

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

April 5, 2017
9:33 a.m.

MEMBERS PRESENT

Senator Mia Costello, Chair
Senator Shelley Hughes, Vice Chair
Senator Kevin Meyer
Senator Gary Stevens
Senator Berta Gardner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 95

"An Act relating to the mariculture revolving loan fund and loans and grants from the fund; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 94

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

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 95

SHORT TITLE: MARICULTURE REVOLVING LOAN FUND

SPONSOR(S): SENATOR(S) STEVENS

03/16/17	(S)	READ THE FIRST TIME - REFERRALS
03/16/17	(S)	L&C, FIN
04/05/17	(S)	L&C AT 9:00 AM BELTZ 105 (TSBldg)

BILL: SB 94

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

SPONSOR(S): SENATOR(S) COSTELLO

03/13/17 (S) READ THE FIRST TIME - REFERRALS
03/13/17 (S) L&C, JUD
03/30/17 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/30/17 (S) <Bill Hearing Canceled>
04/05/17 (S) L&C AT 9:00 AM BELTZ 105 (TSBldg)

WITNESS REGISTER

TIM LAMKIN, Staff
Senator Gary Stevens
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced SB 95 on behalf of the sponsor.

BRITTENY CIONI-HAYWOOD, Director
Division of Economic Development
Department of Commerce, Community and Economic Development
Juneau, Alaska

POSITION STATEMENT: Answered questions related to SB 95.

JULIE DECKER, Administrative Officer II
Division of Behavioral Health
Department of Health and Social Services (DHSS)
Anchorage, Alaska

POSITION STATEMENT: Answered questions and provided information related to SB 95.

LARRY COTTER, CEO
Aleutian Pribilof Island Community Development Association
Juneau, Alaska

POSITION STATEMENT: Offered supporting testimony on SB 95.

WESTON EILER, Staff
Senator Mia Costello
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced SB 94 on behalf of the sponsor.

MATTHEW BLATTMACHR, Vice President
Peak Trust Company
Anchorage, Alaska

POSITION STATEMENT: Provided supporting information related to SB 94.

DAVID G. SHAFTEL, J.D., LL.M.
Shaftel Law Offices, P.C.
Anchorage, Alaska

POSITION STATEMENT: Raised concerns with SB 94.

ACTION NARRATIVE

[9:33:09 AM](#)

CHAIR MIA COSTELLO called the Senate Labor and Commerce Standing Committee meeting to order at 9:33 a.m. Present at the call to order were Senators Gardner, Meyer, and Chair Costello. Senators Hughes and Stevens arrived soon thereafter.

SB 95-MARICULTURE REVOLVING LOAN FUND

[9:34:07 AM](#)

CHAIR COSTELLO announced the consideration of SB 95.

[9:34:59 AM](#)

TIM LAMKIN, Staff, Senator Gary Stevens, Alaska State Legislature introduced SB 95 on behalf of the sponsor speaking to the following sponsor statement:

This bill amends the existing Alaska Mariculture Revolving Loan Fund to allow up to forty percent of the fund to be used for loans to permitted shellfish hatcheries for planning, construction and operation.

Alaska shellfish farms currently do not have a stable supply of seed for the propagation of oysters, and no regular, in-state source of seed for resident aquatic plants and other shellfish. A stable supply of seed is one of many hurdles the industry must overcome to grow and become a viable Alaskan industry.

This bill will amend the program to shift its focus and eligibility from individual mariculture farmers to include shellfish hatcheries that would market stock to local Alaskan mariculture farmers.

The mariculture industry in Alaska is not yet fully developed, and is extremely high risk, from a financial standpoint. These obstacles make private financing difficult to obtain, but this bill will enable Alaskans to maintain their businesses and grow Alaska's mariculture industry.

[9:36:03 AM](#)

SENATOR STEVENS joined the committee.

MR. LAMKIN provided the following sectional analysis for SB 95.

