

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
5786 HOUSE JUDICIARY

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

6-1283E  
Cramer  
2/28/90

Original sponsor(s): Labor & Commerce Committee

1 IN THE HOUSE

BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 300 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to certain property records main-  
7 tained by public utilities; and including the custom-  
8 ers of a public utility that has an annual compensa-  
9 tion in excess of \$50,000 in the definition of 'pub-  
10 lic' for public utility regulation."

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

12 \* Section 1. AS 42.05.461 is amended to read:

13 Sec. 42.05.461. CONTINUING PROPERTY RECORDS. The commission may  
14 require a public utility to establish, provide, and maintain as a part  
15 of its system of accounts, continuing property records segregated by  
16 the year of placement in service, including a list or inventory of all  
17 the units of tangible property used or useful in the public service,  
18 identifying the property by location and project [SHOWING THE CURRENT  
19 LOCATION OF THE PROPERTY UNITS BY DEFINITE REFERENCE TO THE SPECIFIC  
20 LAND PARCELS UPON WHICH THE UNITS ARE LOCATED OR STORED]. The commis-  
21 sion may require a public utility to keep accounts and records in  
22 [SUCH] a manner that shows [AS TO SHOW, CURRENTLY,] the original cost  
23 of the property when first devoted to the public service, and the  
24 current related reserve for depreciation. Each public utility with  
25 annual revenues exceeding \$100,000 shall keep continuing property  
26 records.

27 \* Sec. 2. AS 42.05.720(3) is amended to read:

28 (3) "public" or "general public" means

29 (A) a [ANY] group of 10 or more customers that

1 purchase the service or commodity furnished by a public utility;  
2 [AS DEFINED IN (4) OF THIS SECTION; AND]

3 (B) one or more customers that purchase the service or  
4 product furnished by a public utility if the total annual compen-  
5 sation received by the utility from all sources exceeds \$50,000;  
6 and

7 (C) a [ANY] utility purchasing the product or service  
8 or paying for the transmission of electric energy, natural or  
9 manufactured gas, or petroleum products that [WHICH] are re-sold  
10 to a person or group included in (A) or (B) of this paragraph or  
11 that [WHICH] are used to produce the service or commodity sold to  
12 the public by the utility;

1 IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

2

HOUSE BILL NO. 300

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to certain property records main-  
7 tained by public utilities; and defining 'public' for  
8 public utility regulation."

9

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

10

\* Section 1. AS 42.05.461 is amended to read:

11

Sec. 42.05.461. CONTINUING PROPERTY RECORDS. The commission may  
12 require a public utility to establish, provide, and maintain as a part  
13 of its system of accounts, continuing property records segregated by  
14 the year of placement in service, including a list or inventory of all  
15 the units of tangible property used or useful in the public service,  
16 identifying the property by location or project [SHOWING THE CURRENT  
17 LOCATION OF THE PROPERTY UNITS BY DEFINITE REFERENCE TO THE SPECIFIC  
18 LAND PARCELS UPON WHICH THE UNITS ARE LOCATED OR STORED]. The commis-  
19 sion may require a public utility to keep accounts and records in  
20 [SUCH] a manner that shows [AS TO SHOW] ~~currently~~ the original cost  
21 of the property when first devoted to the public service, and the  
22 related reserve for depreciation. Each public utility with annual  
23 revenues exceeding \$100,000 shall keep continuing property records.

24

\* Sec. 2. AS 42.05.720(3) is amended to read:

25

(3) "public" or "general public" means

26

(A) a [ANY] group of 10 or more customers that pur-

27

chase the service or commodity furnished by a public utility and

28

that is located outside or makes the purchase outside the certifi-

29

icated service area of the public utility; [AS DEFINED IN (4) OF

1 THIS SECTION; AND]

2 (B) a person who purchases a utility service or prod-  
3 uct from a public utility and who is located in or makes the  
4 purchase in <sup>another</sup> the certificated service area of the public utility;  
5 and

6 (C) a [ANY] utility purchasing the product or service  
7 or paying for the transmission of electric energy, natural or  
8 manufactured gas, or petroleum products that [WHICH] are re-sold  
9 to a person or group included in (A) or (B) of this paragraph or  
10 that [WHICH] are used to produce the service or commodity sold to  
11 the public by the utility;

ANALYSIS OF HB 300  
(Including Amendments proposed by APUC)

Section 1. Continuing Property Records.

Present law requires utilities to maintain continuing property records identifying the inventory and value of all property used in the operation of the utility by "definite reference to the specific land parcels upon which the units are located or stored." Taken literally, the present law requires records on every bolt and crossarm in the system identified by the legal description of the land parcel on which it sits. This is essentially impossible to accomplish, and it serves no useful purpose to maintain such detailed records.

The proposed new language would require the utility to maintain continuing property records by location and project. As an example of how this would work, if a utility built a new 5-mile distribution line, it would record all of the materials purchased for the project as being part of "Inlet Road Distribution Project constructed from mile 15 to mile 20 of Inlet Road." This gives both the utility and the commission the records they need without complicating the system with unnecessary detail.

Section 2. Amending Definition of "Public."

This section changes the definition of "public utility" by changing the definition of "public."

Present law exempts from the definition of public utility an entity which provides service to fewer than 10 customers. It is now possible for an independent power producer to provide elec-

tric service to the largest one or two customers from the utility system. The utility would still have the investment it made to serve those large consumers which must now be paid for by the remaining customers. The large customers could experience a small savings while all other customers experience a large increase in rates. In extreme cases, a small utility could even lose its feasibility to maintain central station electric service.

This proposed amendment of AS 42.05.720(3) would maintain the exemption for service provided to fewer than 10 customers if they are located outside the service area certificated to an existing utility, but providing service to even one customer within a service area certificated to an existing utility would trigger APUC jurisdiction. However, under another section of existing law (AS 42.05.711(e)), such sales would have to exceed \$50,000 per year before they would be regulated by the commission. If these sales exceed \$50,000 in value, the commission would have to find that such service is in the public interest before it would be permitted. This would serve to protect the utility and its customers from hardship caused by a raid on its service area.

From: Peter Solkolw  
Commissioner  
APUC

ALASKA PUBLIC UTILITIES COMMISSION

RESPONSE TO COMMITTEE SUGGESTIONS

ON HB 300\*

FEBRUARY 26, 1990

Section 1. AS 42.05.461

At the suggestion of Representative Gruenberg, the Commission reviewed the possibility of rephrasing this section in "less archaic language" and found it to be problematic. The Commission believes with the minor editorial changes that are attached, the existing section clearly states the intended provisions and addresses Representative Gruenberg's concerns.

Section 2. AS 42.05.720(3)

This section provides for the regulation of anyone providing utility services to one or more customers within the service area of another utility. If this is the intended policy of the Legislature, the bill should be redrafted to state this policy more frontally.

---

\*Commissioner Daniel Patrick O'Tierney was out of State and did not participate in the public meeting in which the Commission discussed this legislation.

Alaska Public Utilities Commission  
Comments on HB 300  
February 26, 1990  
Page 2 of 2

Should the Legislature desire an alternative approach that would be less intrusive to utilities who do not have the \$50,000 gross revenue exemption presently given to telephone and electric utilities in AS 42.05.711(c), the Commission suggests a provision that would regulate utilities grossing over \$50,000, regardless of the number of customers they serve. The Commission believes that this would address the "cherry picking" or "cream skimming" concerns of the Alaska Rural Electric Cooperative Association; would allow the Commission to continue regulating utilities other than telephone or electric that have a substantial number of customers, yet gross less than \$50,000; and would preserve the exemptions from economic regulation provided for in AS 42.05.711. To effect this provision, the Commission suggests that the attached statutory changes be enacted instead of those proposed in Section 2 of HB 300. This would preserve the status quo with respect to small water utilities. It would also establish a threshold of \$50,000 as the maximum that could be "cream skimmed" by any one skimmer.

ALASKA PUBLIC UTILITIES COMMISSION

SUGGESTED WORDING FOR HB 300

FEBRUARY 26, 1990

\*Section 1:

Line 16: Change "or" to "and" in the proposed phrase "identifying the property by location or project." [This change was previously suggested by the Commission.]

Line 20: Delete ", currently,".

Line 22: Add "current" before "ated" at the beginning of the line.

With the foregoing changes, AS 42.05.461 would be amended to read:

Sec. 42.05.461 CONTINUING PROPERTY RECORDS. The commission may require a public utility to establish, provide, and maintain as a part of its system of accounts, continuing property records segregated by the year of placement in service, including a list or inventory of all the units of tangible property used or useful in the public service, identifying the property by location and project [SHOWING THE CURRENT LOCATION OF THE PROPERTY UNITS BY DEFINITE REFERENCE TO THE SPECIFIC LAND PARCELS UPON WHICH THE UNITS ARE LOCATED OR STORED]. The commission may require a

public utility to keep accounts and records in [SUCH] a manner that shows [AS TO SHOW, CURRENTLY,] the original cost of the property when first devoted to the public service, and the current related reserve for depreciation. Each public utility with annual revenues exceeding \$100,000 shall keep continuing property records.

\*Section 2:

AS 42.05.720(3) is amended to read:

(3) "public" or "general public" means

(A) a [ANY] group of 10 or more customers that purchase the service or commodity furnished by a public utility [AS DEFINED IN IN (4) OF THIS SECTION]; [and]

(B) one or more customers that purchase the service or commodity furnished by a public utility for total compensation exceeding \$50,000 annually; and

[[B)] (C) any utility purchasing the product or service or paying for the transmission of electric energy, natural or manufactured gas, or petroleum products which are re-sold to a group included in (A) of this paragraph or which are used to produce the service or commodity sold to the public by the utility;

HB300

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

420 L STREET  
SUITE 100  
ANCHORAGE, ALASKA 99501  
(907) 276-6222

February 8, 1990

Representative Dave Donley  
Alaska State House Legislature  
P. O. Box V  
Juneau, Alaska 99811

Dear Representative Donley:

This is in response to your request that the Commission review HB300 and give its comments.

HB300, among other things, was the subject of a special Public Meeting held by the Commission on January 9, 1990, to allow the bill's advocate, the Alaska Rural Electric Cooperative Association to present its views. It was also discussed briefly at a Public Meeting on February 2, 1990.

The Commission has not taken a position on the legislation but does note several technical concerns regarding particular wording, content, and possible ramifications.

Section 1 of HB300 would eliminate from continuing property records (CPRs) certain details regarding the location of public utility property. This appears to be workable if the "or" in "identifying the property by location or project..." (line 16) is changed to "and." Requiring CPRs to be kept by location and project without reference to a "specific land parcel" should enable any auditor to locate the property.

Section 2 of the bill would change the definition of "public" so that any entity providing service to one or more customers would be subject to the jurisdiction of the Commission. (Under AS 42.05.711(e), entities providing electric or telephone service would also have to earn gross revenues in excess of \$50,000 per year to be regulated.) The Commission finds that the language used in sections (A) and (B) to effect this policy change is cumbersome and confusing. It would be helped, but not totally cured, by changing the last reference in each section from "the public utility" to "another public utility."

Representative Dave Donley  
February 8, 1990  
Page 2 of 2

The Commission notes several possible problems with the content of Section 2 and its perceived objectives. First, the bill appears to seek Commission jurisdiction over electric operations which are not currently regulated due to their number of customers. However, electric utilities with annual gross revenues of less than \$50,000 would still be exempt from regulation. Second, some thought should be given to the effect of this legislation on all other types of utilities and particularly on small water utilities operated by residential developers within certificated service areas of other larger utilities. Third, it is unknown how many entities may currently be operating which would come under Commission jurisdiction as a result of this bill. Absent a "grandfather clause," what would be the effect of this legislation on such entities?

Also, it should be noted that HB300 could have a significant fiscal impact, depending on the number of entities which would become regulated now or in the future.

If the Commission can be of further assistance to you in your deliberations on HB300, please do not hesitate to contact me.

Sincerely,

ALASKA PUBLIC UTILITIES COMMISSION



Peter Sokolov  
Chairman

cc: David Hutchens  
Executive Director  
Alaska Rural Electric  
Co-Operative Association  
237 East Fireweed Lane  
Anchorage, Alaska 99503

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March 8, 1990

BETHEL:

CHRISTOPHER R. COOKE

RECEIVED

MAR 12 1990

Mayor Larry Powell  
CITY OF YAKUTAT  
PO Box 6  
Yakutat, AK 99689

CITY OF YAKUTAT  
CITY CLERK

Re: Yakutat Power

Dear Larry:

Pursuant to our conversation of March 2, 1990, I am enclosing herewith a proposed amendment to AS 37.10.0.5 which, if enacted, would clear up any question about the ability of the City to continue operation of the utility company in the corporate form rather than dissolving the corporation.

According to John Parisena, dissolution of the corporation would result in a tax obligation of approximately \$137,000. Shelby Stastny has looked into the matter and concluded that the City could maintain the tax exempt status of the corporation under the Internal Revenue Code so long as the income accrues to the state or a political subdivision. Since all of the project revenues would be pledged to payment of the bonds or, to the extent of any excess, can be paid to the City, dissolution is not required to avoid taxation. Additionally, since the City, not the corporation, will be the issuer of the bonds, their tax exempt status is not in jeopardy according to the information from bond counsel for the bond bank.

