

HB

168



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124 Analysis 25  
February 16, 1987

FILE in Binder 1 behind tab  
Analysis and after prior weekly  
issue.

## ANALYSIS

### Expansion of Statutory Protection For Public-Sector Whistleblowers

**DEVELOPMENT:** Statutory protection for government-employee whistleblowers continues to grow, according to a report presented at a midwinter meeting of the American Bar Association, January 16 and 17.

The report, which forms the basis for this Analysis, was prepared by Nancy J. Sedmak, co-chairman of the ABA State and Local Government Bargaining Committee's Subcommittee on Special Problems.

#### Whistleblower Statutes

The newest state whistleblower law was signed in Pennsylvania in December. Michigan passed the first state whistleblower law in 1981; by 1985, there were 19 such laws, and there are now 25 states with some sort of whistleblower law on the books.

In addition to passing new laws, several states have amended ones already on the books. In 1986, New York expanded its 1984 whistleblower law by granting additional protections to public employees.

Most of the state laws cover only state employees. Several, including the new Pennsylvania law, cover state and local employees. Arizona's law covers state and county employees. Connecticut, Louisiana, Maine, Michigan, New Jersey, New York, and Rhode Island protect state, local, and private-sector employees. California's law covers only private-sector employees.

Many of the state whistleblower laws specify that employees will be protected if they report violations of federal, state, or municipal laws, rules, and regulations. Most such laws also protect employees who disclose information regarding waste, mismanagement, or abuse of authority. But Louisiana restricts protected disclosure to violations of state, federal, or local "environmental" laws.

Some states specify that reports must be submitted to a particular individual or agency, e.g. state auditor (Delaware, Oregon,

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Utah, and Washington). Others protect disclosure to any agency or federal entity having authority to investigate, police, manage, or otherwise remedy the violation or act in question (Florida), or disclosure to any appropriate body or authority (Kentucky, Maine, New York, Rhode Island, Texas).

Whistleblowing employees may be required first to submit a report, usually in writing, to their supervisor and give the employer sufficient time to correct the problem (Indiana, Maine, New Jersey, New York, Utah). This requirement does not apply when the employee has specific reason to believe that reports to the employer will not result in prompt remedying of the violation (Maine), or if the employee is reasonably certain that the activity, policy, or practice is known to one or more supervisors, or where an emergency is involved and the employee reasonably fears physical harm as a result of the disclosure (New Jersey). Pennsylvania and Wisconsin provide that employees may report either to a supervisor or an appropriate authority. Kansas and Kentucky specifically state that employees are not required to give prior notice.

Whistleblowing employees may be required to make their disclosures in good faith (Pennsylvania, Texas), to have reasonable cause to believe a violation has or is about to occur (California, Iowa, Maryland, Maine, New Jersey, New York, Rhode Island, Wisconsin), to make reasonable attempts to ascertain the correctness of their information (Indiana), and not to knowingly make false charges (Connecticut, Delaware, Michigan, Utah). Employees who knowingly make false charges may be disciplined (Connecticut).

#### Remedies and Procedure

Most states provide for civil-suit enforcement, but a few require the employee to exhaust administrative remedies first. A few states have special procedures to handle complaints. Connecticut stipulates that the employee may file an appeal with a review board, or pursue remedies under a collective bargaining contract; Florida's law requires employees to exhaust administrative remedies; Indiana's states that those dismissed may process an administrative appeal, but the law does not impair other legal remedies the employee may have; Maryland provides remedies supplemental to the ordinary state-employee grievance procedure; Oregon's law requires establishment of an administrative appeals procedure; and Wisconsin provides that the employee may file a complaint with a commission. Maine provides for a jury trial.

Some states provide for injunctive relief (Delaware, Florida, Kentucky, Maine, Michigan, New Jersey, New York, Rhode Island, Texas).

Most states provide that reinstatement, back pay, fringe benefits, and seniority may be awarded. Louisiana provides for triple

damages, lost wages, and lost anticipated wages. Kentucky and Texas provide for punitive or exemplary damages. Attorney's fees and costs to the employee are available in Kentucky, Louisiana, Michigan, Rhode Island, Texas, Utah, and Washington, while attorney's fees and costs may be awarded to the prevailing party in Florida, Maine, New Jersey, and New York.

