

## Rep. Tammie Wilson

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**From:** Tom Kluberton <tomk@mtaonline.net>  
**Sent:** Monday, February 16, 2015 10:50 AM  
**To:** Rep. Tammie Wilson  
**Subject:** Board Generated Proposals  
**Attachments:** 1334jb Joint Board BGP Policy.pdf

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**Categories:** Email Read

Representative Wilson,

As Vice Chairman of the Board of Fisheries, and with the resignation of Chairman Johnstone, I am writing to offer my help as you consider the effort you are making to eliminate "Board Generated Proposals". There has indeed been some controversy in recent years regarding these vehicles to bring ideas to the board(s) for consideration and I am happy to discuss how these opinions have been formed and perhaps what the realities of the situations that occurred with the Board of Fisheries entailed.

I am including a list of comments made by the Board's longest-standing attorney general's office representative, Lance Nelson regarding the subject and I will attach the Joint Board's Policy regarding the use of Board-Generated Proposals that was put in place at the last Joint Boards meeting a year and a half ago.

If you would like to discuss any of this please free to call me.

Regards,

Tom Kluberton  
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### Assistant Attorney General Nelson's Comments:

Here are some of my initial concerns with the bill:

1. The language may not actually limit board-generated proposals because the Boards are "state agencies" for purpose of the Administrative Procedure Act, AS 44.62.640(a)(4).
2. If the language effectively prevents board-generated proposals, the Boards would be the only rule-making state agencies precluded from generating their own regulatory proposals.

3. In fact, most state rule-making agencies generate almost all of their own proposals without issuing any “call for proposals” from the public at all.
  4. The Boards are made up of persons appointed and confirmed “on the basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the board,” AS 16.05.221, and yet they would be prevented from initiating regulatory proposals while any other person in the world, qualified in any way or not, could.
  5. Board-generated proposals most often arise to fill a gap in the proposals that becomes apparent during the board process, and are, more often than not, no more controversial than any other proposal.
  6. This statute might be construed to even prevent substantive amendments to public proposals, tying the hands of the board, because an amendment could be considered to come from the board rather than the public. The Boards’ current practice is to not amend a proposal completely beyond the intent of the proposer, which creates resentment in the public. Board-generated proposals are a more direct, up-front gesture than twisting a public proposal.
  7. The Boards are quasi-legislatures. Would the Alaska legislature operated efficiently and effectively if all legislation had to be introduced by someone else.
  8. The inevitable result would be for increased inefficiency, delays, and additional meetings that would be necessary to address obvious issues that would have to wait on a petition from someone else, undoubtedly disrupting the three-year board cycles.
  9. A few recent board-generated proposals have caused some opposition. During the same period of meetings other board-generated proposals have not created any controversy.
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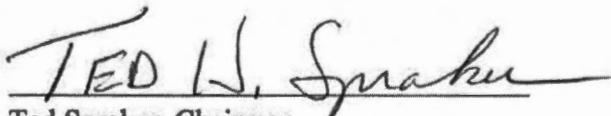
**ALASKA JOINT BOARDS OF FISHERIES AND GAME**

**CRITERIA FOR DEVELOPMENT OF BOARD-GENERATED PROPOSAL**

It has been suggested that criteria need to be established to guide the Alaska Joint Boards of Fisheries and Game, Board of Fisheries, and Board of Game (boards) members when deliberating on whether or not to develop a board-generated proposal. The boards will consider the following criteria when deliberating the proposed development and scheduling of a board-generated proposal:

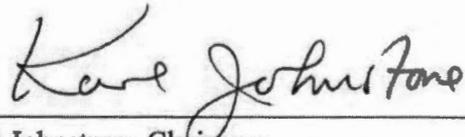
1. Is it in the public's best interest (e.g., access to resource, consistent intent, public process)?
2. Is there urgency in considering the issue (e.g., potential for fish and wildlife objectives not being met or sustainability in question)?
3. Are current processes insufficient to bring the subject to the board's attention (e.g., reconsideration policy, normal cycle proposal submittal, ACRs, petitions)?
4. Will there be reasonable and adequate opportunity for public comment (e.g., how far do affected users have to travel to participate, amount of time for affected users to respond)?

Findings adopted this 16<sup>th</sup> day of October 2013.



Ted Spraker, Chairman  
Alaska Board of Game

Vote: 6-0



Karl Johnstone, Chairman  
Alaska Board of Fisheries

Vote: 7-0