



**STATE OF NEVADA
COMMISSION ON ETHICS**

<http://ethics.nv.gov>

**MINUTES
of the meeting of the
NEVADA COMMISSION ON ETHICS'
LEGISLATIVE SUBCOMMITTEE**

The Commission on Ethics' Legislative Subcommittee held a public meeting on Wednesday, April 20, 2020, at 10:30 a.m. at the following location:

**Grant Sawyer State Building
Governor's Conference Room Suite 5100
555 E. Washington Avenue
Las Vegas, NV 89101**

Zoom Meeting Information

<https://us06web.zoom.us/j/82849521118?pwd=RFNiYnl6N2dwRFZwUGtmZUJNeVY1UT09>

Zoom Meeting Telephone Number: 720-707-2699 *

Meeting ID: 828 4952 1118

Passcode: 445288

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics' Legislative Subcommittee. A recording of the meeting is available for public inspection at the Commission's office.

1. Call to Order and Roll Call.

Chair Wallin, CPA, CMA, CFM appeared in-person in the Governor's Conference Room in Las Vegas and called the meeting to order at 10:30 a.m. Also appearing in-person was Commissioner James Oscarson. Vice-Chair Brian Duffrin appeared via videoconference. Present for Commission staff in Las Vegas were Executive Director Ross E. Armstrong, Esq., Commission Counsel Tracy L. Chase, Esq., Associate Counsel Elizabeth Bassett, Esq. and Executive Assistant Kari Pedroza. Senior Legal Researcher Darci Hayden appeared via videoconference.

2. Public Comment.

There was no public comment.

3. Identification of proposed priorities for inclusion in the Commission's Bill Draft Request for the 82nd Legislative Session (2023) to amend NRS Chapter 281A, Nevada's Ethics in Government Law) including, without limitation, review of Assembly Bill 65, as amended, from the 81st Legislative Session (2021) and information detailing Executive and Legislative Branch Ethics Commissions.

Chair Wallin introduced the Item and asked Executive Director Armstrong for his presentation.

Executive Director Armstrong directed the Subcommittee to the proposed legislative priorities document titled *Reference Guide to AB 65 Provisions* (Attached as Attachment A to these minutes) and included in the Subcommittee meeting materials. He explained the formatting of the proposed priorities as outlined at the top of the document with highlights based on staff's recommended level of priority. Executive Director Armstrong presented the proposed changes to be included in the Commission's legislation to the Subcommittee Members.

The Subcommittee Members agreed the following sections of AB 65 be included with the proposed language provided:

Section(s)	Purpose
Sections 1-6	Definitional clean-up
Section 7	Clarifies the application of the Ethics Law to former public officers and employees after the end of public service if they violate the cooling-off provisions. Paragraph 2 confirms the Commission has the ability to consider whether more than one violation of the Ethics Law applies to a given set of facts.
Section 9	Serves to preserve the confidentiality protections afforded to Requesters of advisory opinions when the Requester seeks judicial review.
Section 11	Institutes a requirement that is consistent with and already imposed by the Secretary of State (NRS 281.574) for those governmental entities who have public officers within the jurisdiction of the Ethics Law to provide a list of appointed and elected public officers which the Commission can utilize to confirm Acknowledgment of Ethical Standards form filing compliance.
Sections 13-19	Clean-up of definitions and language
Section 20	Clarifies the Vice-Chair may perform the duties of the Chair in the Chair's absence.
Section 21	Establishes a mediation and settlement process with consent of the parties for complaint cases referred for adjudication. This section also permits panel members to conduct confidential mediations and settlement negotiations including authorizing and approving deferral agreements.
Sections 23-24	Section 23 has miscellaneous language clean-up and section 24 confirms the boundaries of the legal representation of Commission Counsel to assure there is no impingement on the due process rights of the parties in complaint proceedings.
Section 27	Clarifies that subpoenas would apply to personnel records of public officers/employees relevant to the consideration of the ethics complaints.
Section 29	Clarifies the policy provision of the "limited use exception" and permits otherwise improper use of government property and resources if the use is permitted by way of an existing written policy and the limited use does not create an appearance of impropriety.
Section 30	Miscellaneous language clean-up
Section 33	Limits cooling-off prohibitions to certain management-level employees, while the one-year prohibitions against private employment with agency contract vendors will include employees who have material influence in management or administration of those contracts in addition to public officers/employees whose position could influence the award of contracts.
Section 34	Miscellaneous language clean-up

