

Amendment No. CA9

Conference Committee Amendment to Assembly Bill No. 59 Second Reprint	(BDR 19-288)
<b>Proposed by:</b> Conference Committee	
<b>Amends:</b> Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) green bold italic underlining is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) green bold underlining is newly added transitory language.

HAC/WLK



Date: 6/5/2011

A.B. No. 59—Makes various changes to the Open Meeting Law. (BDR 19-288)



ASSEMBLY BILL NO. 59—COMMITTEE  
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 15, 2010

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to the Open Meeting Law. (BDR 19-288)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for  
Term of Imprisonment in County or City Jail or Detention  
Facility.  
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.

AN ACT relating to the Open Meeting Law; requiring a public body to take certain actions if the Attorney General finds that the public body has violated the Open Meeting Law; authorizing the Attorney General to issue subpoenas during investigations of such violations; providing that meetings of a public body that are quasi-judicial in nature are subject to the Open Meeting Law; ~~under certain circumstances;~~ requiring a public body to include certain notifications on an agenda for a public meeting; excluding a meeting held to consider an applicant for employment from certain notice requirements; making members of a public body subject to a civil penalty for violations; providing a penalty; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law establishes the Open Meeting Law which requires, except in certain limited situations, that all meetings of public bodies be open and public. It further requires that all persons be allowed to attend any meeting of these public bodies. (NRS 241.020) Existing law makes any action of a public body in violation of the Open Meeting Law void, and requires the Attorney General to investigate and prosecute any violation of the Open Meeting Law. (NRS 241.036, 241.040) If the Attorney General finds that a public body has taken an action which violates the Open Meeting Law, **section 2** of this bill requires the public body to include an item on the next agenda posted for a meeting of the public body acknowledging the finding of the Attorney General regarding such a violation. **Section 2** also provides that such acknowledgment is not an admission of wrongdoing on the part of the public body for the purposes of a civil action, criminal prosecution or injunctive relief. **Section 3** of this bill authorizes the Attorney General to issue subpoenas for the production of documents, records or materials in the course of his or her investigation of any violation of the Open Meeting Law and makes failure or refusal to comply with such a subpoena a misdemeanor.

15 **Section 1.5** of this bill provides that meetings of a public body other than certain  
16 meetings of the State Board of Parole Commissioners, that are quasi-judicial in nature are  
17 subject to the provisions of the Open Meeting Law. ~~Unless exempted by the Legislative~~  
18 ~~Commission. Section 1.5 also defines when a meeting is quasi-judicial in nature for purposes~~  
19 ~~of the Open Meeting Law.~~

20 **Section 5** of this bill adds certain notifications that must be included on an agenda for a  
21 meeting of a public body.

22 Under existing law, if a public body holds a meeting to consider the character, alleged  
23 misconduct, professional competence, or physical or mental health of a person, it must first  
24 provide written notice of that fact and, if such a meeting will be closed, must allow the  
25 attendance of certain individuals. Existing law also provides that casual or tangential  
26 references to a person or the person's name during a closed meeting do not constitute  
27 consideration of the character, alleged misconduct, professional competence, or physical or  
28 mental health of the person. (NRS 241.033) **Section 6** of this bill provides that a meeting to  
29 consider an applicant for employment does not require prior notice to be given to the  
30 applicant.

31 Existing law makes each member of a public body who attends a meeting where action is  
32 taken in violation of the Open Meeting Law with knowledge of the fact that the meeting is in  
33 violation guilty of a misdemeanor. (NRS 241.040) **Section 7** of this bill further makes each  
34 such member who attends such a meeting subject to a civil penalty in an amount not to exceed  
35 \$500.

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

1 **Section 1.** Chapter 241 of NRS is hereby amended by adding thereto the  
2 provisions set forth as sections 1.5, 2 and 3 of this act.

3 **Sec. 1.5.** 1. ~~Meetings~~ Except as otherwise provided in subsection 2,  
4 meetings of a public body that are quasi-judicial in nature are subject to the  
5 provisions of this chapter, unless the public body has received an exemption  
6 from the Legislative Commission.

