

HB

91

Sec. 44.21.234. Access to long term care facilities, older Alaskans, and records. (a) A person may not deny access to a long term care facility or to an older Alaskan by the ombudsman or an employee, volunteer, or other representative of the office.

(b) Notwithstanding the provisions of AS 44.21.232(c)(1), the ombudsman may obtain medical or other records of an older Alaskan who resides in a long term care facility in the state only with the consent of the older Alaskan or the older Alaskan's legal guardian or, if the older Alaskan is unable or incompetent to consent and does not have a legal guardian, only with a court order. (§ 2 ch 108 SLA 1988)

Sec. 44.21.235. Confidentiality. (a) Records obtained or maintained by the ombudsman are confidential, are not subject to inspection or copying under AS 09.25.110 — 09.25.120 and, except as provided in (b) of this section, may be disclosed only at the discretion of the ombudsman.

(b) The identity of a complainant or an older Alaskan on whose behalf a complaint is made may not be disclosed without the consent of the identified person or the person's legal guardian, unless required by court order. (§ 2 ch 108 SLA 1988)

Sec. 44.21.236. Immunity from liability. (a) A person who, in good faith, makes a complaint described in AS 44.21.232 is immune from civil or criminal liability that might otherwise exist for making the complaint.

(b) The ombudsman, or an employee, volunteer, or other representative of the office, is immune from civil or criminal liability for the good faith performance of official duties. (§ 2 ch 108 SLA 1988)

Sec. 44.21.237. Interference with the long term care ombudsman and retaliation prohibited. (a) A person may not intentionally interfere with the ombudsman, or an employee, volunteer, or representative of the office, in the performance of official duties under AS 44.21.232.

(b) If a person makes a good faith complaint described in AS 44.21.232, an employer or supervisor of the person, or a public or private agency or entity that provides benefits, services, or housing to the person, may not discharge, demote, transfer, reduce the pay or benefits or work privileges of, prepare a negative work performance evaluation of, deny or withhold benefits or services, evict, or take other detrimental action against the person because of the complaint. The person making the complaint may bring a civil action for compensatory and punitive damages against an employer, supervisor, agency, or entity that violates this subsection. In the civil action there is a rebuttable presumption that the detrimental action was retaliatory if it was taken within 90 days after the complaint was made.

(c) A person who violates this section is guilty of a class B misdemeanor. (§ 2 ch 108 SLA 1988)

Sec. 44.21.238. Legal counsel for the long term care ombudsman. The attorney general shall provide legal advice and representation in connection with any matter relating to the powers, duties, and operation of the office, and in any legal action brought against the ombudsman or an employee, volunteer, or other representative of the office. If the attorney general cannot provide legal advice or representation because of a conflict of interest, the ombudsman may employ private legal counsel. (§ 2 ch 108 SLA 1988)

Sec. 44.21.239. Cooperative agreements. The commission shall enter into cooperative agreements concerning the operations of the office, including protocols for investigations, with state and local agencies that have jurisdiction over long term care facilities or over the abuse and neglect of older Alaskans. (§ 2 ch 108 SLA 1988)

Sec. 44.21.240. Definitions. In AS 44.21.200 — 44.21.240,

(1) "commission" means the Older Alaskans Commission;

(2) "long term care facility" means a foster home or other residential facility for dependent adults that is required to be licensed under AS 47.35 and a nursing home as defined in AS 08.70.180;

(3) "office" means the office of the long term care ombudsman;

(4) "older Alaskan" means a resident who is 60 years of age or older;

(5) "ombudsman" means the long term care ombudsman hired under AS 44.21.231;

(6) "senior citizen housing" has the meaning given in AS 44.47.620(e). (§ 2 ch 79 SLA 1981; am § 3 ch 108 SLA 1988)

Effect of amendments. — The 1988 44.21.240, 'commission' means the Older amendment rewrote and restructured this Alaskans Commission." section, which read "In AS 44.21.200 —

Article 5. Alaska Council on Science and Technology.

Secs. 44.21.241 — 44.21.255. [Repealed, § 63 ch 21 SLA 1985.]

Article 6. Alaska Public Broadcasting Commission.

Section

266. Duties of the commission

268. Powers of the commission

consent of the employee or
A 1973; am § 5 ch 276 SLA

NS

or special inspection. (a)
employees who believes that a
persons that threaten physical
may request an inspection
notice to the department. The
reasonable particularity the
employee or the represen-
the notice, the department
wants to believe that a viola-
make a special inspection
determines there are no
violation exists, the department
representative of the em-

inspection, or an inspection
notice shall be provided the
inspection. Unless expressly
notice, the person's name and
notice shall be kept confiden-
ed the employer or in any

notifying person a written
after a special inspection.
establish a review proce-
special inspection and shall
a written statement of the
1973; am § 6 ch 276 SLA

NS

Sec. 18.60.089. Prohibition against retribution. (a) A person may not discharge or discriminate against an employee because the employee has filed a complaint or instituted or caused to be instituted a proceeding related to the enforcement of occupational safety and health standards, or has testified or is expected to testify in a proceeding relating to occupational safety and health or because an employee has exercised personally or on behalf of others a right afforded under AS 18.60.010 — 18.60.105.

(b) An employee who has been discharged or discriminated against by a person in violation of this section may, within 30 days after the violation occurs, file a complaint with the commissioner alleging the discrimination. Upon receipt of the complaint, the commissioner shall investigate the matter as the commissioner considers appropriate. If, upon investigation, the commissioner determines that this section has been violated, the commissioner shall request the attorney general to bring an action in the superior court against the violator. The superior court has jurisdiction to restrain violations of (a) of this section and to order all appropriate relief including rehiring or reinstatement of the employee to the employee's former position with back pay.

(c) Within 90 days of the receipt of a complaint filed under this section, the commissioner shall notify the complainant of the determination under (b) of this section. (§ 7 ch 72 SLA 1973)

Sec. 18.60.090. Penalty for violations. [Repealed, § 9 ch 72 SLA 1973.]

Sec. 18.60.091. Citations. (a) If, upon inspection or investigation, the department believes that an employer has violated a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer, the department shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and must describe with particularity the nature of the violation, including reference to the provisions of the chapter or any order or regulation alleged to have been violated, and must fix a reasonable time for abatement of the violation. The department may prescribe procedures for the issuance of a notice instead of a citation with respect to minor violations that have no direct or immediate relationship to safety or health, or violations that are not serious and that the employer agrees to correct within a reasonable time. If an employer does not, within a reasonable time set out in the notice, correct a violation that is not serious, the department shall issue a citation to the employer.

(b) Upon receipt by the employer, each citation issued under this section, or a copy of the citation, shall be immediately and prominently posted, at or near each place the violation referred to in the citation occurred.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
Title: An Act relating to protection BRU: Personnel
for public employees
Sponsor: House Labor and Commerce Committee Components: Centralized Administrative Services
Requestor: House Labor and Commerce Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill would not require an additional appropriation.

Prepared By: David K. F. Otto *DKFO* Phone: 465-4430
Division: Personnel Date: 1-31-89

Approved by Commissioner: John M. Andrews *John Andrews* Date: 1-31-89
Agency: Department of Administration *Ed Vign...*

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

A M E N D M E N T

Offered in the HOUSE

By Gruenberg

TO: CSHB 91 (SA)

#1

Page 1, line 19:

Strike "is requested by a public body to"
Strike "participate"; insert "participates"

Comment:

The same protections should apply whether or not the employee technically "is required to participate" in the hearings or participate voluntarily.

2

A M E N D M E N T

Offered in the HOUSE

By Gruenberg

TO: CSHB 91 (SA)

#2

Page 1, line 21:

Strike "that"; insert "a"

Comment:

An employee should be protected against retaliation by his employer even if he testified before another public body.

#3

AMENDMENT

OFFERED IN THE JUDICIARY COMMITTEE

TO: CSHB 91(SA)

Page 3, line 18:

Replace paragraph (4) with the following:

"(4) "public body" includes an officer or agency of

(A) the federal government;

(B) the state;

(C) a political subdivision of the state

including

(i) a municipality,

(ii) a school district, or

(iii) a rural educational attendance area; or

(D) a public or quasi-public corporation or

authority established by state law including

(i) the Alaska Railroad Corporation or

(ii) the University of Alaska."

4

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 91(State Affairs)

Page 1, line 6:

Delete "public" — OUT

IN Page 1, line 7, after "report":

Insert "or participate in an inquiry ~~of~~ regarding"

Permanent

IN Page 1, after line 9:

Insert a new bill section to read:

"* Section 1. This Act may be known as the Whistleblower Act."

IN Page 1, line 10:

Delete "Section 1"

Insert "Sec. 2"

Page 1, line 12:

Delete "A public" — OUT

Insert "An"

IN Page 1, after line 21:

Insert a new subsection to read:

"(b) An employer may not disqualify an employee or other person

~~MS~~
who is entitled to protection under (a) of this section from eligibility to

- (1) bid on contracts with the employer; or
- (2) receive another right, privilege, or benefit from an employer or a public body."

~~MS~~ OUT

Reletter the following subsections accordingly.

Page 1, lines 23 - 25:

~~MS~~
Delete "who reports a matter of public concern, or a public employee on whose behalf a matter of public concern is reported, because the employee or person reported the matter,"

Insert "who is entitled to protection under (a) of this section"

Page 1, line 27:

Delete all material.

Page 1, line 28:

Delete "(2)"

Page 1, line 29:

Delete "; or"

Insert "."

OUT

Page 2, line 1:

Delete all material.

*Separate
amend*

Page 2, line 24, after "relief.":

Insert "In the civil action there is a rebuttable presumption that the detrimental action was retaliatory if it is taken within 90 days after the complaint was made public or after the public body's decision was made, whichever is later."

Page 3, line 4:

Delete "or "public employee""

Page 3, line 6:

Delete "a public"

Insert "an"

Page 3, after line 6:

Insert a new paragraph to read:

"(2) "employer" includes a public employer and a private employer;"

Renumber the following paragraphs accordingly.

