ALASKA LEGISLATURE 2707
HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004

273

preemption device.

(c) In this section,

(1) "emergency vehicle" means a police, fire, or emergency medical service vehicle that only uses a traffic preemption device when responding to a fire or other emergency or when transporting a patient to a hospital or clinic or for transfer to another emergency vehicle;

(2) "traffic preemption device" means a system that uses infrared light or other technology on a motor vehicle to transmit a signal to a receiver connected to a traffic light or other traffic control device for the purpose of giving the vehicle transmitting the signal the right-of-way by changing the traffic light or control device.

(d) Unlawful possession or use of a traffic preemption device is a class A misdemeanor.

SENATE FINANCE COMMITTEE

4 /15 /2004 COMMITTEE ACTION

Bill Number	SB 255	
Amendment	#1	
Motion	~~Dys.~~ to adopt	
Motion by	Dyson	
Objection by	Bunde	
Removed	✓	
Second Objection by		
Committee Member	Y	***Vote*** N
Senator Dyson		
Senator Hoffman		
Senator Olson		
Senator Stevens		
Senator Bunde		
Co-Chair Green		
Co-Chair Wilken		
Tally		
Yea		
Nay		
Absent		
MOTION	ADOPTED	

Attention: Sheila

Of Senator Wilken's office

RE: CS SB 255 (FIN)

Date: 4/16/04 Time: 8:20 AM

The attached Senate Finance CS incorporates the amendment(s) your boss sponsored. Please review and approve so the bill can be forwarded to the Senate Secretary.

The CS is your copy.

A-OK

Sheila

Thanks,
Senate Finance Secretary
Mindy #4935
Robin #2618

Approved: ____________
(please initial)

Return ASAP

Attention: Lucky

Of Senator Dyson's office

RE: CS SB 255 (FIN)

Date: 4/16/04 Time: 8:25 am

The attached Senate Finance CS incorporates the amendment(s) your boss sponsored. Please review and approve so the bill can be forwarded to the Senate Secretary.

The CS is your copy.

Thanks,
Senate Finance Secretary
Mindy #4935
Robin #2618

Approved: ____________
(please initial)

Return ASAP

Conceptual Amend #1

OK'd Per Senator Dyson 4/16/04

MASTER PROOF

23-LS1397\U

OK'ed by Sheila 8:50am 4/16/04

CS FOR SENATE BILL NO. 255(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR THERRIAULT

A BILL

FOR AN ACT ENTITLED

"An Act relating to traffic preemption devices."

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

*** Section 1.** AS 11.56 is amended by adding a new section to read:

Sec. 11.56.825. Unlawful possession or use of traffic preemption device. (a) A person commits the crime of unlawful possession or use of a traffic preemption device if the person possesses or uses a traffic preemption device and that person is not at the time of the possession or use operating an emergency vehicle.

(b) This section does not apply to

(1) an employee of the state or a municipality who at the time of the possession or use of a traffic preemption device is authorized to install, repair, or maintain traffic preemption devices and only uses a device in the process of installing, repairing, and maintaining the devices; or

(2) a person operating a motor vehicle involved in highway maintenance or public transit that has been authorized by the Department of Transportation and Public Facilities or by the municipal assembly or council, as

appropriate, to possess or use a traffic preemption device.

(c) In this section,

(1) "emergency vehicle" means a police, fire, or emergency medical service vehicle that only uses a traffic preemption device when responding to a fire or other emergency or when transporting a patient to a hospital or clinic or for transfer to another emergency vehicle;

(2) "traffic preemption device" means a system that uses infrared light or other technology on a motor vehicle to transmit a signal to a receiver connected to a traffic light or other traffic control device for the purpose of giving the vehicle transmitting the signal the right-of-way by changing the traffic light or control device.

(d) Unlawful possession or use of a traffic preemption device is a class A misdemeanor.

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM April 15, 2004

SUBJECT: CSSB 255(FIN) (Work Order No. 23-LS1397\S)

TO: Senator Lyda Green
Attn: Robin Paul

FROM: Gerald P. Luckhaupt Jerry
Legislative Counsel

Enclosed is the CS(FIN) you requested. I have one comment. The committee amended the bill to provide that municipal or city assemblies could authorize the use of these devices. In Alaska, all cities are municipalities. See AS 01.10.060(4). The reference to "city" should be deleted from the bill. Inclusion of superfluous terms could lead to problems in interpretation both in this provision and others.

GPL:lmb
04-108.lmb

Enclosure

"5" will be replaced with "U"

Master Proof

23-LS1397\S

CS FOR SENATE BILL NO. 255(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR THERRIAULT

A BILL

FOR AN ACT ENTITLED

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traffic preemption device.

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(d) Unlawful possession or use of a traffic preemption device is a class A misdemeanor.

Amend #2

FAILED

23-LS1397\Q

CS FOR SENATE BILL NO. 255(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 3/5/04
Referred: Judiciary, Finance

Sponsor(s): SENATOR THERRIAULT

A BILL

FOR AN ACT ENTITLED

"An Act relating to traffic preemption devices."

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

* **Section 1.** AS 11.56 is amended by adding a new section to read:

Sec. 11.56.825. Unlawful possession or use of traffic preemption device. (a) A person commits the crime of unlawful possession or use of a traffic preemption device if the person possesses or uses a traffic preemption device and that person is not at the time of the possession or use operating an emergency vehicle.

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(2) a person operating a motor vehicle involved in highway maintenance ~~or public transit~~ that has been authorized by the Department of Transportation and Public Facilities ~~or a municipality~~ to possess or use a traffic

preemption device.

(c) In this section,

(1) "emergency vehicle" means a police, fire, or emergency medical service vehicle that only uses a traffic preemption device when responding to a fire or other emergency or when transporting a patient to a hospital or clinic or for transfer to another emergency vehicle;

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(d) Unlawful possession or use of a traffic preemption device is a class A misdemeanor.

SENATE FINANCE COMMITTEE

4 /15/2003 COMMITTEE ACTION

Bill Number	SB 255	
Amendment	#2	
Motion	to adopt	
Motion by	Bunde	
Objection by	Wilken	
Removed		
Second Objection by		
Committee Member	Y	N
Senator Hoffman		✓
Senator Olson	✓	
Senator Stevens		✓
Senator Bunde	✓	
Senator Dyson		✓
Co-Chair Green		✓
Co-Chair Wilken		✓
Tally		
Yea 2		
Nay 5		
Absent		
MOTION	FAILED	

Alaska State Legislature

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

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

Senate

Sponsor Statement
SB 255

Senate Bill 255: "An Act relating to traffic preemption devices"

Sponsor: Senator Gene Therriault

Senate bill 255 was introduced to reserve the use of Traffic Preemption Devices (TPDs) for legitimate authorized users, including emergency response providers, road maintenance and public transit vehicles. TPDs allow vehicles approaching a traffic signal to override the normal signal control and change the light from red to green. This enables emergency vehicles to proceed more rapidly to the situation they are responding to. Unfortunately, without a change in state law, these devices are available for purchase and use by the general public and indiscriminate use could lead to accidents.

This bill is intended to keep these accidents from occurring, by assuring that only authorized personnel use TPDs. This is accomplished by making it illegal to own a TPD unless you are an approved user. In addition, authorized individuals would only be able to use the device in an official capacity, as defined by this bill. The bill also guarantees that mechanics and other repair personnel are allowed to posses and use TPDs, when installing, repairing or testing them in an official capacity.

Email: Senator_Gene_Therriault@legis.state.ak.us

State of Alaska
Department of
Public Safety

Frank H. Murkowski, Governor
William Tandeske, Commissioner

February 9, 2004

The Honorable Gene Therriault
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear Senator Therriault:

The Department of Public Safety supports Senate Bill 255 The Unlawful Possession or Use of Traffic Preemption Device. It is a matter of public safety that these devices are used only during an emergency response by an emergency vehicle. The misuse of these devices could easily endanger the lives of pedestrians and motorists. Possession of these devices by untrained personnel invites their abuse, with what could be tragic results. As a side note, unauthorized use of these devices could generate unfounded complaints to state and local traffic engineers who would attempt to trouble shoot traffic signals for problems that don't exist. Unauthorized use would undermine public confidence and support for continued use and expansion of traffic preemption systems.

The unlawful use or possession of a traffic preemption device warrants the punishment of a class A misdemeanor if convicted.

Sincerely,

William Tandeske
Commissioner

Office of the Commissioner
450 Whittier Street - Juneau, AK 99801 - Voice (907) 465-4322 - Fax (907) 465-4362

Subject: SB 255
Date: Thu, 26 Feb 2004 14:51:21 -0900
From: "Kiewik, John G." <KiewikJG@ci.anchorage.ak.us>
To: <Senator_Gene_Therriault@legis.state.ak.us>

Dear Sir:

Thank you for you efforts in regard to Senate Bill 255.

The Municipality of Anchorage presently uses traffic preemption at several intersections and hopes to someday have a full system wide build out. At present, the system is used by the Anchorage Fire Department.

Anchorage uses the 3M™ Opticom™ Priority Control System which features Vehicle ID. Vehicle ID restricts the use of the system to Fire Department vehicles only, in other words, it is encrypted. The system also has two tiers of service, high priority (emergency vehicles), and low priority (other municipal applications). Many communities use the low priority tier to keep their transit operations efficient (buses on time). Anchorage hopes to use this technology in the near future for its transit and street maintenance operations (snow plowing). However, it is unclear to me if this would be possible under the present wording of the bill. Thank you for your attention in this matter.

John Kiewik, Deputy Fire Chief

Support Services Division

Anchorage Fire Department

907-267-5064

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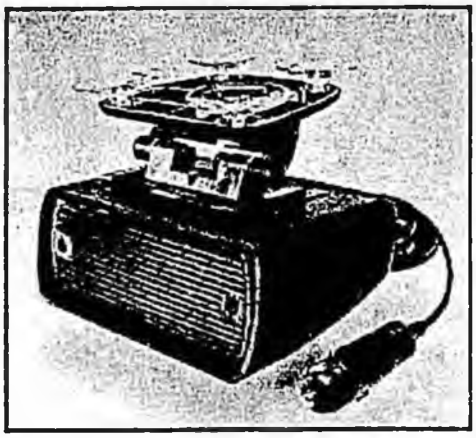

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- Now, traffic light preemption is affordable for every run!

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Do not be fooled by *MIRTs* compact size. Emitting 15 watts of energy (more than any other portable traffic light changer) *MIRT* changes traffic lights from red to green in 2 to 3 seconds from more than 1500 ft.

RELIABLE

MIRT is manufactured by a trusted name in the industry with more than 15 years experience. All electronic components and assembly are top quality, and every unit is tested to ensure endurance, dependability, and safety. It is perfect for the heavy duty use and is backed by a 10-yr. warranty!

ECONOMICAL

The technology of *MIRT* is not only "breakthrough", it is by far the most price-efficient signal changer available...costing less than half of any competing product. Check out the order page for the amazing pricing details!

MIRT MAIN PAGE - HOW DOES IT WORK?! - MIRT FAQ'S - MIRT WARRANTY INFO - MIRT HISTORY

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Provided by Sen. Therriault

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LexisNexis

SIGNAL CHANGER CAN LEAD TO HAVOC LIGHTS: EMERGENCY CREWS RELY ON DEVICE TO CLEAR PATH, SO CIVILIAN USE SPARKS WORRY

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Modesto Bee
January 19, 2004, Monday, ALL EDITION

A fire engine rolling to a house fire with people inside. A police officer responding to a shooting. Paramedics headed to a major traffic accident.

All need clear paths to get to their destinations as quickly and safely as possible.

Recently, however, Riverside County paramedics approaching an intersection used a mobile infrared transmitter (MIRT) to change a signal light from red to green, only to have a civilian change it back.

While such technology might be a dream for drivers eager to sail through without any red lights, authorities say signal changers could create problems for emergency vehicles.

That's why Assemblyman Dario Frommer, D-Glendale, plans to sponsor a bill that would ban the public sale of such transmitters.

Currently, the devices are sold locally, as well as on the Internet. It's not illegal to buy or have them -- it's only illegal for civilians to use them.

"You just can't have every motorist with the ability to change a stop light at

[redacted]

will," Frommer said. "It could create tremendous chaos."

Frommer said the transmitters should be restricted to police, fire and medical emergency personnel.

Modesto police Capt. Joe Aja said he is not aware of any incidents in Modesto when someone used a transmitter to change a signal light against an emergency vehicle.

