

Amendment No. 656

Assembly Amendment to Senate Bill No. 267

(BDR 18-62)

Proposed by: Assembly Committee on Government Affairs**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

SJA/EGO



Date: 5/13/2009

S.B. No. 267—Makes various changes concerning the procedures for adopting administrative regulations and the requirements of the Open Meeting Law. (BDR 18-62)



SENATE BILL NO. 267—SENATOR WIENER

MARCH 16, 2009

Referred to Committee on Government Affairs

SUMMARY—Makes various changes concerning ~~the procedures for adopting administrative regulations and the requirements of the Open Meeting Law.~~ governmental administration. (BDR 18-62)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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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 governmental administration; revising the provisions governing the notice of intention to act on a proposed regulation by a state agency subject to the Nevada Administrative Procedure Act; providing that workshops and hearings regarding a proposed regulation of such a state agency are subject to the Open Meeting Law; revising the procedure for the review of permanent regulations and certain temporary regulations by the Legislative Commission or the Subcommittee to Review Regulations; requiring a public body to make available certain documents to the public at a public meeting; eliminating certain nonprofit entities affiliated with a university or college from the definition of “university foundation” for purposes of the Open Meeting Law, the requirements relating to public records, the exemption from the tax on the transfer of real property and other requirements pertaining to university foundations; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

The Nevada Administrative Procedure Act requires each state agency that is not exempt from the Act to provide 30 days’ notice of its intended action on any proposed regulation. The agency is required to wait to give such notice until at least 30 days after delivering the proposed regulation to the Legislative Counsel or until the agency has received the approved or revised text of the proposed regulation from the Legislative Counsel, whichever occurs first. (NRS 233B.060) **Section 1** of this bill makes receipt of the approved or revised text of the proposed regulation from the Legislative Counsel the only required condition before provision of the 30 days’ notice. **Section 3** of this bill makes a conforming change.

Existing law prescribes a procedure for the review of certain temporary regulations and of adopted permanent regulations by the Legislative Commission or the Subcommittee to Review Regulations for conformity with statutory authority and legislative intent. Under existing law, unless the Commission or Subcommittee objects to such a temporary or permanent regulation, the regulation becomes effective. (NRS 233B.0633, 233B.067, 233B.0675) **Sections 4-6** of this bill require the Commission or Subcommittee to either affirmatively approve or object to a regulation.

The Open Meeting Law requires all meetings of public bodies to be open and public unless otherwise provided by a specific statute. (NRS 241.020) **Section 2** of this bill provides that each workshop and hearing required to be conducted concerning administrative regulations is subject to the Open Meeting Law. (NRS 233B.061)

Under the Open Meeting Law, a public body is required, upon request and at no charge, to provide a copy of an agenda for the meeting, any proposed ordinance or regulation to be discussed at the meeting, and other supporting documents to members of the public body for an item on the agenda. (NRS 241.020) **Section 7** of this bill requires that a public body make at least one copy of those documents available to the public at the public meeting to which the documents pertain.

Section 8 of this bill amends the definition of “university foundation” to exclude certain nonprofit organizations affiliated with a university or college for the purposes of provisions applicable to university foundations, including the Open Meeting Law, the requirements relating to public records and the exemption from the tax on the transfer of real property. (NRS 239.005, 241.015, 375.090, 396.405, 396.535)

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

Section 1. NRS 233B.060 is hereby amended to read as follows:

233B.060 1. Except as otherwise provided in subsection 2 and NRS 233B.061, before adopting, amending or repealing:

(a) A permanent regulation, the agency must, ~~[30 days or more after delivering a copy of the proposed regulation to the Legislative Counsel, or]~~ after receiving the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063, give at least 30 days’ notice of its intended action, unless a shorter period of notice is specifically permitted by statute.

(b) A temporary regulation, the agency must give at least 30 days’ notice of its intended action, unless a shorter period of notice is specifically permitted by statute.

2. Except as otherwise provided in subsection 3, if an agency has adopted a temporary regulation after notice and the opportunity for a hearing as provided in this chapter, it may adopt, after providing a second notice and the opportunity for a hearing, a permanent regulation, but the language of the permanent regulation must first be approved or revised by the Legislative Counsel and the adopted regulation ~~[is subject to review]~~ **must be approved** by the Legislative Commission or the Subcommittee to Review Regulations appointed pursuant to subsection 6 of NRS 233B.067.

