MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS

Eightieth Session
March 6, 2019

The Committee on Government Affairs was called to order by Chair Edgar Flores at 8:37 a.m. on Wednesday, March 6, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblyman Edgar Flores, Chair
Assemblyman William McCurdy II, Vice Chair
Assemblyman Alex Assefa
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman Richard Carrillo
Assemblywoman Bea Duran
Assemblyman John Ellison
Assemblywoman Michelle Gorelow
Assemblyman Gregory T. Hafen II
Assemblywoman Melissa Hardy
Assemblyman Glen Leavitt
Assemblywoman Susie Martinez
Assemblywoman Connie Munk

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Asher Killian, Committee Counsel
Geigy Stringer, Committee Secretary
Trinity Thom, Committee Assistant

OTHERS PRESENT:

Gregory D. Ott, Chief Deputy Attorney General, Division of Boards and Open Government, Office of the Attorney General
Vinson Guthreau, Deputy Director, Nevada Association of Counties
Jamie Rodriguez, Government Affairs Manager, Office of the County Manager, Washoe County
David Dazlich, Director, Government Affairs, Las Vegas Metro Chamber of Commerce
Bryan Wachter, Senior Vice President, Retail Association of Nevada
John Fudenberg, Coroner, Government Affairs, Office of the Coroner/Medical Examiner, Clark County
David Cherry, Government Affairs Manager, City of Henderson
Andy MacKay, Executive Director, Nevada Franchised Auto Dealers Association
Brian McAnallen, representing City of North Las Vegas
Dylan Shaver, Director of Policy and Strategy, Office of the City Manager, City of Reno
Ashley D. Turney, City Clerk, City of Reno
John Koenig, Private Citizen, Pahrump, Nevada
Michael Pelham, Director of Government and Community Affairs, Nevada Taxpayers Association
Richard Karpel, Executive Director, Nevada Press Association
Kathy Clewett, Legislative Liaison, City of Sparks
Wes Henderson, Executive Director, Nevada League of Cities and Municipalities

Chair Flores:
[Roll was called. Committee rules and protocol were explained.] I apologize for being slightly tardy and making you wait a little bit—that is my mistake. I would like to go ahead and open it up for Assembly Bill 70. Those who are here to testify on Assembly Bill 70, please come forward.

Assembly Bill 70: Revises provisions governing the Open Meeting Law. (BDR 19-421)

Gregory D. Ott, Chief Deputy Attorney General, Division of Boards and Open Government, Office of the Attorney General:
Assembly Bill 70 is a proposed revision of *Nevada Revised Statutes* (NRS) Chapter 241, commonly referred to as Nevada's Open Meeting Law or OML. [Mr. Ott proceeded to read from prepared text, (Exhibit C)] I would like to start with a brief summary of the existing

Open Meeting Law to gain a common understanding before moving on to the proposed revisions and clarifications contained in A.B. 70. Nevada's Open Meeting Law was first passed in 1960. The legislative intent that was declared almost 60 years ago remains relevant today, 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." That language still remains in NRS 241.010 and when I conduct trainings on the Open Meeting Law for public bodies across Nevada, I often state that this is the most important provision of the law because it provides the way for public bodies to view all open meeting law questions. The question public bodies should ask themselves when considering Open Meeting Law issues is, Will the public's ability to observe and participate be diminished from the standard established in NRS Chapter 241? Courts have since stated that Nevada's Open Meeting Law has been promulgated for the public benefit and as such should be liberally construed and broadly interpreted. This is also important because, in disputes with a public body, the public will generally get the benefit of any questionable interpretation.

The Open Meeting Law applies to meetings of public bodies, both of which are defined terms in NRS Chapter 241. A "public body" is defined in NRS 241.015(4) and includes any administrative, advisory, executive or legislative body of the state or a local government, consisting of two or more people, which expends, disburses or is supported in whole or in part by tax revenue or which makes collective decisions or recommendations and is created by constitution, statute, regulation, city charter or ordinance, executive order, or formal resolution. Any subcommittees of public bodies have also been found by the Office of the Attorney General to be public bodies. Assembly Bill 70 would make that application of the Open Meeting Law to subcommittees explicit. The Legislature is exempt from the Open Meeting Law by NRS 241.016, although it often follows many of the same procedural standards such as publishing agendas, allowing public comment, and allowing public access to its meetings.

The Open Meeting Law only applies to meetings of public bodies. A "meeting" is defined in NRS 241.015 as a quorum of the public body and either action or deliberation. "Quorum" is generally defined as a simple majority of the public body. "Deliberation" is to collectively weigh, examine, reflect or discuss, while action is a majority vote of the members present. So the Open Meeting Law does not prevent all interactions between members of a public body, only those that involve a quorum. However, technology has increased the ease of communication through convenient avenues such as email and text messages, and this has also increased the potential for Open Meeting Law violations through things such as group texting, replying all to a group email, or forwarding a text or phone call. Additionally, the Open Meeting Law does not prevent social interactions between a quorum of the public body, so they are able to attend basketball games, concerts, or dinner parties so long as there is no deliberation of items within the jurisdiction of the public body.

The Open Meeting Law imposes several requirements on public bodies, including the posting of a full agenda that clearly and completely describes all items to be discussed and is posted not later than 9 a.m. on the third working day prior to a meeting. The agenda must be posted

on the state website (notice.nv.gov), at the place of business or where the public body is meeting, and at three other separate prominent places within the body's jurisdiction. Any person requesting a copy of the agenda must also have notice sent to them. The agenda outline requires public comment at the beginning or end of every meeting or before any action items. It further requires that all supporting materials be made available to the public when they are provided to members of the public body. It also necessitates that the public body keep minutes of its meetings that include the substance of discussions and actions, and the approval of those minutes within 45 days of a meeting or at the body's next meeting, whichever is later. Public bodies must transcribe or audio record their meetings, and make those available to the public as well. Certain items on an agenda require additional information. If the public body intends to consider administrative action regarding an individual, the public body must include the name of the person on the agenda. Additionally, if the public body will hold a closed session to consider the character, alleged misconduct, or professional competence of a person, the name of the person and the possibility of a "closed session" must also be included.

Exceptions to the Open Meeting Law are few and narrow. Public bodies may hold closed sessions to consider the character, alleged misconduct, or professional competence of a person. They may also receive information from their attorney regarding potential or existing litigation involving a matter over which the public body has jurisdiction and to deliberate toward a decision outside of the agendized meeting. However, action regarding litigation must be taken in an open meeting. One of the revisions A.B. 70 proposes is to allow public bodies to delegate litigation decisions to their executive directors or board chairs. Additionally, emergency meetings are authorized in the law, but may only be used to address truly unforeseen circumstances such as disasters or health and safety emergencies.

