

SENATE BILL NO. 170—SENATOR SEGERBLOM

PREFILED FEBRUARY 13, 2017

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public records.
(BDR 19-560)

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; requiring copies of public books and records to be provided in an electronic medium except under certain circumstances; revising provisions governing action by governmental entities in response to requests for public books or records; revising provisions governing the fees that governmental entities are authorized to charge for a copy of a public book or record; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, all public books and public records of a state or local governmental entity, the contents of which are not 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 requires a state or local governmental entity to provide a copy of a public record in any medium in which the public record is readily available. (NRS 239.010) **Sections 1 and 3** of this bill clarify in certain existing law that, in addition to the right to inspect and copy a public book or record, members of the public have the right to receive a copy of a public book or record on request. **Section 2** of this bill specifically includes digital and electronic documents in the term "official state record" in the existing law governing public books and records. **Section 4** of this bill requires a governmental entity to provide a copy of a requested public book or record in an electronic medium unless the public book or record is not readily available in an electronic medium or the copy was requested in a different medium in which the public book or record is readily available.

Under existing law, if a person requests access to a public book or record or a copy of a public book or record which is not readily available, the governmental entity is required to provide access to the public book or record or a copy of the public book or record not later than the end of the fifth business day after the



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request was received. If access to the public book or record or a copy of the public book or record cannot be provided not later than the end of the fifth business day after the request was made, the governmental entity is required to provide notice of that fact to the person who made the request and provide a date and time after which the public book or record or the copy of the public book or record will be available. (NRS 239.0107)

Section 5 of this bill requires a governmental entity, if access to a public book or record or a copy of a public book or record cannot be provided within 5 business days after the request was made, to provide access to the public book or record or a copy of the public book or record within 15 business days after the request was received with two exceptions. First, if the governmental entity provides additional notice to the requester that the governmental entity is unable to meet the deadline of 15 business days, the governmental entity is required to provide access or a copy of the public book or record within 35 business days after the request was received. Second, if the governmental entity provides additional notice to the requester that the request requires the governmental entity to make extraordinary use of its personnel or technological resources, the governmental entity is required to include in the notice a date and time after which the public book or record will reasonably be available. If a governmental entity fails to comply with these deadlines, **section 6** of this bill authorizes the person who requested access to the public book or record or a copy thereof to apply to a district court for an order requiring the governmental entity to provide access to or a copy of the public book or record.

Section 7 of this bill prohibits a governmental entity from charging a fee for providing a copy of a public book or record if the request is for an electronic copy of the public book or record or the request is made for noncommercial purposes, unless the governmental entity provides written notice that the request requires the governmental entity to make extraordinary use of its personnel or technological resources. If the request requires the governmental entity to make extraordinary use of its personnel or technological resources, **section 8** of this bill authorizes the governmental entity to charge the fee in existing law for such extraordinary use of not more than 50 cents per page for commercial requests and authorizes a fee of not more than 10 cents per page for requests that are not commercial. **Section 7** makes a conforming change to the fee charged for providing a copy of a public book or record in the custody of a governmental law library.

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 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 access to inspect , ~~and~~ copy *or receive a copy of, including, without limitation, by electronic means*, 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 *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. 2. 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 of a public record. 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. *"Commercial request" means a request to inspect, copy or receive a copy of a public book or record made by a person who intends to use part or all of the public book or record for the sale, resale, solicitation or advertisement of a product or service.*

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

~~14-~~ 5. "Division" means the Division of State Library, Archives and Public Records of the Department of Administration.

~~15-~~ 6. "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; or

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

~~16-~~ 7. "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) *Digital and electronic documents;*



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

~~(d)~~ (e) 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.

~~(f)~~ 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.

9. *"Request for the public benefit" means any request to inspect, copy or receive a copy of a public book or record that is not a commercial request.*

Sec. 3. 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, ~~to~~ 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, ~~to~~ 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. 4. 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, 41.071, 49.095, 62D.420, 62D.440,