Section 1: Adds a declaration of policy for the state's Mariculture Revolving Loan Fund (AS 16.10.890-16.10.945).

Section 2: Amends a spanned statutory citation in AS 16.10.900 to conform to the provision added by section 1 of the bill.

Section 3: Require 40 percent of the money appropriated to the fund be used for (1) making loans to state residents and Alaskan organizations and businesses that operate hatcheries or aquatic farms for the purpose of producing aquatic plants or shellfish or conduct shellfish enhancement projects or (2) making grants to certain nonprofits. Requires the remaining 60% of the funds appropriated to the fund to be used for other loans from the fund.

Section 4: Authorizes the Department of Commerce, Community, and Economic Development (department) to make loans to an eligible applicant for the planning, construction, and operation of a (1) hatchery that artificially propagates marine aquatic plants or shellfish or (2) shellfish enhancement project. Permits the department to make grants for organizational and planning purposes to certain nonprofit organizations. Amends spanned statutory citations to conform to the provision added by section 1 of the bill.

Section 5: Limits the amount the department may make in grants to nonprofits for organizational and planning purposes, to \$500,000.

Section 6: Expands the classes of person eligible for a loan from the fund to include state residents or entities organized under state law that (1) hold a permit to operate a hatchery or aquatic farm for the purposes of producing aquatic plants or shellfish or (2) conduct shellfish enhancement projects.

Section 7: Conforms the residency requirements for fund loan applicants to reflect that entities

organized under state law are also eligible for loans from the fund.

Section 8: Establishes new loan terms for loans from the fund, including a loan cap of \$100,000/ 20-year term for residents, and \$1,000,000/30-year term for existing mariculture farms.

[9:39:40 AM](#)

SENATOR HUGHES joined the committee.

Section 9: Provides that a subsequent loan may not be made to a resident of the state or entity organized under the laws of the state that holds a permit to operate a hatchery or aquatic farm for the purpose of producing aquatic plants or shellfish or that conducts shellfish enhancement projects if the person's outstanding balance exceeds \$1,000,000.

Section 10: Allows a loan to be made from the fund for the purchase of boats or vessels determined to be integral to the operation of a hatchery.

Section 11: Amends a spanned statutory citation in AS 16.10.915(d) to conform to the provision added by section 1 of the bill.

Section 12: Adds a new subsection to AS 16.10 .915. Prohibits the department from making certain loans from the fund unless the department determines that (1) a loan applicant's hatchery or enhancement project will be managed in a manner reasonably expected to result in repayment of the loan and (2) the applicant's hatchery or enhancement project is in the public interest.

Section 13: Provides when the department may require repayment of principal and interest on loans made from the fund to residents of the state, or entities organized under the laws of the state, that (1) hold a permit to operate a hatchery or aquatic farm for the purpose of producing aquatic plants or shellfish or (2) conduct shellfish enhancement projects.

Section 14: Provides authority for certain associations of limited entry permit holders to levy and collect an assessment from its members to secure

or repay a loan from the fund. Allows the department to rely on certain assessments in deciding whether to make a loan from the fund.

Section 15: Amends a spanned statutory citation in AS 16.10.935 to conform to the provision added by section 1 of the bill.

Section 16: Adds new definitions for AS 16.10.890-16.10.945.

Section 17: Clarifies that changes made by the bill to loan terms from the fund do not apply to loans made before the bill's effective date.

Section 18: Provides the bill with an immediate effective date.

[9:41:43 AM](#)

CHAIR COSTELLO asked if anyone had reviewed Section 14 to determine whether an association can collect tax because that authority resides with the state.

MR. LAMKIN clarified that it is a voluntary assessment, not a tax. The fees that are collected are used to help promote the operation of the organization.

SENATOR MEYER asked if this industry pays a tax to the state.

