

HB

542

First Committee of Referral

DATE: 3/28/96

FURTHER: STA, RES
Finance

DATE TURNED INTO OFFICE: 4/11/96

The C&RA Committee considered CS FOR HOUSE BILL NO. 542(FSH)

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

and recommends:

- be replaced with S CS CS HB 542 (CRA)
- adopt previous CS
- attached amendment(s)
- adopt Letter of Intent by Committee
- further referral to the Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Kell EC 1/00</i>	<input checked="" type="checkbox"/>	<i>Tom Hoff</i>	<input checked="" type="checkbox"/>		
<i>Paul J. Hoff</i>	<input checked="" type="checkbox"/>	<i>Kelly</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>John J. ...</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>Fish. Game</i>	<i>3/28/96</i>	<input checked="" type="checkbox"/>	
<i>La.</i>	<i>3/28/96</i>	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

*Include fiscal notes accompanying Governor's bill

SENATE CS FOR CS FOR HOUSE BILL NO. 542(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

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; and providing for an effective date."

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.

10 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 542(FSH)

Revision Date: _____ Dept. Affected: Fish and Game
 Title: Board of Fish Voting Ethics BRU: Boards of Fish and Game
 Component: Board Services
 Sponsor: House CRA
 Requestor: House Fisheries COMPONENT SERIAL NO. 482

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL						

Estimate of any current year (FY96) cost: \$ 0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Laird Jones LB Phone: 465-6143
 Division: Board Support Section Date: 3/21/96
 Approved by Commissioner: Frank Rus Date: 3/21/96
 Agency: Fish and Game

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 542

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to participation before the Board of Fisheries by members of the board." BRU: Civil Division
 Sponsor: House Community and Regional Affairs Committee Component: General Legal Services
 Requester: House Special Committee on Fisheries COMPONENT SERIAL NO. 2087

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	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	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHT/A						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 39.52.120 to exempt members of the Board of Fisheries from the financial conflict provisions of the Executive Branch Ethics Act. Consequently, members of the board having a personal or financial interest in a matter before the board would be required to take action on the matter, provided they disclosed their interest to the board on the record, irrespective of the significance of their personal or financial interest in the matter. The bill will not have a fiscal impact on the Department of Law.

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 3/20/96
 Date: 3/20/96

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STATE OF ALASKA
1996 LEGISLATIVE SESSION

No. 1
BILL NO. Bill Version: CSHB 542 (FSH)
(H) Publish Date: 3/21/96

Title: HB 542
BOARD OF FISH ETHICS
Sponsor: C+RA COMMITTEE
Requestor: HOUSE SPECIAL COMMITTEE 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						
Buildings & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FINANCING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Bond						
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)

Attached analysis

Prepared by:


ALAN AUSTERMAN, CHAIR
HOUSE SPECIAL COMMITTEE
ON FISHERIES

Date: 3/20/96

Phone: 465-4230

Phone:



Alaska State Legislature

House of Representatives
Special Committee on Fisheries

Memorandum

TO: Senator John Torgerson, Chairman
Senate Community and Regional Affairs Committee

FROM: Representative Alan Austerman

DATE: March 28, 1996

RE: HB 542 Board of Fish voting ethics

I respectfully request that a hearing for my bill CSHB 542 (FSH) be scheduled in your committee at your earliest possible convenience.

My staff will be providing the referral file which includes backup and the appropriate fiscal notes.

Your assistance with this matter is appreciated.



REPRESENTATIVE ALAN AUSTERMAN Alaska State Legislature

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

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.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 28, 1996

SUBJECT: Participation by members of the Board of Fisheries in board meetings
(CSHB 542(FSH))

TO: Representative Alan Austerman
Attn: Amy Daugherty

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have asked for an interpretation of the requirement contained in CSHB 542(FSH) that members of the board of Fisheries "must participate in matters before the board even if the member has a personal or financial interest in the matter." Sec. 39.52.120(d), added by sec. 3 of CSHB 542(FSH). The language means that if a member of the board is present at a meeting, he or she may not abstain for any reason. The subsection requires the board member to disclose a personal or financial interest before participating but does not allow abstention for any reason. If the member were absent from the meeting, the member would be unable to participate. I do not know whether the procedures of the Board of Fisheries include any mechanism for compelling the attendance of members.

