

Amendment No. 514

Assembly Amendment to Assembly Bill No. 60	(BDR 23-309)
Proposed by: Assembly Committee on Legislative Operations and Elections	
Amends: Summary: No Title: No 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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

KCP



Date: 4/19/2015

A.B. No. 60—Revises provisions relating to ethics in government. (BDR 23-309)



ASSEMBLY BILL NO. 60—COMMITTEE ON  
LEGISLATIVE OPERATIONS AND ELECTIONS

(ON BEHALF OF THE COMMISSION ON ETHICS)

PREFILED DECEMBER 20, 2014

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions relating to ethics in government. (BDR 23-309)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

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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 relating to ethics in government; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Under the Nevada Ethics in Government Law, ~~the requirement to disclose a conflict of interest applies to public officers as well as public employees, but the requirements relating to abstention only apply to public officers. (NRS 281A.420) Section 2 of this bill extends to public employees the requirements relating to abstention from taking action on matters on which a public employee has a prescribed conflict of interest.~~

~~Under the Ethics Law,~~ the Commission on Ethics is required to determine whether it has jurisdiction over a request for an opinion. (NRS 281A.280; NAC 281A.360, 281A.405) The Ethics Law also imposes time limits on the Commission to carry out certain duties. ~~With respect to a request for an opinion from a public officer or employee regarding his or her own past, present or future conduct as a public officer or employee, the Commission is required to render an opinion within 45 days after receiving the request, unless the public officer or employee waives the time limit.~~ With respect to a request for an opinion regarding the conduct of a public officer or employee ~~from~~ **which is made by a third party for on the Commission's own motion, and is more commonly known as a third-party request,** the Executive Director of the Commission is required to complete an investigation ~~for~~ and make a recommendation regarding the **third-party** request within 70 days after receipt of the request, unless the public officer or employee waives the time limit. (NRS 281A.440)

~~To accommodate the time required for the Commission to determine whether it has jurisdiction concerning a third-party request, for an opinion, section 3 of this bill moves the commencement of these time limits until the date on which~~ **provides that within 45 days after receiving the request, the Commission shall determine whether it has jurisdiction concerning the request, unless the public officer or employee waives the time limit. If the Commission determines that it has jurisdiction concerning the request** ~~(instead of the date on which the request was received by the Commission).~~

~~The Ethics Law prohibits the Commission from initiating a request for an opinion based on an anonymous complaint. (NRS 281A.440) Section 2 removes this prohibition, thereby allowing the Commission to initiate a request for an opinion if it has sufficient information to do so based on an anonymous complaint.~~ **, the Executive Director must complete the investigation and make a recommendation regarding the request within 70 days after the jurisdictional determination, unless the public officer or employee waives the time limit.**

Under the Ethics Law, the investigative file relating to a request for an opinion, which includes any information obtained by the Commission during the course of an investigation related to the request, is confidential. (NRS 281A.440) **Section 3** clarifies that the investigative file includes any information provided to or obtained by an investigatory panel consisting of Commission members or by the staff of the Commission.

The Ethics Law further provides that all information that is not included in the investigative file relating to a request is confidential for a limited time until an investigatory panel determines whether there is just and sufficient cause to render an opinion in the matter or until the public officer or employee authorizes disclosure, whichever occurs first. (NRS 281A.440) Section 3 authorizes additional confidentiality which allows a person who makes a third-party request to ask for the person's name to be kept confidential under certain limited circumstances. In particular, section 3 states that the Commission: (1) shall keep the person's name confidential if the person is a public officer or employee who works for the same public body, agency or employer as the public officer or employee who is the subject of the request; and (2) may keep the person's name confidential if the person offers sufficient facts and circumstances showing a reasonable likelihood that disclosure of the person's name will subject the person or a member of the person's household to a bona fide threat of physical force or violence. However, if the Commission keeps the person's name confidential, the Commission may not render an opinion in the matter unless there is sufficient evidence without the person's testimony to consider the request. Additionally, if the Commission intends to present the person's testimony as evidence, the Commission must disclose the person's name within a reasonable time before the Commission's hearing on the matter.

