



Nevada WICHE

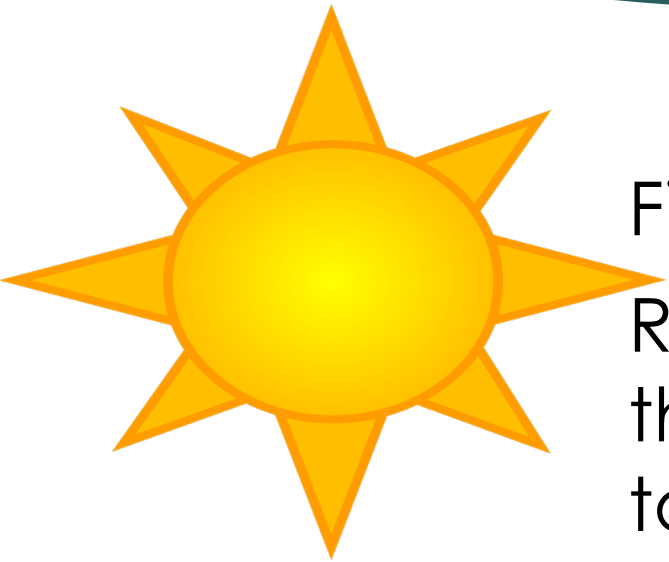
Open Meeting Law Training

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Nevada Open Meeting Law

What is it?

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First enacted in 1960, NRS Chapter 241

Requires public bodies to hold their meetings in the public with at least three business days' notice to the public and with opportunities for the public to participate

“Spirit of the Open Meeting Law”

What happens if the OML is violated?

Violation

- Letter
- Spirit

Penalty

- Action taken in violation is void. NRS 241.036.
- Criminal and civil penalties. NRS 241.040.
 - No criminal or administrative penalty if following legal advice of attorney employed or retained by the public body

Public body may take corrective action within 30 days after violation. NRS 241.0364

What triggers the OML?

- A “meeting” of a public body.
 - What is a “meeting”?
 - **Meeting** is defined as a **quorum** of members of a public body gathering to **deliberate** or take **action**. NRS 241.015.
 - ▶ Meeting =
 - ▶ Quorum + Deliberation
 - ▶ OR
 - ▶ Quorum + Action

Let's break it down – Quorum

- A **Quorum** is a simple majority of the total body. NRS 241.015(6).
 - ▶ How many for Nevada WICHE?
- A vacancy reduces quorum
- What is a “walking quorum”?
 - ▶ “Walking quorums,” or “constructive quorums,” can be created through conversations with other members or through electronic communication shared among a quorum of a public body.

Let's break it down – Deliberate

- ▶ “Deliberate” means collectively to examine, weigh and reflect upon the reasons for or against the action.
- ▶ The term includes, without limitation, the collective discussion or exchange of facts preliminary to the ultimate decision. NRS 241.015(3).

Let's break it down – Action

“Action” means:

- (a) A decision made by a majority of the voting members present, whether in person, by use of a remote technology system or by means of electronic communication, during a meeting of a public body
- (b) A commitment or promise made by a majority of the voting members present, whether in person, by use of a remote technology system or by means of electronic communication, during a meeting of a public body
- (c) If a public body may have a member who is not an elected official, an affirmative vote taken by a majority of the voting members present, whether in person, by use of a remote technology system or by means of electronic communication, during a meeting of the public body

NRS 241.015(1)(a)-(c).

What are the exceptions to what constitutes a “meeting”?

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NOT a meeting:

- ▶ Social functions
- ▶ Trainings on OML and ethics
- ▶ To receive information from attorney regarding potential or existing litigation involving matter over which the public body has supervision, control, jurisdiction or advisory power
- ▶ **If the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power**

What about group emails or social media?

Avoid these OML violations

- Walking quorum or constructive quorum
- Serial communications
- Polling
- Sharing/Relaying thoughts, questions, or opinions
- “Reply all”
- ▶ If any of the above reaches a quorum and there is deliberation or action, it is a “meeting.”



If it's a "meeting," it must be properly noticed. NRS 241.020

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- **When?**
 - ▶ By 9:00 a.m. the third business day before the meeting
- **Where?**
 - ▶ Posted at the public body website, www.notice.nv.gov, and office of the public body or location of meeting
- **What about?**
 - ▶ Agenda must be "clear and complete."

Agenda Requirements

NRS 241.020

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- Time, place and location of meeting
- List of locations posted
- Clear and complete statement of agenda items
- Action items clearly denoted as “for possible action”
- Public comment at beginning and end or before each action item
- Notification that items on the agenda may be taken out of order, may be combined for consideration, and may be removed from the agenda or delayed for discussion at any time
- Any restrictions on comments by the general public
- Public bodies shall make reasonable efforts to assist and accommodate persons with physical disabilities desiring to attend.

Additional Notice Requirements

Notice to Individuals for administrative action against or considerations of character (previously 241.033 and 241.034)

- Personal service: 7 calendar days
- Certified mail: 14 calendar days
- Can serve attorney
- Emergency exception

Separate notice to persons who have requested notice of meetings

Supporting Materials

- Agenda must contain name and contact information for the person from whom the public may request supporting materials and locations where the supporting materials are available.
- “Supporting material” means material that is provided to at least a quorum of the members of a public body by a member of or staff to the public body and that the members of the public body would reasonably rely on to deliberate or take action on a matter contained in a published agenda. The term includes, without limitation, written records, audio recordings, video recordings, photographs and digital data. NRS 241.015(8).
- One copy of the agenda, any supporting materials, and the recording of a public meeting must be provided at no cost to a member of the public requesting them and at least one copy made available at the meeting.
- Supporting materials must be made available to the public when they are provided to public body members.
- Supporting materials must be included on the agency website.

