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

BY THE HOUSE RESOURCES COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES DAWSON, Koponen

A BILL

FOR AN ACT ENTITLED

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

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

3 * Section 1. AS 16.05.221 is amended by adding new subsections to read:

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

8 (d) A member of the Board of Fisheries or the Board of Game who has an interest,
9 financial or otherwise, in a business or organization relating to fish or game resources, shall
10 disclose that interest in the manner provided for in AS 39.52.220.

11 * Sec. 2. AS 16.05.280 is amended to read:

12 Sec. 16.05.280. REMOVAL OF BOARD MEMBERS. The governor may only remove
13 a board member for inefficiency, neglect of duty, [OR] misconduct in office, or because the
14 member has been convicted of a misdemeanor or felony for violating a statute or regulation

1 related to fish or game, by delivering to the member a written copy of the charges and giving
2 the member an opportunity to be heard in person or through counsel at a public hearing before
3 the governor or a designee upon at least 10 days' notice by registered mail. The member may
4 confront and cross-examine adverse witnesses. Upon removal, the governor or a designee shall
5 file in the proper state office the findings and a complete statement of all charges made against
6 the member.

7 * Sec. 3. AS 16.05.290 is amended to read:

8 Sec. 16.05.290. COMPENSATION OF BOARD MEMBERS. Each member of a board
9 is entitled to compensation at a rate equal to Step A, Range 22, of the salary schedule in
10 AS 39.27.011(a) for Juneau, Alaska, [TRAVEL EXPENSES AND \$150 PER DIEM] for each
11 day going to and from and for each day in actual attendance at board meetings. For other
12 meetings or conferences authorized by a board a member shall receive compensation at a rate
13 equal to one-half of Step A, Range 22, of the salary schedule in AS 39.27.011(a) for Juneau,
14 Alaska, for each [\$100 PER] day going to and from and for each day in actual attendance.
15 Each member of a board is also entitled to travel expenses and per diem authorized for
16 boards and commissions under AS 39.20.180.

17 * Sec. 4. APPLICABILITY. A person who is a member of the Board of Fisheries or Board of Game
18 on the effective date of this Act shall serve the term to which the person was appointed, subject to
19 AS 16.05.280, as amended by sec. 2 of this Act. A person who is appointed to the Board of Fisheries
20 or Board of Game after the effective date of this Act shall be appointed for the term provided by
21 AS 16.05.221(c).

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



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.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 65

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 *Beverly Reaume* Phone: 465-4120

Division: Administration Date: 2/7/91

Approved by Commissioner: *[Signature]*

Agency: Fish and Game Date: 3/7/91

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

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
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Boards	BILL NUMBER HB 65	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 1/29/91	COMMISSIONER'S SIGNATURE <i>William W. Dalton</i>	DATE 1-29-91

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) 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 92 days and the Board of Game meets approximately 48 days per year. The fourteen volunteer board members are unable to sustain themselves away from home at the current compensation rate.

ANALYSIS OF BILL/PROGRAM EFFECTS

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.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 65

Revision Date: _____

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: Davidson

Component: Board Services

Requestor: 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	144.4	151.0	151.0	151.0	151.0	151.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	144.4	151.0	151.0	151.0	151.0	151.0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	144.4	151.0	151.0	151.0	151.0	151.0
FEDERAL FUNDS						
OTHER						
TOTAL	144.4	151.0	151.0	151.0	151.0	151.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Attached

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

Division: Administration Date: 01/29/91

Approved by Commissioner: *James D. Dickey* 1/29/91

Agency: Fish and Game Date: _____

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

1/29/91

SB65 BOARDS OF FISHERIES AND GAME

BOARD OF FISHERIES (7 MEMBERS)

CURRENT

89 DAYS AT \$150 PER DAY	\$93,450	
3 DAYS AT \$100 PER DAY	\$2,100	
TOTAL		\$95,550

PROPOSED

89 DAYS AT RANGE 22, STEP A - \$203.93	\$127,048	
3 DAYS AT 1/2 RANGE 22, STEP A - \$101.97	\$306	
92 DAYS AT \$95 PER DAY PER DIEM	\$61,180	
TOTAL		\$188,534

