

HEB

101

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSHB 101(L&C)

Revision Date: _____
Title: Trusts and Property Transfers in Trust

Department: Commerce and Economic Development
BRU: Banking, Securities & Corporations
Component: Banking, Securities & Corporations

Sponsor: Rep. Vezey
Requestor: Senate Judiciary Committee

COMPONENT SERIAL NO. _____ 1233

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
---------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ _____

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Willis F. Kirkpatrick, Director
Division: Banking, Securities and Corporations
Approved by Commissioner: William L. Hensley
Agency: Commerce and Economic Development

Phone: 465-2521
Date: _____
Date: 2-21-97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

Revision Date: _____ Dept. Affected: Revenue
 Title: Trusts & Property Transfers in trust BRU: Child Support Enforcement
 Component: Child Support Enforcement
 Sponsor: Representative Vezey
 Requestor: (H) L&C COMPONENT SERIAL NO. 111

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match					0.0	
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Glenda Straube Phone: 269-6801
 Division: Child Support Enforcement Date: January 7, 1997
 Approved by Commissioner: Wilson L. Condon Date: January 7, 1997
 Agency: Revenue

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

COPY For more information call the Governor's Legislative Office

FISCAL NOTE

No. 2
 Bill Version: CSHB 101(L&C)
 (H) Publish Date: 2/12/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Law
 Title: ...relating to certain irrevocable transfers in trust... BRU: Civil Division
transfers of certain trust interests...an effective date Component: General Legal Services
 Sponsor: Representative Vezey
 Requester: House Labor and Commerce Committee COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact for the Department of Law.

Prepared by: Fred Fisher Phone: 465-3672
 Division: Administrative Services Division *Fred Fisher for* Date: 2/7/97
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/7/97
 Agency: Department of Law

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

No. 1
 Bill Version: CSHB 101(L&C)
 (H) Publish Date: 2/12/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: Trusts and Property Transfers in Trust

Department: Commerce and Economic Development
 BRU: Banking, Securities & Corporations
 Component: Banking, Securities & Corporations

Sponsor: Rep. Vezey
 Requestor: (H) L&C

COMPONENT SERIAL NO. _____ 1233

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
---------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ _____

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Willis F. Kirkpatrick, Director
 Division: Banking, Securities and Corporations
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 465-2521
 Date: 2-5-97
 Date: 2-5-97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

COMMITTEE COPY



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE Administrative
COMMITTEE NAME

COMMITTEE ON House Bill 101 DATED 3-7-97
BILL/SUBJECT

I am in support of House bill 101.

SIGNED *Heaven Smith*
TESTIFIER

Self
REPRESENTING (OPTIONAL)

P.O. Box 10595 457-8250
ADDRESS/PHONE NUMBER



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE Senate Judiciary
COMMITTEE NAME

COMMITTEE ON House Bill 101 DATED 3/7/97
BILL/SUBJECT

I am support of this bill
 because of the economical
 development that it will
 provide Alaska.

SIGNED Andy Urelette
TESTIFIER

REPRESENTING (OPTIONAL)
3053 Great St. North Pole, AK 99705
ADDRESS/PHONE NUMBER



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE

Senate Judiciary
COMMITTEE NAME

COMMITTEE ON

HB 101
BILL/SUBJECT

DATED

7 Mar 97

*I hereby give my support
to the above.*

SIGNED

TESTIFIER

REPRESENTING (OPTIONAL)

ADDRESS/PHONE NUMBER



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE State Judiciary
 COMMITTEE NAME
 COMMITTEE ON CS for HB 101 DATED 3-17-97
 BILL/SUBJECT

Sr. Taylor and committee member,

I urge you to support and recommend
 do passage of HB 101. This bill will
 bring a large amount of investments to ~~our~~ our
 state w/o hurting our natural resources.
 HB 101 will make Alaska the "Estate
 Planning Capitol" of the nation. It will
 increase business in the areas of investments,
 financial planning and trusts.
 Thank you for your work on this bill.