Under the Ethics Law, the Commission is required to consider various aggravating and mitigating factors when determining whether a violation of the Ethics Law is a willful violation and, if so, the amount of any civil penalty to be imposed for such a willful violation of the Ethics Law. (NRS 281A.170, 281A.475) ~~(Section) Sections 1 and 4 of this bill (makes consideration of these) clarify that the factors (discretionary instead of mandatory by) listed in the Ethics Law which must be considered by the Commission (,) are not exclusive or exhaustive, and the Commission may consider other factors in the disposition of the matter if they bear a reasonable relationship to the determination of the severity of the violation.~~

The Ethics Law includes a "safe harbor" provision, whereby any act or failure to act by a current or former public officer or employee is deemed to not be a willful violation if the public officer or employee establishes by sufficient evidence that: (1) the public officer or employee relied in good faith upon the advice of the legal counsel retained by his or her public body, agency or employer; and (2) the act or failure to act by the public officer or employee was not contrary to a prior published opinion issued by the Commission. (NRS 281A.480) **Section 5** of this bill clarifies that to qualify for protection under the "safe harbor" provision, the advice of the legal counsel must have been: (1) ~~requested by and~~ provided to the public officer or employee before he or she acted or failed to act; and (2) based on a reasonable legal determination by the legal counsel under the circumstances when the advice was given that the act or failure to act would not be contrary to any prior published opinion issued by the Commission. (,) which was publicly available on the Internet website of the Commission.

With certain exceptions, the Ethics Law imposes a 1-year "cooling off" period on former public officers and employees during which they are prohibited from soliciting or accepting employment from a business or industry over which they had regulatory authority in some capacity. However, the Ethics Law authorizes a current or former public officer or employee to request an opinion from the Commission to obtain relief from the strict application of the prohibition. The Ethics Law also authorizes a current public officer or employee to request the Commission to render an opinion providing guidance regarding his or her past, present or future conduct as a public officer or employee, which is known as a first-party request for an opinion. Under the Ethics Law, a request for an opinion regarding the application of the "cooling-off" prohibition or a first-party request for an opinion, as well as any 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, in part, the public officer or employee discloses the request for an opinion, opinion or related motion, evidence or record. (NRS 281A.440, 281A.550) **Sections 3 and 6** of this bill allow a public

officer or employee who made such a request to disclose the request for the opinion, the opinion and any motion, evidence or record related to the opinion to certain persons without waiving the confidentiality of the request for the opinion, opinion and any related motion, evidence or record.

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

**Section 1.** NRS 281A.170 is hereby amended to read as follows:

281A.170 “Willful violation” means a violation where ~~+~~

~~1. The~~ the public officer or employee:

~~(a)~~ 1. Acted intentionally and knowingly; or

~~(b)~~ 2. Was in a situation where this chapter imposed a duty to act and the public officer or employee intentionally and knowingly failed to act in the manner required by this chapter ~~+~~; and

~~2. The~~

unless the Commission determines, after applying the factors set forth in NRS 281A.475, that the public officer’s or employee’s act or failure to act has not resulted in a sanctionable violation of this chapter.

**Sec. 2.** ~~NRS 281A.420 is hereby amended to read as follows:~~

~~281A.420 1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:~~

~~(a) Regarding which the public officer or employee has accepted a gift or loan;~~

~~(b) In which the public officer or employee has a significant pecuniary interest;~~

~~or~~

~~(c) Which would reasonably be affected by the public officer’s or employee’s commitment in a private capacity to the interests of another person;~~

~~without disclosing information concerning the gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of the person that is sufficient to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer’s or employee’s significant pecuniary interest, or upon the person to whom the public officer or employee has a commitment in a private capacity. Such a disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body. If the public officer or employee is not a member of such a body and holds an appointive office, the public officer or employee shall make the disclosure to the supervisory head of the public officer’s or employee’s organization or, if the public officer holds an elective office, to the general public in the area from which the public officer is elected.~~

~~2. The provisions of subsection 1 do not require a public officer to disclose:~~

~~(a) Any campaign contributions that the public officer reported in a timely manner pursuant to NRS 204A.120 or 204A.125; or~~

~~(b) Any contributions to a legal defense fund that the public officer reported in a timely manner pursuant to NRS 204A.286.~~

~~3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer or employee shall not vote or otherwise act upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence~~

of judgment of a reasonable person in the public officer's ~~or employee's~~ situation would be materially affected by:

- ~~— (a) The public officer's *or employee's* acceptance of a gift or loan;~~
- ~~— (b) The public officer's *or employee's* significant pecuniary interest; or~~
- ~~— (c) The public officer's *or employee's* commitment in a private capacity to the interests of another person.~~

