

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

**Seventy-Third Session
May 18, 2005**

The Committee on Government Affairs was called to order at 8:18 a.m., on Wednesday, May 18, 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 Chairwoman
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 Terry Care, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Ted Olivas, Director of Government and Community Affairs, City of Las Vegas, Nevada
Robin Reedy, Deputy Treasurer, Debt Management, Office of the State Treasurer, State of Nevada
Neil Rombardo, Senior Deputy Attorney General, Office of the Attorney General, Department of Justice, State of Nevada
Madelyn Shipman, Legislative Advocate, representing the Nevada District Attorneys Association
Anne Loring, Legislative Advocate, representing the Washoe County School District

Chairman Parks:

[Meeting called to order and roll called.] Today, we have a work session. We will do an increment of bills and then pick up the balance of them relative to the Open Meeting Law. We have nine bills up for consideration today. Hopefully, we will be able to act on all of them. The first bill is S.B. 82.

Senate Bill 82: Revises provisions governing Comstock Historic District Commission. (BDR 33-399)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

Senate Bill 82 was sponsored by the Senate Committee on Human Resources and Education on behalf of the Comstock Historic District Commission. It was heard in this Committee on May 5. The bill changes the notice provisions from meetings of the Comstock Historic District Commission from ten days to three days, consistent with the Open Meeting Law. It also allows the district commission's staff to issue certificates of appropriateness for certain projects, which are in substantial compliance with statutory requirements. The commission would determine what class of projects would be eligible for the staff review process.

The Comstock Historic District Commission is a State agency that was established in 1969 to provide architectural review, primarily in Virginia City, Gold Hill, Silver City, and Dayton. Testimony was provided by Ron James, the State Historic Preservation Officer. There were also a number of people from Virginia City and Lyon County presenting testimony in support. There was opposition testimony given by Larry Wahrenbrock, a Virginia City resident and

former district employee. No amendments were proposed at the hearing. The measure passed in the Senate with 16 yeas and Senators Care, Carlton, Horsford, Titus, and Wiener voting no. There has been no identified fiscal impact at the state or local level.

Chairman Parks:

This was one of those bills that I only came in on the very tail end of. I had a bill up in another Committee, and all I heard was Larry Wahrenbrock's testimony. I will ask if there are any questions or concerns among the Committee members.

Assemblyman Christensen:

Having dealt with this before—having formerly had a home in a historic district—I think what they are doing is sound, and I would like to make a motion when you are ready.

Chairman Parks:

Are there other questions? Having dealt with town advisory boards and zoning and planning issues, I guess my only fear dealing with this bill is that some things, on an expedited process of three days, may slip past certain individuals who might want to either express their concern or opposition or may want to have something clarified. I guess I'm only worried that it may be an unintended consequence, and the shortened period might end up resulting in an action being approved that otherwise might slip past somebody.

Assemblyman Grady:

In the area that is covered by this, the people are well known to be very involved in what is going on. There are two newspapers in Virginia City that cover everything quite well. There are also the Lyon County newspapers. I think the newspapers do an excellent job of covering everything that goes on in the Comstock District. I believe, Mr. Chairman, that your fears would be watched very closely by the media, and I do not think anything will get past the board. It's a hard-working group, and the newspapers do monitor it very closely.

Chairman Parks:

Thank you for that assurance.

ASSEMBLYMAN CHRISTENSEN MOVED TO DO PASS
SENATE BILL 82.

ASSEMBLYMAN GRADY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:

Our next bill is S.B. 113.

**Senate Bill 113: Revises various provisions relating to Office of State Treasurer.
(BDR 18-579)**

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

Senate Bill 113 was sponsored by the Senate Committee on Government Affairs on behalf of the State Treasurer and was heard in this Committee on April 25. The bill revises two job titles in the State Treasurer's Office by renaming the Assistant Treasurer position as the Chief of Staff and renaming the Executive Director of the Millennium Scholarship Program as the Deputy of the program. The increased salary for the Chief of Staff will be addressed in the unclassified pay bill, which, I was informed by the Assembly Fiscal Analyst yesterday, has not yet been released. The bill also changes the due date on certain deposits. This measure is concurrently referred to the Assembly Committee on Ways and Means. The only testimony on the bill was in support from the State Treasurer's Office. There are no amendments. It passed unanimously in the Senate, and there is no fiscal impact.

Chairman Parks:

As Ms. Scholley indicated, nobody has seen the unclassified pay bill. I know that there was also anticipated to be an unclassified position rearrangement earlier in the session, and while it was material, that never materialized when the bill was under study. Correct?

Susan Scholley:

That is correct, Mr. Chairman. I was advised that the reorganization of certain classified and unclassified positions would likely be part of the unclassified pay bill, but since the bill has not been issued, it is hard to say.

Chairman Parks:

This is also concurrently referred to the Assembly Committee on Ways and Means. I am certainly of the position that maybe the appropriate thing is to get it to Ways and Means. Maybe we might want to pass this bill out without recommendation, since there are the other factors that are tied to the unclassified pay bill, as well as the fact that the Treasurer's Office needs to take action.

ASSEMBLYMAN McCLEARY MOVED TO RE-REFER WITHOUT RECOMMENDATION SENATE BILL 113 TO THE ASSEMBLY COMMITTEE ON WAYS AND MEANS.

ASSEMBLYMAN GOICOECHEA SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:

The next bill we have in front of us is S.B. 115.

Senate Bill 115 (1st Reprint): Authorizes governing bodies of local governments and certain advisory bodies to such governing bodies to hold closed meetings concerning matters relating to security and terrorism under certain circumstances. (BDR 19-601)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

Senate Bill 115 was sponsored by the Senate Committee on Government Affairs on behalf of the City of Las Vegas. The bill provides an exemption to the Open Meeting Law for certain meetings of local governments and advisory bodies that are designated emergency management entities. The bill permits closing a meeting upon a two-thirds vote to discuss acts of terrorism, receive security briefings, and discuss security deficiencies. On the Senate side, this bill, I would point out, was referred to the Committee on Transportation and Homeland Security rather than our sister Committee on Government Affairs. Testimony in support of the bill was given by representatives of Las Vegas, the Truckee Meadows Water Authority, and the Nevada League of Cities and Municipalities. Strong testimony in opposition was given by the American Civil Liberties Union and the Nevada Press Association.

Subsequent to the hearing, the City of Las Vegas did work on amendments to address the concerns raised at the hearing. There is a mockup attached to your Work Session Document ([Exhibit B](#)), which we will go through shortly. The measure passed in the Senate with 13 yeas. Senators Care, Carlton, Coffin, Horsford, Matthews, Titus, and Wiener voted no, with one member excused. There was no identified fiscal impact.

Turning to the mockup, in order to address concerns regarding the scope of the closed meetings, the proposed amendment deletes "threats of terrorism and related emergencies," so that "acts of terrorism" would be the trigger. Acts of

terrorism is a defined term, if you look on page 2. It is defined in NRS [*Nevada Revised Statutes*] 239C.030.

[Susan Scholley, continued.]Also, the Nevada Press Association raised a concern about the response plans—which were used as an example of when a meeting would be closed—not being referenced, so there was a specific new subsection (d) on page 1, line 12 that would allow and specifically reference discussion of a response plan. Then, on page 2, in order to provide some measure of oversight or accountability, the City of Las Vegas is proposing that the minutes of such a closed meeting would be submitted to the Nevada Commission on Homeland Security within 30 days after the closed meeting.

Chairman Parks:

There has been some discussion of revisions. Is the mockup that we have the latest version?

Susan Scholley:

Yes, Mr. Chairman. I understand that the latest version is the mockup in your notebook ([Exhibit B](#)).

Chairman Parks:

Mr. Olivas, did you plan to make any comments on these latest changes?

Ted Olivas, Director of government and Community Affairs, City of Las Vegas, Nevada:

The mockup that you have, I believe, addresses the concerns that were identified during the initial hearing on this bill. In particular, we wanted to make sure it was very clear that we could only discuss things that relate to acts of terrorism. We wanted to make sure this bill was not generic, so you could talk about related emergencies and make the definition a little generic. I believe that the definition in there right now is appropriate. We also tied up subsection (c) of Section 1, which says we are only going to talk about security-related issues to our facilities, relating to acts of terrorism.