SIGNED

TESTIFIER

Jo A. Kuchle (JO A. Kuchle)
Self

REPRESENTING (OPTIONAL)

P O Box 13784 Fairbanks, AK 99707
 ADDRESS/PHONE NUMBER

(907) 488-1657



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE Senate Judiciary
 COMMITTEE NAME

COMMITTEE ON Bill 101 DATED 3/7/97
 BILL/SUBJECT

I support legislature that will
 afford citizens an opportunity to
 protect their assets.

SIGNED Kenneth J. Joste
 TESTIFIER

REPRESENTING (OPTIONAL)
970 Eldorado Rd Fairbanks, AK
 ADDRESS/PHONE NUMBER

99709



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE Senate Judiciary
COMMITTEE NAME

COMMITTEE ON Bill 101 DATED 3/7/97
BILL/SUBJECT

I feel Bill 101 will benefit the state of Alaska because it makes good business sense and it's citizens will benefit for the very same reason.

SIGNED [Signature]
TESTIFIER

REPRESENTING (OPTIONAL)
2351 Nussel Loop
ADDRESS/PHONE NUMBER
Fairbanks Akc 99709 (907) 455-6125



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE State Judiciary
COMMITTEE NAME

COMMITTEE ON AB 101 DATED 3-7-97
BILL/SUBJECT

I am in insurance sales -
and I am very high
on what this legislation
could and will do for
our state. Please
recommend!

SIGNED Bill Belkin
TESTIFIER

BELTON FINANCIAL RESOURCES
REPRESENTING (OPTIONAL)

600 rd Street - Ste 197
ADDRESS/PHONE NUMBER

Fairbanks, AK 99701

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SCS CSHB 101 (JUD)

Revision Date: _____ Dept. Affected: Department of Law
 Title: ...relating to certain irrevocable transfers in trust... BRU: Civil Division
transfers of certain trust interests...an effective date Component: General Legal Services
 Sponsor: Representative Vezey
 Requester: Senate Judiciary Committee COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact for the Department of Law.

Prepared by: Joan M. Kasson *Joan M. Kasson*
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho *Bruce M. Botelho for*
 Agency: Department of Law

Phone: 465-5370
 Date: 3/10/97
 Date: 3/10/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

SENATE COMMITTEE REPORT

DATE: 2/25/97

FURTHER:

DATE TURNED
IN TO OFFICE: 3/10/97

Judiciary Committee considered CS FOR HOUSE BILL NO. 101(L&C)

"An Act relating to certain irrevocable transfers in trust, to the jurisdiction governing a trust, to challenges to trusts or property transfers in trust, to the validity of trust interests, and to transfers of certain trust interests; and providing for an effective date."

and recommends:

- be replaced with S CS HB 101 (JUD)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:
- same title
 - new title
- House Bill:
- same title
 - technical change
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Lisa Miller</i>	✓	<i>Lisa Miller</i>			
<i>Ann R. Powell</i>	✓				
CHAIR: <i>Seane</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>FNFC</i>			

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

ALASKA STATE LEGISLATURE



Sen. Robin Taylor, Chair
Sen. Drue Pearce, Vice Chair
Sen. Mike Miller
Sen. Sean Parnell
Sen. Johnny Ellis

State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: (907) 465-3922

Senate Judiciary Committee

MEMORANDUM

TO: Terry Bannister, Attorney-- Legislative Counsel

FROM: Laura Chase, Senate Judiciary Committee Aide *Laura Chase*

DATE: March 8, 1997

RE: SCSHB101(JUD)

The Senate Judiciary Committee has passed CSHB101(L&C) out of committee as a Judiciary Committee Substitute with the following amendments:

Amendment 2:

Page 6, line 21:

Following "under a"

Insert "child"

Page 6, line 21:

Delete "for a child of the settlor"

Amendment 3:

Page 6:

Delete lines 25-29

This bill is ready to finalize, as amended above. Senator Taylor hopes to have it read across Monday. If you have questions, please don't hesitate to call me at 3717. Thanks, Terry!

AMENDMENT 1

HB 101

Page 2, line 3:

Following "transfer"

Insert ", including a transfer in trust with a transfer restriction under AS
34.40.110(a),"

Page 4, line 13:

Following "provided in"

Insert "AS 13.12.205(2) and"

Page 6, line 4:

Following "(b)"

Insert "Except as provided in AS 13.12.205, if" [If]

AMENDMENT 2

HB 101

Page 6, line 21:

Following "under a"

Insert "child"

Page 6, line 21:

Delete "for a child of the settlor"

AMENDMENT 3

HB 101

Page 6:

Delete lines 25-29.

