

**ALASKA**

**LEGISLATURE**

**COMMITTEE FILES**

**1991-1992**

**8672**

**7103**

**HOUSE**

**LABOR & COMMERCE**

HB

504

(7)

# HOUSE COMMITTEE REPORT

Date Referred: February 19, 1992

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 2/27/92

The LABOR AND COMMERCE Committee considered:

HB 504

HOUSE BILL NO. 504

RENTAL AGREEMENTS

"An Act requiring written rental agreements entered into under the Uniform Residential Landlord and Tenant Act to be stated in readable, clear, and unambiguous language, and making written rental agreements under the Uniform Residential Landlord and Tenant Act subject to the requirements of law defining unfair trade practices for purposes of consumer protection."

RECOMMENDATIONS:  the same title  
be replaced with \_\_\_\_\_  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

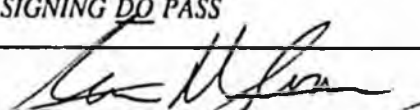
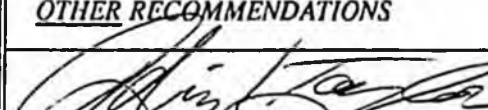
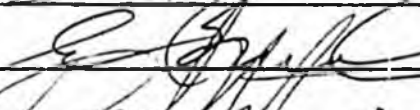
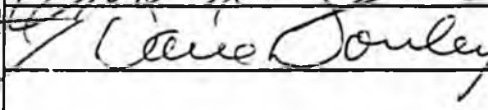
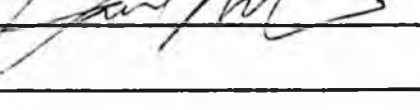
APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

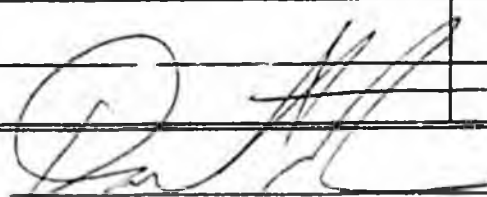
fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note Commerce

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
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CHAIRMAN'S SIGNATURE

FISCAL NOTE

BILL NO. HB 504

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_

Department Affected: \_\_\_\_\_

Title: Rental Agreements

BRU: \_\_\_\_\_

Component: \_\_\_\_\_

Sponsor: Representative Gruenberg

Requestor: House Labor & Commerce

COMPONENT SERIAL NO. 

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND RESOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
<b>TOTAL</b>	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS (Attach a separate page if necessary.)

We don't believe this bill affects us at all.

Prepared By: Sheri Schlotfeldt, Special Assistant to Commissioner Phone: 465-2500

Division: Office of the Commissioner Date: \_\_\_\_\_

Approved by Commissioner: Glenn A. Olds

Agency: Department of Commerce & Economic Development Date: \_\_\_\_\_

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Of., and Impacted Agency(ies).

Page 1 of 1

FISCAL NOTE

BILL NO. HB 504

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
 Title: "...rental agreement...to be stated in readable, clear, and unambiguous language..."  
 Sponsor: Representative Gruenberg  
 Requestor: Representative Gruenberg

Department Affected: Department of Law  
 BRU: Fair Business Practices  
 Component: Fair Business Practices

COMPONENT SERIAL 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director  
 Division: Administrative Services  
 Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law

Phone: 465-3672  
 Date: February 28, 1992

Date: February 28, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 504

This bill amends the state's Uniform Residential Landlord and Tenant Act, AS 34.03, to require that a written rental agreement shall be stated in readable, clear, and unambiguous language. The bill also amends AS 45.50.471(b) to provide that a written rental agreement for residential property under AS 34.03, whose provisions are not stated in readable, clear, and unambiguous language, constitutes an unfair or deceptive act or practice under the state's Unfair Trade Practices and Consumer Protection Act.

Although the Department of Law does not enforce the Landlord and Tenant Act, because leasehold, rental, and real estate interests are generally outside the purview of the Consumer Protection Act, this bill would authorize the department to remedy a deceptively written rental agreement under the latter Act. The department does not anticipate a significant fiscal impact because its activities in the landlord and tenant area would be limited to deceptively written residential rental agreements.

# State of Alaska

House Majority Leader

COMMITTEES

HOUSE JUDICIARY

HOUSE RULES

HOUSE STATE AFFAIRS

SPECIAL COMMITTEE

MILITARY AND VET. AFFAIRS

LEGISLATIVE COUNCIL



Representative Max F. Gruenberg, Jr.  
District 11  
Spennard, Upper Midtown Anchorage

P.O. Box V  
JUNEAU, AK 99811  
(907) 465-3718  
465-4968/4986  
(SESSION)

3111 C STREET, SUITE 440  
ANCHORAGE, AK 99503  
(907) 561-7621

## M E M O R A N D U M

DATE: February 19, 1992

TO: Members of the House Labor and Commerce Committee

FROM: Representative Max Gruenberg *MAX*

RE: Scheduling HB 504, "The Plain Language Lease Bill"

I would very much appreciate your support for HB 504.

HB 504 makes it an unfair trade practice for a landlord to provide a written residential rental agreement that is not written in readable, clear and unambiguous language.

If you have any questions please call me or my legislative assistant, Mark Handley, at 465-4986.

Thank you.

HB504.SUP\MTH

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**FISCAL NOTE**

**STATE OF ALASKA  
1992 LEGISLATIVE SESSION**

**Bill No. HB 509**

Revision Date: \_\_\_\_\_ Department Affected: Alaska Court System  
 Title: An Act adopting the Uniform BRU: Trial Courts  
Custodial Act Components: \_\_\_\_\_  
 Sponsor: Gruenberg  
 Requestor: Labor & Commerce COMPONENT SERIAL NO. 

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**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL</b>						
<b>REVENUE</b>						

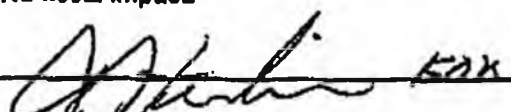
**FUNDING: (Thousands of Dollars)**

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

**ANALYSIS: (Attach a separate page if necessary)**  
 No fiscal impact.  


Prepared by: C. S. Christensen III, Staff Counsel Phone: 284-8228  
 Division: Alaska Court System Date: 03/02/92

Approved by: Arthur H. Snowden, II, Administrative Director Date: 03/02/92  
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

# State of Alaska

House Majority Leader  
COMMITTEES  
HOUSE JUDICIARY  
HOUSE RULES  
HOUSE STATE AFFAIRS  
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MILITARY AND VET. AFFAIRS  
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(SESSION)

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ANCHORAGE, AK 99503  
(907) 561-7621

## MEMORANDUM

February 18, 1992

TO: Representative David Finkelstein  
Chair, House Labor and Commerce Committee

FROM: Representative Max F. Gruenberg, Jr.

RE: HB 509, "An Act adopting the Uniform Custodial Trust Act."

I would very much appreciate it if you would schedule HB 509 for a hearing as soon as it is possible.

HB 509 adopts the Uniform Custodial Trust Act, (UCTA). The primary purpose of the UCTA is to provide a relatively easy and inexpensive mechanism for the elderly to provide for the future management of their assets in the event their incapacity.

The UCTA provides a simplified procedure for a person to establish a trust. The UCTA also allows provision for the transfer of control of the trust in the event of incapacity.

If you have any questions or comments, please contact me, or my legislative assistant, Mark Handley, at 465-4986.

Thank you.

HB509.TXT\MTH

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

### MEMORANDUM

February 27, 1992

**SUBJECT:** Bill adopting the Uniform Custodial Trust Act (HB 509)

**TO:** Representative Max Gruenberg  
Attn: Mark

**FROM:** Theresa L. Bannister *TB*  
Legislative Counsel

This is a revised memo to accompany HB 509, the bill that you requested to adopt the Uniform Custodial Trust Act in Alaska, and replaces my memo of February 14, 1992.

The bill tracks the uniform language very closely and only diverges when necessary to put the language in our legislative style or to clarify a provision. In addition to other very technical changes, the comments that follow indicate some of the modifications.

1. In various places, "an", "a", or no word was substituted for "any", where "any" did not appear to be meaningful, and "under" was substituted for "pursuant to" when referring to statutes.
2. In AS 13.60.010(a), the comma after beneficiary was removed and an "and" inserted after "transferor,".
3. In AS 13.60.040, \$10,000 was used at your request as per the Virginia statute.
4. In AS 13.60.050(a), "considered" was substituted for "deemed", "married couple" was substituted for "husband and wife" and the bracketed language was deleted at your request.
5. In AS 13.60.060(d), "so" was removed from in front of "identified" and "identifying" and "as required by this subsection" was included in two spots.
6. In AS 13.60.090(b), "by relying" was substituted for "in reliance", and the subsection was broken out.

7. In AS 13.60.120(c), the Virginia version was used per your request, and in AS 13.60.120(b), the language was adjusted to clarify the paragraph and conform to our drafting style.
8. In AS 13.60.140(a), (a) was broken out into (a) and (b) and a reference to (a) was included in (b); this was to make the subsection conform to our drafting style.
9. In AS 13.60.140(d), "previous" was substituted for "predecessor."
10. In AS 13.60.150(a)(1), a comma was added after "matter", and the language was slightly rewritten to make it clearer.
11. In AS 13.60.150(c), the language was adjusted to clarify the subsection.
12. In AS 13.60.170(a)(2), "from this date" was substituted for "henceforth."
13. In AS 13.60.170(b), "transferor of the property" was substituted for "owner" (this is the Virginia addition you requested).
14. In AS 13.60.170(c)(2), "set out" was substituted for "prescribed."

If you would like more information on the above, please advise.

TLB:pl  
92-139.plm

# UNIFORM CUSTODIAL TRUST ACT

Table of Jurisdictions Wherein Act Has Been Adopted

Jurisdiction	Laws	Effective Date	Statutory Citation
Hawaii .....	1989, Act 76	5-8-1989	HRS §§ 554B-1 to 554B-22.
Idaho .....	1989, c. 230		I.C. §§ 68-1301 to 68-1322.
Minnesota .....	1990, c. 476	4-19-1990*	M.S.A. §§ 529.01 to 529.19.
Missouri .....	1986, S.B. No. 651		V.A.M.S. §§ 404.400 to 404.650.
Rhode Island .....	1988, c. 623		Gen. Laws 1956, §§ 18-13-1 to 18-13-22.
Virginia .....	1990, c. 264		Code 1950, §§ 55-34.1 to 55-34.17.

### Historical Note

The Uniform Custodial Trust Act was approved by the National Conference of Commissioners on Uniform State Laws in 1987. The complete text of the act, the prefatory note and comments are set forth in this supplement.

### PREFATORY NOTE

This Uniform Act provides for the creation of a statutory custodial trust for adults to be governed by the provisions of the Act whenever property is delivered to another "as custodial trustee under the (Enacting state) Uniform Custodial Trust Act." The provisions of this Act are based on trust analogies to concepts developed and used in establishing custodianships for minors under the Uniform Transfers to Minors Act (UTMA). The Custodial Trust Act is designed to provide a statutory standby inter vivos trust for individuals who typically are not very affluent or sophisticated, and possibly represented by attorneys engaged in general rather than specialized estate practice. The most frequent use of this trust would be in response to the commonly occurring need of elderly individuals to provide for the future management of assets in the event of incapacity. The statute will also be available for accomplishing distribution of funds by judgment debtors and others to incapacitated persons for whom a conservator has not been appointed. Since this Act allows any person, competent to transfer property, to create custodial trusts for the benefit of themselves or others, with the beneficial interest in custodial trust property in the beneficiary and not in the custodial trustee, its potential for use is extensive. Although the most frequent use probably will be by elderly persons, it is also available for a parent to establish a custodial trust for an adult child who may be incapacitated; for adult persons in the military, or those leaving the country temporarily, to place their property with another for management without relinquishing beneficial ownership of their property; or for young people who have received property under the Uniform Transfers to Minors Act to continue a custodial trust as adults in order to obtain the benefit and convenience of management services performed by the custodial trustee.

This Act follows the approach taken by the Uniform Transfers to Minors Act and allows any kind of property, real or personal, tangible or intangible; to be made the subject of a transfer to a custodial trustee for the benefit of a beneficiary. However, the most typical transaction envisioned would involve a person who would transfer intangible property, such as securities or bank accounts, to a custodial trustee but with retention by the transferor of direction over the property. Later, this direction could be relinquished, or it could be lost upon incapacity. The objective of the statute is to provide a simple trust that is uncomplicated in its creation, administration, and termination. The potential for tax problems is minimized by permitting the beneficiary in most instances to retain control while the beneficiary has capacity to manage the assets effectively. The statute contains an asset specific transfer provision that it is believed will be simple to use and will gain the acceptance of the securities and financial industry. A simple transfer document, examples of which are set forth in the Act, and a receipt from the custodian, also in the Act, would provide for identification of beneficiaries or distributees upon death of the beneficiary. Protection is extended to third parties dealing with the custodian. Although the Act is patterned on the Uniform Transfers to Minors Act and meshes into the Uniform Probate Code, it is appropriate for enactment as well in states which have not adopted either UTMA or the UPC.

An adult beneficiary, who is not incapacitated, may: (1) terminate the custodial trust on demand (Section 2(e)); (2) receive so much of the income or custodial property as he or she may request from time to time (Section 9(a)); and (3) give the custodial trustee binding instructions for investment or management (Section 7(b)). In the absence of direction by the

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Section

1. Definitions
2. Custodial Trust
3. Custodial Trustee
4. Form and Effect of Custodial Trust
5. Transfer to Custodial Trustee
6. Multiple Beneficiaries
7. General Disposition
8. General Power of Appointment
9. Use of Custodial Trust
10. Determination of Beneficiary
11. Exemption from Creditors
12. Liability to Creditors

### § 1. Defin

As used  
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## CUSTODIAL TRUST

beneficiary; who is not incapacitated, the custodial trustee manages the property subject to the standard of care that would be observed by a prudent person dealing with the property of another and is not limited by other statutory restrictions on investments by fiduciaries. (Section 7).

A principal feature of the Custodial Trust under this Act is designed to protect the beneficiary and his or her dependents against the perils of the beneficiary's possible future incapacity without the necessity of a conservatorship. Under Section 10, the incapacity of the beneficiary does not terminate (1) the custodial trust, (2) the designation of a successor custodial trustee, (3) any power or authority of the custodial trustee, or (4) the immunities of third persons relying on actions of the custodial trustee. The custodial trustee continues to manage the property as a discretionary trust under the prudent person standard for the benefit of the incapacitated beneficiary.

Means of monitoring and enforcing the custodial trust include provisions requiring the custodial trustee to keep the beneficiary informed, requiring accounting by the custodial trustee (Section 15), providing for removal of the custodial trustee (Section 13), and the distribution of the assets on termination of the custodial trust (Section 17). The custodial trustee is protected in Section 16 by the statutes of limitation on proceedings against the custodial trustee.

Transactions with the custodial trustee should be executed readily and quickly by third parties because their rights and protections are determined by the Act and a third party acting in good faith has no need to determine the custodial trustee's authority to bind the beneficiary with respect to property and investment matters. (Section 11). The Act generally limits the claims of third parties to recourse against the custodial property, with the beneficiary insulated against personal liability unless he or she is personally at fault and the custodial trustee is similarly insulated unless the custodial trustee is personally at fault or failed to disclose the custodial capacity when entering into a contract (Section 12).

As a consequence of the mobility of our population, particularly the mature persons who are most likely to utilize this Act, uniformity of the laws governing custodial trusts is highly desirable, and the Act is designed to avoid conflict of laws problems. A custodial trust created under this Act remains subject to this Act despite a subsequent change in the residence of the transferor, the beneficiary, or the custodial trustee or the removal of the custodial trust property from the state of original location. (Section 19).

### General Statutory Notes

**Hawaii.** While the Hawaii act is a substantial adoption of the major provisions of the uniform act, it departs from the official text in such manner that the various instances of substitution, omission, and additional matter cannot be clearly indicated by statutory notes.

**Missouri.** While the Missouri act is a substantial adoption of the major provisions of the Uniform Act, it departs from the official text in such manner that the various instances of substitution, omission, and additional matter cannot be clearly indicated by statutory notes.

## UNIFORM CUSTODIAL TRUST ACT

### Section

1. Definitions.
2. Custodial Trust; General.
3. Custodial Trustee for Future Payment or Transfer.
4. Form and Effect of Receipt and Acceptance by Custodial Trustee, Jurisdiction.
5. Transfer to Custodial Trustee by Fiduciary or Obligor; Facility of Payment.
6. Multiple Beneficiaries; Separate Custodial Trusts; Survivorship.
7. General Duties of Custodial Trustee.
8. General Powers of Custodial Trustee.
9. Use of Custodial Trust Property.
10. Determination of Incapacity; Effect.
11. Exemption of Third Person From Liability.
12. Liability to Third Person.

### Section

13. Declination, Resignation, Incapacity, Death, or Removal of Custodial Trustee, Designation of Successor Custodial Trustee.
14. Expenses, Compensation, and Bond of Custodial Trustee.
15. Reporting and Accounting by Custodial Trustee; Determination of Liability of Custodial Trustee.
16. Limitations of Action Against Custodial Trustee.
17. Distribution on Termination.
18. Methods and Forms for Creating Custodial Trusts.
19. Applicable Law.
20. Uniformity of Application and Construction.
21. Short Title.
22. Severability.
23. Effective Date.

