

Amendment No. 806

Senate Amendment to Assembly Bill No. 433 First Reprint (BDR 19-892)

Proposed by: Senate Committee on Government Affairs**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: Yes Digest: No

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

EGO



Date: 5/20/2007

A.B. No. 433—Further limits the authority of public bodies to close meetings.
(BDR 19-892)



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:

Existing law requires that meetings of public bodies be open to the public. (Chapter 241 of NRS) Exceptions to the general rule are allowed by specific statute. (NRS 241.020) **Section 1** of this bill provides that if an exception is allowed by specific statute, the meeting may be closed only to the extent specified in the statute and requires that all other portions of the meeting be open and public. **Sections 2 and 3** of this bill limit and clarify a specific exception for the Nevada Tax Commission that allows closed hearings on appeals by taxpayers under certain circumstances. (NRS 360.247, 372.750)

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

Section 1. 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. *A meeting that is closed pursuant to a specific statute may only be closed to the extent specified in the statute allowing the meeting to be closed. All other portions of the meeting must be open and public, and the public body must comply with all other provisions of this chapter to the extent not specifically precluded by the specific statute.* 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 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 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 the time the material is provided to the members of the public body; or

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

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

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

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

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

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

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

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

2. As soon as practicable after closing a hearing pursuant to subsection 1, the Nevada Tax Commission shall ~~make a determination as to~~ determine whether the ~~material~~ information to be presented in the closed hearing is ~~properly classified as~~ proprietary or confidential information. If the Commission, in its discretion, determines that the information is ~~determined~~ not to be ~~proprietary or confidential~~ information, the Commission shall immediately open the hearing to the public. If the Commission, in its discretion, determines that the information is ~~determined to be properly classified as~~ proprietary or confidential information ~~;~~ :

(a) The hearing must remain closed to the public and the Commission shall ~~proceed to gather~~ receive the information in a manner that ensures that ~~each member~~ the members of the Commission ~~has~~ have a reasonable and adequate opportunity to review the information and make any inquiries ~~the~~ that any member believes to be necessary and appropriate.

~~3. Upon completion of the information gathering portion of the hearing~~

(b) After the receipt of and opportunity to review the proprietary or confidential information pursuant to ~~subsection 2.~~ paragraph (a), the ~~Nevada Tax~~ Commission shall ~~open~~ reopen the hearing to the public and ~~begin deliberating in a manner that does not make public any~~ proceed to deliberate toward a decision regarding issues in the appeal that are not proprietary or confidential information.

~~4.~~ (c) After a hearing has been reopened pursuant to paragraph (b), the Commission shall, upon the request of any member of the Commission who believes that he cannot conduct meaningful deliberations with the other members of the Commission on the appeal because the appeal concerns proprietary or confidential information, close the hearing for further deliberations. The definitive vote on the appeal must be taken during a hearing of the Commission that is open to the public.

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

(a) By which a taxpayer may request a closed hearing ~~and~~ pursuant to this section.

(b) By which the Commission may determine ~~during a closed hearing~~ whether information is ~~appropriately classified as~~ proprietary or confidential information ~~and~~

~~(c) For the manner in which the Commission may deliberate and vote on an appeal in an open meeting without making any proprietary or confidential information public.~~

~~5. If the Nevada Tax Commission closes a hearing to receive information, all deliberations must be conducted and all decisions with respect to the appeal must be made in an open and public hearing. The Commission must, at a minimum, provide at the public hearing sufficient information for the public to understand the basis and rationale for the decision of the Commission, including without limitation:~~

~~(a) The name of the taxpayer;~~

~~(b) The amount of the taxpayer's liability, including interest and penalties;~~

~~(c) The type of tax at issue; and~~

~~(d) The general nature of the evidence relied upon by the Commission in reaching its decision.~~

~~6.~~ during a closed hearing.

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

(a) Must include, without limitation:

(1) The name of the taxpayer;

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

(3) The type of tax at issue; and

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

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

5. A member of the Nevada Tax Commission or an officer, agent or employee of the Department is not subject to any criminal penalty or civil liability for the ~~inadvertent~~ use or publication of proprietary or confidential information ~~disclosed~~ received pursuant to the procedure set forth in subsection 2.

1 regardless of whether the information was received during a closed hearing,
2 ~~conducted pursuant to this section.~~

3 ~~7.1~~ 6. The Nevada Tax Commission shall take such actions as it deems
4 necessary to protect the confidentiality of information provided by a taxpayer that
5 the Commission has determined to be proprietary or confidential information,
6 including, without limitation:

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

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

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

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

18 8. As used in this section ~~is~~ “proprietary”:

19 (a) “Confidential economic information”:

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

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

27 (b) “Proprietary or confidential information”:

28 ~~[(a)] (1) Means:~~

29 ~~[(1)] (I) Any trade secret, ~~for~~ confidential economic information or~~
30 ~~business information that is submitted to the Nevada Tax Commission by the~~
31 ~~taxpayer and ~~designated as~~ is determined to be proprietary or confidential~~
32 ~~information by the Commission; or~~

33 ~~[(2)] (II) Any information ~~declared by~~ that a specific statute declares to~~
34 ~~be confidential or ~~that~~ prohibits the Commission ~~is prohibited~~ from making~~
35 ~~public, ~~by specific statute.~~~~

36 ~~[(b)] (2) Does not include any information that has been published for public~~
37 ~~distribution or is otherwise ~~generally~~ available to the public ~~generally~~ or in the~~
38 ~~public domain.~~

39 ~~[(c)] As used in this subsection, “confidential economic information” means any~~
40 ~~information that is not generally known to the public, that confers an economic~~
41 ~~benefit to the holder specifically because it is not known and that is the subject of~~
42 ~~reasonable efforts to maintain its secrecy, including, without limitation,~~
43 ~~information relating to the amount or source of any income, profits, losses or~~
44 ~~expenditures of the taxpayer, including data relating to costs, prices or the~~
45 ~~customers of the taxpayer.~~

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

47 372.750 1. Except as otherwise provided in this section ~~[(1)]~~ **or NRS 360.247,**
48 it is a misdemeanor for any member of the Tax Commission or officer, agent or
49 employee of the Department to make known in any manner whatever the business
50 affairs, operations or information obtained by an investigation of records and
51 equipment of any retailer or any other person visited or examined in the discharge
52 of official duty, or the amount or source of income, profits, losses, expenditures or
53 any particular of them, set forth or disclosed in any return, or to permit any return

1 or copy of a return, or any book containing any abstract or particulars of it to be
2 seen or examined by any person not connected with the Department.

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

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

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

24 5. Successors, receivers, trustees, executors, administrators, assignees and
25 guarantors, if directly interested, may be given information as to the items included
26 in the measure and amounts of any unpaid tax or amounts of tax required to be
27 collected, interest and penalties.

28 6. Relevant information *that the Tax Commission has determined is not*
29 *proprietary or confidential information in a hearing conducted pursuant to NRS*
30 *360.247* may be disclosed as evidence in an appeal by the taxpayer from a
31 determination of tax due.

32 7. At any time after a determination, decision or order of the Executive
33 Director or other officer of the Department imposing upon a person a penalty for
34 fraud or intent to evade the tax imposed by this chapter on the sale, storage, use or
35 other consumption of any vehicle, vessel or aircraft becomes final or is affirmed by
36 the Commission, any member of the Commission or officer, agent or employee of
37 the Department may publicly disclose the identity of that person and the amount of
38 tax assessed and penalties imposed against him.

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

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