

**ALASKA STATE LEGISLATURE
HOUSE RULES STANDING COMMITTEE**

March 14, 2006

11:06 a.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative John Coghill
Representative John Harris
Representative Vic Kohring
Representative Ethan Berkowitz
Representative David Guttenberg

MEMBERS ABSENT

Representative Lesil McGuire

COMMITTEE CALENDAR

HOUSE BILL NO. 489

"An Act relating to the exemption of charity events from regulation by the Alaska Public Offices Commission and to the treatment of charity events under the law governing legislative ethics; and providing for an effective date."

- MOVED CSHB 489(RLS) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 186(JUD)

"An Act relating to the Alaska Executive Branch Ethics Act; and providing for an effective date."

- MOVED HCS CSSB 186(RLS) OUT OF COMMITTEE

HOUSE BILL NO. 273

"An Act relating to the dividends of individuals claiming allowable absences; and providing for an effective date."

- MOVED CSHB 273(RLS) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 489

SHORT TITLE: APOC/LEG ETHICS EXEMPTION: CHARITY EVENTS

SPONSOR(S): FINANCE

03/08/06 (H) READ THE FIRST TIME - REFERRALS

03/08/06 (H) RLS
03/14/06 (H) RLS AT 11:00 AM BELTZ 211

BILL: SB 186

SHORT TITLE: EXECUTIVE BRANCH ETHICS

SPONSOR(s): SENATOR(s) SEEKINS

04/22/05 (S) READ THE FIRST TIME - REFERRALS
04/22/05 (S) STA, JUD
04/26/05 (S) STA AT 3:30 PM BELTZ 211
04/26/05 (S) Moved CSSB 186(STA) Out of Committee
04/26/05 (S) MINUTE(STA)
04/27/05 (S) JUD AT 8:30 AM BUTROVICH 205
04/27/05 (S) Scheduled But Not Heard
04/28/05 (S) STA RPT CS 3NR 1DNP
NEW TITLE
04/28/05 (S) NR: THERRIAULT, WAGONER, HUGGINS
04/28/05 (S) DNP: ELTON
04/28/05 (S) JUD AT 8:30 AM BUTROVICH 205
04/28/05 (S) Scheduled But Not Heard
04/29/05 (S) JUD AT 8:30 AM BUTROVICH 205
04/29/05 (S) LEGISLATIVE ETHICS/MEETINGS
04/30/05 (S) JUD AT 9:00 AM BUTROVICH 205
04/30/05 (S) Scheduled But Not Heard
05/01/05 (S) JUD AT 4:00 PM BUTROVICH 205
05/01/05 (S) Moved CSSB 186(JUD) Out of Committee
05/01/05 (S) MINUTE(JUD)
05/02/05 (S) JUD RPT CS FORTHCOMING 1DP 1DNP 2NR
1AM
05/02/05 (S) DP: SEEKINS
05/02/05 (S) DNP: FRENCH
05/02/05 (S) NR: THERRIAULT, HUGGINS
05/02/05 (S) AM: GUESS
05/02/05 (S) JUD AT 8:30 AM BUTROVICH 205
05/02/05 (S) Moved Out of Committee 5/1/05
05/02/05 (S) MINUTE(JUD)
05/03/05 (S) JUD CS RECEIVED
NEW TITLE
05/04/05 (S) RETURNED TO RLS COMMITTEE
05/08/05 (S) TRANSMITTED TO (H)
05/08/05 (S) VERSION: CSSB 186(JUD)
05/09/05 (H) READ THE FIRST TIME - REFERRALS
05/09/05 (H) STA, JUD
01/31/06 (H) STA AT 8:00 AM CAPITOL 106
01/31/06 (H) Heard & Held
01/31/06 (H) MINUTE(STA)
02/14/06 (H) STA AT 8:00 AM CAPITOL 106

02/14/06 (H) Heard & Held
 02/14/06 (H) MINUTE(STA)
 02/16/06 (H) STA AT 8:00 AM CAPITOL 106
 02/16/06 (H) Moved HCS CSSB 186(STA) Out of
 Committee
 02/16/06 (H) MINUTE(STA)
 02/21/06 (H) STA RPT HCS(STA) 2DP 3NR 1AM
 02/21/06 (H) DP: GARDNER, SEATON;
 02/21/06 (H) NR: GRUENBERG, ELKINS, RAMRAS;
 02/21/06 (H) AM: GATTO
 02/23/06 (H) JUD AT 10:00 AM CAPITOL 120
 02/23/06 (H) Moved HCS CSSB 186(JUD) Out of
 Committee
 02/23/06 (H) MINUTE(JUD)
 02/24/06 (H) JUD RPT HCS(JUD) NT (TECHNICAL) 3DP 2NR
 1AM
 02/24/06 (H) DP: WILSON, ANDERSON, MCGUIRE;
 02/24/06 (H) NR: COGHILL, GRUENBERG;
 02/24/06 (H) AM: GARA
 03/14/06 (H) RLS AT 11:00 AM BELTZ 211

BILL: HB 273

SHORT TITLE: PFD: DELAY PAYMENT FOR ALLOWABLE ABSENCES

SPONSOR(S): REPRESENTATIVE(S) WEYHRAUCH

04/18/05 (H) READ THE FIRST TIME - REFERRALS
 04/18/05 (H) STA, FIN
 05/05/05 (H) STA AT 8:00 AM CAPITOL 106
 05/05/05 (H) Heard & Held
 05/05/05 (H) MINUTE(STA)
 01/12/06 (H) STA AT 8:00 AM CAPITOL 106
 01/12/06 (H) Scheduled But Not Heard
 01/17/06 (H) STA AT 8:00 AM CAPITOL 106
 01/17/06 (H) Heard & Held
 01/17/06 (H) MINUTE(STA)
 01/19/06 (H) STA AT 8:00 AM CAPITOL 106
 01/19/06 (H) Heard & Held
 01/19/06 (H) MINUTE(STA)
 01/26/06 (H) STA AT 8:00 AM CAPITOL 106
 01/26/06 (H) Moved CSHB 273(STA) Out of Committee
 01/26/06 (H) MINUTE(STA)
 01/30/06 (H) STA RPT CS(STA) NT 5DP 1DNP 1NR
 01/30/06 (H) DP: GARDNER, GATTO, RAMRAS, ELKINS,
 SEATON;
 01/30/06 (H) DNP: LYNN;
 01/30/06 (H) NR: GRUENBERG
 02/08/06 (H) FIN AT 1:30 PM HOUSE FINANCE 519

