ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7003 HOUSE JUDICIARY

Alaska State Legislature

Senate Judiciary Committee

March 13, 1991

LETTER OF INTENT

CSSB 35 (JUD)
An Act relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities, to tenant responsibilities, to the civil remedies of forcible entry and detainer and nuisance abatement, and to the duties of peace officers to notify landlords of arrests involving certain illegal activity on rental premises.

Omission of other criminal behavior or activities not addressed in this bill should not be construed as acceptable behavior by tenants.

Senator Rick Halford, Chair
Senate Judiciary Committee

Adopted by the Senate: 5/3/91

Post Office Box V • Juneau, Alaska 99811

SUMMARY

HCS CSSB 35 (L&C) would expedite eviction of tenants in the following situations:

1) For nonpayment of rent - Currently, a landlord must give the tenant a 10-day written notice of intent to evict for nonpayment of rent. The House Labor and Commerce CS would reduce the notification period to 8 days as opposed to the 5-day notification required in the Senate version. Alaska has the longest notification period of the other 12 western states: three states require a five day notice; nine states require only a three day notice.

2) For engaging in felony alcohol or drug activities - There is no specific provision in statute allowing a landlord to evict for illegal alcohol or drug activities. As proposed in this bill, a commercial or residential tenant who engages in these activities could be noticed and evicted under the same procedures as for nonpayment of rent.

3) To assist neighborhoods in halting drug trafficking - The nuisance statutes are amended to include felony alcohol and drug activities related to manufacture and delivery. This would allow a landlord or neighbors to petition the court to abate the nuisance. The order of abatement would terminate a rental agreement. Under the nuisance statutes, evidence of reputation would be admissible by the court in proving the existence of a nuisance.

In all cases where a tenant refuses to pay rent or move after having received notice, the landlord must seek eviction under the forcible entry and detainer (FED) statutes which provide due process protection. To eliminate statutory ambiguity and in accordance with court practice, a provision is included to allow the notice required under the landlord-tenant statutes to serve as the notice required under the FED statutes.

Finally, a provision is included requiring a police officer to make a reasonable effort to notify the owner in person or in writing when a tenant is arrested for violation of felonies relating to manufacture or delivery of drugs or alcohol.

The House Labor and Commerce CS carries a $10,000 fiscal note.

Senator Pat Pourchot
May 17, 1991

SUMMARY

CS SB 35 (JUD) would expedite eviction of tenants in the following situations:

1) For nonpayment of rent - Currently, a landlord must give the tenant a 10-day written notice of intent to evict for nonpayment of rent. SB 35 would reduce the notification period to 5 days. Alaska has the longest notification period of the other 12 western states: three states require a five day notice; nine states require only a three day notice.

2) For engaging in felony alcohol or drug activities - There is no specific provision in statute allowing a landlord to evict for illegal alcohol or drug activities. As proposed in this bill, a commercial or residential tenant who engages in these activities could be noticed and evicted under the same procedures as for nonpayment of rent.

3) To assist neighborhoods in halting drug trafficking - The nuisance statutes are amended to include felony alcohol and drug activities related to manufacture and delivery. This would allow a landlord or neighbors to petition the court to abate the nuisance. The order of abatement would terminate a rental agreement. Under the nuisance statutes, evidence of reputation would be admissible by the court in proving the existence of a nuisance.

In all cases where a tenant refuses to pay rent or move after having received notice, the landlord must seek eviction under the forcible entry and detainer (FED) statutes which provide due process protection. To eliminate statutory ambiguity and in accordance with court practice, a provision is included to allow the notice required under the landlord-tenant statutes to serve as the notice required under the FED statutes.

Finally, a provision is included requiring a police officer to make a reasonable effort to notify the owner in person or in writing when a tenant is arrested for violation of felonies relating to manufacture or delivery of drugs or alcohol.

The bill carries a zero fiscal note.

SUMMARY

EVICTION FOR NONPAYMENT OF RENT

[Amends both the Forcible Entry and Detainer (FED) statutes and the Landlord-Tenant (LLT) Act]

The proposed CS for SB 35 retains the provision in the original bill that reduces the length of time a landlord must wait after giving written notice to vacate from 10 to 5 days before instituting FED proceedings.

EVICTION FOR CERTAIN ILLEGAL ALCOHOL/DRUG ACTIVITIES

Originally, SB 35 focused on making it easier for the landlord to evict a tenant under LLT statutes by allowing "arrest" to trigger eviction through the FED process.

Because of constitutional problems, this provision was dropped. Instead, two separate options are proposed which would: 1) shorten the notification period for eviction for certain illegal activities under current LLT/FED statutes, and 2) amend the nuisance statutes to allow landlords or **neighbors** to get the nuisance abated.

Current Statutes

Under current LLT/FED statutes, to get rid of a tenant who is in noncompliance with a rental agreement takes approximately 34 days (20 day notice required under the LLT statutes plus 10 days for the FED proceedings).

Option 1

Using the same remedy (LLT/FED), Option 1 under the proposed CS would take approximately 20-23 days. To accomplish this the LLT and FED statutes are amended to reduce the notice period to 5-days for specified illegal activities - treated with the same severity as nonpayment of rent.

Option 2

Option 2 would amend the Nuisance statutes to allow abatement of property being used for certain illegal alcohol or drug activities. This procedure involves filing a complaint, the court issuing an

injunction or restraining order, a 20-day period for the defendant to respond, followed by a short trial at which a**n order of abatement would be issued terminating the rental agreement.** Evidence of reputation would be admissible by the court to prove the existence of a nuisance. From time of filing complaint to issuance of abatement order would be approximately 24 days. Although it is highly unlikely the tenant would not voluntarily move from the premises before the order of abatement were issued (to protect his/her personal property), if such were the case, the landlord would be able to resort to the FED remedy.

Although the eviction process under Option 1 (and probably Option 2) is shorter than under current law, Option 2 has the advantage of giving the landlord an additional tool for getting rid of a recalcitrant tenant, as well as providing a means, not now available, for neighbors to halt specified illegal drug activities.

Other Considerations:

Violation of an injunction or restraining order is **criminal contempt.**

To remove an occupant who refuses to leave - regardless of the reason - requires going through the FED process; i.e., a landlord can't physically move a tenant out.

To eliminate confusion, a provision is included to **allow the FED notification period to run concurrently with the notification period required under the LLT and nuisance statutes.**

A provision is included to allow the court to enter an order to vacate and a writ of assistance at the same time (although the tenant still has two days to vacate) to save the landlord another court visit.

OPTION 1 — OPTION 2

[Time frames represent best possible scenario. If day court assistance is needed falls on Saturday, Sunday or holiday, time will be extended. If tenant cannot be served, court has to set new hearing date. If tenant fights eviction, Judge may grant continuance.]

Landlord/Tenant Approach		Nuisance Approach
5-day notice given to tenant	**DAY 1**	File complaint/Summons/ temporary restraining order or injunction (may run into day 2). Tenant has 20 days to respond as to why order of abatement should not be issued. During this time, tenant is liable for criminal contempt if injunction is violated.
Institute FED Process Complaint filed in Court Hearing date set. (usually takes 7-10 days)	**DAY 7**	
Court Hearing date/obtain Order to Vacate	**DAY 15**	
Tenant remains/Writ of Assistance	**DAY 18**	
House back in Landlord's Possession	**DAY 20**	
	DAY 22	
	DAY 23	Half-day trial/Order of abatement issued/rental agreement terminated. **Institute FED process.** File complaint in court, get hearing date (usually 7-10 days)
	DAY 31	Court Hearing date/ Order to Vacate and Writ of Assistance issued.
	DAY 33	House back in landlord's possession.

Senator Pat Pourchot
February 5, 1991

SUMMARY

SB 35 would make two major changes to the Alaska Uniform Residential Landlord-Tenant Act.

The first proposal would expedite eviction of tenants who fail to pay their rent when due by shortening the notification period from ten to five days prior to eviction. Currently, landlords who are trying to evict tenants for nonpayment of rent must give a ten-day notice of intent to evict prior to filing a complaint. The earliest the eviction process can be completed is approximately three weeks (see attached Flow Chart); the more likely eviction scenario is a month to six weeks. This places an undue hardship on landlords, many of whom rely on rental income for their livelihood.

Compared to 12 other western states, Alaska provides a long notice period. For example, only three days' notice by the landlord to the tenant is required in California, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington, and Wyoming. Five days required notice is required in Arizona, Hawaii and Nevada.

I believe the five-day notification period would still allow well-intentioned tenants to work out their difficulties but accelerate the eviction process for tenants unwilling to pay. This proposal in no way interferes with the tenant's rights in the judicial Forcible Entry and Detainer (FED) process.

The second proposal would assist landlords trying to evict tenants who are engaged in specified drug-related or bootlegging activities (related to manufacture and distribution). SB 35 would allow landlords to immediately start the eviction process if the tenant was arrested for one of the specified violations. Law enforcement officials would also be required to make a concerted effort to notify a property owner(s) when making an arrest for these types of offenses. The tenant's rights in court under the FED process are unaffected.

FLOW CHART FOR EVICTION FOR NONPAYMENT OF RENT
(AVERAGE TIME SCENARIO UNDER CURRENT STATUTE)

DAY

1 **Rent due (rent due on 1st and deliquent on 6th in most rental agreements)**

6 **10-day notice given tenant** **[SB35 would reduce notification period from 10 to 5 days]**

(If landlord accepts full or partial payment of rent, the process is voided; must start over by giving another 10-day notice.)

17 **Complaint filed in Court - Court sets Hearing date**

(Law states that tenant must be served by Process Server at least 2 days prior to Hearing date which is usually set 7-10 days following filing of Complaint. If tenant cannot be served in time, landlord must go back to Court for a new Hearing date.)

25 **Court Hearing date - obtain Order to Vacate**
(Tenant has minimum of 2 days to vacate; Judge may grant additional time.)

28 **Tenant remains: obtain Writ of Assistance - deliver to Troopers**
(Troopers usually remove tenant within 24 hours)

30 **House back in landlord's possession**

NOTE:

1) TIME MAY BE EXTENDED
- if, the day Court assistance is needed (filing Complaint, Hearing, etc.) falls on a Saturday, Sunday or holiday - extend days accordingly;
- if tenant fights eviction, Judge may grant Continuance;
- if tenant cannot be served, landlord has to go back to Court for new hearing date;
- if 10-day notice not immediately given - time extended accordingly.

2) TIME MAY BE SHORTENED
- if there is no 5-day "grace" period in rental agreement;
- if tenant can be served immediately; Hearing date can legally be set for 3rd day after filing of Complaint if Court calendar permits.

3) The eviction process does not recover any cost other than for filing fees, service and process fees and postage under Court Rule 79 and attorney fees under Court Rule 82; motion to recover costs must be filed within 10 days of Clerk entering FED Order; treated as a judgement. Getting back rent is another more lengthy process.

4) If process is not completed within the 1st month, landlord will be out rent for additional time tenant remains on premises.

FLOW CHART FOR EVICTION FOR ILLEGAL ALCOHOL OR DRUG ACTIVITIES AS PROPOSED IN SB 35

[Time frames represent best possible scenario. If day court assistance is needed falls on Saturday, Sunday or holiday, time will be extended. If tenant cannot be served, court has to set new hearing date. If tenant fights eviction, Judge may grant continuance.]

Landlord/Tenant/FED Approach		Nuisance Approach
5-day notice given to tenant	**DAY 1**	File complaint/Summons/ temporary restraining order or injunction (may exceed one day). Tenant has 20 days to respond as to why order of abatement should not be issued. During this time, tenant is liable for criminal contempt if injunction is violated.
Institute FED Process if tenant refuses to move. Complaint filed in Court Hearing date set. (usually takes 7-10 days)	**DAY 7**	
Court Hearing date/obtain Order to Vacate	**DAY 15**	
Tenant remains/Writ of Assistance	**DAY 18**	
House back in Landlord's Possession	**DAY 20**	
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	DAY 23	Half-day trial/Order of abatement issued/rental agreement terminated. **Institute FED process if tenant refuses to move.** File complaint in court, get hearing date (usually 7-10 days)
	DAY 31	Court Hearing date/ Order to Vacate and Writ of Assistance issued.
	DAY 33	House back in landlord's possession.

PROPOSED AMENDMENTS TO EVICTION STATUTES (AS 09.45 ET SEQ.)

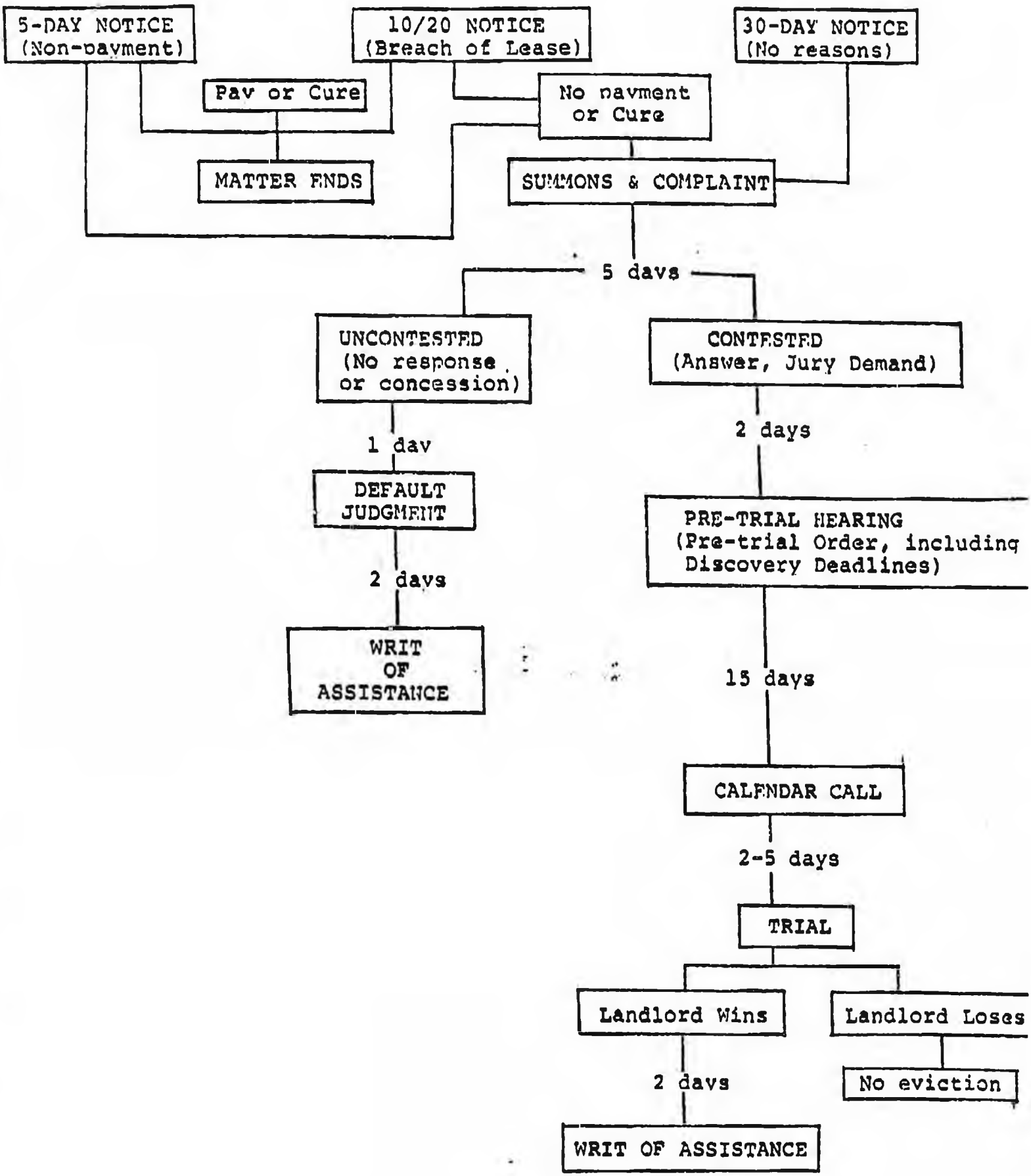
Sec. 1. AS 09.45.120 is deleted and replaced by adding new sections to read:

AS 09.45.120. SUMMONS AND DEFAULT. Summons in actions for forcible entry and detainer shall be served not less than five days from the date notice of eviction is given pursuant to AS 09.45.110 or AS 34.03.220. The tenant or person in possession shall have five days from the date of service of the summons to file an answer with the court. If no answer is filed, a default judgment of evicion may be entered on the sixth day following service of the summons. A writ of assistance to take effect in 48 hours may be issued with the default judgment, authorizing law enforcement officials to assist in the removal of the tenant or person in possession.

