

LEGISLATIVE FUNCTIONS

Meeting Wednesday, February 12, 1975

Senator Monroe called the meeting to order on February 12, 1975 at 4:10 p.m.

PRESENT: Senator Monroe
Senator Brown
Senator Echols
Senator Gibson
Senator Lamb
Senator Young

ABSENT: Senator Close

OTHERS: Larry Dumphy, Common Cause of Nevada
Bob Warren, Nevada League of Cities
Ann Ehrenburg, Review Journal
Jim Caston, Highway Dept. Reno
Jean Ford, Assemblyman #15
Sue Wagner, Assemblyman #39
Esther Nicholson, League of Women Voters
Senator Richard Bryan

Senator Monroe was at the Chair

SB 19 (see attached) an Act providing, that all meetings of the legislature and its committees except as provided by the constitution shall be open to the public.

Senator Monroe read a letter from Senator Sheerin requesting that it be read into the record. (see attached)

The letter said that there are three levels of potential legislation in this area;

- a) Pure, open meeting laws such as the one I have introduced,
- b) Open meeting laws that contain limited exceptions to the rules,
- c) Open meeting laws that contain specified exceptions to the rules and further provides for procedures that must be followed in order to close the meeting.

The letter went on to say that he is presently an advocate of the pure, open meeting law, and has no objections to either of the other two kinds of open meeting laws being passed. He felt that the two closed sessions held by our Finance Committee were ill-advised, He stated that his main desire is to get some kind of open meeting law passed this session, whether it is his bill or any of the others suggested.

Senator Wilson introduced himself and said that he would address both Senate Bills, 19 and 49. He said that he was co-sponsor of SB 49. Explained that the principle expressed in Bill 19 has been around for a while and was also in the last session. He said that the air ought to be cleared on the public meeting principle. The reservations that most people have concerning the exceptions to that general rule, is whether exceptions are so qualified by adequate safe-guards that they will not be subject to abuse and whether or not they are justifiable safe-guards or exceptions related to the Senate Bill, He went on to speak of an exception before the committee in the last session, a circumstance where the committee felt it would close to investigate the matter for legislation. The circumstance was that the witness did not voluntarily testify because he might incriminate himself or incriminate someone else or have some fear for his physical personal being. This resulted in the introduction of SB 49.

The Senator went on to say that it was time that this legislature establish the principle. He did not think that the exclusion of the legislative branch of government from the principle is justifiable. He said he thought it had an effect on the degree of confidence the public has. He went on to mention that in campaigning he noticed that people were skeptical of our government and that there ought to be a presumption that business is conducted properly. He stressed that it was time that we did something about it. He said that he would support SB 19. He spoke of closed hearings and personnel, and said that we don't administer, we legislate and we ought to investigate. If an exception is applied then he thinks you have to express what safe-guards you apply to insure that it is not abused. He does not think a closed meeting should be allowed on the majority as prescribed in SB 49. He thought that the open meeting law should be scrutinized by the Attorney General in reference to the exceptions expressed in SB 49. He said that the recognition of the principle expressed in SB 19 would go a long way to bring back a lot of confidence in the local government.

Senator Monroe told of a meeting that called for a discussion involving an unfortunate circumstance. The committee had read the report, an ugly situation and a very sensitive matter, based on a firm positive report. It had been based on a presumption that had not been proven, involvement with the press and three individuals. Discussion on the incident followed and Senator Monroe asked Senator Wilson if he considered the matter an unfortunate circumstance. Senator Wilson said that it could have been handled in a different way and that we put the committee Chairman in the circumstance where we provided him with no guidelines. Senator Lamb explained what happened and how the whole thing was blown out of proportion. He explained why the meeting was closed and why he did it. Discussion followed on how the situation was handled and how it could have been handled properly. Senator Wilson said that the fault was not in the Committee but in the witness's mistake in judgment. Senator Monroe spoke of circumstances in the state government where witnesses want to testify but will not do so because of open meetings and they are witnesses who have valuable information. Senator Lamb went on to discuss the case above and said it should not have been given publicity because even now the Retirement Board could not decide the matter and did not decide the matter and turned it over to the Attorney General's office for an opinion as to the legality of the situation. He said that it should not have been released to him concerning the legality of the situation.