### § 1. Definitions.

As used in this [Act]:

- (1) "Adult" means an individual who is at least 18 years of age.

(2) "Beneficiary" means an individual for whom property has been transferred to or held under a declaration of trust by a custodial trustee for the individual's use and benefit under this [Act].

(3) "Conservator" means a person appointed or qualified by a court to manage the estate of an individual or a person legally authorized to perform substantially the same functions.

(4) "Court" means the [\_\_\_\_\_] court of this State.

(5) "Custodial trust property" means an interest in property transferred to or held under a declaration of trust by a custodial trustee under this [Act] and the income from and proceeds of that interest.

(6) "Custodial trustee" means a person designated as trustee of a custodial trust under this [Act] or a substitute or successor to the person designated.

(7) "Guardian" means a person appointed or qualified by a court as a guardian of an individual, including a limited guardian, but not a person who is only a guardian ad litem.

(8) "Incapacitated" means lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority, or other disabling cause.

(9) "Legal representative" means a personal representative or conservator.

(10) "Member of the beneficiary's family" means a beneficiary's spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

(12) "Personal representative" means an executor, administrator, or special administrator of a decedent's estate, a person legally authorized to perform substantially the same functions, or a successor to any of them.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(14) "Transferor" means a person who creates a custodial trust by transfer or declaration.

(15) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

#### COMMENT

(1) "Adult" is a person 18 years of age for the purpose of custodial trusts. The result of this is that a person 18 years of age will be eligible to be a custodial trustee under this Act, although he or she may not be eligible under UTMA since minor custodianships under UTMA may run to age 21 and the minor could in some cases be older than the custodian. As the Comments under Section 1 of UTMA explain, the age of 21 was retained under that Act because the Internal Revenue Code continues to permit a "minority trust" under Section 2053(c), to continue in effect until age 21 and because it was believed that most transferors creating trusts or custodianships for minors would prefer to retain the property under management for the benefit of the young person as long as possible. The difference has little or no practical consequence and serves the purpose of each Act.

(3) "Conservator" is defined broadly to permit identification of a person functioning as a conservator.

(4) "Court" means \_\_\_\_\_ court. Here the likelihood is that most states would utilize the

same court, e.g., the probate court, that deals with conservators and estates.

(5 and 6) The terms "custodial trust property" and "custodial trustee," are used throughout to identify clearly the statutory trust property and trustee under this Act. The statutory trust concept is used throughout the Act.

(7) A definition of guardian has been included and is based on the Uniform Probate Code Section 5-103(6).

(8) A definition of incapacitated has been included, for the purpose of this Act, because incapacity of the beneficiary converts the trust from a revocable trust to a discretionary trust. The definition is taken from the Uniform Probate Code Section 5-401(c) relating to the person who is unable to manage property. Compare Uniform Probate Code Section 5-103(7). Note that Section 10(a)(ii) permits a transferor to direct that the trust shall be administered as one for an incapacitated person. Section 10 deals specifically with the determination of incapacity.

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(10) The beneficiary's family is broadly defined to identify persons who may have standing to seek judicial intervention or accounting (Sections 13 and 15).

(11) The definition of a person is taken from the Uniform Probate Code Section 1-201(29).

(12) Personal representative is broadly defined and the definition reflects that in the Uniform Probate Code Section 1-201(30).

**Action in Adopting Jurisdictions**

**Variations from Official Text:**

**Minnesota.** In subsec. (8), substitutes "mental retardation" for "mental deficiency".

Adds definition as follows: "'Holder of the beneficiary's power of attorney' means a person who is a holder of the

beneficiary's unrevoked power of attorney if the document creating the power of attorney grants powers similar or identical to those defined as 'beneficiary transactions' in section 523.24, subdivision 7."

**Virginia.** In par. (7), substitutes "a person" for "an individual".

**Law Review Commentaries**

**New Durable Power Law and Custodial Trust Act Amendments.** Leo E. Eickhoff, Jr. 45 J. of Mo Bar 329 (1989).

**Library References**

**American Digest System**

Nature and essentials of trusts in general, see Trusts ¶1.

**Encyclopedias**

Definitions of terms in connection with trusts in general, see C.J.S. Trusts §§ 1 to 7.

**§ 2. Custodial Trust; General.**

(a) A person may create a custodial trust of property by a written transfer of the property to another person, evidenced by registration or by other instrument of transfer, executed in any lawful manner, naming as beneficiary, an individual who may be the transferor, in which the transferee is designated, in substance, as custodial trustee under the [Enacting state] Uniform Custodial Trust Act.

(b) A person may create a custodial trust of property by a written declaration, evidenced by registration of the property or by other instrument of declaration executed in any lawful manner, describing the property and naming as beneficiary an individual other than the declarant, in which the declarant as titleholder is designated, in substance, as custodial trustee under the [Enacting state] Uniform Custodial Trust Act. A registration or other declaration of trust for the sole benefit of the declarant is not a custodial trust under this [Act].

(c) Title to custodial trust property is in the custodial trustee and the beneficial interest is in the beneficiary.

(d) Except as provided in subsection (e), a transferor may not terminate a custodial trust.

(e) The beneficiary, if not incapacitated, or the conservator of an incapacitated beneficiary, may terminate a custodial trust by delivering to the custodial trustee a writing signed by the beneficiary or conservator declaring the termination. If not previously terminated, the custodial trust terminates on the death of the beneficiary.

(f) Any person may augment existing custodial trust property by the addition of other property pursuant to this [Act].

(g) The transferor may designate, or authorize the designation of, a successor custodial trustee in the trust instrument.

(h) This [Act] does not displace or restrict other means of creating trusts. A trust whose terms do not conform to this [Act] may be enforceable according to its terms under other law.

## COMMENT

Section 2 is the principal provision authorizing the creation of a custodial trust and utilizes the concept of incorporation by reference when the transferee or titleholder of property is designated as custodial trustee under the Act. Section 2 sets forth the general effect of such a transfer. Section 18 provides forms which satisfy the requirements of this section and identifies customary methods of transferring assets to create a custodial trust.

Section 2(a) provides that a trust may be created by transfer to another for the benefit of the transferor or another. This is expected to be the most common way in which a custodial trust would be created. However, a custodial trust may also be created by declaration of trust by the owner of property to hold it for the benefit of another as is provided in Section 2(b). A declaration in trust by the owner of property for the sole benefit of the owner is not contemplated by this Act because such an attempt may be considered ineffective as a trust due to the total identity of the trustee and beneficiary. However, the doctrine of merger would not preclude an effective transfer under this Act for the benefit of the transferor and one or more other beneficiaries. See Section 6.

A custodial trust could be created by the exercise of a valid power of attorney or power of appointment given by the owner of property as one of the transfers "consistent with law."

These alternatives permit the major uses of the custodial trust to be accomplished expeditiously. For example, an older person, wishing to be relieved of management of property may transfer property to another for benefit of the transferor or of the transferor's spouse or child. The declaration may be used to establish a trust of which the owner is trustee to continue management of the property for benefit of another, such as a spouse or child. The trust may include a provision for distribution of assets remaining at the beneficiary's death directly to a named distributee.

This Act does not preclude the creation of trusts under other existing law, statutory or nonstatutory, but is designed to facilitate the creation of simple trusts incorporating the provisions of this Act. The written transfer or declaration "consistent with law" requires that the formalities of the transfer of particular property necessary under other law will be observed, e.g., if land is involved, the requirements of a proper deed and recording must be satisfied.

Section 2(c) provides for the retention of the beneficial interest in the custodial trust property in the beneficiary and, of course, not in the custodial trustee. The extensive control and benefit in the beneficiary who is not incapacitated maintains the simplicity of the trust and avoids tax complexity. The custodial trustee is given the title to the property and authority to act with regard to the property only as is authorized by the statute. The custodial trustee's powers are enumerated in Section 8.

Section 2(e) gives the adult beneficiary, who is not incapacitated, the power to terminate the custodial trust at any time during his or her lifetime. This power of termination exists in any beneficiary who is not incapacitated whether the beneficiary was or was not the transferor. A beneficiary may be determined to be incapacitated or the transferor may designate that the trust is to be administered as a trust for an incapacitated beneficiary under Section 10, in which event the beneficiary does not have the power to terminate. However, the designation of incapacity by the transferor can be modified by the trustee or the court by reason of changed circumstances pursuant to Section 10. The Act precludes termination by exercise of a durable power of attorney if the beneficiary is incompetent (Section 7(f)). If the donor prefers not to permit the beneficiary the power to terminate or to designate the beneficiary as incapacitated under Section 10, an individually drafted trust outside the scope of this Act would seem appropriate.

Upon termination of a custodial trust, the custodial trust property must be distributed as provided in Section 17.

A transfer under this Act is irrevocable except to the extent the beneficiary may terminate it. Hence, a transfer to a trustee for benefit of a person other than the transferor is not revocable by the transferor. If a power of revocation were retained by the transferor, that would be a trust outside the scope of this Act and enforceable under general law pursuant to subsection 2(h).

This Act does not provide for protection of the custodial trust assets from the claims of creditors of the beneficiary, whether those are general or governmental creditors. Other laws of the state remain unaffected. In this regard, unusual problems of handicapped persons and the coordination of resources and state or federal services call for special provision and planning outside the scope of this Act.

### Action in Adopting Jurisdictions

#### Variations from Official Text:

**Minnesota.** In subsec. (e), substitutes "holder of the beneficiary's power of attorney" for "conservator of an incapacitated beneficiary" in the first instance and for "conservator" in the second instance.

**Virginia.** In subsec. (a), inserts "if the property is of a type subject to registration," following "registration".

In subsec. (b), inserts "In addition," at the beginning thereof, and inserts "if the property is of a type subject to registration," following "registration of the property".

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combines subsecs. (d) and (e) in one subsection (designated D) which reads: "D. The beneficiary, if not incapacitated, may terminate a custodial trust by delivering to the custodial trustee a writing signed by the beneficiary declaring the termination. The conservator of an incapacitated beneficiary may similarly terminate the custodial trust in

this manner but only if granted the power by the circuit court that appointed him in a proceeding in which the custodial trustee is made a party. If not previously terminated, the custodial trust terminates on the death of the beneficiary. A transferor may not terminate a custodial trust except as provided in this subsection."

### Library References

#### American Digest System

- Appointment of new trustee, see Trusts ¶169 (1 to 3).
- Modification of trust, see Trusts ¶58.
- Nature of estate in trust, see Trusts ¶129.
- Necessity and sufficiency of delivery of property, see Trusts ¶37½.
- Recording and registration of instrument creating trust, see Trusts ¶23.
- Revocation and termination of trusts, see Trusts ¶59(1 to 4), 61(1 to 4).
- Transfer of legal title to property as creating trust, see Trusts ¶31.
- Written instruments declaring trusts, see Trusts ¶19 to 23.

#### Encyclopedias

- Adding to trust property, see C.J.S. Trusts § 87.
- Essentials of declaration of trust in general, see C.J.S. Trusts §§ 42 to 45.
- Recording or registration of instrument creating trust, see C.J.S. Trusts § 41.
- Revocation and termination of trusts, see C.J.S. Trusts §§ 88 to 90, 92 to 95.
- Right of creator of trust to provide for substitute or successor trustees, see C.J.S. Trusts §§ 212, 213.
- Title of trustee and beneficiary, see C.J.S. Trusts § 175.
- Transfer of title or interest and delivery of trust property, see C.J.S. Trusts §§ 63, 64.

### § 3. Custodial Trustee for Future Payment or Transfer.

(a) A person having the right to designate the recipient of property payable or transferable upon a future event may create a custodial trust upon the occurrence of the future event by designating in writing the recipient, followed in substance by: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act."

(b) Persons may be designated as substitute or successor custodial trustees to whom the property must be paid or transferred in the order named if the first designated custodial trustee is unable or unwilling to serve.

(c) A designation under this section may be made in a will, a trust, a deed, a multiple-party account, an insurance policy, an instrument exercising a power of appointment, or a writing designating a beneficiary of contractual rights. Otherwise, to be effective, the designation must be registered with or delivered to the fiduciary, payor, issuer, or obligor of the future right.

### COMMENT

This section permits a future custodial trustee to be designated to receive property for the beneficiary of a custodial trust to be effective upon the occurrence of a future event or transfer. To accommodate changes in circumstances during the passage of time, one or more successors or substitute custodial trustees can also be designated. The designation of the future custodial trustee and the beneficiary can be made in an instrument which is revocable or irrevocable depending upon the nature of the transaction or transfer. Any person designated as a future

custodial trustee may decline to serve before the transfer occurs or may resign under Section 13 after the transfer.

The source of this section is Section 3 of UTMA.

The enacting state's rule against perpetuities may limit or affect the creation of a custodial trust upon the occurrence of a future event, but because the use of a custodial trust usually contemplates dispositions for the benefit of living persons, perpetuity problems should rarely arise.

## Library References

## American Digest System

- Testamentary trusts, see Wills ¶669 to 675.  
 Trust by deposit of money in bank, see Trusts ¶34(1 to 4).  
 Trust in life insurance payable to another, see Trusts ¶37.  
 Trusts taking effect in future, see Trusts ¶14.

## Encyclopedias

- Certainty as to subject matter of trust, see C.J.S. § 45.  
 Execution of power by appointment in trust, see C.J.S. Powers § 15.  
 Testamentary trusts, see C.J.S. Wills, §§ 1004 to 1016.  
 Time of vesting, see C.J.S. Trusts § 29.  
 Trust of money deposited in financial institution, see C.J.S. Trusts § 54.  
 Trust of proceeds of life insurance, see C.J.S. Trusts § 56.

## § 4. Form and Effect of Receipt and Acceptance by Custodial Trustee, Jurisdiction.

(a) Obligations of a custodial trustee, including the obligation to follow directions of the beneficiary, arise under this [Act] upon the custodial trustee's acceptance, express or implied, of the custodial trust property.

(b) The custodial trustee's acceptance may be evidenced by a writing stating in substance:

## CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

I, \_\_\_\_\_ (name of custodial trustee) acknowledge receipt of the custodial trust property described below or in the attached instrument and accept the custodial trust as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act. I undertake to administer and distribute the custodial trust property pursuant to the [Enacting state] Uniform Custodial Trust Act. My obligations as custodial trustee are subject to the directions of the beneficiary unless the beneficiary is designated as, is, or becomes incapacitated. The custodial trust property consists of \_\_\_\_\_

Dated: \_\_\_\_\_

(Signature of Custodial Trustee)

(c) Upon accepting custodial trust property, a person designated as custodial trustee under this [Act] is subject to personal jurisdiction of the court with respect to any matter relating to the custodial trust.

## COMMENT

Although a custodial trust is created by a transfer that satisfies Section 2 of the Act, the responsibility and obligations upon the trustee do not arise until the trustee has accepted the transfer. This detailed section is included to call the attention of the parties to the effective receipt and acceptance by the custodial trustee. Once a custodial trustee accepts the transfer of the custodial trust property, the custodial trustee assumes the obligation of a custodial trustee under this Act. The acceptance can be ex-

pressed or implied, but it is recommended that the written acceptance provided for in Section 4(b) be utilized. By the acceptance the custodial trustee submits to the personal jurisdiction of the courts of the enacting state for the purpose of the custodial trust, despite subsequent relocation of the parties or of the custodial trust property. The principal sources of these provisions are Sections 8 and 9 of UTMA and the analogous provisions under the Uniform Probate Code, Sections 3-602, 5-208, 5-307, 7-103.

## Library References

## American Digest System

- Acceptance by trustee, see Trusts ¶38.

## Encyclopedias

- Acceptance and disclaimer by trustee, see C.J.S. Trusts § 60.

§ 5. Transfer to Custodial Trustee by Fiduciary or Obligor: Facility of Payment.

(a) Unless otherwise directed by an instrument designating a custodial trustee pursuant to Section 3, a person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a conservator may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds [\$20,000], the transfer is not effective unless authorized by the court.

(b) A written acknowledgment of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee pursuant to this section.

COMMENT

This section is in the nature of a facility-of-payment provision that permits persons owing money to an incapacitated individual to discharge a fixed obligation by a payment to a custodial trustee under this Act. The section does not authorize the custodial trustee to settle claims for disputed amounts but only to acknowledge an effective receipt of property paid or

delivered. It is based primarily on Sections 6 and 7 of UTMA and includes the protections of Section 8 of UTMA as well. It permits a custodial trust to be established as a substitute for a conservatorship to receive payments due an incapacitated individual. Also, see Section 11, which protects transferors and other third parties dealing with the custodial trustee.

Action in Adopting Jurisdictions

Variations from Official Text:  
Minnesota. Omits this section.

Virginia. In subsec. (a), substitutes "\$10,000" for "\$20,000".

Library References

American Digest System

Delivery of money or other personal property as creating trust, see Trusts ¶33.  
Agreements to hold or convey to use of another as trusts, see Trusts ¶35(1).

Encyclopedias

Delivery or possession of personal property, see C.J.S. Trusts § 55.  
Creation of trust by agreement of person acquiring title to hold or convey to use of another, see C.J.S. Trusts § 51.