The Open Meeting Law requires the public have an opportunity to comment at each meeting. The comment may either be at the beginning or end of the meeting or between the discussion and action of every action item on the agenda. Reasonable limitations on public comment are allowed so long as those limitations are reasonable time, place, and manner restrictions. A public body can never restrict comment based on the viewpoint of the speaker. Presiding officers may limit public comment when the comments are unduly repetitious or willfully disruptive. The Open Meeting Law does not prevent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical.

Any action taken in violation of NRS Chapter 241 is void, and the Office of the Attorney General has statutory enforcement power and subpoena power to investigate and prosecute violations. Additionally, any person denied a right conferred by NRS Chapter 241 may sue to have an action declared void. The public does not have to rely solely on the Office of the Attorney General for enforcement. Criminal and civil penalties may also apply if the violation is knowing. Assembly Bill 70 would increase the fines for repeat offenders and extend the time periods that the Office of the Attorney General has to bring suit.

The Office of the Attorney General publishes an open meeting law manual that is available on our website and has a deputy attorney general assigned to answer Open Meeting Law related questions every day.

Thank you for indulging my summary of Nevada's Open Meeting Law. I am happy to take general questions regarding the law now, or if the Chair prefers I can move directly to the presentation of A.B. 70's proposed changes.

Chair Flores:
Please.

Gregory Ott:
[Mr. Ott continued to read from prepared text (Exhibit C).] Assembly Bill 70 is the result of several meetings of the Office of the Attorney General's Open Meeting Law task force, which consisted of representatives of public bodies, representatives of the press association and the American Civil Liberties Union (ACLU) and received comments and recommendations from members of the public. The bill was initially proposed after two meetings of the task force in 2018. Early in 2019 the task force reviewed the proposed language provided by the Legislative Counsel Bureau and voted on the revisions that comprise the amendments that have been requested by our office. I am happy to report that the language contained in the proposed bill was approved by the task force with no member opposing. Assembly Bill 70—and by that I mean the language in the amendment that is before the Committee (Exhibit D)—addresses several provisions of the Open Meeting Law that I will address individually.

Section 2 [page 5, (Exhibit D)] relocates the language allowing a member of a public body to attend a meeting telephonically from the section regarding legislative intent to a new section. The amendment also clarifies that public bodies must only make reasonable efforts to ensure that the public and the public body can hear and observe each other and importantly allows public bodies to avoid an OML violation as long as a quorum of the public body was understandable.

Section 3 [page 5], as proposed in the amendment, is the provision I referenced previously that would allow a public body to delegate the authority for litigation decisions to the chair, the executive director or both. Recent Supreme Court case law requires public bodies to approve certain litigation actions, such as initiating litigation, settling a case or filing an appeal in a public meeting. As litigation sometimes imposes significant consequences on a party for failing to take action within a specific time frame, it is important for public bodies to be able to delegate litigation decisions to protect them from legal liability.

Section 4 [pages 5 and 6] is the removal of the language from the legislative intent section I mentioned previously.

Section 5, subsection 3 [page 8] would allow public bodies to receive training regarding legal obligations from the Office of the Attorney General, the public body's own counsel or the

Commission on Ethics, outside of an open meeting. These trainings typically do not involve items under the jurisdiction or control of the public body. Allowing them to occur outside of a public meeting assists the public body in scheduling trainings and does not deprive the public of the deliberative process of the public body. Section 5, subsection 4(d) [page 9] is also a provision that I mentioned earlier, clarifying the existing interpretation that subcommittees formed by public bodies are also subject to the open meeting law. Section 5, subsection 6 [page 10, (Exhibit D)] proposes to insert a definition of support material that is consistent with the existing interpretation. The amendment seeks to clarify that only items provided by the public body are supporting material and expands the definition to include items that the public body would reasonably rely on for deliberation instead of just for action.

Section 6, subsection 1 [page 10] includes new proposed language that we worked with the ACLU on. This change seeks to clarify that public meetings should be held in facilities reasonably large enough to accommodate the anticipated audience. However, if the facility is not large enough to accommodate actual turnout, the public body may still proceed with the meeting. This is an important provision, as several times over the past few years public bodies have attempted to obtain large facilities but have been overwhelmed by interested members of the public, which has caused a delay in the public body's business. Section 6 also includes several provisions that the amendment seeks to remove as unnecessarily restrictive, such as the required insertion of an agenda provision requiring the public body to vote on the approval of the agenda and the clarification that the chair may combine or take items out of order. The amendment seeks to remove those changes. Section 6 also had several instances of the insertion of the words "at least a quorum" in reference to support material. These changes were not necessary as the definition of support material in section 5 applies only to material provided to at least a quorum or members.

Section 7 [Pages 15-18] contains several changes that the amendment seeks to remove: allowing a transcript of a public body to serve as minutes of a meeting, allowing a public body to provide a copy of draft minutes whenever the actual minutes have not been approved within the 30-day time period, and removing several provisions that would have adjusted the language regarding when minutes of closed sessions become public records. The revision to remove draft minutes is also found in sections 13-36 of the bill. Section 7, subsection 5(a) [page 17] extends the time period a public body must retain the audio recording or transcript of a meeting beyond the current one year requirement. The original language extended it to five years, but the amendment seeks to revise that requirement to three years. Section 7, subsection 7 [page 18] also clarifies that a court reporter who transcribes a meeting is not required to provide a copy of the transcript directly to the public at no charge.

Section 8 [pages 18-19] increases the time that an action regarding an OML violation is tolled to allow a public body to correct the violation without the need of litigation.

Section 9 [pages 19-20] increases the time in which the Office of the Attorney General may bring suit. Current law allows 120 days for all suits to require compliance with the Open Meeting Law and the increase would be to 240 days. Suits to declare an action void because of an OML violation currently must be filed within 60 days, but that would be increased to

120 days. However, the Office of the Attorney General is only granted the additional time if findings of fact and conclusions of law are issued within the original time frame. This section again attempts to allow public bodies to correct their own violations without the need of litigation.

