



**STATE OF NEVADA
COMMISSION ON ETHICS**
<http://ethics.nv.gov>

NOTICE OF PUBLIC MEETING

NAME OF ORGANIZATION: NEVADA COMMISSION ON ETHICS
DATE & TIME OF MEETING: Monday, December 5, 2016 at 9:00 a.m.
PLACE OF MEETING: This meeting will be held at the following location:

**Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, NV 89703**

(Members of the Commission may appear telephonically)

AGENDA

NOTES:

- Two or more agenda items may be combined for consideration.
- At any time, an agenda item may be taken out of order, removed, or delayed.
- Public comment will be accepted at the beginning of the open session and again before the conclusion of the open session of the meeting. Comment and/or testimony by the public may be limited to three (3) minutes. No action may be taken on any matter referred to in remarks made as public comment. Members of the public may also submit written public comment to the Commission at NCOE@ethics.nv.gov.

	1. Call to Order, Roll Call, and Pledge of Allegiance to the Flag.
	2. Public Comment. Comment and/or testimony by any member of the public will be limited to three (3) minutes. No action will be taken under this agenda item.
For Possible Action	3. Approval of Minutes of the October 19, 2016 Commission Meeting.
For Possible Action	4. Report by Executive Director on agency status and operations, including: <ul style="list-style-type: none">• Commissioner Appointments• FY18-FY19 Budget Request• Education and outreach by the Commission• Upcoming Commission meetings

For Possible Action	<p>5. 2017- 79th Legislative Session update regarding proposed legislation impacting the Nevada Commission on Ethics including, without limitation, the following pre-filed bills:</p> <ul style="list-style-type: none"> • Senate Bill 30 • Senate Bill 36 • Senate Bill 84
	<p>6. Commissioner Comments on matters including, without limitation, identification of future agenda items, upcoming meeting dates and meeting procedures. No action will be taken under this agenda item.</p>
	<p>7. Public Comment. Comment and/or testimony by any member of the public may be limited to three (3) minutes. No action will be taken under this agenda item.</p>
	<p>8. Adjournment.</p>

***A meeting or hearing held by the Commission pursuant to NRS 281A.440 to receive information or evidence regarding the conduct of a public officer or employee, and deliberations of the Commission regarding such a public officer or employee, are exempt from the provisions of NRS Chapter 241, Nevada's Open Meeting Law. As a result, these agenda items, or any portion of them, may be heard in closed session.**

NOTES:

- ❖ The Commission is pleased to make reasonable accommodations for any member of the public who has a disability and wishes to attend the meeting. If special arrangements for the meeting are necessary, please notify the Nevada Commission on Ethics, in writing at 704 W. Nye Lane, Ste. 204, Carson City, Nevada 89703; via email at ncoe@ethics.nv.gov or call 775-687-5469 as far in advance as possible.
- ❖ To request an advance copy of the supporting materials for any open session of this meeting, contact Executive Director Yvonne M. Nevarez-Goodson, Esq. at ncoe@ethics.nv.gov or call 775-687-5469.
- ❖ This Agenda and supporting materials are posted and are available not later than the 3rd working day before the meeting at the Commission's office, 704 W. Nye Lane, Ste. 204, Carson City, Nevada, or on the Commission's website at www.ethics.nv.gov. A copy also will be available at the meeting location on the meeting day.

This Notice of Public Meeting and Agenda was posted in compliance with NRS 241.020 before 9:00 a.m. on the third working day before the meeting at the following locations:

- Nevada Commission on Ethics, 704 W. Nye Lane, Suite 204, Carson City
- Nevada Commission on Ethics' website: <http://ethics.nv.gov>
- Nevada Public Notice Website: <http://notice.nv.gov>
- State Library & Archives Building, 100 North Stewart Street, Carson City
- Blasdel Building, 209 E. Musser Street, Carson City
- Washoe County Administration Building, 1001 East 9th Street, Reno
- Grant Sawyer State Office Building, 555 E. Washington Ave., Las Vegas

AGENDA ITEM NO. 3

AGENDA ITEM NO. 3



**STATE OF NEVADA
COMMISSION ON ETHICS**

<http://ethics.nv.gov>

**MINUTES
of the meeting of the
NEVADA COMMISSION ON ETHICS**

October 19, 2016

The Commission on Ethics held a public meeting on
Wednesday, October 19, 2016, at 9:00 a.m.
at the following locations:

**Nevada Legislative Building
Room 3138
401 S. Carson Street
Carson City, NV 89701**

and via video-conference to:

**Grant Sawyer State Building
Room 4412
555 E. Washington Avenue
Las Vegas, NV 89101**

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics. Verbatim transcripts are available for public inspection at the Commission's office located in Carson City.

1. Call to Order, Roll Call, and Pledge of Allegiance to the Flag.

Chair Cheryl A. Lau, Esq. called the meeting to order in Carson City, Nevada at 9:00 a.m. Also present in Carson City were Commissioners Brian Duffrin and Barbara Gruenewald, Esq. Present in Las Vegas, Nevada were Vice-Chair Keith A. Weaver, Esq. and Commissioners Magdalena Groover and Dan H. Stewart. Present for Commission staff in Las Vegas was Executive Director Yvonne M. Nevarez-Goodson, Esq. Present for Commission staff in Carson City was Commission Counsel Tracy L. Chase, Esq., Associate Counsel Judy A. Prutzman, Esq., and Executive Assistant Valerie M. Carter, CPM.

The pledge of allegiance was conducted.

2. Public Comment.

No public comment.

3. Approval of Minutes of the August 17, 2016 Public Hearing regarding Temporary Regulations and August 17, 2016 Commission Meeting.

Commissioner Duffrin abstained from participating in this agenda item as was not a member of the Commission at the time of the August 17, 2016 Commission meetings.

Commissioner Stewart moved to approve the Minutes of the August 17, 2016 Public Hearing regarding Temporary Regulations. Commissioner Gruenewald seconded the Motion. The Motion was put to a vote and carried unanimously.

Commissioner Gruenewald moved to approve the Minutes of the August 17, 2016 Commission Meeting. Commissioner Stewart seconded the Motion. The Motion was put to a vote and carried unanimously.

4. Discussion and approval of a Proposed Consolidated Stipulation concerning Consolidated Third-Party Requests for Opinion Nos. 16-11C and 16-20C regarding George Rapson, City Councilmember, City of Mesquite, submitted pursuant to NRS 281A.440(2).

Appearing before the Commission in this matter were Subject George Rapson, his counsel, Rebecca Bruch, Esq. of Erickson Thorpe and Swainston, and Bob Sweetin, City Attorney for the City of Mesquite. Appearing on behalf of the Executive Director was Associate Counsel Judy A. Prutzman, Esq.

Commission Counsel Chase provided a brief overview of the Request for Opinion.

Associate Counsel Prutzman provided a synopsis of the Stipulated Agreement affirming that the Subject and the Executive Director agreed to one non-willful violation of the Ethics Law, implicating the provisions of NRS 281A.020 and NRS 281A420(3), related to Mr. Rapson's failure to abstain from voting on one item at one Mesquite City Council meeting. Specifically, Rapson acknowledged that a conflict of interest existed with respect to a matter before the City Council involving a real estate transaction and his private relationship as an independent contractor for the real estate company involved in the transaction. Associate Counsel Prutzman stated that the agreement also serves to educate public officers who are similarly situated to Mr. Rapson. (See exhibit 1, final Stipulation)

Subject Rapson, his counsel, Ms. Bruch, and Associate Counsel Prutzman accepted the terms as presented before the Commission.

Ms. Bruch thanked Associate Counsel Prutzman for her professionalism in working with her and her client to come to this resolution.

Commissioner Gruenewald moved to accept the terms of the Stipulation as provided by the parties and directed Commission Counsel to finalize the Stipulation in appropriate form provided that such form does not materially change the terms approved by this Commission. Commissioner Groover seconded the Motion. The Motion was put to a vote and carried unanimously.

5. Discussion and approval of a Proposed Stipulation concerning Third-Party Request for Opinion No. 16-40C regarding Rodney Stewart Woodbury, Mayor, Boulder City, submitted pursuant to NRS 281A.440(2).

Commissioner Stewart disclosed a familial relationship with Subject Rodney Woodbury and abstained from participating in the matter. Commission Counsel Chase confirmed that the Commission maintained a quorum to hear and vote on the agenda item.

Appearing before the Commission in this matter was Subject Mayor Rodney Woodbury and his counsel, Charity Felts, Esq. of Erickson Thorpe and Swainston. Appearing on behalf of the Executive Director was Associate Counsel Judy A. Prutzman, Esq.

Commission Counsel Tracy L. Chase provided a brief overview of the Request for Opinion.

Associate Counsel Prutzman provided a synopsis of the Stipulated Agreement affirming that the Subject and the Executive Director agreed to a finding of one non-willful violation of the Ethics Law, implicating the provisions of NRS 281A.020 and NRS 281A.420(1)(3), based on Mayor Woodbury's failure to abstain from voting on a consent agenda item at three different Boulder City Council meetings. Specifically, Mayor Woodbury acknowledged the conflict of interest regarding his attorney-client relationship with a construction contractor that was regularly bidding on public works projects with Boulder City. Associate Counsel Prutzman stated that by the terms of the Stipulated Agreement, Mayor Woodbury also agreed to facilitate an ethics training session with the Commission's Executive Director for the Boulder City Council Members and staff to ensure their understanding of the disclosure and abstention requirements under NRS 281A, especially as they apply to consent agenda items. (See exhibit 2, final Stipulation)

Subject Woodbury, his counsel, Ms. Felts, and Associate Counsel Prutzman accepted the terms as presented before the Commission.

Commissioner Gruenewald moved to accept the terms of the Stipulation as presented by the parties and directed Commission Counsel to finalize the Stipulation in appropriate form provided that such form does not materially change the terms approved by this Commission. Commissioner Groover seconded the Motion. The Motion was put to a vote and carried unanimously.

6. Discussion and approval of a Proposed Stipulation concerning Third-Party Request for Opinion No. 15-70C regarding Kelly Sweeney, Former Director of Labor Relations, Las Vegas Metropolitan Police Department, submitted pursuant to NRS 281A.440(2).

Appearing before the Commission in this matter was Subject Kelly Sweeney and her counsel Paul Williams, Esq., of Bailey Kennedy Attorneys at Law. Appearing on behalf of the Executive Director was Associate Counsel Judy A. Prutzman, Esq.

Commission Counsel Chase provided a brief overview of the Request for Opinion.

Associate Counsel Prutzman provided a synopsis of the Stipulated Agreement affirming that the Subject and the Executive Director agreed to a finding of one non-willful violation of the Ethics Law, implicating provisions of NRS 281A.410(1)(b), a cooling-off provision. Specifically, Sweeney acknowledged that the cooling-off provisions prohibited her from representing or advising her current private employer regarding two Labor Management Board cases that were under consideration when she worked at the Las Vegas Metropolitan Police Department. The

Stipulation dismissed all other allegations presented to the Commission, as they were not supported by sufficient credible evidence. (See exhibit 3, final Stipulation)

Subject Sweeney, her counsel, Mr. Williams, and Associate Counsel Prutzman accepted the terms of the Stipulated Agreement.

Commissioner Duffrin moved to approve the Stipulation as presented by the parties and directed Commission Counsel to finalize the Stipulation in appropriate form provided that such form does not materially change the terms approved by the Commission. Commissioner Groover seconded the Motion. The Motion was put to a vote and carried unanimously.

Given a scheduling conflict, the Chair moved to agenda item 8 until parties could be available for agenda item 7.

8. Report by Executive Director on agency status and operations

This agenda item was called out of order.

Executive Director Yvonne M. Nevarez-Goodson, Esq. welcomed Commissioner Brian Duffrin who was appointed by the Governor on October 1, 2016. She reported that Mr. Duffrin served as the former Chief of the Administrative Division of the Nevada Gaming Control Board, bringing his former public employment experience as well as budget and legislative experience to the Commission and the agency staff.

Director Nevarez-Goodson reported there are currently two vacancies on the Commission, both pending appointments from the Legislative Commission. She further reported that one of the current vacancies was a result of the recent resignation by Commissioner Carpenter. Director Nevarez-Goodson thanked Commissioner Carpenter for his exceptional service to the Commission and to the State of Nevada over the last several years.

With regard to Regulatory and Legislative matters, Director Nevarez-Goodson reported that the Commission's Temporary Regulations adopted during the August 17, 2016 Commission meeting were now effective, as they have been filed with the Secretary of State in accordance with State law.

Director Nevarez-Goodson further reported that she was working with LCB to draft the Commission's Bill Draft Request, and she expects that the measure will be pre-filed on or around November 16, 2016.

Director Nevarez-Goodson reported that she had submitted the Agency's formal Budget Request for the FY18-FY19 Biennium, which did not change significantly from the Commission's current biennial budget in terms of operating costs. She reminded the Commission that the enhancements which were requested early in the budget process were denied, but she submitted Compensation Plan Adjustment Request for review by the Budget Office and ultimately the Governor. She stated those requests will be decided during the Governor Recommends phase of the budget process.

Director Nevarez-Goodson provided an update regarding pending Third-Party Requests for Opinion. She was happy to report that that nearly all third-party cases will have been resolved as of today's meeting, except for anything that goes forward from a jurisdictional review or Panel hearing. Director Nevarez-Goodson reported that all first-party cases are also up-to-date and one first-party request is expected to be heard at the Commission's December meeting. She reported

that with the conclusion of several cases she can focus on the Commission's education and outreach endeavors.

Director Nevarez-Goodson reported that training requests from the North and South have picked up and she is excited to be providing a presentation to the Clark County Bar Association in January next year. Director Nevarez-Goodson invited recently appointed Commissioners to attend one of her trainings when they are in a convenient location for those members. She stated she would extend invitations as those trainings are scheduled.

Director Nevarez-Goodson discussed the proposed 2017 Commission meeting dates, stating that she hopes to continue to hold meetings every-other-month, but requested that Commissioners keep their calendars clear for every third Wednesday of the month in the event a telephonic meeting or Subcommittee meeting is necessary.

Director Nevarez-Goodson reported that she expects the next Commission meeting to be on either December 5, 2016 or December 7, 2016 depending on Commissioner's availability. She reported the meeting should last only half of the day.

Lastly, Director Nevarez-Goodson reported that after the meeting, all Commissioners will have been issued their Commission tablets. She reminded Commissioners that the tablets will be used for Ethics Commission email correspondence and to receive electronic meeting materials. She also advised that the tablets be used only for official Commission business, as they are government property.

7. Discussion and approval of a Proposed Stipulation concerning Third-Party Request for Opinion No. 15-73C regarding Donna Lopez, Quality Control Officer, Public Employees Benefits System (PEBP), submitted pursuant to NRS 281A.440(2).

Vice-Chair Weaver and Commissioner Stewart were excused from participating in this agenda item pursuant to NRS 281A.224, as they participated in the Panel Hearing in this matter.

Appearing on behalf of Subject Donna Lopez was Caren C. Jenkins, Esq. Appearing on behalf of the Commission was Associate Counsel Judy A. Prutzman., Esq.

Counsel Chase presented an overview of the Request for Opinion and the procedural history of the case. Associate Counsel Prutzman then provided a synopsis of the Stipulated Agreement, affirming that the Subject and the Executive Director agreed that Ms. Lopez' conduct, with respect to three different instances, resulted in one willful violation of the Ethics Law, implicating the provisions of NRS 281A.020(1) and 281A.400(1), and a \$1,000 civil penalty. Specifically, Lopez acknowledged she accepted gifts or favors from PEBP vendors which would tend improperly to influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties. (See exhibit 4, final Stipulation)

Counsel for Subject, Ms. Jenkins, commented on her perspective of the motivation of the requester in filing this Request for Opinion and the employment-based conflicts that were occurring within Subject Lopez's agency, however, she concluded that she understands those issues are not relevant when the Commission considers a matter. Ms. Jenkins agreed that in considering the course of conduct and the appearance of impropriety of all three actions by Subject Lopez, the Stipulated Agreement is a reasonable outcome, although she believes any one action standing alone might have resulted in a different outcome.

Counsel for the Subject, Ms. Jenkins, and Associate Counsel Prutzman accepted the terms as presented before the Commission.

Commissioner Gruenewald moved to approve the Stipulation as presented by the parties and directed Commission Counsel to finalize the Stipulation in appropriate form provided that such form does not materially change the terms approved by the Commission. Commissioners Groover and Duffrin seconded the Motion. The Motion was put to a vote and carried unanimously.

9. Commissioner Comment on matters including, without limitation, future agenda items, upcoming meeting dates and meeting procedures.

No Commissioner comments.

10. Open Session for Public Comment.

No public comment.

11. Adjournment.

Commissioners Gruenewald and Stewart moved to adjourn the meeting. Chair Lau seconded the Motion. The Motion was put to a vote and carried unanimously. The meeting adjourned at 10:12 a.m.

Minutes prepared by:

Valerie Carter, CPM
Executive Assistant

Yvonne M. Nevarez-Goodson, Esq.
Executive Director

Minutes approved December 5, 2016:

Cheryl A. Lau, Esq.
Chair

Keith A. Weaver, Esq.
Vice-Chair

Exhibit 1



STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
George Rapson, Member, City of
Mesquite City Council, State of
Nevada,

Request for Opinion No. **16-11C**
Request for Opinion No. **16-20C**
Consolidated

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE**: This Stipulated Agreement resolves Consolidated Third-Party Requests for Opinion (“RFOs”) Nos. 16-11C and 16-20C, before the Nevada Commission on Ethics (“Commission”), concerning George Rapson (“Rapson”), a Member of the Mesquite City Council for the City of Mesquite, Nevada, and serves as the final opinion in these matters.

2. **JURISDICTION**: At all material times, Rapson served as a City Council Member for the City of Mesquite, Nevada. As such, Rapson is an elected public officer as defined in NRS 281A.160. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A gives the Commission jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Rapson in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

- a. On or about January 25, 2016, the Commission received RFO No. 16-11C, alleging that Rapson disclosed but failed to abstain from voting on agenda items during October 2015 City Council Meetings concerning an offer to purchase property from the City. Two prospective buyers presented offers at the meeting: 333 Eagles landing, which buyer is represented by Premier Properties, a real estate brokerage company where Rapson is a real estate agent; and Mesquite Group 118, a company represented by the Requester.

- b. On or about February 3, 2016, staff of the Commission provided Notice to Rapson of RFO No. 16-11C, stating that the Commission accepted jurisdiction to investigate the allegations regarding violations of NRS 281A.020(1), 281A.400(1), (2) and (3) and 281A.420(3).
- c. On or about February 4, 2016, the Commission received RFO No. 16-20C, alleging that Rapson:
 - 1) Used nonpublic information acquired through his official position to further his own pecuniary interests or those of another person, in violation of NRS 281A.400(1), (2), (3), (5) and (6);
 - 2) Used his official position to seek other employment or contracts by acting with the members of the Mesquite City Council to improperly fund a non-profit company related to the sale of public land, which sale involved Premier Properties, in violation of NRS 281A.400(10);
 - 3) Failed to disclose and abstain from participation on an item heard by the City Council on October 27, 2015, in violation of NRS 281A.420(1) and (3); and
 - 3) Failed to file an Acknowledgment of Ethical Standards with the Commission pursuant to NRS 281A.500.
- d. On or about March 3, 2016, staff of the Commission notified the Requester that the Commission lacked jurisdiction to investigate the alleged violations because the RFO did not include any reliable evidence to support the allegations. The Notice also provided that a review of the Commission's records confirmed that Rapson had, in fact, timely filed his Acknowledgment of Ethical Standards.
- e. The Requester appealed the jurisdictional determination in RFO No. 16-20C ("Jurisdictional Appeal") and a Notice of Jurisdictional Appeal was issued on or about March 17, 2016 to both the Requester and Rapson.
- f. On or about April 11, 2016, Rapson, by and through his attorney of record, Rebecca Bruch, Esq. of Erickson, Thorpe & Swainston, Ltd., provided a written response to the allegations contained in RFO No. 16-11C.