AS 09.45.121. ANSWER, DISCOVERY AND TRIAL. If a tenant answers the summons and complaint as set forth in AS 09.45.120, a pre-trial hearing shall be set no later than two days from the date of the answer, at which the court shall consider any preliminary motions by the parties and establish pre-trial procedures for discovery and other matters. Both parties shall be entitled to a minimum of fifteen days to exchange discovery, and normal discovery deadlines are reduced from 30 days to 15 days. At the close of the 15-day period, the matter shall be scheduled for calendar call to establish a date of trial. No continuance of the trial date shall be permitted beyond two days unless the party seeking the continuance shall post with the court a bond to cover rent that will accrue during the period of the continuance.

PLEASE NOTE: Implementation of these procedures will require a change in the present court rule governing forcible entry and detainer actions, which is Civil Rule 85.

FLOW CHART
PROPOSED AS 09.45.120, .121



ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE,
CO-CHAIR

Senator Pat Pourchot

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MEMORANDUM

TO: Rep. Dave Donley, Chair
House Judiciary Committee

DATE: February 12, 1992

FR: Senator Pat Pourchot

RE: SB 35

As you know, the Code Revision Commission was requested, and in their April 4 letter to me, agreed to prepare for introduction at the beginning of this session draft legislation revising the URLLT and FED statutes to eliminate ambiguities and inconsistencies. Unfortunately, they have taken no action to date.

Alternatively, I have spoken with Tam Cook, Director, Division of Legal Services, who has agreed to undertake this project during the 1992 interim and to have draft legislation ready for introduction in January 1993. A copy of her response will be forwarded to you tomorrow.

Because of this different approach, I have drafted a new Letter of Intent for the Committee's consideration. In addition, I suggest that we amend the bill to add a July 1, 1993 effective date. Both the new Letter of Intent and proposed amendment are attached for your consideration.

Please let me know if you foresee any problems or if I can provide you with additional information.

ALASKA STATE LEGISLATURE

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Senator Pat Pourchot

MEMORANDUM

DATE: January 22, 1991

TO: Senator Steve Frank, Chair
Senate Community and Regional Affairs Committee

FROM: Senator Pat Pourchot

RE: Scheduling of SB 35, an Act amending the Uniform Residential Landlord-Tenant Act

Attached is a copy of SB 35 which 1) shortens the notice period for tenants who have not paid rent from 10 to 5 days (tenant's rights in the judicial Forcible Entry and Detainer process are not impinged), and 2) allows landlords to use an immediate eviction process against tenants arrested for certain drug- or alcohol-related crimes. A provision is also included that would require law enforcement officials to notify property owners when they arrest renters for these types of offenses.

This bill would still allow well-intentioned tenants sufficient time to work out their financial difficulties but would accelerate the eviction process for tenants unwilling to pay or those engaged in drug-related or bootlegging activity.

I would be most appreciative if you would schedule SB 35 for a hearing before the Senate Community and Regional Affairs Committee at your earliest convenience.

ALASKA STATE LEGISLATURE

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Senator Pat Pourchot

MEMORANDUM

TO: House Labor & Commerce Comm. **DATE:** May 14, 1991
Rep. David Finkelstein, Chair
Rep. Pat Parnell, Vice-Chair
Rep. Betty Bruckman
Rep. Dave Donley
Rep. Ivan Ivan
Rep. Robin Taylor
Rep. Jim Zawacki

FR: Senator Pat Pourchot Pat

RE: CS SB 35 (JUD) - Use of Rented Properties/Drug Violations

The goal of the proposed legislation is to shorten the length of time it takes to evict a tenant:

1) For nonpayment of rent;

2) For engaging in felony alcohol or drug activities related to manufacture and delivery; and

3) To assist neighborhoods in halting drug trafficking.

The bill has passed the Senate by a vote of 17 - 0, and carries a zero fiscal note.

DRAFT

LETTER OF INTENT

HCS CSSB 35 (JUD)
An Act relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities, to tenant responsibilities, to the civil remedies of forcible entry and detainer and nuisance abatement, and to the duties of peace officers to notify landlords of arrests involving certain illegal activity on rental premises.

It is the intent of the legislature that the Department of Law delay revising or publishing the information pamphlet on landlord and tenant rights required under AS 44.23.020(b)(8) until the Code Revision Commission has completed its rewrite of AS 09.45.060 - AS 09.45.160 (Forcible Entry and Detainer) and AS 34.03 (Uniform Residential Landlord and Tenant Act).

LETTER OF INTENT

HCS CSSB 35 (JUD)
An Act relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities, to tenant responsibilities, to the civil remedies of forcible entry and detainer and nuisance abatement, and to the duties of peace officers to notify landlords of arrests involving certain illegal activity on rental premises.

It is the intent of the legislature that the Department of Law delay revising or publishing the information pamphlet on landlord and tenant rights required under AS 44.23.020(b)(8) until the Division of Legal Services has completed its rewrite of AS 09.45.060 - AS O9.45.160 (Forcible Entry and Detainer) and AS 34.03 (Uniform Residential Landlord and Tenant Act).

POURCHOT

AMENDMENT

OFFERED IN THE HOUSE
TO: HCS CSSB 35 (JUDICIARY)

Page 12, following line 20:

Add:

Sec. 31. This Act takes effect July 1, 1993.

ALASKA STATE LEGISLATURE

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CO-CHAIR

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Senator Pat Pourchot

MEMORANDUM

TO: Tam Cook, Director
Division of Legal Services

DATE: February 12, 1992

FR: Senator Pat Pourchot Pat

RE: Revision of URLLT and FED statutes

Per our conversation, this letter is to request the Division of Legal Services to review the Uniform Residential Landlord-Tenant (URLLT) and the Forcible Entry and Detainer (FED) statutes during the 1992 interim and to prepare for introduction in January 1993 draft legislation to eliminate ambiguities and inconsistencies that currently exist in these statutes.

These statutes have been in disarray for a number of years (see attached report). Of primary concern is the resolution of existing contradictions between the FED statutes and the Uniform Residential Landlord-Tenant Act. Another concern is the confusion that results because it is unclear whether superior or district court has jurisdiction in the FED process. The current ambiguities impede both the landlord's and tenant's ability to assert their rights.

As you know, a similar request was made to the Code Revision Commission in March of last year. In their April 4th reply they agreed to undertake the project and have draft legislation ready for introduction at the beginning of this session. Unfortunately, they have taken no action to date and I am by copy of this letter withdrawing my request.

Please don't hesitate to contact me if you have questions regarding this request.

ALASKA CODE REVISION COMMISSION

ALASKA STATE LEGISLATURE
P.O. BOX Y - STATE CAPITOL
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(907) 465-2450

April 4, 1991

The Honorable Pat Pourchot
State Senator
Alaska State Legislature
P.O. Box V
State Capitol
Juneau, AK 99811

Re: FED statutes, Uniform Residential Landlord-Tenant Act.

Dear Senator Pourchot:

I received your letters under date of March 13, 1991, concerning the above-referenced Alaska statutes. The Commission agrees with you that there exists a great deal of confusion concerning which court has jurisdiction and which act governs in actions involving the forceable removal of a tenant, notice requirements, *etc.*. The Alaska Supreme Court has (depending upon your point of view) either ameliorated or exaserbated the jurisdiction problem by use of temporary Superior Court "appointments" of District Court Judges. As you may not be aware, the Court is now appointing District Court Judges to hear matters traditionally and under Title 22 been considered only by Superior Court judges. I expect this practice to continue.

FED actions have, since statehood, been heard in the District Court. However, since the passage of the Uniform Residential Landlord-Tenant Act, many such actions are now being heard in Superior Court. It would be well to have a statutory determination as to

which court is the appropriate court to hear FED matters.

Concerning other aspects of the Uniform Residentaial/Landlord-Tenant Act, it is, in fact, a uniform act subject to all of the disabilities of such an act. It requires careful review and consideration by the Legislature insofar as there are many "hard" policy decisions to be made. The Commission has, in the past, been reluctant to consider reform of these provisions precisely because they were controversial. However, since you have made a request, we will gladly and enthusiastically consider and provide draft legislation for consideration by you or your committee. As we have done in the past when dealing with a proposed bill fraught with political and controversial provisions, we will provide the Senate with a bill that provides alternative approaches to resolution of matters coming within the scope of the acts. You will then be able to choose from among competing provisions and make the hard policy decisions.

I will be placing your request on the agenda for our next Commission meeting. I do not have a date at the present time as the Commission has exhausted all of its fiscal 1991 funds. Unfortunately, our budget was allocated in a new manner which provided for specific funding of positions within the Legislative Affairs Agency, Legal Division. Our monthly budget reports regretably did not disclose that certain funds were encumbered, thus leading us to believe we had sufficient funding to complete our yearly meeting schedule. When we discovered that we had no further funds, we shut down the operation of the Commission. We are at this time awaiting a decision by the Legislature on a supplemental appropriation in the amount of $10,000 (the amount requested). If such funding is forthcoming, we will have one or two further meetings during fiscal year 1991. In any event, we will be able to take up this project during fiscal year 1992 and will attempt to have a draft bill for consideration during the next legislative session.

The Commission will keep you appraised of progress on this project. And, I want to express our thanks for the legislative interest in the work done by the Commission. We are always happy to respond to a request from legislators.

Very truly yours,

John W. Abbott

JOHN W. ABBOTT
Chair

cc: Senator Bettye Fahrenkamp,
Chair, Legislative Council

Terry Banister
Division of Legal Services

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS, CHAIR

ETHICS COMMITTEE, CHAIR

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Senator Pat Pourchot

MEMORANDUM

TO: Rep. Dave Donley, Chair
House Judiciary Committee

DATE: Dec. 10, 1991

FR: Senator Pat Pourchot

RE: CS SB 35 (JUD) - Use of Rented Properties/Drug Violations

As you know, the goal of the proposed legislation is to shorten the length of time it takes to evict a tenant (a summary is attached):

1) For nonpayment of rent;

2) For engaging in felony alcohol or drug activities related to manufacture and delivery; and

3) To assist neighborhoods in halting drug trafficking.

It is my understanding that the House Judiciary Committee is planning to restore the 5-day notice provision as specified in the bill that passed the Senate and to delete the provision added in House Labor and Ccommerce requiring a "notice to quit" to be delivered by certified mail. I strongly support these proposed Judiciary Committee revisions.

Additionally, as I mentioned in my October 4 memo to you, the Code Revision Commission's proposed legislation to harmonize the FED and URL-TA statutes will necessitate that the Department of Law revise and republish its pamphlet on landlord/tenant rights. As the provisions in SB 35 will also be subject to this revision, it appears a fiscal note for republishing the pamphlet would more appropriately accompany the Commission's proposed legislation. Therefore, I respectfully request the House Judiciary Committee to delete the fiscal note accompanying HCS CSSB 35 (L&C).

I would greatly appreciate your scheduling this bill for a hearing at your earliest convenience.

L.C. Put in file

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS,
CHAIR

ETHICS COMMITTEE,
CHAIR

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Senator Pat Pourchot

MEMORANDUM

TO: Rep. Dave Donley, Chair
House Judiciary Committee

DATE: Dec. 10, 1991

FR: Senator Pat Pourchot

RE: CS SB 35 (JUD) - Use of Rented Properties/Drug Violations

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I would greatly appreciate your scheduling this bill for a hearing at your earliest convenience.

Dave, let's get together & chat this week!!

ALASKA STATE LEGISLATURE

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Senator Pat Pourchot

MEMORANDUM

TO: Representative Dave Donley, Chair DATE: Oct. 4, 1991
House Judiciary Committee

FR: Senator Pat Pourchot

RE: Fiscal Note Accompanying HCS CSSB 35 (L&C)

In working on SB 35 last session, the lack of harmony between the FED and URL-TA statutes became painfully obvious. As a result, I requested the Code Revision Commission to review these statutes and prepare draft legislation to eliminate ambiguities and inconsistencies. The Commission agreed to undertake this project during the interim. To confirm that this project was underway, I spoke with John Abbott, Chair of the Commission, last week and he assured me that Legal Services is currently working on draft legislation for introduction next January.

Notwithstanding SB 35, this revision of the FED and URL-TA statutes will necessitate that the Department of Law revise and republish its pamphlet on landlord and tenant rights as required by AS 44.23.020(b)(8). As the provisions of SB 35 will also be subject to this revision, it appears a fiscal note for republishing the pamphlet would more appropriately accompany the Commission's proposed legislation. Therefore, I respectfully request the House Judiciary Committee to delete the fiscal note accompanying HCS CSSB 35 (L&C).

Thank you for your consideration of this matter.

7-LS0160\V.1
Chenoweth
05/14/91

AMENDMENT

OFFERED IN THE HOUSE

TO: CSSB 35 (JUDICIARY)

Page 3, line 27:

Delete "a new section"

Insert "new sections"

Page 4, following line 1:

Insert a new section to read:

"Sec. 09.45.137. COMPUTATION OF TIME. In computing any period of days for which notice must be given under AS 09.45.060 - 09.45.160,

(1) the day on which notice is given is not to be included;

(2) the last day of the period is to be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday; and

(3) intermediate Saturdays, Sundays, and legal holidays are excluded from the computation."

