

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Seventh Session  
March 13, 2013**

The Committee on Government Affairs was called to order by Chairwoman Teresa Benitez-Thompson at 9:09 a.m. on Wednesday, March 13, 2013, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [nelis.leg.state.nv.us/77th2013](http://nelis.leg.state.nv.us/77th2013). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Teresa Benitez-Thompson, Chairwoman  
Assemblywoman Dina Neal, Vice Chairwoman  
Assemblyman Elliot T. Anderson  
Assemblywoman Irene Bustamante Adams  
Assemblyman Skip Daly  
Assemblyman John Ellison  
Assemblyman James W. Healey  
Assemblyman Pete Livermore  
Assemblyman Harvey J. Munford  
Assemblyman James Oscarson  
Assemblywoman Peggy Pierce  
Assemblyman Lynn D. Stewart  
Assemblywoman Heidi Swank  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

None



**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Jennifer Ruedy, Committee Policy Analyst  
Jim Penrose, Committee Counsel  
John Budden, Committee Secretary  
Cheryl Williams, Committee Assistant

**OTHERS PRESENT:**

Keith Munro, Assistant Attorney General, Office of the Attorney General  
Jack Mallory, representing Southern Nevada Building and Construction  
Trades Council  
Barry Smith, representing Nevada Press Association  
Tonja Brown, Private Citizen, Carson City, Nevada  
Brett Kandt, Special Deputy Attorney General, Executive Director,  
Advisory Council for Prosecuting Attorneys, Office of the Attorney  
General  
George H. Taylor, Deputy Attorney General, Office of the Attorney  
General  
Adam Plain, Insurance Regulation Liaison, Division of Insurance,  
Department of Business and Industry  
Jeff Fontaine, Executive Director, Nevada Association of Counties  
John Slaughter, Management Services Director, Government Affairs  
Coordinator, Washoe County  
Cadence Matijevich, Assistant City Manager, City of Reno  
P. Michael Murphy, Coroner, Office of the Coroner, Clark County  
Ted J. Olivas, Director, Administrative Services, City of Las Vegas  
Nicole Rourke, Executive Director, Community and Government Relations,  
Clark County School District  
Michelle Ravell, Private Citizen, Las Vegas, Nevada  
Florence Jones, Private Citizen, Las Vegas, Nevada  
Bruce Kittess, Private Citizen, Carson City, Nevada  
Brett Scolari, representing Reno/Sparks Convention and Visitors Authority

**Chairwoman Benitez-Thompson:**

[Roll was taken and housekeeping matters were explained.] Today we will be rehearing two different bills: Assembly Bill 31 and Assembly Bill 65. These are really big bills, both of which had numerous amendments we have been working on. We just wanted to revisit them for the sake of the Committee and for those in the audience in order to make sure that we captured not only the Attorney General's intent in the bills, but also the intent through all of the amendments so that we have good public policy, and to give them a chance to be reheard. With that, I will go ahead and welcome Mr. Keith Munro and Mr. Brett Kandt. We will start with Assembly Bill 31. Thank you so much for being willing to indulge me in rehearing these. I appreciate it.

**Assembly Bill 31: Revises various provisions relating to public records.  
(BDR 19-211)**

**Keith Munro, Assistant Attorney General, Office of the Attorney General,  
Department of Administration:**

I appreciate being able to provide testimony again on Assembly Bill 31. The Public Records Act: Everyone is for public records, and I think our goal with this bill is let us go ahead and get together and process so that it is clear for everyone and will work well for everyone. I read in the paper that Assemblyman Daly feels strongly about this issue and feels that there should be an interim study on the public record process. I think that is an excellent suggestion. If this Committee wishes, feel free to place the interim study within our bill. It has merit.

If you notice, neither the Attorney General's Office nor the Division of Library and Archives, which are affected in this bill, has placed a fiscal note on the bill. Do not get us wrong. It is going to take some time, effort, and thought to work through this, but it is going to be worth it. If the process can be improved, it is better for everyone involved. The intent of our bill is to lay some building blocks to the public records process.

[Throughout the hearing on Assembly Bill 31, the speakers are referring to the mock-up of proposed Amendment 7674 to A.B. 31 ([Exhibit C](#)).]

Section 1 requires agencies to designate someone as a records officer to let it be clear to everyone who is going to be responsible for handling these things. It does not have to be one person; it can be more than one. We think it is good for the public to know who is handling the process for the agency. We also think it is good for agencies to start thinking about who is going to be doing this for us, who is going to be trained, and who is going to be responsible.

Section 1 also requires the Attorney General's Office to prescribe a form that can be used for requesting a public record from an agency, a form that can be used by an agency for responding to requests, and procedures that can be used by records officers. These forms are going to go through the traditional regulation process, so your colleagues on the Legislative Commission will have final approval so it will have legislative blessing.

We think that is a good idea to get started with. I know in the last hearing, Jim Wells from the Public Employees Benefits Program (PEBP) testified, and he said that when we started we had nothing. Therefore, we think it is good to provide a framework for agencies so they know how to go about this process.

Section 1 also requires agencies to make this information available on their website, if they have one. We think that will be good for promoting public access. Standard processes help the public. They make agencies accountable and transparent, and we think these are good things.

Section 3 codifies within *Nevada Revised Statutes* (NRS) 239.010 a list of all the existing statutory exceptions to the public records law. Everybody knows what they are and where to find them. If you notice from the mock-up, there were a few agencies that came forward in the green language and said, we should be in that list. We think those additions are a good thing, and the intent of that provision is not to create anything new, just to list what is existing.

On section 4, I want to be clear, we had some proposed amended language in there, and some could read the mock-up as striking that whole statute. That was not our intent. We think the mock-up should be read to strike just the language that we were adding to that provision. I would also add, on section 3, the language, "including the Administrative Office of the Courts," was recommended by someone other than our office. Records of the court should be looked at very carefully on whether or not and when they should be opened.

With that, I would be happy to answer any questions.

**Chairwoman Benitez-Thompson:**

Perfect. I want to make sure that Committee members were referring to the mock-up in Nevada Electronic Information System (NELIS) ([Exhibit C](#)). You will see the amendments in green, the suggested original language changes in blue, and stricken language in purple.

Before we go into questions, I was wondering if I could have Mr. Daly talk a little bit more about the thoughts and comments about a potential interim committee, and what that would cover and the issues that would address.

**Assemblyman Daly:**

I would be happy to speak to that. We were looking at this and going over what should be in and what should not and the whole issue over the balancing test, which we are taking out. Then I read the court decision and I remembered it had to do with Joe Conforte [The case is *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990)]. What the courts had said about this was, by law, they can only make those decisions if it is ambiguous, or if the language is not clear. I just shook my head and said that it looked pretty clear to me. If we were going to go down a path where we were going to say there was no balancing test and make the law crystal clear—that it is either declared by statute to be confidential or if it is not, then it is open—but we need to make sure that we get it right. We need to examine all of the exemptions that are there to make sure that they are sufficient, or still warranted, or not too broad, and that we did not miss anything that would be an unintended consequence that we are making public that we did not think of. Really, the only way to do that is through a study in the interim because there is just too much to do.

You can see it starts on page 2 [[Exhibit C](#)], goes all of page 3 and into page 4 on areas of law where there is an exemption. That was the idea there. Putting it into the bill: it was recommended to me by the Speaker not to put it into the bill, that there are some interim studies that I think are slated, or can be utilized—five of them or something like that. I put in a request to do that and gave her an outline of the things that we would look at and study, which included fees, having an intermediate appeal to the Attorney General's Office, which they said they were open to. It would define a public record, number one, and then it would review the sufficiency of all of the exemptions that are there. Those are the ones I can recall right off the top of my head, but I did turn that into the Speaker's office, and hopefully we will have the study. I was told if we put it into this bill, then it has to be rereferred to another committee, and we were trying to avoid that step.

Does that give the information you were looking for?

**Chairwoman Benitez-Thompson:**

Yes. I just wanted to make sure that the Committee knew that the public policy we were driving for is within this bill, and I am not accepting any amendments to decide whether or not an agency has any type of confidential privileges or not. That is not the road that we are going down. It is just what is already established in status quo statute as having some type of level of confidentiality or protection in there, and then that interim study would beg the bigger question. In some amendments that I have received, I have told folks that I am not going to accept your amendment because in Government Affairs we are not

going to sit here and contemplate each and every single chapter of NRS, and for each and every single agency, whether or not their information is confidential and privileged. That is a great conversation to have for flushing out a lot of the gray area about what is confidential during the interim when there is a lot of time to have that really good contemplation on all of these different *Nevada Revised Statutes*. So that is why I wanted to make sure that the Committee had an understanding of that direction.

Are there questions?

**Assemblyman Livermore:**

I am addressing the amendment to section 1, paragraph 1, where it talks about an official for the agency. Who will keep a list of who those officials are? How will the public understand who to reach out to or contact?

**Keith Munro:**

The head of each agency will designate existing employees.

