

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8072

9593 SENATE JUDICIARY

230



ALASKA STATE LEGISLATURE

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

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

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

SIGNED Kenneth J. Joste
 TESTIFIER

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

99709



ALASKA STATE LEGISLATURE

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

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

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

SIGNED [Signature]
TESTIFIER

REPRESENTING (OPTIONAL)

2351 Nussel Loop
ADDRESS/PHONE NUMBER

Fairbanks, Ak 99709 (907) 455-6125



ALASKA STATE LEGISLATURE

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

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

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

SIGNED Bill Belkin
TESTIFIER

BELTON FINANCIAL RESOURCES
REPRESENTING (OPTIONAL)

600 rd Street - Ste 197
ADDRESS/PHONE NUMBER

Fairbanks, AK 99701

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SCS CSHB 101 (JUD)

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

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

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

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

SENATE COMMITTEE REPORT

DATE: 2/25/97

FURTHER:

DATE TURNED
IN TO OFFICE: 3/10/97

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

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

and recommends:

- be replaced with S CS HB101 (JUD)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

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

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

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
FNFC			

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

ALASKA STATE LEGISLATURE



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

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

Senate Judiciary Committee

MEMORANDUM

TO: Terry Bannister, Attorney-- Legislative Counsel

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

DATE: March 8, 1997

RE: SCSHB101(JUD)

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

Amendment 2:

Page 6, line 21:

Following "under a"

Insert "child"

Page 6, line 21:

Delete "for a child of the settlor"

Amendment 3:

Page 6:

Delete lines 25-29

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

AMENDMENT 1

HB 101

Page 2, line 3:

Following "transfer"

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

Page 4, line 13:

Following "provided in"

Insert "AS 13.12.205(2) and"

Page 6, line 4:

Following "(b)"

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

AMENDMENT 2

HB 101

Page 6, line 21:

Following "under a"

Insert "child"

Page 6, line 21:

Delete "for a child of the settlor"

AMENDMENT 3

HB 101

Page 6:

Delete lines 25-29.

AMENDMENT 4

HB 101

Page 5, line 16:

Following "created"

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

Alaska State Legislature

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



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

(907)-465-3719

Representative Al Vezey

HB 101 SPONSOR STATEMENT

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

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

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

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

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



Attorneys at Law

COOK SCHUHMAN & GROSECLOSE, INC.

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

February 10, 1997

Via Facsimile: (907) 465-2040

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

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

Dear Rep. Rokeberg:

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

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

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

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

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

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

of Counsel:
 Grace Berg Schabbe

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

Rep. Norm Rokeberg
February 10, 1997
Page 2

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

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

Sincerely,

COOK SCHUHMAN & GROSECLOSE, INC.

By Jo A. Kuchle
Jo A. Kuchle

JAK/am:AKTrust.doc

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

Rep. Norm Rokeberg
February 10, 1997
Page 2

Bill allowing certain trusts winds through House

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

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

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

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



Fred Pratt

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Fairbanks Daily News-Miner Sunday March 2, 1997

ALASKA STATE LEGISLATURE
HOUSE BILL NO. 101

HISTORY IN THE HOUSE

1997
1/31 Read first time and referred to:
L&C

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

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

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

2/21 Read second time
CS(L&C) Adopted

Amended

2/21 Advanced

2/21 Read third time

Return to second for specific amendment

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

Intent adopted

2/21 Reconsideration Kubinka

2/24 Reconsideration ~~not~~ taken up

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

Intent adopted

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

Suzi Lowell
Chief Clerk of the House

HISTORY IN THE SENATE

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

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

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

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

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

Read second time

CS Adopted () New Title
Amended Advanced

Read third time

Letter of Intent adopted
Return to second for specific amendment

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

Reconsideration
Reconsideration not taken up

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

Reported correctly engrossed
Signed by President, to the House

Secretary of the Senate

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

March 6, 1997

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

Dear Senator Taylor and Committee Members:

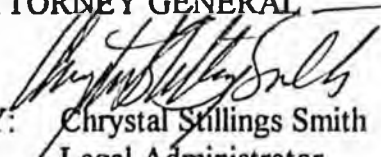
As part of its review of HB 101, which deals with irrevocable trusts, Department of Law attorneys sought counsel from recognized experts in the field of probate law. As you are aware, this type of law is extremely complex and few people in Alaska are on a technically-familiar footing with it. Letters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

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

Thank you for your consideration of these proposed amendments.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL


BY: Chrystal Stillings Smith
Legal Administrator

Enclosures

cc: Representative Al Vezey
urchot

PROPOSED AMENDMENTS TO HB 101:

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

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

AND

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

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

AND

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

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

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

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

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

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

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

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

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

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

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

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



The University of Michigan Law School

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

LAWRENCE W. WAGGONER
Louis M. Simms Professor of Law

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

February 13, 1997

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

Re: Alaska House Bill No. 101

Dear Marilyn:

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

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

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

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

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

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

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

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

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

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

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

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

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

Yours sincerely,

Lawrence W. Waggoner



The University of Georgia

School of Law

February 12, 1997

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

Dear Ms. May,

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

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

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

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

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

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

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

ADDITIONAL
 AG - INFORMATION

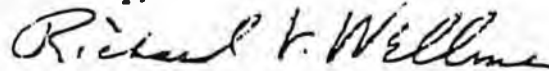
Ms. Marilyn May
February 12, 1997
Page Two

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

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

I hope these suggestions are helpful.

Sincerely,



Richard V. Wellman
Professor of Law, Emeritus

HB

108

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NC

NO. 2
Bill Version: HB 108
(H) Publish Date: 2/12/97

Revision Date: _____ Dept. Affected: Public Safety
Title: "An Act relating to the crime victim compensation program; and providing for an...." BRU: Violent Crime Compensation Board
Sponsor: House Finance Component: Violent Crime Compensation Board
Requestor: _____ COMPONENT SERIAL NO. 0520

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 97) impact: \$ 0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated to the Department of Public Safety.

Prepared By: Kenneth E. Bischoff Phone: 465-4336
Division: Administrative Services Date: 2/7/97
Approved by Commissioner: Ronald L. Otto Date: 2/7/97
Agency: Ronald L. Otto, Dept. of Public Safety

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

For further distribution information call the Governor's Legislative Office

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA

**BILL
NO:
HB**

5. 1
Bill Version: HB 108
(H) Publish Date: 2/12/97

1997 LEGISLATIVE SESSION

Revision Date: 2/7/97 Dept. Affected: Public Safety
 Title: Crime Victim Compensation Fund BRU: CDVSA
 Component: CDVSA
 Sponsor: House Finance
 Requestor: _____ COMPONENT SERIAL NO. _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()						
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 97) impact: \$ 0 _____

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary.)

This fund has not been funded since its inception in 1983. Elimination of the fund will have no impact on the current or future budgets.

Prepared By: Jayne E. Andreen Phone: 485-4356
 Division: CDVSA Date: 2/7/97
 Approved by Commissioner: Ronald L. Otte Date: 2/7/97
 Agency: Ronald L. Otte, Dept. of Public Safety

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

For further distribution information call the Governor's Legislative Office

COMMITTEE COPY

SENATE COMMITTEE REPORT

DATE: 2/20/97

FURTHER: Finance

DATE TURNED

IN TO OFFICE: 3-27-97

Judiciary Committee considered

HOUSE BILL NO. 108

"An Act relating to the crime victim compensation program; and providing for an effective date."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical change

new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Miller</i>	✓				
<i>Boone</i>	✓				
CHAIR: <i>John L. Taylor</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Department	Date	Zero	Fiscal
DPS - Violent Crime	2/17	0	
DPS - CDVSA	2/17	0	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bi'

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

SENATE COMMITTEE REPORT

DATE: 2/20/97

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 3-27-97

Judiciary Committee considered

HOUSE BILL NO. 108

"An Act relating to the crime victim compensation program; and providing for an effective date."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical change

new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Miller</i>	<input checked="" type="checkbox"/>				
<i>Arance</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>James L. Tabor</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
DPS - Violent Crime	2/17	0	
DPS - CDVSA	2/17	0	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Alaska State Legislature

House Finance Committee

REPRESENTATIVE
MARK HANLEY

Co-Chair
(907) 465-4339
Fax (907) 465-2418

INTERIM ADDRESS

716 W. 4th Ave., Suite 300
Anchorage, Alaska 99501-2133
(907) 258-8192
Fax (907) 258-8166



State Capitol, Juneau, Alaska 99801-1182

REPRESENTATIVE
GENE THERRIAULT

Co-Chair
(907) 465-4797
Fax (907) 465-3884

INTERIM ADDRESS

119 N. Cushman, Suite 101
Fairbanks, Alaska 99701
(907) 488-0857
Fax (907) 488-4271

Contact: Representative Gene Therriault

SPONSOR STATEMENT HB 108

HB 108 proposes to eliminate the crime victim compensation fund. The fund has been empty since its inception in 1983. Currently, the Crime Victim's Compensation Program receives appropriations directly from the General Fund and the Permanent Fund. This bill will have no impact on the current program.

HB 108, along with House Bills 103, 107, & 108 were introduced as a package of bills seeking to enact a major cleanup of nearly 30 inactive accounts from State Statutes. The legislation clearly reflects the mission of bringing about a "smaller, smarter" government through careful scrutiny of inefficient and unnecessary administrative functions.

During the past year, investigation by Representative Martin, the past Chairman of the Legislative Budget and Audit Committee, revealed that a large number of special accounts, established through the legislative process over the last thirty years, have been completely inactive since their creation.

Prior to introducing these bills, House Finance Committee Co-Chair Therriault and Representative Martin contacted agencies responsible for the funds to insure their deletion would not be problematic. Without exception, the departments supported the elimination of the inactive accounts contained in these bills. In fact, it was discovered that in some cases, the departments were unaware of the accounts' existence.

