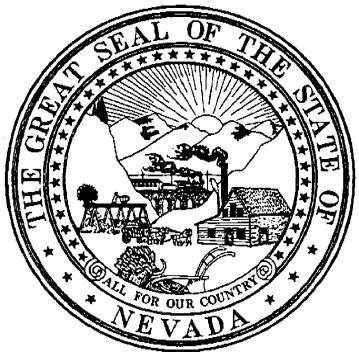
State Regulations that Affect Business and Economic Development



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STUDY OF STATE REGULATIONS THAT AFFECT BUSINESS AND ECONOMIC DEVELOPMENT

BULLETIN NO. 97-3

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SUMMARY OF RECOMMENDATIONS

STUDY OF STATE REGULATIONS WHICH AFFECT BUSINESS AND ECONOMIC DEVELOPMENT

The following recommendations were adopted by the Legislative Commission's Committee to Study State Regulations Which Affect Business and Economic Development at its work session of June 10, 1996. These proposed actions will be forwarded to the Legislative Commission for its acceptance, and relevant recommendations for legislation will be submitted to the 1997 Session of the Nevada Legislature for its consideration.

I. PUBLIC ACCESS TO INFORMATION CONCERNING REGULATIONS

1. **Require the Legislative Counsel to prepare and publish or cause to be published a state register of administrative regulations.**

   a. **The register must include:**

      (i) **Every notice of intent by an agency for the adoption, amendment, or repeal of a permanent regulation; and**

      (ii) **Notice of final adoption of a permanent regulation, its effective date, and its informational statement.**

   b. **The Legislative Counsel shall determine the frequency and dates of publication of the register within a range of no less than ten times a year and no more than once every two weeks. The Legislative Counsel shall determine the deadlines for submission of the required information by agencies accordingly;**

   c. **A minimum number of copies must be produced for distribution to the Office of the Secretary of State, the Office of the Attorney General, the Supreme Court and State Libraries, each county clerk and county library, and the Legislative Counsel Bureau;**

d. The cost of publication of copies required for distribution pursuant to paragraph (c) must be recovered from the agencies whose notices appear in the register;

e. The Legislative Counsel may sell additional copies to other state or local governmental agencies or any other person requesting a copy at a price not to exceed the cost to publish the additional copy; and

f. Amend Chapter 233B, "Nevada Administrative Procedure Act," of the *Nevada Revised Statutes* (NRS) to require state agencies to provide to the Legislative Counsel Bureau the information required by this recommendation, in accordance with the guidelines established pursuant to paragraph (b).

2. Require the Legislative Counsel Bureau to provide access to the state register on the INTERNET. The bureau may determine the manner of compiling the information and the frequency of revision, but the online register must be revised no less frequently than the state register is published. Stipulate that no fee may be charged for access to the information.

3. Include in the final report a statement encouraging state agencies to supplement their notification procedures concerning proposed regulations with press releases.

II. LEGISLATIVE INTENT

4. Require the Legislative Counsel to prepare, at the request of the chief sponsor, a synopsis of any bill drafted for submission to the Legislature that grants, expands, or amends the authority of a state agency to adopt administrative regulations, if:

   a. The resulting regulations would affect persons or entities outside the agency; and

   b. The agency is not exempt from the Nevada Administrative Procedure Act.

   Further stipulate that the synopsis must:

   a. Be included in the bill;

b. Explain briefly the purpose of the bill as a whole; and

c. For each section of the bill, explain the change, repeal, or addition entailed in that section and its purpose as well as its substantive effect.

5. Include in the final report a statement encouraging the Office of the Attorney General to include, in the process of developing regulations, a stringent review of legislative intent of the associated rule making authority.

III. REVIEW OF ADMINISTRATIVE REGULATIONS

6. Include in the final report a statement expressing support for the passage of Ballot Question No. 5 on the 1996 General Election Ballot (constitutional amendment to allow specifically for legislative review of administrative regulations).

7. Authorize the Legislature or a representative body of the Legislature to reject any proposed administrative regulation that, in its determination, exceeds the agency's statutory authority or does not carry out legislative intent. In addition, delete the provision that allows a regulation to become effective over the objection of the Legislative Commission. Further, establish a procedure for the resubmission of regulations to which the Legislature objects.

8. Require state agencies to review administrative regulations a minimum of every ten years to determine if they should be revised, expanded, or repealed. Further require that an agency shall report the results to the Legislature next following its scheduled review. Stipulate that each section of the *Nevada Administrative Code* must be followed with the date of its last substantive review by the agency.

IV. CODIFICATION OF REGULATIONS

9. Amend Chapter 233B, "Nevada Administrative Procedure Act," of NRS and related provisions as necessary, to require the Legislative Counsel Bureau to cite, in every section of the *Nevada Administrative Code*, the statutory authority under which the section is promulgated.

V. REGULATORY BOARDS AND COMMISSIONS

10. Require the Legislature or a representative body of the Legislature to review existing regulatory boards or commissions a minimum of every ten years to determine if the board or commission should be retained, revised, or eliminated. Establish a sunset date of four years for all new regulatory boards and commissions pending renewal by the Legislature.

VI. DEVELOPMENT AND IMPLEMENTATION OF REGULATIONS

11. Require the Attorney General to develop guidelines for the drafting of administrative regulations in language that reflects common, accepted usage of English and is as concise as possible.

12. Amend Chapter 233B, "Nevada Administrative Procedure Act," of NRS to require the use of workshops involving the public and regulated entities to solicit comments concerning the need for and possible content of new or revised regulations before holding the public hearing required pursuant to NRS 233B.061, "Proposed regulation: Public comment and hearing; record of hearing."

13. Amend Chapter 233B, "Nevada Administrative Procedure Act," of NRS and other provisions as necessary to stipulate that a permanent regulation becomes effective not sooner than 90 days after filing with the Secretary of State, unless otherwise precluded by federal law. This requirement would not apply to regulations addressing situations in which there is an imminent threat of danger to person or property.

VII. ADMINISTRATIVE FEES, FINES, AND PENALTIES

14. Require any agency responsible for the enforcement of regulations affecting businesses or professions to issue a citation, instead of a fine, for a first offense for failure to comply with a regulation, unless otherwise precluded by federal law. This requirement would not affect an agency's ability to take other appropriate action in an emergency or where there is an imminent threat of danger to person or property.

15. Amend NRS 482.565 and other provisions as necessary to stipulate that the Department of Motor Vehicles and Public Safety may impose administrative fines only if the department reasonably believes that a violation is the result of fraud or malfeasance.

16. Amend Chapter 218, "State Legislature," of NRS to require the Fiscal Analysis Division to obtain a fiscal note on any legislative measure that has a financial impact on Nevada residents by:

    a. Imposing or increasing a tax or authorizing a local government to do so;

    b. Imposing or increasing a fee for a government service or authorizing a local government to do so;

    c. Requiring a person or business to register with, be licensed by, or provide information to a state or local agency; or

    d. Authorizing regulation of a business or profession or a specific aspect of that business or profession that previously was not regulated.

VIII. DUPLICATION OF REGULATIONS AND EFFORTS TO CONSOLIDATE

17. Include in the final report a statement expressing support for the following concepts:

    a. Reduction of the number and complexity of regulations;

    b. Elimination of duplicate or conflicting regulations; and

    c. Consolidation of reporting requirements and fee collection.

18. Amend Chapter 233B, "Nevada Administrative Procedure Act," of NRS to include, among the contents of a notice of intent to adopt, amend, or repeal a regulation:

    a. If the regulation is required under federal law, the citation and description of the federal law;

b. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency; and

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

19. Amend NRS 277.185 and related provisions as necessary to clarify that the annual meeting described in NRS 277.185 must be noticed as a public hearing. Further, stipulate that the Department of Taxation shall submit to the Legislative Counsel Bureau, on or before February 15 of each year, a progress report concerning the annual meeting, including any recommendations for legislation.

20. Include in the final report a statement encouraging the Department of Taxation (DOT) to work with the Department of Business and Industry, the Department of Information Systems, local governments, and any other state or local agencies the DOT deems necessary, to continue efforts to consolidate information reporting and to use new technologies as much as possible to ease business's reporting and fee paying requirements. Include in the statement support for the concept of a computer-telephone system that enables small businesses to provide consolidated information to a central clearinghouse.

IX. FEDERAL MANDATES

21. Include in the final report a statement expressing support for the concepts embodied in the recommendations of the U.S. Advisory Commission on Intergovernmental Relations, which, pursuant to the Federal Unfunded Mandates Reform Act of 1995, conducted a study of the role of federal mandates in intergovernmental relations.

X. ENVIRONMENTAL REGULATIONS

22. Amend or repeal NRS 459.3816, which designates certain substances in specific quantities as "highly hazardous." Direct the Division of Environmental Protection, in conjunction with the Health Division and the Division of Industrial Relations to establish, by regulation, the list of highly hazardous substances.

23. Amend Chapter 459, "Hazardous Materials," of NRS to authorize the Division of Environmental Protection to combine and administer the following programs:

    a. The State's Chemical Accident Prevention Program (NRS 459.380 through 459.3874, inclusive);

    b. The Federal Occupational Safety and Health Administration's Process Safety Management Program; and

    c. The Federal Environmental Protection Agency's Risk Management Program.

24. Amend Chapter 477, "State Fire Marshal," of NRS to allow the State Fire Marshal the option of assessing an administrative penalty rather than the current criminal penalty for violations that do not pose an imminent threat to life or property.

25. Amend the provisions concerning hazardous materials permitting for intrastate carriers to, unless otherwise prohibited by federal law:

    a. Require the Highway Patrol Division of the Department of Motor Vehicles and Public Safety to assess a fixed, rather than a calculated, fee for hazardous materials transportation; and

    b. Limit application of requirements relating to permits for the transportation of hazardous materials to those vehicles that actually transport hazardous materials, rather than those that are merely capable of transport.

XI. PUBLIC UTILITY REGULATION

26. Amend Chapter 354, "Local Financial Information," of NRS to conform to federal law to avoid the potential for discrimination between interstate telecommunications providers and intrastate telecommunications providers. Further, prohibit local governments from competing with private companies in the provision of public utility service, except in cases in which local governments are the only providers of such services.

27. Amend Chapter 704, "Regulation of Public Utilities Generally," of NRS to delete the authority and responsibility of the Public Service Commission of Nevada to establish regulations concerning plans for natural gas resource planning.

28. Amend NRS 704.110 to include promotional advertising among that information the commission is required to consider in any hearing concerning increased rates, fares, or charges of a public utility.

29. Repeal Nevada's Utility Environmental Protection Act (NRS 704.820 through 704.900, inclusive).

30. Provide that, unless there is imminent danger to public health or safety, a public utility supplier of natural gas does not have an obligation to secure supply and transportation capacity for customers who arrange their own gas supplies and transportation capacity.

31. Authorize a public utility supplier of natural gas to sell the exclusive right to acquire and sell supplies for its local distribution area.

REPORT TO THE 69TH SESSION OF THE NEVADA LEGISLATURE BY THE NEVADA LEGISLATURE'S COMMITTEE TO STUDY STATE REGULATIONS THAT AFFECT BUSINESS AND ECONOMIC DEVELOPMENT

I. INTRODUCTION

The 68th Session of the Nevada Legislature enacted Assembly Bill 538 (Chapter 702, *Statutes of Nevada 1995,* pages 2702-2703), which created a legislative committee to study state regulations that affect business and economic development.[1] The bill specified that the committee was to determine the effect of state regulations on Nevada's efforts to promote economic development; consider methods to reduce the complexity or eliminate duplication of regulation; and recommend to the 1997 Nevada Legislature any proposals for legislation that the committee deemed appropriate.

The Legislative Commission appointed eight members to the committee:

Assemblyman David E. Humke, Chairman
Senator Ann O'Connell, Vice Chairman
Senator Kathy Augustine
Senator Sue Lowden
Senator Bernice Mathews
Assemblywoman Vonne S. Chowning
Assemblyman Larry L. Spitler
Assemblywoman Sandra J. Tiffany

Legislative Counsel Bureau staff services were provided by Denice L. Miller, Principal Research Analyst, Research Division; Eileen G. O'Grady, Principal Deputy Legislative Counsel, Legal Division; and Jonnie Sue Hansen, Senior Research Secretary, Research Division.

The committee held three meetings in Las Vegas and two in Carson City; all five were video conferenced to facilitate wider public participation.

Testimony during the study included the concerns and recommendations of state regulatory agencies, local government, the business community, labor, and environmental representatives. A substantial amount of data, much of it provided

[1]See Appendix A.

in exhibits that are part of the minutes of the committee's meetings, was gathered during the course of the study. Only information bearing directly upon the scope of the study and the committee's recommendations is included in this report. All other supporting documents and minutes of the meetings are on file in the Research Library of the Legislative Counsel Bureau.

The committee adopted 31 recommendations. The subjects of these proposals include: public access to information concerning regulations; review of regulations; regulatory boards and commissions; environmental regulations; development and implementation of regulations; administrative fees, fines, and penalties; consolidation of regulations; and public utility regulation. Refer to Appendix I for the bill drafts of suggested legislation.

II. OVERVIEW OF ADMINISTRATIVE RULE MAKING: THE DELEGATION DOCTRINE

The constitutions of both the United States and the State of Nevada are based upon the concept of separation of powers. The legislative branch makes the laws, the executive branch enforces the laws, and the judicial branch interprets the laws. Collectively, the three branches provide a system of "checks and balances."

An administrative agency, however, is involved to some degree in the exercise of each of these functions. The agency adopts regulations to carry out the law as promulgated by the legislative entity. It also enforces those rules, investigates regulated entities to determine compliance, and adjudicates the rights and liabilities of regulated entities. The delegation doctrine, which has been variously interpreted by courts over the years, holds that, although Article 1 of the *United States Constitution* vests supreme legislative power in the Congress, the constitution does not prohibit the delegation of *some portion* of that power.

Arguments in favor of delegated power to administrative agencies include that the legislative branch cannot possibly contemplate all situations that may be related to a particular law; indeed, supporters argue that legislative attention is wasted in micro-management.

Critics of the delegation doctrine — or, more correctly, of its application — counter that delegation of legislative power has resulted in a proliferation of regulation, much of which, they contend, is an unnecessary burden. For these critics, the opposite of micro-management is micro-legislation, and it is equally irksome.

III. FEDERAL REGULATION

Businesses are regulated not only by states; they are also regulated by the Federal Government and, in some cases, local authorities. The following section describes the rise of federal regulation and recent reform efforts at the national level.

Early History

For over 100 years, regulatory agencies have formed part of the rubric of national industry and commerce. The Interstate Commerce Commission, the first such agency, was created in 1887 to guard against monopolistic practices by railroads. In 1906, the United States Congress established the Food and Drug Administration. Much early regulation was statutory in nature, however, and related primarily to economic efficiency.

Historically, regulation affecting business has addressed, in order of chronological significance, unfair trade practices, employment, consumer issues, and environmental protection. The first growth period in national regulation occurred near the turn of the century, when President Theodore Roosevelt initiated the creation and expansion of broad federal police powers. This expansion of federal powers addressed areas previously left to the states, such as gambling and safe food and drugs.

The New Deal Years

The second growth period took place in the 1930s, under the second Roosevelt president — Franklin Delano Roosevelt. After the market crash of 1929, politicians and private citizens alike questioned the ability of free market and private enterprise to self-regulate and, in so doing, address public needs. During the New Deal years, government, rather than the free market and private enterprise, was seen as the agent of change to further the public good. With general congressional guidance, a plethora of administrative agencies tackled such social and economic problems as financial market control and social welfare.

The New Deal years also brought an expansion of federal oversight of state action, which was ultimately challenged and upheld by the United States Supreme Court:

> Thus, in a series of decisions handed down between 1937 and 1942, the Supreme Court sanctioned an almost unlimited Congressional power to regulate interstate commerce.

> . . . By 1942, the Court had decided that there were few private sector activities which the federal government could not in some way touch through its power to regulate interstate commerce. Moreover, if a state activity conflicted with, or was contrary to, a federal endeavor, the state action could be superseded.[2]

Certain confusion accompanied the regulatory growth during this period. In 1935, President Roosevelt, partly in response to the Panama Refining Case,[3] requested a study of administrative rule making. The war years interrupted the development of subsequent legislation, however, and it was not until after 1946 that the Administrative Procedure Act (APA) was signed by President Harry S. Truman.

The purposes of the Act were to provide public information and increase public participation; to establish uniform procedures for rule making and adjudication; and to restate and reaffirm the principle of judicial review.

The provisions of the original APA are incorporated in Title 5 of the *United States Code*. Certain sections have been revised significantly since passage of the Act, and two major amendments were enacted in 1990 (the Negotiated Rulemaking Act and the Administrative Dispute Resolution Act).

Consumer and Environmental Protection

A final period of regulatory growth occurred in the 1960s and 1970s. The agencies created or expanded during this period were tasked with consumer protection (particularly public health and safety) and environmental protection. Major federal acts affecting business during this period include the National Environmental Policy Act (1969), the Occupational Safety and Health Act (1970), the Endangered Species Act (1973), the Fair Labor Standards Act Amendments (1974), and the Resource Conservation and Recovery Act (1976).

Intergovernmental Regulation

Throughout most of the history of federal involvement, regulation targeted commerce (including unfair or deceptive trade practices), public utilities, and broad public health and safety issues. When Congress wanted to encourage the states to take local action in other areas, federal subsidies were used as an incentive.

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[2]*Regulatory Federalism: Policy, Process, Impact, and Reform,* the Advisory Commission on Intergovernmental Relations, Washington, D.C., February 1984, p. 28.

[3]*Panama Refining Co. v. Ryan*, 293 U.S. 388. 55 S. Ct. 241, 79 L.Ed. 446 (1935).

In the late 1960s and early 1970s, the common practice of awarding federal subsidies to encourage state action gave way to compulsory regulation. States were mandated to institute certain programs or regulate certain practices. If a state did not, the Federal Government would. Much of the compulsory regulation concerned social welfare or personal rights. Environmental protection and occupational safety and health, however, have increasingly become the subjects of intergovernmental regulation.

The shift to compulsory regulation and associated federal mandates, frequently unfunded, ultimately resulted in the regulatory reform efforts of recent years.

Federal Reforms

In many respects, the Federal Administrative Procedure Act can be considered the first major reform of federal regulation. Many others have followed. Interestingly, several reform efforts occurred during the third wave of regulatory growth in the 1960s and 1970s:

> For regulation, the past decade was a period of hyperactivity among such new agencies as the Environmental Protection Agency, the Department of Energy, the Occupational Safety and Health Administration, the Consumer Product Safety Commission, and the National Highway Safety Administration. With reform, on the other hand, the period was marked by a slowly building arsenal of weapons against regulatory excess, initiated during the Ford Administration, continuing under President Carter and culminating in several major programs launched by President Reagan immediately upon taking office in 1981.[4]

In 1974, the United States Congress initiated a study of federal regulation and regulatory reform by the congressional Subcommittee on Oversight and Investigations. The subcommittee's report, issued in 1976, contained several recommendations designed to improve the effectiveness of regulation by:

1. Creating mechanisms to foster a regulatory environment that is supportive of effective programs;

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[4] *Regulatory Federalism*, pp. 189-190.

2. Reforming current agency practices, to ensure evenhanded enforcement of law and selection of qualified regulatory officials; and

3. Reducing and eliminating duplicative, anticompetitive and ineffective programs.[5]

By executive order, President Gerald R. Ford implemented the Inflation Impact Statement Program, which required certain agencies to issue an estimate of the effects of regulations expected to have significant economic impact. The statements were to include a discussion of both expected costs and benefits and a review of possible alternatives to the proposed regulations.

The impact statement program suffered, apparently, from a lack of analytical tools and reliable data. Thus, the Carter Administration attempted to allow more flexibility in determining costs and benefits — in particular, allowing noneconomic impacts to be weighed. In addition, a "sunset" provision in an executive order stipulated that existing regulations were subject to periodic review to determine their validity.

The Regulatory Flexibility Act of 1980 requires agencies to analyze and describe the impact of proposed rules on small entities (businesses, organizations, or governments), unless the rule is determined to have no significant economic effect. Public comment is solicited on the regulatory flexibility analysis, or RFA. The RFA must include, among other factors, the rationale for the proposed rule; the legal authority; an estimate of the small entities that will be affected and the nature and magnitude of that effect; a description of record-keeping and reporting that the rule entails; and the identification of conflicting or duplicated federal rules.

In addition, the agency is expected to consider alternatives to reduce the rule's impact on small entities. When the final RFA is published, the agency must explain why particular alternatives were not chosen.

The Reagan-Bush years saw additional emphasis on streamlining regulations. Indeed, regulatory relief was an important theme of the Reagan campaign. For example, President Reagan established by executive order the "President's Task Force on Regulatory Relief," chaired by then-Vice President George H. Bush.

In addition to reform of the regulatory environment, Congress has also deregulated certain industries or practices. For example, trucking was deregulated in 1980, and

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[5] *Federal Regulations and Regulatory Reform,* Report by the Subcommittee on Oversight and Investigations, House Document No. 95-134, U.S. Government Printing Office, October 1976, p. 539.

in 1982, air transportation and a major portion of the telecommunications industry were deregulated.

