

1 IN THE SENATE

BY HAMMOND

2 SENATE BILL NO. 6

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH 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 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 politi-
16 cal party as the governor, shall be appointed by the governor subject
17 to confirmation by a majority of the members of the legislature in
18 joint session. In appointing board members, the governor shall con-
19 sider recommendations made by fish and game advisory committees
20 created under the authority of sec. 260 of this chapter. Members
21 shall be appointed to the board based on ability, interest in and
22 knowledge of the fish and game resources of the State of Alaska.

23 (b) Two members shall be appointed from each of the four
24 judicial 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 consti-
4 tute a quorum.

5 (b) The board shall elect one member of the board as the chair-
6 man and he shall serve as a chairman of the board at the pleasure of
7 the 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 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
19 officer of the department.

20 (b) The commissioner shall be appointed without regard to poli-
21 tical affiliation and shall be a qualified executive with knowledge of
22 the requirements for the protection, management, conservation, and
23 restoration 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
26 of office by six members of the board for cause as defined in this
27 section.

28 (d) In this section "cause" means

29 (1) incompetency which is the inability or the unintentional

1 or intentional failure to perform the duties of the commissioner;

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

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

8 (e) The commissioner shall receive the salary set out in
9 AS 39.20.080.

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

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

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

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

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

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

1 game;

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

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

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

15 (5) collect, classify, and disseminate statistics, data and
16 information as in its [HIS] discretion will tend to promote the objects
17 of this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 representative, and approved by the proper state officer.

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

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

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

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

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

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

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

27 Sec. 16.05.840. FISHWAY REQUIRED. If the board or its designee
28 [COMMISSIONER] considers it necessary, every dam or other obstruction
29 built by any person across a stream frequented by salmon or other fish

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

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

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

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

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

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

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

12 Sec. 16.05.870. PROTECTION OF FISH AND GAME. (a) The board or
13 its designee [COMMISSIONER] shall, in accordance with the Adminis-
14 trative Procedure Act (AS 44.62) specify the various rivers, lakes,
15 and streams or parts of them that are important for the spawning or
16 migration of anadromous fish. [BEFORE DECEMBER 31, 1968, THE SPECIFI-
17 CATION MAY BE MADE BY DESIGNATING AREAS WITHIN WHICH ALL RIVERS,
18 LAKES, AND STREAMS ARE CONSIDERED IMPORTANT FOR THE SPAWNING OR MI-
19 GRATION OF ANADROMOUS FISH; PROVIDED, THAT THE AREAS LIE WITHIN 50
20 MILES OF THE COASTLINE EXTENDING FROM DIXON ENTRANCE THROUGH FALSE
21 PASS TO CAPE MENSHIKOF, INCLUDING ALL ISLANDS EAST OF FALSE PASS.
22 A PERSON GIVING NOTICE UNDER (b) OF THIS SECTION BEFORE DECEMBER 31,
23 1968, MAY, IF THE ACTIVITY IS TO TAKE PLACE WITHIN SUCH A DESIGNATED
24 AREA, REQUEST THE COMMISSIONER TO SPECIFY INDIVIDUALLY BY NAME OR
25 NUMBER, THE PARTICULAR RIVERS, LAKES, AND STREAMS OR PARTS OF THEM
26 WITHIN THE AREA OF OPERATIONS DESCRIBED IN THE NOTICE WHICH ARE
27 IMPORTANT FOR THE SPAWNING AND MIGRATION OF ANADROMOUS FISH. UPON
28 RECEIPT OF THE REQUEST THE COMMISSIONER SHALL PROMPTLY MAKE THE
29 DESIGNATION.]

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

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

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

21 Sec. 16.05.880. VIOLATION OF SECS. 870 - 895 OF THIS CHAPTER.
22 If a person or governmental agency begins construction on a work or
23 project or use for which notice is required by sec. 870 of this
24 chapter without first providing plans and specifications subject to
25 the approval of the board or its designee [COMMISSIONER] for the
26 proper protection of fish and game, and without first having obtained
27 written approval of the board or its designee [COMMISSIONER] as to the
28 adequacy of the plans and specifications submitted for the protection
29 of fish and game, he is guilty of a misdemeanor. If a person or

1 governmental agency is convicted of violating secs. 870 - 895 of this
2 chapter or continues a use, work or project without fully complying
3 with secs. 870 - 895 of this chapter, the use, work, or project is a
4 public nuisance and is subject to abatement. The cost of restoring a
5 specified river, lake, or stream to its original condition shall be
6 borne by the violator and shall be in addition to the penalty imposed
7 by the court.

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

9 Sec. 16.05.895. PENALTY FOR CAUSING MATERIAL DAMAGE. If a person
10 or governmental agency fails to notify the board or its designee
11 [COMMISSIONER] of any construction or use that causes material damage
12 to the spawning beds or prevents or interferes with the migration of
13 anadromous fish, or by neglect or noncompliance with plans and speci-
14 fications required and approved by the board or its designee [COMMIS-
15 SIONER] causes material damage to the spawning beds or prevents or
16 interferes with the migration of anadromous fish, the person or govern-
17 mental agency shall be guilty of a misdemeanor.

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

19 Sec. 39.05.060. APPOINTMENT, QUALIFICATIONS, AND TERMS OF OFFICE
20 OF MEMBERS OF DEPARTMENTAL BOARDS, COUNCILS, OR COMMISSIONS. Each
21 member of the Local Boundary Commission, Alcoholic Beverage Control
22 Board, Employment Security Advisory Council, Alaska State Housing
23 Authority, [BOARD OF FISH AND GAME,] Board of Tourism and the
24 Commission for Northern Operations of Rail Transportation and Highways
25 shall be a citizen of the United States. The governor shall appoint
26 each member on the basis of interest in public affairs, good judgment,
27 knowledge and ability in the field of action of the department for
28 which appointed, and with a view to providing diversity of interest
29 and points of view in the membership. Appointments are subject to

1 confirmation by a majority of the members of the legislature in joint
2 session. Initial appointments of members are as follows: (1) in the
3 case of three-member boards, for one, two and three years; (2) in
4 the case of five-member boards, for one, two, three, four and five
5 years; (3) in the case of six-member boards, two members serve for
6 one year, two for two years, and two for three years; (4) and in the
7 case of eight-member boards, two members serve for one year, two for
8 two years, two for three years, and two for four years; (5) and in
9 the case of 10-member boards, two members serve for one year, two for
10 two years, two for three years, two for four years, and two for five
11 years. Initial terms date from February 1 before appointment. A
12 vacancy occurring during a term of office is filled in the same manner
13 as the original appointment is made and for the balance of the unex-
14 pired term. Each member holds office at the pleasure of the governor
15 notwithstanding the member's term.

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

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

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

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