

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

February 4, 2010

9:01 a.m.

MEMBERS PRESENT

Senator Linda Menard, Chair
Senator Kevin Meyer, Vice Chair
Senator Hollis French
Senator Albert Kookesh
Senator Joe Paskvan

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 216

"An Act relating to grants to victims of a disaster in this state; and providing for an effective date."

MOVED SB 216 OUT OF COMMITTEE

SENATE BILL NO. 217

"An Act relating to the issuance of state-guaranteed revenue bonds by the Alaska Housing Finance Corporation to finance mortgages for qualifying veterans; and providing for an effective date."

MOVED SB 217 OUT OF COMMITTEE

SENATE BILL NO. 63

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

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 216

SHORT TITLE: GRANTS TO DISASTER VICTIMS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/19/10	(S)	READ THE FIRST TIME - REFERRALS
01/19/10	(S)	STA, FIN

02/04/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)

BILL: SB 217

SHORT TITLE: GUARANTEED REVENUE BONDS FOR VETERANS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/19/10 (S) READ THE FIRST TIME - REFERRALS

01/19/10 (S) STA, FIN

02/04/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)

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)

WITNESS REGISTER

MCHUGH PIERRE, Deputy Commissioner
Department of Military and Veterans Affairs (DMVA)
Ft. Richardson, AK

POSITION STATEMENT: Provided information for SB 216.

MIKE O'HARE, Deputy Director
Division of Homeland Security and Emergency Management
Department of Military & Veterans Affairs (DMVA)
Ft. Richardson, AK

POSITION STATEMENT: Provided information for SB 216.

DAN FAUSKE, CEO
Alaska Housing Finance Corporation (AHFC)
Anchorage, AK

POSITION STATEMENT: Provided information for SB 217.

JOE DUBLER, CFO and Finance Director
Alaska Housing Finance Corporation (AHFC)
Anchorage, AK

POSITION STATEMENT: Provided information for SB 217.

BRYAN BUTCHER, Public Affairs Director
Alaska Housing Finance Corporation (AHFC)
Anchorage, AK

POSITION STATEMENT: Provided information for SB 217.

ESTHER CHA
Staff to Senator McGuire
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Presented SB 63.

DOUGLAS BLATTMACHR, President
Alaska Trust Company
Anchorage, AK

POSITION STATEMENT: Supported SB 63.

DAVID SHAFTEL
Shaftel Law Offices
Anchorage, AK

POSITION STATEMENT: Provided information for SB 63.

ACTION NARRATIVE

[9:01:47 AM](#)

CHAIR LINDA MENARD called the Senate State Affairs Standing Committee meeting to order at 9:01 a.m.

Present at the call to order were Senators French, Meyer, Paskvan, Kookesh and Menard.

SB 216-GRANTS TO DISASTER VICTIMS

[9:02:33 AM](#)

CHAIR MENARD announced the first order of business to come before the committee would be SB 216.

MCHUGH PIERRE, Deputy Commissioner, Department of Military and Veterans Affairs (DMVA), said that in addition to state disasters, two presidential disasters were declared in 2009: flooding on the Yukon and Kuskokwim Rivers and mudslides in Kodiak. He explained that the Legislature implemented Individual Assistance Grants in 1977 in the amount of \$5,000 which go to victims who have no other means of recovery, such as insurance or savings. Mr. Pierre felt that \$5,000 was an inadequate amount to help people get back on their feet during the 2009 disasters. He noted the purpose of the Individual Assistance Grant is not to make disaster victims whole again, but to help them start to recover. He felt the grant amount should be increased to half of the federal amount which is adjusted annually by the consumer price index; in 2009 it was \$30,300 and in 2010 it dropped to \$29,900. The proposed amount [for the Individual Assistance

Grants] was thus \$14,950 or half of the 2010 federal grant amount. He pointed out that \$14,950 would be a maximum and does not mean that every person would get that amount.

SENATOR PASKVAN asked how much more money would have been distributed in 2009 if the \$14,950 grant amount was in place. He asked what the rationale is for the 50 percent of the federal standard.

