



11621 HOUSE RULES

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).

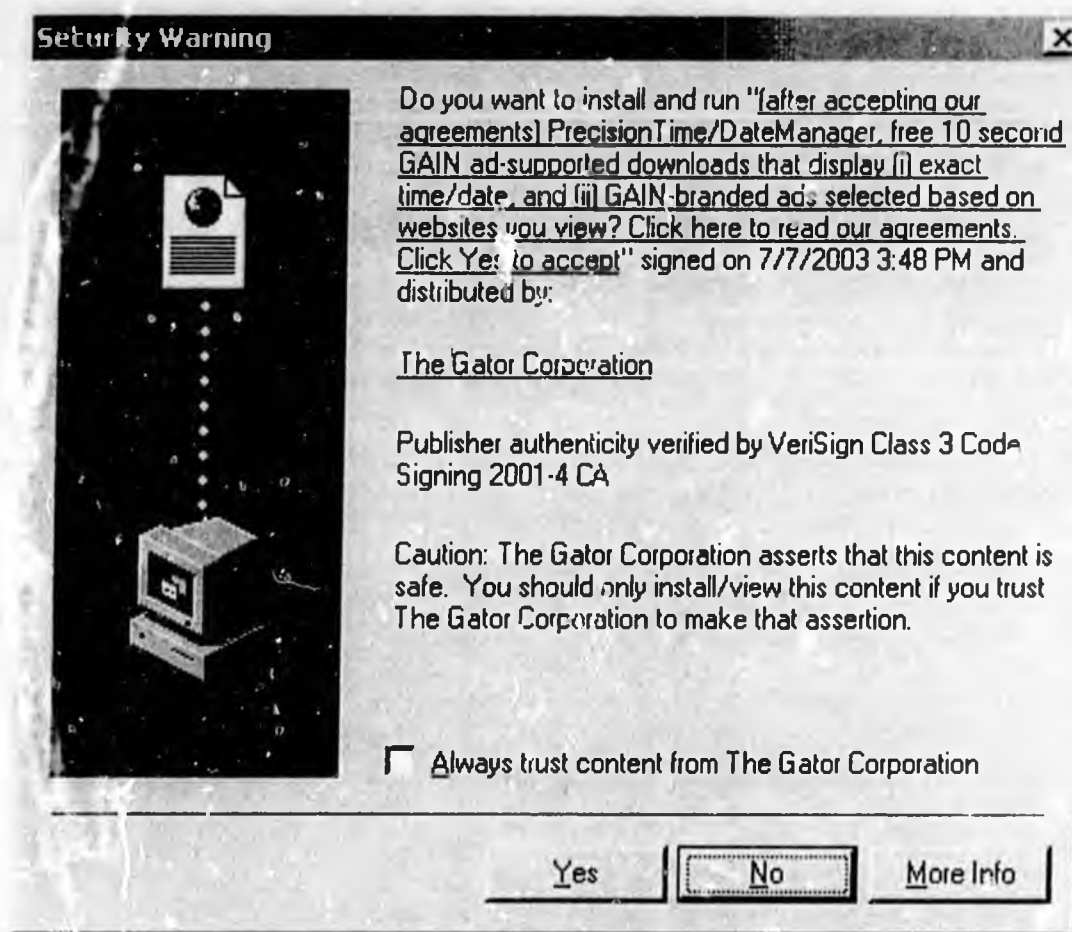
Signs of Spyware



- 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.

How does Spyware get installed?

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

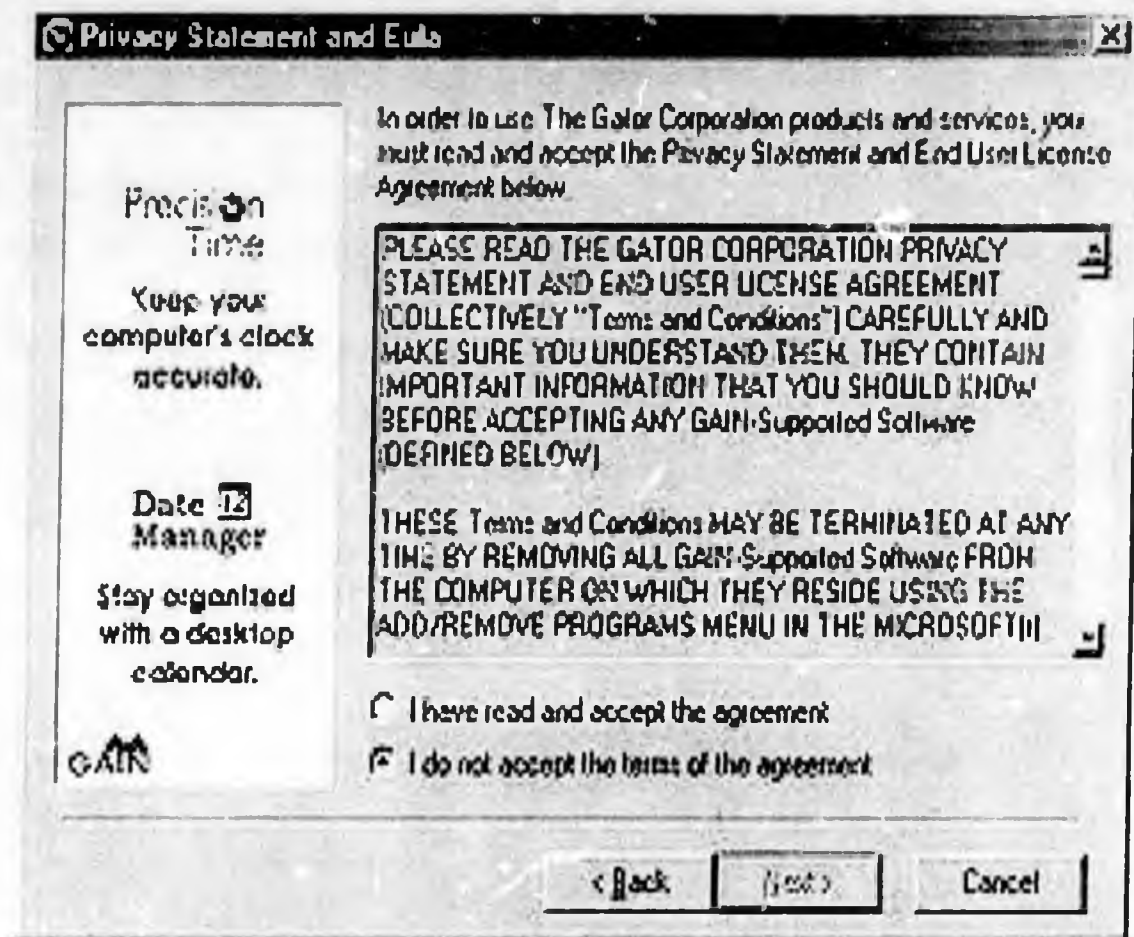


What is Spyware?

- Software that collects personal information, or makes changes to your computer without your knowledge or consent.
 - Personal information can include website visits, or passwords and account numbers.
- Spyware is sometimes accompanied by 'Adware' (software that launches 'custom' advertisements on your computer.)

How does Spyware get installed?

Lengthy 'End User Licensing Agreements' that are difficult to read.



What does Spyware Do?

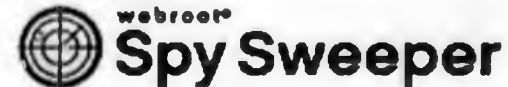
- Spyware changes your computer's settings and programs.
 - Slows or crashes computer.
- These changes are rarely documented and usually occur without your consent.
- Spyware can be (and often is) used to steal confidential information.

