

Amendment No. 513

Senate Amendment to Senate Bill No. 283	(BDR 23-103)
Proposed by: Senate Committee on Legislative Operations and Elections	
Amendment Box: Replaces Amendments Nos. 144 and 315.	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

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 underlining* is newly added transitory language.

MSN/JWP



Date: 4/17/2013

S.B. No. 283—Revises provisions relating to the Commission on Ethics.
(BDR 23-103)



SENATE BILL NO. 283—SENATORS HARDY, HUTCHISON;
CEGAVSKE AND GUSTAVSON

MARCH 15, 2013

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions relating to the Commission on Ethics.
(BDR 23-103)

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; ~~prohibiting the Commission on Ethics from taking action on a request for an opinion concerning a public officer or employee who is a candidate for elected office under certain circumstances;~~ revising provisions governing factors which must be considered by the Commission on Ethics in the disposition of certain requests for opinions; requiring the Commission to consider certain factors before imposing a civil penalty for a violation of the Nevada Ethics in Government Law; providing that a finding of a willful violation of the Nevada Ethics in Government Law requires a finding by the Commission that the person acted in bad faith or with ill will, evil intent, ~~for~~ malice, ~~or~~ or reckless disregard, and with knowledge of the prohibition against the act or omission; ~~authorizing the Commission to impose civil penalties and amounts equal to attorney's fees and other costs under certain circumstances;~~ requiring an affirmative vote by two-thirds of the Commission for the finding of a willful violation of the Nevada Ethics in Government Law; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The Nevada Ethics in Government Law establishes certain provisions governing ethics in government which are applicable to public officers and public employees. (Chapter 281A of NRS) The Commission on Ethics has jurisdiction to investigate and take appropriate action regarding an alleged violation of the Nevada Ethics in Government Law. (NRS 281A.280)

~~Sections 2 and 7 of this bill prohibit the Commission from accepting a request for an opinion concerning the applicability of the Nevada Ethics in Government Law, investigating the facts or circumstances relating to such a request, or rendering an opinion concerning a public officer or public employee who is a candidate for public office during the period beginning 120 days before the election and ending on the date of the election.~~

Section 3 of this bill requires the Commission, when disposing of a request for an opinion by stipulation, agreed settlement or consent order, to treat comparable situations in a comparable manner and ensure that the disposition of a request for an opinion bears a

reasonable relationship to the severity of the violation or alleged violation of the Nevada Ethics in Government Law.

Sections 5 and 6 of this bill revise the definitions of the terms “intentionally” and “knowingly,” respectively, to provide that a willful violation of the Nevada Ethics in Government Law requires proof that a person acted or failed to act in bad faith or with ill will, evil intent, ~~for~~ malice, ~~or~~ or reckless disregard, and with knowledge of the statutory prohibition against the act or omission. Section 8 of this bill provides that an act or omission may be found to be a willful violation of the Nevada Ethics in Government Law only by an affirmative vote of two-thirds of the Commission.

Section 4 of this bill requires the Commission to consider a variety of factors when determining the amount of any civil penalty imposed for a willful violation of the Nevada Ethics in Government Law. ~~Section 5 authorizes the Commission to impose a civil penalty on a person who requests an opinion if the Commission determines that the request was clearly frivolous or vexatious or brought solely for harassment. Section 8 also authorizes the Commission to assess an amount equal to certain attorney's fees and costs against a person who requests an opinion if the Commission determines that there is not just and sufficient cause for the Commission to render an opinion in the matter.~~

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

Section 1. Chapter 281A of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. ~~1. The Commission shall not accept a request for an opinion submitted pursuant to subsection 2 of NRS 281A.440 or render an opinion pursuant to such a request, and the Executive Director shall not investigate the facts and circumstances relating to any such request, concerning a public officer or employee who is a candidate at a special, primary or general election during the period beginning 120 days before the special, primary or general election and ending on the date of:~~

