

**HB**

**91**

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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January 31, 1989
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Draft 6-0327Aa
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Proposed Amendment
- Item 6: Amendment #1 offered by Rep. Donley  
Draft 6-0327Ac



*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. Otto *DKFO* Phone: 465-4430  
 Division: Personnel Date: 1-31-89

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

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 #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"

COVER PUBLIC CORP - UNIVERSITY,  
RAILROAD CORP. etc

CLARIFY: UNAS - QUAS, RESOLVED -  
ALREADY INCLUDED -

16 Sec. 39.51.110. EMPLOYER RIGHTS. (a) An employee or other Item  
17 person is not entitled to the protections under AS 39.51.100 - 39.51.-  
18 130 unless the employee or other person

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

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

23 (3) reports the information in good faith.

24 (b) As part of its written personnel policy, a public employer  
25 may require that, before an employee reports a matter of public con-  
26 cern under AS 39.51.100, the employee shall submit a written report  
27 concerning the matter to the employer. However, the employer may not  
28 require the employee to submit a report if the employee

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

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

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

5 (4) reasonably fears physical harm as a result of disclo-  
6 sure.

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

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  
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### FAIRBANKS REGIONAL OFFICE

2118 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



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.

HR 91

Dowley

L passed last yr - based on case in  
Fair Labor - Falsity Records  
Re: Asbestos - 38%

Two proposed amendments:  
Clarity to school Dist.

DAVID OTTO

support - but concern - perception of  
mismanagement -> given opp to  
respond (management). need  
Balance for employment rights -  
Report given to management  
About problem -

offer friendly amendment  
"Employer Rights Clause"

MEDWYN

Employer Rights section -

Dowley

Television - JUD -> Artistic concept

WORK OUT LANGUAGE IN JUD ->

Copy of Amendment

↳

1) Line 19

1) not protected, REASONABLE CAUSE  
"UNLESS PUBLIC CONCERN"

UNLESS ORIGINAL QUESTION WAS  
REASONABLE. +

2) wouldn't be able to answer  
question - speculation?

What is a REASONABLE ALLEGATION?

UNLESS CLAUSE - PUC

3. Part B

Look CPR requirements ON S.  
copy written Report -

- 1)
  - 2) →
  - 3)
  - 4)
- } classification

→ clause - specifying restrictions -  
have to be very clear  
there.

1) → there - person with employer -  
not employee

2) stopping info becoming before  
US

Purpose: inhibit info coming  
before the legislature

3) People responsible to be

Q: what what has to

be inhibited - asking for

"best guess" -

# Hold over

- REAPD CONSENT - Redist
- CAUSE LAWSUIT
- ~~REAPD~~ political motivated Redist
- PLANS announced 1 yr before election  
    { which cannot be 1 yr in a  
    { public Dist FOR 1 yr. -
- } lock people into dist lines

What if you had to 1 yr earlier

- 1) people know Dist they're in
- 2) opposed to relocate
- 3) people know that outside,  
    DUMB SCREWY LINES

⊗ e.g. RURAL AREA.

→ My going, people opp - Belong  
politicals in this process -

now

→ Live down 1 yr before  
decision

Filing

→ 4 months to relocate

History

know  
Feb 83?

