
ASSEMBLY BILL NO. 66—ASSEMBLYWOMAN ANGLE (BY REQUEST)

PREFILED JANUARY 28, 1999

Referred to Committee on Government Affairs

SUMMARY—Prohibits retaliatory action against independent contractor who discloses improper governmental action. (BDR 23-1057)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: 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 state government; prohibiting retaliatory action against an independent contractor who discloses an improper governmental action; prohibiting a state agency from taking certain adverse action against independent contractors who testify or seek to testify before a house or committee of the legislature on their own behalf; and providing other matters properly relating thereto.

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

- 1 **Section 1.** NRS 281.611 is hereby amended to read as follows:
2 281.611 As used in NRS 281.611 to 281.671, inclusive, unless the
3 context otherwise requires:
4 1. “Improper governmental action” means any action taken by a state
5 officer or employee in the performance of his official duties, whether or
6 not the action is within the scope of his employment, which is:
7 (a) In violation of any state law or regulation;
8 (b) An abuse of authority;
9 (c) Of substantial and specific danger to the public health or safety; or
10 (d) A gross waste of public money.
11 2. “State employee” means any person who performs public duties
12 under the direction and control of a state officer for compensation paid by
13 or through the state. ***The term includes an independent contractor who***
14 ***has entered into a contract with an elective officer or the head of a***
15 ***department, board, commission or institution pursuant to NRS 284.173.***

1 3. "State officer" means a person elected or appointed to a position
2 with the state which involves the exercise of a state power, trust or duty,
3 including:

4 (a) Actions taken in an official capacity which involve a substantial and
5 material exercise of administrative discretion in the formulation of state
6 policy;

7 (b) The expenditure of state money; and

8 (c) The enforcement of laws and regulations of the state.

9 **Sec. 2.** NRS 281.641 is hereby amended to read as follows:

10 281.641 1. If any reprisal or retaliatory action is taken against a state
11 officer or employee who discloses information concerning improper
12 governmental action within 2 years after the information is disclosed, the
13 state officer or employee may file a written appeal with a hearing officer of
14 the department of personnel for a determination of whether the action
15 taken was a reprisal or retaliatory action. The written appeal must be
16 accompanied by a statement that sets forth with particularity:

17 (a) The facts and circumstances under which the disclosure of improper
18 governmental action was made; and

19 (b) The reprisal or retaliatory action that is alleged to have been taken
20 against the state officer or employee.

21 The hearing must be conducted in accordance with the procedures set forth
22 in NRS 284.390 to 284.405, inclusive, and the procedures adopted by the
23 personnel commission pursuant to subsection 4.

24 2. If the hearing officer determines that the action taken was a reprisal
25 or retaliatory action, he may issue an order directing the proper person to
26 desist and refrain from engaging in such action. The hearing officer shall
27 file a copy of his decision with the governor or any other elected state
28 officer who is responsible for the actions of that person.

29 3. The hearing officer may not rule against the state officer or
30 employee based on the person or persons to whom the improper
31 governmental action was disclosed.

32 4. The personnel commission may adopt rules of procedure for
33 conducting a hearing pursuant to this section that are not inconsistent with
34 the procedures set forth in NRS 284.390 to 284.405, inclusive.

35 5. For the purposes of this section, "reprisal or retaliatory action"
36 includes:

37 (a) The denial of adequate personnel to perform duties;

38 (b) Frequent replacement of members of the staff;

39 (c) Frequent and undesirable changes in the location of an office;

40 (d) The refusal to assign meaningful work;

41 (e) The issuance of letters of reprimand or evaluations of poor
42 performance;

- 1 (f) A demotion;
2 (g) A reduction in pay;
3 (h) The denial of a promotion;
4 (i) A suspension;
5 (j) A dismissal;
6 (k) A transfer;
7 (l) Frequent changes in working hours or workdays; ~~for~~
8 (m) *If the employee is an independent contractor, the revocation or*
9 *rescission of a contract entered into pursuant to NRS 284.173; or*
10 *(n) If the employee is licensed or certified by an occupational licensing*
11 *board, the filing with that board, by or on behalf of the employer, of a*
12 *complaint concerning the employee,*
13 *if such action is taken, in whole or in part, because the state officer or*
14 *employee disclosed information concerning improper governmental action.*
15 **Sec. 3.** NRS 284.173 is hereby amended to read as follows:
16 284.173 1. Elective officers and heads of departments, boards,
17 commissions or institutions may contract for the services of persons as
18 independent contractors.
19 2. An independent contractor is a natural person, firm or corporation
20 who agrees to perform services for a fixed price according to his or its own
21 methods and without subjection to the supervision or control of the other
22 contracting party, except as to the results of the work, and not as to the
23 means by which the services are accomplished.
24 3. For the purposes of this section:
25 (a) Travel, subsistence and other personal expenses may be paid to an
26 independent contractor, if provided for in the contract, in such amounts as
27 provided for in the contract. Those expenses must not be paid pursuant to
28 the provisions of NRS 281.160.
29 (b) There must be no:
30 (1) Withholding of income taxes by the state;
31 (2) Coverage for industrial insurance provided by the state;
32 (3) Participation in group insurance plans which may be available to
33 employees of the state;
34 (4) Participation or contributions by either the independent contractor
35 or the state to the public employees' retirement system;
36 (5) Accumulation of vacation leave or sick leave; or
37 (6) Coverage for unemployment compensation provided by the state
38 if the requirements of NRS 612.085 for independent contractors are met.
39 4. ~~Am~~ *Except as otherwise provided in NRS 218.5343 and 281.611*
40 *to 281.671, inclusive, an* independent contractor is not in the classified or
41 unclassified service of the state, and has none of the rights or privileges
42 available to officers or employees of the State of Nevada.

