



NEVADA DEPARTMENT OF TAXATION
Division of Local Government Services

BUSINESS IMPACT STATEMENTS

GUIDELINES AND REFERENCES

Business Impact Statements

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BUSINESS IMPACT STATEMENTS

This package is to be utilized as a guide to assist local governments in the procedures for preparing business impact statements. It was prepared for the Committee on Local Government Finance (the Committee), pursuant to NRS 237.030 through 237.150. It has been updated to reflect amended language added by SB 488 (2005); and by the 2013 Legislative session. The package also includes a checklist for the use by local governmental entities to ensure compliance with statute and regulations.

The goals of the legislation were to require that a Business Impact Statement must be prepared and businesses must have an opportunity to review the statement before a local government takes certain action that has a significant economic burden on a business.

STATUTORY REFERENCES

ADOPTION OF RULES AFFECTING BUSINESSES

NRS 237.030 Definitions. As used in NRS 237.030 to 237.150, inclusive, unless the context otherwise requires, the words and terms defined in NRS 237.040, 237.050 and 237.060 have the meanings ascribed to them in those sections.

(Added to NRS by 1999, 2072; A 2001, 755)

NRS 237.040 “Business” defined. “Business” means a trade or occupation conducted for profit.

(Added to NRS by 1999, 2072)

NRS 237.050 “Local government” defined. “Local government” means a political subdivision of this state, including, without limitation, a city, county, irrigation district, water district or water conservancy district.

(Added to NRS by 1999, 2072)

NRS 237.060 “Rule” defined.

1. “Rule” means:

- (a) An ordinance by the adoption of which the governing body of a local government exercises legislative powers; and
- (b) An action taken by the governing body of a local government that imposes, increases or changes the basis for the calculation of a fee that is paid in whole or in substantial part by businesses.

2. “Rule” does not include:

- (a) An action taken by the governing body of a local government that imposes, increases or changes the basis for the calculation of:
 - (1) Special assessments imposed pursuant to chapter 271 of NRS;
 - (2) Impact fees imposed pursuant to chapter 278B of NRS;
 - (3) Fees for remediation imposed pursuant to chapter 540A of NRS;
 - (4) Taxes ad valorem;
 - (5) Sales and use taxes; **or**
 - (6) A fee that has been negotiated pursuant to a contract between a business and a local government.
- (b) An action taken by the governing body of a local government that approves, amends or augments the annual budget of the local government.
- (c) An ordinance adopted by the governing body of a local government pursuant to a provision of chapter 271, 271A, 278, 278A, 278B or 350 of NRS.
- (d) An ordinance adopted by or action taken by the governing body of a local government that authorizes or relates to the issuance of bonds or other evidence of debt of the local government.

(Added to NRS by 1999, 2072; A 2001, 755; 2005, 2370)

NRS 237.070 Applicability. The provisions of NRS 237.030 to 237.110, inclusive, do not apply with respect to a rule for which a local government does not have the authority to consider less stringent alternatives, including, without limitation, a rule that the local government is required to adopt pursuant to a federal or state statute or regulation or pursuant to a contract or agreement into which the local government has entered.

(Added to NRS by 1999, 2072)

NRS 237.080 Prerequisites to adoption of proposed rule.

1. Before a governing body of a local government adopts a proposed rule, the governing body or its designee must make a concerted effort to determine whether the proposed rule will impose a direct and significant economic burden upon a business or directly restrict the formation, operation or expansion of a business. The governing body or its designee must notify trade associations or owners and officers of businesses which are likely to be affected by the proposed rule that they may submit data or arguments to the governing body or its designee as to whether the proposed rule will:
 - (a) Impose a direct and significant economic burden upon a business; or
 - (b) Directly restrict the formation, operation or expansion of a business.Notification provided pursuant to this subsection must include the date by which the data or arguments must be received by the governing body or its designee, which must be at least 15 working days after the notification is sent.
2. After the period for submitting data or arguments specified in the notification provided pursuant to subsection 1 has expired, the governing body or its designee shall determine whether the proposed rule is likely to:
 - (a) Impose a direct and significant economic burden upon a business; or
 - (b) Directly restrict the formation, operation or expansion of a business.

If no data or arguments were submitted pursuant to subsection 1, the governing body or its designee shall make its determination based on any information available to the governing body or its designee.

3. If the governing body determines pursuant to subsection 2 that a proposed rule is likely to impose a direct and significant economic burden upon a business or directly restrict the formation, operation or expansion of the business, the governing body or its designee shall consider methods to reduce the impact of the proposed rule on businesses, including, without limitation:
 - (a) Simplifying the proposed rule;
 - (b) Establishing different standards of compliance for a business; and
 - (c) Modifying a fee or fine set forth in the rule so that a business is authorized to pay a lower fee or fine.
4. After making a determination pursuant to subsection 3, the governing body or its designee shall prepare a business impact statement.

(Added to NRS by 1999, 2072; A 2005, 1478; 2013, 2309)

NRS 237.090 Consideration of business impact statement at regular meeting held before meeting to adopt proposed rule required; inclusion of business impact statement on agenda before statement is available to public inspection is prohibited.

