MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-Eighth Session
February 25, 2015

The Senate Committee on Government Affairs was called to order by Chair Pete Goicoechea at 1:35 p.m. on Wednesday, February 25, 2015, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pete Goicoechea, Chair
Senator Joe P. Hardy, Vice Chair
Senator David R. Parks
Senator Kelvin Atkinson

COMMITTEE MEMBERS ABSENT:

Senator Mark Lipparelli (Excused)

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Policy Analyst
Heidi Chlarson, Counsel
Darlene Velicki, Committee Secretary

GUEST LEGISLATORS:

Assemblyman Michael C. Sprinkle, Assembly District No. 30

OTHERS PRESENT:

Brett Kandt, Special Assistant Attorney General, Office of the Attorney General
George Taylor, Senior Deputy Attorney, Office of the Attorney General
Jesse Wadhams, Las Vegas Metro Chamber of Commerce
Nechole Garcia, City of Henderson
Lynn Goya, Clerk, Clark County

Carlos McDade, Clark County School District
Richard Daly, Laborers' International Union of America Local 169
Nancy Parent, Clerk, Washoe County
Barry Smith, Executive Director, Nevada Press Association
Brian McAnallen, City of Las Vegas
Dagny Stapleton, Nevada Association of Counties
John Lee, Mayor, City of North Las Vegas
Ryann Juden, Chief of Staff, Office of the Mayor, City of North Las Vegas
Wes Henderson, Nevada League of Cities and Municipalities
Javier Trujillo, City of Henderson
Rusty McAllister, Professional Firefighters of Nevada
Tom Grady, City of Fallon
Shirle Eiting, City of Sparks
Bob LaRiviere, City of Sparks

Chair Goicoechea:
We will start with S.B. 70, a bill from the Attorney General.

SENATE BILL 70: Revises provisions governing meetings of public bodies. (BDR 19-155)

Brett Kandt (Special Assistant Attorney General, Office of the Attorney General):
To my right is Senior Deputy Attorney George Taylor. He has the expertise and responsibility to investigate Open Meeting Law complaints and enforce Open Meeting Law compliance. He works proactively with all the entities subject to the Open Meeting Law to educate and ensure compliance. Senate Bill 70 follows previous session bills to improve and increase compliance.

We can demonstrate success. During every interim, we convene a group that formulates ideas to improve Open Meeting Law compliance. The group is comprised of representatives of the media, legal counsel for entities subject to the Open Meeting Law and other stakeholders. As a result of the group's efforts, every session we bring a bill to the Legislature.

Since 2000, our Office has handled 691 complaints for an average of about 53 complaints per year; between 2007 and 2009, we investigated an average of 49 complaints per year. Thirty-six percent of the complaints filed between 2007 and 2009 resulted in a finding of a violation. However, during a 3-year

period beginning January 2010, our office investigated 131 complaints for an average of 44 complaints each year and an average violation rate of 27 percent. Between January 2013 and October 1, 2014, we investigated 64 complaints. The ratio of investigations to the finding of a violation since January 2013 is 19 percent. Therefore, these statistics represent a positive trend that indicates progress by public bodies both in compliance and in transparency. This was aided by the passage of clarifying amendments and increased attention to enforcement. Senate Bill 70 is the latest in our efforts.

George Taylor (Senior Deputy Attorney, Office of the Attorney General):
The bill changes in section 2, subsections 5 and 6 on page 6 seek to codify our long-standing interpretations of the Open Meeting Law. The issue in subsection 6 is the definition of "working day." At least one legal opinion in the past defines working day as Monday through Friday, excluding holidays. This issue has come up recently primarily because local governments have gone to 4-day workweeks. The issue is whether Friday is a working day or not. We propose to remain with the definition in the statute, about which we have written opinion, and define working day as Monday through Friday. Section 2, subsection 5 deletes the word "constituent" from the definition of quorum. This is simply a clarification of the definition of a quorum. I cannot find where the word came from in the legislative history. However, a quorum is simply a proportion of the majority of a public body.

Section 3, subsection 3, page 7, lists the statutory exemptions from the requirements of the Open Meeting Law. This occurs in the *Nevada Revised Statutes* (NRS) for a variety of public body meetings and proceedings. These are exemptions, not exceptions. There is a big difference between the two. An exemption provides a public body or an entity a complete exemption from all of NRS 241, whereas exceptions throughout the statute may provide some relief or exception to a particular part of the Open Meeting Law. Section 4, subsection 3, page 9 would require that each public body keep a record of compliance with statutory requirements for posting notices and agendas before 9 a.m. of the third working day before a public meeting.

This notice would be on a form provided by the Office of the Attorney General. Every year, there is an issue regarding the time of posting. It is not unusual for me to receive a letter or phone call saying, I was there and they did not post it then. The caller had been actually watching the post office. This provides assurance to the public body as well. Another method could be by signing a

declaration, such as, "I, George Taylor, at or before 9 a.m. on the third working day before the meeting ... ." Our Office will provide the form online. We would not require it to be sent to us; it is just for the public body's records. I do not think it will be terribly hard on the public body to keep a record of when it posted meetings or agendas.

Chair Goicoechea:
This new language is for each meeting: a "public body shall certify in writing, on a form provided by the Attorney General, that the public body complied ... ." Who will sign the certification, the chair of the board, the president and/or the clerk? The chair could not know if all of the requirements were met. I assume it would be the clerk, but what authority would he or she have?

Mr. Taylor:
It would be the person who actually did the posting.

Mr. Kandt:
We now provide an affidavit of posting. It is used routinely by our personnel for boards and commissions that we support and which are subject to the Open Meeting Law. The person who walked across the street with a thumbtack to post an agenda in one of our buildings comes back and signs a form. It says that the undersigned affirms that on or before a specific date, he or she posted a notice of the date of a public meeting and the agenda. He or she identifies the public body, in accordance with NRS 241.020, and attests that said agenda was posted at the listed location. The person signs it, dates it and indicates who he or she is. It is a best practice. We promulgate this, even as it is not codified. We are proposing to do this in law. We have the documentation that the entity has complied with the statutory notice requirement. If we receive a complaint that alleges a public body did not comply with the notice requirement, we pull out those affidavits of posting and have documentation of compliance. Then we respond to that complaint in a timely manner.

