

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

February 26, 2020

1:31 p.m.

**MEMBERS PRESENT**

Senator John Coghill, Chair  
Senator Peter Micciche, Vice Chair  
Senator Shelley Hughes  
Senator Jesse Kiehl

**MEMBERS ABSENT**

Senator Lora Reinbold

**COMMITTEE CALENDAR**

SENATE BILL NO. 55

"An Act relating to judges of the court of appeals; and providing for an effective date."

- MOVED CSSB 55(2D JUD) OUT OF COMMITTEE

SENATE BILL NO. 191

"An Act relating to trusts and trustees, including trust division, the powers of trustees, delayed gifts to trusts, and community property trusts; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 192

"An Act relating to fiduciary discretion and the allocation of capital gains to income under the Alaska Principal and Income Act."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 55

SHORT TITLE: TEMP. APPOINTMENTS TO COURT OF APPEALS

SPONSOR(S): SENATOR(S) WILSON

02/13/19           (S)           READ THE FIRST TIME - REFERRALS

02/13/19 (S) JUD  
03/11/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/11/19 (S) Heard & Held  
03/11/19 (S) MINUTE(JUD)  
03/15/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/15/19 (S) Moved CSSB 55(JUD) Out of Committee  
03/15/19 (S) MINUTE(JUD)  
03/18/19 (S) JUD RPT CS 1DP 2NR 1AM SAME TITLE  
03/18/19 (S) DP: HUGHES  
03/18/19 (S) NR: MICCICHE, SHOWER  
03/18/19 (S) AM: KIEHL  
03/18/19 (S) FIN REFERRAL ADDED AFTER JUD  
03/27/19 (S) FIN AT 9:00 AM SENATE FINANCE 532  
03/27/19 (S) Heard & Held  
03/27/19 (S) MINUTE(FIN)  
04/04/19 (S) FIN AT 9:00 AM SENATE FINANCE 532  
04/04/19 (S) Moved CSSB 55(FIN) Out of Committee  
04/04/19 (S) MINUTE(FIN)  
04/05/19 (S) FIN RPT CS 3DP 4NR SAME TITLE  
04/05/19 (S) DP: VON IMHOF, HOFFMAN, WILSON  
04/05/19 (S) NR: STEDMAN, MICCICHE, SHOWER, OLSON  
02/19/20 (S) RETURNED TO JUD COMMITTEE UC  
02/24/20 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/24/20 (S) Heard & Held  
02/24/20 (S) MINUTE(JUD)  
02/26/20 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 191

SHORT TITLE: TRUSTS, TRUSTEES, COMMUNITY PROPERTY  
SPONSOR(s): SENATOR(s) COGHILL

02/14/20 (S) READ THE FIRST TIME - REFERRALS  
02/14/20 (S) JUD  
02/26/20 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

AIMEE BUSHNELL, Staff  
Senator John Coghill  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Delivered the sponsor statement and sectional analysis for SB 191 on behalf of the sponsor.

LINDA HULBERT, Agent  
New York Life; Director  
Alaska Trust & Estate Professionals

Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of SB 191.

ABIGAIL O CONNOR, Attorney  
O'Connor Law, LLC; Vice President  
Alaska Trust & Estate Professionals  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 191.

DAVE SHAFTEL, Attorney  
Shaftel Delman, LLC  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 191.

JONATHAN BLATTMACHR, Principal  
ILS Management, LLC  
Long Island, New York

**POSITION STATEMENT:** Testified in support of SB 191.

KEVIN WALSH, Certified Public Accountant; Co-Owner  
Walsh, Kelliher & Sharp  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of SB 191.

JAMIE DELMAN, Attorney  
Shaftel Delman LLC  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 191.

RICH HOMPESCH, Attorney  
Hompesch & Evans  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of SB 191.

MATTHEW BLATTMACHR, President & Chief Executive Officer  
Peak Trust Company; President  
Alaska Trust & Estate Professionals  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 191.

