

SENATE HEARING SLIP
(Please Print Plainly)

DATE: Dec 18

BILL NO. SB 109
OR

SUBJECT _____

Senator Joanne Huebner
(NAME)

(Street Address or Route Number)

(City and Zip Code)
Wisconsin Law Commission
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP
(Please Print Plainly)

DATE: 12/18/01

BILL NO. S. 109
OR

SUBJECT _____

John McGehee
(NAME)

(Street Address or Route Number)

(City and Zip Code)
211 E. Ontario #1300
Chicago IL 60601
(Representing)
Wisconsin Law Commission

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

**Senate Committee on Judiciary, Consumer Affairs and Campaign
Finance Reform**

Request for Paper Ballot Executive Action on 2001 Senate Bill 109

The Senate Committee on Judiciary, Consumer Affairs and Campaign Finance Reform was unable to hold a formal Executive Session on Senate Bill 109 as planned. We would like to conduct a paper ballot on the bill. **Please return your ballot to Sen. George's office (Room 118 South) by 5:00 PM Thursday, Friday, March 8, 2002.**

Introduction and Adoption of Substitute Amendment (LRB s0341/1):

- _____ Moved (Optional -- Please check if you wish to Move Introduction and Adoption of the Substitute Amendment)
- _____ Seconded (Optional -- Please check if you wish to Second Introduction and Adoption of the Substitute Amendment)
- _____ **Aye** (In Favor of Adoption of the Substitute Amendment)
- _____ **No** (Oppose Adoption of the Substitute Amendment)

Introduction and Adoption of Amendment (LRB a1396/1) to Substitute Amendment (LRB s0341/1):

- _____ Moved (Optional -- Please check if you wish to Move Introduction and Adoption of the Amendment to the Substitute Amendment)
- _____ Seconded (Optional -- Please check if you wish to Second Introduction and Adoption of the Amendment to the Substitute Amendment)
- _____ **Aye** (In Favor of Adoption of the Amendment to the Substitute Amendment)
- _____ **No** (Oppose Adoption of the Amendment to the Substitute Amendment)

Passage of Senate Bill 109 As Amended:

_____ Moved (Optional -- Please check if you wish to Move
Passage of the Bill as Amended)

_____ Seconded (Optional -- Please check if you wish to Second
Passage of the Bill as Amended)

_____ **Aye** (In Favor of Passage of the Bill as Amended)

_____ **No** (Oppose Passage of the Bill as Amended)

Signed: Robert W. Weich

Friday, March 8, 2002

Please return to Sen. George's Office by 5:00 PM Friday, March 8, 2002.

**Senate Committee on Judiciary, Consumer Affairs and Campaign
Finance Reform**

Request for Paper Ballot Executive Action on 2001 Senate Bill 109

The Senate Committee on Judiciary, Consumer Affairs and Campaign Finance Reform was unable to hold a formal Executive Session on Senate Bill 109 as planned. We would like to conduct a paper ballot on the bill. **Please return your ballot to Sen. George's office (Room 118 South) by 5:00 PM Thursday, Friday, March 8, 2002.**

Introduction and Adoption of Substitute Amendment (LRB s0341/1):

- Moved (Optional -- Please check if you wish to Move Introduction and Adoption of the Substitute Amendment)
- Seconded (Optional -- Please check if you wish to Second Introduction and Adoption of the Substitute Amendment)
- Aye** (In Favor of Adoption of the Substitute Amendment)
- No** (Oppose Adoption of the Substitute Amendment)

Introduction and Adoption of Amendment (LRB a1396/1) to Substitute Amendment (LRB s0341/1):

- Moved (Optional -- Please check if you wish to Move Introduction and Adoption of the Amendment to the Substitute Amendment)
- Seconded (Optional -- Please check if you wish to Second Introduction and Adoption of the Amendment to the Substitute Amendment)
- Aye** (In Favor of Adoption of the Amendment to the Substitute Amendment)
- No** (Oppose Adoption of the Amendment to the Substitute Amendment)

Passage of Senate Bill 109 As Amended:

 X Moved (Optional -- Please check if you wish to Move
Passage of the Bill as Amended)

 X Seconded (Optional -- Please check if you wish to Second
Passage of the Bill as Amended)

 X Aye (In Favor of Passage of the Bill as Amended)

 No (Oppose Passage of the Bill as Amended)

Signed: Joanne Heelsman
By PR - via phone

Friday, March 8, 2002

Please return to Sen. George's Office by 5:00 PM Friday, March 8, 2002.