MR. LAMKIN offered his understanding that it will eventually. These hatcheries have received startup funding through capital budget grants. They produce seed and sell it to farmers. The individuals that harvest the seafood pay the tax.

SENATOR MEYER asked how much tax is collected.

MR. LAMKIN deferred the question to the Department of Revenue (DOR).

[9:43:39 AM](#)

SENATOR GARDNER referred to the qualifying language in Section 6 and asked if a nonresident could qualify for a loan from this fund.

MR. LAMKIN said his understanding is that the program is specifically limited to Alaska residents.

SENATOR GARDNER said she hopes to hear from someone who could specify whether a nonresident could hold a permit to operate.

MR. LAMKIN suggested DCCED respond to the question.

SENATOR MEYER asked if it is advisable to make these loans to such a high-risk industry.

MR. LAMKIN said it's a policy call, but this is one of the few ways for the state to promote the development of its natural resources. He added that it could be argued that it would be impossible for these hatcheries to secure financing in the private sector.

SENATOR MEYER asked where the money for the loans comes from.

MR. LAMKIN explained that the fund was capitalized with about \$5 million; about \$500,000 has been loaned; and the payments on those loans help support the fund. He deferred further explanation to DCCED.

SENATOR MEYER said he'd like the department to comment on the success of the loan fund.

[9:46:52 AM](#)

CHAIR COSTELLO asked Ms. Cioni-Haywood to give some background on the fund, its activity since inception, and why the department supports it.

BRITTENY CIONI-HAYWOOD, Director, Division of Economic Development, Department of Commerce, Community and Economic Development (DCCED), explained that the fund was capitalized in 2012 with a \$5 million appropriation. Five loans have been issued for a total of about \$500,000 and the cash balance available for lending is about \$4.5 million. She said it's difficult to describe the success of the fund since it is relatively new and will take some time to get established. The division has done outreach and suggested ways to further loans within the industry. Because the industry is growing, the division anticipates making additional loans. She highlighted that two applications were submitted recently.

SENATOR HUGHES asked if the industry is new to Alaska or new overall and opined that loans to a new industry would present more risk.

MS. CIONI-HAYWOOD said the industry is only new to Alaska. British Columbia, California, Washington, Oregon, New Zealand and others have had shellfish operations for some time.

[9:49:48 AM](#)

SENATOR HUGHES responded, "I'm hoping someone else can address that just so we know what we're getting into."

CHAIR COSTELLO advised that Julie Decker Larry Cotter could provide additional information.

SENATOR GARDNER directed attention to the new language in Section 6 that says loan applicants shall be a resident of the state or an entity organized under Alaska laws that hold a permit to operate a hatchery or conduct shellfish enhancement projects. She asked if current law allows a nonresident to hold one of those permits.

MS. CIONI-HAYWOOD said she believes a nonresident could form a nonprofit under the state, but she would need to confirm that with another agency.

SENATOR GARDNER said it's something the committee should consider.

SENATOR MEYER asked if the fund charges the going interest rate or if it is higher to reflect high risk.

MS. CIONI-HAYWOOD advised that the current rate is 5 percent.

SENATOR MEYER asked how that compares to a similar bank loan.

MS. CIONI-HAYWOOD said the banking industry would likely be hesitant to issue a loan in this industry. However, the interest rate for the loan programs administered by the Division of Economic Development are often set in statute so they aren't really risk-based.

SENATOR MEYER said it sounds like the rate fluctuates with the prime rate and is set in statute.

MS. CIONI-HAYWOOD offered to provide details on how the rate is set.

SENATOR MEYER asked what revenue the state receives from these loans, including tax.

MS. CIONI-HAYWOOD said she isn't aware of any tax that is collected on the industry.

[9:53:52 AM](#)

CHAIR COSTELLO asked how the division assesses the success of a fund.

MS. CIONI-HAYWOOD said one marker is that the fund revolves. That means the division is making loans and receiving payments, that the fund is growing, and that jobs are being created in the particular sector.

