

In the Matter Of:

Open Meeting Law Task Force Meeting

OPEN MEETING LAW TASK FORCE MEETING

July 18, 2018

Job Number: 480940

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BEFORE THE OPEN MEETING LAW TASK FORCE

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MEETING

GRANT SAWYER BUILDING

555 EAST WASHINGTON AVENUE, SUITE 4500

LAS VEGAS, NEVADA

WEDNESDAY, JULY 18, 2018

REPORTED BY: JOHANNA VORCE, CCR NO. 913

JOB NO.: 480940

1 APPEARANCES:

2 Task Force Members present in Las Vegas:

3 CAROLINE BATEMAN, ESQ., Chair

4 DEAN GOULD, ESQ.

5 ANDY MOORE

6 MARY-ANNE MILLER, ESQ.

7 MICHAEL OH

8 LAUREN KAUFMAN

9 Task Force Members present in Carson City:

10 VINSON GUTHREAU

11 BARRY SMITH

12 ALSO PRESENT:

13 KEVIN LYONS

14 ANGEL DEFAZIO, (Telephonically)

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1 LAS VEGAS, NEVADA; WEDNESDAY, JULY 18, 2018

2 10:14 A.M.

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4 (The Court Reporter was relieved of her duties
5 under NRCP 30(b)(4).)

6 CHAIRPERSON BATEMAN: Good morning, everyone.

7 Can you hear me up in Carson City?

8 MALE SPEAKER: Yeah, we can hear you.

9 MALE SPEAKER: Yeah.

10 MALE SPEAKER: Yes. Yes.

11 CHAIRPERSON BATEMAN: Okay. So it is July 18,
12 2018, at 10:05 a.m. We are located at the Office of the
13 Attorney General in the Grant Sawyer Building, Room 4500, in
14 Las Vegas, Nevada. Additionally, we are being video
15 conferenced to the office of the Attorney General, the mock
16 courtroom up there at 100 North Carson Street, Carson City,
17 Nevada 89701. Just to add, the Las Vegas location is 555
18 East Washington Avenue, 89101.

19 And I will start with Agenda Item 1, call to order
20 and roll call.

21 Mr. Guthreau?

22 MR GUTHREAU: Yes. Here.

23 CHAIRPERSON BATEMAN: Ms. Miller?

24 MS. MILLER: Here.

25 CHAIRPERSON BATEMAN: Mr. Lipparelli?

1 Mr. Oh?

2 MR. OH: Here.

3 CHAIRPERSON BATEMAN: Mr. Hall or Mr. Shipman?

4 Mr. Richie?

5 Mr. Smith?

6 MR. SMITH: Here.

7 CHAIRPERSON BATEMAN: Ms. Kaufman?

8 MS. KAUFMAN: Here.

9 CHAIRPERSON BATEMAN: Mr. Moore?

10 MR. MOORE: Here.

11 CHAIRPERSON BATEMAN: And Mr. Gould?

12 MR. GOULD: Here.

13 CHAIRPERSON BATEMAN: Did I get everyone? Great.

14 Moving on to Agenda Item No. 2, public comment.

15 Is there any public comment up in Carson City?

16 Yes, sir?

17 MALE SPEAKER: No. Actually --

18 MR. LYONS: Yeah. I -- I can -- I can -- well, I

19 can -- I can hold the comment till the specific item so it's

20 easier to follow --

21 CHAIRPERSON BATEMAN: That's fine.

22 MR. LYONS: -- if that makes senses.

23 CHAIRPERSON BATEMAN: Sure.

24 MR. LYONS: Okay. Great.

25 CHAIRPERSON BATEMAN: And is there anyone in the

1 room in Las Vegas who has public comment?

2 And do we have any public comment on the phone?

3 Ms. DeFazio? Okay. And just right before you
4 start, if we can have the mics up in Carson City muted just
5 to help with the transcription. Thank you.

6 And, Ms. DeFazio, whenever you're ready.

7 MS. DE FAZIO: Thank you.

8 For the record, Angel DeFazio. I have a major
9 issue with the deceptive language contained in 241, Part 2,
10 that meetings held by tele or video conference that the
11 Chair can determine who can appear via these options.

12 This is nothing short of a carrot dangling attempt
13 to prevent a facade that they want public participation,
14 offering accessibility but not having it standardized by
15 letting a Chair determine if they want to allow it.

16 This type of cherry picking embodies the favorite
17 phrase of the PUC, "not in the public interest." It is
18 either all or none. You have no right to allow Chairs to
19 penalize, and I am not using that phrase lightly, to
20 conservatively exclude members of the public from speaking
21 predicated on their own whim.

22 I can easily turn this cherry picking clause into
23 a DOJ OCR ADA complaint as the accessibility is there, but
24 it is not available based on a single person's decision to
25 accommodate.

1 If there wasn't any ability for anyone, whether it
2 be the public or a board member, to appear telephonically,
3 that is a different scenario. But when it is available to
4 the chosen ones and not permitted entirely, I have an issue
5 with it. In conjunction with your OML manual, page 13 of
6 119, "Have reasonable efforts been made to assist and
7 accommodate visibly handicapped person desiring to attend?"
8 This is a discriminatory statute as you can't pick what type
9 of handicapped persons you want to accommodate.

10 I'm not a confectioner. I don't sugarcoat when I
11 speak. Therefore, unless every Nevadan has the right to
12 appear telephonically at a public meeting, then no one can.
13 This includes no board commission member, expert witness, et
14 al. They are not superior to the general public. As
15 memorialized by Thomas Jefferson in the Declaration of
16 Independence, "We hold these truths to be self evident that
17 all men are created equal," this is also applicable to every
18 legal resident of Nevada. Thank you.

19 CHAIRPERSON BATEMAN: Thank you, Ms. DeFazio.

20 Is there any other public comment?

21 Seeing none, we will move on to Agenda Item No. 3,
22 which is approval of the Open Meeting Law Task Force's
23 May 23rd, 2018 meeting minutes. And I would note first that
24 our office did receive word from Mr. Kevin Lyons who
25 provided public comment during the last meeting that there

1 was a typo that's contained on page 44, line 20 of the
2 minutes.

3 The statement currently reads, "Boards have a
4 fiduciary duty to delegate," and the statement was
5 accurately -- or it should -- should read, "Boards have a
6 fiduciary duty to not delegate." And so I will make that
7 correction.

8 Additionally, a review of the minutes show that
9 Mr. Andy Moore's name is mistyped as Mr. Andy Miller, so I'd
10 ask that change also to be incorporated.

11 Are this any other corrections by members of the
12 committee?

13 And in Carson City, would you mind un-muting your
14 mics?

15 MALE SPEAKER: Sure.

16 CHAIRPERSON BATEMAN: Just to double check, were
17 there any corrections by any members of the committee to the
18 meeting -- the proposed meeting minutes?

19 MALE SPEAKER: No, none from me.

20 MR. LYONS: You got mine. Thanks.

21 CHAIRPERSON BATEMAN: And any in Las Vegas?

22 MR. GOULD: No.

23 CHAIRPERSON BATEMAN: Great. I will entertain a
24 motion on the approval of the minutes.

25 MS. MILLER: So moved, with those corrections.

1 CHAIRPERSON BATEMAN: Ms. Miller has moved to
2 approve.

3 Is there a second?

4 MR. GOULD: Second.

5 CHAIRPERSON BATEMAN: Mr. Gould has second.

6 All in favor?

7 (Members join in ayes.)

8 CHAIRPERSON BATEMAN: Great. Oh, thank you.

9 And moving on to Agenda Item No. 4, the 2019 OML
10 Task Force Bill Draft Request - Review and Adoption of
11 Proposed Statutory Amendments for discussion and possible
12 action today.

13 My thoughts on how to attack this was to go just
14 item by item any deletions or additions. If there's no
15 discussion on an item, we can move on. If there's
16 discussion, we can open it up at that time.

17 Does that feel appropriate to everyone?

18 Okay. So the first change is an -- an
19 addition-ish to NRS 241.010. That's the legislative
20 declaration and intent requirements for meetings held by
21 teleconference or video conference.

22 What I did there was I removed the second section.
23 I felt like we should emphasize the legislative declaration
24 and intent. It didn't seem to really mesh with
25 teleconference and video conference, so I moved that into a

1 separate section and then made some -- some technical
2 changes to subsection 1, which was previously subsection 2
3 of 241.010. And then I added subsection 2 regarding the
4 discretion of the Chair to allow members of the public to
5 attend meetings of the public body by means of
6 teleconference or video conference.

7 I think Ms. DeFazio makes a good point that,
8 perhaps, this should be clarified that if the Chair is going
9 to allow video conference or teleconference by members of
10 the public, that it should be at a -- you know, either
11 all-or-nothing type proposition, so anyone who -- who -- if
12 one requests it and it is allowed by the Chair, that the
13 entire group of people who are requesting such attendance
14 should be allowed.

15 Alternatively, we can remove the entire section
16 and just rely upon the reasonable accommodations statute
17 that's contained later on in -- in the -- in the chapter.

18 So I'll open this one up to discussion.

19 MR. GOULD: I have a comment, if that's okay.

20 CHAIRPERSON BATEMAN: Yes. Mr. Gould.

21 MR. GOULD: Well, first of all, you answered the
22 first question I had on this, which is: Why are you
23 proposing to add it? And -- and I do totally understand
24 where Ms. DeFazio is coming from, so I'm not questioning
25 that thought. But I'm just questioning, No. 1, why this is

1 included. What was the reason for this being included? If
2 you're going -- if this is going to be included, and this
3 comes up a couple times, wherever you now have put
4 discretion in the Chair, I think you should say "or his or
5 her designee," in case the Chair is not present, so you're
6 not sitting at a meeting and not having anybody who can
7 respond to that issue.

8 Those are -- those are my two comments. An
9 overall comment: There are certain boards that will not
10 necessarily have the equipment, so to speak, to open this up
11 to hundreds, potentially hundreds, of people calling in.
12 But they might need to let members of their board call in
13 because they may be calling in from anywhere in the world,
14 and they need to have that ability. So I would just say I
15 think that should be considered. Thank you.

16 MR GUTHREAU: Yeah. This is Vince Guthreau with
17 the Nevada Association of Counties.

18 We definitely have counties who do not have video
19 teleconferencing available, so I think we would need to make
20 some sort of accommodation if the -- if -- if the technology
21 isn't present, I mean, we wouldn't really allow anyone to do
22 that, I think, because there's no -- there's no capability
23 there.

24 MS. MILLER: I was -- I was also wondering. Is
25 the intent of the statute to give members of the public body

1 the right to be allowed to either phone in or video
2 conference? Because I'm concerned about what happens if
3 there's technical problems and the connection fails.
4 Does -- is an individual member's right impaired, or is
5 there -- is it a privilege?

6 CHAIRPERSON BATEMAN: I would -- I would want to
7 say the basis of this language was my experience with
8 different -- you know, our occupational boards, et cetera,
9 where we have members of the public that are, you know, in
10 Venezuela or in Mexico or in Russia. And they are -- they
11 are on very limited means, so we have a hard time requiring
12 them to appear in person. And that's really more on the
13 subject of the hearings, licensees, et cetera.

14 So, perhaps, we should rework the -- the language
15 to focus on those individuals. I would say -- you know, my
16 background Athletic Commission-wise was that we had these
17 fighters -- you know, I would say 50 percent or more -- who
18 don't reside in the United States, and they make maybe
19 \$1,000 a fight, half of which goes to their team. And so to
20 have them spend \$500 to fly out here, we just felt like that
21 was unfair. But at the same time, we didn't want it to be a
22 blanket policy that everyone can call in, because it -- it
23 does make the -- the hearing process very complicated for
24 the board members in terms of reviewing exhibits, if the
25 licensee has exhibits, et cetera.

1 So that's kind of where I'm coming from. I don't
2 think it's written as artfully as it could be, so I don't
3 know if it would be preferred by the -- oh, I have -- I
4 don't know if it would be preferred by the members of the
5 committee to -- to focus this more on -- on like subjects
6 of hearings, licensees, or disciplinaries, or something
7 along those lines. So I welcome any feedback on that, that
8 the members may have.

9 Additionally, we could add qualifying language in
10 there which states if the public body has the technology to
11 allow for it, then this -- this section would kick in.

12 So I don't know if that answers your question or
13 not.

14 MS. MILLER: It answers some of mine, because it
15 does say that it would be discretionary with the public body
16 based on their ability to do so. It would be nice if we had
17 additional language for the members of the body. If -- if
18 there's a technical difficulty that stops them from being
19 able to participate, it doesn't stop the public body from
20 going forward, assuming they have a quorum.

21 CHAIRPERSON BATEMAN: So should we put qualifying
22 language -- I'm thinking of the section on minutes and audio
23 recordings and the state -- if there's a technical
24 difficulty outside the control of the public body that
25 prevents it, that doesn't constitute a violation?

1 MS. MILLER: That's what I would --

2 CHAIRPERSON BATEMAN: Okay.

3 MS. MILLER: Because I -- I have that come up
4 quite a bit in the last year because people are -- members
5 of the public body are calling in more and more. And I
6 imagine the Attorney General's Office sees it a lot since
7 you represent statewide bodies. So I'd like to have the
8 discretion, but it's hard when it stops a meeting.

9 CHAIRPERSON BATEMAN: Okay.

10 MS. KAUFMAN: I have a comment as well.

11 CHAIRPERSON BATEMAN: Sure.

12 MS. KAUFMAN: As far as with the discretionary
13 language, leaving it entirely at the discretion, I think
14 that there should possibly be some language there that it
15 should be provided when it is practicable.

16 CHAIRPERSON BATEMAN: Okay.

17 MS. KAUFMAN: Because it's at the discretion of
18 one person, that can also provide other issues as well.

19 MR. GOULD: Could -- I have a point of
20 clarification, though. Let me give you an example of what
21 we do at the Nevada System of Higher Ed.

22 We have three sites for all our meetings: Our
23 board office in Las Vegas, our board -- our board office in
24 Reno, and at GBC in Elko.

25 Would this language in any way interfere with our

1 ability and right to have it only at those three video
2 conference sites? Because we wouldn't technologically be
3 able to do it at other places, necessarily. And I just want
4 to make sure we're not creating a situation where we have to
5 have it at 100 sites because that would just basically
6 preclude us from having meetings, I believe.

7 MS. MILLER: Well, you think if it's --

8 MR. GOULD: So I'm not clear, yeah.

9 MS. MILLER: If it's -- if it's required whenever
10 practicable, some of the meetings could get hijacked by
11 people just sitting at home and calling in. And --

12 MR. GOULD: Now, we stream them so people can
13 watch them on the -- on the internet.

14 MS. MILLER: Which is great.

15 MR. GOULD: We have that ability. I don't know if
16 every organization does. But what we do is we say if you
17 want to make public comment, then you have to come to one of
18 the three live video session places. And we always do
19 public comment in all three, just like you just did with the
20 two.

21 It would probably -- even though I know it seems
22 like it would be very open, it -- it could create hours and
23 hours of public comment if you have people just calling in
24 from everywhere at any time. At least if they have to make
25 the effort to come, you're going to get people who generally

1 have a need to be there.

2 I understand there may be people who can't, and
3 they usually will contact me ahead of time, and I'll have
4 them submit it in writing, and we get that into the record
5 so they're not disenfranchised. But there is the
6 possibility that to run a meeting like that would be very,
7 very difficult.

8 CHAIRPERSON BATEMAN: Thank you.

9 Any other comments on that?

10 MR. SMITH: This is Barry in Carson City.

11 First of all, I -- I really couldn't hear what the
12 comments were from the woman on the opposite side of the
13 table over there, what that discussion was. So if you
14 could, summarize that for me please.

15 MS. KAUFMAN: Sure. Yes.

16 I said that since it's entirely at the discretion
17 of the Chair of the public body, that potentially there
18 should be language to include that it should be available
19 when it's practicable.

20 MR. SMITH: Okay. I would also like to reinforce
21 the point that Ms. DeFazio made that -- be careful that
22 you're not creating two classes of citizens here when you
23 allow, as you say, some people who may be expert witnesses,
24 people that you want to call in are allowed to call into the
25 meeting, but you say, "Oh, well, there's these other people

1 that are just being disruptive, and we don't want them to
2 call into the meeting." That's -- that's creating a very --
3 a real problem on who you allow and who you do not allow to
4 call into a meeting. So if there's accommodations for one,
5 there has to be accommodations for all. I think that's the
6 point that's being made.

7 MR. LYONS: Kevin, Kevin Lyons, Carson City.

8 One other thought on that is, you know, if there
9 were a way to distinguish, it might fall along the lines of
10 invited participants to cover the case where you have your
11 kind of mandatory participant or invited participant being
12 the boxer or the expert witness. You'd probably have to
13 come up with a pretty tight definition of participants to
14 have it be very clear that's separate from the public, but
15 maybe that's not too hard.