INCREASED COSTS FOR BOARD OF FISHERIES		\$92,984

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		\$144,381

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

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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 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



Alaska State Legislature

House of Representatives

P.O. BOX 783
GIRDWOOD, ALASKA 99587
(907) 783-2905


WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-2693/2719

REPRESENTATIVE
JIM ZAWACKI
DISTRICT 7

MEMBER
COMMUNITY & REGIONAL
AFFAIRS COMMITTEE
LEGISLATIVE BUDGET &
AUDIT COMMITTEE
FINANCE SUBCOMMITTEE

M E M O R A N D U M

TO: Representative Cliff Davidson, Chairman
House Resources Committee

FROM: Representative Jim Zawacki, Member
House Resources Committee 

DATE: February 7, 1991

RE: Proposed Committee Substitute For House Bill 65

I have reviewed the suggested changes in your proposed CS for HB65 and I am afraid that I must disagree with both your changes in existing law and your intent.

I believe that recommending substantial increases in compensation for board members is highly unwarranted, and in addition, is counterproductive to our common goal of reducing state spending.

In regards to changes in AS 16.05.280, Removal of Board Members, I disagree with your assessment of the need for these particular changes and I have attached several documents for your review.

Your comments to apparently justify the changes to current law: "In light of recent events . . ." is somewhat puzzling, since both of our previous Governors have taken similar action (sometimes to a much greater extent) and not a word of protest was mentioned or changes offered.

It is interesting that it is now crucial to make these changes as a new administration is inaugurated, while it was carefully overlooked in the past.

After careful review, I am of the opinion that CSHB65 is not good public policy.

Thank you for your time and consideration.

Alaska State Legislature



Senate Judiciary Committee

DATE: February 1, 1991
TO: Senator Rick Halford
FROM: Doug Baily,
Counsel, Senate Judiciary Committee
RE: Governor's authority to remove Board members

The governor is expressly authorized by statute to remove any member or members from the Board of Fisheries at any time. No reason need be stated.

AS39.05.060 states in relevent part:

"(d) . . . Each member holds office at the pleasure of the governor notwithstanding the member's term."

This section expressly applies to the Board of Fisheries as well as the Boards of Game, the Local Boundary Commission, Alcoholic Beverage Control Board and certain others.

This unequivocal language on the governor's power of removal first entered Alaska law as Sec. 6 Ch. 64 of the Session Laws of Alaska 1959. It was restated and readopted as the permanent law of Alaska effective January 28, 1963. Ch. 1 SLA 1963.

The "pleasure of the governor" provision became applicable to the Board of Fisheries when that board was first created in 1975. Ch. 206 SLA 1975. This occurred by the legislature adding the Board of Fisheries to the list of boards in AS 39.05.060 to which this power to terminate members is contained.

While the power of the governor to terminate Board of Fisheries members at will is expressly stated in law which some utilized to attempt to cloud the issue. AS 16.05.280, which can also be traced to Ch. 1 SLA 1963, provides that the governor may remove a member of the Board (of Fisheries) for cause in which event certain rights of review attach.

Some have argued that these two statutes are in conflict and that one must prevail to the exclusion of the other. But the

Fisheries it cannot be said that one is more specific and should control over a more general provision.

Because it is apparent that both of these removal processes are in full effect the only remaining legal and logical conclusion is that both apply and that the legislature, for reasons not readily known, has provided the governor an option of acceptable legal methods of removing Board of Fisheries members.

The legal conclusion reached independently by the Legislative Affairs Agency in its report of January 30, 1991 that these two provisions should be read as not being in conflict and that either removal procedure can be used is correct.



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

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FAX (907) 465-2029*

*Delivered to: 210 Main Street
Court Plaza, Room 300
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

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 Myers 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.