IV. STATE REGULATION

Almost 20 years after the passage of the Federal APA, the Nevada Legislature enacted Senate Bill 221, known as the Nevada Administrative Procedure Act (Chapter 362, *Statutes of Nevada 1965*). The Act has been variously amended in the years since its enactment, but, like its federal counterpart, it is intended "to establish minimum procedural requirements for the regulation-making and adjudication procedure of all agencies of the executive department of state government and for judicial review of both functions, except those agencies expressly exempted . . . ."[6]

Exempted Agencies

In its original form, the Nevada Administrative Procedure Act exempted certain agencies from compliance with its provisions. The list of exempted agencies remains relatively unchanged[7] and is established in *Nevada Revised Statutes* 233B.039.

The following agencies are entirely exempt from the provisions of the Act: the Governor; the Department of Prisons; the University and Community College System of Nevada; the Office of the Military; the State Gaming Control Board; the Nevada Gaming Commission; the Welfare Division of the Department of Human Resources; the State Board of Parole Commissioners; the State Board of Examiners acting pursuant to Chapter 217 of NRS; and, except as otherwise provided in NRS 533.365, the Office of the State Engineer. Other agencies are exempted from specific provisions of the Act.

Requirements of the APA

Nevada's APA sets forth a procedure for the promulgation and adoption of administrative regulations and the adjudication of contested cases. The requirements for promulgation and adoption have become more detailed over the years, but the goal remains to ensure public involvement in the process.

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[6]NRS 233B.020.

[7]The 1995 Nevada Legislature removed an exemption for the State Board of Accountancy for the purpose of adopting rules of professional conduct for auditors and accountants. Senate Bill 277, Chapter 106, *Statutes of Nevada 1995.*

Participation of the affected parties is critical to development of a reasonable, practical, and acceptable regulation. Further, the process provides advance notice of changes in administrative law.

Among other provisions, the APA specifies minimum notification of the adoption, repeal, or amendment of a regulation, both in amount of time and in method; the contents of a notice of an intent to adopt a regulation, which includes a description of costs and benefits; and a procedure for public comment.

Legislative Review of the APA

In 1975, the Nevada Legislature directed the Legislative Commission to conduct a review of the regulations of executive branch agencies (Assembly Concurent Resolution 14, [File No. 121, *Statutes of Nevada*]). The subcommittee's task was to determine which agencies had regulations in effect, the methods used by such agencies in developing regulations, the availability of the regulations to the public, and the conformance of regulations to legislative policy.

Among its various findings, the subcommittee recommended that the law be amended "to clarify that all authority to adopt substantive regulations depends upon an express legislative intent."[8] Further, members suggested that the Legislature review regulations to assess their conformity to legislative intent. Finally, the subcommittee recommended that administrative regulations be codified to improve clarity and accessibility.

Codification of Regulations

In 1977, the Nevada Legislature enacted Senate Bill 62,[9] which provided for the codification of administrative regulations. Section 2 of the bill established

> . . . the policy of this state that every agency regulation be made easily accessible to the public and expressed in clear and concise language. To assist in carrying out this policy, every permanent regulation shall be incorporated. . . in the *Nevada Administrative Code*. . . .

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[8] *Review of Regulations by Executive Agencies*, Bulletin No. 77-17 of the Legislative Counsel Bureau, December 1976, page 6.

[9] Chapter 560, *Statutes of Nevada 1977*.

To this end, each agency is required to submit proposed regulations to the Legislative Counsel, who is authorized to "examine and if appropriate revise the language submitted so that it is clear, concise and suitable for incorporation in the *Nevada Administrative Code* (NAC) but shall not alter the meaning or effect without the consent of the agency."

Statutory Authority

Senate Bill 62 also amended NRS 233B.040, to clarify agencies' authority to adopt administrative regulations. The bill stipulated that an agency's authority was limited "by the statutes applicable" and, further, that each regulation must include a citation of its statutory authority.

V. DISCUSSION OF RECOMMENDATIONS

The A.B. 538 Committee adopted 31 recommendations. The majority are recommendations for legislation; listed below, these are followed by the Bill Draft Request (BDR) number at the end of each. Also approved were statements of findings to be included in the final report.

Public Access to Information Concerning Regulations

Early in the study, members of the business community identified a need to be informed of proposed and adopted regulations. Witnesses testified that, given the abundance of federal, state, and local regulations to which they are subject, state agencies' normal notification procedures were insufficient to keep them apprised of new requirements.

Generally, the APA stipulates that 30 days' notice must be given of the intent to adopt, amend, or repeal a regulation. The notice of intent to act upon a regulation must be mailed to anyone who has requested in writing to be placed upon a mailing list for that agency. In addition, the agency must deposit one copy of the notice and text of the proposed regulation with the State Librarian; retain one copy in each of its offices for inspection and copying by the public; and, if the agency does not have an office in a particular county, deposit one copy with the librarian of the main public library in the county. Many state agencies exceed these minimal notification procedures, but nonetheless businesses may not be aware of all proposed regulatory changes.

One method of increasing public awareness of new or proposed regulations is the publication of a state register of regulations. In 1995, at least 40 states published

some type of register. The registers vary widely with respect to the agency responsible for publication, the frequency of publication, computer availability, subscription policy, and the type of information included. In some states, the Secretary of State is responsible for compilation and publication of the register; in others, the Legislature is the responsible agency.

The frequency of publication of state registers ranges from twice a week to ten times a year. The advantage to frequent publication is that the information is timely; the disadvantage is that it results in higher labor and printing costs. Conversely, monthly publication results in outdated information, but costs are generally lower. Most states provide a number of free copies to libraries or state agencies.

Therefore, the committee recommends:

1. **Require the Legislative Counsel to prepare and publish or cause to be published a state register of administrative regulations.**

   a. **The register must include:**

      (i) **Every notice of intent by an agency for the adoption, amendment, or repeal of a permanent regulation; and**

      (ii) **Notice of final adoption of a permanent regulation, its effective date, and its informational statement.**

   b. **The Legislative Counsel shall determine the frequency and dates of publication of the register within a range of no less than ten times a year and no more than once every two weeks. The Legislative Counsel shall determine the deadlines for submission of the required information by agencies accordingly.**

   c. **A minimum number of copies must be produced for distribution to the Office of the Secretary of State, the Office of the Attorney General, the Supreme Court and State Libraries, each county clerk and county library, and the Legislative Counsel Bureau;**

   d. **The cost of publication of copies required for distribution pursuant to paragraph (c) must be recovered from the agencies whose notices appear in the register;**

e. **The Legislative Counsel may sell additional copies to other state or local governmental agencies or any other person requesting a copy at a price not to exceed the cost to publish the additional copy; and**

f. **Amend Chapter 233B, "Nevada Administrative Procedure Act," of the *Nevada Revised Statutes* to require state agencies to provide to the Legislative Counsel Bureau the information required by this recommendation, in accordance with the guidelines established pursuant to paragraph (b). (BDR 17-238)**

Legislators also discussed the feasibility and desirability of placing the state register on the Internet, as many other states do. Increasingly, businesses and individuals have Internet access, and specific and complete information is easier to find through on-line searches. While legislators made it clear that Internet access to the state register would not replace traditional methods of posting meetings and disseminating information, the committee was of the opinion that current technologies could supplement those traditional methods to the public's advantage and convenience.

Therefore, the committee recommends:

2. **Require the Legislative Counsel Bureau to provide access to the state register on the Internet. The bureau may determine the manner of compiling the information and the frequency of revision, but the on-line register must be revised no less frequently than the state register is published. Stipulate that no fee may be charged for access to the information. (BDR 17-238)**

Testimony indicated that a newspaper story may capture the attention of members of the public who are not on agency mailing lists or do not have access to other means of notification.

Therefore, the committee approved the following recommendation:

3. **Include in the final report a statement encouraging state agencies to supplement their notification procedures concerning proposed regulations with press releases.**

Legislative Intent

A second theme that developed early in the study was that of legislative intent. Legislators stated that executive branch regulations do not always conform to the legislative intent of the enabling legislation; executive branch agencies testified that legislative intent is not always clear. Further, the Nevada Supreme Court has held that when the meaning of the law is clear from its language, it is not necessary to resort to extrinsic materials to ascertain the legislative intent.[10]

Committee members were of the opinion that regulatory agencies that are granted new or revised rule making authority should be provided with guidance as to the legislative intent behind the grant of authority.

Therefore, the committee recommends:

4. **Require the Legislative Counsel to prepare, at the request of the chief sponsor, a synopsis of any bill drafted for submission to the Legislature that grants, expands, or amends the authority of a state agency to adopt administrative regulations, if:**

   a. **The resulting regulations would affect persons or entities outside the agency; and**

   b. **The agency is not exempt from the Nevada Administrative Procedure Act.**

   Further stipulate that the synopsis must:

   a. **Be included in the bill;**

   b. **Explain briefly the purpose of the bill as a whole; and**

   c. **For each section of the bill, explain the change, repeal, or addition entailed in that section and its purpose as well as its substantive effect. (BDR 17-238)**

The committee members examined the development of regulations to determine at what point legislative intent was considered by the agencies promulgating the

[10] See Appendix B for additional discussion of the concept of legislative intent.

regulations. Legislators and executive branch representatives both stressed the value of agency attendance at relevant legislative committee hearings.

Members also reviewed the role of the Office of the Attorney General (OAG) in monitoring whether proposed regulations accurately reflect legislative intent. A representative of the OAG testified that, if a statute is ambiguous, its attorneys may apply rules of statutory construction to ascertain legislative intent. This practice sometimes results in interpretation of a particular statute that, although reasonable, is not the result the Legislature intended. Further, the representative testified, a deputy attorney general will not advise a client agency that the Legislature did not intend to grant a particular authority if the statute, in the opinion of the OAG, permits such an authority.[11]

Committee members were of the opinion that the OAG should provide additional direction to its client agencies with respect to legislative intent.

Therefore, the committee approved the following recommendation:

5. **Include in the final report a statement encouraging the Office of the Attorney General to include, in the process of developing regulations, a stringent review of legislative intent of the associated rule making authority.**

Review of Administrative Regulations

In 1977, the Legislature amended the Nevada Administrative Procedure Act to authorize legislative review of proposed administrative regulations.[12] The bill authorized the Legislative Commission to reject those regulations it determined were contrary to legislative intent or outside the agency's authority. After a district court ruled that the legislative "veto" of administrative regulations was unconstitutional, however, the Legislature amended the statutes in 1987 to make the commission's review advisory only.[13]

During the 1993 Session, the Legislature enacted Senate Joint Resolution No. 23 (File No. 142, *Statutes of Nevada*), which proposed to amend the *Nevada Constitution* to allow specifically for the review and rejection of administrative regulations by the Legislative Commission. Adopted in identical form by the

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[11]Page 19, minutes of the A.B. 538 Committee Meeting of February 2, 1996.

[12]Assembly Bill 710, Chapter 586, *Statutes of Nevada 1977.*

[13]Assembly Bill 859, Chapter 659, *Statutes of Nevada 1987.*

1995 Legislature, the measure was approved by the voters at the 1996 General Election.

At each meeting, members discussed the issue of legislative review of administrative regulations. These discussions included an examination of the ballot question language for Ballot Question No. 5 on the 1996 General Election Ballot.[14]

The amendment would specifically authorize:

1. Legislative review of proposed regulations before they become effective;

2. Suspension of regulations that appear to exceed the agency's statutory authority; and

3. Rejection of regulations that are determined to exceed the agency's authority.

Currently, Nevada law requires the Legislature to review regulations adopted by most state agencies to determine whether the regulations exceed the agencies' authority and whether they carry out legislative intent. Nevertheless, if the Legislature determines that an agency has exceeded its authority or that the regulation does not carry out legislative intent, the agency's regulation may still become effective over the objection of the Legislature. The Legislature may not currently suspend or reject a regulation.

Committee members spoke in favor of the amendment and approved the following recommendation:

6. **Include in the final report a statement expressing support for the passage of Ballot Question No. 5 on the 1996 General Election Ballot (constitutional amendment to allow specifically for legislative review of administrative regulations).**

The 1993 Legislature also directed an interim study of the structure and functioning of the Legislative Counsel Bureau (Assembly Concurrent Resolution No. 67 [File No. 176, *Statutes of Nevada*]). The A.C.R. 67 Subcommittee studied the issue of legislative review of regulations and, in its final report to the 1995 Legislature, recommended support of S.J.R. 23. The subcommittee noted that whether a legislative "veto" is constitutional has never been decided by Nevada's Supreme Court. Further, subcommittee members considered that legislative review might,

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[14]See Appendix C for the text of the ballot question as it appeared on the November 1996 General Election Ballot.

in fact, survive constitutional challenge. Thus, the subcommittee recommended that the legislative power to reject regulations be reinstated; the resulting bill draft became A.B. 214 of the 1995 Legislative Session.

Assembly Bill 214 passed both houses of the Legislature, but was vetoed by the Governor. In his veto message, Governor Miller stated that the bill "violates the constitutional doctrine of separation of powers" and is "an unwarranted intrusion in the orderly conduct of business of the State." The veto was sustained by the 1995 Legislature.

The committee received considerable testimony concerning the desirability of legislative review of regulations. Further, the committee was of the opinion that legislative review might be ruled constitutional.

Therefore, the committee recommends:

7. **Authorize the Legislature or a representative body of the Legislature to reject any proposed administrative regulation that, in its determination, exceeds the agency's statutory authority or does not carry out legislative intent. In addition, delete the provision that allows a regulation to become effective over the objection of the Legislative Commission. Further, establish a procedure for the resubmission of regulations to which the Legislature objects. (BDR 18-234)**

Testimony indicated that administrative regulations are not reviewed regularly and thus may not be revised with enough frequency to ensure that their requirements remain reasonable and necessary.

Therefore, the committee recommends:

8. **Require state agencies to review administrative regulations a minimum of every ten years to determine if they should be revised, expanded, or repealed. Further require that an agency shall report the results to the Legislature next following its scheduled review. Stipulate that each section of the *Nevada Administrative Code* must be followed with the date of its last substantive review by the agency. (BDR 18-237)**

Codification of Regulations

During discussions concerning legislative intent, committee members discussed the special problem of older regulations for which the statutory authority is not always clear. When a new regulation is considered, the statutory authority for the

regulation is cited on the notice of intent. The APA does not require, however, that the codified regulation, which is found in the NAC, include the statutory authority. Thus, it can be difficult for a business person, member of the public, or legislator to assess whether a codified regulation conforms to legislative intent.

Therefore, the committee recommends:

9. **Amend Chapter 233B, "Nevada Administrative Procedure Act," of NRS, and related provisions as necessary, to require the Legislative Counsel Bureau to cite, in every section of the *Nevada Administrative Code*, the statutory authority under which the section is promulgated. (BDR 17-238)**

Regulatory Boards and Commissions

In addition to review of individual regulations, the committee considered it valuable to review the operation of the regulatory entities themselves. Testimony indicated support for periodic review of agencies to determine if the agency was still necessary and useful.

Therefore, the committee recommends:

10. **Require the Legislature or a representative body of the Legislature to review existing regulatory boards or commissions a minimum of every ten years to determine if the board or commission should be retained, revised, or eliminated. Establish a sunset date of four years for all new regulatory boards and commissions pending renewal by the Legislature. (BDR 18-235)**

Development and Implementation of Regulations

Various witnesses testified that regulations are often difficult to understand, because they are written in "legalese." Some states currently require laws to be written in "Plain English," which has been variously defined. For example, in some states a Plain English requirement prohibits sentences over a specified length or words and phrases for which a more common term is available. The committee did not make such a specific recommendation.

The Office of the Attorney General currently prepares and distributes a guide to administrative rule-making. Preparation of the guide is not mandatory. Committee members were of the opinion that guidelines in the manual could be strengthened to ensure that regulations are written in simple language.

Therefore, the committee recommends:

11. **Require the Attorney General to develop guidelines for the drafting of administrative regulations in language that reflects common, accepted usage of English and is as concise as possible. (BDR 18-237)**

At the first and subsequent meetings, members heard testimony that public workshops are helpful to develop regulations that are reasonable, acceptable, and suited to the needs of the regulated industry or profession. The workshop is an informal precursor to the actual public hearing on a proposed regulation. Many state agencies now conduct these informal workshops, but they are not required to do so. The committee received a number of positive comments concerning workshops from both regulatory entities and those they regulate.

Therefore, the committee recommends:

12. **Amend Chapter 233B, "Nevada Administrative Procedure Act," of NRS to require the use of workshops involving the public and regulated entities to solicit comments concerning the need for and possible content of new or revised regulations before holding the public hearing required pursuant to NRS 233B.061, "Proposed regulation: Public comment and hearing; record of hearing." (BDR 18-237)**

Testimony from representatives of regulated businesses indicated that often a new regulation becomes effective before it is possible for them to comply, either because they are not informed of the new regulation in a timely fashion or because it requires preparation to comply. Testimony indicated support for a 90-day waiting period before regulations become effective.

Therefore, the committee recommends:

13. **Amend Chapter 233B, "Nevada Administrative Procedure Act," of NRS and other provisions as necessary to stipulate that a permanent regulation becomes effective not sooner than 90 days after filing with the Secretary of State, unless otherwise precluded by federal law. This requirement would not apply to regulations addressing situations in which there is an imminent threat of danger to person or property. (BDR 18-237)**

Administrative Fees, Fines, and Penalties

In addition to testimony that businesses sometimes have insufficient time or warning to comply with a regulation, the committee received comments that often a business may not be in compliance because it is entirely unaware of the requirements of a regulation. Witnesses testified that noncompliance may not be willful, but rather the result of being unaware. Thus, punitive measures for a first offense may be inappropriate.

Therefore, the committee recommends:

14. **Require any agency responsible for the enforcement of regulations affecting business or professions to issue a citation, instead of a fine, for a first offense for failure to comply with a regulation, unless otherwise precluded by federal law. This requirement would not affect an agency's ability to take other appropriate action in an emergency or where there is an imminent threat of danger to person or property. (BDR 40-232)**

The committee also discussed the particular problems of automobile dealers. Testimony indicated that dealers may not be receiving titles from the Department of Motor Vehicles and Public Safety (DMV&PS) in a timely fashion, and that this tardiness is, in turn, responsible for some dealers' late compliance with department reporting requirements and fees. The department indicated its willingness to impose administrative fines only in specific situations.

Therefore, the committee recommends:

15. **Amend NRS 482.565 and other provisions as necessary to stipulate that the Department of Motor Vehicles and Public Safety may impose administrative fines only if the department reasonably believes that a violation is the result of fraud or malfeasance. (BDR 40-232)**

Considerable testimony was heard concerning the cost to businesses and professions to comply with regulations. Although the APA requires state agencies to conduct a cost-benefit analysis of regulations,[15] witnesses were of the opinion that the cost to regulated entities should be reviewed prior to the passage of enabling legislation. Testimony indicated support for including, on regulatory bills, a fiscal note concerning the impact upon the public. This note would be similar to

[15]NRS 233B.066

those currently required for bills with a fiscal impact upon the state or local government.

Therefore, the committee recommends:

16. **Amend Chapter 218, "State Legislature," of NRS to require the Fiscal Analysis Division to obtain a fiscal note on any legislative measure that has a financial impact on Nevada residents by:**

    a. **Imposing or increasing a tax or authorizing a local government to do so;**

    b. **Imposing or increasing a fee for a government service or authorizing a local government to do so;**

    c. **Requiring a person or business to register with, be licensed by, or provide information to a state or local agency; or**

    d. **Authorizing regulation of a business or profession or a specific aspect of that business or profession that previously was not regulated. (BDR 17-238)**

Duplication of Regulations and Efforts to Consolidate

In recent years, lawmakers at all levels of government have listened to a particular concern of businesspeople across the nation — the duplication and overlap of federal, state, and local regulations. For example, a federal agency may require the same information from a business that is required from a state or local agency, but the various governmental agencies use different forms to report the information. Thus, the business must spend considerable time fulfilling all entities' requirements, when much of the requested information is the same. The same problem may occur at the state level: More than one state agency may require a business to supply the same or similar information.

Of all the comments received by the committee, the most prevalent was a call for simplified regulation.

Therefore, the committee approved the following recommendation:

17. **Include in the final report a statement expressing support for the following concepts:**

a. **Reduction of the number and complexity of regulations;**

b. **Elimination of duplicate or conflicting regulations; and**

c. **Consolidation of reporting requirements and fee collection.**

Federal law may be enforced by a federal agency or, where so authorized, by its state counterpart. Testimony indicated that it is beneficial for both a state agency and the entities it regulates to understand the federal requirements that dictate a particular state regulation. Benefits derive both from the agency's greater knowledge of the rationale behind the requirements and from the likelihood that the public will be more accepting of a state regulation that is required by federal law.

In addition, testimony indicated that state regulations may exceed federal requirements. The committee was of the opinion that such regulations might constitute an undue burden on business.

Therefore, the committee recommends:

18. **Amend Chapter 233B, "Nevada Administrative Procedure Act," of NRS to include, among the contents of a notice of intent to adopt, amend, or repeal a regulation:**

    a. **If the regulation is required under federal law, the citation and description of the federal law;**

    b. **If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency; and**

    c. **If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions. (BDR 18-237)**

Beginning in the mid-1970s, Congress and the Federal Government undertook studies and implemented programs to reduce the complexity and duplication of multilayered regulation. The reform effort gained momentum again in the mid-1990s, culminating in the Unfunded Mandates Reform Act of 1995. The Act targeted, among other issues, the lack of clearly defined responsibilities for federal, state, and local governments.

