

ASSEMBLY BILL NO. 59—COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 15, 2010

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to the Open Meeting Law.
(BDR 19-288)

FISCAL NOTE: Effect on Local Government: Increases or Newly
Provides for Term of Imprisonment in County or City
Jail or Detention Facility.

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 the Open Meeting Law; requiring a public body to take certain actions if the Attorney General finds that the public body has violated the Open Meeting Law; authorizing the Attorney General to issue subpoenas during investigations of such violations; providing that meetings of a public body that are quasi-judicial in nature are subject to the Open Meeting Law under certain circumstances; requiring a public body to include certain notifications on an agenda for a public meeting; excluding a meeting held to consider an applicant for employment from certain notice requirements; making members of a public body subject to a civil penalty for violations; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law establishes the Open Meeting Law which requires, except in
- 2 certain limited situations, that all meetings of public bodies be open and public. It
- 3 further requires that all persons be allowed to attend any meeting of these public
- 4 bodies. (NRS 241.020) Existing law makes any action of a public body in violation
- 5 of the Open Meeting Law void, and requires the Attorney General to investigate
- 6 and prosecute any violation of the Open Meeting Law. (NRS 241.036, 241.040) If
- 7 the Attorney General finds that a public body has taken an action which violates the



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Open Meeting Law, **section 2** of this bill requires the public body to include an item on the next agenda posted for a meeting of the public body acknowledging the finding of the Attorney General regarding such a violation. **Section 2** also provides that such acknowledgment is not an admission of wrongdoing on the part of the public body for the purposes of a civil action, criminal prosecution or injunctive relief. **Section 3** of this bill authorizes the Attorney General to issue subpoenas for the production of documents, records or materials in the course of his or her investigation of any violation of the Open Meeting Law and makes failure or refusal to comply with such a subpoena a misdemeanor.

Section 1.5 of this bill provides that meetings of a public body that are quasi-judicial in nature are subject to the provisions of the Open Meeting Law unless exempted by the Legislative Commission. **Section 1.5** also defines when a meeting is quasi-judicial in nature for purposes of the Open Meeting Law.

Section 5 of this bill adds certain notifications that must be included on an agenda for a meeting of a public body.

Under existing law, if a public body holds a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person, it must first provide written notice of that fact and, if such a meeting will be closed, must allow the attendance of certain individuals. Existing law also provides that casual or tangential references to a person or the person's name during a closed meeting do not constitute consideration of the character, alleged misconduct, professional competence, or physical or mental health of the person. (NRS 241.033) **Section 6** of this bill provides that a meeting to consider an applicant for employment does not require prior notice to be given to the applicant.

Existing law makes each member of a public body who attends a meeting where action is taken in violation of the Open Meeting Law with knowledge of the fact that the meeting is in violation guilty of a misdemeanor. (NRS 241.040) **Section 7** of this bill further makes each such member who attends such a meeting subject to a civil penalty in an amount not to exceed \$500.

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 the provisions set forth as sections 1.5, 2 and 3 of this act.

Sec. 1.5. 1. Meetings of a public body that are quasi-judicial in nature are subject to the provisions of this chapter unless the public body has received an exemption from the Legislative Commission.

2. For the purposes of this section, a meeting is quasi-judicial in nature if it is judicial in character and the public body affords to each party in the meeting:

- (a) The ability to present and object to evidence;**
- (b) The ability to cross-examine witnesses;**
- (c) A written decision; and**
- (d) An opportunity to appeal the written decision.**

Sec. 2. 1. If the Attorney General makes findings of fact and conclusions of law that a public body has taken action in violation of any provision of this chapter, the public body must



1 *include an item on the next agenda posted for a meeting of the*
2 *public body which acknowledges the findings of fact and*
3 *conclusions of law. The opinion of the Attorney General must be*
4 *treated as supporting material for the item on the agenda for the*
5 *purposes of NRS 241.020.*

6 *2. The inclusion of an item on the agenda for a meeting of a*
7 *public body pursuant to subsection 1 is not an admission of*
8 *wrongdoing for the purposes of a civil action, criminal*
9 *prosecution or injunctive relief.*

10 **Sec. 3. 1. The Attorney General shall investigate and**
11 **prosecute any violation of this chapter.**

12 *2. In any investigation conducted pursuant to subsection 1,*
13 *the Attorney General may issue subpoenas for the production of*
14 *any relevant documents, records or materials.*

15 *3. A person who willfully fails or refuses to comply with a*
16 *subpoena issued pursuant to this section is guilty of a*
17 *misdemeanor.*

18 **Sec. 4. NRS 241.015 is hereby amended to read as follows:**

19 **241.015** As used in this chapter, unless the context otherwise
20 requires:

