

**MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Eightieth Session
May 3, 2019**

The Senate Committee on Government Affairs was called to order by Chair David R. Parks at 1:11 p.m. on Friday, May 3, 2019, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4404B of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator David R. Parks, Chair
Senator Melanie Scheible, Vice Chair
Senator James Ohrenschall
Senator Ben Kieckhefer
Senator Pete Goicoechea

GUEST LEGISLATORS PRESENT:

Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27
Assemblyman Edgar Flores, Assembly District No. 28
Assemblyman Al Kramer, Assembly District No. 40
Assemblywoman Sarah Peters, Assembly District No. 24

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Committee Policy Analyst
Heidi Chlarson, Committee Counsel
Becky Archer, Committee Secretary
Valeria Becerra, Intern to Assemblywoman Benitez-Thompson
Madison Johnson, Intern to Assemblywoman Benitez-Thompson

OTHERS PRESENT:

Gail Anderson, Deputy for Southern Nevada, Office of the Secretary of State
Edith Duarte, Nevada Society of Enrolled Agents
Carrie Corcoran, National Association of Enrolled Agents

Senate Committee on Government Affairs
May 3, 2019
Page 2

Steve Tackes, Carson City Airport Authority
Kenneth Moen, Carson City Airport Authority
Nancy Paulson, City Manager, Carson City
Michael Hillerby, Regional Transportation Commission of Washoe County
Amy Cummings, Regional Transportation Commission of Washoe County
Kara Jenkins, Administrator, Nevada Equal Rights Commission
Izzy Youngs, Nevada Women's Lobby
Jamie Rodriguez, Washoe County
Caroline Mello Roberson, NARAL Pro-Choice Nevada
Alex Ortiz, Clark County

CHAIR PARKS:

We will open the hearing on Assembly Bill (A.B.) 280.

ASSEMBLY BILL 280 (1st Reprint): Revises provisions governing document preparation services. (BDR 19-254)

ASSEMBLYMAN EDGAR FLORES (Assembly District No. 28):
I am honored to present A.B. 280.

I have worked on the issue of the unauthorized practice of law, specifically notario fraud, since prior to being elected the first time in 2015. I published a study of the unauthorized practice of law with the University of Texas law program in 2013. That was my first interaction with the process in this building when then-Assemblywoman Lucy Flores sponsored A.B. No. 74 of the 77th Session creating the document preparation statute. In 2015, then-Senator Ruben J. Kihuen sponsored S.B. No. 401 of the 78th Session which I cosponsored. In 2017, I sponsored A.B. No. 324 of the 79th Session. I state the history to make it clear that I have been working on this issue for a long time. The unauthorized practice of law is a problem in Nevada, and I have been fighting against these predatory businesses. These businesses are in the minority. Simply because a business is a document preparation service does not imply it is bad. It is the minority—the bad actors—I have consistently gone after.

In 2017, many document preparation services were avoiding having to register with the Secretary of State's Office and therefore avoiding the protections in place. The businesses did not identify themselves as document preparation services but as tax preparation services. That was a problem because we were

not capturing those businesses as document preparation services. With A.B. No. 324 of the 79th Session, I expanded the definition of document preparation services to also include tax preparation services. Therein, we also captured enrolled agents. New problems with our legislation started there.

As a point of clarification about document preparation services, a lot of confusion has existed for years in the community that notario in Spanish is the equivalent—and even holds a larger certification—to an attorney in most Latin-American countries. When people come to the U.S. and Nevada and see the word notario, which is referring to notary, people think the business is that of an attorney who has X amount of years of practice. That is where the confusion has been exploited by these predatory businesses.

In trying to capture the predatory businesses, I expanded the definition of document preparation service to ensure we got the tax preparation services and enrolled agents. The problem is the way the *Nevada Revised Statutes* (NRS) is written, a document preparer cannot provide legal advice or represent a person in court. This language is problematic because enrolled agents can represent people before the Internal Revenue Service (IRS). Including enrolled agents in the document preparation statute disallows them at the State level to do something the agents were allowed to do at the federal level. Assemblyman Al Kramer along with Edith Duarte, who is a lobbyist, and a group of enrolled agents brought this to my attention and explained the problem. Assemblyman Kramer had his own bill on this issue, was gracious in working with me and we decided to combine the bills. There are things Assemblyman Kramer wanted in his bill that did not make it into this bill, but I give him credit for working with me. I appreciate him joining me at the table today.

From 2013 to 2018, I focused on going after the bad actors. With A.B. 280, I am protecting the good actors. This is a cleanup bill to ensure we cast the net smaller with the last Session's bill and not capture the well-intentioned businesses.

I will briefly walk through the bill. Gail Anderson from the Secretary of State's Office is in Las Vegas to address specific questions. Looking at pages 2 and 3 of the bill, section 1.5 defines "business entity." Section 2 walks through the requirement for a surety or cash bond and explains the technical rules on how the process works.