**Assemblyman Livermore:**

I understand the process.

**Keith Munro:**

Yes. And, so the head of the agency will make that decision as to whom it will be, and that information should be posted on their website so the public will know that.

**Assemblyman Livermore:**

Understanding the process that you just described, for the people who either forget what the process is, or I am not saying someone would purposely not identify it, but I would hope that maybe your department or somebody is going to make sure that there is a list that is available to the public, and that the categories as you described to the public as web pages are filled out and the person is a valid person that works in the department, not somebody who was identified when the bill was first adopted, and two years later they have retired and two other people have had that position.

**Keith Munro:**

That is a fair suggestion. If you wanted to come up with some language that there be a master list kept somewhere, that would be fine with us.

**Assemblywoman Pierce:**

I am sure you said something about this, but can you tell me again why we are deleting section 4 in the mock-up, some of which was not in language, but current statute?

**Keith Munro:**

I mentioned that briefly in my testimony, but I will go over it again. We read this as a bill-drafting issue. We did not intend, and we do not think your staff intended, to delete the whole existing statute of section 4. We think that if you had, you probably would have had "repeal the statute" down at the bottom, and it does not say that. We were just deleting a portion of it. If you look at it really carefully it is a darker bold.

**Assemblywoman Pierce:**

So, you mean to delete what was new in the bill.

**Keith Munro:**

The proposed amendment, yes.

**Assemblyman Daly:**

I was looking at the list of the statutes and various things, and I saw a few of them in green, and one that was in strike-through to be deleted. I am assuming various people came through and said, hey somebody missed it, and this should be added in. There is some level of confidentiality that they want included in here, which then would be reviewed if we do the study, as I hope.

You said it was in your amendment, but I also wanted you to expand a little bit more about including the Administrative Office of the Courts. What is open on the courts? I know some court records are open. Some court records are not. What is the difference between the administrative office and the back office and the front office and whatever other office? You said it was not your amendment. So you are not suggesting that we accept it. I just want a little more explanation if you could.

**Keith Munro:**

After our bill was heard we had several agencies come forward and say, we should be on that list of exceptions. We directed them to your staff to make the call whether they had existing exceptions or not. We talked to some of them and they were clear. Anything in green were agencies, and there appear to have been several, so we gave them credit for paying attention and coming forward to try and get on the list to be in the group of exceptions.

As to the Administrative Office of the Courts, I want to be clear, I do not want to speak for the courts in this process. If this bill is lucky enough to go to a work session, I would hope that they come forward for you.

I do not see why there is a need for this specific language of the Administrative Office of the Courts in here, because it does say "governmental entity." It seems like an effort to single them out with particularity. When you start talking about court records, you run the risk of exposing litigants' confidential information. I know that a couple of sessions ago they created the court mediation program where people who were subject to foreclosure had their records sent to the court and they were mediated. At least be careful on that because there is an issue that people's personal and private financial information might be disclosed. However, I do really think it would be better if the court spoke to that.

**Assemblyman Daly:**

That was the explanation I was looking for. In other words, they do not need to be singled out. They have exemptions that are listed in all those statutes that are there already. By singling them out, if you look at the legislative process and various things, someone could make the argument, well, they did not intend for us to be or they would have singled us out, too. So leaving them out and just saying "a government entity" I think is the better form. As for the exemptions, I know some of Chapter 1 of *Nevada Revised Statutes* applies to the courts and various things, and how that is set up they have exemptions for certain things. That answered my question. Thank you.

**Chairwoman Benitez-Thompson:**

Also, there is language within the bill that is kind of a catchall, if you will. I think it should be clear for the legislative record that, since the first hearing, other agencies have come forward to say we have some kind of an exemption for those who have made them known, and our staff has looked at that. We have included them. Our intent is not to create an exemption where one is not. However, if for some reason an agency might not be following this bill, then there is nothing about this list that precludes someone who has an exemption from continuing that exemption. Help me with this Mr. Kandt. Is it on page 4? The language about if an exemption exists and we have missed it, that does not mean that not being included in this list, that you do not have the exemption. We should still have that in here somewhere.

**Keith Munro:**

I think the language is set forth on page 4, lines 7 through 9 [[Exhibit C](#)], and I think that was the intent of your staff.



**Chairwoman Benitez-Thompson:**

There we go. Lines 7, 8, and 9, "unless otherwise declared by law to be confidential." So, if we have missed one, as we have said, part of the interim committee would be looking at the list. It is not necessarily exhaustive. It is exhaustive as of today, to the best of our ability and knowledge, and those who have made themselves known, and those that Legislative Counsel Bureau (LCB) Legal research could find with any type of exemption, but if we have missed one, that does not preclude you from what is already in statute. You just might not be on the list. I did not know if anyone had any questions about that.

Are there additional questions from Committee members? Seeing none, we will go ahead and move into testimony in support.

**Jack Mallory, representing Southern Nevada Building and Construction Trades Council:**

With the clarification discussed by Mr. Munro and Mr. Kandt on section 4, we are in support of this bill. While I think we would have preferred that rather than just not codifying the language from the Supreme Court decision in the bill, inserting more of a legislative intent would be better, we still support the concept of not codifying that, and we are satisfied with the bill as amended.

**Barry Smith, representing Nevada Press Association:**

I am also speaking in support of the bill with the clarifications that are in there. This morning I misread the purple language on page 5 as striking that entire section of the law, not just the bill. So, I want to make sure we were clear on that. What I do appreciate very much are the Chairwoman's, Mr. Daly's, and Mr. Livermore's comments, and that this Committee has a good grasp on what we are trying to accomplish here. We are not trying to add any confidential statutes; we are trying to get a grip on what is there.

To the extent of what is listed, there is a lot, and those need to be examined to make sure that we are not misinterpreting and putting something that is unintended in here. But I think we are on the record now as that not being the intent whatsoever. We are heading toward a much clearer process here for how people go about requesting records and how agencies go about responding to those requests. The last thing we want to do is make it more bureaucratic, more difficult to do. The goal here is to make it a more efficient process, and one that the public can easily understand, and that agencies can better understand how they respond to those requests. I would welcome any further interim study. I would be happy to assist in that and be involved with it to the extent that we can continue this discussion and some of the suggestions that have come forth as a result of this bill that also should be addressed to improve

the process. So, I thank you very much, and I am glad to answer any questions.

**Chairwoman Benitez-Thompson:**

Is there additional testimony in support? Seeing none, I will open it up for testimony in opposition.

**Tonja Brown, Private Citizen, Carson City, Nevada:**

I oppose this bill for several reasons. In the section that we were just talking about, section 4 in the purple, what they are trying to do is get out from underneath the Open Meeting Law to take away even more of the transparency that we have in government. I will give you an example. When you are dealing with confidential court records, I recently settled a wrongful death suit against Nevada Department of Corrections (NDOC). Part of my settlement agreement was that certain records would remain confidential and certain records would remain public records. The Attorney General's Office has repeatedly denied me to put these public records on the public board of the Board of Prison Commissioners because they are quite damaging. There was information that came out that the Attorney General's Office had withheld exculpatory evidence in inmates' cases from the federal courts and from these inmates. They do not want that out there. There were depositions that were public.

**Chairwoman Benitez-Thompson:**

Ms. Brown, you are referring to the purple section. Right?

**Tonja Brown:**

Yes.

**Chairwoman Benitez-Thompson:**

So, help me get to the language that is addressing your concern.

**Tonja Brown:**

Public record and anything at the public record. Do you mean the confidentiality, the second part?

**Chairwoman Benitez-Thompson:**

So, we are in section 4.

**Tonja Brown:**

All of this here should be taken out. We should not have this. Unless the court deems them to be confidential, that is the way it should be. Who oversees the Attorney General's Office? That is another issue on here that should be included. In section 3, page 4, lines 8 through 12 you have put, "including the

Administrative Office of the Courts." It should also include the Attorney General's Office. [Referred to mock-up [Exhibit C](#)] ". . . unless otherwise declared by law to be confidential, all public books and records of the governmental entity . . ." and you have taken out "declared that" and then to include the Administrative Office of the Courts. The Attorney General's Office should be held accountable for public records and people should have access to them.

The inmates will file litigation pertaining to, let us just say, a religion. We have so many lawsuits in which they go into the institutions. The Attorney General's Office will keep it confidential from these inmates that an inmate has reached a settlement, which actually would benefit the NDOC inmates, but they keep those a secret. Then you have the Attorney General's Office in another litigation dealing with another inmate's lawsuit dealing with religion giving them false information in writing stating, "Well, we settled this case with this certain inmate" when it is not true in order to get them to settle.

I have known over the years that legislators have asked the Attorney General's Office, "How much money are we spending in litigation on inmates?" To this day, I believe it has never been answered. Basically, what it comes down to with the Attorney General's Office, it is like the fox guarding the hen house. Who oversees the Attorney General's Office? This needs to come in here. We need to know who oversees the Attorney General's Office when they themselves are violating our laws. But that is not included in this. They deemed these records to be confidential when the courts deemed them otherwise to be public records. I am still dealing with this with the Board of Prison Commissioners, since December 2011. To this day, it has never been addressed. They are still continuing to claim confidentiality, violating the Open Meeting Law.

