

LEGISLATIVE BILL 44

Approved by the Governor June 9, 1993

Introduced by Schimek, 27; Landis, 46; Wesely, 26

AN ACT relating to state personnel; to amend sections 81-8,245, 81-1348, and 81-1350, Reissue Revised Statutes of Nebraska, 1943, and sections 81-1307 and 81-1318.01, Reissue Revised Statutes of Nebraska, 1943, as amended by sections 15 and 19, respectively, Legislative Bill 14, Ninety-second Legislature, Third Special Session, 1992; to adopt the State Government Effectiveness Act; to provide for an employee recognition program; to create a fund; to change the membership of the Suggestion Award Board and provide for expenses; to change the authorized amount of suggestion awards; to require a report; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 10 of this act shall be known and may be cited as the State Government Effectiveness Act.

Sec. 2. The primary purpose of the State Government Effectiveness Act is to encourage public officials and employees to disclose information concerning possible violations of law and fiscal waste or mismanagement in state government to elected state officials or the Public Counsel and to prohibit reprisals for such disclosures by state employees.

The Legislature finds and declares that it is in the vital interest of the people of this state that their government operate in accordance with the law and without fraud, waste, or mismanagement. If this interest is to be protected, public officials and employees must work in a climate where conscientious service is encouraged and disclosures of illegalities or improprieties may be made without reprisal or fear of reprisal.

Sec. 3. For purposes of the State Government Effectiveness Act:

(1) Agency shall mean any agency, department, board, commission, or other governmental unit of the State of Nebraska acting or purporting to act by reason of connection with the State of Nebraska but shall not include (a) any court, (b) any member or employee of the Legislature or the Legislative Council, (c) the Governor or his or her personal staff, (d) any political subdivision or entity thereof, (e) any instrumentality formed pursuant to an interstate compact and answerable to more than one state, or (f) any entity of the federal government;

(2) Employee shall mean any person employed by an agency, regardless of rank;

(3) Official shall mean any elected state official;

(4) Personnel action shall include dismissing, demoting, transferring, reassigning, suspending, reprimanding, admonishing, reducing in rank, or reclassifying an employee, withholding work from an employee of an agency, requiring an employee to submit to a fitness-for-duty examination or take disability retirement, any other involuntary action taken against an employee, or any threat thereof made against an employee; and

(5) Wrongdoing shall include any action by an agency or employee which (a) is a violation of any law, (b) results in gross mismanagement or gross waste of funds, or (c) creates a substantial and specific danger to public health or safety.

Sec. 4. (1) Within thirty working days after receiving a written allegation of wrongdoing from an employee, the Public Counsel or official may conduct a preliminary investigation and determine whether reasonable grounds exist to support the employee's allegation. The Public Counsel or official may consider the following factors in considering whether to proceed with a preliminary investigation:

(a) The employee has available to him or her another remedy which the employee could reasonably be expected to use;

(b) The complaint pertains to a matter outside the Public Counsel's or official's power;

(c) The complaint is trivial, frivolous, vexatious, or not made in good faith or has been delayed too long to justify present examination of its merit;

(d) Other complaints are more worthy of attention; or

(e) The Public Counsel's or official's resources are insufficient for adequate investigation.

(2) The identity of the employee presenting the allegation shall not be disclosed by the Public Counsel, his or her investigators, employees, or agents, or the official without the employee's prior written consent.

(3) When the Public Counsel or official finds reason to believe that reasonable grounds exist to support the employee's allegation of wrongdoing, the Public Counsel may conduct a formal investigation. The Public Counsel shall inform the employee of his or her intent to conduct a formal investigation. Upon the request of the Public Counsel, the director or chief operating officer of the agency which is the subject of the allegation shall cooperate in the investigation of the allegation and any related matters. Upon the conclusion of his or her formal investigation, the Public Counsel shall prepare a report of his or her findings.

(4) Any report prepared pursuant to subsection (3) of this section shall be transmitted to the director or chief operating officer of the agency which is the subject of the allegation, or if the allegation and report are directed against a director or chief operating officer, the report shall be transmitted to the Governor or his or her authorized representative. The report may include, but need not be limited to, any or all of the following:

(a) A summary of the information received before the formal investigation was initiated;

- (b) A description of the conduct of the formal investigation;
- (c) A summary of any evidence obtained from the formal investigation;
- (d) A listing of any violation or apparent violation of any law, rule, regulation, or agency policy or practice; or
- (e) A description of any action taken or recommended as a result of the investigation including, but not limited to:
 - (i) Changes in agency rules, regulations, practices, or policies;
 - (ii) Disciplining the employees involved; or
 - (iii) Referring evidence of a criminal violation to the Attorney General.

