

SENATE BILL NO. 430—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 29, 2005

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions governing removal of public officer from office other than by impeachment or accusation. (BDR 23-918)

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 public officers; providing that certain public officers may be removed from public office for a violation of provisions governing conduct of public officers; revising the provisions governing the removal of a trustee on the board of a consolidated library district by the board of county commissioners; repealing provision relating to removal of a public officer upon a complaint filed with a district court; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

- 1 Existing law establishes three methods to remove a public officer from office.
- 2 The public officer may be removed by impeachment, by grand jury presentment
- 3 and trial by jury or by a summary proceeding. (Nev. Const., Art. 7, §§ 1-4; NRS
- 4 283.140-283.290, 283.300-283.430, 283.440) Existing law also establishes the
- 5 procedure by which a public officer, other than a justice or judge, may be removed
- 6 from office for malfeasance or nonfeasance through a summary removal. This
- 7 procedure requires a person to file a written complaint against the public officer and
- 8 the district court must schedule a hearing on the complaint within 20 days after the
- 9 complaint was presented. If the court sustains the charges in the complaint, the
- 10 court is required to enter a decree that the public officer be removed from office.
- 11 The public officer may appeal the court decree, but is prohibited from holding
- 12 office while the appeal is pending. The Governor or board of county commissioners
- 13 is required to appoint a person to fill the vacant office until a successor is elected or
- 14 appointed. (NRS 283.440)
- 15 This bill repeals the provisions concerning the summary removal of a public
- 16 officer from office for malfeasance and nonfeasance. Instead, this bill establishes
- 17 similar procedures to be added to the provisions of the Nevada Ethics in



Government Law. (NRS 281.411-281.581) However, in lieu of providing that a public officer may be removed from office for malpractice or malfeasance, this bill provides that a public officer may be removed from office for violating any of the provisions of Chapter 281 of NRS governing actions of public officers and employees generally. In addition, this bill authorizes only the Commission on Ethics to submit a complaint to the district court. The other procedures concerning scheduling a hearing, appealing a decision and appointing a person to fill a vacancy caused by such a decision of the district court remain the same.

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

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

*1. A public officer who violates a provision of this chapter may be deprived of his office as hereinafter prescribed in this section.*

*2. Whenever a complaint in writing is presented by the Commission to a district court alleging that a public officer within the jurisdiction of the court has committed one or more violations of a provision of this chapter, the court shall cite the public officer charged to appear before it on a certain day, not more than 10 days or less than 5 days after the date on which the complaint was presented. On that day, or some subsequent day not more than 20 days after the date on which the complaint was presented, the court, in a summary manner, shall proceed to hear the complaint and evidence offered by the public officer about whom the complaint was presented. If, on the hearing, it appears that the charge or charges set forth in the complaint are sustained, the court shall enter a decree that the public officer about whom the complaint was presented must be deprived of his office.*

*3. The clerk of the court in which the proceedings are held, shall, within 3 days thereafter, transmit to the Governor or the board of county commissioners of the proper county, as the case may be, a copy of a decree or judgment declaring a public officer deprived of his office under this section. The Governor or the board of county commissioners, as the case may be, shall appoint a person to fill the office until a successor is elected or appointed and qualified. The person so appointed shall give such bond as security as is prescribed by law and pertaining to the office.*

*4. If the judgment of the district court is against the public officer about whom the complaint was presented and an appeal is taken from the judgment so rendered, the public officer so appealing shall not hold the office during the pendency of the appeal, but the office must be filled as in case of a vacancy.*



**Sec. 2.** NRS 281.005 is hereby amended to read as follows:  
281.005 As used in this chapter:

1. Except as limited for the purposes of NRS 281.411 to 281.581, inclusive, *and section 1 of this act*, “public officer” means a person elected or appointed to a position which:

(a) Is established by the Constitution or a statute of this State, or by a charter or ordinance of a political subdivision of this State; and

(b) Involves the continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty.

2. “Special use vehicle” means any vehicle designed or used for the transportation of persons or property off paved highways.

**Sec. 3.** NRS 281.411 is hereby amended to read as follows:

281.411 NRS 281.411 to 281.581, inclusive, *and section 1 of this act* may be cited as the Nevada Ethics in Government Law.

**Sec. 4.** NRS 281.431 is hereby amended to read as follows:

281.431 As used in NRS 281.411 to 281.581, inclusive, *and section 1 of this act*, unless the context otherwise requires, the words and terms defined in NRS 281.432 to 281.4375, inclusive, have the meanings ascribed to them in those sections.

