

1 IN THE SENATE

BY HAMMOND

2 SENATE BILL NO. 14

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the governance of the Department
7 of Fish and Game; and providing for the Board of
8 Fish and Game to head the department."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 16.05 is amended by adding new sections to read:

11 Sec. 16.05.225. CREATION. There is created at the head of the
12 Department of Fish and Game a Board of Fish and Game consisting of
13 six members and the commissioner of Fish and Game.

14 Sec. 16.05.235. APPOINTMENT OF MEMBERS. (a) The six members
15 of the board shall be appointed by the governor without regard to
16 political affiliation, subject to confirmation by a majority of the
17 members of the legislature in joint session. In appointing board
18 members, the governor shall consider recommendations made by fish
19 and game advisory committees created under the authority of sec. 260
20 of this chapter.

21 (b) One member shall be appointed from each of the four judicial
22 districts and two from the state at large.

23 (c) The six members are entitled to the expenses, travel, and
24 per diem allowances provided by law.

25 (d) A member may act and receive compensation from his appoint-
26 ment until his confirmation or rejection by the legislature.

27 Sec. 16.05.245. TERM OF OFFICE. The members of the board shall
28 be appointed for overlapping six-year terms. A member appointed to
29 fill a vacancy serves for the unexpired term of the member he succeeds.

1 Sec. 16.05.255. QUORUM AND CHAIRMAN. (a) Four members consti-
2 tute a quorum.

3 (b) The governor shall designate one member of the board as the
4 chairman and the chairman serves as a member of the board at the
5 pleasure of the governor.

6 Sec. 16.05.265. REMOVAL. A member of the board other than the
7 chairman may be removed by the governor as set out in sec. 280 of this
8 chapter.

9 Sec. 16.05.275. MEETINGS. The board shall meet at least biannu-
10 ally. Meetings may be called by the chairman or by a majority of the
11 members of the board. Meetings shall be held in Juneau unless a
12 majority of the members of the board changes the place of the meeting.

13 Sec. 16.05.285. LEGAL ASSISTANCE. The Department of Law shall
14 provide all legal services for the board.

15 Sec. 16.05.295. COMMISSIONER OF FISH AND GAME. (a) The board
16 shall appoint the commissioner of fish and game with the approval of
17 the governor. The commissioner shall be the principal executive
18 officer of the department and a member of the board.

19 (b) The commissioner shall be appointed without regard to poli-
20 tical affiliation and shall be a qualified executive with knowledge
21 of the requirements for the protection, management, conservation, and
22 restoration of the fish and game resources of the state.

23 (c) The commissioner may be appointed by the board for a term
24 of office not to exceed five years. He may be removed during his
25 term of office by four members of the board with the approval of the
26 governor.

27 (d) The commissioner shall receive the salary set out in
28 AS 39.20.080.

29 (e) The commissioner shall employ and remove all classified

1 personnel in the department subject to the State Personnel Act
2 (AS 39.25). He may employ and remove personnel in the exempt or
3 partially exempt service subject to the approval of the board. Per-
4 sonnel in the exempt or partially exempt service have a right of
5 appeal to the board if they are removed. The commissioner may not
6 sit on the board during an appeal.

7 Sec. 16.05.305. LIMITATIONS ON BOARD. No member of the board
8 may be a candidate for public office during his term of office.

9 Sec. 16.05.315. PROMULGATION OF REGULATIONS. The board shall
10 promulgate regulations which are necessary to carry out the provisions
11 of this chapter. All regulations shall be promulgated under the
12 Administrative Procedure Act (AS 44.62).

13 * Sec. 2. AS 16.05.050 is amended to read:

14 Sec. 16.05.050. POWERS AND DUTIES OF BOARD [COMMISSIONER]. The
15 board [COMMISSIONER] has, but not by way of limitation, the following
16 powers and duties:

17 (1) assist the United States Fish and Wildlife Service
18 in the enforcement of federal laws and regulations pertaining to
19 fish and game;

20 (2) through the appropriate state agency, acquire by gift,
21 purchase, or lease, or other lawful means, lands, buildings, water,
22 rights-of-way, or other necessary or proper real or personal property
23 when the acquisition is in the interest of furthering an objective or
24 purchase of the department and the state;

25 (3) design and construct hatcheries, pipe lines, rearing
26 ponds, fishways, and other projects beneficial for the fish and game
27 resources of the state;