Page 6 ıe 29, after "days":

Insert "**, as determined under AS 09.45.137,**"

Pat

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO

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☐ *OFFICE OF SPECIAL PROSECUTIONS AND APPEALS*
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March 5, 1991

The Honorable Pat Pourchot
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SB 35

Dear Senator Pourchot:

You have inquired through staff whether the Department of Law uses the nuisance abatement procedures set out in AS 09.50.170 and, thus, whether our practices would be affected by an amendment to this statute. AS 09.50.170 et seq. authorize the attorney general to initiate legal proceedings to abate the nuisances created by "places used for immoral acts."

Any such abatement procedures would be undertaken by the civil division of the Department of Law, rather than by the criminal division. I have conferred with Assistant Attorney General Jeff Bush on behalf of the civil division and he advises me that the department currently does not utilize these procedures. Accordingly, the department would not be affected by any amendment to the statutes.

Thank you for inquiring. If you have any further questions that we may be able to answer, please do not hesitate to contact us.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Margot C. Knuth
Margot C. Knuth
Assistant Attorney General

MOK:ma

03-C31LH

DIVISION OF LEGAL SERVICES

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STATE OF ALASKA

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240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM February 13, 1992

SUBJECT: Landlord-Tenant and Forcible Entry and Detainer Statutes (Work Order No. 7-LS2028)

TO: Senator Pat Pourchot

FROM: Tamara Brandt Cook
Director TBC

You have asked whether the Legal Services Division can prepare a draft over the interim to eliminate inconsistencies that exist in the Uniform Residential Landlord-Tenant and Forcible Entry and Detainer statutes for introduction at the beginning of the next regular session. It is my understanding that you would be shooting for a July l, 1993 effective date.

This should present no major problem for the division to handle as an interim project. The bill has, therefore, been assigned a work order number. It has also been assigned to me, but that is only for our tracking purposes. At the end of the session, once staffing levels and general topic assignments can be reviewed, the bill will be assigned as a special project to a drafting attorney. That person will need guidance from your office with respect to policy choices that must be made to reconcile these statutes.

TBC:pl
92-101.plm

Enclosure

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MEMORANDUM May 13, 1991

SUBJECT: CSSB 35 (Judiciary)

TO: Representative David Finkelstein, Chair
House Labor and Commerce Committee
ATTN: Cliff Groh

FROM: Jack Chenoweth
Legislative Counsel

You have asked me to respond to criticism that has been voiced of this Senate-passed measure.

In the context of amendment of the forcible entry and detainer remedy, the reduction of the ten-day notice to five days in the case of non-payment of rent and, as provided in the Judiciary Committee Substitute, in the event the tenant's breach of the duty not to illegally engage in use of alcohol or drugs in rented premises, is a policy decision for the legislature. As has been noted in the course of the bill's consideration, among western states, Alaska alone provides for 10 days' notice. The statutes of all of the rest authorize commencement of FED or similar proceedings for the nonpayment of rent on as little as three or five days' notice.

The initial bill authorized use of the forcible entry and detainer remedy upon a tenant's arrest for violation of one or more of three sets of statutes involving the sale or possession with intent to sell controlled substances or imitation controlled substances, or for certain illicit sales of alcoholic beverages. The Senate-passed bill abandons the "arrest" requirement and substitutes a more general statement of the tenant's "violation" of one those provisions. I assume that, in the absence of a definitive statement in the measure as to at what point tenant's conduct constitutes a "violation," the courts will eventually have to step in and define that circumstance. And, probably for all the reasons noted in the objection to the earlier version of the bill, that definition may require evidence of tenant's guilt--a plea of guilty or nolo contendere, or a conviction by court or jury. In at least one other jurisdiction with which I am familiar that has a substantially comparable measure, the state prosecutor interceded to impose an interpretation that the statute might only be invoked after a tenant's conviction.

Objection is made that the measure authorizes eviction because of illegal conduct of others not under the tenant's control. The standard in fact is one that looks to evidence of the tenant's "knowingly permit[ting] others in the premises to engage in one more of [the] activities . . . " AS 34.03.120(b). I suggest that the tenant's control of the rented premises is not compromised by that provision.

good idea

To the objection that the bill may be applied to impair existing contracts, to cut off any possibility of that, the House may want to add a provision making the measure's provisions applicable to rental agreements entered into on and after the measure's effective date.

JC:pl
91-360.plm

Bill section 10 recasts existing law under which a court may issue a nuisance abatement order. The principal substantive change adds the underlined material in (a)(1) and directs the termination of the lease or rental agreement on premises subject to the abatement order if the tenant has been given notice of the nuisance abatement proceedings.

The substantive change made by bill section 11 is set out at p. 5, line 15: It adds flexibility in the abatement remedy by giving the court latitude to determine the amount of bond with sureties necessary when premises under abatement are to be returned to the owner rather than maintaining the requirement that the value of that bond reflect the full value of the property. The provision also adds, as a new subsection (c), a statement to clarify that, if an abatement order is subsequently cancelled because of compliance with (a) of that section, the related lease or rental agreement--terminated with the issuance of the abatement order under the authority of AS 09.50.210(a)(1) [bill section 10]--is not automatically revived.

Bill section 16 directs that, under the Uniform Residential Landlord and Tenant Act, an order of abatement entered by the court terminates the related rental agreement.

Bill section 17 identifies the particular activities involving alcoholic beverages, controlled substances, and imitation controlled substances that warrant relief under the expanded nuisance abatement provisions. Generally, these statutes identify sales and possession with intent to sell in violation of law. The Senate-passed measure abandons the "arrest" standard of the original bill and substitutes reference to "a violation" of one of the criminal statutes cited.

FORCIBLE ENTRY AND DETAINER REMEDY AS ALTERNATIVE OR SUPPLEMENT TO NUISANCE ABATEMENT:

Proposed bill section 2 amends AS 09.45.090 in part as follows:

-- The amendment made to (1)(B) sets five days as the period in which a landlord must wait after giving notice to quit and making written demands for possession of rented premises to commence a forcible entry and detainer proceeding in the event the tenant has violated provisions of the Uniform Residential Landlord and Tenant Act against knowing engagement in certain illegal activities involving alcohol or drugs on premises or for violation of a similar provision in rented premises not covered by that Act.

-- The amendment made to (3) authorizes the landlord to use the forcible entry and detainer remedy to enforce an order of abatement. Under the provision, the landlord may, after obtaining the abatement order under AS 09.50.210(a), seek immediate relief.

A related provision, bill section 6, a new section, authorizes the use of an abatement order, obtained at the end of a trial under the nuisance abatement statute, to serve as prima facie evidence of unlawful holding of premises by force for purpose of the hearing required by the forcible entry and detainer process.

OTHER RELATED CHANGES:

Bill sections 1 and 12, adding AS 04.21.075 and AS 17.30.160, respectively, impose on peace officers the requirement to notify a landlord when a tenant has been arrested for violation of one of the identified criminal offenses involving alcohol or drugs.

Proposed bill section 2 amends AS 09.45.090 in part as follows: The addition of material in (2)(B) is included in order to authorize a landlord to recover premises after a notice to quit is given for the tenant's breach of a condition or covenant other than nonpayment of rent or engaging in identified criminal activity involving alcohol or drugs. (Under AS 09.45.110, not amended by this measure, ten days minimum notice must be given--90 days in the event of a farm- or agriculture-related tenancy.)

Bill section 13 adds as a tenant's duty the obligation of the tenant not to engage in illegal activities on rented premises or to knowingly allow others in the premises to do so.

Bill section 14 makes a technical change. Under current law, in order to secure relief under AS 34.03.220(a), a provision detailing the tenant's responsibilities under a rental agreement with respect to rented premises as those are enumerated in AS 34.03.120, the tenant's noncompliance must "materially [affect] health and safety." As noted immediately above, bill section 13 adds to the tenant's responsibilities "not knowingly [to] engage at the premises in [the specified] illegal [activities] . . . or knowingly permit others in the premises to [do so] . . . . " The change made by this bill section confines the "noncompliance materially affecting health and safety" standard to the tenant responsibilities set out in current law and serves not to impose that limiting standard to the added tenant responsibility not to engage on the premises in dealing in alcohol and drugs in violation of law.

The measure's bill section 18 adds a codified section, proposed AS 34.05.100, extending to tenancies not covered by the Uniform Residential Landlord and Tenant Act the provisions establishing the duty on the tenant not to use the rented premises for illegal activities. Under this new section, noncompliance with the provision is a basis for seeking relief through the nuisance abatement process and, as with bill section 16 above, an order of abatement covering a premises that falls within this section terminates the rental agreement.

JBC:lmb
91-185.lmb

ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE,
CO-CHAIR

L&C

Senator Pat Pourchot

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MEMORANDUM

TO: All Senators DATE: April 18, 1991

FR: Senator Pat Pourchot Pat

RE: Response to April 4 Clocksin letter objecting to SB 35 (Landlord/Tenant legislation)

For your information, I've attached a copy of a response from Legal Services to Don Clocksin's April 4 letter which he sent to you regarding his concerns with provisions contained in SB 35 relating to eviction of tenants for nonpayment of rent and for certain alcohol and drug activities.

Recognizing the need to revise the referenced statutes to clarify and remove existing ambiguities, I have requested the Code Revision Commission to undertake this project during the interim.

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MEMORANDUM April 13, 1991

SUBJECT: Don Clocksin's April 4 letter objecting to Senate Bill 35

TO: Senator Pat Pourchot

FROM: Jack Chenoweth
Legislative Counsel

Your staff provided me a copy of Don Clocksin's recent letter and solicited my comments.

The reduction of the ten-day notice to five days in the event of non-payment of rent is a policy decision of the Alaska legislature. As was noted in the course of the bill's consideration, among western states, Alaska alone provides for 10 days' notice. The statutes of all of the : est authorize commencement of FED or similar proceedings for nonpayment of rent on as little as three or five days' notice. Moreover, Doug Baily, responding to an objection that five days' notice may not be sufficient in cases involving tenancies in rural Alaska where mail service can often be sporadic, pointed out that the tenant's actual receipt of notice would not seem to be required: the statute (set out as AS 09.45.100(3) in CSSB 35 (Jud)) only makes a reference to the landlord's sending notice by mail; it doesn't depend on the notice's receipt. The current notice provisions are not without fault, but reducing the amount of notice required to five days in the event of non-payment of rent would not seem to be out of line with what is commonly being done elsewhere.

At the bottom of page 2, Don voices objection to a tenant's suffering possible eviction because of the illegal conduct of others "not under their control," and questions the use of the summary proceeding authorized by the FED action to secure eviction in those situations before the underlying criminal action is resolved. In response to the first objection, let me point out that CSSB 35 (Judiciary) provides for eviction of a tenant engaged in illegal activity involving alcoholic beverages or controlled substances, or the tenant's "knowingly permit[ting] others in the premises to engage in one or more of those activities . . . " (AS 34.03.120(b), p. 6, lines 12, 13). The tenant's control of the premises is not compromised by that provision. If the tenant has knowledge of the activity, AS 34.03.120 may serve as the basis for an FED

action under AS 09.45.090(1)(B). On the second point, Don is correct in the conclusion he reaches: unless the tenant pleads guilty at arraignment, the FED action, a civil remedy, would likely precede any significant activity taken on disposing of the criminal charge in the criminal process and it is, as he concludes, likely that an order of eviction may be entered before the criminal charge is finally resolved. But my recollection is that the objection was earlier considered, in the context of substituting "conviction" for "arrest" and the committee adopted instead the language now set out in bill section 17 of the current CS: the tenant's being engaged in "a violation of [a specific statute]." You and your colleagues should understand that the court may be asked to pin down just exactly when "a violation" of the statute occurs. If the court concludes that there is no violation short of a conviction, then the conviction--on a guilty plea or on entry of judgment following a trial before a jury or a judge--will always precede eviction. If the court concludes otherwise, the FED action will almost surely occur first. (The handing of this topic by the City of Seattle is summarily discussed in the footnote at the last page of my February 5 memo.)

The nuisance "twist"--the changes made to AS 09.50--is hardly original with us. It is, as you well know, derived from a California precedent that was in turn based on a civil action of the same kind--nuisances in red light districts--as the Alaska statute that is amended and extended in this bill. Jeannie Larson of your staff provided me with a report summarizing one California community's successful use of the statute to clean out a known crack house when other attempts and initiatives to eliminate drug activities had failed.

Don's assertion concerning use of reputation evidence would seem to be undercut by our reliance on a court rule, Evidence Rule 405, that permits admission of reputation evidence under certain conditions and authorizes cross-examination of parties offering that testimony or evidence. Our mention of reputation evidence in this bill follows that precedent and, while it does set aside the 1928 trial court decision, the court will apply the standard otherwise applicable to introduction and use of reputation evidence.

On the issue of court rule changes Don's letter doesn't identify specific rules affected by the changes, so I'm not prepared to respond on point. Still, the legislature has latitude to make substantive changes that affect court rules that may not require court rule change treatment under article IV, section 15.

I can't speak to matters of fiscal impact and necessity.

*

Finally, since my fingerprints are on the documents, I am somewhat sympathetic to Don's conclusion about the difficulty in understanding the draft ("The Bill is Incomprehensible."). The forcible entry and detainer provisions and the nuisance law date from territorial days and, from a drafting perspective, are terrible products to

have to amend in a piecemeal fashion as has been proposed here. The Uniform Residential Landlord-Tenant Act, the more recent addition to the body of Alaska law, is a significant improvement, but amending that Act is not without its share of problems. The changes made to all--the need to try to tie them all together into one cohesive package--was not easy. The evidence of that, I think, is the labors that your staff and I performed in trying to provide information as to how this all would fit together. With all the time and attention given, there were still some unanswered questions.

In the course of the committee proceedings on the bill, I made reference to a fifteen-year old law review article that Don authored in which he cites the continuing inconsistencies between the FED proceedings and the URL-T Act, and suggests that they need to be better harmonized. I agree. Unfortunately, that was not the goal of this drafting assignment. Meshing the two is still a task that should be done.

Whether or not the bill drafting was done competently, I understand the objection but respectfully suggest that, until the FED and nuisance provisions are comprehensively revised and until the FED and URL-TA provisions are better harmonized, drafting amendments that interrelate these three areas of law will be difficult--difficult to fashion and especially difficult to explain to laymen not readily familiar with their provisions.

*

Thanks, I think, for the opportunity to read the critical reviews and to respond.