The national call for simplified regulation was made by Nevada's business community as well. For example, during the 1991-1992 interim period, a legislative

subcommittee on hazardous materials recommended the consolidation of several reports and fees, some of them required by federal law and others by state law. In addition, the 1993 Legislature enacted A.B. 153, which required the Department of Taxation to convene a committee of certain state and local governmental agencies to coordinate the collection of information and forms relating to the conduct of business so that each enterprise is required to furnish information to government in as few separate reports as possible.

The committee was required to develop an initial consolidated application form for use by the Department of Taxation; the Employment Security Division, Department of Employment, Training and Rehabilitation; the State Industrial Insurance System; the State Department of Conservation and Natural Resources (SDCNR); and any other state or local governmental agency. Further, A.B. 153 required the committee to develop consolidated forms related to the collection of business taxes and fees. Finally, the bill required the committee to summarize all taxes and fees related to doing business in Nevada.

Testimony indicated support for the continuation, strengthening, and broadening of the provisions of A.B. 153.

Therefore, the committee recommends:

19. **Amend NRS 277.185 and related provisions as necessary to clarify that the annual meeting described in NRS 277.185 must be noticed as a public hearing. Further, stipulate that the Department of Taxation shall submit to the Legislative Counsel Bureau, on or before February 15 of each year, a progress report concerning the annual meeting, including any recommendations for legislation. (BDR 22-239)**

Although the committee recommended consolidation of reporting and fee collection to the extent practical, members recognized the limitations resulting from inadequate or incompatible information systems and related technology. Nevertheless, after hearing presentations concerning current efforts and future proposals, the committee strongly supported the concept of using available and emerging technologies to ease the regulatory burden on business. One such presentation discussed the feasibility and desirability of a telephone-based reporting system. With a telephone and a personal computer, a business owner might file tax returns and employment information, for example, which would be distributed to the appropriate agencies requiring the information.

Therefore, the committee adopted the following recommendation:

20. **Include in the final report a statement encouraging the Department of Taxation (DOT) to work with the Department of Business and Industry, the Department of Information Systems, local governments, and any other state or local agencies the DOT deems necessary, to continue efforts to consolidate information reporting and to use new technologies as much as possible to ease business's reporting and fee paying requirements. Include in the statement support for the concept of a computer-telephone system that enables small businesses to provide consolidated information to a central clearinghouse.**

Federal Mandates

The Unfunded Mandates Reform Act of 1995 (Public Law 104-4), among other provisions, directed the Advisory Commission on Intergovernmental Relations (ACIR) to study the role of federal mandates in intergovernmental relations. The Act further stipulated that the ACIR make related recommendations to the President and Congress.

The ACIR selected 14 federal mandates (out of more than 200) for further analysis. The commission identified several common issues in these mandates:

- Detailed procedural requirements, such that state and local governments are not afforded the flexibility to meet national goals in a manner suited to their needs and resources;

- Lack of federal concern about mandate costs to state and local governments;

- Federal failure to recognize state and local governments' accountability to their citizens;

- Lawsuits by individuals against state and local governments to enforce federal mandates;

- Inability of very small local governments to meet mandate standards and timetables; and

- Lack of coordinated federal policy with no federal agency empowered to make binding decisions about a mandate's requirements.

The ACIR then recommended revisions to the various mandates. These revisions included, in some cases, repeal of the mandate or assigning to the state the responsibility for the related goal.

The A.B. 538 Committee received testimony in support of the ACIR's recommendations. Further, members were of the opinion that many of the problems identified in the commission's report were common to Nevada.

Therefore, the committee approved the following recommendation:

21. **Include in the final report a statement expressing support for the concepts embodied in the recommendations of the U.S. Advisory Commission on Intergovernmental Relations, which, pursuant to the Federal Unfunded Mandates Reform Act of 1995, conducted a study of the role of federal mandates in intergovernmental relations.**

Environmental Regulations

Environmental regulation is one of the largest areas of federal, state, and local concern. As such, environmental regulations and associated reporting requirements have the most potential for overlap, duplication, and complexity.

In 1991, the Nevada Legislature enacted Senate Bill 641, known as the Chemical Catastrophe Prevention Act (CCPA). The CCPA required the registration and regulation of facilities storing threshold quantities of certain highly hazardous materials. The list of highly hazardous materials was specified in the act and is codified as NRS 459.3816. The CCPA directed the Division of Environmental Protection (DEP), SDCNR, in consultation with the Health Division, Department of Human Resources, and the Division of Industrial Relations (DIR), Department of Business and Industry, to add to the list by regulation.

Testimony during the A.B. 538 study indicated that placing the list in statute was neither necessary nor convenient, as changes to the list could be made more quickly and with more flexibility through regulation. Further, witnesses stated that the statutory list created discrepancies among other related federal programs.

Therefore, the committee recommends:

22. **Amend or repeal NRS 459.3816, which designates certain substances in specific quantities as "highly hazardous." Direct the Division of Environmental Protection, in conjunction with the Health Division and the**

Division of Industrial Relations to establish, by regulation, the list of highly hazardous substances. (BDR 40-236)

Testimony indicated also that the CCPA was, in many ways, similar to and duplicative of two other programs: The Federal Occupational Safety and Health Act's Process Safety Management (PSM) program, which is administered in Nevada by the DIR; and the Federal Environmental Protection Agency's Risk Management Program (RMP), which was, at the time of the study, still pending, but will be administered in Nevada by the DEP.

A representative of Nevada's DEP stated that the most effective chemical accident prevention program is implemented at the state level and recommended consolidation of the CCPA, the PSM, and the RMP. Representatives of business testified that multiple programs and regulating entities add to the burden of business. In addition, the lack of coordination increases the potential for a business to overlook a particular requirement of any program; witnesses were supportive of the proposed consolidation.

In lieu of consolidation, the DIR favored a continuation and expansion of the Memorandum of Understanding between the two state agencies.[16] The DIR cautioned that, without federal approval, consolidation might be precluded.

The committee considered the benefits to business of a consolidated program to be the most important factor.

Therefore, the committee recommends:

23. **Amend Chapter 459, "Hazardous Materials," of NRS to authorize the Division of Environmental Protection to combine and administer the following programs:**

    a. **The State's Chemical Accident Prevention Program (NRS 459.380 through 459.3874, inclusive);**

    b. **The Federal Occupational Safety and Health Administration's Process Safety Management Program; and**

    c. **The Federal Environmental Protection Agency's Risk Management Program. (BDR 40-236)**

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[16]See Appendix D for a copy of the Memorandum of Understanding between DEP and DIR, dated July 15, 1994.

In testimony before the committee, the State Fire Marshal noted that any violation of Chapter 477 of NRS and the NAC constitutes a criminal violation and is subject to criminal penalties. The State Fire Marshal was of the opinion that a criminal penalty is "too harsh" for most violations. He encouraged the committee to allow the imposition of an administrative penalty for violations of the adopted fire and building codes. The State Fire Marshal further suggested that criminal penalties be applied only to "life threatening" violations.

Therefore, the committee recommends:

24. Amend Chapter 477, "State Fire Marshal," of NRS to allow the State Fire Marshal the option of assessing an administrative penalty rather than the current criminal penalty for violations that do not pose an imminent threat to life or property. (BDR 40-232)

At the beginning of 1996, Nevada became a participating jurisdiction in the federal Uniform Hazardous Materials Transportation Motor Carrier Registration and Permit Program. The program, which relies on reciprocal agreements among participating jurisdictions, is designed to reduce the regulatory burden to interstate motor carriers who must otherwise contend with different regulations in the states through which they travel. Accordingly, the Nevada Highway Patrol Division, DMV&PS, revised its hazardous materials permitting regulations to conform with the federal program.

During the study, a representative of a public utility testified that the changes to hazardous materials regulation had, in fact, complicated permitting and reporting requirements for the company, which transports fuel in a single fuel tanker. The revised regulation appeared to require that the company permit its entire fleet of vehicles, rather than the single tanker. Further, the cost of tracking the transportation of its vehicles is considerably in excess of the cost of the permit itself. The company suggested a vehicle-specific permit be required rather than a fleet permit and that the fee be fixed, rather than calculated.[17]

Therefore, the committee recommends:

25. Amend the provisions concerning hazardous materials permitting for intrastate carriers to, unless otherwise prohibited by federal law:

[17]See Appendix E for the opinion of Nevada's Attorney General concerning the permit requirements.

a. **Require the Highway Patrol Division of the Department of Motor Vehicles and Public Safety to assess a fixed, rather than a calculated, fee for hazardous materials transportation; and**

b. **Limit application of requirements relating to permits for the transportation of hazardous materials to those vehicles that actually transport hazardous materials, rather than those that are merely capable of transport. (BDR 40-236)**

Public Utility Regulation

In early 1996, the City of Las Vegas entered into a franchise agreement with a communications company for the provision of telecommunication services within the city. The agreement sparked concerns that it might be in violation either of S.B. 568 of the 1995 Session or of the Federal Telecommunications Act.

The Legislative Counsel studied the matter and issued an opinion, which stated that "the provisions of the franchise agreement, as adopted . . . do not violate the relevant provisions of NRS. However the provisions of NRS 354.59881 to 594.59889, inclusive, do, in part, violate federal law."[18]

Therefore, the committee recommends:

26. **Amend Chapter 354, "Local Financial Information," of NRS to conform to federal law to avoid the potential for discrimination between interstate telecommunications providers and intrastate telecommunications providers. Further, prohibit local governments from competing with private companies in the provision of public utility service, except in cases in which local governments are the only providers of such services. (BDR 58-240)**

The committee also reviewed recommendations concerning public suppliers of natural gas. The following topics were considered:

- Natural gas resource planning, as required by NRS 704.755;

- The Nevada Utility Environmental Protection Act (UEPA), NRS 704.820 to 704.900, inclusive;

[18]See Appendix F for the complete text of the opinion of the Legislative Counsel.

- Recovery of promotional advertising for suppliers of natural gas, NRS 704.110;

- The obligation of natural gas utilities to "serve" all users of natural gas, whether or not those users are customers of the utility; and

- The sale of rights to third-party marketers to acquire and sell natural gas supplies.

The committee adopted five recommendations concerning public utilities of natural gas. At the work session, however, members agreed to include in the final report the response of the Public Service Commission of Nevada (PSCN) to these recommendations; the commission's letter is included as Appendix G.

Restructuring of the natural gas industry began in 1985. As a result, public utilities now face significant competition from third-party suppliers who are either not regulated at all or are regulated by an entity other than the PSCN. Thus, current regulations that require a natural gas supplier to submit plans for acquisition and provision of natural gas to the PSCN (resource planning; NAC 704.953 to 704.973, inclusive) enable competitors of the supplier to obtain the information, which places the utility at a disadvantage.

Therefore, the committee recommends:

27. Amend Chapter 704, "Regulation of Public Utilities Generally," of NRS to delete the authority and responsibility of the Public Service Commission of Nevada to establish regulations concerning plans for natural gas resource planning. (BDR 58-233)

Nevada law currently prohibits the consideration of the costs of promotional advertising in hearings concerning a public utility's proposed rate increases. The prohibition was enacted prior to restructuring, at a time when natural gas was in short supply and the public utilities did not face third-party competition. Gas utilities now find it necessary to advertise to retain current customers and attract new ones. Accordingly, costs of promotional advertising should be considered among other costs of production when deriving new rates.

Therefore, the committee recommends:

28. Amend NRS 704.110 to include promotional advertising among that information the commission is required to consider in any hearing concerning increased rates, fares, or charges of a public utility. (BDR 58-233)

Nevada's UEPA, enacted 25 years ago (Senate Bill 287, Chapter 311, *Statutes of Nevada 1971*), requires certain utilities to secure environmental permits for the construction of large facilities. The UEPA permit is in addition to other federal and local permits, and the PSCN performs its review of UEPA permitting after all the other permits are approved. In some cases, this extra regulatory step is redundant and adds as much as six months and considerable cost to the approval process. Further, comparable nonutility facilities are treated differently under the UEPA statute, and this may result in inequitable treatment of utilities.

Therefore, the committee recommends:

29. Repeal Nevada's Utility Environmental Protection Act (NRS 704.820 through 704.900, inclusive). (BDR 58-233)

Prior to restructuring, a public utility supplier of natural gas was required to purchase all gas supplies for an area and arrange for its transportation to customers. This requirement, known as the "obligation to serve," was considered essential in a monopoly situation. Now, however, many large customers secure their own supplies and transportation. Nevertheless, the public utility for an area is still required to reserve capacity for all users of natural gas in the area as part of the "merchant function":

> [Local distribution companies] have traditionally been required to secure gas supplies and arrange for firm capacity (uninterruptible pipeline transportation service) to serve all high priority customers. However, many of the customers who now secure their own gas supplies and upstream pipeline capacity are still classified as high priority customers. As a result, LDCs remain obligated to secure supply and capacity for those customers in the event that their own gas supplies or capacity arrangements fail.[19]

According to testimony, this requirement results in increased costs for regular customers of the utility.

Therefore, the committee recommends:

30. Provide that, unless there is imminent danger to public health or safety, a public utility supplier of natural gas does not have an obligation to

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[19]See Appendix H.

secure supply and transportation capacity for customers who arrange their own gas supplies and transportation capacity. (BDR 58-233)

The committee also considered the overall ramifications of the deregulation of the natural gas industry. Given the number of third-party marketers who offer gas procurement, natural gas utilities, in order to compete, have begun offering these services through wholly owned marketing affiliates. The affiliate relationship presents regulatory difficulties, however, so it may be preferable for a utility to exit the merchant function altogether.

Therefore, the committee recommends:

31. **Authorize a public utility supplier of natural gas to sell the exclusive right to acquire and sell supplies for its local distribution area. (BDR 58-233)**

VI. CONCLUSION

In 1776, Adam Smith in *The Wealth of Nations* introduced the concept of the "invisible hand." Smith postulated that, in a purely competitive economy, each individual working to further his own good would inevitably take those actions that, collectively, would result in the best for everyone; we are all led by this "invisible hand." Thus, Smith argued, interference by government would likely result in less than the best for everyone.

Ours is not a purely competitive economy, however; it is a mixed economy. Further, the definition of what is good has, for most of United States history, included values that compete with profit — workers' rights, consumer safety, social welfare, and environmental protection. When these values conflict with the traditional model of free enterprise, proponents of either side clash over the balance to be struck. Nowhere has this clash been more volatile than over the Endangered Species Act: the timber restrictions in the Northwest have made the northern spotted owl, for many on either side, a symbol of the seminal issues associated with regulation.

Various attempts have been made over the years to quantify the "cost" of regulation, either in loss of national productivity or in dollar amounts specific to types of businesses. No one argues that there is *not* a cost; the argument centers on how much and to whom. Similarly, almost everyone agrees that regulation has its benefits — but once again, it is difficult to quantify those benefits. Even if a cost-benefit analysis can be done for a particular regulation, ultimately those costs and benefits will mean something different to different people. For some, the benefits of saving the spotted owl outweigh the cost to the timber industry. For

workers in that industry, the price is too high. In regulatory matters, every solution is a trade-off.

That limitation notwithstanding, the A.B. 538 Committee is of the opinion that the recommendations contained in this report constitute valuable tools in the State's effort to combine the legitimate need for regulation with a healthy and competitive business environment.

The committee is grateful for the support and cooperation of the many participants who contributed their time, expertise, and suggestions to the study.

VII. APPENDICES

APPENDIX A

Assembly Bill 538
(Chapter 702, *Statutes of Nevada 1995*, pages 2702-2703)

Assembly Bill No. 538

Assemblymen Humke, Schneider, Carpenter, Ohrenschall, Manendo, Monaghan, Steel, Stroth, Sandoval, Lambert, Fettic, Bennett, Nolan, Arberry, Braunlin, Ernaut, Chowning, Allard, Hettrick and Marvel

CHAPTER 702

AN ACT relating to administrative regulations; creating the legislative committee to study state regulations which affect business and economic development and prescribing its duties; and providing other matters properly relating thereto.

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

Section 1. 1. There is hereby created a legislative committee to study state regulations which affect business and economic development, consisting of eight members of the legislature appointed by the legislative commission.

2. As soon as practicable after the adjournment sine die of the 68th session of the legislature, the legislative commission shall appoint the members of the committee and designate the chairman and vice chairman.

3. The terms of the members of the committee expire on June 30, 1997. A vacancy on the committee must be filled for the remainder of the unexpired term in the same manner as the original appointments.

Section 2. 1. The legislative committee to study state regulations which affect business and economic development shall meet at the times and places specified by a call of the chairman or a majority of the committee.

2. The members of the committee are, except during a regular or special session of the legislature, entitled to receive out of the legislative fund the per diem expense allowances provided for state officers and employees generally and the travel expenses provided pursuant to NRS 218.2207.

3. The legislative counsel bureau shall provide the committee with such administrative and clerical support as the committee requires to carry out its duties.

Section 3. The legislative committee to study state regulations which affect business and economic development shall review the provisions of chapters 278, 333, 338, 341, 348A, 349, 361, 364A, 444, 444A, 445A, 445B, 446, 447, 459, 477, 484, 522, 538, 590, 598, 608, 612, 662, 686A and 689C of the Nevada Administrative Code and any other state regulations it determines affect business and economic development, and:

1. Determine the effect of existing state regulations on Nevada's efforts to promote economic development.

2. Consider possible methods to:

(a) Reduce the number and complexity of state regulations which affect business and economic development.

(b) Decrease the number of state agencies authorized to adopt regulations regarding similar subjects which affect business and economic development.

(c) Consolidate the assessment and collection of fees imposed by state regulations which affect business and economic development.

3. Recommend to the 69th session of the legislature any proposals for legislation the committee deems appropriate regarding the adoption of state regulations which affect business and economic development.

Section 4. Any recommended legislation proposed by the legislative committee to study state regulations which affect business and economic development must be approved by a majority of any members of the Senate and a majority of any members of the Assembly appointed to the committee.

Section 5. This act becomes effective upon passage and approval.

APPENDIX B

Letter dated January 29, 1996,
addressed to Assemblyman David E. Humke
from Eileen O'Grady, Deputy Legislative Counsel,
that discusses the concept of legislative intent

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January 29, 1996

Assemblyman David E. Humke
Post Office Box 70656
Reno, Nevada 89570

Dear Mr. Humke:

You have asked this office to discuss the concept of legislative intent. "Legislative intent" is defined as "[s]uch is looked to when court attempts to construe or interpret a statute which is ambiguous or inconsistent." Black's Law Dictionary 900 (6th ed. 1990).

A core principle for judicial construction of the meaning and intent of statutes is that the court must interpret a statute to effectuate the legislature's intent or purpose. *See, e.g.,* Las Vegas Sun, Inc. v. Eighth Judicial District Court, 104 Nev. 508, 511 (1988) ("Statutes should be interpreted so as to effect the intent of the legislature in enacting them; the interpretation should be reasonable and avoid absurd results."). The concept of legislative intent is somewhat of a fiction or figure of speech. Sutherland Statutory Construction § 45.06 (5th ed. 1992). Instead of representing the subjective intent entertained by individual legislators solely, the sources of legislative intent include the language of the statute, the policy underpinning the statute and concepts of legislative history and reasonableness. Id.

The language of the statute itself is the primary source for the determination of the intent or purpose. Id. § 47.01. If the language of a statute is not ambiguous, it must be given its plain meaning. Id. § 45.13. As the Nevada Supreme Court has stated, "[w]e are not empowered to go beyond the face of a statute to lend it a construction contrary to its clear meaning." Union Plaza Hotel v. Jackson, 101 Nev. 733, 736 (1985). *See* Cirac v. Lander County, 95 Nev. 723, 729 (1979) ("When the language of a statute is plain, its intention must be deduced from such language, and the court has no right to go beyond it.").

Although the need for judicial construction of laws may be avoided by clear and unambiguous drafting of statutes, such drafting has been characterized as "unreachable" because:

> [w]ords do not have single, fixed, and immutable meanings established by some authority, natural or supernatural. Instead, they have only such meanings as are given to them from time to time when they are spoken, written, heard, or read by persons endeavoring to participate in the communication process.

John D. Kennedy, Statutory Construction in Maine, 7 Me. B. J. 148, 149 (May 1992) (quoting Sutherland Statutory Construction, supra, § 45.01. A statute is ambiguous when it is "capable of being understood by reasonably well informed persons in either of two or more different senses." Sutherland Statutory Construction, supra, § 45.06. If a statute has been written so the intent is not clearly reflected in its language, courts employ a variety of tools to help determine legislative intent. First, the courts use intrinsic aids, which "are those which derive meaning from the internal structure of the text and conventional or dictionary meanings of the terms used in it." Id. § 45.14. One of the primary intrinsic aids used by courts is maxims and rules of statutory construction, which express "familiar insights about conventional language usage," such as the rule that when the language of an act has a plain meaning it must be given that effect. Id. § 45.13. However, as one commentator has noted, that "[e]ven a cursory review of the caselaw and literature leads to the conclusion that the canons of statutory construction present a menu of choices from which a court may choose the maxim that supports the court's view of what the Legislature intended, while disregarding the contradictory maxim that would support the opposite view." Statutory Construction in Maine, supra, at p. 152.