28 (4) accept money from any person under conditions requiring
29 the use of the money for specific purposes in the furtherance of the

1 protection, rehabilitation, propagation, preservation, or investigation
2 of the fish and game resources of the state or in settlement of claims
3 for damages to fish or game resources;

4 (5) collect, classify, and disseminate statistics, data and
5 information as in his discretion will tend to promote the objects of
6 this chapter;

7 (6) capture, propagate, transport, buy, sell, or exchange
8 fish or game or eggs for propagating, scientific or stocking purposes;

9 (7) procure insurance, in addition to workmen's compensation
10 insurance, for employees of the department against injury or death
11 occasioned by special hazards in connection with their duties;

12 (8) provide public facilities where necessary or proper
13 to facilitate the taking of fish or game, and enter into cooperative
14 agreements with any person to effect them;

15 (9) administrative, budgeting, and fiscal powers;

16 (10) the supervision and maintenance, including construction
17 and operation, of vessels used by the Department of Fish and Game.

18 * Sec. 3. AS 16.05.060 is amended to read:

19 Sec. 16.05.060. EMERGENCY OPENINGS AND CLOSURES. This chapter
20 does not limit the power of the board [COMMISSIONER] or its [HIS]
21 authorized designee, when circumstances require, to summarily open or
22 close seasons or areas or to change weekly closed periods on fish or
23 game by means of emergency orders. An emergency order has the force
24 and effect of law after field announcement by the board [COMMISSIONER]
25 or its [HIS] authorized designee. An emergency order adopted under
26 this section is not subject to the Administrative Procedure Act
27 (AS 44.62).

28 * Sec. 4. AS 16.05.070 is amended to read:

29 Sec. 16.05.070. RULES AND REGULATIONS AS EVIDENCE. Rules and

1 regulations of the board or its authorized designee [AND OF THE
2 COMMISSIONER], including emergency openings and closures, are admissible
3 as evidence in the courts of the state in accordance with the Admini-
4 strative Procedure Act (AS 44.62).

5 * Sec. 5. AS 16.05.100 is amended to read:

6 Sec. 16.05.100. FISH AND GAME FUND ESTABLISHED. There is
7 created a revolving "Fish and Game Fund," which shall be used
8 exclusively (1) to carry out the purposes and provisions of this
9 chapter or other duties that may be delegated by the legislature to
10 the board [COMMISSIONER] or the department; and (2) to carry out
11 such purposes and objectives within the scope of the chapter as may
12 be directed by the donor of any such funds.

13 * Sec. 6. AS 16.05.120 is amended to read:

14 Sec. 16.05.120. DISBURSEMENT OF FUNDS. Upon authorization of
15 the board [COMMISSIONER], disbursements from the fish and game fund
16 shall be paid by the proper state officer on presentation of vouchers
17 signed by the board [COMMISSIONER] or its [HIS] authorized representa-
18 tive, and approved by the proper state officer.

19 * Sec. 7. AS 16.05.240 is amended to read:

20 Sec. 16.05.240. BUDGET AND FISCAL POWERS [EXCLUDED]. The board
21 has rule-making powers as set forth in this chapter [, BUT DOES NOT
22 HAVE ADMINISTRATIVE, BUDGETING, OR FISCAL POWERS]. The commissioner
23 has responsibility and authority for the preparation and execution
24 of a budget and for the other fiscal affairs of the department.
25 subject to the approval of the board.

26 * Sec. 8. AS 16.05.270 is amended to read:

27 Sec. 16.05.270. DELEGATION OF AUTHORITY TO COMMISSIONER. For
28 the purpose of administering secs. 250 and 260 of this chapter, the
29 board may delegate authority to the commissioner to act in its behalf.

1 [IF THERE IS A CONFLICT BETWEEN THE BOARD AND THE COMMISSIONER ON
2 PROPOSED RULES AND REGULATIONS, PUBLIC HEARINGS SHALL BE HELD CON-
3 CERNING THE ISSUES IN QUESTION. IF, AFTER THE PUBLIC HEARINGS, THE
4 BOARD AND THE COMMISSIONER CONTINUE TO DISAGREE, THE ISSUE SHALL BE
5 CERTIFIED IN WRITING BY THE BOARD AND THE COMMISSIONER TO THE GOVERNOR
6 WHO SHALL MAKE A DECISION. THE DECISION OF THE GOVERNOR IS FINAL.]

