

Leg. Finance-House & Senate Finance Comte Files (1991-1992) 723

Representative Mike Navarre  
March 2, 1991  
Page 2

Section 5 of the bill provides that section 3 of the bill is effective January 1, 1991, the date all the land plans are supposed to be completed under section 4 of the bill, which thereby removes the necessity for the exception.

GPL:mi  
91-042.mai

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400  
FACSIMILE: (907) 586-2754

March 5, 1991

The Honorable Cliff Davidson, Chair  
House Resources Committee  
P.O. Box V  
Juneau, AK 99811

Dear Representative Davidson:

Subject: CSHB 57 (Resources), which relates to leases of state land for fisheries development.

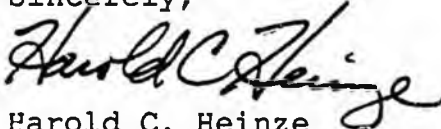
Position: The department supports the <sup>proposed</sup> House Resources Committee substitute for HB 57.

Background: Currently, DNR cannot issue set net leases without completing the required state land planning and classification process for the area. Potential set net site lessees are concerned that the department cannot act quickly on applications for sites where the land planning and classification process has not been completed.

This bill grants a temporary exemption to DNR from state land planning and classification requirements for set net lease sites in non-planned areas of the state. Until 1995, the department may classify land for set net lease sites in areas without a land plan after issuing a public notice under AS 38.04.065. By January 1, 1995, however, the department is to have completed plans for all state tidelands proposed for set net leases, which will end the need for the set net site planning/classification exemption.

Please let me know if you need additional information about this matter.

Sincerely,



Harold C. Heinze  
Commissioner

cc: Committee members  
Representative Navarre  
Bruce Kendall, Legislative Liaison, Office of the Governor

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

3401 C STREET  
BOX 107005  
ANCHORAGE, ALASKA 99513-7005

### DIVISION OF LAND AND WATER SOUTHCENTRAL REGION

March 11, 1991

Re: Shore Fishery Lease

Dear Shore Fishery Lessee or Applicant:

The purpose of this letter is to inform you about the effect of land classification on your shore fishery lease or application.

Under state law, prior to the disposal of an interest in state land, the land must be "classified". Shore fishery leases are a disposal of interest in state land. On July 30, 1990, the Attorney General's Office informed the division that shore fishery leasing is not exempt from the statutory planning and classification process.

A classification identifies the primary use for which the land will be managed. Classification is based on a regional land use plan, such as the Prince William Sound Area Plan, or by a management plan or land planning report.

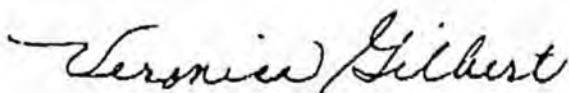
Tide and submerged lands in Cook Inlet, Kodiak and the Alaska Peninsula (outside of those classified by the Bristol Bay Area Plan) have not been classified. Work has recently begun on the Kenai Peninsula Area Plan which will include tide and submerged lands on both sides of Cook Inlet.

However, Representative Navarre has recently introduced legislation that would exempt Shore fishery leases from the land use planning and classification requirement until 1995. If passed, this bill will again enable the department to move forward.

The state considers leases issued in good faith by the department before July 30, 1990, to be valid existing rights. However, until tide and submerged lands have been classified or the law changed, this division will be unable to adjudicate shore fishery leases, applications (including renewals and certain amendments) in Cook Inlet, Kodiak and the unclassified areas of the Alaska Peninsula. We apologize for any inconvenience this causes.

If you have a question on a pending application or adjudication issue please contact the Shore Fishery Unit at 762-2469.

