

**HB**

**542**

**CS FOR HOUSE BILL NO. 542(FSH)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES**

**Offered:  
Referred:**

**Sponsor(s): HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to participation in matters before the Board of Fisheries by  
2 members of the board."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1. PURPOSE.** The purpose of this Act is to preserve and enhance the ability  
5 of the Board of Fisheries to act as a lay board. To accomplish this goal, this Act requires  
6 members of the board to participate in the issues that come before the board even though the  
7 members have a personal or financial interest in the matter by virtue of their participation in  
8 a fishery.

9 \* **Sec. 2.** AS 39.52.120(c) is amended to read:

10 (c) In addition to other provisions of this section, a public officer who is a  
11 member of the [BOARD OF FISHERIES OR THE] Board of Game may not act on  
12 a matter before the board if the public officer has not disclosed in the manner set out  
13 in AS 39.52.220 all personal or financial interests in a business or organization relating  
14 to fish or game resources.

1 \* Sec. 3. AS 39.52.120 is amended by adding a new subsection to read:

2 (d) Notwithstanding any other provision of this chapter, a public officer who  
3 is a member of the Board of Fisheries must participate in matters before the board  
4 even if the member has a personal or financial interest in the matter. Before  
5 participating, the member shall disclose the interest on the record. Disclosure under  
6 this subsection is not subject to AS 39.52.220. Participation in a matter before the  
7 board after disclosure is not considered to be a use of state facilities to benefit personal  
8 or financial interests under (b)(3) of this section. AS 39.52.240 does not apply to  
9 matters related to this subsection.



## REPRESENTATIVE ALAN AUSTERMAN Alaska State Legislature

P.O. Box 2368, Kodiak, Alaska 99615 (907) 486-5930 • Session: State Capitol, Juneau, Alaska 99801 465-2457

### Sponsor Statement HB 542

"An Act relating to participation in matters before the Board of Fisheries by members of the board."

March 19, 1996

This legislation was introduced because of a growing frustration among fishing Alaskans. Alaskans involved in fisheries have witnessed an erosion in their Board of Fisheries process in recent years. The cause is the reinterpretation and consequent increased interference of the Executive Ethics Act by the Attorney General's Office.

HB 542 adjusts the conflict of interest laws in the Executive Ethics Act as they apply to the Board of Fisheries. It stipulates that all members will vote, after disclosure, despite their financial or personal interest. Historically, this is how the board functioned - with full participation after conflict of interest disclosure. It has only been in the last few years that a conflict has disqualified participation on a vote.

You have in your backup a memorandum from myself to Speaker Phillips which refers to a meeting a month ago that I arranged which was attended by six Board of Fisheries chairmen. Three of these chairmen came from a commercial background, three from a sportfish background. Their foremost recommendation was for a legislative fix to the conflict of interest of the Executive Ethics Act.

The chairmen unanimously emphasized a conflict of interest adjustment was necessary to minimize attorney interference in the board process and to require board members to vote. Furthermore, they asserted that members of the industry are necessary to and inherent in a successful lay board process. Today, under the current AG opinions, any financial involvement disqualifies a member from voting, thereby discouraging expertise on the board. Meanwhile, a personal interest has yet to disqualify any member from voting.

This bill will bring the Board process back to the people who know the industries and who know fish. Our Board of Fisheries is a model in resource management, longstanding in its successful track record and public involvement. HB 542 will let the Board of Fish function like it should, like it did, and how it was intended to work.

(2) people who serve as public officers retain their rights to interests of a personal or financial nature; and

(3) standards of ethical conduct for members of the executive branch need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interests that are substantial and material.

(b) Unethical conduct is prohibited, but there is no substantial impropriety if, as to a specific matter, a public officer's

(1) personal or financial interest in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officer belongs; or

(2) action or influence would have insignificant or conjectural effect on the matter.

(c) The attorney general, designated supervisors, hearing officers, and the personnel board must be guided by this section when issuing opinions and reaching decisions. (§ 1 ch 87 SLA 1986)

#### NOTES TO DECISIONS

**Significance of personal or financial interest.** — Substantial evidence supported the hearing officer's findings that Department of Corrections' official had neither a personal nor a financial interest in the awarding of a contract concerning

the housing of minimum security prisoners to a bidder for whom she had served as vice-president of operations. *Kila, Inc. v. State*, 875 P.2d 1102 (Alaska 1994). Cited in *Gates v. City of Tenakee Springs*, 822 P.2d 455 (Alaska 1991).

**Sec. 39.52.120. Misuse of official position.** (a) A public officer may not use, or attempt to use, an official position for personal gain, and may not intentionally secure or grant unwarranted benefits or treatment for any person.

(b) A public officer may not

(1) seek other employment or contracts through the use or attempted use of official position;

(2) accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the state;

(3) use state time, property, equipment, or other facilities to benefit personal or financial interests;

(4) take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest; or

(5) attempt to benefit a personal or financial interest through coercion of a subordinate.

