

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

March 7, 2019
10:01 a.m.

DRAFT

MEMBERS PRESENT

Representative Louise Stutes, Chair
Representative Bryce Edgmon
Representative Chuck Kopp
Representative Jonathan Kreiss-Tomkins
Representative Geran Tarr
Representative Sarah Vance
Representative Lance Pruitt

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING(S):
Alaska Department of Fish & Game;
Doug Vincent-Lang - Commissioner Designee
Anchorage, Alaska

- HEARD

HOUSE BILL NO. 35

"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 35

SHORT TITLE: CONFLICT OF INTEREST: BD FISHERIES/GAME

SPONSOR(S): REPRESENTATIVE(S) STUTES

02/20/19	(H)	READ THE FIRST TIME - REFERRALS
02/20/19	(H)	FSH, RES
03/07/19	(H)	FSH AT 10:00 AM GRUENBERG 120

WITNESS REGISTER

DOUG VINCENT-LANG, Commissioner-Designee
Alaska Department of Fish & Game (ADFG)

POSITION STATEMENT: Testified as commissioner-designee of the Alaska Department of Fish & Game.

MARK RICHARDS, Executive Director
Resident Hunters of Alaska
Fairbanks, Alaska

POSITION STATEMENT: Supported Commissioner Vincent-Lang's appointment.

BRADLEY MEYEN, Senior Assistant Attorney General
Natural Resources Section
Civil Division (Anchorage)
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Offered information on House Bill 35.

MATT GRUENING, Staff
Representative Louise Stutes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 35, explained changes under proposed committee substitute, "Version M," on behalf of Representative Stutes, prime sponsor.

ACTION NARRATIVE

[10:01:09 AM](#)

CHAIR LOUISE STUTES called the House Special Committee on Fisheries meeting to order at 10:01 a.m. Representatives Kopp, Vance, Pruitt, Tarr, and Stutes were present at the call to order. Representatives Kreiss-Tomkins and Edgmon arrived as the meeting was in progress.

**CONFIRMATION HEARING(S): ALASKA DEPARTMENT OF FISH AND GAME;
COMMISSIONER DESIGNEE DOUG VINCENT-LANG.**

[10:01:14 AM](#)

CHAIR STUTES announced that the first order of business would be a confirmation hearing for the Alaska Department of Fish & Game

[10:02:13 AM](#)

DOUG VINCENT-LANG, Commissioner-Designee, testified he grew up in Wisconsin and received his undergraduate degree in 1978 from the University of Wisconsin at Green Bay in population dynamics and biology. His career began as an Oceanographer in Florida before he accepted an offer from the University of Alaska, Fairbanks, to pursue his master's degree in Biological Oceanography. He graduated in 1980. In 1981, he started a career with ADFG where he worked in various positions for 34 years. He retired for four years and accepted the nomination for Commissioner of ADFG when Governor Dunleavy asked him to consider taking the position.

COMMISSIONER VINCENT-LANG shared his belief that Alaska fish and game is a "public trust resource." He expressed his need for the public's trust if he is going to be managing their resource. Commissioner Vincent-Lang stated, "We're not always going to agree on the outcome, but we are going to talk about the issues." People fundamentally care about fish and game, which he indicated is good for Alaska. He said he will seek input from department staff in the decision-making process. Commissioner Vincent-Lang shared a few of his goals are to "put food on the tables of Alaskans," ensure trust, and preserve "the state's right to manage its resources."

COMMISSIONER VINCENT-LANG admitted he was aware of criticism regarding his nomination due to his stance on "Proposition 1," his inexperience managing Commercial Fisheries, and his supportive stance on active management of the fish and game resources. He expressed his excitement at the opportunity as well as his belief he was up for the challenge.

[10:09:55 AM](#)

CHAIR STUTES asked Commissioner Vincent-Lang to expound on the perception that fisheries do not pay their way.

COMMISSIONER VINCENT-LANG explained that ADFG receives \$197 million dollars and turns that into an \$11-billion industry. He indicated his belief was that the Office of Management & Budget (OMB) and the Office of the Governor listened and recognized the return on investment. Over half of the \$11 billion is from commercial fisheries.

[10:11:31 AM](#)

REPRESENTATIVE TARR asked Commissioner Vincent-Lang how he expected to handle the large-scale mine issues facing the state and the Division of Habitat's numerous information requests from the federal government.

