

HB65

SENATE FINANCE COMMITTEE REPORT

DATE: 5/2/92

FURTHER:

DATE TURNED INTO OFFICE: 5/11/92

The Finance Committee considered CS HOUSE BILL NO. 65 (FINANCE) am

"An Act relating to membership on 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."

and recommends:

- replace with _____ CS _____ (FINANCE) same title
 adopt previous 3 CS CS HOUSE new title
 attaches amendment(s) technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

zero fiscal notes _____

DO PASS:

[Handwritten signatures]

Co-Chair: Signature/Recommendation

OTHER RECOMMENDATIONS:

W. Adams - no fee
Kate Kelly (NO REC)

Co-Chair: Signature/Recommendation

FISCAL NOTE

No. 4

Bill Version: SCS HB 257A

(S) Publish Date: 5-2-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____

Department Affected: Fish and Game

Title: "An Act relating to membership
on the Board of Fisheries and ..."

BRU: Boards

Component: Board Services

Sponsor: Davidson, Koponen, Moyer

Requestor: Senate Resources

COMPONENT SERIAL NO.

4	8	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL	92.3	96.0	99.8	103.8	108.0	112.3
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS *						
TOTAL OPERATING	92.3	96.0	99.8	103.8	108.0	112.3

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	92.3	96.0	99.8	103.8	108.0	112.3
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	92.3	96.0	99.8	103.8	108.0	112.3

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: no fiscal impact

ANALYSIS: (Attach a separate page if necessary.)
see attached page

Prepared By: Beverly Reaume *Beverly Reaume* Phone: 465-4110
 Division: Boards of Fisheries and Game Date: 4/27/92
 Approved by Commissioner: Glen Somerville *Glen Somerville*
 Agency: Department of Fish and Game Date: 5/27/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. OSC., & Impacted Agency(ies).

4/27/92

CSHB65 BOARDS OF FISHERIES AND GAME

BOARD OF FISHERIES (7 MEMBERS)

CURRENT

61 DAYS AT \$150 PER DAY	\$64,050
3 DAYS AT \$100 PER DAY	\$2,100

TOTAL \$66,150

PROPOSED

61 DAYS AT RANGE 20, STEP A - \$179.32	\$76,570
3 DAYS AT 1/2 RANGE 20, STEP A - \$89.66	\$1,883
64 DAYS AT \$95 PER DAY PER DIEM	\$42,560

TOTAL \$121,013

INCREASED COST FOR BOARD OF FISHERIES

\$54,863

BOARD OF GAME (7 MEMBERS)

CURRENT

41 DAYS AT \$150 PER DAY	\$43,050
3 DAYS AT \$100 PER DAY	\$2,100

TOTAL \$45,150

41 DAYS AT RANGE 20, STEP A - \$179.32	\$51,465
3 DAYS AT 1/2 RANGE 20, STEP A - \$89.66	\$1,883
44 DAYS AT \$95 PER DAY PER DIEM	\$29,260

TOTAL \$82,608

INCREASED COSTS FOR BOARD OF GAME

\$37,458

GRAND TOTAL

\$92,320

SENATE CS FOR CS FOR HOUSE BILL NO. 65 (RESOURCES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 5/2/92
Referred: Finance

Sponsor(s): REPRESENTATIVES DAVIDSON, Koponen, Moyer

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to membership on the Board of Fisheries and Board of Game; relating
2 to disclosures under the Alaska Executive Branch Ethics Act by members of the Board
3 of Fisheries and Board of Game; and repealing certain references to the Board of
4 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 while serving on the board is convicted of a misdemeanor for violating a statute
20 or regulation related to fish or game or of a felony, and shall do so by delivering to the
21 member a written copy of the charges and giving the member an opportunity to be heard in
22 person or through counsel at a public hearing before the governor or a designee upon at least 10
23 days' notice by registered mail. The member may confront and cross-examine adverse witnesses.
24 Upon removal, the governor or a designee shall file in the proper state office the findings and
25 a complete statement 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 20, 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 20, 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), added by sec. 2 of this Act.

