

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Eightieth Session
June 3, 2019**

The Committee on Government Affairs was called to order by Chair Edgar Flores at 8:38 a.m. on Monday, June 3, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblyman Edgar Flores, Chair
Assemblyman William McCurdy II, Vice Chair
Assemblyman Alex Assefa
Assemblyman Richard Carrillo
Assemblywoman Bea Duran
Assemblyman John Ellison
Assemblywoman Michelle Gorelow
Assemblyman Gregory T. Hafen II
Assemblywoman Melissa Hardy
Assemblyman Glen Leavitt
Assemblywoman Susie Martinez
Assemblywoman Connie Munk
Assemblyman Greg Smith

COMMITTEE MEMBERS ABSENT:

Assemblywoman Shannon Bilbray-Axelrod (excused)

GUEST LEGISLATORS PRESENT:

Senator David R. Parks, Senate District No. 7
Senator Melanie Scheible, Senate District No. 9
Senator Ben Kieckhefer, Senate District No. 16

STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Asher Killian, Committee Counsel
Connie Jo Smith, Committee Secretary
Trinity Thom, Committee Assistant

OTHERS PRESENT:

Tonja Brown, Private Citizen, Carson City, Nevada
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada
Tod Story, Executive Director, American Civil Liberties Union of Nevada
Margaret McLetchie, representing Nevada Press Association; and Right to Know Nevada Coalition
Nancy E. Brune, Executive Director, Kenny Guinn Center for Policy Priorities
Daniel Honchariw, Senior Policy Analyst, Nevada Policy Research Institute
Sylvia R. Lazos, representing Nevada Immigrant Coalition
Richard Karpel, Executive Director, Nevada Press Association
Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada
Danny L. Thompson, representing Lance Gilman Holding Company
Kerrie Kramer, representing The Cupcake Girls
Warren B. Hardy, II, representing Nevada League of Cities and Municipalities
David Cherry, Government Affairs Manager, City of Henderson
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
John Fudenberg, Coroner, Government Affairs, Office of the Coroner/Medical Examiner, Clark County
John T. Jones, Jr., representing Nevada District Attorneys Association
Delen Goldberg, Chief of Staff, City of North Las Vegas
Vinson Guthreau, Deputy Director, Nevada Association of Counties
Chaunsey Chau-Duong, representing Southern Nevada Water Authority
Kelly Crompton, Government Affairs Manager, Office of Administrative Services, City of Las Vegas
Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office
Jamie Rodriguez, Government Affairs Manager, Office of the County Manager, Washoe County
Kirsten Searer, Chief of Communications, Marketing, and Strategy, Clark County School District
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
Scott A. Edwards, President, Las Vegas Peace Officers Association
Michael Ramirez, Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc.

Chair Flores:

[Roll was taken. Committee rules and protocol were explained.] We have one hearing scheduled this morning. I want to publicly say thank you to Senators Kieckhefer, Scheible, and Parks. I know that they have worked incredibly hard in the Senate. This is a very difficult conversation to have because we have two stakeholders that very often are on completely opposite sides of the issue and trying to find middle ground is often very difficult when we put everybody in the same room. Equally, I know at the end of the day, it is the job of this building for us to do the job. We listen to both sides, and at some point, we have to cut everybody out and we get to work—that is how that works. I do appreciate the Senate and the work they have done. At the same time, we have two houses for a reason. We have to vet the issues on both sides and put in an equal amount of work on both sides, and that is the way this process works. With that, we will open the hearing on Senate Bill 287 (1st Reprint).

**Senate Bill 287 (1st Reprint): Revises provisions governing public records.
(BDR 19-648)**

Senator David R. Parks, Senate District No. 7:

Existing state statutes require that all public books and records of a state or local government, unless otherwise declared by law to be confidential, are required to be open for the public to inspect and to request a copy. Senate Bill 287 (1st Reprint) revises provisions relating to accessibility to public records, including public inspection, requests for copies, and receipt of copies. The measure provides that the legislative intent is for public access to records to be prompt, easily available, and for a reasonable cost to the public.

Joining me at the table this morning are Senators Scheible and Kieckhefer and, with your permission, I would like to turn the presentation over to them.

Senator Melanie Scheible, Senate District No. 9:

I think Chair Flores put it very well that we have two houses for a reason and that our job here is to vet policy as thoroughly as possible. I do not know if you have already looked at the first version of the bill that came out as introduced and the first reprint as amended, but they are very, very different. I should not say very different, but there are significant changes. At this late hour, I am not here to tell you how to do your jobs, but I would suggest that maybe we focus on the first reprint and talk about where our policy discussions have gotten us and whether or not that is the right policy. There are a lot of different directions that we could have gone with this bill and a lot of different ways we could have solved these problems. But I just want to present to you the solution that we—Senator Kieckhefer, Senator Parks, and I—have come up with based on extensive conversations with stakeholders on not just both sides, but all sides, because there are a lot of different facets to this issue. With that preamble, I am going to dive into the bill.

Section 1, subsections 1 and 2 establish civil penalties for violations of the Nevada Public Records Act. Currently in law, if a public agency does not provide public records, they do not have to pay any penalties for that breach. This indicates that for the first violation

they have to pay \$1,000; for the second violation, \$5,000; and for the third violation, \$10,000. All of those civil penalties, which are punitive—the point is to deter this kind of behavior—the penalty is paid into the Division of State Library, Archives and Public Records of the Department of Administration. That summarizes section 1.

Section 2 makes some changes just to clarify and update the public records law, since it has been a couple of decades. In addition to books and records that are electronic, documents and blueprints and 3-D printed models, all of those things could be public records.

Section 3 talks about the costs that a government agency incurs when they procure a public record. One of the major issues that we were trying to solve in this bill was the use of excessive fees where individuals and organizations that were requesting public records perceive their position that fees were being implemented that were too burdensome and for the purpose of preventing them from accessing public records, whereas local governments were instituting fees that they thought were reasonable and utilized simply to recover the cost of procuring those records.

We have tried to strike a balance here in section 3, subsection 1 to say that a government agency can recoup the costs that are actually incurred in procuring the records, so it spells out specifically ink, toner, paper, media, and postage. It specifically excludes any costs that would be incurred regardless of whether or not they had to procure the record.

In the spirit of transparency, one of the areas we had difficulty with was whether or not overhead, personnel, and labor costs should be included in the definition of actual costs. You will notice that section 3, subsection 1 does not address that question specifically because it was our determination that in some cases it is appropriate, and in a lot of cases it is not. It is certainly not appropriate for a government agency to depend on fees for providing public records in order to pay their power bill and in order to make up any portion of their annual budget. However, when a public record request comes in that is incredibly onerous or incredibly large—we heard testimony on the Senate side about organizations that for legitimate reasons were requesting tens of thousands of documents, and cities, counties, and local jurisdictions had to call their employees in over the weekend to work on a Saturday. Or they had to invest in another printer in order to leave the copier in the copy room available for all of their daily functions and still be able to complete a project of copying 10,000 pages of some other record. So we want to make sure they are able to account for those costs, and that is why we came to the decision we did in section 3, subsection 1.

Section 4 again indicates that an individual should be able to inspect, copy, or receive a copy of a public record. Section 5 has some exceptions; those are already in law. In section 5, subsection 3, you will notice a theme here that we have gone with some simplicity where there were a lot of discussions about records that were in electronic format or not in electronic format that had to be converted to electronic format, and where that may be easy or difficult, we tried to take the most streamlined approach and say that a public record has to be provided, including electronically. I think it makes sense to read subsection 3 along with subsection 4. Subsection 4 says that if it is available, a public record has to be provided

electronically. Subsection 4, paragraph (a) has some, I do not want to say exceptions, but I know you can appreciate what the plain language says and, hopefully, I can give it some context just to say that what we are trying to do here is indicate that if, and I do provide public records in the course of my job. It is, in fact, one of the most important functions of my job because of *Brady v. Maryland* [373 U.S. 83 (1963)], and I am in violation of the *United States Constitution* if I do not provide public records.

But if an individual like me is sitting at my computer and somebody has requested a particular record and I have it in pdf format, I can just email that to the person who is requesting it. If I have it in a paper format and I can easily scan it and email it, I can send it that way. If it is an email, and in my job it might have a victim's email address on it or it might have the victim's phone number somewhere in it, I cannot just forward that. This gives the government flexibility to print it out, redact it, and either mail it over, hand it over at the front desk, or scan it back in and email it again. We tried to provide some flexibility in this section as well. The way that it actually reads is that if it is already in electronic format and there is no reason that the electronic format cannot be provided—there is nothing confidential in it and it does not require proprietary software to read it—then the government must provide it in that electronic format. Some of the reasons they might not have to provide it in electronic format include on page 8, lines 1 through 4, that it was not created or prepared in that manner or it is not available in that manner.

Section 5, subsection 5, paragraph (a) indicates that the record should be provided in the manner that is requested. We will move on to another subsection that indicates that the public record requester and the person providing the record are supposed to be working in cooperation to figure out how to best fulfill the request. I hope that these things go together that somebody might request a record in a hard copy form and then if they learned that it is actually 8,000 pages, they would adjust their request and not insist on having it in hard copy.

Before I get there, I am going to move to section 6, which talks about what records an agency has to provide. Specifically, subsection 1 where you see the change indicates that the government agency has to provide any records that it is responsible for. This was another point where we had a lot of discussion about the provision of records because you can all appreciate you were not subject to open records or open meeting laws, and we do not have the same public records requirement. We keep a lot of records. Some of them are ours; some of them are things that we wrote, but we also have access to a lot of reports that were provided by agencies or produced by agencies, but that does not mean that we are the people responsible for keeping them. So, section 6 says that every government that produces a report or produces a record is responsible for providing that record. If an agency receives a request for a record that they do not have and they cannot provide, they are supposed to inform the person of where they can access that record. However, it does not prevent them from providing a record that is not within their legal custody. If we think about this in practical terms, if I am sitting at my computer, somebody has requested all of the records related to S.B. 287 (R1) and I happen to have a report on my computer that is relevant, I can send that over to them, even though I might not be the person who created it.