Cordially,

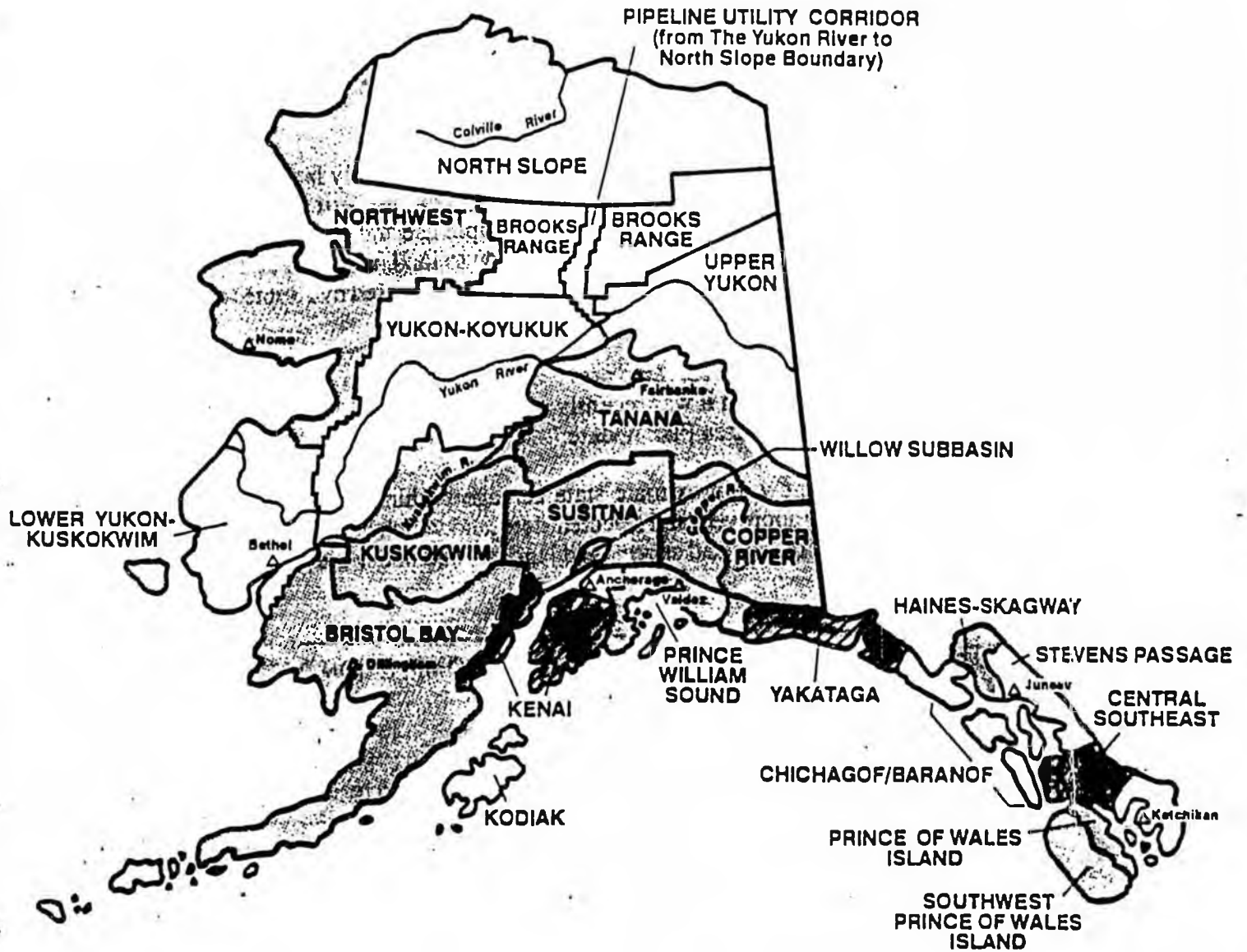


Veronica Gilbert  
Regional Manager

ASD nec: classif

FIGURE 2.

# Alaska Department of Natural Resources AREA PLANS






January 1991



Alaska Department of  
**NATURAL  
RESOURCES**

### AREA PLANNING STATUS

-  Completed area plans
-  Area plans in progress
-  Not scheduled for area plans at this time

# I. STATE LAND CLASSIFICATION PLANNING, CLASSIFICATION, AND MANAGEMENT

## LAND AND RESOURCE PLANNING

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All land classification actions are based on a land use plan prepared by the Department of Natural Resources. The planning process is described in Figure 1, below. Land use plans provide guidance for the use and development of state land and resources. State law requires that these plans be consistent with local governmental land use plans to the maximum extent determined to be consistent with state interests. The department prepares three types of land use plans: area plans, management plans, and site-specific plans.

Area plans, such as the 15.5-million acre Bristol Bay Area Plan, cover relatively large regions of the state. With participation by agencies and the public, resources are identified and land use values are determined. Area plans allocate state land for primary and secondary uses. To ensure multiple use and avoid conflicts, the allocations are accompanied by management intent statements which give direction to land managers and guidelines for applying specific land classifications. About 70 million acres of state land are now covered by adopted area plans in populated as well as rural regions of the state. (See Figures 2 and 3.)

The table below shows ten completed area plans. Two previously completed area plans, Delta-Salcha (1982) was encompassed in the Tanana Basin Plan when it was recently updated. The Willow Sub-basin Area Plan will also be encompassed in the upcoming Susitna Area Plan update.

Completed area plans listed below show approximate state acreage within their planning areas. This acreage includes not only patented, tentatively approved, and selected state land which have come to the state under various federal land entitlements, but also shore, tide and submerged land granted under the federal Submerged Lands Act of 1953.

Table 1A: ADOPTED AREA PLANS	ACRES	COMPLETION DATE
Bristol Bay	15,500,000 acres	1984
Copper River Basin	3,300,000 acres	1986
Haines-Skagway	400,000 acres	1979
Kuskokwim	16,000,000 acres	1988
Northwest	16,000,000 acres	1989
Prince William Sound	5,300,000 acres	1988
Prince of Wales Island	1,035,000 acres	1990
Susitna	9,500,000 acres	1985
Tanana Basin (updated)	14,804,000 acres	1990
Willow Sub-basin	<u>460,000 acres</u>	1982
<b>TOTAL</b>	<b>82,049,000 acres</b>	

Table 1B: AREA PLANS IN PROGRESS	PROJECTED COMPLETION DATE
Kenai Area Plan	December, 1993
Central Southeast Area Plan	December, 1993
Yakataga Area Plan	June, 1993

## Fact sheet:



Alaska Department of  
**NATURAL  
RESOURCES**

# Shore Fishery Leasing

Division of Land & Water Management • May 1990

As manager of most of the state's tidelands out to the three-mile limit, the Department of Natural Resources issues shore fishery (set net) leases. A shore fishery lease gives the leaseholder first priority to use a shore fishery site for commercial salmon set net fishing on state-owned tidelands. This "first priority" applies only when the leaseholder is personally fishing the site.

### Is a shore fishery lease required for set net fishing?

No, a shore fishery lease is not required for set net fishing. However, a person holding a valid shore fishery lease may exclude others from set net fishing within his or her lease area.

### Who may apply for a shore fishery lease?

An applicant must have a valid limited entry permit or an interim-use salmon set net permit. In addition, the applicant must be a citizen of the United States, and must be at least 18 years of age. A lease for a minor who is at least 10 years old may be issued to a legal trustee until the child reaches age 18. Then the lease is automatically transferred to the child's name.

### When may I apply for a shore fishery lease?

New applications may be filed each year between May 1 and September 1.

### How do I apply for a shore fishery lease?

First, decide where you want to locate your lease. Then check land status. Generally, if the tidelands are not already leased to another setnetter, you may stake your lease area. After that, you have thirty days to file your application to the Department of Natural Resources at the address shown on the back of this fact sheet. You must also turn in a sketch map with your application and meet the other requirements of 11 AAC 64.260 (part of the Department of Natural Resources shore fishery regulations). Later, you will have to prepare and file a shore fishery diagram.

### What fees are charged for a shore fishery lease?

A non-refundable filing fee of \$50 is required with each application. There is a \$75 diagram review fee and rent is \$150 per year. The first year's rent must be paid before the lease is issued. Applicants must also pay the cost of public notice (newspaper ad).

### Do I have to stake my site?

Yes. Each site must be staked on the shore above the high tide line before submitting an application. The stake must carry a sign with your name, mailing address, limited entry permit number and date of staking. An application must be filed within 30 days of staking the site.

### Does staking give me exclusive use of a site?

No. Staking is part of the application process for a shore fishery lease. It notifies others that you have applied to lease the site. Only after a lease has been issued do you have first priority to fish your site when you are physically set net fishing there.

### What areas are open to set net leasing?

Only certain areas in Southcentral Alaska are open. They are located in the Alaska Peninsula area, Bristol Bay, Kodiak Island waters, Cook Inlet, and the Eshamy Bay district in Prince William Sound. These areas are defined in the Board of Fisheries' commercial finfish regulations.

