MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Eightieth Session
April 3, 2019

The Senate Committee on Government Affairs was called to order by Chair David R. Parks at 1:08 p.m. on Wednesday, April 3, 2019, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4404B of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator David R. Parks, Chair
Senator Melanie Scheible, Vice Chair
Senator James Ohrenschall
Senator Ben Kieckhefer
Senator Pete Goicoechea

GUEST LEGISLATOR PRESENT:

Senator Moises Denis, Senatorial District No. 2

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Committee Policy Analyst
Heidi Chlarson, Committee Counsel
Pat Devereux, Committee Secretary

OTHERS PRESENT:

Tod Story, Executive Director, American Civil Liberties Union of Nevada
Maggie McLetchie, Right to Know Coalition; Nevada Press Association
Richard Karpel, Executive Director, Nevada Press Association
Nancy E. Brune, Executive Director, Kenny Guinn Center for Policy Priorities
Sondra Cosgrove, League of Women Voters of Nevada
Wesley Juhl, Society of Professional Journalists Las Vegas
Lewis W. Trout
Beth Dorey

Daniel Honchariw, Senior Policy Analyst, Nevada Policy Research Institute
Patrick File
Sam Toll, Editor, *The Storey Teller*
Erin Phillips, Power2Parent
Trevor Hayes
Robert Fellner, Policy Director, Nevada Policy Research Institute
Patrick Donnelly, State Director, Center for Biological Diversity
Bob Conrad, Editor, ThisisReno.com
Warren Hardy, Nevada League of Cities and Municipalities
Ashley D. Turney, City Clerk, City of Reno; Nevada Municipal Clerks' Association
Nancy Parent, Washoe County Clerk; President, Nevada Association of County Clerks and Election Officials
Chuck Callaway, Las Vegas Metropolitan Police Department
Matthew J. Christian, Assistant General Counsel, Las Vegas Metropolitan Police Department
Chaunsey Chau-Dong, Southern Nevada Water Authority; Las Vegas Valley Water District
Kelly Crompton, Office of Administrative Services, City of Las Vegas
Laura Rehfeldt, Civil Division, Clark County Office of the District Attorney
John Fudenberg, Coroner, Clark County
Brandon P. Kemble, Assistant City Attorney, Civil Division, City Attorney's Office, City of Henderson
Scott Edwards, President, Las Vegas Peace Officers Association
Paula Berkley, Board of Occupational Therapy
Vinson Guthreau, Deputy Director, Nevada Association of Counties
Jamie Rodriguez, Washoe County
John T. Jones, Nevada District Attorneys Association
Dylan Shaver, Office of the City Manager, City of Reno
Kathy Clewett, City of Sparks
Christopher G. Nielsen, General Counsel, Nevada Public Employees Retirement System
Jen Chapman, Recorder, Storey County; Recorders Association of Nevada
Mary Pierczynski, City of Boulder City
Dena Dawson, Assistant Clerk/Elections Administrator, Douglas County
Sara Martel, State Records Manager, Nevada State Library, Archives and Public Records Division, Department of Administration
Laura Fucci, Chief Information Officer, City of Henderson
Michael Sherwood, Director, Information Technology, City of Las Vegas

Brian McAnallen, Porter Group, Inc.
Tom Morley, Laborers Union Local 872
Alanna Bondy, EHB Companies
Brittany Walker

CHAIR PARKS:
We will open the hearing on Senate Bill (S.B.) 287.

SENATE BILL 287: Revises provisions governing public records. (BDR 19-648)

SENATOR DAVID R. PARKS (Senatorial District No. 7):
Senate Bill No. 170 of the 79th Session was the genesis of S.B. 287.

TOD STORY (Executive Director, American Civil Liberties Union of Nevada):
You have my testimony in support of S.B. 287 (Exhibit C). The Nevada Public Records Act (NPRA) was passed in 1911 and has been revised many times since. Its purpose is to respond to the public's right to know how their government operates with resources provided by taxpayers. Senate Bill 287 seeks to standardize, clarify, modernize and increase the efficiency of the process of fulfilling the NPRA.

The Right to Know Coalition is an advocacy group comprised of the press, media and citizens to effect necessary changes to the NPRA. Senate Bill 287 will make the process of obtaining public records more responsive by requiring public agencies to acknowledge and communicate with requesters to provide documents.

Government employees are paid to do the people's business. When public records are requested, employees should aid the public in an open, collaborative, transparent, accurate and efficient manner. How do we hold accountable employees who fail to do so? That is the purpose of the bill's penalties.

In 2013, the American Civil Liberties Union of Nevada (ACLUN) began a project to review the sex education curriculum in the State's 17 school districts. We requested those materials on the same day and in the same format, and most districts complied within 30 days. One district took 18 months, and 2 never responded. The material arrived in formats from pdf files, compact discs and

thumb drives to a ream of paper. One district told us we could only review the material in person without cell phones present.

With such wildly different response times and compliance results, it became obvious we must standardize the NPRA. The opposition to S.B. 287 reveals differing approaches to fulfillment of records requests. By requiring agencies to adhere to a common response standard, delivery and deadlines, agencies will fulfill their responsibility to the people to honor records requests. It will also fulfill governments' responsibility to democracy and its people's right to petition.

MAGGIE MCLETCHIE (Right to Know Coalition; Nevada Press Association):
The Nevada Public Records Act is designed to promote democracy, transparency, accountability and trust in government. However, citizens too often face resistance and delays when seeking to understand government activities. Senate Bill 287 addresses key issues to remedy this.

There is no set deadline in the NPRA, resulting in agencies resisting tight time frames for requests. We recognize entities need different time frames to fulfill requests, depending on the nature of the requests. Sections 2 and 6 of the bill address timing, seeking a "prompt" response to supply records. Government lawyers have told me since there is no deadline under the NPRA, they can take ten years to supply records if they so choose.

Section 2 of the bill clarifies that the policy of the NPRA is to further prompt disclosure to promote transparency; section 6, subsection 1, paragraph (c) requires the entity to let requesters know the time frame in which information will be provided and communicate with the requester if unforeseen delays arise. Currently, agencies may say they will provide records but then never get back to the requester, who must continually follow up with no clear answers.

Senate Bill 287 clarifies the definition of "public record" in section 3, subsection 8 to comply with Nevada Supreme Court caselaw that requires disclosure of records relating to transacting the people's business. The bill has other provisions to alleviate confusion over legal custody or control of records.

The bill also clarifies the definition of "actual cost" in section 3, subsection 1. While the NPRA does not prohibit entities from charging routine copy costs, it does prohibit fees for overhead costs. However, when calculating per page copying fees, too often entities incorporate costs for staffing and other things.

Sometimes exorbitant fees are a deterrent to access. If an average citizen is told it will cost $500 to fulfill his or her records request, he or she cannot pay that.

A provision in the NPRA regarding "extraordinary use" is widely misunderstood. Some entities interpret that as anything that takes more than 10 minutes to fulfill.

Section 2 has been misinterpreted to mean entities will be forced to create electronic archives of all records. When records can be transmitted electronically, it makes sense to do so rather than ask requesters to come to offices to view records. Sometimes, entity staff will merely hit "print" and then demand a per page copying cost for records available electronically. Others refuse to provide data like Excel spreadsheets in their native format, which reduces their usability.

Another key aspect of S.B. 287 is cooperation. Some people make "nuisance" requests; therefore, section 6 is designed to allow entities to work with requesters to narrow requests so taxpayer dollars and public resources are not wasted. When entities lose public records lawsuits, taxpayers must pay the court fees of both the entities and opposing sides. The bill recognizes accountability is needed by decision makers who delay responses to requests and otherwise act in bad faith. Those people are required to identify themselves and will be held accountable by courts.

Those opposed to S.B. 287 have expressed concerns about the penalties for noncompliance outlined in section 1, subsection 1. There is no across-the-board $250,000 fine. Penalties are up to courts' discretion and may be as low as $1,000. A factor may be the person who decided to deny records may have been acting in bad faith and is a repeat offender of the NPRA.

Section 7, subsections 2 and 3 allow for a per day denial penalty fee if the requester ultimately prevails in court. The intent is to disincentivize delays. Currently, the only incentive is to avoid scrutiny and appeals because while a case is in appeal, the interest in the records at issue may expire while litigation drags on.

Section 7 provides a delay in providing records or illegal demand for fees is a de facto denial. Even though *Nevada Revised Statutes* (NRS) require entities to

respond within 5 days, in too many cases requesters are told, "We'll get back to you within 30 days," but that does not happen. That is the de facto denial.

SENATOR OHRENSCHALL:
Section 6 of S.B. 287 would establish a time frame for agencies to respond if the requested record is unavailable. Is there often no response from agencies, and is the hope that the bill will increase response time? How will that time frame work?

MR. STORY:
Agencies must now respond within five days and indicate they will provide the documents, when they will do so or if they will refuse the request. Typically, a first notice will be sent promising to provide the document within 30 days. This may take longer depending on the nature and number of documents requested. We think the added word "prompt" in section 2, subsection 1 more accurately captures our goal. In S.B. No. 170 of the 79th Session, we imposed time frame requirements of up to 45 days, then a widespread belief that implementation would be too expensive. Now we are hearing the same thing about "prompt." We are working on a reasonable time frame so people can rely on receiving requested documents to use in a timely fashion.

MS. MCLETCHIE:
The new language allows agencies to say, "Hey, we've run across some problems. We need to adjust the deadline" while still placing the responsibility on the agency to produce the documents in a manner as promptly as possible. The spirit of the NPRA requires prompt compliance. Larger and more complex requests may take more time to fulfill.

SENATOR OHRENSCHALL:
Let us say the requested record is privileged or a HIPAA-type document. Would the entity have to let you know the document cannot be released due to privacy concerns or federal law?

MS. MCLETCHIE:
Under NRS, the agency must explain that within five days. Too often agencies cite caselaw predating amendments to the NPRA, specifically *Donrey of Nevada, Inc. v. Bradshaw,* 106 Nev. 630, 798 P.2d 144 (1990). In some instances, agencies say nothing and continually delay. After a requester sought a Clark County School District (CCSD) trustee's records, he did not know if he

would ever obtain them or if the district was withholding them based on privilege. If a requested record is voluminous or might contain information that must be redacted, agencies do not give any explanation for withholding them, except citing *Donrey*, which predates important amendments to the NPRA. Agencies do not actually say they will provide the records but delay repeatedly. In the CCSD trustee example, the district never said whether it was withholding the records based on privilege.

