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1 IN THE SENATE

2 SENATE BILL NO. 56

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating a Department of Sport Fish and Game
7 within the executive branch; and providing for the
8 Board of Sport 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 ARTICLE 1. THE DEPARTMENT OF SPORT FISH AND GAME.

12 Sec. 16.05.003. CREATION OF DEPARTMENT. There is created within
13 the state government a principal department to be known as the Depart-
14 ment of Sport Fish and Game.

15 Sec. 16.05.006. CREATION OF BOARD. There is created at the head
16 of the Department of Sport Fish and Game a Board of Sport Fish and
17 Game consisting of seven members.

18 Sec. 16.05.009. APPOINTMENT OF MEMBERS. (a) The seven members
19 of the board shall be appointed by the governor without regard to
20 political affiliation, subject to confirmation by a majority of the
21 members of the legislature in joint session. In appointing board
22 members, the governor shall consider recommendations made by sport
23 fish and game advisory committees created under the authority of
24 sec. 66 of this chapter.

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

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

29 Sec. 16.05.012. TERM OF OFFICE. The members of the board shall

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

3 Sec. 16.05.015. QUORUM AND CHAIRMAN. (a) Four members constitute
4 a quorum.

5 (b) The board shall elect a chairman for a term set by the board.

6 Sec. 16.05.018. REMOVAL OF BOARD MEMBERS. The governor may
7 remove a board member for inefficiency, neglect of duty, or misconduct
8 in office by delivering to him a written copy of the charges and giving
9 him an opportunity to be heard in person or through counsel at a public
10 hearing before the governor or his designee upon at least 10 days'
11 notice by registered mail. The member has the right to confrontation
12 by and cross-examination of all witnesses against him. Upon removal,
13 the governor or his designee shall file a complete statement of all
14 charges made against the member and the findings in the proper state
15 office.

16 Sec. 16.05.021. MEETINGS. The board shall meet at least quarterly.
17 Meetings may be called by the chairman or by a majority of the members
18 of the board. Meetings shall be held in Juneau unless a majority of
19 the members of the board changes the place of a meeting.

20 Sec. 16.05.024. LEGAL ASSISTANCE. The Department of Law shall
21 provide all legal services for the board.

22 Sec. 16.05.027. COMMISSIONER. (a) The board shall appoint the
23 commissioner of sport fish and game with the approval of the governor.
24 The commissioner shall be the principal executive officer of the
25 department.

26 (b) The commissioner shall be appointed without regard to politi-
27 cal affiliation. He shall be a qualified executive with knowledge of
28 the requirements for the protection, management, conservation, and
29 restoration of the sport fish and game resources of the state.

1 (c) The commissioner shall be appointed by the board for a term
2 of five years. He may be removed for cause during his term of office
3 by four members of the board with the approval of the governor.

4 (d) The commissioner shall receive the salary set out in
5 AS 39.20.080.

6 (e) The commissioner shall employ and remove all classified per-
7 sonnel in the department subject to the State Personnel Act (AS 39.25).
8 He may employ and remove personnel in the exempt or partially exempt
9 service subject to the approval of the board. Personnel in the exempt
10 or partially exempt service have a right of appeal to the board if they
11 are removed.

12 Sec. 16.05.031. LIMITATIONS ON BOARD MEMBERS. No member of the
13 board may be a candidate for state office during his term of office.

14 Sec. 16.05.033. POWERS AND DUTIES OF BOARD. The board or its
15 authorized designee has, but not by way of limitation, the following
16 powers and duties:

17 (1) assist the United States Fish and Wildlife Service in
18 the enforcement of federal laws and regulations pertaining to sport
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 purpose of the department and the state;

25 (3) design and construct hatcheries, pipelines, rearing
26 ponds, fishways, and other projects beneficial for the sport fish and
27 game 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 sport fish and game resources of the state or in settlement of
3 claims for damages to sport fish and game resources;

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

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

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

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

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

18 Sec. 16.05.036. **EMERGENCY OPENINGS AND CLOSURES.** This chapter
19 does not limit the power of the board or its authorized designee, when
20 circumstances require, to summarily open or close seasons or areas or
21 to change weekly closed periods on sport fish or game by means of
22 emergency orders. An emergency order has the force and effect of law
23 after field announcement by the board or its authorized designee. An
24 emergency order adopted under this section is not subject to the
25 Administrative Procedure Act (AS 44.62).

