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FIRST REPRINT

A.B. 70

ASSEMBLY BILL NO. 70—COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 20, 2018

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing the Open Meeting Law. (BDR 19-421)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ***omitted material*** is material to be omitted.

AN ACT relating to meetings of public bodies; making various changes relating to meetings of public bodies; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The Open Meeting Law requires a public body to ensure that members of the public body and the public present at a meeting can hear or observe and participate in the meeting if any member of the public body is present by means of teleconference or videoconference. (NRS 241.010) **Section 2** of this bill provides instead that if a member of the public body attends a meeting of the public body by means of teleconference or videoconference, the chair of the public body must make reasonable efforts to ensure that members of the public body and the public can hear or observe each member attending by teleconference or videoconference. **Section 4** of this bill makes a conforming change.

Section 2 authorizes a public body, under certain circumstances, to conduct a public meeting by teleconference or videoconference.

Section 2.5 of this bill provides a public body may delegate authority to the chair or the executive director, or an equivalent position, to make any decision regarding litigation concerning any action or proceeding in which the public body or any member or employee of the public body is a party in an official capacity or participates or intervenes in an official capacity.

Existing law sets forth the circumstances when a public body is required to comply with the Open Meeting Law. Under existing law, a public body may gather to receive information from an attorney employed or retained by the public body regarding certain matters without complying with the Open Meeting Law. (NRS 241.015)



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Section 5 of this bill authorizes, under certain circumstances, a public body to gather to receive training regarding its legal obligations without complying with the Open Meeting Law.

Section 5 requires, under certain circumstances, a subcommittee or working group of a public body to comply with the provisions of the Open Meeting Law.

The Open Meeting Law requires a public body to make supporting material for a meeting of the public body available to the public upon request. (NRS 241.020)

Section 5 defines the term "supporting material."

Existing law requires a public body to have a meeting recorded on audiotape or transcribed by a court reporter and provide a copy of the audio recording or transcript to a member of the public upon request at no charge. Existing law also provides this requirement does not prohibit a court reporter from charging a fee to the public body for any services relating to the transcription of a meeting. (NRS 241.035) **Section 7** of this bill clarifies that a court reporter who transcribes a meeting is: (1) not prohibited from charging a fee to the public body for the transcription; and (2) not required to provide a copy of any transcript, minutes or audio recording of a meeting directly to a member of the public at no charge.

Under existing law, the Attorney General is required to investigate and prosecute any violation of the Open Meeting Law. (NRS 241.039) **Section 10** of this bill: (1) requires, with limited exception, the Attorney General to investigate and prosecute a violation of the Open Meeting Law if a complaint is filed not later than 120 days after the alleged violation; and (2) gives the Attorney General discretion to investigate and prosecute a violation of the Open Meeting Law if a complaint is filed more than 120 days after the alleged violation. **Section 10** also provides that the Attorney General is not required to investigate or prosecute an alleged violation of the Open Meeting Law if he or she believes the complaint was filed in bad faith or by a person whose interests are not significantly affected by the action of the public body.

Section 10 further requires: (1) the Attorney General to issue certain findings upon completion of an investigation; and (2) a public body to submit a response to the findings of the Attorney General not later than 30 days after receipt of the Attorney General's findings.

Existing law makes each member of a public body who attends a meeting where action is taken in violation of the Open Meeting Law with knowledge of the fact that the meeting is in violation guilty of a misdemeanor and subject to a civil penalty of \$500. (NRS 241.040) **Section 12** of this bill provides instead that each member of a public body who: (1) attends a meeting where any violation of the Open Meeting Law occurs; (2) has knowledge of the violation; and (3) participates in the violation, is guilty of a misdemeanor and subject to an administrative fine, the amount of which is graduated for multiple offenses. **Section 12** also creates an exception to these penalties and fines where the member violated the Open Meeting Law based on legal advice provided by an attorney employed or retained by the public body.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 241 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 2.5 of this act.

