MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-Third Session
May 3, 2005

The Committee on Government Affairs was called to order at 8:12 a.m., on Tuesday, May 3, 2005. Chairman David Parks presided in Room 3143 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. David Parks, Chairman
Ms. Peggy Pierce, Vice Chairman
Mr. Kelvin Atkinson
Mr. Chad Christensen
Mr. Jerry D. Claborn
Mr. Pete Goicoechea
Mr. Tom Grady
Mr. Joe Hardy
Mrs. Marilyn Kirkpatrick
Mr. Bob McCleary
Mr. Harvey J. Munford
Ms. Bonnie Parnell
Mr. Scott Sibley

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Bob Coffin, Clark County Senatorial District No. 10

STAFF MEMBERS PRESENT:

Eileen O'Grady, Committee Counsel
Susan Scholley, Committee Policy Analyst
Michael Shafer, Committee Attaché

OTHERS PRESENT:

Neil Rombardo, Deputy Attorney General, Office of the Attorney General, Nevada Department of Justice
Dan Klaich, Vice Chancellor of Legal Affairs, University and Community College System of Nevada
James Richardson, Legislative Advocate, representing the Nevada Faculty Alliance
Madelyn Shipman, Legislative Advocate, representing the Nevada District Attorneys Association
Rusty McAllister, President, Professional Fire Fighters of Nevada

Chairman Parks:
[Called meeting to order and roll called.] We have three bills on our agenda for today; we'll begin with S.B. 83.

Senate Bill 83 (1st Reprint): Makes various changes relating to conduct of closed meeting by public body to consider character, alleged misconduct, professional competence, or physical or mental health of person. (BDR 19-43)

Chairman Parks:
I received a letter this morning from Assemblywoman Chris Giunchigliani. She cannot be in attendance for S.B. 83, but would appreciate our support on this very important piece of legislation.

Senator Bob Coffin, Clark County Senatorial District No. 10:
[Distributed Exhibit B.] When this bill first was heard, there was a packed house because there were several open meeting law bills introduced in the Senate. I made sure the Assembly knew of this bill and its importance. The Committee distilled 11 bills into 3 or 4 bills; they passed this one out separately because it dealt with a unique issue.

In 2003, I first requested this bill when the Board of Regents of the University acted hastily and unfairly toward its employees, including [former Southern Nevada Community College] President [Ron] Remington and others. They were acting in a meeting without hearing testimony from both sides or having an unbiased report on conduct and allegations. I felt that it was unfair, and the public in southern Nevada did too. The meetings left out the people who were being investigated; they were defenseless and in the dark on all the subjects.

The cost for the legal settlements that have arisen from the successful challenge—or the negotiated settlements—in these cases will probably approach $1 million. It became a very expensive exercise for our state and an embarrassment for the Board of Regents. The new Chancellor has brought order and harmony to this elected body; that's hard to do.

[Senator Coffin, continued.] The point of this bill is that there should be due process for people who work for any public body. When first brought forth, this bill was for the Board of Regents. The Committee unanimously felt that all public bodies should have the same protections. Under the old law, you just had to give notice of what was to be discussed. Some people did not get notice, and they never knew what subject was to be discussed. Can you imagine the president of a university not knowing what is to be discussed or what type of testimony is going to be given? That is what happened to Dr. Remington.

This bill is a reaction to abuse of power and allows people to get a notice with a general outline of what is to be discussed. If the meeting is about a person, it is required that they be allowed to attend and bring mitigating evidence to counter charges. It's due process without taking these personnel sessions into the public eye, which is difficult because of the embarrassing matters that may be discussed.

We have an agreement that this law, if passed, would be modified sufficiently to help stop that kind of behavior for anybody in any public body, meaning any government now in the state of Nevada. I certainly urge your support.

Assemblyman Grady:
On page 2, line 20, there is a list of "general topics" concerning the person. Are those the only things that can be discussed? How broad do you intend to make that?

Senator Coffin:
It's a general statement. "General topic" can be as general as the public body wants to make it within what it feels is its privilege. Certainly, there should be an objection to the person saying, "Wait a minute! I didn't know you were going to talk about A or about B, point 1 or point 2." I do not think we have to get too technical on this. There's always a tangent that could divert from an issue that may not have been discussed or thought of when you wrote the notice.

Assemblywoman Parnell:
Would this include a school board having an executive session before the open board meeting? If they were discussing someone, the individual could attend that meeting as well?

Senator Coffin:
If it is a personnel session, then it would be covered. There are personnel sessions within the school districts. In those cases, I know it would cover any teacher. Legal counsel could give you an exact determination on that.

Chairman Parks:
Looking at the handout that was put in front of us (Exhibit B), it references a controversial series of closed door personnel sessions. Beyond those, did you encounter this as a widespread problem, or is this pretty much isolated to one state agency?

Senator Coffin:
I did describe the Board of Regents as "serial offenders of the Open Meeting Law." However, that was the press' opinion of the Board of Regents. Other bodies may commit these offenses. Sometimes we wouldn't know. It's an embarrassing thing that neither side wants out. It could go unnoticed. I don't know any, other than the Board, that has offended in this area.