(c) In addition to other provisions of this section, a public officer who is a member of the Board of Fisheries or the Board of Game may not act on a matter before the board if the public officer has not disclosed in the manner set out in AS 39.52.220 all personal or financial interests in a business or organization relating to fish or game resources. (§ 1 ch 87 SLA 1986; am § 5 ch 121 SLA 1992)

**Sec. 39.52.210. Declaration of potential violations by public employees.** (a) A public employee who is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190 shall

(1) refrain from taking any official action relating to the matter until a determination is made under this section; and

(2) immediately disclose the matter in writing to the designated supervisor.

(b) A public employee's designated supervisor shall make a written determination whether an employee's involvement violates AS 39.52.110 — 39.52.190. If the supervisor determines that a violation could exist or will occur, the supervisor shall,

(1) reassign duties to cure the employee's potential violation, if feasible; or

(2) direct the divestiture or removal by the employee of the personal or financial interests that give rise to the potential violation.

(c) A designated supervisor may request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a public employee is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.220. Declaration of potential violations by members of boards or commissions.** (a) A member of a board or commission who is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190 shall disclose the matter on the public record and in writing to the designated supervisor. The supervisor shall determine whether the member's involvement violates AS 39.52.110 — 39.52.190. If a member of the board or commission objects to the ruling of the supervisor, or if the supervisor discloses an involvement requiring a determination, the members present at a meeting, excluding the involved member, shall vote on the matter. If the supervisor or a majority of the members voting determine that a violation will exist if the member continues to participate, the member shall refrain from voting, deliberating, or participating in the matter.

(b) The designated supervisor or the board or commission may request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a member of a board or commission is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.230. Reporting of potential violations.** A person may report to a public officer's designated supervisor, under oath and in writing, a potential violation of AS 39.52.110 — 39.52.190 by the public officer. The supervisor shall provide a copy of the report to the officer who is the subject of the report, and shall review the report to determine whether a violation may exist. The supervisor shall act in accordance with AS 39.52.210 or 39.52.220 if the supervisor deter-

mines that the matter may result in a violation of AS 39.52.110 — 39.52.190. (§ 1 ch 87 SLA 1986)

Sec. 39.52.240. Advisory opinions. (a) Upon the written request of a designated supervisor or a board or commission, the attorney general shall issue opinions interpreting this chapter. The requester must supply any additional information requested by the attorney general in order to issue the opinion. Within 60 days after receiving a complete request, the attorney general shall issue an advisory opinion on the question.

(b) The attorney general may offer oral advice if delay would cause substantial inconvenience or detriment to the requesting party.

(c) The designated supervisor or a board or commission shall make a written determination based on the advice of the attorney general. If the advice of the attorney general provides more than one way for a public officer to avoid or correct a problem found under AS 39.52.110 — 39.52.190, the designated supervisor or the board or commission shall, after consultation with the officer, determine the alternative that is most appropriate and advise the officer of any action required of the officer to avoid or correct the problem.

(d) A public officer is not liable under this chapter for any action carried out in accordance with a determination made under AS 39.52.210 — 39.52.240 if the officer fully disclosed all relevant facts reasonably necessary to the determination.

(e) The attorney general may reconsider, revoke, or modify an advisory opinion at any time, including upon a showing that material facts were omitted or misstated in the request for the opinion.

(f) A person may rely on an advisory opinion that is currently in effect.

(g) A request for advice made under (a) of this section is confidential.

(h) The attorney general shall publish in the Alaska Administrative Journal, with sufficient deletions to prevent disclosure of the persons whose identities are confidential under (g) of this section, the advisory opinions issued under this section that the attorney general determines to be of major import because of their general applicability to executive branch officers. (§ 1 ch 87 SLA 1986)

#### NOTES TO DECISIONS

Opinion not required. — In the absence of any personal or financial interest in the contested contract, and given the fact that state official did not participate in or influence the contract award process,

official was not required to contact the Attorney General regarding the alleged conflict of interest. *Kila, Inc. v. State*, 875 P.2d 1102 (Alaska 1994).



# REPRESENTATIVE ALAN AUSTERMAN Alaska State Legislature

P.O. Box 2368, Kodiak, Alaska 99615 (907) 486-5930 • Session: State Capitol, Juneau, Alaska 99801 465-2487

## MEMORANDUM

DATE: February 28, 1996

TO: Representative Gail Phillips, Speaker  
House of Representatives

FROM: Representative Alan Austerman, Chairman  
House Special Committee on Fisheries

RE: Board of Fisheries Chairmen's Meeting

Our Board of Fish chairman's meeting met in Anchorage on February 15th and 16th and was a great success. Thank you for the opportunity to assemble five prior Board of Fisheries chairmen and the current chairman for this meeting. The meeting was designed as an informal roundtable discussion. The only request on my part was to look at the outline of concerns I supplied for the meeting.

As I know you are aware, these are turbulent times for our fisheries and the board process which governs it. I know you share my thoughts that we need to identify and address some of the current trends regarding commercial fisheries.

The chairmen voiced concern about the current level of politics prevalent in Board of Fisheries appointments and in the legislative confirmation process in general. While some of it is inherent in the process, the level of questionably intended appointments and political motives abound at unprecedented levels.

The chairmen were unanimous that the Board of Fisheries remain a lay board. They felt it would be a great loss to the state if this process gave way to a professional board as other states have done. The resistance to the professional board primarily rests with the loss of varied experience to the board, public accessibility to the board and the longstanding successful track record of our Board of Fisheries.

