

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

February 9, 2017

10:03 a.m.

MEMBERS PRESENT

Representative Louise Stutes, Chair
Representative Zach Fansler
Representative Jonathan Kreiss-Tomkins
Representative Geran Tarr
Representative Mike Chenault
Representative David Eastman

MEMBERS ABSENT

Representative Mark Neuman

OTHER LEGISLATIVE MEMBERS PRESENT

Representative Dan Ortiz

COMMITTEE CALENDAR

HOUSE BILL NO. 87

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

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 87

SHORT TITLE: CONFLICT OF INTEREST: BD FISHERIES/GAME

SPONSOR(s): REPRESENTATIVE(s) STUTES

01/30/17	(H)	READ THE FIRST TIME - REFERRALS
01/30/17	(H)	FSH, RES
02/09/17	(H)	FSH AT 10:00 AM GRUENBERG 120

WITNESS REGISTER

REID HARRIS, Staff
Representative Louise Stutes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the proposed committee substitute (CS) for HB 87, on behalf of Representative Stutes, prime sponsor.

GLENN HAIGHT, Executive Director
Board of Fish (BOF)
Boards Support Section
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during the hearing on HB 87.

SETH BEAUSANG, Assistant Attorney General
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during the hearing on HB 87.

SAM COTTEN, Commissioner
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 87, and responded to questions.

KRISTY TIBBLES, Executive Director
Board of Game (BOG)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during the hearing of HB 87.

CLAY KOPLIN, Mayor
City of Cordova
Cordova, Alaska

POSITION STATEMENT: Testified in support of HB 87.

MATT ALWARD, Fisherman
Homer, Alaska

POSITION STATEMENT: Testified in support of HB 87.

MALCOLM MILNE, President
North Pacific Fisheries Association (NPFA)
Homer, Alaska

POSITION STATEMENT: Testified in support of HB 87.

JOHN MCCOMBS
Ninilchik, Alaska

POSITION STATEMENT: Testified in support of HB 87.

STEVE VANEK

Ninilchik, Alaska

POSITION STATEMENT: Testified in support of HB 87.

GERRY MCCUNE, Representative

United Fishermen Alaska (UFA)

Cordova District Fishermen United

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 87.

ROD ARNO, Executive Director

Alaska Outdoor Council

Juneau, Alaska

POSITION STATEMENT: Testified with opposition to HB 87.

RICHARD DAVIS, Representative

Seafood Producers Cooperative

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 87.

ACTION NARRATIVE

[10:03:50 AM](#)

CHAIR LOUISE STUTES called the House Special Committee on Fisheries meeting to order at 10:03 a.m. Representatives Stutes, Tarr, Eastman, and Chenault were present at the call to order. Representatives Fansler, Kreiss-Tomkins, and Ortiz arrived as the meeting was in progress.

HB 87-CONFLICT OF INTEREST: BD FISHERIES/GAME

[10:04:59 AM](#)

CHAIR STUTES announced that the only order of business would be HOUSE BILL NO. 87, "An Act relating to participation in matters before the Board of Fisheries and the Board of Game by the members of the respective boards; and providing for an effective date."

[10:05:48 AM](#)

REPRESENTATIVE CHENAULT moved to adopt the committee substitute (CS), labeled 30-LS0376\U, Bruce/Bullard, 2/9/17, as the working document.

[10:06:03 AM](#)

CHAIR STUTES objected for discussion.

[10:06:18 AM](#)

REID HARRIS, Staff, Representative Louise Stutes, Alaska State Legislature, presented the proposed committee substitute (CS) for HB 87, Version U, directing attention to the handout issued from the chair's office labeled, "Summary of Changes - Version A to Version U," and paraphrasing from the prepared language, which read [original punctuation provided]:

Section 1. (g)

Eliminates reference to AS 16.05 (Fish and Game Code), AS 16.40.261 (Salt water sport fishing operator license), AS 16.40.271 (Salt water sport fishing guide license, combined guide/operator license), AS 16.43 (Regulation of Entry into Alaska Commercial Fisheries) and 08.54 (Big Game Guides and Related Occupations).

Changes the word "conflict" to "personal or financial interest" (as defined in AS 39.52.960).