Finally, as Ms. Scholley mentioned, we want to make sure that the State-level commission also knows what the local governments are doing. If a local government decided to have a closed meeting, in accordance with this law, they would have to report to that group all the minutes or all the documents that were presented in meeting.

Assemblyman Grady:

You said it answered the concerns. Did it answer the concerns of the Senators that voted no, or have you not run that by them?

Ted Olivas:

I do not believe it answered their questions. I believe that there is some thought that there should be no closed meetings, regardless of what the topic is. That was some of the discussion that took place on the Senate Floor.

Assemblywoman Pierce:

It seems to me that taking out the stuff about the threats of terrorism-related emergencies just got redone on subsection (d), when you can have a closed meeting to discuss a response plan.

Ted Olivas:

The response plan is a requirement in the law that we have to submit that to the state commission, and that document in the law is confidential. The problem is that the law does not allow us to have the discussions about the confidential document in a closed meeting. We would have to discuss that in an open meeting, which defeats the purpose. This tightens that up to clarify that you can have that discussion as well, as provided in NRS 239C.250, which very clearly defines the elements that have to be included in a response plan to the commission.

Assemblyman Goicoechea:

Ted, when you are talking about an emergency, that is one thing, but if you are going to discuss procedures for responding, would it be agendaized? Would it be on the agenda that it would be posted that we were going to have a closed meeting?

Ted Olivas:

It absolutely would be on the agenda. It would be like a personnel session. You would say, "Item 10 on the agenda. We're going to close the meeting on item 10 that would relate to terrorism," and the agenda item would probably list those things that are provided in NRS 239C.030. I can both have the meeting and then come back and resume the meeting. So, yes, it would be noticed to the public.

Chairman Parks:

That was my question, too.

Assemblyman McCleary:

I am still not comfortable, I still have concerns, and I am going to have to vote no on this. I am worried that we are letting the terrorists win here. We are going backwards with our open society. We cannot shut our society down because of

some threat—perceived, real, or imagined. I am just not going to be able to support this bill.

Assemblyman Atkinson:

I am getting confused. With respect to my colleague, Assemblyman McCleary, about letting the terrorists win, I think we are allowing them to win if we allow them to know too much. I do not see a problem with going behind closed doors to discuss probable strategies. I do think that government should be open and inclusive, but I do think there are times we need to discuss things behind closed doors. So, I support the measure, and hopefully we can take a motion soon.

Assemblyman Hardy:

A different take, perhaps, but when I look at line 14 of the mockup ([Exhibit B](#)), if there were an act of terrorism that targeted a public body, you potentially could lose members to that local body. Now, you do not have two-thirds of anybody to meet. What can we do in that circumstance where we literally lose who have been a target of an act of terrorism? Has that scenario been played out in some way?

Ted Olivas:

Actually, it has. This bill is a planning measure. This is what you do to prepare yourself for potential acts of terrorism. If a terrorist activity took place in your jurisdiction, you would be in an emergency situation, and I believe there are provisions that allow those types of discussions not through an open meeting. So, I think you would go through another section of the law—an emergency section—which would preclude the need to have a public notice.

Assemblyman Hardy:

Does that section exist in some section of law that allows us to do that? That is a question for staff.

Susan Scholley:

I am not sure I can entirely answer your question. When you talk about members of a public body being somehow not there, as a practical matter, perhaps you will no longer have a quorum. I think there are provisions for emergency meetings without the three days' notice, in terms of the two-thirds vote. I think that there are provisions that address how many provisions count for the two-thirds. In such cases of dire circumstances, there would be an adaptation.

Assemblyman Hardy:

I have a little conflicting testimony. The way I read the amendment, "Public meeting receives security briefings relating to acts of terrorism," we have taken

out the planning part of that and remitted it to emergency. As I read this, it is now the "acts of terrorism," not the "planning." That is why I am asking that specific question.

Ted Olivas:

This is actually the planning process. You would receive the briefing only as it relates to acts of terrorism. So, what we are trying to do is plan for those acts of terrorism. The planning element is still included in here, but it is more narrowly defined to only "acts of terrorism."

Assemblyman Hardy:

Then why did we take out "threats of terrorism" if it is just planning for terrorism? As I read it, it is "acts of terrorism."

Ted Olivas:

We thought that it was redundant. The "threats of terrorism" and "acts of terrorism" are what you are planning to identify and what we want to be prepared to respond to. So, we felt was redundant, and "acts of terrorism" covered everything that was necessary.

Assemblyman Hardy:

I do not see that defined in the bill, as the mockup ([Exhibit B](#)) shows. I do not see the word "planning." I see the term "acts of terrorism." The way I interpret that and the way it is written, there is an "act of terrorism." We get together as a public body, and we say, "What are we going to do about this act or acts of terrorism?" How are we going to respond to it with the need to go into a closed meeting? I do not see the planning, but maybe it is in the rest of the chapter. I do not see what you are talking about in the bill.

Ted Olivas:

Section 1 of item (b) is the planning effort and the "acts of terrorism"—say, a bomb threat in the jurisdiction. You would have to discuss how you would respond to a bomb threat. That is where you would define your plans for dealing with these acts of terrorism. We thought that was covered in subsection (b).

Assemblyman Hardy:

So, the way I hear you say now, there is an "act of terrorism," and now we plan for that "act of terrorism," or are you saying there might be an "act of terrorism" and we are planning for the potential "act of terrorism"?

Ted Olivas:

The latter. We know that there are acts of terrorism, bombs, anthrax, and those kinds of things. We have to be prepared to respond to those, so that is what

subsection (b) covers. How would we respond to a bomb that went off at the Freemont Street Experience? What would we do? How would we coordinate with police and fire in the community to deal with that? That is the planning element.

Assemblyman Hardy:

That is where I would put in the word "potential acts of terrorism." From what you are saying, you are talking about future acts. This is written, as I see it, as if acts have just happened.

Ted Olivas:

It is interesting that you should bring that up. We had that discussion. Should it be "potential acts of terrorism," or should "potential" not be in there? We have gone around and around again. We thought that process was already covered by just the term "acts of terrorism."

Chairman Parks:

As I see it, these are four different circumstances under which you would respond. The (c) is the response after a terrorist act had occurred.

Ted Olivas:

Subsection (c) is talking specifically about our facilities. For instance, we had the Dula Center in Las Vegas and we evaluated their site. We said, "Terrorists, for whatever reason, could drive their car right through the front doors, so maybe we need to put up some barriers." We have to look at our facilities to determine what acts need to take place and what we have to do to improve those facilities to prepare ourselves for potential acts of terrorism. So, this is a planning element as well.

Assemblyman Claborn:

When this bill first came out, I could not support it for the simple fact that it had "emergencies" in it. Well, "emergencies" has been deleted, so I thought I could support it. An "act of terrorism" is an emergency to the public, and I would not like to see anything that happens with terrorism be suppressed to the public. You just stated that maybe a car drove through the front door, so why would you have to have a closed meeting for that? Why are you not able to put your priorities in perspective in front of the public? I could understand if we had declared war or something. A closed door meeting does not mean anything to me when an emergency involves the public. So, I cannot support the bill.

Assemblywoman Parnell:

I think this one is a tough one for all of us. To me, it is a much broader issue. I have just been writing some things down. First, I think we are almost including

local government and advisory committee people as first responders. I do not see them the same. The first responders are the ones that have to know everything. They have to know what is going on. Secondly, the Nevada Commission on Homeland Security already has the authority to hold closed door meetings. They have been given that authority. Another is that local governments can be briefed, but separately. Lastly, just a major objection to weakening the Open Meeting Law, just to have some basic opposition.

