

Amendment No. 400

Assembly Amendment to Assembly Bill No. 408

(BDR 18-416)

Proposed by: Assembly Committee on Government Affairs**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

RBL/BJE



Date: 4/22/2013

A.B. No. 408—Revises provisions governing business impact statements prepared by state agencies and governing bodies of local governments.
(BDR 18-416)



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:

Existing law requires a state agency subject to the Nevada Administrative Procedure Act (Chapter 233B of NRS) to determine whether a proposed regulation is likely to impose a direct and significant economic burden on small business or directly restrict the formation, operation or expansion of a small business. If so, the agency must engage in certain actions and analysis and then prepare a small business impact statement. (NRS 233B.0608) Existing law provides a similar process to determine the impact on a business when a governing body of a local government proposes to adopt a new rule. (NRS 237.080) **Section 1** of this bill requires a state agency to make a concerted effort to determine the impact of the regulation and to conduct or cause to be conducted an ~~(independent)~~ analysis of the likely impact of the proposed regulation on small ~~business~~ **businesses**. **Section 6** of this bill places a similar requirement on the governing body of a local government with respect to a proposed rule. **Section 6 also removes the rebuttable presumption that no direct or significant economic burden is imposed on a business if the governing body does not receive any data or arguments indicating such a burden.** **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 ~~to the best of his or her~~ **knowledge or belief**. **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 ~~to the best of his or her knowledge or belief.~~ (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 county manager, city manager or other chief legal executive 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 or cause to be conducted an independent analysis of the likely impact of the proposed regulation on small businesses. Insofar as practicable, the analysis must be conducted by the employee of the agency who is most knowledgeable about the subject of the proposed regulation and its likely impact on small businesses or by a consultant or other independent contractor who has such knowledge and is retained by the agency.*

(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.

~~++~~ (d) Prepare a small business impact statement and make copies of the statement available to the public ~~++~~ not less than 15 days before the workshop conducted and the public hearing held pursuant to NRS 233B.061. A copy of the statement must accompany the notice required by subsection 2 of NRS 233B.061 and the agenda for the public hearing held pursuant to that section.

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 ~~++~~ 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, to the best of his or her knowledge or belief, 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:

~~++~~ (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.

~~++~~ (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) Both adverse and beneficial effects; and

~~++~~ (2) Both direct and indirect effects.

~~++~~ (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.

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

~~++~~ (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.

~~++~~ (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, to the best of his or her knowledge or belief, 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 ~~++~~ or a small business impact statement which complies with the requirements of NRS 233B.0608 and

1 **233B.0609**, the Legislative Counsel shall return the regulation to the agency with a
2 note ~~that the statement~~ *indicating the statement which* is missing. Unless the
3 *missing* statement is supplied, the Legislative Counsel shall not submit the
4 regulation to the Legislative Commission or the Subcommittee to Review
5 Regulations, as applicable, and the regulation never becomes effective.

6 **Sec. 4.** NRS 233B.067 is hereby amended to read as follows:

7 **233B.067** 1. After adopting a permanent regulation, the agency shall submit
8 the informational statement prepared pursuant to NRS 233B.066 and one copy of
9 each regulation adopted to the Legislative Counsel for review by the Legislative
10 Commission to determine whether the regulation conforms to the statutory
11 authority pursuant to which it was adopted and whether the regulation carries out
12 the intent of the Legislature in granting that authority. The Legislative Counsel
13 shall endorse on the original and the copy of each adopted regulation the date of
14 their receipt. The Legislative Counsel shall maintain the copy of the regulation in a
15 file and make the copy available for public inspection for 2 years.

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

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

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

22 ➤ it shall include a statement that adoption of the regulation is required by a federal
23 statute or regulation. The statement must include the specific citation of the federal
24 statute or regulation requiring such adoption.

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

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

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

31 4. If an agency determines that an emergency exists which requires a
32 regulation of the agency submitted pursuant to subsection 1 to become effective
33 before the next meeting of the Legislative Commission is scheduled to be held, the
34 agency may notify the Legislative Counsel in writing of the emergency. Upon
35 receipt of such a notice, the Legislative Counsel shall refer the regulation for review
36 by the Subcommittee to Review Regulations. The Subcommittee shall meet to
37 review the regulation as soon as practicable.

