

SB

186

Alaska State Legislature

House of Representatives



Official Business

COMMITTEE ON RULES
Representative Norman Rokeberg, Chairman

State Capitol, Rm. 214
Juneau, Ak 99801-1182
(907) 465-3764

March 23, 2006 House Rules Committee meeting:

SB 186 will be brought up under bills previously heard or scheduled.

Please bring your SB 186 file with you to the committee meeting.

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

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March 27, 2006

The Honorable Ralph Seekins
Senator
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

The Honorable Norman Rokeberg
Representative
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Re: HCS CSSB 186(RLS) – “An Act relating to the Alaska Executive Branch Ethics Act”
AG file no. 661-06-0170

Dear Senator Seekins and Representative Rokeberg:

We wish to alert you to what appears to be a drafting problem in HCS CSSB 186(RLS), which passed out of the House Rules Committee on March 15 and is awaiting placement on the House of Representatives' calendar. We have enclosed a draft amendment that would fix the problem.

The apparent problem is that the bill, which would amend the Alaska Executive Branch Ethics Act, refers in several places to matters remaining confidential “until the personnel board makes a finding of probable cause,” but the personnel board does not make probable cause findings under the Ethics Act. Under the Ethics Act, the attorney general makes the probable cause findings (*see* AS 39.52.320 and AS 39.52.350) except when independent counsel make the findings because the complaints involve the governor, lieutenant governor, or attorney general. *See* AS 39.52.310(c).

Substituting “attorney general” for “personnel board” in the bill's references to probable cause findings would solve the problem, with one exception. The exception is in

section 13 of the bill, which addresses personnel board reports on ethics complaints that the attorney general (or independent counsel) dismisses or resolves. If the attorney general or independent counsel dismisses or resolves an ethics complaint, neither normally makes a probable cause finding on the matter. Consequently, the practical effect of section 13 would be that the personnel board's report on a dismissed or resolved matter would remain confidential unless the subject of the complaint waived confidentiality.

The enclosed draft amendment would fix the problem by substituting "attorney general" for "personnel board" in the appropriate places and by eliminating the reference in section 13 to a probable cause finding. If you have questions about the draft amendment or if we can assist in any way, please let us know.

Sincerely,

DAVID W. MARQUEZ
ATTORNEY GENERAL

By:



David T. Jones
Senior Assistant Attorney General

Enclosure

cc: Kevin Jardell (w. enclosure)
Randy Ruaro (w. enclosure)

24G-2
3/24/06
(9:30 AM)

AMENDMENT #1

*Coghill moved
at 9:30 AM*

OFFERED IN THE HOUSE

BY REPRESENTATIVE _____

TO: HCS CSSB 186(RLS)

adopted

- 1 Page 6, lines 20 - 21:
- 2 Delete "until the personnel board makes a finding of probable cause"
- 3
- 4 Page 7, line 13:
- 5 Delete "personnel board"
- 6 Insert "attorney general"
- 7
- 8 Page 7, line 22:
- 9 Delete "board"
- 10 Insert "attorney general"
- 11
- 12 Page 7, line 28:
- 13 Delete "personnel board"
- 14 Insert "attorney general"

*Hold bill over
bill was not moved out*

5 C.F.R. § 2634.403

C**Effective: [See Text Amendments]**

Code of Federal Regulations Currentness
 Title 5. Administrative Personnel
 Chapter XVI. Office of Government Ethics
 Subchapter B. Government Ethics
 Part 2634. Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture (Refs & Annos)
 Subpart D. Qualified Trusts (Refs & Annos)

→ § 2634.403 Qualified blind trusts.

(a) Definition. A qualified blind trust is a trust in which the filer, his spouse, or his minor or dependent child has a beneficial interest, which is certified pursuant to § 2634.405 of this subpart by the Director of the Office of Government Ethics, and which includes in the trust instrument in the provisions required by paragraph (b) of this section, and has an independent trustee as defined in § 2634.406 of this subpart. See section 102(f)(3) of the Act.

(b) Required provisions. The instrument which establishes a blind trust must adhere substantively to model drafts circulated by the Office of Government Ethics, and must provide that:

(1) The primary purpose of the blind trust is to confer on the independent trustee and any other designated fiduciary the sole responsibility to administer the trust and to manage trust assets without the participation by, or the knowledge of, any interested party. This includes the duty to decide when and to what extent the original assets of the trust are to be sold or disposed of and in what investments the proceeds of sale are to be reinvested;

(2) The trustee and any other designated fiduciary in the exercise of their authority and discretion to manage and control the assets of the trust shall not consult or notify any

interested party;

(3) None of the assets initially placed in the trust's portfolio shall include assets the holding of which by any interested party would be prohibited by the Act, by the implementing regulations, or by any other applicable Federal law, Executive order, or regulation;

(4) Any portfolio asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale, except as fully described in schedules attached to the trust instrument, and as approved by the Director of the Office of Government Ethics;

(5) During the term of the trust, the interested parties shall not pledge, mortgage, or otherwise encumber their interests in the property held by the trust;

(6) The trustee shall promptly notify the filer and the Director of the Office of Government Ethics when any particular asset transferred to the trust by an interested party has been completely disposed of or when the value of that asset is reduced to less than \$1,000;

(7) The trustee or his designee shall prepare the trust's income tax return. Under no circumstances shall the trustee or any other designated fiduciary disclose publicly, or to any interested party, the trust's tax return, any information relating to that return except for a summary of trust income in categories necessary for an interested party to complete his individual tax return, or any information which might specifically identify current trust assets, or those assets which have been sold or disposed of from trust holdings, other than information relating to the sale or disposition of original trust assets under paragraph (b)(6) of this section;

(8) An interested party shall not receive any report on trust holdings and sources of trust

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income, except that the trustee shall, without identifying specifically any asset or holding:

(i) Report quarterly the aggregate market value of the assets representing the interested party's interest in the trust;

(ii) Report the net income or loss of the trust, and any other information necessary to enable the interested party to complete his individual income tax return; and

(iii) Report annually, for purposes of section 102(a)(1)(D) of the Act, the aggregate amount of the trust's income attributable to the interested party's beneficial interest in the trust, categorized in accordance with § 2634.302(b);

(9) There shall be no direct or indirect communication with respect to the trust between an interested party and the independent trustee or any other designated fiduciary with respect to the trust unless:

(i) Such communication is in writing, with the prior written approval of the Director of the Office of Government Ethics and is filed with the Director in accordance with § 2634.408(c) of this subpart; and

(ii) It relates only:

(A) To the request for a distribution from the trust, which does not specify whether the distribution shall be made in cash or in kind;

(B) To the general financial interest and needs of the interested party including, but not limited to, a preference for maximizing current income or long-term capital appreciation;

(C) To notification of the trustee by the interested party that the interested party is prohibited by subsequently applicable statute, Executive order, or regulation from holding an asset, and to directions to the trustee that the trust shall not hold that asset; or

(D) To instructions to the trustee to sell all of an asset which was initially placed in the trust by an interested party, and which, in the determination of the filer creates a real or apparent conflict due to duties subsequently assumed by the filer (but the filer is not required to give such directions);

Note: By the terms of paragraph (3)(C)(vi) of section 102(f) of the Act, communications which solely consist of requests for distributions of cash or other unspecified assets of the trust are not required to be in writing. Further, there is no statutory mechanism for pre-screening of proposed communications. However, experience of the Office of Government Ethics over the years dictates the necessity of prohibiting any oral communications between the trustee and an interested party with respect to the trust and pre-screening all proposed written communications, to prevent inadvertent prohibited communications and preserve confidence in the Federal qualified trust program. Accordingly, under its authority pursuant to paragraph (3)(D) of section 102(f) of the Act, the Office of Government Ethics will not approve proposed trust instruments which do not contain language conforming to this policy, except in unusual cases where compelling necessity is demonstrated to the Director, in his sole discretion.

(10) The interested parties shall not take any action to obtain, and shall take reasonable action to avoid receiving, information with respect to the holdings and the sources of income of the trust, including a copy of any trust tax return filed by the trustee, or any information relating to that return, except for the reports and information specified in paragraphs (b)(6) and (b)(8) of this section;

(11) An independent trustee and any other designated fiduciary shall file, with the Director of the Office of Government Ethics by May 15th following any calendar year during which the trust was in existence, a properly executed Certificate of Compliance in the form prescribed in appendix B to this part. In addition, the independent trustee and such fiduciary shall maintain and make available for inspection by the Office of Government Ethics, as it may from time to time direct, the trust's

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books of account and other records and copies of the trust's tax returns for each taxable year of the trust;

(12) Neither the trustee nor any other designated fiduciary shall knowingly and willfully, or negligently:

(i) Disclose to any interested party any information regarding the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations, or the trust instrument;

(ii) Acquire any holding the ownership of which is prohibited by, or not in accordance with, the terms of the trust instrument;

(iii) Solicit advice from any interested party with respect to the trust, if such solicitation is prohibited by title I of the Act, the implementing regulations, or the trust instrument; or

(iv) Fail to file any document required by title I of the Act or by this part;

(13) An interested party shall not knowingly and willfully, or negligently:

(i) Solicit or receive any information regarding the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations, or the trust instrument; or

(ii) Fail to file any document required by title I of the Act or by this part;

(14) No person, including investment counsel, investment advisers, accountants, and tax preparers, may be employed or consulted by an independent trustee or any other designated fiduciary to assist in any capacity to administer the trust or to manage and control the trust assets, unless the following four conditions are met:

(i) When any interested party learns about such employment or consultation, the person must sign the trust instrument as a party, subject to the prior approval of the Director of the Office

of Government Ethics;

(ii) Under all the facts and circumstances, the person is determined pursuant to the requirements for eligible entities under § 2634.406 of this subpart to be independent of any interested party with respect to the trust arrangement;

(iii) The person is instructed by the independent trustee or other designated fiduciary not to disclose publicly or to any interested party information which might specifically identify current trust assets which have been sold or disposed of from trust holdings, other than information relating to the sale or disposition of original trust assets under paragraph (b)(6) of this section; and

(iv) The person is instructed by the trustee or other designated fiduciary to have no direct communication with respect to the trust with any interested party, and to make all indirect communications with respect to the trust only through the trustee, pursuant to paragraph (b)(9) of this section;

(15) The trustee shall not acquire by purchase, grant, gift, exercise of option, or otherwise, without the prior written approval of the Director of the Office of Government Ethics, securities, cash, or other property from any interested party;

(16) The existence of any banking or other client relationship between any interested party and an independent trustee or any other designated fiduciary shall be disclosed in schedules attached to the trust instrument, and no other such relationship shall be instituted unless that relationship is disclosed to the Director of the Office of Government Ethics; and

(17) The independent trustee and any other designated fiduciary shall be compensated in accordance with schedules annexed to the trust instrument.