- g. On or about May 2, 2016, Rapson, by and through his attorney of record, Rebecca Bruch, Esq. of Erickson, Thorpe & Swainston, Ltd., provided a written response to the Jurisdictional Appeal in RFO No. 16-20C.
- h. The Commission heard the Jurisdictional Appeal at its June 15, 2016 meeting and issued its Order on Jurisdiction on or about June 21, 2016, granting in part and denying in part the Jurisdictional Appeal and ordering that:
 - 1) Jurisdiction is accepted with regard to whether Rapson complied with the provisions of NRS 281A.020 (duty to avoid conflicts) and NRS 281A.420 (disclosure and abstention) associated with the City Council meeting held on October 27, 2015;
 - 2) The other alleged violations of the Ethics Law as presented in the RFO, which relate to NRS 281A.400(1), (2), (3), (5), (6) and (10), and NRS 281A.430/530 are not supported by credible evidence as required by NAC 281A.400(3) and (6) and are therefore dismissed for lack of jurisdiction; and
 - 3) The Commission's records determined that Rapson timely filed an Acknowledgement of Ethical Standards in compliance with the requirements of NRS 281A.500 and the allegations is therefore dismissed.
- i. On or about June 23, 2016, staff of the Commission provided Notice to Subject, stating that the Commission accepted jurisdiction of RFO No. 16-20C regarding potential violations of NRS 281A.020 and NRS 281A.420 associated with the City Council meeting held on October 27, 2015 and that, accordingly, the Commission will proceed with an investigation.
- j. Rapson waived his rights to a panel determination for both RFOs pursuant to NRS 281A.440, and acknowledges that credible evidence establishes just and sufficient cause for the Commission to render an opinion regarding the allegations implicating NRS 281A.020 and NRS 281A.420(3).

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4. **STIPULATED FACTS**: At all material times, the following stipulated facts were relevant to these matters:¹

- a. Rapson has served as a City Councilmember for the City of Mesquite since 2011. He is a public officer as defined in NRS 281A.160.
- b. The City of Mesquite is a political subdivision as defined in NRS 281A.145.
- c. Robert Sweetin, Esq. is a lawyer licensed in Nevada and is the City Attorney for Mesquite.
- d. Rapson is a licensed real estate agent in Nevada.
- e. On October 20, 2011, Rapson entered into an Independent Contractor Agreement with Premier Properties of Mesquite Nevada, LLC (“Premier Properties”).
- f. Pursuant to his Agreement with Premier Properties, Rapson receives no salary but is entitled to 80% of the commission collected by Premier Properties from real estate sales transactions closed by Rapson. Rapson does not receive any commission or other compensation for transactions made by the other real estate agents of Premier Properties.
- g. Pursuant to an agreement between Premier Properties and Legacy Homes, Rapson works full-time as a sales representative selling new homes at three Legacy Homes (“Legacy”) developments in Mesquite. He is the sole real estate sales agent for Legacy in Mesquite.
- h. Rapson is permitted to list homes as a Premier Properties agent, and he has done so approximately 5 times since 2011 for Legacy homeowners who were listing their homes for resale.
- i. Rapson works out of a sales office located in a Legacy model home, utilizing office supplies provided by Legacy and an assistant who is employed by Legacy.
- j. Rapson’s listings of new Legacy properties appear on the Premier Properties website, where he is identified as one of twenty agents of Premier Properties.

¹ Stipulated Facts do not constitute part of the “Investigative File” as that term is defined by NRS 281A.440(17). All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

- k. At the City Council's April 14, 2015 meeting, the Council approved a resolution finding that it was in the best interests of the City to sell certain city-owned real property consisting of approximately 104 acres in the Mesquite Technology and Commerce Center (hereafter "MTCC Property").
- l. Three entities approached the City to express interest in purchasing the MTCC Property:
 - 1) 333 Eagles Landing, LLC ("Eagles Landing");
 - 2) Mesquite Exit 118 Group, LLC; and
 - 3) Mr. Hae Un Lee.

October 13, 2015 City Council Meeting

- m. At the October 13, 2015 meeting, agenda items 15, 16 and 17 related to the sale of the MTCC Property and were noted on the agenda as follows:
 - 15. Consideration of the selection of a sales method for the sale of approximately 104 acres of city-owned land in the Mesquite Technology and Commerce Center (QPN: 002-23-411-002 and 002-23-411-001) and other matters properly related thereto.
 - 16. Consideration of Resolution 878 authorizing the sale of real property in accordance with NRS 268.062 (Public Auction) and other matters properly related thereto.
 - 17. Consideration of Resolution 879 authorizing the sale of real property in accordance with NRS 268.063 (Direct Sale for Economic Development purposes), possible sale of real property and other matters properly related thereto.
- n. Meeting materials included a Letter of Intent to purchase the MTCC Property from Eagles Landing, indicating that Premier Properties of Mesquite, NV was representing Eagles Landing and would receive a real estate brokerage fee from the seller (the City).
- o. Prior to the October 13, 2015 City Council meeting, City Attorney Sweetin advised Rapson that he would not be required to abstain from discussing or voting on agenda items 15, 16 or 17 so long as he made a proper disclosure regarding the nature of his relationship with Premier Properties.
- p. The minutes of the meeting reflect that Rapson provided the following disclosure before the City Council discussed agenda item 15:

One of the properties involved in here is listed or is represented by Premier Properties. I am a real estate agent working with my license hung at Premier Properties. I have no financial interest. I get no remuneration for this. I have no financial benefit. I have no benefit of any kind in this transaction – if either one of these transactions goes. I will not recuse, but I want to make it clear that I am a – I hang my license. I am an independent contractor. I get nothing out of any of these transactions tonight.

- q. Rapson voted with three other City Council members to approve the selection of a direct sales method for the sale of the MTCC Property.
- r. Agenda item 16 was withdrawn and not discussed by the City Council.
- s. The City Council discussed agenda item 17, but voted to move the item forward and place it on a future agenda.

October 27, 2015 City Council Meeting

- t. At the October 27, 2015 meeting, agenda item 15 related to the sale of the MTCC Property and was noted on the agenda as follows:

15. Consideration of Resolution 879 authorizing the sale of real property in accordance with NRS 268.063 (Direct Sale for Economic Development purposes), possible sale of real property and other matters properly related thereto.

- u. Prior to the October 27, 2015 City Council meeting, City Attorney Sweetin advised Rapson that he would not be required to abstain from discussing or voting on agenda item 15 so long as he made a proper disclosure regarding the nature of his relationship Premier Properties.
- v. The minutes reflect that Rapson provided the following disclosure before discussion on agenda item 15 began:

The last meeting I did not recuse, but I disclosed that I am a licensed real estate agent, and I hang my license with Premier Properties. I sit at a model, a new home model; I sell new homes. I have no pecuniary interest whatsoever in this deal. I have – well, let me just get the legalese that was put in front of me. Rapson is an employee – I'm not an employee; I'm an independent contractor. I hang my license there. And that may not be for long. Substantial pecuniary interest, I do not have. I have no interest financially in this, none whatsoever. I don't get one dime out of it if it goes to either party, it makes no difference to me. Has a commitment of private capacity, is employed by, I am not. I have a continued relationship in the sense

that I hang my license, broker salesman license there, but I have no relationship other than that. Let's see, this is a legal document that was handed – let's see here, which also I will address – it states Rapson has a commitment in a private capacity in obtaining a lucrative real estate – I don't even know where that comes from. I have no commitment in a private capacity to do anything with these people, either one. I get nothing out of their brokerage fee. I get nothing.

So I don't know whether this is coming from, but apparently somebody thinks I have a conflict. I don't believe I do. I've talked to counsel, I don't believe I do. And he does not believe I do. So I am not recusing, but I am disclosing. And then I've also heard, once again, that I'm friends with some of the parties. As I said before at the last meeting, I've known the Bowlers for 20 years that I've been here. And I've known one or two of the members in this group, not the principles, not the people who are actually doing the deal, but two of the related people in the real estate business, for the same length of time. So on that level, it's a level playing field, I know both parties, except actually I don't know these guys that well. I just met them. So thanks.

- w. Rapson voted with two other City Council members to approve Resolution 879, amending the Resolution to award the sale of city-owned property to 333 Eagles Landing and directing City staff to negotiate a Sales and Purchase Agreement which was to include a commission on the land sale to be paid by the City.

5. **TERMS / CONCLUSIONS OF LAW**: Based on the foregoing, Rapson and the Commission agree as follows:

- a. Each of the stipulated facts enumerated in Section 4 of this Stipulated Agreement is agreed to by the parties.
- b. Rapson holds public office which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada (in particular, the people of Mesquite).
- c. Rapson has a substantial and continuous business relationship with Premier Properties and each agent of Premier Properties sufficient to create private commitments to the interests of each other under NRS 281A.065(5). *In re Public Officer*, Comm'n Op. No. 13-71A (2014). Rapson's status as an

- independent contractor does not negate the business relationship shared between him and his business associates, the other agents of Premier Properties. *Id.* The Commission has determined that independent contractors have a commitment in a private capacity to those who hire them as independent contractors, and the same analogy applies to independent contractors who are partners and/or business associates in a company. *In re Public Officer*, Comm'n Op. No. 11-43A (2011).
- d. By statute, public officers have a duty to avoid conflicts of interest. See NRS 281A.020. As a public officer, the conflicts of interest provisions of the Ethics Law apply to Rapson's conduct. Specifically, Rapson must commit to avoid actual and perceived conflicts of interest, including publicly disclosing sufficient information concerning any private relationships and pecuniary interests which would reasonably affect his decision on matters before the City Council. See NRS 281A.420(1). As a public officer, Rapson is also required to abstain from voting or otherwise acting on matters in which such relationships would clearly and materially affect the independence of judgment of a reasonable person in his position. See NRS 281A.420(3).
 - e. Rapson relied upon the advice of the City Council's attorney, Sweetin, regarding his disclosure and abstention duties at the October 13, 2015 and October 27, 2015 City Council meetings.
 - f. Rapson's disclosures at the October 13, 2015 and October 27, 2015 meetings satisfied the requirements of NRS 281A.420(1) because he disclosed sufficient information to inform the public of the full nature and extent of his conflict. See *In re Woodbury*, Comm'n Op. No. 99-56 (1999) and *In re Wilson*, Comm'n Op. No. 13-81C (2014).
 - g. Rapson understands that he must disclose his substantial and continuous business relationship with Premier Properties and each agent of Premier Properties whenever a matter involving Premier Properties comes before the City Council. Disclosures required by the Ethics Law must occur "at the time the matter is considered." See NRS 281A.420(1). The Ethics Law does not recognize a continuing disclosure or a disclosure by reference. Silence based

upon a prior disclosure at a prior meeting fails to inform the public of the nature and extent of the conflict at the meeting where no actual disclosure occurred. See *In re Buck*, Comm'n Op. No. 11-63C (2011) (holding that incorporation by reference of her prior disclosure even though based upon the advice of counsel, did not satisfy the disclosure requirements of NRS 281A.420(1). Such disclosures must also inform the public of the potential effect of his action or abstention on the interests of Premier Properties.

- h. As a public officer, Rapson is also prohibited from voting upon or advocating for or against the passage of a matter in which the independence of judgment of a reasonable person in his situation would be materially affected by his commitment to Premier Properties or an agent of Premier Properties. NRS 281A.420(3)(c). However, it is presumed that the independence of judgment of a reasonable person is not materially affected if the resulting benefits or detriments to the public officer, or the person to whom the public officer has a commitment in a private capacity, are not more or less than those accruing to any other member of the group affected by the matter. NRS 281A.420(4)(a). Accordingly, NRS 281A.420(3) did not require Rapson to abstain from voting on agenda items at the October 13, 2015 meeting related to the method of sale of the MTCC Property because there is no evidence that the matters considered at this meeting would have affected Premier Properties any more or less than any member of the group affected by the matters. In particular, Rapson's vote on the method of sale affected all potential buyers and related real estate agents equally.
- i. Rapson failed to avoid the conflict of interest between his public duties as a member of the Mesquite City Council and his private interests by failing to abstain at the October 27, 2015 meeting from discussion and vote on a resolution resulting in a decision to begin negotiations for the sale of City property to Eagles Landing, a buyer represented by a Premier Properties real estate agent.
- j. Although Rapson understood the impact of his vote regarding his lack of any pecuniary interest in a real estate transaction involving a client of Premier

Properties, he did not fully appreciate the impact of his votes on a matter involving an entity with whom he shares a substantial and continuous business relationship. Even if there was no profit sharing arrangement or pecuniary gain to Rapson, the associates of Premier Properties still have a commitment in a private capacity as business associates. See *In re Public Officer*, Comm'n Op. No. 13-71A (2014).

- k. Rapson's conduct alleged in the two RFOs constitute a single violation of the Ethics Law, implicating NRS 281A.020 and 281A.420(3).
- l. However, the allegations pertaining to NRS 281A.400(2) and (3) and NRS 281A.420(1) are not supported by sufficient, credible evidence under NRS 281A.480(9) and are therefore dismissed through this Stipulated Agreement.
- m. Based upon the consideration and application of the statutory mitigating criteria set forth in NRS 281A.475 and other mitigating circumstances presented in this matter, the Commission concludes that Rapson's violation in this case should not be deemed a "willful violation" pursuant to NRS 281A.170, and the imposition of a civil penalty pursuant to NRS 281A.480 is not appropriate for the reasons that follow:
 - 1) Rapson has not previously been the subject of any violation of the Ethics Law.
 - 2) Rapson has not received any personal financial gain as the result of his conduct in this matter.
 - 3) Rapson has been diligent to cooperate with and to participate in the Commission's investigation and resolution of this matter.
 - 4) Rapson relied in good faith upon the advice of legal counsel provided before he acted or failed to act.
- n. This Stipulated Agreement depends on and applies only to the specific facts, circumstances and law related to these RFOs now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.

o. This agreement is intended to apply to and resolve only this specific proceeding before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil, or criminal regarding Rapson.

6. **WAIVER:**

a. Rapson knowingly and voluntarily waives his right to an Investigatory Panel proceeding and any related hearing before the full Commission on the allegations in RFOs (No. 16-11C and No. 16-20C) and of any and all rights he may be accorded with regard to this matter pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B) and any other applicable provisions of law.

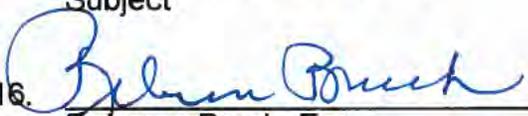
b. Rapson knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS Chapter 281A, NRS Chapter 233B or any other applicable provisions of law.

7. **ACCEPTANCE:** We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this agreement during the regular meeting of the Commission on October 19, 2016.

DATED this 2nd day of November, 2016. 
George Rapson

The above Stipulated Agreement is approved by:

FOR GEORGE RAPSON,
Subject

DATED this 14th day of November, 2016. 
Rebecca Bruch, Esq.
Counsel for Subject

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FOR YVONNE M. NEVAREZ-GOODSON ESQ.,
Executive Director, Commission on Ethics

DATED this 16th day of November, 2016. Judy A. Prutzman
Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form:

DATED this 16th day of November, 2016. Tracy L. Chase
Tracy L. Chase, Esq.
Commission Counsel

The above Stipulated Agreement is accepted by the Commission.²

DATED October 19, 2016.

By: /s/ Cheryl A. Lau
Cheryl A. Lau, Esq.
Chair

By: /s/ Brian Duffrin
Brian Duffrin
Commissioner

By: /s/ Keith A. Weaver
Keith A. Weaver, Esq.
Vice-Chair

By: /s/ Barbara Gruenewald
Barbara Gruenewald, Esq.
Commissioner

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: /s/ Dan Stewart
Dan Stewart
Commissioner

² Subject waived his right to an Investigatory Panel pursuant to NRS 281A.440. Accordingly, this Stipulated Agreement was executed prior to a Panel hearing in this matter and no Commissioner was precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220.

Exhibit 2



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Rodney Stewart Woodbury, Mayor,
City of Boulder City, State of Nevada,

Request for Opinion No. **16-40C**

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE:** This Stipulated Agreement resolves Third-Party Request for Opinion (“RFO”) No. 16-40C before the Nevada Commission on Ethics (“Commission”) concerning Rodney Stewart Woodbury (“Woodbury”), Mayor for the City of Boulder City (“Boulder City”), Nevada, and serves as the final opinion in this matter.

2. **JURISDICTION:** At all material times, Woodbury previously served as a Boulder City Council Member and is currently serving as the Mayor for Boulder City. As such, Woodbury is a public officer as defined in NRS 281A.160. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A establishes the Commission’s jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Woodbury in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

a. On or about March 21, 2016, the Commission received this RFO from a member of the public (“Requester”), alleging that Woodbury:

- 1) Failed to abstain from voting on a consent agenda item at a November 12, 2014 City Council Meeting concerning a bid awarded to Urban Jungle Contractors, Ltd. (“Urban Jungle”), which was represented by Woodbury in

his private capacity as an attorney in a lawsuit filed against Urban Jungle in July 2014; and

- 2) Used nonpublic information acquired through Woodbury's public office to further significant pecuniary interests for himself or any other person or business entity, in violation of NRS 281A.400(5).
- b. On or about March 31, 2016, staff of the Commission issued a Notice to Subject under NRS 281A.440 stating that the Commission accepted jurisdiction to investigate the allegations regarding violations of NRS 281A.020(1) and NRS 281A.420(1) and (3) for failing to avoid a conflict of interest between his public duties and private interests, failing to sufficiently disclose a conflict of interest for which disclosure was required, and for acting on a matter in which abstention was required.¹ Woodbury was provided an opportunity to respond to the RFO.
- c. On or about May 17, 2016, Woodbury, through legal counsel, provided a written response to the RFO.
- d. On or about June 30, 2016, the Commission issued a Notice of Additional Issues and Facts concerning allegations implicating NRS 281A.420(1) and (3).
- e. Woodbury waived his right to a panel determination pursuant to NRS 281A.440 and acknowledges that credible evidence establishes just and sufficient cause for the Commission to render an opinion regarding the allegations implicating NRS 281A.420(1) and (3).
- f. In lieu of a panel determination and a hearing, Woodbury now enters into this Stipulated Agreement acknowledging his duty as a public officer to commit himself to protect the public trust and conform his conduct to Chapter 281A of the Nevada Revised Statutes.

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¹ The Commission did not accept jurisdiction regarding the allegation related to a violation of NRS 281A.400(5) because the allegation was not supported by sufficient evidence as required by NAC 281A.400.

4. **STIPULATED FACTS:** At all material times, the following facts were relevant to this matter:²

- a. Mayor Woodbury was first elected to public office in Boulder City in June 2011. He served as a City Council member until he was elected Mayor of Boulder City in June 2015.
- b. Boulder City is a political subdivision as defined in NRS 281A.145.
- c. Mayor Woodbury is a lawyer licensed in the State of Nevada and he is the sole shareholder, President, Secretary, Treasurer and Director of Woodbury Law, Ltd. (“Woodbury Law”), which is registered as a Domestic Professional Corporation with the Nevada Secretary of State.
- d. Jordan Peel (“Peel”) is Mayor Woodbury’s brother-in-law and is employed as the only Associate Attorney at Woodbury Law.
- e. David Olsen, Esq. is a lawyer licensed in the State of Nevada and serves as the appointed City Attorney for Boulder City.
- f. Urban Jungle is a civil and heavy construction contractor registered as a Domestic Limited-Liability Company in the State of Nevada, with main offices located in Boulder City.
- g. Boulder City uses a bid process for public works projects, and Urban Jungle regularly bids on these projects. Among other laws, NRS 332.065 and NRS 338.1385 govern the bid process regarding purchasing and public works contracts for public bodies and mandates that a public contract shall be awarded to the lowest responsive and responsible bidder.
- h. The City Council approves resolutions related to bid awards and projects, which are regularly listed on consent agendas that contain items that the City Manager and staff believe to be routine and without any reasonable basis for the City Council to vote against the item.
- i. On July 11, 2014, Dr. Michael Falvo filed a negligence action (“Falvo Lawsuit”) in the Eighth Judicial District Court naming Boulder City and Urban

² Stipulated Facts do not constitute part of the “Investigative File” as that term is defined by NRS 281A.440(17). All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

Jungle as co-defendants, alleging negligence with regard to an electrical interruption that caused damage to Dr. Falvo's medical equipment.

- j. On September 3, 2014, Woodbury Law filed an answer on Urban Jungle's behalf and Peel signed the pleading for Woodbury Law.
- k. On or about October 10, 2014, Boulder City was dismissed from the Falvo Lawsuit.
- l. Mayor Woodbury was listed as the lead attorney of record for Urban Jungle in the Falvo Lawsuit until April 26, 2016, when a substitution of counsel was filed and Woodbury Law concluded its representation in the Falvo Lawsuit.
- m. The legal work performed for Urban Jungle represented less than one percent of Woodbury Law's business.
- n. **November 12, 2014 Boulder City Council Meeting**

- 1) At the November 12, 2014 meeting, there were three items placed on the Consent Agenda. Consent Agenda Item number 3 involved Urban Jungle and was noted on the agenda as follows:

Resolution No. 6247 . . . approving a bid for the Backflow Prevention Device Improvements 2015-15, B.C. Project No. 14-0909-WD (Bids opened 10-16-14; 4 Bids received)

- 2) The City Council Agenda Packet included a staff report submitted by the Boulder City Director of Public Works, requesting that the City Council approve Resolution No. 6247 and award the bid to Urban Jungle Contractors with a bid of \$70,800.