Chairman Parks:
There are instances where someone may be summarily discharged based on innuendo. Would this bill satisfy that issue? This bill goes a long way toward having a fair and balanced approach dealing with individuals, especially those in the public eye.

Senator Coffin:
We know innuendo and rumors. It is rare that you don't know when somebody is talking about you, true or false. For that reason, you know that you should bring materials to a hearing to rebut or say, "It has no effect on my job." Bring a statement from somebody. That's as plain and straightforward as you can do in a formal setting.

Assemblyman Hardy:
When we have the Open Meeting Law or a personnel session, is the accusatory side in it, or just the Board of Regents and the person who has their character questioned? Who actually is in there besides the person and the board?

Senator Coffin:
Generally, a person can be there if they want. Sometimes, that's negotiated as in the past. Now, it's required. But usually, a person was not included in the meeting and did not know an investigative report was being presented, which made allegations not based on sworn testimony or hearing both sides. That is why the bill says to give notice of the meeting and the subjects, in general, to be discussed.

Assemblyman Hardy:
Should this become the law? Is the accuser in that meeting or just the accused? In this case, if this were to happen again, would the university president be in the room to protect himself and from what, or would the accuser only be there and everything is second-hand? In that case, the regents would only have his opinion, their opinion, and nothing from other party involved.

Senator Coffin:
We spell out that a person must meet his or her accuser as you might in a court of law. This gives some protection to a person who may be a whistleblower, but allows the person to see what evidence the board might be acting upon. It could be the statements and affidavits from a person who feels that something improper has happened.

Assemblyman Hardy:
The bill reads that the person, and not his attorney or his attorney team, would be in there. It would be the accused whose character, professional competency, or misconduct is questioned. Am I reading this correctly?

Senator Coffin:
It says "to present testimony and written evidence." It does not include the possibility of bringing a counselor with you.

Assemblyman Goicoechea:
If evidence is to be presented in closed session against a person named by a whistleblower in a complaint, that person would have to be notified per the bill. Is that correct?

Senator Coffin:
Yes.

Assemblyman Goicoechea:
It is going to be cumbersome. Boards will have to pay attention that, if they go into a closed session to hear complaints, they have to notify that individual. You will bring the accused and accuser face-to-face, and I agree with that.

Chairman Parks:
Names of other individuals may come up in discussion. Those individuals would not need to be present if no issue deals specifically with them.

Senator Coffin:
As amended, it would not require that sort of confrontation. That could lead to further issues.

Chairman Parks:
Precisely.

Senator Coffin:
It is good for the board to know that they can't just bring up an accusation from someone.

Chairman Parks:
That may include individuals, not directly affected, who might be witnesses to a particular incident. Do you have other persons that you wish to speak in favor on this bill?

Senator Coffin:
There are others that may testify. The Attorney General and the Board of Regents now support this bill.

Neil Rombardo, Deputy Attorney General, Office of the Attorney General, Nevada Department of Justice:
The Attorney General's Office does support S.B. 83. You asked if this problem occurred with other public bodies; I can testify that it does. My responsibility at the Attorney General's Office is to enforce the Open Meeting Law. How to conduct closed meetings is an issue faced by public bodies all the time. It is not clear in the law and is confusing. This bill clarifies part of what they should be doing. Therefore, our Office is in support as well.

Dan Klaich, Vice Chancellor of Legal Affairs, University and Community College System of Nevada (UCCSN):
We have worked with Senator Coffin and Ms. Giunchigliani on this bill. This bill is already codified in policies by the Board of Regents and adopted before this legislation was introduced. We support this legislation.

James Richardson, Legislative Advocate, representing the Nevada Faculty Alliance:
We are on all state campuses, including UCCSN. People knowing they're going to be discussed and what is to be discussed are basic fairness concepts. We wanted to go on record as supporting the bill, even though there are still some issues that need to be addressed.

Madelyn Shipman, Legislative Advocate, representing the Nevada District Attorneys Association:
I'm here to support S.B. 83. It is an idea that should be observed today. This bill puts into law what should be happening.

Assemblyman Goicoechea:
You represent the district attorneys, which, in local government, are our legal counsels. If you have a personnel session scheduled, the person being discussed is invited. In the hearing, more names are brought up. Do you see that as being cumbersome? How would you address that as a district attorney, because those persons have not been notified?

Madelyn Shipman:
There are very few who fall within the direct appointing authority of the elected body. You're not going to have too many of these closed sessions. It is seldom the case of another person being discussed. There might be an allegation by another person. For instance, a statement may be presented to that person. The person has the opportunity to respond.

You asked about a representative. In Washoe County, we allow a representative with the person. The attorney decides whether the discussion is about another person. It is the "target" that deserves the notice. If a person says, "I can't answer that allegation; I didn't know that person was making that statement," it behooves the board, from a due process standpoint, to bring that person forward and consider a closed session or have that person present at the time and already noticed at the hearing.