1. A business impact statement prepared pursuant to NRS 237.080 must be by the governing body at its regular meeting next preceding any regular meeting held to adopt the proposed rule. The business impact statement must set forth the following information:
 - (a) A description of the manner in which comment was solicited from affected businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.
 - (b) The estimated economic effect of the proposed rule on the businesses which it is to regulate, including, without limitation:
 - (1) Both adverse and beneficial effects; and
 - (2) Both direct and indirect effects.
 - (c) A description of the methods that the governing body of the local government or its designee considered to reduce the impact of the proposed rule on businesses and a statement regarding whether the governing body or its designee actually used any of those methods.
 - (d) The estimated cost to the local government for enforcement of the proposed rule.
 - (e) If the proposed rule provides for a new fee or increases an existing fee, the total annual amount the local government expects to collect and the manner in which the money will be used.
 - (f) If the proposed rule includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.
 - (g) The reasons for the conclusions regarding the impact of the proposed rule on businesses.
2. The county manager, city manager or other chief executive officer for the governing body of a local government shall sign the business impact statement certifying that, to the best of his or her knowledge or belief, the information contained in the statement was prepared properly and is accurate.
3. The governing body of a local government shall not include the adoption of a proposed rule on the agenda for a meeting unless a business impact statement has been prepared and is available for public inspection at the time the agenda is first posted.

(Added to NRS by 1999, 2073; A 2005, 1479; 2013, 2309)

NRS 237.100 Objection to adopted rule: Petition; procedure.

1. A business that is aggrieved by a rule adopted by the governing body of a local government on or after January 1, 2000, may object to all or a part of the rule by filing a petition with the governing body that adopted the rule within 30 days after the date on which the rule was adopted.
2. A petition filed pursuant to subsection 1 may be based on the following grounds:
 - (a) The governing body of the local government or its designee failed to prepare a business impact statement as required pursuant to NRS 237.080 and 237.090; or
 - (b) The business impact statement prepared by the governing body or its designee pursuant to NRS 237.080 and 237.090 is inaccurate, incomplete did not adequately consider or significantly underestimated the economic effect of the rule on businesses.
3. After receiving a petition pursuant to subsection 1, the governing body of a local government shall determine whether the petition has merit. If the governing body determines that the petition has merit, the governing body may take action to amend the rule to which the business objected.
4. Each governing body of a local government shall provide a procedure for an aggrieved business to object to a rule adopted by the governing body. The procedure must be filed with the clerk of the local government and available upon request at no charge.

(Added to NRS by 1999, 2073; A 2005, 1479; 2013, 2310)

NRS 237.110 Adoption of rule during emergency. The governing body of a local government may adopt a rule without complying with the provisions of NRS 237.030 to 237.150, inclusive, of this act if the governing body declares, by unanimous vote, that emergency action is necessary to protect public health and safety. Such a rule may remain in effect for not more than 6 months after the date on which it was adopted.
(Added to NRS by 1999, 2074)

NRS 237.150 Nevada tax commission authorized to adopt certain regulations and required to advise local governments regarding procedures and forms required for compliance at request of committee on local government finance. At the request of the committee on local government finance, the Nevada tax commission:

1. May adopt regulations interpreting the provisions of NRS 237.030 to 237.150, inclusive, that are recommended by the committee on local government finance.
2. Shall advise the officers of local governments regarding procedures and forms that are required for compliance with the provisions of NRS 237.030 to 237.150, inclusive, and any regulations adopted that interpret those provisions.

(Added to NRS by 2001, 755)

NRS 233B.060 Notice of adoption, amendment or repeal of permanent or temporary regulation; adoption of permanent regulation after adoption of temporary regulation.

1. Except as otherwise provided in subsection 2 of NRS 233B.061, before adopting, amending or repealing:
 - (a) A permanent regulation, the agency must, after receiving the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063, give at least 30 days notice of its intended action, unless a shorter period of notice is specifically permitted by statute.
 - (b) A temporary regulation, the agency must give at least 30 days notice of its intended action, unless a shorter period of notice is specifically permitted by statute.
2. Except as otherwise provided in subsection 3, if an agency has adopted a temporary regulation after notice and the opportunity for a hearing as provided in this chapter, it may adopt, after providing a second notice and the opportunity for hearing, a permanent regulation, but the language of the permanent regulation must first be approved or revised by the Legislative Counsel and the adopted regulation must be approved by the Legislative Commission or the Subcommittee to Review Regulations appointed pursuant to subsection 6 of NRS 233B.067.
3. If the Public Utilities Commission of Nevada has adopted a temporary regulation after notice and the opportunity for a hearing as provided in this chapter, it may adopt a substantively equivalent permanent regulation without further notice or hearing, but the language of the permanent regulation must first be approved or revised by the Legislative Counsel and the adopted regulation must be approved by the Legislative Commission or the Subcommittee to Review Regulations.

(Added to NRS by 1965, 964; A 1973, 621; 1975, 1157, 1413; 1977, 1386, 1547, 1549; 1981, 186; 1983, 1123, 1244; 1995, 130; 1997, 1973; 2007, 871; 2009, 2284)

NRS 233B.0603 Contents and form of notice of intent to adopt, amend or repeal regulation; solicitation of comments from public and affected business.

1. The notice of intent to act upon a regulation required pursuant to NRS 233B.060 must:
 - (a) Include:
 - (1) A statement of the need for and purpose of the proposed regulation.
 - (2) If the proposed regulation is a temporary regulation, either the terms or substance of the proposed regulation or a description of the subjects and issues involved.
 - (3) If the proposed regulation is a permanent regulation, a statement explaining how to obtain the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063.
 - (4) A statement of the estimated economic effect of the regulation on a 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.
 - (5) A statement identifying the methods used by the agency in determining the impact on a small business prepared pursuant to subsection 3 of NRS 233B.0608.
 - (6) The estimated cost to the agency for enforcement of the proposed regulation.
 - (7) 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.

