

**SB**

**333**

**SFIN**

**FILE**



**FISCAL NOTE**

**STATE OF ALASKA**  
**1994 LEGISLATIVE SESSION**

**BILL NO. CS SB 333 (FIN)**

Revision Date: \_\_\_\_\_ Department Affected: Administration  
 Title: An Act relating to disclosure of close economic BRU: Personnel/OEEO  
associations..and to the prohibition against nepotism.... Component: Personnel/OEEO  
 Sponsor: Senate Rules by request of Leg. Budget & Audit Committee  
 Requestor: Senate Finance COMPONENT SERIAL NO. 56

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	5.6	0	0	0	0	0
TRAVEL	3.1					
CONTRACTUAL	15.6					
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>24.3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal						
1003 GF Match						
1004 GF	24.3					
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
<b>TOTAL</b>	<b>24.3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimate of any current year (FY 94) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS:

History tells us we can expect to receive a class action suit regarding the changes in the nepotism law from each of 11 bargaining units. The costs above are based on the assumption that 5 will go to hearing. Estimated total cost is \$24,300. See attached breakdown for detail.

Prepared by: Kevin C. Ritchie, Director  
 Division: Personnel/OEEO

Phone: 465-4429  
 Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usher  
 Agency: Administration

Date: 4/19/94

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Fiscal Note  
Calculation Sheet

CS SB 333 (FIN)

Personal Services

5 class action hearings @ rg 21C  
3 days preparation  
2 days hearing 5,544.00  

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5,544.00

Travel

Airfare Juneau-Anchorage-Juneau  
444.00 x 5 trips 2,220.00  
9 days per diem @ \$100 900.00  

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3,120.00

Contractual

5 days arbitrator @ \$3120 15,600.00  

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TOTAL \$ 24,264.00

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FISCAL NOTE

o. 2

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Bill Version: SB 333

(S) Publish Date: 3-18-94

Revision Date: March 10, 1994  
Title: "...disclosure of close economic associations by certain state employees...prohibition against nepotism..."  
Sponsor: Senate Rules Committee By Request  
Requestor: Senate State Affairs Committee

Department Affected: Department of Law  
BRU: Legal Services  
Component: Operations  
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)  
Please see the attached analysis.

*Richard I. Pegues*

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services Division

Phone: 465-3672  
Date: March 10, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General  
Agency: Department of Law

Date: March 10, 1994

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FISCAL NOTE

3  
 Bill Version: SB 333  
 (S) Publish Date: 3-18-94

STATE OF ALASKA  
 1994 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to disclosure..."  
 Sponsor: Senate Rules Committee  
 Requestor: LB&A Committee

Department Affected: Office of the Governor  
 BRU: All BRUs  
 Component: All Components  
 COMPONENT SERIAL NO. \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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FUND SOURCE	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

POSITIONS	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY94) cost: n/a

ANALYSIS: (Attach a separate page if necessary.)  
 No fiscal impact

Prepared by: Michael A. Nizich, Director  
 Division: Division of Administrative Services

Phone: 465-3976  
 Date: 3/8/94

Approved by Commissioner: Patrick P. Ryan, Chief of Staff  
 Agency: Office of the Governor

Date: 3/8/94

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. S 333

ANALYSIS CONTINUATION:

This bill amends the Alaska Executive Branch Ethics Act, under AS 39.52, to add a new section that provides that a public officer in the executive branch must disclose a close economic association involving a substantial financial matter with a person who is likely to be affected by an official action taken or withheld by the public officer. Current law, under AS 34.52.120(b)(4) prohibits a public officer from taking or withholding official action in order to affect a matter in which the public officer has a personal or financial interest. However, the existing law does not include the requirements for prior disclosure of close financial associations that are contained in the bill.

The bill also amends the state's statute prohibiting nepotism, AS 39.90.020, to clearly define the supervisory position of a public officer in relationship to family members and those living regularly in a person's household to whom the prohibition applies.

It is not anticipated that either of these provisions would result in a level of violations that would cause a fiscal impact for the Department of Law.

CS SENATE BILL NO. 333 (Fin)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Introduced: 2/22/94
Referred: STA, JUD

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to disclosure of close economic associations by certain state
2 employees and to the prohibition against nepotism in the executive branch of state
3 government; and providing for an effective date."

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

5 \* Section 1. AS 39.52 is amended by adding a new section to read:

6 Sec. 39.52.155. DISCLOSURE OF CERTAIN ASSOCIATIONS. (a) A
7 public officer shall disclose the formation or maintenance of a close economic
8 association involving a substantial financial matter with a person who is likely to be
9 affected by official action taken or withheld by the public officer.

10 (b) For purposes of this section, a person "is likely to be affected by official
11 action" of a public officer if the person is engaged in a closely regulated field or
12 activity in a region or location that the public officer is responsible for regulating or
13 if the person is directly involved in a matter that has come before the administrative
14 unit in which the public officer is employed. The (personnel board) shall adopt

Handwritten notes: #1, A. G. Walker, Adopted

1 regulations that identify closely regulated fields or activities and the activities that are  
2 considered closely regulated.

3 (c) A public officer shall, if it appears to be feasible and in the best interests  
4 of the state, refrain from taking or withholding official action in a matter that directly  
5 involves a person with whom the public officer has a close economic association. A  
6 public officer who takes or withholds official action in a matter that directly involves  
7 a person with whom the public officer has a close economic association shall  
8 immediately disclose the matter to the public officer's designated supervisor. The  
9 disclosure must describe the action taken or withheld, the association, and the way in  
10 which the official action or inaction could affect the other person, unless the effect is  
11 clear from other information in the disclosure.

12 (d) A designated supervisor who receives a disclosure under (c) of this section  
13 shall make a written determination whether the public officer's involvement could  
14 constitute a significant conflict of interest and, if so, whether it is feasible and in the  
15 best interest of the state to reassign duties to avoid the public officer's potential  
16 conflict of interest. The designated supervisor may direct the divestiture or removal  
17 by the officer of the financial interests that give rise to the potential conflict of interest  
18 if divestiture or removal is in the best interest of the state.

19 (e) A public officer shall file a disclosure required to be made because the  
20 person is engaged in a closely regulated field or activity with the public officer's  
21 designated supervisor within 10 working days after forming the association. A public  
22 officer shall file a disclosure required to be made because a person is directly involved  
23 in a matter that has come before the public officer's administrative unit with the public  
24 officer's designated supervisor within five working days after becoming aware that the  
25 person is directly involved in the matter. The disclosure is a public document. A  
26 disclosure under this section must be sufficiently detailed so that a reader of the  
27 disclosure can ascertain the nature of the association.

28 (f) In this section, "close economic association" means a financial relationship  
29 that exists between a public officer and some other person, including a relationship  
30 where the public officer serves as a consultant or advisor to, is a member or  
31 representative of, or has a financial interest in an association, partnership, business, or

1 corporation, or a financial transaction between a public officer and another person,  
2 including the purchase or sale of a significant personal or business asset.

3 \* Sec. 2. AS 39.90.020 is repealed and reenacted to read:

4 Sec. 39.90.020. NEPOTISM PROHIBITED. (a) It is unlawful for a public  
5 officer to hold a position as a supervisor over an immediate family member unless the  
6 family member holds a position that is subject to legislative confirmation.

7 (b) In this section,

8 (1) "immediate family member" means the spouse, parent, child,  
9 including a stepchild and an adopted child, sibling, and grandparent of a person and  
10 includes a regular member of the person's household;

11 (2) "position as a supervisor" includes a position as immediate  
12 supervisor or as a supervisor within the organizational structure, beginning with the  
13 immediate supervisor and extending through the executive head of the agency or  
14 department.

15 \* Sec. 3. This Act takes effect July 1, 1994.

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Bill Version: SB 333

(S) Publish Date: 3-18-94

Revision Date: \_\_\_\_\_  
Title: An Act relating to disclosure of close economic associations..and to the prohibition against nepotism....  
Sponsor: Senate Rules by request of Leg. Budget & Audit Committee  
Requestor: (S) Sta

Department Affected: Administration  
BRU: Personnel/OEEO  
Component: Personnel/OEEO

COMPONENT SERIAL NO 56

EXPENDITURES/REVENUES: (Thousands)

OPERATING	FY 95	FY 96	FY 97
PERSONAL	6.5	0	0
TRAVEL	3.7		
CONTRACTUAL	15.6		
SUPPLIES			
EQUIPMENT			
LAND &			
GRANTS, CLAIMS			
MISCELLANEOUS			
TOTAL OPERATING	25.8	0	0

4-19-94  
DOA to  
prepare a new  
fiscal note reduced  
by \$ 1.5.

-1.5  
Ritchie  
Dept  
will  
support  
new  
note

CAPITAL EXPENDITURES			
CHANGE IN REVENUES			

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal						
1003 GF Match						
1004 GF	25.8					
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	25.8	0	0	0	0	0

Estimate of any current year (FY 94) cost: \$ 0

POSITIONS:

FULL-TIME				
PART-TIME				
TEMPORARY				

ANALYSIS: History tells us we can expect to receive a class action suit regarding the changes in the nepotism law from each of 11 bargaining units. The costs above are based on the assumption that 5 will go to hearing. Estimated total cost is 24.3. Costs for the Personnel Board to develop regulations and have necessary public hearings are calculated at 1.5. See attached breakdown for detail.

Prepared by: Kevin C. Ritchie, Director  
Division: Personnel/OEEO

Phone: 465-4429  
Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usura  
Agency: Administration

Date: 3/14/94

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Fiscal Note  
Calculation Sheet

SB 333

Personal Services

5 class action hearings @ rg 21C  
3 days preparation  
2 days hearing 5,544.00

Personnel Board 1 hearing  
director & staff  
preparation time 1,000.00

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6,544.00

Travel

Airfare Juneau-Anchorage-Juneau  
444.00 x 6 trips 2,664.00

10 days per diem @ \$100 1,000.00

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3,664.00

Contractual

5 days arbitrator @ \$3120 15,600.00

TOTAL

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\$ 25,808.00

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300  
Juneau, AK 99811-3300  
(907) 465-3830  
FAX (907) 465-2347

### MEMORANDUM

TO: The Honorable Druc Pearce, Co-Chair  
The Honorable Steve Frank, Co-Chair  
Senate Finance Committee

FROM: Randy S. Welker *Randy*  
Legislative Auditor

DATE: April 15, 1994

RE: Senate Bill 333

This memo is provided to briefly summarize the contents of Senate Bill 333. The bill was introduced by the Legislative Budget and Audit Committee in response to an audit released last year.