Section(s)	Purpose
Section 35	Clarifies that the Commission may gather additional information needed from the Requester to process the advisory opinion to create a more streamlined and collaborative process and tolls the 45-day deadline for the period of time until the additional information is provided by the Requester.
Section 36	<ol style="list-style-type: none"> 1) Provides statutory discretion for the Commission to grant appropriate extensions of statutory deadlines for good cause to issue advisory opinions. Any extensions would have a designated deadline 2) Permits the Commission to stay advisory opinion proceedings when ethics complaints are filed on the same or similar matter. 4) Clarifies judicial review is not afforded on guidance applicable to past conduct (consistent with an <i>En Banc</i> Order issued by the Nevada Supreme Court in interpreting application of the Ethics Law in a confidential advisory matter on past conduct).
Section 38	Clerical revision allowing the Commission to hold a confidential advisory opinion hearing.
Sections 39-40	Miscellaneous language clean-up
Section 45	Allows the Executive Director to serve a notice detailing the violations the Review Panel refers to the Commission for further proceedings, which serves to provide relevant details to subjects of the complaint and to protect the identity of requesters filing complaints that are entitled to maintain their name as confidential under current law.
Section 46	Provides confidentiality protection for those persons who file complaints by instituting a “notice of allegations” instead of providing a copy of the Complaint.
Section 47	Adds a schedule for discovery, which identifies parties, provides discovery, a notice of hearing and addresses other procedural matters.
Section 48	Makes the final action of the Commission exempt from the procedural requirements of the OML, which require special notice and publication of public meeting materials, which notice is hindered given the dynamics of the confidential adjudicatory process, including confidential settlement negotiations.
Section 49	Includes miscellaneous clean up.
Sections 50-53	Clarifies that the requirement for the Commission to treat comparable situations in a comparable manner is qualified by practicality and confirms the Commission may resolve complaint cases by stipulation, deferral agreement, consent order, and/or opinion.

The Subcommittee Members agreed the following sections of AB 65 could be included with revised language:

Section(s)	Purpose
Section 10	Revises NRS 281A.400 to include an additional code of conduct for a gross or unconscionable abuse of power.
Section 25	Establishes that the 2-year statute of limitations applies to advisory opinions on past conduct.

Section 31	Clarifies that NRS 281A.420 does not require the disclosure of otherwise confidential information if a disclosure is made on non-confidential information and there is a recusal. Separately, this section establishes the same abstention process for disclosures of paid representation as is required of all other disclosures.
Sections 41-42	Section 41 confirms the ability to conduct a preliminary investigation into jurisdictional facts to assist the Commission with ascertaining whether it should initiate a complaint and whether it has jurisdiction over the conduct. Section 42 allows the Commission to consider good cause extensions and establish deadlines based upon a request from the Executive Director and to secure the public officer's or public employee's participation through its subpoena powers set forth in NRS 281A.300.
Section 43	Authorizes the presiding officer of the Review panel to grant good cause extensions during the pre-panel investigative phase.
Section 44	Provides the Review Panel will have 45 days (rather than 15 days) to conclude the investigation after receipt of the Executive Director's written recommendation.

The Subcommittee Members agreed the following sections of AB 65 would NOT be included in upcoming Legislation and could be considered for the next Legislative Session:

Section(s)	Purpose
Section 8	Seeks reasonable assistance and cooperation of public officers and employees in the Commission's proceedings.
Section 12	Allows the Commission to provide information obtained during an Ethics investigation to state or federal law enforcement agencies.
Section 22	Added requirement that the Executive Director be an attorney licensed to practice law in the State of Nevada.
Section 26	Permits a certified court reporter or other authorized person to administer oaths in Commission meetings and proceedings.
Section 28	Permits the Commission to accept requests for advice as a referral on behalf of the public officer or employee whose conduct is at issue.
Section 32	Replaces the term "willful" with "refuses" with respect to a violation for failure to file an acknowledgment form and removes the failure to file the form as an event of nonfeasance of office.
Section 36	3) Establishes a process for informal advice rendered by the Executive Director or Commission Counsel based upon and consistent with established precedent and provides the Requester the ability to obtain review by the Commission.
Section 37	Establishes a process permitting the Executive Director or Commission Counsel to render informal advice and confirms that process is afforded the same confidentiality protections as a formal request for advisory opinion.
Section 54	Gives safe harbor protections for public officers/employees seeking preventative informal ethics advice and confirms that separate violations of the ethics law may be treated cumulatively for purpose of application of the penalty provisions of NRS 281A.790.

