

HB65

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 1, 1991

FURTHER REFERRALS:

Date of Committee Action: 4.10.91

The FINANCE Committee considered

HB 65

HOUSE BILL NO. 65

COMPENSATION: MEMBERS BOARDS OF FISH/GAME

"An Act relating to members of the Board of Fisheries and the Board of Game."

RECOMMENDATIONS:

be replaced with CS HB 65 (Fin) the same title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact Fish & Game

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eileen P. Muehler</i>	✓	<i>Kay Brown</i>		✓	
<i>Mike Sparano</i>		<i>Kamara H Barnes</i>	X		
<i>Mike Brien</i>		<i>Rob E. [unclear]</i>	✓		
<i>[unclear]</i>	✓	<i>Ronald J. [unclear]</i>		X	
<i>[unclear]</i>	✓	<i>Bea [unclear]</i>	X		
<i>[unclear]</i>	X				

Eileen P. Muehler
CHAIRMAN'S SIGNATURE

CS FOR HOUSE BILL NO. 65 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES DAVIDSON, Koponen

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to membership on and compensation of members of the Board of
 2 Fisheries and Board of Game; relating to disclosures under the Alaska Executive Branch
 3 Ethics Act by members of the Board of Fisheries and Board of Game; and repealing
 4 certain references to the Board of Fisheries and Board of Game."

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

6 * Section 1. AS 16.05.221 is amended to read:

7 Sec. 16.05.221. BOARDS OF FISHERIES AND GAME. (a) For purposes of the
 8 conservation and development of the fishery resources of the state, there is created the Board of
 9 Fisheries composed of seven members appointed by the governor, subject to confirmation by a
 10 majority of the members of the legislature in joint session. The governor shall appoint each
 11 member on the basis of interest in public affairs, good judgment, knowledge, and ability in
 12 the field of action of the board, and with a view to providing diversity of interest and points
 13 of view in the membership. The appointed members shall be residents of the state and shall
 14 be appointed without regard to political affiliation or geographical location of residence. The

1 commissioner is not a member of the Board of Fisheries, but shall be ex officio secretary.

2 (b) For purposes of the conservation and development of the game resources of the state,
3 there is created a Board of Game composed of seven members appointed by the governor, subject
4 to confirmation by a majority of the members of the legislature in joint session. The governor
5 shall appoint each member on the basis of interest in public affairs, good judgment,
6 knowledge, and ability in the field of action of the board, and with a view to providing
7 diversity of interest and points of view in the membership. The appointed members shall be
8 residents of the state [,] and shall be appointed without regard to political affiliation or
9 geographical location of residence. The commissioner is not a member of the Board of Game,
10 but shall be ex officio secretary.

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

12 (c) Members of the Board of Fisheries or Board of Game serve staggered terms of three
13 years and until a successor is appointed. An appointment to fill a vacancy in the membership
14 of the Board of Fisheries or Board of Game shall be made in the same manner as the original
15 appointment and for the balance of the unexpired term.

16 * Sec. 3. AS 16.05.280 is amended to read:

17 Sec. 16.05.280. REMOVAL OF BOARD MEMBERS. The governor may only remove
18 a board member for inefficiency, neglect of duty, [OR] misconduct in office, or because the
19 member has been convicted of a misdemeanor for violating a statute or regulation related
20 to fish or game or of a felony, and shall do so by delivering to the member a written copy of
21 the charges and giving the member an opportunity to be heard in person or through counsel at
22 a public hearing before the governor or a designee upon at least 10 days' notice by registered
23 mail. The member may confront and cross-examine adverse witnesses. Upon removal, the
24 governor or a designee shall file in the proper state office the findings and a complete statement
25 of all charges made against the member.

26 * Sec. 4. AS 16.05.290 is amended to read:

27 Sec. 16.05.290. COMPENSATION OF BOARD MEMBERS. Each member of a board
28 is entitled to compensation at a rate equal to Step A, Range 22, of the salary schedule in
29 AS 39.27.011(a) for Juneau, Alaska, [TRAVEL EXPENSES AND \$150 PER DIEM] for each
30 day going to and from and for each day in actual attendance at board meetings. For other
31 meetings or conferences authorized by a board a member shall receive compensation at a rate

1 equal to one-half of Step A, Range 22, of the salary schedule in AS 39.27.011(a) for Juneau.
2 Alaska, for each [\$100 PER] day going to and from and for each day in actual attendance.
3 Each member of a board is also entitled to travel expenses and per diem authorized for
4 boards and commissions under AS 39.20.180.

5 * Sec. 5. AS 39.52.120 is amended by adding a new subsection to read:

6 (c) In addition to other provisions of this section, a public officer who is a member of
7 the Board of Fisheries or the Board of Game may not act on a matter before the board if the
8 public officer has not disclosed in the manner set out in AS 39.52.220 all personal or financial
9 interests in a business or organization relating to fish or game resources.

10 * Sec. 6. APPLICABILITY. A person who is a member of the Board of Fisheries or Board of Game
11 on the effective date of this Act shall serve the term to which the person was appointed, subject to
12 AS 16.05.280, as amended by sec. 3 of this Act. A person who is appointed to the Board of Fisheries
13 or Board of Game after the effective date of this Act shall be appointed for the term provided by
14 AS 16.05.221(c).

15 * Sec. 7. AS 39.05.060(a)(5) and 39.05.060(a)(10) are repealed.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSHB 65 (FIN)

Revision Date: 2/7/91

Department Affected: Fish and Game

Title: "An Act Relating to Members of the Board of Fisheries and Game"

BRU: Boards of Fisheries and Game

Sponsor: Rep. Davidson

Component: Board Services

Requestor: Rep. Davidson

COMPONENT SERIAL NO.

