

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

April 14, 2010

1:06 p.m.

**MEMBERS PRESENT**

Representative Jay Ramras, Chair  
Representative Carl Gatto  
Representative Bob Herron  
Representative Bob Lynn  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Nancy Dahlstrom, Vice Chair  
Representative Lindsey Holmes

**COMMITTEE CALENDAR**

**SENATE BILL NO. 244**

"An Act providing that, during the governor's term of office, the duty station of the governor is Juneau, and prohibiting payment of certain travel allowances for use of the governor's personal residence."

- RESCINDED ACTION OF 4/12/10; MOVED SB 244  
OUT OF COMMITTEE

**COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 63(JUD)**

"An Act relating to transfer restrictions on trust interests."

- MOVED CSSB 63(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 244

SHORT TITLE: GOVERNOR'S DUTY STATION/TRAVEL ALLOWANCES

SPONSOR(S): SENATOR(S) STEDMAN

01/29/10	(S)	READ THE FIRST TIME - REFERRALS
01/29/10	(S)	STA, JUD
02/11/10	(S)	STA AT 9:00 AM BELTZ 105 (TSBldg)
02/11/10	(S)	Moved SB 244 Out of Committee
02/11/10	(S)	MINUTE(STA)
02/12/10	(S)	STA RPT 4DP
02/12/10	(S)	DP: MENARD, PASKVAN, MEYER, FRENCH

02/24/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 02/24/10 (S) <Bill Hearing Postponed>  
 03/01/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 03/01/10 (S) Heard & Held  
 03/01/10 (S) MINUTE(JUD)  
 03/15/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 03/15/10 (S) Moved SB 244 Out of Committee  
 03/15/10 (S) MINUTE(JUD)  
 03/16/10 (S) JUD RPT 3DP 2NR  
 03/16/10 (S) DP: FRENCH, COGHILL, EGAN  
 03/16/10 (S) NR: WIELECHOWSKI, MCGUIRE  
 03/18/10 (S) TRANSMITTED TO (H)  
 03/18/10 (S) VERSION: SB 244  
 03/19/10 (H) READ THE FIRST TIME - REFERRALS  
 03/19/10 (H) STA, JUD  
 04/01/10 (H) STA AT 8:00 AM CAPITOL 106  
 04/01/10 (H) Scheduled But Not Heard  
 04/06/10 (H) STA AT 8:00 AM CAPITOL 106  
 04/06/10 (H) Scheduled But Not Heard  
 04/08/10 (H) STA AT 8:00 AM CAPITOL 106  
 04/08/10 (H) Moved HCS SB 244(STA) Out of Committee  
 04/08/10 (H) MINUTE(STA)  
 04/09/10 (H) STA RPT HCS(STA) NT 5DP 1DNP 1NR  
 04/09/10 (H) DP: SEATON, GRUENBERG, P.WILSON,  
 PETERSEN, LYNN  
 04/09/10 (H) DNP: GATTO  
 04/09/10 (H) NR: JOHNSON  
 04/09/10 (H) JUD AT 1:00 PM CAPITOL 120  
 04/09/10 (H) <Bill Hearing Canceled>  
 04/10/10 (H) JUD AT 10:00 AM CAPITOL 120  
 04/10/10 (H) <Bill Hearing Canceled>  
 04/12/10 (H) JUD AT 1:00 PM CAPITOL 120  
 04/12/10 (H) Moved HCS SB 244(JUD) Out of Committee  
 04/12/10 (H) MINUTE(JUD)  
 04/14/10 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 63

SHORT TITLE: TRANSFER RESTRICTIONS ON TRUSTS

SPONSOR(S): SENATOR(S) MCGUIRE

01/21/09 (S) PREFILE RELEASED 1/16/09  
 01/21/09 (S) READ THE FIRST TIME - REFERRALS  
 01/21/09 (S) STA, JUD, FIN  
 02/04/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)  
 02/04/10 (S) Heard & Held  
 02/04/10 (S) MINUTE(STA)  
 03/11/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)

03/11/10 (S) Moved CSSB 63(STA) Out of Committee  
 03/11/10 (S) MINUTE(STA)  
 03/12/10 (S) STA RPT CS 2DP 3NR SAME TITLE  
 03/12/10 (S) DP: MENARD, MEYER  
 03/12/10 (S) NR: FRENCH, PASKVAN, KOOKESH  
 03/24/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 03/24/10 (S) Heard & Held  
 03/24/10 (S) MINUTE(JUD)  
 03/29/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 03/29/10 (S) Moved CSSB 63(JUD) Out of Committee  
 03/29/10 (S) MINUTE(JUD)  
 03/30/10 (S) JUD RPT CS 2DP 3NR SAME TITLE  
 03/30/10 (S) DP: EGAN, MCGUIRE  
 03/30/10 (S) NR: FRENCH, COGHILL, WIELECHOWSKI  
 04/07/10 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 04/07/10 (S) Heard & Held  
 04/07/10 (S) MINUTE(FIN)  
 04/09/10 (S) FIN AT 1:30 PM SENATE FINANCE 532  
 04/09/10 (S) Moved CSSB 63(JUD) Out of Committee  
 04/09/10 (S) MINUTE(FIN)  
 04/10/10 (S) FIN RPT CS(JUD) 6DP 1NR  
 04/10/10 (S) DP: HOFFMAN, STEDMAN, HUGGINS, THOMAS,  
 EGAN, ELLIS  
 04/10/10 (S) NR: OLSON  
 04/13/10 (S) TRANSMITTED TO (H)  
 04/13/10 (S) VERSION: CSSB 63(JUD)  
 04/13/10 (H) READ THE FIRST TIME - REFERRALS  
 04/13/10 (H) JUD  
 04/14/10 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

