

**ALASKA STATE LEGISLATURE**  
**HOUSE RESOURCES STANDING COMMITTEE**

February 12, 2010

1:07 p.m.

**MEMBERS PRESENT**

Representative Mark Neuman, Co-Chair  
Representative Bryce Edgmon  
Representative Paul Seaton  
Representative Peggy Wilson  
Representative David Guttenberg  
Representative Scott Kawasaki  
Representative Chris Tuck

**MEMBERS ABSENT**

Representative Craig Johnson, Co-Chair  
Representative Kurt Olson

**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."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 41

SHORT TITLE: BOARD OF FISHERIES CONFLICTS OF INTEREST

SPONSOR(S): REPRESENTATIVE(S) SEATON, P.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
02/05/09	(H)	Moved Out of Committee
02/05/09	(H)	MINUTE(FSH)
02/06/09	(H)	FSH RPT 2DP 3NR
02/06/09	(H)	DP: MUNOZ, EDGMON
02/06/09	(H)	NR: JOHNSON, MILLETT, BUCH
02/12/10	(H)	RES AT 1:00 PM BARNES 124

## **WITNESS REGISTER**

REPRESENTATIVE ALAN AUSTERMAN  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Supported HB 41.

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

**POSITION STATEMENT:** During the hearing on HB 41, answered questions.

## **ACTION NARRATIVE**

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**CO-CHAIR MARK NEUMAN** called the House Resources Standing Committee meeting to order at 1:07 p.m. Present at the call to order were Representatives Guttenberg, Kawasaki, Tuck, P. Wilson, Seaton, Edgmon, and Neuman.

### **HB 41-BOARD OF FISHERIES CONFLICTS OF INTEREST**

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CO-CHAIR NEUMAN announced that the only order of business is 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."

REPRESENTATIVE SEATON, sponsor of HB 41, stated that the bill deals with conflicts of interest on the Board of Fisheries. It is identical to House Bill 15, which was heard in the Twenty-Fifth Legislature and which passed the House of Representatives by a vote of 33-2. He noted that the Board of Fisheries is composed of seven members, with each member confirmed by the legislature. The members serve three-year terms and the board meets four to six times per year in different communities around the state to discuss different statewide issues. Board member

conflicts of interest are governed by the Alaska Executive Branch Ethics Act.

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REPRESENTATIVE SEATON explained that any board member having a participatory conflict of interest is recused from that issue. However, the problem with this is that it takes the member out of the board's discussion and means that a member with the most knowledge to offer on a particular regional fishery cannot participate in board deliberations or votes, although that member can testify as a member of the public. Another problem is that the definition of a family member under the Alaska Executive Branch Ethics Act is so broad that a board member can become conflicted out even if a very distant member of his or her family has an interest in a fishery. This definition disproportionately affects the rural parts of Alaska that have a strong fishery basis for the economy and extended families that participate in some aspect of the fishery. The solution is to apply a pilot program that would allow members with a participatory interest in a sport or commercial fishery to deliberate on the issue, but not vote on it; this pilot program would have a sunset [June 30, 2012]. The other solution is to apply the less broad Legislative Ethics Act definition of family, which defines family as direct relations living with and supported by the member; this definition would therefore exclude extended family such as aunts, uncles, and cousins that do not live with the member.

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REPRESENTATIVE SEATON directed attention to the report entitled, "Background Information on the Alaska Board of Fisheries Conflict of Interest Disclosures and Ethics Act Compliance in Regard to HB 41," dated February 12, 2010. He related that on average between 2001 and 2006 individual board members were required to recuse themselves on nearly 10 percent of the proposals in each board cycle. The average between 2001 and 2010 is 11 percent [page 2 of the report]. Under the provisions of HB 41, a board member would have a conflict of interest on an issue when a board action might affect a member of that person's household, but not that person's extended family.

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REPRESENTATIVE SEATON, in response to Co-Chair Neuman, noted that the aforementioned report was prepared by Jim Marcotte,

Executive Director of the Alaska Board of Fisheries. He further pointed out that in some years the conflict of interest is as low as 3 percent and in other years as high as 20 percent. In further response, he confirmed that 250 to 500 regulatory proposals were heard by the board each year over the last 9 years, and 11 percent of the proposals were subject to a ruling of a conflict of interest. He called attention to Table 1 in the report that summarizes the number of proposals and the percent of proposals with conflict for each of the nine years between 2002 and 2010, inclusive.

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CO-CHAIR NEUMAN asked which category of fishery has the most conflicts - subsistence, sport, or commercial.