The impetus for the suggested changes comes primarily from our audit of the Department of Public Safety's Division of Fish and Wildlife Protection (FWP). However, the problem identified is not limited to only FWP. Other public officials with discretionary authority could also be placed in a conflict of interest position.

Section 1 of the bill establishes a requirement in the Executive Branch Ethics Act for disclosure of the formation or maintenance of a close economic association similar to that contained in the Legislative Ethics Act.

The bill also requires a public officer, if it appears feasible and in the best interests of the State, to refrain from taking or withholding official action in a matter that directly involves a person with whom the public officer has a close economic association. However, if taking or withholding official action is not avoidable, the public officer shall immediately disclose the action to the public officer's designated supervisor.

The bill requires a supervisor, to whom a public officer has made a disclosure, to make a written determination of whether the officer's involvement could constitute a conflict of interest. The supervisor could reassign duties to avoid the conflict or the supervisor may direct the divestiture or removal by the officer of the financial interest giving rise to the conflict.

Section 2 of the bill is a change to the nepotism prohibition in statute. As the result of an isolated circumstance we found at the Alaska Psychiatric Institute, we are recommending that the statute be expanded. Currently the only relationship that is prohibited is that a person may not be employed in the same department or agency if they are the spouse of, or related by blood to, the executive head of a principal state department or agency.

We are recommending that the statute be expanded to include all supervisory/subordinate relationships (not just a relationship to the commissioner) and that the definition of relationship be expanded to include a regular member of the officer's household.

I have attached a copy of the nepotism recommendation excerpted from our audit of the Alaska Psychiatric Institute. I have also provided a copy of the entire audit report on the Division of Fish and Wildlife Protection.

I appreciate the Committee's consideration of this legislation. If enacted, this legislation will help improve public perception and clarify the legislature's disapproval of close economic associations by public officials who have discretion in taking or withholding official action that may affect the public officer or a person with whom the public officer has an economic association.

Attachment

appropriate managerial response to committee recommendations, the long-term effectiveness of the committee process as well as overall hospital operations, will suffer.

Recommendation No. 2

The legislature should consider expanding the nepotism statute to prohibit supervisory/subordinate relationships of immediate family members.

Alaska Statute (AS) 39.90.020 prohibits nepotism and reads as follows:

*It is unlawful for a person who is the spouse of or is related by blood within and including the second degree of kindred to the executive head of a principal state department or agency to be employed in that department or agency.*

First, we believe this statute should be expanded beyond just the executive head of principal state agencies to include all supervisory/subordinate relationships. Nepotism at any level can adversely impact the work environment.

Second, we believe this statute should address relationships beyond spousal and blood kindred to include immediate family members. In today's society, close relationships are more common in which an immediate family member is neither a spouse nor a blood relative. Nevertheless, any perceived favoritism shown this family member will likely affect employee morale.

This proposed expansion is not without statutory precedent. The legislature's Standards of Conduct, AS 24.60.090, state:

*An individual who is related to a legislative employee may not be employed in a position over which the employee has supervisory authority. In this subsection, 'an individual who is related to' means a member of the legislator's or legislative employee's immediate family or a person who is a legislator's or legislative employee's spousal equivalent . . . . [emphasis added]*

Further, the Executive Branch Ethics Act, AS 39.52.960, defines an immediate family member as:

*. . . a public officer's spouse, a relation by blood within and including the second degree of kindred, and a regular member of the officer's household. [emphasis added]*

In defining what constitutes improper influence over state grants and contracts, the Ethics Act states that an "immediate family member:"

*... may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract, lease, or loan if the public officer may take or withhold official action that affects the award, execution, or administration of the state grant contract, lease, or loan.*

We see no reason for the State to apply a different standard for improper influence over grants and contracts than for nepotism. "A regular member of the officer's household" should be a standard for both.

During our review of personnel actions, we identified a situation where a public officer approved the appointment and promotion of an employee, when the public officer and employee were cohabitants. There was evidence in the personnel file that the relationship met the definition of an immediate family member as defined above under AS 39.52.960. A perceived act of relational favoritism within an agency, whether factual or not, can adversely affect an agency's efficiency and effectiveness. As this incident was brought to our attention by a number of API employees during audit interviews, we believe that it created significant morale problems at the hospital.

We recommend the legislature expand the current language of AS 39.90.020 to include regular members of an officer's household as part of the nepotism prohibition. Further, we recommend that all supervisory/subordinate relationships be addressed.

### Recommendation No. 3

The Department of Health and Social Services (DHSS) should restructure the membership of the API governing body and consider establishing a board of governance.

API is required by JCAHO accreditation standards and state regulations to have a governing body with overall responsibility for the operations of the hospital. The governing body of API consists of the commissioner of DHSS, the director of the Division of Mental Health and Developmental Disabilities (DMHDD), and management of API; namely, the chief executive officer (CEO), the medical director, the hospital administrator, and the president of the medical staff.

The continuity within the governing body has been disrupted over the years because four of the six positions (DHSS commissioner, DMHDD director, API chief executive officer, and medical director) are political appointees and there has been a high turnover of management at API. In addition, the commissioner, division director, and medical director (prior to 1992 the medical director performed the CEO function) did not necessarily have experience in the management of a psychiatric hospital. Consequently, decisions may be deferred to a committee, delayed, or may not be the most efficient/effective option. Since 1988, there have been two commissioners, three division directors, two chief executive officers, five medical directors, five presidents of the medical staff, and three hospital administrators.

# Audit Report

DEPARTMENT OF PUBLIC SAFETY  
DIVISION OF FISH AND WILDLIFE  
PROTECTION, ENFORCEMENT ISSUES

March 23, 1993



Audit Control Number:

12-4431-93

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

# LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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## DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from each legislative chamber. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$5 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in either Anchorage or Juneau.

### BUDGET AND AUDIT COMMITTEE

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Senator Al Adams  
Senator Steve Frank  
Senator Steve Rieger  
Senator Bert Sharp  
Senator Jay Kerttula (alternate)

Representative Terry Martin, Vice Chair  
Representative John Davies  
Representative Mark Hanley  
Representative Ron Larson  
Representative Eileen MacLean  
Representative Sean Parnell (alternate)

### DIVISION OF LEGISLATIVE AUDIT

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Legislative Auditor  
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# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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March 23, 1993

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

### DEPARTMENT OF PUBLIC SAFETY DIVISION OF FISH AND WILDLIFE PROTECTION ENFORCEMENT ISSUES


March 23, 1993

Audit Control Number

12-4431-93

As stated in the Objectives, Scope, and Methodology section of this report, the audit reviewed various aspects of the Division of Fish and Wildlife Protection (FWP or the division). We determined whether FWP's policies and procedures related to targeting suspected fish and wildlife violators for covert operations were adequate, whether the division's effectiveness may be impacted by public perception of conflicts of interest, and whether the division's association with Fish & Wildlife Safeguard corporation is appropriate.

The audit was conducted in accordance with generally accepted government auditing standards. Audit scope and methodology are discussed in the Objectives, Scope, and Methodology section of this report. Audit results can be found in the Report Conclusions and Findings and Recommendations sections.

  
Randy S. Welker, CPA  
Legislative Auditor

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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we conducted an audit of various aspects of the Department of Public Safety (DPS or the department), Division of Fish and Wildlife Protection (FWP or the division). The objectives, scope, and methodology of our review were as follows.

### Objectives

The objectives of the review were to determine:

1. If FWP's policies and procedures related to targeting suspected fish and wildlife violators for covert operations are adequate.
2. If the division's effectiveness may be impaired due to public perception of conflicts of interest within FWP's ranks.
3. If FWP's relationship with Fish & Wildlife Safeguard corporation (Safeguard) is appropriate.

### Scope and Methodology

Our examination included reviewing applicable Alaska Statutes and Alaska Administrative Code regulations, the DPS Operating Procedures Manual and Officer's Information Manual, policy and procedure manuals from other fish and wildlife law enforcement organizations, departmental administrative investigations and disciplinary actions, selected police files, and criminal histories and cases from the Alaska Public Safety Information Network. Further, we examined databases of public information, documentation of tips received, ethics statutes of other states, organizations in other states similar to Safeguard, Safeguard's articles of incorporation and by-laws, and applicable court judgements.

Additionally, we conducted various interviews with management and staff of DPS, U.S. Fish and Wildlife Service, Department of Fish and Game, Department of Commerce and Economic Development, Court System, Department of Law, and Safeguard, as well as other interested parties.

## ORGANIZATION AND FUNCTION

### Division of Fish and Wildlife Protection

The Division of Fish and Wildlife Protection (FWP or the division) is within the Department of Public Safety (DPS or the department). FWP is charged with protecting the State's resources through enforcement of laws and regulations governing use of fish and game within Alaska and its surrounding waters. The division also participates in the overall mission of the department through enforcement of other criminal laws and participation in search and rescue operations.

Under the overall guidance of the commissioner and deputy commissioner of DPS, a director commands the division. FWP is organized into two sections, Operations and Enforcement. Operations consists of the aircraft, vessel, and administrative sections of the division, and also includes the liaison officer between FWP and Fish & Wildlife Safeguard corporation (Safeguard). Enforcement includes four detachments of enforcement personnel and the Statewide Investigations Section (SIS). While the detachments are primarily concerned with patrols and responding to complaints, SIS is responsible for managing all investigations involving commercial operators as well as any covert operations implemented by the division.

The division headquarters is located in Anchorage. Currently, the four detachments maintain thirty-three posts statewide staffed by Fish and Wildlife Troopers, Fish and Wildlife Enforcement Officers (FWEOs), Fish and Wildlife Aides, and support personnel. FWP Troopers and FWEOs are commissioned officers; while the former are charged with enforcing all laws of the State, the latter are restricted to fish and game statutes and regulations. FWP Aides are non-commissioned assistants to FWP Troopers and FWEOs who aid in the enforcement of fish and game laws and regulations. Support personnel consist of various technical and administrative staff. As of the date of this report, the division had 133 full-time and seasonal employees.

### Fish & Wildlife Safeguard corporation

Safeguard is a private, non-profit Alaskan corporation organized in 1984 with the stated purposes of:

1. Promoting statewide fish and wildlife protection for the State of Alaska by assisting law enforcement agencies in the apprehension of fish and wildlife violators.
2. Motivating members of the public to cooperate with fish and wildlife enforcement within the State of Alaska.
3. Providing rewards and awards for such cooperation.

## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we conducted an audit of various aspects of the Department of Public Safety (DPS or the department), Division of Fish and Wildlife Protection (FWP or the division). The objectives, scope, and methodology of our review were as follows.

### Objectives

The objectives of the review were to determine:

1. If FWP's policies and procedures related to targeting suspected fish and wildlife violators for covert operations are adequate.
2. If the division's effectiveness may be impaired due to public perception of conflicts of interest within FWP's ranks.
3. If FWP's relationship with Fish & Wildlife Safeguard corporation (Safeguard) is appropriate.

### Scope and Methodology

Our examination included reviewing applicable Alaska Statutes and Alaska Administrative Code regulations, the DPS Operating Procedures Manual and Officer's Information Manual, policy and procedure manuals from other fish and wildlife law enforcement organizations, departmental administrative investigations and disciplinary actions, selected police files, and criminal histories and cases from the Alaska Public Safety Information Network. Further, we examined databases of public information, documentation of tips received, ethics statutes of other states, organizations in other states similar to Safeguard, Safeguard's articles of incorporation and by-laws, and applicable court judgements.

Additionally, we conducted various interviews with management and staff of DPS, U.S. Fish and Wildlife Service, Department of Fish and Game, Department of Commerce and Economic Development, Court System, Department of Law, and Safeguard, as well as other interested parties.

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## ORGANIZATION AND FUNCTION

### Division of Fish and Wildlife Protection

The Division of Fish and Wildlife Protection (FWP or the division) is within the Department of Public Safety (DPS or the department). FWP is charged with protecting the State's resources through enforcement of laws and regulations governing use of fish and game within Alaska and its surrounding waters. The division also participates in the overall mission of the department through enforcement of other criminal laws and participation in search and rescue operations.

Under the overall guidance of the commissioner and deputy commissioner of DPS, a director commands the division. FWP is organized into two sections, Operations and Enforcement. Operations consists of the aircraft, vessel, and administrative sections of the division, and also includes the liaison officer between FWP and Fish & Wildlife Safeguard corporation (Safeguard). Enforcement includes four detachments of enforcement personnel and the Statewide Investigations Section (SIS). While the detachments are primarily concerned with patrols and responding to complaints, SIS is responsible for managing all investigations involving commercial operators as well as any covert operations implemented by the division.

The division headquarters is located in Anchorage. Currently, the four detachments maintain thirty-three posts statewide staffed by Fish and Wildlife Troopers, Fish and Wildlife Enforcement Officers (FWEOs), Fish and Wildlife Aides, and support personnel. FWP Troopers and FWEOs are commissioned officers; while the former are charged with enforcing all laws of the State, the latter are restricted to fish and game statutes and regulations. FWP Aides are non-commissioned assistants to FWP Troopers and FWEOs who aid in the enforcement of fish and game laws and regulations. Support personnel consist of various technical and administrative staff. As of the date of this report, the division had 133 full-time and seasonal employees.

### Fish & Wildlife Safeguard corporation

Safeguard is a private, non-profit Alaskan corporation organized in 1984 with the stated purposes of:

1. Promoting statewide fish and wildlife protection for the State of Alaska by assisting law enforcement agencies in the apprehension of fish and wildlife violators.
2. Motivating members of the public to cooperate with fish and wildlife enforcement within the State of Alaska.
3. Providing rewards and awards for such cooperation.

4. Creating a greater sense of awareness and concern about various fish and wildlife violations through a coordinated program with the news media, law enforcement agencies, and the general public.
5. Cooperating, whenever possible, with federal, state, other public agencies, and private corporations in carrying out programs consistent with the purpose for which Safeguard was created.

The corporation is composed of three regional boards of directors, each with membership of between seven and twenty individuals, and a statewide board made up of the chair and vice-chair of each regional board. The corporation employs an administrative assistant who is supervised by the statewide board; this individual's office is located within the DPS complex in Anchorage. An Enforcement Officer coordinates activities between Safeguard and FWP.

Since its inception, Safeguard has offered a 24-hour, seven days a week hotline that utilizes a direct line to the Anchorage FWP office for reporting fish and wildlife violations statewide. Callers may remain anonymous. Rewards are determined by the statewide board and purportedly paid if the information provided leads to a citation or an arrest; a conviction is not necessary. Rewards are said to range from \$100 to \$10,000.

## REPORT CONCLUSIONS

As stated in the Objectives, Scope, and Methodology section of the report, this audit reviewed the Division of Fish and Wildlife Protection's (FWP or the division) handling of issues related to targeting of suspected fish and wildlife violators for covert operations, public perception of conflicts of interest within division ranks, and the relationship between FWP and Fish & Wildlife Safeguard corporation (Safeguard). Our conclusions are as follows.

### Targeting

Covert fish and wildlife law enforcement operations are defined by the division as any investigation that requires FWP investigators or their agents to assume a fictitious identity or rely upon the suspect's belief that the investigators or their agents are other than law enforcement officers. Departmental policies and procedures regarding targeting of suspected fish and wildlife violators are found in the Department of Public Safety's (DPS) Officer's Information Manual (OIM) for FWP and in various other directives.

In response to a prior Division of Legislative Audit recommendation, the OIM was amended in 1992 to document the basis and procedures involved in developing undercover law enforcement actions on resource violators. This amendment places responsibility for supervising and conducting covert law enforcement activities within the division on the Statewide Investigations Section. It further provides the general criteria upon which a covert operation may be initiated; the permissive "may" rather than the mandatory "shall" allows for the division to utilize considerable discretion in determining targets for investigation.

However, the policy does not require that the discretionary criteria or resulting evaluations be documented; the selection process that must occur to initiate costly covert operations with finite resources is not supported in a manner that lends itself to review. FWP personnel state that, on a regular basis, an informal analysis is performed of the outstanding intelligence information received from a myriad of sources. The alleged violators are purportedly ranked by such factors as number of complaints received, chance of conviction, and the gravity of the resource damage. For the most onerous violators, FWP estimates the cost to initiate and complete a covert operation on each of them. From this listing, management approves an operation. FWP management and staff state that there are insufficient funds available to target all alleged violators who, in their mind, deserve it, so operations are selected that have the greatest chance for conviction.

However, as noted above and more fully discussed in Recommendation No. 2, no documentation of this decision-making process is available for review. As well as depriving management of a valuable tool in monitoring selection criteria, this lack of supporting evidence documenting the selection of who to target could leave the division open to charges of favoritism and bias. If an individual targeted for an investigation is convicted, FWP rightfully feels justified; however, this does not provide an answer to the question of what

other possible targets were not selected and the reasons they were not selected. Without adequate documentation, this is a question that cannot be answered. As discussed below, positive public perception is an important factor in maintaining an effective enforcement organization; without adequate documentation and support for important decisions such as these, this perception can only suffer.

In addition to the targeting sections of departmental manuals related to covert actions, FWP also maintains other procedures and directives that relate to these types of operations. However, as we discuss in Recommendation No. 3, this documentation appears outdated and incomplete. No attempt at compiling an updated, cohesive, and comprehensive policy and procedures manual related to covert operations has been made. In the highly-sensitive arena of undercover operations, such a manual is crucial. Approved policies and procedures provide for a consistent method of accomplishing a goal and help diminish variability between different operations.

FWP has acknowledged that there is a great deal of latitude available to them in deciding who to target for undercover activities and how to conduct undercover activities, much of it based upon professional judgement and experience in law enforcement. We agree with that. However, while there is no substitute for professional judgement and experience, neither is there a substitute for adequate documentation. FWP should create and maintain its support for targeting decisions and improve its documentation regarding operational policies and procedures for covert operations.

### Public Perception

Alaska Statute 39.52.010, the Executive Branch Ethics Act, declares that it is a policy of the State that high moral and ethical standards among public officers in the executive branch are essential. This is especially true for law enforcement. To maximize their effectiveness, agencies charged with enforcing laws and regulations and protecting life and resources must be considered above reproach. Perceptions by others are critical. An agency's reputation, deserved or not, will impact every aspect of its ability to perform its tasks or accomplish its mission. As such, great care must be taken that the spirit and intent, in addition to the letter, of laws, regulations, and policies that require or promote ethical behavior be met in a clear and convincing manner. Actual conflicts of interest, or even perceived conflicts of interest, serve only to impair effectiveness.

The effectiveness of FWP could be impaired by the public's perception of existence of conflicts of interest within the division. Instances noted during our review, enumerated below, could easily cause a lack of faith regarding whether FWP's actions are perceived as being fair and unbiased or whether the division is managed in the most principled manner.

1. Two managers of the division, one current and one former, have fish and wildlife violations. Prior to being hired into the division, the former manager plead guilty to both the taking of a moose during a closed season and to making a false statement regarding his Alaskan residency to obtain a resident hunting license.

The current manager, while employed by the department in a different capacity, plead no contest to a charge of commercial fishing in closed waters.

2. The fish and wildlife violation history of the managers discussed above is absent from the Alaska Public Safety Information Network (APSIN). APSIN is maintained by DPS and is used by law enforcement agencies, the courts, and others to provide criminal history information. The system is used during the apprehension process, the prosecution phase, and the sentencing of violators and is considered critical to the overall process. The violation by the former manager occurred in 1965, approximately nineteen years prior to APSIN coming on-line; however, other violations from this time frame are captured within the system. In the current manager's case, a copy of the judgement was received by DPS after the system became operational. No explanation has been provided by the department as to why no record exists in APSIN. However, other inaccuracies exist within this system; see Recommendation No. 4 regarding internal controls over APSIN.
3. The case file for a second commercial fishing charge against the current manager cannot be located. Although APSIN shows this individual as the defendant in the case, DPS states this is an error within APSIN and the case disposition should read that it was closed after an investigation. However, no original documentation is available to support this assertion as the case file could not be located by DPS personnel.
4. A former commander of the Statewide Investigations Section, the group responsible for both conducting investigations into commercial violations such as big game guiding and all covert operations, was himself an assistant guide. This officer was in a position to influence and use his discretion over who would or would not be subject to an undercover operation during the same time period he was associated with certain guides.
5. An FWP Trooper, an FWEO, and a Fish and Wildlife Aide each were in violation of AS 08.51.393. This statute, effective May 1992, prohibits certain law enforcement officers from holding various guide-outfitter licenses. The FWP individuals referred to above each held assistant guide-outfitter licenses active as of December 1992. While FWP management provided notice to its staff of this statutory amendment, no follow-up was performed to ensure compliance.
6. Three FWP employees or their spouses and a manager of the division hold or own, or have held or owned while employed by DPS, commercial fishing permits or commercial fishing vessels.
7. An FWP Trooper was reprimanded by management for discussing privileged information at a private gathering that included individuals outside of DPS, including an assistant guide. The department determined that the Trooper discussed a case that was still open; further, the detail of the discussion had "the

potential to substantially impair FWP's ability to catch and prosecute game violators."