Defines, for the purposes of this act, what an immediate family member is. This definition differs from the definition in 39.52.960, which also includes grandparents, aunts/uncles, parents or siblings of a person's spouse.

Sec. 2 is deleted

Sec. 3 is deleted

Sec. 4 Is deleted

MR. HARRIS pointed out that the statutory definition for family members is broad and overly inclusive for the purpose of serving on the board. The conflicts cause recusals that may affect the process. The sponsor seeks to redefine family members for purposes of board participation.

[10:08:20 AM](#)

CHAIR STUTES withdrew her objection. Without further objection, Version U was before the committee.

10:08:29 AM

MR. HARRIS explained that Version U allows a conflicted member to deliberate but refrain from voting. He provided a succinct outline of the proposed legislation, paraphrasing from the sponsor statement, which read as follows [original punctuation provided]:

House Bill 87 changes the manner that the Board of Fisheries and Board of Game function. It allows members to deliberate on subjects for which they have a declared personal or financial interest according to AS 39.52, the Ethics Act.

Title 39 prohibits a member from "taking or withholding official action in order to affect a matter in which the member has a personal or financial interest." (AS 39.52.120(b)(4)). "Official action" is defined under the Act to mean "advice, participation, or assistance, including for example, a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction by a public officer." (AS 39.52.960(14)).

Currently, Board members are required to divulge a conflict of interest if they or their families are involved in the subject being deliberated on. The conflicted member can then no longer offer their input on the process and cannot vote on the matter at hand. This bill allows the conflicted member to offer remarks and input, but the member still cannot vote on the issue. The member is also precluded from voting on whether they have a conflict of interest. Allowing members with expertise in particular fields to deliberate will help the Board make more informed decisions and lead to stronger fisheries management statewide.

10:09:12 AM

REPRESENTATIVE EASTMAN noted the concern regarding the broad definition for family members, and asked if this is in response to an existing problem or a proactive consideration.

MR. HARRIS offered that expertise is lost when members are required to recuse themselves from deliberation and voting. The bill changes that scenario by narrowing the scope of the definition for family members that could be ethically invoked for reasons of personal or financial interests. He deferred further comment to Glenn Haight.

[10:10:34 AM](#)

REPRESENTATIVE TARR noted that the proposed change in the definition of family members will only apply to this bill and not affect other areas of statute.

MR. HARRIS referred to the CS, page 1, line 12, to point out the language provided to define "immediate family member" for purposes of HB 87 and persons serving on the Board of Fish (BOF) or the Board of Game (BOG), without altering the ethics act language found in AS 39.52.960.

MR. HARRIS pointed out that the BOF also manages personal use fisheries.

[10:12:12 AM](#)

REPRESENTATIVE EASTMAN restated his interest in knowing why the bill is necessary.

GLENN HAIGHT, Executive Director, Board of Fish (BOF), Boards Support Section, Alaska Department of Fish & Game (ADF&G), said there have been seven bills introduced, since 1995, seeking to amend the ethics act specifically for the BOF. He offered to make available a record of the ethics recusals that the BOF has experienced over the last nine years, and the impacts; produced by Jim Marcotte, former Executive Director of the BOF.

CHAIR STUTES interjected that there is precedent for this need as happened recently at a BOF meeting, when a member recused and the outcome of the issue at hand was affected.

MR. HAIGHT described what occurred at the most recent finfish BOF meeting, held in Kodiak. A member who did not fish or benefit directly from the fishery being discussed, had to recuse because of the participation of her ex-husband, from whom she receives money. Because of the recusal, the proposal did not pass.

CHAIR STUTES added that the vote ended three to three, and could have gone either way had the seventh member been allowed to vote.

[10:14:51 AM](#)

REPRESENTATIVE KREISS-TOMKINS clarified that under the proposed bill, the board member would not have had to recuse.

MR. HAIGHT concurred, and said HB 87 narrows the definition of family member significantly; designating immediate family members as a spouse or direct dependent. He said the recused member would have been able to participate, if HB 87 had been the governing statute.

REPRESENTATIVE KREISS-TOMKINS asked how this relates to the Board of Game (BOG), and whether the concern is comparable between the two boards.

MR. HAIGHT responded that conflict doesn't occur with the same frequency at BOG meetings. He suggested that it only happens occasionally, such as when a member is also an active game guide and must recuse on an issue.

