

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-Seventh Session
February 28, 2013**

The Committee on Legislative Operations and Elections was called to order by Chair James Ohrenschall at 4:06 p.m. on Thursday, February 28, 2013, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, 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. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chair
Assemblywoman Lucy Flores, Vice Chair
Assemblyman Elliot T. Anderson
Assemblyman Wesley Duncan
Assemblyman Pat Hickey
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Andrew Martin
Assemblyman James Oscarson

COMMITTEE MEMBERS ABSENT:

Assemblyman Harvey J. Munford (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Pete Livermore, Assembly District No. 40



STAFF MEMBERS PRESENT:

Rick Combs, Director, Legislative Counsel Bureau
Susan Scholley, Committee Policy Analyst
Kevin Powers, Committee Counsel
Karen Pugh, Committee Secretary
Macy Young, Committee Assistant

OTHERS PRESENT:

Barry Smith, Executive Director, Nevada Press Association
Andrea Engleman, Private Citizen, Carson City, Nevada
Elizabeth MacMenamin, representing Retail Association of Nevada
Bruce Kittess, Private Citizen, Carson City, Nevada
Paul Moradkhan, Director, Government Affairs, Las Vegas Metro Chamber
of Commerce
Lynn Chapman, representing Nevada Families Association
Carol Howell, representing Nevada Legislative Affairs Committee
Geoffrey Lawrence, representing Nevada Policy Research Institute
Vanessa Spinazola, Legislative and Advocacy Director, American Civil
Liberties Union of Nevada

Chair Ohrenschall:

[Roll was taken.] Today we have one bill before us, Assembly Bill 118, to be presented by Assemblyman Hickey. Before we move forward with Assemblyman Hickey's presentation, we have a bill draft request (BDR).

BDR 17-986—Requires legislative lobbyists to file reports concerning lobbying activities when the Legislature is not in session. (Later introduced as [Assembly Bill 190](#).)

ASSEMBLYMAN ELLIOT ANDERSON MOVED TO INTRODUCE
BDR 17-986.

ASSEMBLYMAN MARTIN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMEN FLORES AND
KIRKPATRICK AND ASSEMBLYMAN MUNFORD WERE ABSENT
FOR THE VOTE.)

Assemblyman Hickey, if you would, please take the witness stand and begin your testimony.

Assembly Bill 118: Establishes the Legislative Open Meeting Law. (BDR 17-49)

Assemblyman Pat Hickey, Washoe County Assembly District No. 25:

Although I am introducing this bill, I really consider it a committee bill, and in that sense, I enlist your help and feedback on it. This, simply put, is an open government bill.

The application of this bill is not intended to expose the legislative process, while we are in session, to the open meeting law. One of the most basic requirements of the open meeting law is posting an agenda for the meeting three days prior to the actual meeting date. During the 120-day legislative session, we find that virtually impossible to do. It is difficult to comply with an open meeting law that would require a 72-hour notice when, as the days count down, we may only have 40 hours left in the session.

The intent of A.B. 118 is to apply the standards established in Title 17 of the *Nevada Revised Statutes* (NRS), as described in NRS Chapter 218A regarding the open meeting practices, which are currently being followed by the Legislative Counsel Bureau (LCB) to the Legislature in its interim as the important work of the various committees is continued.

Assembly Bill 118 will maintain the Legislature's distinction from other government bodies and will not place it under the oversight of the Office of the Attorney General, as regulating authority would fall under the rules that we are setting for ourselves.

Chair Ohrenschall:

Are there any questions for Mr. Hickey at this time? [There were none.]

Barry Smith, Executive Director, Nevada Press Association:

I am very much in favor of this bill. As Assemblyman Hickey stated, the general provisions of A.B. 118 are what we have come to expect from a government agency regarding the open meeting law. I believe that currently the Legislature follows the standards established by this bill, which will in essence act as a reference for interim committees and legislators to use should questions arise. In addition to my testimony, I believe you have an editorial from the *Las Vegas Review-Journal* in support of this bill ([Exhibit C](#)) that was uploaded to the Nevada Electronic Legislative Information System (NELIS) by Assemblyman Hickey. I consider it important that the Legislature adopt this bill as a statement to the public that it does want to comply with the open

meeting laws and is taking these steps to make itself as open and transparent as possible. This is an excellent way to do it.