[9:54:45 AM](#)

CHAIR COSTELLO opened public testimony on SB 95.

[9:54:56 AM](#)

JULIE DECKER, Alaska Fisheries Development Foundation (AFDF), said AFDF broadly represents the seafood industry in Alaska, including harvesters, processors, and support sector businesses. They work in areas of research and development that will help the industry and communities in which the industry works. AFDF recently became involved in helping to expedite the development of mariculture. There is tremendous opportunity for the industry in Alaska and expansion is occurring in other parts of the world. Reports indicate that China is making a \$200 million investment in eastern Russia to grow sea cucumbers, mussels, and scallops. Those three species already grow in Alaska. She said that AFDF has been focusing on the developmental challenges in Alaska, which includes putting together the Alaska Mariculture Initiative.

She said the governor supported the initiative and put together a taskforce that is charged with delivering a comprehensive plan about how to strategically develop the industry. AFDF's vision is to grow a billion-dollar industry in 30 years. To get there it's important to fix the developmental issues now, she said. The taskforce has identified the issue of access to consistent and quality shellfish and seaweed seed as an issue that has been constraining the industry. With the exception for oysters, all the seed must be produced in the state of Alaska. That means these hatcheries need to be supported so the industry can grow.

MS. DECKER addressed the question about risk by drawing a parallel to the robust salmon enhancement program and salmon hatcheries the state put in place in the 1980s. The state balanced the risk initially by establishing a revolving loan fund. Thirty years later salmon hatcheries are contributing

hundreds of millions of dollars to the economy and the loans have been paid back with interest. She said, "We think this is following a similar model, and can be very successful too." She noted that the bill also allows for the possibility of voluntary assessments by industry to help pay back those funds.

9:59:30 AM

CHAIR COSTELLO asked her to talk about the change the bill makes to make the loans accessible to other groups. She also asked her to speak to the philosophy behind the grant portion of the fund, which is new.

MS. DECKER explained that the bill essentially breaks the fund into two pieces; 60 percent is allocated for access by shellfish or seaweed farmers and 40 percent is eligible for access by shellfish or seaweed hatcheries or organizations doing shellfish enhancement work. For example, if an organization formed around the king crab enhancement work that has been ongoing at the research level, they could apply for loan funds to do an enhancement program. Similarly, sea cucumber divers in Southeast who have been doing research could formally form around the enhancement project and apply for loan funds.

Addressing the question about the grant portion of the fund, she explained that the bill allows up to \$500,000 of the \$2 million that is eligible to these new applicants for grants. An applicant could receive a \$100,000 grant for organization and planning purposes. She said this loan fund is modeled after the Fisheries Enhancement Revolving Loan Fund for salmon hatcheries. That fund initially was intended to help them organize and get them started. That is the intention of the grant - to move the industry forward and get applicants ready for a loan.

CHAIR COSTELLO said she appreciates the explanation of the grant funding.

SENATOR HUGHES asked her to speak to the track record of this industry in other jurisdictions and to the nonresident question mentioned earlier.

MS. DECKER said this is not a new industry in other places. Taylor Shellfish in Washington is a third-generation business and is the third largest shellfish grower in the nation. That company recently announced a projected \$30 million production increase in 2017 for an annual total of \$100 million. New Zealand has a \$400 million mariculture industry that produces mussels, oysters, and king salmon that is projected to reach \$1

billion annually by 2025. Alaska has a large existing seafood industry that marries well with the mariculture industry, she said.

Addressing the second part of the question, she said eligible applicants refers to either nonprofits or corporations. A nonprofit would most likely be doing enhancement work because the shellfish they put out become common property. There would be no incentive for a corporation to do that kind of work. A hatchery could potentially be a privately-owned business or nonprofit. Alaska's two hatcheries are in Ketchikan and Seward, and both are nonprofit. Hatcheries generally are not very profitable, but larger companies in the Lower 48 are sometimes willing to subsidize their own hatchery because they need the seed. Taylor Shellfish has done this. She said the entities must be organized in the state so there must be a state presence, but it is outside her expertise to know if there would be an incentive for nonresidents to form a corporation or nonprofit in Alaska.

