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BEFORE THE OPEN MEETING LAW TASK FORCE

---oOo---

MEETING

Wednesday, May 23rd, 2018

GRANT SAWYER BUILDING  
555 East Washington Avenue, Suite 4500  
Las Vegas, Nevada

Job No.: 477478

Transcribed from video by: KATE MURRAY, CCR #599

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1 APPEARANCES:  
 2 Task Force Members present in Las Vegas:  
 3 CAROLINE BATEMAN, Chair  
 4 MARY ANNE MILLER  
 5 DEAN GOULD  
 6 ANDY MILLER  
 7 MICHAEL OH  
 8 Task Force Members present in Carson City:  
 9 VINSON GUTHREAU  
 10 PAUL LIPPARELLI  
 11 DOUGLAS RICHIE  
 12 BARRY SMITH  
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1 CHAIRPERSON BATEMAN: Mr. Smith?  
 2 MR. SMITH: Present.  
 3 CHAIRPERSON BATEMAN: Mr. Story?  
 4 Mr. Gould?  
 5 MR. GOULD: Present.  
 6 CHAIRPERSON BATEMAN: And Mr. Moore?  
 7 MR. MOORE: Present.  
 8 CHAIRPERSON BATEMAN: Are there any other  
 9 members I haven't called? Great, thank you.  
 10 We will move on to Agenda Item No. 2,  
 11 public comment.  
 12 We'll have five minutes set aside for any  
 13 members of the public who wish to address the task  
 14 force as a whole.  
 15 Are there any members up in Carson City  
 16 who wish to address the task force?  
 17 MALE SPEAKER: We don't have anyone here.  
 18 CHAIRPERSON BATEMAN: Anyone in Las Vegas  
 19 who wishes to address? Yes, ma'am? Will you please  
 20 state your name for the record?  
 21 MS. DEFAZIO: For the record, Angel  
 22 DeFazio.  
 23 The so-called spirit of the OML really is  
 24 just an ongoing board/commission requirement that  
 25 public comments are basically marginalized,

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1 LAS VEGAS, NEVADA; WEDNESDAY, MAY 23RD, 2018; 10:14 AM  
 2 ---oOo---  
 3  
 4  
 5 CHAIRPERSON BATEMAN: Good morning. It  
 6 is about 10:15 on May 23rd, 2008. We are at the  
 7 Grant Sawyer Building in Las Vegas, Nevada, in Suite  
 8 4500.  
 9 We are also being videoconferenced to the  
 10 Attorney's General's Office located at 100 North  
 11 Carson Street in Carson City, Nevada.  
 12 I will call this meeting to order and  
 13 proceed to roll call.  
 14 Mr. Jerbic? Mr. Guthreau?  
 15 MR. GUTHREAU: Yeah. I'm right here in  
 16 Carson. Thanks.  
 17 CHAIRPERSON BATEMAN: Ms. Miller?  
 18 MS. MILLER: Here.  
 19 CHAIRPERSON BATEMAN: Mr. Large?  
 20 MR. LARGE: Present.  
 21 CHAIRPERSON BATEMAN: Mr. Oh?  
 22 MR. OH: Present.  
 23 CHAIRPERSON BATEMAN: Mr. Shipman?  
 24 Mr. Richie?  
 25 MR. RICHIE: Present.

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1 dismissive, tolerated as part of the agenda with the  
 2 attitude that the public has nothing relevant to  
 3 contribute to the discussion.  
 4 Number one, this is an OML meeting, yet  
 5 it's not being broadcast over the Internet like a  
 6 majority of the other public meetings. Do you see  
 7 the irony in that?  
 8 Why can't it be videoconferenced into one  
 9 of the other meeting rooms that has Internet  
 10 capacity? Why in a room you can claim isn't  
 11 accessible to Internet capacity?  
 12 I know that boards and commissions in the  
 13 outside rural areas may not have the ability to  
 14 broadcast over the Internet. This is not to  
 15 preclude that state agencies in Carson City, Reno  
 16 and Vegas can't broadcast their meetings.  
 17 I am going to skip through a lot because  
 18 initially there wasn't any time constraints -- can  
 19 you quiet that? I can't hear myself think.  
 20 CHAIRPERSON BATEMAN: I'm sorry. Up in  
 21 Carson City, would you mind muting the -- thank you  
 22 very much.  
 23 MS. DEFAZIO: Okay. If you were really  
 24 interested in what the public has to say, and I'm  
 25 using the word "interested" facetiously, you would

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1 look into seeing how those who are homebound can  
 2 actively participate.  
 3 Don't try to use the option, Oh, they can  
 4 submit written comments to be incorporated into the  
 5 record. That is a cop-out. How many people  
 6 actually look past the agenda and supporting  
 7 documentation?  
 8 Number two, let's discuss accessibility  
 9 to the disabled where there seems to be an obvious  
 10 pick-and-choose mentality within each board and  
 11 commission, which is both shameful and  
 12 discriminatory let me elaborate.  
 13 When any public meeting allows their  
 14 chosen people to appear telephonically, it confirms  
 15 that telephonic appearances are available.  
 16 Does anyone here besides me know the  
 17 federal three-prong approach to accommodating under  
 18 the ADA?  
 19 One, will it be a financial burden? Two,  
 20 will it involve structural modifications? Three,  
 21 will it alter the purpose of the meeting?  
 22 Appearing telephonically does not prevent  
 23 any of these three prong issues.  
 24 You have public entities whose members  
 25 are able to call in, but when the public would like

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1 to use that access, they are declined. I do appear  
 2 telephonically at times as I do it under the ADA,  
 3 along with having a highly proudly earned reputation  
 4 of never backing down, and I guess people figure  
 5 let's just give it to her to shut her up.  
 6 Nevertheless, seniors, people who are  
 7 home-restricted can't gain access. Why not have  
 8 preapproved access to those who can prove they need  
 9 this accommodation?  
 10 Every notice has this statement at the  
 11 bottom, "If you need accommodation, please contact  
 12 us." Fine, but with over 30 percent of the US  
 13 population having issues with environmental exposure  
 14 and over 6,000 in Clark County alone, calling in is  
 15 a non sequitur.  
 16 After filing an OML complaint and  
 17 fighting, I finally got the PUC to incorporate a  
 18 simple statement sent out on May 6th, 2014.  
 19 To accommodate individuals who went to  
 20 the commission office who are chemically sensitive  
 21 to fragrances or other scented products, please use  
 22 sparingly. This is a reasonable accommodation that  
 23 should be incorporated into the OML.  
 24 No one is going to be excluded for  
 25 wearing anything, but it will address the

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1 accommodation issue.  
 2 Why should the more visually obvious  
 3 handicapped people get ramps, visually impaired have  
 4 larger font on computer screens, hearing impaired  
 5 have interpreters? Why should this larger segment  
 6 under the title "invisible disabilities" get  
 7 sidelined?  
 8 Let me give you an example of what I  
 9 perceive as the most egregious from a flagrant lie  
 10 that was stated during an open meeting at the PUC.  
 11 On January 9th, I commented, The upcoming 10 days of  
 12 workshops should be archived as the energy choice  
 13 initiative is highly impacted to every Nevadan, and  
 14 they should view the proceedings in order to make an  
 15 informed vote on this constitutional amendment.  
 16 Joey Reynolds, Chair of the PUC stated,  
 17 We don't have the technology. Keep in mind, they  
 18 archive all of their agenda meetings.  
 19 Then on the 16th, he proclaimed, I  
 20 decided that these workshops are important and will  
 21 be archived. How do you get technology in a couple  
 22 of days?  
 23 Everything is being done to suppress  
 24 public comment, public knowledge.  
 25 Number three, when an item on an agenda

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1 is referenced and there is the first comment period  
 2 prior to the item being addressed, just how is the  
 3 public supposed to comment on something that is line  
 4 item for a discussion? We're not mind readers.  
 5 Also, along with the fact that the PUC,  
 6 they have two public comments, but the first one is  
 7 restrictive to the agenda items, but the problem is,  
 8 whatever you say cannot be used to influence them.  
 9 It's only based on file pleadings. What good is it?  
 10 It's worthless.  
 11 CHAIRPERSON BATEMAN: And thank you,  
 12 Ms. DeFazio. Your five minutes are up. Thank you.  
 13 You'll have another opportunity at the end of the  
 14 meeting if you wish to continue.  
 15 Are there any other members of the public  
 16 in Las Vegas who would like to address the task  
 17 force? Okay.  
 18 Moving on to Agenda Item No. 3, which is  
 19 approval of the task force August 17th, 2016 meeting  
 20 minutes, have all the members of the task force had  
 21 an opportunity to review the minutes?  
 22 MR. GUTHREAU: I looked at them. I just  
 23 had a slight change. This is Vince.  
 24 It is just titled as Open Government Task  
 25 Force. It probably should say -- it's just a small

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1 nuance that it's the Open Meeting Law Task Force.  
 2 CHAIRPERSON BATEMAN: Correct.  
 3 MR. RICHIE: Doug Richie. That title was  
 4 titled the Open Government because we discussed  
 5 public records as well as open meeting law.  
 6 CHAIRPERSON BATEMAN: Okay. Thank you.  
 7 MR. RICHIE: Going forward, I don't know  
 8 if we're going to limit ourselves to just open  
 9 meeting law or if we're going to discuss public  
 10 records as well.  
 11 CHAIRPERSON BATEMAN: It will be limited  
 12 to open meeting law for this task force, but my  
 13 understanding is that our office will be having a  
 14 separate sunshine law committee or task force that  
 15 addresses public records as well.  
 16 Do any of the members of the task force  
 17 who were present at the 2016 meeting have any  
 18 proposed changes or amendments to the minutes?  
 19 Yes, sir.  
 20 MR. GOULD: Madam Chair, I just want to  
 21 comment. This is Dean Gould from the Nevada System  
 22 of Higher Education. I was not at that meeting so I  
 23 should probably abstain from voting on it.  
 24 CHAIRPERSON BATEMAN: For the record, I  
 25 was also not at that meeting. I will be abstaining

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1 as well.  
 2 Are there any other members who will be  
 3 abstaining from the vote? Ms. Miller, Mr. Moore,  
 4 Mr. Oh?  
 5 MR. OH: Yes.  
 6 CHAIRPERSON BATEMAN: Yes, sir.  
 7 MR. LARGE: Michael Large. I'll be  
 8 abstaining as well.  
 9 CHAIRPERSON BATEMAN: Okay.  
 10 MR. GUTHREAU: Vince Guthreau. I will  
 11 also be abstaining.  
 12 CHAIRPERSON BATEMAN: Okay. So we have a  
 13 quorum (inaudible).  
 14 MR. GUTHREAU: I wasn't here.  
 15 MS. MILLER: I did one time have to look  
 16 this up, and after Robert Rules, you can still vote  
 17 on it even if you weren't present.  
 18 CHAIRPERSON BATEMAN: Okay.  
 19 MS. MILLER: So if we need to do that  
 20 procedurally.  
 21 CHAIRPERSON BATEMAN: Yes. With that, I  
 22 will entertain a motion on approval of the minutes.  
 23 MR. SMITH: This is Barry Smith. I'll  
 24 move for approval.  
 25 CHAIRPERSON BATEMAN: Is there a second?