Section 6, subsection 1, paragraph (c) sets out the timeline. A government agency has to respond to the request within five days. A problem that we learned about on the Senate side was government agencies, by virtue of this provision, were providing updates every five days or thereabouts, but not actually providing records within five days. The proposed bill would indicate that the government agency has to provide a notice in writing to the person as to whether the public record is already available and, if it is unavailable, when they anticipate having it available. They would have to stay in communication with the records requester, which is how we get to subparagraph (2) in section 6, subsection 1 which has four sub-subparagraphs. Subparagraph (2) is the reasonable effort to assist. It says that the government agency has to work with an individual to help narrow their request, to help focus their request, to elicit clarifying information, and to help the person requesting the record understand what is and what is not possible. The idea behind this being that if I request from a public agency all of the records pertaining to the 80th Legislative Session, someone just does not tell me, No. They say, Well, what exactly about the 80th Legislative Session do you want to know? Obviously, and I want to make this very clear, nobody has to give a justification for why they want a public record. They do not even have to specify why they want it or any particular data point that they want, but our local government agencies are full of hardworking public servants, and I know that a lot of you work for local government agencies. It is really not fair to expect a clerk or a paralegal or an attorney to try to retrieve every record related to the 80th Legislative Session when what somebody really wants is everything related to Senate Bill 287 (1st Reprint) of the 80th Legislative Session.

So where we can get people to focus their requests, we want to do that. Then I think section 5, subsection 4 is especially important in understanding how a record is stored because some people—requesters—come to an agency, especially individuals, not so much the organized nonprofits and advocacy groups, but individuals are common. They might think it is easy to just download a spreadsheet and email it over. If the government agency can have that conversation with them that we do not keep this on a centralized database, we do not generally have video recordings of these meetings. These are stored in paper format or these are stored on a server or we delete them every six months. Then that can help them understand, Okay, then what I want is actually the last six months of records—or just the audio recording, realizing there is no video.

I will move to section 7. This is another part of the bill that brings us full circle from section 1, which provides for civil penalties. Section 7 provides for a cause of action for an individual who feels or who submits that their record or their request has been unduly delayed, that there has been an excessive fee, or a fee that is improper. This is another section that gives the law teeth, as it were. It says that if the person believes that the fee charged by the government entity is excessive or improper, they can petition the court for relief from that fee, which would be a reimbursement, an injunction that they cannot charge the fee, and they can receive attorney's costs for having litigated that fee or that issue. The issue, in addition to the fee, could also be that a government agency is delaying provision of the record or simply is not providing it at all.

Subsection 3 of section 7 is also important because I have not touched on it yet, but I think that local governments will touch on some bad actors. Unfortunately, there are people who utilize the public record system to annoy and harass government agencies. If that is what has actually occurred, the governmental entity has the ability to appeal the decision and receive their attorney's costs back. Anybody who is misusing or abusing this system would also be responsible for paying attorney's fees if the government ultimately prevails in a lawsuit. I will pass the microphone to Senator Kieckhefer.

Senator Ben Kieckhefer, Senate District No. 16:

I appreciate your carving out a bit of time this morning to talk about public access to its government. I think it boils down to that notion that the public should have a right to access information relating to the government that is operating on its behalf. This bill that is in front of you in its current form, I think, is a very good middle ground in trying to strengthen public access, while also recognizing the responsibilities of government and being custodians of public documents, being custodians of confidential information, and still having to do the job they are originally created to fulfill.

I have a little bit of a unique perspective on this subject, Chair Flores. I have been on both sides of this table. I moved to Nevada originally in 2003 as a reporter for the Associated Press (AP) to cover this body. I was one of the AP reporters you saw running around here in 2003—that is how I came here. I stayed in journalism. I went to work for the *Reno Gazette Journal* for a couple of years. I have had to retain attorneys to try to get records out of local governments that were putting up barriers unnecessarily. I understand the position of the proponents of this bill. After I left journalism, I got into some government work. I was the public information officer (PIO) for the Department of Health and Human Services for a couple of years. I was the person who fulfilled public records requests, and I have seen both good and bad actors in that arena as well. With that perspective and understanding both sides of this issue, I saw the original version of this bill come forward in a format that I was uncomfortable with. The testimony we received in the Senate Government Affairs Committee indicated there was a lot of discomfort with the parameters of that legislation. A lot of work has been done to recognize the concerns of both parties and bring us to the place where we are now.

I know that there are still concerns, particularly by local governments, over some of the implications of this bill. I think there has been some suggestion that their concerns have not been addressed. I can quickly jot down eight specific changes to this legislation that we have made to address some of those concerns. The original responsibility of the fine being levied against the individual, in the original version of this bill, you could have levied a \$250,000 fine against a clerk making \$30,000 a year. I saw that as unreasonable—we changed that. We put the fines on the government instead of the individuals.

There was a provision in the original version of this bill that identified the person in charge of the public record. Had that person's name and contact information been submitted in writing in the original request, that would have made that person, we believe, the subject of potential harassment by requesters.

There was a provision in the bill that would have changed any requests apt to be applicable to anyone who possesses the document, not just the legal custodian of the document, which is what Senator Scheible is referring to. There were concerns, particularly by the Las Vegas Metropolitan Police Department, that this would impede their ability to fulfill memorandums of understanding with Immigration and Customs Enforcement and other organizations as a specific example of a reason we changed it back to legal custody based on their concerns.

There were changes to the good-faith exemptions, sections that are deleted in the back of the bill and deleted by amendment in the version that is before you to ensure that the government still had immunity from the decisions they made in good faith in fulfillment of this act. There was originally a \$100-per-day rolling fine that a government would have to pay if it were found to be in violation of this act, and that included a \$100-per-day rolling fine that would keep rolling upon appeal. We removed that. The original provisions of the bill had any fines going to the person who actually requested the record, creating a perverse incentive for someone to create difficult requests to fulfill and trying to turn it into a potential profit center for bad actors. We removed that and made the fines payable to the Division of State Library, Archives and Public Records of the Department of Administration to help maintain state public records.

There were a lot of concerns by local governments over the necessity to provide records electronically. Senator Scheible referred to the top of page 8 of the bill, which provides clear statute that if a record was not created or prepared in electronic format and is not available in an electronic format, then it does not need to be provided as such. There were originally hard and fixed timelines in the bill that were particularly responsible for a lot of the fiscal notes that were submitted by government, and we refined those timelines to make them consistent with the five-day requirement that is currently in statute, but makes government say if it is going to be late, why? And I think that is reasonable.

This bill has come a long way, Mr. Chair and Committee. I think we have reached a good middle ground. I think what you are going to hear in opposition to the bill are about things that are not in the bill, not what is actually in it. I believe that if you pass this bill, it will enhance public access to information about its government, and I think that is something we should all be able to support.

Chair Flores:

At the outset of my comments, I forgot to mention the fact that I appreciate you, Chairman Parks also, ensuring that we had some bipartisan work on this, and that this is not really an R-D [Republican-Democrat] issue—it is just a transparency issue. I appreciate your doing that. I have had an opportunity to speak with some of the stakeholders who still have some concerns. I would like to put some of those concerns on the record. I am assuming that in the process of your trying to get to where we are now, you considered some of that. We know that issue, we thought about it, but here is why we reached this and we think this is a better middle ground. I think that would be helpful for the Committee and give the Committee some comfort in that it has been analyzed, it has been thought about—we went through that process.

Specifically, in section 1, where we talk about the fines, one of the issues that has been brought up that I tend to understand is often we will have a director of some department and that person may be a bad actor and/or not serving the public well when it comes to records requests. But then person A may be changed down the road and now we have person B. The concern that was brought is once we hit that trigger for the third violation, it seems the fines stay in perpetuity at \$10,000. One of the conversations we had is about the possibility of a reset. When we know, yes, we understand that under so-and-so's administration, it was horrible, we made the mistakes, we hit the three violations within a year or two years. But now it has been 20 years and this is a completely new team. We are really focused and then we make one mistake. Now we have to pay our dues, but it is at \$10,000 in perpetuity. If you could walk us through that and give us some feedback on that, that would be helpful.

Senator Scheible:

I know exactly the issue you are talking about. The first issue was coming up with the timeline. We could not get to a time—five years, ten years, eight and a half years—that all the stakeholders could agree on. I read the statute as vague. I do not read it as if this goes on in perpetuity, and there are two reasons for that. The first is that government agencies also change. For example, the Nevada Natural Heritage Program existed up until this legislative session, and now we have the Department of Natural Heritage. If the Natural Heritage Program violated—not that they would ever violate this, they are wonderful—but if they had last year and then it happens again in ten years, the court is going to have to determine whether that is even the same agency. I think that is one place where we would run into issues with having some disparities in one agency that might never have changed its name but changed a lot of directors or never changed its composition being subject to a \$10,000 fine, and another agency that perhaps is a more egregious offender, but gets reorganized more often, getting reset more often. I think that is part of it.

The other thing is that courts have a lot of discretion to interpret our statutory construction and to develop their own idea of time limits and resets. They are not administrative fines. In order for one of these fines to be levied, they have to be imposed by a judge, so this statute in its entirety would have to undergo significant litigation before a fine was ever imposed. We felt that the process would be sufficient to help establish how often this is going to happen, how easy or how difficult it would be. I do not foresee any agency ever reaching that \$10,000 fine. If they did, then a court would have the jurisdiction and the discretion to determine whether or not they think that under the statute they have to continue to be fined that \$10,000, or whether there is some natural reset in the law or a course developer or analysis in their own reasoning all the time. I would not be surprised if the court established a rule in jurisprudence of the nature that the violations have to be of the same law, of the same request, of the same type, of the same nature in order to trigger the escalating fees. We trust our judiciary system to interpret the statute faithfully.

Senator Kieckhefer:

I think the other point I struggled with, aside from establishing the timeline over a reset, is twofold: One is that these fines are subject to the good-faith exemption. A government will have to be found to have been acting in bad faith or outside of good faith in order to have these penalties imposed upon them.

Second, the request for the reset acknowledges that we are going to accept that this continues to be a problem. If in two years we come back and one local government has had five violations, maybe these fines are not the problem. We can deal with it then. I think that until there is a demonstrated need to reset these, I think it is reasonable to put them in place as drafted.

Assemblyman Carrillo:

Are personal records included in the information that can be requested? I know it states something to the effect of employment records, and I wanted to find out what is going on with that.

Senator Kieckhefer:

We have not changed in the statute which records are public or not public. Existing rules will continue to apply over which records are deemed public records.

Assemblyman Carrillo:

So that is saying that employee records would be accessed as public records?

Senator Kieckhefer:

I believe personnel files are actually confidential.

Assemblyman Carrillo:

Okay. I just wanted to hear it for the record. Also, regarding the incurred costs of the ink, toner, and paper, the Senator had mentioned something about possibly 8,000 pages of information and whether it is electronic. Obviously if it is not electronic, there will be costs incurred. What is the limitation? If anybody is asking for specific information and it just goes and goes and goes, who is to say how long, or how much the cost of the entity is going to be provided because they are going to have to foot the bill, not the person who is requesting the information. Where is the limitation on that?