**Chairwoman Benitez-Thompson:**

Ms. Brown, there is a lot of ambiguity we have found in the law about what is confidential and what is not. Different parts of different sections of *Nevada Revised Statutes* that may or may not be confidential. So, that is the question that we are seeking to address in the interim study. I do not feel we would be able to create good public policy on that with just our Government Affairs meetings and a 120-day Legislature. In the interim we plan on really looking at this. It is kind of begging the question of what you are going toward and what we were talking about earlier. But, I do not feel that we are going to be able to address all those issues in this bill.

**Tonja Brown:**

I appreciate that, but what I would suggest, if there is an interim committee, is that they delegate some other agency to look into the Attorney General's Office, because it is our taxpaying money that we are spending, that they are using time after time, and they are getting away with whatever they want. The Attorney General's Office needs to be accountable, and it cannot be their office to oversee their office or other agencies, because all it does is take it to litigation. Let us just try to prevent it from going to litigation. Thank you.

**Chairwoman Benitez-Thompson:**

Are there questions for Ms. Brown? Seeing none, thank you for your testimony.

Is there any testimony in neutral? Are there comments, or thoughts, things that you want the Committee to be mindful about, that is not necessarily opposition? Seeing none we will go ahead and close the hearing on A.B. 31.

We will move on to Assembly Bill 65. We will invite Mr. Kandt, Mr. Munro, and Mr. Taylor to the table. Once again, we are referring to the mock-up on A.B. 65 [[Exhibit D](#)], and once again you are going to see a colorful mock-up here, but that is what we are following along with. I will throw it to you, gentlemen.

**Assembly Bill 65: Revises various provisions relating to open meetings.  
(BDR 19-402)**

**Keith Munro, Assistant Attorney General, Office of the Attorney General:**

The Open Meeting Law promotes transparency in government, and the Legislature has set the parameters and guidelines for requiring that governmental meetings be open to the public. The Legislature has designated the Attorney General's Office to enforce open meetings. The operation of the Open Meeting Law needs to be clear for both the public and public bodies.

Section 2 of the legislation identifies the current statutory exemptions to the Open Meeting Law and puts them in one place. Placing the exemptions together makes it easier for the public to know what is exempted from the Open Meeting Law and what is not. On the mock-up that your staff put together, in Section 2 there is another amendment that exempts the Legislature from the Open Meeting Law while in session. The effect of that would be to make interim studies of the Legislature subject to the Open Meeting Law. If you notice on the right side, that is an amendment by Barry Smith from the Press Association. That is not our amendment, but Barry can speak to that.

Section 3 deals with the issue of designees for members of public bodies. The issues regarding this subject have been interpreted and implemented very

differently by public bodies. We are here today to seek some legislative guidance on that. The guidance is not really clear through the *Nevada Revised Statutes* as to who and when a member of a public body can appoint a designee to their place on that public body. Our proposal seeks to provide some clarity to the situation. If there are better suggestions for parameters regarding appointing designees, we are all ears for that.

Section 4 is intended to provide clarity for public bodies and further the goal of ensuring the public that if the public bodies take corrective action they take it in full view of the public. We have reached some compromise language as to that, which we support.

We have not heard many concerns as to section 5 and a part of section 6. We are trying to provide some guidance for what it means to be present at a meeting. The reason for that is, with emerging technologies there have been questions whether a message-board meeting can be held. So we have tried to clarify what it means to be present.

Section 6 of the bill codifies the definition of deliberate. The lynchpin of the Open Meeting Law is whether a public body is deliberating the public's business. There has never been a definition of what it means to deliberate, so we brought this bill to do our best to come up with a definition. At the last hearing there was quite a bit of debate, and we were requested to work with some of the local bodies as to that. We believe we have reached some compromise language. I believe Clark County has submitted that language. I note on the right side that there has been some discussion with staff regarding the definition of section 6. We are sticking with the amendment reached with Clark County, but we also recognize that it is the Committee that gets to make that ultimate decision.

Section 7 is also to help improve transparency of an open meeting. There were some questions as to the application of that. If you look on section 7, subsection 7, there was a little bit of an amendment as to the 45,000 figures. Some questions were brought forth, we believe by Nevada Association of Counties (NACO). We are okay with that amendment. We think as technology improves and information technology improves, we expect that more and more governmental entities will be brought within the scope of this amendment, but we think this is a good start.

I think that brings forth all the amendments that were in question. I am happy to have any discussion that the Committee may wish to have.

**Chairwoman Benitez-Thompson:**

Thank you. I want Committee members to keep in mind that the mock-up has a lot of amendments, and not all of those amendments will necessarily be included in the bill drafting. You see them separated so there can be conversation about the different amendments, and so for the purpose of this bill it is going to be a little bit different because support is not going to be about testimony in support of the mock-up as drafted, it will be support on the individual amendments and opposition to the individual amendments, because it will be up to this Committee to decide which to include in the final bill and which to exclude. That is the point of the rehearing, that we get your questions answered about amendments and the different things happening to date in this bill.

So with that, we will go ahead and start with Mr. Kandt, because he is the bill sponsor. If you look at your mock-up, you will see the amendments that the bill sponsor has proposed off to the side. So you can see the amendments that are coming from the Attorney General, and obviously, sir, the amendments that are coming from you, your office is in support of. I do not want to leave the impression that every amendment in here is supported by the bill sponsor. Just some things for the Committee to contemplate. With that being said, are there any questions about that from the Committee?

**Assemblyman Daly:**

On page 3 of the mock-up, in section 5, I know there was some discussion with Assemblywoman Pierce on various things about what is meant by electronic media and that you can be doing it by text message, or on chat, or anything like that. So the language "teleconference," and "videoconference," when I look at that, and when we use the term "electronic communication" down in section 6 and on and on through the bill, I think we need to define "electronic communication" meaning by teleconference, so that when we use "electronic media" later, or "electronic communications," you can refer back to the definition that it means teleconference or videoconference only, and you cannot do the other things. I think it is a simple drafting deal. I would just like some comment on that.

**Brett Kandt, Special Deputy Attorney General, Executive Director, Advisory Council for Prosecuting Attorneys, Office of the Attorney General:**

With specific regard to section 5 of the bill, we wanted to clarify that it is okay to hold a meeting that involves one or more of the public body members appearing via teleconference or videoconference. In fact, it happens all the time. If you are going to utilize that medium, you have to make sure that the members of the public can follow the discussion, the deliberation, the possible action, including the discussion and comments from the members who are

appearing via videoconference or teleconference. That is an acceptable technology to utilize, but in order to fulfill the spirit and intent of the law, you still need to ensure that everybody can follow the discussion, the deliberation, and any action.

Whereas, if I could move on to section 6, we talk about "by means of electronic communication," remember that in that section we are talking about what constitutes a meeting. If you are holding a meeting, and you are a public body subject to the Open Meeting Law, you had better make sure you are complying with all the requirements of the Open Meeting Law. There, we are clarifying that if you are utilizing technologies such as a chat room, or a message board, or a serial email communication, that is a meeting. The problem is, it is not complying with the Open Meeting Law. So, you have to be careful in using those technologies that you do not inadvertently hold a meeting that is not in compliance with the Open Meeting Law.

**Assemblyman Daly:**

That is why we asked the question. I understand that. On the one part we are saying, to attend the meeting, and then we are talking different content when we are talking about any electronic media for deliberating. Thank you for the clarification. Just for clarification, the language or the definition of deliberate that is in the mock-up is the one that I believe our legal counsel worked on with some concerns that I had. I think that one works best. I know you had to deal with the cities on that, but I am hoping that Clark County and the other agencies say they support that language, because I like it a lot.

**Keith Munro:**

We will leave that between you and them. We will leave that for the city and counties to come up. We are sticking with the Clark County amendment, but we appreciate your discussion with them.

**Chairwoman Benitez-Thompson:**

There was lots and lots of discussion about the definition of deliberate, and this language that you see in blue has definitely evolved over the course of the past couple of weeks. If there are comments about that definition please make sure they are on the legislative record. We think we have something that is workable. If not, I want to make sure we hear about that.

**Assemblyman Livermore:**

Mr. Munro and all who work at the Attorney General's Office, I appreciate your trying to get the public's business done correctly and publicly. I have a couple of comments on the mock-up. You talked about emails and serial emails.

On page 3, line 37, deliberate means, "collectively to examine, weigh and reflect." Can you tell me your opinion of what is meant by those words on line 37?

**Keith Munro:**

I have got our Open Meeting Law deputy, who works with these issues all the time. This definition here is different from the one that we had worked on with Clark County. These are tough words, and that is probably why no one has ever defined them before. That is why we have come forward with the definition, and trying to work through this because we think there should be discussion. I am going to pitch it to George and let him talk about it. We talked about it before this meeting.

