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STATE OF ALASKA THE LEGISLATURE

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JUNEAU, ALASKA 99811
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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House	Judiciary	5/9/85	1:00 pm
"	"	5/7/85	1:30 pm
"	"	1/30/86	1:30 pm
"	"	2/12/86	1:30 pm

Alaska State Legislature
Representative Niilo Koponen

Pouch V
Juneau, Alaska 99811
(907) 465-4992

542 4th Avenue, Suite C
Fairbanks, Alaska 99701
(907) 456-8161

March 21, 1986

Mr. Merle Akers
3031 Bennett Ave.
Anchorage, AK 99517

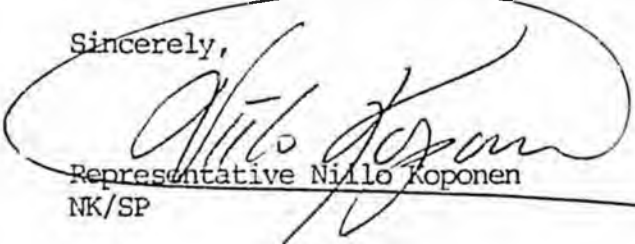
Dear Mr. Akers:

Thank you for the copy of your letter concerning HB 327. I am very aware of the problems with the CS HB327 (Judiciary). This bill is now in the Senate. The original bill made it a class A misdemeanor to fire a employee for "whistleblowing." I enclose a copy of the original bill for your information and comment. If you think the original bill was better, please let me know and I will take it up with Senator DeVries.

The bill went to the Judiciary Committee, which has a majority of lawyers, and was expanded to cover private as well as public employees but as you noted makes it from a criminal to a civil tort. While this frees the state from the responsibility of enforcing it, it does require the injured party to go to court. I prefer to see it enforced by the state.

The Judiciary Substitute was itself further amended on the House Floor to pull out private employees. I am trying to point out to the Judiciary members that people already had the right to go to court and sue and in fact in the case of Mr. Ott, in Fairbanks, could win the case. Be assured that unless we could get a satisfactory bill out of the Senate, I will reintroduce a refined version of my original bill in the next session making retaliation a specified misdemeanor thus placing the power of the state behind the rights of the "whistleblower."

Sincerely,



Representative Niilo Koponen
NK/SP

201/100

Merle W. Akers
3031 Bennett Avenue
Anchorage, Alaska, 99517
Home Phone: 243-4802

March 10, 1985

Senator Edna DeVires
Chairperson, Community & Regional Affairs Committee
Senate Office Building
Juneau, Alaska

Subject: HB 327 - An Act Relating to Protection for Employees

Dear Senator:

Less than six months ago I sued the State of Alaska Railroad Corporation for retaliation involving a whistle blowing incident which took place in December of 1984, prior to the State taking over the Railroad on January 5, 1985. I was removed from the managerial position I held with the Alaska Railroad for 20 years on January 10, 1985, four working days after the date of transfer, and was demoted to a non-managerial tech job. To date I have been through a year of litigation and have spent over \$60,000 in attorney fees and related costs. I feel I have acquired some expertise on the subject of retaliation and the law and because of my experience I do not wish to see HB 327 pass into law in it's present form. I fully support the need for legislation to revamp the present laws and regulations on employee retaliation for whistle blowing. I feel that HB 327, in it's present form, will not accomplish what it intends - if the intent is to make it more difficult for employers to take retaliatory action against their employees who give testimony against them.

I feel there are three major issues which need to be addressed.

1. Should the employee who gives testimony against his/her employer lose their job? If it is the intent of this bill that they should not, then the law should require that they be reinstated. Section 23.10.510(a) of HB 327 leaves this to the discretion of the Court. All the Court cases I have researched resulted in the person not being returned to his/her job.
2. What should be the standard of proof of retaliation which the Court must accept? Section 23.10.510(d) is the same standard that is now required under present rules and it's all but impossible to meet. Most evidence offered to a

Court in support of a retaliation claim will be circumstantial. In my case where I have been removed from my job, the Alaska Railroad successfully defended against the retaliation charges by claiming I was discharged for poor performance and conduct unbecoming a manager. The evidence I presented in my defense opposed this claim: in twenty years with the Alaska Railroad I had never had a less than satisfactory performance evaluation; had received two cash awards for superior performance in the five years prior to January, 1985; had received a superior achievement award from the U. S. Department of Transportation in November of 1984 for my outstanding work on transfer issues and the land evaluation; and had received a pay increase in July of 1985. During the period of July, 1985, through December 12, 1985, I was on a detailed assignment to work with the Land Review Committee, comprised of State and Railroad personnel. The person in charge of this Committee was the Railroad's own Chief Counsel, who gave me a high performance rating. With this information, the Jury during trial could not find clear and convincing evidence of retaliation, but did find that the Railroad acted in "bad faith" and awarded \$7,000 plus an additional \$30,000 in punitive damages.

What additional evidence would have been required to meet the standard - clear and convincing? Perhaps testimony from one of the persons who conspired to retaliate against me, or a memorandum or letter from one of the conspirators acknowledging a plan of retaliation? I believe you will agree, it is very unlikely that kind of evidence could ever be obtained.

3. Punishment and penalties? I know of no person who ever lost a job as a result of retaliation where the court ordered the employer to return the employee to his/her job. On the other hand, I know of no person involved in retaliation who ever lost their job for taking a retaliatory action against an employee. How can this be fair?

HB 327 like the Federal Government Whistle Blowers' Regulations creates an atmosphere for retaliation to a whistle blower, instead of providing safeguards and meaningful deterrents. Both require that the whistle blower, if retaliated against, fund his/her own lawsuit against the employer. If the employer is other than a private corporation, public funds will be used for defense. The employer knows it is going to cost the whistle blower a large amount of money to pursue his/her case. The employer knows the whistle blower will have to pay his/her attorney as the case is prepared ... no attorney I have talked with will take such a case based on a contingency fee due to the difficulty of proving the retaliation issue.

If an employer is going to retaliate against the whistle blower, one approach would be to fire him/her, which would cut off the employees income and lessen his ability to sue. If the whistle blower appears to be in a position to sue, another approach would be to demote the employee until after the trial, knowing the courts historically do not return whistle blowers back to their jobs. The employers tactic then would be to reorganize the work force and the whistle blower's job then becomes an excess and the employee can be layed off. If the employer is a public agency and has had to pay out some damages with it's public monies, the employer is not concerned as the objective in the end, for them is achieved - the whistle blower is out of a job. If the whistle blower is successful in proving his case, he will be entitled to receive back a portion of his/her attorney fees and costs. In my case, I have spent \$60,000 to date and according to my attorney I cannot expect to receive more than 85% of my costs - about \$51,000. The average award is more in the neighborhood of 50%.

HB 327 provides a penalty of a civil fine for violation of the law, of not more than \$10,000. My unrecoverable cost to date is estimated to be between \$9,000 and \$30,000. If this is representative of the average out of pocket cost a whistle blower can expect to pay, along with the loss of his/her job, I feel a possible maximum fine of \$10,000 levied against a public body and paid for with public funds amounts to a non penalty. Even if the fine is levied against the employees who participated in the retaliatory act, a possible maximum find of \$10,000 appears insignificant and even moreso if the whistle blower lost his/her job and those that took the retaliatory action did not lose theirs.

HB 327 states a violator of the law is subject to a civil fine. Who is going to prosecute the violator? It appears it would have to be a separate trial from the one the whistle blower initiated. If it is the intent of HB 327 that the whistle blower must bring a separate action, at his/her own expense, we again have the problem of it costing the whistle blower more in attorney fees than he/she can recover along with having financial ability to even fund another trial to prosecute the offenders. This brings up the issue of to whom the fine is paid ... the State or the whistle blower?

If it is the intent of HB 327 to have the State prosecute violators then the Bill should so state.

The fine of \$10,000 poses yet another problem for the person who pursues retaliation action. Will the Courts grant punitive damages to the plaintiff, or will it reduce the punitive damages to allow for a possible future fine?

I recommend HB 327 be amended to do one of the following:

1. If HB 327 is to be passed in it's present form it should contain an in-dept: explanation of the problems facing a person considering reporting any unlawful or unfavorable action of an employer to any public body. The explanation should make it clear it is up to the person making the report to prove retaliation and that it is very hard to do so unless one has an admission by the person(s) who retaliated, or written documentation clearly stating same; that present law, including HB 327, does not prohibit them from losing their job; that most whistle blowers who are retaliated against do lose their job; that they do not receive back 100% of attorney fees/costs, even if they are successful. If it is up to the person to fund prosecution of the civil fine, that should also be explained.
2. Amend the present bill as follows:
 - A. SECTION 23.10.500(c); set forth in detail (using examples if necessary) what type of evidence constitutes "clear and convincing" evidence. It should consider the following: Is it required evidence that a witness testify in court he/she took retaliatory action against another? Is the evidence required to be a written document clearly stating or instructing one to take a retaliatory action?
 - B. SECTION 23.10.510(a): Delete the word "may" and insert the word "shall", and require the employer to pay 150% of employees attorney fees and 100% of court costs.
 - C. SECTION 23.10.510(c); Delete all of the present section and substitute a new subsection (c) for the following reasons: 1) I am not sure how a whistle blower can pursue an action to insure that a "civil fine" is imposed. 2) A \$10,000 fine when it is not your own money paying the bill will not deter many employers or organizations from taking retaliatory action against an employee. Anyone contemplating retaliatory action will realize the difficulty of proving such a charge and knows it would be at least five (5) years before a fine would be due.

NEW SECTION 23.10.510 (c) The Attorney General for the State of Alaska shall prosecute 1) any person who violates HB 23.10.500-23.10.520. Any employee convicted of violating HB 23.10.500 - 23.10.520 shall be sentenced to a jail term not to exceed six (6) months but not less than 30 days, and be fined a minimum of \$10,000, pay 100% of all the State's attorney fees and court costs. 2) Any person who had prior knowledge of the proposed retaliatory action

who either failed to stop it or report it in writing to the State Attorney General, shall be charged as an accessory and subject to the penalties set forth in (1) above.

- D. NEW SECTION 23.10.510 (e); Any private or public corporation convicted of violating HB 23.10.500 - 23.10.520 shall be liable for minimum civil fine equal to three times the total cost of the State's and Plaintiff's attorney fees and court costs. This fine is in addition to any award made to plaintiff in Section 23.10.510 (a)(c).
- E. NEW SECTION 23.10.510 (f) Where employees of the State or State owned corporations violate HB 23.10.500 - 23.10.520, including Boards of Directors of said State Corporations, said employees and Board of Directors' employment or appointment shall be terminated and they shall not be eligible for rehire by the State or it's corporations nor for appointment to a State Board for a period of five (5) years.
- F. NEW SECTION 23.10.510 (g) Nothing in HB 23.10.500-23.10.520 shall preclude a person who's other rights provided by law were also violated in a retaliatory action from being awarded seperate relief and damages from the Courts for any such violations in addition to those received under provisions of HB 23.10.510 - 23.10.520.

