

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**  
**7455 SENATE JUDICIARY**

1 officer, of the arrest.

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

4 \* Sec. 2. AS 09.45.090 is amended to read:

5 Sec. 09.45.090. UNLAWFUL HOLDING BY FORCE. The following are cases of  
6 unlawful holding by force within the meaning of AS 09.45.060 - 09.45.160:

7 (1) when the tenant or person in possession of a premises fails or refuses to pay  
8 the rent due on the lease or agreement under which the tenant or person holds [,] or deliver up  
9 the possession of the premises for more than five [10] days after demand made in writing for  
10 the possession;

11 (2) when, after a notice to quit as provided in AS 09.45.060 - 09.45.160, a person  
12 continues in the possession of the premises at the expiration of the time limited in the lease or  
13 agreement under which that person holds, or contrary to a condition or covenant in the lease or  
14 agreement, or without a written lease or agreement;

15 (3) when, after a notice to terminate the tenancy as provided in this title with  
16 reference to termination of estate at will or by sufferance, a person continues in possession of  
17 the premises after expiration of the time for determining the tenancy.

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

19 Sec. 09.45.100. REQUISITES OF NOTICE TO QUIT. A notice to quit shall be in  
20 writing and shall be served upon the tenant or person in possession by being

- 21 (1) delivered to the tenant or person;
- 22 (2) [OR] left at the premises in case of absence from the premises; [,] or
- 23 (3) [THE NOTICE MAY BE] sent by registered or certified mail [, IN WHICH
- 24 CASE AN ADDITIONAL THREE DAYS SHALL BE ADDED TO THE 10 DAYS].

25 \* Sec. 4. AS 09.45.100 is amended by adding a new subsection to read:

26 (b) If notice is provided by mail under (a)(3) of this section, an additional three days  
27 shall be added

28 (1) to the five days' notice if, under AS 09.45.090(1), the tenant or person in  
29 possession of the premises fails or refuses to pay the rent due on the lease or agreement under  
30 which the tenant holds or deliver up the possession of the premises; or

31 (2) to the required number of days of notice if notice to quit is given for a reason

1 other than that set out in AS 09.45.090(1).

2 \* Sec. 5. AS 09.50.170 is amended to read:

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

12 (1) lewdness, assignation, prostitution, or any other immoral act;

13 (2) an illegal activity involving

14 (A) alcoholic beverages;

15 (B) a controlled substance; or

16 (C) an imitation controlled substance.

17 \* Sec. 6. AS 09.50.170 is amended by adding a new subsection to read:

18 (b) In this section, "illegal activity involving alcoholic beverages," "illegal activity  
 19 involving a controlled substance," and "illegal activity involving an imitation controlled  
 20 substance" have the meaning given in AS 34.03.360.

21 \* Sec. 7. AS 09.50 is amended by adding a new section to read:

22 Sec. 09.50.175. ADMISSIBILITY OF EVIDENCE TO PROVE NUISANCE. In an  
 23 action brought under AS 09.50.170(a)(2), the court may consider evidence of reputation within  
 24 a community to prove the existence of a nuisance.

25 \* Sec. 8. AS 09.50.230 is amended to read:

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

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

30 (2) [, AND] appears and pays all costs, fees, and allowances that [WHICH] are  
 31 a lien on the premises; [,] and

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

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

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

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

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

16                   (2) notify the owner in writing, at the last address listed on the assessment roll  
17       maintained by the municipality under AS 29.45.160 if the premises are located within a  
18       municipality that levies and collects a property tax, and at any other address known to the peace  
19       officer, of the arrest.

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

22       \* Sec. 10. AS 34.03.120 is amended to read:

23                  Sec. 34.03.120. TENANT RESPONSIBILITIES [TO MAINTAIN DWELLING UNIT].

24       The tenant shall

25                   (1) keep that part of the premises occupied and used by the tenant as clean and  
26       safe as the condition of the premises permit;

27                   (2) dispose all ashes, rubbish, garbage, and other waste from the dwelling unit in  
28       a clean and safe manner;

29                   (3) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean  
30       as their condition permits;

31                   (4) use in a reasonable manner all electrical, plumbing, sanitary, heating,

1 ventilating, air-conditioning, kitchen, and other facilities and appliances including elevators in the  
2 premises;

3 (5) not deliberately or negligently destroy, deface, damage, impair, or remove a  
4 part of the premises or knowingly permit any person to do so;

5 (6) not unreasonably disturb, or permit others on the premises with the tenant's  
6 consent to unreasonably disturb, a neighbor's peaceful enjoyment of the premises; [AND]

7 (7) maintain smoke detection devices as required under AS 18.70.095; and

8 (8) not knowingly engage at the premises in an illegal activity involving  
9 alcoholic beverages, an illegal activity involving a controlled substance, or an illegal activity  
10 involving an imitation controlled substance, or knowingly permit others in the premises to  
11 engage in one or more of those activities at the rental premises.

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

13 (a) Except as provided in this chapter, if there is a material noncompliance by the tenant  
14 with the rental agreement or noncompliance with AS 34.03.120(1) - (7) [AS 34.03.120] materially  
15 affecting health and safety, the landlord may deliver a written notice to the tenant specifying the  
16 acts and omissions constituting the breach and specifying that the rental agreement will terminate  
17 upon a date not less than 20 days after receipt of the notice. If the breach is not remedied in 10  
18 days, the rental agreement terminates as provided in the notice subject to the provisions of this  
19 section. If the breach is remediable by repairs or the payment of damages or otherwise and the  
20 tenant adequately remedies the breach before the date specified in the notice, the rental agreement  
21 will not terminate. In the absence of due care by the tenant, if substantially the same act or  
22 omission that constituted a prior noncompliance of which notice was given recurs within six  
23 months, the landlord may terminate the rental agreement upon at least 10 days written notice  
24 specifying the breach and the date of termination of the rental agreement.

25 \* Sec. 12. AS 34.03.220(b) is amended to read:

26 (b) If rent is unpaid when due and the tenant fails to pay rent within five [10] days after  
27 written notice by the landlord of nonpayment and the intention to terminate the rental agreement  
28 if the rent is not paid within that period of time, the tenancy terminates unless the landlord agrees  
29 to allow the tenant to remain in occupancy, and the landlord may terminate the rental agreement  
30 and immediately recover possession of the rental unit; only one written notice of default need be  
31 given the tenant by the landlord as to any one default.

1 \* **Sec. 13.** AS 34.05.220 is amended by adding a new subsection to read:

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

4 \* **Sec. 14.** AS 34.03.360 is amended by adding new paragraphs to read:

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

9 (20) "illegal activity involving a controlled substance" means a violation of  
10 AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1), 11.71.030(a)(2), 11.71.040(a)(1), or  
11 11.71.040(a)(2);

12 (21) "illegal activity involving an imitation controlled substance" means a  
13 violation of AS 11.73.010 - 11.73.030.

14 \* **Sec. 15.** AS 34.05 is amended by adding a new section to read:

15 **ARTICLE 3. ILLEGAL ACTIVITIES IN NONRESIDENTIAL PREMISES.**

16 **Sec. 34.05.100. TENANT RESPONSIBILITIES IN PREMISES OTHER THAN**  
17 **DWELLING UNITS.** (a) In rented premises other than premises that are dwelling units to  
18 which the provisions of AS 34.03 apply, the tenant may not knowingly engage at the premises  
19 in an illegal activity involving alcoholic beverages, an illegal activity involving a controlled  
20 substance, or an illegal activity involving an imitation controlled substance, or knowingly permit  
21 others in the premises to engage in one or more of those activities at the rental premises.

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

24 (c) An order of abatement entered by a court under AS 09.50.170 against premises under  
25 this section terminates a rental agreement on the premises subject to the order of abatement.

26 (d) In this section, "dwelling unit," "illegal activity involving alcoholic beverages,"  
27 "illegal activity involving a controlled substance," and "illegal activity involving an imitation  
28 controlled substance" have the meanings given in AS 34.03.360.

# DIVISION OF LEGAL SERVICES

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### MEMORANDUM

March 13, 1991

SUBJECT: CSSB 35 (Judiciary)

TO: Senator Rick Halford, Chair  
Senate Judiciary Committee

FROM: Jack Chenoweth  
Legislative Counsel 

This "V" version reflects changes to the last draft. Per committee direction,

-- in bill sections 1 and 12, I made changes that, in concept and substantially in language, are responsive to the change recommended in the March 8 position paper of the Department of Public Safety (see page 1, line 14 - page 2, line 3, and page 6, lines 1 - 6); and

-- in bill section 9, I deleted the reference to paragraph "(2)" following "AS 09.50.170(a)," thereby permitting use of reputation evidence to be offered in nuisance abatement proceedings based on prostitution as well as illegal drug- and alcohol-related activity.

In addition, I have made two drafting changes:

-- On page 3, line 31, I corrected the spelling of "prima facie";

-- In bill section 7, before the words "ACT" or "activity" where they appear on page 4 at lines 3, 5, and 8, I deleted the reference to "illegal." Nuisance abatement tied to asserted prostitution activities is not dependent on proof of activity sufficient to evidence prostitution as a criminal offense, so the use of "illegal" before "activity" in those three places was inaccurate. "Illegal" should be retained before "activity" where it appears on line because the element of the criminal offense is part of the definition of the nuisance for which abatement may be sought.