**George H. Taylor, Deputy Attorney General, Office of the Attorney General:**

Assemblyman Livermore, I believe you asked specifically about the definition and the meaning of the words "examine, weigh and reflect." Those words and the bulk of this definition have been in the Attorney General's manual for well over a decade. If I could sum it up in one word, it would be discussion. It is simply a discussion amongst a quorum of a public body. But the Attorney General's manual went further and actually used these words: examine, weigh, and reflect. Those are synonymous with the give-and-take that public bodies experience during a public meeting. I think it was just an effort to make it easier for the public to understand.

**Assemblyman Livermore:**

I appreciate that, Mr. Taylor, because I happen to know some of the processes about how emails start. Emails start with: "Here is what I want to do. If you agree, do not talk to me about it. If you disagree, here is my phone number. Call me." That is really what I think it comes back down to—weigh and reflect.

Now, I do not know how you are going to capture everything, because humans are humans, and they are going to try for their best interest to work around the merits of the law here, but I want to get on the record at least, within the minutes of this meeting, that the intent of weigh and reflect means between a body of individuals, if you are going to say three times three is this, or you are going to say whatever the things are. I think it is important to understand what the merits of weigh and reflect means.

**Chairwoman Benitez-Thompson:**

Did you want to add anything to the legislative record for future bodies that might look back for guidance on weigh and reflect?



**George H. Taylor:**

Thank you. I would like to make one follow-up comment. I want to make it clear that there is not only the definition you are using in your mock-up, but one that the Attorney General has used for a long time, on page 3 at line 39: "collective discussion." That could differentiate at times in situations, but the Open Meeting Law and our enforcement has always been predicated on a collective discussion. It has been in the manual. It has been in our manual and it is in this current definition. Thank you.

**Assemblyman Ellison:**

If you go back between the mock-up and the bill and look at section 2 about "quasi-judicial in nature." Can you comment on that?

**Keith Munro:**

Yes. What we were trying to do there was we were trying to help further define "deliberate" and separate out "fact finding." There is a difference between fact finding and deliberate, but quite frankly, it got very confusing when you started bringing in those issues, so we thought it would be better to take the fact finding portion out and stick to just trying to define deliberate.

**Assemblyman Ellison:**

I see that on the mock-up, the Attorney General's amendments 2 through 6 were subsequently viewed per discussion. I thought the Press Association had a problem with section 2, as well. Nevada Press Association proposed to add deliberate to this section.

**Keith Munro:**

At least in section 2, the way I am reading it, I think the Press Association was trying to apply the Open Meeting Law to the Legislature when it was not in session. We will leave it to them to discuss the public policy rationale for that.

**Assemblyman Elliot Anderson:**

I wanted to focus on deliberate, Mr. Kandt. In section 6, subsection 2, in defining deliberate, the way I read it is you have to collectively examine, and you have to weigh and reflect separately. So, there are two things that you have to do to deliberate. What I wanted to ask was when you write in "collectively" there as a modifier, do you intend that to modify just "examine"? Or do you intend for it to modify both "examine" and "weigh and reflect"? The way I read it, just one person could be weighing and reflecting with other people in the room. Does that make sense?

**Keith Munro:**

This is a definition that is different from the Clark County one. I think this is something that Assemblyman Daly put in there, but I am going to have George Taylor, our Open Meeting Law deputy, respond to your question. I think it does have two things.

**George H. Taylor:**

In response to Assemblyman Anderson's issue about what "collectively" modifies and applies to, the way that I would read that is that "collectively," and I am not an English expert, but I think it is an adverb followed by an infinitive phrase here. I think the adverb is modifying the entire phrase, which is "to examine, weigh and reflect upon the reasons for or against the action." So, that would be my take on it. I think that is in keeping with our broad construction of not only the definition of deliberation, but in applying the Open Meeting Law. Thank you.

**Chairwoman Benitez-Thompson:**

Thank you for making that clear for the legislative record, since we know that future bodies will be looking back on this. The bill sponsor, the Attorney General, does mean for "collectively" to apply to "examine," "weigh," and "reflect." The adverb modifies all of those.

Did you have a follow-up Mr. Anderson?

**Assemblyman Elliot Anderson:**

Just to be clear, you have to do both. You would have to examine, and you would have to weigh and reflect. I think that is the other issue to make clear.

**George H. Taylor:**

In response to your question, I am not sure that we would require a public body to do all of those things. I think that a public body that examines an issue, that is perhaps collectively weighing the pros and cons, may decide not to weigh in on, or go any further. But, I think they can be differentiated and separated out. I do not think the public body has to do all three at the same time. One would be sufficient to constitute discussion under our provision.

**Assemblyman Daly:**

On the same section concerning "deliberate," I spent a little bit of time on this and I think the key words in there are "collectively," obviously, and then "exchange." Going back to the example that Assemblyman Livermore gave, if you just sent out an email, dissemination is okay. That says, I plan on doing this. In his example, if I recall, he said, so if you agree, do not respond to me.

If you do not agree, call me and talk to me. That would be more than dissemination; that would be an exchange, which then would be prohibited.

We were meant, when we were looking at this, or what I was hoping to allow is the city manager to say, "Here is what is on the agenda. Here are your options. I am nonpartial. I am not giving any recommendation." Disseminating information, and nothing more than that, because that would not be an exchange. It is only if you went back and forth. So, it is pretty clear there on the exchange. I understand Mr. Livermore's point that it might be hard to find that email, but if you did, it would be pretty clear under this definition that it would be a violation. If you could comment on that, I would appreciate it.

**George H. Taylor:**

Assemblyman Daly, I believe your factual predicate is very interesting. I have got to say, I have never had a complaint alleging that. I would be remiss to try to say today, on behalf of the Attorney General, whether that is in fact a violation or not. However, it is an interesting factual predicate, and I can see situations and other facts that perhaps would make it a violation, but right now I do not think we are prepared to say that it is, in fact, going to be a violation of the Open Meeting Law.

**Assemblyman Daly:**

So which part? Clearly, I do not think the dissemination is, but if the emails are going out, they are basically giving me a signal. So now, not only am I going to find out, because you did not respond that you are in support—you are exchanging facts, whether you have actually talked to each other or not—you are giving information and getting my opinion on which way I would go, which is a discussion in and of itself. I know you are not prepared to make that case right here and now, but in my view that would be a pretty easy case.

**Keith Munro:**

As you have clarified it a little bit more there, I see your point. We do not want to talk about what is going to be a violation or not, but when you are seeking, or giving signals as to how you are going to vote, you are getting into perilous territory.

**Chairwoman Benitez-Thompson:**

I know that we are not going to have the most perfect answer for every situation that arises, but I think what we are doing is absolutely taking the right step by getting some intent on the record about where we are drawing the line, and then helping folks to figure out where their actions are potentially stepping over that line, or getting really close to that line. Then, it can be up to the office to go from there. Are there additional questions on this section?

**Assemblyman Oscarson:**

I have a statement and a question. On page 4, lines 28 through 32 [of Assembly Bill 65], I just wanted to tell you how much I appreciate your work. The rural areas are especially impacted by electronic means of communication because they are great distances away. I appreciate your clarifying that for them, and allowing them to continue to use that method. In addition to that, when this bill becomes effective, should it pass, on July 1, 2013, I am assuming there will be some additional information the Attorney General's Office will provide to boards and commissions and all those kinds of things to clarify all these things you have done in these statutes, and even some retraining in some examples.

**Keith Munro:**

Yes. That is why we have a full-time person who handles these issues. Part of George's job is providing periodic trainings throughout the state.

**Assemblyman Healey:**

Mr. Taylor, in speaking with my colleague, Assemblyman Anderson, we were talking about the definition of deliberate again. Based on your clarification for us, as a suggestion, we were thinking, to go back to his point on whether they are individual things, or if you have to do all of those—examine, weigh, and reflect—after weigh, where it says "weigh and reflect," maybe a better way to state that would be "weigh or reflect." So, change the "and" to an "or," which then opens that up to saying that any of those things can happen, versus how we are reading it is with the "and" in there, it says that you need to do all three of those. Based on your comments, I also agree, that is not the intent. It is any of those things that mean deliberate. So, again, it is just one of those and/or type things that may make a big difference in how it is interpreted by individuals.

**Keith Munro:**

If this bill goes to a work session, we would appreciate this Committee saying, "Here is what we intend this to mean." Because, if it goes to Senate Government Affairs, what we will do is we will take the legislative record, and make sure to put it on the record over there as well, because any time you have an "and" or an "or," sometimes people read them different ways. But, we leave it to this Committee to be clear.

**Chairwoman Benitez-Thompson:**

We will move on to speak with folks who have other amendments that are proposed in here. I see one from the Insurance Commissioner. I see one from Mr. Smith. I do not know if, really quickly, the Nevada Association of Counties (NACO) is ready to come to the table about the population adjustment to share

insight about how we came to that number. Let us start with Mr. Smith. Mr. Smith, I will start by saying that we have included your amendment in the mock-up. I want to make sure that we are not opening up a conversation and a rehearing on a subject matter that would be a bill in a different committee, especially for your first amendment in section 2. I want to be sensitive to that, and this Committee's purpose versus another committee's purpose. I will let you start.

