

OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

NEVADA

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

OPEN GOVERNMENT GUIDE

OPEN RECORDS AND MEETINGS LAWS IN

NEVADA

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NEVADA

**SIXTH EDITION
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Previously Titled
Tapping Officials' Secrets

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Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

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FOREWORD

Open Records. As early as 1906, the Nevada Supreme Court recognized a common-law right to inspect and copy public records.

However, the recognition of the common-law right was subject to the requirement that the requester have an “interest” in the matters to which the records relate. *State v. Grimes*, 29 Nev. 50, 84 P. 1064 (1906).

In 1911, the Nevada Legislature passed an open records act. The Nevada Supreme Court has interpreted the act as enlarging the common law right of access to public records. *Mulford v. Davey*, 64 Nev. 506, 509, 186 P.2d 360 (1947).

The current text of the Act (little changed from the original 1911 statute) broadly declares that “all public books and public records” of a public agency, the contents of which are not otherwise declared by law to be confidential, must be open to inspection by any person. N.R.S. 239.010.

The purpose of the Public Records Act is to ensure the accountability of the government to the public by facilitating public access to vital information about governmental activities. *DR Partners v. Board of County Comm’rs of Clark County*, 6 P.3D 465 (2000).

The obvious limitation on the applicability of the Act comes from the language: “not otherwise declared by law to be confidential.” Over the years, the Nevada legislature has declared different types of records to be confidential in whole or in part. Since these exemptions are not contained in the Act itself, but are scattered throughout Nevada law, determining whether a specific public record is disclosable almost always requires extensive research in the statutes, the Nevada Administrative Code and Opinions of the State Attorney General.

To complicate matters further, a second, less-obvious limitation on the applicability of the Act results from the fact that the terms “public books” and “public records” are not defined by the Act. The Nevada Attorney General has determined that a balancing test must be applied to determine whether a record in the possession of a public agency is a “public record” subject to the provisions of the Act. In 1990, the Nevada Supreme Court implicitly adopted the balancing test approach. *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990).

The *Donrey* court never explicitly held that a balancing test should be applied in every instance to determine when a record is public. The *Donrey* court used a balancing test to determine that criminal investigative information, already the subject of an ambiguous statutory provision, may be disclosed when public policy considerations so merit.

In a post-*Donrey* case mentioning the Act, the Nevada Supreme Court did not mention a balancing test, but instead bluntly stated that “all records submitted to the Department [of Human Resources] are public unless ‘otherwise declared by law to be confidential.’” *Neal v. Griepentrog*, 108 Nev. 660, 665, 837 P.2d 432 (1992).

A flaw in the Act is the lack of an effective enforcement mechanism, particularly post-*Donrey*. Agencies often adopt the balancing test, which requires expensive, and often protracted, litigation, to secure records.

Open Meetings. The Nevada legislature adopted the initial version of the state’s Sunshine Law in 1960. As a result of significant amendments in 1977, Nevada’s Open Meeting Law became one of the nation’s most stringent.

The Nevada legislature’s attitude toward open government is best expressed in the opening section of the law: “In enacting this chapter, the legislature finds and declares that all public bodies exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.” N.R.S. 241.010.

The Attorney General is the chief enforcement officer for violations of the law and takes an aggressive approach to open government. The Attorney General publishes the respected Nevada Open Meeting Law Manual (Tenth Edition, published in December 2005, hereinafter A.G.O. Manual). The Manual is an excellent resource for both public agencies and the public and is available online at <http://ag.state.nv.us/oml/oml.html> along with open meeting law opinions and other resources.

Unlike the Open Records Act, there has been considerable litigation involving the Open Meeting Law.

In 2000, the Court addressed new technological means of communications when it held that a quorum of a public body using “serial electronic communication to deliberate toward a decision or to make a decision on any matter over which the public body has supervision, control, jurisdiction or advisory power violates the Open Meeting Law.” *Del Papa v. Board Of Regents Of The University and Community College System Of Nevada*, 956 P.2d 770, 114 Nev. 388, 956 P.2d 770 (2000).

This outline updates the earlier editions by Hon. James W. Hardesty, Kevin D. Doty, Esq. and Dominic Gentile, Esq. whose efforts are greatly appreciated.

Open Records

I. STATUTE -- BASIC APPLICATION

A. Who can request records?

1. Status of requestor.

“Any person” may request records under the Act.

2. Purpose of request.

In general, the motive of the requester does not affect the requester’s right to receive records. However, reporters are entitled to special access to criminal history records “for communication to the public.” N.R.S. 179A.100(5)(l).

3. Use of records.

The Act does not restrict the requester’s use of the information provided.

B. Whose records are and are not subject to the act?

1. Executive branch.

The Act applies to any “governmental entity.” N.R.S. 239.010(1). A governmental entity is defined as 1) an “elected or appointed officer” or 2) an “institution, board, commission, bureau, council, department, division, authority or other unit of government,” 3) a university foundation, or 4) an educational foundation. N.R.S. 239.005 (2001).

2. Legislative bodies.

The statute does not distinguish legislative bodies from any other governmental entity. See N.R.S. 239.005.

3. Courts.

The statute does not distinguish courts from any other governmental entity. See N.R.S. 239.005. But see, *In re Petition for a Writ of Prohibition or in the Alternative For a Writ of Mandamus, The Honorable Jerry Carr Whitehead v. Nevada Commission on Judicial Discipline*, 111 Nev. 70, 893 P2d 866 (1995) at 888.

4. Nongovernmental bodies.

a. Bodies receiving public funds or benefits.

The Act applies to educational foundations, university foundations and quasi-municipal corporations. Although the term “quasi-municipal corporation” is not defined, it may be included in the Act as “a political subdivision of the state” or “other unit of government.” See N.R.S. 239.005.

b. Bodies whose members include governmental officials.

The Act applies to educational foundations, university foundations and quasi-municipal corporations. Although the term “quasi-municipal corporation” is not defined, it may be included in the Act as “a political subdivision of the state” or “other unit of government.” See N.R.S. 239.005.

5. Multi-state or regional bodies.

Multistate and regional bodies are presumably “governmental entities,” and are therefore covered by the Act.

6. Advisory boards and commissions, quasi-governmental entities.

The Act applies to educational foundations, university foundations and quasi-municipal corporations. Although the term “quasi-municipal corporation” is not defined, it may be included in the Act as “a political subdivision of the state” or “other unit of government.” See N.R.S. 239.005. University foundations pursuant to NRS 396.405 are required to make their records open pursuant to NRS 239.010.

7. Others.

Case law has not shed any additional light on the scope of the term “governmental entity.” In *City of Reno v. Reno Gazette Journal*, 19 Nev 55, 63 P3d 1147 (2003) the Nevada Supreme Court held that records confidential under federal law did not lose their character as such in the hands of a state agency.

C. What records are and are not subject to the act?

1. What kind of records are covered?

“All public books and public records. . .” are subject to the Act. However, the Act does not define the terms “public books” and “public records.” Relying upon the Nevada Supreme Court’s decision in *Donrey v. Bradshaw*, the Nevada Attorney General’s office has determined: “Because the expressions ‘public books’ and ‘public records’ are not defined in the statutes, a balancing test is applied by the courts, as well as this office, to determine whether a particular type of record is public.” Nev. Op. Att’y Gen. 94-06 (April 7, 1994).

2. What physical form of records are covered?

The physical forms of the records, i.e., tapes, photographs and objects, are not delineated in the Act. The Act does extend to copies, abstracts or memoranda of original records. “A person may request a copy of a public record in any medium in which the public record is readily available.” N.R.S. 239.010(3).

3. Are certain records available for inspection but not copying?

The requester has a right not only to “inspect” but also to “copy” the records.

D. Fee provisions or practices.

1. Levels or limitations on fees.

A governmental entity may charge a fee for providing a copy of a public record. The fee cannot exceed the actual cost to the governmental entity except as set by statute. N.R.S. 239.052. Some agencies have set a fee of \$1 per page. Information obtained from a geographic system may be charged additional fees. N.R.S. 239.054.

2. Particular fee specifications or provisions.

a. Search.

There is no statutory provision for search fees.

b. Duplication.

A governmental entity may charge a fee for providing a copy of a public record. The fee cannot exceed the actual cost to the governmental entity except as set by statute. The entity may not charge a fee if the statute requires the entity to provide the copy free of charge. N.R.S. 239.052.

c. Other.

Nevada Open Records Act requires the governmental entity to maintain a list of fees it charges for providing copies of public records in each office in which it provides copies of public records. Each office must post in a conspicuous place a notice of the fees it charges or a location in which a list of fees may be found. N.R.S. 239.052(3).

3. Provisions for fee waivers.

Fee waivers and partial fee waivers are available at the discretion of the governmental entity if the entity adopts a written policy that waives all or a portion of the charges for copies of public records and the entity posts notice detailing the terms of the policy in a conspicuous area. N.R.S. 239.052(2).

4. Requirements or prohibitions regarding advance payment.

Advance payment requirements vary depending upon the particular public agency involved.

5. Have agencies imposed prohibitive fees to discourage requesters?

Yes. In particular, some public agencies have attempted to charge inflated search fees for retrieving information from computer databases.

E. Who enforces the act?

The Act is enforced by requesters through often expensive private litigation.

1. Attorney General's role.

The Attorney General issues advisory opinions but takes a limited role in enforcing the Act.

2. Availability of an ombudsman.

None.

3. Commission or agency enforcement.

None.

F. Are there sanctions for noncompliance?

There are no criminal sanctions for violations of the Open Records Act.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open records statute.

1. Character of exemptions.

The act declares simply "the contents of which are not otherwise declared by law to be confidential. . ." as the general exemption.

2. Discussion of each exemption.

The Act itself contains only one specific exemption. Pursuant to N.R.S. 239.013, library records identifying the user of materials are confidential and may be disclosed only upon a court order.

B. Other statutory exclusions.

The Nevada Legislature has created exemptions to the Act either designating records to be confidential or not subject to public inspection. These exemptions are scattered throughout the Nevada Revised Statutes with no cross-references to the Act. Exceptions are also found in the Nevada Administrative Code.

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

In *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990), the Nevada Supreme Court grafted a common law balancing test onto the otherwise broad applicability of the Act. If a particular record is not expressly declared open by statute, a balancing test must be applied to determine if the record must be disclosed. This test begins with the presumption that the record is public and should be disclosed. The test weighs the public's interest in the document versus any privacy or confidentiality interests asserted by the keeper of the record. The balancing test is particularly troublesome since the public agency keeping the record applies the balancing test to determine whether the record should be disclosed. An agency's incorrect determination that a record should not be disclosed may only be overcome by filing suit against the agency.

In 2000, the Nevada Supreme Court held that the public official or agency must establish the existence of a privilege as to public records when the refusal to disclose is based on confidentiality. *DR Partners v. Board of County Comm'rs of Clarke County*, 6 P.3d 465 (2000).

D. Are segregable portions of records containing exempt material available?

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.

E. Homeland Security Measures.

NRS Chapter 239 *et. seq.* deals with Homeland Security measures. The Nevada Homeland Security Commission is charged with proposing goals and programs to prevent terrorism.

NRS 239C.220 allows a "reporter or editorial employee who is employed by or affiliated with a newspaper, press association or commercially operated and federally licensed radio or television station and who uses the restricted document in the course of such employment or affiliation:" to copy a restricted document.

III. STATE LAW ON ELECTRONIC RECORDS

The Act does not address electronic records. However, the requester may ask for a copy of a public record in any medium in which the record is readily available. The custodian is not permitted to deny disclosure on the basis that he "has already prepared or would prefer to provide a copy in a different medium." N.R.S. 239.010(3).

A. Can the requester choose a format for receiving records?

Since the Act does not specifically provide for different formats, such requests must be negotiated with the public agency from which the records are requested.

B. Can the requester obtain a customized search of computer databases to fit particular needs?

Presumably, a public agency must run whatever search is necessary to retrieve the public records requested. However, some public agencies have attempted to use the failings of their own computer systems as excuses for failing to provide access to public records. Often agencies attempt to impose significant fees for reproducing records in the requested format.

C. Does the existence of information in electronic format affect its openness?

No. The Act makes no reference to information in electronic format and there is no case law to indicate that electronic information should be treated differently.

D. How is e-mail treated?

E-mail is not addressed in the Act and has not been addressed by any case law or Attorney General opinion but would presumably be a public record.