02/08/06 (H) Heard & Held
 02/08/06 (H) MINUTE(FIN)
 02/15/06 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 02/15/06 (H) Moved CSHB 273(FIN) Out of Committee
 02/15/06 (H) MINUTE(FIN)
 02/17/06 (H) FIN RPT CS(FIN) NT 2DP 3NR 2AM
 02/17/06 (H) DP: HAWKER, WEYHRAUCH;
 02/17/06 (H) NR: STOLTZE, MOSES, MEYER;
 02/17/06 (H) AM: KERTTULA, JOULE
 03/14/06 (H) RLS AT 11:00 AM BELTZ 211

WITNESS REGISTER

LALANYA SNYDER, Staff
 to Representative Mike Chenault
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented HB 489 on behalf of the sponsor,
 Representative Chenault.

TAMMY KEMPTON, Regulator
 for Lobbying
 Alaska Public Offices Commission (APOC)
 Department of Administration
 Juneau, Alaska

POSITION STATEMENT: Provided remarks on HB 489.

JOYCE ANDERSON, Administrator
 Select Committee on Legislative Ethics
 Anchorage, Alaska

POSITION STATEMENT: Provided remarks on HB 489.

SENATOR RALPH SEEKINS
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of SB 186.

REPRESENTATIVE BRUCE WEYHRAUCH
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 273.

ACTION NARRATIVE

CHAIR NORMAN ROKEBERG called the House Rules Standing Committee
 meeting to order at 11:06:14 AM. Representatives Rokeberg,

Coghill, Harris, Kohring, Berkowitz, and Guttenberg were present at the call to order.

HB 489-APOC/LEG ETHICS EXEMPTION: CHARITY EVENTS

[11:06:48 AM](#)

CHAIR ROKEBERG announced that the first order of business would be HOUSE BILL NO. 489, "An Act relating to the exemption of charity events from regulation by the Alaska Public Offices Commission and to the treatment of charity events under the law governing legislative ethics; and providing for an effective date."

[11:07:20 AM](#)

REPRESENTATIVE COGHILL moved to adopt CSHB 489, Version 24-LS1753\G, Wayne, 3/11/06, as the working document. There being no objection, Version G before the committee.

[11:07:50 AM](#)

LALANYA SNYDER, Staff to Representative Mike Chenault, Alaska State Legislature, explained that HB 489 would amend current statute to allow lobbyists to contribute to charitable events as long as they have been approved by the Legislative Council Committee. Furthermore, the legislation would allow those covered by the Legislative Ethics Code to solicit and accept contributions to charity events from lobbyists so long as it has been approved by the Legislative Council Committee.

[11:08:44 AM](#)

REPRESENTATIVE KOHRING related his assumption that Version G incorporates the recommendations by the Alaska Public Offices Commission (APOC).

MS. SNYDER replied yes.

[11:08:58 AM](#)

REPRESENTATIVE HARRIS related his understanding that HB 489 came about due to the Fahrenkamp Classic and the Thanksgiving in March charitable events. He related his further understanding that this legislation is not meant to change the rules affecting lobbyist contributions to legislators.

MS. SNYDER noted her agreement.

CHAIR ROKEBERG explained that the legislation will allow what the legislature has been doing with regard to soliciting donations for charity and using staff to invite others to participate in the events.

[11:10:27 AM](#)

TAMMY KEMPTON, Regulator for Lobbying, Alaska Public Offices Commission (APOC), Department of Administration, confirmed that Version G has incorporated the concerns she had expressed. She referred to page 2, line 25 and page 7, paragraph (11), which refer to "a contribution to a charity event". She informed the committee that what brought this matter to the attention of APOC was a letter soliciting for the Fahrenkamp Classic. She explained that an area of concern was in regard to the request in the letter for donations of items for goody bags for those putting. The goody bag is possibly something that isn't going to the charity. In other words, whoever putts will benefit from the gifts in the good bags. Therefore, she inquired as to whether the aforementioned language includes gifts in goody bags that are possibly distributed to staff and legislators. If so, she said that would be of concern.

[11:13:19 AM](#)

CHAIR ROKEBERG, speaking as a past participant in the Fahrenkamp Classic, said he didn't recall goody bags. However, if there was such, he assumed that the goody bags would [include items] donated from a business through the tournament to the participant. Furthermore, he pointed out the restriction by which an active legislator can't receive a gift for which the value is over \$250. He surmised that the aforementioned is a cap in the other sections of the statute.

MS. KEMPTON agreed.

[11:14:34 AM](#)

REPRESENTATIVE COGHILL also pointed out that under the Legislative Ethics rules, while in session legislators can't take anything from a lobbyist that can't be consumed.

[11:14:50 AM](#)

REPRESENTATIVE HARRIS surmised that anything in the goody bag would be from the company not from a lobbyist and would have the company's logo on it. Therefore, the gifts [for the goody bag] wouldn't be from the lobbyist at all. Although the lobbyists represent the company within the system, the lobbyist is merely a figure for the corporation that actually does the donating.

[11:15:51 AM](#)

MS. KEMPTON said then that the law doesn't prohibit the employer or client of the lobbyist from giving such a gift.

REPRESENTATIVE HARRIS further surmised then that a goody bag could be put together so long as the items came from the corporation.

MS. KEMPTON replied yes.

[11:16:34 AM](#)

REPRESENTATIVE BERKOWITZ referred to page 5, Section 3, which seems to create an exception that allows minimal gifts of hospitality. He pointed out that these gifts could be consumed under [paragraph] (6) and not connected with the recipient's legislative status or are [gifts of] hospitality. He inquired as to the definition of hospitality.