Assemblyman Goicoechea:

This bill is clearly on life support and in need of some help. The way I look at it, the acts of terrorism have already occurred. We have had the World Trade Centers and Oklahoma City. This bill clearly allows for local government and advisory bodies to address those same deficiencies they might have in their security and infrastructure. If they are looking at a truckload of ammonium nitrate being parked on the Strip as a threat, I do believe that some of the decisions and some of these planning efforts have to be made behind closed doors. Otherwise, we may just as well draw the diagram on how you get to the Strip or how you blow up the office. If we are going to do that during the open meeting, there is no security in that, and I do not feel very comfortable. I have sat on boards of county commissioners, and I do not want to tell them how to do it and draw them a diagram on how to get there. This is what this is all about. Some of this has to be behind closed doors. Otherwise, if it is public record, it is wide open, and we just might as well give them a road map.

Assemblyman Sibley:

I have a general problem with closing meetings to the public. When we made the amendment, I thought it was going to tighten up this issue. Now through testimony, they are basically saying that acts of terrorism is anything before, during, and after, and that just makes it too broad for me to be able to support.

Assemblyman McCleary:

I know we have beaten this thing to death. I feel we should not want to close down our open society in order to worry about every possible fear and threat that could be out there. That is where we are going with this bill, and I do not think they need this at the local level. I think Ms. Parnell really summed up my feelings on this. We really need to keep the society open, or we are going to go backwards.

Assemblyman Hardy:

I do not know if anybody is really as comfortable as we would like to be. Is there someone who has any language that would make us more comfortable with this? I do not know that a local would be able to prevent what could happen unless you have a closed meeting. I like the open meeting, and I see this

really coming head-to-head. So, I do not know if anybody has the language that would make us comfortable as it exists.

Chairman Parks:

This would certainly be used in those rare occasions where they would have the two-thirds affirmative vote of its membership. I concur, I think it is about as good as it is going to get.

ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO
PASS SENATE BILL 115.

ASSEMBLYMAN GOICOECHEA SECONDED THE MOTION.

THE MOTION CARRIED, WITH ASSEMBLYMAN CLABORN,
ASSEMBLYMAN McCLEARY, ASSEMBLYWOMAN PARNELL, AND
ASSEMBLYMAN SIBLEY VOTING NO.

Chairman Parks:

I must say that S.B. 115 is Open Meeting Law. We have several more of these to go. We will now hear S.B. 218.

Senate Bill 218 (1st Reprint): Revises provisions relating to licensing and taxing of certain persons by local governments. (BDR 20-789)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

Senate Bill 218 was sponsored by Senator Titus and was heard in this Committee on May 2. In its original form, it prohibits a local government from requiring a business license or payment of a license tax by certain professionals. To qualify for the exemption, the professional must hold a license, certificate, or similar authorization from a regulatory body in Title 54 of the NRS or be regulated by the Nevada Supreme Court rules. They must also have a bachelor's degree or higher in a particular field of study, as specified by the regulatory body, and be practicing his or her profession as an employee. Testimony in support was given by Jennifer Lazovich and the American Council of Engineering Companies. The Nevada Taxpayers Association also spoke in support of the bill.

Representatives from North Las Vegas and Las Vegas did not oppose the measure. They indicated it was likely that the cities would revise their business license fees for firms to avoid any potential loss of revenue from the impact of the bill. The measure passed unanimously in the Senate, with one member

excused. It may have a fiscal impact at the local government level, but none at the State level.

[Susan Scholley, continued.] Subsequent to the hearing, questions were raised about the enforceability or the applicability of the bachelor's degree requirements in the context of a business license exemption. So, there is a proposed amendment in your Work Session Document ([Exhibit B](#)), which would delete subparagraph (b). This same paragraph is repeated four times in the bill, so the four specific places in the bill it would be deleted, if you chose to do so, are listed there. As an example, (a), (b), and (c) on the mockup show what would come out. It would delete the "has obtained a bachelor's degree or higher." The issue came up that many of these regulatory bodies for the professional categories that were used as examples during the hearing do require a bachelor's degree, but they do also allow several years of actual experience to be substituted for a bachelor's degree. So, there was going to be quite a bit of confusion as to what licenses would qualify if (a), (b), and (c) remained as requirements. Also, for your edification, you will see there is a list of the Title 54 Chapters following the mockup, so you can see what professions you are talking about.

Chairman Parks:

I think that the issue that probably comes to mind is that these would be individuals who are employees, who would get W-2s from their employer. Is that a correct presumption?

Susan Scholley:

You are correct. Russell Rowe, who spoke in support of the bill, is also here, if you have questions of the spokesperson for the bill.

Assemblyman Sibley:

I would just like to make a comment on this bill. I think it is a good bill, because it will cut down on a lot of the processing that local government has to do. Some of our large law firms and real estate firms have to submit 100 applications for business licenses, and now they will be able to streamline it with one application. They are still going to receive the same amount of revenue, because they are going to pay their license based on their employees. So, generally, I think this is a great bill.

I also would like to disclose for the record that I do have a real estate license. This bill will not affect me any differently than anyone else, and I plan on voting for it.

Chairman Parks:

I do note in Chapter 645, which is that chapter that captures you and me for our real estate licenses, it is listed as a part of the backup. I think in this particular case, for us to be captured by this bill, we would have to be the employee of a developer who has paid his real estate people on a salary versus a commission basis, which would then give us those W-2s.

Assemblyman Hardy:

I should disclose that I am a physician, am employed by someone, and get a W-2, but that will not affect me in any way.

Assemblyman Atkinson:

I need to make a disclosure also. I am a part owner in a real estate firm. This will not affect me any differently.

Assemblyman Goicoechea:

I just want to make sure we are adopting the amendment that takes the requirement for a bachelor's out of it or a higher degree. As I look at Chapter 647, dealers in junk and second-hand materials quite possibly would not have a bachelor's degree.

ASSEMBLYMAN SIBLEY MOVED TO AMEND AND DO PASS
SENATE BILL 218 WITH THE LANGUAGE AS DESCRIBED,
DELETING THE BACHELOR'S DEGREE REQUIREMENT.

ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:

That takes us to S.B. 409.

Senate Bill 409: Revises definition of "state agency" for purposes of installment-purchase and lease-purchase agreements. (BDR 31-1346)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

Senate Bill 409 permits the University and Community College System of Nevada (UCCSN) to be considered a State agency if more than 25 percent of a cost of a project is from State appropriations. As a State agency, UCCSN may then utilize provisions that are available to State agencies relating to lease/purchase and installment/purchase agreements in NRS. Testimony in

support was given by UCCSN and the Nevada Faculty Alliance. Testifying in opposition were a number of labor organizations. The opposition testimony primarily focused on a desire not to expand the availability of lease/purchase agreements.

[Susan Scholley, continued.] In terms of amendments, UCCSN—I believe, in conjunction with labor representatives—has proposed an amendment to NRS 353.550, which is attached ([Exhibit B](#)), to clarify that prevailing wages apply to lease/purchase and installment/purchase agreements or projects built under those agreements. Additional amendments were submitted by Richard Daly, as requested by the Committee, but were later withdrawn. The measure passed unanimously in the Senate, and there is no fiscal impact at the State or local level.

Turning to the proposed amendment ([Exhibit B](#)), it adds a clarification that prevailing wages would be paid on projects built within the lease/purchase and installment/purchase provisions, and I believe you have seen this language before as an amendment to other bills. So, it should look familiar.

Assemblywoman Pierce:

We also have discussed doing a design/build study to get a better feel about how that works. That is another part of this, but it will not be in this bill.

Chairman Parks:

That is correct. This bill deals with NRS 353, and I believe design/build is a NRS 338 issue, as I understand. We will deal with it when we deal with S.B. 467.

ASSEMBLYMAN McCLEARY MOVED TO AMEND AND DO PASS
SENATE BILL 409.

ASSEMBLYMAN CLABORN SECONDED THE MOTION.

Assemblyman Hardy:

How would this affect somebody who is building something on the campus and not doing it in any other way other than building something? If we had the donor come in and want to build something on the campus of the University of Nevada, Reno, or the University of Nevada, Las Vegas, how would this affect them?

Susan Scholley:

This would only affect lease/purchase and installment/purchase projects, and only if more than 25 percent of the project costs was from State appropriations.

