

HB

292

<TARGET><BILL>HB 292</BILL><SUBJECT>HB
292</SUBJECT><COMM>HFIN27</COMM></TARGET>

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version CSHB 292(L&C)
Fiscal Note Number 1
(H) Publish Date 3/15/12

Identifier (file name) HB292-DCCED-INS-02-24-12 Dept. Affected DCCED
Title Princip & Inc/Probate/UTMA/Retiremt/Ect. Appropriation Insurance Operations
Allocation Insurance Operations
Sponsor Representative Thompson
Requester House Labor & Commerce OMB Component Number 354

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							
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Estimated SUPPLEMENTAL (FY12) operating costs 0.0 (separate supplemental appropriation required,
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial Version

Prepared by Linda Hall, Director
Division Insurance
Approved by JoEllen Hanrahan, Director Administrative Services
Commerce, Community and Economic Development

Phone 907-465-2560
Date/Time 2/23/12 2:00 PM
Date 2/24/2012

FISCAL NOTE #1

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. CSHB 292(L&C)

Analysis

Section 27 amends AS 21.42.020 and provides that a trustee or a trust may procure an insurance contract on the life or body of an individual and the proceeds may be payable to the trustee if the trustee or trust owns the insurance contract, a settler of the trust has an insurable interest in the individual insured, and the proceeds of the contract are primarily for the benefit of a trust beneficiary.

This provision has no anticipated fiscal impact on the Division of Insurance.

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Croft v. Parnell
Supreme Court of Alaska. July 9, 2010. 236 P.3d 369

236 P.3d 369

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Eric **CROFT**, a private individual, and Alaskans for Clean Elections, an initiative group, and Tim June, Steve Cleary, and Joe McKinnon, initiative sponsors, Appellants,

v.

Sean **PARNELL**, Lieutenant Governor of the State of Alaska, and the State of Alaska, Appellees.

No. S-13200. July 9, 2010.

Synopsis

Background: Sponsors of an initiative brought action challenging lieutenant governor's refusal to certify the initiative for the ballot. The Superior Court, Third Judicial District, Anchorage, Mark Rindner, J., granted summary judgment in favor of lieutenant governor. Sponsors appealed.

Holding: On an issue of apparent first impression, the Supreme Court, Christen, J., held that initiative that created program and contained dedication of funds for program violated single-subject rule.

Affirmed.

West Headnotes (7)

Change View

- 1 **Appeal and Error** Extent of Review Dependent on Nature of Decision Appealed from
When reviewing a grant of summary judgment, the Supreme Court applies its independent judgment, affirming if the record presents no genuine issue of material fact and if the movant is entitled to judgment as a matter of law.
- 2 **Appeal and Error** Judgment
In determining whether the prevailing party was entitled to judgment as a matter of law when reviewing grant of summary judgment, the Supreme Court draws all factual inferences in favor of, and views the facts in the light most favorable to, the non-prevailing party.
- 3 **Constitutional Law** General Rules of Construction
The Supreme Court interprets the state constitution using its independent judgment, according to reason, practicality, and common sense, taking into account the plain meaning and purpose of the law as well as the intent of the drafters.
- 4 **Statutes** Constitutional Requirements and Restrictions
Statutes Acts Relating to One or More Subjects
The single-subject rule protects the voters' ability to effectively exercise their right to vote by requiring that different proposals be voted on separately; this approach allows voters to express their will through their votes more precisely, prevents the adoption of policies through stealth or fraud, and prevents the passage of measures lacking popular support by means of "log-rolling," which consists of deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure. Const. Art. 2, § 13.
- 5 **Statutes** Title and text of proposed act and other information
In ruling on single-subject challenges to initiatives, the Supreme Court must balance the rule's purpose against the need for efficiency in the legislative process. Const. Art. 2, § 13.
1 Case that cites this headnote
- 6 **Statutes** Title and text of proposed act and other information

RELATED TOPICS

Statutes

Legislative Title of an Initiative Measure


General Rules of Construction

Meaning of the Language of Constitutional Provisions

Appeal and Error

De Novo Standard of Review Trial Court Grant of Summary Judgment

In applying the test used to determine whether an initiative violates the single-subject rule, the Supreme Court disregards mere verbal inaccuracies, resolves doubts in favor of validity, and strikes down challenged proposals only when the violation is substantial and plain. Const. Art. 2, § 13.

- 7 **Statutes**  Title and text of proposed act and other information
- Initiative that created a program to provide public campaign funding to candidates for state office on a voluntary, opt-in basis and contained the "soft dedication" of oil tax revenue to fund that program violated the single-subject rule; there was no clear or established connection between the oil industry and a need for public financing of state electoral campaigns, coupling the approval of new oil production tax with approval of program deprived voters of opportunity to send message as to either one, and initiative contained non-binding directive that legislature transfer funds left over to a permanent fund dividend. Const. Art. 2, § 13.

Attorneys and Law Firms

*370 Eric Croft, Law Offices of Eric Croft, Joseph H. McKinnon, Law Offices of Joseph H. McKinnon, Anchorage, for Appellants.

Michael A. Barnhill, Senior Assistant Attorney General, Richard A. Svobodny, Acting Attorney General, Juneau, for Appellees.

Before: FABE, Chief Justice, EASTAUGH, CARPENETI, WINFREE, and CHRISTEN, Justices.