Assemblyman Goicoechea:
Local government policy manuals allow the board of county commissioners or the city council to review an allegation. If there has been a termination, that person has the ability to appeal. They appeal their termination or reprimand to the board or city council, who holds a personnel session. At that hearing, the accused says, "Well, it wasn't me; it was so-and-so," and you have not invited so-and-so to this session. That's where it gets cumbersome. I believe that local governments are already complying with this to the extent that they can. Do you see where I'm coming from?

Madelyn Shipman:
Yes. In my 25 years of public practice, I have represented all entities from the State to the local. I've probably had five closed personnel sessions. They're not that common. A lot depends on the attorney attending. He needs to react appropriately when the discussion changes to another individual. I've never had it happen. If you haven't done the proper investigation and don't have all of the proper people present and available for questions and answers, then probably it shouldn't be held in closed session.

Assemblyman Hardy:
The accused is the one we want to protect. You can have a situation where a coworker goes to the city manager and says, "This is a problem. This is what happened." The city manager calls a personnel session. Because of the Open Meeting Law, you can't tell everybody, "This is what we're doing, and how do you feel about it?" So, one side is represented, but the other side isn't. It's just third-party hearsay. The board or city council has nothing to refute or contradict what is said by one party.

Line 32, page 2 of the bill says, "Attend any portion of the closed meeting." In other words, the person who is the target can attend any part of the closed meeting, including the part where, if you were a judge or jury, after you heard testimony and excuse the combatants, then go into another room and decide what they are going to do. That option is not available for the city council or the board when they deliberate; everything is open to the "target." I don't see the other side being at that table when that happens.

Madelyn Shipman:
It doesn't happen that way. For example, some department heads are confirmed by the council. They have some right of appeal to the governing body. The city manager gets a whistleblower statement or an allegation. The city manager doesn't call a closed session; that's what the city manager does. That employee works for the city manager. The city manager then talks to the employee, gets information, finds out whether or not the allegation has any basis of truth, and in most cases, it was a judgment issue. It wasn't an issue of whether you broke a law; it was an issue of judgment and whether you want a department head to be exercising that type of judgment.

You've done your homework, checked all your third-party sources, and have those persons available before you even call that meeting. The person may deny it, bring up another point, or bring up another issue that perhaps you haven't fleshed out through your own personal investigation as city manager or county manager. These hearings don't occur easily. Usually the elected officials are antsy about them. They don't like to go into these hearings.

The worst part of my job was the administrative portion, having to deal with personnel issues. Elected officials are no different. They don't like to deal with personnel issues. This doesn't work the way you think it does. The accused will have the full opportunity—if the person was not present—to ultimately face that person. No attorney is going to sit in there and say that it is all going to be based on hearsay.

Assemblyman Hardy:
This bill doesn't flesh out the process enough to understand. This bill does not preclude the other side from being present and able to say something?

Madelyn Shipman:
I'm going to suggest that not only does it not preclude, it assumes. No one is going to call a closed personnel session and not have the persons who made the accusations present and available, if necessary.

Assemblyman Hardy:
Would the person who is accused be allowed in every portion of that closed meeting, including the discussion where there is no opportunity for that board or commission to deliberate in and of themselves without anybody or any other party involved?

Madelyn Shipman:
This bill would require that. It is appropriate. The person has always attended all portions of a closed session. This bill makes that mandatory. The only issue that might come up is that of the representative of the person and what their role might be. In some cases, if allowed to attend, they are treated like a grand jury and cannot participate, cross examine, or ask questions on behalf of the target person. Certainly, they are allowed to be present. The role of the representative may be something that's up to the discretion of the board; it's not addressed in this bill.

Assemblyman Hardy:
In line 36 of the bill, to establish legislative intent, there is an appropriate time to present testimony and written evidence to the public body during a closed meeting. There may be an appropriate time not to present written and oral testimony at the discretion of the presiding body.

Madelyn Shipman:
This bill would require that any evidence, whether written or oral, be allowed to be presented to the board by the target. These closed sessions are not necessary because somebody has done something wrong. It could be that they just have a different direction they want to take and want to talk philosophy or something, because they don't like where that department head may be going. Most are not necessarily disciplinary in nature, but corrective or constructive criticism. This bill would make it mandatory that all evidence, whether oral or written, be allowed to be presented to the board. This process, whether a mini trial or a more informal manner, may be more discretionary with the entity and the situation.

Assemblyman Hardy:
There is an appropriate time in the closed session to present testimony and oral argument. There is also an appropriate time for the commission, the board, or the council to pull back from the testimony, with dignity, ask if there is anything else, and talk amongst themselves. That's the time for them to discuss things in front of the accused. I want to be sure we recognize that we don't have the right to continually present testimony; that there is a time where they discuss it amongst themselves and come to that decision. Is that your intention, and the intent of the bill, to allow them that flexibility?

