

Memorandum 2013-36

Fish and Game Law: Proposed Division 2, Part 5 (Finance)

The Commission¹ has provisionally decided to divide the proposed Fish and Wildlife Code along these lines:²

- Division 1. General Provisions
- Division 2. Administration
- Division 3. Law Enforcement
- Division 4. Inter-Jurisdictional Compacts
- Division 5. Freshwater Fisheries
- Division 6. Marine Fisheries
- Division 7. Wildlife Management
- Division 8. Nongame and Endangered Species
- Division 9. Planning and Environmental Review
- Division 10. Miscellaneous Provisions

Prior memoranda in this study presented drafts of proposed Division 1 and Parts 1-4 of proposed Division 2.³

This memorandum discusses the content of proposed Part 5 of Division 2 (“Finance”). However, it does not present a draft of proposed legislation. As discussed below, the staff needs guidance on how Part 5 should be organized. **Once that decision has been made, the staff will prepare an implementing draft for Commission consideration.**

The staff would like to thank William Stanger for his assistance in preparing this memorandum. Mr. Stanger, who is serving as the Commission’s King Hall Summer Law Fellow, conducted numerous searches of the Fish and Game Code in an effort to identify and classify all of its finance-related provisions.

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. Minutes (April 2013), p. 11.

3. Memorandum 2013-12, Memorandum 2013-13, Memorandum 2013-32.

Unless otherwise indicated, all statutory references in this memorandum are to the Fish and Game Code.

FINANCIAL PROVISIONS GENERALLY

The first step in organizing the financial provisions of the proposed code is to determine what we mean by “financial” provisions.

For the purposes of this discussion, the staff has identified three types of financial provisions: (1) revenue provisions, (2) accounting provisions, and (3) expenditure provisions.

Revenue provisions relate to funds that are received by the Fish and Game Commission (“FGC”) and Department of Fish and Wildlife (“DFW”). Revenue sources may include state appropriations, federal grants, private gifts, proceeds from the sale of licenses and permits, and the collection of fees, fines, penalties, and settlements.

Accounting provisions govern the handling and tracking of money after it has been received, but before it is expended. This includes provisions that establish a special fund, account, or subaccount (hereafter “account”) in the State Treasury to hold, segregate, and limit the expenditure of specified revenue.⁴ The amount of money in an account may capped,⁵ or earmarked for specific program uses.⁶

Expenditure provisions govern the expenditure of money by FGC and DFW for specified purposes. In one sense, all provisions that impose a duty on the FGC or DFW require an expenditure of funds. However, there are many code sections that impose duties without specifying how they will be funded. (That was one of the issues flagged by the Legislature for Commission attention in this study. We were charged with clarifying program funding sources.⁷)

EXISTING ORGANIZATION OF FINANCIAL PROVISIONS

About 10% of the existing financial provisions are consolidated in Divisions 10 and 10.5 of the Fish and Game Code. Most of those provisions state general

4. See, e.g., Section 13000 (Fish and Game Preservation Fund).

5. Section 13012 caps certain subaccounts, and directs that excess funds shall go to “projects that preserve California plants, wildlife, and fisheries.”

6. See, e.g., Section 2932 (Salton Sea Restoration Fund).

7. 2012 Cal. Stat. res. ch. 108.

financial rules that apply to the code as a whole. They address broad classes of revenue, omnibus accounts, and department-wide accounting practices.⁸

The remainder of the financial provisions are distributed throughout the code, located near the programs that they govern.⁹

PROPOSED ORGANIZATION OF FINANCIAL PROVISIONS

At the June meeting, the Commission decided that the law enforcement provisions of the proposed law should be organized as follows:

- Provisions with general code-wide application should be consolidated.
- Provisions that are specific to particular offenses should be distributed throughout the code, near the provisions to which they relate.¹⁰

That general organizational approach also seems appropriate for the financial provisions, for the reasons discussed below.

Drafting Considerations

The existing code is already organized along the lines discussed above. A handful of general financial provisions are consolidated in one location, with most of the program-specific financial provisions distributed throughout the code, near the substantive provisions to which they relate.