§ 6. Multiple Beneficiaries; Separate Custodial Trusts; Survivorship.

(a) Beneficial interests in a custodial trust created for multiple beneficiaries are deemed to be separate custodial trusts of equal undivided interests for each beneficiary. Except in a transfer or declaration for use and benefit of husband and wife, for whom survivorship is presumed, a right of survivorship does not exist unless the instrument creating the custodial trust specifically provides for survivorship [or survivorship is required as to community or marital property].

(b) Custodial trust property held under this [Act] by the same custodial trustee for the use and benefit of the same beneficiary may be administered as a single custodial trust.

(c) A custodial trustee of custodial trust property held for more than one beneficiary shall separately account to each beneficiary pursuant to Sections 7 and 15 for the administration of the custodial trust.

COMMENT

This Act, unlike UTMA, does not preclude a custodial trust for more than one beneficiary. Adult persons creating custodial trusts are likely to set up custodial trusts in various forms, e.g., parents may wish to set up a custodial trust for their children or for themselves, then for a spouse, etc. However, the interests of each

beneficiary are separate and the custodial trustee is obligated under subsection (c) to account separately to each beneficiary for administration of the beneficiary's interest in the custodial trust.

Subsection (b) allows a custodial trustee who is administering multiple custodial trusts for the

same beneficiary to administer the custodial trusts as a single custodial trust. For example, if multiple trusts are created for an incapacitat-

ed beneficiary, the custodial trustee can administer them as a single custodial trust.

Action in Adopting Jurisdictions

Variations from Official Text:

Rhode Island. In subsec. (1), at end thereof, omits bracketed language.

In subsec. (b), substitutes "single custodial account" for "single custodial trust".

Virginia. In subsec. (a), omits "community or".

Library References

American Digest System

Extent of estate or interest of beneficiary of trust, see Trusts ⇐139, 140.

Encyclopedias

Construction of trust for several beneficiaries, see C.J.S. Trusts § 186.

§ 7. General Duties of Custodial Trustee.

(a) If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.

(b) If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property. In the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other law restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor. If a custodial trustee has a special skill or expertise or is named custodial trustee on the basis of representation of a special skill or expertise, the custodial trustee shall use that skill or expertise.

(c) Subject to subsection (b), a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

(d) A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control, separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument so identifying the property is recorded, and custodial trust property subject to registration is so identified if it is registered, or held in an account in the name of the custodial trustee, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act."

(e) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

(f) The exercise of a durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the administration or distribution of a custodial trust.

COMMENT

Subsection (b) restates and confirms the control by the beneficiary who is not incapacitated. However, the trustee has a reasonable obligation to act when the beneficiary has not directed him. Under Sections 9 and 10, when a beneficiary becomes incapacitated, the custodial trust becomes a discretionary trust and the trustee is subject to the control of the statute and not the beneficiary's direction. The custodial trustee is subject to the usual trustee's standard as taken

from Section 7-302 of the Uniform Probate Code. The statute also imposes a slightly higher standard on professional fiduciaries acting under the statute. Otherwise, much of this section is taken from Section 12 of UTMA. Whenever recordable assets, such as land, are in the custodial trust, the trustee would be expected to record title to the asset. The section is entitled "general duties" because there are additional

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## CUSTODIAL TRUST

specific duties identified in other sections such as Section 9.

### Action in Adopting Jurisdictions

#### Variations from Official Text:

**Minnesota.** In subsec. (b), substitutes "set forth in section 501B.10" for "that would be observed by a prudent person dealing with property of another and is not limited by any other law restricting investments by fiduciaries", and omits last sentence.

Omits subsec. (f).

**Virginia.** In subsec. (a), substitutes "such person's own property" for "property of another".

### Library References

#### American Digest System

Management and disposal of trust property, see Trusts ¶171 to 269.

#### Encyclopedias

Duties of trustee, generally, see C.J.S. Trusts § 247.

Duties of trustee as to protection and preservation of property, see C.J.S. Trusts § 270.

Investments of trust funds by trustee, see C.J.S. Trusts §§ 320 to 337.

### § 8. General Powers of Custodial Trustee.

(a) A custodial trustee, acting in a fiduciary capacity, has all the rights and powers over custodial trust property which an unmarried adult owner has over individually owned property, but a custodial trustee may exercise those rights and powers in a fiduciary capacity only.

(b) This section does not relieve a custodial trustee from liability for a violation of Section 7.

### COMMENT

This section is taken from Section 13 of UTMA. It grants the trustee very broad powers over the property, subject, however, to the Prudent Person Rule and to the obligations set out in the Act. An alternative approach to subsection (a) that might be taken by an enacting state

is to refer to the existing statutes granting powers to a trustee, such as the Uniform Trustee's Powers Act. For example: [(a) A custodial trustee has the powers of a trustee under the Uniform Trustee's Powers Act.]

### Action in Adopting Jurisdictions

#### Variations from Official Text:

**Virginia.** In subsec. (a), inserts "which shall include but not be limited to those powers set forth in § 64.1-57 as of

the date the custodian acts" following "individually owned property".

### Library References

#### American Digest System

Authority of trustee in management of trust property in general, see Trusts ¶171.

#### Encyclopedias

Management of trust property, see C.J.S. Trusts §§ 296 to 376.

### § 9. Use of Custodial Trust Property.

(a) A custodial trustee shall pay to the beneficiary or expend for the beneficiary's use and benefit so much or all of the custodial trust property as the beneficiary while not incapacitated may direct from time to time.

(b) If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit of the beneficiary and individuals who were supported by the beneficiary when the beneficiary became incapacitated, or who are legally entitled to support by the beneficiary. Expenditures may be made in the manner, when, and to the extent that the

custodial trustee determines suitable and proper, without court order and without regard to other support, income, or property of the beneficiary.

(c) A custodial trustee may establish checking, savings, or other similar accounts of reasonable amounts under which either the custodial trustee or the beneficiary may withdraw funds from, or draw checks against, the accounts. Funds withdrawn from, or checks written against, the account by the beneficiary are distributions of custodial trust property by the custodial trustee to the beneficiary.

COMMENT

This section provides that the custodial trustee is obligated to follow the directions of the beneficiary who is not incapacitated in paying over or expending custodial trust property. If the beneficiary is incapacitated, this section imposes duties on the custodial trustee to apply funds for the beneficiary similar to those imposed on custodians for minors under Section 14 of UTMA. In addition, however, subsection (b) authorizes a custodial trustee to pay over or expend custodial trust property for the use and benefit of the incapacitated beneficiary's dependents who were supported by the beneficiary at the time the beneficiary became incapacitated or for whom there is a legal obligation to support.

The use-and-benefits standard for the expenditure of custodial property is intended to avoid any implication that the custodial trust property can be used only for the required support of the incapacitated beneficiary.

Subsection (c) allows a custodial trustee to maintain a bank account, of an amount reasonable under the circumstances, with the beneficiary whereby both the beneficiary and the custodial trustee may write checks on the account. This may be used as one method of making money available for the beneficiary's personal needs. Many incapacitated persons, unable to manage business affairs, are still competent to pay personal expenses. This type of arrangement would be important to them. A custodial trustee should maintain, of course, a separate bank account for use in managing the custodial trust property and investments.

An alternative approach might be taken to this section that refers to the distributive powers of a conservator under the laws of the enacting state, in the event that state should prefer that incorporation by reference. For example: [The custodial trustee has the distributive powers of a conservator under the Uniform Probate Code.]

Library References

American Digest System

- Expenditure of principal, see Trusts ¶276.
- Payment of income or proceeds of property, see Trusts ¶280, 282.

Encyclopedias

- Payment of income or proceeds of property, see C.J.S. Trusts §§ 351, 353.
- Right to receive and expenditure of principal, see C.J.S. Trusts § 349.

§ 10. Determination of Incapacity; Effect.

(a) The custodial trustee shall administer the custodial trust as for an incapacitated beneficiary if (i) the custodial trust was created under Section 5, (ii) the transferor has so directed in the instrument creating the custodial trust, or (iii) the custodial trustee has determined that the beneficiary is incapacitated.

(b) A custodial trustee may determine that the beneficiary is incapacitated in reliance upon (i) previous direction or authority given by the beneficiary while not incapacitated, including direction or authority pursuant to a durable power of attorney, (ii) the certificate of the beneficiary's physician, or (iii) other persuasive evidence.

(c) If a custodial trustee for an incapacitated beneficiary reasonably concludes that the beneficiary's incapacity has ceased, or that circumstances concerning the beneficiary's ability to manage property and business affairs have changed since the creation of a custodial trust directing administration as for an incapacitated beneficiary, the custodial trustee may administer the trust as for a beneficiary who is not incapacitated.

(d) On petition of the beneficiary, the custodial trustee, or other person interested in the custodial trust property or the welfare of the beneficiary, the court shall determine whether the beneficiary is incapacitated.

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(e) Absent determination of incapacity of the beneficiary under subsection (b) or (d), a custodial trustee who has reason to believe that the beneficiary is incapacitated shall administer the custodial trust in accordance with the provisions of this [Act] applicable to an incapacitated beneficiary.

(f) Incapacity of a beneficiary does not terminate (i) the custodial trust, (ii) any designation of a successor custodial trustee, (iii) rights or powers of the custodial trustee, or (iv) any immunities of third persons acting on instructions of the custodial trustee.

#### COMMENT

This is one of the more important sections of the Act under which the custodial trustee may determine that the beneficiary is incapacitated so the trust will change from one subject to the control of the beneficiary to a discretionary trust for the beneficiary. Subsection (b) allows the custodial trustee to determine that the beneficiary is incapacitated provided the determination is based upon the certificate of the beneficiary's physician, the prior direction or authority of the beneficiary, or other reasonable evidence. That authority could be evidenced, for example, by a durable power of attorney executed by the beneficiary prior to becoming incapacitated even though that power of attorney is not otherwise effective to control management or termination of the custodial trust. Such a durable power of attorney could be given to a child, spouse, friend, or other trusted individual. In addition, specific authority is provided in subsection (d) for the beneficiary, the custodial trustee, or other interested person to seek a declaration from the court as to the capacity of the beneficiary for the purposes of this Act. This is important to the custodial trustee, as his duties and responsibili-

ties change on the event of the beneficiary's incapacity.

This section is not a proceeding for the appointment of a conservator, and it is not contemplated that such a declaration would lead to court appointment of a conservator or guardian unless other factors would warrant such appointment. The existence of a comprehensive and well-managed custodial trust would be one factor that would tend to avoid the necessity for the appointment of a conservator or guardian of the estate.

This section also does not provide a proceeding to attack the legal competence of a transferor in setting up a trust under Section 2. Rather, Section 10 relates to a management matter in a validly established custodial trust.

Subsection (f) provides that the incapacity of the beneficiary does not terminate the custodial trust. If the beneficiary becomes incapacitated, the authority of the custodial trustee continues and the custodial trustee must follow the statutory provisions of the Act relating to managing custodial trusts for incapacitated individuals.

#### Action in Adopting Jurisdictions

##### Variations from Official Text:

Minnesota. In subsec. (a), omits clause (i).

In subsec. (c), substitutes "must administer" for "may administer".

#### Library References

##### American Digest System

Determination as to mental disorder in general, see Mental Health ¶6 to 18.

##### Encyclopedias

Determination as to mental disorder in general, see C.J.S. Insane Persons §§ 8 to 34.

#### § 11. Exemption of Third Person From Liability.

A third person in good faith and without a court order may act on instructions of, or otherwise deal with, a person purporting to make a transfer as, or purporting to act in the capacity of, a custodial trustee. In the absence of knowledge to the contrary, the third person is not responsible for determining:

- (1) the validity of the purported custodial trustee's designation;
- (2) the propriety of, or the authority under this [Act] for, any action of the purported custodial trustee;
- (3) the validity or propriety of an instrument executed or instruction given pursuant to this [Act] either by the person purporting to make a transfer or declaration or by the purported custodial trustee; or
- (4) the propriety of the application of property vested in the purported custodial trustee.

COMMENT

This section is based upon Section 16 of the UTMA and protects third persons who deal in good faith with the custodial trustee.

Library References

American Digest System

Limitations of authority imposed in creation of trust, see Trusts ¶172.  
Rights and title of purchaser from trustee, see Trusts ¶203.

Encyclopedias

Duty of trustee's mortgagee to ascertain whether mortgage by trustee is in violation of trust, see C.J.S. Trusts § 317.  
Lender not required to see to application of money lent, see C.J.S. Trusts § 279.  
Notice to persons dealing with trustee of extent and limitation of his powers, see C.J.S. Trusts § 246.

§ 12. Liability to Third Person.

(a) A claim based on a contract entered into by a custodial trustee acting in a fiduciary capacity, an obligation arising from the ownership or control of custodial trust property, or a tort committed in the course of administering the custodial trust, may be asserted by a third person against the custodial trust property by proceeding against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

(b) A custodial trustee is not personally liable to a third person:

(1) on a contract properly entered into in a fiduciary capacity unless the custodial trustee fails to reveal that capacity or to identify the custodial trust in the contract; or

(2) for an obligation arising from control of custodial trust property or for a tort committed in the course of the administration of the custodial trust unless the custodial trustee is personally at fault.

(c) A beneficiary is not personally liable to a third person for an obligation arising from beneficial ownership of custodial trust property or for a tort committed in the course of administration of the custodial trust unless the beneficiary is personally in possession of the custodial trust property giving rise to the liability or is personally at fault.

(d) Subsections (b) and (c) do not preclude actions or proceedings to establish liability of the custodial trustee or beneficiary to the extent the person sued is protected as the insured by liability insurance.

COMMENT

This section is patterned after Section 17 of the UTMA and that section in turn was based upon Sections 5-428 and 7-306 of the Uniform Probate Code limiting the liability of conservators and trustees. See also Restatement of Trusts, 2d, Sections 265 and 277. The effect of this section is to limit the claims of third parties to recourse against custodial trust property as both the custodial trustee and the beneficiary are protected from personal liability absent personal fault on their part. This section does not alter the obligations between the custodial trustee and the beneficiary arising out of the adminis-

tration of the estate and the accounting for that administration.

There may be cases in which a custodial trustee or beneficiary may have a right to possession of custodial trust property and may insure against liability arising out of possession or control of the property as a named insured, e.g., under homeowner's or automobile liability insurance. In such a case, the beneficiary should be permitted as a party defendant under subsection (d) but only to the extent of the protection of the liability insurance.

Library References

American Digest System

Contracts made in management of trust, see Trusts ¶209 to 213.  
Liability of trustee and trust estate for torts, see Trusts ¶235.  
Rights of action against trustees, see Trusts ¶250.

## Encyclopedias

Contracts made by trustee, see C.J.S. Trusts §§ 275 to 280.

Liability of trustee and trust estate for torts, see C.J.S. Trusts § 252.

Right of action of third person against trust or trustee, see C.J.S. Trusts § 361.

### § 13. Declination, Resignation, Incapacity, Death, or Removal of Custodial Trustee, Designation of Successor Custodial Trustee.

(a) Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve by notifying the person who made the designation, the transferor, or the transferor's legal representative. If an event giving rise to a transfer has not occurred, the substitute custodial trustee designated under Section 3 becomes the custodial trustee, or, if a substitute custodial trustee has not been designated, the person who made the designation may designate a substitute custodial trustee pursuant to Section 3. In other cases, the transferor or the transferor's legal representative may designate a substitute custodial trustee.

(b) A custodial trustee who has accepted the custodial trust property may resign by (i) delivering written notice to a successor custodial trustee, if any, the beneficiary and, if the beneficiary is incapacitated, to the beneficiary's conservator, if any, and (ii) transferring or registering, or recording an appropriate instrument relating to, the custodial trust property, in the name of, and delivering the records to, the successor custodial trustee identified under subsection (c).

(c) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated under Section 2(g) or 3 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee. If the beneficiary is incapacitated, or fails to act within 90 days after the ineligibility, resignation, death, or incapacity of the custodial trustee, the beneficiary's conservator becomes successor custodial trustee. If the beneficiary does not have a conservator or the conservator fails to act, the resigning custodial trustee may designate a successor custodial trustee.

(d) If a successor custodial trustee is not designated pursuant to subsection (c), the transferor, the legal representative of the transferor or of the custodial trustee, an adult member of the beneficiary's family, the guardian of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary, may petition the court to designate a successor custodial trustee.

(e) A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee, as soon as practicable, shall put the custodial trust property and records in the possession and control of the successor custodial trustee. The successor custodial trustee may enforce the obligation to deliver custodial trust property and records and becomes responsible for each item as received.

(f) A beneficiary, the beneficiary's conservator, an adult member of the beneficiary's family, a guardian of the person of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary, may petition the court to remove the custodial trustee for cause and designate a successor custodial trustee, to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties, or for other appropriate relief.

#### COMMENT

This section follows many of the provisions of Section 18 of UTMA with some substantive changes. It is designed to accommodate in a single section the circumstances in which a custodial trustee would be replaced by another custodial trustee. Under subsection (b), if the beneficiary is incapacitated, a custodial trustee who resigns must give written notice to both the beneficiary and the beneficiary's conservator if one exists. Under subsection (c), a beneficiary

who is not incapacitated may designate, without limitation, a successor custodial trustee. If, however, the beneficiary fails to act or is incapacitated, the procedure to be followed is very similar to that found in UTMA except that the nonincapacitated beneficiary has 90 days to act and if the beneficiary has no conservator or if the conservator declines to act, the custodial trustee may eventually designate a successor custodial trustee.