1	2	0	4
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL	121.2	126.0	126.0	126.0	126.0	126.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	121.2	126.0	126.0	126.0	126.0	126.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	121.2	126.0	126.0	126.0	126.0	126.0
FEDERAL FUNDS						
OTHER						
TOTAL	121.2	126.0	126.0	126.0	126.0	126.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Attached

Prepared By: Beverly Reaume *Dung Reaume* Phone: 465-4120

Division: Administration Date: 2/7/91

Approved by Commissioner: *Wanda Kirby*

Agency: Fish and Game Date: 2/7/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

2/6/91

HB65 BOARDS OF FISHERIES AND GAME

BOARD OF FISHERIES (7 MEMBERS)

CURRENT

65 DAYS AT \$150 PER DAY	\$68,250	
3 DAYS AT \$100 PER DAY	\$2,100	
TOTAL		\$70,350

PROPOSED

65 DAYS AT RANGE 22, STEP A - \$203.93	\$92,788	
3 DAYS AT 1/2 RANGE 22, STEP A - \$101.97	\$2,141	
68 DAYS AT \$95 PER DAY PER DIEM	\$45,220	
TOTAL		\$140,150

INCREASED COSTS FOR BOARD OF FISHERIES		\$69,800

BOARD OF GAME

CURRENT

45 DAYS AT \$150 PER DAY	\$47,250	
3 DAYS AT \$100 PER DAY	\$2,100	
TOTAL		\$49,350

PROPOSED

48 DAYS AT RANGE 22, STEP A - \$203.93	\$68,520	
3 DAYS AT 1/2 RANGE 22, STEP A - \$101.97	\$306	
48 DAYS AT \$95 PER DAY PER DIEM	\$31,920	
TOTAL		\$100,746

INCREASED COSTS FOR BOARD OF GAME		\$51,396

GRAND TOTAL		\$121,196

House of Representatives

While in Session:
Box V
Juneau, AK 99811
(907)465-4942

P.O. Box 47001
Pedro Bay, Alaska 99647
(907)850-2208



Rep. George Jacko, Jr.

Member:
Finance Committee

Finance
Subcommittee Chair:
Courts
Department of Public Safety

Finance
Subcommittee Member:
Department of Fish and Game

MEMORANDUM

TO: Representative Mike Nayarre, Co-Chair
Representative Eileen MacLean, Co-Chair
House Finance Committee

FROM: Representative George Jacko, Jr., Chair
Finance Subcommittee for House Bill 65

DATE: March 21, 1991

SUBJECT: House Bill 65 Recommendation

The Subcommittee for House Bill 65 has carefully considered House Bill 65 and makes the following recommendations:

Include:

Sec. 1, Line 10, Rep. Barnes amendment:

"The Governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the board, and with a view to providing diversity of interest and points of view in the membership."

Sec. 3, Line 20, at the request of the Drafter:

"and shall do so"

Delete:

Sec. 5 (c):

"whether significant or not"

All of the above amendments are included in the enclosed draft and have received approval of the sponsor. This is a good piece of legislation and I urge your consideration of calendaring House Bill 65 at your earliest convenience.

CS FOR HOUSE BILL NO. 65 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES DAVIDSON, Koponen

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to membership on and compensation of members of the Board of
2 Fisheries and Board of Game; relating to disclosures under the Alaska Executive Branch
3 Ethics Act by members of the Board of Fisheries and Board of Game; and repealing
4 certain references to the Board of Fisheries and Board of Game."

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

6 * Section 1. AS 16.05.221 is amended to read:

7 Sec. 16.05.221. BOARDS OF FISHERIES AND GAME. (a) For purposes of the
8 conservation and development of the fishery resources of the state, there is created the Board of
9 Fisheries composed of seven members appointed by the governor, subject to confirmation by a
10 majority of the members of the legislature in joint session. The governor shall appoint each
11 member on the basis of interest in public affairs, good judgment, knowledge, and ability in
12 the field of action of the board, and with a view to providing diversity of interest and points
13 of view in the membership. The appointed members shall be residents of the state and shall
14 be appointed without regard to political affiliation or geographical location of residence. The

1 commissioner is not a member of the Board of Fisheries, but shall be ex officio secretary.

2 (b) For purposes of the conservation and development of the game resources of the state,
3 there is created a Board of Game composed of seven members appointed by the governor, subject
4 to confirmation by a majority of the members of the legislature in joint session. The governor
5 shall appoint each member on the basis of interest in public affairs, good judgment,
6 knowledge, and ability in the field of action of the board, and with a view to providing
7 diversity of interest and points of view in the membership. The appointed members shall be
8 residents of the state [,] and shall be appointed without regard to political affiliation or
9 geographical location of residence. The commissioner is not a member of the Board of Game,
10 but shall be ex officio secretary.

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

12 (c) Members of the Board of Fisheries or Board of Game serve staggered terms of three
13 years and until a successor is appointed. An appointment to fill a vacancy in the membership
14 of the Board of Fisheries or Board of Game shall be made in the same manner as the original
15 appointment and for the balance of the unexpired term.

16 * Sec. 3. AS 16.05.280 is amended to read:

17 Sec. 16.05.280. REMOVAL OF BOARD MEMBERS. The governor may only remove
18 a board member for inefficiency, neglect of duty, [OR] misconduct in office, or because the
19 member has been convicted of a misdemeanor for violating a statute or regulation related
20 to fish or game or of a felony, and shall do so by delivering to the member a written copy of
21 the charges and giving the member an opportunity to be heard in person or through counsel at
22 a public hearing before the governor or a designee upon at least 10 days' notice by registered
23 mail. The member may confront and cross-examine adverse witnesses. Upon removal, the
24 governor or a designee shall file in the proper state office the findings and a complete statement
25 of all charges made against the member.