JBC:lmb
91-117.lmb

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March 27, 1991

Senator Pat Pourchot
Room 504, Capitol Building
P.O. Box "V"
Juneau, Alaska 99811

Re: Senate Bill 35
Our File No. 3014.31

Dear Senator Pourchot:

I have been asked by the Board of Directors of the Alaska Civil Liberties Union to review and comment on your Senate Bill 35 relating to landlord and tenant law. After reviewing that Bill, I find that I must criticize it not only for its invasion of certain important constitutional principles, but also because it is unfair to tenants and unnecessarily tips the scales of justice in favor of landlords.

As background, I participated in the drafting of this legislation in 1973-74 as a lobbyist for the Alaska Legal Services Corporation. At the time of its passage, it constituted a careful balance between the rights and obligations of tenants and the countervailing rights and obligations of owners of rental property. Throughout the years following its enactment, including the six years I served in the Legislature, there were numerous attempts to amend this legislation, primarily by landlord advocates. Those efforts were almost universally opposed by legislators who had been involved in the original adoption of the legislation because they would destroy the careful balance that had been achieved. Chief among those who was reluctant to alter the balance was Senator Bob Ziegler, by no means a tenant advocate, but an aggressive believer in maintenance of a carefully crafted legislative compromise.

There are three portions of this legislation which are particularly offensive to constitutional principles. First, the legislation would grant the right to evict a tenant based solely on the individual determination of a police officer with regard to what crime has been committed. The right to evict in the bill is triggered by an arrest, not the filing of a charge nor the

conviction for that charge. This violates due process, one of the most fundamental rights in our constitution, because it authorizes the court to remove somebody from his or her home prior to any determination that the alleged conduct has actually occurred. A single police officer who finds a small amount of marijuana in a home has the power under this legislation to force the removal of the family from that home even though there is no conduct which ultimately results in a conviction for an offense listed under AS 34.03.360(20), which appears as Section 13 of this legislation. In no other situation does a civilized society leave that kind of power with the individual police officer.

Second, the reduction from ten to five days of the notice required prior to eviction will have the practical effect of evicting many people before they have an opportunity to respond. AS 09.45.100(2) allows this notice to quit to be left at the premises. My experience is that this is the common method of providing notice. If the tenant is absent for the five day period of this notice, he or she will have no opportunity to respond to the notice. Failure to respond will result in eviction, even if there had been a legitimate defense. Deprivation of property by providing inadequate notice violates due process of law.Furthermore, as noted above, this ten day notice provision was a compromise which provided the landlord an expedited procedure but assured a reasonable period of time for the tenant to respond. This ten day notice provision was comparable to the notice imposed upon a tenant under AS 34.03.170, as well as the ten day requirement in AS 34.03.160. The effect of this provision of your bill is to strengthen the powers of landlords without a concomitant strengthening of any right of the tenant.

Third, this law would alter many existing landlord-tenant contracts. Typically, those contracts do not contain a five day notice provision, and do not allow eviction upon arrest for a crime. If this legislation is interpreted to modify those contracts, then it impairs the obligation of contract in violation of Article I, Section 15 of the Alaska Constitution. As a practical matter, since there is no delayed effective date in this legislation, there will be great difficulty in determining which landlord-tenant relationships to which this legislation applies. It cannot alter existing contractual relationships. Since some of those relationships are month to month and some are for longer periods of time, it will be unclear which relationships are affected by the legislation and when.

Furthermore, it appears that you are trying to exclude so-called "possession" crimes from this legislation. While that is an admirable goal, the fact that the right to evict is triggered by an arrest, and not upon the filing of a charge or conviction, means

that this limitation is illusory. A police officer who enters a home and observes an amount of marijuana could believe that the marijuana was possessed with "intent to deliver" and arrest on that basis. However, upon review of the case by a prosecutor, or a judge and jury, the determination may be that there was no "intent to deliver." In such a case a person will have been evicted, in effect, for a possession crime - a result not intended by this legislation.

Finally, AS 34.03.120(8), added by Section 9 of this legislation, allows you to evict a tenant if he or she knowingly permits someone else to engage in these illegal activities. This allows a family to be evicted from their home even though the tenant has not engaged in any illegal activity. While you may feel that you are responsible for every person who visits your home, I doubt that you would consider it fair to have your family evicted because someone commits an illegal act in your home with your knowledge. This constitutes the rankest form of guilt by association - a principle that should not be reflected in any legislation adopted by the Alaska Legislature.

I encourage you to rethink the purpose behind this legislation and whether the legislation actual accomplishes that purpose. The legislation is not necessary, because landlords currently have the tools to deal with after-hours clubs and drug dealing in their rental units. Their inability to utilize those tools is a social problem, not one to be solved by the deprivation of the rights of a class of citizens who find it necessary to rent their premises and who may be innocent of any crime.

Thank you very much.

Sincerely,

Don Clocksin

DC:dkm\30143103.ltr

DIVISION OF LEGAL SERVICES

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MEMORANDUM February 26, 1991

SUBJECT: Questions concerning Senate Bill 35 and draft CSSB 35 ( )

TO: Senator Pat Pourchot
ATTN: Jeannie Larson

FROM: Jack Chenoweth
Legislative Counsel

1. Unless the landlord and tenant have provided in their rental agreement for a different remedy, the landlord must use the forcible entry and detainer process of AS 09.45.060-09.45.160 to secure termination of a tenant's forcible entry or unlawful detainer of rented premises.

2. In a residential tenancy, if the landlord seeks to remove a tenant from possession of rented premises based on the tenant's alleged illegal drug activities on the rented premises, under current law the landlord (1) must determine that the tenant has, under AS 34.03.220(a), failed to comply with a tenant's obligation under the rental agreement or under AS 34.03.120 (presumably § 120(a)(6), interference with quiet enjoyment of the premises by neighbors, the justification cited by the Alaska Legal Services Corporation in its February 5 letter in opposition to SB 35), (2) give the 20 day notice under AS 34.03.220(a) directing the tenant to rectify the breach, and (3) if the breach is not adequately remedied within the time allowed--and one wonders how a tenant who engages in illicit alcohol- or drug-activity will do that--move to terminate the rental agreement under the forcible entry and detainer process outlined, presumably under AS 09.45.090(2)(the tenant holds "contrary to a condition or covenant in the lease or agreement,"), in which case, AS 09.45.100 directs a minimum of 10 additional days' notice. Thus, the period under which the landlord would be obligated to wait would necessarily exceed 30 days: a minimum of 20 days under AS 34.03.220(a) and not less than 10 days under AS 09.45.100.

3. The proposed amendment to AS 09.45.130 set out in section 7 of SB 35 is intended to address the situation in which a tenant has prepaid rent and thereafter

the landlord, during the period of tenant's occupancy covered by the prepaid rent, seeks the tenant's removal for tenant's involvement in illegal drug- or alcohol-related activity. AS 09.45.130(a) appears to protect the tenant who has paid advance rent "until the expiration of the period for which that tenant or person may have paid rent for the premises in advance." In other words, there is the color of argument that a tenant may try to "protect" or insulate himself by paying, say, three-months or even one year in advance and go about using the premises for illegal activities without apparently worrying about removal under AS 09.45.060 - 09.45.160. The proposed subsection (b) is intended to eliminate that possibility. Nothing waives the forcible entry and detainer notice requirement, and the notice provisions of AS 09.45--taken in conjunction with those that may be required by AS 34.03--are otherwise applicable.

4. Section 7 of draft CSSB 35 ( ), M version, offered yesterday, authorizes introduction of reputation evidence to demonstrate nuisance. Rule 405 of the Evidence Rules authorizes introduction of evidence of the reputation of or opinion about a person. The circumstances under which that evidence may be offered, received, and considered are fairly well established in the Rules; this is not, then, a provision intended to change the evidence rule as it relates to persons. Taking "reputation" in its dictionary sense ("estimation in which a person or thing is commonly held"--Webster's New World Dictionary), there seemed to be a need for a provision by which neighbors or other residents of a community could describe to a court the opinion or judgment concerning the premises based on their collective opinion of it. Since premises may come to have a community or neighborhood reputation, there should be a clear statement of authority for a court to permit the use of that evidence, subject, of course, to the parameters otherwise applicable to reputation evidence. The provision is permissive. Thus, the bill section would cover evidence relating to personal reputation as well as the collective judgment or repute of a neighborhood or community concerning the premises, though it is only as to the latter that this provision would appear to have substantive effect.

JC:gc
91-102.glc

DIVISION OF LEGAL SERVICES

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MEMORANDUM February 19, 1991

SUBJECT: G.2 and G.4 amendments to Senate Bill 35

TO: Senator Pat Pourchot
ATTN: Jeanne Larson

FROM: Jack Chenoweth
Legislative Counsel

Enclosed are two amendments introducing material amending the nuisance statutes in the context of expansion of landlord remedies for illegal drug and alcohol transactions in rented premises. Both versions take the approach we discussed: expansion of the statutory remedy authorizing abatement of lewd houses.

Let me briefly review the abatement provisions (AS 09.50.170-09.50.240) as they currently exist: These are, as I indicated, typically brought as "in rem" actions, in which the real estate is named the defendant (i.e. State of Alaska v. Property located at 900 East First Street in the City of Borough of Juneau) as well as the premises owner or occupant. Under the statute, the attorney general or a private citizen may seek relief. Injunctive relief is authorized "to perpetually enjoin the nuisance . . .", and contempt proceedings may be initiated for violation of the nuisance injunction. The court is also authorized to abate the nuisance--in essence, order its closure--with contempt authorized for violation of the abatement order. The abatement order may direct sale of the premises and its contents. However, short of a sale, the owner may seek to recover immediate possession. The owner may recover if he or she (1) has not committed contempt in conjunction with an injunction in the proceeding, (2) appears and pays all costs, and (3) files a bond with sureties "in the full value of the property as determined by the court."

Amendment G.2, the shorter of the two amendments submitted, essentially makes two changes: (1) it adds to the abatement statute circumstances in which the remedy may be used to include property used for illegal drug- and alcohol-related purposes, and (2), as we had discussed, it diminishes the severity of the surety bond requirement by eliminating the "in the full value of the property as determined by the court" and replacing it with "an amount to be determined by the court." In all other

respects, the relief authorized by the amendment follows the procedures of the current lewd house abatement statute.

Because it is tied, through the definition, to the "illegal activity . . ." definition of AS 34.03.360, amendment G.2 presupposes that the nuisance abatement provisions would be available to the attorney general or to private citizens only if the tenant suffers the act that triggers relief under the changes being made to the forcible entry and detainer statute and the Uniform Residential Landlord and Tenant law by the measure, i.e. that is, the tenant was "arrested" (as under current provisions of SB 35) for one of the enumerated drug- or alcohol-related violations. Consequently, objection may be raised to the first amendment for the reasons that objection is being raised to the provisions of the measure.

I prepared amendment G.4 to avoid that difficulty. The second amendment

(1) strips from SB 35 the provisions that tie drug- and alcohol-related penalties to arrests;

(2) authorizes relief, as in amendment G.4, through the revised nuisance mechanism; and

(3) expands, following the California model (California Health & Safety Code § 11575.5), the admissibility of testimony to prove the nuisance; admission of reputation evidence is authorized by Evidence Rule 405, so a court rule change would not seem to be necessary.

I retained, in both amendments, the provisions by which state and municipal peace officers are to contact the landlord when arrests are made on rented premises. Independently of the handling of nuisance abatements introduced by these two amendments, there seems to me good reason for a property owner to know what is occurring on the premises the landlord is renting. But retention of the provision, in light of these amendments, is a policy call, not one that must be changed or deleted by law.

I can make further changes to these two approaches as you may direct, but believe that these are the two basic approaches that you asked me to consider in preparing the nuisance amendment revision to this bill.

JBC:pl
91-092.plm

Enclosures

DIVISION OF LEGAL SERVICES

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MEMORANDUM February 4, 1991

SUBJECT: Re Senate Bill 35

TO: Senator Pat Pourchot
ATTN: Jeannie Larson

FROM: Jack Chenoweth
Legislative Counsel

You have asked for an overview of legislation in other states permitting a landlord to terminate a lease when the landlord determines that the tenant has used the premises for illegal purposes without having evidence of a conviction. The following examples, not intended as an exhaustive list, are suggestive of the authority provided by the various states. The statutes reported generally address the tenant's illegal activities in three areas--illegal sale of liquor, gambling, and prostitution.

1. Automatic termination of lease, or termination of the lease at the landlord's option, without specification that the landlord is entitled to possession:

Automatic termination:

Colorado Rev. Stat. Ann. §13-21-103 -- "unlawful sale or giving away of intoxicating liquors works a forfeiture of all rights of the lessee or tenant under any lease or contract of rent upon the premises."

Illinois Ann. Stat., ch. 43 §135 -- "unlawful sale or gift of alcoholic liquor works a forfeiture of all rights of the lessee or tenant under any lease or contract of rent upon the premises where the unlawful sale or gift takes place."

At landlord's option:

Alabama Code, §28-4-91 -- "unlawful manufacture, sale, . . . giving away or otherwise disposing of any prohibited liquors or beverages contrary to the law of the state . . . shall, at the option of the landlord or lessor, work a forfeiture of all the rights of any lessee or tenant under any lease or contract of rent of the premises where such unlawful act is performed . . . by the lessee or tenant or by any agent, servant, clerk, or employee of the lessee or tenant with the latter's knowledge or permission."

2. Automatic termination of lease, thereby entitling the landlord to recover possession but without specifying the procedure the landlord is to follow:

Ohio Rev. Code. Ann. §4399.06 -- "all contracts whereby any building or premises are rented, leased, used, or occupied shall become void when such building or premises are used, in whole or in part, for the sale of intoxicating liquors contrary to law, and the lessor, on and after the sale or gift of intoxicating liquors, shall be held to be in possession of such building or premises."

3. Automatic termination of lease, or termination of the lease at the landlord's option, entitling the landlord to recover possession without process of law:

Automatic termination:

Mississippi Code Ann. §95-3-23 -- "if a tenant or occupant of a building or tenement under lawful title uses such place as a nuisance . . . , such use shall annul and make void the lease or other title under which he holds and, without any act of the owner, shall cause the right of possession to revest and vest in the owner, and the owner may without process of law make immediate entry upon the premises."

New Hampshire Rev. Stat. Ann. §544.41 -- "if a tenant or occupant of a building or tenement, under a lawful title, uses such premises . . . for any of the unlawful purposes enumerated herein[,] such use shall annul and make void the lease or other title under which he holds and, without any act of the owner, shall cause the right of possession to revert to him, and he may, without process of law, make immediate entry upon the premises."

Rhode Island Gen. Laws Ann.

§11-19-23 -- "every lease of any house, shop, or place used as a gambling house or place where gaming is practiced or carried on . . . shall be void, and no notice to the occupant thereof other than a demand for the possession of the premises, shall be necessary to eject such occupant therefrom."

§11-30-6 -- "if any person, being a tenant or occupant under any lawful title of any building or tenement not owned by him, shall use said premises or any part thereof for [unlicensed manufacturing or distribution of intoxicating liquor], such use shall annul the lease or other title under which said occupant holds, and, without any act of the owner, shall cause the right of possession thereof to revert and vest in him, and said owner may make immediate entry thereon and repossess himself of the premises without process of law."