Senator Wilson said that the man raised an accusation before a staff inquiry could be made to verify it before it was made public. It was an awkward position for the committee and asked what the committee should do in that kind of situation. He went on to say that the fellow should have been forced not to come into a public meeting and make that kind of an accusation before there had been staff inquiry and verification of the facts. He could have talked to the Chairman privately, the committee can authorize the staff, the facts can be verified and then what is verified the committee can make public. Senator Lamb said that Senator Wilson was asking for a committee decision there and that he could see certain evils in going to the committee Chairman. He said that the committee Chairman did not want to have the responsibility. He could see maybe two people or something. Said that maybe you don't have the committee meeting and he could see evils that perhaps out-weigh the possibility of a closed meeting. He commented that at least you will have strength in numbers.

Senator Young brought up the question on the eligibility of the people involved. He said we do not know if the people are qualified. The question asked was if they didn't have a staff find out who the people were. Other questions and discussion on the subject followed. Senator Monroe said to analyze the question. "What's wrong with it?" Senator Wilson said that what was wrong with the approach to the problem is that the questions on the open meetings are being decided on an ad-hoc basis and that as long as we're justified that here is a humane responsible basis for handling it the way it was handled. He said that as long as we're handling it on an ad-hoc basis, we're justified, but if ever a committee in the future on an ad-hoc basis handles it in a way which is not justified then that is wrong. He asked what they would then do?

Senator Lamb asked if it was better for the Chairman to go ahead himself and authorize the investigation than to run around to people individually and say "look, you've got a problem. What do you think. Shall I go ahead?" He said it would be more covered, more secretive that way. Senator Wilson said that he didn't see anything wrong with a witness coming in and saying that they have some questions as to whether or not everybody will retire unless he is qualified, or supposed to be there, we would like to verify it. Senator Lamb thought that there was nothing wrong with that. Senator Young asked if the Chairman should come to each of them individually. He said that to him is more secret and more reprehensible than having a meeting. He said he had real reservations on closed meetings but he thought there were times when a closed meeting is justified. He mentioned several examples and discussion followed. Senator Wilson was asked what criteria would be prescribed for a closed meeting and he answered that it was probably a vote. Discussion followed. He said a vote with 2/3 of the committee approving. The Senator said that SB 49 was intended to force the issue.

A problem with the gaming commission was brought up concerning a closed meeting and Senator Wilson said the bill was dropped, was never seen again.

Senator Lamb suggested drawing up some sort of guidelines and give them to the committee. Senator Young asked if there was any other state that had any criteria that would provide some exceptions. Senator Wilson said that he did not know. He went on to say that we have more open meetings than any other state. Senator Young said there should be certain cases where certain exceptions exist. 016

There were no further questions.

Father Larry Dumphy was introduced from Common Cause and spoke on An Act Requiring Open Meetings of Public Bodies.

He Stated that since that morning he had satisfied all the requirements and also registered under the Common Cause and since then discussed the two bills with National parties this morning and stated that an open meeting bill is absolutely essential for preserving the right of all the citizens to participate, however they recognize that there may be grounds for exception, maybe occasions when for the good of the state there may be exceptions. However, these should be stated in the law. It does create problems of credibility. If they had guidelines they could have been spared attack, abuse or embarrassment. Common Cause has suggested personal matters of grievance involved allow for closed hearing. Also in the case of acquisition of property, where bids might be a matter of concern. He said that these points should be stated precisely and some kind of procedure should be followed such as a 2/3 majority vote or signed statement as to why they are invoking the law. And in a particular instance, something recorded for the matter of public record. They feel that this direction of legislation is important and essential to the preservation of democratic process that the access of the citizen to this body that does make decision in their name and for them. Such legislation should be a part of this state and other states.

Senator Brown asked if they have a list from National Headquarters, areas etc.

Father Dumphy referred to Section 5. of Common Cause on open meeting of public bodies. (see attached).

Senator Young asked if provisions of the recommendation preclude a telephonic poll of members. Father Dumphy said he didn't think it did and went on to explain that the intent is that legislature is in session and is here for a public matter and allowing for exceptions that should be appropriate. Senator Lamb asked if it would require a 2/3 vote. Father Dumphy said it required the vote of each member on the question of open or closed meetings. Subsection 5 explains that it be recorded into majority vote.

Senator Echols questioned the problem of open meetings creating a problem as to what happens - such as news going out - explosive items etc. Further discussion followed. Father Dumphy said that the people that vote for or against the decision, if it would be a public matter, would have a kind of responsibility as to having made a decision.