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1 MR. RICHIE: Doug Richie. I'll second.  
 2 CHAIRPERSON BATEMAN: All in favor? I  
 3 think we're good with that.  
 4 MS. MILLER: Close enough.  
 5 CHAIRPERSON BATEMAN: Thank you. Moving  
 6 on to Agenda Item No. 4, review of recent state  
 7 court cases on open meeting law and recent open  
 8 meeting law opinions by the office of the Attorney  
 9 General.  
 10 Obviously, the biggest case in terms of  
 11 the open meeting law enforcement unit here in the  
 12 Attorney's General's Office is the Hanson decision  
 13 out of the Supreme Court regarding appeals and other  
 14 legal actions that must be undertaken during public  
 15 meetings.  
 16 The Supreme Court placed a special  
 17 emphasis on those actions involving the use of  
 18 public funds such as entering a litigation, filing  
 19 an appeal, settlements, et cetera.  
 20 The decision on that case was -- the  
 21 respondent on the case did request rehearing. That  
 22 request was denied; however, a request for en banc  
 23 reconsideration was granted last October.  
 24 Oral argument took place on March 5th of  
 25 this year. We are awaiting that decision.

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1 In terms of any significant open meeting  
 2 law opinions by the Attorney General's Office, I  
 3 didn't have anything significant. There were some  
 4 general ideas that came out that I would like to  
 5 address under the discussion on a possible BDR from  
 6 this task force, but I don't see a need to go into  
 7 any of those specific cases unless any of the  
 8 members wish to do so.  
 9 Okay. Then moving on to Agenda Item No.  
 10 5, which is the 2019 OML BDR that may be coming out  
 11 of this task force should we come to an agreement on  
 12 one.  
 13 My goal for this meeting today is to get  
 14 some feedback from all the members of the task  
 15 force. I have some ideas that I don't have a set  
 16 plan of what I would like to accomplish, but they  
 17 are repeated issues that we see through all the OML  
 18 complaints that come to our office, some  
 19 clarifications that I think are necessary in terms  
 20 of definitions, and then just a general discussion.  
 21 Moving forward, my goal is to have our  
 22 next meeting in the next two or three weeks with a  
 23 rough draft BDR for everyone to review.  
 24 We'll get comments and feedback on that  
 25 proposed BDR, revise it, redraft it, and hopefully,

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1 at our third or maybe fourth meeting, adopt that BDR  
 2 and have it prepared.  
 3 The Attorney General has dedicated one of  
 4 his 20 assigned BDR's to this task force to have an  
 5 open meeting law specific BDR going forward next  
 6 session. Whether or not the new Attorney General  
 7 goes forward with it or not, it will be up to him,  
 8 but we can make our best efforts. That is my goal  
 9 today.  
 10 I'll start off just with some general  
 11 ideas. I want any members to jump in if you believe  
 12 I have missed anything, or if we need further  
 13 discussion on any items, and then at the end, I'll  
 14 have just kind of general discussion, issues that  
 15 you see either in representing your public bodies or  
 16 in kind of looking out for the public and openness,  
 17 et cetera.  
 18 Moving forward from that, my first point  
 19 of discussion would be proposed amendments to open  
 20 meeting law definitions.  
 21 Those definitions are contained in NRS  
 22 241.015, and those are in the meeting packets under  
 23 the open meeting law packet itself, which just is a  
 24 current draft of all the open meeting law statutes.  
 25 Under 241.015, the first issue, I would

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1 like to get some feedback on regarding supporting  
 2 materials. This has been an ongoing issue with  
 3 public funds and the topic of discussion of many OML  
 4 complaints.  
 5 We did have recently an open meeting law  
 6 opinion come out of Boulder City regarding  
 7 supporting materials, and in that case, the public  
 8 body had two separate sets of supporting materials.  
 9 They didn't call them that, but they were  
 10 supporting materials for the public and then  
 11 materials included in the meeting binder for the  
 12 members of the body.  
 13 When members of the public requested the  
 14 supporting materials, they only gave out the public  
 15 section and not the private.  
 16 Our office, through our OML open meeting  
 17 law opinion, or I'm sorry, our open meeting law  
 18 manual has set forth a general definition for  
 19 supporting materials. We do not currently have one  
 20 in NRS 241.015.  
 21 The current definition or informal  
 22 definition that our office utilizes is that  
 23 supporting materials include any written materials  
 24 that would reasonably be relied upon by the public  
 25 body in making a decision.

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1 So something along those lines would be a  
 2 recommendation I would make to the group. I would  
 3 like some feedback on it, but to provide some  
 4 guidance to public bodies so that they can either be  
 5 more informed or may be encouraged to not try to go  
 6 around the definitions, I think, would be helpful.  
 7 I don't know if anyone has any  
 8 suggestions on that or any recommendations for that?  
 9 MR. SMITH: This is Barry Smith. Just  
 10 don't limit it to written.  
 11 CHAIRPERSON BATEMAN: Okay.  
 12 MR. SMITH: Because it could be any  
 13 format.  
 14 CHAIRPERSON BATEMAN: I guess, Mr. Smith,  
 15 how would we provide non-written materials to the  
 16 public?  
 17 MR. SMITH: If the board or commission  
 18 received a video as far as their packet or they  
 19 received digital data. Those would be a couple of  
 20 examples I wouldn't want to preclude.  
 21 CHAIRPERSON BATEMAN: Great. Thank you.  
 22 One item that I am sure is going to cause  
 23 some disagreement is we have heard some feedback  
 24 from public bodies, specifically when they are  
 25 hiring for a prominent position within the body,

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1 like let's say, a city attorney or a city manager,  
 2 and they don't have an issue with releasing, let's  
 3 say, the names of the candidates prior to the  
 4 meeting, but they are concerned when they believe  
 5 that having the resumes, having writing samples,  
 6 anything else associated with the application is  
 7 made public two weeks before the meeting, so on, and  
 8 maybe their current employer doesn't realize that  
 9 they are seeking new employment.  
 10 I don't have any experience with that, so  
 11 I would like to get some feedback from the members  
 12 in terms of how you feel about that, if that is  
 13 something that we should consider on the alternate.  
 14 I think it may lead to, and I hate the  
 15 word, but some level of cronyism where you're able  
 16 to kind of handpick someone and not have to  
 17 disclose, so I think it's a balance that I am hoping  
 18 to reach, but I would love to get some feedback on  
 19 that.  
 20 MR. GOULD: This is Dean Gould from NSHE.  
 21 I am very glad you raised it because this is what I  
 22 wrote down.  
 23 I know that my board, this has become an  
 24 issue that is very important, and we try to always  
 25 respect the open meeting law, and we understand the

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1 need for transparency, but I will tell you as  
 2 someone who has been through several searches for  
 3 presidents of the universities as well as the  
 4 chancellor last year, we absolutely, absolutely lose  
 5 many candidates, very well qualified candidates  
 6 because they do not want their names out there two  
 7 weeks ahead of time.

8 They understand and we tell them from the  
 9 very beginning, you will be at a public meeting,  
 10 your resume will be part of it. Your name will be  
 11 in the agenda, the way the law is right now.

12 I know that other states have grappled  
 13 with this. I think Arizona recently grappled with  
 14 this, and they ultimately reached an ability to have  
 15 an exclusion that both respected the intent and  
 16 policy of the open meeting law, but recognized that  
 17 in the real world, especially in the world of  
 18 academics, you're going to get people who will not  
 19 go into a search like this because they don't want  
 20 to lose their jobs.

21 I'm not suggesting that they never get  
 22 published. I have no problem with the idea that  
 23 when we get to the public meeting, but to do it with  
 24 the agenda, which we post our agendas two weeks  
 25 before the meeting. We're posting today for our

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1 June meeting.

2 It has a very, very detrimental effect to  
 3 the point where on the chancellor search, and I can  
 4 say this because this was said at a public meeting,  
 5 the five finalists withdrew for that reason.

6 We had to continue the search. I would  
 7 strongly urge that we at least look at this subject,  
 8 keeping in mind that we do want to respect the  
 9 policy behind the open meeting law.

10 We're not trying to get around it, but  
 11 we're just asking for some kind of relief that will  
 12 not impact our searches so much. Thank you.

13 CHAIRPERSON BATEMAN: Thank you. Does  
 14 anyone else wish to discuss this issue?

15 MS. MILLER: Caroline, on the open  
 16 meeting manual's kind of rough definition, it seems  
 17 it would cover information provided by third  
 18 parties, which is sort of hard to govern, and that  
 19 is -- any time our staff provides our commissioners  
 20 information, that goes out as soon as it's provided,  
 21 given that it's backup, but we don't always know  
 22 when third parties are providing brochures or little  
 23 notebooks, especially like in zoning matters.

24 It seems like it would fall into that  
 25 loose definition.

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1 CHAIRPERSON BATEMAN: My opinion is it  
 2 would if the public body is going to rely on it to  
 3 any degree.

4 One way to maybe resolve that is to make  
 5 sure all the members at least by the time the  
 6 meeting starts have disclosed to you or counsel all  
 7 the materials they have received from third parties  
 8 and have copies, at least one available to the  
 9 public at that time and then provide them upon  
 10 request.

11 I think that would cover you in terms of  
 12 making sure you're in compliance.

13 MS. MILLER: A little hard to police.

14 CHAIRPERSON BATEMAN: Correct, it is, and  
 15 that is -- I mean, that is something we could try to  
 16 refine through this definition.

17 MS. MILLER: Yeah.

18 CHAIRPERSON BATEMAN: Any other  
 19 discussion on supporting materials?

20 MR. RICHIE: Doug Richie. I am going to  
 21 try to define supporting materials. I think what  
 22 you would say is anything that is provided to the  
 23 entire board or a quorum of the board has to be  
 24 disclosed at a public meeting.

25 I think the law and the AG opinions are

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1 kind of clear on how that works.

2 Boulder City should have known better. I  
 3 think it was Boulder. To try to say they have two  
 4 sets of books that they're using to make decisions  
 5 on this, I don't know if -- I think it may cause  
 6 more problems if we try and start creating more  
 7 definition for what supporting material is because  
 8 for instance, the board may independently go out and  
 9 get information, and then when they go to the  
 10 meeting, that information comes out, but again, it's  
 11 not public forum.

12 I don't -- it's going to be very  
 13 difficult, I think, for a public body to be able to  
 14 figure out what their commissioners or elected  
 15 officials are gathering because they don't report to  
 16 us.

17 We don't know what they're doing, but the  
 18 open meeting law is always -- the central concept is  
 19 a quorum. Once there is a quorum to receive  
 20 information, then it's triggered, not necessarily  
 21 that they're all looking at the same Newsweek  
 22 article or latest headline upon which they're making  
 23 their decision.

