

ASSEMBLY BILL NO. 60—COMMITTEE ON
LEGISLATIVE OPERATIONS AND ELECTIONS

(ON BEHALF OF THE COMMISSION ON ETHICS)

PREFILED DECEMBER 20, 2014

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions relating to ethics in government.
(BDR 23-309)

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 ethics in government; revising provisions relating to ethics in government; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under the Nevada Ethics in Government Law, the requirement to disclose a
2 conflict of interest applies to public officers as well as public employees, but the
3 requirements relating to abstention only apply to public officers. (NRS 281A.420)
4 **Section 2** of this bill extends to public employees the requirements relating to
5 abstention from taking action on matters on which a public employee has a
6 prescribed conflict of interest.

7 Under the Ethics Law, the Commission on Ethics is required to determine
8 whether it has jurisdiction over a request for an opinion. (NRS 281A.280; NAC
9 281A.360, 281A.405) The Ethics Law also imposes time limits on the Commission
10 to carry out certain duties. With respect to a request for an opinion from a public
11 officer or employee regarding his or her own past, present or future conduct as a
12 public officer or employee, the Commission is required to render an opinion within
13 45 days after receiving the request, unless the public officer or employee waives the
14 time limit. With respect to a request for an opinion regarding the conduct of a
15 public officer or employee from a third party or on the Commission’s own motion,
16 the Executive Director of the Commission is required to complete an investigation
17 of and make a recommendation regarding the request within 70 days after receipt of
18 the request, unless the public officer or employee waives the time limit. (NRS
19 281A.440) To accommodate the time required for the Commission to determine
20 whether it has jurisdiction concerning a request for an opinion, **section 3** of this bill
21 moves the commencement of these time limits until the date on which the
22 Commission determines that it has jurisdiction concerning the request instead of the
23 date on which the request was received by the Commission.



24 The Ethics Law prohibits the Commission from initiating a request for an
25 opinion based on an anonymous complaint. (NRS 281A.440) **Section 3** removes
26 this prohibition, thereby allowing the Commission to initiate a request for an
27 opinion if it has sufficient information to do so based on an anonymous complaint.

28 Under the Ethics Law, the investigative file relating to a request for an opinion,
29 which includes any information obtained by the Commission during the course of
30 an investigation related to the request, is confidential. (NRS 281A.440) **Section 3**
31 clarifies that the investigative file includes information provided to or obtained by
32 an investigatory panel of Commission members or the staff of the Commission.

33 Under the Ethics Law, the Commission is required to consider various
34 aggravating and mitigating factors when determining whether a violation of the
35 Ethics Law is a willful violation and, if so, the amount of any civil penalty to be
36 imposed for such a willful violation of the Ethics Law. (NRS 281A.475) **Section 4**
37 of this bill makes consideration of these factors discretionary instead of mandatory
38 by the Commission.

39 The Ethics Law includes a "safe harbor" provision, whereby any act or failure
40 to act by a current or former public officer or employee is deemed to not be a
41 willful violation if the public officer or employee establishes by sufficient evidence
42 that: (1) the public officer or employee relied in good faith upon the advice of the
43 legal counsel retained by his or her public body, agency or employer; and (2) the
44 act or failure to act by the public officer or employee was not contrary to a prior
45 published opinion issued by the Commission. (NRS 281A.480) **Section 5** of this
46 bill clarifies that to qualify for protection under the "safe harbor" provision, the
47 advice of the legal counsel must have been: (1) requested by and provided to the
48 public officer or employee before he or she acted or failed to act; and (2) based on a
49 determination by the legal counsel that the act or failure to act would not be
50 contrary to any prior published opinion issued by the Commission.

