

ASSEMBLY BILL NO. 499—COMMITTEE ON ELECTIONS,
PROCEDURES, ETHICS, AND CONSTITUTIONAL AMENDMENTS

MARCH 28, 2005

Referred to Committee on Elections, Procedures, Ethics,
and Constitutional Amendments

SUMMARY—Makes various changes relating to public office.
(BDR 24-898)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to government; repealing the provision prohibiting a person from making a false statement of fact concerning a candidate or a question on a ballot under certain circumstances; repealing the provision prohibiting certain persons from willfully impeding the success of the campaign of a candidate or the campaign for the passage or defeat of a question on a ballot; and other matters properly relating thereto.

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

Secs. 1-13. (Deleted by amendment.)

Sec. 14. NRS 294A.410 is hereby amended to read as follows:

294A.410 1. ~~Except as otherwise provided in NRS 294A.345 and 294A.346, if~~ *If* it appears that the provisions of this chapter have been violated, the Secretary of State may:

(a) Conduct an investigation concerning the alleged violation and cause the appropriate proceedings to be instituted and prosecuted in the First Judicial District Court; or

(b) Refer the alleged violation to the Attorney General. The Attorney General shall investigate the alleged violation and institute and prosecute the appropriate proceedings in the First Judicial District Court without delay.



2. A person who believes that any provision of this chapter has been violated may notify the Secretary of State, in writing, of the alleged violation. The notice must be signed by the person alleging the violation and include any information in support of the alleged violation.

Sec. 15. NRS 281.461 is hereby amended to read as follows:

281.461 1. The Commission shall:

(a) At its first meeting and annually thereafter elect a Chairman and Vice Chairman from among its members.

(b) Meet regularly at least once in each calendar quarter, unless there are no requests made for an opinion pursuant to NRS 281.511, ~~[294A.345 or 294A.346,]~~ and at other times upon the call of the Chairman.

2. Members of the Commission are entitled to receive a salary of not more than \$80 per day, as fixed by the Commission, while engaged in the business of the Commission.

3. While engaged in the business of the Commission, each member and employee of the Commission is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

4. The Commission may, within the limits of legislative appropriation, maintain such facilities as are required to carry out its functions.

Sec. 16. NRS 281.4635 is hereby amended to read as follows:

281.4635 1. In addition to any other duties imposed upon him, the Executive Director shall:

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

(b) Receive requests for opinions pursuant to NRS 281.511 . ~~294A.345 or 294A.346.]~~

(c) Gather information and conduct investigations regarding requests for opinions received by the Commission and submit recommendations to the panel appointed pursuant to NRS 281.462 regarding whether there is just and sufficient cause to render an opinion in response to a particular request.

(d) Recommend to the Commission any regulations or legislation that he considers desirable or necessary to improve the operation of the Commission and maintain high standards of ethical conduct in government.

(e) Upon the request of any public officer or the employer of a public employee, conduct training on the requirements of this chapter, the rules and regulations adopted by the Commission and previous opinions of the Commission. In any such training, the Executive Director shall emphasize that he is not a member of the Commission and that only the Commission may issue opinions



1 concerning the application of the statutory ethical standards to any
2 given set of facts and circumstances. The Commission may charge a
3 reasonable fee to cover the costs of training provided by the
4 Executive Director pursuant to this subsection.

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

7 2. The Executive Director shall, within the limits of legislative
8 appropriation, employ such persons as are necessary to carry out any
9 of his duties relating to:

10 (a) The administration of the affairs of the Commission;

11 (b) The review of statements of financial disclosure; and

12 (c) The investigation of matters under the jurisdiction of the
13 Commission.

14 **Sec. 17.** NRS 281.465 is hereby amended to read as follows:

15 281.465 1. The Commission has jurisdiction to investigate
16 and take appropriate action regarding an alleged violation of ~~§~~

17 ~~—(a) This~~ *this* chapter by a public officer or employee or former
18 public officer or employee in any proceeding commenced by:

19 ~~[(1)]~~ (a) The filing of a request for an opinion with the
20 Commission; or

21 ~~[(2)]~~ (b) The Commission on its own motion.

22 ~~[(b) NRS 294A.345 or 294A.346 in any proceeding commenced~~
23 ~~by the filing of a request for an opinion pursuant thereto.]~~

24 2. The provisions of ~~[(paragraph (a) of)]~~ subsection 1 apply to a
25 public officer or employee who:

26 (a) Currently holds public office or is publicly employed at the
27 commencement of proceedings against him.