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

No. 3

Bill Version: CSHB 65 (FIN)

(H) Publish Date: 4/8/92

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: 2/4/92
Title: An Act relating to membership on and compensation of members of the Board of Fisheries and Board of Game

Department Affected: Fish and Game
BRU: Division of Boards
Component: Board Services

Sponsor: Davidson

Requestor: House Rules

COMPONENT SERIAL NO.

1	2	0	4
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	111.2	115.0	115.0	115.0	115.0	115.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	111.2	115.0	115.0	115.0	115.0	115.0

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	111.2	115.0	115.0	115.0	115.0	115.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	111.2	115.0	115.0	115.0	115.0	115.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: no current year impact

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Beverly Reaume Phone: 465-4110
Division: Boards Date: February 4, 1992
Approved by Commissioner: Carl L. Rosier
Agency: Fish and Game Date: 2/1/92

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

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CSHB 65(FIN)
(H) 4-3-92

~~2-1-92~~
CSHB65 BOARDS OF FISHERIES AND GAME

BOARD OF FISHERIES- (7 MEMBERS)

CURRENT

61 DAYS AT \$150 PER DAY	\$64,050
3 DAYS AT \$100 PER DAY	\$2,100
TOTAL	\$66,150

PROPOSED

61 DAYS AT RANGE 22, STEP A - \$205.05	\$87,556
3 DAYS AT 1/2 RANGE 22, STEP A - \$102.53	\$2,153
64 DAYS AT \$95 PER DAY PER DIEM	\$42,560
TOTAL	\$132,269

INCREASED COST FOR BOARD OF FISHERIES \$66,119

BOARD OF GAME (7 MEMBERS)

CURRENT

41 DAYS AT \$150 PER DAY	\$43,050
3 DAYS AT \$100 PER DAY	\$2,100
TOTAL	\$45,150

41 DAYS AT RANGE 22, STEP A - \$205.05	\$58,849
3 DAYS AT 1/2 RANGE 22, STEP A - \$102.53	\$2,153
44 DAYS AT \$95 PER DAY PER DIEM	\$29,260
TOTAL	\$90,262

INCREASED COSTS FOR BOARD OF GAME \$45,112

GRAND TOTAL \$111,232

COMMITTEE COPY

p. 2 of 2



Alaska State Legislature

SENATOR RICHARD I. ELIASON

President of the Senate

P.O. Box V
Juneau, Alaska 99811
(907) 465-3755

M E M O R A N D U M

TO: Sen. Pourchot, Co-chairman
Sen. Kertulla, Co-chairman

FROM: Sen. Eliason *Richard I. Eliason*

DATE: May 5, 1992

RE: Request for scheduling of CSHB 65(RES)am

I would very much appreciate your early scheduling of CSHB 65 (FIN)am in Senate Finance. I am the prime sponsor of the Senate companion bill and am in full support of the Senate Resources Committee Substitute for this House measure.

The bill would clarify and tighten the statutes regarding term length and removal of Boards of Fish and Game members, and provide for a level of compensation that will make it more feasible for knowledgeable Alaskans to afford to serve on these extremely demanding and time-consuming boards.

After Senate floor action, the bill will need to go to the House for concurrence, so whatever you can do to expedite it will be much appreciated.

If you need further information on the bill, please contact my staff member, Mary McDowell.

Thank you.

STATE OF ALASKA
House of Representatives
District 27

Representative Cliff Davidson
Chairman
House Resources Committee



Box V, Juneau, AK 99811
(907) 465-2487
Box 746, Kodiak, AK 99615
(907) 486-8250

TO: Senator Pat Pourchot, Co-chairman
Senator Jay Kerttula, Co-chairman
Senate Finance Committee

FROM: Representative Cliff Davidson *CD*

DATE: May 4, 1992

SUBJECT: Scheduling House Bill 65 - Compensation for members of
the Board of Fish and Board of Game

I would like to respectfully request the scheduling of House Bill 65 in the Senate Finance Committee at your earliest convenience.