Chair Ohrenschall:

Mr. Smith, you are in a unique position as a member of the press to examine a variety of public bodies. How would you describe the level of transparency of the legislative interim committees, as they exist now, in comparison with other public bodies, which are under the open meeting provisions in NRS Chapter 241?

Barry Smith:

I think it is good. Occasionally some questions have come up regarding how to handle distribution of materials related to meetings, such as when those materials should be provided and by what method. However, I really have not seen a problem; in fact, the legislative interim committees routinely follow the standards proposed in this statute. There are bodies around the state that seem to have problems with NRS Chapter 241, but I have not seen those particular problems with the interim committees.

Chair Ohrenschall:

Can you give any examples where you have encountered an entity that you believe had not complied with NRS Chapter 241 and what you did to try to remedy that.

Barry Smith:

When the Nevada Press Association presented testimony on another bill, we were informed that the Office of the Attorney General receives some 60 or 70 complaints a year regarding city councils, county commissions, and school boards. Maybe a third or less of those complaints actually turn out to be violations. Those complaints generally have to do with how action items are listed on agendas, and how and when materials are provided in advance of meetings.

Assemblyman Elliot Anderson:

In section 12, on page 7, lines 43 and 44 state, "A suit may seek to have an action taken by the committee declared void." Do you think there may be a question here on the separation of powers?

Assemblyman Hickey:

It is true that one of the trade-offs, if we enact this legislation, is that we are accepting the possibility of a lawsuit. There could be instances where there is either a legitimate reason to question how we have conducted ourselves

in the interim or any other time. However, I believe it is the opinion of the Legal Division that we would most likely not see an effective suit.

Assemblyman Elliot Anderson:

On page 5, in section 9, subsection 3, paragraph (b), it states that notice must be delivered by mail or electronic mail. Who determines which method is used, the requester or the Director of the LCB?

Rick Combs, Director, Legislative Counsel Bureau:

I believe it says, "If feasible for the Director and the requester has agreed to receive the public notice by electronic mail." Both the Director and the requester have to agree to deliver notice via electronic mail for that to be the delivery method. Currently, the LCB keeps a log for every one of our committees with the names of people who have requested to receive the notice via email and the date we send that email out.

Assemblywoman Kirkpatrick:

I have a question regarding the definition of "meeting" as stated in section 6. My concern is that it states, under subsection 1, that a meeting includes a "series of gatherings of members," but then under subsection 2 it states, "Does not include a gathering or series of gatherings of members." This is confusing to me and a concern that we do not get into a situation where we cannot have a dialogue. It is important as a citizen legislature to maintain the dialogue, because we are part-time and we want to keep representing our constituents.

As an example, we tried to do a southern Nevada forum where we could have local officials meet and hold a dialogue about issues concerning all parties. It took two weeks and a good deal of negotiations to allow all these people to be in the same room to have a conversation about things we would like to discuss.

Rick Combs:

This is based on the language in the current open meeting law, with the key phrase being that the members are at a social function and they "do not deliberate toward a decision or take action on any matter." If you are at a social function together, it is a quorum of the committee, and you are not taking any action or deliberating toward a decision on a matter that you have some type of jurisdiction over, you would be fine.

Assemblywoman Kirkpatrick:

I appreciate that, but there is something left out of section 6 that clarifies that. For instance, if members of the Committee on Government Affairs are attending a local government event, and there are enough members to be construed as a quorum, could they be discussing a specific topic?

Rick Combs:

I may have misunderstood which subsection you were asking about. In section 6, subsection 1, paragraph (a), you have a gathering of a committee with a quorum present; then in paragraph (b), you have a gathering of the committee without a quorum present. This section is stating that you cannot have a series of meetings where you have less than a quorum but you are still working toward trying to make a decision as a body. Again, I think that is consistent with the open meeting law that applies to other public bodies.

