

SENATE BILL NO. 478—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF GOVERNOR GUINN)

MARCH 18, 1999

Referred to Committee on Government Affairs

SUMMARY—Makes various changes concerning ethics in government. (BDR 23-1671)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

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

AN ACT relating to state government; authorizing the commission to appoint an executive director and commission counsel and providing their duties; clarifying the intent of the legislature with respect to the Nevada Ethics in Government Law; increasing the number of members of the commission; authorizing the chairman of the commission to issue subpoenas in certain circumstances; revising the provisions relating to requests for opinions by the commission and the manner in which determinations of just and sufficient cause to render such opinions are made; revising the provisions relating to the confidentiality of persons who request an opinion by or provide testimony to the commission; authorizing the commission to take testimony by telephone or video conference in certain circumstances; revising the civil penalties for willful violations of ethical provisions; revising the penalties for certain crimes; authorizing the commission and the secretary of state to waive certain civil penalties in certain circumstances; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 281 of NRS is hereby amended by adding thereto
- 2 the provisions set forth as sections 2 to 8, inclusive, of this act.
- 3 **Sec. 2.** *“Executive director” means the executive director appointed*
- 4 *by the commission pursuant to section 5 of this act.*
- 5 **Sec. 3.** *“Panel” means the panel appointed by the commission*
- 6 *pursuant to section 8 of this act.*
- 7 **Sec. 4.** *“Willful violation” means the public officer or employee*
- 8 *knew or reasonably should have known that his conduct violated this*
- 9 *chapter.*

1 **Sec. 5. 1.** *The commission shall appoint, within the limits of*
2 *legislative appropriation, an executive director and commission counsel*
3 *who shall perform the duties set forth in this chapter and such other*
4 *duties as may be prescribed by the commission.*

5 **2.** *The executive director must have experience in administration,*
6 *law enforcement, investigations or law.*

7 **3.** *The commission counsel must be an attorney who is licensed to*
8 *practice law in this state.*

9 **4.** *The executive director and commission counsel are in the*
10 *unclassified service of the state.*

11 **5.** *Except as otherwise provided in NRS 284.143, the executive*
12 *director and commission counsel shall devote their entire time and*
13 *attention to the business of the commission and shall not pursue any*
14 *other business or occupation or hold any other office of profit that*
15 *detracts from the full and timely performance of their duties.*

16 **6.** *The executive director and commission counsel may not:*

17 **(a)** *Be actively involved in the work of any political party or*
18 *political*
19 *campaign; or*

20 **(b)** *Communicate directly or indirectly with a member of the*
21 *legislative branch on behalf of someone other than himself to influence*
22 *legislative action, except in pursuit of the business of the commission.*

23 **Sec. 6. 1.** *In addition to any other duties imposed upon him, the*
24 *executive director shall:*

25 **(a)** *Maintain complete and accurate records of all transactions and*
26 *proceedings of the commission.*

27 **(b)** *Receive requests for opinions pursuant to NRS 281.511,*
28 *294A.345*
29 *or 294A.346.*

30 **(c)** *Gather information and conduct investigations regarding*
31 *requests*
32 *for opinions received by the commission and submit recommendations to*
33 *the panel appointed pursuant to section 8 of this act regarding whether*
34 *there is just and sufficient cause to render an opinion in response to a*
35 *particular request.*

36 **(d)** *Recommend to the commission any regulations or legislation*
37 *that*
38 *he considers desirable or necessary to improve the operation of the*
39 *commission and maintain high standards of ethical conduct in*
40 *government.*

41 **(e)** *Upon the request of any public officer or the employer of a*
42 *public*
43 *employee, conduct training on the requirements of this chapter, the rules*
44 *and regulations adopted by the commission and previous opinions of the*
45 *commission. In any such training, the executive director shall emphasize*
46 *that he is not a member of the commission and that only the commission*
47 *may issue opinions concerning the application of the statutory ethical*
48 *standards to any given set of facts and circumstances. The commission*

1 *shall charge a reasonable fee to cover the costs of training provided by*
2 *the executive director pursuant to this subsection.*

3 *(f) Perform such other duties, not inconsistent with law, as may be*
4 *required by the commission.*

5 *2. The executive director shall, within the limits of legislative*
6 *appropriation, employ such persons as are necessary to carry out any of*
7 *his duties relating to:*

8 *(a) The administration of the affairs of the commission;*

9 *(b) The review of statements of financial disclosure; and*

10 *(c) The investigation of matters under the jurisdiction of the*
11 *commission.*

12 **Sec. 7.** *Every public officer shall acknowledge that he has received,*
13 *read and understands the statutory ethical standards. The*
14 *acknowledgment must be on a form prescribed by the commission and*
15 *must accompany the first statement of financial disclosure that the public*
16 *officer is required to file with the commission pursuant to NRS 281.561.*
17 *Willful refusal to execute and file the acknowledgment required by this*
18 *subsection constitutes nonfeasance in office and is a ground for removal*
19 *pursuant to NRS 283.440.*

20 **Sec. 8. 1.** *The chairman shall appoint one or more panels of two*
21 *members of the commission on a rotating basis to review the*
22 *determinations of just and sufficient cause made by the executive*
23 *director pursuant to NRS 281.511 and make a final determination*
24 *regarding whether just and sufficient cause exists for the commission to*
25 *render an opinion.*

26 *2. The chairman and vice chairman of the commission may not serve*
27 *together on a panel.*

28 *3. The members of a panel may not be members of the same political*
29 *party.*

30 *4. If a panel finds just and sufficient cause for the commission to*
31 *render an opinion in a matter, the members of the panel shall not*
32 *participate in any further proceedings of the commission relating to that*
33 *matter.*

34 **Sec. 8.5.** *NRS 281.421 is hereby amended to read as follows:*

35 *281.421 1. It is hereby declared to be the public policy of this state*
36 *that:*

37 *(a) A public office is a public trust and shall be held for the sole benefit*
38 *of the people.*

39 *(b) A public officer or employee must commit himself to avoid conflicts*
40 *between his private interests and those of the general public whom he*
41 *serves.*

2. The legislature finds that:

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

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

(c) Members of the legislature serve as "citizen legislators" who have other occupations and business interests. Each legislator has particular philosophies and perspectives that are necessarily influenced by the life experiences of that legislator, including, without limitation, professional, family and business experiences. Our system assumes that legislators will contribute those philosophies and perspectives to the debate over issues with which the legislature is confronted. The law concerning ethics in government is not intended to require a member of the legislature to abstain on issues which might affect his interests, provided those interests are properly disclosed and that the benefit or detriment accruing to him is not greater than that accruing to any other member of the general business, profession, occupation or group.