House Bill 65 has two primary provisions. First, the legislation provides for increased compensation for members of the Boards of Fish and Game. The level of compensation in current law has been eroded to the point that members of these boards pay expenses out of their own pockets to serve. While I do not support professional Boards of Fish and Game, we must compensate these volunteers individuals adequately to cover their costs of serving.

HB 65 also strengthens the independence of the Boards of Fish and Game by clearly listing causes for their removal and clarifies that the Governor can remove members only for cause. These provisions establish in statute what is widely understood as existing policy. This legislation also cleans up archaic provisions relating to the boards and clearly places members under the financial disclosure provisions of the Executive Branch Ethics Act.

Attached is a copy of Senate CS for CSHB 65(RES) as it passed the Senate Resources Committee with the accompanying fiscal note and a side by side analysis and a small packet of additional material. I would be happy to provide you with any additional backup you feel necessary. My staff person working on this issue is Jay Nelson (X3715). Thank you for your prompt consideration.

Attachment

SENATE CS FOR CS FOR HOUSE BILL 65 (Resources)

COMPENSATION FOR BOARD OF FISH AND BOARD OF GAME MEMBERS

CURRENT LAW

Senate CSHB 65 (RES)

<u>SECTION 1</u>	LISTS QUALIFICATIONS FOR BOARD MEMBERS	SAME AS CURRENT LAW BUT MOVES PROVISION FROM AS 39.05.060(b) TO AS 16.05.221(a) and (b)
<u>SECTION 2</u>	3 YEAR TERM BY CUSTOM	PUTS 3 YEAR TERM LIMIT IN STATUTE
<u>SECTION 3</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 4</u>	<u>BOARD COMPENSATION:</u>	
<u>BOARD MEETINGS</u>	NONE	\$179/DAY (RANGE 20)
<u>PER DIEM</u>	\$150/DAY	\$100/DAY
<u>OTHER MEETINGS</u>	\$100/DAY	\$ 90/DAY (1/2 /RANGE 20)
<u>SECTION 5</u>	UNDER EXECUTIVE BRANCH ETHICS ACT	STRENGTHENS REPORTING UNDER EXECUTIVE BRANCH ETHICS ACT
<u>SECTION 6</u>	-----	PROVIDES THAT TERMS OF CURRENT MEMBERS ARE COVERED BY HB 65
<u>SECTION 7</u>	MEMBERS SERVE AT PLEASURE OF GOVERNOR	REPEALS REMOVAL PROVISIONS AND MOVES VACANCY PROVISIONS TO AS 16.05.221(c) -(SECTION 2 OF BILL)

STATE OF ALASKA
House of Representatives
District 27

Representative Cliff Davidson
Chairman
House Resources Committee



Box V, Juneau, AK 99811
(907) 465-2487
Box 746, Kodiak, AK 99615
(907) 486-8250

TO: All House Members
FROM: Representative Cliff Davidson
DATE: March 31, 1992
SUBJECT: House Bill 65

Alaskans have long prized their vast fish and wildlife resources.
And with good reason.

Alaska remains the only place in the United States where fish and wildlife populations even approach their historic abundance.

Tens of thousands of Alaskans in the commercial fishing industry and tourism industry depend on these resources. Many rural residents survive on Alaska's abundant fish and wildlife.

But managing our fish and wildlife to maintain and enhance these populations has not been easy. That topic was the subject of considerable debate during Alaska's Constitutional Convention.

Convention delegates spent considerable time discussing the problem of how to insulate fish and wildlife management from partisan politics. Delegates wanted strong, independent management, not divorced from politics, but insulated from political pressure. I firmly believe that is still what most Alaskans want.

The Alaska Boards of Fish and Game have long been admired for their professional, competent and democratic approach to fish and wildlife management. Board members, as volunteers, spend up to 90 plus days per year sifting through regulations, proposals and testimony to develop comprehensive management policies.

We need to reaffirm and strengthen the Boards of Fish and Game, while maintaining their citizen-based status. HB 65 will do just that and help ensure the Boards' independence from political manipulation.

HB 65 does two primary things. First, it provides for some financial compensation to Fish and Game Board members.