### May I locate my site anywhere I wish within the open areas?

No. You must contact the Department of Fish and Game to find out which tide and submerged lands are open to set net fishing on a permanent basis. Set net leases will not be issued in areas that are opened only on a temporary or irregular basis.

### Does the state have a list of set net sites available for leasing?

No. You must locate your own site within the open areas.

### How long is a shore fishery lease valid?

A lease is issued for up to 10 years. The leaseholder may apply for a renewal at the end of the lease term.

### How many set net sites may I lease?

The number varies depending on the commercial finfish regulations for the area, except for Cook Inlet where the maximum is three sites.

### Do I have to apply separately for each set net site?

No. Sites that are within a reasonable distance (approximately two miles) of each other may be included in one application.

*continued*

### **What is a shore fishery diagram?**

It is a detailed map that shows the exact site and location of your site, and its relationship to neighboring sites. It is more detailed than the sketch map that you attached to your application.

### **Who is responsible for preparing the shore fishery diagram?**

You are. However, most people hire a surveyor or drafts-person to do the drawing. After the Division of Land and Water Management approves your lease application, you will be sent a packet with detailed instructions for preparing a diagram. You must submit two copies of the preliminary diagram within 90 days after you receive the packet.

### **Do I have to survey my set net site?**

You do not usually need to survey the set net site. However, under unusual circumstances, such as where shoreline erosion or accretion causes problems in locating the site, or conflicts appear to exist with neighboring sites, you may be required to survey your site.

### **May I use my shore fishery lease area for purposes other than salmon fishing?**

No. A shore fishery lease is issued only for the purpose of commercial salmon set net fishing.

### **May I put improvements within my shore fishery lease area?**

No, you may not put improvements such as a cabin or storage building within your lease area.

### **Must I fish my site myself?**

Yes. You must personally fish each leased site as depicted on your diagram at least every other year, for at least four legal fishing periods during the commercial fishing season. Failure to do so is grounds for lease termination.

### **May I move my nets within my lease area?**

Yes, you may move the nets. However, the nets must remain within the lease area and can be no closer to the boundaries of the lease area than one half the minimum distance allowed between nets by the Board of Fisheries commercial finfish regulations.

### **May I change the location of my lease site after the lease has been issued?**

Yes. We call these changes amendments. Amendments may be applied for between May 1 and September 1 of any year. Most amendment applications require the same fees and steps as a lease application.

### **May I sublease my set net site?**

No. Subleasing is not allowed under the terms of shore fishery leases.

### **May I assign my shore fishery lease to another person?**

Yes, you may assign your lease (transfer all your lease rights) to a person who is qualified to apply for a lease, if the lease is in good standing. The assignment cannot take effect until it is approved by the director, Division of Land and Water Management. Qualifications and procedures for an assignment are described in shore fishery regulations, 1: AAC 64.430.

### **If my family and I have been fishing the same section of beach for several generations, do we have "grandfather" rights to fish this beach and exclude all others?**

No. No one is given exclusive rights to a set net site because of previous use. The length of time a person has fished a certain site is important only when more than one person applies to lease the same site. It is one of the major factors considered when deciding who is most qualified to lease the site.

### **If I acquire an unleased site from a family member or another setnetter who has fished it for several years, can I claim this time when I apply to lease the site?**

No. You must personally fish a site in order to have the time apply.

### **What precautions should I take before buying a set net site?**

Before you buy a site from an individual, it is a good idea to check land ownership records at the Division of Land and Water Management.

### **For information about shore fishery leases, contact:**

Department of Natural Resources  
Division of Land and Water Management  
Southcentral Region—Shore Fishery  
3601 C Street, Suite 1034  
P. O. Box 107005  
Anchorage, AK 99510-7005  
(907) 762-2469

Land & Water Management has seasonal summer offices in Dillingham, Homer and Valdez.

### **For information about commercial fishing contact:**

The Alaska Department of Fish and Game  
P. O. Box 3-2000  
Juneau, AK 99802  
(907) 465-4100

Fish and Game has regional offices in: Anchorage, Cold Bay, Kodiak, Bethel, Dillingham, Sand Point, Chignik, King Salmon and Unalaska.

**DIVISION OF LEGAL SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

**COPY**

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

**MEMORANDUM**

February 14, 1991

**SUBJECT:** Review of Alaska Survival v. State (HB 57)

**TO:** Representative Mike Navarre

**FROM:** Jerry Luckhaupt  
Legislative Counsel

Pat Malone of your staff requested a short review of the Alaska Supreme Court case, Alaska Survival v. State, 723 P.2d 1281 (Alaska 1986), also known as the Chase decision. Specifically, Pat wanted to know if this decision supported an interpretation that no leasing of state lands may occur absent a regional or area land use plan or if the decision was only applicable to disposals of state land. I hereby respond as follows.

The Alaska Survival case involved the disposal of agricultural lands by the state. Among other issues presented the court considered whether the Department of Natural Resources violated AS 38.04.065 by classifying the lands in question as agricultural lands before the completion of a regional or area land use plan.

AS 38.04.065 provides:

(a) Except as provided in (d) and (h) of this section, the commissioner shall, with local governmental and public involvement under AS 38.05.-945, adopt, maintain, and, when appropriate, revise regional land use plans that provide for the use and management of state-owned land.

...

(c) The commissioner shall adopt regional land use plans for state land. Each regional land use plan must identify and delineate

(1) areas of settlement and settlement impact, where land must be classified for various private uses, renewable and nonrenewable resource development, and for public recreation, open space, and other public uses desirable in and around settlement; and

(2) areas that must be retained in state ownership and planned and classified for various uses and purposes under AS 38.04.015.

(d) The commissioner may adopt as a land use plan a comprehensive plan adopted by a municipality having planning and zoning powers or

Representative Mike Navarre

February 14, 1991

Page 2

a land management plan adopted by another governmental entity if the commissioner determines that the plan adequately recognizes and protects state interests. A decision to adopt the plan must be preceded by public hearings in affected and interested communities and by a draft decision, available for public review, that describes the state's interests and how the state will implement the plan.

(e) Land shall be classified as provided in AS 38.05.300.

(h) Before the commissioner adopts a regional land use plan, a land classification may be made on the basis of a site-specific land use plan, except a classification for a land disposal under AS 38.05.057, AS 38.08, AS 38.09, or a new commercial agriculture project under AS 38.05.-020(b)(6). After adoption of a regional land use plan, land classifications shall be made under the plan.

