

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

May 3, 2004
9:04 a.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Peggy Wilson, Vice Chair
Representative Cheryll Heinze
Representative Dan Ogg
Representative Ralph Samuels
Representative Les Gara

MEMBERS ABSENT

Representative David Guttenberg

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 69(RES)

"An Act relating to participation in matters before the Board of Fisheries by members of the board; and providing for an effective date."

- MOVED HCS CSSB 69(FSH) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 69

SHORT TITLE: BOARD OF FISHERIES CONFLICTS OF INTEREST

SPONSOR(S): SENATOR(S) WAGONER

02/14/03	(S)	READ THE FIRST TIME - REFERRALS
02/14/03	(S)	STA, RES
03/25/03	(S)	STA AT 3:30 PM BELTZ 211
03/25/03	(S)	Moved Out of Committee
03/25/03	(S)	MINUTE(STA)
03/26/03	(S)	STA RPT 5DP
03/26/03	(S)	DP: STEVENS G, HOFFMAN, COWDERY,
03/26/03	(S)	DYSON, GUESS
03/19/04	(S)	RES AT 3:30 PM BUTROVICH 205
03/19/04	(S)	-- Rescheduled from 03/08/04 --
03/26/04	(S)	RES AT 3:30 PM BUTROVICH 205
03/26/04	(S)	Moved CSSB 69(RES) Out of Committee
03/26/04	(S)	MINUTE(RES)
03/29/04	(S)	RES RPT CS 3DP 2NR SAME TITLE

03/29/04 (S) NR: OGAN, DYSON; DP: ELTON, STEVENS B,
03/29/04 (S) WAGONER
04/22/04 (S) TRANSMITTED TO (H)
04/22/04 (S) VERSION: CSSB 69(RES)
04/26/04 (H) FSH AT 9:00 AM CAPITOL 124
04/26/04 (H) -- Meeting Canceled --
04/28/04 (H) FSH AT 8:30 AM CAPITOL 124
04/28/04 (H) -- Meeting Canceled --
05/01/04 (H) READ THE FIRST TIME - REFERRALS
05/01/04 (H) FSH, RES
05/03/04 (H) FSH AT 9:00 AM CAPITOL 124

WITNESS REGISTER

SENATOR TOM WAGONER
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 69.

DIANA COTE, Executive Director
Board of Fisheries
Juneau, Alaska
POSITION STATEMENT: Assisted with the presentation of SB 69 and
responded to questions.

JERRY McCUNE
United Fishermen of Alaska (UFA)
Juneau, Alaska
POSITION STATEMENT: Testified in support of SB 69.

PAUL SHADURA, President
Kenai Peninsula Fishermen's Association (KPFA)
Soldotna, Alaska
POSITION STATEMENT: Testified in support of SB 69.

ACTION NARRATIVE

TAPE 04-27, SIDE A
Number 0001

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at 9:04 a.m. Representatives Seaton, Ogg, Samuels, and Gara were present at the call to order. Representatives Wilson and Heinze arrived as the meeting was in progress.

SB 69 - BOARD OF FISHERIES CONFLICTS OF INTEREST

Number 0042

CHAIR SEATON announced that the only order of business would be [CS FOR SENATE BILL NO. 69(RES)], "An Act relating to participation in matters before the Board of Fisheries by members of the board; and providing for an effective date."

Number 0089

SENATOR TOM WAGONER, Alaska State Legislature, sponsor, relayed that the Joint Legislative Salmon Industry Task Force developed the concept embodied in SB 69 and asked him to sponsor the bill. He explained that SB 69 "opens up the conflict of interest policy for the Board of Fisheries to match that of the legislature." Currently, whenever members of the legislature have a conflict of interest regarding a matter being voted on, they simply declare the conflict and may then be required to vote on the matter; SB 69 would allow members on the Board of Fisheries to follow a similar procedure. He opined that such a change will make the Board of Fisheries more effective and allow all its members to participate more fully.

SENATOR WAGONER noted that there are seven public members on the Board of Fisheries, and suggested that the current practice can sometimes result in decisions being made by only five members. He also suggested that sometimes different factions within the Board of Fisheries strive towards "eliminating the participation of one board member versus another," adding that both the administration and those in the commercial fishing industry are unhappy with such a practice. He opined that the fishing resources of Alaska should be managed on a biological basis; however, because of various political reasons, such does not always occur. He offered his belief that SB 69 will allow a return to management based on biology and allow those board members who are most knowledgeable on a particular issue to participate fully.

SENATOR WAGONER remarked:

The board process we have in Alaska is not the best we could have, but it's better than anybody else in the nation has to manage their fishery; ... this board process allows the maximum input through the regional and local advisory boards and their ability to present issues to the board, and so it's a very, very fair process and it's a very democratic process.

Number 0570

DIANA COTE, Executive Director, Board of Fisheries, explained that currently, the process the Board of Fisheries undertakes is broken down into two main aspects: information gathering, and deliberation and voting. Public testimony occurs in the information gathering part of the process. The Board of Fisheries also has a committee process whereby different proposals are first examined in detail by members that have formed different committees. The committee process is considered an aspect of information gathering. Currently, it is during the deliberation and voting part of the process that members with a conflict of interest don't get to participate. For example, if a member or his/her spouse or family member holds a permit in a particular fishery, he/she cannot deliberate or vote on an issue involving that type of fishery.

