

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9883 HOUSE JUDICIARY

Amendment

OFFERED IN THE HOUSE
TO: HCS CSSB 141 (L&C)

BY REPRESENTATIVE

Page 3, line 17 is amended as follows: delete the [.] and insert a [,] and the following language:

"so long as the municipality provides for procurement procedures substantially similar to the competitive sealed bidding or competitive sealed proposal requirements of AS 36.30.100-190 or AS 36.30.200-270 respectively."

not offered

Amendment

#1 5/4

OFFERED IN THE HOUSE
TO: SB 141

BY REPRESENTATIVE

Rumbowski

Delete Section 3.

lines 19 through 26

adopted

House Judiciary Committee
Representative Pete Kott, Chairman
Representatives Green, James, Murkowski, Rokeberg, Brice, and
Kerttula

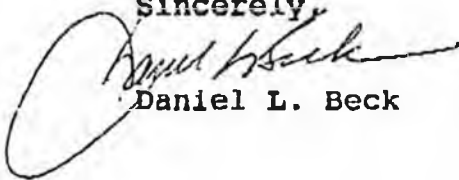
Dear House Judiciary Committee Members,

I am writing to support passage of SSB 141. As a twenty three year resident of Delta Junction, I am concerned with the economic stability and future of our community. We have been in the process of finding a re use of Ft. Greely since the BRAC announced closure over four years ago. The only viable re use has been a prison. Design Build is a concept that fits our situation to a tee. No other corrections groups have stepped forward to indicate an interest. The Planning Local Re Use Agency worked with Alvest over a long period of time to develop our Re Use Plan. In the interest of the common sense, please move this bill on to the floor of the House and support it.

There has been a very vocal group in Delta who oppose the prison. It is my guess is that there are 30 to 40 residents in this group. They are fanatical in their opposition. In no way, shape, or form do they represent the majority of residents in the local community. We have voted on this issue twice. Both times the community supported a private prison. In fact after the City Council was able to negotiate proposed terms many opponents changed their minds.

We have a chance to pull ourselves up after the closure of Ft. Greely. Please support us in that effort.

Sincerely,



Daniel L. Beck (Superintendent of Schools)

Attn: Dana Tolk
MSNBC

From Wayne Carpenter
907 - 895 - 4071

Citizens for Positive Reuse (CPR) is an *ad hoc* committee of Delta residents who are fighting the attempt to establish a private correctional facility at Fort Greely.

We have been reluctantly forced into litigation to achieve this goal. Throughout the attempt to cite a prison in our community we have been denied our basic right of adequate representation. A non-elected and non-representative body, the Delta Greely Community Coalition, was the initial driving force behind the negotiations. Even when the State finally turned to the local Delta City Council it failed to recognize that approximately 70% to 80% of Deltans live beyond the city limits and are not represented by that body..

We will argue in court that the process has been flawed. First, we believe that there are legal problems with the structure of HB 53. We also believe that in their haste to privatize the Alaska corrections system policy makers have ignored some glaring problems. For example, when Governor Knowles signed HB 53 he affirmed the five criteria that the Department of Corrections uses for citing a prison. None of the five criteria can be satisfied at Fort Greely. In fact, on page 29 of the official report is the following statement: "While compliance with state and federal laws could be achieved, the military facilities, remote site, small population and limited resources mean that best corrections practices and policies cannot be met." And finally, State policy makers have not lived up to their responsibility because they have literally dumped the problem of setting State policy onto the City Council of Delta Junction.

We have filed formal complaint in the Alaska Superior Court in Fairbanks. In that complaint are five specific charges. One, the Delta Junction City Council violated its own ordinances pertaining to the procurement process. Two, the City Council did not demonstrate a basis under the State procurement code for seeking a single source agreement. Three, even if the procurement process were invalid, the City Council did not follow the established procedures for securing a sole source agreement. Four, the sequence of events is in the wrong order; i.e., H.B. 53 says that the State and the City may enter into an agreement to allow the

City to negotiate a further agreement with a private contractor. Fifth, the City Council is usurping a State power expressly granted under AS 33, 30, 03

If we are successful with our legal complaint we hope to move the dialogue back to the correct state forum, the legislature and the administration.



ASSOCIATED GENERAL CONTRACTORS of ALASKA

4041 B STREET • ANCHORAGE, ALASKA 99503
P.O. BOX 210609 • ANCHORAGE, ALASKA 99524-0609
TELEPHONE (907) 561-5354 • FAX (907) 562-6118

5. May 1999

To
The House Judiciary Committee
Chairman Representative Pete Kott FAX 465-2819

Subject: House CS for CS for Senate Bill No. 141 (L&C)

Dear Mr. Chairman and committee members:

As a follow-up to my letter on this bill earlier today, I would like to state that AGC of Alaska has no objection to this bill if Section 3 is removed. (or sufficiently modified to address our stated concerns).

Sincerely,

Heinrich Springer
Exec. Director



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
 committee on SB 141 Procurement, dated May 4, 1999
 on subject

I have mixed feelings about turning Fort Greely into a prison, period. If it is to be, then I strongly urge that the State of Alaska be the owner/operator of it.

What my strongest concern relative to SB 141 is, this is the second time in recent months the Alaska State Legislature has proposed or enacted legislation to legalize something government, be it state/borough/city, has already done. In other words cover their hind ends after the fact.

We've watched our so called president make a mockery of the judicial system over the past several years and it appears our own state government is taking lessons from him.

Government should be held to the same standards as the people and should be held responsible/accountable for it's actions. If it breaks the law then it should be required to spend it's day in court and live by the judgement rendered by that court. Then and only then if the legislature deems it appropriate, change the law. Anything less only serves to undermine the image of government in the eyes of the people. Needless to say the image portrayed currently needs help.

Signed: Charles G. Andrews Charles G. Andrews
 Testifier

Representing (Optional) HC 60 Box 3690 Delta Junction, AK 99737
Address 907 895 4041
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY COMMITTEE
 committee on SB 141, dated 5/4/99 committee name
 bill/ subject

When you start allowing retroactive laws, you allow people to break the law and not be accountable for their actions. Didn't we just go through a year of shaking our heads wondering how the President could break the law and not get punished? SB141 (though not on the scale) is the same thing, except SB141 will say the law wasn't broken - no accountability for their original illegal actions. When the coalition signed the original agreement it was known there were laws against "sole source". (There were enough people involved who have worked for government or been around government entities enough to know that contracts go through the bid process.) The City Council continued with the sole source (they should have known better also). Now because a lawsuit has been filed they (city council, special interest groups, Allvest) want SB141 passed so they don't have to account for their illegal actions. . They are not sorry they broke the law, just sorry they were caught.

This also robs the people of due process. This bill acts only in the interest of one group of people and one company (Allvest). How can we expect to keep our elected officials free from the influence of big business if we pass laws that encourages that type of corruption. Passing a law to make an exception to a law after the original law was broken is morally reprehensible. This sets a dangerous precedent.

Signed

May Ellen Lucas

Representing (Optional)

PO Box 1085

Address

Delta Junction, AK 99837

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name
committee on SB 141 , dated 5/4/99
bill/ subject

Hello ,

My name is Ed Larson and I own the IGA FOOD CACHE and Polar Roller Express INC. trucking business. I am very concerned about the progress or "the lack of" that the proposed Prison is running up against.

We as a town, have voted "FOR" the Prison twice now and we still have the minority attempting to sway the support of the state government.

Out of the 52 employees I have all but 4 are in favor. (7.69%) NO 92.31% yes ! We need to move ahead in order to stabilize our economy.

Please help us move ahead now

Sincerely ,

Signed:

Ed Larson
Testifier

Representing (Optional)
P.O. BOX 829

Address
DELTA JCT. AK 99737

Phone No.
(907) 895-4653



Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY COMMITTEE
 committee on SB 141, dated 5/4/99
 bill/ subject committee name

I would like to voice my opposition to passing SB 141 with the added clause capriciously tucked at the end in order to allow the go-ahead on a sole source contract between Allvest and the City of Delta Junction. This law, if passed sends the message that one can just alter the original plan by just adding a clause that benefits whoever stands to gain. I fear that to pass this bill with its new clause will be the start of a new trend in "making exceptions to the rule" to benefit a few who stand to lose big or win big depending on which way the legislative wind blows.

Please keep the integrity of our legislative lawmaking practices strong for the common good for all and not pass this bill.

Signed

Christie L. Mason

P.O. Box 777

Delta Jct. AK. 99737

(907) 895-4904 home

" 873-4215 work

LEGISLATIVE INFORMATION OFFICE

PO BOX 1189

DELTA JCT., AK 99737

PHONE: (907) 895-4236

FAX: (907) 895-5017

FACSIMILE TRANSMITTAL SHEET

TO: House Judiciary	FROM: Liz Sarver
COMPANY: Alaska State Legislature	DATE: 05/04/99
FAX NUMBER: 465-2819	TOTAL NO. OF PAGES INCLUDING COVER: 5
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE: SB 141 Teleconference	YOUR REFERENCE NUMBER:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:



Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY COMMITTEE
 committee on SB 141, dated 5/4/99 committee name
 bill/ subject

The prison is the only economic
 venture in the future of Delta Vt.
 Please don't let a few radicals
 dissuade you from giving us a
 future

Signed:

John Hite John F. Hite
 Testifier

Representing (Optional)
PO Box 1232 Delta Vt. AK 99731

Address
(907) 535-4060

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
 committee on SB 141 Procurement, dated May 4, 1999
 bill subject

I am against SB 141 because what the city council did is illegal and for you to pass legislation to change existing laws to legalize what they did is another wrong. Two wrongs does not make it right. Alvest in their dealings with the coalition and now the city council in my opinion has been and is heavy handed. Do it our way or we're going to sue. To sweeten the pot, Alvest has bribed the city council with money/services etc., to accept these terms and honor the contract signed by the coalition in addition to the threat of taking them to court. How can the city council fight the high paid lawyers that Alvest can hire with seemingly unlimited resources? What about the lawsuits filed against Alvest by other states with regards to their operations of correctional institutions of one sort or another. Also it seems that the city council and I know the coalition had it in their mind that it didn't matter what the people wanted. The previous mayor told individuals and I was standing next to him when he said it, that it didn't matter what the peoples's vote was going to be, he was signing the contract with Alvest, no matter what.

I am against a privately owned/operated prison. Also if Alvest Plans on local hire why are they buying all the quarters buildings at Fort Greely for next to nothing? It just doesn't seem right! There are too many things known about Alvest that bring clouds of doubt on it's operations as well as too many unanswered questions about their integrity to allow opening the door for further operations.

The only ones that will come out ahead in the matter is Alvest. The residents of the Delta area will be the losers whether or not a prison comes to Fort Greely because this issue has torn our community apart. Some of these rifts may never heal. I really don't want to see a privately operated prison at Ft Greely and Greely will never be considered as a possible site for a missile defense site if the prison is there thus the whole state may be a loser also. If a prison has to be there, go about it under existing law currently on the books that govern such matters. Don't change them to accommodate a government body that side stepped the law. Do it right, two wrongs do not make a right.