At landlord's option:

Ohio Rev. Code Ann. §3767.10 -- "if a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness,

assignation, or prostitution, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner, who may without process of law make immediate entry upon the premises."

4. Automatic termination of lease, allowing the landlord to enter on to the leased property or to use the remedy provided in the state's summary proceeding statute:

Kansas Stat. Ann. §41-805(1) -- "if a tenant of any building or premises uses the same, or any part thereof, in maintaining a common nuisance . . . , or knowingly permits such use by another, such use shall render void the lease under which he or she holds, and shall cause the right of possession to revert to the owner or lessor, who may make immediate entry upon the premises, or may avail himself or herself of the remedy provided for the forcible detention thereof."

Maine Rev. Stat. Ann., tit. 17 §2743 -- "if any tenant or occupant, under any lawful title, of any building or tenement not owned by him uses it or any part thereof for any purpose [involving illegal sale or keeping of intoxicating liquor or narcotics, lewdness, or gambling], he forfeits his right thereto, and the owner thereof may make immediate entry, without process of law, or may avail himself of the remedy provided [i.e. forcible entry and detainer]."

Oklahoma Stat. Ann., tit. 21, §958 -- "whenever any lessee of any house or building shall be convicted of suffering any of the said prohibited gambling devices or games of chance to be carried on in said house or building, the lease or contract or letting such house or building shall become void and the lessor may enter upon the premises and shall recover possession of said leased property as in the case of forcible detainer."

5. Automatic termination of lease, granting the landlord the same remedy as the landlord would have against a holdover tenant:

Automatic termination for a tenant's illegal use:

Missouri Rev. Stat. §441.020 -- "whenever any lessee of any house or building shall suffer any prohibited gaming table, bank, or device to be set up or be kept or used therein, for the purpose of gaming, or keeping in the same a bawdyhouse, brothel, or common gaming house, the lease or agreement for letting such house or building shall become void, and the lessor may enter on the premises so let, and shall have the same remedies for the recovery thereof as in the case of a tenant holding over his term."

New Jersey Stat. Ann. §46.8-8 -- "if the lessee of any dwelling house or other premises situate in this state shall use the same for purposes of prostitution or assignation, the lease or agreement for letting the same shall enter thereupon become immediately void, and the landlord may enter thereon, and shall have the same remedies to recover possession as are given by law when a tenant holds over after the expiration of his lease."

Utah Code Ann. §32A-13-6(6) -- "if any tenant of any premises uses the same or any part thereof in maintaining a common nuisance . . . , or knowingly permits use by another, the lease is rendered void, and the right to possession reverts to the owner or lessor[,] who is entitled to the remedy provided by law for forcible detention of the premises."

Termination at landlord's option:

Oregon Rev. Stat. §91.240(3) -- "any person letting or renting any room, building, or place mentioned in [O.R.S.§ 91.240(1)] which is at any time used by the lessee or occupant thereof, or any other person with the knowledge or consent of the lessee or occupant, for gambling purposes, upon discovery thereof, may avoid and terminate such lease or contract of occupancy, and recover immediate possession of such building or other place by an action at law for that purpose . . . ."

Rev. Code of Washington §4.24.080 -- "it shall be lawful for any person letting or renting any house, room, shop, or other building whatsoever . . . which shall, at any time, be used by the lessee or occupant thereof, or any other person, with his knowledge or consent, for gambling purposes, upon discovery thereof, to avoid or terminate such lease, and to recover immediate possession of the premises by an action at law for that purpose."

6. Automatic termination of lease, or termination of the lease at the landlord's option, but mandating that the landlord serve a notice to quit on the tenant:

Automatic termination of the lease:

California Code of Civil Procedure §1161(4) -- "any tenant . . . assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises . . . thereby terminates the lease, and the landlord, or his successor in estate, shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession in such demised premises . . . . "

Termination at landlord's option:

Nevada Rev. Stat. Ann. §40.2514 -- "a tenant of real property or a mobile home . . . is guilty of unlawful detainer when he:

. . .

(4) suffers[,] permits[,] or maintains on or about the premises any nuisance;

. . .

and remains in possession after service upon him of 3 days' notice to quit.

*

An amendment extending the authority of proposed AS 34.03.222 to tenancies other than tenancies in dwelling units covered by the Uniform Residential Landlord and Tenant Act is enclosed.

JBC:lmb
91-013.lmb

Enclosure

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM December 28, 1990

SUBJECT: Landlord's remedies (Work order 7-0368A)

TO: Representative Ramona Barnes
ATTN: Mel Krogseng

FROM: Jack Chenoweth
Legislative Counsel

I

This is by way of response to your request for an overview of the operation of the state's forcible entry and detainer statutes as a remedy for landlords to regain possession of rental premises. Involving two sometimes inconsistent sets of statutes, this is a somewhat complicated area of law.. We agreed that, before drafting any amendments or changes to the forcible entry and detainer statutes, I would prepare a summary of the current law governing the landlord's removal of tenants from rental premises. Your request was apparently prompted in part by a request to make available to landlords a more expedient eviction remedy.

FORCIBLE ENTRY AND DETAINER DEFINED:

"Forcible entry and detainer" is a civil remedy that governs the eviction or removal of tenants from rental premises. The applicable statutes are to be found in AS 09.45.060 - 09.45.160. As a general rule, the remedy most commonly applies in those instances in which a tenant has failed to pay rent when due under the rental agreement, AS 09.45.090(1), or when the landlord has given the tenant notice to quit and the tenant fails to do so, AS 09.45.090(2).

LIMITATIONS ON USE OF FORCIBLE ENTRY AND DETAINER ACTION:

The forcible entry and detainer remedy does not apply in a vacuum. Alongside the forcible entry and detainer remedy, the state's Uniform Residential Landlord and Tenant Act, AS 34.03, sets out rights and remedies applicable to both residential landlords and tenants. In McCall v. Fickes, 556 P.2d 535 (Alaska 1976), the court determined that the statutory provisions of the forcible entry and detainer remedy

might be used "where they do not conflict with the Uniform [Residential Landlord and Tenant] Act," thereby setting the Uniform Act as a limitation on the civil remedy. Taking the Uniform Act and the civil remedy together, then, forcible entry and detainer is typically available to assert and establish the landlord's right to possession under circumstances giving rise to the right of possession under either AS 09.45.060 - 09.45.160 or AS 34.03. The remedy is available in the event the tenant fails to pay rent when due--particularly when, under a month-to-month tenancy, the tenant fails to pay rent in full in advance--but continues to hold over in possession of the rented premises.

TERMINATION OF TENANCY THROUGH FORCIBLE ENTRY AND DETAINER:

The forcible entry and detainer statute sets out time periods that, after notice has been given to the tenant by the landlord, determine when the tenancy ends.

Each of the two principal instances in which the forcible entry and detainer remedy is available to evict the tenant requires written notice given at least 10 days prior to initiating the forcible entry and detainer action. The first involves unpaid rent: If a tenant has failed to pay rent when due under the rental agreement and eviction is sought under AS 09.45.090(1), the paragraph allows use of the action to recover possession only upon 10 days' demand made in writing for the possession. [1] If, in different circumstances, the landlord gives the tenant notice to quit and the tenant fails to do so and eviction is sought under AS 09.45.090(2), then AS 09.45.100 and 09.45.110, setting out the requirements for a notice to quit, direct that the notice to quit be in writing and served at least 10 days before the action. [2]

---

[1] Ten days' notice is also required by applicable provisions of the Uniform Residential Landlord and Tenant Act when rent remains unpaid when due:

> If rent is unpaid when due and the tenant fails to pay rent within ten days after written notice by the landlord of nonpayment and the intention to terminate the rental agreement if the rent is not paid within that period of time, the tenancy terminates . . . , and the landlord may terminate the rental agreement and immediately recover possession of the rental unit; . . . .

AS 34.03.220(b) (Emphasis added.)

[2] Similarly, ten days' notice is also required in instances in which the landlord gives the tenant notice to quit under the Uniform Residential Landlord and Tenant Act. Under AS 34.03.290(c),

> If [a] tenant remains in possession [of rented premises]

(continued...)

When compared to the same or substantially similar notice requirements for termination of tenancy found in the forcible entry and detainer, unlawful detainer, or similar remedial statutes in other jurisdictions, the ten day notice requirement of Alaska law provides the tenant with a comparatively long notice period. Of the other 12 western states, for example, the notice requirements applicable to use of the detainer remedy in the event of tenant's failure to pay rent when due have been set at either three [3] or five [4] days.

JUDICIAL PROCEEDINGS UNDER THE FORCIBLE ENTRY AND DETAINER STATUTE:

Having received sufficient notice of termination of the tenancy, if the tenant thereafter refuses to leave the rented premises within the time allowed, the landlord may begin the process of obtaining the tenant's eviction by filing an action and

---

[2](...continued)

> without the landlord's consent after the expiration of the term of the rental agreement or after its termination, the landlord may bring an action for possession . . . .

and under AS 34.03.270,

> If [a] rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement.

In McCall v. Fickes, 556 P.2d 535 (Alaska 1976), the court concluded that the forcible entry and detainer remedy was available to a landlord as the "action for possession" identified in AS 34.03.290(c), thereby implying the application of the ten day notice period of the forcible entry and detainer statute for evictions of tenants in these circumstances.

[3] Three days' required notice by the landlord to the tenant is provided for under the laws of California (Cal. Code of Civ. Proc. § 1161(2) and (3)), Colorado (Colo. Rev. Stat. § 13-40-104(d)), Idaho (Idaho Code § 6-303(2)-(4)), Montana (Montana Code Ann. § 70-27-108(2)), New Mexico (N. Mex. Stat. Ann. § 47-8-33(A) and (B)(3 days' notice for failure to pay rent, but 7 days for other circumstances), Oregon (Ore. Rev. Stat. §§ 90.405(2) and 105.115(2)(a)), Utah (Utah Code Ann. § 78-36-3(1)(a)), Washington (Rev. Code Wash.¶ 59.12.030(3)), and Wyoming (Wyo. Stat.§§ 1-21-1002(a)(1) and 1003).

[4] Five days' required notice by the landlord to the tenant is provided for under the laws of Arizona (Arizona Rev. Stat. § 12-1173(2)-(4)), Hawaii (Hawaii Rev. Stat. § 521-68(a)(5 business days' notice), and Nevada (Nev. Rev. Stat. § 40.-253).

serving summons. Under AS 09.45.120, "[s]ummons . . . shall be served not less than two nor more than four days before the date of trial." The applicable court rule, Civil Rule 85, contains parallel provisions on time of service and, additionally, directs that "the date set for trial shall be not more than 15 days from the date of filing of the complaint unless otherwise ordered by the court." 5/

CONCLUSION:

My review suggests that, to provide a more expedient remedy, you may profitably consider reducing, from ten to, say, three or five days the period between the giving of written notice of termination of tenancy and the commencement of the forcible entry and detainer action. A reduction to a period of three to five days would bring Alaska law in this regard into line with the time allowed by other western states. Moreover, as with the Nevada statute cited, the period of the time reduction might vary from, for example, three days for notice of tenancy due to nonpayment of rent to five days for other circumstances.

I would not recommend a change in the minimal period between landlord's service

---

5/ Alaska's two-to-four day window period allowed for the landlord's service of summons on the tenant prior to trial compares favorably to like requirements of 11 other western states--Hawaii's service of summons requirement is set by court rule, not available in the Legal Services Division's library:

Arizona ("at least two days before the return date"), Ariz. Rev. Stat. § 12-1175(C);

California ("within five days, including Saturdays and Sundays but excluding all other judicial holidays"), Cal. Code of Civ. Proc. § 1167;

Colorado ("at least five days before the day for appearance"), Colo. Rev. Stat. § 13-40-112;

Idaho ("not less than five days before the day of trial appointed by the court"), Idaho Code § 6-311(5);

Montana ("at least four days before the return day designated [in the summons]"), Montana Code Ann. § 70-27-114(2);

Nevada (service requirements are generally set by court rule with a 20 day minimum, however, by law "[judicial officers] may shorten the time within which the defendant shall be required to appear and defend [an unlawful detainer] action"), Nev. Rev. Stat.§ 40.300(2);

New Mexico ("trial . . . shall be not less than seven nor more than ten days after the service of summons"), N. Mex. Stat. Ann. § 47-8-43;

Oregon (6 days minimum), Ore. Rev. Stat. § 105.135;

Utah ("[defendant's required appearance to be] not less than three or more than 20 days from date of service [of summons]"), Utah Code Ann. § 78-36-8;

Washington ("[trial to be] not less than six nor more than 12 days from date of service"), Rev. Code Wash. § 59.12.070;

Wyoming ("not less than three nor more than 12 days before the date of trial set by the [court]"), Wyo. Stat. § 1-21-1004.

of summons on the tenant and the date of trial on the complaint. Alaska's existing two-to-four day requirement is shorter than the similar time period provided in other jurisdictions.

II

When we spoke, you mentioned a "mediation" or "arbitration" option. Washington state law provides both. A copy of the applicable provisions are included. As you can see from the enclosed, use of mediation or arbitration is permissible, not mandatory, and arbitration is not available in "[a]ny situation where court action has been started by either landlord or tenant to enforce rights under [Rev. Code Wash. 58.18]," including "[a]ny unlawful detainer action." I also have to question whether mediation or arbitration would have any real applicability when the sole question is whether a tenant has timely paid rent in full when due. Still, if you want to explore this option, please advise.

Hope this helps.

JC:gc
90-104.glc

Enclosure

BILL NO: (Proposed) CSSB 35(JUD) DATE: 3/08/91

TITLE: An Act Relating to Termination of Tenancies

CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

DEPARTMENT OF PUBLIC SAFETY

The proposed Judiciary Committee substitute for SB 35 amends existing landlord-tenant laws to allow property owners to terminate rental agreements for residential property with renters who have committed certain alcohol and drug violations. The bill creates a duty on the part of police officers who arrest persons for certain alcohol, drug, and imitation drug offenses committed in residential rental property to make a reasonable effort to discover the identity of the property owner and to notify the owner, in person, or in writing at the last address listed on tax records and at any other address known to police. The notice requirement applies to alcohol violation arrests for sales from unlicensed premises and for possession or sale of alcohol where prohibited by local option; to drug violations involving the manufacture or distribution of all drugs except small amounts of marijuana; and to imitation drug violations involving the manufacture or distribution of imitation drugs, or possession of certain precursor chemicals used in the manufacture of imitation drugs.