COMMISSIONER VINCENT-LANG mentioned that he was unable to share his personal views regarding specific mine projects because he expected to have the [delegated authority for fish habitat and special area permitting] Title 16 authority. He stated the department will use the time allotted to fully inform those decisions. He told Representative Tarr that he had already asked his staff whether they felt there was enough time to fully understand how the comments they had submitted into the Pebble Mine draft environmental impact statement (EIS) would be incorporated.

COMMISSIONER VINCENT-LANG stated that ADFG had issued permits on the Donlin Gold Project under former Commissioner Sam Cotten. The former commissioner had reached out to the "local people" about their concern regarding Donlin Gold Project, but there was no response. He advised that the department will attempt to contact the concerned citizens once again. Commissioner Vincent-Lang stated that there are some reasons to be careful regarding building large mines; but there can be real benefits to local communities. Mines can be responsibly built, but with their increased size there will be the need for greater scrutiny from the department.

[10:14:22 AM](#)

CHAIR STUTES inquired as to Commissioner Vincent-Lang's thoughts on the Division of Habitat being moved out of the department and whether 90 days was enough time to assess a 400,000-page [EIS] document.

[10:14:47 AM](#)

COMMISSIONER VINCENT-LANG responded that he was not aware of the Division of Habitat being moved out of the department. He did indicate awareness that the director of the Division of Habitat may not be filled "as a cost-saving measure." That would leave a deputy director reporting to a deputy commissioner within the department. Title 16 authority would stay within the department. In response to the second half of Chair Stutes'

question, he suggested that 90 days for assessment of a 400,000-page document may or may not be enough time for department staff to fully evaluate the EIS. He related that he had asked his staff to report to him regarding the sufficiency of this allotment of time.

[10:15:29 AM](#)

REPRESENTATIVE TARR requested that if ADFG did not feel like 90 days was enough time for the evaluation of the EIS, Commissioner Vincent-Lang feel comfortable sharing the department's concerns with the legislature. She went on to share concerns about the nominee's membership on a variety of boards.

[10:16:33 AM](#)

COMMISSIONER VINCENT-LANG informed Representative Tarr that he had resigned from all public boards.

[10:17:16 AM](#)

CHAIR STUTES asked Commissioner Vincent-Lang to commit that the department leadership make decisions that are science-based without regard to political pressure.

COMMISSIONER VINCENT-LANG indicated he has had to make politically unpopular fisheries management decision in the past but made them because the science indicated they were the right decision.

[10:19:03 AM](#)

REPRESENTATIVE KREISS-TOMKINS inquired whether he knew what his roll would be, with the governor, regarding appointments to the Board of Fisheries.

COMMISSIONER VINCENT-LANG indicated it was ultimately the governor's decision, but he would like to have input.

[10:19:46 AM](#)

REPRESENTATIVE KREISS-TOMKINS referred to Pittman-Robertson funds, and he requested the designee's outlook on managing those funds and avoiding federal reversion.

COMMISSIONER VINCENT-LANG expressed his shock at learning that the department had reverted \$3 million dollars of Pittman-Robertson funds in October. He informed Representative Kreiss-Tompkins that there is a new director in place that understands the ramifications of a reversion. Commissioner Vincent-Lang indicate the department had already taken steps to address the issue, including partnering with other groups.

[10:21:35 AM](#)

CHAIR STUTES commented that hatcheries have tremendous economic impact on state fisheries and fishermen. She asked the commissioner appointee to share his view on hatcheries - the effect on harvests statewide and economic gains realized because of them.

[10:21:59 AM](#)

COMMISSIONER VINCENT-LANG responded that hatcheries are geographically different as well as different by species. He informed Chair Stutes that he has encouraged the Board of Fisheries to look at hatcheries geographically, temporally, as well as by species. Each region has unique needs and opportunities, and he is currently working for more federal funding.

[10:23:47 AM](#)

REPRESENTATIVE TARR asked Commissioner Vincent-Lang whether he had been involved in the selection process for a recent appointment to the Board of Game.

COMMISSIONER VINCENT-LANG provided input regarding the characteristics of the person he wanted to see on the board, but he said he was not involved in the selection.

[10:24:18 AM](#)

REPRESENTATIVE VANCE asked about the nominee's ideas regarding the Magnuson Stevens Act and how it impacts the state.

COMMISSIONER VINCENT-LANG indicated he believes the state is a better manager of its fisheries than the federal government.

