

LEGISLATIVE BILL 15

Approved by the Governor March 10, 1997

Introduced by Landis, 46

AN ACT relating to the State Government Effectiveness Act; to amend sections 81-2706 and 81-2707, Revised Statutes Supplement, 1996; to change the duties of the Public Counsel; to change hearing, relief, and appeal provisions; and to repeal the original sections.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 81-2706, Revised Statutes Supplement, 1996, 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 by a preponderance of the evidence 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 employee who raised the allegation. The Public Counsel shall also 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. 2. Section 81-2707, Revised Statutes Supplement, 1996, 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 employee who raised the allegation may petition the State Personnel Board, personnel appeals board, or director or chief operating officer of the agency to hold a hearing to determine whether a violation of section 81-2705 has occurred or is about to occur. Upon the receipt of such a petition, the State Personnel Board, personnel appeals board, or director or chief operating officer of the agency shall within ninety days 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 may, 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. In any case in which the personnel action is not stayed or reversed until a hearing is held pursuant to this subsection, the State Personnel Board, personnel appeals board, or director or chief operating officer of the agency shall within ten days of receipt of the employee's petition hold a hearing to determine whether a violation of section 81-2705 has occurred or is about to occur. 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, within ninety days 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, or director, or chief operating officer of the agency shall be authorized to grant backpay or other relief as it deems appropriate, including reasonable attorney's fees. The relief authorized in this subsection, including reasonable attorney's fees, shall be paid from funds of the agency in which the violation occurred.

(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.

(5) No appeal by the state shall operate as a supersedeas of any judgment, decision, or order of a district court or the Court of Appeals in any matter relating to the enforcement of the State Government Effectiveness Act.

Sec. 3. Original sections 81-2706 and 81-2707, Revised Statutes Supplement, 1996, are repealed.