JC:gc  
91-140.glc  
Enclosure

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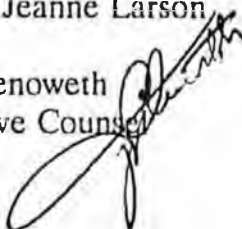
### MEMORANDUM

March 6, 1991

SUBJECT: Draft CSSB 35 ( ), "S" version

TO: Senator Pat Pourchot  
ATTN: Jeanne Larson

FROM: Jack Chenoweth  
Legislative Council



Notes to accompany the draft --

1. You asked me to "specify that [for forcible entry and detainer actions, the] notification period runs concurrently with [the] notification period under the landlord/tenant and nuisance statutes." I have included new material at the end of proposed AS 09.45.090(1)(A), at the end of proposed AS 09.45.090(1)(B), and in the middle of the bill section amending AS 34.03.220(a) to tie those provisions together. The first of these covers situations involving nonpayment of rent (5 days notice required), the second involves use of premises for illegal alcohol and drug activity (5 days notice required), and the last involves instances in which there is a breach of a rental agreement covenant.
2. You asked me to include authority by which the court may enter an order to vacate and a writ of assistance at the same time. See, in this regard, bill section 5.
3. You asked me to provide that trial under the nuisance statute serve also as the hearing required under the forcible entry and detainer process. Because of due process concerns, I didn't see that the forcible entry and detainer process would work without at least a minimum opportunity for the tenant or person in possession to have a chance to appear and raise any defense. Consequently, I opted to retain the separate trial requirement, but reduced to a minimum the burden on the landlord who has secured an abatement order. See, in this regard, bill section 6. Frankly, I can't imagine that this provision will see much use. The proceedings in and entry of the order of abatement should be sufficient to secure the tenant's voluntary removal from the premises on or before the order of abatement issues in order to "protect" his or her personal property from being caught up in the order.

Senator Pat Pourchot

March 6, 1991

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4. Bill section 14 picks up the correct "AS 34.03.120(a)" reference that you called to my attention.

5. I did not delete the "(a)" following the reference to AS 11.71.010 in what is now bill section 17. Subsection (a) now includes the criminal enterprise activity you were concerned about. Subsection (b)--which the "(a)" deletion would pick up--only adds the definition of that phrase.

JC:gc

91-122.glc

Enclosure

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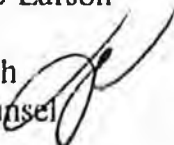
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### MEMORANDUM

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.

*Yes* (

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

*I can't find this*

Senator Pat Pourchot

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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 Rule 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.

good

JC:gc

91-102.glc

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## DIVISION OF LEGAL SERVICES

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#### MEMORANDUM

February 25, 1991

**SUBJECT:** Draft CSSB 35 ( ) relating to the  
landlord-tenant relationship -- sectional  
analysis (W.O. No. 7-LS0160/M)

**TO:** Senator Pat Pourchot  
ATTN: Jeanne Larson

**FROM:** Jack Chenoweth  
Legislative Counsel 

You should have from me a draft amendment to SB 35 (identified as Work Order 7-0160G.5) and a draft CSSB 35, open sponsorship (identified as Work Order 7-0160M), that incorporates that amendment. This sectional analysis, the content of which is applicable to both documents, recounts the substance of the draft committee substitute.

As drafted, CSSB 35 ( ) has two principal purposes, both applicable to the landlord-tenant relationship. First, the measure amends statutes applicable to the forcible entry and detainer remedy to expedite a landlord's eviction of a tenant for failure to pay rent when due. Then, the measure amends the state's nuisance abatement statutes, AS 09.50.170-09.50.240, expanding that remedy to cover the identified criminal offenses involving alcohol or drugs, allowing persons to seek redress under the nuisance abatement law for criminal activity in premises that constitutes a nuisance. There are several secondary changes, noted below.

Let me address these topically rather than sequentially.

#### EXPEDITED EVICTION OF TENANT FOR FAILURE TO PAY RENT WHEN DUE:

Proposed bill section 2 of the draft committee substitute, amending AS 09.45.090(1), reduces from ten days to five days the period in which a landlord must wait after making written demand for possession of rented premises to commence forcible entry

and detainer proceedings to secure a tenant's eviction in the event, and only in the event, the tenant fails to pay rent when due.

Collateral changes are made by proposed bill sections 3 and 4. These sections, read together, merely carry forward the current requirement of allowing three days additional notice if, under the forcible entry and detainer remedy, notice to quit is provided by mail.

A related change is made in the Uniform Residential Landlord and Tenant Act (AS 34.03) by bill section 12. The change made to AS 34.03.220(b) conforms the number of days in which the tenant must pay rent after receiving written notice of nonpayment.

#### NUISANCE ABATEMENT:

Bill section 5 rewrites AS 09.50.170 adding to "lewdness, assignation, prostitution, or any other immoral act"--the existing basis for nuisance abatement relief--an illegal activity involving alcoholic beverages, a controlled substance, or an imitation controlled substance.

Bill section 6 defines those three additional terms, cross-referencing them to the meanings of those terms that are set out in the Uniform Residential Landlord and Tenant Act.

Following the California statutory model, I have included bill section 7, a new section AS 09.50.175, that would allow the court to consider evidence of reputation within a community if relief is sought under the expanded version of the nuisance abatement relief statute.

The substantive change made by bill section 8 is set out at p. 4, lines 11 and 12; it gives 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 requiring that the value of the bond reflect the full value of the property.

Bill section 13 directs that, under the Uniform Residential Landlord and Tenant Act, an order of abatement entered by the court terminates the rental agreement.

Bill section 14 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. (Again, this is a "narrower" listing of offenses than appeared in the original Senate Bill.)

OTHER CHANGES:

The measure retains from the bill as introduced the content of bill sections 1 and 9. These provisions, adding AS 04.21.075 and AS 17.30.160, respectively, impose on peace officers a requirement to notify a landlord when a tenant has been arrested for violation of one of the identified criminal offenses involving alcohol or drugs.

As in the bill as introduced, bill section 10 of the proposed committee substitute adds as a duty the responsibility of a tenant not to engage in illegal activities on rented premises.

Bill section 11 makes a technical change. Under current law, in order to secure relief under AS 34.03.220(a), a tenant's responsibilities with respect to the dwelling unit set out in AS 34.03.120 must constitute a noncompliance "materially affecting health and safety." As noted above, bill section 10 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 bill section 11 is to confine the "noncompliance materially affecting health and safety" standard to the tenant responsibilities of current law and not impose that limiting standard to the added responsibility of dealing alcohol and drugs in violation of law.

Finally, as drafted, the legislation adds the content of a portion of your amendment G.1. The measure's bill section 15 adds a new 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 13 above, an order of abatement covering a premises that falls within AS 34.05.100 terminates the rental agreement.

JC:gc  
91-100.glc

Enclosure

**DIVISION OF LEGAL SERVICES**

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**MEMORANDUM**

February 22, 1991

**SUBJECT:** Landlord's remedies for tenant's violation of  
certain alcohol and drug-related offenses

**TO:** Senator Pat Pourchot

**FROM:** Jack Chenoweth  
Legislative Counsel

This memo accompanies a revision of amendment G.4 and a draft committee substitute incorporating that amendment into the original measure (draft CSSB 35 ( )). My comments are applicable to both documents.

If this revised amendment is adopted--or, obviously, if a committee accepts and reports the draft committee substitute--these are the significant differences:

(1) your proposed amendments to the forcible entry and detainer statute (AS 09.45.060 - 09.45.160) and the Uniform Residential Landlord and Tenant Act (AS 34.03) that would have allowed the landlord to seek a tenant's removal for tenant's "arrest" for one of the identified criminal offenses involving alcohol or drugs are eliminated;

(2) in their place, there would be substituted provisions amending the state's nuisance abatement statutes (AS 09.50.170 - 09.50.240), expanding that set of statutes to cover the identified criminal offenses involving alcohol or drugs; thus, a person--including a landlord--could seek redress under the nuisance abatement statutes for criminal activity in premises that constituted a nuisance; this is a variation on the San Diego approach which itself is consistent with California and this state's very old laws on abatement of lewd houses as nuisances;

(3) the range of criminal offenses for which relief under the nuisance abatement statutes is authorized is modified to eliminate from the earlier measure references to violations of

-- AS 04.11.010(a), the general violation statute applicable to unlicensed transactions involving alcoholic beverages; and

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Page 2

-- AS 11.71.050(a)(1) and 11.71.050(a)(2), the two violations involving drug sales and possession of drugs with intent to sell that were punishable as misdemeanors.

The amendment would not affect, and acceptance and reporting of the draft CS would therefore retain, provisions in the original that accomplish the following:

(1) provisions of the original measure reducing from ten to five days the period in which a landlord must give notice to a tenant to quit for failure to pay rent when due;

(2) provisions imposing on peace officers a requirement to notify a landlord when a tenant has been arrested for violation of one of the identified criminal offenses involving alcohol or drugs; and

(3) the duty of the tenant not to engage in illegal activities on rental premises.

\*

I've added to both documents the very important material in proposed bill section 13 to make clear that an order of abatement entered under AS 09.50.170 is sufficient to terminate a rental agreement covered by the Uniform Residential Landlord Tenant Act.

I prepared amendment G.1, extending to tenancies not covered by the Uniform Residential Landlord and Tenant Act the provisions of eviction for tenant's engaging in illegal alcohol- or drug-related activities in order to meet the possible constitutional challenge to the use of "arrest" to secure relief under the forcible entry and detainer provisions. Now that you may abandon that approach, you need not further consider amendment G.1 in its entirety- it would no longer serve its original purpose--though inclusion of subsection (a) of the amendment as drafted--establishing a duty on a tenant not to use rented premises that are exempt from AS 34.03 for illegal activities--would seem to me to serve a salutary function in telling tenants what the law says they may not do. Additionally, if that portion of amendment G.1 is retained for inclusion in this draft, consider further changing it so that, like the material in proposed bill section 13 discussed above, the issuance of an order of abatement as to these rented premises would terminate the lease or rental agreement. Please tell me how you would want this handled.

Finally, now that I look at this measure with a fresh eye, I want to reserve the right to relocate the key definitions of the draft CS's proposed bill section 14 into the nuisance abatement section (probably placing them in what is the draft CS's proposed

Senator Pat Pourchot  
February 22, 1991  
Page 3

bill section 6), for it appears that, as drafted, these definitions would be more relevant there.

JBC:pl  
91-107.plm

# 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

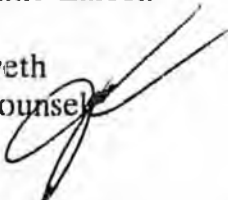
Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

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 revert 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,

assignment, 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 . . . ."

