

Senate Commerce Committee

Aaron Jones 271-2609

SB 52, relative to default provisions in New Hampshire trusts.

Hearing Date: January 23, 2025

Time Opened: 10:01 a.m.

Time Closed: 10:10 a.m.

Members of the Committee Present: Senators Innis, Ricciardi, Murphy, McGough, Fenton and Reardon

Members of the Committee Absent : None

Bill Analysis: This bill:

I. Prevents a beneficiary of a trust from removing a trustee or fiduciary and replacing them with a relative or subordinate.

II. Expands the scope of whom may be considered a trustee under RSA 564-B:8-814.

III. Repeals limitations imposed on certain trustees who are also beneficiaries.

Sponsors:

Sen. Innis

Rep. Hunt

Rep. Lynn

Who supports the bill: Senator Daniel Innis, Glenn Perlow (NH Trust Council), Heather Ogmundson (NH Trust Council)

Who opposes the bill: No one

Who is neutral on the bill: No one

Summary of testimony presented in support:

Grant Bosse, on behalf of Senator Daniel Innis

- For the past 20 years, the Legislature has worked hard to keep New Hampshire as the leading jurisdiction for establishing trusts.
- This bill addressed the default safe harbor provisions in the Trust Code. It ensured a trust settlor's expectations on taxation and trust administration were met, and it also would update a cross reference and eliminate duplicative language.

- Specifically, the bill would amend the default terms in the Trust Code, also known as the “tax saving clauses”, to better align them with IRS rules. Without this backstop, a settlor’s goals could be complicated by the inadvertent exclusion of important federal estate and gift tax structure terms.
- Historically, a trustee was the sole decisionmaker for trusts. In New Hampshire, the role may be divided among separate fiduciaries.
- This bill would clarify that a fiduciary with discretionary power over a trust, such as a trust advisor or trust protector, would be subject to the same good faith obligations of discretion.

Glenn Perlow, President, New Hampshire Trust Council, and Heather Ogmundson, New Hampshire Trust Council

- At the end of last year, trust companies in New Hampshire held over \$1.6 trillion in assets.
- The New Hampshire Trust Code has default and mandatory provisions.
 - The default provisions are there as a backstop. If there is an inadvertent omission when establishing a trust, it is important that certain language from the IRS is contained within the trust document.
 - Under these circumstances, default provisions are used in the interest of the settlor’s and the beneficiaries.
- **Senator Reardon** asked if it made sense to clarify the definition section of the RSA because the term “trustee” is used instead of “fiduciary.”
 - **Ms. Ogmundson** said this issue had been brought up in their committee. For this section, there is a bifurcation of some trustee roles among the different fiduciaries. The statute, however, does not bifurcate all of their roles and duties. They have plans in the future to examine the entire statute holistically to determine if revisions are necessary.
 - **Mr. Perlow** said they took a position of doing no harm. The Trust Code is complicated, and they wanted additional time if they were doing something bigger.
- **Senator Ricciardi** asked if they had discussed this bill with the Trust Department.
 - **Mr. Perlow** stated the narrow focus of the bill had been verbally discussed with the Commissioner of the Bank Department. Since it would have an impact on banking and its regulations, they also shared it with the New Hampshire Banking Association.
- **Senator Fenton** asked if they foresaw issues with smaller family trusts where it is common for family members to be trustees.
 - **Ms. Ogmundson** said they did not. In general, the statute is focused on the exclusion of assets from a beneficiary’s estate for estate tax purposes. This would be in place to protect small trusts where they are with a practitioner who is not as knowledgeable. The language in this bill would fill a gap if an inadvertent exclusion were made.

Summary of testimony presented in opposition: None

Neutral Information Presented: None

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Date Hearing Report completed: January 27, 2025