



The Legislature  
of the  
State of New Mexico

49th Legislature, 2nd Session

LAWS 2010

CHAPTER 12

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR

HOUSE BILL 165

Introduced by



# CHAPTER 12

## 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;

C. "public employer" means:

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

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

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

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

3 D. "retaliatory action" means taking any  
4 discriminatory or adverse employment action against a public  
5 employee in the terms and conditions of public employment; and

6 E. "unlawful or improper act" means a practice,  
7 procedure, action or failure to act on the part of a public  
8 employer that:

9 (1) violates a federal law, a federal  
10 regulation, a state law, a state administrative rule or a law  
11 of any political subdivision of the state;

12 (2) constitutes malfeasance in public  
13 office; or

14 (3) constitutes gross mismanagement, a waste  
15 of funds, an abuse of authority or a substantial and specific  
16 danger to the public.

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

20 A. communicates to the public employer or a third  
21 party information about an action or a failure to act that the  
22 public employee believes in good faith constitutes an unlawful  
23 or improper act;

24 B. provides information to, or testifies before, a  
25 public body as part of an investigation, hearing or inquiry

1 into an unlawful or improper act; or

2 C. objects to or refuses to participate in an  
3 activity, policy or practice that constitutes an unlawful or  
4 improper act.

5 Section 4. RIGHT TO CIVIL ACTION FOR DAMAGES--  
6 AFFIRMATIVE DEFENSES--REMEDY NOT EXCLUSIVE.--

7 A. A public employer that violates the provisions  
8 of the Whistleblower Protection Act shall be liable to the  
9 public employee for actual damages, reinstatement with the  
10 same seniority status that the employee would have had but for  
11 the violation, two times the amount of back pay with interest  
12 on the back pay and compensation for any special damage  
13 sustained as a result of the violation. In addition, an  
14 employer shall be required to pay the litigation costs and  
15 reasonable attorney fees of the employee. An employee may  
16 bring an action pursuant to this section in any court of  
17 competent jurisdiction.

18 B. It shall be an affirmative defense to a civil  
19 action brought pursuant to this section that the action taken  
20 by a public employer against a public employee was due to the  
21 employee's misconduct, the employee's poor job performance, a  
22 reduction in work force or other legitimate business purpose  
23 unrelated to conduct prohibited pursuant to the Whistleblower  
24 Protection Act and that retaliatory action was not a  
25 motivating factor.

1 C. The remedies provided for in the Whistleblower  
2 Protection Act are not exclusive and shall be in addition to  
3 any other remedies provided for in any other law or available  
4 under common law.

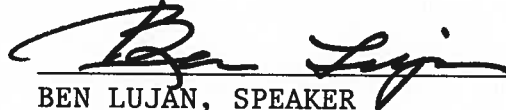
5 D. Nothing in the Whistleblower Protection Act  
6 precludes civil actions or criminal sanctions for libel,  
7 slander or other civil or criminal claims against a person who  
8 files a false claim under that act.

9 Section 5. POSTING OF LAW AND INFORMATION.--Every  
10 public employer shall keep posted in a conspicuous place on  
11 the public employer's premises notices prepared by the  
12 employer that set forth the provisions of the Whistleblower  
13 Protection Act.

14 Section 6. LIMITATION ON ACTIONS.--A civil action  
15 pursuant to the Whistleblower Protection Act shall be forever  
16 barred unless the action is filed within two years from the  
17 date on which the retaliatory action occurred.

18 Section 7. APPLICABILITY.--The provisions of this act  
19 apply only to civil actions for damages resulting from  
20 retaliatory action that occurred on or after July 1, 2008.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



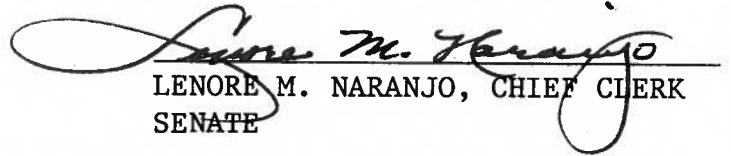
BEN LUJAN, SPEAKER  
HOUSE OF REPRESENTATIVES



STEPHEN R. ARIAS, CHIEF CLERK  
HOUSE OF REPRESENTATIVES



DIANE D. DENISH, PRESIDENT  
SENATE



LENORE M. NARANJO, CHIEF CLERK  
SENATE

Approved by me this 1st day of March, 2010



BILL RICHARDSON, GOVERNOR  
STATE OF NEW MEXICO

SS: MA 25 3:01 PM

Gov: Richardson

SECRETARY OF STATE  
OFFICE OF

MAR 1 10:18 AM '10

RECEIVED