

In The Matter Of:
Nevada Office of the Attorney General
Open Meeting Law Task Force

February 14, 2019

Capitol Reporters
123 W. Nye Lane, Ste 107

Carson City, Nevada 89706

Original File 2-14-19openmtgl.txt

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STATE OF NEVADA
NEVADA OFFICE OF THE ATTORNEY GENERAL
OPEN MEETING LAW TASK FORCE
TRANSCRIPT OF PROCEEDINGS
VIDEO-CONFERENCED OPEN MEETING
CARSON CITY/LAS VEGAS, NEVADA
FEBRUARY 14, 2019

Present in Carson City: Greg Ott, Deputy Attorney General
Vinson Guthreau, NACO
Paul Lipparelli, WCDA
Richard Karpel, NV Press
Doug Ritchie, DCDA

Present Telephonically: Angel De Fazio
Linda Lohman

Present in Las Vegas: Dean Gould, NSHE
Nick Vaskov, City Attorney,
Henderson
Andy Moore, City Attorney,
North Las Vegas
Tod Story, Executive Director
ACLU
Fred Voltz, Public

Reported by: Michel Loomis, RPR

NV CCR #228
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AGENDA

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1 CARSON CITY, NEVADA, THURSDAY, FEBRUARY 14, 2019, A.M. SESSION

2 -o0o-

3

4 CHAIRMAN OTT: Okay. Mr. Gould, can you hear us
5 down south?

6 MR. GOULD: I can. Thank you, Greg.

7 CHAIRMAN OTT: Okay. Fantastic. Angel and
8 Linda, can you hear us on the phone?

9 MS. LOHMAN: Yes.

10 CHAIRMAN OTT: Was that Angel or was that Linda?

11 MS. LOHMAN: Linda.

12 CHAIRMAN OTT: Okay. Angel, can you hear us?

13 MS. DE FAZIO: Yes. Thank you.

14 CHAIRMAN OTT: Okay. Great. It being 9:02, I
15 will call the January -- or the February 14th meeting of the
16 open meeting law task force to order.

17 We will take roll of who is present. I see
18 Mr. Karpel here in Carson City.

19 MR. KARPEL: Yes.

20 CHAIRMAN OTT: Mr. Guthreau, also in Carson City.

21 MR. GUTHREAU: Yes.

22 CHAIRMAN OTT: Mr. Gould down south in Las Vegas.

23 MR. GOULD: Yes.

24 CHAIRMAN OTT: On the phone we have Linda Lohman.
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1 Ms. Lohman, are you with an association or are you just a
2 private individual?

3 MS. LOHMAN: Private individual.

4 CHAIRMAN OTT: Okay. And also on the phone we
5 have Angel De Fazio.

6 MS. DE FAZIO: Yes.

7 CHAIRMAN OTT: Is there anyone else who is
8 present or wishing to participate? Okay. Sounds great.
9 Hearing no one, we will proceed to public comment. I
10 understand Ms. De Fazio and Ms. Lohman may both wish to take
11 public comment.

12 Let us take Ms. De Fazio first. Whenever you're
13 ready, Angel.

14 MS. DE FAZIO: Thank you. For the record,
15 Angel De Fazio. I want to thank Mr. Trout (sic.) regarding
16 the minimum time from public comments to be three minutes as
17 referenced in his attached comments to this docket.

18 I think there needs to be further clarification
19 regarding the use of the term "per person" as currently
20 written. I do have members of the public who wanted to appear
21 as themselves, aka public citizens.

22 Now, what happens if that public citizen happens
23 to be associated with an NGO entity such as a business
24 officer, director of a licensed entity. They would basically
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1 be denied appealing to that corporate entity.

2 So the way this is phrased currently, a private
3 legal entity can't tag their chosen representative appear to
4 express their concerns as it's one or the other, as the same
5 person could be the most knowledgeable to represent the
6 entity's opinion. Thus, you are denying either a member of
7 the public or an entity's right to comment under this
8 regulation.

9 The ongoing issue I have is regarding the court
10 reporter. Page 16, lines 438 to 441 should be changed to "A
11 court reporter who transcribes a meeting is under no
12 obligation to provide a copy of any transcript, minutes or
13 audio recording of the meeting prepared by the court reporter
14 directly to a member of public at no charge, unless the court
15 reporter was paid for by a member of the general public, NGO
16 or private entity outside of the state agency for public body
17 or commission."

18 If the court reporter was paid for by any state
19 entity public board, this is no longer in my opinion
20 considered a work product and becomes a public record. Having
21 already been paid for via money that is paid from the state
22 general fund or a public entity budget.

23 They've been paid via public money by charging
24 for copies it appears that they're being unjustly enriched by
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1 having an ongoing stream of revenue from what should be a
2 single payment of services.

3 Page 17, lines 443 to 446. The court reporter
4 has her own video/audio recordation. It should be provided to
5 the public at no charge if there is no other audio/video
6 recordation from the public body. Page line -- no, excuse me,
7 page 9, line 145, Section 6. Remove the word "physical," just
8 use the word the "facility." You can't pigeonhole a private
9 facility that neglects other facility.

10 Mr. Price brought up a good question about
11 attending the meeting minutes. Excuse me. But the one person
12 is unable to fulfill the request. The only semi good thing I
13 could say about the PUC is that they have links on their
14 records request page stated PUC and executive director has
15 designated at line 8 of the agency's record official and has
16 designated X, Y, Z and X, Y, Z as a permanent records
17 official --

18 CHAIRMAN OTT: Angel, can I ask you --

19 MS. DE FAZIO: -- designated record official is
20 that this would otherwise unavailable be ask.

21 CHAIRMAN OTT: Angel, can I ask you to wrap it
22 up? We have a couple minutes here and we do need to move
23 quickly.

24 MS. DE FAZIO: Okay. On page 11, lines 229
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1 through 233, "Providing a copy of the notice to any person has
2 requested notice of the meeting of the public body, request
3 for notice less than six months after it's made."

4 Now, some people may not be aware that there are
5 two renewable periods in February and August. And the way it
6 reads now, it appears that the expiration of six months is
7 after the initial request is made, which can go past the usual
8 renewal period. I think something in the language should
9 clearly represent the query in the August re-request. Thank
10 you.

11 CHAIRMAN OTT: Thanks, Angel. Ms. Lohman?

12 MS. LOHMAN: Yes. My name is Linda Ann Lohman
13 and I work for the State of Nevada as an accounting assistant.
14 And I was exposed to pesticides and insecticides which caused
15 me to have multiple disciplines of medical issues. And I won
16 my social security case as far as, you know, being exposed to
17 the chemical sensitivity and extreme severe chemical
18 sensitivity.

19 So anyway, as far as the bill is concerned and
20 accommodations for, you know, phone, you know, calling in by
21 phone. That's what I had to do today because my chemical
22 allergic reactions are so severe that when I go out in Washoe
23 County -- let's say their air quality is up to 30, anything
24 between 20 and 30 I have to wear a mask when I go out.

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1 And when I get -- when I go places like such as I
2 went to my pain pill specialist, Sweetwater Pain & Spine last
3 week and there was a high air quality yellow. And instead of
4 me calling in and saying that, you know, I'm too sick to come
5 in, I had to go in because they're very succinct in the rules
6 and regulations as far as pain pills and things like that.

7 And so I was forced to go in. And it takes a
8 long time if you cancel to get another appointment.

9 So anyway, with that being said, I went in and
10 ended up in a chemical reaction. This is the first time my
11 pain pill specialist had ever seen me in an allergic reaction
12 where I had to identify to them that I may go into toxic
13 encephalopathy and my brain may swell and I may have to lay
14 down and they may have to call 911, which they did accommodate
15 me immediately.

16 They put me in a bed, laid me down and I started
17 to feel better. And then I spoke with them, got my business
18 done and was still in a moderate allergic reaction. But then
19 I went to my son's house and he took me home and I went into a
20 full-on allergic reaction, which I went to sleep.

21 Now, this happened many times, especially with
22 my -- within my medical provider because they put -- they put
23 candles and perfumes and everything. And it would be so much
24 easier if they didn't have to see me and it would be less

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1 expensive for them to sit there and have a phone consult, just
2 like I couldn't come to Carson City because of the chemical
3 allergic reactions from here to there and then going in the
4 building.

5 And the last time I went and spoke for the State
6 with aging in front of aging and disability, I went in a
7 restroom and they had the foo-foo smells in there. And when I
8 went to workers' compensation when I had my case they had, you
9 know, foo-foo smells in there.

10 And so the problem is is that for me
11 telephonically or phone or whatever and not having a computer
12 might I add at my place where I am at and living, I have no
13 access, nor can I go to the library because I'm allergic to
14 the library, nor can I go out because I have severe chemical
15 sensitivity and reactions.

16 And I do retain a driver's license because the
17 fact is is I have not been in any -- any type of accidents in
18 20 years, nor have I been in any tickets. And my slate is
19 clean because I know when I get these allergic reactions I
20 pull over, I have an air purifier in my car.

21 And I have my air purifier different grades of
22 air purifier -- well, not air purifier, mats and stuff with a
23 bag that I take everywhere in my car wherever I go into my
24 doctor's offices. And sometimes I take my whole air purifier.

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1 And -- well, as I got sick at DMV and they have one of those
2 accommodations that looks like a driver's license with the NRS
3 in there.

4 They gave me one of those. And you can tell I
5 was in allergic reaction. They kept me in there way too long,
6 my eyes were all dilated. Luckily my daughter was with me and
7 took me home.

8 So as far as this is concerned, there are so many
9 other things because with all of the smoke during the summer,
10 I really can't go out except to go grocery shopping. I can't
11 even go to my doctors because I get sick like I just told you.
12 Even under normal circumstances when there's no smoke, no
13 inversions I still kind of get sick in -- you know, with the
14 severity.

15 So for me and other people, because I do know of
16 two other chemically sensitive people that come in from
17 California and Susanville that have the same thing that I do
18 that went to court here in Reno with chemical sensitivity.
19 And I have -- whenever I wear a mask I have people come up to
20 me oh, what are you doing, oh, I need a mask. And I have
21 educated quite a few people.

22 CHAIRMAN OTT: Ms. Lohman, if I can ask you to go
23 ahead and wrap up?

24 MS. LOHMAN: Yes. I also would like to add that
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1 the chemicals are -- the chemical is -- the chemical exposure
2 is raising in the general population due to the fact that
3 there is fire, smoke, the fire retardants coming in from
4 California on top of Nevada's own, you know, inversions and
5 stuff, so it is raising so the general population, a lot of
6 people are going to be chemically sensitive.

7 And they're not going to be able to just walk
8 around and do whatever they want because it does cause
9 neurological damage. It causes, you know, the chemical
10 damage, you know, with the brain, exposure. It also causes
11 issues within -- I have COPD now and it's because of the smoke
12 coming in.

13 They keep asking me are you smoking, are you
14 smoking, I'm not smoking, I'm smoking because California and
15 Nevada fires cause me to have to breathe this. And even with
16 my mask a lot of the time and an air purifier that's \$700 in
17 my vehicle, I still get sick.

18 And I approached my general practitioner at
19 Renown this past -- or within this last month. I showed her
20 -- I also told her as soon as I start breathing that stuff I
21 found out now that my optical is being -- having issues.

22 So I had to go and order --

23 CHAIRMAN OTT: Ms. Lohman, Ms. Lohman --

24 MS. LOHMAN: -- glasses, glasses that are
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1 goggles --

2 CHAIRMAN OTT: Ms. Lohman, I don't mean to cut
3 you off here, but you've been going for about six minutes. I
4 had to cut off Ms. De Fazio as well. There will be a second
5 public comment period at the end of the meeting. So if you
6 have more to say, hold on until the end of the meeting. But
7 we have a tight schedule, I need to get going. So thank you
8 for your comments. And we will proceed now to the next part
9 of the agenda.

10 Before we do, I note that we've been joined by
11 two people in the south, if you guys could just identify
12 yourselves so you're on the record?

13 MR. VASKOV: Sure. Nick Vaskov, City Attorney
14 for Henderson.

15 MR. STORY: Tod Story, Executive Director at ACLU
16 Nevada.

17 CHAIRMAN OTT: Thank you. And before I move away
18 from public comment we had another member of the public join
19 us up here.

20 Do you have any public comment or are you just
21 observing.

22 MR. GOULD: Yeah. No public comment for now.

23 CHAIRMAN OTT: Okay. So there will be another
24 public comment period at the end if anyone wants to.

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1 Next agenda item is approval of the minutes from
2 the last meeting. Because the meeting was only a couple weeks
3 ago, January 13, we don't have a transcript yet so we don't
4 have minutes, we'll move past that to the next item, which is
5 the AB170 discussion, the continued discussion from the
6 January 30th meeting.

7 Posted on our website, and I believe most of you
8 or all of you had a copy is my revisions to the bill based on
9 our last meeting. What I would like to do as far as format is
10 give everybody a chance to say if I got anything wrong.

11 If there isn't, then move on from where we left
12 off last time. And the first thing I'd like to do is consider
13 some additional language that Mr. Story and I exchanged some
14 e-mails about that went to a concern he raised last time that
15 we weren't able to get to.

16 And we do have the room until 2:00. My intention
17 is to be done by about 11:30. So we'll try to -- we'll try to
18 accommodate that. Does anybody have any questions or concerns
19 about that procedure I just laid out? Mr. Gould?

20 MR. GOULD: Ready.

21 CHAIRMAN OTT: Yeah.

22 MR. GOULD: Thank you. I just want to make it
23 for the record that, I mean, I see what you did and I've read
24 it quickly this morning, but honestly I did not have

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1 sufficient time from yesterday until now to go back in my
2 notes to make sure everything was -- you know, seems
3 acceptable.

4 From what I read this morning, there was nothing
5 that jumped out at me, but I just want to put that caveat.
6 Because I wish we had had a little more time. I understand --
7 not saying this to be critical, but, you know, if you're going
8 to ask us to say this is okay, I'm not prepared to do that
9 today.

10 CHAIRMAN OTT: Okay. I understand that. And so
11 I will represent to you that -- that all I did was transcribe
12 exactly the -- the changes that we made at the last meeting
13 into this. I would like to get a vote on the -- the final
14 bill at the end of an endorsement. If you're not prepared to
15 -- to do that today, I understand.

16 Let's move through what we have left and see how
17 much time we have and maybe we have enough time to take a
18 break and do a little bit more thorough review before that.
19 Thank you for that caveat, Mr. Gould.

20 Are there any other questions or concerns about
21 the red line that I did that I circulated, and I apologize for
22 the lateness of it, before we move on?

23 Okay. So the next thing that I wanted to talk
24 about was to address some comments that Mr. Story made

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1 regarding the definition of facilities.

2 And one of the items that was posted to some new
3 language that I put together, it's an amendment to NRS
4 241.020. We have copies here in the north. So it is the one
5 right here, Mr. Karpel, the one with the comments.

6 Do you guys have that in the south as well?

7 MR. GOULD: (Nodded head.) Yes.

8 MR. STORY: Yes.

9 CHAIRMAN OTT: Okay. And just to refresh our
10 recollection, Mr. Story, correct me if I'm wrong, but the
11 concern was that public bodies need some way to be able to
12 protect against being overwhelmed by activists who can claw
13 the room, overwhelm the facilities, then claim there's an open
14 meeting law violation and protect the public -- and prevent
15 the public body from doing its work.

16 Our open meeting law manual has some language
17 that talks about facilities being large enough to accommodate
18 the public in light of reasonably anticipated attendance.

19 So what I attempted do with this section is to
20 insert that into NRS 241.020, say that public bodies need to
21 attempt to hold proceedings in facilities reasonably large
22 enough to accommodate the anticipated audience. But then also
23 give them the protection that if they take that step it would
24 not be a violation if they anticipated less members of the
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1 public that actually -- than actually showed up.

2 So this language is derived from the existing
3 language in our open meeting law manual and that was the
4 concern we were trying to get at. And, Mr. Story, if I got
5 anything wrong, please -- please correct me.

6 MR. STORY: You know, I looked over the language,
7 I think it's satisfactory, it will work for me. I think it
8 covers the conversation that we had last time. And then the
9 language like I said then in the attorney general's open
10 meeting manual satisfies the concern that I have.

11 So I appreciate you taking this out of action and
12 agree that this is the language that adequately should satisfy
13 the situation at the encounter in 2018 and obviously going
14 forward.

15 CHAIRMAN OTT: Thank you for that. And we were
16 just joined by another individual.

17 MR. LIPPARELLI: Paul Lipparelli, the Washoe
18 County DA's Office.

19 CHAIRMAN OTT: Thank you, Mr. Lipparelli, for
20 attending. It's good to see you in person.

21 MR. LIPPARELLI: Thank you.

22 CHAIRMAN OTT: So we had -- to let you know where
23 we're at, we were discussing some language, let me get you a
24 copy of it.

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1 MR. LIPPARELLI: Is it one of the attachments?

2 CHAIRMAN OTT: It was -- yeah, it's one of the
3 attachments. Mr. Story of the ACLU brought up a concern
4 regarding facilities that are inadequate to accommodate all
5 public.