Madelyn Shipman:
The absence of specific language directing how that portion of a hearing is to be conducted would allow a local entity or a public body to set the rules for how that occurs. If the intent of this Committee is to ensure, somehow, that there is a deliberation period without additional evidence being presented, that is not in this bill. If discretion allows, it is the practice of most people to do that.

Assemblyman Goicoechea:
When you take formal action, does that have to be, or should that be, done in the public portion of the meeting, or do you come out of the special session to take that action? I just want to make sure that's your interpretation.

Madelyn Shipman:
Not only should it be done in public, it should be noticed on the agenda as a possible action to be taken. You don't take any vote and try to be cautious about forming a final conclusion. They can give statements and talk about how they feel about things. You try to come out into the open session, either at that meeting or any future meeting, that you agendize the possible action.

Dan Klaich:
To clarify for Mr. Goicoechea and Dr. Hardy, with respect to talking about other people, you don't talk about other people in those personnel sessions. There is a difference between other people talking in that personnel session and talking about other people. In S.B. 267, Section 6 indicates that you can make a tangential reference to someone else without breaking the Open Meeting Law. If, in a personnel session where you were the target, I started comparing your conduct to mine without noticing that my conduct would be talked about, that would be a problem. That's what you can't do.

The Attorney General has interpreted that it is not within an individual board's discretion to set procedures for what occurs during a personnel session. There is a very strict distinction between what you can and cannot hear and do in them. You talked about when "the evidence is over, and let's recuse ourselves

and start talking." The Attorney General would indicate that action was a violation of the Open Meeting Law, and that is the difference between receiving information and then going on to deliberate on it or discuss. The current opinion of the Attorney General is that if the board begins deliberating on the information that it has received in a closed session, it is moving toward the consensus of a decision, and that has to be done in public. We cannot do what you can in work sessions.

Neil Rombardo:
Mr. Klaich is correct. Our Office interprets the terms "deliberate" and "consider" differently. NRS [*Nevada Revised Statutes*] 241.010 states that you must deliberate and take action in the open. That's the intent of the Open Meeting Law. NRS 241.030 states that you can go into a closed session to "consider" these topics. "Consider" would be the receipt, or the receiving, of information. "Deliberate" would be taking that information and discussing it amongst yourselves. Therefore, when you discuss it amongst yourselves, you must do it in the open. When you receive the information, you can do that in closed.

Using the grand jury example, it is very synonymous. You can take the information during the closed session and even ask questions of the people presenting the evidence. As soon as you begin to deliberate, you have to step into the open.

Chairman Parks:
I appreciate that. Having served on the grand jury for 13 months—and foreman, as well—it's a good analogy.

Madelyn Shipman:
We had extensive discussions in the Senate on a different bill on the definitions of "consider," "consideration," and "deliberate." There is a fine line between considering issues and musing over them, a statement in closed session and deliberating in public, and the transformation of information that was intended to be maintained as confidential into a discussion in public. The issue of definition was left out of the bills that came out of the Senate. I can't tell you why, but my assumption is that they realized that the fine line was a difficult one to actually put in writing.

Chairman Parks:
I certainly appreciate that remark. Does anyone else want to speak on S.B. 83? We'll close the hearing on S.B. 83 and open the hearing on S.B. 415.

Senate Bill 415: Authorizes public bodies to hold closed meetings for certain purposes relating to examinations. (BDR 19-100)

Neil Rombardo, Deputy Attorney General, Office of the Attorney General, Nevada Department of Justice:
S.B. 415 is basically a clarification of the law. Our Office represents several public bodies that do examinations. Some attorneys in our Office have read the Open Meeting Law to mean that they can't do anything in closed session, including drafting exams and considering appeals of these exams. Other people have read into the law that they can do these things in closed session. Therefore, we are asking for clarification. Currently, the interpretation is that they can do it in closed session, but we just ask the Legislature to clarify that. This would allow public bodies, such as the medical board or the ophthalmology board, to go into closed session, discuss the type of exam, draft the exam, and consider appeals by a person who may have failed the exam in closed session.

Assemblyman Goicoechea:
Section 5 says, "Except that the board may hold executive decisions to deliberate on the decision." So, I'm unclear.

Neil Rombardo:
That was intentionally added. This is the first time that the Legislature would allow a public body to deliberate in a closed session. If you have a doctor who failed the exam, they're going to go into the closed session to discuss why he failed, and he can present his point of view. When the board deliberates about this person, it can hurt this person's ability to be a successful doctor in this state if they have to discuss his mistakes in open session. That creates a protection for the appellant.

Assemblyman Goicoechea:
I'm unclear on this. Do you deliberate in your own mind, but don't take the vote until you are in the public process?

Neil Rombardo:
The vote is in the public process, absolutely. That's not what we're saying here. We're just saying you can deliberate in the closed session, which means that you could ask everyone to leave and deliberate on whether or not you should grant the doctor his appeal or not. But, you cannot vote during that closed session. You have to come out and take a vote in public, saying that we either affirm the exam the way it was, or we're going to go ahead and grant the appeal.