Section 10 [pages 20-21] proposes a number or revisions to the manner in which the Office of the Attorney General investigates and prosecutes violations. First, it requires investigation and prosecution of complaints filed within 120 days of the alleged violation. The proposed amendment would also allow, but not require, the investigation and prosecution of claims within 120 days of the discovery of the violation, but in no event more than a year after the alleged violation. This language attempts to allow a longer period of time for undiscovered violations like those that could occur at a secret meeting, but still gives the public body comfort that no action may be brought more than a year from an alleged violation. The proposed amendment also would amend the Office of the Attorney General's existing process to require that public bodies receive notice of every complaint filed against them. Section 10 would allow the Office of the Attorney General to decline to investigate and prosecute an allegation raised in bad faith or by a complainant whose interests are not significantly impacted by the public body. Currently nothing prevents a former business partner, a disgruntled employee, or anyone with a personal bias from filing complaints to harass or obstruct a public body. This provision would allow the Office of the Attorney General to decline to prosecute claims filed in bad faith or by individuals who are not significantly impacted by the public body. Finally section 10 would require the Office of the Attorney General to inform the public body of a finding of no violation or of findings of fact and conclusions of law supporting a violation and would require the public body to respond to any finding of a violation. The amendment would allow counsel for the public body to file a response and extends the time to file a response from 14 to 30 days, in addition to changing the consequences of failure to file a response from agreement with the decision to disagreement with the decision.

Section 11 [page 21] includes changes that would require a public body to place a finding of a violation of the OML on the public body's next meeting—currently only actions taken in violation of the meeting must be agendized. The amendment also changes the wording slightly to require the public body to acknowledge the existence of the findings of fact, instead of acknowledging the findings of fact themselves.

Section 12 [pages 21-22] extends penalties for violations of the open meeting law to all violations of the Open Meeting Law. Current law limits these penalties to actions taken in violation of the OML. This section also allows for increasing fines for members who repeatedly violate the OML and provides a defense for members of public bodies who relied on the advice of counsel. The amendment revises this section to continue to require the Office of the Attorney General to recover the fines in civil actions, instead of imposing them administratively and it removes a section that would have required the attorney of the public body to acknowledge in writing the advice that resulted in the OML violation. The task force believed this would have unnecessarily stressed the relationship between the public body and its attorney.

The amendment also seeks to add new language to NRS 241.033 regarding the additional notice that individuals are entitled to when their character, competence, or alleged misconduct is considered by a public body [pages 43-45, (Exhibit D)]. Current law allows for an exception for casual or tangential references at a closed meeting; the amendment would extend this casual and tangential exception to open meetings. Additionally the amendment would include an exception for awards, honors, tenure, commendations, and other matters of positive recognition. Currently many public bodies spend considerable time obtaining waivers from individuals who will receive some commendation from the public body, which is an unnecessary burden to a public body that is seeking only to honor or commend an individual.

That concludes the proposed changes contained in A.B. 70 and its amendment. In closing, A.B. 70 makes several commonsense clarifications and revisions to the existing Open Meeting Law and will continue to strike the appropriate balance allowing public bodies to efficiently and effectively carry out the public's business and ensuring the public and the media are able to observe and participate in that business. Based upon extensive discussions with the Open Meeting Law task force and representatives of interested stakeholders, we are confident that this amended and updated legislative proposal will move transparent government in this state forward. I welcome any questions that you may have.

Chair Flores:
Thank you again for your presentation. In responding to the upcoming questions, please explain what the rationale was behind the language and/or the stakeholders involved, whether it be with the amendment or the original language as submitted.

Assemblyman Leavitt:
Does section 1 take into consideration a public body's ability to perform, such as a small jurisdiction that maybe does not have teleconferencing abilities or does not have the ability to reach out to the public in that way? Are these meeting organizers bound to create that ability now? I read this bill and could not find anything that says yea or nay that they have to or they do not have to.

Gregory Ott:
As I was reviewing the fiscal notes last night, I noticed your issue was an issue that was raised in a number of the fiscal notes. So I appreciate the question. The intent of the task force was not to change the existing requirements of the Open Meeting Law, which do not require a member to be allowed to participate telephonically but do allow for that participation if the public body thinks it is in the best interest. For instance, a public body may have an item that was not agendized properly or that they needed to delay for a couple of days. However, it is still an item of pressing interest and so they want to schedule a follow-up meeting relatively quickly. Rather than convening everyone in a single location, they will allow members to participate telephonically at that meeting because of the emergency nature of it. This law is not intended to require public bodies to allow their member to participate telephonically. That would still be at the discretion of the public body.

Assemblyman Leavitt:
I think that needs to be stated. I think it is important that these jurisdictions know that they are not required to set up a camera system. I think it is important to call that out so there is some clarification to that effect.

Gregory Ott:
I am happy to work with the members of the public body or members of your staff on an amendment if that needs to be clarified, because that is our intent.

Assemblyman Carrillo:
On change 7 of the amended language, section 6, subsection 2, paragraph (d) [page 11, (Exhibit D)], will this provision prevent a body from meeting and even having discussion if there is no quorum to approve the agenda?

Gregory Ott:
In the amended language that was submitted, the requirement to have a public body approve the agenda was requested to be removed. Members of the task force felt that that was an unnecessary burden on the public body and if public bodies wanted to restrict themselves in that way they could certainly do so in their own bylaws, but to require that of all public bodies was unnecessarily restrictive of the state to do so. That is something that has been requested to be removed in the amendment.

Assemblyman Carrillo:
On change 11 [page 16], section 7, subsection 2, this is adding language requiring a transcript by a court reporter. It states on change 12 [page 18] that the court reporter is not prohibited from charging a fee to the public body. I have two concerns. The first is that many public bodies do not have adequate funds in their budgets to support the mandate, and the second is that this provision seems unnecessary, given the fact that public bodies are already required to keep a body of recording of minutes that must be made available to the public.

Gregory Ott:
The language in section 7, subsections 2 and 3 were also requested to be removed at the meetings of the task force, so in the amended language changes 11 and 12 reflect the removal of those provisions.

Assemblyman Carrillo:
On page 21, section 12, this entire section speaks to violations of Open Meeting Law and penalties. You have added graduated penalties. Is the Attorney General's Office going to ensure that a deputy is at every meeting of a public body to offer legal advice to members so that they do not run afoul of that provision?

Gregory Ott:
That is a good question. We do not represent every public body in the state. There are many local governments that have their own counsel. There are many state agencies that we do represent. I cannot speak to the agencies that are not authorized or that we are not obligated

to represent, but to the state agencies, that is something that we do not require of the public body. We do not require ourselves to be present at meetings. However, if a public body requests us to be present, we make every opportunity to make ourselves available. Since I have been chief of the Division of Boards and Open Government, we have had somebody at every meeting where somebody has requested us to be present.

