

**ALASKA LEGISLATURE**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 1993-1994**

**1008**

No. 12

Bill Version: SOSCS HB 212 (TID)

(S) Publish Date: 2-22-94

# FISCAL NOTE

## STATE OF ALASKA 1994 LEGISLATIVE SESSION

Revision Date: 2/7/94 Dept. Affected: Corrections  
 Title: An Act re: Aggravation of Presumptive Sentence BRU: All  
 Sponsor: Representative MacLean Component: All  
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 694 - 1884

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	569.2	569.2	569.2	569.2	569.2	569.2
<b>TOTAL OPERATING</b>	<b>569.2</b>	<b>569.2</b>	<b>569.2</b>	<b>569.2</b>	<b>569.2</b>	<b>569.2</b>

CAPITAL EXPENDITURES	11,400.0	0	0	0	0	0
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CHANGE IN REVENUES ( )	0	0	0	0	0	0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004-GF	1,969.2	569.2	569.2	569.2	569.2	569.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>1,969.2</b>	<b>569.2</b>	<b>569.2</b>	<b>569.2</b>	<b>569.2</b>	<b>569.2</b>

Estimate of any current year (FY94) cost: \$ 0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Diane Schenkar, Special Assistant Phone: 786-2147/465-4643  
 Division: Office of the Commissioner Date: 2/7/94  
 Approved by Commissioner: J. Frank Prewitt, Jr. (for) Date: 2/7/94  
 Agency: Department of Corrections

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Fiscal Note/DOC  
SCS CSHB 212(JUD)  
Revised 2/7/94  
Page 2 of 3

The bill would add an aggravator to certain Sexual Abuse of a Minor (SAM) felonies if the perpetrator were in a position of authority over the victim. Being in a position of authority over the victim is already an element of certain SAM offenses. This aggravator would only apply to offenses in which the element of authority has not already been factored into the type of crime charged. The bill would prohibit SAM cases involving this aggravator from being referred to a three-judge panel based upon the defendant's potential for rehabilitation.

#### Assumptions

1. The department's prior fiscal note assumed that because these types of sex offenses often result in longer-than-average sentences, the impact of adding this aggravator would be minimal. This revised fiscal note assumes that: (a) the availability of a new aggravator will simply further lengthen the already longer-than-average sentences, and (b) even a minimal increase in sex offender sentence lengths will have a fiscal impact on the department due to the density of SAM offenders in the prison population.
2. Criminal records available for research (OBSCIS) include only the offense (e.g., SAM I, SAM II, etc.). The actual elements of individual offenses are unknown unless individual file reviews are done. The department does not have sufficient resources to conduct individual file reviews within the time limits necessary to assess this legislation. The Department of Law advises that there is a "fairly narrow window" of offenses to which this aggravator would likely be applied, but cannot estimate an actual number either.
3. An unclassified SAM I could be aggravated from the presumptive eight year sentence up to 30 years. According to the department of law, it would not be unrealistic to predict aggravation up to a 15 year sentence, which is almost a 100% increase in sentence length. A Class B SAM II could be aggravated from a probable 2 year sentence up to a probable 4 year sentence; again a 100% increase in sentence length.
4. Since the actual sentence length could be expected to increase by 100%, but the actual rate of occurrence of cases is unknown and probably includes a "narrow window" of cases, the department conservatively estimates only a 5% actual increase in the felony SAM population as a result of this proposed sentence enhancement.
5. On June 30, 1993, there were 276 prisoners incarcerated for Sexual Abuse of a Minor felonies, or 100,740 prisoner-days per year for these offenses under current sentencing laws.
6. The average statewide operating cost of a prison bed is \$113 per day. Operating expenses are reflected under "miscellaneous" on page 1 of the fiscal note since the total operating cost involves multiple categories of expenses. It is not possible to identify specific positions or locations of new positions necessary to absorb additional prisoner-days using this formula.

Fiscal Note/DOC  
SCS CSHB 212(JUD)  
Revised 2/7/94  
Page 3 of 3

7. The cost of constructing an average prison bed in Alaska is approximately \$100,000. Capital expenses might be reduced if additional beds were purchased under contract, however there are no contract beds currently available in Alaska for prisoners with higher than minimum custody.

8. The prison system cannot absorb any additional prisoners without additional resources. The system has been operating over emergency capacity throughout the past year. Even when all aspects of the department's current population management plan are achieved, only the current overcrowding is likely to be addressed, not including any additional numbers caused by new legislation. In addition to posing safety hazards, operating over emergency capacity for prolonged periods of time may result in fines of up to \$1,000 per day if the department is found in contempt of court for violating population caps.

#### Operating Expenses:

A 5% increase in the 100,740 felony SAM prisoner-days = 5,037 additional prisoner-days

5,037 prisoner-days X \$113 per day = \$ 569,181 per year

#### Capital Expenses

In order to absorb the increase in felony SAM population of 5,037 prisoner-days per year, 14 additional prison beds will be needed.

5,037 prisoner-days = 13.8 prisoners, rounded up to 14 prisoners

14 beds X \$100,000 = \$1,400,000

Back-up

# ALASKA STATE LEGISLATURE

MAR 14 1994

Representative Eileen Panigeo MacLean  
Co-Chair House Finance Committee  
P.O. Box 830  
Barrow, Alaska 99723  
(907) 852-7111

WHILE IN JUNEAU  
State Capitol, Room 507  
Juneau, Alaska 99801-1182  
465-4833  
465-4525  
463-3241 FAX

## HOUSE OF REPRESENTATIVES

District 37

North Slope  
Borough

Anaktuvut Pass  
Atkasuk  
Barrow  
Kaktovik  
Nulqsut  
Point Hope  
Point Lay  
Wainwright

Northwest Arctic  
Borough

Ambler  
Buckland  
Deering  
Kiana  
Kivalina  
Kobuk  
Kotzebue  
Noatak  
Noorvik  
Selawik  
Shungnak

Seward Peninsula

Brevig Mission  
Diomedes  
Shishmaref  
Teller  
Wales

### MEMORANDUM

To: Senator Drue Pearce, Co-Chairman  
Senator Steve Frank, Co-Chairman  
Senate Finance Committee

From: Representative Eileen P. MacLean 

Date: March 14, 1994

Subj: Scheduling HB 212

I would appreciate your scheduling HB 212 for consideration by the Senate Finance Committee.

HB 212 relates to a specific factor aggravating a presumptive term of a criminal sentence and prohibiting the referral of a sentence based on application of that factor to a three-judge sentencing panel.

The intent of this bill is to ensure the most serious judicial response to the crime of sexual abuse of a minor when the offender is in a position of authority relative to the minor. The bill accomplishes this by adding the position of authority relationship to the list of aggravators to be considered in sentencing for crimes of sexual abuse against a minor in the first or second degree. It also adds these crimes to the list of offenses not to be referred to the three-judge panel for consideration of a reduced sentence.

Sexual abuse of a minor is an offensive societal crime in itself, but more so when the adult is in a position of authority to the child. In my view, the importance of condemning this kind of behavior by way of statutory direction to the judicial branch is important. The strictest of sentencing circumstances should be applied here.

I appreciate your consideration of a hearing on this bill.

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

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

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

**MEMORANDUM**

March 9, 1993

**SUBJECT:** House Bill 212 -- sectional analysis (Work Order No. 8-LS0780\A)

**TO:** Representative Eileen MacLean

**FROM:** Jack Chenoweth  
Legislative Counsel

You have introduced House Bill 212 and, through staff, have asked me to prepare a sectional analysis of the measure

To reduce or eliminate disparity in criminal sentences, the criminal procedure code, AS 12, subjects offenders convicted of certain specified crimes to presumptive sentences. Presumptive sentences may be extended or reduced if the sentencing judge, by a decision based on clear and convincing evidence, identifies factors in aggravation or factors in mitigation of the sentence. AS 12.55.155(c) identifies a series of factors to be considered by the court in aggravation or extension of a presumptive sentence. **Bill section 1** amends AS 12.55.155(c)(18) by adding a new subparagraph under which the court may consider, as a factor in aggravation of a criminal sentence based on a conviction for sexual abuse of a minor in any degree (AS 11.41.434 - 11.41.440), evidence that the victim of the offense resided in the same household as the offender or evidence that the offender occupied a position of authority over the victim. The bill section offers a definition of the phrase "position of authority" by cross-reference to a definition of that term in the criminal code.

The criminal procedure code also provides for referral of certain criminal sentences by the sentencing judge to a three-judge sentencing panel. Under AS 12.55.165(a)

(a) If the defendant is subject to sentencing under [a presumptive sentencing provision] and the court finds by clear and convincing evidence that manifest injustice would result from . . . imposition of the presumptive term, whether or not adjusted for aggravating or mitigating factors, the court shall enter findings and conclusions and cause a record of the proceedings to be transmitted to a three-judge panel for sentencing under AS 12.55.175.

Representative E. J. McLean

March 9, 1993

Page 2

However, subsection (b) of that section, added in 1992, limits the ability of the sentencing court to make a referral of a sentencing decision to a three-judge review panel in cases involving the application of certain aggravating factors. The amendment to AS 12.55.165(b) made by **bill section 2** places the aggravating factor added in the previous bill section to the list of aggravating factors whose application would not allow a sentencing judge to make a referral to a sentencing panel.

JBC:pl  
93-176.plm

# DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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

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

## MEMORANDUM

March 30, 1993

**SUBJECT:** Purpose and use of three-judge criminal sentencing panels

**TO:** Representative Eileen MacLean  
ATTN: Rena Bukovich

**FROM:** Jack Chenoweth  
Legislative Counsel

This memo is by way of response to your request of last week for a brief explanation of the purpose and use to be made of the three-judge criminal sentencing panel. Use of the panel is authorized by AS 12.55.175.

As I understand, under the former criminal code--in place in this state until 1980--sentencing authority was vested principally in the trial judge who would impose a criminal sentence generally within very broad statutory limits. The revised criminal code put into place a more detailed sentencing framework that set down tougher, more regular guidelines for imposing criminal sentences. Under the revised code, with the exception of particularly serious crimes, the sentencing judge continues to enjoy considerable discretion in sentencing first felony offenders. However, as to subsequent or repeat felony offenders, the statutes establish a series of presumptive sentences that the sentencing judge must follow, within constraints.

One set of constraints applicable to presumptive sentences goes to the finding and application of certain factors. The sentencing judge may increase a presumptive sentence because of the presence of so-called aggravating factors or reduce a presumptive sentence because of the presence of mitigating factors.

The second set of constraints under the revised Criminal Code is the referral of a sentence to a three-judge sentencing panel. That referral may be made if, under AS 12.55.165, the judge determines that manifest injustice would result from following the strict presumptive sentencing scheme. <sup>1/</sup> The sentencing panel apparently has

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<sup>1/</sup> AS 12.55.165(a), captioned "Extraordinary Circumstances," provides:

(continued...)

two choices. If, after consideration of the record and opportunity for argument, the three-judge panel agrees with the sentencing court that a departure from strict application of the adjusted presumptive sentence is necessary, the panel may impose a different sentence. If the three-judge sentencing panel does not agree that a departure is necessary, it is to return the matter to the sentencing judge so that he or she may carry through and impose a sentence. So, in Heathcock v. State, 670 P.2d 1155 (Alaska App. 1983), the Court of Appeals observed:

. . . [A] departure from the presumptive sentencing scheme will not turn on the evaluation of one judge. Rather, a departure from the presumptive sentencing scheme under the provisions of AS 12.55.165 and AS 12.55.175 will involve the decision of four judges. First, the original trial judge makes the decision to refer the matter to the three-judge panel. Then the three-judge panel, if it agrees with the evaluation of the trial judge, imposes sentence.

670 P.2d at 1158.

In 1992, the Seventeenth Legislature started to take away from the authority of the trial court judge to make referrals to the three-judge panel. Those limitations have been set out in AS 12.55.165(b) and are in the nature of cross-references to aggravating factors that do not warrant referral of a criminal sentence to a three-judge panel.<sup>2/</sup> By my reading of this new provision, if these aggravating factors are present, then the sentencing judge must determine, among other factors, the defendant's prospects for rehabilitation and enter a sentence. The judge may not find that "manifest injustice" will occur, so that the "extraordinary" remedy of referral of the matter to the sentencing panel is not available.

JBC:gc:mi  
93-288.glc

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<sup>1/</sup>(...continued)

(a) If the defendant is subject to sentencing under AS 12.55.125(c), (d), (e), or (i) [the presumptive sentencing subsections,] and the court finds by clear and convincing evidence that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155 or from imposition of the presumptive term, whether or not adjusted for aggravating or mitigating factors, the court shall enter findings and conclusions and cause a record of the proceedings to be transmitted to a three-judge panel for sentencing under AS 12.55.175.

<sup>2/</sup> Under AS 12.55.165(b):

(b) In making a determination under (a) of this section, the court may not refer a case to a three-judge panel based on the defendant's potential for rehabilitation if the court finds that a factor in aggravation set out in AS 12.55.155(c)(2), (8), (10), (12), (15), (17), (18)(B), (20), (21), or (28) is present.

# North Slope Borough School District



## RESOLUTION 93-12 AMENDMENT TO TITLE ELEVEN OF THE ALASKA STATUTES

**WHEREAS** the North Slope Borough School District is strongly committed to the education and safety of its students; and

**WHEREAS** the NSBSD and the people of Alaska entrust the education and safety of their students to the teachers of the State; and

**WHEREAS** a breach of that trust involving the sexual contact of a student by a teacher causes irreparable harm to the student and society and, further, undermines the educational mission of the NSBSD and the State of Alaska; and

**WHEREAS** the NSBSD does not believe the criminal code sufficiently addresses sexual contact between a teacher and a student and, further, that likely punishments for teachers who have sexual contact with students who have been entrusted to them by the State and their families neither sufficiently reflects the trauma suffered by the student and society nor the intolerance which the people of the State of Alaska have for such conduct.