~~4. In interpreting and applying the provisions of subsection 2:~~

~~(a) It must be presumed that the independence of judgment of a reasonable person in the public officer's *or employee's* situation would not be materially affected by the public officer's *or employee's* acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person where the resulting benefit or detriment accruing to the public officer [.] *or employee*, or if the public officer *or employee* has a commitment in a private capacity to the interests of another person, accruing to the other person, is not greater than that accruing to any other member of any general business, profession, occupation or group that is affected by the matter. The presumption set forth in this paragraph does not affect the applicability of the requirements set forth in subsection 1 relating to the disclosure of the acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person.~~

~~(b) The Commission must give appropriate weight and proper deference to the public policy of this State which favors the right of a public officer *or employee* to perform the duties for which the public officer was elected or appointed *or the duties which the public employee was assigned* and to vote or otherwise act upon a matter, provided the public officer *or employee* has properly disclosed the public officer's *or employee's* acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person in the manner required by subsection 1. Because abstention [by a public officer] disrupts the normal course of representative government *and governmental operation* and deprives the public [and the public officer's constituents] of a voice in governmental affairs, the provisions of this section are intended to require abstention only in clear cases where the independence of judgment of a reasonable person in the public officer's *or employee's* situation would be materially affected by the public officer's *or employee's* acceptance of a gift or loan, significant pecuniary interest or commitment in a private capacity to the interests of another person.~~

~~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 the public officer 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. The provisions of this section do not, under any circumstances:~~

~~(a) Prohibit a member of a local legislative body from requesting or introducing a legislative measure; or~~

~~(b) Require a member of a local legislative body to take any particular action before or while requesting or introducing a legislative measure.~~

~~7. The provisions of this section do not, under any circumstances, apply to State Legislators or allow the Commission to exercise jurisdiction or authority over State Legislators. The responsibility of a State Legislator to make disclosures concerning gifts, loans, interests or commitments and the responsibility of a State Legislator to abstain from voting upon or advocating the passage or failure of a matter are governed by the Standing Rules of the Legislative Department of State~~

~~Government which are adopted, administered and enforced exclusively by the appropriate bodies of the Legislative Department of State Government pursuant to Section 6 of Article 4 of the Nevada Constitution.~~

~~8. As used in this section, "public officer" and "public employee" do not include a State Legislator. (Deleted by amendment.)~~

**Sec. 3.** NRS 281A.440 is hereby amended to read as follows:

281A.440 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 ~~determining that it has jurisdiction concerning~~ a request ~~freecived~~ 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 a public 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. Within 45 days after receiving a request for an opinion pursuant to paragraph (a) or (b) of subsection 2, the Commission shall determine whether it has jurisdiction concerning the request, unless the public officer or employee who is the subject of the request waives this time limit. Upon receipt of a determination by the Commission that it has jurisdiction concerning a request for an opinion ~~by the Commission~~ pursuant to paragraph (a) or (b) of subsection 2, or upon the motion of the Commission initiating a request for an opinion pursuant to paragraph (c) of subsection 2, as applicable, 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 Executive Director shall notify the public officer or employee who is the subject of the request and provide the public officer or employee an opportunity to submit to the Executive Director a response to the allegations against the public officer or employee within 30 days after the date on which the public officer or employee received the notice of the request. The purpose of the response is to

1 provide the Executive Director with any information relevant to the request which  
2 the public officer or employee believes may assist the Executive Director and the  
3 investigatory panel in conducting the investigation. The public officer or employee  
4 is not required in the response or in any proceeding before the investigatory panel  
5 to assert, claim or raise any objection or defense, in law or fact, to the allegations  
6 against the public officer or employee and no objection or defense, in law or fact, is  
7 waived, abandoned or barred by the failure to assert, claim or raise it in the  
8 response or in any proceeding before the investigatory panel.

9 4. The Executive Director shall complete the investigation and present a  
10 written recommendation relating to just and sufficient cause, including, without  
11 limitation, the specific evidence or reasons that support the recommendation, to the  
12 investigatory panel within 70 days after the ~~receipt of~~ *determination by the*  
13 *Commission that it has jurisdiction concerning the request* or *after* the motion of  
14 the Commission ~~for~~ *initiating* the request, *as applicable*, unless the public officer  
15 or employee waives this time limit.