Opinion

OPINION

CHRISTEN, Justice.

I. INTRODUCTION

Sponsors of an initiative challenge the lieutenant governor's refusal to certify the initiative for the ballot. The lieutenant governor denied certification because he determined that the initiative violated the single-subject requirement of AS 15.45.040. The sponsors filed suit in the superior court seeking a declaration that the initiative did not violate the single-subject rule. The superior court granted summary judgment in favor of the lieutenant governor and the sponsors appeal. Because the "soft dedication" of funds connecting the two aspects of the initiative is an insufficient link, and because we find no other sufficient connection between the initiative's proposed new oil production tax and the initiative's proposed new "clean elections" program, we agree that the initiative violates the single-subject rule. Accordingly, we affirm the superior court's order entering summary judgment in favor of the lieutenant governor.

II. FACTS AND PROCEEDINGS

On May 29, 2007, Tim June, Steve Cleary, and Joe McKinnon submitted an application for a ballot initiative to Lieutenant Governor Sean Parnell.¹ The initiative proposed a program *371 to provide public campaign funding to candidates for state office on a voluntary, opt-in basis. The initiative also proposed a three-cent tax on each barrel of oil produced in Alaska and stated that "[t]he legislature may appropriate ... the proceeds" of the tax to fund the program. The proposal included a non-binding directive that the legislature transfer excess funds to the Permanent Fund Dividend.

After submitting the initiative application, the sponsors engaged in "informal communications" with the Department of Law that led the sponsors to file a second initiative application. This second initiative application proposed the public campaign funding program but not the additional tax on oil production.

Lieutenant Governor Parnell reviewed the applications as required by AS 15.45.070. This statute directs the lieutenant governor to either certify an application for placement on the ballot or explain why certification is denied.² Lieutenant Governor Parnell denied certification of the first initiative proposal, explaining that the initiative "violates the single-subject rule" because "the initiative addresses two subjects that have no fair relation to each other: (1) it creates a voluntary system of public campaign financing, and (2) it imposes a tax on oil production."

Lieutenant Governor Parnell approved the second version of the initiative application. It appeared on the August 2008 ballot but did not pass.

The initiatives' sponsors, Eric Croft and a group called Alaskans for Clean Elections (collectively, "the Sponsors"), filed a complaint in the superior court against Lieutenant Governor Parnell and the State of Alaska (collectively, "Lieutenant Governor") seeking a declaration that the Lieutenant Governor erroneously rejected the first initiative.

The superior court granted summary judgment in favor of the Lieutenant Governor in June 2008. The Sponsors appeal.

III. STANDARD OF REVIEW

1 2 When reviewing a grant of summary judgment, we apply our independent judgment, "affirming if the record presents no genuine issue of material fact and if the movant is entitled to judgment as a matter of law."³ In determining whether the prevailing party was entitled to judgment as a matter of law, we "draw [] all factual inferences in favor of, and view [] the facts in the light most favorable to, the non-prevailing party."⁴

3 We interpret the Alaska Constitution using our independent judgment, "according to reason, practicality, and common sense, taking into account the plain meaning and purpose of the law as well as the intent of the drafters."⁵

IV. DISCUSSION

The parties agree that the only issue in this case is whether the Sponsors' initiative violates the Alaska Constitution's single-subject rule.⁶ *372 Article II, section 13 of the Alaska Constitution provides, in part, that "[e]very bill shall be confined to one subject." Our court has ruled on challenges to bills and initiatives under this provision in only seven cases.⁷ In each case, we identified a single subject that encompassed all the provisions of the challenged bill or initiative; that is, every provision of the bill or initiative, considered on its own, related to a broader, single subject.⁸

Despite their contrary outcomes, the superior court relied on these cases and ruled in favor of the Lieutenant Governor, explaining that "there is [no] connection between the type of revenue created ... [and] the type of program" proposed by the initiative. On appeal, the Sponsors argue that the trial court improperly interpreted the single-subject rule to require a nexus between a funding source and the funded program beyond the fact of the funding. The Sponsors argue that even when two provisions of a bill are not otherwise related by subject, if one provision creates a program and another imposes a tax calibrated to collect approximately the amount of revenue necessary to fund the program, a non-binding, "soft dedication" of funds from the revenue source is sufficient to unite what would otherwise be two subjects into one, at least for purposes of the single-subject test. The Sponsors also argue, in the alternative, that the initiative's oil tax *is* thematically related to the campaign finance program. We are not persuaded by either of these arguments.

4 The single-subject rule protects the voters' ability to effectively exercise their right to vote by requiring that different proposals be voted on separately. This approach allows voters to express their will through their votes more precisely, prevents the adoption of policies through stealth or fraud,⁹ and prevents the passage of measures lacking popular support by means of log-rolling.¹⁰

* 5 6 In ruling on single-subject challenges, we must balance the rule's purpose against the need for efficiency in the legislative process. If the rule were applied too narrowly, "statutes might be restricted unduly in scope and permissible subject matter, thereby multiplying and complicating the number of necessary enactment[s] and their interrelationships."¹¹ Our solution has been to construe the single-subject "provision ... *373 with considerable breadth."¹² We have consistently articulated the substance of the test to reflect this approach:

All that is necessary is that [the] act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.¹³

In applying this test, we "disregard mere verbal inaccuracies, resolve doubts in favor of validity," and strike down challenged proposals only when the violation is "substantial and plain."¹⁴

* 7 In each of the seven cases in which this court has addressed a single-subject challenge, we upheld the challenged bill or initiative by determining that all provisions related to a single general subject, theme, or purpose.¹⁵ But we have never addressed the question, raised by the Sponsors in this case, whether creating a revenue source that might fund an otherwise unrelated program suffices to unite the revenue source with the program as a "single subject."