Chair Goicoechea:
The major bodies such as a city council or a board of county commissioners do not concern me, but when we consider the Paradise Valley Sewer District or the Sandy Valley Citizens Advisory Council that will elect themselves, all of a sudden we may see a hole in compliance. By not having this affidavit in place, I am concerned that it becomes an Open Meeting Law violation against the body. You might have three members on the board and one of them is functioning as

the secretary, who may have posted the notice, but he or she forgot to sign the affidavit. The bigger boards are fine, but we have many small jurisdictions. We all know how they operate. For instance, the Tuscarora Water District has a little tape recorder on the end of the table. Three to five people are doing the best to comply, but if they violate the law, they will get pounded.

Mr. Kandt:
We share your concern. We are not out to penalize bodies and find violations. We are out to do everything we can in a proactive manner to ensure compliance. Regardless of the provision of the Open Meeting Law, we focus on outreach to all the entities subject to the Open Meeting Law to educate them and help them comply.

Chair Goicoechea:
Do you reach out to smaller jurisdictions, pull their records and tell them they are not complying? Do you say that you are not going to beat them up about it, but they need to come into compliance so that someone does not file a complaint? I do not know how far you reach with that program.

Mr. Taylor:
A big part of my job is training the rural counties. I have been in every county. My tack is to work through the district attorney to approach the smaller boards. Together we educate them. We are not out to thump them. You make a good point regarding some of the smaller bodies. We are already cognizant of this and take it into account.

Section 5, subsection 1, page 11, is a clarification that makes NRS 241.025 apply to both individual members of a public body and to a public body itself when designating another person to attend a public meeting and participate. We propose that this can only occur if the prerogative or power has been granted to either the individual and/or public body in the public body's creation documents. Last Session, there was an amendment offered to NRS 241.025 that allowed individuals to designate someone to serve for them at a particular public body. Apparently, public bodies saw an opportunity to appoint someone on behalf of a person whether they had prerogative or power in their creation documents or not. We want to clarify that NRS 241.025 applies both to individuals serving as a member of a public body and to the public body as a whole. As long as the Legislature provides for this, the ability and the authority to appoint someone to serve in his or her place will be held by both the individual and the public body.

Mr. Kandt:
There has been confusion about the ability of a member of a board who could not attend a meeting to designate someone to attend the meeting for the purpose of obtaining a quorum and taking action. There were some instances where the creating statute of boards and commissions specified that they could designate persons to attend meetings in their place. However, there are other instances where a board, a commission or some other entity did not have that authority specified in its creation documents. Last Session, we clarified that you may not designate a stand-in unless it says somewhere that you have the authority to do this. If you are a statutorily created board, it must say so in statute. If you are a city council, it must be provided for in your charter.

The confusion came if a council member had a seat on some separate entity. That member might send someone to represent the council on that entity. The question became, who designates whom to attend that other meeting on behalf of the city council? The answer is that the council has to designate who will attend in its place for that meeting. Does that clarify what we are trying to accomplish?

Senator Atkinson:
Give me an example.

Mr. Kandt:
The Advisory Council for Prosecuting Attorneys, created pursuant to NRS 241A, says that any member of the Council may designate someone else to attend a meeting in his or her place for the purposes of attaining a quorum and taking action. However, other statutory bodies do not say this. We wanted some consistency to make it clear that unless you have the authority, you may not do it. We encountered the issue regarding some bodies that consist of both members of a county commission and members of a city council. Representatives get together to take action on issues of local concern. In that situation, the bodies that have representation on that joint body need clarification as to how to send representation to that body. This will provide that clarification.

Chair Goicoechea:
I agree with you. Most commissions and boards are set up to allow an alternate attendee if he or she has been appointed and if the authority has been granted. I do not have lot of heartburn on that in this Session.

Mr.Taylor:
I would like to clarify the issue regarding boards of county commissions. This does not apply to elected officials. It applies to appointed and advisory bodies.

Mr. Kandt:
In section 3 of S.B. 70, we identify in one place in NRS 241 all of those statutory exemptions to the Open Meeting Law. We are not proposing to create any new exemptions. We are proposing to compile them in one chapter in NRS 241 for ease of reference for members of any public body and for everybody else.

In section 6, we propose to require public bodies to approve minutes of their meetings at their next meetings unless a good cause for delay is shown and to make the minutes and recordings of the meetings available to the public within 30 working days after the adjournment of the meetings. Some of my colleagues and local governments have concerns about this. They say approving minutes at the next meeting could be problematic. We discussed amended language to alleviate their concerns, having it read "approve public minutes of a public body at its next meeting or within 30 days, whichever may be later, unless good cause is shown." We will work with our local government colleagues who have expressed concern. It is a sound policy that minutes be approved in a timely manner. This promotes transparency in government. However, we also realize that from a practical and administrative standpoint, we need a time frame that will work for all public bodies that are subject to the Open Meeting Law.

Section 7 of S.B. 70 clarifies that a complaint may be filed with the Office of the Attorney General. Although this is not noted in statute, it has always been our practice. We investigate complaints of violation of the Open Meetings Law. The bill clarifies that information obtained by our Office in the course of an investigation is confidential until the complaint is closed but that the complaint itself is a public record.

Here is an overview of our investigation process. First, any complaint that our Office receives is considered a public record. Second, if our Office determines immediately that the complainant fails to state a claim, for instance, he or she alleges an Open Meeting Law violation but the law does not apply, the response to the complainant is and remains a public record. If our Office concludes that an investigation is warranted, the information we obtained in the course of the investigation has always been treated as confidential—unless it is already a

matter of public record—until the investigation is concluded. At this point, our findings of fact and conclusion of law are once again public record. This maintains an appropriate balance between the public's right to access information and the strong public policy considerations that favor confidentiality of investigations.