16 5. Within 15 days after the Executive Director has provided the written  
17 recommendation in the matter to the investigatory panel pursuant to subsection 4,  
18 the investigatory panel shall conclude the investigation and make a final  
19 determination regarding whether there is just and sufficient cause for the  
20 Commission to render an opinion in the matter, unless the public officer or  
21 employee waives this time limit. The investigatory panel shall not determine that  
22 there is just and sufficient cause for the Commission to render an opinion in the  
23 matter unless the Executive Director has provided the public officer or employee an  
24 opportunity to respond to the allegations against the public officer or employee as  
25 required by subsection 3. The investigatory panel shall cause a record of its  
26 proceedings in each matter to be kept.

27 6. If the investigatory panel determines that there is just and sufficient cause  
28 for the Commission to render an opinion in the matter, the Commission shall hold a  
29 hearing and render an opinion in the matter within 60 days after the determination  
30 of just and sufficient cause by the investigatory panel, unless the public officer or  
31 employee waives this time limit.

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

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

40 (b) Discloses the request for the opinion, the contents of the opinion, or any  
41 motion, evidence or record of a hearing related thereto ~~in~~ *in any manner except to:*

42 *(1) The public body, agency or employer of the public officer or*  
43 *employee; or*

44 *(2) A person to whom the Commission authorizes the current or former*  
45 *public officer or employee to make such a disclosure; or*

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

49 8. Except as otherwise provided in ~~subsection 9,~~ *subsections 9 and 10*, all  
50 information, communications, records, documents or other material in the  
51 possession of the Commission or its staff that is related to a request for an opinion  
52 regarding a public officer or employee submitted to or initiated by the Commission  
53 pursuant to subsection 2, including, without limitation, the record of the



proceedings of the investigatory panel made pursuant to subsection 5, are confidential and not public records pursuant to chapter 239 of NRS until:

(a) The investigatory panel determines whether there is just and sufficient cause to render an opinion in the matter and serves written notice of such a determination on the public officer or employee who is the subject of the request for an opinion submitted or initiated pursuant to subsection 2; or

(b) The public officer or employee who is the subject of a request for an opinion submitted or initiated pursuant to subsection 2 authorizes the Commission in writing to make its information, communications, records, documents or other material which are related to the request publicly available,

↳ whichever occurs first.

9. Except as otherwise provided in this subsection, if a person who submits a request for an opinion pursuant to paragraph (b) of subsection 2 asks for the person's name to be kept confidential, the Commission:

(a) Shall keep the person's name confidential if the person is a public officer or employee who works for the same public body, agency or employer as the public officer or employee who is the subject of the request.

(b) May keep the person's name confidential if the person offers sufficient facts and circumstances showing a reasonable likelihood that disclosure of the person's name will subject the person or a member of the person's household to a bona fide threat of physical force or violence.

↳ If the Commission keeps the person's name confidential, the Commission shall not render an opinion in the matter unless there is sufficient evidence without the person's testimony to consider the propriety of the conduct of the public officer or employee who is the subject of the request. If the Commission intends to present the person's testimony for consideration as evidence in rendering an opinion in the matter, the Commission shall disclose the person's name within a reasonable time before the Commission's hearing on the matter.

10. ~~Except as otherwise provided in this ~~section~~ subsection,~~ the investigative file ~~of the Commission~~ related to a request for an opinion regarding a public officer or employee, as described in subsection ~~46~~ 17, is confidential. At any time after being served with written notice of the determination of the investigatory panel regarding the existence of just and sufficient cause for the Commission to render an opinion in the matter, the public officer or employee who is the subject of the request for an opinion may submit a written discovery request to the Commission for a copy of any portion of the investigative file that the Commission intends to present for consideration as evidence in rendering an opinion in the matter and a list of proposed witnesses. Any portion of the investigative file which the Commission presents as evidence in rendering an opinion in the matter becomes a public record as provided in chapter 239 of NRS.

~~10.11.~~ 11. 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.

~~11.12.~~ 12. 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.

~~12-13.~~ 13. If a person who requests an opinion pursuant to subsection 1 or 2 does not:

~~(a) Submit~~ submit all necessary information to the Commission ~~if~~ and

~~(b) Declare by oath or affirmation that the person will testify truthfully.~~

the Commission may decline to render an opinion.

~~12-14.~~ 14. For good cause shown, the Commission may take testimony from a person by telephone or video conference.

~~12-15.~~ 15. 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.

