

**MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Eighth Session
March 4, 2015**

The Senate Committee on Government Affairs was called to order by Chair Pete Goicoechea at 1:36 p.m. on Wednesday, March 4, 2015, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pete Goicoechea, Chair
Senator Joe P. Hardy, Vice Chair
Senator Mark Lipparelli
Senator David R. Parks
Senator Kelvin Atkinson

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Policy Analyst
Heidi Chlarson, Counsel
Nate Hauger, Committee Secretary

OTHERS PRESENT:

Wes Henderson, Executive Director, Nevada League of Cities and Municipalities
Joni Eastley, Assistant County Manager, Nye County
Craig Stevens, Clark County School District
Constance Brooks, Nevada System of Higher Education
Luis Valera, University of Nevada, Las Vegas
John Fudenberg, Clark County
Brian McAnallen, City of Las Vegas
Michael Oh, Assistant City Attorney, City of Henderson
Charlotte Bible, Assistant General Counsel, Las Vegas Metropolitan Police
Department
Sabrina Mercadante, President, Nevada Municipal Clerks' Association
Brian Connett, Deputy Director, Industrial Programs, Department of Corrections

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Victor Joecks, Nevada Policy Research Institute
Kandis McClure, Consumer Data Industry Association
Barry Smith, Executive Director, Nevada Press Association
Stanton Tang, News Director, KOLO 8 News Now
Gary Schmidt
Amy Rose, Legal Director, American Civil Liberties Union of Nevada
Jeff Fontaine, Executive Director, Nevada Association of Counties

Chair Goicoechea:

The Committee will hear Senate Bill (S.B.) 28.

SENATE BILL 28: Clarifies provisions governing the fees that may be charged for providing copies of certain public records. (BDR 19-464)

Wes Henderson (Executive Director, Nevada League of Cities and Municipalities):

Opposition to this bill will claim that the true intent is to limit access to public records. This is not true. Our members believe in open and transparent government. The City of Reno has their checkbook available online. Several of our members televise or stream the meetings of their governing bodies in real time. The argument that the intent of this bill is to limit access to public records, or is a means for local governments to make money by providing copies of public records, is a red herring. We have submitted an amendment ([Exhibit C](#)).

Nevada Revised Statutes (NRS) 239 governs public records, copies of public records and the fees that may be charged by the custodian of the public records. *Nevada Revised Statute* 239.055 allows a governmental entity to impose an additional fee for complying with a request for a public document which requires the entity to make extraordinary use of its personnel or technological resources. The bill proposes to define "extraordinary use" as a request that requires personnel of a local government more than 30 minutes of time or requires the printing of 25 or more pages. I have provided written testimony ([Exhibit D](#)).

Chair Goicoechea:

Statute already states that you are able to charge a fee for extraordinary use. The real purpose of this bill is to define the term "extraordinary use."

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Senator Lipparelli:

If a member of the public wished to make a request for a public record that took less than 30 minutes to prepare and was able to be delivered to the requestor through email, is there a fee for that?

Mr. Henderson:

No, there is not.

Chair Goicoechea:

What stops that government worker from taking 31 minutes to work on a request? The requestor will complain that the worker should have done it in 15 minutes, but the worker may have been interrupted and had no choice but to take over 30 minutes.

Senator Hardy:

Government entities can respond to requests electronically. Can the public make record requests electronically?

Mr. Henderson:

I would say yes. However, some people from local governments who testify will probably have a more accurate answer.

Senator Hardy:

I also think the answer is yes.

Joni Eastley (Assistant County Manager, Nye County):

I support defining extraordinary use of personnel and technological resources. It is not helpful to have language in a bill that leaves that up to interpretation.

Senator Hardy:

What does it mean when section 1, subsection 2 says, "the governmental entity shall inform the requester in writing?" Does "in writing" include electronic communications?

Ms. Eastley:

I do not know.

