

ASSEMBLY BILL NO. 253—ASSEMBLYWOMAN CONSIDINE

MARCH 12, 2021

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to governmental administration. (BDR 19-947)

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 governmental administration; revising provisions relating to when a subcommittee or working group of a public body is subject to the Open Meeting Law; setting forth certain requirements for meetings of public bodies that use remote technology systems; revising the notice requirements for a meeting of a public body; revising provisions relating to the privilege of certain persons to publish defamatory matter at a public meeting; revising requirements for notice of intent to act upon a regulation; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Under existing law, a subcommittee or working group of at least two persons who are appointed by certain public bodies is subject to the requirements of the Open Meeting Law if: (1) a majority of the membership of the subcommittee or working group are members or staff of the public body that appointed the subcommittee or working group; or (2) the subcommittee or working group is authorized to make a recommendation to the public body to take any action. (NRS 241.015) **Section 1** of this bill provides, instead, that a subcommittee or working group is subject to the requirements of the Open Meeting Law if: (1) a majority of the membership of the subcommittee or working group are members of the public body or staff; and (2) at least two members of the subcommittee or working group are members of the public body.

The Open Meeting Law authorizes a public body to conduct a meeting by means of teleconference or videoconference. (NRS 241.023) **Section 3** of this bill authorizes, under certain circumstances, a public body to conduct a meeting using a remote technology system. **Section 1** defines "remote technology system" as a system or other means of communication which uses electronic, digital or other similar technology to enable a person from a remote location to attend, participate,



\* A B 2 5 3 \*

vote or take any other action in a meeting even though the person is not physically present at the meeting. **Section 2** of this bill requires the notice of a public meeting that uses a remote technology system to include information about how a member of the public may hear, observe and provide public comment at the meeting through the remote technology system.

The Open Meeting Law sets forth the minimum public notice requirements of a meeting, which include posting a copy of the notice at the principal office of the public body or, if there is no principal office, at the building in which the meeting is to be held, and at not less than three other separate, prominent places within the jurisdiction of the public body not later than 9 a.m. of the third working day before the meeting. (NRS 241.020) **Section 2** of this bill requires, instead, that the public body post a copy of the notice at the principal office of the public body.

The Open Meeting Law prohibits a public body from considering whether to take administrative action against a person unless the public body has given written notice to that person of the time and place of the meeting. (NRS 241.034) **Section 4** of this bill defines "administrative action" to mean a decision by the public body that is uniquely personal to the person and may result in a negative change in circumstances for the person.

The Open Meeting Law provides that a witness who is testifying before a public body is absolutely privileged to publish defamatory matter as part of a public hearing. (NRS 241.0353) **Section 5** of this bill provides, instead, that, subject to a qualified privilege, a witness who is testifying before a public body may publish defamatory matter as part of a public hearing.

Existing law requires certain agencies of the Executive Department of the State Government, at the time of giving notice of intent to act upon a regulation, under certain circumstances, to deposit one copy of the notice and text of the proposed regulation with the librarian of the main public library in the county. (NRS 233B.0607) **Section 6** of this bill requires, instead, that the agency post a copy of the notice and text on the Internet website of the agency. **Section 6** also requires that the agency provide in print or an electronic format a copy of the notice and text to any person who requests a copy from the agency.

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

**Section 1.** 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, 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, if the board, commission or committee has at least two members who are not employed by the public officer or entity;

(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

(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 to make a recommendation to the public body for the public body to take any action.] or working group; and~~

*(2) At least two members of the subcommittee or working group are members of the public body.*

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

6. *“Remote technology system” means any system or other means of communication which uses any electronic, digital or other similar technology to enable a person from a remote location to attend, participate, vote or take any other action in a meeting, even though the person is not physically present at the meeting. The term includes, without limitation, teleconference and videoconference systems.*

7. “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.]~~ 8. “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. 2.** NRS 241.020 is hereby amended to read as follows:

241.020 1. Except as otherwise provided by specific statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these public bodies ~~[.]~~ *at a physical location or by means of a remote technology system.* A meeting that is closed pursuant to a specific statute may only be closed to the extent specified in the statute allowing the meeting to be closed. All other portions of the meeting must be open and public, and the public body must comply with all other provisions of this chapter to the extent not specifically precluded by the specific statute. Public officers and employees responsible for these meetings shall make reasonable efforts to assist and accommodate persons with physical disabilities desiring to attend.