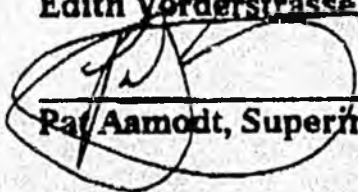
**NOW, THEREFORE, BE IT RESOLVED** that the NSBSD Board of Education strongly urges the Legislature of the State of Alaska to amend the criminal code (Title 11) so as to designate sexual contact of a student by a teacher as sexual abuse of a minor in the first degree; and

**BE IT FURTHER RESOLVED** that the Superintendent shall take such action as is necessary to make known and urge the immediate adoption of this position of the NSBSD to the Legislature and the Association of Alaska School Boards and the Alaska Association of School Administrators

Introduced: 2/09/93

Adopted: 2/09/93

  
\_\_\_\_\_  
Edith Vorderstrasse, Acting President, Board of Education

  
\_\_\_\_\_  
Pat Aamodt, Superintendent

**HB**

**216**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred: March 10, 1993

FURTHER REFERRALS:

Date of Committee Action: 4/8/93

The FINANCE Committee considered:

HB 216

HOUSE BILL NO. 216

POWER COST EQUALIZATION

"An Act relating to power cost equalization; and providing for an effective date."

**RECOMMENDATIONS:**

be replaced with CS HB 216 (Fin)  the same title  
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note HFC

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

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eileen P. McKeown</i> <sup>FRAGLEMAN</sup>	✓	<i>Richard J. Foster</i>		<del>✓</del>	X
<i>Ronald J. Hanley</i> <sup>LARSON</sup>	X	<i>Gene Therrault</i>			X
<i>Mike Hanley</i>	✓	<i>Larry Martin</i>		✓	
<i>Sean P. Paul</i>	✓				

*Ronald J. Hanley* *Eileen P. McKeown*  
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
 Title: An Act relating to PCE;  
and providing for an effective date.  
 Sponsor: House Finance Committee  
 Requestor: House Finance Committee

Dept. Affected: Commerce and Economic  
Development  
 BRU: Alaska Energy Authority  
 Components: Power Cost Equalization  
Grants

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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						
---------	--	--	--	--	--	--

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

FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
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>

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

Prepared By: Rep. Ron Larson, Co-Chair *Ron Larson* 465-3878  
 Division: Rep. Eileen MacLean, Co-Chair Phone: 465-4833  
House Finance Committee *E MacLean* Date: 4/8/93

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Agency: \_\_\_\_\_

8-LS0010X  
Cramer  
4/6/93

CS FOR HOUSE BILL NO. 216( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): HOUSE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to power cost equalization; and providing for an effective date."

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

3 \* Section 1. AS 44.83.162(c) is amended to read:

4 (c) An eligible electric utility is entitled to receive power cost equalization for

5 (1) sales of power to local community facilities, calculated in the  
6 aggregate for each community served by the electric utility, for actual consumption of  
7 not more than 70 kilowatt-hours per month for each resident of the community; and

8 (2) actual consumption of not more than <sup>700</sup>650 [750] kilowatt-hours per  
9 month sold to each customer in all classes served by the electric utility except to  
10 customers of the utility under (1) of this subsection and customers that are federal  
11 offices or federal facilities other than public schools.

12 \* Sec. 2. AS 44.83.162(d) is amended to read:

13 (d) The amount of power cost equalization provided per kilowatt-hour under  
14 (c) of this section may not exceed 95 percent of the power costs, or the average rate

+  
original  
lang +

1 per eligible kilowatt-hour sold, whichever is less, as determined by the commission.  
2 However,

3 (1) during the state fiscal year that begins July 1, 1993, [1984] the  
4 power ~~(costs for)~~ which power cost equalization may be paid to an electric utility are  
5 limited to minimum power costs of more than 9.82 [8.5] cents per kilowatt-hour and  
6 less than 52.5 cents per kilowatt-hour;

7 (2) during each following state fiscal year, the power <sup>rate above</sup> ~~(costs for)~~ which  
8 power cost equalization may be paid to an electric utility shall be adjusted by the  
9 commission, <sup>cost per kilowatt hour</sup> based on the weighted average ~~retail~~ residential rate in Anchorage,  
10 Fairbanks, and Juneau [CONSIDERING THE RATE OF CHANGE IN FUEL COST  
11 AND POWER DEMAND]; and

12 (3) the power cost equalization per kilowatt-hour may be determined  
13 for a utility without historical kilowatt-hour sales data by using kilowatt hours  
14 generated.

15 \* Sec. 3. AS 44.83.162(e) is amended to read:

16 (e) An electric utility whose customers receive power cost equalization under  
17 this section shall set out in its tariff the rates without the power cost equalization and  
18 the amount of power cost equalization per kilowatt-hour sold. The rate charged to the  
19 customer shall be the difference between the two amounts. Power cost equalization  
20 paid under this section shall be used to reduce the cost of all power sold to local  
21 community facilities, in the aggregate, to the extent of 70 kilowatt-hours per month per  
22 resident of the community, and to reduce the cost of the first <sup>+00</sup> 650 [750] kilowatt-hours  
23 per customer per month for all other classes served by the electric utility except  
24 federal offices and <sup>state or</sup> federal facilities other than public schools.

25 \* Sec. 4. This Act takes effect July 1, 1993.

No change  
FAKAL

original  
language

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 216

Revision Date: \_\_\_\_\_  
Title: An Act relating to Power Cost Equalization; and providing  
for an effective date.  
Sponsor: The House Finance Committee  
Requestor: \_\_\_\_\_

Department Affected: Commerce and Economic Development  
BRU: Alaska Energy Authority  
Component: Power Cost Equalization Grants  
COMPONENT SERIAL NO. 965

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	600.0	624.0	649.0	674.9	701.9	730.0
MISCELLANEOUS						
TOTAL OPERATING	600.0	624.0	649.0	674.9	701.9	730.0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF	600.0	624.0	649.0	674.9	701.9	730.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	600.0	624.0	649.0	674.9	701.9	730.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) impact: None

ANALYSIS: (Attach a separate page if necessary.)  
See Attached

Prepared by: Gloria Manni, Director, Accounting and Administration  
Division: Alaska Energy Authority

Phone: 561-7877  
Date: 3/16/93

Approved by Commissioner: Paul Fuhs  
Agency: Commerce and Economic Development

Date: \_\_\_\_\_

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 216

ANALYSIS: (continued)

The intent of HB 216 is to cut the costs of the PCE program effective July 1, 1993. However, the FY 94 PCE Grants budget request submitted to the Alaska Energy Authority, as approved by the Board of Directors in the amount of \$17,920,000, assumes the implementation of the above legislative changes, plus the exclusion of school facilities from PCE credit. Enactment of HB 216 would result either in an increase of the PCE Grants budget request in FY 94 and following years, or if the increased cost is not funded in a *pro rata* reduction of PCE rates for all customers to accommodate the unbudgeted requirement for school facilities.

Back-up

**HB 216: "An Act relating to power cost equalization; and providing for an effective date."**

The bill includes the following provisions:

1. Excludes state or federal offices and facilities from the Power Cost Equalization (PCE) program.
2. Increases the minimum power cost for which PCE may be paid to an electrical utility (floor) from 8.5 cents/kwh to 9.5 cents/kwh.

The Alaska Energy Authority supports the proposed legislation; however, it would prefer the enactment of more comprehensive legislation (see below SB 124 section).

### Program Background

Power Cost Equalization (PCE) is a formula program that reduces the consumers' cost of electricity generated and sold by eligible electric utilities in rural Alaska. The program attempts to provide for statewide equalization of power cost per kilowatt-hour (kwh) at a cost close to the average kwh/cost in Anchorage, Fairbanks, and Juneau.

During FY's 92 and 93, the limited funding of the program has made it necessary to reduce, on a pro rata basis, PCE rates to all participating utilities customers, 20% and 10%, respectively, impacting residential customers the most as the cost of electricity, especially in the communities with low per capita income.

### Analysis

Sections 1 and 3 of the bill propose to make state and federal facilities ineligible for PCE effective July 1, 1993. This change is expected to decrease program costs about \$1 million. Conversely, state offices/facilities in rural communities eligible for PCE would incur, on average, increased electrical cost of about \$1,350 per year. This estimate assumes that each state budgetary unit would be eligible for the maximum 750kwh each month of the year at the PCE average rate of 15 cents/kwh. Federal offices and facilities would experience similar cost increases. No significant impact is expected on the affected customers or local economies.

Section 2 of the bill proposes to increase the minimum power cost for which PCE may be paid to an electric utility (floor) from 8.5 cents/kwh to 9.5 cents/kwh effective July 1, 1993. This program change would bring the minimum cost of electricity in rural Alaska closer to the cost of electricity in the urban areas of state, and it would decrease program costs an additional \$1 million. Our best estimate assumes that once the state and federal facilities are removed from the program, about 100,000 megawatt-hours will

continue to be eligible for PCE annually. If the PCE floor is increased to 9.5 cents/kwh, as an average, residential customers would incur increased costs of about \$45 per year; commercial customers about \$52 per year; and community facilities \$165 per year.

The proposed change in Section 2 to increase the PCE floor to 9.5 cents/kwh may require legislative action in future years to maintain the statutory relationship between the PCE floor and the average kwh/cost in Anchorage, Fairbanks, and Juneau as the cost of power in these urban communities continues to grow. During CY 1990 and 1991, the weighted average electric residential rate for urban electrical customers with consumption of 500 kwh/mo. was 9.6 cents/kwh and 9.8 cents/kwh, respectively.

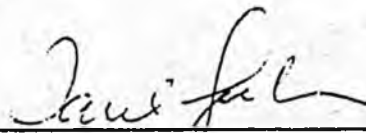
#### Other Related Legislation/SB 124

Senate Bill 124, Sections 11, 12 and 13 reflect the PCE program legislative changes that would match the Alaska Energy Authority FY 94 budget request for PCE grants by excluding from the program federal, state, and school facilities.

It would also provide for a formula to administratively adjust the PCE floor in future years "by an amount equal to the percentage change in the Consumer Price Index, All Urban Consumers, U.S. City Average, published by the U.S. Department of Labor for the 12-month period ending April 30 of the fiscal year preceding the fiscal year for which the adjustment is being made."

SB 124 was introduced by the Senate Rules Committee by request of the Governor on February 19, 1993. If passed, the bill would financially restructure the Alaska Energy Authority. Such plan, among other things, would generate a \$17 million annuity for 20 years to assure reasonable power costs to residential customers in rural areas through PCE or more efficient energy project.

The concept of a PCE program directed mostly to residential customers, combined with a long-term, financially stable and foreseeable program funding reinforces the Alaska Energy Authority's support of SB 124.



Paul Fuhs, Commissioner

3/16/93

Date


**Alaska Energy Authority**

A Public Corporation

 State of Alaska  
 Walter J. Hickel, Governor

March 10, 1993

The Honorable Eileen MacLean  
 Alaska State Representative  
 Co-Chair House Finance Committee  
 State Capitol  
 Juneau, Alaska 99801-1182

Subject: FY94 Operating Budget Request/Power Cost Equalization Grants

Dear Representative MacLean:

I am pleased to provide the following information on the Power Cost Equalization (PCE) program, in response to your request letter dated March 9, 1993.

- The updated FY94 budget estimate as of today for the full funding of the PCE program is presented below. However, due to the numerous factors affecting use of electricity and the eligible cost of each utility participating to the program, it is difficult to closely project what would be the actual program demand; limited upward or downward adjustments may continue to occur.

**FY94 Preliminary Grant Budget Projects as of 3/10/93\***

FY93 Participating Utilities Requirement of 100%	\$20,204,077
Increased FY94 Rates/Power Sales of	
FY93 Participating Utilities	404,082
New Participating Utilities	50,000
APUC Regulatory Cost Charges	80,000
FY94 PCE Grant Requirements	<u>\$20,738,159</u>
Estimated Savings (subject to passage of proposed legislation):	
Federal, State offices	\$ 1,000,000
Schools	566,516
Increase floor to 9.5 cents**	<u>1,000,000</u>
FY94 Revised Grant Requirements	<u>\$18,171,643 (a)</u>
Less: FY94 PCE Grant Budget Request	<u>\$17,920,000</u>
Potential FY94 Shortfall	<u>(\$251,643)</u>

Letter to: Representative Eileen MacLean  
Subject: FY94 Operating Budget Request/PCE Grants  
March 10, 1993

- \* Based on FY92 actual program requirements plus budget amounts for those utilities with pending disbursements.
- \*\* Savings related to residential, commercial customers, and community facilities. It assumes that Federal, State offices and Schools are eliminated from the program.
- o Our best estimate of cost savings due to the removal of state and federal facilities from the program, is about \$1 million. The cost of the schools continued participation in the program is about \$570,000, as presented in the above schedule.
- o Based on the FY91 PCE program statistics report, issued December 1992, the average monthly consumption of residential and commercial customers eligible for PCE is 374 kwh/mo. Community facilities are excluded from this computation.
- o Based on the FY91 PCE program statistics, the average monthly consumption of residential customers eligible for PCE is 367 kwh/mo.
- o If the PCE "floor" is increased to 9.5 cents, the electrical customers, as an average, will incur additional costs as follows:

<u>Customers</u>	<u>Average Consumption</u>	<u>Cost Increase 1¢/kwh</u>	
		<u>Monthlv</u>	<u>Annual</u>
Residential	367 kwh/mth	\$3.67	\$44.04
Commercial	430 kwh/mth	\$4.30	\$51.6

I appreciate your interest and your support of this program that is essential to insure economic viability of local rural electric utilities. Please call my office at 561-7877 if you have any questions or need additional information.