It was also unanimous that a professional board be seriously considered only if the political interference continued and the conflict of interest could not be adjusted to be "workable" to foster the present lay board process. There was suggestion that establishment of a professional board would require careful implementation of specific guidelines for appointment and procedures which, the group felt, they could devise if the lay board changes could not be attained.

Specifically, in order to assist the lay board, the chairmen suggested (1) modification of the conflict of interest law, (2) adoption of a better appointment time frame, as in CSHB 141, and (3) provide Board staff support.

#### Conflict of Interest

The topic of conflict of interest took center stage at the meeting. The chairmen said that the application of the executive branch's conflict of interest laws and the recent interpretation of these laws, did the board a great disservice and rendered it nearly ineffective. There was concern that this law removes industry participants from participating in the process (which, they felt, is the biggest benefit of having a lay board). There was consensus that lawyers are clogging the system in order to promote their own political agendas. It was pointed out that, in the past, as long as the individual board members admit their conflict on the record and could justify their vote, the board functioned well. At the outset of the meeting the chairmen recommended possible application of the Legislative Ethics Act to the Board.

#### Change Board Appointment and Term Dates

Of all the legislation introduced on these subjects, the group preferred HB 141, a bill I sponsored which sets the appointment date closer to the confirmation date thereby minimizing the opportunity for new members to vote at board meetings held prior to legislative confirmation hearings. The bill also sets the beginning date of terms to July 1, so that new members are not thrown into a board meeting several days after appointment. That legislation is awaiting scheduling on the Senate Floor. Passage of HB 141 would be a major step in remedying some of the problems associated with the Board of Fish appointment process.

The chairmen stressed that individuals with high levels of integrity need to be appointed to the Board. There was some discussion suggesting a point system be established by statute. This point system would assist the Governor's adherence to certain criteria when deciding between given candidates. If appointments were not made in accordance to this criteria, justification would need to be established on record.

### Staff Support

There was consensus that the Board is in dire need of some staff, separate from the Department of Fish and Game staff. It was suggested that a legal position is needed to assist with mediating issues, before they reach the board, and to help with preparation of findings, the legal justification of individual votes. There was also substantial support for the board to access biological and economic information, independent of the department, for obvious reasons. Positions specifically designated to the Board, or funding with RSA capabilities, would lighten the excessive demands on the lay board at a fraction of the cost of a professional board.

Two chairmen felt if the two major problem areas in fisheries, False Pass and Cook Inlet were addressed and resolved, the politics of the process would lessen and the board could better function. They recommended that this group make specific recommendations on these two areas to the board to most effectively get the Board on track.

### Update on Conflict of Interest

Since the meeting in Anchorage I have had staff contact Mary McDowell in the Governor's Office and various attorneys in the AG's office. While Mary McDowell has indicated a willingness to work with us on an adjustment of conflict of interest laws for the Board of Fisheries, Neil Slotnick has indicated a reluctance to amend the conflict of interest solely for this board and not all boards at one time. Another attorney, Steven Daugherty (no relation to Amy), supports amending the financial conflict to any interest above 20 percent. That means a commercial fisherman could vote on issues regarding a fishery which composed 20 percent or less of his income. Steve White of the Attorney General's Office suggested that a loosening of the conflict of interest laws undermines public confidence in the Board.

Steven Daugherty also reviewed the Legislative Ethics Act to see if this could apply to the Board of Fisheries. This is not a quick fix because much of AS 24.60 does not or could not apply to the Board of Fish. I am still evaluating which sections should and could apply.

The chairmen's general request was that the Board members be able to vote despite financial ties and an adjustment was needed to relax the financial conflict of interest to more equalize it with the personal conflict of interest criteria.

Speaker Phillips - February 28, 1996  
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My staff is pursuing this topic as a priority item. It is my plan to have legislation drafted in the very near future to address the conflict of interest. I feel that these past and present chairmen are a very valuable information resource that we should continue to draw them together and listen to their input.

Board of Fish Chairmen's Meeting  
February 15-16, 1996

Chairmen present:

Bud Hodson

Tom Elias

Ron Jolin

Nick Szabo

Larry Engles

Mike Martin

Staff present: Amy Daugherty, Sue McNeil

Tape started twenty minutes after the beginning of the meeting.

Larry started the meeting saying that conflict of interest needs to be addressed. It is difficult to function as a board when members cannot vote on specific issues. Lawyers take over. He mentioned that Coffey has a conflict of interest with FISH.

Nick said the federal process should be looked at as a model to protect the public process, especially for the substantiation of the Board's findings. The Board should be set up like the NPFMC, state what your interest is but still vote. Then provide basis for the decision. A findings person would help.

Ron agreed there should be an exemption from conflict of interest because the process is hamstrung and void.

Bud defined the lay board as people who are in a fish business; professional board are people who are paid but don't otherwise participate in the fisheries. Professional decision makers. The board faces legal battles after decisions.

Larry suggested a larger board but, said that with more people there would be less consensus. Clarification or change between plurality needed or a vote of 4 required for decisions. Like 3-2 chum cap.

Nick wondered if decisions by the board were based on facts. If the decisions are based on facts,<sup>1</sup> then voting must be based on those facts. Instead the members vote for or against their political agenda, a misuse of the office.