- ~~(a) The special election;~~
 - ~~(b) The primary election, if the candidate is defeated in that election; or~~
 - ~~(c) The general election,~~
- ~~as applicable.~~

~~2. The limitations period set forth in NRS 281A.280 for the commencement of any proceeding is tolled during the period described in subsection 1 for any proceeding concerning a public officer or employee described in that subsection.~~
~~(Deleted by amendment.)~~

Sec. 3. In any matter in which the Commission disposes of a request for an opinion by stipulation, agreed settlement or consent order, the Commission shall treat comparable situations in a comparable manner and shall ensure that the disposition of the request for an opinion bears a reasonable relationship to the severity of the violation or alleged violation.

Sec. 4. In determining the amount of any civil penalty to be imposed on a public officer or employee pursuant to NRS 281A.480, the Commission shall consider:

1. The seriousness of the violation, including, without limitation, the nature, circumstances, extent and gravity of the violation;
2. The number and history of previous warnings issued to or violations of the provisions of this chapter by the public officer or employee;
3. The cost to the Commission to conduct the investigation and any hearing relating to the violation;

4. Any mitigating factors, including, without limitation, any self-reporting, prompt correction of the violation, any attempts to rectify the violation before any complaint is filed and any cooperation by the public officer or employee or former public officer or employee in resolving the complaint;

5. Any restitution or reimbursement paid to parties affected by the violation;

6. The extent of any financial gain resulting from the violation; and

7. Any other matter justice may require.

Sec. 5. NRS 281A.105 is hereby amended to read as follows:

281A.105 "Intentionally" means voluntarily or deliberately, rather than accidentally or inadvertently. The term ~~does not require~~ **requires** proof of bad faith, ill will, evil intent, ~~for~~ malice, ~~or~~ **or reckless disregard**.

Sec. 6. NRS 281A.115 is hereby amended to read as follows:

281A.115 "Knowingly" imports a knowledge that the facts exist which constitute the act or omission, and ~~does not require~~ **requires** knowledge of the prohibition against the act or omission. Knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinarily prudent person upon inquiry.

Sec. 7. ~~NRS 281A.440 is hereby amended to read as follows:~~

~~281A.440 Except as otherwise provided in section 2 of this act:~~

~~1. The Commission shall render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances within 45 days after receiving a request, 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 the requester's own past, present or future conduct as an officer or employee, unless the public officer or employee waives the time limit. The public officer or employee may also request the Commission to hold a public hearing regarding the requested opinion. If a requested opinion relates to the propriety of the requester's own present or future conduct, the opinion of the Commission is:~~

~~(a) Binding upon the requester as to the requester's 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 investigatory 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~~

1 there is just and sufficient cause for the Commission to render an opinion in the
2 matter. The Executive Director shall notify the public officer or employee who is
3 the subject of the request and provide the public officer or employee an opportunity
4 to submit to the Executive Director a response to the allegations against the public
5 officer or employee within 30 days after the date on which the public officer or
6 employee received the notice of the request. The purpose of the response is to
7 provide the Executive Director with any information relevant to the request which
8 the public officer or employee believes may assist the Executive Director and the
9 investigatory panel in conducting the investigation. The public officer or employee
10 is not required in the response or in any proceeding before the investigatory panel
11 to assert, claim or raise any objection or defense, in law or fact, to the allegations
12 against the public officer or employee and no objection or defense, in law or fact, is
13 waived, abandoned or barred by the failure to assert, claim or raise it in the
14 response or in any proceeding before the investigatory panel.