Signed:

Mary K. Andrews
 Teacher

Representing (Optional) HC 60 Box 3690 Delta Junction, AK 99737

Address 907 895 4041

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY COMMITTEE
 committee on SB 141 , dated 5/4/99
 committee name
bill/ subject

Thank you for the opportunity to testify in writing. I am strongly in favor of this legislation, with particular regard to the fact that it would help get construction of a prison at Fort Greely on track and moving forward. The community has voted twice. We've attended countless meetings and hearings. The opposition remains in the minority here, but the minority is vocal. Reuse of Fort Greely is vitally important to the economic future of this community. Many of those who oppose it believe they can keep the town the same as it was when they came. Change happens and change is certainly going to happen when Fort Greely is drastically down-sized and there are no new jobs to replace those that have gone away. Many of those who oppose this reuse are retired and have their future incomes assured. Those of us who do not have this luxury know the need to have an economic replacement for the military and civilian jobs we will be losing. It is important for individuals and it is extremely important to local businesses.

I urge you to support SSB 141, with Section 7 intact, and to pass it out of Committee with a strong "do pass" recommendation. Thank you again for giving us a chance to testify!

Signed:

Loretta Schooley

Testifier: Loretta Schooley
 Myself, Alaska Motor Coaches, Inc., Sunshine Services, Inc., etc.

Representing (Optional)
P. O. Box 952 (business) P.O. Box 64 (personal), Delta Jct. AR

Address
(907) 895-4550 (work) 895-5059 (home)

Phone No.

LEGISLATIVE INFORMATION OFFICE
 PO BOX 1189
 DELTA JCT., AK 99737
 PHONE: (907) 895-4236
 FAX: (907) 895-5017

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
House Judiciary	Liz Sarver
COMPANY:	DATE:
Alaska State Legislature	05/04/99
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RE:	YOUR REFERENCE NUMBER:
SB 141 Teleconference	

- URGENT
 FOR REVIEW
 PLEASE COMMENT
 PLEASE REPLY
 PLEASE RECYCLE

NOTES/COMMENTS.

Attention House Judiciary Members,

I represent this group of people who are in full support of bill 141. This issue has been voted on twice, and with Fort Greely closing, we have no guarantees of another business moving in the Delta area with this many jobs available. Allvest has been very generous with it's offer to our community. We the undersigned fully support this bill.

Thank You

Sherry Decker Box 249 Delta Jct AK.
Dany Shellham Box 249 Delta Junction, AK
Lordon R. Decker Box 898 Delta Jct AK
Mara A. Colombo General Delivery Delta Jct.
Pi Decker Box 249 DELTA JCT, AK
Pat Decker Box 548 Delta Jct AK



ASSOCIATED GENERAL CONTRACTORS of ALASKA

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5. May 1999

To
The House Judiciary Committee
Chairman Representative Pete Kott

Fax 465-2819

Subject: House CS for CS for Senate Bill No. 141 (L&C)

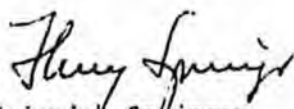
Dear Mr. Chairman and committee members:

Although we have supported the original version of SB 141 in writing by letter dated April 19, 1999 we have concerns about Section 3 of the CS.

We are concerned that the commissioner receives unrestricted discretionary authority (notwithstanding the clause "advantageous to the State") to use a design-build construction contract process without further defining the process. It appears that without reference to the State Procurement Code this is pretty loose. AGC of Alaska does not oppose "design-build" as a procurement method in principle, however, details for the selection process should be structurally addressed. "Single price" is not a sufficient mechanism, because the details for comparison in such a bid package can vary widely and are subject to interpretation and assignment of personal preferences by the commissioner or designees.

If the intent is to solve a problem for a single project it should be addressed in such a manner. Right now our concern is that this Section of the bill opens the door for wide and longrange applicability.

Sincerely,


Heinrich Springer

Executive Director

FAIRBANKS
P.O. BOX 60005 • FAIRBANKS, AK 99706
(907) 452-1809

SOL.DOTNA
P.O. BOX 350 • SOL.DOTNA, AK 99669
(907) 762-7485

STATE OF ALASKA,

May 3, 1999

Governor Tony Knowles,
All Members, Senate and House,
Commissioner's, Corrections,
Health and Social Services

RE: Senate Bill 141

Each of you are respectfully encouraged to review the possibility that passage of Senate Bill 141 may authorize entering into a very costly long term contract, when a much less costly long term contract, or contracts, could result with the same problem solving effects.

Considering the absence of effective and meaningful rehabilitation programs currently operational within Alaska's prison system and, considering the number of first term offenders convicted of non-violent alcohol-drug related crimes, a change of sentencing direction for such offenders from prison or Department of Corrections to long term alcohol-drug abuse rehabilitation programs similar to Nigens Raneta, thru the Department of Health and Social Services - Division of Alcoholism and Drug Abuse.

The cost of incarceration in an alcoholic-drug-abuse treatment facility could range from twenty-five to thirty-five percent less than incarceration in a prison facility, the rehabilitation process in a treatment facility could range from fifty to seventy-five percent more effective than in a prison facility, and the total number of parole violations or commission of new offenses would be thirty-seventy percent less for offenders sentenced to long term alcoholism drug abuse treatment facilities than those committed to the Department of Corrections.

The above per-cent figures are simple estimations but could be proven by the Department of Health and Social Services, Division of Alcoholism and Drug Abuse and the Governors Advisory Council, and probably denied by the Department of Corrections absent corroborating evidence.

Respectfully Submitted,
RONALD C. MALLOTT
P.O. Box 104219
Anchorage, AK 99510
(907) 278-1442

LEGISLATIVE INFORMATION OFFICE

PO BOX 1189

DELTA JCT., AK 99737

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FAX: (907) 895-5017

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SB 141 Teleconference	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

P. O. Box 861
Delta Junction, AK 99737

3 May 1999

Since I will be out of town Tuesday, I am using this note to say that **I am opposed to the clause that was added to Senate Bill 141 that would exempt municipalities from the need to seek competitive bids on projects designed and built by a single contractor.**

Lois Cosgrove

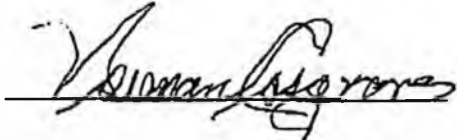
Lois Cosgrove

895-4578

P. O. Box 861
Delta Junction, AK 99737

3 May 1999

Since I will be out of town Tuesday, I am using this note to say that **I am opposed to the clause that was added to Senate Bill 141 that would exempt municipalities from the need to seek competitive bids on projects designed and built by a single contractor.**

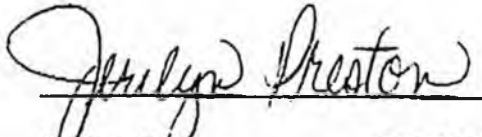
A handwritten signature in cursive script, appearing to read "Norman Cosgrove", written over a horizontal line.

Norman Cosgrove 895-4578

P. O. Box 223
Delta Junction, AK 99737

3 May 1999

Since I will be unable to attend Tuesday's meeting, I am using this note to say that I am opposed to the clause that was added to Senate Bill 141 that would exempt municipalities from the need to seek competitive bids on projects designed and built by a single contractor.



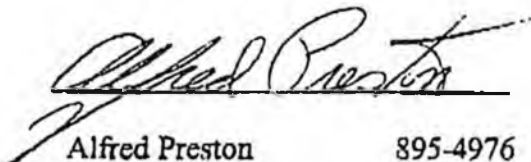
Jerilyn Preston

895-4976

P. O. Box 223
Delta Junction, AK 99737

3 May 1999

Since I will be unable to attend Tuesday's meeting, I am using this note to say that I am **opposed to the clause that was added to Senate Bill 141** that would exempt municipalities from the need to seek competitive bids on projects designed and built by a single contractor.



Alfred Preston 895-4976

LEGISLATIVE INFORMATION OFFICE

PO BOX 1189

DELTA JCT., AK 99737

PHONE: (907) 895-4236

FAX: (907) 895-5017

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RE: SB 141 Teleconference	YOUR REFERENCE NUMBER: [Click here and type reference number]

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NOTES/COMMENTS:



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name
 committee on SB 141 . dated 5/4/99
 bill/ subject

Representatives ? Help this community go "forward not backward." This community and myself would appreciate your support in this matter. Thank you for your time.

Signed:

Jimmy W Mayo

A Citizen of Delta in Support of the Pass

Representing (Optional)
P.O. Box 201 Delta Junction AK 99737

Address
907-895-4610

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY COMMITTEE
committee on SB 141, dated 5/4/99
bill/subject committee name

I AM NOT IN FAVOR OF SENATE BILL 141
I AM OPPOSED TO IT BECAUSE OF ATTACHMENT
PERTAINING TO SOLE SOURCE CONTRACTS, (NO OPEN BID).
I FEEL THE PURPOSE OF THIS ATTACHMENT IS TO
CIRCUMVENT THE INTENT OF CHECKS THAT WERE
IMPLACED TO PREVENT CONFLICTS AND INEQUITIES
THAT ARISE OUT OF SOLE SOURCE ARRANGEMENTS.

Signed: Randy Bealer
Testifier
SELF
Representing (Optional)
PO BOX 796 DELTA JUNCTION AK 99737
Address
907 - 895 - 4523
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
 committee on SB 141, dated 5-4-99
 bill/ subject

Please do not pass this bill which would allow sole source contracting for a prison at Ft. Greely. A competitive bid process should take place. I believe that a prison at Ft. Greely is not in the best interest of our community, and would not be the best use of Ft. Greely. And to allow one company to dictate to us and threaten us with a lawsuit if we don't give the contract to them is just wrong.

Please vote NO. Do not let this ruin our community.

Signed: Janice Templin-Weller
 Testifier

Representing (Optional)
P.O. Box 731 Delta Jct.
 Address
907 895-5128
 Phone No.

To:
House Judiciary
Juneau, Ak.

May 2, 1999

From:
Michael Jenkins
Delta Junction, Ak.

I am writing to voice my opinion in reference to SB 141. I am in full support of a Correctional Facility in our Community. There have been two affirmative votes by the City citizens within one year and the City Council voted 6 to 1 in favor.

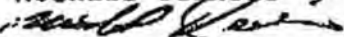
There are some citizens against this project and in their minds, they are right. I cannot argue this with them, although I have with some. This Community is much more important than opposition voters.

The votes have been counted and the majority wants a Correctional Facility on Fort Greely. Our Community and the businesses need the support of a solid base business to create a strong financial base for the future.