So, it would depend on those factors. Your scenario may or may not be affected by this bill.

Assemblyman Hardy:

Then, on the land on which the structure sits, would it not go into that 25 percent of the cost?

Chairman Parks:

I would tend to think it would not.

Assemblyman Hardy:

The way this is written, I would agree.

Chairman Parks:

I agree. The way the bill is written, in all likelihood, since the State already has the property, it would be the construction costs. A good example is that Lawrence Livermore Laboratory might come into campus. Robin Reedy is here from the Treasurer's Office, and she handles all those. If you would like, I am sure she can give us a quick response.

Robin Reedy, Deputy Treasurer, Debt Management, Office of the State Treasurer, State of Nevada:

I believe it is 25 percent on appropriated money to the university. The fact that we own the land would not have any effect to make a donation fall under the lease/purchase.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:

We are going to proceed forward with our last four bills on work session. They all deal with the Open Meeting Law.

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)

Senate Bill 267 (1st Reprint): Makes various changes regarding Open Meeting Law. (BDR 19-77)

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

Senate Bill 421 (1st Reprint): Requires, with certain exceptions, public bodies subject to Open Meeting Law to make audio recordings or transcripts of their meetings. (BDR 19-99)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

I would like to start by drawing your attention to the comparison of the four Open Meeting Law bills. I have laid this out so you can see where there is overlap and where there is not. The four bills are S.B. 83, sponsored by Senator Coffin; S.B. 267, sponsored by Senator Care; S.B. 415, which was put together by the Senate Government Affairs Committee; and S.B. 421, which was sponsored on behalf of the Attorney General's Office.

In the third column, you can see the sections of NRS 241 that are amended in each of the four bills, so you can easily identify the overlap. You will note S.B. 421, sponsored by the Attorney General, does not overlap with the other three bills, although—depending on the proposed amendments to it—it might later on. However, S.B. 83, S.B. 267, and S.B. 415 do overlap in the sections of NRS 241 they amend.

We will go through the bills individually later, but you will notice that Senator Coffin's bill generally addresses notice to persons of closed meetings to discuss their character, alleged misconduct, and competency. Senator Care's bill covers a broader range of topics, including notice of closed meetings, provision of supporting documents, and waiving the closure of a meeting. It also specifically addresses opening meetings that address the alleged misconduct or competency of public officers and high-profile employees. It also talks about who can attend a closed meeting, how that is determined, and addresses some duplicate notice provisions.

The Senate Government Affairs bill is focused on the administration of certain examinations, primarily for licensing, but overlaps and amends some of the provisions that are addressed in Senator Care's bill. The Committee wants to keep in mind that when we are all done for drafting purposes, to avoid conflict notices later in session, it is good to keep this in mind. For example, Senator Coffin's bill is amending NRS 241.033, and Senator Care's bill is also amending NRS 241.033. We want this all to match up at the end and be consistent. The Attorney General's S.B. 421 is pretty much focused on audio recordings, and that is NRS 241.035. That section is not amended by

Senator Care, Senator Coffin, or the Government Affairs bill. At this point, you can compartmentalize the bills, but do recognize the overlap.

[Susan Scholley, continued.] +In the proposed amendments to the Open Meeting Law bills, I have compiled a laundry list of all the suggested amendments ([Exhibit B](#)), not advocating or opposing a particular amendment listed here. It is a compilation of all the things that were thrown out during the hearings and, in some instances, after the hearings. In Senator Coffin's bill, S.B. 83, there was an issue of clarifying whether a person could bring a legal counsel or other representative to the meeting. It was not addressed in his bill, but it came up in questioning on the bill. Senator Coffin said it was clearly his intent that it be covered. A person, as well as presenting evidence, could bring their legal counsel. That is an issue to consider in that bill, and it comes up again in Senator Care's bill.

Senator Care's bill had a number of amendments proposed. There was a suggestion to clarify that if supporting materials were made available at a meeting, that the language be clarified. There was a fairly significant issue that arose. Senator Care's bill deleted the reference to closing the meeting for physical and mental health purposes, but it was pointed out that somehow, that got taken out entirely. It needed to be put back in, so there needed to be a provision for open meetings to discuss character, alleged misconduct, and incompetence. We needed to go back into the bill and restore the provisions that allow a closed meeting to discuss a person's physical or mental health.

Senate Care indicated in his testimony that it was his intent to require meetings that discussed the character, alleged misconduct, or competency of what he described as "high-profile employees." The examples he gave in his testimony were university or college presidents, school superintendents, and city or county managers. Subsequent to the hearing, we provided Senator Care with a copy of the Attorney General's opinion that discussed what is considered a public officer, which is the term currently used in the bill. Public officer, as has been defined by the Attorney General and the courts, is someone whose position is created in statute and their duties are defined in statute. That would not include university and college presidents, school superintendents, and city and county managers. Those positions are not created by statute. In order to implement the intent of Senator Care's remarks, the bill would need to be amended to specifically include those positions.

Also, in Senator Care's bill, the issue came up about a person being able to bring legal counsel or other representatives with them to a closed meeting. Ms. [Madelyn] Shipman brought up that the chairman should have the discretion to allow people into a closed meeting after it begins where there is an

unforeseen need to call additional witnesses. Also, Assemblyman Carpenter requested some assistance from the Attorney General's Office and has proposed to amend the notice of eminent domain actions, which is a section in Senator Care's bill that is amended to include any administrative action that affects a person's property. It would broaden the scope of eminent domain to include any administrative action that affects a person's property.

[Susan Scholley, continued.] Senate Bill 415 was actually pretty clean. There was one oversight, and it relates to NRS 656.090. Currently, that allows the entity to deliberate. I think it is the Certified Court Reporters Board, if memory serves, and the Attorney General's Office, after the meeting, that clarified that "deliberate" should be changed to "consider," consistent with other provisions of the Open Meeting Law.

Finally, there is S.B. 421, the audio recording bill by the Attorney General. There was discussion at the hearing about the subjectivity of deciding what agencies could not afford audio recording. So, we have provided some language that was worked out in S.B. 229 of the 72nd Legislative Session. Senate Bill 229 of the 72nd Legislative Session was an unsuccessful bill, but it did have the provisions that tried to identify smaller public bodies that would not have to do audio recordings. So, we have provided that language if the Committee finds that helpful to substitute for the budget language. After discussions with the Attorney General's Office, it may not be particularly useful any longer.

Finally, there is a proposal by Assemblywomen Parnell and Pierce to add a requirement to post minutes, including transcripts, on an agency website no later than 30 days after the meeting. This was in response to a concern that the Public Employees' Benefits Program does action minutes and also faxes those up with a certified transcript—copies of the certified transcript—and those run close to \$2.00 per page. There was a concern that copies of the certified transcripts were prohibitively expensive for the public. This would attempt to deal with that issue by putting the transcript up on the Web. Then, persons could download those portions of the transcript that they needed or read them. There would have to be an adjustment of the fact that there are certain entities that are required by statute to take certified transcripts of their meetings, and the Nevada Gaming Commission comes to mind. So, there would need to be some allowance for that particular situation.

That is an overview of the four bills, and we just want you to keep the overlap in mind. When we work out an amendment on one bill, we need to take a quick look and see if it affects one of the other bills, so when we are done with all of this, we have four compatible bills.

Assemblywoman Pierce:

You listed some categories of people who are not public officers. Could you tell me those again?

Susan Scholley:

There is an Attorney General's opinion that says to qualify as a public officer, the position must be created in statute and the duties defined by statute. In Senator Care's testimony, he wanted to include, within the provision, that the character and competency closed meetings for public officers be opened. He identified school superintendents, university and college presidents, and city and county managers among the group. University and college presidents, along with school superintendents, are not positions created by statute and therefore would not be considered a public officer. Looking at the statutes, some of them do mention city managers and county managers. Others use different terminology. But, my quick review of the Attorney General's opinion—I am treading on thin ice, because I do not want to be practicing law—since their duties are not defined in statute for county managers and city managers, it would not appear to me that they would fall under the appointed public officers. I do not think they have been considered appointed public officers.