Honest people find it hard to believe that some will lie under oath, falsify documents, knowingly violate the Federal And State constitutional rights of people. Many recognize this happens all the time, especially attorneys, and in particularly it happens in retaliation cases involving whistle blowing. The average person cannot anticipate things like this happening in the Courts. The reality is that it happens all the time. What the defendant is trying to do is win by default. Defendants have more resources, money, political power, attorneys, and time. The defendant knows that very few if any, whistle blowers can, or are prepared to, pursue the issue for five or more years in Court. Even if they did do so and won, at the present time no Court is going to order the person returned to his/her job after five years - even if the people who have done the retaliation have left, moved or been transferred elsewhere.

When the person cannot or is not returned to his position, the Courts have difficulty with the amount of damages that should be awarded, as there are no guidelines for making calculations.

Pg. 6

If I had known in December of 1984 what I know now I would never have been a whistle blower. If anyone were to ask my advice on making public a violation of the law or of State or Municipal regulations, I would advise them against it. I would advise them against testifying before any legislative committee that might be seeking information about violations, as the penalty for failure to testify would be less than the penalty they would have to pay if they do. If we as citizens truly believe in the benefit whistle blowers provide to us, then lets give them some meaningful protection.

I hope the information contained herein can be helpful to you and your committee. If I can be of any service, please do not hesitate to contact me.

Sincerely,

Merle W. Akers

cc:

Representative Nilo Koponen

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

MERLE AKERS,)
)
Plaintiff,)
)
vs.)
)
ALASKA RAILROAD CORPORATION,)
)
Defendant.)
_____)

Case No. 2Ad-85-7707 Civil

SPECIAL VERDICTS

We, the jury in the above-entitled case, find the following Special Verdicts on the following questions submitted to us:

1. Was the suspension of Plaintiff and transfer from his former position as Manager, Industrial Development & Real Estate to his new position as Realty Specialist in the Engineering Department motivated, in whole or in substantial part, by malice or bad faith?

ANSWER: Yes (Answer "yes" or "no")

2. Was the suspension of Plaintiff and transfer from his former position to his new position motivated, in whole or in substantial part, by a desire to retaliate against or penalize Plaintiff for his participation in the R.A.I.L.S. Report?

ANSWER: No (Answer "yes" or "no")

If your answer is "yes" to Question No. 1, Question No. 2 or both, then answer Question No. 3 below. If your answer is "no" to both Question No. 1 and Question No. 2, do not answer any further questions, but do have the jury foreperson sign and date this Special Verdicts form.

3. What is the amount of damages, if any, you (and Plaintiff) is entitled to recover from Defendant in each of the following categories:

- a. Future wage & retirement pay losses: \$
 - b. Mental and emotional distress to date: \$
 - c. Future mental and emotional distress: \$
 - d. Punitive damages: \$
- TOTAL DAMAGES: \$

DATED this _____ day of September, 1995 at Anchorage, Alaska.

FORRESTER, G. THE 2TH

COMMITTEE REPORT
HOUSE

2/17

Rules

(7)

FURTHER:

4/26/85

Date: _____

The Committee on JUDICIARY has had HB 327

"An Act relating to the disclosure of information."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HC 327 (JUD) same title
 new title

and recommends _____

- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 1/30/86

REQUEST

Bill Resolution No. : CSHB 327 (State Affairs)
Title : "An Act relating to disclosure
of information..."

Sponsor : Repr. Koponen
Requestor : House Judiciary Committee
Date of Request : January 30, 1986

FISCAL DETAIL

Agency Affected : Department of Law
BRU : Legal Services, Prosecution

Components : Legal Services Operations,
ALL - Prosecution

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

-Please see attached analysis.-

Prepared by : Richard I. Pegues, Director Phone : 465-3672
Division : Administrative Services Division Date : 1/30/86
Approved by Commissioner : Harold M. Brown, Attorney General Date : 1/30/86
Agency : Department of Law

Distribution (by Agency preparing fiscal note):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 327

Enactment of this bill will probably result in some additional legal work on the part of Department of Law staff. It does not appear that any increase in workload will be significant enough to warrant fiscal note costs. However, when considered in conjunction with other similar measures, bills of this nature divert the department's existing resource from other more pressing assignments because of their cumulative effect.

To the extent that misdemeanor charges may be brought against a public employee for allegedly violating proposed Sec. 39.51.040, it is doubtful that a conviction could ever be obtained. The term cooperate, as it is used in the section, is sufficiently vague that it is unlikely criminal intent could ever be established.

Original sponsors: Koponen, Thompson,
Harrou and Jenkins

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 327 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to protection for employees."

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

8 Section 1. AS 23.10 is amended by adding new sections to read:

9 ARTICLE 7. PROTECTION FOR EMPLOYEES.

10 Sec. 23.10.500. EMPLOYEES PROTECTED. (a) An employer may not
11 discharge, threaten, or otherwise discriminate against an employee
12 regarding the employee's compensation, terms, conditions, location, or
13 privileges of employment because

14 (1) the employee or a person acting on behalf of the
15 employee reports to a public body or is about to report to a public
16 body, believing the report to be true,

17 (A) a violation of a state, federal, or municipal law,
18 regulation or ordinance; or

19 (B) a substantial and specific danger to public health
20 or safety;

21 (2) the employee is requested by a public body to
22 participate in a court action or in an investigation, hearing, or
23 inquiry held by that public body; or

24 (3) an employee of the state or a political subdivision of
25 the state, or a person acting on behalf of the employee, reports to a
26 public body or is about to report to a public body, believing the
27 report to be true, mismanagement, a gross waste of funds, or an abuse
28 of authority.

29 (b) This section does not require an employer to compensate an

Original sponsors: Koponen, Thompson,
Marlow and Jenkins

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 327 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to protection for employees."

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

8 Section 1. AS 13.10 is amended by adding new sections to read:

9 ARTICLE 7. PROTECTION FOR EMPLOYEES.

10 Sec. 13.10.500. EMPLOYEES PROTECTED. (a) An employer may not
11 discharge, threaten, or otherwise discriminate against an employee
12 regarding the employee's compensation, terms, conditions, location, or
13 privileges of employment because

14 (1) the employee or a person acting on behalf of the
15 employee reports to a public body or is about to report to a public
16 body, believing the report to be true,

17 (A) a violation of a state, federal, or municipal law,
18 regulation or ordinance; or

19 (B) a substantial and specific danger to public health
20 or safety;

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22 participate in a court action or in an investigation, hearing, or
23 inquiry held by that public body; or

24 (3) an employee of the state or a political subdivision of
25 the state, or a person acting on behalf of the employee, reports to a
26 public body or is about to report to a public body, believing the
27 report to be true, mismanagement, a gross waste of funds, or an abuse
28 of authority.

29 (b) This section does not require an employer to compensate an

1 employee for participation in an investigation, hearing, or inquiry
2 held by a public body.

3 (c) A person who alleges a violation of this section may bring a
4 civil action for appropriate injunctive relief, actual damages, or
5 both, within 90 days after the occurrence of the alleged violation.

6 (d) The person must show by clear and convincing evidence that
7 the employer violated (a) of this section.

8 (e) The provisions of AS 23.10.500 - 23.10.520 do not diminish
9 or impair the rights of a person under a collective bargaining agree-
10 ment.

11 (f) An employer shall post notices and use other appropriate
12 means to inform employees of their protections and obligations under
13 AS 23.10.500 - 23.10.520.

14 Sec. 23.10.510. RELIEF AND PENALTIES. (a) The court may order
15 an employer to reinstate the employee, pay the employee back wages,
16 reinstate fringe benefits and seniority rights, and pay actual dam-
17 ages.

18 (b) A public body may not disqualify a person who alleges a
19 violation of AS 23.10.500 - 23.10.520 from eligibility to

20 (1) bid on contracts with the public body;

21 (2) receive land under a law of the state or an ordinance
22 of the municipality;

23 (3) receive another right or benefit to which the person is
24 entitled.

25 (c) A person who violates AS 23.10.500 - 23.10.520 is liable for
26 a civil fine of not more than \$10,000.

27 (d) A person who attempts to prevent another person from making
28 a report or participating in a matter under AS 23.10.500(a) with
29 intent to impede or prevent a public inquiry on the matter is liable

1 for a civil fine of not more than \$10,000.

2 Sec. 23.10.520. DEFINITIONS. In AS 23.10.500 - 23.10.520,

3 (1) "employee" means a person who performs a service for
4 wages or other remuneration under a contract of hire, written or oral,
5 express or implied and includes a person employed by the state or a
6 political subdivision of the state;

7 (2) "employer" means a person who has at least one employee
and includes an agent of an employer;

9 (3) "public body" includes a federal, state, or municipal
10 officer or agency.

Original sponsors: Koponen, Thompson,
Marrou and Jenkins

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 327 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to protection for employees."

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

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11 discharge, threaten, or otherwise discriminate against an employee
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14 (1) the employee or a person acting on behalf of the
15 employee reports to a public body or is about to report to a public
16 body, believing the report to be true,

17 (A) a violation of a state, federal, or municipal law
18 regulation or ordinance; or

19 (B) a substantial and specific danger to public health
20 or safety;

21 (2) the employee is requested by a public body to
22 participate in a court action or in an investigation, hearing, or
23 inquiry held by that public body; or

24 (3) An employee of the state or a political subdivision of
25 the state, or a person acting on behalf of the employee, reports to
26 public body or is about to report to a public body, believing the
27 report to be true, mismanagement, a gross waste of funds, or an abuse
28 of authority.

29 (b) This section does not require an employer to compensate a

1 employee for participation in an investigation, hearing, or inquiry
2 held by a public body.

3 (c) A person who alleges a violation of this section may bring a
4 civil action for appropriate injunctive relief, actual damages, or
5 both, within 90 days after the occurrence of the alleged violation.

6 (d) The person must show by clear and convincing evidence that
7 the employer violated (a) of this section.

8 (e) The provisions of AS 23.10.500 - 23.10.520 do not diminish
9 or impair the rights of a person under a collective bargaining agree-
10 ment.

11 (f) An employer shall post notices and use other appropriate
12 means to inform employees of their protections and obligations under
13 AS 23.10.500 - 23.10.520.

14 Sec. 23.10.510. RELIEF AND PENALTIES. (a) The court may order
15 an employer to reinstate the employee, pay the employee back wages,
16 reinstate fringe benefits and seniority rights, and pay actual dam-
17 ages.

18 (b) A public body may not disqualify a person who alleges a
19 violation of AS 23.10.500 - 23.10.520 from eligibility to

20 (1) bid on contracts with the public body;

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22 of the municipality;

23 (3) receive another right or benefit to which the person is
24 entitled.

25 (c) A person who violates AS 23.10.500 - 23.10.520 is liable for
26 a civil fine of not more than \$10,000.

27 (d) A person who attempts to prevent another person from making
28 a report or participating in a matter under AS 23.10.500(a) with
29 intent to impede or prevent a public inquiry on the matter is liable

1 for a civil fine of not more than \$10,000.