#### **ACTION NARRATIVE**

[1:31:22 PM](#)

**CHAIR JOHN COGHILL** called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Present at call to order were Senators Hughes, Micciche, Kiehl, and Chair Coghill.

**SB 55-TEMP. APPOINTMENTS TO COURT OF APPEALS**

[1:31:35 PM](#)

CHAIR COGHILL announced that the first order of business would be SENATE BILL NO. 55, "An Act relating to judges of the court of appeals; and providing for an effective date."

[The committee adopted the committee substitute (CS) for SB 55, work order 31-LS0485\S, referred to as version S, during the previous hearing.]

[1:31:51 PM](#)

CHAIR COGHILL said a motion was made at the last hearing to move SB 55, version S, from committee. An objection was made and maintained. The questions members had related to whether the bill would have a referral to the Senate Finance Committee. He related that he spoke with the presiding officer. This bill will have a further referral to the finance committee because the bill picked up an additional fiscal impact.

[1:32:24 PM](#)

CHAIR HUGHES said she does not have a problem with adding a fourth judge to the court of appeals because it will speed up the process, which is good for victims. However, SB 55, version S has a much higher fiscal impact, so she appreciates that the bill has a further referral to the finance committee. That committee could consider shared staffing to reduce the impact or determine whether the court of appeals requires the additional staffing. She stated support for moving the bill from committee.

CHAIR COGHILL said the motion is on the table. The question is whether the objection maintained.

CHAIR MICCICHE said the member who objected is not present. He offered his support to move the bill. After a brief discussion on the mechanics of the motion, he said an objection was on the record.

[1:34:00 PM](#)

At-ease.

[1:34:19 PM](#)

CHAIR COGHILL reconvened the meeting and asked for a roll call vote.

A roll call vote was taken. Senators Hughes, Micciche, Kiehl, and Coghill voted in favor of reporting the committee substitute for SB 55, work order 31-LS0485\S, from committee. Therefore, CSSB 55(2dJUD) was reported from the committee by a 4:0 vote.

[1:35:05 PM](#)

At-ease.

**SB 191-TRUSTS, TRUSTEES, COMMUNITY PROPERTY**

[1:39:41 PM](#)

CHAIR COGHILL reconvened the meeting and announced the consideration of SENATE BILL NO. 191, "An Act relating to trusts and trustees, including trust division, the powers of trustees, delayed gifts to trusts, and community property trusts; and providing for an effective date."

[1:39:57 PM](#)

CHAIR COGHILL, speaking as sponsor of SB 191, said he has previously introduced trust bills, the goal of which has been to incentivize people to execute their trusts in Alaska. This will give Alaska a competitive edge over other states and provide Alaskans with the best trust options. This effort includes having banks with sufficient funds to provide borrowing power, and excellent trust laws, he said. He characterized the world of trusts as dynamic and competitive. This bill pertains to living trusts and trusts with substantial estates. SB 191 is one of three bills He said he was still working on developing the language for SB 192.

[1:43:30 PM](#)

AIMEE BUSHNELL, Staff, Senator John Coghill, Juneau, Alaska, read the sponsor statement for SB 191:

Senate Bill 191 sets out to clarify existing language within Alaska statutes regarding trust legislation and add a new opportunity to investors to take advantage of historically high estate and gift tax exemptions. Alaska is one of the top states for trusts, and a long-time leader in adopting laws to improve investing opportunities and estate planning. SB 191 gives Alaska the opportunity to continue to draw in more investors and keep those who are invested in Alaskan trusts to remain here.

Estate management can be defined as an art of directing and supervising one's interest in land, property, or other securities in order to achieve

optimum returns. In law, a trust is a relationship where assets or property are held by one party, the trustee, for the benefit of another party. A trust is created by the owner, also called a "settlor" or "trustor" who transfers property to a trustee. The trustee holds that property for the trust's beneficiaries.

