

**CS FOR HOUSE BILL NO. 322 (STATE AFFAIRS)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE STATE AFFAIRS COMMITTEE**

**Offered: 2/5/92**

**Referred: Judiciary, Finance**

**Sponsor(s): REPRESENTATIVES ULMER, Brown**

**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 - 39.90.250;
- 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 39.90.250.

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

- 16 (c) The provisions of AS 39.90.100 - 39.90.250 [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 - 39.90.250 [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 - 39.90.250
- 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 - 39.90.250  
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 - 39.90.250 [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 - 39.90.250  
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 - 39.90.250 [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 - 39.90.250** [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. Instead of bringing a civil action under  
18 AS 39.90.120, a person who alleges a violation of AS 39.90.100 may, within one year after the  
19 date the person reasonably should have known of the violation, file an allegation with the  
20 personnel board. However, if a court of competent jurisdiction either has issued a final  
21 determination resolving some or all of the issues raised by the allegation or has a matter under  
22 consideration that will require resolution of some or all of the issues, the personnel board may  
23 not accept or shall discontinue investigation of the allegation as to those issues. If the allegation  
24 relates to a matter that is outside the jurisdiction of the personnel board under AS 39.90.100 -  
25 39.90.250, the board may not accept the allegation but may refer the person to other appropriate  
26 agencies. If the matter appears to be within the jurisdiction of the board, the board shall  
27 immediately appoint a hearing officer to investigate and report on the allegation.

28 Sec. 39.90.170. INVESTIGATION BY HEARING OFFICER. (a) The hearing officer  
29 shall investigate an allegation referred by the personnel board to determine whether there are  
30 reasonable grounds to believe that a prohibited practice has occurred, is occurring, or is about  
31 to occur. Within 10 days after appointment, the hearing officer shall provide written notice to

1 the person who made the allegation that the hearing officer has received and will investigate the  
2 allegation. The notice must include the name of the person who will serve as a contact with the  
3 person making the allegation.

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

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

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

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

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

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

31 Sec. 39.90.190. INVESTIGATION PROCEDURES. (a) In an investigation, the hearing

1 officer may

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

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

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

6 (4) notwithstanding other provisions of law, have access at all times to records  
7 of every public employer other than the records of the office of the ombudsman, including  
8 confidential records; however, the personnel board may only compel the production of sealed  
9 court records by subpoena and may not compel production of records of active criminal  
10 investigations and records that could lead to the identity of confidential police informants; as to  
11 the records of the office of the ombudsman, the personnel board may only require that the office  
12 confirm or deny that it has accepted a complaint for investigation.

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

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

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

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

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

30 Sec. 39.90.210. DECISION BY PERSONNEL BOARD. (a) After receipt of a report  
31 from the hearing officer, the personnel board may accept, amend, or reject the report or return

1 the report to the hearing officer for further proceedings.

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

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

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

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

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

20 Sec. 39.90.230. REGULATIONS AND PROCEDURES. The personnel board shall adopt  
21 regulations under the Administrative Procedure Act (AS 44.62) to establish procedures for  
22 receiving and processing allegations, conducting investigations and hearings, reporting findings  
23 and recommendations, and making decisions on them. Hearings of the personnel board under  
24 AS 39.90.100 - 39.90.250 are not subject to administrative adjudication procedures under  
25 AS 44.62.330 - 44.62.630.

26 Sec. 39.90.240. ANNUAL REPORT. The personnel board shall submit to the legislature  
27 and the public an annual report of the board's activities under AS 39.90.100 - 39.90.250.

28 Sec. 39.90.250. EXHAUSTION OF REMEDIES NOT REQUIRED. The provisions of  
29 AS 39.90.100 - 39.90.250 do not require exhaustion of administrative, contractual, or other  
30 remedies, including those provided by AS 39.90.100 - 39.90.250, before a person alleging a  
31 violation may file a civil action. The personnel board may not refuse to accept an allegation that

1 is filed with the board because of a civil action that was terminated without resolution on the  
2 merits of the issues raised by the allegation.