In interpreting this statute as it then appeared the court said:

In our view, both the organization of the statutory scheme and the particular language of AS 38.04.065(c) and (d) express an unambiguous intent that regional planning precede land classifications and disposals. . . . To interpret these provisions to allow classification and disposal before regional planning defies logic. It makes little sense to require comprehensive regional planning after the relevant land use decisions already have been made, especially irrevocable disposal decisions. . . . the statute's meaning is plain: it mandates a comprehensive, broad-scale planning process prior to site-specific planning and classification. . . . For these reasons, we conclude that AS 38.04.065 requires regional planning to precede land classification. . .

Alaska Survival, *supra*, at 1289 - 90.

From this discussion it appears that classification of state lands, for any purpose, may not occur absent a regional or area land use plan adopted under AS 38.04.065, or as provided in subsection (h) of that section. Accordingly, the Attorney General's opinion to you concerning the inability of the state to lease state land for shore fisheries development in any area where the state has not adopted a land use plan, appears to be correct.

And, while the Alaska Survival decision the decision does not limit itself to those situations nor does the language of the statute. Accordingly, I conclude that the decision appears to have a broad application to all classifications of state land.

If you have further questions, please contact me at your convenience.

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91-080.plm

# MEMORANDUM

State of Alaska  
Department of Law

TO: Gary Gustafson, Director  
Division of Land & Water Management  
Dept. of Natural Resources

DATE: July 30, 1990

FILE NO: 993-88-0101

TEL NO: 465-3600

SUBJECT: Shore fisheries leasing  
amendments

RECEIVED  
AUG 2 1990  
State of Alaska  
Department of Law  
Division of Natural Resources

LIS

FROM: Larri Irene Spengler  
Assistant Attorney General  
Natural Resources-Juneau

In two memoranda, dated November 27 and December 1, 1989, you asked nine questions about the November 22, 1989, draft of proposed amendments to the Department of Natural Resources shore fisheries leasing regulations, as well as asking me to simply review the regulations to identify any obvious problems. I appreciate your patience in awaiting a response; shortly after receiving your memorandum, the Alaska Supreme Court ruled the state's subsistence law unconstitutional, and that set off a rather busy period. In this memorandum, I will address each of the nine questions you raised, and then will give some overall comments on the draft regulations.

Please bear in mind that this memorandum is solely an attempt at answering the questions you need addressed in developing these regulations, and is not an informal attorney general's opinion. Thus, it has gone through the Department of Law's internal review, and will not be indexed. Should you believe that any of the questions you posed require a more weighty answer, by way of an informal opinion, a request for such an analysis must be routed from your commissioner's office, through the governor's office, and to the attorney general for assignment. Should you believe that desirable, please note in your inquiry that whatever questions you ask have been at least partially addressed on a less formal basis in this memorandum, in the context of assisting your department in preparing a draft set of regulations.

It may be useful for you to send one more draft of the regulations, which I can review for more detailed, technical, compliance with the rules of "shall" versus "will," and "a" versus "the," etc. I have not done that to any extent in this draft, in part because the draft will probably change somewhat in light of some of my comments.

## 1. Classification

You have asked whether to remove shore fisheries leasing from the formal land use planning and classification process under

AS 38.04.065, AS 38.05.300 and 11 AAC 55, you can simply amend 11 AAC 64.050 to remove the reference to 11 AAC 55, or whether you must also amend 11 AAC 55.040(i), which lists exceptions to that process. That question is really moot, because we do not believe that you have the authority to remove the shore fisheries leases from the formal classification process. AS 38.05.822(b) states that "the director may classify land as subject to leases for fisheries development." (Emphasis added.) There is nothing in AS 38.05.082 which indicates that the legislature meant something other by the use of the word "classify" than it did in the other statutes cited by you which describe how the classification process is to proceed. Further, there is nothing in the Alaska Supreme Court case interpreting those statutory requirements which would indicate that shore fisheries leases are exempt from the order described in the statutes: planning, classification, and then disposition--especially in light of the use of the word "classify" in the statute. Alaska Survival vs. State, 723 P.2d 1121 (Alaska 1986). Thus, the amendment you propose does not appear consistent with the wording of the statute governing shore fisheries leases, and should not be included in these draft regulations.

## 2. Assignment procedures

AS 38.05.082(d) provides that subleasing (assignment) of shore fisheries leases are governed by AS 38.05.095. That section gives your division the discretion to issue a permit allowing sublease or assignment, if the division finds that "it is in the best interests of the state to do so." You have asked whether you are correct in assuming that the "finding" mentioned in AS 38.05.095(a) is not the same as the comprehensive "finding" of best interests required by AS 38.05.035(e). That is correct. Shore fisheries leases are specifically excluded from the requirements of AS 38.05.035(e) in paragraph (2) of that subsection. Since that comprehensive finding is not required for the initial disposal--the issuance of a shore fisheries lease--the requirement in AS 38.05.095 for a finding would not logically include the more comprehensive finding.

## 3. Procedures for issuing a renewal lease

AS 38.05.082(d) states that renewals of shore fishery leases will be governed by AS 38.05.102. That section allows your division to grant a preference right for a new lease at a site to the prior lessee, "upon a finding that it is in the best interest of the state." You point out that a new lease would normally be a disposal of land requiring an AS 38.05.035(e) comprehensive best interest finding. However, you note that since AS 38.05.035(e)(2) exempts shore fisheries leasing from the comprehensive finding, and

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page only

DOCUMENTS WHICH HAVE NOT BEEN  
FILMED BUT ARE AVAILABLE IN THE  
ORIGINAL FILE INCLUDE:

- letters of support -

Soldotna, Ak. 99669  
Feb. 20, 1991

Dear Rep. Navarre,

We support your efforts on  
HB57.

It is important that renewal  
of leases in place go on while  
the lands use policy is  
being developed

Sincerely  
Robert and Lutz Knorr  
Box 1163  
Soldotna, Ak 99669

**HB65**

# HOUSE COMMITTEE REPORT

(11)

Date Referred: March 1, 1991

FURTHER REFERRALS:

Date of Committee Action: 4.10.91

The FINANCE Committee considered

HB 65

HOUSE BILL NO. 65

COMPENSATION: MEMBERS BOARDS OF FISH/GAME

"An Act relating to members of the Board of Fisheries and the Board of Game."