Section 3 is another area we are correcting with this bill. Several predatory businesses are in operation on Monday and gone by Tuesday. The business may have already prepared a person's taxes, and now that person has no recourse because the business no longer exists. Another example is a business pretends to practice family law, assists a person who later loses the custody of his or her child, and the company has now disappeared. In the 2017 Session, we created a bond to address this issue. If a person needed to become whole, the bond would trigger and protect the victim. The problem is the NRS is ambiguous as to whether a bond is required of every individual who identifies as a document preparer or per business. We did not clarify that point in the prior NRS language.

On page 5, section 3, lines 3 through 20, we created categories. Section 3, subsection 1, paragraphs (a) through (f) state if a business entity employs 1 registrant to perform document preparation services, then you need a \$25,000 bond; 2 through 25 registrants, \$50,000 bond; 26 through 75 registrants, \$75,000 bond and so on. The bond amounts progress.

If we made each registrant document preparer get a bond, it would be incredibly expensive for the small business community. We are ensuring that we are not making it impossible for small businesses to operate and function. That is the reason we created the categories.

I am making my intent abundantly clear on the record of how the amount of registrants is calculated based on persons doing document preparation services. "Registrant" is defined in statute. The bill language states the number of registrants an entity employs determines the bond amount. Using the word registrant makes it abundantly clear. A concern expressed by the business community is, for example, if a business has 100 employees but only 25 are registrants, the business should not be required to get a bond for all 100 employees since only 25 are registered with the Secretary of State as document preparers. The bill language takes care of that. Our intent is to capture those who are registered with the Secretary of State and are in the world of document preparation. If the Legal Division disagrees with me, then we will amend as necessary. The business community has reached out and wanted this stated on the record.

Most importantly, on the bottom of page 7, section 4, subsection 3, paragraph (h) describes those excluded and not captured by the document preparation statute. Lines 44 and 45 make it clear that it does not include an

enrolled agent authorized to practice before the IRS. This is the clarification I need to correct my mistake in casting too large a net last Session. This is the cleanup to ensure these specific enrolled agents are carved out and the document preparation statute does not apply to them.

ASSEMBLYMAN AL KRAMER (Assembly District No. 40):

Enrolled agents are basically controlled with IRS rules. The agents can work in multiple states and are not controlled by an association. The agents report to and are licensed, in a sense, by the federal government. The enrolled agents came forward and stated they represent their clients, just as an attorney would, before IRS courts.

Assemblyman Flores is correct. This bill does not go as far as I wanted, but the compromise is to monitor the businesses for a couple of years and see if any further problems need to be addressed in the future. We unintentionally captured a group of people, put them through the ringer on this issue and complicated their lives and their businesses. The idea of this bill is a good step to remove the provision when the agents are controlled by the federal government.

SENATOR KIECKHEFER:

The intent is to ensure enrolled agents are exempt, but other people who prepare tax filings remain under this legislation. If a person who is not an enrolled agent is just doing document preparation at Walmart or a similar location, he or she still needs to be registered. Is this correct?

ASSEMBLYMAN FLORES:

Yes. The reason is a lot of tax preparation companies open up shop early in the year and are done by mid-year, but they keep operating the businesses. The second half of the year, the companies are operating as notaries and document preparation services.

CHAIR PARKS:

Assemblyman Kramer, are you an enrolled agent?

ASSEMBLYMAN KRAMER:

No, I am not. I have prepared taxes, but it has always been for free.

CHAIR PARKS:

I fall in the same category.

SENATOR KIECKHEFER:

Getting back to notaries and the interpretation of what that word means in the United States versus perhaps Latin America, are there restrictions on advertising or using the term notario? I assume it relates to businesses that should be licensed as a notary in the U.S., and it is a cultural difference. Am I interpreting this correctly?

ASSEMBLYMAN FLORES:

Yes. This issue was addressed in 2013 and 2015. Unfortunately, these businesses are savvy. When we started disallowing the usage of notario, except for attorneys who can use the term, businesses started using phrases like multiservices or multiservicios, which is the translation in Spanish. Businesses also started using the term "paralegal," which became problematic. In 2017, we addressed the paralegal term to clarify that it means a person who works underneath an attorney. A business cannot refer to itself as providing paralegal services because it is confusing to the community.

GAIL ANDERSON (Deputy for Southern Nevada, Office of the Secretary of State):

I support this bill. I thank Assemblyman Flores for his work with our office. I oversee the document preparation services for the Secretary of State's Office in southern Nevada.

