

**STATE OF NEVADA
OPEN MEETING LAW TASK FORCE**

Minutes of Meeting

Monday, December 19, 2011 at 1:00 p.m.

**Office of the Attorney General
100 North Carson Street
Carson City, NV 89701**

1. Call to order and roll call of members

Committee Members Present

Keith Munro, Chairman
Barry Smith
Scott Doyle
Jeff Fontaine
Gene Brockman
Paul Lipparelli
Judy Caron
Senator Terry Care (LV video)
Jonathan Shipman for John Kadlic
Dane Claussen, ACLU

Public Present

Carolyn Andersby

Chairman Munro called the meeting to order at 1:00 p.m. Roll call was taken and it was determined that a quorum was present.

2. Comments from the public – please limit comments to 5 minutes.

Chairman Munro asked if anyone was present from the public to which ACLU representative, Dan Claussen acknowledged his presence.

3. Discussion and action: approval of minutes from November 9, 2010. For possible action.

Chairman Munro asked if everyone had reviewed the minutes and asked if there were any additions or corrections. There were none. Mr. Doyle made a motion to approve as submitted. Mr. Brockman seconded the motion; motion carried.

- 4. Attendance by a quorum of a public body for a meeting of its own subcommittee. Current A.G.'s opinion allows such attendance. For possible action.**

Chairman Munro stated that OML SDAG George Taylor is ill, so agenda item 4 is not being addressed but will be brought back to a subsequent meeting.

- 5. Supporting materials: modernize the OML: discussion of possible new statutory requirement for any public body with a website to upload agendas, minutes of previous meetings and supporting materials to its webpage. Currently, supporting materials need only be "made available" over the counter. For possible action.**

Discussion: Chairman Munro stated there was a bill last session, AB389 that made it a requirement that anyone who had a website post meeting agendas and approved minutes on it. I wanted to talk about this one to see whether it might be feasible to have something a little bit short of that because AB 389 did not get passed by the Legislature, but whether it might be good for legislative policy to see if we could have something put in the statutes setting forth that it is the policy of the State that if a political subdivision or state agency has a website that they make best efforts to put agendas and minutes on the website. Any thoughts?

Mr. Smith – Yes. It seemed to be the testimony on 389 was that this could be difficult for some people even if they had a website and if it was going to be too much trouble they would rather take down the website than have to post a bunch of stuff, so it falls short, but something that encourages them to do it whenever possible that it is a good policy and a good practice.

Mr. Brockman - How is this suggestion different from what is already in 241, section 202.4? The question was raised that would this impose any burden on the people who take care of the website, etc., so I don't know what the wording is. They read it and it sounded like it was the same thing that is being asked for here.

Mr. Fontaine asked if the question is how far back do you have to go to upload this information because I think you are correct, you are required to do it for current or future meetings but I think what is being contemplated here is going back in time and uploading all that information. Is that correct?

Mr. Brockman - it may be that this is asking for more than is currently being asked for. Those are the kinds of things I would think need to be considered. I think it is a good policy.

Chairman Munro - we are just talking about policy, how difficult would it be for a small city within our state as far as manpower hours and IT connections and, how difficult would that be?

Mr. Brockman – in my opinion, I think it depends on the unit itself. The towns and cities should have sufficient IT departments to take care of this kind of thing. More concern would be about a fire district that probably has less IT than a town would. Some of the other entities that might be brought into this other than a municipality might have some difficulty if they are brought in under the same law.

Chairman Munro – do you think there is any utility for smaller governmental entities if you get all the information out and you have it available that decision makers can have that information out there that they can point to and say, hey we have been discussing this for two years, three years, this isn't something new or this has been on prior agendas that you have had the opportunity to have knowledge of.

Mr. Brockman – the information is there now, it is just not on the website, so it is certainly available every place and I think municipalities, etc. are complying with the existing law. Some of them may not even have a website. You could get anything you want as long as that entity has been alive.

Chairman Munro - I get that you can get it but you have to drive down there, know what you are asking for and this is more of a procedural question, it seems like any time a governmental entity studies something for six months to a year or 18 months and they have had continual updates and information and then when it comes down to crunch time for a decision, then lots of people come out of the woodwork and say "please don't do that, or this will affect me negatively." They only give input when they think there is going to be a decision as opposed to being part of the process if it affects them. Would it help citizens become more a part of the process and have an understanding of issues.

