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DATE 11-15-2011 BY 60322 UCBAW/STW

153 HOUSE LABOR & COMMERCE

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OFFICE OF THE COMMISSIONER

Frank H. Murkowski, Governor

December 30, 2004

Pat Davidson
Legislative Auditor
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811

RECEIVED
DEC 30 2004
LEGISLATIVE AUDIT

RE: Board of Marital and Family Therapy

Dear Ms. Davidson:

We appreciate the opportunity to review the Board of Marital and Family Therapy Preliminary Audit Report. Comments on the recommendations are noted below:

Recommendation No. 1:

The Board of Marital and Family Therapy and the Board of Professional Counselors should be combined into a single oversight and licensing board.

The Department supports consolidation of the Board of Marital and Family Therapy and the Board of Professional Counselors. The Department recommends a five member board (two professionals from each existing board and one public member) as the make-up for a consolidated board. We believe five members would be sufficient to represent the combined professions and to work effectively on issues of common interest/scope of practice concerns. Additionally, a five member board would assist with keeping travel costs at a minimum.

Recommendation No. 2:

The Division of Occupational Licensing (Occ Lic), in conjunction with the Board of Marital and Family Therapy, should increase licensing fees to eliminate the board's current and projected operating deficit.

The Division considered the program deficit and the existing license fees as part of the review for the upcoming renewal period. The Division determined it was in the best interest of the profession to maintain the license/renewal fee at \$775 and to allow the continuation of pay back of the deficit over future years. As noted in your review, the board has attempted to cut costs where possible and seek ways to reduce operating costs from previous fiscal years.

In the event to legislature deems it appropriate to require the Board of Marital and Family Therapy to pay back the deficit prior to board consolidation, the legislature may consider enacting a requirement that

licensees under the board pay a one-time assessment to cover the deficit. The assessment would be applied to all current licensees; if payment were not made, the legislation should provide for license revocation. In the event 80 licenses are current at the time of assessment, the fee per licensee would be approximately \$938 (i.e., 80 licensees covering a \$75,000 deficit).

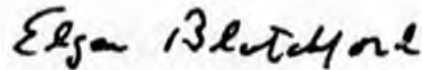
Recommendation No. 3

The Office of the Governor should take steps to make the necessary appointments to keep the Board of Marital and Family Therapy at full membership.

We defer response on this recommendation to the Office of the Governor.

Again, we appreciate the opportunity to comment.

Sincerely,



Edgar Blatchford
Commissioner

cc: Rick Urion, Director,
Division of Occupational Licensing

December 13, 2004
Ms. Pat Davidson
Legislative Auditor
Legislative Budget and Audit Committee
P. O. Box 113300
Juneau, AK. 99811-3300

RECEIVED
DEC 15 2004
LEGISLATIVE AUDIT

Dear Ms. Davidson,

Re: Preliminary audit report on Board of Marital and Family Therapy Sunset Review,
November 1, 2004

My comments relate to the "Report Conclusions" and "Findings and Recommendations".
I believe I represent the MFT Board members as well as many licensees.

I support the overall recommendation that the BMFT should be consolidated with BPC.
However, I disagree with some of the conclusions and findings.

1. It is true that BMFT licensees have significantly declined, however, this is largely due
to several factors not noted in your report, namely:

- a) Licensing fees are extremely high, so psychotherapists may choose to obtain another
license instead of MFT, or to not be licensed at all;
- b) There are no master's degree programs for MFT's in the State of Alaska; therefore, the
only people who get licensed are those from other states;
- c) Alaska does not have a "Practice license" so that therapists can do "marital and family
therapy" without a license;
- d) The initial number of licenses issued when BMFT was formed in 1993 was less than
those in all the other Boards (due to the stringent education and training requirements).

2. A) The 15% of MFT's who hold dual licenses have the necessary education and
training for both licenses and they want to hold dual licenses. There is value in the MFT
designation because of the specific training that license infers. However, many people
who have one license may not be able to obtain a dual license.

3 and 4. The scope of practice may be similar for therapists and counselors, however, I
disagree that educational requirements are similar for therapists and counselors. The
report states that MFT's have "more specialized systemic training for group and family
counseling". In fact, if you compare the specific courses required for the LMFT, you will
note MFT's are required to take numerous courses that educate and train the therapist in
systemic thinking. This distinction is CRITICAL to the basic difference in practice
between the two professions. Systemic thinking and working is used for all types of
therapy, not just for groups and families, and represents a different and unique
methodology/theoretical model for the way we work with clients. Other professionals
may not be adequately trained in systemic work unless they have taken relevant courses.

Furthermore, the legislative audit committee may not be aware that the BMFT is
charged with monitoring licensees who are "Approved Supervisors". Marriage and

Family Therapy is the only mental health discipline that requires extensive education and training on a national level for a therapist to become a Supervisor of those wanting to become licensed. This is because the training in "systemic areas" is so specific and specialized. BMFT is charged with monitoring that there is sufficient training and continuing education of Alaska State Approved Supervisors.

Therefore, if the two Boards were consolidated, provision needs to be made to have Board members who are able to differentiate between the requirements for the two licenses, and who are able to issue two distinctive licenses.

I definitely disagree with the recommendation on p. 13 that the "combined board may want to consider "a single counseling license with an endorsement to practice a specialty..." I do not believe that this would serve the public because the implication is the training for both licenses is the same; that both licenses are covered by the public's health insurance; (however, in at least one instance, I am aware of a medical insurance plan that covers therapy by a LMFT with no restrictions, but restricts coverage of the LPC practitioner-the military person's insurance); and there could be less Board scrutiny over who is stating they are qualified to do "marital and family therapy".

5) I have grave concerns about your findings and recommendations about the BMFT deficit. You state on p. 14 that "The major contributing factor to the deficit is that in the past board costs have exceeded license renewal fee revenues". Operating costs for the BMFT are increased by investigative and administrative functions that are unrelated to licensees, or to the Board functions. According to Jennifer Strickler, who spoke to the BMFT at our October 1, 2004 meeting regarding our budget report, the deficit is due to expenses related to two large investigations from 1998. Since that time, the Board has shown surpluses in revenue over expenses for each licensing period. Standard governmental accounting principles would not carry a deficit over 6 years, just as they would not carry forward excess revenues. It should be noted that the BMFT has absolutely no oversight over any investigations. Also, investigations of therapists could, and have, occurred in any discipline/license. The BMFT was most affected because of the small number of licensees. (Please refer to the points in #1) The Board has discussed the need to challenge the procedures that prevent the Board from having oversight. One such proposal is for the investigators to use volunteer "expert witnesses" who may assist in evaluating concerns about therapists' behaviors. Another proposal would require statutory changes which thereby would incur further expenses to the Board, so no action has yet been taken on this. Another proposal is for OccLic to spear head legislation to create a legal defense fund to help protect all Boards from incurring deficits associated with litigation costs. It is my opinion that MFT licensees should not be penalized by increased fees for investigations not authorized or approved by the Board. In fact, there should be a mechanism to charge investigation expenses to the therapists who incurred the investigations, particularly if a law was violated. This would need legislative action. Ms. Strickler stated that if the number of licensees stays the same and there are no major costs incurred, the fee for the 2006 license renewal might come down. This is different from your statement that the deficit cannot be eliminated until beyond FY07 unless fees are doubled.

On p.14 you recommend that fees would have to be doubled to \$1,350. Increasing fees to "double" would be shortsighted. I think many licensees would choose not to

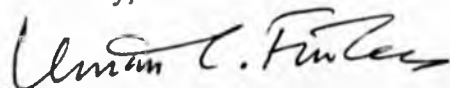
renew their licenses. They could practice without a license, and therefore, would not be monitored for legal and ethical violations. This could be detrimental to the public, and could further delay payment toward the deficit. Consolidating Boards will not alleviate the deficit as LMFT's would need to cover their own "deficits", according to current statutes. I do think the naming of expenditures from 8 years ago as ongoing "deficits" needs to be re-considered. Furthermore, if the "deficit" might indeed be eliminated during the next licensing period (December of 2006), then this is a moot point.

I wanted to point out potential errors under Recommendation No. 3, p. 14. As of December 31, there will be two licensed professional seats on the BMFT that are vacant, and the term of third seat has expired though that person (myself) is serving pending a replacement appointment that was requested in November, 2003. Therefore, I strongly support your recommendation that the Governor's office work to fill appointments to all seats on the Board in a timely manner. Please also note that on p 3 a listing of the BMFT members as of June 30, 2004 is not correct. Mr. Larry Holman, Chair, resigned from the Board last February due to health problems. The BMFT did not have a Chair until they met to elect one on October 1, 2004.

Under the final subsection on p.22 in reference to statutory, regulatory, budgeting, or other changes, I think the BMFT would better serve the interest of the public if, whether alone or consolidated with BPC, it could be proactive in all its efforts. This can best be achieved with full board membership, regular and timely meetings (to be determined by the Board and not OccLic), keeping licensing fees reasonable, (which requires legislative changes) and knowledge and oversight of investigations.

In summary, I do not object to the consolidation of Boards, but I disagree with some significant points that you raised, and have noted those. Please contact me at 907-373-6006 should you have any questions.

Sincerely,



Vivian C. Finlay, LMFT, Chair BMFT

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SB

140

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 20, 2005

FURTHER REFERRALS: Judiciary

Date of Committee Action: April 25, 2005

The LABOR AND COMMERCE Committee considered:

CSSB 140(JUD)

CS FOR SENATE BILL NO. 140(JUD)

BAN INTERNET SPYWARE

"An Act relating to spyware and unsolicited Internet advertising."

Recommends it be replaced with HCS or CS for _____ (_____)

For Senate Bills with new title: Technical Title New Title. HCR _____ Same Title New Title

- attach amendments
 add new referral to _____ Committee
 Letter of Intent _____ Committee

List of Abbrev for Depts
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LEG
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
ADM	1			X
LAW	2			X
DPS	3			X

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	CRAWFORD			✓	
	CYNTHIA KORT	X		✓	
	KATHLEEN ADAIR			✓	
	KELLY			✓	
	[unclear]			✓	
Chair:	ANDERSON	X			
Chair:	[unclear]				

Alaska State Legislature

SENATOR
GENE THERRIAULT

Mailing Address:
119 N. Cushman, Suite 101
Fairbanks, Alaska 99701
(907) 488-0857
Fax: (907) 488-4271



Senate

While in session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
Fax: (907) 465-3884
SENATE DISTRICT F

SB 140 Sponsor Statement

Spyware, which includes malware, trackware and adware, is the categorical name for any application that may track user's online and/or offline PC activity and is capable of locally saving or transmitting those findings for third parties either with, or more often without, the computer user's knowledge or consent.

According to reports by the National Cyber Security Alliance, in 2003 nine out of 10 PCs connected to the Internet were infected with spyware. A joint spy audit report by Earthlink and Webroot in October, 2004, detected an average of 26 spyware traces on any given PC. Over a nine-month random computer audit, Earthlink and Webroot detected 82 million pieces of spyware and other potentially unwanted software programs.

Spyware can install tracking cookies that marketers use to monitor online activities to tailor pop-up ads directly to the user. More harmful programs can record keystrokes to get personal information such as Social Security Number, bank account numbers, login names, passwords and credit card numbers that can be used to commit identity theft.

