

SENATE BILL NO. 36—COMMITTEE ON
LEGISLATIVE OPERATIONS AND ELECTIONS

(ON BEHALF OF THE OFFICE OF THE GOVERNOR)

PREFILED NOVEMBER 16, 2016

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions relating to ethics in government.
(BDR 23-230)

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; removing State Legislators entirely from the jurisdiction of the Commission on Ethics; revising the membership of the Commission; revising the provisions governing the assessments paid by cities and counties to the Commission; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under the Nevada Constitution, the legislative House of which a Legislator is a member has exclusive jurisdiction over discipline of its members. (Nev. Const. Art. 4, § 6) In 2009, the Nevada Supreme Court held that under the constitutional doctrine of separation of powers, the House of which a Legislator is a member is the only governmental entity that is authorized to sanction the Legislator for conduct within the sphere of legitimate legislative activity, such as voting or abstention on legislation and, by extension, disclosure of conflicts of interest. Moreover, the Court held that the Legislature cannot delegate its authority to discipline state legislators for conduct within the sphere of legitimate legislative activity to another branch of government. (*Comm'n on Ethics v. Hardy*, 125 Nev. 285, 294-96 & n.9 (2009)) Existing law sets forth a nonexhaustive list of actions by a Legislator that are considered within the sphere of legitimate legislative activity based on long-standing case law interpreting and applying the constitutional doctrines of separation of powers and legislative privilege and immunity under the Speech or Debate Clause of Section 6 of Article I of the United States Constitution. (NRS 41.071)

The Commission on Ethics, which is an agency of the Executive Department of the State Government, was created under existing law to administer and enforce the



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Nevada Ethics in Government Law. (NRS 281A.200) The Commission has concurrent jurisdiction over Legislators with respect to alleged ethical violations that do not fall within the sphere of legitimate legislative activity, such as misuse of office. (NRS 281A.280; *Hardy*, 125 Nev. at 294-96 & n.9)

Sections 1-3 and 6-9 of this bill remove State Legislators entirely from the jurisdiction of the Commission on Ethics. Therefore, determination of all issues relating to the ethical conduct of Legislators will be within the exclusive jurisdiction of the House of which the Legislator is a member. Since the *Hardy* decision in 2009, each House of the Legislature has had a standing rule in place that provides for a committee on ethics to address questions regarding breaches of ethics and conflicts of interest of Legislators for their respective Houses. (*See, e.g.*, Senate Standing Rule No. 23, File No. 4, Statutes of Nevada 2015, p. 3981; Assembly Standing Rule No. 23, File No. 1, Statutes of Nevada 2015, p. 3956)

Under existing law, the Commission on Ethics consists of eight members, with four members appointed by the Legislative Commission and four members appointed by the Governor. **Section 4** of this bill eliminates the members appointed by the Legislative Commission and adds another member appointed by the Governor, which results in a total of five members of the Commission on Ethics.

Existing law requires certain cities and counties to cover some of the costs incurred by the Commission on Ethics in carrying out its functions by paying assessments during each biennium. (NRS 281A.270) **Section 5** of this bill removes the requirement that the Executive Director of the Commission on Ethics consult with the Budget Division of the Office of Finance and the Fiscal Analysis Division of the Legislative Counsel Bureau before determining the amount of such assessments due for each city and county for a biennium.

Pursuant to **section 11** of this bill, the Commission on Ethics retains its concurrent jurisdiction over any requests for an opinion regarding a Legislator's conduct that are pending before the Commission on the effective date of this bill. **Section 11** also provides that the revised composition of the Commission on Ethics does not affect the status of any requests for an opinion pending before the Commission on the effective date of this bill.

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

Section 1. NRS 281A.020 is hereby amended to read as follows:

281A.020 1. It is hereby declared to be the public policy of this State that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

2. The Legislature finds and declares that:

(a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.



(b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

~~[(c) In interpreting and applying the provisions of this chapter that are applicable to State Legislators, the Commission must give appropriate weight and proper deference to the public policy of this State under which State Legislators serve as "citizen Legislators" who have other occupations and business interests, who are expected to have particular philosophies and perspectives that are necessarily influenced by the life experiences of the Legislator, including, without limitation, professional, family and business experiences, and who are expected to contribute those philosophies and perspectives to the debate over issues with which the Legislature is confronted.~~

~~—(d) The provisions of this chapter do not, under any circumstances, allow the Commission to exercise jurisdiction or authority over or inquire into, intrude upon or interfere with the functions of a State Legislator that are protected by legislative privilege and immunity pursuant to the Constitution of the State of Nevada or NRS 41.071.]~~

Sec. 2. NRS 281A.080 is hereby amended to read as follows:

281A.080 1. The making of a "decision" is the exercise of governmental power to adopt laws, regulations or standards, render quasi-judicial decisions, establish executive policy or determine questions involving substantial discretion.

