

HB

696

FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 696
 Title: "...married persons' rights in a family home."
 Sponsor: House Rules/Code Rev. Comm.
 Requestor: House Judiciary
 Date of Request: 3/13/84

FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: General Government
 Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard L. Pegues Phone: 465-3672
 Division: Administrative Services Division Date: 3-13-84
 Approved by Commissioner: Richard L. Pegues/for Date: 3-13-84
 Agency: Norman C. Gorsuch
Department of Law

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Fiscal Note
Analysis
HB 696

March 13, 1984

This bill was requested by the Code Revision Commission to remove certain anachronisms and would repeal certain statutory provisions that cause uncertainty in titles to Alaska real property. The protections afforded a widow by the right of dower are now afforded by various options under the Uniform Probate Code, as are the protections afforded a widower under the related "curtesy" right. This bill would repeal some of the protections once afforded a married person under common law dower and curtesy. Because the bill only deals with private property rights, it will not have a fiscal impact on state government operations.

HOUSE AND SENATE JOINT
JOURNAL SUPPLEMENT

March 1, 1984

No. 21

ALASKA CODE REVISION COMMISSION



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EXECUTIVE SECRETARY
BILLY G. BERRIER

March 1, 1984

Senator Bill Ray, Chairman
Alaska Legislative Council
Pouch V, State Capitol
Juneau, Alaska 99811

- RE: (1) a bill relating to principal and income of trusts; (HB 693/SB 511)
(2) a bill relating to administration of decedents' estates; (HB 694/SB 512)
(3) a bill relating to renunciation of rights in decedents' estates; (HB 695/SB 513)
(4) a bill relating to married persons' rights in a family home; and (HB 696/SB 514)
(5) a bill relating to the uniform disposition of certain property rights at death (HB 697/SB 515)

Dear Senator Ray:

Pursuant to AS 24.20, the Alaska Code Revision Commission has prepared the enclosed bills and respectfully asks that they be introduced in the legislature.

They are technical bills the commission has been working on with the probate committee of the Alaska Bar Association. They relate generally to rights at death and to property arrangements that usually have their inception in death.

At its last meeting, the Legislative Council agreed to introduce the bills.

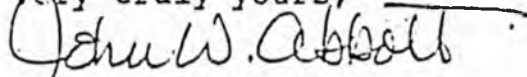
One of the bills, the bill on disposition of certain property rights at death, was previously in the legislature but received little notice. It is revived at the request of the probate committee of the Alaska Bar Association, and that

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committee has advised the commission that it will actively support the bill.

A commentary on each bill is enclosed.

Very truly yours,



John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

Enclosures

cc: Hon. Bill Sheffield
Hon. Edmond W. Burke, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency

-- COVERS IDENTICAL BILLS: HB 696 & SB 514 --

ALASKA CODE REVISION COMMISSION
COMMENTARY TO ACCOMPANY BILL RELATING TO
MARRIED PERSONS' RIGHTS IN A FAMILY HOME

This bill would remove certain anachronisms and would repeal certain statutory provisions that cause uncertainty in titles to Alaska real property. The principal provisions to be repealed are AS 34.15.010(b), (c) and (d), subsections that deal with conveyances of "the family home or homestead".

The other two sections to be repealed by the bill deal with dower, a common law concept that has not been recognized in Alaska in its pure form since 1900 (Bechtol v. Bechtol, 2 Alaska 397 (1905)). Its altered, statutory form was removed from Alaska law in 1963 (sec. 30, ch. 38, SLA 1963). The protections once afforded a widow by the right of dower are now afforded by various options under the Uniform Probate Code adopted in Alaska in 1972, as are the protections afforded a widower under the related "curtesy" right. The official comment to the Uniform Probate Code includes:

"The provisions of this Code replace the common law concepts of dower and curtesy and their statutory counterparts."

The main subjects of this bill, AS 34.15.010(b), (c) and (d), are subsections enacted over a period of time, apparently in a patchwork effort to approach some of the protections once afforded a married person under common law dower and curtesy.

Common law dower was a life estate given a widow in one-third of the lands her husband owned at any time during the marriage. Her husband could not transfer away her right. But Alaska's statutory dower only applied to real property owned by the husband at the husband's death. Common law curtesy was similar to dower but was a right given a husband in lands of his wife. In its statutory form (sec. 482, Compiled Laws of Alaska 1913, since repealed) it applied only to lands owned by the wife at the wife's death.

To compensate for the lesser protection afforded in the statutory forms of dower and curtesy, the legislature required the signature of both spouses on every deed to "a family home or homestead" (ch. 107, SLA 1933; now AS 34.15.010(b)).

Unless both spouses' names appear on the title

documents, a purchaser down the chain of title usually will have no way of knowing whether a predecessor was married and usually will have no way of knowing whether real property was a married couple's "home or homestead". Therefore, the 1953 legislature (ch. 145, SLA 1953) engrafted further provisions on the statute in an effort to clear titles clouded by what now is AS 34.15.010(b).

The confused and contradictory state of these subsections of AS 34.15.010 can best be shown by setting them out in full:

(b) In a deed or conveyance of the family home or homestead by a married man or a married woman, the husband and wife shall join in the deed or conveyance.

(c) The requirement that a spouse of a married person join in a deed or conveyance of the family home or homestead does not create a proprietary right, title or interest in the spouse not otherwise vested in the spouse.

(d) Failure of the spouse to join in the deed or conveyance does not affect the validity of the deed or conveyance, unless the spouse appears on the title. The deed or conveyance is sufficient in law to convey the legal title to the premises described in it from the grantor to the grantee when the deed or conveyance is otherwise sufficient, and (1) no suit is filed in a court of record in the judicial district in which the land is located within one year from the date of recording of the deed or conveyance by the spouse who failed to join in the deed or conveyance to have the deed or conveyance set aside, altered, changed, or reformed, or (2) the spouse whose interest in the property is affected does not file, within one year in the office of the recorder for the recording district where the property is situated, a notice of his interest in the property.

Inconsistencies in the subsections make them extremely difficult to interpret. All that is clear is that there are title problems whenever only one person is record owner of real property, and that person conveys an interest in the property by a document that does not show whether he or she is a single person. At best, the title is clouded during the year of limbo provided under AS 34.15.010(c) and (d).

By proposing this bill, the code revision commission is suggesting (1) that any worthwhile purpose there may be in retaining AS 34.15.010(b), (c) and (d) in the law is far outweighed by the uncertainty in land titles the subsections cause, and (2) that the options afforded a married person under the Uniform Probate Code provide adequate protection.

AS 09.45.480(a)(1) relates to determining value of an "estate in dower". AS 09.45.720 relates to "actions to recover possession by a tenant in dower". The sections should be repealed because the dower right no longer exists in Alaska, as noted above.