

CHAPTER 435

AN ACT relating to public records; requiring a governmental entity to take certain action in response to a written request to inspect or copy a public book or record; making various changes regarding the confidentiality of records; authorizing a person to apply to a district court for an order to allow the person to inspect or copy certain confidential public books or records that have been in the custody of a governmental entity for a certain period; and providing other matters properly relating thereto.

[Approved: June 13, 2007]

Legislative Counsel's Digest:

Under existing law, all public books and records of a governmental entity, the contents of which are not otherwise declared by law to be confidential or which the governmental entity determines pursuant to a balancing test must not be disclosed, must be open at all times during office hours for inspection and copying. (NRS 239.010; *Donrey v. Bradshaw*, 106 Nev. 630 (1990))

Section 4 of this bill provides that if a governmental entity receives a written request to inspect or copy a public book or record, the governmental entity must, within 5 business days after the date on which the person who has legal custody or control of the book or record has received the request: (1) allow the requester to inspect or copy the public book or record; (2) if the governmental entity does not have legal custody or control of the public book or record, notify the requester of that fact and where, if known, the public book or record is located; (3) if the governmental entity cannot make the public book or record available within 5 business days, notify the requester of the date and time when the book or record will be available; or (4) if the public book or record is confidential, notify the requester of that fact in writing, including a citation to the legal authority that makes the book or record confidential.

With certain exceptions, **section 6** of this bill provides that, notwithstanding any provision of law that has declared a public book or record, or a part thereof, to be confidential, once a public book or record has been in the legal custody or control of one or more governmental entities for a period of at least 30 years, a person may apply to the appropriate district court for an order allowing him to inspect or copy the public book or record. If the public book or record pertains to a natural person, a person may not apply for such a court order until 30 years after the book or record has been in the legal custody or control of a governmental entity or the death of the person to whom the book or record pertains, whichever is later. **Section 218** of this bill clarifies that a person may apply for such an order on or after October 1, 2007, the effective date of the bill, to inspect or copy public books or records that already meet the conditions set forth in **section 6**.

Section 5 of this bill provides that in any judicial or administrative proceeding in which the confidentiality of a public book or record is at issue and the governmental entity that has legal custody or control of the public book or record asserts that the public book or record is confidential, the governmental entity has the burden of proving such confidentiality.

Section 8 of this bill provides that a governmental entity shall not deny a request to inspect or copy a public book or record because the public book or record contains information that is confidential if the governmental entity can redact the confidential information.

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 to 6, inclusive, of this act.

Sec. 2. *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 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; and***
- 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.***

Sec. 3. (Deleted by amendment.)

Sec. 4. *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 request*

from a person to inspect or copy the public book or record, a governmental entity shall do one of the following, as applicable:

(a) Allow the person to inspect or copy the public book or record.

(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 fact; 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 to the person, in writing:

(1) Notice of that fact; and

(2) A date and time after which the public book or record will be available for the person to inspect or copy. If the public book or record is not available to the person to inspect or copy by that date and time, the person may inquire regarding the status of the request.

(d) If the governmental entity must deny the person's request to inspect or copy the public book or record 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. The provisions of this section must not be construed to prohibit an oral request to inspect or copy a public book or record.

Sec. 5. *Except as otherwise provided in section 6 of this act, if:*

1. The confidentiality of a public book or record, or a part thereof, is at issue in a judicial or administrative proceeding; and

2. The governmental entity that has legal custody or control of the public book or record asserts that the public book or record, or a part thereof, is confidential,

↳ the governmental entity has the burden of proving by a preponderance of the evidence that the public book or record, or a part thereof, is confidential.

Sec. 6. *1. Except as otherwise provided in this subsection and subsection 3, notwithstanding any provision of law that has declared a public book or record, or a part thereof, to be confidential, if a public book or record has been in the legal custody or control of one or more governmental entities for at least 30 years, a person may apply to the district court of the county in which the governmental entity that currently has legal custody or control of the public book or record is located for an order directing that governmental entity to allow the person to inspect or copy the public book or record, or a part thereof. If the public book or record pertains to a natural person, a person may not apply for an order pursuant to this subsection until the public book or record has been in the legal custody or control of one or more governmental entities for at least 30 years or until the death of the person to whom the public book or record pertains, whichever is later.*

2. There is a rebuttable presumption that a person who applies for an order as described in subsection 1 is entitled to inspect or copy the public book or record, or a part thereof, that he seeks to inspect or copy.

3. The provisions of subsection 1 do not apply to any book or record:

(a) Declared confidential pursuant to subsection 4 of NRS 463.120.

(b) Containing personal information pertaining to a victim of crime that has been declared by law to be confidential.

Sec. 7. (Deleted by amendment.)

Sec. 8. **NRS 239.010** is hereby amended to read as follows:

239.010 1. ~~[(A)]~~ *Except as otherwise provided in subsection 2, all* public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person, and may be fully

copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

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

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

~~3-4~~ 4. A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has *legal custody or control* of a public record shall not refuse to provide a copy of that public record in a readily available medium because he has already prepared or would prefer to provide the copy in a different medium.

Sec. 9. NRS 239.0105 is hereby amended to read as follows:

239.0105 1. Records of a local governmental entity are confidential and not public books or records within the meaning of NRS 239.010 if:

(a) The records contain the name, address, telephone number or other identifying information of a natural person; and

(b) The natural person whose name, address, telephone number or other identifying information is contained in the records provided such information to the local governmental entity for the purpose of:

(1) Registering with or applying to the local governmental entity for the use of any recreational facility or portion thereof that the local governmental entity offers for use through the acceptance of reservations; or

(2) On his own behalf or on behalf of a minor child, registering or enrolling with or applying to the local governmental entity for participation in an instructional or recreational activity or event conducted, operated or sponsored by the local governmental entity.

