

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; 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, malice or reckless disregard, and with knowledge of the prohibition against the act or omission; 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:

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

6 **Section 3** of this bill requires the Commission, when disposing of a request for
7 an opinion by stipulation, agreed settlement or consent order, to treat comparable
8 situations in a comparable manner and ensure that the disposition of a request for
9 an opinion bears a reasonable relationship to the severity of the violation or alleged
10 violation of the Nevada Ethics in Government Law.



* S B 2 8 3 R 1 *

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, malice 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.

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. (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.



* S B 2 8 3 R 1 *

1 **Sec. 5.** NRS 281A.105 is hereby amended to read as follows:
2 281A.105 “Intentionally” means voluntarily or deliberately,
3 rather than accidentally or inadvertently. The term ~~“does not require”~~
4 *requires* proof of bad faith, ill will, evil intent , ~~“or”~~ malice ~~“or”~~ *or*
5 *reckless disregard*.

6 **Sec. 6.** NRS 281A.115 is hereby amended to read as follows:
7 281A.115 “Knowingly” imports a knowledge that the facts
8 exist which constitute the act or omission, and ~~“does not require”~~
9 *requires* knowledge of the prohibition against the act or omission.
10 Knowledge of any particular fact may be inferred from the
11 knowledge of such other facts as should put an ordinarily prudent
12 person upon inquiry.

13 **Sec. 7.** (Deleted by amendment.)

14 **Sec. 8.** NRS 281A.480 is hereby amended to read as follows:
15 281A.480 1. In addition to any other penalties provided by
16 law ~~“and in accordance with the provisions of section 4 of this~~
17 *act,* the Commission may impose on a public officer or employee or
18 former public officer or employee civil penalties:

19 (a) Not to exceed \$5,000 for a first willful violation of this
20 chapter;

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

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

25 2. In addition to any other penalties provided by law, the
26 Commission may ~~“impose”~~ , *upon its own motion or upon the*
27 *motion of the person about whom an opinion was requested*
28 *pursuant to NRS 281A.440, impose* a civil penalty not to exceed
29 \$5,000 and assess an amount equal to the amount of attorney’s fees
30 and costs actually and reasonably incurred by the person about
31 whom an opinion was requested pursuant to NRS 281A.440 against
32 a person who prevents, interferes with or attempts to prevent or
33 interfere with the discovery or investigation of a violation of this
34 chapter.

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

42 4. In addition to any other penalties provided by law, if a
43 proceeding results in an opinion that:

44 (a) One or more willful violations of this chapter have been
45 committed by a State Legislator removable from office only through



1 expulsion by the State Legislator's own House pursuant to Section 6
2 of Article 4 of the Nevada Constitution, the Commission shall:

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

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

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

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

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

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

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

38 5. An action taken by a public officer or employee or former
39 public officer or employee relating to this chapter *may be found to*
40 *be a willful violation of a provision of this chapter only by an*
41 *affirmative vote of two-thirds of the Commission. Without limiting*
42 *the provisions of NRS 281A.105, 281A.115 or 281A.170, an action*
43 *taken by a public officer or employee or former public officer or*
44 *employee* is not a willful violation of a provision of ~~those sections~~
45 *this chapter* if the public officer or employee establishes by



1 sufficient evidence that the public officer or employee satisfied all
2 of the following requirements:

3 (a) The public officer or employee relied in good faith upon the
4 advice of the legal counsel retained by the public body which the
5 public officer represents or by the employer of the public employee
6 ~~for upon the manual published by the Commission pursuant to~~
7 ~~NRS 281A.290;~~ ; and

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

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

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

18 7. The provisions of this chapter do not abrogate or decrease
19 the effect of the provisions of the Nevada Revised Statutes which
20 define crimes or prescribe punishments with respect to the conduct
21 of public officers or employees. If the Commission finds that a
22 public officer or employee has committed a willful violation of this
23 chapter which it believes may also constitute a criminal offense, the
24 Commission shall refer the matter to the Attorney General or the
25 district attorney, as appropriate, for a determination of whether a
26 crime has been committed that warrants prosecution.

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

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

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