- 3) The minutes reflect the following:

Council member Woodbury disclosed he had represented Urban Jungle, the company recommended for the bid award on Item No. 3, for matters not related to the agenda item. City Attorney Olsen advised Council member Woodbury disclosure was sufficient and he was allowed to vote on the matter.

(Minutes, November 12, 2014).

- 4) The Consent Agenda passed unanimously.

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o. **January 13, 2015 Boulder City Council Meeting**

- 1) At the January 13, 2015 meeting, there were seven items placed on the Consent Agenda. Consent Agenda Item numbers 3 and 4 involved Urban Jungle and were noted on the agenda as follows:

Resolution No. 6270 . . . awarding a bid for the Lake Mountain Water Laterals Replacement Project, B.C. Project No. 14-0918-WD (Bids opened 12-11-14; 4 Bids received)

Resolution No. 6271 . . . awarding a bid for the Landfill Bulk Water Dispensing Station B.C. Project No. 14-0910-LF (Bids opened 12-11-14; 3 Bids received)

- 2) The City Council Agenda Packet included staff reports submitted by the Boulder City Director of Public Works, requesting that the City Council approve Resolution Nos. 6270 and 6271 and award the bids to Urban Jungle Contractors, the statutory low bidder on each project, with bids of \$89,000 and \$38,900, respectively.
- 3) Mayor Woodbury was unaware that Resolution Nos. 6270 and 6271 involved Urban Jungle because that information was not included on the consent agenda and consequently he did not restate or reaffirm his prior disclosure regarding his relationship with Urban Jungle and voted with the entire City Council to approve the Consent Agenda unanimously.

p. **April 28, 2015 Boulder City Council Meeting**

- 1) At the April 28, 2015 meeting, there were ten items placed on the Consent Agenda. Consent Agenda Item number 3 involved Urban Jungle and was noted on the agenda as follows:

Resolution No. 6301 . . . approving final acceptance, final payment, and release of retention funds for the Backflow Prevention Device Improvements 2015-15, B.C. Project No. 14-0909-WD

- 2) The City Council Agenda Packet included a staff report submitted by the Boulder City Director of Public Works, requesting that the City Council approve Resolution No. 6301 and approve final acceptance, final

payment, and release of retention funds to Urban Jungle Contractors, the statutory low bidder on the project.

- 3) Mayor Woodbury was unaware that Resolution No. 6301 involved Urban Jungle because that information was not included on the consent agenda and consequently he did not restate or reaffirm his prior disclosure regarding his relationship with Urban Jungle and voted with the entire City Council to approve the Consent Agenda unanimously.

q. **July 14, 2015 Boulder City Council Meeting**

- 1) At the July 14, 2015 meeting, there were fifteen items placed on the Consent Agenda. Consent Agenda Item 12 involved Urban Jungle and was noted on the agenda as follows:

Resolution No. 6350 . . . approving final acceptance, final payment, and release of bonds and retention funds for the Lake Mountain Water Laterals Replacement Project, B.C. Project No. 14-0918-WD

- 2) The City Council Agenda Packet included a staff report submitted by the Boulder City Director of Public Works, requesting that the City Council approve Resolution No. 6350 and approve final acceptance, final payment, and release of bonds and retention funds to Urban Jungle Contractors, the statutory low bidder on the project.
- 3) Mayor Woodbury was unaware that Resolution No. 6350 involved Urban Jungle because that information was not included on the consent agenda and consequently he did not restate or reaffirm his prior disclosure regarding his relationship with Urban Jungle and voted with the entire City Counsel to approve the Consent Agenda, 4-1.

5. **TERMS / CONCLUSIONS OF LAW:** Based on the foregoing, Woodbury accepts the Commission's conclusions as follows:

- a. Each of the stipulated facts enumerated in Section 4 of this Stipulated Agreement is agreed to by the parties.

- b. Woodbury holds public office which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada (in particular, the people of Boulder City).
- c. Woodbury had a commitment in a private capacity to the interests of Urban Jungle because an attorney-client relationship amounts to a substantial and continuing business relationship. *See In re Commissioners A and B*, Comm'n Op. Nos. 10-51A and 10-59A and (2012); NRS 281A.065(5).
- d. Woodbury did not adequately avoid the conflict of interest between his public duties as a member of the Boulder City Council and private interests by not sufficiently disclosing the nature and extent of his attorney-client relationship with Urban Jungle at the November 12, 2014 City Council meeting and not disclosing any relationship with Urban Jungle during City Council meetings on January 13, 2015, April 28, 2015 and July 14, 2015 before voting on consent agenda items that involved Urban Jungle.
- e. The disclosure and abstention requirements of NRS 281A.420 extend to consent agenda items. *See In re Tobler and Mayes*, Comm'n Op. Nos. 11-76C and 11-77C (2012). Each matter on a consent agenda requires action for final approval. Without a formal vote of the City Council, the staff action does not become effective. Accordingly, when considering items on a consent agenda, public officers are required to properly disclose any gifts or loans, pecuniary interests or commitments in a private capacity to the interests of others and undertake the statutorily directed abstention analysis on the record to determine whether abstention is appropriate.
- f. Woodbury recognizes that he had the obligation to disclose sufficient information regarding his attorney-client relationship with Urban Jungle, a business with which he had a commitment in a private capacity, to inform the public of the nature and extent of his relationship. The disclosure should have occurred at every City Council meeting in which a matter involving Urban Jungle was acted on by the City Council, even though the relationship was a matter of public record by virtue of Woodbury's disclosure at the November

- 12, 2014 meeting and even though Woodbury was unaware of Urban Jungle's involvement at the January 13, April 28, and July 14, 2015 meetings.
- g. Under prior Commission precedent, public officials must vigilantly search for reasonably ascertainable potential conflicts of interest and cannot remain unaware of readily knowable facts. *In re Atkinson Gates, Williams and Malone*, Comm'n Op. Nos. 97-54, 97-59, 97-66, 97-53 and 97-52 (1997). Instead, public officials must design and implement systems to spot and respond to potential ethical conflicts. *Id.* In this case, it was reasonable for Woodbury to ascertain that resolutions related to Urban Jungle were incorporated in the consent agendas because the supporting City Council Agenda Packets contained more detailed staff reports indicating Urban Jungle's involvement.
 - h. Disclosures required by the Ethics Law must occur "at the time the matter is considered." See NRS 281A.420(1). The Ethics Law does not recognize a continuing disclosure or a disclosure by reference. The purpose of disclosure is to provide sufficient information regarding the conflict of interest to inform the public of the nature and extent of the conflict and the potential effect of the action or abstention on the public officer's private interests. Silence based on a prior disclosure at a prior city council meeting fails to inform the public of the nature and extent of the conflict at the meeting where no actual disclosure occurs. See *In re Buck*, Comm'n Op. No. 11-63C (2011).
 - i. The disclosure should have also included information regarding the potential effect of Woodbury's action or abstention on the agenda items and the effect it may have had on Urban Jungle's interests. See *In re Woodbury*, Comm'n Op. No. 99-56 (1999) and *In re Derbidge*, Comm'n Op. No. 13-05C (2013).
 - j. Abstention is required when a reasonable person's independence of judgment is "materially affected by" the public officer's significant pecuniary interest or commitment in a private capacity. NRS 281A.420 and *Woodbury*. In cases involving substantial and continuous business relationships, the interests of a business partner or client are statutorily attributed to the public

officer based on the presumption that a person lacks independent judgment toward the interests of a person with whom the public officer shares an important business relationship. *In re Public Officer*, Comm'n Op. No. 13-71A (2014). Thus, a public officer must abstain on all matters before the public body affecting the interests of his business partner or client, including interests unrelated to the business shared with the public officer. *In re Derbidge*, Comm'n Op. No. 13-05C (2013).

- k. Although Woodbury Law's representation of Urban Jungle was for matters unrelated to the resolutions approved by the City Council, Mayor Woodbury was the sole shareholder of Woodbury Law and was named as Urban Jungle's attorney of record in a contested case that was pending at the time matters related to Urban Jungle came before the City Council. Under the circumstances presented, the nature of the attorney-client relationship necessitates abstention because the interests of Urban Jungle are statutorily attributed to Mayor Woodbury and could be affected by his official actions. Therefore, notwithstanding the advice of the City Attorney to the contrary, Woodbury should have abstained from voting on the consent agenda items related to Urban Jungle at the November 12, 2014, January 13, 2014, April 28, 2015 and July 14, 2015 City Council meetings.³
- l. Mayor Woodbury's actions constitute a single course of conduct resulting in one violation of NRS 281A.020(1) and NRS 281A.420(1) and (3).
- m. Based upon the consideration and application of the statutory mitigating criteria set forth in NRS 281A.475, the Commission concludes that Woodbury's violation in this case should not be deemed a "willful violation" pursuant to NRS 281A.170, and the imposition of a civil penalty pursuant to NRS 281A.480 is not appropriate for the reasons that follow:
 - 1) The gravity of the violation is not substantial;

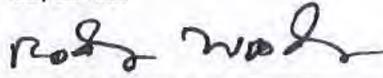
³ To the extent prior opinions of the Commission fail to recognize or analyze the nature of an attorney-client relationship as a continuous and substantial business relationship for purposes of establishing a commitment in a private capacity to the interests of another person under NRS 281A.065, the Commission hereby announces its position.

- 2) Woodbury believed his November 14, 2014 disclosure to be a continuing disclosure;
 - 3) Woodbury has not previously been the subject of any violation of the Ethics Law;
 - 4) Woodbury relied in good faith upon the legal advice, albeit inaccurate advice, of the City Attorney, David Olsen, Esq., regarding the requirements of NRS 281A.420(3);
 - 5) Woodbury has not received any personal financial gain as the result of his conduct in this matter; and
 - 6) Woodbury has been diligent to cooperate with and to participate in the Commission's investigation and resolution of this matter.
- n. Mayor Woodbury agrees to facilitate an Ethics in Government Law training session with the Commission's Executive Director for the Boulder City Council members and staff, to ensure that the City Council members and City staff understand the disclosure and abstention requirements, including responsibilities related to consent agenda items. *See, e.g., In re Tobler and Mayes, Comm'n Op. Nos. 11-76C and 11-77C (2012).*
 - o. This Stipulated Agreement depends on and applies only to the specific facts, circumstances and law related to this RFO and the Notice of Additional Issues and Facts now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.
 - p. This Stipulated Agreement is intended to apply to and resolve only this specific proceeding before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil, or criminal regarding Woodbury.
6. **WAIVER:**
- a. The Parties knowingly and voluntarily waive their right to bring this matter to an Investigatory Panel proceeding and a full hearing before the Commission on the allegations in this RFO (No. 16-40C), including the Notice of Additional

Issues and Facts, and any and all rights that may be accorded with regard to this matter pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B) and any other applicable provisions of law.

- b. The Parties knowingly and voluntarily waive their right to any judicial review of this matter as provided in NRS Chapter 281A, NRS Chapter 233B or any other applicable provisions of law.

7. **ACCEPTANCE:** We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision herein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this agreement during the regular meeting of the Commission on October 19, 2016.

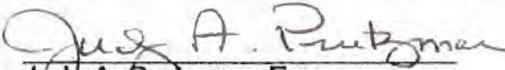
DATED this 27th day of October, 2016. 
Rodney Stewart Woodbury

The above Stipulated Agreement is approved by:

FOR RODNEY STEWART WOODBURY,
SUBJECT

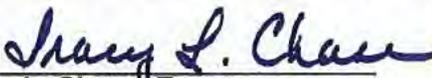
DATED this 1st day of November, 2016. 
Charity F. Felts, Esq.
Counsel for Subject

FOR YVONNE M. NEVAREZ-GOODSON
Executive Director, Commission on Ethics

DATED this 3rd day of November, 2016. 
Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 3rd day of November, 2016. 
Tracy L. Chase, Esq.
Commission Counsel

The above Stipulated Agreement is accepted by the Commission.⁴

DATED October 19, 2016.

By: /s/ Cheryl A. Lau
Cheryl A. Lau, Esq.
Chair

By: /s/ Brian Duffrin
Brian Duffrin
Commissioner

By: /s/ Keith A. Weaver
Keith A. Weaver, Esq.
Vice-Chair

By: /s/ Barbara Gruenewald
Barbara Gruenewald, Esq.
Commissioner

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: ABSTAIN
Dan Stewart
Commissioner

⁴ Subject waived his right to an Investigatory Panel pursuant to NRS 281A.440. Accordingly, this Stipulated Agreement was executed prior to a Panel hearing in this matter and no Commissioner was precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220. Pursuant to NRS 281A.420, Commissioner Stewart disclosed a conflict of interest associated with a relationship to Subject Woodbury within the third-degree of consanguinity and abstained from any participation and voting on this matter.

Exhibit 3



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
For Opinion Concerning the Conduct of
Kelly Sweeney, Former Director of Labor
Relations, Las Vegas Metropolitan Police
Department, Clark County, State of
Nevada,

Request for Opinion No. **15-70C**

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE**: This Stipulated Agreement resolves Third-Party Request for Opinion (“RFO”) No. 15-70C before the Nevada Commission on Ethics (“Commission”) concerning Kelly Sweeney (“Sweeney”), the former Director of Labor Relations at the Las Vegas Metropolitan Police Department (“Department”), and serves as the final opinion in this matter.
2. **JURISDICTION**: At all material times, Sweeney previously served as the Director of Labor Relations at the Department. As such, Sweeney is a former public employee, as defined in NRS 281A.180. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A establishes the Commission’s jurisdiction over the conduct of former public employees pursuant to NRS 281A.280. Accordingly, the Commission has jurisdiction over Sweeney in this matter.
3. **PROCEDURAL HISTORY BEFORE COMMISSION:**
 - a. On or about November 5, 2015, the Commission received this RFO from the Sheriff of the Department, Joseph Lombardo (“Sheriff Lombardo”), alleging that Sweeney violated Nevada’s Ethics Law, specifically NRS 281A.020(1), NRS 281A.400(1), NRS 281A.400(5), and NRS 281A.410, based upon her purported conduct when she became employed by the Las Vegas Police Protective Association (the “Association”) after retiring from the Department.

- b. The Commission did not accept jurisdiction of the allegations regarding potential violations of NRS 281A.020(1), NRS 281A.400(1), and NRS 281A.400(5) because the allegations were not supported by sufficient evidence as required by NAC 281A.400. As required by NAC 281A.410, the Commission provided Sweeney with proper notice of the RFO, stating that the Commission accepted jurisdiction to investigate the allegations regarding violations of NRS 281A.410. Pursuant to NRS 281A.440(3), Sweeney was provided an opportunity to respond to the RFO and did so through legal counsel on February 16, 2016.
- c. On or about June 30, 2016, the Commission issued a Notice of Additional Issues and Facts concerning additional allegations implicating NRS 281A.410(1)(b).
- d. Through counsel, Sweeney submitted a Response to the Notice of Additional Issues and Facts on August 5, 2016.
- e. Sweeney has waived her right to a panel determination pursuant to NRS 281A.440 and acknowledges that credible evidence establishes just and sufficient cause for the Commission to render an opinion regarding the allegations implicating NRS 281A.410(1)(b).
- f. In lieu of a panel determination and a hearing, Sweeney now enters into this Stipulated Agreement acknowledging her duty as a former public employee to commit herself to protect the public trust and conform her conduct to NRS Chapter 281A.

4. STIPULATED FACTS: At all material times, the following stipulated facts were relevant to this matter:

- a. In her former public capacity, Sweeney was employed by the Department between September 2001 and July 2015 as a Senior Analyst, Labor Relations Manager, and Director of Labor Relations.
- b. The Department is a local agency, as defined in NRS 281A.119, and is responsible for all police services within the City limits of the City of Las Vegas, Nevada and unincorporated areas of Clark County, Nevada.

- c. The Association is a private employee organization recognized under the Local Government Employee-Management Relations Act (“Act”) set forth in NRS Chapter 288 and represents active and retired police and corrections officers of the Department. The Association also represents deputy city marshals and municipal court marshals in matters covered by the Act who are employed by or retired from service with the City of Las Vegas.
- d. Pursuant to the provisions of the Act, the Department recognizes the Association as the exclusive representative of eligible Department employees for the purpose of collective bargaining.
- e. During Sweeney’s last 3 years with the Department, she served as the Department’s Director of Labor Relations, supervising six employees and planning and directing the operations of the Labor Relations Section.
- f. Sweeney’s job duties as Director of Labor Relations included:
 - 1) Preparing recommendations and advising Department staff on fact-finding proceedings, disciplinary appeals, grievance/arbitration appeals, negotiation subjects and potential liability;
 - 2) Negotiating collective bargaining agreements (“CBA” or “CBAs”) with unions representing different Department employee groups, including the Association;
 - 3) Conducting training of new Department supervisors on contract administration and disciplinary policies and procedures;
 - 4) Participating in the resolution of employee grievances, including grievances involving Association members; and
 - 5) Administering all CBAs at the Department to ensure compliance with the terms of the agreements.
- g. A Disciplinary Matrix was created in 2001 and is contained in the Managing Employee Performance & Conduct Handbook. The Matrix outlines the discipline and discharge procedures that supervisors and managers at the Department follow when an internal complaint is filed against an employee. The procedures contained in the Disciplinary Matrix are negotiated between the

Association and the Department as a subject of collective bargaining pursuant to NRS Chapter 288. Revisions to the Matrix were considered and agreed upon in February 2008, January 2012 and October 2012.

- h. The Collective Bargaining Agreement between the Department and the Association (“Department/Association CBA”) that became effective as of July 1, 2014 applies to all Department employees having a regular commissioned Civil Service appointment, excluding administrative employees, supervisory employees, confidential employees, and employees in other recognized bargaining units. Although the term of the Department/Association CBA ended on June 30, 2016, the CBA by its terms remains in full force and effect during negotiations for and until a successor agreement is finalized.
- i. Negotiations between the Department and the Association for a successor Department/Association CBA began in October 2015.
- j. A grievance procedure is established by the Department/Association CBA and applies to the various types of disputes that may arise between the Department and employees. Department employees have the right to appeal grievances in accordance with the terms of the CBA. Depending upon the type of dispute involved, grievances may be resolved by a Labor Management Board selected by the Department and Association or an arbitrator.

Sweeney’s Work at the Association

- k. In August 2015, Sweeney was contacted by Mark Chaparian (“Chaparian”), Executive Director of the Association, to discuss a possible employment opportunity for Sweeney at the Association.
- l. Sweeney commenced employment with the Association on October 5, 2015 as a part-time Director of Employee Relations, reporting directly to Chaparian and assisting the Association’s General Counsel, David Roger, Esq.
- m. Sweeney’s job duties at the Association include:
 - 1) Representing City of Las Vegas Deputies and Municipal City Marshals in grievance proceedings (occupies about 30% of Sweeney’s time).

- 2) Representing Association Members in grievance proceedings, including Labor Management Board (“LMB”) hearings.
 - 3) Responding to Citizen Review Board Complaints against Association members.
 - 4) Representing Association members in Pre-Termination Board hearings.¹
 - 5) Reviewing revised policies and drafting explanatory memoranda for Association members.
- n. The Association’s General Counsel, not Sweeney, was and is responsible for handling arbitration cases and providing legal interpretation of the CBAs for the Association and its members.
 - o. Sweeney is not a member of the Association’s negotiating team.
 - p. Between October 2015 and June 2016, Sweeney represented the Association in LMB cases that involved Association members (i.e. Department employees). It is Sweeney’s position that each of these LMB cases were not under consideration during her tenure at Department as they were not filed with the LMB until after she had retired.
 - q. Sweeney attended an October 27, 2015 meeting between the Department, the Association and two other labor associations to discuss possible changes to the Disciplinary Matrix. The meeting was canceled when the Department objected to Sweeney’s involvement with the Disciplinary Matrix on behalf of the Association.
 - r. On October 28, 2015 Sheriff Lombardo sent a letter to Sweeney expressing his concern that her employment with the Association violated the Ethics in Government Laws contained in NRS Chapter 281A. Sheriff Lombardo requested that the Association implement a screening procedure to ensure Sweeney did not counsel or represent the Association on any issues that were under consideration by the Department during her period of public employment.

¹ To date, Ms. Sweeney has not represented any Association members in Pre-Termination Board hearings.