16 The other thought that I had when I saw this
17 was -- and was mentioned earlier, the Chair, I think
18 that's -- you know, that's probably superfluous. You don't
19 want to be reaching into the body and telling them how they,
20 you know, decide to allow the members. I was curious if
21 there was a specific failure mode that you had seen why you
22 maybe wanted to put the Chair in there versus having the
23 public body do its discretion or sort of the public body or
24 its designee.

25 CHAIRPERSON BATEMAN: Well, I think that the issue

1 would be if we're having the public body decide as a body,
2 they would have to have some discussion. I mean, I don't
3 know, technically, how it would work if the public body
4 would have to agree and vote to allow this to occur prior to
5 the meeting where the -- the participant is requesting the
6 video conference or teleconference. So --

7 MR. LYONS: Okay. That's helpful. Yes.

8 So in that case, I think you'd want to say, rather
9 than the Chair, just as with other delegation, "The Board or
10 its designee," because they might designate the Chair as the
11 person to do that, or they might designate, you know, the IT
12 person as the person to do that, depending on what their
13 internal policy, what makes the most sense.

14 Does that make sense?

15 CHAIRPERSON BATEMAN: Yes. Thank you. That's
16 helpful.

17 MR. LYONS: Okay. Great.

18 CHAIRPERSON BATEMAN: Okay. Is there any other
19 comment on that section?

20 MR. SMITH: This is Barry Smith again.

21 Just -- just to be, perhaps, overly cautious, when
22 you're looking at the language of this, I don't think you
23 want to create a circumstance where there is one person at
24 one location and everybody else is communicating
25 electronically, either by telephone, video, internet,

1 chatroom, or something like that. I --

2 The definition of a meeting, that gathering of a
3 quorum -- if -- if you're allowing people to call in, they
4 could be at -- you can have an 11-member board at 11
5 different locations, and -- and a problem of what is the
6 official designation. Is anybody there that's actually a
7 member of the board?

8 Do you see what I mean? Be careful in that
9 language that you don't create that situation that allows a
10 meeting to happen that there's no actual gathering place
11 where it's happening. So thank you.

12 CHAIRPERSON BATEMAN: And, Mr. Smith, would it --
13 would it help if we limited -- because I have -- I
14 personally have seen public bodies have to do a wholly
15 telephonic meeting. And that's on, you know, emergency
16 bases where we've had, obviously, a room available where
17 members of the public could attend and give comment, but
18 we've had all the members call in just based on, you know,
19 something that came up where they needed to have a meeting,
20 you know, in four days or in a week and they just couldn't
21 move their schedules to get back to either Vegas or -- or up
22 in Reno or something else.

23 So would it -- to include a provision in there --
24 I guess, right now there's no limit on how many members of a
25 public body have to attend at the specific meeting. I don't

1 know if that's what you're seeking for us to include or not.

2 MR. SMITH: Yeah. This is Barry again.

3 What I'm -- what I'm trying to avoid is a
4 situation where a board could hold a meeting like that, and
5 the Chairman decide that the public would not be able to
6 call in. You see what I mean? That -- that -- you would,
7 in effect, be able to exclude the public.

8 You're saying that the public would have to meet a
9 higher standard, come to the meeting place to participate,
10 than the actual board does.

11 CHAIRPERSON BATEMAN: Understood. Okay.

12 MR. GOULD: Madame Chair.

13 CHAIRPERSON BATEMAN: Yes.

14 MR. GOULD: Just to show maybe a little different
15 perspective. You have to be careful here because while you
16 want to always comply with the open meeting law, we want to
17 be as open as we can. As you pointed out, there's a
18 functionality issue here.

19 So, for example, if we were going to have a
20 meeting, let's say, under Hansen, we had to have a meeting
21 on an emergency basis because of a litigation matter that we
22 need the board to approve, right, to authorize the action,
23 and people are all over the place because they have lives
24 and they have jobs and they're not just sitting there
25 waiting to be called to the meeting. But the meetings would

1 always, at least in my case, take place in a -- in a
2 location or locations where the public can come. They can
3 watch them on the screen. And -- but the members, if they
4 can't call in or if it's an all or nothing, you could really
5 hamstring that board from conducting business.

6 So now you have the open meeting law constraints
7 of, let's say, the Hansen decision. And potentially, this
8 language in 241 creating a scenario, hypothetically, where
9 you can't really conduct business. And -- and I don't know
10 that that's in anyone's best interest either.

11 As long as everybody can hear what's going on, can
12 come in if they choose, and there is a location, I don't
13 know where anyone is really injured there. Thank you.

14 MS. MILLER: I agree. I think we have to keep in
15 mind the meeting is not to have everybody on equal basis.
16 It's to have the public's business done in public.

17 There inherently are two different classes of
18 people: Members of the board and people who aren't members
19 of the board. So I don't find a problem in treating those
20 two different classes differently if it's pursuing the
21 purpose of doing -- getting the business of that board or
22 body done.

23 CHAIRPERSON BATEMAN: When it -- I guess the
24 concern I think Mr. Smith was making, as well as Ms. DeFazio
25 during her public comment, was that members of the public

1 would then be, I guess, divided into a separate subsection
2 or a separate group just amongst themselves. And so if we
3 were to treat it where if the public body or the designee
4 allowed one member of the public to participate via
5 teleconference or video conference, that any other members
6 so requesting would be allowed as well, and that's just
7 members of the public, so that there's no cherry picking
8 members of the public who are allowed to speak.

9 But ultimately, that decision is, you know, the
10 public body and the designee's decision. So it's a -- it's
11 an all or nothing in terms of members of the public would be
12 allowed to speak, to participate, you know, via video
13 conference or teleconference.

14 And then the only exception to that would be if
15 there is an accommodation that is required based on a
16 disability or based on other issues. So I don't know if
17 that would kind of resolve the issue.

18 Mr. Smith, I don't know if that would kind of help
19 resolve the issue of not being able to hand select which
20 members of the public can and cannot participate via
21 teleconference or video conference.

22 MR. SMITH: Yeah. This is Barry again.

23 Yeah. That -- that resolves that part of it, but
24 I -- I strongly disagree that the public is somehow
25 secondary attendance at a meeting to discuss the public's

1 business.

2 You know, the public has jobs and lives that they
3 need to go to, too. And the accommodations, the reason
4 these meetings are in public is so the public can attend.
5 And if the board meet -- the accommodations are being made
6 for the members of the board but not the public, I disagree
7 that there are -- should be two separate classes of
8 attendees at these meetings or that the public is, by any
9 means, secondary to the members of the board. That's all.

10 CHAIRPERSON BATEMAN: Is there any other comment
11 on that section?

12 MR. OH: Well, I just had a comment. So this is,
13 from what it sounds like -- and this is Michael from
14 Henderson. So this -- this section is the intent to allow
15 people who have business to conduct or have to appear before
16 the governing body or the Board to be able to participate
17 telephonically or via teleconference. Was that the initial
18 -- (inaudible) of this?

19 CHAIRPERSON BATEMAN: Yeah, I think the initial
20 was public -- members of public just as a whole. And then
21 there was some discussion on limiting that to those -- you
22 know, I think Mr. Lyons said it best, the participants of
23 that meeting, whether it be licensees or (inaudible), et
24 cetera. I don't think we kind of came to a conclusion on
25 that, that designation. But as written, it was members of

1 the public, anyone who wished to address the public body via
2 one of these meetings.

3 MR. OH: And my thought would be, just as similar
4 to you have to make an appearance as a witness in court to
5 testify or appear, it would be up to the judge to make that
6 determination if you can appear telephonically, but there
7 has to be extenuating circumstances why you wouldn't be able
8 to appear. So I don't know if that would provide some
9 comfort that there are some parameters when a board member
10 can participate telephonically or since if -- you know, I
11 don't know if it's either lack of quorum members, someone is
12 at the airport.

13 THE COURT REPORTER: Lack of what, the quorum?

14 MR. OH: Quorum. Quorum.

15 I don't know if that would provide any comfort
16 where it's not just they can hand pick, but at least there's
17 some parameters when someone is allowed to appear
18 telephonically, at least for members of the board or
19 witnesses of the board participating on a business item.

20 CHAIRPERSON BATEMAN: Are there any other thoughts
21 on that section?

22 MS. KAUFMAN: I have a comment.

23 CHAIRPERSON BATEMAN: Yes.

24 MS. KAUFMAN: I guess my concern, our concern with
25 that, would be as far as a board member and the public, we

1 don't want to have -- if there's teleconferencing and video
2 conferencing going to be available to the public, we don't
3 want to have to make them prove, A, that they have a
4 disability or, B, that they need an accommodation in order
5 to allow them to attend the meeting.

6 So I think that if we're going to allow the video
7 conferencing or the teleconferencing, then it should be
8 available and not requiring members of the public who want
9 to attend the meeting to prove why they should be able to
10 attend that by teleconference or video conference or
11 whatever the technology would be.

12 CHAIRPERSON BATEMAN: And I think -- to clarify
13 Mr. Oh's comments, I think he was discussing the members of
14 the actual public body would have to establish that so that
15 they -- if they didn't want to attend the meeting in person,
16 if I'm --

17 MR. OH: Yes, that's correct.

18 MS. KAUFMAN: Okay.

19 CHAIRPERSON BATEMAN: And I think that was in line
20 with what Mr. Smith had earlier brought up about, you know,
21 having members of the public have to attend in person but
22 having -- or allowing members of the actual body to all
23 either call in or video conference in. So I think any --
24 any revisions in terms of extenuating circumstances would be
25 to subsection 1 regarding the members of the public body

1 rather than members of the public themselves.

2 MS. KAUFMAN: Understood.

3 CHAIRPERSON BATEMAN: Is there any other
4 discussion on that section before we move on?

5 Okay. Hopefully the rest of these don't take
6 quite as long.

7 Section -- so the next section that I note is
8 under 241.015, and that is under subsection 3 b. 3 b(2),
9 there is an added section in there, although I think this is
10 more of a clarification section regarding the public body to
11 take any action arising out of the attorney-client gathering
12 to be taken by the public body in a meeting noticed in
13 accordance with the OML.

14 Right now it does state, "the jurisdiction or
15 advisory power and to deliberate toward a decision on the
16 matter, or both."

17 We have received a lot of questions, just -- just
18 requests by public bodies on how far that goes. So I think
19 this -- this clarifies that they -- they may deliberate
20 during that attorney-client session or gathering; however,
21 any action must be taken in a public meeting that's --
22 that's properly noticed.

23 And then section 3 is a late add that I made, and
24 that's regarding trainings that the office of the attorney
25 general, the ethics commission, and other entities perform

1 regarding the public body's legal obligations, which do not
2 involve deliberation by the members for its decision or
3 action on any matter over which the public body has
4 supervision, control, jurisdiction, or advisory power.

5 So our office very frequently conducts trainings
6 to public bodies on the open meeting law. We advise public
7 bodies on public records requests, even though that's not
8 entirely within our authority, et cetera. And so I know
9 that Ms. Navarez over at the Ethics Commission also conducts
10 a number of trainings to different members of public bodies,
11 especially when new members are joining the bodies
12 themselves. And our office does conduct a full -- we call
13 it a boards and open government training. It's an all-day
14 affair that we conduct twice a year right now where any
15 members of the public, the executive director, staff, et
16 cetera, are welcome to come. That includes open meeting law
17 trainings, ethics commission, audit requirements, et cetera.
18 We do, you know, administrative rule making and other just
19 general trainings for what they may encounter as members of
20 the board.

21 And that does not involve a back and forth between
22 the -- the individuals who are training the members of the
23 public. It's more an informational session, so there's no
24 discussion on any issues relating to the board itself, no
25 specific matters before the board. Any questions along

1 those lines are not entertained, so it really is just an
2 informative training. And that's what I tried to cover in
3 the new proposed subsection 3, that those trainings don't
4 necessarily require notice to the public because they don't
5 involve anything within the public body's jurisdiction.

6 Mr. Smith, that's a new add, so I don't know if
7 you have the most recent version. There should be copies.

8 MR. LYONS: I don't think I do either.

9 MR. SMITH: Apparently, not.

10 CHAIRPERSON BATEMAN: Okay.

11 MR. SMITH: Apparently not. Sorry. I was a
12 little lost, too.

13 CHAIRPERSON BATEMAN: I should have clarified,
14 yes.

15 MR. SMITH: That's okay.

16 MR. LYONS: While they're looking at that -- Kevin
17 in Carson City -- I had a couple reactions to this.

18 The first one is I think the clarification could
19 be clearer, if it very, you know, sort of linearly followed
20 that up with -- this is in b(2), with, you know, no action
21 may be taken in these meetings essentially, right. And
22 then --

23 CHAIRPERSON BATEMAN: Okay.

24 MR. LYONS: -- any action, right. So that way its
25 kind of like, you know, deliberate toward, and that's where

1 the line ends. And that's maybe where the clarification's
2 been requested.

3 And then for No. 3, the thought on that was that's
4 a -- you know, it's not a -- it's not a deliberative
5 meeting, but it's a -- it's a item of interest to the
6 public. I've actually attended one of those in the past,
7 and there was a lot of back and forth and talk about, "Oh,
8 so we should do this instead of this, right?" or "not this."
9 And, you know, arguably, that is deliberation toward an
10 action.

11 But more importantly, I think those are of --
12 those are of great public interest. And so if the intent
13 was to have that not be noticed, I don't think that's a good
14 fit. But noticed in the sort of general notice of a
15 gathering in which there will be no action, I think that
16 fits very well. So in that middle ground where it's noticed
17 but there's no minutes maybe, right.

18 CHAIRPERSON BATEMAN: Are there any other thoughts
19 on either the add to subsection 2 or subsection 3?

20 MR. GOULD: Madame Chair, just to clarify, when I
21 read your -- I didn't see 3 until I got here because it was
22 not in the one sent out. But this is just stating the rule
23 as it now is?

24 CHAIRPERSON BATEMAN: Yes.

25 MR. GOULD: You're just clarifying, as you said.

1 CHAIRPERSON BATEMAN: Yes.

2 MR. GOULD: So that -- that was my reaction when I
3 saw it. That's what I certainly -- we talked about this
4 last time. I make it very clear not take any action, this
5 is not for that purpose. So I don't have any problem with
6 clarifying it because you're not changing the existing rule
7 at all.

8 MS. MILLER: I'm wondering if the -- the new
9 language in 3, does that narrow the rule that has been in
10 the AG's Open Meeting Law Manual that they can go to
11 seminars? This seems like this would narrow it to official
12 entities' instruction on legal obligations rather than maybe
13 just parliamentary procedure or educational policies or --
14 right now if they -- my understanding is if they're not
15 deliberating with each other, if they're just attending a
16 educational event with other people, they can -- it's not an
17 open meeting, or it's not a meeting under a -- public
18 meeting under the open meeting law. But this seems to
19 narrow that down just to certain educational events.

20 CHAIRPERSON BATEMAN: And I, frankly, came into
21 this thinking, you know, the trainings being conducted with
22 the Ethics Commission. And that's when I see your point in
23 terms of that -- that language regarding legal obligations.

24 MR. LYONS: Yeah.

25 CHAIRPERSON BATEMAN: So if we made it just attend

1 trainings conducted by the Office of the Attorney General
2 Ethics Commission or other entities, and maybe trainings or
3 other -- trying to think of appropriate language. Trainings
4 or other educational opportunities or something along those
5 lines, I think that may clarify a little bit more.

6 MR. OH: I might have a suggestion.

7 CHAIRPERSON BATEMAN: Sure.

8 MR. OH: Maybe if we -- in subsection 1 where it
9 says, "which occurs at a social" --

10 THE COURT REPORTER: It says what?

11 MR. OH: Subsection 1 where it says "which occurs
12 at a social function and/or educational training seminar,"
13 something that would capture those instances, because I
14 think in 3 it does kind of limit it where it says you're
15 going to these trainings conducted by the AG's office,
16 Ethics Commission, other entities, regarding legal
17 obligations. The other one could be if they're going to a
18 planning conference and they're not talking about any
19 business that they have jurisdiction over. I think that
20 might allow that a little more flexibility in what they can
21 attend as more -- a quorum or more.

22 MR. SMITH: Can I ask a question?

23 CHAIRPERSON BATEMAN: Yes.

24 MR. SMITH: This is Barry again.

25 So would the peop- -- public be allowed to attend

1 these sessions?

2 CHAIRPERSON BATEMAN: That is our advice right
3 now. So when -- when public bodies conduct trainings and
4 other -- I mean, out of -- we caution the public bodies that
5 if there's going to be a training, if there's going to be,
6 you know, someone coming in addressing the body and a quorum
7 of the body is going to attend that they should, you know,
8 post notice of that. It may not necessarily be within the
9 OML's, you know, strict requirements. But that if any
10 members of the public appear at the training that they
11 should be allowed to attend.

