EC 4

Moved: Isely

Seconded: Lisenco

Moved, that Bylaw 45 is deleted and replaced by the following:

*a. Purposes*

The purposes of this Conflict of Interest Policy are threefold: (1) to preserve the confidentiality of business, financial, strategic, or other information, data or plans not intended for public dissemination which, if disclosed, could in the view of the Board harm the League; (2) to protect the integrity of the decisionmaking process of the Board so that the deliberations, contributions and decisions of the Board are made in the sole interest of the League and its members collectively; and (3)  to ensure that no one will be eligible for, or hold, the office of Director, Vice Director, President or Vice President whose business connections are of such nature that his or her influence in the affairs of the League could be used for his or her private benefit or materially conflict with the activities or affairs of the League. The Board shall effectuate the following policies in order to further these three purposes and to fulfill the fiduciary obligations that Board members have to the League. This policy is intended to supplement but not supersede any applicable laws governing conflicts of interest in Connecticut nonprofit and charitable corporations.

*b. Conflicts of Interest*

(1)   A conflict of interest arises when a Board Member or Vice Director has a business, personal, professional, financial or familial interest, affiliation or relationship that could materially conflict with the obligation of the Board Member or Vice Director to the ARRL.

(2)  A financial conflict of interest of a Board Member or Vice Director exists if the Board Member or Vice Director (or his or her parents, spouse or partner, children, siblings, or the spouses of children or siblings) has, directly or indirectly, through material equity ownership or voting control, a management position, employment, investment or contract, an interest in or other arrangement with any entity whose business or operation (i) competes with the business or programs of ARRL, or (ii) may be materially affected (positively or negatively) by a decision or action of the Board or by any program, policy, strategy or activity of the League. For purposes of this Bylaw, a material ownership or investment interest shall include an equity or voting interest of five percent (5%) or more of the value of the entity.

(3)  A Board Member or Vice Director may not disclose confidential information obtained by him or her relating to the League to any third person or entity.

(4) A finding that a conflict of interest exists does not indicate that any unethical or improper action on the part of a Board Member or Vice Director has been taken. Acknowledgement of conflicts through voluntary disclosure, and mitigation of the effects of conflicts, principally through some level of recusal, avoids the appearance of impropriety that otherwise might undermine confidence in the Board’s policies.

*c. Duty to Disclose*

(1)  A Board Member or Vice Director and any candidate for election as a Board Member or Vice Director shall promptly disclose to the Ethics and Elections Committee the existence of any potential or actual conflict of interest without delay at the time that the conflict arises during the tenure of the Board Member or Vice Director or during the candidacy of the Candidate for election. Candidates for election as a Director or Vice Director shall disclose to the Ethics and Elections Committee any potential or actual conflict of interest that exists at the time of the submission of their nominating petition.

(2) When requested by the Ethics and Elections Committee and not less frequently than once a year, each Board Member and Vice Director shall promptly submit a statement to that Committee identifying all business, personal, professional, financial, familial and other affiliations of the Board Member or Vice Director or his or her family members (i.e. parents, spouse or partner, children, siblings, or the spouses of children or siblings) that could reasonably be considered to be a conflict of interest as defined above, whether or not the Board Member or Vice Director believes that a conflict exists.

(3) The failure of a Board Member or Vice Director to voluntarily and timely disclose facts that may result in a finding of a potential or actual conflict of interest, whether or not the disclosure is requested by the Ethics and Elections Committee, will be considered a breach of the Board Member or Vice Director’s fiduciary obligation to the League and the Board of Directors will determine an appropriate sanction therefor, even if no harm to the League results from the nondisclosure.

(4) After disclosure of an actual or potential conflict of interest by a Board Member or Vice Director or candidate for election as a Director or Vice Director, the disinterested members of the Ethics and Elections Committee shall determine whether a conflict of interest exists. A finding of an actual or potential conflict involving a Board Member or Vice Director shall be referred to the Board for determination of an appropriate remedy unless the Committee determines that the conflict is *de minimis* and recusal is unnecessary. The interested Board Member or Vice Director shall recuse himself or herself from any vote upon any proposed matter, transaction, contract, or arrangement in connection with which an actual or potential conflict of interest has been disclosed by that Board Member or Vice Director until such time as the Ethics and Elections Committee and/or the Board has addressed the actual or possible conflict of interest.

*d. Recusal*

The principal means of resolving conflicts of interest involving Board Members or Vice Directors will be by recusal of that Board Member or Vice Director. Upon a factual finding by the Ethics and Elections Committee that a Board Member or Vice Director has a conflict of interest and that the conflict is not *de minimis*, the Committee will make a recommendation to the Board as to the level of recusal determined to be appropriate on a case-by-case basis. The Board of Directors will then decide by majority vote which level of recusal (if any) is appropriate in that case. The levels of recusal are as follows:

(1) The interested Board Member or Vice Director will be asked to leave the meeting room so that the Board can freely discuss and vote on the issue about which the conflict exists. Once the vote is taken, the recused Board Member or Vice Director may return to the meeting.