A cooperative effort continued with the Administration, specifically the Office of Management and Budget, to develop a package of bills to repeal the non-operative statutes from the accounting process. In some cases, legislation does not actually repeal statutes, but rather changes the language to read "Program" rather than "Fund", in order to retain the integrity of a program without maintaining a separate account.

These bills do not impede the intent of or appropriation to any existing program, but rather are a series of housekeeping measures designed to save the State from unnecessary administrative expense.

**ALASKA STATE LEGISLATURE
HOUSE BILL NO. 108**

HISTORY IN THE HOUSE

HISTORY IN THE SENATE

1997 2/3	Read first time and referred to: <u>FIN</u>																																																																								
2/12	<table style="width:100%; border: none;"> <tr> <td><u>FIN</u></td> <td>RPT</td> <td>CS()</td> <td>New Title</td> </tr> <tr> <td><u>9</u></td> <td>DP</td> <td><u>7</u></td> <td>DNP</td> </tr> <tr> <td></td> <td></td> <td><u>1</u></td> <td>NR</td> </tr> <tr> <td></td> <td></td> <td><u>0</u></td> <td>AM</td> </tr> <tr> <td></td> <td>FN</td> <td><u>2</u></td> <td>OFN</td> </tr> <tr> <td></td> <td></td> <td></td> <td>Previous FN</td> </tr> </table> <table style="width:100%; border: none;"> <tr> <td></td> <td>RPT</td> <td>CS()</td> <td>New Title</td> </tr> <tr> <td></td> <td>DP</td> <td></td> <td>DNP</td> </tr> <tr> <td></td> <td></td> <td></td> <td>NR</td> </tr> <tr> <td></td> <td></td> <td></td> <td>AM</td> </tr> <tr> <td></td> <td>FN</td> <td></td> <td>OFN</td> </tr> <tr> <td></td> <td></td> <td></td> <td>Previous FN</td> </tr> </table> <table style="width:100%; border: none;"> <tr> <td></td> <td>RPT</td> <td>CS()</td> <td>New Title</td> </tr> <tr> <td></td> <td>DP</td> <td></td> <td>DNP</td> </tr> <tr> <td></td> <td></td> <td></td> <td>NR</td> </tr> <tr> <td></td> <td></td> <td></td> <td>AM</td> </tr> <tr> <td></td> <td>FN</td> <td></td> <td>OFN</td> </tr> <tr> <td></td> <td></td> <td></td> <td>Previous FN</td> </tr> </table>	<u>FIN</u>	RPT	CS()	New Title	<u>9</u>	DP	<u>7</u>	DNP			<u>1</u>	NR			<u>0</u>	AM		FN	<u>2</u>	OFN				Previous FN		RPT	CS()	New Title		DP		DNP				NR				AM		FN		OFN				Previous FN		RPT	CS()	New Title		DP		DNP				NR				AM		FN		OFN				Previous FN
<u>FIN</u>	RPT	CS()	New Title																																																																						
<u>9</u>	DP	<u>7</u>	DNP																																																																						
		<u>1</u>	NR																																																																						
		<u>0</u>	AM																																																																						
	FN	<u>2</u>	OFN																																																																						
			Previous FN																																																																						
	RPT	CS()	New Title																																																																						
	DP		DNP																																																																						
			NR																																																																						
			AM																																																																						
	FN		OFN																																																																						
			Previous FN																																																																						
	RPT	CS()	New Title																																																																						
	DP		DNP																																																																						
			NR																																																																						
			AM																																																																						
	FN		OFN																																																																						
			Previous FN																																																																						
2/19	Read second time CS() Adopted																																																																								
	Amended																																																																								
2/19	Advanced																																																																								
2/19	Read third time																																																																								
	Return to second for specific amendment																																																																								
2/19	<table style="width:100%; border: none;"> <tr> <td>PASSED</td> <td>EFD Same <input checked="" type="checkbox"/> or</td> </tr> <tr> <td>Yeas <u>38</u></td> <td>Yeas</td> </tr> <tr> <td>Nays <u>0</u></td> <td>Nays</td> </tr> <tr> <td>Excused <u>0</u></td> <td>Excused</td> </tr> <tr> <td>Absent <u>2</u></td> <td>Absent</td> </tr> </table> <p>_____ Intent adopted</p>	PASSED	EFD Same <input checked="" type="checkbox"/> or	Yeas <u>38</u>	Yeas	Nays <u>0</u>	Nays	Excused <u>0</u>	Excused	Absent <u>2</u>	Absent																																																														
PASSED	EFD Same <input checked="" type="checkbox"/> or																																																																								
Yeas <u>38</u>	Yeas																																																																								
Nays <u>0</u>	Nays																																																																								
Excused <u>0</u>	Excused																																																																								
Absent <u>2</u>	Absent																																																																								
	Reconsideration Reconsideration not taken up																																																																								
	<table style="width:100%; border: none;"> <tr> <td>PASSED ON RECON.</td> <td>EFD Same ___ or</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> </table> <p>_____ Intent adopted</p>	PASSED ON RECON.	EFD Same ___ or	Yeas	Yeas	Nays	Nays	Excused	Excused	Absent	Absent																																																														
PASSED ON RECON.	EFD Same ___ or																																																																								
Yeas	Yeas																																																																								
Nays	Nays																																																																								
Excused	Excused																																																																								
Absent	Absent																																																																								
2/19	Reported correctly engrossed Signed by Speaker, to the Senate <i>Suzanne Howell</i> Chief Clerk of the House																																																																								

1997 2/20	Read first time and referred to: <u>JUD, FIN</u>																																																																														
	<table style="width:100%; border: none;"> <tr> <td></td> <td>RPT()</td> <td>CS</td> <td>DP</td> <td>NR</td> <td>DNP</td> <td>AM</td> </tr> <tr> <td></td> <td>New Title</td> <td>Same Title</td> <td></td> <td></td> <td></td> <td>Previous FN</td> </tr> <tr> <td></td> <td>FN</td> <td>OFN</td> <td></td> <td></td> <td></td> <td>To</td> </tr> </table> <table style="width:100%; border: none;"> <tr> <td></td> <td>RPT()</td> <td>CS</td> <td>DP</td> <td>NR</td> <td>DNP</td> <td>AM</td> </tr> <tr> <td></td> <td>New Title</td> <td>Same Title</td> <td></td> <td></td> <td></td> <td>Previous FN</td> </tr> <tr> <td></td> <td>FN</td> <td>OFN</td> <td></td> <td></td> <td></td> <td>To</td> </tr> </table> <table style="width:100%; border: none;"> <tr> <td></td> <td>RPT()</td> <td>CS</td> <td>DP</td> <td>NR</td> <td>DNP</td> <td>AM</td> </tr> <tr> <td></td> <td>New Title</td> <td>Same Title</td> <td></td> <td></td> <td></td> <td>Previous FN</td> </tr> <tr> <td></td> <td>FN</td> <td>OFN</td> <td></td> <td></td> <td></td> <td>To</td> </tr> </table> <table style="width:100%; border: none;"> <tr> <td></td> <td>Rules Calendar()</td> <td>CS</td> <td>AM</td> <td>Other</td> </tr> <tr> <td></td> <td>New Title</td> <td>Same Title</td> <td></td> <td>Previous FN</td> </tr> <tr> <td></td> <td>FN</td> <td>OFN</td> <td></td> <td></td> </tr> </table>		RPT()	CS	DP	NR	DNP	AM		New Title	Same Title				Previous FN		FN	OFN				To		RPT()	CS	DP	NR	DNP	AM		New Title	Same Title				Previous FN		FN	OFN				To		RPT()	CS	DP	NR	DNP	AM		New Title	Same Title				Previous FN		FN	OFN				To		Rules Calendar()	CS	AM	Other		New Title	Same Title		Previous FN		FN	OFN		
	RPT()	CS	DP	NR	DNP	AM																																																																									
	New Title	Same Title				Previous FN																																																																									
	FN	OFN				To																																																																									
	RPT()	CS	DP	NR	DNP	AM																																																																									
	New Title	Same Title				Previous FN																																																																									
	FN	OFN				To																																																																									
	RPT()	CS	DP	NR	DNP	AM																																																																									
	New Title	Same Title				Previous FN																																																																									
	FN	OFN				To																																																																									
	Rules Calendar()	CS	AM	Other																																																																											
	New Title	Same Title		Previous FN																																																																											
	FN	OFN																																																																													
	Read second time																																																																														
	CS Adopted ()																																																																														
	Amended																																																																														
	New Title																																																																														
	Advanced																																																																														
	Read third time																																																																														
	Letter of Intent adopted																																																																														
	Return to second for specific amendment																																																																														
	<table style="width:100%; border: none;"> <tr> <td>PASSED</td> <td>EFD Same ___ or</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> </table> <p>Reconsideration Reconsideration not taken up</p>	PASSED	EFD Same ___ or	Yeas	Yeas	Nays	Nays	Excused	Excused	Absent	Absent																																																																				
PASSED	EFD Same ___ or																																																																														
Yeas	Yeas																																																																														
Nays	Nays																																																																														
Excused	Excused																																																																														
Absent	Absent																																																																														
	<table style="width:100%; border: none;"> <tr> <td>PASSED</td> <td>EFD Same ___ or</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> </table> <p>Reported correctly engrossed Signed by President, to the House</p>	PASSED	EFD Same ___ or	Yeas	Yeas	Nays	Nays	Excused	Excused	Absent	Absent																																																																				
PASSED	EFD Same ___ or																																																																														
Yeas	Yeas																																																																														
Nays	Nays																																																																														
Excused	Excused																																																																														
Absent	Absent																																																																														
	Secretary of the Senate																																																																														

(11)

Date Referred to Committee: February 3, 1997

FURTHER REFERRALS:

Date of Committee Action: 2/10/97

The FINANCE Committee considered:

HB 108

HOUSE BILL NO. 108

CRIME VICTIM COMPENSATION PROGRAM

"An Act relating to the crime victim compensation program; and providing for an effective date."

recommends it be replaced with the following committee substitute _____ [] the same title [] a new title

[] additional referral to _____ Committee [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)

[] fiscal note(s) _____ [] fiscal note(s) _____

(2) [x] zero fiscal note(s) DPS [] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Therriault</i>	Therriault	X			
<i>Mark Hanley</i>	Hanley	X			
<i>Alton Mulder</i>	MULDER	X			
<i>Tom Martin</i>	MARTIN	X			
<i>V. Kohring</i>	V. Kohring	X			
<i>J. Davies</i>	J. Davies	X			
<i>Grussendorf</i>	Grussendorf			X	
<i>Kelly</i>	Kelly				
<i>Foster</i>	Foster	X			
<i>Davis</i>	DAVIS	X			

CHAIR'S SIGNATURE

Previous Committee Report(s)

Gene Therriault *Mark Hanley*
Therriault Hanley

HB

115

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. 1
Bill Version: CSHB 115(JUD)
(H) Publish Date: 3/19/97

Revision Date: _____
Title: An act making corrective amendments to Alaska Statutes
as recommended by the revisor of statutes
Sponsor: House JUD
Requestor: Legislative Council

Dept. Affected: Health and Social Services
BRU: Public Assistance
Component: ATAP
COMPONENT SERIAL NO. 220
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary)

This proposed legislation makes technical amendments to the Alaska temporary assistance program. It has no fiscal impact.