24 That kind of information will come out in  
 25 the public (inaudible). Yesterday, we have

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1 flooding. We need to address that.  
 2 CHAIRPERSON BATEMAN: Thank you.  
 3 Any other discussion on supporting  
 4 materials? Okay. The next issue I was grappling  
 5 with in terms of quorum, we do have the definition  
 6 of a quorum within 241.015. Issues that have come  
 7 up or questions that our office has received in  
 8 terms of requests for guidance by public bodies have  
 9 included issues raised by vacancies in positions.  
 10 My opinion is if you are a public body  
 11 and you have a vacancy, that vacancy should not  
 12 count towards the quorum, obviously, so it would be  
 13 the existing members of that body. I don't know if  
 14 anyone has any issues with that.  
 15 The second issue regarding quorum that we  
 16 see is when a member or members of the public body  
 17 abstain from the vote, what effect that abstention  
 18 has in terms of establishing a quorum --  
 19 establishing a quorum in terms of taking action and  
 20 approval of any type of agenda item.  
 21 We had an issue with that where maybe  
 22 it's a five-member body. We have had two members  
 23 abstain, so does it require, you know, the three  
 24 remaining members to all vote in favor? Does the  
 25 quorum then go down to three?

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1 My opinion is if there is an abstention,  
 2 that should not count towards the quorum. Again,  
 3 that is up for discussion with the group as a whole,  
 4 so I'll open that up and just kind of get some  
 5 feedback from all of you.  
 6 MS. MILLER: So there is a rule now that  
 7 if it's totally composed of elected officials, the  
 8 number is reduced when people abstain for ethical  
 9 reasons.  
 10 Are you just proposing to apply that to  
 11 all boards?  
 12 CHAIRPERSON BATEMAN: Correct.  
 13 MS. MILLER: That might be a good move.  
 14 CHAIRPERSON BATEMAN: Yes. Thank you.  
 15 Any other comments on that?  
 16 MR. RICHIE: I think legislature created  
 17 what is considered a majority of pass, and I am  
 18 reluctant to say if three of us abstain, then two  
 19 is -- two people can decide. You don't have a  
 20 quorum. You cannot take action on that item.  
 21 For whatever the reason for their  
 22 abstention, maybe they need to talk to the Ethics  
 23 Commission to figure out why they're abstaining.  
 24 You know, the AG has issued opinions that  
 25 unless it's a clear conflict, they should not

Page 24

1 abstain. They should disclose, and to be honest, my  
 2 experience with public officials is if it's a tough  
 3 issue, they like to abstain, but that is not what  
 4 they're elected for.  
 5 CHAIRPERSON BATEMAN: Okay.  
 6 MR. RICHIE: Again, I think it's  
 7 problematic if we change the definition of a quorum  
 8 by that unilateral action of an elected official.  
 9 Instead of going from five, it goes to two because  
 10 three decide to abstain.  
 11 MALE SPEAKER: (Inaudible).  
 12 MR. RICHIE: Exactly. Sorry. Go ahead.  
 13 MR. LYONS: Sorry. One of the things  
 14 you'll see if you change a rule like that --  
 15 CHAIRPERSON BATEMAN: I'm sorry. Sir?  
 16 MR. LYONS: Sorry. Kevin Lyons.  
 17 CHAIRPERSON BATEMAN: Thank you.  
 18 MR. LYONS: I was at the last meeting.  
 19 One of the problems that you will see if  
 20 you change a rule like that, you'll see strategic  
 21 abstention, so you'll end up with a lot of  
 22 abstention for exactly the reason that was just  
 23 pointed out, so something that works against that  
 24 rule. Thanks.  
 25 CHAIRPERSON BATEMAN: Thank you.

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1 MR. GOULD: I just want to say -- this is  
 2 Dean Gould for the record.  
 3 I totally understand where you're coming  
 4 from. Since I work and represent for an elected  
 5 body, I don't have that issue in the same way.  
 6 I would just say that the problem I see  
 7 is that you could have legitimate abstentions that  
 8 then create a situation where you can't vote on a  
 9 matter because you can never approve it.  
 10 It makes the matter -- it's untoward. My  
 11 thought is we have 281A, which as you indicated, and  
 12 I agree with you, and I often will say to my  
 13 clients, You cannot abstain just because you aren't  
 14 comfortable. You have to have a true conflict.  
 15 Otherwise, you're not fulfilling your ethical  
 16 obligation under 281A.  
 17 I think it's incumbent upon that board  
 18 staff to educate their people about that, but I am  
 19 concerned about putting us in a position where we  
 20 just can't vote, if we can't vote without a majority  
 21 of those who can vote. Thank you.  
 22 MS. MILLER: I think that is the way the  
 23 current rule works. Before it counts -- before it  
 24 reduces a quorum, they have to have a written  
 25 opinion from an official legal advisor to that board

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1 saying that it's required for ethical reasons rather  
 2 than they just don't want to participate or they're  
 3 doing some gamesmanship, which I am sure we have all  
 4 seen.

5           There are restrictions on that rule that  
 6 protect it from abuse, and I did have a situation at  
 7 the county before where so many people were related  
 8 to the issue, a person's right to have his or her  
 9 zoning application would not have been able to go  
 10 forward, but for this type of a rule.

11           CHAIRPERSON BATEMAN: Mr. Richie, would  
 12 it, I guess, help resolve your concerns if we had a  
 13 similar requirement in there?

14           I would like something that involves the  
 15 Ethics Commission, like you noted, rather than just  
 16 legal counsel giving his or her own opinion, maybe  
 17 in consultation with the Ethics Commission, and they  
 18 determine an abstention.

19           At that point, the quorum would reduce,  
 20 or would you prefer just keeping it as it is?

21           MR. RICHIE: For keeping it as it is. If  
 22 you're talking about as a prerequisite to changing  
 23 the quorum requirements, getting some sort of letter  
 24 from Yvonne, from the Ethics Commission, we're going  
 25 to dramatically increase their workload if every

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1 time there is an issue regarding a quorum, they have  
 2 to get a letter from the Ethics Commission saying,  
 3 Yeah, we feel it's a bona fide reason to abstain.

4           There is a lot of unintended  
 5 consequences, I think, from this issue.

6           Again, if it's a zoning matter, to go  
 7 back to the example, it's a good example, but again,  
 8 you're only required to abstain if there is a  
 9 financial interest.

10           We're still a rural state. We have a lot  
 11 of small towns, but I can't imagine that there would  
 12 be so many abstentions because it's their sister or  
 13 brother on this particular zoning matter that you  
 14 can never have a decision on that particular issue.

15           I mean, if it's that incestuous, then  
 16 there are bigger problems than jurisdiction.

17           CHAIRPERSON BATEMAN: Okay. I think that  
 18 is all I have on definitions, unless any of the  
 19 other members have any specific definition would you  
 20 like to discuss or any additions that you propose to  
 21 that list.

22           MR. SMITH: This is Barry Smith. Yeah, I  
 23 would like to consider, see if there is any interest  
 24 in figuring the definition of meeting, basically,  
 25 the nonmeeting aspect of that number two on the

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1 meeting with the attorney.

2           I am not trying to -- I tried to look  
 3 into the statute why that felt -- why it was  
 4 described that way, why it fell under, it's not a  
 5 meeting rather than it's a meeting, but it could be  
 6 an executive session; it's an exception to the law.

7           If there is any interest on the  
 8 committee, I would raise that as a potential issue  
 9 to examine.

10           MR. GOULD: May I comment on that issue?  
 11 This is Dean Gould from NSHE.

12           As long as the exception stays in, are  
 13 you suggesting the exception may just come in in a  
 14 different route versus under the definition of  
 15 meeting, but keep that exception in? The exception  
 16 itself is very important.

17           MR. SMITH: This is Barry again. Yes,  
 18 essentially, but I would -- my concept of it is  
 19 that -- there are other examples in other states --  
 20 that it would be an executive session or closed  
 21 session as part of a regular meeting, that it would  
 22 be noticed, that there is a potential for -- that  
 23 there would be some record and an announcement of  
 24 what the topic was, you know, a general description  
 25 of the topic, This is for pending litigation, to

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1 formalize the process rather than no notice, no  
 2 indication of who was in attendance.

3           I think it does raise an issue especially  
 4 when you see issues carried -- potential litigation  
 5 may go on for years that carries over from one board  
 6 to another and so on, as to whether there was any  
 7 record of who was there and how many meetings took  
 8 place, when they took place, that kind of thing.

9           That is what I would like to explore, not  
 10 that there be -- not that you do away with the  
 11 opportunity for a board to discuss in private  
 12 pending litigation through attorneys.

13           MR. RICHIE: Doug Richie. What Barry is  
 14 talking about is a distinction between closed  
 15 session and a non -- a meeting that is exempt from  
 16 the requirements of the open meeting law.

17           Douglas County has a grand jury that came  
 18 out. There was a big discussion on non-meetings and  
 19 closed sessions.

20           I think it's important that we continue  
 21 to exempt it from the open meeting law, just as if  
 22 you have two members, less than a quorum, it's not a  
 23 meeting for purposes of the open meeting law.

24           You don't have to agendize two members of  
 25 the commission got together to discuss something



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1 that is coming up. Again, the key is a quorum.  
 2 In this case, I didn't bring it with me,  
 3 but I have the minutes from an earlier open meeting  
 4 law task force, but it discusses this very issue.  
 5 They discussed why do we have this, who  
 6 can be in those meetings? It all comes back to the  
 7 traditional privilege to have confidential  
 8 communications with your attorney. That would  
 9 include -- you don't go out and say it to the world,  
 10 we're having a settlement conference about this  
 11 litigation.  
 12 That is why I think it's important that  
 13 we keep it exempted from the open meeting law. As a  
 14 practical matter, sometimes, for instance, a judge  
 15 may request a settlement conference. You have to  
 16 consult with your client. You don't have a lot of  
 17 time to post, We're going to have a settlement  
 18 conference, and to be honest, I'm not sure how  
 19 helpful that would be to the public.  
 20 The notice you receive is the board is  
 21 going to have a closed session to discuss pending  
 22 litigation.  
 23 Does that help transparency? I think the  
 24 key is that once any settlement proposal is  
 25 approved, that happens at a public meeting, and the

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1 public can see the proposed settlement agreement.  
 2 They can ask questions about it. It's proprietary.  
 3 That is how the open meeting law, at  
 4 least in my view, has always been structured. All  
 5 those agreements, like staff thinks that it happened  
 6 between staff and, say, the county manager, that is  
 7 not subject to the open meeting law, all that  
 8 behind-the-scenes stuff, but when there is a  
 9 decision made, when there is some action to be taken  
 10 by the body, that has to occur in a public setting.  
 11 MR. GOULD: This is Dean Gould. I  
 12 absolutely agree with you, Mr. Richie.  
 13 I do this all the time, and it sounds  
 14 like you do. It would be -- we wouldn't be able to  
 15 function, and it would potentially, aside from  
 16 potentially violating attorney-client privilege, it  
 17 would very much expose the potential for the legal  
 18 strategy to have to go out, and I'm involved in one  
 19 right now, and it would just be devastating to our  
 20 whole case if we had to say to everyone, No, we  
 21 can't brief you because we have to notice it on an  
 22 agenda.  
 23 I mean, how many times can these people  
 24 meet, realistically? You have to be careful to  
 25 always stay within the open meeting law, never

