

SCOMM

138:12

HOUSE COMMITTEE REPORT

Date Referred to Committee: April 1, 2005

FURTHER REFERRALS: Resources

Date of Committee Action: _____

The HOUSE SPECIAL COMMITTEE ON FISHERIES considered:

HB 241

HOUSE BILL NO. 241

BOARD OF FISHERIES CONFLICTS OF INTEREST

"An Act relating to participation in matters before the Board of Fisheries by members of the board; and providing for an effective date."

Recommends it be replaced with [] HCS or [] CS for _____ (_____)

For Senate Bills with new title: ☐ *Technical Title* ☐ *New Title:* HCR_____ ☐ *Same Title* ☐ *New Title*

☐ attach amendments

☐ add new referral to _____ Committee

[] Letter of Intent _____ Committee

*List of
Abbrev
for
Depts.:*
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

[illegible][illegible]

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>Peggy Wilson</i>	WILSON	X			
<i>John Harris</i>	HARRIS	X			
<i>Samuel Ellis</i>	Sam Ellis			X	
<i>John Harris</i>	ELIS	L			
Chair: <i>Bill</i>	LODOW	✓			
Chair: <i>Bill</i>	THOMAS	✓			



Alaska State Legislature

Representative Peggy Wilson

House District 2

Putting Alaska's Families First

*ASAC
Jerry McCune
requested*

MEMORANDUM

Date: April 1, 2005

To: Representative Bill Thomas Co-Chair House Fisheries Committee
Representative Gabrielle LeDoux Co-Chair House Fisheries Committee

From: Representative Peggy Wilson *W*

Re: HB 241 "Board of Fisheries Conflicts of Interest"

The Joint Salmon Industry Task Force recommended in their January 31st, 2003 report to the 23rd Alaska State Legislature that this exact piece of legislation be introduced and passed by the legislature.

The Task Force and I are very concerned with the Board of Fisheries conflict of interest policy. The Task Force and I feel that the Board of Fisheries is not as effective as it should be when members with the most knowledge and experience in certain areas must excuse themselves when those issues arise.

Therefore I have introduced HB 241. I request that you schedule HB 241 for a hearing before the House Special Committee on Fisheries as soon as possible.

I have attached the sponsor statement and a copy of the legislation. Thanks for your consideration.



Alaska State Legislature

Representative Peggy Wilson

House District 2

Putting Alaska's Families First

SPONSOR STATEMENT

HB 241

Board of Fisheries Conflicts of Interest

HB 241 implements changes recommended by the Joint Salmon Industry Task Force to the Board of Fisheries conflict of interest policy. The Board of Fisheries is not as effective as it should be when members with the most knowledge and experience in certain areas must excuse themselves when those issues arise.

The Board of Fisheries is a lay board composed of members with various backgrounds and expertise. Some members are involved in the commercial fishing industry, some in recreational fishing, some are fishing lodge owners and others are public members with an interest in fisheries. Under current policy certain members are conflicted out of participation, which removes them from public record. It would be a better policy to have members state whatever conflict they may have on the record, participate on the record, and vote on the record. These people have knowledge and experience that should be used to assist the Board of Fisheries in making the best possible decisions. Currently they are not allowed to use that expertise. This must be corrected. It is critical that all members of the Board of Fisheries be allowed to use their valuable expertise to add important information and perspective to the subjects being discussed and voted upon.

This bill requires Board of Fisheries members to disclose a personal or financial interest on the record before participating in matters before the board. If they disclose a conflict of interest this would not disqualify a board member from participating in and voting on matters before the board.

I ask for your support of HB 241.

ALASKA STATE LEGISLATURE



Interim:
P.O. Box 109
Wrangell, AK 99929
Phone: (907) 874-3088
Fax: (907) 874-3055

Session:
State Capitol, Room 108
Juneau, AK 99801-1182
Phone: (907) 465-3624
Fax: (907) 465-3175

REPRESENTATIVE PEGGY WILSON
HOUSE DISTRICT 2

Fact Sheet for: House Bill 241

Short Title: Board of Fisheries Conflicts of Interest

Summary:

- Changes the conflict of interest policy for the Board of Fisheries – members will declare their conflict, but still participate in discussion and voting.

Benefits:

- Increases the efficiency of the Board of Fisheries by allowing members with the most knowledge and experience in a particular area to participate on the record and to vote on the record instead of having to remove themselves from discussion and voting because of a conflict.

Background:

- HB 241 implements changes recommended by the Joint Salmon Industry Task Force to the Board of Fisheries conflict of interest policy. The Task Force realized that the board is not as effective as it should be when members with the most knowledge and experience in certain areas must excuse themselves when those issues arise.



UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 110
Juneau, Alaska 99801-1172
(907) 586-2820
(907) 463-2545 Fax
E-Mail: ufa@ufa-fish.org
www.ufa-fish.org

April 4, 2005

Representative Gabrielle LeDoux, Co-Chair
House Special Committee on Fisheries
Alaska House of Representatives
State Capitol (Mail Stop 3100)
Juneau AK 99801-1182

Dear Representative LeDoux,

United Fishermen of Alaska supports passage of HB 241 to provide for Board of Fisheries members to participate in matters before the Board, if they declare their personal or financial interest in a fishery.

Members are on the Board for their expertise in some aspect of fishing. It is vital that all Board members, especially those most informed of the issues concerning a fishery, be able to participate in the discussions and decision making process. UFA feels that the requirement to disclose financial interest while allowing participation works in the legislature and can work in the Board of Fisheries.

We appreciate your consideration on this legislation.

Sincerely,

Mark Vinsel
Executive Director

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Druggers Association • Alaska Longline Fishermen's Association • Armstrong Keta • At-sea Processors Association
Bristol Bay Reserve • Concerned Area "M" Fishermen • Cordova District Fishermen United • Douglas Island Pink and Chum
Fishing Vessel Owners Association • Groundfish Forum • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association
North Pacific Fisheries Association • North Pacific Scallop Cooperative • Northern Southeast Regional Aquaculture Association
Old Harbor Fishermen's Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation
Purse Seine Vessel Owner Association • Seafood Producers Cooperative • Southeast Alaska Herring Seiners Marketing Association
Southeast Alaska Fisherman's Alliance • Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners Association
Southern Southeast Regional Aquaculture Association • United Catcher Boats • United Salmon Association • United Southeast Alaska Gillnetters
Valdez Fisheries Development Association • Western Gulf of Alaska Fishermen



43961 Kalifornsky Beach Road • Suite F • Soldotna, Alaska 99669
(907) 262-2492 • Fax: (907) 262-2898 • E Mail: kpfa@alaska.net

FAX
Cover Sheet
(907) 262-2898 FAX

Date: April 13, 2005

Pages: 3
(Including Cover Sheet)

To: Representative Ladd

Attn: _____

FAX: (907) 465-4956

Subject: HB 241

If there are any problems with this transmission, please call the
KPFA office at (907) 262-2492, send a FAX to (907) 262-2898, or
email to kpfa@alaska.net.



43961 Kalifornsky Beach Road • Suite F • Soldotna, Alaska 99669
(907) 262-2492 • Fax: (907) 262-2898 • E Mail: kpfa@alaska.net

April 12, 2005

House Special Committee on Fisheries

Co-Chairs: Representative LeDoux and Representative Thomas
Representatives: Harris, Elkins, Wilson, Kapsner, Salmon

KPFA would like to thank Representative Wilson for introducing HB 241. We believe that this is crucial to allowing the Board of Fisheries to deliberate important issues without political interference.

Current board policy requires that all adopted proposals must have four votes of the board in order to pass. No debate, argument or information is allowed by an individual(s) who are conflicted out. No system for defining conflict is in policy except that the Chair would rule on a conflicted issue for the individual if requested or contested. This is very awkward and allows for definition with subjective reasoning.

Our experience with board members since statehood is that decisions by the board require as much personal knowledge by every board member that is available. It is expertise that prompts individuals to volunteer their services to the people of the state.

Current interpretation of conflicts seems to define commercial fishing as having more of a benefit to individual board members than commercial guiding. Yet definition in statutes that addresses legislative conduct states that even non-monetary or benefits to an individual can also be implied as a conflict.

This bill allows the affected users in the state a fair and equal voice to represent the issues openly, thoroughly and fairly.

We wonder what it would be like if doctors would not be allowed to advise on a physicians board or pharmacists or any other professional board. We would have non-professionals or those no longer involved promulgating rules for those that are.

TWO

The North Pacific Fisheries Regional Council is an example of a body that represents different segments of marine users and it is understood that the individual board members represent a high degree of knowledge on specific issues and events. It is our ardent belief that a good board is one that takes into consideration all available information and discusses it from all aspects of the problem and that this allows for more temperate and long term decision making. Something the current BOF does not incorporate at present.

Please support this bill and with a "do pass" out of this committee.

Respectfully,



Paul A. Shadura II
President

Petersburg Vessel Owners Association

PO Box 232

Petersburg, Alaska 99833

Phone: (907) 772-9323 Fax: (907) 772-4495

April 13, 2005

Representative Bill Thomas
Representative Gabrielle LeDoux
Co-Chairs
House Special Committee on Fisheries
Alaska State Legislature
Juneau, AK 99801-1182

Re: Support HB 241 Board of Fisheries Conflict of Interest

Petersburg Vessel Owners Association is a group of commercial fishermen who participate in many fisheries statewide. We support passage of this bill that would allow members of the Board of Fisheries who have a conflict of interest in a matter before the board to declare the conflict, then participate in deliberations and vote on the matter.