MS. KEMPTON pointed out that this particular section applies to legislators. Under the current lobbying law, a lobbyist is only allowed to give food and beverage for immediate consumption or tickets to a preapproved charity event during session. The problem with the Fahrenkamp Classic is that there isn't a need for tickets, which is why the issue has been brought forth.

CHAIR ROKEBERG noted that there are tickets for the team entering in which the captain, the underwriter, of the team pays the entry fee.

MS. KEMPTON said she wasn't aware of that.

REPRESENTATIVE HARRIS related his understanding that this would allow a lobbyist, who might sponsor [a team], to be able to contribute to the charity.

CHAIR ROKEBERG said that would be his assumption.

[11:19:09 AM](#)

REPRESENTATIVE HARRIS related his understanding that Section 3 is already in law, the only change is the addition of [paragraph] (11), which refers back to [paragraph] 10.

CHAIR ROKEBERG stated that the intent of HB 489 is to sanction the activities of charitable fundraising on the part of the legislature in order not to inhibit the legislature's ability to be a conduit for contributions that go to charity.

[11:20:36 AM](#)

JOYCE ANDERSON, Administrator, Select Committee on Legislative Ethics, informed the committee that in 1994 the Select Committee on Legislative Ethics issued an advisory opinion, 94-06, allowing legislators and legislative staff to solicit and accept charitable donations from lobbyists. To date, there hasn't been a problem with the issue, as far as [the Select Committee on Legislative Ethics] is concerned. The aforementioned advisory opinion specified that as long as the contribution received from a lobbyist by legislators and legislative staff had no financial benefit to the legislator or legislative staff, then there was no problem. That advisory opinion further said that the identity of the recipient of a gift does matter in regard to whether the solicitation is prohibited. Therefore, Ms. Anderson said she agreed with Chair Rokeberg in that the intent of the legislation is not to allow solicitations for the goody bag but rather just on behalf of the charity itself. She, too, mentioned that this legislation isn't really changing what is in place with regard to organizations, corporations, and private individuals who contribute to charitable events. The legislation merely clears up an inconsistency in the ethics law in relation to the lobbying law.

MS. ANDERSON highlighted that in the advisory opinion the following was noted:

Therefore, you may solicit a charitable contribution from a lobbyist during a legislative session. The committee notes that the potential for the appearance of impropriety is high when legislators and legislative employees request favors of lobbyists even on behalf of worthwhile organizations. The committee therefore urges you to use caution in making a decision about whether to approach a lobbyist, especially during a legislative session.

MS. ANDERSON then inquired as to whether the reference to "contribution" in statute should be changed to "charitable contribution", which would limit it to donations that go to the charity. She pointed out that there are many disclosure requirements currently in the ethics statutes regarding gifts. Therefore, she inquired as to whether the committee would want to also consider including [a provision requiring] the disclosure of gifts received by legislatures and legislative staff from lobbyists for preapproved charity events.

[11:24:34 AM](#)

CHAIR ROKEBERG, speaking to Ms. Anderson's suggested language change, opined that the syntax in the sentence would make the change redundant.

[11:25:23 AM](#)

REPRESENTATIVE HARRIS strongly disagreed with Ms. Anderson's latter suggestion regarding disclosure. He opined that if he has to disclose every time he asks someone to do something for charity, he would stop doing it. He mentioned the hard work involved in these charitable events.

[11:26:06 AM](#)

CHAIR ROKEBERG opined that it would be difficult and unnecessary to disclose such.

[11:26:29 AM](#)

REPRESENTATIVE COGHILL said that if the member actually received the contribution, then he could see the need for the disclosure. However, the legislator doesn't actually receive the [contribution].

[11:27:27 AM](#)

CHAIR ROKEBERG, upon determining no one else wished to testify, [closed public testimony].

[11:27:36 AM](#)

REPRESENTATIVE HARRIS moved to report CSHB 489, Version LS1753\G, Wayne, 3/11/06, out of committee with individual recommendations and the accompanying fiscal notes. There being

no objection, CSHB 489(RLS) was reported from the House Rules Standing Committee.

SB 186-EXECUTIVE BRANCH ETHICS

11:27:56 AM

CHAIR ROKEBERG announced that the next order of business would be CS FOR SENATE BILL NO. 186(JUD), "An Act relating to the Alaska Executive Branch Ethics Act; and providing for an effective date."

The committee took an at-ease from 11:27 a.m. to 11:30 a.m.

11:30:07 AM

SENATOR RALPH SEEKINS, Alaska State Legislature, sponsor of SB 186, explained that most people have never read the Alaska Executive Branch Ethics Act, and therefore there is a tremendous misunderstanding of what it does. He read AS 39.52.010, as follows:

- (a) It is declared that
 - (1) high moral and ethical standards among public officers in the executive branch are essential to assure the trust, respect, and confidence of the people of this state;
 - (2) a code of ethics for the guidance of public officers will
 - (A) discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities;
 - (B) improve standards of public service; and
 - (C) promote and strengthen the faith and confidence of the people of this state in their public officers;
 - (3) holding public office or employment is a public trust and that as one safeguard of that trust, the people require public officers to adhere to a code of ethics;
 - (4) a fair and open government requires that executive branch public officers conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest;
 - (5) in order for the rules governing conduct to be respected both during and after leaving public

service, the code of ethics must be administered fairly without bias or favoritism;

(6) no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment; and

(7) compliance with a code of ethics is an individual responsibility; thus all who serve the state have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates.