SOURCE: 45 FR 69777, Oct. 21, 1980; 54 FR

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50230, Dec. 5, 1989; 55 FR 14407, April 18, 1990; 57 FR 11804, April 7, 1992; 57 FR 11814, April 7, 1992; 61 FR 32635, June 25, 1996; 64 FR 47096, Aug. 30, 1999, unless otherwise noted.

AUTHORITY: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub.L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub.L. 104-134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159; 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547; 3 CFR, 1990 Comp., p. 306.

5 C. F. R. § 2634.403, 5 CFR § 2634.403

Current through March 23, 2006; 71 FR 14656

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C

Effective: [See Text Amendments]

Code of Federal Regulations Currentness

Title 5. Administrative Personnel

Chapter XVI. Office of Government Ethics

Subchapter B. Government Ethics

- Part 2634. Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture (Refs & Annos)

- Subpart D. Qualified Trusts (Refs & Annos)

→ § 2634.401 General considerations.

(a) Statutory standards governing qualified trusts--

(1) Types of qualified trusts and their relationship to conflict of interest laws. The Ethics in Government Act of 1978 created, and provided special public financial disclosure requirements for, two types of qualified trusts. It was envisioned that the use of those trusts by Government employees would reduce the real and apparent conflicts of interest which might arise between the financial interests held by those employees (or attributable to them) and their official responsibilities.

(i) Interested party means a Government employee, his spouse, any minor or dependent child, and their representatives in any case in which the employee, spouse, or child has a beneficial interest in the principal or income of a trust proposed for certification or certified.

(ii) Qualified blind trust. The most universally adaptable qualified trust is the qualified blind trust, defined in § 2634.403 of this subpart. A trust is considered to be "blind" only with regard to those trust assets about which no interested party has knowledge. When an interested party originally places assets in trust, that party still possesses knowledge about those

assets. Those original assets remain financial interests of the Government official for purposes of 18 U.S.C. 208 or for any other Federal conflict of interest statutes or regulations, until the trustee notifies the official either that a particular original asset has been disposed of or that the asset's value is less than \$1000. If the trustee sells or disposes of original trust assets and then uses the proceeds to acquire new trust holdings, or if the trustee reinvests trust income to acquire new trust holdings, a "blind" trust exists for those new holdings because the interested parties possess no information about the newly acquired assets.

The holdings of a "blind" trust are not classified as financial interests of the Government official for purposes of 18 U.S.C. 208 or for any other Federal conflict of interest statutes or regulations.

(iii) Qualified diversified trust. The second type of qualified trust established by the Act is the qualified diversified trust, defined in § 2634.404 of this subpart. Among other requirements, a trust is considered to be "diversified" if it can be demonstrated, to the satisfaction of the Director of the Office of Government Ethics, pursuant to § 2634.404(b), that the trust assets comprise a widely diversified portfolio of readily marketable securities, and do not initially include the securities of any entities having substantial activities in the same area as the Government official's primary area of responsibility. The trust holdings are never classified as financial interests of the Government official for purposes of 18 U.S.C. 208 or for any other Federal conflict of interest statutes or regulations.

(2) Independence of trustees and other fiduciaries. Under the Act and § 2634.406 of this subpart, those entities that are authorized by the Act or by the trust instrument to manage

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the assets of, and to control and administer, either a qualified blind or a qualified diversified trust must be independent, in fact and in appearance, from those parties who hold beneficial interests in the trust.

(i) The independence of trustees is facilitated by limiting the entities which may serve in this capacity to certain financial institutions.

(ii) In addition to the trustee, the Act extends the independence requirement to other entities which manage trust assets or administer the trust, including officers and employees of the trustee, any other entity designated in the trust instrument to perform fiduciary duties on behalf of the trust, and the officers and employees of any other entity that is involved in the management or control of the trust, such as investment counsel, investment advisers, accountants, or tax preparers and their assistants.

(iii) Those entities governed by the Act will be considered "independent" for purposes of this subpart if, among other requirements, the entities are not affiliated with, associated with, related to, or subject to the control or influence of, any of the parties that hold a beneficial interest in the trust.

(3) Communications between trust administrators and interested parties. For purposes of Federal ethics laws, the most important feature of those qualified trusts that are recognized under the Act is the separation which those trusts foster between parties with beneficial interests in the trust and entities which manage trust assets and administer the trust instrument. Once a qualified trust has been certified, the beneficiaries and their representatives are expressly prohibited from commenting directly to the trustee about matters relating to asset management and trust holdings, or to trust administration and activities. Likewise, the trustee must make investment decisions for the trust without consulting, or being controlled by, interested parties, and the trustee is prohibited from

informing interested parties directly about trust activities, except to the limited extent required under the Act. The Act requires the trustee to provide trust beneficiaries with certain standard periodic reports. Beyond receipt of these standard reports, trust beneficiaries are prohibited from actively attempting to obtain, and from passively but knowingly obtaining, directly or indirectly, any additional information which the Act prohibits beneficiaries from obtaining, including information about trust holdings and activities. Finally, instruments creating qualified trusts must require interested parties and trustees to make all permissible communications relating to the trust and to its assets in writing, with the prior written approval of the Director of the Office of Government Ethics. Sections 2634.403-2634.405 and 2634.407 of this subpart contain standards implementing these restrictions.

(4) Trust and beneficiary taxes. For tax purposes, because a trust is a separate entity distinct from its beneficiaries, a trustee must file an annual fiduciary tax return for the trust (IRS Form 1041). In addition, the trust beneficiaries must report income received from the trust on their individual tax returns. The Act establishes special filing procedures to be used by the trustee and trust beneficiaries in order to maintain the substantive separation between trust beneficiaries and trust administration. For beneficiaries of qualified blind trusts, the trustee sends a Schedule K-1 form summarizing trust income in appropriate categories to enable the beneficiaries to file individual tax returns. For beneficiaries of qualified diversified trusts, the statute requires the trustee to file the individual tax returns on behalf of the trust beneficiaries. The beneficiaries must transmit to the trustee materials concerning taxable transactions and occurrences outside of the trust, pursuant to the requirements in each trust instrument which detail this procedure.

(b) Policy considerations and objectives underlying the qualified trust program.

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(1) Prior to enactment of the Act's qualified trust provisions, there was no accepted definition of a properly formulated blind or diversified trust. However, there was general agreement that the use of blind or diversified trusts often reduced the potential for conflicts of interest. If Government employees do not know the exact identity, nature, and extent of their financial interests, then the employees cannot be influenced in the performance of their official duties by those interests. Their official actions, under these circumstances, should be free from collateral attack arising out of real or apparent conflicts of interest. Therefore, the most significant objective to be achieved through the use of a blind trust is the lack of knowledge, or actual "blindness," by a Government official with respect to the holdings in his trust. The same goal may be achieved through the use of a diversified trust, if that trust holds securities from different issuers in different economic sectors, and if the trust's interest in any one issuer is limited. Under these conditions, it is unlikely that official actions taken by the Government employee who holds a beneficial interest in the trust would affect individual securities to such a degree that the overall value of the trust's portfolio would be materially enhanced. Thus, wide diversification is tantamount to actual "blindness."

(2) Because, for the trusts certified under the provisions of this subpart D, the Government official is or will become blind to the identity and nature of his actual trust holdings, the reporting requirements of section 102(f)(1) of the Act and subparts C or I of this part, which generally require Government filers to disclose the contents of a trust's portfolio, do not apply. See § 2634.310 of this part. Further, as discussed in paragraphs (a)(1)(ii) and (iii) of this section, 18 U.S.C. 208 and other Federal conflict of interest laws do not generally apply to the holdings of qualified trusts, except in the case of the original assets transferred to a qualified blind trust until notice that a particular original asset has been disposed of or that the asset's value is below \$1,000.

(c) Qualified trust provisions of the regulation. This subpart D prescribes standards which implement the statutory requirements and policy objectives underlying the Act's qualified blind and diversified trust provisions. The Office of Government Ethics will apply the standards of this subpart to specific cases.

(1) Classification as a qualified trust. In order to be classified as a qualified trust for purposes of the Act, blind and diversified trusts must satisfy the following three requirements:

(i) The trust document must conform to announced standards. As provided under § 2634.403(b) for **blind trusts** and § 2634.404(c) for diversified trusts, the trust document must conform to the model trust instruments which are drafted and distributed by the Office of Government Ethics for use by interested parties when drafting their trust arrangements. Prior to certifying a trust under § 2634.405 of this subpart, as discussed in paragraph (c)(1)(iii) of this section, the Office of Government Ethics must approve every proposed trust document. In addition to other required provisions, the trust instrument must contain language which implements the communications restrictions discussed in paragraph (a)(3) of this section. By requiring interested parties, trustees, and other signatories to the trust instrument to include communications provisions, these regulations compel the signatories diligently to safeguard against inadvertent disclosures of precluded information to the interested parties.

(ii) Truly independent fiduciaries. As discussed in paragraph (a)(2) of this section, the fiduciaries in charge of administering and managing the assets of a qualified trust must be actually and apparently independent of the parties who hold beneficial interests in the trust, and of their representatives. To ensure such independence, § 2634.406 of this subpart limits the range of permissible fiduciaries. Before a trust may be classified as a qualified blind or diversified trust, the Director of the Office of Government Ethics must conclude, in

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his judgment, that the trust fiduciaries named in the trust instrument satisfy the standards for independence contained in § 2634.406 of this subpart.