EDITH DUARTE (Nevada Society of Enrolled Agents):

We thank the sponsor for bringing this bill forward. There were some issues last Session with the previous bill from the sponsor's efforts to provide additional consumer protections. This bill removes the enrolled agents from the legislation, and, as such, we are in support. As Assemblyman Kramer mentioned, enrolled agents are able to represent their clients before the IRS, much like attorneys and certified public accountants (CPAs). The difference is attorneys have to pass a state bar, CPAs have to pass a state examination and enrolled agents have education and state examinations administered through the IRS. The continuing education and federal background checks are administered through the IRS for enrolled agents.

CARRIE CORCORAN (National Association of Enrolled Agents):

I am an enrolled agent testifying on behalf of the rest of my colleagues who are also here today from Elko, Reno, Sparks and possibly in Las Vegas. We are in support of A.B. 280.

CHAIR PARKS:

For those who are here with this group in support, please wave for the crowd. I see several are here in support.

We will close the hearing on A.B. 280 and open the hearing on A.B. 406.

ASSEMBLY BILL 406 (2nd Reprint): Makes various changes relating to the Airport Authority of Carson City. (BDR S-50)

ASSEMBLYMAN AL KRAMER (Assembly District No. 40):

I am presenting A.B. 406 related to the Airport Authority of Carson City. In certain areas, it is difficult to get a board of directors actively engaged in the business of the authority they are working with. The Carson City Airport has been no exception. For years, we had good people, but as those enthusiastic people served, they became term-limited and were not able to serve again. After a number of years, you run out of a pool of people who are highly qualified and can serve. Even though some would like to run, they have been termed out. This bill addresses that problem. That is the most important thing this bill does.

STEVE TACKES (Carson City Airport Authority):

This bill does numerous things. First, there is a limited pool of people with expertise to serve on the Carson City Airport Authority. When the authority was originally formed in 1989, set up by former Assemblyman Bob Thomas, a limitation was included that a person could only serve four years and then not be eligible to serve again for four years. As explained to me, the limitation was included to make sure the Airport Authority did not have an old boys club where the same people were involved all the time. It also ensured a turnover.

The problem this created is almost all of the planning cycles are five years or longer. The Airport Authority never has an appointed person serving on the board who actually sees a planning cycle through to completion. That problem has triggered a number of ancillary problems of new people coming in and not having the history of the projects already underway. The other aspect to this problem is we have a limited pool of candidates.

This bill addresses the problem by stating a person can serve two successive four-year terms and then not be eligible to serve for four years. This is an adequate way to ensure it is not the same people all the time but still takes advantage of the expertise on the Airport Authority now and in the future.

The second thing in this bill is a cleanup of language differences. Section 8 of the Airport Authority Act for Carson City describes which provisions of law apply to the Airport Authority. As written, some lines refer to the NRS chapter and some lines refer to the topical chapter. We received numerous complaints about people knowing the topical chapter but not knowing where to find it in NRS and vice-versa. The cleanup is to include both the name and the NRS chapter, so it is easy for people who are looking at the bill to understand it.

The third thing in this bill are a few changes to what needs to be approved by the Carson City Board of Supervisors. Most transactions by the Airport Authority need to be approved by the Board. It has been a duplicative and slowing-down method. Certain things should always be approved by the Board, such as acquiring land or the disposal of land. The Authority sits within Carson City. It makes sense that the Board should have a hand in those types of actions, and its approval should be required. But the day-to-day job of contracting for paper towels and minor needs is something that does not necessitate a second level of approval. We scaled this down a bit.

The fourth thing addresses the long series of provisions on employment criteria in section 4. The Authority only has two employees. I do not anticipate, even if the airport grows substantially, the Authority will have more than a handful of employees. Our employment counsel advised us the provisions in statute are in conflict with federal employment laws. We need to eliminate the provisions and stick to what the federal law requires for employment. We went a step further and added a provision to make sure there is a review and appeals process for any kind of employment grievance. Beyond that, we got rid of an outdated list of employment criteria.

This bill also tweaks the language as to when the terms expire. We want to ensure the Airport Authority has staggered terms to provide a continuity of leadership. It would be a real drag if all seven members' terms expired at the same time and the Authority would have to scramble to get people up to speed. One Airport Authority member will never be staggered on the schedule as everybody else, and that is the city representative. As the law states, one

member needs to be a city official. City officials are typically elected in the same election process the Legislators go through with their service typically beginning in January. The City holds its own meeting and appoints a city official as a representative. That person will be on a different but staggered basis. All the other members representing the public, the pilot community and the businesses are set up with staggered terms.

With me at the table is Ken Moen, who is the Carson City Airport manager. He started working at the airport a little over a year ago, and he has done an enormous amount of work for the airport in that time frame.

KENNETH MOEN (Carson City Airport Authority):

We have 50 percent of our staff here today. I do not want to delay the Committee any longer.

NANCY PAULSON (City Manager, Carson City):

The Carson City Board of Supervisors voted unanimously to support this bill.