Fairness and due process dictate that the investigation be confidential. This maintains the integrity of the process and prevents the matter from being tried in the court of public opinion. It is consistent with the work-product doctrine, which provides that material collected or prepared in anticipation of an adversarial proceeding is generally not discoverable. It is consistent with our ethical obligations as lawyers. These do not allow publicity to create a substantial likelihood of materially prejudicing an adjudicated proceeding. We are not supposed to try things in the press. As public lawyers, we have to balance the interest of transparency and accountability in government and the public's right to access with the legal and ethical constraints on our ability to disclose information or otherwise engage in public discourse.

The Legislature has generally treated information that is obtained during the course of an investigation by a State agency as confidential. For example, this is reflected throughout NRS 54, which governs boards and commissions that license and regulate various occupations and professions. Those chapters provide that if a complaint is filed against a licensee, the subsequent investigation is confidential. The resolution is public, but the investigation is confidential. Section 7 simply clarifies that investigations of potential Open Meeting Law violations are confidential and strong public policy considerations favor confidentiality.

We submitted a letter of support with a proposed amendment (Exhibit C). We propose to revise relevant provisions of NRS 241.020, subsection 2, paragraph (d), subparagraph (5) and NRS 241.034, subsection 1, paragraph (a), subparagraph (1) to require sufficient notice on agenda items of possible administrative action regarding a person.

The statute reads, "... administrative action against a person ... ." We want to change the word "against" to "regarding." This would clarify application of the statutes in instances where a public body is considering an action not necessarily adverse, such as appointing a person to a position of employment. For instance, if a body is to appoint a new executive director, the applicable

agenda item should identify the individuals who may be considered for that appointment. Although we advise public bodies to do this, some do not. We think this is appropriate, and that just changing the language in the statute to specify regarding versus against a person would be in the public interest.

Senator Atkinson:
The language on page 12 in section 6, subsection 1, paragraph (e) presents a problem. It leaves it too open to interpretation. The bodies would have to discuss, "... unless good cause for the delay is shown." Who would be able to show good cause? Others may not agree. I do not know how to correct this, but it does not sound right to me. The turnaround time concerns me. I would probably submit a fiscal note, as I would probably have to hire additional staff to accomplish this. Those are my two observations.

Mr. Kandt:
Some of our colleagues at the local level had expressed concern that the "at the next meeting" language does not allow sufficient turnaround time and is therefore not workable. We talked to colleagues in the Clark County School District and in Washoe County, which requested an amendment (Exhibit D), and the City of Las Vegas, which submitted a letter proposing an amendment to section 6 of the bill (Exhibit E). We will follow up with them. It may be workable to specify, "at the next meeting of the public body or within 30 days, whichever is later." We will seek a workable time frame.

We would like to leave in the "unless good cause for delay is shown" language because we realize that there could always be extenuating circumstances, and "good cause" is a well-established legal term. To quote from *West's Encyclopedia of American Law*, Second Edition, "good cause" denotes, "adequate or substantial grounds or reason to take a certain action, or to fail to take an action prescribed by law." We are comfortable with that; however, it is ultimately your call. We will work with our colleagues on the local level to come up with a turnaround time frame that is realistic for them. We still believe that it is a sound policy for minutes to be approved as soon as practicable for the benefit of the public and for transparency.

Chair Goicoechea:
I agree. I reached out to smaller jurisdictions, particularly to the counties, and clearly we need to change that. The problem is that some of these boards might meet three or four times a month; clearly, they will not get their minutes done in

a timely manner. Others meet quarterly, so for them to approve their minutes and have them available, approved or not, is a problem. They will require 90 days. I agree that we need to fix this. I am concerned about the language, "unless good cause for delay." To whom is this reason submitted? Public bodies may be going along, doing their minutes, thinking they are in compliance and suddenly realize they failed to approve minutes within 30 working days. When they realize this, are they supposed to send a letter to you to say they have good cause? Do you act on it immediately? I have concern as to whether it should happen before or after the fact when they are caught.

Mr. Kandt:
In practice, it would not even come to our attention unless someone filed an Open Meeting Law complaint alleging that the public body had failed to approve minutes of a meeting in a manner prescribed by statute. Then we consult with the public body to discern what happened, and ask for any documentation it can provide. If the body says there were extenuating circumstances, we would deem that good cause shown. If the body did it because it did not want to comply with the statute, then we would have some concern. Our obligation is to ensure better compliance, to reach out and to work with public bodies in a proactive manner.

Chair Goicoechea:
There will not be a lot of heartburn if we can fix those dates and deadlines.

Senator Parks:
About 30 years ago, we dealt with these issues when I was working in the Clark County Manager's Office. We had advisory and town board secretaries quit, and the only thing left to transcribe into minutes was a recording. We would have times when the recording did not pick up the entire testimony, and that caused concerns. In Sandy Valley, which is a rather unique community, the secretary would note when she posted the advisory board notices. One of the places on which she posted them was a cluster of mailboxes where she picked up her mail. A curmudgeon in town would take the notice away. There was always the ongoing discussion as to whether it was posted. She covered herself by always noting the time she posted or reposted the agendas. She did this almost daily.

Jesse Wadhams (Las Vegas Metro Chamber of Commerce):
We want to be on record that we support the concepts in S.B. 70 to strengthen open government by fleshing out the Open Meeting Law.

Nechole Garcia (City of Henderson):
We appreciate the outreach of the Attorney General's Office. Mr. Taylor has provided us with training so that we can be in compliance. We wholeheartedly support this bill. It provides needed clarification and guidance to local jurisdictions. We support the concept in section 7 that investigations of Open Meeting Law violations remain confidential until the investigation is concluded.

Anecdotally, the only Open Meeting Law complaint the City of Henderson had in the last few years turned out to have been made in error. The person was looking at the wrong agenda when he or she concluded there was a violation. If the accusation had been made public, the staff person's reputation could have been harmed. We think it best to keep the information confidential until the investigation is complete.

