

HB

62

Introduced: 1/17/77
Referred: Resources and
Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 62

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the boards of fisheries and
7 game."

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

9 * Section 1. AS 16.05.221 is amended by adding a new subsection to
10 read:

11 (c) Subject to AS 39.05.060(c)(6), regarding initial appoint-
12 ments, terms of members of the boards of fisheries and game are four
13 years.

14 * Sec. 2. AS 16.05.260 is repealed and re-enacted to read:

15 Sec. 16.05.260. ADVISORY COMMITTEES. (a) The boards, in joint
16 session, may adopt regulations they consider advisable in accordance
17 with the Administrative Procedure Act (AS 44.62) establishing, at
18 places in the state ^{delegate} designated by the boards, advisory committees to
19 be composed of persons well informed as to the fish and game resources
20 of the locality. The boards shall set the number and terms of each of
21 the members of the advisory committees, designate one member of each
22 committee as chairman, and give him authority to hold public hearings
23 on fish and game matters.

24 (b) Recommendations from the advisory committees shall be for-
25 warded to the appropriate board for its consideration, but if the
26 Board of Fisheries or the Board of Game chooses not to follow the
27 recommendations of the local advisory committee, it shall insure that
28 the ~~formal record~~ ^{Minutes} of the meeting reflect the reasons for that decision
29 and shall provide ^{the} minutes of the meeting to the advisory committee.

*No
changes*

*Use
Minutes
to
Records*

phone poll Board for Advisory committee request

1 (c) Advisory committees may make emergency closures during
2 established seasons if advance approval is obtained from the appro-
3 priate board. Exercise of this authority is contingent upon the
4 adoption of regulations by joint action of the Board of Fisheries and
5 the Board of Game establishing areas of advisory committee jurisdiction,
6 procedures governing emergency closures by a committee, and other
7 necessary limitations.

8 * Sec. 3. AS 16.05.315 is amended to read:

9 Sec. 16.05.315. JOINT BOARD MEETINGS. The boards of fisheries
10 and game shall [MAY] hold a joint meeting upon the call of the com-
11 missioner or a board and shall [TO] resolve any conflicts in regula-
12 tions of the boards or any other matters [AND TO CONSIDER MATTERS], as
13 determined by the commissioner or a board, which require the action
14 [CONSIDERATION] of both boards.

15 * Sec. 4. AS 16.05.320 is amended to read:

16 Sec. 16.05.320. QUORUM. (a) A majority of the members of a
17 board constitutes a quorum for the transaction of any business, for
18 the performance of any duty, and for the exercise of any power.
19 However, a majority of the full board membership is required to carry
20 all motions, regulations, [AND] resolutions, and delegations of
21 authority.

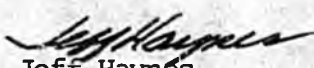
22 (b) A majority of the members of each of the boards of fisheries
23 and game constitutes a quorum for the transaction of any business, for
24 the performance of any duty, and for the exercise of any power in a
25 joint board meeting. A majority of the full board membership of each
26 of the boards is required to carry all joint motions, regulations,
27 [AND] resolutions and delegations of authority of the boards.

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MEMORANDUM

TO: Rep. Keith Specking
Alaska State Legislature

DATE : 2/23

FROM: 
Jeff Haynes
Department of Law

SUBJECT: Proposed CSHB 62

Thank you for the opportunity to review your proposed CSHB 62 relating to the Boards of Fisheries and Game and to fish and game advisory committees. I would offer the following comments.

1. The proposed bill would require that at least one committee be established in each game management unit (GMU). First, it may be difficult to obtain a sufficient number of interested persons in some units to form an advisory committee. Second, orienting fish and game advisory committees and their establishment to GMUs may appear to some to deemphasize their responsibility to advise on fisheries matters.
2. The system you propose for creation of advisory committees may have some drawbacks if the intent is to make the committees more representative of the overall public interest. With new members elected at an open meeting of residents of the area, membership would tend to reflect only the largest interest groups capable of insuring a large turnout at election meetings. In remote areas, the makeup of the committee might depend on the vagaries of sparse attendance or a collection of voters which did not represent the range of interest groups in the area. Subsection (b) would provide some opportunity for representation of groups which were excluded from the one required committee if the election of members was by some other means; however, by a general vote of attending area residents, the same large interest groups which could control membership on the required committee could stack the petitioned committee with their representatives as well.
3. Under the present system, the boards select the first five members of each committee; those five may then elect up to ten more, all of which must be confirmed by the boards. There are advantages to board approval of members; for example, the boards will not confirm or select members who have committed a serious fish and game violation in the recent past. It is also within the power of the boards to provide for advisory committee membership which represents a broad range of interests; however, there is not much in the way of a statutory directive to this effect at the present time. Consequently, you may wish to consider this approach rather than to attempt to obtain more democratic representation through a process.

