

SENATE BILL NO. 420—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE DIVISION OF HEALTH CARE
FINANCING AND POLICY)

MARCH 29, 2005

Referred to Committee on Government Affairs

SUMMARY—Authorizes Drug Use Review Board to hold closed meetings for certain purposes. (BDR 19-172)

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; authorizing the Drug Use Review Board to hold closed meetings for certain purposes; providing that the minutes of and other materials relating to such closed meetings are, with certain exceptions, confidential; 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.** NRS 241.030 is hereby amended to read as follows:
2 241.030 1. Except as otherwise provided in NRS 241.031
3 and 241.033, ~~nothing contained in this chapter prevents~~ a public
4 body ~~from holding~~ ***may hold*** a closed meeting to consider the
5 character, alleged misconduct, professional competence, or physical
6 or mental health of a person.
7 2. ***Except as otherwise provided in this subsection and NRS***
8 ***241.031, the Drug Use Review Board may hold a closed meeting to***
9 ***consider, deliberate regarding, discuss or take action in***
10 ***connection with the retrospective drug use review required***
11 ***pursuant to 42 U.S.C. § 1396r-8(g)(2)(B). Notwithstanding any***
12 ***other provision of law to the contrary, with respect to a meeting***
13 ***closed pursuant to this subsection:***



1 (a) *The Board is not required to provide or cause to be*
2 *provided notice in any form or manner to the person or persons*
3 *who will be the subject of the closed meeting; and*

4 (b) *The person or persons who will be the subject of the closed*
5 *meeting need not be identified on the agenda for the meeting.*

6 *↪ The provisions of this subsection do not authorize the Drug Use*
7 *Review Board to hold a closed meeting to develop or review a*
8 *proposed policy or regulation. Except as otherwise provided in*
9 *paragraph (b) of subsection 2 of NRS 241.035, all information and*
10 *materials received or prepared by the Board during a meeting*
11 *closed pursuant to this subsection and all minutes and audiovisual*
12 *or electronic reproductions of such a meeting are confidential, not*
13 *subject to subpoena or discovery, and not subject to inspection by*
14 *the general public. The provisions of NRS 241.033 do not apply to*
15 *meetings closed pursuant to this subsection. As used in this*
16 *subsection, "Drug Use Review Board" has the meaning ascribed*
17 *to it in NRS 422.402.*

18 3. A public body may close a meeting *pursuant to this section*
19 upon a motion which specifies the nature of the business to be
20 considered.

21 ~~{3-}~~ 4. This chapter does not:

22 (a) Apply to judicial proceedings.

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

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

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

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

31 ~~{4.—The exception}~~

32 5. *The exceptions* provided by this section, and electronic
33 communication, must not be used to circumvent the spirit or letter of
34 this chapter in order to discuss or act upon a matter over which the
35 public body has supervision, control, jurisdiction or advisory
36 powers. *The provisions of this subsection do not prohibit the*
37 *closure of a meeting in the manner and for the purposes set forth*
38 *in subsection 2.*

39 Sec. 2. NRS 241.033 is hereby amended to read as follows:

40 241.033 1. ~~{A}~~ *Except as otherwise provided in subsection*
41 *4, a public body shall not hold a meeting to consider the character,*
42 *alleged misconduct, professional competence, or physical or mental*
43 *health of any person unless it has given written notice to that person*
44 *of the time and place of the meeting. Except as otherwise provided*
45 *in subsection 2, the written notice must be:*



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

3 (b) Sent by certified mail to the last known address of that
4 person at least 21 working days before the meeting.

5 ➡ A public body must receive proof of service of the notice
6 required by this subsection before such a meeting may be held.

7 2. The Nevada Athletic Commission is exempt from the
8 requirements of paragraphs (a) and (b) of subsection 1, but must
9 give written notice of the time and place of the meeting and must
10 receive proof of service of the notice before the meeting may be
11 held.

12 3. ~~IA~~ *Except as otherwise provided in subsection 4, a* public
13 body shall provide a copy of any record of a closed meeting
14 prepared pursuant to NRS 241.035, upon the request of any person
15 whose character, alleged misconduct, professional competence, or
16 physical or mental health was considered at the meeting.