Chair Ohrenschall:

Assemblyman Hickey, do you envision this being applicable to party caucus meetings?

Assemblyman Hickey:

Absolutely not, and I believe that there is history that caucuses are determined to be a private club. There is case law to refer to, which prevents this from being applicable to our caucus meetings.

Assemblyman Martin:

I am going to provide you with an example that may help to make Assemblywoman Kirkpatrick's concern with section 6 a bit clearer. I served on the Nevada Economic Forum, which is a body of five people whose duty it is to project the state's revenues and set by law the amount of revenue in the General Fund. Three of the five members would meet at the airport in Las Vegas en route to the committee meeting here in Carson City. Under the definition you have here, if we were sitting around talking about the hundreds of pages received from the Fiscal Division the night before, and I simply ask a technical question about housing starts, I could be in violation of the standard A.B. 118 is trying to create here.

The major concern I have is the language "deliberate toward a decision," which I consider to be very broad. Often the members of the Nevada Economic Forum did not have a chance to discuss a technical issue amongst ourselves. I think we may want to make a clear distinction between making a decision, which would be expressly forbidden, and deliberating toward a decision.

Assemblyman Hickey:

I believe anyone who served on a public entity can appreciate that. I believe, though, that the Nevada Economic Forum, which is a distinct creature from this legislative body, already operates under NRS Chapter 241, the open meeting law. The intent of this bill, again, is to deal with the Legislature when we meet in the interim and to continue what we are doing now.

Assemblyman Martin:

Would you be inclined to give some latitude in the provisions to allow some dialogue between members of a committee in the interim, so that we are able to have a conversation amongst ourselves?

Assemblyman Hickey:

Perhaps the Chair would advise both of us to come up with a bill draft on that topic, because I support what you are saying, but I am not sure this would be the vehicle to allow people to do that.

Assemblyman Elliot Anderson:

Mr. Hickey, I am looking at section 6 and focusing on the words in subsection 1, paragraph (a) at the top of page 3: "The gathering of members of a committee." Is there a better way to define "members of a committee" to say that they are all members of the same committee?

Rick Combs:

I would think that any interpretation of this would mean that you are members of the same committee.

Assemblywoman Kirkpatrick:

Mr. Hickey, I believe we have a great working relationship, and I would like to personally work with you on this bill in order to clarify a couple of key definitions to ensure that the public gets the information they want and deserve. I am happy to work with you if the Chair will allow that.

Chair Ohrenschall:

I believe that would be a good idea, Assemblywoman Kirkpatrick.

Assemblyman Hickey:

I would welcome the opportunity to make it a better bill.

Chair Ohrenschall:

Mr. Hickey, I do have a question about a caucus meeting that occurs during the interim. For instance, if the Senate Democratic Caucus meets during the interim, and you have a majority of members who are on the Senate Finance Committee or the Senate Judiciary Committee, and you have a quorum present, would they be in violation of the open meeting law?

Assemblyman Hickey:

I do not come prepared to answer that question but will find the answer and provide it to you as soon as possible.

Chair Ohrenschall:

Thank you. Are there any other questions for Mr. Combs or Mr. Hickey at this time? Please proceed with your next witness.

Andrea Engleman, Private Citizen, Carson City, Nevada:

I served as the Executive Director of the Nevada Press Association from 1983 to 1995 and during that time, much of the open meeting law that exists today came into being. I was told by our attorney, and confirmed by Lorne Malkiewich, then Director of the LCB, that during the interim you are not the Legislature; you are a public body. You are only the Legislature when you are in session. Therefore, the exemption that exists in the open meeting law is for when you are in session, not during the interim. So, as a matter of fact, for years you have been following the open meeting law during the interim. I have to tell you that the Legislature, during this last interim, was outstanding. There are public bodies that do not come close to following the law like this Legislature did.

