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DEPARTMENT OF BUSINESS AND INDUSTRY GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

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EMRB
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November 14, 2019

NOTICE OF INTENT TO ACT UPON A REGULATION R056-19

Notice of Hearing for the Amendment of Regulations of the

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

The Government Employee-Management Relations Board will hold a public hearing at 8:30 a.m. on December 17, 2019, at the Nevada State Business Center, 3300 West Sahara Avenue, Fourth Floor, Tahoe Room, Las Vegas, Nevada 89102. The meeting will be video-conferenced to the Department of Business and Industry Director's Office Conference Room, 1830 E. College Parkway, Suite 100, Carson City, Nevada 89706.

The purpose of the hearing is to receive comments from all interested persons regarding the adoption and amendment of regulation R056-19 as that pertains to chapter 288 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation or amendment. Much of the proposed regulation is a result of the passage of Senate Bill 135 in the recently concluded session of the legislature. Senate Bill 135 was the bill authorizing collective bargaining for state employees. The proposed regulation adds to and amends the agency's regulations, and in doing so, creates as much as possible one seamless system for the processing of cases before the agency, no matter the origin of a given case. The proposed regulation also changes deadlines for the submission of certain documents to make due dates coincide with due dates of similar documents filed in court, which were recently changed in a major overhaul of the Nevada Rules of Civil Procedure. Other changes reflect experience of the Board using panels to hear cases as well as the increased use of technology, both before and during the holding of hearings before the Board.

2. A description of the subjects and issues involved: The primary impetus for amending the agency's regulations was the passage of Senate Bill 135, which authorizes collective bargaining for certain classified employees in the Executive Department. To this end, the regulations integrate the handling of cases into one

unified system, no matter whether the source of a given case is the state or a local government. Accordingly, many sections of the current administrative rules have minor language changes to accommodate the existing rule also being applied to cases involving the state. Additionally, Senate Bill 135 has two features unique to the state, and which do not apply to local governments; namely the optional use of preliminary investigations and hearing officers. Sections 5 and 6 provide for these unique rules.

Besides the primary impetus mentioned above, the regulation also changes procedural deadlines for certain documents filed with the Board. This past March the Nevada Supreme Court made major changes to the Nevada Rules of Civil Procedure. Among these changes were the deadlines for the submission of certain documents, such as answers, motions, oppositions to motions, replies, etc. This regulation changes the procedural deadlines to make them coincide with deadlines of similar documents filed with a court, which is helpful since most of the attorneys practicing before the Board also practice in court. These changes are found in 13 different sections of the regulation.

A change to the EMRB's statute in 2017 increased the size of the Board from three to five members and allows certain types of cases to be heard by a panel of three Board members, thus increasing the capacity of the Board to hear cases and thereby reduce the time in which to hear a given case. This regulation provides for a few minor changes to the use of panels gained through the experience of using them these past two years and particularly provides for rules for substitutions on a panel whenever a panel member may be absent or when there is a vacancy on the Board.

Section 21 adds an element to items required to be included in any prehearing statement by requiring a statement as to whether there are any pending or anticipated administrative, judicial or other proceedings related to the case filed with the EMRB. This requirement will avoid any misunderstanding as to whether the EMRB case should be stayed under the limited deferral doctrine while other proceedings are active, thus eliminating the cancellation of a scheduled hearing for which attorneys may have already prepared.

Other sections allow for the increased use of technology through such means as the video-conferencing of hearings; the furnishing of documentary exhibits electronically instead of through the creation of exhibit books; and by providing that pleadings and motions filed electronically do not need to comply with certain requirements prescribed for written documents filed with the Board.

Any person may obtain a copy of the proposed amendments by submitting a request in writing to the Government Employee-Management Relations Board, 3300 W. Sahara Ave., Suite 260, Las Vegas, NV 89102 or via e-mail to emrb@business.nv.gov.

3. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:

(a) **Both adverse and beneficial effects:** The agency has concluded that the proposed regulations will neither impose a direct and significant economic burden upon small businesses nor directly restrict the formation, operation or expansion of small businesses. Neither would they adversely affect those regulated or the public. On the contrary, the proposed regulations have several features that may minimize the impact of those interacting with the agency.

Most notably, the proposed regulations integrate the handling of cases into one system, no matter whether a given case is related to the state government or local governments. This is important to attorneys practicing before the Board as a number of attorneys may represent both clients at the state and local levels.

As to particular sections of the proposed regulation, Sections 5 and 6 provide rules for implementing two optional processes involving prohibited practice complaints at the State level. Section 5 allows for a preliminary investigation to be conducted, which could save law firms costs associated with conducting a separate investigation. Section 6 allows for the use of hearing officers, which might expedite the hearing of claims in certain situations.

