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SENATE BILL NO. 244—SENATOR HARDY

MARCH 21, 2005

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Referred to Committee on Government Affairs

SUMMARY—Makes various changes regarding Open Meeting Law. (BDR 19-344)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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

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AN ACT relating to meetings of public bodies; making various changes regarding the Open Meeting Law; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

- 1 Existing law requires an agenda for a meeting of a public body to include a
- 2 clear and complete statement of topics to be considered, a list of items on which
- 3 action may be taken and a period devoted to public comment. (NRS 241.020)
- 4 This bill requires that an agenda also include: (1) the name of any person whose
- 5 character, alleged misconduct, professional competence, or physical or mental
- 6 health the public body intends to consider during a closed meeting; and (2) the
- 7 name of any person against whom the public body may take administrative action
- 8 during the meeting.
- 9 Existing law authorizes a public body to hold a closed meeting to consider the
- 10 character, alleged misconduct, professional competence, or physical or mental
- 11 health of any person, except for an elected member of a public body. (NRS
- 12 241.030, 241.031, 241.033)
- 13 This bill allows such a person to waive a closed meeting and instead request
- 14 that such matters be considered in an open meeting. Such a request may be made at
- 15 any time, and the public body must honor the person’s request unless the meeting
- 16 will involve the participation of other persons who do not request that the meeting
- 17 be conducted openly.
- 18 Existing law requires a public body to close a meeting upon a motion which
- 19 specifies the nature of the business to be considered. (NRS 241.030)
- 20 This bill requires additionally that such a motion specify the statutory authority
- 21 pursuant to which the meeting is closed.
- 22 Existing law prohibits a public body from holding a closed meeting to consider
- 23 the character, alleged misconduct, professional competence, or physical or mental
- 24 health of an elected member of a public body. (NRS 241.031)



25 This bill provides that such prohibition does not apply unless the public body  
26 will consider such matters in the context of the person's role as an elected member  
27 of a public body.

28 Existing law prohibits a public body from: (1) holding a meeting to consider the  
29 character, alleged misconduct, professional competence, or physical or mental  
30 health of a person; or (2) considering at a meeting whether to take administrative  
31 action against a person, unless the public body first provides the person with certain  
32 written notice of the time and place of the meeting. (NRS 241.033, 241.034)

33 This bill provides that a person whose character, alleged misconduct,  
34 professional competence, or physical or mental health will be considered at a closed  
35 meeting must be allowed to attend the closed meeting or that portion of the closed  
36 meeting which pertains to the consideration of such matters relating to him. This  
37 bill provides that the attendance of other persons is at the discretion of the chairman  
38 of the public body or may be delegated by the chairman to a vote of the members of  
39 the public body.

40 This bill also provides that if a public body, in providing to a person notice that  
41 his character, alleged misconduct, professional competence, or physical or mental  
42 health will be considered at a meeting, also provides notice that the public body  
43 may take administrative action against the person on the basis of its findings, the  
44 public body need not provide separate notice before taking administrative action  
45 against the person.

46 This bill provides further that, if a person or the name of a person is referenced  
47 in a casual or tangential manner during a closed meeting, such references do not  
48 constitute consideration of the person's character, alleged misconduct, professional  
49 competence, or physical or mental health for the purposes of required notice.

50 Existing law requires the Attorney General to prosecute any violation of  
51 Chapter 241 of NRS. (NRS 241.040)

52 This bill expands the duties of the Attorney General by requiring him to  
53 interpret and administer the provisions of Chapter 241 of NRS.

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

1 **Section 1.** NRS 241.015 is hereby amended to read as follows:  
2 241.015 As used in this chapter, unless the context otherwise  
3 requires:

4 1. "Action" means:

5 (a) A decision made by a majority of the members present  
6 during a meeting of a public body;

7 (b) A commitment or promise made by a majority of the  
8 members present during a meeting of a public body;

9 (c) If a public body may have a member who is not an elected  
10 official, an affirmative vote taken by a majority of the members  
11 present during a meeting of the public body; or

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

15 2. "Meeting":

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



1 (1) The gathering of members of a public body at which a  
2 quorum is present to deliberate toward a decision or to take action  
3 on any matter over which the public body has supervision, control,  
4 jurisdiction or advisory power.