I am also enclosing a memorandum which sets out the justification for the amendment, as well as an opinion that, whether the statute is amended or not, it is not violated by City ownership of the stock. However, bond

Mayor Larry Powell  
CITY OF YAKUTAT  
Page Two  
March 8, 1990

counsel may be nervous absent a concrete opinion from  
the court, and amendment of the statute would clear up  
any doubt.

Please let me know if you have further questions.

Sincerely,



John S. Hedland

JSH:jp

MEMORANDUM

TO: Larry Powell  
FROM: John S. Hedland  
DATE: March 8, 1990

1. Proposed statutory change.

AS 37.10.085 is amended by the addition of subsection

(c) as follows:

(c) To the extent that the political subdivision is authorized to acquire, own, or operate a public utility, it may exercise that power by acquiring and owning, in a manner consistent with law, all of the capital stock of a corporation that owns or operates a public utility, and the political subdivision's authority with respect to lending its credit and borrowing money for the use of said corporation shall be the same as if the political subdivision had acquired the assets of said corporation.

2. Justification.

AS 37.10.085 as currently written stated as follows:

Sec. 37.10.085. Financial aid to corporations by state or political subdivision. (a) Neither the state nor a political subdivision of the state may

(1) make a subscription to the capital stock of a corporation;

(2) lend its credit for the use of a corporation; or

(3) borrow money for the use of a corporation.

(b) This section does not apply to debt issued by a municipality or a municipal joint insurance arrangement under AS 21.76.120.

The purpose of the amendment is to make it clear that a municipality may exercise its power to own and operate a public utility by acquiring the stock in a corporation that owns and

operates a public utility, and is not restricted to acquiring the assets of the company, and that it may finance acquisition or operation of the company in the same manner as if it owned the assets directly. If a municipality is required to acquire the assets, rather than the stock, of a public utility company, the assets must be sold by the corporation or the corporation must be dissolved. In either case, assuming that the fair market value of the assets (presumptively the purchase price) exceeds the corporation's depreciated basis in the assets, a substantial tax liability will arise that must ultimately be borne by the municipality, either through payment of the tax or an increase in the purchase price. There is no justification for imposing this unnecessary expense upon the municipality, since municipal ownership of the stock, rather than the assets, of a public utility company does not contravene any policy under Alaska law relating to either municipalities or utilities.

I do not believe that enactment of the proposed amendment would change the substantive law of Alaska. AS 37.10.085 as presently written does not, in my view, prohibit a municipality from acquiring all of the capital stock of a public utility company. However, under the strictures applicable to the sale of municipal bonds, bond counsel for either the municipality or the Alaska Municipal Bond Bank may raise questions about the authority of the municipality to acquire the stock in a public utility company, with the consequence that the bonds may not be marketable. The proposed amendment is designed to eliminate that problem.

It is clear that the evil at which AS 37.10.085 is directed--diverting public funds to private purposes--is not present when a municipality acquires, through a stock acquisition, a public utility that it may lawfully acquire through an asset acquisition. In Wright v. City of Palmer, 468 P.2d 326 (Alaska 1970), the court upheld the issuance of municipal bonds to be used to finance industrial sites to be leased to private companies. The court characterized the statute as one

which prohibits either the state or a political subdivision to lend its credit for the use of a private corporation, or to borrow money for the use of a private corporation. . . . We think that the question of whether the public credit is being pledged for a private purpose is also comprehended under the broader question of whether a public purpose is served by the bond issue and plan for its expenditure. . . . (Emphasis added). 468 P.2d at 328-29.

In State, ex rel. Johnson v. Consumers Public Power District, 10 N.W.2d 784 (Neb. 1943), the court was confronted with a Nebraska constitutional provision which provided that "no city, county, town, precinct, municipality, or other subdivision of the state, shall ever become a subscriber to the capital stock, or owner of such stock, or any portion or interest therein of any railroad, or private corporation, or association." The case involved the legality of the public power district's acquisition of all of the common stock of an electric power company, for purposes of dissolving it and acquiring its assets. The court stated as follows:

Even if respondent is a political subdivision of the state . . . [the constitutional provision] has no application under the circumstances. This provision of our Constitution must be construed

with reference to the evils it was intended to correct or prevent. It was intended to prohibit any subdivision of the state from entering into private business by being associated as a stockholder, or being a partner, or a part owner, in a private business venture or enterprise. . . . [The constitutional provision] was never intended to prohibit a purchase by a subdivision of the state of all the capital stock of a corporation solely for the purpose of lawfully acquiring the physical property of such corporation for a public use, constitutionally defined and lawfully authorized by the legislature. 10 N.W.2d at 794.

It is clear that the Yakutat Power acquisition does not place the City in the position of investing in a private business venture or enterprise, and the same reasoning should apply here.

Acquisition of stock that has already been issued, from an existing shareholder, does not constitute making a "subscription" to the stock of the corporation. As the court noted in Sprague v. Straub, 451 P.2d 49, 52 (Ore. 1969):

The distinction between a subscription to stock and a purchase of stock is well established. The term subscription is ordinarily used to refer to an agreement to purchase stock in a prospective corporation to be organized in the future; it is to be contrasted with the purchase of the stock of an existing corporation.

The court cited Astoria & S.C.R. Co. v. Hill, 25 Pac. 379 (Ore. 1890); Commercial State Bank v. Eilers, 264 Pac. 452 (Ore. 1928). The Alaska statute must therefore be distinguished from statutes or constitutional provisions in other states which prohibit the state or municipality from 'becoming a stockholder in any . . . corporation'. (See, §9 Article XI, Oregon Constitution); being "directly or indirectly the owner of, any stock or bonds of any . . . corporation (New Jersey Constitution, Art. VIII, §III, ¶2), see,

Whelan v. N. J. Power & Light Co., 212 A.2d 136, 139-40 (N.J. 1965); "subscribe to, or be interested in the stock of any . . . corporation" (Oregon Constitution, Article XI, §6); "become a stockholder in any . . . corporation (original Ohio Constitution, see, Sprague v. Straub, supra, 451 P.2d at 54. Indeed, AS 37.13.120(g)(18) expressly authorizes the investment of permanent fund money in "preferred and common stock of corporations incorporated in the United States".

Since a corporation wholly owned by the municipality is not a "private corporation" within the court's interpretation of AS 37.10.085, municipal financing activities do not violate the prescription against lending credit or borrowing money in aid of a corporation. Even if such a corporation were treated as a private one, the issuance of revenue bonds to be repaid solely via a pledge of revenue earned through corporate operations would not amount to a pledge of public credit. Wright v. City of Palmer, supra, 468 P.2d at 329, n. 4; Miles v. City of Eugene, 451 P.2d 59, 62 (Oregon 1969); ("Likewise, the proposal in this case would not come within the constitutional prohibition against raising money or lending credit. Money coming from revenue bonds and not from tax money does not fall within the prohibition.")

6-2364A  
Cramer  
3/16/90

BY THE JUDICIARY COMMITTEE

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to acquisition and ownership of  
7 capital stock of a public utility by a political  
8 subdivision."

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

10 \* Section 1. AS 37.10.085(a) is amended to read:

11 (a) Except as provided in (c) of this section, neither [NEITHER]  
12 the state nor a political subdivision of the state may

13 (1) make a subscription to the capital stock of a corpora-  
14 tion;

15 (2) lend its credit for the use of a corporation; or

16 (3) borrow money for the use of a corporation.

17 \* Sec. 2. AS 37.10.085 is amended by adding a new subsection to read:

18 (c) To the extent that the political subdivision is authorized  
19 to acquire, own, or operate a public utility, it may exercise that  
20 power by acquiring and owning, in a manner consistent with law, all of  
21 the capital stock of a corporation that owns or operates a public  
22 utility. The political subdivision's authority with respect to lend-  
23 ing its credit and borrowing money for the use of the corporation is  
24 the same as if the political subdivision had acquired the assets of  
25 the corporation.

HB

309

# HOUSE COMMITTEE REPORT

3/19

(7)

Date Referred: April 21, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3/06/90

*Finance added 3/19*

The LABOR & COMMERCE Committee considered:

HB 309

HOUSE BILL NO. 309 [LANDLORD/TENANT RELATIONSHIP]

"An Act relating to the landlord and tenant relationship; relating to tenancies in property secured by financial obligations; relating to the information pamphlet on landlord and tenant rights and its availability; and amending Rule 85 of the Alaska Rules of Civil Procedure and Rule 8 of the Alaska District Court Rules of Civil Procedure."

RECOMMENDATIONS:

- be replaced with CS HB 309 (L+C)  the same title
- a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the FIN Committee

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

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

APPROVES PREVIOUS: \_\_\_\_\_

(Date/Dept)

- fiscal impact AK Court system  fiscal note(s) \_\_\_\_\_
- zero fiscal note \_\_\_\_\_  zero fiscal note(s) \_\_\_\_\_
- zero with analysis \_\_\_\_\_  zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

<u>David Donley Donley</u>	<u>David Finkelstein</u>			
<u>Bob Boucher</u>	<u>W. P. ...</u>			
<u>Drew ...</u>	<u>...</u>			
<u>Collins</u>				

David Donley  
Chairman's Signature

**STATE OF ALASKA  
1990 LEGISLATIVE SESSION**

Bill Version: CSHB 309  
Publish Date: 4/21/89

**FISCAL NOTE**

**REQUEST:**

Revision Date:	Agency Affected:	<u>Alaska Court System</u>
Title: <u>An Act relating to the landlord and tenant relationship...</u>	BRU:	<u>Trial Courts</u>
Sponsor: <u>Labor &amp; Commerce</u>	Components:	
Requestor: <u>Labor &amp; Commerce</u>		

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

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services		31.7	31.7	31.7	31.7	31.7
Travel		10.0				
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>41.7</b>	<b>31.7</b>	<b>31.7</b>	<b>31.7</b>	<b>31.7</b>

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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**FUNDING: (Thousands of Dollars)**

General Funds	0.0	41.7	31.7	31.7	31.7	31.7
Federal Funds						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>41.7</b>	<b>31.7</b>	<b>31.7</b>	<b>31.7</b>	<b>31.7</b>

**POSITIONS:**

Full-time		1.0	1.0	1.0	1.0	1.0
Part-time						
Temporary						

**ANALYSIS: (Attach a separate page if necessary)**

See attached fiscal analysis.

Prepared by: Jan Strandberg, General Counsel  
 Division: Alaska Court System  
 Approved by: Arthur H. Snowden, II, Administrative Director  
 Agency: Alaska Court System

Phone: 264-8228  
 Date: 03/15/90  
 Date: 03/15/90

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

Alaska Court System  
CSHB 309  
Fiscal Analysis

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Court Clerk II, PFT, range 10, Anchorage	\$22,140	\$9,510	<u>\$31,650</u>
 <u>Travel</u> (one-time cost)			
Four meetings of the Forms Committee to revise forms and informational pamphlets (4 @ \$1,500)			5,000
Training for Clerks of Court (additional day of training added to annual clerks conference)			<u>4,000</u>
	Total Travel		<u>10,000</u>
	Total Cost		<u>\$41,650</u>

## Fiscal Analysis - CSHE 309

The primary impacts of this bill on the Alaska Court System are found in sections 1 and 5. Section 1 provides that the court shall give priority on the calendar to Forced Entry and Detainer actions. Section 5 provides that these actions shall be brought in small claims court when both the underlying claim does not exceed \$5,000 and important or unusual points of law are not involved.

The Uniform Residential Landlord and Tenant Act is codified in 34.03.010-34.03.380. Topics within the act include purposes, rules of construction, rental agreements, landlord obligations, tenant obligations, tenant remedies, landlord remedies, periodic tenancy, holdover and abuse of access, retaliatory action and general provisions. The Act prescribes many formal notice provisions that either the landlord or the tenant must adhere to. See AS 34.03.160, AS 34.03.170, AS 34.05.180, AS 34.03.200, AS 34.03.220, AS 34.03.290, AS 34.03.300.

The Forcible Entry and Detainer section of the Code of Civil Procedure governs the recovery of possession of real property. These laws include: prohibition of use of force for entry on realty, action for forcible entry or detention, unlawful holding by force, requisites of notice to quit, period between service of notice and action brought, summons and continuance, action against person paying rent in advance, agricultural tenant, inquiry into merits of title and action for possession of realty. See AS 09.45.060 to AS 09.45.160.

The interplay between the Landlord-Tenant Act found in AS 34.03 et seq, and the Forcible Entry and Detainer provisions of AS 09.45.060 et seq is complicated at best. Both acts contain specific notification and strict time requirements. These laws have not been written so that a layperson can easily bring or defend an Forcible Entry and Detainer action without legal assistance. Presently, landlord-tenant and FED actions are brought in district court. Most of these actions are filed with legal representation. Although people are entitled to represent themselves at the district court level, they are not as likely to unknowingly attempt self-representation as in small claims court where the presumption is that the matters can be handled without legal representation.

The proposed bill's purpose in giving small claims court jurisdiction over FED's is to streamline procedures. However, the opposite is what is likely to happen. First, the public will be under the misimpression that they don't need legal advice. Clerks of court are required to assist people in filling out the small claims court forms, yet they are forbidden to give legal advice. However, many people who seek assistance will be expecting legal advice. This process is likely to unduly frustrate people who are filing and defending these actions, and may cause additional delays for the paperwork to be properly completed.