Sec. 2. 1. A public body may conduct a meeting by means of teleconference or videoconference if:



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(a) A quorum is actually or collectively present, whether in person or by means of electronic communication; and

(b) There is a physical location designated for the meeting where members of the public are permitted to attend and participate.

2. If any member of a public body attends a meeting by means of teleconference or videoconference, the chair of the public body, or his or her designee, must make reasonable efforts to ensure that:

(a) Members of the public body and members of the public present at the physical location of the meeting can hear or observe each member attending by teleconference or videoconference; and

(b) Each member of the public body in attendance can participate in the meeting.

Sec. 2.5. A public body may delegate authority to the chair or the executive director of the public body, or an equivalent position, to make any decision regarding litigation concerning any action or proceeding in which the public body or any member or employee of the public body is a party in an official capacity or participates or intervenes in an official capacity.

Sec. 3. (Deleted by amendment.)

Sec. 4. NRS 241.010 is hereby amended to read as follows:

241.010 ~~{1-}~~ In enacting this chapter, the Legislature finds and declares that all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

~~{2.— If any member of a public body is present by means of teleconference or videoconference at any meeting of the public body, the public body shall ensure that all the members of the public body and the members of the public who are present at the meeting can hear or observe and participate in the meeting.}~~

Sec. 5. NRS 241.015 is hereby amended to read as follows:

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

1. "Action" means:

(a) A decision made by a majority of the members present, whether in person or by means of electronic communication, during a meeting of a public body;

(b) A commitment or promise made by a majority of the members present, whether in person or by means of electronic communication, during a meeting of a public body;

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



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

2. "Deliberate" means collectively to examine, weigh and reflect upon the reasons for or against the action. The term includes, without limitation, the collective discussion or exchange of facts preliminary to the ultimate decision.

3. "Meeting":

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

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

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

(I) Less than a quorum is present, whether in person or by means of electronic communication, at any individual gathering;

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

(III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

(b) Does not include a gathering or series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present, whether in person or by means of electronic communication:

(1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

(3) To receive training regarding the legal obligations of the public body, including, without limitation, training conducted by an attorney employed or retained by the public body, the Office of the Attorney General or the Commission on Ethics, if at the gathering the members do not deliberate toward a decision or action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

4. Except as otherwise provided in NRS 241.016, "public body" means:



(a) Any administrative, advisory, executive or legislative body of the State or a local government consisting of at least two persons which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof and includes a library foundation as defined in NRS 379.0056, an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405, if the administrative, advisory, executive or legislative body is created by:

(1) The Constitution of this State;

(2) Any statute of this State;

(3) A city charter and any city ordinance which has been filed or recorded as required by the applicable law;

(4) The Nevada Administrative Code;

(5) A resolution or other formal designation by such a body created by a statute of this State or an ordinance of a local government;

(6) An executive order issued by the Governor; or

(7) A resolution or an action by the governing body of a political subdivision of this State;

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

(1) The Governor or a public officer who is under the direction of the Governor, if the board, commission or committee has at least two members who are not employees of the Executive Department of the State Government;

(2) An entity in the Executive Department of the State Government, ~~consisting of members appointed by the Governor,~~ if the board, commission or committee otherwise meets the definition of a public body pursuant to this subsection; or

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

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

(d) A subcommittee or working group consisting of at least two persons who are appointed by a public body described in paragraph (a), (b) or (c) if:



(1) *A majority of the membership of the subcommittee or working group are members or staff members of the public body that appointed the subcommittee; or*

(2) *The subcommittee or working group is authorized by the public body or working group to make a recommendation to the public body for the public body to take any action.*

5. "Quorum" means a simple majority of the membership of a public body or another proportion established by law.

6. *"Supporting material" means material that is provided to at least a quorum of the members of a public body by a member of or staff to the public body and that the members of the public body would reasonably rely on to deliberate or take action on a matter contained in a published agenda. The term includes, without limitation, written records, audio recordings, video recordings, photographs and digital data.*

7. "Working day" means every day of the week except Saturday, Sunday and any day declared to be a legal holiday pursuant to NRS 236.015.

Sec. 6. (Deleted by amendment.)