Prepared by: Jim Nordlund, Director
Division: Public Assistance
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-2680
Date: 02/12/97
Date: 2/17/97

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

SENATE COMMITTEE REPORT

DATE: 4/25/97

FURTHER:

DATE TURNED
IN TO OFFICE: 4/28/97

Judiciary Committee considered CS FOR HOUSE BILL NO. 115(JUD) am

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical change

new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Alan Starnell</i>	✓		
		<i>J. Ellis</i>	✓		
CHAIR: <i>John...</i>		CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
HSS/PUBLIC ASST.	4/24/97	0	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 28, 1997

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1992
PHONE (907) 269-5100
FAX (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE (907) 451-2811
FAX (907) 451-2846

P.O. BOX 110300-DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE (907) 465-3600
FAX (907) 465-6735

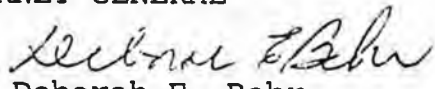
Pam Finley
Revisor of Statutes
Legislative Affairs Agency
130 Seward Street, Ste. 409
Juneau, AK 99801-2105

Dear Pam:

On behalf of the Department of Law, I have reviewed CS HB 115(JUD)am, the 1997 revisor's bill. The Department of Law has no legal problems with this bill. The bill makes appropriate technical improvements to the Alaska statutes.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Deborah E. Behr
Assistant Attorney General

DEB:pao

cc: Sen. Taylor
Chair
Senate Judiciary Committee

Pat Pourchot
Office of the Governor

Bruce Botelho
Chrystal Smith

LEGAL SERVICES

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

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 25, 1997

SUBJECT: CSHB 115(JUD) am (1997 Revisor's Bill)

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: Pamela Finley *PF*
Revisor of Statutes

The following is a sectional analysis of CSHB 115(JUD) am, the 1997 revisor's bill, which was referred to the Senate Judiciary Committee on April 25, 1997. The bill is prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

...shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of...the statute law of this state.

To assist the reader in understanding the bill, I have summarized the contents by listing sections that have similar purposes or effects.

Sections that delete, repeal, or update obsolete provisions: Sections 17, 18, 30, 37, 38 and 41 delete, update, or repeal provisions that have become obsolete either through other legislative action or the passage of time.

Sections that correct errors or oversights: Sections 2, 3, 5 - 16, 19, 26, 27, 29, 31, 32, 36, 39, 40, 41, 42, 43 and 44 correct errors or oversights.

Sections that improve the form or substance of the law: Sections 1, 4, 20 - 25, 28, 31, and 33 - 35, propose amendments to improve the form or substance of the statute law of Alaska.

SECTIONAL ANALYSIS

Section 1. This section corrects the sentence structure of a statute requiring publication of a book containing brands and marks on record and changes "post office address" to the more inclusive term "mailing address". The latter change was made in House Judiciary Committee.

Senator Robin Taylor

April 25, 1997

Page 2

Section 2. This bill section substitutes "employees of one of the municipalities" for "employers of one of the municipalities" in AS 05.15.112(b), relating to charitable gaming. It corrects a typographical error in ch. 70, SLA 1993.

Section 3. This bill section amends the definition of "qualified organization" in the charitable gaming statutes by substituting "license or permit" for "license." Qualified organizations apply for permits primarily, although they also can apply for operator's licenses. This corrects an error in ch. 27, SLA 1960.

Section 4. While most occupational regulation is performed by various boards, the Department of Commerce and Economic Development has direct responsibility for certain occupations. See AS 08.01.010. The occupations regulated directly by the department have also been listed at AS 08.01.050(a)(4) and (9), which means that whenever the department is given responsibility for directly regulating an occupation, these two paragraphs must be amended. This is unnecessary since a general reference to occupations or activities that are regulated directly by the department would suffice. This section substitutes that general reference for the existing list.

Section 5. AS 08.02.010(a) requires members of certain occupations to use certain designations. Some of the occupations covered by subsection (a) are regulated directly by the Department of Commerce and Economic Development rather than by a board, *i.e.*, acupuncturists, audiologists, and naturopaths. However, subsection (b), which sets penalties for a violation of subsection (a), refers only to the "appropriate licensing board." This bill section adds a reference to the department so that the department can enforce subsection (a) for those occupations regulated directly by the department.

Sections 6 and 7. These bill sections substitute "commission" for "board" in two statutes relating to the Real Estate Commission. Although real estate brokers were licensed by a board in 1959, a commission was substituted for the board in ch 95, SLA 1964. The amendment to AS 08.88.041(a) corrects an error in ch. 258, SLA 1976. The amendment to AS 08.88.281 corrects an error in ch. 95, SLA 1964.

Section 8. This bill section, added on the floor of the House, attempts to clarify the language of a floor amendment made to sec. 4, SCS CSSH 58(RLS) am S, which recently passed the Legislature. Both the representative who moved the original floor amendment and the representative who moved an amendment to the original floor amendment (and who was also prime sponsor of HB 58), approved the change made in bill section 8. See bill sections 45 and 46 for the conditional effectiveness, severability, applicability, and effective date of bill section 8.

Section 9. In ch. 119, SLA 1992, AS 09.50.250 (relating to claims against the state) was amended by deleting "superior court" at the end of the first sentence. The purpose was to

Senator Robin Taylor

April 25, 1997

Page 3

give the state district court, as well as the state superior court, jurisdiction over claims against the state, except for small claims. The title of ch. 119, SLA 1992 was "Relating to the jurisdiction of the district court and to the district court's ability to hear actions as small claims." The Attorney General's Office has informed me that the deletion of the phrase "in the superior court" has been claimed to authorize claims against the state to be brought in federal court. To return the statute to what was intended in ch. 119, SLA 1992, "in a state court that has jurisdiction over the claim" is added at the end of the first sentence. This amendment was requested by the Attorney General's office.

Section 10. This bill section amends the definition of "serious offense" in AS 12.62.900 by substituting "AS 11.51.130(a)(1) - (3)" for "AS 11.51.130(a)(1),(3), and (5)." AS 12.62.900 was added by ch. 118, SLA 1994. At the time it was drafted, AS 11.51.130(a)(1),(3),and (5) were the only paragraphs in AS 11.51.130(a), paragraphs (2) and (4) having been previously repealed. However, ch. 33, SLA 1994 redesignated paragraphs (3) and (5) as (2) and (3), respectively, and added new paragraph (4). Therefore the references to former AS 11.51.130(a)(1), (3), and (5) are equivalent to current AS 11.51.130(a)(1) - (3), and that change is made here. (AS 11.51.130(a)(4), added by ch. 33, SLA 1994 is not included because the legislature has not made the policy choice that (a) (4) should be included in the definition of "serious offense". If the legislature wishes to include (a)(4), that should be done in a different bill.)

Section 11. This bill section amends AS 13.12.603(a)(1), relating to construction of wills, by adding a "not" that was inadvertently omitted in ch.75, SLA 1996, which enacted a revised version of the Uniform Probate Code. This amendment was requested by Mr. Arthur Peterson, Uniform Law Commissioner for Alaska. The uniform law on which this law is based does contain the "not" and nothing in our files indicates that the omission was intentional. It appears to have been a typographical error. At the request of the House Judiciary Committee, this amendment is made retroactive to January 1, 1997 (the effective date of AS 13.12.603) under bill section 42.

Sections 12 and 13. Ch. 2, FSSLA 1996 rewrote AS 14.17.021, so that the definition of "basic need" that had previously appeared in subsection (b) now appears in subsection (c). The definition in current subsection (c) is the same as the definition in former subsection (b). However, a reference to "basic need as determined under AS 14.17.021(b)" still appears in AS 14.17.025(a)(2) and (b)(2). Bill sections 12 and 13 make the conforming changes to AS 14.17.025 that should have been made when AS 14.17.021 was amended in ch. 2, FSSLA 1996. Because § 6, ch. 2, FSSLA 1996 made the amendment to AS 14.17.021 retroactive to July 1, 1995, the conforming changes in bill sections 11 and 12 are also made retroactive to that date under bill sec. 43.

Section 14. This bill section amends AS 14.20.020(a), governing teachers certificates. In ch. 105, SLA 1992, an additional requirement for a certificate was added as subsection (h).

Senator Robin Taylor

April 25, 1997

Page 4

However, a cross-reference to this requirement was omitted from subsection (a). That oversight is corrected in this bill section.

