

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990  
5913 HOUSE LABOR & COMMERCE

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317

(B) On jobsites where less than 25 employees work underground at one time, the employer shall provide (or make arrangements in advance with locally available rescue services to provide) at least one 5-person rescue team to be either on the jobsite or within one-half hour travel time from the entry point.

(C) Rescue team members shall be qualified in rescue procedures, the use and limitations of breathing apparatus, and the use of firefighting equipment. Qualifications shall be reviewed at least annually.

(D) On jobsites where flammable or noxious gases are encountered or anticipated in hazardous quantities, rescue team members shall practice donning and using self-contained breathing apparatus monthly.

(E) The employer shall ensure that rescue teams are familiar with conditions at the jobsite.

(h) Hazardous classifications.

(1) Potentially gassy operations. Underground construction operations must be classified as potentially gassy if either:

(A) Air monitoring discloses 10 percent or more of the lower explosive limit for methane or other flammable gases measured at 12 inches (304.8 mm)  $\pm$  0.25 inch (6.35 mm) from the roof, face, floor or walls in any underground work area for more than a 24-hour period; or

(B) The history of the geographical area or geological formation indicates that 10 percent or more of the lower explosive limit for methane or other flammable gases is likely to be encountered in such underground operations.

(2) Gassy operations. Underground construction operations must be classified as gassy if:

(A) Air monitoring discloses 10 percent or more of the lower explosive limit for methane or other flammable gases measured at 12 inches (304.8mm)  $\pm$  0.25 inch (6.35 mm) from the roof, face, floor or walls in any underground work area for more than a 24-hour period; or

(B) There has been an ignition of methane or of other flammable gases emanating from the strata that indicates the presence of such gases; or

(C) The underground construction operation is both connected to an underground work area which is currently

classified as gassy and is also subject to a continuous course of air containing the flammable gas concentration.

(3) Declassification to potentially gassy operations. Underground construction gassy operations may be declassified to Potentially Gassy when air monitoring results remain under 10 percent of the lower explosive limit for methane or other flammable gases for three consecutive days.

(i) Gassy operations-additional requirements.

(1) Only acceptable equipment, maintained in suitable condition, may be used in gassy operations.

(2) Mobile diesel-powered equipment used in gassy operations shall be either approved in accordance with the requirements of 30 CFR Part 36 (formerly Schedule 31) by MSHA, or must be demonstrated by the employer to be fully equivalent to such MSHA-approved equipment, and must be operated in accordance with that Part.

(3) Each entrance to a gassy operation must be prominently posted with signs notifying all entrants of the gassy classification.

(4) Smoking is to be prohibited in all gassy operations and the employer shall be responsible for collecting all personal sources of ignition, such as matches and lighters, from all persons entering a gassy operation.

(5) A fire watch as described in 05.100(c)(5) must be maintained when hot work is performed.

(6) Once an operation has met the criteria in (h)(2) of this subsection warranting classification as gassy, all operations in the affected area, except the following, must be discontinued until the operation either is in compliance with all of the gassy operation requirements or has been declassified in accordance with (h)(3) of this subsection:

(A) Operations related to the control of the gas concentration;

(B) Installation of new equipment, or conversion of existing equipment, to comply with this subsection; and

(C) Installation of above-ground controls for reversing the air flow.

(j) Air quality and monitoring.

(1) General. Air quality limits and control requirements for construction are found in 05.040(f), except as modified by this subsection.

(A) The employer shall assign a competent person to perform all air monitoring required by this subsection.

(B) Where this subsection requires monitoring of airborne contaminants "as often as necessary," the competent person shall make a reasonable determination as to which substances to monitor and how frequently to monitor, considering at least the following factors:

(i) Location of jobsite: Proximity to fuel tanks, sewers, gas lines, old landfills, coal deposits, and swamps;

(ii) Geology: Geological studies of the jobsite, particularly involving the soil type and its permeability;

(iii) History: Presence of air contaminants in nearby jobsites, changes in levels of substances monitored on the prior shift; and

(iv) Work practices and jobsite conditions: the use of diesel engines, use of explosives, use of fuel gas, volume and flow of ventilation, visible atmospheric conditions, decompression of the atmosphere, welding, cutting and hot work, and the employees physical reactions to working underground.

(C) The atmosphere in all underground work areas must be tested as often as necessary to assure that the atmosphere at normal atmospheric pressure contains at least 19.5 percent oxygen and no more than 22 percent oxygen.

(D) Tests for oxygen content must be made before tests for air contaminants.

(E) The atmosphere in all underground work areas must be tested quantitatively for carbon monoxide, nitrogen dioxide, hydrogen sulfide, and other toxic gases, dusts, vapors, mists, and fumes as often as necessary to ensure that the permissible exposure limits prescribed in 05.040(f) are not exceeded.

(F) The atmosphere in all underground work areas must be tested quantitatively for methane and other flammable gases as often as necessary to determine:

(i) Whether action is to be taken under (1) (O), (P), and (Q), of this subsection; and

(ii) Whether an operation is to be classified potentially gassy or gassy under (h) of this section.

(G) If diesel-engine or gasoline-engine driven ventilating fans or compressors are used, an initial test must be made of the inlet air of the fan or compressor, with the engines operating, to ensure that the air supply is not contaminated by engine exhaust.

(H) Testing must be performed as often as necessary to ensure that the ventilation requirements of (k) of this section are met.

(I) When rapid excavation machines are used, a continuous flammable gas monitor shall be operated at the face with the sensor(s) placed as high and close to the front of the machine's cutter head as practicable.

(J) Whenever air monitoring indicates the presence of 5 ppm or more of hydrogen sulfide, a test must be conducted in the affected underground work area(s), at least at the beginning and midpoint of each shift, until the concentration of hydrogen sulfide has been less than 5 ppm for 3 consecutive days.

(K) Whenever hydrogen sulfide is detected in an amount exceeding 10 ppm, a continuous sampling and indicating hydrogen sulfide monitor must be used to monitor the affected work area.

(L) Employees shall be informed when a concentration of 10 ppm hydrogen sulfide is exceeded.

(M) The continuous sampling and indicating hydrogen sulfide monitor must be designed, installed, and maintained to provide a visual and aural alarm when the hydrogen sulfide concentration reaches 20 ppm to signal that additional measures, such as respirator use, increased ventilation, or evacuation, might be necessary to maintain hydrogen sulfide exposure below the permissible exposure limit.

(N) When the competent person determines, on the basis of air monitoring results or other information, that air contaminants may be present in sufficient quantity to be dangerous to life, the employer shall:

(i) Prominently post a notice at all entrances to the underground jobsite to inform all entrants of the hazardous condition; and

(ii) Ensure that the necessary precautions are taken.

(O) Whenever five percent or more of the lower explosive limit for methane or other flammable gases is detected in any underground work area(s) or in the air return, steps must be taken to increase ventilation air volume or otherwise control the gas concentration, unless the employer is operating in accordance with the potentially gassy or gassy operation requirements. Such additional ventilation controls may be discontinued when gas concentrations are reduced below five percent of the lower explosive limit, but must be reinstated whenever the five percent level is exceeded.

(P) Whenever 10 percent or more of the lower explosive limit for methane or other flammable gases is detected in the vicinity of welding, cutting, or other hot work, such work must be suspended until the concentration of such flammable gas is reduced to less than 10 percent of the lower explosive limit.

(Q) Whenever 20 percent or more of the lower explosive limit for methane or other flammable gases is detected in any underground work area(s) or in the air return:

(i) All employees, except those necessary to eliminate the hazard, shall be immediately withdrawn to a safe location above ground; and

(ii) Electrical power, except for acceptable pumping and ventilation equipment, must be cut off to the area endangered by the flammable gas until the concentration of such gas is reduced to less than 20 percent of the lower explosive limit.

(2) Additional monitoring for potentially gassy and gassy operations. Operations which meet the criteria for potentially gassy and gassy operations set forth in (h) of this section must be subject to the additional monitoring requirements of this paragraph.

(A) A test for oxygen content must be conducted in the affected underground work areas and work areas immediately adjacent to such areas at least at the beginning and midpoint of each shift.

