

# Fiscal Note

State of Alaska  
2018 Legislative Session

Bill Version:	HB 208
Fiscal Note Number:	2
(S) Publish Date:	1/31/2018

Identifier: HB208-LAW-CIV-01-26-2018  
 Title: TRUSTS; COMM PROP TRUSTS; POWERS OF APPT  
 Sponsor: JOHNSON  
 Requester: Senate Labor & Commerce

Department: Department of Law  
 Appropriation: Civil Division  
 Allocation: Commercial and Fair Business  
 OMB Component Number: 2717

## Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
<b>OPERATING EXPENDITURES</b>	<b>FY 2019</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

## Fund Source (Operating Only)

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

## Positions

Full-time							
Part-time							
Temporary							

## Change in Revenues

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2018) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2019) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

## ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
 If yes, by what date are the regulations to be adopted, amended or repealed?

## Why this fiscal note differs from previous version/comments:

Updated to SLA2018 fiscal note template.

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Division:	Administrative Services Division	Date:	01/26/2018
Approved By:	Jahna Lindemuth, Attorney General	Date:	01/26/18
Agency:	Department of Law		

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
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## Analysis

HB 208 amends AS 13.12.704 (Power of appointment; meaning of specific reference requirements) under AS 13.12 (rules of construction applicable to wills and other governing instruments), by adding provisions related to non-fiduciary power of appointments. The provisions describe when a power of appointment is considered non-fiduciary, when the exercise of non-fiduciary power cannot be limited, that a person holding a non-fiduciary power cannot be forced or prevented from exercising it, and when property subject to the exercise of a non-fiduciary power is not subject to claims by creditors.

The bill amends certain sections under AS 13.36 (trustees). AS 13.36.109 (specific powers of trustees) is amended to allow a trustee to insure against liability with respect to beneficiaries of the trust, and charge incurred costs against the trust.

HB 208 amends sections of AS 13.36.157 (exercise of power of appointment) to clarify that an unlimited authorized trustee may appoint principal of the trust to benefit future beneficiaries, establishes a standard for distributions from the trust, and defines who is a permissible appointee when an unlimited authorized trustee grants a discretionary power of appointment. The bill also clarifies when a limited authorized trustee may appoint principal of a trust to a trustee of an appointed trust, and sets limits on the exercise of the power of appointment. The bill also repeals AS 13.36.157(f) having to do with the ability of a trustee to invade the principal of an appointed trust while the duration of the trust is extended.

The bill amends sections AS 13.36.158 (additional provisions relating to exercise of a power of appointment) dealing with the duration of an appointed trust, and the authority of an unlimited authorized trustee when both a limited and unlimited authorized trustee have the power to pay trust principal. The section is also amended to remove limits on power of a trustee where there is substantial evidence of contrary intent by the settlor. The bill also allows the terms of the governing instrument to expand or restrict the right of a trustee to appoint property of the trust, and deals with an authorized trustee's ability to reduce, limit, or modify a beneficiary's right to a mandatory distribution. The bill also clarifies that the trust administration statutes apply when certain trustees select the state as the primary location for administration of the trust, and the requirements for a written acknowledgement of that selection. The definition of "Internal Revenue Code" is also clarified.

The bill amends sections of AS 13.36.159 (Implementation of power of appointment) dealing with the effective date to exercise the power of appointment, clarifies the documents related to an invaded and appointed trust that have to be delivered, and the authority of a trustee to exercise authority without notice to the beneficiaries or consent of the settlor. The bill repeals sections of the current statute having to do with the authority of a trustee to exercise the power of appointment without the consent of the settlor or court approval, and requiring that a copy of the trust instrument exercising the power of appointment be kept with the records of the invaded trust.

The bill amends AS 13.36.215 (definitions) to clarify the definitions of appointed trust, authorized trustee, and invaded trust and adds definitions of beneficiary, limited authorized trustee, and unlimited authorized trustee.

The bill adds new sections to AS 13.36 defining the term standard in a governing instrument, and allowing a trustee to divide a trust created by one or more settlors for income tax purposes. A new section is added describing when a court may authorize the trustee of an irrevocable trust to invade the trust.

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**Analysis**

Further, the bill amends sections of AS 34.27 dealing with the rules against perpetuities. The bill repeals and replaces AS 34.27.051 (rule against perpetuities). The new section defines the term "first power" as a nongeneral power of appointment exercised to create a second power, and defines "second power" as a nongeneral power of appointment that is not presently exercisable, or a general appointment not presently exercisable. If a second power is created, it may be exercised to postpone vesting of the property without regard to the creation of the first power. The second power is not valid unless all property interests subject to the second power vest within 1,000 years of the creation of the first power. HB 208 amends AS 34.27.053 (savings provision) to reference the revised sections of AS 34.27.051, and amends AS 34.27.070 (application) to clarify which trusts the amendments apply to.

HB 208 provides an effective date, and adds new sections to the uncodified law of the State of Alaska dealing with the applicability of the bill to powers of appointment and trusts, and the retroactive effect of amendments to AS 34.27.

The bill affects trusts and the powers of appointment among private parties.

The Department of Law does not anticipate a fiscal impact to the department should this bill become law.