

Original sponsor: Hammond

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Referred: State Affairs

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 14

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - SECOND 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 Fish
8 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 11
13 members, all of whom shall be citizens of the United States.

14 Sec. 16.05.235. APPOINTMENT OF MEMBERS. (a) The 11 members of
15 the board, no more than 6 of whom shall be members of the same political
16 party as the governor, shall be appointed by the governor subject to
17 confirmation by a majority of the members of the legislature in joint
18 session. In appointing board members, the governor shall consider
19 recommendations made by fish and game advisory committees created under
20 the authority of sec. 260 of this chapter. Members shall be appointed
21 to the board based on ability, interest in and knowledge of the fish
22 and game resources of the State of Alaska.

23 (b) Two members shall be appointed from each of the four judicial
24 districts and three from the state at large.

25 (c) The 11 members are entitled to the expenses, travel, and
26 per diem allowances provided by law.

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

29 Sec. 16.05.245. TERM OF OFFICE. The members of the board shall

1 be appointed for overlapping five-year terms. A member appointed to
2 fill a vacancy serves for the unexpired term of the member he succeeds.

3 Sec. 16.05.255. QUORUM AND CHAIRMAN. (a) Six members constitute
4 a quorum.

5 (b) The board shall elect one member of the board as the chairman
6 and he shall serve as a chairman of the board at the pleasure of the
7 board.

8 Sec. 16.05.265. REMOVAL. Members of the board serve at the
9 pleasure of the governor.

10 Sec. 16.05.275. MEETINGS. The board shall meet at least once a
11 year. Meetings may be called by the chairman or by a majority of the
12 members of the board. The board shall determine the time and place of
13 meetings.

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

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

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

24 (c) The commissioner shall be appointed by the board for a term
25 of office not to exceed five years. He may be removed during his term of
26 office by six members of the board for cause as defined in this section.

27 (d) In this section "cause" means

28 (1) incompetency which is the inability or the unintentional
29 or intentional failure to perform the duties of the commissioner;

1 (2) immorality which is the commission of an act which,
2 under the laws of the state, constitutes a crime involving moral
3 turpitude; or

4 (3) malfeasance or misfeasance in office which includes, but
5 is not limited to, the failure of the commissioner to comply with the
6 rules or regulations adopted by the board.

7 (e) The commissioner shall receive the salary set out in AS 39.20.
8 080.

9 (f) The commissioner shall employ and remove all classified
10 personnel in the department subject to the State Personnel Act (AS 39.25).
11 He may employ and remove personnel in the exempt or partially exempt
12 service subject to the approval of the board. Personnel in the exempt
13 or partially exempt service have a right of appeal to the board if they
14 are removed. The commissioner may not sit on the board during an
15 appeal.

16 Sec. 16.05.305. LIMITATIONS ON BOARD. No member of the board
17 may be a candidate for partisan political office during his term of
18 office.

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

23 • Sec. 2. AS 16.05.050 is amended to read:

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

27 (1) assist the United States Fish and Wildlife Service in
28 the enforcement of federal laws and regulations pertaining to fish and
29 game;

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

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

9 (4) accept money from any person under conditions requiring
10 the use of the money for specific purposes in the furtherance of the
11 protection, rehabilitation, propagation, preservation, or investigation
12 of the fish and game resources of the state or in settlement of claims
13 for damages to fish or game resources;

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

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

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

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

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

26 (10) the supervision and maintenance, including construction
27 and operation, of vessels, aircraft, and other specialized equipment
28 used by the Department of Fish and Game.

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

1 Sec. 16.05.060. EMERGENCY OPENINGS AND CLOSURES. This chapter
2 does not limit the power of the board [COMMISSIONER] or its [HIS]
3 authorized designee, when circumstances require, to summarily open or
4 close seasons or areas or to change weekly closed periods on fish or
5 game by means of emergency orders. An emergency order has the force
6 and effect of law after field announcement by the board [COMMISSIONER]
7 or its [HIS] authorized designee. An emergency order adopted under
8 this section is not subject to the Administrative Procedure Act
9 (AS 44.62).

