

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 19, 2018

1:32 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Mia Costello
Senator Pete Kelly
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 151

"An Act relating to the number of superior court judges in the first judicial district; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 208

"An Act relating to trusts and powers of appointment; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 151

SHORT TITLE: NUMBER OF SUPERIOR COURT JUDGES

SPONSOR(S): RULES BY REQUEST

01/22/18	(S)	READ THE FIRST TIME - REFERRALS
01/22/18	(S)	JUD
02/19/18	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 208

SHORT TITLE: TRUSTS; COMM PROP TRUSTS; POWERS OF APPT

SPONSOR(S): JOHNSON

03/31/17	(H)	READ THE FIRST TIME - REFERRALS
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03/31/17	(H)	JUD
04/10/17	(H)	JUD AT 1:00 PM GRUENBERG 120
04/10/17	(H)	Scheduled but Not Heard
04/12/17	(H)	JUD AT 1:00 PM GRUENBERG 120
04/12/17	(H)	Heard & Held
04/12/17	(H)	MINUTE(JUD)
04/14/17	(H)	JUD AT 1:00 PM GRUENBERG 120
04/14/17	(H)	Moved HB 208 Out of Committee
04/14/17	(H)	MINUTE(JUD)
04/15/17	(H)	JUD RPT 2DP 5NR
04/15/17	(H)	DP: KOPP, CLAMAN
04/15/17	(H)	NR: EASTMAN, FANSLER, KREISS-TOMKINS, LEDOUX, REINBOLD
05/10/17	(H)	TRANSMITTED TO (S)
05/10/17	(H)	VERSION: HB 208
05/11/17	(S)	READ THE FIRST TIME - REFERRALS
05/11/17	(S)	L&C, JUD
01/30/18	(S)	L&C AT 1:00 PM BELTZ 105 (TSBldg)
01/30/18	(S)	Moved HB 208 Out of Committee
01/30/18	(S)	MINUTE(L&C)
01/31/18	(S)	L&C RPT 2DP 2NR
01/31/18	(S)	DP: COSTELLO, MEYER
01/31/18	(S)	NR: MICCICHE, GARDNER
02/19/18	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

NANCY MEADE, General Counsel
 Administrative Staff
 Alaska Court System
 Anchorage, Alaska

POSITION STATEMENT: Introduced SB 151 on behalf of the Alaska Court System.

REPRESENTATIVE DELENA JOHNSON
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 208.

ANDREW EVANS, Staff
 Representative DeLena Johnson
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Introduced HB 208 on behalf of the sponsor.

RICHARD HOMPESCH, Attorney
 Hompesch Evans & Everett

Fairbanks, Alaska

POSITION STATEMENT: Provided supporting information for HB 208.

ABIGAIL O'CONNOR, Attorney

Holland & Knight

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 208.

MATTHEW BLATTMACHR, Vice President and Trust Officer

Peak Trust Company

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 208.

DOUGLAS BLATTMACHR, President and CEO

Peak Trust Company

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 208.

ACTION NARRATIVE

[1:32:24 PM](#)

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Costello, Kelly, Wielechowski, and Chair Coghill.

SB 151-NUMBER OF SUPERIOR COURT JUDGES

[1:33:45 PM](#)

CHAIR COGHILL announced the consideration of SB 151.

[1:34:18 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Alaska Court System, Anchorage, Alaska, introduced SB 151, on behalf of the Alaska Court System speaking to the following sponsor statement:

The Alaska Court System is requesting a change to AS 22.10.120 to increase the number of superior court judges in the state from 42 to 43. Specifically, the court is seeking authorization for the additional superior court seat so that one of the two existing district court slots in Juneau can be converted to a superior court judgeship. Superior court judges have broader jurisdiction than district court judges; the change would allow the new judge to handle a greater

variety of cases, thus ensuring that the caseload in Juneau is handled more efficiently and effectively.

The two existing Juneau superior court judges handle about 590 cases per judge per year, the second-highest caseload per superior court judge of any court except Anchorage (where other resources are available to assist with cases). The high caseload has resulted in a reduced capacity to schedule and decide matters as expeditiously as the court system would like. Further, one of long-serving district court judges in Juneau has announced his plan to retire effective June 30, 2018. This bill is therefore timely; if passed, the solicitation for applicants to that soon-to-be-vacant position will be for a superior court rather than a district court judge.

The new superior court judge will share a judicial assistant and law clerk with the existing Juneau judges, and would have the already-existing courtroom and materials from the district court position, so that no additional resources are necessary. The court system will absorb the additional salary and benefits for the superior court judge with savings it has achieved elsewhere through attrition. Therefore, Senate Bill 151 has a zero fiscal note.