3. If the Public Utilities Commission of Nevada has adopted a temporary regulation after notice and the opportunity for a hearing as provided in this chapter, it may adopt a substantively equivalent permanent regulation without further notice or hearing, but the language of the permanent regulation must first be approved or revised by the Legislative Counsel and the adopted regulation ~~[is subject to review]~~ **must be approved** by the Legislative Commission or the Subcommittee to Review Regulations.

Sec. 2. NRS 233B.061 is hereby amended to read as follows:

233B.061 1. All interested persons must be afforded a reasonable opportunity to submit data, views or arguments upon a proposed regulation, orally or in writing.

2. Before holding the public hearing required pursuant to subsection 3, an agency shall conduct at least one workshop to solicit comments from interested persons on one or more general topics to be addressed in a proposed regulation. Not less than 15 days before the workshop, the agency shall provide notice of the time and place set for the workshop:

(a) In writing to each person who has requested to be placed on a mailing list; and

(b) In any other manner reasonably calculated to provide such notice to the general public and any business that may be affected by a proposed regulation which addresses the general topics to be considered at the workshop.

3. With respect to substantive regulations, the agency shall set a time and place for an oral public hearing, but if no one appears who will be directly affected by the proposed regulation and requests an oral hearing, the agency may proceed immediately to act upon any written submissions. The agency shall consider fully all written and oral submissions respecting the proposed regulation.

4. An agency shall not hold the public hearing required pursuant to subsection 3 on the same day that the agency holds the workshop required pursuant to subsection 2.

5. ~~[The agency shall keep, retain and make available for public inspection written minutes and an audio recording or transcript of each public hearing held pursuant to subsection 3 in the manner provided in NRS 241.035.]~~ *Each workshop and public hearing required pursuant to subsections 2 and 3 must be conducted in accordance with the provisions of chapter 241 of NRS.*

Sec. 3. NRS 233B.063 is hereby amended to read as follows:

233B.063 1. ~~[At least 30 days before the time of giving notice of its intention]~~ *An agency that intends* to adopt, amend or repeal a permanent regulation ~~[an agency shall]~~ *must* deliver to the Legislative Counsel a copy of the proposed regulation. The Legislative Counsel shall examine and if appropriate revise the language submitted so that it is clear, concise and suitable for incorporation in the Nevada Administrative Code, but shall not alter the meaning or effect without the consent of the agency.

2. Unless the proposed regulation is submitted to him between July 1 of an even-numbered year and July 1 of the succeeding odd-numbered year, the Legislative Counsel shall deliver the approved or revised text of the regulation within 30 days after it is submitted to him. If the proposed or revised text of a regulation is changed before adoption, the agency shall submit the changed text to the Legislative Counsel, who shall examine and revise it if appropriate pursuant to the standards of subsection 1. Unless it is submitted between July 1 of an even-numbered year and July 1 of the succeeding odd-numbered year, the Legislative Counsel shall return it with any appropriate revisions within 30 days. If the agency is a licensing board as defined in NRS 439B.225 and the proposed regulation relates to standards for licensing or registration or for the renewal of a license or a certificate of registration issued to a person or facility regulated by the agency, the Legislative Counsel shall also deliver one copy of the approved or revised text of the regulation to the Legislative Committee on Health Care.

3. An agency may adopt a temporary regulation between August 1 of an even-numbered year and July 1 of the succeeding odd-numbered year without following the procedure required by this section and NRS 233B.064, but any such regulation expires by limitation on November 1 of the odd-numbered year. A substantively identical permanent regulation may be subsequently adopted.

4. An agency may amend or suspend a permanent regulation between August 1 of an even-numbered year and July 1 of the succeeding odd-numbered year by adopting a temporary regulation in the same manner and subject to the same provisions as prescribed in subsection 3.

Sec. 4. NRS 233B.0633 is hereby amended to read as follows:

233B.0633 1. Upon the request of a Legislator, the Legislative Commission may examine a temporary regulation adopted by an agency that is not yet effective pursuant to subsection 2 of NRS 233B.070 to determine whether the temporary

1 regulation conforms to the statutory authority pursuant to which it was adopted and
2 whether the temporary regulation carries out the intent of the Legislature in
3 granting that authority.

4 2. If a temporary regulation that the Legislative Commission is requested to
5 examine pursuant to subsection 1 was required to be adopted by the agency
6 pursuant to a federal statute or regulation and the temporary regulation exceeds the
7 specific statutory authority of the agency or sets forth requirements that are more
8 stringent than a statute of this State, the agency shall submit a statement to the
9 Legislative Commission that adoption of the temporary regulation was required by
10 a federal statute or regulation. The statement must include the specific citation of
11 the federal statute or regulation requiring such adoption.