(B) When using rapid excavation machines, continuous automatic flammable gas monitoring equipment must be used to monitor the air at the heading, on the rib, and in the return air duct. The continuous monitor must signal the heading, and shut down electric power in the affected

underground work area, except for acceptable pumping and ventilation equipment, when 20 percent or more of the lower explosive limit for methane or other flammable gases is encountered.

(C) A manual flammable gas monitor must be used as needed but at least at the beginning and midpoint of each shift, to ensure that the limits prescribed in (h) and (j) of this section are not exceeded. In addition, a manual electrical shut down control must be provided near the heading.

(D) Local gas tests must be made prior to and continuously during any welding, cutting, or other hot work.

(E) In underground operations driven by drill-and-blast methods, the air in the affected area must be tested for flammable gas prior to re-entry after blasting, and continuously when employees are working underground.

(3) Recordkeeping. A record of all air quality tests must be maintained above ground at the worksite and be made available to the Commissioner upon request. The record must include the location, date, time, substance and amount monitored. Records of exposures to toxic substances must be retained in accordance with Title 8, sections 61.260 and 270 of the Alaska Administrative Code. All other air quality test records must be retained until completion of the project.

(k) Ventilation.

(1) Fresh air must be supplied to all underground work areas in sufficient quantities to prevent dangerous or harmful accumulation of dust, fumes, mists, vapors or gases. Mechanical ventilation must be provided in all underground work areas except when the employer can demonstrate that natural ventilation provides the necessary air quality through sufficient air volume and air flow.

(2) A minimum of 200 cubic feet (5.7 m<sup>3</sup>) of fresh air per minute must be supplied for each employee underground.

(3) The linear velocity of air flow in the tunnel bore, in shafts, and in all other underground work areas must be at least 30 feet (9.15 m) per minute where blasting or rock drilling is conducted, or where other conditions likely to produce dust, fumes, mists, vapors, or gases in harmful or explosive quantities are present.

(4) The direction of mechanical air flow must be reversible.

(5) Following blasting, ventilation systems must exhaust smoke and fumes to the outside atmosphere before work is resumed in affected areas.

(6) Ventilation doors must be designed and installed so that they remain closed when in use, regardless of the direction of the air flow.

(7) When ventilation has been reduced to the extent that hazardous levels of methane or flammable gas may have accumulated, a competent person shall test all affected areas after ventilation has been restored and shall determine whether the atmosphere is within flammable limits before any power, other than for acceptable equipment, is restored or work is resumed.

(8) Whenever the ventilation system has been shut down with all employees out of the underground area, only competent persons authorized to test for air contaminants may be allowed underground until the ventilation has been restored and all affected areas have been tested for air contaminants and declared safe.

(9) When drilling rock or concrete, appropriate dust control measures must be taken to maintain dust levels within limits set in 05.040(f). Such measures may include, but are not limited to, wet drilling, the use of vacuum collectors, and water mix spray systems.

(10) Internal combustion engines, except diesel-powered engines on mobile equipment, are prohibited underground. Mobile diesel-powered equipment used underground in atmospheres other than gassy operations must be either approved by MSHA in accordance with the provisions of 30 CFR Part 32 (formerly Schedule 24), or shall be demonstrated by the employer to be fully equivalent to such MSHA-approved equipment, and must be operated in accordance with that Part. (Each brake horsepower of a diesel engine requires at least 100 cubic feet (28.32 m<sup>3</sup>) of air per minute for suitable operation in addition to the air requirements for personnel. Some engines may require a greater amount of air to ensure that the allowable levels of carbon monoxide, nitric oxide, and nitrogen dioxide are not exceeded.)

(11) Potentially gassy or gassy operations must have ventilation systems installed which shall:

- (A) Be constructed of fire-resistant materials;
- and
- (B) Have acceptable electrical systems, including fan motors.

(12) Gassy operations must be provided with controls located above ground for reversing the air flow of ventilation systems.

(13) In potentially gassy or gassy operations, wherever mine-type ventilation systems using an offset main fan installed on the surface are used, they must be equipped with explosion-doors or a weak-wall having an area at least equivalent to the cross-sectional area of the airway.

(1) Illumination.

(1) Illumination requirements applicable to underground construction operations are found in Table D-3 of 05.040(g).

(2) Only acceptable portable lighting equipment may be used within 50 feet (15.24 m) of any underground heading during explosives handling.

(m) Fire prevention and control. Fire prevention and protection requirements applicable to underground construction operations are found in 05.060, except as modified by the following additional standards:

(1) Open flames and fires are prohibited in all underground construction operations except as permitted for welding, cutting and other hot work operations in (n) of this section.

(2) Smoking may be allowed only in areas free of fire and explosion hazards.

(3) Readily visible signs prohibiting smoking and open flames must be posted in areas having fire or explosion hazards.

(4) The employer may store underground no more than a 24-hour supply of diesel fuel for the underground equipment used at the worksite.

(5) The piping of diesel fuel from the surface to an underground location is permitted only if:

(A) Diesel fuel is contained at the surface in a tank which has a maximum capacity of no more than the amount of fuel required to supply for a 24-hour period the equipment serviced by the underground fueling station;

(B) The surface tank is connected to the underground fueling station by an acceptable pipe or hose system that is controlled at the surface by a valve, and at the shaft bottom by a hose nozzle;

(C) The pipe is empty at all times except when transferring diesel fuel from the surface tank to a piece of equipment in use underground; and

(D) Hoisting operations in the shaft are suspended during refueling operations if the supply piping in the shaft is not protected from damage.

(6) Gasoline may not be carried, stored, or used underground.

(7) Acetylene, liquefied petroleum gas, and Methylacetylene Propadiene Stabilized gas may be used underground only for welding, cutting and other hot work, and only in accordance with 05.100 and (j), (k), (m) and (n) of this section.

(8) Oil, grease, and diesel fuel stored underground must be kept in tightly sealed containers in fire-resistant areas at least 300 feet (91.44 m) from underground explosive magazines, and at least 100 feet (30.48 m) from shaft stations and steeply inclined passageways. Storage areas must be positioned or diked so that the contents of ruptured or over-turned containers will not flow from the storage area.

(9) Flammable or combustible materials may not be stored above ground within 100 feet (30.48 m) of any access opening to any underground operation. Where this is not feasible because of space limitations at the jobsite, such materials may be located within the 100-foot limit, provided that:

(A) They are located as far as practicable from the opening; and

(B) Either a fire-resistant barrier of not less than one-hour rating is placed between the stored material and the opening, or additional precautions are taken which will protect the materials from ignition sources.

(10) Fire-resistant hydraulic fluids must be used in hydraulically-actuated underground machinery and equipment unless such equipment is protected by a fire suppression system or by multi-purpose fire extinguisher(s) rated at sufficient capacity for the type and size of hydraulic equipment involved, but rated at least 4A:40B:C.

(11) Electrical installations in underground areas where oil, grease, or diesel fuel are stored must be used only for lighting fixtures.

(12) Lighting fixtures in storage areas, or within 25 feet (7.62 m) of underground areas where oil, grease or diesel fuel

are stored, must be approved for Class I, Division 2 locations, in accordance with 05.110.

(13) Leaks and spills of flammable or combustible fluids must be cleaned up immediately.

(14) A fire extinguisher of at least 4A:40B:C rating or other equivalent extinguishing means must be provided at the head pulley and at the tail pulley of underground belt conveyors.

(15) Any structure located underground or within 100 feet (30.48 m) of an opening to the underground must be constructed of material having a fire-resistance rating of at least one hour.

(n) Welding, cutting, and other hot work. In addition to the requirements of 05.100, the following requirements apply to underground welding, cutting, and other hot work:

(1) No more than the amount of fuel gas and oxygen cylinders necessary to perform welding, cutting or other hot work during the next 24-hour period may be permitted underground.

(2) Noncombustible barriers must be installed below welding, cutting, or other hot work being done in or over a shaft or raise.

(o) Ground support.

