

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

May 1, 2007

9:03 a.m.

MEMBERS PRESENT

Senator Lesil McGuire, Chair
Senator Gary Stevens, Vice Chair
Senator Hollis French
Senator Lyda Green
Senator Con Bunde

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 146

"An Act relating to the issuance of shares of professional corporations to a trust, to trusts, to trustees, to the removal of a trustee, to the compensation of a trustee and a person employed by a trustee, to a trustee's accepting or rejecting a trusteeship, to co-trustees, to a vacancy in a trusteeship, to the resignation of a trustee, to delivery of trust property by former trustees, to the reimbursement of trustee expenses, to the certification of a trust, to the suitability of a trustee, to the place of administration of a trust, to a trustee's power to appoint property to another trust, to a change of the percentage of trust property to be considered principal, to the determination of the value of a trust, and to a settlor's intent when transferring property in trust; amending Rules 54 and 82, Alaska Rules of Civil Procedure; and providing for an effective date."

MOVED CSSB 146(STA) OUT OF COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 15(STA)

Supporting the passage of a Filipino Veterans Equity Act and a Filipino Veterans Family Reunification Act.

MOVED CSHJR 15(STA) OUT OF COMMITTEE

SENATE BILL NO. 148

"An Act relating to motor vehicle registration plates and fees for Purple Heart recipients and Medal of Honor recipients; and providing for an effective date."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 146

SHORT TITLE: TRUSTS

SPONSOR(S): STATE AFFAIRS

03/28/07 (S) READ THE FIRST TIME - REFERRALS
03/28/07 (S) STA, JUD, FIN
05/01/07 (S) STA AT 9:00 AM BELTZ 211

BILL: HJR 15

SHORT TITLE: WW II FILIPINO VETS: BENEFITS/IMMIGRATION

SPONSOR(S): REPRESENTATIVE(S) LEDOUX

03/29/07 (H) READ THE FIRST TIME - REFERRALS
03/29/07 (H) MLV, STA
04/03/07 (H) MLV REFERRAL WAIVED
04/10/07 (H) STA AT 8:00 AM CAPITOL 106
04/10/07 (H) Moved CSHJR 15(STA) Out of Committee
04/10/07 (H) MINUTE(STA)
04/11/07 (H) STA RPT CS(STA) 7DP
04/11/07 (H) DP: JOHNSON, JOHANSEN, GRUENBERG, DOLL,
COGHILL, ROSES, LYNN
04/13/07 (H) TRANSMITTED TO (S)
04/13/07 (H) VERSION: CSHJR 15(STA)
04/16/07 (S) READ THE FIRST TIME - REFERRALS
04/16/07 (S) STA
05/01/07 (S) STA AT 9:00 AM BELTZ 211

WITNESS REGISTER

MARIT CARLSON VAN DORT, Staff
to Senator Lesil McGuire
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 146 on behalf of Senator McGuire, sponsor.

DOUGLAS BLATTMACHR, President
Alaska Trust Company
Anchorage, Alaska

POSITION STATEMENT: Supports SB 146.

DAVE SHAFTEL, Attorney
Tax and Estate Planning
Anchorage, Alaska

POSITION STATEMENT: Supports SB 146.

STEVEN GREER, Attorney
Anchorage, Alaska

POSITION STATEMENT: Supports SB 146.

CHRISTINE MARASIGAN, Staff
to Representative Gabrielle LeDoux
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HJR 15 on behalf of Representative LeDoux, sponsor.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the Senate State Affairs Committee meeting to order at [9:03:06 AM](#). Senators McGuire, Green, Stevens, and Bunde were present at the call to order. Senator French arrived soon thereafter.

SB 146 - TRUSTS

[9:03:39 AM](#)

CHAIR MCGUIRE announced consideration of SB 146.

MARIT CARLSON VAN DORT, Staff to Senator McGuire, sponsor of SB 146, said Alaska has become one of the leading jurisdictions in the country for trust administration and financial planning. With that charge is the responsibility to constantly fine tune the state's trust laws to remain competitive with other states that have progressive trust legislation. Local banking institutions have benefited from over 50 million dollars of additional deposits because of Alaska's trust legislation as well as increased business for trust companies, life insurance agents, stock brokers, accountants, and attorneys. The state also collects two million dollars of direct annual revenue. This bill establishes provisions in current trust legislation that will keep Alaska on the cutting edge of trust law in the United States making them more user-friendly, and keeping litigation to a minimum.