In addition, courts use extrinsic aids to determine legislative intent. Extrinsic aids refer to facts contained outside the statutory language or information which comprises the background of the text, such as legislative history and related statutes. Id. Courts also consider statements made by legislators in construing a statute "when they are a reiteration of events leading to the adoption of proposed amendments, rather than an expression of personal opinion." Khoury v. Maryland Casualty Co., 108 Nev. 1037, 1040 (1992). *See also* A-NLV Cab Co. v. State, Taxicab Authority, 108 Nev. 92, 95 (1992).

Occasionally, the Legislature will insert a statement of intent, purpose or findings in a law. However, the recognized authorities on statutory drafting agree that a statement of intent, purpose or findings is unnecessary if the substantive provisions are properly drafted. *See* Reed Dickerson, Statutory Drafting § 9.2 (1954). As one commentator noted, "[t]he value of a separate purpose section is outweighed by the dangers that it may either be used to override an arguably inconsistent substantive section of the law . . . or be disregarded as a mere 'general

statement of findings' that 'does no more than express . . . a preference . . ." Statutory Construction in Maine, supra, at 151 n.15.

Statements of intent are frequently not included for several reasons. Wisconsin Legislative Reference Bureau, Statements of Legislative Intent, Purpose or Findings (Memorandum #92-1, August 1992). First, a statement of intent, purpose or findings that substantially repeats the substantive provisions of a bill is redundant to those provisions and is therefore unnecessary. Id. Second, a statement of intent, purpose or findings that is drafted initially in harmony with the substantive provisions of a bill may, if the substantive provisions are amended subsequently, directly conflict with the amended provisions or even become irrelevant. Id. Unless that statement is also amended or repealed when the substantive provisions are amended, the statement may cause confusion regarding the status of the bill. Id. Third, a statement of intent, purpose or findings may contain undefined terms that differ from the terms used in the substantive provisions of a bill. Id. If a court finds the substantive provisions ambiguous, it may use the undefined terms in the statement to interpret the act's substantive language more broadly or narrowly than the legislature intended. Id. Fourth, the statement may include provisions that directly or indirectly grant rights, prohibit actions or are otherwise substantive in nature. Id. As a general rule, a legislative statement does not confer power or determine rights. *See* Sutherland Statutory Construction, supra, § 20.03. The existence of a statement that contains substantive powers may require clarification by a court. Id. Finally, a statement of intent, purpose or findings may include language that is intended to argue for the merit of the bill. Id. If a court construes the language in the context of rights and privileges accorded to the substantive provisions of the act, the court's interpretation may yield an unintended result. Id.

However, statements of intent, purpose or findings are encouraged in two situations. Reed Dickerson, Statutory Drafting § 9.2 (1954). The first situation involves recodification bills. Typically, the presumption applied to legislation that amends a statute is that a change in statutory language implies an intentional change in substance. Id. Therefore, a statement of legislative intent or purpose is used in a recodification bill to rebut this presumption. Id. The second instance in which a statement of legislative intent is useful is where legislation may be constitutionally challenged. Id. Such a statement of legislative intent would be used as a court considers constitutional thresholds, such as applying the "strict scrutiny test" or "rational basis test."

In 1993, the Nevada Legislature considered a bill which required the inclusion of a "synopsis" in each proposed bill. Section 1 of Assembly Bill No. 150 of the 1993 legislative session provided:

> The legislative counsel shall prepare a synopsis of each bill drafted for submission to the legislature. The synopsis must be included in the bill and must contain a brief explanation of the purpose of the bill as a whole and a commentary for each section of the bill describing in detail:
>
> 1. If the section is amending existing law, any deletion or addition in the section and the substantive effect of the addition or deletion.
> 2. If the section is repealing a section, the purpose of the section being repealed and the substantive effect of its repeal.
> 3. If a new section is being added, the purpose of the new language, how it relates to existing statutory provisions and the substantive effect of adding it to the law.

The Legislature ultimately did not pass A.B. 150.

If you have any further questions regarding this matter, please contact this office.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By Eileen O'Grady
Eileen O'Grady
Deputy Legislative Counsel

APPENDIX C

Ballot Question No. 5 on the
1996 General Election Ballot

QUESTION NO. 5

Amendment to the Nevada Constitution

Senate Joint Resolution No. 23 of the 67th Session

CONDENSATION (ballot question)

Shall the Nevada Constitution be amended to authorize the legislative review of regulations of state agencies?

Yes——————— ☐
No——————— ☐

EXPLANATION

The authority to enact laws is granted to the Legislature by the Nevada Constitution. To carry out those laws, the Legislature may grant state agencies the authority to adopt administrative regulations. Upon adoption, these regulations have the same effect as law. Current Nevada law requires the Legislature to review regulations adopted by most state agencies to determine whether the regulations exceed the authority granted by the Legislature to adopt such regulations, and whether they carry out the Legislature's intent in granting that authority. Even if the Legislature finds that the agency exceeded its authority, the agency's regulation becomes effective. The Legislature may not currently suspend or reject a regulation. The Legislature's only option is to consider the particular issue during the next legislative session.

The proposed amendment would specifically authorize:

1. Legislative review of proposed regulations before they become effective;

2. Suspension of regulations that appear to exceed the agency's statutory authority; and

3. Rejection of regulations which are determined to exceed the agency's authority.

ARGUMENTS FOR PASSAGE

Members of the Legislature are elected by the residents of Nevada and are, therefore, more responsive and accessible to the needs and wishes of Nevadans than are the officers and employees of state agencies who are not elected. The purpose of the proposed amendment is to ensure that the Legislature may suspend or reject any state regulation that exceeds the authority granted by the Legislature when it passed the law which authorized the agency to adopt the particular regulation. The constitutional principle which provides for a separation of powers among the legislative, executive and judicial branches will remain strong because:

1. The executive branch agencies will still be adopting regulations to carry out the laws, as long as the regulations they adopt are within the authority given to them by the Legislature;

2. The courts will still be interpreting regulations and may rule that a particular regulation is legally defective; and

3. The Legislature will still pass laws while keeping the right to ensure that the people's voice is heard by the state regulators.

ARGUMENTS AGAINST PASSAGE

The Nevada Constitution provides for a separation of powers among the legislative, executive and judicial branches of government. Once it passes a law authorizing a state agency to adopt regulations, the Legislature should not have the authority to review or override the regulations proposed by agencies of the executive branch of government. In addition, the Nevada Constitution grants to the courts the authority to interpret regulations and to determine whether they exceed the agencies' statutory authority.

FISCAL NOTE

Financial Impact - No. The proposal to amend the Nevada Constitution would specifically authorize the legislative review of administrative regulations. The revisions can be accomplished with no adverse fiscal effect.

***

APPENDIX D

Memorandum of Understanding between the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, Bureau of Waste Management, and the Nevada Department of Business and Industry, Division of Industrial Relations, Occupational Safety and Health Enforcement Section, regarding the coordination of the implementation and enforcement of the Occupational Safety and Health Administration Process Safety Management Standard and Nevada Chemical Catastrophe Prevention Act

Memorandum of Understanding

Between

The Nevada Department of Conservation and Natural Resources
Division of Environmental Protection
Bureau of Waste Management

and the

Nevada Department of Business and Industry
Division of Industrial Relations
Occupational Safety & Health Enforcement Section

Regarding

The Coordination of the Implementation and Enforcement of the
Occupational Safety and Health Administration (OSHA)
Process Safety Management Standard (PSM)
(29CFR 1910.119)

and

Nevada Chemical Catastrophe Prevention Act (CCPA)
(NRS 459.380 to 459.3874, inclusive).

July 15, 1994

Whereas: In 1991, the Legislature of the State of Nevada adopted the Chemical Catastrophe Prevention Act (CCPA) (NRS 459.380 to 459.3874, inclusive) and declared that the purposes of the act are to:

1. Protect the health, safety and general welfare of the residents of this state from the effects of the improper handling of hazardous chemicals at the point where they are produced, used or stored in this state;

2. Ensure that the employees of this state who are required to work with hazardous chemicals are guaranteed a safe and healthful working environment;

3. Protect the natural resources of this state by preventing and mitigating accidental or unexpected releases of hazardous chemicals into the environment; and

4. Ensure the safe and adequate handling of hazardous chemicals produced, used, stored or handled in this state; and

Whereas: On February 24, 1992, the United States Occupational Safety and Health Administration published a final rule for Process Safety Management of Highly Hazardous Chemicals (PSM) (29 CFR, 1910.119). The purpose of PSM is to establish requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable or explosive chemicals, which may result in toxic, fire or explosion hazards; and

Whereas: The Nevada Division of Environmental Protection (NDEP) of the Department of Conservation and Natural Resources is authorized and responsible for the implementation and enforcement of the CCPA. The NDEP will also seek authorization for implementation of the Accident Prevention Provisions of the Clean Air Act Amendments of 1990; and

Whereas: The Nevada Division of Industrial Relations (NDIR) of the Department of Business and Industry is authorized and responsible for implementation and enforcement of PSM in the State of Nevada; and

Whereas: The NDEP and NDIR acknowledge that CCPA and PSM establish similar and duplicative requirements of some facilities that produce, use, store or handle highly hazardous substances in the State of Nevada; and

Whereas: The NDEP and NDIR have developed and agreed upon a joint guidance document entitled **Combined Guidance for Conducting an Assessment of Risk Through the Analysis of Hazards and Implementing the Process Safety Management Standard**; and

Whereas: The NDEP and NDIR agree that coordination of the implementation and enforcement of these two laws to the extent possible will provide for the most effective utilization of the resources of both agencies; and

Whereas: The NDEP and NDIR agree that such coordination will benefit the Nevada facilities subject to both laws by minimizing to the extent possible the documentation preparation and submittal; and

Whereas: The NDEP and NDIR agree that such coordination will not adversely impact the health and safety of residents and employees or the natural resources of the State of Nevada and may enhance such protection;

Now therefore: The NDEP and NDIR agree that it is in the best interest of the State of Nevada, its residents, employees and natural resources, and both agencies, to coordinate their resources and efforts regarding the implementation and enforcement of CCPA and PSM according to the specific responsibilities and tasks detailed below.

I. Facility Compliance Guidance Document

The NDEP and NDIR have approved a document that provides guidance to facilities that are regulated by both PSM and CCPA. The guidance document, that is entitled **Combined Guidance for Conducting an Assessment of Risk Through the Analysis of Hazards and Implementing the Process Safety Management Standard**, addresses conduct and documentation of the following elements of one or both laws:

- Chemical process hazard analysis;
- The written plan of action regarding employee participation;
- Written operating procedures;
- Training plans;
- Written procedures for mechanical integrity;
- Description of the hot work permit system;
- Written program for management of change;
- Written emergency action plan;
- Compilation of Process Safety Information;
- Procedures for Conduct of Contractors on Site;
- Pre-startup Review;
- Incident Investigation;
- Compliance Audits;
- Trade Secrets.

The guidance document is distributed by NDEP to all facilities registered pursuant to the CCPA. Modification of this document requires joint concurrence of the NDEP and NDIR.

II. Review and Approval of Qualifications of Team Selected to Perform Process Hazards Assessments

Pursuant to NRS 459.384, the owner or operator of a regulated facility is required to designate and demonstrate the qualifications of persons to perform process hazards assessments. Specific qualifications of such persons is established by NAC 459.9536. PSM establishes qualification requirements for the process hazards analysis. NDEP shall review the qualifications of the assessment teams submitted pursuant to NRS 459.384 and determine whether the team meets the qualifications established by NAC 459.9536 and 29 CFR 1910.119(e)(4).

III. Accident Investigation

In the event of an accidental release of a highly hazardous substance from a facility regulated by both CCPA and PSM, an accident investigation will be coordinated through the Chief Administrative Officer of OSHES and the Chief, Bureau of Waste Management of NDEP.

IV. Enforcement

The NDEP shall enforce all provisions of CCPA as appropriate. The NDIR shall enforce all provisions of PSM as appropriate. In the event that both agencies take enforcement action against a facility for the same violation, representatives of both agencies shall meet to discuss the most appropriate enforcement action.

V. Training and Information Exchange

The NDEP and NDIR shall notify each other of available training and shall provide each other with copies of relevant guidance and information as it becomes available.

SIGNATURES:

Nevada Division of
Environmental Protection:

L.H. Dodgion, P.E.
Administrator, NDEP

7/13/94
Date

Jolaine Johnson, P.E.
Chief
Bureau of Waste Management

7/12/94
Date

Nevada Division of
Industrial Relations:

Ron Swirczek
Administrator, NDIR

6/3/94
Date

Danny Evans,
Chief Administrative Officer
Occupational Safety & Health
Enforcement Section

7-27-94
Date

APPENDIX E

Opinion from Nevada's Office of the Attorney General concerning permit requirements for transportation of hazardous materials

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY
555 Wright Way
Carson City, Nevada 89711
Telephone (702) 687-5383

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

March 20, 1996

VIA FACSIMILE AND U.S. MAIL

Jenney L. Sartin
Governmental Affairs Coordinator
Governmental and Regulatory Affairs
Nevada Power Company
6226 West Sahara Ave.
P.O. Box 230
Las Vegas, NV 89151-0230

RE: HAZARDOUS MATERIALS TRANSPORTATION PERMITTING

Dear Ms. Sartin:

Michael Hood, Major, and Acting Chief of the Nevada Highway Patrol has asked that I respond to your March 15, 1996 letter to the Legislative Counsel Bureau and Legislative Committee on State Regulations that Affect Business and Economic Development: AB 538. This letter is also intended to respond to Dennis Schwehr's letter of March 6, 1996 which was received March 15, 1996 by the Hazardous Materials Permit Section. I am responding as counsel for the Department of Motor Vehicles and Public Safety.

As I understand Nevada Power Company's (NPC) position, NPC disagrees with the regulatory program in permitting transport of hazardous materials ("hazmat") in that it is a fleet system rather than a vehicle-specific system. The law provides for double apportionment among all power units in a fleet (with limited exclusions) based on hazmat activity in Nevada. NPC argues that NPC should be permitted on a vehicle-specific per vehicle basis, rather than requiring it to provide information on its entire fleet.

It appears that NPC is seeking exclusion of all other power units except for the 2000 gallon tanker. However, as Mr. Schwehr noted in his letter, the Instructions Part I 12a specifically exclude from the fleet only those "[v]ehicles that are used exclusively for the transportation of personnel, as opposed to freight..." He then concludes: "Based on the
regulations and criteria in the instructions, NPC owns and operates only one (1) vehicle which would be required to be permitted under the Uniform HazMat Transportation Motor Carrier Registration and Permit Program." That is incorrect; so long as a vehicle may be used other than exclusively for the transport of personnel, it must be included in the power unit calculation.

The legislation and regulations which concern the NPC have been developed through discussion with industry over the past four to five years. Through this process, and due to input from the industry, the vehicle-specific system was rejected in favor of the fleet system. The fleet system allows the transporter flexibility to decide which vehicle in the fleet to use in the transport of hazardous materials. For example, if a transporter loses the use of a specific power unit, it may employ another power unit within the same fleet with which to transport hazardous materials.

NPC is essentially seeking a vehicle-specific program; however, that is not the program which has been enacted. NPC's interpretation of the enacted regulations to allow it to placard only the 2000 gallon tanker is incorrect. Only vehicles which are used **exclusively** for personnel may be excluded from the average number of power units for that fleet. Inasmuch as vehicles are not used exclusively for personnel, but also for freight, they must be included in the calculation of power units for that fleet, so that they may be used for the transport of hazmat. Then, that number of power units is multiplied by the percentage of hazardous materials activity and by the percentage of miles travelled on Nevada highways (the "double apportionment" process). This is set forth in the legislation, regulations, forms, and in Mr. Rhode's letter and sample of February 23, 1996.

The transporter may split the fleet into two fleets where, as here, only a limited number of vehicles in a fleet are claimed to be used in the transport of hazardous materials: one fleet which may carry hazardous materials, and one fleet which may not. Thus, NPC has the option of splitting its fleet into two fleets; however, it would still need to keep records for both fleets. Mr. Rhode is best able to explain the record-keeping requirements of such an option.

Our goal is to make the program work -- we will assist transporters to the extent possible under the existing program. We appreciate NPC's efforts to understand and comply with the regulations. NPC may elect to split its fleet as discussed above; however, the enacted fleet system requirements cannot be ignored.

In the event that you wish to discuss these matters further, please do not hesitate to contact me at (702) 687-7358.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: Laurie B Buck
LAURIE B. BUCK
Deputy Attorney General

LBB

cc: ✓Legislative Counsel Bureau
Assembly Member David E. Humke, Chair
Raymond L. Sparks, Deputy Director, DMV & PS
Michael Hood, Major, and Acting Chief, Nevada Highway Patrol
James Rhode, Program Manager, Hazardous Materials, NHP
letters\hazmat.npc

APPENDIX F

Letter dated March 19, 1996, addressed to Senator Ann O'Connell from Kimberly Marsh Guinasso, Deputy Legislative Counsel, regarding a franchise agreement between the City of Las Vegas and American Communications Services of Las Vegas, Inc.

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710
Fax No.: (702) 687-5962

LORNE J. MALKIEWICH, *Director*
(702) 687-6800

LEGISLATIVE COMMISSION (702) 687-6800
RANDOLPH J. TOWNSEND, *Senator, Chairman*
Lorne J. Malkiewich, *Director, Secretary*

INTERIM FINANCE COMMITTEE (702) 687-6821
JOHN W. MARVEL, *Assemblyman, Chairman*
MORSE ARBERRY, JR., *Assemblyman, Chairman*
Daniel G. Miles, *Fiscal Analyst*
Mark W. Stevens, *Fiscal Analyst*

Wm. GARY CREWS, *Legislative Auditor* (702) 687-6815
ROBERT E. ERICKSON, *Research Director* (702) 687-6825
BRENDA J. ERDOES, *Legislative Counsel* (702) 687-6830

March 19, 1996

Senator Ann O'Connell
7225 Montecito Circle
Las Vegas, Nevada 89120

Dear Senator O'Connell:

You have asked this office to review the terms of a franchise agreement between the City of Las Vegas and American Communications Services of Las Vegas, Inc. (ACSI) for the provision of telecommunication services within the City of Las Vegas. You have also asked whether there are any terms of this agreement which would be invalid because they do not comply with any relevant provisions of NRS. Additionally, you have asked this office to analyze the relevant provisions of NRS and federal legislation to determine whether local governments may be prohibited from competing with private companies in the provision of telecommunication services.

In analyzing the franchise agreement, I spoke with Margaret McMillan, of Sprint/Central Telephone--Nevada, who explained to me her concerns about the franchise agreement. According to Mrs. McMillan, there were several problematic provisions in the franchise agreement as proposed. I will set forth those provisions and then analyze the relevant materials. I also spoke with Michaela Mezo, of the City of Las Vegas, who explained to me the position of the City with regard to the franchise agreement.

In order to review the franchise agreement, it was necessary to have further information regarding ACSI. Based upon my discussions with Ms. Mezo, it is my understanding that ACSI is what is known as a "competitive access provider." An entity such as this may be likened to a type of "broker" of telecommunication services, where the broker contracts with large users of long-distance telecommunication services, such as hotels or finance companies, for the provision of long-distance telecommunication services. It is also my understanding that ACSI is not presently a telecommunication provider which holds a certificate of public

convenience and necessity issued by the Public Service Commission of Nevada and it does not derive revenue from the provision of intrastate service.

According to Mrs. McMillan, the first problem appears on page three of the proposed franchise agreement where "gross revenues" is defined to include "any and all revenue collected by the Company (ACSI) for services provided to customers within the City...." On page 13 of the proposed agreement the franchise fee is set at 5 percent of the total gross revenues collected by ACSI within the city limits. Mrs. McMillan feels the definition of "gross revenues" is contrary to the provisions of Senate Bill No. 568 (S.B. 568) of the 1995 legislative session because the basis for the amount collected by the City pursuant to the agreement would include several items which would not be considered "retail services."

The second area which Mrs. McMillan found problematic is set forth in section 13 of the proposed agreement (beginning at page 14) which requires ACSI to provide a fiber optic network to the City for the City's exclusive use. This provision, however, has been deleted from the adopted version of the franchise agreement. Apparently, according to Mrs. McMillan and Ms. Mezo, ACSI has announced that it will make a gift of the network to the City, rather than providing the network as a condition of the franchise as was previously going to be required.

Finally, the third provision which Mrs. McMillan believes is inappropriate is section 14 of the proposed agreement (see page 17) which requires ACSI to provide tariff service to the City for 10 percent below its published tariff rates. This provision has also been removed from the adopted version of the franchise agreement. However, it is unclear what tariff rates are being referred to since ACSI is an interstate provider and thus is not required to publish tariff rates with the Public Service Commission of Nevada.

Section 2.300 of the Las Vegas City Charter provides in pertinent part:

> The city council may:
>
> 1. Provide, by contract, franchise or public ownership or operation, for any utility to be furnished to the residents of the city.
>
> * * *

The City of Las Vegas, therefore, has the power to enter into franchise agreements for the provision of the services of a utility to the residents of the City. This power, however, may be further constrained by statute. The provisions of S.B. 568 of the 1995 legislative session, codified as NRS 354.59881 to 354.59889, inclusive, place several restrictions on the power of cities and counties to adopt ordinances which

could affect various fees those local governments assess on particular types of utilities.