Regarding the caucuses, back in the late 1980s a number of state press associations sued in court to have the caucuses of their legislatures fall under the open meeting law. I took it to my board, we got our attorney to work on it, and it turned out that we could not do that in Nevada. We could not sue you to bring your caucuses under the open meeting law, because in those other states the caucuses were codified, but in Nevada, your caucuses have never been codified. At one point, someone brought a bill forward to make them official, and Lorne Malkiewich went in and killed it, knowing full well that if it had passed, the caucuses would have been vulnerable to the open meeting law. Legally, your caucuses are just private clubs.

As to Mr. Martin's questions and concerns about being able to discuss things when you are in a quorum, that falls under NRS Chapter 241 and has nothing to do with this bill. I will say that his complaint is one that we hear often from the rural counties, where there are three members of a county commission

or a city council and they are frustrated because if two of them meet in a coffee shop, they have to be careful.

Chair Ohrenschall:

Thank you, Ms. Engleman. The Committee appreciates all your hard work toward transparency. You probably recall when the White Pine County School District went bankrupt, and the Interim Finance Committee had to act quickly to step in to save them. Would you think that a similar scenario under A.B. 118 could conflict with this bill if they could not post an agenda in three days due to a time constraint?

Ande Engleman:

There is a provision in the law for an emergency meeting such as that.

Chair Ohrenschall:

Ms. Engleman, under sections 11 and 12 of the proposed bill, let us say that someone feels that the Interim Finance Committee did not properly post an agenda, or that it really was not an emergency, and they wanted to declare that expenditure of money void. Is it possible that someone who does not like an action taken by the Interim Finance Committee will be able to declare that action void if it is in violation of the Legislative Open Meeting Law in this bill?

Ande Engleman:

As you well know, anybody can sue for any reason whatsoever. It does not mean that it is legitimate, nor does it mean that it is not a frivolous lawsuit. You have excellent counsel here, and I am sure that under a situation like that, a writ of mandamus might be in order to allow you to move forward.

Assemblyman Elliot Anderson:

Ms. Engleman, you talked about revised agendas. How does that currently work under the open meeting law with other public bodies? Is there a way to do that and still make the notice provisions?

Ande Engleman:

Yes. There are times when a speaker cannot make it to a meeting so they put out a revised agenda removing that speaker from the agenda. I think your question may be more specific to adding an action item. That could be a problem if there is not enough notice for the public. You want to remember, the open meeting law is for the benefit of the public. It is so they can know what their government is going to do and what officials' thoughts were before coming to that decision.

Chair Ohrenschall:

Are there any other questions for Ms. Engleman? [There were none.] I would like to call for any other witnesses in support of Assembly Bill 118.

Assemblyman Pete Livermore, Assembly District No. 40:

I am pleased to be here today to support Assembly Bill 118. I did not cosign on this bill, as it did not pass by me, but if it had I would have cosigned. I believe the important part of government is the openness and transparency that the public expects.

Chair Ohrenschall:

Thank you, Assemblyman Livermore. Are there any questions from the Committee for Assemblyman Livermore? [There were none.]

Elizabeth MacMenamin, representing the Retail Association of Nevada:

We support Assembly Bill 118 and we are willing to work with both Assemblyman Hickey and Assemblywoman Kirkpatrick in making this bill as transparent as possible. The Retail Association of Nevada often participates in meetings with various boards and commissions, and we have had some concerns in the past regarding the open meeting law. Changes in the law made last session have made some of the boards and commissions that we work with come more into compliance. This is helpful for our members, because now they are able to see what may be coming up before a business has to decide if that action is good for them or not.

Assemblyman Elliot Anderson:

Have you encountered any problems here with the Legislature?

Liz MacMenamin:

We have not had any difficulties working with this body in the past, and we look forward to working with you in the future.

Chair Ohrenschall:

Are there any questions? [There were none.]

Bruce Kittess, Private Citizen, Carson City, Nevada:

Several sessions ago, I was in this room when Assemblywoman Kirkpatrick was chairing a meeting, and I was very impressed when she said this is the people's house. She even invited people to speak who were not intending to speak. So this is the people's house for the four or five months that the Legislature is in session, and it is wonderful.

