

Amendment No. 799

Senate Amendment to Assembly Bill No. 143 First Reprint (BDR 23-855)

Proposed by: Senate Committee on Legislative Operations and Elections**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

JLW/BJE



Date: 5/20/2007

A.B. No. 143—Revises provisions relating to the Commission on Ethics.
(BDR 23-855)



ASSEMBLY BILL NO. 143—ASSEMBLYMEN GOEDHART, BEERS, GOICOECHEA, GRADY,
HARDY, MARVEL, SETTELMAYER, STEWART AND WEBER

FEBRUARY 21, 2007

JOINT SPONSORS: SENATORS BEERS AND MCGINNESS

Referred to Committee on Elections, Procedures, Ethics,
and Constitutional AmendmentsSUMMARY—Revises provisions relating to the Commission on Ethics.
(BDR 23-855)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 the Commission on Ethics; requiring the Commission to render certain opinions within a certain period; increasing the time within which the Executive Director of the Commission is required to complete his investigation of the facts and circumstances relating to certain requests for an opinion; ~~requiring the Commission to disclose the general status of such a request for an opinion to the person who made the request;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a public officer or employee to request from the Commission on Ethics an opinion interpreting the statutory ethical standards and applying those standards to a particular set of facts and circumstances which directly relate to the propriety of his own past, present or future conduct as an officer or employee. (NRS 281.511) This bill requires the Commission to render the opinion **as soon as practicable or** within 45 days after receiving the request.

Existing law also authorizes certain other persons to request from the Commission an opinion interpreting the statutory ethical standards and applying those standards to a particular set of facts and circumstances. Upon receipt of such a request, the Executive Director of the Commission must investigate the facts and circumstances relating to the request and determine whether there is just and sufficient cause for the Commission to render an opinion in the matter. The Executive Director has 45 days after the receipt of the request to investigate and present his recommendation to a panel of the Commission. (NRS 281.511) This bill increases from 45 days to ~~420~~ **60** days the period given the Executive Director to make his investigation and present his recommendation to a panel of the Commission. ~~(This bill also requires the Commission to disclose the general status of such a request for an opinion to the person who made the request.)~~

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

Section 1. NRS 281.511 is hereby amended to read as follows:

281.511 1. The Commission shall render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances ~~upon~~ as soon as practicable or within 45 days after receiving a request, whichever is sooner, on a form prescribed by the Commission, from a public officer or employee who is seeking guidance on questions which directly relate to the propriety of his own past, present or future conduct as an officer or employee. He may also request the Commission to hold a public hearing regarding the requested opinion. If a requested opinion relates to the propriety of his own present or future conduct, the opinion of the Commission is:

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

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

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

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

(b) Except as otherwise provided in this subsection, upon request from a person, if the requester submits:

(1) The request on a form prescribed by the Commission; and

(2) All related evidence deemed necessary by the Executive Director and the panel to make a determination of whether there is just and sufficient cause to render an opinion in the matter.

(c) Upon the Commission's own motion regarding the propriety of conduct by a public officer or employee. The Commission shall not initiate proceedings pursuant to this paragraph based solely upon an anonymous complaint.

➤ The Commission shall not render an opinion interpreting the statutory ethical standards or apply those standards to a given set of facts and circumstances if the request is submitted by a person who is incarcerated in a correctional facility in this State.

3. Upon receipt of a request for an opinion by the Commission or upon the motion of the Commission pursuant to subsection 2, the Executive Director shall investigate the facts and circumstances relating to the request to determine whether there is just and sufficient cause for the Commission to render an opinion in the matter. The public officer or employee that is the subject of the request may submit to the Executive Director any information relevant to the request. The Executive Director shall complete an investigation and present his recommendation relating to just and sufficient cause to the panel within ~~45 days~~ 120 60 days after the receipt of or the motion of the Commission for the request, unless the public officer or employee waives this time limit. If the Executive Director determines after an investigation that just and sufficient cause exists for the Commission to render an opinion in the matter, he shall state such a recommendation in writing, including, without limitation, the specific evidence that supports his recommendation. If, after an investigation, the Executive Director does not determine that just and sufficient cause exists for the Commission to render an opinion in the matter, he shall state such a recommendation in writing, including, without limitation, the specific reasons for his recommendation. Within 15 days after the Executive Director has provided his recommendation in the matter to the panel, the panel shall make a final

determination regarding whether just and sufficient cause exists for the Commission to render an opinion in the matter, unless the public officer or employee waives this time limit. The panel shall not determine that there is just and sufficient cause for the Commission to render an opinion unless the panel has provided the public officer or employee an opportunity to respond to the allegations against him. The panel shall cause a record of its proceedings in each matter to be kept, and such a record must remain confidential until the panel determines whether there is just and sufficient cause for the Commission to render an opinion in the matter.