- (8) If the regulation is required pursuant to federal law, a citation and description of the federal law.
 - (9) If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.
 - (10) The time when, the place where and the manner in which interested persons may present their views regarding the proposed regulation.
- (b) If the proposed regulation is a temporary regulation, state each address at which the text of the proposed regulation may be inspected and copied.
 - (c) Include an exact copy of the provisions of subsection 2 of NRS 233B.064.
 - (d) Include a statement indicating whether the regulation establishes a new fee or increases an existing fee.
 - (e) Be mailed to all persons who have requested in writing that they be placed upon a mailing list, which must be kept by the agency for that purpose.
 - (f) Be submitted to the Legislative Counsel Bureau for inclusion in the Register of Administrative Regulations created pursuant to NRS 233B.0653. The publication of a notice of intent to act upon a regulation in the register does not satisfy the requirements for notice set forth in paragraph (e).
2. The Attorney General may by regulation prescribe the form of notice to be used.
 3. In addition to distributing the notice to each recipient of the agency's regulations, the agency shall also solicit comment generally from the public and from businesses to be affected by the proposed regulation.
- (Added to NRS by 1983, 1124; A 1995, 130, 239; 1997, 184, 1390; 2005, 1479; 2007, 872)

NRS 233B.0608 Proposed or temporary regulation: Determination of impact on small businesses; consultation with owners and officers of small businesses; analysis of likely impact on small business; consideration of methods to reduce impact on small businesses; preparation of small business impact statement; requirement to include impact statement in submission to Legislative Counsel Bureau.

1. Before conducting a workshop for a proposed regulation pursuant to NRS 233B.061, an agency shall make a concerted effort to determine whether the proposed regulation is likely to:
 - (a) Impose a direct and significant economic burden upon a small business; or
 - (b) Directly restrict the formation, operation or expansion of a small business.
2. If an agency determines pursuant to subsection 1 that a proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business, the agency shall:
 - (a) Insofar as practicable, consult with owners and officers of small businesses that are likely to be affected by the proposed regulation.
 - (b) Conduct or cause to be conducted an analysis of the likely impact of the proposed regulation on small businesses. Insofar as practicable, the analysis must be conducted by the employee of the agency who is most knowledgeable about the subject of the proposed regulation and its likely impact on small businesses or by a consultant or other independent contractor who has such knowledge and is retained by the agency.
 - (c) Consider methods to reduce the impact of the proposed regulation on small businesses, including, without limitation:
 - (1) Simplifying the proposed regulation;
 - (2) Establishing different standards of compliance for a small business; and
 - (3) Modifying a fee or fine set forth in the regulation so that a small business is authorized to pay a lower fee or fine.
 - (d) Prepare a small business impact statement and make copies of the statement available to the public not less than 15 days before the workshop conducted and the public hearing held pursuant to NRS 233B.061. A copy of the statement must accompany the notice required by subsection 2 of NRS 233B.061 and the agenda for the public hearing held pursuant to this section.
3. The agency shall prepare a statement identifying the methods used by the agency in determining the impact of a proposed regulation on a small business and the reasons for the conclusions of the agency. The director, executive head or other person who is responsible for the agency shall sign the statement certifying that, to the best of his or her knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that the information contained in the statement is accurate.
4. Each adopted regulation which is submitted to the Legislative Counsel Bureau pursuant to NRS 233B.067 must be accompanied by a copy of the small business impact statement and the statement pursuant to subsection 3. If the agency revises a regulation after preparing the small business impact statement and the statement made pursuant to subsection 3, the agency must include an explanation of the revision and the effect of the change on small businesses.

(Added to NRS by 1999, 2070; A 2005, 1480; 2013, 2305)

NRS 233B.061 Proposed permanent or temporary regulation: Public comment; workshop; public hearing; applicability of Open Meeting Law.

1. All interested persons must be afforded a reasonable opportunity to submit data, views or arguments upon a proposed regulation, orally or in writing.
2. Before holding the public hearing required pursuant to subsection 3, an agency shall conduct at least one workshop to solicit comments from interested persons on one or more general topics to be addressed in a proposed regulation. Not less than 15 days before the workshop, the agency shall provide notice of the time and place set for the workshop:
 - (a) In writing to each person who has requested to be placed on a mailing list; and
 - (b) In any other manner reasonably calculated to provide such notice to the general public and any business that may be affected by a proposed regulation which addresses the general topics to be considered at the workshop.
- (3) With respect to substantive regulations, the 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 submission. The agency shall consider fully all written and oral submissions respecting the proposed regulation.
- (4) An agency shall not hold the public hearing required pursuant to subsection 3 on the same day that the agency holds the workshop required by subsection 2.
- (5) Each workshop and public hearing required pursuant to subsections 2 and 3 must be conducted in accordance with the provisions of chapter 241 of NRS.

(Added to NRS by 1983, 1125; A 1989, 571; 1997, 185; 2005, 1407; 2007, 873; 2009, 2284)

NRS 233B.063 Submission of proposed permanent regulation to Legislative Counsel; duties of Legislative Counsel; adoption of temporary regulation.