2. If any portion of a meeting is open to the public, the public officers and employees responsible for the meeting must make reasonable efforts to ensure the facilities for the meeting are large enough to accommodate the anticipated number of attendees. No violation of this chapter occurs if a member of the public is not permitted to attend a public meeting because the facilities for the meeting have reached maximum capacity if reasonable efforts were



taken to accommodate the anticipated number of attendees. Nothing in this subsection requires a public body to incur any costs to secure a facility outside the control or jurisdiction of the public body or to upgrade, improve or otherwise modify an existing facility to accommodate the anticipated number of attendees.

3. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:

(a) The time, place and location of the meeting. *If the meeting has no physical location, the notice must include information on how a member of the public may use the remote technology system to hear and observe the meeting and provide live or recorded public comment during the meeting.*

(b) A list of the locations where the notice has been posted.

(c) The name, ~~and~~ contact information *and business address* for the person designated by the public body from whom a member of the public may request the supporting material for the meeting described in subsection 7 and ~~a~~ :

*(1) A list of the locations where the supporting material is available to the public ~~is~~; or*

*(2) Information about how the supporting material may be found on the Internet website of the public body.*

(d) An agenda consisting of:

(1) A clear and complete statement of the topics scheduled to be considered during the meeting.

(2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items by placing the term “for possible action” next to the appropriate item or, if the item is placed on the agenda pursuant to NRS 241.0365, by placing the term “for possible corrective action” next to the appropriate item.

(3) Periods devoted to comments by the general public, if any, and discussion of those comments. Comments by the general public must be taken:

(I) At the beginning of the meeting before any items on which action may be taken are heard by the public body and again before the adjournment of the meeting; or

(II) After each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item.

➔ The provisions of this subparagraph do not prohibit a public body from taking comments by the general public in addition to what is required pursuant to sub-subparagraph (I) or (II). Regardless of whether a public body takes comments from the general public pursuant to sub-subparagraph (I) or (II), the public body must allow



the general public to comment on any matter that is not specifically included on the agenda as an action item at some time before adjournment of the meeting. No action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

(4) If any portion of the meeting will be closed to consider the character, alleged misconduct or professional competence of a person, the name of the person whose character, alleged misconduct or professional competence will be considered.

(5) If, during any portion of the meeting, the public body will consider whether to take administrative action regarding a person, the name of that person.

(6) Notification that:

(I) Items on the agenda may be taken out of order;

(II) The public body may combine two or more agenda items for consideration; and

(III) The public body may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.

(7) Any restrictions on comments by the general public. Any such restrictions must be reasonable and may restrict the time, place and manner of the comments, but may not restrict comments based upon viewpoint.

4. Minimum public notice is:

(a) Posting a copy of the notice at the principal office of the public body ; ~~for, if there is no principal office, at the building in which the meeting is to be held, and at not less than three other separate, prominent places within the jurisdiction of the public body not later than 9 a.m. of the third working day before the meeting;}~~

(b) Posting the notice on the official website of the State pursuant to NRS 232.2175 not later than 9 a.m. of the third working day before the meeting is to be held, unless the public body is unable to do so because of technical problems relating to the operation or maintenance of the official website of the State; and

(c) Providing a copy of the notice to any person who has requested notice of the meetings of the public body. A request for notice lapses 6 months after it is made. The public body shall inform the requester of this fact by enclosure with, notation upon or text included within the first notice sent. The notice must be:

(1) Delivered to the postal service used by the public body not later than 9 a.m. of the third working day before the meeting for transmittal to the requester by regular mail; or



(2) ~~[If feasible for the public body and the requester has agreed to receive the public notice by electronic mail, transmitted]~~ **Transmitted** to the requester by electronic mail sent not later than 9 a.m. of the third working day before the meeting.