The Sponsors argue that the creation of a program and the "soft dedication" of funds for that program are "inherently related" provisions "as a matter of both logic and popular understanding." They argue that the Washington Supreme Court's decision in *Wash. Ass'n of Neighborhood Stores v. Wash.* supports their position.¹⁶ *Neighborhood Stores* involved an initiative that increased taxes on cigarettes and dedicated the new revenue to existing programs in the areas of "violence reduction and drug enforcement," "health services," and "water quality," with remaining funding allocated to "low-income health care programs and other programs."¹⁷ The court held that the initiative did not violate that state's single-subject rule¹⁸ because the new taxes provided revenue to programs that collectively constituted "a single and rationally unified proposal for improving the health of [Washington's] low-income citizens without imposing a net loss of tax revenue on other preexisting programs."¹⁹

In this case, the superior court observed that neither *Neighborhood Stores* nor any other example identified by appellants addressed a single initiative that proposed the creation of an entirely new government program and also proposed the creation of a new and thematically unrelated revenue source. The *Neighborhood Stores* initiative, which created and dedicated a revenue source, is fundamentally different from the Sponsors' initiative, which proposed the creation and "soft dedication" of a new revenue source, and proposed the creation of an entirely new government program. The latter runs afoul of the single-subject rule because it does not provide the voters with an opportunity to express their approval or disapproval of each distinct proposal.

Neighborhood Stores is also distinguishable because it was decided in the context of Washington's prohibition on the dedication of funds beyond a single biennium,²⁰ a framework different from the proscription of *374 dedicated funds in Alaska. The Alaska Constitution expressly prohibits the binding dedication of state revenues for specific projects.²¹ As the superior court correctly noted, "[t]he additional proceeds generated by the [proposed] oil production tax need not and indeed cannot be appropriate[d] to fund the Alaska Clean Elections Program" without running afoul of Article IX, section 7 of Alaska's Constitution. Because the dedication of funds is not permitted in Alaska, a "soft dedication" cannot be considered for purposes of a single-subject analysis and therefore cannot be used to make two independent provisions of an initiative address one subject. Without the "soft dedication," the Sponsors' proposed initiative will satisfy the requirements of the single-subject analysis only if its two provisions-campaign finance and taxation of the oil industry-otherwise relate to a single subject matter.

The Sponsors argue that even if the "soft dedication" of tax revenue cannot be considered, the proposed oil production tax is still related to the subject of "clean elections" because "the oil industry and the oil field services companies ... exert a tremendous and undue influence on Alaska politics and politicians," and contributions from these groups have been "fueling [electoral] campaigns in Alaska for years." But the oil industry is not the only source of contributions to political campaigns in Alaska, and the proposed tax is on oil production, not the political activities of the oil industry. The support for the Sponsors' argument-two newspaper articles and a listing of the top groups lobbying the Alaska Legislature-is insufficient to demonstrate a clear or established connection between the oil industry and a need for public financing of state electoral campaigns.

X The proposed initiative directly implicates one of the main purposes of the single-subject rule-the prevention of log-rolling-in two ways. As noted earlier, the essence of log-rolling is appealing to different constituencies by including distinct provisions calculated to obtain sufficient votes to pass a measure.²² The superior court observed that "record oil and gas prices, high oil company profits, the Exxon Valdez litigation, and controversy regarding a proposed gas pipeline" make the oil industry a target for some groups whose votes on this initiative could be driven entirely by such concerns. We agree that the events and issues cited by the superior court could influence some voters, but we note that other voters may be equally driven by strong feelings of support for the jobs and tax revenue generated by the oil industry in Alaska. Either way, coupling the approval of a new oil production tax with approval of a program to publicly fund elections deprives the voters of an opportunity to send a clear message on each subject encompassed by the Sponsors' initiative.

The second way the initiative violates the prohibition against log rolling is its inclusion of a non-binding directive that the legislature transfer funds left over from public elections to the Permanent Fund Dividend.²³ The Permanent Fund Dividend is entirely unrelated to the purpose of the clean elections program; offering the chance of increased Permanent Fund Dividend payments runs the risk of gaming support for the clean elections program from voters who are otherwise indifferent or even unsupportive of publicly funded campaigns.

V. CONCLUSION

For the reasons addressed above, we AFFIRM the decision of the superior court.

Footnotes

- 1 The initiative was titled "An Act establishing a program of public funding for campaigns for state elected offices, to be known as the Alaska Clean Elections Act, and amending the oil and gas production tax to levy and collect a surcharge on oil as a source of funding for that program."
- 2 AS 15.45.070 provides: "Within 60 calendar days after the date the application is received, the lieutenant governor shall review the application and shall either certify it or notify the initiative committee of the grounds for denial."
- 3 *Beegan v. State, Dep't of Transp. & Pub. Facilities*, 195 P.3d 134, 138 (Alaska 2008) (citing *Matanuska Elec. Ass'n v. Chugach Elec. Ass'n*, 152 P.3d 460, 465 (Alaska 2007)).
- 4 *State v. Jeffery*, 170 P.3d 226, 229 (Alaska 2007) (citing *Lewis v. State, Dep't of Corr.*, 139 P.3d 1266, 1268-69 (Alaska 2006)).