Assemblywoman Bilbray-Axelrod:
Thank you for bringing this bill. I have a couple of concerns. I am always happy to see Open Meeting Law discussed. Anytime you have more daylight it helps public bodies gain people's trust in what we are doing. In addition to this body, I also serve as a trustee on a library board that is subject to OML. One of my concerns in this bill is litigation and the fact that the executive director or the board chair could speak with an attorney. Many times, the entire board is listed as the persons against whom litigation is filed. I would like to see, at the very least—and I understand that sometimes these are timely, but at least—an effort to address the entire board. The onus could even be on the board. This is a little disconcerting to me. My second concern is, on boards where there is a lot of turnover—as there are on many of these boards—people do not understand the Open Meeting Law, and I would love to see more training going on, whether it is a webinar or another way. I know your office can only do so much, but people sometimes do not even realize they are in violation of the Open Meeting Law. Could you address those things?

Gregory Ott:
Let me address them in reverse order. I agree that training is an important component. We try to do a large annual training twice a year, and we do individualized trainings at the request of different boards. I will be in Nye County next Friday doing that with an ethics training as well, but I agree that we can do more. There is an opportunity there. I also think that part of that opportunity is making sure that the attorneys for some of these local bodies and some of these smaller governing bodies are at these trainings as well, so that they are not getting two different messages, one from the local body and one from the state. We really need to make sure that they have a consistent method, because as I just mentioned a minute ago, we do not represent all the local governing bodies and so those attorneys need to be in the loop as well. That is an important component. I agree with your premise.

Going back to your first question about litigation. As I mentioned briefly in my prepared remarks, this really came out of the existing requirement that all those decisions be made in a public meeting. That is the status if this section is not adopted. What we heard from public bodies was the need to be able to delegate if possible, if they want to, if they choose to. We tried to give them the explicit authority to delegate to the chair or the executive director. They certainly are not obligated to do that. They can take every decision in a public meeting if they choose to do so. This would just give them the authority to delegate if they chose to. They could restrict that delegation however they wanted to. They could say, You guys can make a decision but you have to bring it to us in three days for ratification, or You guys can only make a decision on an appeal, or a temporary restraining order, or something where there is really an emergency necessary. We are not trying to cut out the public body. We are really trying to give them the flexibility to respond as necessary.

Assemblywoman Bilbray-Axelrod:
Thank you for that clarification. I am still a little bit unclear. It is the board itself that makes the determination whether they are willing to give that power, correct? So it is not the chair and the executive director making that decision on behalf of the board? The board is giving that decision. One other thing—would the option be on a case-by-case basis, or would this be in perpetuity? Once we have given over the ability?

Gregory Ott:
Yes, that is the intent. The language does say, "a public body may delegate." So the onus is on the public body to do the delegation. With regard to whether it is on a case-by-case basis or an individualized basis, the public body could choose. This language is broad enough to allow either. If I was advising a public body who was sued, the first thing I would do is to recommend they give the authority to respond quickly to matters of importance for that specific litigation. Some public bodies may want to keep closer tabs on litigation. Some may want to give general delegated authority to their chair and executive body. This is intended to give the flexibility to the public body to handle it in the way that they think is best for their individual circumstances.

Assemblyman Hafen:
In section 10 [page 20], the amended language says that the Attorney General's Office will provide notice of a complaint. Would that notice state what the complaint was so it could be fixed at the next public body's meeting, or would it just be notice that a complaint has been filed?

Gregory Ott:
As it is written it would just simply be notice of a complaint. Our existing process right now is not necessarily to notify a public body of every complaint. The first thing we would do is look at it and see if it actually makes out a complaint. For instance, somebody could allege that a public body violated the Open Meeting Law for doing something that is not stated in the Open Meeting Law, or making a policy decision, which is not something the OML governs. If there are no facts that would support a complaint, we could send a letter resolving that complaint without giving notice to the public body. We heard from the task force that some public bodies really want to know every time someone is making an issue of them. Over, for instance, a customer service issue—if their public is unhappy with what they are doing they want to be aware of it. They asked to be notified every time they get a complaint. It would be an amendment to notify them immediately that a complaint has come in, before we do the analysis of whether it makes a case.

Assemblyman Hafen:
If your office determines that there is a violation, then you would provide the public body with notice that this was the complaint and this is what you need to do to fix it?

Gregory Ott:
The existing process now is, if we determine there is the possibility of a complaint, we send notice to the public body and ask them to provide a response that explains their position. We

would never find a violation of a public body without giving them a chance to tell their side of the story. What this amendment was meant to do was to pick up those circumstances where the public body did not get notice and the complaint was resolved without them anyway, without us finding a violation.

Assemblyman Ellison:
I have a hypothetical question. If someone can request a videoconference and the public body cannot have it because the equipment is down and the public body responds back, It is not available at this time, would that be enough clarification that they could not do it? There are many requests for videoconferencing in some areas that just do not have it. If the body notifies the requestor that it is not available, would that response satisfy you?

Gregory Ott:
The current state of the law does not require a public body to provide videoconferencing. Assembly Bill 70 is not meant to impose that requirement on public bodies. It is not meant to require them to have all their meetings live-streamed or to allow people to teleconference or videoconference in. If the request came in from a member of the public saying, We want you to videoconference this meeting, and the public body is not a public body that normally does that, they could simply respond, That is not required and it is not within our budget, and it is not something we are doing at this time—that would not be a violation.

Assemblyman Ellison:
I would just like to get that on the record.

Assemblyman Leavitt:
Section 5, subsection 3 [page 8] talks about members who do not deliberate. This may be a question for our legal counsel—is there a certain requirement level of deliberation? The language leads me to believe that there is, simply because you put it in there, but there is no language saying what level of deliberation is required.

Gregory Ott:
This is in the section regarding training over ethics and Open Meeting Law issues. This section clarifies that members of a public body do not have to receive ethics and Open Meeting Law training in a public meeting, so long as they are not deliberating toward a decision or any action item under their control. What we are trying to do is to make it easier for public bodies to schedule those trainings, to facilitate those trainings—because as Assemblywoman Bilbray-Axelrod mentioned, they are important—by allowing them to do it outside of a public meeting. However, we want to clarify that they cannot use that as a back door to deliberate on anything that is under their jurisdiction. We want to make sure that the public is not deprived of the deliberative process while also facilitating the public body getting the training that they need.

Assemblyman Leavitt:
I was trying to make sense of that paragraph and you clarified it. The deliberation process is not required, but if you do deliberate then it has to be open. Is that what you are saying?

Gregory Ott:
You are not allowed to deliberate in a closed meeting other than under the few special exceptions. One is in regard to litigation. Then the amount of deliberation is a question that is not really addressed in the Open Meeting Law but gets into whether a decision would be arbitrary or capricious and whether the public body took adequate time to weigh the options in front of it. That is beyond the scope of what we are talking about here. I am sure Mr. Killian probably has a treatise that explains it.