In the last few years, it has become increasingly difficult to find individuals willing to devote up to one quarter of each year

sitting in board meetings. Citizens willing to volunteer for this "hardship duty" deserve some compensation for their efforts. The compensation provision in HB 65 has been supported by both this and former administrations.

A second provision in HB 65 clarifies the Governor's existing authority to remove members of the Boards of Fish and Game.

For 30 years most people familiar with the Board of Fish and Board of Game appointment process have felt that, once appointed and confirmed, members could be removed by a governor only for cause. Current law provides for specific circumstances under which Board members can be removed.

Recently, differing legal opinions have surfaced and it now seems that, at best, a governor's statutory authority to remove Fish and Game Board members is unclear. House Bill 65 expands the Governor's authority to remove Board members for cause and clarifies provisions to ensure the governor is prohibited 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 most fishing organizations support this bill.

Any governor with the ability to remove members at his/her pleasure is a governor with the ability to place Board members under enormous political pressure. That is something no Alaskan wishes to see.

Within a four year term, any governor will eventually place his/her people on these Boards. Members are appointed for 3 year terms so any governor will have had the opportunity to replace every Board member.

HB 65 simply clarifies the limits on removal of Fish and Game Board members by any governor. It will insulate our fish and game management from day-to-day "politics as usual." That is a goal all Alaskans can support.

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

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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

Alaska State Legislature



Senate Judiciary Committee

Riis

MEMORANDUM

TO: David R. Dierdorff
Revisor of Statutes

FROM: Doug Baily, Staff Counsel
Senate Judiciary Committee

DATE: February 21, 1991

RE: Governor's power of removal for Board of Fisheries

I reviewed your memo of February 14, 1991 to Representative Cliff Davidson relating to the governor's power to remove members of the Boards of Fisheries and of Game.

While I agree that the memo adds somewhat to the factual history of the governor's power of removal, I disagree with your suggestion that it aids the interpretation of the two removal statutes (AS 16.05.280 and AS 39.05.060), by supporting your conclusion that the "for cause" provision controls.

You correctly point out that the adoption of the 1975 amendment, which you describe, again correctly, as the "only one relevant amendment" since enactment of the two removal

February 21, 1991
page 2

provisions, constitutes legislative reinforcement of the conclusion that the "at pleasure" termination provision of AS 39.05.060 have full force and effect at present¹ as concluded in your agency's legal opinion of January 3, 1991.

You then go on to suggest that the intention of the legislature in 1959 when adopting sec. 35, art. I, ch. 94, SLA1959, has risen Phoenix-like to challenge the 1975 legislative reinforcement of the "at pleasure" provision, notwithstanding the express repeal of sec. 35, art. I, ch. 94, SLA1959, which you conceded was repealed by ch. 1 SLA 1963.

If anyone should be acutely aware of the effect of a repeal of a statute it should be the Revisor of Statutes. No less an authority than Sutherland, Statutory Construction, 4th Ed. provides the relevant and universally recognized rule at sec. 23.33:

The effect of the repeal of a statute . . . is to destroy the effectiveness of the repealed act in futuro and to divest the right to proceed under the statute. Except as to

¹ I note with interest that in your proposed revisor's bill this year you have included a provision to "clarify" the existence of three year terms for members of the Boards of Fisheries and of Game and to insert the provision into AS 16. I trust that this is not an attempt to create a subsequent "relevant amendment" and thereby bolster your apparent preference for the "for cause" termination. You could just as well have suggested placing the provision in AS 39.05 and thereby have further reinforced the currency of the "at pleasure" termination provision.

February 21, 1991
page 3

proceedings past and closed, the statute is considered as if it never existed.

Your suggestion that present efforts to interpret and comply with statutes be encumbered by someone's guess at the intent of a past legislature in adopting an act that was repealed twenty-eight years ago could only lead to chaos.