Mr. Lipparelli – I asked some of the folks in Washoe County for some input on this question and of course everyone has in mind the goal of open government and participation. No one is quarreling with the merits of that but the balancing factor is what kind of resources does it take to comply and one example of something in Washoe County that may illustrate how this could become burdensome is our Board of Equalization who hears tax appeals had 984 appeals for the 2011 year. Their season of meetings last for the month of February so if there was a mandate for the BOE to have not only its agendas but all the supporting materials available on line prior to the meetings, it would be a large effort on the part of the clerical and IT folks to get this material imaged, get it loaded into the computer network, and then linked properly to the agenda. Would it encourage openness and participation, no question about it. Can every government afford to do that – no they can't, especially now days when staffs are reduced and workloads are going up, we simply would not be able to comply with some of our smaller boards and commissions with a mandate when they don't even have staff. I just want to finish by saying our County Commission does this - we do have our

agendas and our supporting materials linked on the website and it is very useful to people to be able to go there and get that stuff. It works for our County Commission because they are our main government body and they have the resources to be able to get that stuff done. It is no small task, it takes the better part of two people on those days leading up to the meeting to get it all coordinated.

Mr. Brockman - are we aware of any problems or complaints about the lack of availability of this kind of material, because if we're not, I am dead set against adding another factor until that becomes a problem.

Chairman Munro – I don't have any first hand complaints, I only have second hand complaints at this point but this is an issue that has been discussed before the Legislature and we are a study committee of this aspect of the NRS so I thought it would be good to put it on here. Let me ask a question of Mr. Lipparelli. When you said prior that word got caught in my ear, because if you read the agenda closely it says "of previous meetings" and I will throw in what Mr. Fontaine said going back in time. What if moving forward from a particular date we had a requirement that future meetings have their minutes, agendas, and items put on but it did not have to be before the meeting, it was more on there for an historical note?

Mr. Fontaine – so public bodies are currently not required to put their agendas on a website?

Mr. Munro – no, they are not required to put all their minutes and things of that nature on their websites but at some point would it be good if we required them to put them on? This would be on a going forward basis. For the record, please mark Mr. Claussen as being present.

Mr. Claussen – I am the executive director of ACLU in Nevada. I am also a member of _____ as well and I am concerned about the public entity having timely access to government materials. I think that they attend meetings like we do, the Governor's Crime Commission and Homeland Security Commission. You can tell just by the lack of public attendance at Nevada meetings that the public is finding it difficult to find out what is on each agenda and there are literally scores of statewide committees and commissions and boards, not to mention city and county levels. I understand the cost element but we have decided as a society that taxpayers are going to assume certain costs for open records and open meetings. **(Hard to understand on recording).**

Mr. Care – I have an initial question **(unable to understand on recording).**

Chairman Munro – I agree that is a distinction but I think records of open meeting that they are similar in nature. Agendas for the meeting that's open meeting law correct, What happened at that meeting is getting into the records so I see the distinction that you are talking but I wanted to have a discussion about since we have open meetings and we have agendas should we make information about what actually

happened at those meeting available to the public and should there be some type of policy stated from the Legislature to require that.

Mr. Care – (unable to understand on recording).

Mr. Smith – The supporting documents potentially is a problem. We saw that with the Legislature because people, although it took a shorter timeframe on committee meetings and so on, but wanted all those documents uploaded before a hearing and I'm sure that they struggled, and the requirement was that you be able to upload and so you do then kind of place a burden on the public if they are providing documents to a public body that is going to be part of that agenda that's going to be part of the supporting documents in the public or other agencies, other departments for a city and county, you do kind of get into a technological issue. A consultant for example doing some strategic planning and has created a 100 page document and you are saying that has to be a format of pdf that we can upload on this site, that is why we run into these issues, we want them there, while the law requiring it created some difficulties. I'm just acknowledging that a lot of time it is supporting documents that create some problems.

Mr. Brockman – Isn't what we are really after here is ease of access to this kind of information and if there was a method of achieving that or a menu that you could look at and get to where you wanted to go, such as having the agendas and subsequent minutes of that meeting on the website, then if you wanted any of the supporting information which is going to be the hard part anyway, they would know where to go in the permanent file to find that information. You could short cut getting to that information whether you are just an interest party or the press or whatever.

Chairman Munro – So Mr. Brockman you are making this distinction about the minutes versus the supporting materials, still keeping the supporting materials available.