**Sec. 5.** NRS 281.4647 is hereby amended to read as follows:

281.4647 1. Each county whose population is more than 10,000 and each city whose population is more than 10,000 and that is located within such a county shall pay an assessment for the costs incurred by the Commission each biennium in carrying out its functions pursuant to NRS 281.411 to 281.581, inclusive ~~§~~, *and section 1 of this act*. The total amount of money to be derived from assessments paid pursuant to this subsection for a biennium must be determined by the Legislature in the legislatively approved budget of the Commission for that biennium. The assessments must be apportioned among each such city and county based on the proportion that the total population of the city or the total population of the unincorporated area of the county bears to the total population of all such cities and the unincorporated areas of all such counties in this State.

2. On or before July 1 of each odd-numbered year, the Executive Director shall, in consultation with the Budget Division of the Department of Administration and the Fiscal Analysis Division of the Legislative Counsel Bureau, determine for the next ensuing biennium the amount of the assessments due for each city and county that is required to pay an assessment pursuant to subsection 1. The assessments must be paid to the Commission in semiannual installments that are due on or before August 1 and February 1 of each year of the biennium. The Executive Director



1 shall send out a billing statement to each such city or county which  
2 states the amount of the semiannual installment payment due from  
3 the city or county.

4 3. Any money that the Commission receives pursuant to  
5 subsection 2:

6 (a) Must be deposited in the State Treasury, accounted for  
7 separately in the State General Fund and credited to the budget  
8 account for the Commission;

9 (b) May only be used to carry out NRS 281.411 to 281.581,  
10 inclusive, *and section 1 of this act*, and only to the extent authorized  
11 for expenditure by the Legislature; and

12 (c) Does not revert to the State General Fund at the end of any  
13 fiscal year.

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

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

28 **Sec. 6.** NRS 281.551 is hereby amended to read as follows:

29 281.551 1. In addition to any other penalty provided by law,  
30 the Commission may impose on a public officer or employee or  
31 former public officer or employee civil penalties:

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

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

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

38 2. In addition to other penalties provided by law, the  
39 Commission may impose a civil penalty not to exceed \$5,000 and  
40 assess an amount equal to the amount of attorney's fees and costs  
41 actually and reasonably incurred by the person about whom an  
42 opinion was requested pursuant to NRS 281.511, against a person  
43 who prevents, interferes with or attempts to prevent or interfere with  
44 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,~~ *section 1 of this act*, 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,~~ *section 1 of this act*, 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:

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

(c) 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



1 by his employer and must be referred for action in accordance to the  
2 applicable provisions governing his employment.

3 8. NRS 281.481 to 281.541, inclusive, *and section 1 of this act*  
4 do not abrogate or decrease the effect of the provisions of the  
5 Nevada Revised Statutes which define crimes or prescribe  
6 punishments with respect to the conduct of public officers or  
7 employees. If the Commission finds that a public officer or  
8 employee has committed a willful violation of this chapter which it  
9 believes may also constitute a criminal offense, the Commission  
10 shall refer the matter to the Attorney General or the district attorney,  
11 as appropriate, for a determination of whether a crime has been  
12 committed that warrants prosecution.

13 9. The imposition of a civil penalty pursuant to subsections 1 to  
14 4, inclusive, is a final decision for the purposes of judicial review.

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

19 **Sec. 7.** NRS 281.552 is hereby amended to read as follows:

20 281.552 1. Every public officer shall acknowledge that he  
21 has received, read and understands the statutory ethical standards.  
22 The acknowledgment must be on a form prescribed by the  
23 Commission and must accompany the first statement of financial  
24 disclosure that the public officer is required to file with the  
25 Commission pursuant to NRS 281.559 or the Secretary of State  
26 pursuant to NRS 281.561.

27 2. The Commission and the Secretary of State shall retain an  
28 acknowledgment filed pursuant to this section for 6 years after the  
29 date on which the acknowledgment was filed.

30 3. Willful refusal to execute and file the acknowledgment  
31 required by this section constitutes nonfeasance in office and is a  
32 ground for removal pursuant to ~~[NRS 283.440.]~~ *section 1 of this*  
33 *act.*

34 **Sec. 8.** NRS 245.110 is hereby amended to read as follows:

35 245.110 The provisions of the Nevada Ethics in Government  
36 Law , ~~[H]~~ NRS 281.411 to 281.581, inclusive ~~[H]~~ , *and section 1 of*  
37 *this act*, do not prohibit any county officer from purchasing the  
38 warrants of the State or of any other county, or to prevent any  
39 county officer from selling or transferring such warrants or scrip as  
40 he may receive for his services, but none other.