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1 deliberate in those briefings, simply provide  
 2 information from the attorneys, but I absolutely  
 3 agree.  
 4 It's vital to the ability for the entity,  
 5 the group, to function to have that exception to the  
 6 open meeting law.  
 7 MR. RICHIE: If I may, Doug Richie again.  
 8 There is another exception under 281 labor  
 9 negotiations that is exempt as well.  
 10 To be honest, when you're having this  
 11 kind of dialogue back and forth, you make a  
 12 proposal, they make a counter proposal. You have to  
 13 get back to the board if it's outside of the scope  
 14 of your authority, especially for big ticket items  
 15 or very controversial issues. You have to meet with  
 16 your board fairly quickly on numerous occasions to  
 17 finalize the scope of the proposed deal.  
 18 Noticing it is going to dramatically --  
 19 you said it very well. It will make it impossible  
 20 for public bodies to conduct their business without  
 21 being severely handicapped compared to their  
 22 opposition.  
 23 CHAIRPERSON BATEMAN: How would the group  
 24 feel -- I guess my concern with the definition as it  
 25 is now, and that is based just on feelings that I

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1 see arising out of the attorney-client meetings, and  
 2 this isn't really any of the local governments, but  
 3 it's more the smaller public bodies, where the  
 4 discussion seems to go past the deliberation, and I  
 5 can't prove that.  
 6 That is -- you know, because they can  
 7 claim attorney-client privilege, but there is an  
 8 ongoing investigation right now involving a public  
 9 body. There was a quorum of members at an  
 10 attorney-client session, and it is unclear whether  
 11 there was some sort of delegation of duties or  
 12 delegation of authority to a staff member or whether  
 13 the public body itself took an action during that  
 14 meeting, and I can't act -- request for responses  
 15 meet with a returned brief stating, We cannot  
 16 disclose what happened during this meeting because  
 17 it's privileged by -- you know, it's attorney-client  
 18 privileged.  
 19 There is not much more I can do as the  
 20 investigator. I have -- I can presume. I can  
 21 infer, but really, it's difficult, and so that is  
 22 the -- it is definitely concerning.  
 23 I don't know what the group would think  
 24 in terms of refining the deliberation and allowing  
 25 the group to deliberate, if it would be onerous to

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1 have it be a -- where the attorney can't provide as  
 2 much information as the attorney or attorneys need  
 3 to the members in determining the course of  
 4 litigation, et cetera, but striking the deliberation  
 5 towards a final action.

6 I haven't represented that side. I do  
 7 need some feedback on that, but that is something  
 8 that I can share with the group that has been  
 9 concerning that there -- you know, that it's being  
 10 used as a cover or as a shield for the public body  
 11 where it leaves us in a difficult spot.

12 It leaves the public in a difficult spot  
 13 where the public doesn't know when an action took  
 14 place, if there was an action, if it was staff  
 15 taking its own initiative in doing something.

16 It's, you know, the most concerning case  
 17 I have had since I have, you know, headed up the  
 18 enforcement unit here, and so I really am not -- I  
 19 am not being facetious. I really do need the  
 20 feedback on this one because I am at a loss.

21 I don't know how to approach, you know,  
 22 resolving this issue, or hopefully, clarifying it at  
 23 least and striking that balance.

24 MS. MILLER: I think it's important to  
 25 keep the ability to deliberate among the members

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1 because that gives the attorney some guidance.  
 2 I think the potential for abuse is when  
 3 they just say it's for pending litigation. They're  
 4 really talking about something else.

5 Would recording it, preserving that,  
 6 assist the Attorney General's Office?

7 CHAIRPERSON BATEMAN: That was -- I mean,  
 8 that was one thing I was considering, almost  
 9 treating it like minutes, but they would be, just as  
 10 the information during the closed session, it's  
 11 private, and it's not required to be included in --  
 12 as part of a meeting as a whole, you don't have to  
 13 include it in the minutes.

14 The supporting materials are not open to  
 15 the public, et cetera, but I understand issues that  
 16 may come from that as well.

17 MR. GOULD: I would only say we would  
 18 never allow deliberation. I think we're not allowed  
 19 to do deliberation.

20 MS. MILLER: The statute allows it.

21 CHAIRPERSON BATEMAN: You can reach to  
 22 deliberation.

23 MR. GOULD: To deliberate, but we don't  
 24 ever allow our members to -- we just use it as a  
 25 briefing. We treat it -- it's vertical. It's not

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1 horizontal.

2 We only talk about what the case is. We  
 3 answer questions perhaps, but we do not allow  
 4 deliberation, okay? I would never want them  
 5 deliberating because then you could cross the line.

6 I am concerned. Even if we took minutes  
 7 or took a recording, I think the minutes -- someone  
 8 else, whether it's your office or anyone else,  
 9 listens to that, I think you have potentially blown  
 10 your attorney-client privilege.

11 MR. RICHIE: I would agree that you would  
 12 have waived the attorney-client privilege unless we  
 13 make some other change to NRS that protected that  
 14 attorney-client privilege.

15 Here is the thing, though. In your  
 16 example, if staff received direction or delegation  
 17 that is easy. You ask staff. Why did you do this?  
 18 What authority did you have to do that? Well, I was  
 19 told to do this by the board. When?

20 I mean, there is -- I understand what  
 21 you're saying. You have to rely on the good faith  
 22 of the people in that meeting.

23 If you have a bunch of bad actors, it's  
 24 going to be hard to prove that except for any  
 25 actions that they decide to take within that, to

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1 become effective, has to go out and something has to  
 2 be done.

3 Once it's done, and you can see that,  
 4 then you can follow and say, Well, why did you do X,  
 5 Y, Z? Who told you to do X, Y, Z?

6 CHAIRPERSON BATEMAN: I'm sorry. Go  
 7 ahead.

8 MR. LYONS: Kevin Lyons again. There is  
 9 one other issue potentially you could raise there is  
 10 that when the attorney, and I think I know the case  
 11 you're referring to without using it by name.

12 When the attorney is using that in  
 13 assisting to break the law, you do have a waiver of  
 14 privilege. So at the attorney level, you can  
 15 certainly question that and make that challenge.

16 In the case that you're referring to, I  
 17 think that's an easy one. Like you said, it's bad  
 18 actors, so it's an outlier. The general case is  
 19 generally going to work pretty well.

20 On deliberate, I believe the laws,  
 21 deliberate towards is included in the meeting, and  
 22 it occurs to me that might be a place where you can  
 23 draw the line. If you are doing an information-only  
 24 meeting, which is clearly the way that some people  
 25 treat it, if there is deliberation toward but not

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1 actually action, you can maybe draw a line that that  
 2 requires an extra level of documentation or  
 3 something.  
 4 CHAIRPERSON BATEMAN: Thank you.  
 5 MR. RICHIE: One thing you should  
 6 remember is for this exemption to occur an attorney  
 7 has to be present.  
 8 An attorney can face disciplinary action  
 9 for knowingly assisting in the violation of the law.  
 10 If they're doing more than what the purpose of that  
 11 meeting is, then unless you stop it, you are helping  
 12 them commit a crime.  
 13 I don't know of any attorney -- well, I  
 14 have heard of that, but I don't know that they want  
 15 to give up their license so these guys can do a  
 16 backroom deal.  
 17 CHAIRPERSON BATEMAN: Yeah.  
 18 MR. RICHIE: Particularly government  
 19 attorneys.  
 20 CHAIRPERSON BATEMAN: Well, this is --  
 21 MR. RICHIE: There are better ways to  
 22 make money.  
 23 CHAIRPERSON BATEMAN: This is a very  
 24 unique case that seems to -- I'm just going to stop  
 25 there.

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1 It's an issue where I think we have now a  
 2 hindrance because that attorney is claiming  
 3 privilege for everything that happened during that  
 4 meeting, including not allowing discussions with any  
 5 of the members who were present, not -- unless the  
 6 attorney is present in the room, not allowing any of  
 7 the staff members to cooperate with the  
 8 investigation absent his attendance at that meeting.  
 9 It's becoming where -- I agree -- it  
 10 becomes where we, our office is inhibited from even  
 11 completing a full investigation. It's something we  
 12 have consulted with the bar counsel's office about.  
 13 Is this something where I, personally, or  
 14 one of the deputies in my division, would we be  
 15 violating, you know, that privilege by going to this  
 16 specific members? Who does the attorney represent?  
 17 Is it the body as a whole, or is it each individual  
 18 member or both?  
 19 It's become quite an issue, and I think  
 20 we have a similar issue that has come up again with  
 21 a different body, and so that is where my concern is  
 22 coming from.  
 23 I agree with you. This is not a  
 24 prevalent issue. I think it's very unique, but it's  
 25 concerning that maybe other bodies are learning how

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1 to conduct their meetings in this way.  
 2 I will take that --  
 3 MR. GOULD: May I ask you one question  
 4 without going into the particulars of your  
 5 situation?  
 6 CHAIRPERSON BATEMAN: Yes.  
 7 MR. GOULD: Are those -- is that a  
 8 situation or situations where the ultimate decision  
 9 was not made at a publicly agendized meeting?  
 10 CHAIRPERSON BATEMAN: That is accurate.  
 11 MR. GOULD: Okay.  
 12 CHAIRPERSON BATEMAN: Yes.  
 13 MR. GOULD: Would you feel the same way  
 14 if, to go off from what Mr. Richie said, if they had  
 15 their briefing, and I understand it's difficult for  
 16 your office because you don't know what goes on in  
 17 those briefings, but then it goes to a public  
 18 meeting as it's supposed to do where it's agendized,  
 19 discussed and voted on? That is different factually  
 20 than what you're talking about?  
 21 CHAIRPERSON BATEMAN: Correct. I guess I  
 22 have it lower in my list, but it is interconnected  
 23 with what, if any, limits we should put on the  
 24 ability of a public body to delegate to a city  
 25 manager, an HR director, et cetera, in terms of

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1 taking action.  
 2 Is it -- if we are considering the use of  
 3 public funds, does that make it where the public  
 4 body should not be able to delegate, or are we going  
 5 to consider something such as the State Board of  
 6 Examiners that reviews all the contracts and  
 7 approves them, where we set a cap of, let's say,  
 8 \$50,000.  
 9 Any contract under \$50,000 in value can  
 10 be approved by the clerk of the board but are  
 11 presented on a subsequent meeting agenda for the  
 12 board's review, and you know, as an information  
 13 item, and the public is able to come forward and  
 14 comment on that?  
 15 Also, a tricky issue, but I think it's  
 16 one where -- I don't want to say it goes around the  
 17 inherent purpose of the open meeting law, but at the  
 18 same time, if there's -- if a public body sets some  
 19 astronomical number like \$200,000, and as long as  
 20 something doesn't exceed \$200,000, we're going to  
 21 delegate that authority to a staff member, or you  
 22 know, someone, or counsel, et cetera, to initiate  
 23 that or represent us, what effect does that have if  
 24 it's not at any time brought forward to the body as  
 25 a whole unless it's going to be -- you know, to

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1 exceed that amount?

