

SENATE BILL NO. 556—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF AIR QUALITY PROGRAMS
IN CLARK COUNTY (SB 432))

MARCH 26, 2001

Referred to Committee on Government Affairs

SUMMARY—Prohibits reprisal or retaliatory action against officer or employee of local government who discloses improper governmental action. (BDR 23-793)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: No.

CONTAINS UNFUNDED MANDATE (§§ 3-11)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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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 local government; prohibiting reprisal or retaliatory action against an officer or employee of a local government who discloses improper governmental action; defining the term “disclose” for the purposes of that prohibition; 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:

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

3 **Sec. 2.** *A local government may enact by ordinance procedures that*
4 *provide greater protection to local governmental officers and employees*
5 *against reprisal and retaliation for the disclosure of improper*
6 *governmental action than the protection provided in NRS 281.611 to*
7 *281.671, inclusive.*

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

11 *(a) Disclosed information concerning improper governmental action;*
12 *and*

13 *(b) Believes that as a result of that disclosure, a reprisal or retaliatory*
14 *action has been taken against him,*



* S B 5 5 6 R 2 *

1 *to determine whether a reprisal or retaliatory action has been taken*
2 *against the local governmental officer or employee. The procedures must*
3 *allow a local governmental officer or employee to file an appeal not later*
4 *than 2 years after the information is disclosed and require the local*
5 *government officer or employee who desires to file an appeal to file the*
6 *appeal within 60 days after the alleged reprisal or retaliatory action was*
7 *taken against him.*

8 2. An ordinance adopted pursuant to subsection 1 must:

9 (a) Prescribe the required contents of an appeal;

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

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

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

16 281.611 As used in NRS 281.611 to 281.671, inclusive, *and sections 2*
17 *and 3 of this act*, unless the context otherwise requires:

18 1. "Disclose" or "disclosure" means the reporting, either verbally or
19 in writing, by a state or local governmental officer or employee of
20 governmental action that the officer or employee reasonably believes, in
21 good faith, to be improper governmental action. The term includes all
22 such reporting that is not expressly prohibited by law, regardless of the
23 identity of the person or entity to whom the information is reported.

24 2. "Improper governmental action" means any action taken by a state
25 officer or employee *or local governmental officer or employee* in the
26 performance of his official duties, whether or not the action is within the
27 scope of his employment, which is:

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

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

31 (c) An abuse of authority;

32 ~~1(e)~~ (d) Of substantial and specific danger to the public health or
33 safety; or

34 ~~1(d)~~ (e) A gross waste of public money.

35 ~~12-1~~ 3. "Local government" means a county in this state, an
36 incorporated city in this state and Carson City.

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

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

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

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

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

49 6. "Reprisal or retaliatory action" includes:



* S B 5 5 6 R 2 *

- 1 (a) *The denial of adequate personnel to perform duties;*
- 2 (b) *Frequent replacement of members of the staff;*
- 3 (c) *Frequent and undesirable changes in the location of an office;*
- 4 (d) *The refusal to assign meaningful work;*
- 5 (e) *The issuance of letters of reprimand or evaluations of poor*
- 6 *performance;*
- 7 (f) *A demotion;*
- 8 (g) *A reduction in pay;*
- 9 (h) *The denial of a promotion;*
- 10 (i) *A suspension;*
- 11 (j) *A dismissal;*
- 12 (k) *A transfer;*
- 13 (l) *Frequent changes in working hours or workdays; or*
- 14 (m) *If the employee is licensed or certified by an occupational*
- 15 *licensing board, the filing with that board, by or on behalf of the*
- 16 *employer, of a complaint concerning the employee,*
- 17 *if such action is taken, in whole or in part, because the state officer or*
- 18 *employee or local governmental officer or employee disclosed*
- 19 *information concerning improper governmental action.*
- 20 7. "State employee" means any person who performs public duties
- 21 under the direction and control of a state officer for compensation paid by
- 22 or through the state.
- 23 ~~13-1~~ 8. "State officer" means a person elected or appointed to a
- 24 position with the state which involves the exercise of a state power, trust or
- 25 duty, including:
- 26 (a) Actions taken in an official capacity which involve a substantial and
- 27 material exercise of administrative discretion in the formulation of state
- 28 policy;
- 29 (b) The expenditure of state money; and
- 30 (c) The enforcement of laws and regulations of the state.
- 31 **Sec. 5.** NRS 281.621 is hereby amended to read as follows:
- 32 281.621 It is hereby declared to be the public policy of this state that a
- 33 state officer or employee ~~is~~ *and a local governmental officer or*
- 34 *employee are* encouraged to disclose, to the extent not expressly prohibited
- 35 by law, improper governmental action, and it is the intent of the legislature
- 36 to protect the rights of a state officer or employee *and a local*
- 37 *governmental officer or employee* who makes such a disclosure.
- 38 **Sec. 6.** NRS 281.631 is hereby amended to read as follows:
- 39 281.631 1. A state officer or employee *and a local governmental*
- 40 *officer or employee* shall not directly or indirectly use or attempt to use his
- 41 official authority or influence to intimidate, threaten, coerce, command,
- 42 influence or attempt to intimidate, threaten, coerce, command or influence
- 43 another state officer or employee *or another local governmental officer or*
- 44 *employee, as applicable,* in an effort to interfere with or prevent the
- 45 disclosure of information concerning improper governmental action.
- 46 2. For the purposes of this section, use of "official authority or
- 47 influence" includes taking, directing others to take, recommending,
- 48 processing or approving any personnel action such as an appointment,