Record of the Meetings

- Meeting must be recorded or transcribed.
- Minutes must be kept in conformance with NRS 241.035 and include
 - Date, time and place of meeting;
 - Members in attendance;
 - Substance of all matters proposed, discussed or decided; and
 - Substance of remarks made by any member of public or their written remarks if submitted for inclusion.
 - Any other information which any member of the public body requests to be included or reflected in the minutes. NRS 241.035(1).

Public Comment

- Public has right to comment on issues under consideration by Nevada WICHE or topics within the scope of Nevada WICHE's authority.
- Public comment allows members of the public to present grievances or concerns to their government to receive redress or influence their government's decision-making process.
- First Amendment is applicable – Cannot restrict viewpoint of public UNLESS:
 - Willfully disruptive by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational or the comment amounts to personal attacks or interferes with rights of other speakers – BE CAUTIOUS HERE
- Wrongful exclusion of anyone is a misdemeanor. NRS 241.040.

Public Comment During Virtual Meetings

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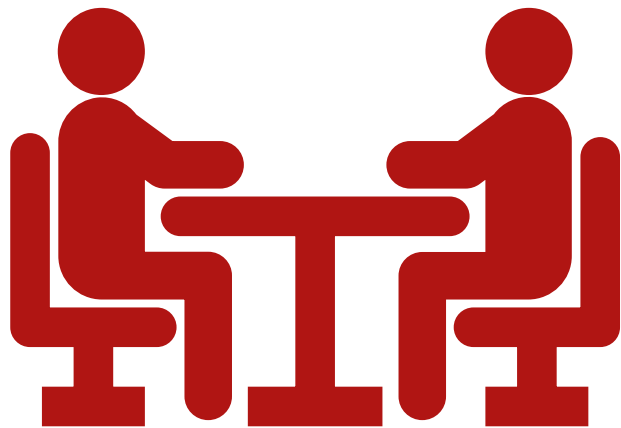
- Entirely virtual meetings must have clear and complete instructions on the agenda for how to call in for public comment
- If meeting is entirely remote, must read instructions for public comment prior to first public comment period
- Must offer at least telephonic public comment if meeting is being conducted via remote technology system



Conduct of the Meeting

NRS 241.020 and 241.0355

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- Meeting must be public and accessible to the public.
- Members of the public may record meetings if it doesn't interfere with the meeting.
- Discussions must remain on topic. Follow the agenda!
- Action is taken by a majority vote of the members present.
- Is abstaining from voting an option?

Hypothetical #1 – New Business

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- ▶ During the “New Business” portion of the agenda, a commissioner proposes that they would like to see an agenda item at the next meeting to discuss revising regulations related to the criteria for exemption or extension of period for participant to complete required practice.
- ▶ What do you think?

Hypothetical #1 – New Business, cont'd

- ▶ This is within the agenda item for “new business.”
- ▶ What if the commissioner states during new business what they think the regulation should say?
- ▶ What if another commissioner suggests that they agree that would be a good idea?

- ▶ **The takeaway:**

- ▶ When discussing new business, be careful not to deliberate because the agenda did not provide notice of the subject of deliberation.



Hypothetical #2 – Lunch

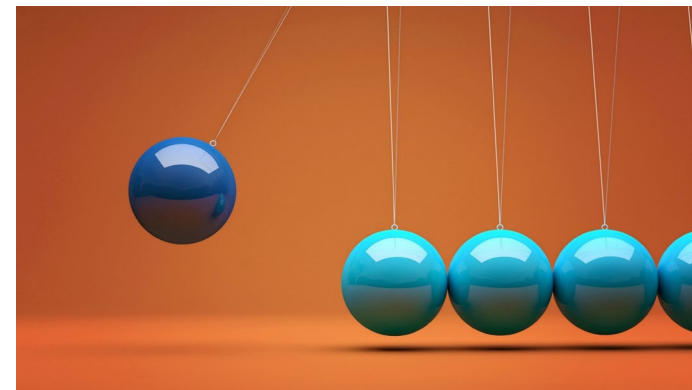
- ▶ Two commissioners go out to lunch during which they discuss the impact of the Big Beautiful Bill on professional students. However, they do not discuss how many slots to sponsor or the amount of money to include in stipends.
- ▶ What do you think?

Hypothetical #2 – Lunch, cont'd

- ▶ NRS 241.015(3): “Deliberate” means collectively to examine, weigh and reflect upon the reasons for or against the action. The term includes, without limitation, the collective discussion or exchange of facts preliminary to the ultimate decision.
- ▶ NRS 241.015(4)(b): “meeting” does not include any gathering or series of gatherings of members of a public body if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

- ▶ **The takeaway:**

- ▶ You can still be friends but be careful when discussing matters within Nevada WICHE’s jurisdiction.
- ▶ Safest route: ask Director Porter to put the matter on the agenda for the next meeting.



Questions?

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Nevada WICHE's webpage:
<https://nvwiche.nevada.edu/>

Attorney General's Open Government Website:
https://ag.nv.gov/About/Governmental_Affairs/OML/