28 (b) Resigns or otherwise leaves his public office or employment:

29 (1) After the commencement of proceedings against him; or

30 (2) Within 1 year after the alleged violation or reasonable
31 discovery of the alleged violation.

32 **Sec. 18.** NRS 281.475 is hereby amended to read as follows:

33 281.475 1. The Chairman and Vice Chairman of the
34 Commission may administer oaths.

35 2. The Commission, upon majority vote, may issue a subpoena
36 to compel the attendance of a witness and the production of books
37 and papers. Upon the request of the Executive Director or the public
38 officer or public employee who is the subject of a request for an
39 opinion, the Chairman or, in his absence, the Vice Chairman, may
40 issue a subpoena to compel the attendance of a witness and the
41 production of books and papers.

42 3. Before issuing a subpoena to a public officer or public
43 employee who is the subject of a request for an opinion, the
44 Executive Director shall submit a written request to the public
45 officer or public employee requesting:



- 1 (a) His appearance as a witness; or
- 2 (b) His production of any books and papers relating to the
- 3 request for an opinion.

4 4. Each written request submitted by the Executive Director
5 pursuant to subsection 3 must specify the time and place for the
6 attendance of the public officer or public employee or the
7 production of any books and papers, and designate with certainty
8 the books and papers requested, if any. If the public officer or public
9 employee fails or refuses to attend at the time and place specified or
10 produce the books and papers requested by the Executive Director
11 within 5 business days after receipt of the request, the Chairman
12 may issue the subpoena. Failure of the public officer or public
13 employee to comply with the written request of the Executive
14 Director shall be deemed a waiver by the public officer or public
15 employee of the time set forth in subsections 3 and 4 of
16 NRS 281.511.

17 5. If any witness refuses to attend, testify or produce any books
18 and papers as required by the subpoena, the Chairman of the
19 Commission may report to the district court by petition, setting forth
20 that:

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

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

25 (c) The witness has failed or refused to attend or produce the
26 books and papers required by the subpoena before the Commission,
27 or has refused to answer questions propounded to him, and asking
28 for an order of the court compelling the witness to attend and testify
29 or produce the books and papers before the Commission.

30 6. ~~[Except as otherwise provided in this subsection, upon]~~
31 **Upon** such a petition, the court shall enter an order directing the
32 witness to appear before the court at a time and place to be fixed by
33 the court in its order, the time to be not more than 10 days after the
34 date of the order, and then and there show cause why he has not
35 attended, testified or produced the books or papers before the
36 Commission. ~~[If the witness has been subpoenaed by the~~
37 ~~Commission in response to a request for an opinion filed pursuant to~~
38 ~~NRS 294A.345 or 294A.346, the court shall direct the witness to~~
39 ~~appear before the court as expeditiously as possible to allow the~~
40 ~~Commission to render its opinion within the time required by NRS~~
41 ~~281.477.]~~ A certified copy of the order must be served upon the
42 witness.

43 7. If it appears to the court that the subpoena was regularly
44 issued by the Commission, the court shall enter an order that the
45 witness appear before the Commission, at the time and place fixed



1 in the order, and testify or produce the required books and papers.
2 Upon failure to obey the order, the witness must be dealt with as for
3 contempt of court.

4 **Sec. 19.** NRS 281.521 is hereby amended to read as follows:

5 281.521 ~~[(1)]~~ The Commission's opinions may include
6 guidance to a public officer or employee on questions whether:

7 ~~[(a)]~~ 1. A conflict exists between his personal interest and his
8 official duty.

9 ~~[(b)]~~ 2. His official duties involve the use of discretionary
10 judgment whose exercise in the particular matter would have a
11 significant effect upon the disposition of the matter.

12 ~~[(c)]~~ 3. The conflict would materially affect the independence
13 of the judgment of a reasonable person in his situation.

14 ~~[(d)]~~ 4. He possesses special knowledge which is an
15 indispensable asset of his public agency and is needed by it to reach
16 a sound decision.

17 ~~[(e)]~~ 5. It would be appropriate for him to withdraw or abstain
18 from participation, disclose the nature of his conflicting personal
19 interest or pursue some other designated course of action in the
20 matter.

21 ~~[(2. Except as otherwise provided in NRS 281.477, 294A.345~~
22 ~~and 294A.346, the Commission's opinions may not include~~
23 ~~guidance to a public officer or employee on questions regarding the~~
24 ~~provisions of chapter 294A of NRS.)]~~

25 **Sec. 20.** NRS 281.551 is hereby amended to read as follows:

26 281.551 1. In addition to any other penalty provided by law,
27 the Commission may impose on a public officer or employee or
28 former public officer or employee civil penalties:

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

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

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

35 2. In addition to other penalties provided by law, the
36 Commission may impose a civil penalty not to exceed \$5,000 and
37 assess an amount equal to the amount of attorney's fees and costs
38 actually and reasonably incurred by the person about whom an
39 opinion was requested pursuant to NRS 281.511 ~~[(1)]~~ against a person
40 who prevents, interferes with or attempts to prevent or interfere with
41 the discovery or investigation of a violation of this chapter.