In addition to frustrating users with pop-up ads that are misleading and anticompetitive, the cost of removing unwanted spyware from PCs in homes, businesses, schools, universities and governments is staggering.

Senate Bill 140 would make it unlawful for a person to engage in deceptive acts or practices using spyware, including causing a pop-up ad to be shown on a computer screen knowing, or with reckless disregard, that the ad is the consequence of a user accessing a certain website.

While prosecutions and enforcement may be challenging, SB 140 sends the message that Alaska takes computer invasion seriously and will not leave its citizens without recourse.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 140
 (S) Publish Date: 3/29/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: Ban Internet Spyware RDU: Enterprise Technology Sr
 Component: Enterprise Technology Sr
 Sponsor: (S) L&C
 Requester: _____ Component No.: 2082

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 will not have a fiscal impact upon the agency.

Prepared by: Stan Herrera, Director Phone: 465-5735
 Division: Enterprise Technology Services Date/Time: 3/22/05 7:21 AM
 Approved by: Michael Tibbles, Deputy Commissioner Date: 3/22/2005
 Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 140
 (S) Publish Date: 3/29/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating to spyware and unsolicited RDU: CIVIL
Internet advertising." Component: Commercial & Fair Business
 Sponsor: Senator Therriault
 Requester: Senate Labor & Commerce 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 amends AS 45.45 (Trade and Commerce - Trade Practices) by adding new sections to prohibit the use of "spyware" that causes "pop-up" ads to appear on a computer when the user accesses a certain website. The Department of Law is currently charged with enforcing Alaska's Consumer Protection Act, AS 45.50.471 et seq., which includes enforcement of AS 45.50.479-.481 relating to electronic mail. We would likely enforce this provision of AS 45.45 in a similar manner, and we do not believe this bill will require additional funds for effective enforcement.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division: Administrative Services Division Date/Time 3/21/05 11:44 AM
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 3/21/2005
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: SB 140
 (S, Publish Date): 3/29/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title: "An Act relating to spyware and unsolicited internet RDU: Alaska State Troopers
advertising." Component: AST Detachments
 Sponsor: Senator Tharriault
 Requester: Senate Labor & Commerce Component No.: 2325

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)
 Passage of this bill will have no fiscal impact on the Alaska State Troopers.

The bill prohibits spyware pop-up advertisements on computers in our state and helps undermine the economic incentives for spyware providers to sneak onto a user's computer. Penalties for a violation of these provisions are civil.

Prepared by: Lieutenant Todd Sharp Phone: 907-269-4532
 Division: Alaska State Troopers Date/Time: 3/18/05 3:24 PM
 Approved by: Commissioner William Tandeske Date: 3/18/2005
 Agency: Department of Public Safety

"Spyware": Research, Testing, Legislation, and Suits

Benjamin Edelman

[[Introduction](#) - [Research](#) - [Legislation](#) - [Pending Suits](#) - [Disclosures](#)]

Introduction

A number of firms currently design and offer so-called "spyware" software -- programs that monitor user activities, and transmit user information to remote servers and/or show targeted advertisements. As distinguished from the design model anticipated by [whatis.com's definition of adware](#) ("any software application in which advertising banners are displayed while the program is running"), these spyware programs run continuously and show advertisements specifically responding to the web sites that users visit. Companies making programs in this latter category include [Gator](#) (recently renamed [Claria](#)), [WhenU](#), and [180Solutions](#). Other spyware programs include keystroke recorders, screen capture programs, and numerous additional software systems that surreptitiously monitor and/or transmit users' activities.

Spyware programs have prompted a number of legal challenges, as described in the pending suits section below. The problem of spyware has also attracted attention from legislators, who have proposed laws to rein in the problem.

I have followed these developments generally, I have written about the programs and their effects, and I have been retained as an expert in certain of these suits. This page indexes my research on my own and my work in selected cases.

Featured Research

- [180solutions & Affiliate Commissions \(NEW\)](#)
- [WhenU Violates Own Privacy Policy \(NEW\)](#)
- [Advertisers Using WhenU \(NEW\)](#)
- [WhenU Spams Google, Breaks "No Cloaking" Rules](#)
- [WhenU Copies 26+ Articles From 20+ News Sites](#)
- [WhenU.com, Inc., v. The State of Utah](#)
- [Documentation of Gator Advertisements and Targeting](#)

Research as to Spyware Operation, Advertisements and Targeting

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Gator / Claria CAIN

- [Documentation of Gator Advertisements and Targeting \(May 2003\)](#)
 - Research showing which advertisements Gator shows when users visit various domain names. Includes advertisement thumbnails and analysis of targeting conditions.
- [WashingtonPost.Newsweek Interactive Company, LLC, et al. v. the Gator Corporation - Edelman Expert Declarations \(June 2002 - February 2003\)](#)
- [Teleflora, Inc. v. Claria. - Edelman Expert Declaration \(May 2004\)](#)
- [Dell's Spyware Puzzle \(June 2004\)](#)
 - Research showing Dell UK advertising on the Claria network, puzzling because Dell has previously criticized unwanted software on users' PCs.
- [Gator's EULA Gone Bad. \(November 2004\)](#)
 - Analysis of substance and presentation of Claria's license agreement. The 5,900+ word, 63-page license is presented in a small scroll box with section headings merged into body text. Users who manage to read the license find surprising terms: Users must not run third-party tools (like Ad-Aware or Spybot) to remove Gator, and users must not investigate what personal information Gator tracks and sends.
- [Claria's License Agreement is Fifty Six Pages Long \(June 2004\)](#)
 - Complete set of screenshots showing the Claria installation process and license agreement, when Claria is bundled with Kazaa. The 5,541-word Claria license requires fifty six on-screen pages, e.g. fifty six presses of the page-down key, discouraging users from meaningfully reviewing the license.

WhenU Save / SaveNow

- WhenU Violates Own Privacy Policy (May 2004)
 - Research showing that WhenU transmits to its servers some of the specific URLs users visit, precisely contrary to WhenU's promises in WhenU's license agreements and in some WhenU software installers.
- Advertisers Using WhenU (June 2004)
 - Research reporting all current WhenU graphical advertisers. Major advertisers include Priceline, J.P. Morgan Chase, Verizon, Merck, and T-Mobile.
- WhenU Security Hole Allows Execution of Arbitrary Software (June 2004)
 - Research finding a flaw in the auto-update system used by certain WhenU software recently available on WhenU's ordinary public web site. Flaw allowed attackers to install any software on PCs of users with the affected WhenU software.
- WhenU Spams Google, Breaks Google "No Cloaking" Rules (May 2004)
 - Research showing web sites created by WhenU in violation of search engine rules, boosting rankings of content favorable to WhenU while pushing critics lower in rankings. Google and Yahoo! responded by removing www.whenu.com and other affected sites from their indexes.
- WhenU Copies 26+ News Articles from 20+ Publishers (May 2004)
 - Research showing that WhenU has copied at least 26 articles from at least 20 different publishers to its main www.whenu.com web server, as well as to at least eleven other official WhenU servers. The articles are provided in full, but without the advertisements that surround article text on the publishers' web sites, without any mention of authorization from the publishers, and without their ordinary copyright notices.
- WhenU's License Agreement is Forty Five Pages Long (April 2004)
 - Complete set of screenshots showing the WhenU installation process and license agreement, when WhenU is bundled with BearShare. Due to placement of the WhenU license is an exceptionally small on-screen window, viewing the entire license requires 45 presses of the page-down key, discouraging users from meaningfully reviewing the license.
- Documentation of WhenU Advertisements and Targeting (forthcoming)
 - Research showing which advertisements WhenU shows when users visit various domain names. Includes advertisement thumbnails and analysis of targeting conditions.
- Quicken Loans and Wells Fargo v. Whenu.com Inc. - Edelman Expert Declarations (July - September 2003)

180Solutions n-CASE and Zango

- Documentation of n-CASE Advertisements and Targeting (forthcoming)
- The Effect of 180solutions on Affiliate Commissions and Merchants (July 2004)
 - Research showing how 180 software intentionally causes merchants to pay affiliate commissions to 180, even when affiliate commissions are properly payable to other affiliates, or are properly withheld by merchants under the terms and conditions of their affiliate programs.
- 180solutions Installation Methods and License Agreement (July 2004)
 - Research itemizing 180's major installation methods, including drive-by downloads, distribution partners, and installation through security holes. Discussion also tracks failure to show a license agreement and failure to provide an uninstaller.
- Who Profits from Security Holes? (November 2004)
 - Video example of software installation through security holes, installing software from 180solutions and 15+ other companies.
- 180 Talks a Big Talk, but Doesn't Deliver (January 2005)
 - Evaluates 180solutions current installation methods and other practices in light of endorsement by an anti-spyware consortium.

DirectRevenue / ABetterInternet

- Documentation of DirectRevenue Advertisements, Advertisers, and Targeting (forthcoming)

- [DirectRevenue Deletes Competitors from Users Disks \(December 2004\)](#)
 - Packet log excerpts showing the means by which DirectRevenue removes certain competitors' programs from users' hard disks.

Spyware Generally

- [Methods and Effects of Spyware \(PDF\) - Response to FTC Call for Comments on Spyware \(March 2004\)](#)
 - I explain how spyware works, including presenting specific personal information transmitted by both Gator and WhenU. (The WhenU transmissions are particularly notable because these transmissions seem to violate WhenU's own privacy policy.) Other sections of the document discuss installation methods of spyware (with special consideration of the technical methods used in drive-by downloads), frequency of advertisement display, and performance and security effects of spyware.
- [A Close Reading of Utah's Spyware Control Act - FAQ-style analysis of the bill, a prominent letter of opposition, and related media coverage. \(March 2004\)](#) See also [WhenU.com, Inc., v. The State of Utah](#), WhenU's challenge to the Spyware Control Act.
- [Grokster and Claria Take Licenses to New Lows \(October 2004\)](#)
 - Shows installation of software even when users press "Cancel" to decline installation. Notes that license agreements stretch to the tens of thousands of words, and to hundreds of on-screen pages.
- [Who Profits from Security Holes? \(November 2004\)](#)
 - Video example of software installation through security holes, installing software from 180solutions and 15+ other companies.
- [Video: Ebates Installed through Security Holes \(December 2004\)](#)
 - Video showing software from Ebates installed through security holes, contrary to affiliate networks' policies.
- [Media Files that Spread Spyware \(January 2005\)](#)
 - Listing of programs installed after a misleading pop-up displayed by a Windows Media file.
- [Investors Supporting Spyware \(January 2005\)](#)
 - Listing of major investment firms helping support the operation of large US-based spyware companies.

Legislation Regulating Spyware

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In the listings below, the  icon indicates links to my original research and analysis;  indicates local versions of content originating elsewhere; and other links point to content hosted elsewhere.