26 Sec. 16.05.039. **RULES AND REGULATIONS AS EVIDENCE.** Rules and
27 regulations of the board, including emergency openings and closures,
28 are admissible as evidence in the courts of the state in accordance
29 with the Administrative Procedure Act (AS 44.62).

1 **Sec. 16.05.042. LIMITATION OF POWER.** Nothing in this chapter
2 authorizes the board to change the amount of fees or licenses.

3 **Sec. 16.05.045. SPORT FISH AND GAME FUND ESTABLISHED.** There is
4 created a revolving sport fish and game fund, which shall be used
5 exclusively (1) to carry out the purposes and provisions of this
6 chapter or other duties that may be delegated by the legislature to
7 the board or the department relating to sport fish and game; and (2)
8 to carry out the purposes and objectives within the scope of the
9 chapter relating to sport fish and game which may be directed by the
10 donor of the funds.

11 **Sec. 16.05.048. COMPOSITION OF FUND.** The sport fish and game
12 fund shall be made up of the following money and other money the
13 legislature appropriates, which shall be deposited and retained in
14 the fund until expended;

15 (1) money received from the sale of state sport fishing
16 and hunting licenses and special permits;

17 (2) proceeds received from the sale of furs, skins and
18 specimens taken by predator hunters and other employees;

19 (3) money received in settlement of a claim or loss caused
20 by damage to the sport fish and game resources of the state;

21 (4) money received from federal, state, or other governmental
22 unit, or from a private donor for sport fish and game purposes;

23 (5) interest earned upon money in the fund;

24 (6) money from any other source.

25 **Sec. 16.05.051. DISBURSEMENT OF FUNDS.** Upon authorization of
26 the board, disbursements from the sport fish and game fund shall be
27 paid by the proper state officer on presentation of vouchers signed
28 by the board or its authorized representative, and approved by the
29 proper state officer.

1 **Sec. 16.05.054. DIVERSION OF FUNDS PROHIBITED.** No funds accruing
2 to the state from sport fishing and hunting licenses or permit fees
3 may be diverted to a purpose other than the protection, propagation,
4 investigation, and restoration of sport fish and game resources, and
5 the expenses of administering of the sport fish and game divisions of
6 the department.

7 **Sec. 16.05.057. BUDGET AND FISCAL POWERS.** The board has rule-
8 making powers as set forth in this chapter. The commissioner has
9 responsibility and authority for the preparation and execution of a
10 budget and for the other fiscal affairs of the department, subject to
11 the approval of the board.

12 **Sec. 16.05.061. PROMULGATION OF REGULATIONS.** The board shall
13 promulgate regulations which are necessary to carry out the provisions
14 of this chapter. All regulations shall be promulgated under the
15 Administrative Procedure Act (AS 44.62).

16 **Sec. 16.05.063. RULES AND REGULATIONS.** The board may make rules
17 and regulations it considers advisable for

18 (1) setting apart sport fish and game reserve areas, refuges
19 and sanctuaries in the waters or on the lands of the state over which
20 it has jurisdiction, subject to the approval of the legislature;

21 (2) establishment of open and closed seasons and areas for
22 sport fish and game;

23 (3) establishment of the means and methods employed in the
24 pursuit, capture, and transport of sport fish and game;

25 (4) setting quotas and bag limits on the taking of sport
26 fish and game;

27 (5) classifying sport fish and game as sport fish, game
28 birds, song birds, big game animals, fur bearing animals, predators,
29 vermin, or other categories essential for regulatory purposes.

