

Senate Bill No. 556—Committee on Government Affairs

CHAPTER.....

AN ACT relating to local government; prohibiting reprisal or retaliatory action against an officer or employee of a local government who discloses improper governmental action; requiring a local government to establish procedures for hearing appeals relating to a reprisal or retaliatory action; and providing other matters properly relating thereto.

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

Section 1. Chapter 281 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *A local government may enact by ordinance procedures that provide greater protection to local governmental officers and employees against reprisal and retaliation for the disclosure of improper governmental action than the protection provided in NRS 281.611 to 281.671, inclusive.*

Sec. 3. 1. *A local government shall, by ordinance, establish procedures for hearing an appeal from a local governmental officer or employee who:*

(a) Disclosed information concerning improper governmental action; and

(b) Believes that as a result of that disclosure, a reprisal or retaliatory action has been taken against him, to determine whether a reprisal or retaliatory action has been taken against the local governmental officer or employee. The procedures must allow a local governmental officer or employee to file an appeal not later than 2 years after the information is disclosed and require the local government officer or employee who desires to file an appeal to file the appeal within 60 days after the alleged reprisal or retaliatory action was taken against him.

2. An ordinance adopted pursuant to subsection 1 must:

(a) Prescribe the required contents of an appeal;

(b) Provide for the designation or appointment of hearing officers to hear such appeals; and

(c) Provide that if a hearing officer determines that the action taken was a reprisal or retaliatory action, he may issue an order directing the proper person to desist and refrain from engaging in such action.

Sec. 4. NRS 281.611 is hereby amended to read as follows:

281.611 As used in NRS 281.611 to 281.671, inclusive, *and sections 2 and 3 of this act*, unless the context otherwise requires:

1. “Improper governmental action” means any action taken by a state officer or employee *or local governmental officer or employee* in the performance of his official duties, whether or not the action is within the scope of his employment, which is:

(a) In violation of any state law or regulation;

(b) If the officer or employee is a local governmental officer or employee, in violation of an ordinance of the local government;

(c) An abuse of authority;

~~1(e)~~ (d) Of substantial and specific danger to the public health or safety; or

~~1(d)~~ (e) A gross waste of public money.

2. *"Local government" means a county in this state, an incorporated city in this state and Carson City.*

3. *"Local governmental employee" means any person who performs public duties under the direction and control of a local governmental officer for compensation paid by or through a local government.*

4. *"Local governmental officer" means a person elected or appointed to a position with a local government that involves the exercise of a local governmental power, trust or duty, including:*

(a) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of local governmental policy;

(b) The expenditure of money of a local government; and

(c) The enforcement of laws and regulations of the state or a local government.

5. *"Reprisal or retaliatory action" includes:*

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

(b) Frequent replacement of members of the staff;

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

(d) The refusal to assign meaningful work;

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

(f) A demotion;

(g) A reduction in pay;

(h) The denial of a promotion;

(i) A suspension;

(j) A dismissal;

(k) A transfer;

(l) Frequent changes in working hours or workdays; or

(m) If the employee is licensed or certified by an occupational licensing board, the filing with that board, by or on behalf of the employer, of a complaint concerning the employee, if such action is taken, in whole or in part, because the state officer or employee or local governmental officer or employee disclosed information concerning improper governmental action.

6. "State employee" means any person who performs public duties under the direction and control of a state officer for compensation paid by or through the state.

~~13-1~~ 7. "State officer" means a person elected or appointed to a position with the state which involves the exercise of a state power, trust or duty, including:

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

(b) The expenditure of state money; and

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

Sec. 5. NRS 281.621 is hereby amended to read as follows:

281.621 It is hereby declared to be the public policy of this state that a state officer or employee ~~is~~ *and a local governmental officer or employee are* encouraged to disclose, to the extent not expressly prohibited by law, improper governmental action, and it is the intent of the legislature to protect the rights of a state officer or employee *and a local governmental officer or employee* who makes such a disclosure.

Sec. 6. NRS 281.631 is hereby amended to read as follows:

281.631 1. A state officer or employee *and a local governmental officer or employee* shall not directly or indirectly use or attempt to use his official authority or influence to intimidate, threaten, coerce, command, influence or attempt to intimidate, threaten, coerce, command or influence another state officer or employee *or another local governmental officer or employee, as applicable*, in an effort to interfere with or prevent the disclosure of information concerning improper governmental action.

2. For the purposes of this section, use of "official authority or influence" includes taking, directing others to take, recommending, processing or approving any personnel action such as an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, evaluation or other disciplinary action.

Sec. 7. NRS 281.641 is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

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

~~— (c) Frequent and undesirable changes in the location of an office;~~
~~— (d) The refusal to assign meaningful work;~~
~~— (e) The issuance of letters of reprimand or evaluations of poor performance;~~
~~— (f) A demotion;~~
~~— (g) A reduction in pay;~~
~~— (h) The denial of a promotion;~~
~~— (i) A suspension;~~
~~— (j) A dismissal;~~
~~— (k) A transfer;~~
~~— (l) Frequent changes in working hours or workdays; or~~
~~— (m) If the employee is licensed or certified by an occupational licensing board, the filing with that board, by or on behalf of the employer, of a complaint concerning the employee, if such action is taken, in whole or in part, because the state officer or employee disclosed information concerning improper governmental action.~~

Sec. 8. NRS 281.651 is hereby amended to read as follows:

281.651 1. ~~Not~~ *A state officer or employee ~~may~~ or a local governmental officer or employee shall not* use the provisions of NRS 281.611 to 281.671, inclusive, *and sections 2 and 3 of this act*, to harass another state officer or employee ~~or~~ *or another local governmental officer or employee, as applicable.*

2. The provisions of NRS 281.611 to 281.671, inclusive, *and sections 2 and 3 of this act*, do not prohibit a state officer or employee *or a local governmental officer or employee* from initiating proper disciplinary procedures against another state officer or employee *or another local governmental officer or employee, as applicable*, who discloses untruthful information concerning improper governmental action.

Sec. 9. NRS 281.661 is hereby amended to read as follows:

281.661 Each year, ~~the~~

1. *The* director of the department of personnel shall make available to each state officer and employee ; *and*

2. *The administrative head of a local government shall make available to each local governmental officer or employee,* a written summary of NRS 281.611 to 281.671, inclusive ~~or~~ *, and sections 2 and 3 of this act.*

Sec. 10. NRS 281.671 is hereby amended to read as follows:

281.671 NRS 281.611 to 281.661, inclusive, *and sections 2 and 3 of this act*, are intended to be directory and preventive rather than punitive, and do not abrogate or decrease the effect of any of the provisions of NRS which define crimes or prescribe punishments with respect to the conduct of state officers or employees ~~or~~ *or local governmental officers or employees.*

Sec. 11. NRS 218.5343 is hereby amended to read as follows:

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

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

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

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

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

3. It is unlawful for a state agency to:

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

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

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

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

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

5. For the purposes of this section:

(a) “Reprisal or retaliatory action” has the meaning ascribed to it in ~~subsection 5 of NRS 281.641.~~ **NRS 281.611.**

(b) “State agency” means an agency, bureau, board, commission, department, division, officer, employee or agent or any other unit of the executive department of the state government.