Page 3, line 7:

Delete ""employer" or"

Page 3, line 16, after "gross":

Insert "public"

Page 3, line 16, after "waste of":

Insert "public"

Page 3, line 17, after "abuse of":

Insert "public"

Page 3, after line 17:

Insert new material to read:

"(D) a matter that comes within the jurisdiction of
the office of the ombudsman under AS 24.55.100 or 24.55.320;

(5) "other person" includes all members of the public;

(6) "private employer" means an employer other than a
public employer who employs at least one other person in the state;"

Renumber the following paragraphs accordingly.

Page 3, line 23:

Delete "."

Insert ";

Page 3, after line 23:

Insert a new paragraph to read:

"(8) "public employee" means an employee of a public em-
ployer."

A M E N D M E N T

TO CS HB 91 (State Affairs)

BY GRUENBERG

Page 2, line 24, after "relief" insert "including punitive damages".

adopted

A M E N D M E N T

Offered in the HOUSE

By Gruenberg

TO: CSHB 91 (SA)

#2

Page 1, line 21:

Strike "that"; insert "a"

Comment:

An employee should be protected against retaliation by his employer even if he testified before another public body.

A M E N D M E N T

OFFERED IN THE HOUSE:

By: Rep. Peter Goll

To: _____ HOUSE BILL No. CSHB91 (JUD)

SENATE BILL No. _____

PAGE: 2

LINE: 20

Sec. 39.90.110 (a)(1) is amended to read:

"(1) [HAS REASONABLE CAUSE TO BELIEVE] reasonably believes that the information reported is or is about to become a matter of public concern; and"

A M E N D M E N T

OFFERED IN THE JUDICIARY COMMITTEE

BY DONLEY

TO: CSHB 91(Judiciary)

Page 2, line 17, following "PROTECTIONS.":

Insert "(a)"

Page 2, following line 22:

Insert a new subsection to read:

"(b) As part of its written personnel policy, a public employer may require that, before an employee initiates a report on a matter of public concern under AS 39.90.100, the employee shall submit a written report concerning the matter to the employer. However, the ^{employee} ~~employee~~ ^{is} ~~may~~ not require ~~the employee~~ to submit a report if the employee

- (1) reasonably believes that reports to the employer will not result in prompt action to remedy the matter of public concern;
- (2) ^{believes with reasonable} ~~knows with reasonable~~ certainty that the activity, policy, or practice is already known to one or more supervisors;
- (3) reasonably believes that an emergency is involved; or
- (4) reasonably fears reprisal or discrimination as a result of disclosure."

A M E N D M E N T

OFFERED IN THE JUDICIARY COMMITTEE

2

BY GRUENBERG

TO: CSHB 91(Judiciary)

Page 1, lines 20-22:

Delete section "(2)" and insert "(2) the employee participates in a court action, an investigation, a hearing, or an inquiry by a public body on a matter of public concern."

COMMENT: This cleans up and simplifies the language.

A M E N D M E N T

OFFERED IN THE JUDICIARY COMMITTEE

TO: CSHB 91 (Judiciary)

3

BY GRUENBERG
"B" Version

Page 2, line 27:

Delete "39.90.140" and insert "39.90.110"

COMMENT: AS 39.90.100 and .110 are the only statutes in the chapter capable of being violated. Technical amendment.

A M E N D M E N T

OFFERED IN THE JUDICIARY COMMITTEE

BY GRUENBERG

TO: CSHB 91(Judiciary)

Page 1, lines 20-22:

Delete section "(2)" and insert "(2) the employee participates in a court action, an investigation, a hearing, or an inquiry by a public body on a matter of public concern."

COMMENT: This cleans up and simplifies the language.

A M E N D M E N T

OFFERED IN THE JUDICIARY COMMITTEE

BY GRUENBERG :|| 3

TO: CSHB 91(Judiciary)

Page 2, line 21:

Delete "and"

Page 2, after line 21:

Insert "(2) has made a reasonable attempt to ascertain the accuracy of the information before reporting; and"

Page 2, line 22:

Delete "(2)"

Insert "(3)"

A M E N D M E N T

OFFERED IN THE JUDICIARY COMMITTEE

BY GRUENBERG
"B" Version

TO: CSHB 91 (Judiciary)

Page 1, line 24:

After "AS 39.90.100", insert "or AS 39.90.110"

Page 2, line 25:

After "relief", insert ", including punitive damages"

COMMENT: Eliminates a possible ambiguity by specifying that punitive damages may be awarded in an appropriate case.

(4)

A M E N D M E N T

OFFERED IN THE HOUSE

BY DONLEY

TO: CSHB 91 (Judiciary)

Page 2, line 25, after "relief.":

Insert "In the civil action there is a rebuttable presumption that the detrimental action was retaliatory if it is taken within 90 days after the complaint was made public."

A M E N D M E - N T

OFFERED IN THE JUDICIARY COMMITTEE

BY DONLEY

TO: CSHB 91(Judiciary)

Page 2, line 17, following "PROTECTIONS.":

Insert "(a)"

Page 2, following line 22:

Insert a new subsection to read:

"(b) As part of its written personnel policy, a public employer may require that, before an employee initiates a report on a matter of public concern under AS 39.90.100, the employee shall submit a written report concerning the matter to the employer. However, the employer may not require the employee to submit a report if the employee

(1) reasonably believes that reports to the employer will not result in prompt action to remedy the matter of public concern;

(2) knows with reasonable certainty that the activity, policy, or practice is already known to one or more supervisors;

(3) reasonably believes that an emergency is involved; or

(4) reasonably fears reprisal or discrimination as a result of disclosure."

A M E N D M E N T

OFFERED IN THE JUDICIARY COMMITTEE

BY GRUENBERG 3

TO: CSHB 91(Judiciary)

Page 2, line 21:

Delete "and"

Page 2, after line 21:

Insert "(2) has made a reasonable attempt to ascertain the accuracy of the information before reporting; and"

Page 2, line 22:

Delete "(2)"

Insert "(3)"

A M E N D M E N T

OFFERED IN THE JUDICIARY COMMITTEE

BY GRUENBERG

TO: CSHB 91(Judiciary)

Page 1, lines 20-22:

Delete section "(2)" and insert "(2) the employee participates in a court action, an investigation, a hearing, or an inquiry by a public body on a matter of public concern."

COMMENT: This cleans up and simplifies the language.

A M E N D M E N T

OFFERED IN THE JUDICIARY COMMITTEE

BY GRUENBERG
"B" Version

TO: CSHB 91 (Judiciary)

Page 2, line 27:

Delete "39.90.140" and insert "39.90.110"

COMMENT: AS 39.90.100 and .110 are the only statutes in the chapter capable of being violated. Technical amendment.

A M E N D M E N T

OFFERED IN THE JUDICIARY COMMITTEE

BY GRUENBERG
"B" Version

TO: CSHB 91 (Judiciary)

Page 1, line 24:

After "AS 39.90.100", insert "or AS 39.90.110"

Page 1, line 25:

After "relief", insert ", including punitive damages"

COMMENT: Eliminates a possible ambiguity by specifying that punitive damages may be awarded in an appropriate case.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 91 (Judiciary)

Page 1, line 6:

Delete "public"

Page 1, line 13:

Delete "A public"

Insert "An"

Page 1, after line 22:

Insert a new subsection to read:

"(b) An employer may not disqualify an employee or other person who reports a matter of public concern or participates in a proceeding connected with a matter of public concern before a public body or court, because of the report or participation, from eligibility to

(1) bid on contracts with the employer; or

(2) receive another right, privilege, or benefit from an employer or a public body."

Reletter the following subsections accordingly.

Page 1, line 28:

Delete all material.

Page 1, line 29:

Delete "(2)"

Page 2, line 1:

Delete "; or"

Insert "."

Page 2, line 2:

Delete all material.

Page 3, line 5:

Delete "or "public employee""

Page 3, line 7:

Delete "a public"

Insert "an"

Page 3, after line 7:

Insert a new paragraph to read:

"(2) "employer" includes a public employer and a private
employer;"

Renumber the following paragraphs accordingly.

Page 3, line 8:

Delete ""employer" or"

Page 3, line 18, after "gross":

Insert "public"

Page 3, line 18, after "waste of":

Insert "public"

Page 3, line 19, after "abuse of":

Insert "public"

Page 4, line 10:

Delete "."

Insert ";

Page 4, after line 10:

Insert new paragraphs to read:

(5) "other person" includes all members of the public;

(6) "private employer" means an employer other than a public employer who employs at least one other person in the state;

(7) "public employee" means an employee of a public employer."

A M E N D M E N T

OFFERED IN THE JUDICIARY COMMITTEE

TO: CSHB 91(Judiciary)

Page 2, line 21:

Delete "and"

Page 2, after line 21:

Insert "(2) has made an attempt to ascertain the accuracy of the information before reporting; and"

Page 2, line 22:

Delete "(2)"

Insert "(3)"

A M E N, D M E N T

OFFERED IN THE JUDICIARY COMMITTEE

TO: CSHB 91(Judiciary)

Page 2, line 17, following "PROTECTIONS.":

Insert "(a)"

Page 2, following line 22:

Insert a new subsection to read:

"(b) As part of its written personnel policy, a public employer may require that, before an employee reports a matter of public concern under AS 39.90.100, the employee shall submit a written report concerning the matter to the employer. However, the employer may not require the employee to submit a report if the employee

(1) believes that reports to the employer will not result in prompt action to remedy the matter of public concern;

(2) believes that the activity, policy, or practice is already known to one or more supervisors;

(3) believes that an emergency is involved; or

(4) fears physical harm as a result of disclosure."