Section(s)	Purpose
Sections 57-111	Portions of these sections creating the Legislature's ethics model are best pursued by the Legislature given the Governor's request for a cost analysis in his veto letter dated June 11, 2021.

Commissioner Oscarson requested that the prioritized language be incorporated in NRS Chapter 281A as typically done with submitted amendments reflecting the changes as different colored, highlighted, strike-through and underlined text.

Vice-Chair Duffrin moved to direct staff to proceed with the discussed recommendations to the Commission's proposed legislation and provide those requested revisions to the Subcommittee at its next meeting on May 4, 2022. Commissioner Oscarson seconded the motion. The Motion was put to a vote and carried unanimously.

4. 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.

There were no Commissioner comments.

5. Public Comment.

No public comment.

6. Adjournment.

Vice-Chair Duffrin made a motion to adjourn the public meeting. Commissioner Oscarson seconded the motion. The Motion was put to a vote and carried unanimously.

The meeting adjourned at 12:07 p.m.

Minutes prepared by:

[/s/ Kari Pedroza](#)

Kari Pedroza
Executive Assistant

[/s/ Ross Armstrong](#)

Ross Armstrong, Esq.
Executive Director

Minutes approved May 4, 2022:

[/s/ Kim Wallin](#)

Kim Wallin, CPA, CMA, CFM
Vice-Chair

[/s/ Brian Duffrin](#)

Brian Duffrin
Commissioner

[/s/ James Oscarson](#)

James Oscarson
Commissioner

Attachment A



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REFERENCE GUIDE TO AB 65 PROVISIONS:

This guide provides the Commission's Legislative Subcommittee with recommendations on which sections of AB 65 should be considered during the 2023 Legislative Session. The provisions of AB 65 have been categorized into three tiers:

Tier 1 – These section numbers highlighted in **blue** are recommended for inclusion in the 2023 Legislative packet.

Tier 2 – These section numbers highlighted in **orange** would be nice to include in the 2023 Legislative packet.

Tier 3 – These section numbers highlighted in **gray** are not a high priority to be included as part of the Commission 2023 legislative package.

AB 65: SECTION AND PURPOSE	
1-6	Definitional clean-up.
7	Clarifies the application of the Ethics Law, consistent with NRS 281A.410 and NRS 281A.550, to former public officers and employees after the end of public service if they violate the cooling-off provisions of the Ethics Law. Paragraph 2 confirms the Commission has the ability to consider whether more than one violation of the Ethics Law applies to a given set of facts.
8	Seeks reasonable assistance and cooperation of public officers and employees in the Commission's proceedings. Note: Often public officers/employees are reluctant to communicate with investigatory staff out of fear that their public employment would be affected. This inhibits the ability to conduct appropriate and thorough investigations. Without cooperation, subpoenas must be issued, which is resource and time consuming and has associated costs. This section operates to protect public officers/employees who are witnesses and reduces investigatory costs, while maintaining all the associated legal defenses and rights to be represented, and reduces the need to issue subpoenas, which are resource and time consuming. Other NRS provisions have similar duties to cooperate in investigations. Cf., NRS 218G.550 (Legislative Audits - agency duty to cooperate), NRS 634.214