7 ~~2. For the purposes of this section, a meeting is quasi-judicial in nature if it~~  
8 ~~is judicial in character and the public body affords to each party in the meeting:~~

9 ~~(a) The ability to present and object to evidence;~~

10 ~~(b) The ability to cross-examine witnesses;~~

11 ~~(c) A written decision; and~~

12 ~~(d) An opportunity to appeal the written decision.~~

13 2. The provisions of subsection 1 do not apply to meetings of the State  
14 Board of Parole Commissioners when acting to grant, deny, continue or revoke  
15 parole of a prisoner or to establish or modify the terms of the parole of a  
16 prisoner.

17 **Sec. 2.** 1. If the Attorney General makes findings of fact and conclusions  
18 of law that a public body has taken action in violation of any provision of this  
19 chapter, the public body must include an item on the next agenda posted for a  
20 meeting of the public body which acknowledges the findings of fact and  
21 conclusions of law. The opinion of the Attorney General must be treated as  
22 supporting material for the item on the agenda for the purposes of NRS 241.020.

23 2. The inclusion of an item on the agenda for a meeting of a public body  
24 pursuant to subsection 1 is not an admission of wrongdoing for the purposes of a  
25 civil action, criminal prosecution or injunctive relief.

26 **Sec. 3.** 1. The Attorney General shall investigate and prosecute any  
27 violation of this chapter.

1           ***2. In any investigation conducted pursuant to subsection 1, the Attorney***  
2 ***General may issue subpoenas for the production of any relevant documents,***  
3 ***records or materials.***

4           ***3. A person who willfully fails or refuses to comply with a subpoena issued***  
5 ***pursuant to this section is guilty of a misdemeanor.***

6           **Sec. 4.** NRS 241.015 is hereby amended to read as follows:

7           241.015 As used in this chapter, unless the context otherwise requires:

8           1. "Action" means:

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

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

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

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

18           2. "Meeting":

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

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

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

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

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

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

29           (b) Does not include a gathering or series of gatherings of members of a public  
30 body, as described in paragraph (a), at which a quorum is actually or collectively  
31 present:

32           (1) Which occurs at a social function if the members do not deliberate  
33 toward a decision or take action on any matter over which the public body has  
34 supervision, control, jurisdiction or advisory power.

35           (2) To receive information from the attorney employed or retained by the  
36 public body regarding potential or existing litigation involving a matter over which  
37 the public body has supervision, control, jurisdiction or advisory power and to  
38 deliberate toward a decision on the matter, or both.

39           3. Except as otherwise provided in this subsection, "public body" means:

40           (a) Any administrative, advisory, executive or legislative body of the State or a  
41 local government ***consisting of at least two persons*** which expends or disburses or  
42 is supported in whole or in part by tax revenue or which advises or makes  
43 recommendations to any entity which expends or disburses or is supported in whole  
44 or in part by tax revenue, including, but not limited to, any board, commission,  
45 committee, subcommittee or other subsidiary thereof and includes an educational  
46 foundation as defined in subsection 3 of NRS 388.750 and a university foundation  
47 as defined in subsection 3 of NRS 396.405 ~~[-and]~~, ***if the administrative, advisory,***  
48 ***executive or legislative body is created by:***

49           ***(1) The Constitution of this State;***

50           ***(2) Any statute of this State;***

51           ***(3) A city charter and any city ordinance which has been filed or***  
52 ***recorded as required by the applicable law;***

1           (4) *The Nevada Administrative Code;*

2           (5) *A resolution or other formal designation by such a body created by a*  
3 *statute of this State or an ordinance of a local government;*

4           (6) *An executive order issued by the Governor; or*

5           (7) *A resolution or an action by the governing body of a political*  
6 *subdivision of this State;*

7           (b) *Any board, commission or committee consisting of at least two persons*  
8 *appointed by:*

9           (1) *The Governor or a public officer who is under the direction of the*  
10 *Governor, if the board, commission or committee has at least two members who*  
11 *are not employees of the Executive Department of the State Government;*