(5) A copy of every report prepared pursuant to subsection (3) of this section shall be retained in the files of the Public Counsel. If the contents of the report indicate a wrongdoing exists or has occurred, a copy of such report shall also be forwarded to the Clerk of the Legislature who shall forward the report to the Executive Board of the Legislative Council. A copy of the report shall be released only after a majority vote of the members of the Executive Board of the Legislative Council authorizes its release.

(6) When the Public Counsel terminates a preliminary investigation or when the Public Counsel terminates a formal investigation of an allegation of wrongdoing, the Public Counsel shall, in writing, promptly notify the employee who made the allegation.

Sec. 5. Any person who has authority to recommend, approve, direct, or otherwise take or effect personnel action shall not, with respect to such authority:

(1) Take personnel action against an employee because of the disclosure of information by the employee to the Public Counsel or an official which the employee reasonably believes evidences wrongdoing;

(2) Take personnel action against an employee as a reprisal for the submission of an allegation of wrongdoing or a violation of this section to the Public Counsel or official by such employee; or

(3) Take personnel action against an employee as a reprisal for providing information or testimony, pursuant to an investigation or hearing held under the State Government Effectiveness Act, to the Public Counsel, an official, the State Personnel Board, a corresponding personnel appeals board, or the director or chief operating officer of an agency.

Sec. 6. (1) The Public Counsel shall receive any allegation of a violation of section 5 of this act and investigate to determine whether there are reasonable grounds to believe that a violation has occurred or is about to occur.

(2) When investigating an allegation of a violation of section 5 of this act, the Public Counsel shall have access to all information maintained by any agency or employee directly or indirectly involved.

(3) If the Public Counsel terminates the investigation of an

alleged violation of section 5 of this act, the Public Counsel shall, in writing, promptly inform the employee who raised the allegation.

(4) If the Public Counsel finds that there are reasonable grounds to believe that a violation of section 5 of this act has occurred or is about to occur, he or she shall transmit his or her finding in writing to the Governor and (a) the State Personnel Board if the employee is employed by an agency that is subject to the state personnel system or (b) the personnel appeals board of the employee's agency if the employee is employed by an agency that is not subject to the state personnel system. If no such personnel appeals board exists, the Public Counsel shall transmit his or her finding to the director or chief operating officer of the agency, or if the director or chief operating officer has committed or is about to commit the violation of section 5 of this act, the finding shall be transmitted to the Governor or his or her authorized representative.

Sec. 7. (1) Upon receiving the Public Counsel's finding that there is reason to believe a violation of section 5 of this act has occurred or is about to occur, the State Personnel Board, personnel appeals board, or director or chief operating officer of the agency shall, without further proceedings, stay or reverse the personnel action until a hearing can be held to determine if there is reason to believe that a violation of section 5 of this act is contemplated or has occurred. Such board, director, or chief operating officer shall, at the earliest possible date, hold a hearing to determine whether a violation has occurred or is about to occur. The employee may be represented by counsel at such hearing.

(2) After determining that a violation has occurred, the State Personnel Board, personnel appeals board, director, or chief operating officer shall be authorized to grant backpay or other relief as it deems appropriate.

(3) An employee or agency aggrieved by the decision rendered pursuant to subsection (2) of this section may appeal such decision. The appeal shall be in accordance with the Administrative Procedure Act. An employee prevailing on appeal shall receive reasonable attorney's fees incurred during the appeal and any previous hearings held on the matter appealed pursuant to this section.

(4) In any proceeding held pursuant to this section, if an employee establishes that a personnel action was taken against him or her after he or she submitted an allegation of wrongdoing or provided information to the Public Counsel, his or her investigators, employees, or agents, or an official in conjunction with a preliminary or formal investigation undertaken pursuant to section 4 of this act, the personnel action shall be presumed to have been taken against such employee because of such allegation. Such presumption may be rebutted by appropriate evidence.

Sec. 8. An official who receives an allegation of wrongdoing or of a violation of section 5 of this act may conduct a preliminary investigation of such allegation or submit such allegation to the Public Counsel for investigation pursuant to section 4 or 6 of this act. A copy of any written findings issued by the Public Counsel pursuant to

such an investigation shall be transmitted to the official submitting the allegation.

Sec. 9. (1) An employee aggrieved by the decision rendered pursuant to subsection (1) of section 7 of this act who has been or is about to be injured by a violation of section 5 of this act shall be entitled to maintain a cause of action pursuant to the Administrative Procedure Act for damages, reinstatement, backpay, and such other relief, including preliminary relief, as the court may deem appropriate. An employee who prevails in an action under this subsection shall receive reasonable attorney's fees incurred during the action.