Senator Kieckhefer:

The government under this section will continue as they are now to be able to charge the requester to recover their actual costs. As Senator Scheible indicated, there are some terms that are not included in this definition, and we would leave that to the process itself and the indication of those fees that can be charged relating to what is reasonable. But the purpose is to say that if there is a broad request that requires a lot of resources of the governmental entity, that the entity can recoup those costs so that the cost is not passed on to the taxpayers more broadly but are the responsibility of the requester. I would note as well, if you look at page 10 of the bill, section 7, that if a requester believes that the fee they are being charged is

unreasonable, they can go to the court for relief. It allows the governmental entity to charge what they need to recoup their actual costs of providing the record. If someone requesting that record believes that the governmental entity is being unreasonable, they can go to the courts for relief.

Assemblyman Leavitt:

I have a few issues with this bill, although I commend you for your intent of transparency. I think the process described, the self-described is vague. I think vagueness in the law hurts the person with the worst lawyer. I do not necessarily agree with that concept of vagueness, especially when we are talking about imposing penalties and fines on entities, especially entities that are not large and through good faith could have penalties imposed upon them and they really cannot afford it. They could be asked to do some very unreasonable things and be required to follow some very unreasonable timelines. A five-day timeline is very difficult to follow. I have done this as a job. It was not my full-time job; I just supplied information, and sometimes five days is a very difficult timeline to follow. Oftentimes, it is difficult to tell them the timeline that you can give them when you are talking about a public information request. It is hard to gauge, and so I think we could get there, but I think we cannot get there through vagueness, especially when you are talking about imposing penalties and you are talking about strict timelines. I just ask that you maybe work a little more on that portion of it, knowing that the intent is good and knowing the end goal should be accomplished. Maybe you can give some insight as to how you got there. I do not know how you got to the penalties. For a small agency in some small rural county, and they have someone who is not prepared to provide public information requests of that nature, maybe those penalties are good. Then if they have to go to court to defend it, that is completely unfair. Maybe you could give us some insight into those two areas.

Senator Scheible:

I think part of our approach to this bill was to try to not just think about not just people with the worst lawyer, but people without a lawyer. In order for the fines to be implemented, section 1 requires that somebody has gone to court and requested some kind of relief. We know that you are going to hear today from large organizations that litigate for a living. But we also heard from individuals on the Senate side who do not litigate for a living, and they just wanted copies of the deeds to the properties in their neighborhood and they could not get them. They wanted some kind of relief, and they wanted some kind of help. We did not want to construct an incredibly complicated statute that would deter them from exercising their right to public records. We wanted to create something that an individual who is lacking access to a public record can utilize to go to their local court system and say, I think this agency is in violation; I think this fine is excessive; I think that they have not gotten back to me within five days; I think they have not given me a reason for not providing the record, and I know they have to be held accountable for that.

They might not know the legalese and the whole process, but they know that the first violation is a \$1,000 fine, and that gives them the first step to get the ball rolling and get this process started so that they can go in front of a court. I think a lot of these issues will not be terribly legally nuanced. They are real people with real concerns about access to

public records. I think that is part of the reason for trying to simplify this and allow some flexibility. I think any vagueness comes from that effort, but the fines have been reduced drastically from where they started. They are very small compared to other states. We heard in the Senate about other states. Throughout the process, we have compared our law to similar public records bills throughout the country. I do not have those comparisons close at hand, but that was something we considered every step of the way. We asked our stakeholders, we asked our experts: Is \$1,000 a lot for a violation of the public records act? We learned that in other places, it is \$10,000 for the very first violation.

Senator Kieckhefer:

To address the second part of Assemblyman Leavitt's question regarding the timelines: I think I have to disagree. I think this change provides more clarity and perhaps more flexibility even to a government entity in fulfilling the request. The five days is current law—we are not changing that. A lot of governmental entities have a form letter that is filled out that says, I received your request, I will be back in touch with more information, signed, and that is how they fulfill their five-day requirement. We do not change that initial five-day requirement, other than saying you need to give an estimate as to when you think you will be able to provide the record, and it is reasonably believed. Then, if by that time where you reasonably believed that you were not going to be able to provide the public record, you still cannot, and there are plenty of reasons why that happens and it happens all the time, you just need to tell the person. And that is enough to alleviate conflict and animosity between the requester and the government. If a person thinks they are being stonewalled by their government, that creates unnecessary conflict when maybe things are illegal and they have to be redacted. That is a perfectly reasonable reason to say, I know I told you that you would be able to have it within two weeks, and it is going to take another two weeks because there are more things that need to be redacted than were estimated, but we think we will have it for you in two weeks. I do not think that back and forth in providing that information to the requester hampers the timeline. I think it smooths the process.

Furthermore, with the additions in section 6, subsection 1, paragraph (c), subparagraph (2) where we require governments and requesters to work together to refine the requests if the requester so chooses, that should help make the life of a PIO or the person fulfilling the request much easier because you will know what to look for. You will know that a person may not want the entire docket of a Public Utilities Commission hearing, but they are looking for specific testimony from a specific person, and that reduces the workload and reduces the burden on that government entity and reduces the burden on the person whose job it is to fulfill it.

From a timeline perspective, we are not actually changing any dates, and we are creating a process that smooths out any potential conflict.

Assemblyman Leavitt:

Thank you, Senators, for that explanation on both those issues. I think we are talking about the same thing. The timeline is what it is—I get that part of it—when we use words like reasonable. Is reasonable defined in law? If it is not, then reasonable is going to have an

issue when I am trying to reasonably do something and my definition of reasonable and the requester's definition of reasonable are very different, and then we have to figure out what the court's definition of reasonable is when they file a lawsuit. That is my whole point in the vagueness of this. I am not saying that we should not provide this information. In my experience, we have never even charged for it because we think that is kind of a right where, personally, I think there is a charge that could be put in place because it is taxpayer money that is being dedicated—not only was my salary dedicated towards their request, but paper, or whatever miscellaneous things that were dedicated. I get where you are coming from, and I do not disagree with it. I just wish we could tighten it up. Reasonable under the law is what?

Senator Scheible:

I am a licensed attorney in the state of Nevada. We utilize the term "reasonable" in law all the time. I have to litigate when a police officer has reasonable suspicion that criminal activity has occurred. That is a heck of a lot harder, I think, than determining whether or not a government employee has made a reasonable effort to procure a document. It is the nature of writing law that we have to use some terminology that is going to be open for debate, and that is why we included in section 6, the sub-subparagraphs (I), (II), (III), and (IV) that indicate what a government agency is supposed to be doing to try to fulfill this request.

If I were an attorney who was representing an agency that was accused of violating this law, the first thing I would do is look at those four sub-subparagraphs and say, Hey, my clerk advised the requester that the database they will be performing the request in is going to be SEGUS, Inc., which is 50 years old—then they listed some additional information. Here is the email where my clerk asked Joe Smith, Hey, do you want the records from all of the meetings or just the regular meetings? Then I would say, Look, my clerk provided some practical suggestions for overcoming these issues. She told him, If we just do all of the draft minutes instead of the finalized minutes, I can get them to you tomorrow. Here is where the requester said, No, I want the finalized minutes. Then I would move on and say, Here is the fourth thing that the clerk did, and that is the reasonable effort to procure a document.

In terms of reasonable timelines, we are going to have all kinds of legal avenues for assessing what is reasonable. I am going to look at how long it takes other agencies; how long it took to fulfill other requests. We are going to look at other states. We are going to look at previous decisions from the court. I think there is a point at which we cannot continue to define every term in the legislation, and that is because this goes back to my original point that we are talking about normal people who want a normal piece of information from their government. So to shoehorn that and be too narrow in how they have to make a request and what they have to request will not only deter people but will prevent people from ultimately being successful in accessing the records that they have the right to access.

Assemblyman Smith:

I congratulate you for tackling this issue—it is a good one to tackle, but it is a tough one. I know where you are and I know what you are trying to do. My question, and I will jump back to Senator Kieckhefer's remarks to Assemblyman Carrillo, is looking for a

division point or a dividing line where it is determined to be an extraordinary request. There are the smaller requests, which we have heard and read about of a five- or ten-page document, but it takes a long time. I get that—that is where you are going. But then there is the request for half a pickup-load of documents. Where is that extraordinary request determined? Or is it? Maybe it is not.

Senator Kieckhefer:

I think you will notice at the back of the bill on page 11, we are striking *Nevada Revised Statutes* (NRS) 239.055 relating to extraordinary use. We are hinging the ability to recoup costs on actual costs, so that any actual costs incurred by an extraordinary request would still be able to be recouped under NRS 239.010, which is the ability to charge fees to recoup those costs. We are trying to simplify it by not having that arbitrary line of what is extraordinary and what is not. Whatever the cost is, they can recover.

Assemblyman Hafen:

I have concerns that have come up. We have talked about the courts having discretion; however, we have written [section 1, subsection 1 of S.B. 287 (R1)] that the court "must impose" these civil penalties—there is no "may." It says must and for these amounts for each violation, whereas in other areas we actually have dictated that the court may impose fines up to a certain dollar amount. I respectfully disagree with you, Senator Scheible, when you say that the court has discretion. I think the legislative intent in this bill is very clear that the court must.

Regarding the comments about deeds, have we actually had a problem with deeds? I do not know about Clark and Washoe and how that works, but in Nye County all of our deeds go electronically online, and they are available for anyone to look at any time. If anybody wants to look up my house and find out how much I paid my grandpa for it, go right ahead. It is public information and available right now, this very second. I do not know if that is a legitimate thing that has occurred in this state, and if you have an example of that, I would really appreciate it. I love this concept—I do—I love transparency. In government, I want everything to be out there. That is why I am proud of my county for publishing that information on the Internet. It is free for anyone to access and, again, I do not know how other counties work and whether there may or may not be problems.

I also have to echo some of my colleagues' concerns about the rural counties. They try the hardest. We have some agencies that literally have one full-time employee, and it makes it very difficult for them when they get those requests to provide 10,000 pages of documents. I understand the intent, from what you are telling me, is not to force this, and that there is discretion, and that there are ways of recouping the costs of having to hire somebody to come in to produce these documents. I would prefer to see it in black and white when we write this, because I have seen other bills that we possibly are going to see here this afternoon or this evening that in other states have caused issues and are being used to do something out of the scope of what the original intent was. I appreciate the intent, and if you can help me feel better, I really want to support this. From what I am hearing and some of the comments I have heard from the opponents, I am struggling right now.