(iii) Certification by the Office of Government Ethics. Before a trust may be classified as a qualified blind or diversified trust, the Director of the Office of Government Ethics must certify, in accordance with the standards and procedures established in § 2634.405 of this subpart, that the trust meets the requirements of section 102(f) of the Act and of this subpart, that certification is in the public interest, and that certification is consistent with the policies established by these provisions and by other applicable laws and regulations. This certification is essential so that the Office can ensure, in advance that the proposed trust arrangement satisfies the established standards.

(2) Certification of pre-existing trusts. Normally, those trusts certified as qualified trusts by the Director of the Office of Government Ethics under § 2634.405 of this subpart are newly created trust arrangements, formulated in accordance with established standards by representatives of the interested parties in consultation with the Office of Government Ethics. However, the Director may certify a pre-existing trust as a qualified blind or qualified diversified trust under § 2634.403 (blind) or § 2634.404 (diversified) if he determines that such action is appropriate and is sufficient to ensure compliance with applicable laws and regulations. The pre-existing trust proposed for certification must meet both the generally applicable trust requirements, and several special requirements contained in § 2634.405(c) of this subpart, including that all of the parties to the original trust agree to administer the trust in accordance with the requirements of this subpart. The pre-existing trust may be certified only if all of the conditions of this subpart are fulfilled, and if the requisite confidentiality can be assured with respect to the trust.

(3) Reporting requirements. Once a trust is

classified as a qualified blind or qualified diversified trust in the manner discussed under paragraph (c)(1) of this section, § 2634.310(b) applies less inclusive financial disclosure requirements to the trust assets.

(4) Sanctions and enforcement. Section 2634.702 provides civil sanctions which apply to any Government official or trust fiduciary who violates his obligations under the Act, its implementing regulations, or the trust instrument. In addition, the Office of Government Ethics has authority under the Act to impose appropriate administrative or other sanctions. Subpart E of this part delineates the procedure which must be followed with respect to the revocation of trust certificates and trustee approvals.

(d) Drafting and implementation of the qualified trust instrument.

(1) The overview of the qualified trust program contained in this section cannot anticipate every concern or question, or discuss every scenario which might arise in the course of formulating and implementing a qualified trust instrument. The Office of Government Ethics should be contacted by an interested party or by his professional representatives if the Act, the implementing regulations, and the trust instrument itself do not provide guidance in a particular instance.

(2) No trust will be considered "qualified" for purposes of the Act until the Office of Government Ethics certifies the trust prior to execution. The Office of Government Ethics makes available to attorneys model trust agreements for use in drafting proposed trust agreements which are to be submitted to the Office for certification. Attorneys are cautioned to consider each model provision in light of the circumstances presented by the particular case, and to modify provisions to the extent that such modifications are necessary or appropriate. Attorneys should not rely uncritically upon the language of the model agreements. However, many of the model

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(Publication page references are not available for this document.)

provisions implement the minimum requirements which must be contained in any trust instrument certified by the Office. Certificates of Independence for fiduciaries must be executed in the form indicated in appendix A of this part.

Current through March 23, 2006; 71 FR 14656

(3) The Office of Government Ethics does not draft trust instruments for use in individual cases. However, its staff is always willing to cooperate with attorneys and to make its experience available to them in developing appropriate trust instruments which satisfy applicable Federal laws, Executive orders and regulations. If the use of a qualified trust is contemplated in a particular case, it is strongly recommended that the interested parties or their representatives contact the Office of Government Ethics as early as possible.

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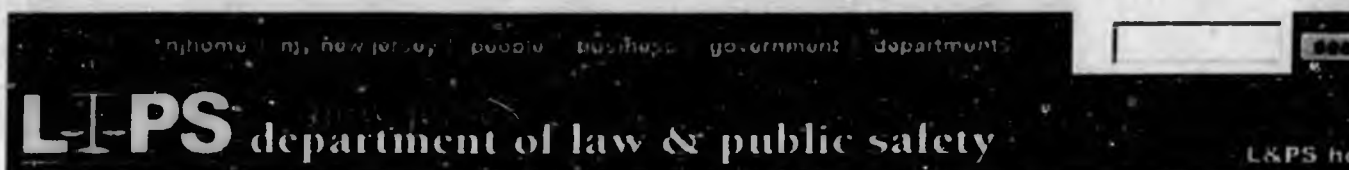
(4) Prior to trust certification, prospective trustees or their representatives should schedule with the staff of the Office of Government Ethics an appointment for an orientation to the specialized requirements and procedures which have been established by the Act and the regulations with respect to qualified trust administration.

SOURCE: 45 FR 69777, Oct. 21, 1980; 54 FR 50230, Dec. 5, 1989; 55 FR 14407, April 18, 1990; 57 FR 11804, April 7, 1992; 57 FR 11814, April 7, 1992; 61 FR 32635, June 25, 1996; 64 FR 47096, Aug. 30, 1999, unless otherwise noted.

AUTHORITY: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub.L. 101-410, 104 Stat. 890, 28 U.S.C. 246; note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub.L. 104-134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159; 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547; 3 CFR, 1990 Comp., p. 306.

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Executive Commission on Ethical Standards

Blind Trusts

Pursuant to Executive Order No. 10, blind trusts may be utilized by a public officer or public employee or his or her spouse or dependent children for certain categories of assets. Blind trusts must be approved by the Executive Commission on Ethical Standards and shall contain the following characteristics:

- a. The trust shall not contain investments or assets in which the holder's ownership right or interest is required to be recorded in a public office or those assets whose permanency makes transfer by the trustee improbable or impractical; these investments or assets would include, but not be limited to, businesses, real estate, security interests in personal property and mortgages;
- b. The trust shall contain a clear statement of its purpose, namely, to remove from the grantor control and knowledge of investment of trust assets so that conflicts between grantor's responsibilities and duties as a public officer or employee of the State of New Jersey and his or her private business or financial interests will be eliminated;
- c. The trust shall be irrevocable, and shall be terminated only upon the death of the public officer or employee or upon termination of his or her status as a public officer or employee, whichever shall first occur;
- d. The trustee shall be directed not to disclose to the grantor any information about any of the assets in the trust;
- e. The trustee shall be required either to:
 - i. prepare and file grantor's personal income tax returns, withholding from distribution of the trust's net income amounts sufficient to pay the grantor's tax; and further to participate in the audit of the grantor's returns during the period of the trust with authority to compromise the grantor's tax liability; or
 - ii. submit to the grantor, for income tax purposes, a certification of income paid without identifying the assets producing such income;
- f. Among its other powers, the trustee shall have authority to determine whether any of the assets originally transferred to the trustee are to be sold and, if so, when;
- g. a provision shall be included in the trust agreement prohibiting the trustee from investing the trust property in corporations or businesses which it knows to a significant amount of business with the State of New Jersey or from knowingly

making any investment in a corporation, business or venture over which the grantor has regulatory or supervisory authority by virtue of his or her official position;

- h. The grantor shall retain no control over the trustee nor shall he or she be permitted to make any recommendations or suggestions as to the trust property;
- i. The trustee shall be a commercial trustee and not a natural person;
- j. The principal benefit to be retained by the grantor shall be the right to receive income from the assets transferred to the trust;
- k. The trust shall not become effective until submitted and approved by the Executive Commission on Ethical Standards; and
 - 1. The trust agreement shall provide that the trustee will give the Executive Commission on Ethical Standards access to any records or information related to the trust which is necessary for the performance of the Commission's duties.
 - 2. A copy of the executed blind trust agreement shall be filed with the Executive Commission on Ethical Standards and with the head of the department in which the State officer or employee holds his or her position. Attached to such copy shall be a brief statement outlining the business or financial interests from which the State officer or employee seeks to remove himself or herself and the actual or potential conflicts of interest, or appearance of such conflicts, which he or she seeks to avoid by use of the trust agreement.

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TEXAS ETHICS COMMISSION

PERSONAL FINANCIAL STATEMENT

FORM PFS--INSTRUCTION GUIDE



Revised November 29, 2005

Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711
(512) 463-5800 1-800-325-8506 FAX (512) 463-5777 TDD 1-800-735-2989

Visit us at <http://www.ethics.state.tx.us> on the Internet.

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PART 9. TRUST INCOME

Complete this section if *any* income was received as a beneficiary of a trust, other than a blind trust, the definition of which is included in the PART 10A of instructions. Identify the trust by name and indicate the category of the amount received. If the requested information is not applicable, check the "NOT APPLICABLE" box.

Each numbered item in these instructions corresponds to the same numbered item on the form.

1. **Source:** Provide the name of the trust.
2. **Beneficiary:** Check the appropriate box indicating whether you, your spouse, or a dependent child is the beneficiary of the trust.
3. **Income:** Check the appropriate monetary category to indicate the amount of income received by the beneficiary.
4. **Assets from which over \$500 was Received:** Identify each asset of the trust from which more than \$500 in income was received, *if you know the identity of the asset.*

PART 10A. BLIND TRUSTS

This section is for reporting each blind trust that is defined in section 572.023(c) of the Government Code in which you, your spouse, or a dependent child is a beneficiary. If the requested information is not applicable, check the "NOT APPLICABLE" box.

Section 572.023(c) of the Government Code. A blind trust is defined as a trust as to which the trustee:

- (A) is a disinterested party;
- (B) is not the individual;
- (C) is not required to register as a lobbyist under Chapter 305 [of the Government Code];
- (D) is not a public officer or public employee;
- (E) was not appointed to public office by the individual or by a public officer or public employee the individual supervises; and
- [(F)] has complete discretion to manage the trust, including the power to dispose of and acquire trust assets without consulting or notifying the individual.

You must submit a statement signed by the trustee of each trust listed on this section. See Part 10B for additional information.

Each numbered item in these instructions corresponds to the same numbered item on the form.

1. **Name of Trust:** Provide the name of the trust.
2. **Trustee:** Provide the name and address of the trustee.
3. **Beneficiary:** Check the appropriate box indicating whether you, your spouse, or a dependent child is the beneficiary of the trust.
4. **Fair Market Value:** Check the appropriate monetary category to indicate the fair market value of the trust.
5. **Date Created:** Report the date the trust was created.