We spoke to the AG about a possible amendment. The AG is neutral on it and pointed out that the amendment may not accomplish our goal anyway. However, in looking at section 3, which lists all the statutes exempting certain boards, NRS 295.121 concerns a county board created when there is a ballot question. That board's job is to create arguments in favor and against the ballot questions. There is a similar statute, NRS 295.217, for a city board created when there is a ballot question. The county boards in NRS 295.121 are exempt from the Open Meeting Law, but the city boards are not exempt.

We want to put our suggestion on the record, although this bill may not be the appropriate venue for this, and ask this Committee to consider making city boards exempt as the county boards are. Creating the ballot question and putting it on the ballot with the arguments is a lengthy process. If the city board must comply with the Open Meeting Law, it will add time to the process because the city will have to post notices publicly.

Chair Goicoechea:
We will work with staff and the bill proponent to add that language for the cities.

Lynn Goya (Clerk, Clark County):
In Clark County, it would be a hardship to complete the minutes by the next meeting. We would like it changed to two or three meetings afterwards. We could then comply without hiring additional staff. In order to comply with it as written, we would have to hire two to three additional staff, costing us $160,000 a year. Therefore, we would like to see the deadline extended so that we could comply without cost. We could use shortcuts. The Public Communications Office already posts video almost immediately after the meeting. We also compile action items such as the voting record. These two things are posted 3 to 5 days after the meeting, thus the public has access to them.

Chair Goicoechea:
The proposed amendment language would allow 30 working days after adjournment, which would give you at least 5 weeks. Would that be adequate?

Ms. Goya:
Yes, that should be adequate.

Carlos McDade (Clark County School District):
I support S.B. 70 as amended with the 30-working-day allowance for the posting of minutes. We also had concerns about the previous language. We want to clarify that the employee is certifying his or her own actions and not the actions of anyone else. Since Clark County is large, our employees do not actually post at each facility. We many times have a third party, such as a librarian, post it for us. We would not want to be certifying that we actually posted it in the library when a third party does this for us. If the form requires us to certify, perhaps under oath, that we took certain actions, I want to make sure that we only certify the actions that we actually took.

Chair Goicoechea:
Seeing a nod from the AG's Office, we can address that as well.

Richard Daly (Laborers' International Union of America Local 169):
In section 4, concerning the affidavit or the certified in writing requirement, many small boards have no staff. A volunteer may set that agenda. I would hate to see someone get into trouble over this requirement. We all understand that if you do not post an agenda, any action that you take at the meeting is null and void. You are also subject to the complaint process and possibly risk a citation. I

share your sentiments concerning the larger bodies, but I hope you can change the language for the smaller entities. It would be a problem if some volunteer signed an affidavit and did not do something right.

I discussed my concern with the AG's Office. Although I have been given reassurances, I have been in situations where we try to discern the intent of the law, but in the end, it is what the words in the law actually say. We need to make sure that we get the words right. In section 3, subsection 3 on page 7, we list all of the provisions where there is a presumed exclusion from the Open Meeting Law. I concluded that all of the exemptions from the Open Meeting Law for a specific purpose are valid. In the 77th Session, in the Committee on Government Affairs, Mr. Kandt spoke to a bill that listed all the provisions in the *Nevada Revised Statutes* where AG documents were claimed to be confidential. These are now listed in section 3 of S.B. 70, amending NRS 241.016. My concern is in section 3, subsection 3, which says, "any provision of law, including, without limitation." This is broader and wider than it should be.

In NRS 286.150, subsection 1 says, "the Board shall meet at least once a month." If we include "without limitation" even with other limiting subparagraphs, it could be construed too broadly. If you give people an inch, they will take a mile. Therefore, we should give them a centimeter, so that they only get the inch we intended. I look for clarifying language. Other provisions specifically say the meetings held under this provision and this section are not subject to NRS 241. I appreciate the convenience of listing provisions in subsection 3, but "without limitation" gives me concern. It unclarified what was to be accomplished. It should say, "to the extent allowed" in that section or "specifically allowed" by a subsection or another place. I have been in plenty of meetings where we went back and said that this is what we meant; this is what we intended to do; this is what the record shows. People say, "I understand the intent," but what do the words say? Then you have legal problems. We should clarify this now.

Chair Goicoechea:
As I read it, "any provision of law, including, without limitation," refers to the statutes that apply. This is unclear. Would this include all the statutes listed in the front and in this portion of the bill? I defer to legal counsel.

Heidi Chlarson (Counsel):
Is the question whether the language in subsection 3 on page 7 is an exhaustive list?

Chair Goicoechea:
Yes, I want to make sure that all we include in the bill are these statutes. In addition, "without limitation" does not mean that we will pick and choose what we want in each one of those statutes.

Ms. Chlarson:
That is correct. The "including, without limitation" indicates that the statutes listed are examples. It does not mean that it is an exhaustive list of statutes. It is possible that at this time or going forward that a new statute or a new provision of law would be drafted that provides some type of exemption or exception to the Open Meeting Law. If that were the case, even if that section were not listed on page 7 in this list, it would still apply. It is not meant to create an additional exception within the sections listed.

Chair Goicoechea:
I can see that Mr. Daly is not satisfied. I want it on the record that that is our legislative intent.

Mr. Daly:
Yes, we want the legislative intent on the record. This is why I testified. I support many other sections of the bill. I am not saying that it is not wise to list all of the sections where there may be an exemption so people can know where they are. I read all of these sections and looked for the exemptions. Some of them do not reference NRS 241. Some of them do not even make reference to an exemption. They just say that the information collected is confidential. This implies that if we have a meeting or hearing to discuss confidential information, then the meeting is not subject to the Open Meeting Law.

It is not as clear as you might think. In some of the sections, it clearly cites the NRS. It says, "This does not apply to this meeting." However, others say that it may be confidential and/or may be up to a vote of the board. Some others simply refer to confidential information. We need to be clear that someone on the other side who wants to make something confidential may say we were allowed to do this, and we are going to point to this section, right here, that says that this is included in this law.