ESTHER CHA, Staff  
 Senator Lesil McGuire  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Presented SB 63 on behalf of the bill sponsor, Senator Lesil McGuire.

JAN TEMPEL, Senior Trust Officer  
 Alaska USA Trust Company  
 Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 63.

DOUGLAS BLATTMACHR, President & CEO  
 Alaska Trust Company  
 Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 63.

RICHARD HOMPESCH, Attorney  
Hompesch & Evans  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified during discussion of SB 63.

**ACTION NARRATIVE**

[1:06:41 PM](#)

**CHAIR JAY RAMRAS** called the House Judiciary Standing Committee meeting to order at 1:06 p.m. Representatives Ramras, Herron, Gatto, and Lynn were present at the call to order. Representative Gruenberg arrived as the meeting was in progress.

**SB 244 - GOVERNOR'S DUTY STATION/TRAVEL ALLOWANCES**

[1:06:51 PM](#)

CHAIR RAMRAS announced that the first order of business would be SENATE BILL NO. 244, "An Act providing that, during the governor's term of office, the duty station of the governor is Juneau, and prohibiting payment of certain travel allowances for use of the governor's personal residence." [HCS SB 244(STA), as amended, was moved from committee on 4/12/10.]

CHAIR RAMRAS explained that the committee had adopted an amendment to HCS SB 244(STA) on April 12, 2010. [The amendment had returned the bill to its original version, SB 244, 26-LS1322\P.]

[1:08:07 PM](#)

REPRESENTATIVE HERRON made a motion to rescind the committee's action on 4/12/10 in reporting HCS SB 244(JUD) [HCS SB 244(STA) as amended on 4/12/10] from committee. There being no objection, it was so ordered.

[1:08:32 PM](#)

REPRESENTATIVE HERRON then moved to adopt SB 244, Version 26-LS1322\P, as the work draft. There being no objection, SB 244, Version P, was before the committee.

[1:08:48 PM](#)

REPRESENTATIVE HERRON moved to report SB 244, Version 26-LS1322\P, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, SB 244 was reported from the House Judiciary Standing Committee.

**SB 63 - TRANSFER RESTRICTIONS ON TRUSTS**

[1:09:13 PM](#)

CHAIR RAMRAS announced that the final order of business would be CS FOR SENATE BILL NO. 63(JUD), "An Act relating to transfer restrictions on trust interests."

CHAIR RAMRAS noted that SB 63 is the companion bill to HB 146, which had been moved from the House Judiciary Standing Committee on February 3, 2010.

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ESTHER CHA, Staff, Senator Lesil McGuire, Alaska State Legislature, pointed out that trust and estate planning is highly competitive. She explained that SB 63 pertains to irrevocable trusts, designation of a discretionary beneficiary, and spendthrift clauses to protect the assets from the settlor's creditors. In trusts, there are three parties: the settlor, also known as the trust maker, grantor or testitor; the trustee, which can be an individual or institution; and the beneficiaries. The settlor designates whether a beneficiary is discretionary, which means the payment of distributions is determined on the discretion of the trustee, instead of the settlor. With discretionary beneficiaries, trustees may be given standards for exercising discretion. She offered as an example, the Health, Education, Maintenance and Support (HEMS) standard. She detailed that a spendthrift provision protects the trustee from paying directly to a creditor until the trustee has paid the distribution to the beneficiary. She pointed out that Alaska, in 1997, established that trusts would be protected from a settlor's creditors, if he has established himself as a discretionary beneficiary. She noted that 12 other states allow this type of trust.

MS. CHA, in response to a question, offered her belief that Alaska had developed this statute. She directed attention to the Committee Substitute (CS) for SB 63(JUD) which she declared would upgrade Alaska's trust statute and would clarify the burden of proof for a creditor that a transfer was made with the intent to defraud. It also "provides that a transfer

restriction on a beneficiary's trust interest is enforceable even if the settlor has certain listed powers relating to the appointment, removal, and replacement of a trustee, trust protector, or an advisor." She clarified that "a spendthrift provision will apply to a trust if distributions are made under the exercise of discretion by a trustee who is not the settlor." She detailed that the "spendthrift provision in a trust will apply even though the trustee may distribute income or principal to the settlor to pay income tax."

REPRESENTATIVE GRUENBERG asked about any differences between CSSB 63(JUD) and CSHB 146(JUD).