Some states specify civil or criminal penalties for violations of the whistleblower law. Any person who willfully violates the Kentucky law is guilty of a Class A misdemeanor. Maine provides for a civil fine of \$10 for each day of willful violation. Michigan and Utah provide for a civil fine of not more than \$500. New Jersey provides for a civil fine of not more than \$1,000 for the first violation, and not more than \$5,000 for each subsequent violation. In Pennsylvania, employers who violate the act may be fined up to \$500 and suspended up to six months, except for elected officials. Supervisors in Texas are subject to a civil penalty up to \$1,000.

The posting of notices informing employees of their rights is required in several states. New Jersey requires that the notices name the person designated to receive written reports.

#### Other Protections

In the absence of state laws protecting whistleblowers, or if the laws that do exist do not cover all employees, other protections are sometimes available. Employees may invoke their First Amendment guarantees, or possibly bring wrongful-discharge suits.

The First Amendment protects a government employee from discharge for speech on matters of public concern. (*Connick v. Myers*, US SupCt, 1983, 1 IER Cases 178) To ascertain whether such matters are involved, the court must focus on the content, form, and context of statements for which protection is sought.

In *Wulf v. City of Wichita* (DC Kan, 1986, 1 IER Cases 895), a city police officer was terminated after he wrote to the state Attorney General expressing allegations ranging from interference by the police chief with the constitutionally protected right of membership in a union to improper use of public funds, and requesting an official investigation into these matters. The officer sued and was found to have engaged in speech on matters of public concern protected by the First Amendment. His letter, which was submitted through proper channels to appropriate authorities, did not affect the officer's ability to perform his duties; his working relationship with the police chief did not require personal loyalty and confidence; and there was no evidence of any disruption of police-department activities or morale as result of the letter. The court found that even if the police chief had legitimate fears of disruption, the First Amendment balance can hardly be controlled by this factor. Quoting *Porter v. Califano* (CA 5, 1979, 592 F.2d

770). the court stated: "An employee who accurately exposes rampant corruption in her office no doubt may disrupt and demoralize much of the office. But it would be absurd to hold that the First Amendment generally authorizes corrupt officials to punish subordinates who blow the whistle simply because the speech somewhat disrupted the office."

Officer Wulf was terminated by the City of Wichita in April 1981. Wulf's award from his lawsuit under 42 U.S.C. 1983 totalled \$242,465 for back pay, \$389,806 for front pay, \$250,000 for mental anguish and emotional distress, and \$50,000 in punitive damages against the police chief, plus reasonable attorney's fees and expenses.

Kansas enacted a whistleblower law to protect state employees in 1984. Wulf and similarly situated employees would not have been covered, because the law does not cover city employees.

#### Public-Policy Exceptions

In *Wagner v. City of Globe* (Ariz Sup Ct, 1985, 1 IER Cases 501), a probationary city police officer was discharged for what the court characterized as whistleblowing — he had taken affirmative steps to investigate and rectify the illegal detention of an individual and called it to the attention of the police chief and city magistrate. The police officer asserted that he had been wrongfully discharged in violation of the city's personnel rules and therefore in breach of contract.

The court considered whether the public-policy exception to the employment-at-will doctrine applied. The court stated: "The employee who chooses to report illegal or unsafe conduct by his employer differs significantly from the employee forced to choose between his job and actual participation in illegal behavior. The latter is the paradigmatic case of a public policy violation; in contrast the whistleblower faces the arguably less onerous choice of either ignoring the known or suspected illegality or becoming an instrument of law enforcement . . . We believe that whistleblowing activity which serves a public purpose should be protected. So long as employees' actions are not merely private or proprietary, but instead seek to further the public good, the decision to expose illegal or unsafe practices should be encouraged."

Further, the court noted, the legislature had recognized in 1985 that whistleblowing is worthy of protection by enacting a law protecting state and county employees. Though this law was not applicable here, it "evinces a legislative expression of public policy fully consonant with our decision," the court said. It summarized by stating: "As we have endeavored to show, all employees who attempt to correct problems of public interest fall within the ambit of the public policy exception to the at-will doctrine."

# HOUSE COMMITTEE REPORT

(7)

Date referred: 3/6/87

FURTHER REFERRALS: Judiciary

DATE: HB168

The Labor & Commerce Committee has considered HB 168

"An Act relating to protection for public employees."

