

ASSEMBLY BILL NO. 162—ASSEMBLYMEN DALY, BENITEZ-
THOMPSON; FUMO, JAUREGUI AND MONROE-MORENO

FEBRUARY 15, 2019

JOINT SPONSOR: SENATOR CANNIZZARO

Referred to Committee on Government Affairs

SUMMARY—Revises various provisions relating to governmental
administration. (BDR 18-777)

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

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

AN ACT relating to governmental administration; authorizing the
Legislative Commission to suspend or nullify certain
administrative regulations; abolishing the Subcommittee
to Review Regulations of the Legislative Commission;
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.”))



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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 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 3 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 3** also establishes procedures that the Legislative Commission must follow before and after it takes action to suspend or nullify a regulation.

Additionally, **sections 3 and 5** 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 3 and 6** 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 11, 20 and 22** of this bill make conforming changes.

Section 16 of this bill abolishes the Subcommittee to Review Regulations of the Legislative Commission and provides only the Legislative Commission with the powers of reviewing and approving or objecting to certain temporary or permanent regulations before those regulations become effective. **Sections 9, 13, 15-18, 21 and 23** of this bill make conforming changes.

Section 4 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 4** 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 6** 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 7** of this bill ratifies the Code as revised or supplemented before February 4, 2019.

Under existing law, if an agency adopts by reference in a regulation material published by another authority, the agency is required to disclose the source and price for purchase of the publication in the reference in the regulation. (NRS 233B.040) **Section 8** of this bill eliminates the requirement to disclose the price for purchase of the publication in the reference.

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 8** 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 10** 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 14** 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. **Section 24** of this bill removes a requirement that is made duplicative by the provisions of **section 14**.

An emergency regulation becomes effective when certain documents are filed with the Secretary of State. (NRS 233B.070) **Section 19** of this bill requires that a copy of the written statement of the emergency endorsed by the Governor is included with the information that must be filed with the Secretary of State before an emergency regulation becomes effective.

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

Section 1. 1. The Legislature hereby finds that:

(a) Under the separation-of-powers provision of Section 1 of Article 3 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 the Nevada Constitution.

(b) In 1996, Nevada's voters approved a constitutional amendment to the 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.

(c) 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.

(d) 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.



(e) When executive agencies adopt regulations which exceed their statutory authority or are inconsistent with legislative intent, the regulations thwart and undermine the will of the people who, through their elected representatives in the Legislature, determine by 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. 2. Chapter 233B of NRS is hereby amended by adding thereto the provisions set forth as sections 3 and 4 of this act.

Sec. 3. 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.



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

5 3. At the initial meeting to consider the suspension or
6 nullification of a regulation, the Legislative Commission:

7 (a) Shall provide the adopting agency with an opportunity to
8 comment on whether the regulation should be suspended or
9 nullified.

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

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

24 (a) The suspension of the regulation and when the suspension
25 becomes effective and when it expires; or

26 (b) The nullification of the regulation and when the
27 nullification becomes effective.

28 5. Any action taken or determination made by the Legislative
29 Commission pursuant to this section, including, without
30 limitation, any action to suspend or nullify a regulation, is final
31 and not subject to judicial review.

32 6. In exercising the powers granted in this section, the
33 Legislative Commission:

34 (a) Has the authority to determine whether an agency rule,
35 standard, directive or statement is a regulation as defined in NRS
36 233B.038; and

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

39 7. Any regulation which is nullified by the Legislative
40 Commission pursuant to this section must be removed from the
41 Nevada Administrative Code and from any agency publications
42 and notices.

43 8. As used in this section, "adopting agency" or "agency"
44 means the agency that adopted the regulation or any successor
45 agency that administers the regulation.



Sec. 4. 1. The Legislative Commission shall adopt such regulations as are necessary to carry out the provisions of this section and NRS 233B.0395 to 233B.120, inclusive, and section 3 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 3 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. 5. 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 3 and 4 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.

~~2.~~ **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. 6. 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 ~~it~~, including, without limitation, an agency rule, standard, directive or statement that the Legislative Commission determines is a regulation pursuant to section 3 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 in compliance with a federal or state statute or regulation in order to assess a fine, monetary penalty or monetary interest.

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

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

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



Sec. 7. NRS 233B.0395 is hereby amended to read as follows:
233B.0395 The Nevada Administrative Code as most recently revised or supplemented before ~~May 15, 1987,~~ **February 4, 2019**, and the text of those regulations which have been prepared by the Legislative Counsel for inclusion in the Nevada Administrative Code on or before ~~May 15, 1987,~~ **February 4, 2019**, but have not been included, are hereby ratified.

