

**SB**

**8**

# FISCAL NOTE

No. 1

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

Bill Version: SB8

(S) Publish Date: 1/29/97

Revision Date: 1/28/97  
 Title: "An Act relating to the noise levels of airports and sport shooting facilities."  
 Sponsor: Senator Halford  
 Requester: Senate Transportation

Dept. Affected: Department of Law  
 BRU: Civil Division  
 Component: General Legal Services  
 COMPONENT SERIAL NO. 2087

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY97) cost: \$ 0.0

**POSITIONS**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)  
 SB 8 will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson *Joan M. Kasson*  
 Division: Administrative Services Division  
 Approved by Commissioner: Bruce M. Botelho *Bruce M. Botelho*  
 Agency: Department of Law

Phone: 465-5370  
 Date: 1/28/97  
 Date: 1/28/97

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4/16/97  
Rules

(7)  
Date Referred to Committee: February 27, 1997

FURTHER REFERRALS:

Date of Committee Action: 4/14/97

The JUDICIARY Committee considered:

SB 8 am

SENATE BILL NO. 8 am

AIRPORT/SHOOTING FACILITY NOISE LEVELS

"An Act relating to the noise levels of airports and sport shooting facilities."

recommends it be replaced with the following committee substitute \_\_\_\_\_ [ ] the same title [ ] a new title

[ ] additional referral to \_\_\_\_\_ Committee  
[ ] attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_

[ ] zero fiscal note(s) \_\_\_\_\_

[ / ] <sup>Senate</sup> zero fiscal note(s) DEPT. OF LAW

1.29.97

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	Croft	✓	✓		
	Rolfeberg	✓	✓		
	James	✓			
	Porter	✓			
	Green	✓			
	Bunde	✓			
	Berkowitz				✓
		(6)		(1)	

CHAIR'S SIGNATURE



# Alaska State Legislature

Please enter into the record my testimony to the H Judiciary  
 committee name /  
 committee on SB 8, dated 4-14-97  
 bill/subject

*1:00 - Teleconference*

Testimony- Judiciary Committee regarding SB 8

I am opposed to Senate Bill 8 regarding the expansion of existing airports and shooting ranges. I am familiar with the air field in the Eagle River area which helped to prompt this particular legislation. However, this bill, where it might help out one constituency, it does nothing to assist my neighborhood.

We purchased our home in a quiet neighborhood many years prior to the development of the Grouse Ridge Shooting Range nearby our residence. At the moment, the nuisance and uncomfotableness of hearing shots while in your living room is tolerated as the owners of the shooting range shoot under voluntary operating hours. However, SB 8 would allow expansion of the number of shots fired within the range while disabling the neighborhoods affected from doing anything to protect their own quality of life or home values.

I am NOT anti-business or against the development of Alaska. You must not label my plea against SB 8 as 'not in my backyard' mentality. This bill unfairly allows loud and irritating noise to increase without allowing for ANY local interference or involvement. It disregards that Alaska is increasingly populated with quiet residential subdivisions that also have rights to exist.

Please do not support SB 8 as written. Please suggest that there must be another way to protect emerging businesses without jeopardizing and disregarding their neighbors.

Sincerely,

Emily Forstner

PO Box 3942  
 Palmer, Alaska 99645  
 907 373 7646

No.

1:00 - Teleconference

Testimony- Judiciary Committee regarding SB 8

I am opposed to Senate Bill 8 regarding the expansion of existing airports and shooting ranges. I am familiar with the air field in the Eagle River area which helped to prompt this particular legislation. However, this bill, where it might help out one constituency, it does nothing to assist my neighborhood.

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Please do not support SB 8 as written. Please suggest that there must be another way to protect emerging businesses without jeopardizing and disregarding their neighbors.

Sincerely,

*Emily K Forstner*  
Emily Forstner

PO Box 3942  
Palmer, Alaska 99645  
907 373 7646

Post-it® Fax Note 7671		Date 4-14-97	# of pages 1
To A-10	From Forstner		
Co./Dept.	Co.		
Phone #	Phone # 373 3242		
Fax # 3766150	Fax # 373 3649		



Official Business

# Alaska State Legislature

## Senate

**RICK  
HALFORD**

State Capitol  
Juneau, Alaska  
99801-1182  
Phone (907) 465-4958

—  
P.O. Box 670190  
Chugiak, Alaska 99567  
Phone (907) 694-4958

—  
600 E. Railroad Avenue  
Wasilla, Alaska 99654  
Phone (907) 376-4958

## Senate Bill 8 Sponsor Statement

### Noise at Airports and Sport Shooting Ranges

Airports and sport shooting ranges offer a public service as well as recreational opportunities and have become increasingly under attack in the lower forty-eight states. Since populations are tending to shift from urban to rural areas, new groups of citizens are moving into areas with existing airports and ranges. This encroachment has resulted in hundreds of lawsuits and complaints against airport and range owners and operators due to the noise level.