12 There's not necessarily a public comment period
13 for those trainings at the beginning or the end of the
14 meeting. But I have -- I haven't seen -- I take that back.
15 I very rarely see a public body that won't allow an
16 attending member of the public to, also, ask questions or to
17 participate in the session because it isn't -- it isn't
18 really anything related specifically just to that public
19 body's business. It's a general informational thing, and I
20 think the -- the instructors, as well as the attendees,
21 recognize it as that. But there -- there isn't a
22 requirement as of now that those -- those meetings or, I
23 guess, gatherings have to comply with all the OML
24 requirements because they aren't considering business within
25 the -- the public body's jurisdiction.

1 MR. LYONS: Kevin here. Yeah.

2 On that -- so it's not so much considering
3 business. Right? There's plenty of items on a -- on a
4 typical meeting that are just informational only. In fact,
5 literally, like maybe we're just going to watch a movie, you
6 know, like a video clip. And so when you think of the --
7 where this fits in on that spectrum from kind of bunch of
8 people passively listening, as you might have at a
9 conference or something else, and compare that to the
10 training, certainly all the trainings that I've seen,
11 different, you know, OAG and otherwise where there's
12 interaction, you know, even if it's their own attorney
13 giving them training, there's interaction and there's
14 conversation about, "Oh, so we should do this instead of
15 this? Oh, okay. So this policy probably needs to be
16 changed, right?"

17 So if there's any interaction at all, you really
18 are getting into that deliberatory action. And not in the
19 context of a, you know, again, legal action, which is nicely
20 defined in -- in 2, but in the context of just general
21 conversation about anything, that is something that's
22 generally noticed as a workshop, at least, or, you know,
23 just to receive information. And that's where I think this
24 does -- I think this does kind of exclude a section.

25 Like you said, guidance on this has been to notice

1 it. This seems to move strongly in the other direction as
2 in guidance is now don't notice this. That's a -- that's a
3 major concern.

4 CHAIRPERSON BATEMAN: If I -- if I can clarify
5 that. I didn't mean --

6 MR. LYONS: Sure.

7 CHAIRPERSON BATEMAN: -- notice it within the
8 requirements of the -- the open meeting law. So the same
9 posting requirements, agenda, minutes, all the rest of the
10 open meeting law, my encouragement to public bodies has
11 been, you know, "Don't keep these a secret. Let -- let the
12 public know you're attending trainings. Let them
13 participate if they want to and -- and bring issues up."

14 And so if that's how this section is now reading,
15 that was not my intent at all. It was more to include a
16 section, because this is a very common -- I mean, I would
17 say maybe three-times-a-week type of question that comes to
18 our office. "Do we need to do this? We -- we had an issue
19 come up. We really -- we have a new member joining us. We
20 would like to do a refresher with the Ethics Commission. Do
21 we need to notice that?" Those types of questions are
22 probably the most prevalent that our office receives, so
23 this was my, apparently, inartful attempt to capture that.
24 And I -- you know, I'll -- I'll revise it and --

25 MR. LYONS: Opening attempt.

1 CHAIRPERSON BATEMAN: Yeah, opening attempt.

2 MR. LYONS: It's a great opening -- it's a great
3 opening attempt, yeah.

4 CHAIRPERSON BATEMAN: And I think Mr. Oh's
5 comments are great in terms of kind of revising subsection 1
6 or clarifying that. And -- and maybe section 3 isn't -- it
7 will be -- it will need to be reworked.

8 So are there any other comments on -- oh, I'm
9 sorry. Go ahead.

10 MR. LYONS: I'm just saying, yeah, no. That --
11 that's a -- that's actually -- you know, just thinking of
12 those now stepping back in terms of the guidance you give
13 and what I see governments doing in terms of notice. So if
14 there's going to be a bunch of trustees getting together at
15 a social function or the meet and greet maybe before a
16 meeting, right, they definitely notice that. The good ones,
17 right? The legal ones.

18 And, you know, 1 and 3 actually fit together in
19 this context better than 2. You know, 2 is the one that's
20 never noticed because it's not -- it's sort of -- like it's
21 a nonmeeting, whereas -- as a -- speaking as a practical
22 matter from what I've seen. Whereas 1 and 3 would fall into
23 the, "Yeah, we're noticing it. There's no agenda." It's
24 just, "Hey, we're noticing it. These, you know, one -- two
25 or more trustees or two or more elected officials may be

1 present, and -- you know, this is happening here and so on."

2 So maybe 3 fits more explicitly with 1 in some way. Just
3 throwing it out there.

4 MR. GOULD: I would point out that 1, which was
5 not added all that long ago, was hard fought because of the
6 problems that were coming up where you did have social
7 function attendance. You could have, technically, a quorum,
8 right? It was not -- there was nothing happening that
9 related to their role other than they were at a social
10 function. And it was intended to clarify that that was not
11 something they had to worry about. Although, you know,
12 you're going to still caution the members to not engage in
13 substantive discussions. You know, they can't take any
14 action anyway. But because you had a potential quorum,
15 that's why everyone got nervous, right, because we are a
16 quorum state.

17 The whole concept under this is these are all
18 technically excluded from the definition of a "meeting." So
19 the question is whether 3 is needed in the same way that,
20 let's say, 1 is needed.

21 I would say that I don't -- I don't have a problem
22 with 3, but I don't think it's as needed. In my particular
23 case, we do these trainings, as you know, in an open
24 agendized meeting because we do it as part of a larger
25 meeting. But I would prefer that we deal with 3 as 3 and

1 not start to mix 3 and 1.

2 CHAIRPERSON BATEMAN: Okay.

3 MR. GOULD: Because I think 1 has its own place
4 for its own reason, and I would hate to mix that up and
5 reopen that dialogue, frankly.

6 CHAIRPERSON BATEMAN: Is there any other comment
7 on any of the additions or this section as a whole?

8 Okay. So I will move on to sect- -- same chap- --
9 or I'm sorry, 241.015, subsection 4, b(2). And this was
10 also a new add, and it strikes out the section that reads,
11 "consisting of members appointed by the Governor." So it
12 now reads, "An entity in the Executive Department of the
13 State Government, if the board, commission or committee
14 otherwise meets the definition of a public body pursuant to
15 this subsection."

16 Same language was struck out of subsection 3.
17 Again, that's "consisting of members appointed by the
18 Governor."

19 And the reason I struck that language from both
20 subsections 2 and 3 is increasingly we are seeing the
21 Governor either delegate to maybe the attorney -- the
22 Lieutenant Governor or other individuals within the
23 Executive Department to then appoint the members and run
24 these meetings and chair them. And so at that point, I
25 don't see the reason why we need that qualifying language

1 that it has to be comprised of members appointed by the
2 Governor when the subsection starts with any board,
3 commission, or committee consisting of at least two persons
4 appointed by. And I think the -- and the officer within the
5 Executive Department of the State Government should be --
6 that should rise that public body into the definition that's
7 currently existing for a public body.

8 So I don't know if anyone has thoughts on that.
9 It would -- it would simply expand the -- the number of
10 bodies that would be subject to the OML in terms of state
11 government.

12 Okay. Now I'll move on to a new subsection (c)
13 under the same section. And that involves subcommittees or
14 working groups of public bodies that are defined under
15 subsections (a) and (b). And the change now considers those
16 subcommittees or working groups to also be public bodies if
17 a quorum of the members of the original public body is a
18 member -- are members of the subcommittee or working group.

19 And this is more -- we -- we're increasingly
20 seeing because it's -- there's a lot of public bodies that
21 have members with certain expertise, and those individuals
22 are -- are chosen to lead up working groups or
23 subcommittees, and they do a lot of the work there, in
24 essence, between the members. If there's a quorum of
25 members of the public body, as of now, that create a

1 subcommittee, that subcommittee does all the work, does all
2 the deliberation on that matter, and then takes the
3 recommendation to the public body, and the public body
4 defers because of their expertise and adopts it.

5 To me, that is -- runs a foul of, you know, the
6 public body requirement. So this simply refines the public
7 body, that commission, to include those subcommittees or
8 working groups. But I do narrow that to those that have a
9 quorum of members from the originating public body.

10 So I don't know if anyone has thoughts on that
11 addition.

12 MR. LYONS: Kevin in Carson City.

13 Yeah. The -- I think the -- as you noted, right,
14 any subcommittee that goes beyond just collecting
15 information and does do its own recommendations or
16 deliberation is a public body, and I think the first part of
17 that clarifies that. But then when you get to the "(a) and
18 (b) shall be considered public bodies if a quorum of the
19 members," so that's not actually -- the -- it almost -- you
20 know, in context to the -- to the regular subcommittee rule,
21 it feels like it's kind of cutting back in some way. Like,
22 "Oh, well, if we only have two members out of our five on
23 the subcommittee," then now maybe we're creating confusion
24 that that's not a public body, because that subcommittee
25 that is actually deliberating and making recommendations to

1 the board is a public body.

2 CHAIRPERSON BATEMAN: And I --

3 MR. LYONS: Because no members of the board --
4 yeah.

5 CHAIRPERSON BATEMAN: I think to clarify that, if
6 there -- if there wasn't a quorum --

7 MR. LYONS: Yeah.

8 CHAIRPERSON BATEMAN: -- on the subcommittee or
9 the -- I mean, that would be a stretch of the current OML in
10 terms of -- because the public body needs to then make
11 recommendations by the language in the statute now that is
12 to -- let me find it. Which advises or makes
13 recommendations to any entity which expends or disburses or
14 is -- or is supported in full or in part by tax revenue.

15 So right now that subcommittee, which is making
16 recommendations solely to the committee or the -- the -- you
17 know, the public body itself, wouldn't be making
18 recommendations to someone who is supported in whole or in
19 part by tax revenue. And in that case, that subcommittee
20 would not be a public body, necessarily. And that's where
21 I'm trying to clarify.

22 I think it's been used in kind of a circumventing
23 way where bodies have created subcommittees and working
24 groups and stated, "Well, we don't advise the legislature,"
25 for example, "directly. We don't advise the city counsel.

1 We don't advise county commission directly. We only advise,
2 you know, our -- our board. And so because of that, we
3 don't qualify as a public body."

4 And so my attempt here was to clarify that, that
5 the -- the working group or subcommittee, when it has a
6 quorum of members, would be a public body itself regardless
7 of whether or not it's advising directly to a group.

8 MR. LYONS: That -- that's helpful. So, you know,
9 with that intent, I think you'd want to -- might want to
10 maybe consider saying that, right, that -- in other words,
11 that a subcommittee that is not otherwise considered a
12 public body will be considered a public body if, as a -- you
13 know, a quorum of members, kind of regardless of what it
14 does. That's the intent, I -- I -- I think I gathered?

15 CHAIRPERSON BATEMAN: Yes.

16 MR. LYONS: Right. So it's to expand the
17 definition. Yeah, then maybe a clarification like that
18 would help because it's difficult to -- to imagine a
19 subcommittee -- you know, obviously, any local government
20 board is -- is advising on things that address tax payer
21 money. So any subcommittee that that board creates to
22 report back to it, you know, recommendations is a public
23 body.

24 I'm on the Washoe County Advisory, for example,
25 one of their advisory boards. We don't have any power other

1 than just to, you know, recommend approval, right. But we
2 are a public body with no members, obviously, on that.

3 So it's -- yeah, maybe there's -- maybe an
4 expansion would be the approach -- the approach there, a
5 clear expansion.

6 CHAIRPERSON BATEMAN: Is there any other comment
7 on subsection (c) before we move on?

8 Okay. Moving on to subsection 7 of the same NRS.
9 This is my attempt, and this is based on our discussion at
10 the last meeting regarding a definition for supporting
11 materials. And this -- the way the proposed language reads
12 now is that "'Supporting materials' means materials provided
13 to a quorum of members of a public body including, but not
14 limited to, written records, audio and/or video recordings,
15 photographs, and digital data, which would reasonably be
16 relied upon by the public body in making a decision."

17 And that is somewhat expanding the language that
18 we currently have in our Open Meeting Law Manual.
19 Obviously, that manual is more advisory, less legal. But
20 the OML Manual currently refines supporting materials to be
21 written materials. And I think it was Mr. Smith at the last
22 meeting mentioned that, you know, that doesn't cover all the
23 materials that these public body members receive. And so
24 this was my attempt to expand that but within a way that
25 is -- is workable so that, you know, those members of the

1 public bodies who go out and do their own research or, you
2 know, meet one on one with individuals and they are the
3 only -- that person is the only one to receive that
4 material, we can't be expected for the, you know, the staff
5 or other members of that board to -- to recognize what this
6 individual member did and collect the information and give
7 it to everyone prior to the meeting or include it.

8 Obviously, if it's addressed through the meeting,
9 it should be, you know, included. If it's relied upon by,
10 you know, the other members after it's shared during the
11 meeting, that should become part of the supporting
12 materials.

13 And I don't know if this sufficiently covers that,
14 but that was my intent. So I'll open that for discussion if
15 anyone has comment.

16 MR. GOULD: Can I pose a hypothetical?

17 MR. SMITH: Sounds good to me.

18 MR. GOULD: You tell me if under this language --
19 and I'll preface this by saying I fully support the idea
20 that any information that's given to a public body that's
21 going to be used to make a decision should be available to
22 the public. But one area that I'm a little concerned about,
23 though, is privileged information that may be provided,
24 particularly if you're asking a public body to make a
25 decision on a litigation matter.

1 There could be matters that they've seen that were
2 not even given as part of an agenda but were given in the
3 course of the representation of that public body that
4 would -- would need to continue to maintain the
5 attorney-client privilege. And I understand that that can
6 be misused, certainly, like anything could be misused. And
7 I'm not talking about trying to hide matters under
8 privilege. I'm talking about situations where there's truly
9 attorney-client privilege that's attaching and needs to
10 attach.

11 I think there needs to be some recognition so that
12 we don't get into a situation where it turns out someone
13 questions that, and then it comes to your office and you're
14 looking -- if this language were to be incorporated as it's
15 written, I'm not sure that's excluded.

16 CHAIRPERSON BATEMAN: I think -- I don't know if
17 this would resolve your -- your question, but we could refer
18 back to the section regarding supporting materials don't
19 include those materials that are, you know, considered -- or
20 I don't want to say -- considered or discussed during a
21 closed session, so that might include, you know, the closed
22 sessions for, you know, reviewing the -- the health or, you
23 know, capacity of an employee, et cetera. Anything that
24 qualifies under the statute that allows a closed session, I
25 would -- we could refine that to include an attorney-client

1 gathering and information.

2 MR. GOULD: Well, I was saying more broadly a
3 communication. Because, for example, in my case, we -- we
4 don't really do closed session. We might do briefings that
5 are not meetings, but we don't generally go into closed
6 session unless we're required to, let's say, under our
7 policies because of a tenure hearing or something.

8 But if the attorney -- and it's not always the
9 in-house person. It could be an out-house -- you know,
10 someone who has gone outside and been brought in. If they
11 have provided legal materials to the board over the course
12 of litigation, that's obviously being used in their minds
13 when they're talking about the litigation. I don't know
14 that -- I don't want to be in a position, frankly, where I'm
15 defending to your office that all of that privileged
16 information now became unprivileged, had to become public
17 materials because it fits within this expanded definition of
18 supporting materials. That's my concern.

19 MS. MILLER: I think you're protected under the
20 re- -- in 020, subsection 6, it says you have to give
21 supporting materials, but then it has exceptions including
22 anything declared confidential by law, which attorney-client
23 communications would fall under.

24 MR. GOULD: Um-hmm. And I -- I don't disagree
25 with that. I just wanted to make sure that we weren't

1 creating any conflict between that and this new proposed
2 section 7. So if they could somehow be tied in --

3 CHAIRPERSON BATEMAN: Sure.

4 MR. GOULD: -- so that we're not losing that
5 protection, then I'm okay with that.

6 CHAIRPERSON BATEMAN: I might just cite to 020 and
7 have that as the qualifying language.

8 Okay. Any other comments on that subsection?
9 That's subsection 7, sorry, for the record.

10 Okay. So we will move on. And I think the next
11 change -- and please let me know if I miss one of these --
12 is under 241.025. And there is a new subsection 4, and
13 that's 241.025, which is "Designee of member of public body
14 not allowed," and then section -- and this subsection came
15 out of --

16 MS. MILLER: I'm sorry, Caroline.

17 MR. LYONS: Sorry. It -- it looks like you did
18 skip over one --

19 CHAIRPERSON BATEMAN: Oh, I'm sorry.

20 MR. LYONS: -- on 241 -- Kevin. Sorry -- 241.020.
21 It's No. 6.

22 CHAIRPERSON BATEMAN: Yes. Thank you.

23 MR. LYONS: Yeah.

24 CHAIRPERSON BATEMAN: And that is under --

25 MR. LYONS: So --

1 CHAIRPERSON BATEMAN: -- the -- under subsection 6
2 regarding combining agenda items and removing agenda items
3 or delaying discussion.