This bill offers clarification on four things regarding trusts and trustees in the State of Alaska. First, it clarifies existing powers a trustee already has, placing the ability to divide trusts into statute. Second, the bill clarifies two powers trustees may act upon, including the ability to purchase fiduciary insurance and allow discretionary distribution to be made from realized capital gains. Third, it gives the ability to charge costs incurred from the duties on that list to the trust.

The fourth and final clarification this bill also offers is in relation to community property in trusts. The primary purpose of Alaska's optional community property system is to obtain an income tax benefit on property when the first spouse dies. To accomplish this purpose, appreciation and income must be characterized as community property. Currently, appreciation and income made from a community property trust must be specifically claimed as community property. The proposed changes have the income made from the community property be automatically community property unless expressly stated otherwise, allowing for easier management of the assets in the trust.

[1:45:48 PM](#)

The 'gift promise' section of the bill is a new concept. This new language would provide that a promise to make a gift to a trust is enforceable under Alaska law and may be treated as a note or a negotiable instrument after 180 days. The promise need not be backed by consideration (a transfer of property or cash), so long as the promise is to a qualifying trust, in writing, references the specific statute, expresses intent to be legally bound, and the money will be transferred within nine months after the person's death. This additional section will allow taxpayers throughout the United States to use their

current estate and gift tax exemptions, which are at historic highs, without having to give up the ownership of property until later when the promise is fulfilled.

[1:46:54 PM](#)

SENATOR COGHILL said staff has provided some background on trusts, highlighting the four changes the bill will accomplish plus a new concept, the ["gift promise" in Section 4].

[1:48:30 PM](#)

LINDA HULBERT, Agent, New York Life; Director, Alaska Trust & Estate Professionals, Fairbanks, Alaska, spoke in support of SB 191. She stated that she has been an Alaska resident for 50 years and a life insurance agent for 30 years. She represents clients in Anchorage and Fairbanks, with offices in both communities. Alaska Trust & Estate Professionals is the group that helped draft the bill.

She highlighted the value of the Alaska Trust Act and what it can accomplish in the future. She explained that the Alaska Trust concept has created jobs, bringing in substantial assets and tax income to Alaska. She offered her view that it has been a very positive influence in the state. Alaska's statutory framework for trusts has put Alaska in the forefront of will, trusts and estate planning. However, other states that have seen Alaska's success have followed suit in some of the activities and laws in Alaska.

She said this bill could create opportunities for Alaska to stay in the forefront of planning throughout the nation. This bill is really important for her clients and Alaskans. It will allow them to pass along assets that are deeply rooted in the family to their children and grandchildren.

[1:51:20 PM](#)

MS. BUSHNELL read the sectional analysis for SB 191:

Sec. 1 - AS 13.36

Adds new a section that changes the default of trusts to allow for easier trust division. Providing that if more than one settlor created the trust, the contributions from each settlor are well documented, as are the earnings and reinvestments, and the trust is governed by Alaska State Law.

Sec. 2 - AS 13.36.109

Clarifies the specific powers of trustees (those responsible for the trust fund) to include insurance against liability with respect to the beneficiaries as an expressly allowed expense to the trust. This section also clarifies that a trustee may treat or deem, within the meaning of United States Treasury Regulation Section 1.643(a)-3, discretionary distributions as first coming from capital gains realized during the year.

[1:52:22 PM](#)

Sec. 3 - AS 13.36.109

Adds a new subsection, allowing a trustee to pay for the authorized actions mentioned earlier in the section with funds from the trust itself.

Sec. 4 - AS 13.36.305

Adds new a section outlining the ability to make a promise of a gift enforceable in relation to trusts. The promise must be to a qualifying trust, in writing, reference this statute, express intent to be legally bound, the money will be transferred within nine months after the person's death, and after 180 days of the promise, it may be treated as a note and a negotiable instrument. This section also outlines what a qualifying trust is: that it intends to be a trust governed by Alaska law, it contains at least \$10,000 of principal assets deposited within the state of Alaska and has at least one trustee in the state.

Sec. 5 - AS 34.77.030

Clarifies the original intent of the existing statute regarding community property, stating that unless expressly declared non-community property, individual or otherwise, appreciation and income accrued in a community property trust is assumed to community property.

