

ASSEMBLY BILL NO. 12—COMMITTEE ON GOVERNMENT AFFAIRS

PREFILED JANUARY 7, 1999

Referred to Committee on Government Affairs

SUMMARY—Makes various changes concerning administrative procedure of state and local government. (BDR 18-10)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

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:

- 1 **Section 1.** Chapter 233 of NRS is hereby amended by adding thereto
- 2 a new section to read as follows:
- 3 *An agency that takes an emergency action as described in paragraph*
- 4 *(l) of subsection 2 of NRS 233B.038 shall file with the legislative counsel*
- 5 *within 5 working days after taking the action a statement that describes*
- 6 *the action taken and the reason for the action. If the agency is prohibited*
- 7 *by federal law, regulation, interpretation or instruction from describing*
- 8 *the action taken or the reason for the action, the statement must cite the*
- 9 *federal law, regulation, interpretation or instruction that prohibits such*
- 10 *disclosure. The legislative counsel shall include a statement filed*
- 11 *pursuant to this section in the register of administrative regulations*
- 12 *published pursuant to NRS 233B.0653.*
- 13 **Sec. 2.** NRS 233B.038 is hereby amended to read as follows:
- 14 233B.038 1. “Regulation” means ~~[an]~~ :
- 15 (a) An agency rule, standard, directive or statement of general
- 16 applicability which effectuates or interprets law or policy, or describes the
- 17 organization, procedure or practice requirements of any agency ~~[. The term~~
- 18 ~~includes a]~~ ;

- 1 (b) A proposed regulation ~~and the~~ ;
2 (c) ~~The~~ amendment or repeal of a prior regulation ~~, but~~ ; and
3 (d) *The general application by an agency of a policy, interpretation,*
4 *process or procedure to determine whether a person is in compliance*
5 *with a federal or state statute or regulation in order to assess a fine,*
6 *monetary penalty or monetary interest.*
7 2. The term does not include:
8 ~~1.1~~ (a) A statement concerning only the internal management of an
9 agency and not affecting private rights or procedures available to the
10 public;
11 ~~1.2~~ (b) A declaratory ruling;
12 ~~1.3~~ (c) An intraagency memorandum;
13 ~~1.4~~ (d) *A manual of internal policies and procedures or audit*
14 *procedures of an agency which is used solely to train or provide guidance*
15 *to employees of the agency and which is not used as authority in a*
16 *contested case to determine whether a person is in compliance with a*
17 *federal or state statute or regulation;*
18 (e) An agency decision or finding in a contested case; ~~for~~
19 ~~5.1~~ (f) *An advisory opinion issued by an agency that is not of general*
20 *applicability;*
21 (g) *A published opinion of the attorney general;*
22 (h) *An interpretation of an agency that has statutory authority to issue*
23 *interpretations;*
24 (i) *Letters of approval, concurrence or disapproval issued in relation to*
25 *a permit for a specific project or activity;*
26 (j) *A contract or agreement into which an agency has entered;*
27 (k) *The provisions of a federal law, regulation or guideline;*
28 (l) *An emergency action taken by an agency that is necessary to*
29 *protect public health and safety;*
30 (m) *The general application by an agency of a policy, interpretation,*
31 *process or procedure to a person who has sufficient prior actual notice of*
32 *the policy, interpretation, process or procedure to determine whether the*
33 *person is in compliance with a federal or state statute or regulation in*
34 *order to assess a fine, monetary penalty or monetary interest; or*
35 (n) A regulation concerning the use of public roads or facilities which
36 is indicated to the public by means of signs ~~and signals.~~ , *signals and*
37 *other traffic-control devices that conform with the manual and*
38 *specifications for a uniform system of official traffic-control devices*
39 *adopted pursuant to NRS 484.781.*
40 Sec. 3. NRS 233B.039 is hereby amended to read as follows:
41 233B.039 1. The following agencies are entirely exempted from
42 the requirements of this chapter:
43 (a) The governor.

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

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

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

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

18 3. The special provisions of:

19 (a) Chapter 612 of NRS for the distribution of regulations by and the
20 judicial review of decisions of the employment security division of the
21 department of employment, training and rehabilitation;

22 (b) Chapters 616A to 617, inclusive, of NRS for the determination of
23 contested claims;

24 (c) Chapter 703 of NRS for the judicial review of decisions of the
25 public utilities commission of Nevada;

26 (d) Chapter 91 of NRS for the judicial review of decisions of the
27 administrator of the securities division of the office of the secretary of
28 state; and

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

31 4. The provisions of NRS 233B.122, 233B.124, 233B.125 and
32 233B.126 do not apply to the department of human resources in the
33 adjudication of contested cases involving the issuance of letters of
34 approval for health facilities and agencies.

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

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

or

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

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

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

7 590.830 1. The fund for cleaning up discharges of petroleum is
8 hereby created as a special revenue fund in the state treasury. The division
9 shall administer the fund for the purposes prescribed in NRS 590.700 to
10 590.920, inclusive, and the board shall adopt appropriate regulations for
11 the investigation and payment of claims against the fund. The board shall
12 review each claim presented and authorize payment to the extent warranted
13 by the facts of the case.

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

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

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

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

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