

ASSEMBLY BILL NO. 403—ASSEMBLYMEN DALY, FRIERSON, DIAZ,
BENITEZ-THOMPSON, ARAUJO; BROOKS, CARRILLO,
MCCURDY II AND MONROE-MORENO

MARCH 20, 2017

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises various provisions relating to governmental
administration. (BDR 18-573)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to governmental administration; authorizing the
Legislative Commission to suspend or nullify certain
administrative regulations; revising provisions relating to
administrative regulations; and providing other matters
properly relating thereto.

Legislative Counsel's Digest:

Under the separation-of-powers provision of the Nevada Constitution, one branch of the State Government may not exercise powers properly belonging to another branch of the State Government “except in the cases expressly directed or permitted in this constitution.” (Nev. Const. Art. 3, § 1) As a general rule under the separation-of-powers doctrine, because the question of whether a regulation adopted by an executive agency exceeds its statutory authority or is inconsistent with legislative intent presents a question of statutory interpretation, the power to resolve that question of statutory interpretation and determine whether to invalidate or nullify the regulation is usually regarded as judicial power because “it is emphatically the province and duty of the judicial department to say what the law is.” (*Nevadans for Nev. v. Beers*, 122 Nev. 930, 943 n.20 (2006) (quoting *Marbury v. Madison*, 5 U.S. 137, 177-78 (1803)); *Berkson v. LePome*, 126 Nev. 492, 499 (2010) (explaining that “[t]o declare what the law is or has been is judicial power; to declare what the law shall be is legislative.” (quoting 1 Thomas M. Cooley, *Constitutional Limitations* 191 (8th ed. 1927)); *Silver State Elec. Supply Co. v. State ex rel. Dep’t of Tax’n*, 123 Nev. 80, 84 (2007) (“Appeals involving interpretation of a statute or regulation present questions of law subject to our independent review.”)))

For example, in applying the separation-of-powers doctrine to the Federal Government and other state governments, courts have found that the separation-of-powers doctrine ordinarily prohibits legislative committees or other legislative bodies from exercising the power to nullify a regulation adopted by an executive



* A B 4 0 3 R 3 *

agency on the basis that the regulation exceeds the statutory authority of the agency or is inconsistent with legislative intent, unless Congress or the state legislature passes a law that expressly nullifies the regulation or revises or repeals the agency's statutory authority. (*I.N.S. v. Chadha*, 462 U.S. 919, 953 n.16 (1983); *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769, 772-79 (Alaska 1980); *Legis. Research Comm'n v. Brown*, 664 S.W.2d 907, 917-20 (Ky. 1984); *Blank v. Dep't of Corr.*, 611 N.W.2d 530, 537-39 (Mich. 2000); *General Assembly of N.J. v. Byrne*, 448 A.2d 438, 443-49 (N.J. 1982); *State ex rel. Barker v. Manchin*, 279 S.E.2d 622, 630-36 (W. Va. 1981))

However, in Nevada, the voters in 1996 approved a constitutional amendment to Nevada's separation-of-powers provision which expressly empowers the Legislature to provide by law for legislative agencies and legislative bodies composed of members of the Senate and Assembly to suspend or nullify regulations adopted by executive agencies on the basis that the regulations exceed the statutory authority of the agencies or are inconsistent with legislative intent. The constitutional amendment provides that if the Legislature authorizes the adoption of regulations by executive agencies which bind persons outside the agencies, the Legislature is authorized to enact laws providing for: (1) the review of such regulations by a legislative agency before their effective date to determine whether each such regulation is within the statutory authority for its adoption; (2) the suspension by a legislative agency of any such regulation which appears to exceed the statutory authority for its adoption until the regulation is reviewed by a legislative body composed of members of the Senate and Assembly; and (3) the nullification of any such regulation by a majority vote of a legislative body composed of members of the Senate and Assembly. (Nev. Const. Art. 3, § 1) When the constitutional amendment was presented to the voters, the ballot materials explained that its purpose was to ensure that the Legislative Branch had the specific constitutional power to suspend or nullify regulations adopted by executive agencies which exceed the statutory authority granted by the Legislature when it passed the laws that authorized the agencies to adopt the regulations. (*State of Nevada Ballot Questions 1996*, Question No. 5, at pp. 1-2 (Nev. Sec'y of State 1996))