Senator Pat Pourchot  
February 4, 1991  
Page 5

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

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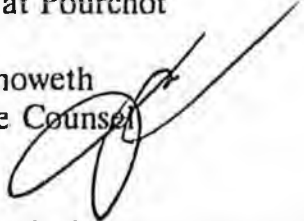
### MEMORANDUM

December 17, 1990

SUBJECT: Landlord-tenant relationship (Work order 7-0160G)

TO: Senator Pat Pourchot

FROM: Jack Chenoweth  
Legislative Counsel



This draft legislation has two principal purposes, both applicable to the landlord-tenant relationship. It substantially amends statutes applicable to the forcible entry and detainer remedy to expedite a landlord's eviction of a tenant for failure to pay rent when due. It also amends and adds to the body of law provisions under which a landlord may terminate a rental agreement and seek the ouster of a tenant who has been arrested for violating certain specified laws on the rented premises.

Let me address each in turn.

#### EXPEDITED EVICTION OF TENANT FOR FAILURE TO PAY RENT WHEN DUE:

Proposed bill section 3, amending AS 09.45.090(1), reduces from ten days to five days the period in which a landlord must wait after making written demand for possession of rented premises to commence forcible entry and detainer proceedings to secure a tenant's eviction in the event the tenant fails to pay rent when due.

Collateral changes are made in proposed bill sections 4 and 5. These sections, read together, merely carry forward the current requirement of allowing three days additional notice if, under the forcible entry and detainer remedy, notice to quit is provided by mail.

A related change is made in the Uniform Residential Landlord and Tenant Act by bill section 11. The change, made to AS 34.30.220(b), conforms the number of days in which the tenant must pay rent after receiving written notice of nonpayment.

**TERMINATION OF TENANCY FOR CONDUCTING CERTAIN ILLEGAL ACTIVITIES ON THE RENTED PREMISES:**

The principal provisions are set out in bill sections 9 and 12.

Bill section 9 adds a new paragraph to the statement of tenant's obligations under the Uniform Residential Landlord and Tenant Act. That additional obligation is one of "not knowingly [engaging] at the premises" in one of three illegal activities, and "knowingly [permitting] others in the premises to engage" in those activities.

Bill section 12, adding a new section, AS 34.03.222, outlines the remedies once the landlord learns of the tenant's breach of the obligation to keep the premises free of illegal activities. Under the section, the landlord (1) may terminate the rental agreement, (2) must, if the rental agreement is terminated, provide notice to the tenant of termination and of the act constituting the breach, and (3) may recover possession under the forcible entry and detainer remedy (under the provisions that require a 10 day delay in recovery, and not under the 5 day provisions for failure to pay rent when due that are amended elsewhere in the bill).

The specific "illegal activities" for which a landlord may invoke the forcible entry and detainer remedy are enumerated in bill section 13. Each requires that the tenant or other person shall have been arrested for the specific violation.

In related bill changes:

Bill section 2, revising AS 09.45.070 (by adding a new subsection (a)(3) and a new subsection (b)), explicitly permits landlords to use the forcible entry and detainer remedy if a tenant's illegal activities of the kind identified above are the basis for termination of the tenancy.

The amendment made by bill section 6 makes clear that action to recover premises for a reason specified in AS 09.45.070(a)(3) requires at least 10 days notice (or, alternatively, 90 days under the special provision for farming and agricultural tenancies).

Existing AS 09.45.130 provides a measure of protection to a tenant who has paid rent in advance of the period in which the tenant is due to occupy the premises. Bill section 7 makes clear that a forcible entry and detainer action may be brought against a tenant in possession who engages in one or more of the enumerated illegal activities even if the tenant has paid rent for the premises in advance.

Bill section 10 makes a technical change in an existing reference.

Finally, bill sections 1 and 8 add new provisions, AS 04.21.075 and AS 17.30.160,

Senator Pat Pourchot  
December 17, 1990  
Page 3

respectively, under which peace officers who arrest persons for illegal activities involving alcoholic beverages, controlled substances, or imitation controlled substances on residential premises not occupied by the record owner are to make a reasonable effort to identify and contact the owner of record of the premises and advise the owner of the arrest that has taken place on those premises.

JBG:lmb  
90-036.lmb

Pat

# STATE OF ALASKA

## DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE  
P.O. BOX KC  
JUNEAU, ALASKA 99811-0310  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

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:

*Margaret O. Knuth*  
Margaret O. Knuth  
Assistant Attorney General

MOK:ma

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.

Department of Public Safety

Position Paper - CSSB 35(JUD)

Page 2

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.

A handwritten signature in cursive script, reading "Richard L. Burton". The signature is written in dark ink and is positioned above a horizontal line.

Richard L. Burton  
Commissioner

BILL NO: SB 35

DATE: 2/25/91

TITLE: An Act Amending the Uniform Residential Landlord and Tenant Act

CONTACT: Gayle A. Horetski  
Deputy Commissioner

DEPARTMENT OF  
PUBLIC SAFETY



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 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 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. 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 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 current version of the bill makes no provision for delivery of the notice in person to the owner of the property. Often the property owner lives in close proximity to the rental property; he or she may actually be present at the time of the arrest or shortly thereafter. The bill as presently written always requires notice to the address on tax records, and does not appear to allow for direct notice from the peace officer to the property owner.

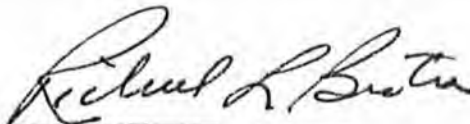
Although the provisions of this bill will create additional work for peace officers, the Department of Public Safety recognizes the problems created for property owners who find that they have rented to alcohol or drug violators. Allowing property owners to evict arrested drug and alcohol violators would 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.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - SB 35

Page 2

The Department of Public Safety supports this bill, but suggests that proposed AS 04.21.075 (Sec. 1) and AS 17.30.160 (Sec. 8) be amended to allow in-person delivery of the notice of arrest to the property owner at any address. Only if no tax records are maintained for the property should notice to other addresses known to the police be required.

A handwritten signature in cursive script, reading "Richard L. Burton".

Richard L. Burton  
Commissioner

# STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

- P.O. BOX B  
JUNEAU, ALASKA 99811-2100  
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400  
ANCHORAGE, ALASKA 99508-4302  
PHONE: (907) 563-1073

March 11, 1991

## POSITION PAPER

RE: Committee Substitute for Senate Bill 35

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.

*Remond Henderson for*  
Edgar Blatchford, Commissioner

# STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

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PHONE: (907) 465-4700
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PHONE: (907) 563-1073

January 31, 1991

## POSITION PAPER

RE: Senate Bill 35

SPONSOR: Senator Pourchot

### PROGRAM EFFECTS OF THE BILL

This bill appears to have little impact on DCRA/HAS. The Housing Assistance Section would not have responsibility of enforcement nor implementation of this bill.

The only apparent effect would be from the renting or leasing of our foreclosed homes to people who may become involved with illegal activities. This bill would allow us to remove them in a timely manner. Housing Assistance may see an increase in the legal fees in dealing with the eviction of tenants that are convicted of illegal activities.

### COMMENTS

The department has no objections to the bill.

*Edgar Blatchford*

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,

A handwritten signature in cursive script, appearing to read "C. S. Christensen III".

C. S. Christensen III  
Staff Counsel

**WAGSTAFF, POPE & CLOCKSIN**  
*Lawyers*

*Robert H. Wagstaff  
Douglas Pope  
Don Clocksin  
912 West Sixth Avenue  
Anchorage, Alaska 99501-2024  
TEL (907) 277-8611  
FAX (907) 274-8040*

*Affiliated with:  
Hobbs, Straus, Dean & Wilder  
1819 H Street N.W., Suite 800  
Washington, D.C. 20006  
(202) 783-5100*

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-

Senator Pat Pourchot  
April 4, 1991  
Page 2

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 protestations 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

Senator Pat Pourchot  
April 4, 1991  
Page 3

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 be 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.

Senator Pat Pourchot  
April 4, 1991  
Page 4

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

Senator Pat Pourchot  
April 4, 1991  
Page 5

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,

A handwritten signature in cursive script, appearing to read "Don Clocksin".

Don Clocksin

DC:dkm\30143104.la

cc: All members of the Senate



**First National Bank**  
of Anchorage

---

December 11, 1990

Senator Pat Fourchot  
Alaska State Legislature  
P. O. Box 104836  
Anchorage, AK 99510

Dear Pat:

Thank you for your letter of December 4, 1990 addressed to Steve Shropshire regarding the Landlord-Tenant Act. I think that you are on the right track. Please keep up the good work.

Sincerely,

David W. Cuddy  
Senior Vice President

DWC/als

JAN 21 1991



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

JAMES KUNTZ, CPM  
c/o MARSTON PROPERTIES  
4105 TURNAGAIN BLVD.  
ANCHORAGE AK 99517

248-1717

Alaska Chapter No. 97

January 21, 1991

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

RE: Proposed Changes To The Alaska  
Uniform Residential Landlord - Tenant Act

Dear Senator Pourchot:

The Alaska Chapter of the Institute of Real Estate Management is an affiliate of the National Association of Realtors. Our executive board has reviewed and supports your proposed changes to the Alaska Uniform Residential Landlord - Tenant Act.

Shortening the notice period for non-payment of rent to five days would assist property owners in accelerating the timely FED process and would still allow well-intentioned tenants to pay or make other arrangements. The second proposal would benefit property owners by giving them the option to initiate the eviction process against tenants arrested for certain drug and alcohol related crimes.

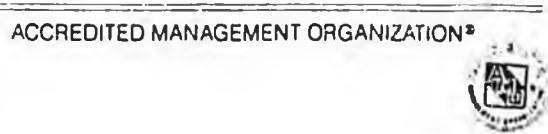
Both proposals would result in reducing the losses rental property owners encounter due to unpaid rent and losing good tenants because of disturbances or fear from certain neighboring tenants engaged in illegal drug activity.

The members of IREM support these proposed changes and are hopeful that they will be passed.

Very truly yours,

James Kuntz, CPM, CRB  
IREM Past President

cc: Dea Turner, Alaska Association of Realtors  
Jim McCourt, Alaska Association of Realtors



THE FOREMAN'S

1241 HILLCREST DRIVE  
P.O. BOX 91576 ANCHORAGE, ALASKA 99509-1576  
(907) 279-1736

December 31, 1990

Senator Pat Pourchot  
P.O. Box 104836  
Anchorage, Alaska 99510-4836

Sir:

Thank you and your Mr. Abbott for the opportunity for input regarding the two changes you are proposing to the Alaska Uniform Residential and Landlord and Tenant Act.