12 3. Except as otherwise provided in subsection 4, the Legislative Commission
13 shall:

14 (a) Review the temporary regulation at its next regularly scheduled meeting if
15 the request for examination of the temporary regulation is received more than 10
16 working days before the meeting; or

17 (b) Refer the temporary regulation for review to the Subcommittee to Review
18 Regulations appointed pursuant to subsection 6 of NRS 233B.067.

19 4. If an agency determines that an emergency exists which requires a
20 temporary regulation of the agency for which a Legislator requested an examination
21 pursuant to subsection 1 to become effective before the next meeting of the
22 Legislative Commission is scheduled to be held, the agency may notify
23 the Legislative Counsel in writing of the emergency. Upon receipt of such a notice,
24 the Legislative Counsel shall refer the temporary regulation for review by the
25 Subcommittee to Review Regulations as soon as practicable.

26 5. If the Legislative Commission, or the Subcommittee to Review
27 Regulations if the temporary regulation was referred, ~~{does not object to}~~ *approves*
28 the temporary regulation, the Legislative Counsel shall notify the agency that the
29 agency may file the temporary regulation with the Secretary of State. If the
30 Commission or the Subcommittee objects to the temporary regulation after
31 determining that:

32 (a) If subsection 2 is applicable, the temporary regulation is not required
33 pursuant to a federal statute or regulation;

34 (b) The temporary regulation does not conform to statutory authority; or

35 (c) The temporary regulation does not carry out legislative intent,

36 ➤ the Legislative Counsel shall attach to the temporary regulation a written notice
37 of the objection, including, if practicable, a statement of the reasons for the
38 objection, and shall promptly return the temporary regulation to the agency.

39 6. If the Legislative Commission or the Subcommittee to Review Regulations
40 has objected to a temporary regulation, the agency that adopted the temporary
41 regulation shall revise the temporary regulation to conform to the statutory
42 authority pursuant to which it was adopted and to carry out the intent of the
43 Legislature in granting that authority and return it to the Legislative Counsel within
44 60 days after the agency received the written notice of the objection to the
45 temporary regulation pursuant to subsection 5. Upon receipt of the revised
46 temporary regulation, the Legislative Counsel shall resubmit the temporary
47 regulation to the Legislative Commission or the Subcommittee for review. If ~~{there~~
48 ~~is no objection to}~~ *the Legislative Commission or the Subcommittee approves*
49 the revised temporary regulation, the Legislative Counsel shall notify the agency that
50 the agency may file the revised temporary regulation with the Secretary of State.

51 7. If the Legislative Commission or the Subcommittee to Review Regulations
52 objects to the revised temporary regulation, the Legislative Counsel shall attach to
53 the revised temporary regulation a written notice of the objection, including, if

1 practicable, a statement of the reasons for the objection, and shall promptly return
2 the revised temporary regulation to the agency. The agency shall continue to revise
3 it and resubmit it to the Legislative Commission or the Subcommittee within 30
4 days after the agency received the written notice of the objection to the revised
5 temporary regulation.

6 **Sec. 5.** NRS 233B.067 is hereby amended to read as follows:

7 233B.067 1. After adopting a permanent regulation, the agency shall submit
8 the informational statement prepared pursuant to NRS 233B.066 and one copy of
9 each regulation adopted to the Legislative Counsel for review by the Legislative
10 Commission to determine whether the regulation conforms to the statutory
11 authority pursuant to which it was adopted and whether the regulation carries out
12 the intent of the Legislature in granting that authority. The Legislative Counsel
13 shall endorse on the original and the copy of each adopted regulation the date of
14 their receipt. The Legislative Counsel shall maintain the copy of the regulation in a
15 file and make the copy available for public inspection for 2 years.

16 2. If an agency submits an adopted regulation to the Legislative Counsel
17 pursuant to subsection 1 that:

18 (a) The agency is required to adopt pursuant to a federal statute or regulation;
19 and

20 (b) Exceeds the specific statutory authority of the agency or sets forth
21 requirements that are more stringent than a statute of this State,

22 ➤ it shall include a statement that adoption of the regulation is required by a federal
23 statute or regulation. The statement must include the specific citation of the federal
24 statute or regulation requiring such adoption.

25 3. Except as otherwise provided in subsection 4, the Legislative Commission
26 shall:

27 (a) Review the regulation at its next regularly scheduled meeting if the
28 regulation is received more than 10 working days before the meeting; or

29 (b) Refer the regulation for review to the Subcommittee to Review Regulations
30 appointed pursuant to subsection 6.