Under subsection (f), the beneficiary, whether or not incapacitated, can petition the court to remove the custodial trustee for cause and to designate a successor trustee, or the court may require the custodial trustee to give bond or other appropriate relief.

This section, unlike Section 18 of UTMA, does not give the custodial trustee the general power to designate a successor custodial trustee but rather limits that power to the situation in which the procedure for designating successor custodial trustees by others has been exhausted.

Action in Adopting Jurisdictions

Variations from Official Text:

Minnesota. In subsec. (c), inserts "or the holder of the beneficiary's power of attorney," following "incapacitated," in the second sentence and omits the last two sentences.

In subsec. (d), substitutes "the conservator of the beneficiary" for "the guardian of the beneficiary" and adds "in accordance with the procedures set forth in sections 501B.16

to 501B.25" following "designate a successor custodial trustee".

Virginia. In subsec. (c), first sentence reads: "If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated in accordance with the trust instrument or in accordance with § 55-34.3 becomes custodial trustee."

Library References

American Digest System

Acceptance by trustee, see Trusts ⇐38.

Appointment and succession of new trustee, see Trusts ⇐169(1 to 3).

Death and survivorship of trustees, see Trusts ⇐168.

Disqualification, resignation and discharge, and removal of trustees, see Trusts ⇐162 to 167.

Encyclopedias

Acceptance or disclaimer of trust by trustee, see C.J.S. Trusts § 60.

Appointment of trustees and successor trustees, see C.J.S. Trusts §§ 211 to 220.

Devolution of office on appointment of new trustee, see C.J.S. Trusts § 236.

Removal of trustees, see C.J.S. Trusts §§ 230 to 235.

Resignation and discharge of trustees, see C.J.S. Trusts §§ 225 to 229.

Who may petition court to require bond of trustee, see C.J.S. Trusts § 224.

§ 14. Expenses, Compensation, and Bond of Custodial Trustee.

Except as otherwise provided in the instrument creating the custodial trust, in an agreement with the beneficiary, or by court order, a custodial trustee:

(1) is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary services;

(2) has a noncumulative election, to be made no later than six months after the end of each calendar year, to charge a reasonable compensation for fiduciary services performed during that year; and

(3) need not furnish a bond or other security for the faithful performance of fiduciary duties.

COMMENT

This section follows the pattern of Section 15 of the UTMA except it does subject the arrangements for payment of expenses, compensation, and bond to provisions in the custodial trust instrument or agreement of the beneficiary or court order.

As in UTMA, the provisions with regard to compensation are designed to avoid imputed

compensation to the custodian who waives compensation and also to avoid the accumulation of claims for compensation until the termination of the custodial trust. Although the ability to control these matters by the trust instrument or agreement of the beneficiary seems to be implied, as was assumed in UTMA, it is here expressly stated because of the possibility of informal arrangements with persons as trustees.

Library References

American Digest System

Bond of trustee, see Trusts ⇐16.

Compensation of trustee, see Trusts ⇐314 to 321.

Expenditures of trustee, see Trusts ⇐224 to 227.

Reimbursement and indemnity of trustee, see Trusts ⇐236.

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## Encyclopedias

Bond of trustee, see C.J.S. Trusts § 224.

Compensation of trustee, see C.J.S. §§ 395 to 408.

Creation and discharge of claims against estate and reimbursement, see C.J.S. Trusts §§ 275 to 285.

### § 15. Reporting and Accounting by Custodial Trustee; Determination of Liability of Custodial Trustee.

(a) Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement describing the custodial trust property and shall thereafter provide a written statement of the administration of the custodial trust property (i) once each year, (ii) upon request at reasonable times by the beneficiary or the beneficiary's legal representative, (iii) upon resignation or removal of the custodial trustee, and (iv) upon termination of the custodial trust. The statements must be provided to the beneficiary or to the beneficiary's legal representative, if any. Upon termination of the beneficiary's interest, the custodial trustee shall furnish a current statement to the person to whom the custodial trust property is to be delivered.

(b) A beneficiary, the beneficiary's legal representative, an adult member of the beneficiary's family, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative.

(c) A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee.

(d) In an action or proceeding under this [Act] or in any other proceeding, the court may require or permit the custodial trustee or the custodial trustee's legal representative to account. The custodial trustee or the custodial trustee's legal representative may petition the court for approval of final accounts.

(e) If a custodial trustee is removed, the court shall require an accounting and order delivery of the custodial trust property and records to the successor custodial trustee and the execution of all instruments required for transfer of the custodial trust property.

(f) On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to interested persons, may issue instructions to the custodial trustee or review the propriety of the acts of a custodial trustee or the reasonableness of compensation determined by the custodial trustee for the services of the custodial trustee or others.

#### COMMENT

This section requires that the custodial trustee inform the beneficiary of the initiation of the trust and provide reasonably current reports of the administration of the custodial trust to the beneficiary or the beneficiary's legal representative. Even though some custodial trustees may act informally, it seems appropriate that both the trustee and the beneficiary be expected to exchange complete information concerning the administration of the trust at least once each year. In some cases, more frequent exchanges of information between the custodial trustee and beneficiary would be expected, e.g., when they use a bank account to which both have access. This is particularly true with regard to necessary information for tax reporting by the parties involved. This section assumes the usual minimum components of an account, i.e., assets and

values at the beginning of the accounting period, receipts, and disbursements during the accounting period and assets and their values on hand or available for distribution at the close of the accounting period.

Subsection (a) identifies the necessary reports and accountings for the parties, and subsection (b) identifies a broad group of persons who may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative. Much of the section is drawn from Section 19 of the UTMA modified to fit the custodial trust. Subsection (f) recognizes the inherent power of the court to instruct trustees and review their actions. This paragraph is patterned after Uniform Probate Code Section 7-205.

Action in Adopting Jurisdictions

Variations from Official Text: Minnesota. Adds a subsec. (g) which reads: "(g) All proceedings described in this section shall be conducted in accordance with the procedures set forth in sections 501B.16 to 501B.25."

Library References

American Digest System

- Accounting of trustee, see Trusts ¶289 to 313, 322 to 333.
Actions for enforcement of trust, see Trusts ¶359 to 377.
Court supervision of execution of trust and instructions to trustee, see Trusts ¶271½.
Trustee as representative of beneficiary, see Trusts ¶173.

Encyclopedias

- Accounting and settlement of trust, see C.J.S. Trusts §§ 377 to 394.
Enforcement of trust, see C.J.S. Trusts §§ 421 to 474.
Court supervision of execution of trust and instructions to trustee, see C.J.S. Trusts § 261.
Duty of trustee to give information as to management of trust on request of beneficiaries or their representatives, see C.J.S. Trusts § 247.

§ 16. Limitations of Action Against Custodial Trustee.

not well drafted. See draft.

(a) Except as provided in subsection (c), unless previously barred by adjudication, consent, or limitation, a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom custodial trust property is to be paid or delivered, or the legal representative of an incapacitated or deceased beneficiary or payee:

- (1) who has received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within two years after receipt of the final account or statement; or
(2) who has not received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within three years after the termination of the custodial trust.

(b) Except as provided in subsection (c), a claim for relief to recover from a custodial trustee for fraud, misrepresentation, or concealment related to the final settlement of the custodial trust or concealment of the existence of the custodial trust, is barred unless an action or proceeding to assert the claim is commenced within five years after the termination of the custodial trust.

(c) A claim for relief is not barred by this section if the claimant:

- (1) is a minor, until the earlier of two years after the claimant becomes an adult or dies;
(2) is an incapacitated adult, until the earliest of two years after (i) the appointment of a conservator, (ii) the removal of the incapacity, or (iii) the death of the claimant; or
(3) was an adult, now deceased, who was not incapacitated, until two years after the claimant's death.

COMMENT

In an effort to provide as comprehensive a statute as possible to inform the parties of substantially all of their obligations and rights, statutes of limitation are provided in this section. The limitations provided in this section are derived from the Uniform Probate Code, Sections 1-106 and 7-307, and from the Missouri Custodial Act.

The nature of the limitations imposed by the section are illustrated by the situation in which a custodial trustee is removed, resigns, or dies. If the former custodial trustee accounts as re-

quired under Section 13 on removal or resignation, or the deceased custodial trustee's personal representative accounts, the two-year limitation of subsection (a)(1) applies. Should the former custodial trustee or the personal representative fail to account, then, subsection (a)(2) would apply to limit the time in which a proceeding to assert the claim could be commenced. This time would begin to run on the date the trust terminated. Of course, if the claim is one for fraud or concealment, the longer time limitation of subsection (b) would apply. In any event, should the beneficiary become incapacitated or die be-

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fore the applicable time limitation had expired, the tolling provision of subsection (c) could postpone the time bar until two years after removal of the disability or death.

Library References

American Digest System

- Limitations of actions against trustees, see Trusts ¶256.
- Limitations of actions to enforce trust, see Trusts ¶365(1).

Encyclopedias

- Limitations of actions against trustees as to management of trust, see C.J.S. Trusts § 365.
- Limitation of actions to compel accounting, see C.J.S. Trusts § 387.
- Limitation of actions to enforce trust, see C.J.S. Trusts § 456.

§ 17. Distribution on Termination.

(a) Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property:

- (1) to the beneficiary, if not incapacitated or deceased;
- (2) to the conservator or other recipient designated by the court for an incapacitated beneficiary; or
- (3) upon the beneficiary's death, in the following order:
  - (i) as last directed in a writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary;
  - (ii) to the survivor of multiple beneficiaries if survivorship is provided for pursuant to Section 6;
  - (iii) as designated in the instrument creating the custodial trust; or
  - (iv) to the estate of the deceased beneficiary.

(b) If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

(c) Death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

COMMENT

This section controls distribution of the custodial trust property when the custodial trust is terminated under Section 2(e). It is designed to provide for efficient and certain distribution without judicial proceedings. Subsection (a)(3) is an important provision for avoiding complications on distribution and provides that distribution may be controlled first, by the direction of the deceased beneficiary or second, by the custodial trust instrument (see Sections 2, 6 and 18) and, only if no effective prior designation for the payment or distribution of the property on the death of the beneficiary has been made, shall it pass through the beneficiary's estate.

The direction to the custodial trustee by the beneficiary, who is not incapacitated, for distribution on termination of the custodial trust may be in any written form clearly identifying the distributee. For example, the following direction would be adequate under the statute:

I, \_\_\_\_\_ (name of beneficiary) hereby direct \_\_\_\_\_ (name of trustee) as custodial trustee, to transfer and pay the unexpended balance of the custodial trust property of which I am beneficiary to \_\_\_\_\_ as distributee on the termination of the trust at my death. In the event of the prior death of \_\_\_\_\_ above named as distributee, I designate \_\_\_\_\_ as distributee of the custodial trust property.

Receipt Acknowledged	Signed
_____ (signature)	_____ (signature)
Custodial Trustee	Beneficiary
Date _____	Date _____

Action in Adopting Jurisdictions

Variations from Official Text:

Minnesota. Subsec. (a) reads:

"(a) Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property:

- "(1) to the beneficiary, if not incapacitated or deceased;
- "(2) to the holder of the beneficiary's power of attorney;

"(3) to the conservator or other recipient designated by the court for an incapacitated beneficiary; or

"(4) upon the beneficiary's death, in the following order:

- "(i) to the survivor of multiple beneficiaries if survivorship is provided for pursuant to section 6;
- "(ii) as designated in the instrument creating the custodial trust; or
- "(iii) to the estate of the deceased beneficiary."

Library References

American Digest System

- Distribution of trust property, see Trusts ¶273 to 286.
- Termination of trust, see Trusts ¶61.

Encyclopedias

- Payment and distribution of property or fund, see C.J.S. Trusts §§ 343 to 355.
- Termination of trusts, see C.J.S. Trusts §§ 92 to 96.

§ 18. Methods and Forms for Creating Custodial Trusts.

(a) If a transaction, including a declaration with respect to or a transfer of specific property, otherwise satisfies applicable law, the criteria of Section 2 are satisfied by:

- (1) the execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

TRANSFER UNDER THE [ENACTING STATE] UNIFORM CUSTODIAL TRUST ACT.

I, \_\_\_\_\_ (name of transferor or name and representative capacity if a fiduciary), transfer to \_\_\_\_\_ (name of trustee other than transferor), as custodial trustee for \_\_\_\_\_ (name of beneficiary) as beneficiary and \_\_\_\_\_ as distributee on termination of the trust in absence of direction by the beneficiary under the [Enacting state] Uniform Custodial Trust Act, the following: (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: \_\_\_\_\_

(Signature); or

- (2) the execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

DECLARATION OF TRUST UNDER THE [ENACTING STATE] UNIFORM CUSTODIAL TRUST ACT

I, \_\_\_\_\_ (name of owner of property), declare that henceforth I hold as custodial trustee for \_\_\_\_\_ (name of beneficiary other than transferor) as beneficiary and \_\_\_\_\_ as distributee on termination of the trust in absence of direction by the beneficiary under the [Enacting state] Uniform Custodial Trust Act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: \_\_\_\_\_

(Signature)

(b) Customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including any of the following:

- (1) registration of a security in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

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(2) delivery of a certificated security, or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in subsection (a)(1);

(3) payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(4) registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(5) delivery of a written assignment to an adult other than the transferor or to a trust company whose name in the assignment is designated in substance by the words: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(6) irrevocable exercise of a power of appointment, pursuant to its terms, in favor of a trust company, an adult other than the donee of the power, or the donee who holds the power if the beneficiary is other than the donee, whose name in the appointment is designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(7) delivery of a written notification or assignment of a right to future payment under a contract to an obligor which transfers the right under the contract to a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, whose name in the notification or assignment is designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(8) execution, delivery, and recordation of a conveyance of an interest in real property in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(9) issuance of a certificate of title by an agency of a state or of the United States which evidences title to tangible personal property:

(i) issued in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act"; or

(ii) delivered to a trust company or an adult other than the transferor or endorsed by the transferor to that person, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act"; or

(10) execution and delivery of an instrument of gift to a trust company or an adult other than the transferor, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act."

#### COMMENT

This section largely follows Section 9 of UTMA. It provides instructional detail for forms and methods of transferring assets that satisfy the requirements of the statute. Although many of the customary methods of transferring assets are identified, these methods are not intended to be exclusive since any type of property that can be transferred by any legal

means is intended to be within the scope of the statute, provided the requirements of Section 2 are met. The method of transfer or conveyance appropriate to the asset should be used, e.g., if land is involved, a deed or conveyance that satisfies the local requirements would be appropriate. In the effort to make the statute as self-contained and as fully explanatory as possible, these

provisions for implementation are included in the statute rather than being appended or inserted in the Comments.

### Action in Adopting Jurisdictions

#### Variations from Official Text:

Virginia. In subsec. (a), adds a provision which reads: "Either form may be modified by the owner to include, for

example, a designation of an alternate or successor trustee or the recipient of the custodial property upon termination of the trust."

### Library References

#### American Digest System

Transactions creating or operating as trusts, see Trusts  $\Leftrightarrow$ 30½ to 37.

Written instruments creating or declaring trusts, see Trusts  $\Leftrightarrow$ 19 to 29.

#### Encyclopedias

Agreements, covenants, and transactions creating or operating as trusts, see C.J.S. Trusts §§ 50 to 59.

Declaration of trust, see C.J.S. Trusts §§ 42 to 49.

### § 19. Applicable Law.

(a) This [Act] applies to a transfer or declaration creating a custodial trust that refers to this [Act] if, at the time of the transfer or declaration, the transferor, beneficiary, or custodial trustee is a resident of or has its principal place of business in this State or custodial trust property is located in this State. The custodial trust remains subject to this [Act] despite a later change in residence or principal place of business of the transferor, beneficiary, or custodial trustee, or removal of the custodial trust property from this State.

(b) A transfer made pursuant to an act of another state substantially similar to this [Act] is governed by the law of that state and may be enforced in this State.

### COMMENT

This section is designed to avoid confusion in the event a party or assets are removed from the state.

### § 20. Uniformity of Application and Construction.

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

### Library References

#### Encyclopedias

Similar interpretation of uniform laws adopted in different states, see C.J.S. Statutes § 371.

### § 21. Short Title.

This [Act] may be cited as the "[Name of Enacting State] Uniform Custodial Trust Act."

### § 22. Severability.

If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

### Library References

#### American Digest System

Effect of partial invalidity of statutes, see Statutes  $\Leftrightarrow$ 64(1).

Encyclopedias

Statutory declaration as to effect of partial invalidity, see C.J.S. Statutes § 94.

§ 23. Effective Date.

This [Act] takes effect \_\_\_\_\_

HB

516

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

FISCAL NOTE

No. 1  
Bill Version: CSHB 516 (HES)  
(H) Publish Date: 4-10-92

Revision Date: \_\_\_\_\_  
Title: An Act Relating to Teacher Tenure  
Sponsor: Rep. Lincoln  
Requestor: \_\_\_\_\_ (H) HESS

Department Affected: Education  
BRU: Educational Finance & Support Services  
Component: Teacher Certification

COMPONENT SERIAL NO. 