Aja said firefighters, police and other emergency personnel have used the transmitters for years. But they were never intended for public use.

"(Police) use the transmitters for safety," Aja said. "They create a safety corridor for us and an extra level of safety."

The devices emit an invisible high-intensity strobe light that can change signals from red to green in two or three seconds from a distance of about 300 yards.

Aja said emergency personnel can use the transmitters at most of Modesto's major intersections. The devices are attached to the police car's emergency light bar, he said.

Internet availability raises concern

But the public can buy the devices for prices ranging from about $100 for a used one to about $400 for a new one. Frommer said the growing availability on the Internet convinced him the law needs to be changed.

Under the proposed legislation, anyone not working as a firefighter, police officer or paramedic would be fined if found with a transmitter or if they are caught selling one, Frommer said.

The bill would make the unauthorized purchase or sale punishable by a fine of up to $1,000. Anyone caught selling or buying two or more transmitters would be charged with a misdemeanor and fined up to $3,000.

A person with an unauthorized device who causes an injury or death in a car accident would be fined up to $10,000.

The bill also would permit law enforcement to conduct online stings.

Frommer said anyone willing to lie about their occupation can buy a signal pre-emptor on the Internet. The transmitter can be plugged into a cigarette lighter, he said.

"If the public starts using the transmitters, emergency personnel might have to start using a secondary signal with a code," Modesto Fire Battalion Chief Richard Hurley said.

Tim Gow, who invented MIRTs and owns the company that produces them, FAC of America, defended a distributor's right to publicize and sell the product online.

The advertising, he said, is aimed at public safety departments.

"We don't market to the public, and we never intended to market to the public," Gow said.

Jerry Sterner, president and chief executive officer of Sintex Security Service in Modesto, is one of 14 authorized MIRT dealers statewide.

Sterner said he sells the infrared transmitter only to police agencies, fire departments and ambulance companies.

He predicts that Frommer's bill will pass. "By midyear they no longer will be allowed," Sterner said.

Bee staff writer Daryl Farnsworth can be reached at 578-2337 or dfarnsworth@modbee.com.

The Sacramento Bee contributed to this report.

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An Overview of
Transit Signal Priority

Prepared by the

Advanced Traffic Management Systems Committee and
Advanced Public Transportation Systems Committee
of the
Intelligent Transportation Society of America (ITS America)

The revised document was endorsed by the
ITS Public Transportation Forum of ITS America and America Public
Transportation Association (APTA)
and
The Transportation System Operations and Planning Forum of ITS
America

Published 2002
Revised and updated 2004

Distibuted by Senator Therriault

3. *TSP Benefits & Costs*

3.1 Benefits

Several benefits are anticipated from implementing a TSP system. These benefits typically include: reduced transit travel times, improved transit schedule reliability, reduced stops which leads to reduced wear and tear on equipment, less pavement maintenance and increased rider comfort, reduced emissions, and ultimately, an increased attractiveness of transit created by an increased competitiveness to the single-occupancy automobile. Some value-added benefits of the TSP system can also exist which are difficult to quantify (e.g., potentially using the TSP system for a fuel management system). Besides the benefits, TSP systems may also have negative impacts. One of the most commonly cited impacts is the potential increase in traffic delay on side streets.

Transit vehicles spend an average of 15% of their trip time waiting at traffic signals. By example, significantly reducing this wait by 40% on average would reduce a 60 minute round trip to 55 minutes, providing a more competitive service. A key point is that if this route requires a 5-minute headway, only 11 buses are required to support that interval, compared with 12 under the 60-minute trip length. Reduced vehicle and operator costs contribute toward a favorable return-on-investment. However, in order to achieve these savings, it is necessary that the reduced travel time be consistent. Since bus trips are scheduled in advance, the allocated running time may only be shortened if the same trip consistently takes less time[5].

In at least one study, the benefit/cost ratio associated with such reductions from deploying TSP was found to be approximately 2:1 over a 10-year operating period, giving a payback period of approximately 3 years. Note also that a reduction in the number of transit vehicles used means that a decrease in pollution emissions can be achieved as well.

Successful implementation of TSP has been practiced in Europe since 1968. The European philosophy to TSP is generally more aggressive and intended to provide a high reward for transit vehicles and passengers compared to other vehicles. Zurich and Amsterdam have a majority of intersections enabled for TSP. Installations in England and France have shown a 6 to 42% reduction in transit travel time, with only 0.3 to 2.5% increases in auto travel time.

In North America, Los Angeles, Toronto, Portland, Seattle, Tacoma, Chicago, , among others, have TSP installations in place (see Appendix 1). Other communities, such as Albany, Salt Lake City, Houston, Montreal, Broward County, Santa Clara Valley, etc., have TSP projects in the development or deployment stages. In fact, TSP is becoming increasingly important with the growing interest in Bus Rapid Transit (BRT) systems; 11 of the 17 BRT consortium members are incorporating TSP in their designs.

The potential benefits from TSP for reducing transit signal delay, and improving travel times and reliability are encouraging TSP deployment across the continent. In Toronto for example, average transit signal delay reductions of up to 46% using TSP has justified expansion to over 300 signalized intersections (15% of total) along four bus and five streetcar routes, all in mixed traffic. Other TSP deployments include a 2-¼ mile stretch in Cicero, IL on Cermak Road that is the site of an Illinois Department of Transportation demonstration using wire loops at 10 signalized intersections. Chicago Transit Authority and suburban PACE buses, using transponders and absolute TSP, realized an 8-minute trip time versus 12 minutes before TSP (a 33% reduction). In Los Angeles, two projects demonstrated application of TSP in conjunction with the introduction of Metro Rapid, a Bus Rapid Transit system, at approximately 100 signals along of each corridor (14-16 miles)[6]. Results indicated an average 8% decrease in overall bus running time, and a 33-39% reduction in bus delay at signalized intersections.

Studies associated with the deployments[7,8,9] have shown that there has been little or no impact on the travel times of other motorists along streets operating with TSP, when effectively designed. In fact, the deployment of TSP may positively benefit vehicles traveling in the same direction of the transit vehicle by introducing signal coordination, or momentarily widening the green band for that approach to the traffic signal. As such, some study results confirmed modest improvements for the balance of traffic flow along transit routes with TSP. Studies have shown there to be no general pattern of change to pedestrian delay as a result of the implementation of bus transit priority, with any increases or decreases being minimal.

Unfortunately, a limited amount of before and after data exists for TSP systems. Results from a limited number of case studies are summarized in Table 1. These results are based only on field data. A number of before and after studies have also been performed using simulation models[10,11]. It is important to note that the results in Table 1 will vary based on several factors including system design (i.e., transit detection system and signal control equipment), TSP strategy, type of data collection procedure, traffic volumes, and the combination of implementing TSP with other preferential treatments (e.g., queue jumps, exclusive transit lanes, etc.).

Lessons Learned

- In general[12], the case studies reveal that implementing TSP results in:
    - ☐ Reductions in transit travel times, transit delay, stops, and schedule unreliability; and
    - ☐ Minor impacts to cross-street traffic and buses.

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Table 1: TSP Benefits and Impacts – Case Studies

Location	Transit Type	No. of Intersections	TSP Strategy	Benefit/Impact
Portland, OR[13] Tualatin Valley Hwy.	Bus	10	early green, green extension	• Bus travel time savings = 1.4 to 6.4% • Average bus signal delay reduction = 20%
Europe[14,16]	Bus	Five case study sites	Various	• 10 seconds/intersection average reduction in transit signal delay • 40 to 80% potential reduction in transit signal delay • 6 to 42% reduction in transit travel times in England and France • 0.3 to 2.5% increase in auto travel times • 1 to 2 year payback period for installation of transit priority systems
Seattle, WA[10,17] Rainier Avenue	Bus	20	early green, green extension	• 24% average reduction in stops for TSP eligible buses • 5-8% reduction in travel times • 25-34% reduction in average intersection bus delay for TSP eligible buses • 40% reduction in critically late trips (trips not completed before next trip scheduled start) • Life cycle benefits are $15,000 service benefit per intesection and $40,000 passenger benefit per intersection (over 10 years life)
Sapporo City, Japan[18] Route 36	Bus	unknown	unknown	• 6.1% reduction in bus travel time • 9.9% increase in ridership • 7.1% reduction in bus stops at signals which resulted in a 20.8% reduction in stopped time
Toronto, Ontario[19,20]	Street car, Bus	260	early green, green extension	• Up to 46% reduction in transit signal delay • 10 street cars removed from service • 4 buses removed from service in 2 initial corridors • Payback less than 5 years • Cross street traffic not significantly affected
Chicago, IL[21] Cermak Rd.	Bus	15	early green, green extension	• 7 to 20% reduction in transit travel time depending on time of day, travel direction • Transit schedule reliability improved • Reduced number of buses needed to operate the service • Passenger satisfaction level increased since TSP was implemented • 1.5 second/vehicle average decrease in vehicular delay (range: +1.1

Location	Transit Type	No. of Intersections	TSP Strategy	Benefit/Impact
				to –7.8) • 8.2 second/vehicle average increase in cross-street delay (range: +0.4 to +37.9)
San Francisco, CA[22]	LRT and Trolleys	16	early green, green extension	• 6 to 25% reduction in transit signal delay
Minneapolis, MN[23] Louisiana Ave.	Bus	3	early green, green extension, actuated transit phase	• 0 to 38% reduction in bus travel times depending on TSP strategy • 23% (4.4 seconds/vehicle) increase in traffic delay • Skipping signal phases caused some driver frustration
Los Angeles, CA Wilshire & Ventura Blvds .[6,24]	Bus	211	early green, green extension, actuated transit phase	• Introduced as part of Metro Rapid BRT • 8% reduction in average running time • 33-39% decrease in bus delay at signalized intersections • Minimal impacts to cross street traffic: average of 1 second per vehicle per cycle increase in delay • TSP did not change the traffic Level of Service
Pierce County, WA Pacific Ave and 19th St. corridors[25]	Bus	42	signal coordination, early green, green extension, low priority preempt	• Initial deployment in two corridors involving both signal coordination and TSP • Signal coordination reduced total signal delay 18-70% for general purpose traffic, and 5-30% for transit • TSP reduced transit signal delay an additional 20-40% beyond signal coordination • TSP had little impact on traffic progression

SENATE COMMITTEE REPORT

DATE: 3/5/04

FURTHER: Finance

DATE TURNED IN TO OFFICE: 3/19/04

Judiciary Committee considered SENATE BILL NO. 255

SB 255 ILLEGAL USE TRAFFIC PREEMPTION DEVICE

"An Act relating to traffic preemption devices."

and recommends:

☐ be replaced with ______ CS ______ (______)
☑ adopt previous ______ CS SB 255 (STA)
☐ attached amendment(s)
☐ adopt Letter of Intent by ______ Committee
☐ further referral to ______ Committee

Senate Bill:
☑ Same Title
☐ New Title

House Bill:
☐ Same Title
☐ Technical Title Change
☐ New Title w/ SCR #____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	Indet.	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	Indet.	FN#
DPS	2/9		✓		1
DPS	2/9		✓		2
LAW	2/10		✓		3

☐ **APPROPRIATION - no fiscal note**

	SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
French				X	
Ogan		✓			
Therriault		✓			
Seekins	CHAIR:	✓			

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/12/04

FURTHER: Judiciary
Finance

Date of 5-Day Notice: 2/5/04
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 3/5/04

State Affairs Committee considered SENATE BILL NO. 255

SB 255 ILLEGAL USE TRAFFIC PREEMPTION DEVICE

"An Act relating to traffic preemption devices."

and recommends:

☑ be **replaced** with ______ **CS** SB 255 (7)

☐ adopt **previous** ______ **CS** ______ (______)

☐ attached amendment(s)

☐ adopt Letter of Intent by ______ Committee

☐ further referral to ______ Committee

Senate Bill:
☑ Same Title
☐ New Title

House Bill:
☐ Same Title
☐ Technical Title Change
☐ New Title w/ SCR #____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DPS	2/9/04			✓	1
DPS	2/9/04			✓	2
LAW	2/10/04			✓	3

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

☐ **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	**DO PASS**	**DO NOT PASS**	**NO REC**	**AMEND**
Cowdery John J Cowdery	✓			
Stedman Bert K Stedman	✓			
G. Stevens **CHAIR:**	✓			