REPRESENTATIVE SEATON referred to the third column in Table 2 of the report and responded that conflicts of interest are more by region than by specific type of fishery. For example, the people with the four highest percentages of meetings with conflicts [for the years between 2001 and 2010] were Robert Heyano of Dillingham with a conflict at [26] percent of the meetings, Vince Webster of King Salmon with 17 percent, Grant Miller of Sitka with 14 percent, and Ed Dersham of Anchor Point with 11 percent. Mr. Heyano, Mr. Webster, and Mr. Miller are commercial fishermen and Mr. Miller is a sport charter operator. John Jensen of Petersburg and Mel Morris of Kodiak each had 9 percent and, like the others, these two men are from areas that have fisheries as an industry base with lots of extended family members participating.

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CO-CHAIR NEUMAN referred to the last column in Table 2 that lists the percent of proposals with conflict and noted that Mr. Heyano is at 5 percent, Mr. Jensen is at 7 percent, and 17 of the 24 board members have 0 percent conflict. He asked how these numbers correlate with the 11 percent that was mentioned for the 250 to 500 proposals.

REPRESENTATIVE EDGMON interjected that it is more complicated than simply looking at a straight line analysis. He explained that the Board of Fisheries has cycles where it meets every three years in various locations, such as Bristol Bay, Cordova, or Southeast Alaska, and this must be factored in. For example, Russell Nelson of Dillingham [with 0 percent] was not an active fisherman, but Robert Heyano was an active commercial fisherman

and had relatives in both the drift and set net areas. It must be realized that when the meeting is taking place in a location in which a board member lives and at which his or her fellow community members are in attendance, that board member must sit in the back of the room because he or she is conflicted out. That makes no sense at all, he opined, and it is his view that this issue has been mightily shortchanged by the legislature.

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REPRESENTATIVE SEATON stated that Table 1 is the easiest way to look at the issue in the manner Co-Chair Neuman is talking about. It can be seen from Table 1 that the number of proposals per cycle and the percent of proposals with conflict is very dependent upon the year. For example, if a particular cycle includes proposals for Southeast Alaska and there is a board member that is a fisherman in that region, that member will have a large number of conflicts in that year. If there are proposals for Cook Inlet and no member on the board is from the Cook Inlet region, there will be no conflicts. He further pointed out that on Table 2, Ed Dersham had conflicts as a sport charter operator, not as a commercial fisherman.

CO-CHAIR NEUMAN said the last column of Table 2 indicates that Mr. Dersham had conflict with 3 percent of the proposals.

REPRESENTATIVE SEATON, at Co-Chair Neuman's request, yielded the witness chair to Representative Austerman for testimony.

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REPRESENTATIVE ALAN AUSTERMAN, Alaska State Legislature, noted that he is from Kodiak and that he sat on the House Special Committee on Fisheries for six years, during which time the conflict of interest issue always cropped up as something needing to be addressed. He said the interpretation by the Department of Law is so strict that even the involvement in a fishery of a board member's great uncle will take that member out of the picture. How to resolve this conflict of interest issue has been ongoing for a number of years. His personal opinion is that Board of Fisheries members should be able to declare every conflict they have at the start of a meeting and then do business. If the member has a financial conflict, this would be put on the table for everyone to see and everyone would see how that member votes. However, getting to this point has not happened over these years and he therefore thinks that allowing board members to debate the issue, but not vote, is a

fairly decent methodology and a step in the right direction. He requested that committee members consider extending the sunset date beyond June 30, 2012, because that date would only cover one cycle and he believes two are needed to adequately see how well it is working.

REPRESENTATIVE AUSTERMAN, in response to Co-Chair Neuman, stated that HB 41 addresses both personal and financial conflicts.

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REPRESENTATIVE GUTTENBERG surmised that people in the various communities may feel they are not being represented when a board member is conflicted out. He inquired whether this also causes problems with not having a quorum or creating a tie vote.

REPRESENTATIVE AUSTERMAN answered that this does happen, but not often. What it really gets down to is that the person with the most knowledge cannot even debate or talk about the subject. For example, in one instance a board member worked for an at-sea processor composed of several processors from the Seattle, Washington, area that also had processing plants in Alaska. Every time an issue came before the board that had any kind of effect on any one of those processors, the Department of Law's interpretation was that that member had to recuse himself from debating or even talking about the issue. The way this is set up now and the way it is interpreted by the Department of Law is ludicrous, he opined. He allowed, however, that he has never seen a board member stand up and say the Department of Law's interpretation is wrong.