15 ~~4. The Executive Director shall complete the investigation and present a~~
16 ~~recommendation relating to just and sufficient cause to the investigatory panel~~
17 ~~within 70 days after the receipt of or the motion of the Commission for the request,~~
18 ~~unless the public officer or employee waives this time limit. If, after the~~
19 ~~investigation, the Executive Director determines that there is just and sufficient~~
20 ~~cause for the Commission to render an opinion in the matter, the Executive Director~~
21 ~~shall state such a recommendation in writing, including, without limitation, the~~
22 ~~specific evidence that supports the Executive Director's recommendation. If, after~~
23 ~~the investigation, the Executive Director determines that there is not just and~~
24 ~~sufficient cause for the Commission to render an opinion in the matter, the~~
25 ~~Executive Director shall state such a recommendation in writing, including, without~~
26 ~~limitation, the specific reasons for the Executive Director's recommendation.~~

27 ~~5. Within 15 days after the Executive Director has provided the Executive~~
28 ~~Director's recommendation in the matter to the investigatory panel, the~~
29 ~~investigatory panel shall make a final determination regarding whether there is just~~
30 ~~and sufficient cause for the Commission to render an opinion in the matter, unless~~
31 ~~the public officer or employee waives this time limit. The investigatory panel shall~~
32 ~~not determine that there is just and sufficient cause for the Commission to render an~~
33 ~~opinion in the matter unless the Executive Director has provided the public officer~~
34 ~~or employee an opportunity to respond to the allegations against the public officer~~
35 ~~or employee as required by subsection 3. The investigatory panel shall cause a~~
36 ~~record of its proceedings in each matter to be kept, and such a record must remain~~
37 ~~confidential until the investigatory panel determines whether there is just and~~
38 ~~sufficient cause for the Commission to render an opinion in the matter.~~

39 ~~6. If the investigatory panel determines that there is just and sufficient cause~~
40 ~~for the Commission to render an opinion in the matter, the Commission shall hold a~~
41 ~~hearing and render an opinion in the matter within 60 days after the determination~~
42 ~~of just and sufficient cause by the investigatory panel, unless the public officer or~~
43 ~~employee waives this time limit.~~

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

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

52 ~~(b) Discloses the request for the opinion, the contents of the opinion, or any~~
53 ~~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.~~

~~8. 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 investigatory 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.~~

~~9. Except as otherwise provided in paragraphs (a) and (b), the proceedings of the investigatory panel are confidential until the investigatory panel determines whether there is just and sufficient cause to render an opinion in the matter. 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 the person filed with the Commission or the substance of testimony, if any, that the person gave before the Commission.~~

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

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

~~10. 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 the person's 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.~~

~~11. 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 the Executive Director 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.~~

~~12. 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 the person will testify truthfully,~~

~~the Commission may decline to render an opinion.~~

~~13. For good cause shown, the Commission may take testimony from a person by telephone or video conference.~~

~~14. 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.~~

~~15. A meeting or hearing that the Commission or the investigatory 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 investigatory panel on such information or evidence are not subject to the provisions of chapter 241 of NRS.~~ **(Deleted by amendment.)**

Sec. 8. NRS 281A.480 is hereby amended to read as follows:

281A.480 1. In addition to any other penalties provided by law ~~and in accordance with the provisions of section 4 of this act~~, 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;

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

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

2. In addition to any other penalties provided by law, the Commission may ~~impose~~, **upon its own motion or upon the motion of the person about whom an opinion was requested pursuant to NRS 281A.440** ~~and~~

~~(a) Impose~~, **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 281A.440 against a person who ~~prevents~~ ~~and~~

~~(1) Files a request for an opinion pursuant to NRS 281A.440 which the Commission determines was clearly frivolous or vexatious or brought solely for harassment or~~

~~(2) Prevents~~, ~~and~~ interferes with or attempts to prevent or interfere with the discovery or investigation of a violation of this chapter.