MIKE O'HARE, Deputy Director, Division of Homeland Security and Emergency Management, said that after the 2008 Tanana floods, a multi-agency task force considered the Individual Grant Program and modernization of disaster assistance according to the current economy. The task force included Homeland Security and Emergency Management, DMVA, Health and Social Services, Commerce Community Economic Development, [Department of] Labor, and the federal Department of Agriculture. The task force suggested increasing the grant amount to half of the Federal Individual Assistance amount, similarly allowing fluctuation with the consumer price index and the economy. Mr. O'Hare pointed out that the state is not an insurance company but does try to help [disaster victims] get some normalcy back, such as heating systems, subsistence tools or other appropriate, eligible costs. He stressed that the grants are not issued lightly but involve an intricate application process utilizing staff who go to the affected communities, set up disaster assistance centers, interview the victims and identify losses and proof of loss.

[9:08:35 AM](#)

MR. O'HARE said a mechanism is needed to increase the cap amount of the grant while allowing it to fluctuate with the economy.

MR. PIERRE explained that a presidential disaster is much larger than a state disaster and the grants should not be equal. He reported that the majority [of last year's disaster victims] were covered by, and received money from, the Federal Emergency Management Association (FEMA). A disaster victim can only receive money from either the federal or state program, not both. Only about 30 people received state Individual Assistance Grants during the Interior flooding.

MR. O'HARE said if all eligible state victims had been given the proposed maximum amount, it would have equated to \$600,000 to \$700,000. He felt that having provided eligible people with a \$5,000 check was nothing.

SENATOR KOOKESH asked how a person's eligibility for federal versus state funding is determined.

MR. O'HARE replied that a federal disaster declaration, requested by the Governor, considers the communities affected. In the 2009 flooding, the communities along the Kuskokwim River and other smaller communities with about 30 affected families were identified. The federal government approved the disaster declaration for the widespread Yukon Kuskokwim communities. Due to the lack of widespread damage in the other, smaller communities, those 30 individual affected families did not qualify for federal aid.

[9:10:51 AM](#)

CHAIR MENARD said she appreciated that the amount [of the Individual Assistance Grant] had not been looked at in 20 years and that the increased amount would be the maximum allowable grant.

SENATOR MEYER moved to report SB 216 from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

At Ease from 9:12 a.m. to 9:14 a.m.

SB 217-GUARANTEED REVENUE BONDS FOR VETERANS

[9:14:06 AM](#)

CHAIR MENARD stated that SB 217 would be the next order of business to come before the committee.

DAN FAUSKE, CEO, Alaska Housing Finance Corporation (AHFC,) said Alaska is one of five states authorized to issue veteran's mortgage bonds. These bonds are the only type that must be guaranteed by the state of Alaska, meaning the state would stand behind the bonds if any problems arose. These bonds must also be approved by the voters. The last vote, in 2002, passed by 70 or 72 percent and resulted in a \$500 million authorization, of which \$95 million is remaining. The veteran's mortgage bonds are some of AHFC's highest performing bonds; one of the indentures has a delinquency rate of 1.2 percent which is the lowest in the United States. He pointed out that Alaska has the highest per capita rate of veterans in the US. The bonds are federally tax exempt meaning about 100 basis points difference or 1 percent of interest. As of December, the veterans bonds were trading at about three-eighths of a point of interest below the conventional market. Bonds issued to date total \$2.6 billion and

bonds outstanding equal \$338 million and loans. All indentures included, delinquency is at 3.11 percent, which is very good. The veterans bonds have been very popular and very well performing and AHFC needs the legislature's permission to ask for voter approval, via the general election ballot in November, of an additional \$600 million of state guaranteed bonds to be issued by AHFC for the purchase of mortgage loans made to qualifying veterans.

[9:17:32 AM](#)

JOE DUBLER, CFO and Finance Director, AHFC, pointed out that SB 217 authorizes AHFC to go to the voters to obtain authorization; it does not authorize AHFC to issue the bonds.

SENATOR MEYER asked if this would go into the general election or the primary.

MR. FAUSKE replied the issue would go into the general election.

SENATOR PASKVAN asked if AHFC had done any analysis or had any problems with upside-down mortgages, particularly with the veterans program.