38 5. If the Legislative Commission, or the Subcommittee to Review
39 Regulations if the regulation was referred, approves the regulation, the Legislative
40 Counsel shall promptly file the regulation with the Secretary of State and notify the
41 agency of the filing. If the Commission or Subcommittee objects to the regulation
42 after determining that:

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

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

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

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

50 ➤ the Legislative Counsel shall attach to the regulation a written notice of the
51 objection, including, if practicable, a statement of the reasons for the objection, and
52 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 or alternate members of the Legislative Commission.

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

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

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

(a) The agency failed to prepare a small business impact statement as required pursuant to NRS 233B.0608 ~~++ and 233B.0609;~~ or

(b) The small business impact statement prepared by the agency pursuant to NRS 233B.0608 *and 233B.0609 is inaccurate, incomplete or* did not *adequately* consider or significantly underestimated the economic effect of the regulation on small businesses.

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

~~4. Notwithstanding the procedure set forth in this section, a small business that is aggrieved by a regulation adopted by an agency on or after July 1, 2013, may commence an action in court to declare a regulation void upon a determination by the court 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.~~

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

237.080 1. Before a governing body of a local government adopts a proposed rule, the governing body or its designee must *make a concerted effort to determine whether the proposed rule will impose a direct and significant economic burden upon a business or directly restrict the formation, operation or expansion of a business. The governing body of a local government or its designee must* notify trade associations or owners and officers of businesses which are likely to be affected by the proposed rule that they may submit data or arguments to the governing body or its designee as to whether the proposed rule will:

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

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

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

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

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

(a) Impose a direct and significant economic burden upon a business; or
(b) Directly restrict the formation, operation or expansion of a business.
↪ If no data or arguments were submitted pursuant to subsection 1, the governing body or its designee shall make its determination based on any information available to the governing body or its designee.

~~1.4.4~~ 3. If the governing body or its designee determines pursuant to subsection ~~1.4.2~~ 2 that a proposed rule is likely to impose a direct and significant economic burden upon a business or directly restrict the formation, operation or expansion of a business, the governing body or its designee shall consider methods to reduce the impact of the proposed rule on businesses, including, without limitation:

(a) Simplifying the proposed rule;
(b) Establishing different standards of compliance for a business; and
(c) Modifying a fee or fine set forth in the rule so that a business is authorized to pay a lower fee or fine.

~~1.5.4~~ 4. After making a determination pursuant to subsection ~~1.3.2~~ 2, the governing body or its designee shall prepare a business impact 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~~ by the governing body at its regular meeting next preceding any regular meeting held to adopt ~~the~~ the proposed rule. ~~and~~ The business impact statement must 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 county manager, city manager or other chief legal executive officer for the governing body of a local government shall sign the business impact statement certifying that, to the best of his or her knowledge or belief, 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 consideration of a business impact statement on the agenda for a meeting unless the business impact statement has been prepared and is available for public inspection at the time the agenda is first posted.

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

2 237.100 1. A business that is aggrieved by a rule adopted by the governing
3 body of a local government on or after January 1, 2000, may object to all or a part
4 of the rule by filing a petition with the governing body that adopted the rule within
5 30 days after the date on which the rule was adopted.

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

8 (a) The governing body of the local government or its designee failed to
9 prepare a business impact statement as required pursuant to NRS 237.080 ~~+~~ and
10 237.090; or

11 (b) The business impact statement prepared by the governing body or its
12 designee pursuant to NRS 237.080 and 237.090 is inaccurate, incomplete or did
13 not adequately consider or significantly underestimated the economic effect of the
14 rule on businesses.

15 3. After receiving a petition pursuant to subsection 1, the governing body of a
16 local government shall determine whether the petition has merit. If the governing
17 body determines that the petition has merit, the governing body may take action to
18 amend the rule to which the business objected.

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

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

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