12           (2) *An entity in the Executive Department of the State Government*  
13 *consisting of members appointed by the Governor, if the board, commission or*  
14 *committee otherwise meets the definition of a public body pursuant to this*  
15 *subsection; or*

16           (3) *A public officer who is under the direction of an agency or other*  
17 *entity in the Executive Department of the State Government consisting of*  
18 *members appointed by the Governor, if the board, commission or committee has*  
19 *at least two members who are not employed by the public officer or entity; and*

20           (c) A limited-purpose association that is created for a rural agricultural  
21 residential common-interest community as defined in subsection 6 of NRS  
22 116.1201.

23        ↳ “Public body” does not include the Legislature of the State of Nevada.

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

26        **Sec. 5.** NRS 241.020 is hereby amended to read as follows:

27           241.020 1. Except as otherwise provided by specific statute, all meetings of  
28 public bodies must be open and public, and all persons must be permitted to attend  
29 any meeting of these public bodies. A meeting that is closed pursuant to a specific  
30 statute may only be closed to the extent specified in the statute allowing the  
31 meeting to be closed. All other portions of the meeting must be open and public,  
32 and the public body must comply with all other provisions of this chapter to the  
33 extent not specifically precluded by the specific statute. Public officers and  
34 employees responsible for these meetings shall make reasonable efforts to assist  
35 and accommodate persons with physical disabilities desiring to attend.

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

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

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

40           (c) An agenda consisting of:

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

43           (2) A list describing the items on which action may be taken and clearly  
44 denoting that action may be taken on those items **↪ by placing the term “for**  
45 **possible action” next to the appropriate item.**

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

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

1 whose character, alleged misconduct or professional competence will be  
2 considered.

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

6 ***(6) Notification that:***

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

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

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

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

15 3. Minimum public notice is:

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

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

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

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

30 4. If a public body maintains a website on the Internet or its successor, the  
31 public body shall post notice of each of its meetings on its website unless the public  
32 body is unable to do so because of technical problems relating to the operation or  
33 maintenance of its website. Notice posted pursuant to this subsection is  
34 supplemental to and is not a substitute for the minimum public notice required  
35 pursuant to subsection 3. The inability of a public body to post notice of a meeting  
36 pursuant to this 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 5. Upon any request, a public body shall provide, at no charge, at least one  
39 copy of:

40 (a) An agenda for a public meeting;

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

43 (c) Subject to the provisions of subsection 6, any other supporting material  
44 provided to the members of the public body for an item on the agenda, except  
45 materials:

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

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

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

51 **↳** The public body shall make at least one copy of the documents described in  
52 paragraphs (a), (b) and (c) available to the public at the meeting to which the

1 documents pertain. As used in this subsection, “proprietary information” has the  
2 meaning ascribed to it in NRS 332.025.

3 6. A copy of supporting material required to be provided upon request  
4 pursuant to paragraph (c) of subsection 5 must be:

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

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

11 **▼** If the requester has agreed to receive the information and material set forth in  
12 subsection 5 by electronic mail, the public body shall, if feasible, provide the  
13 information and material by electronic mail.

14 7. A public body may provide the public notice, information and material  
15 required by this section by electronic mail. If a public body makes such notice,  
16 information and material available by electronic mail, the public body shall inquire  
17 of a person who requests the notice, information or material if the person will  
18 accept receipt by electronic mail. The inability of a public body, as a result of  
19 technical problems with its electronic mail system, to provide a public notice,  
20 information or material required by this section to a person who has agreed to  
21 receive such notice, information or material by electronic mail shall not be deemed  
22 to be a violation of the provisions of this chapter.

23 8. As used in this section, “emergency” means an unforeseen circumstance  
24 which requires immediate action and includes, but is not limited to:

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

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

27 **Sec. 6.** NRS 241.033 is hereby amended to read as follows:

28 241.033 1. ~~[A]~~ *Except as otherwise provided in subsection 7, a* public body  
29 shall not hold a meeting to consider the character, alleged misconduct, professional  
30 competence, or physical or mental health of any person or to consider an appeal by  
31 a person of the results of an examination conducted by or on behalf of the public  
32 body unless it has:

33 (a) Given written notice to that person of the time and place of the meeting;  
34 and

35 (b) Received proof of service of the notice.

