

From: [Lewis Trout](#)
To: [Greg D. Ott](#)
Cc: [Sandra L. Geyer](#); [Althea R. Zayas](#)
Subject: Possible Changes to Strengthen Nevada Open Meeting Law (NRS Chapter 241), N
Date: Wednesday, January 30, 2019 7:52:13 AM

Dear Mr. Ott,

Thank you for the opportunity to submit comments regarding changes in the Nevada Open Meeting Law ("OML"), NRS 241.

My comments result primarily from dealings with the Humboldt County Hospital District (HCSD) from April 2013 to date and efforts by the majority of members of the HCSD Board of Trustees ("Board"); HCSD Legal Counsel ("Legal Counsel"); Chief Executive Officer ("CEO"); and the person designated as the person to be contacted to request copies of supporting materials given to members of the Board of Trustees, copies of minutes, and audio recordings of minutes ("Custodian of Records"). My comments focus on the following five areas:

1. Costs to Obtain and Availability of Written Copies of Minutes and Audio Recordings of Meetings;
2. Timeliness of Responses to Requests to Obtain Copies of Minutes and Audio Recordings of Meetings;
3. Allowing a Minimum of 3 Minutes of Public Comment Per Person Prior to Board Votes on Consent Agenda Items and Discussion/Action Items following staff or proponent reports/comments;
4. Holding members of the Board, Legal Counsel, CEO and Custodian of Records personally accountable for the actions; and
5. Penalties for Failure to Comply with OML statutory requirements.

My comments are:

1. Costs to Obtain and Availability of Written Copies of Minutes and Audio Recordings of Meetings.

NRS 241.035, Section 2 should be changed so that one copy of minutes in draft form must be made available to any public requestor prior to approval by the Board at a regular or special meeting, but no later than 15 working days after a Board meeting has occurred.

One copy of Board approved minutes AND one copy of an audio recording must be made available to any public requestor at no cost within 15 working days or a meeting except that the provisions Sections 4 and 7 shall apply to excuse the public body from providing an audio recording due to technical failures of the recording system. Additional copies of written minutes must be made available at no more than \$0.25 per page and additional copies of audio recordings must be made available at no more than \$5.00 per CD or other medium.

Unfortunately, the Sections 4 and 7 have been used by the HCHD Board, CEO, Legal Counsel and Custodian of Records to assert that no recordings are available of particularly controversial meetings and therefore no written minutes could be prepared. NRS 241.035 and 241.036 make no allowance for not preparing written minutes if an audio recording system fails. It should be made clear that throughout all applicable sections of NRS 241 that failure of an audio recording system does not excuse a public body from preparing draft and approved copies of written minutes of meetings and that the provisions of NRS 242.036 apply to failures to provide written minutes to the public in accordance with stated time periods.

NRS 241.035, Section 4(a) should be changed to require retention of recordings for at least 2 years.

2. Timeliness of Responses to Requests to Obtain Copies of Minutes and Audio Recordings of Meetings.

Copies of draft minutes must be made available to public requestors no later than 10 working days following receipt of such requests.

Copies of Board approved written minutes must be made available to public requestors no later than 10 working days following receipt of such requests.

Copies of audio recordings of Board meetings must be made available to public requestors no later than 5 working days following receipt of such requests.

Requests for draft minutes, Board approved minutes, and audio recordings must be submitted in written or electronic formats and provide contact information (phone number, email address, or physical address for US mail to allow the Custodian of Records to notify the requestor that the requested items are available. The public body (Board, Legal Counsel, CEO and Custodian of Records may NOT require the public requestor to state purpose of the request not the intended use of the requested materials.

3. Allowing a Minimum of 3 Minutes of Public Comment Per Person Prior to Board Votes on Consent Agenda Items and Discussion/Action Items following staff or proponent reports/comments.

NRS 241.020, Section 2(d)(3) should be changed to permit public comment of no less than 3 minutes per person on draft minutes and other Consent items prior to a vote by the governing Board.

NRS 241.020, Section 2(d)(3)(I) should be changed to permit public comment of no less than 3 minutes per person on matters not on the meeting agenda. The word "or" at the end of the section should be changed to "and".

NRS 241.020, Section 2(d)(3)(II) should be changed to permit public comment of no less than 3 minutes per person on a discussion/action item following the staff or proponent presentation, but before the Board members of the public body take action on an item.

4. Holding members of the Board, Legal Counsel, CEO and Custodian of Records personally accountable for the actions.

Governing Board members are not the only ones involved in complying with requirements of the OML. The Legal Counsel, CEO and Custodian of Records also have first line or second line responsibility to insure staff compliance with requirements. This is especially true regarding requests for copies of supporting materials, draft minutes and final minutes, and audio recordings of meeting in compliance with time requirements of the OML. The HCHD has often failed to comply with OML response times due to the Custodian of Records being absent on personal or sick leave or for other reasons. Each governing body must have an alternative means of responding to requests for OML related supporting materials, draft and final minutes, and audio recordings in compliance with OML time requirements. Failure to meet OML time requirements due to the absence of the Custodian of Records must make the CEO and Legal Counsel responsible for failure of the governing body to comply with the OML time requirements (rather than the members of the Governing Board) and therefore subject to fines and other penalties as specified in your revised OML text.

If the Custodian of Records is available and not absent, he or she should be held liable for non-compliance with OML timeliness provision and be subject to fines and other penalties in your revised OML text.

In not event shall fines for non-compliance with OML provisions be paid from public funds.

5. Penalties for Failure to Comply with OML statutory requirements.

NRS 241.040 should be amended to include the Governing Body's CEO, Legal Counsel and Custodian of Records. Fines for the CEO and Legal Counsel should be at the same rate as for members of the Governing Board. However, fines for the Custodian of Records should be limited to no more than 50% of the amount for the members of the Governing Board.

The minimum fines for Board member, CEO and Legal Counsel in connection with violations of provisions of the OML should be \$250 per violation with a maximum of \$5,000 for a fourth or additional violation.

The minimum fines for Custodian of Records in connection with violations of provisions of the OML should be \$100 per violation with a maximum of \$2,500 for a fourth or additional violation.

Thank you again for the opportunity to submit comments regarding possible changes in the OML.

Respectfully submitted,

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