Senator Echols and Senator Gibson went into discussion on closed meetings , collective bargaining. etc. Senator Gibson explained some instances and

happenings when he was chairman concerning open and closed meetings.

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Senator Young asked Father Dumphy if any states adopted this system that he knows of. At this point Father Dumphy turned the discussion to Senator Jean Ford.

Senator Ford introduced herself and went on to answer Senator Young's question. She discussed a States Conference in Williamsburg, Virginia. Said that Colorado has adopted the system and Washington was pretty strong on it. She said that they had Bullitin 114 - Bill O and Bill P - Senate and Assembly standing rules for open meetings. The bills include ability for closing meetings upon 2/3 vote of committee. She read some of the draft and incidents as proposed in draft. She said that each incident is different and might have a problem. It can't spell out specifics - all closing mechanisms are optional. She mentioned the Council of State Governments (see attachment). She went on to discuss the two bills (SB 144 - 199). She explained that the amendment was adopted and in final vote the bill lost last session on a 10 to 8 roll call. She said that none of these bills addressed themselves to the question of a caucus or to the legislative commission.

Senator Young questioned meetings of subcommittees allowing to meet secretly.

Senator Ford said that subcommittees are not included in the rule. Discussion followed on hearings and on subcommittees. She explained how they function. She said that they could not take action. Their report has to be made in a bulk to the full committee and action taken to the full committee. This is only when legislature is in session. She said that she agreed with Senator Wilson and that there should be an open and closed mechanism to back you up because there is no policy. Closed mechanism should only be used on sensitive issues and should not be abused. She explained that no action would be taken by subcommittees. Testimony and discussion only. Executive sessions and constitution on executive sessions were discussed. She referred to the Sunshine Act on open and closed meetings (see attachment). She also discussed subpoenas and testimony under oath.

Bob Warren, League of Cities, introduced himself.

He said that the purpose of an open meeting law was not only to get public to attend meetings and be aware of the activities that take place and judge the actions of the legislators, but also to permit persons such as himself to represent different organizations, of which there are several hundred, who wish to bring information to the legislators which is valuable. On behalf of the League of Cities, a proposal was submitted that language be added to the Assembly Bill that would require that a twenty-four notice of meetings be posted - it would mean that those persons whose business it is to be aware of the legislative process would have an opportunity to appear before this board and bring the information.

Senator Richard Bryan introduced himself. He supported SB 144 in the last session of Legislature.

Senator Bryan went on to say that there were two reasons why that bill ought not to pass.

All meetings were open anyway and they didn't need it. There were certain circumstances that should provide some mechanism for a closed meeting. Said that there is no policy stating under what circumstances a meeting may be closed. The problem still exists. There should be a policy. He said that they also attempted as a matter of compromise to provide some type of closing mechanism. An amendment to the Assembly Bill failed on the floor. Expressed that we have no policy, no total public declaration that a meeting is open to the public. Stressed that there have to be guidelines. He said that we cannot ignore the fact that there seems to be some support, some type of closing mechanism. He urged that we take action.

Question arose as to whether he was satisfied with a 2/3 vote to close. He said that if there is a closing mechanism, there has to be a procedure on record.

Senator Monroe said that the resolution was given due notice and a hearing is already in our committee.

Meeting adjourned 5:30 p.m.

Respectfully submitted

Stephanie Beech

APPROVED:

Warren L. Monroe
Senator Warren Monroe, Chairman

S. B. 19

SENATE BILL NO. 19—SENATOR SHEERIN

JANUARY 22, 1975

Referred to Committee on Legislative Functions

SUMMARY—Provides for public access to meetings of legislature and its committees. Fiscal Note: No. (BDR 17-416)

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT providing that all meetings of the legislature and its committees except as provided by the constitution shall be open to the public.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. Chapter 218 of NRS is hereby amended by adding
- 2 thereto a new section which shall read as follows:
- 3 *Except as provided in the constitution of the State of Nevada, all*
- 4 *meetings of the legislature and its committees shall be open to the public.*

S. B. 49

SENATE BILL NO. 49—SENATORS WILSON,
WALKER AND BRYAN

JANUARY 28, 1975

Referred to Committee on Legislative Functions

SUMMARY—Requires legislative committee meetings to be open and public.
Fiscal Note: No. (BDR 17-584)

