

SENATE BILL NO. 267—SENATOR CARE

MARCH 22, 2005

Referred to Committee on Government Affairs

SUMMARY—Makes various changes regarding Open Meeting Law. (BDR 19-77)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to meetings of public bodies; making various changes regarding the Open Meeting Law; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 241 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. Any statement which is made by a member of a public body during the course of a public meeting is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.*

*2. A witness who is testifying before a public body is absolutely privileged to publish defamatory matter as part of a public meeting, except that it is unlawful to misrepresent any fact knowingly when testifying before a public body.*

**Sec. 2.** NRS 241.015 is hereby amended to read as follows:  
241.015 As used in this chapter, unless the context otherwise requires:

1. “Action” means:

(a) A decision made by a majority of the members present during a meeting of a public body;

(b) A commitment or promise made by a majority of the members present during a meeting of a public body;



(c) If a public body may have a member who is not an elected official, an affirmative vote taken by a majority of the members present during a meeting of the public body; or

(d) If all the members of a public body must be elected officials, an affirmative vote taken by a majority of all the members of the public body.

2. "Meeting":

(a) Except as otherwise provided in paragraph (b), means:

(1) The gathering of members of a public body at which a ~~quorum~~ majority is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) Any series of gatherings of members of a public body at which:

(I) Less than a ~~quorum~~ majority is present at any individual gathering;

(II) The members of the public body attending one or more of the gatherings collectively constitute a ~~quorum;~~ majority; and

(III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

(b) Does not include a gathering or series of gatherings of members of a public body, as described in paragraph (a), at which a ~~quorum~~ majority is actually or collectively present ~~[-~~

~~-(1) Which] and which~~ occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

~~[(2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.]~~

3. Except as otherwise provided in this subsection, "public body" means any administrative, advisory, executive or legislative body of the State or a local government which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof and includes an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405. "Public body" does not include the Legislature of the State of Nevada.



~~[4. "Quorum" means a simple majority of the constituent membership of a public body or another proportion established by law.]~~

**Sec. 3.** NRS 241.020 is hereby amended to read as follows:

241.020 1. Except as otherwise provided by specific statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these public bodies. Public officers and employees responsible for these meetings shall make reasonable efforts to assist and accommodate physically handicapped persons desiring to attend.

2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:

(a) The time, place and location of the meeting.

(b) A list of the locations where the notice has been posted.

(c) An agenda consisting of:

(1) A clear and complete statement of the topics scheduled to be considered during the meeting.

(2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items.

(3) A period devoted to comments by the general public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

*(4) If any portion of the meeting will be closed to consider the physical or mental health of a person, the name of the person whose physical or mental health will be considered.*

*(5) If, during any portion of the meeting, the public body will consider whether to take administrative action against a person, the name of the person against whom administrative action may be taken.*

3. Minimum public notice is:

(a) Posting a copy of the notice at the principal office of the public body or, if there is no principal office, at the building in which the meeting is to be held, and at not less than three other separate, prominent places within the jurisdiction of the public body not later than 9 a.m. of the third working day before the meeting; and

(b) Providing a copy of the notice to any person who has requested notice of the meetings of the public body. A request for notice lapses 6 months after it is made. The public body shall inform the requester of this fact by enclosure with, notation upon or text included within the first notice sent. The notice must be:



(1) Delivered to the postal service used by the public body not later than 9 a.m. of the third working day before the meeting for transmittal to the requester by regular mail; or

(2) If feasible for the public body and the requester has agreed to receive the public notice by electronic mail, transmitted to the requester by electronic mail sent not later than 9 a.m. of the third working day before the meeting.

4. If a public body maintains a website on the Internet or its successor, the public body shall post notice of each of its meetings on its website unless the public body is unable to do so because of technical problems relating to the operation or maintenance of its website. Notice posted pursuant to this subsection is supplemental to and is not a substitute for the minimum public notice required pursuant to subsection 3. The inability of a public body to post notice of a meeting pursuant to this subsection as a result of technical problems with its website shall not be deemed to be a violation of the provisions of this chapter.