**Senate Committee on Judiciary, Consumer Affairs and Campaign
Finance Reform**
Request for Paper Ballot Executive Action on 2001 Senate Bill 109

The Senate Committee on Judiciary, Consumer Affairs and Campaign Finance Reform was unable to hold a formal Executive Session on Senate Bill 109 as planned. We would like to conduct a paper ballot on the bill. **Please return your ballot to Sen. George's office (Room 118 South) by 5:00 PM Thursday, Friday, March 8, 2002.**

Introduction and Adoption of Substitute Amendment (LRB s0341/1):

- _____ Moved (Optional -- Please check if you wish to Move Introduction and Adoption of the Substitute Amendment)
- _____ Seconded (Optional -- Please check if you wish to Second Introduction and Adoption of the Substitute Amendment)
- Aye (In Favor of Adoption of the Substitute Amendment)
- _____ No (Oppose Adoption of the Substitute Amendment)

Introduction and Adoption of Amendment (LRB a1396/1) to Substitute Amendment (LRB s0341/1):

- _____ Moved (Optional -- Please check if you wish to Move Introduction and Adoption of the Amendment to the Substitute Amendment)
- _____ Seconded (Optional -- Please check if you wish to Second Introduction and Adoption of the Amendment to the Substitute Amendment)
- Aye (In Favor of Adoption of the Amendment to the Substitute Amendment)
- _____ No (Oppose Adoption of the Amendment to the Substitute Amendment)

Passage of Senate Bill 109 As Amended:

_____ Moved (Optional -- Please check if you wish to Move
Passage of the Bill as Amended)

_____ Seconded (Optional -- Please check if you wish to Second
Passage of the Bill as Amended)

_____ **Aye** (In Favor of Passage of the Bill as Amended)

_____ **No** (Oppose Passage of the Bill as Amended)

Signed: Scott Fitzgerald

Friday, March 8, 2002

Please return to Sen. George's Office by 5:00 PM Friday, March 8, 2002.

**Senate Committee on Judiciary, Consumer Affairs and Campaign
Finance Reform**
Request for Paper Ballot Executive Action on 2001 Senate Bill 109

The Senate Committee on Judiciary, Consumer Affairs and Campaign Finance Reform was unable to hold a formal Executive Session on Senate Bill 109 as planned. We would like to conduct a paper ballot on the bill. **Please return your ballot to Sen. George's office (Room 118 South) by 5:00 PM Thursday, Friday, March 8, 2002.**

Introduction and Adoption of Substitute Amendment (LRB s0341/1):

- _____ Moved (Optional -- Please check if you wish to Move Introduction and Adoption of the Substitute Amendment)
- _____ Seconded (Optional -- Please check if you wish to Second Introduction and Adoption of the Substitute Amendment)
- Aye** (In Favor of Adoption of the Substitute Amendment)
- _____ **No** (Oppose Adoption of the Substitute Amendment)

Introduction and Adoption of Amendment (LRB a1396/1) to Substitute Amendment (LRB s0341/1):

- _____ Moved (Optional -- Please check if you wish to Move Introduction and Adoption of the Amendment to the Substitute Amendment)
- _____ Seconded (Optional -- Please check if you wish to Second Introduction and Adoption of the Amendment to the Substitute Amendment)
- Aye** (In Favor of Adoption of the Amendment to the Substitute Amendment)
- _____ **No** (Oppose Adoption of the Amendment to the Substitute Amendment)

Passage of Senate Bill 109 As Amended:

_____ Moved (Optional -- Please check if you wish to Move
Passage of the Bill as Amended)

_____ Seconded (Optional -- Please check if you wish to Second
Passage of the Bill as Amended)

Aye (In Favor of Passage of the Bill as Amended)

_____ No (Oppose Passage of the Bill as Amended)

Signed: *Fred Resser*
ca

Friday, March 8, 2002

Please return to Sen. George's Office by 5:00 PM Friday, March 8, 2002.



WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: SENATOR GARY R. GEORGE
FROM: Ronald Sklansky, Senior Staff Attorney
RE: Senate Substitute Amendment __ (LRBs0341/1) to 2001 Senate Bill 109
DATE: March 5, 2002

This memorandum, prepared at your request, summarizes the differences between Senate Bill 109, generally relating to the fiduciary relationship and allocations between principal and income for trusts and estates, and Senate Substitute Amendment __ (LRBs0341/1).

1. SCHOOL FUNDS

Senate Bill 109 provides that funds of a first class city school system held in certain pensions may be invested and reinvested in the same manner as is authorized for investments under the new prudent investor rule. [SECTION 6.] The substitute amendment deletes this provision since it has been enacted into law in 2001 Wisconsin Act 30.

2. UNIFORMITY

Senate Bill 109 creates s. 701.20, Stats., and states that the section may be cited as the Uniform Principal and Income Act. The proposed statute also states that in applying and construing the Act, consideration must be given to the need to promote uniformity among the states enacting it. [See proposed s. 701.20 (1) and (31), Stats.] The substitute amendment removes these provisions because additional amendments made in the substitute amendment make the provisions less uniform with other states' laws.

3. NOTICE TO BENEFICIARIES

The substitute amendment provides that a trustee may obtain approval of a trustee's adjustments between principal and income by providing a written notice to all sui juris beneficiaries at least 30 days before the proposed action is to take effect. A "sui juris beneficiary" is a beneficiary not under a legal disability, including a court-appointed guardian of an incapacitated beneficiary, an agent for an incompetent beneficiary, or a court-appointed guardian of a minor beneficiary's estate or, if there is no

court-appointed guardian, the parents of the minor beneficiary. A trustee may decide not to implement a proposed action after a written objection is received. If a written objection is received, either the trustee or the beneficiary making the written objection may petition the court to have the proposed action approved, modified, or prohibited. [See proposed s. 701.20 (2) (km) and (4) (c), Stats.]

4. DETERMINATION AND DISTRIBUTION OF NET INCOME

Senate Bill 109 provides that a fiduciary must distribute to a beneficiary who receives an outright pecuniary amount the interest or any other required amount from net income or from principal to the extent that net income is insufficient. The substitute amendment provides that a fiduciary must distribute to a beneficiary, including a trustee, who receives a pecuniary amount, not determined by a pecuniary formula, interest at the statutory legal rate on any unpaid portion of the pecuniary amount for the period commencing one year after the decedent's death or after the income interest in the trust ends. This interest must be distributed from net income or from principal to the extent net income is insufficient. [See proposed s. 701.20 (5) (c), Stats.]

Senate Bill 109 also provides that a fiduciary must distribute net income remaining after distributions to residuary and remainder beneficiaries, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust. The substitute amendment deletes the proposed statutory language referring to a beneficiary who holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust. [See proposed s. 701.20 (5) (d), Stats.]

5. DISTRIBUTION TO RESIDUARY AND REMAINDER BENEFICIARIES

Senate Bill 109 provides that in determining a beneficiary's share of net income, one rule in this determination is that the beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust. The substitute amendment applies the rule that the beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not *determined by a pecuniary formula*. [See proposed s. 701.20 (6) (b) 2., Stats.]

6. DEFERRED COMPENSATION, ANNUITIES, AND SIMILAR PAYMENTS

Senate Bill 109 provides that when a trustee receives a payment from a separate fund created by a payer, including an annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan, a trustee must allocate the payment to income to the extent that the payment is characterized as interest or a dividend or a payment made in lieu of payment of a dividend. The balance must be allocated to principal. If no part of a payment is characterized as interest, a dividend, or equivalent payment, and all or part of the payment is required to be made, a trustee must allocate to income 10% of the part that is required to be made during the accounting period and the balance to principal. If no part of the payment is required to be made, or the payment received is the entire amount to which the trustee is entitled, the trustee must allocate the entire payment to principal. [See proposed s. 701.20 (18) (c), Stats.]

The substitute amendment provides that, for each accounting period of a trust in which the trust receives a payment but no part of any payment is allocated to income, the trustee must allocate to income that portion of the aggregate value of all payments received by the trustee in the accounting period that is equal to the amount of plan income that is attributable to the trust's interest in the plan from which payment is received for that accounting period. [See proposed s. 701.20 (18) (c), Stats.]