PART 10B. TRUSTEE STATEMENT

You must submit with your personal financial statement a statement signed by the trustee of each blind trust listed on Part 10A. If the requested information is not applicable, check the "NOT APPLICABLE" box.

Each numbered item in these instructions corresponds to the same numbered item on the form.

1. **Name of Trust:** Provide the name of the trust.
2. **Trustee Name:** Provide the name of the trustee.
3. **Filer on Whose Behalf Statement is Being Filed:** Provide the name of the person on whose behalf the trustee statement is being filed.
4. **Trustee Statement:** Signature of the trustee.

AN ORDINANCE REGARDING ETHICS AND CONFLICTS OF INTEREST

ENGROSSED VERSION (AS ADOPTED 11 AUGUST 2003)

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF ALDERMEN
OF THE CITY OF WATERBURY,**

That Title III of the Code of Ordinances shall be amended by establishing
Chapter 40 entitled "Ethics and Conflicts of Interest", as follows:

CHAPTER 40: ETHICS AND CONFLICTS OF INTEREST

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<i>General Provisions</i>	1
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§40.02 Statement of Policy.....	1
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AN ORDINANCE REGARDING ETHICS AND CONFLICTS OF INTEREST

ENGROSSED VERSION (AS ADOPTED 11 AUGUST 2003)

Ethics in Public Affairs

General Provisions

§40.01 Title.

This chapter shall be known and referred to as the "Ethics and Conflict of Interest Code for the City of Waterbury".

§40.02 Statement of Policy.

Public employment is a public trust. It is the policy of the City to promote balancing the objectives of protecting governmental integrity and facilitating the recruitment and retention of personnel needed by the City. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Furthermore, Employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the City's procurement organization.

Finally, in order to achieve the purposes of this Chapter, it is essential that those doing business with the City also observe the ethical standards prescribed herein.

§40.03 Application.

These sections shall be applied to and be binding on every Public Official and Employee of the City, as defined in this Chapter and Persons conducting business with the City.

§40.04 Definitions.

(A) **Blind Trust** means an independently managed trust in which the Employee-beneficiary has no management rights and in which the Employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

(B) **Board** means the Board of Ethics as established in §6B-3 of the Charter of the City.

(C) **Business** means any entity through which business for profit or not for profit is conducted including a corporation, partnership, proprietorship, firm enterprise, franchise, association, organization, or self-employed individual.

(D) **Confidential Information** means any information which is available to a Public Official, Employee or Member of a Board or Commission only because of their status as such Public Official, Employee or Member of a Board or Commission and is not a matter of public knowledge or available to the public on request, in accordance with the provisions of the General Statutes.

AN ORDINANCE REGARDING ETHICS AND CONFLICTS OF INTEREST

§40.38 Criminal Conduct. State Sanctions.

To the extent that violations of the provisions of this Chapter constitute violations of the criminal laws of the State, the Board of Ethics shall refer the matter to the State's Attorney for the Judicial District of Waterbury. Any criminal sanctions shall be in addition to the civil remedies set forth in this Chapter.

§40.39 Public Official, Employee or Member of a Board or Commission Conflict of Interest in City Procurements.

(A) Conflict of Interest. It shall be a violation of the provisions of the Charter of the City and this Chapter for any Public Official, Employee or Member of a Board or Commission to participate directly or indirectly in the City procurement, set forth in Chapter 38 of the Code, when the Public Official, Employee or Member of a Board or Commission knows that:

(1) the Public Official, Employee or Member of a Board or Commission or any member of the Public Official's, Employee's or Member of a Board or Commission's Immediate Family has a Financial Interest pertaining to the procurement;

(2) a Business in which the Public Official, Employee or Member of a Board or Commission, or any member of the Public Official's, Employee's or Member of a Board or Commission's Immediate Family, has a Financial Interest pertaining to the procurement; or

(3) any other Person or Business with whom the Public Official, Employee or Member of a Board or Commission or any member of the Public Official's, Employee's or Member of a Board or Commission's Immediate Family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

(B) Financial Interest in a Blind Trust. Where a Public Official, Employee or Member of a Board or Commission or any member of the Public Official's, Employee's or Member of a Board or Commission's immediate Family holds a Financial Interest in a Blind Trust, the Public Official, Employee or Member of a Board or Commission shall not be deemed to have a conflict of interest with regard to matters pertaining to that Financial Interest, provided that disclosure of the existence of the Blind Trust has been made to the Board of Ethics.

(C) Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver. Upon discovery of an actual or potential conflict of interest, a Public Official, Employee or Member of a Board or Commission shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The Public Official, Employee or Member of a Board or Commission may, at the same time, apply to the Board of Ethics for an advisory opinion as to what further participation, if any, he may have in the transaction.

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MD ADC 19A.06.02.04

Page 1

COMAR 19A.06.02.04
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CODE OF MARYLAND REGULATIONS
TITLE 19A STATE ETHICS COMMISSION
SUBTITLE 06 BLIND TRUSTS
CHAPTER 02 CRITERIA FOR CERTIFICATION AND EXCEPTION
Complete through Maryland Register Vol. 33, Issue 3, dated Feb. 3, 2006

.04 Features of the Trust.

A. To be certified as a blind trust pursuant to this subtitle, a trust shall be established by a trust instrument containing the provisions in Sec. B--H of this regulation.

B. The trustee shall have absolute discretion and authority to manage and control the trust assets, including the authority to purchase and sell trust holdings.

C. An interested party may not have the ability to learn of the assets of the trust or the actions of the trustee, and may not receive reports on the assets or income except those necessary (without identifying any particular asset or holding) for filing personal income tax returns.

D. Tax returns of the trust shall be prepared and filed by the trustee and may not be available to any interested party.

E. There may not be direct or indirect communication between the trustee and any interested party except directions regarding the disposition of income or general decisions regarding the approach of the trust as a short-term income or long-term growth approach. Any permitted communications shall be in writing, with copies provided to the Commission.

F. An interested party may not seek to obtain information regarding the trust or its assets.

G. Securities may not be purchased that would result in the holdings in any entity exceeding 20 percent of the total trust assets, or any industry or economic sector exceeding 30 percent of the total trust assets, except when the particular holdings present no conflict of interest under State Government Article, Title 15, Annotated Code of Maryland.

H. The trust instrument shall provide for termination of the trust at the earliest of the following:

(1) On April 30, 1991, for trusts established before that date, if legislation has not been enacted regarding disclosure of trust assets;

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MD ADC 19A.06.02.04

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MD Ethics Comm. 19A.06.02.04

- (2) Upon termination of the official's or employee's State service;
- (3) In case of the official's or employee's death or incompetence;
- (4) Upon revocation of trust certification by the Commission pursuant to COMAR 19A.06.03.04; or
- (5) For cause at the request of the official or employee and with the prior approval of the Commission.

<General Materials (GM) - References, Annotations, or Tables>

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CODE OF MARYLAND REGULATIONS
TITLE 19A STATE ETHICS COMMISSION
SUBTITLE 06 BLIND TRUSTS
CHAPTER 01 GENERAL PROVISIONS

Complete through Maryland Register Vol. 33, Issue 3, dated Feb. 3, 2006

.01 Purpose and Scope.

A. State Government Article, §15-501, Annotated Code of Maryland, establishes nonparticipation requirements for employees and officials of the State when the official matter is one in which they have an interest or which involves as a party a business entity with which they have certain economic relationships. State Government Article, §15-502, prohibits these officials and employees from having a financial interest in an entity that is subject to their authority or that of an agency with which they are affiliated or that has or is negotiating a contract with the agency. Exception from the prohibitions of State Government Article, §§ 15-501 and 15-502, Annotated Code of Maryland, is provided for persons under the authority of the State Ethics Commission pursuant to regulations of the Commission where it determines that there is no conflict or appearance of conflict, and where the exception would not be inconsistent with the purposes of the Law.

B. The purpose of this subtitle is to define the circumstances under which a certified blind trust or an excepted blind trust would be viewed by the Commission as meeting the statutory criteria for exception from these conflict of interest provisions. An underlying concept is that, in situations where a trust is created by an independent third party or there are diversified holdings in a trust created by a government official or employee and where the official or employee does not know the identity of the financial interests and does not control these interests, then his or her official actions would not be influenced or appear to be influenced by private interests. Thus, the general public policy goal to be achieved through reliance on a blind trust is an actual "blindness" or lack of knowledge or control by the official or employee with respect to the interests held in trust.

<General Materials (GM) - References, Annotations, or Tables>

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TITLE 19A STATE ETHICS COMMISSION
SUBTITLE 06 BLIND TRUSTS
CHAPTER 02 CRITERIA FOR CERTIFICATION AND EXCEPTION
Complete through Maryland Register Vol. 33, Issue 3, dated Feb. 3, 2006

.01 Substantive Requirements for Certification.

A. A trust that complies with the appropriate procedural requirements of COMAR 19A.06.03, and that meets the substantive requirements set forth in Regulations .01-.04 of this chapter, may be certified by the Commission as a blind trust for purposes of COMAR 19A.06.01.03.

B. A blind trust arrangement by an official or employee will be considered for certification only if in connection with the submission the official or employee certifies that:

(1) All of the official's or employee's holdings at the time the trust is established will be subject to the trust unless otherwise specifically approved by the Commission; and

(2) No new holdings will be purchased directly by the official or employee except as expressly approved by the Commission.

<General Materials (GM) - References, Annotations, or Tables>

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CODE OF MARYLAND REGULATIONS
TITLE 19A STATE ETHICS COMMISSION
SUBTITLE 06 BLIND TRUSTS

CHAPTER 02 CRITERIA FOR CERTIFICATION AND EXCEPTION

Complete through Maryland Register Vol. 33, Issue 3, dated Feb. 3, 2006

.02 Nature of Assets.

A. A trust shall be certified only if the holdings transferred to it by the official or employee meet the requirements of Sec. B of this regulation.

B. A trust shall be:

(1) Well diversified.