Sec. 6.5. NRS 241.033 is hereby amended to read as follows:

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

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

(b) Received proof of service of the notice.

2. The written notice required pursuant to subsection 1:

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

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

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

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

(c) Must include:



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

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

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

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

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

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

(c) Present written evidence, provide testimony and present witnesses relating to the character, alleged misconduct, professional competence, or physical or mental health of the person to the public body during the closed meeting.

5. Except as otherwise provided in subsection 4, with regard to the attendance of persons other than members of the public body and the person whose character, alleged misconduct, professional competence, physical or mental health or appeal of the results of an examination is considered, the chair of the public body may at any time before or during a closed meeting:

(a) Determine which additional persons, if any, are allowed to attend the closed meeting or portion thereof; or

(b) Allow the members of the public body to determine, by majority vote, which additional persons, if any, are allowed to attend the closed meeting or portion thereof.

6. A public body shall provide a copy of any record of a closed meeting prepared pursuant to NRS 241.035, upon the request of any person who received written notice of the closed meeting pursuant to subsection 1.

7. For the purposes of this section:

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

(b) Casual or tangential references to a person or the name of a person during a ~~closed~~ meeting do not constitute consideration of



the character, alleged misconduct, professional competence, or physical or mental health of the person.

(c) A meeting held to recognize or award positive achievements of a person, including, without limitation, honors, awards, tenure and commendations, is not subject to the notice requirements otherwise imposed by this section.

Sec. 7. NRS 241.035 is hereby amended to read as follows:

241.035 1. Each public body shall keep written minutes of each of its meetings, including:

(a) The date, time and place of the meeting.

(b) Those members of the public body who were present, whether in person or by means of electronic communication, and those who were absent.

(c) The substance of all matters proposed, discussed or decided and, at the request of any member, a record of each member's vote on any matter decided by vote.

(d) The substance of remarks made by any member of the general public who addresses the public body if the member of the general public requests that the minutes reflect those remarks or, if the member of the general public has prepared written remarks, a copy of the prepared remarks if the member of the general public submits a copy for inclusion.

(e) Any other information which any member of the public body requests to be included or reflected in the minutes.

➤ Unless good cause is shown, a public body shall approve the minutes of a meeting within 45 days after the meeting or at the next meeting of the public body, whichever occurs later.

2. Minutes of public meetings are public records. Minutes or an audio recording of a meeting made in accordance with subsection 4 must be made available for inspection by the public within 30 working days after adjournment of the meeting. A copy of the minutes or audio recording must be made available to a member of the public upon request at no charge. The minutes shall be deemed to have permanent value and must be retained by the public body for at least 5 years. Thereafter, the minutes may be transferred for archival preservation in accordance with NRS 239.080 to 239.125, inclusive. Minutes of meetings closed pursuant to:

(a) Paragraph (a) of subsection 1 of NRS 241.030 become public records when the public body determines that the matters discussed no longer require confidentiality and the person whose character, conduct, competence or health was considered has consented to their disclosure. That person is entitled to a copy of the minutes upon request whether or not they become public records.



(b) Paragraph (b) of subsection 1 of NRS 241.030 become public records when the public body determines that the matters discussed no longer require confidentiality.

(c) Paragraph (c) of subsection 1 of NRS 241.030 become public records when the public body determines that the matters considered no longer require confidentiality and the person who appealed the results of the examination has consented to their disclosure, except that the public body shall remove from the minutes any references to the real name of the person who appealed the results of the examination. That person is entitled to a copy of the minutes upon request whether or not they become public records.

3. All or part of any meeting of a public body may be recorded on audiotape or any other means of sound or video reproduction by a member of the general public if it is a public meeting so long as this in no way interferes with the conduct of the meeting.

