

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

February 19, 2015

10:09 a.m.

MEMBERS PRESENT

Representative Louise Stutes, Chair
Representative Bob Herron
Representative Jonathan Kreiss-Tomkins
Representative Dan Ortiz

MEMBERS ABSENT

Representative Neal Foster
Representative Craig Johnson
Representative Charisse Millett

COMMITTEE CALENDAR

HOUSE BILL NO. 103

"An Act relating to the authority of the Board of Fisheries and the Board of Game to adopt, amend, or repeal regulations."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 103

SHORT TITLE: BOARDS OF FISH/GAME REGULATION AUTHORITY

SPONSOR(S): REPRESENTATIVE(S) WILSON

02/11/15	(H)	READ THE FIRST TIME - REFERRALS
02/11/15	(H)	FSH, RES
02/19/15	(H)	FSH AT 10:00 AM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE TAMMY WILSON

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 103, as sponsor.

CHRIS GARCIA

Kenai, Alaska

POSITION STATEMENT: Testified in support of HB 103.

ROBERT "BOB" MERCHANT
Kenai, Alaska

POSITION STATEMENT: Testified in support of HB 103.

ROD ARNO, Executive Director
Alaska Outdoor Council
Wasilla, Alaska

POSITION STATEMENT: Testified in support of HB 103.

DAN ANDERSON
Homer, Alaska

POSITION STATEMENT: Testified in support of HB 103.

GARLAND BLANCHARD
Homer, Alaska

POSITION STATEMENT: Testified in support of HB 103.

STEVEN FLORY, Member
Anchorage Advisory Committee
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 103.

MIKE TINKER, Member
Fairbanks Advisory Committee
Ester, Alaska

POSITION STATEMENT: Testified in support of HB 103.

AL BARRETTE, Member
Fairbanks Advisory Committee
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 103.

ROBERT CAYWOOD, Member
Anchorage Advisory Committee
Chugiak, Alaska

POSITION STATEMENT: Testified in support of HB 103.

ACTION NARRATIVE

[10:09:41 AM](#)

CHAIR LOUISE STUTES called the House Special Committee on Fisheries meeting to order at 10:09 a.m. Representatives Stutes, Herron, Ortiz, and Kreiss-Tomkins were present at the call to order.

HB 103-BOARDS OF FISH/GAME REGULATION AUTHORITY

10:10:02 AM

CHAIR STUTES announced that the only order of business would be HOUSE BILL NO. 103, "An Act relating to the authority of the Board of Fisheries and the Board of Game to adopt, amend, or repeal regulations."

10:11:01 AM

REPRESENTATIVE TAMMY WILSON, Alaska State Legislature, provided an introduction to HB 103, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

The clear intent of our constitutional framers and early legislators was to include the public in the process of managing and allocating our fish and game resources. Alaska is unique, for example, among all states for operating a system of fish and game advisory committees (ACs).

Unfortunately, this intent toward public participation has in recent years been frustrated by a commingling of the functions of the boards of fish and game with the Department of Fish and Game, the result of which has been public exclusion.

The legislature is empowered in Art. 8, Sec. 2 of the Alaska Constitution with managing and allocating all resources, including fish and game. The legislature has in turn statutorily delegated that management authority by creating the Department of Fish and Game in the executive branch to manage fish and game resources. The legislature also delegated the allocation authority by creating the Board of Fisheries and Game, but they did not put these boards in the executive branch.

Current statute and regulation require proposals for the allocation of fish and game resources to be submitted by a published deadline before the board meeting. Members of the public, advisory committees, the department, and the board can submit such proposals. Typically, these proposals are published

well ahead of the meeting for the interested public to scrutinize, and if they deem necessary, offer input.

The problem that has developed is that board factions, using department staff for support, are developing proposals outside of the public purview. While individual members of the public and ACs must submit their proposals in advance of board meetings, the board factions and department staff can work on proposal language with no notice to the public. This language is often adopted as board regulation without the public having opportunity to engage in its development.

HB 103 will solve this problem and again put the public on equal footing with the government; as well as, introduce transparency to our public process.

[10:13:15 AM](#)

REPRESENTATIVE WILSON directed attention to the committee packet and the handout titled, "Public Participation and the Board Process," illustrating the complex course to which a public proposal is subjected prior to being heard by the board. However, the board generated proposals (BOGs) are not subject to the same process and review, often not being heard by the local advisory committees or allowing time for witnesses to vet the proposals appropriately for comment. She pointed out that the BOGs aren't necessarily controversial, but should still be subject to a process similar to public submissions and minimally be reviewed for recommendation by a local advisory committee.