Sec. 9. NRS 281.431 is hereby amended to read as follows:

281.431 As used in NRS 281.411 to 281.581, inclusive, *and sections 2 to 8, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS 281.432 to 281.4365, inclusive, *and sections 2, 3 and 4 of this act* have the meanings ascribed to them in those sections.

Sec. 10. NRS 281.455 is hereby amended to read as follows:

281.455 1. The commission on ethics, consisting of ~~{six}~~ *eight* members, is hereby created.

2. The legislative commission shall appoint to the commission ~~{}:~~

~~—(a) One former legislator;~~

~~—(b) One former public officer of a county; and~~

~~—(c) One former public officer of a city.]~~ *four residents of the state, at least two of whom are former public officers, and at least one of whom must be an attorney licensed to practice law in this state.*

3. The governor shall appoint to the commission ~~{three}~~ *four* residents of the state, ~~{one}~~ *at least two* of whom must be ~~{, if available and willing to serve, a retired justice or judge of this state who was not removed or retired from that office for cause.}~~ *former public officers or public employees, and at least one of whom must be an attorney licensed to practice law in this state.*

4. Not more than ~~{three}~~ *four* members of the commission may be members of the same political party. Not more than ~~{three}~~ *four* members may be residents of the same county.

1 5. None of the members of the commission may:

2 (a) Hold another public office;

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

5 (c) ~~Appear in person and communicate~~ **Communicate** directly with a
6 member of the legislative branch on behalf of someone other than himself
7 ~~or the commission~~, for compensation, to influence legislative action,
8 while he is serving on the commission.

9 6. After the initial terms, the ~~members shall serve~~ terms of **the**
10 **members are** 4 years. Any vacancy in the membership must be filled by the
11 appropriate appointing authority for the unexpired term. Each member may
12 serve no more than two consecutive full terms.

13 **Sec. 11.** NRS 281.461 is hereby amended to read as follows:

14 281.461 1. The commission shall:

15 (a) At its first meeting and annually thereafter elect a chairman and vice
16 chairman from among its members.

17 (b) Meet regularly at least once in each calendar quarter, unless there are
18 no requests made for an opinion pursuant to NRS 281.511, 294A.345 or
19 294A.346, and at other times upon the call of the chairman.

20 2. Members of the commission are entitled to receive a salary of not
21 more than \$80 per day, as fixed by the commission, while engaged in the
22 business of the commission.

23 3. While engaged in the business of the commission, each member and
24 employee of the commission is entitled to receive the per diem allowance
25 and travel expenses provided for state officers and employees generally.

26 4. ~~{The commission shall, within the limits of legislative appropriation,~~
27 ~~employ such persons as are necessary to carry out any of its duties relating~~
28 ~~to:~~

29 ~~—(a) The administration of its affairs;~~

30 ~~—(b) The review of statements of financial disclosure; and~~

31 ~~—(c) The investigation of matters under its jurisdiction.~~

32 ~~5.}~~ The commission may, within the limits of legislative appropriation,
33 maintain such facilities as are required to carry out its functions.

34 **Sec. 12.** NRS 281.465 is hereby amended to read as follows:

35 281.465 1. The commission has jurisdiction to investigate and take
36 appropriate action regarding an alleged violation of:

37 (a) This chapter by a public officer or employee or former public officer
38 or employee in any proceeding commenced by:

39 (1) The filing of a request for an opinion with the commission; or

40 (2) ~~{A determination of the commission on its}~~ **Upon the**
41 **commission's** own motion . ~~{that there is just and sufficient cause to render~~
42 ~~an opinion concerning the conduct of that public officer or employee or~~
43 ~~former public officer or employee.}~~

(b) NRS 294A.345 or 294A.346 in any proceeding commenced by the filing of a request for an opinion pursuant thereto.

2. The provisions of paragraph (a) of subsection 1 apply to a public officer or employee who:

(a) Currently holds public office or is publicly employed at the commencement of proceedings against him.

(b) Resigns or otherwise leaves his public office or employment:

(1) After the commencement of proceedings against him; or

(2) Within 1 year after the alleged violation or reasonable discovery of the alleged violation.

Sec. 13. NRS 281.471 is hereby amended to read as follows:

281.471 The commission shall:

1. Adopt procedural regulations to facilitate the receipt of inquiries *and requests* and *the* prompt rendition of its opinions.

2. Prescribe, by regulation, forms and procedures for the submission of statements of financial disclosure ~~{}~~ *and statements of acknowledgment filed by public officers and public employees pursuant to section 7 of this act*, maintain files of ~~{the}~~ *such* statements and make the statements available for public inspection.

3. ~~{Make}~~ *Cause the making of* such investigations as are reasonable and necessary for the rendition of its opinions pursuant to this chapter.

4. Inform the attorney general or district attorney of all cases of noncompliance with the requirements ~~{for disclosure.}~~ *of this chapter.*

5. Recommend to the legislature such further legislation as the commission considers desirable or necessary to promote and maintain high standards of ethical conduct in government.

6. Publish a manual for the use of public officers and employees that contains:

(a) *Hypothetical opinions which are abstracted from opinions rendered pursuant to subsection 1 of NRS 281.511, for the future guidance of all persons concerned with ethical standards in government;*

(b) *Abstracts of selected opinions rendered pursuant to subsection 2 of NRS 281.511; and*

(c) *An abstract of the requirements of this chapter.*

The legislative counsel shall prepare annotations to this chapter for inclusion in the Nevada Revised Statutes based on the abstracts and published opinions of the commission.

