



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

MINUTES
of the Emergency Meeting of the
Nevada Commission on Ethics Legislative Subcommittee

March 15, 2013

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics. The Commission on Ethics held an emergency public meeting on Friday, March 15, 2013, at 12:00 p.m. This meeting was held telephonically. Members of the public were invited to attend at the following location:

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

1. Call to Order and Roll Call.

Chairman of this Subcommittee Gregory J. Gale called the meeting to order and introduced the subcommittee members at 12:00 p.m. on Friday, March 15, 2013.

Present telephonically were Commissioners Paul H. Lambole, Esq., Gregory J. Gale, Cheryl Lau, Esq., and Keith A. Weaver, Esq. Present in Carson City, Nevada were Executive Director Caren Cafferata-Jenkins, Esq. and Commission Counsel Yvonne Nevarez-Goodson, Esq.

The reason for this Emergency Public Meeting was due to the Commission being notified on March 12, 2013 that Senate Bill 228, governing revisions to the Commission's statutes set forth in NRS 281A, was introduced in the Nevada Senate and scheduled to be considered by the Senate Committee on Legislative Operations and Elections on Tuesday, March 19, 2013 at 8:00 a.m. The Commission was not able to schedule and notice a meeting of the Commission or its Legislative Subcommittee within the relevant time frames set forth in NRS 241 to consider or take action regarding the provisions of Senate Bill 228 before the Nevada Legislature's scheduled hearing.

2. Open Session for Public Comment.

No public comment.

3. Work Session: Discussion and possible action regarding Senate Bill 228 (revisions to NRS 281A) scheduled to be considered during the Nevada Senate Committee on Legislative Operations and Elections on Tuesday, March 19, 2013 at 8:00 a.m.

The Subcommittee members examined and discussed S.B. 228 as introduced to the 2013 Legislature. Subcommittee members, the Executive Director and Commission Counsel reviewed each section of the proposed bill and discussed suggested amendments they deemed necessary to be provided to the Senate Committee on Legislative Operations and Elections. The proposed amendments are attached hereto in the Commission's memo titled "Proposed Amendments to S.B. 228, as Introduced, Senate Committee on Legislative Operations and Procedures, Tuesday, March 19, 2013."

The Subcommittee is scheduled to meet again on March 20, 2013 to discuss the proposed concepts with the entire Commission.

4. Open Session for Public Comment.

No public comment.

5. Adjournment

The meeting adjourned at 3:17 p.m.

Minutes prepared by:



Valerie Carter
Executive Assistant

Minutes approved April 17, 2013:



Paul H. Lamboley
Chairman



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Proposed Amendments to S.B. 228, as Introduced
Senate Committee on Legislative Operations and Procedures
Tuesday, March 19, 2013

1) Legislative Counsel's Digest, page 1:

Delete lines 15 and 16 and retain the following language: “‘capacity to the interests of another person’ in NRS 281A.420.”

(No need to reference the term “catchall” in the Digest)

2) Sec. 28, pages 10- 11:

Delete entirety of new language in subsection 3, lines 7-10 on page 11 (eliminates all amendments to Sec. 28).

(Proposed language did not comport with Commission’s intent, any statutory amendment to NRS 281A.020 deemed unnecessary at this time)

3) Sec. 39, page 19:

Delete lines 13-16 (new subsection 5).

Retain existing subsection numbers for NRS 281A.400 for ease of public reference in existing NCOE opinions.

Move language proposed for new subsection 5 to new subsection 11, but amend language to read as follows:

A public officer or employee shall not concurrently serve as a public officer or employee and hold a separate public office ~~[by virtue of which]~~ in which the public officer or employee ~~[may exercise]~~ exercises control over himself or herself or his or her employer or supervisor.

(Commission intent to capture both “boss of his boss” and “boss of himself” circumstances; i.e., serving concurrently as school board member and teacher; city council member and city manager or city employee; etc.)

4) Sec. 40, page 24:

Amend line 18 to read as follows:

An opinion from the Commission pursuant to subsection 1 of NRS 281A.440; and

(Commission intent to authorize request for relief from strict application of the provisions herein pursuant to a confidential first-party request for opinion as specifically set forth in NRS 281A.440(1))

5) Sec. 41, pages 25-26 (end of paragraph (a) of subsection 4 of NRS 281A.440):

Delete all new language in lines 39-44 on page 25 and lines 1-2 on page 26, and retain otherwise original language in the last sentence of paragraph (a) of subsection 4 of NRS 281A.420.

Current S.B. 228 amends NRS 281A.420(4)(a):

The presumption set forth in this paragraph ~~[does not affect the applicability of the requirements set forth in subsection 1 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.]~~ *exempts a public officer from the requirements set forth in subsection 1 when the benefit or detriment accruing to the public officer is not greater than that accruing to any other member of any general business, profession, occupation or group which is affected by the matter.*

Amend back to original language as follows:

The presumption set forth in this paragraph does not affect the applicability of the requirements set forth in subsection 1 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

(Proposed amendment confuses disclosure obligations and deemed unnecessary.)

6) Sec. 42, page 29:

The Commission has authority over public officers and employees only, but this amendment governs governments. Delete lines 15-20 (new subsection 5) and replace (rewrite) with the following new language:

5. A public officer who is a member of the governing body of any county, city or other political subdivision may not sell goods or services to the county, city or other political subdivision unless:

(a) The public officer offers or has a significant pecuniary interest in the entity which offers the sole source of supply of the goods or services within the area served by the governing body; and

(b) The governing body:

(1) Issues a public notice of the meeting which specifically mentions that such a purchase of goods or services will be discussed; and

(2) Approves the purchase upon a two-thirds vote.