1. An agency that intends to adopt, amend or repeal a permanent regulation must deliver to the Legislative Counsel a copy of the proposed regulation. The Legislative Counsel shall examine and if appropriate revise the language submitted so that it is clear, concise and suitable for incorporation in the Nevada Administrative Code, but shall not alter the meaning or effect without the consent of the agency.
2. Unless the proposed regulation is submitted to the Legislative Counsel between July 1 of an even-numbered year and July 1 of the succeeding odd-numbered year, the Legislative Counsel shall deliver the approved or revised text of the regulation within 30 days after it is submitted to the Legislative Counsel. If the proposed or revised text of a regulation is changed before adoption, the agency shall submit the changed text to the Legislative Counsel, who shall examine and revise it if appropriate pursuant to the standards of subsection 1. Unless it submitted between July 1 of an even-numbered year and July 1 of the succeeding odd-numbered year, the Legislative Counsel shall return it with any appropriate revisions within 30 days. If the agency is a licensing board as defined in NRS 439B.225 and the proposed regulation relates to standards for the issuance or renewal of licenses, permits or certificates of registration issued to a person or facility regulated by the agency, the Legislative Counsel shall also deliver one copy of the approved or revised text of the regulation to the Legislative Commission of Health Care.
3. An agency may adopt a temporary regulation between August 1 of an even-numbered year and July 1 of the succeeding odd-numbered year without following the procedure required by this section and NRS 233B.064, but any such regulation expires by limitation on November of the odd-numbered year. A substantively identical permanent regulation may be subsequently adopted.
4. An agency may amend or suspend a permanent regulation between August 1 of an even-numbered year and July 1 of the succeeding odd-numbered year by adopting a temporary regulation in the same manner and subject to the same provisions as prescribed in subsection 3.

(Added to NRS by 1977, 1381; A 1989, 57, 621; 1991, 940; 1993, 514; 2003, 2005; 2007, 874; 2009, 531, 2285)

NRS 233B.067 Permanent regulation: Review by Legislative Commission or Subcommittee to Review Regulations; approval of or rejection by Commission or Subcommittee; appointment of members to Subcommittee.

1. After adopting a permanent regulation, the agency shall submit the informational statement prepared pursuant to NRS 233B.066 and one copy of each regulation adopted to the Legislative Counsel for review by the Legislative Commission to determine whether to approve the regulation. The Legislative Counsel shall endorse on the original and the copy of each adopted regulation the date of their receipt. The Legislative Counsel shall maintain the copy of the regulation in a file and make the copy available to the public inspection for 2 years.
2. If an agency submits an adopted regulation to the Legislative Counsel pursuant to subsection 1 that:
 - (a) The agency is required to adopt pursuant to a federal statute or regulation; and
 - (b) Exceeds the specific authority of the agency or sets forth requirements that are more stringent than a statute of this State,

it shall include a statement that adoption of the regulation is required by a federal statute or regulation. The statement must include the specific citation of the federal statute or regulation requiring such adoption.

3. Except as otherwise provided in subsection 4, the Legislative Commission shall:
 - (a) Review the regulation at its next regularly scheduled meeting if the regulation is received more than 10 working days before the meeting; or
 - (b) Refer the regulation for review to the Subcommittee to Review Regulations appointed pursuant to subsection 6.
4. If an agency determines that an emergency exists which requires a regulation of the agency submitted pursuant to subsection 1 to become effective before the next meeting of the Legislative Commission is scheduled to be held, the agency may notify the Legislative Counsel in writing of the emergency. Upon receipt of such a notice, the Legislative Counsel shall refer the regulation for review by the Subcommittee to Review Regulations. The Subcommittee shall meet to review the regulation as soon as practicable.
5. If the Legislative Commission, or the Subcommittee to Review Regulations if the regulation was referred, approves the regulation, the Legislative Counsel shall promptly file the regulation with the Secretary of State and notify the agency of the filing. If the Commission or Subcommittee objects to the regulation after determining that:
 - (a) If subsection 2 is applicable, the regulation is not required pursuant to a federal statute or regulation;
 - (b) The regulation does not conform to statutory authority; or
 - (c) The regulation does not carry out legislative intent;
 - (d) The small business impact statement is inaccurate, incomplete or did not adequately consider or significantly underestimated the economic effect of the regulation on small businesses; or
 - (e) The agency has not provided a satisfactory explanation of the need for the regulation in its informational statement as required pursuant to NRS 233B.066, or the informational statement is insufficient or incomplete,the Legislative Counsel shall attach to the regulation a written notice of the objection, including, if practicable, a statement of the reasons for the objection, and shall promptly return the regulation to the agency.
6. As soon as practicable after each regular legislative session, the Legislative Commission shall appoint a Subcommittee to Review Regulations consisting of at least three members or alternate members of the Legislative Commission.

(Added to NRS by 1977, 1546; A 1979, 223, 1357; 1981, 508; 1985, 256; 1987, 1581; 1993, 856; 1995, 132, 2581; 1997, 275, 1602; 1999, 2204; 2003, 2006; 2005, 2687; 2007, 876; 2009, 2287; 2011, 3674; 2013, 79, 2307)

NEVADA ADMINISTRATIVE CODE

NAC 233B.010 Form of notice of adoption, amendment or repeal of regulation. (NRS 233B.603)

The following form must be used by agencies, except those agencies specifically exempted by NRS 233B.039, to adopt, amend or repeal a regulation pursuant to chapter 233B of NRS:

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the(Adoption) (Amendment)
(Repeal).....of Regulations of the
.....(Name of Agency).....