If a request is for voluminous documents or contains information that needs to be redacted to address privileged information, we understand delays may happen. Senate Bill 287 will allow more time for governments to explain delays. We would like them to release the records they can provide rather than waiting 30, 60 or 90 days to release all of them.

SENATOR SCHEIBLE:
Providing documents electronically engenders issues involving metadata. How will we control for providing documents while honoring all of the regulations regarding government emails, thumb drives, shared drives and cloud services?

MR. STORY:
In the case of something like a pdf file, you can remove metadata from the document and only provide the text. Each agency must determine which format it is going to use to deliver information. To preface digital file deliveries, agencies must ensure the records are free of information that should not be shared with the public.

SENATOR SCHEIBLE:
Will agencies have the discretion to say, "Cleaning up this document is too hard and risky. Our solution is to print it," and then provide a hard copy to requesters?

MR. STORY:
That would depend on the nature of the record. To release a pdf file, it is as simple as punching a key to clean up the document.

MS. MCLETCHIE:
In some instances, the metadata is not privileged, so that is not a reason to deny or delay a request. Excel spreadsheets are a lot more usable and

cost-effective for agencies to provide. If it does not contain privileged information, that document should be provided in its metadata format.

There are concerns about creating new electronic records from things like microfiche or hard copy documents. There are further concerns about nuisance requests, such as someone asking the Office of the Secretary of State for every business registration in State history and whether individual employees are responsible for paying records withholding penalties.

SENATOR SCHEIBLE:
What is the individual responsibility of the person identified in section 6, subsection 3, paragraph (a)? Is there a precedent in other states for this kind of finger-pointing?

MS. MCLETCHIE:
Numerous states have civil and criminal penalties for violating public records acts; some states impose prison time. The bill imposes a gentler punishment with a civil penalty.

SENATOR SCHEIBLE:
Do other jurisdictions provide for the contact information, "name, title or position of the person responsible," to the requester?

MR. STORY:
Yes. A situation like that is unfolding in Georgia in which a public information officer (PIO) refused to provide public information to protect an elected official for whom she was working. Now, she will be tried.

SENATOR GOICOECHEA:
The provision in section 3 of S.B. 287 allowing agencies to recoup costs except "ink, toner, paper, media and postage" has been removed. Is that correct?

MS. MCLETCHIE:
If an entity needs to obtain a computer program to extract data, that would be part of the duplication cost assessed for a routine request. *Nevada Revised Statutes* state entities cannot charge for costs they would incur anyway, but too often they do. The change is intended to prohibit incorporating things like staff time into requests for one-page documents.

SENATOR GOICOECHEA:
Many documents require significant redaction that entails a lot of staff time. There is no way entities can bill for any of that overhead. If it takes ten days, it is a freebie. Am I reading the bill correctly?

MS. MCLETCHIE:
The entity is in the best position to segregate privileged from nonprivileged information. District courts have agreed with the interpretation that they should bear the financial burden of redacting records.

SENATOR GOICOECHEA:
If a document is improperly redacted, entities may be exposed to liability. Additional manpower may be needed to fulfill requests, and that costs money.

MS. MCLETCHIE:
Government officials are immune from liability for good-faith disclosure of public records under NRS.

SENATOR KIECKHEFER:
In the section 3, subsection 8 definition of "public record," is there anything new that would be captured that is not currently available publicly?

MS. MCLETCHIE:
No, the bill's definition of "public record" is consistent with that of the Nevada Supreme Court, which is very broad and includes private cell phone calls and emails if an official is using them to conduct the people's business. It reflects the idea that people have the right to a transparent government.

SENATOR KIECKHEFER:
Section 5, subsection 4 provides for "an electronic format by means of an electronic medium." It continues with "a copy of a public record must be provided in the electronic format in which the public record was created or prepared." I find that problematic because of how much program-specific software is deployed throughout the State. A lot of them contain personally identifying information and are not commercially available. If I ask for a record contained within a software system the State bought off the shelf to run, say, our child welfare system, how will that work?

MS. MCLETCHIE:
Confidential information can be more easily redacted in an electronic format than in a hard copy. With regard to native formats, there have been instances of Excel spreadsheets not being provided even though the information was not privileged. The concern was the spreadsheet could be manipulated; however, information must be provided in the most usable format possible. The bill does not require that programmers' software be made available to requesters.

SENATOR KIECKHEFER:
I do not object to that, but these are programs not running in Excel, correct? Hundreds of State codes were written to do a specific function, which may not even export Excel documents. We cannot specify that the public have access to the original medium or format in which documents were created because not all programs are usable on just any computer.

Section 6, subsection 3 identifies who is responsible for fulfilling requests. When I was a PIO, that could have been me, but I may have also defaulted to our database availability group (DAG). Who is responsible when I have to consult with a DAG to decide whether information is protected under NRS?

MS. MCLETCHIE:
It would be the DAG. We had a situation in which a PIO testified she had promised to respond to a requester within five days, but her general counsel had her then tell the requester, "It'll be another five days." The counsel office forbade her to say whether or not the office would release the records by a specific date. In this instance, the general counsel's office, not the PIO, was responsible. It should have known the NPRA requires a meaningful response within five days, without putting the PIO in an untenable position.

SENATOR KIECKHEFER:
Does that disclosure and information need to be released within five days? Sometimes, a PIO does not always know what he or she is going to get out within five days once he or she starts culling records. Sometimes when I began that process as a PIO, I ultimately had to move it up the food chain to get a legal opinion. What kind of liability is being imposed on midlevel administrators who are identified as the people in charge, even though they may ultimately not make the final call?

MS. MCLETCHIE:
An amendment could make clear that if the identity of the person making the decision changes, the final individual is liable for withholding the record. We hope agencies would not hang PIOs out to dry when people higher up in the food chain are making the ultimate decisions to violate the NPRA.

SENATOR OHRENSCHALL:
If an agency tries to comply with a request, but it contains an error, would that error—even if it was not willful or intentional—subject the agency to a civil penalty?

MS. MCLETCHIE:
The intent is not to punish PIOs for innocent mistakes; rather, it is to incentivize compliance with the NPRA. That kind of negligent error is an actual violation of the NPRA. A district court judge would decide whether a fine may be issued. Fines are not $250,000 across the board; they are $1,000 to $250,000, as per section 1, subsection 1, paragraph (a).

SENATOR OHRENSCHALL:
Your intent is not to catch perpetrators of good-faith errors, correct?

MS. MCLETCHIE:
No, the intent is to avoid the scenario I outlined for Senator Kieckhefer.

SENATOR OHRENSCHALL:
We often hear the expression, "Time is of the essence." Can you describe a situation you must litigate when your client is not getting requested information within a reasonable time frame? How long does that court process generally take?

MS. MCLETCHIE:
I represented the person seeking the former CCSD school board trustee's records. Timing is key because the NPRA is designed to promote transparency, accountability and democracy. The district's position was it could not control the trustee and stop him from saying and doing inappropriate things. There were serious accusations about the trustee's conduct, but because he was elected, CCSD's position was it could not control him. The truth was the only people who could control him were the voters.

That litigation took quite some time, with CCSD finally providing the records after we went to court. We never got a clear answer about whether CCSD was going to assert confidentiality or provide the records. The district court ordered CCSD to provide the records then appealed a portion of the order. The Nevada Supreme Court ruled for the requesters, with the aviso that CCSD consider possible redactions. I asked CCSD to make appropriate redactions; however, since the board election was a week away, the CCSD attorney said he did not think it was an urgent issue and refused to produce the redacted records. I was required to file an emergency motion to get the district court to convince CCSD to comply with the Supreme Court's order. The voters were the final arbiters, and the trustee was not reelected.

SENATOR OHRENSCHALL:
How close to the election were the records about the trustee made available?

MS. MCLETCHIE:
It was less than a week.

SENATOR GOICOECHEA:
I am concerned about the provision in section 7, subsection 3, paragraph (b) mandating the $100 per day award to a requester after an agency goes to court. Some people might think that is not bad pay for one day—let alone for up to six months—and thus file nuisance requests.

MS. MCLETCHIE:
That fee would only be assessed if the district court found the entity had wrongfully withheld records. In the CCSD trustee records example, I deemed CCSD's refusal to hand over the redacted documents unreasonable, so the $100 penalty was appropriate. Even though under the NPRA attorneys' fees are provided, entities take the position that, except under narrow circumstances, average citizens cannot afford to go to court even if they might ultimately prevail. It is unlikely the bill will result in a flood of litigation.

RICHARD KARPEL (Executive Director, Nevada Press Association):
You have my testimony in support for S.B. 287 (Exhibit D). We think the bill would usher in a new era of transparency in Nevada and help change the culture around how public records requests are received by State agencies.

For an example of what a relatively healthy culture would look like, we need look no further than NRS 241, the Open Meeting Law. At the Nevada Press Association (NPA), I have not heard any news organizations complain about how government agencies implement that law. I attended two meetings of the Open Meeting Law Task Force and found the government representatives there generally respect the aims of the statute and are fairly reasonable in their requests for changes to the Law.

It is a completely different story when it comes to the NPRA. Many NPA members have voiced frustration with how difficult it is to get some State agencies to comply with legitimate record requests. Even requests clearly sanctioned by the NPRA are often denied.

Why is the culture surrounding the implementation of the Open Meeting Law and the NPRA so different? One factor stands out: there are consequences for government officials and public bodies that fail to comply with the Open Meeting Law, including criminal and civil penalties. Those penalties are imposed not just on meeting chairs, but on all members of a public body who attend a meeting and know a violation has occurred. This year, the Task Force recommended increasing those penalties. Assembly Bill 70 seeks to amend the Open Meeting Law.

ASSEMBLY BILL 70: Revises provisions governing the Open Meeting Law. (BDR 19-421)

By contrast, there are no penalties for those who violate the NPRA. The only people who are punished are the taxpayers who have repeatedly been forced to pay requesters' attorneys' fees when agencies refuse to release records and lose in court. Senate Bill 287 will begin to change that by creating penalties that would incentivize officials to follow the NPRA.

NANCY E. BRUNE (Executive Director, Kenny Guinn Center for Policy Priorities):
The Kenny Guinn Center for Policy Priorities is an independent bipartisan institute that examines policy issues facing Nevada and the region. We are in the business of collecting, analyzing and recording data. We rely on State agencies to provide us with public data.

Since the Center's establishment five years ago, members of our research team, education policy researchers at the University of Nevada, Las Vegas, or other

related nonprofit education researchers have often attempted to get information from State and local agencies to evaluate educational trends or conduct program evaluations. Sometimes our requests have been ignored even when agencies' websites say they will respond within in a specific time frame. Sometimes, there are extended delays in response times; a few requests were denied without justification.