26 * Sec. 4. AS 16.05.290 is amended to read:

27 Sec. 16.05.290. COMPENSATION OF BOARD MEMBERS. Each member of a board
28 is entitled to compensation at a rate equal to Step A, Range 22, of the salary schedule in
29 AS 39.27.011(a) for Juneau, Alaska, [TRAVEL EXPENSES AND \$150 PER DIEM] for each
30 day going to and from and for each day in actual attendance at board meetings. For other
31 meetings or conferences authorized by a board a member shall receive compensation at a rate

1 equal to one-half of Step A, Range 22, of the salary schedule in AS 39.27.011(a) for Juneau.
2 Alaska, for each [\$100 PER] day going to and from and for each day in actual attendance.
3 Each member of a board is also entitled to travel expenses and per diem authorized for
4 boards and commissions under AS 39.20.180.

5 * Sec. 5. AS 39.52.120 is amended by adding a new subsection to read:

6 (c) In addition to other provisions of this section, a public officer who is a member of
7 the Board of Fisheries or the Board of Game may not act on a matter before the board if the
8 public officer has not disclosed in the manner set out in AS 39.52.220 all personal or financial
9 interests in a business or organization relating to fish or game resources.

10 * Sec. 6. APPLICABILITY. A person who is a member of the Board of Fisheries or Board of Game
11 on the effective date of this Act shall serve the term to which the person was appointed, subject to
12 AS 16.05.280, as amended by sec. 3 of this Act. A person who is appointed to the Board of Fisheries
13 or Board of Game after the effective date of this Act shall be appointed for the term provided by
14 AS 16.05.221(c).

15 * Sec. 7. AS 39.05.060(a)(5) and 39.05.060(a)(10) are repealed.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

January 21, 1991

SUBJECT: Removal of members of the Board of Fisheries and the Board of Game (Work Order No. 7LS-0475)

TO: Representative Cliff Davidson

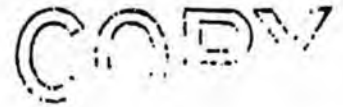
FROM: George Utermohle *GU*
Legislative Counsel

Enclosed is the bill requested by Jay Nelson, of your staff, relating to the Board of Fisheries and Board of Game. The bill is identical to CSHB 476 (Resources) Sixteenth Legislature.

Section 2 of the bill amends AS 16.05.280 to provide that a member of either of the boards may be removed for cause on the ground that the board member has been convicted of violating a law related to fish or game. This provision gives the governor an additional procedure for removing a board member who has been convicted of a fish and game violation. The governor already has authority to remove any board member at the governor's pleasure under AS 39.05.060(d). AS 39.05.060 is an obscure statute and is frequently overlooked. I bring this to your attention so that you are aware that sec. 2 of the bill supplements the existing power of the governor but does not necessarily expand the scope of the governor's power to remove members of the Board of Fisheries and the Board of Game.

GU:pl:gc
91-015.plm

Enclosure



**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

*P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029*

*Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101*

MEMORANDUM

January 3, 1991

SUBJECT: Governor's Power to Remove Members of Boards and Commissions (Work Order No. 17-LS0385)

TO: Senator Arliss Sturgulewski

FROM: Gerald P. Luckhaupt
Legislative Counsel

Article III, § 26, of the Alaska Constitution provides:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. . . .

This section clearly provides that the members of art. III, § 26 boards and commissions may only be removed as the legislature has provided by law. The Alaska Supreme Court in Bradner v. Hammond, 553 P.2d 1, 3 (1976) recognized this and said:

Removal of Section 26 board or commission members is as provided by law and, therefore, not necessarily at the governor's pleasure.

To determine how the legislature has provided for the removal of the members of a board or commission that "is at the head of a principal department or a regulatory or quasi-judicial agency" one must look to the specific authorizing legislation for the board or commission to determine if the legislature has provided a specific procedure for removal. For example, AS 14.07.115 provides that members of the Board of Education serve at the pleasure of the governor, while AS 42.05.035 provides that members of the Public Utilities Commission may only be removed by the governor "by and with the consent of a majority of the legislature."

One must also look to the statutes pertaining to boards and commissions generally in AS 39 and AS 08. AS 39.05.060 provides that the members of the various boards

Senator Arliss Sturgulewski
January 3, 1991
Page 2

or commissions listed therein serve at the pleasure of the governor. AS 08.01.020 provides that the members of those boards and commissions listed at AS 08.01.010 serve at the pleasure of the governor.

The removal of the members of boards or commissions that do not meet the attributes of art. III, § 26 boards or commissions is not as simple a question. In considering this situation one must look to the appointment and removal authority of the governor and the type of government established by our constitution.

The government of the state of Alaska is divided into three branches, the executive, the legislative, and the judicial. The authority granted to one branch may not be exercised by another. In Alaska, "[t]he executive power of the State is vested in the Governor." Alaska Constitution, art. III, § 1. In Bradner v. Hammond, *supra*, the court found the executive authority of the governor necessarily clothes him "with the power to appoint subordinate executive officers to aid him in carrying out the laws of Alaska" and that "the appointment of executive officers is an executive function." In support of this proposition the court cited Ahearn v. Bailey, 104 Ariz. 250, 451 P.2d 30 (1969). In that case the Arizona Supreme Court found:

The Governor is charged with the duty of taking care that the laws are faithfully executed. He must, therefore, have the power to select subordinates and to remove them if they are unfaithful. Accordingly, we conclude that the power to remove is an executive function. . . .

And in Mvers v. United States, 272 U.S. 52, 117-118, 47 S.Ct. 21, 71 L.Ed.2d 160 (1926) the United States Supreme Court said regarding the powers of the President:

As he is charged specifically to take care that [the laws] be faithfully executed, the reasonable implication even in the absence of express words, was that as part of his executive power he should select those who were to act for him under his direction in the execution of the laws. The further implication must be, in the absence of any express limitation respecting removals, that as his selection of administrative officers is essential to the execution of the laws by him, so must be his power of removing those for whom he cannot continue to be responsible. [Citation omitted.] It was urged that the natural meaning of the term 'executive power' granted the President included the appointment and removal of executive subordinates. If such appointments and removals were not an exercise of the executive power, what were they? They certainly were not the exercise of legislative or judicial power in government as usually understood.