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

Representative Cliff Davidson
February 14, 1991
Page 2

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 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

RECEIVED MAR 3 1992

SOUTHEAST ALASKA SEINERS ASSOCIATION
P.O. BOX 9579
KETCHIKAN, ALASKA 99901

(907) 225-5156

March 5, 1992

Representative Cliff Davidson
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Cliff,

As chair of House Resources Committee, I am writing to inform you as to Southeast Alaska Seiners (SEAS) position on various pieces of legislation dealing with fisheries. SEAS Board of Directors just recently met for three days which included extensive discussion on fisheries legislation. A summary of SEAS's positions follows:

Posting of Fish Price - HB 369

Oppose. We agree with the intent of HB 369 as outlined by Rep. Jacko. However, we would like to see how this season goes before asking the legislature to get involved. All the major processors in Southeast are meeting with their respective fleet of seiners well before the start of the 1992 season. This is a new development which is in step with the intent of HB 369 i.e. fostering timely communication about fish prices. We appreciate the filing of HB 369 as it may have spurred this effort of better communication between processors and fishermen.

Regional Board of Fish - HB 413

Oppose. We believe that the statewide board provides more stability and injects less bias into gear group disputes than a regional board. HB 413 also appeared more costly and this would conflict with our desire to have the current board receive more compensation and staff support. SEAS also favors the Board of Fish's recent change to meet in Southeast once every three years as this provides a longer time to assess the need to make allocation modifications. We don't view the current board as broken and therefore there is no need to impose drastic changes to the process as presented in HB 413.

Subsistence - HB 552 & SB 443

Support. This legislation clearly reinstates the subsistence priority for those meriting subsistence protection. Furthermore this legislation resolves many of the outstanding concerns to commercial fisheries, such as the definition of customary trade. This legislation did a fine job of wrestling with who deserves and needs subsistence now and in the future. Without this legislation, the State of Alaska would be faced with the scenario of "All Alaskans" being subsistence users, a disastrous scenario for all users. We support this legislation wholeheartedly. While the SEAS Board of Directors did not have an opportunity to review all the possible constitutional amendments, the concept of a constitutional amendment was discussed. SEAS chose not to support a constitutional amendment at this time; rather we felt it prudent to wait for the two year legislative review called for in SB 443.

Guided Sport - SB 397 and HB 504

Support. The charter boat industry has grown to the point that the resource demands accountability by the Board of Fisheries process. As such, the allocation tool provided for in this legislation is essential.

Salmon Marketing - HB 477, HB 414 and SB 386

Support HB 477 with modification.

Oppose HB 414 and SB 386.

The reasoning behind SEAS position on these bills is contained in a separate letter on marketing, which you will receive.

Legislative Hatchery Review

A top legislative priority with SEAS is amending Title 16 to assure that wild stocks have priority in the management of our commercial fisheries. The hatchery program was established and expanded on the premise that wild stocks would be fully protected and have management priority in our mixed stock fisheries. Yet, the state statutes are not clear on this point. SEAS will be working with the Senate Special Committee on Fisheries in developing specific language for statutory clarification.

State Board of Fish and Game - HB 65

Support This bill to strengthen and clarify the Boards of Fish and Game is long overdue. SEAS has supported this legislative effort for several years now.

Instream Flow for Fish and Wildlife - HB 355

Support How can the State of Alaska even begin to think about major water exporting projects before assuring that our needs at home are met? HB 355 takes a reasonable approach to assure that minimum needs for fish and wildlife are met before appropriating water for other needs. HB 355 does not impair future developments projects, rather it provides a planning basis for development. Meeting basic water needs at home first before appropriating water for export or major development is only prudent planning.

I hope this summary is helpful in your deliberations. Please feel free to call if you have questions or desire more information on SEAS's legislative positions.

Sincerely,



Kathryn Troll
Executive Director

Distribution list:
Members of House Resources Committee

RECEIVED MAR 16 1992



UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

P.O. Box 389 • Kenai, Alaska 99611 - 0389

(907) 283-3600 • FAX (907) 283-3306

March 11, 1992

Dear Legislator,

United Cook Inlet Drift Association (UCIDA) represents the 585 salmon drift permit holders in Upper Cook Inlet. Some 350 permit holders are current members of our association. UCIDA is also active at the state and federal levels as a member of the Executive Committee of United Fishermen of Alaska (UFA).