The non-payment of rent notice period change from ten (10) to five (5) days is highly desirable.

Immediate eviction process against those arrested for drug- or alcohol-related crimes is highly desirable; however, it appears doubtful such legislation would "stand up in court" because "arrest" is not "conviction". And, a person is presumed innocent until proven guilty.

Please note we are sending copies of this letter to our legislators soliciting their support for your efforts.

Very truly yours,

*Helen G. Foreman*

Helen G. Foreman  
Co-Owner

hgf/s

cc: Senator Drue Pearce, Suite 535, 3111 C Street  
Senator Pat Rodey, 3111 C Street  
Representative Dave Donley, Suite 450, 3111 C St.  
Representative Max F. Gruenberg, Jr., 914 Clay Ct.



BOX 719  
BETHEL, ALASKA 99559

543-2124

Senator Pat Pourchot  
Alaska State Legislature  
P.O. Box 104836  
Anchorage, Ak. 99510

December 13, 1990

Dear Senator Pourchot:

This letter is to support your proposed changes in the Alaska Uniform Residential Landlord-Tenant Act.

We are a Native Village Corporation with major interest in rental property in our area. We are fully aware of the impact of drug-related and bootlegging problems in our area. We too would like the right to evict such persons from the premises as soon as possible.

As a landlord, we are also in favor of the 5 day in place of the 10 day eviction notice.

If we can be of further assistance in this matter, please contact us.

Sincerely,

William C. Bivin  
President/CEO

543-2062 (H)

1201 West 45th Ave.  
Anchorage, Alaska 99503  
January 4, 1991

JAN - 7 1991

Dear Sen. Pourchot,

Thank you for your letter of December 4 expressing concerns for landlord's trying to evict non-paying tenants and those engaged in drug selling and bootlegging activity.

We have read the work draft of the proposed bill and find it carefully written.

At our December 13 meeting, the Landlord and Property Managers Ass'n. voted in favor of this draft as far as it goes. We will support it to the best of our ability.

We look forward to hearing that it has been filed.

Sincerely,

*Alice Brewer*

Alice Brewer  
Executive Secy. ALPMA

563-6734

P.O. Box 103628  
Anchorage, AK 99510  
12 November 1990

Senator Pourchot  
Alaska State Senate  
3111 C Street, Suite 545  
Anchorage, AK 99503

Dear Senator Pourchot:

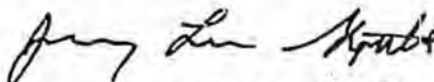
Subject: Landlord-Tenant Law changes

You are interested in sponsoring a bill to amend the landlord-tenant law. You propose to shorten the notice-to-quit time in an FED procedure. I support this plan. I suggest five-days notice.

I own and manage 10 apartments in 3 buildings. I have had experience with the eviction process for non-payment of rent. Currently a ten-day notice is required before an FED lawsuit can be started. This is too long. It is a useless delay. Five days is a good time for a notice-to-quit period (three days would be best, but I will settle for five). Tenant groups will complain, but shortening the notice period will pose no problem. Whatever the non-paying tenant was going to do on the tenth day, they can do just as well on the fifth day. Also, I believe, other states have notice times that are shorter than ten days. Lets be in line here. Finally, remember that this is a legal minimum notice time and each situation can be increased above the minimum. This allows the landlord to give good tenants a break and to get rid of non-payers quickly.

Senator Pourchot, the ten-day notice-to-quit time is a major problem with the current law. Please submit and enact a bill to reduce this useless delay.

Sincerely,



Jerry Lee Gottbe (husb) 338-0627

December 17, 1990

Senator Pat Parnoch  
P.O. Box 104836  
Anchorage, Alaska

Dear Senator,

Your proposed bill, "to reduce the time after giving written notice that a landlord must wait to terminate a tenancy for failure to pay rent when due", and "with respect to illegal activities involving alcoholic beverages, controlled substances," sounds good. If this will help control some of the illegal activities, by making those aware that they can be evicted early, then let's have it made part of the laws.

Landlords need help with the delinquent and destructive tenants.

Sincerely,

Charles Lippitt

2203 Mc.Indy Ave.

Spenard, Alaska

248-4770

TESTIMONY FOR SB 35 (3/7/91)

Mark Begich  
P.O. Box 201627  
Anchorage, AK 99520

Peter Hutton  
Weidner Co. Property Service  
5600 Lake Otis  
Anchorage, AK

James Kuntz, CPM  
c/o Marston Properties  
4105 Turnagain  
Anchorage, AK 99517

Alice Brewer  
1201 West 45th Avenue  
Anchorage, AK 99503

Lt. Dan Lloyd, APD Metro Unit

S B

3 8



FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB 38

Revision Date: 1/30/91 Department Affected: Fish and Game  
 Title: Obstruction or hindrance of lawful hunting, fishing, trapping BRU: Division of Wildlife Conservation  
 Component: Wildlife Conservation  
 Sponsor: Senator Frank  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

	4	7	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0					
TRAVEL	0					
CONTRACTUAL	0					
SUPPLIES	0					
EQUIPMENT	0					
LAND & STRUCTURES	0					
GRANTS, CLAIMS	0					
MISCELLANEOUS	0					
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: No FY 91 impact

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Warren W. Wiley Phone: 465-4100  
 Division: Commissioner's Office Date: 1/30/91  
 Approved by Commissioner: *Donna B. Wiley*  
 Agency: Fish and Game Date: 1/30/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB 38

Revision Date: \_\_\_\_\_ Department Affected: Public Safety  
 Title: An Act relating to the obstruction or hindrance of lawful hunting BRU: Fish & Wildlife Protection  
 Sponsor: Senator Frank, et. al. Component: Enforcement  
 Requestor: Senate Resources

COMPONENT SERIAL NO. 

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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
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<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact 0

ANALYSIS: (Attach a separate page if necessary)  
 No fiscal impact is anticipated.

Prepared by: Captain Conrad G. Seibel Phone: 269-5509  
 Division: Fish & Wildlife Protection Date: 1-31-91  
 Approved by Commissioner: Richard L. Burton for Richard L. Burton  
 Agency: Department of Public Safety Date: 2/5/91

Distribution (by preparer): Legislative Finance, Legislative Services, OMB, & Impacted Agency(ies).

STEVE FRANK  
DISTRICT K  
SEAT A

119 N. Cushman, Rm. 213  
Fairbanks, Alaska 99701

*While in Juneau*  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3709  
Capitol Rm. 514

# Alaska State Legislature

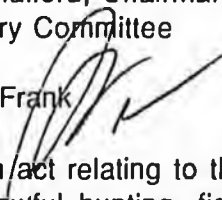


## Senate

MEMBER  
Finance Committee  
Resources Committee  
Legislative Council  
Special Committee on Banking &  
Economic Development

VICE-CHAIR  
Community & Regional  
Affairs Committee

TO: Senator Rick Halford, Chairman  
Senate Judiciary Committee

FROM: Senator Steve Frank 

RE: CSSB 38 - "An act relating to the obstruction or hindrance of lawful hunting, fishing, or trapping."

DATE: February 8, 1991

I would like to request that you schedule CS for Senate Bill 38(res), know as the hunter harassment bill, for a hearing at your earliest convenience. SB 38 was moved from the Senate Resources Committee today with the four members present signing "do pass."

SB 38 would make the obstruction or hindrance of lawful hunting, fishing or trapping a misdemeanor, punishable by a fine of up to \$500 or up to 30 days in jail or both. It would also allow for the recovery of financial and punitive damages.

Hunter harassment is prevalent throughout the lower 48 states and Canada. This bill is intended to protect individuals who are legally hunting or fishing from obstructionists and organized anti-hunting efforts. It is important that we address the problem before it becomes rampant here in Alaska where consumptive use of fish and game is widely recognized as an integral part of the Alaskan lifestyle. Hunter harassment laws already exist in 37 other states.

Last year the measure passed the Senate by a vote of 18-1-1 and enjoys broad bipartisan support from the Alaska Bowhunters Association, the Alaska Federation of Natives, the Alaska Outdoor Council, the Eskimo Walrus Commission, the National Rifle Association and the Alaska Trappers Association.

I would appreciate a hearing on CSSB 38(res) at your earliest convenience. Thank you for your assistance.

STEVE FRANK  
DISTRICT K  
SEAT A

119 N. Cushman, Rm. 213  
Fairbanks, Alaska 99701

*While in Juneau*  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3709  
Capitol Rm. 514

# Alaska State Legislature

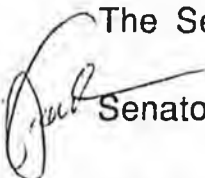


## Senate

MEMBER  
Finance Committee  
Resources Committee  
Legislative Council  
Special Committee on Banking &  
Economic Development

VICE-CHAIR  
Community & Regional  
Affairs Committee

TO: The Senate Resources Committee

FROM:  Senator Steve Frank

RE: Senate Bill 38 "An act relating to the obstruction or hindrance of lawful hunting, fishing or trapping."

DATE: February 8, 1991

Senate Bill 38 would prohibit the intentional obstruction or hindrance of lawful hunting, fishing or trapping. It would also allow for the recovery of financial and punitive damages when a violation occurs. Similar legislation has already been enacted in at least 37 of the 50 states.

This bill will prevent the types of harassment that are prevalent throughout the U.S. and Canada. Harassment erodes the legal rights of not only sport and personal use hunters, fishermen and trappers but subsistence users as well. At the 1989 Subsistence Conference sponsored by the Alaska Federation of Natives and RurAICAP, hunter harassment was specifically identified as a threat to traditional subsistence hunting that can no longer be overlooked. It is important that we act now to prevent further obstruction efforts and to recognize and protect hunting, fishing and trapping as legitimate and integral components of the Alaskan lifestyle.

This proposal passed the Senate last year by a vote of 18-1-1 and enjoys broad bi-partisan support from the National Rifle Association, AFN, the Alaska Trappers Association, the Eskimo Walrus Commission, and the Alaska Outdoor Council. I would appreciate your support as well for the passage of Senate Bill 38.

SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERENCE

DATE: 1/21/91

FURTHER: Judiciary

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2-8-91

Resources Committee considered SENATE BILL NO. 38

"An Act relating to the obstruction or hindrance of lawful hunting, fishing, or trapping."

and recommended:

- replace with \_\_\_\_\_ CS SB 38 (R)  same title
- attached amendment(s)  new title
- \_\_\_\_\_ letter of intent adopted

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

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

zero fiscal note(s) F+G 1/30/91  
SB + CS  
\_\_\_\_\_  
\_\_\_\_\_

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

[Signature]  
\_\_\_\_\_  
[Signature]  
\_\_\_\_\_  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature] [Signature]  
Chair: Signature and Recommendation

CS FOR SENATE BILL NO. 38 ( )  
 IN THE LEGISLATURE OF THE STATE OF ALASKA  
 SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): SENATORS FRANK, Sturgulewski, Pearce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the obstruction or hindrance of lawful hunting, fishing, or trapping."

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

3 \* Section 1. AS 16.05 is amended by adding new sections to read:

4           Sec. 16.05.790. OBSTRUCTION OR HINDRANCE OF LAWFUL HUNTING,  
 5 FISHING, OR TRAPPING. (a) Except as provided in (e) of this section, a person may not  
 6 intentionally obstruct or hinder another person's lawful hunting, fishing, or trapping by

7                           (1) being in a location in which human presence may alter the

8   (A) behavior of the fish or game that another person is attempting to take;

9                           or

10   (B) feasibility of taking fish or game by another person;

11                           (2) creating a visual, aural, olfactory, or physical stimulus in order to alter the  
 12 behavior of the fish or game that another person is attempting to take; or

13                           (3) tampering with personal property of another intended for use in the taking of  
 14 fish or game.

- 1 (b) For purposes of (a) of this section,  
2 (1) "lawful" means  
3 (A) in compliance with  
4 (i) this title, regulations adopted under this title, and applicable  
5 federal statutes and regulations; or  
6 (ii) the Marine Mammal Protection Act (P.L. 92-522); and  
7 (B) with the permission of the private landowner if the hunting, fishing,  
8 or trapping occurs on private land;  
9 (2) "tamper" has the meaning given in AS 11.46.490.
- 10 (c) A peace officer who has probable cause to believe that a person has violated this  
11 section may arrest or cite the person or order the person to desist.
- 12 (d) In a prosecution under this section, it is an affirmative defense that the person was  
13 lawfully entitled to obstruct or hinder the hunting, fishing, or trapping.
- 14 (e) This section does not apply to a commercial fisherman while engaged in a customary  
15 practice recognized in the commercial fishing industry.
- 16 (f) A person who violates this section is guilty of a misdemeanor and is punishable by  
17 a fine of not more than \$500 or imprisonment for not more than 30 days, or both.
- 18 Sec. 16.05.791. CIVIL REMEDIES. (a) A person aggrieved by conduct or threatened  
19 conduct in violation of AS 16.05.790 may petition a superior court to enjoin the respondent from  
20 engaging in the conduct.
- 21 (b) A person aggrieved by a violation of AS 16.05.790 is entitled to recover general  
22 damages and special damages, including license and permit fees, travel costs, guide-outfitting  
23 fees, costs for special equipment and supplies, and other related expenses.
- 24 (c) A court may award punitive damages in addition to the damages set out in (b) of this  
25 section.

**CS FOR SENATE BILL NO. 38 (RESOURCES)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**SEVENTEENTH LEGISLATURE - FIRST SESSION**

BY THE SENATE RESOURCES COMMITTEE

Offered: 2/11/91  
 Referred: Judiciary

Sponsor(s): SENATORS FRANK, Sturgulewski, Pearce

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the obstruction or hindrance of lawful hunting, fishing, or trapping."

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

3 \* Section 1. AS 16.05 is amended by adding new sections to read:

4 Sec. 16.05.790. OBSTRUCTION OR HINDRANCE OF LAWFUL HUNTING,  
 5 FISHING, OR TRAPPING. (a) Except as provided in (e) of this section, a person may not  
 6 intentionally obstruct or hinder another person's lawful hunting, fishing, or trapping by

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8 (2) creating a visual, aural, olfactory, or physical stimulus in order to alter the  
 9 behavior of the fish or game that another person is attempting to take; or

10 (3) tampering with personal property of another intended for use in the taking of  
 11 fish or game.

12 (b) For purposes of (a) of this section,

13 (1) "lawful" means

14 (A) in compliance with

1 (i) this title, regulations adopted under this title, and applicable  
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3 (ii) the Marine Mammal Protection Act (P.L. 92-522); and

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8 section may arrest or cite the person or order the person to desist.

9 (d) In a prosecution under this section, it is an affirmative defense that the person was  
10 lawfully entitled to obstruct or hinder the hunting, fishing, or trapping.

11 (e) This section does not apply to a commercial fisherman while engaged in a customary  
12 practice recognized in the commercial fishing industry. *Legal and Lawful competitive practices*

13 (f) A person who violates this section is guilty of a misdemeanor and is punishable by  
14 a fine of not more than \$500 or imprisonment for not more than 30 days, or both.

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17 engaging in the conduct.

18 (b) A person aggrieved by a violation of AS 16.05.790 is entitled to recover general  
19 damages and special damages, including license and permit fees, travel costs, guide-outfitting  
20 fees, costs for special equipment and supplies, and other related expenses.

21 (c) A court may award punitive damages in addition to the damages set out in (b) of this  
22 section.

~~OR TO Competition between hunters.~~

*engaged in  
among persons hunting  
fishing or trapping.*

CS FOR SENATE BILL NO. 38 ( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATORS FRANK, Sturgulewski, Pearce

A BILL

FOR AN ACT ENTITLED

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4 (B) with the permission of the private landowner if the hunting, fishing,  
5 or trapping occurs on private land;

6 (2) "tamper" has the meaning given in AS 11.46.490.

7 (c) A peace officer who has probable cause to believe that a person has violated this  
8 section may arrest or cite the person or order the person to desist.

9 (d) In a prosecution under this section, it is an affirmative defense that the person was  
10 lawfully entitled to obstruct or hinder the hunting, fishing, or trapping.

11 (e) This section does not apply to a commercial fisherman while engaged in a customary  
12 practice recognized in the commercial fishing industry.

13 (f) A person who violates this section is guilty of a misdemeanor and is punishable by  
14 a fine of not more than \$500 or imprisonment for not more than 30 days, or both.

15 Sec. 16.05.791. CIVIL REMEDIES. (a) A person aggrieved by conduct or threatened  
16 conduct in violation of AS 16.05.790 may petition a superior court to enjoin the respondent from  
17 engaging in the conduct.

18 (b) A person aggrieved by a violation of AS 16.05.790 is entitled to recover general  
19 damages and special damages, including license and permit fees, travel costs, guide-outfitting  
20 fees, costs for special equipment and supplies, and other related expenses.

21 (c) A court may award punitive damages in addition to the damages set out in (b) of this  
22 section.

## SENATE BILL NO. 38

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS FRANK, Sturgulewski, Pearce

Introduced: 1/21/91

Referred: Resources and Judiciary

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to the obstruction or hindrance of lawful hunting, fishing, or trapping."

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

3 \* Section 1. AS 16.05 is amended by adding new sections to read:

4 Sec. 16.05.790. OBSTRUCTION OR HINDRANCE OF LAWFUL HUNTING,  
5 FISHING, OR TRAPPING. (a) Except as provided in (e) of this section, a person may not  
6 obstruct or hinder another person's lawful hunting, fishing, or trapping by intentionally

7 (1) altering the feasibility of taking fish or game by another person;

8 (2) creating a visual, aural, olfactory, or physical stimulus in order to alter the  
9 behavior of the fish or game that another person is attempting to take; or10 (3) tampering with personal property of another intended for use in the taking of  
11 fish or game.

12 (b) For purposes of (a) of this section,

13 (1) "lawful" means

14 (A) in compliance with this title, regulations adopted under this title, and

1 applicable federal statutes and regulations; and

2 (B) with the permission of the private landowner if the hunting, fishing,  
3 or trapping occurs on private land;

4 (2) "tamper" has the meaning given in AS 11.46.490.

5 (c) A peace officer who has probable cause to believe that a person has violated this  
6 section may arrest or cite the person or order the person to desist.

7 (d) In a prosecution under this section, it is an affirmative defense that the person was  
8 lawfully entitled to obstruct or hinder the hunting, fishing, or trapping.

9 (e) This section does not apply to ~~a commercial fisherman while engaged in a customary~~  
10 practice recognized in the commercial fishing industry.

11 (f) A person who violates this section is guilty of a misdemeanor and is punishable by  
12 a fine of not more than \$500 or imprisonment for not more than 30 days, or both.

13 Sec. 16.05.791. CIVIL REMEDIES. (a) A person aggrieved by conduct or threatened  
14 conduct in violation of AS 16.05.790 may petition a superior court to enjoin the respondent from  
15 engaging in the conduct.

16 (b) A person aggrieved by a violation of AS 16.05.790 is entitled to recover general  
17 damages and special damages, including license and permit fees, travel costs, guide-outfitting  
18 fees, costs for special equipment and supplies, and other related expenses.

19 (c) A court may award punitive damages in addition to the damages set out in (b) of this  
20 section.

# 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

February 5, 1991

**SUBJECT:** "Intentionally" in the criminal law

**TO:** Senator Steve Frank  
Attn: Theresa Sager-Stancliff

**FROM:** John B. Gaguine *JBG*  
Legislative Counsel

You have asked what the definition of "intentionally" in the criminal law is, and what the burden would be upon the state to prove that a person "intentionally" obstructed or hindered lawful hunting or trapping if SB 38 were enacted.

There are basically four mental states that are statutorily defined for crimes in Alaska. These are listed in AS 11.81.900(a):

(a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation;

Senator Steve Frank  
February 5, 1991  
Page 2

a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

"Intentionally" is the most stringent of the four standards.

