SENATE BILL NO. 36–COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

(ON BEHALF OF THE OFFICE OF THE GOVERNOR)

PREFILED NOVEMBER 16, 2016

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions relating to ethics in government. (BDR 23-230)

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

EXPLANATION - Matter in *bolded italics* is new; matter between brackets {omitted material} is material to be omitted.

AN ACT relating to ethics in government; removing State Legislators entirely from the jurisdiction of the Commission on Ethics; revising the membership of the Commission; revising the provisions governing the assessments paid by cities and counties to the Commission; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under the Nevada Constitution, the legislative House of which a Legislator is a 1 23456789 member has exclusive jurisdiction over discipline of its members. (Nev. Const. Art. 4, § 6) In 2009, the Nevada Supreme Court held that under the constitutional doctrine of separation of powers, the House of which a Legislator is a member is the only governmental entity that is authorized to sanction the Legislator for conduct within the sphere of legitimate legislative activity, such as voting or abstention on legislation and, by extension, disclosure of conflicts of interest. Moreover, the Court held that the Legislature cannot delegate its authority to discipline state legislators for conduct within the sphere of legitimate legislative activity to another branch of government. (Comm'n on Ethics v. Hardy, 125 Nev. 10 11 285, 294-96 & n.9 (2009)) Existing law sets forth a nonexhaustive list of actions by 12 13 a Legislator that are considered within the sphere of legitimate legislative activity based on long-standing case law interpreting and applying the constitutional 14 doctrines of separation of powers and legislative privilege and immunity under the 15 Speech or Debate Clause of Section 6 of Article I of the United States Constitution. 16 (NRS 41.071)

17 The Commission on Ethics, which is an agency of the Executive Department of 18 the State Government, was created under existing law to administer and enforce the





19 Nevada Ethics in Government Law. (NRS 281A.200) The Commission has concurrent jurisdiction over Legislators with respect to alleged ethical violations that do not fall within the sphere of legitimate legislative activity, such as misuse of office. (NRS 281A.280; Hardy, 125 Nev. at 294-96 & n.9)

20 21 22 23 24 25 26 27 28 29 30 31 32 33 4 35 36 37 Sections 1-3 and 6-9 of this bill remove State Legislators entirely from the jurisdiction of the Commission on Ethics. Therefore, determination of all issues relating to the ethical conduct of Legislators will be within the exclusive jurisdiction of the House of which the Legislator is a member. Since the Hardy decision in 2009, each House of the Legislature has had a standing rule in place that provides for a committee on ethics to address questions regarding breaches of ethics and conflicts of interest of Legislators for their respective Houses. (See, e.g., Senate Standing Rule No. 23, File No. 4, Statutes of Nevada 2015, p. 3981; Assembly Standing Rule No. 23, File No. 1, Statutes of Nevada 2015, p. 3956)

Under existing law, the Commission on Ethics consists of eight members, with four members appointed by the Legislative Commission and four members appointed by the Governor. Section 4 of this bill eliminates the members appointed by the Legislative Commission and adds another member appointed by the Governor, which results in a total of five members of the Commission on Ethics.

Existing law requires certain cities and counties to cover some of the costs 38 incurred by the Commission on Ethics in carrying out its functions by paying <u>3</u>9 assessments during each biennium. (NRS 281A.270) Section 5 of this bill removes 40 the requirement that the Executive Director of the Commission on Ethics consult 41 with the Budget Division of the Office of Finance and the Fiscal Analysis Division 42 of the Legislative Counsel Bureau before determining the amount of such 43 assessments due for each city and county for a biennium.

44 Pursuant to section 11 of this bill, the Commission on Ethics retains its 45 concurrent jurisdiction over any requests for an opinion regarding a Legislator's 46 conduct that are pending before the Commission on the effective date of this bill. 47 Section 11 also provides that the revised composition of the Commission on Ethics 48 does not affect the status of any requests for an opinion pending before the 49 Commission on the effective date of this bill.