AMENDMENT 4

HB 101

Page 5, line 16:

Following "created"

Insert ", except that this provision does not apply to real property"

Alaska State Legislature

Interim Address:
119 N. Cushman, Suite 211
Fairbanks, AK 99701
(907)-456-5081
Fax# (907)-456-8245
Official Business



Session Address:
Room 13
State Capitol
Juneau AK
99801-1182

(907)-465-3719

Representative Al Vezey

HB 101 SPONSOR STATEMENT

Alaska is in the unique position of having neither a state income tax nor a state sales tax. This makes Alaska a very favorable atmosphere for managers of large investment portfolios, administrators of trusts and other investors who want the security and protection of the United States government and the American banking system for their investments.

To attract these investments, certain changes have been suggested to the statutes governing trusts in Alaska. When enacted these changes will open the door to in-state management of billions of dollars that are now going to offshore jurisdictions. According to the latest figures reported by Congress' Joint Committee on Taxation, American families transferred over \$460 billion off-shore in 1995

It is becoming increasingly obvious to policy-makers that this out-flow of U.S. capital comes at a steep cost. U.S. citizens who transfer assets to off-shore trusts do not gain any tax advantages. Thus, there is no tax loss to U.S. jurisdictions, but it reduces the capital base available for other investment in the U.S and increases the costs of capital. Expanding the investment industry in Alaska will increase demand for banking and legal work in the U.S. associated with creating and administering Family Trusts.

Currently, only one state in the nation -- Missouri -- has enacted legislation to offset the tremendous capital outflow, but it suffers from defects and ambiguities that make many practitioners uncomfortable recommending it as a viable option. Therefore, it could be a great benefit to Alaska, and the U.S. generally, to enact legislation which makes it possible for Americans to create family trusts in the U.S.

There is no indication that Americans of good intention will stop using this traditional method of preserving their family's wealth. Passage of HB 101 will be pivotal to opening this great opportunity for Alaskans and other U.S. citizens.



Attorneys at Law

COOK SCHUHMAN & GROSECLOSE, INC.

714 Fourth Avenue, Suite 200 • Post Office Box 70810 • Fairbanks, Alaska 99707-0810 • 907 / 452-1855 • Fax 907 / 452-8154
 Tok (907) 883-5459 • Delta Junction (907) 895-4439 • Toll Free Number 800-550-1855 (Alaska Only)
 Email esg@alaskalaw.com • www.alaskalaw.com

February 10, 1997

Via Facsimile: (907) 465-2040

Rep. Norm Rokeberg
 House of Representatives
 State Capitol
 Juneau, Alaska 99801

Re: *Alaska Trust Act*
 HB 101
 Labor & Commerce Committee Meeting

Dear Rep. Rokeberg:

Today your committee is set to hear testimony on Rep. Al Vezey's bill, The Alaska Trust Act. I wanted to express my strong support for this bill and join in the comments and support for the bill you will undoubtedly hear from members of the Alaska Bar, accountants, bank trust departments and others. Unfortunately I will be unable to testify.

Should this bill become law, Alaska will become the preeminent State in the United States for estate planning and trust work. Presently many wealthy people interested in avoiding estate taxes form trusts which are administered by off-shore financial institutions, such as the Cook Islands. If HB 101 passes most of those types of investments will transfer back onshore to Alaska. This could bring millions of dollars of outside investments into our State.

The passage of this bill will increase investment and job opportunities for Alaskans without harming our natural resources and without costing us a thing. This bill will also increase work in the banking, investment, legal, and trust professions.

I strongly encourage you and the members of your committee to recommend due passage for HB 101. I understand the Governor's Office has or is mounting a campaign to kill this bill.¹ Attorneys and other professionals have revised the language of this bill to address the Governor's concerns. I believe any opposition the Governor

¹ I am sure you are aware the Governor vetoed this bill last year and the Legislature missed override by one vote.