- s. Pursuant to a confidentiality agreement signed by members of the Executive Board of the Association after this RFO was filed, Board members were not allowed to discuss the Association/Department CBA negotiations with Sweeney. Board members were also not allowed to consult with Sweeney about any grievance or pre-termination cases that were pending when Sweeney was employed by the Department.
- t. On October 28, 2015, General Counsel Roger sent a letter to Sweeney, Chaparian and the members of the Association's Executive Board advising about this RFO and the Ethics allegations against Sweeney. Roger explained that the Association had been diligent in screening Sweeney from participation on any cases that may have been pending when she worked at the Department.
- u. On June 14, 2016, Sweeney was advised of additional facts regarding her participation in LMB cases which potentially implicated NRS 281A.410(1)(b). On June 16, 2016, Sweeney voluntarily ceased participating in—and was screened from—all LMB cases involving Department employees. Sweeney resumed participation on such LMB cases after the one year “cooling-off” period applicable to her employment with the Department ended, which was on July 6, 2016.

5. TERMS OF AGREEMENT / CONCLUSIONS OF LAW: Based on the foregoing, Sweeney and the Commission agree as follows:

- a. Each of the stipulated facts enumerated in this Stipulated Agreement are agreed to by the parties.² For purposes of the Conclusions of Law, the Commission accepts each of the stipulated facts as true and correct.
- b. Sweeney served as a public employee, which constituted a public trust to be held for the sole benefit of the people of the State of Nevada.
- c. To promote integrity in public service, the Commission is concerned with situations involving former public officers and employees that create the

² Stipulated Facts do not constitute part of the “Investigative File” as that term is defined by NRS 281A.440(17). All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

- appearance of impropriety and conflicts of interest, as well as situations involving actual impropriety and conflicts. See *In re Maltman*, Comm'n Op. No. 12-66A (2012).
- d. The "cooling-off" provisions of the Ethics Law are intended to discourage former public officers and employees from using opportunities, information, relationships, or experience gathered from their former public service to benefit them in their private capacity. See *In re Zingre*, Comm'n Op. No. 14-66A (2014). Therefore, if a former public officer or employee accepts employment with a private person or business, that employee may not share the information that was accessible to or acquired by him during his service with a public agency on any issues which were under consideration by that agency during the period of public service. See *In re Public Officer*, Comm'n Op. No. 87-04 (1987) (interpreting former NRS 281A.410(1)).
 - e. Although Sweeney's employment with the Association was not prohibited by the Ethics Law because the Association was not a business or industry regulated by the Department, she was nevertheless prohibited, for one year following her employment with the Department, from representing or counseling the Association or any other private person upon any issues that were under consideration by the Department during her tenure pursuant to NRS 281A.410(1)(b). See *In re Former Public Employee*, Comm'n Op. No. 13-29A (2013); *In re Public Employee*, Comm'n Op. No. 11-96A (2012).
 - f. NRS 281A.410(1)(b) provides that an "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations.
 - g. The Ethics Law seeks to prohibit and protect against the possibility that the Association and any other private entity could benefit in labor relations matters involving the Department by hiring Sweeney, who formerly oversaw the labor relations function at the Department. See, e.g., *In re Former Public Officer*, Comm'n Op. No. 13-29A (2013). Sweeney's former employment with the

Department provides potential benefits to the Association and its members, particularly in the area of labor relations.

- h. Despite Sweeney's good faith effort to avoid working on any issues on behalf of the Association that were under consideration by the Department during her public employment, the preponderance of evidence supports a finding that Sweeney was representing or advising the Association regarding two LMB cases that were under consideration when she worked at the Department. Under the circumstances presented in this RFO, these two LMB cases constituted issues "under consideration" because either (1) the underlying facts at issue in the disciplinary matter occurred during Sweeney's period of employment with the Department; or (2) prior disciplinary matters occurred during her period of employment with the Department that are relevant to the current disciplinary matter (e.g., prior discipline).³
- i. Sweeney's actions are deemed to be a single course of conduct resulting in one violation of NRS 281A.410(1)(b).
- j. Based upon the consideration and application of the statutory mitigating criteria set forth in NRS 281A.475, the Commission concludes that Sweeney's violation in this case should not be deemed a "willful violation" as defined by NRS 281A.170, and the imposition of a civil penalty pursuant to NRS 281A.480 is not appropriate for the reasons that follow:
 - 1) Sweeney has not previously been the subject of any violation of the Ethics Law;
 - 2) Sweeney was not aware that her representation of Association members in LMB cases might implicate the Ethics Law, and she took steps in good faith to mitigate violations when she was notified that her work at the Association may implicate NRS 281A.410. The Commission is satisfied that Sweeney did not intend to violate NRS 281A.410(1)(b).

³ The Commission has not previously had the opportunity to apply the provisions of NRS 281A.410(1)(b) to a similar fact pattern, but now expresses that a disciplinary matter, under the presented circumstances, constitutes an "issue under consideration" for application of the statute.

- 3) Sweeney has been diligent to cooperate with and participate in the Commission's investigation of this matter, as well as the resolution process and has been proactive in her attempt to comply with NRS 281A.410.
- k. Allegations related to other conduct by Sweeney are not supported by sufficient, credible evidence to support a violation of NRS 281A.410 by a preponderance of evidence as required by NRS 281A.480(9), and they are therefore dismissed through this Stipulated Agreement.
- l. This Stipulated Agreement depends on and applies only to the specific facts, circumstances and law related to this RFO and the Notice of Additional Issues and Facts now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.
- m. This Stipulated Agreement is intended to apply to and resolve only this specific proceeding before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil, or criminal, regarding Sweeney.

6. WAIVER:

- a. Sweeney knowingly and voluntarily waives her right to an Investigatory Panel proceeding and a full hearing before the Commission on the allegations in this RFO and the Notice of Additional Issues and Facts (No. 15-70C) and of any and all rights she may be accorded pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B), and any other applicable provisions of law.
- b. Sweeney knowingly and voluntarily waives her right to any judicial review of this matter as provided in NRS 281A, NRS 233B, or any other applicable provisions of law.

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7. **ACCEPTANCE:** We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this Stipulated Agreement during the regular meeting of the Commission on October 19, 2016.

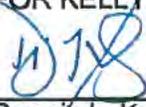
DATED this 20 day of October, 2016.


Kelly Sweeney

The above Stipulated Agreement is approved by:

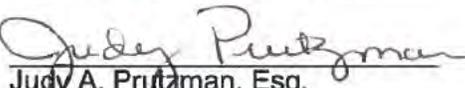
FOR KELLY SWEENEY, Subject

DATED this 24th day of October, 2016.


Dennis L. Kennedy, Esq.
Counsel for Subject

FOR YVONNE M. NEVAREZ-GOODSON, ESQ.
Executive Director, Commission on Ethics

DATED this 24th day of October, 2016.


Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form by:

DATED this 24th day of OCTOBER, 2016.


Tracy L. Chase, Esq.
Commission Counsel

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The above Stipulated Agreement is accepted by the Commission.⁴

DATED October 19, 2016

By: /s/ Cheryl A. Lau
Cheryl A. Lau, Esq.
Chair

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: /s/ Keith A. Weaver
Keith A. Weaver, Esq.
Vice-Chair

By: /s/ Barbara Gruenewald, Esq.
Barbara Gruenewald, Esq.
Commissioner

By: /s/ Brian Duffrin
Brian Duffrin
Commissioner

By: /s/ Dan Stewart
Dan Stewart
Commissioner

⁴ Sweeney waived her right to an Investigatory Panel pursuant to NRS 281A.440. Accordingly, this Stipulated Agreement was executed prior to a Panel hearing in this matter and no Commissioner was precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220.

Exhibit 4



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Donna Lopez, Quality Control Officer,
Public Employees' Benefits Program,
State of Nevada,

Request for Opinion No. **15-73C**

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE**: This Stipulated Agreement resolves Third-Party Request for Opinion ("RFO") No. 15-73C before the Nevada Commission on Ethics ("Commission") concerning Donna Lopez ("Lopez"), Quality Control Officer for the Public Employees' Benefits Program ("PEBP"), and serves as the final opinion in this matter.

2. **JURISDICTION**: At all material times, Lopez was employed as a Quality Control Officer at PEBP, a public employee as defined in NRS 281A.150. The Ethics in Government Law ("Ethics Law") set forth in NRS Chapter 281A provides the Commission jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Lopez in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

a. On or about December 3, 2015, the Commission received this RFO from a private citizen, alleging that Lopez:

- 1) Failed to avoid conflicts of interest between her public and private interests by designating a longtime personal friend as a PEBP consultant (NRS 281A.020(1));
- 2) Accepted gifts which would tend improperly to influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties (NRS 281A.400(1));

- 3) Used her position as Quality Control Officer to gain an unwarranted advantage for a friend (NRS 281A.400(2));
 - 4) Failed to disclose a conflict of interest (NRS 281A.420(1)); and
 - 5) Failed to abstain from acting on a matter in which abstention is required (NRS 281A.420(3)).
- b. As required by NAC 281A.410, the Commission provided Lopez with notice of the RFO by mail on December 16, 2015. Lopez was provided an opportunity to respond to the RFO and requested an extension of time to submit a response through her legal counsel, Mark Mausert, Esq. An extension was granted and the response was due on February 29, 2016. A response was not submitted and no additional extensions of time were requested.
 - c. Pursuant to NRS 281A.440, on March 16, 2016, a two-member Investigatory Panel of the Commission reviewed the RFO, the Executive Director's recommendation and other evidence.
 - d. A Panel Determination issued on March 23, 2016 concluded that:
 - 1) Credible evidence supports just and sufficient cause for the Commission to conduct a public hearing and render an opinion regarding whether Lopez violated NRS 281A.020(1) and 281A.400(1) with regard to acceptance of gifts; and
 - 2) The facts do not establish credible evidence to substantiate just and sufficient cause for the Commission to conduct a public hearing and render an opinion regarding the alleged violations of NRS 281A.400(2) and NRS 281A.420(1) and (3). Accordingly, these allegations were dismissed.
 - e. The Commission notified Lopez of the time and place set for a Commission hearing in this matter. In lieu of a full hearing, Lopez now enters into this Stipulated Agreement acknowledging her duty as a public employee to commit herself to protect the public trust and conform her conduct to Chapter 281A of the Nevada Revised Statutes.

4. **STIPULATED FACTS:** This Stipulated Agreement is premised upon the record before the Commission which includes, without limitation, the following stipulated facts:¹

Overview

- a. Donna Lopez was the Quality Control Officer for PEBP, and therefore is a public employee pursuant to NRS 281A.150.
- b. PEBP is a state agency as defined in NRS 281A.145.
- c. PEBP is the state agency that manages the group health insurance program for State and certain other public employees. PEBP currently administers various insurance plans, including: health; life; accidental death and dismemberment; long-term disability; and other voluntary insurance coverages.
- d. PEBP operates under the direction and oversight of the Public Employees' Benefits Program Board ("PEBP Board"), a ten-member board appointed by the Governor. NRS 287.041. The PEBP Board appoints an Executive Officer who oversees the day-to-day operation and management of the agency. NRS 287.0424.
- e. PEBP is comprised of the following sections: Operations, Quality Control, Public Information, Accounting and Information Technology.
- f. The Quality Control Section of PEBP coordinates the contracting process for all contracts PEBP enters into, including managing the Request for Proposal ("RFP") process, contract negotiations, contract maintenance and contract extensions. The Quality Control Officer is therefore responsible for managing many aspects of PEBP's contracting needs. The position also assists the Executive Officer with overseeing the administration of PEBP benefits by providing regular vendor performance reports and coordinating vendor audits to ensure vendors are complying with their contract requirements.
- g. PEBP contracts for a variety of services including actuarial, PPO networks, HMO, management of large claims cases, utilization review, and audit

¹ Stipulated Facts do not constitute part of the "Investigative File" as that term is defined by NRS 281A.440(17). All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

services. In addition, PEBP contracts with a third-party administrator to pay medical and dental claims, and a pharmacy benefits manager to access drug discounts and to pay claims.

- h. Hometown Health and HealthSCOPE Benefits (“HealthSCOPE”) are two of PEBP’s largest vendors.

Involved Parties and Policies

- i. One of the vendors at issue in this matter is the Chief Medical Officer of Hometown Health (hereafter referred to as “Hometown Health representative”), which operates the Medical Utilization Management & Case Management Services for PEBP’s Consumer Driven High Deductible Plan (“CDHDP”), administers the statewide PPO Network for the CDHDP and operates PEBP’s Northern Nevada Health Maintenance Organization (“HMO”).
- j. Another vendor at issue in this matter is the President of HealthSCOPE (hereafter referred to as “HealthSCOPE representative”), the claims administrator/third-party administrator for PEBP’s CDHDP, PPO Dental Plan, Health Savings Account, PPO-Health Reimbursement Arrangement and Flexible Spending Accounts.
- k. PEBP’s policies outline prohibited conduct, permissible gifts, and progressive discipline procedures associated with certain acts of misconduct by PEBP employees, including the acceptance of gifts, particularly “from any individual, firm, or organization doing business with PEBP or the State when the employee is responsible for making any recommendations or decisions affecting their business activities without approval of the Executive Officer.”

Gift: The Purse

- l. In or around September 2014, a Hometown Health representative gave Lopez a Coach-brand woman’s purse that she had purchased for herself and no longer wanted.
- m. Lopez accepted the Coach purse and re-gifted it to her assistant in September of 2014, approximately one week after Lopez accepted the purse from the Hometown Health representative.

- n. A PEBP employee who reported directly to Lopez at the time recalls that Lopez told her she had received a Coach purse from a Hometown Health representative sometime in late fall or early winter of 2014.
- o. The Hometown Health representative does not remember the exact purchase price of the Coach purse, which she purchased at a Coach outlet store. She recalls that it cost no more than \$100.
- p. On eBay, Coach purses of a similar color and with the same serial number as the purse Lopez received from the Hometown Health representative were recently priced at about \$130.

Gift: Free Lunches

- q. Between April and September of 2015, Lopez met with a HealthSCOPE representative for lunch at least three times. These lunches typically occurred in Carson City, Nevada the day before or the day of PEBP Board meetings.
- r. The HealthSCOPE representative paid for the three lunches. Cumulatively, these lunches totaled approximately \$45.00.
- s. The days after Lopez accepted free meals from the HealthSCOPE representative in May and September, respectively, that same representative appeared before the PEBP Board on behalf of HealthSCOPE to provide a response to first and second quarter audit reports of HealthSCOPE being reviewed by the Board.
- t. Lopez's job responsibilities included coordinating quarterly audits of HealthSCOPE with PEBP's auditor.

Favor: The Suitcase

- u. PEBP's RFP for Statewide/Regional HMO Services ("HMO RFP") was released to vendors on September 8, 2015.
- v. Lopez, in her capacity as Quality Control Officer, is responsible for implementing, monitoring and coordinating the RFP process for PEBP contracts, which includes her participation in contract RFP response evaluations.

- w. On October 7, 2015, a Hometown Health representative purchased a child's suitcase for \$107.35 as a favor for Lopez during a PEBP tour of the Renown Medical Center.
- x. Hometown Health was one of four vendors to submit a proposal to the HMO RFP, which was open at the time this representative purchased the suitcase.
- y. At a closed session at the November 19, 2015 PEBP Board meeting, Lopez explained the circumstances regarding the Hometown Health representative's purchase of the suitcase on October 7, 2015 as follows:

A vendor purchased the luggage that I was getting for my granddaughter because I was running late to a meeting. I didn't have my check book with me and told her I would pay her back later. Because of what was going on at PEBP, I completely forgot, but always planned on reimbursing the vendor.

- z. Lopez wrote a check reimbursing the Hometown Health representative for the suitcase on November 20, 2015.

5. **TERMS OF AGREEMENT / CONCLUSIONS OF LAW:** Based on the foregoing, Lopez and the Commission agree as follows:

- a. Each of the stipulated facts enumerated in section 4 of this Stipulated Agreement is deemed to be true and correct.
- b. At all relevant times, Lopez was a public employee of PEBP, which is a state agency.
- c. As a public employee, the Ethics Law applies to Lopez's conduct and Lopez must commit herself to avoid both actual and perceived conflicts between her private interests and those of the public she serves. *See In re Public Employee*, Comm'n Op. No. 10-73A (2011). Specifically, Lopez must not seek or accept any gift, service or favor which would tend improperly to influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties. NRS 281A.400(1).
- d. The prohibitions of NRS 281A.400(1) are in addition to established policies of a government agency and serve the public's interest in objective, impartial and effective government by preventing a public officer or employee from violating

- the public trust by taking official action in exchange for a personal benefit (i.e., a *quid pro quo*). See *In re Kenny*, Comm'n Op. No. 00-54A (2001).
- e. Lopez's acceptance of a Coach purse from a Hometown Health representative violated NRS 281A.020 and NRS 281A.400(1) because it was a gift of material value of the type that would tend improperly to influence a reasonable person in Lopez's position. See *In re Public Employee*, Comm'n Op. No. 11-62A (2010). The purse was accepted by Lopez as a personal gift, as there was no "state benefit" associated with receipt of the gift, and the purse, with a value of approximately \$100, cannot be considered a trinket or nominal gift. The representative's reasons for giving the purse to Lopez are irrelevant because a violation of NRS 281A.400(1) does not require a finding of improper motive or intent to influence a public employee or public officer.
 - f. Lopez's acceptance of multiple free lunches from a HealthSCOPE representative violated NRS 281A.020 and NRS 281A.400(1) because a reasonable person in Lopez's position would be improperly influenced by the acceptance of repeated free meals from a vendor when PEBP, and specifically, Lopez in her capacity as Quality Control Officer, provide oversight of the performance and quality of services being delivered by that vendor. The Ethics Law prohibits this type of conduct because it creates a perception of impropriety or favoritism for a contracted state vendor and erodes the public's trust in state government.
 - g. Lopez's acceptance of the child's' suitcase purchased by a representative of Hometown Health constitutes acceptance of a favor, not a gift, because Lopez later provided reimbursement for the suitcase. This favor, as it occurred in this case with the intention for immediate reimbursement, would not be the type of favor that would tend improperly to influence a reasonable person in Lopez's position, in violation of the Ethics Law. However, the favor was offered to Lopez during a work-related event while PEBP's HMO RFP was open for bidding, Hometown Health was one of the vendors actively bidding on the RFP and Lopez, as the Quality Control Officer, helped draft the HMO RFP. Under these circumstances, a public employee's acceptance of any personal favor from a

contracted state vendor representative can create the appearance of impropriety and be construed as creating a *quid pro quo* expectation of preferential treatment or competitive advantage. Public employees who work in a highly competitive business environment involving multi-million dollar contracts must be diligent in avoiding such situations.

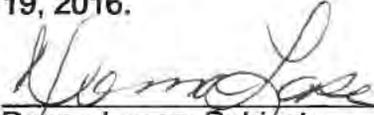
- h. Lopez now understands that she should not have accepted the Coach purse and lunches from representatives of contracted PEBP vendors and she should have been more circumspect in her acceptance of a favor from a contracted vendor that was either bidding on an open PEBP RFP or defending audit findings. The preponderance of evidence establishes that acceptance of the purse and lunches are the type of gifts that would tend improperly to influence a public employee in Lopez's position to depart from the faithful and impartial discharge of the public employee's public duties because of the value of the gifts, the identity of the donors and/or the timing of the gifts. *See In re Public Employee*, Comm'n Opinion No. 11-62A (2010) (*citing In re Wood*, Comm'n Op. No. 95-51 (1997)). Lopez's acceptance of gifts from vendors under the circumstances identified herein creates a perception of *quid pro quo* between vendors and the state agency responsible for ensuring the public trust associated with contracts that involve expenditure of public funds.
- i. Under the specific circumstances of this matter, Lopez's conduct constitutes a single course of conduct resulting in a single violation of the Ethics Law, implicating NRS 281A.020(1) and 281A.400(1).
- j. Based upon the consideration and application of the statutory criteria set forth in NRS 281A.475, the Commission concludes that Lopez's violation should be deemed "willful" pursuant to NRS 281A.170 and there are no mitigating factors to justify a non-willful violation.
- k. Although Lopez may not have intended to violate the Ethics Law, her violation of NRS Chapter 281A was willful because she acted intentionally and knowingly, as those terms are defined in NRS 281A.105 and 281A.115, respectively.