Sincerely,



Ronald A. Garzini  
Executive Director

GM:RAG:tlj

**HB**

**221**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred: April 2, 1993

FURTHER REFERRALS:

Date of Committee Action: 4/6/93

The FINANCE Committee considered:

HB 221

HOUSE BILL NO. 221

WORKERS COMP: VOLUNTEER FIRE FIGHTERS, ETC

"An Act relating to workers' compensation for volunteer ambulance attendants, police officers, and fire fighters; and providing for an effective date."

RECOMMENDATIONS:

[ ] the same title

be replaced with \_\_\_\_\_ [ ] a new title

[ ] have attached amendments(s)

[ ] do pass

[ ] do not pass

[ ] no recommendations

[x] individual recommendations

[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Depu/Date)

[ ] fiscal impact \_\_\_\_\_

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

[ ] zero fiscal note \_\_\_\_\_

2 [x] zero fiscal note(s) DOA 3/31/93  
Labor 3/31/93

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Ronald J. Larson</i>	X	<i>Mark Hamley</i>		X	
<i>Ben Gussendorf</i>	X	<i>Sean Farrell</i>		X	
<i>Richard Foster</i>	X	<i>Terry Martin</i>		X	
<i>Jay Brown</i>	✓	<i>Gene Theriault</i>		X	

*Ronald J. Larson*  
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 221

Revision Date: \_\_\_\_\_  
Title: 'An Act relating to workers' compensation for volunteer ambulance attendants, police officers and fire fighters.'  
Sponsor: Hudson  
Requestor: \_\_\_\_\_

Department Affected: Administration  
BRU: Risk Management  
Component: \_\_\_\_\_  
COMPONENT SERIAL NO. 0071

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	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

Estimate of current year (FY93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)  
This bill would not affect Risk Management budget requirements.

Prepared by: Don Hitchcock, Director  
Division: Risk Management

Phone: (907) 465-2180  
Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usery  
Agency: Administration

Date: 3/18/93

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HB 221

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO : HB 221

Revision Date: \_\_\_\_\_  
 Title: Workers' Compensation :  
Volunteer Fire Fighters, Etc  
 Sponsor: Representatives Hudson, Grussendorf  
 Requestor: House Community & Regional Affairs

Department Affected: Labor  
 BRU: Workers' Compensation  
 Component: \_\_\_\_\_  
Workers' Compensation  
 COMPONENT SERIAL NO. 344

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

**FUNDING:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
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>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Paul B. Arnoldt, Director *Paul B. Arnoldt* Phone: 465-2790  
 Division: Workers' Compensation Date: 3/16/93

Approved by Commissioner: Charles W. Mahlen *Charles W. Mahlen*  
 Agency: Department of Labor Date: 3/16/93

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**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

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

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

**MEMORANDUM**

March 22, 1993

**SUBJECT:** Sectional Summary of HB 221

**TO:** Representative Bill Hudson

**FROM:** Michael F. Ford *MFF*  
Legislative Counsel *LC*

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. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** Provides that for purposes of calculating the compensation paid to a volunteer ambulance attendant, police officer, or fire fighter, the person would receive workers' compensation benefits equal to that paid a full-time employee where the injury occurred or equal to the amount that the person would receive based on earnings in their regular employment, whichever is higher.

**Section 2.** Provides that a person who is injured while performing service as a volunteer ambulance attendant, police officer, or fire fighter, is for purposes of workers' compensation benefits considered an employee of the municipality in which the person performs the volunteer service, if the person is not already covered by insurance.

**Section 3.** Repeals a provision of law allowing a municipality to elect to extend coverage to volunteer ambulance attendants, police officers, or fire fighters.

**Section 4.** Effective date.

MFF:gc  
93-251.glc

# Alaska State Legislature

REPRESENTATIVE BILL HUDSON

State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-3744

## COMMITTEES

CHAIR  
Labor & Commerce  
VICE CHAIR  
Resources  
MEMBER  
Transportation  
Regulation Review  
Economic Development  
Task Force

### SPONSOR STATEMENT

#### HOUSE BILL 221

House Bill 221 was introduced to clarify Workers' Compensation statutes that have been the cause of much confusion or misinterpretation, particularly with regard to benefits for volunteers.

Workers compensation benefits are intended, subject to minimum and maximum limits, to replace the lost wages of injured workers. Section 1 of HB 221 recognizes that volunteers should receive wage replacement based on the actual wages lost or the comparable wage they would receive were they paid employees rather than volunteers. Current law limits wage loss benefits for volunteer fire fighters, for example, who may have high earning capacity in their regular employment, to the benefits based on the wage paid a carrier fire fighter. House Bill 221 corrects the inequities in benefit calculations for volunteer ambulance attendants, police officers and fire fighters by calculating compensation based on the higher wage earned.

Section 2 of HB 221 is to clarify the original intent of AS 23.30.243, which is to extend coverage for volunteer fire fighters. In the past year, compensation benefits for volunteer fire fighters, while engaged in fire department activities other than responding to emergencies, has been questioned. Since "employees" are covered for injuries arising out of and in the course of employment, volunteer fire fighters are similarly covered. Unfortunately, AS 23.30.243 has been misinterpreted to limit coverage only to those instances where the volunteer was responding to an emergency. This section was originally intended to extend coverage, not limit it.

Therefore, in order to restore the original intent of AS 23.30.243, and to clarify once and for all that volunteers are employees and are covered as any other employee for the purposes of workers' compensation, Section 2 of HB 221 amends AS 23.30 by adding a new section that defines volunteer ambulance attendants, police officers and fire fighters as "employees."

*Pause discuss*

Section 3 repeals AS 23.30.092. This statute has been interpreted to mean that a municipality "may" provide workers compensation coverage for volunteers. Conversely, it may be incorrectly interpreted to mean that a municipality may elect not to provide coverage. In reality, this section provides that an alternative policy may substitute for a workers' compensation policy so long as the benefits are equal or better than a statutory workers' compensation policy. However, this section has done nothing but cause confusion and I believe repealing it will clarify that all volunteers who meet the definition in AS 23.30 must be covered by workers' compensation.

Back-up

# ALASKA WORKERS' COMPENSATION BOARD

P.O. Box 25512



Juneau, Alaska 99802-5512

In the Matter of the Self-  
Insurance Certificate of  
  
THE CITY AND BOROUGH OF JUNEAU,  
ALASKA.

FILED with  
ALASKA WORKERS'

FEB 17 1993

COMPENSATION BOARD  
JUNEAU, ALASKA

We met in Juneau, Alaska on 4 February 1993 to consider a petition of the City and Borough of Juneau (CBJ) for an order extending coverage under the CBJ's Certificate of Self-Insurance to volunteer firemen. The CBJ is represented by attorney T.G. Batchelor. Ken Kareen, the CBJ Personnel Director testified at hearing. The Alaska Department of Labor, Workers' Compensation Division was represented by Self-Insurance Administrator Richard Austerman. We closed the record and concluded our deliberations on 4 February 1993.

The CBJ is a self-insured employer under the Alaska Workers' Compensation Act (AWCA)<sup>1</sup> and regulations promulgated

<sup>1</sup> AS 23.30.075(a) provides in pertinent part: "An employer under this chapter, unless exempted, shall either insure and keep insured for the employer's liability under this chapter in an insurance company . . . or shall furnish the board satisfactory proof of the employer's financial ability to pay directly the compensation provided for."

AS 23.30.090 provides in pertinent part: "If an employer has complied with the provisions of this chapter relating to self-insurance, the board shall issue the employer a certificate which shall remain in force for a period fixed by the

In Re: CBJ Self-Insurance Certificate

thereunder at Chapter 46 of Title 8 of the Alaska Administrative Code (8 AAC 46).

The CBJ asserts that volunteer firemen<sup>2</sup> have workers' compensation coverage under AS 23.30.243(a) under certain circumstances, i.e., proceeding to or engaging in a fire suppression or rescue operation or the protection of life or property.<sup>3</sup> The CBJ asserts it is not clear what other types of activities are covered under the AWCA for the volunteer firemen.

By its petition, the CBJ seeks an order which would extend AWCA coverage to volunteer firemen under the CBJ self-insurance certificate, while engaged in "approved" training and community service activities. At hearing, the CBJ informed us it wishes us to determine if we have any objection to their voluntarily providing coverage under its certificate of self-insurance.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

AS 23.30.092 provides:

A political subdivision may elect to provide benefits and compensation to its volunteer . . . firemen by obtaining insurance which would provide its volunteer . . . firemen with benefits and compensation at least equivalent to those conferred upon volunteer . . . firemen by this chapter, and the election shall be considered compliance with the coverage and insurance provisions of this chapter. The election shall be made by filing copies of the

---

board."

<sup>2</sup> AS 23.30.265(30) provides: "'volunteer fireman' means an individual whose name is registered with the state fire marshal as a member of a regularly organized volunteer fire department or who serves with a full-time fire department on a temporary, voluntary basis."

<sup>3</sup> AS 23.30.243 is quoted and discussed below.

In Re: CBJ Self-Insurance Certificate

insurance policy or policies with the commissioner.

AS 23.30.243(a) provides:

For the purpose of workers' compensation, any injury, disability or death incurred by a fireman by reason of the fireman's proceeding to or engaging in a fire suppression or rescue operation, or the protection or preservation of life or property, anywhere in the state is considered to have arisen out of and been sustained in the course of employment, and the fire department or regularly organized volunteer fire department of the fireman's primary employment or registration is considered to be the employer, except when the injured, at the time of injury or death, is acting for compensation from another.

AS 23.30.092 provides a procedure for the resolution of the CBJ's problem, i.e., purchasing workers' compensation insurance coverage for the volunteer firemen, and filing a copy of the insurance policy with the Commissioner of Labor. We assume the CBJ is aware of this option, and has declined to purchase such insurance due to the cost.

The question remains, can the CBJ cover its volunteer firemen under its self-insurance certificate? This issue has never been addressed by the AWCB. We have reviewed the AWCA and 8 AAC 46, the Self-Insurance regulations. We find nothing which prohibits the CBJ from electing to cover its volunteer firemen under its self-insurance certificate. We find nothing which leads us to believe that AS 23.30.092 was intended to require a municipality to purchase insurance as the exclusive method of insuring its volunteers for workers' compensation liability. Absent any specific language precluding it, we find it is permissible for the CBJ to self-insure workers' compensation liability for its volunteer firemen.

Concerning the specific terms of the coverage which the CBJ wishes to provide, and which we are asked to authorize, we find

In Re: CBJ Self-Insurance Certificate

nothing which prohibits the CBJ and volunteer firemen from entering into an agreement under which the CBJ agrees to provide workers' compensation coverage in accord 8 AAC 46 and the guidelines set out in the petition.<sup>4</sup> After doing so, the CBJ should notify the Self-Insurance Administrator. 8 AAC 46.100. It must, of course, also notify its excess insurance carrier as the change will effect the CBJ's exposure to liability for workers' compensation benefits. We find that the parameters of coverage the CBJ wishes to provide its volunteer fireman, including coverage during training, is a matter within its discretion, subject only to its ability to meet its obligation to injured employees and volunteers under the AWCA. The CBJ's ability to pay is an issue which is reviewed annually, and more often if necessary, by the Self-Insurance Administrator and the AWCB.

Finally we turn to the issue of our authority to enter an order binding the CBJ to provide workers' compensation coverage to volunteers during training. The CBJ argues that signing the proposed order will bind the AWCB and the CBJ to providing coverage to volunteer firemen during training. We do not agree. The discussion above is based on the assumption that the CBJ elects to provide the coverage under consideration, and elects to remain bound by that election. We must now consider how the AWCB can resolve a case where a volunteer fireman is injured during training, but due to a change in personnel or policy, or for whatever reason, the CBJ declines to voluntarily provide coverage to the injured volunteer.

Assuming such a "volunteer" is truly a volunteer, and not an employee<sup>5</sup>, we presume we would apply AS 23.30.243. Notably, that

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<sup>4</sup> We note that 8 AAC 46.120 requires that all records necessary to complete and verify the accuracy of all reports and documents submitted to the AWCB must be retained for three years.

<sup>5</sup> AS 23.30.265(12) provides: "'employee' means an employee employed by an employer as defined in (13) of this section."

In Re: CBJ Self-Insurance Certificate

statute does not mention firemen who are injured during training. Based on the plain language of the statute, it appears likely coverage under the AWCA would be denied. We do not issue advisory opinions. Furthermore, we find it would be improper to enter an order which appears to be contrary to the express language of AS 23.30.243. For those reasons we decline to execute the order proposed. We believe the most effective method of assuring volunteer firemen coverage under the Alaska Workers' Compensation Act is by means of an amendment of the AWCA, presumably AS 23.30.243.

At hearing, the CBJ informed us that legislation had been introduced in 1992 which would have amended AS 23.30.243 by adding "training" to the scope of its coverage. We recognize that volunteer firemen are an important and valuable community asset. It is obvious that in order to become and remain qualified to engage in fire fighting and related emergency activities, volunteers must engage in training, and that they should have insurance in the event they are injured while engaging in such authorized activities. This panel favors amending AS 23.30.243 in order to provide coverage under the AWCA to volunteer firemen while they engage in authorized training activities. A copy of this Decision and Order shall be forwarded to the Commissioner of Labor, who is also the Chairman of the AWCB, with the request that he consider an appropriate amendment to the AWCA.

---

AS 23.30.265(13) provides: "'employer' means the state or political subdivision or a person employing one or more persons in connection with a business or industry coming within the scope of this chapter and carried on in this state."

We determine if a person is an employee by applying the "relative-nature-of-the-work test." This multi-part test is set out in 8 AAC 45.890. Obviously we have insufficient information to determine if a hypothetical "volunteer" may qualify as an "employee" for the purposes of this decision.

In Re: CBJ Self-Insurance Certificate

ORDER

The proposed order is denied.