51 With certain exceptions, the Ethics Law imposes a 1-year "cooling off" period
52 on former public officers and employees during which they are prohibited from
53 soliciting or accepting employment from a business or industry over which they
54 had regulatory authority in some capacity. However, the Ethics Law authorizes a
55 current or former public officer or employee to request an opinion from the
56 Commission to obtain relief from the strict application of the prohibition. The
57 Ethics Law also authorizes a current public officer or employee to request the
58 Commission to render an opinion providing guidance regarding his or her past,
59 present or future conduct as a public officer or employee, which is known as a first-
60 party request for an opinion. Under the Ethics Law, a request for an opinion
61 regarding the application of the "cooling-off" prohibition or a first-party request
62 for an opinion, as well as any opinion rendered by the Commission in response to such
63 a request and any motion, determination, evidence or record of a hearing relating to
64 such a request, are confidential unless, in part, the public officer or employee
65 discloses the request for an opinion, opinion or related motion, evidence or record.
66 (NRS 281A.440, 281A.550) **Sections 3 and 6** of this bill allow a public officer or
67 employee who made such a request to disclose the request for the opinion, the
68 opinion and any motion, evidence or record related to the opinion to certain persons
69 without waiving the confidentiality of the request for the opinion, opinion and any
70 related motion, evidence or record.



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

1 **Section 1.** NRS 281A.170 is hereby amended to read as
2 follows:

3 281A.170 “Willful violation” means a violation where ~~f~~

4 ~~—1. The~~ *the* public officer or employee:

5 ~~[(a)]~~ 1. Acted intentionally and knowingly; or

6 ~~[(b)]~~ 2. Was in a situation where this chapter imposed a duty to
7 act and the public officer or employee intentionally and knowingly
8 failed to act in the manner required by this chapter. ~~f; and~~

9 ~~—2. The Commission determines, after applying the factors set
10 forth in NRS 281A.475, that the public officer’s or employee’s act
11 or failure to act resulted in a sanctionable violation of this chapter.]~~

12 **Sec. 2.** NRS 281A.420 is hereby amended to read as follows:

13 281A.420 1. Except as otherwise provided in this section, a
14 public officer or employee shall not approve, disapprove, vote,
15 abstain from voting or otherwise act upon a matter:

16 (a) Regarding which the public officer or employee has accepted
17 a gift or loan;

18 (b) In which the public officer or employee has a significant
19 pecuniary interest; or

20 (c) Which would reasonably be affected by the public officer’s
21 or employee’s commitment in a private capacity to the interests of
22 another person,

23 ↳ without disclosing information concerning the gift or loan,
24 significant pecuniary interest or commitment in a private capacity to
25 the interests of the person that is sufficient to inform the public of
26 the potential effect of the action or abstention upon the person who
27 provided the gift or loan, upon the public officer’s or employee’s
28 significant pecuniary interest, or upon the person to whom the
29 public officer or employee has a commitment in a private capacity.
30 Such a disclosure must be made at the time the matter is considered.
31 If the public officer or employee is a member of a body which
32 makes decisions, the public officer or employee shall make the
33 disclosure in public to the chair and other members of the body. If
34 the public officer or employee is not a member of such a body and
35 holds an appointive office, the public officer or employee shall
36 make the disclosure to the supervisory head of the public officer’s or
37 employee’s organization or, if the public officer holds an elective
38 office, to the general public in the area from which the public officer
39 is elected.

40 2. The provisions of subsection 1 do not require a public
41 officer to disclose:



1 (a) Any campaign contributions that the public officer reported
2 in a timely manner pursuant to NRS 294A.120 or 294A.125; or

3 (b) Any contributions to a legal defense fund that the public
4 officer reported in a timely manner pursuant to NRS 294A.286.

5 3. Except as otherwise provided in this section, in addition to
6 the requirements of subsection 1, a public officer *or employee* shall
7 not vote *or otherwise act* upon or advocate the passage or failure of,
8 but may otherwise participate in the consideration of, a matter with
9 respect to which the independence of judgment of a reasonable
10 person in the public officer's *or employee's* situation would be
11 materially affected by:

12 (a) The public officer's *or employee's* acceptance of a gift or
13 loan;

14 (b) The public officer's *or employee's* significant pecuniary
15 interest; or

16 (c) The public officer's *or employee's* commitment in a private
17 capacity to the interests of another person.

18 4. In interpreting and applying the provisions of subsection 3:

19 (a) It must be presumed that the independence of judgment of a
20 reasonable person in the public officer's *or employee's* situation
21 would not be materially affected by the public officer's *or*
22 *employee's* acceptance of a gift or loan, significant pecuniary
23 interest or commitment in a private capacity to the interests of
24 another person where the resulting benefit or detriment accruing to
25 the public officer ~~or~~ *or employee*, or if the public officer *or*
26 *employee* has a commitment in a private capacity to the interests of
27 another person, accruing to the other person, is not greater than that
28 accruing to any other member of any general business, profession,
29 occupation or group that is affected by the matter. The presumption
30 set forth in this paragraph does not affect the applicability of the
31 requirements set forth in subsection 1 relating to the disclosure of
32 the acceptance of a gift or loan, significant pecuniary interest or
33 commitment in a private capacity to the interests of another person.

