CHAPTER 351

RESIGNATIONS, VACANCIES, REMOVALS

351.01 RESIGNATIONS.
351.02 VACANCIES.
351.05 VACANCY DURING RECESS OF LEGISLATURE.
351.055 PREPARATIONS FOR SPECIAL ELECTIONS.
351.06 APPOINTMENT; CONTINUANCE OF TERM; IMPEACHMENT.
351.07 HABITUAL DRUNKENNESS.

REMOVAL OF ELECTED COUNTY OFFICIALS

351.14 DEFINITIONS.
351.15 REMOVAL OF ELECTED COUNTY OFFICIAL.
351.16 PETITION; REVIEW.
351.17 CHIEF JUSTICE REVIEW; ASSIGNMENT TO SPECIAL MASTER.
351.18 WAIVER.
351.19 PUBLIC HEARING.
351.20 DECISION; CERTIFICATION.
351.21 APPEAL.
351.22 REMOVAL ELECTION; DISQUALIFICATION.
351.23 EXTENSION OF TIME.

351.01 RESIGNATIONS.

Subdivision 1. **To whom made.** Resignations shall be made in writing signed by the resigning officer:

(1) By incumbents of elective offices, to the officer authorized by law to fill a vacancy in such office by appointment, or to order a special election to fill the vacancy;

(2) By appointive officers, to the body, board, or officer appointing them, unless otherwise specially provided.

Subd. 2. **When effective.** Except as provided by subdivision 3 or other express provision of law or charter to the contrary, a resignation is effective when it is received by the officer, body, or board authorized to receive it. In the case of a position appointed by the governor under section 15.0597, the resignation must be submitted to the governor.

Subd. 3. **Contingent resignations prohibited; exception.** (a) Except as provided in paragraph (b), no resignation may be made to take effect upon the occurrence of a future contingency. Statements explaining the reasons for a resignation must not be considered to be contingencies unless expressly stated as contingencies.

(b) A resignation may be made expressly to take effect at a stated future date. Unless it is withdrawn as provided under subdivision 4, a resignation is effective at 12:01 a.m. on the stated date.

Subd. 4. **Withdrawal of resignation.** A prospective resignation permitted by subdivision 3 may only be withdrawn by a written statement signed by the officer and submitted in the same manner as the resignation, and may only be withdrawn before it has been accepted by resolution of the body or board or before a written acceptance of the resignation by an officer authorized to receive it.

History: *(6952) RL s 2666; 1987 c 200 s 2; 2004 c 293 art 2 s 44; 2023 c 52 art 19 s 18*

351.02 VACANCIES.

Every office shall become vacant on the happening of either of the following events, before the expiration of the term of such office:

(1) the death of the incumbent;

(2) the incumbent's resignation;

(3) the incumbent's removal;

(4) the incumbent's ceasing to be an inhabitant of the state, or, if the office is local, of the district, county or city for which the incumbent was elected or appointed, or within which the duties of the office are required to be discharged;

(5) the incumbent's conviction of any infamous crime, or of any offense involving a violation of the official oath;

(6) the incumbent's refusal or neglect to take the oath of office, or to give or renew the official bond, or to deposit or file such oath or bond within the time prescribed;

(7) the decision of a competent tribunal declaring the incumbent's election or appointment void;

(8) the death of the person elected or appointed to fill a vacancy, or for a full term, before the person qualifies, or before the time when by law the person should enter upon the duties of the office, in which case the vacancy shall be deemed to take place at the time when the term of office would have begun had the person lived.

History: *(6953) RL s 2667; 1973 c 123 art 5 s 7; 1986 c 444*

351.03 MS 1984 [Repealed, 1986 c 418 s 11]

351.04 MS 1984 [Repealed, 1986 c 418 s 11]

351.05 VACANCY DURING RECESS OF LEGISLATURE.

When a vacancy occurs during the recess of the legislature, in any office which the legislature, or the governor by and with the advice and consent of the senate, or of both branches of the legislature, is authorized to fill by appointment, unless otherwise specially provided, the governor may appoint some suitable person to perform the duties of such office for the time being. The person so appointed, before proceeding to execute the duties, shall qualify in the manner required by law of the officer in whose place the person is appointed and hold office until the vacancy is regularly filled, as provided by law.