Dated at Juneau, Alaska this 17th day of  
FEBRUARY, 1993

ALASKA WORKERS' COMPENSATION BOARD

/S/ LAWSON N. LAIR  
Lawson N. Lair, Designated Chairman

/S/ DON KOENIGS  
Don Koenigs, Member

UNAVAILABLE FOR SIGNATURE  
Nancy J. Ridgley, Member

APPEAL PROCEDURES

A compensation order may be appealed through proceedings in Superior Court brought by a party in interest against the Board and all other parties to the proceedings before the Board, as provided in the Rules of Appellate Procedure of the State of Alaska.

A compensation order becomes effective when filed in the office of the Board, and unless proceedings to appeal it are instituted, it becomes final on the 31st day after it is filed.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of The Self-Insurance Certificate of THE CITY AND BOROUGH OF JUNEAU, ALASKA; dated and filed in the office of the Alaska Workers' Compensation Board in Juneau, Alaska, on this 17th day of February, 1993.



Bruce Dalrymple  
Bruce Dalrymple



# ALASKA FIRE CHIEF'S ASSOCIATION

680 N. SEWARD MERIDIAN PARKWAY • WASILLA, ALASKA 99654 • (907) 373-8830 FAX 376-0799

ANDREW POSTISHEK  
PRESIDENT

March 25, 1993

Mark R. Barker  
1st Vice President  
(907) 543-2131  
Bethel

Timothy J. Biggane  
2nd Vice President  
(907) 488-3400  
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Dewey Whetsel  
Director  
(907) 424-6100  
Cordova

Charles E. Lundfelt  
Past President  
(907) 835-4560  
Valdez

The Honorable Harley Olberg, Chairman  
House Community and Regional Affairs Committee  
Juneau, Alaska

Dear Representative Olberg:

The purpose of this letter is to urge your support for H.B. 221 which clarifies the protection provided to volunteer firefighters through Workers Compensation. As president of the Alaska Fire Chief's Association, I am requesting your support on behalf of the state's fire chiefs.

As a career fire officer, I have spent years working with volunteers whose selfless dedication and hard work have provided protection for the citizens of Alaska. Much of what is required of them is unseen by the public. The hundreds of hours of training each volunteer must participate in, is as much a public service as responding to emergencies. It is absolutely essential that these men and women are protected during these activities as well.

The passage of this bill is extremely important to all of us.

Thank you very much.

Sincerely,

*Andrew W. Postishek*  
Andrew W. Postishek  
president, A.F.C.A.

**ALASKA STATE FIREFIGHTERS ASSOCIATION**

P.O. Box 2092, Cordova, Alaska 99574



March 31, 1993

Dear Sirs:

As President of the Alaska State Firefighters Association I am asking for your support to aid the passage of H.B. 221.

When I joined the Cordova Volunteer Fire Department I was told I was covered by the Alaska Worker's Compensation Act (AWCA). It was my understanding that this was whenever I participated in department training drills, I performed maintenance duties, responded to emergencies or took part in sanctioned Fire Department activities.

There is now some question as to the level of coverage volunteers have. After a training accident at the William Hagavig Regional Training Center last year there was a delay in assuring coverage for two injured firefighters. This is not acceptable! The level of coverage needs to be clarified in the AWCA to ensure adequate coverage for all volunteer fire fighters state wide. H.B. 221 will do this.

To give a little background to this issue consider that the Alaska Worker's Compensation Board (AWCB) stated in a ruling handed down Feb 17, 1993, that "Assuming such a 'volunteer', is truly a volunteer, and not an employee, we presume we would apply AS 23.30.243. Notably, that statute does not mention firemen who are injured during training. Based on the plain language of the statute, it appears likely coverage under the AWCA would be denied." The AWCB goes on to say. "We believe the most effective method of assuring volunteer firemen coverage under the Alaska Workers' Compensation Act is by means of an amendment to the AWCA, presumably AS 23.30.243."

Last fall I wrote a letter of support for what became H.B 150. I now feel the addition of the wording "participating in training" is not going to cover volunteers adequately. Volunteers perform many functions in addition to training. These include pre fire planning, fire investigation, building and equipment maintenance, administrative duties, fire investigation and teaching fire prevention to citizens. These are only a portion of the activities volunteers may participate in to maintain a fire department.

On March 12, 1993 Representative Bill Hudson and Representative Ben Grussendorf introduced H.B. 221. This bill assures that Volunteer Ambulance Attendants, Police Officers and Fire Fighters are considered employees of the municipality in which they provide thier services. As employees they would receive the same coverage as a paid person which is only right since they are all taking the same risks while performing the same tasks.

H.B. 221 is appropriate and needs your full support.

Sincerely,

Robert J. Plumb, president

# ALASKA STATE FIREFIGHTERS ASSOCIATION

P.O. Box 2092, Cordova, Alaska 99574



## POSITION PAPER

THE ALASKA STATE FIREFIGHTERS ASSOCIATION HAS DETERMINED THAT THE ISSUE OF WORKERS COMPENSATION INSURANCE FOR VOLUNTEER FIREFIGHTERS IS OF THE HIGHEST PRIORITY TO THE MEMBERS OF THE ASSOCIATION. WE FULLY SUPPORT HOUSE BILL 221 AND THE NEED FOR CLARIFICATION OF CURRENT LAW.

THE ASFA BELIEVES THAT THE METHOD OF DETERMINING WAGES FOR BENEFIT CALCULATIONS PRESENTED IN HB 221 IS FAIR AND EQUITABLE TO ALL PARTIES. IT PUTS VOLUNTEER FIREFIGHTERS ON THE SAME BENEFIT DETERMINATION BASIS AS ANY OTHER EMPLOYEE AND TRULY REFLECTS THE INTENT OF THE WORKERS COMPENSATION ACT, TO REPLACE LOST WAGES.

HB 221 ALSO CLARIFIES THAT VOLUNTEERS WHO ARE LEGITIMATE MEMBERS OF FIRE DEPARTMENTS, REGISTERED WITH THE STATE FIRE MARSHALL, ARE TO BE TREATED AS ANY OTHER EMPLOYEE FOR DETERMINATION OF ELIGIBILITY FOR WORKERS COMPENSATION BENEFITS. ALTHOUGH WE BELIEVE THIS HAS ALWAYS BEEN THE CASE, RECENT DEVELOPMENTS HAVE DEMONSTRATED THAT SEVERAL DIFFERENT INTERPRETATIONS OF THE LAW ARE CURRENTLY BEING PUT FOURTH. HB 221 CLARIFIES THE LAW AND RESTATES THE ORIGINAL LEGISLATIVE INTENT.

VOLUNTEER FIREFIGHTERS RISK THEIR LIVES AND EXPEND NUMEROUS HOURS OF THEIR OWN TIME TO PROVIDE A VALUABLE PUBLIC SAFETY SERVICE. WE BELIEVE THAT THE RISK OF INJURY AND DEATH SHOULD NOT BE COMPOUNDED BY THE RISK OF FINANCIAL UNCERTAINTY IN THE EVENT OF AN ACCIDENT DURING PARTICIPATION IN FIRE DEPARTMENT ACTIVITIES.

THE MEMBERS OF THE ALASKA STATE FIREFIGHTERS ASSOCIATION URGE YOUR FULL SUPPORT FOR HB 221.

# ALASKA STATE FIREFIGHTERS ASSOCIATION



THREE SISTERS CHAPTER  
209 Lake St  
Sitka AK 99835

3/15/93

Lynda Giguere, Legislative Aide  
House Labor and Commerce Committee  
Representative Bill Hudson Chair  
Room 108  
State Capital  
Juneau AK 99801-1182

Dear Lynda Giguere,

Thank you very much for the work you have done on HB221. In light of the confusion the existing workers compensation statutes have caused, the clarifications this bill provides are of extreme importance.

Those of us in emergency services like myself believe very strongly in this bill. We want to see it pass.

Please let me know what I can do to help you pass this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ken Barbalace'.

Ken "YOGI" Barbalace  
Chapter President

P.S. I have asked members of my department to send you copies of this letter to show their support. We really do appreciate what you have done for us.

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Sincerely,

*Eric Augustin*  
Volunteer Firefighter/EMT

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Please let me know what I can do to help you pass this bill.

Sincerely,

*Susan Coffland*  
EMS Captain  
Sitka Fire Dept.

**HB**

**222**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred: April 19, 1993

FURTHER REFERRALS:

Date of Committee Action: 4/14/94

The FINANCE Committee considered:

HB 222

HOUSE BILL NC. 222

USE OF RENTED PROPERTY/LAW VIOLATIONS

"An Act relating to landlords and tenants, to termination of tenancies and recovery of rental premises, to tenant responsibilities, to the civil remedies of forcible entry and detainer and nuisance abatement, and to the duties of peace officers to notify landlords of arrests involving certain illegal activity on rental premises."

RECOMMENDATIONS:

be replaced with (S HB 222 LFIN)  the same title  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (DepuDate)

fiscal impact LAW

fiscal note(s) \_\_\_\_\_

zero fiscal note DPS

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

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Ronald J. Larson</i>	X	<i>Eileen P. Maclean</i>		✓	
<i>Mike Hanley</i>	X	<i>Lay Brown</i>		✓	
<i>Larry Martin</i>	X				
<i>John P. Powell</i>	X				
<i>Ben Grussendorf</i>	X				
<i>Tom Hoffman</i>					
<i>Mike Navarre</i>	✓				
<i>Tom Thunig</i>	X				
<i>Richard Foster</i>	X				

*Ronald J. Larson* *E.P. Maclean*  
CHAIRMAN'S SIGNATURE

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO: CSHB 222(FIN)

Revision Date: 04/12/94 Dept. Affected: Public Safety  
 Title: An Act relating to landlords and tenants termination BRU: Alaska State Troopers  
 Sponsor: Representative James Component: Criminal Investigations Bureau  
 Requestor: H. FIN COMPONENT SERIAL NO. 830

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL EXPENDITURES</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CHANGE IN REVENUES ( )</b>	-0-	-0-	-0-	-0-	-0-	-0-
<small>Revenue Code</small>						

**FUNDING: (Thousands of Dollars)**

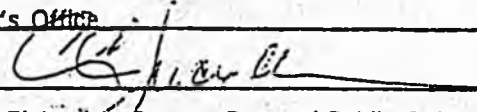
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 94) impact: \$ \_\_\_\_\_

**POSITIONS:**

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

**ANALYSIS: (Attach a separate page if necessary.)**  
 No fiscal impact to the Department of Public Safety is anticipated.

Prepared By: Lee Ann Lucas Phone: 465-4322  
 Division: Commissioner's Office Date: 04/12/94  
 Approved by Commissioner:  Date: 04/12/94  
 Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 222

Revision Date: December 13, 1993  
Title: "...relating to landlords and tenants...termination of tenancies...recovery of rental premises..."  
Sponsor: Representative James  
Requestor: Governor's Office

Department Affected: Department of Law  
BRU: Legal Services  
Component: Fair Business Practices  
COMPONENT SERIAL NO. 1823

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL	10.0					
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.0	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF	10.0					
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	10.0	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)  
Please see the attached analysis.

Prepared by: Richard I. Pegues, Director

Division: Administrative Services Division

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law

Phone: 465-3672

Date: December 13, 1993

Date: December 13, 1993

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For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 222

ANALYSIS CONTINUATION:

This bill amends several statutes relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities. The bill adds illegal activity involving alcoholic beverages, a controlled substance, or an imitation controlled substance to the list of activities that constitute a nuisance that may be enjoined and abated in a place used for the activity. All of the changes will have the effect of substantially changing the information the Department of Law provides to the public in its pamphlet on landlord and tenant rights. The department's publication of the pamphlet is mandated by AS 44.23.020(b)(8).

The department therefore requests \$10,000 to revise and republish the information pamphlet. Of this amount, \$2,500 will be used to publish a pamphlet supplement in the state Bar Association's monthly newsletter and \$7,500 will be used to publish a revised pamphlet for use by the general public. These funds should be sufficient to publish between 7,500 and 10,000 pamphlets.

8-LS0832R  
Chenoweth  
3/2/94

CS FOR HOUSE BILL NO. 222( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES JAMES, Porter

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to landlords and tenants and to the applicability of the Uniform  
2 Residential Landlord and Tenant Act, to termination of tenancies and recovery  
3 of rental premises, to tenant responsibilities, to the civil remedies of forcible entry  
4 and detainer and nuisance abatement, and to the duties of peace officers to notify  
5 landlords of arrests involving certain illegal activity on rental premises; and  
6 amending Rule 62(a) of the Alaska Rules of Civil Procedure and Rule 24(a) of  
7 the Alaska District Court Rules of Civil Procedure."

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

9 \* Section 1. AS 04.21 is amended by adding a new section to read:

10 Sec. 04.21.075. NOTICE TO LANDLORD FOLLOWING ARREST. (a) A  
11 peace officer who arrests a person the peace officer believes is not the owner of the  
12 premises for illegal activity involving alcoholic beverages on the premises shall

13 (1) make a reasonable attempt to discover the identity of the owner of

1 the premises; and

2 (2) notify the owner of the person's arrest

3 (A) in person; or

4 (B) in writing, at the last address listed on the assessment roll  
5 maintained by the municipality under AS 29.45.160 if the premises are located  
6 within a municipality that levies and collects a property tax; if an address is not  
7 available, notice of the person's arrest may be sent to the property owner at  
8 any other address known to the peace officer.

9 (b) In this section, "illegal activity involving alcoholic beverages" has the  
10 meaning given in AS 34.03.360.