I am concerned about the other 18 months. As a retired person, I have the time and interest to attend meetings of the interim committees, and it would be very good to see agendas and minutes, and know what is going on.

Chair Ohrenschall:

Are there any questions? [There were none.]

Paul Moradkhan, Director, Government Affairs, Las Vegas Metro Chamber of Commerce:

The Chamber is here today in support of the intent of A.B. 118. The Chamber is a longtime advocate of the Nevada open meeting law and the transparency that the law brings to the public. [Read from prepared text ([Exhibit D](#)).]

Chair Ohrenschall:

Are there any questions? [There were none.]

Lynn Chapman, representing Nevada Families for Freedom:

We support this bill, and we thank Assemblyman Hickey for bringing it forward. Janine Hansen, our State President, is not able to be here, but she asked that I read into the record the following statement in support.

We believe that government must be open to the scrutiny of the people. [Read from prepared text ([Exhibit E](#)).]

Chair Ohrenschall:

Are there any questions? [There were none.] Ms. Chapman, I think you also have a unique perspective, as you are an activist and very vigilant in terms of attending meetings. What is your impression of the level of transparency within the different levels of government, including the Legislature, both during session and the interim, and your local governments here in Nevada?

Lynn Chapman:

I feel that open meeting laws have helped a lot. I think it is important for the people to be able to experience the meetings in person, in order to see the body language and hear the inflections of voice and such. I believe it is important for the citizens to experience meetings.

Carol Howell, representing the Nevada Legislative Action Committee:

I am a resident of Carson City and a part of the public that appreciates the open meeting laws. In the past five years, I have been very active in both our city and state government. There is no better tool for the transparency and the sharing of information between you and your constituents.

Chair Ohrenschall:

Are there any questions? [There were none.]

Geoffrey Lawrence, representing Nevada Policy Research Institute:

We are an organization that is heavily involved in transparency of government at both the state and local level. The Nevada Legislature has been fairly transparent, but we do believe it is important to codify some type of open meeting standards for the Legislature, especially as the current construction of NRS Chapter 241 defines public body in a way that excludes the Nevada Legislature. As a matter of spirit and principle, we support the provisions of this piece of legislation.

Chair Ohrenschall:

Are there questions? [There were none.]

Vanessa Spinazola, representing the American Civil Liberties Union of Nevada:

We support Assembly Bill 118 because it is about open government and government transparency and allowing citizens more access to participate in their democracy.

Chair Ohrenschall:

Are there any questions? [There were none.] Is there anyone else in Carson City in support of Assembly Bill 118 who would like to be heard? [There was no response.] Is there anyone neutral on Assembly Bill 118 who would like to come forward and be heard? [There was no response.] Is there anyone in opposition to Assembly Bill 118? [There was no response.] Mr. Hickey, are there any closing comments you would like to make?

Assemblyman Hickey:

I would remind all of us that the open meeting laws are primarily for the public. In addition, while they may present some interesting challenges for us, I think the perfect should not be allowed to become the enemy of the good, as the *Las Vegas Review-Journal* editorial stated ([Exhibit C](#)). And I think if we err on the side of public, or on the side of caution and for the sake of the public, then I believe we are doing well.

Chair Ohrenschall:

Assemblyman Hickey, I appreciate your willingness to work with Assemblywoman Kirkpatrick, and I think there is some common ground that can be reached on this bill. I will now close the hearing on Assembly Bill 118 and will open the meeting to public comment if there is anyone who would like to speak. [There was no response.]

As we do not have any other BDR introductions today, I will close today's hearing.

Meeting is adjourned [at 5:03 p.m.].

RESPECTFULLY SUBMITTED:

Karen Pugh
Committee Secretary

APPROVED BY:

Assemblyman James Ohrenschall, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Legislative Operations and Elections

Date: February 28, 2013

Time of Meeting: 4:06 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 118	C	Assemblyman Pat Hickey	Editorial from the <i>Las Vegas Review Journal</i>
A.B. 118	D	Paul Moradkhan	Statement in support of A.B. 118
A.B. 118	E	Lynn Chapman	Janine Hansen's Statement in support of A.B. 118