1 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320,
2 75A.100, 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246,
3 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355,
4 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730,
5 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260,
6 119.265, 119.267, 119.280, 119A.280, 119A.653, 119B.370,
7 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161,
8 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817,
9 130.312, 130.712, 136.050, 159.044, 172.075, 172.245, 176.015,
10 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715,
11 178.5691, 179.495, 179A.070, 179A.165, 179A.450, 179D.160,
12 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651,
13 209.392, 209.3925, 209.419, 209.521, 211A.140, 213.010, 213.040,
14 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218A.350,
15 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 228.270,
16 228.450, 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300,
17 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140,
18 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020,
19 241.030, 241.039, 242.105, 244.264, 244.335, 250.087, 250.130,
20 250.140, 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195,
21 281A.350, 281A.440, 281A.550, 284.4068, 286.110, 287.0438,
22 289.025, 289.080, 289.387, 289.830, 293.5002, 293.503, 293.558,
23 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335,
24 338.070, 338.1379, 338.16925, 338.1725, 338.1727, 348.420,
25 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100,
26 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.610,
27 365.138, 366.160, 368A.180, 372A.080, 378.290, 378.300, 379.008,
28 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259,
29 388.501, 388.503, 388.513, 388.750, 391.035, 392.029, 392.147,
30 392.264, 392.271, 392.850, 394.167, 394.1698, 394.447, 394.460,
31 394.465, 396.3295, 396.405, 396.525, 396.535, 398.403, 408.3885,
32 408.3886, 408.3888, 408.5484, 412.153, 416.070, 422.2749,
33 422.305, 422A.342, 422A.350, 425.400, 427A.1236, 427A.872,
34 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430,
35 432B.560, 433.534, 433A.360, 439.840, 439B.420, 440.170,
36 441A.195, 441A.220, 441A.230, 442.330, 442.395, 445A.665,
37 445B.570, 449.209, 449.245, 449.720, 450.140, 453.164, 453.720,
38 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866,
39 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240,
40 463.3403, 463.3407, 463.790, 467.1005, 480.365, 481.063, 482.170,
41 482.5536, 483.340, 483.363, 483.575, 483.659, 483.800, 484E.070,
42 485.316, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.655,
43 587.877, 598.0964, 598.098, 598A.110, 599B.090, 603.070,
44 603A.210, 604A.710, 612.265, 616B.012, 616B.015, 616B.315,
45 616B.350, 618.341, 618.425, 622.310, 623.131, 623A.137, 624.110,



1 624.265, 624.327, 625.425, 625A.185, 628.418, 628B.230,
2 628B.760, 629.047, 629.069, 630.133, 630.30665, 630.336,
3 630A.555, 631.368, 632.121, 632.125, 632.405, 633.283, 633.301,
4 633.524, 634.055, 634.214, 634A.185, 635.158, 636.107, 637.085,
5 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075,
6 640A.220, 640B.730, 640C.400, 640C.745, 640C.760, 640D.190,
7 640E.340, 641.090, 641A.191, 641B.170, 641C.760, 642.524,
8 643.189, 644.446, 645.180, 645.625, 645A.050, 645A.082,
9 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135,
10 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 647.0945,
11 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110,
12 656.105, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310,
13 671.170, 673.430, 675.380, 676A.340, 676A.370, 677.243,
14 679B.122, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690,
15 680A.270, 681A.440, 681B.260, 681B.410, 681B.540, 683A.0873,
16 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115,
17 687C.010, 688C.230, 688C.480, 688C.490, 692A.117, 692C.190,
18 692C.3536, 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615,
19 696B.550, 703.196, 704B.320, 704B.325, 706.1725, 706A.230,
20 710.159, 711.600, sections 35, 38 and 41 of chapter 478, Statutes of
21 Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013
22 and unless otherwise declared by law to be confidential, all public
23 books and public records of a governmental entity must be open at
24 all times during office hours to inspection by any person, and may
25 be fully copied or an abstract or memorandum may be prepared
26 from those public books and public records. Any such copies,
27 abstracts or memoranda may be used to supply the general public
28 with copies, abstracts or memoranda of the records or may be used
29 in any other way to the advantage of the governmental entity or of
30 the general public. This section does not supersede or in any manner
31 affect the federal laws governing copyrights or enlarge, diminish or
32 affect in any other manner the rights of a person in any written book
33 or 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 governmental entity shall provide a copy of a public book*
45 *or record in an electronic medium unless the public book or*



1 *record is not readily available in an electronic medium or the copy*
2 *was requested in a different medium in which the public book or*
3 *record is readily available.* A person may request a copy of a public
4 *book or* record in any medium in which the public *book or* record is
5 readily available. An officer, employee or agent of a governmental
6 entity who has legal custody or control of a public *book or* record:

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

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

15 **Sec. 5.** NRS 239.0107 is hereby amended to read as follows:

16 239.0107 1. Not later than the end of the fifth business day
17 after the date on which the person who has legal custody or control
18 of a public book or record of a governmental entity receives a
19 written or oral request from a person to inspect, copy or receive a
20 copy of the public book or record, a governmental entity shall do
21 one of the following, as applicable:

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

26 (b) If the governmental entity does not have legal custody or
27 control of the public book or record, provide to the person, in
28 writing:

29 (1) Notice of that fact; and

30 (2) The name and address of the governmental entity that has
31 legal custody or control of the public book or record, if known.