4. Except as otherwise provided in subsection ~~7.1~~ 8, a public body shall, for each of its meetings, whether public or closed, record the meeting on audiotape or another means of sound reproduction or cause the meeting to be transcribed by a court reporter who is certified pursuant to chapter 656 of NRS. If a public body makes an audio recording of a meeting or causes a meeting to be transcribed pursuant to this subsection, the audio recording or transcript:

(a) Must be retained by the public body for at least ~~1-year~~ 3 years after the adjournment of the meeting at which it was recorded or transcribed;

(b) Except as otherwise provided in this section, is a public record and must be made available for inspection by the public during the time the recording or transcript is retained; and

(c) Must be made available to the Attorney General upon request.

5. The requirement set forth in subsection 2 that a public body make available a copy of the minutes or audio recording of a meeting to a member of the public upon request at no charge does not ~~is~~

~~(a) Prohibit~~ prohibit a court reporter who is certified pursuant to chapter 656 of NRS from charging a fee to the public body for any services relating to the transcription of a meeting. ~~is or~~

~~(b) Require a~~

6. A court reporter who transcribes a meeting *is not required* to provide a copy of any transcript, minutes or audio recording of the meeting prepared by the court reporter *directly* to a member of the public at no charge.

~~6.1~~ 7. Except as otherwise provided in subsection ~~7.1~~ 8, any portion of a public meeting which is closed must also be recorded or



transcribed and the recording or transcript must be retained and made available for inspection pursuant to the provisions of subsection 2 relating to records of closed meetings. Any recording or transcript made pursuant to this subsection must be made available to the Attorney General upon request.

~~[7]~~ 8. If a public body makes a good faith effort to comply with the provisions of subsections 4 and ~~[6]~~ 7 but is prevented from doing so because of factors beyond the public body's reasonable control, including, without limitation, a power outage, a mechanical failure or other unforeseen event, such failure does not constitute a violation of the provisions of this chapter.

Sec. 8. (Deleted by amendment.)

Sec. 9. (Deleted by amendment.)

Sec. 10. NRS 241.039 is hereby amended to read as follows:

241.039 1. A complaint that alleges a violation of this chapter may be filed with the Office of the Attorney General. *The Office of the Attorney General shall notify a public body identified in a complaint of the alleged violation not more than 14 days after the complaint is filed.*

2. Except as otherwise provided in *subsection 3 and* NRS 241.0365, the Attorney General ~~[shall]~~:

(a) Shall investigate and prosecute any violation of this chapter alleged in a complaint filed not later than 120 days after the alleged violation with the Office of the Attorney General.

(b) Except as otherwise provided in paragraph (c), shall not investigate and prosecute any violation of this chapter alleged in a complaint filed with the Office of the Attorney General later than 120 days after the alleged violation.

(c) May, at his or her discretion, investigate and prosecute any violation of this chapter alleged in a complaint filed more than 120 days after the alleged violation with the Office of the Attorney General if:

(1) The alleged violation was not discoverable at the time that the alleged violation occurred; and

(2) The complaint is filed not more than 1 year after the alleged violation with the Office of the Attorney General.

3. *The Attorney General is not required to investigate or prosecute any violation of this chapter if the Attorney General believes that a complaint has been filed in bad faith or by a person whose interests are not significantly affected by the action of the public body.*

4. Except as otherwise provided in subsection ~~[6]~~ 7 and NRS 239.0115, all documents and other information compiled as a result of an investigation conducted pursuant to subsection 2 are confidential until the investigation is closed.



~~[4.]~~ 5. In any investigation conducted pursuant to subsection 2, the Attorney General may issue subpoenas for the production of any relevant documents, records or materials.

~~[5.]~~ 6. A person who willfully fails or refuses to comply with a subpoena issued pursuant to this section is guilty of a misdemeanor.

~~[6.]~~ 7. The following are public records:

(a) A complaint filed pursuant to subsection 1.

(b) Every finding of fact or conclusion of law made by the Attorney General relating to a complaint filed pursuant to subsection 1.

(c) Any document or information compiled as a result of an investigation conducted pursuant to subsection 2 that may be requested pursuant to NRS 239.0107 from a governmental entity other than the Office of the Attorney General.

8. Upon completion of an investigation conducted pursuant to subsection 2, the Attorney General shall inform the public body that is the subject of the investigation and issue, as applicable:

(a) A finding that no violation of this chapter occurred; or

(b) A finding that a violation of this chapter occurred, along with findings of fact and conclusions of law that support the finding that a violation of this chapter occurred.