[10:15:38 AM](#)

REPRESENTATIVE HERRON observed that similar legislation has been proposed in years past, and expressed concern for the viability of HB 103. He asked how it differs from previously introduced legislation.

REPRESENTATIVE WILSON pointed out that the board could make the change autonomously, avoiding statutory action, and agreed to provide further information.

REPRESENTATIVE HERRON directed attention to the committee packet, and the memo dated 2/9/15, from T. L. Alpheus Bullard, Legislative Counsel, addressed to Representative Tammie Wilson, with the subject line, "Bill prohibiting the Board of Fish and

the Board of Game from proposing regulations (Work Order No. 29-LS0475), and asked for comment on the legal opinion.

REPRESENTATIVE WILSON responded that the opinion indicates a concern for restricting the boards of fish and game. The bill imposes restrictions based on constituent feedback and user group concerns, who report being shafted when it comes to public input. The constitutional mandate to the boards is that they hear public comment, hence the concern. The conversation is long overdue for how the public process can be reinstated to a workable forum, she opined.

[10:18:53 AM](#)

REPRESENTATIVE ORTIZ asked about perceived significant harms, and requested some examples.

REPRESENTATIVE WILSON provided an example regarding the management of [Dall] sheep. At a recent Board of Game (BOG) meeting, only three members were in attendance and testimony was by invitation only, during the crafting of a proposal.

[10:20:22 AM](#)

REPRESENTATIVE HERRON conjectured that if there were a closed door meeting of only three board members crafting regulation, it would represent a violation of the Sunshine [Act] [Freedom of Information Act (FOIA)].

REPRESENTATIVE WILSON stated that comment from legal services is forthcoming.

REPRESENTATIVE HERRON opined that the Sunshine [Act] appears to have been violated, and such action constitutes an attack on the public process. Further, he found it interesting that the Fairbanks advisory committee feels locked out of the decision making process, and recalled that this is not a new concern. Seeking the help of locals is considered important, he said, and expressed appreciation for the bill being brought forward.

[10:23:50 AM](#)

CHAIR STUTES opened public testimony.

[10:24:18 AM](#)

CHRIS GARCIA stated support for HB 103, and expressed appreciation for the simplicity of the bill. He opined that the public has been slowly removed from the board process, and urged passage.

[10:25:57 AM](#)

ROBERT "BOB" MERCHANT stated support for HB 103, and expressed appreciation to the sponsor for bringing the issue forward, as it is sorely needed. He said that under the current scenario, the Board of Fisheries (BOF) has adopted the habit of generating proposals during meetings; effectively eliminating the 30 day reparation and response period. The BOF has assumed an attitude of unilateral authority, ramrodding proposals through, and cutting out the public input which, he opined serves special interest groups. He urged passage of HB 103.

[10:28:39 AM](#)

ROD ARNO, Executive Director, Alaska Outdoor Council, stated support for HB 103, and said it is important to protect the fish and game management goals. Board generated proposals discourage public input and serve special interest groups. The Outdoor Council urges passage.

[10:30:53 AM](#)

DAN ANDERSON stated support for HB 103, and expressed concern for the advisory committee members that receive little support in the process, when the board generates in-house proposals. It is difficult to provide appropriate response and input given the current situation. He applauded the bill and urged passage.

[10:32:29 AM](#)

GARLAND BLANCHARD stated support for HB 103, and said it is time to bring this issue forward and remedy what is occurring at board meetings. The advisory committee members are currently being ignored at the meetings and the power is removed from the people, he opined and stressed that the opportunity for public comment needs to be restored. Out of cycle, emergency board meetings have been held and decisions made without the input of the Alaska Department of Fish & Game (ADF&G), whose opinion should also be heard. He urged passage of HB 103.

[10:35:19 AM](#)

STEVEN FLORY, Member, Anchorage Advisory Committee, stated support for HB 103, and said at one time the local advisory committees offered support to the regional advisory committees and proposals were considered at those levels prior to being forwarded to the board. The regional committees were eliminated, by ADF&G in a cost cutting measure, and the approving authority was altered. The committee he represents shares the sentiment that the bill does not go far enough and suggested the inclusion of language that proposals must receive approval by one of the 84 advisory committees. The BOGs become law with little or no input from the public or advisory committees. He provided several anecdotal examples of how regulations are being affected and lack vetting. Further, he reported that the chairman of the BOG recently opined that the advisory committees should be dissolved. The board also generates working groups, as a means to get proposals before the board, further circumventing the process. He urged passage of HB 103.