	<p>(Chiropractic physicians and Assistants - duty to cooperate with licensing board law enforcement investigations), NRS 679.660 (Commissioner of Insurance – duty to cooperate with AG, investigative and law enforcement agencies).</p> <p>***As enrolled, AB 65 was amended to exclude the Subject’s attorney from the duty to cooperate since they represent them in the matter before the Commission.</p> <p><i>Consider removing - As litigation has increased in complaint matters, this section may create additional litigation and enforcement issues.</i></p>
9	<p>Creates consistency between the Ethics Law and Nevada’s Open Meeting Law and confirms the Commission may provide litigation direction on judicial review related to confidential advisory opinions.</p> <p>Note: This serves to preserve the confidentiality protections afforded to Requesters of advisory opinions in NRS Ch. 281A when the Requester seeks judicial review. Otherwise, Requesters may be disincentivized from seeking judicial review on an otherwise confidential matter.</p>
10	<p>Revises NRS 281A.400 to include an additional code of conduct for a gross or unconscionable abuse of power.</p> <p>Note: The Commission has received a number of cases over the years that have been dismissed based upon lack of jurisdiction because the allegations at issue do not relate to the Subject’s pecuniary interest or commitment in a private capacity, as those terms are now defined. For example, if a public officer/employee has an animosity against a person and they inappropriately use their public position to cause harm to a public matter requested by a person, the case could be considered by the Commission to determine if the circumstances constitute a gross or unconscionable abuse of power.</p> <p><i>Recommend definitions be established to outline the regulated conduct in anticipation of litigation on the reach of the statutory provisions.</i></p>
11	<p>Institutes a requirement that is consistent with and already imposed by the Secretary of State (NRS 281.574) for those governmental entities who have public officers within the jurisdiction of the Ethics Law to provide a list of appointed and elected public officers.</p> <p>Note: Currently, there is no mechanism for the Commission to check and secure compliance with NRS 281A.500 except for processing of a formal ethics complaint. The list will assist in securing compliance through outreach and education, without proceeding with a formal complaint.</p>

12	<p>Allows the Commission to provide information obtained during an Ethics investigation to state or federal law enforcement agencies.</p> <p>Note: Given current provisions, the Commission declines these requests because such information is protected as confidential. Often Commission resources must then defend the confidentiality protections in subpoena requests from law enforcement agencies in court proceedings.</p> <p><i>Consider eliminating. The Commission rarely receives these inquiries, and it already has authority to refer at conclusion of case for criminal proceedings. See NRS 281A.790(7). Further, currently the requester can be referred to appropriate law enforcement to report earlier in proceedings, if appropriate.</i></p>
13-19	Clean-up of definitions and language.
20	Clarifies the Vice-Chair may perform the duties of the Chair in the Chair's absence.
21	<p>Establishes a mediation and settlement process with consent of the parties for complaint cases referred for adjudication. This section also permits panel members to conduct confidential mediations and settlement negotiations including authorizing and approving deferral agreements.</p> <p>Note: The mediation and settlement process assists in early resolution of cases and results in savings of administrative resources and reduces litigation costs for a subject of an ethics complaint.</p> <p><i>Consider revisions to indicate acting as a mediator is permitted after the Review Panel issues its referral to the Commission and a notice of charges is issued.</i></p>
22	<p>Added requirement that the Executive Director be an attorney licensed to practice law in the State of Nevada.</p> <p>Note: As enrolled, deleted the requirement that the Executive Director be a Nevada licensed attorney be deleted by amendment.</p> <p><i>Recommend maintaining deletion.</i></p>
23-24	Section 23 has miscellaneous language clean-up and section 24 confirms the boundaries of the legal representation of Commission Counsel to assure there is no impingement on the due process rights of the parties in complaint proceedings.
25	<p>Establishes that the 2-year statute of limitations applies to advisory opinions on past conduct.</p> <p><i>Consider revision to replace reference to "subsection 3 of NRS 281A.790" with "this chapter." Note: NRS 281A.790(3) is a form of remedy and this appears to be a clerical error in the bill.</i></p>

26	<p>Permits a certified court reporter or other authorized person to administer oaths in Commission meetings and proceedings.</p> <p>Note: Current law requires oaths be administered by Chair or Vice-Chair. However, in practice a court reporter is utilized to administer the oaths, as directed by the presiding officer. This is a clean-up, which could be clarified by regulation.</p>
27	<p>Clarifies that subpoenas would apply to personnel records of public officers/employees relevant to the consideration of the ethics complaints. Current law provides the Commission the ability to issue subpoenas during the course of an investigation or to compel the attendance of witnesses and production of documents for any hearing before the Commission. With the exception of records relating to criminal proceedings.</p> <p>Note: The Commission direction in past session was that it will create a regulation. If the agency records are personnel records, the Commission would maintain the confidentiality associated with those records in its proceedings and would expand its regulations to address motions to address evidentiary objections, stipulations and sealing of otherwise confidential records. Nevada Courts have similar provisions to consider confidential records in proceedings at which the record relates to the case or matter under consideration. Similar rules are utilized by the courts. See, Nevada Rules Governing Sealing and Redacting Court Records.</p>
28	<p>Permits the Commission to accept requests for advice as a referral on behalf of the public officer or employee whose conduct is at issue.</p> <p>Note: It is a streamlining measure intended to assist local ethics committees and public officers/employees with navigation of the requirements to obtain preventative advice on the application of the Ethics Law. Currently, the Commission must dismiss these requests for lack of jurisdiction because the local committee is not a public officer/employee who may request the advisory opinion under the Ethics Law.</p> <p><i>Consider eliminating as this is rare and not a high priority for service. In addition, public officers and employees already may directly request advisory opinions, and local committees may refer them to do so.</i></p>
29	<p>Clarifies the policy provision of the “limited use exception” and permits otherwise improper use of government property and resources if the use is permitted by way of an existing written policy and the limited use does not create an appearance of impropriety.</p> <p>Note: The Commission has considered ethics cases in which the public officer or employee had authority to create a policy, and did so post conduct, to excuse their own improper use of government resources and facilities, which was not distributed in writing to agency personnel. This section also includes a definition for “appearance of impropriety” consistent with established case law.</p>