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



"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

[Return to top](#)

Gator / Claria GAIN

- [Documentation of Gator Advertisements and Targeting \(May 2003\)](#)
 - o 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 \(June 2004\)](#)
 - o 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. \(November 2004\)](#)
 - o 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 \(June 2004\)](#)
 - o 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

[Return to top](#)

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 \(formerly H.R.2929\)](#)
 - Status: Reintroduced, January 2005. (Previously passed by full House.)
 - Prohibits certain specific practices except with user authorization. Requires notice, consent, and uninstal 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.
- o 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](#)
- o 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.
- o 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
 - o 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.
 - o 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 Tiger Direct. 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 countersued 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 Quicken 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](#).

SB

147

ALASKA STATE LEGISLATURE

House of Representatives

Committee Assignments:

Rules Committee, Chairman
Labor & Commerce Committee, Member
Legislative Council, Member
Special Committees:
Oil & Gas
Ways & Means



Interim:

716 West 4th Avenue, Suite 600
Anchorage, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119

SESSION (Jan-May):

State Capitol
PHONE: (907) 465-4968
FAX: (907) 465-2040

REPRESENTATIVE NORMAN ROKEBERG

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

FAX COVER SHEET

DATE: 5/3/2005

TO: Shaun

FAX: 5241 VOICE: _____

RE: SB 147

MESSAGE: Is this the amendment Sen

Sebens wants?

Please advise

Brian Sparks

OK How Janet

TOTAL NUMBER OF PAGES SENT, INCLUDING COVER SHEET: 2

CONFIDENTIALITY NOTICE

This message is confidential and may be a privileged communication. It is intended only for the use of the individual or entity to whom it is addressed, and should not be read or used by anyone else. If you received this message in error, please immediately notify us by calling 1-907-465-4968 destroying this message and retaining no hard copies.

Amendment #1

May ____, 2005

To be offered in House Rules Committee to HCS CSSB 147(FIN)

Page 4, Line 1

Delete 8.50

and Insert 9.00

Page 4, Line 2

Delete 8.50

and Insert 9.00

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 147
 (S) Publish Date: 4/1/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title: Sport Fishing Facility Revenue Bond RDU: Revenue Programs & Services
 Component: Treasury Management
 Sponsor: Senator Seekins
 Requester: Senate Labor and Commerce Component No.: 121

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	10.0					
Contractual	1,388.6					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Debt Service		5,821.5	5,914.7	5,916.8	5,916.8	5,914.3
TOTAL OPERATING	1,398.6	5,821.5	5,914.7	5,916.8	5,916.8	5,914.3

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
Fish and Game Fund		5,821.5	5,914.7	5,916.8	5,916.8	5,914.3
Revenue Bond proceeds	1,398.6	0.0				
TOTAL	1,398.6	5,821.5	5,914.7	5,916.8	5,916.8	5,914.3

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 creates and authorizes the Sport Fishing Facility Revenue Bond sale of up to \$69 million in revenue bonds to finance construction of fisheries projects that benefit sport fishers. This fiscal note and analysis contemplates 20-year level debt service and a 5.5% interest rate/true interest cost, a negotiated sale, and credit ratings in the A category. The financing could take place 60 to 90 days after authorization became effective.

Financing assumptions include debt service beginning in FY07, interest earnings on bond proceeds of \$1,561,000, a 5.5% interest rate/true interest cost, underwriting spread of \$483,000, bond insurance cost of \$405,621, and other costs of issuance of \$500,000. Up to \$6,000,000 of bond proceeds will be placed in a reserve to secure the bonds. This balance will be invested with annual earnings offsetting debt service and the principal balance used for the final payment on the bonds.

Prepared by: Deven Mitchell Phone 465-3750
 Division: Treasury Division Date/Time 3/29/05 10:50 AM
 Approved by: Tom Boutin, Deputy Commissioner Date 3/29/2005
 Agency: Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 147
 (S) Publish Date: 4/1/05

Revision Date/Time (Note if correction) _____ Dept. Affected: Fish and Game
 Title Sport Fishing Facility Revenue Bonds RDU Sport Fisheries
 Component Sport Fisheries
 Sponsor Senator Seekins
 Requester Senate Labor and Commerce Com. Component No. 464

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING						

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

CHANGE IN REVENUES (1024)	1,553.4	6,213.5	6,213.5	6,213.5	6,213.5	6,213.5
----------------------------------	----------------	----------------	----------------	----------------	----------------	----------------

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						

Estimate of any current year (FY2005) cost: 00

Check 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 creates and authorizes the Sport Fishing Facility Revenue Bond sale for up to \$69 million in revenue bonds to finance the building of a new hatchery in Fairbanks, rebuilding of the Fort Richardson hatchery in Anchorage, and hatchery-related needs in Southeast Alaska.

Passage of this legislation will establish a framework that will allow ADF&G to (1) issue revenue bonds for the construction/enhancement of sport fish hatcheries; and (2) establish a new sport fishing facility surcharge.

(Continued on Page 2)

Prepared by: Tom Lawson, Director
 Division Division of Administrative Services
 Approved by: Wayne Regelin, Acting Commissioner
 Agency Alaska Department of Fish and Game

Phone 465-5999
 Date/Time 3/29/05 4:29 PM
 Date 3/29/2005

FISCAL NOTE # 2

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. SB 147

ANALYSIS CONTINUATION

Upon passage of this legislation, the State of Alaska's State Bond Committee will issue revenue bonds on behalf of ADF&G's Division of Sport Fish. The Committee will issue up to \$69 million in revenue bonds to fund the construction/enhancement of the hatcheries. Bond proceeds will be used to pay for construction and also for costs of issuing bonds and providing an advance funded debt service reserve account. The annual debt service on the bond is shown in a separate fiscal note submitted by the Department of Revenue.

ADF&G has submitted a one-time CIP funding request that will allow the Division of Sport Fish to use bond funds for construction of a new hatchery in Fairbanks, rebuilding the Fort Richardson hatchery in Anchorage, and addressing additional hatchery-related needs in Southeast Alaska.

Sport fishing license surcharges established in the legislation have been structured so as to generate roughly \$6 million annually – the same amount required to pay debt service on the bond. These revenues will be used, in combination with federal funds, to pay back the bond debt issued by the State Bond Committee. The surcharge will be terminated by regulation when the ADF&G Commissioner determines that the surcharge is no longer necessary to fund sport fishery enhancement facilities or to repay revenue bonds issued for construction or renovation of sport fishery enhancement facilities. The department expects to implement the surcharges on January 1, 2006, which allows the department to collect 25 percent of the net surcharges in FY2006, but the full net amount in FY2007 and beyond.

License Category	# Sold CY 2003	Proposed Fee	Potential SF Revenue Increase
Resident Sport Fishing	115,197	\$8.50	\$979,175
Resident Sport Fishing/Hunting	44,153	\$8.50	\$375,301
Resident Fishing/Hunting/Trapping	6,068	\$8.50	\$51,578
Nonresident Military Sport Fishing	4,210	\$8.50	\$35,785
Nonresident Military Fishing/Small Game	254	\$8.50	\$2,159
Nonresident 1-day Sport Fishing	109,622	\$8.50	\$931,787
Nonresident 3-day Sport Fishing	52,933	\$15.00	\$793,995
Nonresident 7-day Sport Fishing	84,314	\$25.00	\$2,107,850
Nonresident 14-day Sport Fishing	23,491	\$30.00	\$704,730
Nonresident Annual Sport Fishing	12,403	\$45.00	\$558,135
Revenue Provided by Resident Anglers			\$1,406,053
Revenue Provided by Non-Resident Anglers			\$5,134,441
Potential Gross Revenue Generated			\$6,540,494
Adjust new revenues for vendor payments (-5%)			\$6,213,469

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSSB 147(FIN)
 (S) Publish Date: 4/20/05

Revision Date/Time (Note if correction) _____ Dept. Affected: Fish and Game
 Title Sport Fishing Facility Revenue Bonds RDU Sport Fisheries
 Component Sport Fisheries
 Sponsor Senator Ralph Seekins
 Requester Senate Rules Committee Component No. 464

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			10.1	10.1	10.1	10.1
Contractual	200.0	350.0	1,182.8	1,182.8	1,182.8	1,182.8
Supplies			111.8	111.8	111.8	111.8
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	200.0	350.0	1,304.7	1,304.7	1,304.7	1,304.7

CAPITAL EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011

CHANGE IN REVENUES (1024)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
	1,553.4	6,213.5	6,213.5	6,213.5	6,213.5	6,213.5

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
1002 Federal Receipts	150.0	262.5	978.5	978.5	978.5	978.5
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1024 Fish and Game Fund	50.0	87.5	326.2	326.2	326.2	326.2
TOTAL	200.0	350.0	1,304.7	1,304.7	1,304.7	1,304.7

Estimate of any current year (FY2005) cost: 0.0
 Check 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 creates and authorizes the Sport Fishing Facility Revenue Bond sale for up to \$69 million in revenue bonds to finance the building of a new hatchery in Fairbanks, rebuilding of the Fort Richardson hatchery in Anchorage, and hatchery-related needs in Southeast Alaska.