I encourage the passing of SB 141 w/sec.7, sole source procurement, to meet the time line established by Fort Greely and the City of Delta Junction to operate a Correctional Facility for the year 2001, which in turn will help those who will be displaced due to the closure of Fort Greely.

Support of the Community for the Correctional Facility is as much needed as the support of the Correctional Facility is to the Community. Both are needed, without question.

Michael Jenkins



D.O.Box 1263

Delta Junction, Ak. 99737

Ph/Fx 907-895-4313



Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY COMMITTEE

committee on SB 141, dated 5/4/99
bill/subject committee name

Members of the Committee:

*When you start allowing retro active laws you allow people to break a law and then correct it later. This is not following the law its robbing the "People" of due process. This bill acts only in the interest of one group of people and one company, Alust. How can we expect to keep our elected officials free from the influence of big business if we make laws which can only encourage that type of corruption. Passing a law to make an exception to a law is distasteful and falls under the premise of EX-POST-FACTO legislation.
Don't allow this to happen!*

Signed:

Donut E. Lucas

Testifier

Representing (Optional)

P.O. Box 1085 Delta Jct. AK 99737

Address

907 873-3262 895-4576

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name
 committee on SB 141 , dated 5/4/99
 bill/ subject

Request your support of SSB 141. This legislation will greatly assist Delta Junction and other small communities in the area of Sole Source contracting. Specifically, this will enable Delta Junction to pursue the building & operation of a private corrections facility to house Alaska's prisoners within the state of Alaska. Because of our unique situation, and the Dept. of Correction's deliberate foot-dragging since SB 53 was passed, we no longer have the required 6 or more months necessary to pursue a Request For Bid.

Additionally, the agreement worked out between the City of Delta Junction and the Delta Corrections Group (Allvest / Cornell), could never be approached in benefits to the community from a RFB process.

There are still a few "concerned citizens" that continue to be very vocal about their opposition to the re-use of Ft. Greely. Even after 2 favorable votes by our residents, they are still writing letters, sending POMs and making calls. Eight of them are now suing the city in a further attempt to squelch the twice voted will of the people.

Please do what you know is right, not only for Delta Junction but for the many other communities that will benefit from this legislation in the future.

Signed: Michael Lawler
 Testifier

Representing (Optional)
PO Box 823 DELTA Junction
 Address
(907) 895-1546
 Phone No.



ASSOCIATED GENERAL CONTRACTORS of ALASKA

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TELEPHONE (907) 561-5354 • FAX (907) 562-6118

5. May 1999

To
The House Judiciary Committee
Chairman Representative Pete Kott

Fax 465-2819

Subject: House CS for CS for Senate Bill No. 141 (L&C)

Dear Mr. Chairman and committee members:

Although we have supported the original version of SB 141 in writing by letter dated April 19, 1999 we have concerns about Section 3 of the CS.

We are concerned that the commissioner receives unrestricted discretionary authority (notwithstanding the clause "advantageous to the State") to use a design-build construction contract process without further defining the process. It appears that without reference to the State Procurement Code this is pretty loose. AGC of Alaska does not oppose "design-build" as a procurement method in principle, however, details fo the selection process should be structurally addressed. "Single price" is not a sufficient mechanism, because the details for comparison in such a bid package can vary widely and are subject to interpretation and assignment of personal preferences by the commissioner or designees.

If the intent is to solve a problem for a single project it should be addressed in such a manner. Right now our concern is that this Section of the bill opens the door for wide and longrange applicability.

Sincerely,

Heinrich Springer

Executive Director

FAIRBANKS
P.O. BOX 60005 • FAIRBANKS, AK 99706
(907) 452-1809

SOLDOTNA
P.O. BOX 350 • SOLDOTNA, AK 99669
(907) 262-2485

TO: Pete Kott
House Judiciary committee

Please support SB 74. I have been in Alaska for 14 years and plan to stay many more. I am an outdoorsman
And enjoy what Alaska has to offer I believe that passing SB74 will help preserve this.

Sincerely,



Larry Hamsley
Box 71613
Fairbanks, AK 99707



Alaska State Legislature

Please enter into the record my testimony to the JUDICIARY
 committee on SB 141 , dated 5-4-99
bill/ subject committee name

DEAR HONORABLE REPRESENTATIVES.

THIS BILL IS COMPLETELY WRONG AND UNETHICAL AND YOU ALL KNOW IT.

IT IS ENTIRELY A "SPECIAL INTEREST" LEGISLATIVE EFFORT TO UNDERMINE OUR LEGAL SYSTEM.

IF THE SUPREME COURT DOES NOT VETO IT BECAUSE OF IT BEING ILLEGAL, IT WILL BECAUSE IT IS COMPLETELY UNETHICAL.

PLEASE. STOP THIS BILL NOW.

THANK YOU

Signed:

R.C. Bouch
Testifier SELF
Representing (Optional) P.O. Box 2
Address 907-895-4448
Phone No.

TOTAL P.01

04/29/99 12:35 TX/RX NO.1703 P.001

TOTAL P.19



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee on SR141, dated 05/04/99
bill/ subject committee name

This is a partly written bill because of the
claws attached. There are still other issues to
be resolved first.

Signed:

W.J. Smith
Testifier
Self
Representing (Optional)
P.O. Box 1083 Delta Jct. AK
Address
895-4759
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name
 committee on SB 141, dated 5/4/99
 bill/ subject

A BAD Bill

DONT WANT THE PRISON

Signed: JOHN CALLAHAN
 Testifier
 Representing (Optional)
324 Delta
 Address
89544110
 Phone No.

Date: Tuesday, May 04, 1999 7:31 AM

Subject: SB 141

I'm forwarding this "Testimony Sheet" to express my outrage at what you politicians are trying to pull off. First, we don't want a prison of ANY KIND in our community, and most of all, we don't want this ALLVEST. We've heard too much about them and their underhanded tactics. IF we wanted a prison, first of all, it should be up for competitive bid - if its a private prison, as in the case of ALLVEST.

I've never had a high opinion of politicians; on a scale of 1 to 10, I might give a used car salesman a 4, and I'd give most politician a 1 or 2. And let me tell you, if you pass on this, we're organizing here, and do everything we can to get you out of office.

There are more people in this community AGAINST a prison, than for one. Regardless of the two phony elections. Have a formal election, with IMPARTIAL vote counters (not from Delta), and you'll see!

Sincerely,

ROBERT L. WEEKS



HC 60 Box 3380
Delta Junction, Alaska 99737 Tel. No. 907-895-5202

5/4/99

Date: Tuesday, May 04, 1999 7:57 AM

Subject: SB 141

I'm sending this to express my opposition to a prison in the Delta area, and most of all, the legislature trying to force a private prison on us without a competitive bid. We don't want a prison of any kind, and we've all heard so much about ALLVEST, that we certainly don't want them.

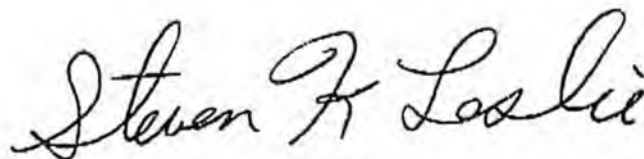
You people are elected by the people, so, if you want to do the right thing, you'll stop this now!

Sincerely,

STEVEN K. LESLIE

P.O. Box 63
Delta Junction, Alaska 99737

Tel. 907-895-5202



5/4/99

Subject: SB 141

I'm sending this message to voice my strong opposition to a prison in our community, and especially the way the Legislature is working with ALLVEST to sneak this bill through. We don't want a prison period, and most of all, we don't want ALLVEST.

This action the legislature is trying to force upon us, at least, without a competitive bid, convinces me that possibly some Legislators have a vested interest in ALLVEST.

Sincerely,

ROSANN M LESLIE



P.O. Box 63
Delta Junction, Alaska 99737

Tel. 907-885-5202

5/4/99



Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY
 committee on SB 141, dated 5/4/99 committee name
bill/ subject

Senate Bill 141 is A Bad
 Bill should redone

Signed:

Dan M. [Signature]
 Testifier
Myself
 Representing (Optional)
Pc 189 BELLALET AK
 Address
907 895 4853
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY COMMITTEE

committee on SB 141, dated 5/4/99 committee name
bill/ subject

*I DO NOT AGREE WITH SB 141, AND I AM
AGAINST SOLE SOURCE AGREEMENTS*

Signed:

James O'Hara
Testifier

Representing (Optional)

Address PO 1334 DELTA AK

Phone No. 895-1921



Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY COMMITTEE

committees on SB 141, dated 5/4/99
bill/ subject committee name

I don't Agree with Admendment 141
Pertaining to Sole source Contracts.

It's A SOURCE OF PROBLEMS!

IE: KICK BACKS

PAYOFFS

ARRANGEMENTS WITH FRIENDS OR RELATIVES

JUST TO NAME A FEW!!!

Best FAIR Deal CAN only be obtained by
Competition.

Go out FOR BID!

Signed:

Gary L. Gerner

Testifier

SELF & FAMILY

Representing (Optional)

2582 MOOSERVA LN.

Address

895-4125

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY COMMITTEE

committee on SB 141, dated 5/4/99, committee name _____
bill/ subject _____

I strongly urge you to support SSB141, with section 7 intact. This bill will help get construction of a prison at Ft. Greely going forward. The people of Delta have voted twice in favor of the prison. Unfortunately a very vocal minority insists on muddling the water. Please help this community that has twice now said they want this prison. Thank you.

Signed:

Kim Edward Purucker
Testifier

KIM EDWARD PURUCKER
Representing (Optional)

Address
P.O. Box 988 Delta, Jct. AK

Phone No.
907-895-1991



Alaska State Legislature

Please enter into the record my testimony to the Judiciary
committee name
committee on CSSB 141, dated May 4, 1999.
bill/ subject

(Continued)

As for the loss of jobs in our community - for those who wish to remain in the area, there will be businesses and support industries built around Pogo. There is a very strong possibility of a refinery being built in the Delta area soon, which will provide good jobs that pay very well.

I encourage you to please scrutinize your bills and pass good ones - but please do not be perpetrator, judge, jury and executioner for special interests. As Honest Abe once said, let's have gov't "of the people, by the people and for the people."

Thank-you

Signed:

Russ Bowdre
Testifier

Representing (Optional)
P.O. Box 1048
Address
895-4328 pg 2 of 2
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Judiciary
committee name
 committee on CSSB 141, dated May 4, 1999.
bill/ subject

My name is Russ Bowdre. Thank-you for the privilege of addressing this committee. I'll get right to the point. Since this is special interest legislation, we need to decide if it is good for Delta Jct. I contend that it is not, mainly because it attempts to validate an illegal and very bad contract my city was coerced into signing with Allvest and company. The contract is contested on legal points and should be decided in court - not fixed by the legislature. Do we all have the privilege of changing the law after purposely and knowingly violating it? Allvest lobbied for HB 53 last year and never contested the competitive bid portion of it. Is the legislature prepared to waste the states money in a battle to the Supreme Court for this issue and this corporation? Many have joined together in the suit to void this contract because of the very bad business deal it is for our city and community. Obviously the lawsuit is legitimate or this legislation, with its retroactive clause, would not be before you now. This is a gross misuse of our legislature by special interests.