Senator Arliss Sturgulewski
January 3, 1991
Page 3

And generally it has been held in other states that:

[T]he power to remove is incident to the power to appoint and that the authority to appoint an officer carries with it the authority to remove such officer in the absence of any constitutional or statutory restriction.

Gowey v. Siggelkow, 382 P.2d 764, 773 (Idaho 1963); 63 Am.Jur.2d, Public Officers and Employees § 221.

Clearly from this discussion the power to remove a member of a board or commission is as much a part of the executive power of the governor as is the power to appoint as determined by the Alaska Supreme Court in Bradner v. Hammond.

In determining that the confirmation power of the legislature provided in art. III, §§ 25 (principal department heads) and 26, is merely a limited delegation of the executive appointment power to the legislature, the court said:

As to this issue, we think the provisions of Sections 25 and 26 of Article III are clear and unambiguous. Thus, we conclude that Sections 25 and 26 mark the full reach of the delegated, or shared, appointive function to Alaska's legislative branch of government.

Bradner v. Hammond, *supra*, at 7.

Similarly, the legislature's authority to determine how an art. III, § 26 board or commission member may be removed appears to be a limited delegation of the executive appointment power and is limited to those boards or commissions that are "at the head of a principal department or a regulatory or quasi-judicial agency." Under this reasoning, other board or commission members serve at the pleasure of the governor and may be removed at any time despite limitations the legislature may attempt to impose by statute.

There is contrary authority that rejects the notion that an appointee serves at the pleasure of the governor when the legislature has set a specified term of office or has otherwise limited the authority of the executive to remove the appointee by statute.

But the power of removal is not incident to the power of appointment where the extent of the term is fixed by the statute. In the absence of any provision for summary removal, appointments to continue for life or during good behavior, which in contemplation of law is for a fixed term - or for a fixed term of years cannot be terminated except for cause. It is the fixity of the term that destroys the power of removal at pleasure.

Govev v. Siggelkow, supra, at 774.

While the Alaska Supreme Court could adopt this general rule in Alaska, the likelihood of this appears to be remote based upon the Supreme Court decision in Bradner. The reasoning of the Bradner court appears to require a determination that non-section 26 boards and commissions are not subject to removal provisions enacted by the legislature and that the members of those boards and commissions serve at the pleasure of the governor.

In response to your specific inquiries concerning the Boards of Education, Fisheries, and Game, it appears that all are art. III, § 26 boards and so their members may only be removed as provided by law. AS 14.07.115 provides that members of the Board of Education serve at the pleasure of the governor.

The inquiries concerning the Board of Fisheries and the Board of Game are not as easily answered. AS 16.05.280 provides that "[t]he governor may remove a board member for inefficiency, neglect of duty, or misconduct in office" and provides for notice and a hearing. This section applies to both the Board of Fisheries and the Board of Game and appears to limit the governor to removals for cause only. However, AS 39.05.060 provides that each member of the Boards of Fisheries and Game "holds office at the pleasure of the governor notwithstanding the member's term." AS 39.05.060(d).

Two interpretations are available from the existence of these two seemingly conflicting statutes. One is that they are not in conflict but are merely alternative methods for the removal of board members. The second is that they are in conflict and the later (in time) enactment controls. I will briefly discuss the two interpretations.

That the provisions are not in conflict comports with the general rules governing statutory construction. Generally, repeals of statutes by implication or reach of another statute are disfavored and the statutes will be read in pari materia to avoid any such conflict. Peter v. State, 531 P.2d 1263 (Alaska 1975). Here, the statutes do not necessarily pertain to the same subject matter. AS 16.05.280 pertains to removals of board members for cause and AS 39.05.060 deals with removals of board members without cause. AS 16.05.280 also provides that board members "may" be removed for cause. It does not provide that board members may "only" be removed for cause, thereby not providing an exclusive removal procedure. The statutes may be read together to avoid any conflict, though the net result is to allow for the removal of board members at any time and for any reason. Such a result is not absurd, since a removal for cause may occasion public ridicule and injury to reputation necessitating the notice and hearing provisions of AS 16.05.280, while no such effects would normally attend a without cause removal.

Senator Arliss Sturgulewski
January 3, 1991
Page 5

The second alternative, that the two provisions are in conflict and that the provision enacted later in time controls, leads to the result that AS 39.05.060 impliedly repealed AS 16.05.280. Terry, supra. AS 16.05.280 was enacted in 1959 and has not been amended since that time. AS 39.05.060 was also enacted in 1959 and included the Board of Fisheries and Game (when only one combined board existed). In 1975 the Board of Fisheries and Game was split into two separate boards, the Board of Fisheries and the Board of Game, by chapter 206, SLA 1975. That act also amended AS 39.05.060 to include both the Board of Fisheries and the Board of Game. Since the legislature is intended to have knowledge of all its previous enactments, its enactment of AS 39.05.060 to include the Boards of Fisheries and Game acted as an implied repeal of AS 16.05.280 under this interpretation and, therefore, the members of the Boards of Fisheries and Game serve at the pleasure of the governor.

Of these two interpretations the former appears to be the most reasonable. Therefore, I conclude that the members of the Boards of Fisheries and Game serve at the pleasure of the governor subject to removal for cause after notice and hearing as provided by AS 16.05.280.

If you have any further questions, please contact me at your convenience.