2 Sec. 23.10.520. DEFINITIONS. In AS 23.10.500 - 23.10.520,

3 (1) "employee" means a person who performs a service for
4 wages or other remuneration under a contract of hire, written or oral,
5 express or implied and includes a person employed by the state or a
6 political subdivision of the state;

7 (2) "employer" means a person who has at least one employee
8 and includes an agent of an employer;

9 (3) "public body" includes a federal, state, or municipal
10 officer or agency.
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Original sponsors: Koponen, Thompson,
Marrou and Jenkins

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IN THE HOUSE

BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 327 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the disclosure of information."

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

* Section 1. FINDING. The legislature finds that free access to information at all levels of government and concerning issues before the legislature is critical to the exercise of legislative responsibilities under Article II of the Alaska constitution. The legislature further finds that retaliation for providing information to a legislator impairs the people's rights to freedom of speech and to petition the government under Article I of the Alaska constitution.

* Sec. 2. AS 39.51.020(c) is amended to read:

(c) A violation of this section is a class A misdemeanor.

* Sec. 3. AS 39.51 is amended by adding new sections to read:

Sec. 39.51.040. LEGISLATIVE ACCESS TO PUBLIC INFORMATION. (a)

An employee of a public agency shall cooperate with the request of a legislator for public information or a public record under AS 09.25.-110 and 09.25.120.

(b) A public agency may not impose restrictions on the release of information to a legislator or a legislative committee unless those restrictions apply equally to the release of information to other members of the public.

(c) A violation of this section is a class B misdemeanor.

Sec. 39.51.050. RETALIATION FOR COMMUNICATING PROHIBITED. (a)

Except as provided in (b) of this section, a public agency may not dismiss, demote, suspend, lay off, or otherwise subject an employee to

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disciplinary action for communicating to a legislator or legislative
committee information relevant to a legislative inquiry unless disclo-
sure of the information is prohibited by law. A public agency may
require an employee who is communicating to a legislator or legisla-
tive committee on behalf of a person or entity other than the agency
to state clearly to the legislator or committee that the communication
is not on behalf of the agency and may prohibit the employee from
making the communication during the employee's hours of work. How-
ever, an agency may not unreasonably deny an employee's request for
annual or personal leave or leave without pay to present information
to the legislature.

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(b) A public agency may discipline an employee who has principal
responsibility for the determination of policy or who has principal
responsibility for the way in which policies are implemented for
communicating an opinion contrary to the agency's official opinion to
a legislator or legislative committee about a job-related matter.
However, an agency may not discipline the employee for communicating
information about a violation or suspected violation of statute or
regulation.

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(c) At the request of an employee, a legislative committee may
refer a violation of this section to the attorney general. The attor-
ney general shall investigate each referral and report the results of
the investigation to the committee.

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(d) An employee who has been disciplined in violation of (a) of
this section has a private cause of action against the agency for
reinstatement, lost wages, other compensation and damages, and for
reasonable attorneys fees incurred in connection with the disciplinary
action.

(e) A public agency shall advise an employee in writing at the

1
2 time of hiring of the employee's rights under this section.

3 (f) The protections of this section do not apply to an employee
4 if the employee knowingly communicated false information or if the
5 employee violated a law in making the communication.

6 (g) A person who violates a provision of this section is punish-
7 able by a civil fine of not less than \$500 and not more than \$5,000.

8 (h) In this section, "public agency" includes the state, a
9 public or quasi-public corporation or authority established by law,
10 the University of Alaska, a political subdivision of the state, and
11 the Alaska Railroad.

12 * Sec. 4. Nothing in this Act terminates or modifies a collective
13 bargaining agreement in existence on the effective date of this Act.
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This proposed CS is commonly known as a "whistleblower" bill. Whistleblower laws protect employees who "blow the whistle" on improper practices by their employers. California, Connecticut, Illinois, Kansas, Louisiana, Michigan, Ohio, Oregon, Maine, New York and Rhode Island have some form of whistleblower laws. This proposed CS is modeled model legislation proposed by the Council of State Governments in 1982. This proposed legislation is based on a Michigan statute.

The sectional analysis is as follows:

Section 23.10.500 sets out provisions which protect employees from being fired or discriminated against in their employment because of the following:

1. Reporting to a public body believing the report to be true a violation of state, federal, or municipal, law, regulation, or ordinance or a substantial and specific danger to public health or safety;
2. the employee is requested by a public body to participate in a court action, some sort of hearing or investigation held by that public body;
3. an employee of the state or political subdivision of the state reports to the public body mismanagement, a gross waste of funds or an abuse of authority.

This section goes on to state that an employer need not compensate an employee for participating in an investigation, hearing or inquiry held by a public body.

The section also sets out the remedy for a person who alleges a violation of the above. A person may bring a civil action for appropriate injunctive relief within 90 days after the occurrence of the alleged violation. It also sets the standard of proof to be clear and convincing evidence which is a higher standard than is normally used in civil cases. It states that provisions of this law will not interfere with collective bargaining agreements and also that employers have a duty to inform their employees of the protections and obligations of this act.

Section 23.10.510 sets out the relief and penalties. A court may order an employer to reinstate the employee, pay back wages and also pay actual damages. It further provides that a public body may not disqualify a person who alleges a violation of this act from being eligible to bid on contracts with the public body, or to receive land or other benefits or rights to which a person is entitled. Violation to this act makes a person liable for civil fine of not more than \$10,000. A person who attempts to prevent another person from making a report or participating in a matter under this act could also be liable for a civil fine of not more than \$10,000.

Section 23.10.520 sets out the definitions. It is important to note that this bill applies to all employees in the state not just to employees of the state government or political subdivisions of the state.

TO: Representative Koponen
FROM: Deborah Niedermeyer, Aide to House HESS Committee
RE: State Affairs CS for HB 327, "Whistleblowers"
DATE: 24 April, 1985

Comparison of CS with Original Bill

page 1, lines 23-26: The addition of this subsection is in response to the difficulty sometimes experienced by legislators in obtaining public information. Some departments (DHSS for example) have at times instituted a policy of requiring legislators to make a written request to the Commissioner for information when the same information was available to the general public simply through a verbal request to a local office.

page 1, lines 27-29: The bill has changed from using the concept of "public employee" to the concept of "public agency". This is a drafting rather than a substantive difference. The definition of "public agency", however, does not include the Alaska Railroad.

page 2, line 4: The CS adds "communicate to a legislator". This would protect a public employee's right to speak freely to any one legislator as well as the right to testify before a legislative committee.

page 2, lines 7-15: The CS adds language which allows a public agency to require an employee to make it clear that the employee is expressing a personal opinion, not the policy of the employer. It also allows a public agency to forbid testifying on paid work time. However, the employer may not unreasonably deny personal leave or leave without pay to the employee for the purpose of testifying.

page 2, lines 16-23: The CS specifies that principal policy-makers (commissioners for example), may be subject to discipline if they express opinions contrary to the agency's official opinion, UNLESS THEY ARE INFORMING THE LEGISLATURE ABOUT A VIOLATION OR SUSPECTED VIOLATION OF LAW OR STATUTE.

page 2, line 29: The CS retains the language which forbids a legislative committee to refer a possible violation of the whistleblower law to the AG without the employee's consent.

page 3, line 15-16: Adds a new section which requires the employee to be informed of the whistleblower law at the time of hiring. (The model law required posting of notices.)

page 3, lines 17-19: Adds a section to protect employers from employees who knowingly provide false information to the Legislature.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Handwritten: C.J. 4/26 Sept 1985

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 327 (SA)
 Title: "An Act relating to the disclosure of information."
 Sponsor: Rep. Koponen
 Requestor: House State Affairs
 Date of Request: April 19, 1985

FISCAL DETAIL

Agency Affected: Law
 Program Category Affected: General Government Admin. of Justice
 BRU, Program or Subprogram(s) Affected: Legal Services, Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary
 Enactment of this bill will probably result in some additional legal work on the part of Department of Law staff. It does not appear that any increase in workload will be significant enough to warrant fiscal note costs. However, when considered in conjunction with other similar measures, bills of this nature divert the department's existing resources from other more pressing assignments because of their cumulative effect.

Prepared By: Richard I. Regues, Director Phone: 465-3672
 Division: Administrative Services Date: April 19, 1985

Approved by Commissioner: Norman C. Gorsuch Date: April 19, 1985
 Agency: Department of Law

- Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

COMMITTEE REPORT
HOUSE

171

FURTHER:

3/27/35

Date:

The Committee on STATE AFFAIRS has had HB 307
"An Act relating to the disclosure of information."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for same title
 new title
- and recommends
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

MEMORANDUM

State of Alaska

TO: Nevette Bowen, Legislative Aide
to Rep. Katie Hurley

DATE: April 24, 1985

FILE NO:

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Review of CSHB 327,
legislative wit-
nesses

By: Susan D. *Susan D. Cox*
Assistant Attorney General
Governmental Affairs-Juneau

I have reviewed Terry's work draft of CSHB 327 and am concerned that the legislative committee's ability to investigate suspected unlawful job retaliation may impinge the employee's right to have personnel records kept confidential. I assume in most circumstances a legislative investigation would be prompted by a disciplined employee's complaint, so the employee would not object to the legislative committee accessing personnel records. However, there might be an uncooperative employee whose privacy rights in those records should be preserved, if demanded. Therefore, I suggest the following to be inserted in a new paragraph to AS 39.51.050:

() A public agency may not disclose personnel records that are confidential by law to a legislative committee under (c) or (e) of this section unless the disciplined employee waives their confidentiality.

Please call if you have questions.

SDC/pjg

cc: Deborah Neidermeir, Legislative Aide
to Rep. Koponen

Theresa Cramer, Legal Services Div.
Legislative Affairs Agency

*Paulwood and some
amendment - [unclear]*

CSG INQUIRY LINE

Q. *What are lifeline rates and how many states have them?*

A. Lifeline rates give eligible consumers, usually the elderly and others with low incomes, a price discount on a basic amount of electricity or other utilities. The goal of lifeline rates is to enable low-income consumers to purchase a basic amount of electricity necessary for sustaining a decent standard of living. According to the National Association of Regulatory Utility Commissioners (NARUC), states which have lifeline rates are: Alabama, California, Georgia, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, Oklahoma, Wisconsin, and the District of Columbia. States which are considering lifeline proposals or have test programs are: North Carolina, New York, Maine, Delaware and Arizona, according to NARUC.