1. Does e-mail constitute a record?

Presumably open. There is no statutory or case law addressing the issue

2. Public matter on government e-mail or government hardware

There is no statutory or case law addressing the issue

3. Private matter on government e-mail or government hardware

There is no statutory or case law addressing the issue

4. Public matter on private e-mail

There is no statutory or case law addressing the issue

5. Private matter on private e-mail

There is no statutory or case law addressing the issue

E. How are text messages and instant messages treated?

There is no statutory or case law addressing the issue

1. Do text messages and/or instant messages constitute a record?

There is no statutory or case law addressing the issue

2. Public matter message on government hardware.

There is no statutory or case law addressing the issue

3. Private matter message on government hardware.

There is no statutory or case law addressing the issue

4. Public matter message on private hardware.

There is no statutory or case law addressing the issue

5. Private matter message on private hardware.

There is no statutory or case law addressing the issue

F. How are social media postings and messages treated?

There is no statutory or case law addressing the issue

G. How are online discussion board posts treated?

There is no statutory or case law addressing the issue

H. Computer software

There is no statutory or case law addressing the issue

1. Is software public?

There is no statutory or case law addressing the issue

2. Is software and/or file metadata public?

There is no statutory or case law addressing the issue

J. Money-making schemes.**1. Revenues.**

There is no statutory or case law addressing the issue

2. Geographic Information Systems.

There is no statutory or case law addressing the issue

K. On-line dissemination.

There is no statutory or case law addressing the issue

IV. RECORD CATEGORIES -- OPEN OR CLOSED**A. Autopsy reports.**

Presumably closed. Nev. Op. Att'y Gen. 82-12 (June 15, 1982).

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

There is no statutory or case law addressing the issue but *See Donrey v. Bradshaw*, 106 Nev. 630 (1990) (finding that if particular record is not expressly declared open by statute, a balancing test must be applied to determine if the record must be disclosed. This test begins with the presumption that the record is public and should be disclosed, then weighs the public's interest in the document versus any privacy or confidentiality interests asserted by the keeper of the record).

1. Rules for active investigations.

There is no statutory or case law addressing the issue

2. Rules for closed investigations.

There is no statutory or case law addressing the issue

C. Bank records.

Many bank records are closed by statute.

D. Budgets.

There is no statutory or case law addressing the issue but see NRS 353.205 generally regarding confidentiality of parts of proposed state budgets.

E. Business records, financial data, trade secrets.

Generally closed.

F. Contracts, proposals and bids.

Presumably closed. Invitations to bid are open. Nev. Op. Att'y Gen. 94-06 (April 7, 1994).

G. Collective bargaining records.

Presumably open.

H. Coroners reports.

Presumably open but *see* Nev. Op. Att'y Gen. 82-12 (June 15, 1982) regarding autopsy reports.

I. Economic development records.

See NRS 231.069.

J. Election records.**1. Voter registration records.**

See NRS 239 generally for election related questions

2. Voting results.

See NRS 239 generally for election related questions

K. Gun permits.

Supreme Court held that identity of the permittee of concealed firearms permit, are public records open to inspection, unless the records contained information that was expressly declared confidential by statute making applications for concealed firearms permits confidential. *RenNewspapers Inc. v. Mike HALEY, Washoe County SHERIFF*, 234 P.3d 922(2010)

L. Hospital reports.

Generally closed.

M. Personnel records.

Presumably open but *see Donrey v. Bradshaw supra* 106 Nev. 630 (1990). Also, *see* NAC 248.718 regarding confidentiality of certain types of state personnel records.

1. Salary.

Presumably open

2. Disciplinary records.

Presumably open

3. Applications.

Presumably open

4. Personally identifying information.

Generally redacted pursuant to *Donrey v. Bradshaw, supra*, 106 Nev. 630 (1990)

5. Expense reports.

There is no statutory or case law addressing the issue

6. Other.

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N. Police records.**1. Accident reports.**

presumably open, See NRS 484E.110. But, Nevada Op. Atty General 2009-05 (2009) held that accident reports submitted by a driver involved in a traffic accident are confidential.

2. Police blotter.

presumably open

3. 911 tapes.

presumably open, See NRS 179.070(1)

4. Investigatory records.**a. Rules for active investigations.**

See *Donrey v. Bradshaw*, *supra* 106 Nev. 630 (1990)

b. Rules for closed investigations.

See *Donrey v. Bradshaw*, *supra* 106 Nev. 630 (1990)

5. Arrest records.

See *Donrey v. Bradshaw*, *supra* 106 Nev. 630 (1990)

6. Compilations of criminal histories.

See *Donrey v. Bradshaw*, *supra* 106 Nev. 630 (1990)

7. Victims.

See *Donrey v. Bradshaw*, *supra* 106 Nev. 630 (1990)

8. Confessions.

See *Donrey v. Bradshaw*, *supra* 106 Nev. 630 (1990)

9. Confidential informants.

See *Donrey v. Bradshaw*, *supra* 106 Nev. 630 (1990)

10. Police techniques.

See *Donrey v. Bradshaw*, *supra* 106 Nev. 630 (1990)

11. Mug shots.

See *Donrey v. Bradshaw*, *supra* 106 Nev. 630 (1990)

12. Sex offender records.

See *Donrey v. Bradshaw*, *supra* 106 Nev. 630 (1990). See NRS 62h320(3) regarding juvenile sex offenders.

13. Emergency medical services records.

See *Donrey v. Bradshaw*, *supra* 106 Nev. 630 (1990)

O. Prison, parole and probation reports.

See *Donrey v. Bradshaw*, *supra* 106 Nev. 630 (1990)

P. Public utility records.

See NRS 703.296 generally

Q. Real estate appraisals, negotiations.**1. Appraisals.**

There is no statutory or case law addressing the issue but see NAC 645C.040 regarding confidentiality of certain records regarding appraisers.

2. Negotiations.

There is no statutory or case law addressing the issue

3. Transactions.

There is no statutory or case law addressing the issue

4. Deeds, liens, foreclosures, title history.

There is no statutory or case law addressing the issue

5. Zoning records.

There is no statutory or case law addressing the issue

R. School and university records.

See *Donrey v. Bradshaw*, *supra* 106 Nev. 630 (1990)

1. Athletic records.

See *Donrey v. Bradshaw*, *supra* 106 Nev. 630 (1990)

2. Trustee records.

See *Donrey v. Bradshaw*, *supra* 106 Nev. 630 (1990)

3. Student records.

See *Donrey v. Bradshaw*, *supra* 106 Nev. 630 (1990)

4. Other.

See *Donrey v. Bradshaw*, *supra* 106 Nev. 630 (1990). Also see NRS 388.750 regarding confidentiality of records regarding donors to an educational foundation.

S. Vital statistics.**1. Birth certificates.**

See NAC 440.021

2. Marriage & divorce.

Presumably open, but see NRS 125.130(3). See NRS 122.040(8) regarding openness of marriage licenses.

3. Death certificates.

Presumably open. See 1990 Nev. Op. Atty Gen., Opinion 90-8

4. Infectious disease and health epidemics.

There is no statutory or case law addressing the issue

V. PROCEDURE FOR OBTAINING RECORDS**A. How to start.****1. Who receives a request?**

Requests should be directed during office hours to the officer, employee, or agent of the governmental entity having legal custody of the records. N.R.S. 239.010.

2. Does the law cover oral requests?

No but such requests may be accepted,

a. Arrangements to inspect & copy.

The Act does not specifically provide for oral requests, but does not require written requests.

b. If an oral request is denied:

If an oral request is denied, a formal, written request should be made citing the Act or other statutory authority granting access to the requested records.

(1). How does the requester memorialize the refusal?

The requester should memorialize the refusal in writing.

(2). Do subsequent steps need to be in writing?

No, but it is advisable.

3. Contents of a written request.

a. Description of the records.

The request should be specific as to the records sought, and should probably indicate the reason for the request.

b. Need to address fee issues.

Requests should contain offers to pay reasonable fees for duplication.

c. Plea for quick response.

Requests may contain a plea for a quick response, but no specific time demands may be made since the Act provides no time limit on agency response.

d. Can the request be for future records?

There is no provision in the Act regarding requests for future records. However, many agencies maintain distribution lists for certain free public records (i.e. agendas for public bodies). Nothing in the Act prohibits a request to be added to one of these lists.

e. Other.

Requests for public records should clearly identify the requester as a reporter since reporters have special access to certain types of information (i.e. criminal history information).

B. How long to wait.

1. Statutory, regulatory or court-set time limits for agency response.

The law requires a response within five days.

2. Informal telephone inquiry as to status.

Informal telephone inquiries as to the status of the request would be appropriate.

3. Is delay recognized as a denial for appeal purposes?

No case authority recognizes delay as a denial for appeal purposes.

4. Any other recourse to encourage a response.

To encourage a response, the requester should set a reasonable time availability of the records.

C. Administrative appeal.

The Nevada Public Records Act makes no provision for administrative review of denials.

2. To whom is an appeal directed?

4. Contents of appeal letter.

a. Description of records or portions of records denied.

There is no statutory or case law addressing the issue

b. Refuting the reasons for denial.

There is no statutory or case law addressing the issue

5. Waiting for a response.

There is no statutory or case law addressing the issue

6. Subsequent remedies.

There is no statutory or case law addressing the issue

D. Court action.

1. Who may sue?

Any "requester" of records may apply to the district court for an order permitting inspection or copying. N.R.S. 239.011.

2. Priority.

The Act states: "The court shall give this matter priority over other civil matters to which priority is not given by other statutes." N.R.S. 239.011.

3. Pro se.

Pro se representation is permitted but probably not advisable.

4. Issues the court will address:

The Act specifically provides only for an action addressing permission to inspect or copy the requested record. Presumably, the court may still address other issues such as copying fees.

a. Denial.

There is no statutory or case law addressing the issue

b. Fees for records.

There is no statutory or case law addressing the issue

c. Delays.

There is no statutory or case law addressing the issue

d. Patterns for future access (declaratory judgment).

There is no statutory or case law addressing the issue

5. Pleading format.

Either a suit filed under the Nevada Rules of Civil Procedure or a petition for a writ of mandate under Chapter 34 of Nevada Revised Statutes would be appropriate.

6. Time limit for filing suit.

The Act provides no time limit for filing suit. A suit may be filed after a request for inspection or copying has been denied.

7. What court.

Suit should be filed in "the district court in the county in which the book or record is located." N.R.S. 239.011.

8. Judicial remedies available.

Although the Act specifically provides for merely an order permitting inspection or copying, injunctive relief for access to future records may presumably be included in the court's order.

9. Litigation expenses.

The Act states: "If the requester prevails, he is entitled to recover his costs and reasonable attorney fees in the proceeding from the agency whose officer has custody of the book or record." N.R.S. 239.011.

a. Attorney fees.

Generally recoverable, see NRS 239.011

b. Court and litigation costs.

Generally recoverable, see NRS 239.011

10. Fines.

The Act does not provide for fines against public agencies or officers who fail to disclose public records.

11. Other penalties.

Other penalties, such as civil suit damages, are unlikely since the Act provides immunity for a public officer or employee who acts in good faith in refusing to disclose public records. N.R.S. 239.012.

12. Settlement, pros and cons.

Settlement may result in information being provided more quickly than if a lawsuit is decided by a court. This may be particularly im-

portant when the newsworthiness of the information sought is only temporary. However, settlement, as a general policy, can embolden public agencies to refuse to comply with the act.

E. Appealing initial court decisions.

1. Appeal routes.

Although not mentioned in the Act, a court's order permitting or denying a request to inspect or copy public records is presumably appealable as a final judgment on the merits. Nev.R.App.Pro. 3.

2. Time limits for filing appeals.

The time limit for filing an appeal is within thirty (30) days after the date of entry of the final judgment. Nev.R.App.Pro. 4.

3. Contact of interested amici.

Interested *amici* may be allowed to participate in an appeal. Nev.R.App.Pro. 29. A likely *amicus* in public records cases is the Nevada Press Association. The association, located in Carson City, may be reached at (702) 885-0866.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

F. Addressing government suits against disclosure.

No provision in Nevada law.

Open Meetings

I. STATUTE -- BASIC APPLICATION.

A. Who may attend?

Nevada's Open Meeting Law states: ". . . all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these bodies." N.R.S. 241.020(1).

B. What governments are subject to the law?

1. State.

State government, with the exception of the Nevada legislature, is covered by the law. N.R.S. 241.015(3).

2. County.

County governments are covered by the law. N.R.S. 241.015(3)

3. Local or municipal.

Local and municipal governments are covered by the law. N.R.S. 241.015(3).

C. What bodies are covered by the law?

See AB 59 adopted in 2011 for recent changes to include boards and commissions of at least two persons appointed by the Governor, or a public officer under direction of Governor, if the board, commission or committee has at least two members who are not employees of the Executive Department. Also, except for the State Board of Parole Commissioners, meetings of public bodies that are quasi-judicial in nature are covered by the law. AB 59, effective July 1, 2011.

1. Executive branch agencies.

Executive branch agencies are covered if the agencies are multi-member bodies. The law does not apply to the Governor or an agency or department head. However, the Nevada Administrative Procedure Act, chapter 344B of N.R.S. requires all agencies to give notice in advance of their intention to adopt rules and regulations at an open public meeting. Investigative meetings of the Nevada Gaming Control Board are exempted from the coverage of the law. N.R.S. 463.110.

2. Legislative bodies.

The law exempts the Legislature. Article 4, section 15 of the Nevada Constitution appears to require "the doors of each House shall be kept open during its session. . ." However, in 1987 the Assembly Commerce Committee closed hearings in order to review confidential oil company documents. The Nevada Supreme Court held the action did not violate Nevada's Constitution. *Sarkes Tarzian Inc. v. Legislature of the State of Nevada*, 104 Nev. 672, 765 P.2d 1142 (1988).

