

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.

~

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 R 1 *

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, participate in 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.

Additionally, **sections 2 and 3** require that if a public body holds a meeting using a remote technology system and does not have a physical location for the meeting, the public body is required to have an Internet website and post on its Internet website the notice of the meeting and any supporting material for the material.

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.

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, *by use of a remote technology system* 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



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

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

9 (a) The time, place and location of the meeting. *If the meeting is*
10 *held using a remote technology system pursuant to NRS 241.023*
11 *and has no physical location, the notice must include information*
12 *on how a member of the public may:*

13 (1) *Use the remote technology system to hear and observe*
14 *the meeting;*

15 (2) *Participate in the meeting by telephone; and*

16 (3) *Provide live public comment during the meeting and, if*
17 *authorized by the public body, provide prerecorded public*
18 *comment.*

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

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

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

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

28 (d) An agenda consisting of:

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

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

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

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

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



1 ➤ The provisions of this subparagraph do not prohibit a public body
2 from taking comments by the general public in addition to what is
3 required pursuant to sub-subparagraph (I) or (II). Regardless of
4 whether a public body takes comments from the general public
5 pursuant to sub-subparagraph (I) or (II), the public body must allow
6 the general public to comment on any matter that is not specifically
7 included on the agenda as an action item at some time before
8 adjournment of the meeting. No action may be taken upon a matter
9 raised during a period devoted to comments by the general public
10 until the matter itself has been specifically included on an agenda as
11 an item upon which action may be taken pursuant to
12 subparagraph (2).

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

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

20 (6) Notification that:

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

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

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

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

31 4. Minimum public notice is:

32 (a) Posting a copy of the notice at the principal office of the
33 public body . ~~for, if there is no principal office, at the building in~~
34 ~~which the meeting is to be held, and at not less than three other~~
35 ~~separate, prominent places within the jurisdiction of the public body~~
36 ~~not later than 9 a.m. of the third working day before the meeting;]~~ *If*
37 *the meeting is held using a remote technology system pursuant to*
38 *NRS 241.023 and has no physical location, the public body must*
39 *also post the notice to the Internet website of the public body not*
40 *later than 9 a.m. of the third working day before the meeting is to*
41 *be held unless the public body is unable to do so because of*
42 *technical problems relating to the operation or maintenance of the*
43 *Internet website of the public body.*

44 (b) Posting the notice on the official website of the State
45 pursuant to NRS 232.2175 not later than 9 a.m. of the third working



1 day before the meeting is to be held, unless the public body is
2 unable to do so because of technical problems relating to the
3 operation or maintenance of the official website of the State. ~~[- and]~~

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

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

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

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

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

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

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

27 6. ~~[If]~~ *Except as otherwise provided in paragraph (a) of*
28 *subsection 4, if* a public body maintains a website on the Internet or
29 its successor, the public body shall post notice of each of its
30 meetings on its website unless the public body is unable to do so
31 because of technical problems relating to the operation or
32 maintenance of its website. Notice posted pursuant to this
33 subsection is supplemental to and is not a substitute for the
34 minimum public notice required pursuant to subsection 4. The
35 inability of a public body to post notice of a meeting pursuant to this
36 subsection as a result of technical problems with its website shall
37 not be deemed to be a violation of the provisions of this chapter.

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

40 (a) An agenda for a public meeting;

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

43 (c) Subject to the provisions of subsection 8 or 9, as applicable,
44 any other supporting material provided to the members of the public
45 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, "proprietary information" has the meaning ascribed to it in NRS 332.025.

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

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

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

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

9. Unless the supporting material must be posted at an earlier time pursuant to NRS 288.153, *and except as otherwise provided in subsection 11*, the governing body of a county or city whose population is 45,000 or more shall post the supporting material described in paragraph (c) of subsection 7 to its website not later than the time the material is provided to the members of the governing body or, if the supporting material is provided to the members of the governing body at a meeting, not later than 24 hours after the conclusion of the meeting. Such posting is supplemental to the right of the public to request the supporting material pursuant to subsection 7. The inability of the governing body, as a result of technical problems with its website, to post supporting material pursuant to this subsection shall not be deemed to be a violation of the provisions of this chapter.

10. ~~[A]~~ *Except as otherwise provided in subsection 11*, a public body may provide the public notice, information or supporting material required by this section by electronic mail.



Except as otherwise provided in this subsection, if a public body makes such notice, information or supporting material available by electronic mail, the public body shall inquire of a person who requests the notice, information or supporting material if the person will accept receipt by electronic mail. If a public body is required to post the public notice, information or supporting material on its website pursuant to this section, the public body shall inquire of a person who requests the notice, information or supporting material if the person will accept by electronic mail a link to the posting on the website when the documents are made available. The inability of a public body, as a result of technical problems with its electronic mail system, to provide a public notice, information or supporting 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. *If a public body holds a meeting using a remote technology system pursuant to NRS 241.023 and has no physical location for the meeting, the public body must:*

(a) *Have an Internet website; and*

(b) *Post to its Internet website:*

(1) *The public notice required by this section; and*

(2) *Supporting material not later than the time the material is provided to the members of the governing body or, if the supporting material is provided to the members of the governing body at a meeting, not later than 24 hours after the conclusion of the meeting.*

↪ *The inability of the governing body, as a result of technical problems with its Internet website, to post supporting material pursuant to this subsection shall not be deemed to be a violation of the provisions of this chapter.*

12. 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]~~ *Except as otherwise provided in subsection 2, 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, *by using the remote technology system* 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 ~~[H]~~; or

(2) *Hear and observe the meeting, participate in the meeting by telephone and provide live public comment during the meeting using the remote technology system. A public body may also allow public comment by means of prerecorded messages.*

(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. *A public body shall not conduct a meeting by means of a remote technology system without a physical location designated for the meeting where members of the public are permitted to attend and participate unless the public body complies with the provisions of subsection 11 of NRS 241.020.*

3. If any member of a public body attends a meeting by means of ~~[teleconference or videoconference,]~~ *a remote technology system*, 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;]~~ *a remote technology system*; and

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

Sec. 4. (Deleted by amendment.)

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. ~~[A]~~ *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. ~~[, except that]~~ *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.