Sections 11, 12, 14, 19, 21, 23, 24, 29, 30, 33, 34, 36 and 37 change procedural deadlines for the certain documents filed with the Board to make them coincide with deadlines of similar documents filed with a court under the Nevada Rules of Civil Procedure. This will help law firms in that the deadlines for the EMRB will be the same as attorneys routinely encounter in court.

Section 21 adds an element to items required to be included in any prehearing statement by requiring a statement as to whether there are any pending or anticipated administrative, judicial or other proceedings related to the case filed with the EMRB. Although this is an added requirement, it will avoid any misunderstanding as to whether the EMRB case should be stayed under the limited deferral doctrine while other proceedings are active, thus eliminating the cancellation of a scheduled hearing for which attorneys may have already prepared.

Other sections allow for the increased use of technology. For example, Section 27 provides for rules for the use of video-conferencing for hearings while Section 31 allows for the furnishing of documentary exhibits electronically instead of through the creation of exhibit books. Likewise, Section 18 provides that pleadings and motions filed electronically do not need to comply with certain requirements prescribed for written documents filed with the Board.

Neither will there be any adverse effects on the public. This is for the same reasons as stated above.

(b) Both immediate and long-term effects. There are no immediate or long-term adverse economic effects. The agency determined that there was no adverse economic impact on small businesses by determining that the agency does not directly regulate small businesses and by ascertaining that the substance of the regulations does not impose an adverse economic burden on any entity. In addition, the agency sought public input prior to conducting a workshop on the proposed regulations and the input it received was generally positive with respect to the proposed regulation.

4. The estimated cost to the agency for enforcement of the proposed regulation. There is no additional cost to the agency for enforcement of this regulation.

5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency. There are no other state or local governmental agency regulations that the proposed regulation duplicates.

6. If the regulation is required pursuant to federal law, a citation and description of the federal law. The regulation is not required pursuant to federal law.

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions. There are no federal regulations that apply.

8. Whether the proposed regulation establishes a new fee or increases an existing fee. This regulation does not provide a new fee or increase an existing fee.

Persons wishing to comment upon the proposed action of the Government Employee-Management Relations Board may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Government Employee-Management Relations Board, 3300 W. Sahara Avenue, Suite 260, Las Vegas, Nevada 89102. Written submissions must be received by the Government Employee-Management Relations Board on or before December 16, 2019. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Government Employee-Management Relations Board may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be on file at the State Library, 100 Stewart Street, Carson City, Nevada 89701, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available at the Government Employee-Management Relations Board, 3300 W. Sahara Avenue, Suite 260, Las Vegas, Nevada 89102, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation may be found on the EMRB website at www.emrb.nv.gov and will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following libraries and other locations:

Carson City Library

900 North Roop Street
Carson City, NV 89701

Las Vegas-Clark County Library District

7060 W. Windmill Lane
Las Vegas, NV 89113

Elko County Library

720 Court Street
Elko, NV 89801

Eureka County Library

10190 Monroe Street (P.O. Box 293)
Eureka, NV 89316

Battle Mountain Branch Library

625 South Broad Street
Battle Mountain, NV 89820

Lyon County Library System

20 Nevin Way
Yerington, NV 89447

Churchill County Library

553 South Maine Street
Fallon, NV 89406

Douglas County Public Library

1625 Library Lane,
Minden, NV 89423

Esmeralda County Library

PO Box 430
Goldfield, NV 89013

Humboldt County Library

85 East 5th Street
Winnemucca, NV 89445

Lincoln County Library

63 Main Street
Pioche, NV 89043

Mineral County Public Library

P.O. Box 1390
Hawthorne, NV 89415

Pershing County Library

1125 Central Avenue (P.O. Box 781)
Lovelock, NV 89419

Storey County Treasurer & Clerk's Office

Drawer D
Virginia City, NV 89440
(in lieu of Storey County Public Library which has closed)

Tonopah Public Library (Nye County)

167 South Central Street (P.O. Box 449)
Tonopah, NV 89049

Washoe County Library System

301 South Center Street
Reno, NV 89501-2102

White Pine County Library

950 Campton Street
Ely, NV 89301

Nevada State Library & Archives

100 North Stewart Street
Carson City, NV 89701-4285

Grant Sawyer State Building

555 E. Washington Ave.
Las Vegas, NV 89101
Attn: Capitol Police

Employee-Management Relations Board

3300 W. Sahara Ave., Suite 260
Las Vegas, NV 89102

Department of Business & Industry

3300 W. Sahara Ave., Fourth Floor
Las Vegas, NV 89102

Department of Business & Industry

1830 College Parkway, Suite 100
Carson City, NV 89706

Nevada State Library

201 S. Carson Street #100
Carson City, NV 89701

Department of Administration

Public Meeting Notice Web Site:
<http://notice.nv.gov>

EMRB Web Site:

www.emrb.nv.gov