Because "intentionally" is an element of the crime, the state would have to prove beyond a reasonable doubt that the person acted intentionally. Of course, "intentionally" can be proven by circumstantial evidence; it would not be necessary to have a statement from the offender that he or she intended to hinder or obstruct. Thus, for instance, if A points a loaded gun at B's head and pulls the trigger, a jury is allowed to infer from my actions that A intended to kill B. Even if A testifies that he did not know the gun was loaded, the jury is free to disregard that testimony.

If I may be of further assistance, please advise.

JBG:lmb  
91-019.lmb



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Wildlife Conservation	BILL NUMBER SB 38	SPONSOR Senator Frank
SHORT TITLE OF BILL Obstruction or hindrance of lawful hunting, fishing, or trapping			
DEPARTMENT POSITION Support			
PREPARED BY Warren W. Wiley	DATE 1/30/91	COMMISSIONER'S SIGNATURE <i>Ernest A. Delany</i>	DATE 1/30/91

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Public Safety	CONSTITUENT GROUP(S) AFFECTED BY BILL Hunters
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

SB 38 would prohibit the harassment of persons legally engaged in hunting, fishing, or trapping, and by inference, the disturbance of equipment used in hunting, fishing, and trapping. Similar legislation was vetoed by Governor Sheffield in 1983 and 1984.

ANALYSIS OF BILL/PROGRAM EFFECTS

This legislation would have no fiscal impact on the Division of Wildlife Conservation. With the increased activity of anti-trapping and hunting advocate in Alaska, this law could be helpful in protecting the privileges of those legally pursuing consumptive use of wildlife resource. 35 other states have such laws.

AMENDMENTS PROPOSED

None

PLEASE AT

F&G Position Paper

BILL NO: SB 38

DATE: February 8, 1991

TITLE: An Act relating to the obstruction or hindrance of lawful hunting, fishing, or trapping.

CONTACT: Gayle A. Horetski  
Deputy Commissioner

DEPARTMENT OF  
PUBLIC SAFETY

Passage of SB 38 would make it illegal to intentionally obstruct or hinder another person's lawful hunting, fishing, or trapping. The new misdemeanor offense carries penalties of a fine of not more than \$500 or imprisonment for not more than 30 days, or both. Civil remedies are also provided for a person who is aggrieved by illegal conduct while lawfully hunting, fishing, or trapping.

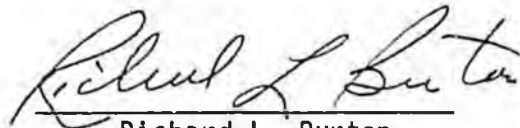
Passage of this bill will provide law enforcement agencies with statutory authority to investigate and file charges on persons who intentionally obstruct and hinder trappers, fishermen, and hunters. Existence of an effectively worded statute may keep affected parties from "taking the law into their own hands".

The Department of Public Safety recommends that the language in SB 38 be simplified by moving the word "intentionally" from the end of the line to before "obstruct" on page 1, Line 6. The Department also recommends deleting the language on page 1, Lines 10-11, and the definition of "tamper" on page 2, Line 4, as this offense is already covered under existing criminal mischief laws (see AS 11.46.482 - AS 11.46.486).

The language on page 2, Lines 9-10 is vague, and subject to differing interpretations. The Department recommends deleting this language and also the lead-in language from page 1, Line 5: "Except as provided in (e) of this section,".

(Note: Interference with commercial fishing gear is covered under AS 16.10.055.)

The Department of Public Safety supports the concept of this bill, but recommends the changes noted above.



Richard L. Burton  
Commissioner



NATIONAL RIFLE ASSOCIATION OF AMERICA  
INCORPORATED 1871

1600 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20036

RUPE ANDREWS  
FIELD REPRESENTATIVE  
ALASKA

9416 LONGRUN DRIVE  
JUNEAU AK 99801  
907/789-7422

January 30, 1991

Hon. Steve Frank  
Alaska State Senate  
Capitol Building  
Juneau, AK 99801

Dear Senator Frank:

This letter is to affirm support of the National Rifle Association for Senate Bill No. 38, " An Act relating to the obstruction or hindrance of lawful hunting, fishing, or trapping." The Alaska membership of NRA has long sought a statutory solution to this problem. Alaskan hunters, fishermen and trappers need lawful means to protect them from the harassment of those that have personal objections to these activities.

Our review of SB 38 indicates agreement with similar legislation approved by Legislatures in other States and could be model legislation for others. Legislation of this type has proved valuable to wildlife resource users by providing a legal redress for loss of hunting opportunities and preventing violent attacks on lawful hunters and trappers.

Sincerely.

---

Rupe Andrews, Field Representative Alaska



# ALASKA OUTDOOR COUNCIL, INC.

3150 MAGNINIS DE WIKIEAIIAH 89801  
09718804011

P.O. Box 34097  
Juneau, Ak. 99803

## MEMORANDUM

DATE: March 13, 1990  
TO: Senator Steve Frank  
FROM: Ed Grasser, Director Legislative Affairs  
RE: SB 469 Hunter Harassment

The Alaska Outdoor Council has continually supported the passage of legislation which will protect individuals engaged in lawful harvesting of fish and wildlife from undue harassment by those persons who believe such practices should be banned.

There are increasing incidents of unprovoked attacks by individuals opposed to the harvest of wildlife nationwide. These types of activities were not in evidence here in Alaska until recently; therefore, past efforts to protect an individual's legal harvest activities were denied by Governor Sheffield, who vetoed two different pieces of legislation which would have accomplished this vital goal.

This past year, Native peoples in remote areas of Alaska were harassed during their attempts to harvest marine mammals which they depend upon for a livelihood. These types of activities will no doubt increase as individuals opposed to the harvest of wildlife become bolder in their attempts to physically harass or prevent legal harvests from taking place.

The problems posed by the increasingly blatant attempts of anti-hunters for lawful outdoorsmen will continue to grow if we do nothing. We feel SB 469 is a step in the right direction to protect the rights of persons legally engaged in wildlife harvests. In our opinion it will go a long way toward solving any future potential conflicts between user groups and will help protect America's outdoor heritage.

# ALASKA FEDERATION OF NATIVES, INC.

411 W. 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611



April 24, 1990

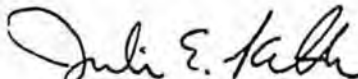
The Honorable Steve Frank  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Senator Frank:

Please be informed that the Alaska Federation of Natives is on record as supporting Senate Bill 469 as introduced.

You are correct your assessment that "hunter harassment" presents a potential threat to subsistence lifestyles in Alaska. SB469 will serve to protect lawful hunting rights and the special degree of dependence Alaska residents have on hunting and fishing resources.

Sincerely,

  
Julie E. Kitka  
President



# 1989 Subsistence Conference Summary



*"Subsistence Is Survival"*



Photo by David Hardenbergh

**Co-Sponsored by the Alaska Federation of Natives, Inc.  
and the Rural Alaska Community Action Program, Inc.**

October 16-17, 1989  
Egan Convention Center, Anchorage

# 1989 Subsistence Conference

## Migratory Birds in Western Alaska

The topic of migratory birds was the focus of the next speaker, Jack U. Williams, Sr. of Mekoryuk. Chuck Hunt interpreted for him. As Mr. Williams was growing up, there were very many ducks and geese. He never heard of waterfowl sport hunting at that time, nor were there shotguns. They used bows and arrows when hunting waterfowl.

The Waterfowl Conservation Commission, chaired by Mr. Williams, originated in 1984. The main purpose of the WCC is to work with the USFWS and others to help people in the villages of the Y-K Delta deal with the issue of waterfowl population declines.

## Animal Rights Groups Threaten Subsistence Lifestyles

The panel on "Threats to Our Way of Life - The Animal Rights Agenda" was next. Larry Mercurieff, Commissioner of the Alaska Department of Commerce and Economic Development, and Dave Monture of Indigenous Survival International in Canada were the speakers.

Mr. Mercurieff showed a video depicting animal rights protectionists harassing Natives on the Pribilof Islands, because of their use of fur seals for subsistence. His focus was on strategies and tactics used by the animal rights groups, their effect on aboriginal people, and what can be done about it. "What happened in the Pribilofs are exactly the same things that will be focused on throughout Alaska, throughout the entire Northern Hemisphere, and throughout the whole world," due to the activities of the animal rights groups.

Dave Monture described Indigenous Survival International as an organization born in 1984 as a direct result of the Dene people in Canada's Northwest Territories becoming very concerned about a new wave of a "colonial attitude from the South," -- people organizing with tremendous resources in a manner which would prove to be a great threat to Dene plans for self-determination and land claim settlements in the Northwest Territories.

"We're not dealing with people with the same sense of ethics or fairness, but we're dealing with people with a new zeal, a new religion for urban Western man," Monture said. ISI-Canada has joined with the British Museum to produce "The Living Arctic," a highly successful major exhibition in London, England designed to educate the public on aboriginal lifestyles.

## In Conclusion

The afternoon session commenced with workshops on "Marine Mammals," "Title VIII of ANILCA," and the "Animal Rights Movement." The facilitators of these sessions reported back to the general assembly following the workshops.

The Animal Rights Movement workshop participants first viewed a film on strategies and the lack of ethics in the animal rights community, specifically in the Native seal campaign. It was concluded that animal rights groups pose a life-threatening situation to our people, not only in their methods of fire-bombs, but in actual cases of teenagers committing suicide in communities where seal subsistence is being cut off, thereby drastically altering traditional lifestyles.

The Marine Mammals workshop addressed the five species of seals in Alaska, sea otter, walrus, beluga whale, and polar bear. The participants learned that there are 900,000 fur seals today, and the population may have leveled off. The Fish & Wildlife program on walrus includes a management plan for walrus, monitoring populations, monitoring harvest, and habitat protection.

The Alaska Sea Otter Commission was formed in 1988. The Commission is very concerned about a proposed rule by the Fish & Wildlife Service to restrict cottage industry practices involving sea otter by Alaska Natives. The Commission has recently initiated a Memorandum of Agreement with FWS which, along with a Management Plan, would address problems FWS is trying to answer in its proposed rule.



Dave Monture of ISI-Canada (left) led a workshop on the threats that animal rights groups are posing to subsistence lifestyles. RurAL CAP attorney Eric Smith (below) explaining how villages can write their own fish and game regulations.