Section 15. This bill section amends AS 14.20.177(a) (relating to reductions in force) by substituting "AS 14.17.021(c)" for "AS 14.17.021(b)." See explanation for sections 12 and 13. This change is needed because ch. 31, SLA 1996, which added AS 14.20.177, passed the legislature before ch. 2, FSSLA 1996 amended AS 14.17.021. Because § 6, ch. 2, FSSLA 1996 made the amendment to AS 14.17.021 retroactive to July 1, 1995, the conforming change in bill section 15 is also made retroactive to August 16, 1996 (the effective date of AS 14.20.177) under bill sec. 44.

Section 16. AS 14.03.160, requiring suspension or expulsion of students for certain weapons violations, was enacted by ch. 33, SLA 1995. At that time, AS 14.30.010(b), which lists exceptions to required attendance at school, should have been amended to include a reference to children suspended or expelled under AS 14.03.160. This section makes that amendment. This section also substitutes "paragraph" for "subsection" in AS 14.30.010(b)(7) and improves the sentence structure in (b)(11).

Section 17. This bill section removes a dated reference from AS 14.36.030(b), which relates to community school program grants.

Section 18. This bill section amends AS 14.43.120(b)(2)(B) to give the current name of the Council of Recognition of Postsecondary Accreditation. It was requested by the Attorney General's Office.

Section 19. This bill section amends AS 14.43.140, relating to the enforceability of student loan obligations agreed to by minors 16 years of age or older. The reference to "19" years of age (as the age of majority) is changed to "18" years of age. This change should have been made in 1977 when the age of majority was reduced from 19 years of age to 18 years of age.

Sections 20 - 25. These bill sections substitute "division of state libraries, archives, and museums" for "division of state libraries" in several statutes. Although this division has not been established by statute, it is referred to in quite a few statutes and should at least have its current name.

Section 26. AS 21.18.100(h) contains a definition of "plan type" ---a term used in AS 21.18.100(f)--- but subsection (h) indicates that the definition in that subsection applies to "this subsection" when it should apply to "this section". This bill section makes that change.

Senator Robin Taylor

April 25, 1997

Page 5

Section 27. This bill section amends AS 23.30.195(a), relating to workers' compensation, by deleting a reference to AS 23.30.190(a)(20). AS 23.30.190(a)(20) ceased to exist when AS 23.30.190 was amended in ch. 79, SLA 1988.

Section 28. This bill section amends AS 24.05.135(c), relating to tapes of legislative proceedings, by substituting "division of state libraries, archives, and museums" for "division of libraries". See explanation for sections 20 - 25.

Section 29. This bill section amends AS 28.10.431(b) by substituting "registration fee" for "license fee." The referenced fees are for registration, not licensure.

Section 30. This bill section amends a definition of "department" in AS 30.30.170, relating to abandoned and derelict vessels, to remove a reference to the "division of waters and harbors." This division does not exist in statute or in the state directory.

Section 31. This bill section reorganizes AS 37.05.146, the definition of "program receipts" into two subsections and moves the receipts of certain employee programs from the paragraph listing funds to paragraphs of their own. (The employee programs are not, properly speaking, "funds".) It also substitutes "public school trust fund" for "public school fund" to correct an omission in ch. 141, SLA 1988, which changed the name of the fund.

Section 32. This bill section substitutes "public school trust fund" for "public school fund" in AS 37.05.530(g)(2). This amendment should have been made in ch. 141, SLA 1988, when the name of the public school fund was changed.

Section 33. This bill section substitutes "under or subject to AS 14.25.180" for "under AS 14.25.180" in a definition relating to the Alaska State Pension Investment Board. AS 14.25.180 sets out management duties of the Board and is referred to in regard to other funds managed by the Board, e.g., AS 39.35.080. While "under AS 14.25.180" probably would be interpreted as including funds managed by the Board that are not in AS 14.25 but are to be managed in accordance with AS 14.25.180, adding the phrase "subject to" makes that result clearer. Note that the phrase "subject to AS 14.25.180" also appears later in the same definition.

Sections 34 - 35. These bill sections amend two sections in the Pipeline Act. Bill section 33 corrects a grammatical error and breaks a long sentence into shorter ones. Bill section 34 rewrites another section for clarity.

Section 36. This bill section deletes a reference in the tax code to AS 43.58. The tax under AS 43.58 terminated on December 31, 1977 and AS 43.58 was repealed in 1984.

Section 37. This bill section substitutes a cross-reference to a section for a cross-reference to a paragraph within that section. The paragraph number has been changed and a reference to the specific paragraph is not necessary.

Section 38. This bill section corrects the name of the Council on Recognition of Postsecondary Accreditation. It was requested by the Attorney General's Office.

Sections 39 and 40. These bill sections amend the Alaska temporary assistance program, which was established by legislation passed last session. The paragraph amended by bill section 39 (AS 47.27.015(a)(1)) contains subparagraphs that establish exceptions to the 5 year maximum period of assistance. Subparagraph (D) contains a general "hardship" exception and also limits the maximum number of families for which an exemption may be in effect under that "paragraph" to 10 percent or the maximum allowed under federal law, whichever is greater. It is my understanding that the limitation was indeed intended to apply to all of the subparagraphs in paragraph (1) so that the reference to "this paragraph" is correct. However, under the drafting style used in the Alaska Statutes, a provision that applies to an entire paragraph should not appear in an indented subparagraph. Accordingly, the limiting language is removed from subparagraph (D) and moved to a new subsection (f), added by section 40. If the legislature will be considering other amendments to the Alaska temporary assistance program, these bill sections could be removed from the revisor's bill and included in the other bill.

Section 41. This bill section repeals the definition of "department" in AS 30.15 because the term does not appear in AS 30.15, except in a reference to a different, specified department. The text of the statute being repealed is attached.

Section 42. This bill section makes the amendment in bill section 11 to AS 13.12.603 retroactive to January 1, 1997, the effective date of AS 13.12.603. See explanation for bill section 11.

Section 43. This bill section makes the amendments in bill sections 12 and 13 to AS 14.17.025(a) and (b) retroactive to July 1, 1995, the date to which the 1996 amendment to AS 14.17.021 was made retroactive. See explanation for bill sections 12 and 13.

Section 44. For the same reason given for section 43, this bill section makes the amendment to AS 14.20.177(a) made by bill section 15 retroactive to August 16, 1996. August 16, 1996 was used rather than July 1, 1995 because AS 14.20.177 did not exist until August 16, 1996. See explanation for bill section 15.

Section 45. This bill section provides that bill section 8 (which amends SCS CSSH B 58(RLS) am S) takes effect only if SCS CSSH B 58(RLS) am S becomes law. This bill section also provides that the applicability and severability provision of SCS CSSH B 58(RLS) am S apply to the amendment made by bill section 8.

Senator Robin Taylor

April 25, 1997

Page 7

Section 46. This bill section makes bill section 8 effective on the effective date of SCS CSSSHB 58(RLS) am S, Twentieth Alaska State Legislature.

Section 47. This bill section gives the bill, exception for section 8, an immediate effective date.

Please let me know if you have any questions about the above.

PF:pl:jr

97-119.plm

TEXT OF STATUTES BEING REPEALED

AS 30.15.070(2):

(2) "department" means Department of Transportation and Public Facilities;

ALASKA STATE LEGISLATURE
HOUSE BILL NO. 115

HISTORY IN THE HOUSE

1997
2/5 Read first time and referred to:
Jud

3/19 Jud RPT CS(Jud) New Title
5 DP 0 DNP 0 NR 0 AM
FN 1 OFN Previous FN

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

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

4/23 Read second time
CS(Jud) Adopted

4/23 Amended

4/23 Advanced

4/23 Read third time

Return to second for specific amendment

4/23 PASSED EFD Same or
Yeas 36 Yeas
Nays 0 Nays
Excused 1 Excused
Absent 3 Absent

Intent adopted

Reconsideration
Reconsideration not taken up

PASSED ON RECON. EFD Same or
Yeas Yeas
Nays Nays
Excused Excused
Absent Absent

Intent adopted

4/23 Reported correctly engrossed
Signed by Speaker, to the Senate
Signatures
Chief Clerk of the House

HISTORY IN THE SENATE

1997
4/25 Read first time and referred to:
JUD

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

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

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

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

Read second time

CS Adopted () New Title
Amended Advanced

Read third time

Letter of Intent adopted
Return to second for specific amendment

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

Reconsideration
Reconsideration not taken up

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

Reported correctly engrossed
Signed by President, to the House
Secretary of the Senate

HB

116

SENATE COMMITTEE REPORT

DATE: 3/6/98

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 4-16-98

Judiciary Committee considered CS FOR HOUSE BILL NO. 116(FIN)

"An Act relating to workers' compensation self-insurance."

and recommends:

- be replaced with SENATE CS SCS CSHB 116 (JUD) FOR CS FOR HB 116 (JUD)
- adopt previous CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

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

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Ellis</i>	X	<i>Frank Powell</i>	X		
<i>Mike Maltese</i>	X	<i>Deane</i>	X		
CHAIR: <i>Adrian L. Payne</i>	X	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Department	Date	Zero	Fiscal
#3 C&ED- INSURANCE	3-9-98		✓
#4 CASOL- WORKER'S COMP.	2-18-98		✓

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Alaska State Legislature House of Representatives

Committees

Rules Committee, Chair
Legislative Council
International Trade & Tourism
Military & Veterans Affairs
World Trade & State/Federal Relations



Interim:
10928 Eagle River Rd. Suite 141
Eagle River, AK 99577

Session:
Alaska State Capitol
Juneau, AK 99801

HB 116 SPONSOR STATEMENT

Alaska law permits certain public entities to enter into insurance cooperative arrangements concerning worker compensation, wherein they pool contributions to assume risks from losses or to purchase insurance coverage on a group basis. Currently, this option is available only to municipalities, public corporations, school districts, and regional educational attendance areas. HB 116 would extend this option to "worker compensation self insurance groups."