6 And so what I had done is try to use some
7 language from our existing OML handbook and propose a revision
8 to NRS 241.020 which would state, and that's the language
9 there, which would state the public bodies should hold
10 meetings in facilities large enough to accommodate the
11 reasonably anticipated amount of public, but if they do take
12 those measures and they are still inadequate to accommodate
13 all members of the public they can still proceed with the
14 meeting. So that was in the intent. It went to the
15 discussion we had last time on the phone which I think you
16 were able to hear most of.

17 MR. LIPPARELLI: I did.

18 CHAIRMAN OTT: And so that's the language,
19 Mr. Story and I exchanged some e-mails about it. Does anybody
20 else have any comments, concerns about this language?

21 MR. KARPEL: The language is fine, I'm just
22 curious, is that a hypothetical on what happened?

23 CHAIRMAN OTT: Yes.

24 MR. KARPEL: Okay.

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1 CHAIRMAN OTT: Greg Ott for the record. I can
2 think of at least two instances where this happened, both
3 times they were organized members of the public brought
4 hundreds of people to a meeting. And then usually attorneys
5 have claimed that the facility was inadequate to hold the
6 public and the meeting had to be postponed.

7 It happened once to the State Public Charter
8 School Authority. I believe it happened in the Clark County
9 School District. I wasn't at that meeting, Mr. Story, you can
10 correct me if I'm wrong, and I know the Department of
11 Education had to take specific measures to get to a -- a
12 reasonably large facility. They -- they didn't -- they
13 weren't overwhelmed --

14 MR. KARPEL: Yeah.

15 CHAIRMAN OTT: -- but they took -- they had
16 overflow rooms at a high school gymnasium and some other
17 things. Did it happen at CCSD?

18 MR. STORY: Tod Story for the record. That is
19 correct, yes. And it occurred multiple times over the last
20 year, 2018, as Clark County School District was considering a
21 new policy regarding transgender students.

22 So it ended up postponing that vote by many, many
23 months because the show -- the number of people that showed up
24 to attend each of those meetings whenever they had not
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1 anticipated that the attendance was going to be so
2 overwhelming.

3 CHAIRMAN OTT: Any other comments or concerns
4 about this language?

5 So, I had a -- I had proposed that this would go
6 into 241.020. If there's no more discussion does anybody have
7 a motion about whether that is or is not an appropriate
8 insertion?

9 MR. LIPPARELLI: Mr. Chairman, I reviewed it
10 prior to the meeting and I -- my sense is it's -- it tries to
11 capture the intent the best we can do. We recognize that
12 there might be occasions when an unanticipated high number of
13 folks show up and the public body's got to do its best to
14 accommodate that.

15 But there are times when public bodies are acting
16 pursuant to statutory time frames to accomplish business. And
17 it seems to me to be a drastic remedy to have to cancel the --
18 the entire agenda.

19 Maybe -- and usually when it's a big crowd
20 they're there for one item. And so maybe the presiding
21 officer can do his or her best to postpone that item to a
22 different time when more people can be accommodated. But it
23 seems to me like the rest of the business of the public body
24 should be able to continue.

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1 That's what I would recommend if I was the lawyer
2 sitting with the board that had that problem. So I would move
3 in favor of the proposed language.

4 CHAIRMAN OTT: I have a motion, does anyone have
5 a second?

6 MR. VASKOV: Second.

7 CHAIRMAN OTT: Motion and a second. Any
8 discussion?

9 Hearing no discussion, all in favor -- oh,
10 Mr. Gould, yes.

11 MR. GOULD: All right?

12 CHAIRMAN OTT: Yeah.

13 MR. GOULD: I just want to point something out,
14 but I'm in favor of this. As an attorney for a board I have
15 to tell you, though, I'm not sure how I would react in a real
16 situation if I'd be sitting there thinking to myself are we
17 going to now have to litigate whether we've made reasonable
18 efforts to accommodate?

19 The problem is you -- whenever you're trying to
20 -- to codify this kind of behavior there's always going to be
21 something that someone can litigate or if they want to. So I
22 think this is a great improvement over what was there and I
23 would support it. I just want to point out that it's not
24 bulletproof, but nothing is in this regard.

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1 CHAIRMAN OTT: Thank you, Mr. Gould. And I
2 actually agree. And I think what Mr. Lipparelli said is
3 important. The public audience still has the ability to push
4 off that item if it's not time sensitive.

5 But I think this should give them some comfort in
6 the law that if they have taken accommodations to determine
7 how -- how many people are going to show up and they've gotten
8 an overflow facility and they've gone a couple of extra miles,
9 that they have a statutory argument that what they did is
10 reasonable and they can defend it in court.

11 So I think it gives them the ability to make the
12 argument, but the conservative case I think is going to be
13 what Mr. Lipparelli stated, postpone an item and then allow
14 the meeting to come back -- or the body to come back to it
15 later.

16 So any further discussion? All those in favor of
17 this insertion say aye.

18 Any opposed? No. I will vote aye as well.

19 So this will be inserted. Thank you for your
20 thoughtful comments for reviewing this.

21 (Motion carries.)

22 CHAIRMAN OTT: So moving on to the -- where we
23 left off last time was Section 7.3 was the last -- last change
24 that I believe we were to take up. Are we ready to take up,
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1 which means the next one that I see is Section 7.5, which
2 would change to require longer retention of audio recordings
3 from one to five years.

4 That appeared to me to be a slight change from
5 what was discussed at prior meetings where I believe it was
6 one to three years. So I'm anxious to hear the task force's
7 comments about this change.

8 MR. GUTHREAU: I have one. This is
9 Vince Guthreau for the record. So, why was five -- I guess my
10 question -- I have a question and then again reiterating local
11 government's, at least NACO's position and our members.

12 We were sort of tentatively okay with three
13 years, I guess my question would be why five years was chosen
14 since that wasn't really discussed in the meeting?

15 CHAIRMAN OTT: Deputy Attorney General Greg Ott.
16 I can't give you more detail about that. I looked at the
17 minutes, I candidly did not speak to the drafters about this
18 specific change. But I agree with you that I saw the three
19 years being referenced in the minutes, I didn't see a
20 reference to five years.

21 So I was concerned about why it went to five
22 because I thought that the three -- the discussion centered
23 around three.

24 Mr. Gould?
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1 MR. GOULD: Greg, this won't really affect NSHE
2 because we keep them I believe in perpetuity, but I am also
3 troubled that we went beyond what was discussed in July last
4 year.

5 So I would make a motion that we reduce that to
6 three years to be consistent with what we discussed.

7 CHAIRMAN OTT: Motion by Mr. Gould to amend the
8 change of five years down to three years.

9 Is there a second?

10 MR. GUTHREAU: I'll second that motion.

11 CHAIRMAN OTT: Seconded by Mr. Guthreau.

12 Any discussion regarding this?

13 All those in favor say aye.

14 Any opposed?

15 Motion carries. Chair will be an aye as well.

16 Thank you for that.

17 (Motion carries.)

18 CHAIRMAN OTT: Next change is the next section,
19 which is Section 7, subsection 6. This adds or draft minutes
20 or applicable to subsection 6.

21 Yes, Mr. Karpel?

22 MR. KARPEL: Can you refer me to the page?

23 CHAIRMAN OTT: I'm sorry.

24 MR. KARPEL: That's okay. But I'm looking at
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1 the -- what we had last week.

2 CHAIRMAN OTT: So the one we were looking at last
3 week, that should be page 12.

4 MR. KARPEL: Okay. Thank you.

5 CHAIRMAN OTT: So Section 7.6, this references
6 draft minutes, which I believe was struck from subsection 3 at
7 the last meeting. So my thought is since it was struck from
8 subsection 3 it should probably be struck from subsection 6 as
9 well.

10 But happy to hear any other comments from the
11 task force?

12 MR. GUTHREAU: I'll make the motion to strike
13 that. This is Vincent Guthreau for the record.

14 CHAIRMAN OTT: Motion to strike from
15 Mr. Guthreau.

16 Is there a second?

17 MR. LIPPARELLI: Second.

18 CHAIRMAN OTT: Second, Mr. Lipparelli. Any
19 discussion on that one?

20 All those in favor say aye.

21 Opposed?

22 That motion carries as well.

23 So or draft minutes will be stricken from
24 subsection 6. Chair's an aye as well.

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1 (Motion carries.)

2 CHAIRMAN OTT: Next section is subsection 7, 7.7,
3 which clarifies that a court reporter who transcribes a
4 meeting is not required to provide a copy of a transcript
5 minutes or audio recording of a meeting prepared by the court
6 reporter directly to a member of the public at no charge.

7 Are there any comments about this change? I
8 think this was discussed at previous meetings.

9 Would anyone like to modify this or should we
10 move forward with no modifications here?

11 MR. LIPPARELLI: Mr. Chairman, this is
12 Paul Lipparelli. I don't have any experience with court
13 reporting of public meetings. We -- we use strictly audio,
14 video and minute taking. So I'll defer to the agencies that
15 have experience with it and what's important to them. I
16 really can't add much.

17 MR. GUTHREAU: You know, from NACO's perspective,
18 Vincent Guthreau for the record, we have clerks in different
19 counties that take minutes, so we don't -- I don't think we've
20 ever used a court reporter unless -- if it is it's a rare
21 circumstance, so.

22 CHAIRMAN OTT: And my recollection from talking
23 to -- Deputy Attorney General Greg Ott. My recollection
24 talking to public bodies is this is just a protection really
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1 for the court reporters because they do retain ownership of
2 the transcript and to clarify that they would not need to
3 provide that work for free to members of the public. So I
4 don't think it was controversial previously.

5 So if there is no motion to amend it, I will
6 leave it in and move on to the next change, which in my notes
7 is the Sections 8.3, 9.3 and 10.7 and 8, which all relate to
8 the amount of time the Attorney General's Office has to bring
9 a suit once it issues findings of fact and conclusions of law.

10 This is something that was discussed previously.
11 And my understanding of the way this would work is the
12 existing time frame of the 60 days at 120 days would remain in
13 place.

14 Once the attorney general issues the findings of
15 fact and conclusions of law public bodies would have a period
16 of time with which to take corrective action or to say that
17 they agree with it, and then the attorney general would have
18 additional time on top of that to bring suit if necessary.

19 So it was intended I believe to be a way to allow
20 public bodies to self-correct without being brought into court
21 through legal action. And to allow a little bit of additional
22 time.

23 Does anyone have comments, concerns,
24 modifications about these sections?

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1 Okay. If we -- unless anybody has a concern I
2 would like to -- the next thing I would like to talk about is
3 some additional language that I had inserted into the
4 materials both at the last meeting and at this meeting. And
5 this would be a change to Section 10.

6 And what this is designed to do is to allow the
7 Attorney General's Office discretion not to investigate a
8 complaint that is filed in bad faith or to file by a
9 complainant whose interests are not significantly impacted by
10 the public body.

11 So what this is designed to prevent is
12 individuals of the public from filing complaints against
13 public bodies that they have no relation to. Could be an
14 individual in Esmeralda County who has an issue personally
15 with a person in Clark County and wants to file open meeting
16 law complaints against that individual, even though whatever
17 the board in Clark County might be doing has no effect on the
18 individual in Esmeralda County.

19 It is an intent to give the Attorney General's
20 Office discretion to decline to investigate those complaints
21 that appear to be being filed by individuals with no interest.

22 That is an issue that we have had recently.
23 There are some individuals who file complaints against boards
24 that they have no connection to. And so that's -- that's the
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1 intent of the language. And I'm -- I'm happy to hear
2 comments, criticisms or concerns from the task force about
3 this.

4 MR. GUTHREAU: Vincent Guthreau for the record.
5 We do have some concerns about this. So I'm sure -- I think
6 we're okay with the bad faith stuff, although that's sort of
7 new and I haven't had an opportunity to run it by the members,
8 but I think in concept we would be okay with that.

9 There is -- there is an issue here about the --
10 about the discretion about filing claims 120 days after at the
11 discretion of the Attorney General's Office.

12 The way that I read that, and maybe I would be
13 open to feedback, it looks like that could go on for an
14 infinite amount of time. So I'll give you an example of where
15 I think that could be problematic. So in ten years someone
16 brings a claim of an open meeting law violation.

17 The agenda item or the program or whatever it is
18 has been passed and adopted and the county or the local
19 governing body is administering a program. Someone says
20 there's a violation of the open meeting law. The attorney
21 general says sure, we'll look into that. Violate -- then they
22 void the agenda item or the program. Now what do you do?

23 Because there's -- it's just -- it's really
24 problematic to implement that, I think. I don't even think
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1 the Attorney General's Office would want that responsibility,
2 to be honest. But I think -- I think that -- that section is
3 problematic, not just for local but any public body.

4 Just because it's an infinite amount of time,
5 there's no statute of limitations, there's no -- I've heard
6 from other people that aren't -- aren't even county members
7 that have some issues with this. So I think -- I think we
8 might need to discuss that -- that time period because at this
9 point it would be infinite.

10 MR. KARPEL: Richard Karpel. I'm not sure --
11 you're not talking about 120 days? What are you talking
12 about?

13 MR. GUTHREAU: You took at Section B, may at his
14 or her discretion investigate and prosecute any violation in
15 this chapter alleged in the complaint filed more than 120 days
16 after the alleged violation with the office of the attorney
17 general.

18 MR. KARPEL: Right.

19 MR. GUTHREAU: There's no time period about after
20 that. Like what -- I mean, I guess I'll stop there.

21 MR. KARPEL: It's attorney general's discretion.

22 MR. GUTHREAU: Yeah, that's problematic. It's a
23 political office, it varies, there's -- I mean, that office
24 changes hands. I think that could be problematic.

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1 CHAIRMAN OTT: Mr. Gould?

2 MR. GOULD: Yeah, I absolutely support that. I
3 think this is problematic, I think it creates an open-ended
4 problem as was stated. And I -- I could not agree to this, I
5 just couldn't.

6 I would also point out on C, I don't -- do you
7 really need the at his or her discretion? Because it makes it
8 sound like there might be a situation where your office would
9 exercise discretion to prosecute a bad faith claim. I can't
10 imagine if you know something's a bad faith claim why you
11 would ever prosecute it? So why can't you just say may
12 decline to investigate, what's the -- what is added by the
13 discretionary language there?

14 MR. VASKOV: Hello, Mr. Chair. That was my --
15 for the record, Nick Vaskov. That was my thought too. C
16 seems to be just a codification of the -- your inherent
17 authority to decline to prosecute something. I think you have
18 that discretion just in terms of prosecutorial discretion. So
19 I'm just not sure C is even necessary.

20 CHAIRMAN OTT: So --

21 MR. GOULD: I'm also a little troubled, even
22 though it's not -- sort of outside my role in representing a
23 public body. And while I would love to be able to say oh,
24 yeah, this person has no interest in my public body, I am

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1 bothered just as a policy matter that the AG is going to
2 decide that someone who may have a -- raise a very legitimate
3 open meeting law violation could potentially have that claim
4 thrown away because your office decides that they're not
5 sufficiently attenuated or -- I'm sorry, there's no nexus with
6 the public body. I don't like that personally from just a
7 public perspective, I find that a little bit overreaching.

8 So I would propose to take out honestly B and C
9 or at least take out C and modify B to put in maybe a
10 secondary period that's reasonable under certain
11 circumstances, like if there's bad faith alleged maybe you
12 have more than 120, but beyond that, I don't like that 120 and
13 I don't like C at all.

14 CHAIRMAN OTT: So, Deputy Attorney General
15 Greg Ott. Let me address -- so there's two different
16 discussions, one is about the statute of limitations extension
17 in B and the other one is about the ability to decline to
18 prosecute or investigate in C.

19 Without the modification to C the language says
20 the Attorney General's Office shall investigate and prosecute
21 any violation of this chapter in subsection A.

22 So I appreciate what you say about prosecutorial
23 discretion to decline to investigate, but as I read shall
24 investigate, I don't know that it does give us that

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1 prosecutorial discretion.

2 So as it is right now when we get a complaint we
3 investigate it. And that allows people to overwhelm our
4 office. If they don't think that we have done what they want
5 to do file they can file as many complaints as they want
6 against as many public bodies as they can in the state.

7 So I feel like we need something in C. And I
8 understand if the language is not correct or you guys want to
9 modify that, but I do think we need something to give us an
10 ability to decline those -- for vexatious litigant for lack of
11 a better term.

12 But let me put that to the side and go back to B
13 if we could because I think that's kind of a bigger issue. I
14 understand -- from my recollection reading the minutes what B
15 was trying to get at was these undiscovered violations. A
16 secret meeting that a member of the public doesn't necessarily
17 know about until after the statute has lapsed.

18 I understand the concerns raised by -- by the
19 task force that there has to be some sort of finality in these
20 desist, maybe it's a statute proposed where it's a hard year
21 regardless of whether it's a secret violation or not.

22 But I am sympathetic to a member of the public
23 who says I got to bring this thing in 120 days, if this public
24 body meets in secret, takes an action and signs a contract I

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1 might know about it until 150 days and then I have no
2 recourse.

