

ASSEMBLY BILL NO. 390—ASSEMBLYMAN
ELLIOT ANDERSON

MARCH 20, 2017

JOINT SPONSOR: SENATOR WOODHOUSE

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to state governmental
administration. (BDR 23-102)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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

AN ACT relating to state governmental administration; prohibiting a state agency from taking certain actions against a state officer or employee who makes certain disclosures of improper governmental action to the Legislature; creating the Spending and Government Efficiency Commission for the Nevada System of Higher Education; prescribing the membership and duties of the Commission; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill prohibits a state agency which is the employer of a state officer or employee from depriving the state officer or employee of his or her employment or taking any other reprisal or retaliatory action or other threatening or intimidating action against the state officer or employee for disclosing: (1) that false information has been disseminated by or on behalf of the employing agency; or (2) evidence of illegal activity of the agency. **Section 1** also prohibits a state agency from taking any of those actions against one state officer or employee in an attempt to affect the behavior of another state officer or employee with respect to that person's communications or attempted communications with the Legislature or a Legislator.

Existing law encourages state officers and employees to disclose improper governmental action and protects the rights of a state officer or employee who makes such a disclosure. (NRS 281.611-281.671) **Section 2** of this bill provides that making a false statement or misrepresentation of facts to the Legislature or to a Legislator is an improper governmental action if the statement or misrepresentation



is made by a state officer or employee or local governmental officer or employee in the performance of the officer's or employee's official duties.

Section 4 of this bill creates the Spending and Government Efficiency Commission for the Nevada System of Higher Education. The Commission is required to make periodic recommendations to the Governor identifying: (1) areas in which the public costs of the System may be reduced; (2) areas in which increased efficiencies in the System may be found; and (3) any means by which the System may be improved.

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

Section 1. Chapter 281 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a state officer or employee employed by a state agency communicates or seeks to communicate with the Legislature or a Legislator to disclose that false information has been disseminated by or on behalf of the state agency or disclose evidence of illegal activity of the state agency, it is unlawful for the state agency to:

(a) Deprive the state officer or employee of employment with the state agency or take any reprisal or retaliatory action against the state officer or employee as a consequence of the actual or attempted communication;

(b) Threaten the state officer or employee that the actual or attempted communication will result in the termination of employment or in any reprisal or retaliatory action against the state officer or employee; or

(c) Directly or indirectly intimidate, threaten, coerce, command or influence or attempt to intimidate, threaten, coerce, command or influence the state officer or employee in an effort to interfere with or prevent such actual or attempted communication by the state officer or employee.

2. It is unlawful for a state agency to:

(a) Deprive or threaten to deprive a state officer or employee of employment with the state agency;

(b) Take or threaten to take any reprisal or retaliatory action against a state officer or employee; or

(c) Directly or indirectly intimidate, threaten, coerce, command or influence or attempt to intimidate, threaten, coerce, command or influence a state officer or employee,

↪ in an attempt to affect the behavior of another state officer or employee who may communicate or may seek to communicate with the Legislature or a Legislator to disclose that false information has been disseminated by or on behalf of the state agency or disclose evidence of illegal activity of the state agency.



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3. Any provision in a contract of employment or other agreement between a state agency and a state officer or employee that conflicts with, or purports to waive, the provisions of this section is against public policy and is void and unenforceable.

4. For the purposes of this section:

(a) "Legislator" means any:

(1) Current or former member of the Senate or Assembly of the State of Nevada; or

(2) Other person who takes or performs any actions within the sphere of legitimate legislative activity that would be protected if taken or performed by any member of the Senate or Assembly, including, without limitation, any such actions taken or performed by any current or former officer or employee of the Legislature.

(b) "Legislature" means:

(1) The Legislature or either House;

(2) Any committee of either House;

(3) Any joint committee of both Houses; or

(4) Any other committee, subcommittee, commission, agency or entity created or authorized by the Legislature to perform legislative functions at the direction of the Legislature, including, without limitation, the Legislative Commission, the Legislative Counsel Bureau or any other agency or entity of the Legislative Department of State Government.

(c) "State agency" means an agency, bureau, board, commission, department, division, officer, employee or agent or any other unit of the Executive Department, including, without limitation, the Nevada System of Higher Education and the Board of Regents of the University of Nevada.

Sec. 2. NRS 281.611 is hereby amended to read as follows:

281.611 As used in NRS 281.611 to 281.671, inclusive, unless the context otherwise requires:

1. "Improper governmental action" means any action taken by a state officer or employee or local governmental officer or employee in the performance of the officer's or employee's official duties, whether or not the action is within the scope of employment of the officer or employee, which is:

(a) In violation of any state law or regulation;

(b) If the officer or employee is a local governmental officer or employee, in violation of an ordinance of the local government;

(c) An abuse of authority;

(d) Of substantial and specific danger to the public health or safety; ~~for~~

(e) A gross waste of public money ~~H~~; or

(f) A false statement or misrepresentation of facts to the Legislature or a Legislator.



2. *“Legislator” means any:*

(a) *Current or former member of the Senate or Assembly of the State of Nevada; or*

(b) *Other person who takes or performs any actions within the sphere of legitimate legislative activity that would be protected if taken or performed by any member of the Senate or Assembly, including, without limitation, any such actions taken or performed by any current or former officer or employee of the Legislature.*

3. *“Legislature” means:*

(a) *The Legislature or either House;*

(b) *Any committee of either House;*

(c) *Any joint committee of both Houses; or*

(d) *Any other committee, subcommittee, commission, agency or entity created or authorized by the Legislature to perform legislative functions at the direction of the Legislature, including, without limitation, the Legislative Commission, the Legislative Counsel Bureau or any other agency or entity of the Legislative Department of State Government.*

4. “Local government” means a county in this State, an incorporated city in this State and Carson City.