Representative Keith Specking

February 23, 1977

-2-

4. In subsection (a), all regulations (including procedural) should be under the APA process.

5. Subsection (c) does not pick up the amendment approved in the Judiciary Committee relating to the submission of board meeting minutes to advisory committees.

3690

§ 16.05.300

FISH AND GAME

§ 16.05.315

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "a board" for "the board" twice, inserted "\$100," and deleted "allowed by law" following "per diem."

① limit testimony
② Policy makers
not reqs

Sec. 16.05.300. Board meetings. (a) Each board shall hold at least one meeting a year and as many other meetings as it considers necessary. Each board shall select the time and place in the state for the transaction of business. Each board shall maintain its office at the principal office of the department. *full*

(b) In addition, the Board of Fisheries shall hold at least one meeting ~~or hearing~~ a year in each of the following general areas *To consider Regulations that all demand changes to the Board business only effect that area*

- (1) Upper Yukon — Kuskokwim — Arctic
- (2) Western Alaska (including Kodiak)
- (3) Southcentral *Prince William Sound*
- (4) ~~Prince William Sound (including Yakutat)~~
- (5) Southeast. (§ 9 art I ch 94 SLA 1959; am § 1 ch 82 SLA 1968; am § 7 ch 206 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, designated the provisions of this section as subsection (a), substituted "Each board" for "The board" at the beginning of the first, second and third sentences of that subsection, and added subsection (b).

Sec. 16.05.305. Clerical assistance for boards. The Board of Fisheries and the Board of Game are authorized to hire and set the compensation for one clerical assistant for each board. (§ 8 ch 206 SLA 1975)

Effective date. — Section 42, ch. 206, SLA 1975, provides: "This Act takes effect July 1, 1975."

Sec. 16.05.310. Special board meetings. A board may meet at any time upon the call of the commissioner or upon the request of two board members. (§ 6 art I ch 94 SLA 1959; am § 9 ch 206 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "A board" for "The board" at the beginning of the section.

Sec. 16.05.315. Joint board meetings. The boards of fisheries and game may hold a joint meeting upon the call of the commissioner or a board to resolve any conflicts in regulations of the boards and to consider matters, as determined by the commissioner or a board, which require the consideration of both boards. (§ 10 ch 206 SLA 1975)

Effective date. — Section 42, ch. 206, SLA 1975, provides: "This Act takes effect July 1, 1975."

Original sponsor: Rules Committee by request
of the Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 62

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the boards of fisheries and game."

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

8 * Section 1. It is the intent of sec. 3 of this Act to create a system of
9 statewide advisory committees that reflects, to the maximum extent possible,
10 the views of residents knowledgeable about the resources of a particular
11 locality. By receiving meaningful public contributions from those often
12 closest to the problems of an area, the boards of fisheries and game will be
13 better equipped to manage all fish and wildlife resources which are of in-
14 estimable value to the state and its citizens.

15 * Sec. 2. AS 16.05.221 is amended by adding a new subsection to read:

16 (c) Subject to AS 39.05.060(c)(6), regarding initial appointments,
17 terms of members of the boards of fisheries and game are four years.

18 * Sec. 3. AS 16.05.260 is repealed and re-enacted to read:

19 Sec. 16.05.260. ADVISORY COMMITTEES. (a) The boards, in joint
20 session, shall adopt regulations they consider advisable in accordance
21 with the Administrative Procedure Act (AS 44.62) establishing at least
22 one advisory committee for each game management unit in the state and
23 other advisory committees considered appropriate, at specific locations
24 designated by the boards. Advisory committees shall be composed of
25 persons well informed as to the fish and game resources of the locality.
26 After the effective date of this Act, new advisory committee members
27 shall be elected from interested persons present at a meeting convened
28 for that purpose, by a majority vote of non-advisory committee members
29 present at the meeting who are residents of the game management unit in

1 which the committee is established. Terms of members shall be estab-
2 lished in the same manner, by majority vote. The boards, jointly, shall
3 adopt necessary procedural regulations to implement this subsection.