42 3. If the Commission finds that a violation of a provision of
43 this chapter by a public officer or employee or former public officer
44 or employee has resulted in the realization by another person of a
45 financial benefit, the Commission may, in addition to other penalties



1 provided by law, require the current or former public officer or
2 employee to pay a civil penalty of not more than twice the amount
3 so realized.

4 ~~4. In addition to any other penalty provided by law, by an~~
5 ~~affirmative vote of two thirds of the Commission, the Commission~~
6 ~~may impose on any person who violates any provision of NRS~~
7 ~~294A.345 or 294A.346 a civil penalty not to exceed \$5,000. The~~
8 ~~Commission shall not impose a civil penalty for a violation of NRS~~
9 ~~294A.345 unless the Commission has made the specific findings~~
10 ~~required pursuant to subsection 7 of NRS 281.477.~~

11 ~~—5.~~ If the Commission finds that:

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

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

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

26 ~~[6.]~~ 5. An action taken by a public officer or employee or
27 former public officer or employee relating to NRS 281.481,
28 281.491, 281.501 or 281.505 is not a willful violation of a provision
29 of those sections if the public officer or employee:

30 (a) Relied in good faith upon the advice of the legal counsel
31 retained by the public body which the public officer represents or by
32 the employer of the public employee or upon the manual published
33 by the Commission pursuant to NRS 281.471;

34 (b) Was unable, through no fault of his own, to obtain an
35 opinion from the Commission before the action was taken; and

36 (c) Took action that was not contrary to a prior published
37 opinion issued by the Commission.

38 ~~[7.]~~ 6. In addition to other penalties provided by law, a public
39 employee who willfully violates a provision of NRS 281.481,
40 281.491, 281.501 or 281.505 is subject to disciplinary proceedings
41 by his employer and must be referred for action in accordance to the
42 applicable provisions governing his employment.

43 ~~[8.]~~ 7. NRS 281.481 to 281.541, inclusive, do not abrogate or
44 decrease the effect of the provisions of the Nevada Revised Statutes
45 which define crimes or prescribe punishments with respect to the



1 conduct of public officers or employees. If the Commission finds
2 that a public officer or employee has committed a willful violation
3 of this chapter which it believes may also constitute a criminal
4 offense, the Commission shall refer the matter to the Attorney
5 General or the district attorney, as appropriate, for a determination
6 of whether a crime has been committed that warrants prosecution.

7 ~~[9.]~~ 8. The imposition of a civil penalty pursuant to
8 ~~[subsections 1 to 4, inclusive,]~~ **subsection 1, 2 or 3** is a final
9 decision for the purposes of judicial review.

10 ~~[10.]~~ 9. A finding by the Commission that a public officer or
11 employee has violated any provision of this chapter must be
12 supported by a preponderance of the evidence unless a greater
13 burden is otherwise prescribed by law.

14 **Sec. 21.** NRS 281.477, 294A.345 and 294A.346 are hereby
15 repealed.

16 **Sec. 22.** The amendatory provisions of sections 14 to 21,
17 inclusive, of this act do not apply to conduct that occurred before
18 October 1, 2005, or to the jurisdiction, duties, powers or
19 proceedings of the Commission on Ethics relating to such conduct.

20 **Sec. 23.** (Deleted by amendment.)

21 **Sec. 24.** 1. This section and sections 1, 3 to 8, inclusive, 10,
22 11, 12 and 14 to 23, inclusive, of this act become effective on
23 October 1, 2005.

24 2. Sections 8 and 12 of this act expire by limitation on
25 December 31, 2007.

26 3. Sections 2, 9 and 13 of this act become effective on
27 January 1, 2008.

TEXT OF REPEALED SECTIONS

**281.477 Public hearing on request for opinion as to whether
person committed act to impede success of political campaign:
Request; notice; response; continuance; actions of Commission;
judicial review of final opinion.**

1. If a request for an opinion is filed with the Commission
pursuant to NRS 294A.345 or 294A.346, the Commission shall
conduct a public hearing on the request. Except as otherwise
provided in subsection 6, the hearing must be held as expeditiously
as possible, but not later than 15 days after the receipt of the request
for the opinion.