Assemblyman Goicoechea:
Under S.B. 83, the person who failed the exam would have to be seated there.

Neil Rombardo:
Unfortunately, we drafted these separately and have to meld them together in some fashion. If S.B. 83 and this bill passed, then you're correct.

Assemblyman Hardy:
Senate Bill 83 deals with a public servant, a public office, a government entity, or an employee of a government entity. There is a difference between the standards we hold public people to and a private individual, which is what S.B. 415 deals with. That's the difference between S.B. 83 and S.B. 415. Am I off base?

Neil Rombardo:
I don't think you're off base, but a public body could consider, under S.B. 83, a private person. I found that the Open Meeting Law always finds a way to get into everything. I think you're correct about the purpose of S.B. 83, to discuss public employees—people who have some effect on the public entity in a closed session—whereas, S.B. 415 would be an appeal from a private citizen. Senate Bill 83 may not necessarily apply to S.B. 415, because S.B. 415 has an appellant. This person is asking for the appeal process; whereas, S.B. 83, the public body is taking it upon themselves. There is a distinction and an important one.

Chairman Parks:
On page 3, lines 34 and 35, it's repeated, but it says, "Public body determines that the matter discussed no longer requires confidentiality." Is there a process, or is that just a common-sense decision made by the body?

Neil Rombardo:
We did discuss that. That language mimics other language in the current statute in the Open Meeting Law. It has always been common sense.

Chairman Parks:
Is there anybody else in the audience who would like to speak on S.B. 415? Are there any further questions from the Committee? We'll close the hearing on S.B. 15 and open the hearing on S.B. 421.

Senate Bill 421 (1st Reprint): Revises certain provisions relating to Open Meeting Law. (BDR 19-99)

Neil Rombardo, Deputy Attorney General, Office of the Attorney General, Nevada Department of Justice:
Senate Bill 421 originally started off, as our Office requested, that all public bodies record their meetings. This would allow our Office to conduct more thorough investigations. We often request information and get minutes that aren't very good, and you can't understand what occurred at the meeting. If you look at the minutes requirement in the Open Meeting Law, it does not require that there be a verbatim or explicit statement. It just says that you have to put the general topics discussed. To clarify that and allow our Office to investigate potential violations, we've asked that all public bodies record their meetings.

Eventually, this was amended to include either record or transcribe the meeting, because transcribing the meetings is just as good as recording. The other amendments added allowed for a good faith effort. If the public body put forth a good faith effort, but, for whatever reason—like the recorder failed—they could not afford the recording devices, that would not to be a violation of the Open Meeting Law.

Those are the highlights of this bill, and we ask you to pass this in order to conduct more thorough investigations and understand what's going on at some of these meetings.

Assemblyman Goicoechea:
What about the quality of the recording device? Most boards have a little diskette recorder that's not very functional. On the other hand, if you come up with a recording system that works well, it is a lot of money, and you end up with a scenario where small boards that are appointed meet in a room in the library. It is a struggle, especially in the rural areas, and, depending on where they meet, in the urban areas.

Neil Rombardo:
My only representation of public bodies was as a deputy in Carson City for the District Attorney's Office, and they had a nice system that was mobile. The system worked well, and we had great tape recordings and minutes. There are several general improvement districts (GIDs), et cetera that meet in rural areas, and it is illogical for them to drive to the county seat to use that type of equipment. Under those circumstances, this law, as it's currently written, would not require them to record it. They couldn't afford to record it.

Assemblyman Goicoechea:
A recording, even if not very good, is better than nothing. Everyone's a little more cautious about what they say when they realize that it's being recorded.

Assemblyman Sibley:
How long are we going to keep these recordings, and where are we going to keep them?

Neil Rombardo:
The recording becomes public record. It would be required to be maintained under the Public Records Act. The Open Meeting Law is specific that recordings be kept for one year. It would be kept wherever the public body normally keeps its records. It would be kept with those. Normally, the clerk's office, the general improvement district—wherever they would keep their minutes—it would be treated the same as the written document, except for the written document has to be kept for five years, if I recall correctly.

Assemblywoman Kirkpatrick:
Subsection 6 on page 3 says that the public body is not required if they don't have enough money. If you ask any local government and they don't have money to buy audio equipment, what's the purpose of having it there?

Neil Rombardo:
We didn't ask for it to be drafted this way. We thought everyone had enough money. In investigating this, our Office would have to look at the type of entity. If the City of Reno came in and said they didn't have the money, we would take that to court and argue that they did. If a small GID out in the middle of a rural county came in and said that, we would understand. In enforcing this law, we decide whether or not to go forward with it. In analyzing this provision, we would look at the entity that claimed that they didn't have enough money.

Assemblywoman Kirkpatrick:
Maybe the language needs to change to allow you to enforce it. Right now, you couldn't enforce. It would be a longer process to determine if they could. What would your requirements be if they have to come before you, and 6 months later you're still working on paperwork? Why not change that language? That language is vague and unenforceable.