**Barry Smith, representing Nevada Press Association:**

The first amendment that I had proposed is intended to clarify that the exemption that was previously in statute only applies to the Legislature while in session. It does not apply to interim committees. I do appreciate very much how this has been moved and rewritten. It was always awkward in the statute to say that the Legislature was not a public body for purposes of this statute. That is very simple. The intent of that particular amendment is to clarify what the understanding is, and the practice now, to make sure that those interim committees and commissions are covered by the Open Meeting Law.

The second amendment, which is further down on page 2, in section 2, subsection 4, would add, "deliberate or act" to the clause here. I think that is very important to the discussion that took place a few moments ago, that the exceptions must not be used to circumvent the spirit or letter of this chapter. That is what we are really trying to get at here. It is very important to have the language clear and specific, and to make sure that we are on the record with the intent of this statute. A key paragraph here is, are you trying to get around the law when you use electronic communications and so on? To me, that section, especially now that we would have it in this bill with the definition of deliberate, to include deliberate in subsection 4 is very important. The common scenario is that an elected body gets together and deliberates in private to circumvent the law, but then meets and conducts the action in public, which would undercut the idea of the whole thing. So, those are the amendments I proposed. I would be glad to try and answer any questions.

**Adam Plain, Insurance Regulation Liaison, Division of Insurance, Department of Business and Industry:**

I just wanted to ask the Committee to look favorably upon our proposed amendment in section 2, subsection 3, on page 2, at line 12, which would add subsection 1 of *Nevada Revised Statutes* (NRS) 679B.282 to the list of exemptions to the Open Meeting Law. In a nutshell, when the insurance division does a market conduct or financial examination upon an insurer, that insurer may conduct a hearing prior to the examination being completed. Before an examination is complete, it is considered a confidential matter. So, all we

are doing is requesting that a hearing held on a confidential matter not be subject to the Open Meeting Law.

**Chairwoman Benitez-Thompson:**

Can you clarify? Do you have such an exemption in the status quo? When we pull up subsection 1 of NRS 679B.282, is there going to be language in there that tells me that there is an existing confidentiality?

**Adam Plain:**

Yes, that does exist. The statute is explicit that an examination is confidential until such time as the Commissioner of Insurance issues an order adopting the results of that examination.

**Assemblyman Livermore:**

I went through this bill and one of the things that was lost from here was the departments that were going to come and ask for exemption from the Open Meeting Law. I believe the Insurance Commissioner is working in the best interest of the consumers of the state of Nevada. I am astounded that you ask for exemption to the Open Meeting Law. I think the company's financial stake should be public information because consumers are going to purchase this product. I am sorry. I feel this way, and I do not support your amendment. Thank you, sir.

**Chairwoman Benitez-Thompson:**

One thing that I want to make sure that I do is, and I clarify, just as in Assembly Bill 31, in Assembly Bill 65 the Committee's intent is not to grant any exemptions. If there is an exemption existing currently, we are not undoing that, and we are not expanding it. That universe is going to stay the same. So, what I will do, especially for the comfort of Assemblyman Livermore, is make sure we have legal counsel pull up that section to confirm whether or not there is an existing exemption. If it already exists and that is the status quo, fine. If there is any gray area, we can revisit it, but the goal of this Committee is not to contemplate exemptions at this time. I have let folks who have submitted amendments know that that is not what we are seeking to do with this bill. We will make sure we get that back to you, Assemblyman Livermore.

Are there additional questions? [There were none.] Thank you.

**Jeff Fontaine, Executive Director, Nevada Association of Counties:**

With regard to section 7 and the amendment for the population cap, I would like to give a little bit of background. This was an item that was discussed during the Attorney General's Open Meeting Law task force. When this requirement was discussed, we did raise some concerns about the resources and technical

capability of some of the smaller rural counties, and we understand that eventually we all need to get there and that will be the goal, but at least for now, we did ask for some consideration for those smaller rural counties. The number of 40,000 as a population cutoff for those counties was the number that was suggested. It was not in consideration of any particular county. I think what happened here is that because of the new population caps in statute, it either had to go to 30,000 or 45,000. So, the only county that would be in question here would be Nye County.

**Assemblyman Ellison:**

Mr. Fontaine, are you asking that they raise that cap to include the other small rural counties? Or, did I misunderstand that?

**Jeff Fontaine:**

No. Again, the number that was put in the bill was 40,000. The question was, should it be 30,000 or 45,000? We are not advocating one way or the other. If you need to pick a number, pick whatever number you believe is correct. I have not spoken with Nye County specifically about their ability to comply with this particular requirement but, again, that would be the only county that would fall into this category.

**Assemblyman Ellison:**

So, is there any other county that you have discussed this bill with? If so, did they want to oppose or support?

**Jeff Fontaine:**

We are only talking about this specific section, which would be the requirement to upload information, and yes, we did discuss this with our counties. For some of the smaller counties, they felt it would be pretty difficult at this point because of the additional resources it would require them to have to do this, as well as other technical capabilities. So, it was primarily the smaller rural counties that had some concern. Again, I think the intent here is that everybody wants to do this eventually, but for the time being, until they can get the technology in place and the resources, we would like to see that cap on smaller counties.

**Assemblyman Oscarson:**

We have had some extensive conversations about this. I know your organization is moving to try and get all the smaller rural counties and working on some things to help them be able to do that. I agree with what you said. It is important that we move in that direction. We are just not quite there yet.

**Assemblyman Daly:**

I just wanted to make sure I understood. I think I heard what you said. The 40,000 would either need to move down to 30,000 or up to 45,000, because we have a whole series of statutory caps and limits over 700, but under 100, or over 100, but under this. The 45,000 sticks in that statutory scheme that we have for all of the other population caps. Is that what I heard you say? That is why you moved from 40,000. It was either up or down, and you went to 45,000.

**Jeff Fontaine:**

I believe that is the case. This was a question that was posed to us, and I believe that is the background.

**Assemblyman Daly:**

I hate to see another cap in there for one specific thing.

**Jeff Fontaine:**

We are not proposing the 45,000.

**Assemblyman Daly:**

But the 45,000 stays in with that statutory scheme.

**Jeff Fontaine:**

I believe it does.

**Chairwoman Benitez-Thompson:**

Yes. It keeps it clean across the board.

Are there additional questions? [There were none.]

**John Slaughter, Management Services Director, Government Affairs Coordinator, Washoe County:**

I wanted to come up and speak specifically to the proposed amendments from the Attorney General's Office, as well as the definition of "deliberate." I just wanted to thank the Attorney General's Office. There was quite a bit of discussion and deliberation in this building about those items. Washoe County absolutely supports those amendments, and what became the hybrid definition of "deliberate." To answer Assemblyman Daly's question, we do support that as well.

**Cadence Matijevich, Assistant City Manager, City of Reno:**

We, too, would like to thank the bill sponsor, the Attorney General's Office, for spending a great deal of time with us to hear our concerns and to being open to



addressing those. Because we are creating legislative record here, I do want to put on the record that at city government we take the Open Meeting Law very, very seriously. We spend an inordinate amount of time in the manager's office and our city attorney's office, trying to make sure that we are giving proper guidance and advice to our city council members, members of our boards and commissions.

So, Assemblyman Livermore, I do not think when you said earlier that we are humans and we try to work things to our benefit, you meant to say that we are doing anything subversive. Because we take these things so seriously, perhaps maybe Mr. Daly could confirm, as we read this new definition of "deliberate" meaning collectively, that could be one, two or more of any public body that would mean a collective. So, it could be two members of our council, it could be six members of our council examining, weighing, and reflecting. I believe with the deletion of the language "and the collective acquisition," that those members could all be present. Perhaps as an example, the members of our city council could be present at a presentation of the university about a plan that they had for something to go on at the university that may ultimately come before the city council as a land use decision. While they are there together, learning as individuals, acquiring facts, so long as they are not engaging amongst one another and discussing, which was a word that Mr. Taylor used in response, he said discuss rather than deliberate, and I do not know for this purpose if they are interchangeable, I guess I am trying to clarify that, by this section, we are not putting an overly burdensome prohibition on the members of a city council from attending a community workshop, something where they need to go, and it is an opportunity for them to learn. It does not prohibit all of them from taking part in that.

**Assemblyman Daly:**

I cannot give legal advice, but I have seen public bodies and those types of things take the extreme and say, "Look, they are all going to be here," so they notice it as an open meeting. Maybe they need to, and maybe they do not. We already know that serial meetings, so just two people, and then two people, and two people is not legal. I have been to meetings at Washoe County where they have had all of the legislative group come in, and the county manager is there, and some of the staff are there, but they only bring in two county commissioners at a time. Then two of them would leave and two others would come in halfway through the meeting.