HOUSE COMMITTEE ON STATE AFFAIRS

**RECAP OF
HB 91**

Protection for "Whistleblowers"

Received January 20, 1989
by The Labor and Commerce Committee

Heard February 1, 1989
Heard February 2, 1989

Committee Substitute adopted February 2, 1989

Passed Out of Committee February 2, 1989
3 Do Pass
3 No Recommendation

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HB 91: Protection for "Whistleblowers"

- Item 1:** HB 91 by the Labor and Commerce Committee
CS HB 91
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January 31, 1989
- Item 4:** Amendments offered by Rep. Donley
Draft 6-0327Aa
- Item 5:** Department of Administration
Proposed Amendment
- Item 6:** Amendment #1 offered by Rep. Donley
Draft 6-0327Ac

CSHB 91 (SA)

Amended by the House State Affairs Committee:

- 1) By request of NEA-Alaska (see Items 3 and 4).
- 2) By request of Donley in response to amendment offered by Dave Otto (DOA, DOP) - see Item 5. The committee felt the language offered by Otto was vague and reference to physical harm unnecessary. Donley offered "Limitation To Protections" section (Item 6) which was adopted.

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 20, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee recommends that:

HOUSE BILL NO. 91

"An Act relating to protection for certain public employees and certain other persons who report matters of public concern."

be replaced with CS HB91 (SA) the same title
 a new title

have attached amendment(s)

- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact
- zero fiscal note
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published: _____
- zero fiscal notes(s) published: _____

SIGNING DO PASS:

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend).

Chairman's signature

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2

HOUSE BILL NO. 91

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to protection for certain public
7 employees and certain other persons who report
8 matters of public concern."

9

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

10

* Section 1. AS 39.90 is amended by adding new sections to read:

11

ARTICLE 2. PROTECTION FOR REPORTS OF CERTAIN MATTERS.

12

Sec. 39.90.100. PERSONS PROTECTED. (a) A public employer may

13

not discharge, threaten, or otherwise discriminate against an employee

14

regarding the employee's compensation, terms, conditions, location, or

15

privileges of employment because

16

(1) the employee, or a person acting on behalf of the

17

employee, reports to a public body or is about to report to a public

18

body a matter of public concern; or

19

(2) the employee is requested by a public body to partici-

20

pate in a court action or in an investigation, hearing, or inquiry

21

held by that public body.

22

(b) A public employer may not disqualify a public employee or

23

other person who reports a matter of public concern, or a public

24

employee on whose behalf a matter of public concern is reported,

25

because the employee or person reported the matter, from eligibility

26

to

27

(1) bid on contracts with the public employer;

28

(2) receive land under a law of the state or an ordinance

29

of the municipality; or

1 (3) receive another right, privilege, or benefit.

2 (c) The provisions of AS 39.90.100 - 39.90.120 do not

3 (1) require an employer to compensate an employee for
4 participation in a court action or in an investigation, hearing, or
5 inquiry by a public body;

6 (2) prohibit an employer from compensating an employee for
7 participation in a court action or in an investigation, hearing, or
8 inquiry by a public body;

9 (3) authorize the disclosure of information that is legally
10 required to be kept confidential; or

11 (4) diminish or impair the rights of an employee under a
12 collective bargaining agreement.

13 (d) An employer shall post notices and use other appropriate
14 means to inform employees of their protections and obligations under
15 AS 39.90.100 - 39.90.120.

16 Sec. 39.90.110. RELIEF AND PENALTIES. (a) A person who alleges
17 a violation of AS 39.90.100 may bring a civil action and the court may
18 grant appropriate relief.

19 (b) A person who violates or attempts to violate AS 39.90.100 -
20 39.90.120 is also liable for a civil fine of not more than \$10,000.
21 The attorney general may enforce this subsection.

22 (c) A person who attempts to prevent another person from making
23 a report or participating in a matter under AS 39.90.100(a) with
24 intent to impede or prevent a public inquiry on the matter is liable
25 for a civil fine of not more than \$10,000.

26 Sec 39.90.120. DEFINITIONS. In AS 39.90.100 - 39.90.120

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

1 (2) "employer" or "public employer" includes the state, a
2 public or quasi-public corporation or authority established by state
3 law, the University of Alaska, a municipality, a political subdivision
4 of the state, and the Alaska Railroad Corporation;
5 (3) "matter of public concern" means
6 (A) a violation of a state, federal, or municipal law,
7 regulation, or ordinance;
8 (B) a danger to public health or safety; or
9 (C) gross mismanagement, a substantial waste of funds,
10 or a clear abuse of authority;
11 (4) "public body" includes a federal, state, or municipal
12 officer or agency.

Item 2

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An Act relating to protection BRU: Personnel
for public employees.
 SPONSOR: House Labor and Commerce Committee Components: Centralized Administrative Services
 Requestor: House Labor and Commerce Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill would not require an additional appropriation.

Prepared By: David K. F. Orr *DKFO* Phone: 465-4450
 Division: Personnel Date: 1-31-89

Approved by Commissioner: John M. Andrews *John M. Andrews* Date: 1-31-89
 Agency: Department of Administration *EDV*

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Item 3.



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

ANCHORAGE REGIONAL OFFICE

1411 W 33RD AVENUE
ANCHORAGE, ALASKA 99503
(907) 274 0536

JUNEAU OFFICE

105 MUNICIPAL WAY, SUITE 302
JUNEAU, ALASKA 99801
(907) 586 3090

FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 450 4435

January 31, 1989

To: Rep. Red Boucher, Chair
House State Affairs Committee

Re: House Bill No. 91; "An Act relating to protection
for certain public employees and certain other
persons who report matters of public concern."

NEA-Alaska supports and encourages passage of HB 91.

We also request that the Committee amend the bill to specifically include employees of school districts and REAAs under its provisions. To do so would require expanding the definitions under (2) and (4) on page 3. It may also be necessary to incorporate the provisions of the "Persons Protected" and "Relief And Penalties" sections from pages 1 and 2 respectively into Title 14 of the Alaska Statutes.

As a matter of fundamental equity, school district employees should be afforded the same rights and protections for their responsible actions as are other public employees.

Thank you for your consideration of our request and position.

Respectfully submitted,

Bob Manners
Executive Secretary

cc: Rep. Dave Donley, Chair, House Labor Commerce Committee

m31jan3

Item 4

6-0327Aa
Cramer

A M E N D M E N T # 1

OFFERED IN THE STATE AFFAIRS COMMITTEE

BY DONLEY

TO: HB 91

Page 3, line 4, after "state":

Insert "including a school district or rural educational attendance
area"

A M E N D M E N T # 2

OFFERED IN THE STATE AFFAIRS COMMITTEE

BY DONLEY

TO: HB 91

Page 3, lines 11 - 12:

Delete "a federal, state, or municipal officer or agency"

Insert "an officer or agency of the federal government, the state, a public or quasi-public corporation or authority established by state law including the Alaska Railroad Corporation, the University of Alaska, a political subdivision of the state including a school district or rural educational attendance area, or a municipality"

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Sec. 39.51.110. EMPLOYER RIGHTS. (a) An employee or other person is not entitled to the protections under AS 39.51.100 - 39.51.130 unless the employee or other person

(1) has reasonable cause to believe that the information reported is or is about to become a matter of public concern;

(2) has made a reasonable attempt to ascertain the accuracy of the information before reporting; and

(3) reports the information in good faith.

(b) As part of its written personnel policy, a public employer may require that, before an employee reports a matter of public concern under AS 39.51.100, the employee shall submit a written report concerning the matter to the employer. However, the employer may not require the employee to submit a report if the employee

(1) reasonably believes that reports to the employer will not result in prompt action to remedy the matter of public concern;

(2) knows with reasonable certainty that the activity, policy, or practice is already known to one or more supervisors;

(3) reasonably believes that an emergency is involved; or

(4) reasonably fears physical harm as a result of disclosure.

Item 6

6-0327Ac
Cramer

A M E N D M E N T # 1

OFFERED IN THE HOUSE

BY DONLEY

TO: HB 91

Page 2, line 2:

Delete "39.90.120"

Insert "39.90.130"

Page 2, line 15:

Delete "39.90.120"

Insert "39.90.130"

Page 2, after line 15:

Insert a new section to read:

"Sec. 39.90.110. LIMITATION TO PROTECTIONS. An employee or other person is not entitled to the protections under AS 39.90.100 - 39.90.130 unless the employee or other person

(1) has reasonable cause to believe that the information reported is or is about to become a matter of public concern; and

(2) reports the information in good faith."

Page 2, line 16:

Delete "Sec. 39.90.110"

Insert "Sec. 39.90.120"

Page 2, line 20:

Delete "39.90.120"

Insert "39.90.130"

Page 2, line 26:

Delete "39.90.120" in two places

Insert "39.90.130" in both places

6-0327H
Cramer
3/10/89

Original sponsor: Labor and Commerce
Committee

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 91 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to protection for certain public
7 employees and certain other persons who report or
8 participate in a proceeding connected with a matter
9 of public concern."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 39.90 is amended by adding new sections to read:

12 ARTICLE 2. PROTECTION FOR WHISTLEBLOWERS.

13 Sec. 39.90.100. PERSONS PROTECTED. (a) A public employer may
14 not discharge, threaten, or otherwise discriminate against an employee
15 regarding the employee's compensation, terms, conditions, location, or
16 privileges of employment because

17 (1) the employee, or a person acting on behalf of the
18 employee, reports to a public body or is about to report to a public
19 body a matter of public concern; or

20 (2) the employee participates in a court action, an inves-
21 tigation, a hearing, or an inquiry held by a public body on a matter
22 of public concern.

23 (b) A public employer may not disqualify a public employee or
24 other person who reports a matter of public concern or participates in
25 a proceeding connected with a matter of public concern before a public
26 body or court, because of the report or participation, from eligibili-
27 ty to

28 (1) bid on contracts with the public employer;

29 (2) receive land under a law of the state or an ordinance

1 of the municipality; or

2 (3) receive another right, privilege, or benefit.

