

SENATE BILL NO. 77—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE LEGISLATIVE COMMITTEE
ON PUBLIC LANDS)

PREFILED JANUARY 26, 2021

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to public bodies.
(BDR 19-466)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public bodies; exempting certain predecisional and deliberative meetings of public bodies from the requirements of the Open Meeting Law; making certain information related to such meetings confidential; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 The Open Meeting Law requires that meetings of public bodies be open to the
2 public, with limited exceptions set forth specifically in statute. (NRS 241.020)
3 Existing federal law exempts certain predecisional interagency or intraagency
4 memorandums or letters that are part of the deliberative process from disclosure
5 under the federal Freedom of Information Act. (5 U.S.C. § 552) **Sections 1 and 2**
6 of this bill exempt from the requirements of the Open Meeting Law certain
7 meetings conducted by a public body for the purpose of engaging in predecisional
8 and deliberative discussions relating to a decision under the federal National
9 Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 et seq.) including, without
10 limitation, the review and discussion of drafts of environmental impact statements
11 describing the environmental effects of proposed actions within the jurisdiction of
12 the public body. **Sections 1 and 3** of this bill provide, with limited exception, that
13 any information or materials discussed or exchanged between the public body and a
14 federal agency for the purpose of engaging in predecisional and deliberative
15 discussions with a federal agency relating to the federal National Environmental
16 Policy Act that is deemed confidential by the federal agency under the deliberative
17 process privilege is confidential and not a public record until the privilege expires
18 or the federal agency determines that such information is no longer protected.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 241 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 1. *A public body that has entered into a memorandum of*
4 *understanding or other agreement with a federal agency for the*
5 *purpose of engaging with the federal agency on a decision under*
6 *the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321*
7 *et seq., may hold a closed meeting to engage in predecisional and*
8 *deliberative discussions on the subject of the memorandum or*
9 *agreement. Any such discussions must:*

10 (a) *Occur before a decision is adopted by the federal agency*
11 *under the National Environmental Policy Act; and*

12 (b) *Be required to be kept confidential under the memorandum*
13 *of understanding or other agreement with the federal agency.*

14 2. *Except as otherwise required by court order, any*
15 *information or materials discussed or exchanged between a public*
16 *body and a federal agency for the purposes of engaging in*
17 *predecisional and deliberative discussions pursuant to subsection*
18 *1 that are deemed confidential by the federal agency under the*
19 *deliberative process privilege pursuant to 5 U.S.C. § 552(b)(5) are*
20 *confidential and not a public record for the purposes of chapter*
21 *239 of NRS until such time as the privilege expires or the federal*
22 *agency determines that such information is no longer protected.*

23 **Sec. 2.** NRS 241.016 is hereby amended to read as follows:

24 241.016 1. The meetings of a public body that are quasi-
25 judicial in nature are subject to the provisions of this chapter.

26 2. The following are exempt from the requirements of this
27 chapter:

28 (a) The Legislature of the State of Nevada.

29 (b) Judicial proceedings, including, without limitation,
30 proceedings before the Commission on Judicial Selection and,
31 except as otherwise provided in NRS 1.4687, the Commission on
32 Judicial Discipline.

33 (c) Meetings of the State Board of Parole Commissioners when
34 acting to grant, deny, continue or revoke the parole of a prisoner or
35 to establish or modify the terms of the parole of a prisoner.

36 3. Any provision of law, including, without limitation, NRS
37 91.270, 219A.210, 228.495, 239C.140, 239C.420, 281A.350,
38 281A.690, 281A.735, 281A.760, 284.3629, 286.150, 287.0415,
39 287.04345, 287.338, 288.220, 288.590, 289.387, 295.121, 360.247,
40 388.261, 388A.495, 388C.150, 388D.355, 388G.710, 388G.730,
41 392.147, 392.467, 394.1699, 396.3295, 414.270, 422.405, 433.534,
42 435.610, 442.774, 463.110, 480.545, 622.320, 622.340, 630.311,



1 630.336, 631.3635, 639.050, 642.518, 642.557, 686B.170,
2 696B.550, 703.196 and 706.1725, *and section 1 of this act*, which:

3 (a) Provides that any meeting, hearing or other proceeding is not
4 subject to the provisions of this chapter; or

5 (b) Otherwise authorizes or requires a closed meeting, hearing
6 or proceeding,

7 ↪ prevails over the general provisions of this chapter.