SENATE FINANCE COMMITTEE

SIGN-IN

SB 255-ILLEGAL USE TRAFFIC PREEMPTION DEVICE

NAME: Shelley Owens Subject/Bill No: SB 255

Co./Dept./Title: Health Program Manager Phone: 465-3028

State Dept. of Health & Social Services

Section of Community Health & EMS

Address: PO Box 110616 - Juneau, AK Zip: 99811-0616

Do you wish to testify? ___Yes _X_No _X_Respond To Questions Dept. supports Bill

✓ NAME: Dennis Michel Subject/Bill No: SB 255

Co./Dept./Title: Legislative Aide to Senator Therriault Phone: 465-4797

Address: Box 72991 Fairbanks, AK Zip: 99707

Do yc stify? _X_Yes ___No _X_Respond To Questions

NAME: ______ Subject/Bill No: ______

Co./Dept./Title: ______ Phone: ______

Address: ______ Zip: ______

Do you wish to testify? ___Yes ___No ___Respond To Questions

NAME: ______ Subject/Bill No: ______

Co./Dept./Title: ______ Phone: ______

Address: ______ Zip: ______

Do you wish to testify? ___Yes ___No ___Respond To Questions

SFC-04
SB 255

4/15/04

SITE: **ANCHORAGE**

COMMITTEE: SFIN

DATE: 4-15-04

SUBJECT OF MEETING or BILL #

SB 255

UPDATE #:

PRINT YOUR NAME	COMMUNITY	REPRESENTING/AFFILIATION	*DO YOU WANT* TESTIFY Y or N
✓ Tom Wilson	Anchorage	MOA/PTD	Y-SB 255

SITE: Offnets

COMMITTEE: SFIN

DATE: 4/15/04

SUBJECT OF MEETING·

BILL # SB255

UPDATE #:

PRINT YOUR NAME	COMMUNITY	REPRESENTING/AFFILIATION	DO YOU WANT TESTIFY Y or N
✓ Al Storey		Alaska State Troopers	Y

SENATE FINANCE COMMITTEE

SIGN-IN

SB 255-ILLEGAL USE TRAFFIC PREEMPTION DEVICE

✓ NAME: Dennis Michel Subject/Bill No: SB 255

Co./Dept./Title: Legislative aide to senator Therriault Phone: 465-4797

Address: PO Box 72991 Fairbanks Zip: 99701

Do you wish to testify? _X_Yes ___No ___Respond To Questions

NAME: Shelley Owens Subject/Bill No: SB 255

Co./Dept./Title: AK DHSS - Community Health & EMS Phone: 465-3028

Address: PO Box 110616 JNU Zip: 99811-0616

Do you wish to testify? ___Yes _X_No _X_Respond To Questions DHSS supports Bill — zero fiscal note

NAME: NONA WILSON Subject/Bill No: SB 255

Co./Dept./Title: AK DOT & PF Phone: 465-3904

Address: 3231 Channel Drive Zip: 99801

Do you wish to testify? ___Yes ___No _X_Respond To Questions only - we support bill

NAME: ___ Subject/Bill No: ___

Co./Dept./Title: ___ Phone: ___

Address: ___ Zip: ___

Do you wish to testify? ___Yes ___No ___Respond To Questions

SFC-04
SB 255

4/1/04

SITE: **Offnets**

COMMITTEE: SFIN

DATE: 4/1/04

SUBJECT OF MEETING:

BILL # SB255

UPDATE #:

PRINT YOUR NAME	**COMMUNITY**	**REPRESENTING/AFFILIATION**	*DO YOU WANT* TESTIFY **Y or N**
✓ **Al Storey**		**Alaska State Troopers**	**Y**

SITE: **Kenai**

COMMITTEE: SFIN

DATE: 040104

SUBJECT OF MEETING:

BILL # SB 255

UPDATE #:

PRINT YOUR NAME	**COMMUNITY**	**REPRESENTING/AFFILIATION**	*DO YOU WANT* **TESTIFY Y or N**
Mike Tilly	Kenai	Kenai Fire Dept	Y SB255

Bill History/Action Display

H

BILL: SB 255
BILL VERSION:
CURRENT STATUS: (S) FIN
SPONSOR(s): SENATOR(S) THERRIAULT

SHORT TITLE: ILLEGAL USE TRAFFIC PREEMPTION DEVICE
STATUS DATE: 03/19/04

TITLE: "An Act relating to traffic preemption devices."

Bill Root: ☐ Display Bill Root | Next Bill

Full Text | Fiscal Notes

Committee Action with Bill History

Jrn-Date	Jrn-Page	Action
01/12/04	1900	(S) PREFILE RELEASED 1/9/04
01/12/04	1900	(S) READ THE FIRST TIME - REFERRALS
01/12/04	1900	(S) STA, JUD, FIN
03/05/04	2427	(S) STA RPT CS 3DP SAME TITLE
03/05/04	2428	(S) DP: STEVENS G, COWDERY, STEDMAN
03/05/04	2428	(S) FN1: ZERO(DPS)
03/05/04	2428	(S) FN2: ZERO(DPS)
03/05/04	2428	(S) FN3: ZERO(LAW)
03/19/04	2560	(S) JUD RPT CS(STA) 3DP 1NR
03/19/04	2560	(S) DP: SEEKINS, OGAN, THERRIAULT;
03/19/04	2560	(S) NR: FRENCH
03/19/04	2561	(S) FN1: ZERO(DPS)
03/19/04	2561	(S) FN2: ZERO(DPS)
03/19/04	2561	(S) FN3: ZERO(LAW)
03/19/04	2561	(S) REFERRED TO FINANCE

Similar Subject Match or Exact Subject Match
CRIMES
FIRE PROTECTION
HOSPITALS
LAW ENFORCEMENT
MEDICAL CARE
MOTOR VEHICLES
PUBLIC SAFETY

Bill Root: ☐ Display Bill Root | Next Bill

To Report Problems with Basis Inquiry

Live KTOO Streams

Return to Basis Main Menu (23 Legislature)

SB

256

SFIN

FILE

SB 256

was referred to the Senate Finance Committee

Hearing(s) were held

The bill did not move from Committee

THE
FOLLOWING
DOCUMENT(S)
ARE
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COPIES

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January 12, 2004

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Therriault:

The operating budget bill delivered today contains my proposal for the 2005 fiscal year.

The Fiscal Year 2005 operating budget marks the administration's second opportunity to demonstrate its commitment to fiscal discipline. Our budget plan is straightforward: control spending, make government smaller and more effective, stabilize revenues over the short-term, and increase revenues over the long-term.

The proposed budget is built on one principle: that we must take responsibility today for Alaska's tomorrow. Jobs, hope, and accountability are the reasons for the administration's work to align state spending in a way that promotes economic development and jobs in Alaska and provides hope for the future to our younger generations.

The administration set two parameters within which it built the proposed Fiscal Year 2005 budget: spend less than this year and use no more than $400 million from the state's reserve account. This later limit is important because over the last 13 years the state has spent more than $5 billion from this reserve in order to prop up spending at a level the state otherwise could not afford. When we took office the rate of withdrawals from the reserve account was projected to deplete the reserve by February 2006.

Today there is less than $2 billion in the reserve. It would be irresponsible to continue spending-as-usual and run the reserve account down to zero. Currently 84 percent of state revenue comes from oil and gas. The reserve was set up to serve as a buffer against swings in oil prices. Without such a cushion, dramatic revenue drops would mean dramatic mid-year reductions in state-supported services. To prolong the life of the reserve, the

COMMITTEE COPY

administration is prudently using it so it will last longer and serve as a "bridge" to the day when increased revenue is realized from natural resource development. Because of our fiscal discipline, the reserve account is extended to January 2008. But it also is important that the reserve maintain a balance of at least $1 billion to serve as a cushion against oil price fluctuations. Based on our spending and revenue proposals, the reserve is expected to drop to $1 billion in July 2006.

Spending more than we can afford has created unrealistic expectations of what government can and should provide and has created services that can't be supported over the long-term unless new revenues are found. This uncertainty has discouraged private business from making serious investments in Alaska.

Until new state revenues are generated, we ask all Alaskans to recognize that we must share the responsibilities—and make sacrifices—to put the state on course.

In developing the Fiscal Year 2005 proposed budget, every department engaged in a process of self-examination in which it got down to the basics:

- Why does the department and program exist—what is its mission?
- Does each program effectively contribute to achieving the department's mission?
- What results are programs supposed to be getting—and are they?
- How efficient is the program in using public dollars to get these results?

This process, called "Missions and Measures," was initiated by the Legislature several years ago. My administration has built on the Legislature's work and expanded it into a management tool. We recognize that these frameworks not only communicate to Alaskans the "bang for the buck" that the state receives, but they also provide program managers with feedback on a program's effectiveness, where changes may be needed to improve services, and just as importantly, which programs should be stopped because they are not effective. In addition to reporting these results to the Legislature as part of the annual budget process, we also will report to Alaskans throughout the year via the State of Alaska's home page on the World Wide Web.

The spending proposed in Fiscal Year 2005 also reflects policy priorities and increases the state's investment in areas of traditional responsibility—protecting the public's safety and education:

- Enforcing the Laws: Twenty Troopers, six criminal prosecutors, and six public defenders are added to improve the safety of communities throughout the state;
- Protecting the Vulnerable: Twenty social workers and nine civil attorneys, including attorneys for Child in Need of Aid, sexual and violent assault, juvenile delinquency, and human services cases, are added to increase the state's protection of those who are most vulnerable; and
- K-12 foundation formula is funded at the higher per student funding level approved by the Legislature last session. In addition, local school districts are reimbursed for school construction debt and the pupil transportation program is funded at the level required by law.

The top priority for this administration is to develop Alaska's natural resources in order to generate state revenue and create jobs to support the quality of life that we want not only for those who are in Alaska today, but also for those that will be here in the future. Economic growth is the best way to balance a budget. If the economy is growing and expanding thanks to policies that encourage job creation and innovation, Alaskans will be able to better provide for their families and communities. The administration has built a budget that encourages private investment.

But the receipt of revenues from resource development takes time—it took eight years for the state treasury to get revenues from Prudhoe Bay. While we diligently work to develop these resources, we must have "bridge financing" to assist in getting us to when these new revenues will start to flow into the treasury. Our reserve account serves as this "bridge" and must be prudently used between now and then.

Investment in our resource departments is necessary as we expand our development efforts. The proposed budget adds key staff to the Department of Natural Resources Oil and Gas Division to aggressively work on the gas line, an expedited Alaska Peninsula oil and gas lease sale, opening of National Petroleum Reserve-Alaska, and further streamlining of our permit process.

The Department of Environmental Conservation also is proposing to assume primacy for issuance of Clean Water Act permits from the federal government. Not only will this mean Alaskans are making decisions instead of outside bureaucrats, but we will be able to have more responsive decision-making that advances resource development and protects the environment.

In terms of spending level, the proposed operating budget is about the same level as the current year. To maintain flat spending, a total of $145 million in reductions had to be taken in order to cover unavoidable increases, which include:

- Retirement system costs of an additional $29 plus another $5 million in unemployment insurance and workers' compensation increases;
- Medicaid, foster care, and other formula-driven program increases that went up $62 million due to higher medical care costs and increased caseloads; and
- State debt service obligations that increased $42 million, of which $13 million is to reimburse school districts for locally approved school construction (bringing the program's total cost to $79 million), and another increase of $27 million to pay for school construction and transportation bonds approved by voters in 2002.

In spite of reductions to cover these increases, the departments are making every effort to maintain the current level of direct services. This is not to say there will not be changes in how services are delivered to Alaskans—but no roads will close in winter nor will any state parks close.

To manage reductions, departments were asked to identify how to achieve administrative-type savings. Human resource functions have been consolidated in the Department of Administration instead of being spread out across 15 departments. Not only will this result in a savings of $640,000, there are other efficiencies including consistent management administration of personnel law, labor contracts, and policies.

The Department of Corrections is consolidating administrative responsibilities to save over $760,000 while the Department of Health and Social Services has reorganized and continues to reduce layers of mid-management. The Department of Administration has led an enterprise-wide information technology (IT) review that resulted in creation of IT standards and coordination of technology within and between departments. The standards will translate into at least a five percent savings in computer purchases. Improved IT coordination will mean the results of technology investments are shared between programs and departments, thereby avoiding future costs. A new decision-making board is tasked with making IT investment decisions from an enterprise-perspective and a group of technology professionals has been tasked with offering enterprise-wide advice.