FED cases already receive calendaring priority. They are set for trial not more than 15 days from the date of filing of the complaint under Civil Rule 85(2).

The current small claims rules do not provide for expedited process. These rules will need to be changed as will internal calendaring procedures. Small claims forms, the small claims handbook and writs of assistance and their instructions will need to be redrafted and forms suitable for FED actions will have to be devised.

Small claims clerks will need to be trained to assist with the filing of FED complaints, summonses, answers and writs of assistance. Because FED procedures involve special time limits depending on the allegations of the complaint, more clerical time can be expected to be taken up with these cases. The Anchorage trial court presently averages approximately 125 FED filings per month. These filings would increase small claims filings by approximately one-fourth.

This proposed bill also states that magistrates would hear these cases. Under AS 22.15.120 magistrates are excluded from hearing matters dealing with the recovery of premises.

To implement the noted provisions of this bill, the court system would need:

- 1 FT Court Clerk Anchorage - R.10
- 4 forms committee meetings
- Statewide clerk training
- small claims rules revisions

## FISCAL NOTE

**REQUEST:**

Revision Date:	Agency Affected:	Alaska Court System
Title: <u>An Act relating to the landlord and tenant relationship...</u>	BRU:	Trial Courts
Sponsor: <u>Labor &amp; Commerce</u>	Components:	
Requestor: <u>Labor &amp; Commerce</u>		

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

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services		31.7	31.7	31.7	31.7	31.7
Travel		10.0				
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>41.7</b>	<b>31.7</b>	<b>31.7</b>	<b>31.7</b>	<b>31.7</b>

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

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

**FUNDING: (Thousands of Dollars)**

General Funds	0.0	41.7	31.7	31.7	31.7	31.7
Federal Funds						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>41.7</b>	<b>31.7</b>	<b>31.7</b>	<b>31.7</b>	<b>31.7</b>

**POSITIONS:**

Full-time		1.0	1.0	1.0	1.0	1.0
Part-time						
Temporary						

**ANALYSIS: (Attach a separate page if necessary)**

See attached fiscal analysis.

Prepared by: Jan Strandberg, General Counsel  
 Division: Alaska Court System  
 Approved by: Stephanie Cole, for - Arthur H. Snowden, II, Administrative Director  
 Agency: Alaska Court System

Phone: 264-8228  
 Date: 03/15/90  
 Date: 03/15/90

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

Alaska Court System  
CSHB 309  
Financial Analysis

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Court Clerk II, PFT, range 10, Anchorage	\$22,140	\$9,510	<u>531,650</u>
 <u>Travel (one-time cost)</u>			
Four meetings of the Forms Committee to revise forms and informational pamphlets (4 @ \$1,500)			5,000
Training for Clerks of Court (additional day of training added to annual clerks conference)			<u>4,000</u>
	Total Travel		<u>10,000</u>
	Total Cost		<u>841,650</u>

### Fiscal Analysis - CSHB 309

The primary impacts of this bill on the Alaska Court System are found in sections 1 and 5. Section 1 provides that the court shall give priority on the calendar to Forced Entry and Detainer actions. Section 5 provides that these actions shall be brought in small claims court when both the underlying claim does not exceed \$5,000 and important or unusual points of law are not involved.

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To implement the noted provisions of this bill, the court system would need:

- 1 FT Court Clerk Anchorage - R.10
- 4 forms committee meetings
- Statewide clerk training
- small claims rules revisions

Alaska State Legislature  
House of Representatives

February 26, 1990

Labor and Commerce Committee

MEMORANDUM

To: Dick Bradley, Counsel  
Legislative Legal Services

From: Representative Dave Donley, Chair  
House Labor and Commerce Committee

Re: Bill drafting request - CS HB 309 (L&C)

Please prepare a draft House Labor and Commerce CS for HB 309, working from the 1/29/89, WO 6-084J draft CS, incorporating the following changes:

Section 1 and 2 - Leave Section 1 (giving landlord/tenant cases priority in court) and Section 2 (technical amendment) as is.

Section 3 - (Period between service and notice of action brought) leave the 10 day standard on page 2, line 2 as it is in current law. Change the three day standard in line five to five days.

Section 4 - (Time periods and surety deposits for summons and continuance) Delete everything after the first sentence.

Section 5 - (Technical amendment to current law to comply to changes that are no longer proposed under this draft). Delete entire section.

Section 6 - (Authorizing landlord/tenant cases to be heard in small claims court). Leave as is.

Section 7 - (Persons who do not pay full rent do not acquire rights under this chapter). Redraft this section to require that a person who does not pay the whole rent for the first full rental period is subject to eviction on 24 hours notice.

Section 8 - (Allowing a landlord to charge three (TWO) times the monthly rent as a security deposit). Redraft section to remove the restriction on security deposits for rental units in excess of \$1,000 a month.

Section 9 - (Requiring tenants to give a forwarding address to landlords for return of security deposits) Leave as is.

Section 10 - (Expanding the scope of landlord duties a tenant can agree to perform). Leave as is in current law but add a new section allowing tenants to agree to perform landlord's duties for (a)(3) (heating and plumbing systems) as

well as duties allowed under current law for rental units in excess of \$1,000 a month. Leave prohibition against elevator maintenance.

Section 11 - (Removal of landlords property from rental premises) Clarify that landlord cannot remove property required by the Act (furnace, plumbing fixtures, etc.) or by a written rental agreement.

Section 12 - (Circumstances under which a landlord can enter rental unit) Delete section.

Section 13 - (Establishing that tenants debt to landlord is satisfied when they pay rent to the new owner when rental property changes ownership). Leave as is.

Section 14 - (Tenant cannot bring claim of deficiencies in rental unit during eviction proceedings unless they had notified landlord prior to proceedings) Rewrite section to clarify that if tenants with held rent based on provisions under the Act, they must notify the landlord in writing specifying the acts and omissions constituting a breach under the Act in order to use it in court.

Section 15 - (Eviction for failure to pay utility bills) Rewrite section so that shorter notice time does not apply if 1) tenant recontinues service within three days, 2) repays any amount paid by landlord, and 3) no damage occurred to the rental unit as a result of the tenants failure to pay utility bills. If those any of those conditions are not met, the landlord may terminate the tenancy five (THREE) days after delivery of the notice.

Section 16 - (Acceptance of partial rental payment) Leave as is.

Section 17 - (Time periods when landlord may reenter the rental unit and terminate the agreement when rent has not been paid and tenant is absent). Leave as is.

Sections 18, 19, and 20 (Repeals and reenacts sections dealing with removal, storage, and disposition of tenants property). Delete sections.

Section 21 - (Technical amendments to section of current law dealing with liability for tenants property to make it easier to understand). Leave as is.

Section 22 - (Continuing the terms of a lease when executing a deed of trust) Leave as is.

Section 23 - (Rights of landlords to receive notice of discontinuance of utility service). Leave as is.

Section 24 - (Review of landlord/tenant pamphlet by Department of Law) Delete section.

Section 25 - (Required continuance deposits) Delete section.

Section 26 - (Change civil rule 85 to give priority to landlord/tenant claims on court calendar) Leave as is.

Section 27 - (Change civil rule 8 to allow landlord/tenant claims to be heard in small claims court). Leave as is.

Section 28 - (Require LJO's to make copies of landlord/tenant pamphlet available to the public). Leave as is.

HB 309 is before the House Labor and Commerce on Thursday, March 1, at 3:00 p.m., assuming you can get a working draft to us by that time. Please call me or Ginger Baim at 4954 if you have any questions or need additional information.

dd/gbs90  
b/hb309-1

# Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

February 23, 1990

TO: Rep. Daye Donley, Chair  
House Labor and Commerce Committee

FROM: Fran Ulmer

RE: HB 309, relating to the landlord/tenant relationship

.....

Attached you will find a copy of some very informative comments I received recently in regard to HB 309, relating to the landlord/tenant relationship. Since the bill is a fairly complex one, I thought the committee would appreciate these as I did. The author of the comments approved the distribution of his remarks.

attachment  
cc: L&C members

FU/dl

GREGORY FRANK COOK

ATTORNEY AT LAW

P.O. Box 618, Douglas, Alaska 99824

(907) 586-9719

Admitted to Practice in Alaska and Oregon

Representative Fran Ulmer  
P. O. Box "V"  
Juneau, Alaska 99811

February 12, 1990

Dear Representative Ulmer,

This office represents Mr. Myron Klein, of Juneau.

The purpose of this letter is to share with you Mr. Klein's opinions and suggestions regarding HB 309, "An Act relating to the landlord tenant relationship... ."

Mr. Klein SUPPORTS HB 309 and urges you to pass HB 309 in this Session. This Bill would improve the current state of landlord-tenant law, including eviction cases (known as "F.E.D.," or "Forcible Entry and Detainer") in several important ways.

I have performed a sectional analysis of HB 309 to demonstrate the benefits this Bill should have and to highlight areas where the Bill could be improved.

\*Section 1: This section directs the Superior Court and District Court to give F.E.D. actions priority on their calendars.

Comment: No such requirement yet exists. Adding this requirement may help tenants and landlords by speeding up the time in which the parties' rights are determined by the court. Unfortunately, there is no mechanism to enforce this requirement.

\*Section 2: This section specifies that a landlord must inform a tenant of the time available to the tenant when a tenant may move out of the premises without incurring the expenses of defending a court action. The time available under law must be stated in the landlord's "Notice to Quit" (usually known as an "eviction notice"), and is specified in section 3, below.

No Comment.

\*Section 3: This section, in most cases, shortens the time period for a tenant to move out from ten days to seven days when a "Notice to Quit" has been served. (Two other time periods are also specified in this section: a three day period for tenants who have been served with a Notice of Eviction during the previous twelve months, and a 90 day period for tenant farmers.)

Comment: Shortening this time period will, for non-agricultural cases, help expedite the judicial proceedings in F.E.D. actions. It is a good reform.

\*Section 4: This section eliminates the four day maximum period for service of a summons in an F.E.D. It also specifies that a tenant who is served with an eviction notice and who wants to delay trial of the F.E.D. for longer than two days must be able to show the court that he can pay the next month's rent by depositing that amount with the court for safe keeping during the pendency of the F.E.D.

Comment: This section ensures that a non-paying tenant who tries to delay the trial of an F.E.D. for longer than two days must deposit with the court one month's rent as security. This protects landlords against lengthy continuances obtained by penurious tenants who might otherwise succeed in living rent-free during the period of the continuance.

\*Section 5: This section applies only to F.E.D. actions against people who have paid rent in advance. It specifies that in those cases, the Notice to Quit must be served under the rules detailed in section 3, above.

No Comment.

\*Section 6: In 1986, the Alaska Legislature increased the jurisdictional limit for small claims actions from \$2,000.00 to \$5,000.00. This section spells out that District Courts may hear F.E.D. actions under the simplified small claims rules, procedures that often avoid the expense of a lawyer.

Comment: This clarifies what we believe to be the existing state of the law. It is a desirable result any time the public can be spared the expense of a lawyer.

\*Section 7: This section specifies that Alaska's Landlord Tenant Act (AS 34.03) does not give a person rights under that Act if the person has not paid a full month's rent under a (written?) rental agreement. It also specifies that a new tenant who wishes to "tack on" to a previous occupant's rights under the Landlord Tenant Act is not entitled to do so unless the prior occupant "has acquired rights under this chapter."

Comment: Section 7 could benefit from re-drafting the first sentence to read: "No tenant acquires rights under this chapter unless that person has paid rent in full for the first rental period specified in a written rental agreement."This additional change is desirable to avoid the problems that are involved when one party or another claims that an oral rental agreement was made.

\*Section 8: This section increases the security deposit which a landlord may require from an amount equal to two months' rent to an amount equal to three months' rent.

Comment: This section increases the freedom of the landlord and tenant to arrive at mutually acceptable terms in a lease. This section recognizes that in some circumstances, a more substantial security deposit may be desirable. If the parties so agree, they may contract to that effect.

\*Section 9: This section specifies the address for a landlord to use to return a tenant's security deposit. It also places the responsibility on the tenant to tell the landlord where to send his security deposit within 90 days of the termination of the tenancy, or forfeit to the landlord the amount of security deposit not applied to damage to the rental unit or to unpaid rent.

Comment: This section absolves the landlord of any duty to indefinitely play banker for a departed tenant who fails to give the landlord an address to which his security deposit may be sent. In some cases, only a few dollars remain out of a security deposit. Under current law, that money must be managed by the landlord in a trust account indefinitely.

\*Section 10: This section further increases the freedom to contract between a landlord and tenant (but only for duplexes or smaller units) by specifying that the parties may agree that the tenant will be responsible for keeping the plumbing, heating, and other facilities and appliances in good working order. This section forbids a landlord and tenant from agreeing that elevators shall be the responsibility of the tenant.

Comment: Many Alaskans are handier than they are wealthy. This gives a handyman-tenant the chance to bargain for reduced rent in exchange for limited maintenance duties. This provision stands to benefit everyone.

\*Section 11: This section specifies that a tenant may not unreasonably refuse to allow a landlord to enter a rental unit to remove property belonging to the landlord.