When the Nevada Constitution expressly grants specific powers to the Legislative Branch, the other branches may not infringe upon the exercise of those powers out of respect for an equal and coordinate branch of government. (*Heller v. Legislature*, 120 Nev. 456, 466-72 (2004); *Comm'n on Ethics v. Hardy*, 125 Nev. 285, 291-94 (2009)) For example, the Nevada Supreme Court has determined that because the Nevada Constitution expressly grants to each legislative House the specific power to "judge" the qualifications, returns and elections of its own members, the constitutional assignment of that power to the Legislative Branch "insulates a legislator's qualifications to hold office from judicial review. In other words, a legislative body's decision to admit or expel a member is almost unreviewable in the courts." (*Heller v. Legislature*, 120 Nev. 456, 466-67 (2004)) Because Nevada's voters expressly granted specific constitutional power to the Legislature to provide by law for legislative agencies and legislative bodies composed of members of the Senate and Assembly to suspend or nullify regulations adopted by executive agencies, the other branches may not infringe upon the exercise of that power out of respect for an equal and coordinate branch of government.

In exercising its expressly granted and specific constitutional power regarding regulations, the Legislature has enacted provisions of the Nevada Administrative Procedure Act which set forth the procedures for the adoption of emergency, temporary and permanent regulations by certain executive agencies. (NRS 233B.0395-233B.120) Under existing law, with limited exceptions, the Legislative Commission or the Subcommittee to Review Regulations of the Legislative



Commission has the authority to review and to approve or object to certain temporary or permanent regulations before those regulations become effective. (NRS 233B.0633, 233B.067-233B.070)

Section 10 of this bill authorizes the Legislative Commission to suspend or nullify a regulation adopted pursuant to the Nevada Administrative Procedure Act if the regulation: (1) exceeds the statutory authority for its adoption; (2) is inconsistent with the intent of the Legislature in granting the statutory authority for its adoption; or (3) is no longer being administered or interpreted in a manner that is consistent with the agency's stated intention when adopting the regulation or the agency's stated intention during the review and approval of the regulation by the Legislative Commission. **Section 10** also establishes procedures that the Legislative Commission must follow before and after it takes action to suspend or nullify a regulation.

Additionally, **sections 10 and 12** of this bill preclude judicial review of any action taken or determination made by the Legislative Commission in exercising its powers to review, object to, suspend or nullify a regulation, and **sections 10 and 13** of this bill allow the Legislative Commission to determine whether an agency rule, standard, directive or statement constitutes a regulation for the purposes of exercising those powers. **Sections 17.5, 26 and 28** of this bill make conforming changes.

Section 11 of this bill directs the Legislative Commission to adopt such regulations as are necessary to carry out the provisions of the Nevada Administrative Procedure Act governing administrative regulations. **Section 11** also requires the regulations to establish certain procedural rights and standards for proceedings of the Legislative Commission concerning the suspension or nullification of a regulation, including: (1) procedural rights that provide regulated persons and other interested persons with an opportunity to comment on whether the regulation should be suspended or nullified; and (2) standards and requirements for making a determination that the immediate suspension or nullification of the regulation is necessary to protect public health or safety.

Existing law excludes the application of certain agency policies as applied to a person with sufficient prior actual notice of the policy from the definition of "regulation" for the purposes of the Nevada Administrative Procedure Act. (NRS 233B.038) **Section 13** of this bill removes this exception.

Existing law ratifies the Nevada Administrative Code as revised or supplemented before May 15, 1987. (NRS 233B.0395) **Section 14** of this bill ratifies the Code as revised or supplemented before February 6, 2017.

Existing law requires an agency to adopt a proposed regulation not later than 2 years after the proposed regulation is submitted to the Legislative Counsel. (NRS 233B.040) **Section 15** of this bill requires an agency to also submit the proposed regulation to the Legislative Commission for review within the same 2-year period.

Existing law requires an agency to hold an oral public hearing on a proposed regulation if an oral hearing is requested by certain persons and the proposed regulation is substantive. (NRS 233B.061) **Section 17** of this bill eliminates the requirement regarding the substantiveness of the regulation.

Under existing law, the Legislative Counsel is required to prepare and publish a Register of Administrative Regulations, which includes information relating to adopted permanent regulations. (NRS 233B.0653) **Section 20** of this bill eliminates the requirement that the Legislative Counsel publish paper copies of the Register and instead requires the Legislative Counsel to publish the Register electronically on the public website of the Legislature on the Internet.