Sec. 6 - Uncodified Law

Adds a new section to the uncodified law, stating that sections 1-4 become effective following the normal effective date procedure as outlined in AS 01.10.070.

Sec. 7 - Uncodified Law

Adds a new section to the uncodified law, a saving clause, stating that Section 5 does not affect actions, proceedings, or rights accrued on or after

May 23, 1998, the year the Alaska Community Property Act was created and placed into law. Sec. 8 - Uncodified Law Section 5, dealing with community property, is retroactive to May 23, 1998, the year the Alaska Community Property Act was created and placed into law

Sec. 8 - Uncodified Law

Section 5, dealing with community property, is retroactive to May 23, 1998, the year the Alaska Community Property Act was created and placed into law.

Sec. 9 - Effective Date

Sections 5 and 8 of this Act take effect immediately.

[1:54:33 PM](#)

CHAIR COGHILL asked her to explain the reason that applicability goes back to 1998.

MS. BUSHNELL answered that this bill follows the rules that were created in Alaska for community property, so all income and appreciation will be community property. There won't be a trust caught in the middle, subject to different provisions. Instead, the trusts will all be treated in the same way.

CHAIR COGHILL commented that this is a prospective action.

[1:56:35 PM](#)

ABIGAIL O CONNOR, Attorney, O'Connor Law, LLC; Vice President, Alaska Trust & Estate Professionals, Anchorage, Alaska, stated that every time she represents a new trustee and drafts or administers a new trust, she has found herself wishing for more clarification in the law on certain things. Although it is very difficult to predict everything that could ever happen, this bill will provide additional clarification in the trust laws. She directed attention to Section 1 of the bill that allows assets to be divided into separate trusts. She currently has a trust that has two different people contributing assets to the trust, so that their contributions are very easy to trace. This bill will make it much simpler to divide the trust, which will be very helpful to beneficiaries. In some settings, different tax attributes apply. In such instances, the goal is to divide the trust so one trust has one tax attribute and the other has a different tax attribute, yet overall to save taxes for the beneficiaries.

She said Section 2 will allow and clarify that trustees can obtain trustee insurance, similar to a personal representative of a state obtaining a bond. This will allow trustees to better protect themselves and their beneficiaries by purchasing insurance in case claims are brought by the beneficiaries. This can result in the state attracting better trustees. It also will allow trustees to treat discretionary distributions to a beneficiary as being made first from capital gains, which is also helpful. The bill replaces the passive "consider" with "treat" which is more active. This provision will allow the trustees to make tax decisions that could ultimately reduce their income taxes. Even though this can currently occur, using the term "treat" more accurately captures what the treasury regulations had in mind, she said.

[2:00:10 PM](#)

MS. O'CONNOR said the IRS currently allows for an unprecedented estate tax exemption for all individuals in the U.S. That exemption will be reduced by half in 2026, so people have a limited time to take advantage of this estate tax exemption. Her clients are trying to take advantage of this opportunity yet not disadvantage other parts of their estate planning. She characterized the promise to transfer money into a trust as a good concept.

Safeguards were built into Section 4 of the bill so someone will not inadvertently make a promise to transfer money as a gift, that the person would not normally be held to. This provision requires the promise of a gift to be in writing, signed, and delivered to the trustee. It's important to ensure that whoever is making this promise understands the irrevocable implications of the statute, so the statute must be referenced. The individual must indicate an understanding that the person is legally bound by the promise. This bill balances the opportunities for Alaskans and non-Alaskans to use Alaska's trust statutes to bring money into the state by protecting people from mistakenly making the promise of a gift that cannot be undone.

[2:02:22 PM](#)

SENATOR MICCICHE referred to the insurance provision in Section 2 [AS 13.36.109(17)]. He asked if this provision was limited to insurance against claims brought by beneficiaries.