5. Upon any request, a public body shall provide, at no charge, at least one copy of:

(a) An agenda for a public meeting;

(b) A proposed ordinance or regulation which will be discussed at the public meeting; and

(c) Any other supporting material provided to the members of the public body for an item on the agenda, except materials:

(1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement **[H]** *which relates to proprietary information;*

(2) Pertaining to the closed portion of such a meeting of the public body; or

(3) Declared confidential by law **[H]** , *unless otherwise agreed to by each person whose interest is being protected under the order of confidentiality.*

➤ *A copy of supporting material required to be provided upon request pursuant to paragraph (c) must, if the requester so specifies, be provided at the same time such material is provided to the members of the public body.* If the requester has agreed to receive the information and material set forth in this subsection by electronic mail, the public body shall, if feasible, provide the information and material by electronic mail. *As used in this section, "proprietary information" has the meaning ascribed to it in NRS 332.025.*

6. A public body may provide the public notice, information and material required by this section by electronic mail. If a public body makes such notice, information and material available by electronic mail, the public body shall inquire of a person who



1 requests the notice, information or material if the person will accept  
2 receipt by electronic mail. The inability of a public body, as a result  
3 of technical problems with its electronic mail system, to provide a  
4 public notice, information or material required by this section to a  
5 person who has agreed to receive such notice, information or  
6 material by electronic mail shall not be deemed to be a violation of  
7 the provisions of this chapter.

8 7. As used in this section, "emergency" means an unforeseen  
9 circumstance which requires immediate action and includes, but is  
10 not limited to:

11 (a) Disasters caused by fire, flood, earthquake or other natural  
12 causes; or

13 (b) Any impairment of the health and safety of the public.

14 **Sec. 4.** NRS 241.030 is hereby amended to read as follows:

15 241.030 1. Except as otherwise provided in *this section and*  
16 NRS 241.031 and 241.033, ~~[nothing contained in this chapter~~  
17 ~~prevents]~~ a public body ~~[from holding]~~ *may hold* a closed meeting  
18 to ~~[consider the character, alleged misconduct, professional~~  
19 ~~competence, or]~~ :

20 (a) *Consider the* physical or mental health of a person.

21 (b) *Receive information from the attorney employed or*  
22 *retained by the public body regarding potential or existing*  
23 *litigation involving a matter over which the public body has*  
24 *supervision, control, jurisdiction or advisory power, or to*  
25 *deliberate toward a decision on the matter, or both.*

26 2. *A person whose physical or mental health will be*  
27 *considered by a public body during a meeting may waive the*  
28 *closure of the meeting and request that the meeting or relevant*  
29 *portion thereof be open to the public. A request described in this*  
30 *subsection:*

31 (a) *May be made at any time before or during the meeting; and*

32 (b) *Must be honored by the public body unless the*  
33 *consideration of the requester's physical or mental health involves*  
34 *the appearance before the public body of another person who does*  
35 *not desire that the meeting or relevant portion thereof be open to*  
36 *the public.*

37 3. A public body may close a meeting upon a motion which  
38 specifies ~~[the]~~ :

39 (a) *The* nature of the business to be considered ~~[~~  
40 ~~3.]; and~~

41 (b) *The statutory authority pursuant to which the public body*  
42 *is authorized to close the meeting.*

43 4. This chapter does not:

44 (a) Apply to judicial proceedings.



(b) Prevent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical.

(c) Prevent the exclusion of witnesses from a public or private meeting during the examination of another witness.

(d) Require that any meeting be closed to the public.

(e) Permit a closed meeting for the discussion of the appointment of any person to public office or as a member of a public body.

~~[4. The exception]~~

**5. The exceptions** provided by this section, and electronic communication, must not be used to circumvent the spirit or letter of this chapter ~~[in order to discuss or]~~ *to, outside of an open and public meeting*, act upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.

**Sec. 5.** NRS 241.031 is hereby amended to read as follows:

241.031 ~~[A]~~

**1. Except as otherwise provided in subsection 2, a** public body shall not hold a closed meeting to consider ~~[the character, alleged misconduct, professional competence, or]~~ :

(a) *The* physical or mental health of ~~[an]~~ :

(1) *An* elected member of a public body.

(2) *A person who is an appointed public officer or public employee and who serves on the personal staff of or in an advisory or policymaking position for an elected public officer of the State or a local government.*

(b) *The hiring or appointment of a person by the public body.*

**2. The prohibitions set forth in paragraph (a) of subsection 1 do not apply if the consideration of the physical or mental health of the person does not pertain to his role as an elected member of a public body or an appointed public officer or employee.**

**Sec. 6.** NRS 241.033 is hereby amended to read as follows:

241.033 1. A public body shall not hold a meeting to consider the ~~[character, alleged misconduct, professional competence, or]~~ physical or mental health of any person unless it has ~~[given]~~ :

(a) *Given* written notice to that person of the time and place of the meeting ~~[. Except as otherwise provided in subsection 2, the]~~ ;  
*and*

(b) *Received proof of service of the notice.*

**2. The** written notice *required pursuant to subsection 1:*

(a) *Except as otherwise provided in subsection 3,* must be:

~~[(a)]~~ (1) Delivered personally to that person at least 5 working days before the meeting; or

~~[(b)]~~ (2) Sent by certified mail to the last known address of that person at least 21 working days before the meeting.