We have been told data analysts receive guidance that they should only respond to education data requests if they can compile and release them with a single mouse click. The Center's relationship with agency data managers has improved; however, the same level of access and responsiveness should be available to the entire public.

Most agency employees want to do the right thing and respond to requests. However, agencies are severely underfunded, and it takes one to two full-time equivalent staff members for local agencies to respond to the education data requests the Center submits. As the State strives to become more sophisticated and use electronic data to make informed decisions and evaluate programming, we need to invest in increased State agency staff. Senate Bill 287 will add needed clarity to the NPRA and benefit our growing research community.

SENATOR OHRENSCHALL:
Has the Center looked at public records laws in other states? They have civil and criminal penalties for violations.

MS. BRUNE:
No.

SONDRA COSGROVE (League of Women Voters of Nevada):
You have my testimony in support for S.B. 287 (Exhibit E). I am a history professor at the College of Southern Nevada and president of the League of Women Voters of Nevada. My son has had developmental delays and mental illness for his entire life. I have been his legal advocate for 36 years and have made many public records requests on his behalf. Responses are often opaque, demeaning and sometimes outright hostile.

On behalf of the League of Women Voters, I support S.B. 287 to ensure government transparency. However, I also support the bill to ensure that Nevadans like my son can request records while being treated with respect and

dignity. Not every disabled person has a mom with a Ph.D. who is a buffer between them and public officials who view people with communications difficulties as gadflies. Every person should have easy access to public records.

WESLEY JUHL (Society of Professional Journalists Las Vegas):
You have my testimony in support of S.B. 287 (Exhibit F). Nevada's public record process is not working as intended, especially for journalists. Too often we have to choose between paying exorbitant fees and shelving an investigation because we cannot access records. Even when journalists know the NPRA is on their side, they must determine whether they have the resources to appeal a denial in court. When the State fails to be transparent, that invites mistrust and misinformation.

The Society of Professional Journalists Las Vegas urges the Committee to adopt S.B. 287 because the sad truth is agencies can be contentious when dealing with the press. Some think they can pick and choose which reporters cover them and which records are released. Certain agencies have developed reputations among reporters as obstructionist.

My organization actually nominated a local agency for the national "Black Hole Award," which highlights the most heinous violations of the public's right to know. The municipality concealed details about sexual misconduct allegations against its police chief. It has a reputation for not returning phone calls and once distributed reporters' photographs to staff to alert them to avoid the reporters at all cost.

LEWIS W. TROUT:
You have my testimony in support of S.B. 287 (Exhibit G). I live in Winnemucca. I support much of S.B. 287 because of my many experiences with trying to access public records. The culture among many governments in our 15 rural counties and Washoe County can be epitomized by a city attorney who told me, "We do things differently in the rurals." Many governments ignore the mandates of the NPRA knowing they face no penalties; the NPRA is a toothless tiger. The same attorney, in his capacity as counsel to a county hospital district, expressed a "public be damned" attitude when he labeled public comment as a waste of meeting time. While not all agencies have such a condescending approach to the public, far too many do.

The Washoe County School District demanded that a parent pay more than $300 to obtain copies of her disabled child's school records. Only after the *Reno Gazette Journal* reported the charge for the same records in Clark County was just $5 did the District reverse its position and provide the records at minimal cost.

The Humboldt County Hospital District has repeatedly obstructed my requests for records. Its most common tactic is a false assertion that an extraordinary amount of time, requiring payments of hundreds of dollars, is required to provide printed copies of readily available electronic records. This included records of several employees who submitted fraudulent time and overtime attendance sheets totaling approximately $1.2 million over a 10-year period.

While such obstructionism is an obvious violation of the NPRA, my only recourse was to file lawsuits, which I lack the time and resources to do. An example of fees used to deny access to records involves my 2011 request for a copy of a public report prepared by the University of Nevada regarding the need for emergency medical transport helicopter service in greater Humboldt County. The Hospital District demanded I pay more than $300 for a copy of the report. I could not afford to do so, but thankfully a State agency sent me an electronic copy of the same report for free.

One of the best aspects of S.B. 287 is its commonsense approach to require governments to give requesters guidance. I requested the Medicare codes the Hospital District uses for billing services. It told me there were more than 80,000 codes and a payment of more than $1,600 was needed just to begin processing my request. Naturally, I gave up—only to discover that the Medicare website contains the complete list of all the codes. Why did the District's public records custodian not simply point me to that website that he relies on rather than effectively denying my request outright?

In Humboldt County, there is a wide variety of how records requests are handled. The County Clerk never sends out a 5-day-response letter because she always responds within 5 days, sometimes within 24 hours. On the one hand you have exemplary responses to requests, while on the other hand another County agency goes out of its way to prevent access.

Despite NRS and the NPRA, Nevada citizens are constantly being denied access to some public records by some agencies with no remedy except legal action

costing several thousand dollars. Senate Bill 287 corrects many imbalances and weaknesses in NRS.

In section 1, a court may impose fines of up to $250,000. While I agree government officials who willing violate or ignore the NPRA should be held personally liable, there may be a better way to handle this. The government ethics code provides an example with a stepped system of penalties consisting of a small fine for the initial violation, an immediate fine for a second violation and a more established fine for a third violation. Each violation should be considered a Category D felony. Fines should be required to be paid from personal, not public, funds.

BETH DOREY:
In 2018, the City of Reno sought to pass an ordinance concerning accessory dwelling units. Overnight, more than 13,000 residents' homes would be rezoned to multifamily status without their knowledge. I wanted to find out the history of the ordinance so, through the NPRA, I requested emails regarding accessory dwelling units. My focus was narrow and the information was not protected, but it took many, many weeks for the City to finally fulfill my request. I was told it would cost $125 for copies of the requested emails.

There needs to be some teeth in the NPRA similar to those in the Open Meeting Law. The NPRA is being abused by government members. The public needs more, not less, transparency.

DANIEL HONCHARIW (Senior Policy Analyst, Nevada Policy Research Institute):
You have my testimony in support of S.B. 287 (Exhibit H). The Nevada Policy Research Institute joins the Right to Know Nevada Coalition and many groups of differing ideologies in supporting S.B. 287.

Nevada already has a very good transparency law on the books; S.B. 287 will simply ensure the NPRA will be faithfully followed. The bill will save taxpayers money by encouraging agencies to comply with the NPRA rather than forcing requesters to pursue expensive, protracted lawsuits.

For example, after CCSD denied our 2018 request for copies of emails, we were forced to file a lawsuit. After the filing, CCSD immediately turned over all the emails, which is a good indication that their original denial was unlawful. If S.B. 287 had been in place, CCSD would have very likely provided the emails

in the first place. However, because CCSD forced a lawsuit, this will end up costing it—and Clark County taxpayers—several thousand dollars in legal fees.

The people who stand most to benefit from S.B. 287 are ordinary citizens who lack the time or resources to sue and are thus effectively shut out of the transparency promised under the NPRA. We hear from citizens of all walks of life who have been unlawfully denied access to or been charged excessive fees to access public records. Most simply give up, which is disheartening. We should encourage citizen engagement with local government, not turn people away because some government agencies choose to violate the NPRA and deny requests or charge excessive fees.

PATRICK FILE:
You have my testimony in support of S.B. 287 (Exhibit I). I am an assistant professor of media law at the University of Nevada, Reno. I am teaching and conducting research on the First Amendment, which includes public records law and government transparency. I support S.B. 287 because it adds needed clarity to the NPRA and will benefit citizens and State agencies.

One useful way to boil down the shortcomings of the NPRA is to compare how many times the words "must" and "may" appear in it. The word "must" only appears 33 times in the NPRA. This includes four times in the introductory section, declaring that the NPRA must be construed liberally to carry out its important purpose of fostering democratic principles through access to public information. It then states that any limitations on the NPRA must be construed narrowly. The word "must" is also used in discussing fees, which must not exceed certain amounts.

The word "may" appears 58 times in the NPRA—almost twice as many times as "must"—such as when it provides that agencies or entities may train employees on procedures for retention of, disposal of and how to respond to requests. The State may take disciplinary action when employees fail to follow those procedures or that agencies or entities may charge or waive a fee to collect or copy records.

The overall effect is that government agencies and entities may consider compliance with the NPRA as an option, not an obligation. The law clearly and unambiguously states its purpose is to "foster democratic principles by providing members of the public with access to … public … records." However,

it fails to deliver on that promise through a lack of clarity about how the policy should be implemented, imposed or enforced.

Senate Bill 287 addresses these failures by clarifying for requesters the path to prompt and inexpensive access to records and for government officials their obligation to provide that access, along with the penalties for ignoring or violating the NPRA. In the long run, this clarity will save the public money by reducing expensive and pointless lawsuits over access to records as well as the waste and mismanagement that comes with a government lacking sufficient public oversight. At a moment when the news media—a traditional government watchdog—is struggling to meet that challenge, it is crucial that the path to active and engaged citizenship through government transparency be made clear for everyone.

When I introduce the topic of public records laws to my students, I always share a quote from James Madison: "A popular Government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both." Records requests under the NPRA run too much risk of turning farcical, which amounts to a tragedy for an engaged and enlightened democracy.

SENATOR OHRENSCHALL:
Perhaps you have looked at how other states' public records laws work. Do they have provisions for citizens who cannot afford excessive fees for printouts?

MR. FILE:
It is common for fee waivers to be granted, depending on the circumstances. Typically, public record laws do not require people to justify records requests. Requesters can request fee waivers based on their affiliation with news or educational organizations or by proving there is public interest in the information sought.

SENATOR OHRENSCHALL:
Do you know if other states have criminal or civil penalties, and are they catching errors made in good faith?

MR. FILE:
The Nevada Public Records Act does not deviate from other laws in that penalties are only assessed through lawsuits. Hopefully, the aim of S.B. 287 is to clarify the public records process to ultimately engender fewer lawsuits and penalties.

SAM TOLL (Editor, *The Storey Teller*):
The Storey Teller is an online news operation in Storey County. I have conducted approximately 75 public record requests within the County, and my experience has been similar to that of Mr. Trout. There are entities that respond the same day with voluminous information, mainly pdf files. The Storey County Office of the Recorder has been extremely responsive to my requests; however, the other County agencies have not.