Dennis E. "Skip" Cook
 Barbara L. Schuhmann
 Robert B. Groseclose

Of Counsel:
 Grace Berg Schabbe

Jo A. Kuchic
 Zane D. Wilson
 Bret D. Cook

Rep. Norm Rokeberg
February 10, 1997
Page 2

may have is strictly political and has nothing to do with its merits. Passage of Rep. Vezey's bill will make Alaska be to estate planning as Delaware is to corporations.

I appreciate your committee's work on the Alaska Trust Act. If you have questions about this bill or if I can be of any assistance to you regarding this bill, please contact me.

Sincerely,

COOK SCHUHMAN & GROSECLOSE, INC.

By



Jo A. Kuchle

JAK/am:AKTrust.doc

Cc: Rep. Al Vezey (via fax)
Rep. Gene Therriault (via fax)
Rich Hompesch (via fax)
Jonathan Blattmachr
Dick Thwaites

Rep. Norm Rokeberg
February 10, 1997
Page 2

Bill allowing certain trusts winds through House

Almost exactly one year ago, the state House passed a very interesting bill making a few small, secure changes in the state's regarding financial trusts. The backers of this bill say it can create a multi-billion dollar financial management industry in Alaska, turning us into another Switzerland.

The measure would have allowed the creation of a type of "revocable" trust that can serve as a powerful tool for business and personal financial management. It would have legalized in Alaska a kind of trust that is drawing hundreds of billions of dollars a year to Bermuda, Belize and other smaller British colonies who have amended their own British common law trust statutes in a similar way.

From a business standpoint, this is certainly one of the most interesting measures in the Legislature this year.

Alaska is the perfect location for such a trust law change. Among the 50 states, the bill's backers say, because it has no



Fred
Pratt

personal income tax or statewide sales tax that would be levied on trust incomes. Our state could provide Americans a safer, more secure trust environment under the protection of U.S. laws than these other "off-shore" jurisdictions that are getting trust business now.

But the bill sponsored and pushed through the last Legislature by Rep. Al Vezey, R-North Pole, was vetoed by Gov. Tony Knowles. The governor cited some vague problems with the bill that his lawyers now admit are groundless, and his reasons for the veto appear more to do with his attitude toward the sponsor than toward the subject.

Vezey is back driving the same issue this year, and he's already got the bill through the state House.

A normal garden-variety family trust is usually set up by a person to invest and secure assets for the benefit of someone else, usually his children, grandchildren or some charity.

An irrevocable trust would be set up by a person or corporation who might be among the beneficiaries of the trust itself. It places assets in the hands of a trustee in such a way that the originator of the trust cannot later revoke the trust and take the assets, although he has limited authority over how the assets are managed and paid out.

In some offshore jurisdictions where these trusts are popular, for instance, the person originating the trust has veto powers over how the trustee distributes earnings.

Vezey's measure, House Bill 101, would not allow such a trust to be set up to guard assets obtained illegally, or for the intent of defrauding creditors. Under HB 101, a creditor can get to the assets of a trust if he can show that it was set up to hinder, delay or defraud creditors, or if the trust is set up with the originator as a beneficiary.

There's even specific language in this year's version of the legislation preventing a trust from being set up to avoid child support payments, a red herring cited by the governor in his veto last year. In reality this is very unlikely, since attorneys who have investigated the field say it costs about \$17,500 to set up one of these trusts and it wouldn't make sense for assets of less than several million dollars.

This places the irrevocable trust outside the range of most deadbeat dads. In fact Vezey's bill might even be better for creditors because the trusts would be subject to Alaska courts rather than set up in foreign countries like they are now.

A study by Congress' Joint Committee on Taxation concluded that \$460 billion left the United States in 1995 for such offshore trusts. If only \$5 billion or \$10 billion of that came to Alaska it could generate many jobs for lawyers, accountants and others in the financial management field.

The trusts are also valuable business tools. They can own the

assets of a joint venture or hold assets that are collateral for bank loans in cases where the bank might otherwise balk.

This year the Knowles administration hasn't come out against the measure. A spokesman for the Department of Law raised some insubstantial issues at a House committee hearing and complained that there are no tax lawyers or estate experts in the department so they're out of their depth on the matter.

In the two years of legislative action nobody has testified against this measure. Last year only two of the 60 legislators voted against it.