3 So those I think are the twin concerns. And I
4 understand that this language doesn't necessarily address the
5 finality that Mr. Guthreau talked about, but I'm sympathetic
6 to the public's concern about a secret violation as well.

7 MR. GUTHREAU: Yeah, I think I would propose --
8 this is Vincent Guthreau for the record. I think I would
9 propose one more sort of scenario, and I don't know how
10 this -- I mean, I would propose putting maybe like a year cap
11 on it. Because my other -- my other thought was what if the
12 entire board that committed the meeting violation is no longer
13 there? How do you -- right? Because I don't know if that
14 means much, but I -- it could have if there's something that
15 was passed that the local government is now implementing;
16 right?

17 So, I don't know, it's hard for me to say because
18 I don't have a number for my members, but, I mean, I would --
19 I would -- I would argue that maybe putting a year or 12-month
20 cap on it is appropriate too. If we're trying to get at some
21 sort of language I'm just throwing that out there. I'm open
22 to suggestions. If -- if you want to keep that in there to
23 sort of satisfy that.

24 CHAIRMAN OTT: Mr. Gould, we'll take you and then
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1 we'll take Mr. Karpel.

2 MR. GOULD: I would be okay with a statute of
3 repose like one year so you know that's the end. But from
4 what you described which made sense to me as to why you may
5 need more than 120 in your discretion, why don't you draft it
6 so that it is limited to either that specific situation or a
7 situation like that where in your discretion you determine
8 that the public could not reasonably have known?

9 I understand that, you know, subject to the
10 one-year finality, but the way this is written -- this is --
11 this is like way beyond that.

12 So if you wanted to limit it to a secret meeting
13 or some other situation where the public could not reasonably
14 have known that a violation occurred with a one-year cap, I
15 could live with that.

16 CHAIRMAN OTT: Mr. Karpel?

17 MR. KARPEL: Yeah, as the new guy I'll ask this
18 question all the time, is this -- has -- has anybody ever
19 tried to invalidate a meeting by filing a complaint ten years
20 or several years after the meeting took place?

21 CHAIRMAN OTT: Deputy Attorney General Greg Ott.
22 I think the language has been pretty clear that you can't file
23 a complaint to avoid an action that late so far.

24 MR. KARPEL: Okay.
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1 CHAIRMAN OTT: So we haven't had that scenario,
2 what we have had is members of the public say I didn't know
3 about this and now the statute of limitation has passed,
4 what's my remedy?

5 MR. KARPEL: So you have that situation?

6 CHAIRMAN OTT: I would say in conversations I'm
7 not familiar with an actual complaint.

8 MR. KARPEL: Okay.

9 CHAIRMAN OTT: But I have had conversations with
10 individuals who've -- who've raised that as a concern.

11 MR. KARPEL: Okay.

12 CHAIRMAN OTT: And I couldn't tell you whether or
13 not those concerns were valid because once it's past the
14 120 days we can't -- we can't do anything.

15 So -- so -- I agree with the comments of -- of
16 Mr. Guthreau and Mr. Gould that there's maybe two different
17 ways to address this. One would be to limit it to where the
18 violation is undiscovered and that the 120 days runs from the
19 discovery.

20 The other would be to put some sort of a statute
21 of repose on there that says, you know, but in no -- in no
22 event should action be brought after a year from the date of
23 violation.

24 I think both of those are --
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1 MR. GOULD: Or both. How about both? 120 days
2 after the discovery or but no event later than one year.

3 CHAIRMAN OTT: I will open that up to the task
4 force. How do other people feel about those issues?

5 MR. KARPEL: Richard Karpel. If it has been
6 shown that it was impossible to know, why -- why would you set
7 an arbitrary time limit of a year?

8 MR. GOULD: Well, my thought is because of what
9 was said at the very beginning of this conversation, there has
10 to be some finality.

11 MR. VASKOV: Yes.

12 MR. GOULD: Otherwise this could go on forever
13 and a contract that was approved or something that was
14 approved by a public body in 2016 could come up and get hit in
15 2019 and now what do you do?

16 MR. VASKOV: Yeah.

17 MR. GOULD: It would put everybody at task. You
18 have to believe that there's -- I mean, and I don't think
19 there's a lot from what Greg is saying, it's not like he gets
20 these a lot, but if someone finds out that say there was a
21 secret meeting they're going to know fairly quickly because
22 that contract is going to be out there and they're going to
23 say how did this contract get approved, what happened? So,
24 you know, there just has to be some finality to this or you're

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1 going to cripple the government's ability to do business.

2 MR. GUTHREAU: Yeah, and it -- Vincent Guthreau
3 for the record. I think it also creates just massive
4 uncertainty with the public, the board --

5 MR. VASKOV: Yes.

6 MR. GUTHREAU: -- and everyone. And also sort of
7 going on another tangent, every crime except for murder has a
8 statute of limitation. So I think we have to figure out a
9 way. And those are in there for a reason; right?

10 People's minds change, I mean, memories that
11 maybe there's, you know, they don't have the records, I don't
12 know. Because if we're only supposed to hold records now for
13 three years, if the claim is about five years later we don't
14 even have a record of the meeting now. So I'll just throw
15 that out there too as far as why there needs to be some sort
16 of limit on that.

17 I'm also not proposing three years because of
18 board makeup change possibly every two years.

19 MR. GOULD: Right.

20 MR. GUTHREAU: So I just think statute of
21 limitations just as rule in law in general, not even though
22 open meeting law is usually the way that it goes.

23 MR. LIPPARELLI: Mr. Chairman?

24 MR. GUTHREAU: It may be --
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1 CHAIRMAN OTT: Mr. Lipparelli?

2 MR. LIPPARELLI: Paul Lipparelli. I -- I'll
3 throw this out. In local government we go by one-year budget
4 cycles and -- and one-year tax levies. And so anything past
5 that year of -- of -- of when the occurrence happened is going
6 to be in a different budget year and -- and that business is
7 going to be closed and gone.

8 So, I think there's a rational basis for saying
9 one year. Because after that what are you going to do, void a
10 contract that's already been performed and paid? I mean, it
11 turns -- it turns the remedy into -- into something kind of
12 silly.

13 So one year makes sense to me as a -- as a mark
14 and if it turns out not to work, very well, we can come up
15 with a better one later.

16 MR. GUTHREAU: Yeah, Vincent Guthreau. I kind of
17 like that testing it out since we are expanding authority
18 here. I think mostly because I said the one year.

19 So obviously it's an excellent proposal, but I
20 think -- yeah, I think we're happy to -- if all of a sudden,
21 you know, in the next -- when this law is implemented or if
22 it's implemented and come back and we're getting a ton of
23 stuff outside that and the public doesn't -- I mean, local
24 governments I think -- I don't want to speak for every board

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1 because I know there's been issues, but I think most of our
2 members try their best to adhere to the spirit of the open
3 meeting law. And I think if they see a place where the public
4 isn't being heard then we would want to revisit that too.

5 So I would make a motion to make that change to
6 put the year cap on there.

7 CHAIRMAN OTT: So can I -- can I put some
8 language on that motion?

9 MR. GUTHREAU: Yes, please.

10 CHAIRMAN OTT: Because I was taking notes.

11 MR. GUTHREAU: Sure.

12 CHAIRMAN OTT: So I had two possible changes, one
13 was to get at the discovery angle that we had talked about and
14 that would be -- and this is the language in 241.039(2)(b), it
15 would be replacing more than in the second sentence within and
16 after to of discovery.

17 So what that would read is may at his or her
18 discretion investigate and prosecute any violation of this
19 chapter alleged in the complaint filed within 120 days of
20 discovery of the alleged violation within -- with the office
21 of the attorney general. So that's the first one that would
22 try to get at the of discovery.

23 And then the second part would be an addition at
24 the end of the sentence which would say but in no case -- but
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1 in no case may an investigation of prosecution be brought more
2 than one year after the violation.

3 MR. GUTHREAU: I'm okay with that. I'm
4 comfortable with that. Vincent Guthreau for the record.

5 CHAIRMAN OTT: So is that --

6 MR. GUTHREAU: I'm comfortable with that, yeah.

7 CHAIRMAN OTT: Okay. So we'll take that as a
8 motion for Mr. Guthreau.

9 MR. GUTHREAU: Yes.

10 CHAIRMAN OTT: Does anyone have a second to that
11 modification?

12 MR. LIPPARELLI: Second.

13 MR. VASKOV: I'll second that.

14 CHAIRMAN OTT: Second from Mr. Lipparelli who
15 wins the buzzer. Any discussion of that language for
16 modification? Hearing no discussion, all in favor of that
17 change say aye.

18 All opposed?

19 Okay. That motion carries. Chair will vote aye
20 as well on that.

21 (Motion carries.)

22 CHAIRMAN OTT: Now let's go back to subsection C
23 of the same section. We had some discussion about removing
24 the at his or her discretion but also a discussion about
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1 removing the section entirely. I think removing it entirely
2 is problematic from our office's perspective for the reasons I
3 said previously. But I didn't allow Mr. Vaskov to respond to
4 that, I pushed us back to subsection B. So happy to hear
5 other concerns.

6 MR. VASKOV: Yeah, for the record, Nick Vaskov.
7 I had not frankly considered your concern about vexatious
8 complaints being lodged and then your office being
9 overwhelmed. So I'll yield on C.

10 CHAIRMAN OTT: How do we feel about the at his or
11 her discretion language? Do we think that that needs to be
12 removed? Because I agree that we could say may decline to
13 investigate without the his or her discretion.

14 MR. GOULD: Same thing. I think it's
15 superfluous.

16 CHAIRMAN OTT: Okay. So how about -- can we get
17 a motion to approve that language with the modification of at
18 his or her discretion with the removal of that language?

19 MR. GOULD: So moved.

20 CHAIRMAN OTT: Moved by Mr. Gould.

21 Is there a second?

22 MR. LIPPARELLI: Second.

23 MR. VASKOV: Second.

24 CHAIRMAN OTT: Second by Mr. Lipparelli.
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1 Any discussion on this? Hearing no discussion
2 all in favor say aye.

3 Any opposed?

4 Okay. The chair is in aye as well. That motion
5 passes.

6 Thank you for the thoughtful discussion regarding
7 that as well.

8 (Motion carries.)

9 CHAIRMAN OTT: I think we're making good time.

10 MR. GUTHREAU: I thought we got through that
11 pretty quickly for what it was.

12 CHAIRMAN OTT: Yeah. So that takes us to
13 Section 10.2, which says --

14 MR. GUTHREAU: We just did.

15 MR. GOULD: Yeah.

16 MR. GUTHREAU: I think it's 7.

17 CHAIRMAN OTT: Okay. Yep. No, you're correct.
18 Sorry.

19 10.7. 10.7, which adds upon completion of
20 investigation conducted pursuant to subsection 2 the attorney
21 general shall inform the public body that is the subject of
22 the investigation and issue as applicable a finding of no
23 violation of this chapter occurred or a finding that a
24 violation of this chapter occurred along with the findings of
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1 fact and conclusions of law that supported the violation of
2 this chapter. And then the public body shall submit a
3 response within 14 days.

4 MR. LIPPARELLI: Mr. Chairman?

5 CHAIRMAN OTT: Yes, sir.

6 MR. LIPPARELLI: On -- on the response from the
7 public body I think 14 days is too little time. We have some
8 public bodies that only meet once a month, some even less
9 frequently than that.

10 And if the public body is going to have a
11 meaningful opportunity to reflect on the attorney general's
12 findings, schedule a meeting and have a discussion and
13 formulate a response, it's going to take much longer than
14 14 days.

15 So I would plead for -- for 45 days for those --
16 for some of those public bodies that don't have these
17 regularly occurring meetings as a starting point for the
18 discussion.

19 There -- we couldn't -- we couldn't almost under
20 any circumstance short of an emergency meeting get you a
21 response in 14 days.

22 MR. GUTHREAU: Vincent Guthreau for the record.

23 MR. VASKOV: This is --

24 MR. GUTHREAU: Oh, sorry, go ahead.
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1 MR. VASKOV: Go ahead, Vincent.

2 MR. GUTHREAU: I guess the only other -- sort of
3 building on those concerns, especially for some of our rural
4 members who meet even less frequently, I would make an
5 argument that it could also be at the next meeting.

6 Because we have some boards that don't meet. I
7 think we have some GIDs in some of our smaller areas, they,
8 you know, manage maybe a small road system, they meet like
9 every six months. So I'm just a little bit worried about them
10 all of a sudden being in violation of something that just
11 because they don't end up meeting.

12 I don't know if that's too broad, but that is my
13 suggestion is to move it to the next possible meeting. Maybe
14 with some language in there that says whichever comes sooner.
15 I don't know if that's -- that might be too restrictive. But
16 anyways, that's -- that's my suggestion.

17 CHAIRMAN OTT: Let's go to the south. I know
18 Mr. Vaskov and Mr. Gould both want to talk, so you guys can
19 decide.

20 MR. VASKOV: Nick Vaskov. So I too am concerned
21 about 14 days. I'm especially concerned about it given that
22 if you don't respond you're deemed to have agreed with the
23 findings; right? I don't like that notion at all, quite
24 frankly. We either respond or we don't, but if we don't

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1 respond I don't know why we're suddenly deemed to sort of
2 agree or be in violation.

3 But, you know, certainly I think one of the
4 language assumes that the public body is going to be the one
5 responding. And as Dean and I just talked about, I'm not sure
6 that's true, the response may simply come from the attorney
7 from the public body without the public body actually taking
8 any action on that response.

9 MR. GOULD: That's pretty typical. I mean, it's
10 an attorney/client issue at that point. I know that when Nick
11 and I worked together we didn't have any, but if we did, we
12 would have --

13 MR. VASKOV: Issued a response.

14 MR. GOULD: -- formulated our response. We
15 wouldn't have taken it to a meeting with an open agenda with
16 an attorney/client issue. We wouldn't have done that.

17 So -- but I'm also concerned -- Greg, am I
18 reading this correctly, that when you're investigating this
19 you give us notice that there's a violation, and that's the
20 first time we even know there's a violation?

21 MR. VASKOV: Yes.

22 MR. GOULD: So you've made that decision without
23 even getting any input from the body?

24 CHAIRMAN OTT: Which section are you talking
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1 about?

2 MR. GOULD: Well, if you start on 7.

3 MR. VASKOV: Yes.

4 MR. GOULD: I think the way I read 7 it implies
5 that -- that you -- your office has decided that there was a
6 violation, but I don't think the public body has yet even
7 known that there's a violation and has had no opportunity to
8 respond to you predetermination. I find that troubling.

9 MR. KARPEL: Richard Karpel. Doesn't the word
10 investigation suggest that the Attorney General's Office is
11 going to contact the public body to get information pursuant
12 to the investigation?

13 MR. GOULD: Well, it might be true if they're
14 doing the kind of investigation that you or I would do, but
15 there's nothing statutorily that requires them to even give us
16 notice.

17 So I'm suggesting that the first step here needs
18 to be a discussion about why would you not let us know
19 immediately that a complaint's been filed and give us some
20 reasonable time to respond as part of your investigation.

21 CHAIRMAN OTT: Deputy Attorney General Greg Ott.
22 So let me put on the record the way that the process currently
23 works, whether or not that's required by statute.

24 We get a violation, we do an initial -- or a
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1 complaint, we will do an initial review to see if it merits a
2 response from the public body.

3 Sometimes somebody complains about something that
4 is not an open meeting law complaint at all, it's just a
5 policy decision or it's something that is just not just
6 violative of 241, even if all the facts as alleged were true.

7 Those typically get responded to with a no
8 violation letter without the public body being requested for
9 for input. Because there's just nothing they could say that
10 would change the decision, there's just no violation there.

11 If there is a possibility of a violation, then a
12 letter and a request for a response goes out to the public
13 body with the time frame to respond. They provide a response,
14 then our office determines if there's additional interviews,
15 documents, other things that are needed. There could be a
16 back and forth with the public body or with other individuals.
17 Before a determination is made and that determination could be
18 a violation or it could be no violation.

19 So that's the way the investigation piece
20 currently exists. I don't believe that is specifically
21 required. I don't think it says that we need to get a
22 response from the public body.

23 It does say that we need to do an investigation.

24 And I think it would be hard to do an investigation without
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1 allowing some sort of contact with the public body.

2 MR. LIPPARELLI: It would not only be hard,
3 Mr. Chairman, Paul Lipparelli speaking, I think it's a
4 violation of due process.

5 MR. VASKOV: Yeah.

6 MR. LIPPARELLI: So -- and that doesn't happen,
7 that's never been the attorney general's practice. The first
8 thing that happens after they get a complaint is they notify
9 the public body against whom the complaint has been made and
10 say please send us all the available information pertaining to
11 this meeting and any other material you want to submit for us
12 to do a full investigation of the complaint.

13 So, that -- that's -- that's never been how it's
14 worked. And I don't know if this language changes that. I
15 think -- I think the attorney general will still do business
16 the way he or she always has on that regard.