Senator Kieckhefer:

I think you are right. The imposition of the civil penalties in section 1 is mandatory after a judge determines that the government acted in bad faith. They will have intentionally not followed this law that is designed to protect the people that the government is there to work with. In that scenario, they should be fined. I think the flexibility that Senator Scheible discussed was related primarily to other provisions of the bill and interpreting what is reasonable and things like that. It took me a little bit to get here myself because I recognize that, especially in some of our smaller counties, these fines could be substantive, and in some ways they are designed to be. Certainly they are designed to be a disincentive for bad acting between that first and second offense where it could jump from \$1,000 to \$5,000.

Senator Scheible:

Two things: number one, the discretion I was talking about with the court was more related to the reset and the court determining whether or not this is a first, second, or third violation. I think that there is some room to argue whether or not this is an agency's first violation or if this violation is different from a previous violation because it was a different subcategory, a different agency within a larger organization or a different division within a larger department. I think that is where the discretion of the judge comes in. Another part of the reason, at least for me that I liked, is the mandatory fine. The "must impose" instead of "may" impose was to avoid having local governments or bad actors come to the table and argue for a lesser fine and say, Well, judge, just charge me \$800 this time because it was an \$800 fee, or just charge us \$250 this time and create that ambiguity in the law. That is where we came up with this set fine schedule.

I also want to address that I agree. Our local governments work really, really hard to fulfill these requests, and they also absorb a lot of the costs. We tried to account for that throughout this bill and account for the good-faith exemption. We actually considered tinkering with it and decided ultimately to leave it as it is. I wish I had a citation to where the good-faith exemption is in the law. What the good-faith exemption says is, if an employee makes an error in either direction, the employee withholds something that should have been released because they really thought it was confidential, or something is released that he or she really thought was a public record, then none of this applies. The employee cannot be held responsible in that case. I think that is the majority of the cases that we are talking about. In some broader sense, there is a public argument, there is a debate playing out in Nevada right now. There are government agencies in this state that have been acting in bad faith. This law gives us a litmus test. Run them through this statute and anybody who comes out on the other side without being fined was following the law. Anybody who comes out on the other side with a \$1,000 fine, well, now we know.

Assemblyman Carrillo:

Can you define unreasonable delay?

Senator Kieckhefer:

The concept of reasonableness is, again, one that gets litigated. I think that is one of the questions that Mr. Leavitt had. If the requester and the government agency seem to agree that something is reasonable or unreasonable, then it is a moot point. The purpose of the issue over this timeline is to facilitate communication between both sides coming to an amicable resolution. When a person or an entity that is requesting records feels that the government has crossed that line, ultimately that is when one side's interpretation of reasonable stops. They can either swallow that or seek relief.

Assemblywoman Gorelow:

I was wondering if you could give us a few more concrete examples of someone who is going to request public records and having some difficulties, and what those difficulties are looking like.

Senator Parks:

If I might mention that first of all, this bill was presented to me by a group called Right to Know Nevada Coalition, a coalition of 17 individuals and organizations, and I am sure they will be coming up and testifying ([Exhibit C](#)). I think that your question is probably most appropriate for them to respond to in light of the fact that they have been through all of that. Having said that, I also want to indicate that certainly far more than 90 percent of all records requests are very routine and are handled in an expeditious manner. It is those situations that we hear a lot about that stand out as being far from the norm, and that is one of the issues that we are trying hard to address.

Assemblyman Ellison:

I have some problems with this. Do I believe in transparency? You bet I do. Do we need to make sure the public can get any kind of access they need for information? I think they do through the regular process. But the problem I have is, what is really the problem out there? I never heard of all these violations or these problems up until now, because in our county, you can go in and get the information if the employees have time to get it out right away. Is this a big problem? I have just never seen this before. Could you answer that?

Senator Kieckhefer:

There will be proponents of this bill, the people who brought the bill to Senator Parks, who will give you concrete examples of the types of issues that have driven them to propose legislation this session, and I will not pretend to speak for them. I came into the bill late. We heard the bill in Senate Government Affairs, and it was at that point that Senator Scheible and I decided to try to reach some sort of consensus. We recognized that the concerns that were outlined we thought were legitimate. But we also did not feel like the solution that was in front of us in Senate Government Affairs was correct. We decided to come together to try to craft what was both a reasonable solution to address the specific concerns that were being outlined by the proponents of the bill, while still recognizing the responsibilities and realities of functioning as a governmental entity, including costs.

I will let those individual proponents speak to them and give you the examples that maybe will help eliminate the need for the bill. But I think even absent that, the process outlined in this legislation is a good one for people who want to access records from their government.

Chair Flores:

Assemblyman Ellison, I think you will hear from the proponents on either side that there have been times when requests were made, and it takes over a year for the request to be answered on something that seems reasonable and could potentially be fulfilled within a few months. The other side will tell you that sometimes people go on a fishing expedition and want everything under the moon, and it is just unreasonable to be able to provide all that without any real direction coming. I think law enforcement will talk about the 1 October requests that have been ongoing and how they still cannot fulfill some of those requests that have come in. I think the records requests have consistently been a problem, depending on what angle you are looking at this issue from. I appreciate all three of you trying to tackle it, because, as I have said at the onset of my comments, there is no real middle ground when it comes to the stakeholders. I think at some point, we, this body, have to decide after we have heard all angles where we think the middle ground is. Unfortunately, both sides will not be completely satisfied, but that is the nature of the building and that is how we operate.

With that, I will say thank you to all three Senators and for working hard on this. I appreciate your time and commitment to this issue. I am going to invite those wishing to speak in support of Senate Bill 287 (1st Reprint) to please come forward. I would like to remind everybody to please limit your remarks to two minutes. I will ask that you refrain from speaking exactly when you hit the two minutes. It is probably in your best interest to not repeat whatever everybody else said—maybe you can hit different points. I think that is wise for those in opposition, support, and neutral. With that, I have the timer up here, so whoever wishes to speak first.

Tonja Brown, Private Citizen, Carson City, Nevada:

I am also here on behalf of Reno Cop Watch. They had some concerns because they have tried to get public records from the Reno Police Department (RPD), the Washoe County Sheriff's Office, and the Sparks Police Department. They would like to state that there is not a standard fee, and records should be a minimal charge or free. It took RPD four months to fulfill one case. Washoe County Sheriff's Office replied two and one-half months ago to the request and have not replied since. There needs to be a mechanism to make them do their job and get these records to the public in a timely, transparent, and uniform manner across the counties and agencies. Also, they have seen and I have seen, if you go to a county commission or city council meeting, any public document that you have and somebody is doing it or heard about it or read about it, they have to go in person to the office to obtain a copy of it. I believe that violates the Americans with Disabilities Act of 1990 because some are homebound, indigent, or homeless. Then they are required to pay a certain amount of money.

Ten cases were requested from the Sparks Police Department. They required \$55 for each case. The very next day the requesters called the Sparks Police Department and were told, No, it is now going to be over \$1,800—same way with the Reno Police Department. It was over \$600 for the record request. They contacted the commissioners and I believe they settled for \$45. There needs to be some type of a balance, and some of the smaller communities, like Storey County, put theirs in a pdf file and they send it right to the requester—and that is the way it should be. I assume that Reno and Sparks, the bigger counties, probably do put their information and their documents in a pdf file. It is very simple just to send it to the requester.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:

If you would indulge us, we have some experts in Clark County at the Grant Sawyer State Office Building who wanted to weigh in on some of the technical questions and aspects of the bill that came up, if we can move down there.

Chair Flores:

We will go to Las Vegas.

Tod Story, Executive Director, American Civil Liberties Union of Nevada:

I have submitted testimony ([Exhibit D](#)) for the record, but I want to focus on one thing specific to the request, I believe, from Assemblyman Ellison and some of the other members of the Committee regarding the nature and function of the Public Records Act and individuals and groups who have made such requests. The American Civil Liberties Union (ACLU) is one of those organizations. We make repeated requests of government agencies every year, but specifically to my example included in my letter was in 2013 when we had requested of all 17 school districts their curriculum surrounding sex education, we ended up with 17 different responses in 17 different formats and 17 different time frames. Fifteen of the school districts responded to our simple request, and two did not. We still have never received those records. Here we are six years later. We received them in various formats from pdf files, a CD, a thumb drive—some even sent them via email electronically, and we received those in a very expeditious and reasonable time frame.

I just want to point out that the ACLU is not the only organization that makes these types of requests. In fact the coalition Right to Know Nevada, as Senator Parks mentioned, includes 17 different organizations, all of which have made various requests of various government agencies across the state. The ACLU, Nevada Policy Research Institute, League of Women Voters, Power2Parent, the Society for Professional Journalists, the Nevada Press Association, the *Las Vegas Review-Journal*, and the Kenny Guinn Center for Policy Priorities, to name a few. We all operate within the realm of government agencies and transparency. We have all encountered difficulties in getting the records we need in order to function as government watchdogs and provide that information to the public in order to educate them about their government and how it operates. We would implore you to pass the bill as it is in its current form. The Senate has worked hard and put a lot of time and effort into this.

Margaret McLetchie, representing Nevada Press Association; and Right to Know Nevada Coalition:

I am going to address a question about what the problem is and if this comes up very often. A number of years ago, the Clark County School District (CCSD) was having problems with a school trustee named Kevin Child. A reporter tried to get access to records about those issues and kept being told that the district would get back to her later. She would follow up when the district told her to follow up only to continually be told that they would get back to her later, over and over. It went on that way for months. The district would not say whether they were going to produce the records or not. The school district took the position that only the voters could control the behavior of trustee Child, who had engaged in some extremely problematic behavior in connection with both students and teachers. Eventually, the reporter at the *Las Vegas Review-Journal* had to go to court to get access to those records so that the voters could find out for themselves. We finally did get access to those records and Kevin Child, then-CCSD trustee, was not re-elected.

The Public Records Act currently says in its text that it is designed to promote democracy in the State of Nevada. This bill is a first and moderate step to help make that a reality. Currently, the Public Records Act, in the words of one member of the public who came out to the Senate committee hearing to explain the issues he had getting access to records, is currently a toothless tiger. Despite the fact that it has some good provisions, it is very hard to enforce, particularly for the average person.

With regard to fines, for example, those will only come to pass if a requester successfully goes to court, successfully sues the government and wins, and a judge determines that the fines should be paid accordingly.