4 Right now the sec- -- the two subsections read
5 that the public body may combine two or more agenda items
6 and the public body may re- -- may remove an item from the
7 agenda or delay discussion. And the language I -- the
8 proposed language I added was, "The Chair of the public
9 body." We can probably make that designee. And this
10 language is more from practice of these public bodies.

11 I think it's quite difficult to have a public body
12 go through an agenda at the beginning of the meeting and
13 vote on whether or not they're going to delay or -- or
14 remove an item from the agenda. And this is what we see in
15 practice, our office anyways. That public bodies -- the
16 Chair is the one to remove it or -- or even, you know,
17 the -- the director who is a staff member or an executive
18 director, et cetera, will remove an item from the agenda at
19 the start of the meeting or delay discussion or combine
20 those items.

21 I think passively that the State Supreme Court has
22 approved that. The case law we see regarding combining and
23 removing, reviewing the -- the minutes of that, it's the
24 Chair who makes that decision. And I think the Court has
25 kind of brought in the public body and used that language.

1 I don't know if this is an issue. I think if this
2 group wants those decisions to be made by the public body,
3 we may need to emphasize that. But this was a way for me to
4 clarify between what's in statute and how the courts have
5 interpreted this -- this ability to combine items or remove
6 or -- or combine items.

7 So any thoughts on that addition one way or the
8 other?

9 MS. MILLER: For some of the local bodies that I
10 represent it will be a problem -- it doesn't -- it's not a
11 problem to me as an attorney. But it may be a problem to
12 some of the members of the board because it gives the Chair
13 special powers.

14 Right now most of the local bodies that I have
15 that are elected bodies rather than appointed bodies, the
16 members have a right to put something on. They're going to
17 be upset if the Chairman has the right to supersede that.

18 CHAIRPERSON BATEMAN: Okay.

19 MS. MILLER: If they're administrative bodies that
20 come within the Open Meeting Law, it makes more sense
21 because the Chair is kind of putting together the agenda.
22 But I can see a couple of my bodies being upset with this.

23 CHAIRPERSON BATEMAN: So would it be more
24 advisable to refine it to say the public body must take
25 action to combine or remove or delay, and maybe that would

1 clarify the confusion that a lot of these bodies have?

2 MR. GOULD: Well, you have to be careful here,
3 though. Because in my situation, my -- my body has bylaws
4 that do exactly what you're saying you've seen, which is
5 they give the Chair the discretion to basically control over
6 the agenda, not necessarily to preclude things from coming
7 on. We have specific sections on that. But in the course
8 of the meeting, the Chair determines what goes on the
9 agenda, the order of the items, the right to change the
10 order. So we've -- we've addressed it in our bylaws, so I
11 would just want to make sure that whatever you do here takes
12 into account that the body could otherwise change its own --
13 this, so they're not required now. I don't think the Open
14 Meeting Law should act as a super corporate bylaw for the
15 entity.

16 MR. LYONS: Thank you.

17 CHAIRPERSON BATEMAN: So would it help if we
18 included qualifying language, you know, something like
19 absent delegation or -- or --

20 MR. GOULD: Absent language in our -- in the
21 bylaws or the public body's governing documents, or
22 something like that to the contrary.

23 CHAIRPERSON BATEMAN: Yeah.

24 MR. GOULD: So that there -- you know.

25 MR. LYONS: Kevin in Carson City.

1 Is this the best place for that since we're really
2 just talking about a notification as opposed to a rule?

3 I would second the previous comments. You know,
4 the governments I work with, they have -- they all have
5 their own bylaws, some of them. Any two members can put
6 something on. You know, the Chair with the cooperation of
7 someone else can -- and there's actually, you know, strict
8 rules that the Chair can't take an agenda item off. You
9 know, the board has to essentially -- the board -- the board
10 can vote to take it off the agenda. But you don't have a
11 veto point there. And that prevents, you know, sort of the
12 problem of the potentially captured or corrupt Chair keeping
13 things off the agenda item, which is a failure mode I've
14 seen as well.

15 So it struck me as fine as is. But if there's a
16 legal point you want to emphasize, maybe it's not under the
17 notification.

18 CHAIRPERSON BATEMAN: Okay.

19 MR. LYONS: Fine as is meaning without "Chair of."
20 Fine as previous, I should clarify. Sorry.

21 CHAIRPERSON BATEMAN: Okay. And is there any
22 other discussion on that section?

23 And I think we're ready to move on to 241.025.
24 And this is an added subsection 4 to that statute, which
25 reads as follows: The prohibitions set forth in this

1 section do not preclude a member of a public body from
2 assigning a representative to attend a meeting of the public
3 body. A representative attending a meeting of a public body
4 on behalf of a member of the public body shall not be
5 included in determining a quorum of the meeting and may not
6 vote upon action items before the public body.

7 And the intent of this subsection was to allow
8 members of a public body who can't attend who don't have
9 designee power to at least have a representative attend to
10 gather information to report back.

11 Obviously, that representative wouldn't have any
12 voting power, wouldn't count towards the quorum of the body.
13 But this allows that member of the public to have someone
14 as, you know, their representative. And this is also based
15 on common practice that we see. And so I -- it's my attempt
16 to capture that but also make sure that the public bodies
17 know that those representatives aren't allowed to
18 participate in any action, et cetera.

19 So any comments on that?

20 MS. KAUFMAN: I have a question.

21 CHAIRPERSON BATEMAN: Yes.

22 MS. KAUFMAN: What is the interplay then with this
23 and the commission rules that prohibit substitutes, the
24 commission statute? So what would be the -- like our -- is
25 there a -- are they complementary or will they be competing?

1 CHAIRPERSON BATEMAN: And when you say "commission
2 statutes," what do you mean?

3 MS. KAUFMAN: Like the statutes that say a
4 substitute can't come on your behalf.

5 CHAIRPERSON BATEMAN: I'm not aware of those.

6 MS. KAUFMAN: Okay.

7 CHAIRPERSON BATEMAN: But I will look into it.

8 MS. KAUFMAN: Okay.

9 CHAIRPERSON BATEMAN: Okay.

10 MR. GOULD: Well, I can give you an example. I
11 haven't looked at the issue, but I think it's a great --
12 does this mean that -- let's say on my public body that this
13 language would force us to allow a member, an elected
14 member, to -- if he or she says, "Well, I want Janet to come
15 in and sit at the table at this meeting," that we'd have to
16 allow that? And I'm not sure what that has to do with the
17 Open Meeting Law, frankly.

18 CHAIRPERSON BATEMAN: Yes. And this, like I
19 stated, was -- it -- it arose from what we've increasingly
20 seen in our office, which is that there are representatives
21 who attend who believe they have the authority to vote and
22 who believe they have the authority to be included in the
23 quorum, or the public body itself is confused. So it's an
24 attempt to -- to clarify between a designee and a
25 representative.

1 MR. GOULD: And again --

2 CHAIRPERSON BATEMAN: But it may be --

3 (inaudible.)

4 MR. GOULD: -- I appreciate the clarification.
5 But my thought is this should be left to the public body.

6 This is an internal issue of a public body. I'm not seeing
7 where this comes into Open Meeting Law. Explain -- I'm not
8 seeing how this is an Open Meeting Law concern.

9 CHAIRPERSON BATEMAN: Would it be -- and I'm going
10 to answer your question with a question.

11 MR. GOULD: Sure.

12 CHAIRPERSON BATEMAN: Would it clarify if we -- if
13 we reworded this as the public body may allow
14 representatives, but they may not vote or, you know, be
15 included in a quorum?

16 And the Open Meeting Law issue arises out of the
17 fact that the confusion surrounding it causes complaint
18 after complaint. So it really is a clarification addition.

19 MR. GOULD: Well, I -- I think the clarification
20 is better than what I'm seeing here.

21 CHAIRPERSON BATEMAN: Okay.

22 MR. GOULD: But again, I'm just going to say
23 for -- for my position is that I don't think this really
24 belongs in 241.

25 CHAIRPERSON BATEMAN: Okay.

1 MS. MILLER: It seems like you're -- the
2 language -- just subsection 1 is pretty clear. And since
3 anybody can attend a public meeting, I'm not sure -- not
4 sure that you're accomplishing anything with this language.

5 CHAIRPERSON BATEMAN: Okay.

6 MS. KAUFMAN: Just to -- like, for example, ACAJ
7 doesn't allow substitutes.

8 THE COURT REPORTER: I'm sorry. Who doesn't allow
9 substitutes?

10 MS. KAUFMAN: ACAJ doesn't allow substitutes to
11 appear on a member's behalf, so to clarify my comment
12 earlier.

13 CHAIRPERSON BATEMAN: Okay.

14 MS. KAUFMAN: So in that situation, then which one
15 is superior?

16 CHAIRPERSON BATEMAN: Got it. Okay.

17 I'm thinking this one is an omission based on the
18 fantastic feedback, so thank you.

19 The next -- oh, I'm sorry. Was there any other
20 discussion on that? I think it was pretty much shut down,
21 so I'm going to duck my head and move on.

22 The next change I see is on under 241.033 under
23 subsection 3. And this is a very specific Athletic
24 Commission exemption from the notice requirements in this
25 statute. And the clarification I included was rather than

1 receipt of proof of service, it would be "proof of receipt
2 of the notice by the subject of the meeting," "or the
3 subject's representative including, but not limited to, the
4 subject's legal counsel, promoter, or manager."

5 And this language, again, came from the fact that
6 most of the -- the individuals who would be subject to a
7 hearing under this section were -- don't reside here, don't
8 speak English, have their promoters, managers, et cetera
9 representing their interests, and we rely on those bodies to
10 be the intermediary and make sure these individuals are
11 aware of the hearings that are occurring. So very -- a very
12 narrow addition to that.

13 And I -- I don't think there are any comments on
14 that section, so I'll move on to -- and I think the next
15 change I see is under 241.035.

16 MR. LYONS: Sorry.

17 CHAIRPERSON BATEMAN: Yes.

18 MR. LYONS: Sorry. Real quick on the last one.

19 CHAIRPERSON BATEMAN: Yes.

20 MR. LYONS: Kevin again.

21 So was the intent to eliminate proof of service?
22 Is that service or receipt to -- to broaden it? Or was it
23 to eliminate service, you know, for the people that are in
24 the U.S., for example?

25 CHAIRPERSON BATEMAN: The service -- the service

1 requirements that are specifically in the Athletic
2 Commission's statutes and regulations are -- it's -- I
3 changed the wording to "receipt," because they're not the
4 same proof of service, let's say, in a civil litigation.

5 MR. LYONS: Okay. Perfect.

6 CHAIRPERSON BATEMAN: Yeah. So it's -- they have
7 their own very narrow requirements, and this was just to
8 clarify that.

9 MR. LYONS: Just curious. Yeah.

10 CHAIRPERSON BATEMAN: Yeah.

11 MR. LYONS: You're the expert on that one,
12 obviously.

13 CHAIRPERSON BATEMAN: 241.035 on public meetings:
14 Minutes; oral -- aural and visual reproduction; and
15 transcripts.

16 My first addition to that was under subsection 1,
17 an added subsection (f), which states that "A transcription
18 of a meeting pursuant to subsection 4 qualifies as written
19 minutes of the meeting."

20 This is purely a clarification. I think it's
21 pretty -- it's clear to me that everything that's in a
22 transcription would be the materials that are, you know,
23 required for meeting minutes. But it's been, for some
24 reason, a huge cause of confusion. And so we've had bodies
25 who have had minutes as well as transcripts, and then they

1 don't know which to provide on request for minutes, and so
2 it really is just a clarifying. I don't -- I don't see a
3 huge issue with that unless members of the group do.

4 And then the -- oh, and the other reason behind
5 this section was that members of the public would be
6 requesting a meeting transcript, and concerns started
7 arising because the public bodies would receive those
8 requests and try to charge the members of the public body
9 for that transcription when the body had already paid the
10 certified court reporter for those services. I don't think
11 that's the intent of the Open Meeting Law, that they should
12 try to have to recoupe their money, because clearly that
13 money is not going to the court reporter. It's going to the
14 body itself. And so they were using -- they were trying to
15 narrow out the transcription of the meeting, opposed to the
16 minutes, and not providing a transcript when they -- they
17 had one available. So this is a way to kind of narrow that
18 so that they can't use this as an exception to the
19 requirement that the meeting minutes be provided free of
20 charge.

21 So that's the addition to subsection (f).

22 Under subsection 2, I added clarifying language,
23 and that's, "If the public body does not hold a subsequent
24 meeting or adopt the minutes within 30 working days, it
25 shall provide a draft copy of the minutes which is clearly

1 marked 'draft.'

2 Furthermore, it states, "A copy of the minutes or
3 audio recording, or draft minutes if applicable, must be
4 made available to a member of the public upon request at no
5 charge."

6 And this arose from questions regarding the 45-day
7 requirement to pass minutes or the -- the next subsequent
8 meeting and when the public body needs to provide at least
9 draft minutes so the public can review those and make
10 comments prior to the next meeting.

11 So that is, hopefully, what I was able to clarify
12 in this section. I don't know if --

13 MR. GOULD: Yeah. I have -- I have a concern with
14 this.

15 CHAIRPERSON BATEMAN: Sure.

16 MR. GOULD: And I'll tell you why.

17 In my particular situation where we do -- we have
18 the main board and eight committees, and we do very
19 extensive minutes. It can take them sometimes two months to
20 get those minutes because we don't just transcribe. There's
21 a lot that goes into it. We do have audio. And if people
22 call us, we always provide the audio free of charge.

23 But I would prefer instead of saying "it shall
24 provide draft copy," I would say "it may," as an
25 alternative, because we don't always have draft copies in

1 that time frame. I'm not -- you know, I'm going through now
2 minutes that are going to go on our agenda for our September
3 board meeting of the June board meeting. So it just
4 wouldn't work for us. So how --

5 MR GUTHREAU: Yeah. This -- sorry. Go ahead.

6 MR. GOULD: No. I -- I just want to make sure
7 that we're not creating requirements that, like in my case,
8 I couldn't satisfy.

9 MR GUTHREAU: Yeah. I think -- this is Vince
10 again with the Nevada Association of Counties. We -- we
11 would have some similar concerns. I mean, I -- I -- I would
12 even say for our organization. So we -- we -- our best
13 intention when we publish a board meeting calendar at the
14 beginning of the year is that we do a board meeting monthly.
15 But, for instance, we -- the board canceled our July
16 meeting, so that would mean that the June minutes wouldn't
17 be available, even in draft form, until August.

18 And the reason for -- for moving the board meeting
19 by the board was that -- I mean, we have sort of a smaller
20 staff at the association, and I just think part of the
21 reason for moving the board meeting was because of workload.
22 But if we're at -- if we -- if we're requiring a workload to
23 satisfy this, it sort of negates -- I mean, we have one
24 person that does minutes so -- and they, again, are also
25 detailed. So I'm a little bit concerned about the -- about

1 the re- -- about being able to meet that requirement and
2 then not being -- not being in compliance.

3 I mean, I guess on occasion -- we rarely get a
4 request for minutes. But on a case by case, if we did get
5 them, I don't see a reason why we wouldn't necessarily
6 provide them. I'm just a little bit worried about being
7 tied into this 30-day requirement.

8 CHAIRPERSON BATEMAN: I think the -- the issue
9 then is the fact that the statute, as it currently reads,
10 requires the public bodies to make those minutes or the
11 audio recording available within 30 working days after the
12 adjournment of the meeting. There is no qualifying language
13 there. So if that is an issue right now where bodies are
14 having a hard time having even draft minutes within 30
15 working days, I think that's a separate -- I mean, unrelated
16 to --

17 MR GUTHREAU: Okay.

18 CHAIRPERSON BATEMAN: -- my addition. I think
19 it's something that we would need to address. It might
20 be -- you know, my concern is that members of the public are
21 given adequate time to review the minutes or draft minutes
22 prior to the body's next meeting where those minutes will be
23 adopted. So maybe that's the better --

24 MR. GOULD: And I would have no problem with that,
25 because, for example, in our case --

1 MR GUTHREAU: Yeah. And neither would we. And I
2 think -- yeah.

3 MR. GOULD: -- we will publish our agenda, yeah,
4 30 days before the meeting, sometimes two to three weeks, so
5 people have -- and those minutes are always su- -- you know,
6 supporting material because the minutes are up for approval.

7 So, for example, if we post on August 15 for a
8 September -- mid September meeting, they'll have plenty of
9 time to review them. We just don't necessarily have the
10 staff, as this gentleman was saying, to have a working draft
11 in 30 days. It's not workable for us.