Q. *How many states have called for a constitutional amendment for a balanced federal budget?*

A. Thirty-two states, two shy of the 34 needed, have called for a constitutional convention to require a balanced federal budget. There is no constitutional or statutory deadline for the remaining two states to call for a convention. However, a state may revoke its call at any time until 34 states have passed resolutions. Most recently, the Montana and California supreme courts have struck ballot initiatives calling for a convention on the basis the measures infringed on legislative powers. The 32 states which have called for constitutional conventions

and the dates of action for each are: Alaska (1982), Arizona (1979, 1977), Arkansas (1979), Colorado (1978), Delaware (1975), Florida (1976), Georgia (1976), Idaho (1979), Indiana (1979), Iowa (1979), Kansas (1978), Louisiana (1979, 1978, 1975), Maryland (1975), Mississippi (1975), Missouri (1983), Nebraska (1976), Nevada (1979, 1977), New Hampshire (1979), New Mexico (1976), North Carolina (1979), North Dakota (1975), Oklahoma (1976), Oregon (1977), Pennsylvania (1976), South Carolina (1978, 1976), South Dakota (1979), Tennessee (1977), Texas (1978), Utah (1979), Virginia (1976), Wyoming (1977).

Q. *Which states have passed whistleblower laws?*

A. Whistleblower laws protect employees who "blow the whistle" on improper practices by their employers. California,

Connecticut, Illinois, Kansas, Louisiana, Michigan, Ohio, Oregon, Maine, Michigan; New York, and Rhode Island have some form of whistleblower laws. Courts in California, Connecticut, Indiana, Massachusetts, Michigan, New Hampshire, New Jersey, Oregon, Pennsylvania, and West Virginia have banned retaliatory firings. A model whistleblower law was published in CSG's *Suggested State Legislation* 1982, pp. 155-157.

The States Information Center (SIC) inquiry service can help you locate relevant information quickly and will respond to requests by phone or letter. The SIC maintains statistical information and program documents, as well as lists of resources, on issues of concern to state governments. The service is confidential and free to state officials and staff. Write or call Debbie C. Tillett or Shery Kearney: The Council of State Governments, States Information Center, Iron Works Pike, P.O. Box 11910, Lexington, KY 40578, (606) 252-2291.

Calendar EVENTS

April 24-26—Southern Region State Treasurers Annual Meeting, Asheville, N.C., Grove Park Inn, Pohlmann, Lexington.

April 29-May 1—NCLG Spring Meeting, Washington, D.C., Feigenbaum, Lexington.

May 8-10—NCSL State-Federal Assembly, Washington, D.C., Hyatt Regency/Capitol Hill, Carden, D.C.

May 8-10—Western Region State Treasurers Meeting, Seattle, Wash., Seattle Sheraton Hotel and Towers, Pohlmann, Lexington.

May 8-11—Southern Conference of Attorneys General, Louisville, Ky., Brown Hotel, Williams, Atlanta.

May 19—NASIS Finance and Executive Committee Meetings, Newport, R.I., Treadway Inn, Parish, Lexington.

May 20-21—NASIS Eastern Regional Meeting, Newport, R.I., Treadway Inn, Parish, Lexington.

June 5-7—Conference of Western Attorneys General Annual Meeting, Juneau, Alaska, Stockholm, San Francisco.

June 6-8—NCSL Executive Committee Meeting, Pittsburgh, Pa., Lake, Denver.

June 9-12—Eastern Region State Treasurers Meeting, Vergennes, Vt., Basin Harbor Club, Hebard, Montpelier.

June 10-12—National State Auditors Association Annual Meeting, Phoenix, Ariz., Pointe Resort, Pohlmann, Schumacher, Lexington.

June 16-20—Leaders' Advanced Management Program, Boston, Mass., Boston University, Lakis, Boston (617) 267-5120.

June 17-21—Western Governors' Association Annual Meeting, Waikiki, Hawaii, Sheraton Waikiki, Madde, Colorado.



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1982

Volume 41

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Juneau, Alaska 99811

3 pensation, terms, conditions, location, or privileges of employment because
 4 the employee, or a person acting on behalf of the employee, reports or is
 5 about to report, verbally or in writing, a violation or a suspected violation
 6 of a law or regulation or rule promulgated under the law of this state,
 7 political subdivision of this state, or the United States to a public body,
 8 unless the employee knows that the report is false, or because an employee
 9 is requested by a public body to participate in an investigation, hearing, or
 10 inquiry held by that public body, or a court action.

1 Section 4. [*Relief and Damages.*]

2 (a) A person who alleges a violation of this act may bring a civil action
 3 for appropriate injunctive relief, or actual damages, or both within 90 days
 4 after the occurrence of the alleged violation of this act.

5 (b) An action commenced pursuant to Section 4 (a) may be brought in
 6 the circuit court for the county where the alleged violation occurred, the
 7 county where the complainant resides, or the county where the person
 8 against whom the civil complaint is filed resides or has their principal place
 9 of business.

10 (c) As used in Section 4 (a), "damages" means damages for injury or
 11 loss caused by each violation of this act, including reasonable attorney fees.

12 (d) Employees shall show by clear and convincing evidence that they or
 13 a person acting on their behalf were about to report, verbally or in writing,
 14 a violation or a suspected violation of a law of this state, a political subdivi-
 15 sion of this state, or the United States to a public body.

1 Section 5. [*Reinstatement.*] A court, in rendering a judgment in an action
 2 brought under this act, shall order, as the court considers appropriate,
 3 reinstatement of the employee, the payment of back wages, full reinstatement
 4 of fringe benefits and seniority rights, actual damages, or any combination
 5 of these remedies. A court may also award the complainant all or a
 6 portion of the costs of litigation, including reasonable attorney fees and
 7 witness fees, if the court determines that the award is appropriate.

1 Section 6. [*Fines.*]

2 (a) A person who violates this act shall be liable for a civil fine of not
 3 more than [amount].

4 (b) A civil fine which is ordered under this act shall be submitted to the
 5 state treasurer for deposit in the general fund.

1 Section 7. [*Collective Bargaining.*] This act shall not be construed to
 2 diminish or impair the rights of a person under an collective bargaining
 3 agreement.

1 Section 8. [*Exemption.*] This act shall not be construed to require an
 2 employer to compensate an employee for participation in an investigation,

3 hearing or in
 4 act.

1 Section 9.
 2 appropriate
 3 tions and ob

1 Section 10

1 Section 11

1 Section 12

Protection of Public Employees

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Protection of Public Employees

3 hearing or inquiry held by a public body in accordance with Section 3 of this
4 act.

1 Section 9. [*Notices Posted.*] An employer shall post notices and use other
2 appropriate means to keep his or her employees informed of their protec-
3 tions and obligations under this act.

1 Section 10. [*Severability.*] [Insert severability clause.]

1 Section 11. [*Repeal.*] [Insert repealer clause.]

1 Section 12. [*Effective Date.*] [Insert effective date.]

TO: The Alaska State Legislature

April 18, 1985

I would like to take this time to address the committee concerning the bill before you now, House Bill #327. I whole-heartedly support this bill, because I recently became an example of this exact same problem.

On Jan. 26, 1985, I testified before a teleconference concerning H.B. #5, which some of you might remember. My testimony was given after work hours and was the beginning of a nightmare. My testimony became headlines and a subject for the Fairbanks North Star Borough Administration. On Feb 7, 1985, I was terminated, because of my testimony. Several of the top Borough officials, including the Mayor, gave public statements to the press and news media, stating these facts. This type of retaliation was very stressful. My professional career and reputation was permanently damaged, not only by the public termination, but also by the Administration making public statements about me.

I was told on three separate occasions, that I was not to talk to any legislators or representatives. My termination and testimony was on the front page of the local newspapers at least four times. This caused a great personal embarrassment to me, and to my family. My family suffered financial losses and pressures. The Administration kept the local newspapers "informed" about their concern of my testimony to the legislators, and the media printed every story, of theirs.

It finally came to the point that I could not support my family. I filed for un-employment, but was refused because I had been terminated and was penalized a six week penalty. I then decided to file a civil law suit.

Page 2

.On March 26, 1985, I returned to work. My returning to work, with back wages, still does not heal the wounds or repair the damage to my career, or punish the actual persons responsible for my embarrassments. Returning to work does not pay for all the late bills, late charges or my childrens embarrassment because of their father in the paper.

A person has the right to talk with you, however, they must be somehow protected. Since my termination and re-instatement, I have been contacted by other persons that are in the same position. Something must be done to protect them, soon,

I am sorry I can not be here in person to give this to you. Again am fearful that I might lose my position, even at the writing of this letter. Please, I ask you as a citizen, presently employed, push this legislation through.

Respectfully


Mike Oden

457-2789

Fired in asbestos issue

FNM 3/26/85

Borough official back on job

By SUSAN FISHER
Staff Writer

A borough safety coordinator is back on the job today, but his former supervisor has not been reinstated and that position, risk management, could be revamped in the future.

James Michael Oden returned to work as safety coordinator today,

without loss of pay and with all legal costs paid. Oden sued the borough after he and Risk Manager Barney Mulligan were fired Feb. 8. On Friday, Oden's attorney, William Schendel, negotiated a settlement with borough attorneys.

Mulligan has not filed suit nor has he been reinstated.

In a related matter, a sample

Oden claimed contained friable (airborne) asbestos from Main Building has proved to contain no asbestos following analysis by a private Anchorage laboratory.

Oden's firing revolved around several issues, including controversial testimony he gave to a legislative committee earlier this year. Oden said then that asbestos removal from local schools had been mismanaged. He later corrected some of his statements, but stood firm on Main Building, saying it contained asbestos material dangerous to workers.

School officials have conceded that an abandoned boiler room in Main does have friable asbestos, but is not a hazard and did not require special precautions to encase the insulating material.

Oden in late January took a sample in the boiler room and sent it to Chemical and Geological Laboratories of Alaska Inc. An analysis showed no asbestos in that sample.

Oden's only comment about that finding today was, "After they admitted there was asbestos there, that proved my point."

Main is one of 11 school buildings where removal of all asbestos is scheduled by late 1986. Officials say in all cases, identified asbestos has been checked for encasing, if necessary, to prevent fibers from

becoming airborne.

Minute asbestos fibers, if inhaled, can years later lead to lung damage or cancer.

This morning, Myrt Charney, borough director of administrative services, said Oden will continue reporting to him in the immediate future. Charney fired Oden and Mulligan with the support of Mayor Bill Allen.

Allen is in Juneau today, and his chief executive director, Greg Strong, is attending a seminar in Anchorage.

Charney said Oden's duties will remain the same. Those principally are to conduct fire and safety inspections of local public schools.

As for the risk management position, Charney said he's had discussions with Corroon and Black Inc., the borough's insurance broker, on possibly restructuring that job. "We're getting some advice from other people," Charney said. "It may be I will downgrade that position," he said, but no decision has been made.

The risk manager, who supervised the safety coordinator, was responsible for overseeing insurance claims, lawsuits, workers compensation and taking corrective or preventive measures to reduce costs.



JAMES ODEN

Safety coordinator back at work (Staff photo by Eric Muchling)

Borough reinstates inspector

By TODD PARIS
Correspondent

Less than six weeks after being fired for what borough officials called his "poor job performance" and "unauthorized testimony" before a House subcommittee, James Oden has been rehired as a borough safety inspector.

