

LEGAL SERVICES

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MEMORANDUM

April 6, 2021

SUBJECT: Question concerning Board of Fisheries and Board of Game
(HB 26; Work Order No. 32-LS0227\A)

TO: Representative Geran Tarr
Chair of the House Special Committee on Fisheries
Attn: Thatcher Brouwer

FROM: Alpheus Bullard 
Legislative Counsel

House Bill 26 relates to the Board of Fisheries and the Board of Game (Boards). You asked two questions relating to the bill.

The bill

The bill provides that if a member of the Boards discloses a personal¹ or financial interest² relating to the involvement of the member in a business or organization relating to fish or game resources, *the member is not disqualified from deliberating or participating in a matter before the board that relates to that interest.* If the chair³ or a

¹ "'Personal interest' means an interest held or involvement by a public officer, or the officer's immediate family member or parent, including membership, in any organization, whether fraternal, nonprofit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit[.]" AS 39.52.960(18).

² "'Financial interest' means

(A) an interest held by a public officer or an immediate family member, which includes an involvement or ownership of an interest in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit;

(B) holding a position in a business, such as an officer, director, trustee, partner, employee, or the like, or holding a position of management[.]" AS 39.52.960(9).

³ HB 26 and current law use the terms "designated supervisor" and "supervisor," which, under AS 39.52.960(8)(C), are defined mean, "the chair or acting chair of the board or commission, for the members and the executive director of a board or commission" and, under AS 39.52.960(8)(F) and (G), the governor or the governor's designee, for the chair.

majority of the members of the respective board determine that the member's further involvement will result in a violation of AS 39.52.110 - 39.52.190 (Executive Branch Code of Ethics (code)), the board member may not vote on the matter.

Under current law, the chair, or a majority of the members, of either of the Boards, may (like other executive branch boards) determine that a member's participation or deliberation in a matter, even without the member casting a vote on the matter, would violate the code.

Questions

How do other Executive Branch boards and commissions manage members conflicts of interest?

HB 26 would allow a member of the Boards to participate and deliberate in a matter before the respective board in which the member has a personal or financial interest *if* the member has disclosed the interest.⁴

Under existing law, the chair, or a majority of the members, of *any* board subject to the code⁵ may determine that a member's participation or deliberation in a matter, even without the member casting a vote on the matter, will result in a violation. As amended by HB 26, the code would provide that if a member of the Boards discloses a personal or financial interest in a matter before the respective board, the member may not be prohibited from participating or deliberating on the matter. However, if the chair or a majority of the members object, the member may not vote on the matter.

Have previous statutory changes been made to the Executive Branch Ethics Code that relate to the Board of Fisheries or the Board of Game?

The code was previously amended to include a provision applicable only to the Boards. The code has not otherwise been amended to similarly or dissimilarly distinguish any other executive branch board.

⁴ See AS 39.52.120(c):

(c) In addition to other provisions of this section, a public officer who is a member of the Board of Fisheries or the Board of Game may not act on a matter before the board if the public officer has not disclosed in the manner set out in AS 39.52.220 all personal or financial interests in a business or organization relating to fish or game resources.

⁵ The Executive Branch Ethics Act applies to "a board, commission, authority, or board of directors of a public or quasi-public corporation, established by statute in the executive branch, including the Alaska Railroad, but excluding members of a negotiated regulation making committee under AS 44.62.710 - 44.62.800[.]" AS 39.52.960(4).

Representative Geran Tarr

April 6, 2021

Page 3

AS 39.52.120(c)⁶ requires a member of either board to fully disclose all personal or financial interests relating to fish or game resources before the board member may act on a matter before the board.⁷ This statute is applicable only to members of the Boards of Fisheries and Game.

If you have questions, please do not hesitate to contact me.

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⁶ AS 39.52.120(c) provides:

(c) In addition to other provisions of this section, a public officer who is a member of the Board of Fisheries or the Board of Game may not act on a matter before the board if the public officer has not disclosed in the manner set out in AS 39.52.220 all personal or financial interests in a business or organization relating to fish or game resources.

⁷ This provision was added by sec. 5, ch. 121, SLA 1992, as part of "[a]n Act relating to membership on the Board of Fisheries and Board of Game; relating to disclosures under the Alaska Executive Branch Ethics Act by members of the Board of Fisheries and Board of Game; and repealing certain references to the Board of Fisheries and Board of Game."