12 CHAIRPERSON BATEMAN: So if we had it where -- oh,
13 I'm sorry.

14 MS. MILLER: I'm sorry. Is it a problem, the
15 three working days for minutes?

16 CHAIRPERSON BATEMAN: I'm sorry. Can you repeat
17 that?

18 MS. MILLER: You know, right now, if we don't have
19 the minutes -- and often we don't depending on how many
20 meetings our boards have, because they have limited clerk
21 staff -- we give a copy of the audiotape or videotape,
22 digital videotapes, but it takes longer to get together
23 those minutes. They're posted three working days before
24 they're approved.

25 Is that not an adequate time? When everything

1 else -- isn't adequate time for everything else to be able
2 to do?

3 CHAIRPERSON BATEMAN: I would think that's -- I
4 mean, if we're -- if we're dealing with meetings that are
5 going, you know, like, as you experience, maybe staff
6 meetings start at, you know, 9:00 and go all the way to 5:30
7 or 6:00, I think it's placing somewhat of a burden on the
8 member of the public if they're interested in a specific
9 section, or even the meeting as a whole, to be expected to
10 review it all prior to the meeting three days later.

11 And I don't know. That -- that's just my thoughts
12 on the issue. But I also agree if you're providing an audio
13 recording, it should -- it should suffice, and the minutes
14 then can be posted at whatever time.

15 My concern is that there are -- there are bodies
16 that are having trouble with both in terms of being able to
17 get the audio recording, you know, whether it's on a phone
18 or -- I don't know how they -- a lot of these bodies do it.
19 But being able to then get that into a format that can be
20 shared with the members of the public. So the -- the
21 complaints that we receive are: We didn't have an adequate
22 time to review this; or my comments were incorrect, but I
23 didn't realize until afterwards. That kind of thing.

24 So I don't know if it would help if we made it
25 within 30 working days after adjournment of the meeting or,

1 you know, 15 days prior to the meeting, whichever is, you
2 know, later. Am I saying that right? You can either do
3 it -- I mean, I guess we can change it to within -- within
4 15 days prior to the body's next meeting.

5 MR. GOULD: Well, would it work for you, for your
6 concerns, based on what you're hearing, if we could do it
7 where it's either the audio or the minutes, if they're
8 available? We still would have to post the minutes in
9 accordance with the Open Meeting Law, so you know that
10 they're going to have at least three working days.

11 But I would prefer that the audio be in leu of --
12 be a choice as opposed to -- because we can do that. And we
13 actually go through and we ask them what they're looking
14 for, and we tell them where on the audio to look, right. We
15 try to accommodate them.

16 CHAIRPERSON BATEMAN: Yeah.

17 MR. GOULD: But -- so if it could be one or the
18 other to be in compliance, I would be comfortable with that.

19 MS. MILLER: Yeah.

20 MS. KAUFMAN: I would just -- along those lines,
21 if it's one or the other, people with disabilities who maybe
22 require a written minute or require an audio, it puts them
23 in a different -- like, they aren't able to get what they
24 may be needing. So I think we need to keep all those
25 accommodations in mind as well.

1 CHAIRPERSON BATEMAN: If we put -- I'm thinking if
2 we wanted to build that language into the accommodation
3 section in terms of requests for accommodations, but then
4 refine subsection 2 to be minutes, if they are available, or
5 an audio recording of the meeting, and then keep the current
6 language, strike the addition. So, in essence, within 30
7 days you need to provide an audio recording or the minutes,
8 if the minutes are available at that time, and then that --

9 MR. GOULD: I would be fine.

10 CHAIRPERSON BATEMAN: Okay.

11 MR. GOULD: Because, again, we still have to post
12 the minutes that are up for approval at the subsequent
13 meeting within the required time --

14 CHAIRPERSON BATEMAN: Yes.

15 MR. GOULD: -- in the Open Meeting Laws. It's not
16 like they're not going to have minutes before the meeting.

17 CHAIRPERSON BATEMAN: Great.

18 Does anyone have a problem with that change?

19 Then in that -- in that --

20 MR. LYONS: Sorry. Kevin in Carson City.

21 Yeah. One -- one thing just to watch for, and
22 I've seen this, is when the minutes are deliberately
23 different from the audio recording. And so the -- the law
24 now, obviously, within 30 days, it's fine, either minutes or
25 an audio recording the person gets that, that's fine. But

1 there -- there's a game that's played where the audio
2 recording's been available for a long time, and then the
3 minutes come out, and maybe you don't see it until too late
4 that it's actually been deliberately, you know, recast,
5 different from the audio. So whatever you do, I'd just keep
6 that in mind.

7 CHAIRPERSON BATEMAN: And I think the language as
8 written would require that audio to be -- I mean, I don't
9 know how to resolve that issue to be frank.

10 MR. LYONS: Yeah. And I don't either. There's no
11 definition of draft. Right? So the draft minutes could
12 be -- yeah.

13 MR. GOULD: I think the issue -- I think the issue
14 is this: If -- if a public body was doing -- was engaging
15 in that behavior, which is obviously inappropriate --

16 MR. LYONS: Yeah.

17 MR. GOULD: -- then I think you have to put some
18 responsibility on the -- on the public, as well as the
19 members of the public body, to read those minutes before the
20 meeting in which it is being -- those minutes are being set
21 up for approval and raise those concerns.

22 If -- so what I'm really hearing here is people
23 aren't necessarily reading the minutes that are supporting
24 materials for the meeting where those minutes are being
25 approved the next -- usually the next meeting.

1 You can't really legislate the failure of anybody,
2 whether it's a member of the public body or the public, to
3 not review materials ahead of the next meeting. They --
4 they're given three working days, at a minimum. We do more
5 than that. But -- so if -- if a public body is playing that
6 game, then the public body members and the public have a
7 responsibility to review those minutes and say: No, that
8 isn't how I heard it when I got the audiotape or what I
9 recall. I don't know how else to reconcile that.

10 CHAIRPERSON BATEMAN: Yeah.

11 MR GUTHREAU: Yeah, that's -- my thing is that's
12 the whole purpose of the adoption process. You're on record
13 as approving the minutes. If -- if -- I mean, yeah, we
14 can't legislate good behavior, I guess. I mean, in this
15 case, like, I feel like people are going to have to read the
16 information before.

17 MR. LYONS: To- -- totally agree with you. Yeah,
18 totally agree with both of those comments, just to be clear.
19 I just wanted to make sure we're not doing anything that
20 makes it easier to play that game, right.

21 CHAIRPERSON BATEMAN: Yeah.

22 The additional changes to this subsection under
23 (a), (b), and (c) is qualifying language in terms of -- and
24 I'm just going to read the first sentence, Paragraph (a) of
25 subsection 1 of NRS 241.030, which, for the record, involves

1 closed sessions to discuss, you know, health issues,
2 behavior issues, et cetera, become public records. And
3 right now it reads, "When the public body determines that
4 the matters discussed no longer require confidentiality."
5 And that same language follows in subsections (b) and (c).
6 And the change that I added to that was to include "if and
7 when the public body determines."

8 And that arises from the fact that a lot of
9 these -- I think the -- the subject matter regarding these
10 hearings would be confidential whether it be, you know,
11 HIPAA issues or anything else, if they're medical records.
12 So I think those would not become public. And so I want to
13 make sure that we build that in, that there's not an
14 expectation that it will eventually become public when there
15 are those limited records that will not be public.

16 So any discussion on those three changes?

17 MR. GOULD: I agree. This is Dean Gould. I agree
18 with this.

19 CHAIRPERSON BATEMAN: Great.

20 If there aren't any additional questions, moving
21 on to subsection 4, same statute, under sub (a), and that is
22 increasing the retention requirements for audio recordings
23 or transcripts of meetings by public bodies from one year to
24 three years after the adjournment of the meeting.

25 And I don't know if that's, you know,

1 controversial in any way. It would assist --

2 MS. MILLER: For smaller bodies.

3 CHAIRPERSON BATEMAN: Yeah.

4 MS. MILLER: I don't think it's going to be an
5 issue for the larger bodies that have digital capabilities.
6 For the smaller bodies, it will be a financial impact that
7 have to buy more tapes and store them.

8 CHAIRPERSON BATEMAN: Mr. Guthreau, do you have
9 any experience with that? Would this be --

10 MR GUTHREAU: Yeah. That's -- I mean, that's a --
11 that's -- that's exactly right. I mean, there is -- the --
12 especially, if you start talking about Open Meeting Law as
13 it applies to, you know, one-member GIDs in some of our
14 smaller counties. I mean, that's -- that's a pretty
15 significant impact, which, I mean, if you want to move
16 forward with it, would require like a fiscal analysis on the
17 BDR. But I think -- you know what? I'd have to reach out
18 to the -- to the local government entities for -- for what
19 that fiscal impact would be.

20 But even larger counties could see a pretty
21 significant increase in costs because they hold meetings
22 more frequently. So yeah, I think that might require
23 some -- some discussion. I mean, I don't know. Maybe we
24 could meet in the middle and do it two years. I don't want
25 to speak for --

1 CHAIRPERSON BATEMAN: Yes.

2 MR GUTHREAU: -- what the impacts would be. But
3 yeah, there would definitely be a fiscal impact. I mean,
4 there would be a fiscal impact just to the association of
5 counties to -- to keep those audio files. But I guess my --
6 I guess my thought is, too -- let's see here. Is this -- I
7 mean, I guess my thought is, is that if we have approved
8 minutes, why -- like why would we need to increase the
9 trans- -- I don't know. Maybe its to -- to -- (inaudible.)
10 But I feel like, I don't know, on approved minutes, like
11 why? If people are coming back three years later, I mean --
12 I mean, sometimes the board's changed over by then. I don't
13 even know how you would handle that.

14 CHAIRPERSON BATEMAN: Okay.

15 MR GUTHREAU: But --

16 CHAIRPERSON BATEMAN: And --

17 MR GUTHREAU: I don't know. That's just my --
18 that's me thinking out loud.

19 CHAIRPERSON BATEMAN: And --

20 MR. LYONS: I had a -- I had a --

21 CHAIRPERSON BATEMAN: And for my purposes --

22 MR. LYONS: -- related thought on the impact.

23 CHAIRPERSON BATEMAN: Oh.

24 MR. LYONS: Sorry. Go ahead.

25 CHAIRPERSON BATEMAN: Oh, no. From -- the reason

1 behind the language was we've had a couple cases recently,
2 as Mr. Lyons kind of brought out, that the minutes
3 weren't -- they -- they were either unclear or they were not
4 comprehensive of what occurred during a session of a
5 meeting, and that portion of the meeting involved the
6 alleged OML violation. And so it -- it was concerning to us
7 because that public body -- I mean, separate issue, but
8 didn't even retain it for a year. So when we went to
9 investigate, it was -- you know, we had certain members
10 remembering it one way, certain members remembering it the
11 other way. And the minutes really not conclusively
12 resolving the issue. And so that's where it arose.

13 I understand that there may be issues. If you
14 wouldn't mind, Mr. Guthreau, just kind of --

15 MR GUTHREAU: Yeah.

16 CHAIRPERSON BATEMAN: -- reaching out to your --
17 your groups --

18 MR GUTHREAU: Sure.

19 CHAIRPERSON BATEMAN: -- and seeing how they think
20 and -- I mean, it's not a -- it's not a huge issue, but
21 it's, for some reason, become more prevalent very recently,
22 and so --

23 MR GUTHREAU: Yeah. That's fair. I can -- I can
24 definitely do that. And maybe -- I mean, although the
25 legislature is sort of not -- they go back and forth on

1 applying different standards to different size of
2 populations, as far as local entities go. So I'm sort of
3 hesitant to propose that; although, I think maybe we should
4 keep that in mind. But I can definitely ask about fiscal
5 notes.

6 I -- this might be a stupid question, but this is
7 only my second meeting in this, and I'm not versed at Open
8 Meeting Law, but -- as -- probably as well as I should be.
9 But is there a statute of limitations of when people can
10 file claims?

11 CHAIRPERSON BATEMAN: File complaints with our
12 office or --

13 MR GUTHREAU: Yeah. Like file -- that says like
14 we believe there's a violation. What's the limit on that?

15 CHAIRPERSON BATEMAN: So we don't -- that's --
16 we're -- I've added that to the Open Meeting Law.

17 In terms of practice and in terms of the Open
18 Meeting Law Manual from our office, if a member of the
19 public wished to have a complaint investigated, it -- the
20 requirement is that the member submit that complaint within
21 120 days of the alleged violation or else --

22 MR GUTHREAU: Okay.

23 CHAIRPERSON BATEMAN: -- we reserve the right not
24 to investigate. Obviously, there's issues where --

25 MR GUTHREAU: Yeah.

1 CHAIRPERSON BATEMAN: -- perhaps, the violation
2 took place in secret, whether in a secret meeting or
3 something else and it didn't arise. So I've tried to build
4 that in, but it's not in statute right now.

5 What is in statute is if a member of the public
6 wishes to -- rather than going through our office, going and
7 filing a complaint in, you know, District Court against the
8 public body alleging a violation -- which each member of the
9 public is able to do, although, it's very rare -- those have
10 the 60 and 120 day requirements.

11 So if -- if the member of the public is seeking to
12 have the Court order an action taken by the public body to
13 be void, and I can see that in like a contract -- a
14 contracts issue, et cetera, that the -- the member of the
15 public would have to file their complaint in court within 60
16 days of the violation. And that --

17 MR GUTHREAU: So yeah. So I guess my -- yeah, my
18 point to that would be you're asking local -- local entities
19 to keep records longer than people are allowed to file
20 complaints in court. That -- that's sort of my only -- I
21 understand the in secret thing. I get it, and I want to be
22 sensitive to that. But I just think it's like the IRS
23 asking people to keep tax returns infinitely for items not
24 based on fraud. I don't know. It -- it just seems to me
25 like maybe the year is sufficient.

1 CHAIRPERSON BATEMAN: Okay.

2 MR GUTHREAU: Because if -- if you're asking
3 for -- I -- I don't know. That's my perspective because
4 if -- it's the reason why I asked the question. Is that
5 if -- if they have 120 days to file a complaint, but we have
6 to keep -- if we're -- we have to bear the cost of keeping
7 records for three years, I don't know that that aligns.

8 MR. LYONS: Yeah.

9 MR GUTHREAU: But --

10 MR. LYONS: I actually had a -- so to -- to tie
11 that all together --

12 MR GUTHREAU: Sure.

13 MR. LYONS: -- my thought on this was, you know,
14 they must be retained by the public body, is one part of it
15 where there's a cost. But I'd have to look it up to make
16 sure, but I'm pretty sure that the -- in Nevada, the public
17 records rules require you to keep these indefinitely.
18 Right?

19 Now, that's usually done with the archivist, for
20 example. So you can ship it off to them, and they'll just
21 keep it for free, essentially, to the county or the -- the
22 local agency. So I -- you know, I think that's -- that's
23 really the thing. You don't want it -- certainly
24 couldn't -- you wouldn't want to destroy it after one year
25 under any circumstances or, frankly after, three years under

1 any circumstances. But maybe that -- that particular local
2 public body doesn't have to bear the cost, which is, I
3 believe, the whole point of the archiving system. Okay.

4 There's a -- there's a large number of public
5 records that have to be retained forever, basically, such as
6 minutes and things like that.

7 CHAIRPERSON BATEMAN: Any other comments on that?

8 MS. MILLER: I wonder if you could consider
9 excusing the advisory body, because they're not taking any
10 action. Just to --

11 MR GUTHREAU: Yeah, that would be -- maybe that
12 would even be something that would be worth exploring
13 because some of these -- although GIDs aren't advisory.

14 MS. MILLER: Yeah.

15 MR. LYONS: GIDs are public bodies?

16 MR GUTHREAU: Yeah. Yeah. So I don't know. I --
17 that's -- I guess, for me that's my biggest concern or a
18 town -- or a County of Esmeralda that has 875 people in it.
19 Like, how are they -- you know what I mean? They're going
20 to keep -- although they end up having less meetings. I'll
21 reach out to them on the -- on the fiscal impact --

22 CHAIRPERSON BATEMAN: Okay.

23 MR GUTHREAU: -- and just see if I can get sort of
24 a cross section of counties to give me some idea of how
25 expensive that might be for them. Then I'll be happy to

1 share that with (Inaudible.)

2 CHAIRPERSON BATEMAN: Okay.

3 THE COURT REPORTER: I'm sorry. Can you slow down
4 a little bit when you speak?

5 MR GUTHREAU: Oh, sorry. I'm an auctioneer.

6 My -- my last comment was on -- was on -- I'll --
7 I'll reach out to the -- I just had a question about -- or
8 sort of a comment about maybe including -- or excluding
9 advisory boards since they're advisory and they don't take
10 action on public policy. But I also just reaffirmed that I
11 would reach out to -- to my -- sort of a cross section of --
12 of -- of counties to see what the fiscal impact would be
13 from a -- from moving this requirement from one year to
14 three months -- to three years.