**RECOMMENDATIONS:**

be replaced with CS HB 65 (Fin)  the same title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal impact Fish & Game

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eileen P. Mahan</i>	✓	<i>Kay Brown</i>		✓	
<i>Mike Sparano</i>		<i>Kamara H Barnes</i>	X		
<i>Mike Brien</i>		<i>Rob E. [unclear]</i>	✓		
<i>[unclear]</i>	✓	<i>Ronald J. [unclear]</i>		X	
<i>[unclear]</i>	✓	<i>Bea [unclear]</i>	X		
<i>[unclear]</i>	X				

*Eileen P. Mahan*  
CHAIRMAN'S SIGNATURE

CS FOR HOUSE BILL NO. 65 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES DAVIDSON, Koponen

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to membership on and compensation of members of the Board of  
2 Fisheries and Board of Game; relating to disclosures under the Alaska Executive Branch  
3 Ethics Act by members of the Board of Fisheries and Board of Game; and repealing  
4 certain references to the Board of Fisheries and Board of Game."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 \* Section 1. AS 16.05.221 is amended to read:

7           Sec. 16.05.221. BOARDS OF FISHERIES AND GAME. (a) For purposes of the  
8 conservation and development of the fishery resources of the state, there is created the Board of  
9 Fisheries composed of seven members appointed by the governor, subject to confirmation by a  
10 majority of the members of the legislature in joint session. The governor shall appoint each  
11 member on the basis of interest in public affairs, good judgment, knowledge, and ability in  
12 the field of action of the board, and with a view to providing diversity of interest and points  
13 of view in the membership. The appointed members shall be residents of the state and shall  
14 be appointed without regard to political affiliation or geographical location of residence. The

1 commissioner is not a member of the Board of Fisheries, but shall be ex officio secretary.

2 (b) For purposes of the conservation and development of the game resources of the state,  
3 there is created a Board of Game composed of seven members appointed by the governor, subject  
4 to confirmation by a majority of the members of the legislature in joint session. The governor  
5 shall appoint each member on the basis of interest in public affairs, good judgment,  
6 knowledge, and ability in the field of action of the board, and with a view to providing  
7 diversity of interest and points of view in the membership. The appointed members shall be  
8 residents of the state [,] and shall be appointed without regard to political affiliation or  
9 geographical location of residence. The commissioner is not a member of the Board of Game,  
10 but shall be ex officio secretary.

11 \* Sec. 2. AS 16.05.221 is amended by adding a new subsection to read:

12 (c) Members of the Board of Fisheries or Board of Game serve staggered terms of three  
13 years and until a successor is appointed. An appointment to fill a vacancy in the membership  
14 of the Board of Fisheries or Board of Game shall be made in the same manner as the original  
15 appointment and for the balance of the unexpired term.

16 \* Sec. 3. AS 16.05.280 is amended to read:

17 Sec. 16.05.280. REMOVAL OF BOARD MEMBERS. The governor may only remove  
18 a board member for inefficiency, neglect of duty, [OR] misconduct in office, or because the  
19 member has been convicted of a misdemeanor for violating a statute or regulation related  
20 to fish or game or of a felony, and shall do so by delivering to the member a written copy of  
21 the charges and giving the member an opportunity to be heard in person or through counsel at  
22 a public hearing before the governor or a designee upon at least 10 days' notice by registered  
23 mail. The member may confront and cross-examine adverse witnesses. Upon removal, the  
24 governor or a designee shall file in the proper state office the findings and a complete statement  
25 of all charges made against the member.

26 \* Sec. 4. AS 16.05.290 is amended to read:

27 Sec. 16.05.290. COMPENSATION OF BOARD MEMBERS. Each member of a board  
28 is entitled to compensation at a rate equal to Step A, Range 22, of the salary schedule in  
29 AS 39.27.011(a) for Juneau, Alaska, [TRAVEL EXPENSES AND \$150 PER DIEM] for each  
30 day going to and from and for each day in actual attendance at board meetings. For other  
31 meetings or conferences authorized by a board a member shall receive compensation at a rate

1 equal to one-half of Step A, Range 22, of the salary schedule in AS 39.27.011(a) for Juneau.  
2 Alaska, for each [\$100 PER] day going to and from and for each day in actual attendance.  
3 Each member of a board is also entitled to travel expenses and per diem authorized for  
4 boards and commissions under AS 39.20.180.

5 \* Sec. 5. AS 39.52.120 is amended by adding a new subsection to read:

6 (c) In addition to other provisions of this section, a public officer who is a member of  
7 the Board of Fisheries or the Board of Game may not act on a matter before the board if the  
8 public officer has not disclosed in the manner set out in AS 39.52.220 all personal or financial  
9 interests in a business or organization relating to fish or game resources.

10 \* Sec. 6. APPLICABILITY. A person who is a member of the Board of Fisheries or Board of Game  
11 on the effective date of this Act shall serve the term to which the person was appointed, subject to  
12 AS 16.05.280, as amended by sec. 3 of this Act. A person who is appointed to the Board of Fisheries  
13 or Board of Game after the effective date of this Act shall be appointed for the term provided by  
14 AS 16.05.221(c).

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

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. CSHB 65 (FIN)

Revision Date: 2/7/91

Department Affected: Fish and Game

Title: "An Act Relating to Members of the Board of Fisheries and Game"

BRU: Boards of Fisheries and Game

Sponsor: Rep. Davidson

Component: Board Services

Requestor: Rep. Davidson

COMPONENT SERIAL NO.

1	2	0	4
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL	121.2	126.0	126.0	126.0	126.0	126.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	121.2	126.0	126.0	126.0	126.0	126.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	121.2	126.0	126.0	126.0	126.0	126.0
FEDERAL FUNDS						
OTHER						
TOTAL	121.2	126.0	126.0	126.0	126.0	126.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Attached

Prepared By: Beverly Reaume *Dung Reaume*

Phone: 465-4120

Division: Administration

Date: 2/7/91

Approved by Commissioner: *Wanda Kirby*

Agency: Fish and Game

Date: 2/7/91

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

2/6/91

HB65 BOARDS OF FISHERIES AND GAME

BOARD OF FISHERIES (7 MEMBERS)

---

CURRENT

65 DAYS AT \$150 PER DAY	\$68,250	
3 DAYS AT \$100 PER DAY	\$2,100	
TOTAL		\$70,350

PROPOSED

65 DAYS AT RANGE 22, STEP A - \$203.93	\$92,788	
3 DAYS AT 1/2 RANGE 22, STEP A - \$101.97	\$2,141	
68 DAYS AT \$95 PER DAY PER DIEM	\$45,220	
TOTAL		\$140,150