Please let me know if you have additional questions or if you would like an amendment prepared for your review.

TC:pl
96-098.plm

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Please let me know if you have additional questions or if you would like an amendment prepared for your review.

TC:pl
96-098.plm

(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. *Kilo, Inc. v. State*, 875 P.2d 1102 (Alaska 1994). Cited in *Gates v. City of Tenakee Springs*, 822 P.2d 435 (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 th
39.52.190. (§

Sec. 39.52.240. (a) The attorney general of a designated supervisor shall supply a written determination in order to complete requirements on the question.

(b) The attorney general shall determine whether the matter is substantial in nature.

(c) The designated supervisor shall provide a written determination to the attorney general in accordance with AS 39.52.190, after consulting with the public officer who is the subject of the matter that is most appropriate to the officer.

(d) A public officer's designated supervisor shall carry out the requirements of AS 39.52.210 — 39.52.220 if the supervisor determines that it is reasonably necessary.

(e) The attorney general shall provide an advisory opinion if the designated supervisor were omitted.

(f) A person shall not be held liable for the effect.

(g) A request shall be made for a written determination.

(h) The attorney general shall determine whether the persons whose advisory opinion is requested determines to execute the

Opinion not binding if presence of any person in the contested fact that state official in or influence the

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 CSIB 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 concensus 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
Page Four

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.



Alaska Trollers Association

130 Seward St., No. 505
Juneau, Alaska 99801
(907) 586-9400
(907) 586-4473 fax

file

March 29, 1996

Representative Joe Green
Alaska State Legislature
Juneau, AK 99811

Dear Representative Green:

I have been informed that members of the House and Senate Resources Committees may meet next week to discuss several issues including HB 542, which ATA supports.

HB 542 amends the Ethics Act to allow Board of Fisheries members to participate in all issues that come before the board after disclosing any personal or financial interest they may have in a fishery.

Conflicting attorney general opinions have confounded the Board's voting procedure for years. The current attorney general opinion disqualifies any member with a financial interest, yet allows those with personal conflicts to vote. ATA believes a lay board with expertise in Alaska fisheries is extremely important to the regulatory process that governs our industry. We support a recusal process which allows the Board members themselves to determine who has a significant conflict of interest and hope you agree.

For your information I have attached to this letter an updated version of ATA's positions on current legislation. If I can provide additional information on these or other industry issues, please don't hesitate to contact me.

Sincerely,

Dale A. Kelley
Executive Director

Att: 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 HB 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.



United Fishermen's Marketing Association, Inc.

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HB 542

An Act Relating to Participation In Matters Before The Board Of Fisheries By Members Of
the Board

Testimony

Jeffrey R. Stephan

United Fishermen's Marketing Association, Inc.

Kodiak, Alaska

to the

Committee on Resources

Alaska House of Representatives

Nineteenth Legislature - Second Session

March 22, 1996

Mr. Chairman, members of the Committee: my name is Jeff Stephan. I am here today representing the United Fishermen's Marketing Association, Inc. (UFMA), which is based in Kodiak, AK. UFMA is a multi-species, multi-gear-type commercial fishermen's association. Our membership includes seiners, pot fishermen, longliners and trawlers who harvest salmon, herring, halibut, black cod, king crab, tanner crab, opilio crab, dungeness crab, pacific cod, pollock and flatfish throughout the Gulf of Alaska and the Bering Sea/Aleutian Islands. UFMA members are interested in, and affected by the activities of the Alaska Board of Fisheries (Board). I have represented UFMA at Board meetings since 1978. We appreciate the opportunity to provide testimony on HB 542.

UFMA supports HB 542. We applaud the efforts of Representative Austerman and other members of the House Resources Committee and the Legislature who have taken the initiative to address this issue.