The(Name of Agency).....will hold a public hearing at(time).....m, on the(day) of(month) of(year), at(Address of Hearing Room)..... The purpose of the hearing is to receive comments from all interested persons regarding the(Adoption) (Amendment) (Repeal)..... of regulations that pertain to chapter(Number of Chapter)..... of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

(In this space, state:

1. The need for and the purpose of the proposed regulation or amendment.
2. Either the terms or the substance of the regulations to be adopted, amended or repealed, 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:
 - (a) Both adverse and beneficial effects; and

- (b) Both immediate and long-term effects.
- 4. The estimated cost to the agency for enforcement of the proposed regulation.
- 5. A description of and citation to 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 proposed 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, as summary of such provisions.
- 8. Whether the proposed regulation establishes a new fee or increases an existing fee.

Persons wishing to comment upon the proposed action of(Name of Agency).... may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to(Name and Address of Agency)..... . Written submissions must be received by (Name of Agency)..... on or before (Date)..... . If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the (Name of Agency)..... may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be (Adopted) (Amended) (Repealed)..... will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be (Adopted) (Amended) (Repealed)..... will be available at (Name and Address of each Office of the Agency)..... and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by any interested person, either before adoption or within 30 days thereafter, will 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.

This notice of hearing has been posted at the following locations:

(Include in this space the locations at which the notice was posted pursuant to the provisions of chapters 233B and 241 of Nevada Revised Statutes.

[Att'y Gen., Form of Notice Reg. § 1.3, eff. 10-12-77] – (NAC A 8-20-90; 11-29-95; R138-97, 11-14-97)

PROCEDURES

RULES – EXERCISES OF LEGISLATIVE POWERS

1. What is a “Rule”? The starting point in determining whether or not the provisions of chapter 237 of NRS apply to an action of a governing body of a local government is to determine whether or not the proposed action to be adopted by the governing body is a “Rule.” As defined in statute, a “Rule” is an ordinance, by the adoption of which the governing body exercises its legislative powers, or an action by which a local government imposes, increases, and changes the basis of calculation of a fee that is paid in whole or in substantial part by businesses. Some points to consider:

- A list of actions the Committee believes is likely to be “Rules” is shown at Exhibit A.
- Typically actions that are of a transitory nature or an exercise of administrative, judicial or executive powers are not “Rules” under the provisions NRS 237.
- Changes to fees that are paid solely (or nearly exclusively) by individuals are not subject to the provisions of NRS 237.030 to 237.150, inclusive.
- A list of actions the Committee believes may not be “Rules” in most circumstances is shown at Exhibit B.

Definition of a rule in this guideline is consistent with the legislative intent on NRS 237.060 (1) (a) and (1) (b) may be interpreted as mutually exclusive.

2. Exemptions. Ordinances adopted under the following chapters of the NRS are exempt from the provisions of chapter 237 of NRS:

- Chapter 271 – Local Improvement Districts;
- Chapter 278 – Planning and Zoning;
- Chapter 278A – Planned Development;
- Chapter 278B – Impact Statements;
- Chapter 350 – Local Government Securities;

The following fees are exempt from the Act:

- Special assessments under 271 of NRS;
- Impact fees under Ch. 278B of NRS;
- Remediation fees under Ch. 540A of NRS; and
- Changes to property taxes and sales and use taxes are exempt from the provisions of NRS 237.

In addition, a Rule a local government is required to adopt pursuant to a federal or state law or regulation, or pursuant to a contract or agreement, is exempt from the requirements of chapter 237 of NRS.

A list of actions the Committee believes are exempt from the requirements of NRS 237 is shown at Exhibit C.

3. Other. In some cases, it may not be obvious whether a proposed ordinance is or is not an exercise of legislative powers or whether a fee is paid in whole or in substantial part by a business. In the case of questions in this area, local governments are encouraged to consult with their legal counsel.

DETERMINATION AS TO BUSINESS IMPACT

Once it is determined that a proposed action is a Rule subject to the provisions of NRS 237, the local government should make a determination as to whether the Rule will:

- impose a direct and significant economic burden upon a business; or
- directly restrict the formation, operation or expansion of any business.

Any Rule, which meets either of the above tests, is referred to as a proposed action with a “significant business impact.”

The staff of a local government should make this determination initially. In making this initial determination, it is suggested that staff complete part 2 of the sample Business Impact Statement (see Exhibit D). Depending on the staff’s initial determination, one of the following paths should be taken:

1. Staff Determines that the Rule has Significant Business Impact. If staff determines the proposed Rule has a significant business impact, staff should:
 - (A) Consult with (and provide written information about the proposal to) appropriate trade associations or owners and officers of businesses that are likely to be affected by the proposed Rule;
 - (B) Consider methods to reduce the impact on business by simplifying the proposed Rule, including simplifying the Rule, establishing different standards of compliance, and reducing any fee, or fine established in the Rule; and
 - (C) Prepare a Business Impact Statement and make copies available before the hearing on the Rule is held in accordance with NRS 237.090. If possible, the Business Impact Statement should be made available 2 weeks before the hearing.

A specimen Business Impact Statement and an example of a completed Business Impact Statement are shown at Exhibits D and E, respectively.