Signed: Russell Bowdre Russ Bowdre
 Testifier

Representing (Optional)
P.O. Box 1048 Delta Jct.
 Address
895-4328 pg 1 of 2
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY COMMITTEE
 committee on SB 141 , dated 5/4/99 committee name
bill subject

I am against a prison in Delta because I believe it will have a negative impact on the community in the long run. People will no longer feel "safe" as they do now. The grade 'A' community that exists now will go to a "grade B" as the ref-ref moves in. Think about it: what type of people will be attracted to a prison community??
 What about property value? "Prison land!! with a prime view of the prison grounds! Live next to RAPISTS and murderers!"

Remember many of these prisoners will be eligible to compete for your jobs, because these will no longer be maximum security prisoners.

I say NO

Signed:

William J. Stevens
 Testifier

Representing (Optional)

Address 3mi 1340 Alutka Highway

Phone No. 873 4642



Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY COMMITTEE
 committee on SB 141, dated 5/4/99 committee name
bill/ subject

MY NAME IS JIM STOREY, A 25 YEAR RESIDENT OF DELTA JUNCT. I WORK AT FORT GREELY, I AM NOT IN FAVOR OF CONVERSION OF THE INSTALLATION TO A PRIVATE PRISON IN ANY FORM. I DO NOT THINK THAT DELTA JUNCTION IS A LARGE ENOUGH POPULATION CENTER TO ABSORB THE IMPACT OF A PRISON OPERATION. WEVE ALREADY HAD A HARD HIT RELATIVE TO THE AGRICULTURE EFFORT THAT DONT LIVE UP TO EXPECTATIONS. SOMETHING SEEMS WRONG WITH THE PRISON PROJECT PROMOTION EFFORT WHICH BY AND LARGE IS THE DELTA SCHOOL SYSTEM WHICH BY ITS NATURE HAS MULTIPLE TENTICLES, E.G. TEACHING STAFF PAST AND PRESENT, BOARD MEMBERS, BUS OWNERS MECHANICS AND DRIVERS, AND ON AND ON. THE GROUP HAS DEVELOPED ITS DIRECTION AND WITHIN THE GROUP ITS UNPOPULAR TO DEVINTE. OF LATE THE PRISON PROPONENT GROUP SEEMS SOMEWHAT SUBDUED. MY GUESS IS THAT THE PERCEIVED SITUATION IS CONNECTED TO THE RECENTLY AVAILABLE AND BROADCASTED INFORMATION IDENTIFYING MISMANAGEMENT AND MONUMENTAL PROBLEMS WITH EXISTING PRIVATE PRISONS SUCH AS YOUNGSTOWN OHIO. IDEAS OF ENTERPRISE AND ADVANCEMENT ARE GREAT, BUT THROUGHOUT OUR GREAT COUNTRY THERE ARE LARGE AND SMALL TOWNS. THAT JUST THE WAY IT IS.

Signed:

Testifier Jim Storey
 Representing (Optional) _____
 Address Po Box 1082
 Phone No. 895-4863



Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY COMMITTEE
 committee on SB 141 , dated 5/4/99
 bill/ subject committee name

I Am writing in opposition to the proposed prison deal. IT SEEMS VERY APPARENT THAT THIS PROPOSITION HAS DRIVEN A WEDGE BETWEEN MEMBERS OF WHAT WAS A VERY CLOSE COMMUNITY. MANY OF THE PEOPLE WHO ARE SUPPORTING THIS ENDEAVOR SEEM TO HAVE ONLY THEIR OWN WELL BEING TO JUSTIFY THEIR OPINIONS, AND NOT THOSE OF THE COMMUNITY. ALREADY WE ARE FREGED WITH THE POSSIBILITY OF LAW SUITS, FROM A COMPANY THAT WISHES TO HELP US? IN MY VIEW THIS IS NOT THE TYPE OF ORGANIZATION I CAN HAVE TRUST IN FOR THE FUTURE OF DELTA JCT. THE INFORMATION PASSED OUT TO THE COMMUNITY HAS CHANGED MANY TIMES, SINCE THIS IDEA WAS BORN WITH MANY UNTRUTHS AND HALF TRUTHS BEING THE CORE. HOW CAN ANYTHING FROM THIS ORGANIZATION BE TRUSTED. I HAVE RESIDED HERE FOR 10 YRS AND PLAN TO STAY. I FEEL THAT THE RESIDENTS HERE HAVE THE DESIRE AND MOTIVATION TO MAKE DELTA PROFITABLE COMMUNITY WITHOUT THE UNNECESSARY BURDEN THE PRISON WILL PLACE ON US.

Signed:

DAVID A. HOFFMAN *CAHNL*

Testifier

Representing (Optional)

P.O. BOX 1452 DELTA JCT AK

Address

895-6288

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY COMMITTEE
 committee on SB 141, dated 5/4/99, committee name
bill/ subject

I am categorically opposed to the building of a private prison on Ft Greely. Although I am a strong proponent of the free enterprise system and believe that "the best government is the government that governs least" there are things that only government should do. When a person is imprisoned it is because that person is deemed to have committed an offense against society and is delivered to the state to be punished. The government is charged with protecting society from the prisoner and safeguarding the prisoner while in the custody of the state. This is not an efficient system. It was not meant to be. The purpose of private enterprise is to make money. Period. Managers who work for the private enterprise will be judged on the profitability of the prison. The private enterprises priority of making money and the states responsibility to protect both society and the prisoner will often be at cross-purposes. You do not need much intelligence to see the conflict of interest. No matter who runs the prison the state will ultimately be responsible for what happens in the prison. The history of private prisons in this country goes much further than the current debate. Prisoners in the South were leased to farms and mines. This relieved the state of the responsibility of caring for the prisoners and allowed the prisoners to earn their keep. It was an efficient system until the horrific conditions that the prisoners were forced to live in were exposed. Recent use of private prisons in Texas and Ohio have resulted in lawsuits against the STATES who contracted to the private prisons. Remember, Alaska will have to bear the costs of any misdeeds by the private prison. You cannot contract responsibility.

I am also opposed to the prison from a strictly common sense point of view. It is my understanding that crime is going down, so will there be a need for the additional prison space? Will the state agree to fund the prison regardless of the numbers of prisoners in the state system? Does anyone really think that you can live in Delta on the wages proposed by Alvest? While the prison and its operators will no doubt be a boon to the people already dependent on government (the school district employees, the school bus company and of course the welfare/social service administrators) I don't think the true cost to the local community and the state have been analysed. If I were going to build a prison I would place it where there was already an existing social support infrastructure. I would not build a prison in an isolated community and then find myself having to recreate state services that are already available elsewhere at less cost. While in the short run the building of a prison in Delta may hold out the promise of low paying jobs, in the long run the state will be responsible for what goes on in the prison and for building the support infrastructure that will be needed for the prison to function in this community. The only people to profit in from a prison in Delta will be lawyers and the paid consultants. When all is said and done, Delta is a little town along way from anywhere. Delta (like most of Alaska) has gone through periods of boom and bust. Good leaders would recognize this and attempt to plan a future that makes wise use of revenues during the fat years so we can make it through the lean ones. Delta has already had one huge white elephant in the past 20 years (remember all that grain the learned consultants said was going to come out of the Barley project?), we don't need another.

Signed:


Jerry E. Reagen
 Testifier

Representing (Optional)
POB 425 Delta Junction AK 99737
 Address
907-895-5520
 Phone No.

May 4, 1999

I strongly oppose Senate Bill 141. It is wrong and those working with it firsthand know that it is wrong. What has happened to our politicians involved with pushing this Bill through? Don't they know that this is not fair play? What has happened to the things that count in a true leader of our community? Is our America, our Alaska, our Delta Junction, too far gone?

A disgusted voter,


Nancy Moxley
P. O. Box 954
Delta Junction, AK 99737

FAX to the Senate Judiciary Committee via LIO 895-5017

From: Sharon Haney Wright
P.O. Box 225
Delta Junction, Alaska 99737

Date: May 4, 1999

RE: SB 141

Dear Senators: It would be a travesty of the political process to pass this bill! This bill attempts to retroactively change the law to accommodate the interests of one business. It is not in the best interests of the people of the State of Alaska to go for sole source bidding. Further, the bill disenfranchises the voters by not allowing them to make this choice themselves. I oppose private prisons; the efforts Allvest and its cohorts have made to get their way at all costs, ethics and conscience be damned, are proof of their interest in the bottom dollar, not the individuals they need to serve. It also encourages lawmakers to accept lobbying favors and political power of questionable origin and motive. Please - DO NOT PASS THIS BILL!

Sharon Haney Wright



Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY
 committee on SB 141, dated 5/4/99
 bill/ subject committee name

*I would like to recommend to
 the House Judiciary committee not
 to pass SB 141. It not only is
 unethical for sole source it also
 seems highly illegal as well.*

Signed: Lori Cummings
 Testifier

Self
 Representing (Optional)

Box 1692, N. to Pt., AK 99737
 Address

(907) 925-4323
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name
committee on SB 141, dated 5/4/99
bill/ subject

I am against SB 141
And Sec 7

Signed: Barbara Goss
Testifier

Representing (Optional)
P.O. Box 755 Delta Junction Alaska
Address

Phone No. 895-4064



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee on SB 141, dated 5/4/99
bill/ subject committee name

I am opposed SB 141

AND SEC 7

Signed:

[Signature]
Testifier

Representing (Optional)
PO. 755 Dept. Sec. T. Alaska

Address
707-895-4064
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY
 committee on SB 141, dated 5/4/99
bill/ subject committee name

Please don't vote in favor of SB141. The change of the bill to include sole source contracts (Sec.7) and have it retroactive (Sec.8) does a disservice to the Delta Jct. community. A prison was voted for by a little more than half of Delta and a little less than half voted against the prison. But many people that voted for the prison at that time did so believing that there would be competitive bidding on the prison. The prospect of having a prison in our community through a sole source agreement bothers a lot of people. The results of a vote today may well be the reverse of the last vote I don't expect there to be another vote. Our only form of input is through these records of testimony. Rules of a game are set at the beginning so everyone knows the regulations that everyone will have to abide by. Changing the rules to benefit half of those playing is not fair to the other half. Please vote no on SB141. Thank you.

Signed:

Vicki Bealer

Testifier
myself

Representing (Optional)

POB 796 Delta Jct 99737

Address

895-4523

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee on SB 141, dated 5/4/99
bill/ subject committee name

I am against bill SB 141

Signed:

Ronald S. Pirby
Testifier

Representing (Optional)

Box 290 Delta Jeton 99737

Address

895-1947

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee on SB141, dated 5/4/99
bill/ subject committee name

I am against bill SB141

Signed:

Lydia S. Kerby
Testifier

Representing (Optional)
Box 290 Delta Jct. AK 99737

Address
907-895-1947

Phone No.