Generally, the statutes talk about how they may appoint a county manager and fix the compensation, but that position is totally within the discretion of the county commission. So, in order to capture those folks within the requirement to open meetings, discussing their character and competency, they have to be specifically listed.

I am glad you brought that up, because I also overlooked Ms. Anne Loring's amendment ([Exhibit C](#)). We were up late last night, and we received an email from her, explaining her opposition to school superintendents being included in the requirements for open meetings for evaluations. So, there also is a copy of her email and her proposed amendment that she would like to see relating to that issue.

Chairman Parks:

So, my normal reaction would be to do the easy bills first. Let us go ahead with S.B. 267 first.

Senate Bill 267 (1st Reprint): Makes various changes regarding Open Meeting Law. (BDR 19-77)

Assemblyman Goicoechea:

Clearly, Senator Coffin's bill is fairly simple, and it looks like it would be easily incorporated in one of the other bills, or are we going to consider the three bills alone?

Chairman Parks:

I realize that Senator Coffin's bill is inclusive and overlaps Senator Care's. At this point, my preference is to handle them separately. Senator Care, did you have any opening remarks you wish to make?

Senator Terry Care, Clark County Senatorial District No. 7:

It is an important piece of legislation. I know there are some people, primarily school districts, who are encumbered with the notion of public evaluations, but the approach that I have taken—as have others—is that it is an open government. We certainly considered there is a right to privacy for those people who are not in the newspapers everyday or on television everyday. The ultimate test, I think, is that a meeting should only be closed when public disclosure is going to produce public harm. The focus should not be on whether the subject of the evaluation—a county manager or a school district superintendent—is uncomfortable or the members of the body are uncomfortable. It is whether it is a disservice to the public to close the doors in the first place. That is the philosophy there.

The only other thing I have at this point is that Ms. Shipman just showed me a copy of the Work Session Document ([Exhibit B](#)). It appears as though the suggested amendments, for the most part, go to clarification, and I have no problem with that. I will also point out that Ms. Shipman did testify before the Government Affairs Committee on the Senate side, clarifying that the documents that are going to be distributed amongst the members of the governing body would also be dealing with the public at the time they become available. Sometimes, it might not be until the actual meeting.

I was just shown another proposed amendment from Assemblyman Carpenter. The focus is on Section 6, lines 30 and 31, and I think the words affected are "person's property." That is supposed to go to open meetings, and this section is for notification purposes. I do not know that Mr. Carpenter's proposed amendment has anything to do with an Open Meeting Law bill, and I do not know if it is workable anyway. Ms. Shipman could better testify to that.

Chairman Parks:

We will go through the bill and review it for comments, relative to the various sections.

Assemblywoman Parnell:

I have a question about the issue of the school superintendent. We received a letter that expressed concern about somebody wanting to be hired if they know this is going to happen. Do we have any idea what other states do? Is this the norm? Does it go against the norm?

Senator Care:

I really do not know the answer to that. I have had one high-profile person from Clark County who has told me he thinks this is fine, because he would not have a problem with it and has nothing to hide. Also, if I am not mistaken, I think that when we had an interim chancellor, Chancellor [Jim] Rogers insisted on an open forum when he was critiqued. As to the question about other states, I do not know the answer.

Chairman Parks:

I can comment a little from the perspective of the state of Florida, which has probably had the most open set of statutes for the longest time. I know that as far back as 30 years ago, every public job was wide open. I remember applying for a city finance director job in Florida in 1979 and finding that everything about me was revealed and open to the press, which was interesting. It did have a chilling effect on persons wanting to apply. They felt they were in jeopardy in their current position, and it could not be kept confidential. Also, they were less likely to apply for another job in Florida, knowing the job would reveal publicly that they were out looking for another job. That is certainly one of the concerns that we want to weigh while deliberating on this bill.

Assemblyman Hardy:

Did we address the availability of the backup materials, so they can be accessed by the public in some type of free manner in a forum? Was that specifically addressed in here?

Susan Scholley:

If you look on S.B. 267, page 3, starting at about line 26, it clarifies that a copy of the supporting material is required to be provided upon request if the supporting material is given to the members. It must be made available to the requestor at the time the material is provided to members of the public body. If it is provided at the meeting, it will be provided to the requestor at the same time. I think the only change there was that subparagraph (b) is kind of assuming that the requestor is at the meeting. There would not be some suggestion that someone in Florida requested the material that is made available at the meeting, yet somehow, the body has to make that material available to them in Florida at the meeting. So, it would be made available at the meeting to

the requestors at the same time the members of the public body received it at the meeting. Does that help clarify, or is that what you are asking?

Assemblyman Hardy:

It gets to where I am going. In the local government, we would get a packet of information. We would get it five days or a week before the meeting. That packet had all sorts of stuff in it that ought to be, in my own mind, public in a library, at city hall, or at the governing place of business. It should be available so someone could access that freely, without having to come to the meeting and having to digest that whole packet of material immediately. They should be able to find the flaw that they are concerned about. I did not see that addressed in a way that made that available to the public. That was my concern.

Susan Scholley:

I believe that is in subsection (a): "If the supporting material is provided to the members of the public body before the meeting, it will be made available to the requestor at the same time the material is provided to members of the public body." So if they mail it out to you a week in advance, it has to be available to other folks a week in advance.

Assemblyman Hardy:

That gets to the logistics of it. When we post the meeting, we have to post it in the newspaper. We have to post it in three other places that are commonly accessible. My personal feeling is that material should not have to be requested by somebody. It should be made available in a place where someone can access that backup material without having to say, "Mother, may I have a copy of that?" When someone becomes aware of a problem, it is usually at night—too late to write the letter to officially request—and that is why I would like to back up materials in some place, in some repository that is open to the public, so they can get the backup materials.

Susan Scholley:

In subsection 5, on page 3 on line 8, it points out that, upon request, a public body shall provide at no charge at least one copy of an agenda or a proposed ordinance and then (c), "subject to the provisions of subsection 6, any supporting material..."

Assemblyman Hardy:

That will work for me.

Susan Scholley:

Generally, I believe those materials would be available at the office of the public body that mailed them out to you. So, whether or not you want to specifically

state in the law that they be made available at the office of the public body would be something that you could consider, but this would make them available at the office.

Assemblyman Hardy:

I would look at the direction of the Committee. I do not know if I would need an amendment to do that as much as making sure of our intent, and whether it is available to the public to access. If that takes a phrase to be added, I would do so. If it is the legislative intent, I would do it, but that is where I am going.

Chairman Parks:

As I read it, I think the intent does cover that. Certainly from my experience with doing agendas and posting for public meetings, it seems sufficiently inclusive, but maybe I am not seeing everything here.

Assemblyman Hardy:

Usually what happens is that you get the agenda, but it is not the complete pack of materials when you are on the mailing list. That is why it would behoove us to make sure those backup materials are somewhere that we can access. I do not know if that is in the law, but I want to make sure that is part of that record.

**Neil Rombardo, Senior Deputy Attorney General, Office of the Attorney General,
Department of Justice, State of Nevada:**

With regard to the mailing of the agenda, the law only requires that the agenda be mailed, not the backup material. The backup material has to be made available at the office of the public body, which is how we have interpreted this statute. I think that answers the question. Only the agenda has to be mailed, not the support material. As you know, support material can be large. The cost is the reason you did not adopt the material originally.

Assemblyman Hardy:

That gets to my other issue. Let's pretend that there was a city that was on a four-day work week, and the backup materials were not available Friday, Saturday, or Sunday. So, you go from Thursday night through the weekend without access to the backup materials, and your council meeting is Tuesday night. That is where I am going. If it is only available in the office, and the office is not available, then it is not available at all. That is my concern.

Neil Rombardo:

I guess that would be the case with any public body that has weekends off. You are just adding a third day to their weekend for notice requirements. They have to notice earlier in the week, because that does not count as a working

day. Arguably the notice would have to go up—if the meeting is on Tuesday—on Wednesday, so the public knows to go to the office on either Wednesday, Thursday, or the following Monday to pick up the material. That might resolve the issue; I do not know, but that is at least feasible.