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CO-CHAIR NEUMAN called attention to a letter written to Representative Seaton by Judge Karl Johnstone, a current board member, in which Judge Johnstone expresses his opposition to [allowing board members who are conflicted from voting on a proposal to be able to deliberate that proposal]. Co-Chair Neuman related that during the confirmation process, Judge Johnstone received unanimous positive comments in regard to his ability to apply fairness.

REPRESENTATIVE AUSTERMAN responded that he has not had the opportunity to talk to Judge Johnstone in this regard.

CO-CHAIR NEUMAN stated his intent to ask members of the fish and game advisory committees and the public for their opinions on the bill.

REPRESENTATIVE AUSTERMAN suggested that Co-Chair Neuman also ask the opinions of all of the previous chairs of the Board of Fisheries. Based on his past experience, he said he believes all of the previous chairs have supported some type of change to the conflict of interest.

REPRESENTATIVE EDGMON expressed his interest in hearing more from Judge Johnstone because his experience with previous Board of Fisheries members is the same as Representative Austerman's and therefore the judge's opinion would be in the minority.

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REPRESENTATIVE SEATON resumed his introduction of HB 41. He explained that every member is required at the beginning of every meeting to declare any potential conflicts, including financial. Thus, the conflicts of interest are on the table and the decisions are made at the beginning of every meeting.

CO-CHAIR NEUMAN inquired whether a board member's financial interests must be put forth on the table.

REPRESENTATIVE SEATON replied that that is done and Mr. Marcotte will explain exactly how it is done. He said he believes the form that board members must fill out is included in the committee packet.

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REPRESENTATIVE TUCK asked whether there are any examples by proposal and the number of people who had to recuse themselves for each proposal.

REPRESENTATIVE SEATON answered that Mr. Marcotte prepared the report independently of his office. He said most of the recusals take place because of the regional nature of the fisheries and where the board is in its cycle. So, generally, these recusals come in huge blocks because a member having extended family that fishes in that region must excuse himself or herself from lots of the proposals.

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REPRESENTATIVE KAWASAKI inquired how many of these conflicts would be taken out if the only thing that is changed is the definition of family.

REPRESENTATIVE SEATON responded that under current law and HB 41, a board member would be barred from voting on proposals that affect his or her bottom line as well as an immediate family member's bottom line. However, he does not have the breakdown for how many of those were extended family or immediate family.

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REPRESENTATIVE GUTTENBERG referred to page 2, line 5, of HB 41, and asked how a conflict is determined and who makes the determination.

REPRESENTATIVE SEATON deferred to Mr. Marcotte.

CO-CHAIR NEUMAN requested that a copy of the conflict of interest form be provided to committee members. He reiterated that the advisory committees will be contacted and that the Department of Law will also be contacted.

JIM MARCOTTE, Executive Director, Board of Fisheries, Boards Support Section, Alaska Department of Fish & Game, noted that he compiled the statistics in the report and they encompass the most recent Board of Fisheries meeting which concluded on [February 7, 2010] in Anchorage. The statistics look back over a nine-year period and because the board is on a three-year cycle, the report includes three complete three-year cycles.

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MR. MARCOTTE, in response to Co-Chair Neuman, explained that there are several goals in regard to board composition and the three-year cycles. One goal is to have a board with a lot of diversity - people from different geographic areas of the state that have knowledge of different fisheries. The Alaska Executive Branch Ethics Act is written so that people cannot vote on something that he or she would have a direct personal or financial interest in. So, those are competing goals. In regard to the three-year cycle, instead of having one meeting about salmon, the next about crab, and the next about sport grayling fishing, the board has found that it works best to deal with fishing issues in a particular region in one meeting. For example, one meeting might deal with fishing issues for Bristol Bay and the next might deal with fishing issues for Prince

William Sound. If there is a meeting on crab in Southeast Alaska and a board member is a crab permit holder for commercial fishing in Southeast, then he or she would potentially have a conflict of interest in some proposals, such as those that are close to the area that the member fishes. However, that member would likely not have a conflict for crab fishing elsewhere in the state and would thus bring to the board expertise about crab fishing in general, issues about hot stacking, registration in the different fisheries, particulars about gear, and so forth. Therefore, the members have different expertise that they bring on any different proposal.

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CO-CHAIR NEUMAN assumed that all seven board members would likely have a broad-based knowledge about fisheries in general.

MR. MARCOTTE replied in general, yes. The rich diversity of fisheries in Alaska is phenomenal and it is quite an education to travel around the state over a three year period and learn about these very unique fisheries.