REPRESENTATIVE VANCE asked what the commissioner intends to do to build public trust in people who believe the state is not doing a good job of managing fisheries resources.

COMMISSIONER VINCENT-LANG answered that he would meet with the public and talk with them. He stated his belief in working with people, because "both sides" want stable and predictable opportunities for the fish but finding the right balance is hard.

REPRESENTATIVE VANCE commented, "Communication is key right now".

[10:27:12 AM](#)

CHAIR STUTES inquired as to know Mr. Vincent-Lang's feelings regarding maintaining the Commercial Fisheries Entry Commission (CFEC) as an independent agency.

COMMISSIONER VINCENT-LANG replied that CFEC plays an important role in managing fisheries. He said ADFG will do whatever the legislature decides regarding CFEC.

CHAIR STUTES expressed her hope that the user groups' opinions would be taken into consideration.

[10:28:13 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked what Commissioner Vincent-Lang's perspective was on personal use preference or priority.

COMMISSIONER VINCENT-LANG answered that the department is neutral on personal use, but subsistence is a priority.

[10:28:51 AM](#)

REPRESENTATIVE TARR expressed support for CFEC remaining as is, then asked for the department's commitment to work on invasive species issues.

COMMISSIONER VINCENT-LANG said he had already discussed with the Office of Management & Budget his preference that if CFEC was to be moved into the department, it be moved as a separate entity within the Office of the Commissioner. He agreed that invasive species are a problem and had already asked staff to work on a communications strategy to get in front of the issue rather than being reactive to it.

[10:30:57 AM](#)

CHAIR STUTES asked if Commissioner Vincent-Lang was aware of the importance of the Commercial Fisheries Revolving Loan Fund.

COMMISSIONER VINCENT-LANG said he was aware of it.

CHAIR STUTES requested the commissioner appointee's comments regarding no longer requiring logbook records for freshwater sportfishing.

COMMISSIONER VINCENT-LANG indicated the Governor's budget included a reduction in funding to the logbook program. The state already had treaty requirements for saltwater logbook programs to be maintained. Regarding the freshwater survey information, he said department staff are looking for alternative ways to collect data.

[10:32:44 AM](#)

CHAIR STUTES opened the hearing up to public testimony.

[10:33:03 AM](#)

MARK RICHARDS, Executive Director, Resident Hunters of Alaska, Stated his belief that the nominee was uniquely qualified for the position. Mr. Richards had worked with the commissioner appointee and said he was a good communicator and "very open."

[10:34:18 AM](#)

CHAIR STUTES closed public testimony. She thanked Commissioner Vincent-Lang.

[10:34:57 AM](#)

REPRESENTATIVE KOPP thanked Commissioner Vincent-Lang for his willingness to step up and be considered for the commissioner position.

[10:36:38 AM](#)

CHAIR STUTES echoed Representative Kopp's comments and recommended the commissioner's appointment be moved forward.

[10:37:25 AM](#)

The committee took an at-ease from 10:37 a.m. to 10:40 a.m.

^#hb35

HB 35-CONFLICT OF INTEREST: BD FISHERIES/GAME

CHAIR STUTES announced that the final order of business would be HOUSE BILL NO. 35, "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."

[10:40:37 AM](#)

REPRESENTATIVE EDGMON moved to adopt the proposed committee substitute (CS), Version 31-LS0297\M, Bullard, 3/4/19, as a working document.

CHAIR STUTES objected for purpose of discussion. She noted that online were Alpheus Bullard, Legislative Legal Services; Bradley Meyen Assistant Attorney General, Department of Law; Glenn Haight, [Executive Director, Board of Fisheries], and Christy Tibbles; Executive Director, Board of Game.

MATT GRUENING, Staff, Representative Louise Stutes, Alaska State Legislature, explained the changes to HB 35 under the proposed CS, "Version M," on behalf of Representative Stutes, prime sponsor.

[10:42:33 AM](#)

REPRESENTATIVE KOPP asked if members would be allowed to vote on issues before the board(s) if they had a conflict.

MR. GRUENING responded that they would not be allowed to vote but could deliberate with the board.

CHAIR STUTES requested information on the contents of the bill.