On Friday, attorneys for the borough and Oden agreed to an out-of-court settlement in a lawsuit filed by Oden. The agreement calls for Oden's reinstatement with no loss in pay or benefits and also for a letter to be placed in Oden's personnel file stating that his safety inspection reports contained "substantially accurate" information.

Those reports were cited by Borough Executive of Administrative Services Myrt Charney as one of the reasons Oden was fired.

A Fairbanks attorney who repre-

sented Oden in the case, said the firing violated Oden's rights to freedom of speech and to petition the government.

The testimony, before a House Health and Social Services Subcommittee, dealt with the need for a training program for employees involved with the removal of asbestos from area schools.

The agreement makes no judgment of liability in the case, but Oden's lawyer said the safety inspector got virtually everything he wanted from the lawsuit.

On Saturday, Oden said he hadn't seen a copy of the agreement, and was puzzled by its rapid settlement.

"I'm glad they reconsidered their decision to fire me," Oden said. "But I don't understand why they did it so soon. Maybe they found out that what I was saying

was true. Anyway, I'm just glad to be going back to work."

Oden's testimony charged that personnel working in the school district's asbestos removal and abatement program didn't know what they were doing and as a result had created more of a health hazard than had previously existed.

Charney, who was named as a defendant in the suit, said he too is pleased with the settlement and thinks it's in the best interests of the borough. When asked if he felt the agreement was a defeat for the borough, he had no comment.

Also included in the settlement agreement is the recognition by both parties of the need for a safety inspector to "maintain harmonious relations with the School District" and to "reduce the risk to those who

(See ODEN, page 3)

ODEN . . .

(Continued from page 1)

use both school district and borough facilities."

Oden was primarily responsible for inspecting area schools on compliance with state building and fire codes. During the removal of asbestos from a number of schools during the past year, Oden reported that some sprinkler systems and fire alarms had been damaged. That prompted him to investigate safety procedures followed by those removing the hazardous insulating material, and led to his testimony.

The borough agreed to pay for court costs and Oden's legal fees.

Meanwhile in Juneau, Fairbanks Democrat Niilo Kopenon said Oden's firing led him to introduce a "whistleblower bill" in the Legislature last week. Kopenon said that piece of legislation is intended to protect public employees from possible punitive action resulting from potentially damaging testimony.

Oden will report for work to the Borough's Chief Executive Director Greg Strong on Tuesday.

WOP
3-13-85 News Mirror

Alaska

Alaska/Fairbank

Renovation to resume

Asbestos from Hering tested

By **SUSAN FISHER**
Staff Writer

Asbestos material uncovered by workers at Hering Auditorium is not the kind that can become easily airborne, according to lab results, but air samples were taken Tuesday as a precaution and work on the \$2.1 million renovation should resume next week.

The work site was officially ordered shut down Monday, and the balcony area has been enclosed with plastic coverings.

Meanwhile, the private contractor, TCI Ltd., is negotiating with local firms for removal of the asbestos before TCI's work resumes.

According to school district officials, a TCI worker late Friday afternoon removed a portion of what he suspected to be an asbestos material in the balcony. A sample was sent to Anchorage for testing, and found to contain one in 20 parts asbestos, but not in a friable state,

officials say. Friable means easy to crumble, thus asbestos fibers could become airborne.

Les Riedlinger, school facilities planner, said he unofficially told the contractor to stop work, and Monday the project architect, USKH Architects and Engineers, officially ordered the shut down.

Hering Auditorium in the Lathrop Ryan school complex on Airport Way is undergoing renovation to its acoustical and electrical systems, with most work in the stage area.

The school district had not identified the auditorium as containing asbestos previously, although Lathrop High School, built in the 1950s, does contain large quantities. It is one of 11 district buildings slated for asbestos removal. All identified asbestos has been contained, school officials say.

A sample was sent to Anchorage Saturday morning for lab testing. Results were ready Monday.

Riedlinger said he and representatives of TCI and USKH met Tuesday morning with the borough engineering department and OceanTech, the firm that will oversee future school asbestos removal.

TCI has been authorized to negotiate with any of nine firms previously qualified for asbestos removal work, Riedlinger said. Most of those are local companies.

Because the asbestos overlay is very thin and apparently present in limited quantities, the work is not expected to be of such an amount as to require bidding, according to Riedlinger.

Asbestos, a mineral, is fire resistant and was popularly used in building construction years ago. Studies have shown, though, that asbestos fibers, if inhaled, can many years later cause permanent lung damage and possibly cancer. The body cannot dislodge the fibers from the lungs. Federal law now requires workers to wear protec-

tive clothing and proper respirators in working with asbestos that can be crumbled or crushed and become airborne.

Riedlinger and school physical plant director Michael Pinon said today that this particular asbestos is not friable. They assume the worker was not dangerously exposed since the worker had indicated to his supervisor he had worked with a similar product in the past.

Air samples were taken as a precaution to assure that asbestos levels in the auditorium do not exceed federal levels, Pinon and Riedlinger said.

The added cost for removing the asbestos will come from a borough-school district reserve account set aside for this work.

Riedlinger said the sprayed on asbestos at Hering was a thin overlay over three-quarter inch plaster board, and was used for acoustical control.

Borough firings concern Koponen

News-Miner Bureau

Fairbanks, Alaska
FAIRBANKS—Rep. Nillo Koponen says he's "deeply concerned" about the firing of Fairbanks North Star Borough safety officer Mike Oden and his supervisor, Barney Mulligan, after Oden testified to Koponen's committee on asbestos removal legislation.

Koponen, D-Fairbanks, co-chairs the the House Health, Education and Social Services Committee with Rep. Max Gruenberg, D-Anchorage. He said he has asked the Legislature's attorney to explore remedies avail-

able to Oden and the committee. "Although Myrt Charney provided me with information to the contrary, press accounts indicate that Oden and Mulligan were fired in part because of Oden's testimony before our committee," Koponen said.

Charney is the borough's director of administration.

Oden testified Jan. 25 on a bill establishing an asbestos health hazard abatement program. In part, it requires workers who remove asbestos from schools to be certified by the state.

Oden told the committee that during one of the school district asbestos removal jobs, workers had dragged asbestos material through the halls, making the problem worse than if it had not been removed at all.

Oden told the committee that the borough was liable for children being exposed to asbestos, and identified the school where the shoddy work was performed as Joy Elementary. A few days later, he corrected himself and said he had heard the reports about the Main Building.

"I sincerely hope Mr. Oden was not, in fact, fired because of his statements to our committee," Koponen

said. "That will require investigation. But, to protect the right of citizens to testify publicly before the Legislature and to protect the legislative process itself, I have asked the Legislative Counsel to examine what remedies may be available to the committee and to Mr. Oden."

He said such actions could result in secret meetings of the committee.

"The public rightfully objects to closed meetings, but if people are to suffer for offering their insights and opinions, would we not be duty bound to close meetings to protect those who wish to testify?" Koponen said.

"Free government depends on free speech," he said.

Allen defends two firings

By SUSAN FISHER
Staff Writer

Borough Mayor Bill Allen says he supports department head Myrt Charney's firing Thursday of the risk manager and a safety officer, and that the assembly was informed that action would be taken.

The mayor said he was briefed by Charney on recent controversies involving Safety Officer Michael Oden, and he had talked with Charney and Schools Superintendent Kenneth Burnley before Charney made his decision.

Also fired was Oden's supervisor, Risk Manager Barney Mulligan. Neither could be reached this morning for comment. Charney did not return a phone call for comment.

Oden's recent controversial testimony to a legislative committee was a large part, but not all, the reason for his dismissal, officials indicated.

According to comments by Allen, Burnley and school district physical plant Director Michael Pinon, Oden's work on inspecting schools and writing up safety deficiencies also played a part.

Oden, a strong supporter of a bill to require workers removing asbestos to be certified, testified to a legislative committee. Oden later admitted to

(See *FIRING*, page 3)

FIRING . . .

(Continued from page 1)

making mistakes in his testimony, but maintained that school workers were exposed to asbestos and that fibers had been released inside Main Building. Asbestos exposure can be deadly or cause permanent lung damage.

School district officials strongly denied most of Oden's assertions. Later, Oden identified an area in Main where asbestos insulation was not encased. That was in an abandoned boiler room, and school officials say the enclosed room poses no hazards to building users.

Oden's strained relations with school officials began shortly after his hiring in October, when he wrote a report critical of safety deficiencies at North Pole Middle School.

Allen said today that Mulligan had changed some of Oden's written reports. That, the mayor said, was unacceptable action.

Mulligan and Oden had visited separately with Burnley and Pinon regarding strained relations on the handling of school safety inspections and Oden's written reports before the legislative testimony.

"Our understanding was that Mike's (Oden's) job was supposed to be to assist us with any deficiencies that were known, so that we could take care of them before an outside agency came in. Kind of like bird-dogging problems, if we had any," said Pinon. Instead, he said, communications disintegrated.

Oden has said that school officials ignored the reports he's done, with the exception of the publicized North Pole school. Pinon denies that.

Burnley this morning declined to comment on the firings, but did say

the risk manager and safety officer are important positions.

"The priority is the health, safety and welfare of our students," he said.

Inspections must be done regularly and fairly, Burnley said, to assure the district's "meeting regulations and maintaining a safe environment. That's what I want. I demand it. There can be no exceptions to that." Burnley noted that the school district pays for the safety officer's position.

Allen said legislators hearing Oden's testimony would conclude that the borough and school district were handling asbestos materials haphazardly. "I don't think that's the case," he said.

Noting public sensitivity over asbestos, Allen said, "There's a written policy in this borough that we do not espouse the borough's position on anything unless we have the authority to do it. I've even self-imposed a rule on myself with the assembly, before I make any public announcement, to inform the assembly, just as a courtesy."

"We don't have a gag order here. All I insist on is people use reasonable intelligence and good judgment when they talk to the media or anyone else, as far as that's concerned, about borough business. On routine standard business, I don't have any problem with that. But if there's a problem, if there's a controversial position, I want to provide the position of the borough, not borough employees. I'm the guy that takes the heat," said Allen.

Oden also had taken a public position that the city of Fairbanks should not allow cement asbestos boards to be installed in the new South Fairbanks Community Center.

FBX MUR 21-12-85

FNM 2/11/85

Borough fires two after asbestos flap

By MARGARET NELSON
Staff Writer

Two members of the borough's risk management department have been fired as the result of testimony one of them gave last month to legislators regarding asbestos in borough schools.

Borough Chief Executive Director Greg Strong said today that Mike Oden, who held the position of safety coordinator/inspector, and his supervisor, Barney Mulligan, the director of the risk management department, were discharged last week. Their last day was Thursday.

The risk management office, which handles safety inspections of borough buildings, has been under fire recently for its position on the removal of asbestos in borough schools and facilities.

Neither Mulligan or Oden could be reached today for comment.

Oden, who had been with the borough since October, was fired because "he had destroyed the relationship he had with the school district," Strong said. "It wasn't a workable relationship."

Strong said Mulligan was fired because he was "not providing the direction necessary for the safety inspector (Oden)."

