

1 IN THE SENATE

BY HAMMOND

2 SENATE BILL NO. 36

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the governance and organization of
7 the Department of Fish and Game."

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

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

10 ARTICLE 2. THE MASTER BOARD OF FISH AND GAME.

11 Sec. 16.05.225. CREATION. There is created at the head of the
12 Department of Fish and Game a Master Board of Fish and Game consisting
13 of 10 members, all of whom shall be citizens of the United States.

14 Sec. 16.05.235. APPOINTMENT OF MEMBERS. (a) The 10 members of
15 the board, no more than six of whom may be members of the same political
16 party as the governor, shall be appointed by the governor from a list of
17 20 persons nominated by the regional boards, two persons to be nominated
18 by each regional board. Each member is subject to confirmation by a
19 majority of the members of the legislature in joint session. A regional
20 board is not prohibited from nominating one of its own members. In
21 nominating board members, a regional board shall consider recommenda-
22 tions made by fish and game advisory committees created under the
23 authority of sec. 260 of this chapter. Members of the board shall
24 possess an ability in management and an interest in and knowledge of
25 the fish and game resources of the state.

26 (b) The 10 members are entitled to the expenses, travel, and per
27 diem allowances provided by law.

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

1 Sec. 16.05.245. TERM OF OFFICE. The members of the board shall
2 be appointed for overlapping five-year terms. A member appointed to
3 fill a vacancy serves for the unexpired term of the member he succeeds.

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

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

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

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

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

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

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

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

29 (d) In this section "cause" means

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

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

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

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

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

17 Sec. 16.05.305. LIMITATIONS ON BOARD. No member of the board may
18 be a candidate for partisan political office during his term of 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 ARTICLE 2-A. REGIONAL BOARDS.

24 Sec. 16.05.322. CREATION OF REGIONAL BOARDS. (a) There are
25 created 10 regional boards of fish and game in the state, one for each
26 of the following areas:

- 27 (1) Bristol Bay,
28 (2) Cook Inlet-Susitna Basin,
29 (3) Arctic,

- 1 (4) Interior (upper Yukon and Kuskokwim),
- 2 (5) Prince William Sound-Copper River Basin,
- 3 (6) Norton Sound-Seward Peninsula-Kotzebue Sound,
- 4 (7) Kodiak,
- 5 (8) Southeastern,
- 6 (9) Alaska Peninsula-Aleutians,
- 7 (10) Lower Yukon and Kuskokwim.

8 (b) The boundaries of the regional boards shall be established
9 by the department, based on a consideration of fish and game areas,
10 geographic areas, population densities, and other resource considera-
11 tions.

12 Sec. 16.05.324. REGIONAL BOARD MEMBERSHIP. (a) A regional
13 board shall consist of at least six members. Within the boundaries of
14 the areas designated by the department in sec. 322 of this chapter
15 each local advisory committee established under sec. 260 of this
16 chapter shall elect one of its members for that area to serve on
17 the regional board.

18 (b) If less than six local advisory committees exist in an area
19 designated by the department in sec. 322 of this chapter, the remaining
20 regional board members shall be elected by the committees from among
21 the committee members or from among persons who are not advisory
22 committee members.

23 (c) The term of office for members of a regional board is four
24 years. If a vacancy occurs, the advisory board shall fill it by
25 election of a new member for the unexpired term.

26 Sec. 16.05.325. COMPENSATION AND MEETINGS OF REGIONAL BOARD
27 MEMBERS. (a) Each member of a regional board is entitled to travel
28 expenses allowed by law for each day going to and from two regional
29 board meetings a year in a community within its area as created in

1 sec. 322 of this chapter. A maximum of six days per diem is allowed
2 for each day in actual attendance at two regional board meetings.

3 (b) A regional board shall hold at least two meetings a year
4 and as many other meetings as it considers necessary.

5 Sec. 16.05.326. ATTENDANCE OF REGIONAL BOARD MEMBERS AT MASTER
6 BOARD MEETINGS. One member of each regional board is entitled to
7 travel expenses and per diem for each day of attendance at each
8 master board meeting.

9 Sec. 16.05.327. REMOVAL. The governor may remove a regional
10 board member for inefficiency, neglect of duty, or misconduct in
11 office by delivering to him a written copy of the charges and giving
12 him an opportunity to be heard in person or through counsel at a
13 public hearing before the governor or his designee upon at least
14 10 days' notice by registered mail. The member has the right to
15 confrontation by and cross-examination of all witnesses against him.
16 Upon removal, the governor or his designee shall file a complete
17 statement of all charges made against the member and the findings in
18 the proper state office.