Generally, members of the Board of Fisheries are appointed because they have expertise in fisheries issues. It is inevitable that some of this expertise must be gained from participation in a fisheries business of some sort. The current statute prohibits board members with a conflict of interest from participating in discussions or voting. At times, this has resulted in the board member with the greatest expertise in the particular area or fishery being prohibited from providing important information to the board.

Due to the small size of the board and the complex nature of fisheries in this state, it is crucial that all board members, especially those with specific knowledge of the issues being discussed, be allowed to participate in discussions. We would like to note that this affects commercial fishermen, sport fishermen, processors, and charter boat operators that sit on the board.

We appreciate your consideration of these comments and hope you will support this bill. If we can assist you in any way, please feel free to contact us.

Respectfully,

Cora Crome
Director

Alaska Draggers Association

**P.O. Box 991
Kodiak, AK 99615
(907) 486-3910
alaska@ptialaska.net**

April 12, 2005

Representative Gabrielle LeDoux, Co-Chair
House Special Committee on Fisheries
Alaska House of Representatives
State Capital
Juneau, AK 99801

Dear Representative LeDoux:

The Alaska Draggers Association supports passage of HB 241 which provides that Board of Fish members can participate in matters before the Board, if they declare a conflict of interest in a particular fishery.

It's important that Board members be able to discuss all the matters before them. Fish Board members are among the most knowledgeable people in their particular aspect of the fisheries. It's important that they be able to contribute in the decision making process—as long as they clearly state their personal or financial interest in a particular fishery.

Thank you for your support of Kodiak's fishermen.

Sincerely,



Alvin R. Burch
Executive Director



Alaska Trollers Association

130 Seward St., No. 211
Juneau, Alaska 99801
(907) 586-9400
(907) 586-4473 Fax

April 11, 2005

Representative Gabrielle LeDoux, Co-Chair
Representative Bill Thomas, Co-Chair
House Special Committee on Fisheries
Alaska House of Representatives
State Capitol (Mail Stop 3100)
Juneau AK 99801-1182

Dear Representative LeDoux:

The Alaska Trollers Association strongly supports HB 241, which seeks to allow Board of Fisheries (BOF) members to act on all matters before the Board, so long as they have declared their personal or financial interests.

In years past, BOF members were able to fully participate in all discussions and votes. Board members used a recusal process similar to the North Pacific Fishery Management Council and were rarely found to have a true conflict of interest. Due to grey areas in the state law, this has not been the case in recent years, and extremely capable Board members have been restricted from addressing the very issues they were most knowledgeable about. ATA believes that this has been damaging not only to the decision process, but has also acted as a deterrent to some individuals who wished to serve the state on this lay regulatory board.

The strength of the BOF process is directly related to the caliber of its membership and the science, law, and policy that underpin their actions. An exceptional group of fishermen has served on the BOF over the years and when they have been fully enabled to act, the resource, industry, and communities have benefited.

ATA believes that the voting mandate that serves the state legislature also serves its regulatory boards. We encourage you to pass HB 241 – let all members of Board of Fisheries vote!

If I can be of assistance on this or other matters, feel free to contact me.

Sincerely,

Dale Kelley
Executive Director

Representative Gabrielle Ledoux, Co-Chair
House Special Committee on Fisheries
Alaska House of Representatives
State Capitol (Mail Stop 3100)
Juneau AK 99801-1182

April 12, 2005

Dear Representative LaDoux

I am in support of HB 241, which would allow for the members of the Board of Fisheries to participate in matters which come before the Board, if they declare their personal and/or financial interest in a fishery.

The Board of Fish process, which is central to the management structure for which the State of Alaska is known and held as an example of good stewardship, has worked well in most all cases since its inception. There are not many things which I believe could provide for substantive improvement in the process, however this is one of those few. We, the State and the users of the marine resources, spend a great deal of time and energy to find, evaluate, and support the members who serve this process. They are held to be some of the most knowledgeable and involved members of the community at large, with the transparency that comes with the disclosure requirement it is counterproductive to limit the very expertise that we so ardently sought because they have some involvement in a specific area of the resource, it is exactly why we asked them to serve. I realize that there are some people who will say that the conflict which arises when a decision might bring an economic change/benefit to a fishery is not appropriate use of the position, however after some thirty years in the industry and I don't know how many Board of fish meetings, with numerous different groupings of membership it is my firm conviction that the decisions rendered by any of the Boards (many that I have not agreed with) have always involved a class which has had significance to a broad sector of the users and while there may have been the potential for a personal gain, the basis for the decision lay in the class and with the resource. I personally believe that those who over the years have served the State and the resource have on average lost more economically than they have ever gained; it has always been wonderment to me that the process has been so effectively sustained. With the requirement for full disclosure, adoption of this legislation will maximize the utilization of the board members expertise and therefore improve the over all process.

