

ASSEMBLY BILL NO. 371—ASSEMBLYMEN DUNCAN, HICKEY,
HARDY, PAUL ANDERSON; ELLISON, HANSEN, LIVERMORE,
OSCARSON, STEWART AND WOODBURY

MARCH 18, 2013

Referred to Committee on Government Affairs

SUMMARY—Provides for the designation and operation of charter agencies. (BDR 18-718)

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

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

AN ACT relating to state government; authorizing the Governor to designate any department within the Executive Department of the State Government as a charter agency; providing that all employees of a department designated as a charter agency become employees in the unclassified service of the State; requiring the Governor and the director of a charter agency to enter into annual performance agreements; requiring the removal of the director of a charter agency under certain circumstances; authorizing the payment of bonuses to the director and employees of a charter agency; providing a limitation on annual appropriations to a charter agency; authorizing a charter agency to retain for its use certain unobligated balances remaining at the end of a fiscal year; exempting a charter agency from certain provisions governing state buildings, state purchasing and public works; authorizing a charter agency to propose a waiver or suspension of an administrative regulation, subject to approval or disapproval by the Legislative Commission; requiring certain reporting concerning a charter agency to the Legislature or Legislative Commission; and providing other matters properly relating thereto.



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Legislative Counsel's Digest:

1 **Section 2** of this bill: (1) authorizes the Governor to designate any department
2 within the Executive Department of the State Government as a charter agency; (2)
3 provides that all employees of a department designated as a charter agency become
4 employees in the unclassified service of the State; (3) requires the Governor and the
5 director of a charter agency to enter into an annual performance agreement which
6 sets forth measurable organizational and individual goals for the director in key
7 operational areas of the charter agency; (4) requires the Governor to remove the
8 director of a charter agency for misconduct relating to the operation of the charter
9 agency or failure to achieve the performance goals set forth in the performance
10 agreement; and (5) authorizes the payment of annual bonuses to the director and
11 employees of a charter agency based on performance. **Section 3** of this bill
12 provides a limitation on annual appropriations to a charter agency and authorizes a
13 charter agency to retain for its use certain unobligated balances remaining at the
14 end of each fiscal year. **Section 4** of this bill exempts a charter agency from
15 provisions governing state buildings, state purchasing and public works. **Section 5**
16 of this bill authorizes a charter agency to propose a waiver or suspension of an
17 administrative regulation and provides that no such waiver or suspension may
18 become effective unless approved by the Legislative Commission. **Section 6** of this
19 bill requires: (1) a charter agency to report annually to the Legislature or
20 Legislative Commission concerning the expenditures and actions of the charter
21 agency; and (2) the Governor to report to the Legislature concerning the operation
22 and effectiveness of this bill. **Section 8** of this bill provides for the prospective
23 expiration of this bill on June 30, 2019.

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

1 **Section 1.** Chapter 232 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 6, inclusive, of this
3 act.

4 **Sec. 2. 1. *The Governor, by executive order, may designate***
5 ***any department established by law within the Executive***
6 ***Department of the State Government as a charter agency. Such a***
7 ***designation must not become effective until the next following***
8 ***July 1.***

9 ***2. Upon the effective date of the designation of a department***
10 ***as a charter agency, all employees of the department become***
11 ***employees in the unclassified service of the State.***

12 ***3. Before the date on which the designation becomes***
13 ***effective, and before the beginning of each subsequent fiscal year,***
14 ***the Governor and the director of the designated charter agency***
15 ***shall enter into a performance agreement which must set forth***
16 ***measurable organizational and individual goals for the director in***
17 ***key operational areas of the charter agency. The period of the***
18 ***performance agreement must be the next following fiscal year.***

19 ***4. The charter agency shall:***

20 ***(a) On or before July 1 of each fiscal year, provide a copy of***
21 ***the performance agreement to the Director of the Legislative***



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Counsel Bureau for transmittal to the Legislative Commission; and

(b) Make a copy of the performance agreement available on an Internet website maintained by the charter agency during the period of the performance agreement.

5. The Governor shall remove the director of the charter agency for:

(a) Misconduct relating to the operation of the charter agency; or

(b) Failure to achieve the performance goals set forth in a performance agreement.

6. Notwithstanding any provision of law to the contrary:

(a) The Governor may authorize the payment of an annual bonus to the director of the charter agency in an amount of not more than 50 percent of the annual salary of the director, based upon the Governor's evaluation of the performance of the director in relation to the goals set forth in a performance agreement; and

(b) The director of the charter agency may authorize the payment of an annual bonus to any employee of the charter agency in a total amount of not more than 50 percent of the annual salary of the employee, based upon the director's evaluation of the performance of the employee.

Sec. 3. 1. Appropriations from the State General Fund for the operation of a department that is designated as a charter agency for any fiscal year must not exceed 80 percent of such appropriations for the fiscal year immediately preceding the effective date of the designation. Any such appropriation that is inconsistent with the provisions of this subsection is void to the extent of the inconsistency.

2. Notwithstanding any provision of law to the contrary, 50 percent of all remaining balances of appropriations made for the operation of a department that is designated as a charter agency for each fiscal year that are not obligated for expenditure on or before June 30 of that fiscal year:

(a) Must not revert to the State General Fund; and

(b) Must be retained by the charter agency and may be used for any purpose within the scope of the responsibilities of the charter agency.

