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by OSC. We did not review any cases that were completed before 1982. Table 1 presents a summary of the results of our review. Following the table are brief narrative summaries of three cases illustrating the range of actions contained in the OSC agency settlements. Narrative summaries of the remaining cases can be found in appendix VII.

TABLE 1

Agency Disciplinary and Corrective Action
in Recent OSC Settlements

Prohibited Personnel Practice	Settlement Date	Disciplinary Action	Corrective Action
1. Nepotism	March, 1984	Letter of reprimand and hiring approval authority revoked	
2. Reprisal for whistleblowing	December, 1983		Inform management officials that such reprisal is prohibited.
3&4. Nepotism[a]	November, 1983	Father to be suspended 14 to 30 days[b]	Son's employment terminated
5. Unauthorized preference	October, 1983	-60-day suspension -$1,000 civil penalty	
6. Reprisal for whistleblowing	August, 1983		Reassignment rescinded
7&8. Reprisal for whistleblowing[a]	June, 1983	Letter of admonishment	-Agency directive supporting CSRA and communications with inspector general -Upgrade performance rating -Restore 16 hours leave -Reassignment -Attorneys fees[c]
9. Reprisal for whistleblowing	April, 1983		-Reassignment rescinded -Secretarial protective notices
10. Reprisal for whistleblowing	August, 1982		-Reassignment rescinded -Within-grade salary increase -Upgraded performance appraisal

[a]Combined because only one investigation was involved.
[b]Suspension had not been imposed as of September 5, 1984.
[c]Corrective action rejected by complainant as unsatisfactory.

SUMMARY CASE 1 (Table 1, Case 1 - Nepotism) - This case illustrates a situation where the action achieved by OSC did not directly benefit the original complainant.

In November 1982, an employee of a Navy installation in Florida made allegations of nepotism against the directors of two technical departments. According to the complainant, one director had hired both his wife and his son and subsequently promoted his son. The complainant also alleged that the other director had hired and subsequently promoted his son.

OSC's investigation substantially confirmed these allegations and, by letter of September 30, 1983, the Special Counsel advised the Secretary of the Navy that he had concluded that the federal anti-nepotism laws had been violated. Due to certain mitigating factors, including the Navy's efforts to seek partial repayment of salaries and assertion by the involved officials of a lack of intent to violate the law, the Special Counsel did not file a formal disciplinary complaint. However, the Special Counsel advised the Navy that the involved officials should be sanctioned in some appropriate way and that OSC was willing to consider approving some disciplinary action by the Navy in this matter. Subsequently, OSC approved a range of penalties between a reprimand and a 14-day suspension, leaving the final choice among them to the agency. On March 7, 1984, the Navy's General Counsel advised OSC that it had issued each of the involved officials a letter of reprimand and revoked their authority to approve personnel hiring actions.

The original complainant who brought the nepotism allegation to OSC did not benefit from OSC's involvement in the case. Her allegation that she was fired in reprisal for disclosing existence of nepotism and other violations was closed by OSC, which found evidence of various valid grounds for her removal.

SUMMARY CASE 2 (Table 1, Case 9 - Whistleblower Reprisal) - This case illustrates a situation where the action achieved by OSC directly benefitted the original complainant.

This case involved an auditor for the Defense Contract Audit Agency. OSC found that the agency's action in denying a waiver of its mandatory rotation policy in light of the employee's planned retirement was in reprisal for the auditor's public whistleblowing and testimony in an MSPB hearing. The auditor had presented allegations of cost overruns and unjustified expenditures on defense contracts.

On April 19, 1983, the Special Counsel reported his findings to the Secretary of Defense. OSC's letter recommended that the agency director be ordered to cancel the auditor's rotation and to allow the auditor to remain in his position until his retirement at the end of the year. The letter also recommended that the secretary direct officials of the Defense Contract

Audit Agency to cease their pattern of discrimination and harassment against the auditor, and inform the agency's director in writing of the requirements of the CSRA regarding reprisals for whistleblowing. Two days later, the department's general counsel furnished proof of compliance with these corrective action recommendations. There was also substantial media and congressional interest in the case. A related disciplinary prosecution, involving four defendants, is still pending before the MSPB.

SUMMARY CASE 3 (Table 1, Cases 7 and 8 - Whistleblower Reprisal) - This case illustrates a situation where the actions achieved by OSC were found unacceptable by the original complainant.

Two of OSC's accomplishments at the agency level resulted from a single investigation at an area office of the Department of Housing and Urban Development (HUD). The complainant, a supervisory construction analyst, alleged in August 1981, that his detail out of a branch chief position and a marginally satisfactory performance appraisal resulted from his numerous disclosures of processing irregularities and serious management problems to the HUD inspector general and central office. Subsequently, the department proposed removal of the employee for violation of agency conduct regulations, but OSC petitioned the MSPB for a stay of the removal action, and the agency eventually withdrew it.

OSC and HUD reached a settlement agreement in June 1983, 22 months after OSC received the complaint. A letter of admonishment was issued to the complainant's supervisor for having engaged in illegal reprisal, constituting a disciplinary action attributable to the OSC. Several elements of a corrective action were also agreed to, including a directed reassignment of the complainant, partially upgrading his performance appraisals, payment of attorney's fees, and restoration of 16 hours of the annual leave taken by the complainant to prepare his response to the removal proposal. The settlement also required HUD to issue a directive to all managers stating that communications with the inspector general should remain unfettered and that the agency will not tolerate personnel practices prohibited by the CSRA.

This settlement, to which the complainant was not a party, met strong objections from the complainant. In a June 17, 1983, letter to OSC and HUD, the complainant's attorney said that the settlement did not remedy the complainant's situation and characterized parts of it as reprisal in itself against the complainant for his protected activity. For example, while two elements of one performance appraisal were upgraded, the overall appraisal remained at the "marginally satisfactory" level. The directed reassignment to an unspecified location was termed a "personal hardship" and a further act of reprisal against the complainant. The complainant filed a petition for relief in

federal district court and has refused to accept attorney's fees because it would imply acceptance of the OSC/HUD settlement.

AGENCY COMMENTS AND GAO ANALYSIS

The Special Counsel commented on the 6-year summary of the results of OSC's prosecutive efforts contained in this chapter. We added a sentence to recognize that OSC's losses before the MSPB occurred in cases that were originally brought before the incumbent Special Counsel took office in October 1982. The Special Counsel also provided us with an expanded, updated list of 49 actions undertaken by OSC since November 1982. Eleven of these are Hatch Act cases, which we did not consider in our review. Of the 13 corrective action cases listed, 6 are new cases resolved after we selected closed cases for review in August 1984, 1 is a mooted case, and 1 is a case in which OSC subsequently agreed with us that corrective action preceded OSC involvement. The other 5 cases are included in Table 1, which also includes a case resolved before the incumbent Special Counsel took office. Of the 24 disciplinary actions listed, 13 are still awaiting trial or pending before MSPB, and 4 have been resolved since we selected closed cases for review. The remaining 7 cases are included in this chapter as agency settlements or victories before the MSPB. It should be noted that the Special Counsel's list considers each defendant separately, so that the Filiberti/Dysthe case summarized on p. 28 is listed as two separate actions. One case pending before the Board has four defendants who are separately listed in the Special Counsel's total.

The Special Counsel noted that the MSPB issued a ruling on March 28, 1985, after our review was completed, that confirms OSC authority to prosecute violations of standards of conduct.

CHAPTER 5

DISCUSSION OF ISSUES RELATED TO CONGRESSIONAL REVIEW OF OSC

In its 6-year history, OSC has been the object of criticism from federal employee representatives, GAO, and the Congress. OSC has been described as administratively inept, ineffective in prosecuting violations, and of little benefit to federal employee complainants such as whistleblowers alleging management reprisal for their disclosures. As a result, questions have been raised in the Congress as to whether OSC should continue to exist, and if it should, whether alterations are needed in its powers or in its statutory authorization. Our review, which concentrated on the role the Office of the Special Counsel is now performing, does not demonstrate whether or not protections should be stronger for individual whistleblowers or other employees who allege that they are victims of prohibited personnel practices. Ultimately, that is a value judgment which involves an assessment not only of the benefits OSC provides through its prosecutive role, but also of the role other institutions play in protecting individuals from improper treatment.

OSC HAS RESOLVED MANY OF ITS START-UP ADMINISTRATIVE PROBLEMS

In its earlier years, OSC was hampered by a large number of administrative problems, which we documented in several contemporaneous reports (see ch. 1, p. 3). We did not review OSC's management in detail, but we observed little in the course of this review that would dispute OSC's claims that many of these problems have been resolved. The incumbent Special Counsel has been in office for nearly 2-1/2 years, substantially longer than any of his three predecessors, whose turnover contributed to lack of management continuity before 1982. OSC's budget has also been stable since fiscal year 1983, avoiding the disruptions in funding that prevented OSC from following through on many of its plans when it was a new organization. Several senior OSC officials told us that no meritorious case has been abandoned in recent years because of inadequate staff or other resources to pursue it. Frequent conflicts arising from OSC's ambiguous administrative relationship with MSPB have been resolved by the complete administrative separation of the two organizations on September 30, 1984. OSC's backlog of unresolved complaints has been reduced substantially as a result of centralized processing. While OSC still has problems with the accuracy of data in its computerized information system, these have been recognized and a commitment to improving and broadening the usefulness of the system has been made through OSC's internal control review process.

We have also criticized OSC in the past for its failure to adopt substantive guidelines on the evaluation of the merit of individual complaints. As discussed in chapter 2, we believe OSC still needs to do a better job of documenting its substantive review policies. Because OSC has prepared a prosecutive manual that is intended to cover many of these questions, we are not now making a recommendation on this subject.

The sum of these developments is that OSC is no longer distinctively vulnerable to criticism on the basis that it is an agency in disarray, unable to carry out its mission effectively because of administrative deficiencies.

PROSECUTIVE EFFORTS HAVE RESULTED IN SOME RECENT SUCCESSES

OSC's record as a prosecutive organization has also been questioned by the Special Counsel and by Members of Congress. Until late 1984, OSC had never won a disciplinary action case before the MSPB, and only one corrective action complaint has been prosecuted with even partial success. OSC's records indicate that 11 cases were lost or withdrawn without result between 1979 and late 1984. Only one of these cases, however, was originally brought by the incumbent Special Counsel.

On the other hand, OSC negotiated 25 settlements at the agency level between January 1979 and January, 1985. Chapter 4 describes 10 of these settlements negotiated between August, 1982 and August, 1984.

While these numbers are small in comparison to the roughly 11,000 complaints of prohibited personnel practices brought to OSC, this is not necessarily an indication that OSC has passed up good prosecutive opportunities in its review of incoming complaints. Our review of a random sample of 76 whistleblower reprisal allegations closed by OSC in its internal review revealed that each case had a prosecutive defect under prevailing legal standards, and many of the cases had more than one such defect.

In November and December, 1984, OSC prevailed in three disciplinary action cases before the MSPB. The Special Counsel's victory in the Harvey case, unless it is reversed on appeal to the courts, provides a significant precedent that may increase the likelihood that OSC will prevail in more disciplinary action cases in the future. The ruling that the Mt. Healthy test does not apply to disciplinary action cases exposes managers to penalties if a prohibited motive, such as retaliation for whistleblowing, plays any part in deciding to take an adverse personnel action against a subordinate employee. Coupled with the Special Counsel's policy of selecting only cases for prosecution with a very high likelihood of victory, the Harvey precedent may allow OSC to improve its prosecutive record markedly in disciplinary action cases.

DESPITE EMPHASIS ON RESPONSIVENESS AND COMMUNICATION, OSC PROVIDES LITTLE ASSISTANCE TO INDIVIDUAL COMPLAINANTS

OSC has improved its responsiveness to individuals who bring complaints to its attention. It has instituted a policy of contacting each complainant personally and has improved its record for timely disposition of cases. Our review of a sample of closeout letters found that two-thirds of them provided a straightforward and informative--though succinct--explanation of the reasons the case had been closed. Nevertheless, these improvements would be of shallow comfort to an individual who wants restoration to his job or reversal of an adverse personnel action.

Our review of incoming complaints to OSC and discussions with several employee representatives, indicate that most of them expect OSC to act as their advocate and protect them from proposed adverse actions. The vast majority of them are disappointed in that OSC eventually closes their files without remedial action. The fact that some personnel actions, including transfer, reassignment, and a change in duties without a reduction in grade, can be reviewed by the MSPB only if brought by the Special Counsel, is a particular source of frustration. A significant proportion of disappointed complainants solicit congressional intervention on their behalf, which has helped generate congressional criticism of OSC. One member of OSC's oversight committee wrote the Special Counsel that "there are no satisfied clients of the Office of Special Counsel."

Judged by this standard, OSC has not been a success. However, as explained in chapter 1, the OSC does not regard this as a legitimate standard and we are unable to disagree with OSC's interpretation that its client, under current law, is the merit system rather than the individual complainant.

To a greater extent than his predecessors, the incumbent Special Counsel has emphasized the prosecutive role of OSC. He has also concentrated on disciplinary action, which is unlikely to benefit individual complainants even if it is successful. The incumbent Special Counsel has never filed a corrective action complaint with the MSPB. As noted in chapter 4, there were 6 corrective actions agreed to by agency officials in the 2 years before August 1984, 3 of which benefitted individual whistleblowers such as by rescinding proposed transfers.

Current law does not impose an "ombudsman" responsibility on OSC. OSC's investigation and analysis of cases brought to it are not oriented toward determining whether the cases have merit from any other perspective than legal prosecutability. As soon as a legal defect in a case is clearly demonstrated, OSC

closes its investigation. An ombudsman given responsibility for investigating these same complaints might well have pursued some of them further, looking for opportunities to conciliate or to address other standards of "merit" and "justice" than prosecutorial ones. For example, an ombudsman for government whistleblowers might seek to arrange a transfer to another job for a legitimate whistleblower who has been harassed or caught in a reduction-in-force.

OPTIONS FOR STATUTORY REVISION

We were asked to apply the results of this review to several proposals that have been made to cure perceived deficiencies in OSC's ability to protect whistleblowers and other federal employees from prohibited personnel practices. Suggestions for reform of the statute include strengthening its role by permitting OSC to appeal decisions of the MSPB to the federal courts, transferring OSC to the Department of Justice, and abolishing OSC altogether.