Neil Rombardo:
Technically, it is enforceable. NRS [*Nevada Revised Statutes*] 241.037 and 241.040 allow our Office to enforce any provision of the Open Meeting Law. This law is arbitrary and not that clear. The Senate was concerned, in particular, about the small GIDs and thought it unfair to require them to record their meetings, but any recording is better than no recording. Everyone can afford a recorder from Wal-Mart, Rite Aid, et cetera, and put it on a desk. They can keep some taped minutes. As for the Attorney General's Office, it wouldn't create any problem if that language were removed.

Assemblyman Hardy:
The safe storage for 5 years of recorded minutes and the transcribing of them can have a fiscal impact on a local government. Do we have a fiscal note on the impact to local government and the State?

Neil Rombardo:
I am uncertain about a fiscal note for the local and the State. They only have to keep the audio tape for one year and 5 years for written minutes. On page 2, line 31, it states that the audio recording or transcript must be retained by the public body for at least one year. A public body won't opt to hold them longer.

Assemblyman Hardy:
I thought the bill applied to everybody; but it specifically lists the Commission of Economic Development, Tourism, Veterans Affairs, et cetera. Are those the only ones included in this? The Clark County School District Community Education Advisory Board theoretically has to comply with the Open Meeting Law. Do they have to do audio tapes?

Neil Rombardo:
As this is written, all public bodies have to audio record. Yes, that entity would. The other entities or statutes are included in here because they had language that changed their position under the Open Meeting Law. To have all public bodies treated equally, we found that language and added it in with the help of the Legislative Counsel Bureau.

Assemblyman Hardy:
The fiscal notes I have range from $10,000 to nothing in different jurisdictions. For Clark County, it is $20,000. Is this included in the Governor's budget, or is this a separate appropriation?

Neil Rombardo:
I did a fiscal note for the Attorney General's Office. There was no impact on our Office or to any State public body. They already transcribe or record their meetings; their subcommittees could be a problem. I don't know if it's in the Governor's budget. It is not an issue for the State. We have the ability to record these meetings or have them transcribed without further costs. Many public bodies use your facilities when you're not here.

Assemblyman Grady:
Sections 6 and 7 are what we talked about to help the rural areas. If there is a meeting in a remote area that does not have a tape recorder, they can go ahead and have the meeting. But, if you forget it, the power goes out, or don't have batteries for the recorder, you can go ahead and have the meeting, and you're

not in violation of these sections. If you can do it, you should do it. If you don't have the equipment, you can still have the meeting. [Neil Rombardo answered in the affirmative.]

Assemblywoman Parnell:
On page 7, it refers to PERS [Public Employee Retirement System] and puts them under this. Is the Public Employees Benefits Program (PEBP) listed under this as well? Would they be treated the same?

Neil Rombardo:
Yes, they would be treated the same.

Chairman Parks:
We talk a lot about audio recording. Today, it can also be video recording. In existing statute, there is a reference to video reproduction. As long as the public agency makes a good faith effort to provide some media for their meeting, they're meeting their requirement.

Neil Rombardo:
That's correct.

Dan Klaich, Vice Chancellor of Legal Affairs, University and Community College System of Nevada (UCCSN):
We support this bill. The Board of Regents already audio tapes all of their meetings and subcommittee meetings. There would be no fiscal impact. We have no objections to this legislation and support it.

Rusty McAllister, President, Professional Fire Fighters of Nevada:
We also support this bill, but not for the same reasons the Attorney General's Office does. Your attaché is passing out some backup information (Exhibit C and Exhibit D). Many times the minutes from board meetings are very slim and hard to follow about what actually takes place during those meetings. That's why they're asking for this bill.

This first document is a copy of the action minutes of a five-and-a-half-hour Public Employees Benefits Program meeting (Exhibit C). They condensed that down to four pages. On page 3, under public comment, they listed the names of those people who spoke and who they represent. There was nothing of what they said or the content of their presentation.

The other document is a copy of an agenda (Exhibit D). On page 2, it lists the policy for the Public Employees Benefits Program on obtaining a copy of their records. If you go to their office, you can look at those for free. Even though

they have a transcriber there, if you want a copy of the transcript, you have to go outside of the office and pay $1.95 a page for the transcript. That is about 100 to 150 pages for a five-and-a-half-hour meeting and costs about $200 to $300. If you don't know what page or what part of the transcripts you're looking for, you have to get the whole thing. If you live in Las Vegas and want to look at something, you have to go to Carson City to their office.

[Rusty McAllister, continued.] The transcriber for the PEBP board meetings is paid; they already have a person to transcribe minutes. Why do we have to pay $1.95 a page to get a copy of the minutes that are already paid for? Is there any way that we can make these records more accessible to the public for a reasonable cost?

Assemblyman Hardy:
When we copy medical records, we charge 60 cents a page.

Rusty McAllister:
In Clark County, if you want a copy of legal documents, it is 30 cents a page. There are varying prices, but nothing that approaches $1.95 a page. It makes it difficult to afford to find out what happens at meetings unless you can afford to attend their meetings at the National Guard Center in Carson City.

