

ASSEMBLY BILL NO. 274—ASSEMBLYMEN
NEAL; TORRES AND WATTS

MARCH 15, 2019

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to governmental administration. (BDR 18-86)

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

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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 governmental administration; revising provisions governing the disclosure of information relating to complaints filed with the Nevada Equal Rights Commission within the Department of Employment, Training and Rehabilitation; revising provisions governing the protections against reprisal or retaliatory action provided for a state or local governmental officer or employee who discloses certain governmental action; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The Nevada Equal Rights Commission is created under existing law within the Department of Employment, Training and Rehabilitation. (NRS 233.030) Among other duties, the Commission accepts, processes and resolves complaints alleging unlawful discriminatory practices in employment, housing and public accommodations. (NRS 233.157, 233.165, 233.170) With certain exceptions, existing law makes any information gathered by the Commission in the course of its investigation of an alleged unlawful discriminatory practice confidential. Existing law authorizes the disclosure of such information to any governmental entity as appropriate or necessary to carry out its duties. (NRS 233.190) **Section 1** of this bill: (1) limits access to information related to a complaint filed with the Commission to such staff of the Commission as are necessary to carry out the duties of the Commission relating to the complaint; and (2) prohibits such staff from disclosing the information to other officers and employees of the Department of Employment, Training and Rehabilitation unless the disclosure is necessary to carry out the duties of the Commission relating to the complaint.

Existing law encourages state and local governmental officers and employees to disclose action taken by a state or local governmental officer or employee in the performance of his or her official duties which is: (1) a violation of a state law or



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19 local ordinance; (2) an abuse of authority; (3) of substantial and specific danger to
20 the public health or safety; or (4) a gross waste of public money. Existing law
21 protects the rights of a state or local governmental officer or employee who makes
22 such a disclosure, commonly known as a whistleblower. (NRS 281.611-281.671)
23 **Section 2** of this bill makes the placement of false information in the personnel file
24 of a state or local governmental officer or employee who discloses improper
25 governmental action a form of reprisal or retaliatory action.

26 Existing law authorizes a local government to enact by ordinance procedures
27 that provide greater protection to local governmental officers and employees
28 against reprisal and retaliation for the disclosure of improper governmental action
29 than the protections provided in existing law. (NRS 281.635) **Section 3** of this bill:
30 (1) makes it mandatory for a local government to enact procedures that provide at
31 least the same amount of protection against reprisal and retaliation as is provided in
32 existing law; and (2) authorizes such procedures to provide greater protection than
33 the protection provided in existing law.

34 Existing law authorizes a hearing officer who hears an appeal relating to a
35 reprisal or retaliatory action against a state or local governmental officer or
36 employee for disclosing improper government action to issue an order directing the
37 proper person to desist and refrain from engaging in an action determined to be a
38 reprisal or retaliatory action. (NRS 281.641, 281.645) **Sections 4 and 5** of this bill
39 additionally authorize such a hearing officer to impose an appropriate civil penalty
40 against the proper person, which must be paid by that person and not his or her
41 public employer.

42 Existing law requires certain persons to annually make available to each state
43 or local governmental officer or employee a written summary of the provisions of
44 existing law concerning reprisal or retaliatory action against a state or local
45 governmental officer or employee who discloses improper governmental action.
46 (NRS 281.661) **Section 6** of this bill requires this written summary to be: (1)
47 developed by the Division of Human Resource Management of the Department of
48 Administration and clearly explain the relevant provisions in existing law,
49 including any action that a hearing officer is authorized to take if the hearing officer
50 determines that reprisal or retaliatory action was taken; and (2) provided within 30
51 days after the commencement of employment, in addition to being provided
52 annually. **Section 6** also authorizes, in lieu of the written summary, the viewing of a
53 video recording developed by the Division of Human Resource Management that
54 clearly explains the relevant provisions in existing law. **Section 6** requires the
55 Division and the administrative head of a local government to obtain written
56 confirmation that employees received the summary or viewed the video as required.

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

1 **Section 1.** NRS 233.190 is hereby amended to read as follows:
2 233.190 1. Except as otherwise provided in this section or
3 NRS 239.0115, any information gathered by the Commission in the
4 course of its investigation of an alleged unlawful discriminatory
5 practice in housing, employment or public accommodations is
6 confidential.

7 2. ~~[The]~~ *Except as otherwise provided in subsection 5, the*
8 Commission may disclose information gathered pursuant to
9 subsection 1 to:



(a) Any governmental entity as appropriate or necessary to carry out its duties pursuant to this chapter; or

(b) To any other person if the information is provided in a manner which does not include any information that may be used to identify the complainant, the party against whom the unlawful discriminatory practice is alleged or any person who provided information to the Commission during the investigation.