Bruce Wallace
F/V Odyssey
P.O. Box 8572
Ketchikan Alaska 99901
9047 North Tongass Hi-way

Gig Decker
P.O. Box 2138
Wrangell, AK 99929
Ph: 907-874-3110
Fax: 907-874 4270
gigdecker@gci.net

House Fisheries Committee
Representative Gabrielle LeDoux
Representative Bill Thomas

April 12, 2005

RE: Support for HB 241

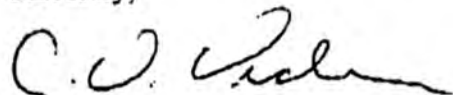
Dear Representatives LeDoux and Thomas,

I am writing on behalf of my personal fishing business in support of HB 241.

This bill will allow the Board of Fisheries to operate under similar conflict of interest rules as the State Legislature. This new system will allow members on the Board of Fisheries who have expertise in a certain area to any potential declare conflicts, but still participate in the discussions and voting.

Thanks for your consideration.

Sincerely,



Gig Decker

Cc: Mark Vinsel, Executive Director, United Fishermen of Alaska



United Cook Inlet Drift Association

43961 K-Beach Road, Suite E • Soldotna, Alaska 99669 • (907) 260-9436 • fax (907) 260-9438 • ucida@acsalaska.net

April 12, 2005

Representative Gabrielle LeDoux, Co-Chair
House Special Committee on Fisheries
Alaska House of Representatives
State Capitol (Mail Stop 3100)
Juneau AK 99801-1182

Dear Representative LeDoux:

United Cook Inlet Drift Association (UCIDA) supports passage of HB 241 to provide for Board of Fisheries members to participate in matters before the Board, if they declare their personal or financial interest in a fishery.

Members are on the board for their expertise in some aspect of fishing. It is vital that all board members, especially those most informed of the issues concerning a fishery, be able to participate in the discussions and decision making process. UCIDA feels that the requirement to disclose financial interest while allowing participation works in the legislature and can work in the Board of Fisheries.

We appreciate your consideration on this legislation.

Sincerely,

A handwritten signature in dark ink that reads "Roland R. Maw". The signature is written in a cursive, flowing style.

Roland R. Maw
Executive Director

Representative Gabrielle LeDoux, Co-Chair
House Special Committee on Fisheries
Alaska House of Representatives
Juneau, AK 99801
Fax 465-4956

Dear Representative LeDoux,

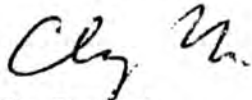
My name is Clay Bezenek, and I'm a commercial fisherman from Ketchikan. I've been fishing for 22 years, from Norton Sound to Tree Point.

I support HB 241 as it allows for, what I feel the most experienced people to be directly involved in fisheries decisions. There are enough checks and balances in the BOF process to allow for conflict declaration, and this bill, if it becomes law would be a useful tool for all members of the State.

During our last administration I had to grit my teeth every time there was an appointee, because there was a pattern developing that removed the most informed people from the process. I feel like we are just coming back to center now. Please help give us the tools to manage the State's resources with the most experienced and knowledgeable people available.

Thanks for your time,

Sincerely,



Clay Bezenek
Commercial Fisherman



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P.O. Box 3476 • Kodiak, Alaska 99615 • 907-487-2248 • Fax 907-487-2515

April 11, 2005

Representative Bill Thomas, Co Chair
Representative Gabrielle LeDoux, Co Chair
House Special Committee on Fisheries
Alaska House of Representatives
State Capitol (Mail Stop 3100)
Juneau AK 99801-1182

Dear Representative LeDoux

I support passage of HB 241 to provide for Board of Fisheries members to participate in matters before the board, if they declare their personal or financial interest in a fishery.

Members are on the board for their experience and expertise in some aspect of fishing. I think that all Board members, especially those most informed of the issues concerning a fishery, be able to participate in the discussions and decision making process. I feel that the requirement to disclose financial interest while allowing participation works in the legislature and can work in the Board of Fisheries.

I appreciate your consideration of this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Steele", is written over the word "Sincerely,".

Jeff Steele

Cc: Peggy Wilson

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: H.B. 241
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title An act relating to participation RDU Administration and Support
in matters before the Board of Fisheries Component Boards of Fisheries and Game
 Sponsor Representative Wilson
 Requester House Fisheries Committee Component No. 2048

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Sarah Gilbertson Phone 465-6137
 Division Legislative Liaison Date/Time 4/12/05 6:30 PM
 Approved by: McKie Campbell, Commissioner Date 4/12/2005
 Agency Alaska Department of Fish & Game

Kimberly Wallace

HB 241

Kim =
is this
the
herring
bill

From: Linda Kozak [kozak@alaska.com]
Sent: Monday, April 04, 2005 6:14 PM
To: Kimberly Wallace
Subject: Re: HB0241A

Kim, is this bill likely to go somewhere? I would like to talk with you next week (if not too late) about this. ~~I am one of the reasons that the board has the current policy they have~~ - I was one of a group of Bristol Bay setnet fishermen who sued the board over conflict of interest in the 1980's when five of the seven were drift permit holders in the bay and voted on an issue against setnetters. It went to the ~~Supreme Court~~, where some of the board members were personally chastised by the court for their votes, which were clearly a conflict. Anyway, I'm at the Council meetings in Anchorage, but if next week isn't too late, could we chat? If it is, I could try to call you this week during a break in the meetings.

