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

CAPITOL REPORTERS (775) 882-5322
AGENDA

1. Call to Order/Roll Call 3

2. Public Comment 4

3. Approval of the Open Meeting Law (OML) Task Force's January 30, 2019 Meeting Minutes

4. 2019 OML Task Force Bill Draft Request - Review and Adoption of Proposed Statutory Amendments

   Motions: 21, 23, 25, 40
   42, 58, 75, 82
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CHAIRMAN OTT: Okay. Mr. Gould, can you hear us down south?

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

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

MS. LOHMAN: Yes.

CHAIRMAN OTT: Was that Angel or was that Linda?

MS. LOHMAN: Linda.

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

MS. DE FAZIO: Yes. Thank you.

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

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

MR. KARPEL: Yes.

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

MR. GUTHREAU: Yes.

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

MR. GOULD: Yes.

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

MS. LOHMANN: Private individual.

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

MS. DE FAZIO: Yes.

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN OTT: Angel, can I ask you --

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

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

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

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

CHAIRMAN OTT: Thanks, Angel. Ms. Lohman?

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

So anyway, as far as the bill is concerned and
accommodations for, you know, phone, you know, calling in by
phone. That's what I had to do today because my chemical
allergic reactions are so severe that when I go out in Washoe
County -- let's say their air quality is up to 30, anything
between 20 and 30 I have to wear a mask when I go out.
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And when I get -- when I go places like such as I went to my pain pill specialist, Sweetwater Pain & Spine last week and there was a high air quality yellow. And instead of me calling in and saying that, you know, I'm too sick to come in, I had to go in because they're very succinct in the rules and regulations as far as pain pills and things like that.

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

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

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

Now, this happened many times, especially with my -- within my medical provider because they put -- they put candles and perfumes and everything. And it would be so much easier if they didn't have to see me and it would be less
expensive for them to sit there and have a phone consult, just like I couldn't come to Carson City because of the chemical allergic reactions from here to there and then going in the building.

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

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

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

And I have my air purifier different grades of air purifier -- well, not air purifier, mats and stuff with a bag that I take everywhere in my car wherever I go into my doctor's offices. And sometimes I take my whole air purifier.
And -- well, as I got sick at DMV and they have one of those accommodations that looks like a driver's license with the NRS in there.

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

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

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

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

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

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

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

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

So I had to go and order --

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

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

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

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


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

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

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

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

CHAIRMAN OTT: Okay. So there will be another public comment period at the end if anyone wants to.
Next agenda item is approval of the minutes from the last meeting. Because the meeting was only a couple weeks ago, January 13, we don't have a transcript yet so we don't have minutes, we'll move past that to the next item, which is the AB170 discussion, the continued discussion from the January 30th meeting.

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

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

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

MR. GOULD: Ready.

CHAIRMAN OTT: Yeah.

MR. GOULD: Thank you. I just want to make it for the record that, I mean, I see what you did and I've read it quickly this morning, but honestly I did not have.
sufficient time from yesterday until now to go back in my
notes to make sure everything was -- you know, seems
acceptable.

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

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

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

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

Okay. So the next thing that I wanted to talk
about was to address some comments that Mr. Story made
regarding the definition of facilities.

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

Do you guys have that in the south as well?

MR. GOULD: (Nodded head.) Yes.

MR. STORY: Yes.

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

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

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

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public that actually -- than actually showed up.

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

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

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

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

MR. LIPPArellI: Paul Lipparelli, the Washoe
County DA's Office.

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

MR. LIPPArellI: Thank you.

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

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MR. LIPARELLI: Is it one of the attachments?

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

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

MR. LIPARELLI: I did.

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

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

CHAIRMAN OTT: Yes.

MR. KARPEL: Okay.

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

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

MR. KARPEL: Yeah.

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

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

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

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

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

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

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

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

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

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

MR. VASKOV: Second.

CHAIRMAN OTT: Motion and a second. Any discussion?

