MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-sixth Session
May 2, 2011

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 8:07 a.m. on Monday, May 2, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator John J. Lee, Chair
Senator Mark A. Manendo, Vice Chair
Senator Michael A. Schneider
Senator Joseph (Joe) P. Hardy
Senator James A. Settelmeyer

GUEST LEGISLATORS PRESENT:

Assemblyman John C. Ellison, Assembly District No. 33
Assemblyman James Ohrenschall, Assembly District No. 12

STAFF MEMBERS PRESENT:

Michael Stewart, Policy Analyst
Heidi Chlarson, Counsel
Martha Barnes, Committee Secretary

OTHERS PRESENT:

Keith Munro, First Assistant Attorney General and Legislative Liaison, Office of the Attorney General
Brett Kandt, Special Deputy Attorney General, Executive Director, Advisory Council for Prosecuting Attorneys, Office of the Attorney General
Barry Smith, Executive Director, Nevada Press Association, Inc.
Pat Hines
Andrea "Ande" Engleman
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada

Todd Rich, Deputy Director, Department of Business and Industry
Susan Fisher, City of Reno; Valley Electric Association, Inc.
Lawrence P. Matheis, Executive Director, Nevada State Medical Association
Wes Henderson, Deputy Director, Nevada Association of Counties
Javier Trujillo, Intergovernmental Relations Specialist, City of Henderson
Jim Slade
Constance J. Brooks, Senior Management Analyst, Clark County
George William Treat Flint, Reno Wedding Chapel Alliance
Margaret G. Flint, Reno Wedding Chapel Alliance

CHAIR LEE:
I will open the hearing on Assembly Bill (A.B.) 59 on behalf of the Attorney General.

ASSEMBLY BILL 59 (1st Reprint): Makes various changes to the Open Meeting Law. (BDR 19-288)

KEITH MUNRO (First Assistant Attorney General and Legislative Liaison, Office of the Attorney General):
The last time I checked the status of this Open Meeting Law bill, it was the most tracked bill during this Legislative Session. Few subjects cause more angst, anger and confusion than the Open Meeting Law, but there should not be any confusion. There should be discussion during every Session about how the laws are working and if they are meeting the needs of the Legislature.

The Attorney General's Office has compiled data on three years' worth of cases provided for you in the handouts (Exhibit C), (Exhibit D), (Exhibit E) and (Exhibit F). The information is provided for you to make the determination about whether the laws are operating properly. In many ways, this is an easy bill for the Attorney General's Office. If you completely reject it, then you are satisfied with the way the laws are operating. Nevertheless, we have some things for you to consider.

We provided a summary of the bill in a letter dated April 29 to members of the Senate Government Affairs Committee, (Exhibit G). We are asking for two new things in A.B. 59; the remainder is fine-tuning existing laws. The recommendation came from a public member of the task force convened to discuss this issue. The Legislature designated the Attorney General to enforce the Open Meeting Law, and we can write opinions informing a public body if it

has complied with the Open Meeting Law. Often, that opinion is not acknowledged by the public body and it moves forward with its business. Therefore, section 2 provides that if the Attorney General's Office finds the Open Meeting Law has not been followed, the public body must acknowledge that finding. This will allow the public body to discuss the finding, remedy the situation, disagree with the finding or, most important, allow the public the opportunity to speak to the finding.

We know the Open Meeting Law is important to the Legislature; therefore, the enforcement of these laws is equally important. In the enforcement of these laws, the Legislature has placed firm deadlines for responding to complaints. *Nevada Revised Statute* (NRS) 241.037 sets forth two limitation periods. The first is 60 days from the date of the alleged violation to bring an action to void the public body's action. The second limitation period of 120 days, which runs concurrently with the 60-day period, forces compliance with the Open Meeting Law records of the public body—which often tell if there has been a violation. Receiving the records in a timely fashion is important to enforcement.

Section 3 allows the Office of the Attorney General to subpoena the records of a public body. This request will ensure accuracy of the records in reviewing whether a violation has occurred and ensure timeliness in providing records so the Attorney General's Office, during this time of budget constraints, can promptly review these matters. Finally, it ensures accountability in the process so the public can review what has happened with respect to public bodies and how the laws were enforced regarding these public bodies. Those are the new provisions requested by the Office of the Attorney General.

One of the items the Attorney General discussed with the task force was whether there should be more openness or clarity with respect to some of the procedures and if the procedures should be written down in the law so citizens can read them. For many years, the Office of the Attorney General has written dozens of legal opinions providing guidance to public bodies as to what the best procedures are for complying with the Open Meeting Law. We are proposing that we begin the process of including the procedures governing the operation of a public meeting into the law.

Section 5, subsection 2, paragraph (c), subparagraph (2) proposes that the public should be informed of those items for which action can be taken.

Section 5, subsection 2, paragraph (c), subparagraph (6) states the law should be clear that items can be taken out of order, two items can be combined for consideration, and an agenda item can be removed or delayed at any time.

Section 5, subsection 2, paragraph (c), subparagraph (7) states any restrictions on the public's right to comment must not be based on a point of view.

There are two parts to section 4 with only a few words but oftentimes the fewer the words the greater the impact. In *Stockmeier v. State, Dep't of Corrections,* 122 Nev. 385, 135 P.3d 220 (2006), the Nevada Supreme Court held that quasi-judicial proceedings were exempt from the Open Meeting Law. In a subsequent case, specifically *Witherow v. Board of Parole Commissioners*, 123 Nev. 305, 167 P.3d 408 (2007), there was tremendous discussion regarding this case. A concurring opinion in that case is quite strong. Nevada Supreme Court Associate Justice James W. Hardesty writes:

> I would...overrule *Stockmeier v. State*...Our decision in *Stockmeier* thus framed the definition of "quasi-judicial proceeding" in terms of whether the hearing entity provides certain "minimum" due process safeguards. By equating quasi-judicial proceedings with any proceeding that offers due process protections, the *Stockmeier* holding eviscerates the purpose of the Nevada Open Meeting Law.

Justice Hardesty later writes that:

> By defining quasi-judicial proceedings as any that provide due process protections, the *Stockmeier* holding creates an absurd result by permitting public bodies to easily circumvent the Open Meeting Law." Entities such as the Public Utilities Commission, Nevada Interscholastic Association, the Board of Architecture, the Board of Dental Examiners, county planning commissions, county boards of commissioners...are free to claim exemption from the Open Meeting Law simply upon the adoption or utilization of basic due process protections.

This is really strong language by our Nevada Supreme Court.

One of the purposes of A.B. 59 is to clean up this ruling as it applies to professional licensing boards and their disciplinary processes. In section 4, the bill seeks to address a portion of the problem identified by Justice Hardesty.

This section requires professional licensing boards to comply with the Open Meeting Law even when engaged with proceedings that are quasi-judicial or judicial in nature. Why should this be?

When a licensing board holds a disciplinary hearing involving a licensee, it is unquestionably performing quasi-judicial functions. These types of hearings, by statute, are contested cases where the boards consider charges and evidence against the licensee, hear testimony, deliberate and make decisions regarding appropriate disciplinary actions. The decisions of the board are appealable to the District Court and the Nevada Supreme Court. This falls within the heart of the exemption to the Open Meeting Law identified in *Stockmeier*. Licensing boards could rely on the language as written in *Stockmeier* to avoid disciplinary hearings in public. There is no evidence this has happened, but part of the role of the Office of the Attorney General is to point out holes in our existing laws and recommend ways to fix potential problems while still following the intent of the Legislature. Some may say that would never happen, but we are all seeing what we thought could never happen.

Members are serving a term on these boards, and it makes the board members pretty powerful. Some of the boards have been given the authority to hire their own attorneys who work and answer solely to the board. The Attorney General's Office represents the professional licensing boards. Because of that nexus, we are asking you to close the hole identified by Justice Hardesty as it applies to them.

In the second part of this section, during the last interim there was an issue as to whether a Governor's Blue Ribbon Task Force needed to comply with the Open Meeting Law. The press claimed they did, but long-standing written authority by the Attorney General said it did not have to comply. The more controversial or difficult the issue, the higher the probability a blue ribbon committee, special commission or government task force will be created to deal with important problems out of the view of the public. The goal of this proposal is to amend the definition of public body to ensure the actions and deliberations of any body created by the Executive Branch of State government to serve the public's business is transparent. The public should be able to see these multimember groups discharge their responsibilities to the maximum because of the growing role these groups play in the formation of public policy. This legislation defines public policy based on the process by which the body was created, not its function.

In section 7, there are no civil monetary penalties under NRS 241. Civil monetary penalties for violations of open meeting laws are common in the United States of America. Twenty-four states authorize statutory civil monetary penalties. Four of those states have both civil and criminal penalties. The public interest in transparency could be better served with the addition of a civil monetary penalty. The public's interest in its government is reflected by the volume of complaints received by our office. The public wants openness. Training provided by our office to counsel for local government bodies is important and effective, but public body members must also become responsible for their own actions. Section 7 allows a small monetary penalty if you break the Open Meeting Law and know that you are breaking it.

