

**SB**

**306**

# ALASKA STATE LEGISLATURE

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## Senate Resources Committee

### SB 306

**"An Act relating to the adoption of conservation, development, and utilization regulations by the Board of Game to address concerns relating to public assets."**

For those us who live in Alaska, one of the wonders we enjoy is our wildlife. Our state biologists are charged with the challenging job of managing this resource and today the constitutional mandate for abundance management has been and continues to be a high profile priority.

The efforts of the Board of Game and the wildlife biologists are not always popular when protecting our most valuable renewable resources. Wild Game represents many things to many people. Be it commercial guiding, hunting, or simply viewing wildlife, Alaska is unique and every Alaskan and visitor enjoys the gift of the resource.

Wildlife is an asset for the state. We know visitors come to the state to see our diverse ecosystem and without moose, caribou, wolves, and bears not as many people would visit. That translates into a loss of revenue. Without an abundance of wildlife guides would not earn a living and hunters would not put food on the table.

The problem we face is that we have not allowed our Board of Game to manage the resource and **allocate** it for what it actually is: an **asset**. SB 306 will accomplish that by inserting those important words into statute. The language makes it clear to others that it is our asset and we will manage for abundance as promised in the Alaska Constitution.

We urge your support for the language in SB 306. It makes it clear we understand that our wildlife is a valuable resource to be managed by professionals. It protects Alaska's wildlife for all, not just a select few.

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SB 306  
 (S) Publish Date: 4/11/08

Identifier (file name): \_\_\_\_\_ Dept. Affected: LAW  
 Title An Act relating to the adoption of regulations by the Board RDU CIVIL  
of Game. Component NATURAL RESOURCES  
 Sponsor RESOURCES  
 Requester SENATE RESOURCES Component Number 2212

**Expenditures/Revenues** (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	Y 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>								
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: 0.0

**POSITIONS**

Full-time							
Part-time							
Temporary							

**ANALYSIS:** (Attach a separate page if necessary)

This bill constitutes a legislative statement that when the Board of Game acts within its authority to develop regulations for the conservation, development and utilization of game, it is allocating or appropriating a public resource.

Prepared by: Betty Martin, Administrative Services Director  
 Division: Administrative Services Division  
 Approved by: Talis Colberg, Attorney General  
Department of Law

Phone 907-465-5427  
 Date/Time 4/10/08 4:30 PM  
 Date 4/10/2008

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: SB 306  
 (S) Publish Date: 4/11/08

Identifier (file name): SB306-DFG-BSS-03-22-08 Dept. Affected: Fish and Game  
 Title: Board of Game Regulations RDU: Administration and Support  
 Component: F&G Boards & Advisory Committees  
 Sponsor: Senate Resources Committee  
 Requester: Senate Resources Committee Component Number: 2825

**Expenditures/Revenues** (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES ( )</b>							
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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 Interagency Receipts							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time							
Part-time							
Temporary							

**ANALYSIS:** (Attach a separate page if necessary)

Passage of this bill will have no fiscal impact on the Department of Fish and Game.

Prepared by: Kristy Tibbles, Executive Director, Board of Game  
 Division: Boards Support Section  
 Approved by: Tom Lawson, Director  
Division of Administrative Services, Department of Fish and Game

Phone 465-6098  
 Date/Time 3/22/08 2:00 PM  
 Date 3/22/2008

# LEGAL SERVICES

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## MEMORANDUM

March 25, 2008

**SUBJECT:** Game as an asset and CSSSHB 348(FIN)  
(Work Order No. 25-LS1328X)

**TO:** Represen *BJK*: Gruenberg

**FROM:** Brian J. Kane *BJK*  
Legislative Counsel

You have asked the following: Can the legislature determine whether game is or is not an asset for purposes of art. XI, sec. 7 or art. VIII, sec. 2, sec. 3, or sec. 4? Or can the legislature determine whether game is or is not an asset in view of *Pullen v. Ulmer*, 932 P.2d 54 (Alaska 1996)?

