

## LEGISLATIVE BILL 856

Approved by the Governor May 23, 1995

Introduced by Hall, 7

AN ACT relating to the State Government Effectiveness Act; to amend sections 81-2704, 81-2706, and 81-2707, Reissue Revised Statutes of Nebraska; to change provisions relating to reports and findings prepared by the Public Counsel; to provide for hearings; to change provisions relating to certain personnel actions; and to repeal the original sections.

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

Section 1. Section 81-2704, Reissue Revised Statutes of Nebraska, is amended to read:

81-2704. (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, to ~~or~~ his or her authorized representative, or to the appropriate board or commission that has governing authority over the director or chief operating officer. 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, the report shall become a matter of public record at the time it is transmitted pursuant to subsection (4) of this section unless the Public Counsel determines its release would impede an ongoing investigation. 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. 2. Section 81-2706, Reissue Revised Statutes of Nebraska, is amended to read:

81-2706. (1) The Public Counsel shall receive any allegation of a violation of section 81-2705 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 81-2705, 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 81-2705, 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 81-2705 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 81-2705, the finding shall be transmitted to the Governor or his or her authorized representative.

(5) Any finding that is made and transmitted by the Public Counsel pursuant to subsection (4) of this section shall include a finding regarding whether an alleged violation of section 81-2705 has occurred or will occur within two years after the date the employee engaged in an action for which he or she is protected from retaliation pursuant to section 81-2705.

Sec. 3. Section 81-2707, Reissue Revised Statutes of Nebraska, is amended to read:

81-2707. (1) Upon receiving the Public Counsel's finding that there is reason to believe a violation of section 81-2705 has occurred or is about to occur, the State Personnel Board, personnel appeals board, or director or chief operating officer of the agency shall hold a hearing to determine whether a violation of section 81-2705 has occurred or is about to occur. If the finding transmitted by the Public Counsel pursuant to section 81-2706 includes a finding that the alleged violation of section 81-2705 has occurred or will occur within two years after the date the employee engaged in an action for which he or she is protected from retaliation pursuant to section 81-2705, 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 81-2705 is contemplated or has occurred. Such in any case in which the personnel action is stayed or reversed pursuant to this subsection, the 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 81-2704, 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. 4. Original sections 81-2704, 81-2706, and 81-2707, Reissue Revised Statutes of Nebraska, are repealed.