(a) In evaluating the diversification of a portfolio the Commission shall consider whether the assets are sufficiently diversified to support a conclusion of blindness and lack of appearance of conflict.

(b) In making the determination the Commission shall consider the:

(i) Number of holdings;

(ii) Share of the portfolio in any particular holding or industry

(iii) Value of each holding; and

(iv) Percentage of ownership in the entity the official's or employee's holding represents.

(c) The Commission may not approve a portfolio for establishment of a blind trust whose assets exceed \$350,000, when more than 20 percent of the trust value is held in a single security, or more than 30 percent is held in a single industry or economic sector, unless these particular holdings present no conflict of interest when the trust is created. The Commission may consider a lesser degree of diversification when smaller trusts make these percentages impractical and when the total circumstances warrant a finding of diversification.

(2) Readily marketable. In evaluating the marketability of holdings the Commission shall consider the presence of a market for the holdings, including whether:

(a) They are traded on a public exchange;

(b) The prices are quoted in papers of general circulation;

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COMAR 19A.06.02.02

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(c) The quantity of the holdings does not limit the possibility of sale; and

(d) The records of the holding for the entity show a ready market for the securities.

(3) Not a holding in an entity where the official or employee has as his primary State function regulatory or procurement duties relating to the entity, unless, due to the size of the holdings and the nature of the official's or employee's duties, a conflict of interest or appearance of conflict is unlikely.

(4) Free of any restriction or encumbrance that would interfere with the trustee's ability to manage and control them as required by Regulation .04 of this chapter.

<General Materials (GM) - References, Annotations, or Tables>

MD ADC 19A.06.02.02

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blind trust

One entry found for **blind trust**.

Main Entry: blind trust

Function: noun

: an arrangement in which the financial holdings of a person in an influential position (as a government official) are placed in the control of a fiduciary in order to avoid a possible conflict of interest

For **More Information on "blind trust"** go to Britannica.com

Get the **Top 10 Search Results for "blind trust"**

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Blind Trust



A trust in which the executors have full discretion over the assets, and the trust beneficiaries have no knowledge of the holdings of the trust.



Blind trusts are generally used when a trustor wishes to keep the beneficiary unaware of the specific assets in the trust, such as to avoid conflict of interest between the beneficiary and the investments.

Related Links

Who Is The Beneficiary Of Your Account? (I) - If you've experienced life changes since first establishing your plan, it might be time to update the designations.

Problematic Beneficiary Designations - Part 1 (I) - Make sure your beneficiary designations not only reflect your intentions but also meet the requirements to be effective.

Problematic Beneficiary Designations - Part 2 (I) - Designating a trust as your IRA beneficiary can be beneficial, but it requires proper planning to avoid problems.

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blind trust

Definition

A trust in which the beneficiaries do not have knowledge of the trust's specific assets, and in which a fiduciary third party has complete management discretion.

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Blind trust

From Wikipedia, the free encyclopedia

A **blind trust** is a trust in which the executors or those who have been given power of attorney have full discretion over the assets, and the trust beneficiaries have no knowledge of the holdings of the trust. Blind trusts are generally used when a trustor wishes to keep the beneficiary unaware of the specific assets in the trust, such as to avoid conflict of interest between the beneficiary and the investments. Politicians often place their assets in blind trusts so they cannot be accused of conflict of interest when they direct government funds to the private sector.

External links

- Entry on Investopedia (<http://www.investopedia.com/terms/b/blindtrust.asp>)

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Category: Law stubs

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Blind Trust

A trust that retains the settlor's right to terminate the trust, but relinquishes all power over the trust's management.

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a Criminal Justice
degree!

Enjoy Platinum status
Claim your 10,000 USD
Centre Platinum Card and
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How to Query

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].*

Sec. 39.50.050. Administration and inspection.

(a) The Alaska Public Offices Commission created under AS 15.13.020 (a) shall administer the provisions of this chapter. The commission shall prepare and keep available for distribution standardized forms on which the reports required by this chapter shall be filed. The commission shall print the forms provided under this section so that the front and back of each page have the same orientation when the page is rotated on the vertical axis of the page. The commission may request that the information required under this chapter be submitted electronically but shall accept any information required under this chapter that is typed in clear and legible black typeface or hand-printed in dark ink on paper in a format approved by the

Title 39. PUBLIC OFFICERS AND EMPLOYEES
Chapter 39.50. PUBLIC OFFICIAL FINANCIAL DISCLOSURE

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO: HCS CSSB 186(RLS)

1 Page 9, following line 11:

2 Insert a new bill section to read:

3 **** Sec. 19.** AS 39.52 is amended by adding a new section to read:

4 **Sec. 39.52.955. Blind trusts.** (a) To qualify under this chapter, a blind trust
5 must meet the requirements of AS 39.50.040, and

6 (1) may not include an asset or investment that

7 (A) is of a permanency that makes transfer by the trustee
8 improbable or impractical;

9 (B) is a security interest, a business, or real estate; or

10 (C) requires the public officer's ownership right or interest to
11 be recorded in a public office; and

12 (2) the trustee of the blind trust shall, for income purposes,

13 (A) prepare and file the public officer's personal income tax
14 returns, withholding from distribution of the trust's net income amounts
15 sufficient to pay the public officer's tax and, for the duration of the trust, shall
16 have authority to act on behalf of the public officer and to compromise the
17 trustor's tax liability, in the event of an audit of the trustor's personal tax
18 returns; or

19 (B) submit to the public officer a certification of income paid
20 without identifying the assets producing the income."

21

22 Renumber the following bill sections accordingly.

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FOR: Rep. Norman Rokeberg 9074652040

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 PHONE: (907) 465-4968
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REPRESENTATIVE NORMAN ROKEBERG e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

FAX COVER SHEET

DATE: 3/27/2006
 TO: Don Wayne
 FAX: 2029 VOICE: _____
 RE: SB186
 MESSAGE: Rep Rokeberg wants to know:

- a) Do you agree w/ Law's letter?
- b) A amendment OK?

Thanks

Janet

3764

TOTAL NUMBER OF PAGES SENT, INCLUDING COVER SHEET: 4

CONFIDENTIALITY NOTICE

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Dick T 30298

They all might change the fine.

AMENDMENT

#1 am adopted
3-14-06

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: HCS CSSB 186(JUD)

1 Page 1, line 10, following "i":

2 Delete "or"

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

5 (4)"

6
7 Page 3, following line 25:

8 Insert a new bill section to read:

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

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

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

17 (2) direct

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

20 (B) the placement by the employee of the financial interest
21 that gives rise to the potential violation into a blind trust or other
22 investment where the employee does not have management control over
23 the financial interest."

Wrote

Handwritten signature

1
2
3
4
5
6
7
8

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."

ALASKA STATE SENATE



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Juneau, Alaska 99801-1182
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(907) 465-5241 Fax

Interim:
119 N. Cushman, Suite 201
Fairbanks, Alaska 99701
(907) 456-8161
Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

MEMORANDUM

Date: March 6, 2006
To: Office of Representative Rokeberg
From: Senator Ralph Seekins
Re: Request for Hearing of Senate Bill 186

See for RS

Attached please find Senate Bill 186 along with a concomitant sponsor statement describing our *original intent*.

I am enclosing three versions of this bill. Version "S" was passed out of the Senate. Version "C" was passed out of the House State Affairs Committee and version "P" was passed out of the House Judiciary Committee. I am also enclosing a side-by-side-by-side comparison of all three bills for your convenience.

With respect to the sponsor statement, you will no doubt notice that it addresses both the executive branch *and* the legislative branch Ethics Acts (SB 186 and SB 187, respectively). These two bills are, in many ways, twins designed to travel together through the legislative process. Therefore, the sponsor statement speaks to both bills. However, SB 187 remains in House State Affairs. Your understanding of this inconsistency is much appreciated.

Lastly, I am enclosing an opinion piece recently printed in the Anchorage Daily News, the Fairbanks Daily News-Miner and the Wasilla Frontiersman.

I respectfully request this bill be scheduled in your committee at your earliest convenience. Thank you.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 186(STA)
 (S) Publish Date: 4/26/05

Revision Date/Time (Note if correction): _____ Dept. Affect: LAW
 Title: "An Act relating to the Alaska Executive Branch Ethics Act." RDU: CIVIL
 Component: Opinions, Appeals & Ethics
 Sponsor: Senator Seekins
 Requester: Senate State Affairs Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation, unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time					
Part-time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

This bill makes numerous amendments to the Executive Branch Ethics Act. It amends AS 39.52.110(b) (Scope of Code) to establish a "bright line" test for when a personal or financial interest is insignificant under the ethics act. The bill amends AS 39.52.960 (Definitions) to add a definition for "closely associated person," amend the definition of "financial interest" to include the financial interests of a "closely associated person," amend the definition of "immediate family member," and repeal the definition of "parent." It amends AS 39.52.130(b) (Gifts) and AS 39.52.150(a), (c), and (d) (Contracts, Leases, Loans) to add "closely associated person" to the list of people whose interests that must be considered. It amends AS 39.52.335 (Summary of Disposition of Complaints and Review by Personnel Board) to provide that the complaint process is confidential and repeals the provisions by which an interested party could go to court to try to get the summary made public. It also amends AS 39.52.340

Prepared by: Kathryn Daughheteo, Director Phone 465-3673
 Division: Administrative Services Division Date/Time 4/26/05 8:09 AM
 Approved by: Kathryn Daughheteo for David Marquez, Attorney General Date 4/26/2005
 Agency: Department of Law

FISCAL NOTE # 1

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

BILL NO. CSSB 186(STA)

ANALYSIS CONTINUATION

(Confidentiality) to expand the information that is confidential under the ethics act. The bill also amends AS 11.56, the criminal code, to make disclosure of confidential ethics information a class A misdemeanor. Passage of this legislation will have no fiscal impact on the Department of Law.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSSB 186(STA)
 (S) Publish Date: 4/28/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: An Act relating to the Alaska RDJ: Central Administrative Services
 Executive Branch: Ethics Act Component: Personnel
 Sponsor: Senator Seekins
 Requester: (S) STA Component No.: 56

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on the Division of Personnel.