Lastly, section 6, was not discussed at the Attorney General's task force meeting but proposed by the Department of Business and Industry. We are neutral on this provision as it addresses the process of hiring someone. We will leave it to the Legislature whether this is a good change or not. The Assembly thought it was, and a representative from the Department of Business and Industry can explain its reasoning for this provision.

CHAIR LEE:
Section 3, subsection 3 says a person who willfully fails or refuses to comply with a subpoena issued pursuant to this section is guilty of a misdemeanor. There is another portion that speaks to the posting of an agenda. If the chair places something on the agenda or he or she violates the Open Meeting Law, is the $500 fine assessed to each member of the committee? If members are in attendance at the meeting and something happens, do they all get fined $500?

MR. MUNRO:
The fine will be assessed to everyone who is aware of violating the Open Meeting Law and continues to participate. If you had a whole committee and everyone said, we know we are breaking the law but we are going to do it anyway—in this case, the fine would apply to everyone on the committee. If one person knew he or she was violating the Open Meeting Law, the fine would apply to only that person.

CHAIR LEE:
Does this person have to go to court?

MR. MUNRO:
The full panoply of due process protections would apply. We would file a civil action, and the person would be noticed and have an opportunity to be heard with an ability to call witnesses.

CHAIR LEE:
In section 5, subsection 2, paragraph (c), subparagraph (6), where it addresses notification, are you requesting the public body can take items out of order, can combine two items for consideration and may not restrict comments based on viewpoint from what is listed on the agenda?

MR. MUNRO:
We have many procedures that govern how the Open Meeting Law operates, and they are not included in the law. They are written as Attorney General Opinions and retained in our office. People know the rules exist, but they should be written in the law so it can be referenced by the public.

CHAIR LEE:
You are not asking that this be placed on the agenda?

MR. MUNRO:
No.

CHAIR LEE:
I would hate to have violations of the Open Meeting Law because we did not print something properly.

SENATOR SETTELMEYER:
I appreciate that you are not asking for that information to be placed on the agenda. For our local conservation district, we actually included the information on our agendas to ensure we were not in violation of the law. In section 7, subsection 4, at the bottom of the page where it states "... who participates in such action with knowledge of the violation," does that mean someone who knowingly violates the law?

MR. MUNRO:
Yes, and that is to make sure there is no guilt by association, meaning I know I am violating the law but I will do it anyway.

SENATOR SETTELMEYER:
The wording seems to be more complicated than using the language "knowingly violates provisions of this chapter." Was there a reason that language was not used?

MR. MUNRO:
We did not draft the language, but as clean-up language, it says the same thing. One procedure that needs to be included on the agenda is clearly identifying what action may be taken on those items by placing the term "for possible action" next to the appropriate item.

CHAIR LEE:
The way I read the bill, it indicates the notice must include time, place and location of the meeting, and then it talks about notification. When I asked if items can be taken out of order, the answer is yes as long as items are listed on the agenda. Can they combine two or more agenda items, the answer is yes, if it is on the agenda. The items must be listed on the agenda.

MR. MUNRO:
I am glad you asked that question because that is not our intent. Our intent is that it be written in the law.

CHAIR LEE:
We will clean that up before we vote it out of this Committee.

SENATOR HARDY:
In the Open Meeting Law, we are having a discussion about using subpoena powers in order to get items that should be in the open meeting or should be open to the public. I find that redundant.

MR. MUNRO:
It is an issue of timeliness and accountability so everyone knows what has occurred with respect to the meeting and enforcement and everyone understands the law. We are currently on the honor system, and it should be

clear for everyone with respect to the meeting and the enforcement of the Open Meeting Law. There should be no more honor system with respect to this issue.

SENATOR HARDY:
There are things we have protected from the Open Meeting Law, such as negotiation with financial issues and contracts. Am I getting away from what this bill covers?

MR. MUNRO:
The Legislature has decided it is a matter of public policy to afford some protections with respect to issues of that nature.

SENATOR HARDY:
Those would not be protected under subpoena power, would they?

MR. MUNRO:
Yes, they would be available for subpoena power.

SENATOR HARDY:
In regard to the agenda item, when we talk about public comment, which is sensitive for local governments, I do not see a preclusion to restrict the time, place and manner of the comments but see they may not restrict the comments based on viewpoint. The time issue is interesting because some people will read that as five minutes and some will read it as the proximity of the agenda item. Does the time include both so you can have public comment at the beginning, at the end of the meeting or behind every agenda item?

MR. MUNRO:
This bill does not speak to that issue.

SENATOR HARDY:
I am looking at the word "time" on page 6, line 9 as what time are we referencing: the time it takes to make the comment or the timing of the comment itself.

MR. MUNRO:
It goes to a reasonable time, place and manner of public comment, but we are not getting into proximity on the agenda with this bill.

SENATOR HARDY:
That would still be up to the local entity to determine?

MR. MUNRO:
Yes. We are not addressing it in this bill.

SENATOR HARDY:
You may be attending a meeting and realize there is some Open Meeting Law violation or you have a question about a violation. You will have the opportunity to comment about the violation and participate in discussions. When does it cross over to you making a debate about an issue? You have not made an action, but you attended a meeting where an action will be voted upon. At what point do you get up and leave the open meeting because you are in attendance before an action is taken?

MR. MUNRO:
Do you know there is going to be a violation?

SENATOR HARDY:
You know there is going to be an action taken but you do not know what the action is because it is a vote. After the vote is taken, you have attended a meeting and participated in an action even though you may have voted outside of the majority party. You will not know what the action is until after the vote.

MR. MUNRO:
The bill says if you know there is going to be a violation and you participate in it, then you are potentially civilly liable for up to $500. Votes do not usually result in violations unless there are other issues involved.

SENATOR HARDY:
I am attending a city council meeting. There comes a point where I say, this could lead to an action that is in violation of the law and I am going to vote against it. I stand up and say, I think this is in violation of the law and the rest of the members say it is not. I have attended the meeting and participated in an action even though I was on record as being against the action.

BRETT KANDT (Special Deputy Attorney General, Executive Director, Advisory Council for Prosecuting Attorneys, Office of the Attorney General):
That is exactly the scenario we used when we crafted this legislation. You as the member have just protected yourself because you established your concern on the record which the Attorney General's Office will review once notice of a potential Open Meeting Law violation is received. You protected yourself from the civil liability by speaking on the record.

SENATOR HARDY:
That is not what the bill says. It says if I went to the meeting that I am liable for a $500 fine and civil penalty. The bill does not say anything about what I did or what I said at the meeting. It says I participated in something that led to an action with knowledge of the violation. Even if I stand up and say, "This is wrong, we should not be here," and then I leave, I was at the meeting in which an action took place.

MR. MUNRO:
As the meeting played itself out, the proper question for you would be on the record to your attorney, does this violate the Open Meeting Law? If he says no, it does not, you have not knowingly violated the Open Meeting Law.

SENATOR HARDY:
That goes back to your original statement that says these boards are hiring attorneys and they happen to be wrong.

MR. MUNRO:
Potentially, yes.

SENATOR HARDY:
Having said I have knowledge this is wrong, but my attorney says this is okay, then we need to write it so the attorney gets fined and not me.

HEIDI CHLARSON (Counsel):
Reading the language in section 7, subsection 4, it does say, "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, and who participates in such action with knowledge of the violation." The Attorney General is reading that language to say it is not someone who attends the meeting but someone who participates

in the action knowing it is a violation of the Open Meeting Law. It is not just simply an act of attending the meeting but actually participating in the vote.

SENATOR SETTELMEYER:
At the local conservation district, the subject comes up about buying a piece of equipment which was not on the agenda. I say this is not on the agenda and I abstain from the vote. Abstention is an action. If I vote no because I believe it is a violation of the Open Meeting Law, that is still an action. At least that is my interpretation.

MS. CHLARSON:
The term "action" is a defined term for purposes of the Open Meeting Law. Section 4 of the bill includes the provision of law that provides the definition, and it seems to take into account that it is an affirmative vote. If you are participating in an action that is not on the agenda and you do it knowingly, it could be a violation of the Open Meeting Law and the civil penalty could be enforced. The fine is not triggered simply because you are in attendance at the meeting and you abstain or vote no.

SENATOR HARDY:
Where is that information in section 4?

MS. CHLARSON:
It is in existing law. Section 4 of the bill is amending NRS 241.015, and subsection 1 provides the definition of "action."

SENATOR SETTELMEYER:
That definition should also be written into this section of law to provide further clarification.

SENATOR HARDY:
I am reading section 4, subsection 1, action means, paragraph (a), "a decision made by a majority of the members present during a meeting of a public body ... ." So is our counsel saying an action for the person who votes no in that definition means that the person did not participate in the action?

MS. CHLARSON:
Addressing the question from Senator Settelmeyer about a local government body taking an affirmative vote on an item that was not on the agenda, I would

interpret this to mean the action taken, in violation of the Open Meeting Law, is the majority vote of the body on an agenda item that is not properly noticed. In that situation if a minority of the members either abstained or voted no, I would interpret that to mean those individuals did not violate the provisions of the Open Meeting Law by making the abstention or the no vote. I would also defer to the Attorney General's Office for verification it would interpret it that way also.