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

MR. GOULD: All right?

CHAIRMAN OTT: Yeah.

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

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

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

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

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

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

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

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

(Motion carries.)

CHAIRMAN OTT: So moving on to the -- where we left off last time was Section 7.3 was the last -- last change that I believe we were to take up. Are we ready to take up,

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which means the next one that I see is Section 7.5, which
would change to require longer retention of audio recordings
from one to five years.

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

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

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

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

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

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

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

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

Is there a second?

MR. GUTHREAU: I'll second that motion.

CHAIRMAN OTT: Seconded by Mr. Guthreau.

Any discussion regarding this?

All those in favor say aye.

Any opposed?

Motion carries. Chair will be an aye as well.

Thank you for that.

(Motion carries.)

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

Yes, Mr. Karpel?

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

CHAIRMAN OTT: I'm sorry.

MR. KARPEL: That's okay. But I'm looking at CAPITOL REPORTERS (775) 882-5322
the -- what we had last week.

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

MR. KARPEL: Okay. Thank you.

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

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

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

CHAIRMAN OTT: Motion to strike from Mr. Guthreau.

Is there a second?

MR. LIPARELLI: Second.

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

All those in favor say aye.

Opposed?

That motion carries as well.

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

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(Motion carries.)

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

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

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

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

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

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

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

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

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

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

Does anyone have comments, concerns,
modifications about these sections?
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Okay. If we -- unless anybody has a concern I would like to -- the next thing I would like to talk about is some additional language that I had inserted into the materials both at the last meeting and at this meeting. And this would be a change to Section 10.

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

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

It is an intent to give the Attorney General's Office discretion to decline to investigate those complaints that appear to be being filed by individuals with no interest. That is an issue that we have had recently. There are some individuals who file complaints against boards that they have no connection to. And so that's -- that's the
intent of the language. And I'm -- I'm happy to hear
comments, criticisms or concerns from the task force about
this.

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

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

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

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

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

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

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

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

MR. KARPEL: Right.

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

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

MR. GUTHREAU: Yeah, that's problematic. It's a political office, it varies, there's -- I mean, that office changes hands. I think that could be problematic.
CHAIRMAN OTT: Mr. Gould?

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

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

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

CHAIRMAN OTT: So --

MR. GOULD: I'm also a little troubled, even though it's not -- sort of outside my role in representing a public body. And while I would love to be able to say oh, yeah, this person has no interest in my public body, I am
bothered just as a policy matter that the AG is going to
decide that someone who may have a -- raise a very legitimate
open meeting law violation could potentially have that claim
thrown away because your office decides that they're not
sufficiently attenuated or -- I'm sorry, there's no nexus with
the public body. I don't like that personally from just a
public perspective, I find that a little bit overreaching.

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

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

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

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

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

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

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

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

    But I am sympathetic to a member of the public who says I got to bring this thing in 120 days, if this public body meets in secret, takes an action and signs a contract I
might know about it until 150 days and then I have no
recourse.

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

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

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

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

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

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

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

CHAIRMAN OTT: Mr. Karpel?

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

CHAIRMAN OTT: Deputy Attorney General Greg Ott.

I think the language has been pretty clear that you can't file
a complaint to avoid an action that late so far.

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

MR. KARPEL: So you have that situation?

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

MR. KARPEL: Okay.

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

MR. KARPEL: Okay.

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

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

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

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

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

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

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

MR. VASKOV: Yes.

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

MR. VASKOV: Yeah.

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

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

MR. VASKOV: Yes.

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

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

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

MR. GOULD: Right.

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

MR. LIPPARELLI: Mr. Chairman?

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

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

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

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

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

So obviously it's an excellent proposal, but I think -- yeah, I think we're happy to -- if all of a sudden, you know, in the next -- when this law is implemented or if it's implemented and come back and we're getting a ton of stuff outside that and the public doesn't -- I mean, local governments I think -- I don't want to speak for every board.
because I know there's been issues, but I think most of our
members try their best to adhere to the spirit of the open
meeting law. And I think if they see a place where the public
isn't being heard then we would want to revisit that too.

