

BOARD OF REGENTS  
BRIEFING PAPER

**1. Agenda Item Title: *Handbook* Revision, Open Meeting Law Policy**

**Meeting Date: September 10-11, 2015**

**2. BACKGROUND & POLICY CONTEXT OF ISSUE:**

- *Handbook* Title 4, Chapter 1, Section 29 contains the Board policy regarding compliance with the Open Meeting Law and Public Records Policy. Several minor corrections for citations to the *Nevada Revised Statutes* (NRS) need to be made to conform the references to current numbers in the NRS. These are non-substantive changes due to amendments made by the Legislature which have resulted in the renumbering of these NRS statutes.
- Additionally, there are several proposed revisions to Section 29, Open Meeting Law and Public Records Policy, to conform the language to the Open Meeting Law and the Public Records Law as last amended by Senate Bill 70 (Chapter 226, *Statutes of Nevada 2015*). NRS 241.035 now provides in relevant part:

1. \*\*\*

**Unless good cause is shown, a public body shall approve the minutes of a meeting within 45 days after the meeting or at the next meeting of the public body, whichever occurs later.**

2. Minutes of public meetings are public records. Minutes **or an audio recording** of a meeting made in accordance with subsection 4 must be made available for inspection by the public within 30 working days after adjournment of the meeting. A copy of the minutes or audio recording must be made available to a member of the public upon request at no charge. (emphasis added).

- Lastly, there is a proposed revision to Section 29(d)(4) regarding closed sessions. Closed sessions of public meetings may only be held in compliance with NRS 241.030 and 241.033(4), (5) & (6). NRS 241.033 (4) & (5) provide as follows:

4. If a public body holds a closed meeting or closes a portion of a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person, the public body must allow that person to:

- (a) Attend the closed meeting or that portion of the closed meeting during which the character, alleged misconduct, professional competence, or physical or mental health of the person is considered;
- (b) Have an attorney or other representative of the person's choosing present with the person during the closed meeting; and
- (c) Present written evidence, provide testimony and present witnesses relating to the character, alleged misconduct, professional competence, or physical or mental health of the person to the public body during the closed meeting.

5. Except as otherwise provided in subsection 4, with regard to the attendance of persons other than members of the public body and the person whose character, alleged misconduct, professional competence, physical or mental health or appeal of the results of an examination is considered, the chair of the public body may at any time before or during a closed meeting:

- (a) Determine which additional persons, if any, are allowed to attend the closed meeting or portion thereof; or
- (b) Allow the members of the public body to determine, **by majority vote**, which additional persons, if any, are allowed to attend the closed meeting or portion thereof

(emphasis added).

Section 29(d)(4) as currently written does not provide for a vote to allow additional persons to attend a closed meeting. The proposed revision would conform Section 29(d)(4) to the Open Meeting Law by making provision for a vote in this limited circumstance.

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**3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:**

- Revise *Handbook* to update citations to NRS
- Revise *Handbook* to conform to the Open Meeting Law in regard to availability of minutes or audio recordings of meetings
- Revise *Handbook* to conform to Open Meeting Law in regard to voting during a closed session

**4. IMPETUS (WHY NOW?):**

The *Handbook* should always reflect the most current applicable NRS provisions

**5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:**

- The Board is committed to compliance with the Open Meeting Law

**6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:**

None

**7. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:**

Do not update the *Handbook* to reflect changes in the NRS

**8. COMPLIANCE WITH BOARD POLICY:**

- Consistent With Current Board Policy: Title #\_\_ Chapter #\_\_\_\_ Section #\_\_
- Amends Current Board Policy: Title #\_\_4\_\_ Chapter #\_\_1\_\_ Section #\_\_29\_\_
- Amends Current Procedures & Guidelines Manual: Chapter #\_\_\_\_ Section #\_\_\_\_
- Other:\_\_\_\_\_
- Fiscal Impact: Yes\_\_\_\_ No\_\_X\_\_  
Explain:\_\_\_\_\_

**POLICY PROPOSAL - HANDBOOK**  
**TITLE 4, CHAPTER 1, SECTION 29**  
Open Meeting Law and Public Records Policy

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

**Section 29. Open Meeting Law and Public Records Policy**

1. General Statement of Policy.

The Board of Regents, as the constitutional public body created to govern the state system of universities, community colleges, state colleges, research and public service units, is committed to the open and public conduct of business in accordance with the provisions of the Nevada Open Meeting Law, NRS 241.010 to NRS 241.040. This commitment, includes, but is not limited to the timely publishing of clear and complete agendas for Board meetings, disclosure of all support materials relating to the Board meetings and seeking public comment on all matters to be considered by the Board. The Board of Regents is committed to working closely with the office of the attorney general to help ensure compliance with the Open Meeting Law.