(2) In an action brought pursuant to subsection (1) of this section by an employee who establishes that a personnel action was taken against him or her after he or she submitted an allegation of wrongdoing or provided information to the Public Counsel, his or her investigators, employees, or agents, or an official in conjunction with a preliminary or formal investigation undertaken pursuant to section 4 of this act, the personnel action shall be presumed to have been taken against such employee because of such allegation. Such presumption may be rebutted by appropriate evidence.

Sec. 10. No employee shall intentionally misuse the State Government Effectiveness Act. Intentional misuse shall include frivolous use, attempts to treat a personnel grievance as an allegation of wrongdoing, and repeated attempts to use such procedures to obtain a resolution of views that do not satisfy the criteria prescribed in subdivision (5) of section 3 of this act for allegations of wrongdoing. The Public Counsel or official may report to the agency any employee found by the Public Counsel or official to have intentionally misused the act, and such employee may be subject to such disciplinary action as is deemed appropriate by the director or chief operating officer of the employee's agency.

Sec. 11. That section 81-8,245, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,245. The Public Counsel shall have the ~~following powers~~ power to:

(1) ~~He may investigate~~ Investigate, on complaint or on his ~~or her~~ own motion, any administrative act of any administrative agency;

(2) ~~He may prescribe~~ Prescribe the methods by which complaints are to be made, received, and acted upon; ~~he may~~ determine the scope and manner of investigations to be made; and, subject to the requirements of sections 81-8,240 to 81-8,254, ~~he may~~ determine the form, frequency, and distribution of his ~~or her~~ conclusions, recommendations, and proposals;

(3) ~~He may conduct~~ Conduct inspections of the premises, or any parts thereof, of any administrative agency or any property owned, leased, or operated by any administrative agency as frequently as is necessary, in his ~~or her~~ opinion, to carry out his duties prescribed under sections 81-8,240 to 81-8,254;

(4) ~~He may request and shall be given by~~ Request and receive from each administrative agency, and such agency shall provide, the assistance and information ~~he~~ the counsel deems necessary for the discharge of his or her responsibilities; ~~he may~~ inspect and examine the records and documents of all administrative agencies notwithstanding any other provision of law; and ~~he may~~ enter and inspect premises within any administrative agency's control;

(5) ~~He may issue~~ Issue a subpoena, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence ~~he deems~~ deemed relevant to a matter under his or her inquiry. A person thus required to provide information shall be paid the same fees and travel allowances and shall be accorded the same privileges and immunities as are extended to witnesses in the district courts of this state; and shall also be entitled to have counsel present while being questioned; ~~and~~

(6) ~~He may undertake~~ Undertake, participate in, or cooperate with general studies or inquiries, whether or not related to any particular administrative agency or any particular administrative act, if he or she believes that they may enhance knowledge about or lead to improvements in the functioning of administrative agencies; ~~and~~

(7) Make investigations, reports, and recommendations necessary to carry out his or her duties under the State Government Effectiveness Act.

Sec. 12. That section 81-1307, Reissue Revised Statutes of Nebraska, 1943, as amended by section 15, Legislative Bill 14, Ninety-second Legislature, Third Special Session, 1992, be amended to read as follows:

81-1307. The Director of Personnel shall be responsible for the administration of the personnel division. Subject to the review powers of the State Personnel Board, the director shall be responsible for development of recommendations on personnel policy and for development of specific administrative systems and shall have the authority to adopt, promulgate, and enforce rules and regulations pertaining thereto. ~~Specific administrative systems for which the director is responsible shall include, but not be~~ The director shall be responsible for specific administrative systems including, but not limited to, the following:

- (1) Employment Services:
- (a) General employment policies and procedures;
 - (b) Position classification plans;
 - (c) Job descriptions;
 - (d) Job specifications;
 - (e) Salary or pay plans;
 - (f) Staffing patterns; and
 - (g) Recruiting, examination, and certification of qualified applicants for employment and the maintenance of registers of qualified candidates for employment for all positions in state government;
- (2) Personnel Records:
- (a) A system of records and statistical reports containing

general data on all employees, including current salary levels and such other information as may be required by the operating needs of state departments and agencies and the budget division; and

(b) Standards for the development and maintenance of personnel records to be maintained within operating departments of the state government;

(3) Personnel Management:

(a) Minimum standards for evaluation of employee efficiency and a system of regular evaluation of employee performance;

(b) Administrative guidelines governing such matters as hours of work, promotions, transfers, demotions, probation, terminations, reductions in force, salary actions, and other such matters as may not be otherwise provided for by law;

(c) Administrative policies and general procedural instructions for use by all state agencies relating to such matters as employee benefits, vacation, sick leave, holidays, insurance, sickness and accident benefits, and other employee benefits as the Legislature may from time to time prescribe; and

(d) A system of formally defined relationships between the personnel division and departments and agencies to be covered by the State Personnel System;