Thanks,
Linda Kozak

Kimberly Wallace wrote:

Please find attached House Bill 241 sponsored by Representative Wilson entitled: Board of Fisheries Conflicts of Interest

Please forward your comments to Kimberly_Wallace@legis.state.ak.us

Best regards, Kim

Kimberly Wallace
Legislative & Fisheries Committee Aide
Representative Gabrielle LeDoux
District 36
State Capitol
Juneau, AK 99801-1121
Phone: 907.465.2487
Fax: 907.465.4956

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Version: 7.0.308 / Virus Database: 266.9.1 - Release Date: 4/1/2005

4/5/2005

HJ

Bill would allow BOF members to participate despite conflict

[print] [close]

Article published on Thursday, Apr 07th, 2005

By JAN DANIELSKI

text size: [-] [+]

Mirror Writer

Currently, members of the Alaska Board of Fisheries can not participate in board business if they have a personal stake in the issue under consideration.

That will change if House Bill 241 becomes law.

The bill, introduced April 1 by Rep. Peggy Wilson, R - Wrangell, is the second attempt by legislators to address a recommendation from the Joint Legislative Salmon Industry Task Force in 2003 to change the ethics disclosure policy for the BOF.

As it is written now, the bill would require all BOF members "to participate in the issues that come before the board even though the members have a personal or financial interest in the matter by virtue of their participation in a fishery."

The proposed legislation further stipulates that before participating, members must disclose all personal or financial interests related to the issue in question.

Wilson would like the conflict-of-interest policy for the BOF to be more like that for the Alaska Legislature.

"It is frustrating when an appointed official cannot talk about or vote on an issue," Wilson said.

Members to the seven-person board are usually appointed because they have experience in some segment of the fisheries.

"The board needs to hear every angle of an issue in order to make the best decisions," she said.

"On the legislative floor we acknowledge conflicts of interests, disclose them and then go on to talk and vote."

The board needs to be able to do the same thing, Wilson said.

BOF member Mel Morris of Kodiak agreed.

"The only feeling I have is, (the way it is now) makes it hard to hear all sides of an issue," Morris said.

Those in the charter business interpret differently. There's no uniform agreement. The ultimate arbiter is the chair," Holm said.

Wilson agreed discrepancies exist.

"Commercial fishing interests are excluded every time," she said. "If a (board member is associated with) commercial sportfishing or lodges, it doesn't always happen."

Last year, Senate Bill 69 by Sen. Tom Wagoner, R - Kenai, proposed a similar change to BOF ethics disclosure policy but ran the bill up against the end of the session and died, according to several legislative aides.

The first hearing on HB 241 is expected next week.

"I've had to conflict myself out of 32 proposals this year because I have a business that operates in the Cook Inlet sockeye salmon fishery."

Furthermore, the current disclosure policy is interpreted differently by the board members, Morris said.

"Now it is up to the individual member to interpret if he is conflicted or not. It would be good to get some definition of what a conflict is," he said.

The interpretive quality of current policy also causes conflict among members associated with different segments of the fishing industry.

"People with commercial sportfishing aren't conflicted out like (those with) commercial fishing," Mark Vinsel, interim executive director of the United Fishermen of Alaska, said. "That comes into play every time we have a discussion about this."

UFA is a statewide organization representing commercial fishing groups, individuals, businesses and crewmembers. The organization supports HB 241.

Oliver Holm, formerly on the BOF and currently a member of the Alaska Department of Fish and Game Kodiak Advisory Committee, agreed there are differences in how members interpret the disclosure policy.

"It's unfair to commercial fishermen.

[print] [close]

(C) promote and strengthen the faith and confidence of the people of this state in public officers;

(3) holding public office or employment is a public trust and that as one safeguard of that trust, the people require public officers to adhere to a code of ethics;

(4) a fair and open government requires that executive branch public officers conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest;

(5) in order for the rules governing conduct to be respected both during and after leaving public service, the code of ethics must be administered fairly without bias or favoritism;

(6) no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment; and

(7) compliance with a code of ethics is an individual responsibility; thus all who serve the state have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates.

(b) The legislature declares that it is the policy of the state, when a public employee is appointed to serve on a state board or commission, that the holding of such offices does not constitute the holding of incompatible offices unless expressly prohibited by the Alaska Constitution, this chapter and any opinions or decisions rendered under it, or another statute. (§ 1 ch 87 SLA 1986; am § 80 ch 74 SLA 1998)

Effect of amendments. — The 1998 amendment, effective January 1, 1999, in subsection (a) rewrote paragraphs (1)-(3) and added paragraphs (4)-(7).