36 2. The written notice required pursuant to subsection 1:

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

38 (1) Delivered personally to that person at least 5 working days before the  
39 meeting; or

40 (2) Sent by certified mail to the last known address of that person at least  
41 21 working days before the meeting.

42 (b) May, with respect to a meeting to consider the character, alleged  
43 misconduct, professional competence, or physical or mental health of a person,  
44 include an informational statement setting forth that the public body may, without  
45 further notice, take administrative action against the person if the public body  
46 determines that such administrative action is warranted after considering the  
47 character, alleged misconduct, professional competence, or physical or mental  
48 health of the person.

49 (c) Must include:

50 (1) A list of the general topics concerning the person that will be  
51 considered by the public body during the closed meeting; and

52 (2) A statement of the provisions of subsection 4, if applicable.

1 3. The Nevada Athletic Commission is exempt from the requirements of  
2 subparagraphs (1) and (2) of paragraph (a) of subsection 2, but must give written  
3 notice of the time and place of the meeting and must receive proof of service of the  
4 notice before the meeting may be held.

5 4. If a public body holds a closed meeting or closes a portion of a meeting to  
6 consider the character, alleged misconduct, professional competence, or physical or  
7 mental health of a person, the public body must allow that person to:

8 (a) Attend the closed meeting or that portion of the closed meeting during  
9 which the character, alleged misconduct, professional competence, or physical or  
10 mental health of the person is considered;

11 (b) Have an attorney or other representative of the person's choosing present  
12 with the person during the closed meeting; and

13 (c) Present written evidence, provide testimony and present witnesses relating  
14 to the character, alleged misconduct, professional competence, or physical or  
15 mental health of the person to the public body during the closed meeting.

16 5. Except as otherwise provided in subsection 4, with regard to the attendance  
17 of persons other than members of the public body and the person whose character,  
18 alleged misconduct, professional competence, physical or mental health or appeal  
19 of the results of an examination is considered, the chair of the public body may at  
20 any time before or during a closed meeting:

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

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

26 6. A public body shall provide a copy of any record of a closed meeting  
27 prepared pursuant to NRS 241.035, upon the request of any person who received  
28 written notice of the closed meeting pursuant to subsection 1.

29 7. For the purposes of this section ~~["casual"]~~:

30 (a) *A meeting held to consider an applicant for employment is not subject to*  
31 *the notice requirements otherwise imposed by this section.*

32 (b) *Casual* or tangential references to a person or the name of a person during a  
33 closed meeting do not constitute consideration of the character, alleged misconduct,  
34 professional competence, or physical or mental health of the person.

35 **Sec. 7.** NRS 241.040 is hereby amended to read as follows:

36 241.040 1. Each member of a public body who attends a meeting of that  
37 public body where action is taken in violation of any provision of this chapter, with  
38 knowledge of the fact that the meeting is in violation thereof, is guilty of a  
39 misdemeanor.

40 2. Wrongful exclusion of any person or persons from a meeting is a  
41 misdemeanor.

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

45 4. *In addition to any criminal penalty imposed pursuant to this section,*  
46 *each member of a public body who attends a meeting of that public body where*  
47 *action is taken in violation of any provision of this chapter, and who participates*  
48 *in such action with knowledge of the violation, is subject to a civil penalty in an*  
49 *amount not to exceed \$500. The Attorney General ~~["shall investigate and prosecute~~  
50 ~~any violation of this chapter."] may recover the penalty in a civil action brought in~~  
51 *the name of the State of Nevada in any court of competent jurisdiction. Such an**



1 *action must be commenced within 1 year after the date of the action taken in*  
2 *violation of this chapter.*

3 **Sec. 8.** 1. This section and sections 1 and 2 to 7, inclusive, of this act  
4 become effective on July 1, 2011.

5 2. Section 1.5 of this act becomes effective on January 1, 2012.