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

1 Section 1. NRS 281A.020 is hereby amended to read as 2 follows:

3 281A.020 1. It is hereby declared to be the public policy of 4 this State that:

(a) A public office is a public trust and shall be held for the sole 5 6 benefit of the people.

(b) A public officer or employee must commit himself or herself 7 to avoid conflicts between the private interests of the public officer 8 or employee and those of the general public whom the public officer 9 10 or employee serves.

The Legislature finds and declares that: 2.

(a) The increasing complexity of state and local government, 12 more and more closely related to private life and enterprise, enlarges 13 the potentiality for conflict of interests. 14



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1 (b) To enhance the people's faith in the integrity and 2 impartiality of public officers and employees, adequate guidelines 3 are required to show the appropriate separation between the roles of persons who are both public servants and private citizens. 4 5

I(c) In interpreting and applying the provisions of this chapter 6 that are applicable to State Legislators, the Commission must give 7 appropriate weight and proper deference to the public policy of this State under which State Legislators serve as "citizen Legislators" 8 who have other occupations and business interests, who are 9 10 expected to have particular philosophies and perspectives that are necessarily influenced by the life experiences of the Legislator, 11 including, without limitation, professional, family and business 12 13 experiences, and who are expected to contribute those philosophies and perspectives to the debate over issues with which the 14 15 Legislature is confronted. 16 (d) The provisions of this chapter do not, under any circumstances, allow the Commission to exercise jurisdiction or 17

18 authority over or inquire into, intrude upon or interfere with the 19 functions of a State Legislator that are protected by legislative privilege and immunity pursuant to the Constitution of the State of 20

- Nevada or NRS 41.071.1 21
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Sec. 2. NRS 281A.080 is hereby amended to read as follows:

281A.080 1. The making of a "decision" is the exercise of 23 24 governmental power to adopt laws, regulations or standards, render 25 quasi-judicial decisions, establish executive policy or determine 26 questions involving substantial discretion.

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The term does not include: 2.

(a) The functions of the judiciary.

29 (b) The functions of a State Legislator. [that are protected by 30 legislative privilege and immunity pursuant to the Constitution of 31 the State of Nevada or NRS 41.071.]

32 33 **Sec. 3.** NRS 281A.160 is hereby amended to read as follows:

281A.160 1. "Public officer" means a person who is:

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(a) Elected or appointed to a position which:

35 (1) Is established by the Constitution of the State of Nevada, 36 a statute of this State or a charter or ordinance of any county, city or 37 other political subdivision; and 38

(2) Involves the exercise of a public power, trust or duty; or

(b) Designated as a public officer for the purposes of this 39 40 chapter pursuant to NRS 281A.182.

41 As used in this section, "the exercise of a public power, trust 2. 42 or duty" means:

43 (a) Actions taken in an official capacity which involve a 44 substantial and material exercise of administrative discretion in the 45 formulation of public policy;





1 (b) The expenditure of public money; and 2 (c) The administration of laws and rules of the State or any 3 county, city or other political subdivision. "Public officer" does not include: 4 3. 5 (a) Any justice, judge or other officer of the court system; 6 (b) Any member of a board, commission or other body whose 7 function is advisory; 8 (c) Any member of a special district whose official duties do not include the formulation of a budget for the district or the 9 authorization of the expenditure of the district's money; [or] 10 (d) A county health officer appointed pursuant to NRS 439.290 11 12 **H**; or 13 (e) A State Legislator. 14 "Public office" does not include an office held by: 4. 15 (a) Any justice, judge or other officer of the court system; 16 (b) Any member of a board, commission or other body whose 17 function is advisory; 18 (c) Any member of a special district whose official duties do not 19 include the formulation of a budget for the district or the authorization of the expenditure of the district's money; for 20 21 (d) A county health officer appointed pursuant to NRS 439.290 22 H; or 23 (e) A State Legislator. Sec. 4. NRS 281A.200 is hereby amended to read as follows: 24 281A.200 1. The Commission on Ethics, consisting of feight 25 *five* members, is hereby created. 26 The Legislative Commission shall appoint to the 27 2. Commission four residents of the State, at least two of whom must 28 29 be former public officers or employees, and at least one of whom 30 must be an attorney licensed to practice law in this State. <u>3.</u> The Governor shall appoint to the Commission [four] five 31 32 residents of the State, at least two of whom must be former public 33 officers or employees, and at least **[one]** two of whom must be **[an**] attorney] attorneys licensed to practice law in this State. 34 35 [4.] 3. Not more than *fourl three* members of the Commission may be members of the same political party. Not more than *[four]* 36 three members of the Commission may be residents of the same 37

38 county.