This year I have initiated 26 public records requests, 14 of which received no response until I followed up 3 weeks later. Ten requests were referred to the Storey County District Attorney, who has still not responded after three months. A disconnect has been created between the County and its constituents. Without the ability to force the issue, requests could go unanswered forever. There is no process to create accountability.

I have operated my website for just over two years. I do not sell advertising so generate no revenue. It would be difficult for me financially to go to the district court over my 14 outstanding requests or, if S.B. 287 were in place, to have the teeth to go after the agencies stonewalling me or kicking the can down the road. Penalties would incentivize county elected and appointed officials to be more responsive. A free flow of information between and amongst the citizenry is essential for our republic's continued existence.

ERIN PHILLIPS (Power2Parent):
Power2Parent is a grassroots organization that protects civil rights. Requesting and receiving public records is difficult for average citizens for many reasons. Often requesters are treated with hostility instead of as people who are entitled to records because the records are public. It often take weeks or months to receive information, which may be heavily redacted. Sometimes we get document "dumps" of up to 1,500 pages through which we have to comb for our request.

Parents seeking information lack the reach, influence or authority to force entities to comply with requests. Many requests are ignored or documents are "slow-walked." Often, issues are time-sensitive, with just 30 days before hearings for which we need the information. Parents often cannot communicate with entities about the specifics of requests. Power2Parent will help parents exercise their right to records and navigate the bureaucracy-laden process, but we are simply a grassroots organization. A cooperative relationship with entities will help narrow the scope of requests, ultimately benefitting both parties. Senate Bill 287 will add needed clarity to the NPRA.

TREVOR HAYES:
I am a former newspaper reporter, an attorney who represented various press entities for nearly ten years and am now an elected official. In the Seventy-fourth Session, Senator Terry Care brought forth S.B. No. 123 of the 74th Session, which made changes to provisions relating to public records. I was representing the NPA and worked with Senator Care to alleviate problems with the NPRA. Since then, we have seen complete disregard of many parts of the NPRA that we put in place in 2007, including provisions about the "actual cost" of copying documents, extraordinary abuse of technology by agency employees and outrageous document copying costs levied by local and State entities.

Opponents of S.B. 287 argue that it is an unfunded mandate; rather, it is a core obligation of government. Governments are empowered by the people to do business on behalf of them with their resources and tax dollars. There is a core obligation to share information with the public.

We have heard testimony about nuisance requests. When I was representing the NPA, I asked many governments for an example of such a request, and they could not name one. The bogeyman of nuisance requests has loomed as a specter over this type of legislation for decades. What is real is entities tacking on extraordinary-use fees and claiming attorneys' fees for redactions should be included.

There should not be a commonplace use of confidential information in regular emails, correspondence and other documents. That is not the fault of citizens seeking public information; it is a misuse of private information at a time when email hacking is prevalent. Whether it is in national political parties or at megacorporations like Sony Corporation, email hacking is happening. We should

minimize the amount of confidential information in documents to the absolute necessary components. There should not be hundreds of hours of attorney time spent looking for redactions in basic public records requests.

Governments complain about the costs and strain records requests place on them. They forget that just 20 years ago a simple request for a deed required an employee to dig through stacks of paper files. Now deeds and similar documents are all online and do not require records requests. Burdens on government have lessened, not increased, over the last 25 years. Barriers are erected to keep information away from the public which owns that material and is guaranteed access to it. Oregon and other states have public records ombudspersons who deal with claims of record obfuscations, which could prevent costly lawsuits and delays.

ROBERT FELLNER (Policy Director, Nevada Policy Research Institute):
Senator Ohrenschall, 23 states have some version of the provisions in S.B. 287. West Virginia requires the individuals identified in section 6, subsection 3, paragraph (a) to pay a fine, yet only 1 case has ever been filed. On behalf of the government official for whom she worked, an employee put in writing a directive to frustrate a records requester and hide the information or release it in an inaccessible format.

In Georgia and North Carolina, an agency employee can be held liable for all of a requester's attorneys' fees, which might be well over $100,000. However, such a payment has never occurred. That speaks to the commonsense notion that if laws have penalties, people are more incentivized to follow them.

The treasurer for the Incline Village town board was denied a copy of the financial chart of accounts. It was discussed at an open board meeting, and the members' response was, "If we give it to you, it becomes a public record," even though the requester was their own treasurer. This illustrates how the problem extends beyond media groups and policy research groups like mine.

Ninety-one percent of the dollar amount in the fiscal notes to S.B. 287 comes from three agencies: the City of Reno, the Las Vegas Metropolitan Police Department (LVMPD) and the Nevada State Library, Archives and Public Records Division, Department of Administration. The Reno and State Library fiscal notes arose from a misunderstanding that all paper records must be

converted to electronic records. The LVMPD filed a fiscal note because it believes it will take a lot of money to make records available to the public.

PATRICK DONNELLY (State Director, Center for Biological Diversity):
The Center for Biological Diversity is a nationwide public interest environmental nonprofit founded to hold government agencies accountable. Our Open Government Team is comprised of five attorneys who work to obtain information through public records requests in our Portland, Oregon, office. Much of our records work is on the national level and leads to litigation. Holding agencies accountable recognizes that at times they do not comply with laws like the NPRA. We have sued the Trump Administration 118 times, including a lawsuit filed this morning against the U.S. Fish and Wildlife Service for its failure to release public records. In Nevada, I have had difficulties obtaining records from Clark County agencies that have flat-out stonewalled us.

Provisions in S.B. 287 section 6, subsection 3 that hold individual employees accountable are important because it recognizes that we have a functional government run by well-intentioned people adhering to the NPRA. Frequently, when difficulties arise in obtaining records, it is because of specific intransigent actors.

BOB CONRAD (Editor, ThisisReno.com):
I was a PIO and records officer with three State agencies. I helped develop records policies in accordance with the NPRA, including training staff and promptly replying to all requests. Since 2015, I have spent thousands of dollars on fees for public records and attorneys to tell stories that otherwise would not be told. One involved Tesla, Inc.'s sale of its tax credits to the MGM Grand Hotel and Casino. I broke that story in 2016 after severe anguish in dealing with the Governor's Office of Economic Development. The communications director refused to answer my questions about transferrable tax credits. I ordered public records seeking answers, but it was not until after I argued with the agency, hired counsel and waited for months that the Office finally produced the documents. Because of that story, which was picked up by national media, an audit was requested of Tesla's tax credit deal with the State.

I have many similar examples of agencies that stall, deny or force requesters to hire legal counsel and cite astronomical fee estimates to produce records to subvert the NPRA. Many agencies use it to develop strategies to deny records. The Washoe County School District cites NPRA caselaw to deny requests;

ironically, the caselaw cited actually found in favor of open records. The multiple requests I have filed with the District have been fully or partially denied. One was ignored for nearly a year, and I was told the request was invalid because it had not been not filed with the District's legal office. Another request was challenged because a District staff member said it would make someone feel uncomfortable.

The only way it is possible to get records from some entities is to hire an attorney; litigation becomes the default. Legislators rely on public records to make decisions based on accurate information so the public is fully informed about how taxpayer dollars are being spent.

WARREN HARDY (Nevada League of Cities and Municipalities):
The Nevada League of Cities and Municipalities opposes S.B. 287 because cities and local governments are serious about their obligation to fulfill records requests. It is central that there be transparency in governments because the public has a right to know what they are doing. I strenuously object to the notion local governments are trying to hide information. While there may be some bad actors, it is a rule that public employees and elected officials take requests seriously.

One side wants records laws to reflect the ability to do whatever is necessary to get information into the public's hands. Freedom of the press is critical to holding governments responsible and ensuring they are good stewards. The other side tries to get as much information as possible into the hands of the public without violating the equally important right to privacy.

There is a difference between people who run for office and put themselves out in the public and those who, as U.S. Supreme Court Justice Louis Brandeis put it, want "the right 'to be let alone.'" The latter often unwittingly find themselves in the spotlight, and they have the right to expect the custodians of public documents—the government—will protect their right to privacy. One constitutional right does not override the other.

These are just public servants doing their best to implement the NPRA as best as can they interpret it. More important, they are trying to strike a balance between the public's right to information and individuals' right to privacy. No one has any quarrel with the notion the public has the absolute right to know

what governments are doing. However, they do not always have the right to know what their neighbors are doing. That is the balance we are trying to strike.

The public records request system is not broken. We asked local governments how long it takes on average to fulfill information requests. Federal agencies break requests down into complex and noncomplex; their average to fulfill noncomplex requests is 34 days, 117 for complex. Local governments do not break requests into complex and noncomplex. One agency told me its average response to requests is .03 days, or within the first day; the average time to fulfill them is 1.4 days. There has been a shift in the nature of public information requests, resulting in an increase in the number and complexity of them. Here is a list of participants in our NPRA working group (Exhibit J).

ASHLEY D. TURNEY (City Clerk, City of Reno; Nevada Municipal Clerks' Association):
My duties as Reno City Clerk encompass three areas: we oversee the City Council's proceedings, changing laws, contracts and agreements; Central Cashiering and every dollar of City revenue; and records pursuant to the Reno City Charter. I am the keeper of the things.

City clerks throughout the State consider themselves helpers. We take an oath of office and are subject to the same Commission on Ethics standards as are Legislators. We act in good faith to give constituents optimum customer service. Most people's interactions with local governments is through city clerks' offices. Our goal is to process all records requests expeditiously and in the order they are received.

The City of Reno instituted a public portal by which all records requests are submitted online through one point of entry and exit. This allows better customer service as people no longer need a person in my office to process requests. This also makes me—as keeper of the records—responsible for every records request. Due to the economic recession, the City has no dedicated staff to respond to requests. We had almost 2,500 requests in 2018, which fall under the category of "other duties as assigned" in staff job descriptions. That includes 1,300 City employees if their supervisors deem them responsible for fulfilling requests.

The 2,500 aforementioned requests received responses within an average of 5.9 days. Responses are usually opened within three hours of their receipt.

There is a common misconception about cities' inability to maintain their records. There is no single database in which we can type one word, resulting in records for any request.

Section 2, subsection 1 of S.B. 287 requires an electronic record to be given to requesters. I am holding a microfiche card. More than 40 percent of the U.S. workforce are Millennials, born between the early 1980s and early 2000s. There is just one person on my staff who knows what this object is, let alone how to access its content. We have more than 5 million City images still on microfiche. We have a contract with a company to convert them into electronic data; however, the money for it has not been allocated. When we get requests for information as far back as the 1940s or 1950s, we have to allocate them to the 1 staff member who can operate the microfiche reader. We are cross training so all staff can do so. We cross our fingers our 1980s microfiche reader does not break because there is no one in the City who can fix it.