~~13-1~~ 5. “Local governmental employee” means any person who performs public duties under the direction and control of a local governmental officer for compensation paid by or through a local government.

~~14-1~~ 6. “Local governmental officer” means a person elected or appointed to a position with a local government that involves the exercise of a local governmental power, trust or duty, including:

(a) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of local governmental policy;

(b) The expenditure of money of a local government; and

(c) The enforcement of laws and regulations of the State or a local government.

~~15-1~~ 7. “Reprisal or retaliatory action” includes:

(a) The denial of adequate personnel to perform duties;

(b) Frequent replacement of members of the staff;

(c) Frequent and undesirable changes in the location of an office;

(d) The refusal to assign meaningful work;

(e) The issuance of letters of reprimand or evaluations of poor performance;

(f) A demotion;

(g) A reduction in pay;

(h) The denial of a promotion;

(i) A suspension;



- 1 (j) A dismissal;
- 2 (k) A transfer;
- 3 (l) Frequent changes in working hours or workdays; or
- 4 (m) If the employee is licensed or certified by an occupational
- 5 licensing board, the filing with that board, by or on behalf of the
- 6 employer, of a complaint concerning the employee,
- 7 ➔ if such action is taken, in whole or in part, because the state
- 8 officer or employee or local governmental officer or employee
- 9 disclosed information concerning improper governmental action.

10 ~~16.1~~ 8. *"State" includes, without limitation, the Nevada*

11 *System of Higher Education and the Board of Regents of the*

12 *University of Nevada.*

13 9. "State employee" means any person who performs public

14 duties under the direction and control of a state officer for

15 compensation paid by or through the State.

16 ~~17.1~~ 10. "State officer" means a person elected or appointed to

17 a position with the State which involves the exercise of a state

18 power, trust or duty, including:

19 (a) Actions taken in an official capacity which involve a

20 substantial and material exercise of administrative discretion in the

21 formulation of state policy;

22 (b) The expenditure of state money; and

23 (c) The enforcement of laws and regulations of the State.

24 **Sec. 3.** (Deleted by amendment.)

25 **Sec. 4.** 1. There is hereby created the Spending and

26 Government Efficiency Commission for the Nevada System of

27 Higher Education. The Commission consists of 12 members

28 appointed as follows:

29 (a) Six members appointed by the Governor;

30 (b) Two members appointed by the Governor from a list of six

31 recommendations provided by the Senate Majority Leader;

32 (c) Two members appointed by the Governor from a list of six

33 recommendations provided by the Speaker of the Assembly;

34 (d) One member appointed by the Governor from a list of three

35 recommendations provided by the Senate Minority Leader; and

36 (e) One member appointed by the Governor from a list of three

37 recommendations provided by the Assembly Minority Leader.

38 ➔ To the extent practicable, in appointing members to the

39 Commission, the Governor shall ensure that the membership reflects

40 the ethnic, gender and geographic diversity of this State.

41 2. The Governor shall appoint the Chair of the Commission

42 from among its members.

43 3. The members of the Commission must be persons with

44 expertise and experience in the operation of a business. A member

45 may not have a personal or professional conflict of interest that



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1 would prevent the member from fully and objectively discharging
2 his or her duties. A member may not derive any financial benefit
3 from the work of the Commission, other than the general benefit
4 received by all residents of this State from increased efficiency in
5 the Nevada System of Higher Education.

6 4. Members of the Commission serve at the pleasure of the
7 Governor.

8 5. Members of the Commission serve without salary or
9 compensation for their travel or per diem expenses.

10 6. A majority of the members of the Commission constitutes a
11 quorum for the transaction of business, and a majority of those
12 members present at any meeting is sufficient for any official action
13 taken by the Commission.

14 7. The Commission shall comply with the provisions of chapter
15 241 of NRS and all meetings must be conducted in accordance with
16 that chapter.

17 8. The Department of Education shall provide administrative
18 support to the Commission.

19 9. The Commission may appoint committees or subcommittees
20 of its members to study the Nevada System of Higher Education and
21 any means by which the Nevada System of Higher Education may
22 be improved.

23 10. The Commission shall, not less frequently than every 90
24 days, meet and:

25 (a) Submit recommendations to the Governor identifying:

26 (1) Areas in which the public costs of the Nevada System of
27 Higher Education may be reduced;

28 (2) Areas in which increased efficiencies in the Nevada
29 System of Higher Education may be found; and

30 (3) Means by which the Nevada System of Higher Education
31 may be improved; or

32 (b) If the Commission does not have any recommendations,
33 submit to the Governor a status report regarding the activities of the
34 Commission for the period from the date on which the Commission
35 last submitted to the Governor a status report or recommendations to
36 the date on which the status report is submitted.

37 11. The Commission shall, on or before February 1, 2019,
38 prepare and submit a final report to the Governor and the Director of
39 the Legislative Counsel Bureau for transmittal to the 80th Session of
40 the Nevada Legislature concerning its findings and
41 recommendations.

42 **Sec. 5.** 1. This act becomes effective on July 1, 2017.

43 2. Section 4 of this act expires by limitation on June 30, 2019.