2. Such a request must be accompanied by all evidence and
arguments to be offered by the requester concerning the issues



related to the request. Except as otherwise provided in this subsection, if such evidence and arguments are not submitted with the request, the Commission may:

(a) Draw any conclusions it deems appropriate from the failure of the person or group of persons requesting the opinion to submit the evidence and arguments, other than a conclusion that a person alleged to have violated NRS 294A.345 acted with actual malice; and

(b) Decline to render an opinion.

→ The provisions of this subsection do not prohibit the Commission from considering evidence or arguments presented by the requester after submission of the request for an opinion if the Commission determines that consideration of such evidence or arguments is in the interest of justice.

3. The Commission shall immediately notify any person alleged to have violated NRS 294A.345 or 294A.346 that such an opinion has been requested by the most expedient means possible. If notice is given orally by telephone or in any other manner, a second notice must be given in writing not later than the next calendar day by facsimile machine or overnight mail. The notice must include the time and place of the Commission's hearing on the matter.

4. A person notified pursuant to subsection 3 shall submit a response to the Commission not later than the close of business on the second business day following the receipt of the notice. The response must be accompanied by any evidence concerning the issues related to the request that the person has in his possession or may obtain without undue financial hardship. Except as otherwise provided in this subsection, if such evidence is not submitted within that time, the Commission may:

(a) Draw any conclusions it deems appropriate from the failure of that person to submit the evidence and argument; and

(b) Prohibit that person from responding and presenting evidence at the hearing.

→ The provisions of this subsection do not prohibit the Commission from allowing that person to respond and present evidence or arguments, or both, after the close of business on the second business day if the Commission determines that consideration of such evidence or arguments is in the interest of justice.

5. Except as otherwise provided in subsection 4, the Commission shall allow any person alleged to have violated NRS 294A.345 or 294A.346 to:

(a) Be represented by counsel; and

(b) Hear the evidence presented to the Commission and respond and present evidence on his own behalf.

6. At the request of:



(a) The person or group of persons that filed the request for the opinion pursuant to NRS 294A.345 or 294A.346; or

(b) The person alleged to have violated the provisions of NRS 294A.345 or 294A.346,

↳ the Commission may grant a continuance of a hearing held pursuant to the provisions of this section upon a showing of the existence of extraordinary circumstances that would prohibit the Commission from rendering a fair and impartial opinion. A continuance may be granted for not more than 15 days. Not more than one continuance may be granted by the Commission pursuant to this subsection.

7. The person or group of persons that filed the request for the opinion pursuant to NRS 294A.345 or 294A.346 has the burden of proving the elements of the offense, including that a person alleged to have violated NRS 294A.345 acted with actual malice. The existence of actual malice may not be presumed. A final opinion of the Commission rendered pursuant to this section must be supported by clear and convincing evidence. In addition to the other requirements for issuing an opinion pursuant to this subsection, the Commission shall not render a final opinion determining that a person has violated NRS 294A.345 unless the Commission makes specific findings that:

(a) The person caused to be published a false statement of fact concerning a candidate;

(b) The person acted with actual malice in causing the false statement to be published;

(c) The person acted with the intent to impede the success of the campaign of the candidate in causing the false statement to be published; and

(d) The publication of the false statement did in fact impede the success of the campaign of the candidate.

↳ In addition to the other requirements for issuing an opinion pursuant to this subsection, the Commission shall not render a final opinion determining that a person has violated NRS 294A.345 or 294A.346 unless a finding that each of the elements of the offense has been proven receives the affirmative vote of two-thirds of the Commission.

8. The Commission shall render its opinion, or decline to render an opinion, as expeditiously as possible, but not later than 3 days after the date of the hearing. If additional time is required to determine the state of mind or the intent of the person alleged to have violated the provisions of NRS 294A.345 or 294A.346 or to determine the amount of any civil penalty that may be imposed pursuant to NRS 281.551, the Commission may continue its jurisdiction to investigate those issues but shall render its opinion as



to the truth or falsity of the statement made concerning the candidate or the ballot question or its opinion as to whether the person impeded the success of the campaign or induced another person to impede the success of the campaign. If the Commission continues its jurisdiction pursuant to this subsection, it may render a final opinion after the time set forth in this subsection.

9. A final opinion of the Commission rendered pursuant to this section is subject to judicial review pursuant to NRS 233B.130. The district court shall give a petition for judicial review of a final opinion of the Commission priority over other civil matters that are not expressly given priority by law. Notwithstanding the provisions of NRS 233B.130, the court may provide for such expedited review of the final opinion, including shortened periods for filing documents, as it deems appropriate for the circumstances.