Senator Hardy:

The people from local governments who are testifying today could talk to their clerks now and find out the answer to my question.

Craig Stevens (Clark County School District):

We support S.B. 28 because it clarifies language and gives strict guidelines on the process when we receive large requests.

Senator Lipparelli:

Hypothetically, a person requests a 75-page transcript. That transcript is available in electronic form and the clerk receiving the request can attach that to an email in response. In that case, would the 75-page document be provided to the requester for free?

Mr. Stevens:

It would depend on the content of that file. We have a lot of private student data. It depends on who requests it and, subsequently, how much redaction is required. If the requester is the parent of the student in question, it probably would not require a fee; but if the document is going somewhere else, we would need to go through the file carefully and charge a fee.

Senator Lipparelli:

If that same individual said, I want a CD-ROM, or a thumb drive that contains a 1,000-page report. Presuming no redaction is required, would the agency provide the CD-ROM at their own expense?

Mr. Stevens:

Yes.

Constance Brooks (Nevada System of Higher Education):

We support S.B. 28 and the proposed amendments from Mr. Henderson. In 2015, we have had staff commit to over 100 hours of time responding to requests. These are administrators who have other responsibilities.

Luis Valera (University of Nevada, Las Vegas):

We support this bill and the proposed amendments.

Senator Hardy:

Does "in writing" include electronic communications?

Mr. Valera:

Yes.

John Fudenberg (Clark County):

We are working with Mr. Henderson to change his proposed amendment so that we can support it. I have submitted an email containing the language we would like to change ([Exhibit E](#)).

In [Exhibit C](#) under subsection 1, paragraph (a), we would like to add the language, "25 cents per page for 8.5- by 11-inch, black-and-white copies." We want to specify normal-sized paper. Further down in paragraph (a), we would add the words "for such extraordinary use or for irregular-sized and color copies, fees that reflect the cost of material required to produce the copy." We want to do this because we have many departments that produce very large documents and irregular-shaped documents which may cost more than 25 cents. We would charge the amount that it costs to produce them.

Chair Goicoechea:

Statute gives you the ability to charge for extraordinary instances, so what does this change?

Mr. Fudenberg:

The coroner's office does not produce any extraordinarily large copies, but we charge for redaction.

Chair Goicoechea:

If you run over 30 minutes do you charge for that? Or do you only charge for redaction?

Mr. Fudenberg:

We do not charge when we go over 30 minutes of staff time. If we get a large request, we give them an estimate of how long it will take and what we would charge. They usually drop the request, or if possible, we email the document to them if we do not have to spend an extraordinary amount of time redacting.

Senator Hardy:

How many documents are not in electronic form?

Mr. Fudenberg:

It is a small percentage of the documents we produce.

Brian McAnallen (City of Las Vegas):

We support S.B. 28 with the amendments from the Nevada League of Cities and Municipalities (NLCM). One example of an extraordinary request we received was from a local reporter who wanted 250,000 emails. The requester later revised the request to about 1,900 emails, about 14,352 pages. It totaled about 250 hours to meet the request. The reporter scheduled a time to review the documents and then did not show up. The request was never used.

Another request also came from a reporter, and it was for about 7,434 emails. The request was revised. There ended up being 204 emails which met the responsive email status and 68 emails met the privileged email status. Those totaled about 458 pages of printed material. That request took about 160 hours to fulfill. Ten of those hours came from senior-level employees performing a final review.

These are examples of "extraordinary use," and this bill will help us with similar requests in the future.

Senator Hardy:

In your second example, what did the 160 hours for the request net?

Mr. McAnallen:

The total time was about 3 weeks and 3 days from one of our city attorneys.

Senator Hardy:

Was there a story in the newspaper on the content of those documents?

Mr. McAnallen:

Some of the information uncovered may have been used in some articles. I did not see what resolution came of that.

Senator Hardy:

There were no indictments?

Mr. McAnallen:

No.