17 I'm just saying back to my suggestion or comment
18 and Mr. Guthreau's, I don't necessarily agree that it's always
19 going to be an attorney who -- who responds, we have public
20 bodies who have disagreement among the members about whether
21 to proceed in a certain fashion.

22 And in light of the Hanson case and the
23 requirements that now are on public bodies to give direction
24 to the lawyers in public meetings about taking action in -- in
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1 legal matters, I think we need to leave room for the
2 possibility that the public body will be the one that has to
3 make a decision on how to respond. And 14 days is just not
4 nearly enough.

5 CHAIRMAN OTT: Mr. Gould?

6 MR. GOULD: Mr. Ott, yeah, I have no problem with
7 the setting of time, I wasn't saying that, and I don't think
8 Nick was saying it because we were disagreeing with the
9 extension, we were just pointing out that we hope that based
10 on the conversation we were hearing the sense wasn't that
11 every -- anytime there's a notification of a violation to the
12 board or the public body that they have to now go to an open
13 meeting.

14 We would have to look at Hanson ourselves in
15 light of -- particularly the language that was discussed at
16 the last task force meeting, that would help to I think soften
17 the effect of Hanson.

18 But -- so I'm not at all arguing the 45, I -- I
19 still would maintain though that -- and I appreciate that what
20 you're saying and what Mr. Ott is saying that it is the
21 practice of the attorney general to provide notice.

22 I would submit that I think it should be required
23 in the statute that if there is a violation alleged, other
24 than the type that you commented on that isn't even a

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1 violation and you dismiss it without even -- but if there's
2 even the sense that it's going to move forward, the public
3 body should immediately then have notice that that's occurring
4 and not wait. I hear what you're saying, but if you're doing
5 it anyway you shouldn't have a problem codifying that
6 practice. It just --

7 CHAIRMAN OTT: Deputy Attorney General
8 Greg Ott -- sorry, go ahead.

9 MR. GOULD: -- seems unfair.

10 CHAIRMAN OTT: So my concern with prescribing
11 details of the investigation is that it's the first step down
12 a slippery slope. I'm worried that then somebody is going to
13 say why are you just getting their word for it, you should
14 also be required to interview witnesses, you should also be
15 required to take additional steps.

16 The statute right now gives us the discretion to
17 investigate in a manner that allows us to get to the facts as
18 necessary.

19 I haven't heard -- I haven't heard any serious
20 and legitimate complaints that we don't do that in a way that
21 gets to a good result in the vast majority of cases.

22 So, I would be probably opposed to anything that
23 would specify how or what we need to do in that investigation.
24 Because I think that we're doing a good job right now. Maybe

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1 I'm self-interested in saying that.

2 But -- but I would -- I'd probably push back
3 against a requirement that our investigation include specific
4 steps, just because I'm concerned about where it would go.
5 Having said that, I don't -- I understand completely the
6 concern about the 14 days. I think part of the reason the
7 14 days is there is because it's a short time frame and it
8 allows the response to come in before the attorney general's
9 extension to file suit is necessary.

10 I mean, the extension that was given in
11 subsection 9 is 60 days if they need to void an action. So if
12 we go out to 45 days there's very little time to file an
13 action, if that's -- if that's the case. We could possibly
14 toll these time frames in subsection 9 and that would maybe
15 alleviate that concern, but then we pushed out the time to
16 which a complaint would need to be filed a little bit further.

17 I don't feel strongly about those numbers. I
18 just want to raise those concerns.

19 MR. VASKOV: Nick Vaskov. I'm just wondering why
20 Section 8 is necessary? If we -- I mean, I guess you've done
21 your investigation and made your findings of fact. Is a
22 response from the public body necessary? And it seems to me
23 it's only necessary to the extent that you the attorney
24 general has authority to then issue fines or -- or other --

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1 take other punitive action against the public body.

2 If -- if there's no such authority, then I'm not
3 sure a response is necessary, which I guess kind of leads me
4 to some of the changes in the further sections where I do feel
5 like the attorney general is -- is getting into the -- the
6 business of sort of a quasi judicial role rather than an
7 investigatory role and an enforcement role.

8 And so as long as the attorney general is not
9 getting into the judicial role and making legal determinations
10 that have penalties associated with that, I guess I'm okay
11 with them doing the investigation, making findings, as long as
12 once they make those findings they then have to go prosecute
13 those findings civilly or criminally.

14 CHAIRMAN OTT: Putting aside the fine piece for a
15 second, although I know it's related. I think the reason for
16 the response is because the Attorney General's Office could
17 have a finding of fact that says you guys have violated the
18 open meeting law and the action that you took should be void.

19 They issue that within 60 days. They either have
20 an option -- under the current law they need to institute that
21 action to avoid -- to void that in court within 60 days.

22 What this is trying to do is allow them to issue
23 the findings of fact, allow us to issue the findings of fact.

24 The public body then can say okay, we agree, we messed up,

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1 we're going to change that, we don't need to go to court about
2 this. If they don't issue any response that says whether they
3 agree or don't agree, the Attorney General's Office isn't
4 going to know whether there is a need for a court action.

5 So that response should alleviate the need to
6 bring public bodies to court to void actions if they're in
7 agreement with the findings that have been made.

8 If they're not in agreement, then we still have
9 the option to go to court and argue about it in front of a
10 judge. But it's supposed to alleviate the need to bring
11 actions to court when necessary. If that makes sense.

12 MR. GOULD: Well, maybe you want to switch this
13 out based on what Nick said earlier. And if -- if the public
14 body doesn't respond then it should be deemed to be opposing
15 it, not accepting it.

16 MR. VASKOV: Yeah, that would be better.

17 MR. GOULD: And then you can go file your action
18 or do whatever you want to do.

19 MR. LIPPARELLI: I -- this is Paul Lipparelli. I
20 agree with that sentiment, it preserves the rights of the
21 public body. If they default and don't -- and don't respond
22 they're deemed to deny the charge and then the attorney
23 general can take whatever further action he or she desires to,
24 but --

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1 MR. GOULD: Yeah.

2 MR. LIPPARELLI: -- to deem them to admit to the
3 wrongdoing is -- is not typical in the law.

4 MR. VASKOV: Yep, I agree.

5 MR. GOULD: Other than in the context of a
6 default judgment. But that's -- that's in the context of a
7 judicial proceeding as Nick said, this is not a judicial
8 proceeding.

9 MR. VASKOV: Where you've been served --

10 MR. GOULD: Right.

11 MR. VASKOV: -- you have the opportunity to
12 respond.

13 MR. GOULD: This is not.

14 CHAIRMAN OTT: I'm thinking -- Deputy Attorney
15 General Greg Ott. I'm thinking in my mind about how that
16 plays out. I imagine public bodies if no action will be a
17 denial and the only effect of taking action would be to
18 eliminate a court case, I would think the vast majority will
19 fail to respond.

20 MR. VASKOV: Well, this is Nick Vaskov again. I
21 think it's in their best interest to respond; right? I don't
22 think you want to let an alleged public violation as a public
23 body lay unresponsive. On the other hand, if you don't
24 respond it shouldn't be deemed that you've admitted either.

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1 MR. GOULD: Right.

2 MR. LIPPARELLI: Mr. Chairman, Paul Lipparelli.
3 I -- I don't know of any of my clients who would take a notice
4 of violation from the attorney general and do nothing with it.
5 Maybe some would.

6 MR. GOULD: Absolutely.

7 MR. LIPPARELLI: But not my clients and not while
8 I was being their lawyer. So I -- I understand the concept of
9 wanting to impose a requirement on the public body to give you
10 something back either saying we agree, we disagree or we
11 partially disagree.

12 I don't have a problem putting an obligation on
13 the public body to give some sort of response. And if you
14 want to deem the absence of a response to be a denial, that
15 would be okay with me too. That would eliminate some of the
16 problems I have with -- with timing.

17 So if as --as Mr. Guthreau said if there's a
18 rural board somewhere that only meets a couple times a year
19 and they don't respond, you can -- you can take that as a --
20 as a denial and then move in whatever direction you need to.

21 So, as a -- let me try a proposal here. The
22 language in paragraph 8, a public body shall submit a response
23 to the attorney general not later than 30 days after the
24 receipt of the finding of the public body violated this
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1 chapter.

2 If the public body does not submit a response to
3 the attorney general within 30 days after the receipt of the
4 finding it shall be deemed that the public body disagrees with
5 the finding of the attorney general.

6 CHAIRMAN OTT: I have a motion --

7 MR. VASKOV: Can I propose a -- sorry.

8 CHAIRMAN OTT: Go ahead.

9 MR. VASKOV: Sorry. Nick Vaskov for the record.
10 Can you propose a friend amendment --

11 MR. LIPPARELLI: Yes, sir.

12 MR. VASKOV: -- to that?

13 MR. LIPPARELLI: Absolutely.

14 MR. VASKOV: I would add that a public body,
15 comma, or where authorized counsel for the public body shall
16 submit a response. That at least leaves open the opportunity
17 where if your counsel is authorized to respond on behalf of
18 the public body that they can.

19 MR. LIPPARELLI: Mr. Chairman, Paul Lipparelli.
20 I like that suggestion and I would incorporate it into my
21 motion.

22 CHAIRMAN OTT: So or where authorized counsel
23 for --

24 MR. VASKOV: Or where authorized counsel for the
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1 public body, comma.

2 CHAIRMAN OTT: So or where authorized counsel for
3 the public body, and that would come after a public body, so
4 that would be after the third word of that subsection.

5 Okay. And that was -- that's your motion,
6 Mr. Lipparelli?

7 MR. LIPPARELLI: Yes, sir.

8 CHAIRMAN OTT: Do we have a second?

9 MR. VASKOV: Second.

10 CHAIRMAN OTT: Any discussion?

11 MR. KARPEL: Richard Karpel. I'm just curious if
12 a counsel speaking for a public body responds to the Attorney
13 General's Office on anything, I mean, isn't it the -- isn't
14 that the same as the public body responding? Or am I missing
15 something here?

16 CHAIRMAN OTT: Deputy Attorney General Greg Ott.
17 I think the concern is that when it says a public body shall
18 respond it might be deemed that the public body is not able to
19 delegate that authority to its counsel. And so I think that's
20 what Mr. Vaskov is trying to get at with his amendment.

21 MR. GOULD: So that in that event you have to
22 always schedule a meeting just for that purpose in order to
23 authorize the public body.

24 CHAIRMAN OTT: Any further discussion?
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1 MR. GOULD: Mr. Ott, this motion's only deal with
2 8, the change in 8; right?

3 CHAIRMAN OTT: Correct.

4 MR. GOULD: So it's not talking about anything
5 ahead of that, because I -- I'm still troubled by the fact
6 that we don't get any notice, but that's not part of 8; right?

7 CHAIRMAN OTT: That's how I understood
8 Mr. Lipparelli's motion.

9 MR. GOULD: Okay.

10 MR. LIPPARELLI: Mr. Chairman, it was my intent
11 to modify paragraph 8 and I have no objection to going back
12 and talking about the 7 stuff either.

13 MR. GOULD: Well, why don't we deal with 8, I'm
14 happy, then we can talk about 7.

15 CHAIRMAN OTT: Okay. So let's --

16 MR. GOULD: I didn't want to hold it up because
17 of the chairman.

18 CHAIRMAN OTT: So seeing no further discussion,
19 all those in favor of the motion made by Mr. Lipparelli say
20 aye.

21 Any opposed?

22 So that is a motion passes unanimously. The
23 chair will be an aye as well.

24 (Motion carries.)

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1 CHAIRMAN OTT: So those changes are adopted.

2 Did somebody -- Mr. Gould, did you want to
3 discuss 7 as well or did you want to move forward?

4 MR. GOULD: I would like to just respond on 7 if
5 I may to something that you had said.

6 CHAIRMAN OTT: Sure.

7 MR. GOULD: I would -- I would submit that a
8 requirement in the statute that you have to provide notice to
9 the public body at the front end is not the same thing as
10 starting to erode the investigative process. This is not a
11 process by which we're telling you how you do your
12 investigation.

13 As was pointing out earlier, I think this is a
14 due process issue. I think this is a constitutional issue.
15 I'm troubled by the fact that hypothetically and statutorily
16 the first time a public body could learn under the statutory
17 scheme that there is an issue is when the -- is under the --
18 they get the notice under 7.

19 And I would submit again that there should be
20 some language added into this process into maybe A or B that
21 just requires your office to provide us with written notice
22 when the notice of the violation comes in.

23 I mean, I have had a situation where the way we
24 found out about it was through the media. And that's not a
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1 good way to find things out.

2 CHAIRMAN OTT: Was that a -- Deputy Attorney
3 General Greg Ott.

4 MR. GOULD: The media --

5 CHAIRMAN OTT: Was that a violation?

6 MR. GOULD: Well, an alleged violation that ended
7 up being not a violation. But it's all over the newspaper,
8 it's all over the TV. Because as you and I know, the media
9 doesn't always vet these things, they just say what's going to
10 cause ratings to increase or -- or clicks. And so there could
11 be, you know, they give the -- the media notice of their
12 letter to you, we have no idea.

13 And then we're forced to have to reach out and
14 say: Is something going on? Because we didn't know. So I
15 just think it's fairness, it's an issue of fairness and due
16 process that we should know when you get something in about
17 our public body.

18 CHAIRMAN OTT: Deputy Attorney General Greg Ott.
19 So you want if I'm understanding correctly is a requirement on
20 the Attorney General's Office to notify the public body upon
21 receipt of any complaint? Whether or not --

22 MR. GOULD: Yes.

23 CHAIRMAN OTT: -- it's meritorious or not?

24 MR. GOULD: Yes. Because we will get calls, we
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1 will get -- we can't control what goes on in the media because
2 it's not coming from us, it's coming from usually the party
3 that's filing the complaint.

4 And in the situation where it's a complaint
5 without any merit, like I said, it nonetheless goes out, the
6 world knows about it and all of a sudden we're defending
7 something in the media that we have no idea was even filed.

8 MR. VASKOV: Nick Vaskov for the record. I would
9 just add that I -- I sympathize with those comments. I
10 believe the ethics statute, the ethics commission has language
11 in the statute that essentially says that they get to do a
12 threshold investigation to determine whether a complaint is
13 credible.

14 Once they have made a determination the complaint
15 is credible -- is credible, then they give notice to the
16 person against whom the complaint is made.

17 So for exactly the reasons you just articulated.
18 And I know that that process is in the ethics statute.

19 CHAIRMAN OTT: But as I'm hearing Mr. Gould's
20 concern, that language -- or that process is not -- would not
21 satisfy his concern because he wants notice of even
22 unmeritorious complaints; correct?

23 MR. GOULD: Correct. Because if you even look at
24 7 in your sub A, one of the things you could tell the public
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1 body is that no violation occurred. But that could
2 hypothetically be the first time we even know that there's an
3 alleged violation.

4 I understand the comment that you're going to do
5 a thorough investigation, you're going to contact us, but if
6 you're going to do it anyway then what's the harm in codifying
7 that and saying you know what, it's coming? I mean, it's --
8 it's a letter.

9 MR. LIPPARELLI: Mr. Chairman, Paul Lipparelli.
10 In -- in NRS 241.039, which is the section on complaints, the
11 first paragraph is a short sentence, a complaint that alleges
12 a violation of this chapter may be filed with the office of
13 the attorney general.

14 What if after that sentence we added a clause
15 notice of which must be provided to the public body by the
16 attorney general, within whatever time period you want? Or
17 immediately or --

18 MR. GOULD: That would work.

19 MR. VASKOV: Yep.

20 MR. GOULD: That would work. Within a reasonable
21 time -- within -- I'm not trying to hamstring your office, I
22 just would like to know.

23 CHAIRMAN OTT: So that would be a change to
24 241.039(1)?

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1 MR. LIPPARELLI: Yes.

2 CHAIRMAN OTT: To add the language notice of
3 which should be given to -- or shall be given to the public
4 body within 14 days, is that --

5 MR. LIPPARELLI: Yeah, I -- that works.

6 MR. GOULD: I would make a motion to that effect.

7 MR. VASKOV: I'll -- I'll second that.

8 CHAIRMAN OTT: Motion and a second from Mr. Gould
9 and Mr. Vaskov.

10 Any discussion on that?

11 I will -- I will say that I'm going to abstain
12 just because I don't think it would be a burden to our
13 investigative process, but I'd like to look into that before I
14 support that because it is a change.

15 So I'm not going to be in favor of that at this
16 time, I won't oppose it, but I just want to put that on the
17 record.

18 Any other discussion?

19 All those in favor of the motion say aye.

20 Any opposed? Okay. That carries.

21 (Motion carries.)

22 CHAIRMAN OTT: So that by my calculation gets us
23 done with subsections 7 and 8 of Section 10, which moves us on
24 to Section 11. Before we take this we've been going for about
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1 an hour and a half, should we take a five-minute break to give
2 the court reporter's fingers a little bit of rest before we
3 come back for this final push?

4 MR. GOULD: Sure thing.

5 MR. LIPPARELLI: Sure.

6 CHAIRMAN OTT: We'll come back by 10:30.

7 (Recess.)