**RECOMMENDS:**

- replace with HB168  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(s):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

\_\_\_\_\_  
*John E. Ellis*  
 \_\_\_\_\_  
*Cliff Davidson*  
 \_\_\_\_\_  
*Paul Alexander*  
 \_\_\_\_\_  
*John P. ...*  
 \_\_\_\_\_  
*John Koppena*  
 \_\_\_\_\_  
*David Donley*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SIGNING OTHER RECOMMENDATIONS:**

\_\_\_\_\_  
*Walt Furnace no rec*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
*David Donley*  
 \_\_\_\_\_  
 Chairman's signature

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_

Bill Version: HB 168  
Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "An Act relating to protection for public employees."  
Sponsor: House Labor and Commerce  
Requestor: House Labor and Commerce

Agency Affected: Department of Law  
BRU: Legal Services  
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		*	*	*	*	*
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		*	*	*	*	*
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		*	*	*	*	*
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 Date: March 16, 1987  
Approved by Commissioner: Grace Berg Schaible, Atty. Gen. Date: March 16, 1987  
Agency: Department of Law

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 168

This bill amends AS 39.51 by adding new sections that provide certain protections and remedies for public employees against employer retaliation for reporting violations of law, dangers to public health and safety, or mismanagement, a gross waste of funds, or an abuse of authority.

This bill could have a substantial fiscal impact on the Department of Law for defending suits alleging violations of proposed Section 39.51.100, because of some of the broad terms used in this section, such as "mismanagement", a "gross waste of funds", or "an abuse of authority". Terms of such breadth generally defy objective measurement, and they are more a matter of perception rather than fact. As an example, a gross waste of funds for some may be about \$144, but for others it might be \$1,440, \$144,000, or \$1,440,000. And where some see efficiency in an expenditure in technological improvements, others will see waste. Likewise, it is not uncommon during an employer/employee disciplinary dispute for an employee to blame a poor performance rating on employer mismanagement and abuse of authority. To the extent that the bill could be read as interfering in the state's current labor relations policy, the bill could encourage unjustified attempts to avoid progressive discipline.

It is not possible to estimate a fiscal impact at this time because of our lack of experience with the sweeping nature of the protections that the bill would provide. However, the addition of one or more attorneys in the long-term may not be unreasonable, particularly if the bill is seen by some employees as a means of avoiding termination or other disciplinary action, or as a way of avoiding layoff that would otherwise be mandated by state budget cuts.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: HB 168  
Publish Date: \_\_\_\_\_

REQUEST \_\_\_\_\_

Revision Date: March 16, 1987  
Title: An Act Relating to Protection  
for Public Employees

Agency Affected: All  
BRU: All

Sponsor: House Labor and Commerce Committee Components: All  
Requestor: House Labor and Commerce Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
<b>OPERATING</b>						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

This bill would not require an additional appropriation.

Prepared By: Diana DeSimone *Diana DeSimone* Phone: 465-4430  
Division: Personnel Date: March 16, 1987

Approved by Commissioner: Garrey Peska *[Signature]* Date: 3/27/87  
Agency: Department of Administration

Distribution (by preparer):

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

# ICSG 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) 267-8120.

**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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## Controlled Substances

maintaining such substance, shall be in opium or heroin" and if the mixture involved:

in 14 grams, such person shall be sentenced to a term of at least 14 years in prison, less than \$50,000.

in 28 grams, such person shall be sentenced to a term of at least 18 years in prison, less than \$100,000.

shall be punished as a felon and shall be confined in the state's prison and shall

through 6 is not eligible for early release as a committed youthful offender. The sentencing judge may reduce the applicable minimum prison term imposed on such person has, to the best of his ability in the identification, arrest, or conviction, co-conspirators, or principals if there is a finding that the person to be sentenced requires assistance.

through 6 shall run consecutively with any sentence being served by

provided in Sections 2 through 6 of the act relating to conspiracy to commit any

eligibility clause.]

use.]

effective date.]

## Protection of Public Employees Act

This draft act provides protection to employees who report a violation or suspected violation of state, local or federal law. It also protects employees who participate in hearings, investigations, legislative inquiries and court actions. Penalties and remedies are specified.

This draft legislation is based on a Michigan statute.

### Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the [state] Protection of  
2 Public Employees Act.