No comment.

\*Section 12: This section adds a "rule of reasonableness" to the requirement that a landlord must give a tenant at least 24 hours' advance notice of his intent to enter the premises for purposes permitted under existing law.

Comment: When a tenant is out of town it may be impossible to provide the 24 hour's notice now required. This change recognizes that sometimes notice is just not possible.

\*Section 13: This section adds a new provision of law. Rental units are often owned partly by a landlord and partly by a lender or a bank. This section provides that when a landlord/borrower defaults on his bank payments for the rented premises, the tenant can make rental payments directly to the bank/lender and the payment will be credited against the tenant's normal rent obligation.

Comment: This section would primarily benefit tenants and lending institutions, while at the same time simplifying what might otherwise be a very complicated situation. It is a good reform.

\*Section 14: This section modifies the procedure for evicting a tenant who has violated his lease. It permits a landlord to terminate a tenant's tenancy if the tenant has failed to pay a utility bill, resulting in a cut-off of heat or water to the premises.

Comment: In Alaska, a cut-off of heat can have potentially disastrous impacts on a home or apartment. Repair costs can be extraordinary. This section permits a landlord to terminate a tenant's tenancy when the tenant fails to keep the utilities bills paid, thereby endangering the unit. This is an important and good reform.

\*Section 15: This section specifies that a tenant must pay rent in full in order to remain in occupancy unless the landlord accepts a partial payment of the rent.

Comment: This section should be clarified to state that a landlord does not need to make an "all or nothing" choice if a tenant offers to make a partial payment of rent. The following language should be added to this section:

"A landlord may accept partial payment of rent from a tenant while specifically reserving his right to terminate the tenancy if within three days of the partial rental payment the landlord gives the tenant written notice that the partial rental payment does not constitute compliance with the rental agreement."

Comment: (Section 15, continued) In Juneau, the District Court has, in some cases, been unwilling to evict tenants who pay part of their rent, but not all of their rent. The Court appears to have adopted an unwritten rule that an unspecified amount of rent can be withheld by a tenant before the Court will grant an eviction for failure to pay rent.

To remedy this problem, the Legislature should further specify, perhaps in a Letter of Intent, that:

"The remedy of eviction is intended to be available as a matter of law, according to the procedures set out in AS 09.45 and AS 34.03, as against tenants who do not pay the full amount of rent due, regardless of the amount of the deficiency."

\*Section 16: This section specifies certain conditions under which the landlord may enter a tenant's rental unit and terminate the tenancy.

No comment.

\*Section 17: This section (and the following three sections) partially repeals existing law regarding when a landlord may dispose of a tenant's property that has been abandoned on the rental premises. It specifies that an automobile is included within the ambit of a tenant's personal property. It requires a tenant to make a written request of the landlord regarding property the tenant leaves behind if the tenant wants to prevent the landlord from selling the property at public auction. The tenant must be given 15 days' written notice before any sale or other disposition of property left behind. It specifies that a tenant's perishable commodities left behind must first be determined to be of minimal value before a landlord may dispose of them in a manner left to his discretion.

Comment: Tenants' property rights are given additional protection in this section whenever perishable commodities are involved.

\*Section 18: Like section 17, this section partially repeals existing law regarding when a landlord may dispose of a tenant's property that has been abandoned on the rental premises. This section limits the landlord's duties (the law of "bailment") when the landlord stores property left behind by a tenant. This section also limits the amount a landlord may charge for such storage.

No comment.

Section 19: Like sections 17 and 18, this section partially repeals existing law regarding when a landlord may dispose of a tenant's property that has been abandoned on the rental premises. This section revises the tenant's duties when he receives a written notice from the landlord of the landlord's intent to dispose of property the tenant has left behind after the tenancy has ended.

No comment.

\*Section 20. Like sections 17-19, this section partially repeals existing law regarding when a landlord may dispose of a tenant's property that has been abandoned on the rental premises. This section specifies that the landlord is not liable for damages to a tenant when the landlord stores the tenant's property after the end of the tenant's term of occupancy unless the landlord deliberately or negligently violates the law's requirements.

No comment.

\*Section 21: This section adds a new provision of law covering hold-over tenancies under a deed of trust executed by a landlord.

No comment.

\*Section 22: This section allows a landlord to ask a utility to notify the landlord in the event of a cut-off of service by the utility to a rental unit.

Comment: This section complements section 14, above.

\*Section 23: This section deletes the requirement that the State of Alaska's publication on landlord and tenant rights be approved by the Department of Law.

No comment.

\*Section 24: This section seeks to amend Civil Rule 85 (a) (3) regarding continuances.

p. 7

Comments on HB 309

Comment: Procedural rules of court are under the exclusive authority of the judicial branch and are set by the Alaska Supreme Court.

\*Section 25: This section seeks to amend Civil Rule 85 regarding calendaring priority.

Comment: Procedural rules of court are under the exclusive authority of the judicial branch and are set by the Alaska Supreme Court.

\*Section 26: This section seeks to amend Civil Rule 8 for District Courts regarding Small Claims procedure

Comment: Procedural rules of court are under the exclusive authority of the judicial branch and are set by the Alaska Supreme Court.

Section 27: This section directs the Legislative Affairs Agency to make copies of the Landlord-Tenant Law pamphlet available to the public.

Comment: In the past, this informational pamphlet has appeared slanted towards the perspective of tenants. It is hoped that this pamphlet can be revised to more evenly reflect the interests of landlords and tenants.

#### CONCLUSION

HB 309 is a good bill. I urge you to vote in favor of this legislation. Please also consider the addition suggested in our comments to Section 15, set out on page 5 of this letter.

Thank you for considering these views. Please contact me if you have specific questions regarding changes to this Bill.

Sincerely,



Gregory F. Cook  
Attorney for  
Myron Klein

HB309



Institute of Real Estate Management  
of the NATIONAL ASSOCIATION OF REALTORS®

Alaska Chapter No. 97

February 22, 1990

Representative Dave Donley  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, Alaska 99811

Representative Donley:

This letter is being written in reference to House Bill No. 309 and House Bill No. 354 both by the House Labor and Commerce Committee. We are desirous of seeing them both enacted.

House Bill 309 an Act relating to Landlord Tenant relationships.

The Landlord Tenant Act was enacted during pipeline days when housing was nearly impossible to obtain and what there was had some atrocious rents attached it to. The most blatant example printed in the papers was in Valdez.

Senator Ziegler of Ketchikan held hearings in the major cities and he stated more than once that the Bill was being pushed through on a surge of emotion and that it would have to be looked at a later date in a more reasonable atmosphere.

We believe that time is now and House Bill 309 will amend the Act to bring it into the realm of fairness. The relationship between the Owners and 90% of the renters is excellent. It is the other 10 percent that have learned how to use the Landlord Tenant Act to prolong their tenancy without payment of rent or payment for the damage that they cause to the premises.

We know that you believe in fairness and therefore request your whole-hearted support of House Bill 309 when it is before you.

House Bill No. 354

This Bill authored by the House Labor and Commerce Committee allows local governments to have options of forgiving taxes for up to a five year period in order to induce owners to remove old buildings or sheds. This is a tool which the local municipalities may rid themselves of blight in the lease painless and least expensive way. We urge your support of this Bill.



CERTIFIED PROPERTY MANAGER®

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# Alaska State Legislature

## House

Official Business

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

### MEMORANDUM

January 23, 1990

TO: Representative Dave Donley  
Chairman, House Labor and  
Commerce Committee

FROM: Rep. David Finkelstein *DF*

RE: HB 309, Landlord/Tenant Law Amendments

I will be absent from the hearing from 3:25-3:50 to go to the Labor Conference, so I thought I would put down my ideas on HB 309 on paper. Many of the same objections will arise in the Judiciary Committee so it may be worth addressing some of them now.

#### Sec. 2. Amendment of AS 09.45.100

Though I realize that this is one of the critical sections of HB 309, I recommend the time of 10 days be maintained from the period of the notice to quit to the commencement of action for possession. In cases where a second notice to quit must be given within a twelve month period, five days might be more appropriate than the bill's recommendation of three days.

#### Sec. 8. Amendment of AS 34.03.070 (a)

This may be an instance where the amount of monthly rent (perhaps for those rentals in excess of \$800/month) could be the basis for allowing three months rather than two months deposit.

#### Sec. 10. Amendment of AS 34.03.100

As in Section 8, I think this should only apply to high-rent rentals.

Sec. 12. Amendment to AS 34.03.140

I believe we need to clarify what is meant by the term "when possible," as added in line 2, page 5 of the workdraft.

Sec. 15. Amendment to AS 34.03.220

Section 15 should give the tenant an opportunity to pay utilities bills in arrears and be reinstated, and the termination period should be increased from 3 to 5 days.

Sec. 24. Amendment to AS 44.23.020 (b) (8)

I haven't heard of any reason why we should get rid of the Department of Law's review.

Thanks for your consideration.

Alaska State Legislature  
House of Representatives

March 1, 1990

Labor and Commerce Committee

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair  
House Labor and Commerce Committee

Re: Draft request and explanation of CS HB 309 (L&C)  
Current Draft: Work order 6-0846D, by Bradley, Dated 3/1/90  
Previous Draft: Work order 6-0846J, by Bradley, Dated 12/29/89

Following is a copy of the drafting request sent to Legislative Legal Services counsel Dick Bradley, outlining the changes incorporated into the attached CS for HB 309:

Section 1 and 2 - Leave Section 1 (giving landlord/tenant cases priority in court) and Section 2 (technical amendment) as is in previous draft CS.

Section 3 - (Period between service and notice of action brought) Leave the 10 day standard on page 2, line 2 as it is in current law. Change the three day standard in line five (of previous draft) to five days (in current draft).

Section 4 - (Time periods and surety deposits for summons and continuance) Delete everything after the first sentence.

Section 5 - (Technical amendment to current law to comply to changes that are no longer proposed under this draft). Delete entire section.

Section 6 - (Authorizing landlord/tenant cases to be heard in small claims court). Leave as is.

Section 7 - (Persons who do not pay full rent do not acquire rights under this chapter). Redraft this section to require that a person who does not pay the whole rent for the first full rental period acquires no rights to use the premises other than what they have actual paid for and may be subject to a 24 hour eviction notice.

Section 8 - (Allowing a landlord to charge three (TWO) times the monthly rent as a security deposit). Redraft section to remove the restriction on security deposits for rental units in excess of \$1,000 a month. (Restrictions limiting security deposits to no more than two times the monthly rent for rental units less than \$1,000/monthly remains as it is under current law).

Section 9 - (Requiring tenants to give a forwarding address to landlords for return of security deposits) Leave as is.

Section 10 - (Expanding the scope of landlord duties a tenant can agree to perform). Leave as is in current law but add a new section allowing tenants to agree to perform landlord's duties for (a)(3) (heating and plumbing systems) as well as duties allowed under current law for rental units in excess of \$1,000 a month. Leave prohibition against elevator maintenance.

Section 11 - (Removal of landlords property from rental premises) Clarify that landlord cannot remove property required by the Act (furnace, plumbing fixtures, etc.) or by a written rental agreement.

Section 12 - (Circumstances under which a landlord can enter rental unit). Delete section.

Section 13 - (Establishing that tenants debt to landlord is satisfied when they pay rent to the new owner when rental property changes ownership). Leave as is.

Section 14 - (Tenant cannot bring claim of deficiencies in rental unit during eviction proceedings unless they had notified landlord prior to proceedings) Rewrite section to clarify that if tenants withheld rent based on provisions under the Act, they must notify the landlord in writing specifying the acts and omissions constituting a breach under the Act in order to use it in court.

Section 15 - (Eviction for failure to pay utility bills) Rewrite section so that landlord may deliver a written notice that the tenancy will terminate in five days if a utility has discontinued service for failure of tenant to pay utility bill. If 1) tenant recontinues service within three days, 2) repays any amount paid by landlord, and 3) no damage occurred to the rental unit as a result of the tenants failure to pay utility bills the rental agreement will not terminate. If any of those conditions are not met, the landlord may terminate the tenancy five (THREE) days after delivery of the notice.

Section 16 - (Acceptance of partial rental payment) Leave as is.

Section 17 - (Time periods when landlord may reenter the rental unit and terminate the agreement when rent has not been paid and tenant is absent). Leave as is.

Sections 18, 19, and 20 (Repeals and reenacts sections dealing with removal, storage, and disposition of tenants property). Delete sections from previous draft.

Section 21 - (Clarifying amendments to current law regarding liability for tenants property to make it easier to understand). Leave as is.

Section 22 - (Continuing the terms of a lease when executing a deed of trust) Leave as is.

Section 23 - (Rights of landlords to receive notice of discontinuance of utility service). Leave as is.

Section 24 - (Review of landlord/tenant pamphlet by Department of Law) Delete section from previous draft.

Section 25 - (Required continuance deposits) Delete section.

Section 26 - (Change civil rule 85 to give priority to landlord/tenant claims on court calendar) Leave as is.

Section 27 - (Change civil rule 8 to allow landlord/tenant claims to be heard in small claims court). Leave as is.

Section 28 - (Require LIO's to make copies of landlord/tenant pamphlet available to the public). Leave as is.

