

HOUSE BILL NO. 588

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Introduced: 4/29/92

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing a procedure for the review of the reorganization of agencies in the
2 executive branch of state government for violations of the merit principle of employment
3 and providing remedies for violations of the merit principle."

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

5 * Section 1. AS 39.25 is amended by adding new sections to read:

6 **ARTICLE 9. REVIEW OF AGENCY REORGANIZATION.**

7 **Sec. 39.25.300. JURISDICTION OF THE PERSONNEL BOARD.** (a) If a
8 reorganization of a state agency affects one or more employees of the agency who are protected
9 by the merit principle of employment, the personnel board has jurisdiction to investigate and
10 determine whether the merit principle has been violated by the reorganization.

11 (b) The board may exercise its powers under AS 39.25.300 - 39.25.500 without regard
12 to the finality of the reorganization and without regard to any proceedings conducted under a
13 collective bargaining agreement concerning any aspect of the reorganization.

14 **Sec. 39.25.310. INVESTIGATION OF COMPLAINTS.** A state employee or former state

1 employee who alleges that a reorganization of a state agency violates the merit principle of
2 employment may file a complaint with the board. The complaint must be filed within one year
3 after the later of implementation of the reorganization or the date that the current or former
4 employee knows or reasonably should have known of the violation. The board shall appoint a
5 hearing officer to investigate the complaint. The hearing officer shall conduct an investigation
6 unless the hearing officer reasonably believes that

7 (1) the complaint relates to a matter that is outside the jurisdiction of
8 AS 39.25.300 - 39.25.500;

9 (2) the complainant does not have a sufficient personal interest in the subject
10 matter of the complaint;

11 (3) the complainant has not alleged sufficient facts to allow the hearing officer
12 to proceed with the investigation;

13 (4) the complaint is trivial or made in bad faith;

14 (5) the resources of the board are insufficient for adequate investigation.

15 Sec. 39.25.320. NOTICE TO COMPLAINANT. (a) If the hearing officer decides not
16 to accept a complaint for investigation, the hearing officer shall inform the complainant of that
17 decision and shall state the reasons.

18 (b) If the hearing officer determines to investigate a complaint, the hearing officer shall
19 notify the complainant of the decision to investigate.

20 (c) Notice given under this section may be oral but, if requested by the complainant, the
21 hearing officer shall state in writing the reasons for not accepting a complaint.

22 Sec. 39.25.330. NOTICE TO OTHERS. If the hearing officer decides to investigate a
23 complaint, the hearing officer shall notify the agency and other employees who may be affected
24 by the reorganization of the intention to investigate unless the hearing officer believes that
25 advance notice will unduly hinder the investigation or make it ineffectual. Notice given under
26 this section may be oral or written, at the discretion of the hearing officer.

27 Sec. 39.25.340. INVESTIGATION PROCEDURES. (a) The hearing officer shall
28 informally investigate the matters set out in a complaint filed under AS 39.25.310, promptly and
29 impartially. If the hearing officer determines that the allegations are supported by substantial
30 evidence, the hearing officer shall immediately try, by conference, conciliation, and persuasion,
31 to eliminate the merit principle violation that was the subject of the complaint.

1 (b) In an investigation, the hearing officer may
2 (1) make inquiries and obtain information considered necessary;
3 (2) enter without notice to inspect the premises of an agency, but only when
4 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 an agency including confidential records related to the investigation; however, the personnel
8 board may only compel the production of sealed court records by subpoena.

9 (c) 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 hearing
11 officer or the board except insofar as disclosures may be necessary to enable the hearing officer
12 or the board to carry out duties and to support recommendations. However, the hearing officer
13 or the board may not disclose a confidential record obtained from an agency.

14 Sec. 39.25.350. STAY OF PERSONNEL ACTIONS. (a) After a complaint is accepted
15 for investigation, the board or a member of the board may, at the request of a complainant, the
16 hearing officer, or on the board's own motion, issue a 30-day stay of implementation of all or
17 a part of the reorganization. The board or board member shall act within three working days
18 after receiving a request for a stay. During the period of a stay, the agency may not proceed
19 with any personnel actions within the scope of the stay.

20 (b) If the complaint has not been resolved at the end of the initial stay of implementation,
21 the board may issue additional stays of implementation for any period that the board considers
22 appropriate.

23 (c) An agency may petition the board for amendments to a stay. The board may
24 terminate or amend the stay after notice and opportunity for oral or written comments are
25 provided to the hearing officer, the affected employees, and the agency. The board may grant
26 an amendment to the stay if it finds that the proposed personnel action to be affected by the
27 amendment will probably not violate the merit principle of employment.

28 Sec. 39.25.360. SUBPOENA POWERS. (a) Subject to the privileges that witnesses have
29 in the courts of this state, the board may, at the request of the hearing officer, compel by
30 subpoena at a specified time and place, the

31 (1) appearance and sworn testimony of a person who the board reasonably

1 believes may be able to give information relating to a matter under investigation; and
2 (2) production by a person of a record or object that the board reasonably believes
3 may relate to the matter under investigation.