SB

162

1-LS0485M
Chenoweth
3/6/00

HOUSE CS FOR CS FOR SENATE BILL NO. 162()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the rule against perpetuities, nonvested property interests, and
2 powers of appointment; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 13.12.702(d) is amended to read:

5 (d) Survival by 120 hours is not required if

6 (1) the governing instrument contains language dealing explicitly with
7 simultaneous deaths or deaths in a common disaster and that language is operable
8 under the facts of the case;

9 (2) the governing instrument expressly indicates that an individual is
10 not required to survive an event, including the death of another individual, by a
11 specified period or expressly requires the individual to survive the event by a specified
12 period, [;] but survival of the event or the specified period must be established by clear
13 and convincing evidence;

14 (3) the imposition of a 120-hour requirement of survival would cause

1 a nonvested property interest or a power of appointment to fail to qualify for validity
 2 under AS 34.27.051 or 34.27.100 [AS 34.27.050(a)(1), (b)(1), OR (c)(1)] or to become
 3 invalid under AS 34.27.051 or 34.27.100, [AS 34.27.050(a)(2), (b)(2), OR (c)(2);] but
 4 survival must be established by clear and convincing evidence; or

5 (4) the application of a 120-hour requirement of survival to multiple
 6 governing instruments would result in an unintended failure or duplication of a
 7 disposition, [;] but survival must be established by clear and convincing evidence.

8 * Sec. 2. AS 13.36.157(a) is amended to read:

9 (a) Unless the terms of the instrument expressly provide otherwise, a trustee
 10 who has the absolute discretion under the terms of a testamentary instrument or
 11 irrevocable inter vivos agreement to invade the principal of a trust for the benefit of
 12 the beneficiary who is eligible or entitled to the income of the trust may exercise
 13 without prior court approval the trustee's discretion by appointing part or all of the
 14 principal of the trust in favor of a trustee of a trust under an instrument other than that
 15 under which the power to invade was created if the exercise of this discretion

16 (1) does not reduce any fixed income interest of an income beneficiary
 17 of the trust;

18 (2) is in favor of the beneficiary of the trust; and

19 (3) does not violate the limitations on validity under AS 34.27.051 or
 20 34.27.100 [AS 34.27.050(a)].

21 * Sec. 3. AS 34.27 is amended by adding new sections to read:

22 **Sec. 34.27.051. Statutory rule against perpetuities.** (a) A general or
 23 nongeneral power of appointment not presently exercisable because of a condition
 24 precedent is invalid unless, within a period of 1,000 years after its creation, either the
 25 power is irrevocably exercised or the power terminates. For purposes of this
 26 subsection, the period in which the power must be exercised or the power terminated
 27 is computed from the time of creation of the original power of appointment under
 28 which a subsequent general power of appointment not presently exercisable or a
 29 subsequent nongeneral power of appointment not presently exercisable was created.

30 (b) If a nongeneral power of appointment is exercised to create a new general
 31 power of appointment, all property interests subject to the exercise of that new general

1 power of appointment are invalid unless, within 1,000 years after the creation of the
2 new general power of appointment, the property interests that are subject to the general
3 power of appointment either vest or terminate.

4 (c) If a nongeneral power of appointment is exercised to create a new or
5 successive nongeneral power of appointment, all property interests subject to the
6 exercise of that new or successive nongeneral power of appointment are invalid unless,
7 within 1,000 years from the time of creation of the original instrument or conveyance
8 creating the original nongeneral power of appointment that is exercised to create a new
9 or successive nongeneral power of appointment, the property interests that are subject
10 to the nongeneral power of appointment either vest or terminate.

11 **Sec. 34.27.053. Savings provision.** A property interest that, under
12 AS 34.27.051, becomes invalid shall, upon the expiration of the 1,000-year period set
13 out in AS 34.27.051,

14 (1) if income from the property interest is payable

15 (A) to one person, be distributed to the person to whom the
16 income is then payable;

17 (B) to more than one person, be distributed to the persons to
18 whom the income is then payable

19 (i) in the shares to which the persons are entitled to the
20 income; or

21 (ii) equally among all persons who are entitled to the
22 income if shares are not specified;

23 (2) if income from the property interest is payable in the discretion of
24 a trustee and is payable

25 (A) to one person, be distributed to the person then eligible to
26 receive the income; or

27 (B) to more than one person, be distributed to the persons then
28 eligible to receive the income

29 (i) in the shares to which the persons are entitled to the
30 income; or

31 (ii) equally among all persons who are entitled to the

1 income if shares are not specified; or

2 (3) when there is no person then living to whom the property interest
3 may be distributed under (1) or (2) of this section, be payable to one or more
4 organizations described in 26 U.S.C. 2055(a) (Internal Revenue Code), or to one or
5 more organizations described in any successor provision to 26 U.S.C. 2055(a), in the
6 shares or proportions that the trustee or trustees then acting may determine.

7 * Sec. 4. AS 34.27.070 is amended to read:

8 **Sec. 34.27.070. Application [PROSPECTIVE APPLICATION].** (a) Except
9 as extended by (b) of this section, **the former provisions of AS 34.27.050 - 34.27.090**
10 **apply to a nonvested property interest or a power of appointment that is created on or**
11 **after January 1, 1996, and before April 2, 1997.** For purposes of this **subsection**
12 **[SECTION], a nonvested property interest or a power of appointment created by the**
13 **exercise of a power of appointment is created when the power is irrevocably exercised**
14 **or when a revocable exercise becomes irrevocable.**

15 (b) If a nonvested property interest or a power of appointment was created
16 before January 1, 1996, and is determined in a judicial proceeding, commenced on or
17 after that date, to violate this state's rule against perpetuities as that rule existed before
18 January 1, 1996, **or if a nonvested property interest or a power of appointment**
19 **was created on or after January 1, 1996, but before April 2, 1997, and is**
20 **determined in a judicial proceeding, commenced on or after that date, to violate**
21 **this state's rule against perpetuities as that rule existed, on or after January 1,**
22 **1996, and before April 2, 1997,** a court, upon the petition of an interested person,
23 may reform the disposition in the manner that most closely approximates the
24 transferor's manifested plan of distribution and is within the limits of the rule against
25 perpetuities applicable when the nonvested property interest or power of appointment
26 was created. **For purposes of this subsection, a nonvested property interest or a**
27 **power of appointment created by the exercise of a power of appointment is**
28 **created when the power is irrevocably exercised or when a revocable exercise**
29 **becomes irrevocable.**

30 * Sec. 5. AS 34.27.070 is amended by adding a new subsection to read:

31 (c) The provisions of AS 34.27.051 apply to a trust instrument or conveyance

1 executed on or after April 2, 1997, if the trust instrument or conveyance creates a
2 contingent power of appointment or nonvested property interest subject to the exercise
3 of a power of appointment that creates a new or successive power of appointment.

4 * Sec. 6. AS 34.27.075 is amended to read:

5 **Sec. 34.27.075. Relationship to [SUPERSESSSION OF] common law rule.**
6 **AS 34.27.051 - 34.27.100** [AS 34.27.050 - 34.27.090] supersede the rule of the
7 common law known as the rule against perpetuities. **The common law rule against**
8 **perpetuities does not apply in this state.**

9 * Sec. 7. AS 34.27 is amended by adding a new section to read:

10 **Sec. 34.27.100. Perpetuities and suspension of the power of alienation. (a)**

11 A future interest or trust is void if, as to property subject to the future interest or trust,

12 (1) the future interest or trust suspends the power of alienation of the
13 property, the suspension of the power is for a period of at least 30 years after the death
14 of an individual alive at the time of the creation of the future interest or trust, and the
15 suspension of the power of alienation occurs in the document creating the future
16 interest or trust;

17 (2) the future interest or trust suspends the power of alienation of the
18 property and the suspension of the power is for a period of at least 30 years after
19 termination of a power to revoke the trust;

20 (3) the future interest or trust suspends the power of alienation of the
21 property, the future interest or trust is created by the exercise of a general power of
22 appointment, whether by will or otherwise, and the suspension of the power is for a
23 period of at least 30 years from the time the power of appointment is exercised; or

24 (4) the future interest or trust suspends the power of alienation of the
25 property, the future interest or trust is created by the exercise of a power of
26 appointment that is not a general power of appointment, and the suspension of the
27 power is for a period of at least 30 years from the time of creation of the original
28 instrument or conveyance creating the original power of appointment that was
29 exercised to create a new or successive nongeneral power of appointment.

30 (b) For purposes of (a) of this section, the power of alienation

31 (1) is suspended if there is no person alive who, alone or in

1 combination with others, can, as to property that is part of the future interest or trust,
2 convey

3 (A) title to real property in fee; or

4 (B) complete ownership of personal property.

5 (2) is not suspended by a future interest or trust or by an equitable
6 interest in a trust if

7 (A) the trustee of the trust has power, either express or implied,
8 to sell the property; or

9 (B) at least one person alive at the time the trust was created
10 has an unlimited power to terminate the trust.

11 (c) The provisions of (a) of this section do not apply to a transfer

12 (1) made outright or in trust for a charitable purpose;

13 (2) to a literary or charitable organization;

14 (3) to a veterans' memorial organization; or

15 (4) to a cemetery corporation, society, or association.

16 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section
17 to read:

18 **RETROACTIVE EFFECT.** AS 34.27.070(c), added by sec. 5 of this Act, is retroactive
19 to April 2, 1997, and applies to a trust instrument or conveyance executed on or after that date
20 upon the conditions set out in that subsection.

21 * Sec. 9. AS 34.27.050, 34.27.055, 34.27.060, 34.27.065, and 34.27.090 are repealed.

22 * Sec. 10. This Act takes effect immediately under AS 01.10.070(c).

of
Alaska's
trust
law

In April of ~~1997~~ ^{the legislature} ~~1997~~, ~~trust law~~ ^{AS} amended AS 34.27.050(a) to include (3) which states that the RAP is inapplicable to those trusts where a trustee has the ability to make a distribution to a person who is living when the trust is created.

In adding this language the AK. Legislature ~~is~~ ^{has} abolished the RAP. _{ineffect}

This follows from the fact that ~~it~~ in almost every case a trustee can make the above-described distribution.

This abolition is a significant reason for the growth of our states trust business since 1997.

By rendering RAP ineffective as applied to trusts it is possible to create a trust which can continue forever.

With careful drafting perpetual trusts can avoid all federal estate tax and continue to grow for the use of successive generations.