SENATOR SEEKINS opined that the ethics laws must be very clear, fair, and enforceable. In order to accomplish the aforementioned, he said he reviewed various state laws, municipal codes, bar association codes, judicial conduct, et cetera. Senator Seekins said that he discovered that there is no uniform ethics code model. He reminded the committee that during the former Attorney General Gregg Renkes situation, Bob Bundy, Attorney for Dorsey & Whitney LLC, said that he couldn't find a clear, bright line as to whether the investment of Mr. Renkes constituted a violation. Therefore, part of the charge with this legislation was to establish a clear, bright line. In so doing, Senator Seekins said that he followed Mr. Bundy's recommendations. Senator Seekins found that there's no impropriety if the following applies:

(1) personal or financial interest in the matter is [INSIGNIFICANT, OR] of a type that is possessed generally by the public or a large class of persons to which the public officer belongs; [OR]

(2) action or influence would have insignificant or conjectural effect on the matter;

(3) financial interest in a matter is held in a blind trust or the public officer does not have management control over the financial interest; or

(4) personal or financial interest in a matter is in regard to a business and the public officer

(A) does not own a controlling interest in the business;

(B) does not own stock or options to buy stock that, when combined,

(i) equal more than one percent of the stock in the business; or
(ii) have a total value of more than \$10,000;
(C) owns or has an option to buy
(i) less than one percent of the equity interest in the business; and
(ii) an equity interest in the business worth less than \$10,000;
(D) is not a member of the board of directors or another governing body of the business;
(E) is not an elected officer of the business;
(F) does not provide or have an option to provide personal
or professional services to the business;
(G) does not have a contract or have an option for a contract with the business; and
(H) is not an employee of the business.

SENATOR SEEKINS noted that a previous committee amended the legislation to also include stock options or ownership options to the list of situations in which there is no impropriety. Senator Seekins said that he was also charged with finding and addressing any other problems in this statute. [Another problem] in the Alaska Executive Branch Ethics Act was in the area of confidentiality, which only applies to current and former public officers. He explained that a public officer is a public employee, a member of a board or commission, and a state officer designated by the governor to act as trustee or a person with trust duties. Furthermore, the Act applies during the investigation and until a finding of probable cause by the attorney general and formal proceedings are initiated. After the aforementioned, the complaint is a public record. Senator Seekins pointed out that [CSSB 186(JUD)] specified that knowingly and intentionally making a complaint public or knowingly and intentionally doing so prior to a finding of probable cause by anyone would've been a misuse of the act. Therefore, the penalty currently in law for public employees would apply to everyone. He pointed out that currently statute specifies that breaking any part of [AS 39] may result in a civil penalty in an amount not to exceed \$5,000. Senator Seekins opined that the law should apply to all equally. He further suggested that if there isn't an equal confidentiality requirement for everyone, then there should be no such requirements.

[11:38:27 AM](#)

SENATOR SEEKINS then turned to the matter of blind trusts, which is defined by the American Bankers Association as follows: "A trust is set up to prevent the owner from having detailed knowledge of assets in the trust." He noted that government officials frequently use blind trusts in order to avoid conflicts of interest between official duties and personal financial transactions. Senator Seekins noted that many successful individuals with investments enter into government, and in some cases, the most qualified person to work on an issue is the person with a potential conflict of interest due to his/her portfolio. Returning to the blind trust, Senator Seekins highlighted that under the Act there has to be full disclosure of the assets, then when there is a potential violation there has to be a declaration of a potential violation. At that point, the person must refrain from taking any official action relating to the matter until a determination is made and the matter is disclosed in writing to his/her immediate designated supervisor and the attorney general. Therefore, the designated supervisor is provided another option for a highly qualified individual to work on behalf of the state on a particular project. This legislation would add the option of [requiring] the public official's interest to be placed in a blind trust. He reiterated that the objective with SB 186 is to make the ethics law clear, fair, and enforceable.

[11:41:00 AM](#)

CHAIR ROKEBERG noted that throughout the legislation there are references to "business associates" and "what a person knows or reasonably ought to know". He related his understanding that "business associates" would not cover a minority ownership or a limited liability company (LLC) in which the covered official is a limited partner, and asked if that's correct.

SENATOR SEEKINS replied yes. With regard to the language "what a person knows or reasonably ought to know", Senator Seekins specified that it's a term of art that isn't a "very wide brush."

CHAIR ROKEBERG recalled that as an LLC member, he had to distinguish whether he was a managing or nonmanaging member for Internal Revenue Services (IRS) purposes. Therefore, accountants would determine whether the LLC member was a majority managing partner or minority nonmanaging member of an LLC. He asked if the legislation makes a similar distinction.

SENATOR SEEKINS answered that [the legislation makes a similar distinction], although he emphasized that it's not expected that an individual would know everything about his/her business associates.

[11:43:25 AM](#)

CHAIR ROKEBERG posed an example in which an individual is appointed to the position of a commissioner and turns his/her business over to an associate, and inquired as to how that individual would know what the associate is thinking.

SENATOR SEEKINS replied that the individual wouldn't know what the associate is thinking, although the individual should have a reasonable idea as whether there is a conflict of interest.

CHAIR ROKEBERG posed a situation in which a public official is a business associate who owns 1,000 shares of a business with which the state is making a deal.

SENATOR SEEKINS explained that if the public official holds over a \$10,000 [interest] or over 1 percent, the public official would have to declare a conflict to his/her supervisor. He specified that the public official would have to make a declaration of a potential violation and refrain from taking any official action until the determination is made and the matter would have to be disclosed in writing to the designated supervisor. If the interest was in a blind trust to begin with, the aforementioned wouldn't have to be done because the public official wouldn't know what is in the blind trust. However, when there is no blind trust, the designated supervisor could recommend that the employee divest or place the [investment] in a blind trust for the period during which the public official is working on the matter in which he/she has a conflict of interest. The blind trust is meant to take [the investment] out of [the public official's] direct control, although he/she would know that he/she has a potential investment.

[11:46:55 AM](#)

REPRESENTATIVE BERKOWITZ asked if there is a definition of "blind trust."

SENATOR SEEKINS said the legislation doesn't currently include a definition for blind trust, although he said he would have no problem inserting the earlier mentioned definition from the American Bankers Association.

REPRESENTATIVE BERKOWITZ suggested that other legal definitions of "blind trust" would be helpful [to review]. Furthermore, any time a definition for trust is added, it must [properly] intersect with the already existing trust statutes.

