

**Background Information on the
Alaska Boards of Game and Fisheries
Ethics Act Process**

Regarding Consideration of HB 87

**Prepared for the
Alaska Legislature, Representative Stutes**

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Prepared by

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Introduction

Compliance with the Executive Branch Ethics Act (AS 39.52) is taken very seriously by the Boards of Game and Fisheries. Board members follow the legal guidelines in the Ethics Act and strive to maintain a high level of public credibility in the overall board process. If a member has a significant personal or financial interest in a matter before the board, he or she must refrain from voting, deliberating, or otherwise participating in the matter.

Procedures

There are several procedures followed by the boards to help insure these guidelines are met. AS 39.52.120(c) specifically calls on members of the Boards of Game and Fisheries to disclose personal or financial interests in a business or organization relating to fish or game resources in the manner set out in AS 39.52.220. AS 39.52.220 provides the necessary steps board or commission members must take to declare potential violations as provided in AS 39.52.110 - 39.52.190. If found to have a significant personal or financial interest in a matter, the member is not allowed to vote, deliberate, or otherwise participate in the matter.

In practice, board members review regulatory proposals in advance of a meeting to determine if they may have a potential personal or financial interest. If a potential interest in a matter is noted, the board member is highly encouraged, and most often does, consult with the board chair and the Department of Law prior to the meeting concerning the member's participation in the matter.

At the beginning of each regulatory meeting, the board chair (who is the designated ethics supervisor for the board) calls on each member to present their ethics disclosure statement. The one-page *Ethics Disclosure* guide sheet (attached as Page 5) is used as the outline for these disclosures. Board members describe their income sources, list any personal or financial interests they or their immediate family members have in fishing or game related matters, and identify any personal or financial interest they or their immediate family members may have in the proposals to be considered at the meeting.

The chair then invites questions from the other board members, and may also ask for comments from the Department of Law. Following any clarification or discussion, the chair issues a ruling on the member's eligibility to participate on specific proposals.

Upon an objection by a member, a determination by the chair as to a member's ability to participate in a matter can be overruled by a vote of the board. When there is a vote to overrule the chair's ruling, the involved member does not vote.

If it is determined that a violation of the Ethic Act will occur if board member participates in a matter, that member does not deliberate or vote on the matter, although the involved board member may still testify on the matter orally or in writing as a member of the public. The Board of Fisheries also allows a member who is prohibited from participating in a matter to participate in committee discussion of the matter.

Pattern since 2005

The Boards of Game and Fisheries have different outcomes related to recusals due to potential violations of the Ethics Act. Both boards address different geographic areas of the state on a three-year cycle, acting on between 150-400 proposals annually. The Board of Fisheries on average finds recusals on 11 percent of its proposals, while the Board of Game is much less at 2 percent. Table 1 provides an annual look at proposals and recusals patterns for each board and the Joint Board.¹

Board			
Meeting Cycle Year	Proposals	Board Member Recusals	% of Proposals Recused
Fisheries			
2005/2006	266	63	24%
2006/2007	277	53	19%
2007/2008	430	1	0%
2008/2009	415	90	22%
2009/2010	208	24	12%
2010/2011	395	19	5%
2011/2012	394	40	10%
2012/2013	266	40	15%
2013/2014	412	14	3%
2014/2015	308	55	18%
2015/2016	251	10	4%
2016/2017	295	13	4%
Total	3917	422	11%
Game			
2005/2006	103	1	1%
2006/2007	432	0	0%
2007/2008	272	1	0%
2008/2009	305	2	1%
2009/2010	227	6	3%
2010/2011	315	6	2%
2011/2012	279	22	8%
2012/2013	195	3	2%
2013/2014	186	7	4%
2014/2015	219	6	3%
2015/2016	143	3	2%
2016/2017	203	5	2%
Total	2879	62	2%
Joint			
2007/2008	76	1	1%
2013/2014	41	1	2%
Total	117	2	2%

¹ The Joint Board is a combination of the Boards of Fisheries and Game. It meets infrequently to design the advisory committee system, make determinations on subsistence areas, and define the board's regulatory process.

The frequency of conflicts varies year to year as a function of board composition and geographic focus. Conflicts are typically found when a board member or their immediate family members have a significant economic or personal interest in a fishery, such as when those persons fish commercially or as a sport fish guide in an area covered in a board meeting. For the Board of Fisheries, the recusal rate can vary from lower than 3 percent to in excess of 20 percent.

Impacts from HB 87

House Bill 87 would result in two changes in how the boards approach conflicts of interests.