Article 2. Code of Ethics.

Section

- 110. Scope of code
- 120. Misuse of official position
- 130. Improper gifts
- 140. Improper use or disclosure of information
- 150. Improper influence in state grants, contracts, leases, or loans

Section

- 160. Improper representation
- 170. Outside employment restricted
- 180. Restrictions on employment after leaving state service
- 190. Aiding a violation prohibited

Administrative Code. — For executive branch code of ethics, see 9 AAC 52.

Sec. 39.52.110. Scope of code. (a) The legislature reaffirms that each public officer holds office as a public trust, and any effort to benefit a personal or financial interest through official action is a violation of that trust. In addition, the legislature finds that, so long as it does not interfere with the full and faithful discharge of an officer's public duties and responsibilities, this chapter does not prevent an officer from following other independent pursuits. The legislature further recognizes that

(1) in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without personal and financial interests in the decisions and policies of government;

(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, Dep't of Admin., 876 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;

(5) attempt to benefit a personal or financial interest through coercion of a subordinate or require another public officer to perform services for the private benefit of the public officer at any time; or

(6) use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes; this paragraph does not prohibit use of the governor's residence for meetings to discuss political strategy and does not prohibit use of the communications equipment in the governor's residence so long as there is no special charge to the state for the use; in this paragraph, "for partisan political purposes"

(A) means having the intent to differentially benefit or harm a

(i) candidate or potential candidate for elective office; or

(ii) political party or group;

(B) but does not include having the intent to benefit the public interest at large through the normal performance of official duties.

(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.

(d) In this section, when determining whether a public officer is considered to be performing a task on government time, the attorney general and personnel board shall consider the public officer's work schedule as set by the public officer's immediate supervisor, if any. A public officer other than the governor and lieutenant governor who, during the work days, engages in political campaign activities other than minor, inconsequential, and unavoidable campaign activities shall take approved leave for the period of campaigning.

(e) [Effective July 1, 2005.] Except for supplying information requested by the hearing officer or the entity with authority to make the final decision in the case, a public officer shall not respond to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, a public officer shall not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer or individual, board, or commission with authority to make the final decision in the case assigned to the hearing officer.

(1) contact is made in the presence of all parties to the hearing or the parties' representatives and the contact is made a part of the record; or

(2) fact and substance of the contact is promptly disclosed by the public officer to all parties to the hearing and the contact is made a part of the record. (§ 1 ch 87 SLA 1991; am § 5 ch 121 SLA 1992; am §§ 81, 82 ch 74 SLA 1998; am § 59 ch 163 SLA 2004)

Cross references. — For prohibition against nepotism, see AS 39.90.020.

Effect of amendments. — The 1992 amendment, effective September 20, 1992, added subsection (c).

The 1998 amendment, effective January 1, 1999, in subsection (b) added "or require another public officer

to perform services for the private benefit of the public officer at any time;" at the end of paragraph (5) and added paragraph (6); and added subsection (d).

The 2004 amendment, effective July 1, 2005 added subsection (e).

NOTES TO DECISIONS

Official action not required. — The statute prohibiting use of official position for personal gain does not require "official action," but only that employees use their position for personal gain or to seek employment. *Skvorc v. State Personnel Bd.*, 996 P.2d 1192 (Alaska 2000).

Solicitation of compensation sufficient. —

Since the ethics statute does not require that a violation involve actual or present receipt of money, solicitation of compensation, including prospective or contingent economic benefits, suffices. *Skvorc v. State Personnel Bd.*, 996 P.2d 1192 (Alaska 2000).

Cited in *Gates v. City of Tenakee Springs*, 822 P.2d 455 (Alaska 1991).

Sec. 39.52.130. Improper gifts. (a) A public officer may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to the officer's personal or financial interests, under circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions, or judgment.

(b) Notice of the receipt by a public officer of a gift with a value in excess of \$150, including the name of the giver and a description of the gift and its approximate value, must be provided to the designated supervisor within 30 days after the date of its receipt

(1) if the public officer may take or withhold official action that affects the giver; or

(2) if the gift is connected to the public officer's governmental status.

(c) In accordance with AS 39.52.240, a designated supervisor may request guidance from the attorney general concerning whether acceptance of a particular gift is prohibited.

(d) The restrictions relating to gifts imposed by this section do not apply to a campaign contribution to a candidate for elective office if the contribution complies with laws and regulations governing elections and campaign disclosure.

(e) A public officer who, on behalf of the state, accepts a gift from another government or from an official of another government shall, within 60 days after its receipt, notify the Office of the Governor in writing. The Office of the Governor shall determine the appropriate disposition of the gift. In this subsection, "another government" means a foreign government or the government of the United States, another state, a municipality, or another jurisdiction.