HB 309 is before the House Labor and Commerce on Thursday, March 1, at 3:00 p.m., assuming you can get a working draft to us by that time. Please call me or Ginger Baim at 4954 if you have any questions or need additional information.

dd/gbs90  
b/hb309-1

6-0846D/  
Bradley  
3/1/90

Original sponsor(s): Labor & Commerce Committee

1 IN THE HOUSE

BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 309 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the landlord and tenant relation-  
7 ship; relating to tenancies in property secured by  
8 financial obligations; relating to the availability  
9 of the information pamphlet on landlord and tenant  
10 rights; and amending Rule 85 of the Alaska Rules of  
11 Civil Procedure and Rule 8 of the Alaska District  
12 Court Rules of Civil Procedure."

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

14 \* Section 1. AS 09.45.070 is amended by adding a new subsection to  
15 read:

16 (c) The court shall give priority on the calendar to an action  
17 filed under AS 09.45.070 - 09.45.160.

18 \* Sec. 2. AS 09.45.100 is amended to read:

19 Sec. 09.45.100. REQUISITES OF NOTICE TO QUIT. A notice to quit  
20 shall be in writing and shall be served upon the tenant or person in  
21 possession by being delivered to the tenant or person or left at the  
22 premises in case of absence from the premises, or the notice may be  
23 sent by registered or certified mail, in which case an additional  
24 three days shall be added to the notice period required under AS 09.-  
25 45.110 [10 DAYS].

26 \* Sec. 3. AS 09.45.110 is amended to read:

27 Sec. 09.45.110. PERIOD BETWEEN SERVICE OF NOTICE AND ACTION  
28 BROUGHT. An action for the recovery of the possession of the premises  
29 may be maintained in the cases specified in AS 09.45.090(2) when the

1 notice to quit has been served upon the tenant or person in possession  
2 for the period of 10 days before the commencement of the action. If  
3 an action for the recovery of the premises was filed against the  
4 tenant within the previous 12 months, the notice to quit need be  
5 served upon the tenant or the person in possession only five days  
6 before the commencement of the action. If [UNLESS] the leasing or  
7 occupation is for the purpose of farming or agriculture, [IN WHICH  
8 CASE] the notice shall be served 90 days before the commencement of  
9 the action.

10 \* Sec. 4. AS 09.45.120 is amended to read:

11       Sec. 09.45.120. SUMMONS AND CONTINUANCE. Summons in actions for  
12 forcible entry and detainer shall be served not less than two [NOR  
13 MORE THAN FOUR] days before the date of trial. A [NO] continuance may  
14 not [SHALL] be granted for a longer period than two days unless the  
15 defendant applying for the continuance gives an undertaking to the  
16 adverse party, with sureties approved by the court conditioned to the  
17 payment of the rent that may accrue if judgment is rendered against  
18 the defendant.

19 \* Sec. 5. AS 22.15.040(a) is amended to read:

20       (a) When a claim for relief does not exceed \$5,000 exclusive of  
21 costs, interest, and attorney fees, and request is so made, the dis-  
22 trict judge or magistrate shall hear the action as a small claim  
23 unless important or unusual points of law are involved. When a claim  
24 for possession under AS 22.15.030(a)(6) does not exceed \$5,000 exclu-  
25 sive of costs, interest, and attorney fees, the district judge or  
26 magistrate shall hear the action as a small claim unless important or  
27 unusual points of law are involved. The supreme court shall prescribe  
28 the procedural rules and standard forms to assure simplicity and the  
29 expeditious handling of small claims.

1 \* Sec. 6. AS 34.03.010 is amended by adding a new subsection to read:

2 (c) Notwithstanding AS 09.45.110 and AS 34.03.220(b), a person  
3 who has not paid rent in full for the first rental period under a  
4 rental agreement acquires no right to the use of the premises beyond  
5 that portion of the period equitably earned by the amount of rent  
6 actually paid and the person is subject to eviction on 24 hour's  
7 notice. A person whose right to the use of premises depends upon  
8 rights acquired by another person does not acquire rights unless the  
9 other person has acquired rights under this chapter.

10 \* Sec. 7. AS 34.03.070(a) is amended to read:

11 (a) A landlord may not demand or receive prepaid rent or a  
12 security deposit, however denominated, in an amount or value in excess  
13 of TWC months' periodic rent. This section does not apply to  
14 rental units where the rent exceeds \$1,000 a month.

15 \* Sec. 8. AS 34.03.070(g) is amended to read:

16 (g) If the landlord or tenant gives notice that complies with  
17 AS 34.03.290, the landlord shall mail the written notice and refund  
18 required by (b) of this section within 14 days after the tenancy is  
19 terminated and possession is delivered by the tenant to the address  
20 supplied by the tenant. If the tenant does not give notice that  
21 complies with AS 34.03.290, the landlord shall mail the written notice  
22 and refund required by (b) of this section within 30 days after the  
23 tenancy is terminated, possession is delivered by the tenant, or the  
24 landlord becomes aware that the dwelling unit is abandoned. If the  
25 landlord does not know the mailing address of the tenant, but knows or  
26 has reason to know how to contact the tenant to give the notice re-  
27 quired by (b) of this section, the landlord shall make a reasonable  
28 effort to deliver the notice and refund to the tenant. If the tenant  
29 does not provide the landlord with an address within 90 days after the

1 tenancy is terminated and if the landlord is unable to contact the  
2 tenant, the landlord may retain the amount not applied under (b) of  
3 this section.

4 \* Sec. 9. AS 34.03.100(c) is amended to read:

5 (c) The landlord and tenant of a one- or two-family residence  
6 may agree in writing that the tenant perform the landlord's duties  
7 specified in (a)(4), (5), (6), and (7) of this section. A tenant may  
8 agree to perform the duties specified in (a)(3) of this section in  
9 rental units where the rent exceeds \$1,000 a month. The tenant may  
10 not agree to maintain elevators in good and safe working order. They  
11 may also agree in writing that the tenant perform specified repairs,  
12 maintenance tasks, alterations, and remodeling. Agreements are al-  
13 lowed under this subsection only if the transaction is entered into in  
14 good faith and not for the purpose of evading the obligations of the  
15 landlord.

16 \* Sec. 10. AS 34.03.140(a) is amended to read:

17 (a) The tenant may not unreasonably withhold consent to the  
18 landlord to enter into the dwelling unit in order to inspect the  
19 premises, make necessary or agreed repairs, decorations, alterations,  
20 or improvements, supply necessary or agreed services, remove personal  
21 property belonging to the landlord that is not covered by a written  
22 rental agreement, or exhibit the dwelling unit to prospective or  
23 actual purchasers, mortgagees, tenants, workers or contractors.

24 \* Sec. 11. AS 34.03 is amended by adding a new section to article 4 to  
25 read:

26 Sec. 34.03.155. ADDITIONAL TENANT OBLIGATIONS. If a landlord  
27 defaults on a financial obligation that secures property occupied by a  
28 tenant of the landlord, the holder of the financial obligation may  
29 advise the landlord and the tenant of the landlord to make payments

1 otherwise due to the landlord directly to the holder of the financial  
2 obligation for the benefit of the landlord and holder. A payment made  
3 under this section to the holder of the financial obligation dis-  
4 charges to that extent the debt of tenant to the landlord.

5 \* Sec. 12. AS 34.03.190 is amended to read:

6 Sec. 34.03.190. LANDLORD'S NONCOMPLIANCE AS DEFENSE TO ACTION  
7 FOR POSSESSION OR RENT. (a) In an action for possession based upon  
8 nonpayment of the rent or in an action for rent when the tenant is in  
9 possession, the tenant may counterclaim for any amount recoverable  
10 under the rental agreement or this chapter. A tenant may not counter-  
11 claim under this section unless, before the landlord filed an action  
12 for possession or rent, the tenant had provided the landlord with  
13 written notice under AS 34.03.160 specifying the acts and omissions  
14 described in AS 34.03.100 that constitute the breach. If a counter-  
15 claim is made, the court shall determine whether the defense is sup-  
16 ported by the evidence and, if so, may order that

17 (1) the periodic rent [IS TO] be reduced to reflect the  
18 diminution in value of the dwelling unit during the period of noncom-  
19 pliance;

20 (2) the action be continued for a reasonable time to enable  
21 the landlord to cure the violation;

22 (3) the tenant pay into court all or part of the rent ~~that~~  
23 has accrued and that is continuing to accrue (THEREAFTER ACCRUING); if  
24 the violations have not been cured within six months, the court shall  
25 enter judgment for the defendant and either refund to the defendant  
26 all money deposited or use the money for the purpose of making the  
27 dwelling fit for human habitation; if the violations have been cured,  
28 the court shall determine the amount due to each party; the party to  
29 whom a net amount is owed shall be paid first from the money paid into

1 the court, and the balance by the other party; if no rent remains due  
2 after application of this section, judgment shall be entered for the  
3 tenant in the action for possession;

4 (4) the tenant vacate the dwelling during the making of  
5 necessary repairs, when the repairs cannot be made without vacation of  
6 the premises, the tenant to be reinstated upon completion of the  
7 repairs.

8 (b) In an action for rent where the tenant is not in possession,  
9 the tenant may counterclaim if authorized under [AS PROVIDED IN] (a)  
10 of this section but the tenant is not required to pay rent into court.

11 \* Sec. 13. AS 34.03.220(a) is amended to read:

12 (a) Except as provided in this chapter, if there is a material  
13 noncompliance by the tenant with the rental agreement or noncompliance  
14 with AS 34.03.120 materially affecting health and safety, the landlord  
15 may deliver a written notice to the tenant specifying the acts and  
16 omissions constituting the breach and specifying that the rental  
17 agreement will terminate upon a date not less than 20 days after  
18 receipt of the notice. If the breach is not remedied in 10 days, the  
19 rental agreement terminates as provided in the notice subject to the  
20 provisions of this section. If a public utility providing electric-  
21 ity, natural gas, or water to the premises occupied by the tenant  
22 discontinues the service to the premises for the failure of the tenant  
23 to pay for the utility service, the landlord may deliver a written  
24 notice to the tenant advising that the tenancy will terminate five  
25 days after the delivery of the notice. If, within the three days from  
26 the receipt of the notice, the tenant reinstates the discontinued  
27 service, repays the landlord for any amounts paid by the landlord to  
28 reinstate service, and no damage occurred to the rental unit as a  
29 result of the discontinuance of service [IF THE BREACH IS REMEDIABLE

1 BY REPAIRS OR THE PAYMENT OF DAMAGES OR OTHERWISE AND THE TENANT  
2 ADEQUATELY REMEDIES THE BREACH BEFORE THE DATE SPECIFIED IN THE  
3 NOTICE], the rental agreement will not terminate. In the absence of  
4 due care by the tenant, if substantially the same act or omission that  
5 constituted a prior noncompliance of which notice was given recurs  
6 within six months, the landlord may terminate the rental agreement  
7 upon at least 10 days written notice specifying the breach and the  
8 date of termination of the rental agreement.

9 \* Sec. 14. AS 34.03.220(b) is amended to read:

10 (b) If rent is unpaid when due and the tenant fails to pay rent  
11 in full within 10 days after written notice by the landlord of nonpay-  
12 ment and the intention to terminate the rental agreement if the rent  
13 is not paid within that period of time, the tenancy terminates unless  
14 the landlord agrees to allow the tenant to remain in occupancy, and  
15 the landlord may terminate the rental agreement and immediately re-  
16 cover possession of the rental unit. Only [; ONLY] one written notice  
17 of default need be given the tenant by the landlord as to any one  
18 default. A landlord who has given written notice to the tenant under  
19 this subsection may accept a partial payment of the rent due under the  
20 rental agreement and extend the date for the eviction accordingly.

21 \* Sec. 15. AS 34.03.230(b) is amended to read:

22 (b) During an absence of the tenant in excess of seven days, the  
23 landlord may enter the dwelling unit at times reasonably necessary as  
24 provided in AS 34.03.140. The landlord may reenter the dwelling unit  
25 and terminate the rental agreement when the rent has not been paid,  
26 the tenant failed to give the landlord notice of the absence, and the  
27 tenant

28 (1) in a week-to-week tenancy has been absent for three  
29 consecutive days;

1                   (2) in a month-to-month tenancy has been absent for 10  
2 consecutive day.

3 \* Sec. 16. AS 34.03.260(d) is amended to read:

4           (d) The landlord is not liable [MAY NOT BE HELD TO RESPOND] in  
5 damages in an action by a tenant claiming loss by reason of the land-  
6 lord's storage [ELECTION, DESTRUCTION,] or disposition of property  
7 under this section. A [, OR SALE. IF, HOWEVER, THE] landlord who  
8 deliberately or negligently violates the provisions of this section [,  
9 THE LANDLORD] is liable for actual damages and penal damages of an  
10 amount not to exceed actual damages.

11 \* Sec. 17. AS 34.20.090 is amended by adding a new subsection to read:

12           (d) A lease or a periodic tenancy created by the party or the  
13 assigns of the party executing the deed of trust continue according to  
14 the terms of the lease or periodic tenancy.