Prepared by: Mila Cosgrove, Director Phone: 465-4429
 Division: Personnel Date/Time: 4/25/05 8:39 AM
 Approved by: Mike Tibbies, Deputy Commissioner Date: 4/25/2005
 Agency: Administration

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: HCS SSB 186(STA)
 (H) Publish Date: 2/21/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: Executive Branch Ethics RDU: Central Administrative Services
 Component: Personnel
 Sponsor: Senator Seekins
 Requester: (S) STA Component No. 56

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Fe. Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on the Division of Personnel.

Prepared by: Mila Cosgrove, Director Phone 465-4429
 Division: Personnel Date/Time 1/31/06 10:25 AM
 Approved by: Mike Tibbles, Deputy Commissioner Date 1/31/2006
 Agency: Administration

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: HCS CSSB 186(STA)
 (H) Publish Date: 2/21/06

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating to the Alaska Executive Branch Ethics Act..." RDU: CIVIL
 Component: Opinions, Appeals & Ethics
 Sponsor: Senator Seekins
 Requester: House State Affairs Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill makes numerous amendments to the Executive Branch Ethics Act. It amends AS 39.52.110(b) (Scope of Code) by establishing a "bright line" test for when a personal or financial interest is insignificant under the ethics act. The bill amends AS 39.52.130(f) (Improper Gifts) and 39.52.150(a), (c) and (d) (Contracts, Leases, Loans) to add "business associate" to the list of people whose interests must be considered. A change to AS 39.52.210 and AS 39.52.410 would allow a financial interest that violates the ethics act to be placed in a blind trust or similar arrangement. AS 39.52.230 is changed to add a new subsection (b) that describes how reporting of violations of the ethics act should be handled if the report concerns the governor, lieutenant governor, or the attorney general. Changes are also made to AS 39.52.335 and .340 regarding confidentiality and reporting requirements by the personnel board. AS 39.52.340 is also amended by adding new subsections dealing with

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division: Administrative Services Division Date/Time 1/30/06 1:22 PM
 Approved by: Kathryn Daughhete for David Márquez, Attorney General Date 1/30/2006
 Agency: Department of Law

FISCAL NOTE #4

**STATE OF ALASKA
2006 LEGISLATIVE SESSION**

BILL NO. HCS CSSB 186(STA)

ANALYSIS CONTINUATION

confidentiality and imposing a civil penalty of up to \$5000 for those who violate the confidentiality requirement, and giving the attorney general the authority to enforce this section by filing an appropriate civil action.

Passage of this legislation will have no fiscal impact on the Department of Law.

ALASKA STATE SENATE

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(907) 456-8151
Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

Senate Bill 186 & 187 Sponsor Statement

“An Act relating to the Alaska Executive Branch Ethics Act.” (SB 186)

“An Act relating to legislative ethics open meetings guidelines, to the public members of the Select Committee on Legislative Ethics, to alternate members of the legislative subcommittees, to advisory opinions, and to confidential information and proceedings regarding legislative ethics complaints and investigations.” (SB 187)

There has been much discussion throughout the Capitol hallways and committee rooms regarding ethics laws. The Senate Judiciary Committee, in particular, has taken great interest and much testimony on this important topic. Over the last three months a substantial amount of research has been conducted on ethical treatises and other states' ethics laws. Furthermore, CPAs, judges and employment law attorneys have been interviewed along with legislators from around the country. This effort has resulted in the introduction of two bills — SB 186 & 187 — designed to improve the Executive and Legislative Code of Ethics, respectively.

Senate Bill 186 revises the Executive Branch Code of Ethics. The terms “substantial” and “insignificant” defy clear definition and consequently are removed from AS 39.52.110(b). Furthermore, this section gains key language outlining specific types of personal or financial activity which the public employee should take into consideration prior to taking official action on matters which could create a conflict.

Of particular note is the inclusion of a recommendation originating from the Bundy Report pertaining to stock ownership. Here, the limiting factors are one percent with a total value of less than \$10,000. This section also includes new language detailing methods by which the public official can avoid even the slightest perception of impropriety. This can be accomplished through the placement of financial assets into a blind trust or other instrument in which the official has no management control.

Two new terms are brought into use throughout AS 39.52 — “business associate” and “household”. These terms are intended to better define close relationships maintained by the state employee particularly as these relationships affect, or are affected by, action taken by the employee in his or her official capacity.

State law currently sets out two remedial options available to a supervisor when a determination has been made that an ethics violation could exist or will occur. Currently, the supervisor could either reassign the employee or require divestiture of the financial interest creating the potential conflict. Senate Bill 186 provides a logical third option. That is to place the financial interest into a blind trust or other investment tool whereby the employee has no management control.

Recent experience has highlighted a significant procedural ambiguity existing in current statute pertaining to a potential violation involving the governor, lieutenant governor or attorney general. Senate Bill 186 clarifies this by adding language spelling out a clear procedural path to be followed in the unlikely event this situation should arise in the future.

Senate Bill 186 proposes that in a case involving the governor or lieutenant governor, the attorney general refers the matter to the personnel board which appoints an independent counsel to investigate. Results of the investigation are submitted to the attorney general, via written report, who then makes a determination as to whether a violation has occurred. If so, then the report is automatically converted to a complaint and forwarded to the personnel board for resolution.

In a case involving the attorney general, it is the governor that refers the matter to the personnel board at which point the same procedure as that described in the previous paragraph is followed. Of course, in this case the written report is then submitted back to the governor who makes the determination as to the necessity for further action through the personnel board.

One feature common to both Senate Bill 186 and 187 has received much attention. That is the civil fine of up to \$5,000 which could be levied on an individual for violating confidentiality requirements. This provision *will not* discourage people with righteous complaints from coming forward and making them. It *will* remind people with less than pure intent that there are legal requirements to abide by and liabilities attached to violations.

Our ethics statutes recognize the paramount importance of maintaining the presumption of innocence prior to any finding of probable cause being made. Current state law explicitly requires members of the State Personnel Board and the Select Committee on Legislative Ethics, and others assisting in an investigation, to maintain confidentiality. Why is this? Why should they be bound to this ethic? The clear answer to this question lies in the moral responsibility of fairness our system of justice provides to the accused during the investigatory pursuit of truth.

We must remember that when investigating an ethics complaint, it is no less than the subject's reputation which is at stake. An adverse finding could negatively affect an individual's career for years to come. But a false accusation could have the very same effect. How fair is that?

As it stands now, fair application of our ethics laws is being perverted through a parallel process of faux justice commonly known as trial by media. The fact is, where violations of ethics are alleged, it seems to be more important for a complainant to get the immediate gratification provided by a news flash than to let the Personnel Board or the Select Committee proceed with their statutory function and render a decision based on facts.

Restated, current law allows a complainant to use an ethics violation as a political hatchet. In these cases the end result is not nearly as important as the opening salvo. In fact, a complainant's entire purpose may be completely satisfied over the course of a single day's news cycle. Charged, tried and convicted in the court of public opinion. Case closed. Is this fair? Or even ethical?

If truth and justice are the complainant's pure motivating factor, then process and procedure should be welcomed along with the requisite confidentiality demanded of all parties involved. If the members of the Personnel Board and the Select Committee and others associated with an investigation must

maintain confidentiality why shouldn't the complainant be required to do the same? That seems only fair.

Senate Bill 187 revises the Legislative Standards of Conduct. To start with, this bill adds succinct language which simply restates a truism — where matters of legislative procedure are concerned, the Alaska State Constitution¹ and the Uniform Rules of Procedure² take precedence over statute. The bill also clarifies application of the Uniform Rules of Procedure with respect to open meetings guidelines. This, too, is an explicit restatement of Constitutional authority.

With respect to the Select Committee on Legislative Ethics, Senate Bill 187 seeks to empanel public members representing a broad cross section of Alaskans. While current law does not favor a particular profession or background, practical experience suggests that, as a matter of convenience, this ideal may be somewhat overlooked. As a result, the Committee may not have the opportunity to benefit from a full range of professional and geographic experience which may otherwise be available.

Senate Bill 187 also seeks to make the Committee more efficient in another important way. It provides that alternate legislative members may attend all meetings and hearings. This allows the alternate to cast informed votes should the need arise due to the absence of a regular member.

Where advisory opinions are concerned, clarifying language is added which makes clear that if the requestor of the opinion identifies another person in the request, then that person, too, shall not only receive the opinion but also be bound by the same standard of confidentiality applying to the requestor in current law. However, the opinion may be released if all parties provide written consent.

Much of the text found in Senate Bill 187 relates directly to AS 24.60.170. This section addresses proceedings before the Committee. New subsection "s" replaces much, if not all, of the confidentiality language scattered throughout this section. Subsection "s" provides the language establishing the new link in the chain of confidentiality whereby an individual may not disclose the filing of a complaint or the intention to file a complaint, or the intention of another to file a complaint.

All proceedings and actions taken by the Committee will be confidential. All documents filed with the Committee, produced by the Committee or obtained or disclosed as result of Committee investigation, discovery, or a hearing will be confidential. *However*, should the Committee, after investigation, find probable cause to believe that the subject of a complaint has committed a violation that may require sanctions instead of or in addition to corrective action, then the Committee will formally charge the individual. A finding of probable cause triggers public disclosure of the complaint.

It's important to note that the subject of a complaint may waive the confidentiality requirements spelled out in subsection "s". If confidentiality is waived with respect to a meeting or proceeding, then the proceeding is open to all members of the public. If confidentiality is waived with respect to a document or other information, then the document or information is available to all members of the public.

In summary, Alaska's ethics code applies not just to a handful of individuals but to 15,000+ state employees. It seems we should be keeping this in mind when we look at designing a system that not only seeks fairness to the individual employee but also justice for the public at large. Senate Bills 186 and 187 implements a number of features which are intended to accomplish these dual purposes in a straightforward fashion.