1981 - Dist know Dist -  
happens both sides

1965 Residents require. Act pt of

\* Reference

Issue of moving - Govt has  
reapp - 1950C is right

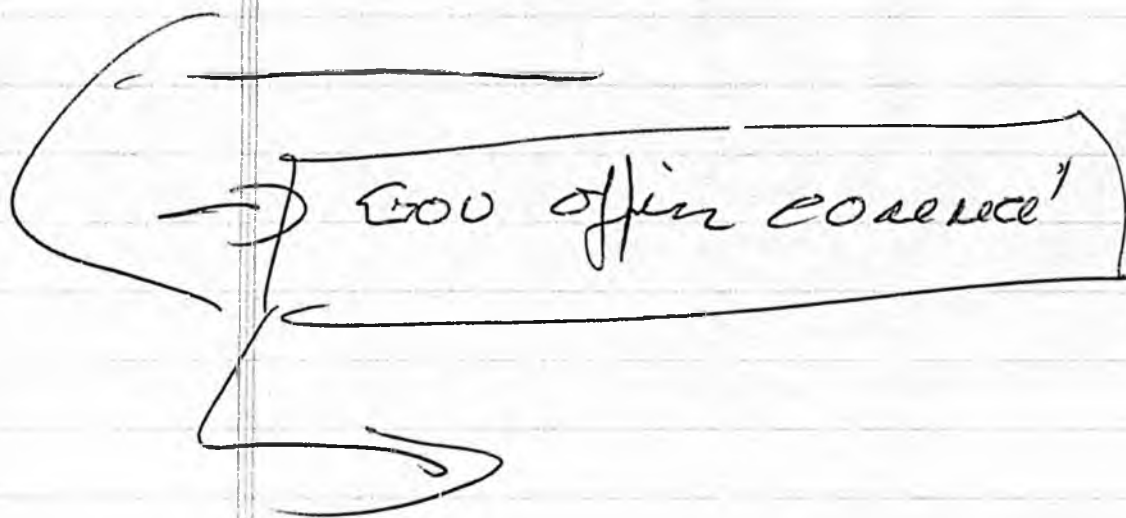
After - now someone

is located - now must  
be taken down

ISSUE IS WHOVE YOU - QUESTION OF  
WHEN YOU ARE TOLD WHOSE  
THOSE LINES ARE DRAWN -

→ by parents, speaker, or

politics -



LABOR AND COMMERCE COMMITTEE

This legislation would protect public employees who report a violation of a state, federal or municipal law, regulation, or ordinance; gross mismanagement; a clear abuse of authority; substantial waste of funds; or a danger to public health or safety by their employer to a state, federal, or municipal officer or agency.

It makes it a civil fine of up to \$10,000 to in any way persecute the employee.

At the request of the National Education Association Representative Donley is offering amendment #1 which would include employees of school districts in this protection.

Amendment #2, also by Donley, would expand the officer or agency which a public employee can go to with their concerns to include the AK Railroad Corporation, University of Alaska, political subdivisions, school district, and REAA.

I can't see anything wrong with either the bill or amendments.

Original sponsor: Labor and Commerce  
Committee

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 91 (State Affairs)

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 mat-  
8 ters 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 - 39.90.130 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 - 39.90.130.

16 Sec. 39.90.110. LIMITATION TO PROTECTIONS. An employee or other  
17 person is not entitled to the protections under AS 39.90.100 - 39.90.-  
18 130 unless the employee or other person

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

21 (2) reports the information in good faith.

22 Sec. 39.90.120. RELIEF AND PENALTIES. (a) A person who alleges  
23 a violation of AS 39.90.100 may bring a civil action and the court may  
24 grant appropriate relief.

25 (b) A person who violates or attempts to violate AS 39.90.100 -  
26 39.90.130 is also liable for a civil fine of not more than \$10,000.  
27 The attorney general may enforce this subsection.

28 (c) A person who attempts to prevent another person from making  
29 a report or participating in a matter under AS 39.90.100(a) with

1 intent to impede or prevent a public inquiry on the matter is liable  
2 for a civil fine of not more than \$10,000.

3 Sec. 39.90.130. DEFINITIONS. In AS 39.90.100 - 39.90.130

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

7 (2) "employer" or "public employer" includes the state, a  
8 public or quasi-public corporation or authority established by state  
9 law, the University of Alaska, a municipality, a political subdivision  
10 of the state, and the Alaska Railroad Corporation;

11 (3) "matter of public concern" means

12 (A) a violation of a state, federal, or municipal law,  
13 regulation, or ordinance;

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

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

17 (4) "public body" includes a federal, state, or municipal  
18 officer or agency.