MS. MEADE explained that Juneau also has a magistrate judge that has been doing master work the last few years to help the superior court with preliminary hearings, not final decisions. With this change, that magistrate judge would transition to more typical duties, leaving the remaining district court judge with about the same number of filings as the Kenai district court judge.

She said the court system hasn't asked for a judge the past few years because it typically costs about \$500 thousand. Taking advantage of the long-serving district court judge's retirement and combining resources makes this request timely.

[1:45:52 PM](#)

SENATOR WIELECHOWSKI referred to table 6.05 of the Court System FY17 annual report and asked if the number of filings was per judicial position or the total amount.

CHAIR COGHILL deferred the question until the members and Ms. Meade had a copy of the report.

1:47:11 PM

SENATOR COSTELLO asked if she had information on the wait times for cases to be resolved, and if that had changed.

MS. MEADE said she didn't have data on the time to dispositions but it's always more complicated than it appears. She advised that there has not been a problem where criminal cases had to be dismissed because Rule 45 deadlines were not met, but it is increasingly difficult for parties to get scheduled if their case doesn't have an absolute deadline to be heard. This has caused general dissatisfaction with the process.

SENATOR COSTELLO asked what timelines are in statute.

MS. MEADE explained that child in need of aid (CINA) cases have federally imposed guidelines for bringing a case to permanency. Those guidelines are tied to federal funding for the Office of Children's Services and are written in the court's child in need of aid rules, although parties can agree to extensions under certain circumstances. This is not uncommon. The court follows criminal Rule 45 in felony cases, which has a 120-day timeline. Felony cases often are not resolved in that timeline because the case is not ready for trial. However, the parties talk about where they are relative to Rule 45 at every felony hearing. Everyone is aware of and works towards that timeline, but logistics sometimes stand in the way of accomplishing it.

SENATOR COSTELLO asked if there were consequences for not meeting the timeline and if passing SB 151 would help the situation at the superior court level.

MS. MEADE said the court hopes it will help move cases along faster. She explained that the court generally grants a Rule 45 waiver if the parties agree that a continuance is needed for due process. In the rare circumstance that there is a Rule 45 failure the case is dismissed.

SENATOR COSTELLO asked if the court tracks the types of cases it hears to see trends that might be occurring.

MS. MEADE replied trends might be evident if one were to look at the statutorily required administrative reports on the Court System website, but the court never addresses the question of why cases go up and down. She offered to provide follow up information on the website and a copy of a pie chart she

prepared on the types of cases and the percentage that is handled in the different courts.

SENATOR COSTELLO asked what the landscape of cases looks like.

MS. MEADE reported that in Juneau from 2013 to 2017, the number of probate cases increased 70 percent and the number of child in need of aid cases increased 60 percent. Statewide the child in need of aid cases have increased about 50 percent the last four years and felonies and misdemeanors ebb and flow. Last year the number of misdemeanors decreased and now there is an increase in the number of felonies and felony trials.

SENATOR WIELECHOWSKI asked if the number of filings in table 6.05 [on page 157] of the Court System FY17 annual report represents raw filings.

MS. MEADE replied the table reflects the number of files that come in the door per superior court judge.

SENATOR WIELECHOWSKI asked if the totals in the last column titled "Filings per judicial position" represent the combined filings for superior court judges, district court judges, and magistrate judges.

MS. MEADE replied it may also include magistrate judges.

SENATOR WIELECHOWSKI noted that there are 19 filings per judicial position in Angoon. He asked if there is either a district court judge or magistrate judge in that jurisdiction.

MS. MEADE answered no; the judicial positions in Southeast have a traveling calendar and Judge George who is based in Sitka covers both district court and superior court in that location.

[1:56:39 PM](#)

SENATOR WIELECHOWSKI asked if the 987 filings in Sitka includes the filings in Angoon.

MS. MEADE said no; to get a better, but still incomplete, picture of the actual caseload you would need to add all the areas the judge is covering. For example, adding the numbers for Sitka, Angoon, and Prince of Wales gives a better idea of Judge George's workload. She cautioned that it's difficult to compare workloads because travel takes time out of a judge's schedule.

SENATOR WIELECHOWSKI asked if the Juneau judge travels.

MS. MEADE said on paper the Juneau judges do travel. One judge covers Juneau, Yakutat, and Haines and the other covers Juneau, Hoonah, and Skagway. The last couple of years the presiding judge has tried to minimize travel for those judges either by taking it himself or offering it to the Sitka judge.

SENATOR WIELECHOWSKI asked if superior court judges typically get a law clerk and district court judges typically do not get a law clerk.

MS. MEADE said that's correct.