Sec. 14. NRS 281.475 is hereby amended to read as follows:

281.475 1. The chairman and vice chairman of the commission may administer oaths.

2. The commission, upon majority vote, may issue a subpoena to compel the *attendance of a witness and the production of books and papers. Upon the request of the executive director or the public officer or*

1 *public employee who is the subject of a request for an opinion, the*
2 *chairman or, in his absence, the vice chairman, may issue a subpoena to*
3 *compel the attendance of a witness and the production of books and papers.*

4 3. Before issuing ~~{such a subpoena, the commission}~~ *a subpoena to a*
5 *public officer or public employee who is the subject of a request for an*
6 *opinion, the executive director* shall submit a written request to the public
7 officer or public employee ~~{who is the subject of an inquiry or opinion of~~
8 ~~the commission, or to the person or group of persons requesting an opinion~~
9 ~~pursuant to NRS 294A.345 or 294A.346,}~~ requesting:

10 (a) His appearance ~~{, or the appearance of a representative of the group,}~~
11 as a witness; *or*

12 (b) ~~{The appearance as a witness of any other person who may have~~
13 ~~information relating to the inquiry or opinion; or~~

14 ~~—(c) The}~~ *His* production of any books and papers ~~{. Each such}~~ *relating*
15 *to the request for an opinion.*

16 4. *Each written request submitted by the executive director pursuant*
17 *to subsection 3* must specify the time and place for the attendance of ~~{any~~
18 ~~witness}~~ *the public officer or public employee* or the production of any
19 books and papers, and designate with certainty the books and papers
20 requested, if any. If the public officer or ~~{other witness}~~ *public employee*
21 fails or refuses to attend *at the time and place specified* or produce the
22 books and papers requested by the ~~{commission, the commission}~~ *executive*
23 *director within 5 business days after receipt of the request, the chairman*
24 *may issue the subpoena. Failure of the public officer or public employee*
25 *to comply with the written request of the executive director constitutes*
26 *good cause for extension of the time set forth in subsections 3 and 4 of*
27 *NRS 281.511.*

28 ~~{3.}~~ 5. If any witness refuses to attend, testify or produce any books
29 and papers as required by the subpoena, the chairman of the commission
30 may report to the district court by petition, setting forth that:

31 (a) Due notice has been given of the time and place of attendance of the
32 witness or the production of the books and papers;

33 (b) The witness has been subpoenaed by the commission pursuant to this
34 section; and

35 (c) The witness has failed or refused to attend or produce the books and
36 papers required by the subpoena before the commission, or has refused to
37 answer questions propounded to him, and asking for an order of the court
38 compelling the witness to attend and testify or produce the books and
39 papers before the commission.

40 ~~{4.}~~ 6. Except as otherwise provided in this subsection, upon such a
41 petition, the court shall enter an order directing the witness to appear before
42 the court at a time and place to be fixed by the court in its order, the time to
43 be not more than 10 days after the date of the order, and then and there

1 show cause why he has not attended, testified or produced the books or
2 papers before the commission. If the witness has been subpoenaed by the
3 commission in response to a request for an opinion filed pursuant to NRS
4 294A.345 or 294A.346, the court shall direct the witness to appear before
5 the court as expeditiously as possible to allow the commission to render its
6 opinion within the time required by NRS 281.477. A certified copy of the
7 order must be served upon the witness.

8 ~~5.1~~ 7. If it appears to the court that the subpoena was regularly issued
9 by the commission, the court shall enter an order that the witness appear
10 before the commission, at the time and place fixed in the order, and testify
11 or produce the required books and papers. Upon failure to obey the order
12 the witness must be dealt with as for contempt of court.

13 **Sec. 15.** NRS 281.501 is hereby amended to read as follows:

14 281.501 1. Except as otherwise provided in subsection 2 or 3, a
15 ~~{member of the legislative branch}~~ **public officer** may vote upon a matter if
16 the benefit or detriment accruing to him as a result of the decision either
17 individually or in a representative capacity as a member of a general
18 business, profession, occupation or group is not greater than that accruing
19 to any other member of the general business, profession, occupation or
20 group.

21 2. In addition to the requirements of the code of ethical standards, a
22 ~~{member of the legislative branch}~~ **public officer** shall not vote upon or
23 advocate the passage or failure of, but may otherwise participate in the
24 consideration of a matter with respect to which the independence of
25 judgment of a reasonable person in his situation would be materially
26 affected by:

27 (a) His acceptance of a gift or loan;

28 (b) His pecuniary interest; or

29 (c) His commitment in a private capacity to the interests of others.

30 It must be presumed that the independence of judgment of a reasonable
31 person would not be materially affected by his pecuniary interest or his
32 commitment in a private capacity to the interests of others where the
33 resulting benefit or detriment accruing to him or to the other persons whose
34 interests to which the member is committed in a private capacity is not
35 greater than that accruing to any other member of the general business,
36 profession, occupation or group. ***The presumption set forth in this
37 subsection does not affect the applicability of the requirements set forth
38 in subsection 3 relating to the disclosure of the pecuniary interest or
39 commitment in a private capacity to the interests of others.***

40 3. A public officer or employee shall not approve, disapprove, vote,
41 abstain from voting or otherwise act upon any matter:

42 (a) Regarding which he has accepted a gift or loan;

1 (b) Which would reasonably be affected by his commitment in a private
2 capacity to the interest of others; or

3 (c) In which he has a pecuniary interest,
4 without disclosing ~~{the full nature and extent of}~~ *sufficient information*
5 *concerning* the gift, loan, commitment or interest ~~{ }~~ *to inform the public*
6 *of the potential effect of the action or abstention upon the person who*
7 *provided the gift or loan, upon the person to whom he has a commitment,*
8 *or upon his interest.* Except as otherwise provided in subsection 6, such a
9 disclosure must be made at the time the matter is considered. If the officer
10 or employee is a member of a body which makes decisions, he shall make
11 the disclosure in public to the chairman and other members of the body. If
12 the officer or employee is not a member of such a body and holds an
13 appointive office, he shall make the disclosure to the supervisory head of
14 his organization or, if he holds an elective office, to the general public in
15 the area from which he is elected. *This subsection does not require a*
16 *public officer to disclose any campaign contributions that the public*
17 *officer reported pursuant to NRS 294A.120 or 294A.125 in a timely*
18 *manner.*