~~12-16.~~ 16. 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.

~~12-17.~~ 17. For the purposes of this section, the investigative file ~~of the Commission~~ which relates to a request for an opinion regarding a public officer or employee includes, without limitation, any information provided to or obtained by the Commission , its staff or an investigatory panel through any form of communication during the course of an investigation and any records, documents or other material created or maintained during the course of an investigation which relate to the public officer or employee who is the subject of the request for an opinion, including, without limitation, a transcript, regardless of whether such information, records, documents or other material are obtained by a subpoena.

**Sec. 4.** NRS 281A.475 is hereby amended to read as follows:

281A.475 1. In determining whether a violation of this chapter is a willful violation and, if so, the amount of any civil penalty to be imposed on a public officer or employee or former public officer or employee pursuant to NRS 281A.480, the Commission ~~shall~~ may consider ~~it~~ , without limitation:

(a) The seriousness of the violation, including, without limitation, the nature, circumstances, extent and gravity of the violation;

(b) The number and history of previous warnings issued to or violations of the provisions of this chapter by the public officer or employee;

(c) The cost to the Commission to conduct the investigation and any hearing relating to the violation;

(d) 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 in resolving the complaint;

(e) Any restitution or reimbursement paid to parties affected by the violation;

(f) The extent of any financial gain resulting from the violation; and

(g) Any other matter justice may require.

2. The factors set forth in this section are not exclusive or exhaustive, and the Commission may consider other factors in the disposition of the matter if they bear a reasonable relationship to the Commission's determination of the severity of the violation.

1 3. In applying the factors set forth in this section, the Commission shall treat  
2 comparable situations in a comparable manner and shall ensure that the disposition  
3 of the matter bears a reasonable relationship to the severity of the violation.

4 **Sec. 5.** NRS 281A.480 is hereby amended to read as follows:

5 281A.480 1. In addition to any other penalties provided by law ~~it~~ and in  
6 accordance with the provisions of NRS 281A.475, the Commission may impose on  
7 a public officer or employee or former public officer or employee civil penalties:

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

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

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

13 2. In addition to any other penalties provided by law, the Commission may,  
14 upon its own motion or upon the motion of the person about whom an opinion was  
15 requested pursuant to NRS 281A.440, impose a civil penalty not to exceed \$5,000  
16 and assess an amount equal to the amount of attorney's fees and costs actually and  
17 reasonably incurred by the person about whom an opinion was requested pursuant  
18 to NRS 281A.440 against a person who prevents, interferes with or attempts to  
19 prevent or interfere with the discovery or investigation of a violation of this chapter.

20 3. If the Commission finds that a violation of a provision of this chapter by a  
21 public officer or employee or former public officer or employee has resulted in the  
22 realization of a financial benefit by the current or former public officer or employee  
23 or another person, the Commission may, in addition to any other penalties provided  
24 by law, require the current or former public officer or employee to pay a civil  
25 penalty of not more than twice the amount so realized.

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

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

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

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

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

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

51 (1) May file a complaint in the appropriate court for removal of the public  
52 officer pursuant to NRS 283.440 when the public officer is found in the opinion to  
53 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. Notwithstanding any other provision of this chapter, any act or failure to act by a public officer or employee or former public officer or employee relating to this chapter is not a willful violation of this chapter if the public officer or employee establishes by sufficient evidence that :

(a) ~~The ~~that~~ public officer or employee relied in good faith upon the advice of the legal counsel retained by his or her public body, agency or employer ; ~~and that the advice was~~~~

~~(a) Requested by and provided to the public officer or employee before the public officer or employee acted or failed to act;~~ and

(b) The advice of the legal counsel was:

(1) Provided to the public officer or employee before the public officer or employee acted or failed to act; and

(2) Based on a reasonable legal determination by the legal counsel under the circumstances when the advice was given that the act or failure to act by the public officer or employee ~~was~~ would not be contrary to ~~that~~ any prior published opinion issued by the Commission ~~that~~ which was publicly available on the Internet website of 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 violation of this chapter which it believes may also constitute a criminal offense, the Commission shall refer the matter to the Attorney General or the district attorney, as appropriate, for a determination of whether a crime has been committed that warrants prosecution.