Generally, we hope that the Governor and the Legislature are careful in the appointment and confirmation of Board members. We hope that the Board is made up of persons

who are capable of conducting the public business in a manner that does not exercise any personal or financial conflict of interest that they may have, or any prejudice that they may hold. It has been both frightening and disappointing to observe several past Board meetings when it has been wholly obvious that a Board member held an unmistakable predetermined bias with regard to a particular regulatory matter, and was not open to a fair and objective reasoning and consideration of the facts relative to such regulatory matter. We note, however, that these predetermined attitudes, prejudices and biases are frequently not based on a financial conflict of interest.

We agree that the Board has been hamstrung because of the current status and exercise of Ethics Act determinations under AS 39.52 by the Alaska Attorney General (Attorney General). Additionally, we have serious concern that the current process opens the door for any administration to direct, control and otherwise influence the policy and regulatory autonomy of the Board through the offices of the Attorney General by virtue of the authority that is held by the Attorney General to disqualify Board members from voting. The Administration and the Attorney General hold de facto control over the regulatory process of the Board through the power that they possess to disqualify Board members from voting. Currently, the possibility exists for the Administration (i.e., Governor, Attorney General, Commissioner of the Alaska Department of Fish and Game (ADF&G), etc.) to influence the regulatory and policy actions of the Board for political or other reasons through the exercise of this authority to disqualify Board members from voting.

While you may take action through HB 542 to modify the Ethics Act determination relative to the Board, or otherwise take action through other legislation to make drastic changes to the structure¹ of the Board, we respectfully submit that you are not getting to the root of the problem. We fully support the much needed action to improve the operational autonomy of the Board that is embodied by HB 542. Nevertheless, we respectfully submit that the Legislature should immediately address several elements relative to the underlying operational and administrative process of the Board. We respectfully recommend that the Legislature adopt legislation that will ensure that before

¹ i.e., regional Boards, multiple Boards, regional or otherwise designated seats, increasing the size of the Board, etc

the Board adopts, amends or repeals a regulation, the Board shall be required to:

1 Substantively and reasonably consider and analyze several significant subject areas as a basis for any regulatory action that the Board may take, and specifically with regard to any regulatory action where the Board employs the Allocation Criteria², the Mixed Stock Policy³, or acts upon an Agenda Change Request⁴. Such Consideration and analysis should include, and not be limited to, the following:

- (a) alternative regulatory options
- (b) costs and benefits of the regulatory action,
- (c) economic impacts on those who are affected by the regulatory action,
- (d) environmental impacts of the regulatory action,
- (e) conservation impacts of the regulatory action,
- (f) other relevant facts and considerations;

2 Produce written findings with regard to significant regulatory issues that the Board addresses, specifically with regard to any regulatory action where the Board employs the Allocation Criteria, the Mixed Stock Policy, or acts upon an Agenda Change Request. Such written findings should:

- (a) include a summary, analysis and enumeration of the significant facts that were considered by the Board as part of a Board action to adopt, amend or repeal a regulation, or to adopt an Agenda Change Request,
- (b) include a summary, analysis and enumeration of the deliberation of the Board relative to a Board action to adopt, amend or repeal a regulation, or to adopt an Agenda Change Request,
- (c) include a summary and enumeration of the

² AS 16.05.251(e), REGULATIONS OF THE BOARD OF FISHERIES.; and 5 AAC 39.205, CRITERIA FOR THE ALLOCATION OF FISHERY RESOURCES AMONG PERSONAL USE, SPORT, AND COMMERCIAL FISHERIES.

³ 5 AAC 39.220, POLICY FOR THE MANAGEMENT OF MIXED STOCK SALMON FISHERIES.

⁴ 5 AAC 39.999, POLICY FOR CHANGING BOARD AGENDA.

reasoning, analysis, logic and justification that the Board applied when they acted to adopt, amend or repeal a regulation, or to adopt an Agenda Change Request,

(d) prove that the Board substantively, reasonably and rationally considered, analyzed and deliberated relative to the required analyses and considerations that are suggested in "1" above.