Passage of this legislation will establish a framework that will allow ADF&G to (1) issue revenue bonds for the construction/enhancement of sport fish hatcheries, and (2) establish a new sport fishing facility surcharge.

(Continued on Page 2)

Prepared by: Tom Lawson, Director
 Division: Division of Administrative Services
 Approved by: McKie Campbell, Commissioner
 Agency: Alaska Department of Fish and Game

Phone: 465-5999
 Date/Time: 4/20/05 8:00 AM
 Date: 4/20/2005

FISCAL NOTE # 3

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

BILL NO. CSSB 147(FIN)

ANALYSIS CONTINUATION

Upon passage of this legislation, the State of Alaska's State Bond Committee will issue revenue bonds on behalf of ADF&G's Division of Sport Fish. The Committee will issue up to \$69 million in revenue bonds to fund the construction/enhancement of the hatcheries. Bond proceeds will be used to pay for construction and also for costs of issuing bonds and providing an advance funded debt service reserve account. The annual debt service on the bond is shown in a separate fiscal note submitted by the Department of Revenue.

ADF&G has submitted a one-time CIP funding request that will allow the Division of Sport Fish to use bond funds for construction of a new hatchery in Fairbanks, rebuilding the Fort Richardson hatchery in Anchorage, and addressing additional hatchery-related needs in Southeast Alaska.

Sport fishing license surcharges established in the legislation have been structured so as to generate roughly \$6 million annually – the same amount required to pay debt service on the bond. These revenues will be used, in combination with federal funds, to pay back the bond debt issued by the State Bond Committee. The authority of the department to collect the surcharge will terminate on December 31 of the calendar year in which the bond debt is retired. The department expects to implement the surcharges on January 1, 2006, which allows the department to collect 25 percent of the net surcharges in FY2006, but the full net amount in FY2007 and beyond.

Beginning in FY06, \$200,000 will be expended to replace Southeast Sustainable Salmon Fund monies, which will no longer be available to fund Crystal Lake Hatchery operations. In FY07, a new program to provide king salmon smolt for release in the Haines area will be funded at an operational cost of \$150,000.

Increases to current sport fish hatchery program operational expenditures at Elmendorf and Fort Richardson hatcheries will not occur until FY08, at which time the new facilities in Fairbanks and Anchorage are scheduled to be completed and producing fish. This increased operational cost is estimated to be \$954,700. No additional positions will be required as existing positions will be reassigned as needed to operate the two new facilities.

All operational funds will be 75% Federal Aid matched with 25% Fish and Game Fund.

License Category	# Sold CY 2003	Proposed Fee	Potential SF Revenue Increase
Resident Sport Fishing	115,197	\$8.50	\$979,175
Resident Sport Fishing/Hunting	44,153	\$8.50	\$375,301
Resident Fishing/Hunting/Trapping	6,068	\$8.50	\$51,578
Nonresident Military Sport Fishing	4,210	\$8.50	\$35,785
Nonresident Military Fishing/Small Game	254	\$8.50	\$2,159
Nonresident 1-day Sport Fishing	109,622	\$8.50	\$931,787
Nonresident 3-day Sport Fishing	52,933	\$15.00	\$793,995
Nonresident 7-day Sport Fishing	84,314	\$25.00	\$2,107,850
Nonresident 14-day Sport Fishing	23,491	\$30.00	\$704,730
Nonresident Annual Sport Fishing	12,403	\$45.00	\$558,135
Revenue Provided by Resident Anglers			\$1,406,053
Revenue Provided by Non-Resident Anglers			\$5,134,441
Potential Gross Revenue Generated			\$6,540,494
Adjust new revenues for vendor payments (-5%)			\$6,213,469

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: HCS CSSB 147(FIN)
 ('') Publish Date: 5/4/05

Revision Date/Time (Note if correction) _____ Dept. Affected: Fish and Game
 Title Sport Fishing Facility Revenue Bonds RDU Sport Fisheries
 Component Sport Fisheries
 Sponsor Senator Ralph Seakins
 Requester House Finance Committee Component No. 464

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			10.1	10.1	10.1	10.1
Contractual	200.0	350.0	1,182.8	1,182.8	1,182.8	1,182.8
Supplies			111.8	111.8	111.8	111.8
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	200.0	350.0	1,304.7	1,304.7	1,304.7	1,304.7
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (1024)	1,612.1	6,448.2	6,448.2	6,448.2	6,448.2	6,448.2

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	150.0	262.5	978.5	978.5	978.5	978.5
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1024 Fish and Game Fund	50.0	87.5	326.2	326.2	326.2	326.2
TOTAL	200.0	350.0	1,304.7	1,304.7	1,304.7	1,304.7

Estimate of any current year (FY2005) cost: 0.0
 Check 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 creates and authorizes the Sport Fishing Facility Revenue Bond sale for up to \$69 million in revenue bonds to finance the building of a new hatchery in Fairbanks, rebuilding of the Fort Richardson hatchery in Anchorage, and hatchery-related needs in Southeast Alaska.

Passage of this legislation will establish a framework that will allow ADF&G to (1) issue revenue bonds for the construction/enhancement of sport fish hatcheries; and (2) establish a new sport fishing facility surcharge.

(Continued on Page 2)

Prepared by: Tom Lawson, Director
 Division: Division of Administrative Services
 Approved by: McKie Campbell, Commissioner
 Agency: Alaska Department of Fish and Game

Phone: 465-5999
 Date/Time: 5/3/05 11:32 AM
 Date: 5/3/2005

FISCAL NOTE #4

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

BILL NO. HCS CSSB 147(FIN)

ANALYSIS CONTINUATION

Upon passage of this legislation, the State of Alaska's State Bond Committee will issue revenue bonds on behalf of ADF&G's Division of Sport Fish. The Committee will issue up to \$69 million in revenue bonds to fund the construction/enhancement of the hatcheries. Bond proceeds will be used to pay for construction and also for costs of issuing bonds and providing an advance funded debt service reserve account. The annual debt service on the bond is shown in a separate fiscal note submitted by the Department of Revenue.

ADF&G has submitted a one-time CIP funding request that will allow the Division of Sport Fish to use bond funds for construction of a new hatchery in Fairbanks, rebuilding the Fort Richardson hatchery in Anchorage, and addressing additional hatchery-related needs in Southeast Alaska.

Sport fishing license surcharges established in the legislation have been structured so as to generate roughly \$6 million annually – the same amount required to pay debt service on the bond. These revenues will be used, in combination with federal funds, to pay back the bond debt issued by the State Bond Committee. The authority of the department to collect the surcharge will terminate on December 31 of the calendar year in which the bond debt is retired. The department expects to implement the surcharges on January 1, 2006, which allows the department to collect 25 percent of the net surcharges in FY2006, but the full net amount in FY2007 and beyond.

Beginning in FY06, \$200,000 will be expended to replace Southeast Sustainable Salmon Fund monies, which will no longer be available to fund Crystal Lake Hatchery operations. In FY07, a new program to provide king salmon smolt for release in the Haines area will be funded at an operational cost of \$150,000.