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to the state legislature; requiring legislative committee and subcommittee meetings to be open to the public except under certain circumstances; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. Chapter 218 of NRS is hereby amended by adding
- 2 thereto a new section which shall read as follows:
- 3 1. *Except as provided in subsection 2, all meetings of legislative*
- 4 *committees and subcommittees shall be open to the public.*
- 5 2. *A legislative committee or subcommittee may by a majority vote*
- 6 *close its meeting to the public to hear a witness who is unwilling to testify*
- 7 *publicly because:*
- 8 (a) *His testimony concerns a violation of a criminal law by himself or*
- 9 *by another; or*
- 10 (b) *He fears that public testimony would jeopardize his physical well-*
- 11 *being.*

STATEMENT TO
SENATE COMMITTEE ON
LEGISLATIVE FUNCTIONS

To: Senator Monroe
From: Senator Sheerin
Re: Open Meeting Law

I am sorry I am unable to attend your hearing due to a prior commitment. However, I would appreciate this statement being read into the record.

It seems to me that there are 3 levels of potential legislation in this area:

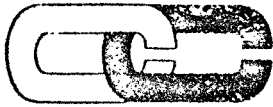
- a) Pure, open meeting laws such as the one I have introduced,
- b) Open meeting laws that contain limited exceptions to the rules,
- c) Open meeting laws that contain specified exceptions to the rules and further provides for procedures that must be followed in order to close the meeting.

While I am presently an advocate of the pure, open meeting law, I have no objections to either of the other two kinds of open meeting laws being passed. My main concern is that we pass some legislation this session that will provide open meeting requirements for the legislature. I was pleased that our Majority Leader advocated opening our Democratic caucus to the press. If the press and public is welcome to our caucus meetings, they should surely be welcome to all legislative hearings.

As I stated on the Senate floor, I believe the two closed sessions held by our Finance Committee were ill-advised. This is particularly true when the information to be delivered to the Finance Committee came from another public agency.

I can conceive of no reason except national security as to why meetings of any public body should not be open to the press and public. Since the Nevada legislature does not deal with matters of national security, there is no reason to close our meetings unless under specified instances.

In conclusion, my main desire is to get some kind of open meeting law passed this session, whether it is my bill or any of the others suggested.



common cause

2030 M STREET, N.W., WASHINGTON, D. C. 20036

John W. Gardner, Chairman

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Dumpley

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AN ACT REQUIRING OPEN MEETINGS OF PUBLIC BODIES

Section 1. PUBLIC POLICY. It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. Toward this end, this act shall be construed liberally.

Section 2. DEFINITIONS. As used in this act:

(a) "Meeting" means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.

(b) "Public body" means any administrative, advisory, executive, or legislative body of the state or local political subdivision of the state, or any other entity created by law, that expends or disburses or is supported in whole or in part by tax revenue or that advises or makes recommendations to any entity that 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.

(c) "Quorum," unless otherwise defined by applicable law, means a simple majority of the constituent membership of a public body.

Section 3. OPEN MEETINGS. Every meeting of all public bodies shall be open to the public unless closed pursuant to sections 4 and 5 of this act. 65

Section 4. CLOSED MEETINGS. A public body may hold a meeting closed to the public upon an affirmative vote, taken at an open meeting for which notice has been given pursuant to section 6 of this act, of two thirds of its constituent members. A meeting closed to the public shall be limited to matters allowed to be exempted from discussion at open meetings by section 5 of this act. The vote of each member on the question of holding a meeting closed to the public and the reason for holding such a meeting, by a citation to a subsection of section 5 of this act, shall be recorded and entered into the minutes of the meeting. Nothing in this section or section 5 of this act, shall be construed to require that any meeting be closed to the public.

Section 5. EXCEPTIONS. (a) A public body may hold a meeting closed to the public pursuant to section 4 of this act for one or more of the following purposes:

(1) discussion of the character, as opposed to the professional competence, or physical or mental health of a single individual provided that such individual may require that such discussion be held at an open meeting; and provided that nothing in this subsection shall permit a meeting closed to the public for discussion of the appointment of a person to a public body;

(2) strategy sessions with respect to collective bargaining or litigation, when an open meeting would have a detrimental effect

on the bargaining or litigating position of the public body;

(3) discussion regarding the deployment of security personnel or devices; and

(4) investigative proceedings regarding allegations of criminal misconduct.

(b) This act shall not apply to any chance meeting, or a social meeting at which matters relating to official business are not discussed. No chance meeting, social meeting, or electronic communication shall be used in circumvention of the spirit or requirements of this act to discuss or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.