ESKIMO WALRUS COMMISSION  
P.O. Box 948  
Nome, Alaska 99762

March 13, 1990

Senator Steve Frank  
P.O. Box V  
Juneau, AK 99811

FAX # 463-3378

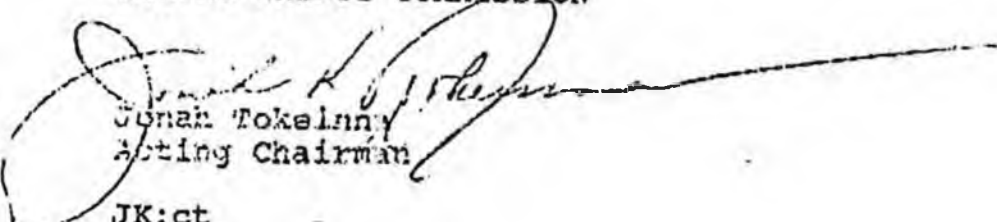
Dear Senator Frank:

The Eskimo Walrus Commission is supporting Senate Bill 469  
for adoption by the State Legislature.

We believe that adopting this Senate Bill would not  
infringe on those people that have a legitimate right to hunt,  
trap and fish.

Sincerely,

ESKIMO WALRUS COMMISSION



Jonah Tokelany  
Acting Chairman

JK:ct



# Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-463-3366

2/8/91

## SB 38 - ISSUE PAPER OBSTRUCTION OR HINDRANCE OF LAWFUL HUNTING...

On April 22, 1983, the first of a long line of bills pertaining to the harassment of hunters was discussed on the floor of the house. In this discussion, Representative Bussell (R-Anchorage), claimed that the purpose of this bill was to prevent the type of hunter harassment that had been occurring in British Columbia from spreading to Alaska.

The most recent version of the bill, SB 38 is now before the legislature. Eight years since the initial bill, very few, if any, documented cases of hunter harassment have occurred. This strongly suggests that this type of preventative measure was not and is not necessary.

Governor Sheffield twice vetoed this legislation. In a letter explaining his reasons behind vetoing the original bill, (to Speaker of the House, Representative Joe Hayes, 7/25/83), the Governor stated that "existing law particularly the disorderly conduct, assault, criminal mischief, and general harassment statutes provide adequate penalties for criminal acts that interfere with these activities."

Since this type of action is already covered by existing law and fears that this type of activity would increase have not materialized, then what is this bill for? The Alaska Environmental Lobby questions the motives behind the bill.

SB 38 sets up a preference for hunters and trappers over other user groups. If this bill passes, it would be illegal to make a lot of noise while walking through the woods to intentionally prevent undesirable animal encounters if even unknown to the hiker, a silent hunter was stalking his prey. A bear wary hiker could be found guilty of a class A misdemeanor (page 1, lines 6-9) and subject to a \$500.00 fine and/or 30 days in prison.

The Alaska Environmental Lobby does not support SB 38 and we urge this committee to take a close look at the language in the bill.

CLEAN AIR COALITION • PRINCE WILLIAM SOUND CONSERVATION ALLIANCE • ALASKA CENTER FOR THE ENVIRONMENT  
ALASKA CHAPTER SIERRA CLUB • JUNEAU GROUP SIERRA CLUB • KNIK GROUP SIERRA CLUB • DENALI GROUP SIERRA CLUB  
ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY • DENALI CITIZENS COUNCIL • ALASKA FRIENDS OF THE EARTH  
JUNEAU AUDUBON SOCIETY • KACHEMAK BAY CONSERVATION SOCIETY • KENAI PENINSULA AUDUBON SOCIETY • KODIAK AUDUBON SOCIETY  
LYNN CANAL CONSERVATION • SITKA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER  
SOUTHEAST ALASKA CONSERVATION COUNCIL • KNIK CANOERS AND KAYAKERS

*friends of animals, inc.* 11 West 60th Street, New York, N.Y. 10019

NRA/ILA

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AUG 30 1983

DATE \_\_\_\_\_

2

TIPS FOR HUNT SABOTEURS

Fourteen million Americans will be shouldering their rifles and shotguns within the next few months, marching off to their annual offensive against our wildlife. These legions, which are more numerous, and generally better equipped than the entire Nazi armies of the Second World War, will take a bloody toll before the season ends. They will kill deer and rabbits, ducks, dogs, cats, a few children, and even a few hunters.

It is time for friends of animals to start organizing a defense that will serve to at least temper the wanton destruction. There are many ways that a friend of animals can become a forest partisan on behalf of our wildlife, and we offer here a few suggestions that range in effort, depending upon a person's abilities and commitment:

1. Deny the hunter the land to hunt on. Much hunting is done on private lands. To protect these animals, encourage your neighbors, especially those who own large tracts such as farms and ranches, to post their land and forbid hunting. Try to convince them that hunters invariably cause more damage to agriculture than the wild animals do.
2. Many areas have hunting restricted to a specified number of hunters who have special permits. Commonly, these permits allow the hunter to use a particular blind or hunt less common species, such as bear. Apply for these permits yourself. The permits are usually awarded by a simple lottery selection. If you're lucky, you'll win a permit and deny a hunter his kill.
3. Get into the woods yourself the day before the hunting season. If you're familiar with the most commonly hunted areas, try to drive wildlife away. A stroll through the forest with a nice loud radio and a dog on a leash, will serve to make wildlife more wary of humans. This is particularly important for younger animals that have not yet had the traumatizing experience of being hunted.
4. Certain substances, such as rotten eggs, when rubbed into hunting blinds, make these enclosures even more uncomfortable for the hunters. Uncomfortable hunters are irritable, and are also poorer shots. Plastering the floor of a hunting blind with cow dung is another good idea.
5. If you're familiar with wildlife habits in your neighborhood, try to encourage them to break these habits shortly before hunting season. For instance, many hunters like to stalk along deer tracks which are pretty well defined to a good woodsman. Placing deer repellent (available at many feed and hardware stores) along these tracks will encourage the deer to move away and leave the hunter with a route devoid of the species. If you want to save money, just scoop up a bag of human hair from a local barber shop and hang handfuls of it in little bags about two or three feet from the ground, along the deer track. The deer will soon get the message that there are humans in the area and will drift away.
6. If there is much hunting with dogs in your area, try to get hold of a female dog in heat and lead her, on a leash, through an area that is heavily hunted. Male dogs in the hunter's pack will "get wind" of the female and lose their enthusiasm for chasing rabbits or deer.

7. Hunters frequently like to ambush their prey by setting out food and then hiding in blinds. Commonly, bushels of apples are set out a few days before hunting season to encourage deer to browse in this area. When hunting season comes, the hunter merely comes to the site, climbs into a blind, and waits for the deer to come to him. To disrupt this, there are two alternatives. First, remove all apple piles immediately on finding them during the days preceding hunting season. Second, if there are just too many apples to carry away, give them a good spraying with deer repellent and spread barber shop hair clippings all over the area.

8. Encourage your municipality to pass an ordinance that bans, in the interest of public safety, the use of all weapons within its limits. Rifles, shotguns, bows and arrows have been known to kill people too.

9. If you have a portable tape recorder, get a cassette recording of wolf howls. Play this in the woods a few times in the days before hunting season. It will make wildlife wary.

10. Try to develop strong anti-hunting sentiment in your community by writing letters to the editor of your local newspapers, meeting with neighbors, getting on talk shows. Creating public awareness of the problem is a vital point. Let your neighbors know that the law recognizes wildlife as belonging to all people, and they are not the exclusive property of hunters until after they have been murdered.

11. Work on a project to get your State to pass a law that would require all hunters to carry written permission from the landowners of the places they hunt. This further curbs the hunter's battlegrounds because many farmers are reluctant to sign permits that would allow people to hunt on their lands. Also, much land is owned by summer residents, corporations, etc. that are nearly impossible to get hold of.

12. Approach your Congressperson and Senators with demands that hunting and trapping be prohibited on national wildlife refuges and all public land.

13. If you have any old, stuffed animal toys, set these around commonly hunted areas. Hunters often don't take the time to check if an animal is real. Better to have a hole in a cotton rabbit than a real one - and the noise of the gun going off might serve to scare away other wildlife.

14. We will be trying to put together a better activist's guide for next hunting season, so if you have any ideas or procedures you've found effective, please let us know. Mail them in to Bill Clark, Friends of Animals, 11 West 60th Street, New York, NY 10023.

Use your imagination. There are plenty of ways to frustrate the hunt, depending on your own abilities and enthusiasm. The main point here is to do something. By your work, you will be helping animals in two ways. First, you will be protecting them from the hunters and second, you will be letting the hunters know that friends of animals are in the woods. This serves to anger them, and angry hunters do not stalk so quietly, their aim is not so precise. Emotions can play heavily in the success of a hunt, and the most effective killers are cool and methodical. Disrupt!

# HUNTING SEASON IS HERE

## Get Out Your Hip Boots and Make Life Difficult For the Weekend Woodsman

American hunters will be shouldering their rifles and shotguns within the next few months, marching off to their annual offensive against wildlife. This legion, which is generally better equipped than the entire German armies of the Second World War, will take a bloody toll before the season ends. They will kill deer and rabbits, ducks, dogs, cats, a few children, and even a few of themselves. How about calling a meeting of a few friends to plan for this hunting season? Here are a few ways you can strike out against the hunt:

1. Encourage neighbors with acreage to post their land. Let them know that hunters cause more damage than wild animals.
2. Many areas have hunting restricted to a specified number of hunters with permits. The permits are usually awarded by a simple lottery selection. Apply for these permits yourself; you may win one and deny a hunter his kill.
3. Get into the woods the day before hunting season. Try to drive wildlife away. Stroll about with a loud radio or a dog on a leash to make wildlife wary of humans.
4. Rotten eggs or cow dung can be rubbed into the floor and walls of hunting blinds to make hunters uncomfortable. Uncomfortable hunters are irritable, and are more likely to miss.
5. Placing deer repellent (available at many feed and hardware stores) along deer routes will encourage the deer to move away and leave the hunter with a route devoid of the species. Scoop up a bag of human hair from a local barber shop and put handfuls of it in little bags about 2 or 3 feet from the ground, along the deer track. The deer will soon get the message that there are humans in the area and will drift away.
6. If hunters use dogs in your area, try to get hold of a female dog in heat and lead her, on a leash, through



"Okay! Now don't move, Andy! Here comes Mom!"

an area that is heavily hunted. Male dogs in the hunter's pack will "get wind" of the female and lose their enthusiasm for chasing rabbits or other hunted animals.