I understand what you said about "without limitation." Maybe we need to clarify section 3, subsection 3, paragraphs (a) and (b) of the bill so we only refer to the extent allowed in a statute. For instance, NRS 392.147 requires policies and rules to protect confidentiality to the extent allowed by statute or in order to carry out official duties. *Nevada Revised Statute* 91.270, subsection 1 says, "the Administrator shall commence an administrative proceeding under this chapter by entering either a notice of intent to do a contemplated act or a summary order."

That notice would be exempt from the Open Meeting Law. The administrator would not have to tell anybody. In NRS 91.270, subsection 6, paragraph (c) says, "every hearing in an administrative proceeding under this chapter must be public unless the Administrator grants a request joined in by all the respondents that the hearing be conducted privately." A person would have to ask for it to be conducted privately. I contend that the language is too broad in S.B. 70.

Nancy Parent (Clerk, Washoe County):
I oppose section 6, subsection 1, paragraph (e) of S.B. 70 regarding the approval of minutes. I would like to have my testimony (Exhibit D) on the record. I appreciate the comments of Mr. Kandt and Mr. Taylor regarding working with us; however, I have concerns that Mr. Kandt's 30-day proposal needs to be wordsmithed a little more. We want to complete minutes as soon as we can. Within 30 days would be problematic for us if we completed our minutes on Day 28, but our Board of Commissioners did not meet for another 2 weeks. I would be happy to work with the AG to come up with a solution. If we accomplish this, the fiscal impact note that I filed earlier would go away.

Barry Smith (Executive Director, Nevada Press Association):
My concern is in section 7, subsection 3 on page 14 concerning confidentiality. This language is not necessary in this section. The distinction with the regulatory boards is that this bill deals strictly with public boards. I do not think that the Attorney General in its investigations collects information not already a public record. I want to make sure that we are not closing off something that is already a public record and that anything already a public record remains so.

Chair Goicoechea:
On the record, we are clear that it is not our intent to fence anything off that is already a public record.

Brian McAnallen (City of Las Vegas):
We proposed an amendment in Exhibit E related to section 6 on page 12 concerning the time for approving minutes. If you have a meeting three or four times a month and holidays between, it becomes problematic to comply. I appreciate the willingness of the Attorney General's Office and Mr. Kandt to work with us and would be happy to be part of a working group to find a solution.

Dagny Stapleton (Nevada Association of Counties):
We echo the concerns of the other local government representatives regarding section 6.

Mr. Kandt:
For the record, I want to establish that since we are charged with the Open Meeting Law, it is not our aim to create a new exemption to the Open Meeting Law. We will enforce the law consistent with your mandate. We proposed S.B. 70 to provide additional guidance to public bodies for their compliance and to increase transparency in government. It is your prerogative to deliberately create new exemptions to the law. We are neutral on that issue.

Chair Goicoechea:
We only intend to ensure that we are enforcing the provisions in statute. I hope you will work with the opponents of the bill for language that satisfies them, especially the 30-day requirement. I will close the hearing on S.B. 70 and open the hearing on S.B. 71.

SENATE BILL 71: Revises provisions relating to the amendment of city charters. (BDR 21-430)

John Lee (Mayor, City of North Las Vegas):
This is a functional home rule bill. As a Legislator, it is important that you ensure that the whole State operates efficiently and things do not come back to haunt you later. The votes you take are important to the whole State. I have two employees, a city attorney and a city manager. Everybody else works for them. I sometimes need direct access to their employees, for instance, when I need to work on the agenda with the city clerk. By law, I am not supposed to go around the city manager to talk to the clerk. If the mayor could have direct access to the clerk without accountability to the city manager, it would be helpful to the elected official.

Former Assemblyman Bernie Anderson from Sparks and I worked on many issues. The City of Sparks had a Charter Committee that looked at proposed changes and brought them to the City Council for evaluation. The City of North Las Vegas still has to come to the Legislature—not to raise taxes—for functional things. My goal in S.B. 71 is to ask that the 11 cities noted have more control over how they run their cities.

I do not see North Las Vegas as a city, I look at it as a half-a-billion-dollar business. We have to be smart because we have a lot coming down the line in this new technological age. We would like to do things without having to come to the Legislature, such as moving my city clerk under the mayor. This is a functional item that should be done. The residents of North Las Vegas did not hire me to be mayor to worry about the lights and the parking garage as much as to plan for where we want to be 10 years from now. How do we move the City into a position for jobs and to increase the value of homes? I am proposing this bill, but it could affect 11 cities that may also want to do this. They would not have to, but it would be an opportunity for them to apply the law. Nothing in this bill states that cities must change what they do.

Ryann Juden (Chief of Staff, Office of the Mayor, City of North Las Vegas):
I will talk about the overarching theme of S.B. 71. Senate Bill 11 addresses the new appetite during this Session to tackle home rule.

SENATE BILL 11: Grants power to local governments to perform certain acts or duties which are not prohibited or limited by statute. (BDR 20-284)

We believe that Senate Bill 71 provides an opportunity for home rule. One of the things that you properly pointed out to those with concerns with S.B. 11 was that a lot of the power in the State of Nevada has already been delineated by the Legislature. This bill would allow the governing body with a supermajority to change its city charter. Many areas in the North Las Vegas City Charter are already defined and controlled by the NRS, which we cannot change. There are areas within our Charter that S.B. 71 would allow us to change. For example, the next bill you will hear is proposed by the City of Sparks. It asks to make changes to its City Charter to comply with a court order from the Nevada Supreme Court. Instead of changing the Charter to reflect the ruling clarifying the city manager does not control court employees, Sparks has to come to the Legislature to ask for this to be done.

The Legislature needs to do many important things in the 120-day session. Certain powers already given to cities by this body are not prohibited by NRS such that we ought to shuffle around things. Senate Bill 71 does not provide any authority to usurp the powers of the Legislature. The powers have already been well-delineated. A tremendous amount of power has been reserved to the State, and some power has been given to the local governments. We would like to act on the powers given to local governments. In this era, events happen rapidly. For example, the City of Sparks facing a Supreme Court decision would address the ruling without returning to this body. This typifies the type of home rule embedded within S.B. 11.