SENATOR WIELECHOWSKI asked if the cost of a law clerk for the proposed additional superior court judge will be absorbed in the court's budget.

MS. MEADE clarified that the Court System is not seeking a law clerk for the proposed position, so no additional money is needed. Everyone thinks having two law clerks for the three judges will work because the caseload for the sitting superior court judges will drop. If things change in a few years and the model is unsustainable, the Court System could hire a law clerk without coming to the legislature using a PCN (position control number) from another vacated position. She noted that law clerks are considered temporary employees and don't get any benefits or payments into PERS. Their salaries are in the high \$60 thousand range.

SENATOR WIELECHOWSKI asked if that would be the only superior court judge in the state that doesn't have a law clerk.

MS. MEADE said no; the two Ketchikan superior court judges share a law clerk, the presiding judge in Anchorage does not have a law clerk, and judges often share resources when a law clerk leaves before the end of his or her one-year term.

SENATOR WIELECHOWSKI asked if there is a national standard for filings per judicial positions.

MS. MEADE said not that she was aware of.

[2:01:02 PM](#)

CHAIR COGHILL asked if this could potentially cause downward pressure and the need for more judge magistrates.

MS. MEADE said the hope and expectation is that this will alleviate the problem; this change is not expected to create a ripple effect to other courts in Southeast.

CHAIR COGHILL said he wanted assurance that this wouldn't create a bubble that appears somewhere else.

MS. MEADE said she appreciates that, but the Court System expects this change will contain the pressure and resources where they're needed without hurting other case handling.

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CHAIR COGHILL stated that he would hold SB 151 in committee with public testimony open.

HB 208-TRUSTS; COMM PROP TRUSTS; POWERS OF APPT

[2:05:06 PM](#)

CHAIR COGHILL announced the consideration of HB 208.

REPRESENTATIVE DELENA JOHNSON, Alaska State Legislature, Juneau, Alaska, sponsor of HB 208, stated that this legislation increases the flexibility of existing trust law. It will restore Alaska to its place as an attractive trust environment. She relinquished further introduction to Mr. Evans.

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At ease

[2:11:02 PM](#)

CHAIR COGHILL reconvened the meeting and invited Mr. Evans to proceed.

[2:11:48 PM](#)

ANDREW EVANS, Staff, Representative DeLena Johnson, Alaska State Legislature, Juneau, Alaska, introduced HB 208 on behalf of the sponsor. He explained that Alaska transitioned to a top choice for the placement of trusts with the passage of the Alaska Trust Act in 1997. This law effectively eliminated the rule against perpetuities and allowed the protection of trust assets against creditors of the beneficiary. The fact that Alaska has no income tax was another benefit.

The trust market has evolved since then and states like New York and Nevada have passed legislation that expand the flexibilities available to trusts. Alaska's ranking of being in the top three for housing trusts has fallen to number eight. HB 208 will

update, clarify, and increase flexibility in trust regulations, while maintaining existing protections.

MR. EVANS stated that HB 208 will promote investment in Alaska's economy and opportunities for growth in the financial services sector. It will expand a non-natural resource extraction industry by attracting nonresident trusts and create high-paying jobs. It will also provide revenue to the state through registration fees and life insurance premium taxes. These are expected to bring in between \$7 million and \$12 million annually.

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MR. EVANS advised that HB 208 expands the flexibility of trust law in four areas. These are 1) decanting of trusts; 2) powers of appointment; 3) traceability of assets; and 4) clarification of trustees' specific powers.

He deferred to Mr. Hompesch to discuss the four areas in detail.

[2:15:02 PM](#)

RICHARD HOMPESCH, Attorney, Hompesch Evans & Averett, Fairbanks, Alaska, explained that trusts are decanted by taking the assets from one trust and placing them in a second trust that is more appropriate for the current circumstance. Because Alaska law allows a trust to continue for one thousand years, what may be appropriate now may not be appropriate in future years. If a trustee can distribute the assets from one trust to another, that provides a lot of options to satisfy the beneficiaries going forward.

The changes to the decanting statutes proposed in HB 208 make the system more efficient and clarify points that raised questions under old law. HB 208 clarifies that the beneficiaries may waive the 30-day notice requirement, that at least one beneficiary must be notified, and that the trustee may be authorized to exercise a power without noticing beneficiaries. He said this is important for settlors who may want to set up a silent trust.

[2:19:32 PM](#)

MR. HOMPESCH explained that the power of appointment relates to a person who has the power to distribute or give assets to another person. HB 208 provides that a non-fiduciary who has the power of appointment, that is someone that is not a trustee, cannot be compelled to exercise that power in favor of a creditor of the person holding the power.

2:20:52 PM

At ease for technical difficulties.