7 * Sec. 9. AS 16.05.800 is amended to read:

8 Sec. 16.05.800. PUBLIC NUISANCES. A net, seine, lantern, snare,
9 device, contrivance, and material while in use, had and maintained for
10 the purpose of catching, taking, killing, attracting, or decoying fish
11 or game, contrary to law or rule or regulation of the board or its
12 designee [THE COMMISSIONER], is a public nuisance and is subject to
13 abatement.

14 * Sec. 10. AS 16.05.840 is amended to read:

15 Sec. 16.05.840. FISHWAY REQUIRED. If the board or its designee
16 [COMMISSIONER] considers it necessary, every dam or other obstruction
17 built by any person across a stream frequented by salmon or other fish
18 shall be provided by that person with a durable and efficient fishway
19 and a device for efficient passage for downstream migrants. The fish-
20 way or device or both shall be maintained in a practical and effective
21 manner in the place, form and capacity the board or its designee
22 [COMMISSIONER] approves, for which plans and specifications shall be
23 approved by the department upon application to it. The fishway or
24 device shall be kept open, unobstructed, and supplied with a sufficient
25 quantity of water to admit freely the passage of fish through it.

26 * Sec. 11. AS 16.05.850 is amended to read:

27 Sec. 16.05.850. HATCHERY REQUIRED. If a fishway over a dam or
28 obstruction is considered impracticable by the board or its designee
29 [COMMISSIONER] because of cost, the owner of the dam or obstruction,

1 in order to compensate for the loss resulting from the dam or obstruc-
2 tion shall, at its or his option: (1) pay a lump sum acceptable to
3 the board or its designee [COMMISSIONER] to the state Fish and Game
4 fund; (2) convey to the state a site of a size satisfactory to the
5 board or its designee [COMMISSIONER] at a place mutually satisfactory
6 to both parties, and erect on it a fish hatchery, rearing ponds,
7 necessary buildings and other facilities according to plans and
8 specifications furnished by the board or its designee [COMMISSIONER],
9 and give a good and sufficient bond to furnish water, lights and
10 necessary money to operate and maintain the hatchery and rearing ponds;
11 or (3) enter into an agreement with the board or its designee [COM-
12 MISSIONER], secured by good and sufficient bond, to pay to the fish
13 and game fund such an initial amount of money and annual payments
14 thereafter as the board or its designee [COMMISSIONER] considers
15 necessary to expand, maintain, and operate additional facilities at
16 existing hatcheries within a reasonable distance of the dam or obstruc-
17 tion.

18 * Sec. 12. AS 16.05.860 is amended to read:

19 Sec. 16.05.860. PENALTY FOR VIOLATION OF SECS. 840 AND 850 OF
20 THIS CHAPTER. (a) The owner of a dam or obstruction who fails to
21 comply with sec. 840 or sec. 850 of this chapter within a reasonable
22 time specified by written notice from the board or its designee [COM-
23 MISSIONER] is guilty of a misdemeanor, and is punishable by a fine of
24 not more than \$1,000. Each day the owner fails to comply constitutes
25 a separate offense.

26 (b) In addition to the fine the dam or other obstruction managed,
27 controlled or owned by a person violating sec. 840 or sec. 850 of
28 this chapter is a public nuisance and is subject to abatement.

29 * Sec. 13. AS 16.05.870 is amended to read:

1 **Sec. 16.05.870. PROTECTION OF FISH AND GAME. (a) The board or**
2 **its designee [COMMISSIONER] shall, in accordance with the Administra-**
3 **tive Procedure Act (AS 44.62) specify the various rivers, lakes, and**
4 **streams or parts of them that are important for the spawning or migra-**
5 **tion of anadromous fish.**

6 **(b) If a person or governmental agency desires to construct a**
7 **hydraulic project, or use, divert, obstruct, pollute, or change the**
8 **natural flow or bed of a specified river, lake, or stream, or to use**
9 **wheeled, tracked, or excavating equipment or log-dragging equipment**
10 **in the bed of a specified river, lake, or stream, the person or govern-**
11 **mental agency shall notify the board or its designee [COMMISSIONER]**
12 **of this intention before the beginning of the construction or use.**