32 (c) Except as otherwise provided in *this paragraph and*
33 paragraph (d), if the governmental entity is unable to make the
34 public book or record available by the end of the fifth business day
35 after the date on which the person who has legal custody or control
36 of the public book or record received the request, provide to the
37 person ~~[(1) Notice]~~ *who made the request*, in writing ~~[(2) A]~~ *the*

38 ~~[(1) Notice]~~ *notice* of that fact ~~[(2) A]~~ *and*
39 ~~[(2) A]~~ *a* date and time after which the public book or record
40 will be available for the person to inspect or copy or after which a
41 copy of the public book or record will be available to the person ~~[(If~~
42 ~~the public book or record or the copy of the public book or record is~~
43 ~~not available to the person by that date and time, the person may~~
44 ~~inquire regarding the status of the request.]~~ *, which must be by the*
45 *end of the 15th business day after the date on which the person*



1 *who has legal custody or control of the public book or record*
2 *received the request, unless the governmental entity provides*
3 *additional written notice to the person who made the request that:*

4 (1) *Except as otherwise provided in subparagraph (2), the*
5 *governmental entity is unable to make the public book or record*
6 *available by the end of the 15th business day after the date on*
7 *which the person who has legal custody or control of the public*
8 *book or record received the request. If the governmental entity*
9 *provides such notice, the governmental entity shall make the*
10 *public book or record available by the end of the 35th business day*
11 *after the date on which the person who has legal custody or*
12 *control of the public book or record received the request.*

13 (2) *The request requires the governmental entity to make*
14 *extraordinary use of its personnel or technological resources for*
15 *which the additional fee in NRS 239.055 is authorized to be*
16 *charged. If the governmental entity provides such notice, the*
17 *governmental entity shall include in the notice a date and time*
18 *after which the public book or record will reasonably be available*
19 *for the person to inspect or copy or after which a copy of the*
20 *public book or record will reasonably be available to the person.*

21 (d) If the governmental entity must deny the person's request
22 because the public book or record, or a part thereof, is confidential,
23 provide to the person, in writing:

24 (1) Notice of that fact; and

25 (2) A citation to the specific statute or other legal authority
26 that makes the public book or record, or a part thereof, confidential.

27 2. If a public book or record of a governmental entity is readily
28 available for inspection or copying, the person who has legal
29 custody or control of the public book or record shall allow a person
30 who has submitted a request to inspect, copy or receive a copy of ~~the~~
31 *the* public book or record.

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

33 239.011 1. If a request for inspection, copying or copies of a
34 public book or record open to inspection and copying is denied ~~H~~ *or*
35 *if a governmental entity fails to make a public book or record*
36 *available by the applicable deadline prescribed in paragraph (c) of*
37 *subsection 1 of NRS 239.0107*, the requester may apply to the
38 district court in the county in which the book or record is located for
39 an order:

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

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

44 ➡ as applicable.



2. 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 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.

Sec. 7. NRS 239.052 is hereby amended to read as follows:

239.052 1. Except as otherwise provided in this subsection, a governmental entity may charge a fee for providing a copy of a public **book or** record ~~if~~ *in response to a commercial request*. Such a fee must not exceed the actual cost to the governmental entity to provide the copy of the public **book or** record unless a specific statute or regulation sets a fee that the governmental entity must charge for the copy. A governmental entity shall not charge a fee for providing a copy of a public **book or** record if ~~it~~ :

(a) A specific statute or regulation requires the governmental entity to provide the copy without charge ~~if~~ ; or

(b) *The request is a request for the public benefit or a request for an electronic copy of a public book or record, unless the governmental entity provides written notice to the person who made the request that the request requires the governmental entity to make extraordinary use of its personnel or technological resources for which the additional fee authorized in NRS 239.055 may be charged.*

2. A governmental entity may waive all or a portion of a charge or fee for a copy of a public **book or** record if the governmental entity:

(a) Adopts a written policy to waive all or a portion of a charge or fee for a copy of a public **book or** record; and

(b) Posts, in a conspicuous place at each office in which the governmental entity provides copies of public **books and** records, a legible sign or notice that states the terms of the policy.

3. A governmental entity shall prepare and maintain a list of the fees that it charges at each office in which the governmental entity provides copies of public **books and** records. A governmental entity shall post, in a conspicuous place at each office in which the governmental entity provides copies of public **books and** records, a legible sign or notice which states:

(a) The fee that the governmental entity charges to provide a copy of a public **book or** record; or

(b) The location at which a list of each fee that the governmental entity charges to provide a copy of a public **book or** record may be obtained.

4. The fee for providing a copy of a public book or record in the custody of a law library operated by a governmental entity must



not exceed 50 cents per page ~~H~~ *for a commercial request or 10 cents per page for a request for the public benefit.*

Sec. 8. NRS 239.055 is hereby amended to read as follows:

239.055 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 *book or* 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 *for such extraordinary use* not to exceed 50 cents per page ~~for such extraordinary use.~~ *for a commercial request or 10 cents per page for a request for the public benefit.* 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.