[10:06:09 AM](#)

SENATOR GARDNER said she read Section 6 more thoroughly and believes it says the applicant must be a resident.

CHAIR COSTELLO observed that the language could be tightened.

[10:07:16 AM](#)

LARRY COTTER, CEO, Aleutian Pribilof Island Community Development Association (APICDA), said APICDA is one of the six community development quota groups that exist in western Alaska. He said the purpose of APICDA is to develop stable local economies in local communities, focusing on fisheries development and tourism. They have processing plants in False Pass and Atka. In the past few years they have spent about \$23 million expanding the plant in False Pass and anticipate spending about \$20 million to expand the plant in Atka in 2018.

He said that APICDA supports passage of SB 95 and one of its members sits on the taskforce. He said there is talk of this being a new industry but he looks at it in two parts: seaweed and shellfish. Seaweed is a new industry in Alaska, whereas shellfish has been around for a while.

MR. COTTER reported that he met with a representative from the Department of Energy several months ago and they talked about federal funds that would be available to help develop mariculture in Alaska and other places. He specifically

mentioned algae that can be grown and used as a fuel source. He said the cost of operations and the cost of energy in rural Alaska is extraordinary and APICDA is constantly searching for ways to make the plant in each community viable. He opined that mariculture offers an opportunity if there is adequate seed available in the state. He said that APICDA is prepared to spend the money to buy the seed, plant it, grow it, process it, and sell it. He concluded saying, "This just seems like a perfect opportunity for the state to help."

SENATOR MEYER asked if efforts to create jobs in rural areas have been successful because fishing and the seafood industry in general has a poor track record of hiring Alaskans.

MR. COTTER said yes and no; the seafood processing sector has a terrible record of hiring Alaskans, but APICDA exclusively hires Alaskans. It is not always 100 percent hire from the community but that is the goal.

SENATOR MEYER asked if these jobs are seasonal or year-round.

MS. COTTER said the seafood jobs would be year-round. "You harvest a crop and plant a new one. Ideally you would have several crops going at a time so that you are able to operate consistently." He pointed out that every community in the region that has a year-round seafood processing plant is stable. Every community that does not have one is in a state of decline. He opined that creating year-round opportunity is a fundamental key to success in rural Alaska.

[10:14:16 AM](#)

SENATOR STEVENS pointed out that in Kodiak the Filipinos that came over and started working in the cannery were not citizens. Now they are contributing citizens who own businesses and work in the industry. He thanked Mr. Cotter for his perspective.

[10:14:51 AM](#)

CHAIR COSTELLO closed public testimony on SB 95 and held the bill in committee for further review.

[10:15:10 AM](#)

At ease

SB 94-TRUSTS;COMM PROP TRUSTS; POWERS OF APPT

[10:18:15 AM](#)

CHAIR COSTELLO reconvened the meeting and announced the consideration of SB 94. She stated that the intent is to hear a high-level overview of the bill and take public testimony. A detailed sectional analysis will be provided in a subsequent hearing.

[10:19:37 AM](#)

WESTON EILER, Staff, Senator Mia Costello, Alaska State Legislature, introduced SB 94 on behalf of the sponsor speaking to the following sponsor statement:

Senate Bill 94 improves estate and tax planning options for both Alaskan and non-Alaskans. Since passage of the Alaska Trust Act and enhancements to state policy in 1990s, Alaska has been a leader in the estate planning industry allowing Alaskans to establish trusts to the benefit of our state's economy. This legislation advances Alaska's competitive advantage through three improvements in the area of trust and estate planning law.