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MR. MARCOTTE spoke about the board's procedures. He explained that at the very beginning of a meeting right after introductions, the chair asks each board member to describe his or her income sources, to list any personal or financial interest that the member or his or her family members may have in fishery-related businesses, and to identify any personal or financial interest that the member or his or her family members may have in regard to any of the specific proposals.

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MR. MARCOTTE, in response to Co-Chair Neuman, confirmed that each of the Board of Fisheries members completes a written conflict of interest disclosure for each meeting. Most board members have already prepared a written narrative of who his or her family members are, along with a description of income sources and any overlaps in fisheries. For some families this is considerable and for some not. In response to further questions from Co-Chair Neuman, Mr. Marcotte clarified that the narrative is not a form that is filled out, it is information that each board member presents verbally on the record at the meeting. After a member presents that information, the chair will invite questions from other board members. Based on that

discussion, the board chair makes a ruling as to whether each member can participate in the different proposals. The member does not state what the dollar values are for his or her income, but does identify the income sources. When the chair makes the ruling, it is not based on a dollar threshold, but whether it is determined to be a significant conflict.

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CO-CHAIR NEUMAN asked whether HB 41 would require that the value of the income be disclosed.

REPRESENTATIVE SEATON answered that there is nothing in the bill that would change the current financial disclosure requirements under the Alaska Executive Branch Ethics Act.

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MR. MARCOTTE directed attention to the chart on page 3 of his report that shows the two different definitions of family for the Alaska Executive Branch Ethics Act and the Legislative Ethics Act. Under HB 41, the less broad definition of the Legislative Ethics Act would instead apply, which would be a significant change.

REPRESENTATIVE EDGMON pointed out that in his letter, board member Karl Johnstone states that he supports the provision of HB 41 that would narrow the definition of family members. He asked for verification that he is interpreting Judge Johnstone's statement correctly.

MR. MARCOTTE stated that he talked to Judge Johnstone yesterday and Judge Johnstone expressed reservation about allowing a board member with a conflict to participate in the deliberations, but supported the aspect of HB 41 that would narrow the definition of family. In regard to Representative Kawasaki's earlier question about what the impact would be of narrowing the definition, Mr. Marcotte said it is very difficult to know because over the past nine years from which his dataset comes from, the question did not delineate whether the conflict was for a household member or for extended family. However, he estimated that about half the time the conflict arises due to a family member that is not part of the household.

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MR. MARCOTTE further noted that neither the Alaska Department of Fish & Game (ADF&G) nor the Board of Fisheries has developed an official position on HB 41 at this time. However, he added that the bill fine tunes the procedures and does not propose a revolutionary change. He related that most of the board members have expressed general comfort with how the bill is written.

CO-CHAIR NEUMAN requested Mr. Marcotte's personal opinion as to whether HB 41 would have a significant impact on the Board of Fisheries.

MR. MARCOTTE answered that the interests are the quality of the discussion - bringing in the expertise - and he thinks it is a step in that direction. The flip-side concern is whether it compromises the integrity of the board. It is a very important part of the board process to know that decisions are being made in the best interests of the state and not in someone's personal interests. He thinks that keeping the restriction on voting, but allowing the board member to participate in the deliberations on record, strikes a good balance between those two competing interests.

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CO-CHAIR NEUMAN commented that once integrity has been questioned, it is hard to overcome even if the accusation is proven untrue. He asked whether HB 41 would still establish integrity.

MR. MARCOTTE stated he does not feel the bill would compromise either the board's or the board members' public credibility and he thinks the integrity of the board process would be maintained. In further response, he said board members currently have financial disclosures at the beginning of the meeting; forms are not filled out with the dollar amounts that are earned in different fisheries, but members do disclose what their financial associations are in the different fisheries. He noted that HB 41 does not seek a change in this regard and that he believes the disclosure of financial associations at the beginning of the meeting is what Representative Austerman was referring to.

CO-CHAIR NEUMAN remarked that financial disclosure by legislators is an important part of assuring that the public can have trust in them.

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REPRESENTATIVE P. WILSON offered her belief that fishermen would not want to serve on the board if they had to give financial information.

MR. MARCOTTE agreed that that would discourage some applicants.

REPRESENTATIVE P. WILSON clarified that her statement was in regard to whether the co-chair is suggesting that the disclosure of dollar amounts be required.

CO-CHAIR NEUMAN responded no, he did not mean that. He pointed out that financial disclosure has become a reason why people do not want to serve on city councils or borough assemblies.

