

Amendment No. 137

Assembly Amendment to Assembly Bill No. 59	(BDR 19-288)
Proposed by: Assembly Committee on Government Affairs	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

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 underlining* is newly added transitory language.

MSM/BJE



Date: 4/7/2011

A.B. No. 59—Makes various changes to the Open Meeting Law. (BDR 19-288)



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; revising the definition of “public body” for the purposes of the Open Meeting Law; 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:

Existing law establishes the Open Meeting Law which requires, except in certain limited situations, that all meetings of public bodies be open and public. It further requires that all persons be allowed to attend any meeting of these public bodies. (NRS 241.020) Existing law makes any action of a public body in violation of the Open Meeting Law void, and requires the Attorney General to investigate and prosecute any violation of the Open Meeting Law. (NRS 241.036, 241.040) If the Attorney General finds that a public body has taken an action which violates the 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 4 of this bill revises the definition of “public body” for purposes of the Open Meeting Law to identify the manner in which an entity must be created to be considered a

public body and to clarify that a public body consists of at least two members. **Section 4** also excludes proceedings of a public body that are judicial or quasi-judicial in nature from the requirements of the Open Meeting Law. ~~It, unless the public body in question is also a regulatory body.~~

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 6** ~~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. ~~regardless of knowledge of the violation.~~

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 2 and 3 of this act.

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

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

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

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

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

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

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

1. "Action" means:

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

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

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

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

2. "Meeting":

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

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

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

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

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

(III) The series of gatherings was held with the specific 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 order by the governing body ~~for the executive officer~~ of a political subdivision of this State;*

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

(1) ~~The Governor [-the executive officer of a political subdivision of this State] or a public officer who is under the direction of the Governor, [-for the executive officer of a political subdivision of this State,] if the board, commission or committee has at least two members who are not [-on the staff of the Governor, the executive officer or the public officer who made the appointment,] 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 the board, commission or*

committee otherwise meets the definition of a public body pursuant to this subsection; or

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

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

↪ “Public body” does not include the Legislature of the State of Nevada ~~or an entity~~ other than a regulatory body as defined in NRS 622.060, which would otherwise be considered a public body when such entity is engaged in proceedings that are judicial or quasi-judicial in nature.

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

Sec. 5. 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 persons with physical disabilities 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 ~~by~~ by placing the term “for possible action” next to the appropriate item.

(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.

(6) Notification that:

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

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

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

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

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.

➤ The public body shall make at least one copy of the documents described in paragraphs (a), (b) and (c) available to the public at the meeting to which the documents pertain. 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.

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

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

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

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

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

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

18 241.033 1. ~~Except as otherwise provided in subsection 7, a~~ public body
19 shall not hold a meeting to consider the character, alleged misconduct, professional
20 competence, or physical or mental health of any person or to consider an appeal by
21 a person of the results of an examination conducted by or on behalf of the public
22 body unless it has:

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

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

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

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

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

30 (2) Sent by certified mail to the last known address of that person at least
31 21 working days before the meeting.

32 (b) May, with respect to a meeting to consider the character, alleged
33 misconduct, professional competence, or physical or mental health of a person,
34 include an informational statement setting forth that the public body may, without
35 further notice, take administrative action against the person if the public body
36 determines that such administrative action is warranted after considering the
37 character, alleged misconduct, professional competence, or physical or mental
38 health of the person.

39 (c) Must include:

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

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

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

47 4. If a public body holds a closed meeting or closes a portion of a meeting to
48 consider the character, alleged misconduct, professional competence, or physical or
49 mental health of a person, the public body must allow that person to:

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

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

(c) Present written evidence, provide testimony and present witnesses relating to the character, alleged misconduct, professional competence, or physical or mental health of the person 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, physical or mental health or appeal of the results of an examination is considered, the chair 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 who received written notice of the closed meeting pursuant to subsection 1.

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

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

(b) 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."]~~ **Sec. 7.** NRS 241.040 is hereby amended to read as follows:

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

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

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

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

~~["Sec. 7."]~~ **Sec. 8.** This act becomes effective on July 1, 2011.