5. For each of its meetings, a public body shall document in writing that the public body complied with the minimum public notice required by paragraph (a) of subsection 4. The documentation must be prepared by every person who posted a copy of the public notice and include, without limitation:

(a) The date and time when the person posted the copy of the public notice;

(b) The address of the location where the person posted the copy of the public notice; and

(c) The name, title and signature of the person who posted the copy of the notice.

6. If a public body maintains a website on the Internet or its successor, the public body shall post notice of each of its meetings on its website unless the public body is unable to do so because of technical problems relating to the operation or maintenance of its website. Notice posted pursuant to this subsection is supplemental to and is not a substitute for the minimum public notice required pursuant to subsection 4. The inability of a public body to post notice of a meeting pursuant to this subsection as a result of technical problems with its website shall not be deemed to be a violation of the provisions of this chapter.

7. Upon any request, a public body shall provide, at no charge, at least one copy of:

(a) An agenda for a public meeting;

(b) A proposed ordinance or regulation which will be discussed at the public meeting; and

(c) Subject to the provisions of subsection 8 or 9, as applicable, any other supporting material provided to the members of the public body for an item on the agenda, except materials:

(1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement which relates to proprietary information;

(2) Pertaining to the closed portion of such a meeting of the public body; or

(3) Declared confidential by law, unless otherwise agreed to by each person whose interest is being protected under the order of confidentiality.

➤ The public body shall make at least one copy of the documents described in paragraphs (a), (b) and (c) available to the public at the meeting to which the documents pertain. As used in this subsection,





1 “proprietary information” has the meaning ascribed to it in  
2 NRS 332.025.

3 8. Unless it must be made available at an earlier time pursuant  
4 to NRS 288.153, a copy of supporting material required to be  
5 provided upon request pursuant to paragraph (c) of subsection 7  
6 must be:

7 (a) If the supporting material is provided to the members of the  
8 public body before the meeting, made available to the requester at  
9 the time the material is provided to the members of the public body;  
10 or

11 (b) If the supporting material is provided to the members of the  
12 public body at the meeting, made available at the meeting to the  
13 requester at the same time the material is provided to the members  
14 of the public body.

15 ➤ If the requester has agreed to receive the information and material  
16 set forth in subsection 7 by electronic mail, the public body shall, if  
17 feasible, provide the information and material by electronic mail.

18 9. Unless the supporting material must be posted at an earlier  
19 time pursuant to NRS 288.153, the governing body of a county or  
20 city whose population is 45,000 or more shall post the supporting  
21 material described in paragraph (c) of subsection 7 to its website not  
22 later than the time the material is provided to the members of the  
23 governing body or, if the supporting material is provided to the  
24 members of the governing body at a meeting, not later than 24 hours  
25 after the conclusion of the meeting. Such posting is supplemental to  
26 the right of the public to request the supporting material pursuant to  
27 subsection 7. The inability of the governing body, as a result of  
28 technical problems with its website, to post supporting material  
29 pursuant to this subsection shall not be deemed to be a violation of  
30 the provisions of this chapter.

31 10. A public body may provide the public notice, information  
32 or supporting material required by this section by electronic mail.  
33 Except as otherwise provided in this subsection, if a public body  
34 makes such notice, information or supporting material available by  
35 electronic mail, the public body shall inquire of a person who  
36 requests the notice, information or supporting material if the person  
37 will accept receipt by electronic mail. If a public body is required to  
38 post the public notice, information or supporting material on its  
39 website pursuant to this section, the public body shall inquire of a  
40 person who requests the notice, information or supporting material  
41 if the person will accept by electronic mail a link to the posting on  
42 the website when the documents are made available. The inability of  
43 a public body, as a result of technical problems with its electronic  
44 mail system, to provide a public notice, information or supporting  
45 material or a link to a website required by this section to a person



who has agreed to receive such notice, information, supporting material or link by electronic mail shall not be deemed to be a violation of the provisions of this chapter.