- (D) Schedule a hearing on the adoption of the Rule before the governing body or a committee thereof at a convenient time. For example, for ordinances for which a hearing is required pursuant to another provision of NRS (e.g., NRS 244.100, which requires hearings on county ordinances), the hearing on the Business Impact Statement could be at the same time as the hearing on the ordinance; and
- (E) Make the Business Impact Finding. The Business Impact Statement should be placed before the governing body and the governing body should consider adopting a written motion making a determination:
 - that the Rule does impose a direct and significant economic burden on a business or directly restrict the formation, operation or expansion of a business;
 - that a Business Impact Statement has prepared, accepted and is on file with the governing body; and
 - that the requirements of chapter 237 of NRS have been met by staff’s action.

The governing body’s adoption of this motion should be viewed as ratifying staff’s action.

The time of consideration of the motion may be different depending on whether the Rule is adopted in a one or two meeting process. The Committee suggests the following:

- for Rules whose adoption requires two meetings of the governing body (e.g., ordinances that are introduced at one meeting and adopted at a subsequent meeting), at the time the Rule is introduced, the Business Impact Statement should be placed before the governing body and the above described motion considered; or

- for Rules adopted in a single meeting, prior to the time of consideration of adoption of the Rule, at the same meeting as the one during which the Rule will be adopted or at an earlier meeting, the Business Impact Statement should be placed before the governing body and the above described motion should be considered as a separate motion or as a part of the motion adopting the Rule.
2. Staff Determines that the Rule DOES NOT have Significant Business Impact. If staff determines the Rule does not have a significant business impact, the governing body should consider adopting a written motion making a determination that the Rule does not impose a direct and significant economic burden on a business or directly restrict the formation, operation or expansion of a business.

The time of consideration of this motion may be different depending on whether the Rule is adopted in a one or two meeting process. The Committee suggests the following:

- for Rules whose adoption requires two meetings of the governing body (e.g., ordinances that are introduced at one meeting and adopted at a second meeting at the time the action is introduced) the above described motion should be considered at the time the Rule is introduced; or
- for Rules adopted in a single meeting, prior to the time of consideration of adoption of the Rule, at the same meeting during which the Rule will be adopted or at an earlier meeting, the above-described motion should be considered as a separate motion or as part of the motion adopting the rule.

OBJECTION PROCESS

Each governing body should adopt a process by which a business that would be impacted by a proposed Rule can object.

Sample process and sample objection petitions are shown at Exhibits F and G, respectively.

EMERGENCIES

A governing body may adopt a Rule without complying with provisions of NRS 237 if the governing body determines by a unanimous vote that an emergency action is necessary to protect the public health and safety. Such an action can remain in effect for not more than six (6) months after the date in which it was adopted. During that six (6) month period, the governing body should take steps required to comply with chapter 237 of NRS by determining whether or not the Rule has a significant business impact and if it does, follow the requirements of NRS 237.030 to 237.150, inclusive, as outlined above.

Exhibit A

INCLUDED RULES

The following actions, if done by ordinance, are ones the Committee believes in most circumstances are Rules and therefore covered by the requirements of NRS 237. If the governing body or staff is in doubt about any particular action, it should consult the local government's attorney as to whether the action is a Rule covered by NRS 237.030 to 237.150, inclusive, or not.

A. Ordinances

1. Business Licensing:

- (a) an ordinance changing requirements for obtaining a building license such as changes in provisions relating to exams, experience, or educational qualifications;
- (b) an ordinance establishing licensing regulations and standards for an occupation;
- (c) an ordinance changing duration of the license and continuing education requirements for license renewal;
- (d) an ordinance changing recording requirements or any information which the business must submit to the local government;
- (e) an ordinance revising the licensing and regulatory requirements that govern massage establishments; and
- (f) an ordinance establishing licensing and other regulatory requirements for acupuncture and reflexology.

2. Building Related:

- (a) an ordinance changing the uniform code;
- (b) an ordinance changing the procedure for obtaining a building permit or satisfying the code requirements; and
- (c) an ordinance amending the building code to require hot-water re-circulation pumps in all new housing.

3. Other:

- (a) an ordinance imposing a reporting requirement on a business;
- (b) an ordinance regulating sexual materials and the display of sexual materials;
- (c) an ordinance prohibiting the use of engine compression brakes within the city;
- (d) an ordinance limiting the hours during which the garbage may be collected;
- (e) an ordinance restricting the hours during which truck traffic may move in residential districts;
- (f) an ordinance establishing regulations for outdoor pay telephones on public and private property; and
- (g) an ordinance revising regulations pertaining to peddlers, solicitors, temporary merchants and mobile food vendors.

B. Fees. The following fees, the Committee believes, are paid in whole or substantial part by businesses and therefore increases to or changes in these fees generally will be a Rule, subject to the requirements of NRS 237:

1. Business License fees;
2. Building Permit fees;
3. Special Event fees for business special events;
4. Jet fuel taxes; Room taxes;
5. Utility connection fees or other utility rates and similar charges that apply to businesses;

C. NOTE THAT changing the method of calculating the above fees by requiring the amount of the fee be automatically indexed to inflation, for a multi-year period identified at the time of adoption, is likely a rule subject to the requirements of NRS 237.

Exhibit B

RULES NOT INCLUDED

Non-Legislative Action. The following actions are ones the Committee believes in most circumstances are not legislative “Rules” covered by NRS 237.030 to 237.110 even if done by ordinance, or are fees that are not paid in whole or in substantial part by businesses and are therefore not subject to the provisions of NRS 237. There may be some circumstances where these are covered, and if there is any doubt, staff should consult with the local government’s attorney as to whether the action is a “Rule” covered by the provisions of NRS 237 or not.