41 **Sec. 9.** NRS 268.380 is hereby amended to read as follows:

42 268.380 The provisions of the Nevada Ethics in Government  
43 Law , ~~[H]~~ NRS 281.411 to 281.581, inclusive ~~[H]~~ , *and section 1 of*  
44 *this act*, do not prohibit any city officer from purchasing the  
45 warrants of the State or of any other city or county, or prevent any



1 city officer from selling or transferring such warrants or scrip as he  
2 may receive for his services, but none other.

3 **Sec. 10.** NRS 269.070 is hereby amended to read as follows:

4 269.070 The provisions of the Nevada Ethics in Government  
5 Law , ~~H~~ NRS 281.411 to 281.581, inclusive ~~H~~ , *and section 1 of*  
6 *this act*, do not prohibit any town officer from purchasing the  
7 warrants of the State or of any other city, town or county, or prevent  
8 any town officer from selling or transferring such warrants or scrip  
9 as he may receive for his services, but none other.

10 **Sec. 11.** NRS 294A.345 is hereby amended to read as follows:

11 294A.345 1. A person shall not, with actual malice and the  
12 intent to impede the success of the campaign of a candidate, impede  
13 the success of the candidate by causing to be published a false  
14 statement of fact concerning the candidate, including, without  
15 limitation, statements concerning:

16 (a) The education or training of the candidate.

17 (b) The profession or occupation of the candidate.

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

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

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

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

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

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

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

41 4. As used in this section:

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





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

**Sec. 12.** NRS 294A.346 is hereby amended to read as follows:

294A.346 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 **H**, and **section 1 of this act**. 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.

**Sec. 13.** NRS 379.0222 is hereby amended to read as follows:

379.0222 1. After the consolidation of a city into a county library district, the board of county commissioners and the governing body of the city shall each appoint five competent persons who are residents of the new consolidated library district to serve as trustees.

2. The terms of office of the trustees appointed pursuant to subsection 1 are as follows:

(a) Three persons appointed by each governing body must be appointed for terms of 4 years.

(b) Two persons so appointed must be appointed for terms of 2 years.

➤ Thereafter the offices of trustees must be filled for terms of 4 years in the order in which the terms expire. No person may be appointed to hold office for more than two consecutive terms.

3. A vacancy in the office of trustee which occurs because of the expiration of the term must be filled by appointment for a term of 4 years. A vacancy which occurs other than by expiration of the term must be filled by appointment for the unexpired term.

4. The trustees are entitled to receive a salary of \$40 per meeting, but not more than \$80 per month, in addition to the travel and subsistence allowances in the same amounts as are provided for employees of the consolidated library district.

5. The board of county commissioners or governing body of the city, as the case may be, may remove any trustee appointed by it:

(a) For cause ; ~~[-, as described in NRS 283.440;]~~ or

(b) Who fails, without good cause, to attend three successive meetings of the trustees.

6. The trustees may appoint an executive director for the consolidated library district who serves at the pleasure of the trustees.

**Sec. 14.** NRS 283.440 is hereby repealed.

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## TEXT OF REPEALED SECTION

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### **283.440 Removal of certain public officers for malfeasance or nonfeasance: Procedure; appeal.**

1. Any person now holding or who shall hereafter hold any office in this State, except a justice or judge of the court system,



who refuses or neglects to perform any official act in the manner and form prescribed by law, or who is guilty of any malpractice or malfeasance in office, may be removed therefrom as hereinafter prescribed in this section.

2. Whenever a complaint in writing, duly verified by the oath of any complainant, is presented to the district court alleging that any officer within the jurisdiction of the court:

(a) Has been guilty of charging and collecting any illegal fees for services rendered or to be rendered in his office;

(b) Has refused or neglected to perform the official duties pertaining to his office as prescribed by law; or

(c) Has been guilty of any malpractice or malfeasance in office,  
↳ the court shall cite the party charged to appear before it on a certain day, not more than 10 days or less than 5 days from the day when the complaint was presented. On that day, or some subsequent day not more than 20 days from that on which the complaint was presented, the court, in a summary manner, shall proceed to hear the complaint and evidence offered by the party complained of. If, on the hearing, it appears that the charge or charges of the complaint are sustained, the court shall enter a decree that the party complained of shall be deprived of his office.

3. The clerk of the court in which the proceedings are had, shall, within 3 days thereafter, transmit to the Governor or the board of county commissioners of the proper county, as the case may be, a copy of any decree or judgment declaring any officer deprived of any office under this section. The Governor or the board of county commissioners, as the case may be, shall appoint some person to fill the office until a successor shall be elected or appointed and qualified. The person so appointed shall give such bond as security as is prescribed by law and pertaining to the office.

4. If the judgment of the district court is against the officer complained of and an appeal is taken from the judgment so rendered, the officer so appealing shall not hold the office during the pendency of the appeal, but the office shall be filled as in case of a vacancy.