MR. MUNRO:
Yes, that is how we interpret this language.

SENATOR SETTELMEYER:
I still have problems with this section. Say we begin discussing an issue in the local conservation district. I say this is clearly a violation of the Open Meeting Law and we should not be discussing this matter. Therefore, I move to postpone the issue to a later meeting. I make a motion and it is seconded, but I have taken an affirmative action, am I guilty?

MS. CHLARSON:
In that situation, the Attorney General's Office would probably not interpret an attempt to remedy a possible violation of the Open Meeting Law as a violation in and of itself. I would defer to the Attorney General's Office for clarification.

MR. MUNRO:
I would agree with the answer from your legal counsel. Anyone who thought the Open Meeting Law was being violated and moved to delay action on the item would not be prosecuted under this provision and would not be taking action in furtherance of a violation. The person was publicly trying to delay the action so the matter could be heard properly before the public.

SENATOR HARDY:
One of the common things not exposed to the Open Meeting Law is to note as an agenda item new business. You end up discussing what will be future business, which is not on the agenda to discuss. Someone might say we need to discuss this issue and we need to put it on the agenda for the next meeting. We have not determined what will be on the next agenda, but we are taking an action regarding what will be discussed at the next meeting without it being listed. I am concerned with the discussion that happens peripherally that leads to an action. People talk about their feelings on an issue before the issue

becomes an item of discussion listed on the agenda. Help me understand how that would be addressed.

MR. MUNRO:
You are concerned that during the course of a meeting, someone says, I would like this on the agenda for a subsequent meeting so the matter can be fairly noticed, posted, discussed and the public can provide input. I do not see an Open Meeting Law violation in that scenario or any violation of section 7 of A.B. 59 because you are not furthering an action which results in a violation of the Open Meeting Law. You are making an attempt to ensure the Open Meeting Law is complied with because you are asking the matter be placed on an agenda. I am assuming within that request there is an effort to ensure the item is fairly posted for the public.

SENATOR HARDY:
I appreciate that intent. As board members in a social situation there could be three of the five of us in a group talking about an issue that exists in the city and how we feel about it. Are we in violation of the Open Meeting Law by talking about how we feel about the issue and what we think should be done?

MR. MUNRO:
Looking at the language that is already set by the Legislature in section 4, subsection 2, paragraph (b), subparagraph (1), which states a meeting:

> does not include a gathering or series of gatherings ... at which a quorum is actually or collectively present 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.

SENATOR HARDY:
The word "deliberate" is the sticking point. If we are deliberating in a social setting versus the meeting setting in order to place it on the agenda, you could get an idea of where the members stand on the issue before it is properly discussed in an open meeting. The members are deliberating on a decision even though they have not formalized the decision.

MR. MUNRO:
If you note the text for this language is existing law. These are decisions made by prior Legislatures and the law as it stands.

SENATOR HARDY:
So with the laws that stand now, we are putting language into a meeting, where we are attending a meeting and deliberating what is going to be on the next agenda. I still have issues with attending a meeting.

CHAIR LEE:
It looks like this bill has some concerns, so we will address them offline. In section 5, subsection 2, paragraph (c), subparagraph (7) it states, "Any restrictions on comments by the general public." If we have a school board meeting, then the restrictions must be reasonable and may not restrict the time. Say you have three minutes to discuss something on the agenda. Could you explain time, place and manner as you perceive it?

MS. MUNRO:
This is the reason for A.B. 59. The current restrictions were not approved by the Legislature but implemented by an Attorney General Opinion. A reasonable time, place and manner restriction is a term that the Supreme Court developed to deal with First Amendment issues. Time means it must be reasonable, and 30 seconds may not provide an opportunity to get your point out in a fair manner. Manner is a respectful manner, no swearing but using a respectful manner of communicating. Place means a reasonable environment. You would not want someone to stand in the hall yelling at the committee while making a presentation.

CHAIR LEE:
So, that manner means we really do not want you to speak to us, we want you to send us a letter. Would that be a violation of the Open Meeting Law? Manner means you can present documentation and we will provide you with time to speak to us and you can send up e-mails also.

MR. MUNRO:
I do not read it that way. I read a public comment as just that. The ability for the public to get up and say something. You must treat everyone the same and fairly. You cannot say everybody gets to talk but Senator Hardy only gets to send a letter.

BARRY SMITH (Executive Director, Nevada Press Association, Inc.):
I support A.B. 59. I was a member of the task force that worked on this issue, and we had long discussions and a great deal of questions about the best way

to approach these issues. The best way to strengthen the Open Meeting Law is to strengthen the Attorney General's ability to enforce it and to place the provisions in the *Open Meeting Law Manual* into the law. It will improve the enforcement through public awareness. If you receive a notice from the Attorney General, you have been in violation of the Open Meeting Law and it will be placed on the agenda. In the past, the public did not know the board was violating the law, and this is a way to make the public aware by utilizing the civil penalties. The subpoena power will give the Attorney General the ability to resolve complaints in a timely manner.

PAT HINES:
I have served on several boards, and at times we may have broken the Open Meeting Law. There needs to be a differentiation between quasi-judicial and Open Meeting Law for the benefit of those of us who cannot find quasi-judicial in the *Nevada Revised Statutes*. The Parole Board was following procedures which were not included anywhere in the law. Please make this information easily accessible for the members of the general public so they will be informed rather than breaking the law. There should always be public discussion after every issue in any board meeting and a public comment period. Public comment is always left until the end of the meeting when there is a limited amount of time left for the public. Can you tell us what you want to say in two minutes? The idea of transparency in government to the public must be included in quasi-judicial and the Open Meeting Law. I would like someone here to tell me what it means to be a quasi-judicial board or agency.

MS. CHLARSON:
A quasi-judicial body is an individual or organization which has powers resembling those of a court of law or judge and is able to remedy a situation or impose legal penalties on a person or organization.

CHAIR LEE:
Is that in NRS?

MS. CHLARSON:
It is not defined for NRS. We can add the term to the bill if the Committee feels it would add clarity to the situation.

CHAIR LEE:
We will see about including that information in the bill.

MS. HINES:
I have an old *Open Meeting Law Manual*. Is there a new one since 1987?

CHAIR LEE:
We will ask the representatives from the Office of the Attorney General to answer that question when they return to the testifier's table.

SENATOR HARDY:
Relative to the quasi-judicial question, Senator Schneider and I are interested in the reality of the Homeowners' Associations (HOA) being subject to the Open Meeting Law.

MS. CHLARSON:
The HOAs are not subject to NRS 241, which is the Open Meeting Law. There are provisions in the relevant statutes related to HOAs that set forth their responsibilities as far as proper notice of their meetings. There is also a separate governing body, not the Attorney General's Office, that oversees violations of the particular laws applicable to HOAs.

SENATOR HARDY:
The definition of quasi-judicial is located in NRS 241?

MS. CHLARSON:
There is no definition of quasi-judicial in NRS. It is a term of art and a defined word in a law dictionary. If you added the definition to NRS 241, it would not make HOAs subject to the Open Meeting Law, but you could craft language to specify that. The Open Meeting Law applies to open bodies, and HOAs are not considered public bodies.

SENATOR SCHNEIDER:
In the preamble of NRS 116, HOAs are quasi governments. That is the part of the law the Federal Bureau of Investigation (FBI) used to raid the HOAs in Las Vegas under the construction defect scam. The issue exposed all of the HOA problems and the FBI's No. 1 charge was political corruption. The term we included, quasi government, allowed the FBI to investigate. I would like to see the HOAs fall under the Open Meeting Law because they are governments, they have the power to tax, penalize and take people's property. I would like them to fall under this provision of the law. I have asked that the Office of the Attorney General oversee HOAs where the enforcement is more appropriate.

MS. HINES:
I reference the *Witherow v. State Board of Parole Commissioners* and *Stockmeier v. Department of Corrections Psychological Review Panel* cases because both of these inmates were denied parole on the basis that the case was a quasi-judicial situation. Yet, I understand there are five or six requirements for something to be declared quasi-judicial; in the case of the inmate, he or she must be present, must be able to read all discovery, must be able to talk to the witness, and at the end it says it must go to a higher power. The objection on the quasi-judicial and Open Meeting Law confusion between those two cases was that the inmates never got a chance to speak to any of the accusations made against them. They did not know they could have a representative and other inmates did not attend their parole board hearings. It will be very beneficial to clarify these two terms in the law not only for the inmates but for residents like me.

ANDREA "ANDE" ENGLEMAN:
I am neutral on A.B. 59 and support most of the bill but would like to propose an amendment. For many years I represented the Nevada Press Association here at the Legislature. The *Open Meeting Law Manual* that was referred to during prior testimony was put out by the Nevada Press Association and the Office of the Attorney General. I raised the money through contributions in order to print it and distribute it to public bodies. The *Open Meeting Law Manual* is now available on the Attorney General's Website and can be downloaded and printed.

