

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. (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; 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



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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.

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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~~



1 ~~subject to review]~~ *must be approved* by the Legislative Commission  
2 or the Subcommittee to Review Regulations.

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

4 233B.061 1. All interested persons must be afforded a  
5 reasonable opportunity to submit data, views or arguments upon a  
6 proposed regulation, orally or in writing.

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

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

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

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

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

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

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

35 233B.063 1. ~~[At least 30 days before the time of giving~~  
36 ~~notice of its intention]~~ *An agency that intends* to adopt, amend or  
37 repeal a permanent regulation ~~[an agency shall]~~ *must* deliver to the  
38 Legislative Counsel a copy of the proposed regulation. The  
39 Legislative Counsel shall examine and if appropriate revise the  
40 language submitted so that it is clear, concise and suitable for  
41 incorporation in the Nevada Administrative Code, but shall not alter  
42 the meaning or effect without the consent of the agency.

43 2. Unless the proposed regulation is submitted to him between  
44 July 1 of an even-numbered year and July 1 of the succeeding odd-  
45 numbered year, the Legislative Counsel shall deliver the approved



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

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

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

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

28 233B.0633 1. Upon the request of a Legislator, the  
29 Legislative Commission may examine a temporary regulation  
30 adopted by an agency that is not yet effective pursuant to subsection  
31 2 of NRS 233B.070 to determine whether the temporary regulation  
32 conforms to the statutory authority pursuant to which it was adopted  
33 and whether the temporary regulation carries out the intent of the  
34 Legislature in granting that authority.

35 2. If a temporary regulation that the Legislative Commission is  
36 requested to examine pursuant to subsection 1 was required to be  
37 adopted by the agency pursuant to a federal statute or regulation and  
38 the temporary regulation exceeds the specific statutory authority of  
39 the agency or sets forth requirements that are more stringent than a  
40 statute of this State, the agency shall submit a statement to the  
41 Legislative Commission that adoption of the temporary regulation  
42 was required by a federal statute or regulation. The statement must  
43 include the specific citation of the federal statute or regulation  
44 requiring such adoption.



1 3. Except as otherwise provided in subsection 4, the  
2 Legislative Commission shall:

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

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

10 4. If an agency determines that an emergency exists which  
11 requires a temporary regulation of the agency for which a Legislator  
12 requested an examination pursuant to subsection 1 to become  
13 effective before the next meeting of the Legislative Commission is  
14 scheduled to be held, the agency may notify the Legislative Counsel  
15 in writing of the emergency. Upon receipt of such a notice, the  
16 Legislative Counsel shall refer the temporary regulation for review  
17 by the Subcommittee to Review Regulations as soon as practicable.

18 5. If the Legislative Commission, or the Subcommittee to  
19 Review Regulations if the temporary regulation was referred, ~~does~~  
20 ~~not object to~~ *approves* the temporary regulation, the Legislative  
21 Counsel shall notify the agency that the agency may file the  
22 temporary regulation with the Secretary of State. If the Commission  
23 or the Subcommittee objects to the temporary regulation after  
24 determining that:

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

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

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

31 ➤ the Legislative Counsel shall attach to the temporary regulation a  
32 written notice of the objection, including, if practicable, a statement  
33 of the reasons for the objection, and shall promptly return the  
34 temporary regulation to the agency.

35 6. If the Legislative Commission or the Subcommittee to  
36 Review Regulations has objected to a temporary regulation, the  
37 agency that adopted the temporary regulation shall revise the  
38 temporary regulation to conform to the statutory authority pursuant  
39 to which it was adopted and to carry out the intent of the Legislature  
40 in granting that authority and return it to the Legislative Counsel  
41 within 60 days after the agency received the written notice of the  
42 objection to the temporary regulation pursuant to subsection 5.  
43 Upon receipt of the revised temporary regulation, the Legislative  
44 Counsel shall resubmit the temporary regulation to the Legislative  
45 Commission or the Subcommittee for review. If ~~there is no~~



~~objection to~~ *the Legislative Commission or the Subcommittee approves* the revised temporary regulation, the Legislative Counsel shall notify the agency that the agency may file the revised temporary regulation with the Secretary of State.

7. If the Legislative Commission or the Subcommittee to Review Regulations objects to the revised temporary regulation, the Legislative Counsel shall attach to the revised temporary regulation a written notice of the objection, including, if practicable, a statement of the reasons for the objection, and shall promptly return the revised temporary regulation to the agency. The agency shall continue to revise it and resubmit it to the Legislative Commission or the Subcommittee within 30 days after the agency received the written notice of the objection to the revised temporary regulation.

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

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

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

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

(b) Exceeds the specific statutory authority of the agency or sets forth requirements that are more stringent than a statute of this State, ➤ it shall include a statement that adoption of the regulation is required by a federal statute or regulation. The statement must include the specific citation of the federal statute or regulation requiring such adoption.

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

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

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

4. If an agency determines that an emergency exists which requires a regulation of the agency submitted pursuant to subsection 1 to become effective before the next meeting of the Legislative



Commission is scheduled to be held, the agency may notify the Legislative Counsel in writing of the emergency. Upon receipt of such a notice, the Legislative Counsel shall refer the regulation for review by the Subcommittee to Review Regulations. The Subcommittee shall meet to review the regulation as soon as practicable.

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

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

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

(c) The regulation does not carry out legislative intent, ➔ the Legislative Counsel shall attach to the regulation a written notice of the objection, including, if practicable, a statement of the reasons for the objection, and shall promptly return the regulation to the agency.

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

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

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

2. If the Legislative Commission or Subcommittee objects to the revised regulation, the Legislative Counsel shall attach to the revised regulation a written notice of the objection, including, if practicable, a statement of the reasons for the objection, and shall promptly return the revised regulation to the agency. The agency shall continue to revise it and resubmit it to the Commission or



1 Subcommittee within 30 days after the agency received the written  
2 notice of the objection to the revised regulation.

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

4 241.020 1. Except as otherwise provided by specific statute,  
5 all meetings of public bodies must be open and public, and all  
6 persons must be permitted to attend any meeting of these public  
7 bodies. A meeting that is closed pursuant to a specific statute may  
8 only be closed to the extent specified in the statute allowing the  
9 meeting to be closed. All other portions of the meeting must be open  
10 and public, and the public body must comply with all other  
11 provisions of this chapter to the extent not specifically precluded by  
12 the specific statute. Public officers and employees responsible for  
13 these meetings shall make reasonable efforts to assist and  
14 accommodate persons with physical disabilities desiring to attend.

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

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

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

20 (c) An agenda consisting of:

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

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

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

30 (4) If any portion of the meeting will be closed to consider  
31 the character, alleged misconduct or professional competence of a  
32 person, the name of the person whose character, alleged misconduct  
33 or professional competence will be considered.

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

38 3. Minimum public notice is:

39 (a) Posting a copy of the notice at the principal office of the  
40 public body or, if there is no principal office, at the building in  
41 which the meeting is to be held, and at not less than three other  
42 separate, prominent places within the jurisdiction of the public body  
43 not later than 9 a.m. of the third working day before the meeting;  
44 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 technical problems with its electronic mail system, to provide a public notice, information or material required by this section to a person who has agreed to receive such notice, information or material by electronic mail shall not be deemed to be a violation of the provisions of this chapter.

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

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

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

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