This year Vezey's bill passed the House last week on a 27-to-8 vote. All Fairbanks legislators supported it except Rep. Tom Brice, who gave it "no recommendation" when it passed from committee and was not present for the final vote.

Fred Pratt, a free-lance writer in Fairbanks, is a longtime reporter and observer of Alaska politics.

Fairbanks Daily News-Miner Sunday March 2, 1997

ALASKA STATE LEGISLATURE
HOUSE BILL NO. 101

HISTORY IN THE HOUSE

1997
1/31 Read first time and referred to:
LEC

2/12 LEC RPT CS(LEC) New Title
5 DP 0 DNP 1 NR 0 AM
FN 3 OFN Previous FN

RPT CS() New Title
DP DNP NR AM
FN OFN Previous FN

RPT CS() New Title
DP DNP NR AM
FN OFN Previous FN

2/21 Read second time
CS(LEC) Adopted

Amended

2/21 Advanced

2/21 Read third time

Return to second for specific amendment

2/21 PASSED EFD Same or
Yeas 27 Yeas
Nays 8 Nays
Excused 4 Excused
Absent 1 Absent

Intent adopted

2/21 Reconsideration Kubria

2/24 Reconsideration ~~not~~ taken up

2/24 PASSED ON RECON. EFD Same or
Yeas 33 Yeas
Nays 3 Nays
Excused 3 Excused
Absent 1 Absent

Intent adopted

2/24 Reported correctly engrossed
Signed by Speaker, to the Senate

Suzi Lowell
Chief Clerk of the House

HISTORY IN THE SENATE

1997
2/25 Read first time and referred to:
LEC

RPT() CS DP NR DNP AM
New Title Same Title Previous FN
FN OFN To

RPT() CS DP NR DNP AM
New Title Same Title Previous FN
FN OFN To

RPT() CS DP NR DNP AM
New Title Same Title Previous FN
FN OFN To

Rules Calendar() CS AM Other
New Title Same Title Previous FN
FN OFN

Read second time

CS Adopted () New Title
Amended Advanced

Read third time

Letter of Intent adopted
Return to second for specific amendment

PASSED EFD Same or
Yeas Yeas
Nays Nays
Excused Excused
Absent Absent

Reconsideration
Reconsideration not taken up

PASSED EFD Same or
Yeas Yeas
Nays Nays
Excused Excused
Absent Absent

Reported correctly engrossed
Signed by President, to the House

Secretary of the Senate

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

March 6, 1997

The Honorable Robin Taylor, Chair
and Members
Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99811

Dear Senator Taylor and Committee Members:

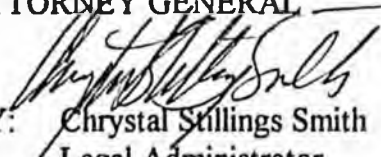
As part of its review of HB 101, which deals with irrevocable trusts, Department of Law attorneys sought counsel from recognized experts in the field of probate law. As you are aware, this type of law is extremely complex and few people in Alaska are on a technically-familiar footing with it. Letters from two of these experts are attached, and we hope that arrangements can be made for the third to testify during the hearing on this bill on Friday, March 8. Our attorneys also discussed their concerns with the principal drafter of the bill, an attorney from New York, and Alaskan supporters of the legislation. Many of the concerns were addressed in changes from last year's bill; however three remain.

Based on those conversations, we would like to propose some limited, technical amendments to address those remaining concerns, as outlined on the attachment. It is my understanding that the supporters of the bill have no substantive objection to these amendments, although they have expressed their concern that changing the bill in any way at this point might impede its progress. The amendments propose minor changes to sections dealing with spousal elective shares in probate and with child support. An amendment that would retain the Rule Against Perpetuities for real property is also included to address concerns that real property located within the state in some cases might be tied up in perpetual trusts with the interests of beneficiaries in generations past the existing limits so diluted as to eventually render the property non-transferrable.

Thank you for your consideration of these proposed amendments.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL


BY: Chrystal Stillings Smith
Legal Administrator

Enclosures

cc: Representative Al Vezey
urchot

PROPOSED AMENDMENTS TO HB 101:

§ 1 of the bill - ADD: at page 2, line 3 so that the provision reads:

(B) a transfer, including a transfer in trust with a transfer restriction under AS 34.40.110(a), in which the decedent created a power over the income or property, . . .