3. Except as otherwise provided in subsection 4, the Commission shall disclose information gathered pursuant to subsection 1 to the complainant and the party against whom the unlawful discriminatory practice is alleged if:

(a) Each has consented to such disclosure; or

(b) The Commission has determined to conduct a hearing on the matter or apply for a temporary restraining order or an injunction or an action has been filed in court concerning the complaint.

4. The Commission may not disclose to the complainant or the party against whom the unlawful discriminatory practice is alleged:

(a) Any information obtained during negotiations for a settlement or attempts at mediating or conciliating the complaint.

(b) Any investigative notes or reports made by the Commission.

(c) Any information that may be used to identify a person who provided information to the Commission during the investigation and who has requested anonymity.

5. *After the filing of a complaint with the Commission, access to information related to the complaint must be limited only to such staff of the Commission as is necessary to carry out the duties of the Commission relating to the complaint. Such staff shall not disclose such information to the other officers and employees of the Department of Employment, Training and Rehabilitation, including, without limitation, supervisors and the Director of the Department, unless the disclosure is necessary to carry out the duties of the Commission relating to the complaint.*

6. Except as otherwise provided in this section or NRS 239.0115, if the Commission's attempts at mediating or conciliating the cause of the grievance succeed, the information gathered pursuant to subsection 1 must remain confidential.

~~6.7~~ 7. If the Commission proceeds with a hearing or applies for injunctive relief, confidentiality concerning any information, except negotiations for a settlement or attempts at mediating or conciliating the cause of the grievance, is no longer required.

Sec. 2. NRS 281.611 is hereby amended to read as follows:

281.611 As used in NRS 281.611 to 281.671, inclusive, unless the context otherwise requires:

1. "Improper governmental action" means any action taken by a state officer or employee or local governmental officer or



1 employee in the performance of the officer's or employee's official
2 duties, whether or not the action is within the scope of employment
3 of the officer or employee, which is:

- 4 (a) In violation of any state law or regulation;
- 5 (b) If the officer or employee is a local governmental officer or
6 employee, in violation of an ordinance of the local government;
- 7 (c) An abuse of authority;
- 8 (d) Of substantial and specific danger to the public health or
9 safety; or
- 10 (e) A gross waste of public money.

11 2. "Local government" means a county in this State, an
12 incorporated city in this State and Carson City.

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

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

- 20 (a) Actions taken in an official capacity which involve a
21 substantial and material exercise of administrative discretion in the
22 formulation of local governmental policy;
- 23 (b) The expenditure of money of a local government; and
- 24 (c) The enforcement of laws and regulations of the State or a
25 local government.

26 5. "Reprisal or retaliatory action" includes:

- 27 (a) The denial of adequate personnel to perform duties;
- 28 (b) Frequent replacement of members of the staff;
- 29 (c) Frequent and undesirable changes in the location of an
30 office;
- 31 (d) The refusal to assign meaningful work;
- 32 (e) The issuance of letters of reprimand or evaluations of poor
33 performance;
- 34 (f) A demotion;
- 35 (g) A reduction in pay;
- 36 (h) The denial of a promotion;
- 37 (i) A suspension;
- 38 (j) A dismissal;
- 39 (k) A transfer;
- 40 (l) Frequent changes in working hours or workdays; ~~for~~

41 (m) If the employee is licensed or certified by an occupational
42 licensing board, the filing with that board, by or on behalf of the
43 employer, of a complaint concerning the employee ~~for~~; **or**

44 *(n) Knowingly placing false information in the personnel file*
45 *of the employee,*



1 ➡ if such action is taken, in whole or in part, because the state
2 officer or employee or local governmental officer or employee
3 disclosed information concerning improper governmental action.

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

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

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

13 (b) The expenditure of state money; and

14 (c) The enforcement of laws and regulations of the State.

