

HOUSE BILL NO. 322
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE ULMER

Introduced: 5/8/91

Referred: State Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to protection of whistleblowers; and relating to the personnel board."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** AS 39.25.070 is amended to read:

4 Sec. 39.25.070. **POWERS AND DUTIES OF PERSONNEL BOARD.** In addition to the
5 other duties imposed by this chapter, the personnel board shall

6 (1) approve or disapprove amendments to the personnel rules in accordance with
7 AS 39.25.140;

8 (2) consider and act upon recommendations for the extension of the partially
9 exempt service and the classified service as provided in AS 39.25.130;

10 (3) hear and determine appeals by employees in the classified service as provided
11 in AS 39.25.170;

12 (4) establish its own rules of procedure; two members constitute a quorum for the
13 transaction of business and two affirmative votes are required for final action on matters acted
14 upon by the board;

- 1 (5) elect a chair [CHAIRMAN] from its membership;
- 2 (6) have the power to administer oaths, subpoena witnesses, and compel the
- 3 production of books and papers pertinent to a hearing authorized by this chapter or by
- 4 AS 39.90.100 - 39.90.240;
- 5 (7) employ staff members, who shall be in the classified service;
- 6 (8) retain independent counsel in accordance with AS 39.52.310(c);
- 7 (9) appoint, and review the findings, conclusions, and recommendations of,
- 8 hearing officers in accordance with AS 39.52.350(c), 39.52.360, and 39.52.370;
- 9 (10) issue findings, conclusions, and decisions regarding violations of the code
- 10 of ethics in AS 39.52.110 - 39.52.190; [AND]
- 11 (11) impose the penalties described in AS 39.52.410, 39.52.440, and 39.52.450;
- 12 and
- 13 (12) carry out the powers and duties assigned to it under AS 39.90.100 -
- 14 39.90.240.

15 * Sec. 2. AS 39.90.100(c) is amended to read:

- 16 (c) The provisions of AS 39.90.100 - 39.90.240 [AS 39.90.100 - 39.90.150] do not
- 17 (1) require an employer to compensate an employee for participation in a court
- 18 action or in an investigation, hearing, or inquiry by a public body;
- 19 (2) prohibit an employer from compensating an employee for participation in a
- 20 court action or in an investigation, hearing, or inquiry by a public body;
- 21 (3) authorize the disclosure of information that is legally required to be kept
- 22 confidential; or
- 23 (4) diminish or impair the rights of an employee under a collective bargaining
- 24 agreement.

25 * Sec. 3. AS 39.90.100(d) is amended to read:

- 26 (d) An employer shall post notices and use other appropriate means to inform employees
- 27 of their protections and obligations under AS 39.90.100 - 39.90.240 [AS 39.90.100 - 39.90.150].

28 * Sec. 4. AS 39.90.110(a) is amended to read:

- 29 (a) A person is not entitled to the protections under AS 39.90.100 - 39.90.240
- 30 [AS 39.90.100 - 39.90.150] unless the person
- 31 (1) reasonably believes that the information reported is or is about to become a

1 matter of public concern; and

2 (2) reports the information in good faith.

3 * Sec. 5. AS 39.90.110(b) is amended to read:

4 (b) A person is entitled to the protections under AS 39.90.100 - 39.90.240
5 [AS 39.90.100 - 39.90.150] only if the matter of public concern

6 (1) is not the result of conduct by the person seeking protection; or

7 (2) is the result of conduct by the person that was required by the person's
8 employer.

9 * Sec. 6. AS 39.90.130 is amended to read:

10 Sec. 39.90.130. EXEMPTION FOR MUNICIPALITIES. A municipality is not required
11 to comply with the provisions of AS 39.90.100 - 39.90.240 [AS 39.90.100 - 39.90.150] if the
12 municipality has adopted an ordinance that provides protections for its employees and other
13 persons that are substantially similar to the protections under AS 39.90.100 - 39.90.240
14 [AS 39.90.100 - 39.90.150]. Notwithstanding AS 29.25.070, the ordinance may provide for a
15 civil penalty for violation of the ordinance not to exceed \$10,000.

