

HB

322

2-5-92

HOUSE COMMITTEE REPORT

(7)
Date Referred: May 8, 1991

FURTHER REFERRALS:

Judiciary
Finance

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: the same title
 be replaced with CS HB 322 (STA) 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) _____
 fiscal impact Admin
 zero fiscal note Court System

APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____
 zero fiscal note(s) _____

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

Eugene G. Kubera
 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	000 788
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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						
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

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 322

Revision Date: _____
Tide: Protection of Whistleblowers
Sponsor: Ulmer
Requestor: House State Affairs

Department Affected: Administration
BRU: Personnel/OEEO
Component: Personnel/OEEO

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	103.8	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 *R. H. King 1/27/92*
Division: Personnel/OEEO

Phone: 465-4430
Date: January 27, 1992

Approved by Commissioner: Nancy Bear Usery
Agency: Administration

Date: _____

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. HB 322

ANALYSIS: (continued)

HB 322 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 whistleblowers 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.



Alaska Public
Employees Association **APEA**

State Headquarters: 340 N. Franklin, Juneau, AK 99801 (907) 588-2334

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.

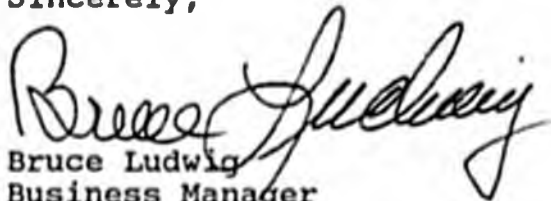
The "Decision by Personnel Board" Section allows the impacted parties to participate in the decision-making process and also provides for remedies to be implemented, including corrective action and penalties to be assessed against other public employees involved. Finally, the "Judicial Review" aspect 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 black 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 102638
Anchorage, AK 99510-2638
(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) 478-257

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

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 26, 1991

SUBJECT: Whistleblower legislation (W.O. 7LS-1204\A, dated 4/26/91)

TO: Representative Fran Ulmer

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

Enclosed is the draft bill you requested, providing administrative protection for whistleblowers. Most of the provisions are based on language in the federal Merit System Protection Board and Special Counsel statutes (5 U.S.C. 1201 - 1222). The investigation procedures (Sec. 36.90.190), subpoena powers (Sec. 39.90.200), and report requirement (Sec. 39.90.240) are taken from the Ombudsman statutes (AS 24.55.160, 24.55.170, and 24.55.230). The Administrative Procedure Act (Sec. 39.90.230) section began with the Ombudsman statute (AS 24.55.090), but I added the exemption from administrative adjudications.

There are several provisions that you should review.

1. Under Sec. 39.60.160, the administrative procedure may be in addition to the currently provided civil action. However, if a court has issued a final determination, that issue may not be retried in the administrative setting.
2. Sec. 39.60.180 provides for stays of personnel actions.
3. Sec. 39.90.210 provides for decisions by the personnel board. Subsection (c) includes the remedies the board may order, including dismissal of an employee who has violated the whistleblower protection laws and reinstatement and back pay for a person harmed by the violation.
4. Sec. 39.90.230 provides that regulations must be adopted under the Administrative Procedure Act but that hearings are exempt from that Act. The exemption seemed warranted because of the confidentiality requirements established in Sec. 39.90.190(b).

Representative Fran Ulmer
April 26, 1991
Page 2

Please let me know whether this draft is headed in the direction you intended and whether (and what) changes you would like me to make.

TC:lmb
91-141.lmb

Enclosure

SECTIONAL ANALYSIS

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 in the Whistleblower Act statute sections added by this bill.

Section 3.

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

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 in the Whistleblower Act, statute sections added by this bill.

Section 9.

- Page 4, lines 16-25. 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 in addition to or instead of bringing a civil court action, 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 26-31; page 5, line 1. 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 15-28. 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, lines 29-31, page 6, lines 1-13. 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 14-25. 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 26-31 and page 7, lines 1-12. Adds new sections, AS 39.90.210 (a), (b) and (c).

(a) This ub-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 13-15. 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, lines 16-21. 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 22-23. Adds a new section which provides that the personnel board prepare an annual report.

