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Alaska Public
Employees Association **APEA**

State Headquarters: 340 N. Franklin, Juneau, AK 99801 (907) 586-2334

FEDERATION OF STATE EMPLOYEES/AFT/AFL-CIO

May 7, 1991

The Honorable Fran Ulmer
Alaska State House of Representatives
P.O. Box V
Juneau, AK 99811

FRAN
Dear Representative Ulmer:

I have reviewed your proposed legislation, "An Act relating to protection of whistleblowers; and relating to the personnel board."

The Addition of the language of AS 39.90.160-240 to the existing AS 39.90.100-150, including an administrative remedy for the "Alaska Whistleblowers Act," provides a desirable alternative to the option of civil court action contained in AS 39.90.100-150.

Using the hearing officer investigative structure strikes the right note of relationship between the Personnel Board, the employee and the agency. If the qualifications of a hearing officer are not addressed in statute or administrative code, they should be clarified through definition or some other appropriate method. The investigative process appears well-outlined under the "Investigation by Hearing Officer," and the "Investigation Procedures" Sections. The "Subpoena Powers" could be extremely useful in collecting information, and the "Stay of Personnel Action" gives additional time to conduct fact-finding and to make a report, hoping to assure that some action is not taken in the name of the State that might later bring legal action.

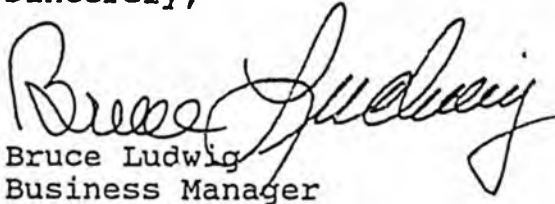
The "Decision by Personnel Board" Section allows the impacted parties to participate in the decision-making process and also provides for remedies to be implemented, including corrective action and penalties to be assessed against other public employees involved. Finally, the "Judicial Review" aspect allows for an appeal of Personnel Board action.

From my perspective as an Association Business Manager, I can see a benefit to some relationship between the proposed Act and the public employees' associations. I realize the Personnel Board functions autonomously, but its responsibilities relate to those

of the associations. For example, both the Board and APEA could be involved in a "Whistleblower's Act" situation--APEA, through the grievance process and, the Board through the existing and proposed legislation. All parties might realize mutual benefits if any new legislation addressed those processes already established to address potential violation of employee rights.

I have no clear idea how this coordination of effort could be accomplished, but I'm open to discussing the possibility further. Thank you for the opportunity to review and comment.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Ludwig". The signature is written in dark ink and is positioned above the typed name and title.

Bruce Ludwig
Business Manager



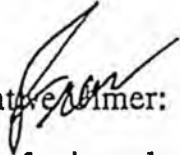
State of Alaska
ombudsman

Duncan C. Fowler

May 21, 1991

Representative Fran Ulmer
Alaska House of Representatives
Post Office Box V
Juneau, Alaska 99811-3100

RE: HB-322

Dear Representative  Ulmer:

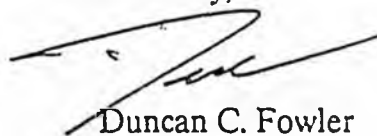
Thank you for introducing this amendment to the Alaska Whistleblower Act. *I believe it is a significant improvement to the act.* It offers assistance and protection to those who come forward to expose improprieties in government and have been personally harmed as a result.

You asked for comments regarding this bill:

- (1) I believe the Personnel Board is a good vehicle for resolving public employee allegations of harm. I was pleased to note that existing statutes make it clear that members of the Personnel Board do not serve at the will of the governor but may only be removed for cause.
- (2) Currently, the bill provides that non public employees who have been harmed by actions covered under the Alaska Whistleblowers Act may also pursue redress for harm by using the state personnel board. Consideration might be given to have the Office of Public Advocacy be able to represent that group of Alaskans.
- (3) I had some concerns that the subpoena provisions of the bill might authorize an executive branch agency to be able to access our confidential files. I have been assured by staff from Legislative Legal Affairs that this is not an issue. The provisions of AS 24.55.160 (b) would continue to allow the ombudsman to make determinations as to whether or not the disclosure would enable the office to carry out its duties and support recommendations.