8 4. The exceptions provided to this chapter, and electronic
9 communication, must not be used to circumvent the spirit or letter of
10 this chapter to deliberate or act, outside of an open and public
11 meeting, upon a matter over which the public body has supervision,
12 control, jurisdiction or advisory powers.

13 **Sec. 3.** NRS 239.010 is hereby amended to read as follows:

14 239.010 1. Except as otherwise provided in this section and
15 NRS 1.4683, 1.4687, 1A.110, 3.2203, 41.071, 49.095, 49.293,
16 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170,
17 62H.220, 62H.320, 75A.100, 75A.150, 76.160, 78.152, 80.113,
18 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200,
19 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345,
20 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880,
21 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280,
22 119A.653, 119A.677, 119B.370, 119B.382, 120A.690, 125.130,
23 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057,
24 127.130, 127.140, 127.2817, 128.090, 130.312, 130.712, 136.050,
25 159.044, 159A.044, 172.075, 172.245, 176.01249, 176.015,
26 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715,
27 178.5691, 179.495, 179A.070, 179A.165, 179D.160, 200.3771,
28 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392,
29 209.3923, 209.3925, 209.419, 209.429, 209.521, 211A.140,
30 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464,
31 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240,
32 218G.350, 226.300, 228.270, 228.450, 228.495, 228.570, 231.069,
33 231.1473, 233.190, 237.300, 239.0105, 239.0113, 239.014,
34 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230,
35 239C.250, 239C.270, 239C.420, 240.007, 241.020, 241.030,
36 241.039, 242.105, 244.264, 244.335, 247.540, 247.550, 247.560,
37 250.087, 250.130, 250.140, 250.150, 268.095, 268.0978, 268.490,
38 268.910, 269.174, 271A.105, 281.195, 281.805, 281A.350,
39 281A.680, 281A.685, 281A.750, 281A.755, 281A.780, 284.4068,
40 286.110, 286.118, 287.0438, 289.025, 289.080, 289.387, 289.830,
41 293.4855, 293.5002, 293.503, 293.504, 293.558, 293.5757, 293.870,
42 293.906, 293.908, 293.910, 293B.135, 293D.510, 331.110, 332.061,
43 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1593, 338.1725,
44 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.049,
45 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255,



1 360.755, 361.044, 361.2242, 361.610, 365.138, 366.160, 368A.180,
2 370.257, 370.327, 372A.080, 378.290, 378.300, 379.0075, 379.008,
3 379.1495, 385A.830, 385B.100, 387.626, 387.631, 388.1455,
4 388.259, 388.501, 388.503, 388.513, 388.750, 388A.247, 388A.249,
5 391.033, 391.035, 391.0365, 391.120, 391.925, 392.029, 392.147,
6 392.264, 392.271, 392.315, 392.317, 392.325, 392.327, 392.335,
7 392.850, 393.045, 394.167, 394.16975, 394.1698, 394.447, 394.460,
8 394.465, 396.3295, 396.405, 396.525, 396.535, 396.9685,
9 398A.115, 408.3885, 408.3886, 408.3888, 408.5484, 412.153,
10 414.280, 416.070, 422.2749, 422.305, 422A.342, 422A.350,
11 425.400, 427A.1236, 427A.872, 432.028, 432.205, 432B.175,
12 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 432B.5902,
13 432C.140, 432C.150, 433.534, 433A.360, 437.145, 437.207,
14 439.4941, 439.840, 439.914, 439B.420, 439B.754, 439B.760,
15 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395,
16 442.735, 442.774, 445A.665, 445B.570, 445B.7773, 447.345,
17 449.209, 449.245, 449.4315, 449A.112, 450.140, 450B.188,
18 453.164, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050,
19 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993,
20 463.240, 463.3403, 463.3407, 463.790, 467.1005, 480.535, 480.545,
21 480.935, 480.940, 481.063, 481.091, 481.093, 482.170, 482.5536,
22 483.340, 483.363, 483.575, 483.659, 483.800, 484A.469, 484E.070,
23 485.316, 501.344, 503.452, 522.040, 534A.031, 561.285, 571.160,
24 584.655, 587.877, 598.0964, 598.098, 598A.110, 599B.090,
25 603.070, 603A.210, 604A.303, 604A.710, 612.265, 616B.012,
26 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.238,
27 622.310, 623.131, 623A.137, 624.110, 624.265, 624.327, 625.425,
28 625A.185, 628.418, 628B.230, 628B.760, 629.047, 629.069,
29 630.133, 630.2673, 630.30665, 630.336, 630A.555, 631.368,
30 632.121, 632.125, 632.3415, 632.405, 633.283, 633.301, 633.4715,
31 633.524, 634.055, 634.214, 634A.185, 635.158, 636.107, 637.085,
32 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075,
33 640A.220, 640B.730, 640C.580, 640C.600, 640C.620, 640C.745,
34 640C.760, 640D.190, 640E.340, 641.090, 641.221, 641.325,
35 641A.191, 641A.262, 641A.289, 641B.170, 641B.282, 641B.460,
36 641C.760, 641C.800, 642.524, 643.189, 644A.870, 645.180,
37 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220,
38 645C.225, 645D.130, 645D.135, 645G.510, 645H.320, 645H.330,
39 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228,
40 653.900, 654.110, 656.105, 657A.510, 661.115, 665.130, 665.133,
41 669.275, 669.285, 669A.310, 671.170, 673.450, 673.480, 675.380,
42 676A.340, 676A.370, 677.243, 678A.470, 678C.710, 678C.800,
43 679B.122, 679B.124, 679B.152, 679B.159, 679B.190, 679B.285,
44 679B.690, 680A.270, 681A.440, 681B.260, 681B.410, 681B.540,
45 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110,