39 [5.] 4. None of the members of the Commission may, while 40 the member is serving on the Commission:

41 (a) Hold another public office;

42 (b) Be actively involved in the work of any political party or 43 political campaign; or



1 (c) Communicate directly with a State Legislator or a member of 2 a local legislative body on behalf of someone other than himself or 3 herself or the Commission, for compensation, to influence:

4 (1) The State Legislator with regard to introducing or voting 5 upon any matter or taking other legislative action; or

6 (2) The member of the local legislative body with regard to 7 introducing or voting upon any ordinance or resolution, taking other 8 legislative action or voting upon:

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(I) The appropriation of public money;

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(II) The issuance of a license or permit; or

11 (III) Any proposed subdivision of land or special 12 exception or variance from zoning regulations.

13 [6.] 5. After the initial terms, the terms of the members are 4 14 years. Any vacancy in the membership must be filled by the 15 appropriate appointing authority for the unexpired term. Each 16 member may serve no more than two consecutive full terms.

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Sec. 5. NRS 281A.270 is hereby amended to read as follows:

18 281A.270 1. Each county whose population is 10,000 or more and each city whose population is 15,000 or more and that is 19 located within such a county shall pay an assessment for the costs 20 21 incurred by the Commission each biennium in carrying out its 22 functions pursuant to this chapter. The total amount of money to be derived from assessments paid pursuant to this subsection for a 23 24 biennium must be determined by the Legislature in the legislatively 25 approved budget of the Commission for that biennium. The 26 assessments must be apportioned among each such city and county based on the proportion that the total population of the city or the 27 28 total population of the unincorporated area of the county bears to the 29 total population of all such cities and the unincorporated areas of all 30 such counties in this State.

31 2. On or before July 1 of each odd-numbered year, the Executive Director shall [, in consultation with the Budget Division 32 33 of the Office of Finance and the Fiscal Analysis Division of the Legislative Counsel Bureau, determine for the next ensuing 34 35 biennium the amount of the assessments due for each city and 36 county that is required to pay an assessment pursuant to subsection 37 1. The assessments must be paid to the Commission in semiannual installments that are due on or before August 1 and February 1 of 38 39 each year of the biennium. The Executive Director shall send out a 40 billing statement to each such city or county which states the 41 amount of the semiannual installment payment due from the city or 42 county.

43 3. Any money that the Commission receives pursuant to 44 subsection 2:





1 (a) Must be deposited in the State Treasury, accounted for 2 separately in the State General Fund and credited to the budget 3 account for the Commission;

4 (b) May only be used to carry out the provisions of this chapter 5 and only to the extent authorized for expenditure by the Legislature;

6 (c) Does not revert to the State General Fund at the end of any 7 fiscal year; and

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(d) Does not revert to a city or county if:

9 (1) The actual expenditures by the Commission are less than 10 the amount of the assessments approved by the Legislature pursuant 11 to subsection 1 and the city or county has already remitted its 12 semiannual installment to the Commission for the billing period; or

13 (2) The budget of the Commission is modified after the 14 amount of the assessments has been approved by the Legislature 15 pursuant to subsection 1 and the city or county has already remitted 16 its semiannual installment to the Commission for the billing period.

17 If any installment payment is not paid on or before the date 4. 18 on which it is due, the Executive Director shall make reasonable 19 efforts to collect the delinquent payment. If the Executive Director is not able to collect the arrearage, the Executive Director shall 20 submit a claim for the amount of the unpaid installment payment to 21 22 the Department of Taxation. If the Department of Taxation receives 23 such a claim, the Department shall deduct the amount of the claim from money that would otherwise be allocated from the Local 24 25 Government Tax Distribution Account to the city or county that 26 owes the installment payment and shall transfer that amount to the 27 Commission.

