

SENATE BILL NO. 267—SENATORS CARE AND HARDY

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:

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

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

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

11 **Sec. 2.** NRS 241.020 is hereby amended to read as follows:

12 241.020 1. Except as otherwise provided by specific statute,
13 all meetings of public bodies must be open and public, and all
14 persons must be permitted to attend any meeting of these public
15 bodies. Public officers and employees responsible for these
16 meetings shall make reasonable efforts to assist and accommodate
17 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 character, alleged misconduct or professional competence of a person, the name of the person whose character, alleged misconduct or professional competence 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



1 technical problems relating to the operation or maintenance of its
2 website. Notice posted pursuant to this subsection is supplemental to
3 and is not a substitute for the minimum public notice required
4 pursuant to subsection 3. The inability of a public body to post
5 notice of a meeting pursuant to this subsection as a result of
6 technical problems with its website shall not be deemed to be a
7 violation of the provisions of this chapter.

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

10 (a) An agenda for a public meeting;

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

13 (c) ~~Any~~ *Subject to the provisions of subsection 6, any* other
14 supporting material provided to the members of the public body for
15 an item on the agenda, except materials:

16 (1) Submitted to the public body pursuant to a nondisclosure
17 or confidentiality agreement ~~that~~ *which relates to proprietary*
18 *information;*

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

21 (3) Declared confidential by law ~~that~~ *, unless otherwise*
22 *agreed to by each person whose interest is being protected under*
23 *the order of confidentiality.*

24 *↪ As used in this subsection, "proprietary information" has the*
25 *meaning ascribed to it in NRS 332.025.*

26 6. *A copy of supporting material required to be provided upon*
27 *request pursuant to paragraph (c) of subsection 5 must be:*

28 (a) *If the supporting material is provided to the members of the*
29 *public body before the meeting, made available to the requester at*
30 *the time the material is provided to the members of the public*
31 *body; or*

32 (b) *If the supporting material is provided to the members of the*
33 *public body at the meeting, made available at the meeting to the*
34 *requester at the same time the material is provided to the members*
35 *of the public body.*

36 *↪* If the requester has agreed to receive the information and material
37 set forth in ~~this~~ subsection 5 by electronic mail, the public body
38 shall, if feasible, provide the information and material by electronic
39 mail.

40 ~~6.1~~ 7. A public body may provide the public notice,
41 information and material required by this section by electronic mail.
42 If a public body makes such notice, information and material
43 available by electronic mail, the public body shall inquire of a
44 person who requests the notice, information or material if the person
45 will accept receipt by electronic mail. The inability of a public body,



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

6 ~~[7-]~~ 8. As used in this section, "emergency" means an
7 unforeseen circumstance which requires immediate action and
8 includes, but is not limited to:

9 (a) Disasters caused by fire, flood, earthquake or other natural
10 causes; or

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

12 **Sec. 3.** NRS 241.030 is hereby amended to read as follows:

13 241.030 1. Except as otherwise provided in *this section and*
14 *NRS 241.031 and 241.033, ~~[nothing contained in this chapter~~*
15 *~~prevents]~~ a public body ~~[from holding]~~ **may hold** a closed meeting*
16 *to consider the character, alleged misconduct, professional*
17 *competence, or physical or mental health of a person.*

18 2. *A person whose character, alleged misconduct,*
19 *professional competence, or physical or mental health will be*
20 *considered by a public body during a meeting may waive the*
21 *closure of the meeting and request that the meeting or relevant*
22 *portion thereof be open to the public. A request described in this*
23 *subsection:*

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

25 (b) *Must be honored by the public body unless the*
26 *consideration of the character, alleged misconduct, professional*
27 *competence, or physical or mental health of the requester involves*
28 *the appearance before the public body of another person who does*
29 *not desire that the meeting or relevant portion thereof be open to*
30 *the public.*

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

33 (a) *The nature of the business to be considered ~~[~~*
34 *~~—3-]~~; and*

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

37 4. This chapter does not:

38 (a) Apply to judicial proceedings.

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

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

43 (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.]~~ 5. The exception 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 act, *outside of an open and public meeting*, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.

Sec. 4. 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 ~~[.]~~ or professional competence ~~[, or physical or mental health of an]~~ of:*

(a) *An elected member of a public body ~~[.]~~; or*

(b) *A person who is an appointed public officer or who serves at the pleasure of a public body as a chief executive or administrative officer or in a comparable position, including, without limitation, a president of a university or community college within the University and Community College System of Nevada, a superintendent of a county school district, a county manager and a city manager.*

2. *The prohibition set forth in subsection 1 does not apply if the consideration of the character, alleged misconduct or professional competence of the person does not pertain to his role as an elected member of a public body or an appointed public officer or other officer described in paragraph (b) of subsection 1, as applicable.*

Sec. 5. 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 character, alleged misconduct, professional competence, or physical or mental health of the person.*

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. *If a public body holds a closed meeting or closes a portion of a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person, each person to whom notice is required to be given pursuant to paragraph (a) of subsection 1 must be allowed to:*

(a) *Attend the closed meeting or that portion of the closed meeting during which his character, alleged misconduct, professional competence, or physical or mental health is considered;*

(b) *Have an attorney or other representative of his choosing present with him during the closed meeting; and*

(c) *Present written evidence, provide testimony and present witnesses relating to his character, alleged misconduct, professional competence, or physical or mental health to the public body during the closed meeting.*

5. *Except as otherwise provided in subsection 4, with regard to the attendance of persons other than members of the public body and the person whose character, alleged misconduct, professional competence, or physical or mental health is considered, the chairman of the public body may at any time before or during a closed meeting:*

(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.*

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

7. *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 character, alleged*



misconduct, professional competence, or physical or mental health of the person.

Sec. 6. 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 character, alleged misconduct, professional competence, or 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.



