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MEMORANDUM

To: Nevada State Agency Public Bodies

From: Rosalie Bordelove, Chief Deputy Attorney General, Boards and Open Government Division

Date: June 20, 2023

Subject: Legislative Updates to the OML from the 2023 Session

The 82nd Session of the Nevada Legislature adjourned on June 6, 2023. This session included two bills making changes to Nevada's Open Meeting Law ("OML"), Assembly Bills 52 and 219.¹ Both bills will go into effect on July 1, 2023. The Office of the Attorney General ("OAG") offers the following summary and guidance regarding changes to the OML.

The general guidance provided below is intended to assist public body members and staff in complying with the law. However, this general guidance does not alter or supersede existing law, regulation or precedent and is not an official attorney general opinion. It is not a substitute for legal advice from the public body's own legal counsel. Public body members and staff should consult with their legal counsel if they have any questions or concerns regarding the applicability of or compliance with the OML.

"Quorum" Definition: For bodies not comprised entirely of elected officials, AB52 changes the general definition of a quorum to exclude vacancies. For example, if a 9-member body has two vacancies, it's treated as a 7-member body for the quorum calculation and a meeting can be held with only 4 members present. The quorum definition was further changed to specify that only *voting* members of a public body count when making a quorum calculation. Note that quorum statutes specific to a particular public body would still control over this general statute.

"Meeting" Definition: AB52 cleans up the language in the definition of a meeting to clarify that a meeting must include a gathering of a quorum of members of the body together with deliberation and/or action. The only exception

¹ Bill text can be found at <https://www.leg.state.nv.us/App/NELIS/REL/82nd2023/Bill/9581/Text> and <https://www.leg.state.nv.us/App/NELIS/REL/82nd2023/Bill/9948/Text>, respectively.

provided in the OML is for attorney client conferences. This comports with the OAG's existing interpretation of the definition.

“Administrative Action Against a Person” Definition: AB52 adds a definition of the term for purposes of determining who is required to receive notice under NRS 241.034 (note that this provision will be moved after AB52 is codified). The new definition is “an action that is uniquely personal to the person and includes, without limitation, the potential for a negative change in circumstances to the person. The term does not include the denial of an application where the denial does not change the present circumstance or situation of the person.” This definition comports with the OAG's prior interpretation of the term.

Notice to Individuals: Existing law required notice to be sent to individuals if a body may discuss their character or take administrative action against them. AB52 shortens the notice period required and adds additional service options.

- If the notice is delivered by personal service, the notice is now 7 calendar days instead of 5 working days.
- If the notice is delivered by certified mail, the notice is now 14 calendar days instead of 21 working days.
- Service may now be completed on the individual's attorney if the individual is represented in the matter.
- If the individual is a direct employee of the body, personal service can be delivered to the person at a time in which they are required to report to work.
- Written notice to an individual is no longer required if a public body may take administrative action against them in an emergency.

Public Comment During Multi-Day Meetings: AB219 adds a requirement that if a public body has a meeting agendized to continue to one or more calendar days and utilizes the public comment option of having a period at the beginning of the meeting and one at the end, at least two public comment periods must be held on *each day* of the meeting.

Public Comment During Virtual Meetings: AB219 adds a requirement for entirely virtual meetings that clear and complete instructions for how to call in to provide public comment must be included on the agenda. In addition, if a meeting is conducted via virtual means and public comment is accepted via the remote technology system, AB219 requires that clear and complete instructions for a member of the public to call in to make public comment must be read verbally prior to the first public comment period of the meeting. Note that AB219's provision requires a body to offer a telephonic public comment option if *any* member will make use of a remote technology system to attend the meeting.

Agenda Posting: AB253 of the 2021 legislative session reduced posting location requirements to the principal office of the public body, its website and notice.nv.gov. AB219 adds the building in which the meeting is to be held, if there is a physical location, as an alternative posting location.

Meetings to Consider Regulations or Contested Cases: AB219 creates an exception to virtual meeting provisions in the OML and requires a physical

location for public to attend and participate for meetings to consider a contested case or a regulation, as defined in NRS Chapter 233B.

Ethical Standard for Elected Bodies: Existing law required bodies comprised entirely of elected officials to have a majority of their total membership vote in favor of a motion in order for it to pass and allowed certain of those bodies to take advantage of NRS 281A.420(5)'s quorum reduction provision in cases of ethical abstentions. AB52 changes the OML so that all elected bodies may take advantage of NRS 281A.420(5).

University, Library and Educational Foundations: AB52 clarifies that library and educational foundations, including parent-teacher associations, are not public bodies unless they otherwise meet the definition of a public body contained in NRS 241.015(4). AB52 further specifically includes university foundations in the definition of public body.