MR. FAUSKE said AHFC intentionally stayed out of mortgage-backed securities, zero interest loans and adjustable rate arms. Alaska did not experience a lot of spec buying and currently ranks 50th or 49th in delinquencies. The state has seen a slight increase in delinquencies and foreclosures but nothing causing great alarm. He said he has seen a slowdown in the industry during the last 14 months during the national financial crisis and attributed this to the federal government's bolstering of Fannie Mae and Freddy Mac, making money available for 1 and 2 percent which inhibited AHFC from entering the market. AHFC has seen a recovery and has been back in the market with one issuance several months ago of \$160 million, and now has an agreement on a new issue bond program with Fannie Mae guaranteeing AHFC \$193 million.

[9:20:03 AM](#)

MR. FAUSKE said the market in Alaska is very healthy; sales values have stayed level. He explained that some other states experienced worse financial crises followed by unemployment. The people that use these veterans bonds are employed and are in the military or retired with a pension. The delinquency and foreclosure rates are below national and statewide averages.

MR. DUBLER said that analyzing an existing loan is difficult because the current market value for every property in their portfolio would have to be determined and compared with the loan balance. Instead, AHFC keeps an eye on trends in the economy. He explained that the Alaskan economy has not seen a rapid decline in property values, which led to most of the lower 48 problems. He said AHFC doesn't allow people to take a second out on a mortgage loan where AHFC has the first, which would dilute it and cause problems.

[9:22:41 AM](#)

SENATOR PASKVAN said he understood that they were not doing an individual market analysis of a home.

SENATOR FRENCH asked if they loan 90 percent of the value of the house, not 100 percent.

MR. DUBLER said it depends on the type of loan. For a conventional loan it would be 80 percent. If a person has Veteran's Affairs (VA) insurance, AHFC will go up to the VA insurance limit of 95 percent. AHFC can go up to 97 percent on Federal Housing Association (FHA) loans that have loan guarantees that mitigate any loss AHFC could have on that property.

MR. FAUSKE said the only loan that AHFC offers at 100 percent is the Teacher Housing loan which has proven to be successful at recruiting and retaining teachers.

SENATOR FRENCH confirmed that in 2002 AHFC started out with \$500 million worth of bonds and has issued \$400 million worth of bonds. He asked how the bonds are parsed out in accordance with the value of a home.

MR. DUBLER replied that if a person comes in to borrow money, AHFC purchases that money from a bank, holds it in their portfolio until enough is accrued to fund into a bond deal. When AHFC runs out of bond funds, they would sell another bond and get, for example, another \$50 million and peck away at it until it is all gone, then return to the market for another \$50 million.

[9:24:42 AM](#)

SENATOR FRENCH asked if \$500 million would be loaned for 500 \$1 million dollar homes.

MR. DUBLER responded that is correct.

SENATOR FRENCH said a layman's understanding of this program might be that the legislature gives AHFC the authority to issue bonds and as the loans are made, the bonds are pledged or sold and are slowly wrapped up or tied up in homes that veterans are living in.

MR. DUBLER said that is correct.

MR. FAUSKE said AHFC will not go out the day after gaining voter approval and issue \$600 million worth of bonds. AHFC is capped on an annual basis, but would get the authorization to move freely within that market for the next four to six years and then seek approval again, through the legislature and voters, to continue the program. Depending on volume and activity within the loan portfolio, AHFC will determine when to sell and how much to sell.

[9:26:22 AM](#)

SENATOR FRENCH said it seems AHFC has been careful and judicial about issuing the bonds. He asked what happens to the debt and how it comes back to the state of Alaska if a person defaults on a loan and walks away from a house he or she owes \$200,000 on.

MR. DUBLER replied that if a loan goes bad, the State would only be responsible if all the corporation's reserves and the other assets in the indenture were gone. He explained that once the property is foreclosed, AHFC owns it, puts it back on the market and sells it. AHFC would then go against VA, FHA or the Private Mortgage Insurance (PMI) provider for any incurred losses. He reported that in the late 1980's and early 1990's, AHFC had over 5,000 Real Estate Owned (REO) properties. To slow mortgage decline, AHFC did not dump them back on the market but rather held onto some properties which helped the market recover. That is one of advantage of the corporation foreclosing as opposed to a bank.