- This tax advantage has caused ~~many~~ 10 states to abolish the RAP, ~~to~~ and 5 more have pending legislation that would abolish the RAP.
- This legislation seeks to fix a ~~problem~~ problem that was discovered with the way section (3) was drafted.
- The problem which is affectionately known as the "Delaware tax trap" would be fatal to a large number of perpetual trusts that have been created since 1997.
- In a nutshell, and our resident expert Steve Greek will be able to explain this in more detail, the problem is that anyone who creates a perpetual trust usually wants to give the trust beneficiaries a power to direct the disposition of assets at their deaths as a means of making the trust more flexible. Under present law →

if a beneficiary exercises a special power of appointment by directing that the trust assets be continued in trust for the benefit of an individual & that individual is also given a special power of appt. then the trust's assets will be subjected to either estate or gift tax liability

• The fix to this problem is included in the language of SB 1602 and ^{would} enable AK trust to avoid the trap by requiring that in the limited circumstance where a spec. power of appt. is exercised to create a successive power of appt, the trust term must rest 1000 yrs from the date of the creation of the original trust instrument.

• A trust which can last 1000 yrs is, practically speaking akin to being perpetual

Sponsor Statement

SB 162

In April of 1997, our legislature amended AS 34.27.050(a) by including (3) which states the RAP is inapplicable to those trusts where a trustee has the ability to make a distribution to a person who is living at the time the trust is created. Because in almost every case a trustee can make the above-described distribution, it was generally accepted we had abolished the RAP, if not explicitly, at least implicitly. Abolishing the RAP is a significant reason for the growth of our state's trust business since 1997. By rendering the RAP ineffective as applied to trusts, it is possible to create a trust, which can continue forever. These trusts are frequently referred to as "perpetual trusts" or "dynasty trusts." With careful drafting and the proper allocation of generation skipping tax exemption "perpetual trusts" can avoid all federal estate tax and continue to grow and made available for the use of successive generations. As a result many states have seen it in their interest to abolish the Rule Against Perpetuities. Arizona, Delaware, Idaho, Illinois, Maine, Maryland, Ohio, Rhode Island, South Dakota, and Wisconsin have seen it in the interest to abolish the Rule Against Perpetuities. Colorado, Florida, Iowa, New Jersey, Nevada all have pending legislation to abolish the Rule Against Perpetuities.

However, after we "abolished" the RAP in April of 1997 it was discovered we had also inadvertently stumbled into a potential estate or gift tax problem under sections 2041(a)(3) or 2512(d) of the Internal Revenue Code, also known as the "Delaware Tax Trap." The tax problem is very difficult to understand but it exists with any perpetual trust in which a beneficiary is given a special power of appointment. Anyone who creates a perpetual trust usually wants to give the trust beneficiaries a power to direct the disposition of the trust assets at their deaths as a means of making the trust flexible and adaptable so the needs of future generations can be adequately served. This power to direct the disposition of trust assets at death is referred to as a special, limited or non-general power of appointment. Under our present law if a beneficiary exercises a special power of appointment by directing that the trust assets be continued in trust for the benefit of an individual and that individual is also given a special power of appointment then the trust assets will be subjected to either estate or gift tax liability. A large number of perpetual trusts created in Alaska since 1997 are vulnerable to this problem. It should

10
states
have
abolished

5 others
are

be noted that many other states that have abolished the Rule Against Perpetuities also stumbled into the Delaware Tax Trap. The technical nature of the problem makes it truly a trap.

Fortunately a relatively simple solution is at hand. The mechanics of the Delaware Tax Trap can be avoided by requiring that in the limited circumstance where a special power of appointment is exercised to create a successive power of appointment the trust property must eventually vest. This Bill states that in the limited circumstance described above, the date in which trust property must eventually vest is 1000 years from the date of creation of the original trust instrument. A trust, which can last 1000 years, is practically speaking akin to being perpetual. For all other purposes the Rule Against Perpetuities can be abolished and this Bill does exactly that.

Passage of this Bill is necessary if Alaska is to remain a suitable place for all individuals, resident and non-resident alike, who have or would want to create a perpetual trust. On the other hand, failure to pass this Bill not only puts existing perpetual trusts at risk but would eliminate Alaska as a suitable place to create perpetual trusts. This would prove harmful to not only our own citizens but also this legislature's effort to build a viable trust industry in this state. Lastly failure to pass this Bill could also have the unintended consequence of drawing Alaskan capital away from this state, as many wealthy Alaska citizens desiring to create perpetual trusts would invariably seek out other states where they are not exposed to the dangers of the Delaware Tax Trap.

- 1 -

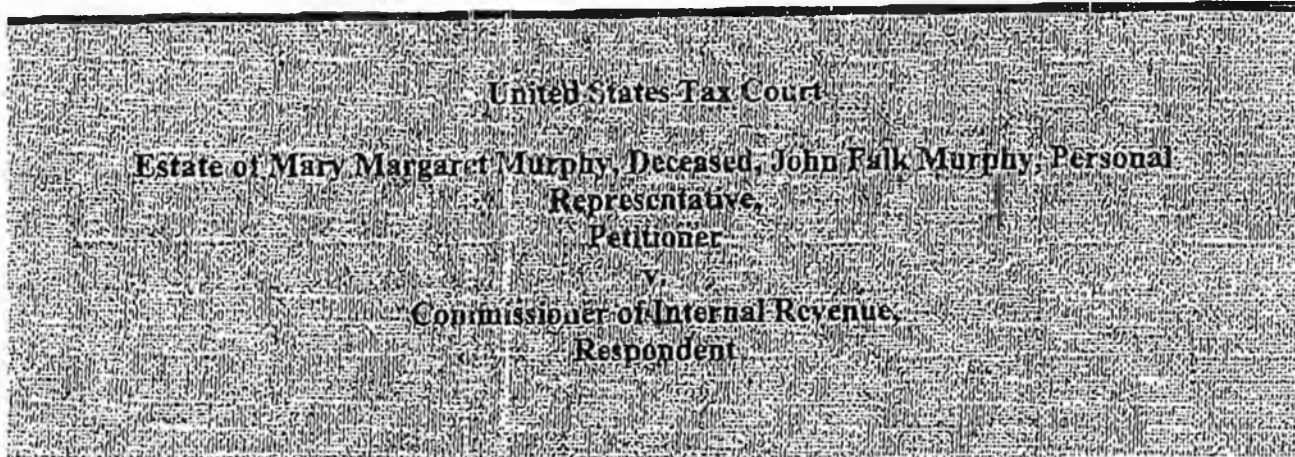
United States Tax Court
Estate of Mary Margaret Murphy, Deceased, John Falk Murphy, Personal Representative, Petitioner
Commissioner of Internal Revenue, Respondent

Docket No. 3880-76
Date of Decision: January 29, 1979
Judge: Fay.
Parallel Citations: 71 T.C. 671

Summary
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The decedent was the donee of a special power of appointment over certain property. At her death, she exercised this power by creating in her husband a second power of appointment with respect to the same property. *Held:* Under Wisconsin's rule against perpetuities, the perpetuities period for an interest appointed under a special power is computed from the date of the power's creation rather than from its exercise. Thus, under these facts, sec. 2041(a)(3), I.R.C. 1954, does not apply to the decedent's exercise of her special power.

Full Text link to
Murphy, Mary Margaret, Estate of v. Comm.
on the Court Opinions Disc
(If you do not already subscribe to this disc and would like to do so, please call 1-800-955-2444.)



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Full Text

Decision will be entered for the petitioner.

Thomas G. Ragatz, for the petitioner. Scott R. Cox, for the respondent.

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OPINION

Respondent determined a deficiency of 39,254.45 in the Federal estate tax of the Estate of Mary Margaret Murphy. The issue presented is whether the value of certain property over which the decedent possessed a power of

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appointment is includable in her gross estate under section 2041(a)(3). /1/

All of the facts have been stipulated and are so found.

Petitioner John Falk Murphy (hereinafter referred to as petitioner or John) is the duly appointed personal representative of the Estate of Mary Margaret Murphy. At the time of filing his petition herein, petitioner resided in Madison, Wis.

Under the terms of his will, /2/ Ross W. Harris (Ross), the father of Mary Margaret Murphy (the decedent), transferred certain property to the First National Bank of Madison, Madison, Wis., as trustee. The beneficiaries of the trust thus established (hereinafter referred to as the Harris Trust) were Ross' wife, Maude Johnson Harris (Maude), and the couple's two daughters, Josephine H. Schuele (Josephine) and the decedent. The terms of the Harris Trust provided that the trust income was to be paid in approximately equal shares to each beneficiary for her life. /3/ The trust was to continue until the earlier of the death or remarriage of Maude. Upon the occurrence of either of these events, the trust would be terminated and the corpus distributed as follows:

One-half thereof to each of my daughters, Mary Margaret Murphy and Josephine H. Schuele if living, but if either of them shall not then be living the share of such Trust Estate to which she would have been entitled if living shall be paid and set over to such person or persons (not, however, including her own estate, her creditors, or the creditors of her estate), in such shares, and in such manner as my said daughter, by her last will, therein making specific reference to the provisions hereof, shall appoint and direct; but in the absence of her exercise of such power of appointment in the manner herein provided such share of the Trust Estate shall be paid and set over to those persons who, under the laws of the State of Wisconsin, would be entitled to take such property in the event of her death intestate on that date.

Prior to the termination of the Harris Trust, the decedent, on May 9, 1972, died testate. Under the provisions of her will, the decedent exercised the power of appointment over her portion of the Harris Trust. In so doing, she appointed one-half of her income interest in the Harris Trust to her husband, John, and

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one-half to a new trust established by her will which was styled "MMM Family Trust." /4/ She also appointed her corpus interest in the Harris Trust to the MMM Family Trust.

The dispositive provisions of the MMM Family Trust were also contained in the decedent's will. In this connection, the income from the MMM Family Trust was distributable to John as needed by him "to maintain himself in the manner of living to which he has become accustomed;" to the decedent's issue, under the discretion of the trustee; or, if not needed by John or the decedent's issue, the income was to be

accumulated. /5/ The MMM Family Trust was to continue for John's life and thereafter until the decedent's youngest child attained the age of 35. /6/ At that time, the trust corpus and accumulated income were to be distributed to the decedent's children or lineal issue. In addition, the decedent's will further provided that:

Notwithstanding the other provisions of [the MMM Family Trust], if my husband, JOHN, survives me he shall have a testamentary power to appoint the corpus and any accumulated income as he may see fit among our lineal issue, the wives or widows of my sons, and the husband of my daughter; but such class shall not include my estate or my creditors or my husband's estate or his creditors.

On October 27, 1972, approximately 5 1/2 months after the decedent's death, John formally renounced the power of appointment over the MMM Family Trust granted him by decedent's will.

Respondent, in a notice of deficiency mailed to petitioner on February 5, 1976, determined that the value of the property in the Harris Trust, with respect to which the decedent exercised her power of appointment, was includable in her estate under section 2041(a)(3).