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

January 17, 1992

To: Representative Gene Kubina, Chair
House State Affairs Committee

From: Representative Fran Ulmer

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

This is to request a hearing for HB 322 which amends the current "whistleblower" law to provide administrative protection for persons who have engaged in whistleblower activities. Current law provides that a person who alleges discrimination due to whistleblowing activities may seek remedy through civil court action, very often a slow and expensive process. HB 322 empowers the State Personnel Board to review and investigate allegations as well as to make findings and establish appropriate remedies.

Most of the provisions in the bill are based on the federal Merit System Protection Board and Special Counsel statutes (5 U.S.C. 1201-1222).

This is an approach to providing practical protections for employees who risk a great deal by reporting on matters of public concern. It supports the whistleblower by providing an alternative to the personal expense involved in a civil court action.

The bill is supported by public employee labor organizations as well as the Office of the Ombudsman.

Thank you for prompt scheduling before the House State Affairs Committee.

7-LS1204D
Cramer
1/29/92

CS FOR HOUSE BILL NO. 322 (STATE AFFAIRS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE: STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ULMER, Brown

A BILL

FOR AN ACT ENTITLED

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

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

3 • Section 1. AS 39.25.070 is amended to read:

4 Sec. 39.25.070. POWERS AND DUTIES OF PERSONNEL BOARD. In addition to the
5 other duties imposed by this chapter, the personnel board shall

6 (1) approve or disapprove amendments to the personnel rules in accordance with
7 AS 39.25.140;

8 (2) consider and act upon recommendations for the extension of the partially
9 exempt service and the classified service as provided in AS 39.25.130;

10 (3) hear and determine appeals by employees in the classified service as provided
11 in AS 39.25.170;

12 (4) establish its own rules of procedure; two members constitute a quorum for the
13 transaction of business and two affirmative votes are required for final action on matters acted
14 upon by the board;

- 1 (5) elect a chair [CHAIRMAN] from its membership;
- 2 (6) have the power to administer oaths, subpoena witnesses, and compel the
- 3 production of books and papers pertinent to a hearing authorized by this chapter or by
- 4 AS 39.90.100 - 39.90.250;
- 5 (7) employ staff members, who shall be in the classified service;
- 6 (8) retain independent counsel in accordance with AS 39.52.310(c);
- 7 (9) appoint, and review the findings, conclusions, and recommendations of,
- 8 hearing officers in accordance with AS 39.52.350(c), 39.52.360, and 39.52.370;
- 9 (10) issue findings, conclusions, and decisions regarding violations of the code
- 10 of ethics in AS 39.52.110 - 39.52.190; [AND]
- 11 (11) impose the penalties described in AS 39.52.410, 39.52.440, and 39.52.450;
- 12 and
- 13 (12) carry out the powers and duties assigned to it under AS 39.90.100 -
- 14 39.90.250.

15 • Sec. 2. AS 39.90.100(c) is amended to read:

16 (c) The provisions of AS 39.90.100 - 39.90.250 [AS 39.90.100 - 39.90.150] do not

17 (1) require an employer to compensate an employee for participation in a court

18 action or in an investigation, hearing, or inquiry by a public body;

19 (2) prohibit an employer from compensating an employee for participation in a

20 court action or in an investigation, hearing, or inquiry by a public body;

21 (3) authorize the disclosure of information that is legally required to be kept

22 confidential; or

23 (4) diminish or impair the rights of an employee under a collective bargaining

24 agreement

25 • Sec. 3. AS 39.90.100(d) is amended to read:

26 (d) An employer shall post notices and use other appropriate means to inform employees

27 of their protections and obligations under AS 39.90.100 - 39.90.250 [AS 39.90.100 - 39.90.150].

28 • Sec. 4. AS 39.90.110(a) is amended to read:

29 (a) A person is not entitled to the protections under AS 39.90.100 - 39.90.250

30 [AS 39.90.100 - 39.90.150] unless the person

31 (1) reasonably believes that the information reported is or is about to become a

1 matter of public concern; and

2 (2) reports the information in good faith.