[9:28:30 AM](#)

SENATOR PASKVAN asked if acquired equity is available for additional loans as a revolving loan fund.

MR. DUBLER said that is correct; it is called recycling and AHFC does a lot of recycling in their programs. For example, a person has borrowed money from AHFC and then moves, that person pays off that loan and AHFC takes those proceeds and loans it out to the next person. Because there is a cost associated with selling bonds, this saves the corporation money.

SENATOR PASKVAN asked if the amount of cumulative loans is \$3.1 million.

MR. DUBLER replied "not necessarily" because bonds that AHFC has refunded are also included in the \$2.6 million. For example, if a \$50 million bond deal is outstanding at 8 percent and current rates drop to 6 percent, AHFC will pay those bonds off and reissue at 6 percent to save additional money.

SENATOR PASKVAN asked what current cumulative monies are in the market for veterans and for the program.

MR. DUBLER said \$341 million in mortgage loans are currently outstanding in the veterans program, in all of the indentures. Currently \$338 million in bonds, of the \$2.6 billion, are outstanding.

MR. FAUSKE stated that AHFC has issued \$2.6 billion in veterans bonds since 1982.

[9:31:11 AM](#)

SENATOR PASKVAN said if a veteran gets a loan, buys a home, sells it 10 years later, AHFC gets the money back... He said he thinks he understands the process.

MR. FAUSKE said the money could then be recycled for another qualifying veteran. Mr. Fauske said AHFC cannot transfer the money around and use it for other things; the money is specifically for bond indentures for veterans. The money will reside within qualifying veterans.

SENATOR MEYER asked if the loans are transferrable to someone outside the family and if the family members assume the loan if the borrower dies.

MR. DUBLER said the loans are qualifying assumable loans. A secondary party would be able to assume the loan, including descendants, only if the person was a veteran qualified to get a loan under this program.

MR. FAUSKE explained that if a veteran dies the family does not have to leave the house.

SENATOR MEYER said he understood that if the borrower is alive and wants to sell to someone else, that person would have to be a veteran; if not, the loan is not assumable.

MR. DUBLER replied that is correct.

SENATOR MEYER said he saw a current rate of 4.25 for a 15 year conventional loan. He asked if AHFC's rates are about three-eighths below that, under 4 percent.

MR. DUBLER said AHFC does not do a lot of 15 year loans, but the 30 year rate is 4.625 and typically the 15 year is three-eighths of a point below that at 4.25.

SENATOR MEYER asked about the general activity for real estate in Alaska.

[9:34:18 AM](#)

MR. FAUSKE said AHFC purchased 240 loans with a total principle balance of approximately \$47 million in the first 10 months of 2009. AHFC's interest rates became more competitive in September, 2009 and in the last two months of 2009 AHFC purchased 189 loans for a total principle balance of \$40 million. He noted these last two months of activity almost equaled the previous 10 months in 2009. Loan commitments for January 2010 equal \$106 million already. AHFC's rates are below market in some areas and good activity should come in the coming year. He said Alaska's market is strong but has still experienced a slowing. Alaska got spoiled a couple of years ago; now the Alaska real estate market is sluggish and slower but is healthy.

[9:37:03 AM](#)

SENATOR FRENCH pointed out that the sectional analysis does not have an author and seems to pertain to a different bill. He suggested that it be replaced before SB 217 goes to Senate Finance.

MR. FAUSKE agreed that the sectional analysis is for a different bill.

SENATOR FRENCH also noted that the fiscal note refers to a statewide public vote on \$800 million in revenue bonds but should reflect SB 217 which is for \$600 million.

MR. FAUSKE said there was previous confusion between \$800 million or \$600 million; \$600 million was put forward.

SENATOR MEYER asked if the committee should amend or modify the fiscal note or just make note of it for the record and ensure a new fiscal note is made and passed up to finance.