- i. For an act to be intentional, NRS 281A.105 requires that Lopez acted voluntarily or deliberately. The definition further states that proof of bad faith, ill will, evil or malice is not required. Lopez's acceptance of gifts and/or favors was not accidental or inadvertent.
 - m. NRS 281A.115 defines "knowingly" as "import[ing] a knowledge that the facts exist which constitute the act or omission." NRS Chapter 281A does not require that Lopez had actual knowledge that her conduct violated the Ethics Law, but it does impose constructive knowledge when other facts are present that should put an ordinarily prudent person upon inquiry. See *In re Stark*, Comm'n Op. No. 10-48C (2010).
 - n. For the willful violation, Lopez will pay a civil penalty of \$1,000.00, pursuant to NRS 281A.480, not later than 90 days after her receipt of the fully executed Stipulated Agreement in this matter. Lopez may pay the penalty in one lump sum payment or in monthly installment payments as negotiated with the Commission's Executive Director.
 - o. This Stipulated Agreement applies only to the specific facts, circumstances and law related to this RFO now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.
 - p. This Stipulated Agreement applies only to these matters before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil, or criminal regarding Lopez.
6. **WAIVER:**
- a. Lopez knowingly and voluntarily waives her right to a full hearing before the Commission on the allegations in this RFO (No. 15-73C) and any and all rights she may be accorded pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedure Act (NRS Chapter 233B) and any other applicable provisions of law.

b. Lopez knowingly and voluntarily waives her right to any judicial review of this matter as provided in NRS Chapter 281A, NRS Chapter 233B or any other provision of Nevada law.

7. **ACCEPTANCE:** We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this Stipulated Agreement during the regular meeting of Commission on October 19, 2016.

DATED this 2 day of November, 2016.

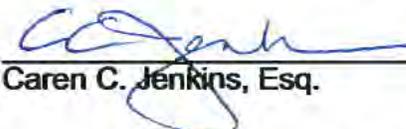


Donna Lopez, Subject

The above Stipulated Agreement is approved by:

FOR DONNA LOPEZ, Subject

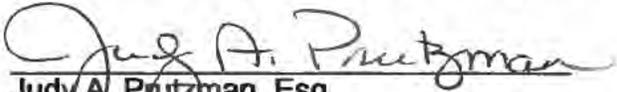
DATED this 7 day of Nov., 2016.



Caren C. Jenkins, Esq.

FOR YVONNE NEVAREZ-GOODSON, ESQ.
Executive Director, Commission on Ethics

DATED this 7th day of November, 2016.



Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 14TH day of November, 2016.



Tracy L. Chase, Esq.
Commission Counsel

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The above Stipulated Agreement is accepted by the Commission.²

DATED October 19, 2016.

By: /s/ Cheryl A. Lau
Cheryl A. Lau, Esq.
Chair

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: /s/ Brian Duffrin
Brian Duffrin
Commissioner

By: /s/ Barbara Gruenewald
Barbara Gruenewald, Esq.
Commissioner

² Vice-Chair Weaver and Commissioner Stewart participated in the Panel hearing and are therefore precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220(4).

AGENDA ITEM NO. 5

AGENDA ITEM NO. 5

SENATE BILL NO. 30—COMMITTEE ON
LEGISLATIVE OPERATIONS AND ELECTIONS

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 16, 2016

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions relating to the solicitation or acceptance of gifts by the Attorney General. (BDR 23-377)

FISCAL NOTE: Effect on Local Government: No.
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 the Office of the Attorney General; revising provisions relating to the solicitation or acceptance of gifts by the Attorney General; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 The Nevada Ethics in Government Law sets forth standards for the conduct of
2 public officers and employees, which standards are interpreted and enforced by the
3 Commission on Ethics. (Chapter 281A of NRS) In particular, the Nevada Ethics in
4 Government Law prohibits a public officer, including the Attorney General, from
5 seeking or accepting a gift which would tend improperly to influence a reasonable
6 person in the public officer’s position to depart from the faithful and impartial
7 discharge of the public officer’s public duties. (NRS 281A.400) The term “gift” is
8 not defined for the purposes of that prohibition. In addition to that prohibition, this
9 bill prohibits the Attorney General from soliciting or accepting money, services or
10 anything of value unless consideration of equal or greater value is received.
11 However, this bill excludes from the prohibition political contributions, loans,
12 certain ceremonial gifts, payments associated with certain meetings, events or trips
13 and items received from persons related to or dependent on the Attorney General.
14 Because this new prohibition is part of the Nevada Ethics in Government Law, it
15 will be enforced by the Commission on Ethics.



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

1 **Section 1.** Chapter 281A of NRS is hereby amended by
2 adding thereto a new section to read as follows:

3 1. *The Attorney General shall not solicit or accept any gift.*

4 2. *As used in this section:*

5 (a) *“Anything of value,” with respect to an educational or*
6 *informational meeting, event or trip, includes, without limitation,*
7 *any actual expenses for food, beverages, registration fees, travel or*
8 *lodging provided or given to or paid for the benefit of the Attorney*
9 *General or reimbursement for any such actual expenses paid by*
10 *the Attorney General, if the expenses are incurred on a day during*
11 *which the Attorney General undertakes or attends an educational*
12 *or informational meeting, event or trip or during which the*
13 *Attorney General travels to or from an educational or*
14 *informational meeting, event or trip.*

15 (b) *“Educational or informational meeting, event or trip”:*

16 (1) *Means any meeting, event or trip undertaken or*
17 *attended by the Attorney General if, in connection with the*
18 *meeting, event or trip:*

19 (I) *The Attorney General receives anything of value*
20 *from an interested person to undertake or attend the meeting,*
21 *event or trip; and*

22 (II) *The Attorney General provides or receives any*
23 *education or information on matters relating to the prosecutorial,*
24 *administrative or political action of the Attorney General.*

25 (2) *Includes, without limitation, any reception, gathering,*
26 *conference, convention, discussion, forum, roundtable, seminar,*
27 *symposium, speaking engagement or other similar meeting, event*
28 *or trip with an educational or informational component.*

29 (3) *Does not include a meeting, event or trip undertaken or*
30 *attended by the Attorney General for personal reasons or for*
31 *reasons relating to any professional or occupational license held*
32 *by the Attorney General, unless the Attorney General participates*
33 *as one of the primary speakers, instructors or presenters at the*
34 *meeting, event or trip.*

35 (c) *“Gift” means any payment, conveyance, transfer,*
36 *distribution, deposit, advance, loan, forbearance, subscription,*
37 *pledge or rendering of money, services or anything else of value,*
38 *unless consideration of equal or greater value is received. The*
39 *term does not include:*

40 (1) *Any political contribution of money or services related*
41 *to a political campaign.*



1 (2) *Any commercially reasonable loan made in the ordinary*
2 *course of business.*

3 (3) *Anything of value provided for an educational or*
4 *informational meeting, event or trip.*

5 (4) *Any ceremonial gift received for a birthday, wedding,*
6 *anniversary, holiday or other ceremonial occasion from a donor*
7 *who is not an interested person.*

8 (5) *Anything of value received from a person who is:*

9 (I) *Related to the Attorney General, or to the spouse or*
10 *domestic partner of the Attorney General, by blood, adoption,*
11 *marriage or domestic partnership within the third degree of*
12 *consanguinity or affinity; or*

13 (II) *A member of the Attorney General's household.*

14 (d) *"Interested person" means a person who has a substantial*
15 *interest in the prosecutorial, administrative or political action of*
16 *the Attorney General. The term includes, without limitation, a*
17 *group of interested persons acting in concert, regardless of*
18 *whether formally organized.*

19 (e) *"Member of the Attorney General's household" means:*

20 (1) *The spouse or domestic partner of the Attorney*
21 *General;*

22 (2) *A person who is related to the Attorney General, or to*
23 *the spouse or domestic partner of the Attorney General, by blood,*
24 *adoption, marriage or domestic partnership within the third*
25 *degree of consanguinity or affinity and who lives in the same*
26 *home or dwelling as the Attorney General; or*

27 (3) *A person, regardless of whether a relative of the*
28 *Attorney General or the spouse or domestic partner of the*
29 *Attorney General, who:*

30 (I) *Lives in the same home or dwelling as the Attorney*
31 *General and who is dependent on and receiving substantial*
32 *support from the Attorney General;*

33 (II) *Does not live in the same home or dwelling as the*
34 *Attorney General but who is dependent on and receiving*
35 *substantial support from the Attorney General; or*

36 (III) *Lived in the same home or dwelling as the Attorney*
37 *General for 6 months or more during the year immediately*
38 *preceding the date of any provision or transfer of anything of*
39 *value to the Attorney General and who was dependent on and*
40 *receiving substantial support from the Attorney General during*
41 *that period.*

42 **Sec. 2.** NRS 281A.400 is hereby amended to read as follows:

43 281A.400 A code of ethical standards is hereby established to
44 govern the conduct of public officers and employees:



1 1. ~~FA~~ *In addition to the provisions of section 1 of this act, a*
2 public officer or employee shall not seek or accept any gift, service,
3 favor, employment, engagement, emolument or economic
4 opportunity which would tend improperly to influence a reasonable
5 person in the public officer's or employee's position to depart from
6 the faithful and impartial discharge of the public officer's or
7 employee's public duties.

8 2. A public officer or employee shall not use the public
9 officer's or employee's position in government to secure or grant
10 unwarranted privileges, preferences, exemptions or advantages for
11 the public officer or employee, any business entity in which the
12 public officer or employee has a significant pecuniary interest, or
13 any person to whom the public officer or employee has a
14 commitment in a private capacity to the interests of that person. As
15 used in this subsection, "unwarranted" means without justification
16 or adequate reason.

17 3. A public officer or employee shall not participate as an agent
18 of government in the negotiation or execution of a contract between
19 the government and any business entity in which the public officer
20 or employee has a significant pecuniary interest.

21 4. A public officer or employee shall not accept any salary,
22 retainer, augmentation, expense allowance or other compensation
23 from any private source for the performance of the public officer's
24 or employee's duties as a public officer or employee.

25 5. If a public officer or employee acquires, through the public
26 officer's or employee's public duties or relationships, any
27 information which by law or practice is not at the time available to
28 people generally, the public officer or employee shall not use the
29 information to further a significant pecuniary interest of the public
30 officer or employee or any other person or business entity.

31 6. A public officer or employee shall not suppress any
32 governmental report or other official document because it might
33 tend to affect unfavorably a significant pecuniary interest of the
34 public officer or employee.

35 7. Except for State Legislators who are subject to the
36 restrictions set forth in subsection 8, a public officer or employee
37 shall not use governmental time, property, equipment or other
38 facility to benefit a significant personal or pecuniary interest of the
39 public officer or employee. This subsection does not prohibit:

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

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



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

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

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

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

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

10 ➤ If a governmental agency incurs a cost as a result of a use that is
11 authorized pursuant to this subsection or would ordinarily charge a
12 member of the general public for the use, the public officer or
13 employee shall promptly reimburse the cost or pay the charge to the
14 governmental agency.

15 8. A State Legislator shall not:

16 (a) Use governmental time, property, equipment or other facility
17 for a nongovernmental purpose or for the private benefit of the State
18 Legislator or any other person. This paragraph does not prohibit:

19 (1) A limited use of state property and resources for personal
20 purposes if:

21 (I) The use does not interfere with the performance of the
22 State Legislator's public duties;

23 (II) The cost or value related to the use is nominal; and

24 (III) The use does not create the appearance of
25 impropriety;

26 (2) The use of mailing lists, computer data or other
27 information lawfully obtained from a governmental agency which is
28 available to members of the general public for nongovernmental
29 purposes; or

30 (3) The use of telephones or other means of communication
31 if there is not a special charge for that use.

32 (b) Require or authorize a legislative employee, while on duty,
33 to perform personal services or assist in a private activity, except:

34 (1) In unusual and infrequent situations where the
35 employee's service is reasonably necessary to permit the State
36 Legislator or legislative employee to perform that person's official
37 duties; or

38 (2) Where such service has otherwise been established as
39 legislative policy.

40 9. A public officer or employee shall not attempt to benefit a
41 significant personal or pecuniary interest of the public officer or
42 employee through the influence of a subordinate.

43 10. A public officer or employee shall not seek other
44 employment or contracts through the use of the public officer's or
45 employee's official position.



1 **Sec. 3.** This act becomes effective upon passage and approval.

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* S B 3 0 *

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:

1 Under the Nevada Constitution, the legislative House of which a Legislator is a
2 member has exclusive jurisdiction over discipline of its members. (Nev. Const. Art.
3 4, § 6) In 2009, the Nevada Supreme Court held that under the constitutional
4 doctrine of separation of powers, the House of which a Legislator is a member is
5 the only governmental entity that is authorized to sanction the Legislator for
6 conduct within the sphere of legitimate legislative activity, such as voting or
7 abstention on legislation and, by extension, disclosure of conflicts of interest.
8 Moreover, the Court held that the Legislature cannot delegate its authority to
9 discipline state legislators for conduct within the sphere of legitimate legislative
10 activity to another branch of government. (*Comm’n on Ethics v. Hardy*, 125 Nev.
11 285, 294-96 & n.9 (2009)) Existing law sets forth a nonexhaustive list of actions by
12 a Legislator that are considered within the sphere of legitimate legislative activity
13 based on long-standing case law interpreting and applying the constitutional
14 doctrines of separation of powers and legislative privilege and immunity under the
15 Speech or Debate Clause of Section 6 of Article I of the United States Constitution.
16 (NRS 41.071)

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



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

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

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

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

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

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

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

3 281A.020 1. It is hereby declared to be the public policy of
4 this State that:

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

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

11 2. The Legislature finds and declares that:

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



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

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

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

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

23 281A.080 1. The making of a "decision" is the exercise of
24 governmental power to adopt laws, regulations or standards, render
25 quasi-judicial decisions, establish executive policy or determine
26 questions involving substantial discretion.

27 2. The term does not include:

28 (a) The functions of the judiciary.

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

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

33 281A.160 1. "Public officer" means a person who is:

34 (a) Elected or appointed to a position which:

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

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

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

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

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



- 1 (b) The expenditure of public money; and
2 (c) The administration of laws and rules of the State or any
3 county, city or other political subdivision.
4 3. "Public officer" does not include:
5 (a) Any justice, judge or other officer of the court system;
6 (b) Any member of a board, commission or other body whose
7 function is advisory;
8 (c) Any member of a special district whose official duties do not
9 include the formulation of a budget for the district or the
10 authorization of the expenditure of the district's money; ~~for~~
11 (d) A county health officer appointed pursuant to NRS 439.290
12 ~~for~~; or
13 (e) *A State Legislator.*
14 4. "Public office" does not include an office held by:
15 (a) Any justice, judge or other officer of the court system;
16 (b) Any member of a board, commission or other body whose
17 function is advisory;
18 (c) Any member of a special district whose official duties do not
19 include the formulation of a budget for the district or the
20 authorization of the expenditure of the district's money; ~~for~~
21 (d) A county health officer appointed pursuant to NRS 439.290
22 ~~for~~; or
23 (e) *A State Legislator.*
24 **Sec. 4.** NRS 281A.200 is hereby amended to read as follows:
25 281A.200 1. The Commission on Ethics, consisting of ~~eight~~
26 *five* members, is hereby created.
27 2. ~~The Legislative Commission shall appoint to the~~
28 ~~Commission four residents of the State, at least two of whom must~~
29 ~~be former public officers or employees, and at least one of whom~~
30 ~~must be an attorney licensed to practice law in this State.~~
31 ~~—3.~~ The Governor shall appoint to the Commission ~~four~~ *five*
32 residents of the State, at least two of whom must be former public
33 officers or employees, and at least ~~one~~ *two* of whom must be ~~an~~
34 ~~attorney~~ *attorneys* licensed to practice law in this State.
35 ~~4.~~ 3. Not more than ~~four~~ *three* members of the Commission
36 may be members of the same political party. Not more than ~~four~~
37 *three* members of the Commission may be residents of the same
38 county.
39 ~~5.~~ 4. None of the members of the Commission may, while
40 the member is serving on the Commission:
41 (a) Hold another public office;
42 (b) Be actively involved in the work of any political party or
43 political campaign; or



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

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

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

9 (I) The appropriation of public money;

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

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

13 ~~[6-]~~ 5. After the initial terms, the terms of the members are 4
14 years. Any vacancy in the membership must be filled by the
15 appropriate appointing authority for the unexpired term. Each
16 member may serve no more than two consecutive full terms.

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

18 281A.270 1. Each county whose population is 10,000 or
19 more and each city whose population is 15,000 or more and that is
20 located within such a county shall pay an assessment for the costs
21 incurred by the Commission each biennium in carrying out its
22 functions pursuant to this chapter. The total amount of money to be
23 derived from assessments paid pursuant to this subsection for a
24 biennium must be determined by the Legislature in the legislatively
25 approved budget of the Commission for that biennium. The
26 assessments must be apportioned among each such city and county
27 based on the proportion that the total population of the city or the
28 total population of the unincorporated area of the county bears to the
29 total population of all such cities and the unincorporated areas of all
30 such counties in this State.

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

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



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

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

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

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

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

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

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

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

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

33 281A.400 A code of ethical standards is hereby established to
34 govern the conduct of public officers and employees:

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

41 2. A public officer or employee shall not use the public
42 officer's or employee's position in government to secure or grant
43 unwarranted privileges, preferences, exemptions or advantages for
44 the public officer or employee, any business entity in which the
45 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. ~~[A 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.]~~ 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.]~~ 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:



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

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

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

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

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

18 **Sec. 8.** NRS 281A.420 is hereby amended to read as follows:

19 281A.420 1. Except as otherwise provided in this section, a
20 public officer or employee shall not approve, disapprove, vote,
21 abstain from voting or otherwise act upon a matter:

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

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

26 (c) Which would reasonably be affected by the public officer's
27 or employee's commitment in a private capacity to the interests of
28 another person,

29 ↪ without disclosing information concerning the gift or loan,
30 significant pecuniary interest or commitment in a private capacity to
31 the interests of the person that is sufficient to inform the public of
32 the potential effect of the action or abstention upon the person who
33 provided the gift or loan, upon the public officer's or employee's
34 significant pecuniary interest, or upon the person to whom the
35 public officer or employee has a commitment in a private capacity.
36 Such a disclosure must be made at the time the matter is considered.
37 If the public officer or employee is a member of a body which
38 makes decisions, the public officer or employee shall make the
39 disclosure in public to the chair and other members of the body. If
40 the public officer or employee is not a member of such a body and
41 holds an appointive office, the public officer or employee shall
42 make the disclosure to the supervisory head of the public officer's or
43 employee's organization or, if the public officer holds an elective
44 office, to the general public in the area from which the public officer
45 is elected.



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

3 (a) Any campaign contributions that the public officer reported
4 in a timely manner pursuant to NRS 294A.120 or 294A.125; or

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

7 3. Except as otherwise provided in this section, in addition to
8 the requirements of subsection 1, a public officer shall not vote upon
9 or advocate the passage or failure of, but may otherwise participate
10 in the consideration of, a matter with respect to which the
11 independence of judgment of a reasonable person in the public
12 officer's situation would be materially affected by:

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

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

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

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

18 (a) It must be presumed that the independence of judgment of a
19 reasonable person in the public officer's situation would not be
20 materially affected by the public officer's acceptance of a gift or
21 loan, significant pecuniary interest or commitment in a private
22 capacity to the interests of another person where the resulting
23 benefit or detriment accruing to the public officer, or if the public
24 officer has a commitment in a private capacity to the interests of
25 another person, accruing to the other person, is not greater than that
26 accruing to any other member of any general business, profession,
27 occupation or group that is affected by the matter. The presumption
28 set forth in this paragraph does not affect the applicability of the
29 requirements set forth in subsection 1 relating to the disclosure of
30 the acceptance of a gift or loan, significant pecuniary interest or
31 commitment in a private capacity to the interests of another person.

32 (b) The Commission must give appropriate weight and proper
33 deference to the public policy of this State which favors the right of
34 a public officer to perform the duties for which the public officer
35 was elected or appointed and to vote or otherwise act upon a matter,
36 provided the public officer has properly disclosed the public
37 officer's acceptance of a gift or loan, significant pecuniary interest
38 or commitment in a private capacity to the interests of another
39 person in the manner required by subsection 1. Because abstention
40 by a public officer disrupts the normal course of representative
41 government and deprives the public and the public officer's
42 constituents of a voice in governmental affairs, the provisions of this
43 section are intended to require abstention only in clear cases where
44 the independence of judgment of a reasonable person in the public
45 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 ~~[7. 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.



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

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

9 5. Notwithstanding any other provision of this chapter, any act
10 or failure to act by a public officer or employee or former public
11 officer or employee relating to this chapter is not a willful violation
12 of this chapter if the public officer or employee establishes by
13 sufficient evidence that:

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

17 (b) The advice of the legal counsel was:

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

20 (2) Based on a reasonable legal determination by the legal
21 counsel under the circumstances when the advice was given that the
22 act or failure to act by the public officer or employee would not be
23 contrary to any prior published opinion issued by the Commission
24 which was publicly available on the Internet website of the
25 Commission.

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

31 7. The provisions of this chapter do not abrogate or decrease
32 the effect of the provisions of the Nevada Revised Statutes which
33 define crimes or prescribe punishments with respect to the conduct
34 of public officers or employees. If the Commission finds that a
35 public officer or employee has committed a willful violation of this
36 chapter which it believes may also constitute a criminal offense, the
37 Commission shall refer the matter to the Attorney General or the
38 district attorney, as appropriate, for a determination of whether a
39 crime has been committed that warrants prosecution.