INCREASED COSTS FOR BOARD OF FISHERIES		\$69,800
		*****

BOARD OF GAME

---

CURRENT

45 DAYS AT \$150 PER DAY	\$47,250	
3 DAYS AT \$100 PER DAY	\$2,100	
TOTAL		\$49,350

PROPOSED

48 DAYS AT RANGE 22, STEP A - \$203.93	\$68,520	
3 DAYS AT 1/2 RANGE 22, STEP A - \$101.97	\$306	
48 DAYS AT \$95 PER DAY PER DIEM	\$31,920	
TOTAL		\$100,746

INCREASED COSTS FOR BOARD OF GAME		\$51,396
		*****

GRAND TOTAL		\$121,196
		*****

# House of Representatives

While in Session:

Box V

Juneau, AK 99811

(907)465-4942

P.O. Box 47001

Pedro Bay, Alaska 99647

(907)850-2208



Member:

Finance Committee

Finance

Subcommittee Chair:

Courts

Department of Public Safety

Finance

Subcommittee Member:

Department of Fish and Game

**Rep. George Jacko, Jr.**

## MEMORANDUM

TO: Representative Mike Nayarre, Co-Chair  
Representative Eileen MacLean, Co-Chair  
House Finance Committee

FROM: Representative George Jacko, Jr., Chair  
Finance Subcommittee for House Bill 65

DATE: March 21, 1991

SUBJECT: House Bill 65 Recommendation

The Subcommittee for House Bill 65 has carefully considered House Bill 65 and makes the following recommendations:

Include:

Sec. 1, Line 10, Rep. Barnes amendment:

"The Governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the board, and with a view to providing diversity of interest and points of view in the membership."

Sec. 3, Line 20, at the request of the Drafter:

"and shall do so"

Delete:

Sec. 5 (c):

"whether significant or not"

All of the above amendments are included in the enclosed draft and have received approval of the sponsor. This is a good piece of legislation and I urge your consideration of calendaring House Bill 65 at your earliest convenience.

CS FOR HOUSE BILL NO. 65 ( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES DAVIDSON, Koponen

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to membership on and compensation of members of the Board of  
2 Fisheries and Board of Game; relating to disclosures under the Alaska Executive Branch  
3 Ethics Act by members of the Board of Fisheries and Board of Game; and repealing  
4 certain references to the Board of Fisheries and Board of Game."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 \* Section 1. AS 16.05.221 is amended to read:

7           Sec. 16.05.221. BOARDS OF FISHERIES AND GAME. (a) For purposes of the  
8 conservation and development of the fishery resources of the state, there is created the Board of  
9 Fisheries composed of seven members appointed by the governor, subject to confirmation by a  
10 majority of the members of the legislature in joint session. The governor shall appoint each  
11 member on the basis of interest in public affairs, good judgment, knowledge, and ability in  
12 the field of action of the board, and with a view to providing diversity of interest and points  
13 of view in the membership. The appointed members shall be residents of the state and shall  
14 be appointed without regard to political affiliation or geographical location of residence. The

1 commissioner is not a member of the Board of Fisheries, but shall be ex officio secretary.

2 (b) For purposes of the conservation and development of the game resources of the state,  
3 there is created a Board of Game composed of seven members appointed by the governor, subject  
4 to confirmation by a majority of the members of the legislature in joint session. The governor  
5 shall appoint each member on the basis of interest in public affairs, good judgment,  
6 knowledge, and ability in the field of action of the board, and with a view to providing  
7 diversity of interest and points of view in the membership. The appointed members shall be  
8 residents of the state [,] and shall be appointed without regard to political affiliation or  
9 geographical location of residence. The commissioner is not a member of the Board of Game,  
10 but shall be ex officio secretary.

11 \* Sec. 2. AS 16.05.221 is amended by adding a new subsection to read:

12 (c) Members of the Board of Fisheries or Board of Game serve staggered terms of three  
13 years and until a successor is appointed. An appointment to fill a vacancy in the membership  
14 of the Board of Fisheries or Board of Game shall be made in the same manner as the original  
15 appointment and for the balance of the unexpired term.

16 \* Sec. 3. AS 16.05.280 is amended to read:

17 Sec. 16.05.280. REMOVAL OF BOARD MEMBERS. The governor may only remove  
18 a board member for inefficiency, neglect of duty, [OR] misconduct in office, or because the  
19 member has been convicted of a misdemeanor for violating a statute or regulation related  
20 to fish or game or of a felony, and shall do so by delivering to the member a written copy of  
21 the charges and giving the member an opportunity to be heard in person or through counsel at  
22 a public hearing before the governor or a designee upon at least 10 days' notice by registered  
23 mail. The member may confront and cross-examine adverse witnesses. Upon removal, the  
24 governor or a designee shall file in the proper state office the findings and a complete statement  
25 of all charges made against the member.

26 \* Sec. 4. AS 16.05.290 is amended to read:

27 Sec. 16.05.290. COMPENSATION OF BOARD MEMBERS. Each member of a board  
28 is entitled to compensation at a rate equal to Step A, Range 22, of the salary schedule in  
29 AS 39.27.011(a) for Juneau, Alaska, [TRAVEL EXPENSES AND \$150 PER DIEM] for each  
30 day going to and from and for each day in actual attendance at board meetings. For other  
31 meetings or conferences authorized by a board a member shall receive compensation at a rate

1 equal to one-half of Step A, Range 22, of the salary schedule in AS 39.27.011(a) for Juneau.  
2 Alaska, for each [\$100 PER] day going to and from and for each day in actual attendance.  
3 Each member of a board is also entitled to travel expenses and per diem authorized for  
4 boards and commissions under AS 39.20.180.

5 \* Sec. 5. AS 39.52.120 is amended by adding a new subsection to read:

6 (c) In addition to other provisions of this section, a public officer who is a member of  
7 the Board of Fisheries or the Board of Game may not act on a matter before the board if the  
8 public officer has not disclosed in the manner set out in AS 39.52.220 all personal or financial  
9 interests in a business or organization relating to fish or game resources.