31 4. If an agency determines that an emergency exists which requires a
32 regulation of the agency submitted pursuant to subsection 1 to become effective
33 before the next meeting of the Legislative Commission is scheduled to be held, the
34 agency may notify the Legislative Counsel in writing of the emergency. Upon
35 receipt of such a notice, the Legislative Counsel shall refer the regulation for review
36 by the Subcommittee to Review Regulations. The Subcommittee shall meet to
37 review the regulation as soon as practicable.

38 5. If the Legislative Commission, or the Subcommittee to Review
39 Regulations if the regulation was referred, ~~does not object to~~ *approves*
40 the regulation, the Legislative Counsel shall promptly file the regulation with the
41 Secretary of State and notify the agency of the filing. If the Commission or
42 Subcommittee objects to the regulation after determining that:

43 (a) If subsection 2 is applicable, the regulation is not required pursuant to a
44 federal statute or regulation;

45 (b) The regulation does not conform to statutory authority; or

46 (c) The regulation does not carry out legislative intent,

47 ➤ the Legislative Counsel shall attach to the regulation a written notice of the
48 objection, including, if practicable, a statement of the reasons for the objection, and
49 shall promptly return the regulation to the agency.

50 6. As soon as practicable after each regular legislative session, the Legislative
51 Commission shall appoint a Subcommittee to Review Regulations consisting of at
52 least three members of the Legislative Commission.

1 **Sec. 6.** NRS 233B.0675 is hereby amended to read as follows:

2 233B.0675 1. If the Legislative Commission, or the Subcommittee to
3 Review Regulations appointed pursuant to subsection 6 of NRS 233B.067, has
4 objected to a regulation, the agency shall revise the regulation to conform to the
5 statutory authority pursuant to which it was adopted and to carry out the intent of
6 the Legislature in granting that authority and return it to the Legislative Counsel
7 within 60 days after the agency received the written notice of the objection to the
8 regulation pursuant to NRS 233B.067. Upon receipt of the revised regulation, the
9 Legislative Counsel shall resubmit the regulation to the Commission or
10 Subcommittee for review. If ~~there is no objection to~~ **the Commission or**
11 **Subcommittee approves** the revised regulation, the Legislative Counsel shall
12 promptly file the revised regulation with the Secretary of State and notify the
13 agency of the filing.

14 2. If the Legislative Commission or Subcommittee objects to the revised
15 regulation, the Legislative Counsel shall attach to the revised regulation a written
16 notice of the objection, including, if practicable, a statement of the reasons for the
17 objection, and shall promptly return the revised regulation to the agency. The
18 agency shall continue to revise it and resubmit it to the Commission or
19 Subcommittee within 30 days after the agency received the written notice of the
20 objection to the revised regulation.

21 **Sec. 7.** NRS 241.020 is hereby amended to read as follows:

22 241.020 1. Except as otherwise provided by specific statute, all meetings of
23 public bodies must be open and public, and all persons must be permitted to attend
24 any meeting of these public bodies. A meeting that is closed pursuant to a specific
25 statute may only be closed to the extent specified in the statute allowing the
26 meeting to be closed. All other portions of the meeting must be open and public,
27 and the public body must comply with all other provisions of this chapter to the
28 extent not specifically precluded by the specific statute. Public officers and
29 employees responsible for these meetings shall make reasonable efforts to assist
30 and accommodate persons with physical disabilities desiring to attend.

31 2. Except in an emergency, written notice of all meetings must be given at
32 least 3 working days before the meeting. The notice must include:

33 (a) The time, place and location of the meeting.

34 (b) A list of the locations where the notice has been posted.

35 (c) An agenda consisting of:

36 (1) A clear and complete statement of the topics scheduled to be
37 considered during the meeting.

38 (2) A list describing the items on which action may be taken and clearly
39 denoting that action may be taken on those items.

40 (3) A period devoted to comments by the general public, if any, and
41 discussion of those comments. No action may be taken upon a matter raised under
42 this item of the agenda until the matter itself has been specifically included on an
43 agenda as an item upon which action may be taken pursuant to subparagraph (2).

44 (4) If any portion of the meeting will be closed to consider the character,
45 alleged misconduct or professional competence of a person, the name of the person
46 whose character, alleged misconduct or professional competence will be
47 considered.

48 (5) If, during any portion of the meeting, the public body will consider
49 whether to take administrative action against a person, the name of the person
50 against whom administrative action may be taken.

