

ASSEMBLY BILL NO. 492—COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE LEGISLATIVE COUNSEL)

MAY 30, 2015

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions relating to administrative regulations. (BDR 18-1281)

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 regulations; making the provisions governing administrative rulemaking applicable to certain written policies, interpretations, processes or procedures of certain agencies; limiting the scope of the exclusions to the rulemaking provisions; revising provisions governing statements relating to the effect of a regulation on small business submitted with adopted permanent regulations; clarifying the time by which proposed regulations must be returned to state agencies; providing that any permanent regulation adopted or implemented by an agency on or after July 1, 1995, that was not approved by the Legislative Commission or the Subcommittee to Review Regulations is null and void; revising provisions relating to the review of regulations by the Legislative Committee on Health Care; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 The Nevada Administrative Procedure Act establishes the procedures for the
- 2 adoption of administrative regulations by agencies of the Executive Department of
- 3 the State Government that are not exempt from the requirements of the Act.
- 4 (Chapter 233B of NRS) **Section 1** of this bill makes the requirements of the Act
- 5 applicable to such an agency's written policies, interpretations, processes or
- 6 procedures to determine whether a person is in compliance with a federal or state



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statute or regulation which is enforceable by the agency. **Section 1** also provides that the exclusions from the rulemaking provisions must be construed narrowly by their express terms and no other exclusion may be implied.

Existing law requires an agency which is proposing to adopt a regulation to make a concerted effort to determine whether the 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. If so, the agency is required to take certain actions and prepare a small business impact statement. (NRS 233B.0608, 233B.0609) In addition, such an agency is required to prepare a statement which identifies 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. A copy of the statement and the small business impact statement are required to be submitted to the Legislative Counsel with each adopted regulation. (NRS 233B.0608) **Section 3** of this bill instead requires an agency to submit only one statement or the other. **Section 3** also provides that a small business impact statement will only be required when the agency concludes that the 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. **Sections 2, 6 and 8** of this bill make conforming changes.

Existing law prescribes a procedure for the review of adopted permanent regulations by the Legislative Commission or the Subcommittee to Review Regulations, which requires the Commission or Subcommittee to either affirmatively approve or object to a regulation. (NRS 233B.067, 233B.0675, 233B.0681) If the Commission or Subcommittee approves a permanent regulation, the regulation, with certain exceptions, becomes effective upon its filing by the Legislative Counsel with the Secretary of State. (NRS 233B.070) **Section 4** of this bill provides that any permanent regulation adopted or implemented by an agency on or after July 1, 1995, that was not approved by the Commission or Subcommittee is null and void.

Existing law requires a state agency that intends to adopt, amend or repeal a permanent regulation to submit its proposed regulation to the Legislative Counsel. The Legislative Counsel is required to examine and, if appropriate, revise the language submitted. If the proposed regulation is submitted between July 1 of an odd-numbered year and July 1 of the succeeding even-numbered year, the Legislative Counsel is required to return the proposed regulation within 30 days. (NRS 233B.063) **Section 5** of this bill clarifies that if the proposed regulation is submitted during any other period, the Legislative Counsel may accept the regulation but is not required to comply with the 30-day deadline.

Existing law requires the Legislative Committee on Health Care to consider certain regulations relating to the licensing of health care professionals. (NRS 439B.225) **Section 9** of this bill instead authorizes the Legislative Committee on Health Care to consider any regulation that is proposed or adopted which relates to health care, thereby allowing the Committee to determine which regulations the Committee wishes to consider and to consider a broader range of topics that may relate to health care which are addressed in administrative regulations. **Sections 5 and 7** of this bill make conforming changes.

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

Section 1. NRS 233B.038 is hereby amended to read as follows:

233B.038 1. "Regulation" means:



(a) An agency rule, standard, directive or statement of general applicability which effectuates or interprets law or policy, or describes the organization, procedure or practice requirements of any agency;

(b) A proposed regulation;

(c) The amendment or repeal of a prior regulation; ~~and~~

(d) The general application by an agency of a written policy, interpretation, process or procedure to determine whether a person is in compliance with a federal or state statute or regulation in order to assess a fine, monetary penalty or monetary interest ~~and~~; and

(e) The general application by an agency of a written policy, interpretation, process or procedure to determine whether a person is in compliance with a federal or state statute or regulation which is enforceable by the agency.