2 MR. RICHIE: This is basic governance.

3 The board of county commissioners, in my case, has

4 authority based on the people elected them to run

5 the county.

6 If they want to delegate to the county

7 manager the authority to buy pencils without coming

8 to them, they have that right. If they want to

9 delegate to him the right to approve any contracts

10 of under \$100,000, they have that right.

11 I would say that they have the right to

12 delegate to him their authority to do anything under

13 a million or \$10 million, or basically, you do

14 whatever you want and just report to us what you

15 think is important.

16 So the open meeting law is -- again, it's

17 where there is a quorum of elected body for taking

18 action, deliberating or taking action.

19 The public had their shot when they --

20 the board met, deliberated and passed a resolution

21 or ordinance delegating to the county manager

22 authority to do whatever it is he is authorized to

23 do.

24 I think it's inappropriate for the state

25 or this body to say, Oh, wait a minute, that is --

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1 we think that's too much authority, especially in

2 the context of the open meeting law.

3 Once the board, the elected board decided

4 this is how we want to -- this is the authority we

5 want to grant to our county manager or chancellor or

6 whomever it may be, that is the end of the matter.

7 In our particular case, due to the

8 decision that came from the Supreme Court, our board

9 passed a resolution saying if it's within your

10 financial authority, which is \$50,000, Douglas

11 County, you have the right to settle that in

12 consultation with the district attorney, and then

13 any one of us members can ask that that be put on

14 the agenda if they want to, but we get sued a lot.

15 A lot of public bodies get sued all the

16 time. In fact, I have a settlement conference

17 tomorrow where a convicted drug dealer is saying he

18 didn't receive proper medical care in jail.

19 You know, it's a public record. It's a

20 \$500 offer. It would be crazy for us to have to go

21 to the board every time we have one of these things.

22 My point is, who gets to decide what is

23 important? Is it us? \$500? \$1,000? \$10,000? No,

24 it's the elected body who decides what is

25 significant to us.

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1 In Douglas County, it's \$50,000.

2 Somewhere else, it may be five.

3 MR. LYONS: To the governance 101 issues,

4 I think there are two things that are typically

5 confused on these issues.

6 One is the appropriation of funds, and

7 second, within that is the ability to authorize

8 contracts.

9 So only the public body -- the public

10 body has to authorize every dollar of funds that is

11 spent, and that has to be either as a separate

12 business item or it can be as a consent item or it

13 can be as part of a line item in a budget that they

14 approve every year, right, just as a policy,

15 essentially a standing order to do stuff.

16 What you see as a problem and a loophole

17 and why you have these created at the state level is

18 because just as people may abstain strategically or

19 just because they don't want to deal with it, boards

20 have a fiduciary duty to delegate. They will

21 delegate beyond what they should be doing, and so

22 then -- I mean, it's -- by the way, it's also used

23 to deliberately circumvent the open meeting law.

24 Hey, go spend a million dollars on

25 whatever you want. Obviously, the public doesn't

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1 know what that is, and so it hasn't been authorized.

2 If it's line items or 500, go do this

3 \$550,000 contract or this project that is defined as

4 one thing, then the board is actually saying, Okay,

5 take public money, do this with it to serve the

6 public, but when you get around and try to find the

7 loopholes where you say, Oh, well, you can do

8 whatever you want with \$1 million. Well, you can't,

9 right, because no staff member can unilaterally

10 authorize the expenditure of public money. Only the

11 body can, right?

12 So that is really the way to sort of

13 balance both of those perspectives and drill that

14 into what the real issue is. Has the money been

15 approved? The numbers that are over 50 are actually

16 approved twice. They're approved once as a budget

17 and then the actual contract when they find the

18 vendor.

19 The sub \$50,000 is only approved once by

20 the board, and then the staff has been delegated to

21 the (inaudible) on it.

22 MR. RICHIE: Also, in every meeting, the

23 county treasurer publishes all the claims against

24 the county, the body.

25 So again, that is difficult, but a person

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1 who is interested can go through and go through  
 2 every one of those line items and say, What is the  
 3 \$50,000 check for, or \$30,000?  
 4 Again, it goes back to who gets to decide  
 5 what is material. Five grand? 500? \$5,000? The  
 6 elected body is -- they are responsible to the  
 7 people who elected them, and if they're poor  
 8 stewards of the people's money or they're not  
 9 transparent, the people will let them know.  
 10 MR. LYONS: Yeah, but they do need a  
 11 tangible action at that point.  
 12 MR. RICHIE: (Inaudible).  
 13 MR. LYONS: Certainly, yeah, exactly.  
 14 The elections aren't very good.  
 15 You certainly wouldn't hire a broker  
 16 based on the ability to have an election and fire  
 17 them two years later, right?  
 18 CHAIRPERSON BATEMAN: All right. Any  
 19 other discussion on this issue? Okay. I'm going to  
 20 have a lot of fun trying to draft this language.  
 21 Thank you all.  
 22 In terms of possible penalties for open  
 23 meeting law violations, I know this comes up pretty  
 24 much every two years prior to the BDR being drafted.  
 25 In that sense, trying to provide some

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1 teeth to a finding of an open meeting law violation,  
 2 as of now, if there isn't an action to void or there  
 3 isn't an action where we're requiring a body to take  
 4 corrective action, the only teeth that our office  
 5 currently has is to require a public body to place  
 6 an item on its next agenda and acknowledge the fact  
 7 that we found an open meeting law violation.  
 8 That is the extent of what we can do,  
 9 absent going to court.  
 10 So I know in the past, there is some  
 11 issues where there were settlements. There were  
 12 some fines assessed. I don't really know where that  
 13 authority came from. Certainly, that is not the  
 14 practice as of now.  
 15 But that is something that our OML  
 16 enforcement unit has been discussing. Would it cut  
 17 down, and I say this with the knowledge that for the  
 18 most part, it's a handful of public bodies that have  
 19 the majority of complaints filed against them.  
 20 They are bodies that, you know, in my  
 21 opinion, are either advised incorrectly, or they're  
 22 just kind of actively seeking some roundabouts, and  
 23 it's really -- you know, I would say maybe three or  
 24 four, and the problem is -- it's gotten to the point  
 25 where we find an open meeting law violation and they

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1 laugh it off during their meetings or they disparage  
 2 the deputy who wrote the opinion as not knowing what  
 3 he or she is talking about.  
 4 When it's your fifth violation in the  
 5 last year, it's hard because there is nothing else I  
 6 can do other than make the wording even angrier in  
 7 our opinion and say, you know, we really think you  
 8 should get open meeting law training, and that is  
 9 something we offer.  
 10 Every time we find an violation, we offer  
 11 to come out, conduct a training for the members of  
 12 that body, legal counsel, whoever wishes to attend,  
 13 but that is it. That is all we can do unless we  
 14 want to go to court.  
 15 Most of the violations we find, there is  
 16 no action to void. There is no corrective action to  
 17 require.  
 18 So I don't know -- it wouldn't be the  
 19 case where it's just, you know, the first time a  
 20 staffer maybe forgot to send it out to the LISTSERV  
 21 or something along those lines, a technical  
 22 violation, absolutely.  
 23 Are we going to bring the hammer down?  
 24 Of course not, but are we going to force them to  
 25 acknowledge it, and if there was action taken, would

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1 we hope that they would correct it and put it back  
 2 on their agenda, and allow the public to  
 3 participate, of course. We see that all the time.  
 4 I say this with the knowledge that most  
 5 public bodies, when we issue a violation or advise  
 6 them of an action, are very willing to comply or  
 7 want to work with us to learn it or ask us at that  
 8 point to come in and train them again or train their  
 9 staff.  
 10 We're happy to do that, but there are  
 11 those handful of bodies where we would like to have  
 12 some more teeth to our findings. I just don't know  
 13 what the group would feel about that, whether it be  
 14 a fine, whether it would be forced training, whether  
 15 it would be, you know, someone from the office  
 16 being, participating not in the setup for the  
 17 meeting, but attending the meeting perhaps and  
 18 helping advise counsel.  
 19 I just don't know what the parameters  
 20 would be and what the group thinks about that.  
 21 MS. MILLER: Are you thinking like an  
 22 administrative fine?  
 23 CHAIRPERSON BATEMAN: Correct.  
 24 MS. MILLER: So you didn't have to go to  
 25 court? Sort of like the Ethics Commission does?

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1 CHAIRPERSON BATEMAN: Correct, yes.  
 2 MS. MILLER: I think that is  
 3 unobjectionable, really.  
 4 CHAIRPERSON BATEMAN: Yeah.  
 5 MS. MILLER: Because sometimes as an  
 6 attorney representing boards, it's easier for me to  
 7 get compliance, quite frankly, if I say, you know  
 8 they can fine you, and the statute requires that you  
 9 pay that individually, that the governmental entity  
 10 doesn't pay it, is something that gets their  
 11 attention.  
 12 MR. GOULD: I guess as long as it's  
 13 stratified, so as you're saying, whatever you're  
 14 going to do meets the crime, so to speak, I don't  
 15 know that I would have a real problem with that. I  
 16 obviously would want to see it at a tangible level.  
 17 MS. MILLER: Some sort of willful --  
 18 CHAIRPERSON BATEMAN: Yeah.  
 19 MR. GOULD: I know that I will have to --  
 20 not that I have to do it a lot, but I will  
 21 reiterate, particularly when I have newly elected  
 22 regents, I will do a whole orientation just on this,  
 23 and I will tell them that there are criminal  
 24 penalties. That usually gets them right there, that  
 25 it can void the action, so any action you take at a

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1 meeting could be voided.  
 2 I mean, 99 percent of public (inaudible),  
 3 they want to comply, so if they're not complying,  
 4 it's usually out of ignorance. You'll have a  
 5 handful of people who will willfully, but it's very  
 6 rare, I find.  
 7 CHAIRPERSON BATEMAN: Okay.  
 8 MR. GOULD: I don't think I would object  
 9 to something that is reasonable and staggered, so  
 10 it's not first time you do something, you're hit  
 11 with this huge fine or something.  
 12 MR. RICHIE: Doug Richie. The last task  
 13 force meeting with Brett and George Taylor, we had a  
 14 lengthy discussion about different penalties that  
 15 are available.  
 16 In addition, personally, I think NRS  
 17 241.036 void, that is a pretty big one. You're  
 18 joking about it, but guess what, (inaudible)  
 19 everything, whatever it was.  
 20 But NRS 241.040, it's a \$500 -- it's a  
 21 misdemeanor, and it's a fine up to 500 bucks for  
 22 willful violation. Now, again, willful is tough to  
 23 prove. If they're laughing about it, most judges  
 24 are not going to find that very funny.  
 25 Then, also, under NRS 197.220, every

