

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; revising the provisions concerning the disclosure of improper governmental action; prohibiting public officers and employees from using governmental time, property, equipment or other facility for activities relating to political campaigns and for the preparation of statements of financial disclosure and campaign contribution and expenditure reports; making attendance by a member of a public body at a meeting of the public body that violates the Open Meeting Law an ethics violation in certain circumstances; increasing the civil penalties for willful violations of the ethics provisions; providing civil penalties for repeated violations of the Open Meeting Law; making certain violations of campaign practices misdemeanors; providing a penalty; 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 and the preparation of statements of financial disclosure required pursuant to NRS 281.559 or 281.561 and reports of campaign contributions and expenditures required pursuant to chapter 294A of NRS, this* subsection does not prohibit:



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

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

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

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

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

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

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

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

21 8. A member of the Legislature shall not:

22 (a) Use governmental time, property, equipment or other facility
23 for a nongovernmental purpose or for the private benefit of himself
24 or any other person. ~~[This]~~ *Except for an activity relating to a*
25 *political campaign and the preparation of statements of financial*
26 *disclosure required pursuant to NRS 281.559 or 281.561 and*
27 *reports of campaign contributions and expenditures required*
28 *pursuant to chapter 294A of NRS, this* paragraph does not prohibit:

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

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

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

34 (III) The use does not create the appearance of
35 impropriety;

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

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

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



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

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

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

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

11. A public officer or employee who is a member of a public body shall not attend a meeting of that public body where action is taken in violation of any provision of chapter 241 of NRS if the public officer or employee knows or should have known that the meeting is in violation thereof.

12. As used in this section, "activity relating to a political campaign" means any activity designed to affect the outcome of any primary, general or special election or question on the ballot.

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

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

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

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

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

2. In addition to other penalties provided by law, the Commission may impose a civil penalty not to exceed \$5,000 and assess an 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 281.511, against a person who prevents, interferes with or attempts to prevent or interfere with the discovery or investigation of a violation of this chapter.

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

4. In addition to any other penalty provided by law, by an affirmative vote of two-thirds of the Commission, the Commission may impose on any person who violates any provision of NRS 294A.345 or 294A.346 a civil penalty not to exceed \$5,000. The



1 Commission shall not impose a civil penalty for a violation of NRS
2 294A.345 unless the Commission has made the specific findings
3 required pursuant to subsection 7 of NRS 281.477.

4 5. If the Commission finds that:

5 (a) A willful violation of this chapter has been committed by a
6 public officer removable from office by impeachment only, the
7 Commission shall file a report with the appropriate person
8 responsible for commencing impeachment proceedings as to its
9 finding. The report must contain a statement of the facts alleged to
10 constitute the violation.

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

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

19 6. An action taken by a public officer or employee or former
20 public officer or employee relating to NRS 281.481, 281.491,
21 281.501 or 281.505 is not a willful violation of a provision of those
22 sections if the public officer or employee:

23 (a) Relied in good faith upon the advice of the legal counsel
24 retained by the public body which the public officer represents or by
25 the employer of the public employee or upon the manual published
26 by the Commission pursuant to NRS 281.471;

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

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

31 7. In addition to other penalties provided by law, a public
32 employee who willfully violates a provision of NRS 281.481,
33 281.491, 281.501 or 281.505 is subject to disciplinary proceedings
34 by his employer and must be referred for action in accordance to the
35 applicable provisions governing his employment.

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



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

10. 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. 4. NRS 281.611 is hereby amended to read as follows:

281.611 As used in NRS 281.611 to 281.671, inclusive, *and section 1 of this act*, unless the context otherwise requires:

1. "Improper governmental action" means any action taken by a state officer or employee or local governmental officer or employee in the performance of his official duties, whether or not the action is within the scope of his employment, which is:

- (a) In violation of any state law or regulation;
- (b) If the officer or employee is a local governmental officer or employee, in violation of an ordinance of the local government;
- (c) An abuse of authority;
- (d) Of substantial and specific danger to the public health or safety; or
- (e) A gross waste of public money.