Chair Goicoechea:

Have you run a thumbnail calculation of what it would cost? When you talk about 14,000 pages or 18,000 pages at 25 cents a page and the hours required, what would that fee be?

Mr. McAnallen:

We have not calculated it.

Chair Goicoechea:

It would be a significant sum. When there is a \$10,000 fee, that could be obstructive to public records requests.

Michael Oh (Assistant City Attorney, City of Henderson):

The City of Henderson supports this bill because it clarifies costs associated with large, complex and sometimes onerous public record requests that require significant staff time to process. Today, many governments are operating with a lean staff. While part of being a public employee requires some function of responding to public record requests, the larger, more complicated requests require a substantial amount of staff time to comply with the record requests within legally required time constraints. The purpose of the public records law is to provide governmental transparency, but government entities need to be responsible financial stewards of taxpayer money and allocate its resources appropriately.

In 2014, the City of Henderson had about 8,800 record requests—more than 150 requests per week. One example was when a private individual asked for reports for all arrests during a 6-month period. In order to fulfill the request, the Henderson Police Department needed to pull each arrest report and ensure that each case had been adjudicated by the Court because statute requires that an unadjudicated case is confidential. Upon further research, we learned that the person who requested the information was part of a business enterprise that posted arrest record information on the Internet and subsequently solicited people whose information was obtained through the request to pay his business a fee to remove that information from the Internet. We review records to redact confidential information such as this.

Another request we received was from a disgruntled employee who made weekly public record requests. In the requests, this person indicated that such requests would continue unless the City agreed to provide this person with a

sum of money. Examples of requests we often receive are requests from people engaged in litigation with the City. These requests circumvent the discovery rules during litigation and require a significant amount of staff time to review.

Statute regarding extraordinary use was put in place in the 2013 Legislative Session through S.B. No. 74 of the 77th Session. Legislative history shows that bill was a compromise and intended to provide consistency for the cost of copying records. However, the current charge, not to exceed 50 cents per page, created some ambiguity in the law. The NRS 239.055 states:

... 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 not to exceed 50 cents per page for such extraordinary use.

However, NRS 239.052 enables a governmental entity to charge the actual cost for providing a copy of a record, so long as a written policy is adopted and posted in a conspicuous place. In reading the legislative history of S.B. No. 74 of the 77th Session, there was testimony of entities charging fees to pay for a staff person's time to access records at a remote site. A statement was given that if records were not available electronically, and under extraordinary circumstances, the governmental entity could charge additional fees. We support S.B. 28 because it clarifies the interpretation of NRS 239.055 and 239.052, and provides a definition of extraordinary use of personnel. It provides guidance and makes a distinction between voluminous record requests and labor-intensive record requests. For example, there could be a request for 1,000 pages of documents that contain no confidential information. The type of work that entails is merely pulling the 1,000 pages and photocopying them. On the other hand, a record request that contains confidential information requires review of all 1,000 pages and it may only produce 10 pages that are responsive to the request. The latter is more labor-intensive and could require days of staff time to review the documents. This bill provides clarification for larger record requests, but it does not affect regular, everyday record requests the public makes.

Charlotte Bible (Assistant General Counsel, Las Vegas Metropolitan Police Department):

The Las Vegas Metropolitan Police Department (LVMPD) supports S.B. 28 with the amendments proposed by NLCM. We support it because it clarifies what we already do. It defines extraordinary use of personnel. The LVMPD has nearly 5,000 employees. A clerk does not simply pull a physical file from a cabinet anymore; there are many silos of records, including electronic records maintained by a government entity for each of the many areas of responsibility. The electronic records in different silos are not interconnected and cannot be searched easily. When a record is requested by a broad description or category, such a request often requires an extraordinary use of personnel because the record will not be readily identifiable without considerable research, unlike the request for a specific record.

