

ASSEMBLY BILL NO. 17—COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF NEVADA)

PREFILED DECEMBER 13, 2010

Referred to Committee on Government Affairs

SUMMARY—Revises provisions concerning the judicial review of decisions of the Public Utilities Commission of Nevada. (BDR 18-455)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: 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; exempting the judicial review of decisions of the Public Utilities Commission of Nevada from the requirements of the Nevada Administrative Procedure Act; revising provisions governing the procedure for the judicial review of decisions of the Commission; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that the provisions of chapter 703 of NRS that relate to the judicial review of decisions of the Public Utilities Commission of Nevada prevail over the general provisions of the Nevada Administrative Procedure Act, which is contained in chapter 233B of NRS. (NRS 233B.039) **Section 1** of this bill removes that existing provision and instead provides that the provisions of the Nevada Administrative Procedure Act do not apply to the judicial review of decisions of the Commission.

Existing law also sets forth provisions relating to the procedure for the judicial review of decisions of the Commission. (NRS 703.373) **Section 1.7** of this bill revises various provisions relating to that procedure and: (1) requires a party seeking judicial review to exhaust all administrative remedies before the party is entitled to seek judicial review of a final decision of the Commission; (2) specifies certain periods in which certain documents must be filed with the court and served upon the parties involved in the judicial review; and (3) provides that a final decision of the Commission is deemed reasonable and lawful until reversed or set aside in whole or in part by the court.



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

Section 1. NRS 233B.039 is hereby amended to read as follows:

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

(a) The Governor.

(b) Except as otherwise provided in NRS 209.221, the Department of Corrections.

(c) The Nevada System of Higher Education.

(d) The Office of the Military.

(e) The State Gaming Control Board.

(f) Except as otherwise provided in NRS 368A.140, the Nevada Gaming Commission.

(g) The Division of Welfare and Supportive Services of the Department of Health and Human Services.

(h) Except as otherwise provided in NRS 422.390, the Division of Health Care Financing and Policy of the Department of Health and Human Services.

(i) The State Board of Examiners acting pursuant to chapter 217 of NRS.

(j) Except as otherwise provided in NRS 533.365, the Office of the State Engineer.

(k) The Division of Industrial Relations of the Department of Business and Industry acting to enforce the provisions of NRS 618.375.

(l) The Administrator of the Division of Industrial Relations of the Department of Business and Industry in establishing and adjusting the schedule of fees and charges for accident benefits pursuant to subsection 2 of NRS 616C.260.

(m) The Board to Review Claims in adopting resolutions to carry out its duties pursuant to NRS 590.830.

2. Except as otherwise provided in subsection 5 and NRS 391.323, the Department of Education, the Board of the Public Employees' Benefits Program and the Commission on Professional Standards in Education are subject to the provisions of this chapter for the purpose of adopting regulations but not with respect to any contested case.

3. The special provisions of:

(a) Chapter 612 of NRS for the distribution of regulations by and the judicial review of decisions of the Employment Security Division of the Department of Employment, Training and Rehabilitation;



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

~~(c) [Chapter 703 of NRS for the judicial review of decisions of the Public Utilities Commission of Nevada;~~

~~—(d)]~~ Chapter 91 of NRS for the judicial review of decisions of the Administrator of the Securities Division of the Office of the Secretary of State; and

~~(e)]~~ (d) NRS 90.800 for the use of summary orders in contested cases,

➔ prevail over the general provisions of this chapter.

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

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

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

(b) An extraordinary regulation of the State Board of Pharmacy adopted pursuant to NRS 453.2184; ~~(or]~~

(c) A regulation adopted by the State Board of Education pursuant to NRS 392.644 or 394.1694 ~~(; or~~

(d) The judicial review of decisions of the Public Utilities Commission of Nevada.

6. The State Board of Parole Commissioners is subject to the provisions of this chapter for the purpose of adopting regulations but not with respect to any contested case.

Sec. 1.3. NRS 703.330 is hereby amended to read as follows:

703.330 1. A complete record must be kept of all hearings before the Commission. All testimony at such hearings must be taken down by the stenographer appointed by the Commission or, under the direction of any competent person appointed by the Commission, must be reported by sound recording equipment in the manner authorized for reporting testimony in district courts. The testimony reported by a stenographer must be transcribed, and the transcript filed with the record in the matter. The Commission may by regulation provide for the transcription or safekeeping of sound recordings. The costs of recording and transcribing testimony at any hearing, except those hearings ordered pursuant to NRS 703.310, must be paid by the applicant. If a complaint is made pursuant to NRS 703.310 by a customer or by a political subdivision of the State or municipal organization, the complainant is not liable for any



costs. Otherwise, if there are several applicants or parties to any hearing, the Commission may apportion the costs among them in its discretion.