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Bud said that two issues would come up over and over again, Cook Inlet and False Pass. Take these two issues out and then the problems go away. He points to Larry and said that Coffey isn't in guiding and has no permit.

Tom Elias thinks that the board needs to be insulated from the governor, he insinuated that board members are thrown to the wolves and that keeps the best members off the board.

Mike said that lawyers have infiltrated the board process. Members are appointed based on their inclination to vote on 1 or 2 issues, Cook Inlet and False Pass. So fix False Pass and Cook Inlet. Instead of a professional Board give the board a better bag of tools to decrease the politics. Increase the integrity of the board members and keep the diversity of backgrounds. As far as public perception, fair play is being hurt, members should state facts why they vote, as they do for tactics, for lawsuits down the line.

Ron said that the Attorney General's office is over-involved in the board process to defend the board against lawsuits which are driving the system.

Nick said that a professional board, like the limited entry commission, would be a mouthpiece of the governor. He suggested a semi-professional board - fairly compensated like the legislators - with the staff that works just with the legislator. The board is not like a member of the cabinet and must avoid bias by the administration.

He believed the board needs a competent attorney, and economist. Sport fish would resist conflict of interest. The public process must be protected - give and take, fair process. We need to overcome the perception that board members are mini-legislators that champion an area's cause. The process needs to be protected from the legislature.

Tom said that the governor should have criteria for board members like judges so that the board is impartial.

Nick suggested a point system for board appointments such as a set number of points for: years as a resident, sport fish license holder, guiding, lodge owner, commercial fishing, processing, tendering, research, managing, industry representation and species importance. Add all the points together so that the public can see why a person is

appointed and the governor and subsequent legislators could give a written decision why one person is nominated over another despite the first person having higher points. There would have to be a good reason for the point discrepancy.

Amy asked about the long versus short range support that the legislature can give to the Board of Fish process.

Larry said this way the board will only get worse, when appointees are measured by the legislature and geographical pressure. Appointments should be made by the end of the legislative session.

Amy asked about moving the appointment date later, closer to the end of the session.

Nick said that confirmation in January is the worse time, May or June would be better.

Bud wants to see the appointees confirmed before they serve on the Board.

Larry said that there is consensus with those present at the meeting that the appointment time should be moved to later in the session. The way it is, is not good for the process.

Ron agreed that as things work now its not fair to the process nor for the people involved.

Mike said that within the legislative confirmation process the criteria for confirmation is based on how a candidate thinks on two issues, False Pass and Cook Inlet. Better if the legislature kicks them off because they haven't studied up on the issues. The process is reactionary. More planning needs to take place.

Amy asked what tools did he suggest.

Nick jumped in to say staff to support the board.

Ron said that the board is between the dept and the public.

Bud said that 10 days could be saved by taking staff reports in before the board meeting. A biologist on staff would help, because

ADF&G fills their own agenda with biology, starting to maneuver months in advance.

Tom suggested limiting staff reports to 15 minutes.  
Ron suggested adding regional staff.

Mike wants to see the end of political pressuring.

Bud wants to see forms conducive to the process. He thinks economists should set criteria for local areas; and standardize data sets.

Tom says that biologists will withhold information because the commissioner doesn't want it publicized.

Nick says politicians will try to manipulate the process, they aren't going away. He echoes the need for staff that works just for the Board.

Larry said that board meetings are bad for decision making. He suggests work groups and professional mediators outside of the Board of Fish process, like the Yukon association, Kuskokwim, and Cook inlet and Kodiak.

Bud thinks there should be a mediator on staff. He warns though that the Board could shunt responsibility off to the mediator.

Tom thinks that the board requires more funds from the legislature which underfunds the Board of Fish.

Bud mentioned Judge Holland's decision, Kneitzi decision.

Tom thinks that there needs to be time to educate the new Board members.

Ron thinks that some of these ideas would be rough to do with a lay board.

Amy asks about 2 boards.

Tom says yes.

Nick says no.

Larry argues that no time is really saved, no money is saved.

Bud says yes.

Ron says that the board gives more via fisheries, into the general fund than it takes out of the fund. Since the shell fishery is small they could meet in the fall.

Larry suggests holding a separate hearing. Allocating time for crab only. Don't allow other issues to get tacked on.

Nick suggests a confirmation hearing criteria, to measure the board member's credentials through committee protocol.

Larry thinks that the findings need to be the facts that the decisions are based on, with dissenting votes justified.

Nick thinks the findings are like the minutes of the meetings, they are just facts. Different standards would be for voting on an issue, than on the findings.

Bud thinks that the minority can write up their own findings. They have their own interpretations of the facts. There should not be a findings person on staff because of the bulk of information. Perhaps if there was enough staff to handle the information.

Larry thinks that the process needs help by changing the conflict of interest, otherwise the board should go professional. This is part of the political process. Standards are nice but legislation is needed for just a few things.

Ron believes that petitions can't be allowed for agenda changes many times a year. Instead it is important for the fishermen to work with the decisions for three years, until the board meets again.

Nick thinks that the Mediation Task Force's study group, needs to be promoted to hash out problems. Coordinate the process, so that people are not excluded. This may help to bolster the public's confidence.