CHAIR PARKS:

We will close the hearing on A.B. 406 and open the hearing on A.B. 270.

ASSEMBLY BILL 270 (1st Reprint): Revises provisions related to transportation.
(BDR 22-579)

ASSEMBLYWOMAN SARAH PETERS (Assembly District No. 24):

I am introducing A.B. 270. Because I am not an expert in the regional transportation commission and this area of the law, I will pass the microphone to my copresenters to brief you on the bill.

MICHAEL HILLERBY (Regional Transportation Commission of Washoe County):

We thank Assemblywoman Peters in sponsoring A.B. 270 and Senator Julia Ratti who originally requested the bill draft request and handed it off to Assemblywoman Peters. Assembly Bill 270 does two things. It provides a new mechanism by which a regional transportation commission (RTC) could dispose of certain kinds of property. It also allows an RTC to offer a microtransit service. The idea is to go beyond our regular route and fixed schedules. This will apply in places where we offer paratransit now with smaller buses and on-demand service at a lower cost. We subsidize paratransit fares fairly heavily.

Section 1 of the bill is copied largely from NRS 408 for the Department of Transportation (NDOT). The highlighted section in the document provided ([Exhibit C](#)) is the language which NRS 277A, section 1 is based upon. Under NRS 277A, if an RTC acquired land through eminent domain or threat of eminent domain, it is limited in how it can sell the property as spelled out in NRS 37.260. This is the typical process of sealed bids or public auction for that land. Regional transportation commissions end up with parcels as often as NDOT. The NDOT language in the exhibit allowing the direct sales we are seeking looks substantially different as it has been amended over the years, but the core piece dates back to 1959.

If the commission makes the findings in section 1, subsection 1, paragraph (b), subparagraphs (1) through (4)—there is no access to the property; the property has value or an increased value only to a single adjoining property owner; such a sale would work an undue hardship upon a property owner as a result of severance of the property or a denial of access to a street or highway; or the property is too small to establish an economically viable use by anyone other than an adjoining property owner—the commission could directly sell to a potential owner.

Under section 1, subsection 1, paragraph (c), the language also allows the RTC to transfer the property to another public agency.

Because the original purchase would have been made with gas tax funds, the proceeds will go back into the State Highway Fund for RTC. Those are the operative provisions.

Any other property that does not meet those qualifications will be sold through a normal process of putting the property out to bid, getting an appraisal and, per section 1, subsection 2, receiving at least 90 percent of the appraisal price.

Section 1, subsection 5 allows the commission to reserve the rights for land next to a bus station or other RTC project, such as: abutter's rights; easements; covenants prohibiting the use of signs, structures or advertising devices and other things that might have an impact on the roadway or property.

SENATOR OHRENSCHALL:

If an RTC uses eminent domain to take land, will any effort be made to see if the original property owner wanted to buy it back, or will it go through this proposed procedure listed in section 1 of the bill?

MR. HILLERBY:

This policy is covered under NRS 37.270. If a public entity does not use or have actively in the planning process a piece of land within 15 years, it is RTC's responsibility to offer the property back to the person from whom it received the land or the successor at the original purchase price. That is how it is offered back to the original owner.

SENATOR KIECKHEFER:

Does the policy carry through when a piece of property is not acquired through eminent domain but by threat thereof? If RTC initiates the proceedings or it is publicly discussed and the people decide to sell their property willingly without the actual eminent domain process, do the original property owners get the property back in that scenario?

AMY CUMMINGS (Regional Transportation Commission of Washoe County):
Yes. That is correct.

CHAIR PARKS:

Nevada Revised Statutes 277A deals with RTCs. There are multiple RTCs throughout the State. Will this bill impact other RTCs?

MR. HILLERBY:

The language in the bill is not specific to any particular population. A variety of pieces of NRS 277A apply to populated counties with categories based on populations of less than 100,000, more than 100,000 but less than 700,000 and over 700,000. In this case, it will be the same language for all.

CHAIR PARKS:

It is interesting to know the operations of the Regional Transportation Commission of Washoe County and the Regional Transportation Commission of Southern Nevada operate in slightly different manners despite the fact they have identical statutory provisions.

MR. HILLERBY:

Section 1.5, subsection 3, paragraph (c) allows an RTC to transport persons without regard to normal fixed routes, published schedules or minor deviations if it is provided by microtransit. This subsection is particular to a population cap of less than 700,000—such as the Washoe County Regional Transportation Commission. The definition of "microtransit" is on page 5, section 1.5, subsection 7, paragraph (b) which is transportation by a multipassenger vehicle that carries fewer passengers than the vehicles normally used on regular routes.

A question which came up before the Assembly Floor vote is if the microtransit vehicles will be private passenger vehicles. The answer is no. The microtransit vehicles will be smaller shuttle buses operated by the same contractor that operates our existing bus fleet with the same drivers.