8 CHAIRMAN OTT: So it's 10:32 now, I'm going to
9 call us back to the record for our final push. I think we
10 were -- our number was enlarged by one in the south.

11 Could you just state your name so for the record?
12 And your organization?

13 Sorry. We didn't get that, could you try again.

14 MR. VOLZ: Fred Volz, public.

15 CHAIRMAN OTT: Thank you, Mr. Volz.

16 So, we left off with Section 11. So before we
17 get to the find section there is a change in Section 11 which
18 changes the language from taking action violation of to
19 violated. This is really just trying to recognize that --

20 MR. VOLZ: I don't have a copy of it so I'll just
21 listen.

22 CHAIRMAN OTT: So that section's really just
23 trying to recognize that you can violate the open meeting law
24 without taking a specific action. And so that change is meant
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1 to ensure that -- or violations that are not actions are still
2 treated as violations.

3 MR. LIPPARELLI: Mr. Chairman?

4 CHAIRMAN OTT: Yes, sir.

5 MR. LIPPARELLI: On that subject I have a grave
6 concern about this from a criminal law perspective. There are
7 misdemeanor penalties attached to these violations.

8 And I'm concerned that the member of a public
9 body who's just merely present in the room and takes no action
10 in furtherance of a violation is guilty on some sort of strict
11 liability standard. I think there needs to be a mens rea
12 component and there needs to be an action component. You
13 actually have to commit a violation of the open meeting law in
14 order to be subjected to criminal penalty for this.

15 And so this is what I'm imagining, a public body
16 commits the most serious violation of the open meeting law
17 which would be voting on an item that's not on the agenda.

18 If -- if a person -- if a member of the body is
19 merely present but doesn't do anything in furtherance of that
20 violation they're -- they're automatically guilty with -- with
21 this change.

22 And so I -- I think that the language in there
23 requiring action to be taken in violation is critically
24 important to -- to making sure that before a member of a
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1 public body can be found guilty of a misdemeanor violation
2 that they -- they have to have done something. And there are
3 other kinds of violations of the open meeting law that may
4 occur without the public -- without the member's knowledge,
5 like failure to properly post or something like that.

6 So, I'm concerned about this, I -- I'm not aware
7 that anyone's ever been prosecuted criminally for a violation
8 of the open meeting law, so it may be a rare thing. But I
9 don't -- I don't favor our law subjecting people to criminal
10 penalty without them having done something.

11 CHAIRMAN OTT: Can I clarify? I appreciate that
12 concern. Section 11 talks about posting any findings of fact
13 finding that an action was taken in violation of the law on
14 the website.

15 Section 12 is where we get to the fines and the
16 other matters that are of concern to you. Do you have a
17 concern with the language change in 11 or is it more directed
18 at 12 or is it both?

19 MR. LIPPARELLI: Well, now that you mention it, I
20 think it might be both. But I'm more concerned about 12
21 because it's the criminal penalty section.

22 CHAIRMAN OTT: Can we take 11 first? And let me
23 just raise one concern. The reason why 11 I think is
24 necessary as it is worded right now it says an action in --

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1 taking action in violation of the open meeting law needs to be
2 agendized and placed with supporting material. Some public
3 bodies have taken the position that if we didn't take an
4 action and we violated the open meeting law in some other way,
5 we don't need to agendize that because this only applies to
6 actions taken in violation of the open meeting law.

7 So what this Section 11 specifically is meant to
8 get at is if we say that you violated the open meeting law,
9 whether that was through action or exclusion of someone or
10 failure to do something proper that was not an action, you
11 need to agendize that and call attention to it and disclose to
12 the public that that was the violation.

13 So I understand your concern with regard to
14 Section 12, but I think with Section 11 it's a little bit of a
15 different concern that we're trying to address.

16 Mr. Gould's about to correct me, though.

17 MR. GOULD: No, I just -- I just want to add
18 something. Because if you -- forget 12 for a minute, if you
19 just look at 11, again, the way I'm reading this correct it's
20 saying that if you tell us that we vio -- you make findings of
21 fact and conclusions of law that we are not -- we must include
22 an item that says we're going to correct it, what if we don't
23 agree with you?

24 There should be some caveat here that -- or
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1 unless we have somehow provided you notification that we don't
2 agree with your findings of facts and conclusions of law.

3 So now if we don't -- you tell us you think we
4 did something wrong and we don't do this, we now have a second
5 violation that's independent because we didn't do this.

6 CHAIRMAN OTT: So that's -- that's the state of
7 the law currently is that has to be agendized.

8 MR. GOULD: I get it. But I don't like it.
9 Because I think it puts an unfair burden on the public body to
10 not even again have an ability to say, you know, or put
11 something in there that says that the public body has the
12 right to indicate in the agenda they don't agree. But if
13 you're telling us we must do this, we've had no opportunity to
14 defend ourselves.

15 CHAIRMAN OTT: Well, so the language says it must
16 acknowledge the findings of fact. I don't think that means
17 that it has to adopt it, it has to say that they agree with
18 it, I think it can be agendized and you can state on the --
19 publicly why you disagree with it.

20 But I think it is very important that it be put
21 at a meeting so the public knows that the Attorney General's
22 Office has found that the public body's acted in violation of
23 the open meeting law. I think that's an important factor.
24 So --

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1 MR. GOULD: I guess I'm troubled by the word
2 acknowledges.

3 MR. LIPPARELLI: Mr. Chairman --

4 MR. GOULD: Because you could argue that
5 acknowledge is broader than just stating it. So I -- I would
6 understand and get the fact that your requirements to put it
7 on an agenda to notify the public body and the public that
8 you've alleged this. I get that. I'm troubled by the word
9 acknowledges.

10 MR. LIPPARELLI: Mr. Chairman, Paul Lipparelli.
11 When I do my own meeting law trainings for my public bodies I
12 refer to this section as the pants down section, which is
13 where when you get caught, the first thing you have to do is
14 go in front of the public and say we got -- we got this --
15 this finding from the attorney general.

16 But I agree with the chairman that the -- that in
17 practice what this means is you just have to acknowledge that
18 the attorney general has made these findings and it doesn't
19 compel you to agree with them, but it is the pants down rule
20 that -- that I think is a deliberate public policy decision
21 that -- that a -- that a public body has to basically confront
22 the findings of the attorney general in a public meeting.

23 But if you have a better word than acknowledge
24 I'd be happy to know it.

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1 MR. VASKOV: Well, Nick Vaskov. What you could
2 do is add a sentence at the end of that section that says the
3 acknowledgement submitted by the public body may disagree with
4 the findings and facts and conclusions of law issued by the
5 attorney general.

6 CHAIRMAN OTT: Deputy Attorney General Greg Ott.
7 My concern here, and we're talking about a modification that
8 isn't real. The only reason we're talking about 11, the only
9 reason I brought 11 up is because of this change from taking
10 action in violation to violate, which I think is a reasonable
11 change I didn't expect opposition to.

12 What we're actually talking about is a change to
13 what the existing law is to allow the public body more freedom
14 to push back against the findings of the attorney general.

15 I think they already have that in the existing
16 law, but I am concerned that any language that says that oh,
17 they can say they don't like it is going to minimize the
18 impact of the importance of the investigation and the findings
19 that the Attorney General's Office has done.

20 So that is my concern. I'm not necessarily all
21 the way to opposed, but I am concerned about diluting the
22 impact of those findings of fact.

23 MR. GOULD: I was good until you had that last
24 statement. Because diluting minds, somehow the public body is
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1 doing something wrong by not agreeing with you.

2 CHAIRMAN OTT: No, I don't think that the
3 argument --

4 MR. GOULD: Remember, we haven't had any
5 opportunity at this point to disagree with you. You're just
6 saying to us we want you to go out there and pull your pants
7 down to coin a phrase.

8 CHAIRMAN OTT: Well, this is -- this is post
9 investigation.

10 MR. GOULD: Yeah, I get that. But that doesn't
11 mean we have to summarily agree with you. You're not the
12 judge, you're the investigatory body.

13 So, you know, acknowledge -- acknowledges that --
14 that the attorney general has provided the body with findings
15 of fact and conclusion of law, that's what you're asking us to
16 do. That they exist.

17 But somehow whether you use Nick's proposed
18 language or something that at least clarifies that it's --
19 it's an acknowledgement, but it's not in any way an admission,
20 so that we -- you know, and I don't want to have to argue that
21 later if we do agendize it the way that says, you know, we are
22 acknowledging it, but we don't agree. And somehow your office
23 says no, no, no, that isn't what you're allowed to do.

24 It's putting us I think in an unfair burden
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1 though. I -- the fact that it wasn't raised -- remember, we
2 didn't write the PDR, you did, your office did.

3 CHAIRMAN OTT: Correct.

4 MR. GOULD: And it was submitted without us
5 having any input at this point, which is the reason for these
6 meetings.

7 So, you know, I'm troubled by it, I'm going to
8 tell you I'm troubled by it. And the group can do what it
9 wants with it.

10 CHAIRMAN OTT: I appreciate that, I just wanted
11 to clarify that this was not necessarily the change, we're
12 talking about a different change.

13 And I --

14 MR. GOULD: Yes, I guess.

15 CHAIRMAN OTT: -- I will push back --

16 MR. GOULD: I will acknowledge that that's a
17 different change.

18 CHAIRMAN OTT: And I will push back a little bit
19 on the -- what I hear, which is that you're sort of assuming
20 that their office is somehow an adversarial body. We're a
21 neutral investigator. We didn't bring the complaint, we're
22 investigating the complaint, so.

23 MR. GOULD: Well, and I don't mean to imply that
24 you're adversarial, but at the point that you've come to the
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1 body and said we have completed our investigation, we've
2 determined there's a violation, this is something you must now
3 do, I think it's a fair statement to say that it would become
4 a bit adversarial.

5 The body might look at it and say we absolutely
6 agree, there was a mistake made and we have no problem doing
7 this.

8 But we may also say we don't agree and we're
9 going to take whatever rights we have to pursue that. And so
10 I just want to be careful that we're not being cast in sort of
11 a guilty until proven innocent corner. That's all.

12 CHAIRMAN OTT: And I agree with that and
13 before -- before I push back, we were joined by someone, could
14 you state your name and organization for the record?

15 MR. MOORE: Yeah, this is -- I'm Andy Moore from
16 City of North Las Vegas. I was down the hall testifying on an
17 assembly bill. So I'm sorry I'm late.

18 CHAIRMAN OTT: No, that's fine. Welcome. I
19 think that we want to look at Section 11 in conjunction with
20 the section immediately preceding it, which specifically gives
21 the public body the right to respond and obligates the public
22 body to formulate a response and say whether they agree with
23 the decision or not.

24 So, I think 241 as a whole clearly states the
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1 public body doesn't to agree. We're actually compliant or
2 trying to obligate the public body to say whether you agree or
3 not. I don't think 11 is then telling us that you have to
4 agree because you clearly have the obligation to state whether
5 you agree or disagree previously.

6 MR. GOULD: I understand, Greg. Again, my big
7 problem is the word acknowledges.

8 MR. LIPPARELLI: Mr. Chairman?

9 CHAIRMAN OTT: Yes.

10 MR. LIPPARELLI: Mr. Gould, what about recognizes
11 or receives instead of acknowledges?

12 MR. GOULD: Acknowledges the existence of -- or,
13 you know, just that they're there, I don't have a problem with
14 that.

15 CHAIRMAN OTT: So, I'm happy with acknowledges
16 because I feel like when I come home and my dog comes up and
17 licks my face he's acknowledging me, not necessarily telling
18 me he likes me.

19 So I feel like this gets at the what we need.
20 But if there's a motion out there that Mr. Gould or somebody
21 else would like to make, happy to do so. I think we've
22 discussed pretty much to the point where Mr. Gould and I are
23 probably going to agree to disagree.

24 MR. GOULD: Probably won't be the last time.
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1 I would make a motion to include the words
2 existence of after the and before findings. I think that's
3 benign enough that it doesn't -- should not give you any
4 heartburn.

5 MR. VASKOV: Correct.

6 CHAIRMAN OTT: Acknowledges the existence of
7 between the and findings is the motion from Mr. Gould.

8 Do we have a second?

9 MR. VASKOV: Second.

10 CHAIRMAN OTT: Second. Any further discussion on
11 this?

12 Hearing no discussion, all those in favor say
13 aye.

14 All those opposed say nay. The chair will be a
15 nay, but I'll be out voted. So that's fine.

16 (Motion carries.)

17 CHAIRMAN OTT: Do we need to make any other
18 changes to 11 before we move on to 12 or are we good with
19 that?

20 Okay. Hearing no further changes to 11, before
21 we move on to 12, which is the section about fines.

22 Mr. Lipparelli, do you want to kick this off since you had
23 kind of broached this previously with your comments?

24 MR. LIPPARELLI: Yes, Mr. Chairman. In
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1 Section 12 the language that's stricken is action is taken in
2 violation of. And again, my concern there is the criminal
3 penalty that potentially attaches and the need that we have in
4 the law for people to have an intent and to commit a crime and
5 to take action in furtherance of the commission of the crime.

6 I think taking this language out the way it's
7 proposed turns it into sort of a strict liability, kind of a
8 violation, just it's a status offense if you're present when
9 it happens you're guilty.

10 And I think before -- I think that the members of
11 public bodies, lots of whom are volunteers, lots of whom who
12 don't get paid and give generously of their time deserve to
13 know that they're not going to be faced with criminal
14 penalties unless they actually do something that constitutes a
15 violation.

16 So maybe the hang up is over the word action.
17 Because in the open meeting law when we say action we think
18 about voting. But I think that the conduct, maybe the word
19 should be conduct or conduct in furtherance of or something
20 needs to be there to protect people against things that they
21 didn't even do.

22 So my hypothetical, it's a five-person public
23 body and a motion gets made to approve something that's not on
24 the agenda. During the discussion one of the members says I'm
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1 not going to vote on this, this isn't on the agenda. I'm --
2 I'm -- I'm not going to participate in this vote.

3 Fine. Don't. They vote, the three members vote
4 in favor of it. The person who refused to act is still part
5 of the public body that committed a violation, even though she
6 said I'm not going to do this.

7 So I think there needs to be a component of not
8 only knowledge but -- but action. Conduct.

9 CHAIRMAN OTT: Deputy Attorney General Greg Ott.
10 Let me move on to Section 4 -- subsection 4 of subsection 12.
11 Because I think this gets at your point.

12 In that section on the third line there it's the
13 action is taken in violation of has been removed. So how it
14 reads now is except as otherwise provided in subsection 6 in
15 addition to any criminal penalty imposed pursuant to this
16 section each member of a public body who attends a meeting of
17 that public body where any violation of this chapter occurs.

18 And then it says and who participate in such
19 action at the meeting violation -- with knowledge of a
20 violation is subject to an administrative fine.

21 So that I think gets to your point because what
22 you're saying is the person needs to know and participate in
23 some sort of action in order to expose themselves to these
24 penalties.

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1 What we have done in this proposed revision is to
2 take out action taken in violation of, replace it with
3 violation, but then leave in participates in such action.

4 So I think there's actually a -- a disconnect in
5 the language of that subsection. So that's why I wanted to
6 bring it to your attention. Because I think the -- who
7 participate in such action is the clause that protects members
8 from penalties for nonparticipation, but the change to the
9 language from action to violation might cut against that.

10 It's a longwinded way of saying I agree with your
11 concern and I think that this is a part of any solution.

12 MR. LIPPARELLI: Mr. Chairman, thanks for
13 pointing that out. Paragraph 4 is -- is in addition to the
14 criminal penalty there may be a fine. Paragraph 1 is the one
15 that says the criminal part.

16 So I still think we need to work on -- on that
17 language in -- in number 1.

18 So maybe it is member of a public body who
19 attends a meeting of that public body where any violation of
20 the chapter occurs and who participates in such violation,
21 borrowing language from paragraph 4, that would -- that would
22 make me feel better, something along those lines.

23 CHAIRMAN OTT: So maybe has knowledge and
24 participates, is that --

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1 MR. LIPPARELLI: Yes.

2 CHAIRMAN OTT: -- what the --

3 MR. LIPPARELLI: Yes.

4 CHAIRMAN OTT: Okay.

5 MR. LIPPARELLI: That covers it, that's both
6 elements, the mens rea and the action.

7 CHAIRMAN OTT: Did anyone else have comments on
8 that?

9 MR. VASKOV: Yeah, for the record, Nick Vaskov.
10 I guess I have a little bit more fundamental concerns about
11 Section 12 as a whole. I am concerned that -- I think the
12 current state of the open meeting law is that the attorney
13 general has the ability to assess I think what's called civil
14 penalties up to \$500, I think.

15 But the only way to collect those is then to
16 bring a civil action to collect them. So in essence, the
17 attorney general if they do assess a civil penalty, they --
18 they have the option of collecting that civilly or they also
19 of course have the option of bringing a criminal charge;
20 right?

21 My problem here is that we're -- we're giving
22 more authority to the attorney general to assess
23 administrative penalties without and then not have the burden
24 of collecting on those.

