

ASSEMBLY BILL NO. 408—ASSEMBLYWOMAN NEAL

MARCH 18, 2013

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing business impact statements prepared by state agencies and governing bodies of local governments. (BDR 18-416)

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 business impact statements; revising provisions governing the small business impact statements prepared by state agencies when proposing regulations; requiring a copy of those statements to be submitted to the Legislative Commission; authorizing a business to commence an action to declare a regulation void when the statement is not prepared properly; authorizing the Legislative Commission to reject a regulation if the statement is not prepared properly; revising provisions governing the business impact statement prepared by the governing body of a local government when proposing a rule; authorizing a business to commence an action to declare a rule void when the statement is not prepared properly; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law requires a state agency subject to the Nevada Administrative
2 Procedure Act (Chapter 233B of NRS) to determine whether a proposed regulation
3 is likely to impose a direct and significant economic burden on small business or
4 directly restrict the formation, operation or expansion of a small business. If so, the
5 agency must engage in certain actions and analysis and then prepare a small
6 business impact statement. (NRS 233B.0608) Existing law provides a similar
7 process to determine the impact on a business when a governing body of a local
8 government proposes to adopt a new rule. (NRS 237.080) **Section 1** of this bill
9 requires a state agency to make a concerted effort to determine the impact of the
10 regulation and to conduct an independent analysis of the likely impact of the
11 proposed regulation on small business. **Section 6** of this bill places a similar



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requirement on the governing body of a local government with respect to a proposed rule. **Section 1** further requires the director, executive head or other person responsible for the agency to sign the statement certifying that a concerted effort was made to determine the impact of the proposed regulation on a small business and that the information contained in the statement is accurate. **Section 1** also requires a copy of the small business impact statement to be submitted to the Legislative Counsel when the adopted regulation is submitted.

Section 2 of this bill requires a state agency to include a statement of the reasons for the conclusions of the agency regarding the impact of a regulation on a small business in its small business impact statement and requires the director, executive head or other person who is responsible for the agency to sign the statement certifying that the information contained in the statement was prepared properly and is accurate. (NRS 233B.0609) **Section 7** of this bill makes similar requirements applicable to the governing body of a local government which proposes a new rule but requires the chief legal officer for the governing body to sign the business impact statement. (NRS 237.090)

Section 3 of this bill requires the Legislative Counsel to return a regulation to the agency if it is submitted without the small business impact statement which complies with the requirements for such a statement. (NRS 233B.0665) **Section 4** of this bill allows the Legislative Commission or the Subcommittee to Review Regulations to reject a regulation if it finds that the small business impact statement is inaccurate, incomplete or did not adequately consider or significantly underestimated the economic effect of the regulation on small businesses. (NRS 233B.067)

Section 5 of this bill requires a state agency that receives a petition from a business that is aggrieved by a regulation to transmit a copy of the petition to the Legislative Counsel for submission to the Legislative Commission or the Subcommittee. **Section 5** further allows such a business to commence an action in court to declare the regulation void upon a determination by the court that a small business impact statement is inaccurate, incomplete or did not adequately consider or significantly underestimated the economic effect of the regulation on small businesses. (NRS 233B.105) **Section 8** of this bill similarly allows a business aggrieved by a rule adopted by the governing body of a local government to commence an action in court to declare the rule void upon a determination that the business impact statement is inaccurate, incomplete or did not adequately consider or significantly underestimated the economic effect of the regulation on business. (NRS 237.100)

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

Section 1. NRS 233B.0608 is hereby amended to read as follows:

233B.0608 1. Before conducting a workshop for a proposed regulation pursuant to NRS 233B.061, an agency shall *make a concerted effort to* determine whether the proposed regulation is likely to:

(a) Impose a direct and significant economic burden upon a small business; or

(b) Directly restrict the formation, operation or expansion of a small business.



2. If an agency determines pursuant to subsection 1 that a proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business, the agency shall:

(a) Insofar as practicable, consult with owners and officers of small businesses that are likely to be affected by the proposed regulation.

(b) *Conduct an independent analysis of the likely impact of the proposed regulation on small businesses.*

(c) Consider methods to reduce the impact of the proposed regulation on small businesses, including, without limitation:

(1) Simplifying the proposed regulation;

(2) Establishing different standards of compliance for a small business; and

(3) Modifying a fee or fine set forth in the regulation so that a small business is authorized to pay a lower fee or fine.

~~H(e)~~ (d) Prepare a small business impact statement and make copies of the statement available to the public at the workshop conducted and the public hearing held pursuant to NRS 233B.061.

3. The agency shall prepare a statement identifying the methods used by the agency in determining the impact of a proposed regulation on a small business ~~H~~ *and the reasons for the conclusions of the agency. The director, executive head or other person who is responsible for the agency shall sign the statement certifying that a concerted effort was made to determine the impact of the proposed regulation on small businesses and that the information contained in the statement is accurate.*

4. *Each adopted regulation which is submitted to the Legislative Counsel pursuant to NRS 233B.067 must be accompanied by a copy of the small business impact statement and the statement made pursuant to subsection 3. If the agency revises a regulation after preparing the small business impact statement and the statement made pursuant to subsection 3, the agency must include an explanation of the revision and the effect of the change on small businesses.*

Sec. 2. NRS 233B.0609 is hereby amended to read as follows:

233B.0609 **1.** A small business impact statement prepared pursuant to NRS 233B.0608 must set forth the following information:

~~H-H~~ (a) A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.