GPL:mi
91-002.mai

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

February 14, 1991

SUBJECT: Confirmation of appointees to the Boards of Fisheries and Game (Work Order No. 7LS0766)

TO: Representative Cliff Davidson

FROM: Tamara Brandt Cook
Director *TBC*

You have asked whether appointments to the Board of Fisheries and the Board of Game are subject to confirmation under art. III, § 26 of the Alaska Constitution and may be removed as provided by law under that same section. That section provides:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

Note that section 26 applies to three types of boards: those at the head of a principal department, those that are regulatory agencies, and those that are quasi-judicial agencies. The Boards are not at the head of a principal department. That position is occupied by the commissioner of fish and game. (AS 44.39.010) Nor are Boards quasi-judicial agencies in that they do not adjudicate individual rights. The Boards are, however, powerful regulatory agencies. (AS 16.10.190, 16.10.440, 16.20.040, 16.20.510, 16.43.381) As such, members are subject to confirmation and may be removed as provided by law.

To determine the meaning of the term "regulatory agency" we must first look to the views of the framers of our constitution to determine what they thought the term meant or what they intended the term to signify. Art. III, § 26, was proposed by the Committee on the Executive Branch as Committee Proposal 10 (later amended and resubmitted as Committee Proposal 10a), at the Constitutional Convention. (Alaska

Constitutional Convention Proceedings (ACCP), Part 6) In the commentary submitted by the executive branch committee with the proposal the committee explained their recommendations concerning government organization. These recommendations are embodied in secs. 22 - 27 of art. III, of the constitution. The committee said:

A clear distinction is made between the administrative departments, such as public works, health, education, and welfare, and the regulatory, including quasi-judicial, bodies such as a rate-setting public utility commission.

Delegate V. Rivers, chairman of the executive branch committee, summarized the committee proposal and the meaning of a "regulatory board" in this manner:

The purpose of that is that in a regulatory board, regulating the power rates, telephone rates, etc., the power of removal might be the power to make the office ineffective so that removal would be prescribed by the legislature. (ACCP, at p. 1102 - 03)

Discussion of what a "regulatory board" is and does includes these statements by delegates: "To me a utilities board would be regulatory" (ACCP, at p. 2204, Delegate V. Fischer); and Delegate McLaughlin, in response to a question of what is the difference between a "regulatory board" and a "quasi-judicial board" said:

Perhaps I can explain it in the terms best known to Alaskans. Very roughly, the Fish and Wildlife Service and the CAB, the Fish and Wildlife Service can set down regulations. Normally if there is an infraction of those regulations, they pick up the offender and deliver him to a judicial body, that is to the United States Commissioner, or to the United States District Court. They have no power of absolute confiscation on their own, no power to deprive of money or rights. In the case of the CAB, the Fish and Wildlife, in substance then, sets down regulations, but in the case of the CAB, they go further than that. In substance, they determine as between carrier and carrier, who is privileged and who can be deprived of it. (ACCP, at pp. 2204 - 05.)

The delegates also acknowledged that a "regulatory board" could also be a "quasi-judicial board." (ACCP, at p. 2206.) The Limited Entry Commission is an example of this. (AS 16.43.020)

From this discussion it appears that the framers believed that a "regulatory board" was a board that issued rules or regulations to govern the public (Fish and Wildlife Service), segments of the public (public utilities commission), or the use or management of resources (Fish and Wildlife Service). A "regulatory board" would

Representative Cliff Davidson
February 14, 1991
Page 3

seem to control or govern at large or in an area or field as the examples cited by the convention reveal. A board or commission that merely issues rules or regulations that govern or control its own internal conduct would not seem to be a "regulatory board" as that term is used in our constitution as the regulations or rules issued by such a such a board or commission do not govern or control at large or in an area or field.

Such a construction comports with the definitions of the term "regulate." Webster's New World Dictionary defines regulate as "to control, direct, or govern according to a rule. . . ." And Black's Law Dictionary defines regulate as "to fix, establish, or control." While these definitions are broad enough to encompass internal operating rules, rules that govern a board's own conduct, when applied to the examples and statements of the delegates to the constitutional convention, regulate apparently means the act of controlling, directing, or governing the public, segments of the public, or the resources of the state.

Clearly, the Board of Fisheries and the Board of Game qualify as regulatory boards under these principals.

TBC:gc:mi
91-075.glc

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029


Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

February 14, 1991

SUBJECT: Statutory History of Removal of Members of the Boards of Fisheries and Game (Work Order No. 17LS-0767)

TO: Representative Cliff Davidson
Attn: Jay Nelson

FROM: David R. Dierdorff 
Revisor of Statutes

Jay Nelson of your staff has asked that we provide you with the statutory history of the governor's power to remove members of the Boards of Fisheries and Game since statehood.

The first post-statehood enactment dealing with the boards was ch. 64, SLA 1959, the State Organization Act of 1959, which created the principal departments of state government and made related changes. Section 17 of that Act established the Department of Fish and Game and the Board of Fish and Game. Section 6 of that Act (now codified as AS 39.05.060) provided, in part, that board members "hold office at the pleasure of the Governor notwithstanding their respective terms."

The same legislature also enacted ch. 94, SLA 1959, the Fish and Game Code of Alaska. That Act also established the department and the board. The section providing for the department (sec. 3 of Art. I) read:

The Alaska Department of Fish and Game referred to in this Act is the Department of Fish and Game created by the State Organization Act of 1959. [emphasis added]

On the other hand, the section establishing the board (sec. 6, Art. I) provided, in part:

There shall be a Board of Fish and Game composed of eight members having a general knowledge of the fish and game resources of the State and selected without regard to political affiliation or special interest.

Section 7 of Art. I, ch. 94 (now codified with style and grammatical changes as AS 16.05.280) provided for the removal of board members:

Sec. 7. Removal of Board Members. The Governor may remove any Board member for inefficiency, neglect of duty, or misconduct in office by delivering to him a written copy of the charges and affording such member the opportunity of being heard in person or through counsel at a public hearing to be held before the Governor or his designee upon not less than ten days' notice by registered mail. The member shall have the right to confrontation by and cross-examination of all witnesses against him. Upon removal as aforesaid, the Governor or his designee shall file in the proper State office a complete statement of all charges made against the member and the findings thereon.