I would like to inform you of positions UCIDA has taken with respect to several bills up for consideration by the legislature. As time permits I shall forward more detailed explanations and justifications of the positions taken. Please feel free to contact me to further discuss the issues.

1) HB 552-SB 443 - Governor's Subsistence Legislation

UCIDA supports this legislation as it makes sense for populated areas dependent on the cash economy and is fair to those residents of Alaska who have an "actual, substantial dependance on fish and game". [Sec. (1)(c)(2)].

UCIDA does not support any amendment to Alaska's Constitution or to this legislation.

2) HB 411 - Restoration Projects - Exxon Valdez

UCIDA supports HB 411 with amendments to include Upper and Lower Cook Inlet. It can be argued that Kenai sockeye salmon was the most affected fishery resource. Please see our enclosed documents to Rep. Davidson.

3) HB 477 - Alaska Salmon Marketing and Development Fund Corporation

Rep. Finkelstein, in consultation with commercial fishing organizations has combined elements of the bills introduced by Sen. Eliason, Rep. Hudson and Rep. Kubina. As a primary funding mechanism a raw fish tax credit is proposed for processors. UCIDA is aware of SB 27, however, at this time we feel that marketing and not plant construction is the priority for the industry.

UCIDA supports HB 477 with the deletion of Article 2, which proposes a 1% tax on fishermen starting in three years. Please see our enclosed comments to Rep. Hudson.

4) SB 386. CS for HB 414 - "Salmon Marketing Tax"

UCIDA does not support a salmon marketing tax on commercial



"MIKE & SHIRLEY CHIHULY"

SALMON & HALIBUT FISHING AT IT'S BEST

P.O. BOX 39294, NINILCHIK, ALASKA 99639

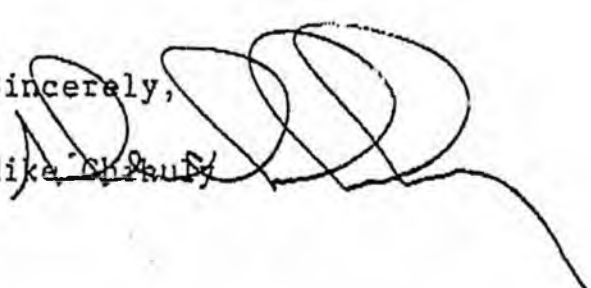
On Sterling Highway next to Chinook Service.

Representative Cliff Davidson
State Capitol
Juneau, Alaska 99801

Dear Cliff:

Thank you for bringing HOUSE BILL NO. 65 to my attention. I have reviewed this bill in its entirety and wish to give my whole-hearted and emphatic support. I have been disappointed in recent past legislatures for their failure to act on the issues this bill seeks to correct. As you know I have some experience from which I can draw upon to evaluate this bill. I have been an Alaskan for over 35 years. I have commercial fished in Bristol Bay and worked for the Ak. Dept. of Fish and Game for a number of years throughout Alaska. I now own and operate my own fishing business and have been involved in Alaska's outdoors and resource management for many years. I was also appointed to the State Board of Fisheries and served a three year term during the Cowper administration. I wish you success in your efforts to enact this legislation.

Sincerely,


Mike Chihuly

 WORLD'S LARGEST KING SALMON!

1-907-567-3374

April 7, 1992

Representative Cliff Davidson
State Capitol
Juneau, Alaska 99801
FAX 465-3444

Dear Representative Davidson,

RE: HB 65

It is certainly my pleasure to tell you how much I appreciate your efforts on behalf of the Boards of Fish and Game members. Though many of us have serious and long-term interests and experience in managing the fish and game resources of the State of Alaska, it is a hardship duty to serve on either of these Boards under the present rules of remuneration. Most of us are gainfully employed elsewhere, have families and other commitments. All that has to be put aside when we serve on such a high profile and time consuming Board. Sidney Huntington was quoted over the years as saying that it cost him \$5-12,000 per year to serve on the Board of Game. Since he served for nearly 20 years, that is a substantial contribution in both time and money to the State of Alaska. I estimated it cost me \$5,000/year in loss of income plus actual out-of-pocket expenses. It was still worth it, but fair compensation would be appreciated by all Board members.