3 * Sec. 5. AS 39.90.110(b) is amended to read:

4 (b) A person is entitled to the protections under AS 39.90.100 - 39.90.250
5 [AS 39.90.100 - 39.90.150] only if the matter of public concern

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

7 (2) is the result of conduct by the person that was required by the person's
8 employer.

9 * Sec. 6. AS 39.90.130 is amended to read:

10 Sec. 39.90.130. EXEMPTION FOR MUNICIPALITIES. A municipality is not required
11 to comply with the provisions of AS 39.90.100 - 39.90.250 [AS 39.90.100 - 39.90.150] if the
12 municipality has adopted an ordinance that provides protections for its employees and other
13 persons that are substantially similar to the protections under AS 39.90.100 - 39.90.250
14 [AS 39.90.100 - 39.90.150]. Notwithstanding AS 29.25.070, the ordinance may provide for a
15 civil penalty for violation of the ordinance not to exceed \$10,000.

16 * Sec. 7. AS 39.90.140 is amended to read:

17 Sec. 39.90.140. DEFINITIONS. In AS 39.90.100 - 39.90.250 [AS 39.90.100 - 39.90.150]

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

21 (2) "employer" or "public employer" includes the state, a public or quasi-public
22 corporation or authority established by state law, the University of Alaska, and a political
23 subdivision of the state including a municipality, school district, and rural educational attendance
24 area;

25 (3) "matter of public concern" means

26 (A) a violation of a state, federal, or municipal law, regulation, or
27 ordinance;

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

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

31 (D) a matter accepted for investigation by the office of the ombudsman

- 1 under AS 24.55.100 or 24.55.320;
- 2 (4) "prohibited practice" means a violation of AS 39.90.100;
- 3 (5) "public body" includes an officer or agency of
- 4 (A) the federal government;
- 5 (B) the state;
- 6 (C) a political subdivision of the state including
- 7 (i) a municipality;
- 8 (ii) a school district; and
- 9 (iii) a rural educational attendance area;
- 10 (D) a public or quasi-public corporation or authority established by state
- 11 law including the Alaska Railroad Corporation; and
- 12 (E) the University of Alaska.

13 • Sec. 8. AS 39.90.150 is amended to read:

14 Sec. 39.90.150. SHORT TITLE. AS 39.90.100 - 39.90.250 [AS 39.90.100 - 39.90.150]
15 may be cited as the Alaska Whistleblower Act.

16 • Sec. 9. AS 39.90 is amended by adding new sections to read:

17 Sec. 39.90.160. ADMINISTRATIVE REMEDY. Instead of bringing a civil action under
18 AS 39.90.120, a person who alleges a violation of AS 39.90.100 may, within one year after the
19 date the person reasonably should have known of the violation, file an allegation with the
20 personnel board. However, if a court of competent jurisdiction either has issued a final
21 determination resolving some or all of the issues raised by the allegation or has a matter under
22 consideration that will require resolution of some or all of the issues, the personnel board may
23 not accept or shall discontinue investigation of the allegation as to those issues. If the allegation
24 relates to a matter that is outside the jurisdiction of the personnel board under AS 39.90.100 -
25 39.90.250, the board may not accept the allegation but may refer the person to other appropriate
26 agencies. If the matter appears to be within the jurisdiction of the board, the board shall
27 immediately appoint a hearing officer to investigate and report on the allegation.

28 Sec. 39.90.170. INVESTIGATION BY HEARING OFFICER. (a) The hearing officer
29 shall investigate an allegation referred by the personnel board to determine whether there are
30 reasonable grounds to believe that a prohibited practice has occurred, is occurring, or is about
31 to occur. Within 10 days after appointment, the hearing officer shall provide written notice to

1 the person who made the allegation that the hearing officer has received and will investigate the
2 allegation. The notice must include the name of the person who will serve as a contact with the
3 person making the allegation.

4 (b) If, after investigation, the hearing officer determines that there are reasonable grounds
5 to believe that a prohibited practice that requires corrective action has occurred, is occurring, or
6 is about to occur, the hearing officer shall report the findings and determination to the personnel
7 board, the agency involved, and the elected or appointed head of the agency. The report may
8 include recommendations for corrective action.