"Decanting" is a commonly used tool to correct drafting errors, reduce costs of trust administration, and other reasons. Just as wine is decanted by pouring liquid from one container to another - trust decanting happens when one trust pays its assets to another trust. Decanting is used by Alaskans who are looking to update their trust documents. The flexibility it provides also allows non-residents to bring their business to Alaska. Alaska has had a decanting statute for nearly 20 years, Senate Bill 94 would provide additional flexibility and clarification to this statute provision.

SB 94 also clarifies certain aspects of Alaska law relating to Powers of Appointment in statute so they can be used more efficiently. One of the most powerful estate planning tools is to grant someone, such as a beneficiary, a "power of appointment," which allows that person the right to specify where property will pass at certain times, such as when the beneficiary dies.

SB 94 would clarify state law to say that a trustee can acquire insurance to protect the trust assets from claims of third parties and the trustee from third party and beneficiary claims and to charge the

premiums to the trust. Alaska law grants trustees powers to acquire insurance to protect the trust from claims from third parties; however, certain aspects of the powers are ambiguous and in need of clarification.

These laws and others enacted by the Legislature have benefitted Alaskans, has resulted in millions of dollars being deposited in financial institutions in the state which has provided capital for Alaska businesses, and provided significant work for many Alaskans.

MR. EILER directed attention to the letters of support and background documents in the bill packets.

CHAIR COSTELLO asked Mr. Blattmachr to provide some history of Alaska trust law and why this bill is needed.

[10:25:32 AM](#)

MATTHEW BLATTMACHR, Vice President, Peak Trust Company, explained that when the legislature passed the Trust Act in 1997, it made Alaska the premier jurisdiction to do trusts and estate planning. SB 94 seeks to continue that by expanding the laws regarding decanting and powers of appointment. These are two areas where Alaska has fallen behind other states.

SENATOR GARDNER asked for clarification that the bill applies to irrevocable trusts, and that the things the bill seeks to achieve can already be done with a revocable trust.

MR. BLATTMACHR confirmed that SB 94 primarily deals with irrevocable trusts, and that there are some capabilities, such as decanting, that irrevocable trusts offer that revocable trusts do not have. With decanting for example, you can revoke or make an amendment to a revocable trust without a technical mechanism, whereas an irrevocable trust cannot be changed without a legal mechanism. Should a trust need to update itself, decanting is the mechanism to do that.

SENATOR GARDNER asked if any provisions in SB 94 apply to revocable trusts.

MR. BLATTMACHR said the insurance piece and the tracking of trust assets would apply to revocable trusts, "but those would likely only fall if you were using a trustee other than the grantor."

CHAIR COSTELLO asked which sections of the bill apply to insurance and tracking trust assets.

MR. BLATTMACHR said that Sections 2 and 3 address the purchase of insurance and Section 23 addresses tracking trust assets.

SENATOR STEVENS asked if Alaskans are taking advantage of the trust laws. He also asked how the state benefits from the trust business.

MR. BLATTMACHR said Alaska's trust laws attract nonresidents to do their planning business here and Alaskans that do estate planning in the state are similarly benefitted. The state benefits several ways one of which is from the 2.7 percent tax on life insurance premiums. He explained that in 1999 the legislature passed a tax regime that is very attractive for those in a high tax bracket. That has attracted nonresidents to purchase large policies and Alaska receives about \$7 million a year from the premium tax. The state also benefits from the fee that is paid to register a trust with the state. Many trusts use LLCs and those pay a biannual tax to the state.

SENATOR STEVENS asked what percentage of Alaskans use this versus the percentage of nonresidents that do their estate planning in Alaska.

MR. BLATTMACHR said Peak Trust sees more non-Alaskans than Alaskans for planning because Alaskans don't need their services as a corporate trustee. However, many of the practitioners that Peak Trust works with do most of their planning for Alaskans.

[10:33:12 AM](#)

SENATOR MEYER asked for an explanation of the fees.