- Proposed US federal legislation
 - [Safeguard Against Privacy Invasions Act - Rep. Mary Bono - H.R. 29 \(formerly H.R.2029\)](#)
 - Status: Reintroduced, January 2005. (Previously passed by full House.)
 - Prohibits certain specific practices except with user authorization. Requires notice, consent, and uninstall capability for certain information collection and advertising programs. Leaves many key details to the Federal Trade Commission. Grants enforcement power only to the FTC. Preempts existing state laws about spyware.
 - [My full analysis and critique.](#) See also my earlier [initial analysis and critique.](#)
 - [Software Principles Yielding Better Levels of Consumer Knowledge - Sen. Conrad Burns and Sen. Ron Wyden - S.2145](#)
 - Status: Introduced, February 2004. Hearing held, March 2004.
 - Requires notice (with representative examples of advertisements and estimated display frequency) and uninstall capability (presence in Add/Remove Programs listing). Enforcement by FTC and state attorney generals.
 - [Computer Software Privacy and Control Act - Rep Jay Inslee - H.R.4255](#)

- Status: Introduced, April 2004.
- Prohibits transmission of software that collects and transmits personal information about computer owner or operator, monitors and transmits web pages accessed, or modifies default computer settings as to home page or search, unless notice is provided and consent is obtained in advance. Advertising software permitted only with consent and uninstall. Violations enforced by FTC under FTC Act, via criminal penalties, and by states. Preempts existing state laws about spyware.
- o Internet Spyware (I-SPY) Prevention Act - Rep. Bob Goodlatte - H.R.4661
 - Status: Passed by House, October 7, 2004.
 - Creates criminal penalties for accessing a protected computer without authorization, or exceeding authorization, by causing software to be copied onto a computer and 1) using that code for another Federal criminal offense, 2) intentionally obtaining or transmitting personal information with intent to defraud, injure, or cause damage, 3) intentionally impair computer security.
 - ~~My initial analysis and critique.~~
- Proposed US state legislation
 - o California
 - Computer Spyware, introduced by Senator Kevin Murray (with principal coauthors Assembly Members Correa and Leslie) - S B.1436
 - According to the California Office of Privacy Protection, "This bill would prohibit a person from knowingly installing a providing spyware, as defined, on or to another user's computer located in California. It would authorize the recipient of such spyware to bring an action for actual damages and for liquidated damages of \$1000 per transmission, subject to reduction by a court for specified reasons, plus attorney's fees and costs to a prevailing plaintiff." ([reference](#))
 - Prohibits numerous specific stated practices, such as removing or disabling security or antivirus software, when such practices are intentionally deceptive and when they are conducted willfully or with actual knowledge.
 - Status: Passed legislature. Signed into law by governor, September 28, 2004.
 - My analysis and critique.
 - Computer Adware and Spyware, introduced by Assembly Member Tim Leslie - A.B.2787
 - Prohibits "hijack[ing] ... a user's computer in this state." Other clauses and prohibitions (from earlier drafts of the bill) have been removed.
 - Consumers may sue to recover actual damages or liquidated damages of \$1,000 per violation. The Department of Consumer Affairs may issue administrative fines against violators.
 - Status: Passed committee.
 - o Iowa - Senate File 2200, introduced by Sen. Keith A. Kreiman
 - According to Slashdot, this bill makes "the distribution of Spyware without notice an aggravated misdemeanor, punishable by confinement for no more than two years and a fine of at least \$500 but not more than \$5,000. The proposed bill also provides victims and county attorneys with the ability to file a civil cause of action for relief from conduct constituting the crime of unauthorized collection and disclosure of personal information by computer." ([reference](#))
 - Suits may be brought by the county attorney or by other aggrieved persons.
 - Status: Introduced
 - o Michigan: Senate 1315
 - Requires certain disclosures prior to installation of spyware. Defines spyware as software that monitors computer use or display advertisements in response to computer use, but excludes from spyware all programs "installed ... by the owner" of a computer. Criminal sanctions including fines and imprisonment.
 - Status: Introduced in Senate.
 - o New Hampshire: Regulating the Use of Computer Spyware
 - Requires certain notice and consent before installation of certain software. Prohibits context-

- based triggering mechanisms that cover web sites with advertisements.
- Status: Introduced, House, January 2005.
- New York: [Senate S07141](#)
 - According to the bill's [summary](#), the bill creates a crime of unlawful dissemination of spyware, ordinarily a class A misdemeanor and a class E felony for repeat offenders. Unlawful dissemination of spyware takes place when a person "having no right to do so" installs software ("including but not limited to a keylogg[er]") to gather and transmit personal information or data without a user's knowledge or explicit authorization.
 - [Slashdot Discussion](#)
- Utah: [Spyware Control Act](#), introduced by [Rep. Stephen H. Urquhart](#), signed by [Governor Olene Walker](#) on March 23
 - [Spyware Control Act](#) - reformatted, indented
 - [A Close Reading of Utah's Spyware Control Act](#) - FAQ-style analysis of the bill, a prominent letter of opposition, and related media coverage
 - [Letter of Opposition \(PDF\)](#) from AOL, Amazon, the Association for Competitive Technology, AT&T, the American Electronics Association, the Business Software Alliance, c|net, the Computer & Communication Industry association, eBay, Google, the Information Technology Association of America, the Internet Commerce Coalition, Intraware, MCI, Microsoft, NetCoalition, Novell, Orbitz, the Software & Information Industry Association, Verizon, and Yahoo!
 - [WhenU.com, Inc., v. The State of Utah - Case Documents](#) - Suit filed by a company subject to the Act, seeking that the act be declared void and invalid.
 - Bill status: Signed into law by [Governor Olene Walker](#) on March 23, 2004. Challenged by [WhenU](#) in: [WhenU v. The State of Utah](#). Preliminary injunction granted, enjoining enforcement of the bill, June 22, 2004.
- Virginia:
 - [HB 1729: Prohibited Software and Actions](#), introduced by [John Cosgrove](#)
 - Prohibits collection of personally identifiable information through intentionally deceptive means. Prohibits modifying certain Internet settings, misrepresenting that software has been disabled or is necessary, inducing a user to install software by misrepresenting necessity for security, privacy, or file viewing.
 - [HB 1304: Invasive Technologies](#), introduced by [L. Scott Lingamfelter](#)
 - Beginning in 2006, would require public bodies to conduct a privacy impact analysis when authorizing or prohibiting the use of invasive technologies including spyware.
- [Other legislation](#)
 - Australia: [Spyware Control Bill](#) - Requires notice and consent prior to installation of certain software. [Computerworld](#) coverage.
 - Status: Slated to go before Parliament in September 2004.
 - Netherlands: Plans for an anti-spyware bill reported in the media, e.g. [this article](#) in [Digital Media Europe](#).

[The National Conference of State Legislatures maintains 2004 Legislation Relating to Internet Spyware or Adware.](#)

Pending Suits against Designers of Spyware

[Return to top](#)

Claria

Claria's activities have prompted a number of legal challenges. This section attempts to chronicle key suits to the best of my ability, but this section is unlikely to be comprehensive; a thorough search of [Google](#), [LexisNexis](#), and/or [Westlaw](#) will likely yield additional cases and additional

information as to recent updates. Send suggested additions to [Ben Edelman](#).

- o Facing complaints from the [Internet Advertising Bureau](#) as to Gator's activities, then including banner ads that tended to cover web site operators' own banner ads. Gator in 2001 [sued](#) the IAB and subsequently [settled](#). Gator has subsequently sued Virtumundo (since settled), L.L. Bean, and PriceGrabber ([citation](#)).
- o In 2002, Gator was sued by a group of media companies including the New York Times and Washington Post in the [US District Court for the Eastern District of Virginia](#). A preliminary injunction was issued, enjoining Gator's targeting of plaintiffs' web sites. The case settled before trial, and the terms of the settlement are confidential. I served as a technical expert for the plaintiffs. See [my declarations and selected other case documents](#).
- o In 2002, Weight Watchers [sued](#) competitor DiscreetDrugs.com, which had reportedly used Gator to cause its advertisements to appear when users requested the Weight Watchers web site. Also in 2002, Weight Watchers [sued](#) competitor DietWatch.com, which had also reportedly used Gator to cause its advertisements to cover the Weight Watchers site. A permanent injunction was issued by the US District Court, Southern District of New York, enjoining certain DietWatch activities and granting \$25,000 of damages.
- o Gator was subsequently sued by Extended Stay America ([District of South Carolina](#)), Hertz ([opinion as to Gator's requested stay of proceedings](#)) ([New Jersey District Court](#)), Lending Tree ([Western District of North Carolina](#)), Metrodate (representing a class of targeted web sites), Overstock.com, Quicken Loans, Six Continents Hotels ([Northern District of Georgia](#)), TigerDirect ([Southern District of Florida](#)), UPS ([Northern District of Georgia](#)), and Wells Fargo, among others. A footnote in the [Hertz opinion](#) provides citations to the majority of these cases.
- o In 2003, Gator moved for consolidation of these cases as well as Gator's declaratory judgment actions against L.L. Bean, Virtumundo, Extended Stay America, PriceGrabber.com, and TigerDirect. Gator asked that these cases be consolidated in the US District Court for the Northern District of California. (See Schedule of Matters for Judicial Panel on Multidistrict Litigation, PDF page 7.) Instead, these cases were consolidated to the [Northern District of Georgia](#), as detailed in the [Multidistrict Litigation Transfer Order](#) (PDF).
- o In 2004, the German division of Hertz obtained a preliminary injunction prohibiting Claria from using pop-up ads to cover Hertz's site. See [news coverage](#).
- o In 2004, Teleflora [sued](#) Claria. I serve as an expert for Teleflora, and I filed an initial declaration in this matter.
- o In 2004, L.L. Bean [sued](#) Nordstrom's, JC Penney, Atkins, and Gevalia, each of which used Claria to display pop-up ads that cover L.L. Bean's site. See [press release](#), [news coverage](#). Claria counter-sued L.L. Bean. Gevalia and Atkins settled with L.L. Bean. L.L. Bean complaints: [Nordstrom's](#), [JC Penney](#), [Atkins](#), [Gevalia](#).
- o According to Claria's SEC S-1 filing of April 8, 2004, Claria has settled suits brought by Extended Stay America, PriceGrabber.com, LendingTree, and UPS.
- o In June 2004, the Georgia Court hearing Gator's multidistrict litigation ordered that the Metrodate case (a class action of targeted web sites) be remanded to state court.
- o In July 2004, Claria was sued by Interlinx, LLC, as to Claria's targeting of budgetlife.com. The case was filed in the US District Court for the Eastern District of Michigan.
- o In August 2004, the clerk of the court hearing Gator's multidistrict litigation reported that the MDL proceedings were closed because all the MDL cases had been settled (reportedly save for Teleflora)

WhenU

WhenU has been sued by 1-800 Contacts, Overstock.com, Quicken Loans, U-Haul, Weight Watchers, and Wells Fargo. See [summary judgment order](#) (PDF) in U-Haul case (dismissing claims against WhenU) and [preliminary injunction order](#) (PDF) in 1-800 Contacts case (granting preliminary injunction enjoining WhenU from delivering certain pop-up advertisements).

1-800 Contacts has also sued (and obtained a preliminary injunction enjoining) Vision Direct, a

competitor which used WhenU to cause its advertisements to appear when users requested the 1-800 Contacts web site.

In 2004, WhenU sued the state of Utah seeking that Utah's Spyware Control Act be declared void and invalid.