It would be a relatively simple matter to continue that existing organization. The general provisions would be consolidated in proposed Part 5 of Division 2 and the program-specific provisions would be left in place (to be addressed when the Commission turns its attention to the related program). This would avoid a number of significant drafting complications.

In some cases, the financial provisions are part of a single integrated body of law governing a particular program. That law may be collected in an article or chapter that is governed by its own definitions and statements of legislative

8. See, e.g., Sections 13000 (existence of general Fish and Game Preservation Fund), 13001 (default disposition of revenue), 13001.5 (annual financial report), 13002 (deposit of license sale revenue), 13003 (default disposition of penalty revenue), 13202 (apportionment of overhead costs), 13203 (basic accounting principle).

9. See, e.g., Sections 2099(b) (Renewable Energy Resources Development Fee Trust Fund), 2621 (habitat enhancement), 3467 (California Waterfowl Habitat Preservation Account), 4332(e) (deer license tag revenue), 5650.1(h) (water pollution penalty revenue), 6594 (ocean fisheries research).

10. Minutes (June 2013), p. 16. See also Memorandum 2013-33.

intent. If the financial provisions were removed from that context, we would need to add cross-references or duplicative language in order to preserve the existing application of definitions and legislative declarations. That would clutter the code and reduce its user-friendliness.

In addition, some financial provisions are so intermixed with substantive provisions that it would be difficult to extract and relocate them.¹¹

Those sorts of problems could be avoided if the current organizational approach is maintained. If program-specific provisions are left *in situ*, there would be no need to parse out the finance-related language or take extraordinary steps to preserve the context of relocated provisions.

User-Friendliness

The DFW is a large and complex organization, with many distinct programs and duties. To carry out its various functions, DFW has divided itself into different operational “divisions,” which are then further divided into “branches,” each with a different area of responsibility.

Given that specialization, it seems likely that most of DFW’s personnel will only need to know and use the law that governs the programs to which they are assigned. For example, staff overseeing fish hatcheries will not need to know the law governing desert tortoises (and vice versa). Instead, it would be most convenient if all of the law governing a specific program were located in one place in the code. The fish hatcheries staff would then find it easier to locate all of the law on fish hatcheries, including the financial provisions.

It seems likely that members of the public would have similarly specialized interests. An organization that is concerned with desert tortoise conservation programs may have little interest in the law governing commercial salmon fishing. Again, it would probably be easiest for such groups if all of the law on a given program were located in one place in the code.

Alternative Approach

Despite the advantages of maintaining the current organizational approach, there would probably also be some advantages to consolidating *all* of the financial provisions (including the program-specific provisions). For example, if all financial provisions were in one place, it might be easier for budget analysts

11. See, e.g., Section 7861, in which financial provisions are intertwined with provisions imposing substantive duties.

(in DFW, the Department of Finance, and the Legislature) to analyze the finances of the department as a whole.

If the Commission is interested in pursuing that alternative, it would then need to decide how the consolidated financial provisions should be organized.

For example, they could be organized by *type* of provision, thus:

- Part 5. Finance
 - Title 1. Revenue
 - Title 2. Accounting
 - Title 3. Expenditures

While that organization makes some logical sense, it is probably not very practical. It would force the separation of closely-related provisions, making it difficult for a person who is interested in a particular program to find all of the related pieces.

Another possibility would be to organize the provisions by subject area, thus:

- Part 5. Finance
 - Title 1. Administration
 - Title 2. Law Enforcement
 - Title 3. Freshwater Fisheries
 - ...

This would allow all of the financial provisions related to a particular program to be kept together. However, it would still require that the financial provisions be separated from the substantive provisions to which they relate.

RECOMMENDATION

The staff recommends that the existing organization of the financial provisions be maintained. General provisions should be consolidated and program-specific provisions should be distributed throughout the code, near the substantive provisions to which they relate.

If the Commission agrees, the staff will prepare an implementing draft for consideration at a future meeting.

Respectfully submitted,

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