- 5 *Id.* at 230 (quoting *Native Vill. of Elim v. State*, 990 P.2d 1, 5 (Alaska 1999) (internal quotation marks omitted)).
- 6 The Sponsors' application was rejected for violating the single-subject provision of AS 15.45.040. Neither party argues that this rule differs from restrictions imposed by article II, section 13 of the Alaska Constitution, which requires that every bill may have only one subject. We have previously explained that, regardless of AS 15.45.040, "the [a]rticle II restriction ... applies to initiatives" under article XII, section 11, which provides that the people may exercise the legislature's law-making powers through the initiative. *Yute Air Alaska Inc. v. McAlpine*, 698 P.2d 1173, 1179 n. 2 (Alaska 1985).
- 7 See *Evans ex rel. Kutch v. State*, 56 P.3d 1046 (Alaska 2002); *Yute Air*, 698 P.2d at 1173; *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406 (Alaska 1982); *Short v. State*, 600 P.2d 20 (Alaska 1979); *North Slope Borough v. SOHIO Petroleum Corp.*, 585 P.2d 534 (Alaska 1978); *Gellert v. State*, 522 P.2d 1120 (Alaska 1974); *Suber v. Alaska State Bond Comm.*, 414 P.2d 546 (Alaska 1966).
- 8 See *Evans*, 56 P.3d at 1049, 1070 (changes to damages recoverable for torts, changes to tort statutes of limitations, change to allocation of fault between parties in tort suits, change to offer of judgment rules, and grant of partial immunity to hospitals all "within the single subject of 'civil actions'"); *Yute Air*, 698 P.2d at 1175, 1181 (repeal of regulations of "motor and air carriers in Alaska," prohibition on further similar regulation, and requirement that governor seek repeal of federal statute that, among other things, regulates shipping by sea, all embraced by "[t]he subject 'transportation'"); *First Nat'l Bank of Anchorage*, 660 P.2d at 414-15 (provisions regulating sale of private land, and provisions on state's power to lease state-owned land and zone private lands all "in some respect concern[] land"); *Short*, 600 P.2d at 22-24 & n. 2 (purposes of new correctional facilities "sufficiently related to the purposes" of new buildings for "state troopers, fish and wildlife protection, a motor vehicles division, [and] a fire prevention division"); *SOHIO*, 585 P.2d at 545-46 (various provisions on municipal and state taxes all "relate directly to state taxation"); *Gellert*, 522 P.2d at 1123 (flood control projects and small boat harbors "all part of a cooperative water resources development program"); *Suber*, 414 P.2d at 557 & n. 23 (criminal penalty for false statements in application for earthquake relief funds "fairly incidental to the general subject ... of grants to homeowners").
- 9 See *Suber*, 414 P.2d at 557.
- 10 *Gellert*, 522 P.2d at 1122 ("Log-rolling consists of deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure.").
- 11 *Gellert*, 522 P.2d at 1122; see also *Evans*, 56 P.3d at 1069 (quoting *State v. First Nat'l Bank of Anchorage*, 660 P.2d at 415); *Yute Air*, 698 P.2d at 1183 (Moore, J., dissenting) (citing *Gellert*, 522 P.2d at 1122); *Short*, 600 P.2d at 23 (quoting *Gellert*, 522 P.2d at 1122).
- 12 *Gellert*, 522 P.2d at 1122.
- 13 *Gellert*, 522 P.2d at 1123 (quoting *Johnson v. Harrison*, 47 Minn. 575, 50 N.W. 923, 924 (1891)) (internal quotation marks omitted); see also *Evans*, 56 P.3d at 1069 (quoting *First Nat'l Bank of Anchorage*, 660 P.2d at 415); *Yute Air*, 698 P.2d at 1180-81 (quoting *Gellert*, 522 P.2d at 1123); *First Nat'l Bank of Anchorage*, 660 P.2d at 415 (quoting *Gellert*, 522 P.2d at 1123); *Short*, 600 P.2d at 24 (quoting *Gellert*, 522 P.2d at 1123); *SOHIO*, 585 P.2d at 545 (quoting *Gellert*, 522 P.2d at 1123).
- 14 *Gellert*, 522 P.2d at 1122 (quoting *Suber*, 414 P.2d at 557); see also *Evans*, 56 P.3d at 1069 (quoting *First Nat'l Bank of Anchorage*, 660 P.2d at 415); *First Nat'l Bank of Anchorage*, 660 P.2d at 415 (quoting *SOHIO*, 585 P.2d at 545); *Short*, 600 P.2d at 23 nn. 7 & 8 (citing *SOHIO*, 585 P.2d at 545, and quoting *Suber*, 414 P.2d at 557); *SOHIO*, 585 P.2d at 545 (citing *Suber*, 414 P.2d at 557).
- 15 See *supra* note 8.
- 16 149 Wash.2d 359, 70 P.3d 920 (2003).
- 17 *Id.* at 922.
- 18 WASH. CONST. art. II, § 19.
- 19 *Neighborhood Stores*, 70 P.3d at 926.
- 20 WASH. CONST. art. VIII, § 4.