8. A review of public information databases revealed numerous other situations where perception of a conflict of interest could exist. A significant number of FWP enforcement employees had financial transactions or relationships with individuals they are charged with monitoring, including registered big game guides-outfitters and individuals involved in commercial fishing. The associations that we researched were primarily related to property transactions. The relationships may not have actually affected the enforcement officer's actions, but they can provide the appearance of a conflict of interest. While this information is not conclusive, it does illustrate an area that has the possibility to lead to negative public perception that could impair the division's ability to perform its mission.

The problem discussed above is not limited to FWP. As we more fully examine in Recommendation No. 1, the current statutory requirements regarding disclosure of possible conflicts of interest for public employees are insufficient; potentially reputation-damaging relationships and associations are ignored. Disclosure of any such relationships and associations, economic or otherwise, between public employees and individuals or groups that a public agency has discretionary dealings with should be required. In all areas, including FWP's, this could greatly alleviate the concern that certain individuals receive preferential treatment.

As noted above, positive public perception is crucial to maximize the effectiveness and efficiency of law enforcement agencies. FWP has not, at times, been managed in a manner that would foster this type of positive opinion.

#### Fish & Wildlife Safeguard corporation (Safeguard)

Safeguard currently enjoys a unique relationship with the State of Alaska. The corporation is a private non-profit entity, supposedly separate and distinct from state government, yet it receives considerable support, both financially and otherwise, from various state agencies, including FWP.

The division provides both space and related utilities at Anchorage DPS headquarters for the benefit of Safeguard without reimbursement from the corporation. FWP also provides an FWEO as a liaison officer to act as the interface between the division and Safeguard; approximately one-quarter of this individual's time is estimated to be spent on Safeguard activities. The division's officers are often used in the delivery of Safeguard reward payments to informants. The Department of Fish and Game (DFG), pursuant to AS 16.05.343, contracts with Safeguard to conduct a raffle for a bison harvest permit, with the corporation retaining a percentage of the net proceeds plus expenses. DFG also provides free advertising to Safeguard within its bi-monthly magazine and on hunting and fishing licenses.

The Court System and Department of Law (DOLaw), in conjunction with FWP, also directly support Safeguard. We noted numerous court judgements ordering defendants convicted of fish and wildlife violations to pay a "donation" to Safeguard instead of a fine to the State; even more common were offers extended to individuals whose equipment had been ordered forfeited to the State. Violators were allowed to re-acquire these items by donating the approximate fair market value of the specific article or articles to Safeguard. We also noted a deferred prosecution agreement between DOLaw and a defendant in a major fishing violation case. The settlement required the defendant to, among other things, donate \$10,000 to Safeguard. FWP has represented that, in some cases, the courts offer defendants the option of paying a fine to the State or making a donation to Safeguard. However, as the donation to the non-profit corporation may be tax-deductible and the fine is not, the incentive to violators appears to be toward donating to Safeguard.

We believe that this diversion of monies from the state General Fund to a private corporation may violate the state constitution. It further erodes the legislature's most significant power, that of appropriation. As we further discuss in Recommendation No. 5, executive or judicial branch agencies appropriating monies that should fall to the General Fund may violate the most basic separation of powers doctrine. Court decisions have held that all appropriations must be made by legislative act; this tenet has been breached. While the amounts involved may not be material to the State, we believe this to be a dangerous precedent to set.

Further sullyng the matter is Safeguard's refusal to allow the State access to its financial records. Relying on the private non-profit status of their organization, the corporation refused Legislative Audit requests to review its fiscal matters, regardless of the level of state support received. As such, we were unable to ascertain the amount of state fine and forfeiture monies received and how these monies were utilized by the corporation. Information such as levels of private donations in relation to public monies, rewards paid out, and board expenses was not disclosed by the corporation and could not be ascertained by other audit procedures.

We also attempted to review how the information received by Safeguard about fish and wildlife violations was used. However, due to weak internal controls over the system, no determination could be made as to the disposition of many of the tips received and the cases generated. Not all pre-numbered case information sheets could be located, case sheets purported to be voided often were not retained, information was recorded on Safeguard's computerized database with no supporting documentation available for review, and the database was not updated in a timely fashion nor could it be reconciled to APSIN.

For a program receiving considerable state support, we consider this to be unacceptable. Safeguard currently does not have to be accountable for its actions to any organization; no checks or balances are inherent in the system. The internal control requirements placed upon state agencies and organizations that receive state support are thought by Safeguard not to apply to its operations. As such, the purported primary beneficiary of Safeguard's efforts, FWP, currently has no means of ensuring itself of the quality or validity of the program. As further discussed in Recommendation No. 6, if DPS is to continue its association, certain modifications should be made.

Controls should be instituted to ensure that there would be performance measurement criteria available for review, including a tie between Safeguard's database of information and DPS's APSIN that could allow evaluation of the disposition of information received over the Safeguard hotline. Further, FWP employees would no longer be used to deliver reward payments to anonymous informants; state employees should not be required to participate in an activity that, as designed, has inadequate cash controls. While it is possible to implement appropriate controls without jeopardizing the anonymity of informants, we understand that this has not been accomplished. Additionally, such requirements as corporation financial statements certified by the board of directors being provided periodically and the elimination of fish and wildlife violators from the regional Safeguard boards would encourage confidence in the program.

Failing this, in our opinion, the only viable option is for DPS to disassociate itself from Safeguard. As we discussed above, public perception is critical to an organization such as FWP. Without adequate controls in place, Safeguard may not appear positively in the public's view. This impacts FWP through the close association between the two organizations. We believe that a program such as Safeguard has merit and can be of benefit to law enforcement; however, adequate accountability must be established for this to occur.

### Summary

Law enforcement is an area in which both sound professional judgement and discretion play vital roles. Both of these attributes of a successful program are needed in making decisions regarding targeting of suspected violators in light of limited resources, conducting operations against suspected violators, managing conflict-of-interest situations, and interfacing with other organizations such as Safeguard. However, as we note throughout this section, judgement and discretion must be tempered with the accountability and documentation that are required for actions within the public arena. FWP, in its internal dealings and its relationship with Safeguard, has not always met these requirements in a successful manner. Our concerns are heightened when one considers that FWP, a relatively small division, is charged with enforcing fish and game laws and regulations over the entire State and its adjoining waters; nothing short of prudent management that inspires public confidence will suffice.

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The Executive Branch Ethics Act should be expanded to more fully address disclosure of possible conflicts of interest.

Conflict of interest can be described as the division of loyalty that exists when a person has a duty to perform which may impact his or her financial or personal interests. It may manifest itself either in fact or in appearance with the same result: the public confidence that is critical to an effective and efficient government is crippled. Public perception plays a key role in maintaining this confidence. A perceived lack of fairness or impartiality in a public agency's dealings can adversely affect the agency's effectiveness, whether factual or not. With this in mind, laws, regulations, and policies should be enacted that will provide guidance so that potential conflicts of interest, both in fact and in appearance, are minimized.

The Alaska Executive Branch Ethics Act, AS 39.52, provides a code of ethics for public officers and employees of the executive branch of state government. Article 2 of this act discusses prohibitions and restrictions upon, and related disclosures of, such items as improper use of official position, gifts, information, or influence; it further delineates the requirements for concurrent employment outside of state government and employment after leaving state government. Subsequent articles address other required disclosures, procedures, and enforcement related to the ethics codification.

Notably absent from AS 39.52, however, is language specifically discussing an area that has great potential for conflict of interest, that of close association, economic or otherwise, between public employees and groups or individuals that a public agency has discretionary dealings with. A conflict of interest, in either fact or appearance, can exist in such areas as personal or business relationships or associations. Hypothetical examples of these types of affiliations could include:

- Department of Revenue, Oil and Gas - Audit Division revenue auditors having a financial interest in an auditee through ownership of debt or equity securities;
- Department of Administration, Division of General Services and Supply procurement officers holding investments in companies receiving state contracts, even if competitively bid;
- Department of Transportation and Public Facilities, Regional Design and Construction staff exercising eminent domain proceedings against individuals with whom they are involved either socially or in a business relationship; or
- Department of Commerce and Economic Development, Division of Banking, Securities, and Corporations bank examiners reviewing institutions where both

they and management are involved in either a social or business association outside of the organization.

Additionally, as noted in the Report Conclusions section, we identified numerous actual financial transactions and associations between the Department of Public Safety (DPS), Division of Fish and Wildlife Protection (FWP or the division), enforcement employees and certain groups of individuals they are charged with enforcing the law against, specifically registered big game guides-outfitters and individuals involved in commercial fishing.

When affiliations similar to the above occur, they give the appearance of a conflict of interest; yet the employee's actions may not actually be affected by the apparent conflict. However, to avoid even the appearance of impropriety or partiality, disclosure of these types of relationships or associations should be required of public employees by statute. This is necessary to ensure the public's confidence in state government and is not without statutory precedent. The legislative branch's Standards of Conduct, AS 24.60, requires disclosure of close economic associations involving a substantial financial matter between certain individuals and groups.

We recommend that the Executive Branch Ethics Act be augmented to include conflict-of-interest disclosure requirements related to close associations, economic or otherwise, between public employees and individuals or groups that a public agency has discretionary dealings with. The disclosures should be required periodically and should be reviewed by the employee's designated supervisor, who would decide if employee reassignment or divestiture was necessary.

#### Recommendation No. 2

FWP should create and retain sufficient documentation to clearly support decisions related to targeting suspected fish and wildlife violators for covert operations.

Properly executed undercover operations are a highly effective method of apprehending law-breakers. Perhaps more important than the actual apprehension is the deterrent effect such operations have on potential violators; this appears to be true in the enforcement of fish and game laws and regulations.

As a result of this, covert operations are utilized by FWP in its enforcement of laws related to both big game guiding and commercial fishing. However, as in most governmental functions, the demand exceeds the available resources. Hence, choices must be made as to what individual or group will be selected for an enforcement action.

FWP's policies and procedures provide very general criteria upon which a covert operation may be initiated. The division has verbally represented that suspected violators that fit this criteria are periodically listed and reviewed by investigators and management. The purpose of this review is to select a target for a covert operation. FWP purportedly takes into account such factors as the number of complaints received, chance of conviction, the gravity of the resource damage caused by the suspected violator, and the anticipated cost of a

successful operation in its selection process. Professional judgement and discretion each play large roles in making the final selection.