Assemblyman Hardy:

I guess what I am asking is if it is only in law we have a backup of material in it. It may not even be in law, but it's just what the interpretation of the Attorney General's Office is. I would love to have that available to the public, where they can access it on the weekend or the long weekend. When you look at the notification by agenda by mail, you are already late when you send the mail out with five days. You have, in essence, Monday and Tuesday before the meeting to know what is actually happening. In this concept of openness in government, it would be nice to have this information on what the government is interested in. Maybe I am moving more towards something that is more formal than just an attempt to do something.

Neil Rombardo:

I was just hoping to add some clarification. That was all.

Assemblyman Goicoechea:

While I agree with my colleague from Boulder City, I think we have to be very careful that we do not make this so cumbersome in some of the smaller districts. If you had to comply and mail a packet out to everybody who requested an agenda, we would have to put more staff on in some of these smaller communities. They just could not meet the load. To prep and put it on a website could be cumbersome and hard to access. I think the public has the right to know, but they also have the responsibility to access it. If you get a notice three days ahead and it is available in the clerk's office or whatever entity, they have to make some effort to obtain it. It should not just fall on government to supply.

Madelyn Shipman, Legislative Advocate, representing the Nevada District Attorneys Association:

I just wanted to clarify something and help Dr. Hardy, and I have a suggestion too. Most of your larger entities are moving to put all of the supporting material that is handed out in a packet on the website, so there is access. I know all of the major entities in the north, in Washoe County—and, I assume, in Clark County—already put that supporting material on their website. Another possibility: if your concern is the three-day weekend with the four-day work week of some of those public bodies, you might want one packet made available at the main library branch. The library tends to be open on days that the public entity is not. I do not know if that would be a huge burden to the

local government. Again, I do not know if that applies outside of major areas where you have libraries. That is the problem.

Assemblyman Hardy:

That is exactly where I was going, as far as somewhere the public had access. I do not know if I need to amend or do anything other than to have intent. I do not want to stop the bill.

Chairman Parks:

I have not seen it recently, but I know at one point, Clark County had the agenda for next Tuesday's meeting available to look at in its lobby. So, the general public could simply go and look at a document there. The other thing is that just prior to the session, there was an agenda item I saw on their website, and by making a quick call I was able to get the backup documentation faxed to me for that particular item. That was at no cost, and that was very cheerfully done to accommodate me.

Shall we look at any other particular areas? Do we want to look at Section 3? Does anybody have any comments or questions relative to Section 3 of S.B. 267? I will go ahead and move on to Section 4, which deals with NRS 241.031. It deals with the closure for physical and mental health.

Assemblyman Grady:

I had, on both 3 and 4, a note that said to amend back in "physical and mental health."

Chairman Parks:

Yes. There was the deletion of "physical or mental health," but it appeared it went into greater detail afterwards. Ms. Scholley, did you wish to comment?

Susan Scholley:

I did mention that earlier. This was an issue that LCB [Legislative Counsel Bureau] brought to Senator Care's attention. I believe they have agreed that they need to go back and add in a parallel section provision. So, if a closed meeting is going to be held to discuss a person's physical or mental health, in order to comply with various privacy laws, there would be an ability to close the meeting. That would apply only if it were to discuss a person's physical or mental health. This is entwined throughout the bill, so they will have to go back in and reinsert separate parallel provisions for closing meetings for that purpose.

Chairman Parks:

We will make a note of that. Let us look at page 5, Section 4, subsection 1(b), dealing with the high-profile employees.

Anne Loring, Legislative Advocate, representing the Washoe County School District:

Senator Care actually described our conversation we had. I think you have a copy of the email with our concerns ([Exhibit C](#)). The issue for us, most importantly, is the dynamic and board/superintendent relationships. My own experience as a board member for eight years is that there are occasionally, even with the best CEOs [chief executive officers], issues that a board member or board members may have about performance on the job. I think most board members, as with most legislators, are caring people who want to be cautious both of the relationship with their CEO and also the organization and its ability to function most effectively. What it may do, if these kinds of evaluations are open to the public, is simply stifle issues that board members would otherwise bring up in a closed session. We feel it may just, over time, generate larger issues when the smaller ones do not get addressed.

I know Senator Care mentioned board members and CEOs being uncomfortable. I think that any of us who hold elected office—and certainly, our CEOs know that comfort and that kind of job description do not go together—I think it is more of an organizational issue of how governing boards and superintendents can most effectively function. Certainly, we respect Senator Care's issue with having open dialogue and our processes being open to the public. It is a policy issue, and we recognize the challenge you have in resolving this issue.

Chairman Parks:

Senator Care, did you wish to comment?

Senator Care:

Anne is right. It is a policy issue, and an example would be the superintendent of schools in Clark County. I think the taxpayers have the right to know what is happening with their money in the sixth-largest school district in the country. You are going to be talking about evaluating somebody who administers and is ultimately responsible for about 260 schools, hundreds of thousands of students, and many millions of dollars. To me, it is obvious that your evaluation and people will need to speak frankly. Whether they like it or not, it comes with the job. The public has the right to see where their money is going. I read about test scores, and I do not know what to believe. Maybe I want to attend a meeting where the evaluation takes place and witness the dialogue.

I actually have a feeling that the elected bodies are going to end up completely okay with this. It is not going to cause any crisis. I think people will get used to it, and the public is going to like it.

Assemblywoman Kirkpatrick:

I do support that, because I think you are absolutely correct. Unfortunately, a lot of times, we read what one disgruntled board member may tell the press, and it is turned upside down. As a taxpaying resident, I want the opportunity to go there and see for myself. If I call and I want an answer to a question, then I can show up and see how the process works. It makes the public more comfortable.

As far as the superintendents, we all take jobs, and it needs to be part of the requirement in the beginning. You have the choice not to take that job for that reason. I think it is good policy and it will put a lot more people at ease with different situations, so I support this.

Assemblywoman Pierce:

I have to say that I am not quite comfortable with this. I think people who are appointed are high profile, but I think there is a difference between people who decide to run for elected office and those who do not. I think the responsibility is with the person who is elected. I am just not sure that this helps the process. So, I am not sure on this.

Chairman Parks:

In looking at this and the way it is written, the hiring of a city manager, county manager, or school superintendent would still be a closed process. However, the evaluation of that individual's performance would be the open hearing.

Senator Care:

Yes. Originally, in the bill's original draft, it would have included the interviews for hiring as part of the open process. I was agreeable following testimony from Dr. Richardson, among others, to exclude that from the bill. You are correct. It would only be the evaluations.

Chairman Parks:

Further comments? Ms. Loring, as far as the process goes now, are the evaluations done strictly in a closed setting for the Washoe School District? What then becomes known to the public?

Anne Loring:

I believe that current language is actually permissive. The practice in our school district has been that we have a closed personnel session with discussion between the board and the superintendent on the performance of the superintendent. If it is a period when the contract is up for renewal and we have a multi-year contract with our superintendent, the contract approval has to be done in public. Typically, the board president will release the statement, which

is reviewed in public and available for public response. The public can respond to the conclusions of the board on the performance of the superintendent. However, the actual discussion, where the seven board members talk about their view of their performance or issues, is done in a closed personnel session.

Chairman Parks:

I think we have two issues here, one of which is a person who is an appointed public officer. That needs to be better defined. If this were to include superintendents and city and county managers, I am trying to see how that process would take place. Would it prohibit individuals who are doing the evaluation from freely expressing their concerns and issues?

Anne Loring:

I will try to think up some kind of hypothetical example that is not too far from reality. I think the issue might be concerns that the superintendent was not spending enough time with some group, so you wanted to have discussion about that. Also, there might be issues and concerns about that dialogue in public. It may be more than one board member's opinion. It might be the majority's opinion or all of them. You can see the headlines the next morning: "Board chastises superintendent." "Board is split over whether the performances should be carried out." You need to question whether doing that in open meetings would shut down those discussions. You would hope ones of a critical nature, such as operating the organization, are going to be brought forward no matter what. I think it will temper the discussion in the anticipation it is going to be public and change the nature of the dynamics.