So we have seen a lot of things to try and make sure, and I think you are right, they do take it seriously. But if you are doing the collective discussion, they know what the rules are. You are giving them that advice: Do not engage in that activity here, or anyplace else, because it is going to be a violation.

So, I think it is pretty clear with what it says, and what the intent is, and it is easy enough to follow. I think you are already giving them that advice, from what I have seen. I do not know if that helps.

**Assemblyman Stewart:**

From time to time agencies have retreats where they do planning and things like this. Do you see that as an issue or a problem here?

**Cadence Matijevich:**

No. We notice those. We believe that those fall under the Open Meeting Law, and we notice them and conduct them accordingly. Mr. Daly, I appreciate your trying to give me some comfort, and I understand that is not how this normally works. We do not come up here to ask you all questions. We want to make sure that we have not supported something that now puts our members at risk of violation of the Open Meeting Law, which is a very serious violation and has some very serious implications that come along with it.

What I am trying to get at today is that, and you are right Assemblyman Daly, sometimes we do, out of an abundance of caution, notice those instances where we think that there is a possibility that more, in our case, than three of our members are going to be there. But I will tell you, that becomes quite an exercise to know who is going to be where and when. Do we have more than three? Do we not have more than three? Do we need to notice this? Do we not need to notice this? It is absolutely our intent to comply. So, as we determine the legislative intent to say that we support it, just try and understand that "deliberate" includes the discussion and exchange of facts between the members of the public body.

**Assemblyman Elliot Anderson:**

I just want to dovetail on what Assemblyman Daly said. "Deliberate" in itself is not the end-all definition—it flows into "meeting." So, when I read subsection 3, of section 6, "deliberate" flows into "meeting," and you have to have a quorum at that point. So, it will only be a quorum that is deliberating for it to be a meeting and qualify. That is the way I read it, so I just wanted to throw it out there and put it on the record to ease your concerns.

**Cadence Matijevich:**

Thank you Assemblyman Anderson, I appreciate that. I believe through this dialogue that I have gained an understanding that does place us where we can support this. Again, you get into the, "Do you have a meeting, now?" If you have four members of your city council attending a workshop, and maybe examining, weighing, and reflecting, individually—they may not be sitting anywhere near one of their other city council members, but they are weighing,

examining, and reflecting reasons for what may be a future action. We have this circumstance right now in Reno. I gave the example where there is a piece of land that the university owns that they are considering, that may ultimately have the land use designation changed for it, because potentially it may be sold.

Through this process the university is conducting workshops with members of the public, and our city council members are very engaged and interested in this issue. What I want to make sure of is that this definition would not prohibit more than three of them from attending one of those public workshops so that they can educate themselves and learn the facts that because there are four of them, it has not all of a sudden become a meeting, and now, because it is a meeting, and they are individually getting facts and information and weighing those, that they have not somehow inadvertently violated the Open Meeting Law.

**Chairwoman Benitez-Thompson:**

Comments? I think that deserves a response.

**Assemblyman Daly:**

Attending an event, in my mind, if they are just there to get information, meaning dissemination, it would take something more, such as interaction between the actual members of the public body engaging in the conversation about X, Y, and Z. You tell them not to do that when they are at these group events. I went to the city council luncheon they had for the legislators, and I think I remember saying at that meeting to be very careful to make sure that we did not discuss any policy issues because I did not want any of them to say I was a witness to something that happened. So, you have told them; everybody knows. It would take something more than just attendance at the meeting, in my view.

**Chairwoman Benitez-Thompson:**

What I do not want to do is walk down the path for every single scenario. I think that is why we do have someone in the Attorney General's Office who can go into specific complaints and look at specific facts. I do not know that we are going to be answering every situation, but we want to be sure that the intent in what we are looking at is for the collective discussion or exchange of facts preliminary to the ultimate decision. Being in a forum or a town hall, where you are listening to folks, you are asking questions, is wholly different than those members coming together and making a decision about that information they are hearing. Getting that information in and of itself is not precluded in any way. It is that next step, which is four of them saying, "We really like what we just heard, and we should make sure that this

happens," and going forward. As I said, I think it will be hard to walk down every single path.

**Cadence Matijevich:**

I was only trying to use an illustration to better articulate the challenge we face, and I very much appreciate your comments just now. I think having that as part of the record is a substantial clarification that gives us a much greater comfort level. So, thank you.

**Assemblyman Livermore:**

I just wanted to clear the record. I did not mean by what I said, the human side of what we do. I am sure that most city councils, city managers' offices, county managers' offices, all try their best to live up to the merit, and to the spirit, of the Open Meeting Law. However, I have been there, and I have done that. I have witnessed, and I have seen things. That is why I put this testimony on the record. Only to make sure that events that happen really are for the purposes for which we have just had this discussion: to gather information, and to understand the event that is going to happen. Thank you very much.

**Assemblyman Oscarson:**

I also understand that. But, I think what I am thinking is not much different from my colleagues. You make an effort to not let that happen. I keyed into a word you said when you were talking about these hearings that the universities have, when you keyed into the word "hearings." Two of them at one hearing, two of them at another; it is easy to do that when there are multiple hearings happening. We have that happen in Nye County periodically, and they will spread themselves out; the commissioners will go to different hearings. I think that is obligatory on the elected officials to make sure that they do whatever they can do, and just utilize a common-sense approach to those kinds of things, as well as transparency to adhere to the Open Meeting Law, as intended in statute.

**Assemblyman Stewart:**

I do not want to belabor the point, but I can see you at a national cities meeting on economic development, or something of that nature, and you are sitting at the same table, and they bring up a point, and you say, "That is a great idea. We could apply that" and zap. I think it is so restrictive in some ways. We had the "Nevada 2.0: Economies for a Sustainable Future" conference at the University of Nevada, Las Vegas (UNLV) on economic development and diversification, and there were groups in a huge meeting room. The city council people and the legislative people tend to come together, and if you make

a comment on what is said, I just think we need to be clear, in my view, that is not a violation.

**Chairwoman Benitez-Thompson:**

Just to clarify, Assemblyman Stewart, you mean that a comment from an individual member is not a violation, but discussion among members about potentially taking action is?

**Assemblyman Stewart:**

If you have four commissioners sitting at a table in a huge room where they just had a presentation on economic development, and one of them says, "Hey, we could apply that to Las Vegas, or Clark County," are they going to get zapped on that? I hope not.

**Chairwoman Benitez-Thompson:**

I think a complaint would have to be made in that situation, and depending on the details of that complaint and what was said, who talked afterwards, and the nature of that conversation, and if a council member says something that rises to the level of issuing the complaint, I would think it would be up to the Attorney General to circle back and ask, "What was said next?" and "Did three members sitting at that table collectively discuss and say, "This is really good, and we should make it happen." What was the nature of that conversation?" I think that is the question we are begging, but at least we are giving the Attorney General the tools by which, if a complaint is made, to look at that and decide if it was a violation, or if a decision was made by a set of folks about public policy that should have happened in a public quorum.

**P. Michael Murphy, Coroner, Office of the Coroner, Clark County:**

In the interest of brevity, we will echo the comments of our sister county in the north, Washoe County. We want to thank Assemblyman Daly, and specifically, the Attorney General's Office for working with us on some of the changes and the verbiage, including the term "deliberate." You can see that becomes somewhat onerous when you are trying to nail it down. I do not have any further comment, other than support for that. Thank you very much.

**Ted J. Olivas, Director, Administrative Services, City of Las Vegas:**

I wanted to thank Assemblyman Daly for keeping me in the loop on this definition. I think we are fine with that. I just wanted to bring up something that was brought up by Assemblyman Stewart. Right before this session we had a local government summit that included county commissioners, city council members, and some of the members of this Committee, actually; so it was legislators as well. We had various topics that were going to be talked about and so we spread out through the room depending on the experience and

the things that people were interested in, so there was never a majority of city council members at one table, or county commissioners at one table, or legislators, for that matter. When we opened that meeting, it took about 17 of us to do all of this procedure to open the meeting and all of that stuff. In fact, the Speaker said how crazy it was that we had to do that. I think those are the kinds of things that Ms. Matijevich and others have expressed here. We just want to make sure that we do not get sideways because we take this very seriously. Everyone in this room takes this seriously, so we want to make sure that we get it right, and that is something that we actually experienced related to this. So, thank you very much for this bill and for letting us be a part of it.

**Nicole Rourke, Executive Director, Community and Government Relations, Clark County School District:**

I thank my colleagues for bringing another issue forward to you, but I wanted to mention the remainder of an item under section 4, subsection 4. We appreciate the deletion of some of the language, but we feel that this provision could still potentially allow an unintended consequence of a lawful decision by a second public body, based on the former decision of an alleged violation of the first public body. We just wanted to bring that to your attention and encourage the strike of the rest of that language on perspective moving forward of the correction. Thank you.

**Chairwoman Benitez-Thompson:**

Thank you. Are there additional comments at this time? As I said, this is a little different because it is not the traditional for or against, but comments on specific amendments are welcome. Just let us know what amendment you are referring to.