The Board and all its member institutions are also committed to allowing open inspection and disclosure of their public records in accordance with the provisions of the Nevada Public Records Law, [~~NRS 239.005 to NRS 239.030.~~] *Chapter 239 of the Nevada Revised Statutes.*

2. Open Meeting Law Guidelines.

a. Office of the Attorney General.

The vice chancellor [øf] *for* legal affairs is directed to consult regularly with the office of the attorney general regarding interpretation and application of the Nevada Open Meeting Law.

b. Agendas.

1. Agendas for all meetings of the Board of Regents, its subcommittees and ad hoc committees will comply with the requirements of NRS 241.020.
2. The agendas must include a clear and complete statement of the topics scheduled to be considered.

c. Agenda Supporting Materials and Minutes.

1. Agenda supporting materials at the time they are made available to the Regents or to the members of subcommittees or ad hoc committees shall be provided to or made available to the public in accordance with the provisions of NRS 241.020(5).

2. Minutes of Board and committee meetings **or an audio recording** will be made available for inspection by the public within 30 working days after adjournment of the meeting and the minutes and any [audiotapes] **audio recording** of the meeting will be maintained in accordance with NRS 241.035.

3. All requests for supporting materials will be referred to the secretary of the board for immediate response.

**4. Unless good cause is shown, minutes of a meeting subject to the Open Meeting Law shall be approved within 45 days after the meeting or at the next meeting of the Board or committee, whichever occurs later.**

d. Closed Sessions.

1. Closed sessions will only be held for those matters for which a meeting may be closed in accordance with NRS 241.030(1).

2. The published agenda and the motion to close any portion of a public meeting will specify the nature of the business to be considered, in accordance with NRS [~~241.030(2)~~] **241.030(3)**.

3. The published agenda and the motion to close the meeting will identify by name the person or persons who will be the subject of the closed session.

4. In a closed session, all relevant aspects of the matter may be considered by the Board, but no votes or action can be taken in closed session **except as otherwise provided in NRS 241.033(5)(b) which authorizes the Chair to allow Board members to determine, by majority vote, which additional persons, if any, other than the person who is the subject of the closed meeting, are allowed to attend the closed session or a portion thereof**. Consideration of any matter in closed session will be limited to receiving information regarding the matter and seeking clarification with regard to the information received. The members of the Board of Regents, in closed session, will not deliberate, discuss or express any opinions on the substance of the matter under consideration. All deliberations, discussion and expression of opinions on the matter will take place in open session.

5. The person or persons who are the subject of the closed session will be given notice of the meeting in accordance with NRS 241.033 and, if applicable, notice of intent to take administrative action in accordance with NRS 241.034.

6. The person or persons, who are the subject of a closed session, will be given the opportunity to address the Board of Regents, any subcommittee or ad hoc committee during the closed session.

7. In accordance with, NRS 241.031, the Board of Regents, its subcommittees and ad hoc committees will not hold closed sessions regarding the character, alleged misconduct, professional competence or physical or mental health of any employees who are elected members of a public body, including the Nevada Legislature.

8. The attorney general will be notified of any planned closed session and asked to send a representative to the closed session.

e. Consultation with Counsel.

The Board of Regents may consult privately with counsel with regard to existing or potential litigation. In accordance with NRS [~~241.015(2)(b)(2)~~] **241.015(3)(b)(2)**, such consultation does not constitute a “meeting” subject to the agenda and other requirements of the Open Meeting Law.

3. Public Record Law Policy.

a. Each institution and the system units must designate a public records officer to receive and respond to all requests for inspection or copying of public records.

b. It is the policy of the Board of Regents that inspection and copying of public records must be promptly accommodated, unless prohibited by a specific provision of law.

c. Minutes of open meetings ***or an audio recording*** will be made available for inspection 30-working days after the adjournment of the meeting in accordance with NRS 241.035(2) ***and a copy of the minutes or audio recording will be made available to a member of the public upon request free of charge.***

d. All minutes of open meetings shall be retained in accordance with NRS 241.035(2).

e. The denial of any request for inspection or copying of public records must be approved by the vice chancellor of legal affairs.

(B/R 2/05)