[9:07:17 AM](#)

DOUGLAS BLATTMACHR, President, Alaska Trust Company, testified that he has been working to improve trust legislation in Alaska since it was first established in 1997. Other states such as Delaware, South Dakota, Rhode Island, Nevada, and Utah have copied most of what Alaska has done. Thousands of Alaskans have

taken advantage of pieces of this legislation. He said good trust legislation will continue to keep attracting business to Alaska.

[9:08:46 AM](#)

SENATOR BUNDE asked for clarification on the ability to change the value of income.

MR. BLATTMACHR replied that provision is primarily for a charitable trust that will go on in perpetuity. Most of these types of trusts provide that the charity gets the income from the trust and therefore the only thing the charity can do is invest in bonds which limits growth. A few years ago the statute changed to allow the trustee to change the income payment to a uni-trust payment which would be a percentage of value of the trust. For example the charitable trust would get four percent of the value. That means they can invest for growth. As the trust fund grows the charity will get more money and there will be more money there for the charity in the future.

SENATOR BUNDE said this is a "POIMB" concept.

MR. BLATTMACHR agreed.

[9:09:47 AM](#)

SENATOR FRENCH asked which section of the bill the value of income change applies to.

MR. BLATTMACHR said it was addressed in section 12. CHAIR MCGUIRE added that section 12 refers to AS 13.38.460(a).

SENATOR STEVENS, referring to section 7, asked Mr. Blattmachr to comment on how quickly a trustee could be removed.

[9:10:44 AM](#)

MR. BLATTMACHR said typically if there is no provision in the trust document, a person must go to court to remove a trustee. The bill sets forth guidelines for removing a trustee, so it could shorten the time it takes for removal and avoid court action.

[9:11:35 AM](#)

CHAIR MCGUIRE asked to hear further testimony from attorneys present on the question asked by Senator Stevens.

DAVE SHAFTEL, private attorney in tax and estate planning, Anchorage, replied that section 7 is a default provision.

Default provisions are meant to fill in the gaps for inadequate trusts. Many trusts that are drafted by either clients themselves or by attorneys who don't work in the trust area may be inadequate. The provision provides that a trust protector can immediately remove a trustee that is not performing adequately or is guilty of malfeasance. The provision does speed up the process considerably and provides a number of different methods for removing a trustee. Without this provision, attorneys can only rely on case law, and if there is ambiguity in the case law it can take much longer.

MR. SHAFTEL said in general, this is an important and substantive bill for filling in trust and estate law covering a variety of subjects that were previously absent from state statutes. He urges its passage.

[9:14:46 AM](#)

SENATOR BUNDE, referring to previous testimony about Alaska remaining competitive with other states, thought there could be a point of diminishing returns. He is concerned about taking action in an attempt to remain competitive that would be less than optimum for the trustee.

MR. BLATTMACHR said that is not the case. He supports legislation that is good for all parties involved, but primarily is helpful to the beneficiaries of the trust.

SENATOR STEVENS asked Mr. Shaftel for clarification of provisions in Section 7. For example, if Senator Stevens wrote his own trust document without language for removal of a trustee, would the provisions in this bill then be in effect on his trust?

[9:17:02 AM](#)

MR. SHAFTEL answered yes, that's what is meant by default provisions. If there was no language in the trust document covering this subject, then the provision in this bill would apply.

CHAIR MCGUIRE asked Mr. Shaftel to give an example where this provision might be important.

[9:17:51 AM](#)

MR. SHAFTEL began with Senator Stevens' example whereby he creates a trust and outlines in it something that is important to him. For example, he creates a trust for the benefit of his children with the assets to be used for their education, and

when they get to the age of 30 if there is anything left over it is distributed to them. The trust may be bare bones and not include any of the administrative provisions that specialists who work in this area would include. If a client consulted an attorney they would be asked how they wanted to handle various situations such as removal, resignation, or compensation of a trustee. These questions would be reviewed with the client and provisions would be drafted to address the client's desires. In Senator Stevens hypothetical trust none of those provisions would be in place so the legislation would fill out the trust document eliminating the need to go to court and ask a judge to come up with an answer. It would also apply to someone who wants to move their trust from outside the state to Alaska. If those trusts were inadequate, these provisions would fill in for those as well.

9:21:03 AM

SENATOR FRENCH asked for an explanation of paragraphs (d), (e), (f), (g), and (h) of Sec. 13.36.079 on pages 9 and 10.