- 21 Article IX, section 7 prohibits binding dedications of state revenues to specific projects.
Article XI, section 7 independently prohibits initiatives from dedicating revenues.
- 22 See *supra* note 10.
- 23 This provision is part of proposed AS 15.14.010(e).

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ALASKA STATE LEGISLATURE

Session:

State Capitol Building
Room 428
Juneau, Alaska 99801-2186
Phone (907) 465-3004
Fax: (907) 465-2070
Toll Free: (877) 465-3004



Interim:

1292 Sadler Way, Ste. 308
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146
Toll Free: (877) 465-3004

REPRESENTATIVE STEVE THOMPSON DISTRICT 10

SECTIONAL ANALYSIS FOR HOUSE BILL NO. 292 (27-LS1232A)

Sec. 1. Asset Protection for Inherited Retirement Plans. Alaska Statute 09.38.017(a) protects an individual's interest in a retirement plan from the claims of the individual's creditors. The amendment extends this protection to claims of a beneficiary's creditors (e.g., creditors of an individual's spouse). Arizona, Florida, and Texas have enacted similar provisions.

Sec. 2. This is a conforming amendment for Sec. 28.

Sec. 3. These are definitional changes implementing Sec. 1.

Sec. 4. through Sec. 5. Representation for Settlement Agreements. Alaska Statute 13.06.120 provides that minors, incapacitated persons, and similar persons may be represented by another person who has the same interests in the matter. This type of representation is important in order to simplify and make more efficient proceedings that involve persons who are not legally competent to represent themselves. The existing statute clearly applies to judicial proceedings. However, often it is important to have representation of minors and incapacitated persons with respect to the settlement of accounts of trustees of trusts and with respect to settlement agreements. These amendments clarify that the statute not only applies to court proceedings but also to non-judicial settlement proceedings.

Section 6 through 8. Existing Alaska Statute 13.36.157 provides a trustee with a method to modify an existing trust, commonly referred to as "decanting". Alaska enacted its "decanting" statute in 1998. Alaska copied New York's statute. At the present time, the following states have enacted decanting statutes: Alaska, Arizona, Delaware, Florida, Indiana, Missouri, Nevada, New Hampshire, New York, North Carolina, Ohio, South Dakota, and Tennessee. In addition, decanting statutes are pending before Illinois, Michigan, and Virginia.

New York recently did a thorough revision of its decanting statute and enacted this new revised statute in 2011. The proposed amendment to Alaska's decanting statute closely tracks the changes made by New York with modifications necessary to accommodate Alaska's procedural provisions.

The purposes of a decanting statute are to allow a trustee to modify a trust in order to correct errors and to adjust to changed circumstances and laws. The revised draft distinguishes between trustees who have unlimited discretion and those without unlimited discretion. A trustee without unlimited discretion must maintain the same beneficiaries in the new trust and apply the same standard for distributions. The trustee cannot be a settlor or beneficiary of the trust, and has a fiduciary duty to exercise the power of appointment in the best interests of one or more proper objects of the exercise of the power and as a prudent person would exercise the power under prevailing circumstances. A trustee must exercise the power in writing and must give written

notice to the settlor, any person having the right to remove or replace the trustee, and any qualified beneficiary. A beneficiary may object to the exercise if it is an abuse of discretion, or fails to comply with the trustee's duties stated above. Restrictions exist to protect mandatory distribution rights, tax benefits, and to prohibit the trustee from exercising the power to either increase the trustee's compensation or decrease the trustee's liability.

Implementation of irrevocable trusts is best accomplished if the law provides reasonable flexibility to adjust to changed circumstances and to correct errors. The reason why so many states have enacted decanting statutes is because of the need for this flexibility. Amendment to Alaska's decanting statute to include these revised provisions will benefit the residents of the state of Alaska, many of whom use lifetime or testamentary trusts to implement their estate planning purposes.

Sec. 9 through Sec. 25. Amendments to 2003 Alaska Principal and Income Act. This modern act allows a person creating a new trust, or a trustee of an existing trust, to adopt a "unitrust" approach for determining the income of the trust which may be required to be distributed annually. A unitrust distributes a certain percentage of its assets annually to the current beneficiary. The use of this percentage unitrust approach allows the trustee to invest in order to maximize total return for both income and remainder beneficiaries.

Since 2003, the Internal Revenue Service has issued final regulations with respect to unitrusts. The Alaska Principal and Income Act amendments contained in this bill are designed to update Alaska's provisions to take advantage of these new regulations.

In summary, the most important changes contained in the bill expressly allow a trustee to choose a unitrust rate of three to five percent rather than be limited to the four percent amount presently in the law. The changes provide an explicit definition of income for a trust drafted as a unitrust. Language is added to provide the ordering of distributions among types of income and principal. A smoothing period of up to five years is allowed for determining the assets to be used when applying the unitrust percentage. Also, the new provisions clarify how the unitrust rules will apply to retirement benefits. These new changes will facilitate the use of unitrusts under Alaska law and maximize flexibility to take advantage of federal income tax planning.