An emergency regulation becomes effective when certain documents are filed with the Secretary of State. (NRS 233B.070) **Section 25** of this bill requires that a copy of the written statement of the emergency endorsed by the Governor is



132 included with the information that must be filed with the Secretary of State before
133 an emergency regulation becomes effective.

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

1 **Section 1.** (Deleted by amendment.)

2 **Sec. 2.** (Deleted by amendment.)

3 **Sec. 3.** (Deleted by amendment.)

4 **Sec. 4.** (Deleted by amendment.)

5 **Sec. 5.** (Deleted by amendment.)

6 **Sec. 6.** (Deleted by amendment.)

7 **Sec. 7.** (Deleted by amendment.)

8 **Sec. 8.** (Deleted by amendment.)

9 **Sec. 8.5.** 1. The Legislature hereby finds that:

10 (a) Under the separation-of-powers provision of Section 1 of
11 Article 3 of the Nevada Constitution, one branch of the State
12 Government may not exercise powers properly belonging to another
13 branch of the State Government except in the cases expressly
14 directed or permitted in the Nevada Constitution.

15 (b) In 1996, Nevada's voters approved a constitutional
16 amendment to the separation-of-powers provision which expressly
17 empowers the Legislature to provide by law for legislative agencies
18 and legislative bodies composed of members of the Senate and
19 Assembly to suspend or nullify regulations adopted by executive
20 agencies on the basis that the regulations exceed the statutory
21 authority of the agencies or are inconsistent with legislative intent.

22 (c) When the constitutional amendment was presented to the
23 voters, the ballot materials explained that its purpose was to ensure
24 that the Legislative Branch had the specific constitutional power to
25 suspend or nullify regulations adopted by executive agencies which
26 exceed the statutory authority granted by the Legislature when it
27 passed the laws that authorized the agencies to adopt the regulations.

28 (d) Because Nevada's voters expressly granted specific
29 constitutional power to the Legislature to provide by law for
30 legislative agencies and legislative bodies composed of members of
31 the Senate and Assembly to suspend or nullify regulations adopted
32 by executive agencies, the other branches may not infringe upon the
33 exercise of that power out of respect for an equal and coordinate
34 branch of government.

35 (e) When executive agencies adopt regulations which exceed
36 their statutory authority or are inconsistent with legislative intent,
37 the regulations thwart and undermine the will of the people who,
38 through their elected representatives in the Legislature, determine by



* A B 4 0 3 R 3 *

properly enacted laws the scope and extent of the authority granted to executive agencies to adopt the regulations.

2. The Legislature hereby declares that there is a legitimate and compelling need to exercise its expressly granted and specific constitutional power under Section 1 of Article 3 of the Nevada Constitution, in the manner set forth in the provisions of this act, in order to:

(a) Provide by law for legislative agencies and legislative bodies composed of members of the Senate and Assembly to suspend or nullify regulations adopted by executive agencies which exceed their statutory authority or are inconsistent with legislative intent; and

(b) Protect and safeguard the rights of the people against such unlawful and invalid regulations.

Sec. 9. Chapter 233B of NRS is hereby amended by adding thereto the provisions set forth as sections 10 and 11 of this act.

Sec. 10. 1. Upon its own initiative, the Legislative Commission may suspend or nullify a regulation, in whole or in part, adopted pursuant to this chapter if, in the opinion of the Legislative Commission, the regulation:

(a) Exceeds the statutory authority for the adoption of the regulation;

(b) Is inconsistent with the intent of the Legislature in granting the statutory authority for the adoption of the regulation; or

(c) Is no longer being administered or interpreted by the adopting agency in a manner consistent with the stated intent of the agency when adopting the regulation or during the review and approval of the regulation by the Legislative Commission.

2. Before holding the initial meeting to consider the suspension or nullification of a regulation, the Legislative Commission shall, at least 30 days before the meeting, provide the adopting agency with written notice of the meeting which informs the agency of:

(a) The specific regulation that will be considered at the meeting; and

(b) The potential reasons for the suspension or nullification of the regulation. The potential reasons provided in the written notice:

(1) Must include sufficient information to allow the agency to prepare for the meeting.

(2) Do not preclude the Legislative Commission from considering other reasons at the initial meeting or any subsequent meeting held to consider the suspension or nullification of the regulation.