9:39:05 AM

BRYAN BUTCHER, Public Affairs Director, AHFC, said when AHFC was working with the Governor's office, the number was \$800 million. Federal law caps AHFC at selling a maximum of \$100 million worth of bonds a year, so the overall amount simply determines how often the program has to go back to the legislature and before the voters. He explained that the program is back before the voters this year because the program will run out of funds sometime in 2011. Everything AHFC had turned into the Governor's office was at \$800 million and when the Governor's office released the bill to the Legislature it said \$600 million. AHFC is fine with either amount and it is up to the Legislature. Instead of going back to the voters in 2016, \$800 million would mean the program would not have to go back before the voters until 2018.

SENATOR FRENCH said the decision is better left to the finance committee; the state affairs committee is endorsing the general concept. He just wanted to make sure everyone was aware of the anomaly. He did not propose an amendment.

SENATOR PASKVAN pointed out that the fiscal note is not about distributing \$600 million or \$800 million; the fiscal note is for \$150,000 to put it before voters.

SENATOR MEYER said he did not think the \$150,000 amount of the fiscal note would change whether the authorization is for \$600 or \$800 million.

MR. BUTCHER said that is correct. The \$150,000 is to make sure Alaskans understand what they are voting on. In 2002, \$200,000 was spent on educating voters through mailers explaining that this is not spending \$600 million but investing in veterans and mortgages.

MR. DUBLER said AHFC has to be careful not to be seen as promoting SB 217, but has to provide information.

9:42:03 AM

SENATOR MEYER expressed the opinion that it would be better to fix SB 217 before it leaves committee, but the question of \$600 or \$800 million is a decision for the finance committee. The state affairs committee should support the program at either

amount. He felt it was important for the record to reflect that the analysis needed to be changed to reflect the amount that the finance committee comes up with.

MR. BUTCHER said he would certainly do that.

[9:43:00 AM](#)

SENATOR MEYER moved to report SB 217 from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

At Ease from 9:43 a.m. to 9:45 a.m.

SB 63-TRANSFER RESTRICTIONS ON TRUSTS

[9:45:46 AM](#)

CHAIR MENARD announced the next matter to come before the committee would be SB 63.

SENATOR MEYER moved to adopt the proposed committee substitute CS for SB 63, labeled 26-LS0317\R, as the working document of the committee. There being no objection, version R was before the committee.

ESTHER CHA, staff to Senator McGuire, sponsor of SB 63, read the following statement:

The climate for trust and estate planning is highly competitive, and the trust business is a multi-billion dollar sector that often crosses state lines in order to take advantage of more attractive state trust laws. In 1997, Alaska became the first state to establish a law that allows a person to form an irrevocable trust, be a discretionary beneficiary of the trust and, if the trust has a spendthrift clause, protect the trust assets from the settlor's creditors.

[9:47:21 AM](#)

To give a little background, I'll summarize the aspect of trusts to which this bill refers. In trusts, there are three parties: a settlor also known as a trust-maker, grantor, or testator; the trustee, which can be an individual or an institution; and beneficiaries. The settlor designates whether or not a beneficiary is discretionary, which means that payment of distributions is determined based on the discretion of the trustee instead of the settlor stating how much

and how often payments will be distributed. With discretionary beneficiaries, trustees may be given standards by which to exercise discretion e.g. the HEMS or Health, Education, Management, and Support standard. If the trust has a spendthrift provision, a creditor cannot force the trustee to pay money directly to the creditor. Instead, the creditor must wait until the trustee pays out the distribution to a beneficiary, at which time the creditor can seize the assets.

Alaska established in 1997 that assets in a trust would be protected from a settlor's creditors if he designates himself as a discretionary beneficiary, provided that he has no current claims pending. Since Alaska enacted this statute, numerous other states have enacted similar statutes. At present, twelve states allow this type of trust. SB 63 upgrades Alaska's trust statute by adopting provisions that have been adopted by other states. Therefore, without changes in legislation, Alaska would not be able to maintain its position at the forefront.

This bill provides the following amendments:

- It clarifies the burden of proof which a creditor must meet to establish that a transfer in trust was done with the intent to defraud a creditor
- Clarifies 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, whether or not the exercise of the discretion is governed by the standard
- Provides that the spendthrift provision in a trust will apply even though the trustee may distribute income or principal to the settlor to pay income taxes
- Clarifies that a beneficiary's interest in a trust, whether or not vested, is not considered a factor or economic circumstance in the division of property subject to divorce

These changes in SB 63 were brought to our office's attention by experts in the probate and trust field.