MR. GRUENING described how HB 35 would change the way the Board of Fisheries and the Board of Game function by allowing board members to deliberate on subjects for which the members have declared a conflict of personal or financial interest according to AS 39.52; the Executive Branch Ethics Act. Members to the board(s) are selected based on their knowledge and abilities in the field of action of the board, with a view to providing diversity in interests and points of view in membership. Title 39 prohibits a member from taking or withholding official action

in order to affect a matter in which the member has a conflict of personal or financial interest. Official action is defined as "Advice, participation or assistance", which could include a recommendation, decision, approval or disapproval, vote, or other similar action including an action by the public officer. Currently, when a conflict is determined the member must step down and cannot participate. HB 35 would allow the member to deliberate but not participate in the vote.

[10:44:35 AM](#)

CHAIR STUTES removed her objection to the motion to adopt the proposed committee substitute (CS), Version 31-LS0297\M, Bullard, 3/4/19, as a working document. There being no further objection, Version M was before the committee.

[10:44:58 AM](#)

MR. GRUENING explained the goal of HB 35 was to remove the requirement for board members to divulge a conflict of interest for themselves or their immediate family members regarding the subject being deliberated. The bill would allow the conflicted member to offer his/her input. The conflicted member would not be allowed to be part of the vote of the board regarding whether the member has a conflict of interest. Currently the decision on a possible conflict of interest is up to the chair of the board to decide. If board members disagree with the chair's ruling, a majority of voting members including the chair decide whether a conflict exists. The member whose possible conflict is being voted upon, is not allowed to participate in the vote. This process is consistent with current practice. This bill would enable the board to benefit from all board members' knowledge and points of view.

MR GRUENING explained that Board of Fisheries and Board of Game issues tend to be complex and require knowledge-based solutions. Board members often have family or direct financial or personal interests which are tied to the complex knowledge the member would need in order to understand the sometimes-nuanced discussions of the board. Members are selected based on their knowledge of the field. Their knowledge would benefit the board discussions and be on the record even if they have a personal conflict of interest, but they should not be allowed to vote on an issue if a conflict exists.

MR. GRUENING said a concern regarding how the process is working with these boards is that off-the-record discussions are

occurring between board members. The off-the-record discussions are not part of the public record; the proposed legislation would enable those discussions to occur on the record. He said, "As a life-long commercial fisherman, I can't tell you how many times I have heard or seen really extremely qualified candidates say they don't want to put their name in for consideration because they know they would be conflicted out of a lot of the proposals of which they have knowledge on." The proposed legislation would allow the member with the conflict of interest to impart his/her knowledge before recusing him/herself for the vote. This should lead to more informed decisions, stronger resource management statewide, and align the process with intent regarding boards benefitting from the members' knowledge and diversity of viewpoints. Mr. Gruening stated that Version M would allow for board members of the Board of Game and the Board of Fisheries to deliberate if they have a conflict of interest, but they could not vote on the subject.

[10:49:37 AM](#)

REPRESENTATIVE VANCE asked what course of action is [currently] available if the member does not recuse him/herself or cite a conflict of interest if others felt a conflict existed.

MR. GRUENING explained that under AS. 39.52 there is a process for complaints filed with the Attorney General. Mr. Gruening deferred to [Assistant Attorney General] Bradley Meyen for more in-depth explanation.

[10:50:42 AM](#)

BRADLEY MEYEN, Senior Assistant Attorney General, Natural Resources Section, Civil Division (Anchorage), Department of Law, stated that two provisions could apply: AS. 39.52.230 for reporting violations and AS.39352.310 for complaints.

[10:51:27 AM](#)

REPRESENTATIVE VANCE referred to Section 3 of HB 35, regarding "financial interest relating to the involvement of the member". She noted that a similar bill, HB 44, cites a minimum dollar amount, and she asked Mr. Gruening if that issue had been considered under HB 35 as a threshold for a conflict to be declared.

[10:52:05 AM](#)

MR. GRUENING explained that the Executive Branch Ethics Act states less than \$5000 is considered insignificant, while anything \$5,000 or above would be considered significant. He offered his understanding that AS 39.52.120 (1)(d) provides that a stock or ownership interest in a business is presumed insignificant if the value or stock of other ownership interest, including an option to purchase an ownership interest, is less than the \$5000.

REPRESENTATIVE VANCE brought that issue up because different bills have different thresholds for financial conflicts of interest, and she asked Mr. Gruening if he knew why the inconsistency existed.

MR. GRUENING answered that he was not sure of the legislative intent regarding the financial differences.