[10:17:11 AM](#)

REPRESENTATIVE CHENAULT asked for further information regarding the Kodiak recusal situation.

MR. HAIGHT deferred comment to the Department of Law (DOL).

[10:18:40 AM](#)

SETH BEAUSANG, Assistant Attorney General, Department of Law (DOL), offered that the member had disclosed a financial interest with a participant of the fishery being considered.

[10:19:38 AM](#)

REPRESENTATIVE EASTMAN inquired about a family member participating in a personal use fishery, and how the definition would apply to that scenario.

MR. HAIGHT said personal use/subsistence fisheries don't cause conflict, as no financial gain is involved.

[10:20:49 AM](#)

CHAIR STUTES said that the BOF and BOG are governed under the same statutes, thus, both entities are addressed in the bill.

[10:21:24 AM](#)

SAM COTTEN, Commissioner, Alaska Department of Fish & Game (ADF&G), stated official support for the proposed CS to HB 87, and said it addresses an important issue and serves to improve the current system, which probably, unnecessarily results in recusals by board members.

[10:22:09 AM](#)

REPRESENTATIVE TARR asked if, under a circumstance as mentioned today when a proposal failed due to a tie vote, are there opportunities to bring the same proposal back before the board.

COMMISSIONER COTTEN responded yes, and deferred further comment on regarding procedures for proposal reconsideration.

[10:23:23 AM](#)

REPRESENTATIVE KREISS-TOMKINS noted that similar bills have been proposed by other legislatures, and asked why none have passed.

COMMISSIONER COTTEN said it's an inviting subject but it would be difficult to know why legislation doesn't get passed.

CHAIR STUTES added that it would be difficult to comment on bills that aren't available for comparison.

[10:25:11 AM](#)

REPRESENTATIVE TARR asked what conflicting out situations arise at BOG meetings, other than the recusal of an active guide, as previously mentioned. She asked specifically about remote lodge operators.

KRISTY TIBBLES, Executive Director, Board of Game (BOG) reported that financial conflicts haven't occurred but spousal conflicts have arisen. She recounted an instance of a board member's spouse, who served on an advisory committee which had taken a vote on an active proposal that was coming before the board; the member recused. Due to the potential for financial conflict, if a proposal was before the BOG that impacted an owner of a remote lodge, it would represent a conflict.

REPRESENTATIVE TARR inquired whether there is a conflict if a BOG member is also a member of a hunting organization.

MS. TIBBLES replied that a conflict wouldn't exist if the board member is in the general membership of an organization, but if they are an officer in the organization and sit on its board, it would represent a conflict.

[10:28:26 AM](#)

REPRESENTATIVE EASTMAN asked how many board members are seated on the BOG.

MS. TIBBLES answered seven.

REPRESENTATIVE EASTMAN queried what the downside would be for observing similar rules as the legislative committee, where a member discloses the conflict but is not prevented from voting.

MS. TIBBLES answered, "There's a potential that something carries or fails that wouldn't have otherwise had that action."

CHAIR STUTES opened public testimony.

[10:30:06 AM](#)

CLAY KOPLIN, Mayor, City of Cordova, stated support for HB 87 and said Cordova depends largely on the fishing industry, which is extremely active and productive for a brief, three month period. It is difficult to find someone to serve on the board due to the time commitment involved and concerns that participation would be restricted due to possible conflicts. It is a problem for ensuring that the voice of experience and those who work in the industry are heard. The bill could rectify the situation and bring voices to the table that otherwise aren't heard, he said; voices that are close to what is actually happening.

[10:33:36 AM](#)

MATT ALWARD, Fisherman stated support for HB 87 and echoed the concern that well vetted, appointed people, committing a month of their time, must sit out of deliberations and voting. He predicted that the bill will enrich the board process and bring better regulation overall.

[10:34:48 AM](#)

MALCOLM MILNE, President, North Pacific Fisheries Association (NPFA), stated official support for HB 87 and said finding qualified members to serve on the board can be challenging and allowing conflicted members to deliberate on issues will add expertise, and make for more robust discussions that lead to better decisions.

[10:36:21 AM](#)

JOHN MCCOMBS stated support for HB 87 and said it's a good start. Members who have attended the Kenai Classic have received gifts, which should be disclosed to ensure ethics compliance, he opined. The board has not met in Soldotna for seventeen years, and it needs to be included in the meeting locale rotation. Other improvements could also be made to improve the public, board process, he finished.