Assemblywoman Kirkpatrick:

A lot of times, when you have an evaluation and some type of pay raise is discussed or a contract is extended, is that part of the closed meeting, or does that have to come back out to the public?

Anne Loring:

The advice we have had from our attorneys is that the approval of the contract must be done in public. That cannot be done in private.

Assemblywoman Kirkpatrick:

But once they are already hired and they have their evaluation—like a city manager who is now having his contract extended for a few years—does that have to come back out in the open?

Anne Loring:

The vote has to be taken in public.

Chairman Parks:

Further questions? Do we want to address the issue of whether an appointed public officer does not include a superintendent of schools or a city manager?

Susan Scholley:

It is clear in the decisions, for instance, that college presidents are not appointed public officers. There is a point on that one, and Eileen is nodding her head yes. As for school superintendents, I did look at the local school administrative statutes, and I find no reference to a requirement that school boards appoint a school superintendent or that they in any way define their duties. It would appear unlikely—although again, there is no case on point. With respect to city and county managers, the statutes are all over the map.

Perhaps it would be helpful to ask the Attorney General's Office if they want to jump in on this. They would be the ones who would actually have to issue such an opinion. If it is the intent of the sponsor of the bill in the Committee to ensure that those folks' evaluations are done in public, then we probably should just list them in the bill or include them specifically in the bill. Possibly the Attorney General's Office wants to answer that question more definitively.

Neil Rombardo:

I cannot answer that more definitively until I receive some type of fact pattern. I would suggest that we follow Ms. Scholley's advice and list the types of persons. You would want to include school superintendents, university presidents, college presidents, city and county managers, and similarly situated people, or something of that nature in this statute. The drafters would have to do that, and at least that provides our office with clear guidance on how to enforce this statute, clear guidance on how to implement the statute, and make sure that it is done properly by the different public bodies.

Chairman Parks:

I would like to handle this issue separately from the overall bills.

Assemblyman Sibley:

I just had a comment about the bill. As a business owner, you have the right to know as a shareholder and a business owner how the business is operating, how the employees are acting, and so forth. I view the school district and these people as employees of the taxpayers. I think we have the right to know, and these things should be held in public so we can see. I want to pick up the paper and I want to read that the board is split, and this is why and this is what is going on. I just feel that we have the right to know and voice our opinion.

Senator Care:

When requesting the bill initially, I think I explained my intent to LCB, but everybody was behind the times when this session started, so this is how the bill came back. I was amazed to learn this language currently in Section 4 did not encompass the positions that I had in mind. Mr. Rombardo actually just enumerated on them. It was university presidents, college presidents, county and city managers, and school district superintendents, and maybe there is some language that would apply to other things. I think the Committee gets the intent of what this bill is. That is always the problem with a list. Somebody gets left out, or maybe somebody gets included who should have not have been. That is just something this Committee is going to have to work with, but obviously, to fulfill the bill's intent, a list would be necessary, I think.

Assemblyman Goicoechea:

It seems to me that the people we are talking about would, in fact, work at the discretion and pleasure of that board. I think that is where you make this all-encompassing. If you truly are appointed and serve at the pleasure of that board, then you should be evaluated in open meeting by that board.

Assemblyman Hardy:

I guess we are saying the same thing. We might come down on different sides, depending on how you look at it. I look at the county manager and the city manager as working for the city council and the county commission. I look at it as a personnel session where you say, "Shape up, do this, do that, or whatever," and come back, or, "You didn't do this; you didn't do that," come back, and then, in essence, come back and vote in the open. I have a problem with people being in a situation where they could be hired and their current employer takes retribution for them even looking. I do not know where we draw that line. I think we can draw a potential line with presidents and superintendents and managers. In reality, every tax-supported job then becomes open in a personnel session. I do not know that you can artificially draw that line somewhere. I'm conflicted with this.

Chairman Parks:

I share your concern, and I don't know whether you would try to reword it as the chief executive officer of any local agency, any local government. We are talking about a flood control district that has a CEO, versus a GID [general improvement district] staff. I would like to get a sense as to how much appetite the Committee has for going into greater detail than the detail that is currently suggested in a person who is an appointed public officer. This, as we look at it, does not include a university president and would not include a superintendent of an individual school district. Is there a desire on the part of Committee members to go into greater detail?

Assemblyman Goicoechea:

I really support the bill and where it is headed. I do think the group has to be expanded a little bit. In all fairness to the school superintendents, they are one of the groups that some of these local governments have the biggest problem defending in front of some of the constituents. I agree with my colleague from southern Nevada. If you are on that board, you do not want to have to take the heat for someone just because his evaluation is not done in a non-open forum. I think in all fairness, we need to expand it just a little bit. I would like to expand it.

Assemblyman Hardy:

I am conflicted. I have a problem with taking a personnel session, at whatever level, and making it public in the hearing. I think there will literally be a chilling effect on the openness of the personnel observations that happen in a personnel session. If we have a chilling effect on the frankness in a personnel session, then we probably are not going to get at the efficiencies that we want in local government. It would then decrease our fiduciary responsibility to the taxpayers who want to get at something. I do not know if I want a personnel session in an open meeting as much as I want the results of the personnel session to be open.

Chairman Parks:

I think you have summed it up very well. I think you have a good grasp of the issue.

Assemblyman Grady:

I do agree. Maybe it is because we were both involved in local government, but I also feel that you are going to get away from the personnel session when it is open to the public. I definitely feel that stronger results or correspondence must come out of those sessions to better define what was handled in the session before the vote is taken.

Assemblyman Hardy:

I agree with Assemblyman Grady, and I think there is an opportunity to get at what Assemblyman Sibley is talking about also. If you go into the personnel session, if you have a frank discussion, there are parts of that personnel session that will get into the physical and mental health issues. You are not hiring an automaton. You're hiring a person. That person has problems in his or her life, and you have to figure out how that person is going to function in that role as the chief executive—call it whatever you want—in that particular body. That person works for the people who have been elected, and ultimately, every person under those elected works for the taxpayer. So, if we had this personnel

session, came out of the personnel session, and not just voted—yes, this person has done a good job—but rather gave them a pat on the back and said, “These were the concerns addressed,” if appropriate, we can put out a copy of the letter and those who voted, and we say, “These were the concerns that were addressed that are appropriate to put out, and this is what we are voting on.” There might be a report that comes out of a personnel session that is appropriate and would give the openness that we need.

Senator Care:

Listening to how Dr. Hardy framed the issue, he is right on here. It is a policy issue. What we are really saying is that some personnel sessions would be open. The question is, whose personnel sessions would be open?

If you believe like I do that the greater the publicity, the more intense the spotlight, you voluntarily shield what expectation of privacy you might have that other city or county employees still enjoy. We do not want to impact that here. Let’s say you have a mechanism by which you can release the minutes of the personnel session. Maybe somebody might say, “Well, here you were talking about mental and physical health.” Then, what are you going to get? Is someone going to redact the minutes, and the public never knows what was discussed there? That gets back to the “trust us,” and there is no intent here to make all of these personal associates open. As a matter of fact, just a few of them, comparatively. I do not know how it would work if you had it closed and then released some sort of a summary. I think that might skirt the issue altogether. Those are my comments.

Chairman Parks:

On Section 6, we have an eminent domain issue that was brought up by Assemblyman Carpenter, where he had asked to amend a notice of eminent domain action to include administrative actions that affect a person’s property. Does the Committee have any questions related to that?

Madelyn Shipman:

I think in reading that language, it opens a Pandora’s box. It might be difficult to enforce, because everyone has their own idea of what affects their property. Let me give you a real good example as to why I think this language goes well beyond the original. The original language in the statute, as you can see in your mockup version ([Exhibit B](#)), indicates that you have to give a 21-working-day notice. It is at least a 30-day notice to a person when you are either going to be taking administrative action against the person under the existing language, or if you’re going to be potentially adopting a resolution to emphasize eminent domain against the person’s property.