19 4. If a ~~{member of the legislative branch}~~ *public officer* declares to the
20 ~~{legislative}~~ body or committee in which the vote is to be taken that he will
21 abstain from voting because of the requirements of this section, the
22 necessary quorum to act upon and the number of votes necessary to act
23 upon the matter, as fixed by any statute, ordinance or rule, is reduced as
24 though the member abstaining were not a member of the body or
25 committee. *A public officer has a duty to vote upon a matter unless he*
26 *makes the disclosure required pursuant to subsection 3.*

27 5. If a ~~{member of the legislative branch}~~ *public officer* is voting on a
28 matter which affects public employees, he shall make a full public
29 disclosure of any personal pecuniary interest which he may have in the
30 matter.

31 6. After a member of the ~~{legislative branch}~~ *legislature* makes a
32 disclosure pursuant to subsection 3, he may file with the director of the
33 legislative counsel bureau a written statement of his disclosure. The written
34 statement must designate the matter to which the disclosure applies. After a
35 legislator files a written statement pursuant to this subsection, he is not
36 required to disclose orally his interest when the matter is further considered
37 by the legislature or any committee thereof. A written statement of
38 disclosure is a public record and must be made available for inspection by
39 the public during the regular office hours of the legislative counsel bureau.

40 7. *The provisions of this section do not, under any circumstances:*

41 (a) *Prohibit a member of the legislative branch from requesting or*
42 *introducing a legislative measure; or*

1 *(b) Require a member of the legislative branch to take any particular*
2 *action before or while requesting or introducing a legislative measure.*

3 *8. As used in this section, "commitment in a private capacity to the*
4 *interests of others" means a commitment to a person:*

5 *(a) Who is a member of his household;*

6 *(b) Who is related to him by blood, adoption or marriage within the*
7 *third degree of consanguinity or affinity;*

8 *(c) Who employs him or a member of his household;*

9 *(d) With whom he has a substantial and continuing business*
10 *relationship; or*

11 *(e) Any other commitment or relationship that is substantially similar*
12 *to a commitment or relationship described in this subsection.*

13 **Sec. 16.** NRS 281.511 is hereby amended to read as follows:

14 281.511 1. The commission shall render an opinion interpreting the
15 statutory ethical standards and apply the standards to a given set of facts
16 and circumstances upon request from a public officer or employee who is
17 seeking guidance on questions which directly relate to the propriety of his
18 own past, present or future conduct as an officer or employee. He may also
19 request the commission to hold a public hearing regarding the requested
20 opinion. If a requested opinion relates to the propriety of his own present or
21 future conduct, the opinion of the commission is:

22 (a) Binding upon the requester as to his future conduct; and

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

27 2. The commission may render an opinion interpreting the statutory
28 ethical standards and apply the standards to a given set of facts and
29 circumstances:

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

31 (b) ~~Upon~~ *Except as otherwise provided in this subsection, upon*
32 *request from a person, if the requester:*

33 (1) Submits all related evidence deemed necessary by the
34 ~~commission for it~~ *executive director and the panel* to make a
35 ~~preliminary~~ determination of whether there is just and sufficient cause to
36 render an opinion in the matter; and

37 (2) Signs a statement on a form prescribed by the commission in
38 which he affirms that:

39 (I) The accusation or information contained in the request is true;

40 (II) He did not submit the request in bad faith or with a vexatious
41 purpose; and

42 (III) He understands that the commission may impose penalties

43 upon him pursuant to NRS 281.551 if the commission determines that the

1 accusation or information is false and was submitted in bad faith ~~[,] or~~ with
2 a vexatious purpose ~~for~~ in connection with a request for an opinion that the
3 commission determines to be without merit.

4 (c) Upon the commission's own motion regarding the propriety of
5 conduct by a public officer or employee . ~~[, if the commission first~~
6 ~~determines in an adopted motion that there is just and sufficient cause to~~
7 ~~render an opinion concerning the conduct of that public officer or~~
8 ~~employee.]~~ The commission shall not initiate proceedings pursuant to this

9 paragraph based solely upon an anonymous complaint. ~~[Proceedings that~~
10 ~~the commission initiates pursuant to this paragraph must remain~~
11 ~~confidential unless the commission determines that there is just and~~
12 ~~sufficient cause to render an opinion.]~~

13 The commission shall not ~~[determine that there is just and sufficient cause~~
14 ~~to render an opinion without extending the public officer or employee an~~
15 ~~opportunity to appear before the commission and present evidence and~~
16 ~~argument.~~

17 ~~—3.— The commission shall] render an opinion interpreting the statutory~~
18 ~~ethical standards or apply those standards to a given set of facts and~~
19 ~~circumstances if the request is submitted by a person who is incarcerated~~
20 ~~in a correctional facility in this state.~~

21 **3. Upon receipt of a request for an opinion by the commission or**
22 **upon the motion of the commission pursuant to subsection 2, the**
23 **executive director shall investigate the facts and circumstances relating**
24 **to the request to determine whether there is just and sufficient cause for**
25 **the commission to render an opinion in the matter. The public officer or**
26 **employee that is the subject of the request may submit to the executive**
27 **director any information relevant to the request. The executive director**
28 **shall complete an investigation and present his recommendation relating**
29 **to just and sufficient cause to the panel within 15 days after the receipt of**
30 **or the motion of the commission for the request, unless the panel extends**
31 **the time for a period not to exceed 30 days upon the request of the**
32 **executive director for good cause shown or the request of the public**
33 **officer or employee. If the executive director determines after an**
34 **investigation that just and sufficient cause exists for the commission to**
35 **render an opinion in the matter, he shall state such a recommendation in**
36 **writing, including, without limitation, the specific evidence that supports**
37 **his recommendation. If, after an investigation, the executive director**
38 **does not determine that just and sufficient cause exists for the**
39 **commission to render an opinion in the matter, he shall state such a**
40 **recommendation in writing, including, without limitation, the specific**
41 **reasons for his recommendation. Within 15 days after the executive**
42 **director has provided his recommendation in the matter to the panel, the**
43 **panel shall make a final determination regarding whether just and**