10 \* Sec. 6. APPLICABILITY. A person who is a member of the Board of Fisheries or Board of Game  
11 on the effective date of this Act shall serve the term to which the person was appointed, subject to  
12 AS 16.05.280, as amended by sec. 3 of this Act. A person who is appointed to the Board of Fisheries  
13 or Board of Game after the effective date of this Act shall be appointed for the term provided by  
14 AS 16.05.221(c).

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

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

January 21, 1991

**SUBJECT:** Removal of members of the Board of Fisheries and the Board of Game (Work Order No. 7LS-0475)

**TO:** Representative Cliff Davidson

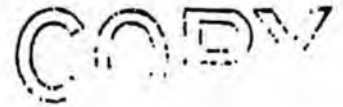
**FROM:** George Utermohle *GU*  
Legislative Counsel

Enclosed is the bill requested by Jay Nelson, of your staff, relating to the Board of Fisheries and Board of Game. The bill is identical to CSHB 476 (Resources) Sixteenth Legislature.

Section 2 of the bill amends AS 16.05.280 to provide that a member of either of the boards may be removed for cause on the ground that the board member has been convicted of violating a law related to fish or game. This provision gives the governor an additional procedure for removing a board member who has been convicted of a fish and game violation. The governor already has authority to remove any board member at the governor's pleasure under AS 39.05.060(d). AS 39.05.060 is an obscure statute and is frequently overlooked. I bring this to your attention so that you are aware that sec. 2 of the bill supplements the existing power of the governor but does not necessarily expand the scope of the governor's power to remove members of the Board of Fisheries and the Board of Game.

GU:pl:gc  
91-015.plm

Enclosure



**DIVISION OF LEGAL SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

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Court Plaza, Room 500  
Mail Stop 3101*

**MEMORANDUM**

January 3, 1991

**SUBJECT:** Governor's Power to Remove Members of Boards and Commissions (Work Order No. 17-LS0385)

**TO:** Senator Arliss Sturgulewski

**FROM:** Gerald P. Luckhaupt  
Legislative Counsel

Article III, § 26, of the Alaska Constitution provides:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. . . .

This section clearly provides that the members of art. III, § 26 boards and commissions may only be removed as the legislature has provided by law. The Alaska Supreme Court in Bradner v. Hammond, 553 P.2d 1, 3 (1976) recognized this and said:

Removal of Section 26 board or commission members is as provided by law and, therefore, not necessarily at the governor's pleasure.

To determine how the legislature has provided for the removal of the members of a board or commission that "is at the head of a principal department or a regulatory or quasi-judicial agency" one must look to the specific authorizing legislation for the board or commission to determine if the legislature has provided a specific procedure for removal. For example, AS 14.07.115 provides that members of the Board of Education serve at the pleasure of the governor, while AS 42.05.035 provides that members of the Public Utilities Commission may only be removed by the governor "by and with the consent of a majority of the legislature."

One must also look to the statutes pertaining to boards and commissions generally in AS 39 and AS 08. AS 39.05.060 provides that the members of the various boards

Senator Arliss Sturgulewski  
January 3, 1991  
Page 2

or commissions listed therein serve at the pleasure of the governor. AS 08.01.020 provides that the members of those boards and commissions listed at AS 08.01.010 serve at the pleasure of the governor.

The removal of the members of boards or commissions that do not meet the attributes of art. III, § 26 boards or commissions is not as simple a question. In considering this situation one must look to the appointment and removal authority of the governor and the type of government established by our constitution.

The government of the state of Alaska is divided into three branches, the executive, the legislative, and the judicial. The authority granted to one branch may not be exercised by another. In Alaska, "[t]he executive power of the State is vested in the Governor." Alaska Constitution, art. III, § 1. In Bradner v. Hammond, *supra*, the court found the executive authority of the governor necessarily clothes him "with the power to appoint subordinate executive officers to aid him in carrying out the laws of Alaska" and that "the appointment of executive officers is an executive function." In support of this proposition the court cited Ahearn v. Bailey, 104 Ariz. 250, 451 P.2d 30 (1969). In that case the Arizona Supreme Court found:

The Governor is charged with the duty of taking care that the laws are faithfully executed. He must, therefore, have the power to select subordinates and to remove them if they are unfaithful. Accordingly, we conclude that the power to remove is an executive function. . . .

And in Mvers v. United States, 272 U.S. 52, 117-118, 47 S.Ct. 21, 71 LEd.2d 160 (1926) the United States Supreme Court said regarding the powers of the President:

As he is charged specifically to take care that [the laws] be faithfully executed, the reasonable implication even in the absence of express words, was that as part of his executive power he should select those who were to act for him under his direction in the execution of the laws. The further implication must be, in the absence of any express limitation respecting removals, that as his selection of administrative officers is essential to the execution of the laws by him, so must be his power of removing those for whom he cannot continue to be responsible. [Citation omitted.] It was urged that the natural meaning of the term 'executive power' granted the President included the appointment and removal of executive subordinates. If such appointments and removals were not an exercise of the executive power, what were they? They certainly were not the exercise of legislative or judicial power in government as usually understood.

Senator Arliss Sturgulewski  
January 3, 1991  
Page 3

And generally it has been held in other states that:

[T]he power to remove is incident to the power to appoint and that the authority to appoint an officer carries with it the authority to remove such officer in the absence of any constitutional or statutory restriction.

Gowey v. Siggelkow, 382 P.2d 764, 773 (Idaho 1963); 63 Am.Jur.2d, Public Officers and Employees § 221.

Clearly from this discussion the power to remove a member of a board or commission is as much a part of the executive power of the governor as is the power to appoint as determined by the Alaska Supreme Court in Bradner v. Hammond.

In determining that the confirmation power of the legislature provided in art. III, §§ 25 (principal department heads) and 26, is merely a limited delegation of the executive appointment power to the legislature, the court said:

As to this issue, we think the provisions of Sections 25 and 26 of Article III are clear and unambiguous. Thus, we conclude that Sections 25 and 26 mark the full reach of the delegated, or shared, appointive function to Alaska's legislative branch of government.

Bradner v. Hammond, *supra*, at 7.

Similarly, the legislature's authority to determine how an art. III, § 26 board or commission member may be removed appears to be a limited delegation of the executive appointment power and is limited to those boards or commissions that are "at the head of a principal department or a regulatory or quasi-judicial agency." Under this reasoning, other board or commission members serve at the pleasure of the governor and may be removed at any time despite limitations the legislature may attempt to impose by statute.

There is contrary authority that rejects the notion that an appointee serves at the pleasure of the governor when the legislature has set a specified term of office or has otherwise limited the authority of the executive to remove the appointee by statute.