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1 public officer or person that shall willfully  
 2 disobey any permission of law shall be guilty of a  
 3 misdemeanor, and that's punishable up to six months  
 4 in jail or \$1,000.  
 5 So whenever I do my open meeting law  
 6 training, I let them know this is not funny. It's  
 7 not -- it's very serious. If you're doing this  
 8 intentionally, that is when you can get into real  
 9 trouble.  
 10 If you just make a mistake, you know, we  
 11 correct the mistake, we learn, we move on.  
 12 What you're talking about is willful  
 13 misconduct where they're joking about it, and there  
 14 is plenty of damage right now.  
 15 MS. MILLER: But the problem with --  
 16 MR. RICHIE: I'm not opposed to  
 17 administrative penalties, but believe me, going to  
 18 jail and having that on your record when you go for  
 19 reelection is a lot bigger than having to have to  
 20 pay a \$1,000 administrative assessment.  
 21 MS. MILLER: The problem in Clark County  
 22 is that misdemeanors, whether or not they're being  
 23 put in jail, quite frankly, take so long to process.  
 24 Some of these offenders are out of office  
 25 by the time it would ever get to court. They know

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1 that. They're not -- they're much -- I think the  
 2 last time I did a training on this, I said, When is  
 3 the last time everybody was ever prosecuted?  
 4 Some of them that have been around are  
 5 aware of that. They're much more aware of the fact  
 6 that you can get an administrative penalty a lot  
 7 quicker, maybe even before filing for their next  
 8 office.  
 9 In fact, I can't remember the last time  
 10 that the AG brought an action, a criminal action.  
 11 CHAIRPERSON BATEMAN: I don't recall it  
 12 having taken place. Yeah, all right.  
 13 Okay. So I will consider some language  
 14 in terms of maybe administrative penalties. We'll  
 15 see what the group thinks about the language, and we  
 16 can always strike whatever we need or amend it.  
 17 If there isn't any more discussion on  
 18 that, I will move on to complaint submissions, and  
 19 timelines for complaint submissions.  
 20 One issue that our office is dealing with  
 21 is the very limited timeframes in terms of, quote,  
 22 unquote, prosecuting these cases.  
 23 I understand, Mr. Richie, the NRS states  
 24 that any action taken in violation of the OML is  
 25 void; however, our office to get that void would

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1 then have to go to court. We would have to initiate  
 2 a lawsuit within 60 days, and we would have to go  
 3 through that full process.  
 4 Our problem right now is the 60 days  
 5 starts to run on the date of the violation, so on  
 6 the date that, let's say, a meeting occurred in  
 7 violation, on the date that maybe the members of the  
 8 body met and exceeded a non-meeting exemption, et  
 9 cetera. We have had multiple complaints come in  
 10 from the public where the public either, you know,  
 11 was compiling information, and thus, waited 45 days  
 12 past the meeting date to submit their complaint, or  
 13 they found out about a violation well in excess of  
 14 the 60 or even 120 days, and our hands are tied at  
 15 that point.  
 16 I am not trying to say we shouldn't have  
 17 time limits because I don't want a complaint coming  
 18 in from 2005, and we have had those where we just --  
 19 there's nothing for us to do.  
 20 All the members of that body are now  
 21 different electeds, et cetera, but considering some  
 22 amendments to those 60- and 120-day deadlines, or  
 23 allowing a provision where in extraordinary  
 24 circumstances there would be an extension of the 60-  
 25 and 120-day deadlines.

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1 I don't know what the group feels about  
 2 that, but our office has experienced it. It has  
 3 been very difficult. We had -- just this year, we  
 4 have had a couple of cases where we haven't received  
 5 a complaint until 90 days out, and there was action  
 6 taken, and there is nothing we can do other than to  
 7 say, This was a violation. We are angry about it,  
 8 but we have nothing else to do that we can do.  
 9 Additionally, we want to provide public  
 10 bodies enough time to respond if they have a  
 11 specific -- going back to the delegation of  
 12 authority, or if they have a specific statute or  
 13 county ordinance or something else that allows a  
 14 certain action. We obviously want that information  
 15 as well when we're drafting our opinions.  
 16 We don't want to issue something without  
 17 providing everyone an opportunity to respond, and so  
 18 our timeframe is -- usually, we try to give two  
 19 weeks to a month to a body for affidavits or  
 20 anything else they want to submit, but oftentimes,  
 21 that is just not something that we can do.  
 22 We had an issue just recently where we  
 23 could only give the public body a week, and that  
 24 left us with two days to decide whether or not we  
 25 were going to file that complaint, and luckily, the

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1 information they provided was enough where we  
 2 realized we're good, but that puts everyone, I  
 3 think, in a difficult position.  
 4 So I don't know in terms of extending the  
 5 timelines completely or writing an exception to  
 6 those timelines would work, and how the group feels  
 7 about that.  
 8 MR. OH: This is Michael. The concern I  
 9 would have with extending the deadlines is if you  
 10 would have someone that is just holding on to  
 11 information as a strategic purpose, for whatever  
 12 reason.  
 13 If the person, elected official is up for  
 14 reelection and is about to file, then we're going to  
 15 have complaints coming on beyond the date where -- I  
 16 mean, it's not fair to the elected officials, and we  
 17 can never tell whether or not, you know, there is  
 18 going to be a complaint, and you know, fully have to  
 19 comply and work with the AG's Office.  
 20 So that would be my comment on just a  
 21 blanket extension of the time. I think it's good to  
 22 have some timelines, but I just -- you know, that  
 23 would be my concern.  
 24 MS. MILLER: I would have a concern on  
 25 actions brought to declare something void.

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1 CHAIRPERSON BATEMAN: Yes.  
 2 MS. MILLER: Because if it's a contract,  
 3 there is a third party to execute that contract. I  
 4 think the extension is a lot more viable when you're  
 5 pursuing administrative penalties against individual  
 6 boards or the members of the board.  
 7 MR. GOULD: I absolutely agree with that.  
 8 I was going to say that I would also say, not to  
 9 minimize the need for the public to have time, but  
 10 in the examples you're giving, it's because  
 11 people -- the public is sitting, and that is what is  
 12 causing the pressure.  
 13 At some level, I think the public needs  
 14 to be aware or needs to be charged with being aware  
 15 of what those timelines are.  
 16 I'm sure there is something on the AG's  
 17 website that says this.  
 18 CHAIRPERSON BATEMAN: Yeah.  
 19 MR. GOULD: That seems -- what I'm  
 20 hearing you say is that is where the pressure is  
 21 coming on you, understandably. If someone waits to  
 22 day 45 or 50, you're now very compressed as is the  
 23 public body that you're dealing with.  
 24 I think the public has to take some  
 25 responsibility that if they believe there has been a

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1 violation, they need to timely submit it, and maybe  
 2 the other way to do it is to put a shorter timeframe  
 3 on when they can submit and then allow you some  
 4 latitude to extend that to the 60 days, so that --  
 5 if there is extraordinary circumstances so that it  
 6 doesn't always fall on the public body or your  
 7 office to deal with that tardiness.

8 I absolutely agree. I couldn't even  
 9 imagine if we had the risk of voiding an action a  
 10 year later. I don't know what would happen.

11 CHAIRPERSON BATEMAN: Would there be a  
 12 difference in opinion if it was a member of the  
 13 public who couldn't have -- identify the violation,  
 14 whether it may be a violation that occurred in a  
 15 secret meeting or private meeting where there was  
 16 action taken, and the public just -- there was no  
 17 way the public would have known for, you know, 90  
 18 days, 120 days, and then once they realize it, they  
 19 get the complaint filed within two weeks?

20 Would there be an exception that would be  
 21 warranted if that person could establish the fact  
 22 that something was -- I'm kind of comparing it to a  
 23 criminal, you know, a fraudulent act that they did  
 24 in under the guise of concealment, and that allows  
 25 the state an additional year or whatever it might

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1 be -- I'm not saying that long of an extension, but  
 2 would that be something this group is interested in?

3 You know, this is -- I feel like a lot of  
 4 these issues are aimed at a very small number of  
 5 bodies, but it's an issue we have seen as well.

6 This is, you know, about a year since I  
 7 have been heading up this unit, so it's, you know,  
 8 not a one-time thing, and it's -- we're kind of  
 9 constrained at this point where all we can send out  
 10 is -- we have in our open meeting manual, we state  
 11 if you submit your complaint past 120 days, since  
 12 there is no action we can take, we are not going to  
 13 investigate the matter, but that is not in the  
 14 statute. That is just something our office has come  
 15 up with.

16 I understand the merit of it, that we  
 17 don't want complaints coming in three or four years  
 18 late.

19 Between us, it's been advantageous at  
 20 times where we don't have to read 1,000 pages of a  
 21 complaint with supporting materials attached to it,  
 22 but at the same time, if it's an act by the public  
 23 body, I don't know if that would change your opinion  
 24 on whether or not even in the case of like an action  
 25 taken, if that would be something where --

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1 MS. MILLER: That is different if it's  
 2 just complaining that the agenda was not sufficient.

3 CHAIRPERSON BATEMAN: Correct, exactly,  
 4 yes, yes.

5 So I think there would have to be a  
 6 burden to establish some sort of active effort by  
 7 the body to conceal it or something along those  
 8 lines.

9 MR. LARGE: This is Michael from Washoe  
 10 County. You're essentially asking for discovery  
 11 rule. They should have known whether or not some of  
 12 the violations, so I mean, it's just simply a  
 13 civil -- if there is action taken in a private  
 14 meeting that you found out they're deliberating  
 15 behind closed doors or whatnot, I mean, there is  
 16 going to be a burden that you're going to have to  
 17 prove.

18 You know, whether or not it's general  
 19 litigation, you're always going to have to prove a  
 20 discovery rule, when the violation occurred, and the  
 21 fact of timing.

22 If there is something that needs to go  
 23 into the code in terms of the open meeting law for  
 24 that, I think you could -- there is some language  
 25 that could probably be worked in, but in terms of

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1 just a regular agendized meeting on X date, that  
 2 there is a mistake made, that is when the discovery  
 3 occurs, and that has got to be differentiated.

4 I think if we start legislating for the  
 5 exceptions rather than the general, it gets to be  
 6 problematic.

7 MR. RICHIE: I think the key is to  
 8 distinguish between voiding actions which can hurt  
 9 the public like you can't unbuild a sewer plant that  
 10 has been built, and actions that are going towards  
 11 both the commissioners or the body itself.

12 I think the limitation of 30 days is  
 13 probably appropriate for voiding the action, but  
 14 other conduct, basically misconduct of the public  
 15 official, whether -- however you find it, just  
 16 expand that to some appropriate time period because  
 17 I agree it gets problematic.

18 Well, what do you do, should have known.  
 19 Look, we'll just give you more time, however you  
 20 discover it, but again, it's not to void the action  
 21 but to investigate and take action against the  
 22 public officials.