3. Courts.

The judiciary and all jury deliberations are exempt. N.R.S. 241.030(3)(a). In addition, the Nevada Supreme Court has held the open meeting law to be unconstitutional as applied to judicial bodies in their rule making or other administrative activities.

4. Nongovernmental bodies receiving public funds or benefits.

The law generally covers any entity that either expends or disburses or is supported in whole or in part by tax revenues. Private or quasi-public entities who do not meet this test are not covered. The following bodies have been declared to be public bodies: Nevada Interscholastic Association, Board of Architecture, Reno City Insurance Committee, Board of Dental Examiners, Community Development Corporation and the Eureka County Economic Development Council, See A.G.O. Manual, 10th edition, page 22.

5. Nongovernmental groups whose members include governmental officials.

Nongovernmental groups whose members include governmental officials are not covered unless the groups either expend or disburse or are supported in whole or in part by tax revenues.

6. Multi-state or regional bodies.

Most regional bodies are presumably supported by tax revenues and, therefore, are covered by the law.

7. Advisory boards and commissions, quasi-governmental entities.

Advisory boards and commissions are covered by the law if supported by tax revenues.

8. Other bodies to which governmental or public functions are delegated.

Other bodies performing governmental functions are subject to the law if they are supported by tax revenues.

9. Appointed as well as elected bodies.

Whether the members of a body are appointed or elected is irrelevant to coverage under the law.

D. What constitutes a meeting subject to the law.

1. Number that must be present.

a. Must a minimum number be present to constitute a “meeting”?

To have a meeting, a quorum of the members of a public body must be present. N.R.S. 241.015(2).

b. What effect does absence of a quorum have?

The absence of a quorum presumably negates the effect of the law. However, if members of a public body meet in sequential groups of less than a quorum in order to deliberate toward a decision a constructive quorum may exist thereby implicating the law.

2. Nature of business subject to the law.

a. “Information gathering” and “fact-finding” sessions.

Information gathering and fact-finding sessions are covered. N.R.S. 241.015(3); But see, *Dewey v. Redevelopment Agency of Reno*, 119 Nev 87, 64 P3d 1070 (2003) (small, back-to-back briefings, standing alone, do not constitute a constructive quorum.)

b. Deliberations toward decisions.

Deliberations are covered. N.R.S. 241.015(3).

3. Electronic meetings.

The law states that electronic communication “must not be used to circumvent the spirit or letter of this chapter in order to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.” N.R.S. 241.030(4).

a. Conference calls and video/Internet conferencing.

The law applies to conference calls. A.G.O. Manual, Section 5.05.

b. E-mail.

Although not specifically addressed, e-mail that is used by a quorum of the members of a public body to deliberate towards a decision or that is used to poll members of a public body is covered by the law. See also, *Del Papa v. Board Of Regents*, 956 P.2d 770, 114 Nev. 388, 956 P.2d 770 (2000).

c. Text messages.

There is no statutory or case law addressing the issue

d. Instant messaging.

There is no statutory or case law addressing the issue

e. Social media and online discussion boards.

There is no statutory or case law addressing the issue

E. Categories of meetings subject to the law.

1. Regular meetings.

a. Definition.

The law does not define or distinguish regular meetings.

b. Notice.

(1). Time limit for giving notice.

Written notice of meetings must be given three working days in advance. N.R.S. 241.020(2).

(2). To whom notice is given.

Written notice must be mailed to any person who has requested notice of the meetings of the body. A request for notice lapses six months after it is made. The notice must be delivered to the postal service used by the body not later than 9 a.m. of the third working day before the meeting. N.R.S. 241.020(3)(b). A public body does not satisfy the requirements of the Open Meeting Law by sending an e-mail to an individual who has requested personal notice of public meetings although the individual may waive his or her statutory rights and instead may elect to receive timely notice by e-mail. See NRS 241.020(3)(b)(2) and Op. Nev. Att’y General No 2001-01 (February 9, 2001).

(3). Where posted.

Written notice must be posted at the principal office of the public body, or if there is no principal office, at the building in which the meeting is to be held, and at not less than three other separate, prominent places within the jurisdiction of the public body not later than 9 a.m. of the third working day before the meeting. N.R.S. 241.020(3)(a).

(4). Public agenda items required.

An agenda must include: (1) a clear and complete statement of the topics scheduled to be considered during the meeting; (2) a list describing the items on which action may be taken and clearly denoting that action may be taken on those items; and (3) a period devoted to comments by the general public (4) if any portion of the meeting will be closed to consider the character, alleged misconduct or professional competence of a person, the name of the person whose character, alleged misconduct or professional competence will be considered, and (5) if, during any portion of the meeting, the public body will consider whether to take administrative action against a person, the name of the person against whom administrative action may be taken. N.R.S. 241.020(2)(c). Pursuant to AB 257 adopted in 2011, the public body must allow the general public to comment on any matter that is not specifically included on the agenda before the adjournment of the meeting.

(5). Other information required in notice.

A notice must include the time, place and location of the meeting and a list of the locations where the notice has been posted. N.R.S. 241.020(2).

(6). Penalties and remedies for failure to give adequate notice.

Failure to give adequate notice implicates the full range of remedies provided under the law, including having any action taken by a public

body without proper notice declared void. N.R.S. 241.037. Under AB 59, adopted during the 211 Legislature, if a Board is found in violation, it must place an item on the agenda and acknowledge the finding during an open meeting. The inclusion of the item is not an admission of wrongdoing for the purposes of civil action, criminal prosecution or injunctive relief. See, *Attorney General v. Board of Regents of the University and Community College System of Nevada*, 119 Nev. 148, 67 P3d 902 (2003).

c. Minutes.

(1). Information required.

Minutes must include: (1) the date, time and place of the meeting; (2) those members of the public body who were present and those who were absent; (3) the substance of all matters discussed and, at the request of any member, a record of each member's vote on any matter decided by vote; (4) the substance of any remarks made by members of the public who address the body if they request that the minutes reflect their remarks, including any written remarks; and (5) any other information which any member of the public body requests to be included or reflected in the minutes. N.R.S. 241.035(1).

(2). Are minutes public record?

Yes, minutes of public meetings are public records and must be available within 30 days and preserved for at least 5 years N.R.S. 241.035(2).

2. Special or emergency meetings.

a. Definition.

"Emergency" means "an unforeseen circumstance which requires immediate action and includes, but is not limited to: (a) Disasters caused by fire, flood, earthquake or other natural causes; or (b) Any impairment of the health and safety of the public." N.R.S. 241.020(5).

b. Notice requirements.

(1). Time limit for giving notice.

The law does not provide a time limit for giving notice of emergency meetings. Emergency meetings are exempt from the three-working-day notice requirement. N.R.S. 241.020(2).

(2). To whom notice is given.

Since emergency meetings are not required to provide notice within any given time frame, it is not clear whether any of the other, regular notice provisions apply. Presumably, a public body holding an emergency meeting should attempt to comply with the remaining notice requirements, if possible, in order to comply with the spirit, if not the letter, of the law.

(3). Where posted.

Since emergency meetings are not required to provide notice within any given time frame, it is not clear whether any of the other, regular notice provisions apply. Presumably, a public body holding an emergency meeting should attempt to comply with the remaining notice requirements, if possible, in order to comply with the spirit, if not the letter, of the law.

(4). Public agenda items required.

Since emergency meetings are not required to provide notice within any given time frame, it is not clear whether any of the other, regular notice provisions apply. Presumably, a public body holding an emergency meeting should attempt to comply with the remaining notice requirements, if possible, in order to comply with the spirit, if not the letter, of the law.

(5). Other information required in notice.

Since emergency meetings are not required to provide notice within any given time frame, it is not clear whether any of the other, regular

notice provisions apply. Presumably, a public body holding an emergency meeting should attempt to comply with the remaining notice requirements, if possible, in order to comply with the spirit, if not the letter, of the law.

(6). Penalties and remedies for failure to give adequate notice.

To the extent that notice requirements may apply to emergency meetings, the remedies for failure to give adequate notice would be the same as in regular meetings. N.R.S. 241.037.

c. Minutes.

(1). Information required.

Minutes of emergency meetings must contain the same information as minutes of regular meetings. N.R.S. 241.035(1).

(2). Are minutes a public record?

Yes, minutes of emergency meetings are public records. N.R.S. 241.035(2).

3. Closed meetings or executive sessions.

a. Definition.

The term "closed meeting" is not defined.

b. Notice requirements.

(1). Time limit for giving notice.

Closed meetings are subject to the same time limit for giving notice as open meetings — three days.

(2). To whom notice is given.

In addition to the notice requirements for open meetings, a closed meeting to consider the character, misconduct, competence or health of a person may not be held unless the subject of the meeting is served with written notice of the meeting. N.R.S. 241.033.

(3). Where posted.

Closed meetings are subject to the same posting requirements as open meetings.

(4). Public agenda items required.

The agenda must state the purpose for the closed meeting and the name of the person whose character, alleged misconduct or professional competence will be considered in a closed meeting. NRS 241.020(4).

(5). Other information required in notice.

Just as for an open meeting, a notice for a closed meeting must include the time, place and location of the meeting and a list of the locations where the notice has been posted. N.R.S. 241.020(2).

(6). Penalties and remedies for failure to give adequate notice.

The penalties for failing to give adequate notice of a closed meeting are the same as for open meetings.

c. Minutes.

(1). Information required.

Minutes of closed meetings must contain the same information as minutes of open meetings. N.R.S. 241.035(1).

(2). Are minutes a public record?

Minutes of closed meetings become public records only when the body determines that the matters discussed no longer require confidentiality. NRS 241.035(2)(b).

d. Requirement to meet in public before closing meeting.

A closed meeting may only be held upon a motion passed at an open meeting which specifies the nature of the business to be considered. N.R.S. 241.030(2).

e. Requirement to state statutory authority for closing meetings before closure.

The law contains no specific requirement requiring a body to state the statutory authority for closing a meeting.

f. Tape recording requirements.

Effective October 1, 2005, N.R.S. 241.035(4) requires that public bodies shall record open and closed meetings on audiotape or use a court reporter to transcribe the proceedings. The tape shall be made available to the Attorney General upon request. The tape must be retained for at least one year after the adjournment of the meeting at which it was transcribed. The tape must be made available to the public during the time the record is retained. NRS 241.035(4)(b).

F. Recording/broadcast of meetings.

1. Sound recordings allowed.

Sound recordings or any other means of sound reproduction are permissible so long as they do not interfere with the conduct of the meeting. N.R.S. 241.035(3).

2. Photographic recordings allowed.

A meeting may be recorded using any means of video reproduction so long as it does not interfere with the conduct of the meeting. N.R.S. 241.035(3). Since video reproduction is permissible, photography that does not interfere with the meeting is presumably also permissible.

G. Are there sanctions for noncompliance?

N.R.S. 241.035(6) effective October 1, 2005, provides: If a public body makes a good faith effort to comply with the provisions of subsections 4 and 5 but is prevented from doing so because of factors beyond the public body's reasonable control, including, without limitation, a power outage, a mechanical failure or other unforeseen event, such failure does not constitute a violation of the provisions of this chapter.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open meetings statute.

1. Character of exemptions.

a. General or specific.

Exceptions must be specific and will be strictly construed by the courts. *McKay v. Board of Supervisors*, 102 Nev. 644, 730 P.2d 438 (1986). In addition, the law itself declares that exceptions ". . . must not be used to circumvent the spirit or letter of this chapter in order to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory powers." N.R.S. 241.030(4).

b. Mandatory or discretionary closure.

The law does not require any meeting to be closed.

2. Description of each exemption.

1. The primary exception to Nevada's Open Meeting Law is contained in N.R.S. 241.030, which permits a public body to close a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person. This provision cannot be used to close a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of an elected member of a public body or a person who is an appointed public officer or who services at the pleasure of a public body as a chief executive or administrative

office or in a comparable position, including, without limitation, a president of a university or community college within the University and Community College System of Nevada, a superintendent of a county school district, a county manager and a city manager. N.R.S. 241.031(1)(a)(b). This exception does not apply if the consideration does not pertain to the person's role as an elected member of a public body or as an appointed public officer. NRS 241.031(2).

2. Judiciary proceedings are exempt. N.R.S. 241.030(4)(a).

3. Any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical may be removed. N.R.S. 241.030(4)(b).

4. Witnesses may be excluded from a meeting during the examination of other witnesses. N.R.S. 241.030(3)(c).

B. Any other statutory requirements for closed or open meetings.

1. Ethics commission meetings at which information concerning the propriety of the conduct of any public officer or employee is received may be closed. N.R.S. 281.511(9).

2. Labor negotiations between public bodies and employees or their unions, including fact finding by negotiations, may be closed. N.R.S. 288.220.

3. School board of trustee hearings concerning suspension or expulsion of students may be closed. N.R.S. 392.467(3).

4. Investigative meetings of the Nevada Gaming Control Board may be closed. N.R.S. 463.110.

C. Court mandated opening, closing.

The Nevada Supreme Court has clarified that votes must occur in open meetings, even if the vote is related to an issue discussed in a validly closed meeting. *McKay v. Board of Supervisors*, 102 Nev. 644, 730 P.2d 438 (1986).