2:23:10 PM

CHAIR COGHILL reconvened the meeting and asked Mr. Hompesch to continue.

MR. HOMPESCH advised that Section 2 allows the trustee to insure property of the trust against damage or loss and themselves against liability from third persons or beneficiaries of the trust.

MR. HOMPESCH discussed the following points regarding traceability of assets under HB 208.

- Assets entering the trust may be documented as to their origin, pre-trust ownership or percentage of ownership prior to being placed into the trust.
- In the event of divorce, beneficiary conflicts, or other such events, the assets of the trust are traceable back to the point they entered the trust.
- Tracing of origin will allow retention of certain tax benefits even after one of the settlors expires.

2:25:07 PM

SENATOR COSTELLO asked what Alaskans are involved with trusts and who in Alaska will benefit when the bill passes.

MR. HOMPESCH said many Alaskans want their assets held in trusts for the benefit of their children and other descendants. This is helpful in the circumstance of divorce because the assets in a trust are not subject to division upon divorce. He said he's surprised at the number of working Alaskans who are interested in trusts and a lot of wealthy families from elsewhere in the U.S. have decided to form their trusts under Alaska law because the law is more flexible. "As Delaware is to corporations, we wanted Alaska to be as trusts and I think we've succeeded in large part."

SENATOR COSTELLO asked if Alaskans who have children with special needs access trusts to ensure their children are taken care of once they're gone.

MR. HOMPESCH confirmed that a special needs trust can be created, or a trust can be decanted to a special needs trust if the need arises.

SENATOR COSTELLO asked if the trust must have some nexus to Alaska.

MR. HOMPESCH said yes; at least one of the trustees must be a state resident and some of the administration must occur here. However, neither the beneficiaries nor the settlor is required to be a resident of Alaska.

CHAIR COGHILL asked the typical circumstances under which a trust is decanted.

MR. HOMPESCH said a trust formed under the laws of another state may be imported and registered under Alaska law and an Alaska trustee is appointed. The trustees then have the power to decant under Alaska statutes. Any forum shopping that occurs takes place before decanting.

CHAIR COGHILL asked if HB 208 will attract new trust business or make it easier for Alaska trusts to move to another jurisdiction.

MR. HOMPESCH said his experience is that trusts that are moved to Alaska and decanted under Alaska law remain in Alaska and HB 208 furthers that goal.

CHAIR COGHILL asked how HB 208 changes the insurance provisions under Alaska trust law.

MR. HOMPESCH explained that AS 13.36.109 expands the powers of the trustee to include insuring the trustee against liability with respect to beneficiaries of the trust.

CHAIR COGHILL asked for an explanation of traceability of assets as it relates to division of ownership.

MR. HOMPESCH explained that Section 23 of HB 208 adds a new provision that allows a trustee to divide a trust for income tax purposes. Unless specifically prohibited, a trustee who has kept records tracing contributions to the trust by different settlors may divide the trust such that the specific settlor is treated as the sole settlor of those contributions.

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CHAIR COGHILL opened public testimony on HB 208.

[2:37:36 PM](#)

ABIGAIL O'CONNOR, Attorney, Holland & Knight LLP, Anchorage, Alaska, stated that she is also licensed and practices law in Florida. She agreed with Mr. Hompesch that HB 208 creates more flexibility and opportunities, particularly for decanting a trust. She provided an example to illustrate that changing the situs of a trust to Alaska makes planning easier for the settlor and is beneficial to Alaska. She also agreed with Mr. Hompesch that the goal of the legislation is to enhance Alaska's desirability as a place to create or move and maintain a trust.

[2:40:22 PM](#)

MATTHEW BLATTMACHR, Vice President and Trust Officer, Peak Trust Company, Anchorage, Alaska, stated that many in the trust community believe HB 208 will further Alaska's position as a premier jurisdiction for both Alaskans and non-Alaskans to do their planning. It's good Alaska.

[2:41:21 PM](#)

DOUGLAS BLATTMACHR, President and CEO, Peak Trust Company, Anchorage, Alaska, referenced an earlier comment about location of assets and explained that one of the requirements is that some of the assets must be in Alaska. He shared that Peak Trust has about \$80 million in trust assets on deposit with local banks which provides more money for the banks to lend and circulate in the economy. This legislation will be very beneficial to Alaskans and Alaska.

MR. HOMPESCH listed additional financial benefits to Alaska including premium taxes on life insurance and fees associated with forming LLCs related to trusts.

[2:45:50 PM](#)

CHAIR COGHILL held HB 208 in committee.

[2:46:37 PM](#)

There being no further business to come before the committee, CHAIR COGHILL adjourned the meeting Senate Judiciary Standing Committee at 2:46 p.m.