7. If you have a portable tape recorder, buy a cassette recording of wolf howls. Play this in the woods a few times in the days before hunting season.
8. Buy large, old stuffed animal toys at a local thrift shop or make your own. Set these around commonly hunted areas. Hunters often don't take the time to check if an animal is real! Better to have a hole in a cotton rabbit than a real one—and the noise of the gun going off may scare away other wildlife. ■

Excerpted from Friends of Animals "Tips for Hunt Saboteurs"

## COMMITTEE TO ABOLISH SPORT HUNTING

Called "One of the Most Dangerous and Aggressive Organizations in the U.S." by the National Rifle Association

C.A.S.H. has

- ★ Won an epic battle to keep hunters out of 52,000 acre Harriman State Park in New York
- ★ Filed a lawsuit to stop hunting at Riley Creek State Park in Pennsylvania
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Specializing only in the fight against "sport" hunting, C.A.S.H. can continue working for wildlife only because people like you care.

\$20 provides a 1-year membership. Contributions of any size are gratefully accepted and immediately put to use. Write us:

The Committee to Abolish Sport Hunting  
Box 43, White Plains, New York 10605  
or call: 212/428-7523

# Humane Group To Seize Animal Leghold Traps

By STEVE GRANT

Friends of Animals Inc. said Friday it is going to trip up trappers by setting off their leghold traps when the season opens next week.

The organization said it will ask its 4,500 members in Connecticut to look for the traps, touch them off with a stick and remove them, because it believes the traps are inhumane.

"We can't as an organization advise people to remove legally set leghold traps. It wouldn't be a smart thing to do. What we're asking them to do is remove illegally set traps. Our guess is most of them are illegal," said Patricia Feral, the organization's Connecticut director.

Game laws require all leghold traps to have the owner's name on them and they must be placed underwater or in an animal's burrow.

A spokesman for trappers questioned the new campaign, which will begin next Saturday, when the season opens.

"They're setting up a vigilante group. Vigilantes in any situation are not good. They don't know enough and they tend to break the law themselves," said Robert Crook of Madison, a member and former president of the Connecticut Trappers Association, which has about 800 members.

"I wouldn't object to anybody coming out and checking my traps, as long as they had the permission of the landowner, and as long as they didn't steal them, set them off or take animals out. But I really don't think that's their responsibility," Crook added.

He said the state Department of Environmental Protection is responsible

for seeing that trapping is conducted legally and that he understood the group was told by DEP not to remove illegal traps but instead to report them to a game warden.

Ms. Feral said a trapper's name legally can be placed anywhere on a trap, so members would have to trip them to check. She said members would not be advised to reset legal traps.

"DEP can read the riot act to me if it wishes. But no way will we aid the trapper. Our object is to get rid of the leghold trap," she said.

The organization has argued that the trap, which has two steel jaws that slam shut when an animal touches a piece of bait, is barbaric because some animals die slowly or are left crippled. Ms. Feral said domestic animals also have been caught in the traps. There are other traps available that are more humane, she said.

Crook estimated that there are 8,000 trappers in Connecticut, with the average trapper placing 50 or 100 traps in the wild.

The most commonly trapped animal in the state is the muskrat, which can yield a pelt that will fetch up to \$8. Raccoon, fox, mink, opossum, weasel, skunk and beaver also can be trapped legally, though the season for some of those animals does not begin until later.

Friends of Animals, which is based in New York, has waged other campaigns against hunters. Some members went into the Connecticut woods recently to play recorded wolf howls to alert animals of danger when the deer hunting season opened.

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# The Force Behind 'Friends of Animals'

## Alice Herrington Raises the Hackles of Sportsmen in Her War on Hunting

By R. J. NEILSON  
Ort Staff Writer



Alice Herrington

Whether Alice Herrington is right or wrong, she is anything but a bore. As founder and president of Friends of Animals (FOA), Herrington arouses strong feelings among sportsmen and others in her crusade against hunting.

Herrington, who lives with eight cats in Little Silver, N.J., founded FOA in 1957 to try to reduce the numbers of stray dogs and cats. And that is still the major purpose of the organization, she said.

But the group's chief claim to fame is Herrington's verbal bouts with hunters and trappers.

"To call this a sport is just pure nonsense," she said about hunting. "It's a real cruelty. It can't be justified."

IN HERRINGTON'S view, the only people worse than hunters are trappers.

"Deer hunters are not nearly as bad as trappers," she said. "I can't imagine how hunters, who pride themselves on fine shooting, ally themselves with trappers, who practice sadism. Deer hunters are due a little credit for at least the speed of their kill."

Despite the fireworks that FOA ignites with its "full program of hunting and trapping disruption," Herrington wants to convince the public that there "are two cruelties."

Besides the killing of "free animals, which are called wildlife," she explained, she's concerned about man's treatment of all domesticated animals—including pets and livestock.

"It's an American syndrome to love kittens and puppies but then throw out dogs and cats," she said, adding that millions of dogs are killed "in American municipal dog pounds, but they were loved as puppies."

In 1970, Herrington organized low-cost spaying programs for 20,000 animals. By 1980, the number had risen to 60,000.

Last September in Neptune, N.J., she opened a low-cost spaying clinic, said to be "a model of its kind with room for 60 animals and two veterinarians." Across the nation, her group pays for part of the cost of spaying in cooperation with 750 participating veterinarians.

ONE OF the prime targets of Herrington and the FOA is the food business.

"Cruelty to animals is practiced on a larger scale by the food industry than by any other single sector of human activity," an FOA publication asserts.

And Herrington adds:

"If people want to support an industry that is destroying the land, then they can continue to eat these creatures. But if not they can eat vegetables."

Other institutions also are criticized by

FOA, including zoos.

"Zoos must be phased out," said an FOA publication.

Herrington's concern for animals was heightened when she returned to the United States in 1954. Working as a War Department statistician, she had seen relatively few animals running loose in Europe.

In the United States, she said, "I was shocked to find stray animals everywhere."

HERRINGTON, a graduate of the University of Wisconsin in Madison, put her statistical talents to work calculating the rate of increase of dogs and cats. She said she realized that cutting the prolific birthrate was the only long-range solution.

This realization led to the founding of FOA, which worked with volunteers until 1967. Now the group has 12 full-time employees.

Herrington was asked whether she would advise FOA members to take traps that were legally set.

"Yes! Why not? Certainly," she said.

But wouldn't the "solution" be stealing?

"You could say that it's stealing if you like," she replied, "but the Robin Hood approach to life is still a very nice way to go."

T. J. ...  
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ALASKA TRAPPERS ASSOCIATION

P.O. Box 82177  
Fairbanks, Alaska 99708

Feb. 1, 1991

Sen. Steve Frank  
Box V  
Juneau, AK 99811

Dear Steve,

The Alaska Trappers Association gives its whole hearted support to Senate Bill 38.

As a statewide trappers organization we have seen a need for an anti harassment law and have always supported the concept. Any help we can give you in the passage of this bill will be rendered if at all possible.

Sincerely,

A. Roy W. Shur  
Vice Pres. Alaska  
Trappers Ass.

See Adam - Show me a problem.

Francis - To prevent problem before it occurs

Adam - may want to add ANILCA -

allows  
Creates arrest by officer for misdemeanor w/o a warrant -

Walford - Wants commercial fishing matter to be "legal & customary" -

Dept of law has no position on policy -

Walford - Competition Between Hunters -

Sec 2 -

competition between hunters would be simple to fake.

Publ is 'softy' opposes "customary practice" language for violation -

This section does not apply to any activity constituting lawful competition between hunter, fisherman or trappers.

not apply  
E - "lawful competition practice <sup>among</sup> ~~by~~ people engaged in hunting, fishing and trapping" -  
This is adopted. Passed Indiv Rec.

Francis - Line 7 - a) 1)

Being in a location which alters the feasibility etc -

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STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB #39

Revision Date: \_\_\_\_\_ Department Affected: AK Permanent Fund Corporati  
Title: An Act relating to the permanent BRU: AK Permanent Fund Corporation  
fund and the Alaska Permanent Fund Corp. Component: #109 AK Permanent Fund Corporation

Sponsor: Senator Pourchot

Requestor: \_\_\_\_\_

COMPONENT SERIAL NO.

0	1	0	9
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Jim Kelly, Research & Liaison Officer

Phone: 907/465-2047

Division: AK Permanent Fund Corporation

Date: 1/31/91

Approved by Commissioner: \_\_\_\_\_

Agency: Alaska Permanent Fund Corporation

Date: 1/31/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB 39

Revision Date: 8-Feb-91 Department Affected: Natural Resources  
 Title: Permanent Fund Technical BRU: Management & Administration  
 Revision: \_\_\_\_\_ Components: Administrative Services  
 Sponsor: Senator Pourchot  
 Requestor: Senate Labor & Commerce COMPONENT SERIAL NO. 424

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
CTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

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

Prepared by: Sharon Barton Phone: 465-2400  
 Division: Management and Administration Date: 8-Feb-91

Approved by Commissioner: HB Harold Heinze Date: 8-Feb-91  
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

# ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE,  
CO-CHAIR



Senator Pat Pourchot

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**SB 39: Technical Changes to Permanent Fund statutes  
presented to Senate Labor and Commerce Committee  
February 11, 1991**

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- A. SB 39 with sponsor notes
- B. Pourchot SB 39 Summary
- C. SB 39 Fiscal Note
- D. SB 39 Sectional Analysis
- E. Sponsor Amendments  
(with copies of affected statutes)
- F. Page 13 from the "Report of the commission on the  
Future of the Permanent Fund"; Clean Up the Statutory  
Language
- G. Page 10 from the Division of Policy report,  
"Permanent Fund Policy Issues"; Maximizing Deposits
- H. Pages 14 and 15 from the Division of Policy report,  
"Permanent Fund Policy Issues"; Treatment of Royalty  
Litigation Interest Earnings