

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 officers. (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 officers; authorizing the Nevada Equal Rights Commission to recommend removal of certain public officers under 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 requires that provision for the removal of local elected officers and certain other officers be made by law. (Nev. Const. Art. 7, § 4) Existing law authorizes the removal of certain public officers for malpractice or malfeasance in office. (NRS 283.440) 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 requires the Commission to accept a complaint that alleges a local elected officer has engaged in an unlawful employment practice regarding



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discrimination and take appropriate action. **Section 1** also requires the Commission to present a complaint to the district court if the Commission determines in a public hearing that a local elected officer has committed an unlawful employment practice regarding discrimination in employment and that the discriminatory practice is severe or pervasive such that removal from office is appropriate. **Section 1** requires that any fine or penalty assessed against an elected officer be paid in his or her personal capacity. **Section 2.5** of this bill defines "malfeasance in office" to include, without limitation, engaging in an unlawful employment practice of discrimination or willfully failing to comply with any other sanction imposed by the Commission.

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 shall accept a complaint that alleges that a local elected officer has engaged in an unlawful employment practice of discrimination pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., or NRS 613.330 and take appropriate action.

2. The Commission shall present a complaint to the district court pursuant to NRS 283.440 if the Commission determines after a hearing held pursuant to subsection 3 of NRS 233.170 that a local elected officer has engaged in an unlawful employment practice of discrimination pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., or NRS 613.330 and that the discriminatory practice that forms the basis of such a complaint is severe or pervasive such that removal from office is an appropriate remedy. In addition to any monetary penalties, the Commission may impose upon the local elected officer any other reasonable sanction, including, without limitation, a requirement to complete a course or training related to the unlawful employment practice of discrimination.

3. Any fine or penalty required to be paid by a local elected officer because such officer was determined to have engaged in an unlawful employment practice of discrimination pursuant to subsection 2 must be assessed against such officer in his or her personal capacity, and may not be paid with public money or contributions received pursuant to chapter 294A of NRS. Except for a fine or a penalty, no damages may be assessed against the local elected officer in his or her personal capacity.

4. As used in this section, "local elected officer" means a person who holds a local government office to which the person was elected.



Sec. 2. (Deleted by amendment.)

Sec. 2.5. NRS 283.440 is hereby amended to read as follows:

283.440 1. Any person who is now holding or who shall hereafter hold any office in this State and 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, except that this section does not apply to:

(a) A justice or judge of the court system;

(b) A state officer removable from office only through impeachment pursuant to Article 7 of the Nevada Constitution; or

(c) 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.

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 the officer's office;

(b) Has refused or neglected to perform the official duties pertaining to the officer's 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 the party's 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.



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1 5. As used in this section, “malfeasance in office” includes,
2 without limitation:

3 (a) Engaging in an unlawful employment practice of
4 discrimination pursuant to Title VII of the Civil Rights Act of
5 1964, 42 U.S.C. §§ 2000e et seq., or NRS 613.330 that is severe or
6 pervasive such that removal from office is an appropriate remedy.

7 (b) Willfully failing to comply with any other sanction imposed
8 upon a local elected officer pursuant to section 1 of this act.

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

