

[Agenda item 3.a.1]

OML Task Force meeting
November 9, 2010
Supporting document for:
Agenda 3.a.1

There are two concepts presented in this document.

1st concept:

(1) An amendment to the Open Meeting Law which would expand the Attorney General's enforcement power (NRS 241.037) to require public bodies to comply with lawful discovery request through the use of an administrative subpoena. Public bodies now may delay or avoid a discovery request until limitations periods have expired;

Or:

2nd concept:

(2) This amendment would amend OML statutory limitations periods for the purpose of extending the limitations periods because of non-compliance with investigative request and/or subpoena. The public body must have been notified of such investigation and of the requested discovery.

NRS 241.037 Action by Attorney General or person denied right conferred by chapter; limitation on actions.

1. The Attorney General may sue in any court of competent jurisdiction to have an action taken by a public body declared void or for an injunction against any public body or person to require compliance with or prevent violations of the provisions of this chapter. The injunction:

(a) May be issued without proof of actual damage or other irreparable harm sustained by any person.

(b) Does not relieve any person from criminal prosecution for the same violation.

2. Any person denied a right conferred by this chapter may sue in the district court of the district in which the public body ordinarily holds its meetings or in which the plaintiff resides. A suit may seek to have an action taken by the public body declared void, to require compliance with or prevent violations of this chapter or to determine the applicability of this chapter to discussions or decisions of the public body. The court may order payment of reasonable attorney's

fees and court costs to a successful plaintiff in a suit brought under this subsection.

3. (a) Any suit brought against a public body pursuant to subsection 1 or 2 to require compliance with the provisions of this chapter must be commenced within 120 days after the action objected to was taken by that public body in violation of this chapter. Any such suit brought to have an action declared void must be commenced within 60 days after the action objected to was taken.

(b) The Attorney General may issue a subpoena for records and materials to any public body to conduct an investigation into any action alleged to be in violation of this chapter.

[Or, second concept: seek to amend the statute with language to extend statutory limitations periods:]

(b) Both limitations periods shall be extended whenever a public body fails to respond to the Attorney General's investigative request for discovery and the public body has been notified of such investigation and of the requested discovery. Failure to respond within the time allowed in the notice of investigation to a reasonable request for copies of the public body's meeting notice, agenda, minutes, audio/video recording, statements or affidavits from members of the public body, shall extend the applicable limitations period in this sub-section one day for each day the public body's response is not submitted within the specified time limit in the notice of investigation."

[Agenda item 3.a.2]

OML Task Force meeting
November 9, 2010
Supporting document for:
Agenda 3.a.2

Concept: an amendment to force public bodies to publicly acknowledge OML violations at a subsequent public meeting:

Violations of the Open Meeting law are common. This amendment to NRS 241.036 would require the public body to publicly acknowledge that the Attorney General's Enforcement unit found sufficient facts indicating a violation(s) of OML by the public body. Public acknowledgment would occur on the agenda of the subsequent public meeting following the issuance of an opinion by this office. The Attorney General's opinion must be included with agenda supporting materials.

Suggested textual amendment;

NRS 241.036 Action taken in violation of chapter void; Public acknowledgement of OML violation.

1. The action of any public body taken in violation of any provision of this chapter is void.
2. A public body must publicly acknowledge that the Attorney General's Open Meeting Enforcement unit found sufficient facts indicating a violation(s) of the Open Meeting Law. Public acknowledgment of such finding must be placed on the public body's agenda for a subsequent public meeting following the issuance of an opinion by the Attorney General. The Attorney General's opinion must be included with agenda supporting materials.

[Agenda item 3.a.3]

OML Task Force meeting
November 9, 2010
Supporting document for:
Agenda 3.a.3

Concept:

This amendment would require a public body to take corrective action following a violation of the Open Meeting Law in order to bring the public body's violation into compliance with the Open Meeting law. Corrective action includes but is not limited to reconsideration in a subsequent public meeting of the agenda item, action, and/or discussion underlying the violation, which resulted in a finding of violation either following investigation by this office or if voluntarily acknowledged by the public body.

Suggested textual amendment;

NRS 241.036 Action taken in violation of chapter void.

1.(a) The action of any public body taken in violation of any provision of this chapter is void.

(b) A public body which has taken action on an agenda item, which action was taken in violation of any provision of this chapter, or which discovers procedural errors which violated this chapter, may avoid legal action under NRS 241.037 if the public body takes prompt and remedial corrective action in a reasonable amount of time following the public meeting at which the defective action or other violation of this chapter occurred.

