

ASSEMBLY BILL NO. 397—ASSEMBLYMEN
BENITEZ-THOMPSON AND FRIERSON

MARCH 21, 2019

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing misconduct by certain public officials. (BDR 18-1038)

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 misconduct by certain public officials; authorizing the Nevada Equal Rights Commission to recommend impeachment or removal of certain public officials under certain circumstances; providing that an accusation of sexual harassment by the Commission is legally sufficient for removal in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the Governor and other state and certain judicial officers may be impeached for misdemeanor or malfeasance in office. (Nev. Const. Art. 7, § 2) The Assembly of the Nevada Legislature has the sole power to impeach, and all impeachments are tried by the Senate. (Nev. Const. Art. 7, § 1) Existing law authorizes the removal of certain public officers for willful or corrupt misconduct in office. (NRS 283.300) Existing law establishes the Nevada Equal Rights Commission. (NRS 233.010-233.210) The Commission is authorized to investigate and conduct hearings regarding any unlawful employment practice by an employer. (NRS 233.150) Under existing law, an unlawful employment practice includes discrimination by an employer against a person because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin. An unlawful employment practice based on sex includes a prohibition on engaging in acts that constitute sexual harassment. (NRS 613.330; *Switzer v. Rivera*, 174 F. Supp. 2d 1097 (D. Nev. 2001)) If the Administrator of the Commission determines that an unlawful employment practice has occurred, the Administrator is required to attempt to mediate between or reconcile the parties. If such attempts fail, the Commission is authorized to hold a public hearing on the matter and take certain actions if the Commission finds an unlawful employment practice has occurred. (NRS 233.170)



Section 1 of this bill authorizes the Commission to submit a recommendation of impeachment to the Assembly of the Nevada Legislature only if the Commission determines in a public hearing that an elected official has committed an unlawful employment practice regarding sexual harassment and that such sexual harassment is sufficiently severe that impeachment is appropriate. **Section 1** similarly authorizes the Commission to present an accusation of sexual harassment against a district, county, township or municipal officer to the grand jury of a county only if such sexual harassment is sufficiently severe that removal is appropriate. **Section 1** requires that any damages assessed against an elected official or district, county, township or municipal officer be paid in his or her personal capacity. **Section 2** of this bill provides that an accusation of sexual harassment made against a district, county, township or municipal officer made by the Commission pursuant to **section 1** is legally sufficient for removal in certain circumstances.

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

Section 1. Chapter 233 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Commission may submit a recommendation of impeachment to the Assembly only if the Commission determines after a hearing held pursuant to subsection 3 of NRS 233.170 that an elected official has engaged in the unlawful employment practice of sexual harassment and that the sexual harassment that forms the basis of such a recommendation is sufficiently severe that impeachment is an appropriate remedy.

2. The Commission may present an accusation to the grand jury of a county pursuant to NRS 283.300 only if the Commission determines after a hearing held pursuant to subsection 3 of NRS 233.170 that a district, county, township or municipal officer has engaged in the unlawful employment practice of sexual harassment and that the sexual harassment that forms the basis of such an accusation is sufficiently severe that removal from office is an appropriate remedy.

3. Any damages assessed against an elected official or a district, county, township or municipal officer pursuant to this chapter must be assessed against such official or officer in his or her personal capacity, and may not be paid with public money or contributions received pursuant to chapter 294A of NRS.

4. As used in this section:

(a) "District, county, township or municipal officer" does not include:

(1) A justice or judge of the court system; and

(2) A State Legislator removable from office only through expulsion by the State Legislator's own House pursuant to Section 6 of Article 4 of the Nevada Constitution.



1 **(b) “Elected official” means a person who was elected to an**
2 **office which is subject to impeachment pursuant to Section 2 of**
3 **Article 7 of the Nevada Constitution.**

4 **Sec. 2.** NRS 283.350 is hereby amended to read as follows:
5 283.350 **1.** If the defendant objects to the legal sufficiency of
6 the accusation, the objection shall be in writing. The objection need
7 not be in any specific form. It is sufficient if it presents intelligibly
8 the grounds of the objection.

9 **2. An accusation of sexual harassment made by the Nevada**
10 **Equal Rights Commission pursuant to section 1 of this act is**
11 **legally sufficient if a court determines that the sexual harassment**
12 **that forms the basis of such an accusation is sufficiently severe**
13 **that removal of the defendant is an appropriate remedy.**

14 **Sec. 3.** This act becomes effective on July 1, 2019.