30	Miscellaneous language clean-up.
31	<p>Clarifies that NRS 281A.420 does not require the disclosure of otherwise confidential information if a disclosure is made on non-confidential information and there is a recusal. Separately, this section establishes the same abstention process for disclosures of paid representation as is required of all other disclosures.</p> <p>Note: As an example of the lack of application of the abstention requirements in current law is that it would allow the public officer, who is a lawyer and has represented a person before public agencies on the matter before them, to disclose and vote on the matter before the public agency. In addition, consideration should be provided to clarify that public employees must also abstain on matter that present a clear and material conflict.</p>
32	<p>Replaces the term “willful” with “refuses” with respect to a violation for failure to file an acknowledgment form and removes the failure to file the form as an event of nonfeasance of office.</p> <p>Note: Many public officers do not know they are required to file the acknowledgment form. To educate public officers, the Commission believes it in the best interest of the public to first promote acknowledgment filing compliance before proceeding with a complaint case.</p> <p><i>Consider revisions. Sec. 32 could establish a specific monetary fine for failure to file an acknowledgment form by deadline similar to the fines imposed by the SOS for failing to file financial disclosure forms, which language could provide the ability to grant exceptions for good cause. Recommend checking with LCB to determine if the fine would trigger the 2/3 voting requirement, which would complicate bill passage. The text currently states that the failure is a violation. Consequently, a hearing would be required, and the mitigating factors set forth in NRS 281A.775 would need to be evaluated for purposes of determining whether the violation was willful and if a fine is appropriate.</i></p>
33	<p>Consistent with feedback from legislators and locals on SB 129 (2019), the Commission seeks to limit cooling-off prohibitions to certain management-level employees, while the one-year prohibitions against private employment with agency contract vendors will include employees who have material influence in management or administration of those contracts in addition to public officers/employees whose position could influence the award of contracts.</p> <p>The bill will assist requesters in presenting good cause factors for the Commission’s consideration on whether relief should be granted if they are able to contact the potential future employer, which contact is not currently allowed by the statute.</p>

	<p><i>Consider revisions: The definition of soliciting or accepting employment precludes any inquiry into a future job, which is a limiting factor in granting relief should there be sufficient cause to do so. Definition revision could permit an initial inquiry into position availability provided no discussion held on the specific terms of employment, etc.</i></p>
34	Miscellaneous language clean-up.
35	<p>Clarifies that the Commission may gather additional information needed from the Requester to process the advisory opinion to create a more streamlined and collaborative process and tolls the 45-day deadline for the period of time until the additional information is provided by the Requester.</p> <p>Note: The amendment will assist requesters in processing their advisory opinion.</p>
36	<p>1) Provides statutory discretion for the Commission to grant appropriate extensions of statutory deadlines for good cause to issue advisory opinions. Any extensions would have a designated deadline.</p> <p>Note: Good cause is a significant threshold and is variable based upon the circumstances. Examples are State closures, emergency situations, Covid-19 pandemic, family medical leave or vacancies in positions.</p> <p>2) Permits the Commission to stay advisory opinion proceedings when ethics complaints are filed on the same or similar matter.</p> <p>Note: This is appropriate because the Commission should not render advice on the conduct before a pending ethics complaint process has been completed.</p> <p>3) Establishes a process for informal advice rendered by the Executive Director or Commission Counsel based upon and consistent with established precedent and provides the Requester the ability to obtain review by the Commission.</p> <p>Note: Would streamline and make the Commission's services more efficient to meet the needs of public employees/officers.</p> <p>4) Clarifies judicial review is not afforded on guidance applicable to past conduct (consistent with an <i>En Banc</i> Order issued by the Nevada Supreme Court in interpreting application of the Ethics Law in a confidential advisory matter on past conduct).</p> <p><i>For 3): Consider removing reference to informal advice or limiting it to official agency attorneys because Commission staff resources may not be sufficient to provide informal advice to public officers and public employees.</i></p>