My concern with A.B. 59 lies with the exemption in section 4, subsection 3, paragraph (c) and putting an exemption in for quasi-judicial bodies. I have a proposed language change (Exhibit H). When I first heard this bill in the Assembly, I was concerned but did not testify because I wanted to hear the reason for the proposed language. I have spoken to Mr. Munro about my concerns. Following that meeting on April 7, the Carson City Board of Supervisors held a meeting having to do with appointing a justice of the peace.

The process they used evaded the Open Meeting Law but did not violate it. The Board said to its staff, you go take the applications for the justice of the peace, who does not have to be an attorney, and conduct the interviews. You can forward the three finalists to us and we will interview them during an open meeting. You can get around the Open Meeting Law if your staff performs the tasks because it is not covered by the Open Meeting Law and the interviews

could be held in private. A lot of people in Carson City who objected to that process attended a meeting on April 7 and objected to the violation of the Open Meeting Law. It did not violate the Open Meeting Law. However, toward the end of the meeting, you have a copy of the news article from the *Nevada Appeal* (Exhibit I), Carson City District Attorney Neil Rombardo disputed the suggestion that the process violated the Open Meeting Law.

"Judicial selection committees are not subject to the open meeting laws, open meeting law does not apply to the judicial branch," said Rombardo. That is exactly the havoc I see taking place if we put in a blanket exemption for quasi-judicial bodies when we do not even have a definition in NRS. The court made one up, but it is under the purview of the Legislative Body to review and rewrite the language to ensure the definition is included. As Justice Hardesty said in his dissent, everybody in the State can claim he or she is a quasi-judicial body, and if their attorney directs them to proceed, boards cannot be held responsible for the Open Meeting Law violation.

Following the *Witherow* court case, the Division of Parole and Probation acted appropriately. Even though it had received this court ruling, it came back to the Legislature and brought A.B. 18, which passed the Assembly Committee on Judiciary.

ASSEMBLY BILL 18: Clarifies that meetings of the State Board of Parole Commissioners are quasi-judicial and clarifies the rights of prisoners and other persons who appear before the Parole Board. (BDR 16-460)

A new process was included to replace the exemption, and the board must now follow a process. I am also concerned when we say all quasi-judicial bodies except for those defined under NRS 622.060, saying everyone is exempt except for regulatory boards. If we are going to say regulatory boards are not exempt, then why not include county commissioners and list them all? People should be presumed to be covered by the law until they come before the Legislature and make their cases to obtain specific exemptions that can be added to the statute.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):
We are in support of this bill and were one of the vocal opponents to the way the Open Meeting Law was being interpreted with respect to the education or task forces. This was evident in the Blue Ribbon Education Task Force during

ex-Governor Jim Gibbons' administration. We are happy to see steps to clarify the Open Meeting Law. More bodies that are involved with public policy should be subject to the Open Meeting Law. I have a question for the Office of the Attorney General to clarify. The amended form of this bill eliminates the executive officer of a political subdivision of this State. That was originally in the bill and I am unsure as to why it was deleted. We would like to support the comments regarding quasi-judicial because I was unable to locate any definition in NRS. The NRS 213.130 deals with the quasi-judicial nature of the Parole Board, and it is referred to in six other chapters of NRS but not with as much specificity as it is in NRS 213.

In the *Stockmeier* decision, the courts proposed a definition of quasi-judicial. We would love to see that mirrored in NRS. A definition of quasi-judicial needs to be included in this bill because it creates a gaping hole in the law. Another question I have is regarding personnel matters and how those are dealt with and recognized as a public decision. When people are hired, intimate details of a person's performance are discussed and bodies are allowed to attend those meetings. The votes of those executive sessions should be considered public. As I read the law right now, that is not declared in NRS. We would like to see it in print. We appreciate the careful consideration this Committee has paid to this bill because it is incredibly important to ensure open and transparent government. For those people who participate as governmental representatives, they need the law to be laid out in a clear and concise format so those representatives who make decisions on behalf of the public understand it as well.

TODD RICH (Deputy Director, Department of Business and Industry):
I am here on behalf of Director Terry Johnson in support of A.B. 59, particularly section 6, subsection 7, paragraph (a) which seeks to clarify a meeting held to consider an applicant for employment is not subject to notice requirements otherwise imposed by this section. We have recently gone through some recruitment efforts with some of our divisions, especially the Taxicab Authority. The recruitment process has been delayed because we have to provide a 21-calendar day notice to all of the applicants who are interested when a public body is empowered to make recruitment decisions.

SENATOR HARDY:
I need to disclose that my son works for the Taxicab Authority and do not know how that will affect me when this bill comes for a vote.

SUSAN FISHER (City of Reno):
We have one friendly amendment (Exhibit J) that will move us from neutral to support of A.B. 59. I have spoken with representatives from the Attorney General's Office, and they have no concerns with the proposed change. In section 4, subsection 3, paragraph (a), subparagraph (7), where it says "a resolution or order." Relative to this particular statute, "order" is not defined, but the word "action" is very clearly defined. For consistency and statutory construction, we would like to change the word "order" to "action" as noted in the proposed amendment.

SENATOR SETTELMEYER:
In Douglas County, we have had a lot of discussions and individuals have filed Open Meeting Law violations. To my knowledge, none of them have ever been substantiated, and that would probably be consistent around the rest of the State. Will this bill solve the issue, or will it just make the problem worse?

MR. MUNRO:
We have provided three years' worth of cases, Exhibit D, Exhibit E and Exhibit F, regarding the Open Meeting Law. We find lots of violations. Will we solve the Open Meeting Law with this bill? No, but the Legislature needs to address this issue. We are presenting simple Open Meeting Law issues with this bill. I identified the *Witherow* case where several years ago the Nevada Supreme Court said you provided a broad exemption for many bodies from the Open Meeting Law. The response from the Legislature from that broad and strong ruling has been nothing. We came forward with a small portion of that exemption—professional licensing boards, doctors, and nurses, could not hold their disciplinary proceedings in private—so we are taking small bites of the apple. Will this solve it all? No. We should have discussions on these issues and move forward with the simple issues set forth in this bill. After that, we can get to the heart of the bill. Ms. Engleman's testimony was very good regarding this subject, but she talked about things that will be very difficult for this body to address. We are trying to get the easy issues done first.

SENATOR SETTELMEYER:
I am worried we might pass something that would bring more violations forward with less results. Maybe we need to tackle HOAs and make sure collective bargaining is done under the Open Meeting Law.

VICE CHAIR MANENDO:
I will close the hearing on A.B. 59 and open the hearing on A.B. 61.

ASSEMBLY BILL 61 (1st Reprint): Creates a temporary entity to study issues relating to substance abuse in this State. (BDR 18-290)

MR. MUNRO:
In 2007, the Governor formed the Governor's Working Group on Methamphetamine Use. Since 2007, the Working Group studied the impact of methamphetamine in this State, looking at its impact on law enforcement, correctional facilities, social services and community services. The group reported its findings to the Legislature.

The mandate of the Working Group expired on December 31, 2010. Copies of the 2009 and 2010 minutes for the Group have been provided to assist the Committee in reviewing this bill draft (Exhibit K), (Exhibit L), (Exhibit M) and (Exhibit N). We have also provided a copy of the final report (Exhibit O), and as you can see, this was a highly successful project. The Working Group found substantial evidence of methamphetamine abuse around the State, as well as extensive problems caused by illicit use of other types of substances, including prescription drugs.

The Group was so successful, its members wanted to continue their work and expand upon the areas to assist the citizens in our State. Specifically, the Group wanted to expand from studying and looking for solutions to including other substances as well; therefore, we have come forward with A.B. 61. The intent of this Legislation is to provide a focal point for organizations in the State to work together to address the broader substance abuse problem. By working together, the intent is to improve the State's ability to identify and address substance abuse issues. As you can see in section 4, the duties of the Working Group are listed.

The Working Group will submit a report of its findings and recommendations to the Director of the Legislative Counsel Bureau by January 15 of each even numbered year. You will note there is no fiscal note attached. The Office of the Attorney General will staff the group from existing staff and will provide facilities necessary for the meetings. We respectfully request this Working Group sunset in four years. Attorney General Catherine Cortez Masto is

term-limited. She will not be the Attorney General in four years, so we will leave the decision of extending the work of the Group to the next Attorney General.

Assembly Bill 61 creates a permanent Substance Abuse Working Group to study substance abuse throughout the State, requires the group to study specified issues, to meet quarterly and to report its findings and recommendations to each regular Session of the Legislature. Group members will serve without compensation and will not be entitled to per diem or travel expenses.

Assembly Bill 61 will create an opportunity for State government, law enforcement, treatment and prevention organizations, tribes and other groups to come together in a team effort to understand and fight substance abuse in this State at no cost to the General Fund.

LAWRENCE P. MATHEIS (Executive Director, Nevada State Medical Association):
We support this bill because of its importance. Both Houses of the Legislature are dealing with a number of proposals, trying to get a handle on the growing substance abuse problems, from prescription drugs, to methamphetamine or the return of heroin. This is a moving target, and having a body reviewing the new permutations on substance abuse in the State and their impacts can make sure you periodically refresh the laws. We support it for those reasons. This Group has a good track record in terms of providing useful information for the legislative process as well as for regulatory agencies.