MS. O'CONNOR answered that although trustees can currently obtain insurance, most trustees do not do so. While there is no express prohibition in the statute, this language clarifies that

trustees are able to obtain insurance in case the beneficiary were to bring an action against them. Further, it allows the trustee to use the trust funds to pay for the policy. She compared this provision to the one where a personal representative is often required to get a bond in estates and probate law.

[2:03:39 PM](#)

SENATOR MICCICHE asked if this change would allow the trustee to insure any real asset in the trust at the expense of the trust itself.

MS. O'CONNOR explained that currently trustees can insure the assets in a trust. This language would simply allow them to also insure against a breach of trust action by a beneficiary.

SENATOR MICCICHE referred to Section 1. He asked how often contributions [to trusts] by individuals are well documented, splitting out the earnings and reinvestments. He asked whether that is normally a clear path.

MS. O'CONNOR said she was unsure if it is normal because it greatly depends on the grantors, the settlors creating the trusts, and the trustee records. More often than not, there is a fairly clear path. However, she has also seen instances where there is no clear notion as to how the assets were put into the trust. In those cases, the provision to allow for a trust to be divided into two or more trusts would not be available.

[2:05:16 PM](#)

SENATOR KIEHL asked whether an attorney's professional liability insurance covers lawsuits by beneficiaries of the trust where she serves as the trustee.

MS. O'CONNOR answered that her malpractice insurance covers her when she serves as a trustee. However, she was unsure if all malpractice insurance covers attorneys serving trustees.

[2:06:01 PM](#)

SENATOR KIEHL asked if she believes this change is necessary because she perceives a prohibition for trustees charging the trust for malpractice insurance.

MS. O'CONNOR replied she does not see a prohibition, but this language provides clear permissive language. When a beneficiary sees a line item for insurance, it is clear that it is allowable, she said.

SENATOR COGHILL referred to Section 4 related to the promise of transfer of gifts. He asked what the exit strategy the trustee has to make any changes to the gift.

MS. O'CONNOR said she was not sure there is an exit strategy. She explained that the promise of a gift must be irrevocable in order to use this exemption.

CHAIR COGHILL asked the record to reflect that people must understand that [Section 4 establishes] an irrevocable gift.

[2:08:03 PM](#)

SENATOR MICCICHE expressed concern that that provisions in Section 4 might conflict with federal tax law. He related a scenario in which a person makes a promise of a gift, but the trustee's asset may lose value due to market corrections. The person will have received the federal tax deduction but then the asset loses value. He asked how the trust law would address the circumstance in which the promise of a \$5 million gift is now worth \$60,000.

MS. O'CONNOR said she envisioned the gifts would be gifts of money. She referred to the language in [AS 13.36.305(a) and read, "if a person promises to transfer a specific amount of money." This would not necessarily be another type of asset.

MS. BUSHNELL added that [the gift] is in the form of a contract, such that the person will write a promise, but the trust must accept it. She said if the trust views it as a business and could discern that the asset would not retain its value in two, five or ten years, the trust will not want to accept the promissory note since it would not be seen as beneficial.

SENATOR MICCICHE expressed concern that this provision is largely directed at money.

[2:11:20 PM](#)

DAVE SHAFTEL, Attorney, Shaftel Delman, LLC, Anchorage, Alaska, spoke in support of SB 191. He noted that he has practiced trust and estate law in Alaska for over 30 years. He did not participate in drafting all of the provisions since his focus has been on the community property provision in Section 5. He deferred to Jamie Delman and Jonathan Blattmachr to answer questions on the promise to transfer money to the trust.

[2:13:14 PM](#)

JONATHAN BLATTMACHR, Principal, ILS Management, LLC, Long Island, New York, characterized SB 191 as a very good bill that will continue to put Alaska on top. It will continue to bring business and money into Alaska, he said. Every time someone creates an Alaska trust, the individual is required to deposit certain funds in the state. At any given time, this provides between \$50 million and \$100 million to Alaska's financial institutions to use for loans or to help businesses.

