

Assembly Bill No. 64—Assemblymen Carpenter, Goicoechea,
Marvel, Grady, Hettrick, Claborn and Sherer

Joint Sponsors: Senators Rhoads and McGinness

CHAPTER.....

AN ACT relating to ethics in government; authorizing the Commission on Ethics to use legal counsel other than the Commission Counsel under certain circumstances; exempting a person elected as a supervisor of a conservation district from the requirement of filing a statement of financial disclosure with the Secretary of State; revising the provisions relating to the circumstances under which a public officer or employee has not committed a willful violation of certain provisions of the Nevada Ethics in Government Law; and providing other matters properly relating thereto.

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

Section 1. NRS 281.4645 is hereby amended to read as follows:

281.4645 1. The Commission Counsel is the legal adviser to the Commission. For each opinion of the Commission, the Commission Counsel shall prepare, at the direction of the Commission, the appropriate findings of fact and conclusions as to relevant standards and the propriety of particular conduct within the time set forth in subsection 4 of NRS 281.511. The Commission Counsel shall not issue written opinions concerning the applicability of the statutory ethical standards to a given set of facts and circumstances except as directed by the Commission.

2. The Commission may rely upon the legal advice of the Commission Counsel in conducting its daily operations.

3. If the Commission Counsel is prohibited from acting on a particular matter ~~[pursuant to NRS 281.501, he shall disclose the reasons therefor to the Chairman and]~~ *or is otherwise unable to act on a particular matter, the Commission may:*

(a) Request that the Attorney General ~~[shall]~~ appoint a deputy to act in the place of the Commission Counsel ~~[for that particular matter.]; or~~

(b) Employ outside legal counsel.

Sec. 2. NRS 281.551 is hereby amended to read as follows:

281.551 1. In addition to any other penalty provided by law, the Commission may impose on a public officer or employee or former public officer or employee civil penalties:

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

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

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

2. In addition to other penalties provided by law, the Commission may impose a civil penalty not to exceed \$5,000 and assess an amount equal to the amount of attorney's fees and costs actually and reasonably incurred by the person about whom an opinion was requested pursuant to NRS 281.511, against a person who prevents, interferes with or attempts to prevent or interfere with the discovery or investigation of a violation of this chapter.

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

4. In addition to any other penalty provided by law, by an affirmative vote of two-thirds of the Commission, the Commission may impose on any person who violates any provision of NRS 294A.345 or 294A.346 a civil penalty not to exceed \$5,000. The Commission shall not impose a civil penalty for a violation of NRS 294A.345 unless the Commission has made the specific findings required pursuant to subsection 7 of NRS 281.477.

5. If the Commission finds that:

(a) A willful violation of this chapter has been committed by a public officer removable from office by impeachment only, the Commission shall file a report with the appropriate person responsible for commencing impeachment proceedings as to its finding. The report must contain a statement of the facts alleged to constitute the violation.

(b) A willful violation of this chapter has been committed by a public officer removable from office pursuant to NRS 283.440, the Commission may file a proceeding in the appropriate court for removal of the officer.

(c) Three or more willful violations have been committed by a public officer removable from office pursuant to NRS 283.440, the Commission shall file a proceeding in the appropriate court for removal of the officer.

6. An action taken by a public officer or employee or former public officer or employee relating to NRS 281.481, 281.491, 281.501 or 281.505 is not a willful violation of a provision of those sections if the public officer or employee ~~is~~:

~~(a) Relied~~ *establishes by sufficient evidence that he satisfied all of the following requirements:*

(a) *He relied* in good faith upon the advice of the legal counsel retained by the public body which the public officer represents or by the employer of the public employee or upon the manual published by the Commission pursuant to NRS 281.471;

(b) ~~[Was]~~ *He was* unable, through no fault of his own, to obtain an opinion from the Commission before the action was taken; and

(c) ~~[Took]~~ *He took* action that was not contrary to a prior published opinion issued by the Commission.

7. In addition to other penalties provided by law, a public employee who willfully violates a provision of NRS 281.481, 281.491, 281.501 or 281.505 is subject to disciplinary proceedings by his employer and must be referred for action in accordance to the applicable provisions governing his employment.

8. NRS 281.481 to 281.541, inclusive, do not abrogate or decrease the effect of the provisions of the Nevada Revised Statutes which define crimes or prescribe punishments with respect to the conduct of public officers or employees. If the Commission finds that a public officer or employee has committed a willful violation of this chapter which it believes may also constitute a criminal offense, the Commission shall refer the matter to the Attorney General or the district attorney, as appropriate, for a determination of whether a crime has been committed that warrants prosecution.

9. The imposition of a civil penalty pursuant to subsections 1 to 4, inclusive, is a final decision for the purposes of judicial review.

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

Sec. 3. NRS 281.561 is hereby amended to read as follows:

281.561 1. Each candidate for public office who will be entitled to receive annual compensation of \$6,000 or more for serving in the office that he is seeking and , *except as otherwise provided in subsection 2*, each public officer who was elected to the office for which he is serving shall file with the Secretary of State a statement of financial disclosure, as follows:

(a) A candidate for nomination, election or reelection to public office shall file a statement of financial disclosure no later than the 10th day after the last day to qualify as a candidate for the office; and

(b) Each public officer shall file a statement of financial disclosure on or before January 15 of each year of the term, including the year the term expires.

2. *A person elected pursuant to NRS 548.285 to the office of supervisor of a conservation district is not required to file a statement of financial disclosure relative to that office pursuant to subsection 1.*

3. A candidate for judicial office or a judicial officer shall file a statement of financial disclosure pursuant to the requirements of Canon 4I of the Nevada Code of Judicial Conduct. Such a statement of financial disclosure must include, without limitation, all information required to be included in a statement of financial disclosure pursuant to NRS 281.571.

~~[3-]~~ **4.** A statement of financial disclosure shall be deemed to be filed with the Secretary of State:

(a) On the date that it was mailed if it was sent by certified mail; or

(b) On the date that it was received by the Secretary of State if the statement was sent by regular mail, transmitted by facsimile machine or electronic means, or delivered personally.

~~[4-]~~ **5.** The statement of financial disclosure filed pursuant to this section must be filed on the form prescribed by the Commission pursuant to NRS 281.471.

~~[5-]~~ **6.** The Secretary of State shall prescribe, by regulation, procedures for the submission of statements of financial disclosure filed pursuant to this section, maintain files of such statements and make the statements available for public inspection.

Sec. 4. Any civil penalty or fine pending on the effective date of this act which was imposed pursuant to NRS 281.581 or any other provision of law against an elected supervisor of a conservation district for failing to file a statement of financial disclosure pursuant to NRS 281.561 is hereby declared void and must not be collected.

Sec. 5. This act becomes effective upon passage and approval and the amendatory provisions of subsection 2 of section 3 of this act apply retroactively to January 1, 2004.