Sec. 26 through 28. Amendments to Alaska Uniform Transfers to Minors Act. The Alaska Uniform Transfers to Minors Act allows donors, personal representatives, trustees, and obligors, to transfer assets to an account for the benefit of a minor. A custodian is named who may make distributions for the benefit of the minor. Under the existing statutes, the minor is entitled to the property when the minor reaches age 18 years or 21 years, depending on the type of transfer. The statute allows this age of distribution to be extended in certain circumstances to age 25 years.

A number of situations have arisen both in Alaska and in other states where it is undesirable for assets to be distributed later than the ages 18, 21, or 25 years, due to problems the minor may have, including substance abuse problems, immaturity, and the inability to manage assets. Often, the minor himself or herself is willing to have the assets remain in a custodial setting, managed by a

competent person who will make distributions for the benefit of the minor. The amendments in this bill would allow for the extension to an age greater than that presently specified in the statute, as long as the minor consents to the extension during the six-month period when the minor attains the age when otherwise the assets would be distributed under the statute.

Sec. 29. Decedents Remains. Alaska does not presently have adequate statutory authority with respect to who may control the disposition of a decedent's remains. This has resulted in arguments and disputes among relatives and friends. Businesses involved in this area need

protection concerning who is the person entitled to give them directions. This new act resolves the present uncertainty of the law. It provides authority for a person to provide directions and a form for a disposition document. If a person has not provided directions, then a priority list is provided of the persons who may control the disposition of the decedent's remains. Businesses who follow these directions or priority list are protected from liability.

Sec. 30. Insurable Interests. For many years, individuals have relied on life Insurance in helping to meet their financial, business, and estate planning needs. Often, their needs are best served by having one or more life insurance contracts held in an irrevocable trust, partnership, or limited liability company. In particular, irrevocable life insurance trusts have been widely used throughout the United States to own life insurance policies.

However, a relatively recent federal court case (*Chawla, ex rel Giesinger v. Transamerica Occidental Life Ins. Co.*, 2005 WL 405405 (E.D. Va. 2005)) had the effect of pointing out that while state insurance statutes typically require purchasers of insurance contracts to have an "insurable interest" in the life or body of the insured, the statutory provisions describing who may have an insurable interest did not specifically include trusts and business entities which are commonly used to purchase and own such policies. This case raised sufficient uncertainty about the status of life insurance trusts that in July, 2010, the Uniform Law Commission approved amendments to the Uniform Trust Code to clarify the situation.

Alaska has previously adopted substantial portions of the Uniform Trust Code. The proposed amendment to AS 21.42.020 is based in large part on the recommended amendments to the Uniform Trust Code, and also clarifies that persons with insurable interests may form business entities for the purposes of purchasing, holding, and administering life insurance contracts. Other states, for example Delaware, have already amended their statutes for these reasons, or are considering such amendments.

Sec. 31. Transfers of IRA Interests. Lifetime estate planning often occurs by a participant making gifts, sales or other transfers of property during lifetime to family members or trusts for their benefit. For many individuals, one of their most valuable assets is their individual retirement account (IRA). Alaska law (AS 09.38.017) protects IRAs from claims of creditors. This protection could be construed to even prohibit voluntary transfers of the participant's interest in an IRA, which would prevent lifetime transfers of IRAs for estate planning and other purposes. Although it is important to maintain that creditor protection for IRAs, it would be beneficial to permit voluntary transfers of IRAs. Therefore, this section clarifies that the participant of an IRA may voluntarily transfer his or her IRA during lifetime.

Sec. 32 through Sec. 36. Community Property. In 1998, Alaska enacted an optional community property system. Several amendments have been made to Alaska's act, and this bill proposes further amendments designed to improve the act. Specifically, the amendments accomplish the following:

- a. Add references to a community property trust in appropriate provisions.
- b. Eliminate language stating a confusing statute of limitations and incorporates by reference a new statute of limitations.
- c. Provide clarification that property which spouses agree is community property is owned as community property regardless of the form of title to the property. If title to community property is in a form that provides for survivorship ownership between the spouses then the survivorship ownership is presumed to have been made with the consent of both spouses. If one spouse designates a beneficiary for an interest in property, the designation is only effective for that spouse's one half interest unless the other spouse consents in writing. Various family designations are presumed to have been made with the consent of the other spouse. The testimony of one spouse is sufficient to rebut a presumption.

- d. Enact remedies for improper transfers and limitation periods within which those remedies must be pursued.

Sec. 37. Repealed sections.

Sec. 38. Indirect rule change.

Sec. 39. Applicability

Sec. 40. Requirement for two-thirds majority vote of each house.

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Session:

**State Capitol Building
Room 428
Juneau, Alaska 99801-2186
Phone (907) 465-3004
Fax: (907) 465-2070
Toll Free: (877) 465-3004**



Interim:

**1292 Sadler Way, Ste. 308
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146
Toll Free: (877) 465-3004**

REPRESENTATIVE STEVE THOMPSON DISTRICT 10

HB292 Explanation of Changes from Version A to Version I

In Section 1. Language was changed to more clearly delineate the kinds of retirement accounts covered by the provisions of the section.

In Section 28. A definition of an individual retirement account is provided for the purposes of the section that governs voluntary transfers of accounts.