15 \* Sec. 18. AS 42.30 is amended by adding a new section to read:

16           ARTICLE 6. RIGHTS OF LANDLORDS IN UTILITY SERVICE.

17           Sec. 42.30.400. RIGHTS OF LANDLORDS TO RECEIVE NOTICE OF THE  
18 DISCONTINUANCE OF SERVICE. A public utility that provides electric-  
19 ity, natural gas, or water to individual customers shall permit a  
20 landlord to register as the owner of an improvement served by the  
21 public utility. The public utility may not discontinue service to a  
22 tenant of the improvement until 10 days after the public utility has  
23 provided to the landlord written notice of an intention to discontinue  
24 service.

25 \* Sec. 19. Rule 85 of the Alaska Rules of Civil Procedure is amended by  
26 adding a new paragraph to read:

27           (c) Priority on the Calendar. The trial court shall give pri-  
28 ority on the calendar to an action brought under the forcible entry or  
29 detainer provisions of law.

1 \* Sec. 20. Rule 8 of the Alaska District Court Rules of Civil Procedure  
2 is amended by adding a new paragraph to read:

3 (d) Notwithstanding (a) - (c) of this rule, when a claim for  
4 possession under AS 22.15.030(a)(6) does not exceed \$5,000 exclusive  
5 of costs, interest, and attorney fees, the district judge or magis-  
6 trate shall hear the action as a small claim unless important or  
7 unusual points of law are involved.

8 \* Sec. 21. The Legislative Affairs Agency shall make copies of the  
9 pamphlet prepared by the Department of Law under AS 44.23.020(b)(8) avail-  
10 able to members of the public at Legislative Information Offices throughout  
11 the state.

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PROPOSED ONLY  
Not adopted by  
House Labor &  
Commerce Comm.  
as of 1/18/90

Original sponsor(s): LABOR & COMMERCE COMMITTEE

1 IN THE HOUSE BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 309 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the landlord and tenant relation-  
7 ship; relating to tenancies in property secured by  
8 financial obligations; relating to the information  
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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

14 \* Section 1. AS 09.45.070 is amended by adding a new subsection to  
15 read:

16 (c) The court shall give priority on the calendar to an action  
17 filed under AS 09.45.070 - 09.45.160.

18 \* Sec. 2. AS 09.45.100 is amended to read:

19 Sec. 09.45.100. REQUISITES OF NOTICE TO QUIT. A notice to quit  
20 shall be in writing and shall be served upon the tenant or person in  
21 possession by being delivered to the tenant or person or left at the  
22 premises in case of absence from the premises, or the notice may be  
23 sent by registered or certified mail, in which case an additional  
24 three days shall be added to the notice period required under AS 09.-  
25 45.110 [10 DAYS].

26 \* Sec. 3. AS 09.45.110 is amended to read:

27 Sec. 09.45.110. PERIOD BETWEEN SERVICE OF NOTICE AND ACTION  
28 BROUGHT. An action for the recovery of the possession of the premises  
29 may be maintained in the cases specified in AS 09.45.090(2) when the

1 notice to quit has been served upon the tenant or person in possession  
2 for the period of seven [10] days before the commencement of the  
3 action. If an action for the recovery of the premises was filed  
4 against the tenant within the previous 12 months, the notice to quit  
5 need be served upon the tenant or the person in possession only three  
6 days before the commencement of the action. If [UNLESS! the leasing  
7 or occupation is for the purpose of farming or agriculture, [IN WHICH  
8 CASE] the notice shall be served 90 days before the commencement of  
9 the action.

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11 Sec. 09.45.120. SUMMONS AND CONTINUANCE. Summons in actions for  
12 forcible entry and detainer shall be served not less than two [NOR  
13 MORE THAN FOUR] days before the date of trial. A [NO] continuance may  
14 not [SHALL] be granted for a longer period than two court days unless  
15 the defendant applying for the continuance deposits with [GIVES AN  
16 UNDERTAKING TO THE ADVERSE PARTY, WITH SURETIES APPROVED BY] the court  
17 [CONDITIONED TO THE PAYMENT OF] the rent that will [MAY] accrue during  
18 the next month if judgment is rendered against the defendant.

19 \* Sec. 5. AS 09.45.130 is amended to read:

20 Sec. 09.45.130. ACTION AGAINST PERSONS PAYING RENT IN ADVANCE.  
21 The service of a notice to quit upon a tenant or person in possession  
22 does not authorize an action to be maintained against the tenant or  
23 person for the possession of the premises until the expiration of the  
24 period for which that tenant or person may have paid rent for the  
25 premises in advance. To authorize the [AN] action against a tenant or  
26 person in possession who has paid rent in advance, the [A] notice must  
27 be given under AS 09.45.110 [AT LEAST 10 DAYS] before the date the  
28 rent is due again [IN CASE OF A MONTH-TO-MONTH TENANCY OR AT LEAST  
29 THREE DAYS BEFORE IN THE CASE OF A WEEK-TO-WEEK TENANCY].

1 \* Sec. 6. AS 22.15.040(a) is amended to read:

2 (a) When a claim for relief does not exceed \$5,000 exclusive of  
3 costs, interest, and attorney fees, and request is so made, the dis-  
4 trict judge or magistrate shall hear the action as a small claim  
5 unless important or unusual points of law are involved. When a claim  
6 for possession under AS 22.15.030(a)(6) does not exceed \$5,000 exclu-  
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8 magistrate shall hear the action as a small claim unless important or  
9 unusual points of law are involved. The supreme court shall prescribe  
10 the procedural rules and standard forms to assure simplicity and the  
11 expeditious handling of small claims.

12 \* Sec. 7. AS 34.03.010 is amended by adding a new subsection to read:

13 (c) A person who has not paid rent in full for the first rental  
14 period under a rental agreement does not acquire rights under this  
15 chapter. A person whose right to the use of premises depends upon  
16 rights acquired by another person does not acquire rights unless the  
17 other person has acquired rights under this chapter.

18 \* Sec. 8. AS 34.03.070(a) is amended to read:

19 (a) A landlord may not demand or receive prepaid rent or a  
20 security deposit, however denominated, in an amount or value in excess  
21 of three [TWO] months' periodic rent.

22 \* Sec. 9. AS 34.03.070(g) is amended to read:

23 (g) If the landlord or tenant gives notice that complies with  
24 AS 34.03.290, the landlord shall mail the written notice and refund  
25 required by (b) of this section within 14 days after the tenancy is  
26 terminated and possession is delivered by the tenant to the address  
27 supplied by the tenant. If the tenant does not give notice that  
28 complies with AS 34.03.290, the landlord shall mail the written notice  
29 and refund required by (b) of this section within 30 days after the

1 tenancy is terminated, possession is delivered by the tenant, or the  
 2 landlord becomes aware that the dwelling unit is abandoned. If the  
 3 landlord does not know the mailing address of the tenant, but knows or  
 4 has reason to know how to contact the tenant to give the notice re-  
 5 quired by (b) of this section, the landlord shall make a reasonable  
 6 effort to deliver the notice and refund to the tenant. If the tenant  
 7 does not provide the landlord with an address within 90 days after the  
 8 tenancy is terminated and if the landlord is unable to contact the  
 9 tenant, the landlord may retain the amount not applied under (b) of  
 10 this section.

11 \* Sec. 10. AS 34.03.100(c) is amended to read:

12 (c) The landlord and tenant of a one- or two-family residence  
 13 may agree in writing that the tenant perform the landlord's duties  
 14 specified in (a)(3), (4) [(a)(4)], (5), (6), and (7) of this section.  
 15 The tenant may not agree to maintain elevators in good and safe work-  
 16 ing order. They may also agree in writing that the tenant perform  
 17 specified repairs, maintenance tasks, alterations, and remodeling.  
 18 Agreements are allowed under this subsection only if the transaction  
 19 is entered into in good faith and not for the purpose of evading the  
 20 obligations of the landlord.

21 \* Sec. 11. AS 34.03.140(a) is amended to read:

22 (a) The tenant may not unreasonably withhold consent to the  
 23 landlord to enter into the dwelling unit in order to inspect the  
 24 premises, make necessary or agreed repairs, decorations, alterations,  
 25 or improvements, supply necessary or agreed services, remove property  
 26 belonging to the landlord, or exhibit the dwelling unit to prospective  
 27 or actual purchasers, mortgagees, tenants, workers or contractors.

28 \* Sec. 12. AS 34.03.140(c) is amended to read:

29 (c) A landlord may not abuse the right of access or use it to

1 harass the tenant. Except in case of emergency or if it is imprac-  
2 ticable to do so, the landlord shall, when possible, give the tenant  
3 at least 24 hours notice of intention to enter and may enter only at  
4 reasonable times and with the tenant's consent.

5 \* Sec. 13. AS 34.03 is amended by adding a new section to article 4 to  
6 read:

7 Sec. 34.03.155. ADDITIONAL TENANT OBLIGATIONS. If a landlord  
8 defaults on a financial obligation that secures property occupied by a  
9 tenant of the landlord, the holder of the financial obligation may  
10 advise the landlord and the tenant of the landlord to make payments  
11 otherwise due to the landlord directly to the holder of the financial  
12 obligation for the benefit of the landlord and holder. A payment made  
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14 charges to that extent the debt of tenant to the landlord.

15 \* Sec. 14. AS 34.03.190 is amended to read:

16 Sec. 34.03.190. LANDLORD'S NONCOMPLIANCE AS DEFENSE TO ACTION  
17 FOR POSSESSION OR RENT. (a) In an action for possession based upon  
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20 under the rental agreement or this chapter. A tenant may not counter-  
21 claim under this section unless, before the landlord filed an action  
22 for possession or rent, the tenant had provided the landlord with  
23 written notice under AS 34.03.160 specifying the acts and omissions  
24 constituting the breach. If a counterclaim is made, the court shall  
25 determine whether the defense is supported by the evidence and, if so,  
26 may order that

27 (1) the periodic rent [IS TO] be reduced to reflect the  
28 diminution in value of the dwelling unit during the period of noncom-  
29 pliance;

1 (2) the action be continued for a reasonable time to enable  
2 the landlord to cure the violation;

3 (3) the tenant pay into court all or part of the rent that  
4 has accrued and that is continuing to accrue [THEREAFTER ACCRUING]; if  
5 the violations have not been cured within six months, the court shall  
6 enter judgment for the defendant and either refund to the defendant  
7 all money deposited or use the money for the purpose of making the  
8 dwelling fit for human habitation; if the violations have been cured,  
9 the court shall determine the amount due to each party; the party to  
10 whom a net amount is owed shall be paid first from the money paid into  
11 the court, and the balance by the other party; if no rent remains due  
12 after application of this section, judgment shall be entered for the  
13 tenant in the action for possession;

14 (4) the tenant vacate the dwelling during the making of  
15 necessary repairs, when the repairs cannot be made without vacation of  
16 the premises, the tenant to be reinstated upon completion of the  
17 repairs.

18 (b) In an action for rent where the tenant is not in possession,  
19 the tenant may counterclaim if authorized under [AS PROVIDED IN] (a)  
20 of this section but the tenant is not required to pay rent into court.

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

22 (a) Except as provided in this chapter, if there is a material  
23 noncompliance by the tenant with the rental agreement or noncompliance  
24 with AS 34.03.120 materially affecting health and safety, the landlord  
25 may deliver a written notice to the tenant specifying the acts and  
26 omissions constituting the breach and specifying that the rental  
27 agreement will terminate upon a date not less than 20 days after  
28 receipt of the notice. If the breach is not remedied in 10 days, the  
29 rental agreement terminates as provided in the notice subject to the

1 provisions of this section. If a public utility providing electric-  
2 ity, natural gas, or water to the premises occupied by the tenant  
3 discontinues the service to the premises for failure to pay for the  
4 utility service, the landlord may deliver a written notice to the  
5 tenant advising that the tenancy will terminate three days after the  
6 delivery of the notice. If the breach is remediable by repairs or the  
7 payment of damages or otherwise and the tenant adequately remedies the  
8 breach before the date specified in the notice, the rental agreement  
9 will not terminate. In the absence of due care by the tenant, if  
10 substantially the same act or omission that constituted a prior non-  
11 compliance of which notice was given recurs within six months, the  
12 landlord may terminate the rental agreement upon at least 10 days  
13 written notice specifying the breach and the date of termination of  
14 the rental agreement.

15 \* Sec. 16. AS 34.03.220(b) is amended to read:

16 (b) If rent is unpaid when due and the tenant fails to pay rent  
17 in full within 10 days after written notice by the landlord of nonpay-  
18 ment and the intention to terminate the rental agreement if the rent  
19 is not paid within that period of time, the tenancy terminates unless  
20 the landlord agrees to allow the tenant to remain in occupancy, and  
21 the landlord may terminate the rental agreement and immediately re-  
22 cover possession of the rental unit. Only [; ONLY] one written notice  
23 of default need be given the tenant by the landlord as to any one  
24 default. A landlord who has given written notice to the tenant under  
25 this subsection may accept a partial payment of the rent due under the  
26 rental agreement and extend the date for the eviction accordingly.

27 \* Sec. 17. AS 34.03.230(b) is amended to read:

28 (b) During an absence of the tenant in excess of seven days, the  
29 landlord may enter the dwelling unit at times reasonably necessary as

1 provided in AS 34.03.140. The landlord may reenter the dwelling unit  
2 and terminate the rental agreement when the rent has not been paid,  
3 the tenant failed to give the landlord notice of the absence, and the  
4 tenant

5 (1) in a week-to-week tenancy has been absent for three  
6 days;

7 (2) in a month-to-month tenancy has been absent for 10  
8 days.