10:40:20 AM

MIKE TINKER, Member, Fairbanks Advisory Committee, stated support for HB 103, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

I have been working with the board of fisheries for nearly 30 years. I am a long serving member of the Fairbanks Fish and Game Advisory Committee and an active member of several outdoor organizations.

I'm here this morning to testify on HB 103. It solves an evolving problem that has been getting worse over time. Our fish and game regulatory system is set up with checks and balances. The Department is the manager, that is, the keeper of the biology and harvest information. The Board of Fisheries, charged with allocating the fish resources not necessary for sustaining the populations, is the "judge" for which users can harvest and what the limits of that harvest can be. In their jargon, they set seasons, methods and means and bag limits. The public is represented by community elected advisory committees, individuals and special interest organizations. Proposals for regulatory change are "called for" by the board(s). The Board of Game has a similar responsibility for wildlife allocation.

In recent years the boards have developed a "short cut" through their processes they call Board Generated Proposals. Looking at an issue, or multiple proposals a board will try to construct a proposal (which is their definition for a draft change to the regulation(s)). The problem is that BGPs frequently bypass the advisory committee and public review and comment. Examples have been drafted by the boards or a few members and then noticed and scheduled for discussion and action. By the time the ACs and individuals are aware of the actual language, it is too late to even have an AC meeting and provide meaningful comments on whether or not the BGP solves the regulatory question on the subject.

This process results in frustration from the non-board member participants in the checks and balances system. The clearest example is the Joint Boards deciding to write themselves a policy for Criteria to Use When Drafting BGPs. That policy (a guideline) was drafted, discussed only by the Joint Boards and adopted all on October 16, 2013. There was no public input, no advisory committee input and the action was taken in the "miscellaneous" portion of the agenda, i.e., not publically noticed.

Representative Wilson's HB 103 seeks to limit the sources of regulatory change proposals to those sources that were provided in regulation and used prior to the creation and use of BGPs. As a member of the public and an AC member, I am in favor of this limitation. If HB 103 is passed, the check and balance system written by our state's constitutional and statutory authors will be preserved. There are adequate protections for the boards to be able to deal with emergencies and their normal meeting agenda can accommodate last minute issues without excepting the public and advisory committees.

[10:44:50 AM](#)

AL BARRETTE, Member, Fairbanks Advisory Committee, stated support for HB 103, and said this bill would close a loophole that allows procedural posturing, or gaming of the system. He described the board generated proposal (BGP) process that is currently occurring regarding ACR's, as described by the previous witness, and stressed that these board actions do not

uphold appropriate standards. Nor, he said does the board follow self-imposed proposal criteria. Recalling a recent board statement, he said:

I think the board said it very clearly in their statement of: 'What is the issue that you'd like to address?' And in the middle of their paragraph they said: 'The flexibility of the board, to allow an agenda change request, should not be used as means to submit a proposal, for a scheduled meeting, after the deadline is established for submitting in-cycle proposals.'

MR. BARRETTE observed that, as a long standing ACR member, this statement indicates that the board is holding the public to a standard, as described in regulation, but the board retains the freedom to not be bound by that policy or regulation. If they were truly looking out for the state's best interest, he opined, the board would hold itself accountable to regulation. Many examples are available, he offered.

[10:49:31 AM](#)

ROBERT CAYWOOD, Member, Anchorage Advisory Committee, stated support for HB 103, and stressed that the public process is not working. He reported that six of the local advisory committee members have resigned over how the process is being handled. The advisory committees and public need to have their power restored, he finished.

CHAIR STUTES closed public testimony after ascertaining no one further wished to testify.

[10:50:53 AM](#)

REPRESENTATIVE ORTIZ commented that the well managed fisheries of Alaska are renowned throughout the nation. Certainly, a process that involves local input and citizen review, is fundamental to the democratic system. He expressed opposition to HB 103, opining that it represents overreach and may inhibit the board from being able to function appropriately.

REPRESENTATIVE WILSON explained that, although the bill proposes to limit BOGs, during meetings, it does not prohibit the board from generating proposals and submitting them to the full process. The board has put sideboards on when it is able to introduce a proposal, during a meeting, but the use of the word

"may" rather than "shall," in the language adopted perpetuates the problem. She underscored that the way in which the process is being handled now is not working.

[10:55:03 AM](#)

REPRESENTATIVE KREISS-TOMKINS said he looks forward to receipt of a committee substitute for this bill.

[10:55:14 AM](#)

REPRESENTATIVE WILSON concurred with the comments of Representative Ortiz for the good resource management work that occurs in Alaska. She suggested that the legislature might take on a very different tenor if the only bills to be introduced were restricted to those generated by the public.

CHAIR STUTES held over HB 103.

[10:56:59 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 10:57 a.m.