34 (b) The Commission must give appropriate weight and proper
35 deference to the public policy of this State which favors the right of
36 a public officer *or employee* to perform the duties for which the
37 public officer was elected or appointed *or the duties which the*
38 *public employee was assigned* and to vote or otherwise act upon a
39 matter, provided the public officer *or employee* has properly
40 disclosed the public officer's *or employee's* acceptance of a gift or
41 loan, significant pecuniary interest or commitment in a private
42 capacity to the interests of another person in the manner required by
43 subsection 1. Because abstention ~~{by a public officer}~~ disrupts the
44 normal course of representative government *and governmental*
45 *operation* and deprives the public ~~{and the public officer's~~



1 ~~constituents~~] of a voice in governmental affairs, the provisions of
2 this section are intended to require abstention only in clear cases
3 where the independence of judgment of a reasonable person in the
4 public officer's *or employee's* situation would be materially affected
5 by the public officer's *or employee's* acceptance of a gift or loan,
6 significant pecuniary interest or commitment in a private capacity to
7 the interests of another person.

8 5. Except as otherwise provided in NRS 241.0355, if a public
9 officer declares to the body or committee in which the vote is to be
10 taken that the public officer will abstain from voting because of the
11 requirements of this section, the necessary quorum to act upon and
12 the number of votes necessary to act upon the matter, as fixed by
13 any statute, ordinance or rule, is reduced as though the member
14 abstaining were not a member of the body or committee.

15 6. The provisions of this section do not, under any
16 circumstances:

17 (a) Prohibit a member of a local legislative body from
18 requesting or introducing a legislative measure; or

19 (b) Require a member of a local legislative body to take any
20 particular action before or while requesting or introducing a
21 legislative measure.

22 7. The provisions of this section do not, under any
23 circumstances, apply to State Legislators or allow the Commission
24 to exercise jurisdiction or authority over State Legislators. The
25 responsibility of a State Legislator to make disclosures concerning
26 gifts, loans, interests or commitments and the responsibility of a
27 State Legislator to abstain from voting upon or advocating the
28 passage or failure of a matter are governed by the Standing Rules of
29 the Legislative Department of State Government which are adopted,
30 administered and enforced exclusively by the appropriate bodies of
31 the Legislative Department of State Government pursuant to Section
32 6 of Article 4 of the Nevada Constitution.

33 8. As used in this section, "public officer" and "public
34 employee" do not include a State Legislator.

35 **Sec. 3.** NRS 281A.440 is hereby amended to read as follows:

36 281A.440 1. The Commission shall render an opinion
37 interpreting the statutory ethical standards and apply the standards to
38 a given set of facts and circumstances within 45 days after
39 ~~receiving~~ *determining that it has jurisdiction concerning* a
40 request ~~is~~ *received*, on a form prescribed by the Commission, from
41 a public officer or employee who is seeking guidance on questions
42 which directly relate to the propriety of the requester's own past,
43 present or future conduct as a public officer or employee, unless the
44 public officer or employee waives the time limit. The public officer
45 or employee may also request the Commission to hold a public



1 hearing regarding the requested opinion. If a requested opinion
2 relates to the propriety of the requester's own present or future
3 conduct, the opinion of the Commission is:

4 (a) Binding upon the requester as to the requester's future
5 conduct; and

6 (b) Final and subject to judicial review pursuant to NRS
7 233B.130, except that a proceeding regarding this review must be
8 held in closed court without admittance of persons other than those
9 necessary to the proceeding, unless this right to confidential
10 proceedings is waived by the requester.

11 2. The Commission may render an opinion interpreting the
12 statutory ethical standards and apply the standards to a given set of
13 facts and circumstances:

14 (a) Upon request from a specialized or local ethics committee.

15 (b) Except as otherwise provided in this subsection, upon
16 request from a person, if the requester submits:

17 (1) The request on a form prescribed by the Commission;

18 and

19 (2) All related evidence deemed necessary by the Executive
20 Director and the investigatory panel to make a determination of
21 whether there is just and sufficient cause to render an opinion in the
22 matter.