However, none of this laborious decision-making effort is documented by FWP. The division appears to be of the opinion that if a targeted individual is arrested, tried, and convicted, the selection was justified. While this may be true, it ignores the question of who was not selected, and why. Currently, there is no means available for either the division or any outside source to answer that question due to the lack of supporting documentation of targeting decisions. As discussed in the Report Conclusions section and in Recommendation No. 1 of this section, the appearance of conflicts of interest can lead to charges of favoritism and bias. Without well-supported findings and criteria related to targeting decisions, FWP has little to offer in its defense against those criticisms.

As such, we recommend that FWP improve its procedures for targeting suspected offenders for covert operations. Specifically, adequate supporting documentation of why an individual or group was selected, and therefore why other individuals or groups were not, should be created and retained. As well as providing management with a valuable tool in administering the program consistently, this will furnish the division with tools to combat any charges of partiality.

### Recommendation No. 3

FWP should make it a priority to create and maintain an updated, cohesive, and comprehensive covert operations policy manual.

Law enforcement agencies, by their nature, are highly structured paramilitary entities. Policies, procedures, directives, and standards are established for even the seemingly minutest detail of routine and non-routine operations and applications. As evidenced by a review of DPS's Operating Procedures Manual and Officer's Information Manual (OIM), FWP is no exception to this. However, the division's documentation of the policies and procedures related to its covert operations are lacking in both organization and substance.

All FWP covert operations are supervised and conducted by the Statewide Investigations Section (SIS), based in Anchorage. Policies pertaining to SIS are contained primarily within the OIM and a series of procedures and directives. These documents contain such potentially useful items as the basis and procedures for initiating covert operations (see Recommendation No. 2 above), responsibilities of SIS, organization of SIS, checklists for special operations, debriefing information, communications protocol, and financial procedures for funds utilized in a covert operation.

However, there are also a number of outdated and unorganized sections within the manuals. The Special Operation Procedures Manual does not appear to have been updated since 1987. Obsolete directives and organization charts and non-policy related notes from meetings permeate the text. In general, the collective information within both manuals that relates to SIS lacks the cohesive, comprehensive quality that is so necessary for a document of this

importance. The data available regarding covert operation policy appears to have been assembled in a piece-meal fashion, with little regard for purging outdated material or documenting basic attributes of a successful program.

To gain a basis for comparison, we reviewed two additional governmental fish and wildlife law enforcement organizations' policies and procedures manuals related to covert operations. In stark contrast to FWP's efforts, both manuals are cohesive documents that comprehensively cover a much greater spectrum of aspects of covert operations.

Adequately documented, updated, and completed policies and procedures are necessary in many circumstances. However, in very sensitive matters such as covert law enforcement operations, these policies are critical. Adequate policies and procedures provide for an approved, consistent method of accomplishing a goal and help to remove unnecessary variability. Further, these types of policies and procedures provide a means to make the best use of limited resources. Consistency of application can be adversely affected if policies and procedures are not documented. This can cause a less efficient and effective enforcement effort.

As such, we recommend that FWP create and maintain an updated, cohesive, and comprehensive covert operations policy manual. The division could utilize ideas from manuals from similar organizations as a base and alter them based upon the unique challenges and requirements presented by enforcement efforts in Alaska. We further recommend that this important project be given high priority.

#### Recommendation No. 4

DPS should improve internal controls related to the Alaska Public Safety Information Network (APSIN) to ensure completeness and accuracy of criminal justice information within the system.

#### Background

APSIN is an on-line real-time database operated and maintained by DPS. The system is dedicated to providing information to all law enforcement agencies within Alaska on such items as licensed drivers, registered vehicles, criminal histories, wanted persons, and stolen property. Additionally, for DPS users, APSIN tracks case information, evidence, payroll, and officer activity data.

APSIN runs on a mainframe computer installed at the Anchorage Data Center. The system came on-line in 1984.

### Prior Finding

A 1986 Division of Legislative Audit report on Alaska's criminal justice information systems documented numerous weaknesses in quality and completeness of data housed within APSIN. The following types of errors were disclosed.

- a. Individuals with known criminal histories were not found.
- b. Criminal conviction histories were found to be incomplete.
- c. Incorrect criminal information was found due to the entering of the wrong charge.
- d. In the case of a charge reduction, both the original and the reduced charge appeared as convictions.

Additionally, the majority of APSIN users surveyed expressed a general lack of confidence in the system to provide complete and accurate criminal history information.

### Legislative Audit's Current Position

In our cursory review of APSIN for this audit, we noted many of the same weaknesses discussed above.

As discussed in the Report Conclusions section, two managers of the division, one current and one former, have fish and wildlife violations. However, neither of these individuals' records on APSIN show any evidence of these infractions. While the former manager's conviction occurred in 1965, other violation history from that time frame is captured within the system. The currently employed manager's violation took place in 1984, approximately two months after the department converted to APSIN. DPS received a copy of the relevant judgement in a timely manner; the department was unable to justify why this individual's record has been excluded.

A different charge appeared in APSIN with the current manager listed as a defendant in a separate commercial fishing case. DPS states that this is an error; the case disposition should read that it was closed after an investigation. No original documentation is available to support either scenario, as the department is unable to locate the applicable case file.

A Fish and Wildlife Enforcement Officer's conviction for misdemeanor assault is incorrectly displayed as a felony within APSIN, as is an FWP Trooper's misdemeanor conviction for possession of marijuana.

Additionally, no mechanism is in place that allows for an audit trail of additions, deletions, or any other modifications to an individual's criminal history to be reviewed. As such, there is no assurance that all criminal histories are included in APSIN.

APSIN is utilized by law enforcement agencies, the courts, and others to provide crucial criminal history information that is used throughout the enforcement and judicial processes. As such, it is imperative that data maintained within the system is complete, accurate, and subject to adequate controls over unauthorized or inappropriate modifications. We have not found this to be the case. DPS should implement controls to ensure that data within APSIN is complete and accurate. Further, to address public perception concerns discussed in the Report Conclusions section, the department should review the data in APSIN that relates to DPS employees for completeness and accuracy. Implementation of these recommendations will serve to increase user confidence in this vital system.

#### Recommendation No. 5

The Court System and Department of Law (DOLaw) should cease the current practice of diverting state fine and forfeiture monies to Fish & Wildlife Safeguard corporation (Safeguard).

A portion of the funding of the non-profit Safeguard is derived from court-awarded donations in lieu of fines and/or forfeitures in fish and wildlife violation cases. During the course of our review, we noted instances where various state district and superior courts ordered convicted violators to donate monies to Safeguard instead of fines to the General Fund. We also encountered cases where the defendant was permitted to re-acquire items ordered forfeited to the State by making a donation to Safeguard approximately equal to the items' fair market value. Further, we reviewed a deferred prosecution settlement agreed to by DOLaw in which a requirement was that the defendant acquiesce to pay a \$10,000 donation to Safeguard. The courts have been permitting these types of arrangements for a number of years. The judiciary appears to be encouraged by both DOLaw and FWP. A district attorney stated that he often advocates such types of penalties in sentencing recommendations; FWP's Safeguard liaison FWEO has sent letters to judges soliciting such support.

The total amounts involved are not readily identifiable from the Court System's records and Safeguard declined to allow us access to their accounting records.

We believe that this diversion of monies from the General Fund to a private corporation may violate the state constitution by effectively bypassing the legislature's appropriation power. The Court System has represented to us that the authority to issue these types of sentences is based upon AS 12.55.080 which, in part, states that a court may ". . . place [a] defendant on probation . . . upon the terms and conditions the court considers best." However, we do not interpret this to mean a court may direct fines and forfeitures from the General Fund to a non-profit organization. It should be the legislature's decision whether to fund or not fund an organization such as Safeguard with General Fund monies.

We do acknowledge that the courts have significant judicial discretion in the determination of sentences and establishing terms of probation. We further note that this concern is likely not limited to the circumstances described in this report. Therefore, we recommend that the

Court System and DOLaw reconsider the current practice. If Safeguard is to receive General Fund monies, it should be appropriated by the legislature in accordance with state law.

Recommendation No. 6

FWP should consider continuing its association with Safeguard only if certain conditions are met.

Safeguard is an enigma. On one hand, the organization receives considerable state support; examples include free space, free related utilities, free program advertising, a liaison state enforcement officer, a contract for a state raffle, court-ordered donations (see Recommendation No. 5), and use of state employees in delivering reward monies. However, the corporation falls back onto its private, non-profit corporation status when accountability concerns are raised: requests for financial information or access to files directly related to the scope of this audit were refused by Safeguard.

We consider this to be unacceptable. FWP and other state agencies provide significant support to Safeguard; prudent management by these agencies would dictate that notable accountability concerns be addressed. Currently, the corporation's dealings and operations are not subject to any public oversight; no measurement criteria is available to adequately appraise successes or failures. Information regarding financial decisions about reward payments, the reasonableness of corporation expenses, or the uses of court-ordered donations have not been made available for review by either FWP or Legislative Audit. Similarly, no oversight over suitability of regional or statewide board members is provided; hence, fish and wildlife violators are involved in decision-making. There are insufficient controls over information received over the hotline and its subsequent disposition; no documentation is available to prove all tips are appropriately handled.

We cannot conclude that Safeguard is not functioning in a responsible manner just as we cannot conclude that it is; the information is either not available or Safeguard is simply unwilling to provide it. Regardless, FWP should not continue to associate with and support such an organization without significant changes being made. Such conditions of continuing the relationship should include the instituting of controls to adequately assess performance, including a tie between Safeguard's database of information and APSIN to allow for the evaluation of the disposition of information received over the hotline. Additionally, FWP officers should not be utilized to deliver cash reward payments to anonymous informants without adequate cash controls; it is possible to implement adequate controls without jeopardizing confidentiality requirements. On a periodic basis, financial statements certified by the boards of directors should be made available for review to determine the reasonableness of corporation expenses. Fish and wildlife violators should be removed from the corporation's regional boards of directors and a policy prohibiting such individuals from being a member of any of the boards should be enacted.

The alternative to implementing these changes is for the State to totally disassociate itself from Safeguard. While there may be potential benefits from such an association, these could

be more than offset by an organization that refuses to be accountable. As we discussed in the Report Conclusions section, public perception of Safeguard may impact FWP's effectiveness.