Senate Bill 8 was introduced to provide private airports and sport shooting ranges in Alaska protection from lawsuits if the action arises out of the noise level from normal operation or its uses; provided the facility was established before the person acquired the property or prior to any noise control ordinance or law.

Without the passage of SB 8 private airports and sport shooting ranges within Alaska will remain vulnerable to legal sanctions jeopardizing the opportunities they provide through their ongoing and traditional uses.

This issue was addressed by the 19th Legislature with Senate Bill 274. SB 274 passed the Senate by a vote of 17-1, and the House by a margin of 33-5, before being vetoed by the governor.

This piece of legislation is endorsed by the National Rifle Association, Alaska Air Carriers Association, the Alaska Outdoor Council, Alaska Boating Association and the Alaska Airmen's Association.

Thank you for your consideration.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

JAN 17 1997

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

January 16, 1997

**SUBJECT:** Sectional Summary of SB 8 (Work Order 20-LS0135\A)

**TO:** Senator Rick Halford  
Attn: Brett Huber

**FROM:** *TB*  
Theresa Bannister  
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Adds a new chapter relating to the noise levels of sport shooting facilities and private airport facilities.

Sec. 34.75.010(a) prohibits the bringing of a civil or criminal action against a person who operates or uses a sport shooting facility or a private airport facility, if the action is based on the noise level from the normal operation or use of the facility. Establishes certain conditions for the application of this provision.

Sec. 34.75.010(b) states that (a) does not apply to a contract action or to certain personal injury actions.

Sec. 34.75.010(c) prohibits a person from bringing a nuisance action for noise level against a sport shooting facility or a private airport facility located in the vicinity of the person's property if the facility was established before the person acquired the property. Establishes some exceptions to this prohibition.

Sec. 34.75.020 sets a time limit on bringing a nuisance action against a sport shooting facility or a private airport facility for noise level. The time limit is five years after the facility is established or begins operation, or three years after a substantial change in the use of the facility.

# STATE OF ALASKA

## DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 112100  
JUNEAU, ALASKA 99811-2100  
PHONE: (907) 465-4700  
FAX: (907) 465-2948

333 W. 4TH AVENUE, SUITE 220  
ANCHORAGE, ALASKA 99501-2341  
PHONE: (907) 269-4500  
FAX: (907) 269-4520

April 10, 1997

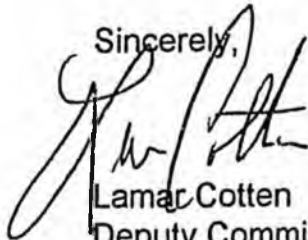
The Honorable Rick Halford  
Alaska State Senator  
State Capitol Room 121  
Juneau, Ak 99801

Subject: SB 8

Dear Senator Halford:

This letter serves as a follow up to conversations with your staff concerning SB 8 (Airport/Shooting Facility Noise Levels). As you will recall, ADCRA expressed initial concerns about possible negative implications of this bill. However, because of the changes made as a result of via discussions with your office, AML and ADCRA, we are no longer objecting to the bill.

Sincerely,



Lamar Cotten  
Deputy Commissioner



**NATIONAL RIFLE ASSOCIATION OF AMERICA**  
**INSTITUTE FOR LEGISLATIVE ACTION**  
555 CAPITOL MALL, SUITE 455  
SACRAMENTO, CA 95814  
(916) 446-2455

January 16, 1997

Senator Rick Halford  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, AK 99801-1182

Dear Senator Halford,

On behalf of the over 25,000 Alaska members of the National Rifle Association, let me take this opportunity to thank you for introducing Senate Bill 8 and to indicate strong support for the bill. Firearms shooting ranges are under attack across the United States and it is important to head this off, particularly in a state like Alaska which has such a strong firearms and shooting heritage.

Firearms shooting ranges have established a long tradition of service to a wide variety of citizen groups in local communities. However, population shifts from urban to suburban or rural areas have moved new groups of citizens in closer proximity to existing ranges. In recent years, this encroachment on previously existing ranges has resulted in hundreds of lawsuits and complaints filed by newcomers against range owners and operators or the passage of local ordinances aimed at closing ranges because of noise.

It is critical that the state of Alaska adopt SB 8 to ensure that ranges remain open for operation so as to provide safe places for the use of firearms. Range owners and operators must be protected from civil court action, criminal prosecution, or other local restrictions. SB 8 would only protect existing ranges and existing activity levels. This legislation would not tie the hands of local government to regulate the location of future ranges nor limit local government from regulating unsafe ranges.