We have outlined a particular section of a service area for a pilot project where we know we have demand. This will help us move people efficiently and less expensively to get them to the hospital, bus stop or transit center and back home again.

CHAIR PARKS:

Will the microtransit vehicles be artificial intelligence-operated vehicles?

MR. HILLERBY:

At the moment, we do not have those. In the future, there potentially could be those type of vehicles. That would require approval from the Department of Motor Vehicles. The State does not allow Level 4 or 5—fully autonomous vehicles—in Nevada. The RTC has some autonomous vehicles in use that have a safety driver attendant in the vehicle. An RTC demonstration project in Las Vegas may be using one. I am not familiar with the details.

CHAIR PARKS:

The City of Las Vegas undertook one, but while the vehicle was safely being operated, it got T-boned by some other delivery vehicle.

MR. HILLERBY:

My recollection from last Session is when RTC was here with the demonstration of that project, it was on a limited fixed route of up and down one street. It will be some time before autonomous vehicles are allowed. That would take a lot of

conversations among elected officials, the RTC Board and others before that might happen.

CHAIR PARKS:

We will close the hearing on A.B. 270 and open the hearing on A.B. 397.

ASSEMBLY BILL 397 (1st Reprint): Revises provisions governing misconduct by certain public officials. (BDR 18-1038)

ASSEMBLYWOMAN TERESA BENITEZ-THOMPSON (Assembly District No. 27):

For too long, we have allowed discrimination and abuse to occur in the workplace. As a Nation, we made a public policy declaration on July 2, 1964, when then-President Lyndon B. Johnson signed the Civil Rights Act into law. Title VII of the Civil Rights Act prevents public policy from engaging in racism, discrimination, sexism and harassment.

We citizens need a clear path in Nevada by which public officials can be held to a higher standard. We elected officials are not above the law, and we will no longer tolerate harassment and discrimination in the workplace by elected officials.

Public figures are expected to be worthy of the public trust. When this trust is violated by acts of sexual harassment discrimination, the level of accountability has to be equivalently higher. We, as elected officials of Nevada, are falling desperately short of this expectation because, practically, there is not a way for required accountability to happen.

When a complaint is made against a local elected official, the local entity's human resource department is conflicted because that elected official is essentially and effectively its boss. A county or city manager serves as a subordinate to the elected. There cannot be a remedy for the employee because there is no way to remove the elected person. The public and the employee must wait for an election cycle, which might be years away.

What is the status quo? An elected official can have findings against them of sexual harassment discrimination or any other Title VII provisions, and nothing happens because nothing can happen. There is no immediate workplace remedy for the person who filed the complaint. The local entity does not have to take, and in the past has not taken, action against the local elected official.

Even if the public retains this bad actor through reelection, that vote should not mean employees in the workplace should have to labor under a bad actor nor work in an environment where the elected official continues bad behavior.

Article 7 of the *Constitution of the State of Nevada* grants to the Assembly of the Nevada Legislature the sole authority to impeach. The ability to recommend impeachment lies with the Nevada Commission on Ethics. If an elected official has three or more willful ethics violations, NRS compels the Nevada Commission on Ethics to seek expulsion through the courts.

Where is justice when an elected official can be removed for using a government copier to make copies of campaign materials but cannot be removed if found to have sexually harassed a person or engaged in acts of discrimination?

This bill seeks to establish accountability for elected officials by giving the Nevada Equal Rights Commission (NERC) the ability to make a recommendation to remove a local elected official whose behavior is severe or pervasive.

Also, we create the requirement that the elected person, not their local entity or government, must pay the fines levied out of his or her personal accounts.

I have two interns serving in my office this Session, both from the University of Nevada, Reno (UNR). One is studying social work, the other public policy. They have been doing research on and helping with this bill. The interns are going to make their first legislative appearance and provide testimony on this bill.

Valeria Becerra, who is a social work intern, will be talking about this issue through that lens. Madison Johnson will talk on this issue through the public policy lens.

VALERIA BECERRA (Intern to Assemblywoman Benitez-Thompson):

I am earning a master of social work degree as a student at UNR. Social workers value the dignity and worth of a person while advocating for social justice. Sexual harassment is a form of discrimination, a crime that violates both U.S. and State law. Title VII of the Civil Rights Act of 1964, is the federal law that prohibits employers from discriminating against employees on the basis of sex, race, color, national origin and religion. Assembly Bill 397 references the Act as well as the State's unlawful employment practices in NRS 613.330,

which includes the above criteria for discrimination as well as sexual orientation, gender identity or expression and interference with aid or appliance for disability.

The Nevada Equal Rights Commission defines sexual harassment as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature that explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to: the harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a coworker or a nonemployee. Unlawful sexual harassment may occur without economic injury to or discharge of the victim. The harasser's conduct must be unwelcomed.