1 3. *At the initial meeting to consider the suspension or*
2 *nullification of a regulation, the Legislative Commission:*

3 (a) *Shall provide the adopting agency with an opportunity to*
4 *comment on whether the regulation should be suspended or*
5 *nullified.*

6 (b) *May not take action to suspend or nullify the regulation*
7 *unless the Legislative Commission makes a specific determination*
8 *that the immediate suspension or nullification of the regulation is*
9 *necessary to protect public health or safety. If the Legislative*
10 *Commission does not make such a specific determination, the*
11 *Legislative Commission may not take action to suspend or nullify*
12 *the regulation unless such action is taken at a subsequent meeting*
13 *held at least 30 days after the date of the initial meeting to*
14 *consider the suspension or nullification of the regulation.*

15 4. *If the Legislative Commission takes action to suspend or*
16 *nullify a regulation pursuant to this section, the Legislative*
17 *Commission shall, as soon as practicable after taking such action,*
18 *provide the Secretary of State and the adopting agency with*
19 *written notice of:*

20 (a) *The suspension of the regulation and when the suspension*
21 *becomes effective and when it expires; or*

22 (b) *The nullification of the regulation and when the*
23 *nullification becomes effective.*

24 5. *Any action taken or determination made by the Legislative*
25 *Commission pursuant to this section, including, without*
26 *limitation, any action to suspend or nullify a regulation, is final*
27 *and not subject to judicial review.*

28 6. *In exercising the powers granted in this section, the*
29 *Legislative Commission:*

30 (a) *Has the authority to determine whether an agency rule,*
31 *standard, directive or statement is a regulation as defined in NRS*
32 *233B.038; and*

33 (b) *After making such a determination, may take action to*
34 *suspend or nullify the regulation pursuant to this section.*

35 7. *Any regulation which is nullified by the Legislative*
36 *Commission pursuant to this section must be removed from the*
37 *Nevada Administrative Code and from any agency publications*
38 *and notices.*

39 8. *As used in this section, “adopting agency” or “agency”*
40 *means the agency that adopted the regulation or any successor*
41 *agency that administers the regulation.*

42 **Sec. 11.** *1. The Legislative Commission shall adopt such*
43 *regulations as are necessary to carry out the provisions of this*
44 *section and NRS 233B.0395 to 233B.120, inclusive, and section 10*
45 *of this act.*



2. *The regulations adopted by the Legislative Commission must establish for proceedings of the Legislative Commission concerning the suspension or nullification of a regulation pursuant to section 10 of this act:*

(a) *Procedural rights that provide persons who are regulated by or otherwise interested in the regulation with an opportunity to comment on whether the regulation should be suspended or nullified.*

(b) *Standards and requirements for making a specific determination that the immediate suspension or nullification of the regulation is necessary to protect public health or safety.*

Sec. 12. NRS 233B.020 is hereby amended to read as follows:

233B.020 1. By this chapter, the Legislature intends to establish ~~minimum~~ procedural requirements for :

(a) *Except as otherwise provided in paragraph (b), the regulation-making and adjudication procedure of all agencies of the Executive Department of the State Government and for judicial review of both functions, except as to those agencies expressly exempted pursuant to the provisions of this chapter.*

(b) *The exercise by the Legislative Commission of the power to review, object to, suspend or nullify a regulation as authorized by Section 1 of Article 3 of the Nevada Constitution and NRS 233B.0395 to 233B.120, inclusive, and sections 10 and 11 of this act, except that the exercise of such a power by the Legislative Commission is final and not subject to judicial review.*

2. This chapter confers no additional regulation-making authority upon any agency except to the extent provided in subsection 1 of NRS 233B.050.

~~12-~~ 3. The provisions of this chapter are intended to supplement statutes applicable to specific agencies. This chapter does not abrogate or limit additional requirements imposed on such agencies by statute or otherwise recognized by law.

Sec. 13. 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 ~~H~~ , *including, without limitation, an agency rule, standard, directive or statement that the Legislative Commission determines is a regulation pursuant to section 10 of this act;*

(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



1 in compliance with a federal or state statute or regulation in order to
2 assess a fine, monetary penalty or monetary interest.