2. The term does not include:

(a) A statement concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) A declaratory ruling;

(c) An intraagency memorandum;

(d) A manual of internal policies and procedures or audit procedures of an agency which is used solely to train or provide guidance to employees of the agency and which is not used as authority in a contested case to determine whether a person is in compliance with a federal or state statute or regulation;

(e) An agency decision or finding in a contested case;

(f) An advisory opinion issued by an agency that is not of general applicability;

(g) A published opinion of the Attorney General;

(h) An interpretation of an agency that has statutory authority to issue interpretations;

(i) Letters of approval, concurrence or disapproval issued in relation to a permit for a specific project or activity;

(j) A contract or agreement into which an agency has entered;

(k) The provisions of a federal law, regulation or guideline;

(l) An emergency action taken by an agency that is necessary to protect public health and safety;

(m) The application by an agency of a policy, interpretation, process or procedure to a person who has sufficient prior actual notice of the policy, interpretation, process or procedure to determine whether the person is in compliance with a federal or state statute or regulation in order to assess a fine, monetary penalty or monetary interest;

(n) A regulation concerning the use of public roads or facilities which is indicated to the public by means of signs, signals and other



1 traffic-control devices that conform with the manual and
2 specifications for a uniform system of official traffic-control devices
3 adopted pursuant to NRS 484A.430;

4 (o) The classification of wildlife or the designation of seasons
5 for hunting, fishing or trapping by regulation of the Board of
6 Wildlife Commissioners pursuant to the provisions of title 45 of
7 NRS; or

8 (p) A technical bulletin prepared pursuant to NRS 360.133.

9 *➔ The exclusions set forth in this subsection must be construed*
10 *narrowly by their express terms and no other exclusion may be*
11 *implied.*

12 **Sec. 2.** NRS 233B.0603 is hereby amended to read as follows:

13 233B.0603 1. The notice of intent to act upon a regulation
14 required pursuant to NRS 233B.060 must:

15 (a) Include:

16 (1) A statement of the need for and purpose of the proposed
17 regulation.

18 (2) If the proposed regulation is a temporary regulation,
19 either the terms or substance of the proposed regulation or a
20 description of the subjects and issues involved.

21 (3) If the proposed regulation is a permanent regulation, a
22 statement explaining how to obtain the approved or revised text of
23 the proposed regulation prepared by the Legislative Counsel
24 pursuant to NRS 233B.063.

25 (4) A statement of the estimated economic effect of the
26 regulation on the business which it is to regulate and on the public.
27 These must be stated separately and in each case must include:

28 (I) Both adverse and beneficial effects; and

29 (II) Both immediate and long-term effects.

30 (5) A statement identifying the methods used by the agency
31 in determining the impact on a small business prepared pursuant to
32 subsection 3 of NRS 233B.0608 *or a small business impact*
33 *statement prepared pursuant to paragraph (d) of subsection 2 of*
34 *NRS 233B.0608 in the manner set forth in NRS 233B.0609, as*
35 *applicable.*

36 (6) The estimated cost to the agency for enforcement of the
37 proposed regulation.

38 (7) A description of any regulations of other state or local
39 governmental agencies which the proposed regulation overlaps or
40 duplicates and a statement explaining why the duplication or
41 overlapping is necessary. If the regulation overlaps or duplicates a
42 federal regulation, the notice must include the name of the
43 regulating federal agency.

44 (8) If the regulation is required pursuant to federal law, a
45 citation and description of the federal law.



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

(10) The time when, the place where and the manner in which interested persons may present their views regarding the proposed regulation.

(b) If the proposed regulation is a temporary regulation, state each address at which the text of the proposed regulation may be inspected and copied.

(c) Include an exact copy of the provisions of subsection 2 of NRS 233B.064.

(d) Include a statement indicating whether the regulation establishes a new fee or increases an existing fee.

(e) Be mailed to all persons who have requested in writing that they be placed upon a mailing list, which must be kept by the agency for that purpose.