(f) A public officer who knows or reasonably ought to know that a family member has received a gift because of the family member's connection with the public office held by the public officer shall report the receipt of the gift by the family member to the public

Sec. 39.52.190. Aiding a violation prohibited. It is a violation of this chapter for a public officer to knowingly aid another public officer in a violation of this chapter. (§ 1 ch 87 SLA 1986)

Article 3. Disclosure and Action to Prevent Violations.

Section

- 210. Declaration of potential violations by public employees
- 220. Declaration of potential violations by members of boards or commissions
- 230. Reporting of potential violations

Section

- 240. Advisory opinions
- 250. Advice to former public officers
- 260. Designated supervisor's report and attorney general review
- 270. Disclosure statements

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 and the attorney general.

(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 and shall provide a copy of the written determination to the public employee and to the attorney general. 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; am §§ 87, 88 ch 74 SLA 1998)

Effect of amendments. — The 1998 amendment, effective January 1, 1999, added "and the attorney general" at the end of paragraph (a)(2) and added "and

shall provide a copy of the written determination to the public employee and to the attorney general" at the end of the first sentence in subsection (b).

NOTES TO DECISIONS

Silence is not approval of activity. — Because the ethics statute requires an employee involved in activities potentially barred by the statute to refrain from taking any official action relating to that matter until a determination is made, approval is a prereq-

uisite to entering into any otherwise prohibited contract, and a failure to respond may not be construed as approval. *Skvorc v. State Personnel Bd.*, 996 P.2d 1192 (Alaska 2000).

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 and to the attorney general. The supervisor shall determine whether the member's involvement violates AS 39.52.110 — 39.52.190 and shall provide a copy of the written determination to the board or commission member and to the attorney general. 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; am § 89 ch 74 SLA 1998)

Effect of amendments. — The 1998 amendment, effective January 1, 1999, in subsection (a) added "and to the attorney general" at the end of the first sentence and added "and shall provide a copy of the written

determination to the board or commission member and to the attorney general" at the end of the second sentence.

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 to the attorney general, 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 determines that the matter may result in a violation of AS 39.52.110 — 39.52.190. (§ 1 ch 87 SLA 1986; am § 90 ch 74 SLA 1998)

Effect of amendments. — The 1998 amendment, effective January 1, 1999, inserted "and to the attorney general" in the second sentence.

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 post on the Alaska Online Public Notice System (AS 44.62.175), 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; am § 2 ch 54 SLA 2000)

Effect of amendments. — The 2000 amendment, effective May 12, 2000, substituted "shall post on the Alaska Online Public Notice System (AS 44.62.175)"

for "shall publish in the Alaska Administrative Journal" in subsection (h).

Southeast Alaska Fishermen's Alliance

9369 North Douglas Highway
Juneau, AK 99801



Phone 907-586-6652

Fax 907-586-5648

E-mail: seaafa@gcl.net

April 7, 2005

Representative Gabrielle LeDoux, Co-Chair
Representative Bill Thomas, Co-Chair
House Committee on Fisheries
Alaska State Legislature
Juneau, AK 99801

RE: Support HB 241

The Southeast Alaska Fishermen's Alliance (SEAFA) strongly supports HB 241, which would allow a Board of Fish member to fully participate in the Board process. This is a priority piece of legislation for our organization. Currently, a Board of Fish member who has the most information and knowledge in a specific fishery because he participates in the fishery is unable to fully share his knowledge with the remainder of the committee. The Board Member is actually required to leave the table and sit in the audience remaining silent during deliberations because the Board member has been conflicted out of the discussion.

For example during a Southeast Board of Fish meeting in Ketchikan, one of the Board members was conflicted out and unable to participate in the deliberations of the net proposals for salmon because his son owned a seine permit and his brother owned a gillnet permit. This member had in the past participated in both fisheries and had a thorough understanding of the issues; he would not have personally benefited financially but was still barred from participating in the deliberations based on the advice of the Board's attorney. If a Board member states on the record his conflict and then provides the information on the region/fishery he has to other board members, the conflict just disclosed is current in the other board member's minds and they are able to listen to the information provided allowing for the bias contained in the information. If a Board of Fish member believes that it is inappropriate to vote they should be allowed to abstain from the final vote but should participate in the process prior to that.

We hope with the passage of this legislation, that commercial fishermen will be more willing to serve on this important board. Fishermen are disinclined to go through the process of being appointed to the Board, if they are conflicted out of participating in the deliberations on the fisheries they most know and understand.

SEAFA believes in the importance of a lay board. This type of Board provides us with the best chance of having a diversity of interests and the knowledge and expertise of the different fisheries and regions around the State. It is also important that the Legislature and the Governor appoint Board of Fish members of a high caliber with sufficient interest in the fisheries and a commitment to do the work and then be allowed to do the work unhindered.

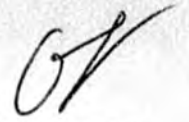
Thank you for considering our testimony and if we can be of any additional help on fishery issues please give us a call.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy H.", followed by a horizontal line extending to the right.