1 Section 2. [*Definitions.*] As used in this act:

2 (1) "Employee" means a person who performs a service for wage, or  
3 other remuneration under a contract of hire, written or oral, express or im-  
4 plied. Employee includes a person employed by the state or a political sub-  
5 division of the state except state classified civil service.

6 (2) "Employer" means a person who has one or more employees.  
7 Employer includes an agent of an employer and the state or a political sub-  
8 division of the state.

9 (3) "Person" means an individual, sole proprietorship, partnership,  
10 corporation, association, or any other legal entity.

11 (4) "Public body" means all of the following:

12 (i) A state officer, employee, agency, department, division, bureau,  
13 board, commission, council, authority, or other body in the executive  
14 branch of state government.

15 (ii) An agency, board, commission, council, member, or employee  
16 of the legislative branch of state government.

17 (iii) A county, city, township, village, intercounty, intercity, or  
18 regional governing body, a council, school district, special district, or  
19 municipal corporation, or a board, department, commission, council, agen-  
20 cy, or any member or employee thereof.

21 (iv) Any other body which is created by state or local authority or  
22 which is primarily funded by or through state or local authority, or any  
23 member or employee of that body.

24 (v) A law enforcement agency or any member or employee of a law  
25 enforcement agency.

26 (vi) The judiciary and any member or employee of the judiciary.

27 Section 3. [*Protection.*] An employee shall not discharge, threaten, or  
28 otherwise discriminate against an employee regarding the employee's com-

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, a  
 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 any 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.

1    hearing or in  
 2    act.

1    Section 9.  
 2    appropriate  
 3    tions and of

1    Section 11

1    Section 1

1    Section 1

Protection of Public Employees

privileges of employment because of the employee, reports or is violation or a suspected violation under the law of this state, a United States to a public body, is false, or because an employee in an investigation, hearing, or action.

his act may bring a civil action damages, or both within 90 days of this act.

ection 4 (a) may be brought in alleged violation occurred, the the county where the person resides or has their principal place

means damages for injury or including reasonable attorney fees. convincing evidence that they or report, verbally or in writing, of this state, a political subdivi-public body.

dering a judgment in an action court considers appropriate, of back wages, full reinstatement, actual damages, or any compensation the complainant all or a reasonable attorney fees and award is appropriate.

liable for a civil fine of not

act shall be submitted to the

shall not be construed to alter any collective bargaining

be construed to require an participation in an investigation,

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.]

Alaska State Legislature  
Representative Niilo Koponen  
District 21, Democrat

S.R. 10059  
Fairbanks, Alaska 99701  
479-6782

Pouch V  
Juneau, Alaska 99811  
465-4992

FOR RELEASE MARCH 27, 1985

Representative Niilo Koponen, Co-chair of the House Health, Education and Social Services Committee, today introduced two bills which grew out of testimony earlier this session concerning Alaska's asbestos problem. The first forbids the use of materials containing hazardous asbestos in the construction and renovation of public buildings. The second, a "whistleblower bill" clarifies the right of public employees to testify before legislative committees and provides penalties to public employers who discipline workers for exercising their right to free speech.

Koponen began work on the new asbestos bill, HB 334, when he learned from testimony that asbestos-containing materials were to be used in the new publically funded Fairbanks South Side Community Center. That building will be, in part, a daycare center.

"During our hearings on HB 5, the bill which would remove hazardous asbestos in schools, we learned that asbestos materials are still being used in new construction," Koponen said. "These materials are typically quite safe once they are in place, but release carcinogenic fibers when they are cut. So they're dangerous to work with, and may also harm people who use the building, since the fibers stay in the air for a long time. If the building is remodeled, the renovation workers may not be aware that they are dealing with asbestos-containing materials. There is a great possibility that hazardous fibers would be released during even a small remodel."

The "whistleblower bill", HB 335, arose from the same January 25 hearing. At that hearing Fairbanks North Star Borough Safety Officer Mike Oden described unsafe removals of asbestos in the FNSB school district to support of his position that asbestos workers should be trained and certified to remove asbestos safely. "At one time the workers were outside playing with the asbestos, throwing it up in the air," Oden told the committee. We must now advise our children they have been exposed to asbestos." Oden was subsequently dismissed from his job, in part for his "unauthorized testimony", but recently reached an out of court settlement with the Borough which includes reinstatement and back pay.