Asher Killian, Committee Counsel:
What this language is getting at is, in training there can often be hypotheticals that are proposed in order to walk though certain concepts. The idea of this language is, those hypotheticals should not be a hypothetical that just happens to match a concept that is just about to come before the board. If you are doing training, it literally has to be training and your hypotheticals cannot be things that are actually coming before the board.

Chair Flores:
Members, are there any questions? We have had all the questions.

I invite all those wishing to speak in support to come forward. I do not see anybody in Las Vegas.

Vinson Guthreau, Deputy Director, Nevada Association of Counties:
The Nevada Association of Counties (NACO) actually engaged on the Open Meeting Law task force that created this amendment. We are thankful to the Attorney General's Office and to Deputy Attorney General Greg Ott, and we are in support of this amendment as written. The explanation that he did was perfect.

Jamie Rodriguez, Government Affairs Manager, Office of the County Manager, Washoe County:
To reiterate NACO's points, we had a deputy attorney general sit on the task force as well. We, too, want to thank the Attorney General's Office and the task force for listening to our concerns on how A.B. 70 was originally drafted. However, with the amendment that they worked with us on, we are in full support of the bill with the amendment.

David Dazlich, Director, Government Affairs, Las Vegas Metro Chamber of Commerce:
We are in support of A.B. 70. We do support strengthening open meeting laws and allowing our stakeholders and members of our organization additional opportunity to participate in the public policy that will directly affect them. I will state, we have not had enough time to fully review the amendment as proposed. Initially it looks like it is still very much in the spirit of the bill. We are in support.

Bryan Wachter, Senior Vice President, Retail Association of Nevada:
We, too, for all the reasons previously stated, support the bill. We were not involved with the task force, although we do appreciate the Attorney General's Office and the deputy

attorney general for reaching out. We read the amendment this morning as well. The only real cause of concern—and it does not affect our support, but we just want to highlight it, Mr. Chair—was in section 6, subsection 1(b) [page 10], which deals with finding the facility size. As a parent I attended a Clark County School District Board of Trustees meeting—or I attempted to. If anyone has ever attempted a meeting on a very large topic at that room it is difficult to get enough people in. There were about 200 of us waiting outside to attempt to be involved in this meeting, and there were questions about whether or not enough had been done to find a larger facility. The crowd size was certainly expected. I think some additional attention should be paid to what those requirements are. What does "reasonable efforts" look like, especially at public body facilities that undoubtedly just do not have the space for crowds to begin with. At what point does it become a violation for scheduling a meeting in a room that you know is not going to be able to hold everybody? With that, we still support the bill, but it is something that we look forward to discussing as the legislative session goes on. We appreciate your support, Mr. Chair.

John Fudenberg, Coroner, Government Affairs, Office of the Coroner/Medical Examiner, Clark County:
We also support the bill with the proposed amendment.

David Cherry, Government Affairs Manager, City of Henderson:
We also had our city attorney, Nicholas Vaskov, participate on the task force. We are here in support of the bill as amended. However, I will put a caveat on there that we are still in the process of reviewing the final amendment language.

Andy MacKay, Executive Director, Nevada Franchised Auto Dealers Association:
We are in full support of the bill. We need to complete the review of the amendment as referenced, but as a former regulator who lived and breathed the Open Meeting Law, I really appreciate the efforts of the task force on this. Good work to them.

Brian McAnallen, representing City of North Las Vegas:
We were neutral on the original bill, but with the proposed amendment, we are in support.

Chair Flores:
I do not believe we have anybody else wishing to speak in support. I would like to invite forward anyone wishing to speak in opposition. Those of you who will be speaking in opposition, please identify the specific sections that you are against, as it would be very helpful for the Committee to understand where your opposition is coming from.

I notice that some individuals are signed in, in the neutral position. I want to remind you that if you disagree with a specific section of the bill, you should come up in opposition. Neutral means that you have no position on the bill and you just want to allow us some additional insight. I know that sometimes, out of respect, we come up in neutral to be respectful to the presenter, but your opposition is fine. You can come up to say you are against something and you will work with the stakeholders.

Dylan Shaver, Director of Policy and Strategy, Office of the City Manager, City of Reno:

I am here for "The Biggest Little City in the World," and the setting of Arthur Miller's 1961 film, "The Misfits," which was the last film for both Marilyn Monroe and, I believe, Clark Gable.

We are here today in very reluctant opposition to A.B. 70, even with the amendment. I say reluctant opposition because the City of Reno makes it a point to be very transparent in all manner of our transactions, to the point where any one of you on this Committee—and I am not encouraging this—can go to our city clerk's office and request Dylan Shaver's text messages about this bill. She will hand them over to you. Again, I am not recommending you do that, but we are committed to operating transparently.

When looking at the Open Meeting Law, I applaud the Attorney General's Office on this. However, Mr. Ott said it best: "Courts have since stated that Nevada's Open Meeting Law has been promulgated for the public benefit and as such should be liberally construed and broadly interpreted." We look at any changes to the Open Meeting Law as liberally and broadly as possible. We do not believe that this bill intends to cause any harm, but in looking at it liberally, we have to look at it not just from the normal conduct of the city's business at the city council and the planning commission but also at all 56 boards and commissions that the City of Reno contains. That includes the City of Reno's Human Rights Commission and the Reno Access Advisory Commission that I think I have been in front of this very Committee discussing previously. We have to look at each one of those commissions, which are primarily volunteers and staffed by folks in the departments that are relevant to them. These are not the city clerk posting these agendas; these are department administrators or department secretaries and things like that. When we are looking at the liberal and broad interpretation that Mr. Ott brings up, we have to look at it through the reference of all of our municipal operations.

To that end, we have four specific concerns with the bill. Mr. Chair, per your request, starting in section 6, subsection 1(a) [page 10], where we are talking about room size. We talk about "Public meetings should be held in facilities that are reasonably large enough to accommodate anticipated attendance by members of the public." We all understand, as people who do this, what "anticipated attendance" means, but we also own a city hall and many other facilities. I think the city council chamber is the largest room in any facility that we own. It has the technology to conduct these meetings. We agree that meetings should be in places large enough for everybody to hear them. You have seen here at the Legislature, sometimes, the rooms that exist cannot accommodate for that, so you have an overflow room and a second overflow room. "Anticipated attendance" is a phrase without meaning under the law. It is left too open for interpretation. The next section does say, Well if they do not do it, then you are probably okay. Our response to that is, Then why have either subsection? We do not want to be caught up in a situation where the room that was available creates an aggrieved party because they could not get through the door. We agree, we want these meetings to be as open as possible, but again, when we put language like that into something

as serious as the Open Meeting Law, which must be interpreted broadly and liberally to the benefit of the public, we have to take it very, very seriously.