2. The term does not include:

(a) The functions of the judiciary.

(b) The functions of a State Legislator . ~~[that are protected by legislative privilege and immunity pursuant to the Constitution of the State of Nevada or NRS 41.071.]~~

Sec. 3. NRS 281A.160 is hereby amended to read as follows:

281A.160 1. "Public officer" means a person who is:

(a) Elected or appointed to a position which:

(1) Is established by the Constitution of the State of Nevada, a statute of this State or a charter or ordinance of any county, city or other political subdivision; and

(2) Involves the exercise of a public power, trust or duty; or

(b) Designated as a public officer for the purposes of this chapter pursuant to NRS 281A.182.

2. As used in this section, "the exercise of a public power, trust or duty" means:

(a) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;



(b) The expenditure of public money; and
(c) The administration of laws and rules of the State or any county, city or other political subdivision.

3. "Public officer" does not include:

(a) Any justice, judge or other officer of the court system;

(b) Any member of a board, commission or other body whose function is advisory;

(c) Any member of a special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money; ~~for~~

(d) A county health officer appointed pursuant to NRS 439.290

~~for~~; or

(e) A State Legislator.

4. "Public office" does not include an office held by:

(a) Any justice, judge or other officer of the court system;

(b) Any member of a board, commission or other body whose function is advisory;

(c) Any member of a special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money; ~~for~~

(d) A county health officer appointed pursuant to NRS 439.290

~~for~~; or

(e) A State Legislator.

Sec. 4. NRS 281A.200 is hereby amended to read as follows:

281A.200 1. The Commission on Ethics, consisting of ~~eight~~ *five* members, is hereby created.

2. ~~The Legislative Commission shall appoint to the Commission four residents of the State, at least two of whom must be former public officers or employees, and at least one of whom must be an attorney licensed to practice law in this State.~~

~~3.~~ The Governor shall appoint to the Commission ~~four~~ *five* residents of the State, at least two of whom must be former public officers or employees, and at least ~~one~~ *two* of whom must be ~~an attorney~~ *attorneys* licensed to practice law in this State.

~~4.~~ 3. Not more than ~~four~~ *three* members of the Commission may be members of the same political party. Not more than ~~four~~ *three* members of the Commission may be residents of the same county.

~~5.~~ 4. None of the members of the Commission may, while the member is serving on the Commission:

(a) Hold another public office;

(b) Be actively involved in the work of any political party or political campaign; or



(c) Communicate directly with a State Legislator or a member of a local legislative body on behalf of someone other than himself or herself or the Commission, for compensation, to influence:

(1) The State Legislator with regard to introducing or voting upon any matter or taking other legislative action; or

(2) The member of the local legislative body with regard to introducing or voting upon any ordinance or resolution, taking other legislative action or voting upon:

(I) The appropriation of public money;

(II) The issuance of a license or permit; or

(III) Any proposed subdivision of land or special exception or variance from zoning regulations.

~~16-1~~ 5. After the initial terms, the terms of the members are 4 years. Any vacancy in the membership must be filled by the appropriate appointing authority for the unexpired term. Each member may serve no more than two consecutive full terms.

Sec. 5. NRS 281A.270 is hereby amended to read as follows:

281A.270 1. Each county whose population is 10,000 or more and each city whose population is 15,000 or more and that is located within such a county shall pay an assessment for the costs incurred by the Commission each biennium in carrying out its functions pursuant to this chapter. The total amount of money to be derived from assessments paid pursuant to this subsection for a biennium must be determined by the Legislature in the legislatively approved budget of the Commission for that biennium. The assessments must be apportioned among each such city and county based on the proportion that the total population of the city or the total population of the unincorporated area of the county bears to the total population of all such cities and the unincorporated areas of all such counties in this State.

2. On or before July 1 of each odd-numbered year, the Executive Director shall ~~in consultation with the Budget Division of the Office of Finance and the Fiscal Analysis Division of the Legislative Counsel Bureau,~~ determine for the next ensuing biennium the amount of the assessments due for each city and county that is required to pay an assessment pursuant to subsection 1. The assessments must be paid to the Commission in semiannual installments that are due on or before August 1 and February 1 of each year of the biennium. The Executive Director shall send out a billing statement to each such city or county which states the amount of the semiannual installment payment due from the city or county.