Mr. Brockman – Yes, I suggested agenda and the minutes of that meeting and then all other supporting materials to remain wherever it is now.

Mr. Fontaine – My thought is that for a meeting that is planned to be held a member of the public is entitled to receive the back up information upon request under the current law. They would presumably receive it in the same format as a member of the governing body receives it so if a member of the governing body received it electronically, then a member of public upon request could receive it electronically. It seems to me that for those that can receive it electronically, this is really a nonissue on a going forward basis because presumably they have the capability. What we are talking about are those who don't have the technical capability or the resources and so what I am struggling with is for the governing body they don't have the opportunity to receive it electronically either is my point. We are talking about revamping the whole system here, not just for the public but for the governing body as well and as Mr. Brockman indicated that for probably most of the counties and I don't have a count because I didn't do the survey ahead of time, my assessment is that probably half of the counties can deliver agendas and supporting material electronically and then half can't.

I think that is something that maybe Mr. Brockman and I need to go back and do a better assessment of and report back to this committee. I also agree with Mr. Brockman that beyond the counties, you have dozens and dozens of these little districts and so where do you draw the line because I think it is going to be problematic.

Chairman Munro – could you draw the line at cities, counties and towns?

Mr. Brockman – no.

Mr. Fontaine – If you are basing it on technical ability and resources there are other and public bodies that better resources and better technical capabilities than many of our towns, cities, and counties.

Chairman Munro – but I asked if the cutoff could be cities, counties and towns, or how about cities and counties?

Mr. Fontaine – I guess I would argue that, I don't know how you could draw the line based upon the type of public body, I think you have to take into consideration the resources and technical capabilities.

Chairman Munro – Mr. Fontaine requested the opportunity to talk with Mr. Brockman and I guess you both talk to your constituents and get something back on a future agenda.

Mr. Fontaine – Just to be clear because I'm not sure we came to a conclusion about this point, are we talking about a going forward basis, or are we talking about going back in time and now uploading everything.

Chairman Munro – I have got to think on a going forward basis has got to be a lot easier that way people know what's coming.

Mr. Care – Unable to understand on recording.

Chairman Munro – What the Legislature does sometimes is they make population distinctions and so they have the law apply equally to every city, county or town that falls within that population distinction.

Mr. Claussen – Unable to understand on recording.

Chairman Munro – Mr. Claussen that is a fair point of view, the OML today makes no distinctions to any public bodies, so that's an excellent point.

Chairman Munro - Mr. Claussen I know you are new to our committee and I welcome you. This is the second time we have had this committee and the Attorney General thinks it is a good idea that we get the people involved in open meeting laws to discuss them and right now I know this says for possible action but I am not bringing this up for a vote. We are really just in the formulation stage to discuss things and get

things out and talk about the issues affecting us. We will consider this one for a future date. I guess we will have to talk about population distinctions. I am closing agenda item 5 and move to item 6.

6. Discussion of possible and/or potential application of the OML to legislative interim committees. Barry Smith. For possible action.

Discussion: Mr. Smith – I printed out some documents, one of them is just kind of a chart that I made up where I took some key issues and kind of said here's what, first of all which state Legislatures are covered by their open meeting law, as you can see it is a little over half. One of the questions that interested me or would come up in this discussion is whether that includes the party caucuses and very few do that and several specifically say "no." If there is a blank it is because I don't really know the answer. The one that says "yes" there I made some notes out to the right because Colorado has a very restrictive open meeting law as far as the Legislature except _____ rule as far as the Legislature is involved but strict compliance is not required, so how you deal with that I don't know. There is another one which states that I know of that there is a constitutional requirement for open Legislatures as there is with Nevada. Several states when this has become an issue have brought up separation of powers. In the long document that has a lot of summaries, Alaska is kind of an interesting overview of that issue where essentially the Legislature was exempt, then it included itself, then there was a court ruling that I guess similar to Nevada on ethics that the Legislature has the ability to set its own rules and laws and it is up to the Legislature to enforce them so it goes around and around in a circle. The court wouldn't enforce the Legislature's open meeting law against itself and that has come up several times. Several states have a separate statute dealing with the Legislature which is certainly a possibility here because usually the issue that comes up with the Nevada Legislature is the compressed time frame and the notice requirements for hearings that are sometimes scheduled 24 hours or less in advance so there are separate statutes with specific requirements for the Legislature. I know with some interest that some state constitutions do require the Legislature to be open except when it needs to meet in secret. So as you probably know on a separate sheet is what the language in the Nevada Constitution is, which is that the doors of each House shall be kept open during its sessions, each House session adopts its own rules saying that in the case of the Assembly, all meetings of the Assembly and its committee must be open to the public and Senate essentially the same thing but includes the phrase that's ultimately in the Constitution about considering the character, alleged misconduct, professional competence, physical or mental health of a person. That is kind of a general overview in the specific question of legislative committees when the Legislature is not in session is despite all this material that I've got, I don't have a lot of insight because very few address that at all. I don't think we have addressed it and my personal opinion is that the law the way it reads, it only excludes the Legislature, not its boards, commissions, its other. I think the language is there but that certainly what we need to discuss, so I kind of threw out some options of do nothing, include the Legislature, add language specific to the Legislature with distinct language on notice, availability of documents, add language requiring the Legislature to adopt rules, right now there is nothing beyond