4 (b) Additional advisory committees may be established for a game
5 management unit under (c) of this section upon the signed petition to a
6 board of 25 or more persons residing in a game management unit. The
7 petition shall specify the location for committee establishment. The
8 terms and election of members of advisory committees formed by petition
9 shall be established by interested residents of the game management unit
10 in which the committee is to be established, at an initial formation
11 meeting, according to procedures established by board regulation.
12 Advisory committees are authorized to hold public hearings on fish and
13 game matters.

14 (c) Recommendations from the advisory committees shall be for-
15 warded to the appropriate board for its consideration, but if the Board
16 of Fisheries or the Board of Game chooses not to follow the recommen-
17 dations of the local advisory committee, it shall insure that the formal
18 record of the meeting reflects the reasons for that decision and shall
19 provide minutes of the meeting to the advisory committee.

20 (d) Advisory committees may make emergency closures during estab-
21 lished seasons if advance approval is obtained from the appropriate
22 board. Exercise of this authority is contingent upon the adoption of
23 regulations by joint action of the Board of Fisheries and the Board of
24 Game establishing areas of advisory committee jurisdiction, procedu-
25 governing emergency closures by a committee, and other necessary limi-
26 tations.

27 * Sec. 4. AS 16.05.315 is amended to read:

28 Sec. 16.05.315. JOINT BOARD MEETINGS. The boards of fisheries and
29 game shall [MAY] hold a joint meeting upon the call of the commissioner

1 or a board and shall [TO] resolve any conflicts in regulations of the
2 boards or any other matters [AND TO CONSIDER MATTERS], as determined by
3 the commissioner or a board, which require the action [CONSIDERATION] of
4 both boards.

5 * Sec. 5. AS 16.05.320 is amended to read:

6 Sec. 16.05.320. QUORUM. (a) A majority of the members of a
7 board constitutes a quorum for the transaction of any business, for the
8 performance of any duty, and for the exercise of any power. However, a
9 majority of the full board membership is required to carry all motions,
10 regulations, [AND] resolutions, and delegations of authority.

11 (b) A majority of the members of each of the boards of fisheries
12 and game constitutes a quorum for the transaction of any business, for
13 the performance of any duty, and for the exercise of any power in a
14 joint board meeting. A majority of the full board membership of each
15 of the boards is required to carry all joint motions, regulations, [AND]
16 resolutions and delegations of authority of the boards.

David Namlook - Toqiaks
Game Unit 17

Walrus - Marine Mammal Act

Walrus Is Any studies on Walrus Ecosystem

No Open season in 17

Other Regions have open seasons

1974 - hunting party to Walrus Is

Nachogak Advisory Board

March 29, - Game Board Meeting

Phil Smith - Rural Cap

Support Speckin's effort generally

1. Abolish Advisory Bd
2. Establish Regional Bd - Powers + Duties
A. hire + fire staff
3. Escape Clause - to over-rule Regional Bd
4. New Boundaries + REAA + Boroughs
5. Advisory Committees that might be joint between 2 Reg Boards
6. Funding of Boards
7. Make-up of Boards
Elect Members by Public

Frank's Woods - New Stuyahok

- ① No funding for local Advisory Committee
To meet in rural areas
- ② Village representatives
- ③ Making regulations based on
People Moving in as opposed to People
Living here

Reintroduced

HB 67...

January 14, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill to make corrections to AS 16 which are necessary because of defects or oversights in ch. 206 SLA 1975, which split the Board of Fish and Game into separate Boards of Fisheries and Game. Failure to adopt these changes will very seriously jeopardize the future viability of the split-board arrangement, with the likelihood of concurrent adverse consequences on conservation and management of fish and game resources of Alaska.

Section 1. Section 36, ch. 206 SLA 1975 (the split-board Act), which added AS 39.05.060(c)(6), provided for initial staggered terms for members of the Boards of Fisheries and Game. However, sec. 40 of that Act repealed AS 16.05.230, which set the term of members of the Board of Fish and Game at four years. Unless a correction is made, there will be no statutory specification of the length of terms for members of the Boards of Fisheries and Game after the initial staggered-term period has concluded. The amendment contained in sec. 1 of this bill would reinstitute the previous system of four-year terms for board members.