Sec. 8. NRS 233B.040 is hereby amended to read as follows:
233B.040 1. To the extent authorized by the statutes applicable to it, each agency may adopt reasonable regulations to aid it in carrying out the functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions. If adopted and filed in accordance with the provisions of this chapter, the following regulations have the force of law and must be enforced by all peace officers:

(a) The Nevada Administrative Code; and
(b) Temporary and emergency regulations.
➤ In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned.

2. Every regulation adopted by an agency must include:
(a) A citation of the authority pursuant to which it, or any part of it, was adopted; and
(b) The address of the agency and, to the extent not elsewhere provided in the regulation, a brief explanation of the procedures for obtaining clarification of the regulation or relief from the strict application of any of its terms, if the agency is authorized by a specific statute to grant such relief, or otherwise dealing with the agency in connection with the regulation.

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

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

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

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

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

Sec. 9. NRS 233B.060 is hereby amended to read as follows:

233B.060 1. Except as otherwise provided in subsection 2 and NRS 233B.061, before adopting, amending or repealing:

(a) A permanent regulation, the agency must, after receiving the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063:

(1) If it is the first hearing on the regulation, give at least 30 days' notice of its intended action, unless a shorter period of notice is specifically permitted by statute. When posted, the agency must include notice that the regulation that is posted on the Internet website of the agency 3 working days before the hearing will be the regulation considered. The agency shall ensure that the regulation to be considered at the hearing is posted on the Internet website of the agency 3 working days before the hearing.

(2) If it is the second or subsequent hearing on the regulation, including, without limitation, a subsequent hearing on an adopted regulation that has not been approved by the Legislative Commission ~~for the Subcommittee to Review Regulations~~ pursuant to NRS 233B.067, in order to approve a revision to the regulation, give at least 3 working days' notice of its intended action.

(b) A temporary regulation, the agency must give at least 30 days' notice of its intended action, unless a shorter period of notice is specifically permitted by statute.

2. Except as otherwise provided in subsection 3, if an agency has adopted a temporary regulation after notice and the opportunity for a hearing as provided in this chapter, it may adopt, after providing a second notice and the opportunity for a hearing, a permanent regulation, but the language of the permanent regulation must first be approved or revised by the Legislative Counsel and the adopted regulation must be approved by the Legislative Commission . ~~for the Subcommittee to Review Regulations appointed pursuant to subsection 6 of NRS 233B.067.]~~

3. If the Public Utilities Commission of Nevada has adopted a temporary regulation after notice and the opportunity for a hearing as provided in this chapter, it may adopt a substantively equivalent permanent regulation without further notice or hearing, but the language of the permanent regulation must first be approved or revised by the Legislative Counsel and the adopted regulation must be approved by the Legislative Commission . ~~for the Subcommittee to Review Regulations.]~~



Sec. 10. 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, except that a workshop is not required if it is the second or subsequent hearing on the 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. 11. NRS 233B.0613 is hereby amended to read as follows:

233B.0613 1. If an agency determines that an emergency exists ~~{}~~ *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 ~~{-if}~~ *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* emergency on the original copy of ~~{a}~~ *the* proposed *emergency* regulation, the *emergency* regulation may be adopted and become effective immediately upon its being filed in the Office of the Secretary of State pursuant to subsection 3 of NRS 233B.070. The



statement of the emergency endorsed by the Governor must be included as a part of the **emergency** regulation for all purposes.

~~{2.}~~ **3.** If practicable, the agency shall, not later than 9 a.m. on the first working day before the date on which the emergency regulation is filed in the Office of the Secretary of State pursuant to subsection 3 of NRS 233B.070, make the emergency regulation available to the public by:

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

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

~~{3.}~~ **4.** If practicable, the agency shall, not later than 9 a.m. on the first working day before the date of any hearing at which the agency considers the emergency regulation, make the version of the proposed emergency regulation that will be considered at the hearing available to the public by:

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

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

~~{4.—A}~~

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

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

(b) **Adopted** by this emergency procedure ~~{only}~~ **more than** once.

~~{5.}~~ (c) ***Substantially identical, in whole or in part, to a regulation suspended or nullified 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 3 and 4 of this act.***

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

Sec. 12. NRS 233B.0617 is hereby amended to read as follows:

233B.0617 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. ***Nothing in***



this section shall be construed to preclude the making of an objection to a regulation on a ground other than noncompliance with the procedural requirements of NRS 233B.060 to 233B.0617, inclusive. Regulations in effect on July 1, 1965, continue in effect until amended, *suspended, nullified* 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.