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

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

MR. GUTHREAU: Yes, please.

CHAIRMAN OTT: Because I was taking notes.

MR. GUTHREAU: Sure.

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

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

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

MR. GUTHREAU: I'm okay with that. I'm
comfortable with that. Vincent Guthreau for the record.
CHAIRMAN OTT: So is that --
MR. GUTHREAU: I'm comfortable with that, yeah.
CHAIRMAN OTT: Okay. So we'll take that as a
motion for Mr. Guthreau.
MR. GUTHREAU: Yes.
CHAIRMAN OTT: Does anyone have a second to that
modification?
MR. LIPPArellI: Second.
MR. VASKOV: I'll second that.
CHAIRMAN OTT: Second from Mr. Lipparelli who
wins the buzzer. Any discussion of that language for
modification? Hearing no discussion, all in favor of that
change say aye.

All opposed?
Okay. That motion carries. Chair will vote aye
as well on that.
(Motion carries.)
CHAIRMAN OTT: Now let's go back to subsection C
of the same section. We had some discussion about removing
the at his or her discretion but also a discussion about
removing the section entirely. I think removing it entirely
is problematic from our office's perspective for the reasons I
said previously. But I didn't allow Mr. Vaskov to respond to
that, I pushed us back to subsection B. So happy to hear
other concerns.

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

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

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

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

MR. GOULD: So moved.

CHAIRMAN OTT: Moved by Mr. Gould.

Is there a second?

MR. LIPPArelli: Second.

MR. VASKOV: Second.

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

Any opposed?

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

Thank you for the thoughtful discussion regarding
that as well.

(Motion carries.)

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

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

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

MR. GUTHREAU: We just did.

MR. GOULD: Yeah.

MR. GUTHREAU: I think it's 7.

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

Sorry.

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

MR. LIPPARELLI: Mr. Chairman?

CHAIRMAN OTT: Yes, sir.

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

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

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

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

MR. GUTHREAU: Vincent Guthreau for the record.

MR. VASKOV: This is --

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

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

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

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

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

MR. VASKOV: Nick Vaskov. So I too am concerned about 14 days. I'm especially concerned about it given that if you don't respond you're deemed to have agreed with the findings; right? I don't like that notion at all, quite frankly. We either respond or we don't, but if we don't
respond I don't know why we're suddenly deemed to sort of agree or be in violation.

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

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

MR. VASKOV: Issued a response.

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

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

MR. VASKOV: Yes.

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

CHAIRMAN OTT: Which section are you talking
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about?

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

MR. VASKOV: Yes.

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

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

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

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

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

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

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

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

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

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

It does say that we need to do an investigation. And I think it would be hard to do an investigation without CAPITOL REPORTERS (775) 882-5322
allowing some sort of contact with the public body.

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

MR. VASKOV: Yeah.

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

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

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

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

CHAIRMAN OTT: Mr. Gould?

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

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

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

I would submit that I think it should be required in the statute that if there is a violation alleged, other than the type that you commented on that isn't even a
violation and you dismiss it without even -- but if there's
even the sense that it's going to move forward, the public
body should immediately then have notice that that's occurring
and not wait. I hear what you're saying, but if you're doing
it anyway you shouldn't have a problem codifying that
practice. It just --

CHAIRMAN OTT: Deputy Attorney General

Greg Ott -- sorry, go ahead.

MR. GOULD: -- seems unfair.

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

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

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

So, I would be probably opposed to anything that
would specify how or what we need to do in that investigation.

Because I think that we're doing a good job right now. Maybe
I'm self-interested in saying that.

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

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

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

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

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

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

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

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

What this is trying to do is allow them to issue
the findings of fact, allow us to issue the findings of fact.
The public body then can say okay, we agree, we messed up,
we're going to change that, we don't need to go to court about this. If they don't issue any response that says whether they agree or don't agree, the Attorney General's Office isn't going to know whether there is a need for a court action.