VICE CHAIR MANENDO:
I have a question for the Attorney General's Office representative. Would folks like Sandy Heverly with Stop DUI be able to be involved in this?

MR. MUNRO:
Absolutely. This is open to all people. It is an opportunity for all people to come forward and discuss issues and look for solutions.

VICE CHAIR MANENDO:
We will close the hearing on A.B. 61 and open the hearing on A.B. 63.

ASSEMBLY BILL 63 (1st Reprint): Revises provisions relating to the duties of, and services provided by, the Office of the Attorney General. (BDR 18-203)

MR. MUNRO:
This bill can be difficult because there are several subparts to the bill that are not related to each other in subject matter, but are related because each of the provisions deals with duties of the Attorney General.

As for section 1, everyone knows these are tough budget times. A little over a year ago, the Department of Administration created a new budgeting process which is commonly called the priorities of government. Legislative staff has also sought more detailed explanations on our budget. We paid attention to these requests to match our duties with our costs. We had some difficulty with costs for the representation of boards and commissions. Because of this, and as you can see from the organizational chart (Exhibit P), provided to you, we have formed a Boards and Commissions Division so we can dedicate individuals to this representation and understand our costs as well as provide a better service.

We are here in part to address the issue of representation for boards and commissions. Section 1 gives the Attorney General the discretion to hire special deputy attorneys general who can work on a limited basis to provide representation to the regulatory licensing boards.

The Legislature authorizes regulatory licensing boards to pay our office on an hourly basis. I presume this authorization was given because a licensing board never knows how much legal work it will need. By paying hourly, these boards can watch their costs and only pay for the services needed. We thought the Office of the Attorney General should do the same.

The Office of the Attorney General is looking to streamline itself by hiring people to work on an hourly basis so we do not have to hire full-time attorneys to handle nonsteady work. Allowing us to hire staff to work on a limited basis will allow us to watch our attorney costs and still have sufficient staff to meet the needs of the boards and commissions.

Section 2 is similar to section 1 in concept. It will allow us to watch our attorney costs more closely and still have sufficient staff to meet the needs of our district attorneys if they need help in a really big case. To provide some background, the Legislature authorizes district attorneys to refer conflict cases to our office since district attorneys have the primary jurisdictions to handle most criminal cases in the State.

Oftentimes, district attorneys or law enforcement have a conflict of interest and must refer cases to our office. Section 2, subsection 3 of A.B. 63 allows the Attorney General to say no when these cases are referred from the district attorneys. We do not want to say no to these cases, but with cuts in pay and staff, we must ensure our office has sufficient resources to handle the more complex criminal cases.

Section 2 will allow us to work with the locals to hire a special prosecutor to carry out the prosecution if it is necessary to do so. Section 4 deals with our office determining the actual cost of providing a service, regarding interlocal agreements where a public agency will be required to expend more that $25,000. Current law requires these types of agreements be sent to the Office of the Attorney General for review. We would like to provide local governments some flexibility with respect to this provision by providing them the discretion of sending these agreements to the Attorney General's office. It should be their choice. Section 4 will also allow us to justify the cost of providing this service to local governmental entities if they choose to enlist our assistance.

Sections 5 through 19 are very long but they are all related to qui tam actions. Qui tam is a fancy Latin term for "who sues on behalf of the king as well as for himself." What does this mean? It involves fraud against the government. It is a lawsuit under a statute that establishes penalties for certain acts or omissions that can be brought by an informer and in which a portion of the penalties, fines or awards can be awarded to the whistleblower.

Nevada has such a process, and we are not looking to change how it operates, merely add who can potentially be involved in the process. Under current law, the Office of the Attorney General is the only governmental entity who can bring such actions. However, with staff cuts we want to enlist the help of district attorneys and city attorneys to handle these cases. We are planning for this contingency by requesting that authority. We are requesting the authority to enlist the assistance of district attorneys and city attorneys to help in cases where there is fraud against a local governmental entity. We will only enlist them if they wish to be enlisted.

Please note in section 7, subsection 2, where it says "A district attorney or city attorney may accept a designation from the Attorney General ... ." That means the attorneys can decline, but we want to utilize their expertise to assist us in that process.

SENATOR SETTELMEYER:
For clarification, a board, commission or district can hire its own attorney rather than have the Office of the Attorney General represent it?

MR. MUNRO:
The Office of the Attorney General represents boards and commission but do not usually represent local boards and commissions because that is the purview of the district attorney.

SENATOR SETTELMEYER:
I will use the Optometry Board as an example. The Board thinks there is a conflict and does not want the AG's Office to represent it; instead, the Board wants to hire an attorney. Does it still have the right to hire its own counsel?

MR. MUNRO:
It depends on the statutory authority given by the Legislature.

SENATOR SETTELMEYER:
Could you send me information regarding any boards or commissions that must use the services of the Office of Attorney General? My concern stems from having to utilize the Attorney General and also receive a bill. If the boards and commissions have the right to choose their own counsels, they can pay their own bills. But if we are indicating they have to use the Office of the Attorney General, and it is outsourced, but they do not like who you hire, that is where I have a problem.

SENATOR HARDY:
Basically, you are talking about some Home Rule options where the Office of the Attorney General can utilize the district attorneys or the city attorneys if they accept the designation. Do other states have a track record of spreading out the AG's responsibilities to a lower level on the qui tam?

MR. MUNRO:
I do not have that information, but we will conduct some research and get it to the Committee.

WES HENDERSON (Deputy Director, Nevada Association of Counties):
My comments will reference section 2 of the bill which deals with the assistance the Office of the Attorney General can provide to the district

attorneys. We applaud the Attorney General's Office for recommending these changes during these difficult budget times so the AG can continue to provide assistance as requested by the local district attorneys. We have worked with the district attorneys to incorporate language in this bill giving the county commission the final word on whether the AG will bring in a special prosecutor. We are in support of the bill.

VICE CHAIR MANENDO:
I will close the hearing on A.B. 63 and open the hearing on A.B. 257.

ASSEMBLY BILL 257 (1st Reprint): Revises provisions relating to the Open Meeting Law. (BDR 19-107)

ASSEMBLYMAN JOHN C. ELLISON (Assembly District No. 33):
This bill was brought forward by former Assemblyman John Carpenter, based on a problem with some of the smaller agencies that did not allow time for public comment. Assembly Bill 257 requires that any agency that does not have a public comment period after each item must hold a public comment period at the beginning and at the end of each meeting. Originally, section 1, subsection 2, paragraph (c), subparagraph 3 read a "public body shall provide such a period before taking action on the item." It also said that a public body shall provide an additional period devoted to comments by the general public, if any, and discussion of those comments immediately before the adjournment of the meeting.

This bill was drafted to address the boards and commissions that were not allowing public comment. Most boards do allow for public comment, but some of the school boards did not.

Assembly Bill 257 was amended in the Assembly to provide two periods for public comment, one at the beginning of the meeting and one at the end of the meeting, and I have proposed an amendment (Exhibit Q) to add, "the provisions of this paragraph do not apply to those public bodies that provide for public comment or receive testimony under each agenda item."

SENATOR SETTELMEYER:
When it says you will be taking public comment at the beginning of the meeting, where in the meeting would you like that to be?

ASSEMBLYMAN ELLISON:
Elko County's agenda will say at the beginning, this time is devoted to comments from the public. Then each action item is discussed, and there is time devoted to comments from the public. Elko's agenda also allows the public a chance to speak to the items that are not action items at the end of the meeting. This gives a chance for the public to speak on the record on these items. Most of the county boards include a public comment period, but some of the smaller boards do not, so they are not in compliance with the Open Meeting Law. This bill will correct that oversight. They must give a period of public comment at the beginning and at the end of the meeting.

SENATOR SETTELMEYER:
I was looking for the definition of the word "beginning." Is that after the quorum, before the secretary's minutes, before the treasurer's report or just prior to an action item? I am trying to establish legislative intent for the record.

ASSEMBLYMAN ELLISON:
Right at the very beginning of the meeting. When the meeting is opened and the roll is taken, at that time it would be a public comment period. The same thing would happen at the very end of the meeting.

VICE CHAIR MANENDO:
That is a good question because there are many items included on a consent agenda, and the public does not get a chance to comment until after the fact.

SENATOR HARDY:
Referencing the beginning of the meeting, the key should be prior to the consent agenda or before any item listed for discussion on the agenda. It should not be prior to the roll call, the pledge, the prayer or the minutes. Obviously, if you have a consent agenda and no one has an opportunity to make public comment, you cannot remove an item from the consent agenda. That should be narrowed down somewhat.

ASSEMBLYMAN ELLISON:
You are correct, and that is how it is normally handled. The meeting is opened, then the roll call, then the pledge and then the time for public comment comes before the actual items for discussion. The problem is the smaller boards that are not following this format.

SENATOR HARDY:
Has the Office of the Attorney General been approached regarding this bill since it is the expert on the Open Meeting Law? Have you received any feedback from the AG's Office?