Again, I do appreciate your interest in this area. As I had mentioned, there has been an increase in calls to my office asking for advice and information relating to whistleblowers issues these past few months. Please let me know if I can be of further assistance.

Sincerely,


Duncan C. Fowler
Ombudsman

Reply to:

P.O. Box 102636
Anchorage, AK 99510-2636
(907) 277-8848
(800) 478-2624

P.O. Box WO
Juneau, AK 99811-3000
(907) 465-4970
(800) 478-4970

P.O. Box 74358
Fairbanks, AK 99707-4358
(907) 452-4001
(800) 478-3257

DCF:pjc

**PUBLIC
EMPLOYEES**



DON VALESKO
BUSINESS MANAGER

VALERIE K. BAFFONE
SECRETARY/TREASURER

HEADQUARTERS

2510 Arctic Blvd.
Anchorage, Alaska 99503

208 Wendell, Room 205
Fairbanks, Alaska 99701

710 W. 9th Street
Juneau, Alaska 99801



May 13, 1991

Representative Fran Ulmer
Rm. 421, Capitol
P. O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

Thank you for your April 30, 1991 letter requesting my opinion on your proposed "whistle blower" bill.

I have reviewed the legislation and reviewed it with staff and counsel for additional input.

It is our collective opinion that this looks like a good bill resulting in improved protection for State employees.

The option of a hearing before the personnel board, is a more practical option verses legal action considering the prohibitive cost of attorney and court fees.

Sincerely,

Don Valesko
Business Manager

DV/ni

SECTIONAL ANALYSIS
February 5, 1992

HB 322, "An Act relating to protection of whistleblowers; and relating to the personnel board."

Section 1.

- Page 2, line 1. Technical, updates word usage.
- Page 2, lines 3 and 4. Expands the specific powers of the State Personnel Board to administer oaths, subpoena witnesses, and compel the production of documents to include matters involving "whistleblowers."
- Page 2, lines 13 and 14. Adds a new section to expand the broad duties and powers of the personnel board to include "whistleblower" issues.

Section 2.

- Page 2, line 16. Technical, to include sections added by this bill in the Whistleblower Act.

Section 3.

- Page 2, line 27. Technical, to include sections added by this bill in the Whistleblower Act.

Section 4.

- Page 2, lines 29 and 30. Technical, same as above.

Section 5.

- Page 3, lines 4 and 5. Technical, same as above.

Section 6.

- Page 3, lines 11 and 13-14. Technical, same as above.

Section 7.

- Page 3, line 17. Technical to ensure that definitions apply to the new statute sections established by this bill.
- Page 4, line 2. Adds a definition of the term "prohibited practice." For purposes of this statute, a prohibited practice is any violation of AS 39.90.100, which sets out the persons protected by the whistleblower act.

Section 8.

- Page 4, line 14. Technical, to include sections added by this bill the Whistleblower Act.

Section 9.

- Page 4, lines 17-27. Adds a new provision, AS 39.90.160. This provision establishes an administrative remedy for the person who alleges a violation of the Alaska Whistleblower Act. It provides that within one year of the date the person

should have known of the violation, the person may file an allegation with the personnel board. If the issue is within the jurisdiction of the board, and a court has not issued a final

resolution, the board is to appoint a hearing officer to investigate and report on the allegation.

- Page 4, lines 28-31; page 5, lines 1-3. Adds new sections, AS 39.90.170 (a), (b), (c) and (d).

(a) This section establishes the authority of the hearing officer to investigate an allegation and to determine if there are reasonable grounds to believe that a prohibited practice has occurred, is occurring, or is about to occur. It provides for notice to the person making the allegation that an investigation will occur.

(b) Provision is made that the hearing officer, after an investigation, report findings and a determination to the personnel board, the agency and agency head involved. The report may include recommendations for corrective action.