¹ Article II, Section 12

² Rules 53 & 55 and Section 4 of Mason's Manual of Legislative Procedure, 2000 edition

Fairbanks Daily News-Miner

Bills to clear up the murky waters of ethics laws should be adopted
By RALPH SEEKINS

Sunday, February 12, 2006 - Alaska has two sets of ethics laws. One covers the governor, lieutenant governor, attorney general and 15,000 state employees. Senate Bill 186 addresses that law. The other covers all legislators and legislative employees. Senate Bill 187 pertains to this law.

Last year it became evident to the Senate majority that a review of the state's ethics laws was necessary. The high-profile report completed by former U.S. Attorney Robert Bundy (an active member of the Democratic party) clearly demonstrated that deficiencies exist in Alaska's ethics laws.

Clearly, Mr. Bundy's recommendations deserved to be adopted. Therefore, in matters concerning potential conflicts of interest, SB 186 installs two key benchmarks from the Bundy Report. It establishes that an impropriety exists in a particular situation when: (1) a public officer owns more than 1 percent of the stock in a business; and (2) the stock in a business is valued at more than \$10,000.

SB 186 also provides that, when a potential conflict exists, public officials may place their financial holdings in a blind trust. State and local governments all across the nation use this common practice. In fact, the American Bankers Association describes blind trusts as a method for "government officials to avoid conflicts of interest between their official duties and personal financial transactions."

Another black hole SB 186 addresses is the procedure to use when an ethics complaint is filed against the governor, lieutenant governor or attorney general. Current law requires that potential violations of the Ethics Code be reported to the employee's ethics supervisor. The supervisor then forwards a report to the attorney general for further investigation, possibly resulting in formal charges before the State Personnel Board.

Yet, this process is clearly defective should a complaint involve the governor, lieutenant governor or the attorney general. So, SB 186 mandates that an independent counsel be appointed by the Personnel Board--rather than by the attorney general--to determine the facts of the matter. Clear, clean and fair.

With respect to Senate Bill 187--concerning the legislative branch--here again the intent is to clear up ambiguities in current law. For example, SB 187 illuminates the relationship between the Constitution, the uniform rules and the statutes. It calls for wider diversification among the membership of the Select Committee on Legislative Ethics. And it clarifies voting procedures among the legislative members of the committee.

All this and, so far, and not a word about confidentiality! The fact is, this legislation implements many necessary clarifications to our ethics codes. But here is an inconvenient little detail: contrary to popular belief, current law requires the ethics complaint process remain confidential until a finding of probable cause. Again, that is the law today.

So what happens if I break the current law by publicly announcing I have filed an ethics complaint? There are quite likely consequences, right? Otherwise, why have the law? The fact is, there are no real consequences. So the legislation, as proposed, encourages people not to violate the law by imposing a civil (not criminal) penalty against deliberate lawbreakers.

It has been widely, yet incorrectly, reported that the civil penalty is \$5,000. Here again we have another one of those inconvenient little facts: The fine could be as little as \$1. The language in both bills is very consistent on this issue.

Ultimately, this will be a legislative policy call. If the law requires confidentiality, then the violator must pay the consequences, just like in any other law. If, on the other hand, we are not concerned about maintaining the integrity of this important process, if we are not concerned about accountability, then all confidentiality provisions should be stricken from our ethics laws. It must be either one or the other.

One last thing to consider: Your co-worker has just filed an ethics complaint against you. Is it righteous or is it just a grudge? It doesn't really matter since, either way, it must go through the process. But it's times like this that you pray the process works.

Sen. Ralph Seekins is a Republican from Fairbanks. He represents District D in the Alaska Legislature and is chairman of the Senate Judiciary Committee.

SB 186 "S" (Senate)	SB 186 "C" (House STA)	SB 186 "P" (House JUD)
<p>Section 1 - AS 39.52.110(b)</p> <p>Removes the ambiguous words [SUBSTANTIAL] and [INSIGNIFICANT] from the statute.</p> <p>Adds new language: "(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 more than one percent of the stock in the business and the stock owned has a value of less than \$10,000; (C) owns 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 personal or professional services to the business; (G) does not have a contract with the business; and (H) is not an employee of the business."</p>	<p>Section 1 - AS 39.52.110(b)</p> <p>Removes the ambiguous words [SUBSTANTIAL] and [INSIGNIFICANT] from the statute.</p> <p>Adds new language: (2) action or influence would have insignificant or conjectural effect on the matter; "or 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."</p>	<p>Section 1 - AS 39.52.110(b)</p> <p>No Change from the "C" version.</p>
<p>Section 2 - AS 39.52.130(f)</p> <p>Adds the word "immediate" to describe family member and adds the phrase "business associate" to tighten the statute.</p>	<p>Section 2 - AS 39.52.130(f)</p> <p>Same as Section 2 in the "S" version.</p>	<p>Section 2 - AS 39.52.130(f)</p> <p>Same as Section 2 in the "S" version.</p>
<p>Section 3 - AS 39.52.140</p> <p>Adds the words "or position"; "business associate" and "or by reason of the officer's position" to</p>	<p>Section 3 - AS 39.52.140</p> <p>Same as Section 3 in the "S" version.</p>	<p>Section 3 - AS 39.52.140</p> <p>Same as Section 3 in the "S" version.</p>

better describe the public officer's capacity.	(intentionally blank)	(intentionally blank)
Section 4 - AS 39.52.140 Adds a new subsection: “(c) A current or former public officer may not disclose information that is confidential under AS 39.52.340(a).”	Version “S” Section 4 language removed from the “C” version.	Version “C” change carried forward to the “P” version.
Section 5 - AS 39.52.150(a) Adds new language: “business associate”.	Section 4 - AS 39.52.150(a) Same as Section 5 in the “S” version.	Section 4 - AS 39.52.150(a) Same as Section 5 in the “S” version.
Section 6 - AS 39.52.150(c) Adds new language: “business associate”.	Section 5 - AS 39.52.150(c) Same as Section 6 in the “S” version.	Section 5 - AS 39.52.150(c) Same as Section 6 in the “S” version.
Section 7 - AS 39.52.150(d) Adds new language: “business associate”.	Section 6 - AS 39.52.150(d) Same as Section 7 in the “S” version.	Section 6 - AS 39.52.150(d) Same as Section 7 in the “S” version.
Section 8 AS 39.52.210(b) Adds a new subsection: “(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.”	Version “S” Section 8 language removed from the “C” version.	Version “C” change carried forward to the “P” version.
(intentionally blank)	(intentionally blank)	Section 7 - AS 39.52.165 Adds a new section: “A public officer may not, in taking official action, violate or be required to violate a provision of a code or canon of professional ethics if the public officer's professional conduct is bound by the code or canon of professional ethics as a condition of obtaining or retaining a license to engage in or to practice the profession.”
Section 9 - AS 39.52.230 Adds new language: “Except where the report concerns the governor, lieutenant governor, or the attorney general” and “If the report concerns the governor, lieutenant governor, or the attorney general, the supervisor shall refer the report as provided in (b) of this section.”	Section 7 - AS 39.52.230 Same as Section 9 in the “S” version.	Section 8 - AS 39.52.230 Same as Section 9 in the “S” version.
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Section 10 - AS 39.52.230

Adds a new subsection:

“(b) If a report or allegation of a violation of AS 39.52.110 – 39.52.190 by the governor, lieutenant governor, or attorney general come to the attention of the designated supervisor for the governor, lieutenant governor, or attorney general, or attorney general under AS 39.52.210(a)(2) or by filing of an ethics complaint under AS 39.52.310(b), then,

(1) in the case of a report or allegation against the governor or the lieutenant governor, the attorney general shall refer the matter to the personal board, which shall appoint an independent counsel to investigate; the independent counsel shall have power to issue and enforce subpoenas under AS 39.52.380 and 39.52.390; the independent counsel shall prepare a written report of the investigation; the written report must include findings of fact and a conclusion as to whether, in the opinion of the independent counsel, the facts constitute conduct in violation of AS 39.52.110 – 39.52.190; the report of the independent counsel shall be submitted to the attorney general; the attorney general shall review the report and make an independent determination as to whether the independent counsel’s findings of fact, if true, would constitute conduct in violation of AS 39.52.110 – 39.52.190; if the attorney general concludes that the facts as found by the independent counsel would constitute a violation of AS 39.52.110 – 39.52.190, then the attorney general shall treat the independent counsel’s report as a complaint and shall refer the report to the personnel board under AS 39.52.310(c); if the attorney general concludes that the facts as found by the

Section 8 - AS 39.52.230

Same as Section 10 in the “S” version.

Section 9 - AS 39.52.230

Same as Section 10 in the “S” version.

independent counsel would not constitute a violation of AS 39.52.110 – 39.52.190, the investigation shall be closed and no further enforcement action shall be taken; nothing in this paragraph precludes a person from filing a complaint concerning the same matter under AS 39.52.310(b);

in the case of a report or allegation against the attorney general, the governor shall refer the matter to the personnel board, which shall appoint an independent counsel to investigate; the independent counsel shall have power to issue and enforce subpoenas under AS 39.52.380 and 39.52.390; the independent counsel shall prepare a written report of the investigation; the written report must include findings of fact and a conclusion as to whether, in the opinion of the independent counsel, the facts constitute in violation of AS 39.52.110 – 39.52.190; the report of the independent counsel shall be submitted to the governor; the governor shall review and make an independent determination as to whether the independent counsel’s findings of fact, if true, would constitute conduct in violation of AS 39.52.110 – 39.52.190; if the governor desires legal advice in making this determination, the personnel board, at the governor’s request, shall appoint additional independent counsel to advise the governor on legal issues; if the governor concludes that the facts as found by the independent counsel would constitute a violation of AS 39.52.110 – 39.52.190, then the governor shall refer the report to the personnel board for appropriate action in accordance with the procedures set out in AS 39.52.310(c); if the governor concludes that the facts as found by the independent counsel would not constitute a violation of AS 39.52.110 – 39.52.190, the investigation shall be closed and no further enforcement action shall be taken; nothing in this paragraph precludes a person from filing a complaint concerning the same matter under AS 39.52.310(b).”