I serve as a technical expert in the Chickens Loans and Wells Fargo matter; I filed two declarations in this matter and provided oral testimony. I serve as a technical expert in the Utah matter; I filed a declaration in this matter and provided oral testimony.

180solutions

DMNews reports that Weight Watchers sued 180solutions and eDiets as to eDiets covering Weight Watchers' site using 180solutions software.

180solutions sued two distributors of its software for installing its software without users' consent, which 180 claims was contrary to the distributors' contract with 180. News coverage.

Others

In May 2004, Overstock.com sued SmartBargains, Inc. Press release.

In December 2004, Avenue Media sued DirectRevenue as to "systematic[] delet[ion]" of Avenue's software from users' hard disks. Discussion and case documents.

Related Suits

[Return to top](#)

New.net v. Lavasoft: Claim by designer and distributor of controversial NewDotNet addressing software against designer of software that, upon a user's request, removes NewDotNet and other programs deemed adware. Alleges false advertising, unfair competition, trade libel, and tortious interference with prospective economic advantage. Complaint.

Disclosures

[Return to top](#)

I serve or served as an expert in some of cases referenced above, and I continue to accept inquiries as to other matters in which I might be of assistance.

This research is a work in progress. Suggestions are welcomed and appreciated.

Last Updated: January 19, 2005 - Sign up for notification of major updates and related work.

Spyware 101



Curtis Clothier
Data Processing Manager
Legislative Affairs Agency
April 7, 2005

Occurrences of Spyware

- In 2003,
 - It was estimated that 2 out of 100 support calls concerned spyware (IDC).
- In 2005,
 - It is now estimated to be 2 out of every 5 support calls concern spyware (IDC).
 - 20% of calls to Dell support involve Spyware (Dell)
 - 50% of calls to Microsoft involve Spyware (Microsoft).

Signs of Spyware



- Lots of pop-up ads, sometimes when you aren't surfing the web.
- Homepage or other settings are changed.
- New toolbars appear.
- New icons appear on your desktop.
- Computer slows down or crashes a lot.

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites Media

Address Go Google

Congratulations!

YOU ARE THE 100,000th VISITOR TO THIS SITE

Click to Claim your Prize

Close Window

System Alert! - Microsoft Internet Explorer provided by Legislative Affairs

Welcome to the System Status monitor.
 Your System Status connection id is 11 to server version: 1.22.41
 (C) Copyright 2005 InternetOpinionGroup.com

Hi> System Status? Urgent Attention

Hi> You have been chosen to receive a FREE* Apple iPod

Hi> This offer available only online

Hi> Limited time offer

Hi> 100% Free*, No Shipping/Handling

OK!

theZreview.co.uk

- ▶ Home
- ▶ News
- ▶ Coming Soon
- ▶ Movie Trailers
- ▶ Movie Reviews
- ▶ Box Office
- ▶ Release Dates
- ▶ DVD
- ▶ Movie Posters
- ▶ Features
- ▶ Community
- ▶ Resource
- ▶ Contact

*** Congratulations!**

You have won our hour
 "OK" button to claim it

Congratulations!

YOU ARE THE 1,000,000th VISITOR TO THIS SITE

Click to Claim your Prize

Close Window

Riding Giants

Riding Giants

Riding Giants Pri

Riding Giants

Riding Giants

Riding Giants

Riding Giants Quick

Hi.F

Riding Giants Quick

Trailer Lo-Res

Riding Giants Fan Sites:

Riding Giants

Submit your News, Information,
 Pictures & Scoops on Riding Giants
 Here: Gary@thezreview.co.uk

Page 1 Sec 1 1/1 AF 1" Ln 1 Col 1 REC FFF EXT OVR []

How does Spyware get installed?

- Often by installing 'free' software, such as:
 - ScreenSavers
 - Weather Info
 - Toolbars
 - Music sharing





What does Spyware Do?

- Spyware changes your computer's settings and programs.
 - Slows or crashes computer.
- These changes are rarely documented and usually occur without your consent.
- Spyware can be (and often is) used to steal confidential information.



Good Software versus Bad

- Not all software that collects information is bad:
 - Some computer and software vendors collect information on computer health.
 - Some software comes gives you an option for a 'paid' version of product, versus a 'free' version bundled with advertising.
- ***Knowledge and consent*** are key.

How Do You Remove Spyware?

- Usually by running several 3rd party Spyware removal tools.



- Some Spyware programs can't be removed without cleaning the machine and starting over.



At the Legislature (and other agencies)...

- Our defenses include:
 - Current versions of software,
 - Anti-virus systems,
 - Spam Filters,
 - Content filters,
 - Firewalls,
 - Spyware removal tools,
 - and a staff to provide support,



However,

- Data Processing staff work on 4-5 Spyware infected computers a week.
- Each call can take several hours each to fix.
- If the computer is in a 'remote' location, the repair may cost several days of downtime.
- Spyware prevention and removal now takes ***more staff time*** than virus and spam issues.



Solutions? – No Silver Bullet

- Continued focus in 3 areas:
 - Continued **education** of computer users to make them aware of Spyware and act more responsibly.
 - Additional **technological** solutions to spot spyware and prevent it from installing.
 - Anti-spyware **legislation** providing recourse to users.

In the News Yesterday

March 21st 2005



■ *The Salt Lake Tribune*

- Utahans May Get Some Relief from Spyware,
http://www.sltrib.com/utah/ci_2615174

■ *The Annapolis Capitol*

- Maryland Lawmakers' bills would make spyware illegal, http://www.hometownannapolis.com/cgi-bin/read/2005/03_21-11/GOV

■ *Internetnews.com*

- Anti-Spyware Bill Introduced in U.S. Senate,
<http://www.internetnews.com/bus-news/article.php/3491731>

What about the future?



- No decline in Spyware.
 - More identity theft.
 - More involvement from organized crime.
-
- **Question:** Why the increases?
 - **Answer:** Because there is money involved (Advertising, Marketing and Theft).

Questions



SB

158

Mayor
Denise Michels
Manager
Randy Romanesko
Clerk/Treasurer
Leslee Wemal



Nome Common Council
Stan Andersen
Mary Knodel
Randy Pomeranz
Jon Larson
John Beckman
Mary Bourdon

102 Division St. • P.O. Box 281
Nome, Alaska 99762
(907) 443-5663
Fax (907) 443-5349

Public testimony regarding Senate Bill No. 158 "An act prohibiting the imposition of municipal sales and use taxes on state construction contracts and certain sub-contracts; and providing for an effective date."

The City of Nome is opposed to SB 158. The bill is punitive and unfairly restricts local control. The bill diminishes the existing statutory authority of local governments to raise needed revenues through the levy of taxes.

Municipal sales tax codes and exemptions have been refined and tailored to meet individual community needs. A municipality needs control over sales and property tax as they are the principle source of local government revenue. This tax is established by the residents of a community for local needs.

The State has already burdened local communities with unfunded mandates. The mandatory state property tax exemptions, such as the senior citizen/disabled veteran property tax exemption, are not funded by the state according to Alaska Statutes. The State Property Tax Exemption shifts the cost of protecting and serving state facilities to local taxpayers. 40% of all property in Nome is exempted by State Statutes. Yet these properties receive service from our police, ambulance, fire departments. These properties have snow removed and roads repaired by City public works. The tenants of these facilities use the locally taxpayer funded libraries and recreation centers. This lost revenue must be made up by the local community, here in Nome it is through a sales tax.

When a contractor works in a community like Nome on a state or federal job, they utilize municipal services every day. Our ambulance treats and transports their injured workers, our police arrest their law breakers, they drive on city streets and use city facilities - all at no cost as proposed by SB 158. The municipality supports the contractor as it provides their services to the state of Alaska yet it expects to not pay in kind for the services it receives.

Sales tax is only applied in some communities throughout the state. This is a community choice. The "rules of engagement" differ in every community for a myriad of reasons. Contractors and residents doing business and living in a community need to be responsible and perform due diligence when working in the different communities within the state. There is no legal reason for consistent application of sales tax within the state. This is a power invested with a municipality by State Statutes.

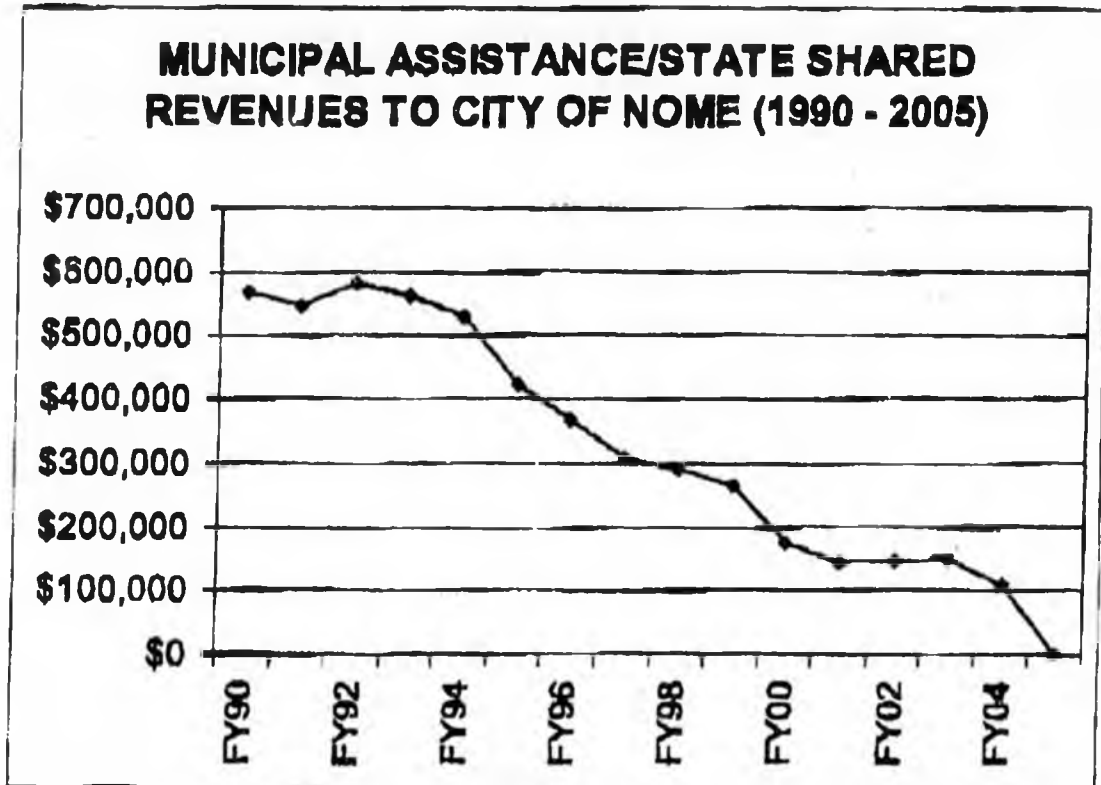
SB 158 Testimony

City of Nome

April 29, 2005

The State of Alaska takes portions of Department of Education grants for overhead, Department of Transportation pass-through grants for administration, imposes fees for landfill, air and water permits. The State continues to take funds from municipalities while cutting state shared revenue/municipal assistance.