Our next section of concern is in section 7 [page 16, (Exhibit D)]. When we go from one year to three years for the amount of time that we have to keep certain records available, there is a fiscal note attached to that. It is not insubstantial. Our chief clerk, who is here with me today, will tell you that our average city council meeting is ten hours long. When we have to keep something for one year to three years, we are not just talking about a file in a folder somewhere. We are talking about rack storage and data space. There is an added cost to this, not just for our city council or our planning commission. It is for all 56 boards and entities that fall under the Open Meeting Law that comprise our city.

Sections 8 and 9 [pages 18-19] of the bill have to do with lawsuit time frames. We go from the amount of time that the Attorney General's Office has to invalidate an action of a public body from 60 days to 120 days. I want to put myself into the position of somebody who has a project pending city council approval. That is a four-month time frame where someone can go back and retroactively deny a project that our city council or somebody else has approved. That four months is a third of a year. We are in a city right now that has a housing crunch. There is no end in sight for that. We have projects pending approval which take a long time. By doubling that length of time, you have not only exposed the local government to more risk but the private property owners and the private developers who are coming before our council to do business as well. Doubling the lawsuit time frame as well, from 120 to 240 days, becomes an eight-month time frame.

I am happy to say that, since I have been here at the City of Reno, we have had no Open Meeting Law complaints—it has only been six weeks, but I am really proud of that. Actually, that is a record that stretches back several years. We are proud of that. What we do not want to do is create the opportunity to weaponize the Open Meeting Law. We appreciate this bill; it does many great things. It gives the Attorney General the authority to look at a complaint and say, That is frivolous, that is not filed in good faith and we are just going to dismiss it. However, at the same time, that is obviously not a requirement. One attorney general's decision of what is a frivolous complaint might not comply with the next elected attorney general's interpretation. So we have to, again, construe this liberally and broadly under every possible circumstance so as to protect ourselves and protect the people that work for the municipality. Mr. Ott said in his testimony that sometimes—and I would love to get disclosure of that under the Freedom of Information Act—he does not even inform a local government that a complaint has been filed. So here we are, a project pending maybe three or four months in and then, suddenly, there is the opportunity for someone to come in and invalidate the decision. That is just risk that—in an overall excellent piece of legislation—seems out of place.

Our final complaint is in section 12 [page 21] that has to do with the fines. I am in the unenviable position in front of you today to testify against an Open Meeting Law bill, which is not our intent at all. We like the Open Meeting Law. We think that there should be penalties for bad actors, but the woman who posts the agendas for the Reno City Council's

office is right next door to mine. I would be remiss not to show up in front of this Committee and merely express some concern about the penalties that are put into place here. Our city council, advised by our city attorney, and made up of elected individuals—that is one group. Our Arts and Culture Commission—exposing those Arts and Culture Commission volunteers to $2,000 fines, because maybe an account number was not referenced correctly on an agenda, we find to be a little heavy-handed and a little bit capricious. I have to reiterate, the office of the amazing person who posts the agendas for the city is literally right next door to mine, so I want to make that abundantly clear.

We are not here to oppose the Open Meeting Law at all. There is a lot of excellent clarifying work in this bill. Many staff hours went into putting this together, and we applaud that. We look forward to working with the folks who brought it to find some sort of amiable solution. The amendment, as presented to you, just contains too much risk for the clarifications that we are getting under the Open Meeting Law. With me today is Ashley Turney. She is the city clerk for the City of Reno. She lives, eats, and breathes these things, and I would love to kick it over to her, Mr. Chair.

Chair Flores:
Please.

Ashley D. Turney, City Clerk, City of Reno:
I will be reiterating many of Dylan Shaver's points today. We have concerns from an administrative standpoint. In the City of Reno, we pride ourselves on the transparency that we have brought forward to the community. As he mentioned, if any of you would like to see text messages, emails, correspondence or otherwise, you may send a request for that through our online public portal. I am not encouraging you, of course. We have gone out of our way to ensure that we are going above and beyond the spirit of the law as it is currently posted. For example, provisions within the current Open Meeting Law only require audio recording; the City of Reno has opted instead to do televised meetings. This is streamed through Charter cable channels as well as online. Additionally, we have our YouTube channel. We have created this ability for as many constituents as possible to be able to reach out and get information.

Additionally, we have concerns with holding on to the recordings for longer. Currently, state statute states that we have a one-year retention. As we mentioned, our Reno City Council meetings are often an average of ten hours long. They can go 12 hours and beyond at times. This results in a very large data packet, very large recordings needing to be held. We are in the process of updating our retention schedule in accordance with the Division of State Library, Archives and Public Records of the Department of Administration. Destruction will be done in accordance with the law. We have concerns about transitioning to a longer period of time retention, as it can make it complicated when you go back in your city's history to identify what you have kept and what you have not. We are also in the process of transitioning all of our storage onto an offsite server so that way we can have additional correspondence held for constituent concerns. These all come at a cost and add in the added cost of us maintaining these records for additional years. The City of Reno currently spends

more than one full-time equivalent per year salary-wise in the storage of paper and DVDs. It is very costly to maintain that. When we look at a threefold retention on just one small component of what we do, there is a cost associated with that.

We have concerns about the size of the building as a requirement. Though we would like to know what hot issues are coming along, oftentimes that is not something that is quantified until such time that the meeting is held, and we have a chamber full of people and overflow into the lobby. That is part of why we have gone above and beyond to ensure that we have the transparency and enable people to access our meetings from multiple other sites.

An additional concern are board and commission postings. This falls to oftentimes lower level staff and we find that Open Meeting Law can occasionally be used as a weapon by the public. Here is an anecdotal story for you: We had a recent city council meeting in which four city council members had opted to give donations to a local nonprofit. This was brought forward; liaisons made sure that they went before and between council members. No violation of Open Meeting Law occurred through the process. We put them all on one agenda in order to streamline the process and ensure that the nonprofit would be getting its donations sooner. A complaint was brought forward during public comment as an alleged OML violation that would be going forward. In order to respond to the complaint and try to be ahead of the issue, even though we knew there was no violation, our attorneys opted to pull the item off the agenda. It had to come back two weeks later, partially, and then an additional two weeks after that for the second half of the donation. At that point one of the council members decided to pull back one of the donations in order to avoid a perceived Open Meeting Law violation. This resulted in more than a month—almost six weeks' delay—for this nonprofit getting a donation that was coming forward that they were expecting. We are concerned more with the anecdotal stories that become truth, as we go forward. We pride ourselves in that transparency.

John Koenig, Private Citizen, Pahrump, Nevada:
I am here speaking for myself because the Nye County Board of Commissioners has not seen this and they are in Washington right now. I am the guy who lives and breathes and dies with the Open Meeting Law—every time we have a meeting. We have no real complaints but a couple.