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

43 9. A finding by the Commission that a public officer or
44 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.



SENATE BILL NO. 84—COMMITTEE ON
LEGISLATIVE OPERATIONS AND ELECTIONS

(ON BEHALF OF THE COMMISSION ON ETHICS)

PREFILED NOVEMBER 17, 2016

Referred to Committee on Legislative Operations and Elections

SUMMARY—Makes various changes relating to ethics in government. (BDR 23-250)

FISCAL NOTE: Effect on Local Government: No.
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 certain procedures of the Commission on Ethics and the remedial authority of the Commission; designating certain persons as public officers for the purposes of the Nevada Ethics in Government Law; revising the code of ethical standards applicable to public officers and employees; providing for the execution and filing by a public officer of a single acknowledgment of statutory ethical standards for all public offices held concurrently by the officer; revising provisions relating to the employment of former public officers and employees; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law permits a public officer or employee, a member of the public, a
2 specialized or local ethics committee, or the Commission on Ethics itself to request
3 or initiate an opinion from the Commission interpreting the ethical standards of the
4 Nevada Ethics in Government Law and applying those standards to a given set of
5 facts. Except for a request made by the affected public officer or employee, the
6 Executive Director of the Commission is required to conduct an investigation and
7 make a recommendation to an investigatory panel, consisting of two members of
8 the Commission, about whether there is just and sufficient cause for the
9 Commission to render an opinion in the matter. In the same section of statute,
10 existing law sets forth rules of confidentiality for the proceedings and records of the
11 Commission, discovery and the conduct of a hearing by the Commission. (NRS
12 281A.440) **Sections 2-14, 21 and 30** of this bill generally reorganize the existing,



13 lengthy section and reenact those provisions in more condensed form, and they also
14 remove or repeal the provisions relating to the investigative panels. **Sections 17, 19,**
15 **28 and 29** of this bill make conforming changes. Pursuant to **section 4**, the
16 Executive Director is required to report the results of his or her investigation and
17 make a recommendation relating to just and sufficient cause directly to the
18 Commission. Other changes to the existing procedure include: (1) authorizing the
19 Executive Director to recommend the disposition of a matter without a hearing, in
20 **section 4**; and (2) revising provisions relating to the disclosure of the identity of the
21 requester of an opinion whose identity is otherwise confidential but who testifies at
22 a hearing, in **section 8**.

23 Existing law establishes the remedial options of the Commission if it finds a
24 violation of the Nevada Ethics in Government Law and also authorizes the
25 Commission to resolve matters before it by stipulation, agreed settlement, consent
26 order or default. (NRS 233B.121, 281A.135, 281A.480) **Sections 5, 12 and 13**
27 expand the remedies available to the Commission to include: (1) a requirement that
28 a public officer or employee complete a period of compliance, receive additional
29 training or issue a public apology; and (2) the issuance of a confidential letter of
30 caution or a public admonition, reprimand or censure. If the Commission believes
31 that a public officer or employee has engaged in conduct that is appropriately
32 addressed through additional training or other corrective action, **section 6** also
33 authorizes the Commission to defer further proceedings in the matter and enter a
34 deferral order, pursuant to which the Commission may dismiss the matter or take
35 other action if the public officer or employee complies with the terms of the order.
36 **Sections 22-24 and 26** of this bill make conforming changes.

37 Existing law generally defines a person as a public officer for the purposes of
38 the Nevada Ethics in Government Law if he or she holds a position that: (1)
39 involves the exercise of a public power, trust or duty; and (2) is established by the
40 Nevada Constitution or any provision of statute, charter or ordinance. (NRS
41 281A.160) Certain additional persons are designated as public officers
42 notwithstanding the fact that their positions are not so established. (NRS 281A.182)
43 **Section 16** of this bill adds to the list of persons so designated any person whose
44 position is not otherwise excluded from the scope of the statutory definition of
45 "public officer," whose compensation is paid with public money and whose duties
46 involve the exercise of a public power, trust or duty.

47 **Section 20** of this bill revises the existing code of ethical standards applicable
48 to the conduct of public officers and employees. (NRS 281A.400) Except for
49 conduct for which a complaint may be filed with the United States Equal
50 Employment Opportunity Commission or the Nevada Equal Rights Commission,
51 **section 20** makes it a violation of the standards for a public officer or employee to
52 use his or her position to coerce, harass, retaliate against or punish any other person
53 or business entity for a purpose inconsistent with the proper performance of the
54 public officer's or employee's public duties. Finally, **section 20** prohibits a public
55 officer or employee from engaging in any other conduct that is contrary to the
56 public policies underlying the Nevada Ethics in Government Law, as those policies
57 are expressed in statute. (NRS 281A.020)

58 Existing law requires each elected and appointed public officer to execute and
59 file with the Commission a written acknowledgment of the officer's understanding
60 of the statutory ethical standards applicable to him or her, and the officer's
61 obligation to become familiar with any amendments to those standards. A public
62 officer is required to execute and file the acknowledgment for each office,
63 including each appointive office, held by the officer. (NRS 281A.500) **Section 25**
64 of this bill provides that a public officer who executes and files the
65 acknowledgment for one office as required by law thereby satisfies the execution
66 and filing requirements for any other office held concurrently by him or her.



67 Under existing law, various public officers and employees are subject to a
68 "cooling-off" period after the termination of their public service or employment,
69 during which they are precluded from soliciting or accepting certain kinds of
70 employment. A similar "cooling-off period" exists for a former public officer's or
71 employee's representation or counseling of a private person on any issue which was
72 under consideration by the agency in which the officer or employee served. The
73 Commission is authorized to grant relief from the application of these provisions in
74 specified circumstances. (NRS 281A.410, 281A.550) **Section 27** of this bill: (1)
75 clarifies that a grant of relief from the application of the cooling-off provisions as
76 they relate to employment does not affect the ban on representation or counseling;
77 and (2) provides that the ban on employment extends to circumstances in which any
78 agreement for personal services exists or is contemplated.

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

- 1 **Section 1.** Chapter 281A of NRS is hereby amended by
2 adding thereto the provisions set forth as sections 2 to 14, inclusive,
3 of this act.
- 4 **Sec. 2.** *"Deferral order" means an order entered by the*
5 *Commission pursuant to section 6 of this act.*
- 6 **Sec. 3.** *If a person who requests an opinion pursuant to*
7 *subsection 1 or 2 of NRS 281A.440 does not:*
- 8 1. *Submit all necessary information to the Commission; and*
9 2. *Declare by oath or affirmation that the person will testify*
10 *truthfully,*
11 *↳ the Commission may decline to render an opinion.*
- 12 **Sec. 4.** 1. *Except as otherwise provided in this subsection, if*
13 *a request for an opinion is submitted to or initiated by the*
14 *Commission pursuant to subsection 2 of NRS 281A.440, the*
15 *Executive Director shall complete the investigation required by*
16 *NRS 281A.440 and present a written recommendation to the*
17 *Commission within 70 days after the determination by the*
18 *Commission that it has jurisdiction concerning the request or after*
19 *the motion of the Commission initiating the request, as applicable.*
20 *The public officer or employee who is the subject of the request*
21 *may waive this time limit.*
- 22 2. *The recommendation must:*
- 23 (a) *State whether the Executive Director believes that there is*
24 *just and sufficient cause for the Commission to render an opinion*
25 *in the matter;*
- 26 (b) *If the Executive Director believes that a disposition of the*
27 *matter without a hearing is appropriate under the circumstances,*
28 *include any suggested disposition that is consistent with the*
29 *provisions of this chapter; and*



1 (c) Set forth the factual and legal basis for the
2 recommendation.

3 **Sec. 5. 1.** Except as otherwise provided in this subsection, if
4 a request for an opinion is submitted to or initiated by the
5 Commission pursuant to subsection 2 of NRS 281A.440, the
6 Commission shall determine whether there is just and sufficient
7 cause to render an opinion in the matter within 15 days after the
8 Executive Director has provided the recommendation required by
9 section 4 of this act, and shall cause a record of its proceedings to
10 be kept. The public officer or employee who is the subject of the
11 request may waive this time limit. The Commission shall not
12 determine that there is just and sufficient cause to render an
13 opinion unless the Executive Director has provided the public
14 officer or employee an opportunity to respond to the allegations as
15 required by NRS 281A.440.

16 2. If the Commission determines that there is not just and
17 sufficient cause to render an opinion in the matter, it shall dismiss
18 the matter with or without prejudice and with or without issuing a
19 letter of caution to the public officer or employee. A letter of
20 caution is confidential, but the Commission may consider a letter
21 of caution in deciding the appropriate action to be taken on any
22 subsequent request for an opinion involving the public officer or
23 employee, unless the letter is not relevant to the issues presented
24 by the subsequent request.

25 3. If the Commission determines that there is just and
26 sufficient cause to render an opinion in the matter but believes
27 that the conduct at issue is more appropriately addressed through
28 additional training or other corrective action, it may enter a
29 deferral order.

30 4. If the Commission determines that there is just and
31 sufficient cause to render an opinion in the matter, the
32 Commission shall hold a hearing and render its opinion within 60
33 days after the date of the determination unless the public officer or
34 employee waives this time limit or a deferral order is entered by
35 the Commission.

36 **Sec. 6. 1.** If a request for an opinion is submitted to or
37 initiated by the Commission pursuant to subsection 2 of NRS
38 281A.440, the Commission determines that there is just and
39 sufficient cause to render an opinion and the Commission
40 reasonably believes that a public officer or employee has engaged
41 in conduct that is appropriately addressed through additional
42 training or other corrective action, the Commission may defer
43 further proceedings in the matter and enter a deferral order.

44 2. A deferral order is confidential and must:



1 (a) Specify the training or other corrective action to be
2 completed by or imposed upon the public officer or employee;

3 (b) Specify any penalty, consistent with the provisions of this
4 chapter, to be imposed upon the public officer or employee; and

5 (c) Provide that the Commission may vacate the order and
6 proceed with a hearing if the Commission finds that the public
7 officer or employee has failed to comply with any condition of the
8 order.

9 3. The imposition of training or other corrective action and
10 any penalty described in a deferral order is without prejudice to
11 any other disposition of the matter, consistent with this chapter,
12 that may be ordered by the Commission if it vacates the order,
13 proceeds with a hearing and finds that the public officer or
14 employee has violated any provision of this chapter.

15 4. The Executive Director shall monitor the compliance of
16 the public officer or employee who is the subject of a deferral
17 order and may require the public officer or employee to document
18 his or her compliance with the order. The Commission shall give
19 the public officer or employee written notice of any alleged failure
20 to comply with the order and shall allow the public officer or
21 employee not less than 15 days to respond to such a notice.

22 5. If the public officer or employee who is the subject of a
23 deferral order complies in a satisfactory manner with the order,
24 the Commission may dismiss the request for an opinion or take
25 any other action it deems appropriate, consistent with the
26 provisions of this chapter.

27 **Sec. 7.** Each request for an opinion that a public officer or
28 employee submits to the Commission pursuant to subsection 1 of
29 NRS 281A.440, each opinion rendered by the Commission in
30 response to the request and any motion, determination, evidence
31 or record of a hearing relating to the request are confidential
32 unless the public officer or employee who requested the opinion:

33 1. Acts in contravention of the opinion, in which case the
34 Commission may disclose the request for the opinion, the contents
35 of the opinion and any motion, determination, evidence or record
36 of a hearing related to the request;

37 2. Discloses the request for the opinion, the contents of the
38 opinion, or any motion, determination, evidence or record of a
39 hearing related to the request in any manner except to:

40 (a) The public body, agency or employer of the public officer
41 or employee; or

42 (b) A person to whom the Commission authorizes the current
43 or former public officer or employee to make such a disclosure; or



1 3. *Requests the Commission to disclose the request, the*
2 *contents of the opinion, or any motion, determination, evidence or*
3 *record of a hearing related to the request.*

4 **Sec. 8.** *1. Except as otherwise provided in this section and*
5 *section 9 of this act, all information, communications, records,*
6 *documents or other material in the possession of the Commission*
7 *or its staff that is related to a request for an opinion regarding a*
8 *public officer or employee submitted to or initiated by the*
9 *Commission pursuant to subsection 2 of NRS 281A.440 are*
10 *confidential and not public records pursuant to chapter 239 of*
11 *NRS until:*

12 *(a) The Commission determines that there is just and*
13 *sufficient cause to render an opinion in the matter and serves*
14 *written notice of its determination on the public officer or*
15 *employee who is the subject of the request; or*

16 *(b) The public officer or employee who is the subject of the*
17 *request authorizes the Commission in writing to make the*
18 *information, communications, records, documents or other*
19 *material which are related to the request publicly available,*
20 *↪ whichever occurs first.*

21 2. *Except as otherwise provided in subsection 3, if a person*
22 *who submits a request for an opinion pursuant to paragraph (b) of*
23 *subsection 2 of NRS 281A.440 asks that his or her identity as the*
24 *requester be kept confidential, the Commission:*

25 *(a) Shall keep the identity of the requester confidential if he or*
26 *she is a public officer or employee who works for the same public*
27 *body, agency or employer as the public officer or employee who is*
28 *the subject of the request.*

29 *(b) May keep the identity of the requester confidential if he or*
30 *she offers sufficient facts and circumstances showing a reasonable*
31 *likelihood that disclosure of his or her identity will subject the*
32 *requester or a member of his or her household to a bona fide*
33 *threat of physical force or violence.*

34 3. *If the Commission keeps the identity of the requester*
35 *confidential, the Commission shall not render an opinion in the*
36 *matter unless there is sufficient evidence without the testimony of*
37 *the requester to consider the propriety of the conduct of the public*
38 *officer or employee who is the subject of the request. If the*
39 *Commission intends to present the testimony of the requester as*
40 *evidence for consideration in rendering an opinion in the matter*
41 *and the public officer or employee who is the subject of the request*
42 *submits a written discovery request to the Commission pursuant to*
43 *section 9 of this act, the Commission shall disclose the name of the*
44 *requester only as a proposed witness within a reasonable time*
45 *before the hearing on the matter.*



1 **Sec. 9. 1.** *Except as otherwise provided in this section, the*
2 *investigative file related to a request for an opinion regarding a*
3 *public officer or employee is confidential.*

4 2. *At any time after being served with written notice of the*
5 *determination of the Commission regarding the existence of just*
6 *and sufficient cause for the Commission to render an opinion in*
7 *the matter, the public officer or employee who is the subject of the*
8 *request for an opinion may submit a written discovery request to*
9 *the Commission for a list of proposed witnesses and a copy of any*
10 *portion of the investigative file that the Commission intends to*
11 *present for consideration as evidence in rendering an opinion in*
12 *the matter.*

13 3. *Any portion of the investigative file which the Commission*
14 *presents as evidence in rendering an opinion in the matter*
15 *becomes a public record and must be open for inspection pursuant*
16 *to NRS 239.010.*

17 4. *For the purposes of this section, the investigative file*
18 *includes, without limitation, any information provided to or*
19 *obtained by the Commission or its staff through any form of*
20 *communication during the course of an investigation and any*
21 *records, documents or other material created or maintained*
22 *during the course of an investigation which relate to the public*
23 *officer or employee who is the subject of the request for an*
24 *opinion, including, without limitation, a transcript, regardless of*
25 *whether such information, records, documents or other material*
26 *are obtained pursuant to a subpoena.*

27 **Sec. 10. 1.** *Whenever the Commission holds a hearing to*
28 *receive evidence concerning the propriety of the conduct of a*
29 *public officer or employee, the Commission shall:*

30 (a) *Notify the public officer or employee of the date, time and*
31 *place of the hearing;*

32 (b) *Allow the public officer or employee to be represented by*
33 *counsel; and*

34 (c) *Allow the public officer or employee to hear the evidence*
35 *presented to the Commission and to respond and present evidence*
36 *on his or her own behalf.*

37 ↳ *Unless the public officer or employee agrees to a shorter time,*
38 *the hearing must be held not less than 10 days after the notice is*
39 *given.*

40 2. *If a person who is not a party to a hearing before the*
41 *Commission, including, without limitation, a person who has*
42 *requested an opinion pursuant to paragraph (a) or (b) of*
43 *subsection 2 of NRS 281A.440, wishes to ask a question of a*
44 *witness at the hearing, the person must submit the question to the*
45 *Executive Director in writing. The Executive Director may submit*



1 *the question to the Commission if the Executive Director deems*
2 *the question relevant and appropriate. This subsection does not*
3 *require the Commission or the Executive Director to ask any*
4 *question submitted by a person who is not a party to the*
5 *proceeding.*

6 *3. For good cause shown, the Commission may take*
7 *testimony from a person by telephone or video conference.*

8 **Sec. 11.** *Any meeting or hearing held by the Commission to*
9 *receive information or evidence concerning the propriety of the*
10 *conduct of a public officer or employee and the deliberations of*
11 *the Commission on such information or evidence, including,*
12 *without limitation, any proceedings of the Commission conducted*
13 *pursuant to subsection 1 of section 5 of this act, are not subject to*
14 *the provisions of chapter 241 of NRS.*

15 **Sec. 12.** *1. Each opinion of the Commission issued after a*
16 *hearing must include findings of fact and conclusions of law.*

17 *2. If and to the extent that the Commission determines that a*
18 *violation of this chapter:*

19 *(a) Has not been proven, the Commission shall dismiss the*
20 *matter, with or without a letter of caution as described in section 5*
21 *of this act.*

22 *(b) Has been proven, the Commission may take any action*
23 *authorized by this chapter.*

24 **Sec. 13.** *1. Except as otherwise provided in this section, as*
25 *a condition of a deferral order or based on a finding of a violation*
26 *of this chapter following a hearing, the Commission may, in*
27 *addition to any other penalty provided by law:*

28 *(a) Require a public officer or employee to:*

29 *(1) Comply in all respects with the provisions of this*
30 *chapter for a specified period without being the subject of another*
31 *request for an opinion:*

32 *(I) That arises from an alleged violation of this chapter*
33 *which is alleged to have occurred during that period; and*

34 *(II) As to which the Commission determines that there is*
35 *just and sufficient cause to hold a hearing.*

36 *(2) Attend and complete training.*

37 *(3) Follow a remedial course of action.*

38 *(4) Issue a public apology.*

39 *(5) Comply with conditions or limitations on future*
40 *conduct.*

41 *(b) Publicly admonish, reprimand or censure a public officer*
42 *or employee.*

43 *(c) Take any combination of such actions or any other*
44 *reasonable action that the Commission determines will remedy the*
45 *violation or deter similar violations.*



1 **2. The Commission may publicly:**

2 (a) *Admonish a public officer or employee if the Commission*
3 *determines that the public officer or employee has violated any*
4 *provision of this chapter, but the violation is not willful. An*
5 *admonition is a written expression of disapproval of the conduct of*
6 *the public officer or employee.*

7 (b) *Reprimand a public officer or employee if the Commission*
8 *determines that the public officer or employee has willfully*
9 *violated any provision of this chapter. A reprimand is a severe*
10 *written reproof for the conduct of the public officer or employee.*

11 (c) *Censure a public officer or employee if the Commission*
12 *determines that the public officer or employee has willfully*
13 *violated any provision of this chapter and no mitigating factors are*
14 *present. A censure is a formal written condemnation of the*
15 *conduct of the public officer or employee.*

16 **3. Any action taken by the Commission pursuant to this**
17 *section is a final decision for the purposes of judicial review*
18 *pursuant to NRS 233B.130.*

19 **Sec. 14.** *For the purposes of NRS 41.032, the members of the*
20 *Commission and employees of the Commission shall be deemed to*
21 *be exercising or performing a discretionary function or duty in*
22 *taking any action related to the rendering of an opinion.*

23 **Sec. 15.** NRS 281A.030 is hereby amended to read as follows:
24 281A.030 As used in this chapter, unless the context otherwise
25 requires, the words and terms defined in NRS 281A.035 to
26 281A.170, inclusive, *and section 2 of this act* have the meanings
27 ascribed to them in those sections.

28 **Sec. 16.** NRS 281A.182 is hereby amended to read as follows:
29 281A.182 1. Any person who serves in one of the following
30 positions is designated as a public officer for the purposes of this
31 chapter:

32 (a) A president of a university, state college or community
33 college within the Nevada System of Higher Education.

34 (b) A superintendent of a county school district.

35 (c) A county manager or a city manager.