I will answer these questions as accurately as I can in the short length of time I have to respond. The short answer is that the legislature cannot "determine" whether game is an asset for purposes of the state constitution.

The legislature can make reference to game as an asset, as is proposed in CSSSHB 348(FIN). However, the court would not be obligated to follow this statutory language when it is interpreting the meaning of a constitutional provision. Hence, I do not believe that the legislature would actually be "determining" anything in relation to the state constitution. The state constitution stands on its own, and issues that arise from constitutional provisions will only require the court to look to the constitutional provision involved. The court may look to a statute for guidance, or for the view of the legislature on the issue, but the actual constitutional provision will likely rule the day.

The court in *Pullen* focused on a legal interpretation of art. XI, sec. 7 of the Alaska state constitution. The court has said that it (i.e. the judiciary) has the obligation to expound on the meaning of a provision of the state constitution and, by extension, under the recognized separation of powers principle, that is not the function of the legislature. *Alaska Pub. Interest Research Group v. State*, 167 P.3d 27, 35 - 36 (Alaska 2007). In other words, independently of anything the legislature might consider doing by law to describe game management as involving an asset of the state, the court will make its own examination and reach its own conclusion. It may give no credence to the subsection added by this bill -- the language may, in fact, not be used by the court as it applies the prohibitions of art. XI, sec. 7.

*distributed by Gruenberg*

Representative Max Gruenberg

March 25, 2008

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It would seem that this bill attempts to expand and codify part of the ruling found in *Pullen*. In that case, the court stated: "We hold that the state's interest in salmon migrating in state and inland waters is sufficiently strong to warrant characterizing such salmon as assets of the state which may not be appropriated by initiative." *Pullen* at 61. This bill attempts to expand that qualification as salmon as an asset of the state to the area of game, in relation to the Board of Game's regulatory authority.

If I may be of further assistance, please advise.

BJK:med

08-218.med

Pullen v. Ulmer 923 P.2d 54; 1996 August 26, 1996, Decided

Chief Justice, Rabinowitz,

On November 7, 1995 appellants Harvey Pullen and United Fishermen of Alaska (Pullen) filed suit for declaratory and injunctive relief challenging, on several grounds, the Lieutenant Governor's certification of the initiative. More particularly, Pullen asserted that (1) the proposed bill is not a proper subject of an initiative because it would make an appropriation of the State of Alaska's salmon resources, (2) **the allocation of salmon resources of the state among common users is exclusively the responsibility of the legislature,**

Pullen's appeal from the superior court's decision on summary judgment raises two issues. First, Pullen argues{1996 Alas. LEXIS 13} that management of Alaska's salmon resources falls exclusively within the power of the state legislature as trustee of Alaska's wildlife, and therefore is not a proper subject of an initiative. Second, Pullen contends that the proposed initiative makes an appropriation of state property, in violation of article XI, section 7 of the Alaska Constitution. We address this latter contention first.

if the state's salmon population{1996 Alas. LEXIS 17} precipitously declines the fishing industry would be devastated, causing even more harm to Alaska's economy and revenue base. The state benefits from the harvest of salmon through the collection of taxes imposed on business enterprises engaged in the fishery and license fees imposed on sport, personal use, and commercial fisheries.

Pullen's contention that the public trust responsibilities imposed on the state by the provisions of article VIII of our constitution compel the conclusion that fish occurring{1996 Alas. LEXIS 21} in their natural state are property of the state for purposes of carrying out its trust responsibilities. {923 P.2d 61} In short, we are in agreement with Pullen's position that it is the authority to control naturally occurring fish which **gives the state property-like interests in these resources.** For that reason, **naturally occurring salmon are, like other state natural resources, state assets** belonging to the state which controls them for the benefit of all of its people.

We hold that the state's interest in salmon migrating in state and inland waters is sufficiently strong to warrant characterizing such salmon as assets of the state which may not be appropriated by initiative. Thus we conclude that the superior court correctly reasoned that salmon are public assets of the state which may not be appropriated by initiative.