Produce oral individual findings on the record that:

(a) itemize the facts and elements of deliberation that were considered by the individual Board member in making her/his decision

(b) permit the public to evaluate the individual reasons, analysis, logic and justification that an individual Board member applied to her/his decision making,

(c) prove that an individual Board member who influenced a decision to adopt, amend or repeal a regulation, or to adopt an Agenda Change Request through debate, deliberation and the exercise of a vote did reasonably and rationally consider and analyze the required considerations and analyses that are suggested in "1" above

We respectfully suggest that the Legislature should act to impose necessary regulatory reform upon the Board process. The Legislature should also act to address the administrative operation of the Board. The complexities of fisheries conservation management and allocation are certain to expand and increase in the future. The

⁵ Several aspects of the administrative operation of the Board are in great need of improvement and modification [i.e., precise and rigorous adherence to the legal requirements of handling Agenda Change Requests (5 AAC 39.999, POLICY FOR CHANGING BOARD AGENDA), and all associated and supportive background information, complete and timely response to information requests from the public, complete and timely dissemination of information to the public that is relevant to Board deliberations and action; adequate and reasonable notice to the public; etc.]

Legislature must take action to insure that the Board process will serve the public and will protect the resource that the Board is statutorily required to manage and conserve. Without such legislative action, the Board has wide latitude to operate in an arbitrary and capricious manner. Without such legislative action, and depending to a large extent on the ability of the Attorney General to disqualify Board members from voting, and on the influence that is exercised in the appointment and confirmation of persons to the Board, the Administration has wide latitude to influence the autonomy and decision making of the Board.

We support HB 542 as a first important step toward improving the Board process. We respectfully suggest that the structure of the Board is not so much in need of attention and fixing as is the underlying process by which the Board administers, operates and regulates under their statutory authority.

Thank you for the opportunity to testify to you today.

Respectfully Submitted By:

Jeffrey H. Stephan

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2. During the First Alaska Legislature I was a member of the House Resources Committee. In that capacity, I voted to report and later, on the floor, to pass HB 201, a bill enacted as ch. 94 SLA 1959 entitled "Fish and Game Code of Alaska." The First Alaska Legislature also enacted HB 114, sec. 17, ch. 64 SLA 1959 (presently codified as AS 44.39.030). HB 201 established an eight-member Board of Fish and Game to which the Legislature delegated authority to adopt fishing regulations (in 1975 the Legislature divided the Board into a seven-member Board of Fisheries and seven-member Board of Game). The statute required the Governor to appoint individuals to the Board "without regard to political affiliation or special interest." HB 114 required the Governor to appoint the Commissioner of Fish and Game from among a list of nominees submitted to him by the Board of Fish and Game.

3. Throughout the Alaska House of Representatives' consideration of HB 201 and HB 114, I exercised my best effort to create a regulatory structure that would accomplish three important goals: to ensure that fishing would not be allowed to compromise the health of Alaska fish stocks, to ensure that fishing regulations would be adopted in a fair and impartial manner and to establish a regulatory structure in which every fisherman could have confidence that his or her opportunity to fish was being regulated independent of political, economic or special interest bias.

4. In 1959 I thought that the Legislature's effort to establish a regulatory system that would achieve the goals described in paragraph no. 3 was generally successful. But I did fail in one regard. To keep politics out of fish and game management, HB 114 required the Governor to select his Commissioner of Fish and Game from among a list of individuals submitted by the Board of Fish and Game whose members, in theory, had themselves been appointed without regard to "political affiliation or special interest." To completely remove the Commissioner (and fish and game management) from politics, during House debate on HB 114 I offered an amendment to designate the Commissioner as a board or commission described in art. III, sec. 26 of the Alaska Constitution. The purpose of my amendment was to prevent the Governor of Alaska from dabbling in fish and game management the way Governors have in other states where a politically impartial board does not exist to buffer the regulatory process from gubernatorial politics. Unfortunately, my amendment did not pass. See 1959 House Journal at 403-04. As a result, the Commissioner serves at the Governor's pleasure. If my amendment had passed, a new Governor could not replace the Commissioner at will. Rather, the Commissioner could only be replaced in the manner "provided by law."