OSC Authority to Appeal to Court

One of these proposals passed the Senate by unanimous consent and without debate on October 11, 1984, as an amendment to a bill (H.R. 5646) extending a program to provide cash awards to federal employees for certain cost savings disclosures. This proposal, which had been previously introduced as separate bills in the Senate (S. 2927) and the House (H.R. 6145), provided that the Special Counsel could appeal MSPB decisions on corrective and disciplinary action cases to the federal district court. It also permitted employees who were "aggrieved" by the MSPB's decision in a complaint brought by the Special Counsel to file a separate petition and be considered a party to the court proceeding. The House of Representatives did not pass the legislation, at least in part because of objections to it from the Department of Justice on the grounds that it would have dispersed governmental litigation authority. The measure has been reintroduced in the 99th Congress as H.R. 928.

Somewhat similar legislation was introduced in the Senate (S. 1662, 98th Congress) to allow the Special Counsel to "appear as counsel on behalf of any party" in court appeals in connection with any of OSC's functions.

These bills were drafted when the the Office of the Special Counsel had failed to win in any of its complaints before the MSPB. To a certain extent, they are based on a supposition that the federal courts would be more receptive to OSC's legal arguments than was the MSPB. While this premise had always been speculative, it is weakened further by OSC's prosecutive successes in late 1984 before the MSPB in three disciplinary action cases.

Another argument for allowing the Special Counsel access to the courts is that such access is available to agencies and officials whom the Special Counsel has prosecuted successfully. The Special Counsel commented to us that this is principally a matter of symmetry. If one party to a prosecution has appeal rights, so should the other in this view.

There is some indication that the fundamental purpose of these statutory revisions is to increase the protections available to whistleblowers by empowering OSC to press their appeals for individual corrective action in the federal courts. If that is the purpose, we do not believe the suggested change will accomplish that objective. As we pointed out in previous chapters, OSC's complaint review mechanisms and its operating philosophy are directly opposed to a "client" or representational function. The incumbent Special Counsel has not yet found it necessary to bring a corrective action complaint to the MSPB, so authority to pursue such cases further to the courts would seem to have little practical significance. The Special Counsel did not indicate to us that lack of access to the courts had any effect on his general policy not to pursue corrective action through litigation on behalf of individual complainants. Of course, a future Special Counsel with different priorities might be more likely to use the authority if the Congress decides to provide it.

The question of whether or not an additional federal office outside the Justice Department should have independent authority to litigate in the federal courts is beyond the scope of this review.

Transfer OSC to the Department of Justice

In a congressional hearing on November 14, 1983, the Special Counsel suggested that OSC would be more successful if it were placed within the Department of Justice. He noted that it is redundant and replicates the resources the Department of Justice has for investigation and litigation.

We would agree that OSC's top priority function of prosecuting complaints for disciplinary purposes is congruent with the mission of the Justice Department. However, there is no counterpart in Justice to OSC's corrective action functions. We also found no indications in our review that OSC lacks the resources it needs to accomplish its mission. While access to Justice's much greater staff could lead to some efficiencies, it is also possible that the function of investigating prohibited personnel practices could be overshadowed by Justice's other priorities. Finally, the Justice Department is directly accountable to the administration, and assignment of the Special Counsel to that department would raise questions as to its independence from administration control.

Abolish the OSC

H.R. 6392, in the 97th Congress, proposed to abolish OSC and distribute its Hatch Act, Freedom of Information Act, and whistleblower referral functions to MSPB and the Office of Personnel Management. Individuals who felt they were victims of prohibited personnel practices would be empowered to bring civil actions to secure relief either to MSPB or to the courts, but not to both. MSPB would be authorized to award attorney fees to employees who prevail in such litigation. This proposal is based upon an assessment that OSC has failed to do what the Congress intended it to do, and that federal employees would be better protected from prohibited personnel practices through litigation on their own behalf than by application of the corrective and disciplinary action powers of the Special Counsel. It also discounts the value to the merit system of improvements to the system that are achieved by OSC's disciplinary prosecutions and institutional corrective action negotiations, since civil actions filed by individuals would normally be designed to achieve individual rather than systemic benefits.

This proposal, if enacted, may result in opening up the courts and the MSPB to increased litigation by employees who perceive that their treatment by the personnel system has been unjust. The Special Counsel now acts as an effective screening mechanism to limit the volume of complaints that reach the stage of adjudication.

CONCLUDING OBSERVATIONS

Our review does not provide an answer to the question of whether protections should be stronger than present law provides for the class of federal employees who claim that they are victims of reprisal for whistleblowing or other prohibited personnel practices. Ultimately, this is a policy question for the Congress to decide based only in part on an evaluation of the OSC's fulfillment of its mission as presently interpreted. While our review provides indications that OSC's protection of whistleblowers is imperfect, we have no basis to conclude that it is inadequate.

The law is imperfect because it cannot provide an impregnable shield against adverse treatment of individuals who reveal evidence of illegality, waste, or mismanagement in government. Their whistleblower status will not exempt them from the consequences of budget cuts, reorganizations, poor performance, or infractions of rules and regulations. Many forms of harassment and resentment by fellow employees and supervisors would be difficult to define and prohibit even if OSC's powers were not limited to official personnel actions. A clever, patient, and circumspect agency official can conceal evidence of his or her prohibited motive so that even malevolently inspired actions can be plausibly defended as a legitimate exercise of managerial discretion.

An answer to the question whether the law is adequate will require the Congress to consider several factors that this review could not address, or could address only partially. For example, we have no way of measuring the deterrent effects of the law's declaration that reprisal for whistleblowing is a prohibited personnel practice, or of the publicity given to OSC's litigations, whether they are ultimately successful or not. In this regard, the Merit Systems Protection Board recently published a study of perceptions among federal employees of the effectiveness of the CSRA in protecting whistleblowers from reprisal. While the study did not analyze perceptions about the Office of the Special Counsel's role specifically, it concluded that the CSRA whistleblower protections in general, by themselves, have not met all the expectations of the Congress. The study produced "no evidence that the protections have had any type of ameliorative effect on employee expectations or experiences relative to reprisal."[4]

The Congress must also weigh the objective of stronger protection for whistleblower disclosures against the objectives of management authority and accountability. Unrestrained whistleblowing could raise levels of dissidence and insubordination to the point where efficiency could be affected. Our review of allegations brought to OSC is inadequate evidence on this point, since the diversity it revealed in circumstances, disclosures, and adverse actions supports no generalizations. For every disclosure of a broad public policy problem, there were several describing minor disputes with supervisors. While some employees had unblemished records, others had well-documented performance or disciplinary problems.

Finally, the adequacy of whistleblower protections should not be judged solely through an examination of cases brought to OSC, which has been the focus of this report. Other institutions, including the President, the Congress, the media, the courts, agency leadership and appeals systems, the Merit Systems Protection Board, and inspectors general are also involved in support for the role of whistleblowers in government. A comprehensive evaluation of the effectiveness of whistleblower protections would need to consider the roles of these institutions, and what happens to legitimate whistleblowers who have not needed help from OSC. One possible explanation for the relatively small number of cases judged worthy of prosecution by OSC is that one or another of these institutions has resolved the most legitimate complaints or situations before a resort to the Special Counsel became necessary.

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[4]Blowing the Whistle in the Federal Government, Office of Merit Systems Review and Studies, MSPB (Oct., 1984), p. 7.

AGENCY COMMENTS

The Special Counsel did not comment on GAO's summary or observations (see app. VII[illegible]. His letter noted that on March 28, 1985, the MSPB ruled that OSC has authority to prosecute violations of standards of conduct, and that all but one of the cases lost or withdrawn by OSC were originally brought before the incumbent Special Counsel took office.

U.S. House of Representatives
COMMITTEE ON POST OFFICE AND CIVIL SERVICE
SUBCOMMITTEE ON CIVIL SERVICE
122 CANNON HOUSE OFFICE BUILDING
Washington, D.C. 20515
TELEPHONE (202) 225-4028

September 12, 1984

Honorable Charles A. Bowsher
Comptroller General
General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Comptroller General:

I wrote you on October 18, 1983, to request that the General Accounting Office (GAO) investigate the thoroughness with which the Office of Special Counsel investigates Federal employee complaints of prohibited personnel practices. In response to this request, GAO auditors examined a small sample of employee complaints and reported informally that:

1. the Office of Special Counsel relies on discretionary professional judgment, rather than written standards to decide whether or not a complaint warrants investigation and prosecution;

2. the Office of Special Counsel conducts an in-depth investigation of only a tiny proportion of the complaints it receives;

3. even if the Office of Special Counsel conducted more thorough investigations of the employee complaints it receives, there is little evidence that those complaints would lead the Office of Special Counsel to uncover more cases of prohibited personnel practices that would sustain prosecution.

Based on these findings, I agreed with the conclusion of your auditors that further concentration on reviewing incoming case files would not be productive.

Nevertheless, the fact remains that few Federal employees or managers believe the Office of Special Counsel is capable of protecting individuals from or punishing supervisors guilty of prohibited personnel practices. This perceived impotence is particularly widespread in the case of reprisals against employees who disclose waste, fraud, mismanagement, or illegality -- that is, whistleblowers. Whistleblower protection was a key element of the Civil Service Reform Act of 1978. Sadly, whistleblower protection has failed to become a reality.

APPENDIX I

Therefore, I am expanding my original request so that Congress can ensure that its intent in prohibiting certain personnel practices and in legislating whistleblower protection is met. Specifically, I request that you address the following questions:

1. What standards, criteria, and priorities guide the Office of Special Counsel in selecting complaints for investigation and prosecution, and are these consistent both with the intent of Congress in establishing the Office and with the need to protect the merit system from improper actions?

2. Is the Office of Special Counsel adequately responsive to complainants, particularly to those Federal employees who have taken career risks to expose fraud, waste, mismanagement, or illegality?

3. What results can be attributed to the work of the Office of Special Counsel and what obstacles have proven most significant in hampering the effectiveness of the Office?

4. Is there some deficiency in the powers of the Office of Special Counsel or in the statutory definition of prohibited personnel practices which makes it impossible for the Office of Special Counsel to do its assigned job? Specifically, would the enactment of proposed legislation to provide the Special Counsel with the ability to appeal cases to court (such as H.R. 6145) cure the ineffectiveness of the Office of Special Counsel?

5. Are there alternative ways of preventing and punishing prohibited personnel practices, especially reprisals for whistleblowing, which should be considered? What are the benefits and problems of each?

I request that a final report be completed by March 15, 1985, so that the Subcommittee can begin action on legislation to protect whistleblowers and prevent and punish prohibited personnel practices.

With kind regards,

Sincerely,

Pat Schroeder

PATRICIA SCHROEDER
Chairwoman

APPENDIX II

United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, D.C. 20510

September 11, 1984

The Honorable Charles Bowsher
Comptroller General of the United States
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Chuck:

As you know, the Office of Special Counsel was created by our Committee in 1978 as part of the Civil Service Reform Act. The Office is responsible for investigating employee complaints of unfair personnel practices, especially cases of employees who are allegedly punished by their superiors for "whistleblowing."

Special Counsel K. William O'Connor recently testified before my Committee concerning his views on the effectiveness of the Defense Contract Audit Agency. The information he presented to the Committee was accumulated during his investigations of alleged reprisals against a whistleblower in the DCAA named George Spanton. I asked Mr. O'Connor to provide the Committee with his views on the effectiveness of the whistleblower protection statutes and he sent me a letter on the matter. One of the most interesting and disturbing comments he offers is "If I were approached by an individual who asked me, in my capacity as a lawyer in the private practice of law, whether or not he or she should become a 'whistleblower', I would have to advise against being so identified publicly."

Based on Mr. O'Connor's comments and on the record of the Office in defending federal employees against reprisal actions stemming from their efforts to expose potential waste or fraud, I believe there is reason to be concerned about the effectiveness of whistleblower protection provisions of the Civil Service Reform Act of 1978. Mr. O'Connor makes clear in his letter to me that legislative improvements are needed in order to ensure that whistleblowers are given adequate protection from reprisals when they act in good faith to report on potential mismanagement or illegal activities.

I am aware that the GAO is reviewing the effectiveness of the Office of Special Counsel and is examining the effectiveness of the statutory provisions concerning whistleblowers. In light of your study of these issues, I would appreciate your views on Mr. O'Connor's comments as contained in

APPENDIX II

his letter to me. In addition, I would like your overall assessment of the need for legislative improvements in this area and your comments on the merits of two pieces of legislation which have recently been introduced to enhance the authority of the Special Counsel, S. 1662 and S. 2927. I would appreciate your comments to be as thorough and specific as possible and wherever possible, I would like to have specific legislative language to implement the changes or improvements you believe to be necessary.

I thank you for your attention to this request and ask that your report be made sufficiently early in the first session of the next Congress so that careful consideration can be given to its conclusion. If your staff has any questions on this matter, they may call Mr. Link Hoewing at 224-4751.

Sincerely,

William V. Roth, Jr.
Chairman

WVR/jlm

SUMMARY OF PROHIBITED PERSONNEL PRACTICE ALLEGATIONS RECEIVED BY OSC BY TYPE FROM OCTOBER 1, 1983 TO SEPTEMBER 7, 1984

PROHIBITED PERSONNEL PRACTICE	Number of allegations	Percentage of total[a]
Discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status or political affiliation.	397	30%
Soliciting or considering employment recommendations based on factors other than personal knowledge or records of job related abilities or characteristics.	11	1%
Coercing the political activity of any employee or applicant.	1	--
Deceiving, or willfully obstructing any person competing for employment	65	5%
Influencing any person to withdraw from competition for any position in order to improve or injure the employment prospects of any other person.	9	1%
Give unauthorized preference or advantage to any person to improve or injure the employment prospects of any particular employee or applicant.	145	11%
Engage in nepotism (hire or promote relatives or advocate such activity).	35	3%
Take reprisal against a whistleblower.	189	14%
Take reprisal against an employee for exercising an appeal right.	161	12%
Discriminate on the basis of personal conduct which does not adversely affect job performance of the employee or applicant.	79	6%

APPENDIX III

PROHIBITED PERSONNEL PRACTICE	Number of allegations	Percentage of total[a]
Take a personnel action violating any law rule or regulation implementing or directly concerning merit system principles.	241	18%
Total	1,333	101%[b]

[a]These percentages were developed from data extracted from OSC's matters reporting system. Because our data tape did not include all of fiscal year 1984, these totals will differ slightly from the full-year figures in OSC's annual report which we have used in our report. According to OSC, these data are about 92 percent accurate when viewed at closeout. Thus these figures provide only a rough indication of the distribution of incoming complaints to the OSC.

[b]Does not add to 100 percent due to rounding.

BIBILOGRAPHY OF REPORTS ISSUED BY GAO CONTAINING INFORMATION ON THE OPERATIONS OF THE OFFICE Of SPECIAL COUNSEL

1. Letter Report on the Transition and Establishment of the Merit Systems Protection Board, Office of Personnel Management, and the Federal Labor Relations Authority to the Chairman of the Senate Committee on Governmental Affairs, FPCD-79-51, 4-20-79.