11. As used in this section, "emergency" means an unforeseen circumstance which requires immediate action and includes, but is not limited to:

(a) Disasters caused by fire, flood, earthquake or other natural causes; or

(b) Any impairment of the health and safety of the public.

**Sec. 3.** NRS 241.023 is hereby amended to read as follows:

241.023 1. A public body may conduct a meeting by means of ~~teleconference or videoconference~~ *a remote technology system* if:

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

(b) ~~There is~~ *Members of the public are permitted to:*

*(1) Attend and participate at a physical location designated for the meeting where members of the public are permitted to attend and participate ~~to~~; or*

*(2) Hear and observe the meeting and provide live or recorded public comment during the meeting using the remote technology system; and*

*(c) The public body can reasonably ensure that any person who is not a member of the public body or a member of the public but is otherwise required or allowed to participate in the meeting is able to participate in the portion of the meeting that pertains to them using the remote technology system.*

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. 4.** NRS 241.034 is hereby amended to read as follows:

241.034 1. Except as otherwise provided in subsection 3:

(a) A public body shall not consider at a meeting whether to:

(1) Take administrative action against a person; or

(2) Acquire real property owned by a person by the exercise of the power of eminent domain,

➔ unless the public body has given written notice to that person of the time and place of the meeting.

(b) The written notice required pursuant to paragraph (a) 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.

↳ A public body must receive proof of service of the written notice provided to a person pursuant to this section before the public body may consider a matter set forth in paragraph (a) relating to that person at a meeting.

2. The written notice provided in this section is in addition to the notice of the meeting provided pursuant to NRS 241.020.

3. The written notice otherwise required pursuant to this section is not required if:

(a) The public body provided written notice to the person pursuant to NRS 241.033 before holding a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of the person; and

(b) The written notice provided pursuant to NRS 241.033 included the informational statement described in paragraph (b) of subsection 2 of that section.

4. For the purposes of this section, real property shall be deemed to be owned only by the natural person or entity listed in the records of the county in which the real property is located to whom or which tax bills concerning the real property are sent.

*5. As used in this section, "administrative action" means a decision by the public body that is uniquely personal to the person and may result in a negative change in circumstances for the person. The term does not include the denial of an application if the denial does not change the person's current circumstances.*

**Sec. 5.** NRS 241.0353 is hereby amended to read as follows:

241.0353 1. Any statement which is made by a member of a public body during the course of a public meeting is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

2. ~~It is~~ *Subject to a qualified privilege, a* witness who is testifying before a public body ~~is absolutely privileged to~~ *may* publish defamatory matter as part of a public meeting. ~~It is unlawful to misrepresent any fact knowingly when testifying before a public body.~~

**Sec. 6.** NRS 233B.0607 is hereby amended to read as follows:

233B.0607 1. The agency shall at the time of giving the notice of intent to act upon a regulation required pursuant to NRS 233B.060:

(a) Deposit one copy of the notice and text of the proposed regulation with the State Library, Archives and Public Records Administrator;



(b) Keep at least one copy of the notice and text available in each of its offices from the date of the notice to the date of the hearing, for inspection and copying by the public; and

(c) ~~[If the agency does not maintain an office in a county, deposit one copy of the notice and text with the librarian of the main public library in the county.]~~ *Post a copy of the notice and text of the proposed regulation on the Internet website of the agency.*

2. *The agency shall provide in print or an electronic format a copy of the notice of intent to act upon a regulation required pursuant to NRS 233B.060 and the text of the proposed regulation to any person who requests a copy from the agency.*

3. The text of the proposed regulation so disseminated must include the entire text of any section of the Nevada Administrative Code which is proposed for amendment or repeal.

~~{3.}~~ 4. After the final version of an adopted regulation is received, each such librarian may discard the deposited copy of the text of the proposed regulation.