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

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

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

MR. VASKOV: Yeah, that would be better.

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

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

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MR. GOULD: Yeah.

MR. LIPPArellI: -- to deem them to admit to the wrongdoing is -- is not typical in the law.

MR. VASKOV: Yep, I agree.

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

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

MR. GOULD: Right.

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

MR. GOULD: This is not.

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

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

MR. LIPPArelli: Mr. Chairman, Paul Lipparelli.

I -- I don't know of any of my clients who would take a notice of violation from the attorney general and do nothing with it. Maybe some would.

MR. GOULD: Absolutely.

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

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

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

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

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

CHAIRMAN OTT: I have a motion --

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

CHAIRMAN OTT: Go ahead.

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

MR. LIPPArellI: Yes, sir.

MR. VASKOV: -- to that?

MR. LIPPArellI: Absolutely.

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

MR. LIPPArellI: Mr. Chairman, Paul Lipparelli. I like that suggestion and I would incorporate it into my motion.

CHAIRMAN OTT: So or where authorized counsel for --

MR. VASKOV: Or where authorized counsel for the CAPITOL REPORTERS (775) 882-5322
public body, comma.

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

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

MR. LIPPARELLI: Yes, sir.

CHAIRMAN OTT: Do we have a second?

MR. VASKOV: Second.

CHAIRMAN OTT: Any discussion?

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

CHAIRMAN OTT: Deputy Attorney General Greg Ott.

I think the concern is that when it says a public body shall
respond it might be deemed that the public body is not able to
delegate that authority to its counsel. And so I think that's
what Mr. Vaskov is trying to get at with his amendment.

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

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

CHAIRMAN OTT: Correct.

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

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

MR. GOULD: Okay.

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

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

CHAIRMAN OTT: Okay. So let's --

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

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

Any opposed?

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

(Motion carries.)

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CHAIRMAN OTT: So those changes are adopted.

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

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

CHAIRMAN OTT: Sure.

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

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

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

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

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

MR. GOULD: The media --

CHAIRMAN OTT: Was that a violation?

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

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

CHAIRMAN OTT: Deputy Attorney General Greg Ott.

So you want if I'm understanding correctly is a requirement on the Attorney General's Office to notify the public body upon receipt of any complaint? Whether or not --

MR. GOULD: Yes.

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

MR. GOULD: Yes. Because we will get calls, we CAPITOL REPORTERS (775) 882-5322
will get -- we can't control what goes on in the media because it's not coming from us, it's coming from usually the party that's filing the complaint.

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

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

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

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

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

MR. GOULD: Correct. Because if you even look at 7 in your sub A, one of the things you could tell the public CAPITOL REPORTERS (775) 882-5322
body is that no violation occurred. But that could hypothetically be the first time we even know that there's an alleged violation.

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

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

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

MR. GOULD: That would work.

MR. VASKOV: Yep.

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

CHAIRMAN OTT: So that would be a change to

241.039(1)?

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MR. LIPARELLI: Yes.

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

MR. LIPARELLI: Yeah, I -- that works.

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

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

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

Any discussion on that?

I will -- I will say that I'm going to abstain just because I don't think it would be a burden to our investigative process, but I'd like to look into that before I support that because it is a change. So I'm not going to be in favor of that at this time, I won't oppose it, but I just want to put that on the record.

Any other discussion?

All those in favor of the motion say aye.

Any opposed? Okay. That carries.

(Motion carries.)

CHAIRMAN OTT: So that by my calculation gets us done with subsections 7 and 8 of Section 10, which moves us on to Section 11. Before we take this we've been going for about CAPITOL REPORTERS (775) 882-5322
an hour and a half, should we take a five-minute break to give
the court reporter's fingers a little bit of rest before we
come back for this final push?