1 *sufficient cause exists for the commission to render an opinion in the*
2 *matter, unless the commission extends the time for a period not to exceed*
3 *30 days upon the request of the panel for good cause shown or the*
4 *request of the public officer or employee. The panel shall not determine*
5 *that there is just and sufficient cause for the commission to render an*
6 *opinion unless the panel has provided the public officer or employee an*
7 *opportunity to respond to the allegations against him. The panel shall*
8 *cause a record of its proceedings in each matter to be kept and such a*
9 *record must remain confidential until the panel determines whether there*
10 *is just and sufficient cause for the commission to render an opinion in*
11 *the matter.*

12 *4. If the panel determines that just and sufficient cause exists for the*
13 *commission to render an opinion requested pursuant to this section ~~as~~*
14 *~~expeditiously as possible in light of the circumstances of the public officer~~*
15 *~~or employee about whom the opinion is requested, so as to minimize~~*
16 *~~adverse consequences to him that may result from a delay in issuing the~~*
17 *~~opinion.~~*

18 *~~—4.]~~ , the commission shall hold a hearing and render an opinion in the*
19 *matter within 30 days after the determination of just and sufficient cause*
20 *by the panel, unless the commission extends the time for a period not to*
21 *exceed 30 days for good cause shown or upon the request of the public*
22 *officer or employee.*

23 *5. Each request for an opinion that a public officer or employee*
24 *submits to the commission pursuant to subsection 1, each opinion rendered*
25 *by the commission in response to such a request and any motion,*
26 *~~{preliminary}~~ determination, evidence or record of a hearing relating to*
27 *such a request are confidential unless the public officer or employee who*
28 *requested the opinion:*

29 (a) Acts in contravention of the opinion, in which case the commission
30 may disclose the request for the opinion, the contents of the opinion and
31 any motion, evidence or record of a hearing related thereto;

32 (b) Discloses the request for the opinion, the contents of the opinion or
33 any motion, evidence or record of a hearing related thereto; or

34 (c) Requests the commission to disclose the request for the opinion, the
35 contents of the opinion or any motion, evidence or record of a hearing
36 related thereto.

37 *~~{5.}~~ 6. Except as otherwise provided in this subsection, each document*
38 *in the possession of the commission *or its staff* that is related to a request*
39 *for an opinion regarding a public officer or employee submitted to *or**
40 **initiated by* the commission pursuant to ~~{paragraph (b) of}~~ subsection 2,*

1 including, ***without limitation***, the commission's copy of the request and all
2 materials and information gathered in an investigation of the request, is
3 confidential until the ~~commission~~ ***panel*** determines whether there is just
4 and sufficient cause to render an opinion in the matter. The public officer
5 or employee who is the subject of a request for an opinion submitted ***or***
6 ***initiated*** pursuant to ~~paragraph (b) of~~ subsection 2 may in writing
7 authorize the commission to make its files, material and information which
8 are related to the request publicly available.

9 ~~6.~~ ***7. Except as otherwise provided in paragraphs (a) and (b), the***
10 ***proceedings of a panel are confidential until the panel determines***
11 ***whether there is just and sufficient cause to render an opinion. A person***
12 ***who:***

13 ***(a) Requests an opinion from the commission pursuant to paragraph***
14 ***(b) of subsection 2 may:***

15 ***(1) At any time, reveal to a third party the alleged conduct of a***
16 ***public officer or employee underlying the request that he filed with the***
17 ***commission or the substance of testimony, if any, that he gave before the***
18 ***commission.***

19 ***(2) After the panel determines whether there is just and sufficient***
20 ***cause to render an opinion in the matter, reveal to a third party the fact***
21 ***that he requested an opinion from the commission.***

22 ***(b) Gives testimony before the commission may:***

23 ***(1) At any time, reveal to a third party the substance of testimony***
24 ***that he gave before the commission.***

25 ***(2) After the panel determines whether there is just and sufficient***
26 ***cause to render an opinion in the matter, reveal to a third party the fact***
27 ***that he gave testimony before the commission.***

28 ***8. Whenever the commission holds a hearing*** ~~for a purpose other than~~
29 ~~to determine whether there is just and sufficient cause to render an opinion~~
30 ~~in a matter,~~ ***pursuant to this section,*** the commission shall:

31 ***(a) Notify the person about whom the opinion was requested of the place***
32 ***and time of the commission's hearing on the matter;***

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

34 ***(c) Allow the person to hear the evidence presented to the commission***
35 ***and to respond and present evidence on his own behalf.***

36 The commission's hearing may be held no sooner than ~~2 weeks~~ ***10 days***
37 after the notice is given unless the person agrees to a shorter time.

38 ~~7.~~ ***9. If a person who is not a party to a hearing before the***
39 ***commission, including, without limitation, a person who has requested***
40 ***an opinion pursuant to paragraph (a) or (b) of subsection 2, wishes to***
41 ***ask a question of a witness at the hearing, the person must submit the***
42 ***question to the executive director in writing. The executive director may***
43 ***submit the question to the commission if he deems the question relevant***

1 *and appropriate. This subsection does not require the commission to ask*
2 *any question submitted by a person who is not a party to the proceeding.*

3 **10.** If a person who requests an opinion pursuant to subsection 1 or 2
4 does not:

5 (a) Submit all necessary information to the commission; and

6 (b) Declare by oath or affirmation that he will testify truthfully,
7 the commission may decline to render an opinion.