We have a duty to respond to public record requests, but we also have a duty to protect privacy and other confidential information. We use personal identifiers, we deal with confidential criminal history information, we have ongoing confidential criminal investigations and we use confidential informants and undercover officers. We have a legal duty to protect certain victims' identities such as sexual assault victims or those subject to elder abuse, juveniles, personal identifiers and the rights of the accused by redacting confidential information. Most of the time we spend responding to a record request is on redacting confidential information.

Charging for extraordinary uses of personnel or technological resources is necessary to be responsible stewards of taxpayer money. Such a charge is not intended to discourage public record requests, but a way to quantify the magnitude and complexity of the request and the dedication of resources to satisfy it. There are opportunity costs in responding to public record requests. When an employee is devoted to working on public record requests, that employee is unable to perform their other duties. When the request is voluminous, the task of retrieving, compiling, reviewing, redacting and otherwise processing will be time-consuming. Such requests do require an extraordinary use of personnel.

We work with requesters on charges because we want to be reasonable and we want to handle requests in the most expeditious manner for a department as well as the requester. When requests are complex, they come to the general counsel's office. I spend a great deal of time with these issues determining if

we can legally release the records. We always have to be concerned that the records that we produce are not only going to the requester to cull information, but they might be posted on the Internet. Under statute, we can charge for extraordinary use of personnel or technological resources. This bill would provide more clarity for both the requester and the governmental entity.

Sabrina Mercadante (Nevada Municipal Clerks' Association):

We support this bill. The majority of record requests completed by the city clerk's office are under the 30-minute threshold and are normally produced at no cost. However, when requests require extraordinary use, this is a method for us to recoup those costs. Senator Hardy, I have spoken to the clerks and received a response from four of them who consider an email request a written request.

Brian Connett (Deputy Director, Industrial Programs, Department of Corrections):

We support this bill for most of the reasons already expressed.

Victor Joecks (Nevada Policy Research Institute):

This bill addresses the wrong problem. Members of the public believe government is not transparent enough and it is difficult to get public records. We are concerned about a bill that would make attaining public records harder, not easier. The fundamental problem with this bill is the principle. The government works for citizens and whether they are taxpayers, media members or watchdog groups, the government has an obligation to let the public know how they are spending public funds and what policies they are enacting. *Nevada Revised Statutes* 239 exists to further democratic principles by letting the citizens know what government officials are doing. One problem we have experienced is that we will get vastly different charges and response times for similar requests, depending on the jurisdiction. I am concerned that a local government would use this as a tool to obstruct requests that they do not want to release. This bill would limit the public's access to data. I recently spoke to a reporter who requested a CD-ROM from the City of North Las Vegas that wanted to charge her \$25. The only recourse for the public is to sue the government, which is expensive.

This bill would also allow local governments to charge for redactions. Review is a broad term: If you request a short record that the government does not want to release, they can simply review it for over a half hour in order to charge you for it. Somebody brought up email searches which are easy to do because they

can be searched by keyword. Redaction is expensive. This bill would mean that the public would have to pay to receive less information.

Senator Lipparelli:

Local governments can already charge for redactions. How does this bill change that?

Mr. Joecks:

The ACLU sued on behalf of a private citizen who wanted to see emails from the Clark County School District and the School District wanted to charge her for redaction. The district court ruled that they could not charge her for redaction because you cannot charge somebody for providing less information. Depending on the agency, compliance varies.

Chair Goicoechea:

Under NRS 239.055, people should be charged if they require extraordinary use of personnel or technological resources. Are you advocating that we repeal that law?

Mr. Joecks:

That would not be a bad idea. Many local government officials work with us because they understand the need to be public. We make extensive requests to <www.transparentnevada.com>. My concern is defining extraordinary use as a half hour. With the broad provisions of review and a request that a government does not want to release, it would be easy to take a half hour in order to charge a fee for releasing the document. When we get bills, it is often \$75 to \$100 per hour; so costs can add up quickly.