19 Sec. 16.05.328. PROPOSALS FOR REGULATIONS. A regional board,
20 after public hearings, may propose to the master board of fish and
21 game regulations which it considers advisable for the area it represents.
22 These regulations shall be considered with the proposed regulations
23 of the master board and adopted in accordance with the Administrative
24 Procedure Act (AS 44.62), unless in the view of a majority of the
25 master board members, compelling conservation reasons, as documented
26 by the staff of the Department of Fish and Game, make them undesirable.

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

28 Sec. 16.05.050. POWERS AND DUTIES OF BOARD [COMMISSIONER]. The
29 board [COMMISSIONER] has, but not by way of limitation, the following

1 powers and duties:

2 (1) assist the United States Fish and Wildlife Service in
3 the enforcement of federal laws and regulations pertaining to fish
4 and game;

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

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

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

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

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

23 (7) 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 (8) administrative, budgeting, and fiscal powers;

27 (9) 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 admissible
15 as evidence in the courts of the state in accordance with the Admini-
16 strative 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 created
19 a revolving "Fish and Game Fund," which shall be used exclusively
20 (1) to carry out the purposes and provisions of this chapter or other
21 duties that may be delegated by the legislature to the board
22 [COMMISSIONER] or the department; and (2) to carry out such purposes
23 and objectives within the scope of the chapter as may be directed by
24 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 CONCERNING
15 THE ISSUES IN QUESTION. IF, AFTER THE PUBLIC HEARINGS, THE BOARD AND
16 THE COMMISSIONER CONTINUE TO DISAGREE, THE ISSUE SHALL BE CERTIFIED
17 IN WRITING BY THE BOARD AND THE COMMISSIONER TO THE GOVERNOR WHO SHALL
18 MAKE A DECISION. THE DECISION OF THE GOVERNOR IS FINAL.]

19 * Sec. 9. AS 16.05.280 is amended to read:

20 Sec. 16.05.280. REMOVAL OF BOARD MEMBERS. The governor may
21 remove a master board member or a regional board member for inefficiency,
22 neglect of duty, or misconduct in office by delivering to him a
23 written copy of the charges and giving him an opportunity to be heard
24 in person or through counsel at a public hearing before the governor
25 or his designee upon at least 10 days' notice by registered mail. The
26 member has the right to confrontation by and cross-examination of all
27 witnesses against him. Upon removal, the governor or his designee
28 shall file a complete statement of all charges made against the member
29 and the findings in the proper state office.

1 * Sec. 10. AS 16.05.800 is amended to read:

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

7 * Sec. 11. AS 16.05.840 is amended to read:

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

19 * Sec. 12. AS 16.05.850 is amended to read:

20 Sec. 16.05.850. HATCHERY REQUIRED. If a fishway over a dam or
21 obstruction is considered impracticable by the board or its designee
22 [COMMISSIONER] because of cost, the owner of the dam or obstruction,
23 in order to compensate for the loss resulting from the dam or obstruction
24 shall, at his option: (1) pay a lump sum acceptable to the board or
25 its designee [COMMISSIONER] to the state fish and game fund; (2)
26 convey to the state a site of a size satisfactory to the board or
27 its designee [COMMISSIONER] at a place mutually satisfactory to both
28 parties, and erect on it a fish hatchery, rearing ponds, necessary
29 buildings and other facilities according to plans and specifications

1 furnished by the board or its designee [COMMISSIONER], and give a
2 good and sufficient bond to furnish water, lights and necessary money
3 to operate and maintain the hatchery and rearing ponds; or (3) enter
4 into an agreement with the board or its designee [COMMISSIONER],
5 secured by good and sufficient bond, to pay to the fish and game fund
6 such an initial amount of money and annual payments thereafter as the
7 board or its designee [COMMISSIONER] considers necessary to expand,
8 maintain, and operate additional facilities at existing hatcheries
9 within a reasonable distance of the dam or obstruction.

10 * Sec. 13. AS 16.05.860 is amended to read:

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

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

21 * Sec. 14. AS 16.05.870 is amended to read:

22 Sec. 16.05.870. PROTECTION OF FISH AND GAME. (a) The board or
23 its designee [COMMISSIONER] shall, in accordance with the Administrative
24 Procedure Act (AS 44.62) specify the various rivers, lakes, and streams
25 or parts of them that are important for the spawning or migration of
26 anadromous fish. [BEFORE DECEMBER 31, 1968, THE SPECIFICATION MAY
27 BE MADE BY DESIGNATING AREAS WITHIN WHICH ALL RIVERS, LAKES, AND
28 STREAMS ARE CONSIDERED IMPORTANT FOR THE SPAWNING OR MIGRATION OF
29 ANADROMOUS FISH; PROVIDED, THAT THE AREAS LIE WITHIN 50 MILES OF THE