3 (c) The provisions of AS 39.90.100 - 39.90.140 do not

4 (1) require an employer to compensate an employee for
5 participation in a court action or in an investigation, hearing, or
6 inquiry by a public body;

7 (2) prohibit an employer from compensating an employee for
8 participation in a court action or in an investigation, hearing, or
9 inquiry by a public body;

10 (3) authorize the disclosure of information that is legally
11 required to be kept confidential; or

12 (4) diminish or impair the rights of an employee under a
13 collective bargaining agreement.

14 (d) An employer shall post notices and use other appropriate
15 means to inform employees of their protections and obligations under
16 AS 39.90.100 - 39.90.140.

17 Sec. 39.90.110. LIMITATION TO PROTECTIONS. (a) A person is not
18 entitled to the protections under AS 39.90.100 - 39.90.140 unless the
19 person

20 (1) reasonably believes that the information reported is or
21 is about to become a matter of public concern; and

22 (2) reports the information in good faith.

23 (b) A person is entitled to the protections under AS 39.90.100 -
24 39.90.140 only if the matter of public concern

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

27 (2) is the result of conduct by the person that was re-
28 quired by the person's employer.

29 (c) As part of its written personnel policy, a public employer

may require that, before an employee initiates a report on a matter of public concern under AS 39.90.100, the employee shall submit a written report concerning the matter to the employer. However, the employee is not required to submit a report if the employee

(1) reasonably believes that reports to the employer will not result in prompt action to remedy the matter of public concern;

(2) believes with reasonable certainty that the activity, policy, or practice is already known to one or more supervisors;

(3) reasonably believes that an emergency is involved; or

(4) reasonably fears reprisal or discrimination as a result of disclosure.

Sec. 39.90.120. RELIEF AND PENALTIES. (a) A person who alleges a violation of AS 39.90.100 may bring a civil action and the court may grant appropriate relief, including punitive damages.

(b) A person who violates or attempts to violate AS 39.90.100 is also liable for a civil fine of not more than \$10,000. The attorney general may enforce this subsection.

(c) A person who attempts to prevent another person from making a report or participating in a matter under AS 39.90.100(a) with intent to impede or prevent a public inquiry on the matter is liable for a civil fine of not more than \$10,000.

Sec. 39.90.130. DEFINITIONS. In AS 39.90.100 - 39.90.140

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

(2) "employer" or "public employer" includes the state, a public or quasi-public corporation or authority established by state law including the Alaska Railroad Corporation, the University of Alaska, and a political subdivision of the state including a

1 municipality, school district, and rural educational attendance area;

2 (3) "matter of public concern" means

3 (A) a violation of a state, federal, or municipal law,
4 regulation, or ordinance;

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

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

8 (D) a matter accepted for investigation by the office
9 of the ombudsman under AS 24.55.100 or 24.55.320;

0 (4) "public body" includes an officer or agency of

1 (A) the federal government;

2 (B) the state;

3 (C) a political subdivision of the state including

4 (i) a municipality;

5 (ii) a school district; and

6 (iii) a rural educational attendance area;

7 (D) a public or quasi-public corporation or authority
8 established by state law including the Alaska Railroad Corpora-
9 tion; and

0 (E) the University of Alaska.

1 Sec. 39.90.140. SHORT TITLE. AS 39.90.100 - 39.90.140 may be
2 cited as the Alaska Whistleblower Act.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HB 91

H. State Affairs	2/1/89
H. State Affairs	2/2/89



State of Alaska
ombudsman

Duncan C. Fowler

February 17, 1989

Representative Max Gruenberg
Representative Peter Goll
Co-Chair, House Judiciary Committee
Post Office Box V
Juneau, Alaska 99811-3100

Dear Representative:

Enclosed is a position paper on HB 91, the Whistle Blowers legislation. I will be in my Anchorage office the week of February 20th and not available to testify in support of this legislation. Please note the suggested improvements for the bill mentioned in my position paper.

For the record, you and the committee should know that this legislation is needed, but only for isolated instances of abuse. I have found over the years that, by far, the large majority of public employees and their supervisors are good public servants. They accept disagreements on issues as part of their jobs and few would ever consider retaliation as a response.

Please give me a call in Anchorage if you have any questions about my suggestions. I have asked Kim Elton of my staff to attend your hearing in case he could be of help. I believe this legislation will be important in helping to improve Alaska's government. It promises to protect the little guy or gal who might have courage to speak out against instances of waste, fraud or mismanagement.

Sincerely,

Duncan C. Fowler
Ombudsman

DCF:pjc
cc: Rep. Mike Davis, Vice Chair
Rep. Cliff Davidson
Rep. Johnny Ellis
✓ Rep. Terry Martin
Rep. Mike Miller

Reply to:

- P.O. Box 102636
Anchorage, AK 99510-2636
(907) 563-3673
(800) 478-2624
- P.O. Box WO
Juneau, AK 99811-3000
(907) 465-4970
(800) 478-4970
- P.O. Box 74358
Fairbanks, AK 99707
(907) 452-4001
(800) 478-3257



Position Paper
HB 91
Whistle Blowers Protection

The Office of the Ombudsman strongly supports the passage of HB 91 as a positive effort to improve the administration of Alaska's government. Some modifications are requested which would enhance the measure and provide better protections for Alaskans who seek to correct problems with our government.

The suggested improvements to the measure are:

- (1) Include complaints filed with the Office of the Ombudsman in the definition of "matters of public concern".
- (2) Extend Whistle Blower protection to those who provide testimony during investigations.
- (3) Set a standard for a presumption of retaliatory action for civil actions when detrimental incidents occur to whistle blowers or witnesses.
- (4) Consider protection of employees in the private sector under the act when they complain of improper government action which may not be in the best interests of their employer.

The Ombudsman's Interest

The Ombudsman Act requires that the confidentiality of the names of complainants and witnesses of those involved in an investigation "except insofar as disclosures may be necessary . . . to support recommendations" be maintained. The act also provides a maximum penalty of \$1000 for a person who "willfully hinders the lawful actions of the ombudsman". The Ombudsman Act does not provide protections to those citizens, including state employees, who may either complain in good faith or provide testimony regarding one of our investigations.

This is an important issue for the Office of the Ombudsman. Lack of such protections has caused many citizens to withdraw complaints when it became necessary for the ombudsman to release their names in order to "prove" information. Citizens have claimed to have not been hired for state jobs because of complaining to the ombudsman. Several have claimed to have lost housing and other benefits because they complained. I have heard stories of people who believe that if they complain to the ombudsman they will lose a state benefit. Few, if any of these citizens would dare testify before the legislature in support of this measure because of their perceived fear of retaliation.

Include Complaints to the Ombudsman

It is not unusual for my office to receive calls from potential complainants who first ask "Do you offer Whistle Blower protection?" And, more often than not, even after we explain our confidentiality provisions, the citizen will either just hang up or refuse to let the issue be further pursued.

Lack of such protection generates anonymous letters with allegations describing various degrees of abuses of the public trust being sent to my office. Such letters cause a dilemma. Some letters are clearly "poison pen" letters and intended to be revengeful acts. Others are honest attempts to cause an investigation of an action the author perceives as improper. In these cases, the author is clearly afraid of retaliation either by an agency or a supervisor.

As a matter of policy, my office does not pursue anonymous complaints. On rare occasions, I do consider an ombudsman initiated complaint (as allowed by the Ombudsman Act) if solid evidence is offered and there is opportunity for third party verification of the allegation. I believe the passage of a measure offering adequate Whistle Blowers protection would reduce the number of anonymous complaints received by the Office of the Ombudsman.

I was involved with a situation when a employee was fired from a position with a public agency for complaining to the ombudsman about fraud and mismanagement. The agency, after becoming aware of the complaint, conducted an internal investigation and created a reason for dismissing our complainant. As a result, our complainant, who was a specialized professional and head of a household, was unemployed for an 2 1/2 year period. It appeared many potential employers wondered why the termination occurred and would not offer the person a position. The family was forced to seek help from Public Assistance. After filing a civil suit and suffering through prolonged negotiations, a settlement was reached.

I believe had HB 91 been enacted at that time, the public employer may not have terminated that employee. The Alaskan and family involved paid dearly for doing just what a responsible citizen should do. Make a legitimate complaint to this office about governmental fraud. This person is not able to present testimony to you about the situation. They believe their settlement prevents such action.

Witness Protection

Over the past several months, my office has received a number of complaints alleging misconduct on the part of office supervisors. It has been necessary to depose several of the staff in those offices. As often as not, clerk's or other staff in lower pay ranges are deposed. They often have witnessed -- or have information on -- incidents of misconduct. I have had them report overhearing conversations where the supervisor being investigated believed the "clerk" was my complainant. The supervisors made comments they were going to "get" them for causing the "trouble".

In these complaints I issue subpoenas to provide witnesses a "legal excuse" for providing sworn testimony to my investigators. Despite the state's requirement for the witness to "tell the truth" there is little real protection for them when the witness returns to the work-place. There is an equity problem when a complaint may be found to be technically "unsupported" but later detrimental personnel actions are taken against employees who have provided what may have been embarrassing testimony involving their supervisor.

Presumption of Retaliation

This is a policy the Alaska Legislature embraced last year in the adoption of the act creating the Long Term Care Ombudsman (2ch 108 SLA 1988). This act covers not only state-operated long term care facilities but private facilities and landlords and contractors who may take retaliatory actions against someone making a complaint. AS 44.21.237 provides if a person makes a good faith complaint and suffers harm as a result, there is a rebuttable presumption in a civil action that the detrimental action was retaliatory if it occurs within 90 days of making the complaint.

The Federal Civil Service Reform Act of 1979 which created the Whistle Blower protections for federal employees does not have the presumption of retaliation but offers a different device to protect the employee. (The act does not cover citizen witnesses.) It allows the Office of Special Counsel (OSC) to initiate action to stop or postpone detrimental personnel actions which may be retaliatory. It also prevents disciplinary actions being taken during the course of an investigation.