Senator Atkinson:
Mr. Lee and Mr. Juden gave the reasons they want home rule and support S.B. 71. They compare it to S.B. 11 and speak to S.B. 118. These are different bills, otherwise we would be hearing one bill. Senate Bill 71 is much different from S.B. 11. I do not want anybody to misconstrue that we are talking about the same bills. We should keep our comments directed to S.B. 71. I want to know the differences.

SENATE BILL 118: Revises various provisions of the Charter of the City of Sparks. (BDR S-500)

Chair Goicoechea:
I have to agree. Processing this bill will make passing S.B. 11 a little more difficult. We are already struggling with the business community to put the sideboards on and to determine just how far this bill or S.B. 11 can go; I agree with my colleague from North Las Vegas. They both refer to the same area, and any reflection on S.B. 11 at this time is not good. We have not passed it, and it is mired down at this point.

Mr. Juden:
Senate Bill 71 originally addressed only the City of North Las Vegas. Assemblywoman Marilyn Kirkpatrick suggested that we expand the bill to include the 11 cities Mr. Lee mentioned. The bill concerns municipal governing bodies, some of which have charter committees or other ways to change their charters. This bill does not change their organizations. Some cities with charter committees, like the City of Henderson and the City of Sparks, have a degree of autonomy from their city councils. This bill allows charter changes that a charter committee or other like body recommends to be adopted by a supermajority of

the governing body. This is home rule. It applies specifically to changing the areas of the city charter not already controlled by NRS. We have heard testimony concerning the NRS, the Open Meeting Law and processes concerning a quorum. This bill would not change these laws. We would only change areas where we clearly are given the authority by this body.

Senator Atkinson:
I am waiting to see if you go over the bill. If not, do you want time to answer questions about sections with which I am concerned?

Chair Goicoechea:
Do you need to have it explained section by section?

Senator Atkinson:
The important parts of the bill—section 2, amending section 119 of the Charter of Boulder City, subsection 1, paragraph D and section 1, subsection 7, paragraph (b)—are not clear to me.

Chair Goicoechea:
I have major concerns with S.B. 71. I do not believe that the City of North Las Vegas has a charter committee. Considering the powers this bill extends to the 11 cities, it would probably be appropriate for a ballot question that concerns amending this piece into respective charters. Elko County would not be happy if I gave this bill to the City of Elko. We should at least give the county voters the opportunity to interact on changes. This would allow for a supermajority vote of the city councils to amend their charters. We have to send this back to the voters to make the decision as to whether to give this authority to the city council.

Mr. Juden:
That is a wonderful suggestion. We brought this item to this body to discuss it. The Henderson City Clerk works for the City Council, but for our clerk to work directly for the North Las Vegas City Council, we have to ask this body to enact this small, housekeeping measure. As the city charter is viewed by some residents as the constitution of the city, it makes sense to ask the voters for approval so that they understand that we are changing their city charter.

Chair Goicoechea:
I agree. You would also get some parameters and sideboards from the voters. They could say they would allow you to do this, they approve of an ordinance allowing the clerk to function in this manner. Within existing caps, what if you said that a supermajority vote of your city council could create development districts? This is where your people will become concerned with assessment fees, for example, and there is just no end to where you could go.

Mr. Lee:
When I sat in your chair, it was obvious to me that some smaller counties looked in the NRS and would say it does not say that we cannot do it, so therefore, we will do it. The bigger counties would say it does not say we can, so we cannot do it. There is always that discussion. If we wanted the city attorney or police chief to be elected, we could discuss it. Now the North Las Vegas City Council and the Mayor have the ability to select the city manager. However, we have no control over many of our responsibilities. One example of this concerns the Southern Nevada Health District. More members are appointed, not elected, to the Board. When it brings problems to our attention, we do not have the support of the Board members; therefore, we are unable to make the needed changes. We are at a disadvantage in carrying out our City responsibilities because we have no authority. We have to come before this body every 2 years to obtain that authority. With a supermajority, we could come close to acting. We could also change things back.

Chair Goicoechea:
I understand where you are. We have been working on the amendments to the home rule bill at least 10 days or 2 weeks, and we still have not landed. We are trying to tighten it up to disallow an entity to take off with it. We are working to fix it. Counsel will agree. She prepares a mock-up a day to patch up the bill and move it where we want it to be. While protecting business, we want to allow local government at least enough flexibility to function. We understand that. Whether it is for the city or the county, we are really struggling.

Mr. Lee:
If the chair would exclusively make S.B. 71 a City of North Las Vegas bill, distinct from S.B. 11, we would have no problem.

Chair Goicoechea:
The total issue is the total issue. If we give it to the City of North Las Vegas, we may not hear any more from the other 10 cities this Session, but next Session, they would be here. I would not blame them.

Senator Hardy:
The charter cities have a way to amend their charter, probably by voting. My people like to vote. I have not heard from many cities in my district. It would require an open meeting to hear from them. I do not know if you have asked Boulder City and the City of Henderson what they want or do not want. How did it come about that 11 cities are part of S.B. 71? Did we poll these cities?

Mr. Juden:
The other cities were incorporated into S.B. 71 by suggestion of Assemblywoman Marilyn Kirkpatrick. In the last few days, other cities had similar questions like how did we get dragged into this? The City of Henderson was not sure at first. As we talked the Henderson officials through the bill, they came to understand that it does not change the way their Charter Committee operates or the City functions. It just provides the ability for the governing body to make decisions. Their concerns were alleviated. We worked with them, and they are now comfortable with that understanding.

Senator Hardy:
I hear that you did this here in the Legislature as opposed to in the city council meeting as a public forum where people would have been able to comment. Voters could have then said to their city council person that they either liked it or did not like it.

Mr. Juden:
That is correct.