Assemblywoman Parnell:
Looking at these minutes (Exhibit C), I have concerns. On page 60 of the Open Meeting Law, it says, "Requirements for and content of written minutes." Then it says, "The substance of all matters proposed, discussed, or decided, and at the request of a member, a record of each members vote" and "the substantive remarks made by any member of the general public."

In those minutes, we don't have any of the conversation or remarks from that meeting. You see names of the individuals who were there and made public comments, but no reference as to what they said at that particular meeting. It just shows the action on the motion, but no discussion leading to that motion. This concerns me. Has that concern been brought to anyone's attention?

Rusty McAllister:
People have asked for more thorough minutes and were told they could get the transcription if they paid for it. On page 4 (Exhibit C), under public comment, twelve people are listed who spoke but not what they said or suggested.

Assemblyman McCleary:
As we're going to require audio recordings at these proceedings, wouldn't it be cheaper and more cost-effective to require them to just give you a copy of that?

Rusty McAllister:
Absolutely. The bill says you can either record or transcribe; you don't have to do both.

Assemblyman McCleary:
Does it stipulate that if you want it, they have to provide you with a copy of the actual audio? Is that something that we might want to consider?

Rusty McAllister:
It doesn't stipulate that they have to provide the public with either in the bill.

Assemblyman McCleary:
Is that something we might want to consider?

Neil Rombardo:
The bill currently does not require the public body to provide the audio recording or the transcript for free. It's a public record and required for them to make it available as a public record. There is a cost related to these transcriptions based on a statute that allows court reporters who do the transcription to receive this rate of pay per page. That's why there is a cost for them.

Assemblyman McCleary:
If I want a copy of the actual audio portion, I can purchase that at a reasonable cost?

Neil Rombardo:
That's correct, at a reasonable cost. The problem with the reasonable standard is, if somebody sits there and records it, they're going to charge you for that person's time, as well as the value of the tape. That's what the public bodies will argue.

Rusty McAllister:
I have requested from PERS, which audiotapes meetings, copies of those tapes. They gave me copies of the meetings free. I didn't even pay for the cassettes. I don't mind getting audiotapes but at a reasonable cost.

Assemblywoman Kirkpatrick:
Currently, you don't have a certified court reporter at every public meeting?

Neil Rombardo:
Yes, that's true.

Assemblywoman Kirkpatrick:
Usually, you have a classified or unclassified employee create the minutes.

Neil Rombardo:
Correct.

Assemblywoman Kirkpatrick:
In North Las Vegas, they are charged $7: $3.50 for the tape and the cost of the employee that makes the copy. I think you misspoke when you said it was a certified court reporter; that's a big difference. In judicial cases, you would have a certified court reporter on some zoning issues. At that time, you have to get the tape from that certified court reporter. The City does not have that tape for you to get. I want you to clarify that. We went from a $7 tape to a $100 tape. I don't know if there's always a certified court reporter on staff.

Neil Rombardo:
I was specifically referring to the PEBP board. They pay a certified court reporter to transcribe their tapes. Therefore, they can charge the higher rate. With regard to the tape, some public body is going to look at the law and say, "We're going to charge a reasonable cost for these tapes." The reasonable cost is for them to recover their expenses. That's the argument they are going to make. If you use terms such as "reasonable," it creates this leeway.

Assemblyman Goicoechea:
A transcription has to be done by a court reporter. If you have a court reporter, you wouldn't have an audio. There is nothing that requires that we have both. The only way you truly have a transcription is if someone sat down, listened to the audio, and transcribed it. There is a difference. The cheapest way is to buy the tape.

Assemblyman Grady:
From the Attorney General's standpoint, are these acceptable minutes (referring to Exhibit C)? This is a joke.

Neil Rombardo:
Our Office represents them, and we've discussed this. The problem is that the Open Meeting Law does not require any public body to give the minutes for free. The PEBP board chose to provide these "action minutes" for free. The full minutes, referred to in the Open Meeting Law, is the entire transcript, which does comply with the law. But, if this was all they were relying on, then they would not be in compliance. Technically, they are in compliance; they don't have to give out those free minutes. That might be an issue for you to address as a public policy issue.

Assemblyman McCleary:
We should state that they should be charged a reasonable fee for reproducing the audio recording and then define "reasonable" as the "price to reproduce an audio recording." You shouldn't be recouping your expenses twice. Can we do that?

Neil Rombardo:
We can define the cost we want to charge several different ways. It's a policy issue. That's a perfectly acceptable definition. If you say "actual cost," then the issue becomes how much time they want to charge for their employee. That's where the extreme costs come in. I'm just trying to see an issue down the road, but I think that's a great definition.

Assemblyman Hardy:
What are the minutes that the PEBP board approves at the next meeting? Is it the "Reader's Digest" version or the transcription? What does the board member get to vote on?

Neil Rombardo:
The PEBP board approves the action list.

Assemblyman Hardy:
I heard two different things.

