

ASSEMBLY BILL NO. 433—ASSEMBLYMEN BUCKLEY, PARKS,
LESLIE, HARDY, SMITH, ARBERRY, ATKINSON, CONKLIN,
DENIS, HOGAN, KIRKPATRICK, KOIVISTO AND MCCLAIN

MARCH 19, 2007

JOINT SPONSORS: SENATORS BEERS, CARE, HARDY,
LEE, RAGGIO, TITUS AND TOWNSEND

Referred to Committee on Taxation

SUMMARY—Further limits the authority of public bodies to close
meetings. (BDR 19-892)

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; providing additional
limitations on the authority of public bodies to close
meetings; limiting the authority of the Nevada Tax
Commission to close certain hearings; providing a
penalty; and providing other matters properly relating
thereto.

Legislative Counsel's Digest:

- 1 Existing law requires that meetings of public bodies be open to the public.
 - 2 (Chapter 241 of NRS) Exceptions to the general rule are allowed by specific
 - 3 statute. (NRS 241.020) **Section 1** of this bill provides that if an exception is
 - 4 allowed by specific statute, the meeting may be closed only to the extent specified
 - 5 in the statute and requires that all other portions of the meeting be open and public.
 - 6 **Sections 2 and 3** of this bill limit and clarify a specific exception for the Nevada
 - 7 Tax Commission that allows closed hearings on appeals by taxpayers under certain
 - 8 circumstances. (NRS 360.247, 372.750)
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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 241.020 is hereby amended to read as follows:
2 241.020 1. Except as otherwise provided by specific statute,
3 all meetings of public bodies must be open and public, and all
4 persons must be permitted to attend any meeting of these public
5 bodies. *A meeting that is closed pursuant to a specific statute may*
6 *only be closed to the extent specified in the statute allowing the*
7 *meeting to be closed. All other portions of the meeting must be*
8 *open and public, and the public body must comply with all other*
9 *provisions of this chapter to the extent not specifically precluded*
10 *by the specific statute.* Public officers and employees responsible
11 for these meetings shall make reasonable efforts to assist and
12 accommodate physically handicapped persons desiring to attend.
13 2. Except in an emergency, written notice of all meetings must
14 be given at least 3 working days before the meeting. The notice
15 must include:
16 (a) The time, place and location of the meeting.
17 (b) A list of the locations where the notice has been posted.
18 (c) An agenda consisting of:
19 (1) A clear and complete statement of the topics scheduled to
20 be considered during the meeting.
21 (2) A list describing the items on which action may be taken
22 and clearly denoting that action may be taken on those items.
23 (3) A period devoted to comments by the general public, if
24 any, and discussion of those comments. No action may be taken
25 upon a matter raised under this item of the agenda until the matter
26 itself has been specifically included on an agenda as an item upon
27 which action may be taken pursuant to subparagraph (2).
28 (4) If any portion of the meeting will be closed to consider
29 the character, alleged misconduct or professional competence of a
30 person, the name of the person whose character, alleged misconduct
31 or professional competence will be considered.
32 (5) If, during any portion of the meeting, the public body will
33 consider whether to take administrative action against a person, the
34 name of the person against whom administrative action may be
35 taken.
36 3. Minimum public notice is:
37 (a) Posting a copy of the notice at the principal office of the
38 public body or, if there is no principal office, at the building in
39 which the meeting is to be held, and at not less than three other
40 separate, prominent places within the jurisdiction of the public body
41 not later than 9 a.m. of the third working day before the meeting;
42 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) Subject to the provisions of subsection 6, 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 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, unless otherwise agreed to by each person whose interest is being protected under the order of confidentiality.

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

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

(a) If the supporting material is provided to the members of the public body before the meeting, made available to the requester at



1 the time the material is provided to the members of the public body;
2 or

3 (b) If the supporting material is provided to the members of the
4 public body at the meeting, made available at the meeting to the
5 requester at the same time the material is provided to the members
6 of the public body.

7 ➤ If the requester has agreed to receive the information and material
8 set forth in subsection 5 by electronic mail, the public body shall, if
9 feasible, provide the information and material by electronic mail.