11 \* Sec. 2. AS 09.45.090 is repealed and reenacted to read:

12 Sec. 09.45.090. UNLAWFUL HOLDING BY FORCE. (a) For property to  
13 which the provisions of AS 34.03 (Uniform Residential Landlord and Tenant Act)  
14 apply, unlawful holding by force includes each of the following within the meaning  
15 of AS 09.45.060 - 09.45.160:

16 (1) when, for failure or refusal to pay rent due on the lease or  
17 agreement under which the tenant or person holds, and after receipt of demand under  
18 AS 34.03.220(b) by the landlord for possession of the premises if the rent is not paid,  
19 the tenant fails or refuses to vacate or pay the rent within 10 days;

20 (2) when, after receipt of demand made in writing for the possession  
21 of the premises,

22 (A) because of a violation of a condition or covenant set out in  
23 AS 34.03.120(a), other than a breach of AS 34.03.120(a)(5) due to the  
24 deliberate infliction of substantial damage to the premises, the tenant fails or  
25 refuses to deliver up the possession of the premises within the number of days  
26 provided for termination under AS 34.03.220(a)(2);

27 (B) because of a violation of AS 34.03.120(a)(5) by deliberate  
28 infliction of substantial damage to the premises, the tenant fails or refuses to  
29 deliver up the possession of the premises by the date set out in the notice  
30 provided under AS 34.03.220(a)(1);

31 (C) because the tenant has violated AS 34.03.120(b) or the

1 tenant has used the dwelling unit or allowed the dwelling unit to be used for  
2 an illegal purpose, the tenant fails or refuses to deliver up the possession of the  
3 premises within five days;

4 (D) because the landlord requires the tenant to vacate the  
5 premises for a reason set out in AS 34.03.310(c)(2) or (c)(4) - (7), the tenant  
6 fails or refuses to deliver up the possession of the premises within the longer  
7 of 30 days or the period of notice for the landlord's recovery of possession of  
8 the premises set out in the rental agreement; or

9 (E) because the tenancy is based upon an estate at will or by  
10 sufferance, the tenant or person in possession continues in possession of the  
11 premises after expiration of the time for determining the tenancy; or

12 (3) when, without a demand made in writing for the possession of the  
13 premises,

14 (A) a person in possession continues in possession of the  
15 premises

16 (i) at the expiration of the time limited in the lease or  
17 agreement under which that person holds; or

18 (ii) without a valid rental agreement as that term is  
19 defined in AS 34.03.360 and without the consent of the landlord; or

20 (B) a tenant or person in possession continues in possession of  
21 the premises after the tenancy has been terminated by issuance of an order of  
22 abatement under AS 09.50.210(a).

23 (b) For property to which the provisions of AS 34.03 (Uniform Residential  
24 Landlord and Tenant Act) do not apply, unlawful holding by force includes each of  
25 the following within the meaning of AS 09.45.060 - 09.45.160:

26 (1) when, for failure or refusal to pay rent due on the lease or  
27 agreement under which the tenant or person in possession holds, after receipt of  
28 demand made in writing by the landlord for the possession of the premises if the rent  
29 is not paid, the tenant or person in possession fails or refuses to vacate or pay the rent  
30 due within 10 days;

31 (2) when, after receipt of demand made in writing for the possession

1 of the premises,

2 (A) because the tenant or person in possession has violated a  
3 condition or covenant of the lease or rental agreement other than breach of a  
4 covenant or condition set out in (B) of this paragraph, the tenant or person in  
5 possession of a premises fails or refuses to deliver up the possession of the  
6 premises within 10 days;

7 (B) because the tenant or person in possession has deliberately  
8 inflicted substantial damage to the premises, the tenant or person in possession  
9 of a premises fails or refuses to deliver up the possession of the premises on  
10 the date specified in the demand for possession; the date specified may not be  
11 less than 24 hours after the date of receipt of the demand for possession;

12 (C) because the tenant or person in possession has violated  
13 AS 34.05.100(a) or has used the premises for or allowed the premises to be  
14 used for an illegal purpose, the tenant or person in possession fails or refuses  
15 to deliver up the possession of the premises within five days;

16 (D) for premises the lease or occupation of which is primarily  
17 for the purpose of farming or agriculture, because the tenant or person in  
18 possession has violated of AS 34.05.025, other than a violation that is a breach  
19 under (B) or (C) of this paragraph, the tenant fails or refuses to deliver up  
20 possession of the premises within 30 days; or

21 (E) because the tenancy is based upon an estate at will or by  
22 sufferance, the tenant or person in possession continues in possession of the  
23 premises after expiration of the time for determining the tenancy; or

24 (3) when, without a demand made in writing for the possession of the  
25 premises,

26 (A) a person in possession continues in possession of the  
27 premises

28 (i) at the expiration of the time limited in lease or  
29 agreement under which that person holds; or

30 (ii) without a written lease or agreement and without the  
31 consent of the landlord; or

1 (B) a tenant or person in possession continues in the possession  
2 of the premises after the tenancy has been terminated by issuance of an order  
3 of abatement under AS 09.50.210(a).

4 \* Sec. 3. AS 09.45.100 is amended to read:

5 Sec. 09.45.100. [REQUISITES OF] NOTICE TO QUIT. (a) Except where  
6 demand for possession of premises is made under AS 09.45.090(a)(1) or (b)(1), in  
7 addition to a demand made in writing for possession of premises required to be  
8 given under AS 09.45.090, a person entitled to the premises who seeks to recover  
9 possession of the premises may not commence and maintain an action to recover  
10 possession of premises under AS 09.45.060 - 09.45.160 unless the person first gives  
11 a notice to quit to the person in possession.

12 (b) To recover possession of premises after a tenant or person in  
13 possession has failed or refused to pay rent due, for purposes of (d) of this section  
14 and AS 09.45.110, demand for possession of the premises under AS 09.45.090(a)(1)  
15 or (b)(1) constitutes notice to quit, and service of a separate notice to quit is not  
16 required.

17 (c) Except as provided in (b) of this section, a notice to quit may not be  
18 given until the number of days specified in AS 09.45.090 has expired following the  
19 receipt by the person in possession of the demand in writing for possession.  
20 However, if, under AS 09.45.090, there is no requirement that the person in  
21 possession receive a demand in writing for the possession of the premises, the  
22 person who seeks to recover possession may immediately serve a notice to quit  
23 under this section.

24 (d) A notice to quit shall be in writing and shall be served upon the tenant or  
25 person in possession by being

26 (1) delivered to the tenant or person;

27 (2) [OR] left at the premises in case of absence from the premises; [,]

28 or

29 (3) [THE NOTICE MAY BE] sent by registered or certified mail [, IN  
30 WHICH CASE AN ADDITIONAL THREE DAYS SHALL BE ADDED TO THE 10  
31 DAYS].

1 \* Sec. 4. AS 09.45.110 is amended to read:

2 Sec. 09.45.110. PERIOD BETWEEN SERVICE OF NOTICE AND ACTION  
3 BROUGHT. An action for the recovery of the possession of the premises may be  
4 commenced

5 (1) after service of [MAINTAINED IN THE CASES SPECIFIED IN  
6 AS 09.45.090(2) WHEN] the notice to quit [HAS BEEN SERVED] upon the tenant  
7 or person in possession

8 (A) by personal delivery of the notice to quit to the tenant  
9 or person; or

10 (B) by leaving a copy of the notice to quit at the premises;  
11 or

12 (2) on or after

13 (A) the 14th day following mailing of the demand for  
14 possession of the premises to the tenant or person in possession by  
15 registered or certified mail. when demand is made under  
16 AS 09.45.090(a)(1) or (b)(1); or

17 (B) the fourth day following mailing of the notice to quit to  
18 the tenant or person in possession by registered or certified mail in  
19 circumstances not covered by AS 09.45.090(a)(1) or (b)(1) [FOR THE  
20 PERIOD OF 10 DAYS BEFORE THE COMMENCEMENT OF THE ACTION  
21 UNLESS THE LEASING OR OCCUPATION IS FOR THE PURPOSE OF  
22 FARMING OR AGRICULTURE, IN WHICH CASE THE NOTICE SHALL  
23 BE SERVED 90 DAYS BEFORE COMMENCEMENT OF THE ACTION].

24 \* Sec. 5. AS 09.45 is amended by adding a new section to read:

25 Sec. 09.45.125. ORDER. If, after trial, the court finds and enters judgment  
26 against the tenant or person in possession, the court shall enter an order to vacate  
27 directed to the tenant or person in possession and, at the request of the person  
28 recovering possession of the premises, at the same time or at any later date may issue  
29 a writ of assistance to a peace officer to secure that officer's assistance in serving and  
30 enforcing the order to vacate.

31 \* Sec. 6. AS 09.45 is amended by adding a new section to read:

1           Sec. 09.45.135. ACTION AGAINST TENANT OCCUPYING PREMISES  
2 ABATED AS NUISANCE. In an action under AS 09.45.060 - 09.45.160 against a  
3 tenant or person in possession of premises for which an order of abatement has been  
4 entered under AS 09.50.210(a), a certified copy of the order of abatement is prima  
5 facie evidence of unlawful holding of the premises by force by a person who remains  
6 on the premises.

7 \* Sec. 7. AS 09.50.170 is amended to read:

8           Sec. 09.50.170. ABATEMENT OF PLACES USED FOR CERTAIN ACTS  
9 [IMMORAL ACT]. A person who erects, establishes, continues, maintains, uses,  
10 owns, or leases a building, structure, or other place used for one of the following  
11 activities [THE PURPOSES OF LEWDNESS, ASSIGNATION, OR PROSTITUTION  
12 OR ANY OTHER IMMORAL ACT] is guilty of maintaining a nuisance, and the  
13 building, structure, or place, or the ground itself in or upon which or in any part of  
14 which the activity [LEWDNESS, ASSIGNATION, OR PROSTITUTION] is  
15 conducted, permitted, [OR] carried on, continues, or exists, and its [THE] furniture,  
16 fixtures, and other contents, constitute a nuisance and may be enjoined and abated:

17           (1) prostitution:

18           (2) an illegal activity involving a place of prostitution: or

19           (3) an illegal activity involving

20                   (A) alcoholic beverages:

21                   (B) a controlled substance; or

22                   (C) an imitation controlled substance.

23 \* Sec. 8. AS 09.50.170 is amended by adding a new subsection to read:

24           (b) In this section, "illegal activity involving alcoholic beverages," "illegal  
25 activity involving a controlled substance," "illegal activity involving an imitation  
26 controlled substance," "illegal activity involving a place of prostitution," and  
27 "prostitution" have the meanings given in AS 34.03.360.

28 \* Sec. 9. AS 09.50 is amended by adding a new section to read:

29           Sec. 09.50.175. ADMISSIBILITY OF EVIDENCE TO PROVE NUISANCE.  
30 In an action brought under AS 09.50.170(a) to prove the existence of a nuisance, the  
31 court may consider

- 1 (1) evidence of reputation within a community;
- 2 (2) evidence derived from records of the courts of the state or of the
- 3 United States that relate to previous complaints concerning alleged violations of, and
- 4 to arrests for or convictions of violations of, laws based on activity set out in
- 5 AS 09.50.170.

6 \* Sec. 10. AS 09.50.210 is amended to read:

7 Sec. 09.50.210. ORDER OF ABATEMENT. (a) If the court finds and

8 enters [UPON] judgment that a nuisance exists, the court shall enter an order of

9 abatement. The order of abatement must direct

10 (1) termination of the lease or rental agreement, if any, on the

11 premises subject to the order of abatement, if the tenant who occupies under the

12 lease or rental agreement has been given notice of the proceedings under

13 AS 09.50.170 - 09.50.240;

14 (2) [SHALL BE ENTERED DIRECTING] the removal from the

15 building or place of the fixtures, furniture, and movable property used in the nuisance

16 and their sale in the manner provided for the sale of chattels under execution;

17 (3) [. THE ORDER SHALL ALSO DIRECT] the closing of the

18 building or place against its use for any purpose for a period of one year unless sooner

19 released.

20 (b) A person who breaks and enters or uses a building, structure, or other

21 place [SO] directed to be closed by an order entered under (a)(3) of this section is

22 guilty of contempt and shall be punished for contempt as provided in AS 09.50.200.

23 \* Sec. 11. AS 09.50.230 is amended to read:

24 Sec. 09.50.230. RELEASE OF PREMISES TO OWNER. (a) The court may

25 order premises abated under AS 09.50.210 delivered to the owner and cancel the

26 order of abatement if [IF] the owner of the premises

27 (1) has not been guilty of a contempt in the proceedings;

28 (2) [, AND] appears and pays all costs, fees, and allowances that

29 [WHICH] are a lien on the premises; [,] and

30 (3) files a bond with sureties approved by the court in an amount

31 [THE FULL VALUE OF THE PROPERTY AS] determined by the court to the effect

1 that the owner will abate the nuisance that exists at the building or place and prevent  
2 the nuisance from being established within a period of one year thereafter [, THE  
3 COURT MAY ORDER THE PREMISES TO BE DELIVERED TO THE OWNER  
4 AND CANCEL THE ORDER OF ABATEMENT].

5 (b) The lease of the property does not release it from a judgment, lien, penalty,  
6 or liability to which it may be subject by law.

7 (c) A cancellation of the order of abatement does not affect a termination  
8 of a lease or rental agreement made under AS 09.50.210(a)(1).

9 \* Sec. 12. AS 17.30 is amended by adding a new section to read:

10 Sec. 17.30.160. NOTICE TO LANDLORD FOLLOWING ARREST. (a) A  
11 peace officer who arrests a person the peace officer believes is not the owner of the  
12 premises for an illegal activity involving a controlled substance or an illegal activity  
13 involving an imitation controlled substance on the premises shall

14 (1) make a reasonable attempt to discover the identity of the owner of  
15 the premises; and

16 (2) notify the owner of the person's arrest

17 (A) in person; or

18 (B) in writing, at the last address listed on the assessment roll  
19 maintained by the municipality under AS 29.45.160 if the premises are located  
20 within a municipality that levies and collects a property tax; if an address is not  
21 available, notice of the person's arrest may be sent to the property owner at  
22 any other address known to the peace officer.

23 (b) In this section, "illegal activity involving a controlled substance" and  
24 "illegal activity involving an imitation controlled substance" have the meanings given  
25 in AS 34.03.360.