~~(b) 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 281A.440 against a person who requested the opinion if, after the investigation required by subsection 1 of NRS 281A.440, an investigatory panel of the Commission determines that there is not just and sufficient cause for the Commission to render an opinion in the matter.~~

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 of a financial benefit by the current or former public officer or employee or another person, the Commission may, in addition to any 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 penalties provided by law, if a proceeding results in an opinion that:

(a) One or more willful violations of this chapter have been committed by a State Legislator removable from office only through expulsion by the State Legislator's own House pursuant to Section 6 of Article 4 of the Nevada Constitution, the Commission shall:

(1) If the State Legislator is a member of the Senate, submit the opinion to the Majority Leader of the Senate or, if the Majority Leader of the Senate is the subject of the opinion or the person who requested the opinion, to the President Pro Tempore of the Senate; or

(2) If the State Legislator is a member of the Assembly, submit the opinion to the Speaker of the Assembly or, if the Speaker of the Assembly is the subject of the opinion or the person who requested the opinion, to the Speaker Pro Tempore of the Assembly.

(b) One or more willful violations of this chapter have been committed by a state officer removable from office only through impeachment pursuant to Article 7 of the Nevada Constitution, the Commission shall submit the opinion to the Speaker of the Assembly and the Majority Leader of the Senate or, if the Speaker of the Assembly or the Majority Leader of the Senate is the person who requested the opinion, to the Speaker Pro Tempore of the Assembly or the President Pro Tempore of the Senate, as appropriate.

(c) One or more willful violations of this chapter have been committed by a public officer other than a public officer described in paragraphs (a) and (b), the willful violations shall be deemed to be malfeasance in office for the purposes of NRS 283.440 and the Commission:

(1) May file a complaint in the appropriate court for removal of the public officer pursuant to NRS 283.440 when the public officer is found in the opinion to have committed fewer than three willful violations of this chapter.

(2) Shall file a complaint in the appropriate court for removal of the public officer pursuant to NRS 283.440 when the public officer is found in the opinion to have committed three or more willful violations of this chapter.

➤ This paragraph grants an exclusive right to the Commission, and no other person may file a complaint against the public officer pursuant to NRS 283.440 based on any violation found in the opinion.

5. An action taken by a public officer or employee or former public officer or employee relating to this chapter *may be found to be a willful violation of a provision of this chapter only by an affirmative vote of two-thirds of the Commission. Without limiting the provisions of NRS 281A.105, 281A.115 or 281A.170, an action taken by a public officer or employee or former public officer or employee* is not a willful violation of a provision of ~~those sections~~ *this chapter* if the public officer or employee establishes by sufficient evidence that the public officer or employee satisfied all of the following requirements:

(a) The public officer or employee relied in good faith upon the advice of the legal counsel retained by the public body which the public officer represents or by the employer of the public employee ~~for upon the manual published by the Commission pursuant to NRS 281A.200.~~ *; and*

(b) The public officer or employee ~~was unable, through no fault of the public officer or employee, to obtain an opinion from the Commission before the action was taken; and~~

~~(c) The public officer or employee~~ took action that was not contrary to a prior published opinion issued by the Commission.

6. In addition to any other penalties provided by law, a public employee who commits a willful violation of this chapter is subject to disciplinary proceedings by the employer of the public employee and must be referred for action in accordance to the applicable provisions governing the employment of the public employee.

7. The provisions of this chapter do not abrogate or decrease the effect of the provisions of the Nevada Revised Statutes which define crimes or prescribe punishments with respect to the conduct of public officers or employees. If the Commission finds that a public officer or employee has committed a willful

1 violation of this chapter which it believes may also constitute a criminal offense,
2 the Commission shall refer the matter to the Attorney General or the district
3 attorney, as appropriate, for a determination of whether a crime has been committed
4 that warrants prosecution.

5 8. The imposition of a civil penalty pursuant to subsection 1, 2 or 3 is a final
6 decision for the purposes of judicial review pursuant to NRS 233B.130.

7 9. A finding by the Commission that a public officer or employee has violated
8 any provision of this chapter must be supported by a preponderance of the evidence
9 unless a greater burden is otherwise prescribed by law.

10 **Sec. 9.** This act becomes effective on July 1, 2013.