He turned to the concerns raised about the Alaska gift trust, which is a new concept [in Section 4]. It provides that individuals have an opportunity to use a very high tax exemption although not everyone can afford to give away even a fraction of the current, allowable \$11 million exemption. He reiterated that this exemption will be reduced in 2026. In fact, it is possible that with a potential change in administrations, this exemption could be cut back even sooner. This exemption will allow a person to make a completed gift for federal gift tax purposes while still retaining the assets. When the person dies, the trust will pay the promise of the gift. Alaska will be the first state to do so. He offered his view that [SB 191] would make Alaska a very sophisticated trust and estate jurisdiction in the country.

[2:15:12 PM](#)

SENATOR KIEHL asked if any safeguards exist to prevent someone from taking the tax benefit. He suggested the person could be "a bad character," who actually does not have the cash. He did not recall that the bill requires that the money subject to the promise exists.

MR. J. BLATTMACHR responded that he believes a safeguard exists. He related a scenario in which a person has \$3 million but wanted to use the entire allowable \$11 million tax exemption, because the person hopes to have \$11 million when the person dies and the note is due. At that time the trustee will present the \$11 million note for payment. If the person's estate only consists of \$3 million, that would be the amount paid into the trust. There won't be any adverse effect, but the person has the opportunity not to just to cover what he or she currently has but to anticipate future gains, which could be up to \$11.5 million.

[2:17:38 PM](#)

KEVIN WALSH, Certified Public Accountant (CPA); Co-Owner, Walsh, Kelliher & Sharp, Fairbanks, Alaska, spoke in support of SB 191. He said he is a longtime member and past president of Fairbanks

Estate Planning Council and a member of the Alaska Trust and Estate Professionals Group. He has been involved in tax matters his entire career. His firm regularly deals with trust and estate matters for clients all over Alaska. The income gift and estate taxes of the United States applies federal tax rules to property as defined and governed by state law. Improvements to Alaska law governing trust and estates can only improve the efficiency with which these trusts operate. When there is clarity of law, it reduces controversy and saves money on accounting, legal, and trustee fees. He said Ben Franklin supposedly indicated two certainties in life, which are death and taxes. This bill can help reduce the certainty of the amount of taxes one might pay by allowing Alaska law to be the most efficient possible and for Alaskan citizens to take full advantage of any opportunity to reduce their federal tax burdens.

SENATOR COGHILL stated his intention to hold SB 191 in committee since this was the first hearing.

[2:19:47 PM](#)

JAMIE DELMAN, Attorney, Shaftel Delman LLC, Anchorage, Alaska, said he was involved in drafting many of the provisions in SB 191. He directed attention to questions raised in Section 4, which was referred to as the Alaska "gift trust" provision. One earlier question was what happens if a promise is made but the expected property or the estate is reduced in value prior to paying on the promise. He related a scenario in which a client makes a promise of \$2 million to an Alaska trust. The client has assets but is unsure of which one to convert to money, but the person wants to take advantage of the high exemption amount [for federal tax purposes]. If the estate contracts in value over the next 20 years, the person will have used the \$11.4 million exemption. However, the client would not need the full exemption if the estate value has contracted. He agreed with Jonathan Blattmachr that there is no real harm in the contraction. He offered his support for SB 191.

[2:22:18 PM](#)

SENATOR MICCICHE said he understood the case, but it does not answer his concern. He offered to put his questions in writing. He was not aware of any other situation where someone can enjoy a federal tax exemption from dollars that potentially do not exist without being subject to penalties. He acknowledged that he could be wrong.

[2:23:28 PM](#)

SENATOR KIEHL referred to Section 4. He referred to [AS 13.36.305](c) that states, "when 180 days have elapsed after a person delivers a promise to a trust ..." He asked what happens to the gift if someone dies before the 180 days lapses, prior to the gift being placed into the trust.

MR. DELMAN answered that if someone died on day 90, the trust would still have an enforceable obligation against the estate of the person who died.

SENATOR KIEHL asked what benefit is derived on day 181.