13 **(c) The board or its designee [COMMISSIONER] shall acknowledge**
14 **receipt of the notice by return air mail. If the board or its designee**
15 **[COMMISSIONER] determines to do so, it or he shall, in the letter of**
16 **acknowledgement, require the person or governmental agency to submit**
17 **to it or him full plans and specifications of the proposed construction**
18 **or work, complete plans and specifications for the proper protection**
19 **of fish and game in connection with the construction or work, or in**
20 **connection with the use, and the approximate date the construction,**
21 **work, or use will begin, and shall require the person or governmental**
22 **agency to obtain written approval from it or him as to the sufficiency**
23 **of the plans or specifications before the proposed construction or use**
24 **is begun.**

25 * **Sec. 14. AS 16.05.880 is amended to read:**

26 **Sec. 16.05.880. VIOLATION OF SECS. 870 - 895 OF THIS CHAPTER. If**
27 **a person or governmental agency begins construction on a work or project**
28 **or use described in sec. 870 of this chapter without first providing**
29 **plans and specifications subject to the approval of the board or its**

1 designee [COMMISSIONER] for the proper protection of fish and game,
2 and without first having obtained written approval of the board or its
3 designee [COMMISSIONER] as to the adequacy of the plans and specifica-
4 tions submitted for the protection of fish and game, he is guilty of a
5 misdemeanor. If a person or governmental agency is convicted of vio-
6 lating secs. 870 - 895 of this chapter or continues a use, work or
7 project without fully complying with secs. 870 - 895 of this chapter,
8 the use, work, or project is a public nuisance and is subject to abate-
9 ment. The cost of restoring a specified river, lake, or stream to its
10 original condition shall be borne by the violator and shall be in
11 addition to the penalty imposed by the court.

12 * Sec. 15. AS 16.05.895 is amended to read:

13 Sec. 16.05.895. PENALTY FOR CAUSING MATERIAL DAMAGE. If a per-
14 son or governmental agency fails to notify the board or its designee
15 [COMMISSIONER] of any construction or use that causes material damage
16 to the spawning beds or prevents or interferes with the migration of
17 anadromous fish, or by neglect or noncompliance with plans and specifi-
18 cations required and approved by the board or its designee [COMMISSION-
19 ER] causes material damage to the spawning beds or prevents or inter-
20 feres with the migration of anadromous fish, the person or governmental
21 agency shall be guilty of a misdemeanor.

22 * Sec. 16. AS 39.05.060 is amended to read:

23 Sec. 39.05.060. APPOINTMENT, QUALIFICATIONS, AND TERMS OF OFFICE
24 OF MEMBERS OF DEPARTMENTAL BOARDS, COUNCILS, OR COMMISSIONS. Each
25 member of the Local Boundary Commission, Alcoholic Beverage Control
26 Board, Board of Education, Employment Security Advisory Council, Alaska
27 State Housing Authority, [BOARD OF FISH AND GAME,] and Board of
28 Tourism shall be a citizen of the United States. The governor shall
29 appoint each member on the basis of interest in public affairs, good

1 judgment, knowledge and ability in the field of action of the depart-
2 ment for which appointed, and with a view to providing diversity of
3 interest and points of view in the membership. Appointments are
4 subject to confirmation by a majority of the members of the legislature
5 in joint session. Initial appointments of members are as follows:
6 (1) in the case of three-member boards, for one, two, and three years;
7 (2) in the case of five-member boards, for one, two, three, four and
8 five years; (3) in the case of six-member boards, two members serve
9 for one year, two for two years, and two for three years; (4) and in
10 the case of eight-member boards, two members serve for one year, two
11 for two years, two for three years, and two for four years. Initial
12 terms date from February 1 before appointment. A vacancy occurring
13 during a term of office is filled in the same manner as the original
14 appointment is made and for the balance of the unexpired term. Each
15 member holds office at the pleasure of the governor notwithstanding
16 the member's term.

17 * Sec. 17. AS 44.39.010 is repealed and re-enacted to read:

18 Sec. 44.39.010. BOARD AND COMMISSIONER OF FISH AND GAME. There
19 is at the head of the Department of Fish and Game a Board of Fish and
20 Game. The commissioner of fish and game is the principal executive
21 officer of the department.

22 * Sec. 18. Upon initial appointment, two members of the board shall be
23 appointed for two years, two for four years, and two for six years.

24 * Sec. 19. AS 16.05.010 - 16.05.040, 16.05.090, 16.05.220 and 16.05.230,
25 16.05.290 - 16.05.320, and 44.39.030 - 44.39.050 are repealed.
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