5. As used in this section, "population" means the current population estimate for that city or county as determined and published by the Department of Taxation and the demographer employed pursuant to NRS 360.283.

Sec. 6. NRS 281A.400 is hereby amended to read as follows:

281A.400 A code of ethical standards is hereby established to
 govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or conomic opportunity which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.

41 2. A public officer or employee shall not use the public 42 officer's or employee's position in government to secure or grant 43 unwarranted privileges, preferences, exemptions or advantages for 44 the public officer or employee, any business entity in which the 45 public officer or employee has a significant pecuniary interest, or





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1 any person to whom the public officer or employee has a 2 commitment in a private capacity to the interests of that person. As used in this subsection, "unwarranted" means without justification 3 4 or adequate reason.

5 A public officer or employee shall not participate as an agent 3. 6 of government in the negotiation or execution of a contract between 7 the government and any business entity in which the public officer 8 or employee has a significant pecuniary interest.

9 4 A public officer or employee shall not accept any salary, 10 retainer, augmentation, expense allowance or other compensation 11 from any private source for the performance of the public officer's 12 or employee's duties as a public officer or employee.

13 5. If a public officer or employee acquires, through the public 14 officer's or employee's public duties or relationships, any 15 information which by law or practice is not at the time available to 16 people generally, the public officer or employee shall not use the 17 information to further a significant pecuniary interest of the public 18 officer or employee or any other person or business entity.

19 6. A public officer or employee shall not suppress any 20 governmental report or other official document because it might 21 tend to affect unfavorably a significant pecuniary interest of the 22 public officer or employee.

7. Except for State Legislators who are subject to the 23 24 restrictions set forth in subsection 8, al A public officer or employee 25 shall not use governmental time, property, equipment or other facility to benefit a significant personal or pecuniary interest of the 26 27 public officer or employee. This subsection does not prohibit:

28 (a) A limited use of governmental property, equipment or other 29 facility for personal purposes if:

30 (1) The public officer or employee who is responsible for 31 and has authority to authorize the use of such property, equipment 32 or other facility has established a policy allowing the use or the use 33 is necessary as a result of emergency circumstances;

34 (2) The use does not interfere with the performance of the 35 public officer's or employee's public duties;

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(3) The cost or value related to the use is nominal; and

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(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information 38 39 lawfully obtained from a governmental agency which is available to 40 members of the general public for nongovernmental purposes; or

41 (c) The use of telephones or other means of communication if 42 there is not a special charge for that use.

43 → If a governmental agency incurs a cost as a result of a use that is 44 authorized pursuant to this subsection or would ordinarily charge a 45 member of the general public for the use, the public officer or





1 employee shall promptly reimburse the cost or pay the charge to the 2 governmental agency. 8. [A State Legislator shall not: 3 (a) Use governmental time, property, equipment or other facility 4 for a nongovernmental purpose or for the private benefit of the State 5 6 Legislator or any other person. This paragraph does not prohibit: 7 (1) A limited use of state property and resources for personal 8 purposes if: 9 (I) The use does not interfere with the performance of the 10 State Legislator's public duties: (II) The cost or value related to the use is nominal; and 11 (III) The use does not create the appearance of 12 13 impropriety; (2) The use of mailing lists, computer data or other 14 15 information lawfully obtained from a governmental agency which is 16 available to members of the general public for nongovernmental 17 purposes; or 18 (3) The use of telephones or other means of communication 19 if there is not a special charge for that use. (b) Require or authorize a legislative employee, while on duty, 20 21 to perform personal services or assist in a private activity, except: 22 (1) In unusual and infrequent situations where the employee's service is reasonably necessary to permit the State 23 Legislator or legislative employee to perform that person's official 24 25 duties; or (2) Where such service has otherwise been established as 26 legislative policy. 27 28 <u>9.</u> A public officer or employee shall not attempt to benefit a significant personal or pecuniary interest of the public officer or 29 30 employee through the influence of a subordinate. 31 [10.] 9. A public officer or employee shall not seek other employment or contracts through the use of the public officer's or 32 33 employee's official position. 34 Sec. 7. NRS 281A.410 is hereby amended to read as follows: 35 281A.410 In addition to the requirements of the code of ethical standards and the other provisions of this chapter: 36 If a public officer or employee serves in a state agency of the 37 1. 38 Executive Department or an agency of any county, city or other political subdivision, the public officer or employee: 39 40 (a) Shall not accept compensation from any private person to 41 represent or counsel the private person on any issue pending before the agency in which that public officer or employee serves, if the 42 43 agency makes decisions; and 44 (b) If the public officer or employee leaves the service of the 45 agency, shall not, for 1 year after leaving the service of the agency,