Amy reminded them that the mediators don't always know the fishery.

Nick reminded her that other issues were well resolved by the mediation process.

Mike thinks that there should be long term plans, sport fish in Cook Inlet has not been addressed. Allocation in the past has been between commercial interests. Sport fishermen have been excluded. The areas have not been seen as having unique needs.

Amy mentioned the Kott buy back as a means of reallocation. Kott's bill includes sport fish contributions. She mentions limited entry, to amend the constitution through HJR 51.

Nick said that few people that he has talked to think a 2nd board is good.

Tom thinks that it's a good idea because crab is contentious. Shellfish split off would give more expertise, and industry people. It would save time.

Larry argues that the time saved would be filled with other issues. Cost for the Board is \$6,000 a day while the board meets. Increase the number in the board to 9 to include crab.

Bud agrees with a second board including bottomfish.

Nick thinks the governor wants more state management of bottomfish, yet neither of the appointments know what a bottomfish is. Money spent on another board would be better spent elsewhere. The governor has not done his job in appointing members. Give criteria to the governor in the appointments. 2 boards would be more cumbersome. Better to resolve the politics. Once seats are allocated on the board to upper, lower Yukon and other geographical locations, the seats are taken before crab is even addressed.

Ron thinks that shellfish are in such bad shape that there aren't enough to make decisions on. Better to spend money elsewhere.

Tom doesn't care if they have to cut DOT, a fair share for F&G, sportfish and game divisions is needed, totally funded by sportmen's dollars. They aren't spending any general fund money.

Bud thinks 4-5 person crab fish board wouldn't increase costs.

Larry thinks that the time would still be filled.

Mike thinks the state should manage for biology and not for economics.

Larry thinks though that if someone is going to cough up more money, it should go to some of the other issues addressed and not to a 2nd board. Time would not be saved.

Ron reminds us that there aren't any shellfish, so the time could be in the spring or fall when the board is otherwise is not meeting.

Nick thinks that the board needs to be built up as it is and not diluted into 2 boards.

Mike thinks the shellfish should have a separate meeting, only.

Others agree.

Tom thinks that if the legislature doesn't change the ethics or appointment dates, there is no reason to meet. He thinks that this meeting holds knowledgeable, viable, people which spans the board for 25 years. Ground rules need to be met first, before meeting again. Talk with others.

No regional boards.

Nick thinks the governor needs criteria in board appointments. Political agendas should be cast aside for Board appointments. Strings should be attached, expertise needs to be all inclusive throughout the state.

Tom thinks staff reports are a waste of time. If we can have these demands (suggestions) met then we can contribute as a viable group of past chairmen. He wants a lay board.

Bud thinks it shouldn't be against the law to vote on the board and also participate in the fisheries. We don't want mid-winter appointments but if there are, the legislature should confirm them then.

Nick interjects that they can agree with the dates in HB 141. Allocation is based on economics, so our need for an economist and as

long as the board is involved in litigation, a person knowledgeable in law is needed.

They stipulate that for a lay board staff: mediator, attorney, biologist, economist ; substance of CSHB 141C as it is now.

Amy describes a professional board. It would be similar to the CFEC, 3 people in a closed room.

Others question what is a professional board, what is the definition of professional board. Like a judge?

Ron thinks this board process could end up like Washington State. (He didn't go into detail)

Mike thinks that Cook Inlet and False Pass drives the board and the politics behind it. A 2nd group away from the board is needed to make decisions. There has been no plan for the growing sport fisheries in Cook Inlet.

Ron reminds the group that the fish are at an all time high. The sport and charter fishery has changed salt to fresh water. What to do when there is a hot bed issue. CI and FP aren't the only hot bed issues that come up. He suggests someone come up with a workable plan to present to the governor with issues like these, in the future.

Tom thinks that this chairmaen's meeting first needs to be made a viable group which would happen when the legislature agrees tot he ethics changes that would need to be made. Otherwise they are wasting their time.

Nick questions the purpose of this group. He thinks they should remain generic not solving specific problems like FP and CI. That is the job of the Board. In 1975 Hammond was in office, FP was a problem then but it was Briatol Bay reds. Then there were much fewer fish (10%). They didn't need a super board to do that. This group has value once a year to be a buffer between board and leg.

Tom sees this group as providing expertise to get tools from the leg. to give to the board, not to solve FP and CI. Brainstorming for the Board of Fish.

Larry asks about the advisory committees.

Tom asks what is the make up of the advisory committee. If a committee is made up of 95% of one gear type there is no validity. To avoid bias there should be designated seats, like the Kodiak committee.

Larry says that joint boards do have mandated seats, but there is still controversy.

Bud says that designated seats are unique to each advisory committee. Like Dillingham has designated seats for villages not gear types.

Anch and Kodiak have designated seats for user groups.

Nick thinks that there are local issues hashed over, and the board will decide something else so why have an advisory committee. His board often went (voted) with the committee to promote the committee process and instill public confidence in the process. Kodiak was a good one, still is. Others were biased, set up and manipulative. PWS was another good one. Good ones were rare.

Bud thinks that it is the integrity of the people who are appointed as to how well the process works.

Generally agreed that there should be an orientation for new board members.