Based upon past arrests for these offenses, it is estimated that the Department of Public Safety will have to notify approximately three hundred property owners per year. The proposed CS allows the peace officer to notify the property owner in person, and we anticipate that that will occur in many (perhaps most) cases. If a written notice is necessary, we estimate that research required to identify the property owner, determine the last address listed on tax roles and any other addresses known to police, and to prepare the written notice, will take approximately one hour per occurrence. The requirement in this bill to provide written notice to "any other address known to the peace officer" will result in the preparation and delivery of the written notice to multiple addresses on file with the police for the owner. As an example, APSIN can retain up to four different addresses for a person. This will result in the sending of multiple notices to property owners, a wasteful duplication of effort.

The Department of Public Safety supports this bill, but suggests that the proposed committee substitute be amended to provide that only if no tax records are maintained for the property should notice to other addresses known to the police be required. This could be accomplished by amending Section 1, at page 2, lines 2 and 3, to read ". . .that levies and collects a property tax, of the arrest. If no tax records are available, notice may be sent to the owner at any other address known to the peace officer." A similar amendment would also have to be made in Section 12, page 6, at lines 6 and 7.

Although the provisions of this bill will create additional work for peace officers, the Department of Public Safety recognizes the problems created for property owners who find that they have rented to alcohol or drug violators. Allowing property owners to evict arrested drug and alcohol violators would help neighborhoods take an active role in fighting the war on drug and alcohol abuse. This law gives property owners a tool to help clean up their rental properties.

Richard L. Burton
Commissioner

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

☑ *P.O. BOX B*
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May 13, 1991

POSITION PAPER

RE: Committee Substitute for Senate Bill 35 (Jud)

Sponsor: Senators Pourchot & Halford

Program effects of Bill

This bill would have no direct effect on the Department of Community and Regional Affairs.

Comments

As an investor providing loans to borrowers for housing needs in the rural areas of the state, the department becomes an owner and landlord only after a foreclosure sale when the state takes title to a property. Since the Department of Community and Regional Affairs has the lowest foreclosure rate of any investor, our landlord activity is relatively low.

for Edgar Blatchford, Commissioner

Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

February 4, 1991

The Honorable Pat Pourchot
Co-Chairman, Senate Finance Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Pourchot:

Your office has inquired about the effect of Senate Bill 35, relating to the use of rental property and drug violations, on the Alaska Court System.

This bill has no direct impact on the administration of the court system, and its fiscal impact is zero.

Please contact me if I can be of any further assistance.

Very truly yours,

C. S. Christensen III
Staff Counsel

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MEMORANDUM

TO: Representative Finkelstein, Chair,
Labor and Commerce Committee

FROM: Don Clocksin

DATE: May 15, 1991

SUBJECT: Senate Bill 35 -- Landlord/Tenant

Accompanying this FAX are (1) a memo to your committee members on this bill; (2) a copy of my April 4 memo to Senator Pourchot; and (3) a copy of a pamphlet written to assist landlords and tenants in understanding the Landlord-Tenant Law. Although this pamphlet is not current, it is an example of how we can educate landlords and tenants as to their rights and responsibilities.

Could you have your staff copy and distribute these to each committee member?

Thanks.

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To Rep. Finkelstein	From Don Clocksin
Co.	Co. Wagstaff, Pope & Clocksin
Dept. Labor & Commerce Committee	Phone # 277-8611
Fax # 465-4954	Fax # 274-8040

DC:dkm\30143121.smo

Fax No.: 465-4954

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MEMORANDUM

TO: House Labor and Commerce Committee Members

FROM: Don Clocksin

DATE: May 15, 1991

SUBJECT: Senate Bill 35 -- Relating to Landlords and Tenants (HEARING TODAY)

Because two of my children are sick, I will be unable to testify at tonight's hearing on SB 35 -- the landlord/tenant bill. I want to testify, and hope I will have an opportunity at a later date.

Attached is a letter I sent to Senator Pourchot criticizing his bill. The criticisms are still valid. In addition, in case I cannot testify in person, here are a few comments.

1. Reduced Notice Is Impractical: The bill reduces from 10 to 5 days the notice a landlord must give to a tenant who is behind in rent. This notice can either be sent by certified mail (3 days added) or left at the premises. That notice period is too short. Tenants who need money from the State or BIA to pay rent often cannot get it in five days. The Anchorage Public Assistance office indicates it would be difficult to provide rent checks in time it

the notice is reduced to five days. Furthermore, tenants who are absent when the notice is posted on their door may be terminated with no actual notice. Tenants in rural areas may not even receive a certified letter within the eight days allowed (time is measured from mailing, not receipt). Finally, the proof of receipt for certified mail ("green card") often will not be returned by the post office to the sender until well past the deadline for holding a trial (2-4 days). I checked with the Eastchester Post Office (Fairview Neighborhood) and was told it could take five days or more for a sender to get the green card back.

2. **Changing "Arrest" to "Violation" Is Not The Answer:**

The original bill was criticized because it allowed tenants to be evicted based upon an arrest for a drug or alcohol-related offense. The Senate changed it to allow eviction upon a "violation". No one knows if that means eviction prior to a criminal conviction or afterwards. Jack Chenoweth admits as much in his May 13 memorandum. The Senate amendment avoids the question. If it feels this bill should be passed, this committee should amend it to delete "violation" and insert "conviction".

3. **The Fiscal Impact Is Real:** AS 44.23.020(b)(8) requires the Attorney General to prepare a pamphlet on revisions of the landlord-tenant law. Such a pamphlet will be necessary if this bill passes, particularly in light of the bill's complexity. To my knowledge, the Department of Law has not submitted a fiscal note.

This bill must go to the Finance Committee, not because to do

so is a clever strategy by its opponents, but because the law requires it.

4. Reputation And Nuisance: This bill allows a tenant to be evicted based solely on rumor in the community as to his/her character. See Section 9. Jack Chenoweth says this is okay because it's already authorized by a court rule (Evidence Rule 405). However, that rule does not allow reputation evidence to prove commission of an act -- this bill does. The law should not allow community opinions as to someone's character to be "proof" the person sold drugs or after-hours liquor.

5. There Are Other Alternatives: No one wants a crack house or after-hours bar in his/her neighborhood. And no one wants to deny landlords the tools to regain their property from deadbeats. But the tools currently exist, and this bill's denial of the rights of non-deadbeats is not necessary.

I am willing to work with you to look for better remedies to clean up our neighborhoods. We can also educate landlords and tenants as to their rights and obligations, and how to proceed when there are problems.

This bill is not the answer.

DC:dkm\30142120.mmo

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April 4, 1991

Senator Pat Pourchot
Room 504, Capitol Building
P.O. Box "V"
Juneau, Alaska 99811

Re: Senate Bill 35
Our File No. 3014.31

Dear Senator Pourchot:

I recently sent you a letter criticizing your Senate Bill 35. For your convenience, a copy is attached to this letter. Since then I have had the opportunity to review the Judiciary Committee Substitute and to speak with your staff about the bill. The substitute alters several provisions, but is still very objectionable. In fact, for reasons I will discuss, the substitute is even worse than the original bill. The ACLU has chosen to submit separate testimony, and this letter is submitted by me on my own behalf and on behalf of the thousand of tenants who live in downtown Anchorage.

1. The Bill Violates Constitutional Principles.

I believe there are some important principles imbedded in our constitution, even if they may not appear in any court interpretation of that document. Those include the right to adequate, actual notice before the courts take away an important right, like housing. They also include the right not to be treated differently than others based upon one's race, sex or economic status, and the right not to be punished for something without proof the "something" actually occurred.

This bill violates all three principles.

First, it reduces the notice required before eviction to almost meaninglessness. Under current law a tenant who does not pay rent when due must received a ten-day notice to pay rent or vacate. If the rent is not paid in that ten-day period, and the tenant does not leave, the tenancy is terminated and another ten-

day notice to quit must be provided without the option of paying. If the tenant still doesn't leave, the landlord may file a lawsuit, and can get a trial within two to four days after the tenant gets notice of the suit. A tenant being evicted for a problem other than non-payment of rent must receive a notice to cure the problem in ten days or vacate in 20 days. For a second offense, the tenancy can be terminated with ten day's notice, giving the tenant no choice to cure the violation. The ten day notice to quit and the lawsuit procedures are the same.

These procedures would be changed by reducing the notice from 20 days to five or eight days. (In fact, through a drafting error, one could argue that no notice is required before suing a tenant for eviction for non-payment of rent.) Since the bill eliminates the obligation to give notice by registered or certified mail, there is no assurance that tenants will get actual notice that their rent is unpaid and they have to leave. Even if they do get actual notice, five days is simply not a reasonable period of time to respond. Please remember that there are many circumstances where the rent has actually been paid, or where a reasonable notice will result in payment without further action. These changes largely foreclose amicable resolution of these types of rent disputes.

Second, this bill treats tenants as second class citizens. Home-owners who don't make their payments have much more liberal time periods than these. The fact that much greater numbers of minorities, women, and low-income citizens rent than own their homes means the effect of these changes falls disproportionately on those groups. As I said in my March 27th letter, when this legislation was enacted in 1974 it was a careful compromise between the needs of landlords to protect their investment and the needs of tenants to avoid being precipitously and unfairly thrown out of their homes. These changes clearly favor the property-owner.

Third, tenants will suffer from government publication of their arrest for alcohol or drug crimes before there has been any determination the crime has been committed. Tenants will also suffer because they - and their families - will be evicted for the conduct of others not under their control. Finally, tenants will suffer because they will be evicted before they have the opportunity to defend themselves on the criminal charges. I note that in his Position Paper, Commissioner Burton says CSSB 35 allows property owners to evict arrested drug and alcohol violators. I agree, your staff's protestions to the contrary notwithstanding. This bill will require tenants to defend themselves from allegations that they violated the alcohol or drug laws with only a few days' notice. Within two to four days after receiving notice of an eviction lawsuit, the tenant will have to be prepared to go

to trial on those charges. The summary eviction procedure was not intended to provide a forum for such complicated issues. The result will be that an order of eviction will quite likely be issued before the criminal charges are finally resolved.

2. The Bill Is Incomprehensible.

I spent eight years as a legislative lobbyist and six years as a legislator. My ability to read and digest a bill is better than most, particularly a bill relating to landlord-tenant law. (I helped write the original law in 1973-74). After several hours of trying I do not understand portions of this bill. Since the subject is not particularly complicated, there can only two explanations. Either the bill drafting has not been done competently or there is a deliberate effort to write a bill which is not understandable by the general public.

A normal citizen can't understand this bill, and no bill should ever be passed that a normal citizen can't understand.

3. The Nuisance Statute.

In a clever twist, the proponents of this legislation have found a way landlords can ignore the procedural requirements of AS 34.03. and AS 09.45.060-.160. All they need to do is sue to abate the tenant's dwelling as a nuisance based upon its use as a "crack house" or a bootlegging operation. That way no one needs to prove the illegal conduct by evidence beyond a reasonable doubt, as would be necessary if a criminal charge were filed. The bill does not require a criminal conviction before winning a nuisance action. The attractiveness of this new remedy is increased by the fact the landlord doesn't even have to show the tenant was at fault. The conduct of any person in the dwelling can be enough to declare it a nuisance.

The bill makes this remedy even easier by providing that, the landlord can get the dwelling declared a nuisance based solely upon "evidence of reputation within a community." He or she doesn't even have to prove the tenant did anything wrong - only that the tenant's neighbors think so. This embellishment overturns the rule that has been in effect in Alaska since 1928 - that the neighbors' perception as to whether a dwelling is a nuisance is not enough to make it a nuisance. U.S. v. Rex Hotels, 8 Alaska 21 (1928).

Finally, this new remedy is particularly attractive to landlords since it might put a tenant in jail for up to six months if the tenant tries to stay in his home after a nuisance abatement order is issued. See AS 09.50.200-.210.

I cannot adequately express the disgust I feel over anyone who would attempt to use this archaic and draconian remedy in the landlord-tenant relationship.

4. Rule Changes.

Section 09.45.125 grants the court the authority to simultaneously enter an order to vacate and issue an order to a peace officer to forcibly remove the tenant. I believe this affects a matter of court procedure.

Section 09.45.100 also appears to alter current court procedure. Therefore, this Section of the legislation requires a two-thirds vote. See Alaska Constitution, Article IV, Section 15.

5. Fiscal Impact.

I have reviewed several position papers and fiscal notes on both versions of SB35. All the fiscal notes are zero. The Public Safety analysis indicates about 300 hours of increased work per year, plus supplies, postage, etc. This analysis admits that the bill will cause a fiscal impact. The Court System fiscal note is faulty because it does not recognize the increased number of eviction cases filed (when the notice period is shortened, the number of informally resolved cases will go down) nor does it realize the effect of a revitalized nuisance statute.

But most importantly, the agency which will suffer the most obvious fiscal impact has not even submitted a fiscal note. AS 44.23.020(b)(8) requires the Department of Law to prepare a handbook describing the landlord-tenant law. The passage of this bill will necessitate a new version of that handbook, particularly in light of the complicated provisions. Since the preparation of that handbook inevitably will cost money, a Finance Committee referral is required.

6. The Bill Is Not Necessary.

It must be emphasized that this bill is not necessary. Alaska law provides powerful remedies for landlords - abbreviated notice requirements and a speedy eviction procedure combined with a cooperative judicial system. Do not let landlords tell you the law does not allow them to evict "bad" tenants. The tools are there for the landlords and lawyers who know how to use them.

7. Conclusion.

This bill should not pass. It is technically defective. It constitutes a move away from enlightened landlord-tenant law, which recognized that the rights of both parties deserve respect and

protection. It will increase homelessness, since it will summarily remove families from their homes, often for events which are not their fault. It violates important principles which are the foundations of our system of justice - due process, equal treatment, and punishment only on proof of misconduct. Finally, it will destroy a carefully crafted legislative compromise that has lasted for seventeen years, and open old wounds and cause new legislative wars.

Thank you for the opportunity to communicate with you on this bill.

Sincerely,

Don Clocksin

DC:dkm\30143104.ltr

cc: All members of the Senate

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May 13, 1991

Rep. David Finkelstein
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Rep. Finkelstein:

Enclosed please find a one-page statement entitled "Objections to SB 35", which I am sending in response to your office's request for the comments of Alaska Legal Services Corporation on proposed changes to the landlord-tenant act. Also enclosed please find a recent editorial from the Anchorage Daily News that addreses the current housing crisis in Anchorage.

Please contact me at the above number if you have questions about the enclosed, or desire further information.

Thank you very much for the opportunity to comment.

Very truly yours,

Barbara J. Hood

Barbara J. Hood
Staff Attorney

OBJECTIONS TO SB 35

THE REDUCED FIVE-DAY NOTICE PROVISION SHOULD FAIL:

1. **IT IS A LANDLORD'S BILL, WITH NOTHING FOR TENANTS.** The current 10-day notice provision has worked fairly and effectively for 17 years. There has been no change of circumstances that would warrant a cut-back of tenant protections. If changes to landlord-tenant law are to be made, they should take the interests of both landlords and tenants into account, which the current bill glaringly fails to do.