E-mail [Representative Steve Thompson@legis.state.ak.us](mailto:Representative_Steve_Thompson@legis.state.ak.us)

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REPRESENTATIVE STEVE THOMPSON DISTRICT 10

MEMORANDUM

To: Representative Kurt Olson, Chair
House Labor & Commerce Committee

From: Representative Steve Thompson

Date: March 7, 2012

Re: Legal memo on HB292 re: Contract Clause

The question has been raised about whether the applicability of certain provisions of the bill to existing retirement accounts, IRAs, trusts, and Uniform Transfers to Minors Accounts might violate the Contracts Clause of the United States Constitution. Analysis indicates that these provisions do not violate that clause.

The Constitution prohibits the states from "impairing" contractual obligations. See U.S. Const. art. 1, § 10, cl. 1. Thus, unless a contractual obligation is impaired, there can be no violation of the Contracts Clause. The proposed legislation with respect to IRAs does not impair or restrict any contract right. To the contrary, it expands the rights of an IRA participant/owner in that it authorizes the assignment of an interest in the plan. Since the owner/participant could, prior to the proposed legislation, freely withdraw all of the money from the plan, enacting legislation that permits an assignment, as well as maintaining the right of withdrawal, cannot be viewed as an impairment. It is instead a permissible expansion of rights that does not constitute an impairment of rights within the meaning of the constitutional provision.

Similarly, the provision in the proposed legislation that would provide expanded creditor protection for an inherited IRA or retirement interest does not effect an impairment of contract rights. The only people whose rights are constrained by this provision are creditors. But a creditor has no contract right to enforce a claim against the IRA or retirement interest. Thus, the legislation does not effect an impairment of contract rights. So, for example, when Congress amended the Bankruptcy Code in 2005 to provide expanded creditor protection for existing IRAs, no concern was raised about its constitutional validity. See section 522 of the Bankruptcy

Code. So, too, here, the expansion of creditor protection does not implicate the Contracts Clause.

The ability of a trustee to modify a trust, pursuant to the amendments provided by sections 6 through 8 of the bill, does not raise Contract Clause issues. Many modifications are to administrative provisions. It is well established that changes that are administrative in nature do not implicate the Contract Clause. With respect to dispositive changes, if the existing trust provides for a limited standard, then the standard and beneficiaries cannot be changed. With respect to the ability of a trustee to "extend" the duration of a trust, it appears that the authority to invade trust principal by paying to another trust of longer duration is provided by common law. In the 1940 case of *Phipps*, the Supreme Court of Florida held the trustee had such power under common law. It relied on the RESTATEMENT OF PROPERTY. When New York, in 1991, enacted the country's first "decanting" statute (EPTL 10-6.6), the legislature stated it was declaratory of existing common law. Both Florida and New York have recently substantially amended their "decanting" statutes. Both of these states applied their amendments to existing trusts.

The changes to the Uniform Transfers to Minors Accounts provisions which allow for extension of the custodial period do not impair contract obligations of the minor. These changes allow the minor to compel distributions at the present statutory age (18 years or 21 years, depending on the existing provision), or at the beginning of an already extended period. Only if the minor consents, can the age be extended.

In summary, none of the provisions in the bill which apply to existing retirement accounts, IRAs, trusts, and Uniform Transfers to Minors Accounts violate the Contract Clause of the United States Constitution.

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Fairbanks, Alaska 99701
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Fax: (907) 452-1146**

REPRESENTATIVE STEVE THOMPSON DISTRICT 10

MEMORANDUM

To: Representative Kurt Olson, Chair
House Labor & Commerce Committee

From: Representative Steve Thompson

Date: March 1, 2012

Re: Legal memo on HB292 re: Single Subject Challenge

The Alaska Constitution Art II, Section 13. Form of Bills reads:

Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

Alaska's Constitution, A Citizen's Guide by Gordon S. Harrison further reads:

"The Alaska Supreme Court has consistently construed the single-subject rule broadly, in deference to the judgment of the legislature on how best to structure individual pieces of legislation."

Eight cases have come before the Alaska Supreme Court concerning the single subject rule. In the first seven cases, the court upheld the challenged bill or initiative by determining that all provisions related to a single general subject, theme, or purpose.

In (*Short v. State*, 600 P.2d 20, 1979), The court said that complying with the one-subject rule required that matters treated in legislation fall under one general idea and be so connected with or related to each other, either logically or in popular understanding, as parts of, or germane to, one general subject. In (*State v. First National Bank of Anchorage*, 660 P.2d 406, 1982) the Court upheld the constitutionality of a bill dealing with the general subject of "lands"

although several sections were otherwise unrelated. In (*Van Brunt v. State*, 646 P.2d 872, Alaska App. 1982), the court found an amendment that changed a driving-while-intoxicated statute to be sufficiently germane to a bill changing liquor laws, since both dealt with “intoxicating liquor”. Bonds that financed both flood control and small boat harbor projects were upheld by the Court in (*Gellart v. State*, 522 P.2d 1120, 1974).