ASSEMBLYMAN ELLISON:
When this bill was heard in the Assembly, Clark County had some concerns because its agenda is already so long, if it took public comment after each action item, the members would be there forever. Those boards that are already in compliance, we want them to remain in compliance. The ones who are not need to come into compliance.

SENATOR HARDY:
You have not placed other restrictions, only to include two public comment periods during the meeting.

VICE CHAIR MANENDO:
We will conduct some additional research but certainly understand the intent of the bill.

MR. SMITH:
We are in favor of the bill because it makes sense to take public comments before you make decisions.

VICE CHAIR MANENDO:
We could probably use language to say prior to items on the agenda designated as action items.

JAVIER TRUJILLO (Intergovernmental Relations Specialist, City of Henderson):
I had an opportunity to speak with the sponsor of the bill. The City of Henderson wants to put a concern on the record. In Henderson, we provide the opportunity for public comment following each agenda item. We also provide a time period for public comment at the end of the meeting. Our staff at the district attorney's office was concerned we would be required to include a time period at the beginning of the meeting also. We were hoping those governing bodies already providing that opportunity to the public would be exempt from this provision, so the City of Henderson has proposed an amendment Exhibit Q. It adds, "the provisions of this paragraph do not apply to those public bodies that provide for public comment or receive testimony under each agenda item."

Our concern stems from requiring the City of Henderson to include a public comment period at the beginning of the meeting.

SENATOR HARDY:
You stated you provide a public comment period after each item as opposed to before each item.

MR. TRUJILLO:
We provide the opportunity for public comment after each item but before a vote it taken.

JIM SLADE:
I appreciate the opportunity as a member of the public to testify on this bill, just as the public is allowed to testify on all bills before the Legislature as they are heard by the Assembly or Senate. This is as it should be, and upholds the value of our democracy. Likewise, all public bodies should allow members of the public to be heard on all action agenda items as they are being considered by that public body. I have prepared remarks I will make concerning A.B. 257 (Exhibit R).

Democracy, as you know, is government of the people, by the people and for the people. This is one of the guiding principles of our great Nation. This is why the opening sentence of Nevada's Open Meeting Law, NRS 241.010 Legislative declaration and intent states: "In enacting this chapter, the Legislature finds and declares that all public bodies exist to aid in the conduct of the people's business." The intent of the law is to make the public process open, transparent and accountable to the public.

Section 12.03 of the *Open Meeting Law Manual* states, "A statute enacted for the public benefit such as a sunshine or public meeting law should be construed liberally in favor of the public ... ." When the late U.S. Supreme Court Justice Louis Brandeis stated, "Sunshine is the best disinfectant," he was referring to the development of public policies and the need for government to be a more accountable, and less easily corrupted, government.

This is why any legislation that seeks to further openness, accountability, and public involvement in the activities of government, as I originally believed that A.B. 257 sought to do, advances the democratic process. When I use the word democratic it is always with a small "d," meaning the values of our democracy,

not with a large "D," indicating the Democratic Party, as this should be a nonpartisan issue.

I am testifying in opposition today only because this bill is so confusing in the way it is written that it is impossible to determine the intent of the bill or the possible ramifications of its passage.

Part of the confusion over this proposed bill lies in the different terminology used in the Legislature versus other public bodies. Here, you have a period for public comment at the end of meetings, which is similar to the period required for public comment on nonaction items or nonagenda items, on which no action may be taken at the meetings of other public bodies. Here, however, public statements on individual agenda items are referred to as "testimony," while in other public bodies it is referred to as public comment. That is the public comment this bill seeks to address, public comment on action agenda items, but that is unclear.

On the local and county level after an agenda item is read into the record, staff introduces the item, it is read into the record and staff provides a report. Then the applicant, if any, has the opportunity to address the board. The public should then always be allowed to comment on the item before the board discusses the item, deliberates and takes action. This is how it should be and already is in many cases. Of course, the public should be able to listen to the presentations by staff and the applicant before making comments. There is no other time that would make any sense at all.

Yet some public bodies are considering only allowing a brief period of public comment on all agenda items at the start of the meeting, sometimes hours before that agenda item will be heard, prior to the presentations of staff and the applicant and prior to any last-minute changes to the proposal. In addition, if members of the public have several items on which they would like to comment, that only allows them a few seconds per item. This makes no sense at all, is contrary to our cherished tenets of democracy and contrary to the intent and spirit of the Open Meeting Law.

Assembly Bill 59 discussed earlier today allows public bodies to restrict the time, place and manner of comments. Senator Hardy raised a concern about the time aspect and whether that denotes proximity. This is also my concern because public comment on action agenda items should be heard while that

agenda item is being considered. Any other time would be inappropriate and contrary to the spirit of the Open Meeting Law. Assembly Bill 59 states that any restriction as to timing must be reasonable. To allow public comment on all agenda items at the beginning and end of the meeting would be unreasonable.

Oddly, the Open Meeting Law does not directly address this issue. It was my understanding that A.B. 257 sought to correct that oversight, in keeping with the spirit of the Open Meeting Law. It was my reading of A.B. 257 that it would require a period devoted to public comment on each action agenda item while it was being considered by the public body. In fact, when I spoke to Assemblyman Ellison, the sponsor of the bill, he stated that he supported the public's right to speak on all action agenda items as they were heard. Assemblyman Pete Livermore, a cosponsor when he spoke in the Assembly Committee hearing, also endorsed this concept and stressed the purpose of the bill was to add an additional period of public comment on nonaction or nonagenda items. But that is not the way the bill is written.

The proposed amendment put forth by Clark County also supported the concept that public comment should be allowed on all action items as they are being heard. We have a serious problem in this Country when it comes to public involvement in the political process—apathy. Not only do we have one of the lowest voter turnout percentages in the developed world, but for most people, voting is their only involvement. Those who are willing and able to attend public meetings to express their opinions should be encouraged to do so. This legislation should do just that by guaranteeing the public's right to comment on all actionable agenda items while they are being heard by the public body. The Open Meeting Law states the Office of the Attorney General believes that any practice or policy that discourages or prevents public comment, even if technically in compliance with the law, may violate the spirit of the Open Meeting Law.

The exact wording of legislation is crucial as I do not need to remind you. The original wording of A.B. 257 stated, "A public body shall provide such a period before taking action on the item." This would be in the public interest, and in keeping with the letter and spirit of the Open Meeting Law. Assemblyman Ellison's amendment brings that intent into doubt. In fact, it alters the entire nature of the bill. This bill fails to differentiate between public comment on nonaction or nonagenda items and public comment on action

agenda items, which should always be heard during consideration of that item by the public body. That is why its legislative intent is completely unclear.

I had originally intended to speak in favor of this bill, but now believe its wording and intent is so unclear that the proposed amendment would so radically alter the meaning and intent of the bill that I can no longer support it. That is why I am testifying in opposition. If the intent of the bill is to allow members of the public to comment on all action agenda items as they are heard, as I had originally thought, and that is made clear in the wording of the bill, then I can support it. If on the other hand, this bill is meant to only allow public comment on all action agenda items at the beginning or end of public meetings, then it would be contrary to the public interest, our democratic values, and the intent and spirit of the Open Meeting Law.

The Open Meeting Law and its intent is to aid in the conduct of the people's business to be construed liberally in favor of the public. It is not to keep meetings short. Expediency should never trump openness and public participation. Most public bodies only meet once or twice a month. Even the Clark County Commissioners only meet twice a month. Their interest should be to encourage public comment from those whom, they serve. It would be a shame at this time when the United States of America is fighting in multiple conflicts overseas that are in large part to bring democracy to those countries where billions of U.S. dollars are being spent and where our brave soldiers are putting their lives on the line every day, that we should not embrace democracy here at home. This bill should be about furthering democratic principles and public participation in government, as I originally thought it did. In that case, it would deserve your support. As it is now, and particularly as it has been amended, it would be undemocratic, contrary to the public interest and contrary to the spirit to the Open Meeting Law and hence should not be passed.

SENATOR HARDY:
I have a question for Mr. Trujillo, about Henderson taking public comment before the action of anything on the agenda. Do you likewise have public comment to anything related to the consent agenda?

MR. TRUJILLO:
With respect to the items on the consent agenda in the City of Henderson, when the citizens sign in with a request to speak, they must identify which

items they would like to speak to. At that point, those items are removed from the consent agenda, which allows the person the opportunity to speak.

SENATOR HARDY:
So in essence, you are taking public input to determine if it should even be on the consent agenda. If it is on the consent agenda, then there is no public comment option, but there is the ability to have something removed from the consent agenda for public comment.

MR. TRUJILLO:
Yes, that is correct. We do provide the opportunity to pull that item from the consent agenda for discussion.

VICE CHAIR MANENDO:
I will close the hearing on A.B. 257 and open the hearing on A.B. 389.

ASSEMBLY BILL 389 (1st Reprint): Revises provisions regarding the Open Meeting Law. (BDR 19-226)

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):
Assembly Bill 389 deals with the Open Meeting Law. We are very fortunate in Nevada to have NRS 241, which tries to promote more public participation and openness in government. Assembly Bill 389 as first introduced was an ambitious bill and ensured the public had equal time to participate at public hearings. It sought to make the Open Meeting Law applicable to nongovernmental entities that have the power of eminent domain because they are exercising a power belonging to government. Lastly, the original bill sought to have the Open Meeting Law apply to all common-interest communities. Following much discussion in the Assembly Judiciary Committee, we amended the bill and deleted the section that made NRS 241 applicable to common-interest communities.