9 (c) If, after a reasonable time, the public employer does not act to correct the prohibited
10 practice, the hearing officer may petition the personnel board for corrective action. If the hearing
11 officer finds, after consulting with the individual subject to the prohibited practice, that the
12 employer has acted to correct the prohibited practice, the hearing officer shall file the finding
13 with the board, together with any written comments provided by the individual and the employer.

14 (d) If, after investigation, the hearing officer determines that there is reasonable cause
15 to believe that a criminal violation has occurred, the hearing officer shall report the determination
16 to the attorney general, the head of the public employer involved, and the personnel board.

17 Sec. 39.90.180. STAY OF PERSONNEL ACTION. (a) If the hearing officer determines
18 that there are reasonable grounds to believe that a violation of AS 39.90.100 has occurred, the
19 hearing officer may request the personnel board or a member of the board to stay any personnel
20 action against the person making the allegation or against another person. Unless the board or
21 board member finds that the stay would not be appropriate, the board or board member shall
22 order a stay, valid for no more than 45 days. The board or board member shall act within three
23 working days of receiving a request for a stay.

24 (b) If the stay or an extension of a stay is granted, the board shall allow the public
25 employer that is the subject of a stay to comment on the stay and to request an amendment to
26 it. The board may terminate the stay at any time after notice and opportunity for oral or written
27 comments are provided to the hearing officer and the individual on whose behalf the stay was
28 ordered.

29 (c) The board may extend the period of a stay granted under this section for any period
30 that the board considers appropriate.

31 Sec. 39.90.190. INVESTIGATION PROCEDURES. (a) In an investigation, the hearing

1 officer may

2 (1) make inquiries and obtain information considered necessary;

3 (2) enter without notice to inspect the premises of a public employer, but only
4 when agency personnel are present;

5 (3) hold hearings that are closed to the public notwithstanding AS 44.62.310; and

6 (4) notwithstanding other provisions of law, have access at all times to records
7 of every public employer, including confidential records; however, the personnel board may only
8 compel the production of sealed court records by subpoena and may not compel production of
9 records of active criminal investigations and records that could lead to the identity of confidential
10 police informants.

11 (b) The hearing officer and the personnel board shall maintain confidentiality with respect
12 to all matters and the identities of the complainants or witnesses coming before the officer or the
13 board except insofar as disclosures may be necessary to enable the officer or the board to carry
14 out their duties and to support recommendations. However, the officer or the board may not
15 disclose a confidential record obtained from an agency.

16 Sec. 39.90.200. SUBPOENA POWERS. (a) Subject to the privileges that witnesses have
17 in the courts of this state, the personnel board may, at the request of the hearing officer or on its
18 own request, compel by subpoena, at a specified time and place, the

19 (1) appearance and sworn testimony of a person who the personnel board or the
20 hearing officer reasonably believes may be able to give information relating to a matter under
21 investigation; and

22 (2) production by a person of a record or object that the personnel board or
23 hearing officer reasonably believes may relate to the matter under investigation.

24 (b) If a person refuses to comply with a subpoena issued under (a) of this section, the
25 superior court may, on application of the personnel board, compel obedience by proceedings for
26 contempt in the same manner as in the case of disobedience to the requirements of a subpoena
27 issued by the court or refusal to testify in the court.

28 Sec. 39.90.210. DECISION BY PERSONNEL BOARD. (a) After receipt of a report
29 from the hearing officer, the personnel board may accept, amend, or reject the report or return
30 the report to the hearing officer for further proceedings.

31 (b) When the hearing officer petitions the personnel board for corrective action under

1 AS 39.90.170(c), the board shall provide an opportunity for

2 (1) oral or written comments by the hearing officer and the agency involved; and

3 (2) written comments by any individual who alleges to be the subject of the
4 prohibited practice.

5 (c) If, after review, the personnel board determines that the hearing officer has
6 demonstrated that a violation of AS 39.90.100 was a contributing factor in a personnel action that
7 was taken or is to be taken against the individual, the board shall order the corrective action the
8 board considers appropriate. For a public employee who has been harmed by a prohibited
9 practice, the board may order reinstatement to a previous position, promotion, transfer, the award
10 of back pay and benefits, or other personnel actions. If the board finds that a public employee,
11 other than an elected public employee, or an employee confirmed by the legislative body of the
12 public employer, has violated AS 39.90.100, the board may order discipline, including suspension
13 or dismissal. The board may require that notice of its findings and determination be placed in
14 the personnel file of appropriate public employees.