Section 2. This section of the bill would make alterations to AS 16.05.260, as amended by the split-board Act, which pertains to advisory committees.

Subsection (a) would clarify an ambiguity in sec. 260 as to whether there will be independent advisory committees dealing with fish or game (but not both) and reporting only to one of the boards, or whether the previous system of combined fish and game advisory committees is to be retained. This amendment would insure that the prior system is continued.

Subsection (b) would alter the manner in which advisory committees interact with the boards. Before enactment of the split-board law, advisory committees were only required to make their recommendations to the Board of Fish and Game, and the board itself was under no duty to respond to those recommendations. Under the split-board law, however, if a board chooses not to follow the recommendation of the local advisory committee, the appropriate board must inform the appropriate advisory committee of this action and state the reasons for not following the recommendations. Such a requirement must be realistic and practical in terms of the customary operating procedures and capabilities of the boards. At the present time, there are over 50 local advisory committees, any one of which may make dozens of recommendations at any given board meeting. In areas where advisory committees are concentrated, more than one advisory committee may venture an opinion on a particular proposal. Declaring that a board must "inform" each committee of the nature of its actions creates a monumental clerical task which the boards and the department are ill equipped to handle.

An equally troublesome aspect of the 1975 law is the requirement that the board "state the reasons for not following the recommendations." On a seven-member board, individual members may have differing reasons for rejecting a position taken by an advisory committee.

Therefore, the alteration proposed in this bill would simply require that the formal record of the board meeting reflect the reasons for rejecting an advisory committee recommendation.

Subsection (c) addresses the question of advisory committee closures of established seasons. This power existed under the pre-1975 AS 16.05.260. However, the split-board Act removed the commissioner's ability to override a closure order issued by an advisory committee. By eliminating this safeguard, the current provision is probably an unconstitutional delegation of the regulatory powers of the legislature to what amounts to a private party. Although there are many constitutional questions surrounding delegations of power and the law is not often clear on the subject, the courts of many states have frowned upon delegations to a nongovernmental body of the power to impose regulations carrying criminal penalties for violations

*have
already done
formalizer*

where there is no ability by a governmental agency to review and, if necessary, reject the action of the private entity. The proposed amendment would more-or-less return to the approach contained in the original sec. 260 except that the appropriate board (rather than the commissioner) would be empowered to disapprove an emergency closure. An additional change would insure that both boards, in joint session, would make the rules governing the closures, so as to be consistent with the clarification presented in subsection (a) of this section in the bill that advisory committees will continue to be combined fish and game committees.

Section 3. It is anticipated that there will be a number of situations in which the boards should hold joint meetings, including conflicts between regulations, differences in policy, differences in direction to the department, and situations where AS 16 requires that action be taken by both boards. Unfortunately, AS 16.05.315, as enacted by the split-board Act, places the boards under no statutory obligation to resolve their differences. Moreover, when the boards are not in session, it places the department in the position of having to absorb the criticism for non-action when the department has no legal authority to take action. If the boards are to be vested with the rulemaking authority over fish and game resources, then the law should clearly place upon them the burden to resolve matters which require their joint consideration. Section 3 of the attached bill would help solve these problems by requiring joint meetings and resolution of conflicts. Since the number of occasions where joint meetings will be necessary is expected to increase rather than decrease, it is important that this change be effected immediately.

Joint Meetings

Section 4. A further problem in the split-board Act concerns quorums necessary for action at joint board meetings. AS 16.05.320, as amended in 1975, refers only to a "majority of the membership of the boards" as being required for a joint board decision. It provides no clue as to whether this means any eight board members (regardless of which board they belong to) or whether it demands concurrence from the majority of the membership of each board (four from one and four from the other). Since joint board meetings are for the purpose of providing for joint board action on matters of concern to both boards, it would appear necessary and proper to require that a majority of both boards concur in any decision reached, and the proposed

*Sanctions
existing
Procedure*

amendment so provides. In addition, the amendment includes specific reference in the quorum section to delegations of authority (regarding the procedure authorized in AS 16.05.270) in order to make certain that a majority of the full membership of a board is required to make a delegation.