SENATOR SEEKINS noted that he didn't review that, although he indicated that he has reviewed the last two major revisions in the trust law and didn't see any conflict. Still, he offered to research that matter for the committee. He also offered to develop a definition for blind trust because he didn't believe there to be one in statute.

[11:48:53 AM](#)

CHAIR ROKEBERG related his plan to offer an amendment that would insert language such that a blind trust is placed in statute.

REPRESENTATIVE BERKOWITZ commented that he doesn't intend to support the aforementioned amendment.

SENATOR SEEKINS offered his assistance with [inserting language] allowing blind trusts.

[11:49:38 AM](#)

CHAIR ROKEBERG pointed out that he didn't see a definition of "campaign period" in the legislation.

SENATOR SEEKINS clarified that the campaign period mainly applies to the Legislative Ethics Act than the Executive Branch Ethics Act. However, [if the committee deems it necessary], then he said he wouldn't have any objection to including the same campaign period for the Legislative Ethics Act.

CHAIR ROKEBERG inquired as to what is meant by the term "close social unit."

SENATOR SEEKINS highlighted the varying family unit configurations, which are difficult to define.

CHAIR ROKEBERG posed a situation in which two to three people are rooming together. Under the Legislative Ethics Act the aforementioned group would be considered "economic associates". Therefore, he asked if that would apply here as well.

SENATOR SEEKINS specified that "if you were working on their behalf and against the best interest of the state, that is one of the groups that we would look at." In conclusion, Senator Seekins said that he has found that those who comment on this legislation on a regular basis haven't read the Alaska Executive Branch Ethics Act and don't even understand the provisions being suggested in SB 186. Therefore, he encouraged everyone to read the Act in order to understand that only public officials are held responsible for breaking confidentiality.

[11:51:38 AM](#)

CHAIR ROKEBERG, upon determining that no one else wished to testify, closed public testimony.

[11:53:19 AM](#)

CHAIR ROKEBERG moved Amendment 1, labeled 24-LS0874\P.1, Wayne, 3/6/06, which read:

Page 1, line 10, following ";":

Delete "or"

Insert "**(3) financial interest in a matter is held in a blind trust or the public officer does not have management control over the financial interest;**
or

(4)"

Page 3, following line 25:

Insert a new bill section to read:

"* **Sec. 8.** AS 39.52.210(b) is amended to read:

(b) A public employee's designated supervisor shall make a written determination whether an employee's involvement violates AS 39.52.110 - 39.52.190 and shall provide a copy of the written determination to the public employee and to the attorney general. If the supervisor determines that a violation could exist or will occur, the supervisor shall,

(1) reassign duties to cure the employee's potential violation, if feasible; or

(2) direct

(A) the divestiture or removal by the employee of the personal or financial interests that give rise to the potential violation; or

(B) the placement by the employee of the financial interest that gives rise to the potential

violation into a blind trust or other investment where the employee does not have management control over the financial interest."

Renumber the following bill sections accordingly.

Page 9, lines 3 - 4:

Delete "[ESTABLISHMENT OF A BLIND TRUST,]"

Insert "establishment of a blind trust for a period of time or under conditions determined appropriate, placement of the financial interest into an investment where the employee does not have management control over the financial interest,"

REPRESENTATIVES BERKOWITZ AND HARRIS objected.

CHAIR ROKEBERG explained that Amendment 1 would reinsert the blind trust provisions that were deleted in the House State Affairs Standing Committee. Chair Rokeberg opined that the blind trust mechanism should be available [because] it's already difficult enough to recruit competent people in the state, which is a small state in which people tend to have interlocking business interests. [Amendment 1] would allow a typical portfolio to be continued and managed while allowing the individual to participate in public service without divesting his/her investment portfolios.

[11:54:58 AM](#)

CHAIR ROKEBERG related his understanding that under SB 186 if a public official didn't have a blind trust prior to an appointment by the governor, for example, full disclosure of the contents of the trust [would be required] before it's placed in a blind trust.

SENATOR SEEKINS replied yes. He related his understanding that when a [public official] enters [public service] he/she has to make a disclosure statement. If later that public official places the [investment] in a blind trust, everyone would know what's in the blind trust. However, that public official wouldn't have control over what is sold or not sold and what is retained or not retained because that would be the charge of the person controlling the trust. Senator Seekins then suggested that the governor may own bank stock. He questioned whether the governor should be forced to sell that bank stock and face the tax consequences in order to make any decision relating to the regulation of banking in the state or could he be allowed to

place it in a blind trust under a petition of a conflict of interest. He reiterated that [a blind trust] merely provides one more option with full disclosure for the ethics supervisor in regard to conflicts of interest.

[11:57:53 AM](#)

REPRESENTATIVE BERKOWITZ said that Senator Seekins' initial supposition is incorrect because no one is saying that the governor has to sell his bank assets. Rather, if there is a conflict, the individual shouldn't participate in related decisions or divest. Anyone with a conflict has the aforementioned choices, he opined.

SENATOR SEEKINS interjected that [under Amendment 1] the option of a blind trust would be available as well.

[11:58:26 AM](#)

REPRESENTATIVE HARRIS pointed out that the governor has to be involved with every decision, and if he/she had prior business dealings, he/she would have to place [investments] in a blind trust, divest it, or not make action. However, the governor is constitutionally bound to make an action. Therefore, he questioned why the governor couldn't merely provide full disclosure.

[11:59:52 AM](#)

CHAIR ROKEBERG posed a scenario in which a governor with banking stock was faced with banking legislation, and asked if Representative Berkowitz would recommend that the legislation become law without the governor taking action or should the governor veto the legislation. He clarified that this situation wouldn't include the option of a blind trust.

REPRESENTATIVE BERKOWITZ pointed out that in HCS CSSB 186(JUD) there are eight alternatives, as specified on page 1, line 12 through page 2, line 15. He mentioned his belief that a governor shouldn't be an elected officer of any business because there's an inherent conflict. He opined that the instances that would arise would be relatively few and far between. Representative Berkowitz further opined that if the governor has a controlling interest in a banking business, then the governor shouldn't participate.