Increases to current sport fish hatchery program operational expenditures at Elmendorf and Fort Richardson hatcheries will not occur until FY08, at which time the new facilities in Fairbanks and Anchorage are scheduled to be completed and producing fish. This increased operational cost is estimated to be \$954,700. No additional positions will be required as existing positions will be reassigned as needed to operate the two new facilities.

All operational funds will be 75% Federal Aid matched with 25% Fish and Game Fund.

License Category	# Sold CY 2003	Proposed Fee	Potential SF Revenue Increase
Resident Sport Fishing	115,197	\$9.00	\$1,036,773
Resident Sport Fishing/Hunting	44,153	\$9.00	\$397,377
Resident Fishing/Hunting/Trapping	6,068	\$9.00	\$54,612
Nonresident Military Sport Fishing	4,210	\$8.50	\$35,785
Nonresident Military Fishing/Small Game	254	\$8.50	\$2,159
Nonresident 1-day Sport Fishing	109,622	\$10.00	\$1,096,220
Nonresident 3-day Sport Fishing	52,933	\$15.00	\$793,995
Nonresident 7-day Sport Fishing	84,314	\$25.00	\$2,107,850
Nonresident 14-day Sport Fishing	23,491	\$30.00	\$704,730
Nonresident Annual Sport Fishing	12,403	\$45.00	\$558,135
Revenue Provided by Resident Anglers			\$1,488,762
Revenue Provided by Non-Resident Anglers			\$5,298,874
Potential Gross Revenue Generated			\$6,787,636
Adjust new revenues for vendor payments (-5%)			\$6,448,254

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: HCS CSSB 147(RLS)
 (H) Publish Date: 5/6/05

Revision Date/Time (Note if correction) _____ Dept. Affected: Fish and Game
 Title Sport Fishing Facility Revenue Bonds RDU Sport Fisheries
 Component Sport Fisheries
 Sponsor Senator Ralph Seekins
 Requester House Rules Committee Component No. 464

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			10.1	10.1	10.1	10.1
Contractual	200.0	350.0	1,182.8	1,182.8	1,182.8	1,182.8
Supplies			111.8	111.8	111.8	111.8
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	200.0	350.0	1,304.7	1,304.7	1,304.7	1,304.7

CAPITAL EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011

CHANGE IN REVENUES (1024)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
	1,612.1	6,450.3	6,450.3	6,450.3	6,450.3	6,450.3

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
1002 Federal Receipts	150.0	262.5	978.5	978.5	978.5	978.5
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1024 Fish and Game Fund	50.0	87.5	326.2	326.2	326.2	326.2
TOTAL	200.0	350.0	1,304.7	1,304.7	1,304.7	1,304.7

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

POSITIONS

Full-time	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This legislation creates and authorizes the Sport Fishing Facility Revenue Bond sale for up to \$69 million in revenue bonds to finance the building of a new hatchery in Fairbanks, rebuilding of the Fort Richardson hatchery in Anchorage, and hatchery-related needs in Southeast Alaska.

 Passage of this legislation will establish a framework that will allow ADF&G to (1) issue revenue bonds for the construction/enhancement of sport fish hatcheries; and (2) establish a new sport fishing facility surcharge.

(Continued on Page 2)

Prepared by: Tom Lawson, Director
 Division Division of Administrative Services
 Approved by: McKie Campbell, Commissioner
 Agency Alaska Department of Fish and Game

Phone 465-5999
 Date/Time 5/5/05 3:55 PM
 Date 5/5/2005

FISCAL NOTE #5

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

BILL NO. HCS CSSB 147(RLS)

ANALYSIS CONTINUATION

Upon passage of this legislation, the State of Alaska's State Bond Committee will issue revenue bonds on behalf of ADF&G's Division of Sport Fish. The Committee will issue up to \$69 million in revenue bonds to fund the construction/enhancement of the hatcheries. Bond proceeds will be used to pay for construction and also for costs of issuing bonds and providing an advance funded debt service reserve account. The annual debt service on the bond is shown in a separate fiscal note submitted by the Department of Revenue.

ADF&G has submitted a one-time CIP funding request that will allow the Division of Sport Fish to use bond funds for construction of a new hatchery in Fairbanks, rebuilding the Fort Richardson hatchery in Anchorage, and addressing additional hatchery-related needs in Southeast Alaska.

Sport fishing license surcharges established in the legislation have been structured so as to generate roughly \$6 million annually – the same amount required to pay debt service on the bond. These revenues will be used, in combination with federal funds, to pay back the bond debt issued by the State Bond Committee. The authority of the department to collect the surcharge will terminate on December 31 of the calendar year in which the bond debt is retired. The department expects to implement the surcharges on January 1, 2006, which allows the department to collect 25 percent of the net surcharges in FY2006, but the full net amount in FY2007 and beyond.

Beginning in FY06, \$200,000 will be expended to replace Southeast Sustainable Salmon Fund monies, which will no longer be available to fund Crystal Lake Hatchery operations. In FY07, a new program to provide king salmon smolt for release in the Haines area will be funded at an operational cost of \$150,000.

Increases to current sport fish hatchery program operational expenditures at Elmendorf and Fort Richardson hatcheries will not occur until FY08, at which time the new facilities in Fairbanks and Anchorage are scheduled to be completed and producing fish. This increased operational cost is estimated to be \$954,700. No additional positions will be required as existing positions will be reassigned as needed to operate the two new facilities.

All operational funds will be 75% Federal Aid matched with 25% Fish and Game Fund.

License Category	# Sold CY 2003	Proposed Fee	Potential SF Revenue Increase
Resident Sport Fishing	115,197	\$9.00	\$1,036,773
Resident Sport Fishing/Hunting	44,153	\$9.00	\$397,377
Resident Fishing/Hunting/Trapping	6,068	\$9.00	\$54,612
Nonresident Military Sport Fishing	4,210	\$9.00	\$37,890
Nonresident Military Fishing/Small Game	254	\$9.00	\$2,286
Nonresident 1-day Sport Fishing	109,622	\$10.00	\$1,096,220
Nonresident 3-day Sport Fishing	52,933	\$15.00	\$793,995
Nonresident 7-day Sport Fishing	84,314	\$25.00	\$2,107,850
Nonresident 14-day Sport Fishing	23,491	\$30.00	\$704,730
Nonresident Annual Sport Fishing	12,403	\$45.00	\$558,135
Revenue Provided by Resident Anglers			\$1,488,762
Revenue Provided by Non-Resident Anglers			\$5,301,106
Potential Gross Revenue Generated			\$6,789,868
Adjust new revenues for vendor payments (-5%)			\$6,450,375

SB

164

HOUSE COMMITTEE REPO

(7)

Date RETURNED to Committee: May 10, 2005

FURTHER REFERRALS:

Date of Committee Action: January 17, 2006

The RULES Committee considered:

CSSB 164(FIN)

CS FOR SENATE BILL NO. 164(FIN)

SALMON PRODUCT DEVELOPMENT TAX CREDIT

"An Act relating to the salmon product development tax credit; providing for an effective date by amending an effective date in sec. 7, ch. 57, SLA 2003; and providing for an effective date."


