

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

February 5, 2009
10:10 a.m.

MEMBERS PRESENT

Representative Bryce Edgmon, Chair
Representative Craig Johnson
Representative Charisse Millett
Representative Cathy Engstrom Munoz
Representative Robert L. "Bob" Buch

MEMBERS ABSENT

Representative Wes Keller
Representative Scott Kawasaki

COMMITTEE CALENDAR

HOUSE BILL NO. 41

"An Act relating to participation in matters before the Board of Fisheries by members of the board and to the definition of 'immediate family member' under the Alaska Executive Branch Ethics Act as that Act applies to members of the Board of Fisheries; and providing for an effective date."

- MOVED HB 41 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 41

SHORT TITLE: BOARD OF FISHERIES CONFLICTS OF INTEREST

SPONSOR(S): REPRESENTATIVE(S) SEATON, WILSON

01/20/09	(H)	PREFILE RELEASED 1/9/09
01/20/09	(H)	READ THE FIRST TIME - REFERRALS
01/20/09	(H)	FSH, RES
02/05/09	(H)	FSH AT 10:00 AM BARNES 124

WITNESS REGISTER

LOUIE FLORA, Staff
Representative Paul Seaton
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 41 on behalf of the sponsor, Representative Paul Seaton.

JIM MARCOTTE, Executive Director
Board of Fisheries
Boards Support Section
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 41.

STEVEN DAUGHERTY, Assistant Attorney General
Natural Resources Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 41.

RON RAINEY
Kenai River Sportfishing Association (KRSA)
Kenai, Alaska

POSITION STATEMENT: Testified in opposition to HB 41.

JERRY McCUNE, Lobbyist
United Fishermen of Alaska (UFA)
Cordova, Alaska

POSITION STATEMENT: Testified in support of HB 41.

ACTION NARRATIVE

[10:10:23 AM](#)

CHAIR BRYCE EDGMON called the House Special Committee on Fisheries meeting to order at 10:10 a.m. Representatives Edgmon, Johnson, Millett, Munoz, and Buch were present at the call to order.

HB 41 - BOARD OF FISHERIES CONFLICTS OF INTEREST

[10:11:08 AM](#)

CHAIR EDGMON announced that the only order of business would be HOUSE BILL NO. 41, "An Act relating to participation in matters before the Board of Fisheries by members of the board and to the definition of 'immediate family member' under the Alaska

Executive Branch Ethics Act as that Act applies to members of the Board of Fisheries; and providing for an effective date."

CHAIR EDGMON noted that similar legislation passed the House last year.

[10:11:43 AM](#)

LOUIE FLORA, Staff, Representative Paul Seaton, Alaska State Legislature, explained on behalf of Representative Seaton, one of the bill's joint prime sponsor, that HB 41 deals with conflicts of interest as they pertain to members of the Board of Fisheries, and [in part] proposes to change the definition of "immediate family member" as it would pertain to conflicts of interest by members of the Board of Fisheries. He mentioned that committee packets include letters of support for HB 41 as well as letters of support [and a letter of opposition] for last year's similar legislation. The Board of Fisheries is composed of seven members appointed by the governor and confirmed by the legislature; according to statute, these seven members are to be chosen "on the basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the board, and with a view to providing diversity of interest and points of view in the membership". The Board of Fisheries, he offered, has been designated by the legislature to help fulfill its constitutional duty to provide for the utilization, development, and conservation of the state's natural resources.

MR. FLORA indicated that the problem HB 41 is intended to address revolves around [what's perceived to be] a disproportionate number of recusals by members participating in particular fisheries. These recusals are required by the current statutory definition of conflict of interest, but when recused, members are then unable to bring their expertise of the area and the fishery to the deliberation and are unable to vote. This leaves the remaining members having to make decisions affecting a particular region without also having the specific expertise about the region or the fishery involved. The changes proposed by [Section 2 of] HB 41, he offered, would allow all members, after disclosing any conflict of interest because of participation in the particular fishery at issue, to deliberate, but would still preclude those with a conflict from voting on the proposal. Section 3 of HB 41 proposes to add to the Alaska Executive Branch Ethics Act - AS 39.52 - a definition of "immediate family member" as it would pertain to the Board of Fisheries; that proposed definition in part reads:

with respect to the application of this chapter to a member of the Board of Fisheries, "immediate family member" means

(1) the spouse or domestic partner of the member;

or

(2) a parent, child, including a stepchild and an adoptive child, or sibling of the member if the parent, child, or sibling resides with the member, is financially dependent on the member, or shares a substantial financial interest with the member.

MR. FLORA, in conclusion, relayed that the bill requires that [proposed AS 39.52.120(g), contained in Section 2 of the bill,] be repealed on June 30, 2012, and that by January 31, 2012, the Alaska Department of Fish & Game (ADF&G) shall submit a report [regarding the effect that provision had on recusal rates].