Over the past 10 years Nome has seen a reduction of about \$500,000, the equivalent of 2.7 mills to property owners or 1% in sales tax. This revenue source shortfall has to be made up to cover ever rising insurance costs, retirement costs, fuel (gasoline and diesel fuel are at almost \$3.00/gallon) and electricity costs.



Sales tax is a local issue controlled by the locally elected officials to meet the needs of the community. SB 158 takes away local control and further cripples a community's ability to survive in today's economy.

I would like to thank the House Labor & Commerce Committee for taking the time to hear the City of Nome's concerns on a bill that will negatively impact the finances of the City.

Respectfully,
City of Nome

Denise Michels
Mayor

SB 158 Testimony

City of Nome

April 29, 2005

Talking Points

Municipal sales tax codes and exemptions have been refined and tailored to meet individual community needs. A municipality needs control over sales and property tax as they are the principle source of local government revenue. This tax is established by the residents of a community for local needs.

When a contractor works in a community like Nome on a state or federal job, they utilize municipal services every day. Our ambulance treats and transports their injured workers, our police arrest their law breakers, they drive on city streets and use city facilities. The municipality supports the contractor as it provides their services to the state of Alaska yet it expects to not pay in kind for the services it receives. Contractors do not pay property taxes that support the local community.

Sales tax is only applied in some communities throughout the state. This is a community choice. The "rules of engagement" differ in every community for a myriad of reasons. Sales taxes range, in the state, from 0 - 6%; communities have special taxes (bed, alcohol, fish, etc.). There is no legal reason for consistent application of sales tax within the state. This is a power invested with a municipality by State Statutes.

The impact to the State coffers is greatly exaggerated. Airport and highway contracts through AkDOT are primarily funded with Federal money (between 90 - 100% Federal). The majority of work by the State is performed in communities with no tax.

Sales tax is a local issue controlled by the locally elected officials to meet the needs of the community. SB 158 takes away local control and further cripples a community's ability to survive in today's economy.

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 22, 2005

FURTHER REFERRALS: Finance

Date of Committee Action: April 30, 2005

The LABOR AND COMMERCE Committee considered:

SB 158

SENATE BILL NO. 158

MUNI TAX ON STATE CONSTRUCTION CONTRACTS

"An Act prohibiting the imposition of municipal sales and use taxes on state construction contracts and certain subcontracts; and providing for an effective date."

Recommends it be replaced with HCS or CS for _____ (_____)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

- List of Abbrev for Depts.:
- ADM
 - CED
 - COR
 - CRT
 - EED
 - DEC
 - DFG
 - GOV
 - HSS
 - LEG
 - LAW
 - LWF
 - MVA
 - DNR
 - DPS
 - REV
 - DOT
 - UA

<u>NEW FISCAL NOTES</u> *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
CED				X

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	CRAWFORD	X			
	LYNN	X			
	KOTT				
	LEDoux				
	GUTTENBERG				
	ROKEBERG				
Chair:	ANDERSON	X			
Chair:					



217 Second Street, Suite 200 • Juneau, Alaska 99801
Tel (907) 586-1325 • Fax (907) 463-5480 • www.akml.org

April 26, 2005

Honorable Representative Tom Anderson
House Labor & Commerce Committee
State Capitol, Room 408
Juneau, Alaska 99801

RE: **SB158**

Dear Representative Anderson,

Over the last couple of years, municipalities have lost Revenue Sharing, Safe Communities money, Capital Matching Grants, and reimbursement for Senior/Veteran's Property Tax Exemptions. The only current revenue stream available is taxes. Taxes are a local provision; therefore the Alaska Municipal League and the 142 communities we represent, believe that taxing decisions should be left to local communities.

If a community (such as Nome) wishes to tax subcontractors who are **not** contracted by the state and that decision negatively affects that community, then it should be up to local voters to change those ordinances and/or elect new officials. We believe it should not be up to the State to preempt local taxing authority.

The sponsor of this bill cites the need for taxing consistency. However, local taxing is not consistent throughout the state in property tax, sales tax, bed tax, raw fish tax, or any other tax. Communities impose taxes that meet with the approval of their residents and meet community needs. We are concerned that a desire for consistency will next be targeted towards other forms of local taxation.

The State of Alaska does not pay tax on their property held in any Alaskan community (including Nome). However, Nome and all other communities, provide services equal to those services provided to all other property tax payers such as road maintenance, ambulance and fire. PILT payments are received by the federal government for federal property, but the state has not taken part in PILT payments to communities for state property.

In Senate Finance, a comment was made, with regards to this bill, that it appeared that communities were attempting to "bite the hand that feeds you."

- Incoming "wealth" to the state is no longer shared or "fed" to communities by the state.

- Most DOT airport money is federally funded by FAA (as much as 93%). This money comes to the State to fund projects such as the Nome airport and costs associated.
- The \$20,000 paid by the subcontractor was based on a bill that exceeded \$400,000.
- This bill does NOT prevent escalating costs (as stated in the Fact Sheet). Escalating costs are prevented by a careful bid selection process practiced by the State. Taxes go up or down relative to the cost of the project; they are not arbitrary.

The bill summary states that the bill's intention is to "prohibit the imposition of municipal sales and use tax on a construction contract awarded by the state or a state agency, or on a subcontract awarded in connection with the project funded under the construction contract." This is misleading, as **no** communities impose a sales or use tax on a construction contract awarded by the state. This issue is ONLY about subcontract workers that have been hired by the contractor.

We thank you for the opportunity to comment on this bill.

Sincerely,

Kathie Wasserman
Alaska Municipal League
Policy and Program Coordinator

cc: Representative Pete Kott
Representative Gabrielle LeDoux
Representative Bob Lynn
Representative Norm Rokeberg
Representative Harry Crawford
Representative David Guttenberg

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
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Mail Stop 3101

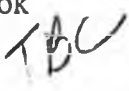
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 5, 2005

SUBJECT: Taxation of construction contracts; sectional summary (SB 158)

TO: Senator Charlie Huggins, Chair
Senate Transportation Committee
Attn: Deborah Grundmann

FROM: Tamara Brandt Cook
Director 

Sec. 1. Adds to the list of statutes that apply as limitations on home rule municipalities (boroughs and unified municipalities) a reference to the new subsection added in bill sec. 3.

Sec. 2. Adds to the list of statutes that apply as limitation on home rule municipalities (cities) a reference to the new subsection added in bill sec. 4.

Sec. 3. Prevents a borough from levying a sales or use tax on state construction contracts or on subcontracts awarded in connection with the state construction project. (For an example of a definition of public construction see AS 36.95.010(3) in the State Procurement Code.)

Sec. 4. Prevents a city from levying a sales or use tax on state construction contracts or on subcontracts awarded in connection with the state construction project.

Sec. 5. Immediate effective date.

TBC;jad
05-193.jad

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB158
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title MUNITAX ON STATE CONSTRUCTION RDU Comm Assist & Ec Dev (405)
CONTRACTS Component Community Advocacy
 Sponsor Huggins
 Requester Community & Regional Affairs Component No. 2703

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 legislation stipulates that boroughs and cities, both home rule and general law, can not impose a sales or use tax on a construction contract awarded by the state or a state agency, or on a subcontract awarded in connection with the project funded under the construction contract.

It would not create a fiscal impact on the operations of the department.

Prepared by: Michael Black, Director Phone 269-4535
 Division Community Advocacy Date/Time 4/6/05 10:28 AM
 Approved by: Edgar Blatchford, Commissioner Date 4/6/2005
 Agency Commerce, Community, and Economic Development

ALASKA STATE LEGISLATURE

Senate District H
600 E. Railroad Avenue
Wasilla AK 99654
907-376-4866
907-373-4724 – Fax
Senator_Charlie_Huggins@legis.state.ak.us



State Capitol, Room 417
Juneau AK 99801-1182
907-465-3878
Fax: 907-465-3265
800-862-3878
www.akRepublicans.org/huggins/

Charlie Huggins Senator

4/3/05

Sponsor Statement

SB 158 – “An Act prohibiting the imposition of municipal sales and use taxes on state construction contracts and certain subcontracts; and providing for an effective date.”

During the course of business in the last couple of years, subcontractors in the construction industry, who work in some areas of the state, have experienced negative financial impact due to the imposition of local sales taxes on state DOT/PF funded projects.

In the case of a construction contract being awarded and a primary contractor doing business with the state, the state is the purchaser of those services and, as such, the legal incidence for the tax falls on the state. Based on the state's sovereign immunity and the fact that the state is immune from taxation no tax is owed.

However, when a subcontract is awarded and a primary contractor hires another contractor to do work for him, the subcontractor is not working directly for the state, but for the original contractor, and in some cases a sales tax has been levied on the value of the subcontract.

In one instance, on a Nome Airport Project, a construction contract was awarded to Quality Asphalt Paving (QAP). QAP and Dimord Electric entered into a subcontract directly in connection with the project funded under the construction contract. Dimord Electric was assessed a sales tax of over \$20,000 on the value of their subcontract. This tax was unexpected and not considered in their bid.

The state cannot afford to have an increase in the cost of construction projects due to the levying of sales taxes on state construction contracts or subcontracts directly awarded in connection with the project funded under the construction contract. While all municipalities do not assess this sales tax the policy needs to be consistent statewide.

SB 158 will prohibit the imposition of municipal sales and use tax on state construction contracts and certain subcontracts and remedy the inequity that exists.

Contact Information – Deborah Grundmann 465-4711



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Charlie Huggins
Current Version: SB 158
Contact: Deborah Grundmann, 465-4711

Fact Sheet for: Senate Bill 158

Short Title: MUNI TAX ON STATE CONSTRUCTION CONTRACTS

Summary:

- Prohibits the imposition of municipal sales and use tax on a construction contract awarded by the state or a state agency, or on a subcontract awarded in connection with the project funded under the construction contract.

Benefits:

- Prevents escalating costs for construction contracts and subcontracts that are awarded directly in connection with a project.
- Makes the local tax policy regarding contractors and subcontractors on state construction projects consistent throughout the state.

Background:

- Municipalities in some areas of the state impose a local sales or use tax on projects funded through the State. Because of sovereign immunity, the State owes no taxes, but in some cases a sales tax has been levied on subcontractors who are working for the contractor and not directly for the state. On one Nome airport project, a construction contract was awarded to Quality Asphalt Paving (QAP). QAP subcontracted with Dimond Electric, and Dimond was assessed a sales tax of more than \$20,000, which had not been factored into the bid.



Alaska State Legislature Senate Majority News

Jeff Turner, Senate Majority Press Secretary
Room 413, State Capitol Building
Juneau, AK 99801
Phone: 907.465.3803

Web Site: <http://www.akrepublicans.org>

FOR IMMEDIATE RELEASE: April 8, 2005 CONTACT: Jeff Turner, Press Secretary: 907.465.3803

Sen. Huggins Introduces Legislation to Protect State Funded Construction Projects

SB 158 Blocks Imposition of Local Sales Tax on Construction Jobs

(Juneau) – Sen. Charlie Huggins (R – Rural Mat-Su/Chugiak) is pushing legislation to conserve the state's capital construction budget by shielding subcontractors working on state funded projects from paying local sales taxes.