MR. GOULD: Sure thing.

MR. LIPARELLI: Sure.

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

(Recess.)

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

Could you just state your name so for the record?

And your organization?

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

MR. VOLZ: Fred Volz, public.

CHAIRMAN OTT: Thank you, Mr. Volz.

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

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

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

MR. LIPPARELLI: Mr. Chairman?

CHAIRMAN OTT: Yes, sir.

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

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

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

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

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

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

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

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

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

CHAIRMAN OTT: Can we take 11 first? And let me
just raise one concern. The reason why 11 I think is
necessary as it is worded right now it says an action in --
taking action in violation of the open meeting law needs to be agendized and placed with supporting material. Some public bodies have taken the position that if we didn't take an action and we violated the open meeting law in some other way, we don't need to agendize that because this only applies to actions taken in violation of the open meeting law.

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

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

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

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

There should be some caveat here that -- or CAPITOL REPORTERS (775) 882-5322
unless we have somehow provided you notification that we don't
agree with your findings of facts and conclusions of law.

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

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

MR. GOULD: I get it. But I don't like it.

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

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

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

So --

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

MR. LIPPARELLI: Mr. Chairman --

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

MR. LIPPARELLI: Mr. Chairman, Paul Lipparelli.

When I do my own meeting law trainings for my public bodies I refer to this section as the pants down section, which is where when you get caught, the first thing you have to do is go in front of the public and say we got -- we got this -- this finding from the attorney general.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN OTT: Correct.

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

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

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

And I --

MR. GOULD: Yes, I guess.

CHAIRMAN OTT: -- I will push back --

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

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

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

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

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

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

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

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

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

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

MR. LIPPArellI: Mr. Chairman?

CHAIRMAN OTT: Yes.

MR. LIPPArellI: Mr. Gould, what about recognizes
or receives instead of acknowledges?

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

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

So I feel like this gets at the what we need.

But if there's a motion out there that Mr. Gould or somebody
else would like to make, happy to do so. I think we've
discussed pretty much to the point where Mr. Gould and I are
probably going to agree to disagree.

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

MR. VASKOV: Correct.
CHAIRMAN OTT: Acknowledges the existence of 
between the and findings is the motion from Mr. Gould. 
Do we have a second?

MR. VASKOV: Second.
CHAIRMAN OTT: Second. Any further discussion on 
this?

Hearing no discussion, all those in favor say 
aye.

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

(Motion carries.)

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

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

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

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

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

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

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

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

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

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

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

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

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

So that I think gets to your point because what
you're saying is the person needs to know and participate in
some sort of action in order to expose themselves to these
penalties.
What we have done in this proposed revision is to take out action taken in violation of, replace it with violation, but then leave in participates in such action.

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

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

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

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

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

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

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MR. LIPPARELLI: Yes.

CHAIRMAN OTT: -- what the --

MR. LIPPARELLI: Yes.

CHAIRMAN OTT: Okay.

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

CHAIRMAN OTT: Did anyone else have comments on that?

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

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

My problem here is that we're -- we're giving more authority to the attorney general to assess administrative penalties without and then not have the burden of collecting on those.
And particularly Section 5 essentially flips the burden of proof and says if -- it's the member of the public body that's got to contest the fine, not the attorney general that's got to seek to enforce the fines. So that troubles me. And then Section 6 also troubles me I think because I'm not sure this is great public policy to essentially say the -- no criminal penalties or fine will be assessed if the attorney for the body acknowledges in writing the violation; right? It seems you're building a perverse incentive for the attorneys to -- to -- well, you're putting a lot of pressure on the public attorneys it seems to me with that section.

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

MR. VASKOV: Yeah.

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

But I'm a big boy and I can live up to that and I can say no, I'm not prepared to give you that opinion because I don't agree with that it would not be a violation.
But in this context, I -- I agree with Nick. I think that it's flipping the burden of proof and, you know, the burden of having to come forward. So now the member of the public body is again is almost like guilty unless he proves himself innocent in a way.