2. Hatch Act Reform -- Unresolved Questions Report to the Chairmen of the Senate Committee on Governmental Affairs, and the House Committee on Post Office and Civil Service, FPCD-79-55, 7-24-79.

3. Letter Report on Merit Systems and Employee Protection to H. Patrick Swygert, Special Counsel, FPCD-80-15, 10-22-79.

4. First-Year Activities of the Merit Systems Protection Board and the Office of the Special Counsel, Report to the Congress, FPCD-80-46, 6-9-80.

5. Letter Report on Delays in Providing Office Space for the Merit Systems Protection Board and the Federal Labor Relations Authority to the Chairwoman of the Subcommittee on Civil Service, House Committee on Post Office and Civil Service, LCD-81-14, 12-5-80.

6. The Office of The Special Counsel Can Improve Its Management of Whistleblower Cases Report to Ms. Mary Eastwood, Acting Special Counsel, FPCD-81-10, 12-30-80.

7. Implementation: The Missing Link in Planning Reorganizations, Report to the Chairman, Senate Committee on Governmental Affairs, GGD-81-57, 3-20-81.

8. Letter Report on Federal Employees Excluded From Certain Provisions of the Civil Service Reform Act of 1978, to the Chairmen of the Senate Committee on Governmental Affairs and the House Committee on Post Office and Civil Service, FPCD 81-28, 4-7-81.

9. Civil Service Reform After Two Years: Some Initial Problems Resolved But Serious Concerns Remain, Report to the President and the Congress, FPCD-82-1, 11-10-81.

10. Letter Report on Observations on the Office of the Special Counsel's Operations to Alex Kozinski, Special Counsel, FPCD-82-10, 12-2-81.

11. Effects of Fiscal Year 1982 Budget Cuts on the Merit Systems Protection Board and its Office of the Special Counsel, Report to the Chairman of the House Committee on Post Office and Civil Service, the Chairman of the House Subcommittee on Human Resources and Chairwoman of the House Subcommittee on Civil Service, GAO/FPCD-83-20, 4-8-83.

12. Letter Report on the Army's Handling of Whistleblowers Contract Allegations and Merit Systems Protection Board's Investigation to the Honorable James J. Howard, House of Representatives, GAO/AFMD-83-67, 5-23-83.

13. Survey of Appeal and Grievance Systems Available to Federal Employees, Report to the Chairwoman of the Subcommittee on Civil Service, House Committee on Post Office and Civil Service, GAO/GGD-84-17, 10-20-83.

REVIEW OF SAMPLE OF WHISTLEBLOWER REPRISAL FILES

In an effort to gain familiarity with OSC's disposition of whistleblower reprisal allegations, we requested a sample of 77 case files randomly selected from the 401 matters classified as allegations of reprisal for whistleblowing and closed between August 31, 1982, and August 31, 1984. Our final sample was 76 cases because we dropped one case from the sample when it was re-opened to active status at the complainant's request. Because of staffing constraints, our examination was limited to the material contained in OSC's investigatory files; we did not try to locate and contact complainants, witnesses, or agency officials to verify the information in OSC's files.

There are limitations on the projectability of statistics from our sample to the universe of whistleblower reprisal complaints considered and closed by OSC. The random sample size that we selected (77 of 401) is statistically projectable to the entire population with a margin for sampling error of plus or minus 10 percent at a confidence level of 95 percent. A distortion is introduced, however, by misclassification of some incoming complaints. OSC's review of a sample of 50 complaints found that 8 percent were improperly classified as to type of allegation. In some cases, this appears to be a simple clerical or interpretive error. In others, it stems from the complainant's own description of his allegation as a whistleblowing reprisal matter when in fact some other action is involved, such as retribution for exercise of an appeal right.

The following table presents data from our sample on the agency actions that have led to these complaints. This table shows only the primary or principal agency action taken. In fact, most of the complaints involve multiple agency actions. For example, an individual may protest not only the initiation of removal proceedings, but also the disciplinary actions and perhaps some alleged harassment that led up to it. In such a case, we list only the most serious action, i.e., the proposed removal.

APPENDIX V

Primary Agency Actions Precipitating Whistleblower Reprisal Allegations in Our Sample

Agency Action	Primary Actions
Removal/proposed removal	22
Suspension/reprimand	17
Harassment; non-personnel actions	8
Demotion/change in responsibilities	8
Non-selection for promotion	8
Reassignment/transfer	6
Denial of within-grade salary increase	3
Reduction in force; elimination of job	2
Objectionable performance evaluation	2
Total	76

It should be noted that some of these actions are reviewable by the MSPB, under the CSRA, only if brought by OSC and only if they are allegedly taken as the result of a prohibited personnel practice. A relocation, performance evaluation, and a change in duties with no reduction in pay or grade, cannot be reviewed by the MSPB except on this basis. This situation may result in a number of complaints being brought to the Special Counsel for prosecution as a prohibited personnel practice, simply because these actions are not appealable directly by individuals on other grounds.

EXTENT OF OSC INVESTIGATION IN WHISTLEBLOWER REPRISAL SAMPLE

	Number of cases	Percentage of total	Sampling error
1. Closed after screening; e.g. after review of material filed with complaint and only one call to complainant.	35	46	± 10.0%
2. Minimal fact-finding and confirmation; e.g. 3 or 4 telephone calls to complainant, agency, or other investigators.	10	13	± 6.7%
3. Extensive investigation with from 5 to more than 15 telephone calls but no on-site interviews or depositions; formal investigation report prepared.	19	25	± 8.7%
4. On-site investigation, with personal interviewing of agency officials, witnesses, etc, and formal investigation report.	12	16	± 7.3%
Total	76	100%	

SUMMARIES OF OSC SETTLEMENTS REVIEWED BY GAO

Case 2, page 31, - Reprisal for Whistleblowing

By letter of May 7, 1982, to the Special Counsel, a complainant alleged that, as a result of his furnishing information to a national magazine concerning cost overruns, schedule slippages, and mismanagement on a Navy contract, he had been detailed from his position as a division head and that the agency planned to permanently reassign him to another position. The complainant retired on December 31, 1982.

OSC investigated the reassignment of the complainant as a possible reprisal for whistleblowing and, by letter of March 31, 1983, informed the Secretary of the Navy that it had found that the installation had committed a prohibited personnel practice in this matter. The Special Counsel recommended that (1) the Secretary advise the employee's second level supervisor in writing that it is a prohibited personnel practice to consider the involvement of an employee in a protected activity in deciding to take a personnel action against that employee and (2) post a notice or otherwise inform management personnel of the installation in writing of this prohibition. On December 2, 1983, the Navy forwarded documentation to OSC that it had complied with the recommendations.

Cases 3-4, page 31, - Nepotism

OSC's statistics list a corrective and, separately, a disciplinary action taken at the agency level. Two separate complainants alleged that various relatives of employees at a Navy shipyard had been hired in violation of anti-nepotism laws. OSC pursued the matter and concluded that one individual who had authority to take or recommend personnel actions violated 5 U.S.C. §2302 (b)(7) in advocating the appointment of his son to two successive metal inspector positions.

By letter of September 28, 1983, to the Secretary of the Navy, the Special Counsel recommended that the Navy take corrective action by terminating the appointment of the son. In the same letter, the Special Counsel advised the Secretary that he planned to file a disciplinary action complaint against the father with the Merit Systems Protection Board.

Two months later, the General Counsel of the Navy advised OSC that (1) the son had been terminated prior to the Navy's receipt of OSC's report based on an internal inquiry and (2) the installation planned to request return of the compensation paid during his appointment. The General Counsel requested, in his letter, that OSC withdraw its disciplinary action complaint

against the father and that the Navy be authorized to initiate the disciplinary proceedings. While the Navy had not decided on what specific action to take, it proposed a suspension ranging between 14 and 30 days.

OSC agreed to withdraw its disciplinary action complaint against the father and allow the Navy to take the disciplinary action. On December 9, 1983, the complaint was dismissed. However, when we asked OSC the current status of the matter, we were advised that, as of September 5, 1984, no such disciplinary action had been taken.

Case 5, page 31, - Unauthorized Preference

On January 29, 1982, a complainant advised OSC that an Air Force GS-11 employee relations specialist made an improper selection of a candidate for promotion. The complainant alleged that the selecting official asked a candidate to withdraw her application for promotion so he could consider other people for the job. The candidate's withdrawal resulted in the substitution of another candidate who was ultimately selected. OSC's investigation revealed that the selectee was the selecting official's girlfriend who subsequently became his wife.

On June 29, 1983, the Special Counsel filed a complaint with MSPB which charged the selecting official with violating 5 U.S.C. §2302 (b)(5) and (6). These sections forbid influencing any person to withdraw from competition for any position for the purpose of improving or injuring the employment prospects of any other person, and granting any unauthorized preference or advantage in hiring decisions. On October 11, 1983, the Special Counsel and the charged official reached agreement on a settlement which included a suspension from duty without pay for a period of 60 days and a civil penalty of $1,000. The penalty was affirmed by an MSPB order of January 13, 1984.

Case 6, page 31, - Reprisal for Whistleblowing

This whistleblowing reprisal complaint involved a personnel officer from a regional office of the Department of Housing and Urban Development (HUD). According to the complainant, his reassignment to HUD's central office in Washington, D.C., was in retaliation for his involvement in three cases investigated by OSC.

By letter of August 3, 1983, 8 months after the complaint was received, the Special Counsel notified the Secretary of HUD that he had determined that there were reasonable grounds to believe that the reassignment resulted from a prohibited personnel practice. The Special Counsel recommended that the reassignment of the complainant be rescinded.

On August 12, 1983, the General Counsel of HUD notified OSC that the Secretary had decided to comply with OSC's recommendation and rescind the complainant's reassignment. Documentation of the rescission was forwarded to OSC on November 30, 1983.

Case 10, page 31, - Reprisal for Whistleblowing

This case, which was settled in August 1982, by OSC's regional office in Dallas, resulted in the Department of Energy's decision to upgrade an employee's performance appraisal, retroactively grant a within-grade salary increase, and cancel the employee's directed reassignment to another state. The department's letter confirming these corrective actions attributed them directly to OSC's investigation, which established that "contacts outside the Department" were cited to justify an unsatisfactory performance appraisal. The employee had sent a letter to the Office of Personnel Management, with copies to Members of Congress, objecting to the enforcement of physical fitness standards in his job category. This letter was cited as evidence that the employee failed to "actively support management policies and objectives," a critical element in his supervisory performance evaluation. (This case was not included in the list of achievements given to us by OSC in August 1984).

OFFICE OF THE SPECIAL COUNSEL
U.S. Merit Systems Protection Board

The Special Counsel

1120 Vermont Avenue, N.W., Suite 1100
Washington, D.C. 20005

April 12, 1985

Mr. William J. Anderson
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

Thank you for the opportunity to review and comment on the draft proposed GAO report entitled "Whistleblower Complainants Rarely Qualify for Office of the Special Counsel Protection" you provided on April 1, 1985. We appreciate the thoroughness of the review of the operations of the Office of the Special Counsel conducted by your audit staff and your recognition of the complexity, difficulty and evolving nature of the legal and factual issues which this office must address daily in fulfilling its statutory mission. We also appreciate your acknowledgment of the accomplishments of the office during the past two and a half years in overcoming past difficulties and shortcomings noted in previous GAO reports. We would, however, like to offer the following information to correct what appear to be misunderstandings of certain procedures of the office and to bring you up-to-date on certain actions and developments which were still pending when your review was concluded.

5, 37, 52

Matters "Appealed" to the Merit Systems Protection Board by OSC. The draft report on pages 6, 50 and 67 refers to certain kinds of agency personnel actions as being "appealable" to the Board by only the OSC. The word "appealable" may imply to some readers that, while the employee affected may not "appeal" such actions to the MSPB, the OSC may "appeal" such actions (presumably on behalf of employees.) The term "appeal" may be interpreted to connote the seeking of personal redress. Such an interpretation of OSC actions before the Board would be incorrect and could be misleading, despite the clear understanding to the contrary elsewhere expressed that OSC does not represent individual employees, e.g. as noted on pages iii-iv and 5-6 of the draft report. Therefore, the OSC does not and cannot appeal any agency action on behalf of any employee. The OSC may, however, seek from the Board a stay of any personnel action or appropriate corrective action when investigation discloses reasonable grounds to believe the personnel action at issue results from or in a prohibited personnel practice and staying the action (pending completion of OSC's investigation) and/or corrective action is warranted. 5 U.S.C. §§ 1205(c)(1) and 1208.

5, 37, 52

Accordingly, we suggest that the phrase "certain personnel actions are appealable to the MSPB only by the Special Counsel" be changed on pages 6, 50 and 67 to "certain personnel actions are reviewable by the MSPB only if brought before it by the Special Counsel under a stay application, disciplinary action or corrective action proceeding".

[GAO Note: Page references in this letter are to the draft report. Page references to the final report can be found in the left margin.]

OSC's Basis for Closing Certain Types of Matters. The draft report
10 states on pages 13 and 14 that:

"The OSC routinely closes after 'initial inquiry,' or screening, a number of types of incoming complaints. These include:

— matters pending before appeal bodies such as MSPB, ...

— allegations which do not involve defined 'personnel actions' ...

-- matters in which an administrative appeal has been completed.

— allegations from employees of agencies not within OSC's jurisdiction ...

-- matters alleging violations in connection with a promotion action, or non-selection for a vacancy, where no prohibited personnel pratice is evident.

-- allegations of discrimination, in which the OSC normally 'defers' to agency investigatory bodies or the EEOC.

— allegations of unfair labor practices, in which OSC normally defers to the Federal Labor Relations Authority."

This statement appears to be based in part on the provisions of OSC's regulations at 5 C.F.R. § 1251.2, Deferral to administrative appeals procedures, and does not accurately reflect OSC procedures. The particular regulation pertains to allegations which do not involve a prohibited personnel practice, but which might otherwise be within OSC's investigative jurisdiction under 5 U.S.C. § 1206(e)(1)(D) or (E) (other activities prohibited by civil service law, rule, or regulation, and discriminstion found by a court or appropriate administrative body). The disposition of all allegations of prohibited personnel practices (except for certain discrimination complaints covered by our deferral policy at 5 C.F.R. § 1251.3) is always decided on the basis of sufficient inquiry to determine whether there are reasonable grounds to believe the alleged or other prohibited personnel practice (as defined in 5 U.S.C. § 2302) has occurred, exists, or is to be taken. In this light, also, the absence of a personnel action as defined in the statute and the applicability of 5 U.S.C. § 2302 to the agency involved may be a significant consideration as to whether any provable prohibited personnel practice has occurred or can occur.