9:22:00 AM

MR. BLATTMACHR said many times a lending institution would like to know if there is a trust in existence, but the person may not want the institution to know the disposit provisions. These sections say that the trustee can give a lending institution a certification that a trust exists and the institution must rely on that information.

SENATOR FRENCH said he is confused about paragraphs (f) and (g) and asked for further clarification.

9:23:39 AM

MR. SHAFTEL said paragraph (f) is designed to allow a party to provide a financial institution certain portions of information relating to the trust document so the financial institution can be certain that the trust exists and that they are dealing with the trustees. They can then proceed for example, with a payment from an account and not be responsible for making a mistake because they don't have the full trust document. Many settlors don't want to give the full trust document because it may contain personal information they don't want to share. The financial institution may have a portion of the trust instrument but not enough to determine that the certification may be erroneous. Under subsection (g), a firm reasonably relying on a certification can proceed to collect their fees even if the certification was incorrect.

[9:29:01 AM](#)

SENATOR FRENCH said he sees the logic except when looking at lines 26-28 on page 9. He understands not impugning knowledge if the person does not have the crucial part of the trust, but if they hold the entire trust it is difficult to absolve them of any knowledge.

MR. SHAFTEL said the point is well taken, and that sentence should be clarified. Perhaps the committee should strike the words "all or" on page 9, line 27.

[9:30:08 AM](#)

SENATOR FRENCH said the bill is going to the Judiciary Committee and it can be worked on there. He wants to flag that as an area of concern.

SENATOR BUNDE said since 1997 there have been 15 bills addressing this topic. He asked if this will take care of it or will something new come up in the trust area next year.

MR. SHAFTEL said when he started practicing law in this area Alaska's trust statutes were very bare. The Uniform Probate Code was about all that existed. The statutes being proposed such as this one are not novel or risky. They simplify and clarify, and provide for ease of administration of estates and trusts. Other bills may well be seen in the future that will improve this area of the law tremendously. The result will be good, solid estate law for Alaska residents and for those considering transferring their business here.

[9:34:19 AM](#)

SENATOR BUNDE said he is encouraged to hear that the law is solid. He asked if this is an evolving area of the law or if it is settled.

MR. SHAFTEL replied some areas of trust and estate law go back to old English common law so that's pretty settled, but because trust and estate laws are so dependent on taxation and the principles go so far back, they sometimes need to be modernized. As tax law changes there are modifications that are appropriate. There will be continuing change for the good.

[9:36:52 AM](#)

SENATOR BUNDE asked if there is opposition to the bill.

MR. BLATTMACHR answered he is not aware of any opposition.

CHAIR MCGUIRE moved to amend SB 146 striking the words "all or" on page 9, line 27. Hearing no objections, Amendment 1 carried.

STEVE GREER, Attorney, said this bill is just catching up with the laws of other states. These provisions fill in the blanks when the trust document doesn't articulate how certain matters should be resolved. Beth Chapman, the primary draftsman of this bill, took most of these provisions from uniform trust code that was passed by the National Commission on Uniform State Laws. This is good legislation and he strongly urges its passage.

CHAIR MCGUIRE closed public testimony on SB 146.

[9:39:07 AM](#)

CHAIR MCGUIRE said this bill is on the House floor today and she would like to move the bill on to Judiciary Committee. She thanked all the parties involved for their contributions bringing the bill before the legislature.

SENATOR GREEN moved to report SB 146, as amended, from committee with individual recommendations and accompanying zero fiscal note. Hearing no objections, CSSB 146(STA) moved from committee.

HJR 15 - WW II FILIPINO VETS: BENEFITS/IMMIGRATION

[9:40:22 AM](#)

CHAIR MCGUIRE announced consideration of HJR 15. [Before the committee was CSHJR 15(STA).]

CHRISTINE MARASIGAN, Staff to Representative Gabrielle LeDoux, sponsor, said HJR15 supports the passage of the Filipino Veterans Equity and Filipino Veterans Family Reunification Acts that are currently in Congress. The bills reinstate the benefits that were promised to Filipino World War II veterans that were rescinded in 1946. It also allows families of immigrated veterans into the United States beyond the current immigration policy quota.

[9:41:32 AM](#)

REPRESENTATIVE GABRIELLE LEDOUX, Sponsor of HJR 15, encouraged passage of the bill out of committee.

CHAIR MCGUIRE closed public testimony.

SENATOR FRENCH moved to report CSHJR 15(STA) from committee with individual recommendations. Hearing no objections, the motion carried.

CHAIR MCGUIRE adjourned the committee at [9:42:47 AM](#).