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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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MEMORANDUM

TO: The Honorable Robin Taylor, Chairman
Senate Judiciary Committee

FROM: Randy S. Welker *Randy*
Legislative Auditor

DATE: April 5, 1994

RE: Senate Bill 333

This memorandum 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 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.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 333

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 of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	6.5	0	0	0	0	0
TRAVEL	3.7					
CONTRACTUAL	15.6					
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
M.SCELLANEOUS						
TOTAL OPERATING	25.8	0	0	0	0	0
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

PREP/ RER TO PROVII
For further

FISCAL NOTES

ERNOR'S LEGISLATIVE OFFICE
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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

6,544.00

Travel

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

10 days per diem @ \$100 1,000.00

3,664.00

Contractual

5 days arbitrator @ \$3120 15,600.00

TOTAL

\$ 25,808.00

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 333

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

FUNDING:

1001						
1003						
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

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 supervisor 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.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 333

Revision Date: _____

Title: "An Acr 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						
TOTAL OPERATING	0	0	0	0	0	0

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						
TOTAL	0	0	0	0	0	0

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 *M. Nizich*
Division: Division of Administrative Services

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

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

Date: 3/8/94

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