3. Any money that the Commission receives pursuant to subsection 2:



(a) Must be deposited in the State Treasury, accounted for separately in the State General Fund and credited to the budget account for the Commission;

(b) May only be used to carry out the provisions of this chapter and only to the extent authorized for expenditure by the Legislature;

(c) Does not revert to the State General Fund at the end of any fiscal year; and

(d) Does not revert to a city or county if:

(1) The actual expenditures by the Commission are less than the amount of the assessments approved by the Legislature pursuant to subsection 1 and the city or county has already remitted its semiannual installment to the Commission for the billing period; or

(2) The budget of the Commission is modified after the amount of the assessments has been approved by the Legislature pursuant to subsection 1 and the city or county has already remitted its semiannual installment to the Commission for the billing period.

4. If any installment payment is not paid on or before the date on which it is due, the Executive Director shall make reasonable efforts to collect the delinquent payment. If the Executive Director is not able to collect the arrearage, the Executive Director shall submit a claim for the amount of the unpaid installment payment to the Department of Taxation. If the Department of Taxation receives such a claim, the Department shall deduct the amount of the claim from money that would otherwise be allocated from the Local Government Tax Distribution Account to the city or county that owes the installment payment and shall transfer that amount to the Commission.

5. As used in this section, "population" means the current population estimate for that city or county as determined and published by the Department of Taxation and the demographer employed pursuant to NRS 360.283.

Sec. 6. NRS 281A.400 is hereby amended to read as follows:

281A.400 A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.

2. A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or



1 any person to whom the public officer or employee has a
2 commitment in a private capacity to the interests of that person. As
3 used in this subsection, "unwarranted" means without justification
4 or adequate reason.

5 3. A public officer or employee shall not participate as an agent
6 of government in the negotiation or execution of a contract between
7 the government and any business entity in which the public officer
8 or employee has a significant pecuniary interest.

9 4. A public officer or employee shall not accept any salary,
10 retainer, augmentation, expense allowance or other compensation
11 from any private source for the performance of the public officer's
12 or employee's duties as a public officer or employee.

13 5. If a public officer or employee acquires, through the public
14 officer's or employee's public duties or relationships, any
15 information which by law or practice is not at the time available to
16 people generally, the public officer or employee shall not use the
17 information to further a significant pecuniary interest of the public
18 officer or employee or any other person or business entity.

19 6. A public officer or employee shall not suppress any
20 governmental report or other official document because it might
21 tend to affect unfavorably a significant pecuniary interest of the
22 public officer or employee.

23 7. ~~{Except for State Legislators who are subject to the~~
24 ~~restrictions set forth in subsection 8, a}~~ A public officer or employee
25 shall not use governmental time, property, equipment or other
26 facility to benefit a significant personal or pecuniary interest of the
27 public officer or employee. This subsection does not prohibit:

28 (a) A limited use of governmental property, equipment or other
29 facility for personal purposes if:

30 (1) The public officer or employee who is responsible for
31 and has authority to authorize the use of such property, equipment
32 or other facility has established a policy allowing the use or the use
33 is necessary as a result of emergency circumstances;

34 (2) The use does not interfere with the performance of the
35 public officer's or employee's public duties;

36 (3) The cost or value related to the use is nominal; and

37 (4) The use does not create the appearance of impropriety;

38 (b) The use of mailing lists, computer data or other information
39 lawfully obtained from a governmental agency which is available to
40 members of the general public for nongovernmental purposes; or

41 (c) The use of telephones or other means of communication if
42 there is not a special charge for that use.

43 ➤ If a governmental agency incurs a cost as a result of a use that is
44 authorized pursuant to this subsection or would ordinarily charge a
45 member of the general public for the use, the public officer or



1 employee shall promptly reimburse the cost or pay the charge to the
2 governmental agency.

3 8. ~~1A State Legislator shall not:~~

4 ~~—(a) Use governmental time, property, equipment or other facility~~
5 ~~for a nongovernmental purpose or for the private benefit of the State~~
6 ~~Legislator or any other person. This paragraph does not prohibit:~~

7 ~~—(1) A limited use of state property and resources for personal~~
8 ~~purposes if:~~

9 ~~—(I) The use does not interfere with the performance of the~~
10 ~~State Legislator's public duties;~~

11 ~~—(II) The cost or value related to the use is nominal; and~~

12 ~~—(III) The use does not create the appearance of~~
13 ~~impropriety;~~

14 ~~—(2) The use of mailing lists, computer data or other~~
15 ~~information lawfully obtained from a governmental agency which is~~
16 ~~available to members of the general public for nongovernmental~~
17 ~~purposes; or~~

