

SENATE BILL NO. 430—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 29, 2005

Referred to Committee on Legislative Operations and Elections

SUMMARY—Eliminates authority of Commission on Ethics to seek removal of public officer. (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 ethics in government; eliminating the authority of the Commission on Ethics to seek the removal of a public officer; 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 directs the
5 Commission on Ethics to file a report with the appropriate person responsible for
6 commencing impeachment proceedings if it finds a willful violation of the Nevada
7 Ethics in Government Law by a person removable from office by impeachment
8 only. (NRS 281.551) Existing law also authorizes the Commission to commence a
9 summary proceeding for the removal of a public officer who may be removed from
10 office in that manner if the Commission finds a willful violation of the Nevada
11 Ethics in Government Law by such a public officer, and requires the Commission
12 to commence such a proceeding if it finds three or more willful violations by such a
13 public officer. (NRS 281.551)

14 This bill eliminates the requirement that the Commission on Ethics file a report
15 that would result in commencing impeachment proceedings and eliminates the
16 authority of the Commission to commence a summary proceeding for the removal
17 of a public officer who may be removed from office in that manner. The authority
18 of the Commission to impose civil penalties for willful violations of the Nevada
19 Ethics in Government Law is unaffected.



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

Section 1. 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.~~

~~—6.1~~ 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.

~~17.1~~ 6. 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.

~~18.1~~ 7. 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.

~~19.1~~ 8. The imposition of a civil penalty pursuant to subsections 1 to 4, inclusive, is a final decision for the purposes of judicial review.

~~110.1~~ 9. 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.