In terms of the number of state employees, the proposed budget deletes 409 full-time positions, of which 69 percent (283) currently are vacant. Elimination of vacant positions represents an effort to have the budget better reflect the actual level of resources (both dollars and staffing) necessary to deliver program services, which is important in a cost/benefit analysis.

In terms of revenues, the state is enjoying higher oil prices. But in spite of this, the administration's overall proposed spending for Fiscal Year 2005 requires an additional $75 million (this is above the $400 million from the state's reserve account.) To protect prudent use of the state's reserve, the administration will be introducing several measures to generate additional revenues.

Sincerely yours,

Frank H. Murkowski

Frank H. Murkowski
Governor

Enclosure

SB

257

SFIN

FILE

SB 257

was referred to the Senate Finance Committee

Hearing(s) were held

The bill did not move from Committee

Alaska State Senate

Senate Finance Committee

Official Business

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

AGENDA

Friday, March 5, 2004

9:00 am

SB 257-APPROP: CAPITAL PROJECTS
Department of Transportation and Public Facilities

Bills Previously Heard or Scheduled

Alaska State Senate

Senate Finance Committee

Official Business

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

AGENDA

Thursday, February 12, 2004

9:00 am

Department FY04 Status Reports

Health and Social Services
Corrections
Law
Military and Veterans Affairs
Environmental Conservation
Public Safety
Administration
Community and Economic Dev.
Revenue

Bills Previously Heard or Scheduled

January 9, 2004

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 ENVIRONMENTAL CONSERVATION
VILLAGE SAFE WATER PROGRAM
SELECTED PROJECTS

November 19, 2003

Audit Control Number

18-30028-04

We reviewed the Department of Environmental Conservation spending practices in the construction of water and sewer systems through the Village Safe Water program. We found that the procedures over spending lacked some normal business safeguards and that this small program did not have the necessary business support. We recommend transferring this program to the Department of Transportation and Public Facilities, where this support is readily available.

The audit was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section.

Pat Davidson, CPA
Legislative Auditor

TABLE OF CONTENTS

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 the Village Safe Water Program (VSW) administered by the Department of Environmental Conservation (DEC).

Objectives

The objectives of the audit were as follows:

- To evaluate DEC oversight over engineering firm billings.
- To evaluate DEC oversight over project payrolls.
- To evaluate DEC purchasing practices in project communities.

Scope and Methodology

The audit request asked us for a review of DEC spending practices in the construction of water and sewer systems through the VSW program. To enhance our understanding of the audit request, we were provided examples of possible waste on particular projects.

Our audits are conducted under standards issued by Congress, known as the *Government Audit Standards.* These standards direct us to assess the ability of program processes to accomplish program objectives, meet legal requirements, and control waste, fraud, and abuse.[1] These standards also encourage us to *"make recommendations for actions to correct problems identified during the audit and to improve programs and operations."*[2]

The VSW program had 35 projects with active construction during the 2002 construction season. We reviewed selected aspects of 20 of these projects. Each of the 20 projects was located in a different community.

Fieldwork for the audit included the following:

- Review of statutes, regulations, ordinances, grant agreements, contracts, and written policies and procedures.

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[1] *Government Audit Standards* (2003) §§ 2.09-2.11, 7.12-7.13, 7.17-7.25. For the purpose of the *Government Audit Standards,* "abuse" is defined to occur when *"conduct of a government program or entity falls far short of behavior that is expected to be reasonable and necessary business practices by a prudent person."* *Government Audit Standards* (2003) § 7.25.

[2] *Government Audit Standards* (2003) §§ 8.28-8.29.

- Interviews with state and federal agencies.[3]
- Review of project files.
- Review of records of project accounting, payroll, personnel, and expenditures.
- Review of prior evaluations, studies, and audits of the VSW program by various entities.

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[3] In addition to past and present DEC personnel, we interviewed employees of the following: U.S. Environmental Protection Agency, U.S. Department of Agriculture, Denali Commission, State Department of Community and Economic Development, State Department of Transportation and Public Facilities, Alaska Industrial Development and Export Authority, State Department of Labor and Workforce Development, Internal Revenue Service, U.S. Citizenship and Immigration Service, and local tax officials.

ORGANIZATION AND FUNCTION

In 1970, the Village Safe Water Act established under Alaska Statute 46.07 created the Village Safe Water (VSW) program. The Act established *"a program designed to provide safe water and hygienic sewage disposal facilities in villages in the state."* An eligible "village" is defined as *"an unincorporated community that has between 25 and 600 people residing within a two-mile radius, a second class city, or a first class city with no more than 600 residents."*[4]

The VSW program was originally administered by the State Department of Health and Welfare but was later transferred to the Department of Environmental Conservation (DEC). The program is currently administered as a separate section within the DEC Division of Facility Construction and Operation.

All of VSW's field engineers and its grants administrator are stationed in its Anchorage office. The field engineering staff consists of eight engineers, three engineering associates, one engineering assistant and one graduate intern. The VSW program manager and a planner work out of DEC's Juneau office.

The majority of VSW's funding is through federal grants from the U.S. Environmental Protection Agency and the U.S. Department of Agriculture. The balance is Alaska legislative appropriations for capital budgets from state funds.

For FY 04, the program has a project budget of $81 million. DEC engineers are directly administering 43% of this budget while 57% is being forwarded to the Alaska Native Tribal Health Consortium.

For most VSW projects, the community provides the workforce. This is termed a "force account" arrangement in the public construction field. DEC engineers may directly oversee a project or may delegate day-to-day oversight to a construction management firm.

Once the legislature has appropriated funds for a specific project, those funds technically belong to the receiving community. However, DEC retains an Anchorage CPA firm to manage a bank account that holds the grant funds "in trust" for each project community. The CPA firm issues checks for project expenditures, as directed by DEC.

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[4] AS 46.07.080(2).

(Intentionally left blank)

BACKGROUND INFORMATION

Project Selection

The Village Safe Water (VSW) enabling statute (AS 46.07) authorizes the program to construct water and sewer systems in the state's "villages." The statute defines a "village" as "an *unincorporated community that has between 25 and 600 people residing within a two-mile radius, a second class city, or a first class city with not more than 600 residents.*"[5] Though the Department of Environmental Conservation (DEC) has a tradition of constructing projects in communities in bush Alaska, that is, communities off the road system, the statute is silent as to any priority among eligible locations.

In fact, statutes, regulations, and federal grant conditions are all silent as to DEC's selection criteria when applicant requests exceed available funds. However, DEC has developed a ranking system to prioritize requests, which is publicly described on its homepage.[6]

DEC has separate ranking processes for projects in the planning and construction phases. In each process, applications receive weighted points in specific categories (see Exhibit 1). Scoring and ranking is conducted by the VSW program management in Juneau, rather than by the Anchorage-based engineers that supervise completion of the selected projects.

EXHIBIT 1

PLANNING SCORING CATEGORIES

Plan information
Community development status
Council resolution

CONSTRUCTION SCORING CATEGORIES

Public health and environmental threats
Project development status
Other funds
Operation and maintenance capabilities
Project coordination
Economic feasibility

Project Construction

Alaska Statute 46.07.040 authorizes VSW "*to provide for the construction by contract or through grants to public agencies or private nonprofit organizations, or otherwise.*" The statute further provides that *"workers from the village in which the facility is being constructed shall be utilized to the maximum extent feasible."*

Under the VSW enabling statute, DEC has several options to construct a project. First, DEC may contract for construction by a contractor using the traditional competitive bidding process of AS 36.30. Second, DEC may transfer funding to the Alaska Native Tribal Health

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[5] AS 46.07.080(2).

[6] See www.state.ak.us/dec/dfco.

Consortium, with construction under consortium procedures. Third, DEC can arrange for the community to provide its own construction workforce. Workers under the latter "force account" arrangement are technically employees of the local government or a local organization. However, DEC still oversees the project and pays all the bills.

VSW projects are funded from three sources: (1) grants from the U.S. Environmental Protection Agency; (2) grants from the U.S. Department of Agriculture; and (3) state capital project funds. Federal grantors leave the method of construction to DEC's discretion, so long as there is compliance with federal grant conditions and regulations. Federal grantors have agreed that the written procedures in DEC's manual for the VSW program are an acceptable approach to the federal requirements.

REPORT CONCLUSIONS

The audit request asked us for a review of Department of Environmental Conservation (DEC) spending practices in the construction of water and sewer systems through the Village Safe Water (VSW) program. To enhance our understanding of the audit request, we were provided examples of possible waste on particular projects.

The concerns reflected in the audit request were well-founded. As we detail below, DEC procedures for spending lack some normal business safeguards that the public has a right to expect for construction projects.

In essence, approximately $35 million[7] in public construction is being monitored by a dozen engineers[8] buried within a regulatory agency. Though well-meaning and exemplary in dedication, these DEC employees suffer from a lack of the usual business support services that enable other state engineers to focus on engineering. In short, there is a mismatch between their professional training and the tasks that consume much of their time.

Our recommended solution is to transfer VSW construction to the Department of Transportation and Public Facilities (DOTPF) with its support services, economies of scale, training opportunities, career paths, and business discipline (see Recommendation No. 1).

A common thread in our findings is the considerable ambiguity that the program has tolerated in accountability for how project funds are actually spent. This is not surprising given that awarded funds are kept by DEC "in trust" for the recipients and jointly controlled by various parties with procedures that fluctuate considerably in practice.

While local hire is desirable, a community's capacity to assume substantial control needs to be carefully evaluated on a case-by-case basis rather than presumed as the norm. When such delegation and transfer of project responsibility is truly deemed feasible, oversight and accountability need to be documented by agreement in no uncertain terms.

Our detailed conclusions follow.

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[7] The VSW program has an FY 04 capital budget of $81 million. The VSW engineers are administering $35 million of these projects while $46 million has been transferred to the Alaska Native Tribal Health Consortium.

[8] The 11 DEC engineers who work directly with VSW communities are stationed in Anchorage. They had an office supervisor during the 2002 construction season, but that position is now vacant. The program manager is in Juneau.

Unskilled oversight of construction management firms and other engineers allows waste

DEC commonly contracts with engineering firms to monitor day-to-day spending and perform other tasks, such as design work, on VSW projects. Information provided with the audit request relayed concerns about billing practices under 24 of these contracts, with those contracts involving 22 different communities.[9] Construction management, that is, the critical delegated control over VSW spending, was the subject of 11 of the contracts in question.

In larger agencies, the drafting of construction management contracts can be entrusted to experienced contracting officers whose business savvy protects the public from exploitive billing. However, engineers in DEC are left to draft their own contracts. The result is a loose, haphazard assortment of provisions invented as the need arises, with pricing and billing terms largely dictated by seasoned contractors.

Exhibit 2 shows the various deficiencies that were spread among the 24 contracts we reviewed. The disparity in business negotiating skills indeed leaves the state open to exploitive billing.

Most VSW engineers recognize that they are not contract experts and would welcome professional help in ensuring communities get fair value for project money. In Recommendation No. 1, we propose a reorganization in which these well-meaning engineers will get the business support they need so they can refocus on engineering.

EXHIBIT 2

CONTRACTS ALLOWED WASTEFUL SPENDING

- Missing standard contract terms. Travel time, overtime, and holiday pay not addressed in most contracts.
- Lack of standardization between contracts. Labor rates and contract fees varied considerably between contracts.
- Contractors dictate rates and fees with little scrutiny by engineers.
- Contractors inflate pricing on pass through expenses.
- Questionable services and rental charges were allowed.
- Missing fee schedules in contract files.
- Contractors dictate contract changes.
- Uncertainty of cumulative dollars authorized and spent under amended contracts.
- Billings did not agree with contract terms.
- Engineers unaware of federal grant requirements.
- VSW skills are outmatched by contractor's business savvy.

---

[9] We note that one of these communities had a 2000 census population of only 22 persons and, per the state demographer, an estimated 2002 population of only 3 persons. This reflects the need for VSW to carefully prioritize its allocation of limited project funding. Recent media coverage highlighted generalized federal concern about grants for public works projects in the State's "phantom" villages." See Liz Ruskin, "Stevens vows to examine funding," *Anchorage Daily News*, October 23, 2003, pp. A-1, A-10.

DEC management insists that the billing provisions in question are simply the accepted norm for private engineering firms. Based on our discussions with state and federal agencies,[10] we disagree.