(1) Portal areas. Portal openings and access areas must be guarded by shoring, fencing, head walls, shotcreting or other equivalent protection to ensure safe access of employees and equipment. Adjacent areas must be scaled or otherwise secured to prevent loose soil, rock or fractured materials from endangering the portal and access area.

(2) Subsidence areas. The employer shall ensure ground stability in hazardous subsidence areas by shoring, by filling in, or by erecting barricades and posting warning signs to prevent entry.

(3) Underground areas.

(A) A competent person shall inspect the roof, face, and walls of the work area at the start of each shift and as often as necessary to determine ground stability.

(B) Competent persons conducting such inspections must be protected from loose ground by location, ground support or equivalent means.

(C) Ground conditions along haulageways and travelways must be inspected as frequently as necessary to ensure safe passage.

(D) Loose ground that might be hazardous to employees must be taken down, scaled or supported.

(E) Torque wrenches must be used wherever bolts that depend on torsionally applied force are used for ground support.

(F) A competent person shall determine whether rock bolts meet the necessary torque, and shall determine the testing frequency in light of the bolt system, ground conditions and the distance from vibration sources.

(G) Suitable protection must be provided for employees exposed to the hazard of loose ground while installing ground support systems.

(H) Support sets must be installed so that the bottoms have sufficient anchorage to prevent ground pressures from dislodging the support base of the sets. Lateral bracing (collar bracing, tie rods, or spreaders) must be provided between immediately adjacent sets to ensure added stability.

(I) Damaged or dislodged ground supports that create a hazardous condition must be promptly repaired or replaced. When replacing supports, the new supports must be installed before the damaged supports are removed.

(J) A shield or other type of support must be used to maintain a safe travelway for employees working in dead-end areas ahead of any support replacement operation.

(4) Shafts.

(A) Shafts and wells over 5 feet (1.53 m) in depth that employees must enter must be supported by a steel casing, concrete pipe, timber, solid rock or other suitable material.

(B) The full depth of the shaft must be supported by casing or bracing except where the shaft penetrates into solid rock having characteristics that will not change as a result of exposure. Where the shaft passes through earth into solid rock, or through solid rock into earth, and where there is potential for shear, the casing or bracing must extend at least 5 feet (1.53 m) into the solid rock. When the shaft terminates in solid rock, the casing or bracing must extend to the end of the shaft or 5 feet (1.53 m) into the solid rock, whichever is less.

(C) The casing or bracing must extend 42 inches (1.07 m) plus or minus 3 inches (8 cm) above ground level, except that the minimum casing height may be reduced to 12 inches (0.3 m), provided that a standard railing is installed; that the ground adjacent to the top of the shaft is sloped away from the shaft collar to prevent entry of liquids; and that effective barriers are used to prevent mobile equipment operating near the shaft from jumping over the 12 inch (0.3 m) barrier.

(D) After blasting operations in shafts, a competent person shall determine if the walls, ladders, timbers, blocking, or wedges have loosened. If so, necessary repairs must be made before employees other than those assigned to make the repairs are allowed in or below the affected areas.

(p) Blasting. This subsection applies in addition to the requirements for blasting and explosives operations, including handling of misfires, which are found in Subchapter 09, Alaska Explosive Code.

(1) Blasting wires must be kept clear of electrical lines, pipes, rails, and other conductive material, excluding earth, to prevent explosives initiation or employee exposure to electric current.

(2) Following blasting, an employee may not enter a work area until the air quality meets the requirements of (j) of this section.

(q) Drilling.

(1) A competent person shall inspect all drilling and associated equipment prior to each use. Equipment defects affecting safety must be corrected before the equipment is used.

(2) The drilling area must be inspected for hazards before the drilling operation is started.

(3) Employees may not be allowed on a drill mast while the drill bit is in operation or the drill machine is being moved.

(4) When a drill machine is being moved from one drilling area to another, drill steel, tools, and other equipment must be secured and the mast must be placed in a safe position.

(5) Receptacles or racks must be provided for storing drill steel located on jumbos.

(6) Employees working below jumbo decks shall be warned whenever drilling is about to begin.

(7) Drills on columns must be anchored firmly before starting drilling, and must be retightened as necessary thereafter.

(8) The employer shall provide mechanical means on the top deck of a jumbo for lifting unwieldy or heavy material.

(9) When jumbo decks are over 10 feet (3.05 m) in height, the employer shall install stairs wide enough for two persons.

(10) Jumbo decks more than 10 feet (3.05 m) in height must be equipped with guardrails on all open sides, excluding access openings of platforms, unless an adjacent surface provides equivalent fall protection.

(11) Only employees assisting the operator may be allowed to ride on jumbos, unless the jumbo deck meets the requirements of (r)(11) of this section.

(12) Jumbos must be chocked to prevent movement while employees are working on them.

(13) Walking and working surfaces of jumbos must be maintained to prevent the hazards of slipping, tripping and falling.

(14) Jumbo decks and stair treads must be designed to be slip resistant and secured to prevent accidental displacement.

(15) Scaling bars must be available at scaling operations and must be maintained in good condition at all times. Blunted or severely worn bars may not be used.

(16) Blasting holes may not be drilled through blasted rock (muck) or water.

(17) Employees in a shaft must be protected either by location or by suitable barrier(s) if powered mechanical loading equipment is used to remove muck containing unfired explosives.

(18) A caution sign reading "Buried Line," or similar wording must be posted where air lines are buried or otherwise hidden by water or debris.

(r) Haulage.

(1) A competent person shall inspect haulage equipment before each shift.

(2) Equipment defects affecting safety and health must be corrected before the equipment is used.

(3) Powered mobile haulage equipment must have suitable means of stopping.

(4) Powered mobile haulage equipment, including trains, must have audible warning devices to warn employees to stay clear. The operator must sound the warning device before moving the equipment and whenever necessary during travel.

(5) The operator shall assure that lights which are visible to employees at both ends of any mobile equipment, including a train, are turned on whenever the equipment is operating.

(6) In those cabs where glazing is used, the glass shall be safety glass, or its equivalent, and must be maintained and cleaned so that vision is not obstructed.

(7) Anti-roll back devices or brakes must be installed on inclined conveyor drive units to prevent conveyors from inadvertently running in reverse.

(8) Employees may not be permitted to ride a power-driven chain, belt, or bucket conveyor unless the conveyor is specifically designed for the transportation of persons.

(9) Endless belt-type manlifts are prohibited in underground construction.

(10) General requirements applicable to conveyors used in underground construction are found in 05.140(f).

(11) No employee may ride haulage equipment unless it is equipped with seating for each passenger and protects passengers from being struck, crushed, or caught between other equipment or surfaces. Members of train crews may ride on a locomotive if it is equipped with handholds and nonslip steps or footboards. Requirements applicable to underground construction for motor vehicle transportation of employees are found in 05.150(b).

(12) Powered mobile haulage equipment, including trains, may not be left unattended unless the master switch or motor is turned off; operating controls are in neutral or park position; and the brakes are set, or equivalent precautions are taken to prevent rolling.

(13) Whenever rails serve as a return for a trolley circuit, both rails must be bonded at every joint and crossbonded every 200 feet (60.96 m).

(14) When dumping cars by hand, the car dumps must have tiedown chains, bumper blocks, or other locking or holding devices to prevent the cars from overturning.

(15) Rocker-bottom or bottom-dump cars must be equipped with positive locking devices to prevent unintended dumping.

(16) Equipment to be hauled must be loaded and secured to prevent sliding or dislodgement.

(17) Mobile equipment, including rail-mounted equipment, must be stopped for manual connecting or service work.

(18) Employees may not reach between moving cars during coupling operations.

(19) Couplings may not be aligned, shifted or cleaned on moving cars or locomotives.

(20) Safety chains or other connections must be used in addition to couplers to connect man cars or powder cars whenever the locomotive is uphill of the cars.

(21) When the grade exceeds one percent and there is a potential for runaway cars, safety chains or other connections must be used in addition to couplers to connect haulage cars or, as an alternative, the locomotive must be downhill of the train.

(22) Such safety chains or other connections must be capable of maintaining connection between cars in the event of either coupler disconnect, failure or breakage.