Nancy E. Brune, Executive Director, Kenny Guinn Center for Policy Priorities:

As some of you may know, the Kenny Guinn Center for Policy Priorities is an independent, bipartisan policy institute that produces data-driven analyses on some of the policy challenges facing Nevada. More than anything, the Guinn Center is in the business of data; specifically, the collection, analysis, and reporting of information. Oftentimes we are actually evaluating taxpayer-funded programs. As such, we rely on public agencies to provide us with public data information so we can ground our research and analysis in facts and numbers. As a research-based organization, we are here to share that there have been instances when members of our Guinn Center research team, university researchers, and other community nonprofits have had challenges in attempting to obtain data and information from state and local public agencies for the purposes of evaluating educational trends or program outcomes. On some occasions, these requests were ignored. Other times they were extended in months-long delays with response times. A few times the requests were denied with no justification. In some instances, we received the data only after someone with a lot more political clout intervened on our behalf. As our state strengthens its commitment to use data to make informed decisions and to invest in taxpayer-funded, evidence-based programs, we need to ensure that our public has access to information about their government. We stand in support of S.B. 287 (R1). We also want to thank Senators Kieckhefer and Scheible for their work in addressing some of the concerns of the bill.

Chair Flores:

Committee members, because they are all there, it may be wise for us to take a quick pause and see if anybody has any questions, specifically for our experts in Las Vegas. [There were none.] We will come back to Carson City.

Daniel Honchariw, Senior Policy Analyst, Nevada Policy Research Institute:

The Nevada Policy Research Institute is a proud member of the Right to Know Nevada Coalition. We fully support this bill ([Exhibit E](#)) as currently written and urge you to resist any further amendments which will lessen its impact. Lastly, a big thank you to Senators Parks, Schieble, and Kieckhefer for their dedicated efforts these past few weeks.

Sylvia R. Lazos, representing Nevada Immigrant Coalition:

When I am interviewed on education issues, I often say I am a long-time, triple-underscore, education advocate. Part of the reason I have been at it so long is that you need data to identify what the problem is, data to inform your community groups about how they are suffering, data to file a civil rights complaint, and data to hold legislators and bureaucrats accountable. A couple of examples: disproportionality of discipline. We know that African-American and brown kids are more likely to suffer from disproportionality of discipline. A request into CCSD was filled four months after the initial request, and only when I became part of My Brother's Keeper Alliance, became friendly with the CCSD folks in charge, did I get that needed data. If I were to write a follow-up research as to where exactly disproportionality of discipline is happening, I do not think I could do it because it would be so difficult to get the data.

Why do I not sue? Well, because I already have a full-time job in addition to having two teenagers and doing this sort of work. I simply do not have the time to also take on litigation when a large bureaucracy says, I do not have your data. What if I wanted to eliminate the issue of equity around Title I schools—the large number of vacancies that we have there—the large number of substitutes; the fact that we do not budget equally in these schools as we do in suburban schools. I need data from CCSD. How long would it take? I have been doing a do-si-do with CCSD for about four or five months. I am not asking for the right kind of data. I ask for median teacher salaries as opposed to average teacher salaries, which they have. By not being able to ask exactly for the kind of data they have, that informational request just lies there. Please support this bill.

Chair Flores:

Committee members, are there any questions? [There were none.]

Richard Karpel, Executive Director, Nevada Press Association:

Thank you to Senator Parks, Senator Kieckhefer, and Senator Schieble for getting us to this point with an inclusive bipartisan process. I would like to mention one thing that has come up a bit in this hearing: the reality is there are varying responses from agency to agency. Some are very good in their public records responses; others are not. The question of what the issue is and who has had problems came up. We had 20 people or so testify at

the original hearing—citizens who had problems getting records. On the Right to Know website, there is a list of bullet points and a number of examples. I am going to read just one of them—the one I think seems the most egregious to me. The Incline Village General Improvement District refused to provide its own board treasurer with basic financial records. That is clearly an agency that needs to up its game a bit, and that is what this bill would do in its current form. It would close the gap between the agencies that are good performers and those that are not.

Holly Welborn:

I want to make two quick points; one about unreasonable delay. We have heard some examples, but I want to give some contrast and how it depends on the type of request—it depends on those circumstances. For example, we filed a public records action in the Scott Dozier case. Scott Dozier was an individual who volunteered to be put to death by the State of Nevada. At that time, the state was seeking what the pharmaceutical drugs were that were going to be used to execute Mr. Dozier. Because there was such a short time limit, we were given a response that they would respond in 60 days. Well at that point, Mr. Dozier's life was at stake, and there was a huge public interest in getting that data in a shorter period of time.

In contrast, we have unreasonable delays. For example, we gave another public records request to the Department of Corrections dealing with solitary confinement and the implementation of a law that was passed in the last legislative session [Senate Bill 402 of the 79th Session]. They responded that they would not be able to get back to us for 60 days, but in that time frame, we were simply asking for data. That is why the language is only applicable based on the circumstances. We had to look at the circumstances of that request, and that is something that the court will determine.

Twenty-three states have provisions that impose fees or other penalties on government actors when they are acting in bad faith. This bill is not nearly as harsh as what other states impose. Arkansas penalties include a fine of up to \$500 and imprisonment. Imprisonment. A criminal penalty of up to 30 days. The court can impose a fine of \$25 per day for each day the records were unlawfully withheld. In Connecticut, it is a fine of \$200 to \$1,000 against the government official, the individual—it is the individual liability. In West Virginia, you can be imprisoned for up to 20 days. We think what we are asking for is very scaled back. We are not asking for huge penalties. For these reasons, we encourage your support.

Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:

I just wanted to add that community trust relies on transparency. We urge you to pass this bill.

Chair Flores:

Is there anybody else wishing to speak in support of Senate Bill 287 (1st Reprint)? [There was no one.] Is there anyone wishing to speak in opposition to Senate Bill 287 (1st Reprint)?

Danny L. Thompson, representing Lance Gilman Holding Company:

I was here yesterday and asked for an amendment to a bill on public records that I was told was not germane. It turned around an issue where not all of these requests are for journalistic needs. Not all of these requests are for pure needs. Last year, there were initiative petitions in three counties in Nevada to outlaw brothels. They all lost. The one case in Lyon County lost 80 percent to 20 percent. The individual who ran that campaign then went to the county and made a public records request for the names and work card applications of all the women for the past ten years who have worked in legal brothels in that county. That application includes your passport number, your address for the past three years, your current address, an emergency contact number, and scars and tattoos on your body. When he was denied this request, he threatened a lawsuit and probably will carry out that lawsuit. I will tell you that this issue is not as black and white as it seems. Not all of these requests are for good purposes. Law enforcement in that county is put in a horrible position because they know that chances are this individual does not want to send these women a Christmas card. These women have a higher incidence of being stalked, of being intimidated, and of being harassed. Last month, a man got a sex worker's home address, went to her home and put sugar in her vehicle's gas tank, and then he beat her so badly that he knocked all her teeth out. This is not a simple issue, and I would urge you to consider your vote carefully. In response to Assemblyman Hafen's concerns, some of these small counties have one person in the office. I urge you to adopt the amendment I proposed yesterday to this bill or kill it.

Kerrie Kramer, representing The Cupcake Girls:

We are an organization that works with sex workers throughout the state of Nevada, in legal brothels, in strip clubs, as well as those who have been trafficked and otherwise. I wanted to piggyback on Mr. Thompson's amendment. We are all about transparency, and we love the bipartisanship of this bill. However, we would like to see more protections put in place for vulnerable communities such as the sex workers in our state. They are at risk if that information is put out there and, as Mr. Thompson mentioned, it is very personal information. It is very proprietary, and that could put them at an even greater risk. I urge your support of the amendment.

Warren B. Hardy, II, representing Nevada League of Cities and Municipalities:

We represent all of the municipalities in the state with the exception of the City of North Las Vegas. I want to thank Senator Parks, Senator Scheible, and Senator Kieckhefer. We reached out to the Right to Know Nevada Coalition during the interim to try to get input into this bill. We did not really have any success inserting ourselves into the conversation until it got to the legislative process. I can tell you that Senators Parks, Scheible, and Kieckhefer's doors were always open. I never had to set up an appointment. They said come in; let us talk. This was an issue they took very seriously, and I know they want to get it right. I also want to thank Chair Flores for his efforts on this to get us together and try to work out a compromise. Frankly, I think we are close, and had we started prior to session, we might have been able to get there.

In spite of what you might have read in the newspapers and editorials and elsewhere, I want this Committee to know that our entire motivation here as local governments is to protect the rights of our citizens. We have a very serious obligation to make sure that their rights and their privacy are protected. Our motivation has been that the public has an absolute right to know, always, what their government is doing. They do not, however, always have the right to know what their neighbors are doing—and that is what is motivating us. We did not set it up this way, but Mr. Thompson's and Ms. Kramer's comments were perfect to illustrate why we are in this fight. That is an obligation that we take seriously.

In terms of the spirit of compromise, we believe that we have compromised a great deal on this bill. The bill that is before you today represents a significant effort to try to get this right and to address many, many of our concerns. I thank the Senators for that. I was particularly pleased to hear Senator Kieckhefer indicate that it was not the intent to remove the extraordinary use provisions, because that is one of, if not our primary, concerns. I would respectfully request that we make sure that is clear.

David Cherry, Government Affairs Manager, City of Henderson:

I think there are three words that could sum up this bill: invitation to litigation. I think if your goal is to create a law that is going to end up taking police departments, cities, and school districts into court and making them spend a lot of money on court fees and attorney's costs, this is the bill that is going to do that. I think we need to be very careful. I think it is important to know that right now, the law already exists. We have a public records law, and we do a very good job complying with it. You have heard the opponents say, We did not get this record and we did not get that record. They did not tell you about the 99 percent of the time when they got everything they asked for at very little cost and in very quick order.

At the City of Henderson, we answer our requests within one-half day and we provide the records within 1.3 days, on average. Between 2017 and 2019, we estimate that we will have handled 45,000 public records requests. We submit that there is not a problem here. If you are going to make changes to the law, I think you need to be very careful because even the sponsors of this bill are telling you that the way this is going to get sorted out, if you make changes, is we are all going to have to go to court. I do not think the goal of this legislation should be to make us all go to court; it should be making it easier for people to get public records. Let us tread carefully. The remedies already exist in the law.

I think in almost every instance, you have heard about people getting the records at the end of the day. They may have had to go to court, but there is a remedy that exists. They can go to court; they have the right to go to court; and if we are not complying with the law, they will take us to court and they will get those records. I think there are changes to this bill that could help clarify it. I think needing to take out section 13 so that we do retain the right to collect our extraordinary use fees is very important. I think you should strike all of section 7 because that is where that very vague language exists that says unreasonable delay. What is an unreasonable delay? They cannot define it; nobody can define it. If you want to end up in court, that is exactly what is going to happen.

We would also like to take out the four sub-subparagraphs of section 6 that have all those descriptions of all the things we need to do when a requester asks for something that we cannot provide to him or her. Again, we think that will lead to litigation. We do not know exactly what we have to do to comply with that, so why would you leave that in there when you could easily take it out? If you want to put a penalty in there, that is fine, but just know that unfortunately the Senators are wrong when they put on the record that good faith protects. Good faith only protects you against damages that are given to somebody who is the requester or somebody whose information is released.