~~{→ A public body must receive proof of service of the notice required by this subsection before such a meeting may be held.~~

~~—2.} (b) May include an informational statement setting forth that the public body may, without further notice, take administrative action against the person if the public body determines that such administrative action is warranted after considering the person's physical or mental health.~~

3. The Nevada Athletic Commission is exempt from the requirements of ~~[paragraphs (a) and (b)]~~ *subparagraphs (1) and (2) of paragraph (a)* of subsection ~~[1,] 2~~, but must give written notice of the time and place of the meeting and must receive proof of service of the notice before the meeting may be held.

~~[3-] 4. Each person to whom notice is required to be given pursuant to paragraph (a) of subsection 1 must be allowed to attend the closed meeting or portion thereof during which his physical or mental health is considered. With regard to the attendance of persons other than the members of the public body and the person whose physical or mental health is considered, the chairman of the public body may:~~

~~(a) Determine which additional persons, if any, are allowed to attend the closed meeting or portion thereof; or~~

~~(b) Allow the members of the public body to determine, by majority vote, which additional persons, if any, are allowed to attend the closed meeting or portion thereof.~~

5. A public body shall provide a copy of any record of a closed meeting prepared pursuant to NRS 241.035 ~~[1-]~~ upon the request of any person whose ~~[character, alleged misconduct, professional competence, or]~~ physical or mental health was considered at the meeting.

6. *For the purposes of this section, casual or tangential references to a person or the name of a person during a closed meeting do not constitute consideration of the person's physical or mental health.*

**Sec. 7.** NRS 241.034 is hereby amended to read as follows:

241.034 1. *Except as otherwise provided in subsection 3:*

(a) A public body shall not consider at a meeting whether to:

~~[(a)] (1)~~ Take administrative action against a person; or

~~[(b)] (2)~~ Acquire real property owned by a person by the exercise of the power of eminent domain,  
→ unless the public body has given written notice to that person of the time and place of the meeting.

~~[2-] (b)~~ The written notice required pursuant to ~~[subsection 1-] paragraph (a)~~ must be:

~~[(a)] (1)~~ Delivered personally to that person at least 5 working days before the meeting; or





~~[(b)]~~ (2) Sent by certified mail to the last known address of that person at least 21 working days before the meeting.

→ A public body must receive proof of service of the written notice provided to a person pursuant to this section before the public body may consider a matter set forth in ~~[subsection 1]~~ *paragraph (a)* relating to that person at a meeting.

~~[3-]~~ 2. The written notice provided in this section is in addition to the notice of the meeting provided pursuant to NRS 241.020.

3. *The written notice otherwise required pursuant to this section is not required if:*

(a) *The public body provided written notice to the person pursuant to NRS 241.033 before holding a meeting to consider his physical or mental health; and*

(b) *The written notice provided pursuant to NRS 241.033 included the informational statement described in paragraph (b) of subsection 2 of that section.*

4. For the purposes of this section, real property shall be deemed to be owned only by the natural person or entity listed in the records of the county in which the real property is located to whom or which tax bills concerning the real property are sent.

**Sec. 8.** NRS 241.035 is hereby amended to read as follows:

241.035 1. Each public body shall keep written minutes of each of its meetings, including:

(a) The date, time and place of the meeting.

(b) Those members of the *public* body who were present and those who were absent.

(c) The substance of all matters proposed, discussed or decided and, at the request of any member, a record of each member's vote on any matter decided by vote.

(d) The substance of remarks made by any member of the general public who addresses the *public* body if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

(e) Any other information which any member of the *public* body requests to be included or reflected in the minutes.

2. Minutes of public meetings are public records. Minutes or audiotape recordings of the meetings must be made available for inspection by the public within 30 working days after the adjournment of the meeting at which taken. The minutes shall be deemed to have permanent value and must be retained by the public body for at least 5 years. Thereafter, the minutes may be transferred for archival preservation in accordance with NRS 239.080 to 239.125, inclusive. Minutes of meetings closed pursuant to :

(a) *Paragraph (a) of subsection 1 of* NRS 241.030 become public records when the *public* body determines that the matters





1 discussed no longer require confidentiality and the person whose  
2 ~~{character, conduct, competence}~~ *physical* or *mental* health was  
3 ~~{discussed}~~ *considered* has consented to their disclosure. That  
4 person is entitled to a copy of the minutes upon request whether or  
5 not they become public records.