A "worker compensation self-insurance group" is a not-for-profit association of ten or more employers engaged in the same or similar business. The employers must be members of the same trade or professional association, which, in turn, must have been in existence for at least five years.

HB 116 contains numerous substantive and procedural requirements designed to ensure that worker compensation self-insurance groups remain fiscally sound and able to fulfill Alaska's worker compensation requirements. Among other requirements, self-insurance groups must be certified by the state, and the Director of the Division of Insurance may examine the books of such groups as often as is necessary. In addition, other express statutory provisions impose net worth, bonding, and security standards.

Insurance carriers often assign small employers a higher risk. This results in higher insurance costs. By pooling their numbers, small employers would qualify for lower risk assessments and therefore lower premiums.

I commend HB 116 to you, and urge your support.

Representative Pete Kott

Juneau Office (907) 465-3777 Toll Free 1-800-861-KOTT(5688) Fax (907) 465-2819
Eagle River Office (907) 694-8944 Fax (907) 694-8945 E-Mail: representative_pete_kott@legis.state.ak.us



SCHMATIC OF HB 116

The following is a schematic of HB 116. * indicates the provision requires the approval of the Director of the Division of Insurance, hereinafter referred to as Director.

WORKER'S COMPENSATION SELF INSURANCE GROUPS

1. A group applying for a self-insurance must, before receiving a Certificate of Approval from the Director:
 - a) be properly organized and consist of at least ten (10) members;
 - b) have payment by each member of 25% of that member's annual premium;
 - c) show the Director a combined net worth of at least \$1,000,000;
 - d) show and provide the Director security in the amount of at least \$450,000;
 - e) aggregate excess insurance as required by the Director; and,
 - f) provide the Director premiums of at least \$500,000 the first year and \$750,000 in subsequent years - 50% cash balance paid monthly or quarterly on approval of the Director.
2. Joint and several liability of members approved by Director*
3. Fidelity bond and errors and omissions and performance bond approved by Director*
4. Certificate may be revoked by Director*
5. Director may examine the books at any time*
6. The Board of Trustees ~~may~~^{must} pay all workers' compensation benefit—70% of premiums must be used for payment of claims
7. Annual audited financial statements submitted to Director*
8. Director may require other reports*
9. Director may require additional premium payments from a member*
10. Refunds may be made only by approval of Director*
11. Reserve plan must be approved by the Director*
12. Workers compensation self insurance guaranty fund must be established
13. If there is a deficit, it must be made up immediately from:
 - a. Surplus of fiscal year other than current fiscal year
 - b. Administrative funds
 - c. 25% annual premium
 - d. Self insurance guaranty fund
 - e. Assessment of group members
 - f. Other method ordered by Director*
14. Director may impose penalties for noncompliance*
15. Director may revoke Certificate*
16. Group must comply with other insurance requirements such as examinations, service of process, prudent person investment rule, unfair trade practices.



State of Michigan
John Engler, Governor

Department of Consumer & Industry Services
Kathleen M. Wilbur, Director

Bureau of Workers' Disability Compensation
7150 Harris Drive
P.O. Box 30016
Lansing, Michigan 48909
(517) 322-1106

March 11, 1998

Mr. Richard Austerman
Alaska Workers' Compensation Division
P.O. Box 25512
Juneau, Alaska 99802-5572

Dear Mr. Austerman:

RE: Review of Group Self-Insurance Bill

I have reviewed the proposed language for group self-insurance in your state with several members of my staff involved with the regulation of group self-insurance programs. Based on the way the bill is presently written, I would answer no to all three of the questions posed: Is there adequate protection for injured employees? Is there adequate capital to fund the group? Is there adequate protection in the event that a group becomes insolvent?

In Michigan, we require group self-insurance funds to collect enough money from their members to completely fund the loss fund on any aggregate excess contract that is purchased and pay all administrative expenses of running the program. If you allow a group from day one to start with an actuary predicting the losses, and if the actuary is wrong, you will end up in an assessment mode in the first year of operation of a group fund. Florida allowed that type of operation and had to go to the insurance industry for a \$5 million bail out to pay for claims of several insolvent group funds. Both specific and aggregate excess insurance is a definite requirement of all group fund programs. We would never allow a group fund to substitute designated depository securities in lieu of excess insurance. We've had situations where the reserves on one claim in the group fund exceeded \$8 million. Securities are not a good substitute for specific excess insurance. The provision that binds you to not allowing a group fund to terminate a certificate of approval unless that group is able to insure or reinsure all incurred workers' comp obligations, sets up a situation where an insolvent group will continue to incur liability and will not have the money to go out and reinsure their obligations. It will not allow you to limit the liability because the group will have to continue to operate and you will not be allowed to terminate their authority. This is a no win situation. If a group is declared insolvent, the best thing that can happen is to immediately allow each of their members to obtain fully insured coverage. This mitigates the ongoing liability of the group and you still have the provision of assessments where you go after the individual employer members for the prior liability of the group through the assessment process.

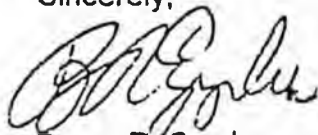
ADDITIONAL
INFORMATION

Allowing a group fund to terminate or cancel an employer's membership and then giving them 10 days beyond that date in which to advise you, automatically sets up a situation where an employer will be uninsured for a minimum of 10 days. We require at least 20 days prior notice before a member can be terminated from the group. This allows the member to either seek coverage in the voluntary market or get coverage through the assigned risk program and does not set up a situation of a member being uninsured.

The language in this bill that allows a member to take their deposit with them when they leave the group if the group at that time does not have a deficiency or insolvency, is also poor language. If you have a group that is on the verge of insolvency, you are going to have the majority of the members leave and grab their deposit from the guarantee fund before they leave. When the group is finally declared insolvent there will be little to no money left in the guarantee fund to help satisfy the outstanding obligation.

These are the major problems I see with this language that lead to our answer of no the three questions you asked. If you can get an audience with the individuals dealing with this legislation, we would be happy to share with you some additional suggestions we have on less major items that would make this much better legislation.

Sincerely,



Bruno R. Czyrka
Deputy Director

HB 116 Workers' Compensation Self-insurance Group Process

Injured worker files claim.
Follows existing workers'
compensation procedures
using existng forms.

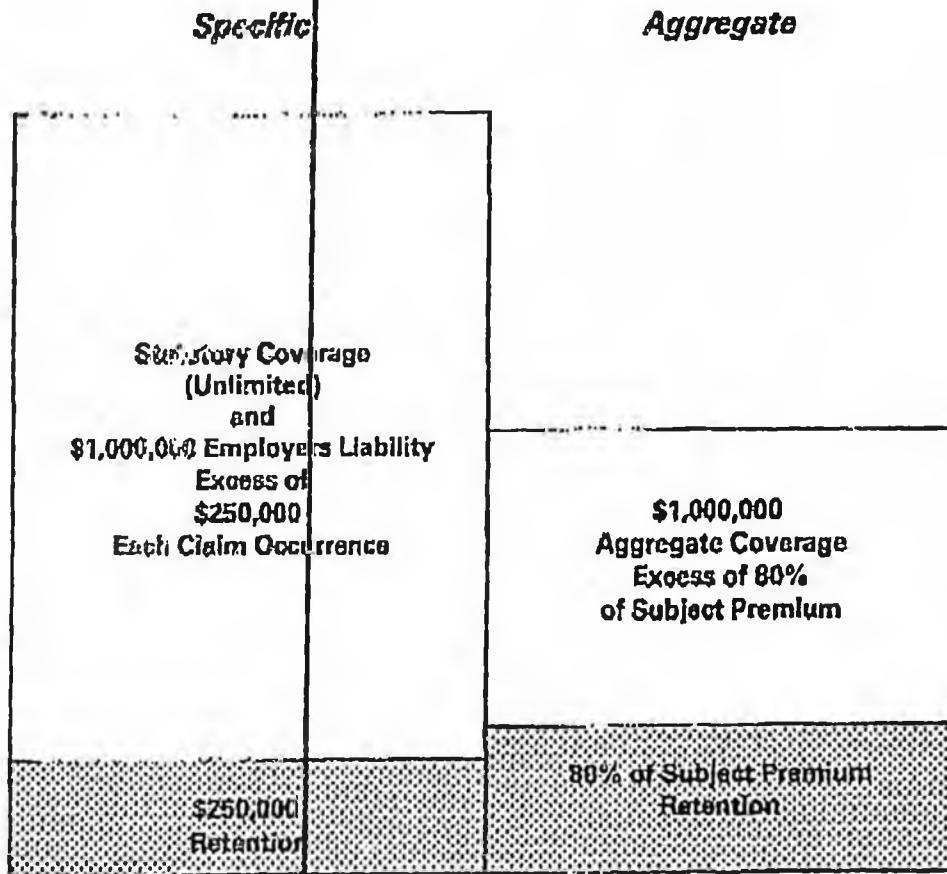
Payment Process
Insolvent Insurer

1. Surplus from fiscal year other than current year
2. Administrative Funds
3. Additional premiums
4. Self-insurance guaranty fund
5. Assessments of membership
6. Other method approved by Director
7. \$450,000 security

Payment Process
Solvent Self-insurer

1. Premiums paid as required by Director
2. Re-insurance Including Specific and Aggregate Excess Insurance as Required by Director. This Coverage Should Prevent Insolvency.

HOME BUILDERS OF ALASKA SELF-INSURED FUND PROPOSED REINSURANCE PROGRAM STRUCTURE



Proposed Cost based on Subject Premium of \$500,000: \$50,000 - \$75,000
(being a 10% to 15% rate)

[REDACTED]

PAT VINCENT, EXECUTIVE OFFICER
KENAI PENINSULA BUILDERS ASSOC.
P.O. BOX 1753
KENAI, ALASKA 99611
PHONE 907-283-8071
FAX 907-283-8072

RECEIVED
MAR 26 1998
Ans'd.....