Chair Flores:

We have a question for you.

Assemblyman Carrillo:

Do you know if investigative personnel files are confidential under *Nevada Revised Statutes*?

David Cherry:

It is my understanding that the Nevada Supreme Court recently held in the case of *Clark County School District v. Las Vegas Review-Journal* [134 Nev., Advance Opinion 84 (2018)], that investigative personnel files are not, in fact, exempt from public records requests. I think one way in trying to frame the issue is, let us say you are a victim of harassment and the person who has had that accusation, the harassment accusation and your name will be in that person's personnel file. That file becomes public; the name of the victim becomes public; and the folks may say, Give us that information and we will not put it out there. But I do not think that we can have that faith that everybody would be a good actor and they would not put that out there. Some people may want to try to embarrass or shame or even harm somebody who makes an accusation against them.

Chair Flores:

Committee members, are there any additional questions?

Assemblyman Leavitt:

You had mentioned how many requests had come in to your particular entity. Can you give me a rough example of how many have come in, and then how many complaints have come in, in accordance with those requests? You said 99 percent, but do you have any data that says, Hey, we took in 65,000 requests?

David Cherry:

I have in front of me the number of requests that we have processed, and I am believing these numbers are fulfillment numbers. I think when I told you that we have fulfilled, or believe that we will fulfill by the end of the time period covered in here, up to 45,000 records, I think that means that those are the ones fulfilled. I can tell you that we did fulfill 13,291 records in 2017; in 2018, 15,397. When these numbers were put together by April of this year, we had fulfilled almost 3,200. In terms of the instances where we have not fulfilled the records, unfortunately, I do not have that number. But I can tell you that certainly they would pale in comparison when you have fulfilled more than 13,000. I would say if there are a few we did

not fulfill, it is simply because we did not have the record. I can tell you the one instance in which we went to court. We were taken to court not because we did not fulfill the record request, but over court fees. At the end of the day, we gave them the records and we were still sued over the issue of court fees.

Chair Flores:

Committee members, are there any additional questions? [There were none.]

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:

As was stated by Mr. Thompson, in law enforcement we have the very difficult task of not only balancing transparency, but balancing privacy and public safety. Normally, the vast majority of the requests we get are simple: I want a copy of a police report. I want a copy of a mug shot or an accident report. We have even set up on our website where a citizen can go in and make those requests online. Unfortunately, we also get many extremely broad and vague any-and-all requests. A couple of examples: We had a request for ten years of arrest data for 26 different crimes that occurred at 213 different casinos on the Las Vegas Strip. Obviously, our folks who do this work tell me it could take us over a year to gather that information and compile it and then redact and provide it to the entity that requested it.

We have also had requests for databases: We want your entire SCOPE database, for example. We have had requests for 1 October, of course. We are still receiving requests for that. We have over \$1 million in costs that we have accumulated that we have not received any compensation for any of those requests. We were taken to court over that as well. In addition, we have had to take eight officers off the street due to all these requests. We have about 61,000 public records requests a year. We have to take eight officers off the street and use those officers full-time to redact and to go through this data. You may say, Why do you use an officer? October 1, for example. If you are looking at video footage of a person being killed from multiple different angles on a video, you cannot take a civilian employee and have them redact that information. In addition, sometimes they are redacting information that is case-sensitive to an investigation. You cannot have a civilian who is not familiar with law enforcement operations doing those redactions. I am trying to talk as fast as Mr. Cherry, but I am not as successful.

We have had a case, as another example, where an elected official's son was involved in an incident, and there was a public records request for that information. We denied that claim. To wrap up, what we really need, Chair Flores and Committee members, is a definition of what a public record is. Until we have that, we will see litigation. This bill will cause litigation. I would recommend we look for a starting place for that.

Chair Flores:

Committee members, are there any questions?

Assemblyman Ellison:

When you said all these requests, what about the victims of crimes? That seems to be if there is a young woman who is raped, what about that? Would that become public information that she could be out there and ridiculed? The other thing is what about the cameras? It seems to me that would be a large request to get all that video system copied to give to somebody.

Chuck Callaway:

I will start with the cameras. If a police officer goes in your house, for example, on a call and someone requests that record, we obviously have to go in and redact that body camera footage. There may be footage inside your living room. There is a privacy interest here that, again, we have to protect not only the public's right to know, but we have to protect the privacy of the person who is in that video. In some cases, we have to redact people's faces, we have to redact license plates. In the case of crime victims, we have to go through those reports and redact what by law can be redacted, but a lot of information ultimately gets released. I will take it another step: we have to protect those who have been accused of a crime. If information regarding someone is obtained and that person is in the process of going through the court system, do they receive a fair trial because their information has been released to the public and is in the newspaper when the individual is going to court on a potential charge? It is a balancing act, and that is why we have to have a clear definition of what a public record is and what is exempt from public records so that we can reduce litigation. It makes it great for both sides because there would be no question about what a record is.

Assemblyman Assefa:

Not everyone who is requesting records is doing it with good intent—we know that. Not everybody is perfectly normal as stated earlier. There are some cuckoo people out there asking for information. I want to know, as written in this bill, what does reasonable mean for you operationally, and what is the average time of response for records from, specifically, your department?

Chuck Callaway:

To the reasonable issue, I think it was stated that the term "reasonable suspicion," a term was used that is a criminal term when the proponents of this bill spoke to you. When it comes to records, reasonable does have a different meaning. I think it would fall upon the courts to decide. The scenario that was given by Assemblyman Leavitt where we believe something is reasonable but the other party says, No, this is not reasonable, 23 crime types that occurred at 213 casinos and we are one year into trying to find that information and someone says, Hey, it has been a year; this is not reasonable. But we say, No, it is actually going to take quite a bit more time to get this for you. We are going to end up in court. We are going to end up in litigation. I do not think the term reasonable as it applies to this statute is the same as reasonable suspicion cause in a criminal case. What was your other question, sir?

Assemblyman Assefa:

If you could give me, and I do not know if you know right away, but the average time of a response for records from your department.

Chuck Callaway:

I do not have with me today an average time with the 61,000 records requests a year we receive. I can check with our folks who do this on a day-in and day-out basis. I will try to get that for you by the end of the day.

Chair Flores:

Committee members, are there any additional questions? [There were none.]

John Fudenberg, Coroner, Government Affairs, Office of the Coroner/Medical Examiner, Clark County:

I would like to thank you, Chair Flores, and specifically Senators Parks, Scheible, and Kieckhefer, for working very hard in addressing some of our concerns. We are still opposed to this bill. I would like to make it very clear that Clark County believes in transparency and understands how important it is for the public to have access to the majority of our records. But as Mr. Hardy stated earlier, it is very important that we protect the privacy of the citizens of Clark County. Therefore, there are some sections that we would like to have addressed.

As Mr. Cherry indicated, we would like to have section 7 removed entirely and parts of section 6. Since David Cherry mentioned those sections, we can refer to what he testified to. We are also requesting to have section 13 placed back into the bill, and that addresses the extraordinary use issue that has been discussed here this morning. I can answer Assemblyman Assefa's question. I do not know about the fact of whether or not there are cuckoo people in this world or certainly in this room, or at least on this side of the room. To reiterate what Mr. Callaway said, we think it is very important to place a definition in this bill. One of the issues that is litigated over and over again is, What is the public record? When you are talking about things such as police tactics and things that could endanger the public, things like autopsy reports, which have a personal meaning to me, these are not things that I feel should be out in the public view. I am available for any questions.

Chair Flores:

Committee members, are there any questions? [There were none.]

John T. Jones, Jr., representing Nevada District Attorneys Association:

The Nevada District Attorneys Association is opposed to this bill. I, as well, want to thank Senators Parks, Scheible, and Kieckhefer for meeting with us. I appreciate their efforts. However, the district attorneys' position is, before you place more fees and fines into the statute, we need more definitions and we need more clarity. I listened to the presenters of the bill, and I think they openly admitted to this Committee that they did not fully answer questions. Even in their own amendment, they said, Well, we sort of left that vague. That is the problem we are having with the public records bill.

In Nevada, we do not specifically make information compiled for law enforcement purposes confidential. Right now, the test is a balancing test between the general policy in favor of an open, accessible government and, quote, the law enforcement interest in nondisclosure [end quote]. That is the balancing test we are dealing with, and it does not exactly answer a lot of questions, which invites litigation. We have confidential witnesses we have to protect. We have undercover officers we have to protect, and we have very sensitive information about victims that we have to protect: social security numbers, compromising photos related to the investigation, et cetera. Even if criminal investigations are open and ongoing, a defendant's right to a fair trial could be affected by public records requests. We ask that you consider all of these and try to provide more clarity before we go down the road of more fees and fines.

Delen Goldberg, Chief of Staff, City of North Las Vegas:

I also want to thank Senators Parks, Scheible, and Kieckhefer for their tremendous amount of work on this. Ditto what all my colleagues said. In the City of North Las Vegas, from January through May 8, just about four months, we received 9,887 public records requests. Of those, we fulfilled—typically within a couple of days or faster—all but 65. Of those 65, 49 of them, the ball is in the requesters' court, so we need clarifying information or more data. The process is working. I am a former journalist, a former reporter and editor, so I take this very seriously, professionally and personally. Except for the outliers, it sounds as if they are not following the existing law. There are remedies in place. I think the data shows that the rules we have on the books are effective.

In terms of the extraordinary use, it is a balancing act, but we have to protect our taxpayer constituents as well. A single records request can take hundreds of hours of staff time. We do not have a records department. It is our lawyers' time, our informational technology person's time, our clerks' time, and that is thousands and thousands of taxpayer dollars to fulfill a single request, potentially, that is never recouped if there is no extraordinary use. Worse, my office is filled with boxes—thousands of pages that were never picked up—hundreds of hours on the taxpayer dime that they spent fulfilling these requests that were never followed up by the requester. The cost helps protect against that.

Assemblyman Carrillo:

What would be the need for anybody to get an autopsy report? Why would I need that, other than just out of grim reasons? What would be the need for autopsy reports other than maybe law enforcement if they are following up on a case and they need specifics? Can you talk in regard to why it would be important to keep that information confidential. Why would the press need it? I cannot see anyone putting that in print or on television for any reason.