23 (c) Upon the Commission's own motion regarding the propriety
24 of conduct by a public officer or employee. ~~[(The Commission shall
25 not initiate proceedings pursuant to this paragraph based solely upon
26 an anonymous complaint.)]~~

27 ↪ The Commission shall not render an opinion interpreting the
28 statutory ethical standards or apply those standards to a given set of
29 facts and circumstances if the request is submitted by a person who
30 is incarcerated in a correctional facility in this State.

31 3. Upon ~~receipt of~~ *a determination by the Commission that*
32 *it has jurisdiction concerning* a request for an opinion ~~[by the~~
33 ~~Commission]~~ or upon the motion of the Commission pursuant to
34 subsection 2, the Executive Director shall investigate the facts and
35 circumstances relating to the request to determine whether there is
36 just and sufficient cause for the Commission to render an opinion in
37 the matter. The Executive Director shall notify the public officer or
38 employee who is the subject of the request and provide the public
39 officer or employee an opportunity to submit to the Executive
40 Director a response to the allegations against the public officer or
41 employee within 30 days after the date on which the public officer
42 or employee received the notice of the request. The purpose of the
43 response is to provide the Executive Director with any information
44 relevant to the request which the public officer or employee believes
45 may assist the Executive Director and the investigatory panel in



1 conducting the investigation. The public officer or employee is not
2 required in the response or in any proceeding before the
3 investigatory panel to assert, claim or raise any objection or defense,
4 in law or fact, to the allegations against the public officer or
5 employee and no objection or defense, in law or fact, is waived,
6 abandoned or barred by the failure to assert, claim or raise it in the
7 response or in any proceeding before the investigatory panel.

8 4. The Executive Director shall complete the investigation and
9 present a written recommendation relating to just and sufficient
10 cause, including, without limitation, the specific evidence or reasons
11 that support the recommendation, to the investigatory panel within
12 70 days after the ~~receipt of~~ *determination by the Commission that*
13 *it has jurisdiction concerning the request* or *after* the motion of the
14 Commission for the request, *as applicable*, unless the public officer
15 or employee waives this time limit.

16 5. Within 15 days after the Executive Director has provided the
17 written recommendation in the matter to the investigatory panel
18 pursuant to subsection 4, the investigatory panel shall conclude the
19 investigation and make a final determination regarding whether
20 there is just and sufficient cause for the Commission to render an
21 opinion in the matter, unless the public officer or employee waives
22 this time limit. The investigatory panel shall not determine that there
23 is just and sufficient cause for the Commission to render an opinion
24 in the matter unless the Executive Director has provided the public
25 officer or employee an opportunity to respond to the allegations
26 against the public officer or employee as required by subsection 3.
27 The investigatory panel shall cause a record of its proceedings in
28 each matter to be kept.

29 6. If the investigatory panel determines that there is just and
30 sufficient cause for the Commission to render an opinion in the
31 matter, the Commission shall hold a hearing and render an opinion
32 in the matter within 60 days after the determination of just and
33 sufficient cause by the investigatory panel, unless the public officer
34 or employee waives this time limit.

35 7. Each request for an opinion that a public officer or employee
36 submits to the Commission pursuant to subsection 1, each opinion
37 rendered by the Commission in response to such a request and any
38 motion, determination, evidence or record of a hearing relating to
39 such a request are confidential unless the public officer or employee
40 who requested the opinion:

41 (a) Acts in contravention of the opinion, in which case the
42 Commission may disclose the request for the opinion, the contents
43 of the opinion and any motion, evidence or record of a hearing
44 related thereto;



1 (b) Discloses the request for the opinion, the contents of the
2 opinion, or any motion, evidence or record of a hearing related
3 thereto ~~§~~ *in any manner except to:*

4 *(1) The public body, agency or employer of the public*
5 *officer or employee; or*

6 *(2) A person to whom the Commission authorizes the*
7 *current or former public officer to make such a disclosure; or*

8 (c) Requests the Commission to disclose the request for the
9 opinion, the contents of the opinion, or any motion, evidence or
10 record of a hearing related thereto.