4 (b) The board may not compel production of records of active criminal investigations or
5 records that could lead to the identity of confidential police informants. As to records of the
6 office of the ombudsman, the personnel board may only require that the office confirm or deny
7 that it has accepted a complaint for investigation.

8 (c) If a person refuses to comply with a subpoena issued under this section, the superior
9 court may, on application of the board, compel obedience by proceedings for contempt in the
10 same manner as in the case of disobedience to the requirements of a subpoena issued by the court
11 or refusal to testify in the court.

12 Sec. 39.25.370. PROCEDURE AFTER INVESTIGATION. (a) After the investigation,
13 the hearing officer shall make a preliminary report to the board in writing as to whether the
14 reorganization violates the merit principle of employment. If the hearing officer finds that the
15 merit principle is violated, the preliminary report must include recommendations for correction
16 of the violation. The hearing officer shall serve copies of the preliminary report on the
17 complainant and the agency.

18 (b) The members of the personnel board shall review each preliminary report. The board
19 may meet to consider the report and may adopt, amend, or reject the findings of fact, and
20 recommendations. Deliberations of the board concerning a preliminary report may only be
21 conducted in sessions that are not open to the public. If the board rejects the findings or
22 recommendations in whole or in part, the board may return the matter to the hearing officer for
23 further proceedings or may hear the matter itself.

24 (c) If the board does not act on a preliminary report, the report and recommendations,
25 if any, become final 30 days after the report was served unless, before that date, the complainant
26 or the agency requests a hearing before the board.

27 (d) The hearing officer, the complainant, and the agency may participate in a hearing
28 before the board. The board shall hold the hearing at the place where the complainant is
29 employed or the violation of the merit principle is alleged to have occurred unless the
30 complainant or agency requests a change of venue for good cause shown. The board is not
31 bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken

1 at the hearing shall be under oath and shall be transcribed at the request of a party to the hearing.

2 (e) If the board determines, after a review of a preliminary report or after a hearing, that
3 an agency reorganization resulted in a violation of the merit principle of employment, the board
4 shall order the corrective action the board considers appropriate. The order must include findings
5 of fact and may prescribe conditions on the agency's future conduct relevant to the violation.

6 (f) For a current or former state employee who has been harmed by a violation, the board
7 may order reinstatement to a previous position, promotion, transfer, the award of back pay and
8 benefits, or other personnel actions. If the board finds that a state employee, other than an
9 elected public officer or a public officer confirmed by the legislature, has violated the merit
10 principle of employment, the board may order discipline, including suspension or dismissal. The
11 board may require that notice of its findings and determination be placed in the personnel file
12 of the appropriate state employees.

13 (g) If the board finds that an agency against whom a complaint was filed has not engaged
14 in the violation alleged in the complaint, it shall issue and serve on the complainant an order
15 dismissing the complaint.

16 (h) A copy of an order issued under this section shall be filed with the attorney general.

17 (i) The board may request the agency to notify it, within a specified time, of action taken
18 on the board's recommendations.

19 (j) The preliminary report is confidential and may not be disclosed to the public by the
20 agency, the complainant, or any other person. The board may disclose the final order only after
21 providing notice to the agency and the complainant that the investigation has been concluded.
22 Within a reasonable time after the board reports the final order to an agency, the board may
23 present the order to the governor, the legislature, a grand jury, or the public, or to more than one
24 of these. The board shall include with the order any reply made by the agency.

25 Sec. 39.25.380. JUDICIAL REVIEW AND ENFORCEMENT. (a) A complainant or
26 agency against whom a complaint is filed may obtain judicial review of the order under
27 AS 44.62.560 - 44.62.570.

28 (b) The board may obtain a court order for the enforcement of its orders by filing a
29 complaint with the superior court.

30 Sec. 39.25.390. REFERRAL TO ATTORNEY GENERAL. At any time in an
31 investigation or hearing, the board or the hearing officer may refer a matter to the attorney

1 general for further action.

2 Sec. 39.25.500. DEFINITIONS. In AS 39.25.300 - 39.25.500,

3 (1) "agency" means an agency in the executive branch of state government;

4 (2) "employee" means an agency employee who is covered by the merit principle
5 of employment;

6 (3) "merit principle" or "merit principle of employment" means the principle
7 established in art. XII, sec. 6, of the Constitution of the State of Alaska;

8 (4) "personnel board" or "board" means the personnel board established under
9 AS 39.25.030;

10 (5) "reorganization" includes the restructuring of an agency, realignment of
11 positions within an agency, changes in job descriptions or assignments, reallocation of positions
12 to job classifications, the elimination, creation, or relocation of positions, and the transfer of
13 agency functions to another public or private entity.