(c) Provides that if a prohibited practice has not been corrected in a reasonable amount of time, the hearing officer may petition the personnel board for corrective action. It also provides that if corrective action, satisfactory to the complainant, is taken, the hearing officer is to notice the personnel board.

(d) Provides that if, after the investigation, the hearing officer believes that criminal action has occurred, the hearing officer is to report that to the attorney general, the head of the public employer involved and to the personnel board.

- Page 5, lines 17-30. Adds new sections, AS 39.90.180 (a), (b), and (c).

(a) This sub-section provides that the hearing officer can request the personnel board to order a 45 day stay of any personnel action against the person making the allegation (whistleblower), and states that the board will act on such a request within three days of receipt.

(b) Provides that the personnel board allow the public employer who is the subject of a stay, to comment and request amendment. It also provides that the board may terminate a stay.

- Page 5, line 31, page 6, lines 1-15. Adds new sections, AS 39.90.190 (a) and (b).

(a) This subsection sets out the power of the hearing

officer, in the course of an investigation, to make inquiries, enter the premises of a public employer without notice, hold hearings that are closed to the public and to access records. It provides that the personnel board may only compel the production of sealed court records by subpoena, and may not obtain records in an ongoing criminal investigation and records that could lead to the identity of confidential police informants.

(b) Requires the hearing officer and the personnel board to maintain confidentiality in all matters, except as necessary for the board to do its duties. It provides that a confidential record from an agency may not be disclosed.

- Page 6, lines 7 and 11. Adds a clause to exempt the confidential files of the Office of the Ombudsman from disclosure.

- Page 6, lines 16-21. Adds new sections, AS 39.90.200 (a) and (b).

(a) This sub-section provides that the personnel board, on its own or at the request of the hearing officer compel the appearance and testimony of a person or a record or an object if such relates to the matter under investigation.

(b) Establishes that a superior court may take the same type of action for non compliance with a subpoena issued under this statute, as the court make take when there is disobedience of a court issued subpoena.

- Page 6, lines 28-31 and page 7, lines 1-14. Adds new sections, AS 39,90.210 (a), (b) and (c).

(a) This sub-section sets out that upon receipt of a report from the hearing officer, the board may accept, amend, reject or return the report for further work.

(b) Provides that when the hearing officer recommends corrective action, the board shall provide for comments by the hearing officer, the involved agency and the individual complainant.

(c) This sub-section provides for the personnel board to take corrective action in the event that a complainant is subjected to negative action resulting from reporting a prohibited action.

* For a public employee who has been harmed, the board may order reinstatement, promotion, transfer, back pay and benefits, or other personnel actions.

* If a public employee, other than an elected official or an employee confirmed by the legislative body, has

committed a violation, the board may order discipline, including suspension or dismissal.

- Page 7, lines 15-17. Adds a new section, AS 39.90.220 which provides that a final order or decision of the personnel board may be appealed to the superior court.
- Page 7, line 20. Technical, to include in the Whistleblower Act, sections added by this bill.
- Page 7, lines 18-23. Adds a new section, AS 39.90.230 which provides that the personnel board shall adopt regulations for processing allegations, conducting investigations, reporting findings and recommendations and making decisions on them.
- Page 7, lines 24-25, Adds a new section which provides that the personnel board prepare an annual report.
- Page 7, lines 26-31. Spells out that administrative or contractual remedies need not be exhausted before a person is able to seek judicial relief. Also that a judicial action terminated without resolution on the merits of the case, not be grounds for the Personnel Board to refuse an otherwise timely and jurisdictional case.

HOUSE COMMITTEE REPORT

2-5-72
 Judiciary
 Finance

(7)

Date Referred: May 8, 1991

FURTHER REFERRALS:

Date of Committee Action: 2/3/92

The STATE AFFAIRS Committee considered:

HB 322

HOUSE BILL NO. 322

WHISTLEBLOWER PROTECTION

"An Act relating to protection of whistleblowers; and relating to the personnel board."