11 8. Except as otherwise provided in subsection 9, all
12 information, communications, records, documents or other material
13 in the possession of the Commission or its staff that is related to a
14 request for an opinion regarding a public officer or employee
15 submitted to or initiated by the Commission pursuant to subsection
16 2, including, without limitation, the record of the proceedings of the
17 investigatory panel made pursuant to subsection 5, are confidential
18 and not public records pursuant to chapter 239 of NRS until:

19 (a) The investigatory panel determines whether there is just and
20 sufficient cause to render an opinion in the matter and serves written
21 notice of such a determination on the public officer or employee
22 who is the subject of the request for an opinion submitted or
23 initiated pursuant to subsection 2; or

24 (b) The public officer or employee who is the subject of a
25 request for an opinion submitted or initiated pursuant to subsection
26 2 authorizes the Commission in writing to make its information,
27 communications, records, documents or other material which are
28 related to the request publicly available,

29 ↪ whichever occurs first.

30 9. Except as otherwise provided in this ~~§~~ *subsection,*
31 the investigative file ~~of the Commission~~ *related to a request for*
32 *an opinion regarding a public officer or employee, as described in*
33 *subsection 16,* is confidential. At any time after being served with
34 written notice of the determination of the investigatory panel
35 regarding the existence of just and sufficient cause for the
36 Commission to render an opinion in the matter, the public officer or
37 employee who is the subject of the request for an opinion may
38 submit a written discovery request to the Commission for a copy of
39 any portion of the investigative file that the Commission intends to
40 present for consideration as evidence in rendering an opinion in the
41 matter and a list of proposed witnesses. Any portion of the
42 investigative file which the Commission presents as evidence in
43 rendering an opinion in the matter becomes a public record as
44 provided in chapter 239 of NRS.



1 10. Whenever the Commission holds a hearing pursuant to this
2 section, the Commission shall:

3 (a) Notify the person about whom the opinion was requested of
4 the place and time of the Commission's hearing on the matter;

5 (b) Allow the person to be represented by counsel; and

6 (c) Allow the person to hear the evidence presented to the
7 Commission and to respond and present evidence on the person's
8 own behalf.

9 ➔ The Commission's hearing may be held no sooner than 10 days
10 after the notice is given unless the person agrees to a shorter time.

11 11. If a person who is not a party to a hearing before the
12 Commission, including, without limitation, a person who has
13 requested an opinion pursuant to paragraph (a) or (b) of subsection
14 2, wishes to ask a question of a witness at the hearing, the person
15 must submit the question to the Executive Director in writing. The
16 Executive Director may submit the question to the Commission if
17 the Executive Director deems the question relevant and appropriate.
18 This subsection does not require the Commission to ask any
19 question submitted by a person who is not a party to the proceeding.

20 12. If a person who requests an opinion pursuant to subsection
21 1 or 2 does not ~~[-~~

22 ~~-(a) Submit]~~ *submit* all necessary information to the Commission
23 , ~~[-~~ and

24 ~~-(b) Declare by oath or affirmation that the person will testify~~
25 ~~truthfully,~~

26 ~~➔]~~ the Commission may decline to render an opinion.

27 13. For good cause shown, the Commission may take
28 testimony from a person by telephone or video conference.

29 14. For the purposes of NRS 41.032, the members of the
30 Commission and its employees shall be deemed to be exercising or
31 performing a discretionary function or duty when taking an action
32 related to the rendering of an opinion pursuant to this section.

33 15. A meeting or hearing that the Commission or the
34 investigatory panel holds to receive information or evidence
35 concerning the propriety of the conduct of a public officer or
36 employee pursuant to this section and the deliberations of the
37 Commission and the investigatory panel on such information or
38 evidence are not subject to the provisions of chapter 241 of NRS.

39 16. For the purposes of this section, the investigative file ~~for~~
40 ~~the Commission]~~ which relates to a request for an opinion regarding
41 a public officer or employee includes, without limitation, any
42 information *provided to or* obtained by the Commission , *its staff or*
43 *an investigatory panel* through any form of communication during
44 the course of an investigation and any records, documents or other
45 material created or maintained during the course of an investigation



1 which relate to the public officer or employee who is the subject of
2 the request for an opinion, *including, without limitation, a*
3 *transcript*, regardless of whether such information, records,
4 documents or other material are obtained by a subpoena.