The most recent Supreme Court ruling in (*Croft v. Parnell*, 236 P.3d 369, 2010), the Court affirmed the superior court’s summary judgment ruling on a single subject challenge that the initiative violated the single-subject rule, because the “soft dedication” of funds connecting the two aspects of the initiative was an insufficient link, and because it found no other sufficient connection between the initiative’s proposed new “oil production tax” and the initiative’s proposed new “clean election” program. The Supreme Court affirmed the superior court’s order of summary judgment, finding that,

“In ruling on single-subject challenges, we must balance the rule's purpose against the need for efficiency in the legislative process. If the rule were applied too narrowly, “statutes might be restricted unduly in scope and permissible subject matter, thereby multiplying and complicating the number of necessary enactment[s] and their interrelationships.” Our solution has been to construe the single-subject “provision with considerable breadth.” We have consistently articulated the substance of the test to reflect this approach:

All that is necessary is that [the] act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.

In applying this test, we disregard mere verbal inaccuracies, resolve doubts in favor of validity,” and strike down challenged proposals only when the violation is “substantial and plain.

Pursuant to the Courts previous rulings on single subject challenges, it is possible but unlikely that the Court would rule that HB292 is outside of the single subject rule.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 22, 2012

SUBJECT: CSHB 292() (Work Order No. 27-LS1232\B)

TO: Representative Steve Thompson
Attn: Jane Pierson

FROM:  Terry Bannister
Legislative Counsel

This memo accompanies the bill described above.

1. Single subject issue. As you are aware, it is my opinion that, by combining all of the subjects in the bill, the bill is not confined to one subject, which violates the constitutional requirement that a bill be confined to one subject.¹ This issue is present in HB 292 and the previous draft CS without the changes added by this draft CS, and the addition of the trust property appointment provisions do not change this.

The Alaska Supreme Court standard is that an "act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject."²

Historically, the Alaska Supreme Court has interpreted Alaska's single subject rule to permit very broad subject matter in one bill without violating the single subject requirement. For example, the Court has held that bills relating to such broad themes as "development of water resources,"³ "taxation,"⁴ "land,"⁵ "intoxicating liquor,"⁶ and

¹ Article 2, sec. 13, Alaska State Constitution.

² State v. First Nat'l Bank of Anchorage, 660 P.2d 406 (Alaska 1982).

³ Gellert v. State, 522 P.2d 1120 (Alaska 1974).

⁴ North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 545 (Alaska 1978).

⁵ State v. First Nat'l Bank of Anchorage, 660 P.2d 406 (Alaska 1982).

⁶ Van Brunt v. State, 646 P.2d 872 (Alaska App. 1982).

Representative Steve Thompson
February 22, 2012
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"criminal law"⁷ are acceptable.⁸ However, there was a strong dissent in one case against allowing broad subject matter in a single bill.⁹ And in 2010, for the first time, the Alaska Supreme Court invalidated a piece of proposed legislation for failure to satisfy the single subject requirement.¹⁰ Please be aware that failure to comply with this requirement could jeopardize this bill if it were ever challenged.

2. Applicability (bill section 39). Applying the changes in AS 09.38.017 to retirement plans that pre-date the effective date of these changes, applying the changes and new provisions contained in AS 13.36.157 - 13.36.159 and AS 13.36.215(5) to trusts that pre-date the effective date of these changes, and applying the changes to AS 13.46 to transfers that pre-date the effective date of these changes may raise constitutional impairment of contracts issues if the changes or provisions operate as a substantial impairment of the retirement plans, trusts, or any contractual relationships involved in the transfers.

If I may be of further assistance, please advise.

TLB:ljw
12-156.ljw

Enclosure

⁷ Galbraith v. State, 693 P.2d 880 (Alaska App. 1985).

⁸ Evans v. State, 56 P.3d 1046, 1070 (Alaska 2002).

⁹ Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173 (Alaska 1985). In his dissent, at page 1182, Justice Moore stated: "This court has mistakenly continued to give the rule such an extremely liberal interpretation that the rule has become a farce."

¹⁰ Croft v. Parnell, 236 P.3d 369 (Alaska 2010).

** Ms. Pierson red
chrs doc.*

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REPRESENTATIVE STEVE THOMPSON DISTRICT 10

Sponsor Statement

HB292 Uniform Probate Code; Trusts, Wills; Disposition of Human Remains

Alaska first modernized its trust and estate legislation in 1997. Since then, the trust and estate planning community continuously makes recommendations to the legislature for updates and improvements to Alaska's trust and estate laws to ensure that Alaska can continue to provide the best possible planning solutions. Alaska's trust and estate laws have significant impact on our economy, bringing literally millions of dollars to the state and creating jobs within the trust, banking, insurance and legal fields.

House Bill 292 provides for amendments to statute in the following areas:

- Extends protection for retirement plan assets to the beneficiaries of retirement plans (often the surviving spouse).
- Provides means of representation for minors and incapacitated persons in dealing with settlements of accounts or settlement agreements.
- Amends the 2003 Alaska Principal and Income Act to conform to current IRS regulations.
- Provides rules concerning who may control the disposition of decedents' remains.
- Makes conforming amendments to Alaska's laws regarding insurable interests to align with changes to the Uniform Trust Code.
- Provides that IRA interests can be voluntarily transferred to a family member or trust.
- Makes amendments to Alaska's community property provisions to update and clarify the ownership of community property.
- Allows a beneficiary to extend the time funds will be held in a Uniform Transfer to Minors Account.

Passage of HB 292 will ensure that Alaska remains the premier state in which to establish trusts and estates. I urge your support for this important legislation.

E-mail [Representative Steve Thompson@legis.state.ak.us](mailto:Representative_Steve_Thompson@legis.state.ak.us)