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

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

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

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

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

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

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

MR. VASKOV: I'll second that.

CHAIRMAN OTT: Second from Mr. Vaskov.

Any discussion on that? All those in favor say
aye.

Any opposed?

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

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

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

(Motion carries.)

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

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

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

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

CHAIRMAN OTT: Absolutely.

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

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

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

MR. VASKOV: Right.

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

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

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

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

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

So, that to me is not where I get the heartburn.

It's -- it's in -- it's in the process of getting that money
that I think that I am concerned.

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

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

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

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

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

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

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

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

MR. MOORE: Is the language after.

MR. VASKOV: I think the two words the meeting.

So who participates in such action with knowledge --

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

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

MR. VASKOV: Probably.

MR. GOULD: Sure.

MR. MOORE: Yeah.

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

MR. LIPARELLI: So moved, Mr. Chairman.

CHAIRMAN OTT: Motion from Mr. Liparelli.

Second? Does anyone --

MR. MOORE: I second it.

CHAIRMAN OTT: Second from Mr. Moore.

All -- any discussion?

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

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

Any further discussion on the motion?

All those in favor aye?

Any opposed?

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

(Motion carries.)

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

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

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

MR. LIPPArellI: Mr. Chairman, Paul Lipparelli.

What if we just struck paragraph 5 and left it up to the
attorney general to pursue collection of the administrative
fines in the way that people usually do.

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

MR. VASKOV: Nick Vaskov. I'm fine with that.

That's -- I would prefer the language of that section. And I
think it starts up on A, where it says the attorney general
may recover the administrative -- any administrative fines in
a civil action brought in any court of competent jurisdiction.

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

MR. GOULD: I'm fine with that.

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

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

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

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

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

MR. VOLTZ: No.

CHAIRMAN OTT: That's all violations.

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

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

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

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

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

MR. VASKOV: That's correct.

MR. GOULD: All this does is establish liability. This isn't going to the collection problem.
MR. VOLTZ: But there's no point in having a fine process and a levying process if you're not going to actually collect it.

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

MR. VOLTZ: Right.

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

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

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

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

CHAIRMAN OTT: So -- so --

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

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

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

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

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

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

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

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

MR. LIPPArellI: It's an eligibility --

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

MR. LIPPArellI: You're ineligible for office if you have an outstanding fine.

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

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


MR. VASKOV: Can I ask a question, Mr. Chairman?

It was a great thought.

CHAIRMAN OTT: Yeah, question, go ahead.

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

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

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

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

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

MR. RITCHIE: I'll second.

CHAIRMAN OTT: Motion from Mr. Lipparelli.

Second from Mr. Ritchie.

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

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

MR. VASKOV: It would have to.

MR. GOULD: Yes.

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

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

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

MR. GOULD: Right. So --

MR. VASKOV: Yeah, just for the record,

Nick Vaskov. I think the only -- I think if you just go back
to the original language in 5 the only thing you would need to
add is at the beginning, the attorney general may recover the
administrative fines.

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

MR. VASKOV: In 4.

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

MR. LIPARELLI: Mr. Chairman, let me restate it
so it's more clear.

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

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

MR. LIPPARELLI: Within one year.

MR. GOULD: I'm fine with that.

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

MR. LIPPARELLI: Yes.

CHAIRMAN OTT: Okay. So basically removing those new changes. And that was seconded by Mr. Ritchie.

Any discussion on that?

Hearing no discussion, all those in favor say aye.

All opposed?

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

(Motion carries.)

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

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

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

CHAIRMAN OTT: I don't believe --

MR. GOULD: Or is that somewhere else?

MR. VASKOV: It was in this.

MR. GOULD: Pardon?

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

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

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

MR. VASKOV: Okay. Go ahead.