3 2. The term does not include:

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

7 (b) A declaratory ruling;

8 (c) An intraagency memorandum;

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

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

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

17 (g) A published opinion of the Attorney General;

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

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

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

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

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

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

32 ~~—(n)~~ A regulation concerning the use of public roads or facilities
33 which is indicated to the public by means of signs, signals and other
34 traffic-control devices that conform with the manual and
35 specifications for a uniform system of official traffic-control devices
36 adopted pursuant to NRS 484A.430;

37 ~~(o)~~ (n) The classification of wildlife or the designation of
38 seasons for hunting, fishing or trapping by regulation of the Board
39 of Wildlife Commissioners pursuant to the provisions of title 45 of
40 NRS; or

41 ~~(p)~~ (o) A technical bulletin prepared pursuant to
42 NRS 360.133.



* A B 4 0 3 R 3 *

1 **Sec. 14.** NRS 233B.0395 is hereby amended to read as
2 follows:

3 233B.0395 The Nevada Administrative Code as most recently
4 revised or supplemented before ~~May 15, 1987,~~ **February 6, 2017,**
5 and the text of those regulations which have been prepared by the
6 Legislative Counsel for inclusion in the Nevada Administrative
7 Code on or before ~~May 15, 1987,~~ **February 6, 2017,** but have not
8 been included, are hereby ratified.

9 **Sec. 15.** NRS 233B.040 is hereby amended to read as follows:

10 233B.040 1. To the extent authorized by the statutes
11 applicable to it, each agency may adopt reasonable regulations to aid
12 it in carrying out the functions assigned to it by law and shall adopt
13 such regulations as are necessary to the proper execution of those
14 functions. If adopted and filed in accordance with the provisions of
15 this chapter, the following regulations have the force of law and
16 must be enforced by all peace officers:

17 (a) The Nevada Administrative Code; and

18 (b) Temporary and emergency regulations.

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

22 2. Every regulation adopted by an agency must include:

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

25 (b) The address of the agency and, to the extent not elsewhere
26 provided in the regulation, a brief explanation of the procedures for
27 obtaining clarification of the regulation or relief from the strict
28 application of any of its terms, if the agency is authorized by a
29 specific statute to grant such relief, or otherwise dealing with the
30 agency in connection with the regulation.

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

33 (a) It files one copy of the publication with the Secretary of
34 State and one copy with the State Library, Archives and Public
35 Records Administrator, and makes at least one copy available for
36 public inspection with its regulations; and

37 (b) The reference discloses the source and price for purchase of
38 the publication.

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

41 4. An agency shall adopt **and submit** a proposed regulation **to**
42 **the Legislative Commission for review** not later than 2 years after
43 the date on which the proposed regulation is submitted to the
44 Legislative Counsel pursuant to subsection 1 of NRS 233B.063. If
45 an agency does not adopt **and submit** a proposed regulation **to the**



Legislative Commission for review within the time prescribed by this subsection, the executive head of the agency shall appear personally before the Legislative Commission and explain why the proposed regulation has not been adopted ~~It~~ *and submitted to the Legislative Commission for review.*

Sec. 16. (Deleted by amendment.)

Sec. 17. NRS 233B.061 is hereby amended to read as follows:

233B.061 1. All interested persons must be afforded a reasonable opportunity to submit data, views or arguments upon a proposed regulation, orally or in writing.

2. Before holding the public hearing required pursuant to subsection 3, an agency shall conduct at least one workshop to solicit comments from interested persons on one or more general topics to be addressed in a proposed regulation. Not less than 15 days before the workshop, the agency shall provide notice of the time and place set for the workshop:

(a) In writing to each person who has requested to be placed on a mailing list; and

(b) In any other manner reasonably calculated to provide such notice to the general public and any business that may be affected by a proposed regulation which addresses the general topics to be considered at the workshop.

3. ~~With respect to substantive regulations, the~~ *The* agency shall set a time and place for an oral public hearing, but if no one appears who will be directly affected by the proposed regulation and requests an oral hearing, the agency may proceed immediately to act upon any written submissions. The agency shall consider fully all written and oral submissions respecting the proposed regulation.

4. An agency shall not hold the public hearing required pursuant to subsection 3 on the same day that the agency holds the workshop required pursuant to subsection 2.

5. Each workshop and public hearing required pursuant to subsections 2 and 3 must be conducted in accordance with the provisions of chapter 241 of NRS.