6 *(b) Paragraph (b) of subsection 1 of NRS 241.030 become*  
7 *public records when the public body determines that the*  
8 *information received and the matters deliberated upon no longer*  
9 *require confidentiality.*

10 3. All or part of any meeting of a public body may be recorded  
11 on audiotape or any other means of sound or video reproduction by  
12 a member of the general public if it is a public meeting so long as  
13 this in no way interferes with the conduct of the meeting.

14 4. Each public body may record on audiotape or any other  
15 means of sound reproduction each of its meetings, whether public or  
16 closed. If a meeting is so recorded:

17 (a) The record must be retained by the public body for at least 1  
18 year after the adjournment of the meeting at which it was recorded.

19 (b) The record of a public meeting is a public record and must  
20 be made available for inspection by the public during the time the  
21 record is retained.

22 ➔ Any record made pursuant to this subsection must be made  
23 available to the Attorney General upon request.

24 5. If a public body elects to record a public meeting pursuant to  
25 the provisions of subsection 4, any portion of that meeting which is  
26 closed must also be recorded and must be retained and made  
27 available for inspection pursuant to the provisions of subsection 2  
28 relating to records of closed meetings. Any record made pursuant to  
29 this subsection must be made available to the Attorney General  
30 upon request.

31 **Sec. 9.** NRS 241.037 is hereby amended to read as follows:

32 241.037 1. The Attorney General may sue in any court of  
33 competent jurisdiction to have an action taken by a public body  
34 declared void or for an injunction against any public body or person  
35 to require compliance with or prevent violations of the provisions of  
36 this chapter. The injunction:

37 (a) May be issued without proof of actual damage or other  
38 irreparable harm sustained by any person.

39 (b) Does not relieve any person from criminal prosecution for  
40 the same violation.

41 2. Any person denied a right conferred by this chapter may sue  
42 in the district court of the district in which the public body  
43 ordinarily holds its meetings or in which the plaintiff resides. A suit  
44 may seek to have an action taken by the public body declared void,  
45 to require compliance with or prevent violations of this chapter or to



determine the applicability of this chapter to discussions or decisions of the public body. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this subsection.

3. *Any person who is a resident of this State may sue in any court of competent jurisdiction to have an action taken by a public body, which was in violation of the provisions of this chapter, declared void.*

4. Any suit brought against a public body pursuant to subsection 1 or 2 to require compliance with the provisions of this chapter must be commenced within 120 days after the action objected to was taken by that public body in violation of this chapter. Any such suit brought *pursuant to subsection 1, 2 or 3* to have an action declared void must be commenced within 60 days after the action objected to was taken.

**Sec. 10.** NRS 241.040 is hereby amended to read as follows:

241.040 1. Each member of a public body who attends a meeting of that public body where action is taken in violation of any provision of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

2. Wrongful exclusion of any person or persons from a meeting is a misdemeanor.

3. A member of a public body who attends a meeting of that public body at which action is taken in violation of this chapter is not the accomplice of any other member so attending.

4. The Attorney General shall ~~investigate~~ :

(a) *Interpret and administer the provisions of this chapter; and*

(b) *Investigate* and prosecute any violation of this chapter.

**Sec. 11.** NRS 433.534 is hereby amended to read as follows:

433.534 1. The rights of a client enumerated in this chapter must not be denied except to protect the client's health and safety or to protect the health and safety of others, or both. Any denial of those rights in any facility must be entered in the client's record of treatment, and notice of the denial must be forwarded to the administrative officer of the facility. Failure to report denial of rights by an employee may be grounds for dismissal.

2. If the administrative officer of a facility receives notice of a denial of rights as provided in subsection 1, he shall cause a full report to be prepared which must set forth in detail the factual circumstances surrounding the denial. Such a report is confidential and must not be disclosed. A copy of the report must be sent to the Commission.

3. The Commission:

(a) Shall receive reports of and may investigate apparent violations of the rights guaranteed by this chapter;



1 (b) May act to resolve disputes relating to apparent violations;  
2 (c) May act on behalf of clients to obtain remedies for any  
3 apparent violations; and

4 (d) Shall otherwise endeavor to safeguard the rights guaranteed  
5 by this chapter.

6 ~~[4.—Pursuant to NRS 241.030, the Commission may close any~~  
7 ~~portion of a meeting in which it considers the character, alleged~~  
8 ~~misconduct or professional competence of a person in relation to:~~

9 ~~—(a) The denial of the rights of a client; or~~

10 ~~—(b) The care and treatment of a client.~~

11 ~~→ The provisions of this subsection do not require a meeting of the~~  
12 ~~Commission to be closed to the public.]~~