2. "Local government" means a county in this State, an incorporated city in this State and Carson City.

3. "Local governmental employee" means any person who performs public duties under the direction and control of a local governmental officer for compensation paid by or through a local government.

4. "Local governmental officer" means a person elected or appointed to a position with a local government that involves the exercise of a local governmental power, trust or duty, including:

- (a) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of local governmental policy;
- (b) The expenditure of money of a local government; and
- (c) The enforcement of laws and regulations of the State or a local government.

5. "Reprisal or retaliatory action" includes:

- (a) The denial of adequate personnel to perform duties;
- (b) Frequent replacement of members of the staff;
- (c) Frequent and undesirable changes in the location of an office;
- (d) The refusal to assign meaningful work;
- (e) The issuance of letters of reprimand or evaluations of poor performance;
- (f) A demotion;
- (g) A reduction in pay;



- 1 (h) The denial of a promotion;
- 2 (i) A suspension;
- 3 (j) A dismissal;
- 4 (k) A transfer;
- 5 (l) Frequent changes in working hours or workdays; or
- 6 (m) If the employee is licensed or certified by an occupational
- 7 licensing board, the filing with that board, by or on behalf of the
- 8 employer, of a complaint concerning the employee,
- 9 ➔ if such action is taken, in whole or in part, because the state
- 10 officer or employee or local governmental officer or employee
- 11 disclosed information concerning improper governmental action.

12 6. "State employee" means any person who performs public

13 duties under the direction and control of a state officer for

14 compensation paid by or through the State.

15 7. "State officer" means a person elected or appointed to a

16 position with the State which involves the exercise of a state power,

17 trust or duty, including:

18 (a) Actions taken in an official capacity which involve a

19 substantial and material exercise of administrative discretion in the

20 formulation of state policy;

21 (b) The expenditure of state money; and

22 (c) The enforcement of laws and regulations of the State.

23 **Sec. 5.** NRS 281.641 is hereby amended to read as follows:

24 281.641 1. If any reprisal or retaliatory action is taken against

25 a state officer or employee who discloses information concerning

26 improper governmental action within 2 years after the information is

27 disclosed, the state officer or employee may file , *within 60 days*

28 *after the date on which the alleged reprisal or retaliatory action*

29 *took place*, a written appeal with a hearing officer of the Department

30 of Personnel for a determination of whether the action taken was a

31 reprisal or retaliatory action. The written appeal must be

32 accompanied by a statement that sets forth with particularity:

33 (a) The facts and circumstances under which the disclosure of

34 improper governmental action was made; and

35 (b) The reprisal or retaliatory action that is alleged to have been

36 taken against the state officer or employee.

37 ➔ The hearing must be conducted in accordance with the

38 procedures set forth in NRS 284.390 to 284.405, inclusive, and the

39 procedures adopted by the Personnel Commission pursuant to

40 subsection ~~[4.]~~ 5.

41 2. If the hearing officer determines that the action taken was a

42 reprisal or retaliatory action, he ~~[may]~~ *shall* issue an order directing

43 the proper person to desist and refrain from engaging in such action.

44 The hearing officer shall file a copy of his decision with the



1 Governor or any other elected state officer who is responsible for
2 the actions of that person.

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

6 4. *The issuance of an order against a person for taking*
7 *reprisal or retaliatory action pursuant to subsection 2 constitutes*
8 *grounds for disciplinary action against the person.*

9 5. The Personnel Commission may adopt rules of procedure for
10 conducting a hearing pursuant to this section that are not
11 inconsistent with the procedures set forth in NRS 284.390 to
12 284.405, inclusive.

13 **Sec. 6.** NRS 281.645 is hereby amended to read as follows:

14 281.645 1. A local government shall, by ordinance, establish
15 procedures for hearing an appeal from a local governmental officer
16 or employee who:

17 (a) Disclosed information concerning improper governmental
18 action; and

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

21 ➔ to determine whether a reprisal or retaliatory action has been
22 taken against the local governmental officer or employee. The
23 procedures must allow a local governmental officer or employee to
24 file an appeal not later than 2 years after the information is disclosed
25 and require the local governmental officer or employee who desires
26 to file an appeal to file the appeal within 60 days after the alleged
27 reprisal or retaliatory action was taken against him.