(23) Parked rail equipment must be chocked, blocked, or have brakes set to prevent inadvertent movement.

(24) Berms, bumper blocks, safety hooks, or equivalent means must be provided to prevent overtravel and overturning of haulage equipment at dumping locations.

(25) Bumper blocks or equivalent stopping devices must be provided at all track dead ends.

(26) Only small handtools, lunch pails or similar small items may be transported with employees in man-cars, or on top of a locomotive.

(27) When small hand tools or other small items are carried on top of a locomotive, the top must be designed or modified to retain them while traveling.

(28) Where switching facilities are available, occupied personnel cars must be pulled, not pushed. If personnel cars must be pushed and visibility of the track ahead is hampered, then a qualified person shall be stationed in the lead car to give signals to the locomotive operator.

(29) Crew trips must consist of personnel loads only.

(s) Electrical safety. This subsection applies in addition to the general requirements for electrical safety which are found in 05.110.

(1) Electric power lines must be insulated or located away from water lines, telephone lines, air lines, or other conductive materials so that a damaged circuit will not energize the other systems.

(2) Lighting circuits must be located so that movement of personnel or equipment will not damage the circuits or disrupt service.

(3) Oil-filled transformers may not be used underground unless they are located in a fire-resistant enclosure suitably vented to the outside and surrounded by a dike to retain the contents of the transformers in the event of rupture.

(t) Hoisting unique to underground construction. Except as modified by this subsection, the following provisions of 05.140 apply: Requirements for cranes are found in 05.140. Section 05.140(a)(8) applies to crane-hoisting of personnel, except that the limitation in 05.140(a)(8)(B) does not apply to the routine access of employees to the underground via a shaft. Requirements for material hoists are found in 05.140 (c)(1)(A) and (2)(A). Requirements for personnel hoists are found in the personnel hoist requirements of 05.140(c)(1)(A) and (c)(3)(A) and in the elevator requirements of 05.140(c)(1) and (4).

(1) General requirements for cranes and hoists.

(A) Materials, tools, and supplies being raised or lowered, whether within a cage or otherwise, must be secured or stacked in a manner to prevent the load from shifting, snagging or falling into the shaft.

(B) A warning light suitably located to warn employees at the shaft bottom and subsurface shaft entrances must flash whenever a load is above the shaft bottom or subsurface entrances, or the load is being moved in the shaft. This subsection does not apply to fully enclosed hoistways.

(C) Whenever a hoistway is not fully enclosed and employees are at the shaft bottom, conveyances or equipment must be stopped at least 15 feet (4.57 m) above the bottom of the shaft and held there until the signalman at the bottom of the shaft directs the operator to continue lowering the load, except that the load may be lowered without stopping if the

load or conveyance is within full view of a bottom signalman who is in constant voice communication with the operator.

(D) Before maintenance, repairs, or other work is begun in the shaft served by a cage, skip, or bucket, the operator and other employees in the area shall be informed and given suitable instructions.

(E) A sign warning that work is being done in the shaft must be installed at the shaft collar, at the operator's station, and at each underground landing.

(F) Any connection between the hoisting rope and the cage or skip must be compatible with the type of wire rope used for hoisting.

(G) Spin-type connections, where used, must be maintained in a clean condition and protected from foreign matter that could affect their operation.

(H) Cage, skip, and load connections to the hoist rope must be made so that the force of the hoist pull, vibration, misalignment, release of lift force, or impact will not disengage the connection. Moused or latched open-throat hooks do not meet this requirement.

(I) When using wire rope wedge sockets, means must be provided to prevent wedge escapement and to ensure that the wedge is properly seated.

(2) Additional requirements for cranes. Cranes must be equipped with a limit switch to prevent overtravel at the boom tip. Limit switches are to be used only to limit travel of loads when operational controls malfunction and may not be used as a substitute for other operational controls.

(3) Additional requirements for hoists.

(A) Hoists must be designed so that the load hoist drum is powered in both directions of rotation, and so that brakes are automatically applied upon power release or failure.

(B) Control levers shall be of the "deadman type" which return automatically to their center (neutral) position upon release.

(C) When a hoist is used for both personnel hoisting and material hoisting, load and speed ratings for personnel and for materials must be assigned to the equipment.

(D) Material hoisting may be performed at speeds higher than the rated speed for personnel hoisting if the hoist and components have been designed for such higher speeds and if shaft conditions permit.

(E) Employees may not ride on top of any cage, skip or bucket except when necessary to perform inspection or maintenance of the hoisting system, in which case they must be protected by a body belt/harness system to prevent falling.

(F) Personnel and materials (other than small tools and supplies secured in a manner that will not create a hazard to employees) may not be hoisted together in the same conveyance. However, if the operator is protected from the shifting of materials, then the operator may ride with materials in cages or skips which are designed to be controlled by an operator within the cage or skip.

(G) Line speed may not exceed the design limitations of the system.

(H) Hoists must be equipped with landing level indicators at the operator's station. Marking of the hoist rope does not satisfy this requirement.

(I) Whenever glazing is used in the hoist house, it must be safety glass, or its equivalent, and be free of distortions and obstructions.

(J) A fire extinguisher that is rated at least 2A:10B:C (multi-purpose, dry chemical) must be mounted in each hoist house.

(K) Hoist controls must be arranged so that the operator can perform all operating cycle functions and reach the emergency power cutoff without having to reach beyond the operator's normal operating position.

(L) Hoists must be equipped with limit switches to prevent overtravel at the top and bottom of the hoistway.

(M) Limit switches are to be used only to limit travel of loads when operational controls malfunction and may not be used as a substitute for other operational controls.

(N) Hoist operators must be provided with a closed-circuit voice communication system to each landing station, with speaker-microphones so located that the operator can communicate with individual landing stations during hoist use.

(O) When sinking shafts 75 feet (22.86 m) in depth, cages, skips, and buckets that may swing, bump, or snag

against shaft sides or other structural protrusions must be guided by fenders, rails, ropes, or a combination of those means.

(P) When sinking shafts more than 75 feet (22.86 m) in depth, all cages, skips, and buckets must be rope or rail-guided to within a rail length from the sinking operation.

(Q) Cages, skips, and buckets in all completed shafts, or in all shafts being used as completed shafts, must be rope or rail-guided for the full length of their travel.

(R) Wire rope used in load lines of material hoists must be capable of supporting, without failure, at least five times the maximum intended load or the factor recommended by the rope manufacturer, whichever is greater. (See 05.140(c)(3)(N)(iii) for safety factors for wire rope used in personnel hoists.) The design factor must be calculated by dividing the breaking strength of wire rope, as reported in the manufacturer's rating tables, by the total static load, including the weight of the wire rope in the shaft when fully extended.

(S) A competent person shall visually check all hoisting machinery, equipment, anchorages, and hoisting rope at the beginning of each shift and during hoist use, as necessary.

(T) Each safety device must be checked by a competent person at least weekly during hoist use to ensure suitable operation and safe condition.

(U) In order to ensure suitable operation and safe condition of all functions and safety devices, each hoist assembly must be inspected and load-tested to 100 percent of its rated capacity: at the time of installation; after any repairs or alterations affecting its structural integrity; after the operation of any safety device; and annually when in use. The employer shall prepare a certification record which includes the date each inspection and load-test was performed; the signature of the person who performed the inspection and test; and a serial number or other identifier for the hoist that was inspected and tested. The most recent certification record must be maintained on file until completion of the project.

(V) Before hoisting personnel or material, the operator shall perform a test run of any cage or skip whenever it has been out of service for one complete shift, and whenever the assembly or components have been repaired or adjusted.

(W) Unsafe conditions must be corrected before using the equipment.

(4) Additional requirements for personnel hoists.

(A) Hoist drum systems must be equipped with at least two means of stopping the load, each of which must be capable of stopping and holding 150 percent of the hoist's rated line pull. A broken-rope safety, safety catch, or arrestment device is not a permissible means of stopping under this paragraph.

(B) The operator must remain within sight and sound of the signals at the operator's station.