"To do its job, the Legislature must have free access to information," Koponen said. "This bill clarifies the Legislature's right to information from the administration and protects a public employee's right to testify before the Legislature. Open government becomes impossible if workers must risk losing their jobs in order to provide needed information."

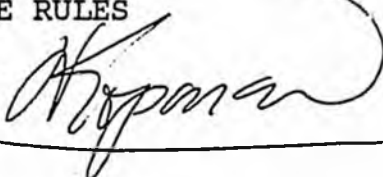
Alaska State Legislature  
Representative Niilo Koponen

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MEMORANDUM

TO: SENATOR KELLY  
CHAIR, SENATE RULES

FROM: REP. KOPONEN 

RE: HB 237

DATE: MAY 9, 1986

The Senate Rules Committee is now in possession of HB 237. This bill, known as the "whistleblower" bill, was modeled on Michigan statute and model legislation proposed by the Council of State Governments in 1982.

I am convinced of the need for such legislation after witnessing the retribution dealt by a public employer to an employee who testified in the House HESS Committee last year regarding asbestos in public facilities in Fairbanks. The public must be free to give us, the Legislature, the information we seek if we are to act in a fully informed manner.

I would like you to schedule this bill for the Senate floor at your earliest opportunity. Doug Yates, of my staff, can provide you or your staff with any back-up, should you require it.

Thank you for your assistance on this matter.

## 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.

**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.

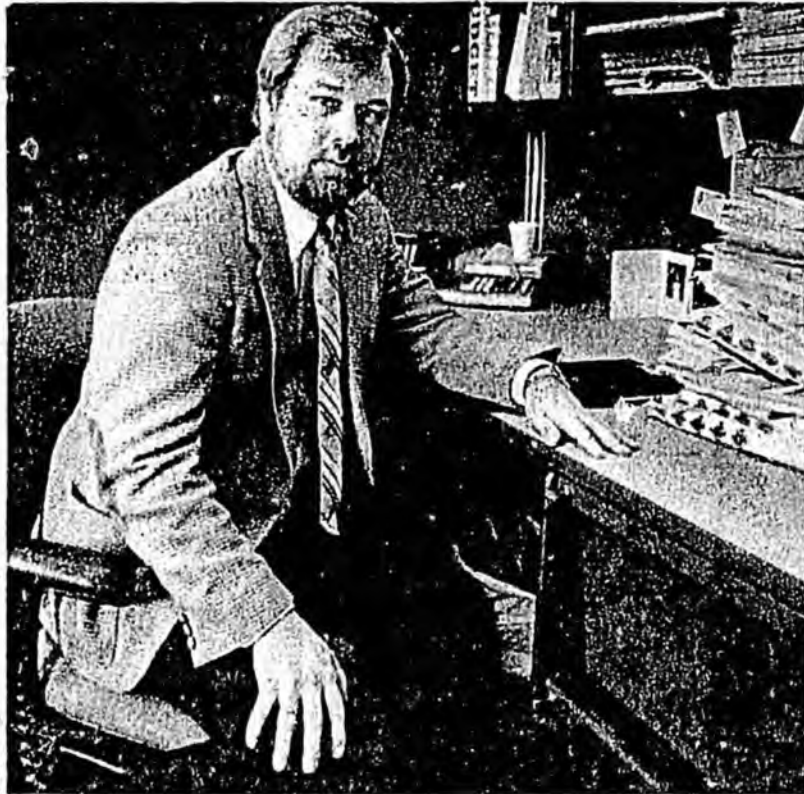
This morning, Myrt Charney, borough director of administrative services, said Oden will continue reporting to him in the immediate future. Charney fired Oden and Mulligan with the support of Mayor Bill Allen.

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 Muehling)

# 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.

Alaska

WOP  
3-13-85 New Mike

# 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

2115145  
JUNEAU—Rep. Niilo 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 publically 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, of 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 be 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 Eielson 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.

# 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 will 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 jobs," 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 committees also considered HB 57, which would appropriate \$26 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.

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

# DOT worker 'blows whistle' and now says he may be fired

By SAM BISHOP  
Staff Writer

A transportation department employee in Fairbanks who pointed out that his supervisors and co-workers were improperly using state vehicles and state time received a severely critical job evaluation shortly afterward, and he now fears he may be fired.

Burle Beard, an 18-year employee in the right-of-way section of the Department of Transportation and Public Facilities, said he first began writing down accounts of incidents and collecting evidence of improper use of state time in October 1984.

