

Assembly Bill No. 12—Committee on Government Affairs

CHAPTER.....

AN ACT relating to administrative procedure; revising the definition of “regulation” for purposes of the Nevada Administrative Procedure Act; exempting certain agencies from the provisions of the Act in certain circumstances; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 233B of NRS is hereby amended by adding thereto a new section to read as follows:

An agency that takes an emergency action as described in paragraph (l) of subsection 2 of NRS 233B.038 shall file with the legislative counsel within 5 working days after taking the action a statement that describes the action taken and the reason for the action. If the agency is prohibited by federal law, regulation, interpretation or instruction from describing the action taken or the reason for the action, the statement must cite the federal law, regulation, interpretation or instruction that prohibits such disclosure. The legislative counsel shall include a statement filed pursuant to this section in the register of administrative regulations published pursuant to NRS 233B.0653.

Sec. 2. NRS 233B.038 is hereby amended to read as follows:

233B.038 **1.** “Regulation” means ~~an~~ :

(a) An agency rule, standard, directive or statement of general applicability which effectuates or interprets law or policy, or describes the organization, procedure or practice requirements of any agency ~~[-The term includes a]~~ ;

(b) A proposed regulation ~~and the~~ ;

(c) The amendment or repeal of a prior regulation ~~[-but]~~ ; and

(d) *The general application by an agency of a written policy, interpretation, process or procedure to determine whether a person is in compliance with a federal or state statute or regulation in order to assess a fine, monetary penalty or monetary interest.*

2. *The term* does not include:

~~1.]~~ (a) A statement concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

~~2.]~~ (b) A declaratory ruling;

~~3.]~~ (c) An intraagency memorandum;

~~4.]~~ (d) *A manual of internal policies and procedures or audit procedures of an agency which is used solely to train or provide guidance to employees of the agency and which is not used as authority in a contested case to determine whether a person is in compliance with a federal or state statute or regulation;*

(e) An agency decision or finding in a contested case; ~~to~~

- ~~—5.1~~ (f) *An advisory opinion issued by an agency that is not of general applicability;*
- (g) *A published opinion of the attorney general;*
- (h) *An interpretation of an agency that has statutory authority to issue interpretations;*
- (i) *Letters of approval, concurrence or disapproval issued in relation to a permit for a specific project or activity;*
- (j) *A contract or agreement into which an agency has entered;*
- (k) *The provisions of a federal law, regulation or guideline;*
- (l) *An emergency action taken by an agency that is necessary to protect public health and safety;*
- (m) *The application by an agency of a policy, interpretation, process or procedure to a person who has sufficient prior actual notice of the policy, interpretation, process or procedure to determine whether the person is in compliance with a federal or state statute or regulation in order to assess a fine, monetary penalty or monetary interest;*
- (n) *A regulation concerning the use of public roads or facilities which is indicated to the public by means of signs ~~{and signals.}~~, signals and other traffic-control devices that conform with the manual and specifications for a uniform system of official traffic-control devices adopted pursuant to NRS 484.781; or*
- (o) *The classification of wildlife or the designation of seasons for hunting, fishing or trapping by regulation of the board of wildlife commissioners pursuant to the provisions of Title 45 of NRS.*

Sec. 3. NRS 233B.039 is hereby amended to read as follows:

233B.039 1. The following agencies are entirely exempted from the requirements of this chapter:

- (a) The governor.
- (b) The department of prisons.
- (c) The University and Community College System of Nevada.
- (d) The office of the military.
- (e) The state gaming control board.
- (f) The Nevada gaming commission.
- (g) The welfare division of the department of human resources.
- (h) The state board of examiners acting pursuant to chapter 217 of NRS.
- (i) Except as otherwise provided in NRS 533.365, the office of the state engineer.

(j) The division of industrial relations of the department of business and industry acting to enforce the provisions of NRS 618.375.

(k) The board to review claims in adopting resolutions to carry out its duties pursuant to NRS 590.830.

2. Except as otherwise provided in NRS 391.323, the department of education, the committee on benefits and the commission on professional standards in education are subject to the provisions of this chapter for the purpose of adopting regulations but not with respect to any contested case.

3. The special provisions of

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- (a) Chapter 612 of NRS for the distribution of regulations by and the judicial review of decisions of the employment security division of the department of employment, training and rehabilitation;
 - (b) Chapters 616A to 617, inclusive, of NRS for the determination of contested claims;
 - (c) Chapter 703 of NRS for the judicial review of decisions of the public utilities commission of Nevada;
 - (d) Chapter 91 of NRS for the judicial review of decisions of the administrator of the securities division of the office of the secretary of state;
- and

(e) NRS 90.800 for the use of summary orders in contested cases, prevail over the general provisions of this chapter.

4. The provisions of NRS 233B.122, 233B.124, 233B.125 and 233B.126 do not apply to the department of human resources in the adjudication of contested cases involving the issuance of letters of approval for health facilities and agencies.

5. The provisions of this chapter do not apply to:

(a) Any order for immediate action, including, but not limited to, quarantine and the treatment or cleansing of infected or infested animals, objects or premises, made under the authority of the state board of agriculture, the state board of health, the state board of sheep commissioners or any other agency of this state in the discharge of a responsibility for the preservation of human or animal health or for insect or pest control; or

(b) An extraordinary regulation of the state board of pharmacy adopted pursuant to NRS 453.2184.

6. The state board of parole commissioners is subject to the provisions of this chapter for the purpose of adopting regulations but not with respect to any contested case.

Sec. 4. NRS 590.830 is hereby amended to read as follows:

590.830 1. The fund for cleaning up discharges of petroleum is hereby created as a special revenue fund in the state treasury. The division shall administer the fund for the purposes prescribed in NRS 590.700 to 590.920, inclusive, and the board shall adopt appropriate regulations for the investigation and payment of claims against the fund. The board shall review each claim presented and authorize payment to the extent warranted by the facts of the case.

2. The expenses incurred by the division in performing its duties pursuant to NRS 590.700 to 590.920, inclusive, are a charge against the fund. The interest earned on money in the fund must be credited to the fund.

3. *The board shall transmit a copy of any resolution that the board has adopted in carrying out its duties pursuant to this section to the legislative counsel within 5 working days after the adoption of the resolution for inclusion in the register of administrative regulations published pursuant to NRS 233B.0653.*

Sec. 5. Chapter 618 of NRS is hereby amended by adding thereto a new section to read as follows:

The division shall submit a written report quarterly to the advisory council of the division which lists each citation issued by the division for a violation of NRS 618.375 during that quarter and the circumstances for which the citation was issued. Within 5 working days after submission of such a report to the advisory council, the division shall transmit the report to the legislative counsel for inclusion in the register of administrative regulations published pursuant to NRS 233B.0653.

Sec. 6. This act becomes effective on July 1, 1999, for the purpose of adopting regulations to comply with the amendatory provisions of section 2 of this act and on January 1, 2000, for all other purposes.

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