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1 And particularly Section 5 essentially flips the
2 burden of proof and says if -- it's the member of the public
3 body that's got to contest the fine, not the attorney general
4 that's got to seek to enforce the fines. So that troubles me.

5 And then Section 6 also troubles me I think
6 because I'm not sure this is great public policy to
7 essentially say the -- no criminal penalties or fine will be
8 assessed if the attorney for the body acknowledges in writing
9 the violation; right? It seems you're building a perverse
10 incentive for the attorneys to -- to -- well, you're putting a
11 lot of pressure on the public attorneys it seems to me with
12 that section.

13 MR. GOULD: And, Greg, if I may add to that,
14 there is a similar-type provision in the ethics of government
15 law that -- that's sort of like a safe harbor.

16 MR. VASKOV: Yeah.

17 MR. GOULD: That's what they refer to it. And I
18 get it and I don't have a problem with it, but I can tell you
19 that as an attorney for a public body it does open the door
20 for public officials to try to get those opinions in order to
21 protect themselves.

22 But I'm a big boy and I can live up to that and I
23 can say no, I'm not prepared to give you that opinion because
24 I don't agree with that it would not be a violation.

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1 But in this context, I -- I agree with Nick. I
2 think that it's flipping the burden of proof and, you know,
3 the burden of having to come forward. So now the member of
4 the public body is again is almost like guilty unless he
5 proves himself innocent in a way.

6 CHAIRMAN OTT: Deputy Attorney General Greg Ott.
7 I -- I understand those concerns, I think there are a number
8 of different sections in 4. We've got criminal provision in
9 subsection 1 which Mr. Lipparelli identified and proposed a
10 change to. We've got the fines that are in subsection 4. And
11 then we've got the attorney provisions that are at the end
12 there.

13 I think it might be best to try to take them one
14 at a time as opposed to dealing with subsection 12 as a whole.
15 Because there's a lot -- there's a lot in here. But if -- if
16 people think we need to not do that I'm happy to hear that.

17 MR. GOULD: That's fine. I think that's --

18 CHAIRMAN OTT: Okay. So let's stick to the
19 criminal provision that Mr. Lipparelli identified I think a
20 valid concern with and proposed a solution to.

21 Does anybody else have any comments about
22 subsection 1 and the proposed revision?

23 MR. LIPPARELLI: So, Mr. Chairman, let me try a
24 motion, see if I've captured the -- the -- the cure here. In
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1 -- in the one, two, three, fourth line there's language, new
2 language proposed occurs and has and an existing term
3 knowledge of my proposal, my motion would be to add the words
4 and participates in after of so that it reads occurs and has
5 knowledge of and participates in the violation.

6 CHAIRMAN OTT: Thank you for that. Do we have a
7 second for that motion?

8 MR. VASKOV: I'll second that.

9 CHAIRMAN OTT: Second from Mr. Vaskov.
10 Any discussion on that? All those in favor say
11 aye.

12 Any opposed?

13 The chair will be an aye as well. I think it's a
14 good change. Thank you, Mr. Lipparelli, for that.

15 The record reflect that Mr. Ritchie has also
16 joined us. And we are on page 17. Mr. Vaskov and Mr. Gould
17 were giving a full throated endorsement of the fines, which we
18 fully agree with. And thank them for that.

19 So we just -- we just had a change to the
20 criminal subsection Mr. Lipparelli mentioned.

21 (Motion carries.)

22 CHAIRMAN OTT: I think now we could move on to
23 the fines in subsection 4. So I heard the concerns. Do we
24 need to go back to concerns or can we start thinking about
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1 solutions if there are any?

2 MR. GOULD: I have nothing more to add, Nick, do
3 you?

4 MR. VASKOV: No, I think I've said it.

5 MR. GOULD: Can I ask you a question, Greg?

6 CHAIRMAN OTT: Absolutely.

7 MR. GOULD: Is this -- is this expanded authority
8 to issue administrative fines, is this a tool that the
9 Attorney General's Office believes is -- is -- is really
10 necessary to further incentivize compliance by -- specifically
11 by members of public bodies?

12 CHAIRMAN OTT: Deputy Attorney General Greg Ott.
13 I will say that there are certain public bodies that tend to
14 get repeated complaints against them. That could come from a
15 variety of reasons. It could be specially hostile members of
16 the public, could be members of the public body who appear not
17 to give our decisions the seriousness that some other members
18 get.

19 So, I think this is an opportunity -- or an
20 effort to bring some increased liability to those members who
21 do not get the message the first time. Because the -- there
22 is no change to the first offense, that is still a \$500 fine.
23 It just escalates --

24 MR. VASKOV: Right.

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1 CHAIRMAN OTT: -- for -- for repeat offenders.
2 So I actually don't have a lot of heartburn about the
3 escalation of fines. And I actually didn't hear that from --
4 from the south as well.

5 It was more about the action taken -- whether
6 there needs to be an action taken. And then the other
7 subsections as well.

8 So maybe we should focus on the language of
9 subsection 4 similar to the correction that we just made in
10 subsection 1, maybe that will alleviate some of the concerns.

11 MR. VASKOV: Mr. Chair, Nick Vaskov again. I
12 think I can actually live with the escalating fines, that
13 doesn't bother me so much. It is Section 5 and 6 that cause
14 me a lot of heartburn.

15 MR. GOULD: I agree with that, Mr. Ott. We
16 actually discussed the escalation of fines back in July. And
17 I think there was a consensus that -- that we understood why
18 that was needed or requested by your office.

19 So, that to me is not where I get the heartburn.
20 It's -- it's in -- it's in the process of getting that money
21 that I think that I am concerned.

22 CHAIRMAN OTT: So do we need any change to
23 subsection 4 or should we move on to 5 and 6?

24 MR. LIPPARELLI: Move on.
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1 CHAIRMAN OTT: Okay. Moving on to subsection
2 5 --

3 MR. MOORE: I think -- this is Andy Moore from
4 City of North Las Vegas. I think what -- does this language
5 make sense? Because it looks as if there's some language
6 that's added that I think makes it so you can't really
7 understand what it's trying to say --

8 CHAIRMAN OTT: Can you slow down? Our court
9 reporter's --

10 MR. MOORE: I think the language as it reads I
11 don't think -- it sounds confusing to me, I don't really -- I
12 can't make sense of it when it says and who participates in
13 such action the meeting with knowledge of the violation. I
14 don't know if that's just existing language in the statute, it
15 wasn't added.

16 CHAIRMAN OTT: Deputy Attorney General Greg Ott.
17 So that section previously had said action taken in violation
18 of any provision. We changed it to be a violation, but I
19 think the problem is we left the language of who participates
20 in such action.

21 And so the first instance of action is struck,
22 but the second instance of action remains. And that may be
23 where the source of confusion is. Perhaps if the change --
24 well, let's see.

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1 MR. VASKOV: Nick Vaskov. I think the
2 confusion --

3 MR. MOORE: Is the language after.

4 MR. VASKOV: I think the two words the meeting.
5 So who participates in such action with knowledge --

6 MR. MOORE: I think it just needs to delete the
7 meeting.

8 CHAIRMAN OTT: Okay. So should we -- should we
9 change such action since we've removed action? Should we
10 change it to such violation as well right before the meeting?

11 MR. VASKOV: Probably.

12 MR. GOULD: Sure.

13 MR. MOORE: Yeah.

14 CHAIRMAN OTT: Okay. So do we have a motion to
15 delete action and the meeting and replace it with violation?

16 MR. LIPPARELLI: So moved, Mr. Chairman.

17 CHAIRMAN OTT: Motion from Mr. Lipparelli.
18 Second? Does anyone --

19 MR. MOORE: I second it.

20 CHAIRMAN OTT: Second from Mr. Moore.

21 All -- any discussion?

22 MR. RITCHIE: Can we read it as -- as proposed
23 then?

24 CHAIRMAN OTT: Yeah, absolutely. So the motion
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1 as I understand it, subsection 4 of Section 12 says except as
2 otherwise provided in subsection 6, in addition to any
3 criminal penalty imposed pursuant to this section, each member
4 of a public body who attends a meeting of that public body
5 where any violation of this chapter occurs and who
6 participates in such violation with knowledge of the violation
7 is subject to an administrative fine in an amount not to
8 exceed.

9 Any further discussion on the motion?

10 All those in favor aye?

11 Any opposed?

12 Okay. That change is adopted. The chair is an
13 aye as well.

14 (Motion carries.)

15 CHAIRMAN OTT: Moving on to subsection 5. Who
16 wants to lay out the concern?

17 MR. VASKOV: For the record, Nick Vaskov. Again,
18 for me this -- this just flips the -- the burden of proof;
19 right? Under the current law I believe if you're assessed a
20 fine the attorney general then has the burden to then collect
21 on that fine through a civil action.

22 Here, the law -- the burden is shifted to the
23 member of the public body to then contest the fine if they
24 disagree with it. That seems to violate some fundamental

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1 notions of fairness to me.

2 MR. LIPPARELLI: Mr. Chairman, Paul Lipparelli.
3 What if we just struck paragraph 5 and left it up to the
4 attorney general to pursue collection of the administrative
5 fines in the way that people usually do.

6 Through a demand for payment, through a civil
7 action, through collections action, through notice to credit
8 reporting agencies, whatever the usual collection tools are.

9 MR. VASKOV: Nick Vaskov. I'm fine with that.
10 That's -- I would prefer the language of that section. And I
11 think it starts up on A, where it says the attorney general
12 may recover the administrative -- any administrative fines in
13 a civil action brought in any court of competent jurisdiction.

14 Such action must be commenced within -- I guess
15 we're changing that to six months after the administrative
16 fines are assessed.

17 MR. GOULD: I'm fine with that.

18 MR. VOLTZ: It doesn't work. I think it's
19 terrible about the fines.

20 MR. VASKOV: I don't know if you guys heard that
21 comment or not.

22 CHAIRMAN OTT: Mr. Voltz, did you have something
23 you wanted to add?

24 MR. VOLTZ: Well, I would just add that the state
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1 is owed about \$700 million of accounts receivable. And the
2 whole administrative fine process is so broken that it's nice
3 to have this in the law, but the reality is it's probably
4 never going to be collected on.

5 CHAIRMAN OTT: Okay. So that \$700 million is
6 mostly not open meeting law violations, just for the record.

7 MR. VOLTZ: No.

8 CHAIRMAN OTT: That's all violations.

9 MR. VOLTZ: But it does go through the same
10 collection process, which is not working presently.

11 MR. VASKOV: Nick Vaskov for the record. I would
12 just note this is like a -- this is like a small claims action
13 at this point.

14 MR. VOLTZ: That's right. And nobody will pursue
15 it.

16 MR. VASKOV: Well, the attorney general should if
17 it's important to them.

18 MR. GOULD: But I would argue that even if you
19 flip it the way that you're proposing, and the -- it creates
20 that monetary civil liability on the board members, someone
21 still has to collect them.

22 MR. VASKOV: That's correct.

23 MR. GOULD: All this does is establish liability.

24 This isn't going to the collection problem.

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1 MR. VOLTZ: But there's no point in having a fine
2 process and a levying process if you're not going to actually
3 collect it.

4 MR. GOULD: Right. But I would just submit that
5 that's a separate issue from how the liability is initially
6 assessed.

7 MR. VOLTZ: Right.

8 MR. GOULD: What we're talking about is do you
9 put burden of liability on the board member, the individual
10 board member and say you aren't going to be liable unless you
11 start an action to say I'm not, or does the AG's office have
12 the burden of saying we're going to determine liability?

13 Once the liability's determined, whichever way
14 you come out of the first question, you then have the question
15 you're raising, which is how do they get the money.

16 But that's not -- I don't -- I view that as a
17 separate issue from what we're talking about.

18 MR. VOLTZ: Well, that is. But again, there's no
19 point in setting an administrative fine process if it's not
20 going to be followed through on.

21 CHAIRMAN OTT: So -- so --

22 MR. VOLTZ: It's pointless because it has no
23 effect.

24 CHAIRMAN OTT: So there is a history of the
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1 Attorney General's Office collecting fines for open meeting
2 law violations. I understand Mr. Voltz may have some concerns
3 about the state in general and its collections efforts, we're
4 not going to solve those here at open meeting law task force.

5 But I agree with Mr. Gould that what we're
6 talking about is the method for collecting those fines. And
7 as it is right now, it requires the attorney general to go and
8 prosecute the violation or get a voluntary submission.

9 This would flip the -- the burden and basically
10 adopt sort of a petition for judicial review model where the
11 fine gets assessed and then the individual is responsible for
12 contesting it through a court if they so choose. I'm hearing
13 some opposition from that in the south.

14 Mr. Lipparelli had a solution proposed I believe
15 that seemed to have some attraction.

16 Just meant to refocus our discussion back to the
17 question at hand, which is should the Attorney General's
18 Office be forced to try to institute the collection or should
19 we adopt more of a petition for judicial review model?

20 MR. LIPPARELLI: Well, if you really want to
21 collect the fine what you could do is put language in here
22 that -- that no public officer may be reappointed or reelected
23 with an outstanding fine.

24 MR. VASKOV: Great. No problem.
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1 MR. GOULD: I'm not sure that's constitutional,
2 but it sounds good. I'm not sure you can do that in an open
3 meeting law provision.

4 MR. LIPPARELLI: It's an eligibility --

5 MR. GOULD: I'll leave that to Greg. He knows
6 more than me.

7 MR. LIPPARELLI: You're ineligible for office if
8 you have an outstanding fine.

9 MR. GOULD: Right. But don't you think that
10 hypothetically goes beyond the scope of the open meeting law?

11 MR. GUTHREAU: You'd have open elections law.

12 MR. LIPPARELLI: You're right. Okay. Never
13 mind.

14 MR. VASKOV: Can I ask a question, Mr. Chairman?
15 It was a great thought.

16 CHAIRMAN OTT: Yeah, question, go ahead.

17 MR. VASKOV: Do you know offhand how the total
18 amount of fines issued -- or civil -- whatever we call them
19 currently, civil penalties, issued by the attorney general in
20 the last few years?

21 CHAIRMAN OTT: I do not. I know it's not
22 exorbitantly high, it's not often used.

23 MR. VASKOV: Which is why I guess in my mind I'm
24 happy -- I'm fine with the accelerated fines based on
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1 additional offenses. And if this becomes a real problem for
2 the Attorney General's Office, then I think that they need to
3 dedicate whatever resources to collect those fines they think
4 are necessary.

5 CHAIRMAN OTT: I understand. Mr. Lipparelli, you
6 had a motion that I think had some support, or at least a
7 concept of a motion.

8 MR. LIPPARELLI: Mr. Chairman, my motion was to
9 strike all the -- all the provisions of new paragraph 5 or new
10 subsection 5.

11 MR. RITCHIE: I'll second.

12 CHAIRMAN OTT: Motion from Mr. Lipparelli.

13 Second from Mr. Ritchie.

14 And would that in effect bring back the sections
15 that have been removed from subsection 5 as well?

16 MR. LIPPARELLI: Yeah, I guess it would if you
17 think --

18 MR. VASKOV: It would have to.

19 MR. GOULD: Yes.

20 MR. LIPPARELLI: I don't know, does the attorney
21 general need authority to file a civil action or could he just
22 do it? I don't know, it --

23 MR. GOULD: I think part of the existing language
24 was that it had a -- didn't it have a -- like a statute of
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1 repose type of -- I don't know what's in the existing one, but
2 to me you don't want to wipe out the time limit in which that
3 can be done.

4 CHAIRMAN OTT: Yeah, I think we were allowed to
5 do it within a year.

6 MR. GOULD: Right. So --

7 MR. VASKOV: Yeah, just for the record,
8 Nick Vaskov. I think the only -- I think if you just go back
9 to the original language in 5 the only thing you would need to
10 add is at the beginning, the attorney general may recover the
11 administrative fines.

12 CHAIRMAN OTT: Yeah, and that language is in the
13 preceding paragraph.

14 MR. VASKOV: In 4.

15 CHAIRMAN OTT: Right. Okay. Is that the motion
16 as we've understood it?

17 MR. LIPPARELLI: Mr. Chairman, let me restate it
18 so it's more clear.

19 I -- I move to strike the proposed new language
20 in subsection 5 consisting of the following, a member of a
21 public body assessed an administrative fine pursuant to the
22 section may contest the fine and retain the existing language
23 authorizing the attorney general to bring a civil action
24 within -- you want the six months?

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1 CHAIRMAN OTT: We have one year right now. I
2 prefer one year.

3 MR. LIPPARELLI: Within one year.

4 MR. GOULD: I'm fine with that.

5 CHAIRMAN OTT: Okay. And that would be one year
6 within the date the action is taken in violation?

7 MR. LIPPARELLI: Yes.

8 CHAIRMAN OTT: Okay. So basically removing those
9 new changes. And that was seconded by Mr. Ritchie.
10 Any discussion on that?

11 Hearing no discussion, all those in favor say
12 aye.

13 All opposed?

14 The chair will be a nay on this, but it'll be out
15 voted. So thank you for the conversation on that.

16 (Motion carries.)