Kathy Hansen,
Executive Director

CC: Representative Peggy Wilson,
UFA



Suzanne Hancock

From: Cindy [ucida@acsalaska.net]
Sent: Tuesday, April 12, 2005 11:09 AM
To: Rep. Bill Thomas; Rep. Gabrielle LeDoux; Rep. Peggy Wilson; Mark Vinsel
Subject: HB 241
Attachments: 2005.maw.hb241.doc

Please see attached letter of support for HB 241.

4/12/2005

April 12, 2005

Representative Bill Thomas, Co-Chair
House Special Committee on Fisheries
Alaska House of Representatives
State Capitol (Mail Stop 3100)
Juneau AK 99801-1182

Dear Representative Thomas:

United Cook Inlet Drift Association (UCIDA) supports passage of HB 241 to provide for Board of Fisheries members to participate in matters before the Board, if they declare their personal or financial interest in a fishery.

Members are on the board for their expertise in some aspect of fishing. It is vital that all board members, especially those most informed of the issues concerning a fishery, be able to participate in the discussions and decision making process. UCIDA feels that the requirement to disclose financial interest while allowing participation works in the legislature and can work in the Board of Fisheries.

We appreciate your consideration on this legislation.

Sincerely,

Roland R. Maw
Executive Director



United Cook Inlet Drift Association

43961 K-Beach Road, Suite E • Soldotna, Alaska 99669 • (907) 260-9436 • fax (907) 260-9438 • ucida@acsalaska.net

April 12, 2005

Representative Gabrielle LeDoux, Co-Chair
House Special Committee on Fisheries
Alaska House of Representatives
State Capitol (Mail Stop 3100)
Juneau AK 99801-1182

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We appreciate your consideration on this legislation.

Sincerely,

A handwritten signature in cursive script that reads "Roland R. Maw".

Roland R. Maw
Executive Director



United Cook Inlet Drift Association

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April 12, 2005

Representative Gabrielle LeDoux, Co-Chair
House Special Committee on Fisheries
Alaska House of Representatives
State Capitol (Mail Stop 3100)
Juneau AK 99801-1182

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We appreciate your consideration on this legislation.

Sincerely,

A handwritten signature in cursive script that reads "Roland R. Maw".

Roland R. Maw
Executive Director



Alaska State Legislature

Please enter into the record my testimony to the House Fisheries Special Committee
Committee name

Committee on NO. 241, dated 04/13/05
Bill/Subject

Public confidence will be undermined should special exceptions be afforded to Board of Fisheries members regarding ethical matters of potential conflicts of interest. Not disqualifying a Board of Fisheries member from participating in matters before the Board is wrong if his or her actions are not subject to AS 39.52.220, AS 39.52.110 - 39.52.190 & AS 39.52.240.

Shame on you Representative Wilson for proposing that Fisheries Board Members be treated differently than Board of Game members.

A solution would be to have alternative Members for the Board of Fisheries to serve in the event of conflicts of interest. Not one major fishery has escaped the effects of overfishing. Resources of our oceans are too valuable to risk sacrifice because of unethical management. Reject This House Bill No 241!

Signed:

Gavan Buearia
Testifier

Natural Resource issues / Public concerns
Representing (Optional)

P.O. Box 870798 Wasilla, AK 99687
Address

373-4974
Phone number



Alaska Trollers Association

130 Seward St., No. 211
Juneau, Alaska 99801
(907) 586-9400
(907) 586-4473 Fax

April 11, 2005

Representative Gabrielle LeDoux, Co-Chair
Representative Bill Thomas, Co-Chair
House Special Committee on Fisheries
Alaska House of Representatives
State Capitol (Mail Stop 3100)
Juneau AK 99801-1182

Dear Representative LeDoux:

The Alaska Trollers Association strongly supports HB 241, which seeks to allow Board of Fisheries (BOF) members to act on all matters before the Board, so long as they have declared their personal or financial interests.

In years past, BOF members were able to fully participate in all discussions and votes. Board members used a recusal process similar to the North Pacific Fishery Management Council and were rarely found to have a true conflict of interest. Due to grey areas in the state law, this has not been the case in recent years, and extremely capable Board members have been restricted from addressing the very issues they were most knowledgeable about. ATA believes that this has been damaging not only to the decision process, but has also acted as a deterrent to some individuals who wished to serve the state on this lay regulatory board.

The strength of the BOF process is directly related to the caliber of its membership and the science, law, and policy that underpin their actions. An exceptional group of fishermen has served on the BOF over the years and when they have been fully enabled to act, the resource, industry, and communities have benefited.

ATA believes that the voting mandate that serves the state legislature also serves its regulatory boards. We encourage you to pass HB 241 – let all members of Board of Fisheries vote!

If I can be of assistance on this or other matters, feel free to contact me.

Sincerely,

Dale Kelley
Executive Director