8 ~~**10.**~~ **11.** *For good cause shown, the commission may take testimony*
9 *from a person by telephone or video conference.*

10 **12.** For the purposes of NRS 41.032, the members of the commission
11 and its employees shall be deemed to be exercising or performing a
12 discretionary function or duty when taking an action related to the
13 rendering of an opinion pursuant to this section.

14 ~~**9.**—The commission shall publish hypothetical opinions which are~~
15 ~~abstracted from the opinions rendered pursuant to subsection 1, for the~~
16 ~~future guidance of all persons concerned with ethical standards in~~
17 ~~government.~~

18 ~~**10.**~~ **13.** A meeting or hearing that the commission *or the panel* holds
19 to receive information or evidence concerning the propriety of the conduct
20 of a public officer or employee pursuant to this section and the
21 ~~commission's~~ *deliberations of the commission and the panel* on such
22 information or evidence are not subject to the provisions of chapter 241 of
23 NRS.

24 **Sec. 17.** NRS 281.531 is hereby amended to read as follows:

25 281.531 **1.** The ~~attorney general~~ *commission counsel* is the legal
26 adviser to the commission. For each opinion ~~he~~, *the commission counsel*
27 shall prepare, at the direction of the commission, the appropriate findings
28 of fact and conclusions as to relevant standards and the propriety of
29 particular conduct ~~within the time set forth in subsection 4 of NRS~~
30 **281.511. The commission counsel shall not issue written opinions**
31 **concerning the applicability of the statutory ethical standards to a given**
32 **set of facts and circumstances except as directed by the commission.**

33 **2.** *The commission may rely upon the legal advice of the commission*
34 *counsel in conducting its daily operations.*

35 **3.** *If the commission counsel is prohibited from acting on a*
36 *particular matter pursuant to NRS 281.501, he shall disclose the reasons*
37 *therefor to the chairman and the attorney general shall appoint a deputy*
38 *to act in the place of the commission counsel for that particular matter.*

39 **Sec. 18.** NRS 281.551 is hereby amended to read as follows:

40 281.551 **1.** In addition to any other penalty provided by law, the
41 commission may impose on a public officer or employee or former public
42 officer or employee civil penalties ~~not to exceed~~ :

43 (a) *Not to exceed* \$5,000 for a *first* willful violation of this chapter ~~to~~ ;

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

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

5 2. In addition to other penalties provided by law, the commission may
6 impose a civil penalty not to exceed \$5,000 and assess an amount equal to
7 the amount of attorney's fees and costs actually and reasonably incurred by
8 the person about whom an opinion was requested pursuant to NRS
9 281.511, against a person who:

10 (a) Submits to the commission, in bad faith or with a vexatious purpose,
11 an accusation or information that is false; *or*

12 ~~(b) Submits to the commission, in connection with a request for an~~
13 ~~opinion that the commission determines to be without merit, an accusation~~
14 ~~or information that is false; or~~

15 ~~—(c)—~~ Prevents, interferes with or attempts to prevent or interfere with the
16 discovery or investigation of a violation of this chapter.

17 3. If the commission finds that a violation of a provision of this chapter
18 by a public officer or employee or former public officer or employee has
19 resulted in the realization by another person of a financial benefit, the
20 commission may, in addition to other penalties provided by law, require the
21 current or former public officer or employee to pay a civil penalty of not
22 more than twice the amount so realized.

23 4. Except as otherwise provided in this subsection, and in addition to
24 any other penalty provided by law, the commission may impose on any
25 person who violates any provision of NRS 294A.345 or 294A.346 a civil
26 penalty not to exceed \$10,000. If the commission finds that a violation of
27 NRS 294A.345 or 294A.346 occurred within ~~{10}~~ 17 days before an
28 election, including , *without limitation*, any recall or special election, the
29 commission may impose on the person who committed such a violation a
30 civil penalty not to exceed \$30,000.

31 5. If the commission finds that ~~{a}~~ :

32 *(a) A willful* violation of this chapter has been committed by a public
33 officer removable from office by impeachment only, it shall file a report
34 with the appropriate person responsible for commencing impeachment
35 proceedings as to its finding. The report must contain a statement of the
36 facts alleged to constitute the violation.

37 *(b) A willful violation of this chapter has been committed by a public*
38 *officer removable from office pursuant to NRS 283.440, the commission*
39 *may file a proceeding in the appropriate court for removal of the officer.*

40 *(c) Three or more willful violations have been committed by a public*
41 *officer removable from office pursuant to NRS 283.440, the commission*
42 *shall file a proceeding in the appropriate court for removal of the officer.*

1 6. An action taken by a public officer or employee or former public
2 officer or employee relating to NRS 281.481, 281.491, 281.501 or 281.505
3 is not a willful violation of a provision of those sections if the public officer
4 or employee:

5 (a) Relied in good faith upon the advice of the legal counsel retained by
6 the public body which the public officer represents or by the employer of
7 the public employee ~~or~~ *or upon the manual published by the commission*
8 *pursuant to NRS 281.471;*

9 (b) Was unable, through no fault of his own, to obtain an opinion from
10 the commission before the action was taken; and

11 (c) Took action that was not contrary to a prior *published* opinion issued
12 by the commission. ~~It to the public officer or employee.~~

13 7. In addition to other penalties provided by law, a public employee
14 who willfully violates a provision of NRS 281.481, 281.491, 281.501 or
15 281.505 is subject to disciplinary proceedings by his employer and must be
16 referred for action in accordance to the applicable provisions governing his
17 employment.

18 8. NRS 281.481 to 281.541, inclusive, do not abrogate or decrease the
19 effect of the provisions of the Nevada Revised Statutes which define crimes
20 or prescribe punishments with respect to the conduct of public officers or
21 employees. *If the commission finds that a public officer or employee has*
22 *committed a willful violation of this chapter which it believes may also*
23 *constitute a criminal offense, the commission shall refer the matter to the*
24 *attorney general or the district attorney, as appropriate, for a*
25 *determination of whether a crime has been committed that warrants*
26 *prosecution.*

27 9. The imposition of a civil penalty pursuant to subsections 1 to 4,
28 inclusive, is a final decision for the purposes of judicial review.