It is my belief that the purpose of these lay boards is to balance the professional opinions and offer different perspectives in fish and game management. If that concept is to be adhered to, then we must not put up roadblocks and restrict to only people who have a financial surplus allowing them to be able to afford to serve or who are retired and have surplus time. I especially appreciate the following which is in Section 1 of your HB 65:

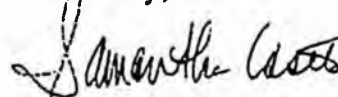
"The governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the board, and with a view to providing DIVERSITY OF INTEREST AND POINTS OF VIEW in the membership."

I had the privilege of serving on a Board of Game which fit that statement and I believe that the State of Alaska was well served. There was respect and courtesy on the Board and a strong desire to fully debate all issues. Though I didn't agree with all the decisions, naturally, I did agree with the process and felt it was fair and honest.

I can't find a thing in either your HB 65 or your March 31 explanation of that House Bill with which I disagree. You've done your homework and I, personally, appreciate your efforts on behalf of the Boards of Fish and Game.

I fully support HB 65.

Sincerely,



Samantha Castle
Former Chair, Boards of F&G

Representative Cliff Davidson
State Capitol
Juneau, Alaska 99801

April 7, 1992

Subject: HB 65

Dear Representative Davidson,

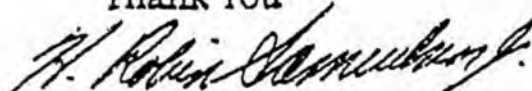
As a past board of fish member I want to state that I fully support HB 65, an act for additional compensation for members of the Board of Fisheries and Board of Game. I know from my three years (1988-1992) on the Alaska Board of Fish I have personally dug into my own pocket for expenses occurred while traveling for the fishery board. This was above the \$ 150.00 a day per diem I received. I have income tax records to prove my costs while on the board of fisheries and all three years show a loss, in excess of \$1000.00 a year.

I believe HB 65 is necessary at this time. The legislature should not expect board members from either board to spend their own money while representing the State of Alaska. Hotel and meal costs are going up every year. I am sure in 1965 are when ever the Legislature set the boards per diem rate, at that time it was an appropriate amount but not at todays prices.

I know money is tight in Juneau and the outlook is looking quite grim in the next few years as far as the state budget goes. But please don't let these board members spend their own money to represent the State, its not fair to them and the families.

Again I urge passage of HB 65, I believe its fair and long over due.

Thank You



H. Robin Samuelson Jr.
Box 412
Dillingham, Alaska 99576

P.O. Box 2617
Homer, Alaska 99603
April 9, 1992

Representative Cliff Davidson
Chairman, House Resources Committee
Box V
Juneau, Alaska 99811

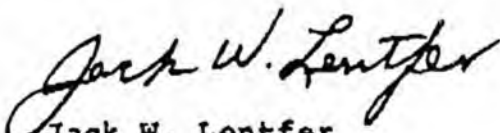
Dear Representative Davidson:

As a former member of the State Board of Game, I would like to give strong support to House Bill 65.

Fish and wildlife are one of the State's most valuable resources used by a large percentage of the State's residents. Allocation for their use is complex and requires objective, dedicated, and hard-working individuals. The pool of people available to serve on the Boards is limited because of the long time commitment required each year with little monetary compensation beyond travel costs and per diem to cover hotel, food, and miscellaneous costs while away from home. More high caliber people would be available for consideration for Board appointment if monetary compensation were increased.

I also strongly support the section of HB 65 that would clarify how Board members may be removed. I was on the Game Board when the present administration took over. For several weeks, rumors and legal opinions circulated about removal of Board members, and in my view, decreased the effectiveness of the Board during this period. I believe a system whereby members stay on for three years and can be removed only for cause would be most beneficial.

Sincerely,


Jack W. Lentfer