2. **IT WILL PREVENT MANY TENANTS FROM "CURING" NONPAYMENT.** The shortened notice will make it twice as difficult for tenants and their families to timely secure the funds needed to preserve their shelter. Governmental and private relief agencies cannot respond with assistance in the sharply curtailed time frame proposed. As a result, families will be displaced. Public policy should favor the prevention, not promotion, of displacement because of the serious toll (emotional, financial, educational, and otherwise) that it exacts on the families themselves and the agencies that try to assist them.

3. **IT WILL INCREASE HOMELESSNESS.** Communities throughout the state have experienced serious increases in homelessness within the past year. While private landlords are not responsible for solving this problem, the legislature must consider the social impact of its decision. Shorter notice periods *will* mean more evictions, and many tenants *will* have no place to go. The current 10-day notice places no great burden on landlords when viewed in light of this countervailing concern. The legislature must take a *comprehensive* approach to housing problems for *all* the residents of Alaska, not a piecemeal approach that benefits a few at great cost to many.

4. **IT IS UNNECESSARY.** It is currently quite simple for landlords to evict non-paying tenants. After a ten-day notice, a landlord can initiate summary procedures that permit a court eviction hearing to be held in 48 hours, and a 48-hour vacate order to be entered. These unique summary procedures allow landlords quicker resolution of their legal claims than is available to other litigants. Delays usually result when landlords either fail to meet their own obligations under landlord-tenant law or fail to timely avail themselves of existing remedies.

5. **IT IGNORES PROCEDURAL INEQUITIES THAT PLACE TENANTS AT SERIOUS DISADVANTAGE.** Current expedited eviction procedures are already woefully inadequate to protect the rights of tenants who raise defenses to eviction. Alaska has lagged behind other states in this area by failing to ensure that such tenants have adequate time to prepare their claims, obtain counsel, and conduct discovery, etc., before being forced to trial. The proposed changes make no effort to remedy this significant problem, and instead compound it.

6. **IT WILL HAVE A FISCAL IMPACT ON SOCIAL SERVICE AGENCIES, LEGAL SERVICES, AND THE COURT SYSTEM.** The shortened notice and resulting increase in evictions will likely result in an added fiscal burden to the Division of Public Assistance (DHSS), the emergency services offices of municipalities throughout the state, Alaska Legal Services, and the court system.

THE BOTTOM LINE: SB 35 IS SHORT-SIGHTED, ONE-SIDED, AND COUNTER TO SOUND PUBLIC POLICY OR FAIRNESS.

Submitted 5/13/91, by Barbara J. Hood, Alaska Legal Services Corporation

THE FOLLOWING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE

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February 25, 1991

Senator Pat Pourchot
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Dear Senator Pourchot:

Thank you for your request to the Alaska Legal Services Corporation (ALSC) Board of Directors for comments on Senate Bill 35, which proposes amendments to the Uniform Residential Landlord and Tenant Act (URLTA). ALSC frequently represents clients in cases brought under the URLTA, and the Board asked that we respond to this opportunity to comment.

Senate Bill 35 proposes two significant changes to current landlord-tenant law: (1) a reduction from ten days to five in the period a tenant may pay rent after receiving a notice of non-payment, and (2) the addition of a drug-related arrest as a grounds for eviction. On behalf of our clients, ALSC opposes both of these changes for the reasons set forth below.

I. THE FIVE-DAY CURE PERIOD

A. SUBSTANTIVE CONCERNS

(1) Current Law

Under current law, a ten-day notice must be given to a tenant before a landlord may pursue eviction for non-payment of rent. AS 34.03.220(b). The notice specifies that the tenant must "cure" the non-payment within ten days or the tenancy will terminate. If a second non-payment occurs within six months, the 10-day notice does not have to include a cure period. As a result, landlords do not have to give tenants more than one chance to rectify late payment. In our view, the current ten-day cure period achieves the proper balance between a landlord's interest in the timely payment of rent and a tenant's interest in preserving his or her shelter.

(2) Ramifications of Proposed Change

The bill's proposed change would reduce the current cure period to five days. The five-day period may marginally benefit landlords, but would seriously jeopardize the ability of many tenants, particularly those with low incomes, to take steps to remain in their homes. The marginal benefit to landlords is, in our view, greatly outweighed by the harm to tenants.

While it may seem insignificant, the additional five days provided under current law is often critical to a tenant's ability to gather the funds necessary to meet his or her rental obligation. For example, many of our clients rely on public assistance checks to pay their rent. Checks are frequently delayed for a variety of reasons, including

agency back-logs, overwhelming caseloads, computer malfunctions, and other circumstances beyond a tenant's control. Absent a statutory exception to the cure period for late governmental checks, a landlord does not have to accept rent that is late for these reasons, and tenants can be evicted through no fault of their own. The extra time provided by the current 10-day period helps prevent this unfair hardship, which will fall most onerously on the single or unemployed parents, children, and disabled people who comprise the vast majority of welfare recipients.

Additionally, indigent tenants frequently seek rental assistance of $120.00 per household member through General Relief (GR) program or the Division of Public Assistance (DPA). They can initiate an application for this benefit only by presenting a current eviction notice to their DPA caseworker. According to DPA staff, it takes one to two weeks for a GR applicant to receive an appointment, and up to 30 days after the interview to process the check. Even under current law it is difficult for tenants to receive the benefits of this program within the statutory cure period; under a shortened five-day period, it may well be impossible.

People living in poverty, or on the edge of poverty, must also avail themselves of relief organizations and other sources of financial help that cannot consistently respond on an expedited basis. For example, the Municipality of Anchorage's Emergency Services office can provide emergency financial assistance to persons having difficulty paying their rent, but it takes an average of two to three weeks for the checks to be delivered to landlords. People who lose their jobs may find themselves in times of severe financial crisis as they wait for unemployment or assistance to be processed. A missed or late paycheck during periods of sporadic employment can mean the difference between shelter and homelessness for workers and their families.

The need for the ten-day cure period is especially great in these difficult economic times. The rise in Alaska's welfare rolls documented in late 1990 underscores the difficult times we are in. *See, "Welfare Rolls Are Up; Normal Seasonal Decline Not Seen,"* Anchorage Daily News (December 2, 1990), attached as Exhibit A. In the fall of 1990, Anchorage experienced a marked rise in rental rates, a sharp reduction in vacancy rates for residential units, and an alarming increase in homelessness. News articles have described the tightening rental market and grim outlook for low-income residential tenants. See Exhibits B - H, attached. The Municipality of Anchorage's Emergency Services office served over twice as many people in 1990 as in 1989, and more people in January 1991 alone than in all of 1989. Exhibit I; conversation with MOA staff. ALSC is very concerned that reducing the current ten-day cure period by half at a time when low-income tenants are faced with few residential options will increase the already significant risk of homelessness for our clientele.

Under the above circumstances, the ten-day cure period--while not always sufficient--creates a much better chance that needed funds can be raised and tenancies preserved. No one would expect private landlords to shoulder more than their share of the burden of tenants who cannot timely pay, but the legislature can implement procedures that fairly balance this burden. The legislature must recognize that many people who cannot pay their rent on time are not willfully flouting their rental obligation. They are struggling to manage under difficult circumstances, and the legislature should join the efforts to help them succeed.

The need for positive legislative action is now particularly acute. In response to the concerns of social services agencies, Anchorage Mayor Tom Fink convened a Task

Force on Emergency Shelter and the Homeless in November 1990. The task force issued a final report in December 1990 with a broad range of recommendations, including increased state funding for housing assistance programs and increased legislative attention to the problem. ALSC agrees with this assessment, and urges that any legislative action that makes it more difficult for tenants to preserve their shelter in private markets must be accompanied by a substantial commitment to increase the availability of public units for low-income people. Otherwise, the legislature remedies a minor problem (late rent to private landlords) by creating a major one (increased homelessness). We would strongly support steps to address the housing needs of the poor such as those proposed by Rep. Kay Brown in House Bills 152 and 153. *See* Exhibit J.

B. PROCEDURAL CONCERNS

In addition to the above substantive issues, ALSC has significant procedural concerns about the reduced cure period. A landlord may file a complaint for eviction at the close of the statutory cure period, which would be only five days under the bill's proposal. AS 34.03.290 (c); AS 09.45.100, .110. Under current Alaska laws, a tenant is entitled to only a 48-hour notice of an eviction hearing. AS 09.45.120. If the landlord prevails at the eviction hearing, courts typically give tenants only 48 hours to vacate.

These summary procedures raise concerns that tenants do not have adequate time to prepare and present possible defenses to eviction, such as rental offsets based on a landlord's failure to maintain a habitable premises or a landlord's unlawful conduct (utility shut-off, lock-out, etc.). Other states have addressed these concerns by providing significantly longer times frames in judicial eviction proceedings. For example, California provides for only a three-day notice of eviction for non-payment of rent, but imposes procedures that require from 16 to 22 days between the original notice and actual sheriff's eviction in uncontested cases, and from 32 to 60 days in contested cases. *See, e.g., "Unlawful Detainer Procedures and Time Chart"*, attached as Exhibit K. Alaska's current eviction procedures are decades-old and incompatible with the modern changes to landlord-tenant law enacted in the URLTA. If the legislature is to contemplate changes to the landlord-tenant act that narrow substantive tenant protections, it should give serious consideration to strengthening procedural protections that are currently inadequate. *See,* Clocksin, Donald E., *Alaska's Summary Eviction Law - A Confused Anachronism*, 4 UCLA-ALASKA LAW REVIEW 56 (1974).

Even under current eviction procedures, it is questionable whether the the proposed five-day notice will significantly impact the time between notice and actual eviction. Alaska courts have postponed eviction hearings when necessary to ensure a tenant's right to a full and fair trial on the eviction claim. Shortening the cure period as proposed will have only a minor impact on the time it takes to complete an eviction in these cases because court rules and court procedures, not notice provisions, will govern. It is also quite possible that courts will give tenants more time to vacate rental units once eviction is ordered as a result of the reduced notice period.

C. CONCLUSION: FIVE-DAY NOTICE

In summary, the ten-day notice provision under current law gives tenants a realistic one-time opportunity to pay rent late in times of hardship and achieves a fair balance between the rights of landlords and tenants. The proposed five-day notice period raises serious substantive and procedural concerns and would marginally

benefit the relatively small number of private landlords at the expense of far greater numbers of residential tenants.

I. DRUG ARREST AS A GROUNDS FOR EVICTION

ALSC shares your concern about the need to confront the drug problem. As respresentatives of low-income tenants, we are well aware of the dangers that drug-dealing and related crimes pose to the health and vitality of low-income neighborhoods. But we suggest that the drug war is better fought in other ways. The proposed legislation is of questionable necessity, is potentially constitutionally infirm, and will do little to improve the welfare of residential tenants in Alaska.

A. UNNECESSARY

First, it can be fairly assumed that the characteristics of drug-related activity most inimical to the welfare and peace of neighbors are noise, traffic, and disturbances. Under current law, a tenant already has an obligation to "not unreasonably disturb, *or permit others on the premises with the tenant's consent to unreasonably disturb*, a neighbor's peaceful enjoyment of the premises." AS 34.03.120(6).

A landlord who wishes to evict a tenant whom he or she believes is engaging in drug-dealing will doubtless have no trouble under the above provision. He or she must simply give the tenant a notice explaining that the noise, traffic, and disturbances must stop within ten days or the tenancy will terminate within twenty days. AS 34.03.220(a). If the problem is not corrected, an eviction may be brought.

Although ALSC is rarely involved in eviction cases where drug-dealing is specifically alleged, we have been involved in cases where allegations of noise and other attributes of drug-dealing have been made. If the landlord can demonstrate that the behavior occurred and continued despite notice, the tenant may be evicted. ALSC questions the propriety of short-circuiting this process by creating a category of tenant default (drug arrest) that bears no necessary relationship to whether or not a person poses a threat to the quiet enjoyment of his neighbors. In summary, if drug activities are occurring, a landlord will likely have grounds for eviction under current law. The possibility that in rare instances a tenant might carry on a drug operation without noise, traffic, or disturbance does not justify the current legislation.

B. UNCONSTITUTIONAL

At first blush, the prohibition against illegal drug activity in rental premises found in proposed section (8) of AS 34.03.120 appears compelling. The proposed language would appear to apply only to those who *knowingly* engage in illegal activity or *knowingly* permit others to do so. However, the bill proposes definitions of illegal drug-related activity that would base eviction on an *arrest* alone, which effectively eliminates the knowledge factor and creates strict liability for a drug-related arrest of anyone in a household. Parents and children could be evicted for the drug arrest of a juvenile or relative regardless of whether they knew of the alleged conduct or could control it. Whole families could be evicted for the activities of one member, or for an isolated incident that none could have foreseen. In this sense, the bill goes well beyond the scope indicated by the language of section (8).

The proposed bill raises serious questions of constitutionallty because of its reliance on a mere *arrest* as a basis for eviction. To prevail at an eviction hearing, a landlord

would have to prove only that an arrest was made. There is no requirement that the court permit a tenant to present defenses of any kind; it would be irrelevant whether the arrest was in fact valid or whether the alleged illegal conduct in fact occurred. An arrest can be made if a police officer has "probable cause" to believe a crime has occurred; "probable cause" is not proof of guilt under either the general civil standard (preponderance of the evidence) or the criminal standard (beyond a reasonable doubt). No court is involved in the arrest itself, and no judicial finding of any kind is made.

The proposed bill has already received severe criticism from the American Civil Liberties Union for penalizing tenants by assuming that they are guilty before they have an opportunity to prove their innocence. *See, "ACLU Assails Tenant Evictions in Drug Arrests,"* Anchorage Times (December 17, 1990), attached as Exhibit L. Regardless of whether one agrees with the ACLU's view, the legislature should consider that valid and potentially successful challenges to enforcement of the proposed bill would likely arise.

There are several potentially persuasive legal arguments against the provision. First, it raises concerns under the Fourth Amendment, which guarantees the right to be free from unreasonable governmental intrusion in one's own home, absent notice and an opportunity to be heard. A tenant who cannot present defenses to an arrest or allegations of drug activity has no meaningful opportunity to be heard. Second, the provision would jeopardize a tenant's right against self-incrimination guaranteed by the Fifth Amendment. A tenant would face the dilemma of waiving his Fifth Amendment right and testifying to preserve his shelter, or asserting the right and effectively losing the opportunity to defend the eviction. Third, the proposed law would improperly remove a court's decisionmaking on a person's guilt or innocence. This potentially violates a basic constitutional premise that only courts, not legislatures, have the power to adjudicate individual cases. Article I, Section 9, U.S. Constitution. Finally, a mandatory loss of shelter for a drug arrest may be viewed as excessive punishment in violation of the Eighth Amendment.