Javier Trujillo (City of Henderson):
I agree with Mr. Juden. Initially, the City of Henderson had concerns with S. B. 71. There were several discussions. We realized it does not affect the structure and operation of the Charter Committee created in the 77th Legislative Session in 2013. It gives us a third way to amend our charter. We would participate in a working group to tighten up S.B. 71 if that makes this body comfortable.

Senator Hardy
How did the City of Henderson decide that it wanted to be part of this?

Mr. Trujillo
We met with the City of North Las Vegas last week. We had not been aware that the City of Henderson was part of S.B. 71 until the bill dropped. We have had a number of meetings with the City of North Las Vegas to discuss S.B. 71. We generally support the idea. It gives us another way to amend our charter.

Senator Hardy:
So, you have not had an Open Meeting Law-type meeting where you polled the city council and the public to find out what they wanted?

Mt. Trujillo:
We have not.

Senator Atkinson:
Adding to what Senator Hardy said, do the Henderson City Council members want this, or are you now saying that you are comfortable with this?

Mr. Trujillo:
It is based on the analysis of your staff; however, it is surely something to take to our council for review and consideration. I will have a conversation this week.

Senator Atkinson:
If you come to the table and say, yes, I will assume that you have had conversations with the council, which will have to make the decisions when it comes to this.

Mr. Trujillo:
That is correct. It gives them a third way to amend the City Charter.

Senator Hardy:
When is your next City Council meeting?

Mr. Trujillo:
Next week.

Senator Hardy:
Is there time to get it noticed?

Mr. Trujillo:
We will have to look at that.

Mr. McAnallen:
We also have looked at the language and agree that this provides some flexibility for Las Vegas. I know which question will be asked next. This is why we support this. A few years ago when the redevelopment agency was organized, we made an 18 percent set-aside for housing. We had to come back to the Legislature to seek a bill to amend the Charter to allow the set-aside. The mechanism in S.B. 71 would allow us to do such things without coming back to the Legislature with a bill to amend our Charter. Allowing us to amend our Charter back home would alleviate extra burdens on the Legislature, as well as make it easier on us. We looked at this as an advantageous opportunity for everyone.

At the beginning of February, the Las Vegas City Council adopted a legislative platform in an open meeting. It is a broad platform that speaks to these types of issues. Its language may not specifically endorse S.B. 71; however, I was given unanimous direction by my Council to seek out opportunities at the Legislature that provide flexibility and easier operation for the City. Senate Bill 71 falls within that jurisdiction. It was certainly discussed back home. We are here to offer a legitimate example of something that would make it easier on the Legislature and on our City.

Senator Atkinson:
I know that you have a list of things the City would like to see accomplished. Maybe this ties into it. I do not know if it is fair to say that the City Council thinks this bill ties in, as Senator Hardy said, until you have had a meeting. When did you say that you made a decision to join this?

Mr. McAnallen:
We have been discussing this for a while, but the platform was adopted by the City Council on February 4.

Chair Goicoechea:
You spoke about the 18 percent set-aside that you adopted, but you had to come back to the Legislature to have the Charter changed to enact it. You said that S.B. 71 would allow you to amend your Charter, but would you not still have to come back to this body to change that 18 percent number?

Mr. McAnallen:
We were not looking at it as a legislative decision. When we would enact the 18 percent, we would also have to change the Las Vegas City Charter. I was using that as an example.

Chair Goicoechea:
Does a charter change then allow you to change what you can assess?

Mr. McAnallen:
I do not know the answer to that question. However, that is not what we intended by supporting S.B. 71. I understand what you are asking, and those are important questions to ask.

Wes Henderson (Nevada League of Cities and Municipalities):
We support S.B. 71. It has long been the policy of the Nevada League of Cities and Municipalities (NACO) that changes to the city charters should start with the cities. With assurances that other cities are on board, NACO can support S.B. 71. We held a local government summit with our friends at NACO before Session started. All local governments want home rule processed this Session. We favorably consider this piece of home rule, at least for the charter cities.

Mr. Daly:
I see opportunity for mischief in this bill. It is well-intentioned and completely different from home rule. If a bill came forward that gave the Legislature authority to change the *Constitution of the State of Nevada* whenever it wanted, people would go crazy. I do not think the Legislature would ever want to suggest that. It is a good analogy. I agree about the sideboards. You or I cannot think of the things that will come forward. They will say it does not say that we cannot do this, so we will change our charter to whatever it is.

Here is an example of my concerns with a flaw in the bill. Let us say that a city has a charter committee. You have two-thirds support on some issue on the city council, but it has to go to the charter committee. Senate Bill 71 indicates that

the charter committee has to agree with the council in order to go forward. It is not clear whether this kills the idea or not. If the council did not get the support of the charter committee, manipulations could be made; for instance, a quorum could be denied because if Council members cannot vote it in or reject it, then it is approved within the 30 days. If they did not get what they wanted from the charter committee, they would eliminate the charter committee. At present, there is a deliberative process in place for checks and balances so that cities cannot focus on something that fixes an issue or helps them in the immediate now without looking at it in the long view. The City of Sparks, Carson City, City of Reno and City of Henderson all have charter committees. The charter committee is a group of citizens who review the charter and make recommended changes. They are free to go forward to seek a bill to amend the charter to reflect their beliefs after open meetings and deliberations. The city is free to put in a competing bill or agree with the committee's bill.

The City of Reno has a Charter Committee as of the 77th Legislative Session. The Reno City Charter had not been reviewed in 20 years. There were many changes, especially to old language. It came to the Legislature. This is the appropriate method for checks and balances to operate on proposed changes to a city constitution. There needs to be oversight, an objective view. People from different points of view and different parts of the state should ask if this is good overall policy for the citizens rather than relying on the myopic view of a temporary city council. Since the Charter Committee of City of Reno meets every 2 years, maybe it will propose changes or maybe not. Regarding S.B. 71, I predict the sideboards will be completely disregarded and you will be back here in 2 years to say we did not intend for that to happen.