(C) All sides of personnel cages must be enclosed by one-half inch (12.70 mm) wire mesh (not less than a No. 14 gauge or equivalent) to a height of not less than 6 feet (1.83 m). However, when the cage or skip is being used as a work platform, its sides may be reduced in height to 42 inches (1.07 m) when the conveyance is not in motion.

(D) All personnel cages must be provided with a positive locking door that does not open outward.

(E) All personnel cages must be provided with a protective canopy. The canopy must be made of steel plate, at least 3/16-inch (4.76 mm) in thickness, or material of equivalent strength and impact resistance. The canopy must be sloped to the outside, and so designed that a section may be readily pushed upward to afford emergency egress. The canopy must cover the top in such a manner as to protect those inside from objects falling in the shaft.

(F) Personnel platforms operating on guide rails or guide ropes must be equipped with broken-rope safety devices, safety catches or arrestment devices that will stop and hold 150 percent of the weight of the personnel platform and its maximum rated load.

(G) During sinking operations in shafts where guides and safeties are not yet used, the travel speed of the personnel platform may not exceed 200 feet (60.96 m) per minute. Governor controls set for 200 feet (60.96 m) per minute must be installed in the control system and must be used during personnel hoisting.

(H) The personnel platform may travel over the controlled length of the hoistway at rated speeds up to 600 feet (182.88 m) per minute during sinking operations in shafts where guides and safeties are used.

(I) The personnel platform may travel at rated speeds greater than 600 feet (182.88 m) per minute in completed shafts.

(u) Definitions.

(1) "Acceptable"--Any device, equipment, or appliance that is either approved by MSHA and maintained in permissible condition, or is listed or labeled for the class and location under 05.110.

(2) "Self-rescuer" --escape only, self-contained breathing apparatus using mouthpiece oxygen meeting MSHA and NIOSH certification requirements under 30 CFR, Part II and duration requirements of one hour.

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



September 26, 1989

To: David Teal, Director  
House Research Agency

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

DB

Re: Research request - Workplace Safety information

In preparation for consideration of legislation dealing with workplace safety issues, I'm writing to ask that your agency gather information on the following:

1. Los Angeles, California criminally prosecutes executives of companies where workplace safety violations have occurred that resulted in the death of a worker and the number of workplace deaths has subsequently dropped. I would like any information you can find on this issue, including copies of legislation, articles, publications, and background information for any other state where such prosecutions occur.
2. Scandinavian countries are highly industrialized with many hazardous occupations such as shipbuilding and iron work. Historically they have far fewer workplace deaths or serious injuries than their American counterparts. I would like any information you can find as to what is unique about the way these countries deal with workplace safety that may account for their excellent record and any articles, studies, publications or model legislation that may be useful to Alaska in trying to develop workplace safety programs.
3. Is there a "model" workplace safety program that is recognized by 1) Alaska, 2) any other state, or 3) the federal government, that could be used by Alaska businesses? In working with the workers' compensation reform package last year, we considered mandating a five percent rate decrease for any company that instituted a workplace safety program. The problem is we couldn't find a "model" program that was recognized by insurers or easily adopted into various workplace situations. If you can not find an existing program, please forward to me any articles, publications or studies you locate that could help us develop a model program.

Please contact Ginger Baim at 561-7629 if you have any questions or need additional information.

## The Job Safety and Health Act of 1989

### Title One: Joint Worker/Management Committees

- A. Worker/Management Committees must be authorized to:
  - 1. Stop work until hazardous conditions are abated.
  - 2. Review appointment and employment of safety and health personnel.
  - 3. Conduct monthly inspections.
  - 4. Obtain employer's information concerning safety and health practices.
  - 5. Investigate accidents.
- B. Worker participation must be legitimate.
- C. Committee members must receive sufficient training.
- D. All businesses with eleven or more employees must designate a safety and health officer.

### Title Two: Rights of Victims and Whistleblowers

- A. Victims must have:
  - 1. The right to obtain copies of OSHA investigative files and citations quickly and free of charge.
  - 2. The right to participate in appropriate deliberations and adjudicative processes, personally or through their representatives, as proposed in the Construction Safety and Health Improvement Act, S. 2518.
- B. Whistleblowers must have:
  - 1. The right to disclose hazards which violate federal law or threaten health and safety.
  - 2. The right to participate in a federal agency proceeding relating to the dangerous activities of an employer.
  - 3. The right to refuse to perform dangerous work, as proposed in the Uniform Health and Safety Whistleblower Act, S. 2095.

### Title Three: Civil and Criminal Penalty Structures

- A. Civil penalty changes.
  - 1. Minimum penalty increases should:
    - a. Adjust all civil penalties for inflation (a maximum willful violation penalty would be increased from \$10,000 to \$29,700).
    - b. Tie future penalties to the cost-of-living index, as proposed in the Federal Civil Penalties Inflation Adjustment Act, S. 1014.
  - 2. NSWI recommends penalty increases of:
    - a. \$50,000 (up from \$10,000) for a willful violation.
    - b. \$10,000 (up from \$1,000) for a serious violation.
- B. Penalty settlement guidelines.
  - 1. Penalty reductions must not exceed 30%.
  - 2. Settlement discussions must not occur until after abatement of hazardous conditions.

3. Written rationalizations for any reduction must be made available to all concerned parties.
  4. Settlements over \$100,000 should be entered into U.S. District Court records.
- C. Criminal penalties.
1. Current maximum fine of \$10,000 and a six month prison sentence for an individual or a corporation are too weak.
  2. An increased fine of \$250,000 for an individual and \$500,000 for a corporation (as proposed by former Assistant Attorney General William Weld) should set the new standard.
- D. Willfulness.
1. The current willfulness standard, requiring an employer to have a history of previous citations, and subsequently to have a repeat violation involving a fatality, makes it very difficult to convict serious offenders.
  2. A new definition of willfulness, based on the California penal code, should be adopted.
- E. Reckless endangerment.
1. A new standard for reckless endangerment should be based on the following criteria:
    - a. Any violator with one serious or willful violation during the previous four years would potentially be liable of reckless endangerment.
    - b. Willfulness would not be considered in applying the reckless endangerment test.
    - c. Reckless endangerment would carry a maximum fine of \$100,000 and a prison sentence of one-to-five years.
- F. Fatalities.
1. Increase penalties for violations involving fatalities to a maximum prison sentence of 20 years, as proposed in S. 2518.

#### Title Four: Public Welfare Cost Recovery

- A. In cases where federal funds provide support for victims of job-related injury or illness, the government should litigate to recover costs from employers for standards-related violations.
- B. The Departments of Labor and Justice would litigate under this provision.

#### Title Five: Rights of Local and State Governments

- A. Current case law discourages a state or local government from pressing criminal charges against an employer in a federally-regulated OSHA state.
- B. Federal preemption of state or local laws, including criminal laws, which provides more stringent job safety and health standards should be prohibited, as proposed in S. 2518.

#### Title Six: State-Plan States

- A. State-Plan States should be encouraged to experiment in developing safer workplaces by providing a grant program for special initiatives.
- B. The Secretary of Labor should develop standard reporting measures for State-Plan States and make reports available to the public.
- C. Workers in State-Plan States should have the right to demand inspections by federal officials when state inspections fail to eliminate hazardous conditions.
- D. The Secretary of Labor should terminate inadequate State-Plan programs.

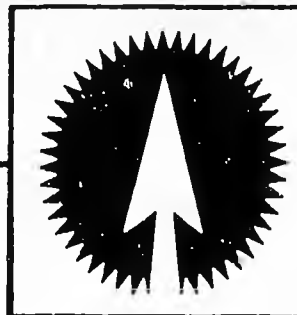
### Title Seven: Safety and Health Standards

- A. The revision of existing standards and promulgation of new standards lags far behind sound scientific knowledge.
- B. The Secretary of Labor's responsibility to promulgate standards should be strengthened by:
  - 1. Reasserting the right to propose individual standards.
  - 2. Reasserting the right to promulgating consensus standards.

