

ASSEMBLY BILL NO. 419—ASSEMBLYMAN PERKINS

MARCH 24, 2005

Referred to Committee on Government Affairs

SUMMARY—Makes various changes relating to public officers and employees. (BDR 23-1020)

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

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

AN ACT relating to government; prohibiting the disclosure of the identity of a public officer or employee who discloses information regarding improper governmental action during an investigation without his written consent; prohibiting public officers and employees from using governmental time, property, equipment or other facility for activities relating to political campaigns; increasing the civil penalties for willful violations of ethics laws; increasing the period of time in which a state officer or employee who disclosed information regarding improper governmental action may file a written appeal relating to any reprisal or retaliatory action; providing civil penalties for repeated violations of the Open Meeting Law; prohibiting an elected public officer from running for another elected public office unless he resigns from his current office or the term of his current office has expired; 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
- 2     thereto a new section to read as follows:
- 3     *The identity of a state officer or employee or a local*
- 4     *governmental officer or employee who discloses information*
- 5     *concerning improper governmental action must not be disclosed*



*during any investigation of the information provided by the officer or employee without the written consent of the officer or employee.*

**Sec. 2.** NRS 281.481 is hereby amended to read as follows:

281.481 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 economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501.

(b) "Unwarranted" means without justification or adequate reason.

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

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

5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.

6. A public officer or employee shall not suppress any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.

7. A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. ~~[This]~~ *Except for an activity relating to a political campaign, this subsection does not prohibit:*

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



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

5 (2) The use does not interfere with the performance of his  
6 public duties;

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

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

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

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

14 ➡ If a governmental agency incurs a cost as a result of a use that is  
15 authorized pursuant to this subsection or would ordinarily charge a  
16 member of the general public for the use, the public officer or  
17 employee shall promptly reimburse the cost or pay the charge to the  
18 governmental agency.

19 8. A member of the Legislature shall not:

20 (a) Use governmental time, property, equipment or other facility  
21 for a nongovernmental purpose or for the private benefit of himself  
22 or any other person. ~~[This]~~ *Except for an activity relating to a*  
23 *political campaign, this* paragraph does not prohibit:

24 (1) A limited use of state property and resources for personal  
25 purposes if:

26 (I) The use does not interfere with the performance of his  
27 public duties;

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

29 (III) The use does not create the appearance of  
30 impropriety;

31 (2) The use of mailing lists, computer data or other  
32 information lawfully obtained from a governmental agency which is  
33 available to members of the general public for nongovernmental  
34 purposes; or

35 (3) The use of telephones or other means of communication  
36 if there is not a special charge for that use.

37 (b) Require or authorize a legislative employee, while on duty,  
38 to perform personal services or assist in a private activity, except:

39 (1) In unusual and infrequent situations where the  
40 employee's service is reasonably necessary to permit the Legislator  
41 or legislative employee to perform his official duties; or

42 (2) Where such service has otherwise been established as  
43 legislative policy.

44 9. A public officer or employee shall not attempt to benefit his  
45 personal or financial interest through the influence of a subordinate.



1 10. A public officer or employee shall not seek other  
2 employment or contracts through the use of his official position.

3 11. *As used in this section, "activity relating to a political*  
4 *campaign" includes, without limitation:*

5 (a) *The preparation of reports of campaign contributions and*  
6 *reports of campaign expenditures required pursuant to chapter*  
7 *294A of NRS.*

8 (b) *Any activity designed to affect the outcome of any primary,*  
9 *general or special election or question on the ballot.*

10 **Sec. 3.** NRS 281.551 is hereby amended to read as follows:

11 281.551 1. In addition to any other penalty provided by law,  
12 the Commission may impose on a public officer or employee or  
13 former public officer or employee civil penalties:

14 (a) Not to exceed ~~[\$5,000]~~ **\$10,000** for a first willful violation of  
15 this chapter;

16 (b) Not to exceed ~~[\$10,000]~~ **\$15,000** for a separate act or event  
17 that constitutes a second willful violation of this chapter; and

18 (c) Not to exceed ~~[\$25,000]~~ **\$30,000** for a separate act or event  
19 that constitutes a third willful violation of this chapter.

20 2. In addition to other penalties provided by law, the  
21 Commission may impose a civil penalty not to exceed \$5,000 and  
22 assess an amount equal to the amount of attorney's fees and costs  
23 actually and reasonably incurred by the person about whom an  
24 opinion was requested pursuant to NRS 281.511, against a person  
25 who prevents, interferes with or attempts to prevent or interfere with  
26 the discovery or investigation of a violation of this chapter.

27 3. If the Commission finds that a violation of a provision of  
28 this chapter by a public officer or employee or former public officer  
29 or employee has resulted in the realization by another person of a  
30 financial benefit, the Commission may, in addition to other penalties  
31 provided by law, require the current or former public officer or  
32 employee to pay a civil penalty of not more than twice the amount  
33 so realized.