the Constitution that says its open and that the Houses adopt their rules, nothing says they must do that, so that would be kind of a minimum and/or add language just clarifying that the Legislature in 241 applies only to the 120 day session or a special session.

Chairman Munro – Mr. Doyle, the Legislature is a constitutional body but each Legislature is a separate and distinct body – correct?

Mr. Doyle – I believe so because of language in the Constitution for example at the opening of each session, that particular session is the judge of the qualifications of its members—so, yes, I think they reconstitute themselves every biennium.

Chairman Munro – because there are new elections. So they may balk at a statute affecting ongoing bodies.

Mr. Doyle – that is a distinct possibility particularly given Barry's materials, his quotation of section 15 from the State Constitution and then the parenthetical history, it looks like that is one that was a resolution passed by two successive sessions of the Legislature and then approved by the electorate at the following general election. Some legislators, perhaps all of them, might invoke what I would term an equal dignities rule if we want to do something along the lines that Barry is suggesting in his material one of these options. That option may have to go through the same constitutional process as section 15. I'm not saying that's the guaranteed outcome, but that's a distinct possibility.

Chairman Munro – so that is probably why the Legislature each session adopts new rules because they adopt rules that they all agree to for a new grouping. I see the Legislature in probably three distinct ways when it comes to the OML. There is the Legislature during the 120 day session (biennial session); there is another intermediate group and that is the Legislative Commission and maybe Interim Finance in there as well because the Legislative Commission is a constitutional body but it is not technically the Legislature; and then there are interim study committees. I think interim study committees are created by statute, some of them are statutory, and so if we wanted to suggest something through the legislative statutory process, we would use a statute to statutorily create bodies. As Mr. Doyle was indicating the possibility of this he wanted to create or change a constitutional body you might have to go through a constitutional process.

Senator Care – (unable to transcribe – not clear.)

Chairman Munro – Are those standing committees statutory or are they pursuant to session law, or legislative rule?

Senator Care – (unable to transcribe – not clear.)

Mr. Lipparelli – First a disclaimer. I don't know what the position of the Washoe County Commission would be on this topic. We have the experience of having a former legislator sitting on our Commission and I would be interested in Commissioner Hunke ideas. I know that the Washoe County D.A. has in the past himself noted the irony of the Nevada Legislature imposing this rigorous system upon the smallest units of government who have only tiny little powers and nets, but the Nevada Legislature who caps the widest net exempts itself and so just from a citizens perspective, the work of the Legislature is so very important and it is so very impactful on our lives and the notion that the Legislature can't at least strive for the openness in government that it mandates for the local governments is lost on me. The academic exercise of whether there would be a constitutional amendment or the Legislature would have to adopt these rules every year is interesting but beside the point that we are really examining here with Mr. Smith's proposal, which is—shouldn't the Legislature start moving itself toward the openness in government that it expects for all of us. For me personally as one individual, I think the answer is yes, it should, and starting with the interim committees would be a fine way for the Legislature to prove to itself that if we poor little local governments can do it, they can too.

Chairman Munro – duly noted Mr. Lipparelli. I think that is why Mr. Smith came here with his suggestion today but I wanted to talk about some of the academic portions of it because when you talk about issues that are affecting open government and Mr. Smith has us on a good start and we are a study committee and our study committee is supposed to make recommendations to the Attorney General for her to consider. We have to talk about the academics of it on what is process for correcting it and one of the things is to just say well let's get a piece of legislation together to make the Legislature comply with the OML. It is not that simple. There are probably constitutional barriers involved with that. As far as interim committees, I was at IFC last week and I'm starting to notice they are having public comment after agenda items and they have never had that before.