15 Sec. 39.90.220. JUDICIAL REVIEW. A public employer, employee, former employee,
16 or applicant for employment adversely affected by a final order or decision of the personnel
17 board under AS 39.90.210 may appeal the decision or order to the superior court.

18 Sec. 39.90.230. REGULATIONS AND PROCEDURES. The personnel board shall adopt
19 regulations under the Administrative Procedure Act (AS 44.62) to establish procedures for
20 receiving and processing allegations, conducting investigations and hearings, reporting findings
21 and recommendations, and making decisions on them. Hearings of the personnel board under
22 AS 39.90.100 - 39.90.250 are not subject to administrative adjudication procedures under
23 AS 44.62.330 - 44.62.630.

24 Sec. 39.90.240. ANNUAL REPORT. The personnel board shall submit to the legislature
25 and the public an annual report of the board's activities under AS 39.90.100 - 39.90.250.

26 Sec. 39.90.250. EXHAUSTION OF REMEDIES NOT REQUIRED. The provisions of
27 AS 39.90.100 - 39.90.250 do not require exhaustion of administrative, contractual, or other
28 remedies, including those provided by AS 39.90.100 - 39.90.250, before a person alleging a
29 violation may file a civil action. The personnel board may not refuse to accept an allegation that
30 is filed with the board because of a civil action that was terminated without resolution on the
31 merits of the issues raised by the allegation.

A M E N D M E N T

OFFERED IN THE HOUSE
TO: HB 322

BY REPRESENTATIVE ULMER

Page 2, line 4:

Delete "AS 39.90.100 - 39.90.240"

Insert "AS 39.90.100 - 39.90.250"

Page 2, lines 13 -14:

Delete "AS 39.90.100 - 39.90.240"

Insert "AS 39.90.100 - 39.90.250"

Page 2, line 16:

Delete "AS 39.90.100 - 39.90.240"

Insert "AS 39.90.100 - 39.90.250"

Page 2, line 27:

Delete "AS 39.90.100 - 39.90.240"

Insert "AS 39.90.100 - 39.90.250"

Page 2, line 29:

Delete "AS 39.90.100 - 39.90.240"

Insert "AS 39.90.100 - 39.90.250"

Page 3, line 4:

Delete "AS 39.90.100 - 39.90.240"

Insert "AS 39.90.100 - 39.90.250"

Page 3, line 11:

Delete "AS 39.90.100 - 39.90.240"

Insert "AS 39.90.100 - 39.90.250"

Page 3, line 13:

Delete "AS 39.90.100 - 39.90.240"

Insert "AS 39.90.100 - 39.90.250"

Page 3, line 17:

Delete "AS 39.90.100 - 39.90.240"

Insert "AS 39.90.100 - 39.90.250"

Page 4, line 14:

Delete "AS 39.90.100 - 39.90.240"

Insert "AS 39.90.100 - 39.90.250"

Page 4, line 17:

Delete "In addition to or instead"

Insert "Instead"

Page 4, line 18, after "may":

Insert ", within one year after the date the person reasonably should have known of the violation,"

Page 4, line 19:

Delete "If"

Insert "However, if"

After "jurisdiction":

Insert "either"

Page 4, line 20, after "allegation":

Insert "or has a matter under consideration that will require resolution of some or all of the issues"

Page 4, line 21, after "accept":

Insert "or shall discontinue investigation of"

Page 4, line 22:

Delete "AS 39.90.100 - 39.90.240"

Insert "AS 39.90.100 - 39.90.250"

Page 7, line 20:

Delete "AS 39.90.100 - 39.90.240"

Insert "AS 39.90.100 - 39.90.250"

Page 7, after line 23:

Insert a new section to read:

"Sec. 39.90.250. EXHAUSTION OF REMEDIES NOT REQUIRED. The provisions of AS 39.90.100 - 39.90.250 do not require exhaustion of administrative, contractual, or other remedies, including those provided by AS 39.90.100 - 39.90.250, before a person alleging a violation may file a civil action. The personnel board may not refuse to accept an allegation that is filed with the board because of a civil action that was terminated without resolution on the merits of the issues raised by the allegation."