Senator Hardy:

You do not like the half-hour constraint; how much time do you think is reasonable?

Mr. Joecks:

I do not like having a definition.

Senator Hardy:

Would a day be long enough?

Mr. Joecks:

Perhaps, it is 8 or 10 hours. I do not like putting a specific time on it because that gives the government workers a goal, and they can stall until they reach it.

Senator Hardy:

You are worried about any amount of time?

Mr. Joecks:

Yes. The government works for taxpayers. Restrictions on how the public can uncover information about money being spent is concerning.

Senator Hardy:

Your organization does research. How does Nevada compare with other states for transparency?

Mr. Joecks:

The problem is not how the law is written, but how it is being implemented by agencies. If all agencies consistently showed good faith, there would not be problems. However, when there are things that agencies do not want to release, delays and fees occur. It seems, that depending on how you ask for something, they may decide to charge you. Washington State puts a fee on the agency if they deny a public record request incorrectly. California does a lot of record requests and I have not seen a half-hour time limit there. I am interested to find out from local governments how many of the requests encompass the time limit; it seems like it would encompass many requests.

Senator Hardy:

You are not sure about other jurisdictions?

Mr. Joecks:

No.

Kandis McClure (Consumer Data Industry Association):

We oppose the bill because we are afraid that the bill as introduced would be cost prohibitive to our members and also to members of the public who should have access to the records.

Chair Goicoechea:

The amendment reduces the fees by about half.

Barry Smith (Executive Director, Nevada Press Association):

Senator Lipparelli asked about the 74-page document being emailed. That would cost 50 cents per page under the original version of this bill, or 25 cents per page under the amended version. Anything over 25 pages is considered extraordinary. It is hard to believe that copying more than 25 pages is extraordinary. Another comment had arrest records confidential which was not true.

This bill addresses two fundamental aspects of our public records act as established in 1997. Assembly Bill No. 214 of the 69th Session, introduced by then-Secretary of State Dean Heller, discussed the actual cost standard and extraordinary use. There was concern that local governments needed a way to deal with burdensome requests and commercial requests. At the time, Mr. Heller said it should be the public policy of this State that cost should never be used as a means of deterring public access to information about government conduct and activities. Information should not be available only to the wealthy. Permitting the government to make a profit from the sale of public records defeats the purpose of open information laws. It is the government's duty to respond to requests for government information.

The standard of actual cost of making a copy of a record does not include search, retrieval or redaction. When I make a request for a record, is it my responsibility that that record be redacted? No, it is the government's responsibility. I understand that there are records that contain personal identifiers, but in 30 years of sending emails I have never sent anybody my social security number, my bank account or my ATM PIN. It could not take 250 hours to go through emails to make sure no confidential information exists. That is not what they are doing; they are looking for a reason to deny the request or a reason to increase the fee. We have gotten quotes as high as \$10,000. The reason for the extraordinary use of personnel or technological resources and the 50-cents-per-page phrases is that they allow fees to reach large amounts. Fifty cents is five times what you would pay for a copy at Office Depot.

There was a question about how we compare to other states. We are fairly similar. Many states claim to use actual cost, but do not do a good job of defining it. Mr. Henderson provided you with a list of states that allow personnel cost recovery ([Exhibit F](#)). I have a list of a dozen or so that prohibit you from charging a fee for redaction, review, retrieval or searching. The

amendment to this bill would add inspection of records. This means that you do not even need to request a copy of records to be charged a fee; you can simply ask to see them. If I sent all of you Senators an email with the 94 pages of legislative history from 1997, could I charge you a fee of \$47 each? It seems like it is either to deny access or to make a profit from it. There are ways to address commercial requests. Arizona uses criteria to determine whether it is a commercial request. If somebody attempts to make money off of their record request, the government can charge them differently. Other states have definitions that say, if your request is in the public interest, it is free. I like one part of the amendment that changes the price per page to 25 cents, from 50 cents. That is only 2.5 times the cost at Office Depot.