9 \* Sec. 18. AS 34.03.260(a) is repealed and reenacted to read:

10 (a) Unless the tenant requests the landlord in writing to store  
11 property owned by the tenant before termination of a tenancy including  
12 but not limited to a termination after expiration of a lease or by  
13 surrender or abandonment of the premises and the landlord agrees, the  
14 landlord may consider personal property, including an automobile, left  
15 on the premises to be abandoned and give notice to the tenant demand-  
16 ing that the property be removed within the dates set out in the  
17 notice but not less than 15 days after delivery or mailing of the  
18 notice, and advising that if the property is not removed within the  
19 time specified, it may be sold at a public sale. The landlord may  
20 dispose of perishable commodities and personal property that is rea-  
21 sonably determined by the landlord to be valueless or of such little  
22 value that the cost of storing and conducting a public sale would  
23 probably exceed the amount that would be realized from the sale in any  
24 manner the landlord considers fit.

25 \* Sec. 19. AS 34.03.260(b) is repealed and reenacted to read:

26 (b) A landlord who has agreed to store property of a tenant  
27 under this section shall store the property in a place of safekeeping  
28 and shall exercise reasonable care of the property, but is not respon-  
29 sible to the tenant for loss not caused by the landlord's deliberate

1 or negligent act. If the landlord has agreed to store the property on  
2 the premises previously demised, the storage cost may not exceed the  
3 fair rental value of the premises. If the tenant's property is re-  
4 moved to a commercial storage company, the storage cost includes the  
5 actual charge for the storage and removal from the premises to the  
6 place of storage.

7 \* Sec. 20. AS 34.03.260(c) is repealed and reenacted to read:

8 (c) If the landlord has not agreed to store the personal proper-  
9 ty of the tenant but the tenant makes response in writing that is  
10 timely under (a) of this section of an intention to remove the per-  
11 sonal property from the premises but does not remove the property  
12 within the time specified in (a) of this section, it is conclusively  
13 presumed that the tenant has abandoned the property. If the tenant  
14 removes the property after the termination of the tenancy, the land-  
15 lord is entitled to the cost of storage for the period the property  
16 has remained in the landlord's safekeeping.

17 \* Sec. 21. AS 34.03.260(d) is amended to read:

18 (d) The landlord is not liable [MAY NOT BE HELD TO RESPOND] in  
19 damages in an action by a tenant claiming loss by reason of the land-  
20 lord's storage [ELECTION, DESTRUCTION,] or disposition of property  
21 under this section. A [, OR SALE. IF, HOWEVER, THE] landlord who  
22 deliberately or negligently violates the provisions of this section [,  
23 THE LANDLORD] is liable for actual damages and penal damages of an  
24 amount not to exceed actual damages.

25 \* Sec. 22. AS 34.20.090 is amended by adding a new subsection to read:

26 (d) A lease or a periodic tenancy created by the party or the  
27 assigns of the party executing the deed of trust continue according to  
28 the terms of the lease or periodic tenancy.

29 \* Sec. 23. AS 42.30 is amended by adding a new section to read:

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ARTICLE 6. RIGHTS OF LANDLORDS IN UTILITY SERVICE.

Sec. 42.30.400. RIGHTS OF LANDLORDS TO RECEIVE NOTICE OF THE DISCONTINUANCE OF SERVICE. A public utility that provides electricity, natural gas, or water to individual customers shall permit a landlord to register as the owner of an improvement served by the public utility. The public utility may not discontinue service to a tenant of the improvement until 10 days after the public utility has provided to the landlord written notice of an intention to discontinue service.

\* Sec. 24. AS 44.23.020(b)(8) is amended to read:

(8) prepare, publish and revise as it becomes useful or necessary to do so an information pamphlet on landlord and tenant rights and the means of making complaints to appropriate public agencies concerning landlord and tenant rights [; THE CONTENTS OF THE PAMPHLET AND ANY REVISION SHALL BE APPROVED BY THE DEPARTMENT OF LAW, DIVISION OF CONSUMER PROTECTION, BEFORE PUBLICATION].

\* Sec. 25. Rule 85(a)(3) of the Alaska Rules of Civil Procedure is amended to read:

(3) Continuances. No continuance shall be granted for a longer period than 2 days [,] unless the defendant applying for a continuance deposits with [THEREFOR SHALL GIVE AN UNDERTAKING TO THE ADVERSE PARTY, WITH SURETIES APPROVED BY] the court [, CONDITIONED TO THE PAYMENT OF] the rent that will [MAY] accrue during the next month if judgment is rendered against defendant.

\* Sec. 26. Rule 85 of the Alaska Rules of Civil Procedure is amended by adding a new paragraph to read:

(c) Priority on the Calendar. The trial court shall give priority on the calendar to an action brought under the forcible entry or detainer provisions of law.

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\* Sec. 27. Rule 8 of the Alaska District Court Rules of Civil Procedure is amended by adding a new paragraph to read:

(d) Notwithstanding (a) - (c) of this rule, when a claim for possession under AS 22.15.030(a)(6) does not exceed \$5,000 exclusive of costs, interest, and attorney fees, the district judge or magistrate shall hear the action as a small claim unless important or unusual points of law are involved.

\* Sec. 28. The Legislative Affairs Agency shall make copies of the pamphlet prepared by the Department of Law under AS 44.23.020(b)(8), as amended in sec. 24 of this Act, available to members of the public at Legislative Information Offices throughout the state.

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY


HOUSE OF REPRESENTATIVES  
STATE OF ALASKA  
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 28, 1989

SUBJECT: Landlord and tenant relationships, etc.  
(CSHB 309(L&C))

TO: Representative Dave Donley  
Chair, House Labor and Commerce Committee

FROM: Richard A. Bradley  
Legislative Counsel 

You have requested a committee substitute for HB 309.

Your request asked for the addition of two ideas.

(1) You asked that a section be added to require new owners of rental properties to honor existing leases with the current tenants for at least three months after purchase and possession of the property. After we talked about it, you asked that existing month-to-month tenancies be protected for three months and that leases entered into within the three months preceding the purchase be protected.

When we talked, I regret that I had overlooked the existence of AS 40.17.080(b) (former AS 34.15.290); that section now provides:

(b) A conveyance of real property in the state, other than a lease for a term of less than one year, is void as against a subsequent innocent purchaser in good faith for valuable consideration of the property or a part of the property whose conveyance is first recorded. An unrecorded conveyance is valid as between the parties to it and as against one who has actual notice of it. In this subsection, "purchaser" includes a holder of a consensual interest in real property that secures payment or performance of an obligation.

We take this section to mean that existing law provides protection to tenants whose term is less than one year; if the

Representative Dave Donley  
Page 2  
December 28, 1989

lease is for one year or longer, the lease is valid according to its terms if it has been recorded or if the purchaser has "actual notice" of it. We understand, moreover, that on the sale of an apartment house, for example, the use of a warranty deed would oblige the grantor-warrantor to include encumbrances existing on the premises [see AS 34.15.030(b)(2)] and thus the purchaser will be on notice as to the encumbrances [leases or other tenancies] that exist on the property.

At that point, purchasers are protected; if long term leases at low rates exist, they are valid but the property is simply worth less.

Because this area was not unregulated, your proposal would require an amendment to this section. And because amendment of this section according to your request results in a decrease of protection as to existing leases and increased protection for month-to-month tenancies, there seems to be a different starting point than we had assumed and I have not provided a draft responsive to this point. You may wish to reconsider your request. Or I may have misunderstood your request.

(2) You also asked that we prepare an amendment that would require that tenants present their complaints about their rental property to the landlord in writing. To some extent, existing law now permits this. See AS 34.03.160.

I have proposed an amendment to AS 34.03.190. It provides that a tenant may not plead the acts and omissions of the landlord as a defense unless the written notice had been presented before the civil action for eviction had been filed.

If I may be of further assistance, please advise.

RAB:mi  
wkm16/007

# Alaska State Legislature

Legislative Research Agency



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Juneau, AK 99811-3100  
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Referenced back up  
material available  
through Committee  
Office (465-4954)

January 11, 1990

## MEMORANDUM

TO: Representative Dave Donley

FROM: Linda J. Snow *LJ Snow*  
Legislative Analyst

RE: Interest Earned on Security Deposits  
Research Request 90.152

You asked how other states address the question of interest earned on security deposits for rental housing. You also asked how interest earned on security deposits was handled in rental units owned or managed by a federal agency.

### Statutes of Other States

As of 1987, sixteen states had statutes requiring that security deposits (and in some states, prepaid rent) be placed in interest-bearing accounts with the interest accruing to the tenant. A summary of state security deposit legislation compiled by the National Housing Law Project in 1987 is included as Attachment A. Eleven states specify an actual, or minimum rate of interest to accrue to tenants, ranging from 4 to 5.25 percent. Five states do not specify an interest rate, but three of the five require that landlords pay one percent less than the interest earned on the account (the one percent is generally considered an administrative fee). Florida and Pennsylvania allow deposit into a non-interest bearing account at the option of the landlord. Florida law allows the landlord an additional option of posting a surety bond in the amount of the security deposits and pre-paid rents held on behalf of the tenants, or \$50,000, whichever is less, and paying the tenant a five-percent simple interest.

Eight states require that security deposits be held a minimum length of time ranging from six months to two years before interest is paid. Four states require a minimum deposit before interest is paid, ranging from 50 to 100 dollars, or one month's rent. Illinois requires that interest accrue only to tenants of multi-family dwellings of 25 units or more, and the Kansas statute addresses only municipal housing authorities which are wholly or partially

Representative Dave Donley  
January 11, 1990  
Page 2

subsidized by the federal government. Some states require that accrued interest be paid to the tenant annually, while others require that it be paid within 30 days after the tenant quits the premises.

Included as Attachment B is the most current version of the *Uniform Residential Landlord and Tenant Act*, drafted by the National Conference of Commissioners on Uniform State Laws. This model law does not address the question of interest earned on security deposits or pre-paid rent.

#### Federally Owned or Managed Rental Units

The U.S. Department of Housing and Urban Development (HUD) has several housing programs that operate in Alaska, under various forms of management. In general, HUD policy conforms to state and local law. If state and local law do not address the question of interest accrued on security deposits and pre-paid rent, it is up to the discretion of the individual manager to decide how the matter is handled.<sup>1</sup> This is also the policy of both the Indian Housing Authority, which coordinates 14 regional housing authorities statewide, and the HUD public housing loan management program.

The Alaska State Housing Authority (ASHA) administers two programs for HUD (Conventional Public Housing and Section 8 New Construction). HUD policy guidelines for ASHA state that if ASHA elects to invest the deposits in interest-bearing accounts, it may either refund the interest to the tenant when the premises are vacated, or use the interest for tenant services or activities.<sup>2</sup> ASHA has made the policy decision to pay interest accrued on security deposits to the tenant under both programs that they administer for HUD.<sup>3</sup>

The federal government also has jurisdiction over military housing in Alaska. No rents or security deposits are collected for this type of housing, however.

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<sup>1</sup>Personal communication with Jim Snyder, Loan Management Program, U.S. Department of Housing and Urban Development, Anchorage Office, January 10, 1990.

<sup>2</sup>Memorandum from B. Elaine Smith, Controller, ASHA to Jo Ann Goynes, Director of Housing Management, ASHA and Barbara Morse-Quinn, Executive Director, ASHA, December 16, 1987, included in Attachment 3. Also see excerpt from HUD Handbook 7465.1 Rev., chapter 4, section 3, 4-14(c), and excerpt from HUD Handbook 4350.3, Change 1, section 2, 4-10(b), included in Attachment C.

<sup>3</sup>Memorandum from Barbara Morse-Quinn, Executive Director, ASHA to B. Elaine Smith, Controller, ASHA, December 29, 1987.

Representative Dave Donley  
January 11, 1990  
Page 3

I hope this information is useful to you. Listed in the attachments are many specific cites of state statutes, which are available in the legislative reference library. If you need further assistance in obtaining specific statutes, please feel free to contact this office.