7. APPLICABILITY

Senate Bill 109 provides that proposed s. 701.20 will apply to every trust or decedent's estate existing on the effective date of the bill and to every trust or decedent's estate created or coming into existence after that date, except as otherwise expressly provided in proposed s. 701.20, Stats., or by the decedent's will or the terms of the trust. The substitute amendment clarifies that with respect to a trust or decedent's trust existing on the effective date of the bill, proposed s. 701.20, Stats., will not apply before the trust's or estate's first accounting period that begins after the law takes effect. [See proposed s. 701.24 (2), Stats.]

RS:tlu;ksm



WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: SENATOR GARY R. GEORGE

FROM: Ronald Sklansky, Senior Staff Attorney

RE: Senate Amendment __ (LRBa1396/1) to Senate Substitute Amendment __ (LRBs0341/1) to 2001 Senate Bill 109

DATE: March 5, 2002

This memorandum, prepared at your request, summarizes the provisions of Senate Amendment __ (LRBa1396/1) to Senate Substitute Amendment __ (LRBs0341/1) to 2001 Senate Bill 109.

1. UNTRUSTS

The senate amendment provides that a trust may be converted to a unitrust under certain conditions. A unitrust is a vehicle in which the allocation of income and principal is simplified by providing that a fixed percentage of the trust will be considered to be income. A trust may be converted by a trustee, either at his or her own discretion or at the request of a beneficiary, or by a court on the petition of a trustee or beneficiary. A trustee may undertake the conversion only if the conversion comports with the creator's intent and if all of the following apply:

- a. The trustee determines that the conversion will enable the trustee to better carry out the purposes of the trust.
- b. The trustee provides notice of the conversion and how the unitrust will operate.
- c. There is at least one beneficiary who is eligible to receive income from the trust and at least one other beneficiary who would receive a distribution of principal if the trust were to terminate.
- d. Every beneficiary consents to the conversion in writing.
- e. The terms of the trust describe the amount that may or must be distributed by referring to the trust income.
- f. The trustee invests and manages the trust assets under the prudent investor rule.

A court may authorize the conversion of a trust to a unitrust on the petition of a trustee or a beneficiary, if all of the following apply:

- a. The trustee or beneficiary has provided notice of the request and the notice advises how the unitrust will operate.
- b. The court determines that the conversion will enable the trustee to better carry out the purposes of the trust.

A trustee of a unitrust must make distributions in accordance with the creating instrument, except that any reference in a creating instrument to "income" must be construed to mean a fixed percentage of the net fair market value of the unitrusts assets, regardless of whether the assets otherwise would be considered income or principal, averaged over the preceding three years or the period since the original trust was created, whichever is less. The fixed percentage will be determined by the trustee or by the court, as appropriate, but the fixed percentage determined by the trustee may not be less than 3% nor more than 5%.

After a trust is converted to a unitrust, a trustee may determine or change any of the following:

- a. The frequency of distributions during the year.
- b. Certain standards for proration of distributions.
- c. The effect on the valuation of the unitrusts assets of other payments from, or contributions to, the unitrust.
- d. How, and how frequently, to value the unitrusts assets.
- e. Valuation dates.
- f. Whether to omit from the valuation unitrust property occupied by or in the possession of a beneficiary.
- g. Any other matters necessary for the proper functioning of the unitrust.

A court may do any of the following with respect to a unitrust on an appropriate petition:

- a. Change the fixed percentage of the assets that will be determined to be income.
- b. Provide for distributions of net income to preserve tax benefits.
- c. Average the valuation of assets over a period other than that otherwise prescribed.
- d. Require the unitrust to be converted back to the original trust under the creating instrument.

A trust may not be converted to a unitrust under defined conditions, including that the creating instrument specifically prohibits the conversion, that distributions will change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets, that certain unfavorable

tax consequences occur, or that the trustee is a beneficiary of the trust. However, in the last circumstance, a co-trustee may convert the trust to a unitrust when the co-trustee is not a beneficiary.

The ability to convert to a unitrust applies only to a trust created under an instrument executed on or after the effective date of the act.

2. LIMITS ON LIABILITY

The senate amendment creates s. 701.20 (31) to provide that if a trustee sends to all beneficiaries a written communication relating to a trust, any action against the trustee that is based on the subject of the written communication must be commenced within two years after the trustee sends the written communication or be barred. However, this provision does not apply to an action based on fraud or misrepresentation with respect to the written communication.

RS:ksm;tlu