(4) Salary and Wage Survey: Measuring, through the use of surveys, the state's comparative level of employee compensation with the labor market;

(5) Payroll Certification and Staffing Patterns: The director shall work with the budget division in the provision of certified information or in the performance of work as necessary to assure the following:

(a) That payrolls of all departments and agencies of the state government consist of employees who have been authorized for those departments and agencies by the budget division;

(b) That staffing patterns for each department and agency of state government conform with those authorized by the budget division;

(c) That revisions to staffing patterns of all departments and agencies have been approved by the budget division;

(d) That each monthly or other payroll of each department and agency of state government is reviewed to assure that salary increases for any employee are in accordance with the approved state pay plan and that all actions affecting payrolls have been authorized by the budget division;

(e) That merit increases provided for any employee of the state are the result of positive action by the appropriate supervisor;

(f) That the state's pay plan, as enacted by the Legislature, together with such amendments as may occur, is explained in appropriate handbooks for employees of the state;

(g) That pay plans covering any position or positions exempted from the state personnel service are reviewed by the Director of Personnel; and

(h) That comparative salary data is prepared biennially for all positions exempted from the state personnel service; ~~and~~

(6) Temporary Employee Pool: The director shall administer a temporary employee applicant pool from which state agencies can draw when in need of a short-term labor supply; ~~and~~

(7) Employee Recognition Program: The director shall administer an employee recognition program for state employees. The program shall serve as the authorized program for honoring state employees for dedicated and quality service to the government of the State of Nebraska.

Sec. 13. There is hereby created the Employee Recognition Revolving Fund to be administered by the personnel division of the Department of Administrative Services. All funds received by the personnel division for employee recognition programs shall be credited to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 14. That section 81-1318.01, Reissue Revised Statutes of Nebraska, 1943, as amended by section 19, Legislative Bill 14, Ninety-second Legislature, Third Special Session, 1992, be amended to read as follows:

81-1318.01. The State Personnel Board shall ensure the fair and equitable administration of the State Personnel System by:

(1) Operating as prescribed by rules and regulations adopted and promulgated by the personnel division of the Department of Administrative Services;

(2) Reviewing and approving, by majority vote, rules and regulations adopted and promulgated by the personnel division;

(3) Determining the grievability of issues or doing so through the designation of a board member. Issues determined to be not grievable shall be subject to summary dismissal;

(4) Adjudicating grievance appeals and rendering final binding decisions;

(5) Rendering decisions consistent with the rules and regulations adopted and promulgated by the personnel division; ~~and~~

(6) Reviewing and providing counsel regarding any matter affecting the State Personnel System; ~~and~~

(7) Performing the actions required pursuant to the State Government Effectiveness Act.

Sec. 15. That section 81-1348, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1348. There is hereby created the Suggestion Award Board. The membership of such board shall consist of the Director of Personnel, the Director of Administrative Services, ~~and~~ the Auditor of Public Accounts, ~~and three persons, each to serve a term of one year, selected and appointed by the Governor from the bargaining units listed in section 81-1373. Of the persons selected from such bargaining units, one person shall be selected from each of such bargaining units as follows:~~

(1) The first year from the bargaining units listed in subdivisions (1)(a), (b), and (l) of such section;

(2) The second year from the bargaining units listed in subdivisions (1)(c), (d), and (e) of such section;

(3) The third year from the bargaining units listed in subdivisions (1)(e), (f), and (h) of such section; and

(4) The fourth year from the bargaining units listed in subdivisions (1)(i), (j), and (k) of such section.

After the fourth year, the appointments shall be made starting from subdivision (1) of this section and following the same sequence.

Whenever a vacancy occurs on the board for any reason, the Governor shall appoint an individual to fill such vacancy from the same bargaining unit in which the vacancy exists.

The members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

The board shall establish adopt and promulgate rules and regulations to aid in carrying out ~~the provisions of~~ sections 81-1350 and 81-1351.

Sec. 16. That section 81-1350, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1350. Any award granted shall be the greater of twenty-five dollars or ~~five~~ ten percent of the amount of savings referred to in section 81-1353; but not to exceed the limitations provided for in section 81-1351.

Sec. 17. The Director of Personnel shall prepare and annually transmit a report detailing the operations of the employee suggestion system, including an accounting of all awards granted and any other information deemed appropriate by the director and the Governor.

Sec. 18. That original sections 81-8,245, 81-1348, and 81-1350, Reissue Revised Statutes of Nebraska, 1943, and sections 81-1307 and 81-1318.01, Reissue Revised Statutes of Nebraska, 1943, as amended by sections 15 and 19, respectively, Legislative Bill 14, Ninety-second Legislature, Third Special Session, 1992, are repealed.