Attachments

ATTACHMENT A  
Summary of State Security Deposit Legislation

INDEX

Security Deposit Table	pp. 1-3
Maximum Security Deposit Amount	pp. 4-7
States Requiring Payments of Interest on Security Deposits	pp. 8-9
Maximum Return Times for Return of Security Deposits	pp. 10-11
Penalty for Landlord's Failure to Comply with Security Deposit Return Provision	pp. 12-15
Security Deposit Statute Citations	pp. 16-19

Information compiled by  
Terence Houzell, Law Clerk  
National Housing Law Project

3/19/87

STATE	INTEREST REQUIRED?	MAXIMUM SECURITY DEPOSIT AMOUNT?	MAXIMUM TIME FOR THE RETURN OF SECURITY DEPOSIT?	PENALTY FOR FAILURE TO TIMELY RETURN SECURITY DEPOSIT?
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ALABAMA NO SECURITY DEPOSIT STATUTE

ALASKA	NO	YES	YES	YES
ARIZONA	NO	YES	YES	YES
ARKANSAS	NO	YES	YES	YES
CALIFORNIA	NO	YES	YES	YES
COLORADO	NO	NO	YES	YES
CONNECTICUT	YES	YES	YES	YES
DELAWARE	NO	YES	YES	YES
D. C.	YES	NO	YES	YES
FLORIDA	YES	NO	YES	NO
GEORGIA	NO	NO	YES	YES
HAWAII	NO	YES	YES	YES
IDAHO	YES	NO	YES	YES
ILLINOIS	YES	NO	YES	YES
INDIANA	NO SECURITY DEPOSIT STATUTE			
IOWA	NO	YES	YES	YES
KANSAS	YES	YES	YES	YES
KENTUCKY	NO	NO	NO	NO
LOUISIANA	NO	NO	YES	YES
MAINE	NO	YES	YES	YES
MARYLAND	YES	YES	YES	YES
MASS.	YES	YES	YES	YES
MICHIGAN	NO	YES	YES	YES

STATE	INTEREST REQUIRED?	MAXIMUM SECURITY DEPOSIT AMOUNT?	MAXIMUM TIME FOR THE RETURN OF SECURITY DEPOSIT?	PENALTY FOR FAILURE TO TIMELY RETURN SECURITY DEPOSIT?
MINNESOTA	YES	NO	YES	YES
MISSISSIPPI	NO SECURITY DEPOSIT STATUTE			
MISSOURI	NO	YES	YES	YES
MONTANA	NO	NO	YES	YES
NEBRASKA	NO	YES	YES	YES
NEVADA	NO	YES	YES	YES
N.H.	YES	YES	YES	YES
NEW JERSEY	YES	YES	YES	YES
NEW MEXICO	YES	YES	YES	YES
NEW YORK	YES	NO	NO	NO
N. CAROLINA	NO	NO	YES	YES
N. DAKOTA	YES	YES	YES	YES
OHIO	NO	NO	YES	YES
OKLAHOMA	NO	NO	YES	YES
OREGON	NO	NO	YES	YES
PENN.	YES	YES	YES	YES
RHODE ISL.	NO	YES	YES	YES
S. CAROLINA	NO	NO	YES	YES
S. DAKOTA	NO	YES	YES	YES
TENNESSEE	NO	NO	NO	YES
TEXAS	NO	NO	YES	YES
UTAH	NO	NO	YES	YES
VERMONT	NO	NO	YES	YES

STATE	INTEREST REQUIRED?	MAXIMUM SECURITY DEPOSIT AMOUNT?	MAXIMUM TIME FOR THE RETURN OF SECURITY DEPOSIT?	PENALTY FOR FAILURE TO TIMELY RETURN SECURITY DEPOSIT?
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VIRGINIA	YES	YES	YES	YES
WASHINGTON	NO	NO	YES	YES
VIRGINIA	NO SECURITY DEPOSIT STATUTE			
WISCONSIN	NO SECURITY DEPOSIT STATUTE			
WYOMING	NO SECURITY DEPOSIT STATUTE			

## TATES WITH LAWS ON SECURITY DEPOSITS

- Alaska** Alas. Stat., tit. 34, sec. .03.070 (1986)  
(Code includes statutes and amendments enacted during the Regular Session of 1986)
- Arizona** Ariz. Rev. Stat. Ann., sec. 33-1321 (1974)  
(Code includes statutes and amendments enacted during the Second Regular Session of 1986)
- Arkansas** Ark. Stat. Ann., secs. 50-525 to 50-530 (Michie Supp. 1986) (Code includes statutes and amendments enacted during the First Extraordinary Session of 1986)
- California** Cal. Civ. Code, Sec. 1950.5 (West Supp. 1987) (Code includes statutes and amendments through 1986 of the 1985-1986 Regular Session)
- Colorado** Colo. Rev. Stat. Ann., tit. 38, secs. 12-101 to 12-103 (1982) (Code includes statutes and amendments enacted during the 1986 Session)
- Connecticut** Conn. Gen. Stat. Ann., sec. 47a-21 (West Supp. 1986) (Code includes statutes and amendments enacted during the January Regular, July Special and Veto Sessions of 1985)
- Delaware** Del. Code Ann., tit. 25, sec. 5511 (1975 & Michie Supp. 1986) (Code includes statutes and amendments enacted during 1986 Session)
- D.C.** 14 D.C. Municipal Regulations, sections 308-311  
(Code includes statutes and amendments enacted during 1985 Session)
- Florida** Fla. Stat. Ann., sec. 83.49 (West Supp. 1986)  
(Code includes statutes and amendments enacted during the First Regular Session of 1985)
- Georgia** Code of Ga. Ann., tit. 61, secs. 601 to 608  
(Harrison Supp. 1986) (Code includes statutes and amendments enacted during the 1986 Regular Session)
- Hawaii** Hawaii Rev. Stat., tit. 28, sec. 521-44 (1976)  
(Code includes statutes and amendments enacted during the 1984 Regular and Special Sessions)
- Idaho** Idaho Code, sec. 8-321 (1979) (Code includes statutes and amendments enacted during the 1986

INDIANA	NO SECURITY DEPOSIT STATUTE
IOWA	Sec. 562A.12            2 months' rent (no classification provided)
KANSAS	Ch. 68, sec. 2550        1 month's rent (unfurnished) 1.5 month's rent (furnished); .5 month's rent additional if tenant allowed to keep or maintain pets (No classification provided)
KENTUCKY	Security deposit statute does not specify a maximum amount
LOUISIANA	Security deposit statute does not specify a maximum amount
MAINE	Tit. 14, sec. 6032        2 months' rent (means any advance or deposit, regardless of denomination, of money, the primary function of which is to secure the performance of the agreement)
MARYLAND	sec. 8-203            2 months' rent or \$50 whichever is greater (includes prepaid rent and any prepaid amount given to protect the landlord against non-payment of rent or damage to the leased premises)
MASSACHUSETTS	ch. 186, sec. 15B        1 month's rent (does not include prepaid last month's rent)
MICHIGAN	sec. 554.602            1.5 months' rent (any prepayment in excess of the first month rent)
MINNESOTA	Security deposit statute does not specify a maximum amount
MISSISSIPPI	NO SECURITY DEPOSIT STATUTE
MISSOURI	sec. 535.300            2 months' rent (No classification provided)
MONTANA	Security deposit statute does not specify a maximum amount
NEBRASKA	ch. 76, sec. 1416        1 month's rent (No classification provided)
NEVADA	sec. 118A.242            3 months' rent (includes last month's rent)
NEW HAMPSHIRE	sec. 540-A:5            1 month's rent or \$100, whichever is greater (funds in excess of the monthly rent which are transferred from the tenant to the

landlord for any purpose)

NEW JERSEY	tit. 48, sec. 8-21.2 1.5 months' rent (No classification provided)
NEW MEXICO	ch. 47, sec. 8-18 1 month's rent if rental agreement duration less than one year
NEW YORK	Security deposit statute does not specify a maximum amount
NORTH CAROLINA	Security deposit statute does not specify a maximum amount
NORTH DAKOTA	ch. 47, sec. 16-07.1 1 month's rent (No classification provided)
OHIO	Security deposit statute does not specify a maximum amount
OKLAHOMA	Security deposit statute does not specify a maximum amount
OREGON	Security deposit statute does not specify a maximum amount
PENNSYLVANIA	tit. 68, sec. 250.511a 2 months' rent (No classification provided)
RHODE ISLAND	sec. 34-18-19 1 month's rent (No classification provided)
SOUTH CAROLINA	Security deposit statute does not specify a maximum amount
SOUTH DAKOTA	tit. 43, sec. 32-6.1 1 month's rent (any deposit of money whose function is to secure the performance of the agreement; a larger deposit may be agreed upon where special conditions pose a danger to maintenance of the premises)
TENNESSEE	Security deposit statute does not specify a maximum amount
TEXAS	Security deposit statute does not specify a maximum amount
UTAH	Security deposit statute does not specify a maximum amount
VERMONT	Security deposit statute does not specify a maximum amount

VIRGINIA	tit. 55, sec. 24B.11 2 months' rent (No classification provided)
WASHINGTON	Security deposit statute does not specify a maximum amount
WEST VIRGINIA	No security deposit statute
WISCONSIN	No security deposit statute
WYOMING	No security deposit statute

STATES REQUIRING PAYMENT OF INTEREST ON SECURITY DEPOSITS

<u>State</u>	<u>Citation</u>	<u>Amount</u>
CONNECTICUT	47a-21(1)	5.25% per year
D.C.	311.1	not less than 5% per annum simple interest (n. 1)
FLORIDA	83.49(1)(b)	5% per year simple interest or 75% of the annualized average interest rate on the account or a non interest account at the option of the landlord
ILLINOIS	80-121	5% on deposits held more than 6 months (see n. 2)
KANSAS	58-2548	5% per year for tenants living in a municipal housing authority which is wholly or partially subsidized by the federal government
MARYLAND	Real Prop. 8-203(f)	4% simple interest on \$50 or more
MASSACHUSETTS	Ch. 186, Sec. 15B(2)(a) Sec. 15B(3)(b)	5% on last month's rent; 5% on security deposit if held at least one year
MINNESOTA	504.20, subd. 2	5.5% simple interest
NEW HAMPSHIRE	540-A:6	5% or the interest rate on regular savings accounts, whichever is larger (n. 3)
NEW JERSEY	46:8-19	1% less than amount earned on account (n. 4)
NEW MEXICO	47-8-18	interest equal to the passbook interest permitted in the state (n. 5)
NEW YORK	Gen. Oblig. Law 7-103(2)	1% less than amount earned on the account
NORTH DAKOTA	47-18-07.1	interest-bearing account with no percentage specified (n. 6)
OHIO	5321.16(A)	5% on deposits of more than one month's rent or \$50, if tenant in possession at least six months
PENNSYLVANIA	68-250.511b	1% less than amount earned on

account, if funds held more than two years; landlord can also deposit in a non-interest-bearing account

VIRGINIA

55-248.11(b)

5% on deposits held at least 13 months

1. 1 -- Interest not payable when duration of the tenancy is less than twelve months (sec. 311.2)
1. 2 -- The act applies only to lessors of real property containing 25 or more units.
1. 3 -- Applies to landlords who hold a security deposit for one year or longer
1. 4 -- If the landlord owns ten or more units, he must deposit the security deposit in an insured money market account, in which case he can either use 1% less than the interest rate or 12.5% of the account's earnings, whichever is larger.
1. 5 -- Applies only to deposits in excess of 1 month's rent
1. 6 -- Interest not required on occupancy less than nine months in duration

RATES SETTING MAXIMUM TIMES FOR RETURN OF DEPOSITS

ALABAMA	NO SECURITY DEPOSIT STATUTE	
ALASKA	34.03.070	30 days (n. 1)
ARIZONA	33-1321(C)	14 days
ARKANSAS	50-527(a)	30 days
CALIFORNIA	1850.6	2 weeks
FLORIDA	38-12-103	1 month (n. 2)
CONNECTICUT	47a-21(d)(2)	30 days
DELAWARE	26-5511(3)(a)	15 days
D.C.	309.1, 308.2	45 days (n. 3)
FLORIDA	83.49	45 days
GEORGIA	61-606	1 month
HAWAII	521-44(c)	14 days
IDAHO	8-321	21 days (n. 4)
ILLINOIS	80, P. 101	30 days (n. 5)
INDIANA	NO SECURITY DEPOSIT STATUTE	
IOWA	582A.12(3)	30 days
KANSAS	58-2550(b)	14 days
KENTUCKY	NO TIME SET FORTH IN SECURITY DEPOSIT STATUTE	
LOUISIANA	9;3251(A)	1 month
MAINE	14-6033	30 days (n. 6)
MARYLAND	Real Prop. 8-203(f)	45 days
MASSACHUSETTS	Ch. 188 Sec 15B(4)	30 days
MICHIGAN	554.609	30 days
MINNESOTA	504.20	3 weeks
MISSISSIPPI	NO SECURITY DEPOSIT STATUTE	
MISSOURI	535.300	30 days
MONTANA	70-25-202	30 days
NEBRASKA	76-1416	14 days
NEVADA	118A.242	30 days
NEW HAMPSHIRE	540-A; 7	30 days
NEW JERSEY	48:8-21.1	30 days
NEW MEXICO	47-8-37	30 days
NEW YORK	NO TIME SET FORTH IN SECURITY DEPOSIT STATUTE	
NORTH CAROLINA	Ch. 42-52	30 days
NORTH DAKOTA	47-16-07.1	30 days
OHIO	6321.16	30 days
OKLAHOMA	41-115	30 days
OREGON	10:91.780 (7)	30 days
PENNSYLVANIA	68-250.512	30 days
RHODE ISLAND	34-18-18	20 days
SOUTH CAROLINA	27-40-410	30 days
SOUTH DAKOTA	43-32-24	2 weeks
TENNESSEE	NO TIME SET FORTH IN SECURITY DEPOSIT STATUTE	
TEXAS	Property 82.103	30 days
UTAH	57-17-3	30 days
VERMONT	9-4481	14 days
VIRGINIA	55-248.11	30 days
WASHINGTON	69.18.280	14 days
WEST VIRGINIA	NO SECURITY DEPOSIT STATUTE	