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

7 (I) Less than a quorum is present at any individual  
8 gathering;

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

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

13 (b) Does not include a gathering or series of gatherings of  
14 members of a public body, as described in paragraph (a), at which a  
15 quorum is actually or collectively present ~~[-~~

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

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

25 3. Except as otherwise provided in this subsection, “public  
26 body” means any administrative, advisory, executive or legislative  
27 body of the State or a local government which expends or disburses  
28 or is supported in whole or in part by tax revenue or which  
29 advises or makes recommendations to any entity which expends or  
30 disburses or is supported in whole or in part by tax revenue,  
31 including, but not limited to, any board, commission, committee,  
32 subcommittee or other subsidiary thereof and includes an  
33 educational foundation as defined in subsection 3 of NRS 388.750  
34 and a university foundation as defined in subsection 3 of NRS  
35 396.405. “Public body” does not include the Legislature of the State  
36 of Nevada.

37 4. “Quorum” means a simple majority of the constituent  
38 membership of a public body or another proportion established by  
39 law.

40 **Sec. 2.** NRS 241.020 is hereby amended to read as follows:

41 241.020 1. Except as otherwise provided by specific statute,  
42 all meetings of public bodies must be open and public, and all  
43 persons must be permitted to attend any meeting of these public  
44 bodies. Public officers and employees responsible for these



1 meetings shall make reasonable efforts to assist and accommodate  
2 physically handicapped persons desiring to attend.

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

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

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

8 (c) An agenda consisting of:

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

11 (2) A list describing the items on which action may be taken  
12 and clearly denoting that action may be taken on those items.

13 (3) A period devoted to comments by the general public, if  
14 any, and discussion of those comments. No action may be taken  
15 upon a matter raised under this item of the agenda until the matter  
16 itself has been specifically included on an agenda as an item upon  
17 which action may be taken pursuant to subparagraph (2).

18 *(4) If any portion of the meeting will be closed to consider*  
19 *the character, alleged misconduct, professional competence, or*  
20 *physical or mental health of a person, the name of the person*  
21 *whose character, alleged misconduct, professional competence, or*  
22 *physical or mental health will be considered.*

23 *(5) If, during any portion of the meeting, the public body*  
24 *will consider whether to take administrative action against a*  
25 *person, the name of the person against whom administrative*  
26 *action may be taken.*

27 3. Minimum public notice is:

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

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

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

42 (2) If feasible for the public body and the requester has  
43 agreed to receive the public notice by electronic mail, transmitted to  
44 the requester by electronic mail sent not later than 9 a.m. of the third  
45 working day before the meeting.



1 4. If a public body maintains a website on the Internet or its  
2 successor, the public body shall post notice of each of its meetings  
3 on its website unless the public body is unable to do so because of  
4 technical problems relating to the operation or maintenance of its  
5 website. Notice posted pursuant to this subsection is supplemental to  
6 and is not a substitute for the minimum public notice required  
7 pursuant to subsection 3. The inability of a public body to post  
8 notice of a meeting pursuant to this subsection as a result of  
9 technical problems with its website shall not be deemed to be a  
10 violation of the provisions of this chapter.

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

13 (a) An agenda for a public meeting;

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

16 (c) Any other supporting material provided to the members of  
17 the public body for an item on the agenda, except materials:

18 (1) Submitted to the public body pursuant to a nondisclosure  
19 or confidentiality agreement;

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

22 (3) Declared confidential by law.

23 ➔ *A copy of supporting material required to be provided upon*  
24 *request pursuant to paragraph (c) must, if the requester so*  
25 *specifies, be provided at the same time such material is provided to*  
26 *the members of the public body.* If the requester has agreed to  
27 receive the information and material set forth in this subsection by  
28 electronic mail, the public body shall, if feasible, provide the  
29 information and material by electronic mail.

30 6. A public body may provide the public notice, information  
31 and material required by this section by electronic mail. If a public  
32 body makes such notice, information and material available by  
33 electronic mail, the public body shall inquire of a person who  
34 requests the notice, information or material if the person will accept  
35 receipt by electronic mail. The inability of a public body, as a result  
36 of technical problems with its electronic mail system, to provide a  
37 public notice, information or material required by this section to a  
38 person who has agreed to receive such notice, information or  
39 material by electronic mail shall not be deemed to be a violation of  
40 the provisions of this chapter.

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

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



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

2 **Sec. 3.** NRS 241.030 is hereby amended to read as follows:

3 241.030 1. Except as otherwise provided in *this section and*  
4 NRS 241.031 and 241.033, ~~[nothing contained in this chapter~~  
5 ~~prevents]~~ a public body ~~[from holding]~~ *may hold* a closed meeting  
6 to ~~[consider]~~ :

7 (a) *Consider* the character, alleged misconduct, professional  
8 competence, or physical or mental health of a person.

