62E.516,
39 62E.620, 62H.030, 62H.220, 62H.320, 76.160, 78.152, 80.113,
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44 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135,
45 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 648.033,



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9 711.600 and sections 35, 38 and 41 of chapter 478, Statutes of
10 Nevada 2011 and unless otherwise declared by law to be
11 confidential, all public books and public records of a governmental
12 entity must be open at all times during office hours to inspection by
13 any person, and may be fully copied or an abstract or memorandum
14 may be prepared from those public books and public records. Any
15 such copies, abstracts or memoranda may be used to supply the
16 general public with copies, abstracts or memoranda of the records or
17 may be used in any other way to the advantage of the governmental
18 entity or of the general public. This section does not supersede or in
19 any manner affect the federal laws governing copyrights or enlarge,
20 diminish or affect in any other manner the rights of a person in any
21 written book or record which is copyrighted pursuant to federal law.

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

24 3. A governmental entity that has legal custody or control of a
25 public book or record shall not deny a request made pursuant to
26 subsection 1 to inspect or copy a public book or record on the basis
27 that the requested public book or record contains information that is
28 confidential if the governmental entity can redact, delete, conceal or
29 separate the confidential information from the information included
30 in the public book or record that is not otherwise confidential.

31 4. A person may request a copy of a public record in any
32 medium in which the public record is readily available. An officer,
33 employee or agent of a governmental entity who has legal custody
34 or control of a public record shall not refuse to provide a copy of
35 that public record in a readily available medium because the officer,
36 employee or agent has already prepared or would prefer to provide
37 the copy in a different medium.

38 **Sec. 4.** (Deleted by amendment.)

39 **Sec. 5.** 1. This section and sections 1, 2 and 3 of this act
40 become effective on October 1, 2013.

41 2. Section 3 of this act expires by limitation on the date that the
42 provisions of The Hague Convention on the International Recovery
43 of Child Support and Other Forms of Family Maintenance are
44 ratified by the President and the United States deposits its
45 instrument of ratification.



1 3. Section 3.5 of this act becomes effective on the date that the
2 provisions of The Hague Convention on the International Recovery
3 of Child Support and Other Forms of Family Maintenance are
4 ratified by the President and the United States deposits its
5 instrument of ratification.

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