36 ***(d) The holder of any other position not excluded by***
37 *subsection 4 of NRS 281A.160 whose compensation is paid with*
38 *public money and whose duties involve the exercise of a public*
39 *power, trust or duty as defined in subsection 2 of NRS 281A.160.*

40 2. This section applies to such a person regardless of whether
41 the person serves in the position:

42 (a) By appointment, contract or employment;

43 (b) With or without compensation; or

44 (c) On a temporary, interim or acting basis.



1 **Sec. 17.** NRS 281A.240 is hereby amended to read as follows:
2 281A.240 1. In addition to any other duties imposed upon the
3 Executive Director, the Executive Director shall:

4 (a) Maintain complete and accurate records of all transactions
5 and proceedings of the Commission.

6 (b) Receive requests for opinions pursuant to NRS 281A.440.

7 (c) Gather information and conduct investigations regarding
8 requests for opinions received by the Commission and submit
9 recommendations to the ~~investigatory panel appointed pursuant to~~
10 ~~NRS 281A.220~~ **Commission** regarding whether there is just and
11 sufficient cause to render an opinion in response to a particular
12 request.

13 (d) Recommend to the Commission any regulations or
14 legislation that the Executive Director considers desirable or
15 necessary to improve the operation of the Commission and maintain
16 high standards of ethical conduct in government.

17 (e) Upon the request of any public officer or the employer of a
18 public employee, conduct training on the requirements of this
19 chapter, the rules and regulations adopted by the Commission and
20 previous opinions of the Commission. In any such training, the
21 Executive Director shall emphasize that the Executive Director is
22 not a member of the Commission and that only the Commission
23 may issue opinions concerning the application of the statutory
24 ethical standards to any given set of facts and circumstances. The
25 Commission may charge a reasonable fee to cover the costs of
26 training provided by the Executive Director pursuant to this
27 subsection.

28 (f) Perform such other duties, not inconsistent with law, as may
29 be required by the Commission.

30 2. The Executive Director shall, within the limits of legislative
31 appropriation, employ such persons as are necessary to carry out any
32 of the Executive Director's duties relating to:

33 (a) The administration of the affairs of the Commission; and

34 (b) The investigation of matters under the jurisdiction of the
35 Commission.

36 3. If the Executive Director is prohibited from acting on a
37 particular matter or is otherwise unable to act on a particular matter,
38 the Chair of the Commission shall designate a qualified person to
39 perform the duties of the Executive Director with regard to that
40 particular matter.

41 **Sec. 18.** NRS 281A.280 is hereby amended to read as follows:

42 281A.280 1. ~~[The]~~ **Except as otherwise provided in this**
43 **subsection, the** Commission has jurisdiction to investigate and take
44 appropriate action regarding an alleged violation of this chapter by a



1 public officer or employee or former public officer or employee in
2 any proceeding commenced by:

3 (a) The filing of a request for an opinion with the Commission;
4 or

5 (b) The Commission on its own motion,
6 ↪ within 2 years after the alleged violation or reasonable discovery
7 of the alleged violation. *The Commission does not have*
8 *jurisdiction regarding alleged conduct for which a complaint may*
9 *be filed with the United States Equal Employment Opportunity*
10 *Commission or the Nevada Equal Rights Commission.*

11 2. For the purposes of this section, a proceeding is commenced:

12 (a) On the date on which a request for an opinion is filed in the
13 proper form with the Commission in accordance with the
14 regulations of the Commission; or

15 (b) If the proceeding is commenced by the Commission on its
16 own motion, on the date on which the Commission serves the public
17 officer or employee or former public officer or employee with
18 notice of the proceeding in accordance with the regulations of the
19 Commission.

20 **Sec. 19.** NRS 281A.300 is hereby amended to read as follows:

21 281A.300 1. The Chair and Vice Chair of the Commission
22 may administer oaths.

23 2. The Commission, upon majority vote, may issue a subpoena
24 to compel the attendance of a witness and the production of books
25 and papers. Upon the request of the Executive Director or the public
26 officer or employee who is the subject of a request for an opinion,
27 the Chair or, in the Chair's absence, the Vice Chair, may issue a
28 subpoena to compel the attendance of a witness and the production
29 of books and papers. A public officer or employee who requests the
30 issuance of a subpoena pursuant to this subsection must serve the
31 subpoena in the manner provided in the Nevada Rules of Civil
32 Procedure for service of subpoenas in a civil action and must pay
33 the costs of such service.

34 3. Before issuing a subpoena to a public officer or employee
35 who is the subject of a request for an opinion to compel his or her
36 attendance as a witness or his or her production of books or papers,
37 the Executive Director shall submit a written request to the public
38 officer or employee requesting:

39 (a) The appearance of the public officer or employee as a
40 witness; or

41 (b) The production by the public officer or employee of any
42 books and papers relating to the request for an opinion.

43 4. Each written request submitted by the Executive Director
44 pursuant to subsection 3 must specify the time and place for the
45 attendance of the public officer or employee or the production of



1 any books and papers, and designate with certainty the books and
2 papers requested, if any. If the public officer or employee fails or
3 refuses to attend at the time and place specified or produce the
4 books and papers requested by the Executive Director within 5
5 business days after receipt of the request, the Chair may issue the
6 subpoena. Failure of the public officer or employee to comply with
7 the written request of the Executive Director shall be deemed a
8 waiver by the public officer or employee of the time set forth in
9 ~~subsections 4, 5 and 6 of NRS 281A.440.~~ *sections 4 and 5 of this*
10 *act.*

11 5. If any witness refuses to attend, testify or produce any books
12 and papers as required by the subpoena, the Chair of the
13 Commission may report to the district court by petition, setting forth
14 that:

15 (a) Due notice has been given of the time and place of
16 attendance of the witness or the production of the books and papers;

17 (b) The witness has been subpoenaed by the Commission
18 pursuant to this section; and

19 (c) The witness has failed or refused to attend or produce the
20 books and papers required by the subpoena before the Commission,
21 or has refused to answer questions propounded to the witness, and
22 asking for an order of the court compelling the witness to attend and
23 testify or produce the books and papers before the Commission.

24 6. Upon such a petition, the court shall enter an order directing
25 the witness to appear before the court at a time and place to be fixed
26 by the court in its order, the time to be not more than 10 days after
27 the date of the order, and then and there show cause why the witness
28 has not attended, testified or produced the books or papers before
29 the Commission. A certified copy of the order must be served upon
30 the witness.

31 7. If it appears to the court that the subpoena was regularly
32 issued by the Commission, the court shall enter an order that the
33 witness appear before the Commission, at the time and place fixed
34 in the order, and testify or produce the required books and papers.
35 Upon failure to obey the order, the witness must be dealt with as for
36 contempt of court.

37 **Sec. 20.** NRS 281A.400 is hereby amended to read as follows:

38 281A.400 A code of ethical standards is hereby established to
39 govern the conduct of public officers and employees:

40 1. A public officer or employee shall not seek or accept any
41 gift, service, favor, employment, engagement, emolument or
42 economic opportunity *for the public officer or employee or any*
43 *other person* which would tend improperly to influence a reasonable
44 person in the public officer's or employee's position to depart from



1 the faithful and impartial discharge of the public officer's or
2 employee's public duties.

3 2. A public officer or employee shall not use the public
4 officer's or employee's position in government to ~~secure~~:

5 (a) *Coerce, harass, retaliate against or punish any other*
6 *person or business entity for a purpose which is inconsistent with*
7 *the proper performance of the officer's or employee's public*
8 *duties; or*

9 (b) *Secure* or grant unwarranted privileges, preferences,
10 exemptions or advantages for the public officer or employee ~~any~~
11 *or any other person or* business entity. ~~in which the public officer~~
12 ~~or employee has a significant pecuniary interest, or any person to~~
13 ~~whom the public officer or employee has a commitment in a private~~
14 ~~capacity to the interests of that person.]~~ As used in this ~~subsection,~~
15 *paragraph*, "unwarranted" means without justification or adequate
16 reason.

17 3. A public officer or employee shall not participate as an agent
18 of government in the negotiation or execution of a contract between
19 the government and *the public officer or employee*, any business
20 entity in which the public officer or employee has a significant
21 pecuniary interest ~~or~~ *or any person to whom the public officer or*
22 *employee has a commitment in a private capacity.*

23 4. A public officer or employee shall not accept any salary,
24 retainer, augmentation, expense allowance or other compensation
25 from any private source, *for the public officer or employee or any*
26 *person to whom the public officer or employee has a commitment*
27 *in a private capacity*, for the performance of the public officer's or
28 employee's duties as a public officer or employee.

29 5. If a public officer or employee acquires, through the public
30 officer's or employee's public duties or relationships, any
31 information which by law or practice is not at the time available to
32 people generally, the public officer or employee shall not use the
33 information to further a significant pecuniary interest of the public
34 officer or employee or any other person or business entity.

35 6. A public officer or employee shall not suppress any
36 governmental report or other official document because it might
37 tend to affect unfavorably a significant pecuniary interest of the
38 public officer or employee ~~or~~ *or any person to whom the public*
39 *officer or employee has a commitment in a private capacity.*

40 7. Except for State Legislators who are subject to the
41 restrictions set forth in subsection 8, a public officer or employee
42 shall not use governmental time, property, equipment or other
43 facility to benefit a significant personal or pecuniary interest of the
44 public officer or employee ~~or~~ *or any person to whom the public*



1 *officer or employee has a commitment in a private capacity.* This
2 subsection does not prohibit:

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

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

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

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

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

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

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

18 ➤ If a governmental agency incurs a cost as a result of a use that is
19 authorized pursuant to this subsection or would ordinarily charge a
20 member of the general public for the use, the public officer or
21 employee shall promptly reimburse the cost or pay the charge to the
22 governmental agency.

23 8. A State Legislator shall not:

24 (a) Use governmental time, property, equipment or other facility
25 for a nongovernmental purpose or for the private benefit of the State
26 Legislator or any other person. This paragraph does not prohibit:

27 (1) A limited use of state property and resources for personal
28 purposes if:

29 (I) The use does not interfere with the performance of the
30 State Legislator's public duties;

31 (II) The cost or value related to the use is nominal; and

32 (III) The use does not create the appearance of
33 impropriety;

34 (2) The use of mailing lists, computer data or other
35 information lawfully obtained from a governmental agency which is
36 available to members of the general public for nongovernmental
37 purposes; or

38 (3) The use of telephones or other means of communication
39 if there is not a special charge for that use.

40 (b) Require or authorize a legislative employee, while on duty,
41 to perform personal services or assist in a private activity, except:

42 (1) In unusual and infrequent situations where the
43 employee's service is reasonably necessary to permit the State
44 Legislator or legislative employee to perform that person's official
45 duties; or



1 (2) Where such service has otherwise been established as
2 legislative policy.

3 9. A public officer or employee shall not attempt to benefit a
4 significant personal or pecuniary interest of the public officer or
5 employee *or any person to whom the public officer or employee*
6 *has a commitment in a private capacity* through the influence of a
7 subordinate.

8 10. A public officer or employee shall not seek other
9 employment or contracts *for the public officer or employee or any*
10 *person to whom the public officer or employee has a commitment*
11 *in a private capacity* through the use of the public officer's or
12 employee's official position.

13 *11. A public officer or employee shall not engage in any other*
14 *conduct that is contrary to the public policy of this State as*
15 *expressed in NRS 281A.020.*

16 *12. The conduct described in this section does not include*
17 *any conduct for which a complaint may be filed with the United*
18 *States Equal Employment Opportunity Commission or the Nevada*
19 *Equal Rights Commission.*

20 **Sec. 21.** NRS 281A.440 is hereby amended to read as follows:

21 281A.440 1. The Commission shall render an opinion
22 interpreting the statutory ethical standards and apply the standards to
23 a given set of facts and circumstances within 45 days after receiving
24 a request, on a form prescribed by the Commission, from a public
25 officer or employee who is seeking guidance on questions which
26 directly relate to the propriety of the requester's own past, present or
27 future conduct as a public officer or employee, unless the public
28 officer or employee waives the time limit. The public officer or
29 employee may also request the Commission to hold a public hearing
30 regarding the requested opinion. If a requested opinion relates to the
31 propriety of the requester's own present or future conduct, the
32 opinion of the Commission is:

33 (a) Binding upon the requester as to the requester's future
34 conduct; and

35 (b) Final and subject to judicial review pursuant to NRS
36 233B.130, except that a proceeding regarding this review must be
37 held in closed court without admittance of persons other than those
38 necessary to the proceeding, unless this right to confidential
39 proceedings is waived by the requester.

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

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

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



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

3 (2) All related evidence deemed necessary by the Executive
4 Director and the ~~[investigatory panel]~~ *Commission* to make a
5 determination of whether there is just and sufficient cause to render
6 an opinion in the matter.

7 (c) Upon the Commission's own motion regarding the propriety
8 of conduct by a public officer or employee. *Any meeting or hearing*
9 *held by the Commission relating to such a motion and the*
10 *deliberations of the Commission on the motion are not subject to*
11 *the provisions of chapter 241 of NRS.* The Commission shall not
12 initiate proceedings pursuant to this paragraph based solely upon an
13 anonymous complaint.

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

18 3. Within 45 days after receiving a request for an opinion
19 pursuant to paragraph (a) or (b) of subsection 2, the Commission
20 shall determine whether it has jurisdiction concerning the request,
21 unless the public officer or employee who is the subject of the
22 request waives this time limit. *Any meeting or hearing held by the*
23 *Commission to determine whether it has jurisdiction concerning*
24 *the request and the deliberations of the Commission relating to*
25 *that determination are not subject to the provisions of chapter 241*
26 *of NRS.* Upon a determination by the Commission that it has
27 jurisdiction concerning a request for an opinion pursuant to
28 paragraph (a) or (b) of subsection 2, or upon the motion of the
29 Commission initiating a request for an opinion pursuant to
30 paragraph (c) of subsection 2, as applicable, the Executive Director
31 shall investigate the facts and circumstances relating to the request
32 to determine whether there is just and sufficient cause for the
33 Commission to render an opinion in the matter. The Executive
34 Director shall notify the public officer or employee who is the
35 subject of the request and provide the public officer or employee an
36 opportunity to submit to the Executive Director a response to the
37 allegations against the public officer or employee within 30 days
38 after the date on which the public officer or employee received the
39 notice of the request. The purpose of the response is to provide the
40 Executive Director with any information relevant to the request
41 which the public officer or employee believes may assist the
42 Executive Director ~~[and the investigatory panel]~~ in conducting
43 the investigation. The public officer or employee is not required in
44 the response or in any proceeding before the ~~[investigatory panel]~~
45 *Commission conducted pursuant to subsection 1 of section 5 of*



1 *this act* to assert, claim or raise any objection or defense, in law or
2 fact, to the allegations against the public officer or employee and no
3 objection or defense, in law or fact, is waived, abandoned or barred
4 by the failure to assert, claim or raise it in the response or in any
5 proceeding *conducted* before the ~~investigatory panel~~.

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

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

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

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

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

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



1 ~~—— (1) The public body, agency or employer of the public officer~~
2 ~~or employee; or~~
3 ~~—— (2) A person to whom the Commission authorizes the current~~
4 ~~or former public officer or employee to make such a disclosure; or~~
5 ~~—— (c) Requests the Commission to disclose the request for the~~
6 ~~opinion, the contents of the opinion, or any motion, evidence or~~
7 ~~record of a hearing related thereto.~~
8 ~~—— 8. Except as otherwise provided in subsections 9 and 10, all~~
9 ~~information, communications, records, documents or other material~~
10 ~~in the possession of the Commission or its staff that is related to a~~
11 ~~request for an opinion regarding a public officer or employee~~
12 ~~submitted to or initiated by the Commission pursuant to subsection~~
13 ~~2, including, without limitation, the record of the proceedings of the~~
14 ~~investigatory panel made pursuant to subsection 5, are confidential~~
15 ~~and not public records pursuant to chapter 239 of NRS until:~~
16 ~~—— (a) The investigatory panel determines whether there is just and~~
17 ~~sufficient cause to render an opinion in the matter and serves written~~
18 ~~notice of such a determination on the public officer or employee~~
19 ~~who is the subject of the request for an opinion submitted or~~
20 ~~initiated pursuant to subsection 2; or~~
21 ~~—— (b) The public officer or employee who is the subject of a~~
22 ~~request for an opinion submitted or initiated pursuant to subsection~~
23 ~~2 authorizes the Commission in writing to make its information,~~
24 ~~communications, records, documents or other material which are~~
25 ~~related to the request publicly available;~~
26 ~~→ whichever occurs first.~~
27 ~~—— 9. Except as otherwise provided in this subsection, if a person~~
28 ~~who submits a request for an opinion pursuant to paragraph (b) of~~
29 ~~subsection 2 asks for the person's name to be kept confidential, the~~
30 ~~Commission:~~
31 ~~—— (a) Shall keep the person's name confidential if the person is a~~
32 ~~public officer or employee who works for the same public body,~~
33 ~~agency or employer as the public officer or employee who is the~~
34 ~~subject of the request.~~
35 ~~—— (b) May keep the person's name confidential if the person offers~~
36 ~~sufficient facts and circumstances showing a reasonable likelihood~~
37 ~~that disclosure of the person's name will subject the person or a~~
38 ~~member of the person's household to a bona fide threat of physical~~
39 ~~force or violence.~~
40 ~~→ If the Commission keeps the person's name confidential, the~~
41 ~~Commission shall not render an opinion in the matter unless there is~~
42 ~~sufficient evidence without the person's testimony to consider the~~
43 ~~propriety of the conduct of the public officer or employee who is~~
44 ~~the subject of the request. If the Commission intends to present the~~
45 ~~person's testimony for consideration as evidence in rendering an~~



1 ~~opinion in the matter, the Commission shall disclose the person's~~
2 ~~name within a reasonable time before the Commission's hearing on~~
3 ~~the matter.~~

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

18 ~~—11.— Whenever the Commission holds a hearing pursuant to this~~
19 ~~section, the Commission shall:~~

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

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

23 ~~—(c) Allow the person to hear the evidence presented to the~~
24 ~~Commission and to respond and present evidence on the person's~~
25 ~~own behalf.~~

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

28 ~~—12.— If a person who is not a party to a hearing before the~~
29 ~~Commission, including, without limitation, a person who has~~
30 ~~requested an opinion pursuant to paragraph (a) or (b) of subsection~~
31 ~~2, wishes to ask a question of a witness at the hearing, the person~~
32 ~~must submit the question to the Executive Director in writing. The~~
33 ~~Executive Director may submit the question to the Commission if~~
34 ~~the Executive Director deems the question relevant and appropriate.~~
35 ~~This subsection does not require the Commission to ask any~~
36 ~~question submitted by a person who is not a party to the proceeding.~~

37 ~~—13.— If a person who requests an opinion pursuant to subsection~~
38 ~~1 or 2 does not:~~

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

40 ~~—(b) Declare by oath or affirmation that the person will testify~~
41 ~~truthfully;~~

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

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



1 ~~—15. For the purposes of NRS 41.032, the members of the~~
2 ~~Commission and its employees shall be deemed to be exercising or~~
3 ~~performing a discretionary function or duty when taking an action~~
4 ~~related to the rendering of an opinion pursuant to this section.~~

5 ~~—16. A meeting or hearing that the Commission or the~~
6 ~~investigatory panel holds to receive information or evidence~~
7 ~~concerning the propriety of the conduct of a public officer or~~
8 ~~employee pursuant to this section and the deliberations of the~~
9 ~~Commission and the investigatory panel on such information or~~
10 ~~evidence are not subject to the provisions of chapter 241 of NRS.~~

11 ~~—17. For the purposes of this section, the investigative file which~~
12 ~~relates to a request for an opinion regarding a public officer or~~
13 ~~employee includes, without limitation, any information provided to~~
14 ~~or obtained by the Commission, its staff or an investigatory panel~~
15 ~~through any form of communication during the course of an~~
16 ~~investigation and any records, documents or other material created~~
17 ~~or maintained during the course of an investigation which relate to~~
18 ~~the public officer or employee who is the subject of the request for~~
19 ~~an opinion, including, without limitation, a transcript, regardless of~~
20 ~~whether such information, records, documents or other material are~~
21 ~~obtained by a subpoena.]~~ *Commission pursuant to subsection 1 of*
22 *section 5 of this act.*

23 **Sec. 22.** NRS 281A.465 is hereby amended to read as follows:

24 281A.465 In any matter in which the Commission disposes of
25 a request for an opinion by stipulation, agreed settlement, ~~for~~
26 consent order ~~or~~ *or deferral order*, the Commission shall treat
27 comparable situations in a comparable manner and shall ensure that
28 the disposition of the matter bears a reasonable relationship to the
29 severity of the violation or alleged violation.