[10:37:39 AM](#)

STEVE VANEK stated support for HB 87 and said as a layman board it's necessary to allow participation, at least in the deliberation process. The non-commercial fishermen that sit on the board don't get conflicted out, only the commercial operator. He stressed the need to allow all the members to deliberate equally on issues.

[10:40:10 AM](#)

GERRY MCCUNE, Representative, United Fishermen Alaska (UFA), Cordova District Fishermen United, stated official support for HB 87 and offered that if he were serving on the BOF today he would be conflicted out and end up sitting in the audience. The fifty years of experience and expertise that he could share would be of no benefit at the meeting. He described incidents of past members who were recused due to situations that might have been considered minimal. Changing the definition, as proposed, will correct a long standing problem, he finished.

[10:41:59 AM](#)

REPRESENTATIVE TARR confirmed that, even with the passage of HB 87, if a board member was being unethical, other statute could be applied.

MR. MCCUNE responded that any board member could bring an ethical challenge for consideration. Disclosures are usually provided beforehand but challenges are also brought up during proceedings.

[10:43:43 AM](#)

REPRESENTATIVE CHENAULT noted the legal services memorandum in the committee packet, and asked who makes the determination that a conflict exists.

CHAIR STUTES responded that it is the purview of the BOF chairman.

[10:44:42 AM](#)

REPRESENTATIVE FANSLER recalled that there is also a bill seeking to expand the board from seven to nine members, and asked, if adopted, would that influence UFA support for HB 87.

MR. MCCUNE answered that UFA does not support expanding the board until the conflict issue is solved. The financial disclosure requirement and being conflicted out prohibits many possible members from seeking appointment. There would be no need to expand the board size if conflict was still a problem.

[10:47:25 AM](#)

ROD ARNO, Executive Director, Alaska Outdoor Council, stated opposition to HB 87 and said he has not attended a meeting where the person conflicted out hasn't had an opportunity to express their opinion and had their input be part of the process. The bill is not necessary, nor is it beneficial to the resource, he opined.

[10:49:47 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked to what extent a conflicted member is able to testify at the table, and are they restricted to three minutes the same as a member of the public.

MR. ARNO answered that on the BOG there is no limitation, but the BOF follows a different committee process.

REPRESENTATIVE KREISS-TOMKINS queried whether applying the bill only to the BOF would change Mr. Arno's stance of opposition.

MR. ARNO answered that the concern remains the same and suggested that the public would be leery to that type of action.

REPRESENTATIVE KREISS-TOMKINS recalled the previously described scenario with the ex-spouse situation, causing the member to recuse, and asked whether allowing that member to participate, under the described circumstances, would have clouded the process or impair the public's faith.

MR. ARNO opined that it would have clouded the process.

[10:52:45 AM](#)

RICHARD DAVIS, Representative, Seafood Producers Cooperative, stated support for HB 87 and said the producers cooperative has sought this type of legislation for three decades. Whenever the BOF meets, cooperative members always attend to provide testimony. The existing protocol makes it difficult to find qualified, dedicated people willing to serve on the BOF and this bill provides hope to change that scenario. It is an essential component for continuing to responsibly manage the fisheries of the state, he finished.

CHAIR STUTES closed public testimony.

[10:54:55 AM](#)

REPRESENTATIVE KREISS-TOMKINS commented that the bill appears to be a common sense improvement to the current procedures. He opined that the testimony is compelling, regarding the faint and indirect relationships that impair a member's participation on the BOF in a way that harms the overall dialogue.

[10:55:48 AM](#)

REPRESENTATIVE EASTMAN referred to the portion of the bill that mentions a personal or financial interest, and asked whether a member, or family member, who actively participates or advocates for a personal use fishery, "be caught up in this new language."

MR. BEAUSANG responded that the terms "personal interest" and "financial interest" are defined under the ethics act. Participation in a personal use fishery would not involve financial interest, he opined, and pointed out that there is no history of a member disclosing participation in a personal use fishery and being found in conflict.

10:57:29 AM

CHAIR STUTES thanked the participants and announced HB 87 as held.

ADJOURNMENT

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