SB 63 is part of an ongoing effort to modernize our trust laws and by doing so (1) to create jobs and revenue, (2) to diversify our economy, and (3) to continue making Alaska attractive to trust business and investment.

9:50:35 AM

DOUGLAS BLATTMACHR, President, Alaska Trust Company, spoke in support of SB 63. He said Alaska Trust Company is constantly trying to update trust laws to keep them the best in the country, bringing substantial assets and employment opportunities to Alaskans.

9:52:04 AM

SENATOR PASKVAN said he wanted to make sure he understood the difference between the original bill and committee substitute: (3)(F) was removed from Section 1 of the original bill [Version A] so that in the committee substitute [Version E] what was section (3)(G) is now section (3)(F). He asked for the reason for the removal of 3(F) from [Version A].

CHAIR MENARD pointed out that section (3) is on page 3.

MS. CHA pointed out that a house companion bill moved out of judiciary yesterday. She explained that some of the committee substitute is a reflection of changes made in the house.

DAVID SHAFTEL, Shaftel Law Offices, said he is a private attorney and a member of an informal group of attorneys and trust officers that has been working with the Legislature since the late 1990's on state and trust legislation. He said the Alaska Legislature has passed a number of bills that have improved this area of law for Alaska residents and that the statutes are often used by non-residents who want to take advantage of Alaska's improved law in this area.

9:55:26 AM

MR. SHAFTEL said he does not have a copy of the committee substitute [Version E].

SENATOR PASKVAN said the provision labeled as [Section (3)(F), subparagraph (i) in Version A] addressed the "reasonable definite standard as described in 26 CFR1.674(b)-1(b)(5)" and [Section (3)(F), subparagraph (ii) in Version A] read "an ascertainable standard relating to health, education, support, or maintenance as described in 26 U.S.C. 2041(b)." He said he is

wondering why this section [Section 1(3)(F)(i) and (ii) in Version A] is no longer in committee substitute [Version E].

MR. SHAFTEL said the house bill combines [Section 1(3)(E) and (F) from Version A] into a simpler statement. He said people who have worked on SB 63, including himself, must have decided it would be simpler to use this language rather than the references to the federal regulations and code.

[9:57:45 AM](#)

SENATOR PASKVAN said [Section 1(3)(E) of Version A] reads "the exercise of discretion by a trustee who is not a settlor and that are not governed by a standard". The committee substitute removes the conjunctive term "and" and says, "whether or not the exercise of discretion is governed by a standard". He asked why "and" was changed to "whether or not it is governed by a standard."

MR. SHAFTEL asked for clarification.

SENATOR PASKVAN said that on page 3, line 2 of the original bill [Version A], it says, "and that are not governed by a standard." He said he assumed the phrase is addressing the exercise of a trustee who is not a settlor "and that are not governed by a standard" as to the exercise of discretion.

MR. SHAFTEL replied, "Correct."

SENATOR PASKVAN said the committee substitute [Version E] eliminates the conjunctive ["and"] and says "whether or not the exercise of discretion is governed by a standard."

MR. SHAFTEL said [Section 1(3)(F) of Version A], which referenced two statutory and regulatory standards was eliminated. He explained that the two concepts are being combined into one simple subsection that says the distributions, that are made under the exercise of discretion by a trustee who is not the settlor, can be governed by a standard but don't have to be governed by a standard - either way, [distributions] are acceptable. This type of trust allows the assets in the trust to be protected from the creditors of the settlor. SB 63 has been simplified and the two concepts have been incorporated into [Section 1(3)(E) of Version E].

[10:00:59 AM](#)

MR. SHAFTEL reiterated that the meaning has not been changed. The original bill [Version A] said the trust still protects

assets from the creditor even though the trustee is not governed by a standard. It then says that assets are still protected from the creditors of the settlor even though the trustee is subject to a standard. [Section 1(3) (E) and (3)(F)] were combined to say this trust is protected from the creditors of the settlor "whether or not" the trustee is governed by a standard. It is a simplification of language.