The action leaves the borough's risk management office without any inspectors. The office is responsible for insurance, health care benefits and safety throughout the borough, including the school district.

Strong said the borough has hired

University of Alaska-Fairbanks Fire Chief Bill Shechter on a temporary basis to review nine reports of safety inspections of borough schools completed by the risk management office.

Oden's dismissal stemmed from testimony last month to the Legislative Health and Social Services Commission regarding asbestos in Fairbanks schools. He said asbestos was prevalent in Joy Elementary School. Later, he corrected his testimony to say he meant asbestos in the Main Building, not at Joy. He was testifying on House Bill 5, which would require any worker removing asbestos to have minimum formal training.

Local school district officials said Oden was wrong in his testimony regarding exposure to asbestos. They said the district has far exceeded federal requirements on protective measure for handling asbestos as well as in its intention to remove all asbestos from schools by the fall of 1986.

According to district officials, asbestos was removed at Joy School in December 1983, and all federal requirements for removal were followed.

Les Riedlinger, school facilities planner, said Main Building is one of 11 older buildings in the district where asbestos insulation has been "encapsulated" or encased until it can be removed. All 11 school district buildings are to be rid of asbestos by late 1986 at a cost of more than \$3 million, in addition to the \$1.26 million that has already been spent.

A / FAIRBANKS

Controversial question: is asbestos new or old?

1-29-85

By SUSAN FISHER
Staff Writer

A sample taken at Main Building Monday may be asbestos, but school district officials say the asbestos was in an old boiler room and left alone at a consultant's recommendation.

That response came after Borough Safety Officer Mike Oden took a sample from an abandoned boiler room Monday.

The rift between Oden and school administrative staff has become more pronounced in this latest debate over safety hazards and job authorities. The opening round came after Oden joined the borough staff in October, and issued an exhaustive study citing of safety deficiencies at North Pole Middle School.

In this latest round, Oden's testimony to a legislative committee Friday drew fire from school officials irate over his implications of poor workmanship and asbestos exposure in schools. They say the district has gone beyond federal requirements in taking precautions, and plans are to remove all asbestos from local schools by 1986.

Oden has corrected some of his testimony, but not all of his conten-

tions. Monday morning he went to Main Building to take a sample of what he believes to be friable asbestos. Friable means easily crumbled or reduced to powder. Such asbestos can become airborne and enter human lungs, where it may cause cancer and other diseases.

That same morning, school Facilities Planner Les Riedlinger said Oden would not find friable asbestos. But Riedlinger was assuming Oden was talking about areas where friable asbestos was encased at Main last summer. An Etelson work crew painted on five coats of a protective covering.

Old asbestos insulation was identified by an Anchorage consultant, said Michael Pinon, district physical plant director. The consultant did not recommend encasing insulation in the old boiler room, because the room is not used, it is enclosed, old ducts are closed off and it poses no dangers, Pinon and Riedlinger said.

By afternoon, Riedlinger learned Oden had been in the boiler room in the basement and may have taken a friable asbestos sample. Still, Riedlinger says that muslin coverings are intact and that asbestos there should pose no dangers.

Oden insists the area should have a posted warning. Riedlinger said today that has been done.

The boiler room was abandoned six or more years ago when Main Building converted to city steam heat. It contains an emergency generator.

Riedlinger says air samples taken at Main before and after the encasing work shows such negligible readings that experts could not identify if fibers were asbestos or not. He also says air samples weren't taken in the boiler room.

Pinon says Oden has never discussed the consultant's report or the district's work in encasing or removing asbestos. Riedlinger is even more rankled, saying Oden hasn't been working with the district.

Oden says school officials have ignored his school inspection safety reports.

"The whole point is I was testifying to try to get people certified" Oden said of Friday's hearing, on requiring worker training for asbestos removal. "It looks like I'm trying to put the district or the borough in a bad spot, and really I'm not," he said.

FNM 1/28/85
**Official firm
on asbestos
allegations**

By SUSAN FISHER
Staff Writer

A borough safety official whose testimony on asbestos in Fairbanks schools startled legislators Friday has corrected parts of his testimony, but contends workers at Main Building may have been exposed to airborne asbestos.

Local school district officials are furious over Safety Officer Mike Oden's testimony Friday to the House Health, Education and Social Services Committee as well as Oden's continued assertions.

Oden told legislators that workers had swept up crumbled insulation material and dust and carried it in open containers through hallways at Joy Elementary School. He now says he meant to refer in his testimony to Main Building, not Joy Elementary, but he still maintains that debris contained asbestos.

School officials say Oden is wrong, and the district has far exceeded federal requirements on protective measures as well as intentions of totally removing all asbestos in schools by fall 1986.

Oden, though, has not backed down, and this morning said he took samples at Main Building where insulation material has crumbled. He believes it may contain asbestos and says he will have it examined.

Les Riedlinger, school facilities planner, said Oden did not find asbestos. "This school (Main) has a tremendous amount of Fiberglas and calcite insulation" in areas where asbestos was not installed, Riedlinger said.

The furor erupted over the weekend when schools Superintendent Kenneth Burnley and Riedlinger heard of Oden's testimony to HESS as legislators considered House Bill 5, to require any worker removing asbestos to have minimum formal training. His testimony implied Joy school.

Oden, who strongly supports that bill, says he was called 15 minutes before the teleconference hearing began and walked into the Fairbanks Legislative Information Office as the hearing was in progress. He had little preparation time before giving testimony and answering legislators' questions without much preparation time.

Asbestos was removed at Joy School in December 1983, and Riedlinger says procedures were in strict accordance with federal requirements. Main Building is one of 11 older buildings in the district where asbestos insulation has been "encapsulated," or encased, until removal can be accomplished. All 11 buildings are to be rid of asbestos by late 1986 at a cost of \$3,017,000, in addition to \$1.26 million already spent on removal.

The incident at Main that Oden refers to occurred last summer after pipes were encased.

Oden joined the borough staff in October. On the strength of interviews with a school worker, Oden believes the work crew doing the encapsulating left the area with dust and

(See ASBESTOS, page 3)

ASBESTOS . . .

(Continued from page 1)

crumbled insulating debris.

Riedlinger denies that. He said he personally inspected that area and found it to be clean. The crew came from Eielson Air Force Base and was experienced in encapsulating pipes, says Riedlinger.

Riedlinger says an expert firm took samples at schools prior to beginning any encapsulation or removal. All of the results showed fiber levels so negligible that experts could not distinguish asbestos from non-asbestos fibers. Nonetheless, the district administration is moving ahead to have all asbestos removed, even though federal regulation would not require it, he said.

Asbestos fibers, if inhaled, can lead to permanent lung damage or cancer many years after exposure.

Oden concedes that it won't be proven that asbestos is in the dust at Main Building until lab results are known, but he is adamant in pursuing it.

During Friday's hearing, referring to school workers at Main Building, Oden told legislators that the workers were not told asbestos was present in the building, and might be in the dust and debris they were sweeping. "They were told to carry the material out of the building and put it into a barrel. They did, and at one time they were outside playing with it, throwing it up in the air," Oden said.

"When this type of shoddy work

manship occurs, we increase our exposure. What the workers did was inexcusable. We must now advise our children they have been exposed to asbestos," he testified.

Main Building is occupied by school administrative offices and Fairbanks Alternative High School.

Both Riedlinger and Burnley said the district has followed federal regulations not only to the letter, but gone beyond some of the requirements to assure safety to workers and total protection at school buildings.

Firms here have had to "prequalify" by offering 20 hours of training to their workers in order to even bid the work, Riedlinger said. "They are absolutely required to make available medical examinations of each worker at the conclusion of the job," he added.

Legislators turn to asbestos removal

By DAN JOLING
News-Miner Bureau

JUNEAU—Legislation to remove asbestos from schools died in the House Health, Education and Social Services Committee last session. This year, after it became a campaign issue in Anchorage, it's one of the first orders of business.

In a joint hearing with the House Labor and Commerce Committee Tuesday, and with several senators sitting in, the HESS Committee took testimony from Fairbanks, Anchorage and Ketchikan on HB 5, a bill establishing an asbestos health hazard abatement program in state schools.

The committee also considered HB 57, which would appropriate \$28 million to the Department of Education for removing or negating asbestos hazards in schools, plus \$300,000 for the Department of Labor to administer the abatement program.

According to the National Cancer Institute, between 1.6 and 2.1 million American workers will die from exposure to cancer-causing asbestos. Another 3 million may suffer non-cancerous, but fatal, asbestosis.

Gov. Bill Sheffield has included \$11 million for asbestos removal in schools in his proposed budget. That amount, however, could be used by schools in Anchorage alone, said Sen.

Joe Josephson, D-Anchorage, the sponsor of similar legislation last year.

The bill drew general support from speakers in Anchorage and Fairbanks except for one provision: a requirement for the Department of Labor to certify that workers who remove or seal asbestos are adequately trained, and that contractors submit a plan for removal to the department.

Freshman Rep. Max Gruenberg, D-Anchorage, co-chairman of the HESS Committee, is prime sponsor of both bills. Gruenberg defeated incumbent Mae Tischer in November. The campaign focused in part on Tischer's chairing of the HESS Committee, the graveyard for a similar asbestos bill.

The Legislature approved \$11 million for asbestos removal at Bartlett High School in Anchorage last session, reportedly the largest asbestos removal project in the country. The federal government approved another \$6 million.

Fairbanks received \$1.4 million for school asbestos identification and removal last year and the work is 20 percent complete, according to the borough's capital improvement project booklet. No money has been requested for Fairbanks this session.

William Schneider, a spokesman for Alaska's Associated General Contractors, said he agrees with the in-

tent of the bills but that certification unnecessarily duplicates existing safety regulations.

He said the law already has provisions for dealing with numerous hazardous substances. "Asbestos should not be treated any differently than those substances," he said.

He said part of the AGC's objection was because of uncertainties in the bill. Schneider said the state may be liable if its certification is inadequate and a hazard remains. He also questioned whether \$300,000 was enough to run the certification and training programs for two years.

Adding up the true costs of running a program, he said, would lead to the question of whether the expense would provide something that's not being done now.

"The answer is nothing," Schneider said.

But most other speakers favored including the certification process, not only because of the danger involved but because of hazards that may remain if asbestos is removed improperly.

Josephson said he was confident of the ability of Anchorage contractors removing asbestos because of the availability of competing contractors and the Anchorage school district's sophistication in contract management.

"I am not equally confident about other areas of the state," Josephson said. "Last year, your committee heard eyewitness testimony that Alaska workers handling asbestos on the job site have been observed using careless methods reflecting a want of training. We are concerned for the safe working place. We are also concerned about the thoroughness and completeness of the asbestos removal job itself."

Fairbanksan Mick Hotrum, safety representative for the Alaska District Council of Laborers, echoed Josephson, as did representatives for the Alaska Environmental Lobby, the Anchorage School District, the Anchorage Education Association, and the Alaska Health Project, a group of occupational health activists.

The bill requires the state Department of Labor to inspect schools that have not required federal regulations regarding school inspections.