Unskilled oversight of on-site managers allows waste

A minority[11] of projects are directly managed by a DEC engineer rather than by a construction management firm. While DEC oversees the project and pays all the bills, the community provides its own workforce to build the facility. This is termed a "force account" arrangement in the public construction field.

a. Overpaid on-site managers

Communities with such force account projects hire an on-site manager with the concurrence of DEC's engineer.[12] This manager is not from the community and may or may not be a resident of Alaska. DEC's engineer drafts the employment contract, under which the manager is technically a "temporary employee," rather than a contractor, and this employee works for the community, rather than DEC.

We have reviewed the compensation of the three highest-paid on-site managers during the 2002 construction season (see Exhibit 3). While DEC defends these wages, we find them excessive and wasteful. This practice offends today's public expectations for small DEC projects.

EXHIBIT 3

THREE HIGHEST PAID ON-SITE MANAGERS

2002 CONSTRUCTION SEASON

Gross wages	Per diem	Other direct*	Total
$197,078	$5,712	$3,200	$205,990
$184,918	$4,662	$7,700	$197,280
$134,758	$8,892	—	$143,650

* Other direct = payments made directly to manager's personal business

Our concerns about DEC's skills at oversight are detailed in Recommendation No. 2.

---

[10] We consulted contracting specialists at DOTPF, the Denali Commission, and the Alaska Industrial Development and Export Authority. Clear, consistent billing terms that protect the state are no novelty. DOTPF has training academy courses that teach contracting skills. A veteran Public Health Service engineer at the Denali Commission also noted the availability of valuable training from the federal government.

[11] Out of 35 VSW projects with actual construction during the 2002 season, 22 were conducted through a construction management firm, 11 had an on-site manager who reported directly to DEC's engineer, one used both a construction management firm and an on-site manager, and one was simply run by a general contractor.

[12] DEC refers to this on-site manager as a "superintendent" in the employment contract.

b. Problems with safeguards over crew payrolls

The on-site manager supervises the local force account crew. We found DEC's loose controls over crew payrolls to fall short of normal business safeguards. Those loose controls are symptomatic of the overall ambiguity as to whether DEC or the community is accountable for how project funds are spent.

While we did not find any fraudulently-issued paychecks, such neglect of payroll safeguards is an opportunity for fraud to occur and not be detected (see Recommendation No. 3).

We do not fault the on-site manager for DEC's failure to appreciate a risk that could jeopardize public confidence. However, the shortcoming once again shows a mismatch between the professional skill set of public engineers and the business savvy needed to protect public spending.

c. Unskilled purchasing

The audit request expressed concern about purchasing practices in project communities. Given the on-site manager's broad discretion over purchasing and hiring in a community,[13] we reviewed the application of DEC-prescribed spending procedures at three projects administered by an on-site manager.

We found problems with DEC's oversight procedures that show a lack of business skills in areas such as purchasing, risk management, and compliance with tax laws. Some of these problems simply waste public money,[14] while some others discussed below invite confrontations with regulators such as the Internal Revenue Service (IRS), federal immigration authorities, and the Alaska Department of Labor and Workforce Development.

We noted particular expenditures that were wasteful,[15] or at least questionable, in view of an inadequate explanation from the DEC engineer.

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[13] Some VSW engineers allow the on-site manager to choose the source for any purchase up to $5,000 without the engineer's preapproval. At least one engineer allows the on-site manager to choose the source up to $25,000 without preapproval. Comparison shopping is required between $5,000 and $50,000. Purchases over $50,000 require competitive bidding. The on-site manager also awards jobs, sets pay rates, and rents local equipment.

[14] For instance, one on-site manager ordered insurance for a rental of heavy equipment. He neglected to cancel the insurance policy at the end of the five-month rental period, resulting in a $5,900 overpayment for an unnecessary coverage extending over 22 months. The automatically-renewing coverage would presumably still be in force today if we had not alerted DEC's engineer.

[15] For instance, local ordinances exempted project purchases from the local sales taxes, which could total 5%. However, we noticed a variety of purchases in which the on-site manager did not attempt to claim the exemption. DEC approved payment even though the bills or receipts clearly included the local tax.

For example, we were unable to evaluate the pricing of some tools and office supplies, such as those in Exhibit 4. The DEC engineer lacked personal familiarity with these purchases, having entrusted them to the on-site manager. Sometimes this delegation occurred when the engineer signed open purchase orders that authorized general charging at local stores. When the engineer sought explanations for Legislative Audit, the on-site manager summarily responded with generalities such as *"tools and safety equipment"* and *"tools that are necessary for water and sewer projects."*

We recognize the value contributed to an area's economy by purchases of common hand tools and office supplies at local convenience outlets. However, we also expect that a skilled purchasing agent could negotiate bulk purchases of such items that would service numerous projects.[16] Such business economies of scale are an unrealistic expectation, though, by DEC's unsupported VSW engineers.

EXHIBIT 4

UNEXPLAINED HIGH COSTS FOR COMMON HAND TOOLS AND SUPPLIES

	<u>Cost</u>
Claw hammer	$25
Hacksaw frame	$29
Bolt cutter	$140
Pliers	$23
Wrench	$89
Wrench	$65
Wrench	$56
Wrench	$31
Grease gun	$27
60-watt light bulb	$2
Executive stapler	$12
Tape refill	$21
Post-it notes	$11
Wastebasket	$11

d. Wasteful duplication of bookkeeping efforts

While DEC lacks adequate safeguards over what the money is used for, up to five different bookkeeping systems concurrently track how much is left. This redundant bookkeeping is wasteful.

Overall disbursements of grant funds are, as usual, tracked by DEC's administration through the state accounting system. However, DEC also pays an Anchorage Certified Public Accounting (CPA) firm $159,000 a year to maintain the computerized books and separate bank accounts needed for VSW projects. The funds in each bank account are considered to be held "in trust" for the community, with the CPA firm issuing checks to vendors and force account employees as DEC authorizes.

DEC engineers have online access to the cash basis books that the CPA firm keeps for each project, which are basically check registers. However, most engineers are hesitant to fully utilize this system due to both their limited accounting background and the system's inability to reflect pending, unpaid purchases.[17] Engineers thus create their own spreadsheets of

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[16] For instance, large hardware chains now sell over the internet.

[17] Depending upon accounting background, users think of unpaid purchases as warranting an encumbrance, account payable, reserve, or some other deduction from committed funds. Regardless of terminology, a cash basis checkbook does not reflect items ordered or wages earned until the check is actually cut. There is an ever-present risk of spending over budget unless one adopts a practical solution.

pending expenses and resort to creative solutions, such as the preplanned holding of a $60,000 check for several months. These spreadsheets in effect constitute a redundant, unofficial set of books that are not tied in to the state accounting system or to the subsidiary system operated by the CPA contractor.

The contract that DEC drafts for on-site managers requires that managers also track spending commitments under their project budgets. One on-site manager employed his spouse to act as an on-site bookkeeper (see Exhibit 6 on page 21), and purchased a $2,700 computer system out of project funds. Like DEC's engineers, these front-line managers could conceivably use on-line access to the CPA firm's system. However, their immediate needs require that they, too, rely on their own self-designed spreadsheets to track expenses under an unofficial system.

Yet another unofficial system, tracking by the community itself, may exist at some sites. For instance, $1,700 of a project's money was used to send an officer of a community council to Anchorage for a two-day QuickBooks course.[18]

All of this redundancy shows both waste and, once again, the lack of business support that diverts DEC from focusing its engineering talents on the communities' important technical problems.

Noncompliance with tax and payroll laws invites enforcement

The lack of support also surfaces in noncompliance with various tax and payroll laws routinely expected of most small businesses. Some of this noncompliance presents the possibility of enforcement actions, as well as the obvious erosion of confidence in the program by public cynicism over double standards.

DEC engineers were apparently unaware that longstanding federal tax laws require Form 1099 reporting of some payments to vendors that exceed $600. Only one Form 1099 was filed for all of the VSW projects administered by DEC during the 2002 tax year.[19] This is not a new issue[20] and, despite the potential for IRS penalties, DEC apparently lacks the business infrastructure to solve this problem.

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[18] This $1,700 included the employee's project wages of $660 for two 10-hour days, with overtime. Such QuickBooks training could have been obtained far more economically from the local college ($102) or even on-site from the state's rural utility business advisor at no charge.

[19] We checked three projects for completion of Form 1099 and found at least 15 vendors for which that reporting was required in 2002. However, the contract CPA firm failed to file any 1099 forms for these projects.

[20] DEC arranged for a private auditor to review VSW procedures back in 2001, with the auditor reporting to DEC that the necessary 1099s were not being issued.

State law provides penalties for employers that circumvent workers compensation coverage. One on-site manager initiated a recharacterization of his uninsured work. He wrote DEC: *"If insurance for [this project] is not in place, and you don't want to run this through payroll, you can issue me a P.O. [purchase order] for consulting services to cover the time . . ."* After being paid for one pay period of "consulting services," he worked the next month as an employee but still without workers compensation coverage.

A similar issue arose when another on-site manager was paid wages as an employee while sizeable additional payments were paid directly to his private business. Among these additional payments was $4,662 in per diem and $7,700 designated as a reimbursement for health insurance premiums. Whatever reason for this arrangement,[21] the split once again blurred the important distinction between employee and consulting contractor.

State wage and hour laws forbid hourly workers from performing the same job as both an employee and a volunteer. While one on-site manager consistently claimed very long days on his timesheets (see Recommendation No. 2), he asserts that there have been many additional hours for which he has not charged the VSW program.[22] Such confused boundaries invite wage claim disputes with costly penalties.[23]

Long-standing federal law requires every employer to complete Form I-9 after verifying an employee's identity and citizenship status. The contracts for on-site managers make this an explicit part of their duties. Nevertheless, when a federal agent inspected the forms for three projects, the agent found errors of varying significance on every form. In fact, we noted that no Form I-9 was even provided by the manager for 11 employees on these projects.[24]

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[21] For instance, we note that DEC did not report the $7,700 as taxable income on the manager's W-2 form. DEC should ensure that this treatment meets IRS standards. The IRS government liaison can assist DEC in this regard.

[22] On July 2, 2003, the on-site manager wrote DEC: *"I have given hundreds of hours of mine and [spouse's] time without charging . . ."* On July 11, 2003, he wrote DEC: *"over the last ten years, [spouse] and I have given pro bono thousands of hours to various VSW projects."* [Emphasis added.] He now indicates to DEC that he is continuing to work on the project free of charge, well after DEC shut the project down for exhausted funding. We have not attempted to evaluate whether such statements are accurate or hyperbole; they simply reinforce our position in Recommendation No. 2 that employees like this belong on a salary.

The same manager has also volunteered cash payments that further complicate the boundaries of his employment relationship. After a history of $6,700 in equipment thefts at one site, he wrote that he was *"personally offering a $1,000.00 cash reward in this matter."* When the DEC engineer ordered work to stop for exhausted funding, the on-site manager declined and promised that he would personally pay for any overruns, implicitly agreeing to act as a sort of guarantor.

[23] DEC can clarify such status questions by requesting an opinion letter from the Department of Labor and Workforce Development. Also, we recommend that DEC obtain advice from the Department of Law concerning the risk of continuing apparent authority to bind the state and continuing liability for workplace injuries.

[24] Contracts for the on-site managers also require them to obtain the usual IRS Form W-4 from every employee. Forms for six employees were incomplete on the three projects.

DEC must ensure that its on-site managers appreciate the need for careful attention to payroll tax laws. Though on-site managers technically work for the communities, we think the IRS may treat DEC as a "responsible person" for the purpose of assessing penalties.

Finally, we note that recent federal regulations clarify the IRS intent to evaluate the reasonableness of compensation that nonprofit corporations pay influential employees. Total compensation packages over $90,000, while not automatically unreasonable, are subject to IRS review. Excessive compensation is subject to heavy penalty taxes. To the extent that the VSW program expands its awards to community councils organized as nonprofit corporations, this is another area of tax compliance that necessitates specialized business support.

Better monitoring needed for safeguards over outside employment

Some DEC employees are assigned considerable autonomous discretion on VSW projects. Given the scope of discretion, the Executive Branch Ethics Act contemplates that DEC management will carefully screen outside employment for any conflicts of interest.[25] Such conflicts might include significant business ties with vendors and contractors, or activities in which DEC employees must juggle loyalties to the state and private customers. In Recommendation Nos. 4 and 5, we address the need for clear rules and specific action on this and other ethical matters pertinent to this program.

This need to protect the public from potential conflicts of interest again reflects the value of specialized support skills.