5 **Sec. 4.** NRS 281A.475 is hereby amended to read as follows:

6 281A.475 1. In determining whether a violation of this
7 chapter is a willful violation and, if so, the amount of any civil
8 penalty to be imposed on a public officer or employee or former
9 public officer or employee pursuant to NRS 281A.480, the
10 Commission ~~shall~~ *may* consider ~~[-],~~ *without limitation:*

11 (a) The seriousness of the violation, including, without
12 limitation, the nature, circumstances, extent and gravity of the
13 violation;

14 (b) The number and history of previous warnings issued to or
15 violations of the provisions of this chapter by the public officer or
16 employee;

17 (c) The cost to the Commission to conduct the investigation and
18 any hearing relating to the violation;

19 (d) Any mitigating factors, including, without limitation, any
20 self-reporting, prompt correction of the violation, any attempts to
21 rectify the violation before any complaint is filed and any
22 cooperation by the public officer or employee in resolving the
23 complaint;

24 (e) Any restitution or reimbursement paid to parties affected by
25 the violation;

26 (f) The extent of any financial gain resulting from the violation;
27 and

28 (g) Any other matter justice may require.

29 2. In applying the factors set forth in this section, the
30 Commission shall treat comparable situations in a comparable
31 manner and shall ensure that the disposition of the matter bears a
32 reasonable relationship to the severity of the violation.

33 **Sec. 5.** NRS 281A.480 is hereby amended to read as follows:

34 281A.480 1. In addition to any other penalties provided by
35 law, ~~[and in accordance with the provisions of NRS 281A.475,]~~ the
36 Commission may impose on a public officer or employee or former
37 public officer or employee civil penalties:

38 (a) Not to exceed \$5,000 for a first willful violation of this
39 chapter;

40 (b) Not to exceed \$10,000 for a separate act or event that
41 constitutes a second willful violation of this chapter; and

42 (c) Not to exceed \$25,000 for a separate act or event that
43 constitutes a third willful violation of this chapter.

44 2. In addition to any other penalties provided by law, the
45 Commission may, upon its own motion or upon the motion of the



1 person about whom an opinion was requested pursuant to NRS
2 281A.440, impose a civil penalty not to exceed \$5,000 and assess an
3 amount equal to the amount of attorney's fees and costs actually and
4 reasonably incurred by the person about whom an opinion was
5 requested pursuant to NRS 281A.440 against a person who
6 prevents, interferes with or attempts to prevent or interfere with the
7 discovery or investigation of a violation of this chapter.

8 3. If the Commission finds that a violation of a provision of
9 this chapter by a public officer or employee or former public officer
10 or employee has resulted in the realization of a financial benefit by
11 the current or former public officer or employee or another person,
12 the Commission may, in addition to any other penalties provided by
13 law, require the current or former public officer or employee to pay
14 a civil penalty of not more than twice the amount so realized.

15 4. In addition to any other penalties provided by law, if a
16 proceeding results in an opinion that:

17 (a) One or more willful violations of this chapter have been
18 committed by a State Legislator removable from office only through
19 expulsion by the State Legislator's own House pursuant to Section 6
20 of Article 4 of the Nevada Constitution, the Commission shall:

21 (1) If the State Legislator is a member of the Senate, submit
22 the opinion to the Majority Leader of the Senate or, if the Majority
23 Leader of the Senate is the subject of the opinion or the person who
24 requested the opinion, to the President Pro Tempore of the Senate;
25 or

26 (2) If the State Legislator is a member of the Assembly,
27 submit the opinion to the Speaker of the Assembly or, if the Speaker
28 of the Assembly is the subject of the opinion or the person who
29 requested the opinion, to the Speaker Pro Tempore of the Assembly.

30 (b) One or more willful violations of this chapter have been
31 committed by a state officer removable from office only through
32 impeachment pursuant to Article 7 of the Nevada Constitution, the
33 Commission shall submit the opinion to the Speaker of the
34 Assembly and the Majority Leader of the Senate or, if the Speaker
35 of the Assembly or the Majority Leader of the Senate is the person
36 who requested the opinion, to the Speaker Pro Tempore of the
37 Assembly or the President Pro Tempore of the Senate, as
38 appropriate.