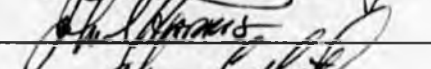
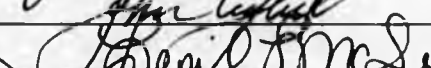
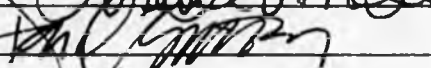


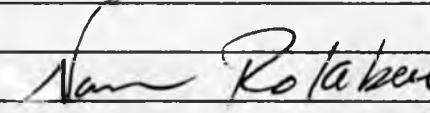
Recommends it be replaced with HCS or CS for CS SB 164 (RLS) ()
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- 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
 LWF
 LAW
 LEG
 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
Rev		<input checked="" type="checkbox"/>		

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

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Berkowitz			<input checked="" type="checkbox"/>	
	Harris	<input checked="" type="checkbox"/>			
	Cook			<input checked="" type="checkbox"/>	
	Cook			<input checked="" type="checkbox"/>	
	Cook			<input checked="" type="checkbox"/>	
	Roker			<input checked="" type="checkbox"/>	
Chair: 	ROKER			<input checked="" type="checkbox"/>	
Chair:					

WORK DRAFT

WORK DRAFT

WORK DRAFT

24-LS0589\C
Kane
12/19/05

1/17/06
WE
document
EB object
for disc
EBremous
obj
Hansant
wind
nos +
of n
noobjctn

HOUSE CS FOR CS FOR SENATE BILL NO. 164()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR STEDMAN

REPRESENTATIVE Kohring

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the salmon product development tax credit; providing for an
2 effective date by amending an effective date in sec. 7, ch. 57, SLA 2003; and providing
3 for an effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 43.75.035(b) is amended to read:

6 (b) The amount of the tax credit applied against taxes under this section may
7 not

8 (1) exceed 50 percent of the taxpayer's tax liability incurred under this
9 chapter for processing of salmon during the tax year; or

10 (2) be claimed for property first placed into service after December 31,
11 2008 [2005].

12 * Sec. 2. AS 43.75.035(i)(3) is amended to read:

13 (3) "qualified investment" means the investment cost in depreciable
14 tangible personal property with a useful life of three years or more to be used

WORK DRAFT

WORK DRAFT

24-LS0589C

1 predominantly to perform a processing, packaging, or product finishing function
2 that is a significant component in producing [PRODUCE] value-added salmon
3 products beyond gutting of the salmon; in this paragraph, "property"

4 (A) includes

5 (i) fileting, skinning, portioning, mincing, forming,
6 extruding, stuffing, injecting, mixing, marinating, preserving, drying,
7 smoking, brining, packaging, blast freezing, or pin bone removal
8 equipment; and

9 (ii) new parts to convert an existing can seamer to
10 pop-top can production;

11 (B) does not include

12 (i) vehicles, forklifts, conveyors, cranes, pumps or
13 other equipment used to transport salmon or salmon products,
14 knives, gloves, tools, supplies and materials, equipment that is not
15 processing, packaging, or product finishing equipment, or other
16 equipment the use of which is incidental to the production,
17 packaging, or finishing of value-added salmon products; or

18 (ii) the overhaul, re-tooling, or modification of new
19 or existing property, except for new parts to convert an existing
20 can seamer to pop-top can production;

21 * Sec. 3. AS 43.75.035(i) is amended by adding a new paragraph to read:

22 (6) "value-added salmon product" means the product of a salmon that
23 is processed beyond heading, gutting, or separation in a manner that materially
24 enhances the value of the salmon product, such as shelf-stable, retort pouched,
25 smoked, pickled, or filleted salmon, ikura, leather, or jerky; "value-added salmon
26 product" does not include a salmon or salmon product that

27 (A) has been subjected to only one or more of heading, gutting,
28 freezing, packaging, quality assurance practices, or value retention practices;

29 (B) is salmon skeins or other unprocessed salmon products
30 whether fresh or frozen;

31 (C) is canned, except for salmon products in a pop-top can; or

WORK DRAFT

WORK DRAFT

24-LS0589C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

(D) is produced out of the state.

* Sec. 4. Section 7, ch. 57, SLA 2003, is amended to read:

Sec. 7. Section 3 of this Act takes effect on the earlier of the following:

(1) January 1, 2012 [2009]; or

(2) the date of the attorney general's notification to the lieutenant governor and to the revisor of statutes that

(A) a court has entered final judgment that AS 43.75.035 or 43.75.036, added by sec. 1 of this Act, violates the commerce clause contained in art. I, sec. 8, United States Constitution; and

(B) the time for an appeal of that judgment has expired, or, if an appeal was taken, a final order on the appeal has been entered that AS 43.75.035 or 43.75.036, added by sec. 1 of this Act, violates the commerce clause contained in the United States Constitution.

* Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVITY. Sections 2 and 3 of this Act are retroactive to January 1, 2006.

* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSSB 164 (FIN)
 () Publish Date: _____

Revision Date/Time (Note if correction) _____ Dept. Affected Revenue 04
 Title Salmon Product Development Tax Credit RDIJ Tax and Treasury
 Component Tax
 Sponsor Sen. Stedman
 Requester Sen Resources Component No. 2476

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	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES ()	(100.0)	(100.0)	(1,060.0)	(1,500.0)	(1,000.0)	(500.0)
-------------------------------	----------------	----------------	------------------	------------------	------------------	----------------

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 current year (FY2006) cost: _____

Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by Tim Cottogim Phone 465-3695
 Division Tax Division Date/Time 01/13/2006 8:00 AM
 Approved by: Tom Boutin Date 1/13/2006
 Agency Revenue

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 164
 (S) Publish Date: 4/18/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue 04
 Title Salmon Product Development Tax Credit RDU Tax and Treasury
 Component Tax
 Sponsor Sen. Stedman
 Requester Sen Resources Component No. 2476

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 ()			(1,000.0)	(1,500.0)	(1,000.0)	(500.0)
-------------------------------	--	--	------------------	------------------	------------------	----------------

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

Check 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)

See page 2

Prepared by: Chuck Harlamert Phone 465-2320
 Division: Tax Division Date/Time 4/13/05 12:37 PM
 Approved by: Tom Boutin, Deputy Commissioner Date 4/13/2005
 Agency: Revenue

FISCAL NOTE # 1

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

BILL NO. SB 164

ANALYSIS CONTINUATION

The bill extends the existing credit for investment in processing equipment used to produce value-added salmon products by three years through 2008. The credit is the result of legislative recommendations of the Joint Legislative Salmon Task Force and was designed to encourage in-state processing of salmon beyond heading and gutting and the development of value-added salmon products in the state. Credits may be applied against tax in the year generated and the three subsequent years. Use of the credit in any tax year is limited to one half of the fisheries business tax on salmon that is processed in the state.

Based on credit claims for the most recent tax year (2004) we project investments generating \$1.5 million of credits in each of the three tax years 2005-2008. These credits will be applied against tax only after pre-existing credits have been used or expired. We project that the credits arising under this bill will be used against fisheries business tax liabilities for 2008-2010 to reduce receipts during FY08-FY11.

The bill also clarifies the definitions of qualified investment and value-added salmon products. These clarifications will improve taxpayer's ability to make investment decisions and avoid unanticipated liabilities.

ALASKA STATE LEGISLATURE

SESSION

State Capitol, Rm. 30
Juneau, Alaska 99801-1182
(907) 465-3873 Phone
(907) 465-3922 Fax
(877) 463-3873 Toll Free
Senator_Bert_Stedman@legis.state.ak.us



INTERIM

50 Front Street
Suite 203
Ketchikan, AK 99901-6442
Phone (907) 225-8088
Fax (907) 225-0713

SENATOR BERT K. STEDMAN

MEMORANDUM

To: Representative Norman Rokeberg, Chairman
House Rules Committee

From: Senator Bert Stedman *BS*

Date: January 12, 2006 *Jan*

Subject: Request for Hearing

I respectfully request that SB 164 Salmon Product Development Tax Credit be scheduled for a hearing in the House Rules Committee at your earliest convenience.

SB 164 extends the existing credit for investment in processing equipment used to produce value-added salmon products through 2008. This credit came out of the work completed by the Joint Legislative Salmon Task Force in order to encourage in-state processing of salmon beyond heading and gutting and the development of value-added salmon products in the state. This bill clarifies the definitions of "qualified investment" and "value-added salmon products" in order to improve the taxpayer's ability to make investment decisions and avoid unanticipated liabilities.

I ask that your committee introduce and support the attached Work Draft Committee Substitute version "C" dated 12/19/05. The committee substitute makes an effective date change and the provisions retroactive in applicability in order to allow for seamless continuation of the program.

If you have any questions or need more information, feel free to contact myself or Kim Carnot on my staff. Thank you for your attention to this important matter.

