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FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Alaska Court System
 Title: An Act relating to protection for BRU: Trial Courts
certain public employees ...
 Sponsor: Labor & Commerce Compositors: _____
 Requestor: Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

The State Affairs CS has
no fiscal effect. This fiscal
note is appropriate
S Schubert

Prepared by: Jan Strandberg, General Counsel

Division: Alaska Court System

Phone: 264-8228
Date: 4-21-89 04/20/89

Approved by: Arthur H. Snowden, II, Administrative Director

Agency: Alaska Court System

Date: 04/20/89

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)

Adopted

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.

Changes made in the CS have no fiscal effect. This fiscal note is appropriate.
S. Schubert
4-21-89

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

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

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

Adopted

Original sponsor: Labor and Commerce
Committee

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

2 SENATE CS FOR 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 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 - 39.90.150 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 - 39.90.150.

17 Sec. 39.90.110. LIMITATION TO PROTECTIONS. (a) A person is not
18 entitled to the protections under AS 39.90.100 - 39.90.150 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 39.90.150 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

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

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

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

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

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

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

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

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

22 Sec. 39.90.130. EXEMPTION FOR MUNICIPALITIES. A municipality is
23 not required to comply with the provisions of AS 39.90.100 - 39.90.150
24 if the municipality has adopted an ordinance that provides protections
25 for its employees and other persons that are substantially similar to
26 the protections under AS 39.90.100 - 39.90.150. Notwithstanding
27 AS 29.25.070, the ordinance may provide for a civil penalty for viola-
28 tion of the ordinance not to exceed \$10,000.

29 Sec. 39.90.140. DEFINITIONS. In AS 39.90.100 - 39.90.150

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

4 (2) "employer" or "public employer" includes the state, a
5 public or quasi-public corporation or authority established by state
6 law, the University of Alaska, and a political subdivision of the
7 state including a municipality, school district, and rural educational
8 attendance area;

9 (3) "matter of public concern" means

10 (A) a violation of a state, federal, or municipal law,
11 regulation, or ordinance;

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

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

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

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

18 (A) the federal government;

19 (B) the state;

20 (C) a political subdivision of the state including

21 (i) a municipality;

22 (ii) a school district; and

23 (iii) a rural educational attendance area;

24 (D) a public or quasi-public corporation or authority
25 established by state law including the Alaska Railroad Corpora-
26 tion; and

27 (E) the University of Alaska.

28 Sec. 39.90.150. SHORT TITLE. AS 39.90.100 - 39.90.150 may be
29 cited as the Alaska Whistleblower Act.



Position Paper
CSHB 91 (SA)
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. This office worked with the House Judiciary Committee in the development of its committee substitute and concur with its provisions. This bill will provide better protections for Alaskans who seek to correct problems with state and local governments.

Whistle Blowers protection is not a new concept to Alaska Law. Last year, the Alaska Legislature again embraced the concept through 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. State labor law (AS 23.10.135) provides for penalties to any employer who "discharges or in any other manner discriminates against an employee because the employee has filed a complaint . . ." relating to the Wage and Hour Act.

The Federal Civil Service Reform Act of 1979 originally created Whistle Blower protections for federal employees. This past month it was revised with new "teeth" and signed into law by President Bush. There had been concerns that not enough employees had been protected by the previous act. The revision allows the Office of Special Counsel (OSC) to stop or postpone detrimental personnel actions which may be retaliatory to federal employees. It also prevents disciplinary actions being taken during the course of an investigation. The Federal Merit System Protection Board reviews the actions of the OSC and provides time extensions for the protections.

The Ombudsman's Interest

The Ombudsman Act requires that the confidentiality of the names of complainants and witnesses 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 apparently justified 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 complaints made 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.

Complaints to the Ombudsman Covered

It is not unusual for my office to receive calls from potential complainants who first ask "Do you offer Whistle Blower protection?" 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 intended as 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 where 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 a 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 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.

Managers of that public agency were later prosecuted for their management abuses.

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.

Protection from Specious Complaints

Few argue the soundness of setting a public policy which protects those with the courage to come forward to "Blow the Whistle" on government officials who are abusing their position. After all, it is those within the government who are often the first to become aware of such abuses. This kind of legislation does create concern on the part of managers however. It is the fear that "bad" employees, or those about to be justifiably terminated, will file false charges in order to become sheltered by the protections of a "Whistle Blowers Act."

The House Committee substitute handles that problem well. It provides that matters accepted for investigation by the Office of the Ombudsman be considered a "matter of public concern" and subject to the protections of the act. This essentially requires the ombudsman perform a preliminary screening of a complaint and make a positive decision to accept it for investigation before the protections would take effect. This, in effect, prevents abuse by the filing of a last minute specious complaint with the ombudsman.

Section 39.90.110 of the measure also sets out other limitations for protections under the act. It should be noted that persons are required to make the complaint in good faith and, if an employee, must submit a written report to the employer concerning the matter. Employees are not required to file written reports if they reasonably fear reprisals or if an emergency exists.