(f) Be submitted to the Legislative Counsel Bureau for inclusion in the Register of Administrative Regulations created pursuant to NRS 233B.0653. The publication of a notice of intent to act upon a regulation in the Register does not satisfy the requirements for notice set forth in paragraph (e).

2. The Attorney General may by regulation prescribe the form of notice to be used.

3. In addition to distributing the notice to each recipient of the agency's regulations, the agency shall also solicit comment generally from the public and from businesses to be affected by the proposed regulation.

Sec. 3. 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 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 *in the manner set forth in NRS 233B.0609* 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]~~ *If the* agency *determines that a proposed regulation is not 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 prepare a statement identifying the methods used by the agency in determining the impact of ~~the~~ *the* 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 statement prepared pursuant to subsection 3 or* the small business impact statement ~~and the statement made pursuant to subsection 3.]~~ *prepared pursuant to paragraph (d) of subsection 2 in the manner set forth in NRS 233B.0609.* If the agency revises a regulation after preparing the *statement or the* small business impact statement ~~and the statement made pursuant to subsection 3,]~~ *, as applicable,* the agency must include *in the applicable statement* an explanation of the revision and the effect of the change on small businesses.



Sec. 4. NRS 233B.0617 is hereby amended to read as follows:

233B.0617 **1.** No regulation adopted after July 1, 1965, is valid unless adopted in substantial compliance with this chapter but no objection to any regulation on the ground of noncompliance with the procedural requirements of NRS 233B.060 to 233B.0617, inclusive, may be made more than 2 years after its effective date. Regulations in effect on July 1, 1965, continue in effect until amended or repealed in accordance with the provisions of this chapter, if an original and two copies were deposited with the Secretary of State on or before July 1, 1965.

2. *Any permanent regulation adopted or implemented by an agency on or after July 1, 1995, that was not approved by the Legislative Commission or the Subcommittee to Review Regulations pursuant to NRS 233B.067, 233B.0675 or 233B.0681 is null and void.*

Sec. 5. NRS 233B.063 is hereby amended to read as follows:

233B.063 **1.** An agency that intends to adopt, amend or repeal a permanent regulation must deliver to the Legislative Counsel a copy of the proposed regulation. The Legislative Counsel shall examine and if appropriate revise the language submitted so that it is clear, concise and suitable for incorporation in the Nevada Administrative Code, but shall not alter the meaning or effect without the consent of the agency.

2. ~~Unless~~ **If** the proposed regulation is submitted to the Legislative Counsel between July 1 of an even-numbered year and July 1 of the succeeding odd-numbered year, the Legislative Counsel shall deliver the approved or revised text of the regulation *as soon as possible or, if submitted any other time,* within 30 days after it is submitted to the Legislative Counsel. If the proposed or revised text of a regulation is changed before adoption, the agency shall submit the changed text to the Legislative Counsel, who shall examine and revise it if appropriate pursuant to the standards of subsection 1. ~~Unless~~ **If** it is submitted between July 1 of an ~~even-numbered~~ *odd-numbered* year and July 1 of the succeeding ~~odd-numbered~~ *even-numbered* year, the Legislative Counsel shall return it with any appropriate revisions *as soon as possible* within 30 days ~~[. If the agency is a licensing board as defined in NRS 439B.225 and the proposed regulation relates to standards for the issuance or renewal of licenses, permits or certificates of registration issued to a person or facility regulated by the agency, the Legislative Counsel shall also deliver one copy of the approved or revised text of the regulation to the Legislative Committee on Health Care.] or~~ *as soon as possible if submitted between July 1 of an even-numbered year and July 1 of the succeeding odd-numbered year.*



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

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

Sec. 6. 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 *statement or* small business impact statement which complies with the requirements of NRS 233B.0608 and 233B.0609, *as applicable*, the Legislative Counsel shall return the regulation to the agency with a note 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. 7. NRS 233B.070 is hereby amended to read as follows:

233B.070 1. A permanent regulation becomes effective when the Legislative Counsel files with the Secretary of State the original of the final draft or revision of a regulation, except as otherwise provided in NRS 293.247 or where a later date is specified in the regulation.