March 23, 1998

Dear Senator Taylor.

Our association has been notified by our ASHBA lobbyist, Mitch Drews, that you're undecided about your support of HB 116 which would allow trade organizations to self-pool for Worker's Compensation Insurance.

The Kenai Peninsula Builders Association strongly urges a "yes" vote on HB 116. This legislation would reduce the costs of new homes and is supported by those of us involved in the building industry across the state. Your support is needed and will be greatly appreciated.

Sincerely,
Pat Vincent

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 4
Bill Version: SCS CSHB 116 (L&C)
(S) Publish Date: 3-18-98

Revision Date (Note if correction): _____
Title: Workers' Compensation Self Insurance Group
Sponsor: Representative Kott
Requestor: Senate JUD

Department Affected: Labor
BRU: Workers' Compensation
Component: Workers' Compensation

COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	37.5	37.5	37.5	37.5	37.5	37.5
TRAVEL						
CONTRACTUAL	7.0	1.1	1.1	1.1	1.1	1.1
SUPPLIES						
EQUIPMENT	5.0					
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	49.5	38.6	38.6	38.6	38.6	38.6

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

CHANGE IN REVENUE FUND SOURCE #						
---------------------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	49.5	38.6	38.6	38.6	38.6	38.6
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	49.5	38.6	38.6	38.6	38.6	38.6

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

Estimate of current year (FY98) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary)
This bill proposes amending AS 21 by adding chapter 47, "Workers' Compensation Self Insurance Groups". See attached for the impact to Workers' Compensation.

Prepared by: Paul Grossi, Director *Paul Grossi* Phone: 465-2790
Division: Workers' Compensation Date: 3/11/98
Approved by Commissioner: Tom Cashen, Commissioner *Tom Cashen*
Agency: Department of Labor Date: 3/11/98

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

SCS CSHB 116(L&C) Analysis:

The provisions of this bill applies to workers' compensation self insured groups. Under this bill the Division of Insurance would issue a certificate of approval to those persons who qualify for self-insurance coverage. Security from the self insurers would be deposited with the Division of Insurance and assigned to the Workers' Compensation Division to hold in trust, collect and transmit accruing interest to the depositor, and keep the Division of Insurance apprised of individual or group status changes within the self insured group.

A new position would be required to track all securities assigned; establish individual trust, monitor interest accrued and disbursed to the depositor, prepare form letters of status change and keep the Division of Insurance apprised of any status changes within the self insured groups.

One staff month of programming time will be required to develop computerized programs to interface with the Division of Insurance and to track self insurer and individual changes within each self insurance group.

The figures representing office furniture and equipment assume that some items may be available through Surplus Property at reduced costs.

Line 100 Personal Services

1 Administrative Clerk III	
Salary & Benefits	\$37.5

Line 300 Contractual Services

DP Programming (FY99 one time)	5.9
Postage	0.5
DP Operations	0.4
Printing form letters	<u>0.2</u>
	7.0

Line 500 Equipment

(One time set up costs)	
Computer	3.5
Office Furniture/Equipment	<u>1.5</u>
	5.0

Total	\$49.5
-------	--------

#4
WB116

01/30/98	Position Information Inquiry/Update	Prior	10:43:21
		Yr Actual	Budgeted
Position: 07-07#020	Project: 0	Salary: 0	26,268.00
Comp: 07-06-07-10-01-00	Region:	Benefits: 0	11,188.73
Scenario: 7	FY: 99	COLA %: 0.000	Total: 0
			37,456.73

 Actuals not available (Status: UNKNOWN) FLSA: | Retirement Code: A

00/00/00	Step: B for 12.0 months & Step: C for 0.0 months (total: 12.00)
G	Merit Date; use merit defaults? N (0.0 @ & 0.0 @)
	Class/Sched Prefix: 2 Schedule: 2A (actual:)
	Bargaining Unit: GG Range: 10 (actual:)
	Lccation Code: AWA Place: JUNEAU
	Jcb Class Code: P1135 Title: ADMINISTRATIVE CLERK III
	Seasonal Indic.: F Type: -

 Optional Override Salary Rates:

Monthly Rate: 0.00 for 0.0 months & rate of 0.00 for 0.0 months
 Hourly Rate: 0.00 for 0.0 months Frozen at this rate? (Y/N): N

Press ENTER to update record; enter # or use PF key to go to another screen:
 1=Premium pay info 2=Funding info 4=Code Translations 6=Calculations
 7=MISC NEW POS DATA 8=Detail Report 12=Exit w/o update Selection: 0_

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 3

B Bill Version: SCS CSHB 116 (4C)

(S) Publish Date: 3-9-98

Revision Date (3/5/98) _____ Dept. Affected Commerce & Economic Development
 Title An Act relating to workers' compensation BRU Insurance
 self-insurance _____ Component Insurance
 Sponsor Representative Kott _____
 Requester Senate Labor and Commerce Component Serial No. 354

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	72.0	72.0	73.0	73.0	74.0	74.0
Travel	1.5	1.5	1.6	1.6	1.7	1.7
Contractual	2.0	2.0	2.1	2.1	2.2	2.2
Supplies	1.5	1.5	1.6	1.6	1.7	1.7
Equipment	5.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	82.0	77.0	78.3	78.3	79.6	79.6

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()	0.0	(47.0)	(47.0)	(47.0)	(47.0)	(47.0)

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	66.2	56.7	58.0	58.0	59.3	59.3
1005 GF/Program Receipts	15.8	20.3	20.3	20.3	20.3	20.3
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	82.0	77.0	78.3	78.3	79.6	79.6

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The division estimates that 20 groups will be formed and pay application fees of \$2,500 in FY 99 . No annual continuation fees would be paid. Expenditures are based on the addition of one full time Financial Examiner II, with normal associated costs for equipment, supplies etc.

Prepared by Marianna K. Burke, Director *Marianna K. Burke* Phone 465-2515
 Division Insurance Date 3/5/98
 Approved by Commissioner Deborah B. Sedwick *Deborah B. Sedwick* Date 3/5/98
 Agency Commerce and Economic Development

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

For further distribution information, call the Governor's Legislative Office

HEB

119

FISCAL NOTE

No. 1

Bill Version: CSHB 119(JUD)

(H) Publish Date: 3/10/97

**STATE OF ALASKA
1997 LEGISLATIVE SESSION**

Revision Date: 3/7/97 Dept. Affected: Courts
 Title: _____ BRU: _____
 Component: _____
 Sponsor: Hodgins
 Requester: House Judiciary COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Lisa Kirsch
 Division: House Judiciary Committee
 Approved by Commissioner:
 Agency: Chairman, House Judiciary Committee

Phone: 465-4990
 Date: 3/7/97
 Date: 3/7/97

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

COPY

DBR

SENATE COMMITTEE REPORT

DATE: 4/9/97

FURTHER:

DATE TURNED
IN TO OFFICE: 4/23/97

Judiciary Committee considered CS FOR HOUSE BILL NO. 119(JUD)

"An Act raising the limit on small claims actions to \$7,500; amending Rule 9, Alaska Rules of Administration; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS HB119 (JUD)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

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

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Paul D. Parnell</i>	<input checked="" type="checkbox"/>	<i>July Ellis</i>	<input checked="" type="checkbox"/>		
<i>A. K. Kene</i>					
CHAIR: <i>John Taylor</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>COURTS</i>	<i>3/7/97</i>	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

ALASKA STATE LEGISLATURE

Session
State Capitol
Juneau, Alaska 99801-1182
(907) 465-3779 - Phone
(907) 465-2833 - Fax



Intern:
145 Main St. Loop Suite 223
Kenai, Alaska 99611
(907) 283-7223 - Phone
(907) 283-3075 - Fax

REPRESENTATIVE MARK D. HODGINS
House District 9

SPONSOR STATEMENT

HB 119, INCREASE SMALL CLAIMS LIMIT TO \$10,000.

House Bill 119 would change the small claims limit in (AS 22.15.040(a)) from \$5000 to \$10,000. This increase more accurately represents the real dollar costs involved in small claims litigation.

The effective date of the amendment is July 1, 1997.

LEGAL SERVICES

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

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


130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 18, 1997

SUBJECT: Sectional Summary of CSHB 119. (W.O. 0-LS0440\E)

TO: Representative Mark Hodgins
Attn. Tom Manninen

FROM: Gerald P. Luckhaupt 
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill raises the small claims jurisdictional limit from \$5,000 to \$7,500.

Section 2 of the bill raises the jurisdictional limit for actions before magistrates to \$7,500.

Section 3 of the bill amends Rule 9(c)(2), Alaska Rules of Administration, to increase the filing fee for small claims action where the claim for relief is for more than \$2,500.

Section 4 of the bill provides an effective date.