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

11 Sec. 16.05.070. RULES AND REGULATIONS AS EVIDENCE. Rules and
12 regulations of the board or its authorized designee [AND OF THE
13 COMMISSIONER], including emergency openings and closures, are admissible
14 as evidence in the courts of the state in accordance with the Adminis-
15 trative Procedure Act (AS 44.62).

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

17 Sec. 16.05.100. FISH AND GAME FUND ESTABLISHED. There is
18 created a revolving "Fish and Game Fund," which shall be used exclusively
19 (1) to carry out the purposes and provisions of this chapter or other
20 duties that may be delegated by the legislature to the board [COM-
21 MISSIONER] or the department; and (2) to carry out such purposes and
22 objectives within the scope of the chapter as may be directed by the
23 donor of any such funds.

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

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

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

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

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

9 Sec. 16.05.270. DELEGATION OF AUTHORITY TO COMMISSIONER. For
10 the purpose of administering secs. 250 and 260 of this chapter, the
11 board may delegate authority to the commissioner to act in its behalf.
12 [IF THERE IS A CONFLICT BETWEEN THE BOARD AND THE COMMISSIONER ON
13 PROPOSED RULES AND REGULATIONS, PUBLIC HEARINGS SHALL BE HELD CON-
14 CERNING THE ISSUES IN QUESTION. IF, AFTER THE PUBLIC HEARINGS, THE
15 BOARD AND THE COMMISSIONER CONTINUE TO DISAGREE, THE ISSUE SHALL BE
16 CERTIFIED IN WRITING BY THE BOARD AND THE COMMISSIONER TO THE GOVERNOR
17 WHO SHALL MAKE A DECISION. THE DECISION OF THE GOVERNOR IS FINAL.]

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

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

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

26 Sec. 16.05.840. FISHWAY REQUIRED. If the board or its designee
27 [COMMISSIONER] considers it necessary, every dam or other obstruction
28 built by any person across a stream frequented by salmon or other fish
29 shall be provided by that person with a durable and efficient fishway

1 and a device for efficient passage for downstream migrants. The fish-
2 way or device or both shall be maintained in a practical and effective
3 manner in the place, form and capacity the board or its designee
4 [COMMISSIONER] approves, for which plans and specifications shall be
5 approved by the department upon application to it. The fishway or
6 device shall be kept open, unobstructed, and supplied with a sufficient
7 quantity of water to admit freely the passage of fish through it.

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

9 Sec. 16.05.850. HATCHERY REQUIRED. If a fishway over a dam or
10 obstruction is considered impracticable by the board or its designee
11 [COMMISSIONER] because of cost, the owner of the dam or obstruction,
12 in order to compensate for the loss resulting from the dam or obstruc-
13 tion shall, at its or his option: (1) pay a lump sum acceptable to
14 the board or its designee [COMMISSIONER] to the state fish and game
15 fund; (2) convey to the state a site of a size satisfactory to the
16 board or its designee [COMMISSIONER] at a place mutually satisfactory
17 to both parties, and erect on it a fish hatchery, rearing ponds,
18 necessary buildings and other facilities according to plans and
19 specifications furnished by the board or its designee [COMMISSIONER],
20 and give a good and sufficient bond to furnish water, lights and
21 necessary money to operate and maintain the hatchery and rearing ponds;
22 or (3) enter into an agreement with the board or its designee [COM-
23 MISSIONER], secured by good and sufficient bond, to pay to the fish
24 and game fund such an initial amount of money and annual payments
25 thereafter as the board or its designee [COMMISSIONER] considers
26 necessary to expand, maintain, and operate additional facilities at
27 existing hatcheries within a reasonable distance of the dam or obstruc-
28 tion.