The concept of a presumption of retaliation is a sound one which can offer additional safeguards for both witnesses and complainants. It should be noted, however, that complaints alleging misconduct are often our most complex. As a result, they take more time on the part of ombudsman staff to insure fairness for all concerned. In this instance, it would be nearly impossible that we could complete our investigation and get a response from both the individual and agency within 90 days from the time a complaint was filed. Language extending the period of presumptive retaliation to 90 days after the investigative agencies action was complete might be most appropriate.

Inclusion of the Private Sector

The Long Term Care Ombudsman legislation included private sector employers as persons who could not take retaliatory actions against those who make good faith complaints to that office. The concept is not dissimilar from AS 18.60.089 which provides employees, both public and private, protection from termination or other discriminatory actions by employers because of reported safety violations. There is reason to include similar provisions in HB 91.

Protections should be considered for employees in the private sector who complain about improper actions or inaction on the part of governmental agencies. Private sector employees have complained to the Office of the Ombudsman about improper governmental activities which may be actually be benefiting their employer. They have expressed concern that their employer not become aware of the fact they were the complainant as they were afraid for their jobs.

A hypothetical example might be an employee of a resource firm who has noticed state inspectors continually ignore certain waste disposal requirements. By ignoring the disposal requirements, the firm saves tens of thousands of dollars annually. Suppose also that the inspectors are good friends with the firm's managers. Without some assurance of "protection" the concerned employee may well choose to not report the violations until they find another job. In the mean time, environmental damage could be occurring.

Other Considerations

I would suggest adding a section which would title this act as "The Whistle Blowers Act". The terminology is well accepted and by formally naming the section it would allow easy reference and access to law.



NEA-ALASKA

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FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

February 16, 1989

To: Representatives Goll & Gruenberg, Co-Chairs
Members, House Judiciary Committee

Re: CS for House Bill No. 91; "An Act relating to
protection for certain public employees and certain
other persons who report matters of public concern."

NEA-Alaska supports and encourages your favorable
consideration of CS for HB 91.

This bill provides that school district and other public
employees can act in good faith on matters of public concern
and not fear reprisals by their employer as a result of such
conduct.

The unfortunate reality is that there have been occasions
where their employment security has been at risk for school
district employees when they have spoken out on such
matters.

Passage of this bill will provide a level of security which
will enable all public employees to be more productive and
confident in their employment responsibilities.

Thank you for your consideration of our position. We
encourage your support.

Respectfully submitted,

Bob Manners
Executive secretary

cc: Rep. Dave Donley, Chair, House Labor/Commerce Committee

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811


(907) 465-3892



February 6, 1989

M E M O R A N D U M

To: Representatives Peter Goll and Max Gruenberg
Co-Chairs - House Judiciary Committee

From: Representative Dave Donley, Chair 
House Labor and Commerce Committee

Re: Request for hearing - HB 91

I am writing to request a hearing before the House Judiciary Committee on HB 91, relating to protection of public employees who report matters of public concern ("whistleblowers"), at your earliest convenience.

Attached is a referral file for your information. Please contact Colette Jensen or Ginger Baim at 4954 if you have any questions or need additional information.

Enclosure

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892

February 6, 1989

MEMORANDUM

To: Members, House Judiciary Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: HB 91 - "Whistleblower" protection

The House State Affairs CS for HB 91, relating to protection of public employees who disclose certain public information, is currently before the House Judiciary Committee.

Modeled after other states "whistleblower" laws, HB 91 was introduced by the House Labor and Commerce Committee to provide protection for public employees who disclose information of public concern before a public body. A similar measure has been before this Legislative body for each of the last six years. Unfortunately, none has yet passed into law.

The House State Affairs CS adopted three amendments (see attached) to the bill as filed that:

- Specifically include school districts and REAA's under the definition of "public employer"
- Broaden the definition of "public body"
- Provide that the protections under the act do not apply unless the employee has reasonable cause to believe the information reported is a matter of public concern and that they report the information in good faith.

HB 91 is a much needed bill that will assure that the Legislature and other public bodies receive critical public information. I urge your support.

A M E N D M E N T #1

OFFERED IN THE STATE AFFAIRS COMMITTEE

BY DONLEY

TO: HB 91

Page 3, line 4, after "state":

Insert "including a school district or rural educational attendance
area"

A M E N D M E N T #2

OFFERED IN THE STATE AFFAIRS COMMITTEE

BY DONLEY

TO: HB 91

Page 3, lines 11 - 12:

Delete "a federal, state, or municipal officer or agency"

Insert "an officer or agency of the federal government, the state, a public or quasi-public corporation or authority established by state law including the Alaska Railroad Corporation, the University of Alaska, a political subdivision of the state including a school district or rural educational attendance area, or a municipality"

A M E N D M E N T # 3

OFFERED IN THE HOUSE

BY DONLEY

TO: HB 91

Page 2, line 2:

Delete "39.90.120"

Insert "39.90.130"

Page 2, line 15:

Delete "39.90.120"

Insert "39.90.130"

Page 2, after line 15:

Insert a new section to read:

"Sec. 39.90.110. LIMITATION TO PROTECTIONS. An employee or other person is not entitled to the protections under AS 39.90.100 - 39.90.130 unless the employee or other person

(1) has reasonable cause to believe that the information reported is or is about to become a matter of public concern; and

(2) reports the information in good faith."

Page 2, line 16:

Delete "Sec. 39.90.110"

Insert "Sec. 39.90.120"

Page 2, line 20:

Delete "39.90.120"

Insert "39.90.130"

Page 2, line 26:

Delete "39.90.120" in two places

Insert "39.90.130" in both places



NEA-ALASKA

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(907) 586-3090

FAIRBANKS REGIONAL OFFICE

211N CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

January 31, 1989

To: Rep. Red Boucher, Chair
House State Affairs Committee

Re: House Bill No. 91; "An Act relating to protection
for certain public employees and certain other
persons who report matters of public concern."

NEA-Alaska supports and encourages passage of HB 91.

We also request that the Committee amend the bill to specifically include employees of school districts and REAAs under its provisions. To do so would require expanding the definitions under (2) and (4) on page 3. It may also be necessary to incorporate the provisions of the "Persons Protected" and "Relief And Penalties" sections from pages 1 and 2 respectively into Title 14 of the Alaska Statutes.

As a matter of fundamental equity, school district employees should be afforded the same rights and protections for their responsible actions as are other public employees.

Thank you for your consideration of our request and position.

Respectfully submitted,

Bob Manners
Executive Secretary

cc: Rep. Dave Donley, Chair, House Labor Commerce Committee

m31jan3

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



January 16, 1989

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Proposed Committee Legislation - "Whistleblowers"

The attached bill draft (Work Order #6-0327A - Cramer) is similar to legislation that has been before this body every year since 1984. Last year's version, HB 168, was introduced by the House Labor and Commerce Committee. It passed the House 38 to one and died on adjournment in the Senate Labor and Commerce Committee.

The draft bill applies only to public employees and prohibits employers from discharging, threatening, or otherwise discriminating against an employee in terms of compensation, terms, conditions, location or privileges of employment because the employee reports or is about to report to a public body a matter of public concern or because the employee is requested to testify or participate in a court action or an official inquiry by a public body.

The bill further prohibits employers from disqualifying a public employee or other person who reports a matter of public concern from eligibility to bid on public contracts, receive land under a law of the state or municipal ordinance or any other right, benefit or privilege they are entitled to.

The bill includes restrictions on this protection under certain circumstances, listed in AS 39.90.100(c). Violation of this law is punishable by a civil fine of not more than \$10,000. In addition, a person who alleges a violation of this law may bring a civil action.

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892

January 16, 1989

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Proposed Committee Legislation - "Whistleblowers"

The attached bill draft (Work Order #6-0327A - Cramer) is similar to legislation that has been before this body every year since 1984. Last year's version, HB 168, was introduced by the House Labor and Commerce Committee. It passed the House 38 to one and died on adjournment in the Senate Labor and Commerce Committee.

The draft bill applies only to public employees and prohibits employers from discharging, threatening, or otherwise discriminating against an employee in terms of compensation, terms, conditions, location or privileges of employment because the employee reports or is about to report to a public body a matter of public concern or because the employee is requested to testify or participate in a court action or an official inquiry by a public body.

The bill further prohibits employers from disqualifying a public employee or other person who reports a matter of public concern from eligibility to bid on public contracts, receive land under a law of the state or municipal ordinance or any other right, benefit or privilege they are entitled to.

The bill includes restrictions on this protection under certain circumstances, listed in AS 39.90.100(c). Violation of this law is punishable by a civil fine of not more than \$10,000. In addition, a person who alleges a violation of this law may bring a civil action.



State of Alaska
Ombudsman

Duncan C. Fowler

February 17, 1989

Representative Max Gruenberg
Representative Peter Goll
Co-Chair, House Judiciary Committee
Post Office Box V
Juneau, Alaska 99811-3100

Dear Representative:

Enclosed is a position paper on HB 91, the Whistle Blowers legislation. I will be in my Anchorage office the week of February 20th and not available to testify in support of this legislation. Please note the suggested improvements for the bill mentioned in my position paper.

For the record, you and the committee should know that this legislation is needed, but only for isolated instances of abuse. I have found over the years that, by far, the large majority of public employees and their supervisors are good public servants. They accept disagreements on issues as part of their jobs and few would ever consider retaliation as a response.

Please give me a call in Anchorage if you have any questions about my suggestions. I have asked Kim Elton of my staff to attend your hearing in case he could be of help. I believe this legislation will be important in helping to improve Alaska's government. It promises to protect the little guy or gal who might have courage to speak out against instances of waste, fraud or mismanagement.