GPL:jdr
97-191:jdr

**ALASKA STATE LEGISLATURE
HOUSE BILL NO. 119**

HISTORY IN THE HOUSE

1997	Read first time and referred to: <u>Jud</u>
2/7	
3/10	<u>Jud</u> RPT CS(<u>Jud</u>) <input checked="" type="checkbox"/> New Title <u>7</u> DP <u>0</u> DNP <u>0</u> NR <u>0</u> AM <u> </u> FN <u>1</u> OFN <u> </u> Previous FN <u> </u> RPT CS(<u> </u>) <u> </u> New Title <u> </u> DP <u> </u> DNP <u> </u> NR <u> </u> AM <u> </u> FN <u> </u> OFN <u> </u> Previous FN <u> </u> RPT CS(<u> </u>) <u> </u> New Title <u> </u> DP <u> </u> DNP <u> </u> NR <u> </u> AM <u> </u> FN <u> </u> OFN <u> </u> Previous FN
4/7	Read second time CS(<u>Jud</u>) Adopted Amended
4/7	Advanced
4/7	Read third time
4/7	Return to second for specific amendment <u> </u> PASSED <u> </u> EFD Same <input checked="" type="checkbox"/> or Yeas <u>39</u> Yeas Nays <u>0</u> Nays Excused <u>1</u> Excused Absent <u>0</u> Absent <u> </u> Intent adopted Reconsideration Reconsideration not taken up <u> </u> PASSED ON RECON. EFD Same <u> </u> or Yeas <u> </u> Yeas Nays <u> </u> Nays Excused <u> </u> Excused Absent <u> </u> Absent <u> </u> Intent adopted
4/7	Reported correctly engrossed Signed by Speaker, to the Senate <u><i>Suzi Howell</i></u> Chief Clerk of the House

HISTORY IN THE SENATE

1997	Read first time and referred to: <u>JUD</u>
4/9	
	<u> </u> RPT(<u> </u>) CS <u> </u> DP <u> </u> NR <u> </u> DNP <u> </u> AM <u> </u> New Title <u> </u> Same Title <u> </u> Previous FN <u> </u> FN <u> </u> OFN <u> </u> To <u> </u> <u> </u> RPT(<u> </u>) CS <u> </u> DP <u> </u> NR <u> </u> DNP <u> </u> AM <u> </u> New Title <u> </u> Same Title <u> </u> Previous FN <u> </u> FN <u> </u> OFN <u> </u> To <u> </u> <u> </u> RPT(<u> </u>) CS <u> </u> DP <u> </u> NR <u> </u> DNP <u> </u> AM <u> </u> New Title <u> </u> Same Title <u> </u> Previous FN <u> </u> FN <u> </u> OFN <u> </u> To <u> </u> <u> </u> Rules Calendar(<u> </u>) CS <u> </u> AM <u> </u> Other <u> </u> New Title <u> </u> Same Title <u> </u> Previous FN <u> </u> FN <u> </u> OFN <u> </u>
	Read second time
	<u> </u> CS Adopted (<u> </u>) <u> </u> New Title <u> </u> Amended <u> </u> Advanced
	Read third time
	<u> </u> Letter of Intent adopted <u> </u> Return to second for specific amendment <u> </u> PASSED <u> </u> EFD Same <u> </u> or Yeas <u> </u> Yeas Nays <u> </u> Nays Excused <u> </u> Excused Absent <u> </u> Absent Reconsideration Reconsideration not taken up <u> </u> PASSED <u> </u> EFD Same <u> </u> or Yeas <u> </u> Yeas Nays <u> </u> Nays Excused <u> </u> Excused Absent <u> </u> Absent Reported correctly engrossed Signed by President, to the House <u> </u> Secretary of the Senate

ALASKA STATE LEGISLATURE



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

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

Senate Judiciary Committee

MEMORANDUM

TO: Senator Taylor, Chairman
Senator Pearce, Vice Chairman
Senator Miller
Senator Parnell
Senator Ellis

FROM: Laura Chase, Committee Aide *Laura Chase*

DATE: April 16, 1997

RE: HB 119 Support

The Secretary/Treasurer of Alaskans for Liability Reform, Mr. Al Tamagni, telephoned to say that he will not be available to testify when HB 119 is heard by Judiciary Committee members. Mr. Tamagni asked that the organization's support of SB 119 be reflected in the record. On behalf of his organization, he urges you to pass this legislation from committee at your earliest convenience.

If you wish to contact Mr. Tamagni, his addresses and phone number are listed below.

Organizational Address:

Mr. Al Tamagni, Secretary/Treasurer
Alaskans for Liability Reform
P. O. Box 201668
Anchorage, Alaska 99520-1668

Business Address:

Mr. Al Tamagni
c/o Pension Services
1205 E. International Airport Road, Ste. 205
Anchorage, Alaska 99518

Telephone Number: 907/562-3938

HB

120

SENATE COMMITTEE REPORT

DATE: 2/14/97

FURTHER:

DATE TURNED
IN TO OFFICE: 2/27/97

Judiciary Committee considered

CS FOR HOUSE BILL NO. 120(JUD)

"An Act relating to the power of the attorney general to waive immunity from suit in federal court; and providing for an effective date."

and recommends:

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

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

SIGNING DQ PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Miller</i>	<input checked="" type="checkbox"/>	<i>Miller</i>	<input checked="" type="checkbox"/>		
<i>Ray B. Parnell</i>	<input checked="" type="checkbox"/>				
<i>Deane</i>	<input checked="" type="checkbox"/>				
CHAIR <i>John Taylor</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>(H) Law/Civil Div</i>	<i>2/7</i>	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

No. 1
 Bill Version: CSHB 120(JUD)
 (H) Publish Date: 2/12/97

**STATE OF ALASKA
 1997 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Department of Law
 Title: ...power of attorney general to waive immunity BRU: Civil Division
 from suit in federal court...effective date Component: General Legal Services
 Sponsor: Representative Hudson
 Requester: House Judiciary COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

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

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

Alaska State Legislature

REPRESENTATIVE BILL HUDSON

State Capitol
Juneau, Alaska
99801-1182
(907) 465-3744
Fax (907) 465-2273

COMMITTEES

CO-CHAIR
Resources Committee

MEMBER
Transportation Committee
Labor & Commerce Committee

Sponsor Statement for CSHB120

The Eleventh Amendment to the United States Constitution prohibits suits against states in federal court for damages brought by citizens of that state. Recent decisions of the United States District Court for the District of Alaska have prohibited the Attorney General from waiving this immunity without express legislative authority to do so. Although the Attorney General has statutory authority to represent the state in all civil actions in which the state is a party, there is no specific legislative grant to waive Eleventh Amendment immunity where it is in the state's best interest.

From time to time there are cases where it is procedurally advantageous for the state to waive its Eleventh Amendment immunity and have a case heard in federal court - there are presently two such cases before the state of Alaska.

The first case is addressed in the original language for HB120. The United States is being sued by plaintiffs in Alaska who seek a judgment that the US owns the tidelands in the Tongass National Forest. The State has not been named as a defendant, however, it would like to intervene to determine its title to the lands in dispute.

Only by joining as a defendant in this lawsuit can the state litigate this title. The Quiet Title Act requires that the United States "claim and interest" in the disputed property. In this case, the United States has carefully avoided taking any formal position as to whether it believes it or the State has title to the tidelands in question. Therefore, by joining as a defendant, the State would secure the opportunity to establish title to lands it owns.

The second case where it would be procedurally advantageous to waive Eleventh Amendment immunity involves tort claims where the state and federal government are both potentially responsible. This issue is addressed in the amendment before you. Because of the Eleventh



Amendment immunity, and because the federal government will not appear in state court, the claims cannot be litigated in one court, and fault allocated among all parties. The state is put in a position where it cannot have fault allocated to federal agencies and employees and loses this valuable substantive right. If the state is unable to waive the Eleventh Amendment and appear and defend in federal court, it will lose its ability to have a fair allocation of fault among all responsible parties. This places the state at a substantial economic disadvantage in defending the lawsuit.

The purpose of HB120 is to ask the Alaska State Legislature to allow the Attorney General to give the State's consent to appear in Federal Court as a defendant in a case that involves the state's title to submerged lands. The amendment before you would further enable the Attorney General to waive Eleventh amendment immunity and litigate in federal court in cases where the state seeks to allocated fault to the federal government or a federal employee under AS 09.17.080.

Background on the Need for the Proposed Amendment to House Bill 120

As a "deep pocket," the State of Alaska is frequently named as the only defendant in cases where other nonparties are clearly at fault, and ordinarily the state can receive a fair allocation of potential liability by joining those parties as third-party defendants for apportionment of fault under AS 09.17.080. However, a problem exists when the federal government is involved.

By federal law the federal government (agencies, officials, employees, etc.) can only be sued in federal court. Thus, fault can only be apportioned to the federal government in federal court. However, the Eleventh Amendment of the United States Constitution deprives federal courts of jurisdiction over tort actions brought by private parties against consenting states. Thus, the state cannot appear in federal court as a defendant (or third-party plaintiff) in a tort action brought by a private party unless it waives its Eleventh Amendment immunity.

While it clearly would not be in the state's interest to waive its Eleventh Amendment immunity in all cases, in the occasional case where the state could reduce its liability in a tort action by joining the federal government as a third-party defendant for apportionment of fault under AS 09.17.080 it would be in the state's interest to waive its Eleventh Amendment immunity, since federal court is the only forum where a third-party claim against the federal government can be brought.

In fact, the state faces such a situation now. The state has been sued by approximately one hundred and fifty residents of Hooper Bay in two civil actions in Superior Court in Bethel. The cases are Smith v. State and Melba Joseph, et al v. State, and they arise out of one wrongful death (Smith case) and many illnesses (Joseph case) which were caused by excess fluoride in Hooper Bay's public water system. (The liability issues in the two cases are identical, and the Joseph case has been stayed pending a determination of liability in the Smith case.)

Hooper Bay is responsible under state law to prevent the distribution of contaminated water, but Hooper Bay had no insurance. Consequently, Smith originally filed suit against the Yukon Kuskokwim Health Corporation (YKHC), alleging that YKHC failed to properly supervise Hooper Bay's water system. However, YKHC was acting under a contract with the federal government, and the action was removed to federal court.¹ After the case against YKHC was removed to federal court Smith essentially abandoned the action, and initiated a new action against the State of Alaska in Bethel Superior Court. Smith now claims that the state should have assured the safety of Hooper Bay's water system. And more specifically, Smith seeks

¹ The state and federal governments are engaged directly and indirectly in several programs to improve drinking water and sanitation facilities in the bush communities, and both were aware of problems in Hooper Bay and both had been providing direct and indirect assistance to Hooper Bay.

to hold the state vicariously liable for the negligence of Steve Weaver, a federal (Public Health Service) employee detailed to the State of Alaska (Village Safe Water) who was working to rehabilitate Hooper Bay's public water system

It obviously would be in the state's best interest to have fault allocated to any negligent federal entities in the Smith and Joseph actions (and in any similar action in the future) pursuant to AS 09 17 080. Indeed, the federal government intended to join the state as a third-party defendant in the original action against YKHC if that action had gone forward.