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

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

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

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

36 (d) *Provide that the issuance of an order against a person for*
37 *taking reprisal or retaliatory action pursuant to paragraph (c)*
38 *constitutes grounds for disciplinary action against that person.*

39 **Sec. 7.** NRS 241.037 is hereby amended to read as follows:

40 241.037 1. The Attorney General may sue in any court of
41 competent jurisdiction to have an action taken by a public body
42 declared void or for an injunction against any public body or person
43 to require compliance with or prevent violations of the provisions of
44 this chapter. The injunction:



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

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

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

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

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

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

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

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

32 **Sec. 8.** NRS 241.040 is hereby amended to read as follows:

33 241.040 1. Each member of a public body who attends a
34 meeting of that public body where action is taken in violation of any
35 provision of this chapter, with knowledge of the fact that the
36 meeting is in violation thereof, is guilty of a misdemeanor.

37 2. Wrongful exclusion of any person or persons from a meeting
38 is a misdemeanor.

39 3. A member of a public body who attends a meeting of that
40 public body at which action is taken in violation of this chapter is
41 not the accomplice of any other member so attending.

42 4. The Attorney General shall **[investigate]** :

43 *(a) Investigate* and prosecute any violation of this chapter **[]** ;
44 *and*



1 ***(b) Report to the Commission on Ethics each member of a***
2 ***public body that is convicted of a violation of subsection 1.***

3 **Sec. 9.** Chapter 294A of NRS is hereby amended by adding
4 thereto a new section to read as follows:

5 ***Unless a greater penalty is provided by specific statute, any***
6 ***violation of this chapter is a misdemeanor.***

7 **Sec. 10.** NRS 294A.420 is hereby amended to read as follows:

8 294A.420 1. If the Secretary of State receives information
9 that a person or entity that is subject to the provisions of NRS
10 294A.120, 294A.140, 294A.150, 294A.200, 294A.210, 294A.220,
11 294A.230, 294A.270, 294A.280 or 294A.360 has not filed a report
12 or form for registration pursuant to the applicable provisions of
13 those sections, the Secretary of State may, after giving notice to that
14 person or entity, cause the appropriate proceedings to be instituted
15 in the First Judicial District Court.

16 2. Except as otherwise provided in this section, ***and in addition***
17 ***to any other penalty imposed by law,*** a person or entity that violates
18 an applicable provision of NRS 294A.112, 294A.120, 294A.130,
19 294A.140, 294A.150, 294A.160, 294A.200, 294A.210, 294A.220,
20 294A.230, 294A.270, 294A.280, 294A.300, 294A.310, 294A.320 or
21 294A.360 is subject to a civil penalty of not more than \$5,000 for
22 each violation and payment of court costs and attorney's fees. The
23 civil penalty must be recovered in a civil action brought in the name
24 of the State of Nevada by the Secretary of State in the First Judicial
25 District Court and deposited by the Secretary of State for credit to
26 the State General Fund in the bank designated by the State
27 Treasurer.

28 3. If a civil penalty is imposed because a person or entity has
29 reported its contributions, expenses or expenditures after the date
30 the report is due, except as otherwise provided in this subsection, the
31 amount of the civil penalty is:

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

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

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

38 ↪ A civil penalty imposed pursuant to this subsection against a
39 public officer who by law is not entitled to receive compensation for
40 his office or a candidate for such an office must not exceed a total of
41 \$100 if the public officer or candidate received no contributions and
42 made no expenditures during the relevant reporting periods.

43 4. For good cause shown, the Secretary of State may waive a
44 civil penalty that would otherwise be imposed pursuant to this



1 section. If the Secretary of State waives a civil penalty pursuant to
2 this subsection, the Secretary of State shall:

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

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

8 **Sec. 11.** This act becomes effective on July 1, 2005.