10 7. A public body may provide the public notice, information
11 and material required by this section by electronic mail. If a public
12 body makes such notice, information and material available by
13 electronic mail, the public body shall inquire of a person who
14 requests the notice, information or material if the person will accept
15 receipt by electronic mail. The inability of a public body, as a result
16 of technical problems with its electronic mail system, to provide a
17 public notice, information or material required by this section to a
18 person who has agreed to receive such notice, information or
19 material by electronic mail shall not be deemed to be a violation of
20 the provisions of this chapter.

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

24 (a) Disasters caused by fire, flood, earthquake or other natural
25 causes; or

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

27 **Sec. 2.** NRS 360.247 is hereby amended to read as follows:

28 360.247 **1.** Except as otherwise provided in this section, any
29 appeal to the Nevada Tax Commission which is taken by a taxpayer
30 concerning his liability for tax must be heard during a session of the
31 Commission which is open to the public. ~~[A]~~ *Upon request by the*
32 *taxpayer, a hearing on such an appeal may be closed to the public*
33 ~~*if the taxpayer requests that it be closed.]*~~ *to receive proprietary or*
34 *confidential information.*

35 **2.** *As soon as practicable after closing a hearing pursuant to*
36 *subsection 1, the Nevada Tax Commission shall determine*
37 *whether the information to be presented in the closed hearing is*
38 *proprietary or confidential information. If the Commission, in its*
39 *discretion, determines that the information is not proprietary or*
40 *confidential information, the Commission shall immediately open*
41 *the hearing to the public. If the Commission, in its discretion,*
42 *determines that the information is proprietary or confidential*
43 *information:*

44 (a) *The hearing must remain closed to the public and the*
45 *Commission shall receive the information in a manner that*



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1 ensures that the members of the Commission have a reasonable
2 and adequate opportunity to review the information and make any
3 inquiries that any member believes to be necessary and
4 appropriate.

5 (b) After the receipt of and opportunity to review the
6 proprietary or confidential information pursuant to paragraph (a),
7 the Commission shall reopen the hearing to the public and
8 proceed to deliberate toward a decision regarding issues in the
9 appeal that are not proprietary or confidential.

10 (c) After a hearing has been reopened pursuant to paragraph
11 (b), the Commission shall, upon the request of any member of the
12 Commission who believes that he cannot conduct meaningful
13 deliberations with the other members of the Commission on the
14 appeal because the appeal concerns proprietary or confidential
15 information, close the hearing for further deliberations. The
16 definitive vote on the appeal must be taken during a hearing of the
17 Commission that is open to the public.

18 3. The Nevada Tax Commission shall adopt regulations
19 which establish procedures:

20 (a) By which a taxpayer may request a closed hearing
21 pursuant to this section.

22 (b) By which the Commission may determine whether
23 information is proprietary or confidential information during a
24 closed hearing.

25 4. Not later than 45 days after the Nevada Tax Commission
26 deliberates in a closed hearing and makes a definitive decision on
27 an appeal in a hearing that is open to the public pursuant to this
28 section, the Commission shall prepare an abstract that explains
29 the reasons for the decision, which must be made available to the
30 public upon request. Such an abstract:

31 (a) Must include, without limitation:

32 (1) The name of the taxpayer;

33 (2) The amount of the taxpayer's liability, including
34 interest and penalties;

35 (3) The type of tax at issue; and

36 (4) The general nature of the evidence relied upon by the
37 Commission in reaching its decision.

38 (b) Must not contain any proprietary or confidential
39 information relating to the taxpayer.

40 5. A member of the Nevada Tax Commission or an officer,
41 agent or employee of the Department is not subject to any criminal
42 penalty or civil liability for the use or publication of proprietary or
43 confidential information received pursuant to the procedure set
44 forth in subsection 2, regardless of whether the information was
45 received during a closed hearing.