Sec. 13. NRS 233B.0633 is hereby amended to read as follows:

233B.0633 1. Upon the request of a Legislator, the Legislative Commission may examine a temporary regulation adopted by an agency that is not yet effective pursuant to subsection 2 of NRS 233B.070 to determine whether the temporary regulation conforms to the statutory authority pursuant to which it was adopted and whether the temporary regulation carries out the intent of the Legislature in granting that authority.

2. If a temporary regulation that the Legislative Commission is requested to examine pursuant to subsection 1 was required to be adopted by the agency pursuant to a federal statute or regulation and the temporary regulation exceeds the specific statutory authority of the agency or sets forth requirements that are more stringent than a statute of this State, the agency shall submit a statement to the Legislative Commission that adoption of the temporary regulation was required by a federal statute or regulation. The statement must include the specific citation of the federal statute or regulation requiring such adoption.

3. ~~{Except as otherwise provided in subsection 4, the}~~ *The* Legislative Commission shall ~~{~~

~~{(a) Review}~~ *review* the temporary regulation at its next regularly scheduled meeting if the request for examination of the temporary regulation is received more than 10 working days before the meeting. ~~{; or~~

~~{(b) Refer the temporary regulation for review to the Subcommittee to Review Regulations appointed pursuant to subsection 6 of NRS 233B.067.~~

~~{4. If an agency determines that an emergency exists which requires a temporary regulation of the agency for which a Legislator requested an examination pursuant to subsection 1 to become effective before the next meeting of the Legislative Commission is scheduled to be held, the agency may notify the Legislative Counsel in writing of the emergency. Upon receipt of such a notice, the Legislative Counsel shall refer the temporary regulation for review by the Subcommittee to Review Regulations as soon as practicable.~~

~~{5.}~~ *4.* If the Legislative Commission ~~{, or the Subcommittee to Review Regulations if the temporary regulation was referred,}~~



1 approves the temporary regulation, the Legislative Counsel shall
2 notify the agency that the agency may file the temporary regulation
3 with the Secretary of State. If the Commission ~~for the~~
4 ~~Subcommittee~~ objects to the temporary regulation after determining
5 that:

6 (a) If subsection 2 is applicable, the temporary regulation is not
7 required pursuant to a federal statute or regulation;

8 (b) The temporary regulation does not conform to statutory
9 authority; or

10 (c) The temporary regulation does not carry out legislative
11 intent,

12 ➤ the Legislative Counsel shall attach to the temporary regulation a
13 written notice of the objection, including, if practicable, a statement
14 of the reasons for the objection, and shall promptly return the
15 temporary regulation to the agency.

16 ~~{6.}~~ 5. If the Legislative Commission ~~for the Subcommittee to~~
17 ~~Review Regulations~~ has objected to a temporary regulation, the
18 agency that adopted the temporary regulation shall revise the
19 temporary regulation to conform to the statutory authority pursuant
20 to which it was adopted and to carry out the intent of the Legislature
21 in granting that authority and return it to the Legislative Counsel
22 within 60 days after the agency received the written notice of the
23 objection to the temporary regulation pursuant to subsection ~~{5.}~~ 4.
24 Upon receipt of the revised temporary regulation, the Legislative
25 Counsel shall resubmit the temporary regulation to the
26 Legislative Commission . ~~for the Subcommittee for review.~~ If the
27 Legislative Commission ~~for the Subcommittee~~ approves the revised
28 temporary regulation, the Legislative Counsel shall notify the
29 agency that the agency may file the revised temporary regulation
30 with the Secretary of State.

31 ~~{7.}~~ 6. If the Legislative Commission ~~for the Subcommittee to~~
32 ~~Review Regulations~~ objects to the revised temporary regulation, the
33 Legislative Counsel shall attach to the revised temporary regulation
34 a written notice of the objection, including, if practicable, a
35 statement of the reasons for the objection, and shall promptly return
36 the revised temporary regulation to the agency. The agency shall
37 continue to revise it and resubmit it to the Legislative Commission
38 ~~for the Subcommittee~~ within 30 days after the agency received the
39 written notice of the objection to the revised temporary regulation.