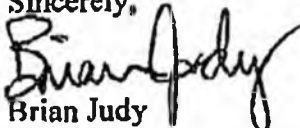
Firearm shooting ranges have longstanding records of safely providing important public services and recreational or training opportunities and often serve as training facilities for local law enforcement officials and military personnel. In addition to serving as locations to hold both informal practice sessions and organized competitions for those engaged in recreational shooting, firearm ranges offer firearm and hunter education and safety courses, providing invaluable hands-on instruction in the safe and proper handling and use of firearms.

January 16, 1997  
Senate Bill 8  
Page 2

Without the protection afforded by Senate Bill 8, shooting ranges which currently offer valuable public services and recreational opportunities while posing no hazard to nearby residents will continue to remain vulncrable to arbitrary legal or legislative sanctions. To date, eighteen other states have passed range protection legislation similar to SB 8, including Idaho, Indiana and Oklahoma which passed their laws just last session.

Senate Bill 8 is an important piece of legislation which will provide real benefits to Alaska's law-abiding firearm users and to the public at large.

Sincerely,



Brian Judy  
Alaska State Liaison



January 17, 1997

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Alaska Boating Association • P.O. Box 210430 • Anchorage, Alaska 99521

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Senator Rick Halford  
Alaska State Senate  
State Capitol, Interdepartmental Mail Stop: 3101  
Juneau, AK 99801-1182

Dear Senator Halford:

This letter is in response to your proposed SB0008 relating to the noise levels of airports and sport shooting facilities. At a regularly scheduled meeting of the Alaska Boating Association held on January 16, 1997, our organization voted unanimously to join the National Rifle Association, Alaska Air Carriers Association, Alaska Outdoor Council, and the Alaska Airmen's Association in endorsing this piece of legislation. This letter communicates to you our official position on this legislation.

In addition, many of our individual members will be corresponding with individual letters, POM's, testimony at teleconferences, etc. This bill is important to all of us for if it is not passed opportunities provided through ongoing and traditional uses may become jeopardized.

Thank you for your efforts and continue to keep us informed of any and all related legislative matters we can be effective in supporting.

Yours truly,

A handwritten signature in cursive script, appearing to read "Roy J. Burkhart".

Roy J. Burkhart, Legislative Affairs Officer  
Alaska Boating Association  
Voice:(907)495-6337 FAX:(907)495-6338 E-Mail: rjburk@alaska.net

cc: Donald Sherwood, President, Alaska Boating Association  
Senator Drue Pearce, Co-Sponsor SB0008, Alaska State Senate

- Dedicated to the rights of Alaskan Boaters -

# Kent Lee Woodman

12920 Hillside Drive, Anchorage, Alaska 99516-3260 USA

[1] (907) 345-1356    ☎ FAX [1] (907) 345-1626    M4Ctel 244-2388

➔ E-Mail: *CompuServe* 71043.2035 - *Internet*: 71043.2035@Compuserve.com

☐ TELEX: 3762848 COMPUSERVE (attn: 71043,2035)

## REPORT TO THE BOARD ALASKA AIRMEN'S ASSOCIATION, INC. Real Estate Legislation Proposal

**BACKGROUND:** A number of years ago, when I was relatively new to the Board, a developer built a number of residential units off to the east side, north end of the *Lake Hood Strip*. We were all quite surprised how close they were to the flightpath and to the airstrip, as we all somehow imagined airport property extended further to protect operations.

At the time, several mentioned that we could certainly expect those new residents to "discover" the airport and make moves to close it or restrict operations to control sound. They did, in fact do that, though *Lowell Thomas Jr* and others off the south end of the main airport raised such a stink about the then new north-south runway, that this cluster at *Lake Hood* was not in the papers.

As far as I was concerned, that was the clincher. I wanted to do something to protect such residential creep on airports. My idea at the time was to pass State legislation which would require that any person purchasing property (residential or commercial) within a certain radius ....say 2 nautical miles, be required to sign a statement in his or her closing documents something like:

"I have personal knowledge that there is/are airport/s within \_\_\_ nautical miles of this property. I have been to the airport and I have an idea of the nature of aeronautical operations there. I understand that airports and airplanes make noise, and that subject to airport and FAA regulations, I can expect to hear these aircraft operations under certain conditions.

I do NOT hereby give up any rights to protest undue noise or operations deemed to be excessive, but I DO hereby acknowledge the presence and historic operations of the airport/s and I DO hereby give up my right to be "surprised" in the future, to discover the noise and participate in efforts to close the airport/s for historical patterns of operations."