Senator Hardy:

We request emails from an agency's computer, not personal emails. Those can be transferred electronically. You do not expect to receive a paper copy; you expect to get copies of emails electronically. What is the largest number of emails requested that led to something newsworthy?

Mr. Smith:

The *Las Vegas Review-Journal* wrote an award-winning series of stories on police shootings. They went through about 20 years' worth of records from the LVMPD and the coroner's office on police shootings and deaths. The definition of an investigative reporter is that he missed the meeting so he had to call and get the minutes. I assume there was a lot of negotiation between those parties about what the journalists needed, which is typical. The agency asks how they can scale back the request so it is not too burdensome.

Statistics show that 94 percent of record requests come from the public, not the media. The Division of State Library and Archives never charges for records, but if this bill passes, they could.

Senator Hardy:

Have you uncovered something newsworthy with your requests?

Mr. Smith:

Yes.

Senator Lipparelli:

Looking at [Exhibit C](#), subsection 1, paragraph (a) says, "Charge a fee not to exceed 25 cents per page or, for a request for a record to be delivered electronically, the cost of any storage media used to deliver the electronic record" We can clean that language up. I assumed from that language that any delivery that does not require storage media would be provided at no cost, unless it takes more than 30 minutes to retrieve.

Mr. Smith:

In the bill, section 1, subsection 3, paragraph (a), subparagraph (2) says that if it is more than 25 pages, that constitutes extraordinary use of personnel or technological resources.

Senator Lipparelli:

Anything that can be delivered electronically within a short span of time should not be charged.

Mr. Smith:

Senate Bill No. 74 of the 77th Session gave the State Library the responsibility of adopting regulations, and they struggled with defining extraordinary use. They produced a manual which contains a vague description of what constitutes extraordinary use, but it is helpful because it points out that extraordinary use for one secretary in a general improvement district is different from extraordinary use for Clark County. In a small jurisdiction, if one person needs to spend an extraordinary amount of time or resources responding to a request, it could put a strain on the governing body. For a larger jurisdiction, such as Clark County, which has a staff of public relations people, that should not be much of a burden. This is why it is difficult to create a definition and have it apply across all jurisdictions. Nevada's law is in the middle of the pack when compared to other states. Many states have this vague standard. If S.B. 28 passes, we will have the worst public records law in the Country. It would be too easy for employees to take 30 minutes to work on a request. For instance, an employee may need to drive across town to recover a document. The standard has already been eroded greatly by what is being applied in fees. However, the 50-cent cap that exists now compensates for that.

Senator Hardy:

You are comfortable with the 50-cent cap per page?

Mr. Smith:

Yes.

Senator Hardy:

You do not like the half-hour constraint. How much time would you like?

Mr. Smith:

In defining a time limit, you also have to define what type of work that covers and who is doing it. There is a difference between having the lowest-paid, qualified personnel doing the job, and having an attorney do it. As for the time constraint, the Freedom of Information Act does not allow governmental entities to charge for less than 2 hours' worth of work. The states that set limits usually have those limits around 2 hours, so 30 minutes would definitely be low.

Senator Hardy:

Regulations do not normally specify what type of worker should be doing the work. Have you found in your research that any entities are regulated that way, or are they all regulated based on the 2-hour time constraint?

Mr. Smith:

The limits I saw were in statutes.

Chair Goicoechea:

Regulations vary greatly among the 19 states in [Exhibit F](#). Some provide it has to be the lowest-paid employee doing the work, and some set time constraints. Arizona's law simply states that fees must be reasonable, which is ambiguous, and leaves it up to the interpretation of the worker responding to the request.

You mentioned that you should not be charged when the worker has to redact documents. Redaction has to be done and it takes time. As you stated, redaction in smaller jurisdictions can put a greater strain on resources.