15 **Sec. 3.** NRS 281.635 is hereby amended to read as follows:

16 281.635 A local government ~~[may enact]~~ *shall*, by ordinance ,
17 *enact* procedures that provide ~~[greater]~~ *at least the same amount of*
18 protection to local governmental officers and employees against
19 reprisal and retaliation for the disclosure of improper governmental
20 action ~~[than the protection]~~ *as is* provided in NRS 281.611 to
21 281.671, inclusive. *Such procedures may provide greater*
22 *protection to local governmental officers and employees than the*
23 *protection provided in NRS 281.611 to 281.671, inclusive.*

24 **Sec. 4.** NRS 281.641 is hereby amended to read as follows:

25 281.641 1. If any reprisal or retaliatory action is taken against
26 a state officer or employee who discloses information concerning
27 improper governmental action within 2 years after the information is
28 disclosed, the state officer or employee may file a written appeal
29 with a hearing officer of the Personnel Commission for a
30 determination of whether the action taken was a reprisal or
31 retaliatory action. The written appeal must be accompanied by a
32 statement that sets forth with particularity:

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

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

37 ➡ The hearing must be conducted in accordance with the
38 procedures set forth in NRS 284.390 to 284.405, inclusive, and the
39 procedures adopted by the Personnel Commission pursuant to
40 subsection ~~[4.]~~ **5.**

41 2. If the hearing officer determines that the action taken was a
42 reprisal or retaliatory action, the hearing officer may issue an order
43 ~~[directing]~~ :

44 (a) *Directing* the proper person to desist and refrain from
45 engaging in such action.



1 ***(b) Imposing an appropriate civil penalty against the proper***
2 ***person. The civil penalty must be paid by that person and not the***
3 ***public employer of the person.***

4 **3.** The hearing officer shall file a copy of the decision with the
5 Governor or any other elected state officer who is responsible for
6 the actions of that person.

7 ~~3-1~~ **4.** The hearing officer may not rule against the state officer
8 or employee based on the person or persons to whom the improper
9 governmental action was disclosed.

10 ~~4-1~~ **5.** The Personnel Commission may adopt rules of
11 procedure for conducting a hearing pursuant to this section that are
12 not inconsistent with the procedures set forth in NRS 284.390 to
13 284.405, inclusive.

14 ~~5-1~~ **6.** As used in this section, "Personnel Commission" means
15 the Personnel Commission created by NRS 284.030.

16 **Sec. 5.** NRS 281.645 is hereby amended to read as follows:
17 281.645 1. A local government shall, by ordinance, establish
18 procedures for hearing an appeal from a local governmental officer
19 or employee who:

20 (a) Disclosed information concerning improper governmental
21 action; and

22 (b) Believes that as a result of that disclosure, a reprisal or
23 retaliatory action has been taken against the local governmental
24 officer or employee,

25 ➤ to determine whether a reprisal or retaliatory action has been
26 taken against the local governmental officer or employee. The
27 procedures must allow a local governmental officer or employee to
28 file an appeal not later than 2 years after the information is disclosed
29 and require the local governmental officer or employee who desires
30 to file an appeal to file the appeal within 60 days after the alleged
31 reprisal or retaliatory action was taken against the local
32 governmental officer or employee.

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

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

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

37 (c) Provide that if a hearing officer determines that the action
38 taken was a reprisal or retaliatory action, the hearing officer may
39 issue an order ~~directing~~:

40 ***(1) Directing*** the proper person to desist and refrain from
41 engaging in such action.

42 ***(2) Imposing an appropriate civil penalty against the proper***
43 ***person. The civil penalty must be paid by that person and not the***
44 ***public employer of the person.***



1 **Sec. 6.** NRS 281.661 is hereby amended to read as follows:

2 281.661 ~~{Each year:}~~

3 1. The Administrator of the Division of Human Resource
4 Management of the Department of Administration shall ~~{make~~
5 ~~available to}~~ *obtain written confirmation that* each state officer and
6 employee ~~{; and}~~ *, not later than 30 days after commencing*
7 *employment and annually thereafter, received a written summary*
8 *or viewed a video recording that clearly explains the provisions of*
9 *NRS 281.611 to 281.671, inclusive, including, without limitation,*
10 *any action that a hearing officer is authorized to take if the*
11 *hearing officer determines that reprisal or retaliatory action was*
12 *taken.*

13 2. The administrative head of a local government shall ~~{make~~
14 ~~available to}~~ *obtain written confirmation that* each local
15 governmental officer or employee,
16 ~~{;}~~ *not later than 30 days after commencing employment and*
17 *annually thereafter, received a written summary or viewed a video*
18 *recording that clearly explains the provisions of NRS 281.611 to*
19 *281.671, inclusive {;}, including, without limitation, any action*
20 *that a hearing officer is authorized to take if the hearing officer*
21 *determines reprisal or retaliatory action was taken.*

22 3. *The Division of Human Resource Management shall*
23 *develop and revise as necessary the written summary and video*
24 *recording described in subsections 1 and 2.*

25 **Sec. 7.** This act becomes effective on July 1, 2019.