21 1. "Action" means:

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

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

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

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

32 2. "Meeting":

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

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

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

40 (I) Less than a quorum is present at any individual
41 gathering;

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

44 (III) The series of gatherings was held with the specific
45 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 is actually or collectively present:

(1) 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:

(a) Any administrative, advisory, executive or legislative body of the State or a local government ***consisting of at least two persons*** 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 ~~}; and~~ ***, if the administrative, advisory, executive or legislative body is created by:***

(1) The Constitution of this State;

(2) Any statute of this State;

(3) A city charter and any city ordinance which has been filed or recorded as required by the applicable law;

(4) The Nevada Administrative Code;

(5) A resolution or other formal designation by such a body created by a statute of this State or an ordinance of a local government;

(6) An executive order issued by the Governor; or

(7) A resolution or an action by the governing body of a political subdivision of this State;

(b) ***Any board, commission or committee consisting of at least two persons appointed by:***

(1) The Governor or a public officer who is under the direction of the Governor, if the board, commission or committee has at least two members who are not employees of the Executive Department of the State Government;

(2) An entity in the Executive Department of the State Government consisting of members appointed by the Governor, if



1 *the board, commission or committee otherwise meets the definition*
2 *of a public body pursuant to this subsection; or*

3 (3) *A public officer who is under the direction of an agency*
4 *or other entity in the Executive Department of the State*
5 *Government consisting of members appointed by the Governor, if*
6 *the board, commission or committee has at least two members who*
7 *are not employed by the public officer or entity; and*

8 (c) A limited-purpose association that is created for a rural
9 agricultural residential common-interest community as defined in
10 subsection 6 of NRS 116.1201.

11 ➤ “Public body” does not include the Legislature of the State of
12 Nevada.

13 4. “Quorum” means a simple majority of the constituent
14 membership of a public body or another proportion established by
15 law.

16 **Sec. 5.** NRS 241.020 is hereby amended to read as follows:

17 241.020 1. Except as otherwise provided by specific statute,
18 all meetings of public bodies must be open and public, and all
19 persons must be permitted to attend any meeting of these public
20 bodies. A meeting that is closed pursuant to a specific statute may
21 only be closed to the extent specified in the statute allowing the
22 meeting to be closed. All other portions of the meeting must be open
23 and public, and the public body must comply with all other
24 provisions of this chapter to the extent not specifically precluded by
25 the specific statute. Public officers and employees responsible for
26 these meetings shall make reasonable efforts to assist and
27 accommodate persons with physical disabilities desiring to attend.

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

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

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

33 (c) An agenda consisting of:

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

36 (2) A list describing the items on which action may be taken
37 and clearly denoting that action may be taken on those items **H** *by*
38 *placing the term “for possible action” next to the appropriate item.*

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

44 (4) If any portion of the meeting will be closed to consider
45 the character, alleged misconduct or professional competence of a



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1 person, the name of the person whose character, alleged misconduct
2 or professional competence will be considered.

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

7 (6) *Notification that:*

8 (I) *Items on the agenda may be taken out of order;*

9 (II) *The public body may combine two or more agenda*
10 *items for consideration; and*

11 (III) *The public body may remove an item from the*
12 *agenda or delay discussion relating to an item on the agenda at*
13 *any time.*

14 (7) *Any restrictions on comments by the general public.*
15 *Any such restrictions must be reasonable and may restrict the*
16 *time, place and manner of the comments, but may not restrict*
17 *comments based upon viewpoint.*

18 3. Minimum public notice is:

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

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

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

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

37 4. If a public body maintains a website on the Internet or its
38 successor, the public body shall post notice of each of its meetings
39 on its website unless the public body is unable to do so because of
40 technical problems relating to the operation or maintenance of its
41 website. Notice posted pursuant to this subsection is supplemental to
42 and is not a substitute for the minimum public notice required
43 pursuant to subsection 3. The inability of a public body to post
44 notice of a meeting pursuant to this subsection as a result of



1 technical problems with its website shall not be deemed to be a
2 violation of the provisions of this chapter.

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

5 (a) An agenda for a public meeting;

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

8 (c) Subject to the provisions of subsection 6, any other
9 supporting material provided to the members of the public body for
10 an item on the agenda, except materials:

11 (1) Submitted to the public body pursuant to a nondisclosure
12 or confidentiality agreement which relates to proprietary
13 information;

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

16 (3) Declared confidential by law, unless otherwise agreed to
17 by each person whose interest is being protected under the order of
18 confidentiality.

19 ➔ The public body shall make at least one copy of the documents
20 described in paragraphs (a), (b) and (c) available to the public at the
21 meeting to which the documents pertain. As used in this subsection,
22 "proprietary information" has the meaning ascribed to it in
23 NRS 332.025.