A. Ordinances.

1. approving a contract for a public work project between a local community and a contractor;
2. adopting an agreement between a local government and any utility relating to a location of a facility;
3. approving interlocal agreements between two or more governments which relate to service delivery;
4. approving any purchase by local government of supplies or services;
5. approving the investment of local government funds or selection of financial services vendors;
6. determining the type of equipment or services that are to be used by the government (for instance electronic data processing methodology, programs, etc.);
7. setting the time for a hearing;
8. awarding a contract;
9. appointing persons to advisory boards and committees;
10. disposing of an individual’s business licensing appeal;
11. setting a date for a special meeting; and
12. relating to specific personnel matters, including hiring and firing.

B. Fees.

Fees that are:

1. pool fees;
2. library fees;
3. lunch fees;
4. school fees;
5. golf fees;
6. other recreation fees;
7. animal control fees;
8. court fees;
9. parking fees; and
10. fees paid solely, or almost exclusively, by individuals.

Exhibit C

EXEMPT – ZONING, COMPREHENSIVE PLANNING, IMPACT FEES, LOCAL IMPROVEMENT DISTRICTS, AND REQUIRED BY FEDERAL OR STATE LAW

The following represent actions the Committee believes in most cases are Rules but are covered by the specific exceptions for certain types of legislative actions (NRS 237.060 (2)).

Note that whether or not an item is an exception, however, depends on whether it is an action taken under a particular chapter of NRS. Sometimes, some actions similar to one of the items listed below are adopted as a business license matter. Business license matters generally are not exempt. For example, a jurisdiction could license owners and operators of newspaper vending stands and one of the licensing requirements might specify where vending stands can be located; changes to this business licensing ordinance would not be exempt from the provisions of NRS 237. On the other hand, if the location of newspaper stands is governed by a zoning ordinance adopted under the provisions of Chapter 278 of NRS, a change in that zoning ordinance is exempt from the provisions of NRS 237.

A. Ordinances

1. adopting an ordinance imposing impact fees under Chapter 278 of NRS;
2. adopting a new zoning code under Chapter 278 of NRS;
3. amending zoning code under Chapter 278 of NRS to revise definitions pertaining to sexually oriented business;
4. revising zoning code rules specifying the maximum occupancy standards for residential dwellings;
5. clarifying the time period for the termination of certain non-conforming uses under Chapter 278 of NRS;
6. providing that a grading permit required under the zoning code will generally authorize the grading of no more than 120 acres at a time;
7. amending zoning code to update the requirements for open space in residential planned developments;
8. making a zoning change to establish limitations on the amount of turf that may be installed with the landscaping of new development;
9. amending the zoning code to revised the method of measuring minimum distances relative to liquor establishments;
10. allowing pawn shops in the C-M and M zoning districts; and then only means of special use permit;
11. taking action as a result of the mandate of state or federal law which does not go beyond what is mandated; and
12. amending the zoning code provisions regarding news racks to require permit identification tags, impose permit fees and adjust various location requirements;
13. relating to bonds or other local government debt;
14. pertaining to medium term financing under Ch. 350 of NRS;
15. creating an assessment district under Ch. 271 of NRS.

B. Fees.

1. Special Assessments under Ch. 271 of NRS;
2. Impact Fees under Ch. 278B of NRS;
3. Remediation fees under Ch. 540A of NRS;
4. Ad Valorem (property) Taxes;
5. Sales and Use Taxes; and
6. Fees negotiated in a contract between a business and a government, e.g., rental paid to rent space in a government owned building under a negotiated contract.

C. Note Also: That an action approving, amending or augmenting the annual budget is also exempt from the provisions of NRS 237.

Exhibit D

BUSINESS IMPACT STATEMENT (TEMPLATE)

The following business impact statement was prepared pursuant to NRS 237.090 to address the proposed impact of _____ (insert ordinance number, or description of proposed rule).

1. The following constitutes a description of the number of the manner in which comment was solicited from affected businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary. *(List all trade association or owners and officers of businesses likely to be affected by the proposed rule that have been consulted).*

2. The estimated economic effect of the proposed rule on businesses, including, without limitation, both adverse and beneficial effects, and both direct and indirect effects:

Adverse effects:

Beneficial effects:

Direct effects:

Indirect effects:

3. The following constitutes a description of the methods the local government considered to reduce the impact of the proposed rule on businesses ad a statement regarding whether any, and if so which, of these methods were used: *(Include whether the following was considered: simplifying the proposed rule; establishing different standards of compliance for a business; and if applicable, modifying a fee or fine set forth in the rule so that business could pay a lower fee or fine).*

4. The governing body estimates the annual cost to the local government for enforcement of the proposed rule is: \$ _____.

5. (If applicable, provide the following:) The proposed rule provides for a new fee or increases and existing fee and the total annual amount expected to be collected is: \$ _____.

6. The money generated by the new fee or increase in existing fee will be used by the local government to:

7. (If applicable, provide the following:) The proposed rule includes provisions that duplicate or are more stringent than federal, state or local standards regulating the same activity. The following explains when such duplicative or more stringent provisions are necessary:

Exhibit E

BUSINESS IMPACT STATEMENT (COMPLETED)

The following business impact statement was prepared pursuant to NRS 237.090 to address the proposed impact of Proposed Rule Ordinance No. 02-099 which would increase the current basic building permit fee applicable to residential dwelling construction from \$32.00 dollars per 100 square feet to proposed \$36.00 dollars per 100 square feet.