23 MR. SMITH: This is Barry. I would  
 24 certainly welcome that. I think that's a good  
 25 approach, and I would like some language to attempt



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1 that, at least anyway.

2 MR. RICHIE: Again, you want to curb the

3 conduct of the public officials not necessarily

4 punish the public to voiding all these actions that

5 are necessary.

6 CHAIRPERSON BATEMAN: Okay. Thank you.

7 I think my last two issues, so I'm going to try to

8 keep this pretty quick.

9 Like I mentioned before, I think most

10 public bodies, when we have found violations,

11 whether they be technical or a bit more substantive,

12 have been very welcoming in terms of, you know,

13 taking the appropriate action to correct their

14 mistakes.

15 They have self-initiated those

16 corrections at times, and for the most part, public

17 bodies have, you know, reached out to us, gotten

18 clarification, have done what they're supposed to

19 do, and I believe that would extend to actions,

20 whether or not it included our belief that they

21 required corrective action or even voided actions,

22 and I'm not -- there would have to be a distinction,

23 but not like a contract like say, a meeting that

24 wasn't noticed properly, didn't go out on a LISTSERV

25 or didn't get posted on three locations, maybe just

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1 two.

2 The body may have taken some actions

3 during that meeting, approving minutes, et cetera,

4 but it is action that should be voided because the

5 notice wasn't, you know, conducted properly, et

6 cetera, and it would be a whole lot more

7 expeditious, I think, for the public body as well as

8 our office in prosecuting to say, we have found a

9 violation. We would like you to take corrective

10 action. Place this back on your next agenda, and

11 you know, and allow the public to comment if

12 necessary, properly notice it, et cetera, rather

13 than having to go to court and initiate a complaint

14 and have -- you know, start that process and have

15 the public body have to come back, and you know,

16 response at the court, make a ruling, and then have

17 that, you know, six months later having the body go

18 back and correct it.

19 We would have to build something in there

20 where the public body, if it didn't agree with our

21 findings, would have an opportunity to contest it,

22 but I don't know if that is something where the

23 group feels it would be too much authority on the

24 Attorney General's Office, if it is appropriate to

25 require going to court, or if it would be kind of an

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1 intermediary step that would be available if, you

2 know, both groups are in agreement that something

3 happened in violation, and if they're willing to

4 correct it, that we can avoid having to, you know,

5 go to court at all.

6 That is something that has come up where,

7 you know, I don't want to have to be going to these

8 public bodies. Our office at this point has a very

9 solid -- we do not communicate with either the

10 complainant or the public bodies and their

11 representatives absent a complaint, a response,

12 deal.

13 There have been times it would have been

14 a whole lot easier if I could have picked up the

15 phone, and say, you know, you screwed up here.

16 Please just put this on your next agenda again.

17 Correct yourself, and then we don't have to do this

18 whole rignmarole.

19 The public, at that point, gets their

20 opportunity to participate and comment, and issues

21 get resolved quicker, but you know, that is

22 obviously from my perspective. It would make things

23 speedier. It would get things resolved quicker.

24 I don't know what the group's opinion is

25 on that.

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1 MR. GOULD: Well, what I'm hearing is

2 when you have consensual relationships, it's

3 happening, so there is really nothing that stops you

4 from picking up the phone and saying, you know,

5 there is an issue here; you want to just deal with

6 it? The person can always just say sure.

7 If they say no, I think it's important

8 that they have the ability to go to court, so what I

9 heard you expressing is really nothing more than if

10 the parties agree -- because we can always agree,

11 it's only when we don't agree that we need to have

12 the ability to go see a judge, and so I'm not sure

13 what changing it would really affect anything.

14 CHAIRPERSON BATEMAN: We don't -- at this

15 time, the Attorney General's Office doesn't have the

16 authority to say you need to go correct this or you

17 need to void it.

18 MR. GOULD: Yeah. You don't have the

19 authority, but you always have the ability to pick

20 up a phone and talk to someone.

21 CHAIRPERSON BATEMAN: But that would, I

22 guess -- what I envision is, to fix, the 120-day

23 deadline staying in place, but having an additional,

24 let's say, 30 days, so our office finds -- you know,

25 makes its finding, you know, you need to take

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1 corrective action and renote this, and rehear it,  
 2 or you know, reapprove your minutes from your last  
 3 meeting, et cetera, and reissue that finding, and  
 4 the body has 30 days to decide, yes, we agree, we're  
 5 going to stick it on our next agenda. We  
 6 acknowledge the issue. Thank you for the  
 7 information.

8 Alternatively, the body would have 30  
 9 days to say, we do not agree with your findings, and  
 10 at that point, the onus would go back to our office  
 11 to file a complaint and get that heard in court.

12 So it would just give a 30-day window  
 13 where we wouldn't have to file a complaint within 60  
 14 days unless it was very clear that the public body  
 15 didn't agree with our office and stood firm that  
 16 they did not commit a violation.

17 At that point, we would just go court  
 18 right away.

19 MALE SPEAKER: So the date would run from  
 20 the date that they failed to take corrective action?

21 CHAIRPERSON BATEMAN: It would -- so the  
 22 60-day would remain and the 120-day would remain  
 23 from the date of the violation, but the 30 days  
 24 would run from the date of our office's finding,  
 25 either of the violation, or you know -- of the

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1 violation, whether or not it's an action that needs  
 2 to be voided and revoked on, or if it was an issue  
 3 where we needed corrective action taken.

4 MR. LYONS: I was just to add on that  
 5 another thing you might think about if you think of  
 6 the analogy of the tentative ruling.

7 You could work that potentially very  
 8 early on in the process when it's a straightforward  
 9 thing and also the consent decree where essentially  
 10 when you think you're in agreement, just go right to  
 11 the consent decree. We agree, we both agree.

12 It's like most prosecutions right?  
 13 Ninety-five percent of criminal prosecutions end in  
 14 a contract, and the other regulatory bodies use the  
 15 consent decree and the tentative ruling, that way.  
 16 Yeah, I didn't miss anything, and it's probably some  
 17 fact where there is more. Kevin Lyons. Sorry.

18 CHAIRPERSON BATEMAN: Any other thoughts  
 19 on that?

20 MS. MILLER: I don't have any objections  
 21 to the (inaudible).

22 CHAIRPERSON BATEMAN: Okay. So I'm going  
 23 to include it, and then you can all jump on me at  
 24 the next meeting and say, Take that out. I'm fine  
 25 with that too.

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1 Okay. Then the last issue is the one  
 2 that hopefully is more public body friendly, and  
 3 that is the -- it hasn't really been through the  
 4 complaint process, but it has -- I have received a  
 5 lot of calls from, you know city attorney offices,  
 6 county commission offices, et cetera, regarding  
 7 public comment.

8 The examples I can think of are members  
 9 of the public who show up to a meeting and address  
 10 the public body, and you know, they're screaming  
 11 obscenities, or they're attacking individual members  
 12 of the body, not for their votes, not for actions  
 13 they have taken but for personal reasons, et cetera.

14 I think it's hard for, you know, counsel  
 15 to these bodies or chairs of these bodies because  
 16 they don't want to inhibit public comment, and they  
 17 don't want to be in violation of the open meeting  
 18 law, and I know there is the general language in  
 19 241.030 regarding willful disruption, and you can  
 20 remove a member who commits that to an extent that  
 21 the meeting cannot go forward.

22 I absolutely agree with the ability of  
 23 the public to, you know, to disagree with actions  
 24 taken by the public bodies to voice their opinions,  
 25 to give recommendations, however strongly worded

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1 those might be, but I think there is a line where if  
 2 a member is coming and just screaming, let's say, at  
 3 a mayor or a city council member, obscenities, and  
 4 calling them awful -- nothing related to their  
 5 performance or anything else, just a personal  
 6 dislike or something along those lines, a political  
 7 dislike.

8 I think that that crosses a certain line,  
 9 and I have received a lot more calls asking advice  
 10 like, This guy is going to come in again. He's, in  
 11 essence, threatening our mayor or threatening our  
 12 city council member, but we don't want to remove  
 13 him. We don't want him filing a complaint against  
 14 us, et cetera.

15 It's been where I have relied on 241.030  
 16 and said if it rises to that level, it prevents the  
 17 meeting from being conducted in an orderly manner,  
 18 and in my opinion, I don't believe you're in  
 19 violation of the open meeting law by removing that  
 20 person or cutting off their public comment.

21 It's going to be -- have to be very  
 22 carefully constructed, but that is something I am  
 23 looking into including and would need some feedback  
 24 from the group in terms of how to specifically word  
 25 it to not prohibit members of the public from

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1 commenting.

2 Just throwing that out there, seeing if

3 there is any feedback on that?

4 MR. OH: This is Michael. I like that

5 idea. I think we have run into some situations

6 where public comment has been -- it was perhaps

7 offensive to members of the public, in general, who

8 are attending the meeting, not necessarily toward

9 the elected officials, but you know, because it was

10 public comment and they're very sensitive to

11 allowing people to speak, I think that is something

12 that, you know, would be nice to have some guidance

13 on or something, you know.

14 For the benefit of everyone who is

15 attending the meetings, just not elected, but to be

16 able to stop some of this offensive language where

17 it's, you know -- of course, we would have to define

18 that, but.

19 CHAIRPERSON BATEMAN: Yeah. I know there

20 is an Eighth Circuit case, I believe a Ninth Circuit

21 case has referenced this Eighth Circuit case, and of

22 course, I didn't write it down, so I don't recall

23 the name of the case, but it included profanity.

24 It included offensive language,

25 derogatory language, et cetera, as inclusive of the

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1 disorderly conduct, so I don't think it would be in

2 violation of any of those to kind of refine 241.030

3 to include some of those specifics that I think

4 bodies could rely on rather than, you know, having

5 to rely on any formal opinion by a mediator or

6 another person in our office.

7 I'll work on that, and I'm sure it will

8 require a lot of finagling at the next meeting, and

9 refinement, but hopefully, that will give some more

10 clarification and guidance to counsel and chairs, et

11 cetera, on when and when they cannot prohibit or cut

12 off public comment.

13 I think --

14 MR. RICHIE: Just to record a thought on

15 that, the board is within their jurisdiction and

16 control, so that is one way of limiting it.

17 If they're talking about whatever that is

18 offensive, but always in the back of my mind we're

19 thinking about First Amendment, those kind of

20 claims, and we need to make clear it's a public

21 forum, but it's a public forum for items that are

22 within the jurisdiction and control of this board,

23 and you ranting on a personal vendetta, you're

24 wasting everyone's time, so I don't know if when you

25 draft that -- I'm always worried about the First

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1 Amendment issues, but somehow, reinforce it's within

2 the jurisdiction and control of this board.

3 That is why we're here. It's not your

4 time to rant.

5 MS. MILLER: I think it's a little

6 troublesome to try to write it down in language that

7 won't be subject to attack. That would be my only

8 concern.