Neither sec. 6 or sec. 7 referred to the State Organization Act of 1959. However, sec. 35, Art. I, ch. 94 provided:

It is the purpose of this Article to further implement the provisions of the State Organization Act of 1959 relating to fish and game. However, in the event the provisions of Sec. 6 and Sec. 7 of this Article are found to be in conflict with the provisions of the State Organization Act of 1959, then the provisions of Sec. 6 and Sec. 7 of this Article shall prevail to the extent of that conflict. [emphasis added]

Section 35, Art. I, ch. 94, SLA 1959 was set out in the Alaska Compiled Laws as sec. 39-10-35. However, when John Bohn (a Benicia, California contract attorney) prepared the first drafts of the Alaska Statutes codification, the section was not codified. Instead, it was set out in a revisor's note at the beginning of AS 16.05.

There is no question but that the provisions of sec. 6, ch. 64, SLA 1959 were intended to apply to the Board of Fish and Game in the context of that Act. However, it is my opinion that when the same legislature subsequently enacted ch. 94, the legislature intended that the provisions of secs. 6 and 7 of Art. I, ch. 94, that related to the board and were inconsistent with ch. 64 were to apply in lieu of ch. 64's provisions. The legislature's reference to the department as, essentially, continuing the department as previously established, while creating the board from whole cloth, coupled with the express provisos of sec. 35, are strong evidence of that intent.

The statutes enacted in 1959 have been subject to only one relevant amendment since their enactment (if one does not view the 1962 rewrite in connection with codification as an amendment). That amendment was in 1975 and related to the creation of the separate boards of fisheries and game. It could be argued that the intent of that legislation was to reinforce the belief that the "at pleasure" provision of AS 39.05.060 was in addition to the "for cause" provision of AS 16.05.280. However, it can be

Representative Cliff Davidson
February 14, 1991
Page 3

equally argued that the amendment was only a housekeeping change consistent with the primary substantive purpose of that enactment.

Because sec. 35, Art. I, ch. 94, SLA 1959 was not codified, it was repealed by the provisions of sec. 2, ch. 1, SLA 1963 (the Act which enacted the newly codified Alaska Statutes as the statutory law of the state). However, that does not lessen its effect on an understanding of the legislative history of AS 16.05.280 and AS 39.05.-060, and the appropriate interpretation of these two apparently inconsistent provisions.

DRD:mi
91-031.mai

STATE OF ALASKA
Office of the Governor
POSITION PAPER
Walter J. Hickel, Governor

P.O. BOX A, JUNEAU, AK 99811-0101

BRUCE KENDALL, LEGISLATIVE LIAISON

FEBRUARY 14, 1991

BILL NUMBER: HB65/CSHB65 (RES) ***SPONSOR:*** DAVIDSON

BILL TITLE: "AN ACT RELATING TO MEMBERS OF THE BOARD OF FISHERIES AND THE BOARD OF GAME."

POSITION STATEMENT:

IT IS THIS ADMINISTRATION'S POSITION THAT THIS BILL, IN ITS PRESENT FORM, IS A DELIBERATE ATTEMPT TO ABROGATE THE GOVERNOR'S CONSTITUTIONAL AUTHORITY AND OBLIGATION TO MANAGE THE RESOURCES AND BUSINESS OF THIS STATE FOR THE PEOPLE OF ALASKA.

IF THIS LEGISLATION PASSES BOTH HOUSES WITHOUT ACCEPTABLE AMENDMENTS TO MAKE THIS BOARD FALL WITHIN THE GENERAL RULES OF ALL OTHER BOARDS AND COMMISSIONS NOW IN EXISTENCE, IT WILL BE VETOED.



STATE OF ALASKA

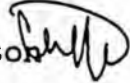
HOUSE OF REPRESENTATIVES

Box V, Juneau, Alaska 99811

(907) 465-2487 • 465-2498

REPRESENTATIVE CLIFF DAVIDSON • DISTRICT 27 • Box 746, Kodiak, Alaska 99615 • (907) 486-8250

TO: Representative Eileen MacLean
House Finance Committee

FROM: Representative Cliff Davidson 

DATE: February 25, 1991

SUBJECT: Scheduling HB 65, "An Act relating to membership on and compensation of members of the Board of Fisheries and Board of Game; relating to disclosures under the Alaska Executive Branch Ethics Act by members of the Board of Fisheries and Board of Game; and repealing certain references to the Board of Fisheries and Board of Game"

Last week CSHB 65(RES) passed the Judiciary Committee and is next referred to the Finance Committee. I would appreciate an expeditious hearing on this legislation.

I originally introduced House Bill 65 to address the problem of inadequate compensation for members of the Board of Fisheries and Board of Game. The Boards of Fish and Game were originally established as citizen boards. Board members have traditionally been expected to serve with no monetary compensation. However, over the past few years, the workload for the boards has expanded dramatically. It has become increasingly difficult to find individuals to serve in these controversial and time consuming positions. HB 65 is one attempt to address some of these concerns.

In the Resources Committee HB 65 was substantially amended to clarify existing law with respect to the Governor's authority to remove members of the Boards of Fish and Game. Until recently, most folks believed the Governor did not possess the authority to remove members of the Boards except for cause.

During the recent controversy between the Joint Boards and the Governor, several legal opinions on the subject identified the Governor's authority to remove board members as a gray area at best. It appears the board members may indeed serve at the pleasure of the Governor. That concept was a surprise to many of us. For this reason and because there exists considerable ambiguity in existing law, I regard the new provisions in CSHB 65(RES) as a simple clarification of the Governor's authority.

If you have any further questions on this legislation, please do not hesitate to contact me. My staff assigned to this bill is Jay Nelson (3715).