Mr. Lipparelli – Mr. Chairman if the matters on the agenda themselves are the dress of an open meeting law's business, the public comment is the spice and they should not deprive themselves of the spice.

Chairman Munro – it sounds like they are trying to make an effort. As far as the statutory committees, a study committee where you are really just getting together information, any thoughts about if the Legislature had to comply with that aspect of the OML?

Mr. Fontaine – Mr. Chairman do we know that the statutory committees believe that they are not required to comply with the OML.

Chairman Munro – I believe that is what they think.

Mr. Smith – My experience has been for the ones I have followed over the years that they do comply with the OML for the statutory committees.

Chairman Munro – maybe we could have someone from the LCB come and explain their position.

Mr. Fontaine – I think that might be important for this committee to hear their position on those particular committees before we make a recommendation.

Mr. Care – every committee I sit on I try to get the OML in. My experience is that it usually arises at last minute committees. It will be a tough sell and they won't like it (unable to understand recording).

Chairman Munro – I believe the interim committees are making an effort and I'm not looking at them to see whether they are violating the OML. Would we have an enforcement mechanism problem? Terry talked about separation of powers. Let's say a statute change for the OML that said it applied to legislative statutory committees, what would be the enforcement mechanism? Would it have to be someone in the legislative branch or executive branch?

Mr. Lipparelli – Mr. Chairman someone earlier mentioned the Nevada Supreme Court's decision in the Ethic's Commission case involving I think it was Senator Hardy and under the reasoning of that case I think it would be up to the Legislature itself to have an enforcement mechanism because the court decided that only the Legislature can govern its practices, not the Nevada Commission on Ethics, likewise it would follow that OML violations would have to be policed by that branch of the government itself, but I think it is imminently doable and I do know that some of the legislators who preside over those interim committees do virtually comply with the OML because they have agendas, they post them, they follow them and so I think in a lot of way they are geared up to do it, but putting the extra touch on it by mandating it, I think would demonstrate to a lot of folks that the Legislature's work is important to be done in public just as the other boards are.

Mr. Brockman – Where does the separation of powers stop as you go down the scale from the very largest of the state down to the smallest entity, because currently what we are talking about is imposed on hundreds of entities in this state who are currently having to follow the OML in their standing committees and that is going on by virtue of OML requirements. Why isn't it good for the goose if it is good for the gander?

Chairman Munro – for the record Judy Caron has just arrived.

Mr. Claussen – (unable to understand on recording)

Chairman Munro – Mr. Claussen how do you think it would help our citizens to have the OML apply to the various functions of the Legislature?

Mr. Claussen – needs to be as open and transparent as possible (unable to understand).

Mr. Smith – as Paul mentioned we generally do have a level of attempt to make sure these meetings are open, their agendas are posted and that we know about them and that is all appreciated and that happens until there is something that somebody doesn't want anybody to know about or a document that they don't want to get out widely spread. The practical solution and what's happened with other bodies when they violate the OML is a do over, that action is nullified and that draws attention, that gives everyone an opportunity, a second shot at that controversial action that they didn't want known, you have got to do it over and that is still the best thing for shining a light on what goes on.

Chairman Munro – but how do you do over a law that will pass the Legislature and get signed by the Governor?

Mr. Smith – it is still the question of who can enforce it.

Chairman Munro – but how do you do it over if the Legislature passes a law by majority, let's say it is even two-thirds, and the Governor signs it and you find a violation six or eight months later, how do you undo a law?

Mr. Smith - go to the Supreme Court.

Chairman Munro – the Supreme Court for the most part and it gets back to the conversation about constitutionality, the SC judges cases in controversy and they would have to be imposing a statute to nullify a constitutional process and I'm not sure they can do that.

Mr. Lipparelli – as much as I am enjoying the idea of the Legislature complying with the OML, I confess it is hard for me to visualize the Nevada Assembly conducting itself under the OML but I certainly think that the interim committees can and should, and the legislative committees probably can and should because their work is more manageable, their functions are not the enactment of laws but part of the legislative process that has to be gone through in order for the Legislature to be in a position to act on a law, so if a committee were to do its work under the OML with some possible exceptions as Senator Care mentioned earlier. We have to be realistic about happens near the end of a legislative session. We may need to consider some exceptions. The committees do post agendas for the most part, they do follow their agendas for the most part, but as Mr. Smith said, the devil is when they don't put that bill number on the agenda and then they call it up at the end of the meeting and nobody knew they were going to, that is difficult for people.