**BOTTOM LINE:** I propose that this would be a good project for the Airmen to complete and for which to take credit when it is signed into law. It will take some research, drafting and some lobbying to get it in form and find sponsors and get it passed. I am willing to do that, time available, between making a living and other emergencies, and would aim at having a draft ready for the winter session.

On the **DOWN** side, the only opposition I can imagine would come from one (1) of two (2) places:

1. Individual property owners: They are not organized and there is no one agency or voice to speak for them.

2. Realtors: They **ARE** organized and can speak, but if it is crafted carefully and if our intent is clear and we do our homework, I see no problems of significance.

Respectfully submitted this 08th day of June 1995:

KENT LEE WOODMAN, Member

Past director and V.P.

end end end

-3-



## ALASKA OUTDOOR COUNCIL

P.O. BOX 2790

PALMER, AK. 99645

(907) 376-2913

Jan. 14, 1997

The Honorable Rick Halford, Chair  
Senate Resources Committee  
Alaska State Capitol  
Juneau, Ak. 99801

Dear Senator Halford:

The Alaska Outdoor Council and its member organizations strongly support SB 8 and appreciate your continued efforts on the behalf of the citizens of Alaska to protect traditional activities important to them.

SB 8, "An act relating to the noise levels of airports and sport shooting facilities" is an important effort to maintain the opportunity to pursue traditional activities inherently important to many Alaskans. As you are well aware, most long time Alaskans have recently found themselves constantly fighting the increasing involvement of government in their lives. The Alaska Outdoor Council feels it is time to work towards reducing the level of government in our daily lives and look at efforts like SB 8 as a good start in the fight to protect and maintain traditional Alaskan activities.

Once again, the AOC would like to thank you Senator for your efforts supporting the traditions our members value. If there is something further we can do to assist you in this effort, please feel free to contact us.

Sincerely,

Rod Arno  
President

cc: Senator Pearce

February 13, 1997

Senator Rick Halford  
Alaska State Senate  
State Capitol, Inderdepartmental Mail Stop: 3101  
Juneau, AK 99801-1182

Dear Senator Halford:

We are sending this letter in support of your SB0008 relating to the noise levels of airports and sport shooting facilities. In addition we are sending a copy of this reply to all Senators and the Governor asking for their support of this very worthwhile proposed legislation.

It is a shame that people encroaching on the areas of existing airports and sport shooting ranges feel that they must complain against these existing operations due to noise levels. This simply is something the individuals should have taken into consideration before they bought property of otherwise elected to utilize areas in or near existing operations.

There is one area with laws already in existence that can be used here to show how similar usage considerations have been resolved. There probably is no area in the State Statutes that has any more stringent rules than the laws governing alcoholic beverage licensing under Title 4. Within that Title, Section 04.11.410 states that an alcoholic beverage license cannot be approved within a specified distance from an existing school or church. However, within the same section, it clearly states that any alcoholic beverage license approved prior to the existence of any school or church coming into existence within those distance constraints cannot be revoked. The same laws should apply to the conditions that affect your proposed bill.

We strongly support this legislation and encourage all those copied on this letter to do likewise.

Thank you,

*Roy J. Burkhart*  
*E. June Burkhart*

E. June and Roy J. Burkhart

P.O. Box 204

Willow, AK 99688-0204

Voice: (907)495-6337 FAX:(907)495-6338 E-Mail Address: rjburk@alaska.net

cc: Tony Knowles, Governor, State of Alaska  
All Senators, Alaska State Senate

Jimmie E. Coleman  
HC-33 Box 3200  
Wasilla AK 99654  
376-5175

April 9, 1997

Editor,

I would like to respond to Mr. Richard A. Francavilla's letter in the Frontiersman dated April 8, 1997 regarding the passage of SB8.

I live about 350 yds from Grouse Ridge Shooting Range. I own 10 acres of land and a home, never, never has any activity at Grouse Ridge Shooting Range caused me any problems, nor has it lowered the value of my property. Just look at the yearly climb of my property taxes.

Over 20 years ago, I contacted Mr. Francavilla about buying 40 acres of his property on Tax Al Drive. His answer to me was no, I am waiting to see where directions of the oil drilling is going. Since that time, I have talked to him at least twice about the land. Both times he said he had bought the land for investment purposes and wanted to sell the whole 160 acres in one piece. From my discussions with him, he has never had any intentions of ever living on the land.

It is my opinion that Mr. Francavilla's opposition to SB8 is one of greed and greed alone.

No I don't shoot trap & skeet, but I believe in freedom and the sooner SB8 is passed the better off we will be.