MS. COTE noted that currently, all board members, regardless of potential conflicts of interest, can participate in the information gathering part of the process, and this is helpful, she remarked, because when someone is familiar with a particular fishery, he/she is more likely to ask pertinent questions. She also noted that currently, for any measure to pass, there must be at least four votes in favor of the measure regardless of how many members actually get to vote. When members are excluded from voting because of a conflict of interest - as occurs in the current procedure - it can become quite difficult to get a measure passed.

SENATOR WAGONER interjected to point out that currently, in such a situation, the members who do get to vote on a particular measure end up being those that are less knowledgeable about the specific issues involved. Under the change proposed by SB 69, members would declare any conflict of interest they have, contribute to the deliberations, and then vote. He opined that this change will open up the process to the scrutiny of the public, and suggested that it will result in biologically based decisions being made, which will, in turn, prevent fisheries from being destroyed as has happened in the past.

CHAIR WAGONER asked whether the current practice acts as a disincentive for people who are knowledgeable in the fisheries industry to serve on the Board of Fisheries.

SENATOR WAGONER said he has not heard that said.

REPRESENTATIVE HEINZE mentioned that on the surface, the changes proposed by SB 69 appear to make sense, but noted that she is troubled by the letter from the Alaska Outdoor Council (AOC) in opposition to SB 69. She asked Senator Wagoner to comment.

SENATOR WAGONER suggested that the AOC's opposition could be an aspect of the basic disagreements between sport and commercial users, and mentioned that some members of the AOC have relayed to him a concern that SB 69 will negate the McDowell v. State decision. He opined that SB 69 won't affect any court decision that he is aware of, and noted that under the current conflict-of-interest procedure, members on the Board of Fisheries are prevented from voting approximately 12-14 times a year. In response to a question, he relayed that the AOC does attend Board of Fisheries meetings, listed several other groups that often attend as well, and gave a brief synopsis of how the Board of Fisheries deals with issues in the Cook Inlet region.

Number 1301

MS. COTE, in response to questions, reiterated her comments regarding how the Board of Fisheries operates, adding that committees are usually made up of two or three members, and that when a committee reports back to the board, the report will indicate whether or not there is consensus among committee members and panel members and, if not, what the differing views are. In response to further questions, she relayed that currently during the deliberative process, when members have a conflict of interest, they physically get up and leave the table, and then only offer comments to the remaining board members during breaks in the deliberative process. She also outlined the current schedule of compensation due board members, and estimated the yearly cost for the Board of Fisheries to conduct business as approximately \$10,000 for meeting between 50 and 100 days a year.

SENATOR WAGONER mentioned that the chair of the Board of Fisheries generally gets the most compensation because he/she spends more time on issues than other board members.

REPRESENTATIVE OGG asked how the public will perceive the change in procedure when the issue is one of how a fishery will be allocated.

MS. COTE said that such would be hard to predict, but suggested that in general, the public will appreciate having those members most familiar with an issue be able to vote.

REPRESENTATIVE OGG indicated that he is concerned with the public's perception of the proposed change.

SENATOR WAGONER, in response to comments, offered his belief that board members do a very good job of looking at issues fairly and don't get wrapped up in the contention between the commercial and sport factions of the fishing industry.

REPRESENTATIVE GARA suggested that an almost perfect solution would be to allow all board members to deliberate on issues, even if they have a conflict of interest and could benefit financially from a particular outcome, and then just not be allowed to vote on those issues. Such would maintain the credibility of the organization, and allow the board to receive the information it needs to make an informed decision. He asked whether there would be a downside to such a change.

MS. COTE opined that such a change would not add anything to the current process because any member that is currently excluded from voting has already given his/her views and information to the remainder of the board before deliberations begin; allowing for him/her to repeat that information during deliberations will not necessarily add anything to the process. She added that in her experience, most members, even when they have a financial interest in an issue, want to do what's best for the fishery under debate and are very careful to be fair and open. She suggested that the current process with regard to conflict of interest has made it difficult to find people willing to serve on the Board of Fisheries.

SENATOR WAGONER directed attention to page 2, line 19, and pointed out that the proposed change has a sunset date of June 30, 2009; thus, if the new procedure works, the legislature can extend it.

Number 2195

JERRY McCUNE, United Fishermen of Alaska (UFA), after noting that a letter of support from the UFA is in members' packets, said that the UFA supports the bill and thinks it's vital for all members to take part in all aspects of the decision-making process, including voting. He echoed Ms. Cote's comments regarding the difficulty of finding people to serve on the board under the current conflict of interest rules. In conclusion, he expressed confidence in the Board of Fisheries to arrive at fair decisions.