### Title Eight: Licensed Technicians

- A. In oversight of all high-risk activities, the law should:
  - 1. Require licensing of all key supervisory personnel.
  - 2. Provide general definitions of the work functions to be supervised by licensed technicians.
- B. An employer's failure to comply with this provision should constitute a serious violation.

# Alaska Loggers Association, Inc.



111 STEDMAN, SUITE 200  
KETCHIKAN, ALASKA 99901  
Phone 907-225-6114

May 23, 1989

The Honorable Dave Donley, Chairman  
Labor and Commerce Committee  
House of Representatives  
Alaska State Legislature  
3111 "C" Street  
Anchorage, Alaska 99501

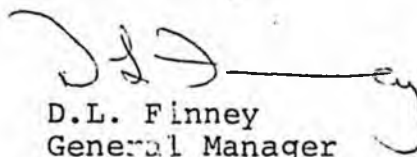
Dear Chairman Donley:

It is the understanding of the Alaska Loggers Association that your Committee may work on legislation during the interim which may be of interest to ALA. In particular, we understand that the Committee may focus on H.B. 286, legislation regarding penalties for workplace safety violations.

As you may know, ALA is vitally interested in making the workplace as safe as possible, and has an active and effective training program to accomplish this objective. Therefore, we are interested in any legislation which advances workplace safety. However, we are concerned about legislation which takes a punitive approach towards workplace safety, instead of a positive one. The legislative goals articulated in H.B. 286 are worthy of support, but we are concerned that emphasis on increasing penalties alone may not be as effective as other alternatives.

In closing, we want to emphasize that the ALA is interested in working in a constructive manner with the Committee on H.B. 286, and other workplace safety legislation. Would you please be sure to inform us of any meetings or work sessions which the Committee plans to hold during the interim on this type of legislation? Thank you for your time and cooperation on this matter.

Sincerely,

  
D.L. Finney  
General Manager

DLF:es

*Publications from the*  
**National Safe Workplace Institute**

**NATIONAL REPORTS**

**Failed Opportunities: The Decline of U.S. Job Safety in the 1980s**

*An evaluation of the effectiveness of OSHA's civil enforcement programs, key OSHA management issues, and recommendations for improving the nation's job safety programs.*  
September, 1988.

**The Rising Wave: Death and Injury Among High Risk Workers in the 1980s**

*An examination of the deterioration of workplace safety in the 1980s, the administration of the nation's safety and health laws by OSHA, and recommendations to provide for safer working conditions.*  
September, 1987.

**Summary Outline of COUNTING INJURIES AND ILLNESSES IN THE WORKPLACE**

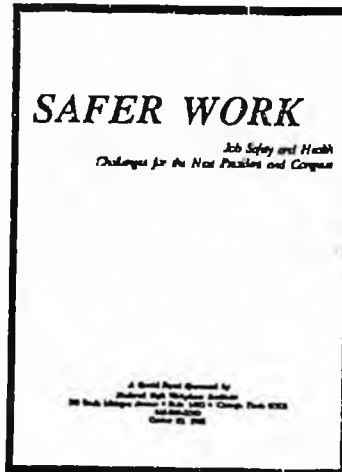
*An outline summarizing the highlights of the National Academy of Sciences' study of the adequacy of workplace safety and health data.*  
November, 1987.

**SAFER WORK: Job Safety and Health Challenges for the Next President and Congress**

*Comprehensive proposals to set a challenging job safety and health agenda for the next President and the 101st Congress.*  
October, 1988.

**Safety at Bay: The Failure of the Department of Justice to Enforce Federal Occupational Safety Laws**

*An evaluation of the U.S. Department of Justice's performance in enforcing the criminal provisions of OSH Act and proposals to improve the execution of the law by the federal government.*  
June, 1987.



**Ending Legalized Workplace Homicide**

*An examination of federal and state prosecutions for workplace safety and health violations and recommendations for improving the nation's criminal justice system.*  
July, 1988.

**REGIONAL & OTHER REPORTS**

**Tunnel of Death -- Interim Report on the Metropolitan Sanitary District's Tunnel and Reservoir Project**

*An examination of the safety record of the U.S. EPA's largest public works project and steps needed to make a safer workplace.*  
January, 1988.

**Information Sources on Workplace Safety and Health Issues**

*A directory of public and private sources for workplace safety and health information.*  
November, 1988.

**Expendable Hoosiers: Job Safety & Health Problems in Indiana**

*An appraisal of the deplorable conditions of Indiana's workers' compensation and state-run OSHA program, and recommendations to improve Hoosier worksites.*  
October, 1988.

**Safety and Health Voice**

*NSWI's periodic publication. Published at least six times annually.*

*Price Lists Are Available*

# About the National Safe Workplace Institute ...

## BOARD OF DIRECTORS

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**DR. HOWARD HESSL, M.D., M.P.H.**  
*Division of Occupational  
Medicine  
Cook County Hospital  
Chicago, Illinois*

## OBJECTIVES

The National Safe Workplace Institute was founded in 1987. The Institute is funded by foundations, contributions from individuals, and through the sale of publications. The Board of Directors supports the use of appropriate tools to achieve the Institute's goals, including:

### Research and Education ...

*The Institute examines workplace conditions and policies and educates the public on issues relating to safety and health.*

### Intervention...

*The Institute intervenes on behalf of individuals with regulators, law enforcement agencies, and the social welfare system to secure justice and pursues compensation and other remedies.*

### Acknowledgement...

*Each year the Institute acknowledges, with its "Commitment to Life" award, people who have made important contributions in advancing workplace safety and health.*

### **The National Safe Workplace Institute**

122 South Michigan Avenue  
Suite 1450  
Chicago, Illinois 60603  
312-939-0690

# National Safe Workplace Institute

## How We Make a Difference

### ..... Education

*Inform opinion leaders and the general public on workplace safety and health issues. Informed individuals can take steps to reduce workplace injuries and fatalities. NSWI has:*

- Contributed to greater public understanding of job safety and health problems through reports and by providing the media with information at their request. NSWI's work has been covered by every major U.S. news organization.

- Participated and supported a successful public proposition to restore job safety jurisdiction in California to state government. For this, NSWI prepared an issue analysis and testified before the California General Assembly.

- Worked with Congressional and state legislative-committees in their consideration of job safety regulation, enforcement, and workers' compensation issues.

- Spoke at the 1988 Investigative Editors & Reporters National Conference in Minneapolis. Prepared an information guide for the media.

- Participated in "talk shows" in virtually every major media market.

- Provided hundreds of injured workers, victim's families, and interested citizens with job safety information.

### ..... Government Accountability

*S*rutinize government programs and policies to identify ways in which public servants can more effectively reduce workplace injuries and fatalities. NSWI has conducted extensive research and issued reports on federal, state, and local public agencies. NSWI's reporting has highlighted mismanagement and influenced reforms. NSWI has:

- Revealed that the U.S. Department of Justice has failed to attain imprisonment of a single individual for job safety violations.

- Exposed massive abuse of victims--injured workers and their family members--by the U.S. Occupational Safety and Health Administration (OSHA).

- Revealed that OSHA's mega-fine strategy (fines over \$100,000) has resulted in unintended consequences that potentially undermine OSHA's effectiveness.

- Evaluated and informed the public of the significant weakening of OSHA enforcement during the 1980s (OSHA often reduced its penalties for serious violations by two-thirds).

- Researched and reported on how Indiana workers are dying--due to pitifully weak state enforcement--at a much higher rate than workers in neighboring states.

- Showed that prosecutors in most states are ignoring criminal prosecution as an injury prevention tool.

### ..... Intervention

*I*ntervene with appropriate parties in workplace safety and health issues to advance the cause of injury prevention. NSWI has:

- Successfully persuaded the U.S. Department of Justice to impose much higher penalties in workplace safety and health criminal cases.

- Battled to expand the categories of workers and types of firms regulated by OSHA.

- Recommended changes in federal job safety policy.

- Encouraged cooperation between the U.S. Environmental Protection Agency (EPA) and OSHA on EPA's wastewater construction projects. As a result of our work, EPA engineers now receive hazard training. Also, EPA has developed procedures to debar contractors with safety violations.