(c) Corrective action includes but is not limited to: rescheduling the consideration of items which were not clearly and completely stated on its agenda or which were not listed as action items. Improper notice of a public meeting requires the public body to stop the meeting and reschedule the meeting for a time which complies with the statutory notice provisions. A public body must reschedule any item that failed to show proper notice to individuals required by NRS 241.033 and NRS 241.034.

[Agenda item 3.a.4]

OML Task Force meeting
November 9, 2010
Supporting document for:
Agenda 3.a.4

Concept: Revise NRS 241.015(3), Definitions, to clarify the scope of the definition of public body. Many groups or entities unsure of the application of NRS 241.015(3) seek advice from this office to determine whether the OML applies to it or not. We propose to clarify the current definition it by reference to the creation of the body and to the nature of its membership.

[Pattern: section 10-502, Annotated Code of Maryland]

NRS 241.015(3):

Except as otherwise provided in this subsection, "public body" means:

(a) Any administrative, advisory, executive or legislative body of the State or a local government consisting of at least two individuals which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof and includes an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405; and

(b) is created by

1. the Nevada Constitution;
2. a Nevada statute;
3. a county or municipal charter;
4. an ordinance;
5. a resolution of the county's highest legislative body;
6. an executive order of the Governor; or
7. an executive order or the chief executive authority of a political subdivision of the State.

(c) "public body" includes:

1. any multimember board, commission, or committee appointed by the Governor or chief executive authority of a

political subdivision of the State or appointed by an official who is subject to the policy direction of the Governor or chief executive authority of the Political subdivision, if the entity has at least two individuals not employed by the State county or other political subdivision of the State.

2. any multimember board, commission, or committee that is appointed by an entity in the Executive branch of State Government, the members of which are appointed by the Governor, and that otherwise meet the definition of public body under this subsection; or

3. any multimember board, commission, or committee that is appointed by an official who is subject to the policy direction of an entity described in item 2 of this item and also includes at least two individuals who are not members of the appointing entity.

(d) "Public body" does not include:

(1) the Legislature of the State of Nevada;

(2) judicial proceedings, or quasi-judicial proceedings;

~~(b)(e) A limited-purpose association that is created for a rural agricultural residential common-interest community as defined in subsection 6 of NRS 116.1201 is a public body. "Public body" does not include the Legislature of the State of Nevada.~~

[Agenda item 3.a.5]

OML Task Force meeting
November 9, 2010
Supporting document for:
Agenda 3.a.5

Concept: This is a proposed amendment to NRS chapter 241 to create a civil infraction which would impose a fine or fee on individual public body members or on the public body for violation of the OML. Multiple violations by an individual during one term of office would result in a subsequent greater penalty amount. Designate the Attorney General to authorize and bring any action seeking a penalty under this scheme. Designate the civil summary process for prompt adjudication and an appeal process.

[Pattern: § 286.011 Florida Statutes]

Suggested Text:

NRS 241.040 Penalties; members attending meeting in violation of chapter not accomplices; enforcement by Attorney General.

1. Each member of a public body who attends a meeting of that public body where action is taken in violation of any provision of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

2. Wrongful exclusion of any person or persons from a meeting is a misdemeanor.

3. A member of a public body who attends a meeting of that public body at which action is taken in violation of this chapter is not the accomplice of any other member so attending.

4. (a) Each member of a public body who violates any provision of this chapter is guilty of a non criminal infraction not to exceed \$100 for a first violation and \$300.00 for each subsequent violation as a civil penalty.

(b) The Attorney General may file a complaint in a court of competent jurisdiction alleging that any member of a public body as defined in NRS chapter 241 has violated the provisions of NRS chapter 241 and is subject to the penalty for civil infraction.

(c) The court shall cite the party charged in the Attorney General's complaint to appear before it on a certain day, not more

than 10 days or less than 5 days from the day when the complaint was presented. On that day, or some subsequent day not more than 20 days from that on which the complaint was presented, the court, in a summary manner, shall proceed to hear the complaint and evidence offered by the party complained of. If, on the hearing, it appears that the charge or charges of the complaint are sustained, the court shall find the party complained of guilty of a non criminal infraction subject to a fine as set forth in this subsection.

(d) No private action may be brought pursuant to this subsection and there shall be no right of action for damages arising out of any violation of the provisions of NRS 241.015 through NRS 241.0355 under this subsection.

(e) There is no right to a jury trial of the allegations in a complaint brought by the Attorney General under this subsection.

5. The Attorney General shall investigate and prosecute any violation of this chapter.