Jimmie E. Coleman  
Wasilla

Harry W. Brunnhoelzl  
Po Box 1028  
Palmer AK 99645  
907-376-5400  
907-376-6500 FAX

April 9, 1997

Editor:

Recent letters from Mr. Richard A. Francavilla, a resident of Staten Island N.Y., has grossly misrepresented the need for passage of SB8 and the good intentions of Sen. Rick Halford in trying to protect the rights of Alaskans who have constructed private air strips near their houses and gun clubs, like ourselves, from being forced out by subdivision encroachment.

My family and I own Grouse Ridge Shooting Grounds, a trap, skeet and sporting clay target facility, located almost 8 miles north of the Parks Hwy. In an area consisting almost exclusively of large tracts of land.

Mr. Francavilla was introduced to me last July by George Struthers, one of our closest neighbors. Mr. Francavilla had made the trip from New York to Alaska to investigate the possibility of selling his property and investing the money in another property closer to his residence on Staten Island and summer place in New Jersey.

During our negotiation with Mr. Francavilla, which lasted over six months, he stated in his New York style that he could be either our best friend or our worst enemy. A high market price of \$265,000 was agreed upon for the sale of his 160 acre parcel. The negotiations broke down when we could not comply with his demands to structure the sale to comply with IRS 1031 exchange provisions, which would allow him to reinvest without having to pay capital gains taxes on this property.

Our family is making a dedicated, life long commitment to the Mat Valley. We have lived, and worked here for over 20 years and have employed only local residents.

Please support Sen. Rick Halford and Sen. Lyda Green in their valiant efforts to protect our Alaskan lifestyle. Mr. Francavilla is a carpathagger and he has no interest in our Valley except for the money he can extract.

Harry W. Brunnhoelzl  
Palmer



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907) 586-1325, Fax (907) 463-5480

February 3, 1997

Senator Rick Halford  
State Capitol  
Juneau, AK 99801

Dear Senator Halford:

Thank you for the opportunity to work with you on SB 8, relating to noise levels of airports and shooting facilities.

The Transportation, Utilities & Environment Policy Subcommittee and the Land Use, Resources and Economic Development Policy Subcommittee of the AML Legislative Committee discussed the legislation via teleconference. Municipalities recognize the right of the state to assume control and liability for certain statewide regulatory concerns.

The municipalities' biggest concern about the bill is clarifying the balance of rights between property owners regarding changes in the use of the facilities and its affect on existing surrounding private property owners. We understand the issue of people moving into an area where there is an existing airstrip or shooting range and complaining about noise after the fact. However, if, for example, an airstrip is historically used for landing a single small airplane but suddenly becomes a landing pad for helicopters, the neighbors could have a right to be upset at the change in noise levels.

At the recommendation of our legislative subcommittees, we suggest the language be changed under Sec. 34.75.010 (b) to clarify this intent. Beyond this amendment, the AML does not have further comments, nor will it oppose the bill as curenly written with the amendment. The proposed clarification takes the language in ( c ) in the same section, and adds it to ( b ) to make it clear that the provision applies to both nuisance actions and regulatory exemptions:

- (b) The exemption [prohibition] in (a) of this section do not apply to an action that arises out of
- (1) a contract; or
  - (2) a personal injury suffered by a person while on the premises of the facility; or
  - (3) substantial change in use of the facility.

Again, we appreciate the opportunity to work with you and your staff on this legislation and if you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin C. Ritchie', written over a horizontal line.

Kevin C. Ritchie  
Executive Director

cc: Senate Resources Committee  
AML Legislative Committee

c:\kleg\97feb8lr.doc

Member of the National League of Cities and the National Association of Counties



JAN 17 1997

**ALASKA AIR CARRIERS ASSOCIATION**

117 E. 35th Avenue, Suite 102  
Anchorage, Alaska 99508  
(907) 277-0071 Fax (907) 277-0072

January 14, 1997

Senator Rick Halford  
Alaska State Senate  
State Capital Building  
Juneau, AK 99801-1182

via fax: 465-4928

Re: SB8 Noise Levels at Private Airports

Dear Senator Halford,

The Alaska Air Carriers Association, representing more than 100 air carriers operating throughout Alaska, supports the legislation you have introduced relating to noise levels at airports and shooting facilities.

If we can be of further assistance in the promotion of SB8, please contact this office.