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<p>Section 11 - AS 39.52.240(a)</p> <p>Adds clarifying language: "This section does not apply to a report or an allegation investigated under AS 39.52.230(b)."</p>	<p>Section 9 - AS 39.52.240(a)</p> <p>Same as Section 11 in the "S" version.</p>	<p>Section 10 - AS 39.52.240(a)</p> <p>Same as Section 11 in the "S" version.</p>
<p>Section 12 - AS 39.52.310(a)</p> <p>Adds an additional cite: AS "39.52.230(a)" to the list of statutes under which the attorney general may initiate a complaint.</p>	<p>Section 10 - AS 39.52.310(a)</p> <p>Same as Section 12 in the "S" version.</p>	<p>Section 11 - AS 39.52.310(a)</p> <p>Same as Section 12 in the "S" version.</p>
<p>Section 13 - AS 39.335(c)</p> <p>Adds inclusive language: "the subject of the complaint" within the distribution of those receiving the summary report.</p> <p>Removes language: [(2) SUPERIOR COURT MAKES THE MATTER PUBLIC UNDER (h) OF THIS SECTION].</p>	<p>Section 11 - AS 39.52.335(c)</p> <p>Same as Section 13 in the "S" version.</p>	<p>Section 12 - AS 39.52.335(c)</p> <p>Same as Section 13 in the "S" version.</p>
<p>Section 14 - AS 39.52.335(f)</p> <p>Adds inclusive language: "the attorney general, the subject of the complaint, and the complainant" to the list of recipients of any final report issued by the personnel board.</p> <p>Adds new language: "The report is confidential."</p> <p>Removes language: [IF THE MATTER IS CONFIDENTIAL AND THE BOARD DETERMINES THAT PUBLICATION OF THE NAME OF THE SUBJECT IS IN THE PUBLIC INTEREST, THE REPORT MAY INCLUDE A RECOMMENDATION THAT THE MATTER BE MADE PUBLIC].</p>	<p>Section 12 - AS 39.52.335(f)</p> <p>Same as Section 14 in the "S" version.</p>	<p>Section 13 - AS 39.52.335(f)</p> <p>Same as Section 14 in the "S" version with one exception.</p> <p>Adds new language: "The report is confidential until the personnel board makes a finding of probable cause."</p>
<p>Section 15 - AS 39.52.340(a)</p> <p>Adds new language: "independent counsel" with respect to confidential documents obtained during an investigation.</p> <p>This section also adds: "complainant, subject of the complaint" to those persons who must maintain confidentiality during the course of an investigation "or proceeding".</p> <p>This section also adds: "A person may not disclose to any other person the filing of or intention to file a complaint under AS 39.52.310 except to a person assisting in the filing of the</p>	<p>Section 13 - AS 39.52.340(a)</p> <p>Adds new language: "independent counsel" with respect to confidential documents obtained during an investigation.</p> <p>This section also adds: "complainant, subject of the complaint" to those persons who must maintain confidentiality during the course of an investigation "or proceeding".</p> <p>This section also adds: "In a proceeding conducted or an action taken under this chapter, (1) a person may not disclose the filing of a complaint, its contents, or related matters</p>	<p>Section 14 - AS 39.52.340(a)</p> <p>Same as Section 13 in the "C" version.</p>

complaint. A person may not disclose information regarding the intention of another to file a complaint under AS 39.52.310. This subsection does not prevent a person from obtaining directly from a state agency a public record of that agency that has also been made available in connection with an investigation or a formal proceeding under AS 39.52.310 – 39.52.390.”

until after the personnel board makes a finding of probable cause or unless the disclosure is made while the person is

- (A) communicating with personnel board members or staff;
- (B) seeking advice from an attorney; or
- (C) lawfully representing the person or the person's client in defense of a complaint that has been filed and the disclosure is in defense of a complaint that has been filed and the disclosure is necessary;

(2) personnel board proceedings related to a complaint that has been filed are closed to all persons except board members and staff until after the board makes a finding of probable cause unless

(A) the board permits otherwise after finding that fairness to the subject of the complaint may be advanced by the permission; or

(B) the subject of the complaint waives confidentiality;

(3) the complaint document and each related record are confidential are not available for public inspection unless

(A) the personnel board makes a finding of probable cause; or

(B) the subject of the complaint waives confidentiality;

(4) under this section, if the subject of a complaint waives confidentiality of a proceeding or a document, the entire proceeding is open to the public, and the entire document is available for public inspection;

(5) the personnel board shall make appropriate efforts to provide notice of the confidentiality

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(intentionally blank)	<p>requirements of this section;</p> <p>(6) this section governs confidentiality only for complaints filed under this chapter and does not alter confidentiality or the rights of any person for matters not connected with this chapter;</p> <p>this subsection does not prevent a person from obtaining directly from a state agency a public record of that agency that has also been made available in connection with an investigation or a formal proceeding under AS 39.53.310 – 39.52.390.”</p>	(intentionally blank)
<p>Section 16 – AS 39.52.340</p> <p>Adds new subsections:</p> <p>“(d) A person may not disclose information that is confidential under (a) of this section.</p> <p>(e) Except for a current or former public officer covered by AS 39.52.140(c), a person who violates (d) of this section is subject to a civil penalty of up to \$5,000.</p> <p>(f) The attorney general may enforce this section by filing an appropriate civil action.”</p>	<p>Version “S” Section 16 language removed from the “C” version.</p>	<p>Version “C” change carried forward to the “P” version.</p>
(intentionally blank)	<p>Section 14 – AS 39.52.352</p> <p>Adds a new section:</p> <p>“Wrongful use of complaint. (a) The board may find there has been wrongful use of an executive branch ethics complaint if it determines, after compliance with due process requirements, including a public hearing, if requested, and a majority vote, that the complainant</p> <p>(1) made a factual allegation in the complaint knowing the allegation to be false or with reckless disregard of the truth or falsity of the allegation; or</p> <p>(2) did not reasonably believe that the facts alleged in the complaint, if proven, would constitute a violation of this chapter.</p> <p>(b) The board may not find wrongful use of an executive branch ethics complaint under (a)(2) of this section if the complainant filed the complaint in reliance on advice from the complainant’s attorney, a member or staff of the board, or an employee of the state acting in an official</p>	<p>Section 15 – AS 39.52.352</p> <p>Adds a new section:</p> <p>“Wrongful use of complaint. (a) The board may find there has been wrongful use of an executive branch ethics complaint if it determines, after compliance with due process requirements, including a public hearing, if requested, and a majority vote, that the complainant made a factual allegation in the complaint knowing the allegation to be false or with reckless disregard of the truth or falsity of the allegation.</p> <p>(b) If, under (a) of this section, the board makes a finding of wrongful use of an executive branch ethics complaint, the board shall notify both the complainant and the subject of the complaint of its final determination under (a) of this section. The board</p> <p>(1) shall provide to the subject of the complaint the name and last known mailing address of the complainant; and</p> <p>(2) may recommend sanctions under AS 39.52.410 – 39.52.440.”</p>

(intentionally blank)	<p>capacity. (c) If, under (a) of this section, the board makes a finding of wrongful use of an executive branch ethics complaint, the board shall notify both the complainant and the subject of the complaint of its final determination under (a) of this section. The board (1) shall provide to the subject of the complaint the name and last known mailing address of the complainant; and (2) may recommend sanctions under AS 39.52.410 – 39.52.440.”</p>	(intentionally blank)
<p>Section 17 – AS 39.52.380(a) Adds cite: “AS 39.52.230(b).”</p>	<p>Section 15 – AS 39.52.380(a) Same as Section 17 in the “S” version.</p>	<p>Section 16 – AS 39.52.380(a) Same as Section 17 in the “S” version.</p>
<p>Section 18 – AS 39.52.410(a) Adds language pertaining to actions taken by the personnel board in the event of a violation which could include divestiture or establishment of a blind trust: “for a period of time or under conditions determined appropriate, placement of the financial interest in/0 an investment where the employee does not have management control over the financial interest”, restitution, or forfeiture.</p>	<p>Section 16 – AS 39.52.410(a) Version “S” Section 18 language removed from the “C” version. Furthermore, the following existing statutory language is removed: [ESTABLISHMENT OF A BLIND TRUST].</p>	<p>Section 17 – AS 39.52.410(a) Same as Section 15 in the “C” version.</p>
<p>Section 19 – AS 39.52.960(9) Adds language to the definition of financial interest which now also means: “(C) an interest held by a public officer with a business associate”.</p>	<p>Section 17 – AS 39.52.960(9) Same as Section 19 in the “S” version.</p>	<p>Section 18 – AS 39.52.960(9) Same as Section 19 in the “S” version.</p>
<p>Section 20 – AS 39.52.960(11) Makes changes to the definition of immediate family member which now reads: (B) another person “living in the same household” [COHABITATING] with the person in a “sexual” [CONJUGAL] relationship that is not a legal marriage; (D) a parent “or” sibling [GRANDPARENT, AUNT, OR UNCLE] of the person; [AND] (E) a “child,” parent, or sibling of the person’s spouse; “and (F) a child, parent, or sibling of another person living in the same household with the person in a</p>	<p>Section 18 – AS 39.52.960(11) Same as Section 20 in the “S” version.</p>	<p>Section 19 – AS 39.52.960(11) Same as Section 20 in the “S” version.</p>

sexual relationship that is not a legal marriage”.	(intentionally blank)	(intentionally blank)
Section 21 – AS 39.52.960 Adds new definitions: “(23) ‘business associate’ means any person with whom a public officer jointly shares the management, control, or majority ownership of a business for the conduct of trade, commerce, the practice of a profession, or any other occupation engaged in for the purpose of providing income or potential income to the public officer, regardless of how the business is organized; (24) ‘household’ means a social unit of those persons living together in the same dwelling.”	Section 19 – AS 39.52.960 Same as Section 21 in the “S” version.	Section 20 – AS 39.52.960 Same as Section 21 in the “S” version.
Section 22 – AS 39.52.335(h) Repealer.	Section 20. – AS 39.52.335(h) Same as Section 22 in the “S” version.	Section 21. – AS 39.52.335(h) Same as Section 22 in the “S” version.
Section 23 Effective date: January 1, 2006.	Section 21 Same as Section 23 in the “S” version.	(intentionally blank)