

ASSEMBLY BILL NO. 390—COMMITTEE
ON GOVERNMENT AFFAIRS

MARCH 23, 2023

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing the Nevada Administrative Procedure Act. (BDR 18-849)

FISCAL NOTE: Effect on Local Government: No.
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 governmental administration; making the Department of Corrections subject to the Nevada Administrative Procedure Act; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law enacts the Nevada Administrative Procedure Act, which
2 establishes procedural requirements for the adoption of regulations and adjudication
3 of contested cases by certain agencies of the Executive Department of the State
4 Government. (Chapter 233B of NRS) With certain exceptions, existing law
5 exempts the Department of Corrections from the requirements prescribed by the
6 Act. (NRS 209.221, 209.2473, 233B.039) **Section 1** of this bill removes this
7 exemption and makes the Department subject to the Act. **Sections 2 and 3** of this
8 bill make conforming changes to remove the provisions of existing law that
9 required certain regulations of the Department to be adopted pursuant to the
10 requirements of the Act since **section 1** requires all regulations of the Department
11 to be adopted pursuant to the requirements of the Act.

12 **Section 4** of this bill provides that the regulations currently adopted by the
13 Department remain in effect until replaced by new regulations adopted by the
14 Department in accordance with the Act.

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

1 **Section 1.** NRS 233B.039 is hereby amended to read as
2 follows:

3 233B.039 1. The following agencies are entirely exempted
4 from the requirements of this chapter:



1 (a) The Governor.

2 (b) ~~[(e)] Except as otherwise provided in NRS 209.221 and~~
3 ~~209.2473, the Department of Corrections.~~

4 ~~[(e)]~~ The Nevada System of Higher Education.

5 ~~[(d)]~~ (c) The Office of the Military.

6 ~~[(e)]~~ (d) The Nevada Gaming Control Board.

7 ~~[(f)]~~ (e) Except as otherwise provided in NRS 368A.140 and
8 463.765, the Nevada Gaming Commission.

9 ~~[(g)]~~ (f) Except as otherwise provided in NRS 425.620, the
10 Division of Welfare and Supportive Services of the Department of
11 Health and Human Services.

12 ~~[(h)]~~ (g) Except as otherwise provided in NRS 422.390, the
13 Division of Health Care Financing and Policy of the Department of
14 Health and Human Services.

15 ~~[(i)]~~ (h) Except as otherwise provided in NRS 533.365, the
16 Office of the State Engineer.

17 ~~[(j)]~~ (i) The Division of Industrial Relations of the Department
18 of Business and Industry acting to enforce the provisions of
19 NRS 618.375.

20 ~~[(k)]~~ (j) The Administrator of the Division of Industrial
21 Relations of the Department of Business and Industry in
22 establishing and adjusting the schedule of fees and charges for
23 accident benefits pursuant to subsection 2 of NRS 616C.260.

24 ~~[(l)]~~ (k) The Board to Review Claims in adopting resolutions to
25 carry out its duties pursuant to NRS 445C.310.

26 ~~[(m)]~~ (l) The Silver State Health Insurance Exchange.

27 ~~[(n)]~~ (m) The Cannabis Compliance Board.

28 2. Except as otherwise provided in subsection 5 and NRS
29 391.323, the Department of Education, the Board of the Public
30 Employees' Benefits Program and the Commission on Professional
31 Standards in Education are subject to the provisions of this chapter
32 for the purpose of adopting regulations but not with respect to any
33 contested case.

34 3. The special provisions of:

35 (a) Chapter 612 of NRS for the adoption of an emergency
36 regulation or the distribution of regulations by and the judicial
37 review of decisions of the Employment Security Division of the
38 Department of Employment, Training and Rehabilitation;

39 (b) Chapters 616A to 617, inclusive, of NRS for the
40 determination of contested claims;

41 (c) Chapter 91 of NRS for the judicial review of decisions of the
42 Administrator of the Securities Division of the Office of the
43 Secretary of State; and



1 (d) NRS 90.800 for the use of summary orders in contested
2 cases,

3 ➔ prevail over the general provisions of this chapter.

4 4. The provisions of NRS 233B.122, 233B.124, 233B.125 and
5 233B.126 do not apply to the Department of Health and Human
6 Services in the adjudication of contested cases involving the
7 issuance of letters of approval for health facilities and agencies.