John Fudenberg:

I agree with you. There is no reason they should be made public. The law enforcement agency that is involved in the investigation receives the autopsy reports. The legal next-of-kin is entitled to the autopsy report and, of course, any court proceeding or subpoena that we receive, we fulfill those requests with autopsy reports. An example is when Dennis Hof died in Nye County. Nye County has a different interpretation of the statute as it

relates to autopsy reports. They posted that online. The *Las Vegas Review-Journal* linked directly to it the very next day. Many of these media outlets will tell you that they will not post autopsy reports online. I disagree, and that is a perfect example of when they did post autopsy reports online. Autopsy reports contain things like what sort of communicable diseases an individual may have had. They contain things we describe in detail of how our doctors are dissecting the decedent's brain, their heart, and other vital organs. These are not things that should be made public or made available to anyone, let alone the media so they can sell more newspapers or create more advertising dollars as a result of obtaining those autopsy reports.

Vinson Guthreau, Deputy Director, Nevada Association of Counties:

The Nevada Association of Counties represents all 17 counties, and I want to put on record that our members believe in transparency. We also have, as has been mentioned, the right to protect information of members of the public. We balance this with limited resources and whose primary job is to provide government services to the public. I will echo what my friends from the city said, especially the initial speakers, who discussed those are the faces of the people we are trying to protect—their privacy—and serving them as well.

Chaunsey Chau-Duong, representing Southern Nevada Water Authority:

In consideration of the Committee's time, our issues on the bill have been expressed, so we want to let the Committee know we still have concerns on the bill.

Kelly Crompton, Government Affairs Manager, Office of Administrative Services, City of Las Vegas:

I would like to echo the comments of Mr. Cherry and Mr. Hardy. I would also like to bring up section 1, subsection 1 [S.B. 287 (R1)] where we talk about the penalties and the fees for violations. I think that there was testimony that people might change their names, their organizations, and then you would have to reset those. I do not think the City of Las Vegas ever intends to reset its name, but we do have many people who work on records requests. The effort of human error could happen, so we are looking for a reset in those penalties.

When you talk about section 6, the vagueness of the law is there. We get requests all the time, some voluminous requests. If you were to request all the records on the Fremont Street Experience, it is a 25-year-old project and \$70 million in costs. People think they can request a record and we have a button that pops up the record they are looking for. If we put the Fremont Street Experience into our database, we would have everything on that property, everything on Fremont Street, any public works that were on Fremont Street. So it takes time, sometimes, to look at these records and try to figure out what exactly they are requesting. Sometimes that dialogue takes some time as well. Our organization already works in good faith to hand-hold a requester and make sure they are getting the records they request. I think the vagueness in the law should be looked at, and pieces of section 6 should be stricken and pieces of section 13 need to come back in.

Chair Flores:

Before you leave, we have a question for you.

Assemblyman Leavitt:

Does the City of Las Vegas charge for public records requests?

Kelly Crompton:

The City of Las Vegas does charge for records requests usually, depending on the request. If it is a voluminous request, we will let the individual know there will be a cost incurred. It depends on what the request is. If a media outlet is requesting information from our public information officers (PIOs), usually that is just a conversation and we get that information to them. We do not track that record because information back and forth between the media and our PIOs is easy to fulfill. It depends on what the record is.

Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office:

I want to thank you, Chair Flores, for meeting with us and listening to our concerns with all the stakeholders, and the Senators who presented before you this morning. The Washoe County Sheriff's Office is opposed to Senate Bill 287 (1st Reprint) in its current form. We are a community partner. Our motto is commitment to community, and we work hard to ensure our community is kept well informed. We place the majority of our records, policies, and information online for access to all. We do this in an effort to be transparent and to help keep our staff available for their duty line functions. We do not have full-time public records personnel. It is an ancillary duty that takes away from their full-time assignments, but we are happy to fulfill and comply with all requests. The ambiguity of this bill is problematic and leads to delays in our employees' response times. Defining a public record is paramount to this bill's success. Language littered with ambiguity demanding litigation for clarity is problematic for our agency. During my nonlegislative time, my job is a lieutenant over the research and development unit. Our personnel are responsible for crime and data analysis when requests come in for extraction of data from our records management system, Tiburon. I have one person—one computer systems technician—who can extract that data. It does take time.

With respect to video-based evidence with new redaction technology, 10 minutes of video takes approximately 60 minutes to redact. We would like to have the provision to be able to recoup our personnel's fees for extraordinary time and technology. I would encourage this Committee to protect public safety, protect investigative confidentiality, and protect our communities. We encourage your opposition to S.B. 287 (R1).

Chair Flores:

We have a question for you.

Assemblyman Hafen:

I wanted to comment on what you said about how you post as much as you can online, and I wanted to say thank you. I think that is the best way. We would not be here today, I think, if all the other different agencies that seem to be having problems with it would do that. I just wanted to commend you on that and say thank you.

Jamie Rodriguez, Government Affairs Manager, Office of the County Manager, Washoe County:

I want to start by thanking the sponsors, Senators Parks, Kieckhefer, and Scheible, for working with us very extensively on the Senate side. While the bill in front of you is, in our opinion, substantially better than when it started, we do definitely still have some concerns. Our job as a local government is to help residents, to provide services and, at times, public records. Our job is to be transparent. I agree with all the statements made before me. I am going to highlight two quick points here because we have been here for a while.

In section 6, page 9, when we talked about making efforts to help the requester, we understand and appreciate the intent of these four points. I think our concern is that there is a balance there. People have the right to simply request a record. However, our concern is that residents may feel that we are trying to deny those records by asking a multitude of questions. Why do you want it? What specifically are you trying to get? How can I help you understand that? Do you understand that this is here, maybe there, or it may come in a different format? Our concern is that we are going to turn residents off from coming to us because they do not want to have to answer a bunch of questions. They just want the information. Again, we absolutely understand and appreciate the intent of it, but we are scared that that could cause a slippery slope of people not just being able to come in and request a record.

Last is section 13, the fees. We talked a lot about a multitude of records requests that do come in. We have several commercial requests that come in on an annual basis. I have used the example previously on the Senate side as well. Title companies come to our recorder every year and ask for information of every property title transfer that has occurred over that last year. That is to help people when they purchase property, homes, et cetera. That is a substantial amount of staff time to pull and collect that data and that information. They are happy and willing to pay for those fees and that cost for the staff.

Kathy Clewett from the City of Sparks had to stay in Sparks this morning for the Community Homelessness Advisory Board meeting but asked that I put on the record that they, too, are in opposition.

Kirsten Searer, Chief of Communications, Marketing, and Strategy, Clark County School District:

We are in opposition to this bill. While we think it has made significant progress and we are thankful to the sponsors for that progress, we still have significant concerns that this will increase litigation and legal costs, and force us to hire additional staff that will take away money from the classroom.

Very briefly, our largest concerns mirror our colleagues' concerns. We would like to reinstate the language regarding the extraordinary use of staff time. We have certainly had many requests that require many hours of staff time. For example, we have to protect the privacy of our children and oftentimes our employees. We routinely get requests for school police body camera videos or camera videos from special education school buses.

We obviously have to balance the need to be transparent with the community with the costs and privacy issues of blurring out faces of children. You can imagine if a police officer works on a fight, that could sometimes involve faces of hundreds of kids. So the amount of time it takes to blur out those faces could be significant. Second, we also agree that section 7 could open us up to significant legal liability, and we are concerned that there is no definition of what would be an unreasonable amount of time to fulfill a request, or of an excessive amount of fees.

Lastly, I want to comment on the definition. Someone mentioned earlier a case that we lost in court about an investigation involving our employees. I was the person who had to call those folks and tell them that we were releasing the records even though we were redacting their names. Their question to me was, How are you going to protect me? I think that we need to be very careful in defining public records because of the increased scrutiny that we are seeing. This is very important. I am also a former reporter. We have to balance the transparency that our public deserves, especially for government agencies, with the need to protect the privacy of students and victims and cases like this. We encourage you to consider other amendments.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:

It has all been said. We oppose the bill.

Scott A. Edwards, President, Las Vegas Peace Officers Association:

We oppose this bill for the reasons stated.

Michael Ramirez, Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc.:

We are opposed.

Chair Flores:

Is there anyone else wishing to speak in opposition to Senate Bill 287 (1st Reprint)? [There was no one.] Is there anyone wishing to speak in the neutral position? [There was no one.] If I could have our Senators please come back for any closing remarks.

Before we move forward, we will ask the Clark County School District to return.

Assemblywoman Martinez:

It is my understanding that these cases where the Clark County School District had been requested a record and that there have been violations by the Clark County School District, the school district in turn must pay high fees for private attorneys to fight for access only to lose. Would you agree with this?

Kirsten Searer:

We routinely hire outside attorneys to handle litigation, especially in areas where our in-house attorneys do not have the capacity or the knowledge expertise.

Assemblywoman Martinez:

We do not want children's names to be exposed, but we would like the data for the amount of the schools being schooled per pupil, would you agree?

Kirsten Searer:

I do not understand the question.

Assemblywoman Martinez:

All we are asking for is data. We just want transparency. We would want to know, for instance, if there are teachers who are child molesters. As a parent, I would want to know that information. Many of us here have our children in the school. I believe in transparency. My child probably spends more time in the school than even in my home. That is why we should have the transparency, and have the knowledge and know everything that is going on in the school district where my daughter spends most of her time.

Kirsten Searer:

Okay, I understand better. You bring up a really great point and it is something we struggle with because I absolutely understand what you are expressing. My understanding is that *Nevada Revised Statutes* and the *Nevada Administrative Code* define that personnel investigations for state agencies are confidential, but are not as clear about local agencies. I think your point goes to what we are trying to say that we think we need a better definition of public records. I understand what you are saying. As I said, I am a former reporter. I feel that need for transparency, especially in the case of parents who want to know what is going on. Again, we need a better definition.

Assemblywoman Martinez:

Another thing where I would really appreciate the transparency, for instance, is the school shootings. As parents, we should be aware of how many incidents a school has had of children bringing guns to the school. Again, my daughter is in that school system, as are many of our children and grandchildren. Even the children who are sitting here and testifying—we need the transparency. My daughter is very important to me, just as everyone's child is important. As a parent, I believe I should have that information.

Kirsten Searer:

I agree with you and, more importantly, our superintendent agrees with you. We have recently started posting the number of guns confiscated in schools.

Assemblyman Ellison:

When you are doing all these requests—which I know a lot of these are valid—you need to put them out there at no cost. Do you break even on all these requests or do you go in the hole? When you are charging for these, are you breaking even on these requests; salaries, paperwork, and time that is taken to get these?