Number 2284

PAUL SHADURA, President, Kenai Peninsula Fishermen's Association (KPFA), expressed the KPFA's support of SB 69 and Senator Wagoner's efforts. He said:

We believe that there are those in our state who will commit their time, for up to three years, and offer their expertise to promote the wellbeing of the residents of the state of Alaska; they should be allowed to give valuable information that they alone have, they should be able to debate, ask questions, and help clarify issues. We believe that given the fact that this board promulgates regulations around the entire state for three-year intervals, it would seem extremely unlikely that an individual [would place] themselves in this position for their own specific geographical [or] methodological gain.

What type of state board would we have if we deny the expertise of individuals, with ... [a] specific vocation, from serving on their industry-directed board - no beauticians on the beautician board, no doctors on the physician's board, no active commercial fishermen on the Board of Fisheries. With only seven members on this board, [and in] such a tremendously huge state with all its resource complexities, it's imperative that different knowledgeable users contribute to the state's rules and regulations. It'll allow a balance, a sense of fairness, a sense of justice; please support this bill. Thank you.

CHAIR SEATON, after ascertaining that no one else wished to testify, closed public testimony on SB 69.

Number 2382

CHAIR SEATON made a motion to Adopt Amendment 1, labeled 23-LS0313\I.3, Cook, 3/30/04, which read:

Page 1, line 7:
Delete "requires"
Insert "allows"

Page 2, line 11:
Delete "matters"

Insert "the matter"

Following "board":

Insert "if the matter (1) directly involves activities conducted under a permit or license issued under AS 16.05 or AS 16.43, or for sport fish guiding; and (2) does not involve the personal or financial interests of a person the member is paid to represent"

Number 2394

REPRESENTATIVE WILSON objected.

CHAIR SEATON explained that Amendment 1 would make it so that a member with a conflict may vote but will not be required to vote, and will specify that the conflict must directly involve activities conducted under a permit or license issued under AS 16.05, AS 16.43, or for sport fishing and must not involve the personal or financial interest of a person the member is paid to represent. The latter aspect of Amendment 1 would prevent members that are also paid lobbyists from voting on an issue of financial interest to their clients.

CHAIR SEATON opined that Amendment 1 is necessary because SB 69 is making a big change. He noted that the North Pacific Fishery Management Council (NPFMC) is exempt from all conflicts of interest because, unlike the Board of Fisheries, it is simply an advisory panel and does not actually create any regulations.

Number 2637

REPRESENTATIVE GARA made a motion to amend Amendment 1 so that it says in part, "the member is paid, or has been paid within the previous year, to represent"; such a change would ensure that the member would be precluded from voting if he/she has been paid within the year to represent a client with a personal or financial interest.

Number 2670

CHAIR SEATON objected and asked Senator Wagoner to comment.

SENATOR WAGONER indicated that he did not see any reason to exclude a member from voting just because he/she was formerly a paid lobbyist. He expressed a preference for an unaltered Amendment 1.

Number 2753

REPRESENTATIVE GARA withdrew the amendment to Amendment 1, but expressed a concern that if a member is also a contract lobbyist, his/her client could get around Amendment 1 simply by not paying the lobbyist for the period of time during which a particular issue is before the board.

SENATOR WAGONER offered his belief that such a situation is unlikely to happen, that the governor will appoint people with a certain amount of integrity.

CHAIR SEATON concurred.

REPRESENTATIVE OGG asked whether a subsistence permit would be covered under Amendment 1.

CHAIR SEATON offered his understanding that having such a permit does not currently exclude a member from voting.

MS. COTE concurred, adding that it is viewed similarly to a sport fishing license.

TAPE 04-27, SIDE B

Number 2932

CHAIR SEATON, in response to a comment, expressed a concern that if members with a conflict of interest are allowed to vote, then there could be more pressure put on the governor to appoint people who are paid to represent a particular interest group and thus change the complexion of the board. He opined that Amendment 1 will prevent such from happening, and noted that the sponsor is amenable to Amendment 1. In response to a question, he offered his belief that a member who is a paid representative of a person or organization that might benefit from an allocation decision would have no qualms about voting for the benefit of his/her client.

REPRESENTATIVE GARA surmised that such a person would in fact be obligated to vote in the best interest of his her client. He characterized Amendment 1 as addressing a "graphic" situation.

MS. COTE, in response to a question, said that most board members are individuals rather than paid industry personnel.

SENATOR WAGONER, in response to a question, confirmed that he is amenable to Amendment 1, and offered his belief that the legislature's current authority to confirm appointees provides a

safeguard against paid lobbyists being appointed to the Board of Fisheries.

Number 2472

A roll call vote was taken. Representatives Samuels, Ogg, Gara, and Seaton voted in favor of Amendment 1. Representative Wilson voted against it. Therefore, Amendment 1 was adopted by a vote of 4-1.

CHAIR SEATON, in response to a question, reiterated Ms. Cote's opinion that allowing members with conflicts of interest to participate in deliberations while still not allowing them to vote would not result in any discernable difference in the current decision-making process.

Number 2362

REPRESENTATIVE OGG moved to report CSSB 69(RES), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 69(FSH) was reported from the House Special Committee on Fisheries.

ADJOURNMENT

Number 2340

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 10:05 a.m.