Last year, Nevada had 784 filed cases due to discrimination. Of those, 264 were sexual harassment. Victims face many consequences with sexual harassment. Victims of sexual harassment often experience serious mental and physical health issues. Ninety to 95 percent of sexually harassed victims suffer from debilitating stress reaction, including anxiety and depression.

Additionally, victims of sexual harassment lose \$4.4 million in wages and 973 hours in unpaid leave each year in the U.S. Clearly, victims lose much more than their perpetrators. Not only does this speak volumes for our employees, it speaks volumes for the morale of our State and communities.

Elected officials must be held to a higher standard. They are the face of our community. Our community does not stand for these offensive behaviors. These behaviors should be faced with serious consequences, otherwise the State is misleading and breaking the trust of our community and its members.

As a State, we do not have a clear process for victims to make a complaint against a local elected official. Thus, the victims' experiences and words continue to fall on deaf ears. What picture are we giving to these victims? That we do not care? That we no longer have the power over the elected officials?

This bill seeks to establish accountability for elected officials by giving NERC the power to make a recommendation to remove a local elected official who

demonstrates bad behavior. We need to place a requirement on these perpetrators to be held responsible.

SENATOR KIECKHEFER:

This legislation allows the impeachment process to take place if a violation of the federal Civil Rights Act is found, is that correct?

ASSEMBLYWOMAN BENITEZ-THOMPSON:

Yes. There are some changes to Proposed Amendment 5841 as well ([Exhibit D](#)). I will walk through the amendment shortly. The intent is to capture both our States' references to unlawful employment acts as well as the Civil Rights protections.

SENATOR KIECKHEFER:

That was my question because our State's provisions are better than the federal provisions.

ASSEMBLYWOMAN BENITEZ-THOMPSON:

That is correct.

MADISON JOHNSON (Intern to Assemblywoman Benitez-Thompson):

I am a UNR student studying political science and public policy.

The intent of A.B. 397 is to ensure elected officials are abiding by the virtue of their office and maintaining the public trust that is intrinsic to the holding of such an office.

Though this legislation is relatively short, it carries quite a bit of weight—its intentions are congruent with the values and interests of this State. The bill's intent is to provide a process that ensures civil protections are in place for the employee or victims of unlawful behavior enacted by such officials.

This legislation seeks to create a mechanism for the State to remove elected officials who are found to have demonstrated egregious behavior or to have engaged in unlawful discriminatory practices, as previously stated by my colleague Ms. Becerra.

This bill also stipulates the damages or fines incurred by such actions of an elected official are assessed from his or her own personal capacity, not from

campaign, taxpayer or public monies. This provision ensures the public is not paying for the bad behavior of such official.

I will briefly address the NRS Titles and chapters which we are utilizing in this bill. *Nevada Revised Statutes* 233 establishes the Nevada Equal Rights Commission and delineates the processes by which discriminatory accusations are assessed. *Nevada Revised Statutes* 613 covers employment practices; NRS 613.330 covers unlawful employment practices, the discriminatory basis Ms. Becerra described earlier. *Nevada Revised Statutes* 613 has more of an expansive framework of discrimination practices than Title VII of the Civil Rights Act of 1964 and is more inclusive in achieving the intent of this bill. *Nevada Revised Statutes* 283 covers resignations, vacancies and removals of public officials. *Nevada Revised Statutes* 283.440 pertains to the removal of certain public officers for malfeasance or nonfeasance. We are looking to mirror these three NRS chapters to create a comprehensive framework for the State through which the removal of these officials can be done in a proper manner.

ASSEMBLYWOMAN BENITEZ-THOMPSON:

We have two changes to the proposed amendment to put on the record. In section 1, line 14, the word "significantly" is paired with "severe." We need to strike the word "significantly" so the standard is just severe or pervasive. That change keeps with the standard for all other complaints filed with the NERC. We did not want to inadvertently create a higher standard. Any other place that definition falls will be a conforming change.

We will also keep the reference to Title VII of the Civil Rights Act. While State law enumerates more protections than Title VII, we want to make sure we are not only talking about the direct relationship with an employee but the workplace as well.

We discussed this language with local entities. The local entities said we are capturing everything with this change. Some say the language is duplicative and other people say we got it just right. Either way, we are safe.

CHAIR PARKS:

How does it all start? The Nevada Equal Rights Commission does the investigation, but NERC normally makes an investigation based upon somebody filing a complaint. What is the mechanism for the complaint to come to NERC?

ASSEMBLYWOMAN BENITEZ-THOMPSON:

Section 1 of the proposed amendment starts with "the Commission shall accept a complaint." The complaint can be against a local elected official. In the paradigm, we are fitting the local elected official as a person in a workplace and not just a stand-alone elected person. The point of pulling the local elected official into the NERC process is to acknowledge the official as a person in a workplace, not just an elected official up in a shiny ivory tower. The local elected official affects the environment around them.