The move to projects in recent road system subdivisions reflects changing priorities

VSW's enabling statute only defines eligibility as "villages" that are either incorporated cities with up to 600 people or unincorporated settlements with 25 to 600 people within a two-mile radius. Program funding for the 2002 construction season expectedly emphasized the installation of basic water and sewer in remote "bush" communities off the road system. Out of the 73 VSW projects directly administered by DEC in 2002, 85% were in locations off the road system with either formal incorporation as a city or a long-standing history before statehood.

Nine projects were funded for communities on the road system that lacked formal status as a unit of local government. While six of these locations have long traditions of prestatehood settlement, two others[26] present the fundamental issue of program expansion into recent subdivisions. VSW leadership needs to openly consider this issue before straying further from the implicit public assumptions for the program.

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[25] See AS 39.52.160, 39.52.170, 39.52.140, 39.52.120.

[26] Nikolaevsk, Voznesenka.

There is no question that the two communities in question have had hepatitis cases that, at the time,[27] might conceivably have been prevented through better water treatment. However, these two communities are neither impoverished, nor isolated, nor long-standing historical settlements. Each project involves only around 50 homes. Like many poststatehood arrivals, extended families came up from the Lower 48 and platted their own subdivisions in unincorporated areas[28] along the road system. They have prospered over the years and installed private communal utilities that now need upgrading.

The VSW program was never intended to displace the usual funding mechanisms for improvements in modern subdivisions on the road system. However, instead of paying special assessments to a developer, homeowner association, or local government, the residents at these two locations incorporated their homeowner association as a community council. They then asked DEC to pay for subdivision infrastructure, even down to the level of fire hydrants or new septic tanks. While this is certainly legal, it presents a fundamental question of priorities for scarce financial resources.

Questionable purchasing presumes unlimited future funding

During 2002, DEC awarded $1.7 million to one of these subdivisions[29] for a well, a water tank, and a 20 x 40-foot building with a treatment system. However, at this point, that subdivision expects further funding because the tank, building, and bank account are all empty.

Construction of the structures, with landscaping, was completed before the project ever found a workable source of water, or even decided upon a treatment method. Seven wells were drilled, including the region's deepest of 680 feet, without finding one that consistently delivered the quantity and quality of water needed by the community.[30]

Recommendation No. 5 discusses some issues on renting, fixing, and furnishing a house provided to the on-site manager to serve as living quarters and an office. Other questionable

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[27] While vaccination is certainly a personal choice for residents of these communities, we note that hepatitis is now preventable by a vaccine routinely administered to the public.

[28] These two subdivisions lie within the boundaries of the Kenai Peninsula Borough, but not within an incorporated city.

[29] Voznesenka.

[30] DEC's engineer expressed to us his disappointment at the progress in finding water. Also, a dispute apparently developed between the on-site manager and a consultant over the technical aspects of the drilling process. Nevertheless, after seven unsuccessful wells, DEC's engineer still did not recognize the need to evaluate this situation for potential claims involving contractor error. DEC's small group of engineers lacks adequate business support in this important aspect of contract monitoring.

priorities were purchases such as a $33,000 pickup truck, signage costing $3,100,[31] and a $4,000 archeological study.[32]

This type of questionable spending implicitly treats DEC funding as a general purpose, discretionary block grant, rather than funding that is to be narrowly-focused on a specific health-related facility. It also reflects an implicit strategy that, once you drive that first stake, the legislature will never leave a project unfinished and always provide more money.

In our Auditor's Comments section, we discuss the need to reassess the tradition of full funding and suggest requiring meaningful in-kind contributions by capable communities.

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[31] This signage consisted of (1) various construction warning signs for $2,046, (2) three metal signs advertising the local water utility for $384, (3) two water utility decals for a vehicle for $190, and (4) six magnetic water utility signs for $568 that will presumably allow private vehicle owners to assert that they are operating their vehicles on utility-related business. Warning signs are an obvious candidate for multi-project economies of scale, while the other items exemplify unchecked waste given the stage of the project.

[32] Though no archeological sites had ever been discovered near the construction site, DEC indicates that the Department of Natural Resources ordered a study for purposes of the Federal Historic Preservation Act. The on-site manager then hired a local college teacher to conduct an immediate study for $4,000. The teacher conducted two days of field work, looked at nine "shovel tests," and wrote a four-page report indicating that nothing had been found. Once again, the state would have benefited from specialized skills in negotiating the price, as well as the real need for a full study in the first place.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The governor should, by executive order, place the Village Safe Water program within the public facilities section of the Department of Transportation and Public Facility.

We recommend that the governor, by executive order,[33] place the Village Safe Water (VSW) program within the public facilities section of the Department of Transportation and Public Facility (DOTPF).[34] The program will benefit from DOTPF's support services, economies of scale, training opportunities, career paths, and business discipline.[35]

Our observations on the personal limits of engineers in the Department of Environmental Conservation (DEC) are not intended as attacks on their conscientiousness. Their deficiencies in oversight are not due to any lack of integrity, dedication, or engineering talent. All of the DEC engineers in this program exhibit an exemplary level of commitment to enhancing the quality of life for rural communities.

Their strengths and enthusiasm lie in their familiarity with arctic technology and their social skills in working with the residents of bush Alaska. The six most senior VSW engineers have a total of 100 years of experience in constructing rural water and sewer facilities. Unfortunately, there is a mismatch between these special talents and the morass of nonengineering administrative tasks that consume their day.

In a larger organization, such tasks would be routinely assigned to others with specialized business skills such as purchasing, accounting, risk management, environmental coordination, legal review, internal auditing, and quality control.

Two DEC engineers estimate that they spend only ten percent of their time on the actual engineering tasks needed to help their communities.

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[33] See Alaska Constitution art. III, sec. 23.

[34] While our audit was, of course, conducted at the request of the legislature, our recommendation is certainly consistent with the governor's recent Administrative Order No. 202 that encourages *"recommendations for consolidation and reorganization of departments, divisions, and duties and any other recommendation to promote sound and efficient administration."*

[35] We recognize that DOTPF traditionally administers its projects through competitive bidding by commercial contractors. However, statutes that govern DOTPF procurement appear sufficiently flexible to allow a force account arrangement when feasible. See AS 35.15.010 (in-house work permissible *"when it appears to be in the best interests of the state"*); AS 44.33.300 (governor may waive competitive bidding for work in impoverished community done by government entity or nonprofit).

Forcing DEC engineers to wear all these hats places them in an untenable, no-win posture few would envy. On one hand, they are to be zealous advocates for a community, deftly maneuver it through bureaucratic red tape, and do whatever it takes to get the job done. On the other hand, they are expected to police the community's use of public money. When the need arises, we expect them to apply traditional business discipline in making realistic choices that may be locally unpopular.

DEC, expectedly, defends the status quo, mainly asserting that DEC engineers have ready access to the DEC regulators who issue the necessary permits for water and sewer projects. We question, though, whether that relationship is really an advantage instead of another weakness in the current placement.

The public expects DEC to function as an impartial regulator. Public confidence in this function is threatened, not enhanced, when a regulated developer shares the same organizational identity and the same physical offices. Environmental compliance is a costly requirement for private developers, and there is an inherent issue of comparative fairness for the latter permittees who cannot simply visit another floor to expedite their applications.

However, the main reason to reassign VSW construction is DEC's lack of the necessary business infrastructure to safeguard spending from abuse. We believe that a better home for this program is DOTPF's public facilities section.

VSW engineers will benefit from the business discipline, support services, training opportunities, and career paths[36] found at DOTPF. However, in giving VSW a better placement, DOTPF should consider keeping the current work group intact, given its cohesive nature, bush skills, initiative, and culture of dedicated advocacy.

Recommendation No. 2

The state should mandate that on-site managers be paid with a salary rather than on an open-ended hourly basis.

The on-site manager on VSW projects is not an engineer and is labeled by DEC as the project's "superintendent." Nevertheless, under the contract traditionally prescribed by DEC, the position oversees on-site construction with the broad discretion and authority characteristic of a high-level manager. Despite this managerial status, compensation under the contract has been on an uncapped, self-reported, hourly basis, with the potential for copious overtime pay, rather than a fixed salary.

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[36] Despite the talents of DEC engineers assigned to the VSW program, the size and unique classifications of their work group foreclose meaningful opportunities for internal advancement. DOTPF, on the other hand, offers a full career path of engineer positions up through Engineer V.

Though not a permanent resident, an on-site manager can become quite popular within the community. VSW procedures[37] do not encourage a community to monitor a manager's ongoing compensation. Nevertheless, we consider such extraordinary wages to be a waste of project funding and another symptom of the ambiguity as to whether DEC or the community is accountable.

The normal business solution is hardly novel: pay these managers with a competitive fixed salary for full-time, temporary employment judged under specific performance milestones. We recommend that the drafting and oversight of such contracts be transferred to professional procurement staff with the expertise, experience, and personal skills to comfortably police this type of abuse.

Once again, this oversight problem is symptomatic of the human limits faced by VSW engineers. Business waste results from DEC's unrealistic expectation that each of these well-meaning engineers be a jack-of-all-trades in a specialized world where economies of scale save money.

a. <u>Excessive wages for on-site managers</u>

During the 2002 construction season, this pay arrangement resulted in an extraordinary level of gross wages for some of these on-site managers (see Exhibit 3 on page 9). Such wages obviously exceeded the compensation of every engineer directly employed by the state.

DEC engineers, who drafted these contracts, have offered us a variety of justifications for the high compensation of their on-site managers: (1) they do a lot of work; (2) communities like them; (3) they endure bush living hardships; (4) they would not like the reduced pay of a salary; (5) good ones cost at least $100,000; (6) they are denied the state benefit package; (7) some technically work for nonprofits rather than true cities; and (8) communities lack incentives to control manager pay levels.[38]

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[37] The community usually contributes none of its own money to the project. All expenses, including the wages of the on-site manager, are usually paid by DEC out of state and federal funds, with an apparent local assumption that more funding will be available next year if the project runs short. Further, the on-site manager has considerable discretion over residents' cash flow as the manager awards jobs, sets pay rates, rents local equipment, and buys everything from used furniture to stump removal services.

[38] DEC's limited control was apparent when its engineer directed one community to reduce the number of workdays specified in its employment agreement with the on-site manager. The community declined and continued its previous arrangement. DEC's ambiguous authority was also apparent when the same community leadership asked the engineer, "*Can <u>you</u> be fired?*"

b. Perks can further enhance high wages

EXHIBIT 5

VILLAGE SAFE WATER PAYMENTS FOR THE HIGHEST-PAID ON-SITE MANAGER

CALENDAR YEAR 2002 (63% FTE)

Manager's gross wages	$197,078
Fee for "consulting services"	3,200
Per diem	5,712
Gasoline	3,165
Rental house	6,500
Utilities for house	952
Furnishings for house	4,946
Indemnification for site thefts	2,700
Total for 63% of full year	$224,253
Projected payment for full year	$355,957

DEC can authorize payments for significant perks for on-site managers. Exhibit 5 shows the overall package of just under $225,000 enjoyed by the highest-paid manager for a construction season reflecting less than two-thirds of a full work year. If projected for full-year employment, this pay rate would translate to an annual compensation of $356,000.

DEC permitted this on-site manager a variety of fringe benefits as he juggled three projects at three locations during a single construction season. Approximately $5,700 was provided as "per diem" for his meals. Up to $3,000 in gas appears[39] to have been provided for daily commutes between his home and the two jobs on the road system.

For days when the manager did not commute, DEC rented him a two-story, 3-bedroom, sauna-equipped home/office at one of his road system projects. This rental was renovated, painted, and furnished for him at DEC expense, including such items as two TV/VCRs and a $2,700 computer system.

While such perks are not unusual in private corporations, Recommendation No. 5 addresses our concerns within the context of public employment.

Finally, while not included in Exhibit 5, the manager's accompanying spouse was paid to work on two of his projects, frequently during the same workweek (see Exhibit 6).

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[39] The two projects were, respectively, 194 and 141 round-trip road miles from the manager's home. DEC engineers made no effort to discover or control the manager's commuting habits or use of over $3,000 in auto gas reimbursement. However, we conclude that the gas reimbursement was largely used for personal commuting given the compact job sites, limited need for distant errands, and the timing of the gas purchases. For instance, in August 2002, the manager purchased sufficient gas for 30 potential round-trips (194 miles each) between the most distant project and his home.

c. *Overtime origins of excessive wages*

The high wages are a function of hourly pay arrangements with uncapped overtime. Exhibit 6 shows the weekly hours claimed by the highest-paid of DEC's on-site managers, including ten consecutive weeks in which he juggled both a bush project[40] and one of two projects on the road system in the Kenai Peninsula Borough. Between the two projects, he consistently claimed exactly 110 hours for each of those ten consecutive weeks.