NRS 354.59883 provides in pertinent part:

> A city or county shall not adopt an ordinance imposing or increasing a fee:
> * * *
> 3. If, after the adoption of the ordinance:
> * * *
> (b) The total amount of all fees the city or county imposes upon a public utility to which the ordinance applies will exceed:
> (1) Except as otherwise provided in subparagraph (2), 5 percent of the utility's gross revenue from customers located within the jurisdiction of the city or county.
> * * *

NRS 354.59881 further provides in pertinent part:

> As used in NRS 354.59881 to 354.59889, inclusive, unless the context otherwise requires:
> 1. "Customer" does not include any customer of a provider of a telecommunication service other than a retail customer.
> 2. "Fee" means a charge imposed upon a public utility for a business license, a franchise or a right of way over streets or other public areas, except any paid pursuant to the provisions of NRS 709.110, 709.230 or 709.270.
> 3. "Jurisdiction" means:
> (a) In the case of a city, the corporate limits of the city.
> * * *
> 4. "Public utility" means a person or local government that provides:
> * * *
> (b) A telecommunication service, if the person or local government holds a certificate of public convenience and necessity issued by the public service commission of Nevada and derives intrastate revenue from the provision of that service to retail customers: * * *
> * * *
> 5. "Revenue" does not include:
> * * *

(b) Any revenue of a provider of a telecommunication service other than intrastate revenue.

Since ACSI is not a "public utility" pursuant to the definition set forth in NRS 354.59881, the provisions of NRS 354.59881 to 354.59889, inclusive, do not apply to the franchise agreement between ACSI and the City of Las Vegas. If ACSI were a "public utility," however, the City of Las Vegas would be prohibited from establishing such a franchise fee for ACSI as is set forth in the franchise agreement. The provisions of NRS 354.59881 to 354.59889, inclusive, could be expanded to include providers such as ACSI. Indeed, pursuant to the provisions of the recently enacted federal Telecommunications Act of 1996 (effective on February 8, 1996), state and local governments are permitted to manage the public rights-of-way and to require fair and reasonable compensation from telecommunications providers, but only 1) upon a competitively neutral and nondiscriminatory basis and 2) if the compensation required is publicly disclosed by the government (Sec. 253). Since the provisions of NRS 354.59881 to 354.59889, inclusive, apply only to certain arrangements between local governments and intrastate providers, these provisions could easily result in conditions which are discriminatory and thus in violation of the federal Telecommunications Act of 1996. In order to comply with the provisions of the Telecommunications Act of 1996, it is advisable that the provisions of NRS 354.59881 to 354.59889 be amended to include within their scope telecommunications providers such as ACSI which are not presently qualified as "public utilities" as defined pursuant to NRS 354.59881.

You have also expressed a desire to prohibit local governments, such as the City of Las Vegas, from competing with private companies in the provision of telecommunications services. As has been discussed, the City of Las Vegas currently has the authority pursuant to its city charter to provide for the provision of any utility to the residents of the city. This power is currently quite broad in its scope, but it is possible for the Legislature to restrict this power with respect to the provision of telecommunications services. ("Where there is a conflict between a general law enacted by the legislature and a charter provision, the general law is superior and supersedes the charter provision." Reno Police Prot. Assn v. City of Reno, 102 Nev. 98, 101, (1986), citing City of Reno v. Reno Police Prot. Assn., 98 Nev. 472, (1982).) A statute which prohibits such competition by a local government could be drafted for the next legislative session. Thus, while the City of Las Vegas is free to accept a "gift" of a fiber optic network, the City (as well as other local governments) could still be prohibited from using such a network to compete with private companies in the provision of telecommunications services. One area of concern which you may wish to consider, however, is the provision of telecommunications services by local governments in some of the rural areas of the state. If local governments are legislatively prohibited from providing telecommunications services

to the public, it may be advisable to exempt any local governments which are currently the exclusive provider of such services in their areas.

In conclusion, it is the opinion of this office that the provisions of the franchise agreement, as adopted, between the City of Las Vegas and ACSI do not violate the relevant provisions of NRS. However, the provisions of NRS 354.59881 to 354.59889, inclusive, do, in part, violate federal law. We suggest that those provisions be amended to avoid creating the potential for discriminatory treatment between interstate providers of telecommunication services and intrastate providers of telecommunication services. Additionally, it is possible to draft legislation which would prohibit local governments from competing with private companies in the provision of telecommunication services to the public, but it may be advisable to limit such a prohibition in cases where local governments are the only providers of such services in remote areas of the state.

Enclosed are copies of the franchise agreement, as adopted, a summary of the Telecommunications Act of 1996 prepared by the United States Telephone Association and the packet of information sent to you by Margaret McMillan for your reference. If you have any further questions regarding this matter, please contact this office.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By
Kimberly Marsh Guinasso
Deputy Legislative Counsel

APPENDIX G

Letter dated June 19, 1996, addressed to Assemblyman David Humke from John F. Mendoza, Chairman, Public Service Commission of Nevada, which responds to Southwest Gas Corporation's June 10, 1996, presentation to the A.B. 538 Committee

BOB MILLER
Governor

STATE OF NEVADA
PUBLIC SERVICE COMMISSION OF NEVADA
Grant Sawyer State Office Building
555 E. Washington Avenue, Room 4600
Las Vegas, Nevada 89101
(702) 486-2630

Commissioners:
JOHN F. MENDOZA
Chairman

JO ANN KELLY
GALEN D. DENIO
JUDY M. SHELDREW
DONALD L. SODERBERG

TIMOTHY HAY
Counsel

WILLIAM H. VANCE
Secretary

June 19, 1996

Assemblyman David Humke
Post Office Box 70656
Reno, NV 89570

Re: **Response of the Public Service Commission to Southwest Gas Corporation's June 10, 1996 Presentation to the Nevada Legislature's Committee to Study State Regulations that Affect Business and Economic Development (Assembly Bill 538)**

Dear Assemblyman Humke:

First, Mr. Chairman, let me restate my appreciation of the courtesy you extended to the Public Service Commission to submit written comments in response to Southwest Gas' remarks before the AB 538 Committee on June 10, 1996. Since the Commission had not seen Southwest Gas' comments until just hours before they were presented publicly, it was not possible to have any thoughtful response to the utility's proposals. If implemented, these proposals would make substantial changes to Nevada law and regulations.

I was very disappointed with Southwest Gas' failure to share its concerns with the Commission before the meeting. Had they done so, it would have allowed the members of your Committee the opportunity to hear all sides, and all perspectives, on these important issues before a vote was taken to submit a bill draft.

Southwest Gas left the impression that they operate in an entirely competitive environment when, for the most part, Southwest Gas is still a monopoly. Southwest Gas faces competition only for a few large customers. Most of Southwest Gas' customers do not have competitive options for their natural gas service. These captive customers, primarily residential and smaller commercial users, still need the protections of regulation.

Transition to a blend of more competition and less regulation is currently being fostered by federal restructuring efforts in the gas, electric and telephone industries. The Public Service Commission concurs with Southwest Gas regarding the need to keep Nevada

utility regulation, as embodied in the Nevada Revised Statutes and the Nevada Administrative Code, consistent with industry changes resulting from these federal restructuring initiatives. Southwest Gas is, however, only one interested party in the assessment of the need for changes in statutes and rules that pertain to the natural gas industry.

The Public Service Commission believes that it is appropriate to open an investigation to gather input from all interested parties and to report back to the Legislature with its findings regarding the concerns expressed by Southwest. Toward this end, the Commission opened an investigatory docket (96-6020) at its regular agenda meeting on June 17, 1996.

Related Issues in Commission's Electric Restructuring Investigation

The following electric issues are similar to some of those raised by Southwest Gas in their presentation to the AB 538 Committee on June 10. These issues are being addressed in the Commission's electric restructuring investigation, Docket 95-9022. In the Commission's electric restructuring report, each issue -- UEPA, Integrated Resource Planning, and Obligation to Serve -- is discussed in the context of creating a level playing field for effective competition. The Committee may find the following information useful:

UEPA

The Utility Environmental Protection Act (UEPA) requires utilities (other than municipalities and coops) to secure permits for large facilities. NRS 704.855(3) excludes from this requirement "plants or equipment used to generate electrical energy that is wholly consumed on the premises of and by the producer thereof."

Requirements for permits to construct under UEPA are also much more restrictive for existing utilities. A utility is required to describe the need for the facility, alternative locations and a summary of conservation measures and alternatives to building. A non-utility (municipality, coop or business) is not required to address these issues. (704.870 (1) and (2) inclusive).

This difference in treatment is not consistent with effective competition, because competitors would have different costs for reasons other than their relative efficiency. There are several solutions to consider.

1. Require equal treatment for all generation plants, regardless of who constructs them.

2. Impose externality taxes on all electricity produced in or imported into a particular state, coupled with a rebate mechanism that rewards environmentally preferable producers.

3. Apply trading and offset mechanisms similar to those used for sulfur dioxide in the Clean Air Act Amendments to other pollutants.

Other possibilities should be explored as well.

Integrated Resource Planning

Electric resource plans are required to be filed every three years and to be accepted or rejected within 135 days (NRS 704.741; 704.751). Also, the integrated resource plan requirements of NRS 704.741 to 704.751, inclusive, are not applicable to non-utility resources.

On the other hand, cost recovery treatment is different also. Utility resources approved through the resource planning process are subject to the provisions of NRS 704.110(8) which provides a relatively high assurance of recovery of the utility's investment. No such protection is afforded the investment which non-utility entities dedicate to resource options.

There are numerous substantive issues which are currently being investigated inasmuch as resource planning includes issues related both to supply and demand and has a considerable effect on environmental and other issues.

Obligation to Serve

An existing utility has an obligation to serve all customers in return for having a monopoly status. In a competitive market, this obligation cannot be placed on one competitor and not others. It is one thing to require the owner of the monopoly distribution facility to connect all customers (at an appropriate regulated price), however, that obligation need not also obligate the distribution owner to be the provider of electricity of last resort.

SOUTHWEST GAS PROPOSALS

The Public Service Commission offers the following initial observations with regard to each of the five primary issues Southwest Gas Corporation has suggested that this Committee address:

Plans for Acquisition and Provision of Natural Gas (Resource Planning) NRS 704.755 and NAC 704.953 to 704.973, inclusive

Southwest Gas asserts that the Commission's regulation of forecasting and planning for growth (resource planning) is no longer necessary or in the public interest as a result of

fundamental changes in the natural gas industry. Its concerns appear to center around a competitive disadvantage from competitors' gaining proprietary information from the process.

As to confidentiality issues, the Legislature enacted SB 343 last session to address concerns related to the confidential treatment of competitive and/or trade secret information which utilities file with the Commission. The Commission subsequently opened Docket 95-1016 and created regulations regarding confidential information filed by utilities like Southwest Gas.

The substantive issues are complex and remain to be addressed both by the Legislature and by the Public Service Commission. As noted above, these issues are being discussed in the electric restructuring context.

The Commission will investigate these issues in a more comprehensive fashion and report back to the Legislature.

Construction of Utility Facilities
NRS 704.820 to 704.900, inclusive, and NAC 703.415 to 703.428, inclusive

Southwest Gas asserts that the Commission's permitting process under the Nevada Utility Environmental Protection Act (UEPA) is unnecessary because it represents another layer of regulation that is redundant and adds unnecessary delay to the process. Southwest Gas asserts that this is so because the Commission performs its review of UEPA permitting after all other permits are in place, adding six months or more to the approval process. Additionally, Southwest Gas was concerned that the UEPA process treats the construction of comparable facilities inconsistently.

The history of UEPA applications of Southwest Gas does not appear to justify its claim of an additional six month delay in permitting construction of facilities. It is the Commission's practice to work within applicants' time schedules whenever possible. Consider, for example, the Commission's recent approval of the UEPA application for Sierra Pacific Power Company's Alturas Transmission Line. In that case the Commission finished its review and issued a compliance order granting a UEPA permit upon a showing that Sierra Pacific had obtained the required permits.

The UEPA statute does treat utility and non-utility applicants differently under NRS 704.870, and the Commission believes there is some value in an investigation into the potential need to modify the process. The Commission will investigate these issues in a more comprehensive fashion and report back to the Legislature.

Promotional Advertising
NAC 704.280 to 704.295, inclusive

Southwest Gas maintains that gas utilities should be allowed to recover the cost of all promotional advertising. In the alternative, Southwest Gas proposes to amend the regulation to preclude recovery of political advertising only.

The issue of cost recovery for promotional and political advertising is not new. Traditionally, it has raised the question of what value these activities hold for customers who are essentially captive and have no competitive choices to influence. In today's environment, large customers do have competitive opportunities and there have been new debates in this area.

The Commission will investigate these issues in a more comprehensive fashion and report back to the Legislature regarding this proposal.

Curtailment of the Distribution of Natural Gas
NAC 704.471 to 704.511, inclusive

Southwest Gas asserts that regulations regarding priorities of service and obligation to serve require updating to reflect the restructuring of the natural gas industry. Southwest Gas observes that virtually all large commercial and industrial customers now secure their own gas supplies as well as arrange for capacity and movement of that gas (transportation) on upstream pipelines. In the new natural gas industry, Southwest Gas contends it is unfairly burdened by its obligation to serve these classes in the event that they elect transportation service, i.e. use of Southwest's pipeline rather than full service.

While there is some validity to Southwest Gas' observations, there are also significant public interest concerns to be addressed before those regulations are changed. For example, if a large customer such as a hospital were to take transportation service and subsequently be confronted with supply shortages, would it be reasonable to simply turn off the natural gas supply to the hospital? A modified obligation to serve in which customers like the hospital can obtain cost-based back up service is one potential solution.

The Commission will investigate these issues in a more comprehensive fashion and report back to the Legislature regarding this proposal.

New Legislation
Purchased Gas Cost Adjustment Provision

Southwest Gas advocates legislation that will allow Local Distribution Companies (LDCs) to either exit the merchant function, by allowing them to sell an exclusive right to a third party marketer, aggregator or broker to acquire gas supplies for general systems sales,

APPENDIX H

Issues presented by Southwest Gas Corporation
on June 10, 1996

Southwest Gas Corporation

Nevada Legislature's
Committee to Study State Regulations that Affect Business and
Economic Development
(Assembly Bill 538)

June 10, 1996

Presenters: Charlie Silvestri
Ed Zub

I. ABOUT SOUTHWEST GAS CORPORATION

Southwest Gas Corporation (Southwest or the Company) has been serving the natural gas energy needs of consumers for more than six decades. Carson Water Company, a wholly owned subsidiary, is the oldest continuous existing corporation in Nevada. Southwest's corporate headquarters have been located in Las Vegas since 1958.

The Company's service territories are located in the southwest sunbelt. Thanks in part to the tremendous growth in the southern Nevada area, Southwest now serves more than one million customers throughout its three-state service territory. Southwest now ranks as one of the top ten largest natural gas distribution companies in the country. More than 3,600 miles of mains and 312 miles of transmission pipe have been installed to accommodate the increasing demand for clean, efficient natural gas energy throughout Nevada, along with office and maintenance facilities for the more than 1,000 employees required for Southwest's Nevada utility operations.

Not only has Southwest experienced the challenges and complexities of serving the fastest growing regions of the country, but the entire natural gas industry has experienced sweeping changes at the same time. Beginning in 1985, the Federal Energy Regulatory Commission (FERC) deregulated the transportation of natural gas on the interstate pipeline systems. Under what is typically called open access, large industrial and commercial customers can now freely arrange directly with suppliers and pipelines for the procurement of their own supplies and delivery, in some cases completely leaving the local distribution company system. Open access has introduced complexities and challenges to Southwest's business far greater than simply building and maintaining the necessary infrastructure to deliver natural gas. Southwest must now compete with many other suppliers and transportation providers to retain sales or attract new loads.

II. MAJOR ISSUES IN NEVADA UTILITY REGULATION

As a concerned corporate citizen of the State of Nevada, Southwest acknowledges its responsibility to work together with the State Legislature, the Office of the Governor, the Public Service Commission of Nevada (PSCN or the Commission), its utility customers and all interested and affected parties to address and respond to state and national energy issues and policies. This Committee's review of state regulations that affect business and economic development has a direct bearing on the ability of Nevada utilities to compete in a changing business environment and to effectively respond to daily challenges and complexities.

Regulation of natural monopolies in the provision of utility service arose as a substitute for the disciplines imposed by free market forces in a competitive environment. As defined, the forces of competition and the forces of regulation cannot coexist; they are substitutes for one

another. Continued regulation in a competitive market distorts the market by imposing costs in utility service that are not reflective of the true costs to provide service or by thwarting innovation or imposing unacceptable delays in responsiveness to customer needs. With the introduction of greater competitive forces in the energy marketplace, regulation must be restructured or replaced to minimize distortions or delays.

While Southwest recognizes the efforts of the Commission and its staff to assist Nevada utilities in meeting the competitive challenges of a rapidly-changing industry, Southwest has experienced first-hand the effects of regulatory delays and requirements that have frustrated its ability to respond to customers, harmed its competitive position, and defeated the introduction of additional economic development and diversity to Nevada.

Southwest believes that because fundamental changes in the natural gas industry have introduced sufficient competitive forces, especially for the large industrial and commercial markets, now is the time to lighten the regulatory framework and allow the forces of competition to work on a level playing field. By allowing competition to replace regulation, Nevada's business and regulatory climate can be improved to attract and retain a diversified economic base and promote the efficient provision of utility services.

Southwest has identified five primary issues that it believes are important for this Committee to address in its review and in developing responsive regulatory policies. Those issues are: (1) plans for acquisition and provision of natural gas (resource planning); (2) construction of utility facilities; (3) advertising; (4) curtailment priorities; and (5) gas supply acquisition and cost recovery.

Specifically, Southwest has identified the Nevada Administrative Code (NAC) sections and Nevada Revised Statutes (NRS) that follow for the Committee's review and consideration.

Plans for Acquisition and Provision of Natural Gas (Resource Planning)
NAC 704.953 to 704.973, inclusive

Issue: PSCN regulation of resource planning for natural gas utilities is no longer necessary or in the public interest.

Problem: As a result of fundamental changes in the natural gas industry, Southwest's franchised service territory is no longer protected from outside competition. Today Southwest is in direct competition for customers with third party entities that are either completely unregulated or regulated by agencies other than the PSCN. The resource planning process provides a public forum for these third party entities to examine Southwest's strategic plans regarding gas supply and capacity acquisition, load forecasts and facilities planning, placing Southwest at a competitive disadvantage to third party entities who are able to develop marketing strategies without any PSCN oversight.

Solution: Elimination of regulations applicable to natural gas resource planning.

Construction of Utility Facilities
NAC 703.415 to 703.428, inclusive

Issue: PSCN approval of Nevada Utility Environmental Protection Act (UEPA) permitting is unnecessary.

Problem: The UEPA permitting rules provide for another layer of regulation that is redundant and adds unnecessary delay to the process. The PSCN performs its review of UEPA permitting after all other permits are in place. This can add six months or more to the approval process. The UEPA permitting rules may result in inconsistent treatment.

Solution: Elimination of the UEPA permitting process. In the alternative, the applicability of the rules should be revised to exempt facilities where PSCN approval is not required when another regulatory body is designated as the lead agency. At a minimum, the rules should be revised to allow the UEPA permitting process to occur concurrently with permitting that is required from other agencies and to eliminate inconsistent treatment for the construction of comparable facilities.

Advertising
NAC 704.280 to 704.295, inclusive

Issue: Gas utilities should be allowed to recover the cost of promotional advertising.

Problem: Existing regulation precludes recovery of all promotional advertising for both natural gas and electric utilities. This legislation was enacted approximately 15 years ago, at a time when a natural gas supply shortage had developed after years of federal price controls at the wellhead. Supplies of natural gas are now abundant, as a result of deregulation of segments of the natural gas industry and the introduction of competition into the provision of natural gas service.

Solution: Amendment to the regulation to allow cost recovery of promotional advertising by utilities providing natural gas service. In the alternative, amend the regulation to limit its applicability to political advertising only. Southwest intends to pursue appropriate statutory language to authorize such cost recoveries.

Curtailment of the Distribution of Natural Gas
NAC 704.471 to 704.511, inclusive

Issue: Regulations regarding priorities of service and obligation to serve require updating to reflect the restructuring of the natural gas industry.

Problem: In the restructured natural gas industry, virtually all large commercial and industrial customers now secure their own gas supplies and arrange for capacity and transportation on upstream interstate pipelines. Prior to restructuring, which began in 1985, the local distribution company (LDC) was responsible for purchasing all gas supplies and arranging for its transportation over upstream interstate pipelines for all customers. This practice is known

as the merchant function. The LDC's obligation to serve by planning for and securing adequate supply and upstream transportation capacity for all customers arose from this merchant function.

In the early 1970's, the State Legislature and the PSCN enacted what is known as General Order 18, which established the rules for curtailing natural gas supplies to customers during times of shortages or system emergencies, using a decreasing scale based on end-use priority. Customers defined as having the highest priority, typically residential customers, schools, hospitals and other essential services, are the last to be curtailed. Large, nonessential industrial and commercial customers, or those with alternative energy sources, are assigned lower priorities and would be among the first to be curtailed to preserve service for the higher priority customers. The existing gas supply curtailment regulation was enacted when the LDC performed the merchant function and was last updated in 1982.