18 ~~—(3) The use of telephones or other means of communication~~
19 ~~if there is not a special charge for that use.~~

20 ~~—(b) Require or authorize a legislative employee, while on duty,~~
21 ~~to perform personal services or assist in a private activity, except:~~

22 ~~—(1) In unusual and infrequent situations where the~~
23 ~~employee's service is reasonably necessary to permit the State~~
24 ~~Legislator or legislative employee to perform that person's official~~
25 ~~duties; or~~

26 ~~—(2) Where such service has otherwise been established as~~
27 ~~legislative policy.~~

28 ~~—9.1~~ A public officer or employee shall not attempt to benefit a
29 significant personal or pecuniary interest of the public officer or
30 employee through the influence of a subordinate.

31 ~~H0.1~~ 9. A public officer or employee shall not seek other
32 employment or contracts through the use of the public officer's or
33 employee's official position.

34 **Sec. 7.** NRS 281A.410 is hereby amended to read as follows:

35 281A.410 In addition to the requirements of the code of ethical
36 standards and the other provisions of this chapter:

37 1. If a public officer or employee serves in a state agency of the
38 Executive Department or an agency of any county, city or other
39 political subdivision, the public officer or employee:

40 (a) Shall not accept compensation from any private person to
41 represent or counsel the private person on any issue pending before
42 the agency in which that public officer or employee serves, if the
43 agency makes decisions; and

44 (b) If the public officer or employee leaves the service of the
45 agency, shall not, for 1 year after leaving the service of the agency,



1 represent or counsel for compensation a private person upon any
2 issue which was under consideration by the agency during the
3 public officer's or employee's service. As used in this paragraph,
4 "issue" includes a case, proceeding, application, contract or
5 determination, but does not include the proposal or consideration of
6 legislative measures or administrative regulations.

7 2. Except as otherwise provided in subsection 3, ~~†a-State~~
8 ~~Legislator or~~ a member of a local legislative body, or a public
9 officer or employee whose public service requires less than half of
10 his or her time, may represent or counsel a private person before an
11 agency in which he or she does not serve.

12 3. A member of a local legislative body shall not represent or
13 counsel a private person for compensation before another local
14 agency if the territorial jurisdiction of the other local agency
15 includes any part of the county in which the member serves. The
16 Commission may relieve the member from the strict application of
17 the provisions of this subsection if:

18 (a) The member requests an opinion from the Commission
19 pursuant to subsection 1 of NRS 281A.440; and

20 (b) The Commission determines that such relief is not contrary
21 to:

22 (1) The best interests of the public;

23 (2) The continued ethical integrity of each local agency
24 affected by the matter; and

25 (3) The provisions of this chapter.

26 4. Unless permitted by this section, a public officer or
27 employee shall not represent or counsel a private person for
28 compensation before any state agency of the Executive or
29 Legislative Department.

30 5. Not later than January 15 of each year, if any ~~†State~~
31 ~~Legislator,~~ member of a local legislative body or other public
32 officer permitted by this section has, within the preceding year,
33 represented or counseled a private person for compensation before a
34 state agency of the Executive Department, he or she shall disclose
35 for each such representation or counseling during the previous
36 calendar year:

37 (a) The name of the client;

38 (b) The nature of the representation; and

39 (c) The name of the state agency.

40 6. The disclosure required by subsection 5 must be made in
41 writing and filed with the Commission on a form prescribed by the
42 Commission. For the purposes of this subsection, the disclosure is
43 timely filed if, on or before the last day for filing, the disclosure is
44 filed in one of the following ways:



(a) Delivered in person to the principal office of the Commission in Carson City.

(b) Mailed to the Commission by first-class mail, or other class of mail that is at least as expeditious, postage prepaid. Filing by mail is complete upon timely depositing the disclosure with the United States Postal Service.

(c) Dispatched to a third-party commercial carrier for delivery to the Commission within 3 calendar days. Filing by third-party commercial carrier is complete upon timely depositing the disclosure with the third-party commercial carrier.

(d) Transmitted to the Commission by facsimile machine or other electronic means authorized by the Commission. Filing by facsimile machine or other electronic means is complete upon receipt of the transmission by the Commission.

7. The Commission shall retain a disclosure filed pursuant to this section for 6 years after the date on which the disclosure was filed.

Sec. 8. 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 294A.120 or 294A.125; or

(b) Any contributions to a legal defense fund that the public officer reported in a timely manner pursuant to NRS 294A.286.

3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote 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 situation would be materially affected by:

(a) The public officer's acceptance of a gift or loan;

(b) The public officer's significant pecuniary interest; or

(c) The public officer's commitment in a private capacity to the interests of another person.