~~12-1~~ (b) *The manner in which the independent analysis was conducted.*

(c) The estimated economic effect of the proposed regulation on the small businesses which it is to regulate, including, without limitation:

~~1(a)~~ (1) Both adverse and beneficial effects; and

~~1(b)~~ (2) Both direct and indirect effects.

~~13-1~~ (d) A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

~~14-1~~ (e) The estimated cost to the agency for enforcement of the proposed regulation.

~~15-1~~ (f) If the proposed 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.

~~16-1~~ (g) If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

(h) *The reasons for the conclusions of the agency regarding the impact of a regulation on small businesses.*

2. The director, executive head or other person who is responsible for the agency shall sign the small business impact statement certifying that the information contained in the statement was prepared properly and is accurate.

Sec. 3. NRS 233B.0665 is hereby amended to read as follows:

233B.0665 If a regulation submitted to the Legislative Counsel Bureau pursuant to NRS 233B.067 is not accompanied by an informational statement which complies with the requirements of NRS 233B.066 ~~1-1~~ *or a small business impact statement which complies with the requirements of NRS 233B.0609*, the Legislative Counsel shall return the regulation to the agency with a note ~~that the statement~~ *indicating the statement which* is missing. Unless the *missing* statement is supplied, the Legislative Counsel shall not submit the regulation to the Legislative Commission or the Subcommittee to Review Regulations, as applicable, and the regulation never becomes effective.

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 the regulation conforms to the statutory authority pursuant to which it was adopted and whether the regulation carries



1 out the intent of the Legislature in granting that authority. The
2 Legislative Counsel shall endorse on the original and the copy of
3 each adopted regulation the date of their receipt. The Legislative
4 Counsel shall maintain the copy of the regulation in a file and make
5 the copy available for public inspection for 2 years.

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

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

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

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

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

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

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

32 5. If the Legislative Commission, or the Subcommittee to
33 Review Regulations if the regulation was referred, approves the
34 regulation, the Legislative Counsel shall promptly file the regulation
35 with the Secretary of State and notify the agency of the filing. If the
36 Commission or Subcommittee objects to the regulation after
37 determining that:

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

40 (b) The regulation does not conform to statutory authority; ~~for~~

41 (c) *The small business impact statement is inaccurate,*
42 *incomplete or did not adequately consider or significantly*
43 *underestimated the economic effect of the regulation on small*
44 *businesses; or*

45 (d) The regulation does not carry out legislative intent,



1 ↳ the Legislative Counsel shall attach to the regulation a written
2 notice of the objection, including, if practicable, a statement of the
3 reasons for the objection, and shall promptly return the regulation to
4 the agency.

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

9 **Sec. 5.** NRS 233B.105 is hereby amended to read as follows:

10 233B.105 1. A small business that is aggrieved by a
11 regulation adopted by an agency on or after January 1, 2000, may
12 object to all or a part of the regulation by filing a petition with the
13 agency that adopted the regulation within 90 days after the date on
14 which the regulation was adopted. *An agency which receives such*
15 *a petition shall transmit a copy of the petition to the Legislative*
16 *Counsel for submission to the Legislative Commission or the*
17 *Subcommittee to Review Regulations appointed pursuant to*
18 *subsection 6 of NRS 233B.067.*

19 2. A petition filed pursuant to subsection 1 may be based on
20 the following grounds:

21 (a) The agency failed to prepare a small business impact
22 statement as required pursuant to NRS 233B.0608; or

23 (b) The small business impact statement prepared by the agency
24 pursuant to NRS 233B.0608 *is inaccurate, incomplete or* did not
25 *adequately* consider or significantly underestimated the economic
26 effect of the regulation on small businesses.

27 3. After receiving a petition pursuant to subsection 1, an
28 agency shall determine whether the petition has merit. If the agency
29 determines that the petition has merit, the agency may, pursuant to
30 this chapter, take action to amend the regulation to which the small
31 business objected.

32 4. *Notwithstanding the procedure set forth in this section, a*
33 *small business that is aggrieved by a regulation adopted by an*
34 *agency on or after July 1, 2013, may commence an action in court*
35 *to declare a regulation void upon a determination by the court that*
36 *the small business impact statement is inaccurate, incomplete or*
37 *did not adequately consider or significantly underestimated the*
38 *economic effect of the regulation on small businesses.*

39 **Sec. 6.** NRS 237.080 is hereby amended to read as follows:

40 237.080 1. Before a governing body of a local government
41 adopts a proposed rule, the governing body or its designee must
42 *make a concerted effort to determine whether the proposed rule*
43 *will impose a direct and significant economic burden upon a*
44 *business or directly restrict the formation, operation or expansion*
45 *of a business. The governing body of a local government or its*



1 **designee must** notify trade associations or owners and officers of
2 businesses which are likely to be affected by the proposed rule that
3 they may submit data or arguments to the governing body or its
4 designee as to whether the proposed rule will:

5 (a) Impose a direct and significant economic burden upon a
6 business; or

7 (b) Directly restrict the formation, operation or expansion of a
8 business.