Sec. 17.5. NRS 233B.0613 is hereby amended to read as follows:

233B.0613 1. If an agency determines that an emergency exists ~~It~~ *and wants to adopt an emergency regulation*, it shall submit to the Governor *the original copy of the proposed emergency regulation with* a written statement of the emergency which sets forth the reasons for ~~the~~ *its* determination ~~It~~ *that an emergency exists.*

2. *Except as otherwise provided in this section, if* the Governor endorses the statement of the emergency by written endorsement at the end of the full text of the statement of *the*



* A B 4 0 3 R 3 *

1 emergency on the original copy of ~~the~~ the proposed *emergency*
2 regulation, the *emergency* regulation may be adopted and become
3 effective immediately upon its being filed in the Office of the
4 Secretary of State pursuant to subsection 3 of NRS 233B.070. The
5 statement of the emergency endorsed by the Governor must be
6 included as a part of the *emergency* regulation for all purposes.

7 ~~12-1~~ 3. If practicable, the agency shall, not later than 9 a.m. on
8 the first working day before the date on which the emergency
9 regulation is filed in the Office of the Secretary of State pursuant to
10 subsection 3 of NRS 233B.070, make the emergency regulation
11 available to the public by:

12 (a) Providing a copy of the emergency regulation to a member
13 of the public upon request; and

14 (b) Making a copy of the emergency regulation available on its
15 website on the Internet, if any.

16 ~~13-1~~ 4. If practicable, the agency shall, not later than 9 a.m. on
17 the first working day before the date of any hearing at which the
18 agency considers the emergency regulation, make the version of
19 the proposed emergency regulation that will be considered at the
20 hearing available to the public by:

21 (a) Providing a copy of the proposed emergency regulation to a
22 member of the public upon request; and

23 (b) Making a copy of the proposed emergency regulation
24 available on its website on the Internet, if any.

25 ~~14-A~~

26 5. *An emergency* regulation adopted pursuant to this section
27 may *not* be ~~effective~~ :

28 (a) *Effective* for a period ~~of not~~ longer than 120 days. ~~A~~
29 ~~regulation may be adopted~~

30 (b) *Adopted* by this emergency procedure ~~only once~~.
31 ~~5-1 more than once~~.

32 (c) *Substantially identical, in whole or in part, to a regulation*
33 *suspended or nullified by the Legislative Commission pursuant to*
34 *Section 1 of Article 3 of the Nevada Constitution and NRS*
35 *233B.0395 to 233B.120, inclusive, and sections 10 and 11 of this*
36 *act*.

37 6. If an agency adopts, after providing notice and the
38 opportunity for a hearing as required in this chapter, a permanent or
39 temporary regulation which becomes effective and is substantially
40 identical to its effective emergency regulation, the emergency
41 regulation expires automatically on the effective date of the
42 temporary or permanent regulation.



1 **Sec. 18.** NRS 233B.0617 is hereby amended to read as
2 follows:

3 233B.0617 No regulation adopted after July 1, 1965, is valid
4 unless adopted in substantial compliance with this chapter but no
5 objection to any regulation on the ground of noncompliance with the
6 procedural requirements of NRS 233B.060 to 233B.0617, inclusive,
7 may be made more than 2 years after its effective date. *Nothing in*
8 *this section shall be construed to preclude the making of an*
9 *objection to a regulation on a ground other than noncompliance*
10 *with the procedural requirements of NRS 233B.060 to 233B.0617,*
11 *inclusive.* Regulations in effect on July 1, 1965, continue in effect
12 until amended, *suspended, nullified* or repealed in accordance with
13 the provisions of this chapter, if an original and two copies were
14 deposited with the Secretary of State on or before July 1, 1965.

15 **Sec. 19.** (Deleted by amendment.)

16 **Sec. 20.** NRS 233B.0653 is hereby amended to read as
17 follows:

18 233B.0653 1. The Legislative Counsel shall *periodically*
19 prepare and publish ~~for cause to be prepared and published~~
20 *electronically* a Register of Administrative Regulations ~~†† on the~~
21 *public website of the Legislature on the Internet.* The Register
22 must include the following information regarding each permanent
23 regulation adopted by an agency:

24 (a) The proposed and adopted text of the regulation and any
25 revised version of the regulation;

26 (b) The notice of intent to act upon the regulation set forth in
27 NRS 233B.0603;

28 (c) The written notice of adoption of the regulation required
29 pursuant to NRS 233B.064;

30 (d) The informational statement required pursuant to NRS
31 233B.066; and

32 (e) The effective date of the regulation, as determined pursuant
33 to NRS 233B.070.