Sincerely,

Duncan C. Fowler
Ombudsman

DCF:pjc

cc: Rep. Mike Davis, Vice Chair
Rep. Cliff Davidson
Rep. Johnny Ellis
Rep. Terry Martin
Rep. Mike Miller

Reply to:

- P.O. Box 102636
Anchorage, AK 99510-2636
(907) 563-3673
(800) 478-2624
- P.O. Box W0
Juneau, AK 99811-3000
(907) 465-4970
(800) 478-4970
- P.O. Box 74358
Fairbanks, AK 99707
(907) 452-4001
(800) 478-3257



Position Paper
HB 91
Whistle Blowers Protection

The Office of the Ombudsman strongly supports the passage of HB 91 as a positive effort to improve the administration of Alaska's government. Some modifications are requested which would enhance the measure and provide better protections for Alaskans who seek to correct problems with our government.

The suggested improvements to the measure are:

- (1) Include complaints filed with the Office of the Ombudsman in the definition of "matters of public concern".
- (2) Extend Whistle Blower protection to those who provide testimony during investigations.
- (3) Set a standard for a presumption of retaliatory action for civil actions when detrimental incidents occur to whistle blowers or witnesses.
- (4) Consider protection of employees in the private sector under the act when they complain of improper governmental action which may not be in the best interests of their employer.

The Ombudsman's Interest

The Ombudsman Act requires that the confidentiality of the names of complainants and witnesses of those involved in an investigation "except insofar as disclosures may be necessary . . . to support recommendations" be maintained. The act also provides a maximum penalty of \$1000 for a person who "willfully hinders the lawful actions of the ombudsman". The Ombudsman Act does not provide protections to those citizens, including state employees, who may either complain in good faith or provide testimony regarding one of our investigations.

This is an important issue for the Office of the Ombudsman. Lack of such protections has caused many citizens to withdraw complaints when it became necessary for the ombudsman to release their names in order to "prove" information. Citizens have claimed to have not been hired for state jobs because of complaining to the ombudsman. Several have claimed to have lost housing and other benefits because they complained. I have heard stories of people who believe that if they complain to the ombudsman they will lose a state benefit. Few, if any of these citizens would dare testify before the legislature in support of this measure because of their perceived fear of retaliation.

Include Complaints to the Ombudsman

It is not unusual for my office to receive calls from potential complainants who first ask "Do you offer Whistle Blower protection?" And, more often than not, even after we explain our confidentiality provisions, the citizen will either just hang up or refuse to let the issue be further pursued.

Lack of such protection generates anonymous letters with allegations describing various degrees of abuses of the public trust being sent to my office. Such letters cause a dilemma. Some letters are clearly "poison pen" letters and intended to be revengeful acts. Others are honest attempts to cause an investigation of an action the author perceives as improper. In these cases, the author is clearly afraid of retaliation either by an agency or a supervisor.

As a matter of policy, my office does not pursue anonymous complaints. On rare occasions, I do consider an ombudsman initiated complaint (as allowed by the Ombudsman Act) if solid evidence is offered and there is opportunity for third party verification of the allegation. I believe the passage of a measure offering adequate Whistle Blowers protection would reduce the number of anonymous complaints received by the Office of the Ombudsman.

I was involved with a situation when an employee was fired from a position with a public agency for complaining to the ombudsman about fraud and mismanagement. The agency, after becoming aware of the complaint, conducted an internal investigation and created a reason for dismissing our complainant. As a result, our complainant, who was a specialized professional and head of a household, was unemployed for an 2 1/2 year period. It appeared many potential employers wondered why the termination occurred and would not offer the person a position. The family was forced to seek help from Public Assistance. After filing a civil suit and suffering through prolonged negotiations, a settlement was reached.

I believe had HB 91 been enacted at that time, the public employer may not have terminated that employee. The Alaskan and family involved paid dearly for doing just what a responsible citizen should do. Make a legitimate complaint to this office about governmental fraud. This person is not able to present testimony to you about the situation. They believe their settlement prevents such action.

Witness Protection

Over the past several months, my office has received a number of complaints alleging misconduct on the part of office supervisors. It has been necessary to depose several of the staff in those offices. As often as not, clerk's or other staff in lower pay ranges are deposed. They often have witnessed -- or have information on -- incidents of misconduct. I have had them report overhearing conversations where the supervisor being investigated believed the "clerk" was my complainant. The supervisors made comments they were going to "get" them for causing the "trouble".

In these complaints I issue subpoenas to provide witnesses a "legal excuse" for providing sworn testimony to my investigators. Despite the state's requirement for the witness to "tell the truth" there is little real protection for them when the witness returns to the work-place. There is an equity problem when a complaint may be found to be technically "unsupported" but later detrimental personnel actions are taken against employees who have provided what may have been embarrassing testimony involving their supervisor.

Presumption of Retaliation

This is a policy the Alaska Legislature embraced last year in the adoption of the act creating the Long Term Care Ombudsman (2ch 108 SLA 1988). This act covers not only state-operated long term care facilities but private facilities and landlords and contractors who may take retaliatory actions against someone making a complaint. AS 44.21.237 provides if a person makes a good faith complaint and suffers harm as a result, there is a rebuttable presumption in a civil action that the detrimental action was retaliatory if it occurs within 90 days of making the complaint.

The Federal Civil Service Reform Act of 1979 which created the Whistle Blower protections for federal employees does not have the presumption of retaliation but offers a different device to protect the employee. (The act does not cover citizen witnesses.) It allows the Office of Special Counsel (OSC) to initiate action to stop or postpone detrimental personnel actions which may be retaliatory. It also prevents disciplinary actions being taken during the course of an investigation.

The concept of a presumption of retaliation is a sound one which can offer additional safeguards for both witnesses and complainants. It should be noted, however, that complaints alleging misconduct are often our most complex. As a result, they take more time on the part of ombudsman staff to insure fairness for all concerned. In this instance, it would be nearly impossible that we could complete our investigation and get a response from both the individual and agency within 90 days from the time a complaint was filed. Language extending the period of presumptive retaliation to 90 days after the investigative agencies action was complete might be most appropriate.

Inclusion of the Private Sector

The Long Term Care Ombudsman legislation included private sector employers as persons who could not take retaliatory actions against those who make good faith complaints to that office. The concept is not dissimilar from AS 18.60.089 which provides employees, both public and private, protection from termination or other discriminatory actions by employers because of reported safety violations. There is reason to include similar provisions in HB 91.

Protections should be considered for employees in the private sector who complain about improper actions or inaction on the part of governmental agencies. Private sector employees have complained to the Office of the Ombudsman about improper governmental activities which may be actually be benefiting their employer. They have expressed concern that their employer not become aware of the fact they were the complainant as they were afraid for their jobs.

A hypothetical example might be an employee of a resource firm who has noticed state inspectors continually ignore certain waste disposal requirements. By ignoring the disposal requirements, the firm saves tens of thousands of dollars annually. Suppose also that the inspectors are good friends with the firm's managers. Without some assurance of "protection" the concerned employee may well choose to not report the violations until they find another job. In the mean time, environmental damage could be occurring.

Other Considerations

I would suggest adding a section which would title this act as "The Whistle Blowers Act". The terminology is well accepted and by formally naming the section it would allow easy reference and access to law.



Matanuska-Susitna Borough

BOX 1608, PALMER, ALASKA 99645 • PHONE 745-9689

BOROUGH MANAGER

February 16, 1989

To: Judiciary Committee
From: Lee Hall, Director of Human Resources
Subject: House Bill 91

I wish to express a question or concern re. HB 91. Briefly, the definition of "matter of public concern" concerns me.

Gross mismanagement, substantial waste of funds, clear abuse of authority, etc. are very, very broad terms that a mal-contented employee could easily use to hide behind in order to gripe, complain, accuse, or otherwise express dissatisfaction with impunity. The bill needs modification or clarification.



Alaska Foster Parents Association

P. O. BOX 140651 • ANCHORAGE, ALASKA 99508



POSITION PAPER HB 91 PROTECTION OF "WHISTLE BLOWERS"

The Alaska Foster Parent Association supports this legislation in its original form and intent.

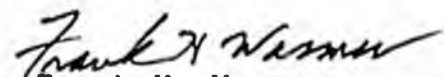
While we understand the concern of various agencies that this might lead to frivolous reports, we have a good deal of confidence in the legislature and other public bodies to consider the source of such reports and the possible motives of the person making the report.

If supervisors and administrators are acting with integrity, they have little cause for concern. If an employee makes a report in the hopes to shield themselves from termination that is appropriate, and the supervisor has complied with counseling and documentation procedures, the termination can proceed. This legislation would not interfere with that process. If, however, a supervisor attempts to dismiss an employee without just cause simply because they provided information of public interest, then this measure would provide some protection to the employee who acted in good faith.

We urge that this legislation be passed in a form that offers as few impediments to free flow of information of interest to the public as possible.

Thank you for your efforts in support of the public and of public employees.

Sincerely,


Frank H. Wasmer
Vice President



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-586-2345

AEL TESTIMONY - HB 91 "WHISTLE-BLOWERS" BILL

As a group representing the public interest, the Alaska Environmental Lobby always encourages responsive and responsible government. Because it promotes the free flow of public information through protection of individuals "blowing the whistle" on activity potentially harmful to the public good, we give our whole-hearted support to House Bill 91.

Open government is good government. The uninhibited and unafraid voice of public employees in reporting information of public concern is essential to promote public awareness. The voice of the citizens, especially public employees, must not be stifled in any way.

Karen Wood
Volunteer
Alaska Environmental Lobby



An Affiliate of the American Civil Liberties Union

P.O. Box 201844
Anchorage, AK 99520-1844

Office Location:
310 K Street
Anchorage, Alaska
(907) 278-2258

James Bohanbach
Executive Director

Date: February 23, 1989
To: Labor and Commerce Committee
From: Jamie Gollenbach
Re: CS for HB 91

The Alaska Civil Liberties Union, a private membership organization acting to protect and promote the Bill of Rights, strongly supports House Bill 91. The ability of a public employee to report to a public body a matter of public concern without fear of retribution is a policy that promotes the responsibility of state agencies, and it extends the spirit of the First Amendment's protection of free speech to employees acting in the public interest.