MS. CHA replied that these are not identical. She explained that the Senate Judiciary Standing Committee had removed language from Section 1.

REPRESENTATIVE GRUENBERG specifically requested to affirm that Section 3, which had been removed from CSHB 146(JUD), had not been reinserted.

MS. CHAIR said that the aforementioned Section 3 was removed, and in response to the earlier request by Representative Gruenberg, explained the differences of the two bills, noting that there were not any substantial changes. Referring to CSSB 63(JUD), page 2, lines 5-7, she pointed out that language conflicting with the concept of the section had been removed and placed in Section 3, beginning on page 3, line 15. She responded that this was not a substantive change. She directed attention to CSHB 146(JUD), page 3, lines 1-14, subsections (e) and (f), and shared that both of these subsections had also been moved to Section 3 of CSSB 63(JUD), with no substantive changes.

[1:16:02 PM](#)

JAN TEMPEL, Senior Trust Officer, Alaska USA Trust Company, declared that her company is the trustee for both Alaska residents and nonresidents who have trusts in Alaska. Alaska is at the forefront of trust law, and she stated how important it was for her company and the rest of the state that the trust laws be up to date. She stated her support for SB 63.

MS. TEMPEL, in response to a question from Chair Ramras, relayed that her company administered more than \$7 billion in assets, though the majority of this is unrelated to these types of trusts. She estimated that her company has 200-250 of these trusts, and that the majority are from out of state, as a result

of Alaska's trust laws. She reiterated that it is important for Alaska to stay in the forefront of the trust laws. In response, she noted that Alaska USA Trust Company is located in Anchorage, and although a wholly owned subsidiary of Alaska USA Federal Credit Union, it is a separate corporation.

MS. TEMPEL, in response to Representative Gatto, pointed out that companies which offer deeply discounted trusts and wills are usually referring to revocable living trusts, which are a completely different trust than what is addressed by SB 63. She opined that the Alaska trusts are generally for those that have more assets, and interested in more complex estate planning for family members and future generations.

REPRESENTATIVE GRUENBERG, noting that the general standard for proving fraud required clear and convincing evidence from the creditor, asked if Title 9 requires this same standard.

MS. TEMPEL, in response, offered her belief that this was the usual standard, and that this was added to SB 63 for conformity.

REPRESENTATIVE GRUENBERG asked if SB 63 created any more difficulty for the collection of child support through these trusts.

MS. TEMPEL replied that SB 63 would not protect the trust assets if child support is already owed and she opined that SB 63 would not make any difference to the existing law. She offered her belief that the provision for "clear and convincing evidence" was not adding anything new, but simply clarifying what was already in Alaska law.

[1:26:11 PM](#)

DOUGLAS BLATTMACHR, President & CEO, Alaska Trust Company, stated his support for SB 63. He declared that Alaska is the premier jurisdiction for financial and estate planning. He estimated that more than 10,000 Alaskans have taken advantage of Alaska's trust laws, and that it creates additional jobs and additional revenue for the state.

REPRESENTATIVE GRUENBERG asked if there is anything in SB 63 to create additional difficulty for the collection of unpaid child support.

[1:28:14 PM](#)

RICHARD HOMPESCH, Attorney, Hompesch & Evans, in response to a question from Representative Gruenberg, said that if the settlor of a trust owes child support, the trust cannot be set up under Alaska law. Each settlor is required to sign a statement that they are not in arrears for child support.

REPRESENTATIVE GRUENBERG asked if this is the same when a beneficiary owes child support.

MR. HOMPESCH said that the bill doesn't change the law with respect to child support owed by a beneficiary of a trust.

REPRESENTATIVE GRUENBERG asked whether the settlor or beneficiary could shield their money from future child support obligations.

MR. HOMPESCH said that he did not know of any way that a beneficiary can shield any assets through a trust, as the beneficiary only asks distributions from the trust.

REPRESENTATIVE GRUENBERG asked if a settlor could take money to set up a trust to protect the beneficiary from paying future child support from those trust assets.

MR. HOMPESCH replied that if a beneficiary of a trust has child support obligations, those trust assets could be shielded.

REPRESENTATIVE GRUENBERG opined that SB 63 did not include any further protection for a recipient of child support.

MR. HOMPESCH agreed.

[1:31:39 PM](#)

REPRESENTATIVE GRUENBERG, offering a hypothetical example that he owed child support, asked whether he could put all his money in a trust so that the obligee could not get any of the money. He asked if SB 63 offers any enhancement to his ability to shield the money from future child support payment.

MR. HOMPESCH replied that Section 1 of the bill speaks to the issue of intent to defraud a creditor.

The committee took a brief at-ease.

REPRESENTATIVE GRUENBERG asked if there was any other protection beyond clear and convincing evidence.

MR. HOMPESCH said that there was none other than that listed in Section 1, subsection (b)(1).

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on SB 63.

[1:34:02 PM](#)

REPRESENTATIVE HERRON moved to report CSSB 63(JUD) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 63(JUD) was reported from the House Judiciary Standing Committee.

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#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 1:34 p.m.