Stanton Tang (News Director, KOLO 8 News Now):

I oppose S.B. 28. I am specifically opposed to section 1, subsection 1, paragraph (a), which would allow government entities to charge 50 cents per electronic page. I do not oppose section 1, subsection 1, paragraph (b), which charges a fee for the actual cost of the time and efforts of an employee. The fees for the actual cost and for the equivalent amount of electronic data means that requesters will be double-charged for the same information. This would

restrict public access to large files, and many of the most important documents are very large. For example, requests on the Sparks Middle School and the Renown Hospital shootings both totaled over 1,000 pages. For the Renown shooting, we were charged \$50.95 for the electronic form. The electronic page equivalent would have been over \$538.

I understand that you expect businesses to pay, but it could be cost-prohibitive for the average Nevadan. You asked about the results of our work as journalists. My written testimony ([Exhibit G](#)) included links to the stories we produced as a result of the requests regarding the two shootings. We do not believe that local government entities should bear the brunt of our efforts to collect information for journalism, but it needs to be fair.

Senator Parks:

You indicated the price for the electronic document for the Renown shooting. What was the price for the document on the Sparks shooting?

Mr. Tang:

The price for the data that came on a CD-ROM was \$50. We were charged about \$80 for the printed copy, but they did not charge us the 50 cents per page. We understand that more than one media outlet is requesting the information. How do they determine 30 minutes when they are working on the same request from multiple sources? Is it 30 minutes for each request, or 30 minutes total for all the requests? This is not specified in the bill.

Gary Schmidt:

Somebody asked how we compare to other states. We are around the middle. Our transparency rating is about twenty-fifth in the Country. Our public records law and Open Meeting Law are relatively strong. However, if S.B. 28 passes, our ranking will drop 10 or 15 spots. Public records laws are generally rated based on the cost of receiving records. We are in twenty-fifth place because we have a strong Open Meeting Law and a strong public records law. We would be 10 or 15 states higher if the Legislature complied with the Open Meeting Law. Statute should not be changed.

When a request requires more than 30 minutes, statute allows the governing body to recover their cost with a 50-cent cap per page. The proposed changes include a definition of extraordinary use of more than 25 pages. I have a copy of a bill draft request (BDR) for the 2015 Legislative Session which is provided for

free. Statute allows the Legislative Counsel Bureau (LCB) to charge the cost of printing, which would be about 75 cents for this BDR. Senate Bill 28 would allow LCB to charge \$35 for this same BDR, and the amended version would allow LCB to charge \$17.50. In response to Senator Lipparelli's question, S.B. 28 defines more than 25 pages as extraordinary use. The proposed bill would allow fees of 50 cents per page, and the amended version would allow fees of 25 cents per page.

Amy Rose (Legal Director, American Civil Liberties Union of Nevada):

We oppose S.B. 28. The fees allowed under this bill impose an unreasonable burden on the public in accessing public records. It also hinders nonprofit organizations such as the ACLU from investigating the government in search of any wrongdoing. There is no exception in this bill for groups working in the public interest. In the public records act, there is a provision that a government entity can waive fees, but that is not mandated. Under the Freedom of Information Act, fees can be waived when the requester demonstrates that it is in the public interest, it is likely to contribute to public understanding of government operations and activities, and it is not primarily for commercial interest. We should add that language to this bill.

The bill contradicts the purpose of the public records act in NRS 239—which is to foster democratic principles and transparency of the government. The ACLU has represented an individual who is suing because she was unable to access records from the Clark County School District. In that case, the Clark County School District said her request was extraordinary under the statute definition. The district court looked at the legislative history of the public records act and decided that extraordinary use means nuisance requests or needing to write a computer program in order to retrieve access to information. This case took 3 hours to retrieve the information, and the district court ruled that that was not extraordinary.