13 Procedures for Handling Sensitive Matters. The description, on page 18 of the draft report, of OSC's handling of sensitive matters (including Congressional inquiries) was partially correct during the initial period in which the review was conducted. It was not a current description of the procedures in effect at the end of the review.

Mr. William J. Anderson
U.S. General Accounting Office
Page 3

Prior to November 1982, the initial review and investigation of complaints was handled by OSC's field offices. Beginning in November 1982, the results of field office review of complaints were first reviewed in the headquarters' Prosecution Division before assignment for field investigation or decision to close. At this time, a special investigative unit was established in the headquarters to handle the more sensitive or complex matters. With the centralization of initial review of all complaints in the headquarters' Complaints Examining Unit (CEU), gradual increase in the number of experienced investigators assigned to the Investigation Division and increased direction and control of all investigations by that division, the need for a special investigative unit was obviated so that such a unit no longer exists. Instead, all matters to be investigated, which are referred from the Prosecution Division following initial review in the CEU, are now assigned and controlled by the Associate Special Counsel for Investigation in close coordination and consultation with the Associate Special Counsel for Prosecution. Matters are assigned to investigators (or investigative teams) on the basis of the nature of the matter (including its complexity or sensitivity), any particular investigative skills which may be required, and the relative expertise of the available investigators. In hiring new investigators, emphasis has been given to hiring persons with extensive experience in conducting criminal investigations leading to prosecution of offenders.

Although GAO appears to include Congressional inquiries among sensitive matters, such inquiries, while considered by OSC as important, do not influence the sensitivity of matters or the substantive action taken thereon.
13 Thus, the second paragraph on page 18 appears to reflect a misapprehension of OSC's procedures for processing and tracking Congressional inquiries. All Congressional inquiries on matters at OSC are required to be routed to the Director of Congressional and Public Relations. The Director is responsible for coordinating a response. These inquiries are tracked and synopsized on OSC's matters reporting system.

Development of Guidance for Substantive Review of Complaints. With regard to the discussion on pages 19 - 21 of the draft report on the absence of guidance in the Investigations Manual concerning the receipt, processing and review of complaints and legal issues which might be encountered during an investigation, it should be noted that the particular manual was developed and issued to guide the conduct of investigations after the initial review of complaints and the identification and resolution of any relevant legal issues involved by competent legal staff. (The manual was developed after the establishment, in November 1982, of our current procedure for initial review of all complaints by the Prosecution Division.) Additionally, since November 1982, a Prosecution Division attorney has been assigned to all matters under review or investigation to assist in resolving any legal questions which may arise before or during the course of an investigation.

Issuance of Prosecution Manual. The Prosecution Manual, which is mentioned
15 on page 21 of the draft report as being under development and which provides

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instructions concerning the initial review of complaints in the CEU and covers pertinent legal guidance for acting on complaints and allegations (to the extent possible given the current fluid state of the evolving case law) has been completed and is being issued to all attorneys and investigators of the office. A copy is enclosed for your reference. We are providing it for your information, and request that you not append it to your report or otherwise make it available to the public.

Establishment of OSC Office of Inspector General. The OSC Inspector General is referred to on pages 20 and 21 of the draft report without elaboration. The office of OSC Inspector General was established in November 1982 in order to give strength to our efforts to improve the efficiency, effectiveness and economy of OSC operations and to assure OSC's full compliance with the Federal Managers' Financial Integrity Act of 1982 and OMB Circular A-123, Internal Control Systems. As indicated on pages 20 and 21 of the report, the Inspector General has, through his internal control reviews, identified a number of areas in need of improvement and steps have been taken to address all his recommendations. And, in order to further emphasize OSC's commitment to further improving the quality and effectiveness of its operations, I have recently reorganized OSC by establishing a Planning and Oversight Division. The new division is responsible for, in addition to the inspection, audit and internal control functions of the Inspector General now designated head of the new division, coordinating and documenting policy development, program planning, and certain other statutory functions of the office. A copy of the directive implementing this reorganization and setting forth the current functional responsibilities of the major divisions of OSC is enclosed for your reference.

14, 15

14, 15

Steps Taken to Clarify Understanding of OSC's Role. With regard to the steps taken to clarify public understanding of OSC's role, covered briefly on page 22 of the draft report, we add that the OSC Office of Congressional and Public Relations handled approximately 300 press and Congressional inquiries per month and prepared and dispatched a total of 2300 written responses to the Congress, press and public during FY 1984. In the same time period, the office disseminated 79,000 copies of OSC informational materials and maintained a speakers bureau which provided guest speakers to organizations expressing interest in the OSC. Also, in addition to the new pamphlet explaining the role of OSC, a pamphlet explaining the Hatch Act's application to Political Action Committees was produced, a one page open letter to federal employees informing them of the primary functions of OSC and how to contact the office was distributed to all federal agencies, and two posters dealing with prohibited personnel practices and whistleblower protections were printed since October 1982.

15

The Mt. Healthy Test and Jurisdictional Issues.

(a) Mt. Healthy. On page 26, the draft report refers to the Supreme Court's formulation of the test for determining the actual cause of an adverse action in cases involving both legitimate and prohibited motivations by the officials taking the action. See Mt. Healthy School District v. Doyle, 429 U.S. 274 (1977).

19

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This is the so-called "dual motivation" causation test. The report states: "In cases where there are allegations of both legitimate and illegitimate reasons for the adverse treatment ..." Actually, the Mt. Healthy test is not invoked on the basis of "allegations", but rather when there is evidence of both legitimate and prohibited motivations.

29 Likewise on page 41, the draft report equates the Mt. Healthy test with a so-called "significant factor" test. The report would be more accurate if it referred to the Mt. Healthy test as the "dual motivation" test for causation when illegitimate motivation has been shown to have been a significant factor in the adverse action.

29 On page 41, the draft report states that "the Mt. Healthy test requires that, even if OSC could establish that an employee suffered retaliation for a protected disclosure, it would not prevail if the agency proferred other legitimate reasons for the adverse treatment." This statement relates to corrective actions (as opposed to disciplinary actions where the agency generally is not a party) and would be correct if it stated that OSC would not prevail "if the agency proved by preponderant evidence that it would have taken the same action in the absence of protected conduct." As GAO has correctly observed, the
36 Board's decision in Special Counsel v. Gordon Harvey, referred to on page 49 of the draft report, makes it clear that the dual motivation test of Mt. Healthy will not protect an offending employee against disciplinary action.

(b) Recent Legal Development. Additionally, on March 28, 1985, OSC prevailed in another case with possible far reaching implications. In Special Counsel v. Williams, OSC had filed charges against a Federal Mediation and Conciliation Service (FMCS) senior executive for violating agency standards of conduct by going on a trip to Las Vegas paid for by a subordinate employee and an officer of a union whose contract disputes were mediated by FMCS. See 5 C.F.R. §§ 735.201a and 735.202. Williams and OSC had reached a settlement whereby he would be removed from the SES and fined $1,000 for this misconduct. However, the Office of Personnel Management (OPM) had intervened to argue that the agency heads had the exclusive authority to enforce standards of conduct. The Board rejected OPM's argument and ruled that the Special Counsel had concurrent authority to enforce violations of the standards of conduct by filing complaints with the Board.

Results of Prosecutive Efforts. The draft report on page 49 states: "OSC's
36 records indicate that at least 10 cases were lost or withdrawn without result between 1979 and late 1984." This summary of prosecutive results without specification of the nature of the actions undertaken or the actual time of the actions may be misleading. The reference to "at least 10 cases" appears to refer to 3 disciplinary action cases (all initiated prior to mid-1982) in which the MSPB declined to order disciplinary action, 3 corrective action cases (also all filed prior to mid-1982) in which the MSPB declined to order corrective action, and 5 cases in which the agency declined to take recommended corrective action and the OSC agreed. Only one of the latter 5 actions was initiated after

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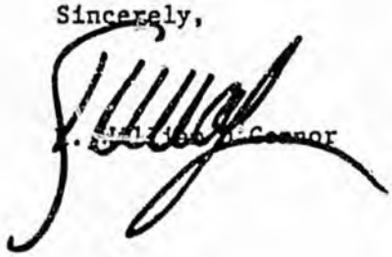
October 1982. In that case, OSC closed the case only when corrective action was mooted by the action of the allegedly injured employee. Moreover, during the period of October 1982 through the end of the period reported upon, no agency has declined to take corrective action on any matter initiated, except in the one instance when the proposed action was made moot by factors beyond the control of OSC or MSPB. To be factually accurate, and complete, it would be correct to say that 49 actions have been undertaken by OSC since November 1982. A few are awaiting trial or MSPB action and one was mooted. All which have been concluded have been resolved in favor of OSC. (Table attached.)

Accuracy and Completeness of OSC Data. The draft report contains references to the lack of accuracy and completeness of some of OSC's statistical information concerning its operations in earlier years. The report, however, acknowledges that concerted action is being taken by the office to improve the information system and data base. To that end, action has been taken to assure the accuracy and completeness of information and data now being recorded in the existing computerized information system. Concurrently, substantial staff resources have been assigned to improve the overall management information system and the initial and major result has been the development of a new Litigation Reporting System (LRS) which will provide more complete information and data concerning the litigative activities of the office. This system is now being tested and will be fully implemented shortly. On full implementation of the LRS, OSC's efforts to further improve the management information system will continue to be given top priority. The Associate Special Counsel for Planning and Oversight/Inspector General has been assigned full responsibility for coordinating and overseeing (through his internal control and management reviews) the refinement of OSC management information system requirements, policies, procedures and results, and I and the Deputy Special Counsel will give our personal attention to assuring that any necessary changes and improvements in data collection, recording and compilation are accomplished.

We trust that this information will be helpful to you in putting your report in final form. If we can provide any additional information, please do not hesitate to call me.

Sincerely,



Enclosures

KWOC/SJS

[GAO Note: Attachments have not been included.]

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§ 2. Summary and comment

[a] Generally

Although an individual may not refuse to be examined on Fifth Amendment grounds without voiding his fire insurance where an insurer attempts to deny coverage because the insured has failed to cooperate in discovering a possible arson of his own property, the courts have not so held with respect to automobile insurance cases involving injured third parties who are in no respect responsible for the insured's failure to cooperate and unable to enforce such cooperation. Wojna v Merchants Ins. Group (1983, Sup) 464 NYS2d 664.

§ 4. Determination of prejudice or materiality

[b] Finding of prejudice or materiality held justified or required

See Firemen's Ins. Co. v Cadillac Ins. Co. (1984) 13 Ark App 89, 679 SW2d 821, § 7[b].

In an action on automobile liability policy, where insurer showed that insured's willful failure to appear at original trial deprived insurer of evidence which would have raised a jury issue as to her liability, her willful failure to attend and testify at trial, in breach of cooperation clause of policy, prejudiced insurer in its defense of action against motorist and insurer could therefore escape liability on the ground of noncooperation. State Farm Mut. Auto. Ins. Co. v Davies (1983, Va) 310 SE2d 167.

§ 6. Necessity of showing that absence was inexcusable

[a] Generally

Where evidence indicated only automobile insurer's failed effort to locate insured after initial cooperation, and where action against insured was not filed until after insured disappeared, evidence failed to establish that insured intentionally and willfully failed to cooperate and attend trial in breach of cooperation clause. Smithers v Mettert (1987, Ind App) 513 NE2d 660.

§ 7. Waiver or estoppel

[a] Continuing with defense of absent insured; generally

Insurer waived defense of noncooperation where it had sufficient notice of the fact that insured might not cooperate in his defense and, despite the opportunity to do so, made no effort to reserve its rights in that regard but instead chose to proceed without insured to a master's hearing which resulted in a finding against insured in the amount of $75,000, which finding was admissible at the subsequent jury trial and constituted prima facie evidence of liability. Di Marzo v American Mut. Ins. Co. (1983) 389 Mass 85, 449 NE2d 1189.

[b] —Under reservation of rights

There was sufficient evidence to support trial court's finding that insured's failure to appear for trial of action against him for damages sustained in automobile accident was a material breach of non-cooperation clause of automobile liability policy and that his failure to appear substantially prejudiced insurer's efforts to defend insured. Moreover, insurer did not waive nor was it estopped from denying liability based on insured's breach of noncooperation clause, even though insurer's counsel failed to withdraw when insured failed to appear at trial and instead participated in the trial on behalf of insured. Firemen's Ins. Co. v Cadillac Ins. Co. (1984) 13 Ark App 89, 679 SW2d 821.

9 ALR4th 329–341

§ 1. Introduction

[b] Related matters

Modern status of rule that employer may discharge at-will employee for any reason. 12 ALR4th 544.

Validity, construction, and application of statute requiring employer, on employee's request, to provide written statement of employee's service record and reason for termination of employment. 24 ALR4th 1115.

Failure to pursue or exhaust remedies under union contract as affecting employee's right of state civil action for retaliatory discharge. 32 ALR4th 350.

Recovery for discharge from employment in retaliation for filing workers' compensation claim. 32 ALR4th 1221.

Right to discharge allegedly "at-will" employee as affected by employer's promulgation of employment policies as to discharge. 33 ALR4th 120.

Liability for discharge of at-will employee for in-plant complaints or efforts relating to working conditions affecting health or safety. 35 ALR4th 1031.

Damages recoverable for wrongful discharge of at-will employee. 44 ALR4th 1131.

Right to jury trial in action for retaliatory discharge from employment. 52 ALR4th 1141.

Right of employee, discharged for refusal to participate in employer's anticompetitive practices, to bring action under federal antitrust laws against employer. 64 ALR Fed 825.

Whistleblowers' protection under Energy Reorganization Act § 210 (42 USCS § 5851). 79 ALR Fed 631.

Intentional infliction of emotional distress by employer. 45 Am Jur Proof of Facts 2d 249.

Wrongful discharge—bad faith dismissal of at-will employee. 48 Am Jur Proof of Facts 183.

Discharge from employment in retaliation for filing workers' compensation claim. 50 Am Jur Proof of Facts 187.

Wrongful discharge of at-will employee. 31 Am Jur Trials 317.

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§ 3. In general

[a] View that discharge may be actionable

ILLINOIS

Employee's retaliatory discharge complaint, based on Illinois law recognizing such cause of action when employee is discharged in retaliation for activities in contravention of clearly mandated public policy, failed to state cause of action under Illinois law respecting plaintiff's discharge in retaliation for his opposition to employer's alleged sex discrimination, since Illinois courts recognize tort of retaliatory discharge only when there is no other remedy available to vindicate public policy involved, and since both federal and state law furnish exclusive statutory remedies for retaliatory discharge of employee opposed to unlawful employment practices. Brudnicki v General Electric Co. (1982, ND Ill) 535 F Supp 84.