III. MEETING CATEGORIES -- OPEN OR CLOSED.

A. Adjudications by administrative bodies.

Except as otherwise provided by a specific exemption, all deliberations and adjudications of an administrative body are open. N.R.S. 241.015(3).

B. Budget sessions.

Open.

C. Business and industry relations.

Open.

D. Federal programs.

Open.

E. Financial data of public bodies.

Open.

F. Financial data, trade secrets or proprietary data of private corporations and individuals.

If the purpose of a meeting is to receive information that is required by law to be kept confidential, the meeting may be closed for the limited purpose of receiving that information.

G. Gifts, trusts and honorary degrees.

Open.

H. Grand jury testimony by public employees.

Closed.

I. Licensing examinations.

Closed. N.R.S. 241.030(1)(b).

J. Litigation; pending litigation or other attorney-client privileges.

A meeting held for the purpose of having an attorney-client discussion of potential and existing litigation pursuant to NRS 241.015(2)(b) (2) is not a meeting for purposes of the Open Meeting Law. However, NRS 241.015(2)(b)(2) does not permit a public body to take action during an attorney-client discussion.

K. Negotiations and collective bargaining of public employees.**1. Any sessions regarding collective bargaining.**

Closed. N.R.S. 288.020.

2. Only those between the public employees and the public body.

Closed. N.R.S. 288.020.

L. Parole board meetings, or meetings involving parole board decisions.

Open.

M. Patients; discussions on individual patients.

A meeting may be closed to consider the health of a person. N.R.S. 241.030(1).

N. Personnel matters.**1. Interviews for public employment.**

Under NRS 241.030(4)(e), closed sessions may not be held “for the discussion of the appointment of any person to public office or as a member of a public body.” Other interviews may be closed.

2. Disciplinary matters, performance or ethics of public employees.

May be closed. A person whose character, alleged misconduct, professional competence, or physical or mental health will be considered by a public body during a meeting may waive the closure of the meeting and request that the meeting or relevant portion thereof be open to the public. N.R.S. 241.030(2). The request must be honored unless the consideration of the character, alleged misconduct, professional competence, or physical or mental health of the requester involves the appearance before the public body of another person who does not desire that the meeting or relevant portion thereof be open to the public. NRS 241.030(2)(b) NRS 241.031(1)(a) provides that a public body shall not hold a closed meeting to consider the character, alleged misconduct or professional competence of: (a) an elected member of a public body; or (b) a person who is an appointment public officer or who serves at the pleasure of a public body as a chief executive or administrative officer or in a comparable position, including, without limitation a president of a university or community college within the University and Community College System of Nevada, a superintendent of a county school district, a county manager and a city manager.

3. Dismissal; considering dismissal of public employees.

May be closed, but vote to dismiss employee must occur in an open meeting. *McKay v. Board of Supervisors*, 102 Nev. 644, 730 P.2d 438 (1986). See N.R.S. 241.030(2) *supra*.

O. Real estate negotiations.

Open.

P. Security, national and/or state, of buildings, personnel or other.

The Nevada Homeland Security Commission may meet in closed session to receive security briefings and discuss procedures for re-

sponding to acts of terrorism and emergencies. N.R.S. 239C.140(2)(a)(b).

Q. Students; discussions on individual students.

May be closed under general provision allowing closed meeting to consider character or alleged misconduct. In addition, school board of trustee hearings concerning suspension or expulsion of students may be closed. N.R.S. 392.467(3).

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS**A. When to challenge.****1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?**

There is no provision in the law for expedited proceedings.

2. When barred from attending.

An injunction may be attained before the meeting, pursuant to the Nevada Rules of Civil Procedure, to require compliance with the law.

3. To set aside decision.

A suit to void an action taken in violation of the law must be filed within 60 days. N.R.S. 241.037(3).

4. For ruling on future meetings.

The law states that an injunction may be attained to require compliance with the law. N.R.S. 241.037(1).

5. Other.

No other time limits exist regarding actions to enforce the law.

B. How to start.**1. Where to ask for ruling.****a. Administrative forum.****(1). Agency procedure for challenge.**

Nevada’s Open Meeting Law makes no provision for administrative review of decisions to close meetings.

(2). Commission or independent agency.

Nevada’s Open Meeting Law makes no provision for administrative review of decisions to close meetings.

b. State attorney general.

A person may file a complaint with the Attorney General for investigation and action. N.R.S. 241.037.

c. Court.

Any person or the Attorney General may file suit to have an action taken by a public body declared void or to require compliance with the law. N.R.S. 241.037.

2. Applicable time limits.

A suit to void an action taken in violation of the law must be filed within 60 days. A suit to require compliance with the law must be brought within 120 days after the action objected to was taken by the public body. N.R.S. 241.037.

3. Contents of request for ruling.

While no ruling may be obtained, a complaint to the Attorney General for possible action should be written and describe the body, agenda, date of meeting and the events leading to closure.

4. How long should you wait for a response?

If the Attorney General does not respond quickly, then a complaint may need to be filed to meet the 60-day time limit for voiding actions

taken in violation of the law.

5. Are subsequent or concurrent measures (formal or informal) available?

No.

C. Court review of administrative decision.

1. Who may sue?

The Attorney General and any person denied a right conferred by the law may sue. N.R.S. 241.037. Under changes adopted in 2011, the Attorney General has subpoena power to aid in investigations of violations.

2. Will the court give priority to the pleading?

There is no provision in the law giving preference to these cases.

3. Pro se possibility, advisability.

Pro se complaints are possible, but probably not advisable.

4. What issues will the court address?

a. Open the meeting.

A court can grant an injunction requiring an open meeting.

b. Invalidate the decision.

A court can declare void any action taken in violation of the law.

c. Order future meetings open.

A court can issue an injunction requiring future meetings to be kept open.

5. Pleading format.

Either a suit filed under the Nevada Rules of Civil Procedure or a petition for a writ of mandate under Chapter 34 of Nevada Revised Statutes would be appropriate.

6. Time limit for filing suit.

A suit to void an action taken in violation of the law must be filed within 60 days. A suit to require compliance with the law must be brought within 120 days after the action objected to was taken by the public body. N.R.S. 241.037.

7. What court.

A person may file suit in the district court of the district in which the public body ordinarily holds its meetings or in the district in which the plaintiff resides. NRS 241.037(2).

8. Judicial remedies available.

Judicial remedies include injunctive relief and the voiding of actions taken in violation of the law.

9. Availability of court costs and attorneys' fees.

The court may order the payment of reasonable attorney fees and court costs to a successful plaintiff in a suit brought pursuant to the law. N.R.S. 241.037.

10. Fines.

\$500 civil penalty pursuant to AB 59 adopted in 2011..

11. Other penalties.

A violation of the law may result in a misdemeanor. N.R.S. 241.040 A person who willfully fails or refuses to comply with a subpoena is-

sued by the Attorney General investigating violations of the OML is guilty of a misdemeanor. AB 59, enacted 2011

D. Appealing initial court decisions.

1. Appeal routes.

A court's order granting or denying relief under the law is presumably appealable to the Nevada Supreme Court as a final judgment on the merits. Nev.R.App.Pro. 3.

2. Time limits for filing appeals.

The time limit for filing an appeal is within thirty (30) days after the date of entry of the final judgment. Nev.R.App.Pro. 4.

3. Contact of interested amici.

Interested *amici* may be allowed to participate in an appeal. Nev.R.App.Pro. 29. A likely *amicus* in open meetings cases is the Nevada Press Association. The association, located in Carson City, may be reached at (702) 885-0866.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

V. ASSERTING A RIGHT TO COMMENT.

Legislative history on Nevada law suggests that legislators intended to allow members of the public to bring "unagendized topics to the attention of a public body for discussion purposes only." See 1991 Nev. Op. Atty. Gen. 6 (May 23, 1991), fn 1.

A. Is there a right to participate in public meetings?

A member of the public has a right to address the public body during the public comment period. N.R.S 241.020(2)(c)(3). Pursuant to AB 257, effective July 1, 2011, comments from the general public must be taken at the beginning of the meeting before any items on which actions may be taken are heard by the public body and again before the adjournment of the meeting; or after each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item.

B. Must a commenter give notice of intentions to comment?

No. *See* Nevada OMLO 99-11 where the Attorney General noted that a practice of requiring persons to sign up three and one-half hours in advance to speak at a public meeting can have the effect of unnecessarily restricting public comment.

C. Can a public body limit comment?

The Attorney General has opined that a public body may create reasonable rules and regulations regarding written remarks of members of the public. The rules and regulations may not discourage public comment. Nevada Op. Att'y Gen. 2005-08. The Attorney General believes that limits must be viewpoint neutral.

D. How can a participant assert rights to comment?

A member of the public should sign up if a sign-up is provided before or during the meeting to speak or approach the podium during the public comment period.

E. Are there sanctions for unapproved comment?

If a person willfully disrupts a meeting to the extent that its orderly conduct is made impractical, the person may be removed from the meeting. NRS 241.030(3)(b).

Statute

Open Records

19 Nev. Rev. Stat. § 239 et seq.

Title 19. Miscellaneous Matters Related to Government and Public Affairs

Chapter 239.

Public Records

CHAPTER 239 - PUBLIC RECORDS

IN GENERAL

- NRS 239.001 Legislative findings and declaration.
- NRS 239.005 Definitions.
- NRS 239.010 Public books and public records open to inspection; confidential information in public books and records; copyrighted books and records; copies to be provided in medium requested.
- NRS 239.0105 Confidentiality of certain records of local governmental entities.
- NRS 239.0107 Requests for inspection or copying of public books or records: Actions by governmental entities.
- NRS 239.011 Application to court for order allowing inspection or copying of public book or record in legal custody or control of governmental entity for less than 30 years.
- NRS 239.0113 Burden of proof where confidentiality of public book or record is at issue.
- NRS 239.0115 Application to court for order allowing inspection or copying of public book or record in legal custody or control of governmental entity for at least 30 years; rebuttable presumption; exceptions.
- NRS 239.012 Immunity for good faith disclosure or refusal to disclose information.
- NRS 239.013 Confidentiality of records of library which identify user with property used.
- NRS 239.015 Removal, transfer and storage of records authorized if necessary; copies to be provided upon request.
- NRS 239.020 Provision of certified copies of public records to Department of Veterans Affairs without charge.
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REPRODUCTION OF RECORDS

- NRS 239.051 Reproduction of public records before destruction: Requirements.
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- NRS 239.055 Additional fee when extraordinary use of personnel or resources is required.
- NRS 239.070 Use of microfilm by county recorder for recording; Division to provide microfilming or similar service;

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DISPOSAL OF OBSOLETE RECORDS

- NRS 239.073 Committee to Approve Schedules for the Retention and Disposition of Official State Records: Creation; composition; meetings; rules and regulations.
- NRS 239.077 Committee to Approve Schedules for the Retention and Disposition of Official State Records: Duties.
- NRS 239.080 State records: Schedules for retention and disposition.
- NRS 239.085 State records: Disposition by Department of Transportation.
- NRS 239.090 State records: Preservation of obsolete and noncurrent records by Division; right to control records.
- NRS 239.110 Judicial records: Destruction; microphotographic copies.
- NRS 239.121 Local governmental records: Definitions.
- NRS 239.123 Local governmental records: Submission to Division; accounting; return or reclamation.
- NRS 239.124 Local governmental records: Exclusive procedures for destruction.
- NRS 239.125 Local governmental records: Program for management; regulations of State Library and Archives Administrator.

RESTORATION OF LOST OR DESTROYED RECORDS

- NRS 239.130 Rerecording of instrument if county records lost or destroyed.
- NRS 239.140 Certain deeds prima facie evidence of regularity of proceedings after destruction or loss of records.
- NRS 239.150 Restoration of liens, mortgages and judgments if records lost or destroyed; procedure; limitations.
- NRS 239.160 Proceeding to establish contents and record of lost or destroyed deed or will; parties defendant.
- NRS 239.170 Procedure to establish contents of lost or destroyed deed or will: Complaint; summons; hearing; decree.
- NRS 239.180 Character of evidence which court may admit.
- NRS 239.190 Proceedings brought in county where property is situated.
- NRS 239.200 Where proceedings are brought when county divided after destruction of records.
- NRS 239.210 Limitations affecting restored records.
- NRS 239.220 Restored records validated.
- NRS 239.230 Restoration of judicial records not affecting real property or water rights: Procedure.
- NRS 239.240 Restoration of judicial records not affecting real property or water rights: Contents of affidavit filed with court.
- NRS 239.250 Court to issue citation upon filing of affidavit.
- NRS 239.260 Service of citation on parties residing outside of county or State.
- NRS 239.270 Counter-affidavits; hearing; decree.
- NRS 239.280 Limitation of record of judgment which has been restored.

NRS 239.290 Taxation of costs.**PENALTIES****NRS 239.300 Stealing, altering or defacing records, documents or instruments.****NRS 239.310 Removing, injuring or concealing public records and documents.****NRS 239.320 Injury to, concealment or falsification of records or papers by public officer.****NRS 239.330 Offering false instrument for filing or record.****IN GENERAL**

NRS 239.001 Legislative findings and declaration. 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.