(2) The interested Board Member or Vice Director may be allowed to remain in the room but not participate in the discussions or vote on the issue about which the conflict exists.

(3) The interested Board Member or Vice Director may be allowed to remain in the room and participate in the discussions but not vote.

Upon recusal of a Director per levels 1 or 2 above, that Division’s Vice Director shall fulfill the duties of the recused Director in discussion and voting on such matter. Upon recusal of a Director per level 3 above, that Division’s Vice Director shall fulfill the duties of the recused Director in voting on such matter. A decision by the Board on recusal of a Board Member or Vice Director shall state the reason for the recusal, which shall be noted in the minutes of the Board of Directors.

*e.  Disqualification*

Disqualification of a Board Member or Vice Director to serve or continue to serve due to a finding of a conflict of interest is a remedy that is to be applied by the Board of Directors only in the rarest of circumstances. The Board, upon a majority vote, may disqualify an incumbent Board Member or Vice Director upon a finding that the Board Member or Vice Director (or his or her parents, spouse or partner, children, siblings, or the spouses of children or siblings) (1) is engaged in an ongoing business or activity that directly, materially and consistently competes with an active program, business interest or activity of the League on a continuing basis, or which engages regularly or periodically in commercial business transactions with the League; and (2) that application of any of the three levels of recusal would be inadequate or insufficient to accomplish the purposes of this Conflict of Interest policy; and (3) that the nature of the conflict of interest is so pervasive and continuous as to render the Board Member or Vice Director ineligible to serve or continue to serve.

*f.  Annual Statements*

Each Board Member and Vice Director shall annually sign a statement which affirms that such person:

(i) Has received a copy of the current conflict of interest policy set forth in this Bylaw;

(ii) Has read the Bylaw;

(iii) Agrees to comply with the disclosure requirements; and

(iv) Acknowledges that the League is a non-profit organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

The failure of a Board Member or Vice Director to sign such statement on a timely basis will render that Board Member or Vice Director ineligible to serve or continue to serve.

Cost: None

Rationale: The revised Bylaw begins with a three-point statement of the purposes of the policy: to protect confidential business information of ARRL; to protect the integrity of the Board's processes; and to preclude a situation in which a Director, Vice Director, President or Vice President has interests which conflict with those of the ARRL. It also states unconditionally that a Board member or Vice Director cannot disclose confidential ARRL information to any third party or entity.

The revised Bylaw 45 also puts primary emphasis on voluntary disclosure by candidates or incumbents of actual or potential conflicts. It clarifies that the failure of a Board Member or Vice Director to voluntarily disclose facts that may constitute a conflict is a violation of that Board Member or Vice Director’s fiduciary duty to ARRL, whether or not ARRL was damaged in fact by the non-disclosure. Circumstances of immediate family members are taken into account in determining whether or not a Board member or Vice Director has a conflict of interest.

Once the disclosure is made, the E&E Committee will ascertain whether or not a conflict exists and will report the findings of fact and any recommendations the Committee has to the full Board. The Board will then determine whether recusal is or is not an adequate remedy and if so, what level of recusal is appropriate. The theory is that all conflicts are fact-based and that in general, they can be adequately mitigated by some level of recusal. Seldom is disqualification required.

The three levels of recusal are: (1) leaving the room during discussions of issues that might trigger the conflict; (2) remaining in the room but not participating in the discussion or voting; or (3) staying in the room and participating in the discussion but not voting. The Board will determine, in each case, which of these three levels of recusal, if any, are necessary and sufficient to protect the interests that ARRL has declared in the introductory paragraph. If it is a Director who must leave, the disinterested Vice Director will take his or her place, either by taking the chair of the Director or by simply acting in his or her place and fulfilling the functions that the Director can't do.

A very strict test is provided for disqualification. It is only where all of the following are present that a Director or Vice Director (or a candidate for either role) can be disqualified:

The Board Member or Vice Director, (or candidate): (1) is engaged in an ongoing business or activity that directly, materially and consistently competes with an active program, business interest or activity of the League on a continuing basis, or which engages regularly or periodically in commercial business transactions with the League; and (2) that application of any of the three levels of recusal would be inadequate or insufficient to accomplish the purposes of this Conflict of Interest policy; and (3) that the nature of the conflict of interest is so pervasive and continuous as to render the Board Member or Vice Director ineligible to serve or continue to serve.

Finally, the Board Members would not be asked to affirm in their annual conflicts disclosure and policy acknowledgement that they "understand" the policy. They are asked only to certify that they have read it. The "understanding" provision was problematic for one Vice Director relative to the current Bylaw 45.