1	2	4	0
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS. CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

The department has determined there will be no fiscal impact to implement this bill.

Prepared by: Eddy Jeans / Bill Wright  
Division: Educational Finance & Support Services

Phone: 465-2865  
Date: 3-5-92

Approved by Commissioner: *M.A. McLean*  
Agency: Education

Jerry Covey  
Date: 3-5-92

COMMITTEE COPY

ALASKA STATE LEGISLATURE

Representative Georgianna Lincoln

HESS Committee, Co-Chair  
Resources Committee, Vice-Chair

Budget Subcommittees  
Health and Social Services  
Revenue



P.O. Box V  
Juneau, Alaska 99811

Phone: (907) 465-3732  
FAX: (907) 465-2652

MEMORANDUM

Alatna  
Allakaket  
Aniak  
Anvik  
Arctic Village  
Beaver  
Bettles  
Birch Creek  
Chalkyitsik  
Chuathbaluk  
Crooked Creek  
Evansville  
Fort Yukon  
Galena  
Grayling  
Holy Cross  
Hughes  
Huslia  
Kalskag  
Kaltag  
Koyukuk  
Lake Minchumina  
Lime Village  
Lower Kalskag  
Manley Hot Springs  
Marshall  
McGrath  
Minto  
Mountain Village  
Nikolai  
Nulato  
Pilot Station  
Pitkas Point  
Rampart  
Red Devil  
Ruby  
Russian Mission  
Shageluk  
Sleetmute  
St. Mary's  
Stevens Village  
Stony River  
Tako'na  
Tanana  
Telida  
Tuluksak  
Tyonek  
Venetie  
Wiseman

TO: House Health, Education and Social Services Commission Members  
FROM: Representative Georgianna Lincoln *geom*  
DATE: March 12, 1992  
RE: House Bill 516 - Relating to Teacher Tenure

House Bill 516 provides for the release of tenured teachers for budgetary and fiscal circumstances of the district.

Under current law school districts are allowed to lay off tenured teachers for incompetence, immorality, substantial noncompliance with law or regulation, or decreased student enrollment. As revenues decline, school districts must have the ability to make personnel decisions based on programmatic needs.

Every school district I have talked with has a story about a tenured teacher--or teachers--who are teaching children of ages or subject areas for which they have not been trained because they've lost funding or their program needs have changed. We must give school districts the flexibility to make adjustments on the basis of what is best for the children.

# HOUSE COMMITTEE REPORT

(7) Date Referred: February 18, 1992      FURTHER REFERRALS:      Labor & Commerce

Date of Committee Action: 4/9/92

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:      HB 516

HOUSE BILL NO. 516      NONRETENTION OF TENURED TEACHERS

"An Act relating to teacher tenure."

RECOMMENDATIONS:      [ ] the same title  
 be replaced with CS HB 516 (HES)      [  ] a new title  
 [ ] have attached amendments(s)  
 do pass  
 [ ] do not pass  
 [ ] no recommendations  
 [ ] individual recommendations  
 [ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)      APPROVES PREVIOUS: (Dept/Date)  
 [ ] fiscal impact \_\_\_\_\_      [ ] fiscal note(s) \_\_\_\_\_  
 zero fiscal note DOE      [ ] zero fiscal note(s) \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Cheri Davis</i>	<input checked="" type="checkbox"/>	<i>Betty Davis</i>		<input checked="" type="checkbox"/>	
<i>John Samples</i>	<input checked="" type="checkbox"/>	<i>Mark Penley</i>			<input checked="" type="checkbox"/>
<i>Patricia Carney</i>	<input checked="" type="checkbox"/>				
<i>Georgeina [unclear]</i>	<input checked="" type="checkbox"/>				
<i>Mary Miller</i>	<input checked="" type="checkbox"/>				

*Patricia Carney*  
 COCHAIRMAN'S SIGNATURE

ALASKA DEPARTMENT OF EDUCATION  
 FY 1991 SCHOOL OPERATING FUND - FUND BALANCE COMPLIANCE TEST (AS 14.17.082)

SCHOOL DISTRICT	TOTAL FY91 AUDITED EXPEND.&TRANSF	TOTAL FY91 FUND BALANCE	RESERVED FY91 FUND BALANCE	UNRESERVED FY91 FUND BALANCE	PERCENTAGE OF UNRESERVED FY91 FUND BALANCE	AMOUNT OVER 10%
ADAK	\$5,326,574	\$2,905,967	\$2,715,308	\$190,659	3.58%	0
ALASKA GATEWAY	5,305,208	663,688	182,167	501,501	9.45%	0
ALEUTIAN REGION	828,120	214,033	182,747	31,286	3.78%	0
ANNETTE ISLAND	3,672,667	1,480,060	1,480,060	0	0.00%	0
BERING STRAIT	20,069,822	8,777,258	7,891,955	1,085,303	5.41%	0
CHATHAM	4,499,941	389,596	378,800	10,796	0.24%	0
CHUGACH	1,907,187	346,611	284,863	61,748	3.24%	0
COPPER RIVER	5,639,046	849,511	357,641	491,870	8.88%	0
DELTA GREELY	5,736,516	1,297,020	1,297,020	0	0.00%	0
IDITAROD	6,180,483	1,134,134	1,134,134	0	0.00%	0
KASHUNAMIUT	2,044,037	442,452	407,753	34,699	1.70%	0
KUSPUK	6,229,457	588,709	588,709	0	0.00%	0
LOWER KUSKOKWIM	38,105,720	12,925,193	10,797,181	2,128,012	5.89%	0
LOWER YUKON	17,910,634	6,130,706	6,130,706	0	0.00%	0
PRIBILOF	2,191,554	1,153,215	973,826	179,389	8.19%	0
RAILBELT	3,334,605	407,927	405,852	2,075	0.06%	0
SOUTHEAST ISLAND	6,055,484	894,128	314,785	379,343	6.26%	0
SOUTHWEST REGION	6,978,581	3,630,578	3,064,893	565,685	8.11%	0
YUKON FLATS	5,588,297	1,788,370	1,238,068	550,302	9.85%	0
YUKON-KOYUKUK	7,872,747	3,251,811	2,528,403	723,408	9.19%	0
YUPIIT	5,077,601	2,124,300	1,774,309	350,000	6.89%	0
<b>TOTALS REAA'S</b>	<b>\$158,454,279</b>	<b>\$51,195,256</b>	<b>\$43,809,180</b>	<b>\$7,286,076</b>		<b>0</b>
<b>STATEWIDE TOTALS</b>	<b>\$781,594,023</b>	<b>\$101,670,791</b>	<b>\$71,146,643</b>	<b>\$30,524,148</b>		<b>0</b>

SOURCE OF DATA: FY 1991 SCHOOL DISTRICT AUDITS, STATEMENT OF COMPLIANCE - AS 14.17.082, FOR THE FISCAL YEAR ENDED JUNE 30, 1991.

or from: COMBINED BALANCE SHEET - ALL FUND TYPES AND ACCOUNT GROUPS, SCHOOL OPERATING FUND.

NOTE: 4 AAC 09.160 defines RESERVED to include encumbrances, pre-paid expenses, inventories, fuel reserves,

Retirement Incentive Program, self insurance, and federal impact aid.

UNRESERVED-DESIGNATED means that portion of the fund balance formally budgeted for a specific purpose.

UNRESERVED-UNDESIGNATED means that portion of the fund balance without legal encumbrance or specified use.

ALASKA DEPARTMENT OF EDUCATION  
 FY 1991 SCHOOL OPERATING FUND - FUND BALANCE COMPLIANCE TEST (AS 14.17.082)

4-29-92 FILE: FUN91BAL.XLS

SCHOOL DISTRICT	TOTAL FY91 AUDITED EXPEND.&TRANSF	TOTAL FY91 FUND BALANCE	RESERVED FY91 FUND BALANCE	UNRESERVED FY91 FUND BALANCE	PERCENTAGE OF UNRESERVED FY91 FUND BALANCE	AMOUNT OVER 10%
ALEUTIAN EAST	\$4,439,723	\$285,347	\$285,347	\$0	0.00%	0
ANCHORAGE	220,890,596	22,761,253	5,818,405	16,942,848	7.67%	0
BRISTOL BAY	2,846,330	372,244	372,244	0	0.00%	0
CORDOVA	3,377,480	153,281	28,143	127,138	3.78%	0
CRAIG	1,981,068	55,810	49,430	6,380	0.33%	0
DILLINGHAM	4,392,844	1,023,837	747,535	276,302	8.28%	0
FAIRBANKS	88,672,806	1,816,724	909,299	907,425	1.02%	0
GALENA	2,100,273	603,716	655,748	37,970	1.81%	0
HAINES	3,534,399	227,183	27,192	199,971	5.66%	0
HOONAH	2,278,809	311,471	311,471	0	0.00%	0
HYDABURG	1,288,817	97,344	60,218	47,126	3.68%	0
JUNEAU	30,331,848	1,604,161	827,054	777,107	2.66%	0
KAKE	1,752,396	416,719	374,597	44,122	2.52%	0
KENAI	61,567,994	1,280,454	1,280,454	0	0.00%	0
KETCHIKAN	16,184,339	308,608	268,940	39,568	0.24%	0
KLAWOCK	2,008,662	653,880	545,019	108,841	5.42%	0
KODIAK	16,307,484	2,820,184	2,353,587	466,607	2.86%	0
LAKE & PENINSULA	7,909,358	2,409,518	2,409,518	0	0.00%	0
MAT-SU	56,739,565	1,900	0	1,900	0.00%	0
NENANA	1,732,654	288,054	114,093	151,961	8.77%	0
NOME	5,638,301	824,533	273,548	550,987	9.77%	0
NORTH SLOPE	31,836,582	683,407	683,407	0	0.00%	0
NORTHWEST ARCTIC	20,516,865	7,314,132	6,186,744	1,147,388	5.58%	0
PELICAN	730,300	111,273	43,601	67,672	9.27%	0
PETERSBURG	3,831,343	745,206	378,708	366,500	9.57%	0
BITKA	10,328,300	420,624	114,380	306,244	2.97%	0
SKAGWAY	1,266,157	79,779	55,389	23,690	1.87%	0
ST. MARY'S	2,130,640	75,827	75,827	0	0.00%	0
TANANA	1,727,735	245,577	245,577	0	0.00%	0
UNALASKA	2,365,077	39,947	34,823	5,124	0.22%	0
VALDEZ	7,447,964	2,288,304	1,750,000	538,304	7.20%	0
WRANGELL	3,442,340	159,142	30,245	98,897	2.87%	0
YAKUTAT	1,562,897	(51,074)	(51,074)	0	0.00%	0
<b>TOTALS C&amp;B'S</b>	<b>\$623,139,744</b>	<b>\$50,475,535</b>	<b>\$27,237,463</b>	<b>\$23,238,072</b>		<b>0</b>

SOURCE OF DATA: FY 1991 SCHOOL DISTRICT AUDITS, STATEMENT OF COMPLIANCE - AS 14.17.082, FOR THE FISCAL YEAR ENDED JUNE 30, 1991, or from: COMBINED BALANCE SHEET - ALL FUND TYPES AND ACCOUNT GROUPS, SCHOOL OPERATING FUND.

NOTE: 4 AAC 09.160 defines RESERVED to include encumbrances, pre-paid expenses, inventories, fuel reserves, Retirement Incentive Program, self insurance, and federal impact aid.

UNRESERVED-DESIGNATED means that portion of the fund balance formally budgeted for a specific purpose.

UNRESERVED-UNDESIGNATED means that portion of the fund balance without legal encumbrance or specified use.



# NEA-ALASKA

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Sandy Pevan  
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Region R Director  
2529 Nelson Road  
North Pole, AK 99705

## ANCHORAGE REGIONAL OFFICE

1411 W. 33RD AVENUE  
ANCHORAGE, ALASKA 99503  
(907) 274-0536  
FAX: (907) 274-0551

## JUNEAU OFFICE

105 MUNICIPAL WAY, SUITE 302  
JUNEAU, ALASKA 99801  
(907) 586-3090  
FAX: (907) 586-2744

## FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET  
FAIRBANKS, ALASKA 99701  
(907) 456-4435  
FAX: (907) 456-2159

March 11, 1992

To: Rep. Carney, and members of the Alaska House HESS Committee

FROM: Don Oberg, President & Vernon Marshall, Executive Director  
NEA-Alaska

RE: HB 516 "An Act related to teacher tenure"

NEA-Alaska is disappointed to review this piece of legislation because it is clearly an act to remove rights provided effective professionals earned through a rigorous probationary teaching period of evaluations by schools administrators.

NEA-Alaska is available to discuss procedures for emergency lay-off provisions with the HESS committee in case such a financial emergency were to exist. However, with the glaring problems with these amendments currently before you, we urge the HESS Committee to refer HB 516 to a subcommittee for extensive rewriting. If not referred and rewritten to provide responsible protection against abuse of the tenure law we urge members of the committee to oppose the bill.

APR 08 '92 15:53  
April 8, 1992

Rep. David Finkelstein  
Juneau, AK 99801

Dear Rep. Finkelstein,

I have read House Bill #516 and find the language frightening. Essentially, the bill gives regional school boards the right to decide when there is a need to Reduce in Force and how that reduction will take place in their district. The bill seemingly ignores the need to protect the greatly experienced, well trained and adequately paid teachers particularly in remote and rural areas where decisions are often emotional, arbitrary and/or capricious.

Having been a principal in Arizona and a superintendent in Oregon, I recognize the need for a well thought out Reduction in Force bill which identifies a fair method of moving a tenured teacher out of a district.

Many, many states have Reduction in Force statutes. Some of these Reduction in Force statutes date as far back as 30 years. We can profit from their efforts- many really do work. All of those Reduction in force bills which I have read have common elements:

- A third independent neutral party which must concur with a district's perceived drop in enrollment and/or loss of operating money and the need to enter into a RIFing situation.
- Teacher certification type and training is always considered because that is best for students
- Teacher district seniority consideration is a must in order to avoid costly and lengthy litigation.

As a principal and again as a superintendent, I have seen colleagues in similar positions use the Reduction in Force statutes as a subterfuge to try to fire a teacher that they might not have been able to fire other wise.

You can appreciate that there are good administrators and poor administrators. All administrators out here in the Tundra have acquiesced to actions and pressures of Regional and Advisory School Board members.

Protecting experienced teachers with advanced training and identifying a Reduction in Force procedure can be accomplished if the three above points are written into the regulations as many other states have done. Tenured teachers are the "old work horses of the district" providing continuity, consistence quality education.

Sincerely,



Edwin Graham PhD  
Russian Mission  
Alaska 99657  
(907) 584-5126

CAROLE C. HUNTINGTON  
PO BOX 10  
GALENA, ALASKA 99741

REPRESENTATIVE GEORGIANNA LINCOLN  
HOUSE OF REPRESENTATIVES  
JUNEAU, ALASKA 99801

DEAR GEORGIANNA,

I WOULD LIKE TO TAKE THIS TIME TO THANK YOU FOR HB516. IT IS SUCH A CHANGE, A WELCOMED ONE, TO WORK WITH SOMEONE WITH YOUR ATTITUDE ON EDUCATION ISSUES. AND ALSO TO HAVE SOMEONE THAT UNDERSTANDS RURAL ISSUES.

I WOULD LIKE TO STATE MY SUPPORT FOR HB516. IT IS MUCH NEEDED HERE IN OUR SMALL SCHOOL. WE ARE LOOKING AT A LARGE BUDGET CUT AND NEED THE FLEXIBILITY TO LAY OFF TEACHERS BASED ON OUR PROGRAM NEEDS. WE CAN ONLY LAY OFF A TENURED TEACHER NOW IF OUR ENROLLMENT DECLINES. THAT IS NOT HAPPENING BUT OUR DOLLARS ARE TAKING A DIVE. TEACHER SALARY AND BENEFITS TAKE UP A GOOD PART OF OUR BUDGET. WE CANNOT CUT THE COST OF MAINTAINING OUR BUILDINGS. WE CAN CONSOLIDATE CLASSROOMS. WE HAVE A HIRING PRACTICE WHICH WE FEEL BRINGS IN EXCELLENT TEACHERS IN THEIR FIELD OF EXPERTISE. WE DO NOT WANT TO SETTLE FOR MEDIOCRE TEACHING BY LAYING OFF NON TENURED QUALIFIED STAFF AND REPLACING THEM WITH TENURED TEACHERS TEACHING OUTSIDE OF THEIR AREA. THAT IS NOT GOOD FOR THE KIDS!!!!

THANK YOU AGAIN FOR YOUR EFFORTS ON OUR BEHALF.

CAROLE C. HUNTINGTON  
GALENA CITY SCHOOL BOARD  
PO BOX 10  
GALENA, ALASKA 99741



# GALENA CITY SCHOOL DISTRICT

GALENA, ALASKA 99741  
PHONE (907) 656-1205

SUPERINTENDENT'S  
OFFICE

March 11, 1992

Representative Georgianna Lincoln  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Lincoln:

Our total FY-93 budget will require a cut of \$423,258. I am certain we will have to eliminate 4 to 6 certified teaching positions from our staff. That is quite a few for a small school. Over half of our teachers are tenured (12) and the other 7-1/2 are non-tenured.