17 CHAIRMAN OTT: Moving to subsection 6, Mr. Gould
18 is about to endorse this.

19 MR. GOULD: I'm going to raise something that is
20 a real concern of mine, and that is under sub B. I understand
21 we had this discussion last July, the idea here was to put the
22 attorney on the hot seat to have to put his or her position in
23 writing.

24 I just want to make sure that we're not violating
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1 attorney/client privilege by putting -- requiring an attorney
2 to put it in writing what he or she provided the legal advice
3 to. And we had a whole discussion in July, I don't know how
4 that translates here about is there still a provision in this
5 revision, this revised bill that you'd have to notify the
6 state bar if you've determined that there was wrong advice
7 given? Remember that was in here originally. Was that
8 stricken?

9 CHAIRMAN OTT: I don't believe --

10 MR. GOULD: Or is that somewhere else?

11 MR. VASKOV: It was in this.

12 MR. GOULD: Pardon?

13 MR. VASKOV: It was in the pre-bill rescission.

14 MR. GOULD: Right. But it's not in this.

15 CHAIRMAN OTT: I don't believe that made it in.

16 MR. VASKOV: Okay. Go ahead.

17 MR. GOULD: I just ant to -- I just think we need
18 to think about it. I'm not sure what the answer is that we're
19 not putting in a position where he she has to violate
20 privilege in order to satisfy this.

21 CHAIRMAN OTT: So Deputy Attorney General
22 Greg Ott --

23 MR. GOULD: If they gave it in an opening
24 meeting. If they gave -- like if I give advice in an open
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1 meeting, that's on the record, I don't have a problem with
2 that. But I'm not sure I want anything I may have discussed
3 outside of that in an attorney/client context.

4 CHAIRMAN OTT: So --

5 MR. GOULD: Now I'm in a position where if I
6 don't opine to that I've somehow thrown my member under the
7 bus.

8 CHAIRMAN OTT: I think that's a valid concern.
9 This section was attempting to give some safe harbor to
10 members who act based on the advice of legal counsel.

11 The concern is then these provisions also put
12 pressure on legal counsel to provide a shield to the member
13 for advice that was -- may not have been given in a public --
14 public body -- or in a public meeting.

15 So, I guess the question is one, do we want to
16 give that protection to the member of the public body
17 explicitly or is it already implied through the other
18 provisions of case law and provision of the open meeting law?

19 And if we do want to give that protection
20 explicitly, is the language of A and B the right way to do it
21 or is it problematic?

22 So I guess the first question is whether we need
23 to do -- to provide this protection explicitly. Mr. Gould?

24 MR. GOULD: All right. I -- I am thinking that
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1 what if you kept A but eliminated B?

2 MR. VASKOV: Yeah.

3 MR. LIPPARELLI: I would support that.

4 MR. VASKOV: Yep. For the record, Nick Vaskov.
5 I think that is essentially the way the safe harbor and the
6 ethics law works.

7 MR. GOULD: Right.

8 MR. VASKOV: Now, I will say that I have a little
9 bit more comfort in the ethics law safe harbor because at
10 least then in theory you're giving the advice to an individual
11 and not a public body. But I'm not sure that's determinative
12 for me.

13 But certainly eliminating the requirement in B
14 that the attorney acknowledge it eliminates my concern about
15 undue pressure being placed on the public attorney for the
16 public body to shield a member from a potential violation of
17 the open meeting law.

18 MR. GOULD: I'm okay with that, Mr. Ott. I would
19 say the same thing I said in the ethics discussion, and that
20 is, you know, I can protect myself, I'm not going to let
21 anyone pressure me into giving advice that I'm not comfortable
22 giving, but I think if you take out B, and I would make a
23 motion to that effect, and leave in A, you've accomplished
24 what you wanted to accomplish.

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1 CHAIRMAN OTT: So before I give my -- does
2 anybody have a second to that motion to just remove B from
3 subsection 12?

4 MR. LIPPARELLI: Second.

5 CHAIRMAN OTT: Okay. Seconded.

6 I'll open the discussion. I think -- I think the
7 concern is there that the public -- that the public attorney's
8 going to be pressured regardless of whether B exists. B
9 probably ramps up that pressure by saying you need to give
10 that acknowledgement in writing.

11 Without B --

12 MR. VASKOV: Yes.

13 CHAIRMAN OTT: -- you still have the defense for
14 the member of the public body and they would -- they would be
15 able to establish that they received that legal advice, one
16 way would be if the advice was given in a meeting, that would
17 be very clear.

18 If the advice is not given in a meeting, they
19 could just say I relied on the advice of my counsel. I don't
20 know how much that is going to be worth if the advice is not
21 documented in a meeting. I imagine that our office would
22 still want to verify that. We would probably ask the attorney
23 did you give this advice. And I'm not sure how that would
24 play out.

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1 MR. GOULD: Well, you can ask that -- excuse me,
2 you can ask that, Nick, if the client, in this case the public
3 body, waives the privilege.

4 MR. VASKOV: Yeah, but the important part there
5 is the public body, not the individual --

6 MR. GOULD: Right --

7 MR. VASKOV: -- who's being --

8 MR. GOULD: -- but that's -- that's how it is
9 right now.

10 MR. VASKOV: Right.

11 MR. GOULD: I can't imagine many situations where
12 I'm giving advice that's not being given in an open meeting on
13 the record --

14 MR. VASKOV: Yeah.

15 MR. GOULD: -- related to the open meeting law.
16 Because the violations occur in the realtime.

17 MR. RITCHIE: Yeah.

18 MR. GOULD: Or the alleged violations, you know,
19 whether it's -- whether it's because -- and we do this. We
20 encourage members to stop the discussion because they're going
21 adrift, we've had members who --

22 MR. VASKOV: Fight us.

23 MR. GOULD: -- fight us and say we vehemently
24 disagree. It's their violation at that point. But I can't

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1 imagine that we would go into a conference and talk about, you
2 know, whether or not they violated the open meeting law. It
3 just doesn't happen.

4 So that's why I was okay with A without B.

5 CHAIRMAN OTT: And I think I'm okay with A
6 without B as well talking it through the ramifications.

7 I don't know that if it's perfect, I don't know
8 that I have a perfect solution, but I think that's -- that's
9 as acceptable -- that's an acceptable solution to me.

10 Does anyone else have comments? Mr. Ritchie?

11 MR. RITCHIE: I -- I can't remember when -- a
12 member of the public body response is. Is that by affidavit
13 or is it sworn declaration or is it just a statement, I can't
14 remember that?

15 CHAIRMAN OTT: I've seen both, depending.

16 MR. RITCHIE: Because see, if it's a sworn
17 declaration I say my attorney provided this to counsel. As an
18 attorney we have a duty of candor; right? We would have to
19 say we can't facilitate a fraud and so we could -- obviously
20 that's the response usually goes through our office, we would
21 see that, we'd go from privately and say you're saying I gave
22 you this advice. I do not recall that occurring.

23 Do you want to refresh my memory or retract that
24 statement? Because if you bring that forward I don't have a
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1 duty to disclose, I did not give that counsel. That might
2 address your concerns.

3 CHAIRMAN OTT: Yeah. That's a -- that's a --
4 that's an excellent point.

5 MR. RITCHIE: I agree with you. Somebody says
6 well, my attorney told me that, we need a little bit more than
7 that.

8 CHAIRMAN OTT: Yeah. Is there any other
9 discussion about this motion? I'll call the question then.
10 All those in favor of striking subsection B in its entirety
11 say aye. Any opposed? Abstention the chair will say aye as
12 well.

13 MR. RITCHIE: So we're going to strike A because
14 there's no B anymore; right?

15 MR. LIPPARELLI: The letter A.

16 MR. RITCHIE: Yeah.

17 CHAIRMAN OTT: So A would just come up -- yeah,
18 yeah, most likely. I'll leave that to the LCB
19 professionals --

20 MR. RITCHIE: -- the medical professionals.

21 CHAIRMAN OTT: Yeah. But B, the language in B
22 we'll leave, the language in A will stay. Thank you for the
23 discussion.

24 MR. GUTHREAU: Before we move on,
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1 Vincent Guthreau for the record. I think most of my concerns
2 have been addressed and I voted support. The ones that we
3 changed. I have to go. But yeah, I guess we'll look forward
4 to the final version of the amendment.

5 So, yeah, I won't be able to hear the vote on the
6 final -- final piece, I guess.

7 CHAIRMAN OTT: Well, thank you again, Mr.
8 Guthreau, for your contributions both on and offline. It was
9 super helpful.

10 MR. GUTHREAU: Yeah.

11 CHAIRMAN OTT: I will -- my intent is to take a
12 vote of the public -- of the task force to get an endorsement
13 of what we have.

14 MR. GUTHREAU: Okay.

15 CHAIRMAN OTT: What we have changed today. I
16 will certainly notify you of the results of that vote and
17 circulate a copy of the final ones.

18 MR. GUTHREAU: That would be great.

19 CHAIRMAN OTT: And give you an opportunity to
20 talk to me about any changes that you think --

21 MR. GUTHREAU: I think -- just for the record, I
22 think most of what local government's concerned is at least
23 our members have been satisfied in this. I mean, there's
24 still a couple issues, but we can maybe take those up

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1 separately. But I think as a whole it's probably -- it's much
2 better than it was. So good work.

3 CHAIRMAN OTT: Thank you for those comments. And
4 just so the committee is clear, the intent is to make these
5 amendments before the first hearing before the subcommittee
6 and then go through the normal legislative process.

7 So this is not the end of the road, it's an
8 attempt to get a really good product before we start. So
9 thanks again, Mr. Guthreau.

10 MR. GUTHREAU: You're welcome. Thanks.

11 CHAIRMAN OTT: So the -- and I think that really
12 got us to the end of kind of the real substantive issues.
13 There are changes in the remainder of the sections that
14 include the insertion of or draft minutes as applicable. That
15 really references the draft minutes that we talked about last
16 time. I think it was in Section 6.2D, which we struck.

17 So, I think for consistency sake it would make
18 sense to strike the remainder of the changes after Section 13,
19 but I'm happy to be opposed if anybody disagrees with that.

20 MR. RITCHIE: I'd so move --

21 MR. GOULD: So moved.

22 CHAIRMAN OTT: Okay. I'll give Mr. Ritchie the
23 motion. We'll count Mr. Gould as a second.

24 Any discussion on that?

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1 All those in favor say aye.

2 Any opposed?

3 Okay. That motion carries. Chair is an aye as
4 well.

5 (Motion carries.)

6 CHAIRMAN OTT: That concludes what I understand
7 is the -- the revisions of the bill.

8 Before I move on to trying to get a motion in
9 support of the bill in principle as it is now, does anybody
10 have any other issues that we haven't raised that we had some
11 concerns from the public?

12 We had speakers from the ethics commission last
13 time, I think we addressed their concerns. But is there
14 anything that we have left out that anybody wants to bring up.

15 MR. VASKOV: Mr. Chair, could I bring up one
16 issue? And if nobody else finds this concerning we can
17 quickly move on.

18 I am looking at NRS 410.033, which is the
19 requirement on notice when you're going to consider the
20 character, misconduct, competence or health of a person. And
21 I think it's also 241.030.

22 I have long had concerns about this section
23 because it -- I think it can be read to require us to provide
24 notice even when we're doing things like bringing public
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1 recognition to folks in public meetings.

2 For instance, do I need to provide notice to an
3 individual who's on the agenda, for instance, a 13-year-old
4 who is getting the mayor's honor roll certificate because
5 they're getting that because of their good character.

6 I know Dean and I battled this a few times for
7 the sytem. Lots of times we're just giving public
8 recognition, we're not intending to have a substantive
9 discussion about their character, yet the recognition is
10 because of their good character.

11 MR. GOULD: Mr. Ott, if I could add, we do get
12 this. We just, for example, just posted an agenda yesterday
13 for the Board of Regents who were nominating several people to
14 receive our distinguished Nevada award. I get favors from
15 them as a manner of custom.

16 Because even though it's a positive thing, the
17 way the law reads we have to get that waiver or serve them,
18 which we don't serve in that kind of situation, but because we
19 will be discussing their character, whether it's good or bad.

20 So --

21 MR. VASKOV: For the record, Nick Vaskov. Dean
22 and I have both been in a situation where we would never I
23 think allow them -- in terms of recognition to discuss a
24 negative aspect of their character when the intention is to

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1 give an award.

2 MR. GOULD: But we do give the waiver sign to
3 content. We don't think it's the way it's worded right now, I
4 believe we have -- Nick does too.

5 So, it's not the end of the world, it just seems
6 a little -- people will come to me and say really, I have to
7 sign this even though you're giving me this prestigious award.

8 CHAIRMAN OTT: So my concern with -- and I agree,
9 that's a -- that section is not -- it can be read expansively
10 to include discussions of positive character.

11 My concern is that if we're limited to
12 discussions of negative character or misconduct or competence,
13 it might be alleged that the public body was prejudging
14 someone's character or competence before the item was raised.

15 MR. VASKOV: Nick Vaskov for the record. My
16 thought, Mr. Chairman, was just adding some sort of language
17 that would make an exception for honorary awards and then
18 limiting the discussion to any positive characteristics of the
19 individual.

20 MR. LIPPARELLI: So, Mr. Chairman, in
21 subsection -- in Section 241.033, at the very end there are
22 exceptions in subsection 7 for the purposes of this section a
23 meeting held to consider employment and casual tangential
24 references to a person are already exceptions, we could add a
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1 third of subsection C that it doesn't apply to accommodations,
2 recognitions, proclamations --

3 MR. VASKOV: Awards.

4 MR. LIPPARELLI: -- awards.

5 MR. VASKOV: Nick Vaskov for the record. That --
6 that's exactly the kind of exception I would like to see in
7 the law.

8 CHAIRMAN OTT: So which section were you in,
9 Mr. Lipparelli?

10 MR. LIPPARELLI: 241.033(7).

11 CHAIRMAN OTT: So we would be adding a sub C or
12 would we be adding something within B?

13 MR. LIPPARELLI: Either way.

14 CHAIRMAN OTT: Does anyone feel comfortable with
15 a motion or -- what were the classes we were talking about,
16 honorary recognition or -- what were some of the things that
17 needed to be --

18 MR. GOULD: Awards. Awards. I would throw in
19 tenure because, for example, this meeting coming up we have
20 many individuals getting tenure. I have to get waivers from
21 80 people, a hundred people all over the system just so their
22 name can be on an agenda saying they're going to granted
23 tenure.

24 MR. RITCHIE: Mr. Ott?
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1 CHAIRMAN OTT: Yes, sir.

2 MR. RITCHIE: Could we -- could we actually
3 expand that to right now B is casual or tangential references
4 during closed meeting? Could we do that during an open
5 meeting?

6 Because sometimes they'll be a public comment
7 like we -- you know, we appreciate what the fire department
8 did in fighting that fire, then the board will say yeah,
9 they've done a great job and, you know, Chief Isley was out
10 there on scene and did a great job. Technically we are again
11 talking about their character.

12 It's -- I think we all understand what we're
13 trying to do, but maybe bring that casual tangential reference
14 into an exemption. If -- if -- I think we all agree if the --
15 the agenda item is to consider disciplinary action or
16 something -- we all understand you need to provide those.

17 But if it's kind of off the fly, boy, you did a
18 great job or you did a horrible job, it's -- it wasn't
19 agendized for action.

20 CHAIRMAN OTT: So that's a great comment and that
21 would be a change to subsection B. I don't know that it
22 addresses the honorary awards, but it may be that we need to
23 do both.

24 MR. LIPPARELLI: Mr. Chairman, let me throw this
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1 out for consideration, and maybe I'll learn something. What
2 if we struck the word -- what if he struck the word character
3 from the entire section? I mean, do we really think that
4 public bodies should be examining the character of people, is
5 that even appropriate?

6 We have alleged misconduct, professional
7 competence or physical or mental health as categories of
8 things that public bodies may need to do from time to time,
9 but what if we took character out would we lose anything?

10 CHAIRMAN OTT: I'm trying to think of the
11 disciplinary provisions that you can take someone --
12 discipline someone for.

13 MR. GOULD: Yeah.

14 CHAIRMAN OTT: And see if there's anything there
15 that would not fall into professional competence, misconduct,
16 or any of the other provisions. That's my concern with doing
17 something in that section.

18 MR. RITCHIE: My response to that is normally if
19 you're going to be take action against someone it should be in
20 the code of conduct, personnel regulations.

21 MR. LIPPARELLI: Right.

22 MR. RITCHIE: So that would be alleged misconduct
23 violation of policy.

24 MR. LIPPARELLI: That would be a violation of
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1 policy or misconduct, it's not character.

2 MR. RITCHIE: It's not character. It can also be
3 related to character, but it's within your personnel regs.

4 CHAIRMAN OTT: There are certain licensing boards
5 have the ability to discipline a member for immoral or
6 unprofessional conduct. I'm guessing maybe that fits into --
7 it wouldn't be competence I don't think because you could be
8 immoral and still have competence.