40 **Sec. 14.** NRS 233B.0653 is hereby amended to read as
41 follows:

42 233B.0653 1. The Legislative Counsel shall *periodically*
43 prepare and publish ~~for cause to be prepared and published~~
44 *electronically* a Register of Administrative Regulations ~~{.}~~ *on the*
45 *public website of the Legislature on the Internet*. The Register



1 must include the following information regarding each permanent
2 regulation adopted by an agency:

3 (a) The proposed and adopted text of the regulation and any
4 revised version of the regulation;

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

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

9 (d) The informational statement required pursuant to NRS
10 233B.066; and

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

13 ~~{→ In carrying out the duties set forth in this subsection, the~~
14 ~~Legislative Counsel may use the services of the State Printing~~
15 ~~Office.~~

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

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

19 ~~—(a) The Secretary of State;~~

20 ~~—(b) The Attorney General;~~

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

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

23 ~~—(e) Each county clerk;~~

24 ~~—(f) Each county library; and~~

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

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

30 ~~—5.} 2.~~ The Legislative Counsel is immune from civil liability
31 which may result from failure to include any information in the
32 Register.

33 **Sec. 15.** NRS 233B.0665 is hereby amended to read as
34 follows:

35 233B.0665 If a regulation submitted to the Legislative Counsel
36 Bureau pursuant to NRS 233B.067 is not accompanied by an
37 informational statement which complies with the requirements of
38 NRS 233B.066 or a small business impact statement which
39 complies with the requirements of NRS 233B.0608 and 233B.0609,
40 the Legislative Counsel shall return the regulation to the agency
41 with a note indicating the statement which is missing. Unless the
42 missing statement is supplied, the Legislative Counsel shall not
43 submit the regulation to the Legislative Commission ~~{for the~~
44 ~~Subcommittee to Review Regulations, as applicable,}~~ and the
45 regulation never becomes effective.



Sec. 16. NRS 233B.067 is hereby amended to read as follows:

233B.067 1. After adopting a permanent regulation, the agency shall submit the informational statement prepared pursuant to NRS 233B.066 and one copy of each regulation adopted to the Legislative Counsel for review by the Legislative Commission to determine whether to approve the regulation. The Legislative Counsel shall endorse on the original and the copy of each adopted regulation the date of their receipt. The Legislative Counsel shall maintain the copy of the regulation in a file and make the copy available for public inspection for 2 years.

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

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

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

3. ~~{Except as otherwise provided in subsection 4, the}~~ The Legislative Commission shall ~~;~~:

~~—(a) Review~~ **review** the regulation at its next regularly scheduled meeting if the regulation is received more than 10 working days before the meeting. ~~;~~ ~~or~~

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

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

~~—5.}~~ 4. If the Legislative Commission ~~;~~ ~~or the Subcommittee to Review Regulations if the regulation was referred,~~ approves the regulation, the Legislative Counsel shall promptly file the regulation with the Secretary of State and notify the agency of the filing. If the Commission ~~for Subcommittee~~ objects to the regulation after determining that:

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



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

(c) The regulation does not carry out legislative intent;

(d) 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; or

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

➤ the Legislative Counsel shall attach to the regulation a written notice of the objection, including, if practicable, a statement of the reasons for the objection, and 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. 17. NRS 233B.0675 is hereby amended to read as follows:

233B.0675 1. If the Legislative Commission ~~{, or the Subcommittee to Review Regulations appointed pursuant to subsection 6 of NRS 233B.067,}~~ has objected to a regulation, the agency shall revise the regulation to conform to the statutory authority pursuant to which it was adopted and to carry out the intent of the Legislature in granting that authority and return it to the Legislative Counsel within 60 days after the agency received the written notice of the objection to the regulation pursuant to NRS 233B.067. Upon receipt of the revised regulation, the Legislative Counsel shall resubmit the regulation to the Commission ~~for Subcommittee~~ for review. If the Commission ~~for Subcommittee~~ approves the revised regulation, the Legislative Counsel shall promptly file the revised regulation with the Secretary of State and notify the agency of the filing.

2. If the Legislative Commission ~~for Subcommittee~~ objects to the revised regulation, the Legislative Counsel shall attach to the revised regulation a written notice of the objection, including, if practicable, a statement of the reasons for the objection, and shall promptly return the revised regulation to the agency. The agency shall continue to revise it and resubmit it to the Commission ~~for Subcommittee~~ within 30 days after the agency received the written notice of the objection to the revised regulation.



