

FILED
Electronically
CV23-01341
2023-08-15 12:13:19 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 9831148 : yvioria

EXHIBIT 2

EXHIBIT 2

**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

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

Senate Committee on Government Affairs
May 3, 2019
Page 16

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

Senate Committee on Government Affairs
May 3, 2019
Page 20

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: _____