[10:20:15 AM](#)

JIM MARCOTTE, Executive Director, Board of Fisheries, Boards Support Section, Alaska Department of Fish & Game (ADF&G), in response to a question, explained that Board of Fisheries members must file disclosures with the Alaska Public Offices Commission (APOC), and must disclose possible conflicts of interest at the beginning of each Board of Fisheries meeting. Members must describe their income sources, must list any personal or financial interest which they or their family members have in fishing-related businesses, and must identify any personal or financial interest they or their family members may have with regard to the proposals being considered at the meeting. Once those disclosures are made, following discussion and clarification, the chair makes a ruling on a member's eligibility to participate on specific proposals, though this ruling may be overturned by a vote of the members whose participation is not in question. He noted that during its week-long meetings, the Board of Fisheries typically considers between 50 and 200 proposals.

MR. MARCOTTE referred to a document in members' packets titled, "Background Information on the Alaska Board of Fisheries Conflict of Interest Disclosures", and relayed that it contains recusal statistics for the last several years; these statistics illustrate that about 10 percent of the proposals that came before the Board of Fisheries have resulted in a member being recused due to a potential conflict of interest. Referring specifically to the page titled, "TABLE 2. BOARD OF FISHERIES VOTE ABSTENTIONS, BY MEMBER (Oct. 2001 - Dec. 2008)", he named

the 7 of the 23 members active during that time period who had conflicts, but acknowledged that the other two-thirds of the members had not had conflicts. In response to a question, he mentioned that the page titled, "TABLE 8. 2006/2007 BRISTOL BAY, AYK, ALASKA PENINSULA CYCLE" illustrates that at the December 2006 Board of Fisheries meeting regarding Bristol Bay finfish, board member Robert Heyano from Dillingham had a conflict with 38 out of the 120 proposals; Mr. Heyano is an active commercial fisherman and participates in "guided Sportfishing" and subsistence fishing.

[10:26:47 AM](#)

CHAIR EDGMON asked whether the ADF&G supports HB 41.

MR. MARCOTTE said neither the ADF&G nor the Board of Fisheries has taken a formal position on the bill, but noted that most Board of Fisheries members are comfortable with the concept of HB 41 and are frustrated with not being able to participate on some proposals. In response to another question, he said that no research has been conducted yet to determine whether past recusal rates would have been different had the changes proposed by HB 41 already been in place; he, too, noted that the bill requires the ADF&G to submit a report in three years illustrating recusal rates.

REPRESENTATIVE JOHNSON surmised that some of the past recusals might still have been required even if the proposed changes had been in place.

CHAIR EDGMON noted, though, that under the bill, a member with a conflict could still have participated in the discussion and would have just been precluded from voting.

REPRESENTATIVE JOHNSON stated his support for the bill, opining that the Board of Fisheries should be able to take advantage of the specific expertise that members have.

MR. MARCOTTE noted that the page titled, "TABLE 9. 2007/2008 COOK INLET/KODIAK CYCLE" illustrates that at the February 2008 Board of Fisheries meeting regarding upper Cook Inlet, board member Howard Delo from Big Lake had a conflict with 1 out of the 286 proposals; Mr. Delo's mother in-law, Mr. Marcotte explained, has a "latent set net permit in Cook Inlet," and under HB 41, Mr. Delo could have at least participated in the discussion of that proposal.

[10:31:51 AM](#)

STEVEN DAUGHERTY, Assistant Attorney General, Natural Resources Section, Civil Division (Anchorage), Department of Law (DOL), said he is not aware of any legal questions arising from HB 41. In response to questions, he explained that Board of Fisheries members are subject to the Alaska Executive Branch Ethics Act, and that the changes proposed by HB 41 would not automatically be applied to any other agency or board, though such changes could set a precedent, and thus other agencies or boards might come before the legislature seeking similar changes in their governing statutes.

[10:34:33 AM](#)

RON RAINEY, Kenai River Sportfishing Association (KRSA), after noting that he has attended most if not all of the Board of Fisheries meetings over the last 15 years, stated that the KRSA is opposed to HB 41 because if a board member who has a direct conflict is allowed to deliberate on a proposal, it would be possible for him/her to influence the other members. He also opined that now is not the appropriate time to be making changes to the statutes governing the ethical behavior of Board of Fisheries members who have a financial interest in a particular fishery.

[10:36:20 AM](#)

JERRY McCUNE, Lobbyist, United Fishermen of Alaska (UFA), stated support for HB 41, and expressed frustration over situations in which the member with the most expertise regarding a particular fishery is not allowed to participate; recusals of this type leave the other members at a disadvantage.

CHAIR EDGMON, after ascertaining that no one else wished to testify, closed public testimony on HB 41.

MR. MARCOTTE, in response to a question, indicated that finding people interested in serving on the Board of Fisheries has not been a problem, though serving on the Board of Fisheries does require a great deal of time.

CHAIR EDGMON offered his understanding that the Board of Fisheries meets approximately 40 days per year, and surmised that that could influence a person's decision to serve.

[10:40:17 AM](#)

REPRESENTATIVE MUNOZ moved to report HB 41 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 41 was reported from the House Special Committee on Fisheries.

10:41:00 AM

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 10:41 a.m.