First, the definition of “immediate family member” would be narrowed for certain purposes (see chart), shifting from the definition applied to the Executive Branch under AS 39.52.960(11), to a definition very similar to the Legislative Branch under AS 24.60.990(6). No longer included would be a member’s child, parent, or sibling when not residing with the member, when not financially dependent, or when not sharing a substantial financial interest. Also deleted would be a grandparent, aunt, uncle, spouse’s parent, or spouse’s sibling. The new definition of “immediate family member” would apply to the new subsection (g) of AS 39.52.120. Even under HB 87, there may be situations where the expanded definition of “immediate family member” under AS 39.52.960(11) would still apply. If the intent of the bill is to have the new, narrower definition of “immediate family member” apply to Ethics Act determinations for members of the Boards of Fisheries and Game, the language in the bill could be amended to make that clear.

Comparison of “family” definitions in Current Statute and HB 87

	AS 39.52.960(11) (Executive Branch)	HB 87
Spouse, Conjugal cohabitant/ Domestic partner	Included	Included
Child (including stepchild and adopted child), Parent, Sibling	Included	Included only if: -resides with person -financially dependent, or -if shares a substantial financial interest
Grandparent, Aunt, Uncle, Spouse’s parent, Spouse’s sibling	Included	Not included

The second change is that notwithstanding other provisions of the Ethics Act, each board member would be allowed to deliberate on every proposal. The bill would not change the restriction on a board member voting on a proposal or issue if that would result in a violation of the Ethics Act. The bill only applies to board member personal or financial interests that “arise directly” from involvement of a member in a business or organization relating to fish or game resources; the bill appears not to affect such interests that arise indirectly.

While speculative, it is possible the number of recusals might be half of what it is today. The lion's share of recusals from the Board of Fisheries since 2013 are related to familial relationships that based on available information would not have led to recusals under HB 87.

Clarification is needed to determine if HB87 –

- Is meant to apply to board member personal or financial interests that arise indirectly (as opposed to “directly”) from involvement of a member in a business or organization relating to fish or game resources;
- If the new definition of “immediate family member” is meant to be the operative definition for any ethics determination made by the board members;
- Would still require board members to follow the procedure outlined in AS 39.52.220 when providing their disclosures.

We also note that the language in HB 87 is somewhat in conflict in that the bill refers to a “personal or financial interest in a matter arising directly from involvement of ... an immediate family member of a member of either board,” even though “personal interest” and “financial interest” are defined terms that incorporate the existing and expanded definition of “immediate family member.”

(This instruction is provided to board members.)

ETHICS DISCLOSURE

To comply with the Alaska Executive Branch Ethics Act (AS 39.52), board members are required to disclose sufficient information on the record of all interests they, or their immediate families, may have that relate to fish (Board of Fisheries members) or wildlife (Board of Game members) to enable the chair of the board to determine whether the involvement may be a personal or financial interest that constitutes a conflict of interest under the Act.

When making public ethics disclosures on the record at board meetings, members must provide sufficient information in response to the following questions to enable the chair to decide if it is necessary to inquire further to determine whether a conflict exists:

1. Explain in general terms what you do for a living:
 - a. primary employer/employment,
 - b. other employment or sources of income,
 - c. other business interests.

For the following questions, “member of your family” includes spouse, conjugal cohabitant, child (including step-child and adopted child), parent, sibling, grandparent, aunt, uncle, and spouse’s parent and sibling.

2. List all personal or financial interests you, or any member of your family, have in any business or organization relating to fish or wildlife resources.
3. Describe generally any interest you, or any member of your immediate family, have in a business or fish or wildlife organization that may be affected by any of the proposals to be discussed.
4. Describe generally any other interests of a personal or financial nature you, or any member of your immediate family, have that may be affected by any of the proposals to be discussed.
5. List all lawsuits that you, a member of your immediate family, or any organization you belong to, are involved in against the state, the board or the Department of Fish and Game, or where the state, the board, or the department is a party to the lawsuit.

If you, or a member of your immediate family, are a member of any organization or corporation that is involved in a such a lawsuit, briefly explain what the organization is, the size of its membership and whether you, or an immediate family member, are on its board or hold some other executive or policy making position.

You must certify that your disclosure statement is “true, correct and complete.”

Under the Ethics Act the chair of each board has the duty to determine whether a member's involvement in a matter violates the Act (AS 39.52.220). After each individual disclosure, the chair will rule on whether the board member has a conflict. If the chair determines that a conflict will exist if the member participates, the member must refrain from voting, deliberating, or participating in the matter. If the chair determines no conflict will exist, the member can participate fully.