The legislation was crafted after Sen. Huggins learned that a subcontractor was slapped with a \$20,000 dollar sales tax by a local government for work it performed on the Nome Airport Project.

The subcontractor was hired directly for project's main contractor, not the state, which was used as justification by the local government to impose the sales tax. That tax was not anticipated in the original bid and was eventually paid by the subcontractor.

Most local governments don't charge a sales tax on subcontractors working on state funded construction jobs. "This legislation closes the loophole in state law so that never happens again and it means our scarce capital construction dollars are used for what they were intended for," said Sen. Huggins.

SB 158 will block the imposition of municipal sales and use tax on state construction contracts and certain subcontracts. It has been referred to the Senate Community and Regional Affairs and Finance Committees.

###

Fifty Years Serving Alaska



NECA

ALASKA CHAPTER
1953-2003

May 15, 2003

Commissioner Mike Barton
Alaska Dept. of Transportation
and Public Facilities
3132 Channel Dr.
Juneau, AK 99801-7898

Re: City of Nome Sales Tax

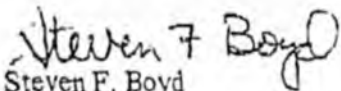
Dear Commissioner Barton:

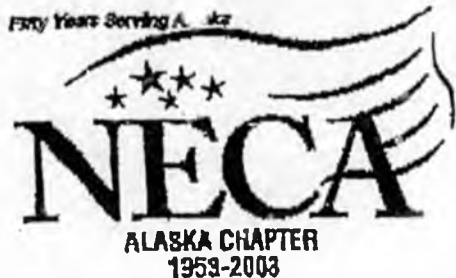
I am writing to you regarding an issue one of our member contractors is facing in Nome, Alaska as a result of their status as a subcontractor to Quality Asphalt Paving on the Nome Airport R/W 27 Rehabilitation & Obstruction Removal, #AIP 3-02-0199-1201/60905. The City of Nome has taken action to assess and collect a sales tax on the value of the subcontract of Dimond Electric and in fact other subcontractors as well. Dimond Electric has unsuccessfully tried to reason with the City of Nome that not only is this not a retail sale, but the project is owned by the State of Alaska which does not pay sales tax on its purchases. Unfortunately, the City has indicated that they will be filing a lawsuit to collect the tax they have estimated as due and Dimond is faced with an expensive legal defense.

The reason we bring this to your attention is in the hope that your department may be able to investigate this and possibly intervene. If the City of Nome prevails in this action, the State will eventually be facing higher construction costs in every community with a local sales tax as word of this practice spreads. In the instant case, several subcontractors who bid the work as they normally do will suffer unexpected and substantial costs that they will not be able to recover.

If you need further information please feel free to contact me at 907 561-1958 or Dave Lantz with Dimond Electric at 907 344-1121.

Sincerely,
Alaska Chapter, NECA


Steven F. Boyd



November 13, 2004

Senator John Cowdery
Alaska State Senate
716 W. 4th, Ste. 500
Anchorage, AK 99501

Dear Senator Cowdery:

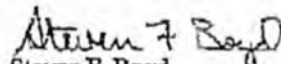
Congratulations on your recent reelection to the State Senate. Our contractor members look forward to another four years of your experience and leadership in the State Senate.

During the course of business in the last two years, subcontractors in the construction industry who work in some rural areas have experienced negative financial impact due to the imposition of local sales taxes on State D.O.T. funded projects. In our efforts to mitigate this impact, our research has shown that while the General Contracting entity is not subject to local sales tax due to their direct relationship with the State D.O.T. (which is exempt from local sales tax), the subcontractors who have a relationship to the General Contractor have been ruled to be subject to the local sales tax. Efforts on the local level, the legal system and pleas to the State D.O.T. have been fruitless. We are therefore requesting a meeting with you to provide you with the information we have and a request to pursue legislative remedy to this inequity.

I would like to suggest a meeting on the morning of November 23rd if possible since one of our out of town members who has done considerable work on this issue will be in town and available. Obviously we realize you probably have a busy schedule and we will work with you and your staff to set something up.

Thank you for your consideration.

Sincerely,
Alaska Chapter, NECA


Steven F. Boyd
Chapter Manager

CC: Scott Bringmann, Alcan Electrical & Engineering
David Lantz, Dimond Electric Co.
Ralph Kibby, Chatham Electric



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Charlie Huggins
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Fact Sheet for: Senate Bill 158

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SB

177

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 12, 2006

FURTHER REFERRALS:

Date of Committee Action: April 21, 2006

The **LABOR AND COMMERCE** Committee considered:

CSSB 177(HES)

CS FOR SENATE BILL NO. 177(HES)

PRACTICE OF PSYCHOLOGY

"An Act eliminating the prohibition on the use by certain licensed professionals of titles or descriptions of services that incorporate the terms 'psychoanalysis,' 'psychoanalyst,' 'psychotherapy,' 'psychotherapeutic,' or 'psychotherapist.'"

Recommends it be replaced with HCS or CS for _____ (_____)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Dept's:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LEG
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u> *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
CEA	1			X
HSS	2			X

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>[Signature]</i>	CRAWFORD			X	
<i>[Signature]</i>	LODOY			X	
<i>[Signature]</i>	WILLIAMS			X	
<i>[Signature]</i>	LYNN				X
Chair: <i>[Signature]</i>	Kott	✓			
Chair:					

vice



SENATOR FRED DYSON

MEMORANDUM

To: House Labor & Commerce Committee Members

From: Senator Fred Dyson, Chair
Senate H.E.S.S. Committee *Fred*

Date: April 20, 2006

Re: SB 177

Thank you for your careful consideration of SB 177. I share your concerns regarding consumer protections, especially for vulnerable populations. It is important that the providers of mental health services be qualified and supervised in doing so.

SB 177 retains the current standards for state licensure of mental health professionals. Attached is a fact sheet that delineates the requirements to obtain a license in each of these professions. Each license requires at least a master's degree, at least one year or 1500 hours of supervised experience, passage of an exam, and continued board regulation and enforcement of standards. I believe that individuals who can satisfy the strict license requirements are indeed qualified to provide the types of psychological services contained in the bill. In addition, there is unanimous agreement among these different professional groups in support of SB 177. I assure you that these distinct professional groups are protective of the standards of each license and go to great lengths to enforce them.

Again, the issue centers on the fact that state licenses [for clinical social workers, marital and family therapists, and professional counselors] were not available when the original statutes were enacted. SB 177 proposes to update the statutes to unrestrict the generic terms so that licensed professionals may use them if they are educated, trained, and supervised by their respective boards.

Requirements and Rates for Licensure for Mental Health Disciplines

Licensed PhD Psychologist:

Doctoral Degree

No dishonorable conduct

One year of post-doctoral supervised experience

Passage of a board approved exam

Fee Rates: Vary from \$85 (Medicaid Reimbursement) to \$200 per hour

Licensed Psychological Associate:

Master's Degree

No dishonorable conduct

Two years post-graduate supervised experience

Passage of a board approved exam

Fee Rates: Vary from \$65 to \$135, Medicaid Reimbursement for psychotherapy is \$85

Licensed Clinical Social Worker:

Doctoral or Master's Degree

Over a minimum of 2 years, 3,000 supervised hours of experience

Good moral character and in good standing

Passage of a board approved exam (exams are specific to LCSW or LMSW)

Fee Rates: Vary from \$65 to \$135, Medicaid Reimbursement for psychotherapy is \$85

Licensed Marital and Family Therapist:

Master's Degree -- with course work specific to marriage and family

Has not engaged in conduct that is a ground for imposing disciplinary sanctions

One year of post-graduate supervised clinical practice (1500 hours)

Passage of a board approved exam

Fee Rates: Vary from \$65 to \$135, Medicaid Reimbursement for psychotherapy is \$85

Licensed Professional Counselors:

Doctoral or Master's Degree

Is not under investigation

Has not had a license suspended, revoked, or surrendered elsewhere

Over a minimum of 2 years, 3,000 supervised hours of experience

Passage of a board approved exam

Fee Rates: Vary from \$65 to \$135, Medicaid Reimbursement for psychotherapy is \$85

Statutory Definitions of Licensed Mental Health Professions

Licensed PhD Psychologist:

Sec. 08.86.230. Definitions. In this chapter,

(6) "to practice psychology" means to render or offer to render for a fee to individuals, groups, organizations, or the public for the diagnosis, prevention, treatment, or amelioration of psychological problems and emotional and mental disorders of individuals or groups or for conducting research on human behavior, a psychological service involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, including

(A) the principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships;

(B) the methods and procedures of interviewing, counseling, psychotherapy, biofeedback, behavior modification, and hypnosis;

(C) constructing, administering and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations.

Sec. 08.86.164. Scope of practice by associate.

(a) A psychological associate shall be licensed to provide psychological services within the nature and extent of the psychological associate's training and experience as defined in regulation.

Licensed Social Worker:

Sec. 08.95.990. Definitions. In this chapter,

(2) "clinical social work" means the diagnosis of psychiatric disorders and the use of techniques of applied psychotherapy of a nonmedical nature while practicing social work;

(6) "social work" means a service in which a special knowledge of social resources, human capabilities, and the part that unconscious motivation plays in determining behavior is directed, through the application of social work principles and methods, at helping individuals to achieve more adequate, satisfying, and productive social adjustments;

(7) "social work principles and methods" include counseling of a nonmedical nature to assist in the treatment of mental and emotional conditions of individuals, families, and groups; providing information and referral services; providing or arranging for the provision of social services; explaining and interpreting the psychosocial aspects in the situations of individuals, families, or groups; helping communities to organize, provide, or improve social and health services; and doing research related to social work.

Licensed Marital and Family Therapist:

Sec. 08.63.900. Definitions. In this chapter, unless the context indicates otherwise,

(5) "practice of marital and family therapy" means the diagnosis and treatment of mental and emotional disorders that are referenced in the standard diagnostic nomenclature for

marital and family therapy, whether cognitive, affective, or behavioral, within the context of human relationships, particularly marital and family systems; marital and family therapy involves

(A) the professional application of assessments and treatments of psychotherapeutic services to individuals, couples, and families for the purpose of treating the diagnosed emotional and mental disorders;

(B) an applied understanding of the dynamics of marital and family interactions, along with the application of psychotherapeutic and counseling techniques for the purpose of resolving intrapersonal and interpersonal conflict and changing perceptions, attitudes, and behaviors in the area of human relationships and family life;

Licensed Professional Counselors:

Sec. 08.29.490. **Definitions.** In this chapter,

(1) "practice of professional counseling" means, subject to (C) of this paragraph, the application of principles, methods, or procedures of the counseling profession to diagnose or treat, other than through the use of projective testing or individually administered intelligence tests, mental and emotional disorders that are referenced in the standard diagnostic nomenclature for individual, group, and organizational therapy, whether cognitive, affective, or behavioral, within the context of human relationships and systems; if otherwise within the scope of this paragraph, "practice of professional counseling" includes

(A) the professional application of evaluation techniques, treatments, and therapeutic services to individuals and groups for the purpose of treating the emotional and mental disorders;

(B) an applied understanding of the dynamics of the individual and of group interactions, along with the application of therapeutic and counseling techniques for the purpose of resolving intrapersonal and interpersonal conflict and changing perceptions, attitudes, and behaviors in the area of human relationships; and

(C) consistent with regulations adopted by the board under AS 08.29.020(a)(4), administration and use of appropriate assessment instruments that measure or diagnose problems or dysfunctions within the course of human growth and development as part of a counseling process or in the development of a treatment plan;

Statutory Definitions of Licensed Mental Health Professions

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SENATOR FRED DYSON

MEMORANDUM

To: House Labor & Commerce Committee Members

From: Senator Fred Dyson, Chair
Senate H.E.S.S. Committee *Fred*

Date: April 20, 2006

Re: SB 177

Thank you for your careful consideration of SB 177. I share your concerns regarding consumer protections, especially for vulnerable populations. It is important that the providers of mental health services be qualified and supervised in doing so.