Kirsten Searer:

No, we do not. How we handle it in Clark County and listening to my colleagues, I think that we all probably track public records differently. For example, we do not include all of the student records requests in our public records count because that goes through our student records system. I handle public records myself. We track public records requests from the media and from the public. We created a position, a support professional position, in 2012 to handle that. The first full year we had that, we had about 70 requests and, again, some of those could take anywhere from five minutes to a month to process based on the redaction needed and the amount of records that needed to be collected. Last year, I think we had 326, and that same person is handling all of those. The time to process those records varies greatly. We might bring in a couple thousand dollars a year in what we charge versus the cost for that person.

Chair Flores:

With that, thank you. If I could have our Senators please come back up.

Senator Parks:

Thank you very much, Chair Flores and Committee members, for giving this bill an extensive hearing. We appreciate all your time and efforts. I wanted to comment on a couple of things, and that is in the initial drafting of the first iteration of the bill, we had on page 5 a definition of public record, and then in the Senate Government Affairs Committee we had a fair amount of discussion on that. It was removed from the first reprint. It was never our intention to make certain information public, such as a person accused of a crime and not found guilty, or to have a victim's name released. We saw those as being elements of confidentiality.

Senator Kieckhefer:

I appreciate all of the Committee's time. This is a critically important issue. I would like to address a couple of the concerns specific to the opponents. For Mr. Thompson and Ms. Kramer, clearly they were working on an amendment to another piece of legislation that was not attached. That amendment has not been posted to the Nevada Electronic Legislative Information System for this bill hearing, and I have not seen it. But it seems to relate to something that is not in the bill versus what is in the bill.

For Mr. Hardy and Mr. Cherry, the issue over protecting the rights of citizens and the obligation of the government to do so, nothing in this bill changes that. Their biggest concern when we spoke to them about a previous draft of this amendment was regarding the changes over the good-faith exemption that ensures that if they deny a record in good faith, that those agencies are protected, and we made that change to accommodate them because I thought their concern was legitimate.

In addition, a concern of Mr. Callaway, who clearly has frustration over the obligations of Las Vegas Metro and the difficulties of the Las Vegas Metropolitan Police Department to fulfill the voluminous records requests they receive, and I am sympathetic. I do not think anything in this bill specifically makes that worse or changes it. People are going to continue

asking Metro for records, and if all these agencies are saying they already get sued all the time, then I do not think the additions in section 7 really change the status quo with that point. The requests relate specifically to section 7 and the ability for people to seek relief when they do not feel as if they are being treated correctly. The other suggestion seems to be to remove the provision that requires the government to work with the requester to refine the request, which is designed to make the process more smooth and alleviate problems.

Finally, the other point that Senator Parks referred to was the definition of public record. There has been a lot of discussion over what would constitute a public record and how you would put that into statute. I am going to quickly read what was in the original draft of the bill.

"Public record" means any record, document, paper, letter, map, notes, calendar, spreadsheet, database, book, tape, photograph, film, sound recording, video recording, data processing software, computer and other electronic data, metadata, electronic mail or any other material or means of recording information, regardless of the physical form, characteristics or means of transmission, which is prepared, created, used, owned, retained or received in connection with the transaction of official business or the provision of a public service.

We could talk about that all day and all week. I think that by striking this definition that was originally included, we have case law that exists and we are operating under the status quo. We are not changing what is a public record in this law. Again, a definition like this has serious implications for record retention policies for every governmental entity in this state. Governments have obligations to retain public documents for set periods of time. Under definitions like this, every voice mail recorded would have to be retained on every government phone for years. I do not think that is a reasonable way to go.

In summary, Chair Flores, I think what is before you today is a reasonable middle ground to try to streamline the process, but it is not one that changes definitions of public record. There is not one that changes obligations of the government to provide them while also protecting personal information. It is not one that should get in the way of reaching middle ground—it should foster it. I would ask that you consider processing this piece of legislation as it is presented to you today.

Chair Flores:

Thank you—all three of you. For all the stakeholders and members of the Committee, we are not in a place where defining a public record is even at play—that is not for us to consider here. The bill did not bring that to us, and that is something that if we want to do over the interim, we can, all of us collectively, but we are not going to do that on the eve of *sine die*. It is unrealistic and not a good way to move forward with that.

Every time we have a conversation about public records, it has always been this contentious. You are always going to have a whole host of stakeholders who are not going to be 100 percent satisfied—that is normal. Expect yourselves to have difficult conversations in the time remaining regarding this bill, but understand that nobody is going to be 100 percent happy. Everybody comes to this building and we approach it through a different lens and, equally, we understand that every single stakeholder is being genuine when they say, Look, sometimes we get these requests that take us a year, just like we have stakeholders who are saying, We have bad actors who are refusing to give information that we need for the sake of transparency for the public. That is what we do here and, very likely, most of you are the good players. You are the people who are trying to do everything perfectly. I think some of our stakeholders who are pushing this bill are trying to capture those individuals who are not in the room—the people who are not coming to the table who are not having these discussions.

Thank you, Senators. I appreciate the bipartisan support that you were able to make work in the Senate. With that, members, we are going to go ahead and close the hearing on Senate Bill 287 (1st Reprint). I encourage all of you to give yourself an opportunity to continue speaking with stakeholders, and to the stakeholders, thank you all for meeting with me last night. I know it was last minute, and there were about 30 people in a very small room and we made that work. I appreciate your having an open dialogue with me, and I intend to do the same with you.

I would like to invite forward those who are here for public comment. [There was no one.]

We are not going to adjourn. We will recess and likely continue the conversations. At this point, we are holding onto two bills in this Committee that still require us to decide what we want to do collectively. Committee members, please reach out with any concerns you may have and/or if there is something you really like, do that.

[([Exhibit F](#)) and ([Exhibit G](#)) were submitted but not discussed and are included as exhibits for the meeting.]

We are in recess [at 10:49 a.m.]. [The meeting was called back to order behind the bar at 7:34 p.m.]

Chair Flores:

We are here to pass two bills, and I will let our Committee Policy Analyst present the first one.

Jered McDonald, Committee Policy Analyst:

The first bill is Senate Bill 287 (1st Reprint) as it relates to governing public records.

**Senate Bill 287 (1st Reprint): Revises provisions governing public records.
(BDR 19-648)**

Senate Bill 287 (1st Reprint) revises provisions relating to public records, including public inspection, request for copies, and receipt of copies ([Exhibit H](#)). The bill provides that if a court determines that a governmental entity failed to comply with the existing law governing public books and records concerning a request to inspect, copy, or receive a copy of a public book or record, the court must impose on the governmental entity a civil penalty. The bill also clarifies when a request for a public record will take longer than five business days, the entity must provide written notice of the earliest date and time the record will be available. If the record is not provided by that date, the entity must provide a written explanation of the reason for the delay. Finally, the bill eliminates the authority of an entity to charge an additional fee for providing a copy of a public record when extraordinary use of personnel or resources is required.

An amendment has been proposed by the Assembly Committee on Government Affairs which would amend the bill to:

1. Add the term willfully regarding a failure to comply with provisions of the bill; repeals 50 cents per page, allowing the government entity to charge for actual cost;
2. Adds a 10-year period by which civil penalties escalate for repeated violations; and
3. Deletes Roman numerals I through IV in subsection 1 of section 6 on page 9, lines 21 through 32.

Chair Flores:

I will entertain a motion to amend and do pass Senate Bill 287 (1st Reprint).

ASSEMBLYMAN CARRILLO MADE A MOTION TO AMEND AND DO
PASS SENATE BILL 287 (1ST REPRINT).

ASSEMBLYWOMAN GORELOW SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblyman Hafen:

I will be voting yes to get the bill out of Committee, but I reserve my right to change my vote on the floor.

Assemblyman Leavitt:

I will be voting yes to get the bill out of Committee, but I also am reserving my right to change my vote on the floor.

THE MOTION PASSED UNANIMOUSLY.

Chair Flores:

I will assign the floor statement to Assemblyman Smith. The second bill is Senate Bill 388 (1st Reprint).

Senate Bill 388 (1st Reprint): Revises provisions relating to public records.
(BDR 19-827)

Jered McDonald, Committee Policy Analyst:

Senate Bill 388 (1st Reprint) (Exhibit I) provides that a record or portion of a record is confidential if:

1. It contains personally identifiable information collected by automated means over the Internet or other digital network by a governmental entity as part of the electronic collection of information from the general public; and
2. The governmental entity determines that disclosure of the personally identifiable information could create negative consequences for the person to whom it pertains.

The entity must allow such records to be inspected or copied if there is a compelling operational, administrative, legal, or educational reason that outweighs the risk of the potential negative consequences. The entity must also maintain a list of records that were determined to be confidential and prepare an annual report to the Legislature regarding such records.

Chair Flores:

I will entertain a motion to do pass.

ASSEMBLYMAN LEAVITT MOVED TO DO PASS SENATE BILL 388 (1ST REPRINT).

ASSEMBLYWOMAN BILBRAY-AXELROD SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblyman Hafen:

I will be voting yes to get the bill out of Committee, but I reserve my right to change my vote on the floor.

Assemblyman Leavitt:

I will be voting yes to get the bill out of Committee, but reserve the right to change my vote on the floor.

THE MOTION PASSED. (ASSEMBLYMAN ELLISON VOTED NO.)

Chair Flores:

Assemblyman Leavitt will take the floor statement. This meeting is in recess [at 7:39 p.m.]. The meeting is adjourned [at 11:59 p.m.].

RESPECTFULLY SUBMITTED:

Connie Jo Smith
Committee Secretary

APPROVED BY:

Assemblyman Edgar Flores, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a copy of an article from the *Las Vegas Review-Journal* titled "Your Right to Know," by Michael Scott Davidson and Anita Hassan, dated May 31, 2019, submitted by Senator David R. Parks, Senate District No. 7.

[Exhibit D](#) is a copy of a letter dated June 2, 2019, to Chair Edgar Flores and members of the Assembly Committee on Government Affairs, authored by Tod Story, Executive Director, American Civil Liberties Union of Nevada, in support of Senate Bill 287 (1st Reprint).

[Exhibit E](#) is written testimony dated June 2, 2019, submitted by Daniel Honchariw, Senior Policy Analyst, Nevada Policy Research Institute, in support of Senate Bill 287 (1st Reprint).

[Exhibit F](#) is written testimony dated June 2, 2019, submitted by Erin Phillips, President, Power2Parent, in support of Senate Bill 287 (1st Reprint).

[Exhibit G](#) is a copy of a letter dated June 2, 2019, submitted by Beth Dory, Private Citizen, Reno, Nevada, in support of Senate Bill 287 (1st Reprint).

[Exhibit H](#) is the Work Session Document for Senate Bill 287 (1st Reprint), dated June 3, 2019, presented by Jered McDonald, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit I](#) is the Work Session Document for Senate Bill 388 (1st Reprint), dated June 3, 2019, presented by Jered McDonald, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.