29 10. In determining for the purposes of this section whether a person
30 submitted an accusation or information in bad faith or with a vexatious
31 purpose, the commission may consider various factors, including, without
32 limitation:

33 (a) When the accusation or information was filed with or provided to the
34 commission;

35 (b) Whether and, if applicable, in what manner the person who
36 submitted the accusation or information publicly disseminated the
37 accusation or information before the commission determined whether there
38 was just and sufficient cause to render an opinion in the matter;

39 (c) Whether the accusation or information sets forth alleged facts or
40 details that are misleading or deceptive; and

41 (d) Whether the accusation or information or the conduct of the person
42 who submitted the accusation or information:

(1) Would be perceived as annoying or harassing by a reasonable person; or

(2) Demonstrates conscious disregard for the process and procedures established by the commission.

11. A finding by the commission that a public officer or 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.

Sec. 19. NRS 281.553 is hereby amended to read as follows:

281.553 1. A public officer or public employee shall not accept or receive an honorarium.

2. An honorarium paid on behalf of a public officer or public employee to a charitable organization from which the officer or employee does not derive any financial benefit is deemed not to be accepted or received by the officer or employee for the purposes of this section.

3. This section does not prohibit:

(a) The receipt of payment for work performed outside the normal course of a person's public office or employment if the performance of that work is consistent with the applicable policies of his public employer regarding supplemental employment.

(b) The receipt of an honorarium by the spouse of a public officer or public employee if it is related to the spouse's profession or occupation.

4. As used in this section, "honorarium" means the payment of money or anything of value for an appearance or speech by the public officer or public employee in his capacity as a public officer or public employee. The term does not include the payment of:

(a) The actual and necessary costs incurred by the public officer or public employee, his spouse or his aid for transportation and for lodging and meals while the public officer or public employee is away from his residence.

(b) Compensation which would otherwise have been earned by the public officer or public employee in the normal course of his public office or employment.

(c) A fee for a speech related to the officer's or employee's profession or occupation outside of his public office or employment if:

(1) Other members of the profession or occupation are ordinarily compensated for such a speech; and

(2) The fee paid to the public officer or public employee is approximately the same as the fee that would be paid to a member of the private sector whose qualifications are similar to those of the officer or employee for a comparable speech.

(d) A fee for a speech delivered to an organization of legislatures, legislators or other elected officers.

1 5. A public officer or public employee who violates the provisions of
2 this section is ~~guilty of a misdemeanor and, upon~~ :

3 *(a) Guilty of a category E felony and shall be punished as provided in*
4 *NRS 193.130; and*

5 *(b) Upon* conviction, forfeits the amount of the honorarium.

6 **Sec. 19.5.** NRS 281.581 is hereby amended to read as follows:

7 281.581 ~~{A}~~

8 *1. Except as otherwise provided in this section, a* candidate or public
9 or judicial officer who fails to file his statement of financial disclosure in a
10 timely manner pursuant to NRS 281.561 is subject to a civil penalty and
11 payment of court costs and attorney's fees. The amount of the civil penalty
12 is:

13 ~~{1-}~~ *(a)* If the statement is filed not more than 7 days late, \$25 for each
14 day the statement is late.

15 ~~{2-}~~ *(b)* If the statement is filed more than 7 days late but not more than
16 15 days late, \$175 for the first 7 days, plus \$50 for each additional day the
17 statement is late.

18 ~~{3-}~~ *(c)* If the statement is filed more than 15 days late, \$575 for the first
19 15 days, plus \$100 for each additional day the statement is late. ~~{The}~~

20 *2. A civil penalty imposed pursuant to subsection 1* must be recovered
21 in a civil action brought in the name of the State of Nevada by the
22 commission in a court of competent jurisdiction and deposited with the
23 state treasurer for credit to the state general fund.

24 *3. For good cause shown, the commission may waive a civil penalty*
25 *that would otherwise be imposed pursuant to subsection 1. If the*
26 *commission waives a civil penalty pursuant to this subsection, the*
27 *commission shall:*

28 *(a) Create a record which sets forth that the civil penalty has been*
29 *waived and describes the circumstances that constitute the good cause*
30 *shown; and*

31 *(b) Ensure that the record created pursuant to paragraph (a) is*
32 *available for review by the general public.*

33 **Sec. 20.** NRS 197.110 is hereby amended to read as follows:

34 197.110 Every public officer who:

35 1. Asks or receives, directly or indirectly, any compensation, gratuity
36 or reward, or promise thereof, for omitting or deferring the performance of
37 any official duty ~~{H}~~ or for any official service which has not been actually
38 rendered, except in case of charges for prospective costs or fees
39 demandable in advance in a case allowed by law; or

40 2. Employs or uses any person, money or property under his official
41 control or direction, or in his official custody, for the private benefit or gain
42 of himself or another,

~~{shall be}~~ is guilty of a ~~{gross misdemeanor.}~~ *category E felony and shall be punished as provided in NRS 193.130.*

Sec. 21. NRS 197.170 is hereby amended to read as follows:

197.170 A public officer *or employee* who ~~{asks,}~~ :

1. Asks, receives or agrees to receive a fee or other compensation for his official service ~~{}~~ *or his employment* either:

~~{1.}~~ *(a)* In excess of the fee or compensation allowed to him by statute therefor; or

~~{2.}~~ *(b)* Where a fee or compensation is not allowed to him by statute therefor ~~{}~~ ; *or*

2. Requests money, property or anything of value which is not authorized by law, from any person regulated by the public officer or employee, and in a manner which would cause a reasonable person to be intimidated into complying with the request to avoid the risk of adverse action by the public officer or employee,

commits extortion which is a category D felony and shall be punished as provided in NRS 193.130. In addition to any other penalty, the court shall order the person to pay restitution.

Sec. 22. NRS 294A.345 is hereby amended to read as follows:

294A.345 1. A person shall not, with actual malice and the intent to impede the success of the campaign of a candidate, cause to be published a false statement of fact concerning the candidate, including, without limitation, statements concerning:

(a) The education or training of the candidate.