1 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 689A.696,
2 692A.117, 692C.190, 692C.3507, 692C.3536, 692C.3538,
3 692C.354, 692C.420, 693A.480, 693A.615, 696B.550, 696C.120,
4 703.196, 704B.325, 706.1725, 706A.230, 710.159, 711.600, *and*
5 *section 1 of this act*, sections 35, 38 and 41 of chapter 478, Statutes
6 of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada
7 2013 and unless otherwise declared by law to be confidential, all
8 public books and public records of a governmental entity must be
9 open at all times during office hours to inspection by any person,
10 and may be fully copied or an abstract or memorandum may be
11 prepared from those public books and public records. Any such
12 copies, abstracts or memoranda may be used to supply the general
13 public with copies, abstracts or memoranda of the records or may be
14 used in any other way to the advantage of the governmental entity or
15 of the general public. This section does not supersede or in any
16 manner affect the federal laws governing copyrights or enlarge,
17 diminish or affect in any other manner the rights of a person in any
18 written book or record which is copyrighted pursuant to federal law.

19 2. A governmental entity may not reject a book or record
20 which is copyrighted solely because it is copyrighted.

21 3. A governmental entity that has legal custody or control of a
22 public book or record shall not deny a request made pursuant to
23 subsection 1 to inspect or copy or receive a copy of a public book or
24 record on the basis that the requested public book or record contains
25 information that is confidential if the governmental entity can
26 redact, delete, conceal or separate, including, without limitation,
27 electronically, the confidential information from the information
28 included in the public book or record that is not otherwise
29 confidential.

30 4. If requested, a governmental entity shall provide a copy of a
31 public record in an electronic format by means of an electronic
32 medium. Nothing in this subsection requires a governmental entity
33 to provide a copy of a public record in an electronic format or by
34 means of an electronic medium if:

35 (a) The public record:

36 (1) Was not created or prepared in an electronic format; and

37 (2) Is not available in an electronic format; or

38 (b) Providing the public record in an electronic format or by
39 means of an electronic medium would:

40 (1) Give access to proprietary software; or

41 (2) Require the production of information that is confidential
42 and that cannot be redacted, deleted, concealed or separated from
43 information that is not otherwise confidential.

44 5. An officer, employee or agent of a governmental entity who
45 has legal custody or control of a public record:



1 (a) Shall not refuse to provide a copy of that public record in the
2 medium that is requested because the officer, employee or agent has
3 already prepared or would prefer to provide the copy in a different
4 medium.

5 (b) Except as otherwise provided in NRS 239.030, shall, upon
6 request, prepare the copy of the public record and shall not require
7 the person who has requested the copy to prepare the copy himself
8 or herself.

9 **Sec. 4.** This act becomes effective upon passage and approval.

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