[10:02:09 AM](#)

SENATOR PASKVAN asked if it was correct he was establishing a method by which a creditor can't have access to monies of a settlor in a trust that has a trustee who is another person.

MR. SHAFTEL replied that was correct and explained that this type of trust was initially approved by the Legislature in 1997. He said the Legislature has enacted various additional provisions to strengthen and increase the workability of this type of trust about six different times. With SB 63, the Legislature is considering another slight improvement. This kind of trust was always set up to have an independent trustee who had absolute discretion as to whether or not to make distributions. Several states have enacted laws that allow the trustee of this type of trust to be subject to a standard, meaning directions or guidelines. These other states have said this trust will work even though the trustee is subject to a standard. SB63 would make Alaska's trusts subject to a standard as well and still protect the assets from the settlor's creditors.

[10:06:06 AM](#)

MR. SHAFTEL said the language being discussed is a couple of different ways of stating the concept that the trustee can be subject to a standard.

[10:07:54 AM](#)

CHAIR MENARD said the committee can continue to become better informed but she felt it would be better if Senator McGuire could help clean up SB 63 for better understanding.

SENATOR PASKVAN agreed and asked Mr. Shaftel what [Section 1 (3)(E)] does beyond [Section 1 (b)(1)] which addresses the clear and convincing standard with the settlor regarding an intent to defraud.

MR. SHAFTEL replied that whenever one is required to prove fraud, the standard burden of proof is by clear and convincing evidence. Alaska's statute failed to address that subject; other

states' statutes point it out expressly in their statutes. [Section 1 (b)(1)] is making it clear in the statute.

[10:10:23 AM](#)

SENATOR PASKVAN referred again to [Section 1(3)(E) and (F), Version E] and asked what is being advanced, who is being protected and who is at risk.

MR. SHAFTEL replied that this type of trust is designed to provide two benefits to Alaska residents and non-residents that want to use it. One, it allows a person who is solvent and has adequate assets to put assets into irrevocable trust for the benefit of that person and his or her family, assuming there is no intent to defraud creditors. He noted that a person could always do this for family, however, as of 1997, the creator of the trust could also be a beneficiary of the trust. He explained that the trustee, who is not the creator of the trust, can have discretion to make distributions to the creator as well as the creator's family.

MR. SHAFTEL said the second benefit is that the creator of the trust can use the trust to minimize the amount of federal estate taxes that will have to be paid upon his or her death. If a person creates the same type of trust, but is not a beneficiary of the trust, and makes gifts to that trust, then those assets, plus the growth of those assets, are not taxed upon the creator's death. Because this type of trust is subject to the discretion of a trustee, who is not the person who created the trust, experts said it should not be included in the creator's gross estate tax, under the federal estate tax, when he or she dies. Mr. Shaftel said the IRS just issued a private letter ruling approving that.

[10:14:43 AM](#)

MR. SHAFTEL summarized the second benefit of this kind of trust: it allows people to make gifts for their family into an irrevocable trust, which will not be taxed when they die. However, if they need the funds themselves, the trustee can distribute the funds back to them. He said it is a very helpful estate planning approach for Alaska families and is very popular.

SENATOR PASKVAN thanked Mr. Shaftel and said he understands more clearly now. He said some clean up between the original bill and the committee substitute is needed.

CHAIR MENARD said she will hear SB 63 again after flushing it out with Senator McGuire and the involved attorneys.

10:16:26 AM

SENATOR MEYER asked if a person's estate has to be a certain value before a trust makes sense.

MR. SHAFTEL said not necessarily; it depends upon the purpose of the trust and the needs of the person creating it. He said trusts are often created with \$25,000 or \$50,000 to help children or grandchildren go through college. He mentioned that a temporary repeal of the federal estate tax is in place but if Congress does not act, any person who dies who has more than 1 million assets will be subject to federal estate tax in 2011.

[SB 63 was held in committee.]

10:19:13 AM

There being no further business to come before the committee, Chair Menard adjourned the meeting at 10:19 a.m.