37	<p>Establishes a process permitting the Executive Director or Commission Counsel to render informal advice and confirms that process is afforded the same confidentiality protections as a formal request for advisory opinion.</p> <p><i>See note above for Sec. 36 on limiting informal advice to official counsel for agencies with employees under the jurisdiction of the Commission.</i></p>
38	<p>Confirms that when a requester seeks a public meeting or hearing in proceedings related to requester’s confidential advisory opinion, the Commission will provide one in accordance with the regulations of the Commission, but the meeting or hearing is not subject to the notice requirements of the Open Meeting Law.</p> <p>Note: With no requirement to serve an Open Meeting Law notice, the Commission may provide the timely rendering of advisory opinions within the 45-day statutory deadline.</p> <p><i>Consider clerical revision to confirm that Commission may hold a confidential advisory opinion hearing, which it may do under current law. The section incorrectly indicates the hearing on an advisory opinion is to be open to the public.</i></p>
39-40	<p>Miscellaneous language clean-up.</p>
41-42	<p>Section 41 confirms the ability to conduct a preliminary investigation into jurisdictional facts to assist the Commission with ascertaining whether it should initiate a complaint and whether it has jurisdiction over the conduct. Section 42 allows the Commission to consider good cause extensions and establish deadlines based upon a request from the Executive Director and to secure the public officer’s or public employee’s participation through its subpoena powers set forth in NRS 281A.300.</p> <p>Note: For example, extensions may be needed to obtain public records, obtain subpoenaed records, and to conduct the investigation, which are case and fact dependent. Further, providing the ability to obtain relevant testimony and facts relating to the allegations will provide opportunities for earlier case resolution saving resources and costs.</p> <p><i>Consider revision to confirm an addition, consistent with current NRS subpoena powers that the Commission can issue subpoenas to obtain evidence to support initiating a complaint on its own motion or determine facts related to a complaint filed by a requester which the Commission has accepted jurisdiction and directed the Executive Director to investigate. NAC regulations, that party status of the Subject of the Complaint and Executive Director, who are already defined parties under NAC 281A.060, commences upon issuance of the notice of complaint and panel determination and that prior investigation and related complaint, and the pre-panel investigation and review panel proceedings are not a contested process.</i></p>

43	<p>Authorizes the presiding officer of the Review panel to grant good cause extensions during the pre-panel investigative phase.</p> <p>Note: Based upon the good cause presented, the Presiding Officer of the Review Panel would have authority to set specific and reasonable deadlines in order to process cases efficiently and to prevent dismissals caused by the delay of others or circumstances beyond the Executive Director’s control. Current law only provides the subject of the ethics complaint the ability to waive time requirements, and there is no mechanism for any other good cause extension.</p>
44	<p>Provides the Review Panel will have 45 days (rather than 15 days) to conclude the investigation after receipt of the Executive Director’s written recommendation.</p> <p>Note: The additional 30-day time period will provide members of the Review Panel time for questions, requests for additional evidence, preparation of the written determination and statutory options to issue letters of caution or process deferral agreements in resolution of the case. This change will assist the Review Panel to address complex cases and complete its statutory duty of considering whether there is sufficient cause or the case to proceed to the Commission for further proceedings.</p>
45	<p>As part of the notice system established by the bill, the Executive Director will serve a notice to detail the violations the Review Panel refers to the Commission for further proceedings, which serves to provide relevant details to subjects of the complaint and to protect the identity of requesters filing complaints (complainants) that are entitled to maintain their name as confidential under current law (NRS 281A.750 – whistle-blower protections).</p> <p>Note: Adds identity protection for confidential complainants in furtherance of existing provisions established in NRS 281A.750. The Commission has received comments that certain subjects determined the identity of confidential complainants, entitled to protection under NRS 281A.750, on the basis of agency size or the complaint (even though the complaint was redacted), which result would be alleviated by institution of a notice system that adds protection of the identity of confidential requesters (complainants).</p>
46	<p>Provides confidentiality protection for those persons who file complaints by instituting a “notice of allegations” instead of providing a copy of the Complaint.</p> <p>Note: The Commission has received cases where the identity of the requester is required to be maintained as confidential but the complaint and submitted materials has been used to ascertain the identity. Often such heavy redactions are needed to protect the identity of the person filing the complaint, that subjects complain that they do not know what is being charged. The formal notice system and the schedule of discovery for cases adjudicated before the Commission serve to address these issues.</p>
47	<p>Adds a schedule for discovery, which identifies parties, provides discovery, a notice of hearing and addresses other procedural matters.</p>