INDIANA

Former employee's complaint alleging that he had been discharged for refusing to continue participation in anticompetitive conspiracy stated cause of action for wrongful discharge under Indiana law, notwithstanding fact that plaintiff was employee at will, since plaintiff was under statutory duty to refrain from engaging in conspiracies in restraint of trade. Perry v Hartz Mountain Corp. (1982, SD Ind) 537 F Supp 1387, 1982-2 CCH Trade Cases ¶ 64827.

MARYLAND

Former corporate president of subsidiaries owned by defendant stated cause of action under Maryland law for "abusive discharge," where plaintiff alleged that he threatened exposure of acts of bribery and tax statute violations committed by defendant's agents, that he was fired as result of such threat, and that tendency of such firing would be to prevent disclosure of federal tax law violations in contravention of clear federal policy which is incorporated as public policy by State of Maryland. Adler v American Standard Corp. (1982, DC Md) 538 F Supp 572.

ARKANSAS

Arkansas law would recognize exceptions to at-will doctrine for cases in which employee is discharged for refusing to violate criminal statute, for exercising statutory right, for complying with statutory duty, and for cases in which employee is discharged in violation of general public policy of state. Scholtes v Signal Delivery Service, Inc. (1982, WD Ark) 548 F Supp 487.

CALIFORNIA

In an action alleging that employer wrongfully suspended employee without pay and demoted him as retaliatory measure for reporting employer's conduct in mischarging time of employees to projects they were not working on to NASA's Inspector General, triable issue of fact existed so as to preclude summary judgment, where there was no direct evidence either that employer disciplined employee for cause because he mischarged, or that employer disciplined employee in retaliation for revealing mischarging at employer's business to NASA. Garcia v Rockwell Internat. Corp. (1986, 4th Dist) 187 Cal App 3d 1556, 232 Cal Rptr 490, 106 CCH LC ¶ 55694.

CONNECTICUT

Trial court erred in dismissing complaint by at-will employee working as quality control director and operations manager for producer of frozen food products who alleged that he had been dismissed by employer in retaliation for his insistence that employer comply with requirements of Connecticut Uniform Food, Drug and Cosmetic Act where complaint stated cause of action for intentionally tortious conduct, and particularly where plaintiff's position as quality control director might have exposed him to possibility of prosecution under Act. Sheets v Teddy's Frosted Foods, Inc. (1980) 179 Conn 471, 427 A2d 385.

Former employee's complaint charging retaliatory discharge stated cause of action where employee alleged that he was fired for having supplied information to local law enforcement authorities that another employee might be involved in violation of state's criminal code, and for agreeing to assist in investi-

gation and trial of employee if requested; there is no public policy more basic than enforcement of state's criminal code and employee was under statutory duty to further assist officials when requested to do so. Palmateer v International Harvester Co. (1981) 85 Ill 2d 124, 52 Ill Dec 13, 421 NE2d 876.

Nuclear power plant guard was entitled to bring action for wrongful discharge under State "whistleblower" Protection Act, where his termination allegedly resulted from his disclosure of allegedly false company security reports to Nuclear Regulatory Commission and other government agencies. Melchi v Burns International Secur. Services, Inc. (1984, ED Mich) 597 F Supp 575 (applying Mich law).

At-will employee formerly employed as pharmacist stated cause of action for wrongful discharge where he had been terminated after advising Board of Pharmacy of employer's plan to close pharmacy section on holiday while leaving balance of store open in that employer's conduct conflicted with public policy (emanating from statutory and regulatory scheme) requiring pharmacist on duty whenever premises were open and public policy (derived from pharmacist's professional code of ethics) requiring that he expose illegal or unethical conduct in pharmacy profession. Kalman v Grand Union Co. (1982) 183 NJ Super 153, 443 A2d 728.

District controller for paper company who was discharged after 17 years employment with company, for no reason, but who was awarded $10,000 bonus following day for his good work was entitled to jury trial on his claim of wrongful discharge, despite nominally at-will employment relationship. While employee handbook did not create implied contract for termination only for cause, fact issue remained as to whether express contract was created, especially where employee contended that he had given additional consideration in that he had signed agreement granting patent and other rights to employer for his inventions. Further, employee's allegation that his discharge had been premised upon his compliance with accounting requirements of Foreign Corrupt Practices Act of 1977, 91 Stat 1494, which requires certain reports in accordance with other legislation, and that his discharge was intended as warning to other company controllers, if true, would render his discharge tortious as contrary to public policy, and thus raised fact issue precluding summary judgment. Thompson v St. Regis Paper Co. (1984) 102 Wash 2d 219, 685 P2d 1081, 1 BNA IER Cas 392, 116 BNA LRRM 3142, 105 CCH LC ¶ 55616.

See Brockmeyer v Dun & Bradstreet (1982, App) 109 Wis 2d 44, 325 NW2d 70, affd 113 Wis 2d 561, 335 NW2d 834, 98 CCH LC ¶ 55398, § 4[b].

[b] View that discharge is not actionable

Also holding or supporting view that employer may discharge at-will employee for any reason or no reason at all including reason based on employee's resistance to illegal or unethical activity:

US—Rachford v Evergreen International Airlines, Inc. (1984, ND Ill) 596 F Supp 384, 1 BNA IER Cas 559, 117 BNA LRRM 3195.

Ga—Taylor v Foremost-McKesson, Inc. (1981, CA5 Ga) 656 F2d 1029.

Ill—Johnson v World Color Press, Inc. (1986, 5th Dist) 147 Ill App 3d 746, 101 Ill Dec 251, 498 NE2d 575, 1 BNA IER Cas 1446, 105 CCH LC ¶ 55619, app den (Ill) 106 Ill Dec 47, 505 NE2d 353.

La—Frichter v National Life & Acci. Ins. Co. (1985, ED La) 620 F Supp 922, affd without op (CA5 La) 790 F2d 891 (applying La law).

NY—Titsch v Reliance Group, Inc. (1982, SD NY) 548 F Supp 983 (applying NY law).

Ohio—Phung v Waste Management, Inc. (1986) 23 Ohio St 3d 100, 23 Ohio BR 260, 491 NE2d 1114, 2 BNA IER Cas 786, 122 BNA LRRM 2163, 104 CCH LC ¶ 55602.

Pa—Fleming v Mack Trucks, Inc. (1981, ED Pa) 508 F Supp 917 (applying Pa law).

Action by former at-will employee, who was fired after he refused to conceal commercial bribery and to falsify his company's records and financial data, failed to state cause of action upon which liability could be predicated where complaint did not assert that falsification of corporate records was done with intent to defraud stockholders of public at large, and where other allegations of complaint did not demonstrate violation of clear mandate of public policy. Adler v American Standard Corp. (1981) 291 Md 31, 432 A2d 464.

Plaintiff who was discharged from at-will position in accounting employment, assertedly in retaliation for his disclosure of accounting improprieties by co-workers, failed to state cause of action for tort of abusive or wrongful discharge, since modification of traditional at-will rule, allowing employer to freely terminate at-will employee at any time for any reason or for no reason at all, should be left to legislature. Murphy v American Home Products Corp. (1983) 58 NY2d 293, 461 NYS2d 232, 448 NE2d 86, 31 BNA FEP Cas 782, 31 CCH EPD ¶ 33607.

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§ 4. Refusal of employee to act illegally or unethically

[a] Refusal to perform or participate in work or project

Hotel clerk who alleged that she was fired for refusing to pay several invoices that she had determined were from dummy corporation set up by employer to defraud stockholders and Internal Revenue Service did not state cause of action for wrongful termination, since employer was entitled to discharge at-will employee for malicious or improper reason. Reich v Holiday Inn (1984, Ala) 454 So 2d 982.

At-will employee who alleged that he was fired after refusing to conceal from customer fact that employer had stolen items of customer's property salvaged from wreck stated cause of action in tort for wrongful discharge. Vermillion v AAA Pro Moving & Storage (1985, App) 146 Ariz 215, 704 P2d 1360, 119 BNA LRRM 2337.

Former employee who alleged that he was fired from his job as result of his refusal to participate in illegal scheme to set back odometers stated cause of action for wrongful or retaliatory discharge under state law. Sarratore v Longview Van Corp. (1987, ND Ind) 666 F Supp 1257, 2 BNA IER Cas 922 (applying Ind law).

At-will employee failed to state general tort claim for wrongful discharge from employment by allegation that he was discharged for refusing to participate in employer's illegal practice of removing identification marks from foreign steel and then delivering it to customers who had specified domestic steel orders, and reviewing court would not create public policy exception to normal rule that employer may terminate at-will employee without assigning any reason for doing so. Gil v Metal Service Corp. (1982, La App) 412 So 2d 706, cert den (La) 414 So 2d 379.

Boat employee's contention that he was discharged for refusing to empty bilge into water in violation of law stated cause of action for wrongful discharge. Sabine Pilot Service, Inc. v Hauck (1985, Tex) 687 SW2d 733, 1 BNA IER Cas 733, 119 BNA LRRM 2187, 102 CCH LC ¶ 55493.

At-will employee who contended that he was discharged for refusing to pump bilges of his vessel at place where it was prohibited by federal law stated cause of action for wrongful termination. Hauck v Sabine Pilots, Inc. (1984, Tex App Beaumont) 672 SW2d 322, 117 BNA LRRM 2590, affd (Tex) 687 SW2d 733, 1 BNA IER Cas 733, 119 BNA LRRM 2187, 102 CCH LC ¶ 55493.

[b] Refusal to commit perjury

Also recognizing liability of employer who wrongfully discharges at-will employee for refusal to commit perjury at employer's request:

NC—Sides v Duke Hospital (1985) 74 NC App 331, 328 SE2d 818, 1 BNA IER Cas 512, 120 BNA LRRM 2091, 103 CCH LC ¶ 55512, review den 314 NC 331, 335 SE2d 13, 1 BNA IER Cas 1040.

Ohio—Merkel v Scovill, Inc. (1983, SD Ohio) 573 F Supp 1055, 35 CCH EPD ¶ 34629, later proceeding (SD Ohio) 590 F Supp 529, 35 CCH EPD ¶ 34630 (applying Ohio law).

In order to effectuate state policy against perjury and suborning of perjury, former at-will employee could properly maintain common law action against employer for wrongful discharge growing out of employee's refusal to commit perjury. Merkel v Scovill, Inc. (1983, SD Ohio) 570 F Supp 133, 5 Ohio BR 439, 31 CCH EPD ¶ 33543 (applying Ohio law), later proceeding (SD Ohio) 570 F Supp 141, 35 CCH EPD ¶ 34628, later proceeding (SD Ohio) 590 F Supp 529, 35 CCH EPD ¶ 34630.

See Meredith v C.E. Walther, Inc. (1982, Ala) 422 So 2d 761, § 6.

Although recovery will be permitted if termination of employee from at-will contract offends clearly defined public policy, or results from exercise of bad faith, or malicious or retaliatory activity on part of employer, trial court improperly granted judgment for discharged at-will employee, where there was no evidence from which to infer any violation of clearly defined public policy by employer, any suggestion by employer that employee engage in perjury, any retaliation for employee's alleged refusal to engage in illegal or immoral activities, or any absence on employer's part of honest, intelligent action and fair dealing. Brockmeyer v Dun & Bradstreet (1982, App) 109 Wis 2d 44, 325 NW2d 70, affd 113 Wis 2d 561, 335 NW2d 834, 98 CCH LC ¶ 55398.

§ 5. Employee's institution of complaints against employer or other employees; generally

[a] Liability established

Attendant nurse who alleged that he was discharged from employment with department of mental health as reprisal for bringing charges of resident abuse against attendants stated cause of action for wrongful discharge. Watassek v Michigan, Dept. of Mental Health (1985) 143 Mich App 556, 372 NW2d 617.

In-Service Director of Nurses' Training and Education at licensed intermediate care nurs-

For latest cases, call the toll free number appearing on the cover of this supplement.

ing home was entitled to recover damages for wrongful discharge upon evidence that administrator had discharged her following her threat to report administrator to Health Division for allegedly yelling at patient and calling patient "firebug." Whether or not administrator actually mistreated patient, Director's good faith reporting of perceived mistreatment protected her from discharge. McQuary v Bel Air Convalescent Home, Inc. (1984) 69 Or App 107, 684 P2d 21, 120 BNA LRRM 3129, review den 298 Or 37, 688 P2d 845.

[b] Liability not established

Executive vice president whose discharge by bank was allegedly in retaliation for his participation in filing report of irregular financial transaction to controller of currency did not present compelling reasons to overcome bank's authority to remove officers at will. Morast v Lance (1987, CA11 Ga) 807 F2d 926.

While disciplinary layoff for absenteeism was so close in time to female black employee's filing of federal race discrimination charges that an inference of retaliatory motive arose and prima facie case was established, employer would not be held liable for retaliatory discharge, where evidence at trial clearly established that employer's sole motivation in issuing disciplinary layoff was to enforce its stated policy of discouraging absenteeism and tardiness. Dewey v R.L. Polk & Co. (1984, WD Mo) 589 F Supp 48, 41 BNA FEP Cas 1341.

Allegation by at-will employee working for gas company, that he was discharged for attempting to report and correct employer's internal accounting practices, reflected only corporate management dispute and lacked type of violation of clearly mandated public policy that could support action for retaliatory discharge; employer's alleged violation of code of ethics of Institute of Internal Auditors did not establish public policy, and state's statutory regulation of public utilities' accounting systems was not directed at conferring rights on employees and thus also did not impact upon public policy. Suchodolski v Michigan Consol. Gas Co. (1982) 412 Mich 692, 316 NW2d 710.

In former employee's damages suit challenging his termination for having reported defendant-employer's safety violations to Federal Aviation Administration and for refusing to falsify flight records, plaintiff's at-will status precluded cause of action for abusive discharge based on alleged violation of public policy. Pavolini v Bard Air Corp. (1982, 3d Dept) 88 App Div 2d 714, 451 NYS2d 288.

Civil tort remedy for wrongful discharge was not available to employee who alleg that she was discharged in retaliation f having reported alleged patient abuse to sta commission on aging. Welch v Brown's Nu ing Home (1984, Hamilton Co) 20 Ohio A 3d 15, 20 Ohio BR 16, 484 NE2d 178, moti overr.

At-will employee who was allegedly d charged in retaliation for his reporting infc mation to Nuclear Regulatory Commissi regarding nuclear safety violations at emplc er's facility could not rely on state's pub policy exception to employment-at-will dc trine, where employee had statutory remec available. Cox v Radiology Consulting Asso ates, Inc. (1987, WD Pa) 658 F Supp 264, BNA IER Cas 233 (applying Pa law).