represent or counsel for compensation a private person upon any
 issue which was under consideration by the agency during the
 public officer's or employee's service. As used in this paragraph,
 "issue" includes a case, proceeding, application, contract or
 determination, but does not include the proposal or consideration of
 legislative measures or administrative regulations.

7 2. Except as otherwise provided in subsection 3, [a State 8 Legislator or] a member of a local legislative body, or a public 9 officer or employee whose public service requires less than half of 10 his or her time, may represent or counsel a private person before an 11 agency in which he or she does not serve.

3. A member of a local legislative body shall not represent or counsel a private person for compensation before another local agency if the territorial jurisdiction of the other local agency includes any part of the county in which the member serves. The Commission may relieve the member from the strict application of the provisions of this subsection if:

(a) The member requests an opinion from the Commission
 pursuant to subsection 1 of NRS 281A.440; and

20 (b) The Commission determines that such relief is not contrary 21 to:

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(1) The best interests of the public;

23 (2) The continued ethical integrity of each local agency24 affected by the matter; and

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(3) The provisions of this chapter.

4. Unless permitted by this section, a public officer or employee shall not represent or counsel a private person for compensation before any state agency of the Executive or Legislative Department.

5. Not later than January 15 of each year, if any [State Legislator,] member of a local legislative body or other public officer permitted by this section has, within the preceding year, represented or counseled a private person for compensation before a state agency of the Executive Department, he or she shall disclose for each such representation or counseling during the previous calendar year:

37 (a) The name of the client;

38 (b) The nature of the representation; and

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(c) The name of the state agency.6. The disclosure required by subsection 5 must be made in

6. The disclosure required by subsection 5 must be made in
writing and filed with the Commission on a form prescribed by the
Commission. For the purposes of this subsection, the disclosure is
timely filed if, on or before the last day for filing, the disclosure is
filed in one of the following ways:





1 (a) Delivered in person to the principal office of the 2 Commission in Carson City.

3 (b) Mailed to the Commission by first-class mail, or other class 4 of mail that is at least as expeditious, postage prepaid. Filing by mail 5 is complete upon timely depositing the disclosure with the United 6 States Postal Service.

7 (c) Dispatched to a third-party commercial carrier for delivery to 8 the Commission within 3 calendar days. Filing by third-party 9 commercial carrier is complete upon timely depositing the 10 disclosure with the third-party commercial carrier.

11 (d) Transmitted to the Commission by facsimile machine or 12 other electronic means authorized by the Commission. Filing by 13 facsimile machine or other electronic means is complete upon 14 receipt of the transmission by the Commission.

15 7. The Commission shall retain a disclosure filed pursuant to 16 this section for 6 years after the date on which the disclosure was 17 filed.