RECOMMENDATIONS:

be replaced with CS HB 322 (STA) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact Admin.

fiscal note(s) _____

zero fiscal note Court System

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eugene G. Kubera</i>		<i>Mr. Stuenkel</i>			<input checked="" type="checkbox"/>
<i>Mr. Stuenkel</i>		<i>John Stuel</i>		<input checked="" type="checkbox"/>	
<i>E. (unclear)</i>		<i>Chris Stuel</i>			<input checked="" type="checkbox"/>
<i>Tom Weyh</i>	<input checked="" type="checkbox"/>				

Eugene G. Kubera
 CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 5, 1992

FURTHER REFERRALS:

Finance

Date of Committee Action: 2-28-92

The JUDICIARY Committee considered:

HB 322

HOUSE BILL NO. 322

WHISTLEBLOWER PROTECTION

"An Act relating to protection of whistleblowers; and relating to the personnel board."

RECOMMENDATIONS:

be replaced with OS HB 322 (JUD) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) Admin.

zero fiscal note law

zero fiscal note(s) courts

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Daniel Donley</i>	<input checked="" type="checkbox"/>	<i>Kevin Pat Varnell</i>		<input checked="" type="checkbox"/>	
<i>Mark Hunter</i>	<input checked="" type="checkbox"/>				
<i>Terry Martin</i>	<input checked="" type="checkbox"/>				

Daniel Donley
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill No. HB 322

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to protection of BRU: Trial Courts
whistleblowers... Components: _____
 Sponsor: Ulmer
 Requestor: Ulmer COMPONENT SERIAL NO. 000 | 000 | 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)
 No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CS* Phone: 264-8228
 Division: Alaska Court System Date: 01/28/92
 Approved by: Arthur H. Snowden, II, Administrative Director *AS*
 Agency: Alaska Court System Date: 01/28/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

BILL NO. CSEB 322 (SA)

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____

Department Affected: Administration

Title: Protection of Whistleblowers

BRU: Personnel/OEEO

Sponsor: Ulmer

Component: Personnel/OEEO

Requestor: House Judiciary

COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	68.5	68.5	68.5	68.5	68.5	68.5
TRAVEL	20.0	20.0	20.0	20.0	20.0	20.0
CONTRACTUAL	15.0	15.0	15.0	15.0	15.0	15.0
SUPPLIES	.6	.3	.3	.3	.3	.3
EQUIPMENT	6.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	110.1	103.8	103.8	103.8	103.8	103.8

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	110.1	103.8	103.8	103.8	103.8	103.8
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	110.1	103.6	103.8	103.8	103.8	103.8

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
See Attached.

Prepared by: R. H. King, Director *Richard P. ...*
Division: Personnel/OEEO

Phone: 465-4430
Date: January 27, 1992 Feb. 18, 1992

Approved by Commissioner: Nancy Bear Usara *|||*
Agency: Administration *|||*

Date: 2/2/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 322 (SA)

ANALYSIS: (continued)

CSHB 322 (SA) provides that a person who alleges a violation of the whistleblower statute may file an allegation with the personnel board. This filing may be instead of or in addition to a civil action. This fiscal note assumes that allegation will be filed with the personnel board in order to avoid the risk of lost attorney's fees and to insure faster action than typically available in court.

If the allegation appears to be within the jurisdiction of the board, it shall immediately appoint a hearing officer to investigate and report on the allegation. The hearing officer shall investigate the allegation to determine if reasonable grounds exist to determine that a violation has occurred. The hearing officer must make numerous determinations in this process.

Each factual condition in AS 39.90.100, 110, 160, 170 and 180 would need to be investigated.

If reasonable grounds are found, the personnel board may order a stay of any action against an employee. The board may accept, amend, or reject a report of the hearing officer or may return a report for further proceedings. If the hearing officer petitions the board for corrective action, the board must provide a review process that can result in an order for corrective action. The board may also order discipline up to and including dismissal of a public employer for violation of AS 39.90.100.