Since restructuring, neither the existing regulation nor other Commission action has adequately addressed the issue of what an LDC' s "obligation to serve" should be, in light of the increased competition that has been introduced into the industry. For example, LDCs have traditionally been required to secure gas supplies and arrange for firm capacity (uninterruptible pipeline transportation service) to serve all high priority customers. However, many of the customers who now secure their own gas supplies and upstream pipeline capacity are still classified as high priority customers. As a result, LDCs remain obligated to secure supply and capacity for these customers in the event that their own gas supplies or capacity arrangements fail. This additional supply and capacity to accommodate such returning customers cause all other customers to bear increased costs under existing gas cost recovery regulations.

Solution: Revise regulation to address the existence of transportation customers who secure their own gas supplies and interstate capacity; eliminate the LDC' s traditional obligation to serve for large volume or other customer classes in the event they elect transportation service.

New Legislation
Purchased Gas Cost Adjustment Provision

Issue: Legislation may be necessary to allow LDCs to either exit the merchant function or earn a profit on gas supply acquisition activities.

Problem: There are presently many third party marketers who offer gas procurement services in an unregulated marketplace. To compete, LDCs have begun offering these services through wholly-owned marketing affiliates, however, this can present a host of regulatory problems whenever the LDC purchases gas supplies through an affiliate.

Solution: Propose legislation which would allow LDCs to sell an exclusive right to a third party marketer to acquire gas supplies for its general system sales, or, in the alternative, introduce, performance-based regulation into gas acquisition activities where the LDC would have an opportunity to enhance its earnings by acquiring gas supplies below predetermined benchmarks.

III. CONCLUSION

Southwest appreciates the opportunity to express its concerns and provide its comments to the Committee. Southwest would add that these concerns have been shared with Nevada Power Company and Sierra Pacific Power Company, the two other major regulated energy providers in the state. Each has represented that they concur with the recommendations on UEPA and resource planning.

Southwest believes there are opportunities to increase the flexibility of energy policy and regulations, as well as eliminate those regulations that hinder competitive responsiveness and the provision of greater choices for utility consumers. Doing so will improve the ability of the Nevada utilities to help attract or retain business within the state, to promote economic development and diversity, and to respond to the needs of Nevada energy consumers and businesses.

Strong, locally-owned and controlled utilities, like Southwest, are key components and assets to the state, not only because of their vital contributions to economic development and diversification, but because of their significant corporate presence and investment. In an era when utility mergers are in vogue, and competition is replacing the monopoly marketplace, the effect, in many instances, is the loss of headquarters presence and local control over utility activities. The importance of maintaining strong, viable, locally-owned and headquartered utility entities is heightened. Flexible energy regulation and enlightened business policies can do much toward insuring the continued strength of Nevada's energy providers and their role in Nevada's business and economic development.

In closing, Southwest asks the Committee to act upon these recommendations and offers its assistance regarding these recommendations.

APPENDIX I

Suggested Legislation

SUMMARY—Revises civil penalties that certain state agencies may impose for violations.

(BDR 40-232)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to civil penalties; revising the civil penalties that certain state agencies may impose for violations; authorizing the state fire marshal to impose administrative fines; and providing other matters properly relating thereto.

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

Section 1. NRS 445B.835 is hereby amended to read as follows:

445B.835 1. [The] *Except as otherwise provided in subsection 2, the* department of motor vehicles and public safety may impose an administrative fine, not to exceed $2,500, for a violation of any provision of NRS 445B.700 to 445B.845, inclusive, or any rule, regulation or order adopted or issued pursuant thereto [.] *if the department reasonably believes that the violation was the result of fraud or malfeasance.* The department shall

afford to any person so fined an opportunity for a hearing pursuant to the provisions of NRS 233B.121.

2. *Except in an emergency or in a situation that constitutes imminent danger to person or property, the department shall issue a warning to a person for the first violation of a regulation adopted pursuant to NRS 445B.700 to 445B.845, inclusive. The department may impose an administrative fine for the second and subsequent violations of the regulation if the department reasonably believes that the violation was the result of fraud or malfeasance.*

3. All administrative fines collected by the department pursuant to [subsection 1] *this section* must be deposited with the state treasurer to the credit of the pollution control account.

[3.] *4.* In addition to any other remedy provided by NRS 445B.700 to 445B.845, inclusive, the department may compel compliance with any provision of NRS 445B.700 to 445B.845, inclusive, and any rule, regulation or order adopted or issued pursuant thereto, by injunction or other appropriate remedy and the department may institute and maintain in the name of the State of Nevada any such enforcement proceedings.

Sec. 2. NRS 477.250 is hereby amended to read as follows:

477.250 1. Any person who knowingly violates the provisions of this chapter or any of the regulations adopted by the state fire marshal is guilty of a misdemeanor.

2. Except as otherwise provided in subsection 3, the state fire marshal may impose an administrative fine, not to exceed $2,500, for a violation of any provision of this chapter, or any regulation or order adopted or issued pursuant thereto. The state fire marshal shall afford to any person so fined an opportunity for a hearing pursuant to the provisions of NRS 233B.121.

3. Except in an emergency or in a situation that constitutes imminent danger to person or property, the state fire marshal shall issue a warning to a person for the first violation of a regulation adopted pursuant to this chapter. The state fire marshal may impose an administrative fine for the second and subsequent violations of the regulation.

4. In addition to any other remedy provided by this chapter, the state fire marshal may compel compliance with any provision of this chapter and any rule, regulation or order adopted or issued pursuant thereto, by injunction or other appropriate remedy and the state fire marshal may institute and maintain in the name of the State of Nevada any such enforcement proceedings.

5. Each day on which a violation occurs is a separate offense.

Sec. 3. NRS 482.565 is hereby amended to read as follows:

482.565 1. [The] *Except as otherwise provided in subsection 2, the* department may impose an administrative fine, not to exceed $2,500, for a violation of any provision of this chapter, or any rule, regulation or order adopted or issued pursuant thereto [.] *if the department reasonably believes that the violation was the result of fraud or malfeasance.*

The department shall afford to any person so fined an opportunity for a hearing pursuant to the provisions of NRS 233B.121.

2. *Except in an emergency or in a situation that constitutes imminent danger to person or property, the department shall issue a warning to a person for the first violation of a regulation adopted pursuant to this chapter. The department may impose an administrative fine for the second and subsequent violations of the regulation if the department reasonably believes that the violation was the result of fraud or malfeasance.*

3. All administrative fines collected by the department pursuant to [subsection 1] *this section* must be deposited with the state treasurer to the credit of the state highway fund.

[3.] *4.* In addition to any other remedy provided by this chapter, the department may compel compliance with any provision of this chapter and any rule, regulation or order adopted or issued pursuant thereto, by injunction or other appropriate remedy and the department may institute and maintain in the name of the State of Nevada any such enforcement proceedings.

Sec. 4. NRS 487.700 is hereby amended to read as follows:

487.700 1. [The] *Except as otherwise provided in subsection 2, the* department may impose an administrative fine, not to exceed $2,500, for a violation of any provision of this chapter, or any rule, regulation or order adopted or issued pursuant thereto [.] *if the department reasonably believes that the violation was the result of fraud or malfeasance.*

The department shall afford to any person so fined an opportunity for a hearing pursuant to the provisions of NRS 233B.121.

2. *Except in an emergency or in a situation that constitutes imminent danger to person or property, the department shall issue a warning to a person for the first violation of a regulation adopted pursuant to this chapter. The department may impose an administrative fine for the second and subsequent violations of the regulation if the department reasonably believes that the violation was the result of fraud or malfeasance.*

3. All administrative fines collected by the department pursuant to [subsection 1] *this section* must be deposited with the state treasurer to the credit of the account for regulation of salvage pools, automobile wreckers and body shops.

[3.] *4.* In addition to any other remedy provided by this chapter, the department may compel compliance with any provision of this chapter and any rule, regulation or order adopted or issued pursuant thereto, by injunction or other appropriate remedy and the department may institute and maintain in the name of the State of Nevada any such enforcement proceedings.

Sec. 5. NRS 501.119 is hereby amended to read as follows:

501.119 1. The division is authorized to determine methods of obtaining necessary data from hunters, trappers and fishermen relative to their activities and success.

2. The methods may include return of reports attached to licenses and tags or questionnaires addressed to license holders.

3. Failure to return such a report or questionnaire within the period specified by regulation of the commission [or the submission of any false statement thereon] is cause for the commission to:

(a) Deny the person the right to acquire any license provided [under] *pursuant to* this Title for a period of 1 year; [or

(b) Levy]

(b) For a first violation, issue a warning to the person; or

(c) For the second and subsequent violations, levy an administrative fine of $50 against the person.

4. *Submission of a false statement on such a report or questionnaire is cause for the commission to:*

(a) Deny the person the right to acquire any license provided pursuant to this Title for a period of 1 year; or

(b) Levy an administrative fine of $50 against the person.

5. Any statement made on such a report or questionnaire may not be the basis for prosecution for any indicated violations of other sections of this Title.

SUMMARY—Revises certain provisions relating to public utilities. (BDR 58-233)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to public utilities; providing that a utility that supplies natural gas is not obligated to provide service in certain circumstances; authorizing such a utility to sell an exclusive right to acquire gas supplies within its service area; authorizing a public utility to recover the costs of promotional advertising; repealing the Utility Environmental Protection Act; eliminating the authority of the public service commission of Nevada to adopt regulations relating to the resource plan submitted by a utility that provides natural gas; and providing other matters properly relating thereto.

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

Section 1. Chapter 704 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *A utility that supplies natural gas in this state is not obligated to provide service to a customer within its service area who has continuously for the previous 12 months obtained natural gas from a supplier other than the utility unless:*

1. The failure to provide service would create an imminent threat to the health and safety of the public; or

2. The customer has entered into a contract with the utility pursuant to which the utility will resume service upon the request of the customer.

Sec. 3. *A utility that supplies natural gas in this state may sell the exclusive right to acquire and sell supplies of natural gas within its service area to a person, company, corporation or association which is not engaged in business as a public utility.*

Sec. 4. NRS 704.110 is hereby amended to read as follows:

704.110 Except as otherwise provided in NRS 704.075 or as otherwise provided by the commission pursuant to NRS 704.095 or 704.097:

1. Whenever there is filed with the commission any schedule stating a new or revised individual or joint rate, fare or charge, or any new or revised individual or joint regulation or practice affecting any rate, fare or charge, or any schedule resulting in a discontinuance, modification or restriction of service, the commission may, upon complaint or upon its own motion without complaint, at once, without answer or formal pleading by the interested utility, investigate or, upon reasonable notice, conduct a hearing concerning the propriety of the rate, fare, charge, classification, regulation, discontinuance, modification, restriction or practice.

2. Pending the investigation or hearing and the decision thereon, the commission, upon delivering to the utility affected thereby a statement in writing of its reasons for the suspension, may suspend the operation of the schedule and defer the use of the rate, fare, charge, classification, regulation, discontinuance, modification, restriction or practice, but not for more than 150 days beyond the time when the rate, fare, charge, classification, regulation, discontinuance, modification, restriction or practice would otherwise go into effect.

3. Whenever there is filed with the commission any schedule stating an increased individual or joint rate, fare or charge for service or equipment, the public utility shall submit with its application a statement showing the recorded results of revenues, expenses, investments and costs of capital for its most recent 12 months for which data were available when the application was prepared. During any hearing concerning the increased rates, fares or charges determined by the commission to be necessary, the commission shall consider evidence in support of the increased rates, fares or charges based upon actual recorded results of operations for the same 12 months, adjusted for increased revenues, any increased investment in facilities, increased expenses for depreciation, *increased expenses for promotional advertising,* certain other operating expenses as approved by the commission and changes in the costs of securities which are known and are measurable with reasonable accuracy at the time of filing and which will become effective within 6 months after the last month of those 12 months, but no new rates, fares or charges may be placed into effect until the changes have been experienced and certified by the utility to the commission. The commission shall also consider evidence supporting expenses for depreciation, calculated on an annual basis, applicable to major components of the public utility's plant placed into service during the recorded test period or the period for certification as set forth in the application. Adjustments to revenues, operating expenses and costs of securities must be calculated on an annual basis. Within 90 days after the filing with the commission of the certification required in this subsection, or before the expiration of any period of suspension ordered pursuant to subsection 2, whichever time is longer, the commission shall make such order in reference to those rates, fares or charges as is required by this chapter.

4. After full investigation or hearing, whether completed before or after the date upon which the rate, fare, charge, classification, regulation, discontinuance, modification, restriction or practice is to go into effect, the commission may make such order in

reference to the rate, fare, charge, classification, regulation, discontinuance, modification, restriction or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, discontinuance, modification, restriction or practice has become effective.

5. Whenever an application is filed by a public utility for an increase in any rate, fare or charge based upon increased costs in the purchase of fuel or power, and the public utility has elected to use deferred accounting for costs of the purchase of fuel or power in accordance with the commission's regulations, the commission, by appropriate order after a public hearing, shall allow the public utility to clear the deferred account not more often than every 6 months by refunding any credit balance or recovering any debit balance over a period not to exceed 1 year as determined by the commission. The commission shall not allow a recovery of a debit balance or any portion thereof in an amount which would result in a rate of return in excess of the rate of return most recently granted the public utility.

6. Except as otherwise provided in subsection 7 or in NRS 707.350, whenever a general rate application for an increased rate, fare or charge for, or classification, regulation, discontinuance, modification, restriction or practice involving service or equipment has been filed with the commission, a public utility shall not submit another general rate application until all pending general rate applications for increases in rates submitted by that public utility have been decided unless, after application and hearing, the commission determines that a substantial financial emergency would exist if the other application is not permitted to be submitted sooner.

7. A public utility may not file an application to recover the increased cost of purchased fuel, purchased power, or natural gas purchased for resale more often than once every 30 days.

8. A utility facility identified in a 3-year plan submitted pursuant to NRS 704.741 or 704.755 and accepted by the commission for acquisition or construction pursuant to NRS 704.751 or 704.755 and the regulations adopted pursuant thereto shall be deemed to be a prudent investment. The utility may recover all just and reasonable costs of planning and constructing such a facility. [For the purposes of] *As used in* this subsection, "utility facility" [has the meaning ascribed to it in subsections 1, 2 and 3 of NRS 704.860.] *means:*

(a) Electric generating plants and their associated facilities;

(b) Electric transmission lines and transmission substations designed to operate at 200 kilovolts or more, and not required by local ordinance to be placed underground when constructed outside any incorporated city; and

(c) Gas transmission lines, storage plants, compressor stations and their associated facilities when constructed outside any incorporated city.

Sec. 5. NRS 704.390 is hereby amended to read as follows:

704.390 1. [It shall be] *Except as otherwise provided in section 2 of this act, it is* unlawful for any public utility to discontinue, modify or restrict service to any city, town, municipality, community or territory theretofore serviced by it, except upon 30 days' notice filed with the commission, specifying in detail the character and nature of the discontinuance or restriction of the service intended, and upon order of the commission, made after hearing, permitting such discontinuance, modification or restriction of service.

2. The commission in its discretion and after investigation, may dispense with the hearing on the application for discontinuance, modification or restriction of service, if, upon the expiration of the time fixed in the notice thereof, no protest against the granting of the application has been filed by or on behalf of any interested person.

Sec. 6. NRS 704.755 is hereby amended to read as follows:

704.755 1. A utility which supplies natural gas in this state shall, periodically, as prescribed by the commission, submit to the commission a plan which describes:

(a) The anticipated demand for natural gas made on its system by its customers;

(b) The estimated cost of supplying natural gas sufficient to meet the demand and the means by which the utility proposes to minimize that cost; and

(c) The sources of planned acquisitions of natural gas, including an estimate of the cost and quantity of the acquisitions to be made from each source and an assessment of the reliability of the source.

2. [The commission shall, by regulation, provide for the procedure and schedule for and the contents and method of preparing, reviewing and approving the plan.

3.] The costs of preparing the plan are allowable expenses of the utility for the purpose of establishing rates. The commission may provide for the timely recovery of those costs.

[4.] *3.* The application of this section is limited to any public utility in the business of supplying natural gas which has an annual operating revenue in this state of $10,000,000 or more.

Sec. 7. NRS 704.820, 704.825, 704.830, 704.840, 704.845, 704.850, 704.855, 704.860, 704.865, 704.870, 704.875, 704.880, 704.885, 704.890, 704.891, 704.893, 704.895, 704.897 and 704.900 are hereby repealed.

LEADLINES OF REPEALED SECTIONS

704.820 Short title.

704.900 Cooperation with other states and Federal Government.

SUMMARY—Revises procedures for adoption of administrative regulations and forms required by administrative agencies under certain circumstances. (BDR 18-234)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to administrative regulations; revising the procedures for the adoption of administrative regulations and forms required by administrative agencies under certain circumstances; and providing other matters properly relating thereto.

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

Section 1. 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 an original and four copies of each regulation adopted, to the director of the legislative counsel bureau for review by the legislative commission, which may refer it to a joint interim committee, to determine whether the regulation conforms to the statutory authority [under] *pursuant to* which it was adopted and whether the regulation carries out the intent of the legislature in

granting that authority. The director shall have endorsed on the original and duplicate copies of each adopted regulation the date of their receipt and shall maintain one copy of the regulation in a file and available for public inspection for 2 years.

2. If an agency submits an adopted regulation to the director of the legislative counsel bureau pursuant to subsection 1 which:

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

(b) Exceeds the agency's specific statutory authority 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. The legislative commission , or the joint interim committee if the commission has referred it to such a committee, shall review the regulation at its next regularly scheduled meeting if the regulation is received more than 10 working days before the meeting and a regular meeting is held within 35 days after receipt of the regulation. The commission may appoint a committee composed of three or more members of the commission or any joint interim committee to examine proposed regulations received more than 35 days before a regular meeting is scheduled to be held.

4. The legislative commission shall notify the director of the results of its review within 30 days after receipt of the regulation from the agency. If the commission does not object to the regulation , [on the basis that the regulation fails to conform to the statutory

authority under which it was adopted or fails to carry out the intent of the legislature in granting that authority,] the director shall file it with the secretary of state within 35 days after receipt from the agency and notify the agency of the filing. If the commission [determines] *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 [, if subsection 2 is applicable, or] *;*

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

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

the director shall attach to the regulation a written notice of the commission's objection, including a statement of the reasons for its objection, and shall promptly return the regulation to the agency. [The director shall file the regulation with the secretary of state within 35 days after receipt from the agency if the agency does not notify the director in writing before that date of its intent to revise the regulation. If the agency notifies the director that it intends to revise the regulation as recommended, the director shall file the regulation with the secretary of state within 10 days after receipt of the revised regulation.

5. If the director fails to file the regulation as required by this section, the agency may file the regulation with the secretary of state.]

Sec. 2. NRS 233B.0675 is hereby amended to read as follows:

233B.0675 *1.* If the legislative commission has objected to a regulation *,* [and] the agency [did not] *may* revise it [before it was filed with the secretary of state, the commission shall report the matter to the next session of the legislature for its

consideration.] *and return it to the director of the legislative counsel bureau. Upon receipt of the revised regulation, the director shall resubmit the regulation to the commission at its next regularly scheduled meeting. If the commission does not object to the revised regulation, the director shall promptly file the revised regulation with the secretary of state and notify the agency of the filing.*

2. If the legislative commission objects to the revised regulation, the agency may continue to revise it and resubmit it to the commission.

3. If the agency refuses to revise a regulation to which the legislative commission has objected, the commission may suspend the filing of the regulation until the 30th day of the next regular session of the legislature. Before the 30th day of the next regular session the legislature may, by concurrent resolution, declare that the regulation will not become effective. The director shall thereupon notify the agency that the regulation will not be filed and must not be enforced. If the legislature has not so declared by the 30th day of the session, the director shall promptly file the regulation and notify the agency of the filing.

Sec. 3. NRS 233B.070 is hereby amended to read as follows:

233B.070 1. A permanent regulation becomes effective [upon filing] *when the director of the legislative counsel bureau files* with the secretary of state the original of the final draft or revision of a regulation, except as otherwise provided in NRS 233B.0665 or where a later date is specified in the regulation.

2. A temporary or emergency regulation becomes effective [upon filing] *when the agency files* with the secretary of state the original of the final draft or revision of a

regulation [by the agency,] together with the informational statement prepared pursuant to NRS 233B.066. The agency shall also file a copy of the temporary or emergency regulation with the legislative counsel bureau, together with the informational statement prepared pursuant to NRS 233B.066.

3. 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.

4. 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.

5. 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 librarian, to the state librarian 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 licensing or for the renewal of a license 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.

6. 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.

7. 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. 4. NRS 233B.115 is hereby amended to read as follows:

233B.115 1. Any person who objects to the content of a form required by an agency to be used in submitting an application, making a declaration or providing other information may request the legislative commission to determine whether the information required and the instructions for its preparation conform to the statutory authority [under] *pursuant to* which the agency requires it. The legislative commission may also make such a determination on its own motion.

2. If the legislative commission finds that any part of the information or instructions does not conform to statutory authority, the director of the legislative counsel bureau shall so notify the agency. [The agency may revise the form and submit it to the legislative commission for its review.]

3. *After notification by the director of the legislative counsel bureau of the legislative commission's objection to the form, the agency may revise the form to conform to statutory authority and resubmit it to the legislative commission. The agency shall not use the form*

until it has submitted a revised version to the legislative commission and the commission has approved the form.