What this means is that the 4-6 cuts must come from our non-tenured staff which include:

1. 1st grade teacher
2. 3/4 combination grade teacher
3. preschool teacher/librarian
4. junior high teacher, 1/2 time
5. junior high teacher
6. high school science teacher
7. high school voc ed teacher
8. high school voc ed/language teacher, 1/2 time
9. high school social studies teacher
10. high school principal

I will have to fill some of the above positions with one or more of the following tenured people:

1. high school math teacher
2. school counselor
3. high school English teacher
4. band teacher
5. elementary 5th grade teacher
6. 6th grade teacher
7. special education teacher
8. special education teacher
9. Bilingual teacher
10. second grade teacher
11. kindergarten teacher
12. special education teacher

Representative Lincoln

March 11, 1992

Page 2

My ability to choose the best qualified staff for particular positions is greatly restricted. For example:

1. What will the band teacher teach if we cut that program?
2. What will the counselor teach if we cut back that program?
3. Who will teach high school science or vocational ed (shop)?
4. What high school teacher could teach first grade or early childhood?

The point of all of the above is, that our flexibility to retain the best people to meet the specific needs of our students is greatly hindered by existing school laws.

Any help you can provide us would be greatly appreciated.

Sincerely,



William L. Miller, Superintendent

WLM/elb  
075/92

# Petersburg City Schools

Phone (907) 772-4271  
FAX (907) 772-4719

P.O. Box 289  
Petersburg, Alaska 99833

Mary A. Francis, Ph.D.  
Superintendent

March 10, 1992

The Honorable Georgianna Lincoln  
Alaska State Legislature  
State Capital  
Juneau, Alaska 99801-1182

Dear Representative Lincoln:

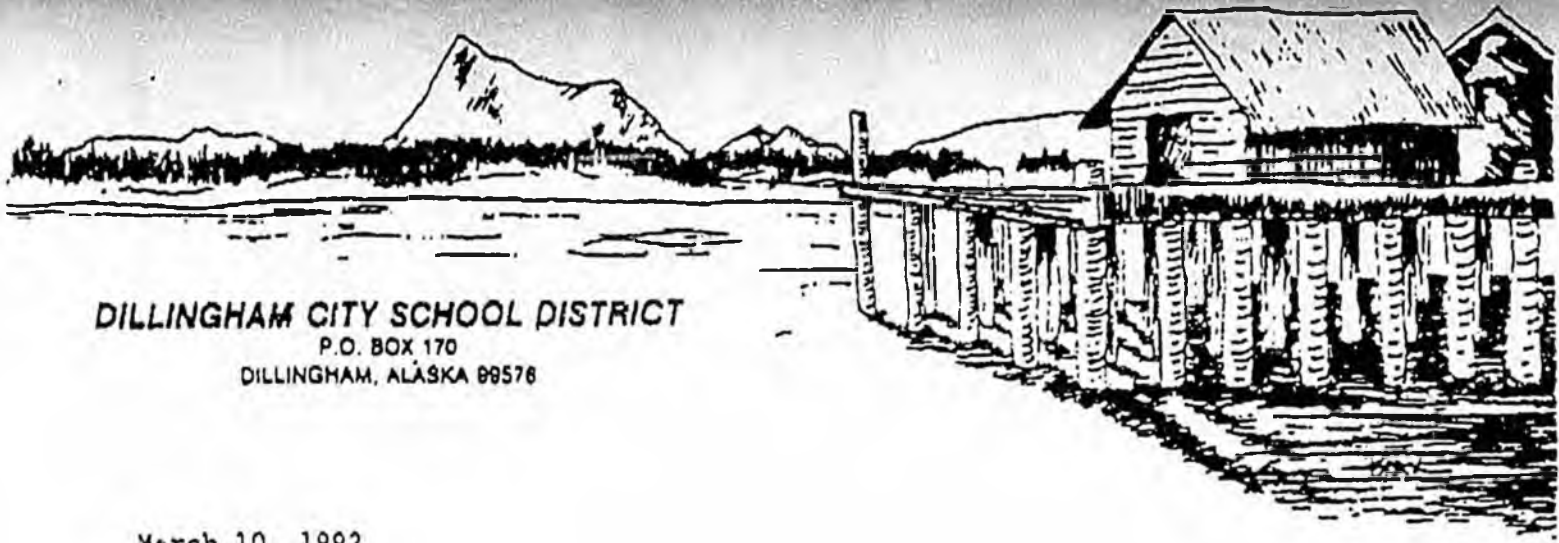
The Petersburg City School District Board of Education supports HB 516 which would allow us to layoff tenured teachers for financial as well as program reasons. Our hands are tied by current state law. We have consistent enrollment increases coupled with declining revenues - a deadly combination.

We support this legislation and urge its passage.

Sincerely,

PETERSBURG CITY SCHOOL BOARD

Thomas H. Wood, M.D., President  
Patricia Norheim, Vice President  
John C. Forney, Secretary/Treasurer  
Janice Kvernvik  
George Wood



DILLINGHAM CITY SCHOOL DISTRICT  
P.O. BOX 170  
DILLINGHAM, ALASKA 99576

March 10, 1992

Georgianna "Georg" Lincoln  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, Alaska 99811

Dear Representative Lincoln

I am following your bill pertaining to non retention of teachers for budgeting reasons with great interest.

I have attended countless meetings with school board members from all around our state who have made the following remark in one way or another, "If we could get rid of the teachers we do not want, I wouldn't care if they never raised the foundation unit."

Perhaps that is a little strong, but the message is clear. We can employ excellent teachers at half the cost of some of our veterans who are burned out and coasting to retirement.

I understand you are holding a hearing on HB 516. I hope your testimonies run heavy for changing the present tenure laws. I hope we can get back to letting the educational program drive our employment practices. I hope we can do what is best for kids.

If I can lend support to your effort, please don't hesitate to call on me.

Sincerely

Don Renfro  
Superintendent

mrk



**WRANGELL**

**PUBLIC SCHOOLS  
DISTRICT OFFICE**

P.O. BOX 2319

WRANGELL, ALASKA 99929

Telephone (907) 674-2347

LINWOOD LAUGHY, Superintendent

GATEWAY TO THE STIKINE

March 10, 1992

Representative Georgianna Lincoln  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 9801-1182

Dear Representative Lincoln:

The Wrangell School Board **STRONGLY SUPPORTS** legislation you have courageously sponsored that would allow school districts to reduce staff when such reductions are determined by the Board, as the elected representatives of the community, to be in the best interests of the district.

It is beyond most citizens' comprehension that the granting of tenure to a teacher in a small district can virtually lock in an educational program for up to twenty-five years, regardless of whether or not a community wishes to continue that program or can afford to do so - or even regardless of student interest!

Example: A school district hires a new art teacher and expands its art offerings at the high school level. Three years later the school board decides that the district has a greater need for a secondary science teacher. They now have one of three choices:

- a) continue the expanded art program even though this this is not the wish of the community or is determined to be beyond the fiscal capability of the district;
- b) lay-off a non-tenured teacher (maybe a new first grade teacher or mathematics teacher who is doing an excellent job) and replace that person with the art teacher;
- c) if a city or borough school district, seek more local support to fund the new science position.

Which of these choices best benefits the community and its children? Obviously, none of the above. Each of these alternatives fails to use limited resources to the best advantage of students. Yet this is the type of decision that districts can face on a regular basis.

Is this example forced, melodramatic?

Wrangell School District last year identified a teaching position that we did not need at the secondary level. This identification resulted from a carefully conducted review of all course offerings and student enrollments over the previous five years. The positions involved a tenured faculty member. We had the choice of non-retaining non-tenured faculty doing an excellent job in positions for which they had been well-trained and replacing them with teachers who were clearly not trained for these same positions, or in spending \$54,000 that we needed in other areas of our program. After pursuing the matter in superior court, we paid the \$54,000.

During the court case the judge presented to the teacher's attorney a hypothetical case. Imagine, posed the judge, that a tenured teacher had taught shorthand for fifteen years, and that student interest in this course had dwindled over the years. The teacher was only trained to teach shorthand, only had experience teaching shorthand, but now there was not a single student who wished to take shorthand. Was the district required to continue to employ the shorthand teacher? Absolutely, stated the teacher's attorney. As illogical as it may seem to some, she argued, **THAT WAS THE LAW!**

This year Wrangell has experience an influx of elementary students. The school board and parents of this community have clearly identified the need for lowering the pupil-teacher ratio in the primary program. Once again we have a choice to make. We can place a high school physical education teacher into a first grade classroom, ignore the wishes of the community and the clear recommendations of educational research about the importance of the primary years, or seek more funds from the City.

Yes, you're correct again. The right answer is "none of the above."

It's time we allowed communities through their elected school boards to make sound decisions about the best use of their resources. The problem described in this communique will get much worse with dwindling state dollars for education. It will also be exacerbated by the changes that are being thrust upon public education. Such problems as educational cabooses are already addressed in negotiated agreements - must we add to the problem with outdated and misguided state statutes?

Sincerely,

Lin Laughy  
Superintendent



BRISTOL BAY BOROUGH SCHOOL DISTRICT

P. O. BOX 169  
NAKNEK, ALASKA 99633

PHONE 246-4225 OR 4265

HIGH SCHOOL

RICHARD W. LEATH  
SUPERINTENDENT

March 10, 1992

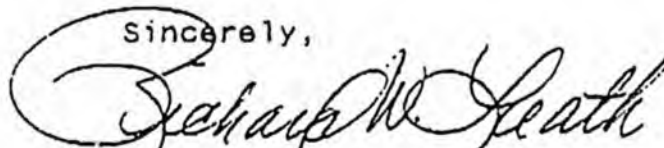
Representative Georgianna Lincoln  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Lincoln:

The Bristol Bay Borough School Board and its administrative staff support your bill, HB 516. We feel that this bill would provide us with much more flexibility in dealing with staff reductions that might be necessary to balance our local school district budgets.

We very much appreciate your efforts in introducing and championing this piece of legislation.

Sincerely,



Richard W. Leath  
Superintendent of Schools

RWL;crm

DISTRICT OFFICE

# BERING STRAIT SCHOOL DISTRICT

P.O. BOX 225

UNALAKLEET, ALASKA 99884-0225

(907) 624-3611

March 10, 1982

Representative Georgianna Lincoln  
House of Representatives Building  
P.O. Box V  
Juneau, Alaska 99811

BREVIK MISSION

Dear Honorable Georgianna Lincoln:

COUNCIL

DIOMEDE

I am writing to support your recent legislation, HB 516, regarding the nonretention of tenured teachers. In the current days of cost containment measures to insure educational programs will remain intact, this is a piece of legislation that I support.

ELIM

GAMBELL

GOLOVIN

Bering Strait School District, along with other school districts across the state, have experienced inflationary pressures and other constraints that make it more difficult to keep a balanced budget. Personnel costs are one of the most expensive items in our budget. In the event that we would have to decrease costs, it would be helpful for districts to have the option of nonretaining tenured teachers. This is not the first course of action that we would chose, but it is an option that we may need in order to sustain the integrity of our educational programs.

KOYUK

SAINT MICHAEL

SAVOONGA

SHAKTOOLIK

SHISHMAREF

STEBBINS

TELLER

I would also like to take this opportunity to ask for your support for the increase of the foundation unit to \$ 63,000. Our costs for operating schools continues to climb. We have been at the same level of funding since 1986 and have had to absorb such things as inflation, fuel and transportation increases, the state's portion of TRS, and rising personnel costs. Please help us in our efforts to preserve education.

UNALAKLEET

WALES

WHITE MOUNTAIN

Thank you for your continued support of educational issues.

Sincerely,

  
David Bowling  
Acting Superintendent

cc: Correspondence file



# FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT

P.O. Box 71250

Fairbanks, Alaska 99707-1250

(907) 452-2000

## Board of Education

Gene Redden  
President  
Seat G  
456-8085

March 10, 1992

Andy Warwick  
Vice President  
Seat F  
474-9148

The Honorable Georgianna Lincoln  
House of Representatives  
P. O. Box V  
Juneau, Alaska 99811

Jerry McBeath, Ph.D.  
Treasurer  
Seat C  
478-2870

Dear Representative Lincoln:

Sandra Henriks  
Clerk  
Seat E  
474-6732

Enclosed please find a copy of Resolution 91-22 which was approved by the Fairbanks North Star Borough Board of Education this fall. It supports legislation which would allow districts to lay off certificated personnel due to reductions in funding.

Joy Cook  
Member  
Seat B  
488-0488

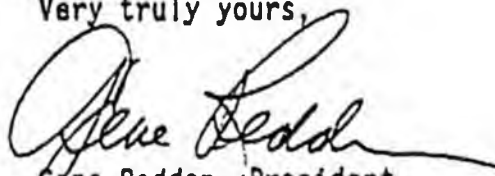
Given the current economic climate in Alaska, districts must have the flexibility to deal with declining revenues by reducing staff when necessary.

Mike Kramer  
Member  
Seat D  
457-4447

Thank you for allowing us the opportunity to provide input into this issue.

Sue Wilken  
Member  
Seat A  
474-0341

Very truly yours,

  
Gene Redden, President  
Board of Education

Sharon Daly, Major  
Eielson Air Force Base  
Representative  
372-2153

/plh  
cc: Board of Education  
Superintendent

Henry Rogers, Major  
Fort Wainwright Army Post  
Representative  
356-7610

Nathan Riding  
Student Representative  
372-1862

Post-It™ brand fax transmittal memo 767\* \* of pages ▶ 2

To	CARL ROSE	From	Fairbanks
Co.		Co.	
Dept.		Phone #	451-0541
Fax #	586-2995	Fax #	

FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT

Resolution 91-22

Tenured Staff Reduction When Revenues Decline

WHEREAS, school districts are faced with budget reductions; and,

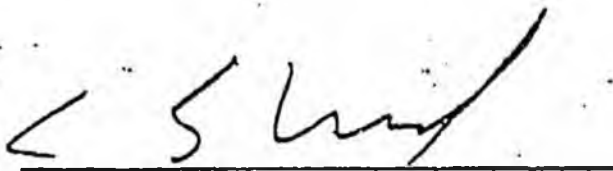
WHEREAS, certificated staff may be non-retained due to declining enrollments but not due to declining revenues; and,

WHEREAS, this often places teachers in grade levels or subject areas for which they have insufficient preparation; and,

WHEREAS, districts, in order to deal with declining revenues, need the authority to reduce staff due to a lack of funds;

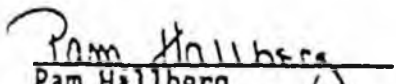
NOW, THEREFORE, BE IT RESOLVED, that the Fairbanks North Star Borough Board of Education promotes necessary legislation allowing districts to reduce certificated personnel due to reductions in funding.

PASSED AND APPROVED SEPTEMBER 17, 1991.



Andy Warwick, President  
Board of Education

ATTEST:

  
Pam Hallberg  
Secretary to the Board



# KASHUNAMIUT SCHOOL DISTRICT

985 KSD Way  
Chevak, Alaska 99563  
(907) 856-7713

March 10, 1992

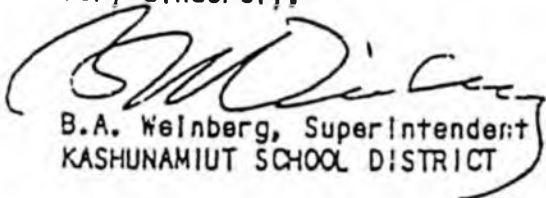
Honorable Georgianna Lincoln  
Alaska House of Representatives  
Pouch Y  
Juneau, AK 99801

Dear Rep. Lincoln:

I am writing in support of HB516. In this time of static or declining revenues and increasing costs, school districts must have the flexibility to reduce tenured staff in the event of a loss of revenue.

Thank you for recognizing this need and for addressing it in HB516.

Very sincerely,



B.A. Weinberg, Superintendent  
KASHUNAMIUT SCHOOL DISTRICT

# Copper River School District

Superintendent's Office  
Box 108  
Glennallen, Alaska 99588  
(907) 822-3234



March 10, 1992

The Honorable Georgianna Lincoln  
House of Representatives  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Lincoln:

Your efforts promoting HB516 are greatly appreciated.

As revenues decline, school districts must have the ability to make personnel decisions based on programmatic needs. Some will argue that the present statute provides an adequate vehicle to non-retain a tenured teacher. Documenting for dismissal is both costly and time consuming.

As one example, in another district I ventured to dismiss a tenured teacher. I notified the teacher of my intent to recommend dismissal after having spent six (6) months attempting to remediate and documenting during the process. After the first day of the due process hearing, the teacher resigned. I estimate that the district spent approximately seventy-five thousand dollars leading up to the resignation. Remember that a tenured teacher is also afforded a trial de nova that conceivably could have doubled or tripled the district expenditures.

School districts need the type of legislation contemplated in HB516, particularly as revenues declines.

You are to be commended for your efforts.

Sincerely,

Gordon C. Tope  
Superintendent

IT ASB office

James L. Lindsey  
P.O. Box 809  
Valdez, Alaska 99686

Representative Georgianna Lincoln  
Room 112, State Capitol Building  
Juneau, Alaska 99801

March 5, 1992

Dear Representative Lincoln:

This letter is written in strong support of your bill HB516 relating to teacher tenure.