26 \* Sec. 13. AS 34.03.020 is amended by adding a new subsection to read:

27 (e) If required by the landlord, the landlord and the tenant shall include within  
28 the rental agreement, incorporate by reference in the rental agreement, or add as a  
29 separate attachment to the rental agreement a premises condition statement, setting out  
30 the condition of the premises, including fixtures but excluding reference to any of the  
31 other contents of the premises, and, if applicable, a contents inventory itemizing or

1 describing all of the furnishings and other contents of the premises and specifying the  
2 condition of each of them. In the premises condition statement and contents inventory,  
3 the parties shall describe the premises and its contents at the commencement of the  
4 term of the period of the occupancy covered by the rental agreement. When signed  
5 by the parties, the premises condition statement and contents inventory completed  
6 under this subsection become part of the rental agreement.

7 \* Sec. 14. AS 34.03.070(b) is amended to read:

8 (b) Upon termination of the tenancy, property or money held by the landlord  
9 as prepaid rent or as a security deposit may be applied to the payment of accrued rent  
10 and the amount of damages that the landlord has suffered by reason of the tenant's  
11 noncompliance with AS 34.03.120. ["DAMAGES" DOES NOT INCLUDE WEAR  
12 RESULTING FROM ORDINARY USE OF THE PREMISES.] The accrued rent and  
13 damages must be itemized by the landlord in a written notice mailed to the tenant's  
14 last known address within the time limit prescribed by (g) of this section, together with  
15 the amount due the tenant. In this subsection, "damages"

16 (1) means deterioration of the premises and, if applicable, of the  
17 contents of the premises;

18 (2) does not include deterioration

19 (A) that is the result of the tenant's use of the premises by  
20 normal, nonabusive living;

21 (B) caused by the landlord's failure to prepare for expected  
22 conditions or by the landlord's failure to comply with an obligation of the  
23 landlord imposed by this chapter.

24 \* Sec. 15. AS 34.03.090 is amended by adding a new subsection to read:

25 (b) As a condition of delivery of possession of the premises to the tenant, the  
26 landlord may require the tenant to acknowledge or verify by the tenant's signature the  
27 accuracy of the premises condition statement and contents inventory prepared under  
28 AS 34.03.020(e). Before requiring the tenant's signature, the landlord shall first advise  
29 the tenant that the premises condition statement and contents inventory

30 (1) may be used by the landlord as the basis

31 (A) to determine whether prepaid rent or a security deposit shall

1 be applied to the payment of damages to the premises when authorized by  
2 AS 34.03.070(b); and

3 (B) to compute the recovery of other damages to which the  
4 parties may be entitled under this chapter; and

5 (2) is, in an action initiated by a party to recover damages or to obtain  
6 other relief to which a party may be entitled under this chapter, presumptive evidence  
7 of the condition of the premises and its contents at the commencement of the term of  
8 the period of occupancy covered by the rental agreement.

9 \* Sec. 16. AS 34.03.110(a) is amended to read:

10 (a) Unless otherwise agreed, a landlord who conveys premises that include a  
11 dwelling unit subject to a rental agreement in a good faith sale to a bona fide  
12 purchaser is relieved of liability under the rental agreement and this chapter as to  
13 events occurring subsequent to written notice to the tenant of the conveyance.  
14 However,

15 (1) the landlord remains liable to the tenant for the property and money  
16 to which the tenant is entitled under AS 34.03.070, unless the property and money are  
17 specifically assigned to and accepted by the purchaser; and

18 (2) the provisions of

19 (A) a premises condition statement prepared under  
20 AS 34.03.020(e) between the landlord and the tenant remains valid as  
21 between the purchaser and the tenant until a new premises condition  
22 statement is entered into between the purchaser and the tenant; and

23 (B) a contents inventory prepared under AS 34.03.020(e)  
24 between the landlord and the tenant remains valid as between the  
25 purchaser and the tenant for the contents remaining on the premises after  
26 the conveyance of the premises until a new contents inventory is entered  
27 into between the purchaser and the tenant.

28 \* Sec. 17. AS 34.03.120 is amended by adding a new subsection to read:

29 (b) The tenant may not knowingly engage at the premises in prostitution, an  
30 illegal activity involving a place of prostitution, an illegal activity involving alcoholic  
31 beverages, an illegal activity involving a controlled substance, or an illegal activity

1 involving an imitation controlled substance, or knowingly permit others in the premises  
2 to engage in one or more of those activities at the rental premises.

3 \* Sec. 18. AS 34.03.220(a) is amended to read:

4 (a) Except as provided in this chapter,

5 (1) if the tenant or someone in the tenant's control deliberately  
6 inflicts substantial damage to the premises in breach of AS 34.03.120(a)(5), the  
7 landlord may deliver a written notice to the tenant specifying the act constituting  
8 the breach and specifying that the rental agreement will terminate upon a date  
9 that is not less than 24 hours after receipt of the notice; at any time after the date  
10 set out in the notice, the landlord may serve a notice to quit the premises; for  
11 purposes of this paragraph, damage to premises is "substantial" if the loss,  
12 destruction, or defacement of property attributable to the deliberate infliction of  
13 damage to the premises exceeds the amount of the security deposit held by the  
14 landlord under AS 34.03.070;

15 (2) if there is a material noncompliance by the tenant with the rental  
16 agreement or noncompliance with AS 34.03.120, other than deliberate infliction of  
17 substantial damage to the premises, materially affecting health and safety, the  
18 landlord may deliver a written notice to the tenant specifying the acts and omissions  
19 constituting the breach and specifying that the rental agreement will terminate upon  
20 a date not less than 10 [20] days after receipt of the notice; if [. IF] the breach is not  
21 remedied in five [10] days, the rental agreement terminates as provided in the notice  
22 subject to the provisions of this section; if [. IF] the breach is remediable by repairs  
23 or the payment of damages or otherwise and the tenant adequately remedies the breach  
24 before the date specified in the notice, the rental agreement will not terminate; in [.  
25 IN] the absence of due care by the tenant, if substantially the same act or omission that  
26 constituted a prior noncompliance of which notice was given recurs within six months,  
27 the landlord may terminate the rental agreement upon at least five [10] days written  
28 notice specifying the breach and the date of termination of the rental agreement.

29 \* Sec. 19. AS 34.03.220 is amended by adding a new subsection to read:

30 (d) An order of abatement entered by a court under AS 09.50.170 terminates  
31 a rental agreement on the premises subject to the order of abatement.

1 \* Sec. 20. AS 34.03.330(b) is amended to read:

2 (b) Unless created to avoid the application of this chapter, the following  
3 arrangements are not governed by this chapter:

4 (1) residence at an institution, public or private, or in premises used  
5 as temporary housing, public or private, if incidental to detention or the provision  
6 of medical, geriatric, educational, counseling, religious, or similar services;

7 (2) occupancy under a contract of sale of a dwelling unit or the  
8 property of which it is a part [.] if the occupant is the purchaser or a person who  
9 succeeds to the interest of a purchaser;

10 (3) occupancy by a member of a fraternal or social organization in the  
11 portion of a structure operated for the benefit of the organization;

12 (4) transient occupancy in a hotel, motel, lodgings, or other transient  
13 facility;

14 (5) occupancy by an employee of a landlord whose right to occupancy  
15 is conditioned upon employment substantially for services, maintenance, or repair to  
16 the premises;

17 (6) occupancy by an owner of a condominium unit or a holder of a  
18 proprietary lease in a cooperative;

19 (7) occupancy under a rental agreement covering premises used by the  
20 occupant primarily for agricultural purposes.

21 \* Sec. 21. AS 34.03 is amended by adding a new section to read:

22 Sec. 34 03.335. PROOF OF CERTAIN PROPERTY DAMAGE CLAIMS. In  
23 an action initiated by a party to recover damages or to obtain other relief to which a  
24 party may be entitled under this chapter, a premises condition statement and contents  
25 inventory prepared under AS 34.03.020(e) is presumptive evidence of the condition of  
26 the premises and its contents at the commencement of the term of the period of  
27 occupancy covered by the rental agreement between the parties. Unless its authenticity  
28 is rebutted by clear and convincing evidence by the party against whom the statement  
29 and contents inventory is offered, the statement and contents inventory may be offered  
30 by a party, without additional supporting evidence, as the basis on which to compute  
31 the recovery of damages to which the party may be entitled under this chapter.

1 \* Sec. 22. AS 34.03 is amended by adding new sections to read:

2 Sec. 34.03.342. NOTICE TO LANDLORD FOLLOWING ARREST  
3 RELATED TO PROSTITUTION. A peace officer who arrests a person the peace  
4 officer believes is not the owner of the premises for prostitution or an illegal activity  
5 involving a place of prostitution alleged to have been committed by the person on the  
6 premises shall

7 (1) make a reasonable attempt to discover the identity of the owner of  
8 the premises; and

9 (2) notify the owner of the person's arrest

10 (A) in person; or

11 (B) in writing, a the last address listed on the assessment roll  
12 maintained by the municipality under AS 29.45.160 if the premises are located  
13 within a municipality that levies and collects a property tax; if an address is not  
14 available, notice of the person's arrest may be sent to the property owner at  
15 any other address known to the peace officer.

16 Sec. 34.03.345. MEDIATION. A landlord and a tenant may agree to mediate  
17 disputes between them as to an obligation of either of them arising out of the rental  
18 agreement. If the landlord and tenant agree to mediate disputes, they shall include the  
19 scope of the agreement within the executed rental agreement, incorporate a reference  
20 to that agreement within the rental agreement, or add the text of the agreement as a  
21 separate attachment to the rental agreement.

22 \* Sec. 23. AS 34.03.360 is amended by adding new paragraphs to read:

23 (19) "illegal activity involving alcoholic beverages" means a person's  
24 delivery of an alcoholic beverage in violation of AS 04.11.010(b) in an area where the  
25 results of a local option election have, under AS 04.11.490 - 04.11.500, prohibited the  
26 Alcoholic Beverage Control Board from issuing, renewing, or transferring a liquor  
27 license or permit under AS 04;

28 (20) "illegal activity involving a controlled substance" means a  
29 violation of AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or 11.71.040(a)(1),  
30 (2), or (5);

31 (21) "illegal activity involving an imitation controlled substance" means

1 a violation of AS 11.73.010 - 11.73.030;

2 (22) "illegal activity involving a place of prostitution" means a violation  
3 of AS 11.66.120(a)(1) or 11.66.130(a)(1) or (4);

4 (23) "prostitution" means an act in violation of AS 11.66.100.

5 \* Sec. 24. AS 34.05 is amended by adding a new section to read:

6 ARTICLE 3. ILLEGAL ACTIVITIES IN PREMISES NOT  
7 SUBJECT TO UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT.

8 Sec. 34.05.100. TENANT RESPONSIBILITIES IN PREMISES NOT  
9 SUBJECT TO AS 34.03. (a) In rented premises other than premises to which the  
10 provisions of AS 34.03 apply, the tenant may not knowingly engage at the premises  
11 in prostitution, an illegal activity involving a place of prostitution, an illegal activity  
12 involving alcoholic beverages, an illegal activity involving a controlled substance, or  
13 an illegal activity involving an imitation controlled substance, or knowingly permit  
14 others in the premises to engage in one or more of those activities at the rental  
15 premises.

16 (b) If there is noncompliance with (a) of this section, a person may seek relief  
17 under AS 09.50.170 - 09.50.240.

18 (c) An order of abatement entered by a court under AS 09.50.210 against  
19 premises under this section terminates a rental agreement on the premises subject to  
20 the order of abatement.

21 (d) A peace officer who arrests a person the peace officer believes is not the  
22 owner of the premises for prostitution or an illegal activity involving a place of  
23 prostitution alleged to have been committed by the person on the premises shall

24 (1) make a reasonable attempt to discover the identity of the owner of  
25 the premises; and

26 (2) notify the owner of the person's arrest

27 (A) in person; or

28 (B) in writing, at the last address listed on the assessment roll  
29 maintained by the municipality under AS 29.45.160 if the premises are located  
30 within a municipality that levies and collects a property tax; if an address is not  
31 available, notice of the person's arrest may be sent to the property owner at

1 any other address known to the peace officer.

2 (e) In this section,

3 (1) "illegal activity involving alcoholic beverages," "illegal activity  
4 involving a controlled substance," "illegal activity involving an imitation controlled  
5 substance," "illegal activity involving a place of prostitution," and "prostitution" have  
6 the meanings given in AS 34.03.360;

7 (2) "premises" means a structure or the structure of which it is a part,  
8 and facilities and appurtenances in it, and grounds, areas, and facilities held out for the  
9 use of persons entitled to possession under an agreement that relates to its use.

10 \* Sec. 25. AS 34.03.360(18) is repealed.

11 \* Sec. 26. AS 09.45.125, added by sec. 5 of this Act, allowing orders to vacate and writs  
12 of assistance to issue at the same time as the entry of judgment or at any later date, has the  
13 effect of amending Rule 62(a) of the Alaska Rules of Civil Procedure and Rule 24(a) of the  
14 Alaska District Court Rules of Civil Procedure by eliminating the respective periods of  
15 automatic stays of enforcement upon judgment for orders to vacate premises.

16 \* Sec. 27. AS 09.45.125, added by sec. 5 of this Act, takes effect only if sec. 26 of this  
17 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,  
18 Constitution of the State of Alaska.

8-LS0832ND  
Chenoweth  
3/23/94

CS FOR HOUSE BILL NO. 222( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES JAMES, Porter

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to landlords and tenants and to the applicability of the Uniform  
2 Residential Landlord and Tenant Act, to termination of tenancies and recovery  
3 of rental premises, to tenant responsibilities, to the civil remedies of forcible entry  
4 and detainer and nuisance abatement, and to the duties of peace officers to notify  
5 landlords of arrests involving certain illegal activity on rental premises; and  
6 amending Rule 62(a) of the Alaska Rules of Civil Procedure and Rule 24(a) of  
7 the Alaska District Court Rules of Civil Procedure."