As a general rule, property with respect to which a decedent dies possessing a general power of appointment, /7/ is includable in his gross estate under section 2041(a). Conversely, where a

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decedent is the donee of a nongeneral or special power of appointment, /8/ the value of his gross estate does not include the value of the property over which such power extends at the time of his death. An exception to this latter rule is found in section 2041(a)(3).

Because the rule against perpetuities (hereinafter sometimes referred to as the Rule) is so inextricably a part of section 2041(a)(3), before discussing that section and its requirements, and the question of whether they are here satisfied, it will be helpful to review briefly the purpose and operation of the Rule.

The principal purpose of the rule against perpetuities is to promote the free alienability of property by ensuring that its ownership is not suspended for an inordinate length of time. /9/ Future interests which make uncertain, for more than the permissible period, the ultimate takers of property violate this objective by seriously impeding the power of alienation. /10/ Hence, the rule against perpetuities evolved at common law to eliminate these impediments or so-called "fetterings of property."

At common law, the rule against perpetuities was a rule against the suspension of the power of alienation and against the remoteness of vesting. /11/ A suspension of the power

of alienation exists when there are no persons in being who can collectively transfer complete ownership of property. /12/ If a future interest causes such a suspension for longer than the permissible period, the future interest is invalidated by the rule against perpetuities. Likewise, the rule against perpetuities voids future interests which may not vest within the permissible period. /13/ In most instances where a future interest is invalidated under the Rule because the interest suspends the power of alienation for too long a period, such interest would also be rendered ineffective for remoteness of vesting and vice versa. /14/

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It is important to note that not all "fetterings of property" which suspend its ownership come within the Rule. It is only those fetterings which may last longer than the permissible period that are invalid. /15/ The most common period during which fetterings are permissible is measured by some life or lives in being at the time such interest is created plus 21 years. /16/ In the case of an interest in property appointed under a special power of appointment, the permissible period is computed from the date of the *creation* of the power. /17/ For example, assume A dies and leaves property to B for life with the remainder to whomever B appoints by will; provided, however, that B may not appoint to his estate, his creditors, or the creditors of his estate; i.e., his power is a special power. Assume further that B dies and appoints the property to the children of C. To determine if the appointment by B is valid under the rule against perpetuities, it is construed as if A had died and left the property to B for life with the remainder to the children of C. /18/

Over the years some States have modified the permissible period by statute. In Delaware, for instance, the period of perpetuities for an interest appointed under a special power of appointment is computed from the date of the *exercise* of the special power rather than from its creation. /19/ Thus, in Delaware it is possible for the absolute ownership of property to be indefinitely suspended through the successive exercises of such special powers. To illustrate this point, assume A died and left property to B for life with the remainder to whomever B appoints by will; provided, however, that B's power is only a

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special power. Assume further that B dies and exercises his power by appointing the property to C for life with the remainder to whomever C appoints by will under a special power; then C exercises the power in the same way and so on. Under the common law rule, the contingent interests which did not vest within the period of the Rule would be void; however, because Delaware law computes the perpetuities period from the date of

the exercise of the special power, the Rule will not be violated. Absent section 2041(a)(3), the effect of the Delaware statute would be to permit the continual transfer of property from generation to generation without the occurrence of an estate tax. /20/ Specifically, the donees each are given a life estate in the property which expires at their deaths and is therefore not included in their respective gross estates. Moreover, the remainder interest is not includable in their estates because under local law they do not own it and also because property subject to a special power of appointment is not taxed as part of the gross estate. To prevent this from happening, Congress enacted as part of the Powers of Appointment Act of 1951, section 811(f)(4) of the Internal Revenue Code of 1939, the predecessor of section 2041(a)(3). /21/

Section 2041(a)(3) /22/ generally requires the inclusion in the

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gross estate of the value of any property with respect to which the decedent by his will has exercised a post-1942 power by creating a second power. A further requisite to inclusion is that the second power, under the applicable local law, can be validly exercised so as to postpone the vesting of any estate or interest in the appointed property, or to suspend the absolute ownership or power of alienation of such property, for a period ascertainable without reference to the date of creation of the first power.

In the instant case, Ross Harris, the decedent's father, under the terms of his will, transferred certain property into the newly created Harris Trust for the benefit of his wife, the decedent, and the decedent's sister. In addition to a one-third income interest in the Harris Trust, the decedent's father gave decedent a testamentary power to appoint her portion of the income and corpus of the trust to anyone other than her estate, her creditors, or the creditors of her estate. Upon her death, the decedent, through her will, appointed the property subject to her special power to the MMM Family Trust. The decedent's will also granted to her husband, John, a testamentary power to appoint the corpus of her newly created MMM Family Trust to the children of the decedent or the spouses of those children. However, John could not appoint this interest to his estate, his creditors, or the creditors of his estate. Under the facts it is clear that the decedent by will exercised a power of appointment by creating a second power in her husband. /23/ The issue presented is whether decedent's exercise of her power comes within the purview of section 2041(a)(3).

Petitioner's position is that section 2041(a)(3) was drafted to catch the successive exercises of powers which, under the local rule against perpetuities, could be validly exercised without regard to the date the first power was created. He argues that because Wisconsin expresses its rule against perpetuities in terms of a prohibition on the suspension of the power of alienation, and because the perpetuities period is measured from the date the first power is created, section 2041(a)(3) is not violated.

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Respondent's position and reasoning are as follows: In Wisconsin the statutory rule against perpetuities is concerned with the suspension of the power of alienation. Wis. Stat. Ann. sec. 700.16. Under this statute, an interest is void only if it suspends the power of alienation for a period longer than a life or lives in being, plus 30 years. Wis. Stat. Ann. sec. 700.16(1)(a). However, the statute also states that there is no suspension of the power of alienation when the property interest is held in a trust where the trustee has the power to sell the assets of the trust. Wis. Stat. Ann. sec. 700.16(2) and (3). In addition, remoteness of vesting is not prohibited in Wisconsin so long as there is no suspension of the power of alienation. *In re Walker's Will*, 258 Wis. 65, 45 N.W.2d 94 (1950). In the present case, the decedent exercised a power by creating in her husband another power which he, in turn, could validly exercise by placing the property subject to the power in a perpetual trust for the benefit of, for example, his children and their descendants. By giving the trustee of the newly created trust a power of sale over the corpus, the Wisconsin rule against perpetuities is not violated despite the fact that ownership of the property may never vest in anyone. From this, respondent concludes, section 2041(a)(3) applies to tax decedent's exercise of her power. He argues that Congress intended section 2041(a)(3) to function independently of State law. He maintains that the statute unequivocally indicates that if a power violates any one of three conditions of title, viz, (1) postponement of vesting, (2) suspension of the powers of alienation, or (3) suspension of absolute ownership, then the property subject to the power must be included in the gross estate. Therefore, he concludes, because the decedent exercised her power by creating in her husband another power which could be validly exercised to indefinitely postpone the vesting of any interest in such property, section 2041(a)(3) is applicable to include the appointed property in her gross estate.

While respondent's position may comport with a literal reading of the statute, apart from that it is without support in the legislative history, the regulations, and in the roots underlying the Rule at the time the predecessor of section 2041(a)(3) was enacted. We therefore agree with petitioner.

As previously noted, the common law rule against perpetuities was a rule against the suspension of the power of alienation and against remoteness of vesting. Also previously noted was the

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fact that in most instances a future interest invalidated because the interest suspends the power of alienation for too long a period, would also be rendered ineffective for

remoteness of vesting. At an early stage in American history, a number of States passed statutes modifying or abrogating the common law rule against perpetuities and substituting therefore a statutory rule against perpetuities. /24/ The most significant of these statutory enactments occurred in New York in 1830. At that time, the New York legislature adopted legislation prohibiting the suspension of the power of alienation of real property and suspension of the absolute ownership of personal property. /25/ This statute, which remained substantially unmodified until 1958, served as a model perpetuity statute for several other States. /26/ Over the years, certain other States passed statutes expressing the rule against perpetuities in terms of remoteness of vesting rather than suspension of the power of alienation or of absolute ownership. /27/ Still other States preserved, unmodified, the common law rule. /28/ In 1951, when the predecessor of section 2041(a)(3) was adopted, there was anything but a uniform rule against perpetuities. A transfer valid under one State's rule might be invalid under another State's rule. Despite the lack of uniformity among the States, there were, nevertheless, two prevalent formulations of the rule which existed. On the one hand, there were those States which modeled their perpetuity statutes after New York's in terms of suspension of the power of alienation or absolute ownership; on the other hand, there were those States whose rule was expressed in concepts concerning remoteness of vesting. With this background in perspective, the purpose and choice of words used by Congress in section 2041(a)(3) becomes clear.

Section 2041(a)(3) taxes a power which is exercised by creating a second power which "under the applicable local law can be validly exercised so as to *postpone the vesting of any estate or interest in property, or suspend the absolute ownership or power of alienation of such property,*" for an impermissible period of time. (Emphasis added.)

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The language of the statute regarding postponement of vesting, suspension of absolute ownership, and suspension of the power of alienation, does not, as respondent maintains, provide for alternative conditions applicable in all cases. Rather, each condition of title is simply shorthand terminology for the local rule against perpetuities. Thus, section 2041(a)(3) taxes the exercise of any power of appointment if the donee exercises the power by creating a second power which, under the applicable local rule against perpetuities, can be validly exercised to effect the appropriate condition of title for longer than the permissible period. Accordingly, if the local rule against perpetuities is expressed in terms of remoteness of vesting, under section 2041(a)(3) we must determine if vesting of appointed property may be postponed for a period ascertainable without regard to the date of the creation of the first power. Similarly, if the local rule is expressed in terms of suspension of the power of alienation or absolute ownership, a determination must be made as to whether the prohibited condition may exist for longer than the permissible period.

Our interpretation of the statute is further supported by respondent's own regulations which provide in pertinent part:

(ii) If the power is exercised by creating another power of appointment which, under the terms of the instruments creating and exercising the first power and under applicable local law, can be validly exercised so as to (a) postpone the vesting of any estate or interest in the property for a period ascertainable without regard to the date of the creation of the first power, or (b) *(if the applicable rule against perpetuities is stated in terms of suspension of ownership or of the power of alienation, rather than of vesting)* suspend the absolute ownership or the power of alienation of the property for a period ascertainable without regard to the date of the creation of the first power. [Sec. 20.2041-3(e)(1)(ii), Estate Tax Regs.; emphasis added.]

Thus, under section 2041(a)(3), the exercise of any power of appointment will be taxable if the donee exercises the power by creating a second power which can be validly exercised so as to postpone the vesting of any interest in property, or "(if the applicable rule against perpetuities is stated in terms of suspension of ownership or of the power of alienation, rather than vesting)" suspend the absolute ownership or the power of alienation of the property for a period ascertainable without regard to the date of the creation of the first power. Hence, the question is whether the Wisconsin law of perpetuities, the applicable local law in this case, measures the period of

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perpetuities from the time a general or special power is exercised or from the time it was created.