Best Regards,

Kimberly S. Daniels Ross  
Executive Director

cc: AACA Board of Directors

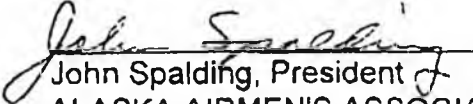


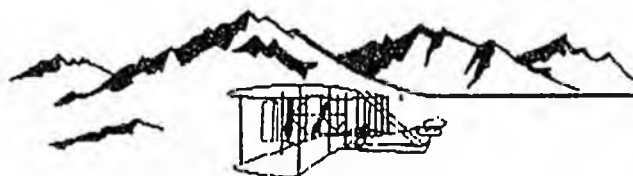
ALASKA AIRMEN'S ASSOCIATION., INC.

## RESOLUTION

The Alaska Airmen's Association hereby resolves that the Alaska Legislature adopt proposed Senate Bill 8 relating to the noise levels of airports and sport shooting facilities.

So Resolved this 21 day of January, 1997

  
John Spalding, President  
ALASKA AIRMEN'S ASSOCIATION, INC.



ALASKA AIRMEN'S ASSOCIATION., INC.

January 16, 1997

sent by facsimile

Senator Rick Halford  
State Capitol Building, Room 508  
Juneau, AK 99801-1182

Ref: SB-8

*Rich.*  
Dear Senator Halford:

It is the position of the Alaska Airmen's Association to strongly support SB-8, which is an act relating to the noise levels of airports and sport shooting facilities. In the definition of "airport facility" which currently reads "private area of land or water that is used or intended for use for the landing and take-off of aircraft", we are in support of you including heliports.

The Alaska Airmen's Association would like to thank you for the opportunity to review and submit our position on this important bill.

Sincerely,

*John Spalding*  
John Spalding  
President



# Alaska State Legislature

Please enter into the record my testimony to the H Judiciary  
committee name  
committee on SB 8, dated 4-14-97  
bill/subject

*1:00 - Teleconference*

Testimony- Judiciary Committee regarding SB 8

I am opposed to Senate Bill 8 regarding the expansion of existing airports and shooting ranges. I am familiar with the air field in the Eagle River area which helped to prompt this particular legislation. However, this bill, where it might help out one constituency, it does nothing to assist my neighborhood.

We purchased our home in a quiet neighborhood many years prior to the development of the Grouse Ridge Shooting Range nearby our residence. At the moment, the nuisance and uncomfortableness of hearing shots while in your living room is tolerated as the owners of the shooting range shoot under voluntary operating hours. However, SB 8 would allow expansion of the number of shots fired within the range while disabling the neighborhoods affected from doing anything to protect their own quality of life or home values.

I am NOT anti-business or against the development of Alaska. You must not label my plea against SB 8 as 'not in my backyard' mentality. This bill unfairly allows loud and irritating noise to increase without allowing for ANY local interference or involvement. It disregards that Alaska is increasingly populated with quiet residential subdivisions that also have rights to exist.

Please do not support SB 8 as written. Please suggest that there must be another way to protect emerging businesses without jeopardizing and disregarding their neighbors.

Sincerely,

Emily Forstner

PO Box 3942  
Palmer, Alaska 99645  
907 373 7646

.10.

April 9, 1997

Letters to the Editor (FAX: 352-2277)  
The Frontiersman  
1261 Seward Meridian Road, Suite F  
Wasilla, Alaska 99654

This letter was "sparked" by a letter by Richard Francavilla in today's issue of the Frontiersman. It concerns SB-8 which, I understand has passed the Alaska Senate and is scheduled for a vote in the House early next week. I'll appreciate it if you can squeeze it in on Friday's issue.

\*\*\*\*\*  
Editor:

The last issue of this paper contained a letter by Richard Francavilla, of New York who claims to have "Alaska in his blood" but complained about Senate Bill-8 which is intended to protect established airstrips and shooting ranges from sanctions over the noise which they generate. Presumably Francavilla has owned has a parcel near Hatcher Pass since Territorial Days. He wishes to return to Alaska to retire nearby, but is concerned about the potential noise which might disturb him. Before that time, however, he enjoys the amenities and solitude of New York.

I too, am "originated" from the New York, have had Alaska in my blood since about 1948, but didn't arrive until '71. My migration to Alaska was to leave behind the attitudes that I found in that part of our country. Mr. Francavilla's letter epitomizes those attitudes. They are not very different from what we experience from some "migrants" from Anchorage, who buy land and build in the Valley, and then proceed to change the Valley to make it more urban.

It is hoped that readers who came to Alaska, for the love of Alaska and the personal freedom which living here provides, will soon contact members of the Alaska House and urge support for SB-8.

Bob Parkerson  
\*\*\*\*\*

You can verify the authenticity of this letter by calling my listed Palmer telephone number, 745-4358. Thank you.