5. The federal government transferred fish and game regulatory authority to the State of Alaska (and hence to the Board of Fish and Game) in 1960. After more than 30 years of experience as a commercial fisherman, 12 years of experience as a

legislator and eight years of experience as Governor of Alaska (during which tenure I appointed commissioners and board members) I have come to realize that the fish and game regulatory structure that I and other members of the First Alaska Legislature created is fatally flawed in a respect that none of us appreciated in 1959. What I and other legislators failed to adequately consider was the extent to which Board members appointed "without regard to political affiliation or special interest" would carry their own political, economic, social and other biases into the regulatory arena. Inevitably, when individuals who have a personal economic or social interest in particular Alaska fisheries become board members who then make regulatory decisions that, by their nature, accommodate groups of fishermen who profit economically from board decisions, both the fact and the perception of special interest bias is apparent. In retrospect, the practice of appointing individuals to the Board of Fisheries because of their past or present participation in particular fisheries is fundamentally unfair to the thousands of fishermen whose economic and other interests are not personally represented by individual board members. Indeed, if the Legislature wanted to ensure that the economic and other interests of all groups of Alaska fishermen have the same degree of representation on the Board, it would have to expand the Board to at least 150 members. Since Board membership presently is limited to seven individuals, as any fisherman familiar with Board proceedings can attest, fishermen whose gear groups or

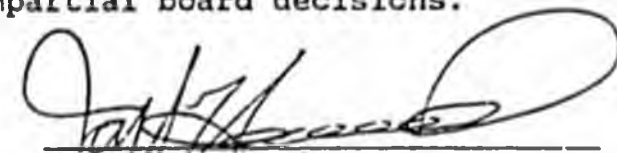
fisheries are represented on the Board are better accommodated by Board action than fishermen whose gear groups or fisheries are not represented on the Board. In retrospect, this result could easily have been avoided if the 1959 Legislature had prohibited the Governor from appointing individuals to the Board who have any economic or other interest in Alaska fisheries. Doing so would not have been difficult, and it is interesting to note that the Legislature did precisely that when it enacted criteria for appointment to the Commercial Fisheries Entry Commission.

6. In addition to the situation described in the cross-claim in the above-captioned action, other examples of the unfairness that results from the inherent Board member conflicts-of-interest described in paragraph no. 5 are numerous. For example, a majority of commercial fishermen who participate in the Alaska salmon fishery hold set net limited entry permits. However, set net fishermen frequently have had no representation on the Board of Fisheries, while drift net fishermen historically have had at least two seats (and on occasion as many as four seats) on the Board. The attendant Board bias in favor of drift net fishing has exhibited itself in numerous ways. In Bristol Bay, Board regulations prohibit set net fishermen (approximately 90 percent of whom are Alaska residents) from fishing with nets longer than 50 fathoms (300 feet), but allow drift net fishermen (almost 50 percent of whom are non-residents) to fish with 150 fathom (900 feet) nets. See 5 AAC 06.331(c). Similarly, in Cook Inlet Board regulations limit set net fishermen to an aggregate of 105 fathoms (630 feet) of net, but allow drift net fishermen



to fish with 150 fathom nets. See 5 AAC 21.331(d). More importantly, most ADF&G biologists agree that the annual Bristol Bay salmon run might best have been managed by allowing the harvest to be taken by set nets and by fishermen fishing with drift nets at the river mouths in small skiffs. Doing so would allow ADF&G to ensure that discrete salmon stocks that spawn in each of the Bristol Bay river systems are not intercepted and overharvested and that escapement goals for each system are achieved. But because its members in the past have favored drift net fishermen, the Board has adopted regulations which achieve a contrary result. In particular, the regulations have authorized and encouraged drift net fishermen to invest in large, expensive and extremely efficient boats. As a result, the drift net fishery is drastically overcapitalized. The overcapitalization has put undue pressure on ADF&G and the Board to allow the drift fleet to intercept commingled Bristol Bay salmon stocks in open water in front of the Egegik River and elsewhere. Although the situation is biologically dangerous and patently unfair to both set and drift net fishermen who fish in rivers of origin that salmon intercepted at Egegik never reach, the Board has done little to correct the problem because doing so would affront the massive and politically powerful drift fleet.