9 ➔ Notification provided pursuant to this subsection must include
10 the date by which the data or arguments must be received by the
11 governing body or its designee, which must be at least 15 working
12 days after the notification is sent.

13 2. If the governing body or its designee does not receive any
14 data or arguments from the trade associations or owners or officers
15 of businesses that were notified pursuant to subsection 1 within the
16 period specified in the notification, a rebuttable presumption is
17 created that the proposed rule will not impose a direct and
18 significant economic burden upon a business or directly restrict the
19 formation, operation or expansion of a business.

20 3. After the period for submitting data or arguments specified
21 in the notification provided pursuant to subsection 1 has expired, the
22 governing body or its designee shall determine whether the
23 proposed rule is likely to:

24 (a) Impose a direct and significant economic burden upon a
25 business; or

26 (b) Directly restrict the formation, operation or expansion of a
27 business.

28 ➔ If no data or arguments were submitted pursuant to subsection 1,
29 the governing body or its designee shall make its determination
30 based on any information available to the governing body or its
31 designee.

32 4. If the governing body or its designee determines pursuant to
33 subsection 3 that a proposed rule is likely to impose a direct and
34 significant economic burden upon a business or directly restrict the
35 formation, operation or expansion of a business, the governing body
36 or its designee shall consider methods to reduce the impact of the
37 proposed rule on businesses, including, without limitation:

38 (a) Simplifying the proposed rule;

39 (b) Establishing different standards of compliance for a
40 business; and

41 (c) Modifying a fee or fine set forth in the rule so that a business
42 is authorized to pay a lower fee or fine.

43 5. After making a determination pursuant to subsection 3, the
44 governing body or its designee shall prepare a business impact
45 statement.



Sec. 7. NRS 237.090 is hereby amended to read as follows:

237.090 1. A business impact statement prepared pursuant to NRS 237.080 must be considered at any hearing conducted to adopt a proposed rule and set forth the following information:

(a) A description of the manner in which comment was solicited from affected businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.

(b) The estimated economic effect of the proposed rule on the businesses which it is to regulate, including, without limitation:

(1) Both adverse and beneficial effects; and

(2) Both direct and indirect effects.

(c) A description of the methods that the governing body of the local government or its designee considered to reduce the impact of the proposed rule on businesses and a statement regarding whether the governing body or its designee actually used any of those methods.

(d) The estimated cost to the local government for enforcement of the proposed rule.

(e) If the proposed rule provides a new fee or increases an existing fee, the total annual amount the local government expects to collect and the manner in which the money will be used.

(f) If the proposed rule includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

(g) The reasons for the conclusions regarding the impact of the proposed rule on businesses.

2. *The chief legal officer for the governing body of a local government shall sign the business impact statement certifying that the information contained in the statement was prepared properly and is accurate.*

3. The governing body of a local government shall not include the adoption of a proposed rule on the agenda for a meeting unless a business impact statement has been prepared and is available for public inspection at the time the agenda is first posted.

Sec. 8. NRS 237.100 is hereby amended to read as follows:

237.100 1. A business that is aggrieved by a rule adopted by the governing body of a local government on or after January 1, 2000, may object to all or a part of the rule by filing a petition with the governing body that adopted the rule within 30 days after the date on which the rule was adopted.

2. A petition filed pursuant to subsection 1 may be based on the following grounds:



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1 (a) The governing body of the local government or its designee
2 failed to prepare a business impact statement as required pursuant to
3 NRS 237.080; or

4 (b) The business impact statement prepared by the governing
5 body or its designee pursuant to NRS 237.080 *is inaccurate,*
6 *incomplete or* did not *adequately* consider or significantly
7 underestimated the economic effect of the rule on businesses.

8 3. After receiving a petition pursuant to subsection 1, the
9 governing body of a local government shall determine whether the
10 petition has merit. If the governing body determines that the petition
11 has merit, the governing body may take action to amend the rule to
12 which the business objected.

13 4. Each governing body of a local government shall provide a
14 procedure for an aggrieved business to object to a rule adopted by
15 the governing body. The procedure must be filed with the clerk of
16 the local government and available upon request at no charge.

17 *5. Notwithstanding the procedure set forth in this section, a*
18 *business that is aggrieved by a rule adopted by the governing body*
19 *of a local government on or after July 1, 2013, may commence an*
20 *action in court to declare a rule void upon a determination by the*
21 *court that the business impact statement is inaccurate, incomplete*
22 *or did not adequately consider or significantly underestimated the*
23 *economic effect of the rule on business.*

24 **Sec. 9.** This act becomes effective on July 1, 2013.