9 MR. VASKOV: Mr. Chair -- Nick Vaskov. I think
10 we have the same concerns because certain privileged business
11 license the character of the person that would be getting the
12 license actually is at issue.

13 MR. LIPPARELLI: Okay. Well, I would withdraw
14 the suggestion, let's refocus on the exception section and see
15 if we can have a litany of things that are accepted. I've
16 taken some notes, honors, awards, tenure, accommodation. Does
17 that cover it?

18 MR. VASKOV: And other matters of symbolic
19 recognition.

20 MR. GOULD: Positive symbolic.

21 MR. LIPPARELLI: All right. I'll try a motion if
22 you're amenable, Mr. Chair.

23 MR. RITCHIE: Well, that addresses C. What about
24 B? I like -- I don't know who brought it up, but just review
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1 -- strike the reference to a closed meeting, just say any
2 casual or tangential reference, whether during an open meeting
3 or closed meeting.

4 MR. LIPPARELLI: Okay. Mr. Chairman, I move that
5 we amend NRS 241.033(7) to remove the word or closed from
6 paragraph B and to add a new paragraph C that provides honors,
7 awards, tenure, accommodations and other matters of positive
8 recognition are not subject to the notice requirements
9 otherwise imposed by this section.

10 MR. VASKOV: I'll second.

11 CHAIRMAN OTT: Motion and a second.

12 Further discussion?

13 MR. RITCHIE: Any concerns, Mr. Ott?

14 CHAIRMAN OTT: I actually don't have concerns, I
15 understand the concerns that have been raised. I think that
16 this tries to carve out some of those positive recognitions
17 that were not intended to be swept up in 241.033.

18 I think it's intended to do two things. Give --
19 well, I think it's kind of primarily to give someone notice
20 when they're going to be discussed in a negative manner for
21 disciplinary provisions. And it probably is a little bit too
22 broad and I think this is a reasonably good way to carve out
23 some of those most common areas.

24 So I feel pretty good about the solution.
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1 Any other discussion?

2 All those in favor, aye?

3 Any opposed?

4 Abstentions?

5 Chair is an aye as well. So thank you for that
6 suggestion, Mr. Vaskov and Mr. Lipparelli and Mr. Ritchie for
7 providing a solution.

8 (Motion carries.)

9 CHAIRMAN OTT: Any other additions before we
10 consider this as a whole?

11 MR. RITCHIE: Are there any areas of concern from
12 the AG's thing, frequent flyer problems?

13 CHAIRMAN OTT: So the concerns that we had I
14 think were largely addressed in a couple of the changes that
15 we made before you arrived.

16 One was a concern that Mr. Story raised last time
17 regarding facilities, that's something that has been an issue.
18 We adopted the language that -- this language actually that --
19 I proposed it kind of carves some language from our meeting
20 law manual into 241.020.

21 The other area of concern was being able to
22 decline to prosecute bad faith actions for people who are
23 filing complaints against boards that are unrelated to. That
24 language was also adopted for insertion. Those are the two --

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1 two areas. And then along with the other provisions of the
2 bills. So I'm pretty comfortable at this point.

3 MR. RITCHIE: Okay.

4 CHAIRMAN OTT: Mr. Gould indicated earlier that
5 he didn't have a chance to review the red line that I had done
6 from the prior session.

7 Before I ask for a vote on all of the changes
8 that we've made in this meeting and in 230 -- or in the
9 January 30 meeting, would we like to take a brief recess so we
10 can review what I did previously or do we feel good plowing
11 ahead?

12 Mr. Gould, yes.

13 MR. GOULD: Yes. Since I raised it, I did have a
14 chance to look through while in between. And I'm comfortable
15 with everything I read. I'm just -- and I'm comfortable
16 voting at this point because I think it's been a very
17 constructive -- both meetings have been very constructive and
18 I want to compliment you on that.

19 Is there some way we could vote and then if
20 there's something that maybe when the final version comes out
21 that we really -- that anyone thinks is just not consistent,
22 not to reopen, but is not consistent with what the minutes
23 reflect was discussed that we could at least notify you?

24 That's -- that's really all I'm worried about.

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1 I'm not -- I -- I didn't see anything that --
2 that I said no, no, no, that isn't what we did, I just want to
3 make sure we have a few minutes to make sure my notes and your
4 changes jive.

5 CHAIRMAN OTT: Absolutely. I think that's
6 completely reasonable to give you the opportunity to correct
7 any of -- errors that I made. I've been known not to be able
8 to read my own handwriting at times. So it's a reasonable
9 request.

10 So do you want to take a few minutes before we
11 get to a final vote or would you like to proceed with a
12 discussion now --

13 MR. GOULD: No.

14 CHAIRMAN OTT: -- with that understanding?

15 MR. GOULD: I'm fine with that caveat. I'm fine,
16 Mr. Ott, because, you know, I'm comfortable that if there is
17 something that's just missed or wrong that you'll be open to
18 hearing it. I'm not seeing anything at this point.

19 CHAIRMAN OTT: No, I appreciate that. And I
20 think that what I'd like to do is get a vote on the bill as
21 amended and be able to send those amendments to LCB and be
22 able to express that we've worked through these issues with
23 multiple task force meetings and the task force hopefully has
24 endorsed the bill.

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1 That doesn't mean that you all can't come to with
2 me with specifically clerical issues where I may have mistyped
3 something. But also with substantive issues where you say you
4 know what, I supported it, I voted in favor of it, but I feel
5 like I need to testify on these issues because, you know, my
6 client has a specific concern.

7 So I would not hold any of you against, you know,
8 some justification about any -- or testimony about any
9 specific matter in here.

10 And we will have multiple -- multiple hearings.

11 MR. GOULD: I'm fine. I'm fine with that.

12 CHAIRMAN OTT: Okay. Having said --

13 MR. MOORE: This is Andy Moore from City of North
14 Las Vegas for the record. I just wanted -- procedurally are
15 we going to approach it as the entirety of the proposed bill
16 or are we going to do it by section?

17 Just because I don't feel comfortable obviously
18 voting for ones that I wasn't at the meeting for because I was
19 out. So I don't know if you want to do it section by section
20 or how do you want to handle that.

21 CHAIRMAN OTT: My preference would be --

22 MR. MOORE: I would just abstain on those ones.
23 I didn't participate in the meeting at all.

24 CHAIRMAN OTT: So my preference --
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1 MR. MOORE: So we --

2 CHAIRMAN OTT: Go ahead, Mr. Moore.

3 MR. MOORE: I'm sorry. I was talking over you, I
4 apologize.

5 CHAIRMAN OTT: That's okay. My preference would
6 be to take one vote on the entirety of it. Because we've gone
7 through every -- every change in the last two meetings and
8 either made a modification or left it as is. So I think to go
9 through it vote by vote again would be a problem.

10 If you feel the need to abstain because you
11 weren't at the last meeting, I would appreciate it if you had
12 some comment about what we did today whether you feel
13 comfortable with those changes. And then I would --

14 MR. MOORE: I was at the last meeting, I was just
15 saying -- because I know that we covered Sections 1 to 8 last
16 meeting, I think we started Section 9 today.

17 I just missed the discussion on Sections 9 and
18 10, but everything else I was here. So I'm comfortable with
19 moving forward, I was just wanting to know procedurally how
20 you were going to handle it.

21 CHAIRMAN OTT: Yeah. So that's -- well, that's
22 my preference, does anybody else have a different preference?

23 MR. LIPPARELLI: So Mr. Moore missed the
24 discussion about the redistribution of tax revenues to cities
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1 in Section 8 and 9.

2 MR. RITCHIE: Vote for that.

3 CHAIRMAN OTT: I'm trying to remember what 9 was,
4 that was the extension, we did make some significant changes
5 there.

6 Well --

7 MR. GOULD: One thought.

8 CHAIRMAN OTT: Yes, Mr. Gould?

9 MR. GOULD: Perhaps have Mr. Moore when he votes
10 just abstain on the changes that were made on January 31st I
11 think it was or 30th so that he can on the record say I wasn't
12 there, but he can still vote on the ones --

13 MR. MOORE: I mean, I was at both meetings, it's
14 just the particular sections today.

15 MR. GOULD: Oh, today.

16 MR. MOORE: Yeah, I walked in late so I don't
17 know what was discussed.

18 MR. GOULD: Oh, okay. I misunderstood you.

19 CHAIRMAN OTT: That was the best part of the
20 meeting. I'm sorry you have missed it.

21 Let's do this. Let's take a vote on the entirety
22 of the bill with all of the -- all of the changes and see if
23 we can get an endorsement that way.

24 I would be happy to talk offline with you about
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1 what happened in 9 and 10, submit a -- once we get a final
2 revision obviously we'll send it around. And if you don't
3 feel comfortable voting on the entirety of the bill because of
4 you weren't present for part of that today, we'll see if we
5 can get to the vote with your abstention.

6 MR. MOORE: That's totally fine. Thanks.

7 CHAIRMAN OTT: Okay. So, does anybody have any
8 further discussion or comment before I ask for a vote for
9 endorsement of the bill as amended in the past two weeks?

10 Mr. Karpel?

11 MR. KARPEL: Just wanted to state for the record
12 that, you know, a lot of the motions I didn't vote one way or
13 the other on and I'm not going to vote on the bill in its
14 entirety either. Either because I just don't understand
15 enough about the bill yet, the entirety of the open meeting
16 act or I don't know the position of my members.

17 So I'm here to learn and I've learned a lot and I
18 appreciate it and I'll leave it at that.

19 CHAIRMAN OTT: I appreciate that disclaimer. And
20 I appreciate your participation as a member of the press as
21 well.

22 Certainly, a crucial stakeholder in open meeting
23 law is the press and their ability to participate and to
24 understand the goings on of public bodies. So I appreciate
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1 your participation even if you're unable to vote and thank you
2 for that. And to Angie too who's not here.

3 Anybody else have comments?

4 MR. LIPPARELLI: You ready for a motion,
5 Mr. Chairman?

6 CHAIRMAN OTT: I'm ready for a motion,
7 Mr. Lipparelli.

8 MR. LIPPARELLI: Mr. Chairman, I move the open
9 meeting law task force endorse the changes made in the last
10 two public meetings to the text of -- what's the bill number?

11 MR. RITCHIE: AB70.

12 CHAIRMAN OTT: AB70

13 MR. LIPPARELLI: AB70 with members reserving the
14 right to notify the Attorney General's Office of clerical and
15 minor changes to the final draft when it's produced.

16 MR. RITCHIE: I'll second.

17 MR. MOORE: Thank you.

18 CHAIRMAN OTT: So we have a motion for
19 endorsement of the bill as amended at the last two sessions
20 and a second.

21 Any discussion before we vote? All those in
22 favor say aye.

23 Any opposed?

24 Abstentions?

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1 I know Mr. Karpel and Mr. Moore are going to
2 abstain.

3 MR. KARPEL: Yes.

4 (Motion carries.)

5 CHAIRMAN OTT: Okay. Fantastic work. I really
6 want to thank you guys for taking the time out for two
7 meetings and all the ones that I wasn't at before. It really
8 did -- did yeoman's work.

9 From here, I will take these, incorporate them
10 into another revision. I'll send that to LCB and also send it
11 to you all as well.

12 And I'm happy to discuss any further clerical
13 issues or other issues that -- that we need to as we go
14 through the process.

15 I'll also let you know when this gets scheduled
16 for a meeting for testimony.

17 So having said that, I will close that agenda
18 item and move on to our second public comment.

19 I believe Ms. De Fazio and Ms. Lohman are still
20 on the phone. We don't have any public here in Las Vegas.

21 Do you have guys have any public in Carson -- or
22 in Las Vegas you have Mr. Voltz.

23 So, Mr. Voltz, you missed the first public
24 comment. Would you like to make public comment before we go
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1 to the phone for Ms. De Fazio or Ms. Lohman?

2 MR. VOLTZ: No, thank you.

3 CHAIRMAN OTT: Okay. Thank you for attending,
4 Mr. Voltz.

5 Ms. De Fazio went first in the beginning.
6 Ms. Lohman, would you like to go first this time? You may
7 still be on mute.

8 MS. LOHMAN: (Telephonically indiscernible.)

9 CHAIRMAN OTT: Okay. Ms. Lohman, are you
10 present?

11 It appears that Ms. Lohman is no longer present.
12 So the only member of the public that we have left is
13 Ms. De Fazio.

14 Ms. De Fazio, if you could try to take yourself
15 off of Bluetooth so the court reporter can keep up with you I
16 would appreciate that. But the floor is yours. Ms. De Fazio.

17 MS. DE FAZIO: Oh, I'm sorry. I just find the
18 mute bottom. For the record, Angel De Fazio. I've been
19 extremely reserved in making comments during these last two
20 meetings, but today I really finally reached my tolerance
21 level.

22 I had made some extremely salient comments
23 regarding adjustments that were discussed with other members
24 of the public. And I incorporated their input into my
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1 comments, which took way too much of my time to prepare them
2 and appear to be several. And as usual, this body like every
3 other public body ignored them.

4 So, fidelity is now off the table and it's time
5 to take the bull by the horn. I've had this saying for years,
6 all these meetings are just a dog and pony show.

7 They use verbiage that attempts to convey concern
8 when, in fact, it does just the opposite. The chronic way
9 described upon the chair and is not standardized, it's cause
10 for too much variability and potential harm to the public.

11 Someone mentioned if an agenda item garnered a
12 large turnout how does that remove and put on another date,
13 which should have been approved as it's common -- at the PUC
14 to remove an item for a later date.

15 You're making the assumption that the chair is
16 psychic and determines how much of a larger than anticipated
17 turnout. And their concept of an acceptable venue is the end
18 all.

19 There is nothing that precludes a rescheduling
20 for an even greater capacity venue rather than just going
21 forward with their interpretation of acceptable capacity and
22 allow it to proceed and basically to hell with the public
23 being accommodated.

24 In Clark County there was I think the meeting
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1 addressing the gender back pass through commission (sic.) that
2 they rescheduled the meetings to address the larger turnout.

3 Sometimes it takes a no holds bar PR campaign to
4 bring this issue to a greater audience so they can see what is
5 being done by Hillsberg Group that is supposed to generate
6 guidelines for this facade said commonly referred to as an
7 open meeting.

8 Double dipping apparently is deemed acceptable
9 causing unsuspecting members of the public to be extorted when
10 they have already paid for service.

11 Now, I'm in a town from Brooklyn and I don't even
12 think the boys at the thought of this knew thoughts of ill
13 gotten gains, aka the repetitive payment to a court reporter.

14 The funds that the AG can unilaterally dismiss a
15 complaint has a chilling effect on the rights of the aggrieved
16 party to get the (telephonically indiscernible) investigation
17 into their grievances.

18 This overtly confers that the AG has the latitude
19 to say nah, I don't think this should be investigated or they
20 may have some sort of connection to the body in question.

21 It's common knowledge that everyone saying
22 unbiasedness there is too much collusion and protection of
23 sister agencies.

24 Way too much of the good old boys network and
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1 nepotism throughout the state. You still have not protected
2 the disabled. You are conservatively discriminating against
3 nonphysical disability and again today refused to make it
4 equal by removing a single word, which was physical.

5 Yet you keep bringing forth and concerning my
6 ongoing assertion you are saying you want participation from
7 the public, but you ignored the comments.

8 Some people really aren't into verbal
9 masturbation, which this entire concept of public comment is
10 predicated on. And I feel that you either need to fully act
11 in the public interest and make it equal or just drop the
12 entire task force as it is biased because most of today was
13 nitpicking to find more work, more ways to cloak the public
14 entity.

15 Thank you.

16 CHAIRMAN OTT: Thank you, Ms. De Fazio. And you
17 weren't here, but we did post your e-mail that you sent to me
18 on February 9th as support documentation, that's available to
19 the members and also available to the public. And I
20 appreciate the two conversations that we've had over the past
21 week about some of your concerns.

22 So thank you for that. I note that the committee
23 did not necessarily take those concerns up. But nonetheless,
24 I appreciate your willingness to devote your time and effort
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1 to speak with me and to - to provide the committee with --
2 with insight.

3 Any other public comment on the phone? Okay.
4 Having heard none, I will adjourn this meeting as all of our
5 business is completed.

6 Thanks again, everybody, for your work and you'll
7 be hearing from me soon.

8 MR. RITCHIE: Thank you so much.

9 CHAIRMAN OTT: Thank you.

10 (Proceedings concluded at 11:55 a.m.)

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1 STATE OF NEVADA,)
2) ss.
3 CARSON CITY.)
4

5 I, MICHEL LOOMIS, Court Reporter for the State of
6 Nevada, Open Meeting Law Task Force Committee, do hereby
7 certify:

8 That on Thursday, February 14, 2019, I was
9 present in Carson City, Nevada, for the purpose of reporting
10 in verbatim stenotype notes the within-entitled meeting;

11 That the foregoing transcript, consisting of
12 pages 1 through 126, inclusive, includes a full, true and
13 correct transcription of my stenotype notes of said meeting to
14 the best of my ability.

15 Dated at Carson City, Nevada, this 2nd day of
16 March, 2019.

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MICHEL LOOMIS, CCR #228

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