I am holding 1 of 53 volumes of the original, handwritten articles of incorporation for the City. It is extremely large and encased in acid wrap, which we cannot open in daylight. We cannot convert the articles electronically; we need to send volumes out to do that and charge requesters a fee. If we send them out for conversion, we have no guarantee they will come back intact. I would be the first to tell you we would like all of our records in electronic form, but that is simply not within the City's budget.

We receive a lot of broad requests. During the recession, we switched to a more affordable email platform which subjects all of our requests to a keyword search. Two years ago, a requester did a search for the word "apple" in our records for information about the Apple, Inc., distribution center going in downtown. This resulted in 506,000 emails, more than 1.5 terabytes of data. Our IT department told me it would have taken 22 hours to download the results. After I narrowed them down to 102,000, I had to monitor the requested emails to ensure no confidential information was included. The requester consented to the cost then never picked up the emails.

Senate Bill 287 could dismantle the transparency and customer service initiatives developed by local governments. We have made great strides to ensure requests are honored in the order they are received. The recession caused deferred maintenance not only of City potholes but of the public's assets: our records. They take time and money to maintain.

Section 3, subsection 8 identifies metadata. We are concerned about the proprietary information therein and the need to maintain the data. If additional software is needed for us to maintain and release requested records, it will cost local governments. Section 6, subsection 3 identifies the person who will release the records. Everything in the City has my name on it, making me ultimately responsible for the record and paying the fine, the amount of a combined total of 75 DUI fines. Section 10, subsection 2 removes the act of "good faith," which is how we operate every day as public servants.

SENATOR SCHEIBLE:
Do your microfiche cards just contain images, or are there documents on them as well?

MS. TURNEY:
Microfiche has all of our past documents, not images per se. The microfiche I have today is an agenda from the City Council packet of December 12, 2000. We were still using microfiche not too long ago. The cards contain contracts, papers, agreements, agendas, etc.

SENATOR SCHEIBLE:
In your reading of S.B. 287, what would happen if I requested the minutes from the December 6, 1999, Reno City Council meeting but you did not have the staff to go through the microfiche or it could not be accessed? Is there any kind of legal leeway, or do you have to call a microfiche expert, get another machine to Reno and then ensure there is something on the card that satisfies my request?

MS. TURNEY:
Under the bill, if we were unable to provide those minutes within a reasonable time frame, I would be subject to a penalty and fine.

SENATOR SCHEIBLE:
We need to look at the financial ramifications of the workload the bill will impose on local governments. What sort of extra duties are you anticipating under the bill?

MS. TURNEY:
The fiscal note submitted by the City of Reno is conservative because it is specifically for transferring all documents to electronic media. Conversion of

1 microfiche image by our contractor costs $1.38. The digitization of the City's 5 million-plus microfiche images and 53 original journals are included in the note. We must send the journals to a contractor for digitization at a cost of $25,000 per volume. There is an unfunded contract available for the State Archivist to do so. The note includes additional staff to handle that but no software data management to identify proprietary information. Our fear is we may be unable to put everything into an electronic format within five days.

SENATOR KIECKHEFER:
Section 5, subsection 4 does not specify that everything must be converted to an electronic format, only if a person requests it. Is it unreasonable to tell a requester he or she will not get the document within five days because you have to send it out for electronic conversion? Can you tell me where the bill requires that all documents be electronic?

MS. TURNEY:
My reading of section 2, subsection 1 is requesters must "receive a copy of, including, without limitation, [documents] in an electronic format by means of an electronic medium." If the document is unavailable electronically, we would hope the requester will be reasonable if we tell him or her it will take longer than five days. That language is vague and may be weaponized, regardless of our moving forward in good faith, as evidenced by our time estimates.

SENATOR OHRENSCHALL:
You mentioned the thousands of search responses you got for emails containing "apple." In the bill's section 6, subsection 1, paragraph (c), subparagraph (2), agencies must:

> Make a reasonable effort to assist the requester to focus the request in such a manner as to maximize the likelihood the requester will be able to inspect, copy or receive a copy of the public record as expeditiously as possible.

Will that assist your City and other agencies in helping people focus requests to reduce your workload?

MS. TURNEY:
We are already doing that in practice. Our goal is to get requests off our desks as soon as they come in. For most requests, people know what they need. They

are not purposefully embarking on a fishing expedition; they just do not know how to properly articulate what they need.

When I called the "apple" requester to tell him how many emails that search had turned up, he told me he only wanted information on the distribution center. We get a lot of false positives based on word searches. I had a recent request for any documents containing the word "vote," which engendered many hundreds of false positives in a search. Anything with the words such as "devoted" or "pivoted" was included as a potential document. I had to look at each individual "vote" email.

SENATOR OHRENSCHALL:
Section 7, subsection 1, subparagraph (c) talks about "Providing relief relating to the amount of the fee" for someone who may be on a fixed income or has a limited budget. Does the City of Reno do that now?

MS. TURNEY:
Our practice is to proceed evenly and equitably in serving all of our constituents. We try to put as much information as possible on the internet so there is no access cost. All of our agendas, contracts, agreements and City Council minutes for the last five years are on our website. Our costs for special requests are in line with the Attorney General's opinion that "extraordinary use" is anything that takes more than 30 minutes of staff time. Because of our antiquated system, emails always take two hours of staff time for IT to pull them before I can review them. We default to 50 cents per email, versus 50 cents per page, because it is more cost-effective. Email strings can be 10 or 12 pages, but we still charge 50 cents for them. If the City Council put a provision into our fee schedule, we would utilize it.

SENATOR OHRENSCHALL:
Is there a provision to waive request fees?

MS. TURNEY:
No. Constituents can come in and view records for free if they do not need copies, per NRS.

SENATOR SCHEIBLE:
What stands out for me in the "apple" search story is that after your office invested so much time and energy, the requester never claimed the emails. Is

there anything we can or should do to hold requesters accountable for that kind of inconsiderate behavior?

MS. TURNEY:
There should be a level of mutual trust between constituents and government. We are acting in good faith and would hope requesters return that favor. The No. 1 type of records not picked up are 911 calls. Requesters often want them in a DVD format instead of accessing them through our electronic system, which is much less burdensome for us. We have 74 requests that have not been picked up.

SENATOR SCHEIBLE:
You indicated you have records in electronic form and want to provide that to requesters, but they instead want you to burn a DVD. That is the opposite of the desire of proponents of S.B. 287 for records to be available electronically.

MS. TURNEY:
Correct. Requesters can identify the medium in which they want their documents. Ideally that would be electronically; documents are available 24/7 on our online portal. Recently, someone complained to the Reno Mayor's Office because I would not fax over a document.

NANCY PARENT (Washoe County Clerk; President, Nevada Association of County Clerks and Election Officials):
County and city clerks have similar duties. We are the record keepers and pride ourselves on being mindful of the NPRA and the need for governmental transparency. We are the central source of records relating to the actions of our boards and commissions, and we make them as available as possible.

Washoe and Clark Counties have posted videos of their board meetings online for ten years. The Counties are slowly digitizing all of their board and commission meetings for posting online. While our rural counterparts do not have the same resources, they are equally committed to allowing access to public records.

We are concerned about the definition in S.B. 287, section 3, subsection 8 of "public record" to include "database" and "data processing" software. As Senator Kieckhefer mentioned, many of our application systems are proprietary,

of which we are merely licensed users. We do not have the ability or legal authority to grant access to those systems to anyone else.

Testifiers have mentioned Excel spreadsheets. If you do a database dump, everything is available, compared to extracting a report for which you can pick and choose the transmitted information. County clerks issue marriage licenses, a vital record full of significant personal information: parents' names, mothers' maiden names, birthdates, birthplaces and social security numbers. By law in all of that personal information, the only thing that is confidential is the first four digits of the social security number.

If we were to provide a requester with that database, he or she would have everything but those four numbers at their disposal. We do provide copies of marriage licenses on a case-by-case basis as there are individual reasons why people request them. However, giving someone a database jeopardizes millions of people's personal information. When we provide records in our offices or online, we can redact that information.

We have concerns about media in which records may be requested. Section 5, subsection 5, paragraph (a) stipulates we must provide records in "the medium that is requested." Not all clerks—especially in the rurals—have the technical support and wherewithal to accommodate all requests.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):
Las Vegas Metropolitan Police Department supports the intent of the NPRA 100 percent and believes we are the most transparent police agency in the Nation. With law enforcement, there is a definite balance between transparency, protecting victims' rights and privacy, and being responsible with taxpayers' dollars.

Las Vegas Metropolitan Police Department has a team of eight officers assigned to do redactions of and research on records requests. Instead of being out on the street and handling service calls like your property crimes, they are instead in a room providing records information.

The reason we use officers and not civilians is because within 2 hours of the October 1, 2017, mass shooting at the Route 91 Harvest Music Festival outside of the Mandalay Bay Casino and Resort, also known as 1 October, we received records requests about the incident. We had multiple thousands of hours of

body camera footage, some showing victims being killed from multiple angles. We have to redact victims' faces from that footage to protect their identities.

Clark County Sheriff Joseph Lombardo spoke about revictimizing victims when 1 October survivors have to see that footage every night on television news. When the body camera footage was finally released to various entities, they said it was too graphic to broadcast or print. Officers who spent untold hours redacting the footage suffered emotional trauma. In addition to the footage, LVMPD had hundreds of thousands of documents, radio transmissions and calls to our 911 center. We have incurred more than $1 million in costs connected to 1 October and have not received a dime of compensation for any records requests.

Las Vegas Metropolitan Police Department has had records requests that involved more than 80,000 pages of material. We see requests like, "We want everything you got on traffic stops" or "everything your Vice Unit has" going back to 1973. We have had requests for entire databases, such as our Shared Computer Operations for Protection and Enforcement system, which is full of personal information. We received a request for background checks of 76 LVMPD employees, which we completed within 3 days. That information was never picked up. In 2018, we had a request for a report regarding a former Legislator's son. When we denied it because the case involved a juvenile—so the records were privileged information—we were taken to court. We get requests for voluminous documents for which we receive no compensation. Then the requester posts it on YouTube with advertising, making a profit from public records at the taxpayers' expense.

It was said today that technology has made it easier to comply with records requests, but that is not always the case. New technology in police work creates new media, like body cameras, subject to public record requests. Redacting those records is a time-consuming and difficult process.

