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MEMORANDUM

To: Nevada State Agency Public Bodies

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

Date: January 27, 2023

Subject: Legislative Session Guidance

The 82nd Session of the Nevada Legislature will begin on February 6, 2023. The Office of the Attorney General (OAG) offers the following guidance to Nevada State Agency Public Bodies (Boards and Commissions) regarding their activities during the Legislative Session.

Boards and Commissions are subject to Nevada's Open Meeting laws, Nevada's Ethics in Government laws, and Nevada's laws regarding lobbying, NRS Chapters 241, 281A and 218H, respectively. The general guidance provided below is intended to assist Board and Commission members and staff in the performance of their duties during legislative session. 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 Board or Commission's own legal counsel. Board and Commission members should consult with their legal counsel if they have any questions or concerns regarding their activities.

Board and Commission members may not appear **on behalf of** their Board or Commission in front of the Legislature unless specifically authorized to do so during a public meeting. NRS 241.015(1). Action is required to delegate any authority to a single member of the Board or Commission and that action must comply with the Open Meeting Law (OML) to be effective. It is advised that Boards and Commissions provide as much direction in their delegation as possible so that they do not have to take action prior to every appearance by the member. Alternatively, Executive Directors, agency heads or their designees may appear before the legislature without authorization to explain the effect of legislation or any other legislative action related to their departments, divisions or agencies.

The Nevada Legislature is exempt from the OML, including its required three working day notice for meetings. NRS 241.016(2)(a). The pace of the legislative session is variable and proposed amendments to legislation may occur at a pace that does not allow a public body to consider and opine on each and every proposed amendment or bill

draft request. Hearing scheduling or requests from the Legislature generally do not qualify as an emergency under NRS 241.020(11) allowing for a public meeting on shorter notice. Thus, Boards and Commissions should consider delegating authority to a member or staff member to speak on the Board or Commission's behalf in advance if they anticipate relevant Legislative hearings may be scheduled. The OAG recommends considering potential issues and positions when making such a delegation as opposed to single pieces of legislation. Boards and Commissions may also consider what sort of legislative updates they desire from their staff or delegated members and schedule meetings appropriately.

Boards and Commissions should also take care in the level detail that is included in an agenda where action on specific legislation is to be considered. “[T]o the extent that a public body plans to affirmatively take a position on specific legislation, the public body should list the bill or topic of legislation on its agenda so that the public is aware that possible action may take place. The OAG notes that reference to a specific piece of legislation may not be necessary where the agenda provides sufficient notice regarding the legislative topic or issue that the public body intends to take a position on.”¹

In addition, members and employees of Boards and Commissions may only explain the effect of legislation or any other legislative action related to their departments, divisions or agencies and otherwise provide information to the legislature. Advocating for or against any particular legislation would be considered lobbying and registration as a lobbyist may be required. NRS 218H.080(2).

Board or Commission members may always appear in front of the Legislature **on their own behalf** and may identify their relationship to a Board or Commission but must specify that they are **not speaking for** the Board or Commission. Board and Commission members must comply with their ethical responsibilities as public officers under NRS Chapter 281A regardless of who they are representing in front of the legislature.

¹ *In re Lyon County Board of County Commissioners*, OMLO 13897-420 at 5 (Jan. 16, 2023). A copy of this opinion can be viewed on the Attorney General's Website at https://ag.nv.gov/About/Governmental_Affairs/OML_Opinions/.