

SENATE BILL NO. 267—SENATOR WIENER

MARCH 16, 2009

Referred to Committee on Government Affairs

SUMMARY—Makes various changes concerning 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:**

- 1 The Nevada Administrative Procedure Act requires each state agency that is not
- 2 exempt from the Act to provide 30 days’ notice of its intended action on any
- 3 proposed regulation. The agency is required to wait to give such notice until at least
- 4 30 days after delivering the proposed regulation to the Legislative Counsel or until
- 5 the agency has received the approved or revised text of the proposed regulation
- 6 from the Legislative Counsel, whichever occurs first. (NRS 233B.060) **Section 1** of
- 7 this bill makes receipt of the approved or revised text of the proposed regulation



8 from the Legislative Counsel the only required condition before provision of the 30  
9 days' notice. **Section 3** of this bill makes a conforming change.

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

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

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

29 **Section 8** of this bill amends the definition of "university foundation" to  
30 exclude certain nonprofit organizations affiliated with a university or college for the  
31 purposes of provisions applicable to university foundations, including the Open  
32 Meeting Law, the requirements relating to public records and the exemption from  
33 the tax on the transfer of real property. (NRS 239.005, 241.015, 375.090, 396.405,  
34 396.535)

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

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

3 233B.060 1. Except as otherwise provided in subsection 2  
4 and NRS 233B.061, before adopting, amending or repealing:

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

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

14 2. Except as otherwise provided in subsection 3, if an agency  
15 has adopted a temporary regulation after notice and the opportunity  
16 for a hearing as provided in this chapter, it may adopt, after  
17 providing a second notice and the opportunity for a hearing, a  
18 permanent regulation, but the language of the permanent regulation



1 must first be approved or revised by the Legislative Counsel and the  
2 adopted regulation ~~is subject to review~~ *must be approved* by the  
3 Legislative Commission or the Subcommittee to Review  
4 Regulations appointed pursuant to subsection 6 of NRS 233B.067.

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

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

14 233B.061 1. All interested persons must be afforded a  
15 reasonable opportunity to submit data, views or arguments upon a  
16 proposed regulation, orally or in writing.

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

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

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

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

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

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



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

2       233B.063 1. ~~{At least 30 days before the time of giving~~  
3 ~~notice of its intention}~~ *An agency that intends* to adopt, amend or  
4 repeal a permanent regulation ~~{an agency shall}~~ *must* deliver to  
5 the Legislative Counsel a copy of the proposed regulation. The  
6 Legislative Counsel shall examine and if appropriate revise the  
7 language submitted so that it is clear, concise and suitable for  
8 incorporation in the Nevada Administrative Code, but shall not alter  
9 the meaning or effect without the consent of the agency.

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

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

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

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

40       233B.0633 1. Upon the request of a Legislator, the  
41 Legislative Commission may examine a temporary regulation  
42 adopted by an agency that is not yet effective pursuant to subsection  
43 2 of NRS 233B.070 to determine whether the temporary regulation  
44 conforms to the statutory authority pursuant to which it was adopted



1 and whether the temporary regulation carries out the intent of the  
2 Legislature in granting that authority.

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

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

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

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

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

30 5. If the Legislative Commission, or the Subcommittee to  
31 Review Regulations if the temporary regulation was referred, ~~does~~  
32 ~~not object to~~ *approves* the temporary regulation, the Legislative  
33 Counsel shall notify the agency that the agency may file the  
34 temporary regulation with the Secretary of State. If the Commission  
35 or the Subcommittee objects to the temporary regulation after  
36 determining that:

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

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

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

43 ➔ the Legislative Counsel shall attach to the temporary regulation a  
44 written notice of the objection, including, if practicable, a statement



1 of the reasons for the objection, and shall promptly return the  
2 temporary regulation to the agency.

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

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

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

28 233B.067 1. After adopting a permanent regulation, the  
29 agency shall submit the informational statement prepared pursuant  
30 to NRS 233B.066 and one copy of each regulation adopted to the  
31 Legislative Counsel for review by the Legislative Commission to  
32 determine whether the regulation conforms to the statutory authority  
33 pursuant to which it was adopted and whether the regulation carries  
34 out the intent of the Legislature in granting that authority. The  
35 Legislative Counsel shall endorse on the original and the copy of  
36 each adopted regulation the date of their receipt. The Legislative  
37 Counsel shall maintain the copy of the regulation in a file and make  
38 the copy available for public inspection for 2 years.

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

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

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



1    ➔ it shall include a statement that adoption of the regulation is  
2    required by a federal statute or regulation. The statement must  
3    include the specific citation of the federal statute or regulation  
4    requiring such adoption.

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

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

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

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

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

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

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

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

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

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

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

40    233B.0675 1. If the Legislative Commission, or the  
41    Subcommittee to Review Regulations appointed pursuant to  
42    subsection 6 of NRS 233B.067, has objected to a regulation, the  
43    agency shall revise the regulation to conform to the statutory  
44    authority pursuant to which it was adopted and to carry out the  
45    intent of the Legislature in granting that authority and return it to





1 the Legislative Counsel within 60 days after the agency received the  
2 written notice of the objection to the regulation pursuant to NRS  
3 233B.067. Upon receipt of the revised regulation, the Legislative  
4 Counsel shall resubmit the regulation to the Commission or  
5 Subcommittee for review. If ~~{there is no objection to}~~ *the*  
6 *Commission or Subcommittee approves* the revised regulation, the  
7 Legislative Counsel shall promptly file the revised regulation with  
8 the Secretary of State and notify the agency of the filing.

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

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

18 241.020 1. Except as otherwise provided by specific statute,  
19 all meetings of public bodies must be open and public, and all  
20 persons must be permitted to attend any meeting of these public  
21 bodies. A meeting that is closed pursuant to a specific statute may  
22 only be closed to the extent specified in the statute allowing the  
23 meeting to be closed. All other portions of the meeting must be open  
24 and public, and the public body must comply with all other  
25 provisions of this chapter to the extent not specifically precluded by  
26 the specific statute. Public officers and employees responsible for  
27 these meetings shall make reasonable efforts to assist and  
28 accommodate persons with physical disabilities desiring to attend.

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

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

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

34 (c) An agenda consisting of:

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

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

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

44 (4) If any portion of the meeting will be closed to consider  
45 the character, alleged misconduct or professional competence of a





1 person, the name of the person whose character, alleged misconduct  
2 or professional competence will be considered.

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

7 3. Minimum public notice is:

8 (a) Posting a copy of the notice at the principal office of the  
9 public body or, if there is no principal office, at the building in  
10 which the meeting is to be held, and at not less than three other  
11 separate, prominent places within the jurisdiction of the public body  
12 not later than 9 a.m. of the third working day before the meeting;  
13 and

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

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

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

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

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

38 (a) An agenda for a public meeting;

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

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



\* S B 2 6 7 R 1 \*

(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.



\* S B 2 6 7 R 1 \*

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

396.405 1. A university foundation:

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

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

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

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

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

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

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

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

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

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