SENATOR SEEKINS clarified that it's not a controlling interest, but rather a \$10,000 interest. He emphasized that the reason [the legislation is before the committee] is because these situations are few and far between, but the state was caught in such a situation. Therefore, in order to address this [one must realize] that for some a \$10,000 investment isn't a large sum. He reiterated that the legislation specifies that with full disclosure and a letter to the attorney general and the individual's ethics supervisor relating the conflict, the blind trust would merely provide another option to AS 39.52.210.

[12:03:12 PM](#)

REPRESENTATIVE BERKOWITZ opined that there has never been an instance in which the governor has had such a conflict. However, if such a conflict exists, then the governor is incapacitated for that legislation and the responsibility for the course of action should be left to the lieutenant governor. He said that he didn't want to design a system for an instance that hasn't occurred. He then expressed concern with regard to creating a blind trust because "we" don't know what it is. Furthermore, the circumstances under which the blind trust is created don't necessarily mean that the individual whose assets are held in the blind trust doesn't know what's in them. For example, someone could have a blind trust, know what's in it, and decide to sell the assets in order to capitalize on an official action, which would be problematic. Therefore, the stark choice created under the current statute seems appropriate.

SENATOR SEEKINS commented that he didn't know that the statutes or the constitution contain a provision allowing the lieutenant governor to sign legislation. Senator Seekins then specified that the example with the governor is merely that, although he said he could provide other examples [with public officials] all of which are subject to the law. With full disclosure, knowledge of the investment, and consultation with the ethics supervisor, he opined that there is protection against possible problems while allowing the individual [with the investment] the opportunity to use his/her expertise to the benefit of the state.

[12:05:48 PM](#)

REPRESENTATIVE BERKOWITZ opined that there are ethics [laws] so that there is a democracy rather than a kleptocracy in order that individuals don't utilize their official government

positions to enhance their personal position. Representative Berkowitz emphasized that if one has an inescapable conflict, then he/she shouldn't be involved in government.

CHAIR ROKEBERG pointed out that in Section 9 of Article III of the Alaska State Constitution it says: "In case of the temporary absence of the governor from office, the lieutenant governor shall serve as the acting governor." Therefore, he surmised that the governor would have to be absent and thus Representative Berkowitz's suggestion isn't appropriate.

[12:06:47 PM](#)

CHAIR ROKEBERG expressed concern with the 15,000 [public officials] who could have a retirement plan of their own that could easily amount to seven figures. He opined that he didn't believe it to be appropriate for those people to liquidate their portfolio to serve the government. Therefore, providing a mechanism by which the individual can have a blind trust in order that the individual can serve the government is appropriate, which is the basis of the amendment. Furthermore, he opined that it's quite defensible.

REPRESENTATIVE BERKOWITZ reiterated the lack of [a definition] of blind trust in statute and the lack of actual examples beyond the Renkes incident, which he characterized as a clear conflict of interest. Although the Renkes incident was a bit difficult under the statute, a bright line could be inserted in statute to address such situations.

CHAIR ROKEBERG opined that the \$10,000 limitation is a bright line. He further opined that a blind trust is appropriate so that one doesn't have to liquidate his/her entire portfolio because owning \$10,000 of an equity position is relatively small. Chair Rokeberg pointed out that he would have to liquidate his entire retirement portfolio or major portions of it if he were appointed to an executive position because of the \$10,000 limit. He characterized [having an equity interest in a business worth more than \$10,000] as common, especially for those who have been self employed.

[12:09:53 PM](#)

REPRESENTATIVE HARRIS posed a situation in which a long-term employee of the state who had built up retirement under the Public Employees Retirement System (PERS) was selected to be the commissioner of Department of Administration. He asked if that

individual, with more than \$10,000 worth of retirement, would have to liquidate the retirement or not participate in decisions related to the retirement system.

SENATOR SEEKINS answered that the aforementioned individual would be part of a large group with which that individual doesn't have control and thus wouldn't be a conflict under the current law or this legislation. With regard to actual examples, Senator Seekins opined that before the Renkes incident there wasn't a clear line. Had such been in place, the governor, as the attorney general's ethics supervisor, may have suggested that Mr. Renkes divest himself of the interest and have nothing more to do with the project or place the interest in a blind trust with full disclosure. The Renkes situation was something that wasn't thought of before, and therefore this legislation attempts to avoid future [similar] situations with some reasonable and full disclosure on the part of someone who works for state government and may have a potential conflict.

[12:12:51 PM](#)

REPRESENTATIVE GUTTENBERG opined that he would rather have full disclosure rather than a blind trust, which seems to be a smoke screen. He noted that in the past there have been situations in which some chief executives have had control of a blind trust, although it may not have been direct control.

SENATOR SEEKINS pointed out that under AS 39.52.270 a public official is required to provide full disclosure, which has to be screened by that public official's designated ethics supervisor.

CHAIR ROKEBERG surmised then that the asset has to be disclosed and screened, which seems to overcome Representative Guttenberg's concern.

[12:15:40 PM](#)

REPRESENTATIVE BERKOWITZ informed the committee of AS 39.50.040, which read:

Sec. 39.50.040. Blind trusts.

(a) A public official may transfer all or a portion of the official's assets to a blind trust for the duration of service in public office. The original assets placed in the blind trust shall be listed by the official in the statement required to be filed

under this chapter. The instrument creating the blind trust must be included with the statement.

(b) For a trust to qualify under this section,

(1) assets transferred to the trust shall be marketable;

(2) the trustee shall be a bank or other institutional fiduciary;

(3) the trustee shall have full authority to manage the trust, including the purchase, sale, and exchange of its assets in accordance with fiduciary principles;

(4) information regarding the identity and the nature of its assets shall be confidential from the trustor for the duration of the trust;

(5) the trustee shall be required to report any known breach of confidentiality or the termination of the trust to the office where the trustor is required to file statements under this chapter; and

(6) ~~{}~~Repealed, Sec. 26 ch 25 SLA 1975~~}~~.