1. The following constitutes a description of the number of the manner in which comment was solicited from affected businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary. (*List all trade association or owners and officers of businesses likely to be affected by the proposed rule that have been consulted*).

The draft of proposed Rule Ordinance No. 02-099 was mailed to the Home Builders Association, the Chamber of Commerce, the Nevada Taxpayers Association, the Nevada Retail Association, and other interested parties who are a part of the permanent mailing list. Of those interested parties, only the Home Builders responded. They did not oppose the increase.

2. The estimated economic effect of the proposed rule on the businesses, including, without limitation, both adverse and beneficial effects, and both direct and indirect effects:

Adverse effects: Currently the average levy is \$484.00 dollars, which represents an approximately 1,500 square foot-housing unit. The change from \$32 to \$36 represents a 12.5% increase. The adverse effect is anticipated to be an increase of \$60.00 dollars per average housing unit.

Beneficial effects: It is estimated that this increase in the residential tax will add an additional \$400,000 dollars per year to pay the costs of processing building permits, conducting related reviews and making related inspections.

Direct effects: The passage of this measure will directly increase the fees paid to construct new dwelling units and will result in additional money for building permit processing.

Indirect effects: The passing of this measure is sure to have indirect effects, however at this time, those effects cannot be quantified.

3. The following constitutes a description of the methods that the governing body of the local government considered to reduce the impact of the proposed rule on businesses and a statement regarding whether any, and if so which, of these methods were used: (*Include whether the following was considered: simplifying the proposed rule; establishing different standards of compliance for a business; and if applicable, modifying a fee or fine set forth in the rule so that a business could pay a lower fee or fine*).

The governing body of the local government considered raising the residential building permit fee approximately 1 year ago, but chose to postpone as the governing body felt that it should seek alternative means of financing costs of processing building permit and related reviews and inspections. It attempted to pass legislation during the 2001 session of the Nevada State Legislature to provide other sources of financing, however, the Legislature chose not to make this change. At this time, there does not appear to be any other reasonable method to achieve the funding increases that building permit processing requires.

4. The governing body estimates the annual cost to the local government for enforcement of the proposed rule is: The proposed change in the residential construction tax presents no significant foreseeable or anticipated cost or decrease in the costs related to collection.
5. (If applicable, provide the following:) The proposed rule provides for a new fee or increase in an existing fee and the total amount the local government expects to collect is: \$400,000.
6. The money generated by the new fee or increase in existing fee will be used by the local government for processing building permits and making related reviews and inspections.
7. (If applicable, provide the following:) The proposed rule includes provisions, which duplicate or are more stringent than federal, state or local standards regulating the same activity. The following explains why such duplicative or more stringent provisions are necessary.

The proposed change is not duplicative, or more stringent than existing federal, state or local standards.

Exhibit F

OBJECTION PROCESS

1. If a business believes it is aggrieved by a rule (as defined in NRS 237.060) adopted by the governing body, the business may object by filing a petition in writing with the clerk/secretary of the local government at _____.
2. The governing body will accept such petitions for a period of thirty (30) days following approval of the subject Rule for one of the following reasons:
 - (a) The governing body failed to prepare a business impact statement as required pursuant to Chapter 237 of NRS; or
 - (b) The business impact statement prepared by the governing body did not consider or significantly underestimated the economic effect of the ordinance or rule on the business.
3. Upon receipt of the petition, the clerk/secretary will forward a copy to the local government's attorney, the department/agency that generated the Rule, and the local government's manager/chief executive.
4. Staff will consider the merits of the petition and forward a recommendation to the governing body.
5. The governing body will determine if the petition has merit and direct staff accordingly.
6. A sample petition is shown at Exhibit G.

Exhibit G

PETITION OBJECTING TO ADOPTION OF RULE

NRS 237.100 provides that a business that is aggrieved by an ordinance, regulation, resolution or other type of instrument through which a governing body exercises legislative powers, except pursuant to Chapter 271, 278, 278A and 278B of NRS (herein a "Rule") adopted by the governing body may object to all or a part of the Rule by filing a petition. This petition form is provided to assist those who wish to object. The petition must be filed with the clerk/secretary of the local government at _____, _____, Nevada, within thirty (30) days after the date on which the Rule was adopted.

Petitioner's name: *(Include name of the business or proposed business and whether it is a corporation, partnership, sole proprietorship, fictitious name):*

Petitioner's type of business:

Petitioner's business location:

Street

City

County

State

Petitioner's mailing address: (If different from above):

Petitioner's telephone number: (____) ____ - _____

Petitioner is objecting to the following:

(Identify the Rule to which petitioner is objecting and state whether it is an ordinance, resolution, regulation or other instrument. Please give number if known.)

The basis of the petitioner's objection is as follows:

- The governing body failed to prepare a business impact statement; or
- The business impact statement did not consider or significantly underestimated the economic effect of the adopted Rule.

The nature of the impact of the above rule on the petitioner's business is as follows: (Attach additional sheets if necessary):

By signing below, the signor of this petition certifies he is a duly authorize representative of the business identified above and has been authorized by that business to file this petition on behalf of the business.

Business Name

By: _____

Title of Signor: _____