

SENATE BILL NO. 220—SENATOR CARE

MARCH 21, 2005

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions governing voting by public officers. (BDR 23-1179)

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

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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 public officers; revising the provisions governing voting by public officers; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The Nevada Ethics in Government Law establishes ethical standards to govern the conduct of public officers and employees. (NRS 281.411-281.581)

Under existing law, a public officer may vote upon a matter if the benefit or detriment accruing to him as a result of the action would not be to a greater degree than to other members of a group to which he belongs.

Under this bill, a similarly situated public officer would only be able to vote if more than 50 percent of the members of the public body of which the public officer is a member were also not benefitted to a greater degree than other members of the group to which they belong.

Under existing law, a public officer is prohibited from voting upon or advocating the passage or failure of a matter regarding which the public officer has accepted a gift or loan or in which the public officer has a pecuniary interest or a commitment in a private capacity to the interest of others if such a gift, loan, interest or commitment would materially affect the independence of judgment of a reasonable person in the public officer's situation. The independence of judgment of a reasonable person is presumed not to be materially affected by a pecuniary interest or commitment in a private capacity if the resulting benefit or detriment accruing to him or to the persons to whom he is committed is not greater than that accruing to any other member of the general business, profession, occupation or group. (NRS 281.501)

This bill eliminates this presumption. As a result, a public officer must determine, without applying the presumption, whether his pecuniary interest or commitment in a private capacity to the interests of others in a matter would materially affect the independence of judgment of a reasonable person in his situation and would thereby require the public officer to abstain from voting on or advocating the passage or failure of the matter.



Under existing law, if a public officer is required to abstain from a vote because of an ethical conflict, the quorum and number of necessary votes required to act upon the matter is reduced as though the abstaining public officer were not a member of the body. (NRS 281.501) An exception to this provision exists in NRS 241.0355 which provides that a public body which consists entirely of elected officials must take action by a majority of all the members regardless of any abstentions unless the legal counsel of a public body in a county whose population is 40,000 or more opines that abstention is required. This bill requires any public body which consists entirely of elected officials to take action by a majority of all the members regardless of any abstentions.

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

Section 1. NRS 281.421 is hereby amended to read as follows:

281.421 1. It is hereby declared to be the public policy of this State that:

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

(b) A public officer or employee must commit himself to avoid conflicts between his private interests and those of the general public whom he 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]~~ , *but requires that each member of the Legislature [to abstain on issues which might affect his interests, provided those interests are properly disclosed and that the] avoid any perception that his vote on these issues might result in a* benefit or detriment accruing to him is not greater than that accruing to any other member of the general business, profession, occupation or group.



1 **Sec. 2.** NRS 281.501 is hereby amended to read as follows:

2 281.501 1. Except as otherwise provided in subsection 2, 3 or
3 4, a public officer may vote upon a matter if the benefit or detriment
4 accruing to ~~him~~ *each member of a number of members that is*
5 *more than 50 percent of the body of which he is a member,*
6 *including the public officer,* as a result of the decision either
7 individually or in a representative capacity as a member of a general
8 business, profession, occupation or group is not greater than that
9 accruing to any other member of the general business, profession,
10 occupation or group.

11 2. Except as otherwise provided in subsection 3, in addition to
12 the requirements of the code of ethical standards, a public officer
13 shall not vote upon , ~~or~~ advocate the passage or failure of ~~but~~
14 ~~may~~ *or* otherwise participate in the consideration of, a matter with
15 respect to which the independence of judgment of a reasonable
16 person in his situation would be materially affected by:

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

18 (b) His pecuniary interest; or

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

21 ~~{→ It must be presumed that the independence of judgment of a~~
22 ~~reasonable person would not be materially affected by his pecuniary~~
23 ~~interest or his commitment in a private capacity to the interests of~~
24 ~~others where the resulting benefit or detriment accruing to him or to~~
25 ~~the other persons whose interests to which the member is committed~~
26 ~~in a private capacity is not greater than that accruing to any other~~
27 ~~member of the general business, profession, occupation or group.~~
28 ~~The presumption set forth in this subsection does not affect the~~
29 ~~applicability of the requirements set forth in subsection 4 relating to~~
30 ~~the disclosure of the pecuniary interest or commitment in a private~~
31 ~~capacity to the interests of others.]~~

32 3. In a county whose population is 400,000 or more, a member
33 of a county or city planning commission shall not vote upon , ~~or~~
34 advocate the passage or failure of ~~but~~ ~~may~~ *or* otherwise
35 participate in the consideration of, a matter with respect to which the
36 independence of judgment of a reasonable person in his situation
37 would be materially affected by:

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

39 (b) His direct pecuniary interest; or

40 (c) His commitment to a member of his household or a person
41 who is related to him by blood, adoption or marriage within the third
42 degree of consanguinity or affinity.

43 ~~{→ It must be presumed that the independence of judgment of a~~
44 ~~reasonable person would not be materially affected by his direct~~



~~pecuniary interest or his commitment described in paragraph (c) where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the direct pecuniary interest or commitment.]~~

4. A public officer ~~[or employee]~~ shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

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

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

(c) In which he has a pecuniary interest,

➔ without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer ~~[or employee]~~ is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer ~~[or employee]~~ is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

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

6. After a member of the Legislature makes a disclosure pursuant to subsection 4, he may file with the Director of the Legislative Counsel Bureau a written statement of his disclosure. The written statement must designate the matter to which the disclosure applies. After a Legislator files a written statement pursuant to this subsection, he is not required to disclose orally his interest when the matter is further considered by the Legislature or any committee thereof. A written statement of disclosure is a public



1 record and must be made available for inspection by the public
2 during the regular office hours of the Legislative Counsel Bureau.

3 7. The provisions of this section do not, under any
4 circumstances:

5 (a) Prohibit a member of the Legislative Branch from requesting
6 or introducing a legislative measure; or

7 (b) Require a member of the Legislative Branch to take any
8 particular action before or while requesting or introducing a
9 legislative measure.

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

12 (a) Who is a member of his household;

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

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

16 (d) With whom he has a substantial and continuing business
17 relationship; or

18 (e) Any other commitment or relationship that is substantially
19 similar to a commitment or relationship described in this subsection.

20 **Sec. 3.** NRS 241.0355 is hereby amended to read as follows:

21 241.0355 ~~[1.]~~ A public body that is required to be composed
22 of elected officials only may not take action by vote unless at least a
23 majority of all the members of the public body vote in favor of the
24 action. For purposes of this ~~[subsection,]~~ **section**, a public body may
25 not count an abstention as a vote in favor of an action.

26 ~~[2. In a county whose population is 40,000 or more, the~~
27 ~~provisions of subsection 5 of NRS 281.501 do not apply to a public~~
28 ~~body that is required to be composed of elected officials only, unless~~
29 ~~before abstaining from the vote, the member of the public body~~
30 ~~receives and discloses the opinion of the legal counsel authorized by~~
31 ~~law to provide legal advice to the public body that the abstention is~~
32 ~~required pursuant to NRS 281.501. The opinion of counsel must be~~
33 ~~in writing and set forth with specificity the factual circumstances~~
34 ~~and analysis leading to that conclusion.]~~