SENATOR SEEKINS highlighted that the ethics law doesn't include an allowance to accommodate that blind trust.

REPRESENTATIVE BERKOWITZ clarified that once an individual becomes a public official, nothing prohibits that individual from establishing a blind trust.

SENATOR SEEKINS noted his agreement, but pointed out that nothing [in statute] specifies that the individual wouldn't have a conflict of interest if "there's something there." He specified [that the statute] doesn't include for a potential conflict of interest to utilize blind trusts nor does a blind trust remove the individual from the first conflict, which is what SB 186 accomplishes.

[12:18:10 PM](#)

REPRESENTATIVE HARRIS asked if Senator Seekins would support Amendment 1.

SENATOR SEEKINS replied yes, adding that blind trusts are a legitimate method that he opined was originally intended to be included in statute. In further response to Representative Harris, Senator Seekins specified that the blind trust provision was deleted in the House State Affairs Standing Committee.

[12:19:24 PM](#)

REPRESENTATIVE HARRIS expressed the desire for the legislation to include a definition for blind trust, which could be accomplished through amendment.

SENATOR SEEKINS explained that [AS 39.50.040] doesn't define a blind trust, although it specifies the elements that qualify it as a trust. Therefore, the committee may want to cross reference AS 39.50.040 in SB 186.

12:20:30 PM

REPRESENTATIVE BERKOWITZ opined that there is a substantial difference between the blind trust referenced in AS 39.50.040 and what Amendment 1 suggests. He related his understanding that Amendment 1 suggests that once it's determined that a violation could exist or will occur, then the supervisor shall direct the placement of the financial interest of the employee into a blind trust. The aforementioned is very different than one transferring all or a portion of his/her assets into a blind trust for the duration of service in a public office.

CHAIR ROKEBERG said that he tended to agree with Representative Berkowitz.

SENATOR SEEKINS returned to the situation in which an public employee enters service and that employee's disclosure is screened for a potential violation. If the ethics supervisor determines that there is a potential violation, there are two options and this [amendment] would provide a third option. Moreover, if the financial interest in violation is in a blind trust from the beginning, then it's not a substantial violation of the ethics code.

12:22:51 PM

REPRESENTATIVE HARRIS inquired as to the problem with automatically placing the financial interests that are in violation in a blind trust when the individual takes office.

CHAIR ROKEBERG opined that the aforementioned could be problematic because there could be certain businesses that one wouldn't want to place in a blind trust. Therefore, such should be an optional provision. He commented that one with a broad portfolio that places the individual under the \$10,000 limitation would probably want to utilize a blind trust. Amendment 1, he explained, specifies that if one has a financial

interest in a blind trust, it would be out of the individual's control. However, Section 8 allows the establishment of a blind trust after the supervisory review.

SENATOR SEEKINS noted his agreement.

12:25:05 PM

REPRESENTATIVE KOHRING asked if the chair's intention is to take an amendment to Amendment 1 to insert the language "as defined in AS 39.50.040."

CHAIR ROKEBERG said that such an amendment could be offered or an amendment stripping out the Section 8 language could be offered. Although he recognized the sponsor's intention to allow the [ethics] supervisor to have the freedom, he indicated that he did have a bit of concern with that.

SENATOR SEEKINS opined [that a blind trust] provides a reasonable alternative that's fully disclosed.

CHAIR ROKEBERG commented that he wasn't sure what would be gained by the mere act of placing the [financial interest] in the blind trust because it doesn't eliminate the conflict "if you know what's already there."

SENATOR SEEKINS reiterated his earlier remarks that sometimes those with conflicts are the best to have working on the project.

12:26:38 PM

CHAIR ROKEBERG reviewed the elements of Amendment 1, which includes the provision to establish a blind trust as a methodology and the provision that allows the supervisor to recommend the placement of any assets in conflict in a blind trust. He asked if the discretionary action, as specified in the Section 8 provision of Amendment 1, is the primary concern of Representative Berkowitz.

REPRESENTATIVE BERKOWITZ replied yes.

CHAIR ROKEBERG referred to changes in Amendment 1 to page 9, lines 3-4, of the legislation.

The committee took an at-ease from 12:28 p.m. to 12:30 p.m.

[12:30:06 PM](#)

CHAIR ROKEBERG moved that the committee adopt an amendment to Amendment 1 such that page 1, lines 7-23 to page 2, line 2, as numbered on Amendment 1, would be deleted. Therefore, Amendment 1, as amended, would read as follows:

Page 1, line 10, following "i":

Delete "or"

Insert "(3) financial interest in a matter is held in a blind trust or the public officer does not have management control over the financial interest;
or

(4)"

Page 9, lines 3 - 4:

Delete "[ESTABLISHMENT OF A BLIND TRUST,]"

Insert "establishment of a blind trust for a period of time or under conditions determined appropriate, placement of the financial interest into an investment where the employee does not have management control over the financial interest,"

There being no objection, the aforementioned amendment to Amendment 1 was adopted.

CHAIR ROKEBERG explained that Amendment 1, as amended, leaves the blind trust concept intact and allows it to be used as a tool when one enters public service. Therefore, if one has a blind trust after taking a position, as is allowed currently, the language allows the individual to operate. He related his assumption that the blind trust would be defined by AS 39.50.040 without a specific reference because it resides in the same chapter.

[12:32:59 PM](#)

CHAIR ROKEBERG, upon determining there were no objections, announced that Amendment 1, as amended, was adopted.

[12:33:19 PM](#)

REPRESENTATIVE BERKOWITZ, in response to Chair Rokeberg, related his belief that the language [in Amendment 1 as amended] adequately sets forth the definition of a blind trust. Representative Berkowitz then related his understanding that when the language regarding the criminal sanctions for those who

made mention of a complaint was removed, a section allowing for the filing of a civil complaint against an individual was inadvertently left in.

SENATOR SEEKINS responded that he wasn't aware of such, but offered to review the language if Representative Berkowitz could direct him to it.

