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Administrative Law

Administrative Law; adoption of regulations

N.R.S. §233B.068 (repealed); §§233B.—, 233B.— (new); §§233B.060, 233B.067 (amended).

AB 146 (Dini); STATS 1981, Ch 264

SB 274 (Kosinski); STATS 1981, Ch 88

Existing law authorizes a state agency¹ to adopt reasonable regulations.² Chapter 88 clarifies and modifies the content requirements of a notice of an intent to adopt, amend, or repeal an administrative regulation and requires that public and private comment be solicited regarding the proposed action.³ In addition, Chapter 88 requires that each proposed regulation submitted to the Director of the Legislative Counsel Bureau be accompanied by a statement containing specified information.⁴ Finally, Chapter 264 provides for legislative veto of proposed regulations under certain circumstances.⁵

The Administrative Procedure Act⁶ was enacted for the purpose of establishing minimum procedural requirements governing the process for the promulgation of regulations by state agencies.⁷ Under existing law, an agency must give at least thirty days notice of an intent to adopt, amend, or repeal a regulation unless a shorter period is permitted by statute.⁸ The notice must include either the proposed regulation or a description of the subjects and issues involved, and the time, place, and manner for interested persons to present their views on the regulation.⁹ Chapter 88 specifies that each notice must include a short statement of the need for and purpose of the proposed regulation.¹⁰ Furthermore, the agency must solicit comment from the general public

1. See N.R.S. §233B.031 (definition of agency).

2. See *id.* §233B.040 1.

3. See *id.* §§233B.—, 233B.060 2(c).

4. See *id.* §§233B.—, 233B.—.

5. See *id.* §233B.—.

6. See generally *id.* §§233B.010-233B.150.

7. See *Gibbens Co. v. Archie*, 92 Nev. 234, 235, 548 P.2d 1366, 1367 (1976).

8. N.R.S. §233B.060 1.

9. See *id.* §233B.060 2(a). See also *id.* §233B.060 4 (requirements for hearings on action regarding a substantive regulation).

10. Compare §233B.060 2(a) with STATUTES OF NEVADA 1977, c. 560, §23, at 1386. See generally *Gibbens Co. v. Archie*, 92 Nev. 234, 548 P.2d 1366 (1976) (orders entered by a state agency without adequate notice and a full hearing declared void); *Checker Inc. v. Public Serv. Comm'n*, 84 Nev. 623, 446 P.2d 981 (1968) (same).

and from businesses that will be affected by the proposed regulation.¹¹

Existing law provides that after a hearing on the proposed regulation, the state agency must submit the regulation¹² to the Director of the Legislative Counsel Bureau for review by the Legislative Commission.¹³ Chapter 88 provides that a statement of the estimated enforcement cost of the regulation and the economic impact on businesses that will be affected by the regulation and the public in general be contained in each regulation submitted for review.¹⁴ Moreover, each statement must include a description of the methods used to solicit public and private opinion and a summary of the response¹⁵ and outline the procedure available to interested persons for obtaining a copy of each summary.¹⁶ The statement must also explain any duplication or overlap by the proposed regulation with the regulations of other government agencies.¹⁷ A proposed regulation that does not include the informational statement will be returned to the agency by the Director of the Legislative Counsel Bureau rather than be submitted to the Commission.¹⁸ If the statement subsequently is supplied, the time for legislative action on the proposed regulation will be computed from the delivery date of the statement to the Director.¹⁹

Existing law governing legislative review of proposed regulations provides that the Legislative Commission²⁰ must determine whether the regulation conforms to the statutory authority under which it was adopted and whether the regulation carries out the intent of the legislature in granting that authority.²¹ If the regulation is approved by the Commission, the Director will file it with the Secretary of State and will notify the agency of the filing; if the regulation is objected to, it will be returned to the agency with a written notice of the grounds of the objection.²² The agency may revise a regulation that has been objected to and submit the revision to the Director.²³

11. Compare N.R.S. §233B.060 2(c) with STATUTES OF NEVADA 1977, c. 560, §23, at 1386.

12. See N.R.S. §233B.060 5 (emergency or temporary regulations may be adopted and become effective immediately upon being concurred in by the Governor and filed with the Secretary of State; a regulation so adopted may be effective no longer than 120 days).

13. See *id.* §233B.067 1.

14. See *id.* §23B.— 3, 4.

15. See *id.* §§233B.— 1, 2, 233B.060.

16. See *id.* §233B.— 1, 2.

17. See *id.* §233B.— 5.

18. See *id.* §233B.—.

19. *Id.*

20. See *id.* §233B.067 1, 2 (the Legislative Commission may in turn refer the regulation to a joint interim committee).

21. See *id.* §233B.067 1.

22. See *id.* §233B.067 3.

23. See *id.* §233B.— 1.

Under prior law, if an agency submitted a revised regulation that was objected to by any member of the Commission or resubmitted an unchanged regulation when the legislature was not in session, the Director had to file the regulation with the Secretary of State and on the first day of the next regular session of the legislature, the regulation and a notice of the objection would be sent to the President of the Senate and the Speaker of the Assembly for appropriate legislative action.²⁴ If the legislature was in session, the Director sent the regulation to the President of the Senate and the Speaker of the Assembly for referral to the appropriate standing committee of each house of the legislature.²⁵

Chapter 264 provides that if an agency submits a revised regulation to the Director, the Director will send the revision to the Legislative Commission at its next regular meeting.²⁶ If there is no objection to the revision, the regulation will be filed with the Secretary of State.²⁷ If a majority objects to the revision, the amended regulation will be sent back to the agency and the agency may continue to revise and resubmit the regulation to the Commission.²⁸ Under Chapter 264, if an agency refuses to revise a regulation, the Commission may postpone the filing of the regulation with the Secretary of State until the thirtieth day of the next regular session of the legislature.²⁹ During the first thirty days of the next session, the legislature may declare by concurrent resolution³⁰ that the regulation will not become effective or enforceable.³¹ In the absence of a legislative veto within the thirty-day period, the Director will file the regulation with the Secretary and notify the agency of the filing.³²

24. See STATUTES OF NEVADA 1979, c. 630, §1, at 1358.

25. See *id.* See also *id.*, 1977, c. 586, §3, at 1547 (standing committee will review the regulation in the same manner as the Legislative Commission).

26. See *id.* §233B.— 1.

27. See *id.*

28. See *id.* §233B.— 2.

29. See *id.* §233B.— 3.

30. Compare *id.* §233B.— with STATUTES OF NEVADA 1977, c. 586, §3, at 1547 (Chapter 264 repeals prior law governing review of regulations by legislative standing committees).

31. See N.R.S. §233B.— 3. But see *Chadha v. Immigration and Naturalization Serv.*, 634 F.2d 408, 420-25, 429-36 (9th Cir. 1980) (legislative veto of a suspension of deportation violates the doctrine of separation of powers as it intrudes upon both executive and judicial authority to execute the laws and determine cases). See also *Buckley v. Valeo*, 424 U.S. 1, 109-43 (1976) (legislative appointment of officials to perform the executive function of law administration is violative of U.S. CONST. art. II, §2, cl. 2).

32. See N.R.S. §233B.— 3.