The above legal assessment is by no means exhaustive, and other issues would likely arise if litigation is brought. ALSC would agree with the assessment of Jack Chenoweth, legal consultant with the Legislative Affairs Agency, that the provision invites a court challenge.

C. COMPARISON TO PARALLEL WASHINGTON STATUTE

In your letter requesting comment, you indicate that the anti-drug provisions of SB 35 are inspired by the approach taken by the State of Washington and City of Seattle. ALSC thinks it is important to note that Washington law does not go so far as to permit eviction based on a drug *arrest* alone. To the contrary, the parallel provision of the Washington code provides:

> Each tenant shall...:
>
> Not engage in drug-related activity at the rental premises, or allow a subtenant, sublessee, resident, or anyone else to engage in drug-related activity at the rental premises with the knowledge or consent of the tenant. *"Drug-related activity" means that activity which*

constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW

RCW 59.18.130. Exhibit M. (The cited provisions are criminal statutes pertaining to prescription drugs, controlled substances, and imitation controlled substances. Exhibit N.)

Because the Washington code makes the very important distinction between a drug *arrest* and drug *activity*, which must be proven, it is far less objectionable. Washington's approach may also alleviate some of the constitutional questions the proposed bill raises, because it would permit a tenant to contest the allegations of drug activity and would permit a court to make the ultimate decision on whether the allegations are substantiated.

For the above reasons. ALSC submits that current landlord-tenant laws are adequate to protect the interests of landlords, tenants, and the public with respect to both rent payment periods and drug-related activities of tenants. Accordingly, we urge you to reconsider your sponsorship of the bill, and recommend against its passage.

Thank you very much again for the opportunity to comment.

Sincerely yours,

ALASKA LEGAL SERVICES CORPORATION

Barbara J. Hood
Staff Attorney & Supervisor
Public Entitlements Unit, Anchorage

Robert K. Hickerson
Executive Director

Enclosures

PROPOSED MODIFICATIONS TO SB 35

I. SUMMARY:

PERMIT SHORTENING OF THE NOTICE PERIOD FOR NON-PAYMENT OF RENT, BUT IMPLEMENT PROCEDURAL PROTECTIONS FOR TENANTS WHO RAISE VALID DEFENSES TO EVICTION.

II. PURPOSE:

(1) To ensure that tenants with defenses to eviction have an adequate and fair opportunity to prepare and present their claims, and that the shortened notice does not unduly jeopardize their rights.

(2) To ensure that landlords are able to timely evict tenants who have not paid rent and raise no defenses to eviction.

III. DISCUSSION:

The notice provisions of SB 35 make the apparent assumption that tenants who don't pay rent on time are "dead-beats" who should be kicked out as quickly as possible. While there are certainly irresponsible tenants to whom this characterization might apply, many tenants have defenses to eviction based on their landlord's own irresponsible conduct. The bill should be modified to recognize that tenants who raise defenses are entitled to a fair opportunity to present them. This can be done without jeopardizing a landlord's ability to summarily evict the vast majority of tenants who don't raise defenses.

TWO EXAMPLES OF TENANT DEFENSES (based on actual cases in Anchorage, 1990-91):

(A) LANDLORD'S BREACH OF WARRANTY OF HABITABILITY.

Tenant's sliding door in his one-room apartment is jammed open nearly 12 inches in the middle of winter, and his carpet is sopping and mildewed because of a leak in the bathroom plumbing. Tenant makes numerous requests for repairs over a three month period, but landlord fails to make repairs. Tenant's efforts to fix the problems himself are unsuccessful, and he and his 2-year-old child endure near-freezing temperatures in a damp and smelly apartment. Tenant gives written notice that he will not pay rent until repairs are made. Landlord immediately shuts off tenant's electricity and locks tenant out. Tenant obtains a temporary restraining order reinstating him to the apartment. Landlord counterclaims for eviction. Tenant's defenses include (1) breach of covenant of good faith and fair dealing, (2) breach of the warranty of habitability, and (3) unlawful lock-out and termination of utilities. Landlord denies that the shut-off was intentional and refutes the habitability problems.

(B) LANDLORD'S ABUSE OF ACCESS.

Tenants complain to landlord of a number of serious problems requiring repair. Landlord responds by ripping off the apartment's door, peering through the windows at all hours, and verbally harassing tenants on a number

of occasions. Tenants withhold rent, and landlord sues for eviction. Tenants' defenses include abuse of access and harassment, which entitle them to a minimum one-month offset against rent allegedly due. Landlord claims that the door was taken off because the unit was abandoned (despite the presence of all of tenants' belongings).

In both of the above examples, tenants raise defenses to eviction that are seriously jeopardized by current eviction procedures. Tenants must prove a course of conduct by their landlords without time to seek discovery, subpoena witnesses, obtain counsel, or otherwise adequately prepare their defenses. The result is a greatly heightened risk of wrongful eviction.

IV. PROPOSED PROCEDURAL ADDITIONS TO SB 35

Current summary eviction laws are decades-old and predate the Uniform Residential Landlord and Tenant Act. Their procedures are no longer fully appropriate for the modern landlord-tenant relationship, and should be amended to better address the procedural concerns spelled out above.

Towards this end, we propose that the language set forth in the attached "Proposed Amendments to Eviction Statutes (AS 09.45.*et seq.*)" be added to SB 35. A flow chart of these procedures is also attached.

SUBMITTED BY:

Barbara J. Hood
Staff Attorney
Alaska Legal Services Corporation

5/13/91

Anchorage Daily News

Michael Carey, Editorial Page Editor
Patrick Dougherty, Managing Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971
Founded in 1946 by Norman C. Brown

Apt. wanted

Housing squeeze needs state attention

During Alaska's recession, you heard a lot about the pain suffered by property owners. Homeowners lost jobs and lost their houses. Landlords watched rents plummet and tenants disappear. Many owners who managed to hold on saw their property values fall far below what they owed the bank.

Alaska needs to show more concern for people who can't take out 30-year mortgages or pay $10,000 a year for housing.

You didn't hear so much about the people who came out ahead. As housing prices tumbled out of the stratosphere, more people were able to afford decent housing. Those with steady but low-paying jobs took advantage of falling rents to move to better quarters. Some renters managed to buy places of their own.

As the economy recovers, what some people consider good times seem to be coming back. Property values and rents are up; housing of all types is selling briskly again.

But forgotten once more are those for whom higher housing prices are a curse, not a blessing. Decent housing is once again starting to be priced beyond the reach of those who don't enjoy a solidly middle-class existence.

About 30 percent of clients at Anchorage's main homeless shelter are people who cannot find housing they can afford. More than 2,100 people are on waiting lists for federal housing assistance in Alaska. Here in Anchorage, more than 170 of those who get housing aid cannot find landlords who will take what government aid lets them pay.

Alaska needs to show more concern for people who can't take out 30-year mortgages or pay $10,000 a year for housing. An approach state Rep. Kay Brown is proposing may help. She wants to consolidate the state's 13 housing programs, now scattered throughout various agencies, under a single commission. The commission would oversee a housing trust fund that would pay for projects serving low- and moderate-income Alaskans.

Money for the trust would come from surplus funds at Alaska Housing Finance Corporation. Those surpluses are created as people pay off loans AHFC made years ago.

Consolidating housing programs all in one place is one way to make good on the age-old promise to streamline government. It would also offer a better overall picture of what Alaska is doing with housing and where state efforts fall short.

As a nation, our indifference to making sure everyone has safe, affordable shelter is appalling. Federal housing programs were never adequate — and President Reagan allowed them to shrivel and become corrupted. President Bush has shown little inclination to rescue housing from his predecessor's neglect.

If Alaskans are going to get more help finding decent, affordable housing, the state will have to take the lead. Rep. Brown's proposals are a good place to start the discussion.

Doctor's orders
UAA hockey player returns SPORTS C1

Fund-raising woes
Abuse counselors latest to close METRO B1

The Anchorage Times
Alaska's Best Newspaper

THURSDAY
December 20, 1990
25¢
VOLUME 76 NO. 354

High rents drive poor onto street

Municipal population surges; agents see worsening market

By JAY STANGE
TIMES BUSINESS WRITER

As rents have climbed in recent months, more low-income Anchorage residents are being squeezed out of the market.

Yet real estate experts say it will take 18 months to 2½ years for the city's rental market to improve, and conditions are expected to get a lot worse before they get better.

Emboldened by an improving Anchorage economy and a surge in the city's population, landlords and property managers have raised rents during the past year as much as 20 percent, especially in the city's low-to-come apartment complexes, local surveys show.

'The marketplace does not take care of the low-income people.'
- Cynthia Parker, housing service director

Ken Kincaid, a real estate appraiser with Shorett & Reilly in Anchorage, said the housing market tightens when vacancy rates fall below 5 percent.

Apartment vacancies in Anchorage had decreased to 5.2 percent on July 1, 1990, which is the most recent figure available, according to Sue Fison, director of the Anchorage planning office. That figure compared with vacancy rates of 20.1 percent in 1987, 17.1 percent in 1988, and 8.4 percent

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Kincaid said apartment vacancy rates in middle- and upper-income complexes of more than 20 units are now ranging from 2 percent to 3 percent.

As recently as 18 months ago, Kincaid reported at least 99 percent of the 90 apartment complexes he regularly surveys were paying for electricity. By comparison, his most recent survey showed 80 percent now ask tenants to pay their own electric bills.

"A majority of my complexes have gone away from losses," he said. "Seventy-five to 80 percent are now month to month because of the rental market's volatility."

Not everyone sees a housing shortage in the current market.

"I don't believe there is a housing crunch now," said James Kuntz of Marston Real Estate. "Occupancy is good right now, about 95 percent in apartment complexes. But there are columns and columns of condos and single family homes for rent in the paper."

Moreover, demand in December has slowed, Kuntz said. "Rents can only go up to a certain point before the renter will go into the condo rental market," he said. "I don't see a shortage of housing (as long as the condos are there to be absorbed)."

But Kuntz agreed the low end of the rental market will become more prohibitive for low-income families and increased social service assistance will be needed.

Construction of multifamily units and apartment complexes, which will ease the tight rental market for low-income families in town, is not expected to begin until rents for a two-bedroom apartment, now going for about $600 per month, climb into the range of $800 to $900, housing experts say.

That is 18 to 24 months away, said Connie Yoshimura, owner of Fortune Properties.

People who can afford to pay middle- and upper-range rents can afford to buy homes and condominiums.

"The marketplace does not take care of the low-income people," said Cynthia Parker, executive director of Anchorage Neighborhood Housing Service.

Anchorage homeless shelters are bulging with record numbers of people. A mayor's task force of industry and government housing experts met recently to look for solutions.

Source: Anchorage Alaska Housing Authority — Times chart by MAT TUTTELL

One problem they identified is Section 8 rent subsidies from the Alaska State Housing Authority were going unused because they were too low to keep pace with increasing rents.

Landlords who flocked to obtain those Fair Market Rent certificates during the recession are able to rent to non-subsidized tenants today, Parker said.

Landlords still are taking losses as they have since 1987, when rents dropped off drastically at the end of the oil boom, said Jack Vandenberg of the Jack White Co.

Vandenberg, who is also a landlord, raised rents $100 recently and still has 100 percent occupancy. Though appraisals on rental property have come up 40 percent to 60 percent, they are recovering slower than single family homes, realtors say.

Others say the housing crunch is most apparent among the poor.

Forced out of their homes by higher rents, homeless residents have grown in the city at an alarming rate in recent months, Parker said.

The service will open 110 units from the Village off Reka Drive for occupancy next spring. Many other condo complexes will be renovated and rented to low-income tenants who will make payments towards buying in Mutual Housing Program, said.

"The housing stock we h eliminated has been on the end," Kuntz said. "We are a ter community for it, but we need to step up social ser aid."

According to the Municipa of Anchorage's 1988 survey 5,300 families, Anchorage ha population of 220,185, or a 18,800 fewer people than the had at its peak of 248,283 in 19

Yet the city survey showed there are 89,207 hou units in Anchorage, or 480 n units than in 1985, when t were 89,804 housing units a able.

However, an influx of dreds of laid off workers f the Lower 48 and British Col bia — particularly in the tim industry — is absorbing rental stock rapidly.

A change in property ow ship also has contributed to problem, Kincaid said. M than 63 percent of Ancho residents owned their home 1983. That figure fell to 58 cent in 1988 and to 57 percent year.

With the economy impro over the past year, people been able to upgrade their li arrangements, Kincaid

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METRO

TUESDAY

SECTION B Dec. 11, 1990

Homeless population increases

Solutions elude task force

by LARRY CAMPBELL
Daily News reporter

The Anchorage mayor's task force on the homeless has decided that local social service groups are right — the homeless problem in Anchorage is worse this year than last. Still, the report it released Monday raised more questions than it answered.

The group's biggest recommendation is to gather more information. With just a month to do its work, the task force couldn't find answers to such questions as how large particular groups of homeless people are or exactly what kinds of services they will need.

"The problem is worse, but it's much more complicated than that," said task force member Wayne Mabry, operations manager for Alaska Telecom Inc. "That's the reason we suggested getting more information."

Mayor Tom Fink formed the task force last month to delve into complaints from social service agencies that the numbers of homeless in Anchorage had reached crisis proportions.

The evidence it found was heavy with anecdotal examples and much lighter in hard numbers. Still, the group's report claims 4,200 people are or will be homeless this year. Families with children seem to be the fastest-growing group of homeless, judging by increases in the number of women and children who stayed at the Clare House shelter, operated by Catholic Social Services.

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Some agencies show decreases in the number of homeless served, but claim they've been forced to cut back on services either because of state funding cuts or because they couldn't handle the demand to begin with.

While specific numbers of homeless and their needs are lacking, the task force nonetheless also recommended new efforts. Volunteer programs should be expanded. More state and federal dollars should be pried loose. Private developers could be encouraged to build more low-income housing, primarily through offering federal or local tax breaks as incentives. The group suggested the city take lead roles in coordinating many of these efforts, but didn't recommend spending any more local revenue.

Also unclear was why Anchorage has more homeless now. Part of the problem lies in rising rents and federal rent subsidies that haven't kept up. Alaska Housing Authority, which manages federal low-income housing programs, has asked for a rent credit for a rent increase from the Department of Housing and Urban Development, but that may not come until next spring, said ASHA executive director Ray Price.

Currently, 1,872 families are on the rent subsidy waiting list for Anchorage, Price said. In January, 1,290 families were on the waiting list. Statewide, 2,328 families are waiting for federal rent assistance.

Whether anything actually gets done remains to be seen. But Jim Caldarola, Catholic Social Services executive director, is glad that at least some of the prominent conservative local businessmen who served on the task force became convinced of the problem.

"In the non-profit world we're seeing these kinds of problems and talking about them all the time," Caldarola said. "Once in a while it's kind of jokingly say, 'We've got to pull in a suit.' So one of prominence in the community to get the public's attention. This lends the seal of approval."

TASK FORCE: Anchorage homeless population increases