(c) This act shall not apply to judicial proceedings, but shall apply to a court or other judicial body while exercising rule-making authority or while deliberating or deciding upon the issuance of administrative orders.

(d) This act shall not prohibit the removal of any person or persons who willfully disrupt a meeting to the extent that orderly conduct of the meeting is seriously compromised.

Section 6. NOTICE. (a) All public bodies shall give written public notice of their regular meetings at the beginning of each calendar year. The notice shall include the dates, times, and places of such meetings. (b) All public bodies shall give supplemental written public notice of any regular, special, or rescheduled meeting no later than 72 hours before the meeting. The notice shall include the agenda, date, time, and place of the meeting.

(c) Written public notice shall include, but need not be limited to:

(1) posting a copy of the notice at the principal office of the public body holding the meeting, or if no such office exists, at the building in which the meeting is to be held, and in at least three other prominent places within the governmental unit; and

(2) mailing a copy of the notice to any person who requests notice of such meetings; any such person shall be given notice of all special or rescheduled meetings in the same manner as is given to members of the public body.

Section 7. MINUTES. (a) All public bodies shall keep written minutes of all of their meetings. Such meetings shall include, but need not be limited to:

(1) the date, time and place of the meeting;

(2) the members of the public body recorded as either present or absent;

(3) the substance of all matters proposed, discussed, or decided, and, at the request of any member, a record, by individual member, of any votes taken; and

(4) any other information that any member of the public body requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting except where such disclosure would be inconsistent with sections 4 and 5 of this act.

(c) All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any

other means of sonic reproduction except when a meeting is closed pursuant to sections 4 and 5 of this act; provided that in so recording there is no active interference with the conduct of the meeting.

Section 8. VOIDABILITY. Any final action taken in violation of sections 3 and 6 of this act shall be voidable by a court of competent jurisdiction. A suit to void any final action must be commenced within 90 days of the action.

Section 9. ENFORCEMENT. (a) The Attorney General and the public prosecutors of competent jurisdiction shall enforce the provisions of this act.

(b) Any person denied the rights conferred by this act may commence a suit in a court of competent jurisdiction for the county or city in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of this act or to determine the applicability of this act to discussions or decisions of the public body. The court may order payment of reasonable attorney fees and court costs to a successful plaintiff in a suit brought under this section.

Section 10. PENALTIES. Any person knowingly violating any provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$500 or imprisoned not more than six months, or be both fined and imprisoned.

Section 11. CONFLICT OF LAW. If the provisions of this act **027** conflict with any other statute, ordinance, regulation, or rule, the provisions of this act shall control.

Section 12. SEVERABILITY. If any provision of this act, or the application of this act to any particular meeting or type of meeting is held invalid or unconstitutional, such decision shall not affect the validity of the remaining provisions or the other applications of this act.

Section 13. EFFECTIVE DATE. This act shall take effect 30 days after enactment into law.

June 1, 1974

2. Open Government

Recommendation 2.1

"Meeting" should be defined as the convening of a governing body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.

Recommendation 2.2

"Governing body" should be defined in such a manner as to include any board, commission, department, committee, or agency within the executive or legislative branches of the state, regional council, city, county, and district governments, but to exclude the political caucuses of a Legislature.

Recommendation 2.3

Except in certain circumstances (see Recommendation 2.6), all meetings of a governing body should be open to the public, and all persons should be permitted to attend any meeting.

*procedural notes question
Houlton party org.*

Recommendation 2.4

Except in certain circumstances (see Recommendation 2.6), no quorum of a governing body should be permitted to meet in private for the purpose of deciding on or deliberating toward a decision on any matter.

Recommendation 2.5

All governing bodies should be required to give public notice, reasonably calculated to give actual notice to interested persons, of the time and place of public meetings.

Recommendation 2.6

All exceptions to the rule of open meetings should be clearly specified in the law and should be reserved primarily for sensitive issues such as: the acquisition of public property; the employment, evaluation, discipline, or dismissal of public employees; and security personnel and devices.

Recommendation 2.7

All information collected, assembled, or maintained by governmental bodies should be declared public information and available to the public, with the exception of certain specifically defined information involving sensitive issues, matters sub-

ject to judicial or executive decree, or drafts and working papers involved in the preparation of proposed legislation.

Recommendation 2.8

Accurate records should be required of all meetings of a governing body. The records may be kept by means of a full transcription, a recording, or written minutes which give a true reflection of the matters discussed at the meeting and the views of the participants.