1 promotion, transfer, assignment, reassignment, reinstatement, restoration,
2 reemployment, evaluation or other disciplinary action.

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

4 281.641 1. If any reprisal or retaliatory action is taken against a state
5 officer or employee who discloses information concerning improper
6 governmental action within 2 years after the information is disclosed, the
7 state officer or employee may file a written appeal with a hearing officer of
8 the department of personnel for a determination of whether the action taken
9 was a reprisal or retaliatory action. The written appeal must be
10 accompanied by a statement that sets forth with particularity:

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

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

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

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

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

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

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

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

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

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

34 ~~—(d) The refusal to assign meaningful work;~~

35 ~~—(e) The issuance of letters of reprimand or evaluations of poor
36 performance;~~

37 ~~—(f) A demotion;~~

38 ~~—(g) A reduction in pay;~~

39 ~~—(h) The denial of a promotion;~~

40 ~~—(i) A suspension;~~

41 ~~—(j) A dismissal;~~

42 ~~—(k) A transfer;~~

43 ~~—(l) Frequent changes in working hours or workdays; or~~

44 ~~—(m) If the employee is licensed or certified by an occupational licensing
45 board, the filing with that board, by or on behalf of the employer, of a
46 complaint concerning the employee,~~

47 ~~if such action is taken, in whole or in part, because the state officer or
48 employee disclosed information concerning improper governmental
49 action.}~~



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1 **Sec. 8.** NRS 281.651 is hereby amended to read as follows:
2 281.651 1. ~~Not~~ A state officer or employee ~~may~~ *or a local*
3 *governmental officer or employee shall not* use the provisions of NRS
4 281.611 to 281.671, inclusive, *and sections 2 and 3 of this act*, to harass
5 another state officer or employee ~~or~~ *or another local governmental officer*
6 *or employee, as applicable.*

7 2. The provisions of NRS 281.611 to 281.671, inclusive, *and sections*
8 *2 and 3 of this act*, do not prohibit a state officer or employee *or a local*
9 *governmental officer or employee* from initiating proper disciplinary
10 procedures against another state officer or employee *or another local*
11 *governmental officer or employee, as applicable*, who discloses untruthful
12 information concerning improper governmental action.

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

14 281.661 Each year, ~~the~~

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

17 2. *The administrative head of a local government shall make*
18 *available to each local governmental officer or employee,*
19 a written summary of NRS 281.611 to 281.671, inclusive ~~or~~ *, and sections*
20 *2 and 3 of this act.*

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

22 281.671 NRS 281.611 to 281.661, inclusive, *and sections 2 and 3 of*
23 *this act*, are intended to be directory and preventive rather than punitive,
24 and do not abrogate or decrease the effect of any of the provisions of NRS
25 which define crimes or prescribe punishments with respect to the conduct
26 of state officers or employees ~~or~~ *or local governmental officers or*
27 *employees.*

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

29 218.5343 1. An employee of a state agency who testifies before a
30 house or committee of the legislature on his own behalf and not on behalf
31 of his employer shall, before commencing his testimony, state that fact
32 clearly on the record.

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

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

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

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

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

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

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



* S B 5 5 6 R 2 *

1 (c) Directly or indirectly intimidate, threaten, coerce, command or
2 influence or attempt to intimidate, threaten, coerce, command or influence
3 the employee,
4 in an attempt to affect the behavior of another employee who is testifying
5 or seeks to testify before a house or committee of the legislature on his own
6 behalf.

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

9 5. For the purposes of this section:

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

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