2. The records described in subsection 1 must be disclosed by a local governmental entity only pursuant to:

(a) A subpoena or court order, lawfully issued, requiring the disclosure of such records;

(b) An affidavit of an attorney setting forth that the disclosure of such records is relevant to an investigation in anticipation of litigation; ~~to~~

(c) A request by a reporter or editorial employee for the disclosure of such records, if the reporter or editorial employee is employed by or affiliated with a newspaper, press association or commercially operated, federally licensed radio or television station ~~to~~; or

(d) The provisions of section 6 of this act.

3. Except as otherwise provided by specific statute or federal law, a natural person shall not provide, and a local governmental entity shall not require, the social security number of any natural person for the purposes described in subparagraphs (1) and (2) of paragraph (b) of subsection 1.

4. As used in this section, unless the context otherwise requires, "local governmental entity" has the meaning ascribed to it in NRS 239.121.

Sec. 10. (Deleted by amendment.)

Sec. 11. NRS 239C.140 is hereby amended to read as follows:

239C.140 1. Except as otherwise provided in subsections 2 and 3, the Commission shall comply with the provisions of chapter 241 of NRS and all meetings of the Commission must be conducted in accordance with that chapter.

2. The Commission may hold a closed meeting to:

(a) Receive security briefings;

(b) Discuss procedures for responding to acts of terrorism and related emergencies; or

(c) Discuss deficiencies in security with respect to public services, public facilities and infrastructure,

↳ if the Commission determines, upon a majority vote of its members, that the public disclosure of such matters would be likely to compromise, jeopardize or otherwise threaten the safety of the public.

3. ~~[A]~~ *Except as otherwise provided in section 6 of this act, all* information and materials received or prepared by the Commission during a meeting closed pursuant to subsection 2 and all minutes and audiovisual or electronic reproductions of such a meeting are confidential, not subject to subpoena or discovery, and not subject to inspection by the general public.

Sec. 12. NRS 239C.250 is hereby amended to read as follows:

239C.250 1. Each political subdivision shall adopt and maintain a response plan. Each new or revised plan must be filed within 10 days after adoption or revision with:

- (a) The Division; and
- (b) Each response agency that provides services to the political subdivision.

2. The response plan required by subsection 1 must include:

- (a) A drawing or map of the layout and boundaries of the political subdivision;
- (b) A drawing or description of the streets and highways within, and leading into and out of, the political subdivision, including any approved routes for evacuation;
- (c) The location and inventory of emergency response equipment and resources within the political subdivision;
- (d) The location of any unusually hazardous substances within the political subdivision;
- (e) A telephone number that may be used by residents of the political subdivision to receive information and to make reports with respect to an act of terrorism or related emergency;
- (f) The location of one or more emergency response command posts that are located within the political subdivision;
- (g) A depiction of the location of each police station, sheriff's office and fire station that is located within the political subdivision;
- (h) Plans for the continuity of the operations and services of the political subdivision, which plans must be consistent with the provisions of NRS 239C.260; and
- (i) Any other information that the Commission may determine to be relevant.

3. ~~[A]~~ *Except as otherwise provided in section 6 of this act, a* plan filed pursuant to the requirements of this section, including any revisions adopted thereto, is confidential and must be securely maintained by the entities with whom it is filed pursuant to subsection 1. An officer, employee or other person to whom the plan is entrusted by the entity with whom it is filed shall not disclose the contents of such a plan except:

- (a) Upon the lawful order of a court of competent jurisdiction; ~~[or]~~
- (b) As is reasonably necessary in the case of an act of terrorism or related emergency ~~[H]~~; *or*
- (c) *Pursuant to the provisions of section 6 of this act.*

Sec. 13. NRS 239C.270 is hereby amended to read as follows:

239C.270 1. Each utility shall:

- (a) Conduct a vulnerability assessment in accordance with the requirements of the federal and regional agencies that regulate the utility; and
- (b) Prepare and maintain an emergency response plan in accordance with the requirements of the federal and regional agencies that regulate the utility.

2. Each utility shall:

- (a) As soon as practicable but not later than December 31, 2003, submit its vulnerability assessment and emergency response plan to the Division; and
- (b) At least once each year thereafter, review its vulnerability assessment and emergency response plan and, as soon as practicable after its review is completed but not later than December 31 of each year, submit the results of its review and any additions or modifications to its emergency response plan to the Division.

3. ~~[Each]~~ *Except as otherwise provided in section 6 of this act, each* vulnerability assessment and emergency response plan of a utility and any other information concerning a utility that is necessary to carry out the provisions of this section is confidential and must be securely maintained by each person or entity that has possession, custody or control of the information.

4. A person shall not disclose such information, except:

- (a) Upon the lawful order of a court of competent jurisdiction;
- (b) As is reasonably necessary to carry out the provisions of this section or the operations of the utility, as determined by the Division; ~~[or]~~
- (c) As is reasonably necessary in the case of an emergency involving public health or safety, as determined by the Division ~~[H]~~; *or*
- (d) *Pursuant to the provisions of section 6 of this act.*

5. If a person knowingly and unlawfully discloses such information or assists, solicits or conspires with another person to disclose such information, the person is guilty of:

(a) A gross misdemeanor; or

(b) A category C felony and shall be punished as provided in NRS 193.130 if the person acted with the intent to:

(1) Commit, cause, aid, further or conceal, or attempt to commit, cause, aid, further or conceal, any unlawful act involving terrorism or sabotage; or

(2) Assist, solicit or conspire with another person to commit, cause, aid, further or conceal any unlawful act involving terrorism or sabotage.