[10:53:34 AM](#)

REPRESENTATIVE KOPP drew attention to language [beginning on page 2, line 31, through page 3, line 4], which read as follows:

(c) If a member of the Board of Fisheries or the Board of Game discloses a personal or financial interest relating to the involvement of the member, or immediate family member of that member, in a business or organization relating to fish or game resources, the member is not disqualified from deliberating or participating in the matter.

REPRESENTATIVE KOPP said that makes sense because people with industry knowledge are serving on the boards. He then referred to continuing language [on page 3, beginning on line 4 through line 6], which read:

If the supervisor or a majority of the members of the respective board determine that the member's further involvement will result in a violation of AS 39.52.110 - 39.52.190, the board member may not vote on the matter.

REPRESENTATIVE KOPP opined that that is good, because those [statutes] address violations, including improper influence, misuse of official public position outside of employment, and improper representation.

Representative Kopp continued:

What I'm having a hard time understanding is it sounds like if it doesn't fall under that, we're still saying they can't vote if they have a personal or financial interest. Because you can have a personal or financial interest but not be in violation...of how the statute says that that...arrives to a misuse.

REPRESENTATIVE KOPP said the legislature tries to ensure the board is balanced to ensure balanced outcomes. He questioned whether taking away the ability to vote would throw the balance of the board.

[10:57:26 AM](#)

MR. GRUENING clarified that board members with a conflict of interest currently could not vote. The language regarding "further involvement will result in a violation" simply describes the process that currently takes place. The proposed change would allow them to deliberate. The voting balance of the board was considered, but there was concern regarding the possibility of a member abusing the system for financial gain. The sponsor and community felt like allowing a conflicted member to vote was a step too far.

[10:58:57 AM](#)

REPRESENTATIVE PRUITT asked, "Why would we do this with these two boards and not others?"

MR. GRUENING answered that he was only aware of this problem with the two boards. User groups have brought this specific issue forward since changes/revisions to the Ethics Act in 1988. There was concern that in the attempt to fix the Board of Fisheries and Board of Game, similar changes to other boards may result in unforeseen repercussions.

[11:00:43 AM](#)

CHAIR STUTES mentioned that all the boards and commissions are different. The Board of Fisheries and Board of Game some of the few allocative boards.

MR. GRUENING added there are professional boards that have more members to cover the knowledge gaps if one of the members had a

conflict of interest. The Board of Fisheries and the Board of Game only a single member may have knowledge of the subject being discussed.

[11:01:37 AM](#)

REPRESENTATIVE PRUITT discussed his concern that if HB 35 were to pass, other boards and commissions could come forward asking for similar regulation.

MR. GRUENING said he didn't foresee the mentioned changes occurring but agreed it was possible.

REPRESENTATIVE PRUITT indicated he thought the discussion was to allow the [board members] expertise to be shared. He clarified his real concern was that it appeared that currently the conversations are occurring "behind the scenes" and board members may not only bring their expertise to the conversations but might be advocating for something that personally benefits them. Representative Pruitt suggested adding language to the bill that would not allow a board member to advocate publicly or privately for something that would benefit him/her. Once a member was recognized as having a conflict, the member would only be allowed to share his/her expertise. He shared his concern that it appears committee members are already sharing information off the record on issues in which they may have conflict of interest.

MR. GRUENING stated he thought the Representative Pruitt had a fair point and that he'd look to the will of the chair and the committee regarding whether that was a change they wished to consider.

REPRESENTATIVE VANCE voiced her concerns about the duty to create consistency within the boards. She suggested that the committee investigate what could be done to preemptively do what is right for the public before problems arise. She explained that was her reason for bringing up the dollar amount differences for conflict of interests as a legislator versus a board. She expressed concern that the public would not want to have to look up all the differences between the government entities regarding the various standards for conflicts of interest. She expressed her desire to keep in mind the other boards and commissions and their future concerns.

[11:06:32 AM](#)

CHAIR STUTES shared with the committee that HB 35 is the result of requests by user groups. Through the years this legislation has been worked on there have not been any other reports from boards or commission that had similar problems.

MR. GRUENING noted that he had two additional letters for the legislators' packets: One was from the Resident Hunter of Alaska, in opposition; and the other was from the United Southeast Gillnetters Association, in support.

[11:07:51 AM](#)

CHAIR STUTES announced that HB 35 was held over.

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[11:08:38 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 11:09 a.m.