9 (b) *Receive information from the attorney employed or*  
10 *retained by the public body regarding potential or existing*  
11 *litigation involving a matter over which the public body has*  
12 *supervision, control, jurisdiction or advisory power, or to*  
13 *deliberate toward a decision on the matter, or both.*

14 2. A *person whose character, alleged misconduct,*  
15 *professional competence, or physical or mental health will be*  
16 *considered by a public body during a meeting may waive the*  
17 *closure of the meeting and request that the meeting or relevant*  
18 *portion thereof be open to the public. A request described in this*  
19 *subsection:*

20 (a) *May be made at any time before or during the meeting; and*

21 (b) *Must be honored by the public body unless the*  
22 *consideration of the character, alleged misconduct, professional*  
23 *competence, or physical or mental health of the requester involves*  
24 *the appearance before the public body of another person who does*  
25 *not desire that the meeting or relevant portion thereof be open to*  
26 *the public.*

27 3. A public body may close a meeting upon a motion which  
28 specifies ~~[the]~~ :

29 (a) *The nature of the business to be considered* ~~[.]~~  
30 ~~3.]~~; *and*

31 (b) *The statutory authority pursuant to which the public body*  
32 *is authorized to close the meeting.*

33 4. This chapter does not:

34 (a) Apply to judicial proceedings.

35 (b) Prevent the removal of any person who willfully disrupts a  
36 meeting to the extent that its orderly conduct is made impractical.

37 (c) Prevent the exclusion of witnesses from a public or private  
38 meeting during the examination of another witness.

39 (d) Require that any meeting be closed to the public.

40 (e) Permit a closed meeting for the discussion of the  
41 appointment of any person to public office or as a member of a  
42 public body.

43 ~~[4.—The exception]~~

44 5. *The exceptions* provided by this section, and electronic  
45 communication, must not be used to circumvent the spirit or letter of



1 this chapter ~~[in order to discuss or]~~ to act , *outside of an open and*  
2 *public meeting*, upon a matter over which the public body has  
3 supervision, control, jurisdiction or advisory powers.

4 **Sec. 4.** NRS 241.031 is hereby amended to read as follows:

5 241.031 ~~[A]~~

6 *1. Except as otherwise provided in subsection 2, a public body*  
7 *shall not hold a closed meeting to consider the character, alleged*  
8 *misconduct, professional competence, or physical or mental health*  
9 *of an elected member of a public body.*

10 *2. The prohibition set forth in subsection 1 does not apply if*  
11 *the consideration of the character, alleged misconduct,*  
12 *professional competence, or physical or mental health of the*  
13 *person does not pertain to his role as an elected member of a*  
14 *public body.*

15 **Sec. 5.** NRS 241.033 is hereby amended to read as follows:

16 241.033 1. A public body shall not hold a meeting to  
17 consider the character, alleged misconduct, professional  
18 competence, or physical or mental health of any person unless it has  
19 ~~[given]~~ :

20 (a) *Given* written notice to that person of the time and place of  
21 the meeting ~~[. Except as otherwise provided in subsection 2, the]~~ ;  
22 *and*

23 (b) *Received proof of service of the notice.*

24 *2. The written notice required pursuant to subsection 1:*

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

26 ~~[(a)]~~ (1) Delivered personally to that person at least 5 working  
27 days before the meeting; or

28 ~~[(b)]~~ (2) Sent by certified mail to the last known address of that  
29 person at least 21 working days before the meeting.

30 ~~[↔—A public body must receive proof of service of the notice~~  
31 ~~required by this subsection before such a meeting may be held.~~

32 ~~—2.]~~ (b) *May include an informational statement setting forth*  
33 *that the public body may, without further notice, take*  
34 *administrative action against the person if the public body*  
35 *determines that such administrative action is warranted after*  
36 *considering the character, alleged misconduct, professional*  
37 *competence, or physical or mental health of the person.*

38 3. The Nevada Athletic Commission is exempt from the  
39 requirements of ~~[paragraphs (a) and (b)]~~ *subparagraphs (1) and (2)*  
40 *of paragraph (a)* of subsection ~~[1,]~~ 2, but must give written notice  
41 of the time and place of the meeting and must receive proof of  
42 service of the notice before the meeting may be held.