4. In interpreting and applying the provisions of subsection 3:

(a) It must be presumed that the independence of judgment of a reasonable person in the public officer's situation would not be materially affected by the public officer'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 if the public officer 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 to perform the duties for which the public officer was elected or appointed and to vote or otherwise act upon a matter, provided the public officer has properly disclosed the public officer'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 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 situation would be materially affected by the public



1 officer's acceptance of a gift or loan, significant pecuniary interest
2 or commitment in a private capacity to the interests of another
3 person.

4 5. Except as otherwise provided in NRS 241.0355, if a public
5 officer declares to the body or committee in which the vote is to be
6 taken that the public officer will abstain from voting because of the
7 requirements of this section, the necessary quorum to act upon and
8 the number of votes necessary to act upon the matter, as fixed by
9 any statute, ordinance or rule, is reduced as though the member
10 abstaining were not a member of the body or committee.

11 6. The provisions of this section do not, under any
12 circumstances:

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

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

18 ~~17. The provisions of this section do not, under any~~
19 ~~circumstances, apply to State Legislators or allow the Commission~~
20 ~~to exercise jurisdiction or authority over State Legislators. The~~
21 ~~responsibility of a State Legislator to make disclosures concerning~~
22 ~~gifts, loans, interests or commitments and the responsibility of a~~
23 ~~State Legislator to abstain from voting upon or advocating the~~
24 ~~passage or failure of a matter are governed by the Standing Rules of~~
25 ~~the Legislative Department of State Government which are adopted,~~
26 ~~administered and enforced exclusively by the appropriate bodies of~~
27 ~~the Legislative Department of State Government pursuant to Section~~
28 ~~6 of Article 4 of the Nevada Constitution.~~

29 ~~8. As used in this section, "public officer" and "public~~
30 ~~employee" do not include a State Legislator.]~~

31 **Sec. 9.** NRS 281A.480 is hereby amended to read as follows:

32 281A.480 1. In addition to any other penalties provided by
33 law and in accordance with the provisions of NRS 281A.475, the
34 Commission may impose on a public officer or employee or former
35 public officer or employee civil penalties:

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

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

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

42 2. In addition to any other penalties provided by law, the
43 Commission may, upon its own motion or upon the motion of the
44 person about whom an opinion was requested pursuant to NRS
45 281A.440, impose a civil penalty not to exceed \$5,000 and assess an



1 amount equal to the amount of attorney's fees and costs actually and
2 reasonably incurred by the person about whom an opinion was
3 requested pursuant to NRS 281A.440 against a person who
4 prevents, interferes with or attempts to prevent or interfere with the
5 discovery or investigation of a violation of this chapter.

6 3. If the Commission finds that a violation of a provision of
7 this chapter by a public officer or employee or former public officer
8 or employee has resulted in the realization of a financial benefit by
9 the current or former public officer or employee or another person,
10 the Commission may, in addition to any other penalties provided by
11 law, require the current or former public officer or employee to pay
12 a civil penalty of not more than twice the amount so realized.

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

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

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

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

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

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

42 (1) May file a complaint in the appropriate court for removal
43 of the public officer pursuant to NRS 283.440 when the public
44 officer is found in the opinion to have committed fewer than three
45 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 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

(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 would not be contrary to any prior published opinion issued by the Commission 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



1 supported by a preponderance of the evidence unless a greater
2 burden is otherwise prescribed by law.

3 **Sec. 10.** 1. Notwithstanding the provisions of NRS
4 281A.200, the term of each member of the Commission on Ethics
5 who was appointed by the Legislative Commission expires on the
6 effective date of this act.

7 2. As soon as practicable after the effective date of this act, the
8 Governor shall appoint to the Commission on Ethics the member
9 added pursuant to subsection 2 of NRS 281A.200, as amended by
10 section 4 of this act.

11 **Sec. 11.** 1. The amendatory provisions of this act that
12 remove the concurrent jurisdiction of the Commission on Ethics
13 over State Legislators do not apply to any request for an opinion
14 regarding a Legislator's conduct submitted pursuant to NRS
15 281A.440 that is pending before the Commission on Ethics on the
16 effective date of this act.

17 2. The revision of the composition of the Commission on
18 Ethics in NRS 281A.200, as amended by section 4 of this act, does
19 not affect the status of any request for an opinion pursuant to NRS
20 281A.440 that is pending before the Commission on Ethics on the
21 effective date of this act.

22 **Sec. 12.** This act becomes effective upon passage and
23 approval.