As previously noted, Wisconsin has by statute eliminated the common law rule against perpetuities and has substituted in its stead a rule against suspension of the power of alienation modeled after New York's statute. Wis. Stat. Ann. sec. 700.16(5); *In re Walker's Will*, 258 Wisc. 65, 45 N.W.2d 94 (1950). In pertinent part the relevant Wisconsin statute provides:

Sec. 700.16 *Perpetuities and suspension of power of alienation.* (1)(a) A future interest or trust is void if it suspends the power of alienation for longer than the permissible period. The permissible period is a life or lives in being plus a period of 30 years. * * * *

(c) If a future interest or trust is created by exercise of a power of appointment, the permissible period is computed from the time the power is exercised if the power is a general power as defined in s. 702.01(4) even if the power is exercisable only by will; in the case of other powers the permissible period is computed from the time the power is *created* but facts at the time the power is exercised are considered in determining whether the power of alienation is suspended beyond a life or lives in being at the time of creation

of the power plus 30 years. [Emphasis added.]

In the instant case, decedent's power was not a general power of appointment as defined in sec. 702.01(4), Wisconsin Statutes, /29/ and is therefore governed by the second clause of subsection (c) of the Wisconsin statute set out above. Under this clause the perpetuities period is measured from the date the first power is created. Since a requisite of section 2041(a)(3) is that under the applicable local law the perpetuities period on the second power is computed from a date ascertainable without regard to the date of the creation of the first power, the statute has no application in this case. See A. Casner, Estate Planning, pp. 675, 710-711 (3d ed. 1961).

To hold otherwise would have the undesirable effect of indirectly imposing upon one State the rule against perpetuities of another State. In other words, the conditions of title which appear in section 2041(a)(3) are not defined in the Internal Revenue Code. They are, as stated above, various State law formulations of the rule against perpetuities, and therefore, we

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must look to State law for their meaning. Because of the many statutory variations of the Rule, a transfer by appointment may comply with one State's rule on suspension of the power of alienation and yet violate another State's rule against remoteness of vesting. In this instance, a literal reading of section 2041(a)(3) would tax the exercise of the power of appointment. As a result, draftsmen would be held to a standard requiring them to avoid creation of conditions of title considered objectionable in States other than their own. /30/ This interpretation of section 2041(a)(3) would ignore the evolution of the Rule throughout the various States and extend its reach well beyond that intended by Congress. Indeed, the Senate Report /31/ accompanying the predecessor of section 2041(a)(3) in referring to a situation in "at least one state" indicates to us that Congress did not intend the application of the statute to be so broad in its scope. /32/

Respondent asserts that acceptance of petitioner's position would leave open to individual States the ability to circumvent section 2041(a)(3) by enacting laws similar to those in Wisconsin. Aside from the fact that we think it unlikely that States would take such steps to upset established local property law, any potential for abuse in this area would better be curbed by Congress. Indeed, without deciding the question at this time, through passage of the generation-skipping transfer provisions in 1976, /33/ it would appear that Congress has already acted, albeit indirectly, to close the loophole perceived by respondent in this case.

Accordingly,

Decision will be entered for the petitioner.

Footnotes

/1/ Unless otherwise indicated, all section references are to the Internal Revenue Code

each appointed by her will. However, Josephine or the decedent could not appoint their of 1954, as in effect at the time of the decedent's death.

/2/ The record does not contain the date of Ross' death but it occurred sometime around 1958.

/3/ In the event that either Josephine or the decedent died prior to the termination of the Harris Trust, their respective income interests were thereafter payable to whomever each appointed by her will. However, Josephine or the decedent could not appoint their income interests to their respective estate, creditors, or creditors of the estate.

/4/ Specifically, John was to receive one-half of the decedent's income interest in the Harris Trust for his life. If he died before the termination of the Harris Trust, his income interest was thereafter payable to the MMM Family Trust.

/5/ The decedent's will also gave the trustee of the MMM Family Trust the power to sell any property not specifically devised or bequeathed.

/6/ The number of decedent's children and their respective ages are not in the record.

/7/ With certain exceptions, sec. 2041(b) defines a "general power of appointment" to mean a power which is exercisable in favor of the decedent, his estate, or the creditors of either.

/8/ A "special power of appointment" is one which is not a general power as defined in sec. 2041(b). See n. 7 *supra*.

/9/ 5 R. Powell, Real Property 537, et seq. (1977). /10/ 5 R. Powell, *supra* at 553.

/11/ 4 Restatement, Property, sec. 370 (1944). /12/ 4 Restatement, *supra*, Comment i. /13/ 4 Restatement, *supra*, Comment j.

/14/ The most common example of an interest which causes no suspension of the power of alienation but which may not vest within the perpetuities period is one where A conveys land to B church to be held so long as the property is used for a parsonage, and thereafter to C and his heirs. There is no suspension of the power of alienation because B and C could unite and convey complete ownership of the property; however, C's interest may vest beyond the perpetuities period and is therefore voided under the Rule. See 5 R. Powell, *supra* at 588-590.

/15/ 4 Restatement, *supra*, Comments b and c. /16/ 5 R. Powell, *supra* at 574.

/17/ W. Leach, "Perpetuities in a Nutshell," 51 Harv. L. Rev. 638, 653 (1938).

/18/ Further, when testing the appointment under the Rule, circumstances existing at the time the appointment is made are taken into account. W. Leach, *supra* at 654.

/19/ The relevant Delaware statute provides:

Sec. 501. Powers of appointment; effect of rule against perpetuities.

Every estate or interest in property, real or personal, created through the exercise, by

will, deed or other instrument, of a power of appointment, irrespective of: (1) Whether such power is limited or unlimited as to appointees; (2) The manner in which such power was created or may be exercised;

(3) Whether such power was created before or after the passage of this section, shall, for the purpose of any rule of law against perpetuities, remoteness in vesting, restraint upon the power of alienation or accumulations now in effect or hereafter enacted be deemed to have been created at the time of the exercise and not at the time of the creation of such power of appointment. No such estate or interest shall be void on account of any such rule unless the estate or interest would have been void had it been created at the date of the exercise of such power of appointment otherwise than through the exercise of a power of appointment. [Del. Code Ann. tit. 25, sec. 501 (1974).] /20/ W. Leach, *supra* at n. 37.

/21/ The Senate Report accompanying the Powers of Appointment Act of 1951 stated in pertinent part:

"The new section 811(f)(4) deals with successive powers of appointment. In at least one State a succession of powers of appointment, general or limited, may be created and exercised over an indefinite period without violating the rule against perpetuities. In the absence of some special provision in the statute, property could be handed down from generation to generation without ever being subject to estate tax.

"Under section 811(f)(4) the exercise of any power of appointment created after October 21, 1942, will be taxable if it is exercised by creating another power of appointment which under local law can in turn be exercised so as to postpone the vesting of the property for a period which is ascertainable without regard to the date of the creation of the first power. This is true whether or not the first power is exercisable in favor of the holder of the power or his estate. [S. Rept. 382, to accompany H.R. 2084 (Pub. L. 82-58), 82d Cong., 1st Sess. (1951).]"

/22/ Sec. 2041(a)(3) provides as follows:

(a) In General. -- The value of the gross estate shall include the value of all property --
* * * *

(3) Creation of another power in certain cases. -- To the extent of any property with respect to which the decedent -- (A) by will, or

(B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent such property would be includible in the decedent's gross estate under section 2035, 2036, or 2037,

exercises a power of appointment created after October 21, 1942, by creating another power of appointment which under the applicable local law can be validly exercised so as to postpone the vesting of any estate or interest in such property, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power.

/23/ Her husband's renunciation of this second power does not alter the fact that the decedent exercised her power by creating a second power. See sec. 20.2041-1(d), Estate Tax Regs.

/24/ L. Simes, *Future Interests* 263, et seq. (2d ed. 1966). /25/ L. Simes, *supra* at 298, et seq. /26/ L. Simes, *supra* at 312. /27/ S R. Powell, *supra* at 549-552. /28/ See n. 27 *supra*.

/29/ Wis. Stat. sec. 702.01(4) provides in part:

(4) "General power" means a power exercisable in favor of the donee, his estate, his creditors or the creditors of his estate, whether or not it is exercisable in favor of others. *
* *

/30/ It might be argued that Congress intended to use the common law rule against perpetuities as a touchstone in sec. 2041(a)(3). However, while it appears that Congress, through sec. 2041(a)(3), sought to encourage compliance with that aspect of the common law rule which measures the perpetuities period from the date of a special power's creation, it is far from clear that Congress intended to also force compliance with all aspects of that rule. Indeed, assuming we could define a universal common law rule, acceptance of this approach would likewise have the ill effect of imposing the common law rule and all its mysteries in the many States which have statutorily modified the common law rule to alleviate some of its more arcane aspects. We think Congress did not intend such a result. /31/ See n. 21 *supra*.

/32/ That is not to say that the statute has application in only one State; rather, we are merely stating that we do not think Congress intended it to operate as extensively as respondent argues here.

/33/ See secs. 2601, et seq., I.R.C. 1954, as amended.

Statement of Legislative Intent

By Stephen E. Greer

This bill follows the intent of originally proposed SB 162 which would abolish the Rule Against Perpetuities but does so in a manner which avoids a potential tax trap, discovered after SB 162 was introduced last year. The following discussion is as close as the law comes towards approaching rocket science. Nonetheless even though complicated, the proposed legislative fix encompassed by this bill is extremely important to: individuals who have established dynasty trusts in our state; the lawyers who drafted them; and our reputation as the premier state in which to establish a trust. This legislation is strictly remedial in nature and attempts to fix a later discovered tax problem attendant with the manner in which the Rule Against Perpetuities was abolished in April of 1997.

I. Who is behind this bill and why?

A group of estate planning attorneys in Alaska meet informally on a continual basis to discuss the very complex and continually changing aspects of the estate planning profession. These attorneys are dedicated to the improvement of Alaska's laws to keep us in the forefront of the trust industry. Alaska has been on the cutting edge of this industry on a nationwide basis in recent years. This reputation is the result of our state enacting creative and innovative trust laws, which not coincidentally is being replicated by an increasing number of other states. Nonetheless if we in Alaska are to remain in the forefront, our laws must be kept current. Being a leader has its disadvantages. The strength and weakness of any new law can not be fully assessed at the outset. Only after some time passes can this assessment be made. The burden of constantly improving existing law and the willingness to address change is the one which any leader must bear, whatever the profession. Make no mistake about it, we in Alaska are nationally respected as a leader in the trust industry. Unfortunately compounding our responsibility of remaining a leader in trust law is its inextricable link with federal tax law. As we all know, federal tax law constantly changes. Our laws must both anticipate and keep current with these changes. If we fail in this effort, all previous efforts to establish a trust industry in this state will go for naught.