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

9 \* Section 1. AS 04.21 is amended by adding a new section to read:

10 Sec. 04.21.075. NOTICE TO LANDLORD FOLLOWING ARREST. (a) A  
11 peace officer who arrests a person the peace officer believes is not the owner of the  
12 premises for illegal activity involving alcoholic beverages on the premises shall

13 (1) make a reasonable attempt to discover the identity of the owner of

1 the premises; and

2 (2) notify the owner of the person's arrest

3 (A) in person; or

4 (B) in writing, at the last address listed on the assessment roll  
5 maintained by the municipality under AS 29.45.160 if the premises are located  
6 within a municipality that levies and collects a property tax; if an address is not  
7 available, notice of the person's arrest may be sent to the property owner at  
8 any other address known to the peace officer.

9 (b) In this section, "illegal activity involving alcoholic beverages" and "peace  
10 officer" have the meanings given in AS 34.03.360.

11 \* Sec. 2. AS 09.45.090 is repealed and reenacted to read:

12 Sec. 09.45.090. UNLAWFUL HOLDING BY FORCE. (a) For property to  
13 which the provisions of AS 34.03 (Uniform Residential Landlord and Tenant Act)  
14 apply, unlawful holding by force includes each of the following:

15 (1) when, for failure or refusal to pay rent due on the lease or  
16 agreement under which the tenant or person holds, and after service, under  
17 AS 09.45.100(b), of the written notice required by AS 34.03.220(b) by the landlord for  
18 recovery of possession of the premises if the rent is not paid, the tenant or person in  
19 possession fails or refuses to vacate or pay the rent within 10 days;

20 (2) when,

21 (A) after a violation of a condition or covenant set out in  
22 AS 34.03.120(a), other than a breach of AS 34.03.120(a)(5) due to the  
23 deliberate infliction of substantial damage to the premises, or after a breach or  
24 violation of a condition or covenant in a lease or rental agreement, and  
25 following service of written notice to quit, the tenant fails or refuses to deliver  
26 up the possession of the premises within the number of days provided for  
27 termination under AS 34.03.220(a)(2);

28 (B) after a violation of AS 34.03.120(a)(5) by deliberate  
29 infliction of substantial damage to the premises, following service of written  
30 notice to quit, the tenant fails or refuses to deliver up the possession of the  
31 premises by the date set out in the written notice to quit under

1 AS 34.03.220(a)(1);

2 (C) the landlord requires the tenant to vacate the premises for  
3 a reason set out in AS 34.03.310(c)(2) or (c)(4) - (7), following service of  
4 written notice to quit, the tenant fails or refuses to deliver up the possession of  
5 the premises within the longer of 30 days or the period of notice for the  
6 landlord's recovery of possession of the premises set out in the rental  
7 agreement;

8 (D) in a mobile home park, there is to be a change in the use  
9 of land for which termination of tenancy is authorized by AS 34.03.225(a)(4),  
10 following service of written notice to quit, the mobile home dweller or tenant  
11 fails or refuses to vacate within the number of days provided for termination  
12 under AS 34.03.225(a)(4);

13 (E) after termination of a periodic tenancy as prescribed by  
14 AS 34.03.290(a) or (b), following service of written notice to quit, the tenant  
15 remains in possession without the landlord's consent after expiration of the  
16 term of the rental agreement or after the date of its expiration;

17 (F) after the tenant has violated AS 34.03.120(b) or the tenant  
18 has used the dwelling unit or allowed the dwelling unit to be used for an illegal  
19 purpose in violation of AS 34.03.310(c)(3), other than a breach of  
20 AS 34.03.120(b), following service of written notice to quit, the tenant fails or  
21 refuses to deliver up the possession of the premises within five days; or

22 (G) following service of written notice to quit, a person in  
23 possession continues in possession of the premises without a valid rental  
24 agreement, as that term is defined in AS 34.03.360, and without the consent of  
25 the landlord; or

26 (3) when, without a notice to quit, a tenant or person in possession  
27 continues in possession of the premises after the tenancy has been terminated by  
28 issuance of an order of abatement under AS 09.50.210(a).

29 (b) For property to which the provisions of AS 34.03 (Uniform Residential  
30 Landlord and Tenant Act) do not apply, lawful holding by force includes each of  
31 the following:

1 (1) when, for failure or refusal to pay rent due on the lease or  
2 agreement under which the tenant or person in possession holds, after service, under  
3 AS 09.45.100(c), of demand made in writing by the landlord for the possession of the  
4 premises if the rent is not paid, the tenant or person in possession fails or refuses to  
5 vacate or pay the rent due within 10 days;

6 (2) when, following service of a written notice to quit,

7 (A) after the tenant or person in possession has breached or  
8 violated a condition or covenant of the lease or rental agreement other than  
9 breach of a covenant or condition set out in (B) of this paragraph, the tenant  
10 or person in possession of a premises fails or refuses to deliver up the  
11 possession of the premises within 10 days;

12 (B) after the tenant or person in possession has deliberately  
13 inflicted substantial damage to the premises, the tenant or person in possession  
14 of a premises fails or refuses to deliver up the possession of the premises on  
15 the date required by the landlord; the date specified may not be less than 24  
16 hours after demand for possession of the premises by the landlord;

17 (C) after the tenant or person in possession has violated  
18 AS 34.05.100(a) or has used the premises for or allowed the premises to be  
19 used for an illegal purpose, the tenant or person in possession fails or refuses  
20 to deliver up the possession of the premises within five days;

21 (D) for premises the lease or occupation of which is primarily  
22 for the purpose of farming or agriculture, after the tenant or person in  
23 possession has violated of AS 34.05.025, other than a violation that is a breach  
24 under (B) or (C) of this paragraph, the tenant fails or refuses to deliver up  
25 possession of the premises within 30 days;

26 (E) a tenancy based upon an estate at will terminates, and the  
27 tenant or person in possession continues in possession of the premises; or

28 (F) a person in possession continues in possession of the  
29 premises

30 (i) at the expiration of the time limited in the lease or  
31 agreement under which that person holds; or

1 (ii) without a written lease or agreement and without the  
2 consent of the landlord; or

3 (3) when, without a notice to quit, a tenant or person in possession  
4 continues in the possession of the premises after the tenancy has been terminated by  
5 issuance of an order of abatement under AS 09.50.210(a).

6 (c) When a landlord who is required to provide written notice to a tenant or  
7 person in possession under (a) or (b) of this section, provides notice by mail,  
8 notwithstanding any other provision of law, three days must be added to the period set  
9 out in (a) or (b) of this section to determine the date on and after which the tenant or  
10 person in possession unlawfully holds by force.

11 \* Sec. 3. AS 09.45.100 is amended to read:

12 Sec. 09.45.100. [REQUISITES OF] NOTICE TO QUIT. (a) Except where  
13 service of written notice is made under AS 09.45.090(a)(1) or (b)(1), or except  
14 when notice to quit is not required by AS 09.45.090(a)(3) or (b)(3), a person  
15 entitled to the premises who seeks to recover possession of the premises may not  
16 commence and maintain an action to recover possession of premises under  
17 AS 09.45.060 - 09.45.160 unless the person first gives a notice to quit to the person  
18 in possession.

19 (b) To recover possession of premises after a tenant or person in  
20 possession has failed or refused to pay rent due, for purposes of (c) of this section,  
21 AS 09.45.110 and AS 34.03.310(c), service of the written notice required by  
22 AS 34.03.220(b) or of a demand in writing for possession of the premises  
23 constitutes notice to quit, and service of a separate notice to quit is not required.

24 (c) A notice to quit shall be in writing and shall be served upon the tenant or  
25 person in possession by being

26 (1) delivered to the tenant or person;

27 (2) [OR] left at the premises in case of absence from the premises; [,]

28 or

29 (3) [THE NOTICE MAY BE] sent by registered or certified mail [, IN  
30 WHICH CASE AN ADDITIONAL THREE DAYS SHALL BE ADDED TO THE 10  
31 DAYS].

1 \* Sec. 4. AS 09.45 is amended by adding a new section to read:

2 Sec. 09.45.105. CONTENT OF NOTICE TO QUIT. Notice to quit served  
3 upon the tenant or person in possession must

4 (1) state

5 (A) the nature of the breach or violation of the lease or rental  
6 agreement or other reason for termination of the tenancy of the tenant or person  
7 in possession;

8 (B) in circumstances in which the breach or violation described  
9 in (A) of this paragraph may be corrected by the tenant or person in possession  
10 to avoid the termination of the tenancy, the nature of the remedial action to be  
11 taken, and the date and time by which the corrective actions must be completed  
12 in order to avoid termination of the tenancy;

13 (C) the date and time when the tenancy of the tenant or person  
14 in possession under the lease or rental agreement will terminate;

15 (2) direct the tenant or person in possession to quit the premises not  
16 later than the date and time of the termination of the tenancy; and

17 (3) give notice to the tenant or person in possession that, if the tenancy  
18 terminates and the tenant or person in possession continues to occupy the premises, the  
19 landlord may commence a civil action to remove the tenant or person and recover  
20 possession.

21 \* Sec. 5. AS 09.45.110 is repealed and reenacted to read:

22 Sec. 09.45.110. TIME WHEN ACTION TO RECOVER POSSESSION MAY  
23 BE BROUGHT. An action for the recovery of the possession of the premises may be  
24 commenced on or after the date the tenant or person in possession unlawfully holds  
25 possession of the dwelling unit or rental premises by force, as determined under  
26 AS 09.45.090.

27 \* Sec. 6. AS 09.45 is amended by adding a new section to read:

28 Sec. 09.45.125. ORDER. If, after trial, the court finds and enters judgment  
29 against the tenant or person in possession, the court shall enter an order to vacate  
30 directed to the tenant or person in possession and, at the request of the person  
31 recovering possession of the premises, at the same time or at any later date may issue

1 a writ of assistance to a peace officer to secure that officer's assistance in serving and  
2 enforcing the order to vacate.

3 \* Sec. 7. AS 09.45 is amended by adding a new section to read:

4 Sec. 09.45.135. ACTION AGAINST TENANT OCCUPYING PREMISES  
5 ABATED AS NUISANCE. In an action under AS 09.45.060 - 09.45.160 against a  
6 tenant or person in possession of premises for which an order of abatement has been  
7 entered under AS 09.50.210(a), a certified copy of the order of abatement is prima  
8 facie evidence of unlawful holding of the premises by force by a person who remains  
9 on the premises.

10 \* Sec. 8. AS 09.50.170 is amended to read:

11 Sec. 09.50.170. ABATEMENT OF PLACES USED FOR CERTAIN ACTS  
12 [IMMORAL ACT]. A person who erects, establishes, continues, maintains, uses,  
13 owns, or leases a building, structure, or other place used for one of the following  
14 activities [THE PURPOSES OF LEWDNESS, ASSIGNATION, OR PROSTITUTION  
15 OR ANY OTHER IMMORAL ACT] is guilty of maintaining a nuisance, and the  
16 building, structure, or place, or the ground itself in or upon which or in any part of  
17 which the activity [LEWDNESS, ASSIGNATION, OR PROSTITUTION] is  
18 conducted, permitted, [OR] carried on, continues, or exists, and its [THE] furniture,  
19 fixtures, and other contents, constitute a nuisance and may be enjoined and abated:

20 (1) prostitution;

21 (2) an illegal activity involving a place of prostitution; or

22 (3) an illegal activity involving

23 (A) alcoholic beverages;

24 (B) a controlled substance; or

25 (C) an imitation controlled substance.

26 \* Sec. 9. AS 09.50.170 is amended by adding a new subsection to read:

27 (b) In this section, "illegal activity involving alcoholic beverages," "illegal  
28 activity involving a controlled substance," "illegal activity involving an imitation  
29 controlled substance," "illegal activity involving a place of prostitution," and  
30 "prostitution" have the meanings given in AS 34.03.360.

31 \* Sec. 10. AS 09.50 is amended by adding a new section to read:

1           Sec. 09.50.175. ADMISSIBILITY OF EVIDENCE TO PROVE NUISANCE.  
2           In an action brought under AS 09.50.170(a) to prove the existence of a nuisance, the  
3           court may consider

- 4                     (1) evidence of reputation within a community;  
5                     (2) evidence derived from records of the courts of the state or of the  
6           United States that relate to previous complaints concerning alleged violations of, and  
7           to arrests for or convictions of violations of, laws based on activity set out in  
8           AS 09.50.170.

9           \* Sec. 11. AS 09.50.210 is amended to read:

10                    Sec. 09.50.210. ORDER OF ABATEMENT. (a) If the court finds and  
11           enters [UPON] judgment that a nuisance exists, the court shall enter an order of  
12           abatement. The order of abatement must direct

13                           (1) termination of the lease or rental agreement, if any, on the  
14           premises subject to the order of abatement, if the tenant who occupies under the  
15           lease or rental agreement has been given notice of the proceedings under  
16           AS 09.50.170 - 09.50.240:

17                           (2) [SHALL BE ENTERED DIRECTING] the removal from the  
18           building or place of the fixtures, furniture, and movable property used in the nuisance  
19           and their sale in the manner provided for the sale of chattels under execution;

20                           (3) [. THE ORDER SHALL ALSO DIRECT] the closing of the  
21           building or place against its use for any purpose for a period of one year unless sooner  
22           released.

23                           (b) A person who breaks and enters or uses a building, structure, or other  
24           place [SO] directed to be closed by an order entered under (a)(3) of this section is  
25           guilty of contempt and shall be punished for contempt as provided in AS 09.50.200.