1 COASTLINE EXTENDING FROM DIXON ENTRANCE THROUGH FALSE PASS TO CAPE
2 MENSHIKOF, INCLUDING ALL ISLANDS EAST OF FALSE PASS. A PERSON GIVING
3 NOTICE UNDER (B) OF THIS SECTION BEFORE DECEMBER 31, 1968, MAY, IF
4 THE ACTIVITY IS TO TAKE PLACE WITHIN SUCH A DESIGNATED AREA, REQUEST
5 THE COMMISSIONER TO SPECIFY INDIVIDUALLY BY NAME OR NUMBER, THE
6 PARTICULAR RIVERS, LAKES, AND STREAMS OR PARTS OF THEM WITHIN THE
7 AREA OF OPERATIONS DESCRIBED IN THE NOTICE WHICH ARE IMPORTANT FOR
8 THE SPAWNING AND MIGRATION OF ANADROMOUS FISH. UPON RECEIPT OF THE
9 REQUEST THE COMMISSIONER SHALL PROMPTLY MAKE THE DESIGNATION.]

10 (b) If a person or governmental agency desires to construct a
11 hydraulic project, or use, divert, obstruct, pollute, or change the
12 natural flow or bed of a specified river, lake, or stream, or to use
13 wheeled, tracked, or excavating equipment or log-dragging equipment
14 in the bed of a specified river, lake, or stream, the person or
15 governmental agency shall notify the board or its designee [COMMIS-
16 SIONER] of this intention before the beginning of the construction
17 or use.

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

1 * Sec. 15. AS 16.05.880 is amended to read:

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

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

17 * Sec. 16. AS 16.05.895 is amended to read:

18 Sec. 16.05.895. PENALTY FOR CAUSING MATERIAL DAMAGE. If a person
19 or governmental agency fails to notify the board or its designee
20 [COMMISSIONER] of any construction or use that causes material damage
21 to the spawning beds or prevents or interferes with the migration of
22 anadromous fish, or by neglect or noncompliance with plans and speci-
23 fications required and approved by the board or its designee [COMMIS-
24 SIONER] causes material damage to the spawning beds or prevents or
25 interferes with the migration of anadromous fish, the person or govern-
26 mental agency shall be guilty of a misdemeanor.

27 * Sec. 17. AS 16.05.940(1) is amended to read:

28 (1) "board" means the Master Board of Fish and Game unless
29 otherwise specified;

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

2 Sec. 39.05.060. APPOINTMENT, QUALIFICATIONS, AND TERMS OF OFFICE
3 OF MEMBERS OF DEPARTMENTAL BOARDS, COUNCILS, OR COMMISSIONS. Each
4 member of the Local Boundary Commission, Alcoholic Beverage Control
5 Board, Employment Security Advisory Council, Alaska State Housing
6 Authority, [BOARD OF FISH AND GAME,] Board of Tourism, Commission for
7 Northern Operations of Rail Transportation and Highways, and the Board
8 of Directors for State-operated Schools shall be a citizen of the United
9 States. The governor shall appoint each member on the basis of interest
10 in public affairs, good judgment, knowledge and ability in the field of
11 action of the department for which appointed, and with a view to
12 providing diversity of interest and points of view in the membership.
13 Appointments are subject to confirmation by a majority of the members of
14 the legislature in joint session. Initial appointments of members are
15 as follows: (1) in the case of three-member boards, for one, two and
16 three years; (2) in the case of five-member boards, for one, two, three,
17 four and five years; (3) in the case of six-member boards, two members
18 serve for one year, two for two years, and two for three years; (4) in
19 the case of eight-member boards, two members serve for one year, two for
20 two years, two for three years, and two for four years; (5) and in the
21 case of 10-member boards, two members serve for one year, two for two
22 years, two for three years, two for four years, and two for five years.
23 Initial terms date from February 1 before appointment. A vacancy occur-
24 ring during a term of office is filled in the same manner as the original
25 appointment is made and for the balance of the unexpired term. Each
26 member holds office at the pleasure of the governor notwithstanding
27 the member's term.

28 * Sec. 19. AS 44.39.010 is repealed and re-enacted to read:

29 Sec. 44.39.010. BOARD AND COMMISSIONER OF FISH AND GAME. There

1 is at the head of the Department of Fish and Game a Master Board of
2 Fish and Game. The commissioner of fish and game is the principal
3 executive officer of the department.

4 * Sec. 20. Upon initial appointment, three members of the board shall
5 be appointed for two years, four for four years, and four for five years.

6 * Sec. 21. AS 16.05.010 - 16.05.040, 16.05.090, 16.05.220 and 16.05.230,
7 16.05.290 - 16.05.320, and 44.39.030 - 44.39.050 are repealed.