AND

§ 5 of the bill - ADD: at page 4, line 13 so that the provision reads:

Sec. 13.36.310. Challenges to trusts. Except as provided in AS 13.12.205(2) and AS 34.40.110, . . .

AND

§ 8 of the bill - ADD: at page 6, line 4 so that the provision reads:

(b) Except as provided in AS 13.12.205, if [IF] a trust contains a transfer restriction allowed under (a) of this section, . . .

These additions would obviate the conflicts between AS 13.12.205(a) and (b) and between those sections and AS 34.40.110. These conflicts could jeopardize the spousal elective share in probate by protecting a trust from creditors, including spouses. Under the amendment to AS 34.40.110 such a trust would become part of the augmented estate of a spouse when the settlor dies, but under the later provisions, since the spouse is a person, no claim would be allowed against the trust based on marital rights. Although the authors of the bill intended that this not be the case, letting the conflict remain could jeopardize a spouse's right to share in the estate of a settlor using such a trust.

§ 6 of the bill - ADD: page 5, line 14 so that the provision reads:

(3) the interest is in a trust and all or part of the income or principal of the trust may be distributed, in the discretion of the trustee, to a person who is living when the trust is created[.], except that this provision does not apply to real property.

This provision would waive the Rule Against Perpetuities for these trusts. Intangible property (money, stocks, bonds, etc.) can grow with the trust to meet the increase in potential beneficiaries. Real property, while it may increase in value, cannot grow in size and there could

come a time when the growth in number of potential distributees could make an interest in the property meaningless. While a beneficiary could petition a court to force the sale of the property, the interest might be so small as to make even that effort more expensive than it would be worth. The net effect could be to tie up real property so that it could not be alienated. This is an unintended result and this amendment would obviate that potential problem.

§ 8 of the bill - AMEND: at page 6, lines 20 & 21 so that the provision reads:

(4) at the time of the transfer, the settlor is in default by 30 or more days of making a payment due under a child support order or judgment [FOR A CHILD OF THE SETTLOR].

As presently worded, a settlor might be able to escape this provision if the support order or judgment is for other than his or her own child. It is not uncommon for individuals to incur a support obligation for other than a natural child, such as a stepchild for whom the obligor has been found to stand in loco parentis.

§ 8 of the bill - DELETE page 6, lines 25 - 29. (All of subsection (d) to AS 34.40.110)

This provision adds nothing to existing law. Distributions from a trust to a beneficiary are now reachable by any creditor, including the Child Support Enforcement Division. Leaving this provision in the bill could prompt a court to find that it is intended to favor child support collection agencies over other creditors. This too was unintended by the drafters.



The University of Michigan Law School

HUTCHINS HALL
625 SOUTH STATE STREET
ANN ARBOR, MI 48106-1213
U.S.A.

LAWRENCE W. WAGGONER
Louis M. Simms Professor of Law

OFFICE PHONE: 313.783.2586
E-MAIL: WAGGONER@UMICH.EDU
OFFICE FAX: 313.764.8309
HOME FAX: 313.873.0784

February 13, 1997

Ms. Marilyn May
Assistant Attorney General
State of Alaska
Department of Law
1031 West 4th Ave., Suite 200
Anchorage, AK 99501-1994

Re: Alaska House Bill No. 101

Dear Marilyn:

Thanks for giving me the opportunity to review and comment on House Bill No. 101, which is a revised version of the Alaska Family Trust Act, HB 459(JUD) upon which I commented last summer. My opinion of this version of the bill has not changed. The legislature should not pass it, and if they do, the governor should veto it. The bill is still ambiguous in part, and, more importantly, is against public policy. *Make no mistake about one thing: This bill is aimed at one type of trust that the out-of-state lawyer who is behind this bill wants to create for his wealthy clients: A discretionary trust (with a friendly trustee) that will protect the client's assets from creditors of all types (including his or her child's support obligations) and that will last in perpetuity.*

Sections 1 and 8, Spousal Elective Share Rights. The principal change from the prior version appears in the provision concerning the spousal elective share. The promoters of the bill apparently have decided that they overreached last year, and are willing to cut back on protecting discretionary trusts from the spouse's elective share. Hence, section 1 of the new bill adds the underlined clause to 13.12.205(2)(A). However, there may still be an intended or unintended loophole. I would only feel that spousal elective share rights are truly protected if:

- (1) the same clause were added to 13.12.205(2)(B); and
- (2) 34.40.110 (added by Section 8) were amended to add at the beginning of subsection (2) the following language: "Except as provided in 13.12.205,".