The first one is at the top of the summary where it says it contains an unfunded mandate [page 2, (Exhibit D)]. Whenever we see that, we obviously have a complaint because we do not have money. Some of the smaller rurals really do not have money. It is going to cost us money to do things in here.

The second item I have is this: Today, I open the meeting and one of the first things we do is approve the agenda. The county manager says it stands as it is, or we are removing this, or we are removing that. We do not take a vote; it is not an action item. We want it to stay that way. We do not want to have to take a vote on the agenda, et cetera, et cetera. We also take advantage of the fact that, today, we can take items out of order. I believe I heard testimony earlier that that could go away. We need to be able to do that to control a meeting. Let us

posit that it is a quarter-to-twelve and the next agenda item is something that I know is going to take one hour because it is very contentious, but I have ten other action items that will take me longer to read the action item than it does to get the vote. I will skip down, I will do those, and we will go to lunch and take the long one later. If they take that ability away, the meeting becomes very difficult to manage.

The next problem I have is the requirement to have draft minutes of the meeting available for inspection within 30 [working days] . . . putting draft minutes out there is dangerous. We approve minutes at a meeting for a reason—to correct mistakes that are made in transcribing what we say. We have committees that meet quarterly. So those minutes would have to go out two or three months before the committee could meet to approve and correct any mistakes that were made. We definitely have a problem with that, because it is just bad business to do that. Our minutes come out three days before the meeting. People can see it then and almost always there is a correction to be made, whether it is a misspelling of somebody's name or sometimes there are things that are in there that are just wrong and they need to be fixed. To put that out as a draft is just not good business. That is all I have.

Michael Pelham, Director of Government and Community Affairs, Nevada Taxpayers Association:
I am here today in opposition of A.B. 70. We have three concerns with the bill. I have not had enough time to fully read the amendment, so I do not know if a couple of our concerns have been addressed.

One would be to provide the local governments with a couple of biennia in order to install the necessary technology equipment that needs to be available for some of these meetings. I believe this was addressed—about having each member being able to hear—I wanted to get that on record as well.

Our biggest concern with this bill is the monetary penalties in section 12, subsection 4 [page 22, (Exhibit D)]. I believe Mr. Shaver said it well when he said that the Open Meeting Law would be weaponized. We fully agree with that. For example, I sit on a volunteer board for a charter school, which is subject to the Open Meeting Law. The campus is in Las Vegas and I am based in Carson City, so I go down for board meetings. I am unaware if these agendas have been posted correctly. Unlike Mr. Shaver, I do not have the luxury of having somebody right next door to me. That is a concern of ours. We would be happy to talk with the representative from the Attorney General's Office about an amendment he has talked about, but as of right now, we are opposing the bill.

Chair Flores:
Is there anyone else wishing to speak in opposition?

Richard Karpel, Executive Director, Nevada Press Association:
We participated in the task force, and I personally was able to attend the last couple of meetings. Although we participated, we abstained from voting on the task force proposal. I just was not in a position to be able to do that. I am still not in a position to weigh in on the

larger bill. There is one provision that does make us somewhat anxious. The part of section 12 that provides a defense for members of a public body who rely on the advice of their attorney. I hope this metaphor is not inappropriate, but we view it as kind of a "Get Out of Jail Free" card that blows a big hole in the statute. Among other issues with that provision is it puts increased pressure on the attorneys for public bodies to give advice that their clients are seeking.

Let me just end by commending Mr. Ott. As I said, I attended the last two meetings. I am new in town, and I was impressed with the job that he did as the head of the task force, balancing interests, and he gave me great confidence in the Attorney General's good faith in making sure that the Open Meeting Law is enforced as written.

Chair Flores:
Is there anyone wishing to come up in opposition? We got everybody. Is there anyone wishing to come up in the neutral position?

Kathy Clewett, Legislative Liaison, City of Sparks:
I am here today on the neutral side for A.B. 70. While the amendment that was posted on Nevada Electronic Legislative Information System yesterday afternoon takes care of a lot of our concerns, we still do have some issues with some of the amendment changes. I do have them written down—I can go through them, there are not a lot of them. Let me know, Mr. Chair, if you would like me to do that.

Personal experience with some of these things: I am the legislative liaison staff person for my Charter Committee. The Charter Committee for the City of Sparks meets every other year. This pretty much means every other year I have to get retrained, because it is not part of my job description. I am just a regular staff person that has to go to this meeting, a meeting in which the committee members are all volunteers—none of them are elected. So every other year we have to go through this whole thing. If I have to have something posted in 30 days, when we are not going to have another meeting for probably 18 months after our last meeting . . . ? For this volunteer kind of situation such as we are, it makes me nervous that something is sitting out there for literally 18 months before the next committee is going to come back and approve what those meeting minutes say, instead of just being internal and given to somebody who asks if he or she can have it. Unless you would like me to go through any of those sections, Mr. Chair, we are neutral. We like some of the amendment changes. We would look forward to working through some of the little things that are left.

Wes Henderson, Executive Director, Nevada League of Cities and Municipalities:
We are neutral on this bill at this time. Our members certainly support open and transparent government and strive to comply with the Open Meeting Law. We have not had a chance to completely review this amendment. We just saw it last night. I would like to point out that we were not a part of the task force, so we have little knowledge of the meetings that went on. So at this point we are neutral on the bill.

Chair Flores:
Is there anyone else wishing to speak in the neutral position?

I saw some students walk in. I would like to recognize them. Welcome to our Committee. This is the funniest committee in this building. Thank you for being here this morning.

We do not have anybody else in the neutral position. Could I have our presenter come back up? If you could specifically address some of the concerns that were raised by the opposition and those speaking in neutral who were kind of in opposition, too, that would be helpful, to give us some insight. I am assuming you thought out some of the issues that they have brought up but that you see differently. Please weigh in on that.

Gregory Ott:
To the students: Welcome. You missed the tap dance earlier from the Chair. That was the most fun part of the meeting. Be timely next time and you will get to enjoy that.

I will go through some of these, starting with the City of Reno's comments. For all the members in opposition and neutral, I am happy to work with them after this to either get amendments or at least to come to a point where we agree to disagree, because I think that on a lot of these our intent is the same.