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

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

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

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

37 7. A public body may provide the public notice, information
38 and material required by this section by electronic mail. If a public
39 body makes such notice, information and material available by
40 electronic mail, the public body shall inquire of a person who
41 requests the notice, information or material if the person will accept
42 receipt by electronic mail. The inability of a public body, as a result
43 of technical problems with its electronic mail system, to provide a
44 public notice, information or material required by this section to a
45 person who has agreed to receive such notice, information or



1 material by electronic mail shall not be deemed to be a violation of
2 the provisions of this chapter.

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

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

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

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

10 241.033 1. ~~[A]~~ *Except as otherwise provided in subsection*
11 *7, a* public body shall not hold a meeting to consider the character,
12 alleged misconduct, professional competence, or physical or mental
13 health of any person or to consider an appeal by a person of the
14 results of an examination conducted by or on behalf of the public
15 body unless it has:

16 (a) Given written notice to that person of the time and place of
17 the meeting; and

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

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

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

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

23 (2) Sent by certified mail to the last known address of that
24 person at least 21 working days before the meeting.

25 (b) May, with respect to a meeting to consider the character,
26 alleged misconduct, professional competence, or physical or mental
27 health of a person, include an informational statement setting forth
28 that the public body may, without further notice, take administrative
29 action against the person if the public body determines that such
30 administrative action is warranted after considering the character,
31 alleged misconduct, professional competence, or physical or mental
32 health of the person.

33 (c) Must include:

34 (1) A list of the general topics concerning the person that will
35 be considered by the public body during the closed meeting; and

36 (2) A statement of the provisions of subsection 4, if
37 applicable.

38 3. The Nevada Athletic Commission is exempt from the
39 requirements of subparagraphs (1) and (2) of paragraph (a) of
40 subsection 2, but must give written notice of the time and place of
41 the meeting and must receive proof of service of the notice before
42 the meeting may be held.

43 4. If a public body holds a closed meeting or closes a portion of
44 a meeting to consider the character, alleged misconduct,



1 professional competence, or physical or mental health of a person,
2 the public body must allow that person to:

3 (a) Attend the closed meeting or that portion of the closed
4 meeting during which the character, alleged misconduct,
5 professional competence, or physical or mental health of the person
6 is considered;

7 (b) Have an attorney or other representative of the person's
8 choosing present with the person during the closed meeting; and

9 (c) Present written evidence, provide testimony and present
10 witnesses relating to the character, alleged misconduct, professional
11 competence, or physical or mental health of the person to the public
12 body during the closed meeting.

13 5. Except as otherwise provided in subsection 4, with regard to
14 the attendance of persons other than members of the public body
15 and the person whose character, alleged misconduct, professional
16 competence, physical or mental health or appeal of the results of an
17 examination is considered, the chair of the public body may at any
18 time before or during a closed meeting:

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

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

24 6. A public body shall provide a copy of any record of a closed
25 meeting prepared pursuant to NRS 241.035, upon the request of any
26 person who received written notice of the closed meeting pursuant
27 to subsection 1.

28 7. For the purposes of this section ~~[-casual]~~ :

29 (a) *A meeting held to consider an applicant for employment is*
30 *not subject to the notice requirements otherwise imposed by this*
31 *section.*

32 (b) *Casual* or tangential references to a person or the name of a
33 person during a closed meeting do not constitute consideration of
34 the character, alleged misconduct, professional competence, or
35 physical or mental health of the person.

36 **Sec. 7.** NRS 241.040 is hereby amended to read as follows:

37 241.040 1. Each member of a public body who attends a
38 meeting of that public body where action is taken in violation of any
39 provision of this chapter, with knowledge of the fact that the
40 meeting is in violation thereof, is guilty of a misdemeanor.

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

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



1 4. *In addition to any criminal penalty imposed pursuant to*
2 *this section, each member of a public body who attends a meeting*
3 *of that public body where action is taken in violation of any*
4 *provision of this chapter, and who participates in such action with*
5 *knowledge of the violation, is subject to a civil penalty in an*
6 *amount not to exceed \$500. The Attorney General ~~[shall investigate~~*
7 *~~and prosecute any violation of this chapter.]~~ may recover the*
8 *penalty in a civil action brought in the name of the State of*
9 *Nevada in any court of competent jurisdiction. Such an action*
10 *must be commenced within 1 year after the date of the action*
11 *taken in violation of this chapter.*

12 **Sec. 8.** 1. This section and sections 1 and 2 to 7, inclusive, of
13 this act become effective on July 1, 2011.

14 2. Section 1.5 of this act becomes effective on January 1, 2012.