There is a problem we request that you consider. The bill gives school districts just what we need, then section 2 exempts everyone to whom it might need to apply. This section should be amended out.

This could be a politically difficult thing to do. If there is more we could do to aid in this matter, please inform me.

V.T.Y.

Jim Lindsey



YUKON FLATS SCHOOL DISTRICT

P.O. Box 359  
Fort Yukon, Alaska 99740  
Phone: (907) 662-2515

March 3, 1992

- ARCTIC VILLAGE  
99722
- BEAVER  
99724
- BIRCH CREEK VILLAGE  
99740
- CENTRAL  
99730
- CHALKYITSIK  
99788
- CIRCLE  
99733
- FORT YUKON  
99740
- NORTHERN LIGHTS  
99701
- RAMPART  
99787
- STEVENS VILLAGE  
99774
- VENETIE  
99781

The Honorable Georgianna Lincoln  
House of Representatives  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Lincoln:

The Yukon Flats School District Board of Education and Administrators encourages you to:

1. Support full funding of the \$63,000 unit value (SB 20/SB 316/HB 25).
2. Support HB 516 and F'S 485 or a similar senate version.

Thank you for consideration of this request.

Sincerely,  
Yukon Flats School District  
*Douglas A. Walker*  
DOUGLAS A. WALKER  
SUPERINTENDENT OF SCHOOLS

cc: AASB

# Unalaska City School District



February 27, 1992

Representative Georgianna Lincoln  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

re: HB 516 - staff reduction based on program needs

Dear Representative Lincoln:

Thank you for sponsoring HB 516 which would allow non-retention of tenured teachers due to program cutbacks as a result of budgetary and fiscal circumstances. In years past our school district has seen a steady increase in school enrollment and programs have been expanded to meet the needs of our students. If the foundation unit value is not increased substantially, the district could face circumstances requiring reduction of the programs we so recently put in place.

If a reduction in workforce is required, Alaska's school districts need the options available to make cut-backs based on program needs and help retain the most qualified teachers to fill required positions for those programs.

I also support the amendment to remove Section 2 of the proposed legislation. Cutbacks may be necessary in the next school year and the school district must have flexibility to work within a tight budget.

Very Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Carlquist".

Sandra K. Carlquist  
Unalaska City School Board President

cc: Senator Fred Zharoff  
Representative George Jacko  
AASB



# LOWER YUKON SCHOOL DISTRICT

P.O. Box 32089 • Mt. Village, Alaska 99632 • (907) 591-2411

February 18, 1992

Representative Georgianna Lincoln  
Alaska State Legislature  
State Capital  
Juneau, Alaska 99801-1182

Dear Representative Lincoln:

We were recently informed that you were introducing legislation that would give districts the right to use cost containment measures that relate to nonretention of tenured teachers due to budgetary or fiscal circumstances and program needs of students.

Please be advised that we strongly support such legislation, especially in view of the revenue outlook for the State. Our costs have continued to grow and we have not had any increase in revenue for the past six years.

We appreciate your initiative and concern to help us make decisions that will be in the best interest of quality education for students. Without such legislation our hands are tied as to whom we can retain and for what reasons.

Thank you very much. You have our support.

Sincerely,

Keith Evans, Superintendent

Leslie Hunter, Chairman, RSB

cc: Alaska Association of School Boards ✓



KETCHIKAN GATEWAY BOROUGH  
SCHOOL DISTRICT

March 10, 1992

Representative Georgianna Lincoln  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

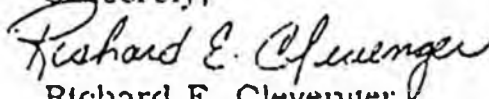
Dear Representative Lincoln,

I want to express my sincere appreciation for your willingness to confront a real problem head-on. House Bill 516 speaks to an issue which continues to operate at a level far beyond it's original intent. My school district has just gone through the painful exercise of reducing \$895,249 of programs in an effort to meet the requirements of a possible \$60,000 per educational unit value once again in FY-93.

If students and their educational programs are our top priority, as we claim, then your HB 516 is an absolute must. Certainly, required due process, as well as protective language in most negotiated contracts provide our tenured teachers with adequate and fair job security. However, we all realize money represents the bottom line which forces us into making tough decisions based on priority programs. Often we are unable to maintain our priorities during a mandated period of reduction brought on by reduced revenues because the current law will not allow us to take action caused by budgetary or fiscal circumstances.

We, the local school district, need the authority to take such action. Certainly, with the authority, goes the responsibility to carry out the process in a rational and professional manner. Like you, your local elected representatives (school boards) can be trusted to do so.

Once again, on behalf of our young people, thank you for your efforts.

Sincerely,  
  
Richard E. Clevenger  
Superintendent of Schools



ALASKA ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS  
ALASKA ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS  
ALASKA ASSOCIATION OF SCHOOL ADMINISTRATORS

• ALASKA COUNCIL OF SCHOOL ADMINISTRATORS •  
326 Fourth St., Suite 408, Juneau, AK 99801-1101 (907) 586-9702 FAX (907) 586-5879

## POSITION STATEMENT

### HOUSE BILL 516

#### "An Act relating to teacher tenure."

The Alaska Council of School Administrators supports HB 516, "An Act relating to teacher Tenure."

Although we hope that such a reduction in staff will not be necessary, we realize under the present revenue projections for the State of Alaska and the mood that many legislators have that major reductions will be necessary in the Fy 93 operating budget to meet the revenue projections that such flexibility will be necessary to school districts to balance their respective budgets.

We believe that school districts must be given the flexibility to determine how best they can reduce their own budgets in light of the revenue they have available to use. If indeed the revenue short fall from the state does occur then it will be absolutely necessary that they have the necessary tools to balance their own school district budgets.

We believe that tenured teachers are the backbone of a district who bring continuity and stability to a district. However, if indeed there becomes a drastic finance crises as appears to be threatening now, districts must have the flexibility to act responsibly.



March 11, 1992

## Position Paper

### HB 516 - Relating to teacher tenure

The Alaska Municipal League supports HB 516 - An Act relating to teacher tenure, which would allow school districts to lay off tenured teachers if necessary because of the fiscal or budgetary circumstances of the municipal school district or regional educational attendance area. The *1992 Alaska Municipal League Policy Statement* includes the following statement: "The League supports legislation that allows local school districts to have a reduction in force of teachers (tenured and non-tenured) when either student enrollment decreases or funding is reduced" (II.A.4).

Current Alaskan law provides that a school district may reduce its tenured teaching staff only in the event of a decline in student enrollment. HB 516 would amend that provision to clarify that the employing district has the right to determine whether a reduction in staff is warranted by a decline in enrollment.

In addition, it would give districts essential management authority to determine when a reduction in staff was necessary for fiscal or budgetary reasons. Personnel costs are the largest single element in a school district's budget and one the district may not be able to cut back if the proportion of tenured teachers is high, as it is in many of Alaska's districts.

Municipalities fund approximately 25 percent of the cost of education in Alaska's municipal districts. Because of their major contribution to and responsibility for the costs of running school districts, they strongly support enhancing the ability of school districts to control their costs by reducing teaching staff in cases of financial hardship. AML and its members support passage of HB 516, which would give districts that authority.

ctest92:HB516pos.311

TO: Rep. Davis  
DEPT: \_\_\_\_\_ FAX #: 465-3443  
FROM: Wrangell PHONE: 874-2347  
CO: School Dist FAX #: \_\_\_\_\_  
Post-Net brand fax transmittal memo 7671

NO. OF PAGES  
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**WRANGELL**  
**PUBLIC SCHOOLS**  
**DISTRICT OFFICE**

P.O. BOX 2319  
WRANGELL, ALASKA 99929  
Telephone (907) 874-2347  
LINWOOD LAUGHY, Superintendent



GATEWAY TO THE STIKINE

March 16, 1992

Representative Bettye Davis  
House HESS Committee  
Room 106  
State Capitol  
Juneau, Alaska 99801-1182

Re: HB-516

Dear Representative Davis:

Is a city librarian qualified to serve as a city engineer? Is a plumber an electrician? Is a kindergarten teacher qualified to teach high school chemistry or physics?

Perhaps these questions should be asked from a different perspective. If a city lost its engineer, would the Alaska legislature expect them to fill the position with the city librarian? If a contractor no longer needed a plumber on a job, could he or she be required to assign the plumber to do electrical work and lay off the less senior electrician?

Pretty silly questions, right?

Let's try a third and fourth question...

If a school district desperately needed to replace a retiring science teacher and wished to discontinue an elementary art program, would Alaska statutes allow the non-retention of the tenured elementary art teacher and the hiring of a new science teacher? What if an excellent high school science teacher had been hired the preceding year and the district needed to reduce faculty for budgetary reasons, could they eliminate the elementary art specialist position and have these classes taught by the regular elementary faculty, using the savings to replace the science teacher?

Excerpts from a recent Alaska superior court case can provide an answer to this second set of questions...

Judge: Let us suppose there is no change in the attendance district-wide; there is no change in attendance at the secondary level. Any way you look at it, there is no change in the attendance in the school. . . . But over the last five years everybody's decided they don't want to take typing . . . or shorthand. And they refuse to sign up for the courses. Is that a drop in attendance that would justify non-retaining a typing teacher if the typing teacher was full-time before, had five or six periods, and now had virtually none?

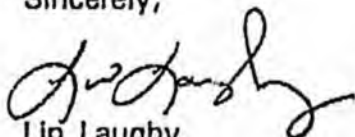
Attorney: It might be under other statutes, but I would submit to the Court that under our [Alaska's] statute — which is very specifically worded — it could not be done. I mean, the district might want to re-deploy such a teacher. Because in our state the only requirement to teach any subject is a Class A certificate. ....our legislature has specifically directed what can and cannot dictate grounds for lay-off of a tenured teacher. Logic might dictate that reduced budget would be awfully good grounds for reduction in staff... But, its not only been held that it is not, but attempts to change the statute to include that have been rebuffed by the legislature.

So the art teacher begins teaching chemistry and physics, or the art teacher teaches third grade and the third grade teacher teaches chemistry and physics, or the district reduces its high school science program, OR THE DISTRICT BEGS THE LEGISLATURE AND ITS COMMUNITY FOR MORE MONEY SO THEY CAN HAVE A HIGH SCHOOL SCIENCE PROGRAM.

If the legislature is serious about quality education and the wise use of educational resources, it will not rebuff continued efforts to change the existing statute governing the lay-off of tenured teachers. If legislative pressure of the largest labor union in the United States does not permit such change, then parents can expect art or music teachers in the science lab, or physical education teachers teaching remedial reading. Or they can pay higher taxes — or pursue the privatization of the public education system.

But then maybe librarians will make good city engineers ....

Sincerely,



Lin Laughy  
Superintendent

LL

# ASSOCIATION OF ALASKA SCHOOL BOARDS

316 West 11th Street, Juneau, Alaska 99801-1510 • Tel. (907) 586-1083 • Fax (907) 586-2995

*Advocates for Alaska's Youth*



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Hydaburg

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Michael Williams

**EX-OFFICIO DIRECTOR**  
Dick Anderson  
Delta-Greely

**EXECUTIVE DIRECTOR**  
Carl F.N. Rose

## **HB 516** **Nonretention revision**

### **AASB Position**

The Association of Alaska School Boards (AASB) supports HB 516, by Rep. Lincoln, "An Act relating to teacher tenure." AASB also supports an amendment to remove Section 2 of the proposed legislation.

### **History**

Historically, tenure rights were granted primarily to protect academic freedom. Current law allows a reduction in tenured staff for reasons of incompetence, immorality, substantial noncompliance and a decrease in enrollment. HB 516 would allow districts to utilize a Reduction in Force (RIF) caused by budgetary and fiscal circumstances.

### **District latitude is key**

School boards are very concerned about the overall cost of operating Alaska's public schools, maintaining a quality workforce, and the program needs of students. Schools are constantly being required to provide more services and programs with less financial commitment from the Legislature. Calls for significant cost containment measures are not surprising. If school districts are going to improve instruction and performance in the face of inadequate levels of funding we must have latitude to address key policy issues.

### **Student program needs should drive staffing patterns**

If reductions in workforce are required due to budgetary and fiscal circumstances in Alaska's schools, what will be the principal consideration in reducing the workforce? Will seniority (tenure) or the program needs of students be the determining factor? AASB believes the program needs of students should drive the staffing patterns of schools.

HB 516 will allow some latitude to reduce tenured staff in statutes. School districts are charged with determining the program needs of students, and where applicable, local negotiated agreements will determine the extent and shape of a district staff reduction plan.

AASB disagrees with Section 2 of the bill as the language grandfathering tenure rights prior to the effective date listed in this bill lessens the intent of the bill dramatically.

School boards realize HB 516 will meet with serious objections from special interests as it progresses through the legislative process. However, given the present circumstances – rising operating costs, inadequate finances, program needs of students, and state-mandated tenure provisions – HB 516 must receive special consideration and debate.

AASB urges your favorable consideration of HB 516. New lay-off provisions must allow educational programmatic needs to be the primary factors when budgetary or fiscal circumstances require reduction in staff.

2/92

H B

5 2 2

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 522

Revision Date: March 31, 92  
Title: Real estate conveyance tax and providing for tax sharing  
Sponsor: Rep. Koponen  
Requestor: \_\_\_\_\_

Department Affected: Department of Revenue  
BRU: Revenue Operations  
Component: Income and Excise Audit

COMPONENT SERIAL NO. | 1 | 1 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	5.8	5.8	5.8	5.8	5.8	5.8
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	5.8	5.8	5.8	5.8	5.8	5.8
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	5.8	5.8	5.8	5.8	5.8	5.8
FEDERAL FUNDS						
OTHER FUND SOURCE						
TOTAL	5.8	5.8	5.8	5.8	5.8	5.8

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS:

SEE ATTACHED

Prepared By: Paul Dick Phone: (907) 465-2320  
Division: Income and Excise Audit Date: March 31, 1992

Approved by Commissioner: Darrel J. Rexwinkel  
Agency: Department of Revenue Date: \_\_\_\_\_

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

### **Intent**

HB 522 imposes an excise tax on real property conveyances and provides for sharing a portion of the revenues collected to municipalities based on the location of the real property. This bill also authorizes municipalities and boroughs to impose local conveyance taxes in conjunction with the state conveyance tax.

### **Analysis**

Effective January 1, 1993, this bill imposes an excise tax upon each real property conveyance at a rate of 1% of the selling price of the property. Under this bill, the tax will be paid to and collected by the recorder of the recording district in which the real property was conveyed. Before any conveyance could be recorded, the recorder would be required to affix a stamp to the instrument as evidence of payment of the tax.

This bill requires the Department of Revenue to prescribe standards for collecting and reporting the tax, and specifications for a tax affidavit to be filed with the recorder. The department would also be required to establish regulations in regard to determination of the sales price for conveyances.

Administratively, the recorder would account for and deposit all conveyance tax receipts and then periodically report to the Department of Revenue the total taxes collected along with a schedule of the locations of the conveyances for tax sharing purposes.

The Department of Revenue would assess and collect delinquent state conveyance taxes, penalties and interest as authorized under AS 43.05 and AS 43.10 respectively. Because the municipal and borough conveyance taxes are codified under AS 29 in this bill, the department would not have authority to assess and collect local taxes.

### **Tax Sharing**

Under section 1 of this bill, 50% of revenues collected by the state will be shared to communities where the conveyances were located. For those cases in which the city is located in an organized borough, the department would share the 50% amount equally between the city and the borough, thus the city would receive 25% and the borough 25% of the tax receipts.

The department would annually share the state taxes to the municipalities and boroughs after the close of the fiscal year ending June 30. For municipal or borough conveyance taxes, the recorder would directly remit those taxes collected to the respective municipality or borough.

Penalties and the amount spent by the state in collection of the conveyance taxes would be excluded from the amount shared to municipalities and boroughs.

Fiscal Note Analysis, HB 522  
Income and Excise Audit Division  
Prepared by Paul Dick  
March 31, 1992  
Page 2

### Operating Costs

The Department of Natural Resources (recorders) will collect and account for the conveyance taxes. The Department of Revenue's involvement in administering the tax program will be limited to sharing taxes and collecting delinquent taxes. Accordingly, the personal services costs in this fiscal note reflect the apportioned time needed for the department to administer its duties.

Personal Services			<u>\$5.8</u>
Accounting Technician II	Tax Sharing	75 hours	2.2
Accounting Technician I	Collections	150 hours	3.6

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 522

Revision Date: \_\_\_\_\_  
Title: Real Estate Conveyance Tax  
Sponsor: Representative Koponen  
Requestor: Representative Koponen

Department Affected: Community and Regional Affairs  
BRU: Local Government Assistance  
Component: State Assessor

COMPONENT SERIAL NO. 

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	*0	*0	*0	*0	*0	*0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	*0	*0	*0	*0	*0	*0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	*0	*0	*0	*0	*0	*0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)  
\* The impact on the State Assessor's office is indeterminate but thought to be minimal. The only reference to the department or the State Assessor's office is on page 2, line 30, and only creates the possibility of a duty to provide service.

