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SENATE BILL 132

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Sue Wilson Beffort

AN ACT

RELATING TO PUBLIC EMPLOYMENT; ENACTING THE WHISTLEBLOWER PROTECTION ACT; PROHIBITING PUBLIC EMPLOYER RETALIATORY ACTION AGAINST PUBLIC EMPLOYEES IN CERTAIN CIRCUMSTANCES; CREATING A RIGHT TO CIVIL ACTION FOR DAMAGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Whistleblower Protection Act".

Section 2. DEFINITIONS.--As used in the Whistleblower Protection Act:

A. "good faith" means that a reasonable basis exists in fact as evidenced by the facts available to the public employee;

B. "public employee" means a person who works for or contracts with a public employer;

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1 C. "public employer" means:

2 (1) any department, agency, office,
3 institution, board, commission, committee, branch or district
4 of state government;

5 (2) any political subdivision of the state,
6 created under either general or special act, that receives or
7 expends public money from whatever source derived;

8 (3) any entity or instrumentality of the state
9 specifically provided for by law; and

10 (4) every office or officer of any entity
11 listed in Paragraphs (1) through (3) of this subsection;

12 D. "retaliatory action" means the discharge,
13 suspension, demotion or disciplining of or the threatening or
14 taking any discriminatory or adverse employment action against
15 a public employee in the terms and conditions of public
16 employment; and

17 E. "unlawful or improper act" means a practice,
18 procedure, action or failure to act on the part of a public
19 employer that:

20 (1) violates or is a suspected violation of a
21 federal law, federal regulation, state law, state
22 administrative rule or a law of any political subdivision of
23 the state;

24 (2) constitutes malfeasance in public office;
25 or

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1 (3) is of public concern or results or would
2 result in a specific and substantial danger to public health
3 and safety.

4 Section 3. PUBLIC EMPLOYER RETALIATORY ACTION
5 PROHIBITED.--A public employer shall not take any retaliatory
6 action against a public employee because the public employee:

7 A. discloses or threatens to disclose an activity,
8 policy or practice of the public employer that constitutes an
9 unlawful or improper act or that the public employee believes
10 in good faith constitutes an unlawful or improper act;

11 B. provides information to, or testifies before, a
12 public body as part of an investigation, hearing or inquiry
13 into an unlawful or improper act; or

14 C. objects to or refuses to participate in an
15 activity, policy or practice that constitutes an unlawful or
16 improper act or that the public employee believes in good faith
17 constitutes an unlawful or improper act.

18 Section 4. RIGHT TO CIVIL ACTION FOR DAMAGES--AFFIRMATIVE
19 DEFENSES--REMEDY NOT EXCLUSIVE.--

20 A. A public employer that violates the provisions
21 of the Whistleblower Protection Act shall be liable to the
22 public employee for all relief necessary to make the employee
23 whole, including actual damages, reinstatement with the same
24 seniority status that the employee would have had but for the
25 violation, two times the amount of back pay with interest on

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1 the back pay and compensation for any special damage sustained
2 as a result of the violation. In addition, an employer shall
3 be required to pay the litigation costs and reasonable attorney
4 fees of the employee. An employee may bring an action pursuant
5 to this section in any court of competent jurisdiction.

6 B. It shall be an affirmative defense to a civil
7 action brought pursuant to this section that the action taken
8 by a public employer against a public employee was due to the
9 employee's misconduct, poor job performance or a reduction in
10 workforce for purposes unrelated to conduct prohibited pursuant
11 to the Whistleblower Protection Act.

12 C. The remedies provided for in the Whistleblower
13 Protection Act are not exclusive and shall be in addition to
14 any other remedies provided for in any other law or available
15 under common law.

16 D. Nothing in the Whistleblower Protection Act
17 precludes civil actions or criminal sanctions for libel,
18 slander or other civil or criminal claims against a person who
19 files a false claim under that act.

20 Section 5. POSTING OF LAW AND INFORMATION.--Every public
21 employer shall keep posted in a conspicuous place on the public
22 employer's premises notices prepared by the employer that set
23 forth the provisions of the Whistleblower Protection Act.

24 Section 6. LIMITATION ON ACTIONS.--A civil action
25 pursuant to the Whistleblower Protection Act shall be forever

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1 barred unless the action is filed within three years from the
2 date on which the retaliatory action occurred.

3 Section 7. APPLICABILITY.--The provisions of this act
4 apply only to civil actions for damages resulting from
5 retaliatory action that occurred on or after July 1, 2005.

6 Section 8. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2008.