(Added to NRS by 2007, 2061)

NRS 239.005 Definitions. 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. "Committee" means the Committee to Approve Schedules for the Retention and Disposition of Official State Records.

3. "Division" means the Division of State Library and Archives of the Department of Cultural Affairs.

4. "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 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.

(Added to NRS by 1977, 455; A 1979, 179; 1983, 1298; 1985, 126; 1993, 209, 1538; 1995, 511; 1997, 2385; 2001, 936)

NRS 239.010 Public books and public records open to inspection; confidential information in public books and records; copyrighted books and records; copies to be provided in medium requested.

1. Except as otherwise provided in subsection 3, 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 may not reject a book or record which is copyrighted solely because it is copyrighted.

3. 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.

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 the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

[1:149:1911; RL § 3232; NCL § 5620]—(NRS A 1963, 26; 1965, 69; 1993, 1230, 2307, 2623; 1995, 503, 716; 1997, 2386; 1999, 1210; 2007, 2062)

NRS 239.0105 Confidentiality of certain records of local governmental entities.

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 or her 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;

(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; or

(d) The provisions of NRS 239.0115.

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.

(Added to NRS by 2005, 1040; A 2007, 2063)

NRS 239.0107 Requests for inspection or copying of public books or records: Actions by governmental entities.

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.

(Added to NRS by 2007, 2061)

NRS 239.011 Application to court for order allowing inspection or copying of public book or record in legal custody or control of governmental entity for less than 30 years. If a request for inspection or copying of a public book or record open to inspection and copying is denied, the requester may apply to the district court in the county in which the book or record is located for an order permitting the requester to inspect or copy it. 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.

(Added to NRS by 1993, 1230; A 1997, 2386)

NRS 239.0113 Burden of proof where confidentiality of public book or record is at issue. Except as otherwise provided in NRS 239.0115, 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.

(Added to NRS by 2007, 2062)

NRS 239.0115 Application to court for order allowing inspection or copying of public book or record in legal custody or control of governmental entity for at least 30 years; rebuttable presumption; exceptions.

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 the person seeks to inspect or copy.

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

(a) Declared confidential pursuant to NRS 463.120.

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

(Added to NRS by 2007, 2062; A 2009, 290)

NRS 239.012 Immunity for good faith disclosure or refusal to disclose information. A public officer or employee who acts in good faith in disclosing or refusing to disclose information and the employer of the public officer or employee are immune from liability for damages, either to the requester or to the person whom the information concerns.

(Added to NRS by 1993, 1230)

NRS 239.013 Confidentiality of records of library which identify user with property used. Any records of a public library or other library which contain the identity of a user and the books, documents, films, recordings or other property of the library which were used are confidential and not public books or records within the meaning of NRS 239.010. Such records may be disclosed only in response to an order issued by a court upon a finding that the disclosure of such records is necessary to protect the public safety or to prosecute a crime.

(Added to NRS by 1981, 182)

NRS 239.015 Removal, transfer and storage of records authorized if necessary; copies to be provided upon request.

1. A custodian of records may remove books of records, maps, charts, surveys and other papers for storage in an appropriate facility if the custodian believes that the removal of such records is necessary for their protection or permanent preservation, or the custodian may arrange for their transfer to another location for duplication or reproduction.

2. If a county recorder receives a request for a particular item which has been stored pursuant to subsection 1, the county recorder shall produce a microfilmed copy of such item or the original within 3 working days.

(Added to NRS by 1975, 748)

NRS 239.020 Provision of certified copies of public records to Department of Veterans Affairs without charge. Whenever a copy of any public record is required by the Department of Veterans Affairs to be used in determining the eligibility of any person to participate in benefits made available by the Department of Veterans Affairs, the official charged with the custody of such public record shall, without charge, provide the applicant for the benefit or any person acting on behalf of the applicant or the representative of the Department of Veterans Affairs with a certified copy or copies of such records.

[1:30:1947; 1943 NCL § 6879.15]—(NRS A 1995, 1083)

NRS 239.030 Furnishing of certified copies of public records. Every officer having custody of public records, the contents of which are not declared by law to be confidential, shall furnish copies certified to be correct to any person who requests them and pays or tenders such fees as may be prescribed for the service of copying and certifying.

[1:73:1909; RL § 2045; NCL § 2976]—(NRS A 1973, 353)

REPRODUCTION OF RECORDS

NRS 239.051 Reproduction of public records before destruction: Requirements.

1. Unless destruction of a particular record without reproduction is authorized by a schedule adopted pursuant to NRS 239.080 or 239.125, any custodian of public records in this State may destroy documents, instruments, papers, books and any other records or writings in the custodian's custody only if those records or writings have been placed on microphotographic film or if the information they contain has been entered into a computer system which permits the retrieval and reproduction of that information. A reproduction of that film or that information shall be deemed to be the original.

2. Microphotographs made pursuant to this section must be made on film which complies with minimum standards of quality approved by the American National Standards Institute.

3. The custodian of the records or writings shall:

(a) Promptly store at least one copy of the microphotographic film or the tape, disc or other medium used for the storage of that information by the computer in such a manner and place as to protect it reasonably from loss or damage; and

(b) Maintain for the use of authorized persons a copy of a reproduction of the film or the information stored by the computer.

(Added to NRS by 1981, 601)

NRS 239.052 Fees: Limitations; waiver; posting of sign or notice.

1. Except as otherwise provided in this subsection, a governmental entity may charge a fee for providing a copy of a public record. Such a fee must not exceed the actual cost to the governmental entity to provide the copy of the public 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 record if a specific statute or regulation requires the governmental entity to provide the copy without charge.

2. A governmental entity may waive all or a portion of a charge or fee for a copy of a public 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 record; and

(b) Posts, in a conspicuous place at each office in which the governmental entity provides copies of public 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 records. A governmental entity shall post, in a conspicuous place at each office in which the governmental entity provides copies of public records, a legible sign or notice which states:

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

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

(Added to NRS by 1997, 2384)

NRS 239.053 Additional fee for transcript of administrative proceedings; money remitted to court reporter; posting of sign or notice.

1. If a person requests a copy of a transcript of an administrative proceeding that has been transcribed by a certified court reporter, a governmental entity shall charge, in addition to the actual cost of the medium in which the copy of the transcript is provided, a fee for each page provided which is equal in amount to the fee per page charged by the court reporter for the copy of the transcript, as set forth in the contract between the governmental entity and the court reporter. For each page provided, the governmental entity shall remit to the court reporter who transcribed the proceeding an amount equal to the fee per page set forth in the contract between the governmental entity and the court reporter.

2. The governmental entity shall post, in a conspicuous place at each office in which the governmental entity provides copies of public records, a legible sign or notice which states that, in addition to the actual cost of the medium in which the copy of the transcript is provided, the fee charged for a copy of each page of the transcript is the fee per page set forth in the contract between the governmental entity and the court reporter.

(Added to NRS by 1997, 2385)

NRS 239.054 Additional fee for information from geographic information system.

1. A fee for the provision of information from a geographic information system may include, in addition to the actual cost of the medium in which the information is provided, the reasonable costs related to:

- (a) The gathering and entry of data into the system;
- (b) Maintenance and updating of the database of the system;
- (c) Hardware;
- (d) Software;
- (e) Quality control; and
- (f) Consultation with personnel of the governmental entity.

2. As used in this section, “geographic information system” means a system of hardware, software and data files on which spatially oriented geographical information is digitally collected, stored, managed, manipulated, analyzed and displayed.

(Added to NRS by 1997, 2385)

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

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 for such extraordinary use. Upon receiving such a request, the governmental entity shall inform the requester 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.

(Added to NRS by 1997, 2384)

NRS 239.070 Use of microfilm by county recorder for recording; Division to provide microfilming or similar service; requirements; sale of duplicate.

1. In lieu of or in addition to the method of recording required or allowed by statute, the county recorder may use microfilm for such recording.

2. The Division shall provide microfilming service to any local government. The charge for the service must not exceed the actual cost.

3. If microfilming is used:

(a) The microphotographs or micronegative films must be properly indexed and placed in conveniently accessible files.

(b) Each film must be designated and numbered.

(c) Provision must be made for preserving, examining and using the films.

4. A duplicate of each such film must be made and kept safely in a separate place.

5. Duplicates of each such film must be made available by the county recorder for sale at a price not exceeding cost upon the request of any person, firm or organization. Subject to the approval of the board of county commissioners, the county recorder may, at any time, make additional duplicates of each such film available for sale to the public at a price not exceeding cost.

6. The Division shall provide services for recording other than microfilming to any local government if the Division has the equipment necessary to provide the services. The services provided are subject to the requirements of this section relating to microfilming.

[3:135:1953]—(NRS A 1961, 393; 1973, 319; 1977, 456; 1979, 179; 1983, 1298; 1985, 464, 1689; 1993, 1538; 1997, 19; 2005, 1086)

DISPOSAL OF OBSOLETE RECORDS

NRS 239.073 Committee to Approve Schedules for the Retention and Disposition of Official State Records: Creation; composition; meetings; rules and regulations.

1. The Committee to Approve Schedules for the Retention and Disposition of Official State Records, consisting of six members, is hereby created.

2. The Committee consists of:

(a) The Secretary of State;

(b) The Attorney General;

(c) The Director of the Department of Administration;

(d) The State Library and Archives Administrator;

(e) The Director of the Department of Information Technology; and

(f) One member who is a representative of the general public appointed by the Governor.

Ê All members of the Committee, except the representative of the general public, are ex officio members of the Committee.

3. The Secretary of State or a person designated by the Secretary of State shall serve as Chair of the Committee. The State Library and Archives Administrator shall serve as Secretary of the Committee and prepare and maintain the

records of the Committee.

4. The Committee shall meet at least quarterly and may meet upon the call of the Chair.

5. An ex officio member of the Committee may designate a person to represent the ex officio member at any meeting of the Committee. The person designated may exercise all the duties, rights and privileges of the member that the person represents.

6. The Committee may adopt rules and regulations for its management.

(Added to NRS by 1993, 208; A 1995, 510; 1997, 3088, 3154; 1999, 642)

NRS 239.077 Committee to Approve Schedules for the Retention and Disposition of Official State Records: Duties. The Committee shall:

1. Review and approve or disapprove the schedules for the retention and disposition of the official state records of each agency, board and commission which is required to develop those schedules pursuant to NRS 239.080.

2. Advise the Division concerning the development and use of schedules for the retention and disposition of official state records.

(Added to NRS by 1993, 209)

NRS 239.080 State records: Schedules for retention and disposition.

1. An official state record may be disposed of only in accordance with a schedule for retention and disposition which is approved by the Committee.

2. In cooperation with the Division, each agency, board and commission shall develop a schedule for the retention and disposition of each type of official state record.

3. The Division shall submit the schedules described in subsection 2 to the Committee for final approval.

4. As used in this section, "official state record" includes, without limitation, any:

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

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

(c) Materials which are capable of being read by a machine, including microforms and audio and visual materials; and

(d) Materials which 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.

[Part 1:38:1937; 1931 NCL § 7278.11] + [2:38:1937; 1931 NCL § 7278.12]—(NRS A 1957, 66; 1963, 576; 1967, 1270; 1973, 342, 1478; 1979, 1789; 1983, 1298; 1993, 209)

NRS 239.085 State records: Disposition by Department of Transportation.

1. The Director of the Department of Transportation shall, in cooperation with the Division, develop a schedule for the retention and disposition of each type of official state record in the care, custody and control of the Department of Transportation.

2. A record which has historical or permanent value must be preserved permanently by the Department of Transportation or submitted to the State Library and Archives Administrator for preservation in the archives.

3. The Department of Transportation shall keep a record showing when any official state record mentioned in subsection 1 was destroyed, and the kind and nature of it.

(Added to NRS by 1963, 575; A 1967, 1270; 1979, 180, 1789; 1983, 1299; 1997, 3155)

NRS 239.090 State records: Preservation of obsolete and noncurrent records by Division; right to control records.

1. Subject to the provisions of subsection 2, a state official may, with the prior approval of the State Library and Archives Administrator, submit any obsolete official books, documents, original papers, newspaper files, printed books or other records not in current use in his or her office to the Division.

2. A state officer shall first obtain the consent and approval of the Governor. Any other state official shall obtain the consent of the department head

under which the state official operates.

3. The Division may return a submission or any part thereof, if the submission has no historical or permanent value.

4. If the State Library and Archives Administrator finds that any record so submitted has historical or permanent value and accepts it as an accession to the archives, the right to control and possession of it vests in the State Library and Archives Administrator, and the submitting official is not entitled to reclaim it. If records are transferred to the Division by a state official only for the purpose of having the records stored safely on the state official's behalf, the state official has constructive custody of the records and retains the right to control access to them.

[1:67:1943; 1943 NCL § 4694]—(NRS A 1967, 1271; 1973, 323; 1977, 456; 1983, 1299; 1997, 3155)

NRS 239.110 Judicial records: Destruction; microphotographic copies.