Tom thinks that public perception of the process is the number one issue. He has even had people removed from the meeting. Gave an example with Clem Tillion.

Ron thinks that 80% of what the board does is grassroots stuff. Hot bed issues that keep coming up try to undermine the process. The process needs to be protected. What is our task after this group?

Larry thinks that the advisory groups fall apart over political boundaries.

Nick advises that advisory committees stay regional and focused. The advisory committee process should be reanalyzed.

Bud said that it is language from ANILCA, and advisory committees were set up by the feds. Regional councils and advisory committees.

That is why the feds gave \$1.2 million. Things can be changed now because the funding is off.

Bud thinks this is the wrong time to be putting something forth as a group because the political implications with the governor's board appointments. Two months ago, or from now, would be a better time.

Tom says that when the conflict of interest changes then this group can work on criteria from here. Types of questions to be asked by the legislature or protocol for the governor to follow.

Mike thinks that tools are needed for the board to deal with CI and FP.

Bud thinks there needs to be long term planning like the rainbow trout management plan is one of the best. Visionary products, to see where are we going to be sport fishing, fish farming, Canada, Russia, Wash, Ore sport fishing? The solution can include processors, and the group here. How to get on top of the sport fishing growth before it becomes another bad Kenai River situation.

Bud said that in his board, participation was laxer than it is now. Members revealed their interests in an issue but still voted.

Larry says how can people participate when there is thousands of dollars in benefit.

Bud states and others agree that now lawyers are dictating the board decisions by interpretation of the ethics laws. Board decisions are dictated by the AG office.

Nick said that with White and Coffey there might not be a financial conflict but there is public perception that their conflict is just as great as those who own several permits and make money in fishing. Apparently White has no conflict of interest but...

Nick suggests amending Title 16 to recognize that the Board operates on a different standard. Some of the ethics laws are good (like not allowing closed meetings with 4 or more board members present) but others are not, actually interfering with the lay board process.

Governors are afraid to appoint people who are involved in the fishery because of the conflict of interest scare. But those are who you want on the board for diversity of experience.

Bud reiterates that a lay board is one who is made up of those who participate in the industry. After all everyone on the board has a bias, they cannot be taken away. Everyone has their own ideas. But openmindedness is important.

Nick said that there needs to be a broad representation on the board, more so than what has been on the board in the last few years with justification for the governors decisions on appointments.

Larry comments that apparently this governor wants to correct CI. He wants to ensure state management of fisheries, and may be willing to compromise other values. He senses FP has a lot to do with subsistence.

The question arises about restocking sockeye lakes. Stocking lakes is definitely long term projects, but first the state has to decide about CI to make longterm decisions on stocking, trophy, commercial decrease. Stocking doesn't take away the allocation questions. 103 systems in CI but access is reduced.

Bud says fish to the ocean becomes part of a common fishery. Can create more problems. Takes long term planning to harvest the resource. Management problems. CIAA is in charge of this.

Ron said aquaculture associations are supporting sportfish because of the increased interest in the sport.

Larry states that stocking is not a panacea, it has probably caused as any problems as it has solved.

We have to be careful because Spiridon Lake is in the middle of a National Refuge. Fish and Wildlife could dictate how fisheries would be allocated.

Amy reports that Steve White says it is possible to draft and amend the ethics act to exempt the BoF from conflicts of interest, and George is open to it. SW has to get a call from the administration. Mary McDowell said they backed off addressing this because they wanted to keep the public confidence, only financial interests are now only

disqualified. It would come across that we were undermining the board process as far as public confidence. Otherwise a policy call. They are open to suggestions on this.

Bud says they are suggesting just a small adjustment in the ethics statute.

Nick said, I'm looking for a fairly specific exemption, balancing it with staff support. We need to get more specific. The way the board interprets this law is probably right, it is the law that needs to be changed. For voting and participating in the meetings, we need a blanket exemption except some financial disclosures. The board should be more like the legislature and similar to the council.

Amy explains how it works in the legislature, with disclosure. Speaking with George Utermohle on speaker phone, legislature has its own ethics act.

Larry asks for language that will free the board from being hamstrung by the interpretation of the ethics law and return the board to the way it used to be as a lay board.

Bud tells George that because of the different interpretations of the ethics act by the AG's office it has become apparent that there is a trend to exclude board members who participate in fisheries, if it continues we will end up with a BoF where no one participates in fisheries, which is not the intent nor the desire of the public. The ethics law needs to be changed. We don't want to be totally exempt from the ethics law but we also want to function as a lay board.

George Utermohle said the solution comes in changes in statute. It is in the power of the legislature to develop standards similar to those applicable to the legislature.

Nick: in meetings, the board would use the legislature ethics act instead of the executive.

Ron said that this group needs to be in Juneau. It would be more efficient. Legislators and aides would be available.

Bud suggests to send a memo to the AG's office.

Mike said that this is what Alan should be doing contacting governor's office and legislature's legal.

Bud says that this is a starting point for Amy to go from here. The ball is in the legislatures park before this group can do any more. Nick wants to see broader representation, qualifications for board members, narrowing the governor's discretion, ranked somehow. Long range planning is good, around which to make the regulations, but it does have its limitations.