4. If the agency [chooses instead not] *refuses* to revise the form, [the commission shall report the matter to the next session of the legislature for its consideration.] *it shall not use the form until after the expiration of the first 30 days of the next regular session of the legislature. Before the 30th day of the next regular session the legislature may, by concurrent resolution, declare that the form must not be used. The director shall thereupon notify the agency that it shall not use the form. If the legislature has not so declared by the 30th day of the session, the director shall promptly notify the agency that it may use the form.*

Sec. 5. This act becomes effective on July 1, 1997.

SUMMARY—Makes various changes relating to the creation and review of state agencies.

(BDR 18-235)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to state government; requiring the periodic review of state agencies by the legislative commission; providing for the prospective expiration of newly created state agencies; and providing other matters properly relating thereto.

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

Section 1. Chapter 232B of NRS is hereby amended by adding thereto a new section to read as follows:

If the legislature creates a new agency on or after July 1, 1997, the legislative measure in which the agency is created must include a provision which states that each section of the measure relating to the creation of the agency expires by limitation at the end of the calendar year that is 4 years after the calendar year in which the agency was created unless the legislature continues the existence of the agency.

Sec. 2. NRS 232B.010 is hereby amended to read as follows:

232B.010 As used in this chapter, unless the context otherwise requires, "agency" means [any public agency which the legislature has designated to be the subject of a review by the legislative commission.] *an agency, bureau, board, commission, department, division or any other unit of the executive department of state government.*

Sec. 3. NRS 232B.040 is hereby amended to read as follows:

232B.040 1. The legislative commission shall [conduct the reviews of agencies directed by the legislature] *review each agency, including an agency whose existence has been continued by the legislature pursuant to section 1 of this act, at least once every 10 years* to determine whether [each] *the* agency should be terminated, consolidated with another agency or continued. [The legislative commission shall begin each review on July 1 of the second year preceding the scheduled date for terminating the agency.]

2. The legislative commission shall determine the membership and method of appointment of committees or subcommittees appointed to carry out the reviews.

3. The legislative commission shall transmit its review and recommendations to the legislature at the beginning of its next regular session.

Sec. 4. NRS 284.254 is hereby amended to read as follows:

284.254 In establishing lists of eligible persons, a preference must be allowed for each person in the classified service who has been separated from the service because the agency

by which he was employed was terminated pursuant to NRS 232B.100 [.] *or section 1 of this act.*

SUMMARY—Revises various provisions relating to regulatory control of hazardous materials. (BDR 40-236)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to hazardous materials; authorizing the division of environmental protection of the state department of conservation and natural resources to designate highly hazardous substances by regulation; requiring the division to coordinate and administer certain federal programs; clarifying the motor vehicles for which a permit to transport hazardous materials must be obtained; and providing other matters properly relating thereto.

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

Section 1. NRS 459.3808 is hereby amended to read as follows:

459.3808 "Hazard" means a characteristic of a:

1. Highly hazardous substance designated in *the regulations adopted pursuant to* NRS 459.3816;

2. System involving the use of such a highly hazardous substance;

3. Manufacturing plant using or producing a highly hazardous substance; or

4. Process relating to a highly hazardous substance,

which makes possible a chemical accident.

Sec. 2. NRS 459.3816 is hereby amended to read as follows:

459.3816 [1. The following substances are designated as highly hazardous, if present in the quantity designated after each substance or a greater quantity:

Chemical Name of Substance	Number Assigned by Chemical Abstract Service	Quantity (In pounds)
Acetaldehyde	75-07-0	2500
Acrolein (2-Propenal)	107-02-8	150
Acrytyl Chloride	814-68-6	250
Allyl Chloride	107-05-1	1000
Allylamine	107-11-9	1500
Alkylaluminums	None	5000
Ammonia, Anhydrous	7664-41-7	5000
Ammonia solutions (44% ammonia by weight)	7664-41-7	10000
Ammonium Perchlorate	7790-98-9	7500
Ammonium Permanganate	7787-36-2	7500

Arsine (also called Arsenic Hydride)	7784-42-1	100
Bis(Chloromethyl) Ether	542-88-1	100
Boron Trichloride	10294-34-5	2500
Boron Trifluoride	7637-07-2	250
Bromine	7726-95-6	1500
Bromine Chloride	13863-41-7	1500
Bromine Pentafluoride	7789-30-2	2500
Bromine Trifluoride	7787-71-5	15000
3-Bromopropyne (also called Propargyl Bromide)	106-96-7	7500
Butyl Hydroperoxide (Tertiary)	75-91-2	5000
Butyl Perbenzoate (Tertiary)	614-45-9	7500
Carbonyl Chloride (see Phosgene)	75-44-5	100
Carbonyl Fluoride	353-50-4	2500
Cellulose Nitrate (concentration 12.6% Nitrogen)	9004-70-0	2500
Chlorine	7782-50-5	1500
Chlorine Dioxide	10049-04-4	1000
Chlorine Pentafluoride	13637-63-3	1000
Chlorine Trifluoride	7790-91-2	1000

Chlorodiethylaluminum (also called Diethylaluminum Chloride)	96-10-6	5000
1-Chloro-2,4-Dinitrobenzene	97-00-7	5000
Chloromethyl Methyl Ether	107-30-2	500
Chloropicrin	76-06-2	500
Chloropicrin and Methyl Bromide mixture	None	1500
Chloropicrin and Methyl Chloride mixture	None	1500
Cumene Hydroperoxide	80-15-9	5000
Cyanogen	460-19-5	2500
Cyanogen Chloride	506-77-4	500
Cyanuric Fluoride	675-14-9	100
Diacetyl Peroxide (concentration 70%)	110-22-5	5000
Diazomethane	334-88-3	500
Dibenzoyl Peroxide	94-36-0	7500
Diborane	19287-45-7	100
Dibutyl Peroxide (Tertiary)	110-05-4	5000
Dichloro Acetylene	7572-29-4	250
Dichlorosilane	4109-96-0	2500
Diethylzinc	557-20-0	10000
Diisopropyl Peroxydicarbonate	105-64-8	7500
Dilauroyl Peroxide	105-74-8	7500

Dimethyl Sulfide	75-18-3	100
Dimethyldichlorosilane	75-78-5	1000
Dimethylhydrazine, 1.1-	57-14-7	1000
Dimethylamine, Anhydrous	124-40-3	2500
Ethyl Methyl Ketone Peroxide (also Methyl Ethyl Ketone Peroxide; concentration 60%)	1338-23-4	5000
Ethyl Nitrite	109-95-5	5000
Ethylamine	75-04-7	7500
Ethylene Fluorohydrin	371-62-0	100
Ethylene Oxide	75-21-8	5000
Ethyleneimine	151-56-4	1000
Fluorine	7782-41-4	1000
Formaldehyde (concentration 90%)	50-00-0	1000
Furan	110-00-9	500
Hexafluoroacetone	684-16-2	5000
Hydrochloric Acid, Anhydrous	7647-01-0	5000
Hydrofluoric Acid, Anhydrous	7664-39-3	1000
Hydrogen Bromide	10035-10-6	5000
Hydrogen Chloride	7647-01-0	5000
Hydrogen Cyanide, Anhydrous	74-90-8	1000

Hydrogen Fluoride	7664-39-3	1000
Hydrogen Peroxide (52% by weight or more)	7722-84-1	7500
Hydrogen Selenide	7783-07-5	150
Hydrogen Sulfide	7783-06-4	1500
Hydroxylamine	7803-49-8	2500
Iron, Pentacarbonyl-	13463-40-6	250
Isopropyl Formate	625-55-8	500
Isopropylamine	75-31-0	5000
Ketene	463-51-4	100
Methacrylaldehyde	78-85-3	1000
Methacryloyl Chloride	920-46-7	150
Methacryloyloxyethyl Isocyanate	30674-80-7	100
Methyl Acrylonitrile	126-98-7	250
Methylamine, Anhydrous	74-89-5	1000
Methyl Bromide	74-83-9	2500
Methyl Chloride	74-87-3	15000
Methyl Chloroformate	79-22-1	500
Methyl Disulfide	624-92-0	100
Methyl Ethyl Ketone Peroxide (concentration 60%)	1338-23-4	5000
Methyl Fluoroacetate	453-18-9	100

Methyl Fluorosulfate	421-20-5	100
Methyl Hydrazine	80-34-4	100
Methyl Iodide	74-88-4	7500
Methyl Isocyanate	624-83-9	250
Methyl Mercaptan	74-93-1	5000
Methyl Vinyl Ketone	78-94-4	100
Methyltrichlorosilane	75-79-6	500
Nickel Carbonyl (Nickel Tetracarbonyl)	13463-39-3	150
Nitric Acid (94.5% by weight or greater)	7697-37-2	500
Nitric Oxide	10102-43-9	250
Nitroaniline (para Nitroaniline)	100-01-6	5000
Nitromethane	75-52-5	2500
Nitrogen Dioxide	10102-44-0	250
Nitrogen Oxides (NO; NO_2; N_2O_4; N_2O_3)	10102-44-0	250
Nitrogen Tetroxide (also called Nitrogen Peroxide)	10544-72-6	250
Nitrogen Trifluoride	7783-54-2	5000
Nitrogen Trioxide	10544-73-7	250
Oleum (65% to 80% by weight; also called Fuming Sulfuric Acid)	8014-94-7	1000
Osmium Tetroxide	20816-12-0	100

Oxygen Difluoride (Fluorine Monoxide)	7783-41-7	100
Ozone	10028-15-6	100
Pentaborane	19624-22-7	100
Peracetic Acid (also called Peroxyacetic Acid)	79-21-0	5000
Perchloric Acid (concentration 60%)	7601-90-3	5000
Perchloromethyl Mercaptan	594-42-3	150
Perchloryl Fluoride	7616-94-6	5000
Peroxyacetic Acid (concentration 60%; also called Peracetic Acid)	79-21-0	5000
Phosgene (also called Carbonyl Chloride)	75-44-5	100
Phosphine (Hydrogen Phosphide)	7803-51-2	100
Phosphorus Oxychloride (also called Phosphoryl Chloride)	10025-87-3	1000
Phosphorus Trichloride	7719-12-2	1000
Phosphoryl Chloride (also called Phosphorus Oxychloride)	10025-87-3	1000
Propargyl Bromide	106-96-7	7500
Propyl Nitrate	627-3-4	2500
Sarin	107-44-8	100
Selenium Hexafluoride	7783-79-1	1000
Stibine (Antimony Hydride)	7803-52-3	500

Sulfur Dioxide (liquid)	7446-09-5	1000
Sulfur Pentafluoride	5714-22-7	250
Sulfur Tetrafluoride	7783-60-0	250
Sulfur Trioxide (also called Sulfuric Anhydride)	7446-11-9	1000
Sulfuric Anhydride (also called Sulfur Trioxide)	7446-11-9	1000
Tellurium Hexafluoride	7783-80-4	250
Tetrafluoroethylene	116-14-3	5000
Tetrafluorohydrazine	10036-47-2	5000
Tetramethyl Lead	75-74-1	7500
Thionyl Chloride	7719-09-7	250
Trichloro(chloromethyl) Silane	1558-25-4	100
Trichloro(dichlorophenyl) Silane	21737-85-5	2500
Trichlorosilane	10025-78-2	5000
Trifluorochloroethylene	79-38-9	10000
Trimethyoxysilane	2487-90-3	1500

2.] *1.* The division, in consultation with the health division of the department of human resources and the division of industrial relations of the department of business and industry shall [regularly] :

(a) Regularly examine the sources of information available to it with regard to potentially highly hazardous substances [.The division shall, by regulation, add to] *; and*

(b) Establish, by regulation, a list of substances that are designated as highly hazardous.

2. *The division shall include in* the list of highly hazardous substances any chemical that is identified as being used, manufactured, stored, or capable of being produced, at a facility, in sufficient quantities at a single site, that its release into the environment would produce a significant likelihood that persons exposed would suffer death or substantial bodily harm as a consequence of the exposure.

Sec. 3. NRS 459.3818 is hereby amended to read as follows:

459.3818 1. The division shall adopt such regulations as are necessary to carry out the purposes and enforce the provisions of NRS 459.380 to 459.3874, inclusive.

2. *The division shall:*

(a) Administer and coordinate any program for the prevention of accidental releases established pursuant to 42 U.S.C. § 7412(r).

(b) Enforce the Federal Occupational Safety and Health Administration Process Safety Management Standard set forth in 29 C.F.R. § 1910.119.

3. The division shall make every effort to involve advisory councils on hazardous materials, where they exist, the governing bodies of local governments and other interested persons in explaining actions taken pursuant to those sections and the regulations adopted pursuant thereto.

Sec. 4. NRS 459.705 is hereby amended to read as follows:

459.705 1. Every person who transports in a motor vehicle upon the highways of this state hazardous materials which are required to be placarded in accordance with federal law shall, pursuant to regulations of the department:

(a) Obtain from the division a permit to transport the hazardous materials.

(b) Submit each motor vehicle used to transport the hazardous materials for an inspection pursuant to the regulations of the department as to the safety of the vehicle to transport hazardous materials.

2. [The] *Except as otherwise provided in subsection 3, the* department shall adopt regulations concerning such permits. The regulations may require that the permit or a legible copy of the permit be carried in the driver's compartment of the motor vehicle at all times while the vehicle is used to transport hazardous materials.

3. *The department shall not adopt any regulation requiring such a permit or requiring recordkeeping for the purposes of such a permit for a motor vehicle unless the motor vehicle is actually used to transport hazardous material:*

(a) Of a type and amount for which a vehicle transporting the substance must be placarded pursuant to 49 C.F.R. Part 172;

(b) Of a type and amount for which a uniform hazardous waste manifest is required pursuant to 40 C.F.R. Part 262;

(c) Which is transported in bulk packaging, as defined in 49 C.F.R. § 171.8; or

(d) Identified as a hazardous material pursuant to NRS 459.710.

4. In addition to complying with the provisions of this section and any regulations adopted pursuant thereto, the division shall comply with the provisions of NRS 459.707 and 459.708 if an application is submitted for a permit to transport radioactive waste.

Sec. 5. NRS 618.315 is hereby amended to read as follows:

618.315 1. The division has authority over working conditions in all places of employment except as limited by subsection 2.

2. The authority of the division does not extend to working conditions which:

(a) Exist in household domestic service;

(b) Exist in motor vehicles operating on public highways of this state; [or]

(c) Are regulated pursuant to the Federal Mine Safety and Health Act of 1977 (30 U.S.C. §§ 801 et seq.), the Federal Safety Appliances Act (45 U.S.C. §§ 1 et seq.) or the Federal Railroad Safety Act of 1970 (45 U.S.C. §§ 421 et seq.) [.] *; or*

(d) Are regulated pursuant to the Federal Occupational Safety and Health Administration Process Safety Management Standard set forth in 29 C.F.R. § 1910.119.

3. The division may:

(a) Declare and prescribe which safety devices, safeguards or other means of protection are well adapted to render employees safe as required by lawful order, state standards or regulations or federal standards, as adopted by the division.

(b) Fix and adopt such reasonable standards and prescribe, modify and enforce such reasonable orders for the adoption, installation, use, maintenance and operation of safety devices, safeguards and other means or methods of protection, which must be as nearly

uniform as practicable, as may be necessary to carry out all laws and lawful orders relative to the protection of the lives, safety and health of employees.

(c) Adopt such reasonable standards for the construction, repair and maintenance of places of employment as render those places safe and healthful.

(d) Require the performance of any other act which the protection of the lives, safety and health in places of employment reasonably demands.

(e) Provide the method and frequency of making investigations, examinations and inspections.

(f) Prepare, provide and regulate forms of notices, publications and blank forms deemed proper and advisable to carry out the provisions of this chapter [,] and to charge to employers the printing costs for those publications.

(g) Furnish blank forms upon request.

(h) Provide for adequate notice to each employer or employee of his right to administrative review of any action or decision of the division as set forth in NRS 618.475 and 618.605 and to judicial review.

(i) Consult with the health division of the department of human resources with respect to occupational health matters in chapter 617 of NRS.

(j) Appoint and fix the compensation of advisers who shall assist the division in establishing standards of safety and health. The division may adopt and incorporate in its general orders such safety and health recommendations as it may receive from advisers.

SUMMARY—Makes various changes relating to Administrative Procedure Act. (BDR 18-237)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to administrative procedure; requiring an agency periodically to review its regulations and report the results to the legislature; requiring an agency to conduct a workshop before holding a public hearing on a proposed regulation; directing the attorney general to develop guidelines for drafting regulations; providing that a permanent regulation becomes effective 90 days after its filing with the secretary of state except under certain circumstances; and providing other matters properly relating thereto.

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

Section 1. NRS 233B.050 is hereby amended to read as follows:

233B.050 1. In addition to other regulation-making requirements imposed by law, each agency shall:

(a) Adopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.

(b) Make available for public inspection all *rules of practice and* regulations adopted or used by the agency in the discharge of its functions and that part of the Nevada Administrative Code which contains its regulations.

(c) Make available for public inspection all final orders, decisions and opinions except those expressly made confidential or privileged by statute.

(d) Review its rules of practice at least once every 3 years and file with the secretary of state a statement setting forth the date on which the most recent review of those rules was completed and describing any revisions made as a result of the review.

(e) Review its regulations at least once every 10 years to determine whether it should amend or repeal any of the regulations. Within 30 days after completion of the review, the agency shall submit a report to the director of the legislative counsel bureau for distribution to the next regular session of the legislature. The report must include the date on which the agency completed its review of the regulations and describe any regulation that must be amended or repealed as a result of the review. The director of the legislative counsel bureau shall provide a copy of the report to the legislative counsel for the purposes of subsection 2 of NRS 233B.065.

2. [No agency] *A* regulation, rule, final order , [or] decision *or opinion of an agency* is *not* valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection as required in this section, except that this provision does not apply in favor of any person or party who has actual knowledge thereof.

Sec. 2. NRS 223B.0603 is hereby amended to read as follows:

233B.0603 1. The notice of intent to act upon a regulation must:

(a) Include [a statement of:

(1) The] *:*

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

(2) Either the terms or substance of the proposed regulation or a description of the subjects and issues involved.

(3) [The] *A statement of the* estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:

(I) Both adverse and beneficial effects; and

(II) Both immediate and long-term effects.

(4) The estimated cost to the agency for enforcement of the proposed regulation.

(5) [Any] *A description of any* regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining

why the duplication or overlapping is necessary. *If the regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.*

(6) *If the regulation is required pursuant to federal law, a citation and description of the federal law.*

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

(8) The time when, the place where, and the manner in which, interested persons may present their views regarding the proposed regulation **[.]** *, including, but not limited to, the time and place set for a workshop and the public hearing.*

(b) State each address at which the text of the proposed regulation may be inspected and copied.

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

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

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

2. The attorney general may by regulation prescribe the form of notice to be used, which must be distributed to each recipient of the agency's regulations. The agency shall also solicit comment generally from the public and from businesses to be affected by the proposed regulation.

Sec. 3. NRS 233B.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 regarding a proposed regulation.

3. With respect to substantive regulations, 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.

[2.] *4.* The agency shall keep, retain and make available for public inspection written minutes of each public hearing held pursuant to subsection [1] *3* in the manner provided in subsections 1 and 2 of NRS 241.035.

[3.] *5.* The agency may record each public hearing held pursuant to subsection [1] *3* and make those recordings available for public inspection in the manner provided in subsection 4 of NRS 241.035.

Sec. 4. NRS 233B.062 is hereby amended to read as follows:

233B.062 1. It is the policy of this state that every [agency] regulation *of an agency* be made easily accessible to the public and expressed in clear and concise language. To assist in carrying out this policy [, every] :

(a) The attorney general shall develop guidelines for drafting regulations; and

(b) Every permanent regulation [shall] *must* be incorporated, excluding any forms used by the agency, any publication adopted by reference, the title, citation of authority, signature and other formal parts, in the Nevada Administrative Code, and every emergency or temporary regulation [shall] *must* be distributed in the same manner as the Nevada Administrative Code.

2. The legislative commission may authorize inclusion in the Nevada Administrative Code of the regulations of an agency otherwise exempted from the requirements of this chapter.

Sec. 5. NRS 233B.065 is hereby amended to read as follows:

233B.065 1. The legislative counsel shall prescribe the numbering, page size, style and typography of the Nevada Administrative Code. For convenience of reproduction in the code, he may prescribe the same matters in original agency regulations.

2. *The legislative counsel shall cause to be included in the Nevada Administrative Code the date on which an agency last completed a review of its regulations pursuant to paragraph (e) of subsection 1 of NRS 233B.050.*

3. The legislative counsel shall prepare or cause the superintendent of the state printing and micrographics division of the department of administration to prepare such sets of the Nevada Administrative Code and of supplementary pages as are required from time to time. A set must be provided to and kept respectively:

(a) By the secretary of state as the master copy;

(b) By the state librarian for public use;

(c) By the attorney general for his use and that of the executive department; and

(d) By the legislative counsel for his use and that of the legislature.

The legislative commission may direct the preparation of additional sets or pages, or both, and specify the places where those sets or parts of sets are to be kept and the uses to be made of them.