History: *(6956) RL s 2670; 1986 c 444*

351.055 PREPARATIONS FOR SPECIAL ELECTIONS.

If a future vacancy becomes certain to occur and the vacancy must be filled by a special election, the appropriate authorities may begin procedures leading to the special election so that a successor may be elected at the earliest possible time. For prospective vacancies that will occur as a result of a resignation, preparations for the special election may begin immediately after the written resignation is received by the official provided in section 351.01, subdivision 1.

History: *1987 c 175 s 17; 1999 c 132 s 40*

351.06 APPOINTMENT; CONTINUANCE OF TERM; IMPEACHMENT.

Unless otherwise provided for, when a vacancy in an elective office is authorized to be filled by appointment, such appointment shall continue until the next general election occurring after there is sufficient time to give the notice prescribed by law, and until a successor is elected and has qualified. When any state officer, excepting the lieutenant governor, shall be temporarily suspended from the performance of the duties of office by reason of having been impeached, the governor shall appoint some suitable person to exercise the duties of such office during the time of such suspension, and such person, before entering upon the

duties, shall comply with the requirements of law relating to the same, and during incumbency shall be governed in the administration thereof by all laws enacted in reference thereto, and receive the compensation provided by law for such office.

History: *(6957) RL s 2671; 1986 c 444*

351.07 HABITUAL DRUNKENNESS.

The habitual drunkenness of any person holding office under the constitution or laws of this state shall be good cause for removal from office by the authority and in the manner provided by law.

History: *(6958) RL s 2672; 1986 c 444*

351.08 MS 1984 [Repealed, 1986 c 418 s 11]

351.09 MS 1984 [Repealed, 1986 c 418 s 11]

351.10 MS 1984 [Repealed, 1986 c 418 s 11]

351.11 MS 1984 [Repealed, 1986 c 418 s 11]

351.12 [Renumbered 43.223]

351.13 [Renumbered 43.224]

REMOVAL OF ELECTED COUNTY OFFICIALS

351.14 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 351.14 to 351.23.

Subd. 2. **Malfeasance.** "Malfeasance" means the willful commission of an unlawful or wrongful act in the performance of a public official's duties which is outside the scope of the authority of the public official and which infringes on the rights of any person or entity.

Subd. 3. **Nonfeasance.** "Nonfeasance" means the willful failure to perform a specific act which is a required part of the duties of the public official.

Subd. 4. **Misfeasance.** "Misfeasance" means the negligent performance of the duties of a public official or the negligent failure to perform a specific act which is a required part of the duties of the public official.

Subd. 5. **Elected county official.** "Elected county official" means any public official who is elected to countywide office or appointed to an elective countywide office, including county attorney, county sheriff, county auditor, county recorder, county treasurer, and soil and water conservation supervisor. "Elected county official" also means a county commissioner elected or appointed from a commissioner district or a soil and water conservation district supervisor elected or appointed from a supervisor district established under section 103C.311, subdivision 2.

History: *1986 c 418 s 1; 2003 c 104 s 31*

351.15 REMOVAL OF ELECTED COUNTY OFFICIAL.

An elected county official may be removed from office in accordance with the procedures established in sections 351.14 to 351.23.

History: *1986 c 418 s 2*

351.16 PETITION; REVIEW.

Subdivision 1. **Form of petition.** Any registered voter may petition the county auditor requesting a removal election and setting forth facts which allege with specificity that an elected county official committed malfeasance or nonfeasance in the performance of official duties during the current or any previous term in the office held by the elected county official, except that a petition may not be submitted during the 180 days immediately preceding a general election for the office which is held by the county official named in the petition. The petitioner must attach to the petition documents which contain the signatures of supporters who are registered voters totaling at least 25 percent of the number of persons who voted in the preceding election for the office which is held by the county official named in the petition. Each page on which signatures are included must clearly identify the purpose of the petition. The registered voters must be residents of the county or, in a removal election involving a county commissioner, of the commissioner district which elected the named county commissioner. The signatures of supporters must be on forms provided by the county auditor.

Subd. 2. **County auditor's duties.** The county auditor shall examine the petition to determine whether it contains the requisite number of valid signatures of registered voters. If so, the county auditor shall forward the petition, but not the signatures, to the clerk of appellate courts within 15 days of receipt of the petition. If the county auditor determines that the petition does not include the requisite number of signatures, the county auditor shall deny the petition within 15 days of receipt of the petition.