In Wisconsin, the courts said government entities could not charge for redaction. In the case of *Milwaukee Journal Sentinel v. City of Milwaukee*, 815 N.W.2d 367 (Wis. 2012) they said:

Although there was not a direct denial of public access to records, the issue directly implicates the accessibility of government records. The greater the fee imposed on the requester of a public record, the less likely the requester will be willing and able to

successfully make a records request. Thus, the imposition of fees limits and may even serve to deny access to government records.

Although there may be instances where charging for records is appropriate, charging for redaction which lessens the amount of information being given is not reasonable and does not further public interest. This bill is going to create two tiers of people: The tier that has the means to access records, and the tier that does not have the means. The underserved populations of Nevada who would have the most need to access public records constitute the tier that does not have the means. We oppose the bill as introduced.

Chair Goicoechea:

Do you oppose the bill with the amendments as well?

Ms. Rose:

Yes. Our biggest concern with the amendment is the charge for inspection of records. There are no resources being used by a government entity when somebody comes in and inspects the records. The 30-minute limit on inspection is unreasonable. The limit of 25 pages also does not constitute extraordinary use, and it is not fair to charge the requester for the government entity not keeping their records in an easily accessible manner.

Senator Lipparelli:

Are you satisfied with the language in the bill under section 1, subsection 2 which says, "The fee charged by the governmental entity must be reasonable and must be based on the cost that the government entity actually incurs for the extraordinary use of its personnel or technological resources?"

Ms. Rose:

That language is in statute. We would prefer no fees at all. However, that part of the law is not subject to change with this bill.

Senator Lipparelli:

The language in statute up for interpretation is problematic. We were clarifying what the public can expect when making a records request. Perhaps, the language as written is acceptable to most.

Ms. Rose:

Under the Freedom of Information Act, it is 10 cents per page which better reflects the actual cost of copying. Other entities that provide copying services, such as Kinkos, charge far less than 50 cents per page.

Jeff Fontaine (Executive Director, Nevada Association of Counties):

We are neutral on this bill. However, we do agree there is a need to define the term extraordinary use. Our members include densely populated counties and rural counties. Application of the statute today varies from county to county. The occurrence of a large request for information from a smaller county can have a disproportionate effect on the staff compared to a larger county receiving the same request.

Chair Goicoechea:

It sounds like everybody agrees that there can be cases where whoever is doing the research should have some costs offset. There is disagreement over how to define extraordinary use, and what is reasonable. I am not comfortable setting it at 25 cents per page and setting a definite price for an amount of time. I would like to see this language tightened up. Because of S.B. No. 74 of the 77th Session, we are under the gun with this bill. Local governments can already charge up to 50 cents per page.

Mr. Henderson:

That is correct. Under statute, we can charge up to 50 cents per page. We are willing to work with the other stakeholders to determine a figure that will work for the local governments and the public. For extraordinary requests, I do not have the exact statistics because the overwhelming majority of requests are handled quickly at no cost. Records are not maintained for the number of requests handled that way. This bill only applies to a small number of record requests. Regarding the Kinkos analogy, they may only charge you 10 cents per page, but that is for something that you brought in to copy. They do not have to search through their files to find it. We are willing to work to create more acceptable language for this bill.

Chair Goicoechea:

A number of industries have to deal with local governments, including assessors and county recorders. We want to make this bill more acceptable.

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Chair Goicoechea:

The meeting is adjourned at 3:11 p.m.

RESPECTFULLY SUBMITTED:

Nate Hauger,
Committee Secretary

APPROVED BY:

Senator Pete Goicoechea, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	1		Agenda
	B	5		Attendance Roster
S.B. 28	C	2	Nevada League of Cities and Municipalities	Proposed Amendment
S.B. 28	D	3	Nevada League of Cities and Municipalities	Written Testimony
S.B. 28	E	1	Clark County	Emailed Amended Language
S.B. 28	F	10	Nevada League of Cities and Municipalities	Bill Information Sheet
S.B. 28	G	1	KOLO 8 News Now	Written Testimony