Senator Arliss Sturgulewski
January 3, 1991
Page 4

Gowey 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



Alaska State Legislature

HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 468-3718

TO: House Resources Committee Members
FROM: Representative Cliff Davidson, Chairman 
DATE: 6 February 1991
SUBJECT: CS for HB 65

Attached is a proposed Committee Substitute for HB 65 which I am offering for Committee consideration.

The CS would add additional provisions to the fish and game statutes to make it clear that members of the Boards of Fish and Game can be removed from office by the Governor only for cause.

In light of recent events, I feel that this clarification of existing law will be in the best interest of our fish and game resources.

7-LS047SD
Utermohle
1/29/91

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

BY THE HOUSE RESOURCES COMMITTEE

Introduced:

Referred:

Sponsor(s): REPRESENTATIVES DAVIDSON, Koponen

A BILL

FOR AN ACT ENTITLED

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

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA.

3 * ^{New} Section 1. AS 16.05.221 is amended by adding new subsections to read:

4 *Moved from AS 39* (c) Members of the Board of Fisheries or Board of Game serve staggered terms of three
5 years. An appointment to fill a vacancy in the membership of the Board of Fisheries or Board
6 of Game shall be made in the same manner as the original appointment and for the balance of
7 the unexpired term.

8 (d) A member of the Board of Fisheries or the Board of Game who has an interest,
9 financial or otherwise, in a business or organization relating to fish or game resources, shall
10 disclose that interest in the manner provided for in AS 39.52.220.

11 * Sec. 2. AS 16.05.280 is amended to read:

12 Sec. 16.05.280. REMOVAL OF BOARD MEMBERS. The governor may only remove
13 a board member for inefficiency, neglect of duty, [OR] misconduct in office, or because the
14 member has been convicted of violating a statute or regulation related to fish or game, by

1 delivering to the member a written copy of the charges and giving the member an opportunity
2 to be heard in person or through counsel at a public hearing before the governor or a designee
3 upon at least 10 days' notice by registered mail. The member may confront and cross-examine
4 adverse witnesses. Upon removal, the governor or a designee shall file in the proper state office
5 the findings and a complete statement of all charges made against the member.

6 * Sec. 3. AS 16.05.290 is amended to read:

7 Sec. 16.05.290. COMPENSATION OF BOARD MEMBERS. Each member of a board
8 is entitled to compensation at a rate equal to Step A, Range 22, of the salary schedule in
9 AS 39.27.011(a) for Juneau, Alaska, [TRAVEL EXPENSES AND \$150 PER DIEM] for each
10 day going to and from and for each day in actual attendance at board meetings. For other
11 meetings or conferences authorized by a board a member shall receive compensation at a rate
12 equal to one-half of Step A, Range 22, of the salary schedule in AS 39.27.011(a) for Juneau,
13 Alaska, for each [\$100 PER] day going to and from and for each day in actual attendance.
14 Each member of a board is also entitled to travel expenses and per diem authorized for
15 boards and commissions under AS 39.20.180.

16 * Sec. 4. APPLICABILITY. A person who is a member of the Board of Fisheries or Board of Game
17 on the effective date of this Act shall serve the term to which the person was appointed, subject to
18 AS 16.05.280, as amended by sec. 2 of this Act. A person who is appointed to the Board of Fisheries
19 or Board of Game after the effective date of this Act shall be appointed for the term provided by
20 AS 16.05.221(c).

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

caused by commission of the offense and the culpability of the offender. Except for murder in the first and second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, the offenses in this title are classified into the following categories:

(1) class A felonies, which characteristically involve conduct resulting in serious physical injury or a substantial risk of serious physical injury to a person;

(2) class B felonies, which characteristically involve conduct resulting in less severe violence against a person than class A felonies, aggravated offenses against property interests, or aggravated offenses against public administration or order;

(3) class C felonies, which characteristically involve conduct serious enough to deserve felony classification but not serious enough to be classified as A or B felonies;

(4) class A misdemeanors, which characteristically involve less severe violence against a person, less serious offenses against property interests, less serious offenses against public administration or order, or less serious offenses against public health and decency than felonies;

(5) class B misdemeanors, which characteristically involve a minor risk or physical injury to a person, minor offenses against property interests, minor offenses against public administration or order, or minor offenses against public health and decency;

(6) violations, which characteristically involve conduct inappropriate to an orderly society but which do not denote criminality in their commission.