§ 6. Other conduct by employee

In diversity action, evidence that employ discharged employee for employee's refusal participate in employer's unlawful and unet ical conduct, namely commercial bribe of er ployee's former employer to obtain bid, en tled jury to find that employer had discharge employee wrongfully in violation of publ policy. Hansrote v Amer Industrial Technol gies, Inc. (1984, WD Pa) 586 F Supp 113, 1 BNA LRRM 3286, affd without op (CA3 P 770 F2d 1070, 120 BNA LRRM 2912.

Cause of action for wrongful discharge at-will employee would not be recognize where employee did not allege that employ had asked him to commit perjury, viola disciplinary rule to which he was subject a attorney, or commit some other similar tran gression, and where employee merely demo strated that he was party in action with oth salaried employees against employer and th his employment was terminated because that involvement. Meredith v C.E. Walthe Inc. (1982, Ala) 422 So 2d 761.

Termination of at-will employee for refus to participate in public exposure of buttock was termination contrary to policy of stat even if alleged "mooning" incident only co stituted technical violation of decent exposu statute; firing for bad cause was not rig inherent in at-will contract, or in any othe contract, even if expressly provided, and suc termination violated rights guaranteed to en ployee by law and was tortious. Wagenseller Scottsdale Memorial Hospital (1985) 147 Ari 370, 710 P2d 1025, 119 BNA LRRM 3166, 10 CCH LC ¶ 55511.

Vice-president who alleged that he was di charged for having disclosed to auditors h participation in employer's false insuranc damage claim stated cause of action fc

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Termination of at-will employee for refusal
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CH LC ¶ 55511.

Vice-president who alleged that he was dis-
charged for having disclosed to auditors his
participation in employer's false insurance-
damage claim stated cause of action for

wrongful discharge. Schmidt v Yardney Electric Corp. (1985) 4 Conn App 69, 492 A2d 512.

In breach of contract suit brought by employee discharged from at-will contract, summary judgment for employer was improper where fact question existed as to whether employer had discharged employee to induce her to leave area, and thereby prevent her from testifying before grand jury investigating employer's alleged antitrust activities. Parnar v Americana Hotels, Inc. (1982) 65 Hawaii 370, 652 P2d 625.

Employee working under at-will contract has right of action for wrongful termination of his employment, where employee was terminated for exercising his statutory right to file workers' compensation claim against employer and for informing law enforcement officials of criminal activities of coemployee. Martin v Federal Life Ins. Co. (1982) 109 Ill App 3d 596, 65 Ill Dec 143, 440 NE2d 998.

Trial court improperly dismissed at-will employee's retaliatory-discharge complaint, where employee's allegations that, in course of performing his accounting and financing duties, he discovered discrepancy in corporation's financial records that he believed may have been due to criminal misconduct and attempted to report his suspicions to corporation's management and was discharged to aid in corporation's concealment of its wrongdoings and in retaliation for his efforts to ensure management's compliance with requirements of criminal law, stated essence of cause of action for retaliatory discharge. Petrik v Monarch Printing Corp. (1982) 111 Ill App 3d 502, 67 Ill Dec 352, 444 NE2d 588.

In wrongful discharge action, employee's allegation that she was discharged for warning employer that she would notify the Food and Drug Administration of employer's violation of federal regulations requiring treatment and testing of eyeglass lenses was sufficient to state cause of action for wrongful discharge under public policy exception to at-will employment doctrine; although employers generally are free to discharge at-will employees with or without cause at any time, they are not free to require employees, on pain of losing their jobs, to commit unlawful acts or acts in violation of clear mandate of public policy expressed in constitution, statutes, and regulations promulgated pursuant to statute. Boyle v Vista Eyewear, Inc. (1985, Mo App) 700 SW2d 859, 2 BNA IER Cas 768, 122 BNA LRRM 2327, 106 CCH LC ¶ 55731.

Restaurant which discharged manager for failure to sign false and potentially defamatory statement about employee he had terminated was liable for wrongful discharge of manager in violation of state public policy. Delaney v Taco Time International, Inc. (1984) 297 Or 10, 681 P2d 114, 1 BNA IER Cas 367, 116 BNA LRRM 2168, 105 CCH LC ¶ 55606.

9 ALR4th 354–363

Adequacy of defense counsel's representation of criminal client regarding guilty pleas. 10 ALR4th 8.

Adequacy of defense counsel's representation of criminal client regarding search and seizure issues. 12 ALR4th 318.

Adequacy of defense counsel's representation of criminal client regarding post-plea remedies. 13 ALR4th 533.

Adequacy of defense counsel's representation of criminal client regarding prior conviction. 14 ALR4th 227.

Propriety and prejudicial effect of informing jury that witness in criminal prosecution has taken polygraph test. 15 ALR4th 824.

Adequacy of defense counsel's representation of criminal client regarding incompetency, insanity, and related issues. 17 ALR4th 575.

Validity and construction of statute prohibiting employers from suggesting or requiring polygraph or similar tests as condition of employment or continued employment. 23 ALR4th 167.

Fact that witness undergoes hypnotic examination as affecting admissibility of testimony in civil case. 31 ALR4th 1239.

When is attorney's representation of criminal defendant so deficient as to constitute denial of federal constitutional right to effective assistance of counsel—Supreme Court cases. 33 L Ed 2d 1112.

In Nebraska rape prosecution in which defendant pleaded nolo contendere, defense counsel's failure to inform him of victim's hypnotically refreshed testimony and to object to admissibility of that testimony did not constitute ineffective assistance, though Nebraska Supreme Court held six years after his plea that hypnotically refreshed testimony was inadmissible at criminal trials, where

6-0327J
Cramer
4/20/89

Original sponsor: Labor and Commerce Committee

Changes in CS
p. 3, l. 22-28
p. 4, l. 6

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 91 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to protection for certain public employees and certain other persons who report or participate in a proceeding connected with a matter of public concern."

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

* Section 1. AS 39.90 is amended by adding new sections to read:

ARTICLE 2. PROTECTION FOR WHISTLEBLOWERS.

Sec. 39.90.100. PERSONS PROTECTED. (a) A public employer may not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because

(1) the employee, or a person acting on behalf of the employee, reports to a public body or is about to report to a public body a matter of public concern; or

(2) the employee participates in a court action, an investigation, a hearing, or an inquiry held by a public body on a matter of public concern.

(b) A public employer may not disqualify a public employee or other person who reports a matter of public concern or participates in a proceeding connected with a matter of public concern before a public body or court, because of the report or participation, from eligibility to

(1) bid on contracts with the public employer;

(2) receive land under a law of the state or an ordinance

of the municipality; or

(3) receive another right, privilege, or benefit.

(c) The provisions of AS 39.90.100 - 39.90.150 do not

(1) require an employer to compensate an employee for participation in a court action or in an investigation, hearing, or inquiry by a public body;

(2) prohibit an employer from compensating an employee for participation in a court action or in an investigation, hearing, or inquiry by a public body;

(3) authorize the disclosure of information that is legally required to be kept confidential; or

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

(d) An employer shall post notices and use other appropriate means to inform employees of their protections and obligations under AS 39.90.100 - 39.90.150.

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

(1) reasonably believes that the information reported is or is about to become a matter of public concern; and

(2) reports the information in good faith.

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

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

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

(c) As part of its written personnel policy, a public employer

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

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

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

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

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

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

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

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

added in CS

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

Sec. 39.90.140. DEFINITIONS. In AS 39.90.100 - 39.90.150

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

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

(3) "matter of public concern" means

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

(B) a danger to public health or safety;

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

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

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

(A) the federal government;

(B) the state;

(C) a political subdivision of the state including

(i) a municipality;

(ii) a school district; and

(iii) a rural educational attendance area;

(D) a public or quasi-public corporation or authority established by state law including the Alaska Railroad Corporation; and

(E) the University of Alaska.

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

H B

93

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER CSHB 93(Jud)

SPONSOR Boucher

BILL TITLE Voter registration by Dept. Public Safety

DATE REFERRED 4-4-89

HEARING SCHEDULED 4-26-89

FISCAL NOTE PREPARED ✓

SPONSOR CONTACTED ✓Marc Chad 4931

INTERESTED PARTIES CONTACTED

✓Linda Edgeworth Elections 4611

✓Bill Brown, DW Motor Vehicles 4335

✓Gail Hoetzki 4322

are a few rural ones not doing

OTHER

SENATE COMMITTEE REPORT

FURTHER

DATE TURNED INTO OFFICE 4-26-89

4/4/89
Mr. President:

STATE AFFAIRS Committee considered CSHB 93 (JUD)

duty of the director of the division of elections and to voter registration by the Department of Public Safety

and recommended

[ ] replace with ___ CS_____)[] same title
[ ] or adopt _____ CS_____)[] new title
[] technical title change (HB only)

[ ] attached amendment(s) and

[ ] _____letter of intent adopted

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to _____

FISCAL NOTE(S) [ ] zero [ ] fiscal impact [ ] appropriation no FN
[ ] new [ ] updated [X] previous
[ ] same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

Jan Faris

Mel Adams

OTHER RECOMMENDATIONS

Pat Saunders Do Pass
Chairman signature and recommendation

[ ] Committee Backup attached

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling

P.O. Box V
State Capitol
Juneau, Alaska 99811

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members

FROM: Senator Pat Pourchot, Chairman

RE: April 26 Committee Memo

DATE: April 25, 1989

On Wednesday, April 26 at 1:30 p.m. in the Beltz Room the Senate State Affairs Committee will hear the following bills:

SJR 46, Supporting the establishment of a Joint Commission on the Status of Alaska Natives by Congress

SJR 46 would support the establishment of a Joint Commission on the Status of Alaska Natives and commit the state to actively participate on the commission. The commission would be charged with conducting a comprehensive review of federal and state policies affecting Alaska Natives and the current health, social, and economic status of Alaska Natives.

The resolution that would establish the Commission is pending introduction in the U.S. Senate. The effort stems from the recently published AFN Report on the Status of Alaska Natives.

SSSB 72, An Act relating to registration and licensing of contractors; prohibiting the use of state money for certain residential work unless the work is performed by a licensed residential contractor

SB 72 would require that contractors who construct or alter privately-owned residential structures of one to four units have a residential endorsement on their license. To receive the endorsement, the contractor would need to pass a written or practical exam which tests competence in arctic construction techniques, and complete the Alaska Craftsman Home program or a postsecondary course in arctic engineering or its equivalent.

The Labor and Commerce C.S. clarified that the residential requirement would be an endorsement to the general contractor's license rather than a separate license, allowed participation in programs equivalent to the Alaska Craftsman Home program, and allowed the exemptions in current statute for small projects and owner-built projects.

SB 157, An Act relating to imposition of a civil fine for violation of a statute, regulation, or ordinance related to alcoholic beverages

SB 157 would authorize the Alcoholic Beverage Control Board to assess civil fines against liquor licensees who violate liquor laws. The fine would be in addition to license suspension or revocation, and would follow the suspension/revocation hearing required under current statute. The amount of the fine would be determined by the Board.

The bill would also provide the Board with program receipt authority. Fees and fines would be separately accounted for and could be appropriated by the legislature to fund the Board's operation.

SB 192, An Act relating to legislators' eligiblity for long-term per diem

SB 192, which would limit eligibility for long term per diem during the interim to days spent attending meetings of a legislative committee or subcommittee, was heard by the State Affairs Committee on April 10. No action was taken pending action by the Legislative Council on a revised per diem policy.

The Council policy, adopted April 24, is attached. It provides that to qualify for interim per diem a legislator must attend a meeting for a legislative or public purpose, or spend at least four hours of that day on legislative and constituent business.

Also attached is a fiscal note for SB 192, indicating savings of $161,700. Fiscal impact of the new Council policy has not yet been determined.

CSHB 93(Jud), An Act relating to a duty of the director of the division of elections and to voter registration by the Department of Public Safety

HB 93 would require that the Division of Elections provide voter registration forms to the Division of Motor Vehicles, and that DMV advise persons registering their vehicles or applying for drivers' licenses that they may also register to vote.

According to the Division of Elections, most motor vehicle registration outlets currently provide voter registration services. Elections provides training to DMV personnel; DMV forwards completed voter registration forms to Elections.

In addition, SJR 38, Proposing an amendment to the Constitution of the State of Alaska relating to terms of legislators, will be before the committee. Due to time constraints, the bill was not heard on April 24 as scheduled.

Item 3

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M February 7, 1989

SUBJECT: Sectional analysis - HB 93

TO: Representative Red Boucher

FROM: Michael F. Ford MF
Legislative Counsel

The following is a sectional analysis of HB 93:

Section 1 - Requires the director of the division of elections to provide voter registration forms to the Department of Public Safety for public distribution.

Section 2 - Requires the Department of Public Safety to advise certain people who are registering or licensing for driving purposes that they may also register to vote. Requires the department to use forms prepared by the division of elections and to prominently display notice of the right to register to vote.

MFF:gc
WKG6/095

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 93
PUBLISH DATE: 1/20/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to voter Registration
Sponsor: Boucher
Requestor: Boucher

Agency Affected: Office of the Governor
BRU: Elections
Components: I - Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Linda Edgeworth
Division: Division of Elections
Phone: 465-4611
Date: _____

Approved by Commissioner: _____
Agency: Division of Elections
Date: _____

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

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 465-4611

COMMENTS IN SUPPORT OF HB 93
Prepared by
Division of Elections
February 7, 1989

The Division of Elections has reviewed House Bill 93 and supports its provisions. It should be pointed out that for many years, the Division has enjoyed a cooperative association with the Department of Public Safety through which, most motor vehicle registration outlets already provide voter registration services.

Among the most active outlets are Juneau, Haines, Sitka, Ketchikan, Kodiak, Nome, Fairbanks, Tok, Anchorage, Eagle River and Palmer. Barrow, Bethel and Kotzebue have also been encouraged to participate. The Anchorage motor vehicle offices are scheduled for another refresher training session which is conducted about once a year. The regional supervisors report that registrations submitted through motor vehicle offices have been timely, accurate and properly processed.

In general, the Division has received positive support from the motor vehicle offices currently providing voter registration services.

February 7, 1989
Date

Sandra J. Stout, Director

Item #3

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB93
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act relating to voter registration
Sponsor: Boucher
Requestor: House State Affairs

Agency Affected: Public Safety
BRU: Motor Vehicles
Component:

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Since we are already registering voters at DMV field offices there will be no fiscal impact.