As such, we recommend that FWP continue its association with Safeguard if, and only if, the above conditions providing oversight of the program are met.

be more than offset by an organization that refuses to be accountable. As we discussed in the Report Conclusions section, public perception of Safeguard may impact FWP's effectiveness.

As such, we recommend that FWP continue its association with Safeguard if, and only if, the above conditions providing oversight of the program are met.

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX 111200  
JUNEAU, ALASKA 99811-1200  
PHONE: (907) 465-4322  
FAX: (907) 465-4362

July 2, 1993

Mr. Randy S. Welker  
Legislative Auditor  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, AK 99811-3300

RECEIVED  
JUL 2 1 1993

LEGISLATIVE AUDIT

Dear Mr. Welker:

Re: Audit No. 12-443-93

I am writing in response to your letter and preliminary audit report of March 23, 1993. Thank you for the opportunity to review and comment on the preliminary report and for the courtesy in allowing us an extension of time. My comments are as follows:

Recommendation #1

"The Executive Branch Ethics Act should be expanded to more fully address disclosure of possible conflict of interest."

We are unaware of the numerous actual financial transactions and associations between FWP enforcement employees and certain groups of individuals they are charged with enforcing the law against, and as such cannot comment specifically on them. Short of obvious violations of the Ethics Act, it would be very difficult to learn of these transactions, let alone prohibit them. As I am sure you are aware, the vast majority of Alaskans participate in outdoor activities to include hunting and fishing. To regulate the members of Fish and Wildlife Protection (FWP) so stringently as to prohibit any close associations would be most difficult. However, we agree that amending the Executive Branch Ethics Act, as you suggest, would be an excellent review tool for the Department of Public Safety, and one that we would certainly comply with.

Recommendation #2

"FWP should create and retain sufficient documentation to clearly support decisions related to targeting suspected fish and wildlife violators for covert operations."

Mr. Randy Welker  
July 2, 1993  
Page 2

I agree with your recommendation and toward that end the following things are occurring. In conjunction with the Alaska State Troopers (AST), FWP will become part of a statewide intelligence gathering network and repository. This is being made possible by a \$170,000 federal grant and is expected to be on-line this year. In the interim, all documentation is now being retained in hard copy on standard department forms.

Through input into this soon-to-be network, there will be sufficient documentation to sustain why one person or operation was targeted and another was not. Still and always lacking from a hard data base will be that portion of the decision-making process known as professional judgement and experience. The Division is overtasked in the area of covert operations and, until such time as sufficient manpower is available, will be forced to prioritize covert operations.

#### Recommendation #3

"FWP should make it a priority to create and maintain an updated, cohesive, and comprehensive covert operations policy manual."

I agree and we are doing this now. A complete update and rewrite is ongoing. In addition, in August the supervisor of the covert unit will be attending a seminar composed of covert managers from the western states. He has been instructed to glean as much information as possible from those states about their policy manuals and provide me with a draft for review. I expect that review by October of 1993.

#### Recommendation #4

"The Department of Public Safety (DPS) should improve internal controls related to the Alaska Public Safety Information Network (APSIN) to ensure completeness and accuracy of criminal justice information within the system."

The department agrees with the specific data errors in the two instances noted by the auditor which are being researched and corrected. A second part of this recommendation would have the department review existing employees' records for criminal history accuracy. The question is, how would one accomplish that? The only data DPS might have on an employee is if it is already recorded in APSIN, which if serious enough, often precludes hiring of that individual. DPS will review the feasibility and effectiveness of such a review.

Mr. Randy Welker  
July 2, 1993  
Page 3

**NOTE:** There appears to be some confusion regarding the functions several subsystems of APSIN are used for. This note is intended to clarify these functions:

The trooper case report system is internal to the Department of Public Safety. Information contained in this system is not used to determine a person's criminal history.

To date, fish and wildlife violations (misdemeanors) have been recorded in a separate citation subsystem apart from the regular criminal history database. The department is reviewing the appropriateness of merging fish and wildlife violations into the criminal history system so the entire record is visible in one place.

The criminal history record system is the only system routinely used by the courts and prosecutors for determining previous criminal histories and by employers for screening applicants. Based on the contents of records in this system, repeat offenders would receive more severe sentencing, employment might be denied, etc. Therefore, due to the official use of this APSIN subsystem, efforts to ensure completeness and accuracy must be focused.

The auditor makes a broad, system-wide recommendation. Accordingly, a more complete response is required.

DPS concurs with the general thrust of this recommendation with the caveat that it is not possible for DPS to implement these changes by itself. The continuing support and cooperation of the criminal justice community and the Legislature is essential if substantive improvements are to be achieved. Funding and legislation are issues that must be factored into a permanent solution.

APSIN's Criminal History Record Information (CHRI) database is a central repository of information contributed by police, prosecutors, courts, and Corrections. Each CHRI entry contributed by each of these agencies is dependent upon the procedures, source documentation, and quality control of records and information provided to DPS by each of these agencies. There is nowhere else to go to obtain CHRI other than APSIN. The courts depend upon prosecutors to obtain previous criminal history information; prosecutors depend upon APSIN to provide that information.

CHRI is used to assist in investigations, in making sentencing, probation, and release decisions, and to screen various applicants for employment who intend to work with children and in

Mr. Randy Welker  
July 2, 1993  
Page 4

other sensitive areas. To the extent CHRI entries are incomplete, inaccurate, or unreadable:

Offenders will not be properly identified for prosecution due to missing arrest information and fingerprints.

Repeat offenders will receive lighter sentences due to missing arrest information used at sentencing.

Dangerous persons who should not be released back into the public, may be.

Persons who should not be permitted contact with children or dependent adults (potential teachers, school bus drivers, foster parents, child care) will be permitted access via employment, as disqualifying arrest information will not be complete.

DPS has contracted two significant reviews on how to approach CHRI improvement and has drafted legislation for introduction that would define the responsibilities of contributors of CHRI to APSIN, provide guidance regarding the use of this information, and provide for periodic auditing of the database for compliance, quality, and completeness. A recent audit of APSIN's CHRI database was conducted as part of a federal grant received from the U.S. Department of Justice, Bureau of Justice Statistics. Alaska's Criminal Justice Work Group has adopted the audit report (conducted by SEARCH) and supports the draft legislation as a foundation for improving Alaska's CHRI database. This information was made available to the auditor.

APSIN's CHRI database is essential for making a number of significant criminal justice and employment decisions. The consequences of incomplete or inaccurate data are substantial. The standard that SEARCH recommends, as do other states (including Alaska's DPS), is that all arrest entries and court actions which result in a conviction be supported by fingerprints as the underlying source documentation that positively identifies the CHRI entry with the person to which it belongs. Arrest and charge linkage numbers must continue to be used and implemented to permit tracking of criminal processing across all criminal justice agency systems and to permit electronic interfaces between these systems to efficiently and accurately record these entries in APSIN.

DPS, with the cooperation of the criminal justice agencies, has successfully implemented the arrest tracking number and will be able to electronically interface with the Department of Law by early 1994.

Mr. Randy Welker  
July 2, 1993  
Page 5

To be able to continue to make improvements to APSIN's CHRI database, legislation needs to be enacted. The Departments of Public Safety, Law, and Corrections and the Court System need to maintain operating funding to continue current automation efforts, and receive capital funds to build the information systems necessary to support Alaska's \$300 million criminal justice system. Additionally, the Department of Corrections, the Court System, and DPS need funding to be able to record and process fingerprints, which are the keystones of the CHRI database.

Recommendation #6

"FWP should consider continuing its association with Safeguard only if certain conditions are met."

I agree with the recommendation and will follow those suggestions offered by the Department of Law. Henceforth, members of the Department of Public Safety will not be involved in the delivery of reward monies. I will further make a recommendation to Safeguard that applicants are screened to ensure fish and wildlife violators do not become a member of any of their boards. Fish and Wildlife Protection will further strengthen its documentation of tips received over the Wildlife Safeguard hotline.

I believe that Safeguard can be of benefit to the State of Alaska and her resources much the same as "Crime Stoppers," another private organization.

It is my belief that had the initial request for information by Legislative Audit been received at a different time under different circumstances, the results would have been much different. There are concerns by Safeguard that this audit was initiated after one person, convicted of guiding without proper licenses, attempted to find out who it was that turned in an anonymous complaint about him to the Safeguard hotline and was subsequently paid a reward. This same person attended at least one Safeguard meeting in an attempt to learn the name and was very disruptive. Were it not for those types of incidents and a concern, real or perceived, by Wildlife Safeguard that informants' names would be revealed, I believe the auditors would have been granted access to financial statements.

On page five of your report, at the end of paragraph 4, I would suggest that an additional sentence be added indicating that the deterrent effect is also factored into the final selection process.

Mr. Randy Welker  
July 2, 1993  
Page 6

On page seven, item #4 is an old issue which has been examined by both the Ombudsman and Legislative Audit. Since that review, legislation has been passed prohibiting such activity. Nothing appears to be gained by revisiting this issue and I would ask that the comments be stricken.

Also on page seven, item #7 again is an old issue. The employee was reprimanded as the evidence did not support further disciplinary action. Whether or not the Division's ability to catch and prosecute was compromised was never established. I would ask that this item be stricken.

Thank you again for the opportunity to comment on your preliminary report. I would be glad to discuss my response with you further, if you so desire.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard L. Burton", written in dark ink.

Richard L. Burton  
Commissioner

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

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OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 W. 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

June 30, 1993

Randy Welker  
Legislative Auditor  
P.O. Box W  
Juneau, Alaska 99811-3300

RECEIVED  
JUN 30 1993  
LEGISLATIVE AUDIT

Re: Dept. of Law Response to Fish and Wildlife Audit  
Audit Control Number 12-4431-93  
CONFIDENTIAL

Dear Mr. Welker:

This is in response to your preliminary audit, suggesting that the state constitution does not permit violators of fish and game laws to satisfy fines and forfeitures by making donations to a private, non-profit corporation that promotes the lawful use of fish and game resources. For the reasons stated in this letter, we believe your analysis raises legitimate concerns about current practices and we make suggestions for handling such cases in the future.

The provisions of Title 16 relating to fines and forfeitures are somewhat confusing. State law provides that property used or acquired in violation of fish and game laws can be forfeited "to the state", but AS 16.05.190 (relating to illegally taken fish and game) and AS 16.05.195 (relating to vessels, guns, traps, nets, fishing gear, etc.) treat those proceeds differently.