MR. BLATTMACHR said every irrevocable trust is supposed to register with the state and pay a \$40 fee.

SENATOR MEYER asked how many trusts are formed in Alaska.

MR. BLATTMACHR said his organization has opened more than 2,800 trusts, all of which have been registered with the state.

SENATOR MEYER asked what makes Alaska trust laws so much more attractive compared to other states.

MR. BLATTMACHR said there are a variety of things that make Alaska the premier jurisdiction including: the ability to do

self-settled trusts; the rule that allows trusts to continue in perpetuity; and the option to adopt opt-in community trust laws that allow the surviving spouse to get a double step-up in basis.

SENATOR MEYER asked if someone who wants to form a trust works through a financial planner, an attorney, or both.

MR. BLATTMACHR said there are a variety of ways but legal counsel is needed to draft the trust.

[10:36:07 AM](#)

CHAIR COSTELLO opened public testimony on SB 94 and directed members' attention to the letter of opposition in the packets from David Shaftel.

[10:36:45 AM](#)

DAVID G. SHAFTEL, J.D., LL.M., Shaftel Law Offices, P.C., stated that he is an attorney in Anchorage who has been practicing in the area of estate planning and estate and trust administration since the early 1980s. He is also a member of a group of attorneys and trust officers who have worked with the legislature since 1998 to improve Alaska's trust and estate statutes to make it one of the premier jurisdictions.

He reported that he participated in drafting the decanting provisions in the bill. These are found in Sections 4-22 and 24-28. He explained that decanting is a way of modifying an existing trust to make changes or cure problems. He said the current statutes have safeguards to protect the settler's intent, but the proposed provisions relating to decanting do not provide adequate safeguards for Alaskans who have existing trusts. The proposed provisions would apply to every trust that's been created, not just future trusts.

He provided an example of a typical estate plan where the assets go to the surviving spouse then when that person dies the assets go to the children in equal shares. Under current statute the trustee is governed by an ascertainable standard which is typically health, education, maintenance, and support. Unfortunately, he said, the proposed provisions of SB 94 do not provide this kind of protection. As proposed, a trustee who is not a settler or a beneficiary can change the ascertainable standard to one of absolute discretion. The interest of certain beneficiaries can be eliminated to the benefit of just one favored beneficiary.

MR. SHAFTEL advised that he submitted a memo describing his concerns and offered suggestions to tighten the bill if the committee feels this type of flexibility is desirable. This includes several suggestions for giving notice to everyone about what is occurring and for increasing the fiduciary obligations of the trustee. He also submitted an email from the reporter of the Uniform Trust Decanting Act. This is a uniform law that was enacted in 2015. The reporter is Susan Bart, an attorney in Chicago. She was very critical of these proposed provisions and how they affect the settler's intent and the possible tax consequences of these types of provisions.

[10:42:19 AM](#)

The present law protects the settler's intent through the ascertainable standard, but the proposed bill does away with that distinction. The new approach focuses on who is the trustee.

He noted that he submitted a memo highlighting the deficits and offering suggestions to tighten the bill if the proposed flexibility is desirable. There are several suggestions for giving notice for everyone about what is occurring and for increasing the fiduciary obligations of the trustee. He also submitted an email from attorney Susan Bart, the reporter of the Uniform Trust Decanting Act. He said she is very critical of the proposed provisions and how they affect the settler's intent and the possible tax consequences of the flexible provisions.

CHAIR COSTELLO said committee members have copies of your letter and the email from Susan Bart is being distributed. She asked Mr. Shaftel to continue his public testimony when the bill is heard again.

[10:45:49 AM](#)

CHAIR COSTELLO held SB 94 in committee with public testimony open.

[10:46:06 AM](#)

There being no further business to come before the committee, Chair Costello adjourned the Senate Labor and Commerce Standing Committee meeting at 10:46 a.m.