REPRESENTATIVE BERKOWITZ reiterated that the language regarding the fine was deleted, although the possibility of a civil complaint with compensatory damages remains in the legislation.

SENATOR SEEKINS pointed out that there still is a wrongful use of the complaint if it's a frivolous complaint, which would result [in a civil penalty]. In response to Representative Harris, Senator Seekins specified that the personnel board determines whether a complaint is frivolous.

[12:35:53 PM](#)

REPRESENTATIVE BERKOWITZ turned attention to Section 15 of HCS CSSB 186(JUD), which is a negligence standard and thus leaves open the possibility of a civil complaint.

SENATOR SEEKINS pointed out that the legislation specifies that the personnel board may recommend sanctions. He noted that the [House] Judiciary Standing Committee determined that reckless disregard was the proper standard.

[12:37:31 PM](#)

REPRESENTATIVE BERKOWITZ related that reading Section [15] in conjunction with the Section [14] leaves the complainant open to a civil suit.

The committee took an at-ease from 12:37 p.m. to 12:40 p.m.

[12:40:46 PM](#)

SENATOR SEEKINS explained that currently [AS 39.52].340 requires confidentiality [and the legislation] clearly sets out where the confidentiality is. He pointed out that under current law one would be in violation if he/she talks with his/her attorney. Therefore, the legislation specifies that the level of confidentiality can be broken with the specified individuals under the specified bases. The legislation also describes at

what point the information becomes public. Moreover, any penalty only applies to a public employee.

CHAIR ROKEBERG pointed out that under Section 15 the sanctions under AS 39.52.410-AS 39.52.440 only apply as a civil fine to a public employee.

[12:43:39 PM](#)

REPRESENTATIVE HARRIS moved to report HCS CSSB 186(JUD), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 186(RLS) was reported from the House Rules Standing Committee.

The committee took an at-ease from 12:44 p.m. to 12:46 p.m.

HB 273-PFD: DELAY PAYMENT FOR ALLOWABLE ABSENCES

[12:46:43 PM](#)

CHAIR ROKEBERG announced that the final order of business would be HOUSE BILL NO. 273, "An Act relating to the dividends of individuals claiming allowable absences; and providing for an effective date." [Before the committee is CSHB 273(FIN).]

[12:46:52 PM](#)

REPRESENTATIVE COGHILL moved to adopt CSHB 273, Version 24-LS0871\I, Cook, 3/10/06, as the working document.

REPRESENTATIVE BERKOWITZ objected, and mentioned that in the House Finance Committee two amendments that received a 4-3 vote were deemed not to have passed and thus not included in the House Finance Committee's substitute. However, it's clear, he opined, that only a majority of the quorum is all that's needed to adopt an amendment.

[12:47:39 PM](#)

REPRESENTATIVE BRUCE WEYHRAUCH, Alaska State Legislature, sponsor, began by confirming that the House Finance Committee did deem two amendments that received a 4-3 vote as failed. He informed the committee that he requested this hearing because of the interest with regard to anything related to the permanent fund dividend (PFD) and to address any amendments in committee rather than on the House floor. He explained that once someone

applies for an allowable absence, of which there are 11, the individual can continue to receive the PFD if the individual returns to the state to demonstrate his/her presence. The aforementioned situation is allowed for a period of 10 years. However, under HB 273 once an individual has been out of state for two years and the individual hasn't returned to the state, the PFD check would be held until the individual returns to the state. Once the individual returns to the state and establishes residency again, then all the held checks are given to the individual. Therefore, the legislation provides a large incentive to return to the state and provides a bonus because once residency is established, the individual would receive all the PFD checks that were held. Representative Weyhrauch related that he has learned, through the [Permanent Fund Division] and the Department of Law, that individuals who have been out of state for three years don't return to the state. In fact, the allowable absence category in which an individual who is a dependent of military personnel living outside of the state could receive a PFD without ever being in the state. He recalled that the amendments to which Representative Berkowitz spoke about were related to extending the period of time allowed for allowable absences. He concluded by informing the committee that before the committee is essentially the House State Affairs Standing Committee version of HB 273 because Version I doesn't include Representative Mike Kelly's amendment adopted in the House Finance Committee, which would've prohibited individuals who had been out of state for five years from receiving a PFD.

[12:52:40 PM](#)

CHAIR ROKEBERG requested that Representative Weyhrauch explain the substance of the two amendments that were deemed to have failed in the House Finance Committee.

REPRESENTATIVE WEYHRAUCH recalled that the amendments addressed extending the number of years in which a person could be out of state before collecting the PFD.

REPRESENTATIVE BERKOWITZ informed the committee that Representative Joule's amendment in the House Finance Committee would've allowed an exemption for students who were in the state for at least 90 days.

REPRESENTATIVE WEYHRAUCH recalled that the other amendment addressed the notion that students are more in need of the PFD than other categories of excused absences. The concern was that

the needs-based test for receiving the PFD couldn't withstand legal scrutiny and wouldn't be applied across the board.

REPRESENTATIVE BERKOWITZ specified that Representative Kerttula's amendment in the House Finance Committee would've extended by a year, the time period an individual would be able to collect a PFD under the delayed payment plan.

[12:55:01 PM](#)

REPRESENTATIVE WEYHRAUCH reiterated that Version I is essentially the House State Affairs Standing Committee version, which included an amendment by Representative Gardner that would extend the period of time in which one could receive a PFD when out of state to two years. He highlighted that data relates that greater than 60 percent of those out of state longer than two years don't return yet still claim a PFD.

[12:55:56 PM](#)

REPRESENTATIVE BERKOWITZ withdrew his objection.

There being no further objection, Version I, was adopted.

[12:56:33 PM](#)

REPRESENTATIVE HARRIS moved to report CSHB 273, Version 24-LS0871\I, Cook, 3/10/06, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 273(RLS) was reported from the House Rules Standing Committee.

[12:56:46 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Rules Standing Committee meeting was adjourned at 12:57 p.m.