**Tonja Brown, Private Citizen, Carson City, Nevada:**

On amendment 4, on the "deliberate or," presented by Barry Smith, I like that. Section 7, subsection 2, paragraph (c), "the name and the contact information for the person designated by the public body from whom a member of the public may request the supporting material for the meeting described in subsection 5, and the list and locations for supporting material is available to the public"—okay on that. However, the rest of the stuff I do not agree with. That is section 2 particularly subsection 2, paragraphs (b) and (c): "Judicial proceedings, including, without limitation, proceedings before the Commission on Judicial Selection, and, except as otherwise provided in NRS 1.4687, the Commission on Judicial Discipline." I have gone through that situation over the years, and this information should be public.

Section 2, subsection 2, paragraph (c), I do not agree with on behalf of the inmates and the innocent. "Meetings of the State Board of Parole

Commissioners when acting to grant, deny, continue or revoke the parole of a prisoner or to establish or modify the terms of the parole of a prisoner."

And the same with section 2, subsection 2, paragraph (d). Let me tell you, as an advocate for the inmates and for the innocent, I have seen violations by the parole boards and how they use the Legislature to circumvent the laws to come and create new legislation so they can get away with what they have been doing. The prime example is, as an advocate for the innocent, those wrongfully convicted and those innocent people, I was asked one time to step in and represent a victim at a parole hearing. Prior to this, the victim received two separate letters from the parole board. It was giving him direction on how to get around the Open Meeting Law. They said that anything that you present to the State Board of Prison Commissioners in writing will remain confidential, but if you go before the board and testify, under the quasi-judicial, they have the right to cross-examine you. So, they are just basically telling them, "Go ahead and submit everything in writing, do not testify, and whatever you want to present we will listen to, and they do not have to know about it."

So, the inmates have no way of knowing whether or not the information provided to the parole board was in fact true or not. So they have no way to defend themselves because the parole board is acting outside the scope of the Open Meeting Law by giving the victim direction. No. They should be under the Open Meeting Law. They have been going on since 2001 trying to get out from underneath the Open Meeting Law. They are also trying to do it by getting rid of the psych panel, because psych panel falls under the Open Meeting Law. That is another bill that will appear before you.

On section 4, no, absolutely not, and let me tell you why. I have a letter from the Attorney General's (AG) office, from George Taylor, dated February 20, 2013. As I stated earlier, I had attended the State Board of Prison Commissioners meeting December 5, 2011, and again May 17, 2012, trying to get these public records on the public website. Records that came out of discovering a wrongful death suit deemed by the court to be public. The AG's office has continually maintained that they are confidential, because they are quite damaging to the Nevada Department of Corrections (NDOC) and to the AG's office.

In part, the AG's office, that came out of discovery, show that they had withheld evidence in Mr. Klein's case, and from the federal court judge. This was detrimental to the AG's office and to NDOC. To this day they have refused to put these public documents on the record, claiming confidentiality. So, in May, again I tried to get them. If you go to the State Board of Prison Commissioners, December 5, 2011 meeting, you will deem they are not there;

you will see that they are claiming confidentiality. So, I knew that they were going to try to do something, and I knew that I had to object to the minutes of the May 17 meeting, which also carried over from the December minutes. I knew that it was going to come up. I called and I was informed that they were going to have a State Board of Prison Commissioners meeting in October of 2012. As I continued, prior to October, I started to look. Nothing posted. Nothing posted.

Finally, at the end of October, I believe it was October 27, it fell on a weekend. With Open Meeting Law, and three days notification, it would be Monday; let us see if they are going to have it. I went to the State Board of Prisoner Commissioners' website, and it said no meeting had been scheduled. Okay. And the last meeting up there, there is a list of all the prior meetings from May 17 going back for years. Nothing for October. I took my phone camera and took a picture of the newspaper article October 27, and clicked it on there, showing nothing was posted. As I continued to look, still nothing. Then I figured, well it is December, and now it is going into November, again nothing. Nothing posted. December comes. December 27, again I look and guess what, now they had it listed on October 15. They had a board meeting and it was December 17. So I took a picture of it. I could not attend the October 15, 2012 meeting because it was not posted on the NDOC website. So I filed a violation of the Open Meeting Law February 14, 2013.

This letter ([Exhibit E](#)), dated February, 20, and signed by Mr. George Taylor, who spoke before you, says: "We have reviewed your Open Meeting Law complaint. You have alleged that the Nevada Board of Prison Commissioners did not notice its October 15, 2012 meeting until 62 days after the meeting had already been held thereby causing your objection to the Board's approval of the minutes of its May 17, 2012 meeting to not be heard. We reviewed the notice and agenda for the Board of Prison Commissioners October 15, 2012 meeting, published on the Secretary of State's website, and have determined that the agenda was timely posted on October 8, 2012. There was no Open Meeting Law violation. The other matters you complained of in your letter are not reviewable under the Open Meeting Law."

That was dealing with the public records deemed by the court to be public. But the AG's office was claiming they were confidential. I will just make this really quick.

**Chairwoman Benitez-Thompson:**

I do not think this Committee can give you an answer on your specific concerns.



**Tonja Brown:**

I know but I am just trying to tell you how they are trying to get away with what they are doing, and why the AG's office needs to have an oversight over them. Because, again, I filed and resubmitted it in February, shortly thereafter, and I am expecting a letter any day from Mr. Taylor on this.

**Chairwoman Benitez-Thompson:**

We should have a Super-AG office?

**Tonja Brown:**

Yeah. They did not post it on the NDOC website. Okay. There are major issues.

**Chairwoman Benitez-Thompson:**

I just do not want to get too far into the weeds. I am not going to disagree with you that there are issues with the Open Meeting Law, and what I hope is with Assembly Bill 31 and Assembly Bill 65, we are at least taking steps in the right direction to add clarity. I am not promising that it is going to solve or address every single Open Meeting Law violation. I think that is evident, but I think that we are at least going in the right direction with this bill and the intent of the language to make things just a little bit more clear.

**Tonja Brown:**

I agree with that. I am just saying that there has to be something over the Attorney General's Office because I do not know what the answer is going to be, but I have kind of projected what I think he is going to say. But anyway, there has to be something because the Attorney General's office cannot do this. The Attorney General's office gets away with what they want. For example, the Attorney General sits on the Board of Prison Commissioners.

**Chairwoman Benitez-Thompson:**

I do not want to sit here and impugn the entire Attorney General's Office.

**Tonja Brown:**

Right, but I will just finish this up real briefly. She also sits on the Advisory Commission of the Administration of Justice where I have taken those same documents that were deemed public by the court. They are on the Legislature website as public record, but I cannot get the Board of Prison Commissioners to put them on their public website. Why is that? Why can one committee have it, and one not have it when the courts deem them public?

**Chairwoman Benitez-Thompson:**

Thank you Ms. Brown. If there are more, fill the seats so that I do not miss you. We actually have a couple in Las Vegas, too, so let me go down to Las Vegas real quick. Once again, be sure to address a specific section of the bill and state your name for the record.

**Michelle Ravell, Private Citizen, Las Vegas, Nevada:**

Nevada Cure actually submitted an amendment to this that I am not seeing, and I do not see any of the issues addressed in the mock-up of the bill so I want to put those on the record. In section 2, subsection 2 (c), what this does is create an exception to the Open Meeting Law that does not currently reside in NRS Chapter 213. Nevada Cure is very concerned about this. In order to amend that, all you would need to do is remove everything except "revoke," because that is the only thing that is currently exempt from the Open Meeting Law. So, the concern is that by this wording you are creating exactly what you are trying not to create which is another exception to the Open Meeting Law.

Nevada Cure would very much appreciate if you would look at the amendment that we have submitted, and make those changes accordingly in this law so you are not making more exemptions. I would be happy to answer any questions.

**Chairwoman Benitez-Thompson:**

Thank you. We will have the bill sponsor address that in a moment. Are there questions? Seeing none, thank you. Is there someone else signed in down there? Did Florence Jones want to speak as well?

**Florence Jones, Private Citizen, Las Vegas, Nevada:**

I am extremely concerned about the Open Meeting Law. I have been following it since 2001. I noticed that in section 2, subsection 3, many agencies are already listed as exempt under the Open Meeting Law, and various other places throughout the NRS. They are just listed with their NRS numbers. They are not set out specifically. I call to your attention in section 2, subsection 2 (b) and (c) where the judicial proceeding, selection committee, and judicial discipline, as well as the parole board, are specifically set out. I have searched the NRS and cannot find where those particular entities are exempt from the Open Meeting Law as Deputy Attorney General Munro testified to you at the last meeting on this particular bill, A.B. 65. I believe he stated that there were no new exceptions being listed, that is was merely to compile all those that were already exempt.