30 **Sec. 23.** NRS 281A.475 is hereby amended to read as follows:

31 281A.475 1. In determining whether a violation of this
32 chapter is a willful violation and, if so, the ~~amount of any civil~~
33 penalty to be imposed on a public officer or employee or former
34 public officer or employee pursuant to NRS 281A.480 ~~or~~ *or section*
35 *13 of this act*, the Commission shall consider, without limitation:

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

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

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

44 (d) Any mitigating factors, including, without limitation, any
45 self-reporting, prompt correction of the violation, any attempts to



1 rectify the violation before any complaint is filed and any
2 cooperation by the public officer or employee in resolving the
3 complaint;

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

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

8 (g) Any other matter justice may require.

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

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

17 **Sec. 24.** NRS 281A.480 is hereby amended to read as follows:

18 281A.480 1. In addition to any other penalties provided by
19 law and in accordance with the provisions of NRS 281A.475, the
20 Commission may impose on a public officer or employee or former
21 public officer or employee civil penalties:

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

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

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

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

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

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



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

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

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

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

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

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

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

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

40 5. Notwithstanding any other provision of this chapter, any act
41 or failure to act by a public officer or employee or former public
42 officer or employee relating to this chapter is not a willful violation
43 of this chapter if the public officer or employee establishes by
44 sufficient evidence that:



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

4 (b) The advice of the legal counsel was:

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

7 (2) Based on a reasonable legal determination by the legal
8 counsel under the circumstances when the advice was given that the
9 act or failure to act by the public officer or employee would not be
10 contrary to any prior published opinion issued by the Commission
11 which was publicly available on the Internet website of the
12 Commission.

13 6. In addition to any other penalties provided by law, a public
14 employee who commits a willful violation of this chapter *or fails to*
15 *complete a period of compliance imposed by the Commission*
16 *pursuant to subparagraph (1) of paragraph (a) of subsection 1 of*
17 *section 13 of this act* is subject to disciplinary proceedings by the
18 employer of the public employee and must be referred for action in
19 accordance to the applicable provisions governing the employment
20 of the public employee.

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

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

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

37 **Sec. 25.** NRS 281A.500 is hereby amended to read as follows:

38 281A.500 1. On or before the date on which a public officer
39 swears or affirms the oath of office, the public officer must be
40 informed of the statutory ethical standards and the duty to file an
41 acknowledgment of the statutory ethical standards in accordance
42 with this section by:

43 (a) For an appointed public officer, the appointing authority of
44 the public officer; and

45 (b) For an elected public officer of:



1 (1) The county and other political subdivisions within the
2 county except cities, the county clerk;

3 (2) The city, the city clerk;

4 (3) The Legislative Department of the State Government, the
5 Director of the Legislative Counsel Bureau; and

6 (4) The Executive Department of the State Government, the
7 Director of the Department of Administration, or his or her
8 designee.

9 2. Within 30 days after a public employee begins employment:

10 (a) The Director of the Department of Administration, or his or
11 her designee, shall provide each new public employee of a state
12 agency with the information prepared by the Commission
13 concerning the statutory ethical standards; and

14 (b) The manager of each local agency, or his or her designee,
15 shall provide each new public employee of the local agency with the
16 information prepared by the Commission concerning the statutory
17 ethical standards.

18 3. Each public officer shall acknowledge that the public
19 officer:

20 (a) Has received, read and understands the statutory ethical
21 standards; and

22 (b) Has a responsibility to inform himself or herself of any
23 amendments to the statutory ethical standards as soon as reasonably
24 practicable after each session of the Legislature.

25 4. The acknowledgment must be executed on a form prescribed
26 by the Commission and must be filed with the Commission:

27 (a) If the public officer is elected to office at the general
28 election, on or before January 15 of the year following the public
29 officer's election.

30 (b) If the public officer is elected to office at an election other
31 than the general election or is appointed to office, on or before the
32 30th day following the date on which the public officer swears or
33 affirms the oath of office.

34 5. Except as otherwise provided in this subsection, a public
35 officer shall execute and file the acknowledgment once for each
36 term of office. If the public officer serves at the pleasure of
37 the appointing authority and does not have a definite term of office,
38 the public officer, in addition to executing and filing the
39 acknowledgment after the public officer swears or affirms the oath
40 of office in accordance with subsection 4, shall execute and file the
41 acknowledgment on or before January 15 of each even-numbered
42 year while the public officer holds that office.

43 6. For the purposes of this section, the acknowledgment is
44 timely filed if, on or before the last day for filing, the
45 acknowledgment is filed in one of the following ways:



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

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

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

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

15 **7. *If a public officer is serving in a public office and executes***
16 ***and files the acknowledgment for that office as required by the***
17 ***applicable provisions of this section, the public officer shall be***
18 ***deemed to have satisfied the requirements of this section for any***
19 ***other office held concurrently by him or her.***

20 **8.** The form for making the acknowledgment must contain:

21 (a) The address of the Internet website of the Commission where
22 a public officer may view the statutory ethical standards and print a
23 copy of the standards; and

24 (b) The telephone number and mailing address of the
25 Commission where a public officer may make a request to obtain a
26 printed copy of the statutory ethical standards from the Commission.

27 ~~8.~~ **9.** Whenever the Commission, or any public officer or
28 employee as part of the public officer's or employee's official
29 duties, provides a public officer with a printed copy of the form for
30 making the acknowledgment, a printed copy of the statutory ethical
31 standards must be included with the form.

32 ~~9.~~ **10.** The Commission shall retain each acknowledgment
33 filed pursuant to this section for 6 years after the date on which the
34 acknowledgment was filed.

35 ~~10.~~ **11.** Willful refusal to execute and file the
36 acknowledgment required by this section shall be deemed to be:

37 (a) A willful violation of this chapter for the purposes of NRS
38 281A.480; and

39 (b) Nonfeasance in office for the purposes of NRS 283.440 and,
40 if the public officer is removable from office pursuant to NRS
41 283.440, the Commission may file a complaint in the appropriate
42 court for removal of the public officer pursuant to that section. This
43 paragraph grants an exclusive right to the Commission, and no other
44 person may file a complaint against the public officer pursuant to
45 NRS 283.440 based on any violation of this section.



1 ~~11~~ 12. As used in this section, “general election” has the
2 meaning ascribed to it in NRS 293.060.

3 **Sec. 26.** NRS 281A.510 is hereby amended to read as follows:

4 281A.510 1. A public officer or public employee shall not
5 accept or receive an honorarium.

6 2. An honorarium paid on behalf of a public officer or public
7 employee to a charitable organization from which the officer or
8 employee does not derive any financial benefit is deemed not to be
9 accepted or received by the officer or employee for the purposes of
10 this section.

11 3. This section does not prohibit:

12 (a) The receipt of payment for work performed outside the
13 normal course of a person’s public office or employment if the
14 performance of that work is consistent with the applicable policies
15 of the person’s public employer regarding supplemental
16 employment.

17 (b) The receipt of an honorarium by the spouse of a public
18 officer or public employee if it is related to the spouse’s profession
19 or occupation.

20 4. As used in this section, “honorarium” means the payment of
21 money or anything of value for an appearance or speech by the
22 public officer or public employee in the officer’s or employee’s
23 capacity as a public officer or public employee. The term does not
24 include the payment of:

25 (a) The actual and necessary costs incurred by the public officer
26 or public employee, the officer’s or employee’s spouse or the
27 officer’s or employee’s aid for transportation and for lodging and
28 meals while the public officer or public employee is away from the
29 officer’s or employee’s residence.

30 (b) Compensation which would otherwise have been earned by
31 the public officer or public employee in the normal course of the
32 officer’s or employee’s public office or employment.

33 (c) A fee for a speech related to the officer’s or employee’s
34 profession or occupation outside of the officer’s or employee’s
35 public office or employment if:

36 (1) Other members of the profession or occupation are
37 ordinarily compensated for such a speech; and

38 (2) The fee paid to the public officer or public employee is
39 approximately the same as the fee that would be paid to a member
40 of the private sector whose qualifications are similar to those of the
41 officer or employee for a comparable speech.

42 (d) A fee for a speech delivered to an organization of
43 legislatures, legislators or other elected officers.

44 5. In addition to any other penalty imposed pursuant to NRS
45 281A.480 ~~11~~ or section 13 of this act, a public officer or public



1 employee who violates the provisions of this section shall forfeit the
2 amount of the honorarium.

3 **Sec. 27.** NRS 281A.550 is hereby amended to read as follows:

4 281A.550 1. A former member of the Public Utilities
5 Commission of Nevada shall not:

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

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

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

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

15 (a) Appear before the Nevada Gaming Control Board or the
16 Nevada Gaming Commission on behalf of a person who holds a
17 license issued pursuant to chapter 463 or 464 of NRS or who is
18 required to register with the Nevada Gaming Commission pursuant
19 to chapter 463 of NRS; or

20 (b) Be employed by such a person,

21 ➤ for 1 year after the termination of the member's service on the
22 Nevada Gaming Control Board or the Nevada Gaming Commission.

23 3. In addition to the prohibitions set forth in subsections 1 and
24 2, and except as otherwise provided in subsections 4 and 6, a former
25 public officer or employee of a board, commission, department,
26 division or other agency of the Executive Department of State
27 Government, except a clerical employee, shall not solicit or accept
28 employment from a business or industry whose activities are
29 governed by regulations adopted by the board, commission,
30 department, division or other agency for 1 year after the termination
31 of the former public officer's or employee's service or period of
32 employment if:

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

36 (b) During the immediately preceding year, the former public
37 officer or employee directly performed activities, or controlled or
38 influenced an audit, decision, investigation or other action, which
39 significantly affected the business or industry which might, but for
40 this section, employ the former public officer or employee; or

41 (c) As a result of the former public officer's or employee's
42 governmental service or employment, the former public officer or
43 employee possesses knowledge of the trade secrets of a direct
44 business competitor.



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

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

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

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

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

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

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

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

26 6. A current or former public officer or employee may request
27 that the Commission apply the relevant facts in that person's case to
28 the provisions of subsection 3 or 5, as applicable, and determine
29 whether relief from the strict application of those provisions is
30 proper. If the Commission determines that relief from the strict
31 application of the provisions of subsection 3 or 5, as applicable, is
32 not contrary to:

33 (a) The best interests of the public;

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

36 (c) The provisions of this chapter,

37 ➤ it may issue an opinion to that effect and grant such relief. The
38 opinion of the Commission in such a case is final and subject to
39 judicial review pursuant to NRS 233B.130, except that a proceeding
40 regarding this review must be held in closed court without
41 admittance of persons other than those necessary to the proceeding,
42 unless this right to confidential proceedings is waived by the current
43 or former public officer or employee. *The opinion of the
44 Commission does not relieve the current or former public officer*



1 *or employee from the strict application of any provision of*
2 *NRS 281A.410.*

3 7. Each request for an opinion that a current or former public
4 officer or employee submits to the Commission pursuant to
5 subsection 6, each opinion rendered by the Commission in response
6 to such a request and any motion, determination, evidence or record
7 of a hearing relating to such a request are confidential unless the
8 current or former public officer or employee who requested the
9 opinion:

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

14 (b) Discloses the request for the opinion, the contents of the
15 opinion or any motion, *determination*, evidence or record of a
16 hearing related thereto in any manner except to:

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

20 (2) Any person to whom the Commission authorizes the
21 current or former public officer or employee to make such a
22 disclosure; or

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

26 8. A meeting or hearing that the Commission ~~for an~~
27 ~~investigatory panel~~ holds to receive information or evidence
28 concerning the propriety of the conduct of a current or former public
29 officer or employee pursuant to this section and the deliberations of
30 the Commission ~~and the investigatory panel~~ on such information
31 or evidence are not subject to the provisions of chapter 241 of NRS.

32 9. *For the purposes of this section:*

33 (a) *A former member of the Public Utilities Commission of*
34 *Nevada, the Nevada Gaming Control Board or the Nevada*
35 *Gaming Commission; or*

36 (b) *Any other former public officer or employee governed by*
37 *this section,*

38 *↳ is employed by or is soliciting or accepting employment from a*
39 *business, industry or other person described in this section if any*
40 *agreement exists or is contemplated pursuant to which the*
41 *personal services of the public officer or employee are provided or*
42 *will be provided to the business, industry or other person.*

43 10. As used in this section, "regulation" has the meaning
44 ascribed to it in NRS 233B.038 and also includes regulations
45 adopted by a board, commission, department, division or other



1 agency of the Executive Department of State Government that is
2 exempted from the requirements of chapter 233B of NRS.

3 **Sec. 28.** NRS 239.010 is hereby amended to read as follows:

4 239.010 1. Except as otherwise provided in this section and
5 NRS 1.4683, 1.4687, 1A.110, 41.071, 49.095, 62D.420, 62D.440,
6 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320,
7 75A.100, 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246,
8 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355,
9 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730,
10 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260,
11 119.265, 119.267, 119.280, 119A.280, 119A.653, 119B.370,
12 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161,
13 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817,
14 130.312, 130.712, 136.050, 159.044, 172.075, 172.245, 176.015,
15 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715,
16 178.5691, 179.495, 179A.070, 179A.165, 179A.450, 179D.160,
17 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651,
18 209.392, 209.3925, 209.419, 209.521, 211A.140, 213.010, 213.040,
19 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218A.350,
20 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 228.270,
21 228.450, 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300,
22 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140,
23 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020,
24 241.030, 241.039, 242.105, 244.264, 244.335, 250.087, 250.130,
25 250.140, 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195,
26 281A.350, ~~281A.440,~~ 281A.550, 284.4068, 286.110, 287.0438,
27 289.025, 289.080, 289.387, 289.830, 293.5002, 293.503, 293.558,
28 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335,
29 338.070, 338.1379, 338.16925, 338.1725, 338.1727, 348.420,
30 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100,
31 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.610,
32 365.138, 366.160, 368A.180, 372A.080, 378.290, 378.300, 379.008,
33 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259,
34 388.501, 388.503, 388.513, 388.750, 391.035, 392.029, 392.147,
35 392.264, 392.271, 392.850, 394.167, 394.1698, 394.447, 394.460,
36 394.465, 396.3295, 396.405, 396.525, 396.535, 398.403, 408.3885,
37 408.3886, 408.3888, 408.5484, 412.153, 416.070, 422.2749,
38 422.305, 422A.342, 422A.350, 425.400, 427A.1236, 427A.872,
39 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430,
40 432B.560, 433.534, 433A.360, 439.840, 439B.420, 440.170,
41 441A.195, 441A.220, 441A.230, 442.330, 442.395, 445A.665,
42 445B.570, 449.209, 449.245, 449.720, 450.140, 453.164, 453.720,
43 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866,
44 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240,
45 463.3403, 463.3407, 463.790, 467.1005, 480.365, 481.063, 482.170,



1 482.5536, 483.340, 483.363, 483.575, 483.659, 483.800, 484E.070,
2 485.316, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.655,
3 587.877, 598.0964, 598.098, 598A.110, 599B.090, 603.070,
4 603A.210, 604A.710, 612.265, 616B.012, 616B.015, 616B.315,
5 616B.350, 618.341, 618.425, 622.310, 623.131, 623A.137, 624.110,
6 624.265, 624.327, 625.425, 625A.185, 628.418, 628B.230,
7 628B.760, 629.047, 629.069, 630.133, 630.30665, 630.336,
8 630A.555, 631.368, 632.121, 632.125, 632.405, 633.283, 633.301,
9 633.524, 634.055, 634.214, 634A.185, 635.158, 636.107, 637.085,
10 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075,
11 640A.220, 640B.730, 640C.400, 640C.745, 640C.760, 640D.190,
12 640E.340, 641.090, 641A.191, 641B.170, 641C.760, 642.524,
13 643.189, 644.446, 645.180, 645.625, 645A.050, 645A.082,
14 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135,
15 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 647.0945,
16 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110,
17 656.105, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310,
18 671.170, 673.430, 675.380, 676A.340, 676A.370, 677.243,
19 679B.122, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690,
20 680A.270, 681A.440, 681B.260, 681B.410, 681B.540, 683A.0873,
21 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115,
22 687C.010, 688C.230, 688C.480, 688C.490, 692A.117, 692C.190,
23 692C.3536, 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615,
24 696B.550, 703.196, 704B.320, 704B.325, 706.1725, 706A.230,
25 710.159, 711.600, *and sections 5 to 9, inclusive, of this act,*
26 sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and
27 section 2 of chapter 391, Statutes of Nevada 2013 and unless
28 otherwise declared by law to be confidential, all public books and
29 public records of a governmental entity must be open at all times
30 during office hours to inspection by any person, and may be fully
31 copied or an abstract or memorandum may be prepared from those
32 public books and public records. Any such copies, abstracts or
33 memoranda may be used to supply the general public with copies,
34 abstracts or memoranda of the records or may be used in any other
35 way to the advantage of the governmental entity or of the general
36 public. This section does not supersede or in any manner affect the
37 federal laws governing copyrights or enlarge, diminish or affect in
38 any other manner the rights of a person in any written book or
39 record which is copyrighted pursuant to federal law.

40 2. A governmental entity may not reject a book or record
41 which is copyrighted solely because it is copyrighted.

42 3. A governmental entity that has legal custody or control of a
43 public book or record shall not deny a request made pursuant to
44 subsection 1 to inspect or copy or receive a copy of a public book or
45 record on the basis that the requested public book or record contains



1 information that is confidential if the governmental entity can
2 redact, delete, conceal or separate the confidential information from
3 the information included in the public book or record that is not
4 otherwise confidential.

5 4. A person may request a copy of a public record in any
6 medium in which the public record is readily available. An officer,
7 employee or agent of a governmental entity who has legal custody
8 or control of a public record:

9 (a) Shall not refuse to provide a copy of that public record in a
10 readily available medium because the officer, employee or agent has
11 already prepared or would prefer to provide the copy in a different
12 medium.

13 (b) Except as otherwise provided in NRS 239.030, shall, upon
14 request, prepare the copy of the public record and shall not require
15 the person who has requested the copy to prepare the copy himself
16 or herself.

17 **Sec. 29.** NRS 241.016 is hereby amended to read as follows:

18 241.016 1. The meetings of a public body that are quasi-
19 judicial in nature are subject to the provisions of this chapter.

20 2. The following are exempt from the requirements of this
21 chapter:

22 (a) The Legislature of the State of Nevada.

23 (b) Judicial proceedings, including, without limitation,
24 proceedings before the Commission on Judicial Selection and,
25 except as otherwise provided in NRS 1.4687, the Commission on
26 Judicial Discipline.

27 (c) Meetings of the State Board of Parole Commissioners when
28 acting to grant, deny, continue or revoke the parole of a prisoner or
29 to establish or modify the terms of the parole of a prisoner.

30 3. Any provision of law, including, without limitation, NRS
31 91.270, 219A.210, 239C.140, 281A.350, 281A.440, 281A.550,
32 284.3629, 286.150, 287.0415, 288.220, 289.387, 295.121, 360.247,
33 388.261, 388A.495, 388C.150, 392.147, 392.467, 394.1699,
34 396.3295, 433.534, 435.610, 463.110, 622.320, 622.340, 630.311,
35 630.336, 639.050, 642.518, 642.557, 686B.170, 696B.550, 703.196
36 and 706.1725, *and section 11 of this act* which:

37 (a) Provides that any meeting, hearing or other proceeding is not
38 subject to the provisions of this chapter; or

39 (b) Otherwise authorizes or requires a closed meeting, hearing
40 or proceeding,

41 ➤ prevails over the general provisions of this chapter.

42 4. The exceptions provided to this chapter, and electronic
43 communication, must not be used to circumvent the spirit or letter of
44 this chapter to deliberate or act, outside of an open and public



- 1 meeting, upon a matter over which the public body has supervision,
- 2 control, jurisdiction or advisory powers.
- 3 **Sec. 30.** NRS 281A.108 and 281A.220 are hereby repealed.
- 4 **Sec. 31.** This act becomes effective on July 1, 2017.

TEXT OF REPEALED SECTIONS

281A.108 “Investigatory panel” or “panel” defined.
“Investigatory panel” or “panel” means an investigatory panel appointed by the Commission pursuant to NRS 281A.220.

281A.220 Investigatory panels: Appointment; members; review and final determination of just and sufficient cause; disqualification of members from participation in further proceedings in matter.

1. The Chair shall appoint one or more investigatory panels of two members of the Commission on a rotating basis to review the determinations of just and sufficient cause made by the Executive Director pursuant to NRS 281A.440 and make a final determination regarding whether there is just and sufficient cause for the Commission to render an opinion in a matter.

2. The Chair and Vice Chair of the Commission may not serve together on an investigatory panel.

3. The members of an investigatory panel may not be members of the same political party.

4. If an investigatory panel determines that there is just and sufficient cause for the Commission to render an opinion in a matter, the members of the investigatory panel shall not participate in any further proceedings of the Commission relating to that matter.