7) **Sec. 42, page 29:**

Amend line 24 to read as follows:

The Commission pursuant to subsection 1 of NRS 281A.440; and

(Commission intent to authorize request for relief from strict application of the provisions herein pursuant to a confidential first-party request for opinion as specifically set forth in NRS 281A.440(1))

8) **Sec. 43, page 32 and 33:**

Delete lines 5-11 on page 32. Retain original language of last sentence of subsection 5 of NRS 281A.440, except for the following deletions:

The investigatory panel shall cause a record of its proceedings in each matter to be kept [~~and such a record must remain confidential until the investigatory panel determines whether there is just and sufficient cause for the Commission to render an opinion in the matter~~].

Delete lines 34-45 and page 32 and delete lines 1-5 on page 33 and amend subsection 8 of NRS 281A.440 as follows:

8. Except as otherwise provided in [~~this subsection, each~~] *subsection 9, any information, communication, record, document or other material which is* in the possession of the Commission or its staff [~~that~~] *and* is related to a request for an opinion regarding a public officer or employee submitted to or initiated by the Commission pursuant to subsection 2, including, without limitation, [~~the Commission's copy of the request and all materials and information gathered in an investigation of the request~~] *the record of a proceeding of the investigatory panel required pursuant to subsection 5:*

(a) Is confidential and not a public record pursuant to Chapter 239 of the Nevada Revised Statutes until the investigatory panel determines whether there is just and sufficient cause to render an opinion in the matter [~~The~~] *or* the public officer or employee who is the subject of a request for an opinion submitted or initiated pursuant to subsection 2 [~~may~~] in writing [~~authorize~~] *authorizes* the Commission to make its [~~files, material and information~~]

information, communications, records, documents or other materials which are related to the request publicly available ~~[.]~~, *whichever occurs first.*

(b) Becomes a public record pursuant to Chapter 239 of the Nevada Revised Statutes after written notice of the final determination of the investigatory panel regarding just and sufficient cause for the Commission to render an opinion in the matter is served on the public officer or employee who is the subject of the request for an opinion submitted or initiated pursuant to subsection 2.

Add new subsection to NRS 281A.440 as follows:

9. Except as otherwise provided in this section, the investigative file of the Commission is confidential. At any time after being served with written notice of the final determination of the investigatory panel regarding just and sufficient cause for the Commission to render an opinion in the matter, the subject of the request for opinion may submit a written discovery request to the Commission for a copy of any portion of the investigative file that the Commission intends to present for consideration as evidence in rendering an opinion in the matter and a list of proposed witnesses. Any portion of the investigative file which the Commission presents as evidence in rendering an opinion in the matter becomes a public record as provided in chapter 239 of the Nevada Revised Statutes.

Change all remaining subsection numbers throughout NRS 281A.440 accordingly.

9) Sec. 43, page 34, after line 18:

Add new subsection as follows:

15. As used in this section, the investigative file of the Commission related to a request for opinion regarding a public officer or employee submitted to or initiated by the Commission pursuant to this section includes, without limitation, any information obtained by the Commission via any form of communication during the course of an investigation and any record, document or other material created or maintained during an investigation related to the subject, whether or not acquired through a subpoena.

(Commission's intent is to protect its investigative file as confidential except when it presents information from its investigative file as evidence against the Subject in rendering an opinion in the matter. This practice mirrors that of the Attorney General with regard to investigations of various State licensing boards. See, e.g., NRS 622A.330 and 625.425

10) Sec. 45, pages 36 and 37:

Delete proposed new language at the end of paragraph (a) of subsection 5 of NRS 281A.480.

(Proposed language did not comport with Commission's intent, any statutory amendment to NRS 281A.480 deemed unnecessary at this time)

11) Transitory Provisions (Grandfather Clauses):

NRS 281A.550(3) is proposed to be repealed and replaced in subsection 5 of NRS 281A.410 (Sec. 40 of S.B. 228) to codify all "cooling-off" provisions affecting former public officers and employees in a single section. NRS 281A.550 was originally enacted and codified as NRS 281.236 in 1993 and included the following Grandfather Clause:

"Ch. 597, Stats. 1993, the source of subsection 3 of this section, contains the following provision not included in NRS:

The provisions of subsection 3 of [NRS 281.236] do not apply to the service or employment of a public officer or employee who is serving or is employed by an agency, division or department of the executive branch of government on July 12, 1993, or was such an officer or employee before July 12, 1993, unless on or after that date, that person is appointed to serve as an officer or retained as an employee of another agency, division or department of the executive branch of government for which subsequent employment is restricted pursuant to subsection 3 of [NRS 281.236.]"

The Commission proposes to include the same or similar Grandfather Clause in S.B. 228 to ensure that the recodification of NRS 281A.550(3) as the new NRS 281A.410(5) does not negatively affect those employed on or before the original effective date of the legislation in 1993.

Further, the existing provisions of NRS 281A.550(3) govern cooling off requirements for former public officers and employees of the Executive Department of State Government. The provisions are being amended in Sec. 40 of S.B. 228 (NRS 281A.410(5)) to include former public officers and employees of local governments. Accordingly, the Commission proposes a similar Grandfather Clause for existing public officers and employees of such local governments who will be affected by this amendment as of the effective date of this amendment.