Sec. 18. NRS 233B.0677 is hereby amended to read as follows:

233B.0677 1. Before holding a meeting to review temporary regulations pursuant to NRS 233B.0633 or adopted regulations pursuant to NRS 233B.067 or 233B.0675, the Legislative Commission ~~for the Subcommittee to Review Regulations appointed pursuant to subsection 6 of NRS 233B.067, as applicable,~~ shall provide written notice of the meeting at least 3 working days before the meeting. The notice must include, without limitation:

(a) A list of the regulations that the Legislative Commission ~~for the Subcommittee to Review Regulations~~ will review at the meeting; and

(b) An explanation of the manner in which a person may obtain a copy of a regulation that the Legislative Commission ~~for Subcommittee to Review Regulations~~ will review at the meeting.

2. If the Legislative Counsel Bureau maintains a website on the Internet or its successor, the Legislative Counsel Bureau shall, at least 3 working days before the Legislative Commission ~~for the Subcommittee to Review Regulations~~ holds a meeting to review temporary regulations pursuant to NRS 233B.0633 or adopted regulations pursuant to NRS 233B.067 or 233B.0675, post on its website a list of the regulations that the Legislative Commission ~~for the Subcommittee to Review Regulations~~ will review at the meeting, unless the Legislative Counsel Bureau is unable to do so because of technical problems relating to the operation or maintenance of its website.

Sec. 19. 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 ~~and~~ *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 ~~and~~ *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. 20. 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 3 and 4 of this act.**

Sec. 21. 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 . ~~for 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.

Sec. 22. NRS 233B.110 is hereby amended to read as follows:

233B.110 1. The validity or applicability of any regulation may be determined in a proceeding for a declaratory judgment in the district court in and for Carson City, or in and for the county where



1 the plaintiff resides, when it is alleged that the regulation, or its
2 proposed application, interferes with or impairs, or threatens to
3 interfere with or impair, the legal rights or privileges of the plaintiff.
4 A declaratory judgment may be rendered after the plaintiff has first
5 requested the agency to pass upon the validity of the regulation in
6 question. The court shall declare the regulation invalid if it finds that
7 it violates constitutional or statutory provisions or exceeds the
8 statutory authority of the agency. The agency whose regulation is
9 made the subject of the declaratory action shall be made a party to
10 the action.

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

13 3. Actions for declaratory judgment provided for in subsections
14 1 and 2 shall be in accordance with the Uniform Declaratory
15 Judgments Act (chapter 30 of NRS), and the Nevada Rules of Civil
16 Procedure. In all actions under subsections 1 and 2, the plaintiff
17 shall serve a copy of the complaint upon the Attorney General, who
18 is also entitled to be heard.

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

24 **Sec. 23.** NRS 514A.110 is hereby amended to read as follows:

25 514A.110 A permanent regulation adopted by the:

26 1. Nevada Tax Commission, pursuant to NRS 360.090,
27 concerning any taxation related to the extraction of any mineral in
28 this State, including, without limitation, the taxation of the net
29 proceeds pursuant to chapter 362 of NRS and Section 5 of Article
30 10 of the Nevada Constitution;

31 2. Administrator of the Division of Industrial Relations of the
32 Department of Business and Industry for mine health and safety
33 pursuant to NRS 512.131;

34 3. Commission on Mineral Resources pursuant to NRS
35 513.063, 513.094 or 519A.290; and

36 4. State Environmental Commission pursuant to NRS 519A.160,
37 ➤ is not effective unless it is reviewed by the Mining Oversight and
38 Accountability Commission before it is approved pursuant to
39 chapter 233B of NRS by the Legislative Commission . ~~for the~~
40 ~~Subcommittee to Review Regulations appointed pursuant to~~
41 ~~subsection 6 of NRS 233B.067.]~~ After conducting its review of the
42 regulation, the Mining Oversight and Accountability Commission
43 shall provide a report of its findings and recommendations regarding
44 the regulation to the Legislative Counsel for submission to the



- 1 Legislative Commission . ~~for the Subcommittee to Review~~
2 ~~Regulations, as appropriate.~~
3 **Sec. 24.** NRS 233B.0656 is hereby repealed.
4 **Sec. 25.** This act becomes effective on July 1, 2019.

TEXT OF REPEALED SECTION

233B.0656 Register of Administrative Regulations: Access via Internet.

1. The Legislative Counsel shall, without charge, make available for access on the Internet or its successor, if any, the information contained in the Register of Administrative Regulations created pursuant to NRS 233B.0653. The Legislative Counsel may determine the manner in which this information is compiled and must revise the information at least as often as the Register is published pursuant to NRS 233B.0653.

2. This section must not be construed to require the Legislative Counsel to provide any equipment or service that would enable a person to access the Internet.