Exhibit 7, shown on page 22, is another perspective on time reporting by the highest-paid manager. He claimed 94 workdays of over 14 hours a day, with 37 of those days exceeding 16 hours a day. We even noted one day in which he claimed the full 24 hours, followed by a 16-hour day.

Though this on-site manager's overtime rate is a significant one at $67.50 per hour, his timesheets simply record his total hours for the day. There is no indication as to when work actually began and ended, the precision of recording time in fractional hours, any minimum call-outs, travel time, standby time, or even whether meal breaks and commuting occurred on or off the clock.[41]

DEC's written procedures, DEC engineers, and the contracts themselves were all silent on such costly nuances of overtime for these hourly employees. DEC engineers

EXHIBIT 6

WEEKLY HOURS CLAIMED BY VSW'S HIGHEST PAID ON-SITE MANAGER AND HIS SPOUSE

2002 CONSTRUCTION SEASON

	On-site Manager		*Spouse*	
Week	*No. of Projects*	*Hours*	*No. of Projects*	*Hours*
1	2	52		
2	2	62		
3	3	66		
4	3	82		
5	2	104	1	40
6	2	102	1	40
7	2	92	1	40
8	2	112	1	40
9	2	108	1	40
10	2	112	1	40
11	2	108	1	60
12	2	108	1	60
13	2	108	1	60
14	2	92	1	60
15	2	108	1	60
16	2	108	2	96
17	2	110	2	96
18	2	110	2	96
19	2	110	2	96
20	2	110	2	96
21	2	110	2	96
22	2	110	2	96
23	2	110	2	90
24	2	110	2	90
25	2	110	2	90
26	2	110	2	90
27	1	24	1	24
28	2	84	1	48
29	2	76	1	48
30	1	44	1	32
31	1	68	1	48
32	1	32	1	32

Shading indicates a week in which time was claimed for both a remote bush project and at least one project on the road system.

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[40] Nulato.

[41] Paying an on-site manager for commuting time would constitute a "portal to portal" employment agreement, not a customary arrangement for public employees.

unapologetically indicated that they simply left it to the discretion of the on-site manager to claim time as he deemed appropriate.

Given the continued FY 04 funding for some of this work, these problems may well continue without direct intervention.

EXHIBIT 7

14-PLUS HOUR WORKDAYS CLAIMED BY VSW'S HIGHEST PAID ON-SITE MANAGER AND HIS SPOUSE

2002 CONSTRUCTION SEASON

	On-site Manager	*Spouse*
Days over 14 hours	94	40
Days over 16 hours	37	-0-
Days over 18 hours	3	-0-

d. Missing DEC oversight

Existing DEC oversight procedures were only sporadically applied by DEC engineers. DEC's written procedures prescribe that timesheets for force account employees, including on-site managers, will be sent to DEC for review. But in most cases, this simply does not happen.[42]

Rather, individual employee timesheets are presumably kept by on-site managers, who directly fax only a summary to the contract CPA firm that cuts the paychecks. During our audit, DEC could not immediately produce individual timesheets for the past season's work on the three projects that we selected for payroll review. Those timesheets had never been reviewed by DEC engineers and had to be retrieved from the manager's home in another city.[43]

DEC procedures require the completion of daily activity reports by on-site managers, a standard practice in the construction industry. DEC engineers could ideally compare managers' time claims to these routine reports, as well as to the engineers' own observations during site visits. However, for two of the projects, busy engineers only had time for brief visits once or twice a month, and daily activity reports often lacked sufficient detail for meaningful monitoring of exactly who did what on a given day. On the third project, there were no engineer site visits during 2002, and the on-site manager simply decided not to complete any daily field reports.[44]

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[42] In fact, one DEC engineer candidly told us that he would not know what to look for if the timesheets were sent to him for review. Another told us that he simply would not have time to review them.

[43] Though DEC and its on-site manager cooperated with our request, it was clear from the logistical hurdles that DEC seldom, if ever, attempts to inspect such timesheets for legitimacy, accuracy, or even existence. However, such oversight is an important business safeguard given the traditional risks we discuss in Recommendation No. 3.

[44] Though DEC asserts there was only limited activity at this project during 2002, we note that the on-site manager received approximately $21,000 in gross wages for work done at that site. Also, his spouse grossed approximately $5,500 in wages at this project during 2002.

Difficulties in effectively monitoring this manager were further compounded in 2003. DEC placed the oversight for each of his three projects with a different DEC engineer. When we noted the obvious benefits of consolidated monitoring, one engineer feared that DEC's choice of manager would then override the engineers' personal choices as to which projects they prefer as assignments.

Recommendation No. 3

The VSW program should institute traditional business safeguards to protect the integrity of force account payrolls.

A common form of construction site corruption is "ghost employees," that is, fictitious workers' paychecks that are cashed by someone in a position to manipulate the system. One national authority on loss prevention warns:[45]

> *This scheme is especially prevalent among construction companies and other businesses that hire short-term, temporary employees who work "out in the field." It is also not uncommon for owners of small closely-held businesses to add their children or other relatives to the payroll as "ghosts."*

The traditional business safeguard is to assign the key stages in a construction payroll to different people that serve as a cross-check on each other. In other words, particularly at a remote site, the same individual simply should not (1) complete the initial hiring paperwork, (2) set the pay rates, (3) approve the hours on daily timesheets, (4) store timesheets and personnel files, (5) complete the daily activity reports, and (6) physically hand out the paychecks.

DEC's ambiguous written procedures theoretically insist upon some oversight. However, most DEC engineers now appear to leave the whole payroll process from start to finish to the unreviewed discretion of the on-site manager. While we did not discover any "ghost employees," we are surprised that DEC fails to appreciate the risk and surprised that on-site managers would allow DEC to place them in a position so vulnerable to suspicion.

For the three projects in which we reviewed 2002 payrolls, hiring was left to the discretion of the on-site manager, including the setting of pay rates. However, DEC procedures still required that every employee sign a written employment agreement to avoid later disputes over pay, status, benefits, and conditions of employment. Between the three projects, the on-site manager failed to provide DEC with the required agreements for 35 employees, including his own spouse. On five of the agreements provided to DEC, the position or pay rate was simply left blank.

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[45] W. Steve Albrecht et al., *Guide to Fraud Investigations, 3rd ed.*, (Fort Worth, Texas: PPC, 1999), sec. 508.3. Also see Joseph T. Wells, *Occupational Fraud and Abuse* (Austin, Texas: Obsidian Pub., 1997), chapter 8.

The usual practice was for the contract CPA to express mail employee checks directly to the on-site manager's home, which was distant from the project community. This may have seemed practical at the time given the manager's frequent commuting, and we found no evidence that the checks were not properly distributed to the payees.

Nevertheless, this scenario placed the manager in an unacceptable position when coupled with his private custody of the individual timesheets and the other factors we discuss above. A skeptical business world simply assumes a higher risk of ghost employees when a payroll process, from hiring to paycheck distribution, is dominated by one person in a remote setting. This basic shortcoming is another symptom of the over-delegation that can result when engineers lack the business support services found in larger organizations.

Recommendation No. 4

DEC's designated ethics supervisor should, with comprehensive assistance from the Department of Administration, determine the extent of any conflicts of interest among employees and establish clear boundaries.

Some DEC employees are assigned considerable autonomous discretion on VSW projects. Given the scope of discretion, the Executive Branch Ethics Act contemplates that DEC management will carefully screen outside employment for any conflicts of interest.[46]

Obviously, outside employment should not compromise DEC's needs as a public employer with a limited staff. Conflicts from outside employment may impair employees' eligibility for particular assignments or their impartiality in selecting particular contractors and vendors.

We recommend that DEC's designated ethics supervisor obtain comprehensive assistance from the human resource professionals with the Department of Administration (DOA). In view of DEC management's uncertainty in this matter, a specialist from DOA should interview employees to ascertain the specific nature of any outside employment and to assist them in complying with the ethics act disclosure requirements in a meaningful manner. DOA should then assist the designated ethics supervisor in issuing clear boundaries for outside employment.

As we discuss in Recommendation No. 1, the longer term solution for this and other shortcomings in business infrastructure is to relocate the VSW program within DOTPF's public facilities section.

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[46] We have discussed particular concerns with DEC management. However, due to the confidentiality of ethics act disclosures, this report does not attempt to cite any particular example.

Recommendation No. 5

For force account projects, the VSW program should adopt regulations setting basic business standards for potential conflicts of interest, transactions with project employees, and nepotism.

Our discussions earlier in this report detail the considerable discretion that on-site managers have in local spending on force account projects. The concept sounds positive in the abstract, with DEC scaling down a cumbersome purchasing bureaucracy to fit local realities. Cash is brought into a local economy, and stays there, as longtime residents get hired and sell the project anything available.

However, in the zeal to "just get things done," DEC has left on-site managers in an unregulated void when it comes to some basic business safeguards that the public has a right to expect. More specifically, these managers are simply left to set their own boundaries when it comes to potential conflicts of interest, transactions with employees, and nepotism.

Such a standard-less void, by default, invites questionable practices that may eventually cross the line into misconduct. While managers' choices may not technically violate existing laws,[47] anecdotes that disappoint public expectations can jeopardize statewide confidence in the program as irreparably as any lawsuit. Development of consistent rules will once again benefit from specialized business expertise outside of the engineering field. Pertinent concepts from the state's ethics act and procurement code will, of course, be a good starting point for the drafting of specific rules that fit the context of these projects.

Our discussions in this report include examples where the same individuals have multiple roles on a project, such as community officers, employees, vendors, and beneficiaries. While such "self dealing" may be a reality and not inherently wrong, VSW projects need standards for scrutinizing the necessity and pricing of such transactions between related parties.[48]

Clear standards regarding nepotism are another needed business safeguard. Employment for an on-site manager's accompanying spouse occurred at two projects in our review, including the frequent 90-hour weeks detailed in Exhibit 6 on page 21. Contrary to DEC's requirements for all force account employees, her employment was not reduced to a written agreement as to position, pay rate, and terms. Rather, her husband-manager set her pay rate, approved her timesheets, and assigned her duties as an "office clerk" or "bookkeeper" as he

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[47] Neither on-site managers nor nonprofit community councils appear to be covered by the Executive Branch Ethics Act.

[48] For instance, DEC paid a community vice-president wages of $19,185 as well as additional payments of $3,600 to his private business for building equipment shelters. DEC paid an unallocated lump sum of $2,000 to another force account employee in a bulk purchase of items ranging from mosquito repellant to chain saws to hand tools to lubricants to a mud pump.

An employee at another project received $31,419 in wages and over $45,000 for the rental of his construction vehicles. We also noted that the project was charged $1,700 more than the quoted price for this vehicle use.

deemed necessary. Her timesheets, like that of the other employees, were kept in the couple's home and never reviewed by the DEC engineer.

Another troublesome situation concerns an on-site manager's personal purchase of a home rented at DEC expense. With the community president as landlord, DEC entered into a one-year oral lease of a two-story, three-bedroom, sauna-equipped house intended to serve as the manager's home/office. At the beginning of the tenancy, repairs were made at DEC expense including plumbing and painting.[49] The on-site manager put the utilities in his own name.

Ten days before the end of the year-long tenancy, DEC approved payment of a bill for $9,000 in back rent. On the last day of the tenancy, the on-site manager signed a contract to personally purchase the home. While the home was later appraised for $10,000 more than the purchase price, we note that five years ago, before DEC's plumbing and painting work, the assessed value for the purpose of property taxes was $31,000 higher than the purchase price. We further note that the sales contract is silent as to any rent due between the end of DEC's lease and the closing date for the manager's personal purchase.

When DEC inquired about this transaction, the on-site manager responded that he (1) had sold his condo in Arizona, (2) had decided to stay in Alaska, (3) was purchasing this house *"for the sake of the project,"*[50] (4) was doing DEC a favor since it would not have to move its equipment and furnishings, (5) was allowing the community continued use of the office and shop in return for an eventual charitable tax deduction,[51] and (6) was currently completing an application for further DEC funding. He also indicated that the community president and he may sue the state for defamation and implying a conflict of interest by inquiring about the transaction.