Subd. 3. **Removal of county auditor.** If the county auditor is the named elected county official, the petition must be submitted to the chair of the county board of commissioners who shall appoint a county official to perform the duties of the county auditor specified in sections 351.14 to 351.23.

Subd. 4. **Limitation.** An elected county official is not subject to a removal election on the ground that misfeasance in the performance of official duties was committed, or on the ground of disagreement with actions taken that were within the lawful discretion of the elected county official.

History: *1986 c 418 s 3*

351.17 CHIEF JUSTICE REVIEW; ASSIGNMENT TO SPECIAL MASTER.

The clerk of appellate courts shall submit the petition to the chief justice. The chief justice shall review the petition to determine whether the petition properly alleges facts which, if proven, constitute malfeasance or nonfeasance in the performance of official duties. If the petition properly contains factual allegations of malfeasance or nonfeasance, the chief justice shall assign the case to a special master for a public hearing. The special master must be an active or retired judge. The chief justice may issue an order denying the petition if it appears that the petition does not contain allegations which, if proven, constitute malfeasance or nonfeasance in the performance of official duties.

History: *1986 c 418 s 4*

351.18 WAIVER.

An elected county official who is the subject of a petition under section 351.16 may waive in writing the right to a public hearing. If the hearing is waived, the case must be certified by order of the chief justice to the county auditor for a removal election to be held within 30 days of the receipt of the order.

History: *1986 c 418 s 5*

351.19 PUBLIC HEARING.

Subdivision 1. **Time; subpoenas; amendment of petition.** A public hearing into the allegations of a petition under section 351.16 must be held within 60 days after issuance of the order of the chief justice assigning the case to a special master. The special master may issue subpoenas to compel the testimony of witnesses and the production of documents. The petition may be amended of right by the petitioners at any time prior to 40 days before the scheduled hearing. The special master may permit later amendment of the petition only for good cause.

Subd. 2. **Determinations by special master.** The special master shall take evidence at a public hearing under this section and determine:

(1) whether the petitioners have shown by clear and convincing evidence that the factual allegations of malfeasance or nonfeasance are true; and

(2) if so, whether the facts found to be true constitute malfeasance or nonfeasance.

The special master shall dismiss the petition at any time if it appears that this standard has not been met.

Subd. 3. **Rules.** The public hearing under this section must be conducted using the Minnesota Rules of Civil Procedure, unless modified in sections 351.14 to 351.23, and the Minnesota Rules of Evidence.

Subd. 4. **Legal counsel.** The petitioners and the elected county official shall be represented by legal counsel at their own expense, and shall pay their costs associated with the hearing except that the county may assume the legal costs incurred by the elected county official. The county shall pay all other costs of the hearing.

Subd. 5. **Decision.** The special master shall issue a decision within 60 days after the end of a public hearing under this section.

Subd. 6. **Appeal.** If a petition under this section is dismissed by the special master, either before or after a public hearing, the petitioner may appeal the decision to the supreme court within 30 days. The supreme court shall grant an expedited appeal.

History: *1986 c 418 s 6*

351.20 DECISION; CERTIFICATION.

If the special master determines that the elected county official committed malfeasance or nonfeasance in the performance of official duties, the case must be certified to the county auditor for a removal election on a date to be fixed by the county auditor and held within 30 days of the order of the special master.

History: *1986 c 418 s 7*

351.21 APPEAL.

An elected county official may appeal the decision of a special master under section 351.20 to the supreme court within ten days. The removal election is stayed until 20 days after the supreme court issues a decision on the appeal. The supreme court shall grant an expedited appeal.

History: *1986 c 418 s 8*

351.22 REMOVAL ELECTION; DISQUALIFICATION.

Subdivision 1. **Majority vote; form of question.** An elected county official may be removed pursuant to sections 351.14 to 351.23 by majority vote. The removal election is a special election conducted under applicable provisions of section 375.20. The question submitted to the voters must be:

"Should ..... (Name) elected (appointed) to the office of ..... (title) be removed from that office?

Yes .....

No ....."

Any resulting vacancy must be filled as provided by law.

Subd. 2. **Disqualification.** A removed county official may not thereafter hold the same office for the remainder of the term to which the official was elected.

History: *1986 c 418 s 9*

351.23 EXTENSION OF TIME.

The chief justice may extend the time limitations in sections 351.14 to 351.23 for good cause.

History: *1986 c 418 s 10*