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE ULMER

TO: HB 322

Page 6, line ~~8~~⁷ after "employer":

Insert "other than the records of the office of the ombudsman"

Page 6, line ~~10~~¹⁰ after "informants":

Insert "; as to the records of the office of the ombudsman, the personnel board may only require that the office confirm or deny that it has accepted a complaint for investigation"

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 322

BY REPRESENTATIVE ULMER

Page 6, line 5, after "employer":

Insert "other than the records of the office of the ombudsman"

Page 6, line 8, after "informants":

Insert "; as to the records of the office of the ombudsman, the personnel board may only require that the office confirm or deny that it has accepted a complaint for investigation"



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: February 3, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:

- *HB 428 - Relating to Residency for Permanent Fund Dividends
- HB 322 - Relating to Whistleblower Protection
- *SCR 19 - Relating to Age-Related Discrimination in Alaska
- HCR 16 - Relating to Bone Marrow Donor Week

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Tom Williams	Revenue	PFD Division P.O. Box 110460 Juneau	99811		465-2323	(Y) N	HB 428
Paula Terrel	Sen Keritula				465-1200	(Y) N	SCR 19 & SCR 24 ✓
Mike McMillan	Dept. of Public Safety	Juneau, AK 99801	99801		465-4620	(Y) N	F. Scott Miller HB 322
Margaret Pugh	Rep. Ulman	Room 421		479	4747	(Y) N	HB 322
Ron Clarke	Rep. Koponen	CAP 503			4772	(Y) N	HJR 51
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

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House State Affairs Committee

Representative Gene Kubina, Chair

SUBJECT OF MEETING:

DATE:

PLACE:

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
<i>Geneva Foubie</i>	<i>Coburn</i>	<i>1507 W. ...</i>			<i>4970</i>	<input checked="" type="radio"/>	<input type="radio"/>	<i>VB 322</i>
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	

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House State Affairs Committee

Representative Gene Kubina, Chair

SUBJECT OF MEETING:
 HB 195 - Relating to Campaign Finance Reform
 *HB 322 - Relating to Reporting/Campaign Finance Reform

DATE: February 7, 1992

PLACE: Capitol Room 102

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Scott Burgess	AMU				6-1325	<input checked="" type="radio"/> Y	<input type="radio"/> N	HB 195
Karee Boorman (Pearson)	APOC	2221 E. Northern Lights Anch. 99508	99508		970-4176	<input checked="" type="radio"/> Y	<input type="radio"/> N	HB 195 HB 322
Denton Pearson (Bursack)	APOC	P.O. Box 98 S.H.C. AK 99835		747-5347	747-3256	<input checked="" type="radio"/> Y	<input type="radio"/> N	HB 322
Winston Buckman	APOC	711 CAFFREY RD. FISKE, AK			452-2211	<input checked="" type="radio"/> Y	<input type="radio"/> N	HB 195 HB 322
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	

C.



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: January 29, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:

- *HB 301 - Relating to Regular Legislative Sessions
- *HB 322 - Relating to Whistleblower Protection
- *HB 385 - Relating to State Employee VDT Safety
- *SCR 19 - Relating to Age-Related Discrimination in Alaska

NAME	REPRESENTING,	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Juan Foster	Oak Harbor	Box 113000 June	99801		4970	(Y) N	HB 322
James A. Wilson	AK DEPT. LABOR				4520	(Y) N	HB 385
Gran Island	OAC	Box 110209	99801			Y (N)	SCR 19
Debra Knutson	AK DOA/ASEA	5875 Glac. Hwy #4	99801		2218	(Y) N	HB 385
George Imbsey	ASEA	4113 Canby St 641 W. Willoughby	99801	3642242 4634949	4652915	(Y) N	HB 385
BRUCE LUDWIG	APEA/AFT	340 N. FRANKLIN ST	99801	6-6936	6-2324	(Y) N	HB 322, 385
Mary Ann...	TOA					Y N	
						Y N	
						Y N	
						Y N	
						Y N	