I question, once again, under section 2, subsection 2 (b) and (c), I believe new exceptions are being specifically set out as the Open Meeting Law calls for in a

1977 resolution, or amendment to this particular body, saying that unless you are specifically set out in the Legislative NRS, that you are under the Open Meeting Law. I believe that this entire bill, if you will, is to create the exceptions I have called out to you. I have followed the Parole Board for some years, and I have found that they have been brought before the legislative body and been rejected in Senate Bill No. 229 of the 72nd Session, Senate Bill No. 423 of the 73rd Session, Senate Bill No. 496 of the 74th Session, Assembly Bill No. 61 of the 74th Session, Assembly Bill No. 62 of the 74th Session. There is also a specific portion of the NRS that gives the parole board the right to deliberate in closed session. I do not believe that previous legislators would have created that if they had meant for the parole board to be outside the Open Meeting Law. Thank you very much.

**Chairwoman Benitez-Thompson:**

Thank you. I will have bill sponsors comment to that.

**Brett Kandt:**

With regard to this first comment about the State Board of Parole Commissioners, I would direct the Committee's attention to the existing language in NRS 241.030, subsection 4, in which it specifically states that "The provisions of this subsection do not apply to meetings of the State Board of Parole Commissioners when acting to grant, deny, continue or revoke parole of a prisoner or to establish or modify the terms of the parole of a prisoner." That is the exact same language that appears in the proposed section 2 of the bill. So, once again, to clarify for the record, our proposal in A.B. 65 is not to create or expand or remove any existing exceptions to the Open Meeting Law. Through section 2 of the bill we simply wanted to put all those exceptions in one place to increase transparency and make it easier for the public to understand what exceptions exist, and for the agencies and entities that are subject to the Open Meeting Law to comply with the Open Meeting Law. Once again, with regard to the second comment, and the proposed language in section 2, subsection 2 (b), at lines 8 through 10, on page 1 of the bill, those are existing exceptions in law. We simply wanted to identify them in one place.

**Chairwoman Benitez-Thompson:**

Thank you, Mr. Kandt. Are there any questions? [There were none.] Thank you for your testimony in Las Vegas. Assemblyman Munford, do you have a question?

**Assemblyman Munford:**

I am a little confused and perplexed about many of the allegations and the charges that were made by some of the testimonies from the people down in Las Vegas. I think they have something that has some legitimacy to it, but I am

trying to get my arms around it to see what direction and what path they can take for their allegations or issues to be addressed, because I have heard them before and it is still problematic. I think they have something solid to say, but I do not know how to get to it. Even Ms. Brown, some of the comments she made. As a representative of District 6, I hear a lot of my constituency talking in terms of parole and probation and some of the powers that they have, and maybe some of those things should be taken from them. I just wanted to make that comment. I have to look further into it. Thank you for the time.

**Chairwoman Benitez-Thompson:**

I do not disagree, I just think that a lot of the conversation on the topic is a whole separate bill, a whole separate issue potentially for the Judiciary Committee. However, I welcome, and I am excited by, your enthusiasm about this, Assemblyman Munford. I would say to absolutely keep talking with these folks and see if there is a solution to be found.

**Assemblyman Munford:**

Yes, I am going to continue to keep an open mind, and I want to continue discussion with them.

**Chairwoman Benitez-Thompson:**

I invite anyone else who would like to work with Assemblyman Munford on that to please let him know. Thank you. We will come back up to northern Nevada. We have got to be out of here in just a couple of minutes. We have got a couple of different meetings that members have right before today's floor session, so let us make sure we get this on the legislative record in the next five-and-a-half minutes here.

**Bruce Kittess, Private Citizen, Carson City, Nevada:**

I am a retired person who goes to a number of meetings, and I do appreciate, in Carson City, the Open Meeting Law where I can look in the agenda and get the backup documents. Whoever is responsible for deleting section 2, subsection 2 (d), I would like to thank them. To be honest, I was shocked that a bill introduced by the Attorney General would even suggest that a committee or subcommittee of a public body would be exempt. I do not understand how they could have even put that in there, but I thank you for taking it out.

I am interested in what happened to the Public Utilities Commission (PUC) amendment, having spent a lot of time last year, over a year going to two PUC hearings. No. There were four hearings and two workshops over a year on the smart meter. I understand that process, and when I read the amendment, I wanted to make sure that it did go away; that there is no change to the PUC, because they call themselves quasi-judicial, but there is no

administrative place for people that want to discuss the electrical rates. I would like to know, did it go away? I did not see any box over here that said it went away, or that it was incorporated in some way. Has there been any change?

**Chairwoman Benitez-Thompson:**

Just for clarification, the PUC withdrew their amendment on March 8, 2013.

**Bruce Kittess:**

Good. Thank you. The definition of "deliberate," I have listened to that this morning and I wondered, how, after 40 years, did the Legislature operate without a definition? We will see how well that works out.

Finally, on the videoconferencing, good idea. I have been to some committee meetings, and telephoning in to a meeting is a joke. It is one thing when you call in on a landline. When you call in on a cell phone that is cutting in and out, and the chairman asks, "What did you say? Did you hear what we said?" I think that telecommunicating is a step backward, and if you have been doing it for a number of years, maybe it is time that you stop it. If you cannot show up at the meeting, so be it. Thank you very much.

**Brett Scolari, representing Reno/Sparks Convention and Visitors Authority:**

I am going on my eleventh year acting as legal counsel. I want to apologize that I am a little late to this party, but this bill was heard so early, and I just got back from our last board meeting. I wanted to raise an issue to this Committee today. Respecting your request that we are not asking for additional exceptions, but as an entity who does not get bill draft requests, this is my only opportunity to raise this issue, so I thought, with your indulgence, if you could allow me a couple of minutes just to give you some background on the issue.

**Chairwoman Benitez-Thompson:**

Remind me of what you are speaking. Are you talking about an existing exemption in statute?

**Brett Scolari:**

It contemplates a new exemption.

**Chairwoman Benitez-Thompson:**

I will say, for the purposes of this specific bill, we are not contemplating new exemptions. That just opens the door for a whole world of different types of exemptions. I do not think we can do proper time and justice for that, but we will talk afterwards, off-line, about what the concern is, and see if that conversation is germane to another bill that we have. I think we have been clear that we are not looking in this bill for new exemptions. But, we will talk.

Ms. Brown, you are back.

**Tonja Brown:**

Yes. Thank you Chairwoman, and thank you Assemblyman Munford. I think I have a possible resolution to maybe some of the concerns regarding the Attorney General's Office. It is to set up a committee for oversight of the Attorney General's Office. It would be for the U.S. Justice Department to come in to investigate wrongdoings by the Attorney General's Office. I believe that is one way we can resolve what has been going on for many, many, years, including violations of the Attorney General's Office—Brady violations, Open Meeting Laws. Thank you.

**Chairwoman Benitez-Thompson:**

I look forward to the conversations that you and Assemblyman Munford have about different possible solutions and paths to addressing that. I am glad you will be working together on that. Thank you very much.

I see you still sitting down there in Las Vegas, Ms. Jones and Ms. Ravell, so just real quickly I wanted to circle back to you. We heard the Attorney General confirm that section 2 is not creating an exemption that does not otherwise exist.

**Michelle Ravell:**

I am looking at the bill with the proposed mock-ups and the NRS that he is quoting, NRS 241.030, in subsection 4, is, of course, being stricken from this. However, prior to it being stricken, it says "the provisions of this subsection do not apply to meetings of the State Board of Parole Commissioners. If that exemption did not apply to the State Board of Parole Commissioners in NRS 241.030, then why are we suddenly making it apply in section 2 (c)?"

**Chairwoman Benitez-Thompson:**

I will circle back to our legal counsel on that for clarification.

**Michelle Ravell:**

I would very much appreciate that.

**Chairwoman Benitez-Thompson:**

With that, I am going to go ahead and close the hearing on Assembly Bill 65, and open it up for public comment. Is there any public comment in Carson City or in southern Nevada?

**Florence Jones:**

Madam Chairwoman, may I ask that there be a clarification on the Attorney General's information regarding section 2, subsection 2 (b)? They did not identify where in NRS that could be located. I would appreciate that information from him.

**Chairwoman Benitez-Thompson:**

I have closed the hearing on A.B. 65, so let us do this. Make sure you get your testimony to me, in writing, with what exactly you are looking for clarification on so we can have legal follow-up. Shoot me an email on that, or shoot it to Committee staff. Thank you.

Seeing no additional public comment, I will go ahead and close this hearing of Assembly Government Affairs [at 11:08 a.m.]. Thank you all so much for your great thinking, and your thoughts.

RESPECTFULLY SUBMITTED:

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John Budden  
Committee Secretary

APPROVED BY:

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Assemblywoman Teresa Benitez-Thompson, Chairwoman

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Government Affairs

**Date:** March 13, 2013

**Time of Meeting:** 9:09 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 31	C	LCB/Legal	Mock-up of proposed amendment
A.B. 65	D	LCB/Research	Mock-up of proposed amendment
A.B. 65	E	Tonja Brown	Letter from Office of the Attorney General