Of particular concern to the AkCLU is the possibility under current law that an employee required to report to a public body may be terminated or reprimanded for compelled testimony. A public employee in this situation is forced to either comply with the law and face the loss of a job or other sanctions from employers, or to violate the law and withhold information from courts, the legislature, or other public bodies. The protection of these employees is critical for fairness in the workplace and for the accuracy of testimony.

The AkCLU would oppose amendments to the bill that weaken the protections for employees in the current draft. The amendments proposed by the Department of Administration appear to water down the bill, and would add language potentially confusing to both employers and employees. For this reason, we oppose the Department of Administration's proposal.

At least nineteen states have some form of protection for public employees in this area. As currently drafted, HB 91 would facilitate the honest and responsible operation of state government by encouraging reports of questionable activities, and would contribute to fair dealing and free speech for public employees.

The AkCLU would like to thank the Labor and Commerce Committee for their consideration in this matter. We would be happy to answer questions or to provide further information on this topic.



Alaska Foster Parents Association

P. O. BOX 140651 • ANCHORAGE, ALASKA 99508



February 22, 1989

Alaska State Legislature
House Judiciary Committee
Juneau, Alaska 99811

As an officer of the Alaska Foster Parent Association, I have had quite a lot of experience in situations where the law such as HB 91 would provide information to the legislature and others. I have often had state employees relate situations which would be of concern to the members of this legislature but who were afraid to come forward. They were in fear of reprisals against their jobs and they have families to feed and bills to pay like the rest of us.

I have little understanding why anyone honest would oppose this legislation. If a supervisor or administrator is acting appropriately and with integrity, all the reports in the world cannot change the fact that they are doing good works. On the other hand, if they are deceitful, dishonest and abusing their authority, they would have a great deal to fear were this bill to become law.

As I see it, this bill attacks a problem in two ways. One is in the protection of the employee who comes forward with information that will result in better government. The other is serving notice that "gag orders" and inappropriate control of state employees will not be tolerated. Indeed, such activities could be quite costly.

I fully support this measure and feel strongly that it will have a positive impact on state government. I hope that it will pass into law without modification that reduces its effect.

Sincerely,


Frank H. Wasmer
Vice President

Alaska State Legislature



House of Representatives House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

February 16, 1989

MEMORANDUM

To: House Judiciary Members

From: Rep. Max Gruenberg *MG*
Co-Chair

Re: HB 91, Whistleblowers

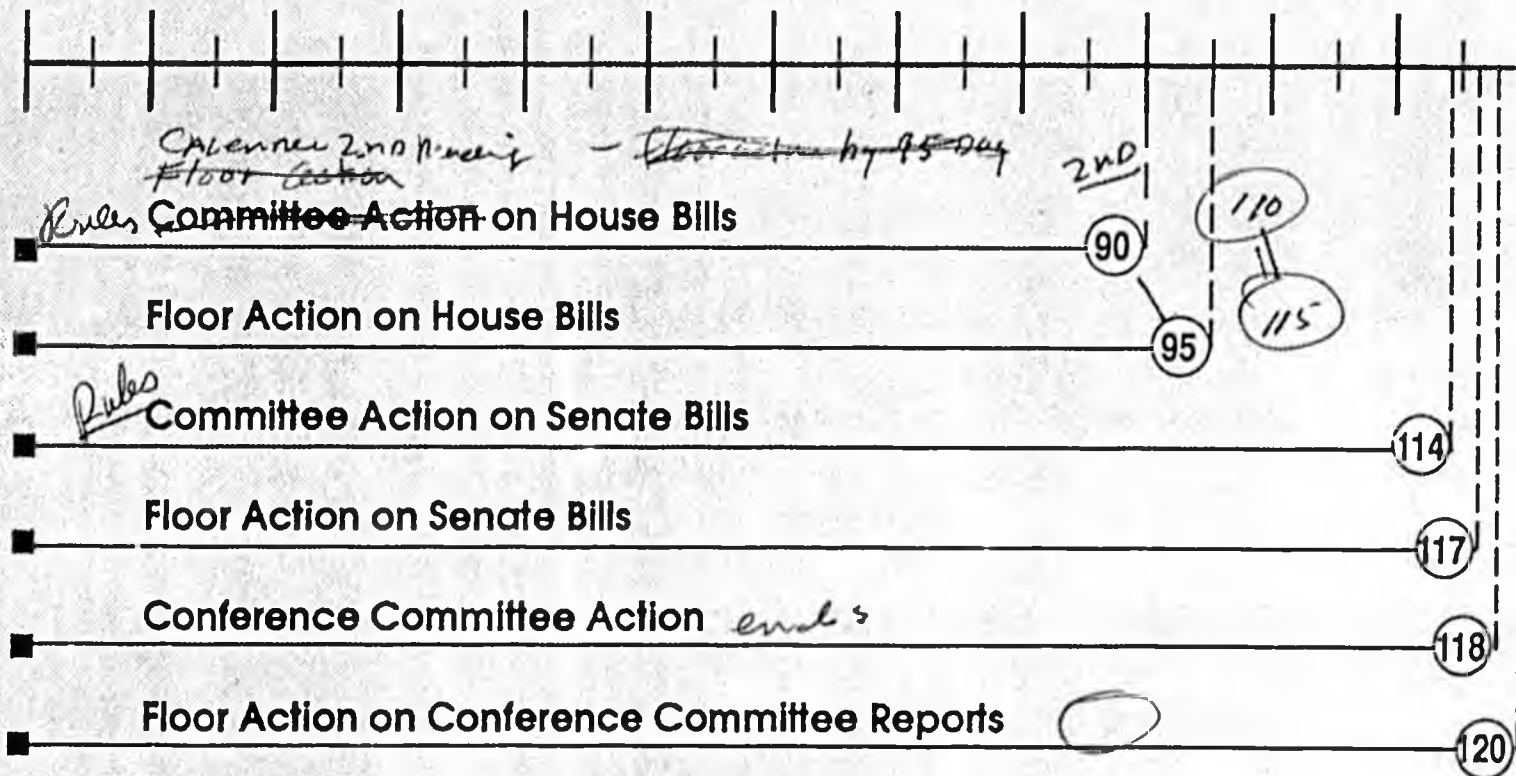
Lee Hall, Personnel Director for the Mat Su Borough, phoned me this morning and expressed the following comments to me, which I am transmitting to you:

Page 3, line 16, "gross mismanagement, a substantial waste of funds, or a clear abuse of authority" is too broad and will shield malcontents, whose major effect is simply to stir up problems without making valid public criticisms. He suggested narrowing the language.

House Actions Required on Bills Under HCR1*

Legislative Days

0 5 10 15 20 25 30 35 40 45 50 55 60 65 70 75 80 85 90 95 100 105 110 115 120



* Pursuant to Article II; Section 8 of the Alaska Constitution: "The legislature shall adopt as part of the uniform rules of procedure deadlines for scheduling session work not inconsistent with provisions controlling the length of the session."

1st/2nd/3rd/4th/5th/6th/7th/8th/9th/10th/11th/12th/13th/14th/15th/16th/17th/18th/19th/20th/21st/22nd/23rd/24th/25th/26th/27th/28th/29th/30th/31st/32nd/33rd/34th/35th/36th/37th/38th/39th/40th/41st/42nd/43rd/44th/45th/46th/47th/48th/49th/50th/51st/52nd/53rd/54th/55th/56th/57th/58th/59th/60th/61st/62nd/63rd/64th/65th/66th/67th/68th/69th/70th/71st/72nd/73rd/74th/75th/76th/77th/78th/79th/80th/81st/82nd/83rd/84th/85th/86th/87th/88th/89th/90th/91st/92nd/93rd/94th/95th/96th/97th/98th/99th/100th/101st/102nd/103rd/104th/105th/106th/107th/108th/109th/110th/111th/112th/113th/114th/115th/116th/117th/118th/119th/120th

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 6, 1989

FURTHER REFERRALS:

Date of Committee Action: 3/13/89

The JUDICIARY Committee recommends that:

HOUSE BILL NO. 91

"An Act relating to protection for certain public employees and certain other persons who report matters of public concern."

be replaced with CS HB 91 (Amended) the same title
 a new title

have attached amendment(s)

- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact
- zero fiscal note
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published: _____
- zero fiscal notes(s) published: _____

SIGNING DO PASS:

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

Mr. Schunberg
Mr. Gilman
Chf. Darden
Mike Miller
Terry Martin
Pete Jace
W. B. ...

Mr. Schunberg
Pete Jace
 Chairman's signature

2 Amendments to CS HB 91 (3A)
by Gronberg

I

p 1 l 19

Strike " is requested by a public body to"
Strike "participate" ; insert "participates"

Comments:

The same protections should apply
whether or not the employee technically
" is requested to participate " in the hearing
or participates voluntarily.

II

p 1 l 21 strike "that" ; insert "a"

Comment: An employee should be
protected against retaliation by his
employer even if he testified before
another public body.

Original sponsor: Labor and Commerce
Committee

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 91 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to protection for certain public
7 employees and certain other persons who report or
8 participate in a proceeding connected with a matter
9 of public concern."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 39.90 is amended by adding new sections to read:

12 ARTICLE 2. PROTECTION FOR WHISTLEBLOWERS.

13 Sec. 39.90.100. PERSONS PROTECTED. (a) A public employer may
14 not discharge, threaten, or otherwise discriminate against an employee
15 regarding the employee's compensation, terms, conditions, location, or
16 privileges of employment because

17 (1) the employee, or a person acting on behalf of the
18 employee, reports to a public body or is about to report to a public
19 body a matter of public concern; or

20 (2) the employee participates in a court action, an inves-
21 tigation, a hearing, or an inquiry held by a public body on a matter
22 of public concern.

23 (b) A public employer may not disqualify a public employee or
24 other person who reports a matter of public concern or participates in
25 a proceeding connected with a matter of public concern before a public
26 body or court, because of the report or participation, from eligibili-
27 ty to

28 (1) bid on contracts with the public employer;

29 (2) receive land under a law of the state or an ordinance

1 of the municipality; or

2 (3) receive another right, privilege, or benefit.