- Intervened in individual cases where safety-advancing precedents can be established. Intervention by NSWI has led to numerous OSHA policy changes.

- When appropriate, sought investigations by Congress, the U.S. General Accounting Office, and the Inspector General's Office.

## What Others Say

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### **National Safe Workplace Institute\***

122 South Michigan Avenue  
Suite 1450  
Chicago, IL 60603  
312-939-0690

**Hon. William E. Brock,  
Former U.S. Secretary of Labor**

"Any accomplishments we made to improve workplace safety were due in large measure to you and your organization...you have made a tremendous difference for which all American workers are grateful."

*The Christian Science Monitor*

"The Environmental Protection Agency is taking a new tack on worker safety...the work of a new Chicago organization called the National Safe Workplace Institute, brought increasing pressure on EPA...."

**Hon. Edward M. Kennedy,  
United States Senate**

"I want to thank you for your assistance to the Senate Labor and Human Resources Committee in connection with the recent oversight hearings concerning the Occupational Safety and Health Administration. Your efforts and those of the National Safe Workplace Institute have made a significant contribution to the cause of worker safety. I commend you for your activities in this regard."

**Dr. Philip Landrigan, M.D.  
Director**

**Environmental & Occupational Medicine  
The Mount Sinai Medical Center**

"[SAFER WORK] is an extremely important and timely document. In large measure, its importance derives from its specificity. This is not just a fluff piece espousing generalities; it is instead concrete, well documented and hard hitting. My congratulations on a very nice piece of work."

**John B. Moran**

**Former Director of Safety Research  
National Institute of Safety and Health**

"In a very short period of time, the National Safe Workplace Institute has established itself as one of the nation's most effective injury prevention organizations."

**Peggy Holly**

**Fort Lauderdale, Florida**

**Sister of a Workplace Accident Victim**

"I was very enthused to learn that there is an organization...concerned about the safety standards of high risk workers."

*The Daily Herald*

"We also appreciate the dogged determination of the Chicago-based National Safe Workplace Institute. Worker safety on the Deep Tunnel project has gained the attention of the EPA and OSHA, in part, because NSWI has challenged those agencies to examine and evaluate the safety issue on the MSD's huge public works project."

**Lee Doyle**

**Bloomington, Illinois**

**Father of a Workplace Accident Victim**

"Again, thank you so much for your help and support."

**Hon. Jim Edgar**

**Secretary of State, Illinois**

"Your leadership in focusing public attention on safety in the workplace is admirable."

*The Chicago Tribune*

"The Midwest's top federal environment official Friday asked his department's inspector general to investigate allegations of unsafe construction...A prime catalyst for the federal investigation [is], the National Safe Workplace Institute..."

\*From letters to the Institute or news articles about the Institute.

Alaska State Legislature  
Representative Niilo Koponen


House District 21

119 N. Cushman, Suite 207  
Fairbanks, Alaska 99701  
(907) 456-8172

Pouch V  
Juneau, Alaska 99811  
(907) 465-4992

MEMORANDUM

**To:** Representative Dave Donley  
Chair, Labor & Commerce Committee

**From:** Representative Niilo Koponen 

**Re:** House Bill 286

**Date:** 4/19/89

---

House Bill 286, increasing penalties for workplace safety violations, is now in your committee. I would appreciate a hearing at your earliest convenience.

Thank you for your consideration of this matter.



# Representative Dave Donley, Chair House Labor & Commerce Committee

DATE: 4/25

PLACE: CH17

SUBJECT OF MEETING:

HJ 445      HB 204      HB 186  
 SL 51      HB 286  
 HB 245      HB 284

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Richard Arab	Dept of Labor	Box 21149, Juneau, AK <del>99801</del>	99802		465-7856	(Y) N	HB 286
Willis F. Kulepatnick	Div Corporations	DCTED			465 3501	(Y) N	HB 204
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	



# Representative Dave Donley, Chair

## House Labor & Commerce Committee

DATE: 5-2-89

PLACE: C#17

SUBJECT OF MEETING:

SJR 8 HB 286  
 SB 191 HB 225  
 SCR 27 HB 166  
 SCR 28

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
						Y	N	
Judy Knight	Dept of Lab	P.O. Box 3700 JUN 998	99811	465-2712	→	<input checked="" type="radio"/>	N	SB 191
Richard Arab	Dept of Labor	Box 21149, Juneau	99802		465-4836	<input checked="" type="radio"/>	N	HB 286
Rena Jurel	A.G.C.	134 No. Franklin	99801		586-1748	<input checked="" type="radio"/>	N	HB 286
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

## STATE NEWS

### **State fines Juneau in worker's death**

JUNEAU — The state has fined Juneau \$1,000 for violating safety rules in the death of a city worker. Donald A. Anderson, 58, died after he fell 24 feet from a roof he and other workers were replacing at a community center in August. None of the workers was wearing safety equipment, in violation of state law. The workers should have been provided some protection such as a cable or rope to work as a lifeline, a fall net or a guardrail, said Eric Shortt of the state Division of Labor Standards and Safety in Anchorage.

ASU 10/10/89

## Mill worker dies

The Associated Press

SITKA — A worker died early Wednesday in an accident at the Alaska Pulp Corp. mill, the company reported.

Joseph E. Lau, 28, of Sitka was killed at 6 a.m. as he was changing a 16-foot-wide pulp roll. Police said Lau was killed when he fell or got caught on rollers.

He is survived by his wife, Sheila, and two children.

# Pilot, mill worker die in separate accidents

By BARBARA ROGERS  
Times Writer

9/28/89 - Times

Separate accidents killed two men as an Anchorage pilot in a homebuilt airplane crashed in Palmer and a sawmill employee was crushed in a Ketchikan industrial accident Wednesday.

The pilot, whose name was not released this morning pending notification of his family, took off from Anchorage International Airport about 8 p.m. Wednesday en route to the Birchwood Airstrip, Palmer and then back to Anchorage, said Paul Steucke of the Federal Aviation Administration.

He was reported overdue by his wife at 10 p.m. and a helicopter search was begun by Alaska State Troopers this morning, Steucke said.

The wreckage of his homebuilt Long-Eze was found spread over a swampy area of the Matanuska River Park about 8:30 a.m. today after searchers picked up a signal from the aircraft's emergency locator transmitter, said Palmer Police Department Sgt. Greg Carpenter.

The body of the pilot was found in the cockpit of the single-seater, Carpenter said. He was pronounced dead at the scene.

In Ketchikan, a 60-year-old man died Wednesday afternoon when he was crushed between a gate and an upper structural bar at Ketchikan Sawmill, troopers report.

Dead is Francis K. Glover, who was leaning on a hydraulically operated gate when the gate lifted him, crushing his body, troopers and a Ketchikan Pulp Co. spokesman said.

Also Wednesday, in a traffic accident on Minnesota Drive just south of Tudor Road, two small boys were injured when the station wagon they were riding in was struck from the rear by another car.

Michael Nichols, 5, was in fair condition this morning while Justin Bushre, 7, was in serious condition at Providence Hospital, a spokeswoman said today. Both received head injuries in the accident, said Sgt. Greg Stewart of the Anchorage Police Department.

Stewart said the station wagon was southbound on Minnesota Drive when its engine quit as the car was about halfway up the bridge over the Alaska Railroad tracks.

Driver Terry Risinger, 32, turned on the emergency flashers and was trying to restart the car when it was struck from behind by a car driven by Afualo Uatisone, Stewart said.

The force of the accident collapsed the rear of the station wagon, pinning the seatbelted boys inside, Stewart said. Rescue workers got them from the car and took them to the hospital, where they originally were listed in critical condition.

HB

300

# HOUSE COMMITTEE REPORT

(7)

Date Referred: April 18, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3/1/90

The LABOR & COMMERCE Committee considered:

HB 300

HOUSE BILL NO. 300

[PUBLIC UTILITY REGULATION]

"An Act relating to certain property records maintained by public utilities; and defining 'public' for public utility regulation."