SB 177 retains the current standards for state licensure of mental health professionals. Attached is a fact sheet that delineates the requirements to obtain a license in each of these professions. Each license requires at least a master's degree, at least one year or 1500 hours of supervised experience, passage of an exam, and continued board regulation and enforcement of standards. I believe that individuals who can satisfy the strict license requirements are indeed qualified to provide the types of psychological services contained in the bill. In addition, there is unanimous agreement among these different professional groups in support of SB 177. I assure you that these distinct professional groups are protective of the standards of each license and go to great lengths to enforce them.

Again, the issue centers on the fact that state licenses [for clinical social workers, marital and family therapists, and professional counselors] were not available when the original statutes were enacted. SB 177 proposes to update the statutes to unrestrict the generic terms so that licensed professionals may use them if they are educated, trained, and supervised by their respective boards.



SENATOR FRED DYSON

MEMORANDUM

April 12, 2006

To: Representative Tom Anderson, Chair
House Labor & Commerce Committee

From: Senator Fred Dyson, Chair *AND*
Senate Health, Education, and Social Services Committee

RE: Request for Hearing SB 177

CS SB 177 (HES) is "*An Act eliminating the prohibition on the use by certain licensed professionals of titles or descriptions of services that incorporate the terms 'psychoanalysis,' 'psychoanalyst,' 'psychotherapy,' 'psychotherapeutic,' or 'psychotherapist.'*"

I respectfully request that SB 177 be heard in the House Labor & Commerce Committee as soon as possible. In addition to the attached materials, I would be glad to answer any questions that may arise, as would my staff, Jason Hooley (ext. 3762). Thank you for your consideration.

The attached packet includes:

- Sponsor Statement
- CS SB 177 (HES)
- Current Statutes: AS 08.86.170—08.86.130
- "Psychotherapy means..."
- 2 Zero Fiscal Notes
- 8 Letters of Support



Health, Education, and Social Services Committee Alaska State Senate

SPONSOR STATEMENT

CS SB 177 (HES)—*“An Act eliminating the prohibition on the use by certain licensed professionals of titles or descriptions of services that incorporate the terms ‘psychoanalysis,’ ‘psychoanalyst,’ ‘psychotherapy,’ ‘psychotherapeutic,’ or ‘psychotherapist.’”*

AS 08.86.180 prohibits professionals—except for licensed psychologists and clinical social workers—from using certain terms to describe their services or their titles. These terms include: “psychology,” “psychological,” “psychologist,” “psychometry,” “psychotherapy,” “psychotherapeutic,” “psychotherapist,” “psychoanalysis,” and “psychoanalyst.” This statute was written prior to the licensure of professional counselors (LPC’s) and marital and family therapists (LMFT’s), who also provide these types of psychological services. LPC’s and LMFT’s constitute a large portion of Alaska’s licensed mental health professional workforce, and are an even larger percentage of professionals working in state funded community mental health centers.

CS SB 177 (HES) was composed with the collaboration of the Alaska Board of Licensed Professional Counselors, the Alaska Psychological Association, the Alaska Board of Psychologist and Psychological Associate Examiners, the Alaska Chapter of the National Association of Social Workers, the Alaska Board of Marital and Family Therapists, and the Alaska Board of Social Work Examiners

SB 177 updates these statutes to reflect current practice and training as well as maintaining a degree of protection to the public. The language affects licensed clinical social workers, licensed marital and family therapists, and licensed professional counselors and explicitly allows these licensed professionals to provide and bill for these services.

Sec. 08.86.170. Use of title.

(a) Unless licensed under this chapter, a person may not use the title "psychologist" or a title, designation, or device indicating or tending to indicate that the person is a psychologist or practices psychology.

(b) Unless licensed under this chapter, a person may not use the title "psychological associate" or a title, designation, or device indicating or tending to indicate that the person is a psychological associate or practices counseling or psychometrics.

Sec. ~~08.86.180~~ Practice of psychology.

(a) Unless licensed under this chapter, a person may not practice psychology or hold out publicly as a psychologist or as practicing psychology. A person holds out as a psychologist by using a title or description of services incorporating the words "psychology," "psychological," "psychologist," "psychometry," "psychotherapy," "psychotherapeutic," "psychotherapist," "psychoanalysis," or "psychoanalyst" or when holding out publicly to be trained, experienced, or qualified to render services in the field of psychology.

(b) This section does not apply to

(1) a person employed by a governmental unit, educational institution or private agency who may be required to engage in some phase of work of a psychological nature in the course of the person's employment, if the employer maintains appropriate supervision of psychological activities and professional conduct, and if the person is performing the psychological activities as part of the duties for which the person was employed, is performing the activities solely within the facilities of the organization in which the person is employed or under the supervision of the organization in which the person is employed, and does not render or offer to render psychological services to the public for compensation in addition to the salary the person receives from the organization;

(2) a student, intern, or resident in psychology pursuing a course of study approved by the board as qualifying training and experience for a psychologist, if that person's activities constitute a part of that person's supervised course of study and that person is designated by titles such as "psychology intern" or "psychology trainee";

(3) a qualified member of another profession, in doing work of a psychological nature consistent with that person's training and consistent with the code of ethics of that person's profession, if the person does not hold out to the public by a title or description of services incorporating the words "psychology," "psychological," "psychologist," "psychometry," "psychotherapy," "psychotherapeutic," "psychotherapist," "psychoanalysis," or "psychoanalyst" or represent to be trained, experienced, or qualified to render services in the field of psychology.

(4) *[Repealed, Sec. 15 ch 65 SLA 1973].*

(5) a physician engaged in the normal practice of medicine for which the physician is licensed under AS 08.64.

(c) Nothing in this chapter authorizes a person licensed as a psychologist to engage in the practice of medicine, as defined by the laws of the state.

(d) Nothing in this section prohibits a clinical social worker from holding out to the public by a title or description of services incorporating the words "psychotherapy," "psychotherapist," or "psychotherapeutic."

Sec. 08.86.185. Practice of counseling and psychometrics. [Repealed, Sec. 24 ch 58 SLA 1980. For current law, see AS 08.86.180].

Repealed or Renumbered

Psychotherapy means:

the treatment of mental or emotional problems by psychological means

the treatment of psychological disorders or maladjustments by a psychological technique, as psychoanalysis, group therapy, or behavioral therapy. Psychotherapy does not include physiological interventions, such as drug therapy or electroconvulsive therapy, although it may be used in combination with such methods. Behavior therapy aims to help the patient eliminate undesirable habits or irrational fears through the use of principles of conditioning

a set of techniques believed to cure or to help solve behavioral and other psychological problems in humans. The common part of these techniques is direct personal contact between therapist and patient, mainly in the form of talking. Due to the nature of these communications, there are significant issues of patient privacy and/or client confidentiality.

A generic term for the treatment of mental illness or emotional disturbances primarily by verbal or nonverbal communication.

The treatment of mental and emotional disorders through the use of psychological techniques designed to encourage communication of conflicts and insight into problems, with the goal being relief of symptoms, changes in behavior leading to improved social and vocational functioning, and personality growth.

(Partial) List of Psychotherapeutic Modalities

- Analytical psychology
- Autogenic psychotherapy
- Behavior therapy
- Biodynamic psychotherapy
- Bioenergetic analysis
- Biosynthesis
- Jungian psychotherapy
- Rogerian psychotherapy
- Cognitive analytic psychotherapy
- Cognitive behavioural psychotherapy
- Concentrative movement therapy
- Core proces psychotherapy
- Daseins analytic psychotherapy
- Encounter groups
- Existential analysis
- Family therapy
- Freudian psychotherapy
- Gestalt therapy
- Group therapy
- Humanistic psychology
- Logotherapy
- Neuro-Linguistic Programming
- Person centred psychotherapy
- Personal construct psychology (PCP)
- Positive psychotherapy
- Postural integration
- Primal integration
- Primal therapy
- Psychoanalysis
- Psychodrama
- Psychodynamic psychotherapy
- Psycho-Organic analysis
- Psychosynthesis
- Pulsing
- Rational emotive behaviour psychotherapy
- Reichian psychotherapy
- Rolfing
- Sophia analysis
- Systemic therapy
- T Groups
- Transactional analysis
- Transpersonal psychotherapy

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 177(HES)
 (S) Publish Date: 2/6/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Practice of Psychology RDU Corp, Bus & Prof Licensing (117)
 Component Corp. Bus & Prof Licensing
 Sponsor Health, Education & Social Services
 Requester Health, Education & Social Services Component No. 2360

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 ()						
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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 1156 - Receipt Supported Services						
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)

SB177 eliminates certain titles or description of services from requiring licensure by the Board of Psychologist and Psychological Associate Examiners. New funds are not required to implement the provisions of this bill.

Prepared by: Jennifer Strickler, Chief
 Division: Corporations and Licensing
 Approved by: William C. Noll, Commissioner
 Agency: Commerce, Community and Economic Development

Phone (907) 465-2144
 Date/Time 1/24/06 4:44 PM
 Date 1/24/2006

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSSB 177(HES)
 (S) Publish Date: 2/15/06
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title USE OF THE TERMS PSYCHOTHERAPY, PSYCHOTHERAPEUTIC, OR PSYCHOTHERAPIST

RDU Health Care Services

Component Medicaid Services

Sponsor SENATE (HES) BY REQUEST

Requester _____

Component No. 2077

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 (0)						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
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: _____

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 eliminates the prohibition on the use of the terms 'psychoanalysis', 'psychoanalyst', 'psychotherapy', 'psychotherapeutic' or 'psychotherapist' in descriptions of services or titles by licensed clinical social workers, licensed marital and family therapists, or licensed professional counselors.

This bill is not expected to have an effect on any aspect of the Medicaid program.

Prepared by: Dwayne Peeples, Director
 Division: Health Care Services
 Approved by: Karleen Jackson, Commissioner
 Agency: Department of Health and Social Services

Phone: 907-465-5830
 Date/Time: 02/02/2006
 Date: 02/07/2006

Dear Legislator:

An issue has been brought up to me again by members of the Community Mental Health Center (CMHC) providers association. They are concerned because one of the primary services that they provide is "psychotherapy". There is confusion among them and others because the statutes regarding licensed psychologists says that only they and social workers may call themselves "psychotherapists", and use the terms "psychotherapy" and "psychotherapeutic" to describe the work that they do. This statute was written prior to the licensing of professional counselors (LPC) and marital and family therapists (LMFT) who currently make up close to half of the licensed mental health professionals practicing in the state and an even larger percentage working in state funded community mental health centers (CMHC).