26           \* Sec. 12. AS 09.50.230 is amended to read:

27                            Sec. 09.50.230. RELEASE OF PREMISES TO OWNER. (a) The court may  
28           order premises abated under AS 09.50.210 delivered to the owner and cancel the  
29           order of abatement if [IF] the owner of the premises

30                            (1) has not been guilty of a contempt in the proceedings;

31                            (2) [, AND] appears and pays all costs, fees, and allowances that

1 [WHICH] are a lien on the premises; [,] and

2 (3) files a bond with sureties approved by the court in an amount  
3 [THE FULL VALUE OF THE PROPERTY AS] determined by the court to the effect  
4 that the owner will abate the nuisance that exists at the building or place and prevent  
5 the nuisance from being established within a period of one year thereafter [, THE  
6 COURT MAY ORDER THE PREMISES TO BE DELIVERED TO THE OWNER  
7 AND CANCEL THE ORDER OF ABATEMENT].

8 (b) The lease of the property does not release it from a judgment, lien, penalty,  
9 or liability to which it may be subject by law.

10 (c) A cancellation of the order of abatement does not affect a termination  
11 of a lease or rental agreement made under AS 09.50.210(a)(1).

12 \* Sec. 13. AS 17.30 is amended by adding a new section to read:

13 Sec. 17.30.160. NOTICE TO LANDLORD FOLLOWING ARREST. (a) A  
14 peace officer who arrests a person the peace officer believes is not the owner of the  
15 premises for an illegal activity involving a controlled substance or an illegal activity  
16 involving an imitation controlled substance on the premises shall

17 (1) make a reasonable attempt to discover the identity of the owner of  
18 the premises; and

19 (2) notify the owner of the person's arrest

20 (A) in person; or

21 (B) in writing, at the last address listed on the assessment roll  
22 maintained by the municipality under AS 29.45.160 if the premises are located  
23 within a municipality that levies and collects a property tax; if an address is not  
24 available, notice of the person's arrest may be sent to the property owner at  
25 any other address known to the peace officer.

26 (b) In this section, "illegal activity involving a controlled substance," "illegal  
27 activity involving an imitation controlled substance," and "peace officer" have the  
28 meanings given in AS 34.03.360.

29 \* Sec. 14. AS 34.03.020 is amended by adding a new subsection to read:

30 (e) If required by the landlord, the landlord and the tenant shall include within  
31 the rental agreement, incorporate by reference in the rental agreement, or add as a

1 separate attachment to the rental agreement a premises condition statement, setting out  
2 the condition of the premises, including fixtures but excluding reference to any of the  
3 other contents of the premises, and, if applicable, a contents inventory itemizing or  
4 describing all of the furnishings and other contents of the premises and specifying the  
5 condition of each of them. In the premises condition statement and contents inventory,  
6 the parties shall describe the premises and its contents at the commencement of the  
7 term of the period of the occupancy covered by the rental agreement. When signed  
8 by the parties, the premises condition statement and contents inventory completed  
9 under this subsection become part of the rental agreement.

10 \* Sec. 15. AS 34.03.070(b) is amended to read:

11 (b) Upon termination of the tenancy, property or money held by the landlord  
12 as prepaid rent or as a security deposit may be applied to the payment of accrued rent  
13 and the amount of damages that the landlord has suffered by reason of the tenant's  
14 noncompliance with AS 34.03.120. ["DAMAGES" DOES NOT INCLUDE WEAR  
15 RESULTING FROM ORDINARY USE OF THE PREMISES.] The accrued rent and  
16 damages must be itemized by the landlord in a written notice mailed to the tenant's  
17 last known address within the time limit prescribed by (g) of this section, together with  
18 the amount due the tenant. In this subsection, "damages"

19 (1) means deterioration of the premises and, if applicable, of the  
20 contents of the premises;

21 (2) does not include deterioration

22 (A) that is the result of the tenant's use of the premises by  
23 normal, nonabusive living;

24 (B) caused by the landlord's failure to prepare for expected  
25 conditions or by the landlord's failure to comply with an obligation of the  
26 landlord imposed by this chapter.

27 \* Sec. 16. AS 34.03.090 is amended to read:

28 Sec. 34.03.090. LANDLORD TO SUPPLY POSSESSION OF THE  
29 DWELLING UNIT. At the commencement of the term the landlord shall deliver  
30 possession of the premises to the tenant in compliance with the rental agreement and  
31 AS 34.03.100. The landlord may, after serving a notice to quit under AS 09.45.100

1        - 09.45.105 to a person who is wrongfully in possession,

2                (1) bring an action for possession against any person wrongfully in  
3 possession; and

4                (2) [MAY] recover the damages provided in AS 34.03.290.

5 \* Sec. 17. AS 34.03.090 is amended by adding a new subsection to read:

6                (b) As a condition of delivery of possession of the premises to the tenant, the  
7 landlord may require the tenant to acknowledge or verify by the tenant's signature the  
8 accuracy of the premises condition statement and contents inventory prepared under  
9 AS 34.03.020(e). Before requiring the tenant's signature, the landlord shall first advise  
10 the tenant that the premises condition statement and contents inventory

11                (1) may be used by the landlord as the basis

12                        (A) to determine whether prepaid rent or a security deposit shall  
13 be applied to the payment of damages to the premises when authorized by  
14 AS 34.03.070(b); and

15                        (B) to compute the recovery of other damages to which the  
16 parties may be entitled under this chapter; and

17                (2) is, in an action initiated by a party to recover damages or to obtain  
18 other relief to which a party may be entitled under this chapter, presumptive evidence  
19 of the condition of the premises and its contents at the commencement of the term of  
20 the period of occupancy covered by the rental agreement.

21 \* Sec. 18. AS 34.03.110(a) is amended to read:

22                (a) Unless otherwise agreed, a landlord who conveys premises that include a  
23 dwelling unit subject to a rental agreement in a good faith sale to a bona fide  
24 purchaser is relieved of liability under the rental agreement and this chapter as to  
25 events occurring subsequent to written notice to the tenant of the conveyance.  
26 However,

27                        (1) the landlord remains liable to the tenant for the property and money  
28 to which the tenant is entitled under AS 34.03.070, unless the property and money are  
29 specifically assigned to and accepted by the purchaser: and

30                        (2) the provisions of

31                                (A) a premises condition statement prepared under

1 AS 34.03.020(e) between the landlord and the tenant remains valid as  
2 between the purchaser and the tenant until a new premises condition  
3 statement is entered into between the purchaser and the tenant; and

4 (B) a contents inventory prepared under AS 34.03.020(e)  
5 between the landlord and the tenant remains valid as between the  
6 purchaser and the tenant for the contents remaining on the premises after  
7 the conveyance of the premises until a new contents inventory is entered  
8 into between the purchaser and the tenant.

9 \* Sec. 19. AS 34.03.120 is amended by adding a new subsection to read:

10 (b) The tenant may not knowingly engage at the premises in prostitution, an  
11 illegal activity involving a place of prostitution, an illegal activity involving alcoholic  
12 beverages, an illegal activity involving a controlled substance, or an illegal activity  
13 involving an imitation controlled substance, or knowingly permit others in the premises  
14 to engage in one or more of those activities at the rental premises.

15 \* Sec. 20. AS 34.03.220(a) is amended to read:

16 (a) Except as provided in this chapter,

17 (1) if the tenant or someone in the tenant's control deliberately  
18 inflicts substantial damage to the premises in breach of AS 34.03.120(a)(5), the  
19 landlord may deliver a written notice to quit to the tenant under AS 09.45.100 -  
20 09.45.105 specifying the act constituting the breach and specifying that the rental  
21 agreement will terminate upon a date that is not less than 24 hours after service  
22 of the notice; for purposes of this paragraph, damage to premises is "substantial"  
23 if the loss, destruction, or defacement of property attributable to the deliberate  
24 infliction of damage to the premises exceeds \$400 or the amount of the security  
25 deposit held by the landlord under AS 34.03.070, whichever is greater;

26 (2) if there is a material noncompliance by the tenant with the rental  
27 agreement, or if there is noncompliance with AS 34.03.120, other than deliberate  
28 infliction of substantial damage to the premises, materially affecting health and  
29 safety, the landlord may deliver a written notice to quit to the tenant under  
30 AS 09.45.100 - 09.45.110 specifying the acts and omissions constituting the breach and  
31 specifying that the rental agreement will terminate upon a date not less than 10 [20]

1 days after service [RECEIPT] of the notice; if [. IF] the breach is not remedied [IN  
2 10 DAYS], the rental agreement terminates as provided in the notice subject to the  
3 provisions of this section; if [. IF] the breach is remediable by repairs or the payment  
4 of damages or otherwise and the tenant adequately remedies the breach before the date  
5 specified in the notice, the rental agreement will not terminate; in [. IN] the absence  
6 of due care by the tenant, if substantially the same act or omission that constituted a  
7 prior noncompliance of which notice was given recurs within six months, the landlord  
8 may terminate the rental agreement upon at least five [10] days written notice to quit  
9 specifying the breach and the date of termination of the rental agreement.

10 \* Sec. 21. AS 34.03.220 is amended by adding a new subsection to read:

11 (d) An order of abatement entered by a court under AS 09.50.170 terminates  
12 a rental agreement on the premises subject to the order of abatement.

13 \* Sec. 22. AS 34.03.225 is amended by adding a new subsection to read:

14 (c) When, under (a) of this section, a mobile home park owner is required to  
15 give notice to evict a mobile home owner or a mobile home park dweller or tenant,  
16 provision of notice to quit under AS 09.45.100 - 09.45.105 satisfies the requirement  
17 of notice.

18 \* Sec. 23. AS 34.03.290(c) is amended to read:

19 (c) If the tenant remains in possession without the landlord's consent after  
20 expiration of the term of the rental agreement or after its termination under (a) or (b)  
21 of this section, the landlord may, after serving a notice to quit to the tenant under  
22 AS 09.45.100 - 09.45.105, bring an action for possession and if the tenant's holdover  
23 is wilful and not in good faith the landlord, in addition, may recover an amount not  
24 to exceed one and one-half times the actual damages. If the landlord consents to the  
25 tenant's continued occupancy, AS 34.03.020 applies.

26 \* Sec. 24. AS 34.03.310(c) is amended to read:

27 (c) Notwithstanding (a) and (b) of this section, after serving a notice to quit  
28 to the tenant under AS 09.45.100 - 09.45.105, a landlord may bring an action for  
29 possession if

30 (1) the tenant is in default in rent;

31 (2) compliance with the applicable building or housing code requires

1 alteration, remodeling, or demolition that would effectively deprive the tenant of use  
2 of the dwelling unit;

3 (3) the tenant is committing waste or a nuisance, or is using the  
4 dwelling unit for an illegal purpose or for other than living or dwelling purposes in  
5 violation of the rental agreement;

6 (4) the landlord seeks in good faith to recover possession of the  
7 dwelling unit for personal purposes;

8 (5) the landlord seeks in good faith to recover possession of the  
9 dwelling unit for the purpose of substantially altering, remodeling, or demolishing the  
10 premises;

11 (6) the landlord seeks in good faith to recover possession of the  
12 dwelling unit for the purpose of immediately terminating for at least six months use  
13 of the dwelling unit as a dwelling unit; or

14 (7) the landlord has in good faith contracted to sell the property, and  
15 the contract of sale contains a representation by the purchaser corresponding to (4), (5)  
16 or (6) of this subsection.

17 \* *Sec. 25.* AS 34.03.330(b) is amended to read:

18 (b) Unless created to avoid the application of this chapter, the following  
19 arrangements are not governed by this chapter:

20 (1) residence at an institution, public or private, or in premises used  
21 as temporary housing, public or private, if incidental to detention or the provision  
22 of medical, geriatric, educational, counseling, religious, or similar services;

23 (2) occupancy under a contract of sale of a dwelling unit or the  
24 property of which it is a part [,] if the occupant is the purchaser or a person who  
25 succeeds to the interest of a purchaser;

26 (3) occupancy by a member of a fraternal or social organization in the  
27 portion of a structure operated for the benefit of the organization;

28 (4) transient occupancy in a hotel, motel, lodgings, or other transient  
29 facility;

30 (5) occupancy by an employee of a landlord whose right to occupancy  
31 is conditioned upon employment substantially for services, maintenance, or repair to

1 the premises;

2 (6) occupancy by an owner of a condominium unit or a holder of a  
3 proprietary lease in a cooperative;

4 (7) occupancy under a rental agreement covering premises used by the  
5 occupant primarily for agricultural purposes.

6 \* Sec. 26. AS 34.03 is amended by adding a new section to read:

7 Sec. 34.03.335. PROOF OF CERTAIN PROPERTY DAMAGE CLAIMS. In  
8 an action initiated by a party to recover damages or to obtain other relief to which a  
9 party may be entitled under this chapter, a premises condition statement and contents  
10 inventory prepared under AS 34.03.020(e) is presumptive evidence of the condition of  
11 the premises and its contents at the commencement of the term of the period of  
12 occupancy covered by the rental agreement between the parties. Unless its authenticity  
13 is rebutted by clear and convincing evidence by the party against whom the statement  
14 and contents inventory is offered, the statement and contents inventory may be offered  
15 by a party, without additional supporting evidence, as the basis on which to compute  
16 the recovery of damages to which the party may be entitled under this chapter.

17 \* Sec. 27. AS 34.03 is amended by adding new sections to read:

18 Sec. 34.03.342. NOTICE TO LANDLORD FOLLOWING ARREST  
19 RELATED TO PROSTITUTION. A peace officer who arrests a person the peace  
20 officer believes is not the owner of the premises for prostitution or an illegal activity  
21 involving a place of prostitution alleged to have been committed by the person on the  
22 premises shall

23 (1) make a reasonable attempt to discover the identity of the owner of  
24 the premises; and

25 (2) notify the owner of the person's arrest

26 (A) in person; or

27 (B) in writing, at the last address listed on the assessment roll  
28 maintained by the municipality under AS 29.45.160 if the premises are located  
29 within a municipality that levies and collects a property tax; if an address is not  
30 available, notice of the person's arrest may be sent to the property owner at  
31 any other address known to the peace officer.