8 5. The provisions of this chapter do not apply to:

9 (a) Any order for immediate action, including, but not limited
10 to, quarantine and the treatment or cleansing of infected or infested
11 animals, objects or premises, made under the authority of the State
12 Board of Agriculture, the State Board of Health, or any other agency
13 of this State in the discharge of a responsibility for the preservation
14 of human or animal health or for insect or pest control;

15 (b) An extraordinary regulation of the State Board of Pharmacy
16 adopted pursuant to NRS 453.2184;

17 (c) A regulation adopted by the State Board of Education
18 pursuant to NRS 388.255 or 394.1694;

19 (d) The judicial review of decisions of the Public Utilities
20 Commission of Nevada;

21 (e) The adoption, amendment or repeal of policies by the
22 Rehabilitation Division of the Department of Employment, Training
23 and Rehabilitation pursuant to NRS 426.561 or 615.178;

24 (f) The adoption or amendment of a rule or regulation to be
25 included in the State Plan for Services for Victims of Crime by the
26 Department of Health and Human Services pursuant to
27 NRS 217.130;

28 (g) The adoption, amendment or repeal of rules governing the
29 conduct of contests and exhibitions of unarmed combat by the
30 Nevada Athletic Commission pursuant to NRS 467.075;

31 (h) The adoption, amendment or repeal of regulations by the
32 Director of the Department of Health and Human Services pursuant
33 to NRS 447.335 to 447.350, inclusive;

34 (i) The adoption, amendment or repeal of standards of content
35 and performance for courses of study in public schools by the
36 Council to Establish Academic Standards for Public Schools and the
37 State Board of Education pursuant to NRS 389.520;

38 (j) The adoption, amendment or repeal of the statewide plan to
39 allocate money from the Fund for a Resilient Nevada created by
40 NRS 433.732 established by the Department of Health and Human
41 Services pursuant to paragraph (b) of subsection 1 of NRS 433.734;
42 or

43 (k) The adoption or amendment of a data request by the
44 Commissioner of Insurance pursuant to NRS 687B.404.



1 6. The State Board of Parole Commissioners is subject to the
2 provisions of this chapter for the purpose of adopting regulations but
3 not with respect to any contested case.

4 **Sec. 2.** NRS 209.221 is hereby amended to read as follows:

5 209.221 1. The Offenders' Store Fund is hereby created as a
6 special revenue fund. All money received for the benefit of
7 offenders through contributions, and from other sources not
8 otherwise required to be deposited in another fund, must be
9 deposited in the Offenders' Store Fund.

10 2. The Director shall:

11 (a) Keep, or cause to be kept, a full and accurate account of the
12 Fund;

13 (b) Submit reports to the Board relative to money in the Fund as
14 may be required from time to time; and

15 (c) Submit a monthly report to the offenders of the amount of
16 money in the Fund by posting copies of the report at locations
17 accessible to offenders generally or by delivery of copies to the
18 appropriate representatives of the offenders if any are selected.

19 3. Except as otherwise provided in subsections 4 to 10,
20 inclusive, money in the Offenders' Store Fund, except interest
21 earned upon it, must be expended for the welfare and benefit of all
22 offenders or for any other purpose authorized by the Legislature.

23 4. If necessary to cover a shortfall of money in the Prisoners'
24 Personal Property Fund, the Director may, after obtaining the
25 approval of the Interim Finance Committee, authorize the State
26 Controller to transfer money from the Offenders' Store Fund to the
27 Prisoners' Personal Property Fund, and the State Controller shall
28 make the transfer.

29 5. If an offender has insufficient money in his or her individual
30 account in the Prisoners' Personal Property Fund to repay or defray
31 costs assessed to the offender pursuant to NRS 209.246, the Director
32 shall authorize the State Controller to transfer sufficient money from
33 the Offenders' Store Fund to the appropriate account in the State
34 General Fund to pay costs remaining unpaid, and the State
35 Controller shall make the transfer. Any money so transferred must
36 be accounted for separately. The Director shall cause the Offenders'
37 Store Fund to be reimbursed from the offender's individual account
38 in the Prisoners' Personal Property Fund, as money becomes
39 available.

40 6. If the Department incurs costs related to state property that
41 has been willfully damaged, destroyed or lost or incurs costs related
42 to medical examination, diagnosis or treatment for an injury to an
43 offender, the Director may authorize the State Controller to transfer
44 money from the Offenders' Store Fund to the appropriate account in
45 the State General Fund to repay or defray those costs if:



1 (a) The Director has reason to believe that an offender caused
2 the damage, destruction, loss or injury; and

3 (b) The identity of the offender is unknown or cannot be
4 determined by the Director with reasonable certainty.