The problem is that "psychotherapy" is a generic term much like "physical therapy". There are many modes of therapy that fall under the umbrella of this generic term and they all have to do with working with people's minds to improve health or alter behavior. Attached are several definitions of psychotherapy easily found on the internet at medical dictionary sites. Also attached is the statutory language limiting the use of the psychotherapy terms and the definition of the practice of psychology.

When billing for services at a CMHC, Medicaid recognizes "psychotherapy" as a service and Medicaid regulations allow all of the four mental health professions to bill for it. However, there is currently confusion and fear that service providers could be found to be billing fraudulently if they have LMFT or LPC staff sign and bill for those services.

It is clear that legislators in the past recognized that psychologists were not the only mental health professionals to practice psychotherapy. Before the licensing of LMFT and LPC clinicians, they amended the psychology statutes to include:

Sec. 08.86.180. (d) Nothing in this section prohibits a clinical social worker from holding out to the public by a title or description of services incorporating the words "psychotherapy," "psychotherapist," or "psychotherapeutic."

In a survey that I did two years ago, I found that there were only 8 licensed psychologists working in community mental health centers across the state. The rest of the clinical staff were mostly social workers and LPCs with a few MFTs. These numbers help to demonstrate the necessity to make changes to current law in order to recognize the reality of the current workforce, the actual practice of clinical staff, and the need to support clinical staff on whom many rely for mental health services.

Should you wish to contact me to discuss this bill, my email address is alhenry@alaska.net, and my phone numbers are: (H) 272-0816, (cell) 250-5244.

Thank you very much for considering this.

Respectfully,

Anne L. Henry

LPC Board Chair



DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Division of Corporations, Business and Professional Licensing

JASON
SB 177
Frank H. Murkowski, Governor
William Noll, Commissioner
Rick Union, Director

January 10, 2006

The Honorable Fred Dyson
Alaska State Senate
10928 Eagle River Road
Eagle River, AK 99577

Dear Senator Dyson:

This letter is in support of Senate Bill 177, which references the use of words such as "psychotherapy/psychotherapeutic" by licensed mental health professionals. As you know, currently terms such as "psychotherapy", "psychotherapeutic" and "psychotherapist" that are used by Psychologists may not be used by other mental health professionals. We would like to eliminate the requirement that only Psychologists licensed by their Board can use those terms.

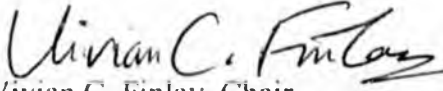
The Webster's Dictionary defines "psychotherapy" as "the treatment of psychological disorders or maladjustments" . . . In the Statutes for Licensed Marriage and Family Therapists, (LMFT) Sec. 08.63.900, the "practice of marital and family therapy" (#5) is defined as (A) "the professional application of assessments and treatments of psychotherapeutic services to individuals, couples and families for the purpose of treating the diagnosed emotional and mental disorders". Therefore, the term "psychotherapeutic" is already being used and is in the Statutes for LMFTs.

In order that the public understand that all licensed mental health professionals are qualified to provide psychotherapeutic services, we need to ensure passage of Senate Bill 177. Currently, there is apparent contradictory information in the Statutes.

The Marriage and Family Therapy licensing Board is in support of Senate Bill 177.

Thank you for your attention to this matter.

Sincerely,


Vivian C. Finlay, Chair
Marital & Family Therapists Board



DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Division of Corporations, Business and Professional Licensing

JASUN

Frank H. Murkowski, Governor
William Noll, Commissioner
Rick Union, Director

January 13, 2006

RECEIVED
JAN 17

The Honorable Fred Dyson
Alaska State Senate
State Capitol, Room 121
Juneau, AK 99801-1182

Dear Senator Dyson:

The Board of Social Work Examiners has met and discussed the merits of Senate Bill 177. After discussion and consideration of the Statutes and Regulations governing the licensing of social workers, we are in agreement that the statutory changes proposed in the amended version of SB177 (below) are consistent with the mission of the Board. The amended bill will protect the public safety while better defining the work of the practitioners who serve them.

Amend SB177 to: Delete proposed changes to Sec. 08.86.180(a) and (b). This maintains the restrictive language currently in statute, which will prevent unlicensed individuals from using the restricted terminology. This protects the public while remedying the confusion about who is permitted to use the generic terminology to describe the work that is done by all four disciplines.

Add a change to Sec. 08.86.180: (d) Nothing in this section prohibits a licensed clinical social worker, licensed marital and family therapist or licensed professional counselor from holding out to the public by a title or description of services incorporating the words "psychotherapy", "psychotherapist", "psychotherapeutic", "psychoanalysis", or "psychoanalyst".

Thank you for your sponsorship of SB177.

Respectfully,

Denny Patella, LCSW, Chairperson
Board of Social Work Examiners

April 20, 2005

Senator Fred Dyson, Chair
& Members of Senate H&SS Committee
State Capitol Building
Juneau, Alaska

Re: Senate Bill 177

Senator Dyson,

I am writing to you in support of Senate Bill 177, which seeks to remove the unintentional, discriminatory language that was inserted into state statutes prior to the licensing of LPC and LMFT clinicians in the state of Alaska.

My strong support for the bill stems in part from the shortage of mental health professionals licensed to legally provide services to Alaska's village communities and adolescent populations, given the current wording of the statute. I lend further support given the fact that many clients take comfort in being able to choose from qualified multidisciplinary mental health providers when attempting to obtain needed services; however, due to the language in the current statute, health insurance companies may choose to limit subscriber's coverage to psychologists or clinical social workers only.

Senate Bill 177 would update the statutory language necessary to include licensed professional counselors to provide mental health services that they are clearly schooled and qualified to provide and it would also promote unity among the four professions (psychology, social work, counseling and marriage and family therapy) that are vital in providing access to behavioral healthcare for all Alaskans.

As we rapidly interface with the 21st century, so do our social challenges as a community. I thank you for your support, as one of the many professionals, who is dedicated to moving Alaska forward and supporting quality mental health clinicians and understanding their inclusive scope of practice.

In appreciation of your efforts,
Ann M. Ginn, M.Ed., LPC, LBSW

April 16, 2005

Senator Fred Dyson, Chair, and
Members of Senate HE&SS Committee
State Capitol
Juneau, Alaska

Dear Senator Dyson:

Senate Bill 177 serves a very important purpose to the public, by allowing mental health and related behavioral health professionals to legally provide the services they either already offer mentally ill Alaskans, or could offer them, if this bill is passed.

Many mental health professionals in community mental health centers, and other behavioral health agencies are technically not allowed to use some of the "psychology-related" language, or provide services referred to in this legislation, even though they are trained and qualified to do so. SB 177 would correct that situation.

For Alaskans, this would mean greater access to needed services, often at less cost to them than they currently might pay. They could receive mental health services, and have greater opportunity to use their own insurance to cover those services provided by agencies and providers qualified to perform them.

I strongly encourage you and the Committee to support this legislation, in the best interests of our state and communities.

Thank you,

Pamela Watts, Administrator
Rainforest Recovery Center (formerly Juneau Recovery Hospital)

January 26, 2006

Dear Senator,

As an LPC therapist I do support the passage of bill SB177 but do not want to see anything about combining LPC and LMFT boards attached to the bill.

LPC and LMFT disciplines and orientations and often, clients are different. LMFT therapists, as their initials state, specialize in work with families, marriages and couples. LPC's serve a broader base of clientele and our specialties within the field of counseling are diverse. My own specialty is PTSD (post traumatic stress disorder).

As an LPC I want to be responsible for the legal and other expenses in my own area of work. I do not want to take on past, current, or future debt of LMFT's and have my own licensure expense penalized.

I understand the legislature's interest in combining boards to simplify and save State money. But, this does not benefit LPC's in any way and in fact creates more liability for us.

Please do not add anything about combining boards to bill SB177.

Thank you,

Micki Halloran, MA, LPC
2605 Denali Street #203
Anchorage, Alaska 99503
State of Alaska, LPC #329
907-279-1393

Jason Hooley

From: Sen. Fred Dyson
Sent: Monday, January 30, 2006 9:13 AM
To: Jason Hooley
Subject: FW: Hess Committee

From: Ellen Cole [mailto:ecole@alaskapacific.edu]
Sent: Thursday, January 26, 2006 11:30 PM
To: Sen. Fred Dyson; Sen. Gary Wilken; Sen. Donny Olson; Sen. Lyda Green; Sen. Kim Elton
Subject: Hess Committee

Dear Senators,

I am writing to you as director of the Master of Science in Counseling Psychology (MSCP) program at Alaska Pacific University. While I am a psychologist, myself, I and my APU colleagues are responsible for training the next generation of Alaska's Licensed Professional Counselors. We support the passage of SB177 but do not support the combining of the LPC licensing board and the Marriage and Family Therapist licensing board.

We do not think combining the boards would serve either profession well, nor (above all) would it serve the clients with whom we work. There is already enough confusion about the differences between the two professions. Combining the boards would only add to that confusion.

The fact of the matter is that LMFT's specialize in one very particular and focused arena of the counseling world. LPC's practice across a broader range of specialties and have very different training, theoretical orientations, and internship requirements. To become an LPC in Alaska, a graduate student must complete a 60-credit graduate program which includes a 600 hour internship. Then there are 3000 hours of post-graduate supervision and the passage of a national exam. These are rigorous requirements, and those who complete them are very proud of their accomplishments. They chose to become Professional Counselors. Marriage and Family Therapy is an equally fine profession, but it is a different one.

In addition, my understanding is that two difficulties emerge in states that have tried to combine mental health boards. First, turf wars are inevitable and create inefficiency and ill will. Second, combined boards cost more in the long run, because each discipline wants and needs to meet separately in addition to joint meetings.

I hope these comments help with your deliberations. Thank you for your attention.

Ellen Cole, Ph.D.
Professor of Psychology
Director, MSCP
Alaska Pacific University
4101 University Drive
Anchorage, Alaska 99508
tel: 907-564-8216
fax: 907-564-8396
ecole@alaskapacific.edu

1/30/2006

Pat Crowe, LPC
PO Box 135
Kodiak, AK 99615
907-486-0846
pcrowe@ak.net

Senator Fred Dyson, Chair, and
Members of Senate HE&SS Committee
State Capitol
Juneau, Alaska

Dear Senator Dyson:

Senate Bill 177 serves a very important purpose to the public, by allowing mental health and related behavioral health professionals to legally provide the services they either already offer mentally ill Alaskans, or could offer them, if this bill is passed.

Many mental health professionals in community mental health centers, and other behavioral health agencies are technically not allowed to use some of the "psychology-related" language, or provide services referred to in this legislation, even though they are trained and qualified to do so. SB 177 would correct that situation.

For Alaskans, this would mean greater access to needed services, often at less cost to them than they currently might pay. They could receive mental health services, and have greater opportunity to use their own insurance to cover those services provided by agencies and providers qualified to perform them.

I strongly encourage you and the Committee to support this legislation, in the best interests of our state and communities.

Thank you,

Pat Crowe