Mr. Fontaine – I want to echo the point Mr. Lipparelli just made and you know local government is required to comply with the OML and at least there is an opportunity for people within the local jurisdiction to be involved because they are close by. If you live outside of Carson City by a considerable distance, you don't get a second shot. Either you are notified or you are not and if you are not there is no recourse for you as

an individual party to come to Carson City and rarely does the Legislature broadcast to make available to areas outside of Carson City with the exception of Las Vegas where they do regularly video conference but that is it. We have talked about what's the problem, who is it affecting? I can't tell you how many times I hear from constituents that live outside of the environment of the legislative process in Carson City that they wake up one day and find out that something has been enacted and never knew about it. I think it is important that people be given the opportunity to participate in the process and to the extent the Legislature should comply with the OML, I think they should.

Mr. Care – (unable to understand).

Judy Caron – I'm speaking on behalf of myself and the public, I would just like to state that I became involved with the legislative process on a bill that a friend and I worked on with a legislator two years ago and that was my first introduction to the legislative process in Nevada. Following a bill all the way through following the tools available on the internet to a private citizen tracking a bill, watching what went on when considering different interests on the same line of the bill we were working with it is very hard and disheartening to a citizen on a day someone calls you at the last minute and said your bill is being heard in one-half hour. Living in Reno, people coming from Winnemucca testifying on that to get our voices heard at the government, it is very hard. If you don't have a lobbyist tracking your bills, it puts the public at a handicap and I really think it needs further discussion. I have looked at some of the other states that their legislative bodies do follow OML and I think that is something we need to look at with all the new technology we have. Maybe not 3 to 5 days posting, but there needs to be some rules for the public to participate.

Chairman Munro – would there be any benefit of getting someone from the Legislature to come and chat with us about their philosophy on the OML and how it applies to interim statutory committees. Let's focus just on statutory.

Mr. Doyle – could we expand that to include interim committees that are created by things like joint resolutions and concurrent resolutions in addition to statutes because I do believe that there are a number of committees that meet between the 120-day as well as the special sessions that creates significant information gathering and legislative deliberations in the form of formal printed reports which become the fodder for subsequent and general sessions of the Legislature because they many times include bill draft requests or actual bill text as well as very extensive reports and if the was something we could do in those areas as well I think that would mesh nicely with statutory. To me the logical representative to come speak to us about this would be someone from the legal division of the LCB and have them explain to us the practice, the procedures, and the rationale for both.

Chairman Munro – Mr. Doyle would you like to make a motion.

MOTION: Mr. Doyle – made the motion – “that at our next or subsequent meeting a representative of the LCB legal division come speak to this study committee

and the topic of the discussion be “the applicability, practice and procedures of OML compliance as it applies to interim committees whether they be created by statute or some form of legislative resolution.” Seconded by Mr. Lipparelli. No discussion. Motion passed unanimously.

7. **Discussion of “performance review” for appointed officers. Is there any room or need for a shield for this process from the public eye and the OML? Trevor Hayes. For possible action.**

Discussion: It was noticed that Mr. Hayes is ill and not at this meeting.

Mr. Brockman stated that at a prior meeting he had suggested to Mr. Taylor that this item be included and would be happy to make a comment about it. The way current OML reads it has effectively ended performance reviews of appointed officials, general managers, county managers, or city managers, etc., since they must be done in open. I am wondering if it might be possible to change that so that either the Attorney General by an opinion or amending the wording so that existing wording and professional competence also includes performance evaluation or the appropriate words – evaluation of performance. If that was included in the exception it would open up again the proper performance evaluation of your chief executive. I would think it would be a very simple thing to do either way.

Mr. Munro – we will put this item on our agenda for discussion at our next meeting and I would suggest between now and then when Mr. Hayes makes his presentation you want to look at statute and think about some potential language that can be discussed that might be helpful.