MR. DELMAN answered that [AS 13.36.305(c) cites AS 45.03] which provides trustees guidance as to what they can do with this asset on day 181. This obligation is being created by using the new statutory provision but referencing AS 45.03 provides instruction on how the property can be transferred, sold, or negotiated.

SENATOR COGHILL suggested that what he probably needs is a "white paper" on Section 4, in terms of how it would work for time periods and for assets.

[2:26:29 PM](#)

RICH HOMPESCH, Attorney, Hompesch & Evans, Fairbanks, Alaska, spoke in support of SB 191. He responded to Senator Micciche's question about the diminution in the value from the date the gift is made until death. He understood the purpose of Section 4, or the "Alaska gift trust" is so the person can use the federal tax exemption of \$11 million before the window closes and the exemption is reduced on December 31, 2025. If the estate's value is reduced in the meantime, the person does not have an estate tax problem, so it does not matter. The idea is to address the estate that grows beyond the exemption so use the exemption before it is reduced under federal law. He concurred with testimony given by the previous testifiers.

SENATOR COGHILL suggested that the committee might need a primer on the tax requirements.

[2:28:51 PM](#)

MATTHEW BLATTMACHR, President & Chief Executive Officer, Peak Trust Company; President, Alaska Trust & Estate Professionals, Anchorage, Alaska, spoke in support of SB 191. He said the Alaska legislature has a 24-year legacy of reviewing [estate and trust] bills. This bill will clarify Alaska law and adding the

"gift trust" concept, which is new under any state law will improve planning options for Alaskans.

[2:29:51 PM](#)

SENATOR COGHILL remarked that he would like to frame the tax question prospectively, such that an asset that may not have the same value when the person dies as when it was gifted.

[2:30:35 PM](#)

SENATOR KIEHL asked if he could quantify the size of the trust industry in Alaska, such as the number of jobs, trust assets from nonresidents, and any figures on the rate of anticipated growth.

MR. M. BLATTMACHR responded that there are several ways to quantify the trust industry in Alaska, including the number of trusts, the assets in banks, and the number of people employed by the industry. Several years ago, a bill dealing with life insurance premium tax included estimates that about 350 jobs were directly related to the industry and the state collected \$7 million in direct taxes on life insurance policies. At the time it was the second largest contributor to the general fund. This also doesn't take into consideration those indirectly related to the industry, such as attorneys or accountants whose practice is incidental to trusts. He said he could speak to assets in terms of Peak Trust, but the scope goes beyond their practice. For example, the First National Bank of Alaska's trust company also generates assets. He reported that Peak Trust has static deposits of well over \$100 million in Alaska's banking institutions and 2,500 trusts. This does not take into account other trust companies, such as First National Bank's trust, where Alaska residents as individuals are the trustees. He offered to provide more information on gross figures.

[2:33:49 PM](#)

SENATOR MICCICHE said he supports improving the trust policies and he recognizes the value to the state.

He asked for assurance that the Alaska Trust & Estate Professionals had thoroughly thought through the gifting provision. He expressed concern that the person promising the gift might not have sufficient funds in his or her estate to satisfy the amount promised in the will. The person may make decisions later on in life, after the promise of the gift is made, that adversely affect the estate to the extent that the person's liabilities at the time of his or her death exceed the

promise to the trust. He said he was unsure of the order or priority to satisfy the trust.

SENATOR COGHILL suggested his concern could be framed by considering how other conflicts would be handled in general trust management in terms of the promise of a gift to the trust.

He said his goal with SB 191 is to keep Alaska attractive, ensure that beneficiaries benefit, and provide clarity in statute for businesses.

SENATOR COGHILL indicated the bill would be set aside. He referred to Section 2, page 5, lines 9 - 10, which read:

(29) to treat [CONSIDER] discretionary distributions to a beneficiary as being made first from capital gains realized during the year.

He asked the Alaska Trust & Estate Professionals to explain how distributions were previously made and the reason to prioritize them as "first".

[2:38:11 PM](#)

CHAIR COGHILL held SB 191 in committee.

[2:38:40 PM](#)

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:38 p.m.