43 ~~[3.]~~ 4. *If a public body holds a closed meeting or closes a*  
44 *portion of a meeting to consider the character, alleged*  
45 *misconduct, professional competence, or physical or mental health*



1 *of a person, each person to whom notice is required to be given*  
2 *pursuant to paragraph (a) of subsection 1 must be allowed to*  
3 *attend the closed meeting or that portion of the closed meeting*  
4 *during which his character, alleged misconduct, professional*  
5 *competence, or physical or mental health is considered. With*  
6 *regard to the attendance of persons other than the members of the*  
7 *public body and the person whose character, alleged misconduct,*  
8 *professional competence, or physical or mental health is*  
9 *considered, the chairman of the public body may:*

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

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

15 5. A public body shall provide a copy of any record of a closed  
16 meeting prepared pursuant to NRS 241.035, upon the request of any  
17 person whose character, alleged misconduct, professional  
18 competence, or physical or mental health was considered at the  
19 meeting.

20 6. *For the purposes of this section, casual or tangential*  
21 *references to a person or the name of a person during a closed*  
22 *meeting do not constitute consideration of the character, alleged*  
23 *misconduct, professional competence, or physical or mental health*  
24 *of the person.*

25 **Sec. 6.** NRS 241.034 is hereby amended to read as follows:

26 241.034 1. *Except as otherwise provided in subsection 3:*

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

28 ~~[(a)]~~ (1) Take administrative action against a person; or

29 ~~[(b)]~~ (2) Acquire real property owned by a person by the  
30 exercise of the power of eminent domain,

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

33 ~~[(2)]~~ (b) The written notice required pursuant to ~~[subsection 1]~~  
34 *paragraph (a)* must be:

35 ~~[(a)]~~ (1) Delivered personally to that person at least 5 working  
36 days before the meeting; or

37 ~~[(b)]~~ (2) Sent by certified mail to the last known address of that  
38 person at least 21 working days before the meeting.

39 ↪ A public body must receive proof of service of the written notice  
40 provided to a person pursuant to this section before the public body  
41 may consider a matter set forth in ~~[subsection 1]~~ *paragraph (a)*  
42 relating to that person at a meeting.

43 ~~[(3)]~~ 2. The written notice provided in this section is in addition  
44 to the notice of the meeting provided pursuant to NRS 241.020.





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

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

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

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

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

15       241.035 1. Each public body shall keep written minutes of  
16 each of its meetings, including:

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

18       (b) Those members of the *public* body who were present and  
19 those who were absent.

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

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

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

29       2. Minutes of public meetings are public records. Minutes or  
30 audiotape recordings of the meetings must be made available for  
31 inspection by the public within 30 working days after the  
32 adjournment of the meeting at which taken. The minutes shall be  
33 deemed to have permanent value and must be retained by the public  
34 body for at least 5 years. Thereafter, the minutes may be transferred  
35 for archival preservation in accordance with NRS 239.080 to  
36 239.125, inclusive. Minutes of meetings closed pursuant to :

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

44       (b) *Paragraph (b) of subsection 1 of NRS 241.030 become*  
45 *public records when the public body determines that the*



1 *information received and the matters deliberated upon no longer*  
2 *require confidentiality.*

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

7 4. Each public body may record on audiotape or any other  
8 means of sound reproduction each of its meetings, whether public or  
9 closed. If a meeting is so recorded:

10 (a) The record must be retained by the public body for at least 1  
11 year after the adjournment of the meeting at which it was recorded.

12 (b) The record of a public meeting is a public record and must  
13 be made available for inspection by the public during the time the  
14 record is retained.

15 ➔ Any record made pursuant to this subsection must be made  
16 available to the Attorney General upon request.

17 5. If a public body elects to record a public meeting pursuant to  
18 the provisions of subsection 4, any portion of that meeting which is  
19 closed must also be recorded and must be retained and made  
20 available for inspection pursuant to the provisions of subsection 2  
21 relating to records of closed meetings. Any record made pursuant to  
22 this subsection must be made available to the Attorney General  
23 upon request.

24 **Sec. 8.** NRS 241.040 is hereby amended to read as follows:

25 241.040 1. Each member of a public body who attends a  
26 meeting of that public body where action is taken in violation of any  
27 provision of this chapter, with knowledge of the fact that the  
28 meeting is in violation thereof, is guilty of a misdemeanor.

29 2. Wrongful exclusion of any person or persons from a meeting  
30 is a misdemeanor.

31 3. A member of a public body who attends a meeting of that  
32 public body at which action is taken in violation of this chapter is  
33 not the accomplice of any other member so attending.

34 4. The Attorney General shall ~~investigate~~ :

35 (a) *Interpret and administer the provisions of this chapter; and*

36 (b) *Investigate* and prosecute any violation of this chapter.

37 **Sec. 9.** This act becomes effective on July 1, 2005.