8. **Discussion of exemption from OML for the process of appointing or hiring county CEO/county manager. Jeff Fontaine. For possible action.**

Discussion: Mr. Fontaine – Mr. Brockman what I am going to discuss has to do with what you just described and that is a bill that NAACO submitted in 2009, Senate Bill 32. This bill was intended to allow the public body to conduct their performance evaluation of their chief appointed official in a closed session; however, the individual could have the ability to request the evaluation to be done in a public meeting as well. The public body then would have to report within 30 days the findings of their analysis or evaluation as well as any description of any changes in salary, benefits, or bonuses and so forth. This bill did not get a hearing and was a political lightning rod in the 2009 session. Some of your members jumped all over it, one in particular, and so the bill did not move forward. The intent of this bill was really to give the governing body the ability to do these evaluations and quite frankly to be more candid about the evaluations. You can say that local elected officials, county commissioners, and maybe city council members should have the moxie to be able to do those kinds of things in a public setting, but I think human nature being what it is the intent was to allow it to be done in a closed session so you could be more candid and then report out to the public. The other concern that was raised at that time was there were some instances and I think

these were in one or two of the rural counties where you had a county manager whose performance evaluation was being done in a public setting and many member of the public who were disgruntled or not happy with certain things the county manager had done, just lined up and went on and on about this person. That was the intent of the bill, but again it didn't move forward. I have a copy of the bill here if anyone is interested.

Chairman Munro – stated he would make copies of the bill for all of the members. What would be the benefit if this bill passed?

Mr. Fontaine – Again, I think the intent was to be able to in a setting that would allow the governing body to sit down and have an honest evaluation, be frank, be candid in their evaluation and again report to the public. So the benefit is I think a more thorough, perhaps more candid valuation of the chief appointed official of a governing body and avoid potential circumstances where you would have a county manager on trial and the thing turns into a circus.

Mr. Brockman – the existing law has reduced performance evaluation sessions is trying to reach a decision whether to extend the executive's salary or contract and that's about all it accomplishes now in many different situations in counties and certainly in all the cities and towns.

Chairman Munro – so do you think that lack of the ability to give an honest evaluation affects the performance as a local government?

Mr. Brockman – Yes, because you can have a weak executive that is continued in his position far longer than he should be there and that affects the operation of that particular body. I heard that same complaint from large cities, small cities, GID's and everybody.

Chairman Munro – so what you are saying is that you are getting cursory evaluations and with those cursory evaluations does the public still get an opportunity to come in and comment on those agenda items?

Mr. Brockman – “superficial” is a better description. The provision he included to have a public review of the results within 30 days is an essential part. You can have a closed session for the actual performance review but once that is done then the results of that must be made public and easily available and that needs to be done in open session where comment can be received.

Mr. Smith – I testified against that bill and what my point was on it is that these bodies, the county commissioners, city council, probably the most important thing they do in office is hire and review the chief appointed official and to say that the most important thing that they do should take place behind closed doors denies the public to actually witness what their elected officials do, say, what their priorities are, their questions and what they have to say to that hired administrator. That's essentially the top of the list of why I was in opposition to this.

Mr. Lipparelli – I have been in on closed personnel sessions prior to 2005 when the law was changed to prohibit that and it is my observation that those closed sessions are much more open and frank and honest about the performance issues of an executive than they are since 2005, whereas Mr. Robben pointed out they have to be done in public and they are much more tempered, they are much more benign, and I think ultimately less effective for the executive because an elected official reviewing the performance of an executive will say some things in private that he or she would not say in public, so I think Mr. Smith's point is that maybe that conversation need to take place in the public so the public can see it because after all that executive is the highest office of that unit of government. I think it is important to keep some things separated and one thing that has always been separate is the action that the board takes on the contract, the compensation and the benefits. That has always been done in public and should always be done in public. I think item no. 7 and we are kind of blending it in with item no. 8 here is the question under those topics is to recognize that there are some things that should be done privately for the benefit of the employee who has to suffer the potential indignities of being accused of certain things and for the protection of the elected official who we hope is being honest with the executive that they are managing as a member of the governing body. Lastly, there are occasions during the regular conduct of the county's business when the chief executive is essentially getting a performance evaluation anyway. If there is a project going on, an application for a big development, a contract for the expenditure for millions of dollars is being entertained, or a new ordinance is being proposed to govern a new area of common. If that doesn't go well, the executive gets a performance evaluation right there at the public meeting because no one is reluctant to express their frustration about certain issues in a public meeting. What makes this potentially different is when it comes time to give them the overall performance evaluation when you want to be able to give that counseling that the executive needs about certain things to be done differently. The International County Manager's Association has some standards that I'd like to dig up and share with the Task Force that maybe will give us some guidance on that. I know that our county manager communicated to me that officials at the ICMA were greatly surprised that the performance evaluations of Nevada chief executives were being done in public and that was unlike what they were accustomed to. I will put that on the table for consideration and offer to bring that back.