MATTHEW J. CHRISTIAN (Assistant General Counsel, Las Vegas Metropolitan Police Department):
You have my testimony in opposition to S.B. 287 (Exhibit K). We are concerned about the cost in money and time in filling overbroad records requests while taking employees away from their core function: policing. Las Vegas Metropolitan Police Department is a transparent organization, so public records

disputes are rare. When an average citizen comes in looking for his or her records, that is a specific record about a specific event, which is easy to find.

Our records dispute are generally with the media, not average citizens. Perhaps more than any other governmental entity, our records contain extremely sensitive private information. They must contain social security numbers and birthdates because officers must know who they are dealing with when interacting with suspects or other citizens. We must redact those two factors from records. If the record is just a page or two, that is not a problem. However, when we are asked to produce thousands of pages, all social security numbers and birthdates must be redacted.

We also have records involving open criminal investigations. We have a legal duty to the defendants, legal counsel and ourselves to protect those files so our investigatory material is not prematurely disclosed. It is not uncommon to talk to a suspect who may never be charged. Suspects have legitimate privacy concerns about keeping their names confidential.

Our records also contain names of crime victims and witnesses who did not choose to be part of the criminal justice system. Often, they are in danger. We are currently under court order to reveal the names of sexual assault victims even though NRS makes it a crime to reveal victims' names.

We also have records involving juveniles. *Nevada Revised Statutes* make clear juveniles have an interest in protecting their privacy. In the case mentioned by Mr. Callaway in which information about a candidate's son was sought, the LVMPD was taken to court but prevailed. Now, the political organization seeking the records has appealed. We did not raise the issue of confidentiality of juvenile records in bad faith; we raised it because a specific NRS contemplates that issue.

Las Vegas Metropolitan Police Department is also running into problems with an increase in overbroad requests. Currently, we have a request for all memos, reports and white papers about prostitution, pandering and sex trafficking enforcement at hotel casinos and/or enforcement by hotel casino security from January 1, 2013, through February 23, 2017, Exhibit K. There are more than 200 hotel casinos in Las Vegas; the date range is more than 6 years, and prostitution, pandering and sex trafficking are common crimes for which we make thousands of arrests annually. We do not have a database into which we

can type simple search words and all relevant records will pop out. Other requests have an even broader scope.

Senate Bill 287 does not recognize our dilemma. We take our transparency obligation seriously, but we are obligated to protect the rights of innocent third parties, suspects, juveniles and regular citizens. Manpower hours of eight LVMPD officers diverted to researching complex requests need to be seriously considered.

When the media requested all of our body camera footage from 1 October, we knew it would be a daunting task to redact and produce it. Hundreds of officers responded to the tragedy and captured images of the faces of the dying, bloody bodies and victims' relatives. We told the media:

> The statute that created body-worn cameras allows us to inspect the video before giving you copies of it. Please come inspect the video, let us know which parts you'd like to show, and let's talk about some sections we can give you so we do not have to go through every second of it for redactions.

The media resisted, demanding every second of the video, and after a court agreed with them, we were required to release all of it. That was a massive undertaking involving 9 months and 13 officers working nonstop on redactions. The media uploaded the footage to television and their websites, including ads, for a profit. That is the LVMPD's reality.

In its present form, S.B. 287 will engender an increasing number of similar requests. A cottage industry will be born if the media never has to pay our personnel and IT costs and always gets their attorneys' fees paid if they prevail in court. The bill creates no disincentive to send the LVMPD more and more requests. Either the bill allocates more money for us to hire more full-time staff dedicated to compiling and redacting records, or citizens must accept fewer officers on the streets.

Las Vegas Metropolitan Police Department recognizes that change and clarity is needed in regard to the NPRA. We need to know exactly which documents are confidential and privileged under the NPRA and NRS. We need an honest debate about the realities of our costs in money and decreased public service.

CHAUNSEY CHAU-DONG (Southern Nevada Water Authority; Las Vegas Valley Water District):
The Southern Nevada Water Authority and the Las Vegas Valley Water District are committed to transparency, so we do not normally charge for records requests. We only charge for Geographic Information System data because it involves maps and surveys. Senate Bill 287's section 3, subsection 1 provides that agencies cannot recover any overhead or labor costs incurred during record searches. Some requests take a short time; others may take up to 60 business days. In 2018, the Las Vegas Valley Water District devoted approximately 10,000 staff hours to records requests, the number of which is increasing. In 2018, we received 24 requests, but in the first quarter of this year we have already received 18.

KELLY CROMPTON (Office of Administrative Services, City of Las Vegas):
Senate Bill 287 does not fully address or regulate the use of public records generated by agencies. The current system can be abused by for-profit entities, particularly those seeking to commercialize requested information, as described by Mr. Callaway. As the City of Las Vegas has partnered with downtown groups to become a proponent of smart cities, we have heard from people who question the type of data we collect and how they can use it to better their business models.

It is important to strike a balance between transparent government and protecting individuals' data. Smart cities are beginning to rely on aggregated and real-time data with a variety of technologies. The City has sensors to aggregate data about specific places and things which is put into networks and analyzed to spot trends in traffic patterns and public works problems. This allows us to fix potholes if we see cars swerving around them or increase a red light's duration to relieve congestion.

We have recently had requests for data from smart city systems. The requests are vague, and people ask to log into our system to obtain data and metadata in real time. Such information in electronic form could possibly contain sensitive metadata that could inadvertently reveal confidential and privileged information. Requesters ask for the exact locations and mapping of technology within the City, which poses a security risk to the technology used to ensure public safety.

LAURA REHFELDT (Civil Division, Office of the District Attorney, Clark County): Section 10, subsection 2 of S.B. 287 has huge ramifications by rendering good-faith immunity virtually useless when a requester is denied public records. *Nevada Revised Statutes* 239.012 provides employers of public officers or employees are immune from damages if the officer or employee acts in good faith. This interfaces with NRS 239.011, subsection 2, which provides that a requester denied access to records is entitled to attorneys' fees from the governmental entity if he or she prevails in court. Entities have a legal argument based on statutory construction and legislative history that the two provisions should be read together, meaning the requester is not entitled to attorneys' fees if the officer or employee acted in good faith.

Senate Bill 287 isolates attorneys' fees from damages. That makes entities always responsible for attorneys' fees and renders meaningless the merit of entities' positions and good-faith actions. Taxpayers become financially responsible even if the officers and employees acted in good faith.

"Damages" are always the attorneys' fees as it is unlikely there would be any other damages available to requesters. Carving attorneys' fees out from damages renders the good-faith immunity argument invalid. Without a good-faith immunity provision, there could be a dramatic increase in litigation. There may be more requests and more challenges when records must be denied. There is no provision in S.B. 287 to allow entities to recover attorneys' fees or damages from frivolous lawsuits.

Section 10, subsection 2 forces onto entities the burden of proof by a preponderance of evidence that its officers or employees acted in good faith. An evidentiary hearing is unnecessary because a court can make finding of good faith simply on the merits of a legal brief and oral arguments.

Section 1, subsection 1, paragraph (a) provides for noncompliance civil penalties of $1,000 to $250,000 levied on entities or their employees. This is punitive, excessive, makes employees acting in good faith personally liable and may be assessed on taxpayers. It precludes the entity from responsibly taking and defending positions of merit when privacy interests outweigh public access.

Nevada Revised Statutes do not expressly define confidential records. That is why NRS weighs the privacy interest against the right to public access. Sometimes individuals' private rights need to be assessed. Records could

contain medical information or complainants in public response documents. The welfare of the general public should be assessed in records containing codes for traffic sequencing that allow first responders to drive through traffic lights. This could allow the public at large to control signals. Records also contain security codes to access things like flood-control channels, which must be limited to public works maintenance staff for safety reasons. Risk of civil penalties could present a risk of that kind of information being disclosed to the public. No good-faith immunity is included in sections 1 or 6 of S.B. 287 when staff determine disclosure is inappropriate.

Clark County takes public records requests seriously, especially when disclosure must be denied. Nondisclosure is often carefully and deliberately discussed among several employees of different staff levels and agencies. Multiple employees could be at risk of being assessed the civil penalty simply for doing their jobs; two people could point the finger at each other. This could make it difficult to recruit staff to do records searches. Liability for attorneys' fees alone constitutes a viable deterrent at about $30,000 per case.

Section 7 stipulates if a court finds a public body failed to comply with the NPRA, a requester is granted $100 each day—in addition to the attorneys' fees—that the entity failed to provide the records. This constitutes a windfall for the requester. The penalties create a chilling effect on governments' willingness to protect private information. The Clark County Office of the Coroner/Medical Examiner has a records case, filed in 2017, pending on appeal. The cost to the County to date is $72,000, paid by taxpayers. That could be in excess of $100,000 by the bill's effective date of October 1.

JOHN FUDENBERG (Coroner, Clark County):
The Clark County Office of the Coroner/Medical Examiner adamantly opposes S.B. 287. The County believes in being transparent and knows how important it is to the public to access our records for many different reasons. The County fulfills tens of thousands of records requests every year; my office receives and fills three to five requests daily from the *Las Vegas Review-Journal* alone.

The balance of interest test is when we weigh an individual's privacy interests against the right to public access. One of the most protected and personal documents is autopsy reports. As coroner, I feel obligated to protect decedents' private information and their families by not releasing that information. Over the past 18 months, since 1 October, when a lawsuit was filed against my office by

the *Review-Journal,* numerous families have contacted me pleading with me to continue to protect their loved ones' autopsy reports.

Autopsy reports include private medical information; most diseases with which decedents were diagnosed; how our pathologists make incisions on cadavers to remove all organs, specifically the heart and brain; and details of how organs are dissected. No one, from parents who have lost a child to children who have lost parents, wants that information released and posted online. The people who need autopsy reports get them: legal next of kin, the criminal justice system, multidisciplinary death review committees, which include child and elder abuse review committees.

Proponents of S.B. 287 say they are after the bad actors. Am I a bad actor because I believe people have the right to protect loved ones' personal information? Will I be subject to the penalty of up to $250,000? I disagree adamantly with that concept.

BRANDON P. KEMBLE (Assistant City Attorney, Civil Division, City Attorney's Office, City of Henderson):
Over the last year, the City of Henderson fulfilled 28,688 requests for public records in an average time of 0.3 days with an average resolution time of 1.4 days. During my seven years with the City, I have only seen one lawsuit concerning records requests filed by a media organization. We have filled more than 50 requests from them at an average cost of $5. The only reason we litigated the case is the parties were unable to come together to accomplish some of the things S.B. 287 would require jurisdictions to do.