51 3. Minimum public notice is:

52 (a) Posting a copy of the notice at the principal office of the public body or, if
53 there is no principal office, at the building in which the meeting is to be held, and at

not less than three other separate, prominent places within the jurisdiction of the public body not later than 9 a.m. of the third working day before the meeting; and

(b) Providing a copy of the notice to any person who has requested notice of the meetings of the public body. A request for notice lapses 6 months after it is made. The public body shall inform the requester of this fact by enclosure with, notation upon or text included within the first notice sent. The notice must be:

(1) Delivered to the postal service used by the public body not later than 9 a.m. of the third working day before the meeting for transmittal to the requester by regular mail; or

(2) If feasible for the public body and the requester has agreed to receive the public notice by electronic mail, transmitted to the requester by electronic mail sent not later than 9 a.m. of the third working day before the meeting.

4. If a public body maintains a website on the Internet or its successor, the public body shall post notice of each of its meetings on its website unless the public body is unable to do so because of technical problems relating to the operation or maintenance of its website. Notice posted pursuant to this subsection is supplemental to and is not a substitute for the minimum public notice required pursuant to subsection 3. The inability of a public body to post notice of a meeting pursuant to this subsection as a result of technical problems with its website shall not be deemed to be a violation of the provisions of this chapter.

5. Upon any request, a public body shall provide, at no charge, at least one copy of:

(a) An agenda for a public meeting;

(b) A proposed ordinance or regulation which will be discussed at the public meeting; and

(c) Subject to the provisions of subsection 6, any other supporting material provided to the members of the public body for an item on the agenda, except materials:

(1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement which relates to proprietary information;

(2) Pertaining to the closed portion of such a meeting of the public body; or

(3) Declared confidential by law, unless otherwise agreed to by each person whose interest is being protected under the order of confidentiality.

➤ *The public body shall make at least one copy of the documents described in paragraphs (a), (b) and (c) available to the public at the meeting to which the documents pertain.* As used in this subsection, "proprietary information" has the meaning ascribed to it in NRS 332.025.

6. A copy of supporting material required to be provided upon request pursuant to paragraph (c) of subsection 5 must be:

(a) If the supporting material is provided to the members of the public body before the meeting, made available to the requester at the time the material is provided to the members of the public body; or

(b) If the supporting material is provided to the members of the public body at the meeting, made available at the meeting to the requester at the same time the material is provided to the members of the public body.

➤ If the requester has agreed to receive the information and material set forth in subsection 5 by electronic mail, the public body shall, if feasible, provide the information and material by electronic mail.

7. A public body may provide the public notice, information and material required by this section by electronic mail. If a public body makes such notice, information and material available by electronic mail, the public body shall inquire of a person who requests the notice, information or material if the person will accept receipt by electronic mail. The inability of a public body, as a result of

1 technical problems with its electronic mail system, to provide a public notice,
2 information or material required by this section to a person who has agreed to
3 receive such notice, information or material by electronic mail shall not be deemed
4 to be a violation of the provisions of this chapter.

5 8. As used in this section, "emergency" means an unforeseen circumstance
6 which requires immediate action and includes, but is not limited to:

7 (a) Disasters caused by fire, flood, earthquake or other natural causes; or

8 (b) Any impairment of the health and safety of the public.

9 **Sec. 8. NRS 396.405 is hereby amended to read as follows:**

10 396.405 1. A university foundation:

11 (a) Shall comply with the provisions of chapter 241 of NRS;

12 (b) Except as otherwise provided in subsection 2, shall make its records public
13 and open to inspection pursuant to NRS 239.010;

14 (c) Is exempt from the taxes imposed by NRS 375.020, 375.023 and 375.026
15 pursuant to subsection 14 of NRS 375.090; and

16 (d) May allow a president or an administrator of the university, state college or
17 community college which it supports to serve as a member of its governing body.

18 2. A university foundation is not required to disclose the name of any
19 contributor or potential contributor to the university foundation, the amount of his
20 contribution or any information which may reveal or lead to the discovery of his
21 identity. The university foundation shall, upon request, allow a contributor to
22 examine, during regular business hours, any record, document or other information
23 of the foundation relating to that contributor.

24 3. As used in this section, "university foundation" means a nonprofit
25 corporation, association or institution or a charitable organization that is:

26 (a) Organized and operated ~~exclusively~~ **primarily** for the purpose of
27 ~~supporting~~ **fundraising in support of** a university, state college or a community
28 college;

29 (b) Formed pursuant to the laws of this State; and

30 (c) Exempt from taxation pursuant to 26 U.S.C. § 501(c)(3).

31 ~~Sec. 8.~~ **Sec. 9.** This act becomes effective on July 1, 2009.