

ASSEMBLY BILL NO. 252—ASSEMBLYMEN HANSEN, KIRKPATRICK, HARDY, FIORE, HAMBRICK; PAUL ANDERSON, BENITEZ-THOMPSON, DUNCAN, FRIERSON, GRADY, HICKEY, KIRNER, LIVERMORE, OSCARSON AND WHEELER

MARCH 13, 2013

JOINT SPONSORS: SENATORS GUSTAVSON,
GOICOECHEA; AND SETTELMEYER

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to the Nevada Administrative Procedure Act. (BDR 18-539)

FISCAL NOTE: Effect on Local Government: No.
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 administrative regulations; revising provisions governing the posting of certain notices concerning regulations by agencies; requiring regulations to be adopted within a certain period; requiring certain information to be included on the informational statement submitted with an adopted regulation; making various other changes to the Nevada Administrative Procedure Act; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 The Nevada Administrative Procedure Act is set forth in existing law to
2 establish the procedures for agencies of the Executive Branch of the State
3 Government to promulgate administrative regulations. (Chapter 233B of NRS)
4 **Section 1** of this bill requires an agency to submit a notice of any meeting or
5 workshop relating to the adoption of a regulation to the Director of the Legislative
6 Counsel Bureau at the same time that the agency posts notice of the meeting or
7 workshop for posting on the Internet website maintained by the Legislative Counsel
8 Bureau. **Section 2** of this bill requires an agency to adopt a regulation within 2
9 years after submitting the regulation to the Legislative Counsel. If the regulation is
10 not adopted within that time, **section 2** requires that the executive head of the
11 agency appear personally before the Legislative Commission to explain the reason
12 for the failure. **Section 3** of this bill revises the requirements for the informational



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statement which is submitted under existing law with the adopted regulation by requiring the agency to include an explanation of the need for the regulation.

Existing law provides that the Legislative Commission or the Subcommittee to Review Regulations may object to a regulation: (1) if it is determined that the regulation is not required by federal law if it is adopted for that purpose; (2) if the regulation does not conform to statutory authority; or (3) if the regulation does not carry out legislative intent. **Section 4** of this bill further allows an objection to be made to a regulation if the agency did not provide a satisfactory explanation of the need for the regulation or if the informational statement is insufficient or incomplete. If an objection is raised, under existing law, the regulation is returned to the agency. (NRS 233B.067)

Section 5 of this bill makes the provisions of this bill applicable retroactively to any regulation which has been proposed but not adopted before July 1, 2013, and to any regulation adopted on or after July 1, 2013.

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

Section 1. Chapter 233B of NRS is hereby amended by adding thereto a new section to read as follows:

At the same time that an agency provides notice of any meeting or workshop relating to the adoption of a proposed regulation pursuant to this chapter or NRS 241.020, the agency shall submit an electronic copy of the notice to the Director of the Legislative Counsel Bureau. The Director shall cause the notice to be posted on the same day on the Internet website maintained by the Legislative Counsel Bureau.

Sec. 2. NRS 233B.040 is hereby amended to read as follows:

233B.040 1. To the extent authorized by the statutes applicable to it, each agency may adopt reasonable regulations to aid it in carrying out the functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions. If adopted and filed in accordance with the provisions of this chapter, the following regulations have the force of law and must be enforced by all peace officers:

(a) The Nevada Administrative Code; and

(b) Temporary and emergency regulations.

➔ In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned.

2. Every regulation adopted by an agency must include:

(a) A citation of the authority pursuant to which it, or any part of it, was adopted; and

(b) The address of the agency and, to the extent not elsewhere provided in the regulation, a brief explanation of the procedures for obtaining clarification of the regulation or relief from the strict application of any of its terms, if the agency is authorized by a



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1 specific statute to grant such relief, or otherwise dealing with the
2 agency in connection with the regulation.

3 3. An agency may adopt by reference in a regulation material
4 published by another authority in book or pamphlet form if:

5 (a) It files one copy of the publication with the Secretary of
6 State and one copy with the State Library and Archives
7 Administrator, and makes at least one copy available for public
8 inspection with its regulations; and

9 (b) The reference discloses the source and price for purchase of
10 the publication.

11 ➤ An agency shall not attempt to incorporate any other material in a
12 regulation by reference.

13 *4. An agency shall adopt a proposed regulation not later than*
14 *2 years after the date on which the proposed regulation is*
15 *submitted to the Legislative Counsel pursuant to subsection 1 of*
16 *NRS 233B.063. If an agency does not adopt a proposed regulation*
17 *within the time prescribed by this subsection, the executive head of*
18 *the agency shall appear personally before the Legislative*
19 *Commission and explain why the proposed regulation has not*
20 *been adopted.*

21 **Sec. 3.** NRS 233B.066 is hereby amended to read as follows:

22 233B.066 1. Except as otherwise provided in subsection 2,
23 each adopted regulation which is submitted to the Legislative
24 Counsel pursuant to NRS 233B.067 or filed with the Secretary of
25 State pursuant to subsection 2 or 3 of NRS 233B.070 must be
26 accompanied by a statement concerning the regulation which
27 contains the following information:

28 (a) *A clear and concise explanation of the need for the adopted*
29 *regulation.*

30 (b) A description of how public comment was solicited, a
31 summary of the public response and an explanation of how other
32 interested persons may obtain a copy of the summary.

33 ~~[(b)]~~ (c) The number of persons who:

- 34 (1) Attended each hearing;
35 (2) Testified at each hearing; and
36 (3) Submitted to the agency written statements.

37 ~~[(c)]~~ (d) For each person identified in subparagraphs (2) and (3)
38 of paragraph ~~[(b)]~~ (c), the following information if provided to the
39 agency conducting the hearing:

- 40 (1) Name;
41 (2) Telephone number;
42 (3) Business address;
43 (4) Business telephone number;
44 (5) Electronic mail address; and
45 (6) Name of entity or organization represented.



~~(d)~~ (e) A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.

~~(e)~~ (f) If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

~~(f)~~ (g) The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include:

(1) Both adverse and beneficial effects; and

(2) Both immediate and long-term effects.

~~(g)~~ (h) The estimated cost to the agency for enforcement of the proposed regulation.

~~(h)~~ (i) A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

~~(i)~~ (j) If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

~~(j)~~ (k) If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

2. The requirements of paragraphs ~~(a)~~ (b) to ~~(e)~~ (f), inclusive, of subsection 1 do not apply to emergency regulations.

Sec. 4. 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 *to approve* the regulation . ~~It 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,



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, approves the
23 regulation, the Legislative Counsel shall promptly file the regulation
24 with the Secretary of State and notify the agency of the filing. If the
25 Commission or Subcommittee objects to the regulation after
26 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; ~~for~~

30 (c) The regulation does not carry out legislative intent ~~for~~; or

31 *(d) The agency has not provided a satisfactory explanation of*
32 *the need for the regulation in its informational statement as*
33 *required pursuant to NRS 233B.066, or the informational*
34 *statement is insufficient or incomplete,*

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

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

43 **Sec. 5.** The provisions of this act apply to:

44 1. Any proposed regulation of an agency which was
45 submitted to the Legislative Counsel pursuant to subsection 1 of



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- 1 NRS 233B.063 before, on or after July 1, 2013, and which has not
- 2 been adopted as of July 1, 2013; and
- 3 2. Any regulation adopted on or after July 1, 2013.
- 4 **Sec. 6.** This act becomes effective on July 1, 2013.