(b) The profession or occupation of the candidate.

(c) Whether the candidate committed, was indicted for committing or was convicted of committing a felony or other crime involving moral turpitude, dishonesty or corruption.

(d) Whether the candidate has received treatment for a mental illness.

(e) Whether the candidate was disciplined while serving in the military or was dishonorably discharged from service in the military.

(f) Whether another person endorses or opposes the candidate.

(g) The record of voting of a candidate if he formerly served or currently serves as a public officer.

2. A person shall not, with actual malice and the intent to impede the success of a campaign for the passage or defeat of a question on the ballot at any election, including any recall or special election, cause to be published a false statement of fact concerning the question on the ballot.

3. Any candidate who alleges that a false statement of fact concerning the candidate has been published in violation of subsection 1, and any person or group of persons that advocates the passage or defeat of a question on the ballot at any election, is required to file a report pursuant to NRS 294A.150, and alleges that a false statement of fact has been

1 published in violation of subsection 2, may file a request for an opinion
2 with the commission on ethics pursuant to NRS 281.411 to 281.581,
3 inclusive . ~~[-and NRS 281.477.]~~ *Such a request must be filed with the*
4 *commission not later than 10 days after the date of the election with*
5 *respect to which the alleged violation occurred.* The commission shall
6 give priority to such a request over all other matters pending with the
7 commission.

8 4. A person who violates the provisions of this section is subject to a
9 civil penalty that may be imposed by the commission on ethics pursuant to
10 NRS 281.551.

11 5. As used in this section:

12 (a) “Actual malice” means knowledge of the falsity of a statement or
13 reckless disregard for whether a statement is true or false.

14 (b) “Publish” means the act of printing, posting, broadcasting, mailing,
15 speaking or otherwise disseminating.

16 **Sec. 23.** NRS 294A.346 is hereby amended to read as follows:

17 294A.346 1. An employee, agent or volunteer of the campaign of a
18 candidate shall not willfully perform any act in the course of his
19 employment, agency or volunteering that impedes the success of that
20 campaign.

21 2. A person shall not willfully, to impede the success of the campaign
22 of a candidate, offer or give an item of value to:

23 (a) A person to induce him to obtain a position as an employee, agent or
24 volunteer for that campaign and perform any act in the course of his
25 employment, agency or volunteering to impede the success of that
26 campaign; or

27 (b) An employee, agent or volunteer for that campaign to induce him to
28 perform any act in the course of his employment, agency or volunteering to
29 impede the success of that campaign.

30 3. An employee, agent or volunteer of a campaign for the passage or
31 defeat of a question on the ballot at any election, including any recall or
32 special election, shall not willfully perform any act in the course of his
33 employment, agency or volunteering that impedes the success of that
34 campaign.

35 4. A person shall not willfully, to impede the success of a campaign for
36 the passage or defeat of a question on the ballot at any election, including
37 any recall or special election, offer or give an item of value to:

38 (a) A person to induce him to obtain a position as an employee, agent or
39 volunteer for that campaign and perform any act in the course of his
40 employment, agency or volunteering to impede the success of that
41 campaign;

or

(b) An employee, agent or volunteer for that campaign to induce him to perform any act in the course of his employment, agency or volunteering to impede the success of that campaign.

5. Any candidate who alleges that a person has violated the provisions of subsection 1 or 2, and any person or group of persons that advocates the passage or defeat of a question on the ballot at any election, is required to file a report pursuant to NRS 294A.150, and alleges that a person has violated the provisions of subsection 3 or 4, may file a request for an opinion with the commission on ethics pursuant to NRS 281.411 to 281.581, inclusive. ~~and 281.477.~~ *Such a request must be filed with the commission not later than 10 days after the date of the election with respect to which the alleged violation occurred.* The commission shall give priority to such a request over all matters pending with the commission.

6. A person who violates the provisions of this section is subject to a civil penalty that may be imposed by the commission on ethics pursuant to NRS 281.551.

Sec. 24. NRS 294A.420 is hereby amended to read as follows:

294A.420 1. If the secretary of state receives information that a person or entity that is subject to the provisions of NRS 294A.120, 294A.140, 294A.150, 294A.180, 294A.200, 294A.210, 294A.220, 294A.270, 294A.280 or 294A.360 has not filed a report pursuant to the applicable provisions of those sections, the secretary of state may, after giving notice to that person or entity, cause the appropriate proceedings to be instituted in the first judicial district court.

2. Except as otherwise provided in this section, a person or entity that violates an applicable provision of NRS 294A.112, 294A.120, 294A.130, 294A.140, 294A.150, 294A.160, 294A.170, 294A.180, 294A.200, 294A.210, 294A.220, 294A.270, 294A.280, 294A.300, 294A.310, 294A.320 or 294A.360 is subject to a civil penalty of not more than \$5,000 for each violation and payment of court costs and attorney's fees. The civil penalty must be recovered in a civil action brought in the name of the State of Nevada by the secretary of state in the first judicial district court and deposited with the state treasurer for credit to the state general fund.

3. If a civil penalty is imposed because a person or entity has reported its contributions, expenses or expenditures after the date the report is due, the amount of the civil penalty is:

(a) If the report is not more than 7 days late, \$25 for each day the report is late.

(b) If the report is more than 7 days late but not more than 15 days late, \$50 for each day the report is late.

(c) If the report is more than 15 days late, \$100 for each day the report is

late.

1 **4. For good cause shown, the secretary of state may waive a civil**
2 **penalty that would otherwise be imposed pursuant to this section. If the**
3 **secretary of state waives a civil penalty pursuant to this subsection, the**
4 **secretary of state shall:**

5 **(a) Create a record which sets forth that the civil penalty has been**
6 **waived and describes the circumstances that constitute the good cause**
7 **shown; and**

8 **(b) Ensure that the record created pursuant to paragraph (a) is**
9 **available for review by the general public.**

10 **Sec. 25.** The amendatory provisions of this act do not apply to conduct
11 that occurred before October 1, 1999.