

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

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Alaska Legislature, Representative Stutes**

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Updated 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 discloses a conflict of interest with a matter before the board due to a significant personal or financial interest, or a member discloses a potential conflict that is determined by the chair to constitute a conflict of interest, the member must refrain from voting, deliberating, or otherwise participating in the matter.

Procedures

There are several procedures followed by the boards to help ensure 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.¹

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 encouraged to, 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

¹ The Ethics Act is intended to ensure that public officers will not base their official decisions and actions upon their own personal or financial interests. (AS 39.52.010). A public officer may not use, or attempt to use, his official position for personal gain. (AS 39.52.120(a)). Nor may a public officer take or withhold official action in a matter in which the public officer has a personal or financial interest. (AS 39.52.120(b)(4)). The act mandates that "public officers conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest." (AS 39.52.010(a)(4)).

But the Alaska Legislature also recognized that "in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without personal and financial interests in the decisions and policies of government." (AS 39.52.110(a)(1)). Thus, the Act "distinguish[es] between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interest that are substantial and material." (AS 39.52.110(a)(3)).

Therefore, the Ethics Act speaks principally to actual substantial conflicts of interest, not the appearance of conflict alone. (9 AAC 52.010; 1993 *Inf. Op. Att'y Gen.* (Jan. I; 663-93-0113), 1993 WL 595769 (Alaska A.G.) at *5.) It requires individual determinations regarding potential conflicts of interest on a case-by-case basis. (1999 *Inf Op. Att'y Gen.* (Sept. 23; 663-99-0232), 1999 WL 1454824 (Alaska A.G.).

Under AS 39.52.110(b)(1) there is no substantial impropriety where a public officer's "personal or financial interest in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officer belongs." Subsection (b)(2) then provides that there is "no substantial impropriety" if the public officer's "action or influence would have insignificant or conjectural effect on the matter."

one-page *Ethics Disclosure* guide sheet (attached as Page 6) 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 conflicts of interest or potential conflicts of interest they or their immediate family members may have in the proposals to be considered at the meeting.

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

Upon an objection by a member, a determination by the chair that a member has a conflict and will not 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 Ethics Act will occur if a 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 established policy [2020-299-FB](#), *Board Member Actions at Meetings When Recused from Participating on Proposals*, which outlines how a board member may participate at a meeting when the member is recused for a proposal(s).

After the board has heard staff reports, public testimony, and any additional input through a committee process (generally just a practice of the Board of Fisheries), it will deliberate on each proposal. When the board arrives at a proposal in committee (for the Board of Fisheries) and in deliberations for which a member has been deemed to have a conflict, that member will physically remove themselves from the board table and not participate in any way.

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 twelve percent of its proposals, while the Board of Game is much less at two percent. Table 1 provides an annual look at proposals and recusals patterns for each board and the Joint Board.²

The frequency of conflicts for the Board of Fisheries 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 three percent to more than 20 percent.

² 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.

Table 1. Board of Fisheries and Game Recusals from 2005 to 2024

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%
2017/2018	242	54	22%
2018/2019	283	20	7%
2019/2020	284	24	8%
2020/2021	8	0	0%
2021/2022	294	83	28%
2022/2023	193	52	27%
2023/2024	276	13	5%
Total	5497	668	12%
Meeting Cycle Year	Proposals	Board Member Recusals	% of Proposals Recused
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%
2017/2018	166	2	1%
2018/2019	150	0	0%
2019/2020	169	3	2%
2020/2021	23	0	0%
2021/2022	244	3	1%
2022/2023	211	11	5%
2023/2024	212	0	0%
Total	4054	81	2%
	Proposals	Board Member Recusals	% of Proposals Recused
Joint Boards			
2007/2008	76	1	1%
2013/2014	41	1	2%
2018/2019	40	0	0%
2023/2024	20	0	0%
Total	177	2	1%

(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.