Government Members' Recommendation:

Request that the Nevada Legislature Consider Legislation Directing the Nevada State Division of Library and Archives to Develop a Standardized Fee Schedule for Public Records Requests including Staff Time

The NPRA allows each governmental entity to set its own fees, limited to the entity's actual cost. NRS 239.052. As a result, requesters face different charges from entity to entity for the same kind of request. Entities also lack a common benchmark for what counts as a reasonable or actual cost. The term "Actual cost" means the direct cost incurred by a governmental entity in the provision of a public record, including, without limitation, the cost of ink, toner, paper, media and postage." NRS 239.005(1). "The term does not include a cost that a governmental entity incurs regardless of whether or not a person requests a copy of a particular public record." *Id.* The ordinary meaning of "direct cost" is "a cost that may be computed and identified directly with a product, function, or activity and that usually involves expenditures for raw materials and *direct labor* and sometimes specific and identifiable items of overhead." *Direct Cost, Merriam-Webster Dictionary* (emphasis added) (https://www.merriam-webster.com/dictionary/direct%20cost); *see also Cost, Black's Law Dictionary* (12th ed. 2024) (defining "direct cost" as "[t]he amount of money for material, *labor*, and overhead to produce a product") (emphasis added). As such, under the plain meaning of NRS 239.052(1) and 239.005(1), government entities may charge for staff time because staff are diverted from their primary functions to provide public records, which is a direct cost to the organization.[i]

AB 128 directed the Task Force to recommend "a standardized fee schedule." Staffing and staff time was the operational challenge respondents cited most often in the survey issued by the Government Representatives to government entities across the state and half of the entities have no employee whose primary duty is public records. Indeed, fees and cost recovery were the change Nevada survey respondents requested most often.

We recommend Legislature consider legislation directing the Nevada State Division of Library and Archives to develop the uniform public records fee schedule, expressly including the cost of searching, reviewing, redacting, and producing records. The Task Force recommends a delegated approach, so the schedule reflect current market conditions and technological changes without legislation each session.

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[i] To the extent a court would find NRS 239.052(1) and/or NRS 239.005(1) ambiguous, it would look to the legislative history to determine the meaning. *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011). NRS 239.052 and 239.005 were significantly changed in 2019 via SB 287. The original bill draft would have expressly prevented public agencies from ever charging for labor costs. But that language was specifically removed. The removal supports an inference that the Legislature did not intend to prohibit public agencies from charging for staff time.