DISTRICT A

Ketchikan • Sitka • Petersburg • Wrangell
Pelican • Elfin Cove • Port Alexander • Saxman • Meyers Chuck • Thorne Bay • Coffman Cove • Hollis

ALASKA STATE LEGISLATURE

SESSION

State Capitol, Rm 30
Juneau, Alaska 99801-1182
(907) 465-3873 Phone
(907) 465-3922 Fax
(877) 463-3873 Toll Free
Senator_Bert_Stedman@legis.state.ak.us



INTERIM

50 Front Street
Ketchikan, AK 99901-6442
Phone (907) 225-8088
Fax (907) 225-0713

SENATOR BERT K. STEDMAN

SPONSOR STATEMENT CSSB 164(FIN)

“An Act relating to the salmon product development tax credit; providing for an effective date by amending an effective date in sec. 7, ch. 57, SLA 2003; and providing for an effective date.”

Senate Bill 164 extends the deadline for salmon processors to receive a salmon product development tax credit. Under current law (A.S. 43.75.035), processors can claim the credit only for property first placed into service by the end of this calendar year (December 31, 2005). SB 164 would give processors three more years (until December 31, 2008) to claim the credit. The legislation also clarifies what types of items are eligible for the tax credit, to more effectively achieve the legislature's goal of encouraging Alaska's seafood processors to develop innovative value-added salmon products.

In 2003, the legislature passed and the Governor signed legislation that allows processors to claim a credit on the tax liability on new equipment they have purchased to add value to salmon using innovative processing techniques. The bill (HB 90) that became this law was proposed by the Joint Legislative Salmon Industry Task Force, and was part of an effort by Alaska's elected leaders and the fishing industry to create incentives for the industry to take investment risks and produce new salmon products that add value to our salmon. It has worked: a number of processors have taken advantage of this tax credit. SB 164 extends the deadline for applying for the credit for another three years, to the end of 2008. In addition, the bill defines the kind of investment that qualifies for the credit, making it clear that processors should be producing new, innovative salmon products in order to benefit from this program. The legislation has been drafted in consultation with the Tax Division of the Department of Revenue, incorporating lessons learned in the first two years of administering the credit, to ensure that management and enforcement are efficient and effective.

Senate Bill 164 is supported by many Alaskan salmon processors and fishermen as a valuable tool in improving the quality and net worth of our wild salmon.

Contact: Kim Carnot, Aide to Senator Bert Stedman at (907) 465-3873

DISTRICT A

Ketchikan • Sitka • Petersburg • Wrangell

Pelican • Elfin Cove • Port Alexander • Soxman • Meyers Chuck • Thorne Bay • Coffman Cove • Hollis

AN ACT

1 Relating to a salmon product development tax credit and a salmon utilization tax credit under
2 the Alaska fisheries business tax; and providing for an effective date

3
4 • Section 1. AS 43.75 is amended by adding new sections to read:

5 Sec. 43.75.035. Salmon product development tax credit. (a) A taxpayer
6 that is a fisheries business may claim a salmon product development tax credit of 50
7 percent of qualified investment in new property first placed into service in a shore-
8 based plant or on a vessel in the state in the tax year.

9 (b) The amount of the tax credit applied against taxes under this section may
10 not

11 (1) exceed 50 percent of the taxpayer's tax liability incurred under this
12 chapter for processing of salmon during the tax year; or

13 (2) be claimed for property first placed into service after December 31,
14 2005.

(c) If the property for which a tax credit is claimed is installed on a vessel, the amount of qualified investment under (a) of this section is determined by multiplying the investment cost of the qualified investment property by a fraction, the numerator of which is the weight of raw salmon processed on the vessel by the taxpayer in the state in the tax year in which the property is first placed in service, and the denominator of which is the weight of raw salmon processed on the vessel by the taxpayer in and outside of the state in the tax year in which the property is first placed into service.

(d) An unused credit under this section may be carried forward and applied against the tax liability incurred on salmon in the following three tax years.

(e) Qualified investment costs upon which a tax credit is claimed under this section may not be considered for another tax credit in this title. A tax credit applied under this section together with a tax credit applied under AS 43.75.036 may not exceed 50 percent of the taxpayer's tax liability incurred for the processing of salmon during the tax year.

(f) A taxpayer may not claim the tax credit allowed under this section if the taxpayer is in arrears in the payment of assessments under AS 16.51.120, contributions under AS 23.20, or taxes or assessments collected or owed under this title. For purposes of this subsection, a taxpayer is not in arrears if the liability for the assessment, contribution, or tax is under administrative or judicial appeal.

(g) If, during a tax year, property for which a credit was claimed under this section is disposed of by the taxpayer, ceases to be qualified investment property, or is removed from service in the state, the tax due under this chapter is increased by the recapture percentage of the aggregate decrease in the credit allowed under this section for all prior tax years that would have resulted solely from reducing to zero the credit allowed for the qualified investment property under this section. The amount of tax credit attributable to the qualified investment that is carried forward from prior tax years is terminated as of the first day of the tax year in which the qualified investment property is disposed of by the taxpayer, ceases to be qualified investment property, or is removed from service in the state. For purposes of this subsection,

(1) the recapture percentage during the year in which the property is

first placed into service or during the first year following the year in which the property is first placed into service is 100 percent;

(2) the recapture percentage during the second year following the year in which the property is first placed into service is 75 percent;

(3) the recapture percentage during the third year following the year in which the property is first placed into service is 50 percent;

(4) the recapture percentage during the fourth or subsequent year following the year in which the property is first placed into service is zero percent;

(5) qualified investment property used on a vessel is considered to have been removed from the state on the first day of a tax year in which the proportion of raw salmon processed in the state on the vessel is less than 50 percent of total weight of raw salmon processed on the vessel in and outside of the state.

(h) The amount of a tax credit recaptured under (g)(1) - (3) of this section may not be included in the determination of the amount of that tax credit that is allowable under this section or AS 43.75.036.

(i) In this section,

(1) "first placed into service" means the moment when property is first used for its intended purpose;

(2) "new property" means property whose original use commences with the taxpayer and does not include property first used by another person;

(3) "qualified investment" means the investment cost in depreciable tangible personal property with a useful life of three years or more to be used predominantly to produce value-added salmon products beyond gutting of the salmon; in this paragraph, "property" includes filleting, skinning, portioning, muncing, forming, extruding, stuffing, injecting, mixing, marinating, preserving, drying, smoking, brining, packaging, blast freezing, or pin bone removal equipment;

(4) "tax liability" means the liability for all taxes under this chapter before all credits allowed by this chapter;

(5) "useful life" means the useful life of the property that is or would be applicable for purposes of depreciation.

Sec. 43.75.036. Salmon utilization tax credit. (a) A taxpayer that is a

1 fisheries business may claim a salmon utilization tax credit of 50 percent of the
2 amount of the qualified expenditure in the state in the tax year for full utilization of
3 salmon.

4 (b) The amount of the tax credit applied against taxes under this section may
5 not

6 (1) exceed 50 percent of the taxpayer's tax liability incurred under this
7 chapter for salmon during the tax year; or

8 (2) be claimed for property first placed into service, or for expenditures
9 incurred, after December 31, 2005.

10 (c) If the tax credit is claimed for installation or operation of new equipment
11 on a vessel, the amount of the qualified expenditure under (a) of this section is
12 determined by multiplying the cost of the installation or operation of the equipment by
13 a fraction, the numerator of which is the weight of raw salmon processed on the vessel
14 by the taxpayer in the state in the tax year in which the equipment is first placed into
15 service, and the denominator of which is the weight of raw salmon processed on the
16 vessel by the taxpayer in and outside of the state in the tax year in which the
17 equipment is first placed into service.

18 (d) An unused credit under this section may be carried forward and applied
19 against the tax liability incurred on salmon in the following three tax years.