17 *4. The provisions of this section do not apply to a meeting*
18 *closed pursuant to subsection 2 of NRS 241.030.*

19 **Sec. 3.** NRS 241.035 is hereby amended to read as follows:

20 241.035 1. Each public body shall keep written minutes of
21 each of its meetings, including:

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

23 (b) Those members of the body who were present and those who
24 were absent.

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

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

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

34 2. Minutes of public meetings are public records. Minutes or
35 audiotape recordings of the meetings must be made available for
36 inspection by the public within 30 working days after the
37 adjournment of the meeting at which taken. The minutes shall be
38 deemed to have permanent value and must be retained by the public
39 body for at least 5 years. Thereafter, the minutes may be transferred
40 for archival preservation in accordance with NRS 239.080 to
41 239.125, inclusive. Minutes of meetings closed pursuant to :

42 *(a) Subsection 1 of* NRS 241.030 become public records when
43 the body determines that the matters discussed no longer require
44 confidentiality and the person whose character, conduct,
45 competence or health was discussed has consented to their



1 disclosure. That person is entitled to a copy of the minutes upon
2 request whether or not they become public records.

3 *(b) Subsection 2 of NRS 241.030 do not become public records*
4 *at any time and, except as otherwise provided in this paragraph, a*
5 *physician, pharmacist or person receiving benefits who is*
6 *discussed during a meeting closed pursuant to that subsection is*
7 *not entitled to a copy of the minutes. If the Drug Use Review*
8 *Board conducts an educational intervention with respect to a*
9 *physician or pharmacist during a meeting closed pursuant to*
10 *subsection 2 of NRS 241.030, the physician or pharmacist, as*
11 *applicable, who is the subject of the educational intervention is*
12 *entitled to a copy of that portion of the minutes which applies*
13 *specifically to his educational intervention. As used in this*
14 *paragraph:*

15 *(1) "Drug Use Review Board" has the meaning ascribed to*
16 *it in NRS 422.402.*

17 *(2) "Educational intervention" means an educational*
18 *intervention referred to in 42 U.S.C. § 1396r-8(g)(3)(C)(iii)(III).*

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

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

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

28 (b) The record of a public meeting is a public record and must
29 be made available for inspection by the public during the time the
30 record is retained.

31 ➤ Any record made pursuant to this subsection must be made
32 available to the Attorney General upon request.

33 5. If a public body elects to record a public meeting pursuant to
34 the provisions of subsection 4, any portion of that meeting which is
35 closed must also be recorded and must be retained and made
36 available for inspection pursuant to the provisions of subsection 2
37 relating to records of closed meetings. Any record made pursuant to
38 this subsection must be made available to the Attorney General
39 upon request.

40 **Sec. 4.** NRS 422.406 is hereby amended to read as follows:

41 422.406 1. The Department may, to carry out its duties set
42 forth in NRS 422.401 to 422.406, inclusive, and to administer the
43 provisions of NRS 422.401 to 422.406, inclusive:

44 (a) Adopt regulations; and

45 (b) Enter into contracts for any services.



1 2. *The Department shall adopt regulations setting forth that:*
2 (a) *If the Drug Use Review Board proposes to refer a case or*
3 *issue concerning a physician for review by an entity other than the*
4 *Department, the referral must be based on the recommendation of*
5 *a subcommittee of the Drug Use Review Board composed entirely*
6 *of physicians.*

7 (b) *If the Drug Use Review Board proposes to refer a case or*
8 *issue concerning a pharmacist for review by an entity other than*
9 *the Department, the referral must be based on the*
10 *recommendation of a subcommittee of the Drug Use Review*
11 *Board composed entirely of pharmacists.*

12 3. Any regulations adopted by the Department pursuant to NRS
13 422.401 to 422.406, inclusive, must be adopted in accordance with
14 the provisions of chapter 241 of NRS.

15 **Sec. 5.** The amendatory provisions of this act do not apply to
16 the extent that those provisions:

17 1. Are preempted or prohibited by federal law;

18 2. Violate a condition to the receipt of federal money by this
19 State, an agency of this State or a political subdivision of this State;
20 or

21 3. As determined by the Centers for Medicare and Medicaid
22 Services of the United States Department of Health and Human
23 Services, violate a requirement related to the State Plan for
24 Medicaid established pursuant to NRS 422.271.

25 **Sec. 6.** This act becomes effective on July 1, 2005.