9. A public body or, if authorized by the public body, an attorney employed or retained by the public body, shall submit a response to the Attorney General not later than 30 days after receipt of any finding that the public body violated this chapter. If the Attorney General does not receive a response within 30 days after receipt of the finding, it shall be deemed that the public body disagrees with the finding of the Attorney General.

Sec. 11. NRS 241.0395 is hereby amended to read as follows:

241.0395 1. If the Attorney General makes findings of fact and conclusions of law that a public body has ~~taken action in violation of~~ *violated* any provision of this chapter, the public body must include an item on the next agenda posted for a meeting of the public body which acknowledges *the existence of* the findings of fact and conclusions of law. The opinion of the Attorney General must be treated as supporting material for the item on the agenda for the purposes of NRS 241.020.

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

Sec. 12. NRS 241.040 is hereby amended to read as follows:

241.040 1. ~~Each~~ *Except as otherwise provided in subsection 6,* each member of a public body who attends a meeting of that public body where ~~action is taken in violation of~~ any



~~{provision}~~ **violation** of this chapter ~~{, with}~~ **occurs, has** knowledge of the ~~{fact that the meeting is in violation thereof,}~~ **violation and participates in the violation**, is guilty of a misdemeanor.

2. ~~{Wrongful}~~ **Except as otherwise provided in subsection 6, wrongful** exclusion of any person or persons from a meeting is a misdemeanor.

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

4. ~~{In}~~ **Except as otherwise provided in subsection 6, in** addition to any criminal penalty imposed pursuant to this section, each member of a public body who attends a meeting of that public body where ~~{action is taken in violation of}~~ any ~~{provision}~~ **violation** of this chapter ~~{,}~~ **occurs** and who participates in such ~~{action the meeting}~~ **violation** with knowledge of the violation, is subject to ~~{a civil penalty}~~ **an administrative fine** in an amount not to exceed :

(a) **For a first offense**, \$500 ~~{. The Attorney General may recover the penalty}~~ ;

(b) **For a second offense**, \$1,000; and

(c) **For a third or subsequent offense**, \$2,500.

5. **The Attorney General may recover the penalty** in a civil action brought in the name of the State of Nevada in any court of competent jurisdiction. Such an action must be commenced within 1 year after the ~~{date of the action taken in violation of this chapter.}~~ **fine is assessed.**

6. **No criminal penalty or administrative fine may be imposed upon a member of a public body pursuant to this section if a member of a public body violates a provision of this chapter as a result of legal advice provided by an attorney employed or retained by the public body.**

Sec. 13. (Deleted by amendment.)

Sec. 14. (Deleted by amendment.)

Sec. 15. (Deleted by amendment.)

Sec. 16. (Deleted by amendment.)

Sec. 17. (Deleted by amendment.)

Sec. 18. (Deleted by amendment.)

Sec. 19. (Deleted by amendment.)

Sec. 20. (Deleted by amendment.)

Sec. 21. (Deleted by amendment.)

Sec. 22. (Deleted by amendment.)

Sec. 23. (Deleted by amendment.)

Sec. 24. (Deleted by amendment.)

Sec. 25. (Deleted by amendment.)

Sec. 26. (Deleted by amendment.)



- 1 **Sec. 27.** (Deleted by amendment.)
- 2 **Sec. 28.** (Deleted by amendment.)
- 3 **Sec. 29.** (Deleted by amendment.)
- 4 **Sec. 30.** (Deleted by amendment.)
- 5 **Sec. 31.** (Deleted by amendment.)
- 6 **Sec. 32.** (Deleted by amendment.)
- 7 **Sec. 33.** (Deleted by amendment.)
- 8 **Sec. 34.** (Deleted by amendment.)
- 9 **Sec. 35.** (Deleted by amendment.)
- 10 **Sec. 36.** (Deleted by amendment.)
- 11 **Sec. 37.** (Deleted by amendment.)