[3.] *4.* The legislative counsel shall, without charge, provide:

(a) A complete set of the Nevada Administrative Code, upon request, to each person who is on July 1, 1985, or who becomes after that date a member of the legislature; and

(b) To each legislator who has so acquired the code, the replacement or supplementary pages which are issued during his term of office.

[4.] *5.* Each agency shall reimburse the legislative counsel bureau and the state printing and micrographics division of the department of administration for their respective costs in preparing and keeping current that agency's portion of the Nevada Administrative Code in the number of copies required for official and public use. If additional sets or pages

are sold, the legislative commission shall set sale prices sufficient to recover at least the cost of production and distribution of the additional sets or pages.

Sec. 6. NRS 233B.070 is hereby amended to read as follows:

233B.070 1. A permanent regulation becomes effective [upon filing] *90 days after the director of the legislative counsel bureau files* with the secretary of state the original of the final draft or revision of a regulation, except [as] *:*

(a) As otherwise provided in NRS 233B.0665 [or where] *;*

(b) Where a later date is specified in the regulation [.] *; or*

(c) Where federal law requires a different effective date.

2. A temporary or emergency regulation becomes effective [upon filing] *when the agency files* with the secretary of state the original of the final draft or revision of a regulation , [by the agency,] together with the informational statement prepared pursuant to NRS 233B.066. The agency shall also file a copy of the temporary or emergency regulation with the legislative counsel bureau, together with the informational statement prepared pursuant to NRS 233B.066.

3. 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.

4. 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.

5. 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 librarian, to the state librarian 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 licensing or for the renewal of a license 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.

6. 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.

7. 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.

SUMMARY—Imposes additional duties upon legislative counsel bureau. (BDR 17-238)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to the legislative counsel bureau; requiring the legislative counsel to prepare a synopsis of certain bills; requiring the fiscal analysis division of the legislative counsel bureau to obtain a fiscal note on a bill or joint resolution that creates a financial effect on the public; requiring the legislative counsel to prepare and publish a register of certain information related to administrative regulations; requiring an agency whose regulations are published in the register to pay certain costs related thereto; requiring the legislative counsel to make available on the INTERNET the information contained in the register; requiring the legislative counsel to include in the Nevada Administrative Code a citation of authority for each section contained therein; and providing other matters properly relating thereto.

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

Section 1. Chapter 218 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *1. Upon request made by the proposed introducer of a bill that is drafted for submission to the legislature, the legislative counsel shall prepare a synopsis of the bill if the bill authorizes or amends the authority of a state agency that is subject to the provisions of chapter 233B of NRS to adopt regulations that bind persons outside the agency.*

2. A synopsis prepared pursuant to subsection 1 must be included in the bill and must contain a brief explanation of the purpose of the bill as a whole and a commentary for each section of the bill describing in detail:

(a) If the section is amending existing law, any deletion or addition in the section and the substantive effect of the addition or deletion.

(b) If the section is repealing a section, the purpose of the section being repealed and the substantive effect of its repeal.

(c) If a new section is being added, the purpose of the new section, the manner in which the new section relates to existing statutory provisions and the substantive effect of adding the new section to the law.

3. In the event of a substantive conflict between a synopsis and a bill, the provisions of the bill prevail.

Sec. 3. *Before any bill or joint resolution which creates a financial effect on the public by:*

1. Imposing or increasing a tax or authorizing a local government to do so;

2. Imposing or increasing a fee for a service provided by the state or a local government or authorizing a local government to do so;

3. Requiring a person to register with, be licensed by or provide information to an agency of this state or a local government; or

4. Authorizing the regulation of a business, occupation or profession or a specific aspect of a business, occupation or profession that previously was not regulated,

is considered at a public hearing of a committee of the assembly or the senate or before a vote is taken thereon by the committee, the fiscal analysis division shall prepare a fiscal note and may consult with any person or governmental entity to secure the appropriate information to prepare that note.

Sec. 4. NRS 218.240 is hereby amended to read as follows:

218.240 1. The legislative counsel and the legal division of the legislative counsel bureau shall prepare and assist in the preparation and amendment of legislative measures when requested or upon suggestion as provided in NRS 218.240 to 218.255, inclusive [.] , *and section 2 of this act.* Except as otherwise provided in those provisions, the legislative counsel and the legal division of the legislative counsel bureau shall not prepare or assist in the preparation and amendment of legislative measures directly submitted or requested by a natural person, corporation, firm, association or other entity, including an organization that represents governmental agencies, unless the requester, or if the requester is a natural

person the office or other position held by the person, is created by the constitution or laws of this state.

2. An interim committee which conducts a study or investigation pursuant to subsection 5 of NRS 218.682 may request the preparation of no more than 10 legislative measures, except that such a committee may request the preparation of additional legislative measures if the legislative commission approves each additional request by a majority vote.

3. The legislative counsel shall give consideration to and service concerning any measure before the legislature which is requested by the governor, the senate or assembly, or any committee of the legislature having the measure before it for consideration.

4. The legislative counsel may deliver to the superintendent of the state printing and micrographics division of the department of administration and request that he print or preset the type for printing a legislative measure before its introduction upon the consent of the person or persons requesting the measure. If the measure has been requested by a legislator, the superintendent shall promptly comply with this request.

Sec. 5. NRS 218.272 is hereby amended to read as follows:

218.272 1. The fiscal analysis division shall obtain a fiscal note on:

(a) Any bill which makes an appropriation or increases any existing appropriation;

(b) Any bill or joint resolution which creates or increases any fiscal liability or decreases any revenue which appears to be in excess of $2,000; and

(c) Any bill or joint resolution which increases or newly provides for a term of imprisonment in the state prison or makes release on parole or probation therefrom less likely,

before it is considered at a public hearing of a committee of the assembly or the senate, or before any vote is taken thereon by the committee. The fiscal note must contain a reliable estimate of the anticipated change in appropriation authority, fiscal liability or state revenue [under] *pursuant to* the bill or joint resolution, including, to the extent possible, a projection of such changes in future biennia.

2. Except as otherwise provided in NRS 218.272 to 218.2758, inclusive, *and section 3 of this act,* or in the joint rules of the senate and assembly, the estimates must be made by the agency receiving the appropriation or collecting the revenue.

3. The fiscal note is not required on any bill or joint resolution relating exclusively to the executive budget.

Sec. 6. NRS 218.2754 is hereby amended to read as follows:

218.2754 1. The summary of each bill or joint resolution introduced in the legislature must include the statement:

(a) "Fiscal Note: Effect on Local Government: Yes,"

"Fiscal Note: Effect on Local Government: No,"

"Fiscal Note: Effect on Local Government: Contains Appropriation included in Executive Budget," or

"Fiscal Note: Effect on Local Government: Contains Appropriation not included in Executive Budget,"

whichever is appropriate; [and]

(b) "Effect on the State or on Industrial Insurance: Yes,"

"Effect on the State or on Industrial Insurance: No,"

"Effect on the State or on Industrial Insurance: Contains Appropriation included in Executive Budget,"

"Effect on the State or on Industrial Insurance: Executive Budget," or

"Effect on the State or on Industrial Insurance: Contains Appropriation not included in Executive Budget,"

whichever is appropriate [.] *; and*

(c) "Effect on the Public: Yes," or

"Effect on the Public: No,"

whichever is appropriate.

2. The legislative counsel shall consult the fiscal analysis division to secure the appropriate information for summaries of bills and joint resolutions.

Sec. 7. Chapter 233B of NRS is hereby amended by adding thereto the provisions set forth as sections 8 and 9 of this act.

Sec. 8. *1. The legislative counsel shall prepare and publish or cause the superintendent of the state printing and micrographics division of the department of administration to prepare and publish a register of administrative regulations. The register*

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

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

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

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

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

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

2. The legislative counsel shall publish the register not less than 10 times per year but not more than once every 2 weeks.

3. The register must be provided to and maintained by:

(a) The secretary of state;

(b) The attorney general;

(c) The supreme court law library;

(d) The state library and archives;

(e) Each county clerk;

(f) Each county library; and

(g) The legislative counsel bureau.

4. Each agency shall reimburse the legislative counsel bureau and the state printing and micrographics division of the department of administration for the agency's

proportionate share of the costs related to preparing, publishing and distributing each edition of the register that includes information about a regulation of the agency.

5. 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.

6. The legislative counsel is immune from civil liability which may result from failure to include any information in the register.

Sec. 9. *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 section 8 of this act. 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 section 8 of this act.*

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.

Sec. 10. NRS 233B.0603 is hereby amended to read as follows:

233B.0603 1. The notice of intent to act upon a regulation must:

(a) Include a statement of:

(1) The need for and purpose of the proposed regulation.

(2) Either the terms or substance of the proposed regulation or a description of the subjects and issues involved.

(3) The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:

(I) Both adverse and beneficial effects; and

(II) Both immediate and long-term effects.

(4) The estimated cost to the agency for enforcement of the proposed regulation.

(5) Any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary.

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

(b) State each address at which the text of the proposed regulation may be inspected and copied.

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

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

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

(f) Be submitted to the legislative counsel bureau for inclusion in the register of administrative regulations created pursuant to section 8 of this act. The publication of a notice of intent to act upon a regulation in the register does not satisfy the requirements for notice set forth in paragraph (e) of this subsection.

2. The attorney general may by regulation prescribe the form of notice to be used . [, which must be distributed]

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

Sec. 11. NRS 233B.062 is hereby amended to read as follows:

233B.062 1. It is the policy of this state that every agency regulation be made easily accessible to the public and expressed in clear and concise language. To assist in carrying out this policy, every permanent regulation [shall] *must* be incorporated, excluding any forms used by the agency, any publication adopted by reference, the title, [citation of authority,] *any* signature and other formal parts, in the Nevada Administrative Code, and every emergency or temporary regulation [shall] *must* be distributed in the same manner as the Nevada Administrative Code.

2. The legislative commission may authorize inclusion in the Nevada Administrative Code of the regulations of an agency otherwise exempted from the requirements of this chapter.

Sec. 12. NRS 233B.064 is hereby amended to read as follows:

233B.064 1. An agency shall not adopt, amend or repeal a permanent regulation until it has received from the legislative counsel the approved or revised text of the regulation in the form to be adopted. The agency shall immediately notify the legislative counsel *in writing* of the date of adoption of each regulation adopted.

2. Upon adoption of any regulation, the agency, if requested to do so by an interested person, either [prior to] *before* adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

Sec. 13. NRS 233B.065 is hereby amended to read as follows:

233B.065 1. The legislative counsel shall prescribe the numbering, page size, style and typography of the Nevada Administrative Code. For convenience of reproduction in the code, he may prescribe the same matters in original agency regulations.

2. *The legislative counsel shall cause to be included in the Nevada Administrative Code the citation of authority pursuant to which the agency adopted each section of a permanent regulation.*

3. The legislative counsel shall prepare or cause the superintendent of the state printing and micrographics division of the department of administration to prepare such sets of the Nevada Administrative Code and of supplementary pages as are required from time to time. A set must be provided to and kept respectively:

(a) By the secretary of state as the master copy;

(b) By the state librarian for public use;

(c) By the attorney general for his use and that of the executive department; and

(d) By the legislative counsel for his use and that of the legislature.

The legislative commission may direct the preparation of additional sets or pages, or both, and specify the places where those sets or parts of sets are to be kept and the uses to be made of them.

[3.] *4.* The legislative counsel shall, without charge, provide:

(a) A complete set of the Nevada Administrative Code, upon request, to each person who is on July 1, 1985, or who becomes after that date a member of the legislature; and

(b) To each legislator who has so acquired the code, the replacement or supplementary pages which are issued during his term of office.

[4.] *5.* Each agency shall reimburse the legislative counsel bureau and the state printing and micrographics division of the department of administration for their respective costs in preparing and keeping current that agency's portion of the Nevada Administrative Code in the number of copies required for official and public use. If additional sets or pages are sold, the legislative commission shall set sale prices sufficient to recover at least the cost of production and distribution of the additional sets or pages.

Sec. 14. The amendatory provisions of sections 11 and 13 of this act apply only to permanent regulations adopted on or after July 1, 1997.

SUMMARY—Revises provisions relating to annual meeting of state and local governmental agencies which coordinate collection of certain fees, taxes or information. (BDR 22-239)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to the coordination of governmental functions; providing that the statutory requirements for open meetings apply to the annual meeting of state and local governmental agencies which coordinate their collection of certain fees, taxes or information; requiring the executive director of the department of taxation to submit a report; and providing other matters properly relating thereto.

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

Section 1. NRS 277.185 is hereby amended to read as follows:

277.185 1. The agencies of this state, and the local governments within this state, that collect taxes or fees from persons engaged in business, or require such persons to provide related information and forms, shall coordinate their collection of information and forms so that each enterprise is required to furnish information in as few separate reports as

possible. This section applies specifically, but is not limited, to the department of taxation, the employment security division of the department of employment, training and rehabilitation, the state department of conservation and natural resources, the state industrial insurance system, and the counties and cities that require a business license.

2. On or before October 1 of each year, the executive director of the department of taxation shall convene the heads, or persons designated by the respective heads, of the state agencies named in subsection 1 and the appropriate officers of the cities and counties that require a business license. The secretary of state, a representative of the Nevada Association of Counties and a representative of the Nevada League of Cities must be invited to attend the meeting. If he knows, or is made aware by persuasive information furnished by any enterprise required to pay a tax or fee or to provide information, that any other state or local agency needs to participate to accomplish the purpose set forth in subsection 1, he shall also invite the head of that agency or the appropriate officer of the local government, and the person so invited shall attend. The director of the department of information services shall assist in effecting the consolidation of the information and the creation of the forms.

3. The persons so assembled shall design and modify, as appropriate, the necessary joint forms for use during the ensuing fiscal year to accomplish the purpose set forth in subsection 1. If any dispute cannot be resolved by the participants, it must be referred to the Nevada tax commission for a decision that is binding on all parties.

4. On or before February 15 of each year, the executive director of the department of taxation shall submit a report to the director of the legislative counsel bureau for presentation to the legislature. The report must include a summary of the annual meeting held during the immediately preceding year and any recommendations for proposed legislation.

5. The provisions of chapter 241 of NRS apply to a meeting held pursuant to this section. The executive director of the department of taxation shall provide members of the staff of the department of taxation to assist in complying with the requirements of chapter 241 of NRS.

SUMMARY—Provides in skeleton form various changes to provisions governing telecommunication service. (BDR 58-240)

FISCAL NOTE: Effect on Local Government: Yes.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to telecommunication services; providing in skeleton form for a prohibition against a local government providing telecommunication service except in certain circumstances; providing that an interstate provider of telecommunication service is subject to the limitations on the amount of fees a city or county may charge certain public utilities; and providing other matters properly relating thereto.

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

Section 1. NRS 710.010 is hereby amended to read as follows:

710.010 1. [The] *If the public service commission of Nevada has determined that no other provider of telecommunication service can reasonably serve an area of a county, the* board of county commissioners of [any] *the* county is authorized, upon there being filed

with it a petition signed by two-thirds of the taxpayers of the county requesting the board so to do, to purchase or construct a [telephone] *telecommunication* line or lines within the limits of the county, if in the judgment of the board it would be to the interest of the county to do so, and to pay for the same out of the county general fund.

2. The title to any [telephone] *telecommunication* line or lines constructed or acquired by or under the authority of any board of county commissioners as provided in subsection 1 [shall] *must* be vested in the county and under its control and management.

3. Any [telephone] *telecommunication* system which is under the control and management of a county, notwithstanding the method used in acquiring the system, may include within its charges for service to each user an amount sufficient to provide a reasonable reserve to be used for the purpose of expansion of the [telephone] *telecommunication* facility.

Sec. 2. NRS 266.290 is hereby amended to read as follows:

266.290 1. [The] *Except as otherwise provided in subsection 2, the* city council may acquire or establish any public utility in the manner provided in this section.

2. *The city council may not acquire or establish a public utility that provides telecommunication service unless the public service commission of Nevada has determined that no other provider of telecommunication service can reasonably serve the residents of the city.*

3. The council shall enact an ordinance which must set forth fully and in detail:

(a) The public utility proposed to be acquired or established.

(b) The estimated cost thereof, as shown by the report approved by the council and mayor, of an engineer or body theretofore appointed by the council for that purpose.

(c) The proposed manner and terms of payment.

[3.] *4.* The ordinance must be published in full at least once a week for 4 successive weeks in a newspaper of general circulation published in the city.

[4.] *5.* At the first regular meeting of the council, or any adjournment thereof, after the completion of the publication, the council may proceed to enact an ordinance for that purpose which must conform in all respects to the terms and conditions of the previously published ordinance, unless a petition is presented to it, signed by not less than 15 percent of the qualified electors of the city, as shown by the last preceding registration list, and representing not less than 10 percent of the taxable property of the city as shown by the last preceding tax list or assessment roll, praying for placement on the ballot at a special election or at the next primary or general municipal election or primary or general state election of the question of whether the proposed ordinance is to be passed. Thereupon, no such proposed ordinance may be enacted or become effective for any purpose whatsoever, unless at a special election called and held for the purpose or the next primary or general municipal election or primary or general state election, a majority of the votes cast are for the ordinance.

Sec. 3. NRS 354.59881 is hereby amended to read as follows:

354.59881 As used in NRS 354.59881 to 354.59889, inclusive, unless the context otherwise requires:

1. "Customer" does not include any customer of a provider of a telecommunication service other than a retail customer.

2. "Fee" means a charge imposed upon a public utility for a business license, a franchise or a right of way over streets or other public areas, except any paid pursuant to the provisions of NRS 709.110, 709.230 or 709.270.

3. "Jurisdiction" means:

(a) In the case of a city, the corporate limits of the city.

(b) In the case of a county, the unincorporated area of the county.

4. "Public utility" means a person or local government that provides:

(a) Electric energy or gas, whether or not the person or local government is subject to regulation by the public service commission of Nevada;

(b) A telecommunication service, if the person or local government [holds a certificate of public convenience and necessity issued by the public service commission of Nevada and] derives intrastate *or interstate* revenue from the provision of that service to retail customers; or

(c) A commercial mobile radio service as that term is defined in 47 C.F.R. § 20.3 on July 5, 1995.

5. "Revenue" does not include [:

(a) Any] *any* proceeds from the interstate sale of natural gas to a provider of electric energy which holds a certificate of public convenience and necessity issued by the public service commission of Nevada.

[(b) Any revenue of a provider of a telecommunication service other than intrastate revenue.]

Sec. 4. Section 2.310 of the charter of the City of Las Vegas, being chapter 517, Statutes of Nevada 1983, as amended by chapter 345, Statutes of Nevada 1993, at page 1101, is hereby amended to read as follows:

Sec. 2.310 Powers of city council: Acquisition or establishment of city utility.

1. [The] *Except as otherwise provided in subsection 2, the* city council, on behalf of the city and in its name, may acquire, establish, hold, manage and operate, alone or with any other government or any instrumentality or subdivision of any government, any public utility in the manner which is provided in this section.

2. *The city council may not acquire, establish, hold, manage and operate, alone or with any other government or an instrumentality or subdivision of any government, a public utility that provides telecommunication service unless the public service commission of Nevada has determined that no other provider of telecommunication service can reasonably serve the residents of the city.*

3. The city council must adopt a resolution which sets forth fully and in detail:

(a) The public utility which is proposed to be acquired or established.

(b) The estimated cost of that utility, as shown in a recent report, which has been approved by the city council, of an engineer or consulting firm which had previously been appointed by the city council for that purpose.

(c) The proposed bonded indebtedness which must be incurred to acquire or establish that utility, the terms, amount and rate of interest of that indebtedness and the time within which, and the fund from which, that indebtedness is redeemable.

(d) That a public hearing on the advisability of acquiring the public utility will be held at the first regular meeting of the city council after the final publication of the resolution.

[3.] *4.* The resolution must be published in full at least once a week for 4 successive weeks.

[4.] *5.* At the first regular meeting of the city council, or any adjournment of that meeting, after the completion of the publication, the city council may, without an election, enact an ordinance for that purpose, which must conform in all respects to the terms and conditions of the resolution, unless, within 30 days after the final publication of the resolution, a petition is filed with the city clerk which

has been signed by a number of registered voters of the city which is not less than 15 percent of the registered voters of the city, as shown by the last preceding registration list, who own not less than 10 percent in assessed value of the taxable property within the city, as shown by the last preceding tax list or assessment roll, and which prays for the submission of the question of the enactment of the proposed ordinance at a special election or the next primary or general municipal election or primary or general state election. Upon the filing of that petition, the proposed ordinance may not be enacted or be effective for any purpose unless, at a special election or primary or general municipal election or primary or general state election, a majority of the votes which are cast in that election are cast in favor of the enactment of the ordinance.

[5.] *6.* A special election may be held only if the city council determines, by a unanimous vote, that an emergency exists. The determination made by the city council is conclusive unless it is shown that the city council acted with fraud or a gross abuse of discretion. An action to challenge the determination made by the city council must be commenced within 15 days after the city council's determination is final. As used in this subsection, "emergency" means any unexpected occurrence or combination of occurrences which requires immediate action by the city council to prevent or mitigate a substantial financial loss to the

city or to enable the city council to provide an essential service to the residents of the city.

[6.] *7.* If the proposed ordinance is adopted, without an election or as a result of an election, the city council may issue bonds to obtain revenue for acquiring or constructing systems, plants, works, instrumentalities and properties which are needed in connection with that public utility.