48	<p>Makes the final action of the Commission exempt from the procedural requirements of the OML, which require special notice and publication of public meeting materials, which notice is hindered given the dynamics of the confidential adjudicatory process, including confidential settlement negotiations.</p> <p>Note: Current law provides the Commission with an exemption from Nevada’s Open Meeting Law to receive and deliberate on evidence in complaint cases but requires notice of a public hearing to take final action. See NRS 281A.760.</p> <p>This bill would assure transparency in rendering the final decision of the Commission, including any records relied upon by the Commission that are not otherwise confidential, would be made public after the Commission renders its decision. In particular, the Open Meeting Law notice requirements of NRS 241.033 for the Commission to hold a public hearing to discuss a Subject’s character and competence relating to whether there is a violation of the Ethics Law (5 days personal service or 21 working days) is inconsistent with the short deadline of 60 days to adjudicate the case after referral by the Review Panel.</p>
49	Includes miscellaneous clean up.
50-53	<p>Clarifies that the requirement for the Commission to treat comparable situations in a comparable manner is qualified by practicality.</p> <p>Note: This is appropriate given the number of opinions that the Commission has rendered over the last 40+ years. These sections also include miscellaneous language clean-up.</p> <p><i>Consider revisions to confirm the Commission may resolve complaint cases by stipulation, deferral agreement, consent order, opinion and in doing so may apply any of the listed provisions to the applicable resolution.</i></p>
54	<p>Gives safe harbor protections for public officers/employees seeking preventative informal ethics advice and confirms that separate violations of the ethics law may be treated cumulatively for purpose of application of the penalty provisions of NRS 281A.790.</p> <p><i>Consider revisions to confirm the Commission has the authority to treat multiple violations occurring out of the same conduct as a single violation or determine each should be treated as separate violations if occurring on different dates based upon the application of the mitigating factors set forth in NRS 281A.775.</i></p>

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Generally, these sections pertain to Amendment 777. However, Amendment 777 also provided agreed upon revisions to AB 65 for Sections 8 and , which are recommended to be retained – see applicable section, above.

The main purpose of Amendment 777 was to provide the Legislature with singular authority over alleged ethics violations of its members and staff, creating a tripartite model for internal legislative commissions to address ethics matters.

Notes: The Governor’s veto letter of June 11, 2021, contained a recommendation for a cost analysis to be performed in the interim on the proposed legislative model, and LCB Staff may have information on the status of completion of the cost analysis. Additional Background: As confirmed by the NCSL Chart, the individual states have established differing structures for their ethics commissions, with a majority of states (37) having a single ethics commission to oversee both executive and legislative branches. Similar to Nevada, most states retain authority over their core legislative functions. In Nevada, the Nevada Supreme Court decision in Comm’n on *Ethics v. Hardy*, 125 Nev. 285, 212 P.3d 1098 (2009) confirms the Nevada Legislature retains and could not delegate its authority over core legislative functions. As a result, revisions to NRS 281A.020 confirming the jurisdiction over core legislative functions remains with the Nevada Legislature were enacted in 2009.

It is recommended that the portions of Amendment 777 creating the legislative model not be included in the Commission 2023 bill draft. Resources are needed to support reinstating the bill including obtaining a cost analysis associated with the operations of the Legislature. Commission does not have fiscal knowledge or resources available to prepare this analysis, but will be available to the Legislative Council Bureau, as requested. Further, it would be reasonable to introduce the legislative model as a separate bill so the Legislature can receive full information on the bill intent, financial impacts and consistency with other jurisdictions.