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

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

**Sec. 6.** NRS 281A.550 is hereby amended to read as follows:

281A.550 1. A former member of the Public Utilities Commission of Nevada shall not:

(a) Be employed by a public utility or parent organization or subsidiary of a public utility; or

(b) Appear before the Public Utilities Commission of Nevada to testify on behalf of a public utility or parent organization or subsidiary of a public utility,

➤ for 1 year after the termination of the member's service on the Public Utilities Commission of Nevada.

2. A former member of the State Gaming Control Board or the Nevada Gaming Commission shall not:

(a) Appear before the State Gaming Control Board or the Nevada Gaming Commission on behalf of a person who holds a license issued pursuant to chapter

1 463 or 464 of NRS or who is required to register with the Nevada Gaming  
2 Commission pursuant to chapter 463 of NRS; or

3 (b) Be employed by such a person,  
4 ↪ for 1 year after the termination of the member's service on the State Gaming  
5 Control Board or the Nevada Gaming Commission.

6 3. In addition to the prohibitions set forth in subsections 1 and 2, and except  
7 as otherwise provided in subsections 4 and 6, a former public officer or employee  
8 of a board, commission, department, division or other agency of the Executive  
9 Department of State Government, except a clerical employee, shall not solicit or  
10 accept employment from a business or industry whose activities are governed by  
11 regulations adopted by the board, commission, department, division or other agency  
12 for 1 year after the termination of the former public officer's or employee's service  
13 or period of employment if:

14 (a) The former public officer's or employee's principal duties included the  
15 formulation of policy contained in the regulations governing the business or  
16 industry;

17 (b) During the immediately preceding year, the former public officer or  
18 employee directly performed activities, or controlled or influenced an audit,  
19 decision, investigation or other action, which significantly affected the business or  
20 industry which might, but for this section, employ the former public officer or  
21 employee; or

22 (c) As a result of the former public officer's or employee's governmental  
23 service or employment, the former public officer or employee possesses knowledge  
24 of the trade secrets of a direct business competitor.

25 4. The provisions of subsection 3 do not apply to a former public officer who  
26 was a member of a board, commission or similar body of the State if:

27 (a) The former public officer is engaged in the profession, occupation or  
28 business regulated by the board, commission or similar body;

29 (b) The former public officer holds a license issued by the board, commission  
30 or similar body; and

31 (c) Holding a license issued by the board, commission or similar body is a  
32 requirement for membership on the board, commission or similar body.

33 5. Except as otherwise provided in subsection 6, a former public officer or  
34 employee of the State or a political subdivision, except a clerical employee, shall  
35 not solicit or accept employment from a person to whom a contract for supplies,  
36 materials, equipment or services was awarded by the State or political subdivision,  
37 as applicable, for 1 year after the termination of the officer's or employee's service  
38 or period of employment, if:

39 (a) The amount of the contract exceeded \$25,000;

40 (b) The contract was awarded within the 12-month period immediately  
41 preceding the termination of the officer's or employee's service or period of  
42 employment; and

43 (c) The position held by the former public officer or employee at the time the  
44 contract was awarded allowed the former public officer or employee to affect or  
45 influence the awarding of the contract.

46 6. A current or former public officer or employee may request that the  
47 Commission apply the relevant facts in that person's case to the provisions of  
48 subsection 3 or 5, as applicable, and determine whether relief from the strict  
49 application of those provisions is proper. If the Commission determines that relief  
50 from the strict application of the provisions of subsection 3 or 5, as applicable, is  
51 not contrary to:

52 (a) The best interests of the public;

(b) The continued ethical integrity of the State Government or political subdivision, as applicable; and

(c) The provisions of this chapter,

↳ it may issue an opinion to that effect and grant such relief. The opinion of the Commission in such a case is 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 current or former public officer or employee.

7. Each request for an opinion that a current or former public officer or employee submits to the Commission pursuant to subsection 6, 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 current or former 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 ~~in~~ *in any manner except to:*

*(1) The public body, agency or employer of the public officer or employee or a prospective employer of the public officer or employee; or*

*(2) Any person to whom the Commission authorizes the current or former public officer or employee to make such a disclosure; 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. A meeting or hearing that the Commission or an investigatory panel holds to receive information or evidence concerning the propriety of the conduct of a current or former 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.

9. As used in this section, "regulation" has the meaning ascribed to it in NRS 233B.038 and also includes regulations adopted by a board, commission, department, division or other agency of the Executive Department of State Government that is exempted from the requirements of chapter 233B of NRS.

**Sec. 7.** This act becomes effective upon passage and approval.