1. The Clerk of the Supreme Court, a county clerk, deputy clerk of a justice court or clerk of a municipal court may destroy all documents, records, instruments, books, papers, depositions and transcripts in any action or proceeding in the Supreme Court, district court, justice court or municipal court, respectively, or otherwise filed in the clerk's office pursuant to law, including transcripts of coroners' inquests and depositions, if the records of the clerk do not show that the action or proceeding is pending on appeal or review in any court, except that:

(a) If the written consent of the district attorney is first obtained, transcripts of preliminary hearings may be destroyed as provided in this section; and

(b) Minutes of the Supreme Court, district court, justice court or municipal court, affidavits supporting applications for marriage licenses, after those licenses have been issued, and certificates of fictitious names of businesses may be destroyed immediately subject to the provisions of subsections 2 and 3.

2. The clerk shall maintain for the use of the public a microphotographic film print or copy of each document, record, instrument, book, paper, deposition or transcript so destroyed, if the print or copy is placed and kept in a sealed container under certificate of the clerk and properly indexed. This print or copy shall be deemed to be the original.

3. The clerk shall promptly seal and store at least one original negative of each microphotographic film in such manner and place as may reasonably ensure its preservation indefinitely against loss, theft, defacement or destruction.

4. The Supreme Court may provide by rule for the destruction, without prior microfilming, of such other documents of the several courts of this State as are held in the offices of the clerks but which:

(a) No longer serve any legal, financial or administrative purpose; and

(b) Do not have any historical value.

5. The Court Administrator may request the Division to advise and assist the Supreme Court in its establishment of the rules.

[1:108:1953]—(NRS A 1960, 112; 1977, 158; 1979, 297; 1981, 155, 240; 1983, 384; 1985, 53)

NRS 239.121 Local governmental records: Definitions. As used in NRS 239.121 to 239.125, inclusive:

1. "Custodian of records" means any person authorized to have the care, custody and control of any documents, instruments, papers, books, pamphlets or any other records or writings of a local governmental entity.

2. "Governing body" means the governing body of a local governmental entity.

3. "Local governmental entity" means a county, an incorporated city, an unincorporated town, a township, a school district or any other public district or agency designed to perform local governmental functions.

4. "Old records" means documents, instruments, papers, books, pamphlets or any other records or writings of a local governmental entity which are retained for any purpose by the local governmental entity beyond the minimum period for retention established by the Division or for 5 years or more, whichever is earlier.

(Added to NRS by 1973, 322; A 1975, 80; 1977, 456; 1983, 1300)

NRS 239.123 Local governmental records: Submission to Division;

accounting; return or reclamation.

1. As an alternative to the destruction of old records, the records, with the consent of the governing body and the State Library and Archives Administrator, may be submitted to the Division.

2. The custodian of records shall maintain an accounting of all old records disposed of pursuant to subsection 1, indicating the nature or identity of the records as well as the date of submission to the Division.

3. The Division may return the records so submitted, or any part thereof, if they have no historical or permanent value.

4. Records so submitted may be reclaimed, in whole or in part, by the local government if:

(a) The Division did not acquire title to them in an agreement between the State Library and Archives Administrator and the local government; and

(b) The local government serves written notice upon the Division of its intention to reclaim the records and pays the cost of transportation for the return.

(Added to NRS by 1973, 322; A 1973, 347; 1977, 457; 1979, 180; 1981, 602; 1983, 1300; 1997, 3155)

NRS 239.124 Local governmental records: Exclusive procedures for destruction. The procedures set forth in NRS 239.051, 239.110 and 239.123, and any procedure specifically authorized by the special charter of an incorporated city, constitute the procedures for disposition by a local governmental entity of any old records which have been retained by the entity for any purpose. The disposition thereof must not occur except in compliance with one of those procedures.

(Added to NRS by 1973, 323; A 1981, 602; 1983, 1300)

NRS 239.125 Local governmental records: Program for management; regulations of State Library and Archives Administrator.

1. A local governmental entity may establish a program for the management of records, including the adoption of schedules for the retention of records and procedures for microfilming, which must be approved by the governing body and comply with the applicable provisions of this chapter and any regulations adopted pursuant thereto.

2. The State Library and Archives Administrator shall adopt regulations to carry out a program to establish and approve minimum periods of retention for records of local governments. The proposed regulations or any amendment thereto must be submitted to the local government advisory committee, established pursuant to NRS 354.594, for its advice and recommendations.

(Added to NRS by 1973, 323; A 1977, 457; 1979, 180; 1993, 170; 1997, 3156)

RESTORATION OF LOST OR DESTROYED RECORDS**NRS 239.130 Rerecording of instrument if county records lost or destroyed.**

1. Whenever the records, or any material part thereof, of any county in this State have been lost or destroyed by fire or otherwise, or shall hereafter be lost or destroyed by fire or otherwise, any map, plat, deed, conveyance, contract, mortgage, deed of trust, power of attorney, or other instrument in writing, of whatever nature or character, or record in any proceeding authorized by law to be recorded, affecting the title to real property or water rights in such county, which have been heretofore recorded, or which may be hereafter recorded, may be rerecorded in the proper office therefor.

2. In rerecording the same, the officer shall record the certificate of the previous record with the date of original filing for record shown by the official endorsement on such original instrument, which shall be deemed and taken as the date of the recording of the instrument to which it is attached.

3. Where the person desiring such record shall produce to the recorder an affidavit showing that the original is lost or destroyed, or that the same is not in the person's possession or control, a duly certified copy of the original may be recorded in the same manner and with the same force and effect as the original under this chapter.

4. Copies of records herein authorized to be made, duly certified, shall have the same force and effect as evidence as certified copies of the original instrument or record.

[1911 CPA § 688; RL § 5630; NCL § 9177]

NRS 239.140 Certain deeds prima facie evidence of regularity of proceedings after destruction or loss of records.

1. In all cases where real property has been sold by a sheriff, executor, administrator, guardian, assignee, receiver, trustee or other person appointed or authorized by the court, and the record of the action in which the sale had been made is lost or destroyed by fire or otherwise, the deed to the property made by the sheriff, executor, administrator, guardian, assignee, receiver, trustee or other person appointed or authorized by the court shall be prima facie evidence of the legality and regularity of the sale, and of the correctness of the proceeding in the action or proceeding wherein the property was sold.

2. The deeds made by the treasurer of any county of lands sold at delinquent or forfeited tax sales shall not be prima facie evidence of the title in the purchasers of such lands, and no such presumption shall be indulged in favor of such tax deeds or sales when the records of the sales and the proceedings upon which the sale was based have been lost or destroyed by fire or otherwise.

[1911 CPA § 689; RL § 5631; NCL § 9178]

NRS 239.150 Restoration of liens, mortgages and judgments if records lost or destroyed; procedure; limitations.

1. Whenever the record and entry of any judgment, or the record of any mechanic's lien, mortgage or other encumbrance or lien upon property is lost or destroyed by fire or otherwise, and the original documents or instruments or certified copies thereof cannot be found, the judgment creditor or his or her assignee and the person holding or entitled to the mechanic's lien, mortgage or other encumbrance or lien on property may, as to such judgments, begin a proceeding in the court wherein the same was rendered, and as to mortgages, mechanic's liens or other encumbrances or liens, begin a proceeding in any court having jurisdiction over such property, to have established the fact of the existence, prior to the loss or destruction, of the record of the judgment, mortgage, mechanic's lien or other encumbrance or lien, and the substance and effect thereof.

2. The decree in any such case shall be recorded in the records of the same office in which the original judgment, mortgage, mechanic's lien or other encumbrance or lien was recorded or entered.

3. No judgment, mortgage, deed of trust, mechanic's lien or other encumbrance upon property, the record whereof has been lost or destroyed as described in subsection 1:

(a) Shall continue to be a lien upon such property, or affect the title thereto as against any purchaser for value or subsequent lienholder, unless the action or proceeding to establish the existence of such record, prior to the loss or destruction thereof shall be begun within 6 months from and after such loss or destruction.

(b) Shall be held binding and in force or be executed or foreclosed, unless the action or proceeding to reestablish the existence of such judgment or instrument, prior to the destruction of the record thereof, shall be begun within 1 year from and after such loss or destruction.

[1911 CPA § 690; RL § 5632; NCL § 9179]

NRS 239.160 Proceeding to establish contents and record of lost or destroyed deed or will; parties defendant.

1. Whenever the record of any deed or other instrument affecting the title to or concerning any interest in real property or water rights in this state, which is authorized or required by law to be recorded, or any will, or the probate thereof, is lost or destroyed by fire or otherwise, and the original of the deed or will or the probate thereof, or other instrument, or a certified copy thereof, cannot be found, any person claiming title to such real property or water right or any interest under the will may institute a proceeding in the district court of the county in which the property so affected is situated, to establish the fact of the existence, contents and record of the deed, will and probate thereof, or other instrument, prior to such loss or destruction, and the decree in the case shall be entered in the proper office of such county.

2. Any person having or claiming an interest in the real property or water right or being in possession and enjoyment thereof, as well as the parties to the lost deed or other instrument, and their privies, and all persons interested under the will, shall be made parties defendant in such proceeding.

[1911 CPA § 691; RL § 5633; NCL § 9180]

NRS 239.170 Procedure to establish contents of lost or destroyed deed or will: Complaint; summons; hearing; decree.

1. The proceeding provided in NRS 239.160 for the restoration of lost records shall be begun by filing a complaint in the court having jurisdiction thereof as provided in this chapter, setting forth:

(a) The nature, character and substance of the instrument and record thereof so lost or destroyed.

(b) The date of the loss or destruction as near as may be.

(c) The office in which the instrument was originally recorded, with the date when the same was originally filed for record as near as may be.

(d) That the restoration of such records is necessary to secure the legal rights of the applicant, or of some other person for whose benefit the application is made.

2. The complaint shall be verified in the manner provided for the verification of pleadings in other civil actions.

3. Summons shall issue, and actual service thereof, or service by publication, shall be made upon all persons interested in or affected by the original instrument or record in the manner provided by law for the commencement of civil actions; but the parties may waive the issuing or service of summons and enter their appearance to such application.

4. Upon hearing the application without further pleadings, if the court or judge finds that such instrument and the record thereof have been lost or destroyed and that such instrument, record or certified copy thereof cannot be found or produced by the applicant in the proceeding, and the court or judge is enabled by the evidence produced to find the substance of the instrument or record, an order and decree shall be made setting forth the interest or record according to its substance and effect, and requiring the proper officer to reproduce such record which shall recite the substance and effect of the lost or destroyed record, or part thereof, as found by the order and decree. Such record shall have the same effect as the original record would have if the same had not been lost or destroyed, so far as it concerns the rights of the applicant, or person or parties so served with summons or entering their appearance, or persons claiming under them by title acquired subsequently to the filing of the application.

[1911 CPA § 692; RL § 5634; NCL § 9181]

NRS 239.180 Character of evidence which court may admit. Upon the hearing of the application provided in NRS 239.170, the court or judge may admit in evidence oral testimony, and any complete or partial abstract of such lost or destroyed instrument, record, docket entries or indexes, and any other written evidence of the contents or effect of such instrument or record, or published reports concerning such instrument or record when the court or judge is of the opinion that such abstracts, writings and publications were fairly and honestly made before the loss or destruction of such instrument or record.

[1911 CPA § 693; RL § 5635; NCL § 9182]

NRS 239.190 Proceedings brought in county where property is situated. The district court of any county in which the property is situated which will be affected by proceedings to restore lost records, as provided in this chapter, shall have jurisdiction of such proceedings.

[1911 CPA § 694; RL § 5636; NCL § 9183]

NRS 239.200 Where proceedings are brought when county divided after destruction of records. Whenever a county is segregated after the loss or destruction of the public records thereof, or any part of such records, and a portion of its territory is included in some new county created by an act of the Legislature, all original instruments or duly certified copies of such instruments mentioned in NRS 239.130 shall be recorded in the office of the county recorder of the county in which the property affected thereby is situated after such segregation, and all proceedings to restore lost records as provided in this chapter, which are commenced after the creation of such new county, shall be begun in the county in which the lands affected by such records are then situated.

[1911 CPA § 695; RL § 5637; NCL § 9184]

NRS 239.210 Limitations affecting restored records. Where any judgment, mortgage, deed of trust, lien or the record thereof has been restored under this chapter, such judgment, mortgage, deed of trust or lien shall not continue to extend beyond the limitation prescribed by law at the time the original judgment, mortgage, deed of trust or lien was entered, recorded or created.

[1911 CPA § 696; RL § 5638; NCL § 9185]

NRS 239.220 Restored records validated. Whenever the records or any material part thereof of any county in this state have been lost or destroyed by fire or otherwise, and any map, plat, deed or other instrument in writing

mentioned in NRS 239.130, affecting the title to any real property or water rights in any such county, shall have been rerecorded therein, or where a duly certified copy of such instrument shall have been recorded in such county, prior to January 1, 1912, the record so made is hereby validated and given the same force and effect as records hereafter restored in accordance with the provisions of NRS 239.130.

[1911 CPA § 697; RL § 5639; NCL § 9186]

NRS 239.230 Restoration of judicial records not affecting real property or water rights: Procedure. In all cases where the records of any judgments, not affecting real property or water rights, which judgments have not expired by limitation, or other records of any court of either general or limited jurisdiction in this state, and all records of proceedings taken by, or in behalf of any alien to become a citizen of the United States in this state, have been lost or destroyed, the same may be restored and replaced, and become the records of the courts, in the manner prescribed in NRS 239.240 to 239.290, inclusive.

