

Alaska State Legislature

Session
State Capitol Bldg., Rm 418
Juneau, AK 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 W. 4th Ave, Suite 430
Anchorage, AK 99501
Phone (907) 269-0250
Fax (907) 269-0249



Chair, House Special Committee
on Economic Development, Trade,
and Tourism

Chair, Jt. House and Senate
Administrative Regulation and
Review Committee

Member, Resources Committee
Rules Committee

Representative Lesil L. McGuire *House District 17*

SECTIONAL ANALYSIS HB 34

AAAn Act relating to the statutory rule against perpetuities, to non-vested property interests and trusts, and to the suspension of the power of alienation of property;
and providing for an effective date.≡

AS 34.27.051(b) is amended to clarify that only a presently exercisable general power of appointment can create a new perpetuities period within which property must vest. On the other hand, AS 34.27.051(c) is amended to clarify that property interests subject to a testamentary general power of appointment relate back to the date of the original instrument and must vest within the prescribed time set forth in the statute. The current law does not make the distinction between presently exercisable general powers of appointment and testamentary general powers of appointment. The distinction that this bill makes, in conformance with the common law, is discussed in the Commentary to Section 2-902 of the Uniform Statutory Rule Against Perpetuities passed by the National Conference of Commissioners on Uniform State Laws, as well as in the Restatement, Second, Property (Donative Transfers) at § 1.4, Comment 1.

The change in this bill is a clarification of the Suspension of the Power of Alienation as presently enacted. AS 34.27.100, passed by the Twenty-First legislature in the Second Session, adopted a second line of defense to the Delaware Tax Trap. It was meant to track the language of a similar Wisconsin statute that was found to avoid the Delaware Tax Trap, Estate of Mary Margaret Murphy v. Commissioner, 71 T.C. 671 (1979).

The modification made to AS 34.27.100 (a)(2)-(4) more clearly sets forth the computation of the permissible time period in which property must be made alienable and in addition makes a distinction between presently exercisable general powers of appointment and testamentary general powers of appointment, as noted above.