The bill also permits schools to meet for 150 days rather than 180 if the shorter term is necessary for abating the asbestos hazard. The attorney general has already rendered an opinion that the Education Department can waive the 180-day requirement for Bartlett High School in Anchorage so contractors can get a jump on removing asbestos.

ODEN' CHRONOLOGY

JANUARY 25, 1985

Mike Oden testified to the House HESS Committee about the need for state-certification of asbestos workers. He described to the committee gross mishandling of asbestos removal projects in the Fairbanks North Star Borough School District. (A verbatim transcript is in the packets.)

JANUARY 28, 1985

FNSB School officials denied what Oden said. School officials claimed there was no asbestos in Old Main School.

FEBRUARY 11, 1985

Both Mike Oden and his supervisor Barney Mulligan were fired by Fairbanks North Star Borough Director of Administration, Myrt Charney. Official statements said Oden "had destroyed the relationship he had with the school district," and Mulligan was "not providing the direction necessary for Oden". There was some question about the possibility of Mulligan's altering Oden's safety reports. It appeared possible that Mulligan had deleted Oden's descriptions of the mishandling of asbestos in the school removal projects.

FEBRUARY 15, 1985

Representative Koponen responded with his concern and began to investigate the need for "whistleblower legislation" for Alaska.

FEBRUARY 18, 1985

In an APRN radio interview, Fairbanks North Star Borough Mayor Bill Allen made it clear that Oden's testimony before the House HESS Committee was a factor in his firing.

EARLY MARCH, 1985

A sample taken from the Old Main School furnace room proved to contain asbestos.

MID MARCH, 1985

Michael Oden arranged for Fairbanks labor attorney Will Schendel to represent him. The Fairbanks North Star Borough Assembly voted to give Myrt Charney \$6000 for legal fees.

MARCH 24, 1985

Mike Oden was reinstated in his job. The out of court settlement provided that

- 1) Oden be reinstated with back pay
- 2) The Borough acknowledge that Oden's safety reports were substantially correct as written
- 3) Oden agree to testify in any dispute over the firing of his supervisor, Mulligan

AT PRESENT

Mike Oden is back at work as Fairbanks North Star Borough safety inspector. Mulligan has not been reinstated.

*280-393 Verbatim testimony of Mike Oden, Safety Coordinator of the Fairbanks North Star Borough & the Borough School District. 1/25/85

Gruenberg - Mr. Oden, are you there?

Oden - Can you hear me now?

Gruenberg - Please give us your name, the spelling of your last name, and the group you represent.

Oden - My name is Mike Oden, O-D-E-N. I am the Safety Coordinator, Safety Inspector, for the Fairbanks North Star Borough and Fairbanks North Star Borough School District. I would like to address the committee concerning the choice that you must make on HB 5, whether or not asbestos workers must be skilled or certified. The Fairbanks North Star Borough has spent several thousand dollars on its buildings and schools both studying asbestos, and in the actual removal of asbestos from the schools. During one of the recent asbestos removals that we had contracted, several complaints were filed to this department because of dust in the air. The dust was tested and found to contain asbestos. The investigation revealed, in

the removals, the workers were not experienced or had not had any certification in asbestos removal. At one point, they were actually dragging the material through the schools and the hallways. They were taking, making the situation a more severe problem. Instead of dormant asbestos, we now have asbestos dust and fibers in our hallways of schools. Not in all of the schools, but in some. Untrained and uncertified persons can make a dormant situation a more hazardous situation. Interviews with the contractors and the workers at the time I talked to them, and they indicated to me they had no idea what they were doing, they were told to carry the material out of the building and put it into a barrel. They did. At one time, they were outside playing with it, throwing it up in the air. When this type of shoddy workmanship occurs, we increase our exposure. What the workers did was unexcusable. We must now advise our children they have been exposed to asbestos. The unskilled worker isn't responsible, the Fairbanks North Star Borough is responsible. We are now liable for that. Asbestos is a problem. However, when it becomes disturbed or is _____, by unknowing workers it changes from hazardous to deadly. A certification program for workers, asbestos workers is a must. We must require persons handling this material to know what they're doing. We cannot let anyone handle this without a certification or training. Why should we increase the hazard? Thank you.

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Gruenberg - Mr. Oden, I'm going to start off some of the questioning from you. I think that your testimony is extremely important, and I'm going to ask you some specifics about the people throwing the asbestos up in the air and playing with it. Was this children or adults who was, were doing this?

Oden - This was the workers that actually removed the asbestos.

Gruenberg - When and where did this occur?

Oden - I didn't bring the papers with me. It is available.

Gruenberg - I would like you to transmit that information immediately to Miss Bennett. Can you tell me...was it in one or more schools, or where was it?

Oden - It was only in one school that I know of at this time, only one incident at this time.

Gruenberg - Do you recall the name of the school, sir?

Oden - I believe it was Joy Elementary School.

Gruenberg - And approximately when did this occur?

Oden - Last year.

Gruenberg - I see. Were there any protective measures taken afterwards, to make sure that that, for example, the barrel of asbestos was removed, or done something with to make it safe?

Oden - I do not know what happened to the barrel. The area was swept and cleaned with dustmops in the hallways and that's all the precautions that have been taken.

Gruenberg - I see. Are there questions? Representative Koponen.

361 Koponen - Yes, that hits rather home because I was teaching at that school at the time the asbestos was initially sprayed there. That's a nice thought. I was wondering what subsequent measures have been taken to check for airborne asbestos and whether any other removal procedures might be necessary if there is still asbestos dust around.

Oden - The schools we're testing again the last month, and I haven't received the results of the tests since then.

Gruenberg - When you do receive those tests, could you please transmit them to the committee via Miss Bennett?

Oden - Yes I can.

Gruenberg - Representative Koponen says he has no further questions, Representative Hanley?

374 Hanley - Yes. Mr. Oden, I do have a question. Even though certification has not been required, there are toxic and hazardous substance laws which are in existence which cover employee safety programs, and also cover asbestos removal. As a safety coordinator for the Fairbanks Borough and School District, were you aware of any of those laws and regulations?

Oden - Not completely.

Hanley - So there was no compliance, or no attempt to take any precautions in removing the asbestos from that particular school. Is that correct?

(Pause)

Gruenberg - Mr. Oden, can you hear us?

Oden - It's breaking up, could you repeat please?

Hanley - My question was, were there any precautions or any particular procedures that the workers used in removing the asbestos?

Oden - No.

Hanley - That was the only question I had.

GRUENBERG - THANK YOU VERY MUCH MR. ODEN

ODEN - THANK YOU

STATEMENT TO PRESS
REP. NILO KOPONEN 2/14/85

I sincerely hope that Mr. Oden was not fired because of his statements to the House Health Education and Social Services Commission teleconference on the subject of asbestos in the Fairbanks schools. Whether his statements were partially or wholly incorrect, they should have been considered as a citizen's use of his right of free speech. Free public input is perhaps the most important part of the legislative process. Even if errors or misstatements are made, the very fact that the discussion is open and public allows correction of errors of fact and for presentation of varying opinions and alternative proposals.

The legislature is not and must not attempt to be a court of law, finding fault and assessing blame. Our job is to craft laws that guide future actions and to determine what public resources are to be used to meet what public needs in the immediate future.

When the legislature is attempting to ascertain those needs and to craft those laws any person should be free to state his or her views, opinions and observations - just as any other citizen should be free to contradict them. The legislator's task is to refrain from 'rushing to judgement' but to weigh everything with care and arrive at the best future course of action given the resources available.

Even when I had reason to believe Mr. Oden's comments were correct in relation to Joy School, I did not feel the schools district, the borough or the contractor were culpable. In the situation described people were acting in the light of the information available to them. The entire point of the certification portion of the proposed legislation is to assure that a carcinogenic material such as asbestos is handled by contractors and workers who are aware of the dangers to themselves and to the public and therefore use the best available techniques in the most responsible manner possible.

To protect the right of citizens to testify publically before the legislature and to protect the legislative process itself I have asked the Legislative Council to examine what remedies are available to the committee and to Mr. Odom, and what protections, if any, need to be afforded in the future.

The public rightfully objects to closed committee meetings - but if people are to suffer for offering their insights and opinions - would we not be duty-bound to close meetings to protect those who wish to testify? And in that case would we not further compound the evil? Free government must depend upon free speech.

(39) [Terminates July 1, 1984] Alaska Agricultural Action Com. (AS 44.33.450).

(40) Board of Fisheries (AS 16.05.221(a));

(41) Board of Game (AS 16.05.221(b));

(42) Board of Trustees and executive director of the Alaska Permanent Fund Corporation (AS 37.13.040);

(43) Alaska Energy Center (AS 46.12). (Initiative Proposal No. 1, effective Dec. 11, 1974; am §§ 18, 19 ch 25 SLA 1975; am § 1 ch 79 SLA 1975; am § 2 ch 170, SLA 1975; am § 18 ch 263 SLA 1976; am § 2 ch 67 SLA 1977; am § 2 ch 141 SLA 1978; am § 2 ch 158 SLA 1978; am § 9 ch 167 SLA 1978; am § 2 ch 66 SLA 1979; am § 3 ch 75 SLA 1979; am § 37 ch 3 SLA 1980; am § 28 ch 12 SLA 1980; am § 8 ch 14 SLA 1980; am §§ 39-43 ch 94 SLA 1980; am § 5 ch 148 SLA 1980; Executive Order No. 44 § 2 (1980))

Revisor's note. — Under the authority of AS 01.05.031(b), this section was rearranged for clarity in 1980. The list of state boards and commissions formerly found at AS 39.50.200(9) has been placed in AS 39.50.200(b).

Effect of amendments. — The 1977, 1978, and 1979 amendments added paragraphs (34)-(39) of present subsection (b). The second 1979 amendment, which added paragraph (39), terminates July 1, 1984.

The first 1980 amendment repealed a former subparagraph (b) to present paragraph (b), which read: "Alaska Salary Commission (AS 39.23)."

The second 1980 amendment inserted "court of appeals" following "a judge to the" near the middle of subparagraph (2) of paragraph (a).

The third 1980 amendment added subparagraph (42) in present paragraph (b).

The fourth 1980 amendment, in present paragraph (b), repealed former paragraphs, which read: "Board of Fish and Game (AS 16.05.220)," "State Section of Joint Federal-State Land Use Planning Commission (AS 41.40.020)," "Board of Directors, State-Operated Schools (AS

14.08.030)," and "Alaska State Commission (AS 39.23)," respectively substituted "Workers" for "Workmen" in subparagraph (31), and "workers" in subparagraphs (40) and (41).

The fifth 1980 amendment added subparagraph (43) in present paragraph (b).

Section 2, Executive Order No. 44 substituted "(AS 44.27.040)" for "(AS 44.19.900)" at the end of subparagraph (b) of present paragraph (b).