16 * Sec. 7. AS 39.90.140 is amended to read:

17 Sec. 39.90.140. DEFINITIONS. In AS 39.90.100 - 39.90.240 [AS 39.90.100 - 39.90.150]

18 (1) "employee" or "public employee" means a person who performs a service for
19 wages or other remuneration under a contract of hire, written or oral, express or implied, for a
20 public employer;

21 (2) "employer" or "public employer" includes the state, a public or quasi-public
22 corporation or authority established by state law, the University of Alaska, and a political
23 subdivision of the state including a municipality, school district, and rural educational attendance
24 area;

25 (3) "matter of public concern" means

26 (A) a violation of a state, federal, or municipal law, regulation, or
27 ordinance;

28 (B) a danger to public health or safety;

29 (C) gross mismanagement, a substantial waste of funds, or a clear abuse
30 of authority; or

31 (D) a matter accepted for investigation by the office of the ombudsman

- 1 under AS 24.55.100 or 24.55.320;
- 2 (4) "prohibited practice" means a violation of AS 39.90.100;
- 3 (5) "public body" includes an officer or agency of
- 4 (A) the federal government;
- 5 (B) the state;
- 6 (C) a political subdivision of the state including
- 7 (i) a municipality;
- 8 (ii) a school district; and
- 9 (iii) a rural educational attendance area;
- 10 (D) a public or quasi-public corporation or authority established by state
- 11 law including the Alaska Railroad Corporation; and
- 12 (E) the University of Alaska.

13 * Sec. 8. AS 39.90.150 is amended to read:

14 Sec. 39.90.150. SHORT TITLE. AS 39.90.100 - 39.90.240 [AS 39.90.100 - 39.90.150]

15 may be cited as the Alaska Whistleblower Act.

16 * Sec. 9. AS 39.90 is amended by adding new sections to read:

17 Sec. 39.90.160. ADMINISTRATIVE REMEDY. In addition to or instead of bringing

18 a civil action under AS 39.90.120, a person who alleges a violation of AS 39.90.100 may file an

19 allegation with the personnel board. If a court of competent jurisdiction has issued a final

20 determination resolving some or all of the issues raised by the allegation, the personnel board

21 may not accept the allegation as to those issues. If the allegation relates to a matter that is

22 outside the jurisdiction of the personnel board under AS 39.90.100 - 39.90.240, the board may

23 not accept the allegation but may refer the person to other appropriate agencies. If the matter

24 appears to be within the jurisdiction of the board, the board shall immediately appoint a hearing

25 officer to investigate and report on the allegation.

26 Sec. 39.90.170. INVESTIGATION BY HEARING OFFICER. (a) The hearing officer

27 shall investigate an allegation referred by the personnel board to determine whether there are

28 reasonable grounds to believe that a prohibited practice has occurred, is occurring, or is about

29 to occur. Within 10 days after appointment, the hearing officer shall provide written notice to

30 the person who made the allegation that the hearing officer has received and will investigate the

31 allegation. The notice must include the name of the person who will serve as a contact with the

1 person making the allegation.

2 (b) If, after investigation, the hearing officer determines that there are reasonable grounds
3 to believe that a prohibited practice that requires corrective action has occurred, is occurring, or
4 is about to occur, the hearing officer shall report the findings and determination to the personnel
5 board, the agency involved, and the elected or appointed head of the agency. The report may
6 include recommendations for corrective action.

7 (c) If, after a reasonable time, the public employer does not act to correct the prohibited
8 practice, the hearing officer may petition the personnel board for corrective action. If the hearing
9 officer finds, after consulting with the individual subject to the prohibited practice, that the
10 employer has acted to correct the prohibited practice, the hearing officer shall file the finding
11 with the board, together with any written comments provided by the individual and the employer.

12 (d) If, after investigation, the hearing officer determines that there is reasonable cause
13 to believe that a criminal violation has occurred, the hearing officer shall report the determination
14 to the attorney general, the head of the public employer involved, and the personnel board.

15 Sec. 39.90.180. STAY OF PERSONNEL ACTION. (a) If the hearing officer determines
16 that there are reasonable grounds to believe that a violation of AS 39.90.100 has occurred, the
17 hearing officer may request the personnel board or a member of the board to stay any personnel
18 action against the person making the allegation or against another person. Unless the board or
19 board member finds that the stay would not be appropriate, the board or board member shall
20 order a stay, valid for no more than 45 days. The board or board member shall act within three
21 working days of receiving a request for a stay.