Some federal courts have held that only the Alaska Legislature can waive the state's Eleventh Amendment immunity, and only by giving an unequivocal indication of its intent to do so. Thus the purpose of the proposed bill is to unequivocally authorize the Attorney General to waive the state's Eleventh Amendment immunity on a case by case basis in any case in which the state seeks to allocate fault to the federal government or a federal employee pursuant to AS 09.17.080.

Herring Coalition

4. *Peratrovich v. United States* (United States District Court No. A92-734 Civ. (Judge Holland); our file no. 221-93-0340; state's attorneys: Henry Wilson and Joanne Grace (monitoring); plaintiffs' attorneys: Thomas Luebben and Richard Young of Albuquerque, New Mexico; U.S.' attorney: Dean Dunsmore). This is one of the jointly managed ANILCA cases that have been stayed pending final resolution of the jurisdictional issues raised in *John* and the rulemaking petition requesting that federal regulatory authority be extended to state and private lands.

The plaintiffs seek declaratory and injunctive relief requiring the Federal Subsistence Board (FSB) to issue a collective permit allowing the harvest of up to 366,000 pounds of herring roe on kelp (1000 pounds per individual for 366 applicants) from the waters of southeast Alaska as "customary trade." The FSB has taken the position that it lacks jurisdiction over the navigable waters where the harvest would occur. The plaintiffs claim that navigable waters are "public lands" for purposes of ANILCA, or alternatively that the waters and submerged lands within the boundaries of the Tongass National Forest were reserved by the United States as part of a pre-statehood withdrawal. The state has not been named as a party, and has sought unsuccessfully to intervene. In March, 1993, the State Board of Fisheries adopted a "customary trade" regulation allowing sale of up to 32 pounds of herring spawn on substrate by an individual, and up to 158 pounds per household. Also in March 1993, Judge Holland denied plaintiffs' motion for a preliminary injunction, finding that plaintiffs had not shown that they face irreparable injury or a likelihood of success on the merits. On February 12, 1996, in response to the federal defendants' most recent status report, the plaintiffs indicated that they wish to proceed with their alternative claim that the waters and submerged lands of the Tongass are "public lands" because of a pre-statehood withdrawal.

In April 1996, the United States moved to dismiss the complaint because the plaintiffs did not challenge the regulations establishing the FSB, which limit its authority over navigable waters, and for failure to name the state as a defendant. On July 26, 1996, Judge Holland granted the motion to dismiss based on the first theory, with leave to amend to challenge the jurisdictional limitations of the FSB. Judge Holland suggested, however, that the plaintiffs wait to amend their complaint until the federal rulemaking concerning implementation of the Ninth Circuit's *Katie John* decision runs its course. Judge Holland also tentatively indicated that the state will be an indispensable party if the case proceeds.

On October 24, 1996, the plaintiffs filed an amended complaint, and did not name the state as a party. On December 18, 1996, the United States moved for judgment on the pleadings, arguing that the case should be dismissed for failure to join the state as

an indispensable party, because the plaintiffs have not exhausted administrative remedies through the federal rulemaking process, and because the plaintiffs' remaining claims have been rejected by the Ninth Circuit in the *Katie John* decision.


5. *Fish and Game Fund v. Alaska and United States* (United States District Court No. A92-0443 Civ. (Judge Holland); our file no. 221-92-0832; state's attorneys: Joanne Grace and Henry Wilson; plaintiff's attorneys: Edgar Paul Boyko; intervenor attorneys: Mike Stanley and Marc Slorim). This is one of the jointly managed ANILCA cases that have been stayed pending final resolution of the jurisdictional issues raised in *John* and the rulemaking petition requesting that federal regulatory authority be extended to state and private lands.

A coalition of commercial salmon fishermen in the Yukon and Kuskokwim Rivers challenge the Area M (False Pass) fishery also addressed in the *Elim* state court case. Plaintiffs raise various constitutional and statutory grounds, including violation of the Magnuson Act and Title VIII of ANILCA, and seek to have the Secretary of Commerce or Interior take over management of commercial and subsistence fisheries in Area M and in the Y-K region. A coalition consisting of the Peninsula Marketing Association, Concerned Area M Fishermen, Aleutian Borough, and various Area M Native groups have intervened. The state, federal defendants, and intervenors have filed motions to dismiss plaintiffs' second amended complaint. Judge Holland had the matter under advisement until the case was stayed.

6. *Kerzler v. Alaska* (United States District Court No. F90-040 Civ. (Judge Holland); our file no. 221-92-0278; state's attorney: Robert Nauheim; plaintiffs' attorney: none, as Marc Grober has withdrawn). This is one of the jointly managed ANILCA cases that have been stayed pending final resolution of the jurisdictional issues raised in *John* and the rulemaking petition requesting that federal regulatory authority be extended to state and private lands.

This case challenged the closure of the Kantishna and Toklat Rivers to subsistence fishing for chum salmon under state regulations now superseded. On December 7, 1996, the case was dismissed without prejudice as moot.

7. *Kluti Kaah v. Alaska* (United States District Court No. A90-004 (Judge Holland); our file no. 221-90-0433; state's attorney: Robert Nauheim; plaintiff's attorneys: Heather Kendall of the Native American Rights Fund (NARF); Mike Walleri of Tanana Chiefs' Conference (TCC)). This is one of the jointly managed ANILCA cases

MEMORANDUM**State of Alaska****Department of Law****TO: The Honorable Bill Hudson
Alaska House of Representatives****DATE: February 7, 1997****FILE NO:****TEL. NO: 465-2133****SUBJECT House Bill 120****FROM:**
**Bruce M. Botelho
Attorney General**

I support House Bill 120, which authorizes the Attorney General to waive the state's Eleventh Amendment immunity and thereby consent to suit in federal court in very limited cases. The Eleventh Amendment to the United States Constitution provides that a state generally may not be sued in federal court without its consent. This bill would permit the Attorney General to consent to suit in federal court in cases involving the state's title to submerged lands, which will benefit the state in ongoing litigation.

I also support a proposed amendment which would allow the Attorney General to consent to suit in federal court in tort cases in which the state seeks to allocate fault to the federal government or a federal employee under AS 09.17.080. The state needs to be able to litigate, in federal court, tort cases in which federal entities are potentially liable, because the federal government and its employees cannot be sued in state court.

If you have any questions about either of these issues, please do not hesitate to contact my office.

BMB:SDC:kh

MEMORANDUM

State of Alaska
Department of Law

TO: Ron Somerville
Special Assistant

DATE: February 5, 1997

FILE NO: 269-5100

TEL NO: 11th Amendment Bill

SUBJECT:

FROM: Joanne Grace
Assistant Attorney General
Federal Relations, Anchorage

stay to copy
refer
CONFIDENTIAL

This memorandum explains the need of the Department of Law for passage of the draft bill attached.

A group of plaintiffs has sued the United States, claiming that the federal government rather than the State owns the tidelands and territorial sea within the Tongass National Forest (*Peratrovich v. United States*). They seek this judgment because if the United States owns these submerged lands, they constitute "public lands" under the Alaska National Interest Lands Conservation Act ("ANILCA") and are subject to the jurisdiction of the Federal Subsistence Board. The plaintiffs want their purchase of herring roe on kelp from rural residents and resale to other markets to constitute "customary trade" subject to a priority under title VIII of ANILCA.

The plaintiffs have not named the State as a defendant, however. They want title to the submerged lands litigated without the State's involvement. The United States has not answered the complaint, and therefore has not stated whether it believes it owns the submerged lands, but has moved for judgment. One of its bases for judgment is that the plaintiffs have failed to join an indispensable party, the State. The United States argues that the Court cannot decide the issue of title to the submerged lands without the State's participation because of the State's strong interest in them. We agree with this argument and believe the Court will dismiss the case unless the State intervenes.

The State would like to intervene because it wants to litigate title to these lands against the United States. The State would have problems simply filing suit against the United States to quiet title to them, however, because the Quiet Title Act requires as a prerequisite to federal court jurisdiction that the United States "claim an interest" in the property in dispute. The United States has carefully avoided taking any formal position as to whether it

believes it or the State has title to the submerged lands within the boundaries of the Tongass, although Forest Service employees certainly have taken the position that they are federally-owned in dealings with the state. Therefore, this litigation affords the State an opportunity to litigate title to these lands that the State otherwise may not have for many years.

The attorney for the United States has notified the State's attorneys that if the State tries to intervene as a defendant, he will assert a violation of the 11th Amendment. The 11th Amendment provides that federal courts do not have jurisdiction over suits against unconsenting states. A state may waive its 11th amendment immunity, but only by giving an "unequivocal indication" that it consents to suit in a federal court. This authority is held by the legislature, however, which may delegate it to the Attorney General. The federal district court in Alaska twice has found that Alaska has no statute expressly waiving 11th amendment immunity, and that the Attorney General's power to expressly consent to federal jurisdiction "in the context of litigation"¹ does not grant him or her the authority to consent to federal jurisdiction for the trial of a single case. Although the Department of Law thinks it has good arguments that the legislature has delegated this authority, these cases carry some weight as precedent, and we want to eliminate the issue in the *Peratrovich* case and other submerged lands cases.

This is the purpose of the drafted bill. Judge Holland has indicated that he will withhold decision on the United States' attempt to have the case dismissed until February 14 to give the State an opportunity to intervene. The State must have some level of assurance by that date that the bill will pass and the State will be able to intervene.

¹ AS 44.23.020(b) provides in part that the Attorney General shall "represent the State in all actions in which the State is a party" and "perform all other duties required by law or which usually pertain to the office of Attorney General in a state."