1 (6) establishing the qualifications for guides and assistant
2 guides, certifying master guides, regulating guide activities, and
3 maintaining a guide register;

4 (7) revoke, suspend or refuse issuance of guide licenses;

5 (8) engaging in biological research, watershed and habitat
6 improvement, sport fish and game management, protection, propagation
7 and stocking;

8 (9) investigating and determining the extent and effect of pre-
9 dation and competition among sport fish and game in the state and exercis-
10 ing control measures considered necessary to the resources of the state;

11 (10) entering into cooperative agreements with educational
12 institutions and state, federal, or other agencies to promote sport
13 fish and game research, management, education, and information and to
14 train men for sport fish and game management;

15 (11) prohibiting the live capture, possession, transport,
16 or release of native sport fish or game or their eggs.

17 Sec. 16.05.066. **ADVISORY COMMITTEES.** The board may make rules
18 and regulations it considers advisable in accordance with the Admini-
19 strative Procedure Act (AS 44.62) establishing, at places in the state
20 designated by the board, advisory committees to be composed of persons
21 well informed on the sport fish and game resources of the locality.
22 The board shall set the number and terms of each of the members of the
23 advisory committees, shall delegate one member of each committee as
24 chairman, and shall give him authority to hold public hearings on,
25 sport fish and game matters. Recommendations from the advisory com-
26 mittees shall be forwarded to the board for its consideration. The
27 commissioner shall delegate authority to advisory committees for
28 emergency closures during established seasons. The commissioner may
29 countermand and make null and void any authority delegated or order

1 issued under this section. The board shall establish the necessary
2 rules governing such closures.

3 Sec. 16.05.069. DELEGATION OF AUTHORITY TO COMMISSIONER. For the
4 purpose of administering secs. 63 and 66 of this chapter, the board may
5 delegate authority to the commissioner to act in its behalf.

6 * Sec. 2. AS 16.05.800 is amended to read:

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

12 * Sec. 3. AS 16.05.840 is amended to read:

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

24 * Sec. 4. AS 16.05.850 is amended to read:

25 Sec. 16.05.850. HATCHERY REQUIRED. If a fishway over a dam or
26 obstruction is considered impracticable by the board or its designee
27 [COMMISSIONER] because of cost, the owner of the dam or obstruction,
28 in order to compensate for the loss resulting from the dam or obstruc-
29 tion shall, at its or his option: (1) pay a lump sum acceptable to

1 the board or its designee [COMMISSIONER] to the state Fish and Game
2 fund; (2) convey to the state a site of a size satisfactory to the
3 board or its designee [COMMISSIONER] at a place mutually satisfactory
4 to both parties, and erect on it a fish hatchery, rearing ponds, neces-
5 sary buildings and other facilities according to plans and specifica-
6 tions furnished by the board or its designee, [COMMISSIONER] and give
7 a good and sufficient bond to furnish water, lights and necessary money
8 to operate and maintain the hatchery and rearing ponds; or (3) enter
9 into an agreement with the board or its designee, [COMMISSIONER] secured
10 by good and sufficient bond, to pay to the fish and game fund such an
11 initial amount of money and annual payments thereafter as the board or
12 its designee [COMMISSIONER] considers necessary to expand, maintain,
13 and operate additional facilities at existing hatcheries within a
14 reasonable distance of the dam or obstruction.

15 * Sec. 5. AS 16.05.860 is amended to read:

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

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

26 * Sec. 6. AS 16.05.870 is amended to read:

27 Sec. 16.05.870. PROTECTION OF FISH AND GAME. (a) The board or
28 its designee [COMMISSIONER] shall, in accordance with the Administrative
29 Procedure Act (AS 44.62) specify the various rivers, lakes, and streams

1 or parts of them that are important for the spawning or migration of
2 anadromous fish. Before December 31, 1968, the specification may be
3 made by designating areas within which all rivers, lakes, and streams
4 are considered important for the spawning or migration of anadromous
5 fish; provided, that the areas lie within 50 miles of the coastline
6 extending from Dixon Entrance through False Pass to Cape Menchikof,
7 including all islands east of False Pass. A person giving notice under
8 (b) of this section before December 31, 1968, may, if the activity is
9 to take place within such a designated area, request the board or its
10 designee [COMMISSIONER] to specify individually by name or number, the
11 particular rivers, lakes, and streams or parts of them within the area
12 of operations described in the notice which are important for the
13 spawning and migration of anadromous fish. Upon receipt of the request
14 the board or its designee [COMMISSIONER] shall promptly make the
15 designation.