Prepared By: Remond Henderson  
Division: Administrative Services Division

Phone: 465-4708  
Date: 3/31/92

Approved by Commissioner: Ed. Ruth  
Agency: Department of Community and Regional Affairs

3 - 81-92 /  
Date: \_\_\_\_\_

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. CSHB 522(CRA)

Revision Date: 4/15/92 Department Affected: Natural Resources  
Title: Real Estate Conveyance Tax BRU: Management & Administration  
Component: Recorder's Office

Sponsor: Rep. Koponen  
Requestor: House Labor & Commerce COMPONENT SERIAL NO. 

	8	0	2
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	240.8	240.8	240.8	240.8	240.8	240.8
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	20.0	15.0	15.0	15.0	15.0	15.0
SUPPLIES	9.0	9.0	9.0	9.0	9.0	9.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>284.8</b>	<b>279.8</b>	<b>279.8</b>	<b>279.8</b>	<b>279.8</b>	<b>279.8</b>

CAPITAL						
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REVENUE						
FUND SOURCE:	*					

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER GF/PR						
FUND SOURCE: 1007	284.8	279.8	279.8	279.8	279.8	279.8
<b>TOTAL</b>	<b>284.8</b>	<b>279.8</b>	<b>279.8</b>	<b>279.8</b>	<b>279.8</b>	<b>279.8</b>

POSITIONS:

FULL-TIME	4.0	4.0	4.0	4.0	4.0	4.0
PART-TIME	2.0	2.0	2.0	2.0	2.0	2.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: - 0 -

ANALYSIS: (Attach a separate page if necessary.)

\* See attachment for estimated tax revenues. DNR would take in an estimated \$450,000 in additional recording fees under this bill.

Prepared By: Cindy Wilkinson Phone: 465-3425  
Division: Management and Administration Date: 4/15/92  
Approved by Commissioner: Harold C. Heinze  
Agency: Natural Resources Date: 4/15/92

FISCAL NOTE CSHB 522 (C&RA)

4/14/92

This bill would change the procedures for the recording of conveyance documents in the Recorder's/UCC Section, Commissioner's Office, Department of Natural Resources.

EFFECTS OF ENACTMENT ON RECORDER'S/UCC SECTION:

**Sec. 43.33.010. TAX IMPOSED.** This bill imposes an excise tax upon each conveyance of real property at the rate of 1% of the selling price of the real property.

**Sec. 43.33.020. TAX CONSTITUTES LIEN.** The Department of Revenue would assess and collect delinquent state conveyance taxes, penalties and interest.

**Sec. 43.33.040. EVIDENCE OF PAYMENT.** The excise tax will be collected by the recorder's office in which the real property being conveyed is located. According to this section of the bill, a receipt will be issued by the recorder for the payment of the tax, and is evidence of the satisfaction of the lien of the tax, and may be recorded in a manner prescribed for recording satisfactions of mortgages. The statewide total of all deeds and sales contracts for calendar year 1991 was 28,356 documents. This figure does not include leases with option to purchase, or notices of interest in real property. Currently, the recording and receipting time for a conveyance averages 5 to 10 minutes. With the state excise tax, the time to record the tax affidavit (Sec. 43.33.050) and the conveyance concurrently, will increase the recording time by another 15 minutes. At an estimated 30,000 conveyances, the total time for recording and receipting will increase by 7,500 hours. This will create the need for an additional 4 full time recorder positions.

**Sec. 43.33.070. DISTRIBUTION OF REVENUE.** Costs to load data on to the table file will be an initial \$1200, and \$2000 a year to generate checks to the municipalities for one or both taxes.

**Sec. 29.45.750. REAL ESTATE CONVEYANCE TAX AUTHORIZED.** A unified municipality and a first or second class borough may impose an excise tax of up to 1% to be collected by the recorder in the recording district where the real property is being conveyed. With a state and municipal/borough tax, the time to record and receipt the taxes will increase the recording time for a conveyance by 20 minutes. At an estimated 30,000 conveyances, the total time for recording and receipting will increase for the year by 12,500 hours. This will create the need for an additional 7 full time

positions.

**INCREASED REVENUE:** Additional recording revenue will result from this bill. With the state tax affidavit recorded as a separate document, an extra \$15 per affidavit will be generated. At an estimated 30,000 conveyance documents, the increased revenue would be 450.0.

Personal Services (100) 240.8

Recorder II (0339)	10F	Bethel	19.9	(4 mo.)
Recorder II (0333)	10J	Nome	20.0	(4 mo.)
Recorder II (0364)	10E	Sitka	15.0	(4 mo.)
Recorder II (0329)	10B	Ketchikan	19.7	(6 mo.)

Recorder I	8A	Anchorage	32.8	
Recorder I	3A	Fairbanks	33.9	
Recorder I	8A	Fairbanks	33.9	
Recorder I Part time	8A	Kenai	16.4	
Recorder I Part time	8A	Ketchikan	16.4	
Recorder I	8A	Palmer	32.8	

\* Note: The above staff additions do not include impact to the 3 Court System maintained offices. These offices are located in Chitina, Valdez and Seward.

Travel (200) 15.0

Travel is needed for Regional Manager's to travel to satellite offices for training in new procedures. Travel for public meetings to be held in all locations.

Contractual (300) 20.0

Courier services in Anchorage and Fairbanks only for transportation of bank deposits. 5.0

Chargeback costs incurred to produce monthly reports to municipalities. 10.0

One time expenditure of 5.0 for programming time to modify current Revenue and Billing System. 5.0

Commodities (400)  
State tax stamps

9.0

State excise stamps will have to be printed in different values to equal the amount of the tax paid. If municipal/borough taxes are imposed, stamps for these taxes will also have to be printed. A mechanical hand stamp could be procured to take the place of regular stamps.

TOTAL

284.8

NOTES:

1. State tax, Sec. 43.33.040 will require additional recorder positions. The following Recorder II's will be reinstated to full time from part time positions:

Bethel, Range 10F

Nome, Range 10J

Sitka, Range 10E

Ketchikan, Range 10B

The following offices will need one full time Recorder I:

Fairbanks, Range 8A

Anchorage, Range 8A

Formula for figuring extra positions: 30,000 documents X 15 minutes extra time = 450,000 minutes. 450,000 minutes divided by 60 minutes = 7,500 hours. 7,500 hours divided by 7.5 = 1,000 days. 1,000 days divided by 250 working days = 4

Municipal/borough tax, Sec. 29.45.750 will require an additional 3 Recorder positions together with the 4 positions needed for the state tax. The following offices will need one full time Recorder I positions:

Palmer, Range 8A

Fairbanks, Range 8A

Kenai, Range 8A, Part time

Ketchikan, Range 8A, Part time

Formula for figuring extra positions: 30,000 documents X 25 minutes = 750,000. 750,000 divided by 60 minutes = 12,500 hours. 12,500 hours divided by 7.5 hours = 1,667 days. 1,667 working days divided by 250 working days = 7 employees.

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 527

Revision Date: 1-Apr-92 Department Affected: Natural Resources  
 Title: Real Estate Conveyance Tax BRU: Management & Administration  
 Components: Recorder's Office  
 Sponsor: Representative Koponen  
 Requestor: House Community & Regional Affairs COMPONENT SERIAL NO. 802

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	307.3	240.8	240.8	240.8	240.8	240.8
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	9.0	9.0	9.0	9.0	9.0	9.0
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	336.3	269.8	269.8	269.8	269.8	269.8

CAPITAL	* 3,000.0					
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REVENUE						
Funding Source:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER GF/PR						
Funding Source: 1007	3,336.3	269.8	269.8	269.8	269.8	269.8
TOTAL	3,336.3	269.8	269.8	269.8	269.8	269.8

POSITIONS:

FULL-TIME	4.0	4.0	4.0	4.0	4.0	4.0
PART-TIME	2.0	2.0	2.0	2.0	2.0	2.0
TEMPORARY	1.0					

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

\* Revolving Loan Fund for Appraisal.  
See Attached

Prepared by: Cindy Wilkinson Phone: 465-3425  
 Division: Management and Administration Date: 1-Apr-92

Approved by Commissioner: Harold C. Heinze Date: 1-Apr-92  
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,  
& Impacted Agency(ies).

FISCAL NOTE HB 522

This bill would change the procedures for the recording of conveyance documents in the Recorder's/UCC Section, Commissioner's Office, Department of Natural Resources.

EFFECTS OF ENACTMENT ON RECORDER'S/UCC SECTION:

**Sec. 43.33.010. TAX IMPOSED.** This bill imposes an excise tax upon each conveyance of real property at the rate of 1% of the selling price of the real property.

**Sec. 43.33.020. TAX CONSTITUTES LIEN.** Interest and penalties would have to be figured by someone other than the Recorder's office for collection.

**Sec. 43.33.040. EVIDENCE OF PAYMENT.** The excise tax will be collected by the recorder's office in which the real property being conveyed is located. According to this section of the bill, a receipt will be issued by the recorder for the payment of the tax, and is evidence of the satisfaction of the lien of the tax, and may be recorded in a manner prescribed for recording satisfactions of mortgages. The statewide total of all deeds and sales contracts for calendar year 1991 was 28,356 documents. This figure does not include leases with option to purchase, or notices of interest in real property. Currently, the recording and receipting time for a conveyance averages 5 to 10 minutes. With the state excise tax, the time to record the tax affidavit (Sec. 43.33.050) and the conveyance concurrently, will increase the recording time by another 15 minutes. At an estimated 30,000 conveyances, the total time for recording and receipting will increase by 7,500 hours. This will create the need for an additional 4 full time recorder positions.

**Sec. 43.33.060. DETERMINING SELLING PRICE.** The Department of Natural Resources will be responsible for writing regulations to determine the selling price of real property. This will require a Certified Public Accountant position at a Range 20 for one year.

**Sec. 43.33.070. DISTRIBUTION OF REVENUE.** Costs to load data on to the table file will be an initial \$1200, and \$2000 a year to generate checks to the municipalities for one or both taxes.

Sec. 29.45.750. REAL ESTATE CONVEYANCE TAX AUTHORIZED. A unified municipality and a first or second class borough may impose an excise tax of up to 1% to be collected by the recorder in the recording district where the real property is being conveyed. With a state and municipal/borough tax, the time to record and receipt the taxes will increase the recording time for a conveyance by 20 minutes. At an estimated 30,000 conveyances, the total time for recording and receipting will increase for the year by 12,500 hours. This will create the need for an additional 7 full time positions.

Increased revenue: There will be an increase in revenue in the recording fees created by this bill. With the state tax affidavit recorded as a separate document from the conveyance, an extra \$15 per affidavit will be generated. At an estimated 30,000 conveyance documents, the increased revenue would be \$450,000.

Personal Services (100)				\$307.3
Auditor (CPA)	20A	Anchorage	66.5	(1 year only)
Recorder II (0339)	10F	Bethel	19.9	(4 mo.)
Recorder II (0333)	10J	Nome	20.0	(4 mo.)
Recorder II (0364)	10E	Sitka	15.0	(4 mo.)
Recorder II (0329)	10B	Ketchikan	19.7	(6 mo.)
Recorder I	8A	Anchorage	32.8	
Recorder I	8A	Fairbanks	33.9	
Recorder I	8A	Fairbanks	33.9	
Recorder I Part time	8A	Kenai	16.4	
Recorder I Part time	8A	Ketchikan	16.4	
Recorder I	8A	Palmer	32.8	

A Certified Public Accountant position, Range 20, will need funding for one year. This position will write the regulations needed under Sec. 43.33.060.

Travel (200) 15.0

Travel is needed for Regional Manager's to travel to satellite offices for training in new procedures. Travel for public meetings to be held in all locations. CPA travel to unified municipalities and first/second class boroughs during the regulation writing process.

Contractual (300) 5.0

Courier services in Anchorage and Fairbanks only for transportation of bank deposits.

Commodities (400) 9.0

State tax stamps

State excise stamps will have to be printed in different values to equal the amount of the tax paid. If municipal/borough taxes are imposed, stamps for these taxes will also have to be printed. A mechanical hand stamp could be procured to take the place of regular stamps.

Capital

Revolving loan fund 3,000.0

A 3,000.000 revolving loan fund will be established for appraisal fees. These fees will be reimbursed to the recorder at the time the excise tax is paid.

TOTAL \$3,336.3

NOTES:

1. State tax, Sec. 43.33.040 will require additional recorder positions. The following Recorder II's will be reinstated to full time from part time positions:  
Bethel, Range 10F  
Nome, Range 10J  
Sitka, Range 10E  
Ketchikan, Range 10B  
The following offices will need one full time Recorder I:  
Fairbanks, Range 8A  
Anchorage, Range 8A

Formula for figuring extra positions: 30,000 documents X 15 minutes extra time = 450,000 minutes. 450,000 minutes divided by 60 minutes = 7,500 hours. 7,500 hours divided by 7.5 = 1,000 days. 1,000 days divided by 250 working days = 4

Municipal/borough tax, Sec. 29.45.750 will require an additional 3 Recorder positions together with the 4 positions needed for the state tax. The following offices will need one full time Recorder I positions:

Anchorage, Range 8A  
Fairbanks, Range 8A

Palmer, Range 8A  
Fairbanks, Range 8A  
Kenai, Range 8A, Part time  
Ketchikan, Range 8A, Part time

Formula for figuring extra positions: 30,000 documents X 25 minutes = 750,000. 750,000 divided by 60 minutes = 12,500 hours. 12,500 hours divided by 7.5 hours = 1,667 days. 1,667 working days divided by 250 working days = 7 employees.

Alaska State Capitol  
Juneau, AK 99801-1182  
XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX  
(907) 465-4992

Alaska State Legislature  
Representative Niilo Koponen

House District 21

119 N. Cushman, Suite 207  
Fairbanks, Alaska 99701  
(907) 456-8172

SPONSOR STATEMENT

House Bill 522

"An Act imposing a real estate conveyance tax; providing for sharing with municipalities of a portion of the revenue obtained from the tax; authorizing certain municipalities to levy and collect a real estate conveyance tax; amending the formal requisites of recording a conveyance; and providing for an effective date."

Whether or not the Alaska Legislature reduces the state operating budget for the coming fiscal year, Alaskans will face the continuing dilemma resulting from declining oil revenues coupled with stable or increasing demands for government services. We must consider new measures to accrue revenue to the state, including taxes. Taxes should be simple, fair, stable from year to year and relatively inexpensive to administer. It is desirable to implement an array of broad-based taxes set at low rates rather than to unduly burden any particular class of taxpayers.

From 1984 to 1990, Alaska experienced a 51% increase in local government tax rates as a percentage of personal income, due to reductions in state support. Thus, Alaska jumped from 22nd in the nation in local government tax rates to 4th in state-by-state ranking. In 1990, property taxes constituted 86.1% of all local taxes, with sales taxes comprising 12.7% and others (fish, personal property, etc.) making up the remaining 1.2%. Clearly, property owners are shouldering an unfair portion of Alaska's tax burden.

HB 522 is essentially a sales tax on a specific item: real estate. It is not a tax on home or property ownership; it taxes transactions only. It is a tax on real estate sales and, especially, on real estate speculation. To simplify administration and enforce it at least cost, the tax would be collected by the state; after deducting administrative costs, revenues would be shared equally with affected municipalities.

House Bill 522 is a dual-purpose bill. On the one hand, it is a shared source of revenue for municipalities and the state. It also provides real time information on the actual market value of real property, thus simplifying the task of local municipal assessors and of the Alaska Department of Community and Regional Affairs, allowing for real savings in administrative costs and greater

accuracy in calculations for educational funding and other state and federal support programs based on local resources. It also provides potential purchasers of real property necessary information on current market values.

This tax is used in all English-speaking countries, being based in English common law concerning property rights. All but nine U.S. states use this tax, at rates ranging from 2% in Delaware to .01% in Colorado. Five states, including Washington and Oregon, have turned collection of the tax over to county and local governments. The state of Vermont, to control land speculation, has implemented a sliding scale adjusted by both the property value (1.25% on values over \$100,000.00, down to 0.5% for properties of lesser value) and the length of time elapsed from last sale (nominal for property held 20 years, prohibitive for sale in first year).

# HOUSE COMMITTEE REPORT

(7)

Date Referred: February 18, 1992

FURTHER REFERRALS:

Labor & Commerce  
Finance

Date of Committee Action: 4/8/92

The COMMUNITY AND REGIONAL AFFAIRS Committee considered:

HB 522

HOUSE BILL NO. 522

REAL ESTATE CONVEYANCE TAX

"An Act imposing a real estate conveyance tax; providing for sharing with municipalities of a portion of the revenue obtained from the tax; authorizing certain municipalities to levy and collect a real estate conveyance tax; amending the formal requisites of recording a conveyance; and providing for an effective date."

**RECOMMENDATIONS:**

be replaced with CS HB 522 (C & CA)  the same title  
 a new title

have attached amendment(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact Revenue 3/31/92 DNR 4/1/92

fiscal note(s) \_\_\_\_\_

zero fiscal note DCEA 3/31/92

zero fiscal note(s) \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		<i>[Signature]</i>	✓		
		<i>Chris Davis</i>	✓		
		<i>[Signature]</i>		✓	
		<i>[Signature]</i>	✓	✓	
		<i>Betty Davis</i>			
		<i>[Signature]</i>	✓		
		<i>Richard [Signature]</i>		✗	

*[Signature]*  
\_\_\_\_\_  
CHAIRMAN'S SIGNATURE