Neil Rombardo:
Correct. Unfortunately, the Open Meeting Law doesn't require a public body to approve the minutes; it is done as a matter of course. We have several public bodies that don't meet for long periods of time; what would be the relevance of the minutes ahead? It's not required, but they do approve of the action minutes.

It was pointed out that the Public Records Law states you can only charge actual cost. That might resolve our issue with regard to tape recording. I can still see a public body saying, "I had someone sitting there at $7.00 an hour for 8 hours."

Assemblywoman Parnell:
There is a reference in the Open Meeting Law to Chapter 239, which deals with the fee charged for public records. It says, "Such a fee must not exceed the actual cost to the governmental entity to provide the copy of the public record unless a specific statute or regulation sets a fee that the governmental entity must charge for the copy. Actual cost means the direct cost related to the reproduction of a public record. The term does not include a cost that a governmental entity incurs, regardless of whether or not a person requests a

copy of a particular public record. It should not exceed at any time the cost of the reproduction." Using that as a guideline, we can come up with something that would be most reasonable.

Rusty McAllister:
If it's the cost of reproduction and they use a private transcriber and don't record their meetings, it follows that the private company can say, "We charge $1.95 a page." That's what the cost would be.

Neil Rombardo:
That is correct. There is a specific statute for what court reporters can charge. I don't have the statute number. It might even be in NRS 239.

Chairman Parks:
It is in 239. Apparently, that $1.95 is an agreed upon rate between the PEBP Board and the court reporter doing the recording under a contract.

Madelyn Shipman, Legislative Advocate, representing the Nevada District Attorneys Association:
We've gone far afield from the original bill. The Public Records Law very clearly says actual cost. Washoe County did a study; for a letter-size page, it is 4 cents per copy, including the lease payments on the copier. A charge anywhere between 5 and 25 cents per page would probably fall within that actual cost. You cannot charge for overhead, cost of personnel, or time. Under state law, currently there is an exemption for extraordinary use of personnel or equipment. We had an Attorney General's opinion letter given to Washoe County saying that anything over a half-hour of staff time looking for a specific record on a specific request, you could start tracking—not for the past, but going forward—for time spent. That was just an opinion, a judgment call.

We've heard a lot of talk about common sense. That is really what we're talking about. I'm here to support the concept of the audio requirement. It's very important to have these audios. This bill does provide it. But it has been difficult to reach this end. We have had this bill, in one form or another, for the last two or three sessions. The irrigation districts out in the middle of nowhere are people who are citizens that come from their homes to meet someplace that is noticed. They go through their public entities under the Open Meeting Law, but to whom do you entrust the equipment to carry it around with them? An audio is not a little tape recorder for $59. A typical system that would pick up voices beyond the person speaking is going to run anywhere from $1,500 to $3,000 for a simple system.

[Madelyn Shipman, continued.] No one requested a dollar figure in Section 1, subsection 6, because the issue has more to do with practicality than with money. The District Attorneys Association feels that it will be a difficult section to enforce. I talked with Pam Wilcox, State Lands Administrator, who originally raised the issue of these irrigation districts. She has been preparing her folks for the mandate of audio. We're prepared to purchase equipment. There will be times when it's not going to be practical to actually have that equipment.

In Section 1, subsection 7, "reasonable factors beyond the public body's reasonable control," I would like to have some discussion on what those might be. For example, I attended a meeting with Washoe County up in Incline Village, where they were looking at various streets. This was a moving meeting and was noticed. We had a little handheld tape recorder, and the clerk went around trying to get comments of each of the commissioners. That was a good faith effort to record the comments during a moving meeting. Another factor could be distance and travel. If you're going to keep the equipment at a county or city location, it is logical for a person to have to go and get that equipment and might be beyond the control of the board.

I'm here in support of the bill. You have to start with something. We can always revisit the bill if there are problems from the enforcement side. I wanted to clear up some of the background and discussion that had occurred over that section.

Chairman Parks:
Does anyone else wish to speak either in favor or opposition to S.B. 421? We'll close the hearing on S.B. 421. We'll postpone the test on the Open Meeting Law booklet for another day. There is nothing further to come before the Committee; we are adjourned [at 9:53 a.m.].

RESPECTFULLY SUBMITTED:

Michael Shafer
Recording Attaché

RESPECTFULLY SUBMITTED:

Paul Partida
Transcribing Attaché

APPROVED BY:

Assemblyman David Parks, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Government Affairs

Date: May 3, 2005 **Time of Meeting: 8:11 a.m.**

Bill	Exhibit	Witness / Agency	Description
N/A	A	********	Agenda
S.B. 83	B	Senator Bob Coffin	Las Vegas Review-Journal article "Small Step in the Right Direction"
S.B. 421	C	Rusty McAllister / Professional Fire Fighters of Nevada	State of Nevada Public Employees Benefits Program Board Meeting Minutes for October 7, 2004
S.B. 421	D	Rusty McAllister / Professional Fire Fighters of Nevada	State of Nevada Public Employees Benefits Program Board Meeting Agenda for March 10, 2005