~~If a petition is served upon the Commission as provided in NRS 703.373 for the bringing of an action against the Commission, before the action is reached for trial, the Commission shall file a certified copy of all proceedings and testimony taken with the clerk of the court in which the action is pending.~~

~~3.]~~ A copy of the proceedings and testimony must be furnished to any party, on payment of a reasonable amount to be fixed by the Commission, and the amount must be the same for all parties.

~~[4.]~~ 3. The provisions of this section do not prohibit the Commission from:

(a) Restricting access to the records and transcripts of a hearing pursuant to paragraph (a) of subsection 3 of NRS 703.196.

(b) Protecting the confidentiality of information pursuant to NRS 704B.310, 704B.320 or 704B.325.

Sec. 1.7. NRS 703.373 is hereby amended to read as follows:

703.373 1. Any party of record to a proceeding before the Commission is entitled to judicial review of the final decision ~~[.]~~ *upon the exhaustion of all administrative remedies by the party of record seeking judicial review.*

2. Proceedings for review may be instituted by filing a petition *for judicial review* in the District Court in and for Carson City, in and for the county in which the party *of record seeking judicial review* resides, or in and for the county where the act on which the proceeding is based occurred.

3. A petition *for judicial review* must be filed within ~~[90]~~ 30 days after ~~[the service of the]~~ final ~~[decision of]~~ *action by* the Commission *on reconsideration* or ~~[, if a]~~ rehearing ~~[is held,]~~, *or if the Commission takes no action on reconsideration or rehearing,* within 30 days after the ~~[decision thereon.]~~ *date on which reconsideration or rehearing is deemed denied.* Copies of the petition *for judicial review* must be served upon the Commission and all other parties of record.

~~[3.]~~ 4. *The Commission shall participate in the judicial review. Any party of record desiring to participate in the judicial review must file a statement of intent to participate in the petition for judicial review and serve the statement upon the Commission and every party within 15 days after service of the petition for judicial review.*

5. *Within 30 days after the service of the petition for judicial review or such time as is allowed by the court, the Commission shall transmit to the reviewing court a certified copy of the entire record of the proceeding under review, including a transcript of*



1 *the evidence resulting in the final decision of the Commission.*
2 *The record may be shortened by stipulation of the parties to the*
3 *proceedings.*

4 6. A petitioner who is seeking judicial review must serve and
5 file a memorandum of points and authorities within 30 days after
6 the Commission gives written notice to the parties that the record
7 of the proceeding under review has been filed with the court.

8 7. The Commission and any other ~~{defendants}~~ respondents
9 shall serve and file ~~{their answers to the petition}~~ a reply
10 memorandum of points and authorities within 30 days after ~~{the}~~
11 service ~~{thereof,}~~ of the memorandum of points and authorities,
12 whereupon the action is at issue and ~~{they}~~ the parties must be ready
13 for a hearing upon 20 days' notice. ~~{to either party.}~~

14 ~~—4.— The}~~

15 8. Judicial review of a final decision of the Commission must
16 be ~~{conducted}~~ :

17 (a) Conducted by the court without a jury ; and ~~{be confined}~~

18 (b) Confined to the record.

19 ➔ In cases ~~{of}~~ concerning alleged irregularities in procedure
20 before the Commission ~~{}~~ that are not shown in the record, ~~{proof}~~
21 ~~thereon may be taken in}~~ the court ~~{. The court, upon request, shall}~~
22 ~~hear oral argument and receive written briefs.~~

23 ~~—5.— may receive evidence concerning the irregularities.~~

24 9. The final decision of the Commission shall be deemed
25 reasonable and lawful until reversed or set aside in whole or in
26 part by the court. The burden of proof is on the petitioner to show
27 that the final decision is invalid pursuant to subsection 11.

28 10. All actions brought under this section have precedence over
29 any civil action of a different nature pending in the court.

30 ~~{6.}~~ 11. The court shall not substitute its judgment for that of
31 the Commission as to the weight of the evidence on questions of
32 fact. The court may affirm the decision of the Commission or set it
33 aside in whole or in part if substantial rights of the ~~{appellant}~~
34 petitioner have been prejudiced because the ~~{administrative}~~
35 ~~findings, inferences, conclusions or decisions are:}~~ final decision of
36 the Commission is:

37 (a) In violation of constitutional or statutory provisions;

38 (b) In excess of the statutory authority of the Commission;

39 (c) Made upon unlawful procedure;

40 (d) Affected by other error of law;

41 (e) Clearly erroneous in view of the reliable, probative and
42 substantial evidence on the whole record; or

43 (f) Arbitrary or capricious or characterized by abuse of
44 discretion.



1 **Sec. 2.** This act becomes effective upon passage and approval.

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