15 THE COURT REPORTER: Thank you.

16 MR. GOULD: So my --

17 MR GUTHREAU: Thanks. Sorry about that.

18 MR. GOULD: -- sense from what I'm hearing is that
19 there seems to be a consensus, at least what I'm hearing,
20 not to move it.

21 CHAIRPERSON BATEMAN: Yes.

22 MR. GOULD: But perhaps if you're concerned, and I
23 was thinking the same thing that it really does tie into the
24 time period in which someone could file a complaint, right,
25 because if they can't sue or file a complaint, what do we

1 need it for. However, maybe build something in that if
2 there is an active complaint, then they're prohibited,
3 almost like a litigation --

4 CHAIRPERSON BATEMAN: Yes.

5 MR. GOULD: -- hold where they now can't --
6 they're mandated not to get rid of it. Whether they should
7 or shouldn't is a different issue, and I -- and I hear that.
8 But this -- I don't know why we would want to increase the
9 time from one to three years in the legislation itself.

10 CHAIRPERSON BATEMAN: Okay. Perfect. I think
11 that is a good compromise.

12 MR GUTHREAU: Yeah. I think that's -- that would
13 make sense. I mean, that's not something we would oppose.
14 I mean, if there's ongoing -- if the complaint is filed
15 within the 120-day or 60-day time period, whatever would
16 apply -- I mean, yeah, destroying records is -- that's like
17 made for TV movie kind of stuff, if it's -- but yeah, that's
18 a great suggestion. Yeah.

19 CHAIRPERSON BATEMAN: Okay. Perfect.

20 MR. LYONS: Have -- have you looked at the -- at
21 the conflict specifically between this and the public
22 records? Because that's -- I see that as a major source of
23 confusion, potentially.

24 CHAIRPERSON BATEMAN: I have not.

25 MR. LYONS: Is it a --

1 CHAIRPERSON BATEMAN: I do work with --

2 MR. LYONS: Okay. Because --

3 CHAIRPERSON BATEMAN: -- State Library and
4 Archives on their retention schedule.

5 MR. LYONS: Yeah.

6 CHAIRPERSON BATEMAN: So I will look into that. I
7 think -- I mean, from my perspective, this was more on like
8 the audio recordings, so it may require some additional
9 revisions. But I think maybe that suggestion from Mr. Gould
10 might wrap it up pretty cleanly. And we can add a reference
11 to notwithstanding your -- your obligations under the Nevada
12 Public Records Act, or something along those lines --

13 MR. LYONS: Yeah.

14 CHAIRPERSON BATEMAN: -- so they know that there
15 are --

16 MR. LYONS: There you go, yeah.

17 CHAIRPERSON BATEMAN: -- official requirements on
18 them. Yeah.

19 MR. LYONS: Yeah. And also just keeping in mind
20 that, you know, if the matter is some other misdemeanor or
21 gross misdemeanor, you know, false statement or something
22 like that, it could be a multiyear statute of limitations, I
23 believe.

24 CHAIRPERSON BATEMAN: Yeah. Okay.

25 So moving on to Subsection No. 5, under the same

1 statute. This was, again, an attempt to clarify the
2 payments and requirements of -- of members of the public for
3 transcripts.

4 And so the language now clarifies that -- that the
5 requirements that a public body provide a transcript of a
6 meeting free to any requested member of the public doesn't
7 apply to the actual court reporters who performed the
8 action. So this arises out of members of the public
9 reaching out directly to the court reporters and saying, "We
10 want a transcript. You have to give it to us for free."

11 It really isn't -- I thought the statute was
12 pretty clear, but we see it a lot more than you would
13 imagine. And so in an attempt to assist our court reporters
14 from getting harassed, this was just slight changes to the
15 currently existing language so that the court reporters
16 don't have that same obligation that the public bodies do
17 directly.

18 And I'm -- I'm not thinking that's going to be
19 controversial.

20 Okay. Moving along. The next change that I see
21 is under 241.0365. That's take -- action taken by a public
22 body to correct violation of the chapter; timeliness of
23 corrective action; and the effect of it.

24 MS. MILLER: I'm having a little hard time reading
25 all these together.

1 Could you just give us an overview of what the
2 statute of limitations would be for the Attorney General, if
3 any?

4 CHAIRPERSON BATEMAN: The statute of limitations
5 for?

6 MR GUTHREAU: Attorney General to file -- I guess
7 there's two different types of action.

8 CHAIRPERSON BATEMAN: Correct.

9 MS. MILLER: Okay.

10 CHAIRPERSON BATEMAN: So there is -- if we're
11 going -- if the Attorney General's Office is going to be
12 filing a complaint in court to request the Court to order an
13 action taken by the public body to be void, that must
14 require with -- must -- the Attorney General's Office must
15 file that complaint within 60 days of the -- the date of the
16 violation. So the date of the meeting, in essence, is when
17 the 60 days is triggered.

18 Separately, if the Attorney General's Office is
19 requesting that the Court order a public body to take
20 corrective action on a violation that occurred during the
21 meeting, that requirement is 120 days from the date of the
22 violation.

23 MS. MILLER: So what would your proposed changes
24 do to those dates, if anything?

25 CHAIRPERSON BATEMAN: It wouldn't. It wouldn't --

1 it wouldn't necessarily change those dates. What I've built
2 in is -- based on our discussions last meeting, as well as,
3 you know, my experience with these public bodies, a lot of
4 these public bodies are willing to acknowledge an issue
5 when -- when they receive the complaint from our office, as
6 well as our request for a response, they reach out to us and
7 say, "Oh, we'll fix this." You know, "We'll put it on our
8 next agenda. We'll take care of it. We didn't realize this
9 was a violation," or, you know, "We didn't realize that the
10 meeting wasn't properly noticed. We recognize that all the
11 action we took on that was void, so we're" -- you know, "We
12 will provide you proof of that all on our next agenda, and
13 that should be resolved."

14 And so the language that we built into 241.0365
15 and 241.037 is that we build in language that allows our
16 office -- so if it's -- if it's a public body who receives a
17 complaint, we issue a finding, "Yes, you failed to properly
18 notice this meeting because you didn't put it on your list,"
19 or "You didn't properly post it," whatever the -- the issue
20 may be, "and so we believe" -- "we find that the actions
21 taken at that meeting are void, and you need to do that."
22 Or, alternatively, you know, the -- "the meeting minutes did
23 not include the request of records from a member of the
24 public who submitted it, so we're going to require you to
25 take corrective action, correct those minutes, and reapprove

1 them."

2 It gives the public body the option of saying,
3 "Yes, we're" -- "we're happy to do that. We're going to do
4 it on our end." We get to close the case out rather than
5 having to take the matter to court, even though both parties
6 are in agreement and -- and requiring court action to either
7 void an action or actions by the public body or to request
8 that corrective action.

9 Obviously, the public bodies are not always going
10 to agree with our office, so there's no requirement,
11 obviously, that they comply with our order. It's, in
12 essence, a "We think this happened based on this case law
13 and the statute and everything else." And I think we put
14 those in 14 days, so we would issue our findings of fact,
15 conclusions of law and order, which is our standard practice
16 right now, informing a public body "You have committed an
17 Open Meeting Law violation, and, 1, your actions taken are
18 void; or, 2, the" -- you know, "we're going to require
19 corrective action."

20 The public body can choose to accept that and --
21 and do what it needs to do to correct that issue or,
22 alternatively, the public body can let us know, "We don't
23 agree with you. If you want this to happen, you're going to
24 have to take us to court."

25 So it -- it's our attempt, because most public

1 bodies are -- you know, really want to work with us and they
2 tell us, "Don't take us to court. We'll fix it." You know,
3 we'll speed it up so that the void action can be resolved
4 quickly, and we can move on.

5 That's where it arose, and I'm hopeful that this
6 will cut down on -- on, you know, the -- the active
7 litigation that we have to take against public bodies.

8 Frankly, under -- since I've been involved in the
9 OML Enforcement Unit, we haven't had to take action by going
10 to court because once a public body has even received just a
11 complaint, and not our finding, they've recognized the fact
12 that, "Oh, we screwed up. We didn't know." And they've
13 corrected it. So there really was no reason for us to take
14 that matter to court.

15 This is in the event that we do have that issue
16 where a public body is going to contest it.

17 You know, I think we have an active one right now
18 which may have to go to court. It doesn't take away any of
19 the -- the options of the public body to fight it, but it
20 does allow us to close out these cases a lot more quickly.

21 So the language itself is -- you know, it allows
22 that. And then the 60 and 120 days, the changes to those
23 requirements are merely that -- let's see -- that -- that we
24 build in the 14-day time period where a public body can --
25 the -- the Attorney General's Office would still have to

1 issue its order regarding either action taken in violation
2 of the OML or a requirement of corrective action. Those 60
3 and 120 days would now apply to when we would have to issue
4 that order.

5 And then so the -- the additional time, in
6 essence, would be a 14-day period for interaction with the
7 public bodies for them to let us know, you know, "We want to
8 fight this," or, "Absolutely, we agree, and we'll," you
9 know, "provide you proof of that." And then the --

10 MS. MILLER: It seems like the language -- and
11 I'm -- I'm just having trouble reading it, so I could sure
12 be wrong. In the new subsection 3 -- 037, tolls at 60 and
13 120 until after the Attorney General issues its notice and
14 the public entity responds, which could be indefinitely
15 depending on the complexity of the case or the other demands
16 on the Attorney General's timeline, I would think.

17 CHAIRPERSON BATEMAN: So it would --

18 MS. MILLER: I'm looking at the -- they don't have
19 a page number, but the --

20 CHAIRPERSON BATEMAN: Yes. So --

21 MS. MILLER: -- the language on the bottom of
22 241.037.

23 CHAIRPERSON BATEMAN: Yes.

24 THE COURT REPORTER: The language on the bottom
25 of?

1 MS. MILLER: 241.037.

2 CHAIRPERSON BATEMAN: That's subsection 3 (b).

3 MS. MILLER: Yeah. Correct. Yeah. And it says
4 120 days after the public body submits its response in
5 subsection (a) and 60 days in subsection (b) after the
6 public body issues its response.

7 So that -- I don't know. It seems to extend it.

8 CHAIRPERSON BATEMAN: It would be -- so it would
9 extend it for the instances where the public body would
10 contest our findings. So, in essence, to require us to go
11 to court or to take the action to court. So yes, it would
12 extend that time period. And we -- I left the 60 and 120
13 days. We can revise that.

14 MS. MILLER: But it doesn't have any prior time
15 period. Let's say you guys are really busy and you take six
16 months to get around to issuing your notice or order,
17 whatever you call it. Then that time doesn't run until
18 after that.

19 CHAIRPERSON BATEMAN: I think we -- I mean, we
20 still need to make our -- we have to provide notice to the
21 public body under subsection 1 within 60 days or 120 days
22 for -- if we're letting the public body know you committed a
23 violation that requires an action to be voided or to require
24 corrective action, so I don't --

25 MS. MILLER: So there's 120 days. Let's just say

1 the corrective action --

2 CHAIRPERSON BATEMAN: Yes.

3 MS. MILLER: -- plus 15 days or 14 days for the
4 public body to respond.

5 CHAIRPERSON BATEMAN: Oh, oh, I see where
6 you're --

7 MS. MILLER: Yeah.

8 CHAIRPERSON BATEMAN: Yeah. My intent was to make
9 it so we still need to provide notice within the 60 and 120
10 days to the public body. The public body has 14 days to let
11 us know of its decision either, you know --

12 MS. MILLER: Right.

13 CHAIRPERSON BATEMAN: -- to accept or not. And my
14 intent -- and I didn't make the changes -- was regardless of
15 the void or the corrective action that we're requesting if
16 the public body is contesting it, we would have 30 days to
17 file our complaint --

18 MS. MILLER: Okay.

19 CHAIRPERSON BATEMAN: -- to the --
20 So I don't know if that --

21 MS. MILLER: So it still does extend it then?

22 CHAIRPERSON BATEMAN: It extends it by forty- --

23 MS. MILLER: By --

24 CHAIRPERSON BATEMAN: Yeah, 44 -- 44 days. Yeah.

25 MS. MILLER: If that could be clarified.

1 CHAIRPERSON BATEMAN: Yes. And that was --

2 MS. MILLER: Because that's still workable.

3 CHAIRPERSON BATEMAN: -- my -- my mistake.

4 Absolutely, yeah.

5 THE COURT REPORTER: I'm sorry. Could you just
6 speak one at a time? I'm having a hard time.

7 CHAIRPERSON BATEMAN: So those changes will be
8 made to subsection 3.

9 So, in essence, to clarify, it would be -- from
10 the current system, it would be an additional 44 days that
11 the Attorney General's Office would have to file a complaint
12 regardless of whether that complaint would be to void an
13 action or to require corrective action.

14 So I hope that clarifies it, and I'll make the
15 required changes.

16 MR. GOULD: But to clarify again --

17 CHAIRPERSON BATEMAN: Yes.

18 MR. GOULD: -- the public body is entitled to the
19 notice --

20 CHAIRPERSON BATEMAN: Yes.

21 MR. GOULD: -- of an alleged violation from your
22 office within 60 or 120 days, depending on what you're
23 seeking to do?

24 CHAIRPERSON BATEMAN: Correct.

25 MR. GOULD: The extension, so to speak, is on --

1 is after that point --

2 CHAIRPERSON BATEMAN: Correct.

3 MR. GOULD: -- where more time is being built in
4 if the public body says, "I don't agree with you"?

5 CHAIRPERSON BATEMAN: Correct.

6 MR. GOULD: Now, as I'm reading this then, then
7 the pub- -- then you would have to then issue findings of
8 fact and conclusions of law.

9 Is there any time frame in which you must do that?

10 CHAIRPERSON BATEMAN: Our -- so the findings of
11 fact and conclusions of law would be under subsections (a)
12 and (b) under 1, so the 60 days and 120 days. We would have
13 to issue our findings then. So that's the notice. I guess
14 we can -- I can clarify that, that shall provide notice via
15 findings of fact, conclusions of law.

16 MR. GOULD: Yeah. That -- that confused me a
17 little bit whether we were talking about different items.

18 CHAIRPERSON BATEMAN: Got it.

19 MR. GOULD: Okay. Thank you.

20 CHAIRPERSON BATEMAN: Yes. No, thank you. Those
21 are good clarifications.

22 Okay. And further down under 241.037 is the
23 addition that if the Attorney General establishes that a
24 public body committed a violation of the OML in a secret
25 manner that the deadline stated in subsections (a) and (b)

1 of -- and I'm going to add section 1.

2 MR. GOULD: You're talking about 039.

3 CHAIRPERSON BATEMAN: No. Under -- so right above
4 the new subsection 4, under 037, there's just language
5 stating that if the Attorney General's Office determines
6 that the OML violation occurred through, you know, an action
7 taken in a secret manner that the deadlines start running on
8 the filing date of the complaint rather than the date of the
9 action.

10 MS. MILLER: Which deadlines are you talking
11 about?

12 CHAIRPERSON BATEMAN: Under -- so subsections (a)
13 and (b) of section 1, so the 60 and 120 days.

14 MR. GOULD: Sixty and 120 days.

15 CHAIRPERSON BATEMAN: Yes.

16 MS. MILLER: Those are deadlines for filing the
17 complaint. If you've already filed a complaint -- I just
18 think there's some language here. The deadlines don't start
19 running after the filing of complaint. Deadlines for
20 filing --

21 CHAIRPERSON BATEMAN: No. Oh, I'm sorry. I
22 should clarify. The filing date of the OML complaint to our
23 office, not the complaint filed.

24 MS. MILLER: Oh, okay.

25 CHAIRPERSON BATEMAN: Yeah. So I'll clarify that.

1 And --

2 MR. MOORE: When you add that language for the
3 deadlines related to the filing to the OML complaint, does
4 that clarify that you're referring to subsection --

5 CHAIRPERSON BATEMAN: Yes.

6 MR. MOORE: -- (a) and (b) of 1 --

7 CHAIRPERSON BATEMAN: Added -- section 1.

8 MR. MOORE: Versus sub- -- okay.

9 CHAIRPERSON BATEMAN: Yes.

10 MS. MILLER: Because that's under 3. Okay.

11 CHAIRPERSON BATEMAN: Okay. And then subsection 4
12 of 037 is in line with 241.0395. And those are what I call
13 the technical violations. So this, in essence, runs the
14 gamut between a public body that doesn't timely approve
15 minutes.