The reason for adding the "except" clause is that, without it, 34.40.110(b) refers to a creditor "or

another person." a term which includes the spouse of the settlor.

Other Spousal Rights, Including Rights on Divorce. What I said above pertains only to spousal *elective share* rights. As I read 34.40.110, a settlor could avoid his or her obligations under the *divorce laws* by setting up a discretionary trust with the proverbial friendly trustee.

Child Support Obligations. The bill as revised still allows a settlor to set up a trust and have it immune from child support obligations. 34.40.110(d) provides no protection, because it only applies to distributions out of the trust and in the hands of the beneficiary (the settlor or another beneficiary). This is nothing new in American law. Our law has always provided that all creditors can reach property distributed from a trust and in the hands of the distributee, regardless of any contrary provision in the trust document. This well-accepted principle has never been restricted to child support obligations. In fact, by negative implication, this provision suggests that this well-accepted principle now *only* applies to child support, so that a settlor could provide in the trust document that creditor protection would continue to apply to the property *after* distribution.

Section 6, Perpetuities. The proposed amendment to the Uniform Statutory Rule Against Perpetuities is not sanctioned by the Uniform Law Commission. The amendment is ambiguous, and very bad policy. Subsection (3) says that a nonvested future interest cannot be invalid under the Rule Against Perpetuities (in other words, the nonvested future interest is exempt from the Rule Against Perpetuities) if it is in a trust in which the trustee has discretion to distribute income or principal to a person who is living when the trust was created. Does this mean that such a trust continues to be exempt forever, even after the person dies, or does it lose its exemption once the person dies? The language is unclear, and would surely lead to unnecessary litigation.

I have reason to believe that the intention is that the trust will continue to be exempt forever. If this is so, the bill sets up a situation in which a wealthy person, whether an Alaskan or a resident of another state, can set up a so called "dynasty trust" in Alaska, a trust that lasts perpetually.

Why do the promoters of this bill want Alaska to allow perpetual dynasty trusts? The apparent purpose is purely commercial (to manipulate state law in order to give Alaska banks a competitive advantage over banks in nearly all other states). The public policy against dynasty trusts (trusts that last longer than a life in being plus 21 years or 90 years) is lost in the wake of these commercial interests. Ironically, the genesis is the federal generation-skipping tax (GST tax), which imposes high costs for creating trusts that persist through more than one generation. The GST tax would therefore seem to discourage long-term trusts. But the GST tax also contains a \$1 million per donor GST exemption that relies only on state perpetuity law to control the length of exempt trusts. The apparent purpose of this bill is to abolish the Rule Against Perpetuities for Alaskan trusts in order to give Alaskan banks a competitive advantage in attracting out of state \$1 million (\$2 million for married donors) GST-exempt trusts. There are a few other states that have, in effect, abolished the Rule Against Perpetuities for trusts—Wisconsin, Idaho, South Dakota, and Delaware. But I am in touch with people at the IRS and the U.S. Treasury

Department, and on the basis of what they tell me, it is only a matter of time before Congress or the Treasury Department by regulation puts a stop to this, for it is an unintended loophole in the GST tax. Once the loophole is closed, the tax incentive for creating perpetual or dynasty trusts will disappear, but trusts created before the loophole is closed will continue to exist.

On the surface, dynasty trusts might appear attractive to settlors, but will in the end prove to be curses on the settlors' descendants, as they proliferate generation by generation in geometric fashion, some staying in Alaska but some moving far, far away. Such trusts do not preserve family property, but rather divide and subdivide it into shares so that four, five or six generations down the road, each descendant's share represents a smaller and smaller share of the asset. What good is a 1/30th share, or a 1/70th share, or a 1/200th share, or a 1/1000th share?