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

CHAIRMAN OTT: So Deputy Attorney General

Greg Ott --

MR. GOULD: If they gave it in an opening

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

CHAIRMAN OTT: So --

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

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

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

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

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

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

MR. GOULD: All right. I -- I am thinking that

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what if you kept A but eliminated B?

MR. VASKOV: Yeah.

MR. LIPARELLI: I would support that.

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

MR. GOULD: Right.

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

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

MR. GOULD: I'm okay with that, Mr. Ott. I would say the same thing I said in the ethics discussion, and that is, you know, I can protect myself, I'm not going to let anyone pressure me into giving advice that I'm not comfortable giving, but I think if you take out B, and I would make a motion to that effect, and leave in A, you've accomplished what you wanted to accomplish.
CHAIRMAN OTT: So before I give my -- does anybody have a second to that motion to just remove B from subsection 12?

MR. LIPARELLI: Second.

CHAIRMAN OTT: Okay. Seconded.

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

Without B --

MR. VASKOV: Yes.

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

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

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

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

MR. GOULD: Right --

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

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

MR. VASKOV: Right.

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

MR. VASKOV: Yeah.

MR. GOULD: -- related to the open meeting law.

Because the violations occur in the realtime.

MR. RITCHIE: Yeah.

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

MR. VASKOV: Fight us.

MR. GOULD: -- fight us and say we vehemently disagree. It's their violation at that point. But I can't
imagine that we would go into a conference and talk about, you
know, whether or not they violated the open meeting law. It
just doesn't happen.

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

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

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

Does anyone else have comments? Mr. Ritchie?

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

CHAIRMAN OTT: I've seen both, depending.

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

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

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

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

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

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

MR. LIPPARELLI: The letter A.

MR. RITCHIE: Yeah.

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

MR. RITCHIE: -- the medical professionals.

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

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

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

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

MR. GUTHREAU: Yeah.

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

MR. GUTHREAU: Okay.

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

MR. GUTHREAU: That would be great.

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

MR. GUTHREAU: I think -- just for the record, I think most of what local government's concerned is at least our members have been satisfied in this. I mean, there's still a couple issues, but we can maybe take those up.
separately. But I think as a whole it's probably -- it's much better than it was. So good work.

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

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

MR. GUTHREAU: You're welcome. Thanks.

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

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

MR. RITCHIE: I'd so move --

MR. GOULD: So moved.

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

Any discussion on that?
All those in favor say aye.

Any opposed?

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

(Motion carries.)

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

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

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

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

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

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

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

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

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

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

So --

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

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

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

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

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

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

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

MR. VASKOV: Awards.

MR. LIPPARELLI: -- awards.

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

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

MR. LIPPARELLI: 241.033(7).

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

MR. LIPPARELLI: Either way.

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

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

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

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

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

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

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

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

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

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

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

MR. GOULD: Yeah.

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

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

MR. LIPARELLI: Right.

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

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

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

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

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

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

MR. VASKOV: And other matters of symbolic recognition.

MR. GOULD: Positive symbolic.

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

MR. RITCHIE: Well, that addresses C. What about B? I like -- I don't know who brought it up, but just review CAPITOL REPORTERS (775) 882-5322
-- strike the reference to a closed meeting, just say any casual or tangential reference, whether during an open meeting or closed meeting.

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

MR. VASKOV: I'll second.

CHAIRMAN OTT: Motion and a second.

Further discussion?

MR. RITCHIE: Any concerns, Mr. Ott?

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

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

So I feel pretty good about the solution.
Any other discussion?
All those in favor, aye?
Any opposed?
Abstentions?
Chair is an aye as well. So thank you for that suggestion, Mr. Vaskov and Mr. Lipparelli and Mr. Ritchie for providing a solution.

(Motion carries.)

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

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

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

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

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

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

MR. RITCHIE: Okay.

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

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

Mr. Gould, yes.

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

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

That's -- that's really all I'm worried about.
I'm not -- I -- I didn't see anything that --

that I said no, no, no, that isn't what we did, I just want to

make sure we have a few minutes to make sure my notes and your

changes jive.