34 4. In addition to any other penalty provided by law, by an  
35 affirmative vote of two-thirds of the Commission, the Commission  
36 may impose on any person who violates any provision of NRS  
37 294A.345 or 294A.346 a civil penalty not to exceed \$5,000. The  
38 Commission shall not impose a civil penalty for a violation of NRS  
39 294A.345 unless the Commission has made the specific findings  
40 required pursuant to subsection 7 of NRS 281.477.

41 5. If the Commission finds that:

42 (a) A willful violation of this chapter has been committed by a  
43 public officer removable from office by impeachment only, the  
44 Commission shall file a report with the appropriate person  
45 responsible for commencing impeachment proceedings as to its



1 finding. The report must contain a statement of the facts alleged to  
2 constitute the violation.

3 (b) A willful violation of this chapter has been committed by a  
4 public officer removable from office pursuant to NRS 283.440, the  
5 Commission may file a proceeding in the appropriate court for  
6 removal of the officer.

7 (c) Three or more willful violations have been committed by a  
8 public officer removable from office pursuant to NRS 283.440, the  
9 Commission shall file a proceeding in the appropriate court for  
10 removal of the officer.

11 6. An action taken by a public officer or employee or former  
12 public officer or employee relating to NRS 281.481, 281.491,  
13 281.501 or 281.505 is not a willful violation of a provision of those  
14 sections if the public officer or employee:

15 (a) Relied in good faith upon the advice of the legal counsel  
16 retained by the public body which the public officer represents or by  
17 the employer of the public employee or upon the manual published  
18 by the Commission pursuant to NRS 281.471;

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

21 (c) Took action that was not contrary to a prior published  
22 opinion issued by the Commission.

23 7. In addition to other penalties provided by law, a public  
24 employee who willfully violates a provision of NRS 281.481,  
25 281.491, 281.501 or 281.505 is subject to disciplinary proceedings  
26 by his employer and must be referred for action in accordance to the  
27 applicable provisions governing his employment.

28 8. NRS 281.481 to 281.541, inclusive, do not abrogate or  
29 decrease the effect of the provisions of the Nevada Revised Statutes  
30 which define crimes or prescribe punishments with respect to the  
31 conduct of public officers or employees. If the Commission finds  
32 that a public officer or employee has committed a willful violation  
33 of this chapter which it believes may also constitute a criminal  
34 offense, the Commission shall refer the matter to the Attorney  
35 General or the district attorney, as appropriate, for a determination  
36 of whether a crime has been committed that warrants prosecution.

37 9. The imposition of a civil penalty pursuant to subsections 1 to  
38 4, inclusive, is a final decision for the purposes of judicial review.

39 10. A finding by the Commission that a public officer or  
40 employee has violated any provision of this chapter must be  
41 supported by a preponderance of the evidence unless a greater  
42 burden is otherwise prescribed by law.

43 **Sec. 4.** NRS 281.641 is hereby amended to read as follows:

44 281.641 1. If any reprisal or retaliatory action is taken against  
45 a state officer or employee who discloses information concerning



1 improper governmental action within 2 years after the information is  
2 disclosed, the state officer or employee may file , *within 60 days*  
3 *after the date on which the alleged reprisal or retaliatory action*  
4 *took place*, a written appeal with a hearing officer of the Department  
5 of Personnel for a determination of whether the action taken was a  
6 reprisal or retaliatory action. The written appeal must be  
7 accompanied by a statement that sets forth with particularity:

8 (a) The facts and circumstances under which the disclosure of  
9 improper governmental action was made; and

10 (b) The reprisal or retaliatory action that is alleged to have been  
11 taken against the state officer or employee.

12 ➤ The hearing must be conducted in accordance with the  
13 procedures set forth in NRS 284.390 to 284.405, inclusive, and the  
14 procedures adopted by the Personnel Commission pursuant to  
15 subsection ~~[4.]~~ 5.

16 2. If the hearing officer determines that the action taken was a  
17 reprisal or retaliatory action, he ~~[may]~~ *shall* issue an order directing  
18 the proper person to desist and refrain from engaging in such action.  
19 The hearing officer shall file a copy of his decision with the  
20 Governor or any other elected state officer who is responsible for  
21 the actions of that person.

22 3. The hearing officer may not rule against the state officer or  
23 employee based on the person or persons to whom the improper  
24 governmental action was disclosed.

25 4. The Personnel Commission may adopt rules of procedure for  
26 conducting a hearing pursuant to this section that are not  
27 inconsistent with the procedures set forth in NRS 284.390 to  
28 284.405, inclusive.