Beard's information eventually led to an investigation by the DOT's Division of Internal Review, which cleared the supervisors of almost all the charges.

But Beard said the investigator's report, completed on Aug. 21 and released on Sept. 18, dismissed several of the problems without giving them a thorough review.

Beard said that as a result of his role in starting the investigation, his supervisors have become critic-

al of his job performance in order to justify firing him. He was recently placed on leave until mid-November.

Beard has brought his problem to Reps. Niilo Koponen and Mike Davis. Koponen has introduced a bill designed to protect "whistle-blowers" in government positions and so was interested in Beard's situation. However, he said he was not familiar enough with Beard's case to make a judgment on it.

Bill McMullen, director of design and construction for DOT, said Beard's rating—a "low acceptable"—accurately reflects his value to the department.

Because Beard failed to stop agitating even after the internal investigation cleared the supervisors, he is now in danger of being fired, McMullen said. McMullen said he cannot criticize Beard for bringing up the problems, but now that they have been addressed, the matter should be dropped.

"Burle won't let go of this," McMullen said. "He's become obsessed by it."

Beard called the internal inves-

tigation a "whitewash."

Beard said he first became aware of improper actions in his department while reading DOT's personnel rules. In his reading, he came to a section that directed employees to report any violations of such rules to their supervisors.

He felt his immediate supervisors were part of the problem, so he began talking to attorneys and other people outside his department to obtain some perspective.

He was told by one attorney that charging time improperly and using state vehicles for personal tasks could be considered fraud, felony deception and embezzlement.

Eventually, news of the troubles reached McMullen through the state Division of Personnel and the Federal Highway Administration.

"I took it very seriously," McMullen said.

A three-week investigation was conducted by the DOT's Division of Internal Review.

"It showed that the allegations were primarily a bunch of smoke," McMullen said.

Beard disagrees. His evidence was primarily against one supervisor, now retired, who Beard said regularly used a state vehicle for personal tasks and went home a half hour early each day.

Beard admits the issue is not terribly significant but said it bothers him that the man's supervisors, who still work in the division, refuse to acknowledge that it occurred. He said he suspects they will not admit to the improprieties because it would mean they had knowingly falsified information on the man's timesheets for many years. That, if proven, could endanger or reduce both the present and retired employees' retirement benefits, he says.

McMullen is not Beard's immediate supervisor, was not responsible for developing the evaluations and is not among the supervisors Beard charges with improper actions.

Beard also said he continues to pursue the issue because he is angered by the poor evaluation he received this summer. He said he feels his supervisors are trying to force him to shut up or get out.

For the past several years, Beard has received short, moderately



**BURLE BEARD**  
"Opened my eyes"

luating and the people who pay the bill," he said.

Still, Beard's refusal to let the issue die is disrupting work in the right-of-way section, he said.

The section is currently the bottleneck for most DOT projects, McMullen said. With more than \$100 million in contracts to write each year, the DOT cannot afford to let personal squabbles slow the process, he said.

In response to Beard's information, investigators found that a DOT employee was charging time spent on the Fairbanks North Star Borough Platting Board to specific road projects.

-FNM 4-3-85

## 'Whistle-blowing' ex-worker sues over firing

ANCHORAGE (AP)—A former ARCO Alaska employee is suing the oil company, claiming he was fired illegally after raising questions about the financial feasibility of a work camp being built by the North Slope Borough for lease by ARCO.

David Sicks, a former ARCO cost analyst, claimed in a Superior

Court suit filed Monday that he was fired after he told ARCO auditors of possible illegal activity involving the multi-million dollar Kuparuk Industrial Center at Prudhoe Bay.

The structure, completed in December, was built by the North Slope Borough and leased to ARCO.

Sicks is asking to be reinstated, and also is seeking lost pay and be-

nefits. ARCO officials declined comment on the suit.

Sicks contended he performed a study on the rates that would the borough would need to charge to cover the \$68 million cost of the work camp.

After completing the study "it became clear" the project was "total-ly unfeasible from an economic

standpoint," Sicks contends.

Sicks alleges he was told by ARCO officials to change the study to lower the costs. He said he became concerned that his superiors or co-workers were "involved in illegal activities, or if not illegal activities, activities that were clearly of violation of good business practices."