39 (c) One or more willful violations of this chapter have been
40 committed by a public officer other than a public officer described
41 in paragraphs (a) and (b), the willful violations shall be deemed to
42 be malfeasance in office for the purposes of NRS 283.440 and the
43 Commission:

44 (1) May file a complaint in the appropriate court for removal
45 of the public officer pursuant to NRS 283.440 when the public



1 officer is found in the opinion to have committed fewer than three
2 willful violations of this chapter.

3 (2) Shall file a complaint in the appropriate court for removal
4 of the public officer pursuant to NRS 283.440 when the public
5 officer is found in the opinion to have committed three or more
6 willful violations of this chapter.

7 **↳** This paragraph grants an exclusive right to the Commission, and
8 no other person may file a complaint against the public officer
9 pursuant to NRS 283.440 based on any violation found in the
10 opinion.

11 5. Notwithstanding any other provision of this chapter, any act
12 or failure to act by a public officer or employee or former public
13 officer or employee relating to this chapter is not a willful violation
14 of this chapter if the public officer or employee establishes by
15 sufficient evidence that ~~†~~

16 ~~—(a) The~~ *the* public officer or employee relied in good faith upon
17 the advice of the legal counsel retained by his or her public body,
18 agency or employer ~~†~~ *and that the advice was:*

19 *(a) Requested by and provided to the public officer or*
20 *employee before the public officer or employee acted or failed to*
21 *act; and*

22 *(b) ~~†The~~ Based on a determination by the legal counsel that*
23 *the act or failure to act by the public officer or employee ~~†was~~*
24 *would not be contrary to a prior published opinion issued by the*
25 *Commission.*

26 6. In addition to any other penalties provided by law, a public
27 employee who commits a willful violation of this chapter is subject
28 to disciplinary proceedings by the employer of the public employee
29 and must be referred for action in accordance to the applicable
30 provisions governing the employment of the public employee.

31 7. The provisions of this chapter do not abrogate or decrease
32 the effect of the provisions of the Nevada Revised Statutes which
33 define crimes or prescribe punishments with respect to the conduct
34 of public officers or employees. If the Commission finds that a
35 public officer or employee has committed a willful violation of this
36 chapter which it believes may also constitute a criminal offense, the
37 Commission shall refer the matter to the Attorney General or the
38 district attorney, as appropriate, for a determination of whether a
39 crime has been committed that warrants prosecution.

40 8. The imposition of a civil penalty pursuant to subsection 1, 2
41 or 3 is a final decision for the purposes of judicial review pursuant
42 to NRS 233B.130.

43 9. A finding by the Commission that a public officer or
44 employee has violated any provision of this chapter must be



1 supported by a preponderance of the evidence unless a greater
2 burden is otherwise prescribed by law.

3 **Sec. 6.** NRS 281A.550 is hereby amended to read as follows:

4 281A.550 1. A former member of the Public Utilities
5 Commission of Nevada shall not:

6 (a) Be employed by a public utility or parent organization or
7 subsidiary of a public utility; or

8 (b) Appear before the Public Utilities Commission of Nevada to
9 testify on behalf of a public utility or parent organization or
10 subsidiary of a public utility,

11 ➤ for 1 year after the termination of the member's service on the
12 Public Utilities Commission of Nevada.

13 2. A former member of the State Gaming Control Board or the
14 Nevada Gaming Commission shall not:

15 (a) Appear before the State Gaming Control Board or the
16 Nevada Gaming Commission on behalf of a person who holds a
17 license issued pursuant to chapter 463 or 464 of NRS or who is
18 required to register with the Nevada Gaming Commission pursuant
19 to chapter 463 of NRS; or

20 (b) Be employed by such a person,
21 ➤ for 1 year after the termination of the member's service on the
22 State Gaming Control Board or the Nevada Gaming Commission.