I have been involved in law reform work at the multi-state level for over ten years, and have been in law teaching at major law schools for over thirty years. I was the Chief Reporter for (author of) the 1990 revisions of the Uniform Probate Code that was recently passed in Alaska. I am also the Reporter for (author of) the Restatement (Third) of Property (Wills and Other Donative Transfers). This is perhaps the most pernicious bill I have ever seen in that time, allowing as it does a wealthy settlor to set up a particular type of trust to skirt his or her obligations to his or her children, spouse, creditors, and in the end to set up a trust that will last so long that its beneficiaries will number well into the hundreds, so that the share of each is nothing more than a nuisance.

Yours sincerely,





The University of Georgia

School of Law

February 12, 1997

Ms. Marilyn May
Assistant Attorney General
State of Alaska
Department of Law
Office of the Attorney General
1031 W 4th Avenue, Ste. 200
Anchorage, AK 99501

Dear Ms. May,

This responds to your telephone call and fax concerning HB 101.

If HB 101 is enacted without change, Alaska will become a state where child support obligations cannot be effectively enforced against beneficiaries of discretionary trusts. Enforcement against a trust beneficiary after the beneficiary has received a discretionary distribution, though theoretically possible, will be difficult if the beneficiary is adept at keeping his money accounts and cash unavailable to collectors.

Subsection (d) of 34.40.110, apparently designed in response to concerns about support obligations, only permits enforcement "against the portion of the distribution to which the beneficiary is entitled." So, a trustee with discretion to pay money to X can protect X from ever having his distribution reached prior to distribution on behalf of persons to whom support is owed, by simply making the payment it decides to make without prior announcement.

The language, in line 29 of p. 6, should be broadened to "distribution to which the beneficiary is entitled or may thereafter become entitled to receive." Also, the language at lines 25 and 26 of the same subsection, "when a distribution is declared by and payable from a trust" needs attention.

A good solution would be to substitute the following language which is based in part on a California statute, and is consistent with Restatement of Trusts, 2d, for (d) of 34.40.110:

Notwithstanding a provision in the trust instrument to the contrary, and notwithstanding (a) and (b) of this section, if a trust provides that the trustee shall pay to or for the benefit of a beneficiary so much of the income or principal or both as the trustee in the trustee's discretion sees fit to pay, a transferee or creditor of the beneficiary may not compel the trustee to pay any amount that may be paid only in the exercise of the trustee's discretion, but if the trustee has knowledge of a proceeding by the child support enforcement agency established under AS25.27 seeking satisfaction of a support obligation from trust distributions made to a beneficiary who is obligated to support another person and the trustee

Athens, Georgia 20602-6012 • Telefax (706) 642-5556
An Equal Opportunity/Affirmative Action Institution

ADDITIONAL
AG - INFORMATION

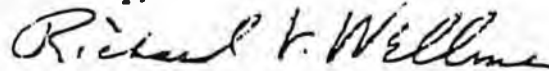
Ms. Marilyn May
February 12, 1997
Page Two

distributes assets to the beneficiary that may be distributed only in the exercise of the trustee's discretion, the trustee is liable to the child support enforcement agency to the extent of values so distributed to the beneficiary.

Other concerns about HB 101 relate to its ambiguous provision regarding duration limits on trusts. Paragraph (3) of proposed AS36.27.050(a) should be dropped, because retention of (1) and (2) as subs under (a) of 34.24.050 would validate a trust set up to enable a trustee to make discretionary distribution for 21 years after the death of the last to die if all the settlor's descendants are living at the time of trust creation. (The example is simply one of many that would satisfy Alaska's just enacted Statutory Rule Against Perpetuities). If the drafters of proposed (3) intended that a trust should end when all possible beneficiaries living at time of creation had died, they should not object to deletion of (3). If they intended that the death of the last beneficiary living at creation would be irrelevant -- meaning, in the case of a wholly discretionary trust, the trust goes on and on until the trustees lose interest in continuing it -- they should be forced to say as much by adding: "and the death of the last such person shall not cause the trust to terminate," or similar language.

I hope these suggestions are helpful.

Sincerely,



Richard V. Wellman
Professor of Law, Emeritus