Chairman Munro – yes, let's have it back and why don't you transmit those materials to me. Would you say that it is rare, how many states do you think have the chief executives of their county's and city managers, their performance evaluations in public.

Mr. Lipparelli – that's the sense I got from that one communication, but it is far from a comprehensive study of what all the other states do, but I will bring that back.

Chairman Munro – Mr. Fontaine, do you think that is information that is available?

Mr. Fontaine – I can query my counterparts in other states to see if they know or try to find out from the national makeup.

Mr. Claussen – (not clear).

Chairman Munro – I think that is what SB 32 tries to take a stab at and so I am going to send that to you and all the members and so when you get it, look at that in line with what you are suggesting.

Mr. Care – Barry Smith captured the spirit of my bill, want government conducting business behind closed doors... (not clear).

Chairman Munro – I don't think the intent was to make anybody the culprit or the hero on this, the intent is to have a discussion on it and Mr. Fontaine is putting forth the suggestion along with Mr. Lipparelli and Mr. Brockman that it may be impeding the effectiveness of their local governments.

Mr. Care – (not clear).

Chairman Munro – I appreciate that, let's keep discussing it. I think it is a fair point raised by some of the members. Let's move to agenda item no. 9

9. Summary and discussion of legislative OML enactments including AB 59 and AB 257; presentation by George Taylor, OML Deputy.
AB 59 was enacted on June 23, 2011.

Section 1.5: Quasi-judicial bodies become subject to OML.

Section 2: Publication of an Attorney General opinion finding a violation of the OML.

Section 3: Administrative subpoena power.

Section 4: Definition of "public body."

Section 5: Additional agenda information items.

Section 6: Monetary penalties for violations of the OML.

AB 257: New public comment requirements.

Discussion: Mr. Taylor is out ill so we will pass on this agenda item to bring it back to the next meeting. Those are all items other than AB 257. AB 59 was the bill that came out of this committee, at least the framework for it, that was passed by the Legislature.

10. Comments from the public. Please limit to five (5) minutes.

Carolyn Andersley from Pahrump, Nevada. I am an elected town board member but attending your task force meeting as a citizen and resident and I appreciate the opportunity to be heard and to know that these discussions are going on. We are faced with many of these issues on a local level and certainly have questions as an elected town board member as to how to work within the ambiguities or constraints within the NRS and seek on a continuous basis, clarifications. I look forward to hearing more about what you are doing here and appreciate that you are taking the time to look at these issues. Some of the ones that we are immediately faced with is what you are talking about as far as performance review and also the transparency of reports, the transparency of documents, and the availability to the general public. We have questions which I have right now in front of me as to how we can make those documents and information available to the citizens. Certainly the website is one way to do it but there is a challenge to make it available and the question of what is the proper information that should be put out there, what is the document that should be released to the general public and what shouldn't be, that's not really one that is readily available as far as clarity to know what that process should be per document or per issue, The public comment period is another time that we find challenging because we certainly work at making every meeting as transparent as possible through agenda postings but timeframes is a problem and sometimes our citizens or residents don't have an opportunity to get that information and so they are not clear what is being talked about or what the history of the issue is and so they are faced with that, so what you are discussing and the conclusions you come to have impact on the minutest level of our democracy. We have advisory boards that have no clarity around where they stand, advisory boards to the town board are citizens that volunteer their time and they come forward to be a part of the process but often times they are challenged to know what is going on within the bureaucracy or what's going on within the government so they lose trust in the process and they lose interest in participating. If there is any information that I can share on a real local level because we are an unincorporated town that falls way down on the bottom of the pecking order of the Legislature's NRS. Anything that we can do to bring up information from a grassroots level, we would be glad to do that. Thank you for your time.

11. Adjourn. For possible action.

Mr. Smith – An issue we might want to consider in the future because there is not much clarity on it as far as the OML and that is exactly what we are doing here – videoconference and telephone conference calls. To my knowledge there has not been a problem or a challenge but it is not and I don't think there is an opinion on it, so it works okay, but my question is "what would happen if a challenge came up on an open meeting that involved a telephone or video conference. The fact is we play that it works the same as a meeting where everybody is in the same room but we don't have anything that says that, so I am just raising this.

Chairman Munro – Meeting adjourned at 3:00 p.m.