20 (e) Qualified expenditures for which a tax credit is claimed under this section
21 may not be considered for another tax credit in this title. A tax credit applied under
22 this section together with a tax credit applied under AS 43.75.035 may not exceed 50
23 percent of the taxpayer's tax liability incurred for the processing of salmon during the
24 tax year.

25 (f) A taxpayer may not claim the tax credit allowed under this section if the
26 taxpayer is in arrears in the payment of assessments under AS 16.51.120, contributions
27 under AS 23.20, or taxes or assessments collected or owed under this title. For
28 purposes of this subsection, a taxpayer is not in arrears if the liability for the
29 assessment, contribution, or tax is under administrative or judicial appeal.

30 (g) If, during a tax year, equipment for which a credit was claimed under this
31 section is disposed of by the taxpayer, ceases to be a qualified expenditure, or is

1 removed from service in the state, the tax due under this chapter is increased by the
2 recapture percentage of the aggregate decrease in the credit allowed under this section
3 for all prior tax years that would have resulted solely from reducing to zero the credit
4 allowed for the qualified expenditure under this section. The amount of tax credit
5 attributable to the qualified expenditure that is carried forward from prior tax years is
6 terminated as of the first day of the tax year in which the equipment is disposed of by
7 the taxpayer, ceases to be a qualified expenditure, or is removed from service in the
8 state. For purposes of this subsection,

9 (1) the recapture percentage during the year in which the equipment is
10 first placed into service or during the first year following the year in which the
11 equipment is first placed into service is 100 percent;

12 (2) the recapture percentage during the second year following the year
13 in which the equipment is first placed into service is 75 percent;

14 (3) the recapture percentage during the third year following the year in
15 which the equipment is first placed into service is 50 percent;

16 (4) the recapture percentage during the fourth or subsequent year
17 following the year in which the equipment is first placed into service is zero percent;

18 (5) equipment used on a vessel is considered to have been removed
19 from the state on the first day of a tax year in which the proportion of raw salmon
20 processed in the state on the vessel is less than 50 percent of total weight of raw
21 salmon processed on the vessel in and outside of the state.

22 (h) The amount of a tax credit recaptured under (g)(1) - (3) of this section may
23 not be included in the determination of the amount of that tax credit that is allowable
24 under this section or AS 43.75.035.

25 (i) In this section,

26 (1) "first placed into service" means the moment when equipment is
27 first used for its intended purpose;

28 (2) "new equipment" means tangible, depreciable personal property
29 with a useful life of three years or more whose original use commences with the
30 taxpayer and does not include property first used by another person;

31 (3) "qualified expenditure" means

1 (A) the direct and incremental cost of the development,
2 manufacture, or purchase of new equipment by a taxpayer to produce
3 marketable products in the state using salmon waste;

4 (B) reasonable custom processing or disposal fees paid to
5 another fisheries business in the state that does not claim a credit under this
6 section or AS 43.75.035 and that produces marketable products from salmon
7 waste, less the market value of the products produced for the taxpayer; or

8 (C) the direct and incremental cost of transporting salmon
9 waste to a facility in the state that produces a marketable product from salmon
10 waste;

11 (4) "tax liability" means the liability for all taxes under this chapter
12 before all credits allowed by this chapter;

13 (5) "useful life" means the useful life of equipment that is or would be
14 applicable for purposes of depreciation.

15 * Sec. 2. AS 43.75.130 is amended by adding a new subsection to read:

16 (g) For purposes of this section, tax revenue collected under AS 43.75.015
17 from a person entitled to credit under AS 43.75.035 or 43.75.036 shall be calculated
18 as if the person's tax were collected without applying the credit; tax revenue collected
19 does not include the amount of a tax credit recaptured under AS 43.75.035(g) or
20 43.75.036(g)

21 * Sec. 3. AS 43.75.035, 43.75.036, and 43.75.130(g) are repealed.

22 * Sec. 4. The uncoded law of the State of Alaska is amended by adding a new section to
23 read:

24 **RETROACTIVITY.** Sections 1 and 2 of this Act are retroactive to January 1, 2003.

25 * Sec. 5. The uncoded law of the State of Alaska is amended by adding a new section to
26 read:

27 **RETROACTIVITY.** If the attorney general provides notification under sec. 7(2) of
28 this Act, sec. 3 of this Act is retroactive to January 1, 2003.

29 * Sec. 6. Sections 1, 2, and 4 of this Act take effect immediately under AS 01.10.07(c).

30 * Sec. 7. Section 3 of this Act takes effect on the earlier of the following:

31 (1) January 1, 2009; or

1 (2) the date of the attorney general's notification to the lieutenant governor and
2 to the revisor of statutes that

3 (A) a court has entered final judgment that AS 43.75.035 or 43.75.036,
4 added, by sec. 1 of this Act, violates the commerce clause contained in art. I, sec. 8,
5 United States Constitution; and

6 (B) the time for an appeal of that judgment has expired, or, if an appeal
7 was taken, a final order on the appeal has been entered that AS 43.75.035 or
8 43.75.036, added by sec. 1 of this Act, violates the commerce clause contained in the
9 United States Constitution.

10 * Sec. 8. Section 5 of this Act takes effect on the date of the attorney general's notification
11 under sec. 7(2) of this Act.

Sec. ~~43.75.035~~. Salmon product development tax credit.

(a) A taxpayer that is a fisheries business may claim a salmon product development tax credit of 50 percent of qualified investment in new property first placed into service in a shore-based plant or on a vessel in the state in the tax year.

(b) The amount of the tax credit applied against taxes under this section may not

(1) exceed 50 percent of the taxpayer's tax liability incurred under this chapter for processing of salmon during the tax year; or

(2) be claimed for property first placed into service after December 31, 2005.

(c) If the property for which a tax credit is claimed is installed on a vessel, the amount of qualified investment under (a) of this section is determined by multiplying the investment cost of the qualified investment property by a fraction, the numerator of which is the weight of raw salmon processed on the vessel by the taxpayer in the state in the tax year in which the property is first placed into service, and the denominator of which is the weight of raw salmon processed on the vessel by the taxpayer in and outside of the state in the tax year in which the property is first placed into service.

(d) An unused credit under this section may be carried forward and applied against the tax liability incurred on salmon in the following three tax years.

(e) Qualified investment costs upon which a tax credit is claimed under this section may not be considered for another tax credit in this title. A tax credit applied under this section together with a tax credit applied under ~~AS~~ 43.75.036 may not exceed 50 percent of the taxpayer's tax liability incurred for the processing of salmon during the tax year.

(f) A taxpayer may not claim the tax credit allowed under this section if the taxpayer is in arrears in the payment of assessments under ~~AS~~ 16.51.120, contributions under ~~AS~~ 23.20, or taxes or assessments collected or owed under this title. For purposes of this subsection, a taxpayer is not in arrears if the liability for the assessment, contribution, or tax is under administrative or judicial appeal.

(g) If, during a tax year, property for which a credit was claimed under this section is disposed of by the taxpayer, ceases to be qualified investment property, or is removed from service in the state, the tax due under this chapter is increased by the recapture percentage of the aggregate decrease in the credit allowed under this section for all prior tax years that would have resulted solely from reducing to zero the credit allowed for the qualified investment property under this section. The amount of tax credit attributable to the qualified investment that is carried forward from prior tax years is terminated ~~as~~ of the first day of the tax year in which the qualified investment property is disposed of by the taxpayer, ceases to be qualified investment property, or is removed from service in the state. For purposes of this subsection,

(1) the recapture percentage during the year in which the property is first placed into service or during the first year following the year in which the property is first placed into service is 100 percent;

(2) the recapture percentage during the second year following the year in which the property is first placed into service is 75 percent;

~~(3)~~ the recapture percentage during the third year following the year in which the property is first placed into service is 50 percent;

(4) the recapture percentage during the fourth or subsequent year following the year in which the property is first placed into service is zero percent;

(5) qualified investment property used on a vessel is considered to have been removed from the state on the first day of a tax year in which the proportion of raw salmon processed in the state on the vessel is less than 50 percent of total weight of raw salmon processed on the vessel in and outside of the state.