4. If the panel determines that just and sufficient cause exists for the Commission to render an opinion requested pursuant to this section, the Commission shall hold a hearing and render an opinion in the matter within 30 days after the determination of just and sufficient cause by the panel, unless the public officer or employee waives this time limit.

5. Each request for an opinion that a public officer or employee submits to the Commission pursuant to subsection 1, each opinion rendered by the Commission in response to such a request and any motion, determination, evidence or record of a hearing relating to such a request are confidential unless the public officer or employee who requested the opinion:

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

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

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

6. Except as otherwise provided in this subsection, each document in the possession of the Commission or its staff that is related to a request for an opinion regarding a public officer or employee submitted to or initiated by the Commission pursuant to subsection 2, including, without limitation, the Commission's copy of the request and all materials and information gathered in an investigation of the request, is confidential until the panel determines whether there is just and sufficient cause to render an opinion in the matter. The public officer or employee who is the subject of a request for an opinion submitted or initiated pursuant to subsection 2 may in writing authorize the Commission to make its files, material and information which are related to the request publicly available.

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

(a) Requests an opinion from the Commission pursuant to paragraph (b) of subsection 2 may:

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

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

(b) Gives testimony before the Commission may:

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

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

8. ~~{The Commission shall disclose to a person who requests an opinion from the Commission pursuant to paragraph (b) of subsection 2 the general status of his request, including, without limitation, whether the request has been received and an abbreviated summary of the actions that the Commission is taking with regard to the request. The provisions of this subsection do not require the Commission, its officers or members to provide, and do not authorize or entitle a person requesting an opinion to obtain:~~

~~—(a) Personally identifying information concerning a person other than the requester of the opinion;~~

~~—(b) Information that is confidential;~~

~~—(c) Information that is otherwise protected from disclosure by any other provision of federal or state law; or~~

~~—(d) Information the release of which, as determined by the Executive Director, would interfere with:~~

~~—(1) The ability of the Executive Director to conduct an investigation;~~

~~—(2) The ability of a panel to determine whether there is just and sufficient cause for the Commission to render an opinion; or~~

~~—(3) The ability of the Commission to render an opinion.~~

~~9.~~ Whenever the Commission holds a hearing pursuant to this section, the Commission shall:

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

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

(c) Allow the person to hear the evidence presented to the Commission and to respond and present evidence on his own behalf.

➤ The Commission's hearing may be held no sooner than 10 days after the notice is given unless the person agrees to a shorter time.

9. ~~{10.}~~ If a person who is not a party to a hearing before the Commission, including, without limitation, a person who has requested an opinion pursuant to paragraph (a) or (b) of subsection 2, wishes to ask a question of a witness at the hearing, the person must submit the question to the Executive Director in writing. The Executive Director may submit the question to the Commission if he deems the question relevant and appropriate. This subsection does not require the Commission to ask any question submitted by a person who is not a party to the proceeding.

10. ~~{11.}~~ If a person who requests an opinion pursuant to subsection 1 or 2 does not:

(a) Submit all necessary information to the Commission; and

(b) Declare by oath or affirmation that he will testify truthfully,

➤ the Commission may decline to render an opinion.

11. ~~{12.}~~ For good cause shown, the Commission may take testimony from a person by telephone or video conference.

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

13. ~~{14.}~~ A meeting or hearing that the Commission or the panel holds to receive information or evidence concerning the propriety of the conduct of a public officer or employee pursuant to this section and the deliberations of the Commission and the panel on such information or evidence are not subject to the provisions of chapter 241 of NRS.

1 **Sec. 2.** This act becomes effective on July 1, 2007.