Sincerely,

  
Robert H. Parkerson  
HC 02, Box 7638-A1  
Palmer, Alaska 99645

Department of Law, Proposed Amendment  
Senate Bill 8 am  
April 14, 1997

Page 2, line 8, after "person"  
delete: "may not bring"  
insert: "who brings"

Page 2, line ~~8~~<sup>9</sup>, after "property"  
insert: "must,"

Page 2, line 10, after "property"  
insert: "demonstrate that the  
noise was grossly  
unreasonable."

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO

1031 WEST 4TH AVENUE SUITE 200  
ANCHORAGE ALASKA 99501-1931  
PHONE (907)269-5100  
FAX (907)276-3697

KEY BANK BUILDING  
100 CUSHMAN ST. SUITE 400  
FAIRBANKS ALASKA 99701-4579  
PHONE (907)451-2911  
FAX (907)451-2846

P.O. BOX 110300-DIMOND COURT-HU  
JUNEAU ALASKA 99811-0300  
PHONE (907)465-3600  
FAX (907)465-8735

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 13, 1997

The Honorable Tim Kelly  
Chair  
Senate Rules Committee  
State Capitol  
Juneau, AK 99801-1182

Re: Department of Law Concerns  
with Senate Bill 8

Dear Senator Kelly:

The Department of Law, on behalf of the executive branch, has four specific concerns with Senate Bill 8, "An Act relating to the noise levels of airports and sport shooting facilities." Because the bill was moved out of the Senate Resources Committee while we were in the middle of our presentation, these concerns have not yet been noted on the record. However, I have personally discussed Concern #4 with Brett Hubber of Senator Halford's staff and he will entertain amendments from us to assuage that concern. The purpose of this letter is to ensure that all of our concerns are noted before this bill moves out of the Senate.

The four concerns are:

1. As law, the bill will reduce fluidity of land use.
2. The bill is a legislative endorsement of unreasonable actions.
3. Noise is a local, not a statewide, issue.
4. Either the bill violates the Alaska Constitution or fails to clearly state what it means.

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Chair, Senate Rules Committee

February 13, 1997

Each of these is discussed in detail throughout the remainder of this letter.

**Concern 1:** THE BILL REDUCES FLUIDITY OF LAND USE AND INHIBITS GROWTH OF AN AREA BECAUSE IT COMPLETELY BARS NEW ARRIVALS FROM COMPLAINING ABOUT NOISE.

**Explanation:**

The bill completely bars a person from challenging noisemakers in court if that person acquired land in the vicinity of the noisemaker after the noisemaker started making noise. See, Proposed Section 34.75.010(a), (c); Page 1 lines 9-11, and page 2 lines 7-9. This doctrine -- that a person may complain about another only if the complainant was there first -- is known as "coming to the nuisance." As a complete bar to complaints, the doctrine was first recognized in England in 1838 but was abandoned there in 1878. It has never received widespread acceptance in American courts. On the contrary, it is generally repudiated by our judiciary. 5 Powell, Real Property (1995), ¶ 704[3] at 64-48.

In America, "coming to the nuisance" is one factor the courts consider when a person challenges a noisemaker but it is not a complete bar to the litigation. The reason for this has been explained in the Restatement of Torts, a compilation of America's common laws:

If people were barred from court because they came to the nuisance, those who settled in an area would acquire complete control over the future of adjoining and nearby land. This would inhibit and impair the fluidity of land use. Yet, fluidity of land use is a basic aspect of the American economy.

4 Restatement of Law 2d, Torts (1979), § 840D, comment b, (paraphrased, not quoted).

This same concern was stated differently in a treatise on American Real Property law (Powell, *supra*):

is a state  
presumptively  
appropriate  
claim

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If new landowners were barred from court because they came to the nuisance, an existing landowner could, by setting up an activity or a condition that results in a nuisance, condemn all the land in his vicinity to a servitude without paying any compensation and so could arrogate to himself a good deal of the value of adjoining land.

(paraphrased, not quoted). We think it important that the legislature recognize it is embracing a doctrine that has been rather widely rejected by others because the doctrine inhibits logical growth of a community and reasoned development of realty.

**Concern #2:** THE BILL PREVENTS A LANDOWNER FROM ABATING ANOTHER PERSON'S ACTIVITIES EVEN WHERE THOSE ACTIVITIES UNREASONABLY INTERFERE WITH THE LANDOWNER'S USE AND ENJOYMENT OF HIS OWN PROPERTY.

**Explanation:**

A "nuisance" is, by definition, one person's unreasonable interference with a landowner's use and enjoyment of the landowner's property. 4 Restatement of Law 2d, Torts (1979), §§ 821B and 822. The key word is UNREASONABLE. We do not comprehend any rational basis for mandating that one landowner suffer unreasonable interference from another.