A public employer or employee adversely affected by a final order or decision of the board may appeal to the superior court.

The above description of the process is meant to highlight the similarity of the proposed legislation to the process of the Executive Branch Ethics Act, AS 39.52. A whistleblower's complaint would have the following costs:

- public notice, travel, and per diem for a meeting of the board and its secretary for a determination that a complaint appears to be within its jurisdiction, and the appointment of a hearing officer;

- expenses of the hearing officer;

- expenses of the legal counsel for the board;

- public notice, travel and per diem expenses for the review hearing;

- legal expenses in defense of appeals to the superior court.

We assume the board would employ a permanent hearing officer to whom they would assign cases. We also assume the regulations would provide for the authority to issue a stay under AS 39.90.180 without a formal meeting.

Estimated costs are for a hearing officer at range 21. First year costs include initial office equipment. Costs also cover board meeting expenses and legal counsel, and travel funds to investigate in any potential subdivision of the State. No estimate is provided to defend cases appealed to superior court.

Position Title Hearing Officer		No. of Positions 1	Range / Step 21/A	Barg. Unit EE
Time Status FT	Staff Months 12.0	Location Anchorage		Election District 7
TYPE OF EXPENDITURE		AMOUNT		
Salary		49.9		
Benefits		18.6		
Premium Pay				
Other				
Total Personal Services		68.5		
Travel		10.0		
Contractual		5.0		
Commodities		.6		
Equipment		6.0		
Other				
Total Cost		90.1		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.F. Match 1003				
General Fund 1004		90.1		
I-A Receipts 1007				
CIP Receipts 1061				
Other				
<p>Justification</p> <p>HB 322 provides for complaints of violation of the whistleblower protection statute to be investigated by a hearing officer appointed by the Personnel Board. This position will be the hearing officer. Initial duties will include the drafting of regulations required by HB 322.</p> <p>The whistleblower protection statute applies to the State and all political subdivisions. Travel is expected to take the hearing officer to the jurisdiction under investigation.</p> <p>Contractual costs include telephone, copying, and expert testimony.</p> <p>Commodities include initial office supplies and routine consumables.</p> <p>Equipment is for the one-time purchase of necessary computer hardware.</p>				

6/budget/fy93/4/rmp/02809.kp

Request For New Position

AGENCY ADMINISTRATION

BRU Personnel/OEEO

COMPONENT Personnel/OEEO

FY 93

Page 1 of 1
Revised Date:

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 322 (STA)

Revision Date: _____

Department Affected: Department of Law

Title: "An Act relating to protection of whistleblowers..."

BRU: Legal Services

Sponsor: Representative Ulmer

Component: Operations

Requestor: House Judiciary Committee

COMPONENT SERIAL

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services
 Approved by Commissioner: Richard I. Pegues / FOR
 Agency: Department of Law

Phone: 465-3672
 Date: February 24, 1992
 Date: February 24, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 322 (STA)

This bill amends AS 39.90 to add new sections which provide an administrative remedy for violations alleged under the Alaska Whistleblower Act. These sections empower the state or a local personnel board to appoint a hearing officer to investigate a complaint of unlawful retaliation against a person who reports or is about to report a matter of public concern to a public body. Currently, a person who alleges a violation of the protections against retaliation provided by the existing Whistleblower Act must bring a civil action in court in order to seek relief. State employees who are members of collective bargaining units are already allowed to have allegations of retaliation heard as part of the grievance process.

The bill will probably not have a direct fiscal impact on the Department of Law, but there may be considerable impact for the state personnel board for hearing officer costs. Furthermore, there will be additional cost to the state because the state personnel board would also have to provide an administrative remedy process for complaints involving municipalities, where a municipality has not adopted its own hearing process by ordinance. There have not been many allegations at the state level that the Act has been violated in the past, and it is not known whether the bill may encourage more people to come forth with allegations in the future. It is also unclear whether the bill provides a second hearing process for members of collective bargaining units, in addition to the grievance process, but it appears that it might.