Sec. 4. Notwithstanding any provision of law to the contrary, the provisions of chapters 331, 333, 333A, 334, 336 and 338 of NRS do not apply to a charter agency or any action taken by a charter agency.

Sec. 5. 1. A charter agency may, in accordance with the provisions of this section, propose the waiver or suspension with regard to the charter agency of the provisions of any



1 *administrative rule or regulation adopted in this State if the*
2 *charter agency determines that:*

3 *(a) Strict compliance with the administrative rule or regulation*
4 *will negatively affect the ability of the charter agency to perform*
5 *its duties in a more cost-efficient manner;*

6 *(b) The application of the administrative rule or regulation*
7 *poses an undue financial hardship on the charter agency;*

8 *(c) The waiver or suspension of the administrative rule or*
9 *regulation will not prejudice the substantial legal rights of any*
10 *person;*

11 *(d) If the administrative rule or regulation provides protection*
12 *of the public health, safety or welfare, substantially similar*
13 *protection of the public health, safety or welfare will be provided*
14 *by a means other than that prescribed in the administrative rule or*
15 *regulation; and*

16 *(e) The waiver or suspension will not result in a violation of*
17 *due process, a violation of any statute of this State or any federal*
18 *law, or a violation of the Nevada Constitution or the Constitution*
19 *of the United States.*

20 *2. The charter agency shall draft the waiver or suspension in*
21 *such a manner as to provide the narrowest exception possible to*
22 *the provisions of the administrative rule or regulation and may*
23 *place any condition on the waiver or suspension that the charter*
24 *agency determines necessary to protect the public health, safety*
25 *and welfare. The charter agency shall submit the proposed waiver*
26 *or suspension to the Director of the Legislative Counsel Bureau*
27 *for transmittal to the Legislative Commission for consideration at*
28 *its next scheduled meeting.*

29 *3. No proposed waiver or suspension of an administrative*
30 *rule or regulation may become effective unless the waiver or*
31 *suspension is approved by the Legislative Commission. The*
32 *Legislative Commission may approve a proposed waiver or*
33 *suspension of an administrative rule or regulation if the*
34 *Legislative Commission:*

35 *(a) Makes the determinations set forth in subsection 1; and*

36 *(b) Determines that the suspension or waiver will not result in*
37 *an adverse financial effect on this State.*

38 *4. The Legislative Commission shall provide written notice to*
39 *the charter agency of its approval or disapproval of the proposed*
40 *waiver or suspension, and the reasons therefor.*

41 *5. The charter agency shall post a copy of the written notice*
42 *on an Internet website maintained by the charter agency.*

43 *6. A waiver or suspension approved pursuant to this section*
44 *must be for a period not to exceed 12 months or until June 30,*
45 *2019, whichever occurs first. The renewal of a waiver or*



suspension must be approved in the same manner as the initial waiver or suspension.

Sec. 6. *1. Each charter agency shall, on or before December 31 of each year, submit a written report which summarizes the activities of the charter agency for the immediately preceding fiscal year to the Director of the Legislative Counsel Bureau for transmittal to the Legislature, if submitted during an even-numbered year, or the Legislative Commission, if submitted during an odd-numbered year. The report must include information:*

(a) Concerning the expenditures of the charter agency and the number of persons employed by the charter agency during the immediately preceding fiscal year; and

(b) Relating to the actions taken by the charter agency pursuant to the provisions of sections 2 to 6, inclusive, of this act.

2. On or before February 1, 2019, the Governor shall submit a written report to the Director of the Legislative Counsel Bureau for transmittal to the Legislature on the operation and effectiveness of sections 2 to 6, inclusive, of this act and the costs and savings associated with the implementation of those sections. The report must include any recommendations concerning extending the prospective expiration of the provisions of sections 2 to 6, inclusive, of this act beyond June 30, 2019.

Sec. 7. NRS 284.140 is hereby amended to read as follows:

284.140 The unclassified service of the State consists of the following state officers or employees in the Executive Department of the State Government who receive annual salaries for their services:

1. Members of boards and commissions, and heads of departments, agencies and institutions required by law to be appointed.

2. Except as otherwise provided in NRS 223.085, 223.570 and 223.600, all persons required by law to be appointed by the Governor or heads of departments or agencies appointed by the Governor or by boards.

3. All employees other than clerical in the Office of the Attorney General and the State Public Defender required by law to be appointed by the Attorney General or the State Public Defender.

4. Except as otherwise provided by the Board of Regents of the University of Nevada pursuant to NRS 396.251, officers and members of the teaching staff and the staffs of the Agricultural Extension Department and Experiment Station of the Nevada System of Higher Education, or any other state institution of learning, and student employees of these institutions. Custodial, clerical or maintenance employees of these institutions are in the



1 classified service. The Board of Regents of the University of
2 Nevada shall assist the Administrator in carrying out the provisions
3 of this chapter applicable to the Nevada System of Higher
4 Education.

5 5. *All employees of a department designated as a charter*
6 *agency pursuant to section 2 of this act.*

7 6. All other officers and employees authorized by law to be
8 employed in the unclassified service.

9 **Sec. 8.** This act becomes effective on July 1, 2013, and expires
10 by limitation on June 30, 2019.