23 3. In addition to the prohibitions set forth in subsections 1 and
24 2, and except as otherwise provided in subsections 4 and 6, a former
25 public officer or employee of a board, commission, department,
26 division or other agency of the Executive Department of State
27 Government, except a clerical employee, shall not solicit or accept
28 employment from a business or industry whose activities are
29 governed by regulations adopted by the board, commission,
30 department, division or other agency for 1 year after the termination
31 of the former public officer's or employee's service or period of
32 employment if:

33 (a) The former public officer's or employee's principal duties
34 included the formulation of policy contained in the regulations
35 governing the business or industry;

36 (b) During the immediately preceding year, the former public
37 officer or employee directly performed activities, or controlled or
38 influenced an audit, decision, investigation or other action, which
39 significantly affected the business or industry which might, but for
40 this section, employ the former public officer or employee; or

41 (c) As a result of the former public officer's or employee's
42 governmental service or employment, the former public officer or
43 employee possesses knowledge of the trade secrets of a direct
44 business competitor.



1 4. The provisions of subsection 3 do not apply to a former
2 public officer who was a member of a board, commission or similar
3 body of the State if:

4 (a) The former public officer is engaged in the profession,
5 occupation or business regulated by the board, commission or
6 similar body;

7 (b) The former public officer holds a license issued by the
8 board, commission or similar body; and

9 (c) Holding a license issued by the board, commission or similar
10 body is a requirement for membership on the board, commission or
11 similar body.

12 5. Except as otherwise provided in subsection 6, a former
13 public officer or employee of the State or a political subdivision,
14 except a clerical employee, shall not solicit or accept employment
15 from a person to whom a contract for supplies, materials, equipment
16 or services was awarded by the State or political subdivision, as
17 applicable, for 1 year after the termination of the officer's or
18 employee's service or period of employment, if:

19 (a) The amount of the contract exceeded \$25,000;

20 (b) The contract was awarded within the 12-month period
21 immediately preceding the termination of the officer's or
22 employee's service or period of employment; and

23 (c) The position held by the former public officer or employee at
24 the time the contract was awarded allowed the former public officer
25 or employee to affect or influence the awarding of the contract.

26 6. A current or former public officer or employee may request
27 that the Commission apply the relevant facts in that person's case to
28 the provisions of subsection 3 or 5, as applicable, and determine
29 whether relief from the strict application of those provisions is
30 proper. If the Commission determines that relief from the strict
31 application of the provisions of subsection 3 or 5, as applicable, is
32 not contrary to:

33 (a) The best interests of the public;

34 (b) The continued ethical integrity of the State Government or
35 political subdivision, as applicable; and

36 (c) The provisions of this chapter,

37 ➤ it may issue an opinion to that effect and grant such relief. The
38 opinion of the Commission in such a case is final and subject to
39 judicial review pursuant to NRS 233B.130, except that a proceeding
40 regarding this review must be held in closed court without
41 admittance of persons other than those necessary to the proceeding,
42 unless this right to confidential proceedings is waived by the current
43 or former public officer or employee.

44 7. Each request for an opinion that a current or former public
45 officer or employee submits to the Commission pursuant to



1 subsection 6, each opinion rendered by the Commission in response
2 to such a request and any motion, determination, evidence or record
3 of a hearing relating to such a request are confidential unless the
4 current or former public officer or employee who requested the
5 opinion:

6 (a) Acts in contravention of the opinion, in which case the
7 Commission may disclose the request for the opinion, the contents
8 of the opinion and any motion, evidence or record of a hearing
9 related thereto;

10 (b) Discloses the request for the opinion, the contents of the
11 opinion or any motion, evidence or record of a hearing related
12 thereto ~~H~~ *in any manner except to:*

13 *(1) The public body, agency or employer of the public*
14 *officer or employee or a prospective employer of the public officer*
15 *or employee; or*

16 *(2) Any person to whom the Commission authorizes the*
17 *current or former public officer to make such a disclosure; or*

18 (c) Requests the Commission to disclose the request for the
19 opinion, the contents of the opinion, or any motion, evidence or
20 record of a hearing related thereto.

21 8. A meeting or hearing that the Commission or an
22 investigatory panel holds to receive information or evidence
23 concerning the propriety of the conduct of a current or former public
24 officer or employee pursuant to this section and the deliberations of
25 the Commission and the investigatory panel on such information or
26 evidence are not subject to the provisions of chapter 241 of NRS.

27 9. As used in this section, "regulation" has the meaning
28 ascribed to it in NRS 233B.038 and also includes regulations
29 adopted by a board, commission, department, division or other
30 agency of the Executive Department of State Government that is
31 exempted from the requirements of chapter 233B of NRS.

32 **Sec. 7.** This act becomes effective upon passage and approval.