6. *The Nevada Tax Commission shall take such actions as it deems necessary to protect the confidentiality of information provided by a taxpayer that the Commission has determined to be proprietary or confidential information, including, without limitation:*

(a) *Issuing such protective orders as it deems necessary;*

(b) *Restricting access to any hearing closed to the public and to the records and transcripts of any such hearing, without the prior approval of the Commission; and*

(c) *Prohibiting any intervener allowed to attend such a hearing or allowed access to the records and transcripts of such a hearing from disclosing such information without prior authorization from the Commission.*

7. *A person who violates a protective order issued by the Nevada Tax Commission pursuant to subsection 6 is guilty of a misdemeanor, unless a more severe penalty is prescribed by law for the act that constitutes the violation of the order.*

8. *As used in this section:*

(a) *“Confidential economic information”:*

(I) *Means any information which is not available to the public generally, which confers an economic benefit on the holder of the information as a result of its unavailability and which is the subject of reasonable efforts by the taxpayer to maintain its secrecy.*

(2) *Includes, without limitation, information relating to the amount or source of any income, profits, losses or expenditures of the taxpayer, such as data relating to costs, prices or customers.*

(b) *“Proprietary or confidential information”:*

(I) *Means:*

(I) *Any trade secret, confidential economic information or business information that is submitted to the Nevada Tax Commission by the taxpayer and is determined to be proprietary or confidential information by the Commission; or*

(II) *Any information that a specific statute declares to be confidential or prohibits the Commission from making public.*

(2) *Does not include any information that has been published for public distribution or is otherwise available to the public generally or in the public domain.*

Sec. 3. NRS 372.750 is hereby amended to read as follows:

372.750 1. Except as otherwise provided in this section ~~or~~ **NRS 360.247**, it is a misdemeanor for any member of the Tax Commission or officer, agent or employee of the Department to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or



1 examined in the discharge of official duty, or the amount or source
2 of income, profits, losses, expenditures or any particular of them, set
3 forth or disclosed in any return, or to permit any return or copy of a
4 return, or any book containing any abstract or particulars of it to be
5 seen or examined by any person not connected with the Department.

6 2. The Tax Commission may agree with any county fair and
7 recreation board or the governing body of any county, city or town
8 for the continuing exchange of information concerning taxpayers.

9 3. The Governor may, by general or special order, authorize the
10 examination of the records maintained by the Department under this
11 chapter by other state officers, by tax officers of another state, by
12 the Federal Government, if a reciprocal arrangement exists, or by
13 any other person. The information so obtained may not be made
14 public except to the extent and in the manner that the order may
15 authorize that it be made public.

16 4. Upon written request made by a public officer of a local
17 government, the Executive Director shall furnish from the records of
18 the Department, the name and address of the owner of any seller or
19 retailer who must file a return with the Department. The request
20 must set forth the social security number of the owner of the seller
21 or retailer about which the request is made and contain a statement
22 signed by the proper authority of the local government certifying
23 that the request is made to allow the proper authority to enforce a
24 law to recover a debt or obligation owed to the local government.
25 The information obtained by the local government is confidential
26 and may not be used or disclosed for any purpose other than the
27 collection of a debt or obligation owed to that local government.
28 The Executive Director may charge a reasonable fee for the cost of
29 providing the requested information.

30 5. Successors, receivers, trustees, executors, administrators,
31 assignees and guarantors, if directly interested, may be given
32 information as to the items included in the measure and amounts of
33 any unpaid tax or amounts of tax required to be collected, interest
34 and penalties.

35 6. Relevant information *that the Tax Commission has*
36 *determined is not proprietary or confidential information in a*
37 *hearing conducted pursuant to NRS 360.247* may be disclosed as
38 evidence in an appeal by the taxpayer from a determination of tax
39 due.

40 7. At any time after a determination, decision or order of the
41 Executive Director or other officer of the Department imposing
42 upon a person a penalty for fraud or intent to evade the tax imposed
43 by this chapter on the sale, storage, use or other consumption of any
44 vehicle, vessel or aircraft becomes final or is affirmed by the
45 Commission, any member of the Commission or officer, agent or



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1 employee of the Department may publicly disclose the identity of
2 that person and the amount of tax assessed and penalties imposed
3 against him.

4 **Sec. 4.** The provisions of NRS 360.247, as amended by
5 section 2 of this act, do not apply to any appeal to the Nevada Tax
6 Commission taken by a taxpayer concerning his liability for tax that
7 has been heard by the Commission before July 1, 2007.

8 **Sec. 5.** This act becomes effective on July 1, 2007.