RECOMMENDATIONS:

- be replaced with L+C CS 300  the same title  
 have attached amendment(s)  a new title  
 do pass  
 do not pass  
 no recommendation  
 individual recommendations  
 additional referral to the Judiciary Committee

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

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact \_\_\_\_\_  
 zero fiscal note \_\_\_\_\_  
 zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_  
 zero fiscal note(s) \_\_\_\_\_  
 zero fn/analysis \_\_\_\_\_

SIGNING DO PASS

Paul J. [Signature]  
Mark [Signature]  
Steven A. [Signature]  
[Signature]  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>		<input checked="" type="checkbox"/>	
_____			
_____			
_____			
_____			
_____			
_____			
_____			

[Signature]

Chairman's Signature

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: An Act relating to certain property records, etc.  
 Sponsor: House Labor & Commerce Comm.  
 Requestor: House Labor & Commerce Comm.

Agency Affected: Commerce & Economic Dev.  
 BRU: APUC  
 Components: \_\_\_\_\_

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

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

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

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

**FUNDING:** (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

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

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

Please see attached

Prepared by: T.S. Moninski II, Executive Director Phone: 276-6222  
 Division: Alaska Public Utilities Commission Date: 3/5/90  
 Approved by Commissioner: Larry Mercurieff *Gary Bellor* Date: 3/6/90  
 Agency: Department of Commerce & Economic Development

**Distribution (by preparer):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

## ANALYSIS - FISCAL NOTE FOR CSHB 300 (L&C)

The primary impact of the enactment CS for HB 300 is found in Section 2 of the bill which would expand the APUC's jurisdiction by bringing under regulation any utility which serves one or more customers if such service produces gross annual revenue in excess of \$50,000.

While this section has some potential for increasing the number of utilities subject to economic regulation, the projected increase is highly speculative. At this time, the APUC does not anticipate that the workload increase will be substantial and, accordingly, submits a zero fiscal note.

The commission may need to submit a budget request in the future if the actual result of the bill's enactment is to generate significant numbers of new jurisdictional utilities which require regulatory oversight.

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 "related" 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 to the utility exceeding \$50,000 annually; and

*from all customers together*  
[(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;

From: Peter Sokolow  
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.

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-

# **CORRECTION**

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

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.

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."

8

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

27

(A) a [ANY] group of 10 or more customers that pur-  
28 chase the service or commodity furnished by a public utility and  
29 that is located outside or makes the purchase outside the certif-  
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 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;

# STATE OF ALASKA

ALASKA PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

February 8, 1990

HB300

STEVE COWPER, GOVERNOR

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

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

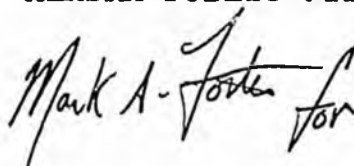
The Commission notes several possible problems with the content of Section 2 and its perceived objectives. First, the bill appears to seek Commission jurisdiction over electric operations which are not currently regulated due to their number of customers. However, electric utilities with annual gross 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

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;

HB

309

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

POUCHY - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Labor & Commerce

November 28, 1989

9:30 am

HB 309

# HOUSE COMMITTEE REPORT

(7)

Date Referred: April 21, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3/06/90

The LABOR & COMMERCE Committee considered:

~~10/23/89~~

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  a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

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

- |  |  |
|--|--|
| ATTACHES NEW FISCAL NOTE(S):   | APPROVES PREVIOUS:                                 |
| (Dept)   | (Date/Dept)  |
| <input checked="" type="checkbox"/> fiscal impact <u>AK Court system</u> | <input type="checkbox"/> fiscal note(s) _____      |
| <input type="checkbox"/> zero fiscal note _____                          | <input type="checkbox"/> zero fiscal note(s) _____ |
| <input type="checkbox"/> zero with analysis _____                        | <input type="checkbox"/> zero fn/analysis _____    |

**SIGNING DO PASS:**

**SIGNING:**

David Donley Donley  
Bob Boucher Boucher  
Drew Lerman Lerman  
Collins Collins

(Check appropriate column)

	Do Not Pass	No Rec	Amend
<u>Finkelstein</u>	<input checked="" type="checkbox"/>		
<u>Greenberg</u>			

David Donley  
 Chairman's Signature

**STATE OF ALASKA  
1990 LEGISLATIVE SESSION**

Bill Version: CSHB 309

Public 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

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

Approved by: Stephanie Cole, for - Arthur M. Snowdon, II, Administrative Director  
 Agency: Alaska Court System

Date: 03/15/90

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

## 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.

The Uniform Residential Landlord and Tenant Act is codified in AS 34.03.010-34.03.380. Topics within the act include purposes and 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.

# **CORRECTION**

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

**STATE OF ALASKA  
1990 LEGISLATIVE SESSION**

Bill Number: **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>						
----------------	--	--	--	--	--	--

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

**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  
CSBB 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 (one-time cost)</u>			
Four meetings of the Forms Committee to revise forms and informational pamphlets (4 @ \$1,500)			6,000
Training for Clerks of Court (additional day of training added to annual clerks conference)			<u>4,000</u>
	<u>Total Travel</u>		<u>10,000</u>
	<u>Total Cost</u>		<u>\$41,650</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.

The Uniform Residential Landlord and Tenant Act is codified in AS 34.03.010-34.03.380. Topics within the act include purposes and 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 09.43.060 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

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

Original sponsor(s): LABOR & COMMERCE COMMITTEE

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IN THE HOUSE BY THE LABOR & COMMERCE COMMITTEE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "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."

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

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

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

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

Sec. 09.45.100. REQUISITES OF NOTICE TO QUIT. A notice to quit shall be in writing and shall be served upon the tenant or person in possession by being delivered to the tenant or person or left at the premises in case of absence from the premises, or the notice may be sent by registered or certified mail, in which case an additional three days shall be added to the notice period required under AS 09.45.110 [10 DAYS].

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

Sec. 09.45.110. PERIOD BETWEEN SERVICE OF NOTICE AND ACTION BROUGHT. An action for the recovery of the possession of the premises 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.

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 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-  
7 sive of costs, interest, and attorney fees, the district judge or  
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 24.03.010 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

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

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

Sec. 34.03.155. ADDITIONAL TENANT OBLIGATIONS. If a landlord defaults on a financial obligation that secures property occupied by a tenant of the landlord, the holder of the financial obligation may advise the landlord and the tenant of the landlord to make payments otherwise due to the landlord directly to the holder of the financial obligation for the benefit of the landlord and holder. A payment made under this section to the holder of the financial obligation discharges to that extent the debt of tenant to the landlord.

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

Sec. 34.03.190. LANDLORD'S NONCOMPLIANCE AS DEFENSE TO ACTION FOR POSSESSION OR RENT. (a) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount recoverable under the rental agreement or this chapter. A tenant may not counterclaim under this section unless, before the landlord filed an action for possession or rent, the tenant had provided the landlord with written notice under AS 34.03.160 specifying the acts and omissions constituting the breach. If a counterclaim is made, the court shall determine whether the defense is supported by the evidence and, if so, may order that

(1) the periodic rent [IS TO] be reduced to reflect the diminution in value of the dwelling unit during the period of noncompliance;

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

*Exempted  
If tenant  
and routine  
service w/in the  
three day period  
repay landlord  
no short  
time.*

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:

1                   ARTICLE 6. RIGHTS OF LANDLORDS IN UTILITY SERVICE.

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

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

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

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

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

25 \* Sec. 26. 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. 27. 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. 28. The Legislative Affairs Agency shall make copies of the  
9 pamphlet prepared by the Department of Law under AS 44.23.020(b)(8), as  
10 amended in sec. 24 of this Act, available to members of the public at  
11 Legislative Information Offices throughout the state.

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STATE OF ALASKA  
THE LEGISLATURE

POUCH STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 2800


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  
wkmi6/007

# Alaska State Legislature

Legislative Research Agency



P.O. Box Y  
Juneau, AK 99811-3100  
Phone: (907) 165-3991  
Fax: (907) 163-3351

January 11, 1990

Referenced back up  
material available  
through Committee  
Office (465-4954)

## 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

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 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 Goyne, 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 Howzell, 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?
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