18 Sec. 8. NRS 281A.420 is hereby amended to read as follows:

19 281A.420 1. Except as otherwise provided in this section, a
20 public officer or employee shall not approve, disapprove, vote,
21 abstain from voting or otherwise act upon a matter:

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

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

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

→ without disclosing information concerning the gift or loan, 29 30 significant pecuniary interest or commitment in a private capacity to 31 the interests of the person that is sufficient to inform the public of 32 the potential effect of the action or abstention upon the person who 33 provided the gift or loan, upon the public officer's or employee's significant pecuniary interest, or upon the person to whom the 34 35 public officer or employee has a commitment in a private capacity. Such a disclosure must be made at the time the matter is considered. 36 37 If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the 38 disclosure in public to the chair and other members of the body. If 39 40 the public officer or employee is not a member of such a body and 41 holds an appointive office, the public officer or employee shall make the disclosure to the supervisory head of the public officer's or 42 employee's organization or, if the public officer holds an elective 43 44 office, to the general public in the area from which the public officer 45 is elected.





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

3 (a) Any campaign contributions that the public officer reported 4 in a timely manner pursuant to NRS 294A.120 or 294A.125; or

5 (b) Any contributions to a legal defense fund that the public 6 officer reported in a timely manner pursuant to NRS 294A.286.

7 3. Except as otherwise provided in this section, in addition to 8 the requirements of subsection 1, a public officer shall not vote upon 9 or advocate the passage or failure of, but may otherwise participate 10 in the consideration of, a matter with respect to which the 11 independence of judgment of a reasonable person in the public 12 officer's situation would be materially affected by:

(a) The public officer's acceptance of a gift or loan;

(b) The public officer's significant pecuniary interest; or

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

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

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

32 (b) The Commission must give appropriate weight and proper deference to the public policy of this State which favors the right of 33 a public officer to perform the duties for which the public officer 34 35 was elected or appointed and to vote or otherwise act upon a matter, 36 provided the public officer has properly disclosed the public 37 officer's acceptance of a gift or loan, significant pecuniary interest 38 or commitment in a private capacity to the interests of another 39 person in the manner required by subsection 1. Because abstention 40 by a public officer disrupts the normal course of representative 41 government and deprives the public and the public officer's 42 constituents of a voice in governmental affairs, the provisions of this 43 section are intended to require abstention only in clear cases where 44 the independence of judgment of a reasonable person in the public 45 officer's situation would be materially affected by the public





officer's acceptance of a gift or loan, significant pecuniary interest
 or commitment in a private capacity to the interests of another
 person.

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

11 6. The provisions of this section do not, under any 12 circumstances:

(a) Prohibit a member of a local legislative body fromrequesting or introducing a legislative measure; or

15 (b) Require a member of a local legislative body to take any 16 particular action before or while requesting or introducing a 17 legislative measure.

[7. The provisions of this section do not, under any 18 eircumstances, apply to State Legislators or allow the Commission 19 20 to exercise jurisdiction or authority over State Legislators. The responsibility of a State Legislator to make disclosures concerning 21 22 gifts, loans, interests or commitments and the responsibility of a State Legislator to abstain from voting upon or advocating the 23 passage or failure of a matter are governed by the Standing Rules of 24 25 the Legislative Department of State Government which are adopted. administered and enforced exclusively by the appropriate bodies of 26 the Legislative Department of State Government pursuant to Section 27 28 6 of Article 4 of the Nevada Constitution. 8. As used in this section, "public officer" and "public 29

30 employee" do not include a State Legislator.]

Sec. 9. NRS 281A.480 is hereby amended to read as follows:

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

36 (a) Not to exceed \$5,000 for a first willful violation of this 37 chapter;

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

40 (c) Not to exceed \$25,000 for a separate act or event that 41 constitutes a third willful violation of this chapter.

2. In addition to any other penalties provided by law, the
Commission may, upon its own motion or upon the motion of the
person about whom an opinion was requested pursuant to NRS
281A.440, impose a civil penalty not to exceed \$5,000 and assess an



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amount equal to the amount of attorney's fees and costs actually and
 reasonably incurred by the person about whom an opinion was
 requested pursuant to NRS 281A.440 against a person who
 prevents, interferes with or attempts to prevent or interfere with the
 discovery or investigation of a violation of this chapter.