The intent of the bill is admirable, but when lawyers litigate, intent does not matter to courts when NRS language is clear. There are several sections in the bill with clear language. Committee members have asked where the bill says entities must produce electronic copies of documents. Section 5, subsection 4 provides "A governmental entity shall [no discretion here] provide a copy of a public record in an electronic format by means of an electronic medium unless the public record was requested in a different medium."

In section 7, there is no discretion as to the fees and costs of providing documents. There is likewise no discretion if courts find entities must turn over documents. For violations, entities are required to impose the minimum fee and assess the $100 per day penalty. Under NRS, you can sue if you have been

denied a records request. You can go to court and obtain priority over all other matters before it and demand your records.

Under section 1 of S.B. 287, the penalties apply to any violation of the NPRA. Section 6, subsection 3 lists things entities must do to collaborate with requests. In section 6, subsection 1, paragraph (c), subparagraph (2), sub-subparagraph (II), that includes "Eliciting additional clarifying information from the requester that will assist the person who has possession, custody or control of a public record in identifying the public record." Failure to do so could potentially be a violation for which the penalty or fine is imposed.

Senator Scheible raised the issue of metadata. In section 3, subsection 8, the new definition of "public record" includes metadata. There is no discretion about whether metadata must be turned over. The bill also upsets legal privileges in NRS like the deliberative process and attorney-client privilege by requiring the disclosure of notes. The overbroad definition of "public record" includes anything connected "with the transaction of official business or the provision of a public service."

Imagine a public utilities customer service representative discussing a billing question and writing down the caller's information and sending him or her an email. Now the representative would have to produce that email and the Post-it notes and notepads with the information from the call.

Testifiers have scoffed at governments for raising the idea of nuisance requests. A disgruntled former employee of the City of Henderson has made 72 voluminous records requests for emails, contracts, texts and invoices. He has pending litigation against the City, and there is a stay in the litigation of discovery. Another, anonymous, person filed 68 records requests in 48 hours.

Senator Scheible seemed amazed people request records then do not pick them up. After the Seventy-ninth Legislative Session, the City compiled a request from the ACLUN that was never picked up. Promptness in fulfilling requests is a good goal but may be problematic. The bill creates a new basis for lawsuits brought by requesters in which they can be awarded fees. Statute already provides that requesters can take entities to court for tardy fulfillment of requests, and agencies are responsible for attorneys' fees. Concealing public records is a Category C felony under the NPRA. In other states with penalties, it is generally for willful acts; S.B 287 punishes people who act in good faith.

SENATOR OHRENSCHALL:
When requesters go to court, if their requests are deemed frivolous or not part of the public record, have you been able to get court-ordered sanctions against them?

MR. KEMBLE:
My office has not because we have only litigated one such case. *Nevada Revised Statutes* 239 is not written as a reciprocal-fee law. Fees are only awarded to requesters, not entities. The only recourse we might have is if someone continually brought cases against the City, he or she could be declared a vexatious litigant.

SENATOR OHRENSCHALL:
Would there then be the possibility of imposing fees on requesters?

MR. KEMBLE:
The vexatious litigant is barred from filing further lawsuits. I do not know if there could be cost recovery.

SCOTT EDWARDS (President, Las Vegas Peace Officers Association):
The Las Vegas Peace Officers Association represents corrections officers and sergeants at the City of Las Vegas Jail and is a member of the Nevada Law Enforcement Coalition. We oppose S.B. 287.

PAULA BERKLEY (Board of Occupational Therapy):
You have my testimony in opposition to S.B. 287 (Exhibit L). While the Board of Occupational Therapy is sympathetic to the bill's intent, we strongly oppose section 6, subsection 3. The bill eliminates the personal liability that has always been a basic and essential legal protection for Board members and staff. It authorizes the risk of being personally liable for attorneys' fees and costs with a civil penalty of up to $250,000.

Senate Bill 287 would have a chilling effect on the recruitment and retention of volunteer members of the Board and on staff for all State licensing boards. Recruiting professional licensees is often difficult, especially considering that the Office of the Governor tries to balance Board membership geographically and by professional specialty, gender, ethnicity and race. If this bill were enacted, the Board believes the licensed professionals, consumer members and its staff will be reluctant to participate in this crucial volunteer service to our State.

VINSON GUTHREAU (Deputy Director, Nevada Association of Counties):
The Nevada Association of Counties opposes S.B. 287.

JAMIE RODRIGUEZ (Washoe County):
Washoe County opposes S.B. 287 because it goes too far. Section 1, subsection 2 opens up individual staff to liability of up to $250,000. The County has more than 2,700 employees, and with the exception of a handful of them, $250,000 is more than their annual base salaries.

JOHN T. JONES (Nevada District Attorneys Association):
The Nevada District Attorneys Association opposes S.B. 287. You have my testimony to that effect (Exhibit M).

DYLAN SHAVER (Office of the City Manager, City of Reno):
Proponents of S.B. 287 stated categorically that nuisance filings for records do not occur. While Ms. Turney was testifying, the Office of the City Manager, City of Reno, received two requests specific to her testimony for documentation of what she had said. We will fill those requests; nevertheless, the idea that there was any reason other than to create an inconvenience for a political opponent over a measure being considered by the Legislature is specious at best.

KATHY CLEWETT (City of Sparks):
The City of Sparks strongly opposes S.B. 287.

CHRISTOPHER G. NIELSEN (General Counsel, Nevada Public Employees Retirement System):
The Nevada Public Employees Retirement System (PERS) opposes S.B. 287. We are a small agency that maintains a wealth of personal information on hundreds of thousands of past and present State workers and their families. We sometimes receive complex requests seeking custom reports on information that does not already exist. That takes an enormous amount of staff time, including legal and IT help.

We just want to know what we do and do not have to produce as records. We do not know what the ground rules will be under the bill, especially when PERS, as a fiduciary trust fund, owes fiduciary duties to its members. One duty is confidentiality. If we create personal liability for PERS employees, what is confidential information must be clarified. *Nevada Revised Statutes* 239.010,

section 5 of the bill, has more than 100 exemptions for release of certain information.

SENATOR OHRENSCHALL:
Does PERS get many records requests, and if so, are some frivolous?

MR. NIELSEN:
I would not necessarily say frivolous. Given the vast amount of data PERS has, we get many requests from retirees for investment-related information, nearly all of which is commercial. I would not call those nuisance requests, just time-consuming to fill.

The PERS board adopts evaluations which assess the health of the system and are used to set employee contribution rates; it is easy to fulfill requests for those. However, when we are asked to produce custom reports, coupled with personal information, that takes a long time to do, including ascertaining what is confidential. In the last several years, PERS lost two district court and two Nevada Supreme Court records request cases. Every decision defined confidential differently, and the most recent Supreme Court decision has provided little guidance.

JEN CHAPMAN (Recorder, Storey County; Recorders Association of Nevada):
You have my testimony in opposition to S.B. 287 (Exhibit N). The Recorders Association of Nevada wholeheartedly supports government transparency. In general, NRS 239 does not govern recorders offices, but it does affect what we do.

Many historic ledgers are fragile and subject to chemical degradation. Even if we sent ledgers out to obtain images, sometimes the images are unreadable. Several steps must be taken to pull images off ledger pages. Storey and other rural counties use the Nevada State Library, Archives and Public Records to pull images from ledgers, but they have a backlog of requests. The concern is that requests for ledger information takes quite a while.

SENATOR OHRENSCHALL:
Do many of your requests involve Storey County's old ledgers?

MS. CHAPMAN:
Because most of our documents are posted online, usually the only requests we get directly pertain to that medium. Sometimes, if documents involve lawsuits, such as those concerning old mining companies or something from 100 years ago, people will spend a long time in my office looking at records.

SENATOR OHRENSCHALL:
With old documents, do you photocopy them or try to not handle them due to their fragility?

MS. CHAPMAN:
It is a hard call, decided on a case-to-case basis depending on the characteristics of the book. Some are in good shape; many others survived a fire. The factors are how the books are bound and whether the text is legible.

MARY PIERCZYNSKI (City of Boulder City):
The City of Boulder City opposes S.B. 287.

DENA DAWSON (Assistant Clerk/Elections Administrator, Douglas County):
We echo the testimony of Ms. Parent in saying Douglas County is concerned S.B. 287 could negatively affect offices with reputations as prompt responders to requests.

SARA MARTEL (State Records Manager, Nevada State Library, Archives and Public Records Division, Department of Administration):
You have my testimony on S.B. 287 (Exhibit O). The Nevada State Library, Archives and Public Records is neutral on the bill. The State Records Center has physical possession of hard-copy records from more than 100 State agencies. Not all agencies store with the Center; some store with approved third-party vendors such as Iron Mountain Best Practices or Offsite Data Depot at a significantly increased cost.

The Center staff has limited knowledge of the specific contents of records stored in any given box. The bill's proposed language change in section 5, subsection 3 from "legal possession, custody or control" to "possession, custody or control" will shift the burden of responsibility from the Office of Records to the Center staff. The fiscal note from the Department of Administration reflects our best estimate of the increased costs for the Center to fulfill the bill's provisions.

MR. STORY:
Today we have seen many examples of how governments have not been transparent or prompt in responding to records requests from public advocacy organizations, especially the press and media. It is imperative that we get this right this Session. I am not sure what Mr. Kemble was referring to, but the ACLUN had had records requests fulfilled by the City of Henderson before this Session.

CHAIR PARKS:
We will close the hearing on S.B. 287 and open the hearing on S.B. 388.

SENATE BILL 388: Revises provisions relating to public records. (BDR 19-827)

SENATOR MOISES DENIS (Senatorial District No. 2):
Senate Bill 388 revises provisions relating to certain public records containing personally identifiable information. Balancing government transparency with individuals' privacy is a continuing challenge, especially in the digital age when personal information is constantly gathered and stored. While the idea of public access is pivotal to how democracy works, we have the responsibility to protect citizens from unwarranted and unintended consequences when personal information is collected by entities.

The bill is a result of collaboration between southern Nevada municipalities to address residents' privacy concerns when entities collect data as part of smart community initiatives. U.S. Senator Catherine Cortez Masto's office is also working on federal legislation to address these privacy issues (Exhibit P). Senate Bill 388 is largely in reference to that federal bill draft for Senate Resolution 994 of the 116th Congress, known as the Digital Accountability and Transparency to Advance Privacy Act.

The provisions requiring local governments to prepare reports of confidential records is taken from NRS, which exempts records prepared to prevent acts of terrorism stemming from public records requests. The bill drafters realize there may be public interest in the disclosure of some documents containing personal information. Section 1, subsection 3 of the bill provides that members of the public can request the documents if there is compelling justification.