CHAIRMAN OTT: Absolutely. I think that's

completely reasonable to give you the opportunity to correct

any of -- errors that I made. I've been known not to be able

to read my own handwriting at times. So it's a reasonable

request.

So do you want to take a few minutes before we

close to a final vote or would you like to proceed with a

discussion now --

MR. GOULD: No.

CHAIRMAN OTT: -- with that understanding?

MR. GOULD: I'm fine with that caveat. I'm fine,

Mr. Ott, because, you know, I'm comfortable that if there is

something that's just missed or wrong that you'll be open to

hearing it. I'm not seeing anything at this point.

CHAIRMAN OTT: No, I appreciate that. And I

think that what I'd like to do is get a vote on the bill as

amended and be able to send those amendments to LCB and be

able to express that we've worked through these issues with

multiple task force meetings and the task force hopefully has

endorsed the bill.

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

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

And we will have multiple -- multiple hearings.

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

CHAIRMAN OTT: Okay. Having said --

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

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

CHAIRMAN OTT: My preference would be --

MR. MOORE: I would just abstain on those ones.

I didn't participate in the meeting at all.

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

CHAIRMAN OTT: Go ahead, Mr. Moore.

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

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

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

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

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

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

MR. LIPPARELLI: So Mr. Moore missed the discussion about the redistribution of tax revenues to cities

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in Section 8 and 9.

MR. RITCHIE: Vote for that.

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

Well --

MR. GOULD: One thought.

CHAIRMAN OTT: Yes, Mr. Gould?

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

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

MR. GOULD: Oh, today.

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

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

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

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

I would be happy to talk offline with you about CAPITOL REPORTERS (775) 882-5322
what happened in 9 and 10, submit a -- once we get a final revision obviously we'll send it around. And if you don't feel comfortable voting on the entirety of the bill because of you weren't present for part of that today, we'll see if we can get to the vote with your abstention.

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

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

Mr. Karpel?

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

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

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

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

Anybody else have comments?

MR. LIPPArellI: You ready for a motion,

Mr. Chairman?

CHAIRMAN OTT: I'm ready for a motion,

Mr. Lipparelli.

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

MR. RITCHIE: AB70.

CHAIRMAN OTT: AB70

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

MR. RITCHIE: I'll second.

MR. MOORE: Thank you.

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

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

Any opposed?

Abstentions?

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

MR. KARPEL: Yes.

(Motion carries.)

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

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

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

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

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

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

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

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

MR. VOLTZ: No, thank you.

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

Ms. De Fazio went first in the beginning.

Ms. Lohman, would you like to go first this time? You may still be on mute.

MS. LOHMAN: (Telephonically indiscernible.)

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

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

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

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

I had made some extremely salient comments regarding adjustments that were discussed with other members of the public. And I incorporated their input into my CAPITOL REPORTERS (775) 882-5322
comments, which took way too much of my time to prepare them and appear to be several. And as usual, this body like every other public body ignored them.

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

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

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

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

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

In Clark County there was I think the meeting CAPITOL REPORTERS (775) 882-5322
addressing the gender back pass through commission (sic.) that they rescheduled the meetings to address the larger turnout.

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

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

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

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

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

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

Way too much of the good old boys network and CAPITOL REPORTERS (775) 882-5322
nepotism throughout the state. You still have not protected
the disabled. You are conservatively discriminating against
nonphysical disability and again today refused to make it
equal by removing a single word, which was physical.

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

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

Thank you.

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

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

Any other public comment on the phone? Okay.

Having heard none, I will adjourn this meeting as all of our
business is completed.

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

MR. RITCHIE: Thank you so much.

CHAIRMAN OTT: Thank you.

(Proceedings concluded at 11:55 a.m.)
STATE OF NEVADA,
 ) ss.
CARSON CITY. 

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

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

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

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

MICHEL LOOMIS, CCR #228

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