The complaint goes to NERC and then goes through the process by which NERC makes a determination of whether an unlawful employment practice has happened. The process is in NRS 233.170. The finding goes to a district court, and a person will have due process. The district court will direct the local governing body, such as a county commissioner, to remove the offender from office.

CHAIR PARKS:

I am still at a loss. Who files the complaint with the Commission?

ASSEMBLYWOMAN BENITEZ-THOMPSON:

My legislative intent is that the complaint is filed by a person in the workplace who is a victim.

CHAIR PARKS:

The complaint is filed by the victim.

ASSEMBLYWOMAN BENITEZ-THOMPSON:

This is the normal course of the process.

KARA JENKINS (Administrator, Nevada Equal Rights Commission):

The Commission takes the complaint from the victim if the harm happened within the past 300 days. The Commission investigates the findings. The process involves the investigative team. I, as Administrator, and my deputy are removed from the process. On a finding of cause, the Administrator makes a recommendation to the five Governor-appointed NERC Commissioners to hold a hearing on the matter. The court will make the determination of whether to impeach.

SENATOR KIECKHEFER:

Are the hearing and complaints confidential or public?

Ms. JENKINS:

They are public hearings.

ASSEMBLYWOMAN BENITEZ-THOMPSON:

Nevada Revised Statutes 233.170 lays out the process for how NERC comes about a finding, how the meetings are conducted and how the attempt to settle is completed. This section contains quite a few provisions. We are including a local elected official into the well-established NERC process.

SENATOR OHRENSCHALL:

Under the proposed amendment, if a complaint goes to NERC, what is the burden of proof for a local elected officer in terms of finding the complaint is true or has merit?

Ms. JENKINS:

The standard is probable cause, which is more likely than not.

SENATOR OHRENSCHALL:

Is that the standard NERC uses for complaints against any other employee?

Ms. JENKINS:

Yes, it is. The standard is also used by the Equal Employment Opportunity Commission.

CHAIR PARKS:

Will NERC investigate the complaint before it goes public with the complaint? It will be tough to reverse the possible public sentiment if no finding is made.

Ms. JENKINS:

As mentioned, NERC conducts a full investigation with strong intentions on settling privately before going public. When NERC cannot get parties to agree or the parties have failed attempts to conciliate after another attempt to mediate before investigation, NERC makes a recommendation, with the support of a deputy attorney general, for its Commissioners to go public. It takes about a year to thoroughly complete these investigations before NERC gets to the point

of going public. The intent is to settle privately at the State level, but if NERC cannot conciliate, a public hearing is held on the matter.

SENATOR GOICOECHEA:

In absence of this legislation, how do you handle it today? Will NERC investigate a complaint against an elected official or otherwise?

ASSEMBLYWOMAN BENITEZ-THOMPSON:

The Commission can investigate and have a finding. However, if an offense is severe or pervasive, NERC does not have the ability to recommend removal of an elected official. The Nevada Commission on Ethics has the authority for ethics violations. We are proposing an extra tool specific to local elected officials for NERC to use when appropriate. The Commission will do the fact-finding and complete its process. If NERC finds an egregious violation, NERC can go to this heavy hammer and recommend removal of the official from public office.

SENATOR GOICOECHEA:

Why would the Nevada Commission on Ethics not pursue a complaint of this nature?

ASSEMBLYWOMAN BENITEZ-THOMPSON:

The Nevada Commission on Ethics does not have jurisdiction over the provisions related to race, discrimination and sexism. The Ethics Commission handles violations. These are separate accusations handled by the different commissions.

SENATOR GOICOECHEA:

Sexual assault or misconduct certainly falls under the purview of the Nevada Commission on Ethics, correct? I am struggling with the separation of duties of the commissions.

ASSEMBLYWOMAN BENITEZ-THOMPSON:

I will have Legal Counsel clarify, but I believe it does not fall under the Nevada Commission on Ethics.

HEIDI CHLARSON (Committee Counsel):

The Nevada Commission on Ethics does not have jurisdiction over the types of complaints which NERC has jurisdiction to hear. This bill will allow NERC to

investigate the same types of complaints it receives now but also give NERC the authority to recommend an elected local government officer be removed from office in findings where discrimination is severe or pervasive wherein removal is an appropriate remedy.

ASSEMBLYWOMAN BENITEZ-THOMPSON:

We are setting forth a path by which victims can bring their allegations and be heard against a local elected official. This issue was brought to light by women's groups that approached me with a concern. The groups expressed frustration that local officials who are engaging in bad behavior or have findings brought against them by NERC cannot be removed for those kinds of offenses. The Nevada Commission on Ethics has the special ability to remove someone for ethics violations, but these two worlds do not cross over. We are contemplating giving NERC the ability to remove someone. We do not take this lightly. Due process is afforded to the accused. The ability and a place for these complaints to be discussed is provided. We Legislators have the ability to expel our own members. Statute does not have a good process for defining malfeasance by local elected officials with these kind of behaviors and these kind of findings. That is what we are seeking to do.