5 ➔ The State Controller shall make the transfer if authorized by the
6 Director. Any money transferred must be accounted for separately.
7 If the identity of the offender is determined after money has been
8 transferred, the Director shall cause the Offenders' Store Fund to be
9 reimbursed from the offender's individual account in the Prisoners'
10 Personal Property Fund, as money becomes available.

11 7. The Director may, with approval of the Board, establish by
12 regulation criteria for a reasonable deduction from money credited
13 to the Offenders' Store Fund to repay or defray the costs relating to
14 the operation and maintenance of the offenders' store, coffee shop,
15 gymnasium and correctional officers' salaries for visitation posts
16 where they exist in each facility. ~~[Any regulations adopted pursuant
17 to this subsection must be adopted in accordance with the provisions
18 of chapter 233B of NRS.]~~

19 8. The Director may, with approval of the Board, establish by
20 regulation a charge on the purchase of electronic devices by
21 offenders to defray the costs relating to the operation of the devices.
22 The Director shall utilize the proceeds collected from the charge
23 established for operation of the devices to offset the energy costs of
24 the facilities within the Department. ~~[Any regulations adopted
25 pursuant to this subsection must be adopted in accordance with the
26 provisions of chapter 233B of NRS.]~~

27 9. The Director may, with approval of the Board, establish by
28 regulation a charge on the use by offenders of videoconferencing
29 equipment for conducting visits to defray the costs relating to the
30 operation and maintenance of the equipment. The Director shall
31 utilize the proceeds collected from the charge established for the
32 operation and maintenance of the equipment to offset the costs of
33 operating and maintaining the videoconferencing equipment and
34 correctional officers' salaries for posts for conducting visits by
35 videoconference where the posts exist in each facility.

36 10. If an offender who has been assigned to a center for the
37 purpose of making restitution is returned to an institution for
38 committing an infraction of the regulations of the Department and
39 the center has not been fully compensated for the cost of providing
40 the offender with housing, transportation, meals, or medical or
41 dental services at the center, the Director may authorize the State
42 Controller to transfer money from the Offenders' Store Fund to the
43 appropriate account in the State General Fund to repay or defray
44 those costs. The State Controller shall make the transfer if
45 authorized by the Director. Any money transferred must be



1 accounted for separately. The Director shall cause the Offenders'
2 Store Fund to be reimbursed from the offender's individual account
3 in the Prisoners' Personal Property Fund, as money becomes
4 available.

5 11. If an offender has insufficient money in his or her
6 individual account in the Prisoners' Personal Property Fund to repay
7 or defray costs assessed to the offender pursuant to NRS 209.246,
8 the offender shall sign a statement under penalty of perjury
9 concerning his or her financial situation. Such a statement must
10 include, but is not limited to, the following information:

- 11 (a) The value of any interest the offender has in real estate;
- 12 (b) The value of the personal property of the offender;
- 13 (c) The assets in any bank account of the offender; and
- 14 (d) The employment status of the offender.

15 12. The statement required by subsection 11 must also
16 authorize the Department to access any relevant document, for the
17 purpose of verifying the accuracy of the information provided by the
18 offender pursuant to this section, including, but not limited to,
19 information regarding any bank account of the offender, information
20 regarding any bank account held in trust for the offender and any
21 federal income tax return, report or withholding form of the
22 offender.

23 13. An offender who conceals assets from the Department or
24 provides false or misleading information on a statement prepared
25 pursuant to this section is guilty of a gross misdemeanor.

26 14. A person who aids or encourages an offender to conceal
27 assets from the Department or to provide false or misleading
28 information on a statement prepared pursuant to this section is guilty
29 of a gross misdemeanor.

30 **Sec. 3.** NRS 209.2473 is hereby amended to read as follows:

31 209.2473 ~~[-]~~ The Department may adopt regulations
32 necessary to carry out the provisions of NRS 209.247 and 209.463.

33 ~~[-] Any regulations adopted pursuant to this section must be~~
34 ~~adopted in accordance with the provisions of chapter 233B of NRS.~~

35 **Sec. 4.** 1. Any current regulations adopted by the
36 Department of Corrections, except for those regulations adopted by
37 the Department pursuant to NRS 209.221 and 209.2473, must
38 remain in effect until regulations are adopted in accordance with the
39 provisions of chapter 233B of NRS to replace those regulations, and
40 as required pursuant to subsection 2.

41 2. The Department of Corrections shall, as soon as practicable,
42 adopt regulations in accordance with the provisions of chapter 233B
43 of NRS to replace the current regulations adopted by the
44 Department, except for those regulations adopted by the Department
45 pursuant to NRS 209.221 and 209.2473.



1 **Sec. 5.** This act becomes effective on July 1, 2023.

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