(h) The amount of a tax credit recaptured under (g)(1) - (3) of this section may not be included in the determination of the amount of that tax credit that is allowable under this section or AS 43.75.036 .

(i) In this section

(1) "first placed into service" means the moment when property is first used for its intended purpose;

(2) "new property" means property whose original use commences with the taxpayer and does not include property first used by another person;

(3) "qualified investment" means the investment cost in depreciable tangible personal property with a useful life of three years or more to be used predominantly to produce value-added salmon products beyond gutting of the salmon; in this paragraph, "property" includes filleting, skinning, portioning, mincing, forming, extruding, stuffing, injecting, mixing, marinating, preserving, drying, smoking, brining, packaging, blast freezing, or pin bone removal equipment;

(4) "tax liability" means the liability for all taxes under this chapter before all credits allowed by this chapter;

(5) "useful life" means the useful life of the property that is or would be applicable for purposes of depreciation.

SB

186

Alaska State Legislature

House of Representatives



Official Business

COMMITTEE ON RULES
Representative Norman Rokeberg, Chairman

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

March 23, 2006 House Rules Committee meeting:

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

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

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

1031 WEST 4TH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501-1994
PHONE: (907)269-3100
FAX: (907)258-4978

March 27, 2006

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

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

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

Dear Senator Seekins and Representative Rokeberg:

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

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

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

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

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

Sincerely,

DAVID W. MARQUEZ
ATTORNEY GENERAL

By:



David T. Jones
Senior Assistant Attorney General

Enclosure

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

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

AMENDMENT #1

*Coghill moved
at 9:30 AM*

OFFERED IN THE HOUSE

BY REPRESENTATIVE _____

TO: HCS CSSB 186(RLS)

adopted

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

*Hold bill over
bill was not moved out*

5 C.F.R. § 2634.403

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

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

→ § 2634.403 Qualified blind trusts.

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

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

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

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

interested party;

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

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

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

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

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

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

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

5 C.F.R. § 2634.403

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

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

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

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

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

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

(ii) It relates only:

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

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

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

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

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

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

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

5 C.F.R. § 2634.403

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

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

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

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

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

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

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

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

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

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

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

of Government Ethics;

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

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

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

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

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

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

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

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

5 C.F.R. § 2634.403

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

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

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

Current through March 23, 2006; 71 FR 14656

Copr. © 2006 Thomson/West

END OF DOCUMENT

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

5 C.F.R. § 2634.401

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

C

Effective: [See Text Amendments]

Code of Federal Regulations Currentness

Title 5. Administrative Personnel

Chapter XVI. Office of Government Ethics

Subchapter B. Government Ethics

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

■ Subpart D. Qualified Trusts (Refs & Annos)

→ § 2634.401 General considerations.

(a) Statutory standards governing qualified trusts--

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

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

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

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

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

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

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

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

5 C.F.R. § 2634.401

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

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

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

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

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

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

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

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

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

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

5 C.F.R. § 2634.401

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

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

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

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

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

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

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

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

5 C.F.R. § 2634.401

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

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

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

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

(3) Reporting requirements. Once a trust is

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

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

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

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

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

5 C.F.R. § 2634.401

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

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

Current through March 23, 2006; 71 FR 14656

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

Copr. © 2006 Thomson/West

END OF DOCUMENT

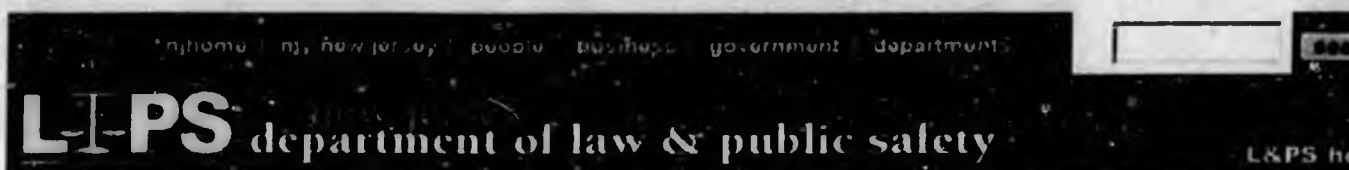
(4) Prior to trust certification, prospective trustees or their representatives should schedule with the staff of the Office of Government Ethics an appointment for an orientation to the specialized requirements and procedures which have been established by the Act and the regulations with respect to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

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

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

5 C. F. R. § 2634.401, 5 CFR § 2634.401

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



Executive Commission on Ethical Standards

Blind Trusts

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

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

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

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

[contact us](#) | [privacy notice](#) | [legal statement](#)

divisional: [ethics home](#) | [contact ethics](#) | [meetings](#) | [statutes](#) | [faqs](#) | [codes of ethics](#) | [procedures](#) | [guidelines](#) | [financial disclosure](#)

departmental: [lps home](#) | [contact lps](#) | [news](#) | [about us](#) | [faqs](#) | [library](#) | [employment](#) | [programs and units](#) | [services a-z](#)

statewide: [njhome](#) | [my new jersey](#) | [people](#) | [business](#) | [government](#) | [departments](#) | [search](#)

TEXAS ETHICS COMMISSION

PERSONAL FINANCIAL STATEMENT

FORM PFS--INSTRUCTION GUIDE



Revised November 29, 2005

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

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

AN EQUAL OPPORTUNITY EMPLOYER

The Texas Ethics Commission does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

PART 9. TRUST INCOME

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

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

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

PART 10A. BLIND TRUSTS

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

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

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

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

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

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

PART 10B. TRUSTEE STATEMENT

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

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

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

AN ORDINANCE REGARDING ETHICS AND CONFLICTS OF INTEREST

ENGROSSED VERSION (AS ADOPTED 11 AUGUST 2003)

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

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

CHAPTER 40: ETHICS AND CONFLICTS OF INTEREST

Ethics in Public Affairs.....	1
<i>General Provisions</i>	1
§40.01 Title.....	1
§40.02 Statement of Policy.....	1
§40.03 Application.....	1
§40.04 Definitions.....	1
§40.05-§40.09 Reserved for Future Use.....	3
<i>Standards of Conduct</i>	4
§40.10 Generally.....	4
§40.11 Official Conduct.....	4
§40.12 Restrictions on Employment of Present and Former Employees.....	4
§40.13 Use of Confidential Information.....	6
§40.14 Paid Consultants of the City.....	6
§40.15-§40.29 Reserved for Future Use.....	7
<i>Prohibited Practices</i>	7
§40.30 Gifts and Favors.....	7
§40.31 Exceptions.....	7
§40.32 Gratuities and Kickbacks.....	8
§40.33 Use of City Resources.....	9
§40.34 Relating to Business with the City.....	9
§40.36 Appearance and Intervention on Behalf of Others.....	9
§40.37 Prohibition Against Contingent Fees; Exception for Retention of Counsel in Accordance with the Rules of Professional Responsibility of the Connecticut Bar Association.....	10
§40.38 Criminal Conduct. State Sanctions.....	11
§40.39 Public Official, Employee or Member of a Board or Commission Conflict of Interest in City Procurements.....	11
§40.40-§40.49 Reserved for Future Use.....	12
<i>Disclosure Requirements</i>	12
§40.50 Disclosure of Financial Interest.....	12
§40.51 Contents of Statements of Financial Interest Disclosure.....	13
§40.52 Disclosure Requirements Pertaining to City Procurements.....	14
§40.53 Amendments.....	14
§40.54 Failure to File.....	15
§40.55 Extensions.....	15
§40.56 Financial Disclosure Statement: Notice.....	15

AN ORDINANCE REGARDING ETHICS AND CONFLICTS OF INTEREST

ENGROSSED VERSION (AS ADOPTED 11 AUGUST 2003)

Ethics in Public Affairs

General Provisions

§40.01 Title.

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

§40.02 Statement of Policy.

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

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

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

§40.03 Application.

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

§40.04 Definitions.

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

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

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

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