Under the first statute, forfeited fish and game is to be disposed of "as directed by the court" or, if sold, the funds are to be deposited in the general fund. AS 16.05.190. Under the other statute, forfeited property is to be disposed of "at the discretion of the department [of fish and game]". AS 16.05.195(f).

Even more recent enactments in AS 16.05.722 and 723, which arguably provide authority for forfeiture separate from AS 16.05.190 -- 195, permit or require forfeitures in commercial fishing cases without specifying what is to be done with the proceeds.

To make matters even more confusing, AS 16.05.100 establishes a revolving "fish and game fund" and AS 16.05.110 mandates that "money received in settlement of a claim or loss caused by damage to the fish and game resources of the state" be deposited in the fund.

According to a 1986 opinion of this department, money received as a forfeiture due to damage to the resources must be deposited in the fund, and doing so does not violate the constitutional prohibition of dedicated funds. 1986 Inf. Op. Att'y. Gen. (May 20; 661-86-0489) (copy attached).

The 1986 opinion also concluded that fines -- as distinct from forfeitures -- had traditionally been deposited in the general fund, and therefore could *not* be deposited in the fish and game fund. That opinion was based upon then-existing AS 16.05.720(b), which provided: "The court shall transmit the proceeds from all fines to the proper state officer for deposit in the general fund of the state." That statute was, however, repealed in 1988 as part of a broader revision of the penalty provisions for fish and game violations.<sup>1</sup>

In light of this confusing statutory scheme, it is perhaps not surprising that the handling of proceeds from fish and game cases has been problematical. Even without legislative clarification of the statutes discussed above, money derived from legal proceedings relating to fish and game offenses should not be diverted to a private entity if that money would ordinarily be imposed as a fine or forfeiture accruing to the state.

Although the courts have broad powers to impose conditions of probation under AS 12.55.080, if a court determines that a fine or a forfeiture is an appropriate sanction in a case, there is no statutory authority to impose probation conditioned on the money being paid to a private corporation rather than to the state.

There has been widespread acceptance by the courts, the fish and wildlife protection division and the department of law, of the practice of using fines and forfeitures to finance the Fish and Wildlife Safeguard Corp., and there is no reason to believe this private organization is not doing a good job of promoting lawful use of fish and wildlife. That does not, however, change the fact that the group uses state facilities, receives funds through state action (both judicial action through criminal court judgments and executive action by sale of promotional items on state premises), yet its private status effectively removes the group from legislative oversight by its refusal to be audited.

Until there is legislative clarification, state prosecutors will be directed not to enter into any agreement, and to oppose court action, that would allow a fine or forfeiture to be satisfied by a donation to a private entity. This applies to Fish and Wildlife Safeguard Corporation, D.A.R.E., Inc., Crimestoppers, or any similar organization.

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<sup>1</sup> A similar statute, that requires fines from violations of AS 16.10 to be deposited in the general fund, still exists. AS 16.10.040. The statute provides that the funds so collected are immediately available for expenditure by the department of fish and game.

As an example, prosecutors should oppose a sentence providing for a \$1000 fine that is suspended on the condition the defendant make a \$250 donation to Fish and Wildlife Safeguard Corporation. This type of sentence obviously reflects the court's view that a \$250 payment is appropriate in light of the nature of the violation. The payment is, in essence, a fine that should not be diverted from the state to a private entity.

Similarly, prosecutors in criminal cases, and assistant attorneys general in civil cases, should oppose a forfeiture in which the defendant is permitted to "buy back" the property by making a donation to a private entity.

A more difficult question is whether a court may, *in addition* to imposing an appropriate fine and/or forfeiture, require a defendant in a criminal case, as a condition of probation, to make a donation to Fish and Wildlife Safeguard or another private entity.

The statutes provide courts with considerable authority to fashion an appropriate sentence. In addition to any other penalty, courts can order a defendant to pay money for restitution to a victim or to an organization that has provided counselling, medical or shelter services to a victim. AS 12.55.045. Courts can also require a defendant to perform work that benefits the community, even if it is in lieu of a fine or jail sentence. AS 12.55.055. There is nothing that prohibits community work being provided to a private, non-profit community service organization.

There is also nothing in the statutes that prohibits a court from requiring a defendant to pay money to a private entity as a condition of probation. The powers of courts to fashion conditions of probation are broad enough to permit them to order payment of money even though the underlying statute does not permit a fine as a sentence. *Brown v. State*, 559 P.2d 107 (Alaska 1977).

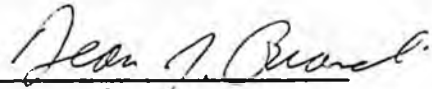
In light of these broad powers, as long as a court has considered and imposed an appropriate fine and/or forfeiture in a fish and game case, prosecutors will be permitted to recommend, suggest or agree that a donation to a private entity may be an appropriate condition of probation.

Thus, using the example given above, an appropriate sentence might be a \$1000 fine, with \$750 suspended, thus resulting in the unsuspended \$250 payment going to the general fund. The remaining \$750 could stay suspended on the condition that the offender make a suitable donation to the corporation, or on any other condition imposed by the court. This type of sentence, in our view, addresses the concerns raised in your preliminary audit, while at the same time giving the courts discretion to fashion sentences that provide appropriate rehabilitative and public service components.

Thank you for giving us the opportunity to comment.

Sincerely,

CHARLES E. COLE  
ATTORNEY GENERAL

By:   
Dean J. Guaneli  
Assistant Attorney General &  
Criminal Division Administrator

DJG:jf

cc: All Criminal Division Offices  
All Natural Resources Attorneys

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 20, 1986

Representative Adelheid Herrmann  
P. O. Box 63  
Naknek, Alaska 99633

Re: Settlement Proceeds in State v. F/V Baranof  
Our File: 661-86-0489

Dear Representative Herrmann:

Thank you for your March 18, 1986 letter requesting our opinion on whether the proceeds received in settlement of State v. F/V Baranof 1/ may be deposited in the fish and game fund, AS 16.05.110. As explained more fully below, we believe the money should be deposited in the fish and game fund and may be made available for an onboard observer program, as recommended in the memorandum from Colonel Henderson attached to your letter.

1. The Fish and Game Fund Includes Certain Settlement Proceeds.

In general, proceeds from fines and penalties received for violations of commercial fishing statutes AS 16.05.480--AS 16.05.690 and commercial fishing regulations adopted by the board of fisheries or the Department of Fish and Game are to be deposited in the general fund. AS 16.05.720(b). 2/ However, AS 16.05.110(3) specifically requires "money received in settlement of a claim or loss caused by damage to the fish and game resources of the state" to be deposited into the fish and game fund established in AS 16.05.100. This more specific provision, which was originally enacted as part of the same act that created AS 16.05.720(a), therefore governs settlement proceeds. See generally Singer, Sutherland Statutory Construction § 47.02, at 120 (4th ed. Sands 1984).

1/ Court No. 3KO-81-219, Civ. (3rd Jud. Dist. Kodiak, Nov. 6, 1985).

2/ This provision has been in effect since 1959. See sec. 12, art. 3, ch. 94, SLA 1959.

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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PHONE: (907) 465-3600

Representative Adelheid Herrmann  
Re: Settlement Proceeds in  
State v. F/V Baranof  
661-86-0489

May 20, 1986  
Page 2

2. F/V Baranof Settlement Proceeds Are Based on Damages Claims.

The money received by the state in settlement of State v. F/V Baranof constitutes money received in settlement of a claim by the state for damages to the state's natural resources (viz., king crab). State v. F/V Baranof was a civil in rem forfeiture action brought by the state against a king crab vessel for a multitude of commercial fisheries violations. The state alleged, inter alia, that the vessel was fishing in closed waters, fishing in waters for which the vessel was not registered, and fishing during closed season, and that its operators failed to report catch data. A central purpose underlying the fisheries management and conservation laws and regulations involved in the case is protection of the resource from excessive harvest: i.e., the state's claims against the vessel arose from alleged damages to the resources. The fact that the case was brought as an in rem forfeiture action, rather than as a money damages action against the skipper and owners, reflects a number of practical considerations, but does not change the underlying nature of the claims asserted by the state, which were founded upon damage to the king crab fishery resources. <sup>3/</sup> Accordingly, the settlement proceeds should be deposited in the fish and game fund under AS 16.05.110(3) (for settlement proceeds) only if this statutory provision does not violate article IX, section 7, of the Alaska Constitution. For the reasons outlined below, we find that this section does not violate the Constitution.

3. Article IX, Section 7 Does Not Invalidate Dedication Of The F/V Baranof Proceeds.

As you know, article IX, section 7, of the Alaska Constitution generally prohibits the legislature from dedicating revenue to special purposes. However, it allows some limited exceptions and exemptions. The section provides in full:

The proceeds of any state tax or license shall not be dedicated to any special purpose except as provided in section 15 of this article [Alaska Permanent Fund] or when required by the federal

---

<sup>3/</sup> AS 16.05.195 provides that a forfeiture action may be combined with a civil damages action arising out of the same underlying incidents. It is clear that both kinds of proceedings are closely related.

government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska [i.e., April 24, 1956].

The term "proceeds of any state tax or license" has been interpreted to apply generally to all public funds. See 1975 Op. Att'y Gen. No. 9 at 16 (May 2); 1982 Op. Att'y Gen. No. 13 at 7 (Nov. 30); see also State v. Alex, 646 P.2d 203 (Alaska 1982). Thus, the constitutional prohibition against dedicated funds applies to money received from fines, penalties and civil settlements (such as that in State v. F/V Baranof), unless the dedication is subject to the exceptions or exemptions in article IX, section 7, of the Constitution. The exceptions for the Alaska Permanent Fund and for funds required by the federal government for state participation in federal programs do not apply to dedication of settlement proceeds under AS 16.05.110(3). Therefore, we need only look at whether this fund was a continuance of a dedication that existed as of April 24, 1956, the date of ratification of article IX, section 7.

AS 16.05.110(3) derives from the original 1959 fish and game code, which specified that "all monies received in settlement of any claims or losses caused by damages to the fish and game resources of the state" were to be deposited into a special fund to be used for carrying out the purposes of the fish and game code. Sec. 17, Art. I, ch. 94, SLA 1959. That 1959 fish and game fund was itself a continuation of a fund originally established in 1953 by the territorial legislature. The 1953 fund was dedicated to "furtherance of the protection, rehabilitation, preservation, or conservation of the territorial fish and shellfish resources." Sec. 1, ch. 64, SLA 1953. The fund was to include money received "in settlement of any claims for damages to such [territorial] fish and shellfish resources." Ch. 64, SLA 1953. 4/

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4/ In 1957, the nature of this fund was amended to include money received in settlement of damages to game resources as well. Ch. 63, SLA 1957. However, this amendment to include settlement of claims for damages to game resources occurred after the date of ratification of article IX, section 7, of the Alaska Constitution; therefore, money received in settlement of claims regarding damages to game resources may not be dedicated to the fish and game fund under the "grandfather" exception in article IX, section 7.