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[49] DEC records were not adequate to distinguish employee time and materials for the house repairs from work on the project itself. However, there appear to have been repairs, painting, and plumbing work done on the house, with much of this work concentrated within the nine-day period between May 25 and June 14, 2002.

[50] We recommend that DEC obtain advice from the Department of Law concerning the need to negate any inference that this real estate was purchased on behalf of the state and to negate state liability for any eventual defaults or injuries.

[51] While the on-site manager suggested the availability of this tax deduction, we note that a homeowner association may not qualify as a charity under Internal Revenue Code § 501(c)(3).

AUDITOR'S COMMENTS

The Village Safe Water program could require meaningful in-kind contributions by capable communities.

Though there have been some exceptions over the years, the usual assumption of the Village Safe Water (VSW) program is that communities invest none of their own funds or property. Under the force account arrangement used by the Department of Environmental Conservation (DEC), the community gets a facility along with paychecks for the local crew that builds it. DEC asserts that the use of force account labor, a business plan, and a local operator fosters a sense of community "ownership" in the completed project.

In some cases, an available workforce is all that can be expected. However, state funding is increasingly strained and federal funding increasingly expects local responsibility, commitment, and sustainability.[53] Communities could be encouraged to expect VSW assistance as a startup partnership, rather than a perpetual entitlement.[54]

There will certainly be legitimate cases in which a community truly has nothing tangible to contribute. However, Exhibit 8 lists examples of local in-kind contributions

EXHIBIT 8

POTENTIAL COMMUNITY COMMITMENT (IN-KIND CONTRIBUTIONS) BY BENEFICIARIES OF VSW PROJECTS

Land for treatment building and water tank[52]

Use of vacant building for construction office

Use of cars and trucks

Use of construction equipment

Use of hand tools

Lodging for on-site manager and visiting specialty contractors

Community landscaping, gardening, and cleanup at construction site

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[52] For example, community leaders at one project had considerable land in the area, but we found no discussion of potential land donations or trades for the project site. Rather, DEC without question agreed to pay $40,000 to purchase the nearby site of choice from someone outside of the community.

[53] See our prior audit of rural energy programs at the *Alaska Industrial Development and Export Authority, July 12, 2001, Audit No. 08-30006-01.*

[54] We are not the first to question whether the beneficiaries of VSW projects should be expected, when able, to make a tangible contribution to their project's construction. In 1999, a federal inspector general reviewed the use of rural development grants from the U.S. Department of Agriculture. The inspector general's report states:

> *Regarding the equipment rental charges, we believe the intent of 7 CFR 1780, Subpart B, Section 1780.49(e) is to prohibit grant recipients from benefiting financially from the use of their own equipment when that use could have been donated to the project reducing the amount of grant funds actually needed. (However, we do believe that RUS [Rural Utilities Service] should continue to reimburse grantees for their incidental costs associated with the use of the equipment such as those expenditures incurred for oil, fuel, and maintenance.)*

that the public has a right to expect in other cases. In other words, as the program moves into more capable communities, DEC should not presume that the program needs to fund every element of the project.

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OFFICE OF THE COMMISSIONER

February 17, 2004

Ms. Pat Davidson
Legislative Auditor
Legislative Audit Division
P.O. Box 11300
Juneau, AK 99811-3300

Preliminary Audit Report
Village Safe Water Program, Selected Projects, November 19, 2003.

Dear Ms. Davidson:

We appreciate the opportunity to respond to the subject preliminary audit report. Overall the report remains a disappointment, not because it does not reveal significant need for improvement in some areas – it does, but because it contains so many other poorly informed or inaccurate analyses and findings. We offer our comments with the intent of helping focus the final report on meaningful analyses and more valuable findings. Detailed comments are enclosed. General comments follow.

The audit did not use the well-established body of construction management practices as the standard for reviewing Village Safe Water (VSW) construction management procedures. Instead, the preliminary report relies on vague notions of "normal business safeguards" or "business savvy" as audit standards. Time and again the preliminary report finds fault with practices that are, in fact, well-established, effective norms in the construction management field.

The preliminary audit report still misunderstands, ignores or misrepresents the basic structure for the VSW program. For example, the VSW program often uses a CPA firm to hold and disburse project funds for payroll and procurement. Disbursements must be authorized by both the community and the VSW engineer. This arrangement is effective at involving the community as project owner while maintaining state control over expenditures. The process has been copied by most other state and federal agencies that are funding force account projects in rural Alaska. The draft audit report concludes only that the process creates "ambiguity." Either the auditors miss the importance of state control over project spending or they do not understand the process.

The preliminary audit report, like the management letter, contains unsupported allegations. For example, Exhibit 2 claims examples of "wasteful spending" in a number of areas with no specifics, alleging only that "contractors dictate changes" or "contractors dictate rates and fees with little scrutiny by engineers." The report lacks discussion of the specific basis for these conclusions. Absent specifics, the report does not provide information that we can use to examine our processes or to otherwise respond to the allegations.

The audit report, again like the management letter, speculates about what might happen despite the evidence that no problems have ever been experienced. The lengthy discussion of "ghost employees" is a good example. The discussion on program employee conflicts of interest and ethics falls into this category as well. We acknowledge that the audit appropriately examines control systems and the potential for problems, as well as actual instances of problems. In some cases however, the analysis goes well beyond reasonable characterization of the potential for wrongdoing, essentially assuming that criminal activity is inevitable.

The audit relies on one or two rare situations to rationalize sweeping organizational changes. It fails to suggest other options for correcting perceived inadequacies, and instead leaps to a conclusion that the VSW program would be better off within the Alaska Department of Transportation and Public Facilities (DOTPF). The final report should indicate whether the auditors were asked to look at reorganizing VSW within DOTPF, or whether they arrived at that conclusion on their own.

Many of the report's conclusions stand out as groundless:

- There is no basis for faulting DEC procedures to guard against employee conflict of interest due to outside employment (Recommendation No. 4). The agency employs the same Ethics Act procedures as other agencies. The audit revealed no conflicts of interest or other Ethics Act violations. A thorough review by a Department of Administration official found no violations.

- The VSW program's timesheet procedures reflect construction management norms (see Recommendation No. 3). Despite the preliminary audit report's discussion of "ghost employees" it found no evidence of this ever occurring and program practices simply reflect industry norms. Either industry norms should be used as a basis for evaluating VSW practices, or all discussion of this issue eliminated from the report. The program should not be faulted because the auditors are unfamiliar with construction management practices.

- The audit's finding that there is wasteful duplication of bookkeeping efforts is a result of the auditors' unfamiliarity with the complexities of construction management. The suggestion that one set of books could be used is overly simplistic and unrealistic. Including this discussion in the report dilutes the more substantive findings.

- The recommendation that superintendents be paid a salary (Recommendation No. 2) is extraordinarily ill-conceived. The industry norm is to pay superintendents on an hourly basis to accommodate the variability in construction project work schedules. Paying a salary would waste state funds by paying f[illegible]ne that is not actually worked.

The "Auditor's Comments" that communities should contribute to the projects where possible amounts to an endorsement of existing Village Safe Water procedures.

Finally, there is merit in some of the report's conclusions:

- The audit revealed that the VSW program continues to have serious problems with 1099 and I-9 form procedures. Some of the problem stems from confusion over whether responsibility lies with the VSW engineer or the CPA firm. This situation will be corrected through a combination of employee training and amending the CPA firm contract before the next construction season (by May 1 of this year).

- In two, and perhaps three cases, the program did not exhibit sufficient control over superintendent compensation (including salary, travel and housing arrangements). While paying superintendents a salary is not the answer, the program clearly needs to establish better limits on superintendent compensation. New guidance is being prepared and will be in effect before the construction season (by May 1 of this year).

- The audit accurately revealed a single incident of nepotism that should not have been tolerated. A new policy is being prepared and will be in effect before the construction season (by May 1 of this year).

- Finally, we do not dispute that the VSW engineers could benefit from better procurement and contracting support. The program intends to reclassify an existing position to create a contracting officer position in the Village Safe Water program before the end of the current fiscal year.

Again, we appreciate the opportunity to comment.

Sincerely,

Ernesta Ballard
Commissioner

enclosure

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Alaska Department of Environmental Conservation
Preliminary Audit Report Comments
Village Safe Water Program, Selected Projects, November 19, 2003

Findings and Recommendations

Recommendation No. 1: The Governor should, by executive order, place the Village Safe Water program within the public facilities section of the Department of Transportation and Public Facilities.

We strongly disagree with this recommendation. The audit analysis, centered mainly on a single atypical Village Safe Water (VSW) project, is insufficient basis for recommending such a sweeping organizational change, and ignores all of the reasons why the program is housed in the Department of Environmental Conservation (DEC) in the first place.

For example, the recommendation ignores the relationship between the VSW program and the other DEC water and sewer assistance programs: the Municipal Water, Sewerage and Solid Waste Matching Grant (MMG) program, the Drinking Water Loan State Revolving Loan (DWSRF) program, the Clean Water State Revolving Loan (CWSRF) program, and the Remote Maintenance Worker (RMW) program. MMG program staff administer VSW program funds in some communities. VSW and RMW staff work side-by-side in many villages. Loans made through the CWSRF and DWSRF programs are often paired with grants from the MMG program. These programs are all intrinsically linked and having them in a single organization unit produces immense efficiency, affords some flexibility in assigning agency resources, and provides for continuity and a high level of service to client communities. As far as we can tell from the preliminary audit report, the relation of the VSW program to these other DEC assistance programs was never considered.

The recommendation also ignores the efficiency of having the drinking water and wastewater assistance program, including the VSW program, housed in the same agency as the drinking water and wastewater regulatory programs. The assistance and regulatory programs share the same uniquely DEC mission. Assistance and regulatory program staff share the same areas of expertise. Regulatory staff and VSW program staff work hand-in-hand with communities bringing expertise in both the regulatory standards and the means by which they can be achieved.

Finally, the VSW program differs substantially from the DOTPF programs. With an occasional exception, DOTPF does not use a force account process. DOTPF programs do not share the DEC and VSW program mission to protect health and the environment. DOTPF and DEC staffs do not share similar expertise.

Implementing this recommendation would prove tremendously inefficient and wasteful. There are far more effective means to achieve better contracting support for VSW engineers than to place the program within DOTPF.

Recommendation No 2: The state should mandate that on-site managers be paid with a salary rather than on an open-ended hourly basis.

We disagree with this recommendation. Paying on-site managers or superintendents on an hourly basis is a prudent practice and an industry norm. Rural construction projects frequently experience slow periods where minor work items need to be completed but where a full-time superintendent is not necessary. It would be a waste of public funds to pay an individual for a forty hour workweek, when only ten hours were worked.

We examined VSW program superintendent compensation more broadly than the narrowly-focused audit. For the 2002 construction season, the range of regular-hour wages paid to VSW superintendents varied from $17.50/hour to $47.50 per hour. The average wage rate was $35.03 per hour. This compares to the average $36-$38 per hour DOTPF pays project superintendents, although DOTPF project superintendents typically receive a State benefit package when VSW superintendents do not.

To deal with the audit's isolated case of a superintendent working on more than one active project at a time, and to otherwise curtail the potential for inordinate compensation due to the cumulative effect of overtime, housing or travel-related payments, we will issue program guidance before the beginning of this coming construction season (before May 1) on superintendent compensation, including per diem and housing allowances.

Recommendation No. 3: The VSW program should institute traditional business safeguards to protect the integrity of force account payrolls.

We disagree with this recommendation. The VSW force account payroll process is spelled out in guidance and works as follows: (1) the community and the VSW engineer set the pay rates based upon prevailing rates in the area; (2) the project superintendent completes the initial hiring paperwork; (3) the superintendent approves daily time sheets and sends a summary to the VSW project engineer and the contract CPA firm; (4) the contract CPA firm mails the pay checks to the superintendent or, in some cases, to the community; and (5) the superintendent distributes the checks and stores the timesheets and personnel files. This process is certainly adequate and reflects industry norms.

The superintendent's job is to review each employee's timesheet for accuracy based on their records of employee hours. The VSW engineers cannot confirm employee hours since they are not on-site and have no knowledge of who worked what hours. Yes, a superintendent could embark on the felony criminal offense of creating "ghost employees." We trust that the criminal justice system provides some disincentive for criminal behavior. We also believe that the voluntary annual financial audits contracted by the program are a reasonable measure to protect against "ghost employees."