29 **Sec. 5.** NRS 281.645 is hereby amended to read as follows:

30 281.645 1. A local government shall, by ordinance, establish  
31 procedures for hearing an appeal from a local governmental officer  
32 or employee who:

33 (a) Disclosed information concerning improper governmental  
34 action; and

35 (b) Believes that as a result of that disclosure, a reprisal or  
36 retaliatory action has been taken against him,

37 ➤ to determine whether a reprisal or retaliatory action has been  
38 taken against the local governmental officer or employee. The  
39 procedures must allow a local governmental officer or employee to  
40 file an appeal not later than 2 years after the information is disclosed  
41 and require the local governmental officer or employee who desires  
42 to file an appeal to file the appeal within 60 days after the alleged  
43 reprisal or retaliatory action was taken against him.

44 2. An ordinance adopted pursuant to subsection 1 must:

45 (a) Prescribe the required contents of an appeal;



(b) Provide for the designation or appointment of hearing officers to hear such appeals; and

(c) Provide that if a hearing officer determines that the action taken was a reprisal or retaliatory action, he ~~may~~ *shall* issue an order directing the proper person to desist and refrain from engaging in such action.

**Sec. 6.** NRS 241.037 is hereby amended to read as follows:

241.037 1. The Attorney General may sue in any court of competent jurisdiction to have an action taken by a public body declared void or for an injunction against any public body or person to require compliance with or prevent violations of the provisions of this chapter. The injunction:

(a) May be issued without proof of actual damage or other irreparable harm sustained by any person.

(b) Does not relieve any person from criminal prosecution for the same violation.

2. Any person denied a right conferred by this chapter may sue in the district court of the district in which the public body ordinarily holds its meetings or in which the plaintiff resides. A suit may seek to have an action taken by the public body declared void, to require compliance with or prevent violations of this chapter or to determine the applicability of this chapter to discussions or decisions of the public body. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this subsection.

3. Any suit brought against a public body pursuant to subsection 1 or 2 to require compliance with the provisions of this chapter must be commenced within 120 days after the action objected to was taken by that public body in violation of this chapter. Any such suit brought to have an action declared void must be commenced within 60 days after the action objected to was taken.

*4. A public body or person who violates the provisions of this chapter two or more times within 5 years is liable, in addition to any other penalty or remedy that may be provided by law, for a civil penalty of:*

*(a) Not more than \$5,000 for the second offense;*

*(b) Not more than \$10,000 for each subsequent offense committed within that 5-year period,*

*↳ which penalty may be recovered by civil action on complaint of the Attorney General. All money collected as civil penalties pursuant to this subsection must be deposited in the State General Fund.*



1     **Sec. 7.** Chapter 293 of NRS is hereby amended by adding  
2 thereto a new section to read as follows:

3     ***1. An elected public officer or a person appointed to an***  
4 ***elective office for the remainder of an unexpired term shall not***  
5 ***file a declaration of candidacy or an acceptance of candidacy for***  
6 ***any public office to be voted on at a primary election or general***  
7 ***election unless:***

8       ***(a) The declaration of candidacy or acceptance of candidacy is***  
9 ***for his current elective public office;***

10       ***(b) He resigns from his current elective public office; or***

11       ***(c) The term of his current elective public office has expired.***

12     ***2. As used in this section, "public officer" has the meaning***  
13 ***ascribed to it in NRS 281.4365.***

14     **Sec. 8.** NRS 293.175 is hereby amended to read as follows:

15     293.175 1. The primary election must be held on the first  
16 Tuesday of September in each even-numbered year.

17     2. Candidates for partisan office of a major political party and  
18 candidates for nonpartisan office must be nominated at the primary  
19 election.

20     3. Candidates for partisan office of a minor political party must  
21 be nominated in the manner prescribed pursuant to NRS 293.171 to  
22 293.174, inclusive.

23     4. Independent candidates for partisan office must be  
24 nominated in the manner provided in NRS 293.200.

25     5. The provisions of NRS 293.175 to 293.203, inclusive, ***and***  
26 ***section 7 of this act,*** do not apply to:

27       (a) Special elections to fill vacancies.

28       (b) The nomination of the officers of incorporated cities.

29       (c) The nomination of district officers whose nomination is  
30 otherwise provided for by statute.

31     **Sec. 9.** Chapter 293C of NRS is hereby amended by adding  
32 thereto a new section to read as follows:

33     ***1. An elected public officer or a person appointed to an***  
34 ***elective office for the remainder of an unexpired term shall not***  
35 ***file a declaration of candidacy or an acceptance of candidacy for***  
36 ***any public office to be voted on at a primary city election or***  
37 ***general city election unless:***

38       ***(a) The declaration of candidacy or acceptance of candidacy is***  
39 ***for his current elective public office;***

40       ***(b) He resigns from his current elective public office; or***

41       ***(c) The term of his current elective public office has expired.***

42     ***2. As used in this section, "public officer" has the meaning***  
43 ***ascribed to it in NRS 281.4365.***





1      **Sec. 10.**   This act becomes effective on July 1, 2005.







