

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 protects
21 the rights of a state or local governmental officer or employee who makes such a
22 disclosure, commonly known as a whistleblower. (NRS 281.611-281.671) **Section 2**
23 of this bill makes the placement of false information in the personnel file of a state
24 or local governmental officer or employee who discloses improper governmental
25 action a form of reprisal or retaliatory action.

26 Existing law prohibits a state or local governmental officer or employee from
27 using or attempting to use his or her official authority or influence to intimidate,
28 threaten, coerce, command or influence another state or local governmental officer
29 or employee in an effort to interfere with or prevent the disclosure of information
30 concerning improper governmental action. (NRS 281.631) **Section 2.5** of this bill
31 clarifies that this prohibition includes using or attempting to use official authority or
32 influence to intimidate, threaten, coerce, command or influence another state or local
33 governmental officer or employee to take reprisal or retaliatory action. **Section 2.5**
34 also requires a state or local governmental officer or employee to use his or her
35 official authority or influence to remedy any reprisal or retaliatory action of which
36 the officer or employee becomes aware.

37 Existing law authorizes a local government to enact by ordinance procedures that
38 provide greater protection to local governmental officers and employees against
39 reprisal and retaliation for the disclosure of improper governmental action than the
40 protections provided in existing law. (NRS 281.635) **Section 3** of this bill: (1) makes
41 it mandatory for a local government to enact procedures that provide at least the same
42 amount of protection against reprisal and retaliation as is provided in existing law;
43 and (2) authorizes such procedures to provide greater protection than the protection
44 provided in existing law.

45 Existing law authorizes a hearing officer who hears an appeal relating to a
46 reprisal or retaliatory action against a state or local governmental officer or employee
47 for disclosing improper government action to issue an order directing the proper
48 person to desist and refrain from engaging in an action determined to be a reprisal or
49 retaliatory action. (NRS 281.641, 281.645) **Sections 4 and 5** of this bill authorize the
50 filing of an appeal with a hearing officer for violations of the provisions relating to
51 use of official authority or influence. **Sections 4 and 5** additionally authorize such a
52 hearing officer to order the termination of the employment of the proper person.

53 Existing law requires certain persons to annually make available to each state or
54 local governmental officer or employee a written summary of the provisions of
55 existing law concerning reprisal or retaliatory action against a state or local
56 governmental officer or employee who discloses improper governmental action.
57 (NRS 281.661) **Section 6** of this bill requires this written summary to be: (1)
58 developed by the Division of Human Resource Management of the Department of
59 Administration and clearly explain the relevant provisions in existing law, including
60 any action that a hearing officer is authorized to take if the hearing officer determines
61 that reprisal or retaliatory action was taken; and (2) provided within 30 days after the
62 commencement of employment, in addition to being provided annually. **Section 6**
63 also authorizes, in lieu of the written summary, the viewing of a video recording
64 developed by the Division of Human Resource Management that clearly explains the
65 relevant provisions in existing law. **Section 6** requires the Division and the
66 administrative head of a local government to obtain written confirmation that
67 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:

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

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

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

21 (a) Each has consented to such disclosure; or

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

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

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

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

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

33 5. *After the filing of a complaint with the Commission, access*
34 *to information related to the complaint must be limited only to such*
35 *staff of the Commission as is necessary to carry out the duties of the*
36 *Commission relating to the complaint. Such staff shall not disclose*
37 *such information to the other officers and employees of the*
38 *Department of Employment, Training and Rehabilitation,*
39 *including, without limitation, supervisors and the Director of the*
40 *Department, unless the disclosure is necessary to carry out the*
41 *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. 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 employee in the performance of the officer's or employee's official duties, whether or not the action is within the scope of employment of the officer or employee, 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;

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

(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; ~~for~~

(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 ~~for~~; or

(n) Knowingly placing false information, including, without limitation, a false complaint, in the personnel file of 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.

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. 2.5. 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~~ :

(a) Shall use the official authority or influence of the officer or employee to remedy any reprisal or retaliatory action of which the officer or employee becomes aware.

(b) Shall not ~~directly~~ :

(1) Directly or indirectly use or attempt to use the official authority or influence of the officer or employee 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 ~~for~~, including, without limitation, by intimidating, threatening, coercing, commanding, influencing or attempting to intimidate, threaten, coerce, command or influence the other officer or employee to take reprisal or retaliatory action.



(2) *Fail to use the official authority or influence of the officer or employee to remedy any reprisal or retaliatory action of which the officer or employee becomes aware.*

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

281.635 A local government ~~{may enact}~~ *shall*, by ordinance, *enact* procedures that provide ~~{greater}~~ *at least the same amount of* protection to local governmental officers and employees against reprisal and retaliation for the disclosure of improper governmental action ~~{than the protection}~~ *as is* provided in NRS 281.611 to 281.671, inclusive. *Such procedures may provide greater protection to local governmental officers and employees than the protection provided in NRS 281.611 to 281.671, inclusive.*

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

281.641 1. If any *alleged violation of NRS 281.631 occurs or any alleged* 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 Personnel Commission for a determination of whether *a violation of NRS 281.631 occurred or* the action taken was a reprisal or retaliatory action ~~{ }~~, *as applicable*. The written appeal must be accompanied by a statement that sets forth with particularity ~~{ }~~, *as applicable*:

(a) The facts and circumstances *relating to the alleged violation of NRS 281.631; or*

(b) *The facts and circumstances* under which the disclosure of improper governmental action was made ~~{ }~~ and

~~{(b)-The}~~ *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}~~ *5*.

2. If the hearing officer determines that *a violation of NRS 281.631 occurred or* the action taken was a reprisal or retaliatory action, the hearing officer may issue an order directing :

(a) ~~{the}~~ *The* proper person to desist and refrain from engaging in such *a violation or* action ~~{ }~~; *or*

(b) *The termination of the employment of the proper person.*



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

~~[3-]~~ 4. 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-]~~ 5. 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-]~~ 6. As used in this section, "Personnel Commission" means the Personnel Commission created by NRS 284.030.

Sec. 5. NRS 281.645 is hereby amended to read as follows:

281.645 1. A local government shall, by ordinance, establish procedures for hearing an appeal from a local governmental officer or employee who ~~[1-]~~ *alleges a violation of NRS 281.631 occurred or 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 the local governmental officer or employee,

↳ to determine whether a *violation of NRS 281.631 occurred or 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 *or the disclosure of which has been prevented or interfered with* and require the local governmental officer or employee who desires to file an appeal to file the appeal within 60 days after the alleged *violation of NRS 281.631 occurred or the alleged* reprisal or retaliatory action was taken against the local governmental officer or employee.

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 *a violation of NRS 281.631 occurred or* the action taken was a reprisal or retaliatory action, the hearing officer may issue an order directing :

(1) ~~[the]~~ *The* proper person to desist and refrain from engaging in such *a violation or* action ~~[1-]~~ ; or

(2) *The termination of the employment of the proper person.*

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

281.661 ~~[Each year:]~~



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

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

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

22 **Sec. 7.** This act becomes effective upon passage and approval.