Senate Bill 388 will require entities to make records confidential if they contain personally identifiable information that could create negative consequences for

the individuals involved. Section 1, subsection 1 provides that records are confidential if they contain personally identifiable information collected by an entity as part of the electronic collection of information from the general public. With smart city initiatives, all kinds of electronic information is being gathered. Some vehicles broadcast information that allows them to be tracked. Section 1, subsection 1 also provides that an entity cannot disclose identifiable information that might create negative consequences for people.

Section 1, subsection 2 requires entities to maintain lists of records or portions of records determined to be confidential under the bill's definition. Lists must not reveal the personally identifiable information therein. Section 1, subsection 3 provides an exception to the confidentiality provision in subsection 1: if someone requests to inspect or copy a record deemed confidential and "demonstrates a compelling operational, administrative, legal or educational justification ... that outweighs the risk of potential negative consequences," the entity must grant the request.

Section 1, subsection 4 requires entities to prepare annual reports providing "a detailed description of each record or portion of a record determined to be confidential ... along with an explanation of the reasons for that determination." Entities must submit the reports to the Legislative Counsel Bureau for transmittal to standing committees of Legislative Sessions or to the Legislative Commission during the Interim.

Data often contains different databases storing different parts of information. Let us say one database is keeping track of videos of cars downtown and another is tracking concertgoers or campers through their tickets or reservations. Even though the information gathered might be different, the two sets of records can be linked to compile information requesters can obtain that is not normally released to the public. The bill is an effort to circumvent that.

MS. CROMPTON:
The City of Las Vegas has discussed problems relating to smart city technology and how to identify data collected on transportation or public works issues.

LAURA FUCCI (Chief Information Officer, City of Henderson):
Throughout the world, governments are embracing technology for what is called smart cities, communities or states. It is about leveraging technology and data

collection to better serve constituents or residents by predicting events to improve service. We want to ensure that when we collect data, we protect residents' privacy from records requesters. We want to release aggregate and anonymized, but not private, data.

MICHAEL SHERWOOD (Director, Information Technology, City of Las Vegas):
Today's technology sometimes outpaces the ability of regulations to monitor it. Examples are information-gathering mobile apps on phones and smart parking meters. Collecting smart city data serves the public, but we also want to protect the public's identity. While we use smart services to help citizens lead more productive lives, we want to ensure the security of personal identifying information with redactions and other protections.

The City has an Open Data Portal on its website. By having preset measures of personal identifying information removed, information can be accessed for free on the Portal.

SENATOR GOICOECHEA:
Can you give an example of smart city data? You mentioned traffic patterns. How is that data confidential unless someone is pulling up to his or her house?

MR. SHERWOOD:
We all use Wi-Fi in buildings. When your phone connects, your device's identifying number—not your phone number—is temporarily stored. If it were vetted out, that information could be weaponized to track you. We try to provide information about how many devices are connected to a Wi-Fi access point without releasing phones' identifying numbers that are traceable back to individuals.

Many vehicles have systems that can "talk" to traffic signals to find out when lights will change. That device has a unique identifier; when it talks to the signal, that information is passed to us while the light passes information back to you. A log stores that personal identifying information. Section 1, subsection 5 of S.B. 287 mentions "electronic device." They are tied to you as the owner of the vehicle or phone with the intent of providing a service to users. The intent is to increase mobility, not track individuals.

MS. CROMPTON:
The intent of the bill is to stay on top of rapidly changing technology. Just a few models of vehicles now have the technology Mr. Sherwood described. As vehicles become increasingly technologically savvy, we want to ensure NRS protects drivers' privacy.

MS. FUCCI:
Sometimes traffic technology is not in your vehicle; rather, sensors are installed along the roadway. This allows entities to better understand traffic patterns and congestion to improve them.

BRIAN MCANALLEN (Porter Group, Inc.):
For the last 18 months, the Southern Nevada Forum has discussed the issues in S.B. 388 as we try to move the community in the direction of smart cities. The Southern Nevada Forum Committee on Transportation and Infrastructure was chaired by Senator Yvonne Cancela with Senator Scott Hammond and Assemblywoman Ellen Spiegel. We support S.B. 388.

MR. KARPEL:
You have my testimony in opposition to S.B. 388 (Exhibit Q). The Nevada Press Association has strong concerns about the bill. Despite its good intentions, by making all records that cause a member of the public emotions like "embarrassment" or "anxiety," it would blow a hole in the NPRA. It would be the exception that swallows the rule.

We also believe the bill is unnecessary. Under the Nevada Supreme Court's balancing test in *Donrey,* government agencies are already empowered to withhold records if the harm to an innocent member of the public outweighs the public policy interest in the release of the records. The ACLUN asked me to testify that it also has concerns about S.B. 388.

TOM MORLEY (Laborers Union Local 872):
Laborers Union Local 872 understands the intent of smart city data collection; however, even Senator Cortez Masto has stated she has concerns about data breaches and hijacking, Exhibit P.

ALANNA BONDY (EHB Companies):
The EHB Companies oppose S.B. 388 because it is overly broad and creates an almost unlimited exception to the NPRA. The bill could shield public figures from

exposure to wrongdoing. The records disclosure is at the discretion of public agencies. As Mr. Karpel testified, the Nevada Supreme Court has already established a balancing test.

SENATOR SCHEIBLE:
What standard was established in caselaw?

MS. BONDY:
In *Donrey*, the standard established was if privacy and security concerns outweigh the general policy of disclosure, governments can withhold records.

MS. CHAPMAN:
The Recorders Association of Nevada is neutral on S.B. 388. We fear the unintended consequences of the bill. It could negatively impact the functions and duties of State recorders' offices. *Nevada Revised Statutes* 239 is inextricably tied to many other NRS involving duties and jobs of governmental entities, including NRS 603A, which defines personal information. That NRS is referenced in the recording process.

Recording requirements sometimes include an affirmation by the party as to whether the document contains personal information. Under NRS, we are unauthorized to record documents containing personal information unless it is required by law to be included. An example is when we remove a decedent's significant other from a property title, information required by law to be therein. We do not just accept a death certificate for recording without a specific reason; in my example, that would be to effectuate a change to the property.

Adding another definition of "personally identifiable information" in section 1, subsection 5 will cause confusion as it pertains to recorded documents. At the very least that could lead to delays in recordings and could delay or impinge upon the home-buying process. By including data such as the required name and address, a simple recording could be construed as unauthorized. Many recorded documents could be subject to confidentiality status, which would be disadvantageous to all parties.

Recorded documents chronicle important events in people's lives such as marriage and home buying and selling. Sometimes they chronicle the less-desirable events: death, foreclosure, divorce. Each of these events

effectuate changes associated with property and could create "embarrassment" or one of the other consequences in section 1, subsection 1.

We are unsure of the process by which entities can determine disclosure of personally identifiable information will create negative consequences. That process could be inconsistent among counties and agencies. We are also concerned about inconsistencies in provided reports because we redact records for different reasons and times. One redacted report may not match the same one a year later. When we receive orders for confidentiality, that requires us to redact previously recorded records.

SENATOR GOICOECHEA:
Section 1, subsection 1 provides for "electronic collection of information." Does that include messages left on phones?

MS. CHAPMAN:
Documents are electronically recorded, so that means information is transmitted to us electronically.

MS. PARENT:
The Nevada Clerks Association is neutral. I am confused about S.B. 388. My initial thought was it gave clerks the option to not disclose personal information in marriage certificates. We need clarification as to what records the bill applies. "Personally identifiable information" as defined in NRS 239 is different from that in NRS 603A.040.

BRITTANY WALKER:
I helped draft S.B. 388 and want to address opponents' concerns. Testifiers stated some of the bill's provisions are already covered by the common-law balancing test laid out by the Nevada Supreme Court in *Donrey*. Records referenced in the bill not covered by that balancing test include personally identifiable information. As Mr. Sherwood testified, such information is tied to your cell phone, which by itself is not personally identifying because it is just a number. However, when you connect that to other information, you can identify the phone's owner. As Ms. Compton pointed out, in NRS 603A.040 the definition of personal information is slightly different than in section 1, subsection 1 of S.B. 388.

SENATOR GOICOECHEA:
In section 1, subsection 4, paragraph (a), I am concerned about the fiscal impacts of filing reports about records deemed confidential by February 15 annually. Does that deadline apply to all entities?

MS. CROMPTON:
Yes. The fiscal note reflects the cost of staff time to extract and report that data.

SENATOR GOICOECHEA:
If entities do not have the data, they do not have to submit the reports, correct? Clearly, smaller jurisdictions are not running traffic reports and things like that.

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CHAIR PARKS:
We will close the hearing on S.B. 388. Seeing no more business before the Senate Committee on Government Affairs, we are adjourned at 5:08 p.m.

RESPECTFULLY SUBMITTED:

Pat Devereux,
Committee Secretary

APPROVED BY:

Senator David R. Parks, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	14		Attendance Roster
S.B. 287	C	1	Tod Story / American Civil Liberties Union of Nevada	Testimony in Support
S.B. 287	D	2	Richard Karpel / Nevada Press Association	Testimony in Support
S.B. 287	E	1	Sondra Cosgrove / League of Women Voters of Nevada	Testimony in Support
S.B. 287	F	1	Wesley Juhl / Society of Professional Journalists Las Vegas	Testimony in Support
S.B. 287	G	2	Lewis W. Trout	Testimony in Support
S.B. 287	H	1	Daniel Honchariw / Nevada Policy Research Institute	Testimony in Support
S.B. 287	I	2	Patrick File	Testimony in Support
S.B. 287	J	1	Warren Hardy / Nevada League of Cities and Municipalities	Working Group Participants
S.B. 287	K	20	Matthew J. Christian / Las Vegas Metropolitan Police Department	Testimony in Opposition
S.B 287	L	1	Paula Berkley / Board of Occupational Therapy	Testimony in Opposition
S.B. 287	M	4	John T. Jones / Nevada District Attorneys Association	Testimony in Opposition
S.B. 287	N	2	Jen Chapman / Recorders Association of Nevada	Testimony in Opposition
S.B. 287	O	1	Sara Martel / Nevada State Library, Archives and Public Records Division	Testimony in Neutral

S.B. 388	P	3	Senator Moises Denis	Press Release: "Cortez Masto Introduces Data Privacy Act"
S.B. 388	Q	1	Richard Karpel / Nevada Press Association	Testimony in Opposition