16 Obviously, there's no -- there's nothing to void.
17 There's nothing incorrect about the minutes, and there's no
18 corrective action to take that would fix the fact that the
19 minutes weren't timely approved, but there's still a
20 violation there. And so those, right now, fall under
21 241.0395. And so what subsection 4 does is to clarify that
22 those technical violations -- and I think the language right
23 now is when the violation does not involve voiding an action
24 or requiring corrective actions complying with this Chapter
25 that the -- the same deadlines don't apply to -- to our

1 findings of fact, conclusions of law, and order on those
2 issues. So we can -- we can issue those -- those orders at
3 any time and require the acknowledgment at the public body's
4 next meeting.

5 Any -- any issues with that section?

6 Okay. Moving on to 241.039. Again, this is the
7 extension of the 120-day deadline that we previously
8 discussed in order for a complaint to be investigated by our
9 office. It merely cuts out those instances where the
10 Attorney General's Office establishes that the action took
11 place in some sort of secret manner. And in that case, the
12 investigation will take place outside of the 120-day
13 deadline.

14 And 3, the new subsections 3, 4, 5, 6, and 7 are
15 merely re -- renumbered currently existing language. And
16 just clarifies that it's -- prosecute any violation of this
17 chapter that is alleged in a complaint. I added that
18 qualifying language because we receive complaints, you know,
19 five or six a week sometimes. And we focus on allegations
20 that are contained in the complaint. We're not going to be
21 reviewing all their minutes and making sure they were
22 approved at -- you know, within the 45 days. And we're not
23 going to -- if we come across it, our practice is we let the
24 bodies know, "Hey, you guys screwed up." But it's not going
25 to be our goal to be reviewing every aspect of every meeting

1 to see if there's a possible violation that occurred so that
2 we could file a violation against that body. We focus on
3 the allegations in each OML complaint. And so that just
4 clarifies that fact that we aren't going to be the all
5 end-all police. We will investigate the allegations
6 thoroughly but not everything else, in essence. Yes.

7 MR. GOULD: I apologize. But because we have two
8 versions that we're working with, I had made notes on the
9 version that was sent out.

10 CHAIRPERSON BATEMAN: Oh, I'm --

11 MR. GOULD: So if I could go back. If you could
12 clarify something.

13 CHAIRPERSON BATEMAN: Yes.

14 MR. GOULD: Under Section 241.037 sub 1 --

15 CHAIRPERSON BATEMAN: Yes.

16 MR. GOULD: -- before you get to (a) and (b), you
17 talk "it shall provide notice to the public body."

18 CHAIRPERSON BATEMAN: Yes. And I added --

19 MR. GOULD: Does it say anywhere how we give
20 notice?

21 CHAIRPERSON BATEMAN: I -- I just added the
22 language "via findings of fact, conclusions of law, and
23 order."

24 MR. GOULD: So it's implicit in that, that it's
25 written notice.

1 CHAIRPERSON BATEMAN: Yes. And I can add written,
2 yes.

3 MR. GOULD: Yeah. I think unless you're -- unless
4 you're -- you're combining some other statutory section that
5 I'm not aware of, it should be written.

6 CHAIRPERSON BATEMAN: Okay.

7 MR. GOULD: Right.

8 CHAIRPERSON BATEMAN: Perfect.

9 MR. GOULD: And the other comment that I had was
10 on subsection 4 of that same section.

11 CHAIRPERSON BATEMAN: Yes.

12 MR. GOULD: Where it says the Office of the
13 Attorney General may issue a findings of fact, conclusions
14 of law at any time when the violation does not involve
15 voiding an action or requiring corrective action to comply,
16 what -- I'm not sure I'm following that.

17 CHAIRPERSON BATEMAN: So these are the violations
18 we discussed, the technical violations.

19 MR. GOULD: Yeah.

20 CHAIRPERSON BATEMAN: And so they involve -- they
21 don't require any type of action or anything else from the
22 public body other than acknowledging our findings of fact at
23 their next meeting and stating the Attorney General's Office
24 found --

25 MR. GOULD: Okay. Thank you. That's what you

1 were talking about before?

2 CHAIRPERSON BATEMAN: Yes. Correct.

3 MR. GOULD: Okay.

4 CHAIRPERSON BATEMAN: Okay. Any other questions
5 on that?

6 I think we covered 039, and so we'll move to --
7 oh, we're almost done -- 0395. And that's inclusion of item
8 acknowledging finding by Attorney General of violation by
9 public body on next agenda of meeting of public body; and
10 the effect of the inclusion.

11 This is clarifying subsection 1. And right now it
12 reads, "If the Attorney General makes findings of fact and
13 conclusions of law that a public body has taken action in
14 violation of." And replace that with "violated any
15 provision of the OML." So again, these are for, you know,
16 technical violations as well as actions taken in violation
17 of the OML to cover those technical violations that we
18 discussed.

19 MR. GOULD: So I have a question on that, if I
20 may.

21 CHAIRPERSON BATEMAN: Yes.

22 MR. GOULD: Is it possible that this section, if
23 this is created, went with your change, the public body
24 should then -- shouldn't it have the right to put on the
25 public record that it's contesting it? Because they may not

1 have agreed with you. This makes it sound like they have to
2 put it on the agenda as though it's a fait accompli, but it
3 may not be because you may be contesting this.

4 CHAIRPERSON BATEMAN: Yes.

5 MR. GOULD: So I think there should be a
6 recognition that the public body has the right to put on the
7 record at that next meeting that it does not agree or that
8 it's challenging it or something like that.

9 CHAIRPERSON BATEMAN: That is a fantastic point.

10 We have the public bodies doing that anyways. "We
11 don't agree with this, but we have to do it pursuant to the
12 OML." And so this -- yeah, it will -- it will clarify for
13 them that they don't agree and they're contesting it.

14 MR. GOULD: Correct.

15 CHAIRPERSON BATEMAN: Yeah. Okay. Great.

16 Moving on to 040.

17 MR. LYONS: One -- sorry. Kevin in Carson City.

18 CHAIRPERSON BATEMAN: Yes.

19 MR. LYONS: One -- one little thing on that. And
20 this -- maybe this is more of a tactical issue because of
21 the way the letters are written. But you may or may not be
22 familiar with public bodies kind of doing a little mockery
23 of this requirement where they actually paste in, you know,
24 "conclusions of fact and findings of law," instead of
25 saying, you know, the Attorney General found that we

1 violated this, you know, and here are the supporting
2 materials. And I don't know if there's anything you want to
3 maybe put in here, but maybe it's in the letter. Just to --
4 so you're aware of that.

5 CHAIRPERSON BATEMAN: Okay. Thank you.

6 MR. LYONS: It's a violation of the agenda item
7 being clear and complete, but it's also potentially over
8 lapsing.

9 CHAIRPERSON BATEMAN: Okay. And I think our last
10 statute is 241.040. And this was my attempt. We had quite
11 a discussion at the last -- the last meeting regarding
12 administrative fines against public bodies who commit
13 violations again this wouldn't be, you know, a first time
14 offense. I did try to build in the -- the discussion-airy
15 language. But in essence, it -- it involves the ability of
16 the Attorney General's office to have a little bit more
17 teeth in terms of its enforcement unit and when it finds a
18 violation.

19 And so subsection 1, again, is -- the intent is to
20 encompass also those technical violations that we discussed.
21 So instead of involving action -- action taken in violation
22 of the OML, just any violations.

23 Subsection 2 remains unchanged.

24 Subsection 3, same -- same change in terms of
25 action versus just all violations, and we're incorporating

1 all the violations.

2 Subsection 4, which previously allowed a civil
3 penalty, and it just stated \$500 that could be assessed to
4 each member of the public body. And this is incorporating
5 the steps that we discussed at the last meeting about
6 increasing the penalties, and, hopefully, that, you know,
7 making an impact on the bodies and the members of the
8 bodies. And these numbers are arbitrary. So I'm happy to
9 discuss. I just wanted to -- to show that -- that, you
10 know, increase so that we can get to those members of the
11 public who we see constantly committing the violations. And
12 administrative fine would have to be paid within 60 days,
13 but the -- the members of the public body may contest those
14 fines in a civil action. And it -- the actions by the
15 members of the public bodies to contest the fines would have
16 to occur within one year after the Attorney General's Office
17 issues its findings.

18 The new subsection 5 --

19 MR. GOULD: Could I -- can I interrupt you?

20 CHAIRPERSON BATEMAN: Yes.

21 MR. GOULD: Because 5, I think will have some
22 discussion.

23 CHAIRPERSON BATEMAN: Yes.

24 MR. GOULD: On 4, I would propose a provision that
25 if an action is filed in a court of competent jurisdiction

1 to contest the fine, that the 60 days for payment is tolled.

2 CHAIRPERSON BATEMAN: Okay.

3 MR. GOULD: So that we don't have to go in and
4 seek an injunction from the judge to force that tolling, I
5 would like that to be embedded into the statutes.

6 CHAIRPERSON BATEMAN: Thank you.

7 Okay. Tolling the payment deadline until the
8 action is resolved.

9 MR. GOULD: Concluded. Yeah, however.

10 CHAIRPERSON BATEMAN: Great.

11 Any other discussion on 1, 2, 3, and 4 before we
12 move on to 5? I think --

13 MR. LYONS: Yeah. On Number -- on No. 1. Okay.
14 So Kevin on No. 1.

15 There's a -- there's a scenario there where you
16 have kind of three of the board members want to do the
17 illegal action and two don't. And this -- this -- this part
18 has always bothered me in this section. And it seems like
19 in this case, you know, everyone is guilty of a misdemeanor
20 even though two were -- two were absolutely opposed to
21 committing the action because he knew it was illegal and
22 three are fine with it because of whatever reason. Right?

23 Is there a better way of doing this that all --
24 doesn't, obviously, interfere with the fact that the body
25 acts as a body, but the -- you know, the crimes are

1 committed as individuals, potentially?

2 CHAIRPERSON BATEMAN: I think if we -- I don't
3 know how the group feels. But if we're -- if we make it a
4 "may" language and then include provisions about those who
5 may have -- it's just a fine line. Because it's not always
6 going to be an action.

7 MR. LYONS: Exactly.

8 CHAIRPERSON BATEMAN: So I -- I can work on that
9 language, but it's -- it's going to -- I -- initially, I
10 think that the easiest way to address your concern would be
11 to cut out those -- when applicable, cut out those members
12 who didn't participate or who --

13 MR. LYONS: Yeah.

14 CHAIRPERSON BATEMAN: -- you know, who actively
15 voiced their -- their opposition to it. I don't know how --

16 MR. LYONS: Right.

17 CHAIRPERSON BATEMAN: -- exactly to do that, but
18 I'll take a stab.

19 MR. LYONS: That's the issue. I wanted to raise
20 the issue. Yeah. Yeah.

21 CHAIRPERSON BATEMAN: Right.

22 MR. GOULD: You know, that's a great issue. And I
23 would -- I would ask a followup question.

24 In your opinion --

25 CHAIRPERSON BATEMAN: Yes.

1 MR. GOULD: -- if you're sitting on a public body,
2 you're a member, and -- and you feel strongly that the body
3 is taking action that violates the Open Meeting Law, is --
4 is it enough if the member who feels that way states it and
5 then leaves the meeting? What can that member do to protect
6 himself or herself from this potential liability? And I
7 think if -- and I think you're going to say -- tell me that,
8 yes, of course, they could leave, they don't have to be
9 required to participate in something they believe is a
10 violation. But I -- I'm wondering if the statutes should
11 state that.

12 CHAIRPERSON BATEMAN: Yeah.

13 MR. GOULD: Because that issue has come up where
14 someone really thinks there's an issue going on. If
15 everyone says, "Yeah, you're right, they could" -- "they
16 could just end the meeting," but if you have a disagreement,
17 I think you need to give the people who believe that there's
18 a violation occurring the right to extricate themselves and
19 leave so that they are not guilty of a misdemeanor or
20 whatever else the penalty may be.

21 CHAIRPERSON BATEMAN: And I think that's a great
22 suggestion. We have -- we've seen that in the past where,
23 you know, the record shows that a public meeting -- a public
24 body is meeting, and then one or more members are like, "We
25 can't do this. This is a violation. We're out of here. We

1 don't want to go to jail." Since this is the line. And I
2 absolutely think that should be sufficient to remove those
3 individuals.

4 I think, also, just reading it as a whole, we --
5 we acknowledge that the -- that there is, you know, a
6 knowing requirement. I mean, I think that's important
7 because, yes, we expect all members of the public body to
8 know their -- their duties, to understand the OML. But,
9 frankly, a lot of attorneys don't understand the OML, so
10 it's hard to require that, rather than if they're -- they're
11 noticed of it or if they're aware of it.

12 So I think, you know, it's harder to claim
13 ignorance when you've sat on a public body for 20 years or
14 something like that. But ultimately, I want that knowing
15 language to stay. I think there was some discussion about
16 that, but I think it's important to keep that in there.

17 So if there's no other discussion on subsections
18 1, 2, 3, or 4, I'll open up 5 because I'm sure there's a lot
19 of comments on that.

20 And I'm going to start by saying the basis for the
21 new subsection 5 under 241.040 is the fact that we are
22 seeing more and more members of public bodies, public bodies
23 themselves in their responses or in, you know, affidavits
24 when we request, et cetera, stating, "We were" -- "we were
25 nervous," or -- you know, all the way from "We were nervous

1 because we thought there might be a violation," all the way
2 to "We weren't aware of it at all, and my counsel told me
3 this was fine to do. And so we went with our counsel's
4 representations. You can't hold us accountable for that,"
5 et cetera.

6 And then we'll have the attorney come back and
7 say, "I don't know what these people are talking about. I
8 never advised them that way." You know, "Here's my e-mail
9 showing my questions to my counsel. I am willingly giving
10 up my, you know, attorney-client privilege." You know,
11 we -- we send those back because they, obviously, don't --
12 I'm just giving that as an example. Like, you can't. It's
13 not a one-way thing. But anyways. You know, we -- we see
14 that.

15 And so, 1, I wanted to build in the fact that if
16 it was a public body, especially those public bodies who
17 have several new members and they really did rely upon
18 inaccurate advice by counsel, that we wouldn't hold those
19 people accountable under, you know, the rest of this statute
20 and open them up to criminal or civil liabilities. But at
21 the same time, to include provisions that if the legal
22 counsel knowingly misadvised.

23 So let's say knowingly recognizing the fact that
24 they, you know, didn't have certain delegative authority to
25 take action on behalf of the public body, something along

1 those lines. It was my intent to kind of weigh both of
2 those issues into one section. And I'm opening myself up to
3 the vitriol that's going to come back at me, but I hope you
4 recognize where I was coming from, from it. I just -- I'm
5 seeking the group's guidance on how to refine it to make
6 it --

7 MS. MILLER: I actually don't have any problem
8 with this section, the concept.

9 CHAIRPERSON BATEMAN: Yes.

10 MS. MILLER: Because I think the attorneys should
11 be held to some level of professional responsibility. I'm a
12 little worried about a knowing board member setting up their
13 attorney.

14 So I'm wondering -- it says "The Attorney General
15 shall not assess." I wonder if you want to keep some
16 discretion, and you might say, "you may waive," depending on
17 what you see the situation being, if you think an
18 experienced board member took advantage of an inexperienced
19 legal adviser --

20 CHAIRPERSON BATEMAN: Yes.

21 MS. MILLER: -- to make a record where he knows he
22 or she shouldn't have. I just would like you to retain some
23 discretion.

24 CHAIRPERSON BATEMAN: Instead of a shall, a may?

25 MS. MILLER: Yeah.

1 CHAIRPERSON BATEMAN: Yeah. I agree with that.

2 MS. KAUFMAN: I have one question.

3 So if the counsel acknowledges incorrectly
4 advising the members of the public body, then they shall not
5 assess administrative fines. But then are they still being
6 considered as to violating a misdemeanor? Because you're
7 waiving the fine, but what's the criminal aspect of that?

8 Then my other concern there is just generally
9 criminalizing bad legal advice. And I think that we get to
10 an iffy area there, because, obviously, if -- like, I --
11 yeah. You determine that legal counsel for a public body
12 knowingly misadvised the public --

13 THE COURT REPORTER: I'm sorry. You determined
14 that legal counsel?

15 MS. KAUFMAN: Sorry.

16 -- for a public body knowingly advised [sic] the
17 public body regarding the requirements of this chapter, then
18 they are referred to the State Bar of Nevada, which is,
19 obviously, like every lawyer's requirement if they see a
20 violation of the rules of professional responsibility.

21 But I do have -- echo the same concerns where a
22 counsel is either -- attorney-client privilege is waive-able
23 by the client, which in this case is the public body. I
24 think necessarily setting up some very difficult fights in
25 the future between people who are serving as counsel and the

1 public body itself. So I just -- yeah.