1 5. Except as otherwise provided in this subsection, each contract for
2 the services of an independent contractor must be in writing. The form of
3 the contract must be first approved by the attorney general, and, except as
4 otherwise provided in subsection 7, an executed copy of each contract
5 must be filed with the fiscal analysis division of the legislative counsel
6 bureau and the clerk of the state board of examiners. The state board of
7 examiners may waive the requirements of this subsection in the case of
8 contracts which are for amounts less than \$750.

9 6. Except as otherwise provided in subsection 7, and except contracts
10 entered into by the University and Community College System of Nevada,
11 each proposed contract with an independent contractor must be submitted
12 to the state board of examiners. The contracts do not become effective
13 without the prior approval of the state board of examiners, but the state
14 board of examiners may authorize its clerk to approve contracts which are:

15 (a) For amounts less than \$5,000 or, in contracts necessary to preserve
16 life and property, for amounts less than \$25,000.

17 (b) Entered into by the state gaming control board for the purposes of
18 investigating an applicant for or holder of a gaming license.

19 The state board of examiners shall adopt regulations to carry out the
20 provisions of this section.

21 7. Copies of the following types of contracts need not be filed or
22 approved as provided in subsections 5 and 6:

23 (a) Contracts executed by the department of transportation for any work
24 of construction or reconstruction of highways.

25 (b) Contracts executed by the state public works board or any other
26 state department or agency for any work of construction or major repairs of
27 state buildings if the contracting process was controlled by the rules of
28 open competitive bidding.

29 (c) Contracts executed by the housing division of the department of
30 business and industry.

31 (d) Contracts executed by the state industrial insurance system.

32 (e) Contracts executed with business entities for any work of
33 maintenance or repair of office machines and equipment.

34 8. The state board of examiners shall review each contract submitted
35 for approval pursuant to subsection 6 to consider:

36 (a) Whether sufficient authority exists to expend the money required by
37 the contract; and

38 (b) Whether the service which is the subject of the contract could be
39 provided by a state agency in a more cost-effective manner.

40 If the contract submitted for approval continues an existing contractual
41 relationship, the board shall ask each agency to ensure that the state is
42 receiving the services that the contract purports to provide.

1 9. If the services of an independent contractor are contracted for to
2 represent an agency of the state in any proceeding in any court, the
3 contract must require the independent contractor to identify in all pleadings
4 the specific state agency which he is representing.

5 **Sec. 4.** NRS 218.5343 is hereby amended to read as follows:

6 218.5343 1. An employee of a state agency who testifies before a
7 house or committee of the legislature on his own behalf and not on behalf
8 of his employer shall, before commencing his testimony, state that fact
9 clearly on the record.

10 2. It is unlawful for a state agency which is the employer of an
11 employee who complies with subsection 1 and testifies or seeks to testify
12 before a house or committee of the legislature on his own behalf to:

13 (a) Deprive the employee of his employment or to take any reprisal or
14 retaliatory action against the employee as a consequence of his testimony
15 or potential testimony;

16 (b) Threaten the employee that his testimony or potential testimony will
17 result in the termination of his employment or in any reprisal or retaliatory
18 action against him; or

19 (c) Directly or indirectly intimidate, threaten, coerce, command or
20 influence or attempt to intimidate, threaten, coerce, command or influence
21 the employee in an effort to interfere with or prevent the testimony of the
22 employee.

23 3. It is unlawful for a state agency to:

24 (a) Deprive or threaten to deprive an employee of his employment;

25 (b) Take or threaten to take any reprisal or retaliatory action against the
26 employee; or

27 (c) Directly or indirectly intimidate, threaten, coerce, command or
28 influence or attempt to intimidate, threaten, coerce, command or influence
29 the employee,

30 in an attempt to affect the behavior of another employee who is testifying
31 or seeks to testify before a house or committee of the legislature on his
32 own behalf.

33 4. The provisions of this section do not apply to an employee in the
34 classified service who has not completed his probationary period.

35 5. ~~For the purposes of~~ *As used in* this section:

36 (a) *“Employee” includes an independent contractor who has entered*
37 *into a contract with an elective officer or the head of a department,*
38 *board, commission or institution pursuant to NRS 284.173.*

39 (b) “Reprisal or retaliatory action” has the meaning ascribed to it in
40 subsection 5 of NRS 281.641.

1 ~~I(b)~~ (c) “State agency” means an agency, bureau, board, commission,
2 department, division, officer, employee or agent or any other unit of the
3 executive department of the state government. *The term includes an*
4 *elective officer or the head of a department, board, commission or*
5 *institution who has entered into a contract with an independent*
6 *contractor pursuant to NRS 284.173.*

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