As I said on S.B. 70, there is your intent and then what the words say. You will be cleaning up this mess. It is the wrong direction to go. The deliberative process with checks and balances and oversight of the Legislature should be maintained. Keep the sideboards on. You established these cities; you gave them the rules and said within the confines of the charter, here is what you can do with self-government. The charter committee, if the city has one, should come to the Legislature if it wants to change the charter. I could think of ten other mission creep items that would cause me concern. I do not want to say that anyone has ill intentions. However, I do know human nature. If absolute power corrupts, we will absolutely have problems.

Chair Goicoechea:
There are some concerns up and down this Committee as well.

Rusty McAllister (Professional Firefighters of Nevada):
We oppose S.B. 71 for the reasons that Mr. Daly mentioned. I have seen charter bills brought forth over my short time at the Legislature that affected my members. If a city does not have a charter committee, S.B. 71 allows enactment of changes by a supermajority of the city council. If it has a charter committee, there is room to work. The ability to change voter districts, the number of wards and when and how you conduct elections would be afforded to the city by changing the charter without bringing these changes to the Legislature. Such actions have been brought to the Legislature in the past. Many of the charter committees have members appointed by the leadership of the Legislature. The city could amend this provision out of the charter. The present process provides checks and balances.

The 76th Legislative Session in 2011 made multiple revisions to NRS 288 regarding who could collectively bargain. The bill was passed. It was challenged in court, which ruled that the bill reflected was what was intended. In 2013, an employer proposed a charter change to exempt himself from collective bargaining laws since it could not be done based on statute. Because of nefarious things like this, we stand in opposition. We believe that the Legislature is a good forum for these discussions to take place.

Senator Atkinson;
I think it is a lot broader. You say that cities would be able to change voting wards and elections. Expand on that. We have seen those bills. In the past, I carried one concerning the City of North Las Vegas, which was not happy about it. Are you saying that cities could change voting wards and elections if we were to give them the language in S.B. 71?

Mr. McAllister:
The Legislature in the 76th and the 77th Sessions passed a bill regarding election primaries. Former Senator Sheila Leslie was interested in changing election processes. In Reno, candidates run in the primary in their wards, then run citywide in the general election. She wanted to change the process to allow candidates to run in their ward only, both in the primary and general elections. The Legislature passed the bill twice and the Governor vetoed it. The elections language is in the Reno Charter. If you give cities the ability to amend their

charters, they could amend provisions concerning their elections. Based on the political affiliation of the council members, they could tie things up. One party could control much of what is done.

Tom Grady (City of Fallon):
Counsel could check this, but if you change your charter by a vote of the people and you later want to change it, it would also have to be by the vote of the people. I represent a general law city, Fallon, so it is not involved in this. I like the intent of the bill, but I agree with you, it has to be tightened so no games can be played. My other concern is that not all of the charter committees operate in the same way. We have to be careful that a charter committee could not override the city council. You need to review some things before it is finished.

Chair Goicoechea:
No one would question your interpretation of how it works on charters after all your years as the Director of the Nevada League of Cities and Municipalities.

Senator Parks:
When I was a freshman in this body 18 years ago, I thought it would be a great idea to address the issue of home rule as well as the three methods of creating a city, to have an interim study to look at the forms of city government creation and suggest a buffet-style choice. The various entities could choose from different possibilities to craft and amend their city charters as they wished. This question is going to linger on. We see it every session. Maybe having an interim committee would be a way to address these issues. Eighteen years ago, I got a lot of push-back on the overall concept, but it has been done elsewhere and maybe the time is now to do it. It would protect all individuals as well so we would not have some of the problems that we envision today.

Chair Goicoechea:
We will close the hearing on S.B. 71 and open the hearing on S.B. 118, which is about the business of amending a city charter.

Assemblyman Michael C. Sprinkle (Assembly District No. 30):
Senate Bill 118 makes necessary administrative changes pursuant to a Nevada Supreme Court ruling. To comply, the City of Sparks must change certain parameters of its City Charter. The language is intended to provide clarity to the

separation of powers between the executive and judicial branches of the City of Sparks government.

There are five key provisions. First, it clarifies that court staff are appointed and directed by the court, not by the city manager. Second, it clarifies that the city manager's ability to make investigations into various departments of the City does not include investigations regarding the municipal court. Third, it allows municipal court judges to appoint employees and administer the affairs of the municipal court. Fourth, it allows the administrative judge of the Sparks Municipal Court to appoint and define the duties and salaries of a judicial assistant for each of the Sparks municipal court judges. Fifth, it provides that the civil service rules for the employees of the City do not apply to officers and employees of the municipal court. Originally, this was Senator Debbie Smith's bill. Due to her absence, I am here today.

Chair Goicoechea:
Does the City of Sparks have a charter committee?

Assemblyman Sprinkle:
The Sparks Charter Committee is a separate body from the City of Sparks. It has reviewed and unanimously approved S.B. 118.

Shirle Eiting (City of Sparks):
This action is pursuant to a Nevada Supreme Court ruling. We incorporated the ruling into S.B. 118 by mutual agreement between the municipal court attorney, the municipal court and the City. This is how we created the recommended language.

Bob LaRiviere (City of Sparks):
I represent the Sparks Charter Committee. Our entire independent autonomous body within the City of Sparks supports S.B. 118.

Mr. Henderson:
We support S.B. 118 and want to emphasize that this is the way the Legislature should be making changes to city charters.

Chair Goicoechea:
We close the hearing on S.B. 118 and the meeting is adjourned at 3:22 p.m.

RESPECTFULLY SUBMITTED:

Darlene Velicki,
Committee Secretary

APPROVED BY:

Senator Pete Goicoechea, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit**		**Witness or Agency**	**Description**
	A	1		Agenda
	B	4		Attendance Roster
S.B. 70	C	4	Office of the Attorney General	Proposed Amendment
S.B. 70	D	2	Washoe County Clerk	Letter in Opposition
S.B. 70	E	1	City of Las Vegas	Proposed Amendment