2 MR. GOULD: And I'm going to echo that very
3 strongly. This is what I had written, which is almost
4 verbatim. I think this is creating an ethical issue between
5 the attorney and his or her client, because now it's a
6 he-said she-said.

7 Who determines knowingly in this letter? How is
8 it determined? Does the attorney -- because, obviously, my
9 concern is the second sentence. How does the attorney
10 defend himself or herself, and in front of whom?

11 And then in terms of shall referring this to State
12 Bar, No. 1, I don't think you should mix -- I don't think
13 that has a place in here. If an attorney has, in fact,
14 violated the Rules of Professional Conduct, then you have a
15 right, and probably an obligation as an officer of the
16 court, to make a complaint to the State Bar. But to put it
17 in here as mandatory, I think what this is doing -- I
18 understand why it's in this. But it really could have a
19 chilling effect with lawyers who don't have the intent to
20 mislead but who are ignorant, that the concern is they've
21 now put themselves in a position where the Attorney General
22 has a huge hammer to say, "Well, if you don't do this, we're
23 going to take the position that you knowingly misled, and
24 then we're going to file a complaint." And this -- this
25 could be hugely detrimental.

1 If -- if you discover during your discovery, so to
2 speak, that it's clear that a lawyer just gave -- knowingly
3 gave bad advice, then I think you already have remedies.
4 And -- and I -- I strongly object to that being in there.

5 CHAIRPERSON BATEMAN: Are you okay with the first
6 section?

7 MR. LYONS: Yeah, I have a -- Kevin.

8 THE COURT REPORTER: I'm sorry.

9 MR. GOULD: I'm okay with the first section.

10 MR. LYONS: Kevin.

11 THE COURT REPORTER: I'm sorry. Are you okay with
12 what section?

13 CHAIRPERSON BATEMAN: Oh, I'm sorry. The first
14 section under subsection 5.

15 MR. GOULD: I'm okay with it. I -- I like the
16 shall not assess. I like when it's prohibited versus
17 discretionary. But, you know, that's -- that's my take on
18 it. But yes, I don't have objection to the -- I -- I
19 understand. I do agree that the misdemeanor should be added
20 in there for -- for clarity.

21 CHAIRPERSON BATEMAN: Yes.

22 MR. GOULD: Right. Both items, both the civil and
23 the criminal are covered. But -- but I really don't like
24 the second. I don't think it belongs here.

25 CHAIRPERSON BATEMAN: Great.

1 Are there any other comments on --

2 MR. LYONS: Yeah.

3 CHAIRPERSON BATEMAN: Yes, Mr. Lyons.

4 MR. LYONS: Kevin in -- Kevin in Carson City.

5 So the -- yeah. So the -- I think one of the ways
6 we can improve that, that issue with the may or shall in the
7 first sentence is the -- it's really about committing a
8 violation based on, also, a good faith reliance on the
9 incorrect legal advice, because certainly a case, you know,
10 where the lawyer is giving bad advice deliberately, and
11 that's for the benefit of the counsel. And that's a
12 different case. Right? That's something that you don't
13 want to see. Otherwise, it becomes, you know, basically a
14 preplanned fall guy. And that's a real case right now.

15 And then the legal advice definition that was
16 brought up, you could borrow the language from the Nevada
17 Bar Rules, you know, knowingly making false or misleading
18 statement of the law, something like that. I think that
19 would maybe be helpful in making sure that you're not sort
20 of overreaching.

21 And on the last point, I agree with the -- the
22 comments about the shall refer. I think if the -- the may
23 refer is -- is useful. And especially, as was brought up,
24 if the findings of fact include that the attorney, you know,
25 knowingly provided the bad information, made a false

1 statement of law, or withheld the law, you know, that would
2 be very clear from that. And anyone could actually take
3 that and make that filing. So I think it would cover the
4 bases pretty well.

5 CHAIRPERSON BATEMAN: Great. Thank you.

6 Any other comments on 241.040 or any of the other
7 sections that we discussed?

8 Okay. So my goal on -- on these revisions is upon
9 receipt of the transcript to incorporate the discussions we
10 had today, and hopefully have our final meeting in early
11 August to meet our BDR deadline of the end of August to
12 submit our draft. And so tight time line, but I think it's
13 accomplishable. We have been saved -- like I mentioned
14 before. One of the Attorney General's 20 BDRs will be
15 our -- our OML BDR, so we don't have to be concerned with
16 that.

17 So at this point, it will be, you know, revisions,
18 et cetera. I'm hoping to have the draft to the members and
19 the attendees, everyone else who requested the materials, as
20 soon as possible. And please feel free to individually
21 contact me if there's issues that we discussed that you
22 believe that I didn't quite capture accurately. And my --
23 my hope is at our next meeting that any changes will be, you
24 know, very technical issues or, you know, clarification
25 language so that we'll have something that we can adopt as,

1 you know, discussed during that last meeting.

2 So this third draft will have all my hopeful
3 proposed changes. And then my goal is the next meeting will
4 be much shorter than this one, and we'll get this thing
5 approved at that meeting.

6 So any questions on that?

7 MS. MILLER: I was just wondering if your office
8 has kicked around at all any language to address the Hansen
9 Decision, about the ability of a public body to ratify the
10 actions of an attorney?

11 CHAIRPERSON BATEMAN: We actually -- we
12 considered -- we considered it, and -- oh, in terms of
13 ratification?

14 MS. MILLER: Yes.

15 CHAIRPERSON BATEMAN: So the aspect that we
16 considered, one, was delegation as --

17 MS. MILLER: Okay.

18 CHAIRPERSON BATEMAN: -- you know, as a whole.
19 And we just thought that's best left for the public bodies
20 themselves, especially on the fact that -- I hate to say the
21 word "punted." But (inaudible) --

22 THE COURT REPORTER: The word punted?

23 CHAIRPERSON BATEMAN: -- on that issue. So I
24 didn't -- I didn't -- you know, it was one where I wanted to
25 discuss it, but I think that is -- it really is, I think,

1 something that is relegated to the public bodies to
2 determine. And all that -- all the delegation occurs in the
3 public bodies' public meetings anyways, if they're going to
4 have any delegated authority. So we didn't discuss that.

5 In terms of ratifying a previously taken decision
6 by, you know, like a court action, appeal, et cetera, I -- I
7 didn't include that. We didn't really discuss it. Our
8 general counsel brought it up, and there may -- there may be
9 discussions about it. I don't know. I think it said
10 divided --

11 MS. MILLER: Oh.

12 CHAIRPERSON BATEMAN: -- office -- our office is
13 divided on the issue as well. So I'm happy, I mean, if we
14 want to discuss it now or -- you know, I can -- we can wait
15 until the next meeting.

16 If there is some direction from our office to
17 consider that, of course, that would be in the draft that I
18 send out to everyone, and we could have a fuller discussion
19 on it later.

20 But is there any, you know, thoughts either way
21 right now? I'm assuming that the public bodies do want that
22 to the -- the -- the approval following -- or I guess the
23 ratification of that action at a -- at a subsequent meeting.

24 MS. MILLER: Because that would be helpful
25 because, as you said, we don't have clear direction on the

1 efficacy of the delegation because it just hasn't come up
2 before. So there is some discomfort level in my office
3 advising the different boards, especially those that don't
4 meet very often, or it's hard to get together for a quorum
5 on short notice. Ratification would solve a lot of
6 problems. And I was thinking even if there's a time period
7 wherein they must ratify, even a relatively short time
8 period, would still be helpful to the various boards.

9 MR. GOULD: I -- I absolutely agree with that. I
10 will tell you that that -- and I have had the conversation
11 with some of the justices, you know, when I've seen them.
12 They felt that they had to live by what the statute says,
13 so, you know, without saying that the decision was an
14 incorrect interpretation of the Open Meeting Law, if the
15 Open Meeting Law itself could be amended to allow
16 specifically for ratification within a certain period of
17 time, it would take a great administrative burden off of
18 public bodies, particularly smaller public bodies who may
19 not have the ability to meet that quickly. And, frankly, if
20 the public body were, for some reason, to -- I'll take an
21 appeal -- were to decide, no, we didn't really want you to
22 do that, they can always dismiss the appeal. But if they
23 don't file it, then -- or if they file it in contravention
24 now, in Hanse, then -- then they may have essentially
25 violated the Open Meeting Law and they have an invalid

1 appeal, which is exactly what happened in the Hansen case.
2 So I -- I would echo that, that it would be great to see a
3 ratification provision in here.

4 MR. LYONS: To clarify, are we talking about a
5 ratification for the appeal, not for the initial action?

6 MR. GOULD: I would say it would apply to
7 everything, but --

8 MS. MILLER: Right. Because some initial
9 action --

10 MR. LYONS: Yeah. I think that would be --

11 MS. MILLER: -- have the same deadlines as an
12 appeal would, like filing an action from an administrative
13 order of a state board has a deadline. The same issues
14 would apply.

15 MR. LYONS: Yeah. I think it's -- I think
16 that's -- it's -- it's certainly plausible. It's kind of --
17 it's kind of like the -- kind of like the budget, also,
18 though, the -- the approval of the funds for that, in that
19 you'd want to have a very clear delegation, like a standing
20 order from the public body that the attorney can do X, Y,
21 and Z. And then in a sense to -- to deal with this
22 potential other issue, it would be, you know, the second
23 thing, right? It's like a contract over \$50,000. The board
24 has to approve the expenditure of \$50,000 for a purpose, and
25 then they have to -- you have to come back and get the

1 specific contract authorized because it's \$60,000. So in
2 thinking about the ratification, I think we'd want to be
3 careful we don't confuse the two. There's sort of the board
4 either does or does not delegate authority to the attorney
5 to do X, Y, and Z. And then in terms of the specific
6 filing, you know, they have maybe 30 days to bring that back
7 to the board for ratification. The analogy would be as
8 opposed to approving the contract ahead of time and a
9 budget, if that makes sense. Right?

10 CHAIRPERSON BATEMAN: That does, yes.

11 MR. LYONS: Okay.

12 CHAIRPERSON BATEMAN: Any other comments on that?

13 Any other comments on the draft as a whole?

14 Okay. Then we will move on to public comment
15 under Agenda Item No. 5.

16 Are there any members of the public up north in
17 Carson City who wish to give public comment?

18 Are there any --

19 MR. LYONS: No one here.

20 MR GUTHREAU: No.

21 CHAIRPERSON BATEMAN: Is there anyone in Las Vegas
22 who would like to give public comment?

23 And is there anyone on the phone who would like to
24 give public comment?

25 Okay. Hearing -- hearing none, I am going to move

1 on to Agenda Item No. 6 for adjournment.

2 Do I have a motion?

3 MS. MILLER: So moved.

4 CHAIRPERSON BATEMAN: Is there a second?

5 MR. GOULD: Second.

6 CHAIRPERSON BATEMAN: All in favor?

7 (Members join in ayes.)

8 CHAIRPERSON BATEMAN: And just for the record, I
9 would note that Mr. Oh from the Henderson City Attorney's
10 Office did have to leave the meeting prior so included in
11 the -- in the adjournment motion.

12 Thank you. So much everyone. Appreciate it.

13 (The proceeding was concluded at

14 12:35 p.m.)

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EXHIBIT A

OML July 18, 2018- Second Comment Period Angel De Fazio

Due to a miscommunication when I appeared telephonically after the first comment period, the call was disconnected. I opted to not disrupt the meeting to bring me back online, so in the alternative I was offered the opportunity to submit comments for the 2nd comment period.

I think my intentions were not fully understood. As three minutes to address an issue such as this, results in confusion, as was demonstrated by your follow up discussion to my comments. Let me thoroughly clarify what I was trying to convey.

1. I am completely against ANY board member having the ability to decide who can appear telephonically. It needs to be fully offered not a 'per meeting/chair' decision.
2. This is only for public bodies that have the ability to teleconference or video-conferencing. Nothing was implied to have them invest in equipment that they currently don't have access to.
3. Any entity that does tele/video conferencing to allow the public to appear telephonically.
4. Any entity that does video-conferencing to another location that it be streamed over the internet. Especially if they are in a building that offers this option. Lets use your meetings for example. This meeting is video-conferenced to CC, but not over the internet. Yet, you have the ability to use one of the other meetings rooms on this floor via a request to LCB to broadcast it. So why isn't this being used?
5. Page 13 lines thru page 15 to line 7, is easy to rectify. There would be no impedance to their remote office, as one of the video-conferencing sites can provide their voice only transmission, as Mr. Gould stated his meeting provides. I agree in part with his concerns about people using this option as opposed to physically appearing. His offering to submit written comments to be incorporated into the meeting, in my opinion is not a 'real' option. As the people in the audience would not hear their comments, only if they log on to the meeting site and read them. As some comments might bring up issues that those in the audience might want to address.
6. A viable option is to have commenters submit written comments and have a member of the committee read their comments into the record. Even if the comments exceed the time-allotted, only verbalize those comments that conform to the time for those who are physically present and their written comments can be appended to the meetings record.
7. I was not intending to have this overly constrained regarding board or commission members or experts regarding telephonic appearances. More to show that they have the 'ability' to 'grant' their 'chosen' people to access this option, whereas this is not extended to the public.

8. I am in complete agreement with the concerns that it can be abused and become overly time consuming, by having everyone taking advantage of this option.
9. Page 23 lines 24-page 24 to line 11. Mr. Kaufman's concerns about those who are requesting accommodations is kind of erroneous. For example, under the ADA there has to be a 'three prong criteria' when discussing accommodations; 'reasonable accommodations, not a financial hardship or changing the 'structure' of a meeting'. In your 2016 OML Manual § 7.03 *Accommodations for physically handicapped persons NRS 241.020(1) provides that public officers and employees must make "reasonable efforts to assist and accommodate physically handicapped persons desiring to attend" meetings of a public body. In order to comply with this statute, it is required that public meetings be held, whenever possible, only in buildings that are reasonably accessible to the physically handicapped, i.e., those having a wheelchair ramp, elevators, etc., as may be appropriate. See Fenton v. Randolph, 400 N.Y.S.2d 987 (N.Y. Sup. Ct. 1977).* Here's where this citation tends to be discriminatory, as they are only referencing 'physically', which converts to 'seeing a disability' as opposed to those who have what are classified as 'hidden disabilities', such as chronic fatigue syndrome, fibromyalgia, neurological conditions, etc., that are fully protected under the term 'disabled'.
10. Your own agenda notice has a statement citing: '*We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If accommodations for the meeting are necessary, please notify Althea Zayasno later than 48 hours prior to the meeting.*' (A) there is no clear definition of the term 'attend'; (B) accommodations are being offered with no clarity, as to what type of accommodations you are offering.
11. Looking at this statement at face value, you can offer accommodations, there is no requirement to 'prove' you are disabled and it also appears that its on a 'case by case' request.
12. Simple resolution to this entire issue, would be to require a simple addition to these statements; '*We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting, **if the requested accommodation is available***'. This way you are in compliance with the ADA and any entity that has telephonic ability for their members is now accessible for those who are disabled. This would not create another 'class' as you are complying with federal law, nothing else. Just as you are not 'creating' another class, if you are providing a sign language interpreter.
13. Also, in the case of a building that is harmful to the public, yet, meetings are still being held there, case in point, the Grant Sawyer Building with their ongoing mold and other IAQ issues, exceptions should be made for alternative participation. As broad-based telephonic appearances would be highly justified.

14. Before anyone tries to refute my assertion of the buildings toxicity, state agencies have moved out over this issue, so, its apparent that the state has recognized there is a problem so severe to warrant this exodus. Laxalt at a BOE also complained about his employees becoming sick from the building. Duncan was notified by me in January of 2015 and obviously did nothing to protect his fellow employees or the public in general.
15. So why should the public be subjected to this for any period of time?
16. Currently the Secretary of State has moved their offices.
17. The Controller's Office has 'moved' but it is being kept quiet. As you can only reach them via the telephone and they will return the call, you can't 'visit' their office. Its known, again, being kept quiet, that the Controller's Office employees are working from home, over the unacceptable IAQ in the building. Protecting state employees over the public is not acceptable at any level.
18. There are a few employees in the AG's office, who it is being stated, are working either 'off-site' or from home.
19. Page 27 lines 1-20 regarding training sessions that are open to the public. Even though they aren't 'technically' under the OML, since this entire state keeps using the phrase 'open and transparent', what harm would it do to post a notice about it? Otherwise, just how is the public supposed to know about them? Refusal to make the most minimal notification, just serves to confirm, 'if you can find out about it, you may attend, but, we aren't going to go out of our way to notify you'.
20. The 'public postings' of public meetings is completely unacceptable. How many people really visit said sites where the notices are currently being posted? How many even know that they are posted there?
21. If public meetings are addressing issues/concerns that impact the public, why aren't there members of the public on boards/committees? Just looking over the email distribution for the current notification of the meeting for October 17th, there are no 'public' members, appears to be another barrier for true representation.