34 ~~†→ In carrying out the duties set forth in this subsection, the~~
35 ~~Legislative Counsel may use the services of the State Printing~~
36 ~~Office.~~

37 ~~— 2. The Legislative Counsel shall publish the Register not less~~
38 ~~than 10 times per year but not more than once every 2 weeks.~~

39 ~~— 3. The Register must be provided to and maintained by:~~

40 ~~— (a) The Secretary of State;~~

41 ~~— (b) The Attorney General;~~

42 ~~— (c) The Supreme Court Law Library;~~

43 ~~— (d) The State Library, Archives and Public Records;~~

44 ~~— (e) Each county clerk;~~

45 ~~— (f) Each county library; and~~



* A B 4 0 3 R 3 *

~~(g) The Legislative Counsel Bureau.~~

~~4. The Legislative Counsel may sell an additional copy of the Register to any person or governmental entity that requests a copy, at a price which does not exceed the cost of publishing the additional copy.~~

~~5.~~ **2.** The Legislative Counsel is immune from civil liability which may result from failure to include any information in the Register.

Sec. 21. (Deleted by amendment.)

Sec. 22. (Deleted by amendment.)

Sec. 23. (Deleted by amendment.)

Sec. 24. (Deleted by amendment.)

Sec. 25. 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 **H and a copy of the written statement of the emergency endorsed by the Governor pursuant to NRS 233B.0613.** The agency shall also file a copy of the emergency regulation with the Legislative Counsel, together with the informational statement prepared pursuant to NRS 233B.066 **H and a copy of the written statement of the emergency endorsed by the Governor pursuant to NRS 233B.0613.**

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, Archives and Public Records Administrator, to the State Library, Archives and Public Records 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. 26. NRS 233B.100 is hereby amended to read as follows:

233B.100 1. Any interested person may petition an agency requesting the adoption, filing, amendment or repeal of any regulation and shall accompany the petition with relevant data, views and arguments. Each agency shall prescribe by regulation the form for such petitions and the procedure for their submission, consideration and disposition. Upon submission of such a petition, the agency shall within 30 days either deny the petition in writing, stating its reasons, or initiate regulation-making proceedings.

2. Any regulation of any agency is subject to ~~amendment~~ :
(a) *Amendment* or suspension by the Governor pursuant to the provisions of NRS 416.060.

(b) *Suspension or nullification by the Legislative Commission pursuant to Section 1 of Article 3 of the Nevada Constitution and NRS 233B.0395 to 233B.120, inclusive, and sections 10 and 11 of this act.*

Sec. 27. (Deleted by amendment.)



1 **Sec. 28.** NRS 233B.110 is hereby amended to read as follows:

2 233B.110 1. The validity or applicability of any regulation
3 may be determined in a proceeding for a declaratory judgment in the
4 district court in and for Carson City, or in and for the county where
5 the plaintiff resides, when it is alleged that the regulation, or its
6 proposed application, interferes with or impairs, or threatens to
7 interfere with or impair, the legal rights or privileges of the plaintiff.
8 A declaratory judgment may be rendered after the plaintiff has first
9 requested the agency to pass upon the validity of the regulation in
10 question. The court shall declare the regulation invalid if it finds that
11 it violates constitutional or statutory provisions or exceeds the
12 statutory authority of the agency. The agency whose regulation is
13 made the subject of the declaratory action shall be made a party to
14 the action.

15 2. An agency may institute an action for declaratory judgment
16 to establish the validity of any one or more of its own regulations.

17 3. Actions for declaratory judgment provided for in subsections
18 1 and 2 shall be in accordance with the Uniform Declaratory
19 Judgments Act (chapter 30 of NRS), and the Nevada Rules of Civil
20 Procedure. In all actions under subsections 1 and 2, the plaintiff
21 shall serve a copy of the complaint upon the Attorney General, who
22 is also entitled to be heard.

23 4. *Nothing in this section shall be construed to limit the*
24 *authority of the Legislative Commission to suspend or nullify a*
25 *regulation pursuant to Section 1 of Article 3 of the Nevada*
26 *Constitution and NRS 233B.0395 to 233B.120, inclusive, and*
27 *sections 10 and 11 of this act.*

28 **Sec. 29.** (Deleted by amendment.)

29 **Sec. 29.5.** (Deleted by amendment.)

30 **Sec. 30.** This act becomes effective on July 1, 2017.