Moreover, in a nuisance action a landowner is protecting his own property. *Id.* at § 821D. Under common law, a landowner does not have a noise-based nuisance action against another unless the other's activities create noises that cross over to the landowner's property. *Id.* at § 821E. Thus, a nuisance case is not a situation where one person gets to tell another how the other should use his own land; it is a situation where one person gets to tell another that the other cannot also "use" the first person's land. We must wonder aloud why this legislature deems it appropriate to divest some landowners of the right to quietude that normally accompanies property ownership.

Nor do we understand why the bill fails to acknowledge that "reasonableness" changes over time. Had this legislature

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convened in Juneau when the old stamp mills were running, the legislators would have had to yell to be heard in their chambers. It was reasonable, at that time, for the local mining activity to be so noisy. Now, we think it fair to say that few legislators would accept such noise during the entirety of the session. Common law recognizes the evolution of reason. *Id.* at § 821F, comments c - f and § 826, comments b - c. We see no legitimate state interest in an act that fails to recognize that evolution but instead locks citizens into a status quo that may well become atavistic and anachronistic.

**Concern #3:** NOISE IS A LOCAL CONCERN.

**Explanation:**

No single noise travels throughout the state. For this reason courts deal with noise issues on a very local, site specific basis. E.g., Krueger v. Mitchell, 332 N.W.2d 733 (Wis. 1983) (airport noise); Gray v. Barnhart, 601 A.2d 924 (Pa. 1992) (shooting range noise), Soja v. Factoryville Sportsmen's Club, 610 A.2d 491 (Pa. 1992) (shooting range noise). While it is true that some control of aircraft noise has been taken over by the federal government, the only aircraft noise issues left to the control of other governments are peculiarly local. Cf., City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973) with Krueger, *supra*. We doubt there is any legitimate state interest in such local issues that justifies usurpation of control from the people most directly affected by the noise.

**Concern #4:** THE BILL IS AMBIGUOUS AND MAY VIOLATE THE CONSTITUTION.

**Explanation:**

Article I, Section 15 of the Alaska Constitution prohibits any law that irrevocably grants a special privilege or immunity. The proposed Section 34.75.010(a) grants a special privilege to operators of certain airports and shooting ranges: they may make lots of noise. That privilege is special because it is not given to public airports or shooting ranges; it is not given

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to noisy types of activities other than airports or shooting ranges; it is not given to private airports and shooting ranges that start up in an already established, quiet community.

The proposed Section 34.75.010(a) also immunizes certain facilities from suit and the proposed Section 34.75.030 immunizes them from regulation.

If these privileges and immunities are irrevocable, they are unconstitutional. These privileges and immunities are irrevocable if they are not limited or lost following a substantial change in the use of the facility. Are these privileges and immunities lost following a substantial change in use? The bill is ambiguous.

On the one hand, the proposed 34.75.010(b) [Page 2, lines 1 - 5] purports to list all instances where the privileges and immunities do not apply. Since that section does not reference "a substantial change in use of the facility," one could infer that the privileges and immunities are retained even after a substantial change. If that is true, the bill is probably unconstitutional, violating Article I Section 15.

On the other hand, the proposed 34.75.010(c) seems to grant some rights to certain persons if the facility substantially changes its use. [Page 2, lines 9 - 10.] Similarly, proposed 34.75.020 purports to establish a statute of limitations for bringing actions following a substantial change in use. [Page 2, line 15.] These two sections make no sense unless we infer that a cause of action following substantial changes is implied, notwithstanding the silence of 34.75.010(b). While a court might make that inference to avoid the unconstitutionality and the nonsense, to do so it would have to read into the bill language that is not actually there.

We think it necessary and appropriate for the legislature to ensure that it's bill is sensible and constitutional. Toward that end we embrace the amendments previously offered by the Alaska Municipal League and under consideration by Senator Halford.

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Chair, Senate Rules Committee

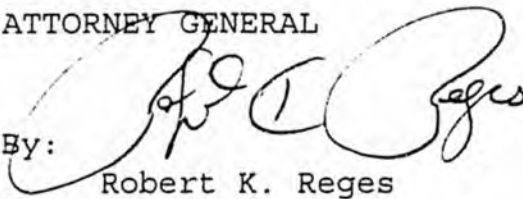
February 13, 1997

Thank you for this opportunity to express our views on  
this bill.

Sincerely yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:

  
Robert K. Reges  
Assistant Attorney General

RKR:prm

Basically bill creates remedy  
to nuisance suit

p2 line6 →

They are discussing the  
meaning of "substantial  
change" that allows a  
nuisance action when  
someone moves in next  
to airport / shooting range

- AG may have a amendment  
to make it easier

H