3 (c) The provisions of AS 39.90.100 - 39.90.140 do not

4 (1) require an employer to compensate an employee for
5 participation in a court action or in an investigation, hearing, or
6 inquiry by a public body;

7 (2) prohibit an employer from compensating an employee for
8 participation in a court action or in an investigation, hearing, or
9 inquiry by a public body;

10 (3) authorize the disclosure of information that is legally
11 required to be kept confidential; or

12 (4) diminish or impair the rights of an employee under a
13 collective bargaining agreement.

14 (d) An employer shall post notices and use other appropriate
15 means to inform employees of their protections and obligations under
16 AS 39.90.100 - 39.90.140.

17 Sec. 39.90.110. LIMITATION TO PROTECTIONS. (a) An employee or
18 other person is not entitled to the protections under AS 39.90.100 -
19 39.90.140 unless the employee or other person

20 (1) reasonably believes that the information reported is or
21 is about to become a matter of public concern; and

22 (2) reports the information in good faith.

23 (b) An employee or other person is entitled to the protections
24 under AS 39.90.100 - 39.90.140 for reporting a matter of public con-
25 cern or participating in a proceeding about a matter of public concern
26 only if the matter of public concern

27 (1) is not the result of action or inaction by the employee
28 or person seeking protection; or

29 (2) is the result of action or inaction by the employee or

1 person seeking protection but was required by the employer.

2 (c) As part of its written personnel policy, a public employer
3 may require that, before an employee initiates a report on a matter of
4 public concern under AS 39.90.100, the employee shall submit a written
5 report concerning the matter to the employer. However, the employee
6 is not required to submit a report if the employee

7 (1) reasonably believes that reports to the employer will
8 not result in prompt action to remedy the matter of public concern;

9 (2) believes with reasonable certainty that the activity,
10 policy, or practice is already known to one or more supervisors;

11 (3) reasonably believes that an emergency is involved; or

12 (4) reasonably fears reprisal or discrimination as a result
13 of disclosure.

14 Sec. 39.90.120. RELIEF AND PENALTIES. (a) A person who alleges
15 a violation of AS 39.90.100 may bring a civil action and the court may
16 grant appropriate relief, including punitive damages.

17 (b) A person who violates or attempts to violate AS 39.90.100 is
18 also liable for a civil fine of not more than \$10,000. The attorney
19 general may enforce this subsection.

20 (c) A person who attempts to prevent another person from making
21 a report or participating in a matter under AS 39.90.100(a) with
22 intent to impede or prevent a public inquiry on the matter is liable
23 for a civil fine of not more than \$10,000.

24 Sec. 39.90.130. DEFINITIONS. In AS 39.90.100 - 39.90.140

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

28 (2) "employer" or "public employer" includes the state, a
29 public or quasi-public corporation or authority established by state

1 law including the Alaska Railroad Corporation, the University of
2 Alaska, and a political subdivision of the state including a munic-
3 ipality, school district, and rural educational attendance area;

4 (3) "matter of public concern" means

5 (A) a violation of a state, federal, or municipal law,
6 regulation, or ordinance;

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

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

10 (D) a matter accepted for investigation by the office
11 of the ombudsman under AS 24.55.100 or 24.55.320;

12 (4) "public body" includes an officer or agency of

13 (A) the federal government;

14 (B) the state;

15 (C) a political subdivision of the state including

16 (i) a municipality;

17 (ii) a school district; and

18 (iii) a rural educational attendance area;

19 (D) a public or quasi-public corporation or authority
20 established by state law including the Alaska Railroad Corpora-
21 tion; and

22 (E) the University of Alaska.

23 Sec. 39.90.140. SHORT TITLE. AS 39.90.100 - 39.90.140 may be
24 cited as the Alaska Whistleblower Act.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 91 (Judiciary)

Page 1, line 6:

Delete "public"

Page 1, line 13:

Delete "A public"

Insert "An"

Page 1, after line 22:

Insert a new subsection to read:

"(b) An employer may not disqualify an employee or other person who reports a matter of public concern or participates in a proceeding connected with a matter of public concern before a public body or court, because of the report or participation, from eligibility to

(1) bid on contracts with the employer; or

(2) receive another right, privilege, or benefit from an

employer or a public body."

Reletter the following subsections accordingly.

Page 1, line 28:

Delete all material.

Page 1, line 29:

Delete "(2)"

Page 2, line 1:

Delete "; or"

Insert "."

Page 2, line 2:

Delete all material.

Page 3, line 5:

Delete "or "public employee""

Page 3, line 7:

Delete "a public"

Insert "an"

Page 3, after line 7:

Insert a new paragraph to read:

"(2) "employer" includes a public employer and a private employer;"

Renumber the following paragraphs accordingly.

Page 3, line 3:

Delete ""employer" or"

Page 3, line 18, after "gross":

Insert "public"

Page 3, line 18, after "waste of":

Insert "public"

Page 3, line 19, after "abuse of":

Insert "public"

Page 4, line 10:

Delete "."

Insert ";

Page 4, after line 10:

Insert new paragraphs to read:

"(5) "other person" includes all members of the public;

(6) "private employer" means an employer other than a public employer who employs at least one other person in the state;

(7) "public employee" means an employee of a public employer."

A M E N D M E N T

OFFERED IN THE JUDICIARY COMMITTEE

TO: CSHB 91(Judiciary)

Page 2, line 17, following "PROTECTIONS.":

Insert "(a)"

Page 2, following line 22:

Insert a new subsection to read:

"(b) As part of its written personnel policy, a public employer may require that, before an employee reports a matter of public concern under AS 39.90.100, the employee shall submit a written report concerning the matter to the employer. However, the employer may not require the employee to submit a report if the employee

(1) believes that reports to the employer will not result in prompt action to remedy the matter of public concern;

(2) believes that the activity, policy, or practice is already known to one or more supervisors;

(3) believes that an emergency is involved; or

(4) fears physical harm as a result of disclosure."

A M E N D M E N T

OFFERED IN THE JUDICIARY COMMITTEE

TO: CSHB 91(Judiciary)

Page 2, line 21:

Delete "and"

Page 2, after line 21:

Insert "(2) has made an attempt to ascertain the accuracy of the information before reporting; and"

Page 2, line 22:

Delete "(2)"

Insert "(3)"

A M E N D M E N T

OFFERED IN THE JUDICIARY COMMITTEE

BY GRUENBERG 3

TO: CSHB 91(Judiciary)

Page 2, line 21:

Delete "and"

Page 2, after line 21:

Insert "(2) has made a reasonable attempt to ascertain the accuracy of the information before reporting; and"

Page 2, line 22:

Delete "(2)"

Insert "(3)"

A M E N D M E N T

OFFERED IN THE JUDICIARY COMMITTEE

BY GRUENBERG -77/

TO: CSHB 91(Judiciary)

Page 2, line 17, following "PROTECTIONS.":

Insert "(a)"

Page 2, following line 22:

Insert a new subsection to read:

"(b) As part of its written personnel policy, a public employer may require that, before an employee reports a matter of public concern under AS 39.90.100, the employee shall submit a written report concerning the matter to the employer. However, the employer may not require the employee to submit a report if the employee

(1) reasonably believes that reports to the employer will not result in prompt action to remedy the matter of public concern;

(2) knows with reasonable certainty that the activity, policy, or practice is already known to one or more supervisors;

(3) reasonably believes that an emergency is involved; or

(4) reasonably fears physical harm as a result of disclosure."

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 91 (Judiciary)

Page 2, line 25, after "relief.":

Insert "In the civil action there is a rebuttable presumption that the detrimental action was retaliatory if it is taken within 90 days after the complaint was made public or after the public body's decision was made, whichever is later."

*sent to
Hc, Hcl*

A M E N D M E N T

OFFERED IN THE JUDICIARY COMMITTEE

↓
BY GRUENBERG

TO: CSHB 91(Judiciary)

Page 2, line 3:

Delete "39.90.100 - 39.90.140"

Insert "39.90.100 - 39.90.200"

Page 2, line 16:

Delete "39.90.100 - 39.90.140"

Insert "39.90.100 - 39.90.200"

Page 2, lines 18 - 19:

Delete "39.90.100 - 39.90.140"

Insert "39.90.100 - 39.90.200"

Page 2, lines 26 - 27:

Delete "39.90.100 - 39.90.140"

Insert "39.90.100 - 39.90.200"

Page 3, after line 3:

Insert a new section to read:

"Sec. 39.90.130. RELATION TO COMMON LAW. The provisions of AS 39.90.100 - 39.90.200 are in addition to and not in place of the common law."

Page 3, line 4:

Delete "39.90.130"

Insert "39.90.190"

Delete "39.90.100 - 39.90.140"

Insert "39.90.100 - 39.90.200"

Page 4, line 11:

Delete "39.90.140"

Insert "39.90.200"

Delete "39.90.100 - 39.90.140"

Insert "39.90.100 - 39.90.200"

Dept of Administration #1

A M E N D M E N T

OFFERED IN THE STATE AFFAIRS COMMITTEE

TO: CSHB 91(SA)

Page 2, line 16, following "PROTECTIONS.":

Insert "(a)"

Page 2, line 20:

Delete "and"

Page 2, line 21, following "(2)":

Insert "has made a reasonable attempt to ascertain the accuracy of the information before reporting; and

(3)"

Page 2, following line 21:

Insert a new subsection to read:

"(b) As part of its written personnel policy, a public employer may require that, before an employee reports a matter of public concern under AS 39.90.100, the employee shall submit a written report concerning the matter to the employer. However, the employer may not require the employee to submit a report if the employee

(1) reasonably believes that reports to the employer will not result in prompt action to remedy the matter of public concern;

(2) knows with reasonable certainty that the activity,

policy, or practice is already known to one or more supervisors;

(3) reasonably believes that an emergency is involved; or

(4) reasonably fears physical harm as a result of disclosure."