9 CHAIRPERSON BATEMAN: Yeah. Okay. So

10 those were all the main points I had. There was

11 some language for the BDR. I don't know if any of

12 the other members -- I know it was just kind of

13 round-tabling right now, so if there were any other

14 members that wanted any additional items discussed

15 or included for -- at least to address during the

16 BDR, I'm happy to listen to that, to have discussion

17 on it.

18 We can always do that at the next meeting

19 as well when there is some proposed language in

20 there, and we can see if there is additions that we

21 need to make to it.

22 Like I said, my goal is to have some sort

23 of draft BDR prepared in the next two to three

24 weeks, have a meeting at that time, the proposed BDR

25 or the draft BDR would be supporting materials for

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1 the meeting, and so hopefully, all of you would have

2 an opportunity to review that and then have comment

3 back to the group at the next meeting, and if

4 everything goes swimmingly and there is not a lot of

5 opposition, hopefully, there would be a second

6 refinement period, and we would be able to adopt it

7 or approve it at the third meeting, maybe fourth

8 meeting.

9 We have -- not we. I am under a not

10 super close deadline, but by -- I would like to have

11 something prepared by, you know, July 1st and have

12 it approved at that time during a meeting.

13 Obviously, that can be extended.

14 Our BDR final drop dead date is September

15 1st, just like anyone else's BDR deadline, but it

16 would have to go through certain review channels as

17 well, so we'll send out the next meeting date in the

18 next few weeks and have, hopefully, some more

19 discussion to be had at that time.

20 If there is no other issues, I'll move on

21 to the next agenda item, which is our second public

22 comment. If there is any members of the public in

23 Las Vegas who would like to speak? Ms. DeFazio?

24 MS. DEFAZIO: Could you have them turn

25 off the mics?

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1 CHAIRPERSON BATEMAN: Yes. Would you  
 2 mind muting? Thank you.  
 3 MS. DEFAZIO: Thank you. Well, listening  
 4 here has confirmed every one of my fears about the  
 5 OML.  
 6 Okay. So apparently, I'm going to have  
 7 to get involved, and I know Mr. Smith is highly  
 8 aware of when I get involved, what it entails.  
 9 Now, following, it's not a  
 10 recommendation. You will do this because when you  
 11 hear what the problem is, either you fix it, or I am  
 12 going to do it, and it's advisable for you to do it.  
 13 When the public is notified of a meeting  
 14 in a building, we expect it to be a safe  
 15 environment. You put up sandwich signs when the  
 16 floor is wet, but you never, ever inform the public  
 17 of the water damage, mold issues in this building.  
 18 It only came to light when the media  
 19 picked it up. I complained and requested  
 20 accommodations since 2011.  
 21 I have an e-mail to the LCB dated 2013  
 22 about this. I complained why were there air  
 23 filters, and the people are telling me there is a  
 24 funny odor.  
 25 Now, your office knew full well of the

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1 toxicity of this building because seven of your  
 2 employees got sick, one of them was moved over five  
 3 times, and the prime information and belief, he is  
 4 not working in the building.  
 5 Also, the Secretary of State is looking  
 6 to move her office out of this building. When I  
 7 confronted her about it, she said she doesn't  
 8 comment on SOS activities.  
 9 I'm the barometer for toxic buildings.  
 10 My head trembling happens when I walk in to a  
 11 building that has poor indoor air quality.  
 12 Now, years ago -- to give you another  
 13 example of how you do not protect the public. I  
 14 complained about the PUC building being toxic. No  
 15 one paid attention. I finally tracked down the new  
 16 owner, spoke with him, and he had the building  
 17 tested.  
 18 I have got copies of the reports, and the  
 19 cancer causing chemicals that were found in the  
 20 building such as formaldehyde in an elevated level  
 21 and methylene chloride additionally found in a  
 22 public building where you invite people to come in,  
 23 EPA known hazardous chemicals such as benzene,  
 24 polystyrene, methylbenzene, styrene, all of these  
 25 are showing as elevated.

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1 The owner went out and bought four of the  
 2 top line air filters to try to remediate the  
 3 problem.  
 4 I want you to do, in the OML, that your  
 5 agenda notices should reference if there has been  
 6 water damage in a building, mold, building  
 7 modifications or pesticides being sprayed, that  
 8 persons adversely affected are put on notice.  
 9 Why should we walk into a building and  
 10 get struck with this? No. You have got over 100  
 11 people from what I have been told who have filed C1  
 12 workers' comp complaints.  
 13 I already know some of them retained an  
 14 attorney, and I know some of them because they  
 15 called my foundation for help.  
 16 So this is a sick building. You negated  
 17 your fiduciary duties by notifying us that you knew  
 18 there was mold here, and now all this money is being  
 19 spent on it.  
 20 People have a right to know. Your  
 21 employees, 700 people, why should they get sick and  
 22 why should the public get sick? You invite us here,  
 23 you make sure it's open and safe.  
 24 Thank you. I was cut off with time. I  
 25 want all my papers submitted along with the

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1 printouts from Prism Analytical Technology, proving  
 2 the elevated formaldehyde, the EPA hazardous  
 3 pollutants and the total VOC.  
 4 Protect the public. What I heard today  
 5 was more skimming down of the OML. Oh, no, no, no.  
 6 This is not acceptable. It should be more broader,  
 7 not protecting.  
 8 By the way, the language and everything,  
 9 I agree with you. Profanity has no place in a  
 10 public meeting, but -- I just exemplify, it can get  
 11 emotional, but if somebody calls someone an idiot,  
 12 that is not a violation, or I think your proposal is  
 13 dumb or stupid. That does not violate it.  
 14 There is a fine line with the First  
 15 Amendment as the gentleman up there said.  
 16 How are you going to craft it? I don't  
 17 know, but people have a right to express their  
 18 opinions. I'll see you at the next meeting. Thank  
 19 you.  
 20 CHAIRPERSON BATEMAN: Ms. DeFazio, if  
 21 you'll leave the documents that you wanted included  
 22 in the minutes just on that table, we'll be sure to  
 23 include them.  
 24 MS. DEFAZIO: Okay. Thank you.  
 25 CHAIRPERSON BATEMAN: Thank you. Are

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1 there any members of the public who wish to speak up  
 2 in Carson City?  
 3 MR. RICHIE: We have someone here.  
 4 CHAIRPERSON BATEMAN: Would you please  
 5 state your name.  
 6 MR. HUMMER: Jake Hummer, J-a-k-e,  
 7 H-u-m-m-e-r. This is my first public comment. I  
 8 wasn't planning on giving one today, but I do hope  
 9 what I have to say will be helpful.  
 10 One of the things you brought up for the  
 11 BDR's was trying to deal with some of these cases  
 12 where citizens are coming to a public meeting and  
 13 using the opportunity at public comment to  
 14 personally attack some of the elected officials.  
 15 I think -- I don't think there is really  
 16 a way around that. The First Amendment does protect  
 17 someone's, you know, right to free speech, but it  
 18 also protects the government so long as residents  
 19 and citizens feel they can express themselves in a  
 20 public meeting, it won't take more dramatic action.  
 21 Losing five minutes to someone calling  
 22 someone an idiot, a moron, a baboon, whatever it is,  
 23 doesn't seem like a really big cost in order to just  
 24 keep everything civil, to make sure it doesn't  
 25 escalate from there.

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1 The other thing I wanted to bring up that  
 2 I also brought up during the BDR was the issue of  
 3 enforcement, that I do think that open meeting law,  
 4 public records law are absolutely crucial to the  
 5 function of any government, and I think it's  
 6 unfortunate that the state isn't able to better  
 7 control or better enforce instances where public  
 8 officials try in a gray area or try and work their  
 9 way in and around open meeting, public record laws.  
 10 To give an example, I graduated from  
 11 college last year, and while I was in college, I  
 12 served on the Harvard College Honor Council. We  
 13 voted on cases of students violating the honor code,  
 14 academic integrity, things likes that, and early on,  
 15 we only would do severe punishments if we could  
 16 prove it was willful.  
 17 We found that was just not practicable.  
 18 It was so easy for -- I didn't understand the law,  
 19 the issues with the honor code, the code didn't make  
 20 this clear, so we actually changed it to negligent  
 21 and willful because the students had a  
 22 responsibility to understand academic integrity at  
 23 the college, understand the honor code, and failing  
 24 to understand that in itself, if it manifested in  
 25 something so bad as breaching academic integrity,

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1 violating the honor code, that the result was the  
 2 same, the consequence would be.  
 3 It didn't matter if it was willful or  
 4 negligent. The results of their action was the  
 5 same, so the response by the university to the  
 6 student was the same.  
 7 So applying this to what has been brought  
 8 up with OML law and public records law, a suggestion  
 9 that I would have is I don't think it's the  
 10 responsibility of the state to inform public  
 11 officials of what OML -- of open meeting laws and  
 12 public records laws.  
 13 It's the official -- it's their  
 14 responsibility to learn the law. It's their  
 15 responsibility to make sure that, okay, what am I  
 16 allowed to do and what am I not allowed to do.  
 17 Then failing to learn that, that in  
 18 itself, to me, seems like a problem.  
 19 I think it's great that all the OML task  
 20 or workshops that you guys do with local  
 21 governments. I think they're very effective, but I  
 22 still think the responsibility to understand what is  
 23 and isn't allowed as public officials for open  
 24 meeting law, for public records law, should fall on  
 25 that public official.

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1 If then failing to understand the OML  
 2 law, or excuse me, open meeting law or public  
 3 records law results in something so bad that the  
 4 effects of it are the same as if it was a willful  
 5 violation of it, then I think that the consequence  
 6 of it should be the same as well, and that's it.  
 7 Thank you.  
 8 CHAIRPERSON BATEMAN: Thank you. Are  
 9 there any other members of the public up in Carson  
 10 City?  
 11 MALE SPEAKER: No one else up here.  
 12 CHAIRPERSON BATEMAN: Great. If that is  
 13 it, I believe we can move on to adjournment. If I  
 14 have a motion?  
 15 MR. GOULD: So moved.  
 16 MS. MILLER: Seconded.  
 17 CHAIRPERSON BATEMAN: All in favor?  
 18 Thank you all so much.  
 19 (End of video at 11:57 a.m.)  
 20  
 21  
 22  
 23  
 24  
 25

1 STATE OF NEVADA )  
 ) ss.  
2 COUNTY OF WASHOE )  
3

4 I, KATE MURRAY, Certified Court Reporter  
5 of the Second Judicial District Court, in and for  
6 the County of Washoe, State of Nevada, do hereby  
7 certify:

8 That I was provided a video recording and  
9 said video recording was transcribed by me, a  
10 Certified Court Reporter, in the matter entitled  
11 herein;

12 That the foregoing transcript was taken  
13 in stenotype notes by me from the video recording  
14 and thereafter transcribed into typewriting as  
15 herein appears to the best of my knowledge, skill  
16 and ability and is a true record thereof.

17  
18 DATED: At Reno, Nevada, this 12th day  
19 of June, 2018.



20  
21 KATE MURRAY, CCR #599

22  
23  
24  
25