Sincerely,

Jay S. Hammond
Governor

In addition, the Board of Fisheries shall hold at least one meeting annually in each of the following general areas:

- 1) Upper Yukon - Kuskokwim - Arctic
- 2) Western Alaska (including Kodiak)
- 3) Southcentral and Prince William Sound
- 4) Southeast.

At least a majority of the full membership of the board shall be present at each meeting. Consideration of regulations pertaining specifically to any of the above areas shall be undertaken at the meeting held in that area.

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "a board" for "the board" twice, inserted "\$100," and deleted "allowed by law" following "per diem."

Sec. 16.05.300. Board meetings. (a) Each board shall hold at least one meeting a year and as many other meetings as it considers necessary. Each board shall select the time and place in the state for the transaction of business. Each board shall maintain its office at the principal office of the department.

(b) In addition, the Board of Fisheries shall hold at least one meeting or hearing a year in each of the following general areas:

- (1) Upper Yukon — Kuskokwim — Arctic
- (2) Western Alaska (including Kodiak)
- (3) Southcentral
- (4) Prince William Sound (including Yakutat)
- (5) Southeast. (§ 9 art I ch 94 SLA 1959; am § 1 ch 82 SLA 1968; am § 7 ch 206 SLA 1975)

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Sec. 16.05.305. Clerical assistance for boards. The Board of Fisheries and the Board of Game are authorized to hire and set the compensation for one clerical assistant for each board. (§ 8 ch 206 SLA 1975)

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House Judiciary
February 23, 1977

The meeting was called to order at 7 p.m. by Chairman, Gardiner. Members present were Gardiner, Dankworth, Miles, Specking, Rudd and Brown. Mr. Elaison was absent.

HB 67 Uniform Land Sale Act

HB
67

Mr. Dankworth mentioned that he had heard from the Anchorage realtors that they don't necessarily go along with the offered amendments #1 and #2. In protecting them, these amendments don't really change the bill. There was some discussion about this, after which the two amendments were adopted by the committee. (Amendments proposed by the Dept. of Commerce and Econ.Dev.)

Mr. Specking moved that the bill be moved out of committee. There was one objection, but the motion carried and the bill was moved out of committee

HB 187 Liens for towing and storage of motor vehicles

HB
187

Larry Veneble, from the Alaska Carriers Association, was here to testify in favor of the bill. He suggested that the committee amend the bill to illiminate the fixed charge of \$1.50 per day. He also suggested that section 2 be deleted.

Following a brief discussion, Mrs. Rudd moved that sections 2 and 3 be deleted. The motion carried.

Mr. Brown moved that the bill be moved out of committee. The bill will be moved out after the committee substitute has been drafted.

HB 112 Appropriation for capital improvements within
the court system

HB
112

Mr. Brown suggested that the amount on line 14 be reduced to \$60,000. He felt that the Finance Committee would then reduce this figure even further. There was a motion made to this effect.

Mrs. Rudd requested that the bill include a committee report to explain that it is the committee's intent that the site selection committee's funds come out of the \$60,000.

Mr. Brown moved that the bill be moved out of committee. The motion did not carry. Mr. Dankworth was especially highly opposed to the bill. A somewhat heated discussion followed. The bill was tabled until further notice.

House Judiciary
February 23, 1977 (con't)

HB 62 Boards of fisheries and game

HB
62

Phil Smith, Executive Director of the Rural Alaska Community Action Program (Rural CAP), was here to testify. He endorsed the CS for HB 62. He suggested that perhaps the powers of the advisory boards should be separate:

1. Boards should continue with responsibility; advisory board structure abolished and have regional boards.
2. Make up of board should be that the members are elected and in some areas they should be an at large election. Suggested a publically conducted election- present system doesn't work.

Frank Woods, of the Subsistence Resource Council, was here to testify. He indicated that the present advisory board system has not worked. He would like to see someone from a village in each district on the board to rightfully represent and understand the problems.

David Nanalook, from the village of Togiak in the Bristol Bay area was here also representing the Subsistence Resource Council. He backed up Wood's testimony that rural Alaska is being overlooked.

George Allen, from Rural CAP spoke indicated that it should be considered what authority to give the advisory committees, keeping the rural individuals in mind.

This bill will be considered further at a later date.

The meeting was adjourned at 9:00 p.m.