(b) The classification of each felony defined in this title, except murder in the first and second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, is designated in the section defining it. A felony under Alaska law defined outside this title for which no penalty is specifically provided is a class C felony.

(c) The classification of each misdemeanor defined in this title is designated in the section defining it. A misdemeanor under Alaska law defined outside this title for which no penalty is provided is a class A misdemeanor. (§ 10 ch 166 SLA 1978; am §§ 9, 10 ch 143 SLA 1982; am §§ 17, 18 ch 37 SLA 1986; am §§ 2, 3 ch 59 SLA 1988)

Effect of amendments. — The 1986 amendment inserted "sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree," in two places in the introductory language of subsection (a) and in the first sentence of subsection (b).

The 1988 amendment inserted "attempted murder in the first degree" in both sentences in the introductory paragraph of subsection (a) and in the first sentence in subsection (b).

Title 12
Code of Criminal
Procedure

Title 13
Decedents Estates
Guardianships and Trusts

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I INTRODUCED HOUSE BILL 65 TO ADDRESS THE PROBLEM OF INADEQUATE COMPENSATION FOR MEMBERS OF THE BOARD OF FISHERIES AND BOARD OF GAME. THE BILL IS IDENTICAL TO LEGISLATION I INTRODUCED LAST YEAR ALTHOUGH TODAY I WILL ALSO BE PROPOSING A COMMITTEE SUBSTITUTE. LAST YEAR THE BILL PASSED THE HOUSE 31-7 BUT EVENTUALLY DIED IN THE SENATE FINANCE COMMITTEE.

UNDER CURRENT LAW, BOARD MEMBERS ARE NOT ADEQUATELY COMPENSATED FOR THE TIME THEY INVEST IN BOARD MEETINGS. BOTH THE BOARD OF FISH AND THE BOARD OF GAME WERE ORIGINALLY ESTABLISHED AS CITIZEN BOARDS. BOARD MEMBERS HAVE TRADITIONALLY BEEN EXPECTED TO SERVE WITH NO COMPENASTION. 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. HOUSE BILL 65 IS ONE ATTEMPT TO ADDRESS SOME OF THESE CONCERNS.

TODAY WE ALSO HAVE BEFORE US A PROPOSED COMMITTEE SUBSTITUTE TO HOUSE BILL 65. THE ADDITION LANGUAGE IS INTENDED TO CLARIFY THE EXISTING LAW WITH RESPECT TO THE GOVERNOR'S POWER TO REMOVE MEMBERS OF THESE IMPORTANT REGULATORY BOARDS. UNDER THE PROPOSED COMMITTEE SUBSTITUTE, THE GOVERNOR WILL BE ABLE TO REMOVE MEMBERS ONLY "FOR CAUSE".

IN LIGHT OF THE RECENT CONTROVERSY, I FEEL THAT THIS CLARIFICATION IS BOTH TIMELY AND NECESSARY IN ORDER TO PROPERLY MANAGE OUR FISH AND WILDLIFE RESOURCES.

m



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

HOUSE BILL 65

COMPENSATION FOR BOARD OF FISH AND BOARD OF GAME MEMBERS

CURRENT LAW

HB 65

SECTION 1

NO DISCLOSURE
REQUIRED

REQUIRES DISCLOSURE
OF CONFLICT OF
INTEREST

SECTION 2

PROVIDES FOR
REMOVAL OF BOARD
MEMBERS "FOR
CAUSE"

EXPANDS GOVERNOR'S
POWER TO REMOVE BOARD
MEMBERS "FOR CAUSE"

SECTION 3

COMPENSATION:

BOARD MEETINGS

\$150/DAY

\$195/DAY (RANGE 22)

OTHER MEETINGS

\$100/DAY

\$ 98/DAY (1/2 /RANGE 22)

PER DIEM

NONE

\$100/DAY

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