10. Each request for an opinion filed pursuant to NRS 294A.345 or 294A.346, each opinion rendered by the Commission pursuant thereto and any motion, evidence or record of a hearing relating to the request are public and must be open to inspection pursuant to NRS 239.010.

11. For the purposes of NRS 41.032, the members of the Commission and its employees shall be deemed to be exercising or performing a discretionary function or duty when taking any action related to the rendering of an opinion pursuant to this section.

12. Except as otherwise provided in this section, a meeting or hearing held by the Commission to carry out the provisions of this section and the Commission's deliberations on the information or evidence are not subject to any provision of chapter 241 of NRS.

13. As used in this section:

(a) "Actual malice" has the meaning ascribed to it in NRS 294A.345.

(b) "Publish" has the meaning ascribed to it in NRS 294A.345.

294A.345 Impeding success of campaign of candidate by causing publication of certain false statements of fact concerning candidate prohibited; civil penalty imposed by Commission on Ethics.

1. A person shall not, with actual malice and the intent to impede the success of the campaign of a candidate, impede the success of the candidate by causing to be published a false statement of fact concerning the candidate, including, without limitation, statements concerning:

(a) The education or training of the candidate.

(b) The profession or occupation of the candidate.

(c) Whether the candidate committed, was indicted for committing or was convicted of committing a felony or other crime involving moral turpitude, dishonesty or corruption.



(d) Whether the candidate has received treatment for a mental illness.

(e) Whether the candidate was disciplined while serving in the military or was dishonorably discharged from service in the military.

(f) Whether another person endorses or opposes the candidate.

(g) The record of voting of a candidate if he formerly served or currently serves as a public officer.

2. Any candidate who alleges that a false statement of fact concerning the candidate has been published in violation of subsection 1 may file a request for an opinion with the Commission on Ethics pursuant to NRS 281.411 to 281.581, inclusive. Such a request must be filed with the Commission not later than 10 days after the date on which the false statement of fact is alleged to have been made. The Commission shall give priority to such a request over all other matters pending with the Commission.

3. A person who violates the provisions of this section is subject to a civil penalty that may be imposed by the Commission on Ethics pursuant to NRS 281.551.

4. As used in this section:

(a) "Actual malice" means knowledge of the falsity of a statement or reckless disregard for whether a statement is true or false.

(b) "Publish" means the act of printing, posting, broadcasting, mailing, speaking or otherwise disseminating.

294A.346 Impeding success or inducing another to impede success of campaign of candidate or for ballot question prohibited; civil penalty imposed by Commission on Ethics.

1. An employee, agent or volunteer of the campaign of a candidate shall not willfully perform any act in the course of his employment, agency or volunteering that impedes the success of that campaign.

2. A person shall not willfully, to impede the success of the campaign of a candidate, offer or give an item of value to:

(a) A person to induce him to obtain a position as an employee, agent or volunteer for that campaign and perform any act in the course of his employment, agency or volunteering to impede the success of that campaign; or

(b) An employee, agent or volunteer for that campaign to induce him to perform any act in the course of his employment, agency or volunteering to impede the success of that campaign.

3. An employee, agent or volunteer of a campaign for the passage or defeat of a question on the ballot at any election, including any recall or special election, shall not willfully perform



any act in the course of his employment, agency or volunteering that impedes the success of that campaign.

4. A person shall not willfully, to impede the success of a campaign for the passage or defeat of a question on the ballot at any election, including any recall or special election, offer or give an item of value to:

(a) A person to induce him to obtain a position as an employee, agent or volunteer for that campaign and perform any act in the course of his employment, agency or volunteering to impede the success of that campaign; or

(b) An employee, agent or volunteer for that campaign to induce him to perform any act in the course of his employment, agency or volunteering to impede the success of that campaign.

5. Any candidate who alleges that a person has violated the provisions of subsection 1 or 2, and any person or group of persons that advocates the passage or defeat of a question on the ballot at any election, is required to file a report pursuant to NRS 294A.150, and alleges that a person has violated the provisions of subsection 3 or 4, may file a request for an opinion with the Commission on Ethics pursuant to NRS 281.411 to 281.581, inclusive. Such a request must be filed with the Commission not later than 10 days after the date of the election with respect to which the alleged violation occurred. The Commission shall give priority to such a request over all matters pending with the Commission.

6. A person who violates the provisions of this section is subject to a civil penalty that may be imposed by the Commission on Ethics pursuant to NRS 281.551.