STATE OF ALASKA

HOUSE OF REPRESENTATIVES

Box V, Juneau, Alaska 99811

(907) 465-2487 • 465-2498

REPRESENTATIVE CLIFF DAVIDSON • DISTRICT 27 • Box 746, Kodiak, Alaska 99615 • (907) 486-8250

25 February 1991

Mr. Dan Joling, Managing Editor
Fairbanks Daily News-Miner
200 North Cushman
Fairbanks, Alaska 99701

Dear Mr. Joling,

Following is a response to your recent editorial (2/22) concerning House Bill 65. Thank you for this opportunity to respond.

To the editor:

Your recent editorial in opposition to House Bill 65 was, like an Iraqi scud missile, way off target. My legislation is intended to clarify the laws that provide for the removal of members of the Boards of Fish and Game.

For 30 years most people familiar with the appointment process for the Fish and Game Boards have felt that, once appointed, members could be removed by a governor only for cause. Several attorneys general, including the current one, advised their bosses that this was a correct interpretation of the law. Only recently, with all of the controversy over the Boards of Fish and Game, did differing legal opinions surface. It now seems that, at best, a governor's power to remove Fish and Game Board members is unclear.

House Bill 65 will clear up this confusion. It expands provisions for removal of Board members for cause and clarifies provisions prohibiting a governor from removing members at his pleasure.

There is one very good reason why Board members should be insulated from easy removal: politics. The Alaskan public does not want management decisions by the Board to become a political football. That is why the United Fisherman of Alaska, the National Rifle Association and the Alaska Environmental Lobby all support this bill.

They know that, by and large, the Boards have managed our \$1.5 billion fisheries and vast game resources quite well - without direct political interference.

A governor with the ability to remove members at his pleasure is

a governor with the ability to place Board members under enormous political pressure. That is something no Alaskan should want to see.

As to the assertion that this legislation is directed at Governor Hickel, that is absolutely not true. If I had discovered this confusion in the law last year or the year before, I would have proceeded along these same lines. Furthermore, I expect that any governor would have opposed this legislation. I certainly do not take Governor Hickel's opposition to HB 65 personally.

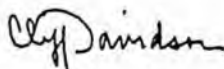
There are many folks that are not especially fond of the current Boards of Fish and Game, but the ones that have spoken to me absolutely do not want these Board members to be subject to easy removal by any governor.

This is not to say a governor cannot eventually place his people on these Boards. Member terms are 3 years so that at the end of Governor Hickel's four years in office he will have had the opportunity to replace any Board members he chooses.

Finally, I would like to make it crystal clear to your readers that there is no question but that the Legislature has the power, under the Constitution, to provide for methods of removal of members of the Boards of Fish and Game. Article III Section 26 of the Constitution clearly states that when a board is a regulatory agency, its members shall be appointed by a governor, "and may be removed as provided by law." (emphasis added)

I intend to "stick to making laws" as you suggested in your editorial. HB 65 will clarify the limits on removal of Fish and Game Board members by a governor. I believe it will also insulate our fish and game management from day-to-day "politics as usual."

Sincerely,



Cliff Davidson
State Representative

Editorial Opinion and Comment of

FAIRBANKS

Daily News - Miner

"Independent in All Things . . . Neutral in None"

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

Governor's choice

Legislators got huffy last week when a representative of Gov. Walter Hickel delivered a blunt threat to veto a bill limiting the governor's ability to fire members of boards and pick replacements.

Though the delivery may have lacked tact, the message from the governor was correct: The governor should have the right to pick who serves on the boards within his administration, especially such crucial boards as those overseeing hunting and fishing seasons.

House Bill 65 started out as an attempt to boost the daily pay for members of the Board of Game and the Board of Fisheries. However, legislators added language that listed the "only" reasons for which the governor could remove members—inefficiency, neglect of duty, misconduct in office, or a conviction of fish and game violations. That language goes too far.

Gov. Hickel has raised some eyebrows by making wholesale changes among some boards. Besides changes on the game and fisheries board, Hickel significantly changed membership on the state Board of Education, the Permanent Fund Board and the University of Alaska Board of Regents. However, that's his right.

Our state Constitution spells out a position of strength for our state's chief executive. It's also clear that voters did not elect Hickel to maintain the status quo.

The Legislature should stick to making laws and let the governor administrate them as he sees fit with the boards and commissions he desires.



STATE OF ALASKA

HOUSE OF REPRESENTATIVES

Box V, Juneau, Alaska 99811

(907) 465-2487 • 465-2498

REPRESENTATIVE CLIFF DAVIDSON • DISTRICT 27 • Box 746, Kodiak, Alaska 99615 • (907) 486-8250

CS HOUSE BILL 65 (Judiciary)

COMPENSATION FOR BOARD OF FISH AND BOARD OF GAME MEMBERS

CURRENT LAW

CSHB 65 (JUD)

	CURRENT LAW	CSHB 65 (JUD)
<u>SECTION 1</u>	3 YEAR TERM BY CUSTOM	PUTS 3 YEAR TERM LIMIT IN STATUTE
<u>SECTION 2</u>	PROVIDES FOR REMOVAL OF BOARD MEMBERS "FOR CAUSE"	CLARIFIES THAT THE GOVERNOR MAY REMOVE " <u>ONLY</u> FOR CAUSE" AND EXPANDS LIST OF CAUSES FOR REMOVAL
<u>SECTION 3</u>	<u>BOARD COMPENSATION:</u>	
<u>BOARD MEETINGS</u>	\$150/DAY	\$195/DAY (RANGE 22)
<u>OTHER MEETINGS</u>	\$100/DAY	\$ 98/DAY (1/2 /RANGE 22)
<u>PER DIEM</u>	NONE	\$100/DAY
<u>SECTION 4</u>	UNDER EXECUTIVE BRANCH ETHICS ACT	STRENGTHENS REPORTING UNDER EXECUTIVE BRANCH ETHICS ACT
<u>SECTION 5</u>	-----	PROVIDES THAT CURRENT MEMBER TERMS ARE COVERED BY ACT
<u>SECTION 6</u>	MEMBERS SERVE AT PLEASURE OF GOVERNOR	REPEALS REMOVAL PROVISIONS AND MOVES VACANCY PROVISIONS TO AS 16.05.221(c) -(SECTION 1 OF BILL)