Larry explains the rainbow trout plan, to get a long term plan, extended to Copper River and other parts of the state. Hatchery production is out of control, we need to look to the future.

Nick reminds the others that there is a limit to where this group can go.

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 542

Title: HB 542  
BOARD OF FISH ETHICS  
Sponsor: C+RA COMMITTEE  
Requestor: HOUSE SPEC COMM ON FISH.

Dept. Affected \_\_\_\_\_  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_  
Serial # \_\_\_\_\_

**EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)**

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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**FUNDING: (THOUSANDS OF DOLLARS)**

General Fund						
Federal Fund						
Other						
TOTAL	0	0	0	0	0	0


**POSITIONS:**

Full-Time						
Part-Time						
Temporary	0	0	0	0	0	0

**ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)**

see attached analysis

Prepared by:



ALAN AUSTEILMAN, CHAIR  
HOUSE SPECIAL COMMITTEE  
ON FISHERIES

Date: 3/20/96

Phone: 465-4230

Phone:

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. 1  
CSHB 542

Title: CSHB 542 (FSH)  
Board of Fish Ethics

Sponsor: C&RA Committee

Requestor: House Spec Committee on Fish

Dept. Affected \_\_\_\_\_  
DRU: \_\_\_\_\_

Components: \_\_\_\_\_  
Serial # \_\_\_\_\_

**EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)**

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

**FUNDING: (THOUSANDS OF DOLLARS)**

General Fund						
Federal Fund						
Other						
<b>TOTAL</b>	0	0	0	0	0	0


**POSITIONS :**

Full-Time						
Part-Time						
Temporary	0	0	0	0	0	0

**ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)**

see attached analysis

Prepared by:

  
Alan Austerman, Chairman  
House Special Committee  
on Fisheries

Date: March 20, 1996

Phone: 465-4230

Phone:

Another proposal considered and rejected by the committee was to split the present board into two boards--one to deal with salmon and herring or anadromous and freshwater finfish, the other to deal with marine fish and shellfish. The committee agrees with concerns that salmon interests have tended to dominate the board process, sometimes to the neglect of other fisheries. It feels, however, that to split the board would complicate management of resources and would not be in the best interests of the state or the resources.

The committee consensus is that the board should be structured to provide a comprehensive assessment of fisheries and fishery resources as a whole, and that fragmentation of this responsibility would increase the difficulty of designing and implementing a cohesive statewide and resource-wide fisheries policy. The feeling is that better staff support to the board will permit appropriate attention to non-salmon concerns as well as reduce time and effort demands on the board.

✓ (Other major concerns voiced in regard to conduct of the board relate to conflict of interest, special-interest bias, and influence on board members by special-interest advocates.

While it is recognized by the committee that conflict of interest and special-interest bias can be and has at times been a problem with board members, the unanimous view of the committee, and the majority view received from the public, supports appointment to the board of persons with hands-on knowledge of and experience with fisheries resources and sport, commercial, subsistence and personal use fisheries. The feeling of the committee is that even with a full-time board divested of financial interest in the industry, persons of sufficient knowledge and experience to qualify for appointment will bring with them, by definition, certain views commensurate with their experience and background.

Conflict of interest and special interest bias is not necessarily limited to commercial or financial interests, but also extends to sport fishing, subsistence and personal use. Any broad interpretation of conflict of interest or special interest would, therefore, tend to severely limit the number of qualified and knowledgeable persons available for appointment to the board. This does not mean, however, that both the governor and the legislature should not use reasonable care in avoiding the appointment of persons perceived as advocates of special interest groups.

Divestiture of fisheries interests by persons appointed to the board was carefully considered and ultimately rejected by the majority of the committee. Part

of the problem lies in the definition of financial interest and to what lengths this definition should be taken. In many cases financial involvement in the fisheries industry involves heavy investment of capital for gear and equipment, with demanding payment schedules which cannot easily be divested. To require such divestiture would, again, seriously limit the number of qualified persons available for appointment.

In addition, the majority view of the committee is that it is possible to conceal financial interests, and that to require divestiture would not prove meaningful.

But while the majority of the committee did not feel it necessary to require divestiture of financial interest for appointment to the board, it did unanimously reaffirm the necessity for full and clear disclosure by appointees of any and all financial investments in fisheries or fishery related businesses as well as membership in organizations.

The committee also considered a proposal which would require board members to abstain from discussing or voting on issues in which the member has any economic interest, including subsistence or personal use. It was decided that such a requirement would seriously hinder the board's ability to function, and that, while laudable in principle, absention should be at the discretion of the board itself. Currently, the board chairperson has the authority to decide whether or not a member has a conflict of interest which might influence their position and which should preclude his or her discussion or vote on a given issue. The committee recommends that the chair diligently exercise this authority.

The committee does recommend that board members be compensated by an appropriate salary while on board business. The primary concern is that recent time demands on the board make it financially difficult for persons to accept appointment, and that this difficulty may compromise appointment of the most qualified persons to the board. Salaries for board members should be comparable to those received by members of the North Pacific Fishery Management Council for their service.

#### 4.5 Ex parte Communication:

In regard to inappropriate or undue influence on a board member by special interest representation, committee has drafted formal recommendations which expressly forbid ex parte communication with and lobbying of board members during board meetings. The purpose of this recommendation is not to forbid or curtail discussion of issues, but rather to ensure that such discussion takes place on the public record.