[1911 CPA § 698; RL § 5640; NCL § 9187]

NRS 239.240 Restoration of judicial records not affecting real property or water rights: Contents of affidavit filed with court.

1. When any record of any court in this State, not affecting real property or water rights, has been lost, destroyed or defaced, so that its contents cannot be distinguished, the same may be restored by any party interested, by making and filing an affidavit in the court whose records it is proposed to restore.

2. The affidavit shall set forth:

(a) The nature of the action, demand or claim upon which the lost, destroyed or defaced record was obtained.

(b) About the date of the discovery of its loss or destruction as near as may be.

(c) That the restoration of the record or records is necessary to secure the legal rights of the affiant, or of some other person, for whose benefit the record or records are sought to be restored.

3. When the record sought to be restored is that of a judgment, the affidavit shall set forth the amount and character of the judgment as nearly as can be ascertained.

[1911 CPA § 699; RL § 5641; NCL § 9188]

NRS 239.250 Court to issue citation upon filing of affidavit.

1. Except in all cases of citizenship or naturalization where no citation is required to issue, upon making and filing of the affidavits, the court or the judge thereof shall thereupon issue a citation to all parties interested, notifying them to appear and show cause why the record referred to in the case should not be restored. The citation shall state that the motion to restore the lost record is based upon affidavit on file in the court.

2. If the hearing of the case is before the district court, 10 days' notice shall be given to all parties interested. If the hearing is before a justice court, not less than 5 nor more than 10 days' notice shall be required.

[1911 CPA § 700; RL § 5642; NCL § 9189]

NRS 239.260 Service of citation on parties residing outside of county or State.

1. When parties upon whom citation is required to be served reside outside of the county, but within the State, service shall be made in the same manner as is prescribed by the Nevada Rules of Civil Procedure for the service of summons in civil actions in this State, and upon a citation issued from a justice court under this chapter, the service of the same upon parties residing out of the county, but within the State, shall be in the same manner as that required for the service of summons in civil actions in the district courts.

2. Where the parties upon whom service is required to be made reside out of this State, service shall be made by publication, in the same manner as is required for service of summons in civil cases in the courts of this State.

[1911 CPA § 701; RL § 5643; NCL § 9190]

NRS 239.270 Counter-affidavits; hearing; decree.

1. In all cases the parties interested shall, upon motion, have an opportunity of appearing and using counter-affidavits and contesting the application.

2. If it appear to the court at the hearing that the record in the case is lost, destroyed or defaced, and what its contents were, it may then make, order or cause to be made, a new roll or record, corresponding to the old one as near as can be done, and enter the same as of record in the court.

3. The matter thus substituted will thenceforward be received in all courts and given in all respects the same effect as though it were the original record.

[1911 CPA § 702; RL § 5644; NCL § 9191]

NRS 239.280 Limitation of record of judgment which has been restored. Where any record of a judgment has been restored under this chapter, the judgment shall not continue or extend beyond the limitation prescribed by law at the time the original judgment so restored was entered.

[1911 CPA § 703; RL § 5645; NCL § 9192]

NRS 239.290 Taxation of costs. The costs to be taxed upon an application to restore a lost or destroyed record, as provided in this chapter, shall be the same as are provided for like service in civil actions, and may be adjudged against either or any party to such proceeding or application, or may, in the discretion of the court, be apportioned between such parties.

[1911 CPA § 704; RL § 5646; NCL § 9193]

PENALTIES

NRS 239.300 Stealing, altering or defacing records, documents or instruments. A person who:

1. Steals, embezzles, corrupts, alters, withdraws, falsifies or avoids any record, process, charter, gift, grant, conveyance, bond or contract;
2. Knowingly or willfully, takes off, discharges or conceals any issue, forfeited recognizance or other forfeiture;
3. Forges, defaces or falsifies any document or instrument recorded or filed in any court, or any registered acknowledgment or certificate; or
4. Steals, alters, defaces or falsifies any minute, document, book or any proceedings of or belonging to any public office within this state,

È is guilty of a category C felony and shall be punished as provided in NRS 193.130.

[Part 61:108:1866; B § 2659; BH § 1696; C § 1842; RL § 2817; NCL § 4817]—(NRS A 1967, 533; 1979, 1463; 1983, 266; 1995, 1263)

NRS 239.310 Removing, injuring or concealing public records and documents. A person who willfully and unlawfully removes, alters, mutilates, destroys, conceals or obliterates a record, map, book, paper, document or other thing filed or deposited in a public office, or with any public officer, by authority of law, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

[1911 C&P § 79; RL § 6344; NCL § 10028]—(NRS A 1967, 533; 1979, 1463; 1995, 1263)

NRS 239.320 Injury to, concealment or falsification of records or papers by public officer. An officer who mutilates, destroys, conceals, erases, obliterates or falsifies any record or paper appertaining to his or her office, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

[Part 1911 C&P § 80; RL § 6345; NCL § 10029]—(NRS A 1979, 1463; 1995, 1264)

NRS 239.330 Offering false instrument for filing or record. A person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in a public office under any law of this State or of the United States, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

[1911 C&P § 83; RL § 6348; NCL § 10032]—(NRS A 1967, 533; 1995, 1264) 193.130.

Open Meetings

241.010. Legislative declaration and intent

In enacting this chapter, the legislature finds and declares that all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

Section 1. Chapter 241 of NRS is hereby amended by adding thereto the provisions set forth as sections 1.5, 2 and 3 of this act.

Sec. 1.5.

1. Except as otherwise provided in subsection 2, meetings of a public body that are quasi-judicial in nature are subject to the provisions of this chapter.
2. The provisions of subsection 1 do not apply to meetings of the State Board of Parole Commissioners when acting to grant, deny, continue or revoke parole of a prisoner or to establish or modify the terms of the parole of a prisoner.

Sec. 2.

1. If the Attorney General makes findings of fact and conclusions of law that a public body has taken action in violation of any provision of this chapter, the public body must include an item on the next agenda posted for a meeting of the public body which acknowledges the findings of fact and conclusions of law. The opinion of the Attorney General must be treated as supporting material for the item on the agenda for the purposes of NRS 241.020.

2. The inclusion of an item on the agenda for a meeting of a public body pursuant to subsection 1 is not an admission of wrongdoing for the purposes of a civil action, criminal prosecution or injunctive relief.

Sec. 3.

1. The Attorney General shall investigate and prosecute any violation of this chapter.
2. In any investigation conducted pursuant to subsection 1, the Attorney General may issue subpoenas for the production of any relevant documents, records or materials.
3. A person who willfully fails or refuses to comply with a subpoena issued pursuant to this section is guilty of a misdemeanor.

241.015. Definitions

As used in this chapter, unless the context otherwise requires:

1. "Action" means:

- (a) A decision made by a majority of the members present during a meeting of a public body;
- (b) A commitment or promise made by a majority of the members present during a meeting of a public body;
- (c) If a public body may have a member who is not an elected official, an affirmative vote taken by a majority of the members present during a meeting of the public body; or
- (d) If all the members of a public body must be elected officials, an affirmative vote taken by a majority of all the members of the public body.

2. "Meeting":

- (a) Except as otherwise provided in paragraph (b), means:
 - (1) The gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.
 - (2) Any series of gatherings of members of a public body at which:
 - (I) Less than a quorum is present at any individual gathering;
 - (II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and
 - (III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.
- (b) Does not include a gathering or series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present:
 - (1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

3. Except as otherwise provided in this subsection, “public body” means:

(a) Any administrative, advisory, executive or legislative body of the state or a local government consisting of at least two persons which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof and includes an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405, if the administrative, advisory, executive or legislative body is created by:

(1) The Constitution of this State

(2) Any statute of this State

(3) A city charter any city ordinance which has been filed or recorded as required by the applicable law;

(4) The Nevada Administrative Code

(5) A resolution or other formal designation by such a body created by a statute of this State or an ordinance of a local government;

(6) An executive order issued by the Governor; or

(7) A resolution or an action by the governing body of a political subdivision of this State;

(b) Any board, commission or committee consisting of at least two persons appointed by:

(1) The Governor or a public officer who is under the direction of the Governor, if the board, commission or committee has at least two members who are not employees of the Executive Department of the State Government;

(2) An entity in the Executive Department of the State Government consisting of members appointed by the Governor, if the board, commission or committee otherwise meets the definition of a public body pursuant to this subsection; or

(3) A public officer who is under the direction of any agency or other entity in the Executive Department of the State Government consisting of members appointed by the Governor, if the board, commission or committee has at least two members who are not employed by the public officer or entity; and

(c) A limited-purpose association that is created for a rural agricultural residential common-interest community as defined in subsection 6 of NRS 116.1201.

“Public body” does not include the legislature of the State of Nevada.

4. “Quorum” means a simple majority of the constituent membership of a public body or another proportion established by law.

241.020. Meetings to be open and public; notice of meetings; copy of materials; exceptions

1. Except as otherwise provided by specific statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these public bodies. Public officers and employees responsible for these meetings shall make reasonable efforts to assist and accommodate physically handicapped persons desiring to attend.

2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:

(a) The time, place and location of the meeting.

(b) A list of the locations where the notice has been posted.

(c) An agenda consisting of:

(1) A clear and complete statement of the topics scheduled to be considered during the meeting.

(2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items by placing the term “for possible action” next to the appropriate item..

(3) Periods devoted to comments by the general public, if any, and discussion of those comments. Comments by the general public must be taken:

(I) At the beginning of the meeting before any items on which action may be taken are heard by the public body and again before the adjournment of the meeting; or

(II) After each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item.

The provisions of this subparagraph do not prohibit a public body from taking comments by the general public in addition to what is required pursuant to sub-paragraph (I) or (II). Regardless of whether a public body takes comments from the general public pursuant to sub-subparagraph (I) or (II), the public body must allow the general public to comment on any matter that is not specifically included on the agenda as an action item at some time before adjournment of the meeting. No action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

(4) If any portion of the meeting will be closed to consider the character, alleged misconduct or professional competence of a person, the name of the person whose character, alleged misconduct or professional competence will be considered.

(5) If, during any portion of the meeting, the public body will consider whether to take administrative action against a person, the name of the person against whom administrative action may be taken.

(6) Notification that:

(I) Items on the agenda may be taken out of order;

(II) The public body may combine two or more agenda items for consideration; and

(III) The public body may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.

(7) Any restrictions on comments by the general public. Any such restrictions must be reasonable and may restrict the time, place, and manner of the comments, but may not restrict comments based upon viewpoint.

3. Minimum public notice is:

(a) Posting a copy of the notice at the principal office of the public body or, if there is no principal office, at the building in which the meeting is to be held, and at not less than three other separate, prominent places within the jurisdiction of the public body not later than 9 a.m. of the third working day before the meeting; and

(b) Providing a copy of the notice to any person who has requested notice of the meetings of the public body. A request for notice lapses 6 months after it is made. The public body shall inform the requester of this fact by enclosure with, notation upon or text included within the first notice sent. The notice must be:

(1) Delivered to the postal service used by the public body not later than 9 a.m. of the third working day before the meeting for transmittal to the requester by regular mail; or

(2) If feasible for the public body and the requester has agreed to receive the public notice by electronic mail, transmitted to the requester by electronic mail sent not later than 9 a.m. of the third working day before the meeting.

4. If a public body maintains a website on the Internet or its successor, the public body shall post notice of each of its meetings on its website unless the public body is unable to do so because of technical problems relating to the operation or maintenance of its website. Notice posted pursuant to this subsection is supplemental to and is not a substitute for the minimum public notice required pursuant to subsection 3. The inability of a public body to post notice of a meeting pursuant to this subsection as a result of technical problems with its website shall not be deemed to be a violation of the provisions of this chapter.

5. Upon any request, a public body shall provide, at no charge, at least one copy of:

- (a) An agenda for a public meeting;
- (b) A proposed ordinance or regulation which will be discussed at the public meeting; and
- (c) Subject to the provisions of subsection 6, any other supporting material provided to the members of the public body for an item on the agenda, except materials:
 - (1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement which relates to proprietary information;
 - (2) Pertaining to the closed portion of such a meeting of the public body; or
 - (3) Declared confidential by law, unless otherwise agreed to by each person whose interest is being protected under the order of confidentiality.

As used in this subsection, "proprietary information" has the meaning ascribed to it in NRS 332.025.

6. A copy of supporting material required to be provided upon request pursuant to paragraph (c) of subsection 5 must be:

- (a) If the supporting material is provided to the members of the public body before the meeting, made available to the requester at the time the material is provided to the members of the public body; or
- (b) If the supporting material is provided to the members of the public body at the meeting, made available at the meeting to the requester at the same time the material is provided to the members of the public body.

If the requester has agreed to receive the information and material set forth in subsection 5 by electronic mail, the public body shall, if feasible, provide the information and material by electronic mail.