Representative Adelheid Herrmann  
Re: Settlement Proceeds in  
State v. F/V Baranof  
661-86-0489

May 20, 1986  
Page 4

Thus, since 1953, the legislature has treated money received in settlement of claims arising from damage to fisheries resources separately from commercial fishing fines or penalties, and has directed that the former money be deposited in a special fund dedicated to fisheries management. Because a dedicated fund that included money received in settlement of claims of damages to fisheries resources existed on (and before) the date of ratification of article IX, section 7, of the Alaska Constitution (i.e., April 24, 1956), the prohibition against dedicated funds does not apply.

4. Summary.

In summary, because a fund dedicated to fisheries management, composed in part of money received in settlement of claims of damages to Alaska's fisheries resources, existed on the date of ratification of article IX, section 7, of the Alaska Constitution, the fund is exempted from the dedication prohibition of article IX, section 7, of the Alaska Constitution. Therefore, the settlement proceeds from State v. F/V Baranof should be deposited in the fish and game fund under AS 16.05.110(3). Money in the fish and game fund may be expended for purposes and provisions of Title 16, Alaska Statutes, which may include fisheries management programs such as an onboard observer program.

If you have any additional questions regarding the F/V Baranof settlement proceeds, please do not hesitate to contact this office.

Yours sincerely,

HAROLD M. BROWN  
ATTORNEY GENERAL

By: *Sarah E. McCracken*  
Sarah Elizabeth McCracken  
Assistant Attorney General

SEM/jmo

cc: Commissioner Don W. Collinsworth  
Alaska Department of Fish & Game  
Steven Pennoyer, Deputy Commissioner  
Ken Parker, Director, Division of Commercial Fisheries  
Col. Red Henderson, Director, Division of Fish & Wildlife  
Protection, Dept. of Public Safety  
Ron Lorensen, Deputy Attorney General  
Jim Baldwin, AGO Juneau  
Larri I. Spenger, AGO Juneau



Chambers of  
Daniel A. Moore, Jr.  
Chief Justice

**Supreme Court**  
State of Alaska

303 "B" Street  
Anchorage, Alaska  
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Fax (907) 276-5808

June 16, 1993

Randy Welker  
Legislative Auditor  
Legislative Audit Division  
P. O. Box 113300  
Juneau, Alaska 99811-3300

**RECEIVED**  
JUN 21 1993  
**LEGISLATIVE AUDIT**

Dear Mr. Welker:

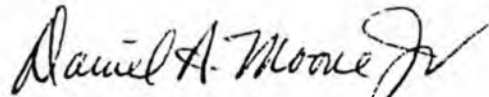
I have had an opportunity to review Recommendation No. 5 of your Preliminary Audit Report of the Department of Public Safety, Division of Fish and Wildlife Protection, Enforcement Issues dated March 23, 1993. In that recommendation, you expressed concerns about the court's allowing sentencing arrangements which include provisions for donations to the non-profit organization "Safeguard", as advocated by the Department of Law and the Division of Fish and Wildlife Protection.

The Supreme Court, as a matter of policy, agrees with your conclusion that criminal sentences should not include provision for donations to any private organization unless such an action is specifically authorized by statute. Since administration of the court system in accord with the laws of Alaska is the responsibility of the supreme court by statute, and the specific responsibility of the chief justice by the terms of the Alaska Constitution, I believe that it is quite appropriate for me to communicate this conclusion to all judges. However, since your audit is only preliminary at this point and therefore still confidential, I will await notification from you that the audit has been made public before I take any action.

Randy Welker  
Page #2  
June 16, 1993

I appreciate the opportunity to respond to your concerns. Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Daniel A. Moore Jr." with a large, stylized flourish at the end.

Daniel A. Moore, Jr.  
Chief Justice

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300  
Juneau, AK 99811-3300  
(907) 465-3830  
FAX (907) 465-2347

July 9, 1993

Members of the Legislative Budget  
and Audit Committee:

We have reviewed the responses to our preliminary audit report on the Division of Fish and Wildlife Protection (FWP or the division) from the Department of Public Safety (DPS or the department), the Department of Law, and the Court System. In general, the agencies concurred with the findings and recommendations presented. However, in the interest of clarity, we make the following comments.

### Recommendation No. 1

The Executive Branch Ethics Act should be expanded to more fully address disclosure of possible conflicts of interest.

The department states that not only are they unaware of the numerous actual financial transactions between FWP enforcement employees and certain groups of individuals they are charged with enforcing the law against, but also that "*it would be very difficult to learn of these transactions, let alone prohibit them.*" Unfortunately, DPS did not fully grasp the overall concept behind this finding. The recommendation does not endorse sweeping prohibitions of FWP employees' activities, nor does it attempt to regulate their personal behavior. Rather, our concern is primarily related toward monitoring possible conflicts of interest through disclosure requirements contained within the Executive Branch Ethics Act.

As we discussed in both the Report Conclusions and Findings and Recommendations sections, in order to maximize efficiency and effectiveness, law enforcement agencies must be perceived by the public as being above reproach. To foster positive public perception, disclosure to management of significant relationships and associations between enforcement officers and individuals involved in such occupations as guiding and commercial fishing should be mandated. Management could then review such disclosures and determine if reassignment or divestiture was necessary.

DPS states that amending the Executive Branch Ethics Act as we have described would be "*an excellent review tool*" for the department. However, DPS currently has within its authority, through existing law, the ability to provide themselves with that tool by taking the initiative and developing policies and procedures that will address these public perception

concerns. The department could, in conjunction with the Department of Law, develop and adopt a policy that provides both an overall framework and specific direction. Such a policy is currently in place for the Department of Fish and Game (DFG). DFG's specifically tailored standards of professional conduct augment the requirements of the Executive Branch Ethics Act and address the topics of both public perception and disclosure of possible conflicts related to associations, relationships, and arrangements.

#### Recommendation No. 4

#### DPS should improve internal controls related to the Alaska Public Safety Information Network (APSIN) to ensure completeness and accuracy of criminal justice information.

DPS inquires as to the methodology they should follow in order to determine the completeness and accuracy of current departmental employees' criminal history records housed within APSIN. While not providing absolute assurance, we believe a practical approach should include, at a minimum, a comparison of the employee's APSIN file with their respective application for employment with the State. Further, each employee should review their criminal history file on APSIN for correctness and completeness; an affirmative written statement attesting to its accuracy should be required.

As we noted above, these steps are not considered all inclusive and will not provide total assurance as to the completeness and accuracy of current DPS employees' histories within APSIN. However, such procedures would demonstrate that the department is concerned about these issues and is taking steps to address them.

#### Public Perception

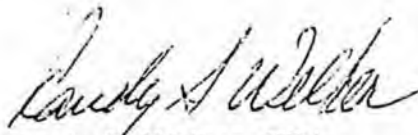
DPS asks that the comments relating to the former commander of the Statewide Investigations Section (SIS) being an assistant guide while he was in a position to influence who would or would not be subject to an undercover operation be stricken from our report. They reason that this an old issue and legislation has since been passed prohibiting such activity.

Similarly, the department asks that a discussion of an FWP Trooper's reprimand for discussing privileged information at a private gathering that included an assistant guide also be expunged from our report. DPS states this also is an old issue that was never proven to have compromised FWP's ability to catch and prosecute.

Neither item has been deleted from our report. Audit findings are not considered irrelevant simply because they are not current situations in need of immediate individual resolution; rather, our audit is concerned with the much broader perspective of the cumulative effect of the many conflicts. We have included both instances because they directly relate to the public perception concern of enforcement employees having close relationships and

associations with certain individuals they are charged with enforcing the law against. These relationships and associations illustrate an area that has the possibility to lead to negative public perception that could impair the division's ability to perform its mission. Additionally, regarding the SIS commander being an assistant guide, simply because a law is in place does not mean it is being followed; as discussed later in the same section of the report, we noted three FWP enforcement individuals that, in violation of that law, held guide licenses during our audit fieldwork.

While any one of the conflicts enumerated in the report taken on its own is troublesome, collectively they point to a pattern that should be addressed by management.



Randy S. Welker, CPA  
Legislative Auditor

SENATE COMMITTEE REPORT

*mdr*

DATE: 3/18/94

FURTHER:

*[Handwritten signature]*

DATE TURNED INTO OFFICE: 4/7/93

Judiciary Committee considered SENATE BILL NO. 333

"An Act relating to disclosure of close economic associations by certain state employees and to the prohibition against nepotism in the executive branch of state government; and providing for an effective date."

*+ do pass*

and recommends:

replace with \_\_\_\_\_ CS \_\_\_\_\_ ( )

same title

or  adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( )

new title

attaches amendment(s)

technical

title change

(HB only)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

*2 & 3  
1 & 4*

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
<i>Off of Gov</i>	<i>3-18-94</i>	<input checked="" type="checkbox"/>	
<i>Law</i>	<i>3-18-94</i>	<input checked="" type="checkbox"/>	
<i>Admin</i>	<i>3-18-94</i>		<i>25.8</i>

Appropriation No Fiscal Note

DO PASS:

*[Signatures: David Couley, Suzanne Little, Rick Halford, George Jacks]*

OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*[Signature: Phillip L. Taylor]*  
Chair: Signature and Recommendation *Do Pass*

**SENATE COMMITTEE REPORT**  
FIRST COMMITTEE OF REFERR.

DATE: 2/22/94

FURTHER: Judiciary

Date of 5-Day Notice: 3.3.94  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3-16-94

State Affairs Committee considered SB 333

"An Act relating to disclosure of close economic associations by certain state employees and to the prohibition against nepotism in the executive branch of state government; and providing for an effective date."

and recommends:

*major committee report with no rec*

replace with \_\_\_\_\_ CS \_\_\_\_\_

- same title
- new title
- technical title change (HB only)

attaches amendment(s)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

*df + Enl  
moving*

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
DA - (OEEO)	3.14.94	<del>NO</del>	25.8
DOL	3.10.94	✓	
Office of GOV.	3.8.94	✓	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

PASS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS:

*Adrian Taylor No Rec*  
*Mike Miller No REC*

*Loren A. Brown No Rec*  
Chair: Signature and Recommendation