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

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

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

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

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

18 (b) If a person or governmental agency desires to construct a
19 hydraulic project, or use, divert, obstruct, pollute, or change the
20 natural flow or bed of a specified river, lake, or stream, or to use
21 wheeled, tracked, or excavating equipment or log-dragging equipment
22 in the bed of a specified river, lake, or stream, the person or govern-
23 mental agency shall notify the board or its designee [COMMISSIONER]
24 of this intention before the beginning of the construction or use.

25 (c) The board or its designee [COMMISSIONER] shall acknowledge
26 receipt of the notice by return air mail. If the board or its designee
27 [COMMISSIONER] determines to do so, it or he shall, in the letter of
28 acknowledgement, require the person or governmental agency to submit
29 to it or him full plans and specifications of the proposed construction

1 or work, complete plans and specifications for the proper protection
2 of fish and game in connection with the construction or work, or in
3 connection with the use, and the approximate date the construction,
4 work, or use will begin, and shall require the person or governmental
5 agency to obtain written approval from it or him as to the sufficiency
6 of the plans or specifications before the proposed construction or use
7 is begun.

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

9 Sec. 16.05.880. VIOLATION OF SECS. 870 - 895 OF THIS CHAPTER. If
10 a person or governmental agency begins construction on a work or project
11 or use described in sec. 870 of this chapter without first providing
12 plans and specifications subject to the approval of the board or its
13 designee [COMMISSIONER] for the proper protection of fish and game,
14 and without first having obtained written approval of the board or its
15 designee [COMMISSIONER] as to the adequacy of the plans and specifica-
16 tions submitted for the protection of fish and game, he is guilty of a
17 misdemeanor. If a person or governmental agency is convicted of
18 violating secs. 870 - 895 of this chapter or continues a use, work or
19 project without fully complying with secs. 870 - 895 of this chapter,
20 the use, work, or project is a public nuisance and is subject to abate-
21 ment. The cost of restoring a specified river, lake, or stream to its
22 original condition shall be borne by the violator and shall be in
23 addition to the penalty imposed by the court.

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

25 Sec. 16.05.895. PENALTY FOR CAUSING MATERIAL DAMAGE. If a per-
26 son or governmental agency fails to notify the board or its designee
27 [COMMISSIONER] of any construction or use that causes material damage
28 to the spawning beds or prevents or interferes with the migration of
29 anadromous fish, or by neglect or noncompliance with plans and

1 specifications required and approved by the board or its designee
2 [COMMISSIONER] causes material damage to the spawning beds or prevents
3 or interferes with the migration of anadromous fish, the person or
4 governmental agency shall be guilty of a misdemeanor.

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

6 Sec. 39.05.060. APPOINTMENT, QUALIFICATIONS, AND TERMS OF OFFICE
7 OF MEMBERS OF DEPARTMENTAL BOARDS, COUNCILS, OR COMMISSIONS. Each
8 member of the Local Boundary Commission, Alcoholic Beverage Control
9 Board, Board of Education, Employment Security Advisory Council, Alaska
10 State Housing Authority, [BOARD OF FISH AND GAME,] and Board of
11 Tourism shall be a citizen of the United States. The governor shall
12 appoint each member on the basis of interest in public affairs, good
13 judgment, knowledge and ability in the field of action of the depart-
14 ment for which appointed, and with a view to providing diversity of
15 interest and points of view in the membership. Appointments are
16 subject to confirmation by a majority of the members of the legislature
17 in joint session. Initial appointments of members are as follows:

- 18 (1) in the case of three-member boards, for one, two, and three years;
19 (2) in the case of five-member boards, for one, two, three, four and
20 five years; (3) in the case of six-member boards, two members serve
21 for one year, two for two years, and two for three years; (4) and in
22 the case of eight-member boards, two members serve for one year, two
23 for two years, two for three years, and two for four years. Initial
24 terms date from February 1 before appointment. A vacancy occurring
25 during a term of office is filled in the same manner as the original
26 appointment is made and for the balance of the unexpired term. Each
27 member holds office at the pleasure of the governor notwithstanding
28 the member's term.

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

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

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

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