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

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

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

7 * Sec. 7. AS 16.05.880 is amended to read:

8 Sec. 16.05.880. VIOLATION OF SECS. 870 - 895 OF THIS CHAPTER.

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

23 * Sec. 8. AS 16.05.895 is amended to read:

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

1 causes material damage to the spawning beds or prevents or interferes
2 with the migration of anadromous fish, the person or governmental
3 agency shall be guilty of a misdemeanor.

4 * Sec. 9. AS 16.05 is amended by adding a new section to read:

5 Sec. 16.05.945. ADDITIONAL DEFINITIONS. (a) In secs. 1 - 210
6 and 330 - 430 of this chapter

7 (1) "board" means the Board of Sport Fish and Game;

8 (2) "commissioner" means the commissioner of sport fish
9 and game;

10 (3) "department" means the Department of Sport Fish and
11 Game;

12 (b) In secs. 800 - 940 of this chapter "department", "board", and
13 "commissioner" refer to either the Department of Sport Fish and Game or
14 the Department of Commercial Fisheries, whichever is appropriate.

15 * Sec. 10. AS 39.05.060 is amended to read:

16 Sec. 39.05.060. APPOINTMENT, QUALIFICATIONS, AND TERMS OF OFFICE
17 OF MEMBERS OF DEPARTMENTAL BOARDS, COUNCILS, OR COMMISSIONS. Each
18 member of the Local Boundary Commission, Alcoholic Beverage Control
19 Board, Board of Education, Employment Security Advisory Council, Alaska
20 State Housing Authority, [BOARD OF FISH AND GAME,] and Board of Tourism
21 shall be a citizen of the United States. The governor shall appoint
22 each member on the basis of interest in public affairs, good judgment,
23 knowledge and ability in the field of action of the department for
24 which appointed, and with a view to providing diversity of interest
25 and points of view in the membership. Appointments are subject to
26 confirmation by a majority of the members of the legislature in joint
27 session. Initial appointments of members are as follows: (1) in the
28 case of three-member boards, for one, two, and three years; (2) in the
29 case of five-member boards, for one, two, three, four and five years;

1 (3) in the case of six-member boards, two members serve for one year,
2 two for two years, and two for three years; (4) and in the case of
3 eight-member boards, two members serve for one year, two for two years,
4 two for three years, and two for four years. Initial terms date from
5 February 1 before appointment. A vacancy occurring during a term of
6 office is filled in the same manner as the original appointment is made
7 and for the balance of the unexpired term. Each member holds office
8 at the pleasure of the governor notwithstanding the member's term.

9 * Sec. 11. AS 44.15.010 is amended by adding a new paragraph to read:

10 (16) Department of Sport Fish and Game

11 * Sec. 12. AS 44 is amended by adding a new chapter to read:

12 CHAPTER 40. DEPARTMENT OF SPORT FISH AND GAME.

13 Sec. 44.40.010. BOARD AND COMMISSIONER. There is at the head
14 of the Department of Sport Fish and Game a Board of Sport Fish and
15 Game. The commissioner of sport fish and game is the principal execu-
16 tive officer of the department.

17 Sec. 44.40.020. DUTIES OF DEPARTMENT. The Department of Sport
18 Fish and Game shall administer the state program for the conservation
19 and development of the state's sport fish, birds, game and fur bearing
20 animals.

21 * Sec. 13. Upon initial appointment, board shall be appointed as follows:
22 one member for one year, two for two years, three for three years and one
23 for four years.

24 * Sec. 14. The following are repealed: AS 16.05.010 - 16.05.130;
25 AS 16.05.220 - 16.05.320; AS 16.05.940(1), (4) and (5).

26 * Sec. 15. The Department of Sport Fish and Game is vested with the
27 duties, powers, and responsibilities relating to sport fish and game formerly
28 exercised and held by the Department of Fish and Game.
29