6 3. If the Commission finds that a violation of a provision of 7 this chapter by a public officer or employee or former public officer 8 or employee has resulted in the realization of a financial benefit by 9 the current or former public officer or employee or another person, 10 the Commission may, in addition to any other penalties provided by 11 law, require the current or former public officer or employee to pay 12 a civil penalty of not more than twice the amount so realized.

13 4. In addition to any other penalties provided by law, if a 14 proceeding results in an opinion that:

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

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

(2) If the State Legislator is a member of the Assembly, 24 25 submit the opinion to the Speaker of the Assembly or, if the Speaker 26 of the Assembly is the subject of the opinion or the person who 27 requested the opinion, to the Speaker Pro Tempore of the Assembly. 28 (b) One or more willful violations of this chapter have been 29 committed by a state officer removable from office only through 30 impeachment pursuant to Article 7 of the Nevada Constitution, the 31 Commission shall submit the opinion to the Speaker of the 32 Assembly and the Majority Leader of the Senate or, if the Speaker 33 of the Assembly or the Majority Leader of the Senate is the person who requested the opinion, to the Speaker Pro Tempore of the 34 Assembly or the President Pro Tempore of the Senate, as 35 36 appropriate.

37 [(c)] (b) One or more willful violations of this chapter have 38 been committed by a public officer other than a public officer 39 described in [paragraphs] paragraph (a) , [and (b),] the willful 40 violations shall be deemed to be malfeasance in office for the 41 purposes of NRS 283.440 and the Commission:

42 (1) May file a complaint in the appropriate court for removal 43 of the public officer pursuant to NRS 283.440 when the public 44 officer is found in the opinion to have committed fewer than three 45 willful violations of this chapter.





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

5 \rightarrow This paragraph grants an exclusive right to the Commission, and 6 no other person may file a complaint against the public officer 7 pursuant to NRS 283.440 based on any violation found in the 8 opinion.

9 5. Notwithstanding any other provision of this chapter, any act 10 or failure to act by a public officer or employee or former public 11 officer or employee relating to this chapter is not a willful violation 12 of this chapter if the public officer or employee establishes by 13 sufficient evidence that:

(a) The public officer or employee relied in good faith upon the
advice of the legal counsel retained by his or her public body,
agency or employer; and

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(b) The advice of the legal counsel was:

18 (1) Provided to the public officer or employee before the 19 public officer or employee acted or failed to act; and

20 (2) Based on a reasonable legal determination by the legal 21 counsel under the circumstances when the advice was given that the 22 act or failure to act by the public officer or employee would not be 23 contrary to any prior published opinion issued by the Commission 24 which was publicly available on the Internet website of the 25 Commission.

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

31 The provisions of this chapter do not abrogate or decrease 7. 32 the effect of the provisions of the Nevada Revised Statutes which 33 define crimes or prescribe punishments with respect to the conduct of public officers or employees. If the Commission finds that a 34 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 district attorney, as appropriate, for a determination of whether a 38 39 crime has been committed that warrants prosecution.

8. The imposition of a civil penalty pursuant to subsection 1, 2
or 3 is a final decision for the purposes of judicial review pursuant
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





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

3 Sec. 10. 1. Notwithstanding the provisions of NRS 4 281A.200, the term of each member of the Commission on Ethics 5 who was appointed by the Legislative Commission expires on the 6 effective date of this act.

7 2. As soon as practicable after the effective date of this act, the 8 Governor shall appoint to the Commission on Ethics the member 9 added pursuant to subsection 2 of NRS 281A.200, as amended by 10 section 4 of this act.

Sec. 11. 1. The amendatory provisions of this act that remove the concurrent jurisdiction of the Commission on Ethics over State Legislators do not apply to any request for an opinion regarding a Legislator's conduct submitted pursuant to NRS 281A.440 that is pending before the Commission on Ethics on the effective date of this act.

2. The revision of the composition of the Commission on
Ethics in NRS 281A.200, as amended by section 4 of this act, does
not affect the status of any request for an opinion pursuant to NRS
281A.440 that is pending before the Commission on Ethics on the
effective date of this act.

22 Sec. 12. This act becomes effective upon passage and 23 approval.

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