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Boards	BILL NUMBER HB65	SPONSOR Davidson
SHORT TITLE OF BILL "An act relating to the members of the Board of Fisheries and the Board of Game."			
DEPARTMENT POSITION Support			
PREPARED BY Beverly Reaume <i>Beverly Reaume</i>	DATE 2/7/91	COMMISSIONER'S SIGNATURE <i>D. H. ...</i>	DATE 2/7/91

SUMMARY

OTHER AGENCIES AFFECTED BY BILL None	CONSTITUENT GROUPS AFFECTED BY BILL Those members of the public affected by quality of regulation promulgated by the boards.
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT
The Board of Fisheries meets approximately 68 days and the Board of Game meets approximately 48 days per year. The fourteen voluntary board members are unable to sustain themselves away from home at the current compensation rate.

The Board of Fisheries has changed its meeting schedule to review each regions' regulations every three years. This will reduce the number of meeting days, which was not reflected in the prior analysis of January 29, 1991.

ANALYSIS OF BILL/PROGRAM EFFECTS
Section 1 requires board members to disclose financial or other interests in a business or organization relating to fish and game resources.
Section 2 provides the Governor the ability to remove a board member who has been convicted of violating a fish or game statute or regulation. Section 3 provides board members with per diem at a rate authorized in AS 39.20.180 and additional daily compensation equal to a range 22.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

Alaska's Constitution A Citizen's Guide

GORDON S. HARRISON

Agreed upon by the delegates in Constitutional Convention assembled at the University of Alaska, this fifth day of February, in the year of our Lord one thousand nine hundred and fifty-six, and of the Independence of the United States the one hundred and eightieth.

Wm C. Stewart
PRESIDENT OF THE CONVENTION

Richard Armstrong *Douglas Gray* *Steen McCutcheon*
Stanley J. Aase *Thomas C. Morris* *George McChapman* *Nick C. Rivers*
Frank Barry *Richard Blalock* *Wm. M. ...* *John H. ...*
John C. Bonnell *Malcolm R. ...* *John G. ...* *W.D. ...*
Seal ... *Hub ...* *W.C. ...* *B. D. Stewart*
John B. ... *John ...* *J. ...* *George ...*
E. A. ... *James ...* *Louis ...* *Norman ...*
George ... *Walter ...* *James ...* *Harold ...*
John W. ... *Yule F. ...* *Thomas ...* *H.P. ...*
Edward V. ... *Donald H. ...* *Frank ...* *W.J. ...*
James P. ... *Walter ...* *Chris ...* *Paul ...*
Lawrence C. ... *W.M. ...* *Pat ...* *Alan B. ...*
John ... *Ernest ...* *Luella ...*
Vinton ... *Norman ...* *Paul ...*

ATTEST:
Thomas K. Stewart
SECRETARY OF THE CONVENTION

ORDINANCE NO. 1
RATIFICATION OF CONSTITUTION

SECTION 1. The Constitution for the State of Alaska agreed upon by the delegates to the Alaska Constitutional Convention on February 4, 1956, shall be submitted to the voters of Alaska for ratification at a general election to be held in the several primary election districts to be held on April 24, 1958. The election shall be conducted according to existing laws regulating primary elections or to laws as applicable.

SECTION 2. Each elector who offers to vote upon this constitution shall be given a ballot by the election judges which will be separate from the ballot on which candidates in the primary election are listed. Each of the propositions offered by the Alaska Constitutional Convention shall be set forth separately, but on the same ballot form. The first proposition shall be as follows:

"Shall the Constitution for the State of Alaska prepared and agreed upon by the Alaska Constitutional Convention be adopted?"

Yes
No

\$2.00

proposal is well beyond the scope of this discussion, but it should be noted that such a change would be a further retreat from the original constitutional objective of a centralized and accountable executive administration.

A notable constitutional law case developed over interpretation of language in this section and Section 26 which gives the legislature authority to confirm the governor's appointments of heads of major departments. Confirmation authority of this type is a traditional legislative "check and balance" on the executive branch. The Alaska legislature asserted that it could by law extend its authority to confirm appointments to deputy department heads as well as department heads, on the ground that these positions involve substantial policy-making authority. The governor refused to submit names of his department deputy heads to the legislature, which sued. The supreme court ruled against the legislature (*Bradner v. Hammond*, 553 P.2d1; 1976). It said that the power to confirm did not extend beyond the express limits of the constitution and that the legislature's action violated the principle of separation of powers. Thus rebuffed, the legislature in 1980 placed a proposed constitutional amendment before the voters that would give the legislature explicit authority to determine which executive appointees would be subject to confirmation. The amendment failed to be ratified by the voters.

Section 26. Boards and Commissions

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, ~~and may be removed as provided by law.~~ They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

Members of boards and commissions are appointed by the governor and confirmed by the legislature. Thus, even though there is a policy-making board at the head of an executive department, the governor retains the power to appoint the members of the board and to veto a board's choice of its principal executive officer. However, the constitution permits the legislature to determine how these board members are removed. The statutes governing the respective boards and commissions specify the terms of removal. In the case of the state board of education, for example, the law provides that the members serve at the pleasure of the governor. ~~In the case of the board of fisheries and game, however, the law restricts the governor's power of removal to cases of "inefficiency, neglect of duty, or misconduct in office."~~