Prepared by: Bill Brown
Division: Motor Vehicles
Phone: 465-4335
Date: 02/07/89

Approved by Commissioner: Arthur English
Agency: Department of Public Safety
Date: 2-7-89

2/16/89

page 1 of 1

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

P.O. BOX 20
JUNEAU, ALASKA 99802-0020

DIVISION OF MOTOR VEHICLES

PHONE: (907)465-4335

February 7, 1989

The Honorable H. A. Boucher
Chairman, House State Affairs
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 93
Voter Registration

Dear Representative Boucher:

A member of your staff called in reference to the subject legislation, and requested a statement of policy concerning the current procedure of registering voters in motor vehicles offices.

The Division of Elections has provided training to our field staff, and provides the offices with voter registration forms. When a person registers as a voter, the registration form is forwarded to the Division of Elections by motor vehicle personnel.

The Division of Motor Vehicles has signs posted in the field offices to advise people who come into our offices that they many register to vote.

Please let me know if any further information is available.

Sincerely,

Bill Brown
Chief of Driver Services

BB:bc

12-L8LH

copy to Sandra
We'll schedule
in couple of
weeks
P

DATE: April 4, 1989
TO: PAT
fr: jl

RE: HB 93 - Voter Registration/DMV (Boucher)

Currently, most motor vehicle registration offices provide voter registration services. (The practice is optional, and in the past has been determined by the Commissioner.) This bill places the procedure in statute.

The bill requires:

(1) the Director of Elections to provide voter registration forms to the Department of Public Safety;

(2) the DMV to advise an eligible applicant that he/she may also register to vote at the same time as applying for a driver's license, identification card, or vehicle registration;

(3) the DMV to forward completed forms to the Division of Elections; and

(4) the DMV to prominently display notice of the right to apply for voter registration at each location where a person may apply for a driver's license, identification card, or vehicle registration.

The House Judiciary CS tightened up the title; added a new Section 1 designating the Act as the "Motor-Voter" Act; and made stylistic changes in the first sentence of Section 3.

2/7

The Division of Elections supports the bill and has submitted a zero fiscal note. There is no position paper or fiscal note from the Department of Public Safety.

Concerns were expressed during the House Judiciary hearing that the current wording could be interpreted to require that DMV personnel would have to give oral information and instructions in addition to providing forms, etc., which could result in long lines, particularly in Anchorage. The Committee realized that the wording was open to interpretation, but decided not to change it, because they didn't think it was that big a problem.

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4931

DISTRICT 10
BOX 111038
ANCHORAGE, ALASKA 99511
(907) 349-2192

CHAIRMAN
Special Committee on
Telecommunications

MEMBER
Labor and Commerce
State Affairs
Finance—Subcommittee Administration

Representative H. A. "Red" Boucher

TO: STATE AFFAIRS COMMITTEE

FROM: H.A."RED" BOUCHER

DATE: MAY 13, 1987

RE: HB 308 AN ACT RELATING TO VOTER REGISTRATION

The major feature of the "motor voter" bill is to provide additional means for people to register to vote, update their existing registration, or cancel a registration in another state -- while they are applying for a driver's license. Motor Voter legislation has been adopted in Arizona (1983), Colorado (1985) and Michigan (1975) with an increase of 16% to the registered rolls.

The procedure for registering would not consume much time (less than 2% in Arizona) or place an excessive burden on Department of Motor Vehicle (DMV) personnel. Both Division of Elections and DMV require the same information. DMV personnel would post signs, help with the forms, and forward the forms to the Division of Elections for verification.

Currently in Alaska, voter registration forms are available in some DMV offices, but not in Anchorage or Fairbanks. Where the forms are available, DMV does not assist in filling out the forms nor does it forward the forms to Division of Elections. Approximately 60% of Alaskans are registered to vote, although Division of Elections has no firm numbers on this.

H93POOP.TXT
4/26/89

HB 93 VOTER REGISTRATION BY DEPT. PUBLIC SAFETY

TO TESTIFY

REP. BOUCHER, SPONSOR (CHAD)

LINDA EDGEWORTH, DIV. ELECTIONS

SOMEBODY FROM DEPT. PUBLIC SAFETY

F.Y.I.

EVERYONE I TALK TO SAYS THE BILL MERELY PUTS INTO STATUTE WHAT'S ALREADY GOING ON. RED HAS HAD THE BILL IN FOR A FEW YEARS -- THE OLD RECORDS INDICATE THAT WHEN HE FIRST INTRODUCED IT VOTER REGISTRATION AT D.M.V. OFFICES WAS NOT SO WIDESPREAD. NOW THERE ARE JUST A FEW OFFICES NOT DOING VOTER REGISTRATION -- THEY WOULD BE REQUIRED TO UNDER HB 93.

GOAL: INCREASE VOTER REGISTRATION. RED SAYS ARIZONA, COLORADO, AND MICHIGAN HAVE "MOTOR VOTER" LAWS -- 16% INCREASE IN VOTER REGISTRATION SINCE THEIR ENACTMENT.

HB93.TXT

ALASKA STATE LEGISLATURE

P.O. Box V
Juneau, AK 99811

907-465-3712

Senate State Affairs Committee

May 11, 1989

Boyd Keeling
5901 East 6th, #A-22
Anchorage, Alaska 99504

Dear Boyd:

I received your message objecting to HB 93, which would require the state Division of Motor Vehicles to advise persons registering their vehicles or applying for drivers' licenses that they may also register to vote. Voter registration forms would be available at the DMV offices.

HB 93 received final approval prior to adjournment earlier this week, and now goes to the Governor for signature into law. I see the bill primarily as a convenience for the general public, and voted for its passage. The bill doesn't require that people register to vote in order to get their driver's license or vehicle registration, but simply makes the voter registration forms available. Most motor vehicle registration outlets currently provide voter registration services under a cooperative agreement with the state Division of Elections; HB 93 would formalize the current arrangement.

Boyd, thanks again for sharing your views. Voting is a fundamental right and I believe that government has an obligation to provide easy access to voter registration. HB 93 helps achieve that goal.

Sincerely,

Senator Pat Pourchot
Chairman

PP/ss

H B 138

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER HB 138

SPONSOR Ulmer

BILL TITLE State employee incentive award system.

DATE REFERRED 4-11-89

HEARING SCHEDULED 4-19-89

FISCAL NOTE PREPARED ✓

SPONSOR CONTACTED Katy 4947 ✓

INTERESTED PARTIES CONTACTED

✓ Dave Otto 4430

OTHER

H138POOP.TXT
4/21/89

HB 138 EMPLOYEE INCENTIVE AWARD SYSTEM

TO TESTIFY

REP. ULMER, SPONSOR (KATE TESAR)

DAVE OTTO, PERSONNEL, HAS BEEN NOTIFIED

F.Y.I.

C.S. MAKES TWO CHANGES: State Affairs

REQUIRES REPORT TO LEGISLATURE. SPECIFIES MUST INCLUDE NAME OF EACH AWARD RECIPIENT, BASIS FOR MAKING AWARD, AMOUNT. (PAGE 4, LINES 7-9)

EXEMPTS FROM RECEIVING AWARDS: COMMISSIONER, DEPUTY COMMISSIONER, ASSISTANT COMMISSIONER, DIRECTOR, DEPUTY DIRECTOR (PAGE 4, LINES 17-18)

Finance CS

Sunset 1993.
Letter of intent.

Other Features

FISCAL NOTE $11,100 -- HIRING SOMEONE TO WRITE REGULATIONS, AND CONTRACTUAL USE OF A HEARING OFFICER. MONETARY AWARDS ARE TO BE PAID OUT OF THE APPROPRIATION IN WHICH THE EFFICIENCY SAVINGS HAVE BEEN ACHIEVED. Finance zeroed the Fiscal Note.

OTHER FEATURES OF BILL:

- NO AWARD IF MONEY-SAVING IDEA REQUIRES CHANGE IN LAW.
- MAXIMUM AWARD $25,000 (BASED ON AMOUNT OF SAVINGS DURING FIRST 12 MONTHS OF IMPLEMENTATION, PER FORMULA)
- FOR NON-MONEY SAVING IDEAS, AWARD CERTIFICATE.
- NO AWARDS FOR EMPLOYEES DOING RESEARCH OR FOR IDEAS THAT ARE PART OF THE EMPLOYEE'S NORMAL DUTIES.
- AWARDS BOARD = DIRECTOR OF DIVISION OF PERSONNEL, DIRECTORS OF O.M.B., AND A PUBLIC MEMBER WITH EXPERIENCE IN ACCOUNTING AND MANAGEMENT (APPOINTED BY GOVERNOR).
- ANNUAL REPORT TO GOVERNOR.

KOPONEN HAD THIS BILL IN LAST YEAR, REMEMBER? ULMER'S BILL IS A LITTLE "TIGHTER", BUT YOU COULD STILL ARGUE THAT DEVELOPING GOOD IDEAS IS JUST PART OF THE JOB....

Offered: 5/3/89
Referred: Rules

6-0662M

Original sponsors: Ulmer, Koponen,
Ellis, et al.

IN THE HOUSE BY THE FINANCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 138 (Finance) see Sec 3 a 4

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing a state employee incentive award system."

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

* Section 1. AS 39.51 is amended by adding new sections to read:

ARTICLE 2. INCENTIVE AWARD PROGRAM.

Sec. 39.51.110. INCENTIVE AWARDS. The Incentive Awards Board may authorize the commissioner of a department or the executive head of an agency other than a department to pay an employee a cash award and incur necessary expense for the honorary recognition of the employee if the employee has contributed to the efficiency, economy, or other improvement of state operations by a superior suggestion, invention, accomplishment, or other superior personal effort in connection with or related to the employee's official employment.

Sec. 39.51.120. PAYMENT OF AWARDS. (a) A cash award under AS 39.51.110 - 39.51.200 is in addition to the regular pay of the recipient. Acceptance of a cash award constitutes an agreement that the use by the state of an idea, method, or device for which the award is made does not form the basis of a further claim of any nature against the state by the employee.

(b) A department or agency may pay a cash award and the expense for the honorary recognition of an employee from the appropriation available to the activity or activities primarily benefiting from the idea, method, or device that forms the basis for the award. The commissioner of the department or head of the agency shall recommend

to the board the amount to be paid by each activity for an award.

(c) An employee may receive a cash award only if the board is satisfied that a net savings has been realized by the department or agency as a direct result of the employee's concept or idea, and the proposal has been developed outside normal working hours.

(d) The board may not grant an award to an employee whose idea or concept requires a change in law before it may be implemented.

Sec. 39.51.130. AMOUNT OF AWARDS. The board may not grant a cash award under AS 39.51.110 - 39.51.200 that exceeds $25,000. The amount of the award is determined by multiplying each increment of the state's actual cost savings during the first 12 months of implementation, as determined by the board, by the following percentages and adding the results:

(1) five percent of the first $10,000 in savings;

(2) four percent of the next $20,000 in savings;

(3) three percent of the next $30,000 in savings;

(4) two percent of the amount of savings that exceeds $60,000.

Sec. 39.51.140. MERITORIOUS ACHIEVEMENT. When the commissioner of a department or the executive head of an agency certifies to the board that an employee's superior suggestion, invention, accomplishment, or other meritorious effort is highly exceptional and unusually outstanding, but does not result in a direct savings to state government, the board may approve an award consisting of a certificate of merit issued by the Office of the Governor.

Sec. 39.51.150. LIMITATION ON AWARDS. The board may not make an award to an employee

(1) for a suggestion that represents a part of the normal duties of the employee;

(2) who has sole authority to implement the suggestion;

(3) whose duties include research or planning, unless the subject matter of the suggestion is unrelated to the employee's normal work assignments; or

(4) is developed by more than one person unless each person is an employee eligible for an award under this section.

Sec. 39.51.160. AWARDS TO FORMER EMPLOYEES. Notwithstanding the death or separation from state service of the employee concerned, a department or agency may pay or grant an award under AS 39.51.110 - 39.51.200 if the award is based on events that happened while the employee was in the employ of the state, and after the effective date of this Act.

Sec. 39.51.170. INCENTIVE AWARDS BOARD. (a) The Incentive Awards Board is established in the division of personnel in the Department of Administration.

(b) The board consists of the director of the division of personnel in the Department of Administration, the directors of the office of management and budget in the Office of the Governor, and a public member from the private sector with experience in accounting and management appointed by the governor. The board shall elect a chair.

(c) The board shall meet as necessary at a time and place determined by the chair. The meetings are open to the public. A majority of the membership of the board constitutes a quorum. The board may not take action on a matter except by affirmative vote of a majority of the board members.

(d) A member of the board may not act on a matter in which the relationship of the member with another person creates a conflict of interest.

(e) A member of the board may not receive an award under this chapter.

(f) The board shall adopt regulations and conduct hearings under the Administrative Procedure Act (AS 44.62).

Sec. 39.51.180. ANNUAL REPORT. The board shall submit a report regarding the operation of the awards program to the governor and the legislature by January 15 of each year. The report must include the name of each person who received an award, the basis for making the award, and the amount of the award.

Sec. 39.51.200. DEFINITIONS. In AS 39.51.110 - 39.51.200

(1) "board" means the Incentive Awards Board;

(2) "employee"

(A) includes a permanent, probationary, seasonal, nonpermanent, temporary, or provisional employee of the executive branch of state government whether in the classified, partially exempt, or exempt service;

(B) but does not include a commissioner, deputy commissioner, assistant commissioner, director, or deputy director.

* Sec. 2. AS 39.35.680(8) is amended to read:

(8) "compensation" means the total remuneration earned by an employee for personal services rendered to an employer, including employee contributions under AS 39.35.160, cost-of-living differentials only as provided in AS 39.35.675, payments for leave that is actually used by the employee, the amount by which the employee's wages are reduced under AS 39.30.150(c), and any amount deferred under an employer-sponsored deferred compensation plan, but does not include retirement benefits, severance pay or other separation bonuses, welfare benefits, per diem, expense allowances, workers' compensation payments, <u>incentive cash awards under AS 39.51.120,</u> or payments for

leave not used by the employee whether those leave payments are scheduled payments, lump-sum payments, donations, or cash-ins;

* Sec. 3. Section 1 of this Act is repealed July 1, 1993.

* Sec. 4. The directors of the office of management and budget in the Office of the Governor and of the division of personnel in the Department of Administration shall report to the legislature by January 15, 1994, on the state's experience with the incentive awards program. The report must include the name of each person who received an award during 1993, the basis for making the award, and the amount of the award.

6-0662D
Cramer
4/20/89

Changes in CS
page 4, l. 7-9
page 4, l. 17-18

Original sponsors: Ulmer, Koponen, Ellis, et al.

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 138 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing a state employee incentive award system."

