

SENATE BILL NO. 495—COMMITTEE ON LEGISLATIVE
OPERATIONS AND ELECTIONS

(ON BEHALF OF THE COMMISSION ON ETHICS)

MARCH 26, 2007

Referred to Committee on Legislative Operations and Elections

SUMMARY—Makes various changes relating to ethics in government. (BDR 23-566)

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 ethics in government; revising provisions concerning the filing of disclosures of certain representation; authorizing the imposition of a penalty against a public officer or employee who realizes financial benefit from an ethics violation; revising the penalty for the acceptance or receipt of an honorarium; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The Nevada Ethics in Government Law sets forth standards for the conduct of public officers and employees, which standards are interpreted and enforced by the Commission on Ethics. (NRS 281.411-281.581) **Section 18** of this bill requires the Legislative Counsel to move those provisions of NRS to a new chapter of NRS to be numbered 281A which will include the provisions currently codified as NRS 281.411 to 281.581, inclusive.

Section 10 of this bill moves the deadline for the annual filing of a disclosure of representation before certain agencies by certain public officers and employees from January 10 to January 15, which is consistent with the deadlines by which statements of financial disclosure are required to be filed. (NRS 281.491, 281.559, 281.561)

Under existing law, if a violation of the ethics provisions by a current or former public officer or employee results in the realization by another person of a financial benefit, the Commission is authorized to impose an additional civil penalty against the officer or employee. (NRS 281.551) **Section 14** of this bill authorizes the imposition of such an additional penalty if the public officer or employee that committed the violation realizes any financial benefit.



* S B 4 9 5 R 1 *

Under existing law, a public officer or employee who accepts or receives an honorarium is guilty of a gross misdemeanor. (NRS 281.553) **Section 16** of this bill removes the criminal penalty and makes the punishment for such a violation a civil penalty, which is the same penalty as for violations of the other ethics provisions.

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

Sec. 9. (Deleted by amendment.)

Sec. 10. NRS 281.491 is hereby amended to read as follows:

281.491 In addition to the requirements of the code of ethical standards:

1. A member of the Executive Branch or public employee of the Executive Branch shall not accept compensation from any private person to represent or counsel him on any issue pending before the agency in which that officer or employee serves, if the agency makes decisions. Any such officer or employee who leaves the service of the agency shall not, for 1 year after leaving the service of the agency, represent or counsel for compensation a private person upon any issue which was under consideration by the agency during his service. As used in this subsection, "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations.

2. A member of the Legislative Branch, or a member of the Executive Branch or public employee whose public service requires less than half of his time, may represent or counsel a private person before an agency in which he does not serve. Any other member of the Executive Branch or public employee shall not represent a client for compensation before any state agency of the Executive or Legislative Branch of government.

3. Not later than January ~~10~~ 15 of each year, any Legislator or other public officer who has, within the preceding year, represented or counseled a private person for compensation before a state agency of the Executive Branch shall disclose for each such representation or counseling during the previous calendar year:

(a) The name of the client;



(b) The nature of the representation; and

(c) The name of the state agency.

➔ The disclosure must be made in writing and filed with the Commission, on a form prescribed by the Commission. The Commission shall retain a disclosure filed pursuant to this subsection for 6 years after the date on which the disclosure was filed.

Sec. 11. (Deleted by amendment.)

Sec. 12. (Deleted by amendment.)

Sec. 13. (Deleted by amendment.)

Sec. 14. 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 for a first willful violation of ~~{this chapter;}~~ *NRS 281.411 to 281.581, inclusive;*

(b) Not to exceed \$10,000 for a separate act or event that constitutes a second willful violation of ~~{this chapter;}~~ *NRS 281.411 to 281.581, inclusive;* and

(c) Not to exceed \$25,000 for a separate act or event that constitutes a third willful violation of ~~{this chapter;}~~ *NRS 281.411 to 281.581, inclusive.*

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;}~~ *NRS 281.411 to 281.581, inclusive.*

3. If the Commission finds that a violation of a provision of ~~{this chapter}~~ *NRS 281.411 to 281.581, inclusive,* by a public officer or employee or former public officer or employee has resulted in the realization *of a financial benefit* by *the current or former public officer or employee or* 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. If the Commission finds that:

(a) A willful violation of ~~{this chapter}~~ *NRS 281.411 to 281.581, inclusive,* has been committed by a public officer removable from office by impeachment only, the Commission shall file a report with the appropriate person responsible for commencing impeachment



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

3 (b) A willful violation of ~~[this chapter]~~ *NRS 281.411 to*
4 *281.581, inclusive*, has been committed by a public officer
5 removable from office pursuant to NRS 283.440, the Commission
6 may file a proceeding in the appropriate court for removal of the
7 officer.

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

12 5. An action taken by a public officer or employee or former
13 public officer or employee relating to NRS ~~[281.481, 281.491,~~
14 ~~281.501 or 281.505]~~ *281.411 to 281.581, inclusive*, is not a willful
15 violation of a provision of those sections if the public officer or
16 employee establishes by sufficient evidence that he satisfied all of
17 the following requirements:

18 (a) He relied in good faith upon the advice of the legal counsel
19 retained by the public body which the public officer represents or by
20 the employer of the public employee or upon the manual published
21 by the Commission pursuant to NRS 281.471;

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

24 (c) He took action that was not contrary to a prior published
25 opinion issued by the Commission.

26 6. In addition to other penalties provided by law, a public
27 employee who willfully violates a provision of NRS ~~[281.481,~~
28 ~~281.491, 281.501 or 281.505]~~ *281.411 to 281.581, inclusive*, is
29 subject to disciplinary proceedings by his employer and must be
30 referred for action in accordance to the applicable provisions
31 governing his employment.

32 7. *The provisions of* NRS ~~[281.481 to 281.541,]~~ *281.411 to*
33 *281.581, inclusive*, do not abrogate or decrease the effect of the
34 provisions of the Nevada Revised Statutes which define crimes or
35 prescribe punishments with respect to the conduct of public officers
36 or employees. If the Commission finds that a public officer or
37 employee has committed a willful violation of ~~[this chapter]~~ *NRS*
38 *281.411 to 281.581, inclusive*, which it believes may also constitute
39 a criminal offense, the Commission shall refer the matter to the
40 Attorney General or the district attorney, as appropriate, for a
41 determination of whether a crime has been committed that warrants
42 prosecution.

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



9. A finding by the Commission that a public officer or employee has violated any provision of ~~[this chapter]~~ **NRS 281.411 to 281.581, inclusive**, must be supported by a preponderance of the evidence unless a greater burden is otherwise prescribed by law.

Sec. 15. (Deleted by amendment.)

Sec. 16. 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.

5. ~~[A]~~ **In addition to any other penalty imposed pursuant to NRS 281.551, a** public officer or public employee who violates the



provisions of this section ~~[is guilty of a gross misdemeanor and, upon conviction, forfeits]~~ *shall forfeit* the amount of the honorarium.

Sec. 17. (Deleted by amendment.)

Sec. 18. The Legislative Counsel shall:

1. In preparing the reprint and supplements to the Nevada Revised Statutes, move NRS 281.411 to 281.581, inclusive, to a new chapter of NRS to be numbered chapter 281A of NRS, preserving as much of the existing numbering as practicable, and appropriately change any internal references to reflect the change in location and numbering.

2. In preparing the supplements to the Nevada Administrative Code, appropriately change any references to NRS 281.411 to 281.581, inclusive, to reflect the change in the location and numbering of the provisions.