7. Although the analysis of Board bias in paragraph no. 6 is a set net fisherman's perspective, I voiced similar complaints to no avail when I participated in the Bristol Bay fishery as a drift net fisherman. The point is simply that, based on my more than 30 years of experience as a Bristol Bay fisherman, in my

opinion, the intervenors' cross-claim in the above-captioned action does not describe an isolated situation. The fact is that if it was ever appropriate when Alaska was a small state, as the intervenors allege, the present Board system is patently and fundamentally unfair to thousands of fishermen who have a legitimate expectation that their opportunity to participate in Alaska's fisheries will be regulated fairly and impartially. In that regard, while the statute may prohibit doing so, during my tenure as Governor, as a matter of course, I nominated individuals to serve on the Board of Fisheries with knowledge of the area of the state in which they resided, the fisheries in which they participated, the gear they utilized and the fishing groups whose interests they represented. I did so in order to try and balance fishing group representation on the Board in the forlorn and ultimately unfounded hope that, accepting the existing regulatory structure as a given, doing so somehow would result in fairer and more impartial board decisions.


Jay S. Hammond

SUBSCRIBED AND SWORN to before me this 27th day of August, 1990, at Port Alsworth, Alaska.


Notary Public or Postmaster
My Commission Expires:

Postmaster - Port Alsworth

Senate Community and Regional Affairs Committee
John Torgerson-Chair

Senate State Affairs Committee
Bart Sharp, Chair

Senate Resources Committee
Loren Leman, Chair

Senate Finance Committee
Steve Frank, Chair

DATE: April 10, 1996

SUBJECT: HB 542

Dear Honorable Chairmen,

I am writing to you about HB 542. HB 542 pertains to the Board of Fisheries voting ethics. The bill must be passed if the board process is to work to the benefit of all user groups as was originally intended when Governor Hammond signed the bill in 1974.

The bill was referred to the Senate Community and Regional Affairs Committee, and then the State Affairs Committee, and then the Resources Committee and finally the Finance Committee after passing overwhelmingly on the floor of the House.

I was appointed to the Board of Fisheries by Governor Wally Hickel in February 1, 1992. I was reappointed to the board by Governor Tony Knowles in February 1, 1995.

During my first term on the board, Attorney General Charlie Cole reviewed my ethics disclosure and determined that I could participate in deliberations on the Area M/AYK chum issue because my level of financial interest was insignificant. I participated in the 1/93 chum meeting and was a full participant in all aspects of the deliberations.

When a new AG took office, he determined that under the current ethics law, because my family and I hold limited entry permits for the Bristol Bay fishery, I could no longer participate in the Area M/AYK chum cap issue. He felt that my family and I could possibly materially benefit if the chum cap was lowered.

Lowering the cap could result in Area M fishermen not being able to harvest their full allotment of Bristol Bay sockeye as provided by the Juno Management Plan because they could reach the chum cap before they reached the 8.3% of the Bristol Bay run allotted to them.

Because four votes are needed to change any regulation, I feel the Area M/AYK issue will never be resolved as long as I or any

future board member from Bristol Bay sits on the board of fisheries because they will be conflicted conflicted out under the current interpretation of the ethics law.

The current law states that members can participate as long as there is no significant or substantial personal or financial interest on the issues before the board.

In summary, the problem with the current ethics law is that because there is no standard of measurement of what constitutes a significant or substantial financial or personal interest, any benefit no matter how minuscule, will be ruled as a conflict of interest, thus a conflict is declared and that board member will be excluded from deliberations.

Sincerely,

Trafon Anqasan

Public member, Board of Fisheries