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

* Section 1. AS 39.51 is amended by adding new sections to read:

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(b) A department or agency may pay a cash award and the expense for the honorary recognition of an employee from the appropriation available to the activity or activities primarily benefiting from the idea, method, or device that forms the basis for the award. The commissioner of the department or head of the agency shall recommend

to the board the amount to be paid by each activity for an award.

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(d) The board may not grant an award to an employee whose idea or concept requires a change in law before it may be implemented.

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(1) five percent of the first $10,000 in savings;

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Sec. 39.51.150. LIMITATION ON AWARDS. The board may not make an award to an employee

(1) for a suggestion that represents a part of the normal duties of the employee;

(2) who has sole authority to implement the suggestion;

(3) whose duties include research or planning, unless the subject matter of the suggestion is unrelated to the employee's normal work assignments; or

(4) is developed by more than one person unless each person is an employee eligible for an award under this section.

Sec. 39.51.160. AWARDS TO FORMER EMPLOYEES. Notwithstanding the death or separation from state service of the employee concerned, a department or agency may pay or grant an award under AS 39.51.110 - 39.51.200 if the award is based on events that happened while the employee was in the employ of the state, and after the effective date of this Act.

Sec. 39.51.170. INCENTIVE AWARDS BOARD. (a) The Incentive Awards Board is established in the division of personnel in the Department of Administration.

(b) The board consists of the director of the division of personnel in the Department of Administration, the directors of the office of management and budget in the Office of the Governor, and a public member from the private sector with experience in accounting and management appointed by the governor. The board shall elect a chair.

(c) The board shall meet as necessary at a time and place determined by the chair. The meetings are open to the public. A majority of the membership of the board constitutes a quorum. The board may not take action on a matter except by affirmative vote of a majority of the board members.

(d) A member of the board may not act on a matter in which the relationship of the member with another person creates a conflict of interest.

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Sec. 39.51.180. ANNUAL REPORT. The board shall submit a report regarding the operation of the awards program to the governor and the legislature by January 15 of each year. The report must include the name of each person who received an award, the basis for making the award, and the amount of the award.

Sec. 39.51.200. DEFINITIONS. In AS 39.51.110 - 39.51.200

(1) "board" means the Incentive Awards Board;

(2) "employee"

(A) includes a permanent, probationary, seasonal, nonpermanent, temporary, or provisional employee of the executive branch of state government whether in the classified, partially exempt, or exempt service;

ADDED (B) but does not include a commissioner, deputy commissioner, assistant commissioner, director, or deputy director.

* Sec. 2. AS 39.35.680(8) is amended to read:

(8) "compensation" means the total remuneration earned by an employee for personal services rendered to an employer, including employee contributions under AS 39.35.160, cost-of-living differentials only as provided in AS 39.35.675, payments for leave that is actually used by the employee, the amount by which the employee's wages are reduced under AS 39.30.150(c), and any amount deferred under an employer-sponsored deferred compensation plan, but does not include retirement benefits, severance pay or other separation bonuses, welfare benefits, per diem, expense allowances, workers' compensation payments, incentive cash awards under AS 39.51.120, or payments for

leave not used by the employee whether those leave payments are scheduled payments, lump-sum payments, donations, or cash-ins;

and do pass with a Letter of Intent. The report was signed by Senator Binkley, Co-Chair, and concurred in by Senators Frank, Pearce and Duncan. Senators Zharoff, Fischer and Uehling signed "no recommendation."

Letter of Intent
for
SENATE CS FOR CS FOR HOUSE BILL NO. 138 (Finance)

It is the intent of the legislature that no awards be paid by an agency until the amount of the savings realized by the employee's idea or suggestion has been removed from the agency's budget and the legislature has appropriated the award amount from the savings realized.

Zero fiscal note published today from Senate Finance Committee.

CS FOR HOUSE BILL NO. 138 (Finance) am was referred to the Rules Committee.

Alaska State Legislature

Representative Fran Ulmer

P.O. Box V
Juneau, Alaska 99811
(907) 465-4947

HOUSE OF REPRESENTATIVES

M E M O R A N D U M

TO: Senator Pourchot

FROM: Rep. Fran Ulmer

DATE: May 4, 1989

RE: SCS HB 138 (FIN)

SCS HB 138 (FIN) would establish a monetary incentive program to encourage state employees to improve state operations by promoting efficiency and reducing costs without decreasing services. An incentive awards board would be established within the Division of Personnel in the Department of Administration. This board would review cost saving ideas and grant cash awards in accordance with the amount of money being saved by the state. These awards would not apply to a cost savings suggestion made by an employee in the course of their employment, so we would not be rewarding an employee for just doing their job.

idea must result in net savings to agency; must be developed outside normal working hours

Awards could total from a low of 5% of the first $10,000 in savings, to an amount not to exceed $25,000. Please see the attached chart for actual calculations of awards. This type of legislation has been established in many states, and the Federal government has had a similar program in place since 1954. Federal data shows a long term saving of over $12 for every dollar awarded. I have also attached news articles regarding other savings on the Federal and state level.

Two changes were adopted in Senate State Affairs. One regards the submittal of an annual report to the legislature to include the names of the persons who receive awards, the basis for making the award and the amount awarded. The second change would exclude comissioners, deputy commissioners, assistant commissioners, directors and deputy directors from receiving the incentive awards. In the Senate Finance Committee, language was added to provide for a review of the program by the legislature in 1993, and a letter of intent was included which clarifies the process by which the savings are appropriated by the legislature prior to preparing agency budgets.

EXPLANATION OF CALCULATION OF INCENTIVE AWARDS

The amount of the award is determined by multiplying each increment of the state's actual cost savings during the first 12 months of implementation by the percentages listed below:

5% of savings up to $10,000 plus
4% of savings between $10,000 and $30,000 plus
3% of savings between $30,00 and $60,000 plus
2% of savings between $60,000 and $1,250,000

The maximum award would be capped at $25,000.

Example: if an employee saved the state $30,000 in a 12 month period, the award would equal $1,300.

5% of the first $10,000=	$500
+	
4% of the next $20,000=	800
Total	$1,300 award

Example: Savings equal $60,000-award would be $2,200

5% of the first $10,000=	$500
+	
4% of the next $20,000=	800
+	
3% of the next $30,000=	900
Total	$2,200 award

Example: Savings equal $100,000-award would be $3,000

5% of the first $10,000=	$500
+	
4% of the next $20,000=	800
+	
3% of the next $30,000=	900
+	
2% of the next $40,000=	800
Total	$3,000 award

Example: Savings equal $200,000-award would be $5,000

5% of the first $10,000=	$500
+	
4% of the next $20,000=	800
+	
3% of the next $30,000=	900
+	
2% of the next $ 140,000=	2800
Total	$5,000 award

Example: Savings equal $1,000,000-award would be $21,000

5% of the first $10,000=	$500
+	
4% of the next $20,000=	800
+	
3% of the next $30,000=	900
+	
2% of the next $ 940,000=	18,800
Total	$21,000 award

IN VIEW OF THE CURRENT UNSTABLE REVENUE SITUATION IN ALASKA, IT SEEMS APPROPRIATE THAT WE MAKE EVERY EFFORT TO ENCOURAGE COSTS SAVING MEASURES WHENEVER THEY CAN BE FOUND. HB 138 DOES JUST THAT. THIS LEGISLATION WOULD ESTABLISH AN INCENTIVE AWARDS BOARD IN THE DIV. OF PERSONNEL IN THE DEPT. OF ADMINISTRATION. THE BOARD WOULD REVIEW IDEAS FROM STATE EMPLOYEES- IDEAS WHICH IMPROVE STATE OPERATIONS BY PROMOTING EFFICIENCY AND REDUCING COSTS WITHOUT DECREASING SERVICES.

EMPLOYEES WORKING IN STATE GOVERNMENT EVERY DAY ARE PROBABLY MOST FAMILIAR WITH HOW STATE DEPTS. COULD SAVE MONEY AND BECOME MORE EFFICIENT. BY MAKING CASH AWARDS AVAILABLE THOSE EMPLOYEES MIGHT BE GIVEN THE INCENTIVE THEY NEED TO CONTRIBUTE COST SAVING IDEAS WHICH MAY NOT BE POPULAR OR WHICH MAY REQUIRE SUBSTANTIAL TIME AND EFFORT TO DISCOVER AND DEVELOP.

THIS AWARD WOULD NOT APPLY TO A COST SAVINGS SUGGESTION MADE BY AN EMPLOYEE IN THE COURSE OF THEIR EMPLOYMENT (JOB DESCRIPTION). WE WOULD NOT BE REWARDING AN EMPLOYEE FOR JUST DOING THEIR WORK. EXAMPLE: IF YOUR JOB IS TO REDUCE PAPERWORK, YOU WOULD NOT GET AN AWARD FOR SAVING MONEY IF YOU CHANGE FIVE FORMS NOW USED BY A DIVISION INTO ONE. BUT IF YOU ARE A SECRETARY IN PERSONNEL, AND, OUTSIDE OF WORKING HOURS, YOU DEVELOP A NEW FORM THAT SAVES MUCH TIME AND MONEY, YOU WOULD BE ELIGIBLE FOR AN AWARD.

SENATE FINANCE ZEROED THE SMALL FISCAL NOTE. THIS PROGRAM CAN BE ADVERTISED THROUGH REGULAR NEWSLETTERS AND ON BULLETIN BOARDS OR IN PAYCHECK ENVELOPES WITH VERY LITTLE EXTRA COST. IT WOULD NOT TAKE LONG FOR THE WORD TO SPREAD.

<u>TWO CHANGES WERE ADOPTED IN SENATE STATE AFFAIRS.</u> ONE REGARDS THE SUBMITTAL OF AN ANNUAL REPORT TO THE LEGISLATURE TO INCLUDE THE NAMES OF THE PERSONS WHO RECEIVE AWARDS, THE BASIS FOR MAKING THE AWARD AND THE AMOUNT AWARDED. THE SECOND CHANGE WOULD EXCLUDE COMMISSIONERS, DEPUTY COMMISSIONERS, ASSISTANT COMMISSIONERS, DIRECTORS AND DEPUTY DIRECTORS FROM RECEIVING THE INCENTIVE AWARDS. IN <u>THE SENATE FINANCE COMMITTEE</u>, LANGUAGE WAS ADDED TO PROVIDE FOR A REVIEW OF THE PROGRAM BY THE LEGISLATURE IN 1993, AND A LETTER OF INTENT WAS INCLUDED WHICH CLARIFIES THE PROCESS BY

WHICH THE SAVINGS ARE APPROPRIATED BY THE LEGISLATURE PRIOR TO PREPARING AGENCY BUDGETS.

- BOARD IS MADE UP OF DIR. OF PERSONNEL IN ADMIN., DIRECTORS OF OMB, AND ONE PUBLIC MEMBER W/ACCOUNTING AND MANAGEMENT BACKGROUND-BOARD MEETS AS NECESSARY
- MONEY FOR AWARD COMES FROM AMOUNT SAVED AFTER 12 MONTHS OF SAVINGS OCCURS-$25,000 MAX AWARD
- ALSO A NON-MONITORY AWARD FOR MERITORIOUS ACHIEVEMENT AVAILABLE
- CAN'T GRANT AN AWARD IF A LAW HAS TO BE CHANGED TO REALIZE SAVINGS

6-0662Da
Cramer

A M E N D M E N T

OFFERED IN THE SENATE BY FISCHER

TO: SCS CSHB 138 (State Affairs)

Page 5, after line 2:

Insert new bill sections to read:

"* Sec. 3. Section 1 of this Act is repealed July 1, 1993.

* Sec. 4. The directors of the office of management and budget in the Office of the Governor and of the division of personnel in the Department of Administration shall report to the legislature by January 15, 1994, on the state's experience with the incentive awards program. The report must include the name of each person who received an award during 1993, the basis for making the award, and the amount of the award."

Alaska State Legislature

SENATE

Committee on Finance

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

LETTER OF INTENT

SENATE CS FOR CS FOR HOUSE BILL 138 (FINANCE)

It is the intent of the legislature that no awards be paid by an agency until the amount of the savings realized by the employee's idea or suggestion has been removed from the agency's budget and the legislature has appropriated the award amount from the savings realized.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 136 (FIN)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 3/15/89
Title: An act establishing a state employee incentive award
Sponsor: Ulmer, Koponen, Ellis,
Requestor:

Agency Affected: Dept. of Administration
BRU:

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	8.1	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	3.0	3.0	3.0	3.0	3.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	11.1	3.0	3.0	3.0	3.0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	11.1	3.0	3.0	3.0	3.0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	11.1	3.0	3.0	3.0	3.0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	1	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

See attached

House Finance Committee
Rep. Hoffman, Rep. Larson, Co-Chairs

Prepared by: _____ Phone: _____
Division: _____ Date: _____

Approved by Commissioner: _____ Date: _____
Agency: _____

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

CONTINUATION OF FISCAL NOTE ANAYLSIS

For CS House Bill 138 (FIN)

The specific cost of the program for years covered by this fiscal note are outlined below:

FY 90

PERSONAL SERVICES

Regulations Specialist, Range 16A, 3 months, Juneau. (42,702 x 3)	8.1

CONTRACTUAL

Legal Services--Hearing Officer	3.0

Costs for FY 91-94 are the same less the one time FY 90 cost for a Regulations Specialist. Total cost per these years $ 3.0.

STATE OF ALASKA

1989 LEGISLATIVE SESSION

BILL VERSION: SCS CSHB 138 (Fin

PUBLISH DATE: 5/3/89

FISCAL NOTE

REQUEST:

REVISION DATE:

TITLE: State employee incentive award program

SPONSOR: Ulmer, Koponen, Ellis

REQUESTOR:

AGENCY: Dept. of Administration

BRU:

COMPONENTS:

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERS. 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/BUILD.	0	0	0	0	0	0
GRANTS/CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (THOUSANDS OF DOLLARS)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS:

PREPARED BY:

SENATOR RICK UEHLING, CO-CHAIRMAN
SENATE FINANCE COMMITTEE

DATE: May 3, 1989

PHONE NO.: 465-4821

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 138 (FIN)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST: _____

Revision Date: 3/15/89
Title: An act establishing a state employee incentive award
Sponsor: Ulmer, Koponen, Ellis,
Requestor: _____

Agency Affected: Dept. of Administration
BRU: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	8.1	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	3.0	3.0	3.0	3.0	3.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	11.1	3.0	3.0	3.0	3.0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	11.1	3.0	3.0	3.0	3.0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	11.1	3.0	3.0	3.0	3.0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	1	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

See attached

House Finance Committee
Rep. Hoffman, Rep. Larson, Co-Chairs

Prepared by: _____ Phone: _____
Division: _____ Date: _____

Approved by Commissioner: _____ Date: _____
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