MS. JENKINS:

The Nevada Equal Rights Commission is neutral on this bill. As an Executive Branch agency, we cannot be for or against a bill. We are encouraged by this legislation and thank the sponsor.

IZZY YOUNGS (Nevada Women's Lobby):

I am here to read testimony from Marlene Lockard from the Nevada Women's Lobby. The Nevada Women's Lobby supports A.B. 397 and thanks the bill's sponsors for bringing this important legislation. We are aware that despite the normal safeguards and processes to remove an elected official for egregious violations of the oath of office, opportunities still remain for bad actors in public office to escape the consequences of their actions. To add insult to injury, it has been demonstrated in high-profile cases that the perpetrators are allowed to fight removal from office and fight their victims by using taxpayer dollars to defend themselves from repeated acts of sexual harassment and vile behavior in office.

All too often, we find a harasser's life carries on and is even elevated while the victims' lives are forever shattered and in tatters, their professional reputations ruined and stunted. This is not acceptable.

The public must have a way to remove an individual who has violated and abused his or her office. This is especially the case when an elected official holds a position of trust, such as a chief law enforcement official. Allowing such an individual to remain in a position with enormous power over our citizenry and our visiting unsuspecting tourists is unconscionable.

This bill is a bill of last resort. It allows our objective regulatory agencies and court to protect the citizens of the State from predatory individuals who have been able to successfully manipulate the system. We urge your favorable consideration of this legislation.

JAMIE RODRIGUEZ (Washoe County):

We support this legislation which gives victims an opportunity to not file complaints with Washoe County. Complaints received by the County can result in employees having to potentially investigate their supervisors. This can create an uncomfortable situation for those employees. This legislation allows for an investigation which does not put employee against employee or employee against supervisor within the County.

CAROLINE MELLO ROBERSON (NARAL Pro-Choice Nevada):

I will say ditto to the remarks by the Nevada Women's Lobby. As an organization with 45,000 members across the State, I hear a lot of stories of victims of sexual assault and harassment. Passing a measure like A.B. 397 and taking action on the issue of workplace harassment will give the people of Nevada a good level of comfort that the State is looking out for them and their best interests. Both men and women experience these situations. I urge your support. I shout out to the many members of the audience who came here for this matter. NARAL members have been fighting for this issue since the publicized matter came up not long ago.

As citizens of Nevada, we are glad you are hearing the people. We are asking to be treated fairly and decently and to make sure no woman or man has to experience any undue treatment.

SENATOR KIECKHEFER:

What is the expansion of the relationship in these situations? If a local elected official is not harassing an employee but is harassing someone who works at the office, whether that be a lobbyist or someone else, will that situation fall under this scope? Under this bill, could a local government lobbyist lodge a complaint against a local elected official?

ASSEMBLYWOMAN BENITEZ-THOMPSON:

This is the type of conversation we had through the Interim Session as the Legislature was setting up our own processes by which these kinds of complaints could be handled. Does the definition of a workplace mean everyone inside the workplace, regardless of whether they are employees? The best answer is we want to stay with the precedence of what is being set by record and by caselaw and within the realm of what NERC already considers.

That might not be the most direct answer you are looking for, but from my experience, that is the best answer I can give.

SENATOR KIECKHEFER:

It looks like it hinges back to NRS 613.330. For the purpose of intent, we may want to consider the influence a local elected official can have over people who may not be his or her direct employees and whether those individuals need to be captured in a section like this.

CHAIR PARKS:

I see a number of people with the interested parties in the room. If you would like to raise your hands, we can get a sense of who all is here to support this bill. I see several hands raised in the room.

ALEX ORTIZ (Clark County):

I am here in the neutral, but the purpose of my testimony is to thank the Majority Floor Leader. One of our lobbyists worked with her on this bill, and the Majority Floor Leader addressed our concerns. We wanted to place that on the record.

Senate Committee on Government Affairs
May 3, 2019
Page 24

CHAIR PARKS:

We will close the hearing on A.B. 397. Hearing no further business, this meeting is adjourned at 2:30 p.m.

RESPECTFULLY SUBMITTED:

Becky Archer,
Committee Secretary

APPROVED BY:

Senator David R. Parks, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	2		Agenda
	B	6		Attendance Roster
A.B. 270	C	2	Michael Hillerby / Regional Transportation Commission of Washoe County	Presentation
A.B. 397	D	4	Assemblywoman Teresa Benitez-Thompson	Proposed Amendment 5841