With regard to that additional detail in section 6, that language is important for some of the reasons that were stated. You can have meetings of intense public interest and the public body has to struggle with how to accommodate them. The language is intended to give public bodies the obligation to make accommodations that are reasonable but also to give them comfort that, if they try to make those reasonable accommodations and fall short, they can still proceed with their meeting and do not have to put off their business. In the past when I have advised public bodies with regard to this issue, I have told them to look at the past attendance of their meetings; that would form some sort of a baseline. If you always get 100 people, you need to accommodate at least that many people. If you have an item of intense public interest and you have received a lot of phone calls, you need to take that into account. If this item has appeared on your meeting agenda previously and your capacity was exceeded, you need to take into account how many people showed up, because you should be seeking a larger room. Look at phone calls and emails and those sorts of things to determine what is appropriate. I am a little bit against trying to lay out with mathematical certainty the steps a public body would have to take in the law. As long as they are proceeding in good faith, we want to give them the ability to make the appropriate determinations to get those reasonable accommodations but also give them the ability to proceed. That was the task force's thinking. This is a concern that was raised by the ACLU because of some of the issues that came up. I think it is a good provision and the task force thought it was a good provision and that is why it is included. I am happy to discuss with the City of Reno and others who are concerned about this. Mr. Wachter, who was in favor, also had some concerns about this section. I am happy to work with them.

In regard to retention of minutes for three years: The increased cost was raised by the City of Reno. That was something that the task force looked at. In the original language, it was going to be extended out to five years. The public interest is to make sure that these minutes are available for more than a year. Some of these committees or public bodies only meet quarterly, so they would only have to keep four sets of meeting minutes under the current law. You can probably understand that minutes for two or three years back are still concerning items of public interest. So we think it is worth having the public bodies retain those for at least three years, so the public has the ability to access those minutes.

In regard to sections 8 and 9, the expansion of time to file suit—this is something where the language of the section is really important. The Attorney General only gets the additional time to file suit if they file the findings of fact, the conclusions of law, and finding of violation within the original time frame. It is not intended to extend out that time frame without allowing the public body to know. The public body still gets notice of the violation within the existing 120- or 60-day time frame and then, if the public body is going to take interest to cure that violation, there is no need for a lawsuit. If the public body says, No, we think you are wrong and we are not going to do anything, then the Attorney General can go ahead and file suit. It is not intended to do anything other than prevent litigation while preserving the same notice time frames that public bodies enjoy currently. That is maybe a misunderstanding. I can talk to the City of Reno about the intent, and if they think the language does not say that, then I am happy to look at that.

Section 12 is regarding the escalation of fines. This is an important issue because the concern about good faith mistakes is real. We do not want to be fining people for intending to comply and having a mistake. That is why the fines in section 12 are about knowing violations. It is when someone understands what they are doing and then proceeds to act in violation of the Open Meeting Law. It is not intended to ding somebody for an unknowing violation. That language is in there, and I hope it gives all members of public bodies and support staff comfort, because they should not be monetarily penalized for trying to volunteer and trying to accomplish transparency. However, we also want to hold people accountable who know the law and act in violation of it—and, this is repeated violations. The analogy that the City of Reno gave of somebody who mistyped something and it was not agendized correctly and they would be dinged for a $2,000 fine—that would not happen. First of all, that would not be a knowing violation if it were only a simple typo or an error. Second, the $2,000 fine would only be on the third offense. This is a third offense of someone who knows what the Open Meeting Law says and continues to act in violation of it because the initial fines have not been appropriate. I stand by the fines, because we need to get at the bad actors while also protecting the people who are making innocent mistakes and are there to faithfully carry out the duties of the public body.

Most of Nye County's concerns have been addressed in the amendment. As I mentioned, there is no required vote on the approval of the agenda. The way that they have done it, based on my understanding, will continue to be allowed under this amendment. There is no restriction on the ability to take items out of order. That is still present in section 6. They would continue to be able to move their agenda around. The draft minutes language was also

removed. There is a current provision in the Open Meeting Law that requires minutes to be available within 30 days. I do not want them to think that there is no requirement there. That language exists. Assembly Bill 70 as it is right now is not changing that. The language referencing draft minutes that we heard exceptions to, that language has been removed. I think that also addresses some of the concerns of Nye County.

I am a little confused by some of the concerns raised by the Nevada Taxpayers Association in regard to technology changes. Other than the expansion of the retention of minutes, I do not know what technology changes are required. We are not requiring people to teleconference; we talked about that earlier. I am happy to discuss that offline, but I do not see many technology changes or any technology changes other than the expansion of the time for the retention of minutes that we talked about, from one to three years, which we think is warranted so the public can access those minutes. The Taxpayer Association also referenced section 12 about the fines. The important distinction is that those fines are for knowing violations.

As to Mr. Karpel's concern, I thank him for his kind comments. He was a valuable member of the committee and gave an important voice to the media—the defense on relying on the advice of counsel. What we want to do with that section is to protect a member of the public body who is on uncertain ground and turns to his counsel and says, Can we proceed with this action? and counsel says, Yes, you are fine under the Open Meeting Law. If counsel was wrong, it is not fair to ding that member of the public body for the advice of his counsel because he should have a right to do that. We did take out the section requiring the attorneys to admit in writing that they did something wrong because that does unnecessarily strain their relationship. It is important for members of public bodies to rely on the advice of their counsel, and the safe harbor provision for them is an appropriate provision for this bill.

I think that is all of the concerns, but if I missed any, or anything else, I am happy to discuss them further.

Chair Flores:
I appreciate your going through what the opposition has brought forth. It is quite normal for us to start with five stakeholders, present a bill, and then find we have twenty. I ask that you please work with them and, when you have those stakeholder meetings, please invite Assemblymen Assefa and Ellison so they can both be a part of those conversations and help you work with whatever it is that you are trying to accomplish.

With that, I am going to close out the hearing on A.B. 70. I thank you all for coming forward and bringing up your concerns. Next, I would like invite those here wishing to speak for public comment. If we have anybody here for public comment, please come forward. [There was no one.]

[The Committee schedule for the following day was announced.] This meeting is adjourned [at 9:58 a.m.].

RESPECTFULLY SUBMITTED:

_____
Geigy Stringer
Committee Secretary

APPROVED BY:

_____
Assemblyman Edgar Flores, Chair

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is prepared text titled "Attorney General's Office Testimony on A.B. 70," delivered by Gregory D. Ott, Chief Deputy Attorney General, Division of Boards and Open Government, Office of the Attorney General.

Exhibit D is a document titled "Proposed Amendment to A.B. 70," submitted by Gregory D. Ott, Chief Deputy Attorney General, Division of Boards and Open Government, Office of the Attorney General.

Exhibit E is electronic mail dated March 5, 2019 on the subject, "Support of Amendments to AB 70 from AG's OML Task Force," authored by Dean J. Gould, Chief of Staff and Special Counsel – Board of Regents, Nevada System of Higher Education.

Exhibit F is a letter dated March 5, 2019 in regard "Support AB 70," signed by Tod Story, Executive Director, ACLU of Nevada.