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REPRESENTATIVE SEATON said he believes the financial disclosure that is required at the start of the Board of Fisheries meetings is adequate and more details would not serve the interests of the public. He directed attention to the paper in the committee packet entitled, "Recusals due to Conflict of Interest in Quarterly Ethics Reports 2003-2006." He said the paper was prepared by his office and depicts the recusals due to conflict of interest for the years 2003, 2004, 2005, and 2006 for the various statewide boards in Alaska. He noted that for the state medical board, a person is not recused because of a family member being in medical practice. The Board of Fisheries is much more restrictive in regard to involvement of either the board member or the member's family. He said he will be providing further information in this regard.

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REPRESENTATIVE SEATON, in response to Co-Chair Neuman, pointed out that when the Board of Fisheries meets in a rural region like Bristol Bay or Southeast Alaska where the economics of the region are highly dependent upon fisheries, a board member from that region will be recused from a number of proposals. Even if it is only three board members being recused, it will be on a huge number of issues because the cycle for that year is for that region, and this can create a dramatic effect.

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MR. MARCOTTE added that he would like to echo Representative Austerman's comment in regard to the bill's proposed review date

of January 31, 2012 [page 2, line 20], which would provide for a review of one full cycle. As has been seen, he continued, each cycle is going to have its own pattern, and the cycle coming up is the Cook Inlet and Kodiak cycle. He offered his opinion that the review period would need to go through three cycles to get a representative sample of the different issues.

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REPRESENTATIVE EDGMON noted that this is his fourth committee hearing on this bill and at each of those meetings comparisons have been made to other boards and commissions. However, comparison of the atmospheres between the Board of Fisheries and the other boards are like comparing apples and oranges. Board of Fisheries meetings are a highly public, highly scrutinized environment; and this highly public decision-making process essentially provides a built-in self-policing mechanism. The decisions are very controversial and at times can involve much fratch when allocating resources between competing user groups that are sitting right there in the audience before the board members. This is something that other boards and commissions do not have to undertake. He said he considers the changes in HB 41 to be reasonable, yet comparisons are made to other boards and commissions that have completely different missions and much less publically-charged environments. For example, when was the last time had the Pharmacy Board had 100 people at a meeting?

CO-CHAIR NEUMAN agreed.

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REPRESENTATIVE P. WILSON drew attention to page 3 of a document in the committee packet entitled, "Fish & Game Transition Team Issues Report to Governor Sarah Palin." She related that there were 21 people on that transition team and one of the team's recommendations was that "only the household members or immediate family should be considered for conflict so as not to unfairly bias the process against longstanding families with extensive affected relatives." She further related that the team outlined the following consequences of inaction: lack of valid information in Board of Fisheries deliberations, reluctance of well qualified members to serve on the board, and lack of public confidence in the Board of Fisheries process and state management. She said she therefore thinks it is important to make this recommended change.

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CO-CHAIR NEUMAN noted that the suggested changes to HB 41 have been about the sunset date and definition of family. He urged Representative Seaton to work with Representative Kawasaki in regard to the sunset date and Representative Edgmon in regard to the definition of family.

REPRESENTATIVE SEATON agreed to work with Representative Kawasaki in regard to the sunset date. He pointed out that the bill already provides for narrowing the definition of family as described in the transition team report cited by Representative P. Wilson. He said he will be interested in hearing back from the advisory committees because versions of this bill have been out for at least four years. One version passed the House of Representatives but did not make it through the other body. Thus, there has been a lot of public notice and comment on this bill. The original bill was more expansive and allowed voting with the declaration of conflicts, but that along with a number of other things has since been removed from the bill.

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CO-CHAIR NEUMAN inquired as to why this bill has not been passed in the four years it has been around.

REPRESENTATIVE SEATON responded that, generally, the reason the bills in previous legislatures did not pass was because they would have allowed board members that declare a conflict of interest to vote on the proposal, which is like what the legislature does. However, HB 41 would not allow that. The version of the bill that previously passed the House so broadly had the same provision as proposed by HB 41, which is to allow a conflicted board member to deliberate but not vote.

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CO-CHAIR NEUMAN, in light of Representative Edgmon's comments about comparisons to other boards, said Representative Seaton does not need to provide further information in this regard.

REPRESENTATIVE EDGMON replied that if the committee's desire is to have this comparison, he would suggest that the director of boards and commissions speak to the committee. In further response, he clarified that he is not making a specific request in this regard.

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CO-CHAIR NEUMAN opened public testimony. After ascertaining that no one wished to testify, he closed public testimony.

CO-CHAIR NEUMAN held over HB 41.

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**ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:17 p.m.