2. Except as otherwise provided in NRS 233B.0633, an agency that has adopted a temporary regulation may not file the temporary regulation with the Secretary of State until 35 days after the date on which the temporary regulation was adopted by the agency. A temporary regulation becomes effective when the agency files with the Secretary of State the original of the final draft or revision of the regulation, together with the informational statement prepared pursuant to NRS 233B.066. The agency shall also file a copy of the temporary regulation with the Legislative Counsel, together with the informational statement prepared pursuant to NRS 233B.066.

3. An emergency regulation becomes effective when the agency files with the Secretary of State the original of the final draft or revision of an emergency regulation, together with the informational statement prepared pursuant to NRS 233B.066. The agency shall also file a copy of the emergency regulation with the



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Legislative Counsel, together with the informational statement prepared pursuant to NRS 233B.066.

4. The Secretary of State shall maintain the original of the final draft or revision of each regulation in a permanent file to be used only for the preparation of official copies.

5. The Secretary of State shall file, with the original of each agency's rules of practice, the current statement of the agency concerning the date and results of its most recent review of those rules.

6. Immediately after each permanent or temporary regulation is filed, the agency shall deliver one copy of the final draft or revision, bearing the stamp of the Secretary of State indicating that it has been filed, including material adopted by reference which is not already filed with the State Library and Archives Administrator, to the State Library and Archives Administrator for use by the public. ~~[If the agency is a licensing board as defined in NRS 439B.225 and it has adopted a permanent regulation relating to standards for the issuance or renewal of licenses, permits or certificates of registration issued to a person or facility regulated by the agency, the agency shall also deliver one copy of the regulation, bearing the stamp of the Secretary of State, to the Legislative Committee on Health Care within 10 days after the regulation is filed with the Secretary of State.]~~

7. Each agency shall furnish a copy of all or part of that part of the Nevada Administrative Code which contains its regulations, to any person who requests a copy, and may charge a reasonable fee for the copy based on the cost of reproduction if it does not have money appropriated or authorized for that purpose.

8. An agency which publishes any regulations included in the Nevada Administrative Code shall use the exact text of the regulation as it appears in the Nevada Administrative Code, including the leadlines and numbers of the sections. Any other material which an agency includes in a publication with its regulations must be presented in a form which clearly distinguishes that material from the regulations.

Sec. 8. 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 *statement or* small business impact statement as required pursuant to NRS 233B.0608 and 233B.0609 ~~[3]~~, *as applicable*; or

(b) The *statement or* small business impact statement prepared by the agency pursuant to NRS 233B.0608 and 233B.0609 , *as applicable*, 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.

Sec. 9. NRS 439B.225 is hereby amended to read as follows:

439B.225 1. ~~{As used in this section, “licensing board” means any division or board empowered to adopt standards for the issuance or renewal of licenses, permits or certificates of registration pursuant to NRS 435.3305 to 435.339, inclusive, chapter 449, 625A, 630, 630A, 631, 632, 633, 634, 634A, 635, 636, 637, 637A, 637B, 639, 640, 640A, 640D, 641, 641A, 641B, 641C, 652 or 654 of NRS. —2.}~~ The Committee ~~{shall}~~ *may* review ~~[each]~~ *any* regulation that ~~{a licensing board proposes or adopts that relates to standards for the issuance or renewal of licenses, permits or certificates of registration issued to a person or facility regulated by the board,}~~ *is proposed or adopted which relates to health care*, giving consideration to:

(a) Any oral or written comment made or submitted to it by members of the public or by persons or facilities affected by the regulation;

(b) The effect of the regulation on the cost of health care in this State;

(c) The effect of the regulation on the number of licensed, permitted or registered persons and facilities available to provide services in this State; and

(d) Any other related factor the Committee deems appropriate.

~~[3]~~ 2. After reviewing a proposed regulation, the Committee shall notify the agency of the opinion of the Committee regarding the advisability of adopting or revising the proposed regulation.

~~[4]~~ 3. The Committee shall recommend to the Legislature as a result of its review of regulations pursuant to this section any appropriate legislation.



1 **Sec. 10.** This act becomes effective upon passage and
2 approval.

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