7. A public body may provide the public notice, information and material required by this section by electronic mail. If a public body makes such notice, information and material available by electronic mail, the public body shall inquire of a person who requests the notice, information or material if the person will accept receipt by electronic mail. The inability of a public body, as a result of technical problems with its electronic mail system, to provide a public notice, information or material required by this section to a person who has agreed to receive such notice, information or material by electronic mail shall not be deemed to be a violation of the provisions of this chapter.

8. As used in this section, "emergency" means an unforeseen circumstance which requires immediate action and includes, but is not limited to:

- (a) Disasters caused by fire, flood, earthquake or other natural causes; or
- (b) Any impairment of the health and safety of the public.

Sec. 2. This act becomes effective on July 1, 2011.

241.030. Exceptions to requirement for open and public meetings; waiver of closure of meeting by certain persons

1. Except as otherwise provided in this section and NRS 241.031 and 241.033, a public body may hold a closed meeting to:

- (a) Consider the character, alleged misconduct, professional competence, or physical or mental health of a person.
- (b) Prepare, revise, administer or grade examinations that are conducted by or on behalf of the public body.
- (c) Consider an appeal by a person of the results of an examination that was conducted by or on behalf of the public body, except that any action on the appeal must be taken in an open meeting and the identity of the appellant must remain confidential.

2. A person whose character, alleged misconduct, professional competence, or physical or mental health will be considered by a public body during a meeting may waive the closure of the meeting and request that the meeting or relevant portion thereof be open to the public. A request described in this subsection:

- (a) May be made at any time before or during the meeting; and

(b) Must be honored by the public body unless the consideration of the character, alleged misconduct, professional competence, or physical or mental health of the requester involves the appearance before the public body of another person who does not desire that the meeting or relevant portion thereof be open to the public.

3. A public body may close a meeting pursuant to subsection 1 upon a motion which specifies:

- (a) The nature of the business to be considered; and
- (b) The statutory authority pursuant to which the public body is authorized to close the meeting.

4. This chapter does not:

- (a) Apply to judicial proceedings.
- (b) Prevent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical.
- (c) Prevent the exclusion of witnesses from a public or private meeting during the examination of another witness.
- (d) Require that any meeting be closed to the public.
- (e) Permit a closed meeting for the discussion of the appointment of any person to public office or as a member of a public body.

5. The exceptions provided by this section, and electronic communication, must not be used to circumvent the spirit or letter of this chapter to act, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.

241.031. Meeting to consider character, misconduct, or competence of elected member of public body or certain public officers

1. Except as otherwise provided in subsection 2, a public body shall not hold a closed meeting to consider the character, alleged misconduct or professional competence of:

- (a) An elected member of a public body; or

(b) A person who is an appointed public officer or who serves at the pleasure of a public body as a chief executive or administrative officer or in a comparable position, including, without limitation, a president of a university, state college or community college within the Nevada System of Higher Education, a superintendent of a county school district, a county manager and a city manager.

2. The prohibition set forth in subsection 1 does not apply if the consideration of the character, alleged misconduct or professional competence of the person does not pertain to his role as an elected member of a public body or an appointed public officer or other officer described in paragraph (b) of subsection 1, as applicable.

241.033. Meeting to consider character, misconduct, competence or health of person or to consider appeal of results of examination: Written notice to person required; exception; public body required to allow person whose character, misconduct, competence or health is to be considered to attend with representative and to present evidence; attendance of additional persons; copy of record

1. Except as otherwise provided in subsection 7, a public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person or to consider an appeal by a person of the results of an examination conducted by or on behalf of the public body unless it has:

- (a) Given written notice to that person of the time and place of the meeting; and
- (b) Received proof of service of the notice.

2. The written notice required pursuant to subsection 1:

- (a) Except as otherwise provided in subsection 3, must be:
 - (1) Delivered personally to that person at least 5 working days before the meeting; or
 - (2) Sent by certified mail to the last known address of that person at

least 21 working days before the meeting.

(b) May, with respect to a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person, include an informational statement setting forth that the public body may, without further notice, take administrative action against the person if the public body determines that such administrative action is warranted after considering the character, alleged misconduct, professional competence, or physical or mental health of the person.

(c) Must include:

(1) A list of the general topics concerning the person that will be considered by the public body during the closed meeting; and

(2) A statement of the provisions of subsection 4, if applicable.

3. The Nevada Athletic Commission is exempt from the requirements of subparagraphs (1) and (2) of paragraph (a) of subsection 2, but must give written notice of the time and place of the meeting and must receive proof of service of the notice before the meeting may be held.

4. If a public body holds a closed meeting or closes a portion of a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person, the public body must allow that person to:

(a) Attend the closed meeting or that portion of the closed meeting during which his character, alleged misconduct, professional competence, or physical or mental health is considered;

(b) Have an attorney or other representative of his choosing present with him during the closed meeting; and

(c) Present written evidence, provide testimony and present witnesses relating to his character, alleged misconduct, professional competence, or physical or mental health to the public body during the closed meeting.

5. Except as otherwise provided in subsection 4, with regard to the attendance of persons other than members of the public body and the person whose character, alleged misconduct, professional competence, physical or mental health or appeal of the results of an examination is considered, the chairman of the public body may at any time before or during a closed meeting:

(a) Determine which additional persons, if any, are allowed to attend the closed meeting or portion thereof; or

(b) Allow the members of the public body to determine, by majority vote, which additional persons, if any, are allowed to attend the closed meeting or portion thereof.

6. A public body shall provide a copy of any record of a closed meeting prepared pursuant to NRS 241.035, upon the request of any person who received written notice of the closed meeting pursuant to subsection 1.

7. For the purposes of this section,

(a) A meeting held to consider an applicant for employment is not subject to the notice requirements otherwise imposed by this section.

(b) Casual or tangential references to a person or the name of a person during a closed meeting do not constitute consideration of the character, alleged misconduct, professional competence, or physical or mental health of the person.

241.034. Meeting to consider administrative action against person or acquisition of real property by exercise of power of eminent domain: Written notice required; exception

1. Except as otherwise provided in subsection 3:

(a) A public body shall not consider at a meeting whether to:

(1) Take administrative action against a person; or

(2) Acquire real property owned by a person by the exercise of the power of eminent domain, unless the public body has given written notice to that person of the time and place of the meeting.

(b) The written notice required pursuant to paragraph (a) must be:

(1) Delivered personally to that person at least 5 working days before the meeting; or

(2) Sent by certified mail to the last known address of that person at least 21 working days before the meeting.

A public body must receive proof of service of the written notice provided to a person pursuant to this section before the public body may consider a matter set forth in paragraph (a) relating to that person at a meeting.

2. The written notice provided in this section is in addition to the notice of the meeting provided pursuant to NRS 241.020.

3. The written notice otherwise required pursuant to this section is not required if:

(a) The public body provided written notice to the person pursuant to NRS 241.033 before holding a meeting to consider his character, alleged misconduct, professional competence, or physical or mental health; and

(b) The written notice provided pursuant to NRS 241.033 included the informational statement described in paragraph (b) of subsection 2 of that section.

4. For the purposes of this section, real property shall be deemed to be owned only by the natural person or entity listed in the records of the county in which the real property is located to whom or which tax bills concerning the real property are sent.

241.035. Public meetings: Minutes; aural and visual reproduction; transcripts

1. Each public body shall keep written minutes of each of its meetings, including:

(a) The date, time and place of the meeting.

(b) Those members of the public body who were present and those who were absent.

(c) The substance of all matters proposed, discussed or decided and, at the request of any member, a record of each member's vote on any matter decided by vote.

(d) The substance of remarks made by any member of the general public who addresses the public body if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

(e) Any other information which any member of the public body requests to be included or reflected in the minutes.

2. Minutes of public meetings are public records. Minutes or audiotape recordings of the meetings must be made available for inspection by the public within 30 working days after the adjournment of the meeting at which taken. The minutes shall be deemed to have permanent value and must be retained by the public body for at least 5 years. Thereafter, the minutes may be transferred for archival preservation in accordance with NRS 239.080 to 239.125, inclusive. Minutes of meetings closed pursuant to:

(a) Paragraph (a) of subsection 1 of NRS 241.030 become public records when the public body determines that the matters discussed no longer require confidentiality and the person whose character, conduct, competence or health was considered has consented to their disclosure. That person is entitled to a copy of the minutes upon request whether or not they become public records.

(b) Paragraph (b) of subsection 1 of NRS 241.030 become public records when the public body determines that the matters discussed no longer require confidentiality.

(c) Paragraph (c) of subsection 1 of NRS 241.030 become public records when the public body determines that the matters considered no longer require confidentiality and the person who appealed the results of the examination has consented to their disclosure, except that the public body shall remove from the minutes any references to the real name of the person who appealed the results of the examination. That person is entitled to a copy of the minutes upon request whether or not they become public records.

3. All or part of any meeting of a public body may be recorded on audiotape or any other means of sound or video reproduction by a member of the general public if it is a public meeting so long as this in no way interferes with the conduct of the meeting.

4. Except as otherwise provided in subsection 6, a public body shall, for each of its meetings, whether public or closed, record the meeting on audiotape or another means of sound reproduction or cause the meeting to be transcribed

by a court reporter who is certified pursuant to chapter 656 of NRS. If a public body makes an audio recording of a meeting or causes a meeting to be transcribed pursuant to this subsection, the audio recording or transcript:

(a) Must be retained by the public body for at least 1 year after the adjournment of the meeting at which it was recorded or transcribed;

(b) Except as otherwise provided in this section, is a public record and must be made available for inspection by the public during the time the recording or transcript is retained; and

(c) Must be made available to the Attorney General upon request.

5. Except as otherwise provided in subsection 6, any portion of a public meeting which is closed must also be recorded or transcribed and the recording or transcript must be retained and made available for inspection pursuant to the provisions of subsection 2 relating to records of closed meetings. Any recording or transcript made pursuant to this subsection must be made available to the Attorney General upon request.

6. If a public body makes a good faith effort to comply with the provisions of subsections 4 and 5 but is prevented from doing so because of factors beyond the public body's reasonable control, including, without limitation, a power outage, a mechanical failure or other unforeseen event, such failure does not constitute a violation of the provisions of this chapter.

241.0353. Absolute privilege of certain statements and testimony

1. Any statement which is made by a member of a public body during the course of a public meeting is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

2. A witness who is testifying before a public body is absolutely privileged to publish defamatory matter as part of a public meeting, except that it is unlawful to misrepresent any fact knowingly when testifying before a public body.

241.0355. Majority of all members of public body composed solely of elected officials required to take action by vote; abstention not affirmative vote; reduction of quorum

1. A public body that is required to be composed of elected officials only may not take action by vote unless at least a majority of all the members of the public body vote in favor of the action. For purposes of this subsection, a public body may not count an abstention as a vote in favor of an action.

2. In a county whose population is 40,000 or more, the provisions of subsection 5 of NRS 281.501 do not apply to a public body that is required to be composed of elected officials only, unless before abstaining from the vote, the member of the public body receives and discloses the opinion of the legal counsel authorized by law to provide legal advice to the public body that the abstention is required pursuant to NRS 281.501. The opinion of counsel must be in writing and set forth with specificity the factual circumstances and analysis leading to that conclusion.

241.036. Action taken in violation of chapter void

The action of any public body taken in violation of any provision of this chapter is void.

241.037. Action by attorney general or person denied right conferred by chapter; limitation on actions

1. The attorney general may sue in any court of competent jurisdiction to have an action taken by a public body declared void or for an injunction against any public body or person to require compliance with or prevent violations of the provisions of this chapter. The injunction:

(a) May be issued without proof of actual damage or other irreparable harm sustained by any person.

(b) Does not relieve any person from criminal prosecution for the same violation.

2. Any person denied a right conferred by this chapter may sue in the district court of the district in which the public body ordinarily holds its meetings or in which the plaintiff resides. A suit may seek to have an action taken by the public body declared void, to require compliance with or prevent violations of this chapter or to determine the applicability of this chapter to discussions or decisions of the public body. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this subsection.

3. Any suit brought against a public body pursuant to subsection 1 or 2 to require compliance with the provisions of this chapter must be commenced within 120 days after the action objected to was taken by that public body in violation of this chapter. Any such suit brought to have an action declared void must be commenced within 60 days after the action objected to was taken.

241.038. Board of regents to establish requirements for student governments

The board of regents of the University of Nevada shall establish for the student governments within the Nevada System of Higher Education requirements equivalent to those of this chapter and shall provide for their enforcement.

241.040. Penalties; members attending meeting in violation of chapter not accomplices; enforcement by attorney general

1. Each member of a public body who attends a meeting of that public body where action is taken in violation of any provision of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

2. Wrongful exclusion of any person or persons from a meeting is a misdemeanor.

3. A member of a public body who attends a meeting of that public body at which action is taken in violation of this chapter is not the accomplice of any other member so attending.

4. In addition to any criminal penalty imposed pursuant to this section, each member of a public body who attends a meeting of that public body where action is taken in violation of any provision of this chapter, and who participates in such action with knowledge of the violation, is subject to a civil penalty in an amount not to exceed \$500. The Attorney General May recover the penalty in a civil action brought in the nature of the State of Nevada in any court of competent jurisdiction. Such an action must be commenced within 1 year after the date of the action taken in violation of this chapter.