[Madelyn Shipman, continued.] My concern does not have to do with the eminent domain piece, because I clearly understand why a 30-day notice, in somebody's mind, may not be enough time if that issue is coming before them. For instance, your county board of equalization meets, and those are considered. There was actually an issue raised and addressed by the Nevada Supreme Court this session. As you know, there has been a lot of hearings brought before the Washoe County Board of Equalization. You have time limits in statute that would never be able to be met. You would never be able to have your hearings. You would have to change your dates for your county board of equalization hearings if it was interpreted to mean that an assessment tax, when you are challenging the value of your assessment on your property or the value of the assessor against your property, becomes an administrative action. That was claimed in a lawsuit against Washoe County. The district court judge said that this section, administrative action against a person, did not apply to a county board of equalization hearing.

With this change in language, I think that this would renew that argument. If it does, you have to change all of the timelines, because right now, for a county board of equalization, you have to complete all of your hearings by the end of February. You do not even get your appeals submitted to you until January 15. You can hear them between January 15 and March 1. That is it, so 30 days would give you less than two weeks to be able to hold hearings, assuming you are able to agendize all of them right at the beginning.

It creates some problems in other areas. I can also see a real difficulty in determining what constitutes an action affecting a person's property. For instance, if a local government were to issue a home-based business license to somebody, normally the license would not require any kind of notice to people. However, under the current land use statutes, because it is a business license, someone could claim that it affects their property. So, where is the notice? It would raise a lot of questions that I think have been pretty well resolved.

By the way, the Supreme Court agreed when the district court said it was not an administrative action against a person. So, I am just concerned about how this broad nature would be enforced by the Attorney General. It also opens up an avenue of citizens all thinking something affects their property. You have a lot of permits that are issued by your planning staffs that are considered administrative permits—variances, certain delegated areas of performance for your planners—and someone could say that it affects their property. Now they need 21 working days' notice. I just raise it as a concern.

Chairman Parks:

Since we are looking at moving forward, I would rather not add anything more to this. Are there any more questions or comments that anyone has related to S.B. 267?

Assemblywoman Pierce:

On Section 1, subsection 1, was I correct? I thought I heard a discussion that it's already covered in statute.

Eileen O'Grady, Committee Counsel:

That is currently not covered in statute. I think that was supposed to address the absolute privilege, the legislative privilege, and that is not in the *Constitution* or in statute. It is just a common law privilege, and I think this is just to codify that.

Assemblywoman Parnell:

I would like to go back to Section 1 as well. I had a little concern, and maybe I am reading this incorrectly, but to me it says—let us consider a Carson City Board of Supervisors meeting—that this gives a person the right to stand up in that meeting and say whatever they want to say. They will not be held accountable for misspeaking, speaking against someone, completely nonfactual, and they are protected and have the absolute right to do that. Am I reading that correctly?

Senator Care:

Subsection 1 goes to the public body itself—the members of the public body—only when they are meeting as a public body, making a distinction between what they might say outside the county courthouse or on a radio talk show. In the course of the public dialogue of a public issue, you are correct. In theory, he or she could say anything they wanted to, and the voters can do something about that if they so desire. It is the same thing with the speech and debate clause that Congress enjoys. I think it is already a common law doctrine that is valid anyway.

As to subsection 2, that goes to the witness. We already have this precise language in statute for any witness who appears before a legislative committee. What this does is say that we are going to grant the same immunity to a witness before a county commission or a city commission, on the theory that we do not want them to be chilled, so they can feel free to say what they believe to be true. They cannot knowingly make a factual misrepresentation. In fact, that is what we all have right here.

Assemblyman Goicoechea:

I have to make it clear in my own mind. In the bill, as amended, are superintendents included or not?

Chairman Parks:

That is what we will have to decide. Do we want to amend Section 4, subsection 1(b) to amend the current proposed wording in the first reprint and more clearly identify a person who is an appointed public officer? We can handle it separately if you would like. We would like to deal with that issue first, and then deal with the whole bill after.

ASSEMBLYMAN GOICOECHEA MOVED TO AMEND SECTION 4 OF SENATE BILL 267 TO INCORPORATE AN APPOINTED PUBLIC OFFICER, IF THAT PUBLIC OFFICER SERVES AT THE PLEASURE OF A BOARD.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED, WITH ASSEMBLYMAN GRADY AND ASSEMBLYWOMAN PIERCE VOTING NO. (Assemblyman Hardy was not present for the vote.)

Chairman Parks:

We are ready to act on the bill itself with one provision, the parallel provisions with regard to physical and mental health. Is that correct?

Susan Scholley:

Actually, I do not know that "parallel" is the right word. My legal advisor told me I should not have said "parallel." Somehow, they will bring physical and mental health back into the closed meeting through the mysterious drafting process, and we will make it all right again, but forget I said "parallel."

Chairman Parks:

Is that acceptable, Senator?

Senator Care:

Yes, it is.

Chairman Parks:

I am being asked about Section 6, and it is my intent and my discretion that we are going to hold that off. Do we have a motion for S.B. 267?

ASSEMBLYMAN McCLEARY MADE A MOTION TO AMEND AND DO PASS SENATE BILL 267.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

Chairman Parks:

On your list of amendments worksheet, it includes items 1 through 5, excluding item 6.

THE MOTION CARRIED, WITH ASSEMBLYMAN GRADY AND ASSEMBLYWOMAN PIERCE VOTING NO. (Assemblyman Hardy was not present for the vote.)

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

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

Senate Bill 415 was sponsored on behalf of the Attorney General and was heard in the Committee on May 3. This relates to closing meetings to prepare, revise, administer, or grade examinations. There was no testimony in opposition to this bill. There was one minor amendment that Mr. Rombardo asked for, which was on page 4, line 41 of the bill, in relation to NRS 656.090. The word "deliberate" should be changed to "consider." It did pass with 20 yeas in the Senate, and there is no fiscal impact.

Chairman Parks:

Comments or questions from the Committee?

ASSEMBLYWOMAN PARNELL MOVED TO AMEND AND DO PASS SENATE BILL 415.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Hardy was not present for the vote.)

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)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

Senate Bill 83 was sponsored by Senator Coffin and addresses a person whose character, competence, or physical and mental health is the subject of a closed meeting. That person may attend the meeting and present testimony and written evidence. There is also a proposed amendment to add ([Exhibit B](#)). They could also bring legal counsel or other representatives. The bill also requires that the notice to the person include a list of the general topics that might be considered. It also advises a person that he or she has the right to attend and present testimony and evidence and, if amended, can have a legal counsel or other representative present. All the testimony was in support of the bill. Senator Coffin did acknowledge his intent was that you would be able to bring legal counsel or other representatives. The measure passed unanimously in the Senate. There is no fiscal impact at the local government level, but there seems to be one possibly at the State level.

Eileen reminds me that legal representative or other representatives is consistent with what was discussed in Senator Care's bill. We want to add that they could also bring witnesses to testify on their behalf. In discussing this with Committee Counsel, it seemed consistent with Senator Care's bill and some of the situations Ms. Shipman described. If they were going to go into a closed meeting and present evidence to defend themselves, the evidence may include the testimony of witnesses. However, alternatively, it would not include taking their mother with them to keep them company. It would need to be someone germane to the hearing.

ASSEMBLYWOMAN PARNELL MOVED TO AMEND AND DO PASS
SENATE BILL 83.

ASSEMBLYMAN GOICOECHEA SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Hardy was not present for the vote.)

Chairman Parks:

I see that it is 11:00, so rather than try to squeeze S.B. 421 into this meeting, we will take it up first thing in the morning. We will convene at 8:00 a.m. tomorrow morning. Unless there is something else, we are adjourned [at 11:02 a.m.].

RESPECTFULLY SUBMITTED:

Michael Shafer
Committee Attaché

APPROVED BY:

Assemblyman David Parks, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: May 18, 2005

Time of Meeting: 8:18 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
SB 82, SB 83, SB 113, SB 115, SB 218, SB 267, SB 409, SB 415, SB 421	B	Susan Scholley / Legislative Counsel Bureau	Work Session Document
SB 267	C	Anne Loring / Washoe County School District	Copy of email and proposed amendment