Attn:  
Amy

HOUSE FISHERIES COMMITTEE 3/20/96 @ 5:00 PM  
HOUSE RESOURCES COMMITTEE 3/22/96 @ 8:00 AM

MY NAME IS NICK SZABO, I WAS A MEMBER OF THE BOARD OF FISHERIES FROM 1975-1982 AND I'VE BEEN INVOLVED WITH ALASKA'S FISHING INDUSTRY FOR THE LAST THIRTY YEARS. I SUPPORT HR 542. I RECENTLY ATTENDED A MEETING OF THE PRESENT AND PAST FISHERIES BOARD CHAIRMEN CALLED BY REP. AUSTERMAN. THOSE ATTENDING SPANNED A 20 YEAR PERIOD OF BOARD SERVICE AND ALL WERE IN FULL AGREEMENT THAT THIS CHANGE WAS MOST NEEDED.

FISHERIES MANAGEMENT AND ALLOCATION DECISIONS ARE VERY IMPORTANT TO ALASKA'S ECONOMY. WE NEED THE FULL PARTICIPATION OF MEMBERS WHO ARE HIGHLY KNOWLEDGEABLE AND WIDELY EXPERIENCED IN A VARIETY OF DIFFERENT FISHERY USES. THE ISSUES ARE TOO COMPLEX AND TOO IMPORTANT TO RISK DECISIONS BY A BOARD THAT DOESN'T FULLY UNDERSTAND ALL THE IMPLICATIONS OF THEIR DECISIONS.

PEOPLE WITH A LOT OF KNOWLEDGE AND EXPERIENCE ARE LIKELY TO HAVE BOTH A FINANCIAL AND A PERSONAL INTEREST IN AN ISSUE. HOWEVER, THE EXECUTIVE BRANCH ETHICS ACT PROHIBITS PARTICIPATION BY A MEMBER WITH A PERSONAL OR FINANCIAL INTEREST AND THUS FRUSTRATES THE INTENT OF HAVING A BOARD COMPOSED OF MEMBERS WITH KNOWLEDGE AND EXPERIENCE. THE 7 MEMBER FISHERIES BOARD REQUIRES 4 VOTES TO PASS AN ACTION REGARDLESS OF HOW MANY MEMBERS ARE ACTUALLY PARTICIPATING. AT ONE TIME THE BOARD HAD 4 MEMBERS WHO HELD BRISTOL BAY SALMON PERMITS. UNDER THE PRESENT LEGAL OPINIONS, THAT BOARD COULDN'T FUNCTION ON ANY ACTION THAT DEALT WITH BRISTOL BAY. THERE HAVE BEEN OTHER SITUATIONS WHERE ONLY 4 OR 5 MEMBERS HAVE BEEN RULED ELIGIBLE TO PARTICIPATE. AN ACTION TO CHANGE THE STATUS QUO FAILED 3-2, YET A MOTION TO APPROVE FINDINGS IN SUPPORT OF THAT VOTE ALSO FAILED BECAUSE ONLY A PORTION OF THE MEMBERSHIP WAS ALLOWED TO VOTE. THE BOARD'S ACTION TO MAINTAIN THE STATUS QUO WAS NULLIFIED BY ITS INABILITY TO APPROVE FINDINGS.

YOU MAY HAVE MISGIVINGS ABOUT EXEMPTING THE BOARD FROM THE ETHICS ACT BECAUSE YOU FEEL IT MAY VIOLATE THE PUBLIC TRUST. THERE ARE OTHER WAYS TO PROTECT THE PUBLIC'S INTEREST WHILE STILL ALLOWING PARTICIPATION BY MEMBERS WHO ARE INVOLVED WITH THE ISSUE. THE PUBLIC WOULDN'T BE CONCERNED ABOUT BOARD MEMBER'S FINANCIAL OR PERSONAL INTERESTS IF THEY WERE CONFIDENT THAT THE BOARD MEMBER'S VOTE WAS IN THE PUBLIC INTEREST AND BASED ON THE FACTS ON THE RECORD. BY REQUIRING THE BOARD TO DOCUMENT THE REASONS FOR AN ACTION BY FINDINGS OF FACT, THE PUBLIC CAN BE ASSURED THAT BOARD MEMBERS ARE VOTING BASED ON THEIR EXPERTISE RATHER THAN THEIR CONFLICTS. THESE FINDINGS WOULD GIVE THE PUBLIC A WRITTEN BASIS FOR CONTROVERSIAL BOARD DECISIONS. POSSIBLY EACH BOARD MEMBER COULD ADDITIONALLY BE REQUIRED TO PRODUCE PERSONAL FINDINGS, EXPLAINING TO THE PUBLIC THEIR INDIVIDUAL REASONS FOR A PARTICULAR VOTE.

THESE ADDITIONAL OBLIGATIONS WOULD REQUIRE INCREASED STAFF SUPPORT, BUT IF THE BOARD IS TO REGAIN THE CONFIDENCE OF THE PUBLIC, THEN THEY ARE VERY MUCH NEEDED AND LONG OVERDUE.