

## Helen Phillips

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**From:** Jane Pierson  
**Sent:** Tuesday, April 12, 2016 1:04 PM  
**To:** Helen Phillips  
**Subject:** FW: HB 317 - Department of Law's Concerns and Suggested Language

**From:** Mills, Cori M (LAW) [mailto:cori.mills@alaska.gov]  
**Sent:** Tuesday, April 12, 2016 11:31 AM  
**To:** Joan Brown <Joan.Brown@akleg.gov>  
**Cc:** Jane Pierson <Jane.Pierson@akleg.gov>; Brodie Anderson <Brodie.Anderson@akleg.gov>; Rex Shattuck <Rex.Shattuck@akleg.gov>  
**Subject:** FW: HB 317 - Department of Law's Concerns and Suggested Language

Joan, as I mentioned yesterday, I spoke with Rep. Wilson yesterday evening and her staffer this morning. Below is the email I just sent to her encapsulating the concerns/questions we have had and providing suggested amendment language that would avoid the unintended consequences we have identified.

Assistant Attorney General Kent Sullivan from our Civil Division and Criminal Division Director John Skidmore will be at the hearing and will put the concerns on the records as well as provide the suggested language. However, if there is a decision ahead of time to include the suggested language, we can just be available for questions. I cannot be at the hearing because I have to be in Senate Finance.

If you have any questions, please feel free to contact me or Kaci Schroeder.

Thank you.

Cori Mills

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**From:** Mills, Cori M (LAW)  
**Sent:** Tuesday, April 12, 2016 11:27 AM  
**To:** Barnes, Barbara A (LAA) ([barbara.barnes@akleg.gov](mailto:barbara.barnes@akleg.gov)); Wilson, Tammie (LAA)  
**Cc:** Sullivan, Kent (LAW) ([kent.sullivan@alaska.gov](mailto:kent.sullivan@alaska.gov)); Skidmore, John B (LAW); [darwin.peterson@alaska.gov](mailto:darwin.peterson@alaska.gov); Schroeder, Kaci K (LAW)  
**Subject:** HB 317 - Department of Law's Concerns and Suggested Language

Rep. Wilson and Barbara, as I mentioned yesterday and today, the Department of Law's Civil Division has some concerns that there could be unintended consequences with the current version of HB 317. We understand that you received feedback from the Criminal Division that the current version of the bill is acceptable, but Director Skidmore was evaluating the bill in the criminal proceeding context, since that is what the bill has been targeted at. The provision in the bill uses the term "common law civil in rem forfeiture." The following are the examples of areas where we are unsure whether the bill would be applied. We understand it is not the intent to cover these areas, but based on the current wording, there could be confusion.

1. Float houses, of unknown origins, illegally located on State-owned tidelands without proper leases, permits, documentation, etc. Due to the lack of being able to identify the owner, civil in rem forfeiture may provide a means by which the float houses and their contents may be addressed.

2. A private landowner with a large property that they wish to subdivide contains abandoned mining equipment incapable of identification. Civil in rem forfeiture may provide a means by which the mining equipment may be addressed.
3. A person passes away, intestate (without a Will), and without apparent heirs. They possess numerous parcels of high-value real property in their name. Civil in rem forfeiture may provide the rules and authority for that property to be dealt with and ultimately resolved.
4. A landowner in a municipality owns derelict real property (for instance, a run-down motel) used by third-parties for criminal activity. The owner has fled the country. Civil in rem forfeiture may provide a means by which the municipality can obtain ownership and/or control of the property.
5. There are many civil actions that have some basis in statute, however, it is often common law rather than statutes that provide the working parameters for how the various proceedings apply and occur. Depending on how civil in rem forfeiture is interpreted, it could be deemed applicable to such things as various aspects of probate proceedings, lost property, abandoned property, salvaging of property, derelict vessels (including boats and autos), escheating of real and personal property, nuisance property issues, condemnation, quiet title actions, etc

We have drafted the following suggested additional language that we believe would likely clarify the intent and ensure the bill applies in the context of potential criminal proceedings/charges and not to purely civil matters.

#### **AMENDMENT**

**Sec. 09.55.700. In rem civil forfeiture actions abolished.** Common law civil in rem forfeiture actions are abolished **if used instead of a criminal proceeding.**

Civil Division Assistant Attorney General Kent Sullivan and Criminal Division Director John Skidmore will be attending the hearing today and plan on discussing these examples and offering the language. If you are ok with the language and want to add it in, we can also just attend and be available to answer questions on it. I have to be in a Senate Finance hearing at the same time, so I will not be available to attend. If you would like to speak with Director Skidmore and AAG Sullivan in advance, we can arrange that.

I apologize for the lateness of this email and the suggested language. We have been working the past week on identifying whether there are areas this could cover that were unintended and what we could suggest to avoid any unintended consequences.

Rep. Neuman had some questions on the legislation so I am going to send this to his office as well and give the co-chairs a head's up that Kent Sullivan and John Skidmore will be available at the hearing.

Thank you.

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