I believe there will be an amendment proposed from Clark County, which I do not oppose. The bill encourages more public participation and more openness, especially with these nongovernmental entities that are exercising the power of eminent domain.

SENATOR HARDY:
The bill says the public bodies shall make a reasonable effort to allow the expression of competing opinions concerning any items on the agenda for a meeting of the public body. I see that as what we do anyway. Is there a problem you are trying to address?

ASSEMBLYMAN OHRENSCHALL:
Sometimes we have a statute and then go back and make changes. A problem was brought to my attention by Mr. Flint and his daughter. They attended a meeting, and the proponents of an issue were allowed a generous amount of time to present their case. The folks who were opposed to the issue were given minimal time to speak on the issue. Section 1 was initially drafted to address that specific situation, which should not happen often.

SENATOR HARDY:
You are saying this would apply to the Legislature as well.

ASSEMBLYMAN OHRENSCHALL:
No, I am not. We had some discussions with our legal counsel about whether this should apply to the Nevada Legislature, and it was noted it would be very difficult with a 120-day Session to get our work done if NRS 241 were applicable.

SENATOR HARDY:
We are requiring other people to be reasonable.

ASSEMBLYMAN OHRENSCHALL:
We do go the extra mile to try to be reasonable here and to conform with NRS 241 even though it is not technically applicable to the Legislature.

SENATOR HARDY:
Please help me understand section 2, subsection 3, paragraph (c), nonprofit corporation. What is that fixing and what does it pertain to?

ASSEMBLYMAN OHRENSCHALL:
In Nevada, NRS provides that certain nongovernmental entities have the power of eminent domain. In the last couple of years, we have seen news coverage about how mining has the power of eminent domain when there is a claim. This was brought to my attention by someone who lives in Nye County because the

power company there has the power of eminent domain, yet it is a nonprofit cooperative. The company exercises what is in effect is a power that we consider belonging to public agencies. This is meant to address that situation.

SENATOR HARDY:
So, this would ensure the nonprofit cooperative makes a reasonable effort to allow people time to express their opinions?

ASSEMBLYMAN OHRENSCHALL:
Because they have the power to take your private land, they should also have to conform with NRS 241.

SENATOR HARDY:
There is no nexus between section 1 and section 2. You are saying anyone with the power of eminent domain needs to be under the Open Meeting Law in that all of their deliberations and action items must be listed on an agenda and subject to the Open Meeting Law?

ASSEMBLYMAN OHRENSCHALL:
That is how I understand the statute but would be happy to defer to your legal counsel for clarification. It is fair because a nonprofit corporation has the power of eminent domain and has become a quasi-governmental agency.

SENATOR HARDY:
You deleted the Homeowners' Associations portion from the bill?

ASSEMBLYMAN OHRENSCHALL:
Yes. This bill was considered in a subcommittee of the Assembly Judiciary Committee, and we took a lot of testimony. What we found was that having NRS 241 become applicable to common-interest communities would strengthen the public's participation and openness. There are other ways in which NRS 116 was stronger in terms of notice provisions in NRS 241. At the end of the discussions, we decided to leave things as they are.

SENATOR HARDY:
I would like to have our legal counsel weigh in on this issue.

MS. CHLARSON:
My reading of the provision relating to the nonprofit corporations is that if a nonprofit corporation has the authority to exercise the power of eminent domain, then that nonprofit corporation is essentially a public body that is subject to the Open Meeting Law in all circumstances, not just when they would be exercising the power of eminent domain.

VICE CHAIR MANENDO:
You mentioned an amendment, and we are not familiar with what you are referencing. Is this an amendment you have reviewed? I spoke to the representative for Clark County and do not see a problem with it.

SENATOR HARDY:
Could you provide us with a list of all the nonprofit corporations that could now be subject to the Open Meeting Law? I am interested in those located in my district, the Moapa Valley Power District or the water districts and others that are quasi utility or quasi government. Are these entities aware of this proposed language change, and have you had discussions with them?

ASSEMBLYMAN OHRENSCHALL:
I do not have that list but will work with Research to obtain it for you. We had a very thorough hearing on this bill in the Assembly. There was no opposition to section 2 of the bill.

CONSTANCE J. BROOKS (Senior Management Analyst, Clark County):
I had the opportunity to discuss our amendment (Exhibit S) with Assemblyman Ohrenschall. The original amendment was changed so it now reads, "A public body shall make a reasonable effort to allow the expression of competing opinions concerning any item on the agenda for a meeting of the public body." We still have concerns with the word "any" without a qualifier, so we would like to offer the words "public hearing" be inserted between the words "any" and "item." By the time this bill reaches a work session, I will have an official amendment provided in hard copy for the Committee.

Since our agendas in Clark County are on average 100 items long, it would allow us to ensure those items listed for public hearing would allow time for public comment.

SENATOR HARDY:
I would like to see the language.

MS. BROOKS:
I will have that to you by the end of the day.

SENATOR HARDY:
Since you represent Clark County and the County has nonprofit entities, do you have some input about how it might affect some of the nonprofits in the County?

MS. BROOKS:
With regard to our agendas, generally there are some official relationships that we have with nonprofits, some fiduciary relationships as well as services and programs that we share. We do allow for those nonprofits to come to the table and have a voice during our hearings. They have done so in the past and will continue to do so. The language in this bill would not prohibit that in the future.

SENATOR HARDY:
The eminent domain nonprofits, do you have any interaction with them?

MS. BROOKS:
We have a wide array of nonprofits that we have relationships with, and I would assume some of them include some eminent domain nonprofits. I do not see any reason they would not be able to voice their concerns publicly during our hearings.

SENATOR HARDY:
The way I read this bill, the nonprofit itself would be subject to the Open Meeting Law. The corporation itself would have each and every action it takes on anything subject to the Open Meeting Law. Would there be ramifications from the county when all of the nonprofits are subject to all of the Open Meeting Law for any action they ever take?

MS. BROOKS:
If you are referring to the language in section 2, Clark County did not have any problems with that language and has not suggested any language changes. Generally, we have relationships with a wide array of nonprofit organizations; with regard to their following the Open Meeting Law, they would have to follow

the guide of what we currently follow under Open Meeting Law. That is the expectation that we have of any nonprofit or any organization that we have a relationship with that would come forward in a public hearing.

SENATOR SCHNEIDER:
Some nonprofits are very small and do good work, but they handle a small sliver of society and their budgets are small. Homeowners' Associations are very large, handling millions of dollars. They are governments, but they are nonprofit corporations for the Internal Revenue Service. I propose the HOAs should be left in this bill.

ASSEMBLYMAN OHRENSCHALL:
I had mixed feelings about losing the HOAs but was concerned if it was not deleted I would lose the bill completely. I would defer to this Committee on that question. The most striking provision that brought concern was the three-day notice requirement in NRS 241 which is not as generous as what is currently in NRS 116. That was a concern because NRS 241 allows less notice time to the citizens than NRS 116. That could be remedied with a unique part of NRS 241 directed at common-interest communities.

SENATOR SCHNEIDER:
You could leave the notice period in the bill when referencing the common-interest communities, but they should still have to stay under the Open Meeting Law. Many of them operate however they want to without providing any notice at all, and they pass regulations with no discussion. They operate almost like dictatorships. One person has a good idea, and there is no discussion to hear both sides, then 98 percent of the homeowners in the community are livid when they find out about it.

ASSEMBLYMAN OHRENSCHALL:
That was why I wanted NRS 241 to apply to common-interest communities in the original bill. Like the nonprofits that have the power of eminent domain, HOAs are not governmental bodies but can exercise the power of a government, being able to raise fees, foreclose on property and assess fines. They have a lot of governmental power.

In answer to Senator Hardy's previous question, in terms of the nonprofit corporations, it is covered under section 2, where nonprofit corporations that may exercise the power of eminent domain include corporations organized to

conduct mining, operate public utilities, provide water for generation and transmission of electricity, operate pipelines for natural gas or petroleum products, and provide video service. It seems only fair to have NRS 241 apply to these nonprofit corporations because they exercise this governmental power. They can take your private property using the power of eminent domain.

SENATOR HARDY:
Is there a way to amend the nonprofit corporation provision so that the issue of eminent domain is the one that pertains to the circumstances of eminent domain, and thus let the nonprofit continue to do its business without having every single thing it does subject to the Open Meeting Law? The Open Meeting Law may apply to the issue of eminent domain.

ASSEMBLYMAN OHRENSCHALL:
That would certainly be a policy decision at the pleasure of this Committee. I would favor having it apply to all of their business since nonprofits are acting as governmental agencies.

SENATOR HARDY:
In the original bill, did you address the differences in giving notice from the two chapters so we might already have language for the noticing requirement being amended?