22 (b) If the stay or an extension of a stay is granted, the board shall allow the public
23 employer that is the subject of a stay to comment on the stay and to request an amendment to
24 it. The board may terminate the stay at any time after notice and opportunity for oral or written
25 comments are provided to the hearing officer and the individual on whose behalf the stay was
26 ordered.

27 (c) The board may extend the period of a stay granted under this section for any period
28 that the board considers appropriate.

29 Sec. 39.90.190. INVESTIGATION PROCEDURES. (a) In an investigation, the hearing
30 officer may

31 (1) make inquiries and obtain information considered necessary;

1 (2) enter without notice to inspect the premises of a public employer, but only
2 when agency personnel are present;

3 (3) hold hearings that are closed to the public notwithstanding AS 44.62.310; and

4 (4) notwithstanding other provisions of law, have access at all times to records
5 of every public employer, including confidential records; however, the personnel board may only
6 compel the production of sealed court records by subpoena and may not compel production of
7 records of active criminal investigations and records that could lead to the identity of confidential
8 police informants.

9 (b) The hearing officer and the personnel board shall maintain confidentiality with respect
10 to all matters and the identities of the complainants or witnesses coming before the officer or the
11 board except insofar as disclosures may be necessary to enable the officer or the board to carry
12 out their duties and to support recommendations. However, the officer or the board may not
13 disclose a confidential record obtained from an agency.

14 Sec. 39.90.200. SUBPOENA POWERS. (a) Subject to the privileges that witnesses have
15 in the courts of this state, the personnel board may, at the request of the hearing officer or on its
16 own request, compel by subpoena, at a specified time and place, the

17 (1) appearance and sworn testimony of a person who the personnel board or the
18 hearing officer reasonably believes may be able to give information relating to a matter under
19 investigation; and

20 (2) production by a person of a record or object that the personnel board or
21 hearing officer reasonably believes may relate to the matter under investigation.

22 (b) If a person refuses to comply with a subpoena issued under (a) of this section, the
23 superior court may, on application of the personnel board, compel obedience by proceedings for
24 contempt in the same manner as in the case of disobedience to the requirements of a subpoena
25 issued by the court or refusal to testify in the court.

26 Sec. 39.90.210. DECISION BY PERSONNEL BOARD. (a) After receipt of a report
27 from the hearing officer, the personnel board may accept, amend, or reject the report or return
28 the report to the hearing officer for further proceedings.

29 (b) When the hearing officer petitions the personnel board for corrective action under
30 AS 39.90.170(c), the board shall provide an opportunity for

31 (1) oral or written comments by the hearing officer and the agency involved; and

1 (2) written comments by any individual who alleges to be the subject of the
2 prohibited practice.

3 (c) If, after review, the personnel board determines that the hearing officer has
4 demonstrated that a violation of AS 39.90.100 was a contributing factor in a personnel action that
5 was taken or is to be taken against the individual, the board shall order the corrective action the
6 board considers appropriate. For a public employee who has been harmed by a prohibited
7 practice, the board may order reinstatement to a previous position, promotion, transfer, the award
8 of back pay and benefits, or other personnel actions. If the board finds that a public employee,
9 other than an elected public employee, or an employee confirmed by the legislative body of the
10 public employer, has violated AS 39.90.100, the board may order discipline, including suspension
11 or dismissal. The board may require that notice of its findings and determination be placed in
12 the personnel file of appropriate public employees.

13 Sec. 39.90.220. JUDICIAL REVIEW. A public employer, employee, former employee,
14 or applicant for employment adversely affected by a final order or decision of the personnel
15 board under AS 39.90.210 may appeal the decision or order to the superior court.

16 Sec. 39.90.230. REGULATIONS AND PROCEDURES. The personnel board shall adopt
17 regulations under the Administrative Procedure Act (AS 44.62) to establish procedures for
18 receiving and processing allegations, conducting investigations and hearings, reporting findings
19 and recommendations, and making decisions on them. Hearings of the personnel board under
20 AS 39.90.100 - 39.90.240 are not subject to administrative adjudication procedures under
21 AS 44.62.330 - 44.62.630.

22 Sec. 39.90.240. ANNUAL REPORT. The personnel board shall submit to the legislature
23 and the public an annual report of the board's activities under AS 39.90.100 - 39.90.240.