Purpose of the Conflict of Interest law is to bring to light all conflicts, actual and potential. *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

Patient of a physician is a client of medical services and falls within the scope of this chapter. *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

And source of income. — The Conflict of Interest law encompasses a physician's individual patients as sources of income. *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

Sec. 39.51.010. Misuse of confidential information.

Repealed by § 21 ch 166 SLA 1978.

Cross reference. — For present Editor's note. — The repealed section covers the subject matter of derived from § 1, ch. 105, SLA 1975. Repealed section, see AS 11.56.860.

Sec. 39.51.020. Obstruction of access to public information. (a) A public employee may be dismissed, demoted or suspended, laid off or otherwise made subject to any disciplinary action for communicating matters of public record or information under AS 09.25.110 and 09.25.120.

(b) As used in this section, "public employee" means any employee receiving compensation for services provided to the state (including the University of Alaska) or any political subdivision of the state.

(c) A violation of this section is a misdemeanor. (§ 1 ch 151 SLA 1978)

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Chapter 51. Abuse of Power by Public Officers and Employees.

Section

10. [Repealed]

20. Obstruction of access to public information

TO: Representative Koponen
FROM: Deborah Niedermeyer, Aide to House HESS Committee
RE: Whistleblower bill
DATE: 25 March, 1985

This bill strengthens and clarifies the existing law forbidding retaliation against public employees who provide information which is a matter of public record, or who testify before a legislative committee. Specifically, the bill

- 1) Clarifies that public employees must provide to the Legislature information concerning matters of public record
- 2) Increases the penalty for harrassment of an employee who does provide public information from "a misdemeanor" to a "class A misdemeanor"
- 3) Clarifies a public employee's right to request a legislative investigation if she or he is harrassed at work because of testimony before the Legislature
- 4) Requires an employer to comply with a legislative request for information if the employer has disciplined an employee within 90 after an employee has testified before a legislative committee
- 5) Clarifies the employee's right to sue for reinstatement, back wages, damages, and attorney's fees if he or she is disciplined for testifying before a legislative committee
- 6) Makes it a class A misdemanor to discipline an employee for testifying before a legislative committee

to the money, instrument, or property, or the person waives it. If the objection is to the amount of money, the terms of the instrument, or the amount or kind of property, the person shall specify the amount, terms, or kind which the person requires, or is precluded from objecting later. This section shall not be construed to modify or change in any manner corresponding provisions of the Uniform Commercial Code (AS 45.01 - 45.09). (§ 3.20 ch 101 SLA 1962)

NOTES TO DECISIONS

It is not necessary to tender cash. *Ward v. Miller*, 13 Alaska 752 (1952).
 And a check, unobjected to, would constitute a proper tender. *Ward v. Miller*, 13 Alaska 752 (1952).

Sec. 09.25.100. Disposition of tax information. Information in the possession of the Department of Revenue which discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record, except for purposes of investigation and law enforcement. The information shall be kept confidential except when its production is required in an official investigation or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports and items, or prohibit the publication of tax lists showing the names of taxpayers who are delinquent and relevant information which may assist in the collection of delinquent taxes. (§ 3.21 ch 101 SLA 1962)

Collateral references. — Validity, construction, and effect of state laws requiring state officials to protect confidentiality of income tax returns and information, 1 ALR4th 959.

Sec. 09.25.110. Inspection and copies of public records. Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of costs a certified copy of the public record. (§ 3.22 ch 101 SLA 1962)

Cross references. For proof of public records, see Evid. R. 1005; for management and preservation of public records, see AS 40.21.

For discussion of the history of this section, see *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Broad policy. — This section and AS 09.25.120 articulate a broad policy of open records. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

The "agencies and departments" language used in this section must be read as referring to the agencies and departments of the governments to which the statute applies, but that language itself does not define what the applicable level of government is. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

The word "public" as used in this section and AS 09.25.120 with "officer" refers both to state and local officials. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Application to municipalities. — The provisions of this section are applicable to municipalities. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

In light of the common law rule, legislative history, and the court's reading of the

sections, the state supreme court will construe this section and AS 09.25.120 as that court should have construed them prior to 1957, which is as a strong legislative declaration that records in the possession of municipalities shall be available for public inspection, subject to exceptions based on need. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Disclosure of applications for public posts. — Strong public interest in the disclosure of the affairs of government generally, and in an open selection process for high public officials in particular, requires public disclosure and inspection of applications for posts having substantial discretionary authority. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

University of Alaska. — The legislature intended to include the University of Alaska within the scope of state agencies subject to the public records statute. *Carter v. Alaska Pub. Employees Ass'n*, Sup. Ct. Op. No. 2657 (File No. 6586), P.2d (1983).

The president of the University of Alaska is a public officer for purposes of this section. *Carter v. Alaska Pub. Employees Ass'n*, Sup. Ct. Op. No. 2657 (File No. 6586), P.2d (1983).

Collateral references. — Finding of trial board as evidence of physical condition of one registered, 16 ALR 247.
 Admissibility of report of public officer

or employee on cause of or responsibility for injury to person or damage to property, 163 ALR 163; 69 ALR2d 1148.

Sec. 09.25.120. Inspection and copying of public records. Every person has a right to inspect a public writing or record in the state, including public writings and records in recorders' offices except (1) records of vital statistics and adoption proceedings which shall be treated in the manner required by AS 18.50; (2) records pertaining to juveniles; (3) medical and related public health records; (4) records required to be kept confidential by a federal law or regulation or by state law. Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the legal fees therefor a certified copy of the writing or record, and the copy shall in all cases be evidence of the

original. Recorders shall permit memoranda, transcripts, and copies of the public writings and records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public writings and records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants; and shall furnish proper and reasonable facilities to persons having lawful occasion for access to the public writings and records for those purposes, subject to reasonable rules and regulations, in conformity to the direction of the court, as are necessary for the protection of the writings and records and to prevent interference with the regular discharge of the duties of the recorders and their employees. (§ 3.23 ch 101 SLA 1962)

NOTES TO DECISIONS

For discussion of the history of this section, see *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Broad policy. — AS 09.25.110 and this section articulate a broad policy of open records. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Effect of "in the state" language. — When the legislature chose to say "in the state," and not "of the state" in the first sentence of this section, they were conscious of the fact that they were defining scope and had it been intended to limit the application of this section to state agencies and departments, it could easily and clearly have done so. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

The word "public" as used in AS 09.25.110 and this section with "officer" refers both to state and local officials. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Application to municipalities. — The provisions of AS 09.25.110 and this section are applicable to municipalities. See *City of Kenai v. Kenai Peninsula Newspapers,*

Inc., Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

In light of the common law rule, legislative history, and the court's reading of the sections, the state supreme court will construe AS 09.25.110 and this section as that court would have construed them prior to 1967, which is as a strong legislative declaration that records in the possession of municipalities shall be available for public inspection, subject to exceptions based on need. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Disclosure of applications for public posts. — Strong public interest in the disclosure of the affairs of government generally, and in an open selection process for high public officials in particular requires public disclosure and inspection of applications for posts having substantial discretionary authority. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Universality of Alaska. — The legislature intended to include the University of Alaska within the scope of state agencies subject to the public records statute. *Carter v. Alaska Pub. Employees Ass'n*, Sup. Ct. Op. No. 2657 (File No. 6586), P.2d (1983).

Validity, construction, and application of statutes making public proceedings open to the public, 38 ALR3d 1070.

Confidentiality of records, 38 ALR3d 1070.

Collateral references. — 66 Am.Jur.2d, Records and Recording Laws, §§ 12-31.

76 C.J.S., Records, §§ 34-41.

ients of public welfare, 54 ALR3d 768.

Validity, construction, and application of statutory provisions relating to public access to police records, 82 ALR3d 19.

Restricting access to judicial records of state courts, 84 ALR3d 598.

Payroll records of individual government employees as subject to disclosure to public, 100 ALR3d 699.

Sec. 09.25.121. Copies of public records for veterans. When a copy of a public record is required by the division of veterans' affairs, Department of Commerce and Economic Development or by the United States Veterans' Administration to be used in determining the eligibility of a person to participate in benefits, the official custodian of the public record shall, without charge, provide the applicant for the benefits, a person acting on behalf of the applicant, or an authorized representative of the division of veterans' affairs or the United States Veterans' Administration with a certified copy of the record. (§ 1 ch 35 SLA 1981)

Revisor's notes. — Enacted as AS 09.25.123. Renumbered in 1981.

Cross references. — As to records of

veterans of the armed forces, see AS 26.10.070.

Sec. 09.25.125. Enforcement: Injunctive relief. A person having custody or control of a public record who obstructs or attempts to obstruct, or a person not having custody or control who aids or abets another person in obstructing or attempting to obstruct, the inspection of a public record subject to inspection under AS 09.25.110 or 09.25.120 may be enjoined by the superior court from obstructing, or attempting to obstruct, the inspection of public records subject to inspection under AS 09.25.110 or 09.25.120. (§ 1 ch 74 SLA 1975)

Sec. 09.25.130. Effect of private seals and scrolls. Private seals and scrolls as a substitute for seals are abolished. They are not required to an instrument, but when used their effect remains unchanged. (§ 3.10 ch 101 SLA 1962)

Sec. 09.25.150. Claiming of privilege by public official or reporter. Except as provided in AS 09.25.150 — 09.25.220, no public official or reporter may be compelled to disclose the source of information procured or obtained while acting in the course of duties as a public official or reporter. (§ 1 ch 115 SLA 1967)

Cross references. — For court rule recognizing statutory privileges, see Evid. R. 501.

Collateral references. — 81 Am.Jur.2d, Witnesses, §§ 141-147, 287-302.

98 C.J.S., Witnesses, §§ 432-440, 450-457.

tion between others, 2 ALR2d 645. Admissibility of recordings in evidence as affected by privileged nature of communications, 58 ALR2d 1037.

Construction of statute creating privilege against disclosure of communications made to stenographer or confidential clerk, 96 ALR2d 159.

MEMORANDUM

State of Alaska

TO: Nevette Bowen, Legislative Aide
to Rep. Katie Hurley

DATE: April 24, 1985

FILE NO:

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Review of CSHB 327,
legislative wit-
nesses

By: Susan D. Cox *Susan D. Cox*
Assistant Attorney General
Governmental Affairs-Juneau

I have reviewed Terry's work draft of CSHB 327 and am concerned that the legislative committee's ability to investigate suspected unlawful job retaliation may impinge the employee's right to have personnel records kept confidential. I assume in most circumstances a legislative investigation would be prompted by a disciplined employee's complaint, so the employee would not object to the legislative committee accessing personnel records. However, there might be an uncooperative employee whose privacy rights in those records should be preserved, if demanded. Therefore, I suggest the following to be inserted in a new paragraph to AS 39.51.050:

() A public agency may not disclose personnel records that are confidential by law to a legislative committee under (c) or (e) of this section unless the disciplined employee waives their confidentiality.

Please call if you have questions.

SDC/pjg

cc: Deborah Neidermeir, Legislative Aide
to Rep. Koponen

Theresa Cramer, Legal Services Div.
Legislative Affairs Agency