ASSEMBLYMAN OHRENSCHALL:
Unfortunately, in the original bill, all of the notice provisions in NRS 116 were deleted and NRS 241 was applied to the common-interest communities. It should not be a difficult change for the Legal Division, but I would defer to counsel to determine if NRS 241 could apply to common-interest communities yet retain the more generous period of notice in NRS 116.

MS. CHLARSON:
It is certainly possible to draft an amendment that would have certain provisions of NRS 241 be applicable to the common-interest communities. I would need to have a clear understanding of what provisions would apply and what provisions would not apply. For example, NRS 241 has specific provisions relating to the notice and agenda requirements. If we plan to blend these two different sets of requirements for drafting purposes, we would need to know which provisions of NRS 241 would apply and which would not.

VICE CHAIR MANENDO:
We know that if we get into NRS 116, Senator Schneider may have a whole list of items to add to this bill.

GEORGE WILLIAM TREAT FLINT (Reno Wedding Chapel Alliance):
This bill began with section 1 only, but there were other issues that were included. Assembly Bill No. 2 of the 26th Special Session passed both houses and into law allowing a change in the marriage bureau license office hours in the two large counties. Forty years ago, an advocate convinced this body that in Washoe and Clark Counties the marriage bureau license office should be open every day of the year from 8 a.m. until midnight including all holidays. Clark County has found it is a very profitable law. Prior to the law change 40 years ago, Washoe County opened and closed at its whim, which created problems with the 20 or so wedding chapels that were operating in the County at that time. We only have five chapels left in Washoe County and very candidly, Washoe County can hardly afford to stay open to sell licenses at all because of the drop from over 38,000 licenses 20 years ago to less than 10,000 licenses today.

After A.B. No. 2 of the 26th Special Session passed into law, we were invited as a group of businesses to participate in a public exchange and were told the exchange would take place at a regular Washoe County Board of Commissioners meeting. We had seen no deviation change, allowed by A.B. No. 2 of the 26th Special Session, nor had we had the ability provided for us to speak to the County Clerk. We showed up to meeting blind for all practical purposes. At the meeting, we were handed a 50-page study the Washoe County Clerk had prepared for the meeting. There was no open exchange; it was just part of the regular meeting.

When the matter came before the Commissioners, Ms. Amy Harvey spent 27 minutes presenting her proposal. She finished her presentation, which was full of charts and graphs and what I considered misinformation. When I got up to speak I mentioned Ms. Harvey had spoken for 27 minutes and there was no way for me to respond in a shortened time period. I asked Chair David Humke how much time he was going to allow me, and he said, "Two minutes." I indicated I would not be able to respond to a 27-minute presentation in two minutes. He indicated, George, you best get speaking because you are using up your two minutes. I did the best I could but there were too many facets to this 50-page presentation.

The presentation had dire, serious, negative results on the Reno Chapel Association businesses. My daughter followed me as the next speaker, and there were three more speakers waiting. Margaret told the chair the three other speakers would give her their time so she asked, "May I speak for eight minutes?" Chair David Humke indicated she would only be allowed two minutes to speak. The changes were implemented following that meeting. We have had to return to the Commission about five times and ask for a little bit more here and a little bit more there.

Now Chair John Breternitz of the Washoe County Board of Commissioners is saying he is tired of this issue and wants us to go away, so I asked Assemblyman Ohrenschall if we could address the issue.

Clark County has worked with us very well with some concerns they had with the language. One of their concerns is a 150-item agenda that is common in Clark County. Washoe County has not provided any input to us. We are content with the amendment proposed by Clark County, Exhibit S. So much of what has been said in this hearing regarding the Open Meeting Law reverts back to this same situation. How you can tell a business, after conducting business for 40 years one way, it is going to have to conduct business a different way, and provide the business two minutes to respond? It is ludicrous.

Even though the County Clerk is not part of the County Commission, she does take minutes for the Commission meetings and works very closely with all of the Commissioners. It was obvious the 50-page document and 27-minute presentation were already decided, or they would have allowed me at least four minutes to speak. The item passed unanimously. You have heard a lot of testimony today about the Open Meeting Law and some of the weaknesses. These three lines, including the proposed amendment, will at least give us the ability in the future, if the same thing happens again, to refer to NRS and say we are entitled to a like time period to speak.

MARGARET G. FLINT (Reno Wedding Chapel Alliance):
My father has mostly covered the things I wanted to address. When the hearing he used as an example came about, there was a great deal of misinformation. There was also a great deal of clarification needed as part of this budget hearing.

Offices would be opened very limited hours on county-observed holidays. The wedding chapel businesses are not county offices nor are we county employees. We are private businesses and do not function under county time. We function under business time. We are also a tourist-oriented business, which means we need to be there and be available for tourism. In the State, tourism is a 24-hour business. We were not allowed any clarification on the presentation.

My father was correct that the other chapel representatives asked if they could defer their time allotment over to me, and we were not provided any consideration. It was almost akin to the prosecution being allowed an abundance of time to present its case and the defense allowed two minutes. It is not a matter of a public works project, but it was a matter that would have an extremely negative impact on our local businesses—not just the wedding industry, but also the tourist industry, which trickles down into the entire tourist-oriented realm.

MR. SMITH:
I am speaking in support of the bill to the section on eminent domain. When these bodies are given the power and authority of government, they need to live up to the responsibilities of government, and that means abiding by the Open Meeting Law.

VICE CHAIR MANENDO:
What a shame that you were only given a few minutes to speak. The media does show up to some of these meetings, and maybe they would have been interested in writing about the issue since it affects the economy in Washoe County. There may not be a lot to write about if you are not allowing people to speak before their government in a reasonable amount of time. You might not have a story.

SENATOR HARDY:
Mr. Smith, could you weigh in on the nonprofits and the applicability to the Open Meeting Law?

MR. SMITH:
I have tried to scan through the section referencing eminent domain, but I am not very familiar with it. It does sound reasonable to craft it to the portions that have the powers of government that should be subject to the Open Meeting Law. I do agree with that concept.

SUSAN FISHER (Valley Electric Association, Inc.):
We are the rural electric member cooperative referenced by Assemblyman Ohrenschall in this bill. I am speaking in opposition to section 2, subsection 3, paragraph (c), where it impacts a nonprofit corporation that exercises the power of eminent domain. Valley Electric Association is a member-owned utility based in Nye County covering about 6,800 acres of service territory. Our concern with this language, we have open meetings at this time and we advertise them by posting them on the Internet.

We allow the public to sit in on our board meetings. The public is allowed ample time to ask questions and receive explanations of issues. However, as a member-owned utility, we are in direct competition with investor-owned utility companies, public corporations. We are a privately held corporation, so this would put us at a severe disadvantage. We do build transmission to serve our service territory, and we are also working on additional transmission for the renewable market in southern Nevada. We are very concerned with this bill when we are talking about negotiating eminent domain issues and offers on eminent domain where we would have to be in the public but our competitors would not. We do have severe concerns.

VICE CHAIR MANENDO:
Did you get a chance to talk to the sponsor of the bill?

MS. FISHER:
This bill was not on my radar screen until I was here on behalf of another client and heard the discussion regarding Open Meeting Law issues.

VICE CHAIR MANENDO:
I will close the hearing on A.B. 389 and bring it back to Committee.

CHAIR LEE:
We have concluded our business for today and I will adjourn the meeting of the Senate Committee on Government Affairs at 10:30 a.m.

RESPECTFULLY SUBMITTED:

Martha Barnes,
Committee Secretary

APPROVED BY:

Senator John J. Lee, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
A.B. 59	C	Keith Munro	OML Complaints
A.B. 59	D	Keith Munro	Data compilation for OML investigations for 2007
A.B. 59	E	Keith Munro	Data compilation for OML investigations for 2008
A.B. 59	F	Keith Munro	Data compilation for OML investigations for 2009
A.B. 59	G	Keith Munro	Letter summarizing A.B. 59
A.B. 59	H	Andrea "Ande" Engleman	Proposed amendment
A.B. 59	I	Andrea "Ande" Engleman	News article Armstrong recommended for justice of the peace seat
A.B. 59	J	Susan Fisher	Proposed amendment
A.B. 61	K	Keith Munro	Governor's Working Group on Methamphetamine Use Meeting Minutes January 12, 2009
A.B. 61	L	Keith Munro	Governor's Working Group on Methamphetamine Use Meeting Minutes March 19, 2009
A.B. 61	M	Keith Munro	Governor's Working Group on Methamphetamine Use Meeting Minutes July 29, 2009
A.B. 61	N	Keith Munro	Governor's Working Group on Methamphetamine Use Meeting Minutes

			July 7, 2010
A.B. 61	O	Keith Munro	Governor's 2007 Strategic Approach to Reducing Methamphetamine Use in Nevada
A.B. 63	P	Keith Munro	Copies of Office of the Attorney General Organizational Charts
A.B. 257	Q	Assemblyman John C. Ellison	Proposed amendment to Assembly Bill No. 257 (First Reprint)
A.B. 257	R	Jim Slade	Comments on AB 257
A.B. 389	S	Constance J. Brooks	Proposed amendment to Assembly Bill 389