But the power of removal is not incident to the power of appointment where the extent of the term is fixed by the statute. In the absence of any provision for summary removal, appointments to continue for life or during good behavior, which in contemplation of law is for a fixed term - or for a fixed term of years cannot be terminated except for cause. It is the fixity of the term that destroys the power of removal at pleasure.

Govev v. Siggelkow, supra, at 774.

While the Alaska Supreme Court could adopt this general rule in Alaska, the likelihood of this appears to be remote based upon the Supreme Court decision in Bradner. The reasoning of the Bradner court appears to require a determination that non-section 26 boards and commissions are not subject to removal provisions enacted by the legislature and that the members of those boards and commissions serve at the pleasure of the governor.

In response to your specific inquiries concerning the Boards of Education, Fisheries, and Game, it appears that all are art. III, § 26 boards and so their members may only be removed as provided by law. AS 14.07.115 provides that members of the Board of Education serve at the pleasure of the governor.

The inquiries concerning the Board of Fisheries and the Board of Game are not as easily answered. AS 16.05.280 provides that "[t]he governor may remove a board member for inefficiency, neglect of duty, or misconduct in office" and provides for notice and a hearing. This section applies to both the Board of Fisheries and the Board of Game and appears to limit the governor to removals for cause only. However, AS 39.05.060 provides that each member of the Boards of Fisheries and Game "holds office at the pleasure of the governor notwithstanding the member's term." AS 39.05.060(d).

Two interpretations are available from the existence of these two seemingly conflicting statutes. One is that they are not in conflict but are merely alternative methods for the removal of board members. The second is that they are in conflict and the later (in time) enactment controls. I will briefly discuss the two interpretations.

That the provisions are not in conflict comports with the general rules governing statutory construction. Generally, repeals of statutes by implication or reach of another statute are disfavored and the statutes will be read in pari materia to avoid any such conflict. Peter v. State, 531 P.2d 1263 (Alaska 1975). Here, the statutes do not necessarily pertain to the same subject matter. AS 16.05.280 pertains to removals of board members for cause and AS 39.05.060 deals with removals of board members without cause. AS 16.05.280 also provides that board members "may" be removed for cause. It does not provide that board members may "only" be removed for cause, thereby not providing an exclusive removal procedure. The statutes may be read together to avoid any conflict, though the net result is to allow for the removal of board members at any time and for any reason. Such a result is not absurd, since a removal for cause may occasion public ridicule and injury to reputation necessitating the notice and hearing provisions of AS 16.05.280, while no such effects would normally attend a without cause removal.

Senator Arliss Sturgulewski  
January 3, 1991  
Page 5

The second alternative, that the two provisions are in conflict and that the provision enacted later in time controls, leads to the result that AS 39.05.060 impliedly repealed AS 16.05.280. Terry, supra. AS 16.05.280 was enacted in 1959 and has not been amended since that time. AS 39.05.060 was also enacted in 1959 and included the Board of Fisheries and Game (when only one combined board existed). In 1975 the Board of Fisheries and Game was split into two separate boards, the Board of Fisheries and the Board of Game, by chapter 206, SLA 1975. That act also amended AS 39.05.060 to include both the Board of Fisheries and the Board of Game. Since the legislature is intended to have knowledge of all its previous enactments, its enactment of AS 39.05.060 to include the Boards of Fisheries and Game acted as an implied repeal of AS 16.05.280 under this interpretation and, therefore, the members of the Boards of Fisheries and Game serve at the pleasure of the governor.

Of these two interpretations the former appears to be the most reasonable. Therefore, I conclude that the members of the Boards of Fisheries and Game serve at the pleasure of the governor subject to removal for cause after notice and hearing as provided by AS 16.05.280.

If you have any further questions, please contact me at your convenience.

GPL:mi  
91-002.mai

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

February 14, 1991

**SUBJECT:** Confirmation of appointees to the Boards of Fisheries and Game (Work Order No. 7LS0766)

**TO:** Representative Cliff Davidson

**FROM:** Tamara Brandt Cook  
Director *TBC*

You have asked whether appointments to the Board of Fisheries and the Board of Game are subject to confirmation under art. III, § 26 of the Alaska Constitution and may be removed as provided by law under that same section. That section provides:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

Note that section 26 applies to three types of boards: those at the head of a principal department, those that are regulatory agencies, and those that are quasi-judicial agencies. The Boards are not at the head of a principal department. That position is occupied by the commissioner of fish and game. (AS 44.39.010) Nor are Boards quasi-judicial agencies in that they do not adjudicate individual rights. The Boards are, however, powerful regulatory agencies. (AS 16.10.190, 16.10.440, 16.20.040, 16.20.510, 16.43.381) As such, members are subject to confirmation and may be removed as provided by law.

To determine the meaning of the term "regulatory agency" we must first look to the views of the framers of our constitution to determine what they thought the term meant or what they intended the term to signify. Art. III, § 26, was proposed by the Committee on the Executive Branch as Committee Proposal 10 (later amended and resubmitted as Committee Proposal 10a), at the Constitutional Convention. (Alaska

Constitutional Convention Proceedings (ACCP), Part 6) In the commentary submitted by the executive branch committee with the proposal the committee explained their recommendations concerning government organization. These recommendations are embodied in secs. 22 - 27 of art. III, of the constitution. The committee said:

A clear distinction is made between the administrative departments, such as public works, health, education, and welfare, and the regulatory, including quasi-judicial, bodies such as a rate-setting public utility commission.

Delegate V. Rivers, chairman of the executive branch committee, summarized the committee proposal and the meaning of a "regulatory board" in this manner:

The purpose of that is that in a regulatory board, regulating the power rates, telephone rates, etc., the power of removal might be the power to make the office ineffective so that removal would be prescribed by the legislature. (ACCP, at p. 1102 - 03)

Discussion of what a "regulatory board" is and does includes these statements by delegates: "To me a utilities board would be regulatory" (ACCP, at p. 2204, Delegate V. Fischer); and Delegate McLaughlin, in response to a question of what is the difference between a "regulatory board" and a "quasi-judicial board" said:

Perhaps I can explain it in the terms best known to Alaskans. Very roughly, the Fish and Wildlife Service and the CAB, the Fish and Wildlife Service can set down regulations. Normally if there is an infraction of those regulations, they pick up the offender and deliver him to a judicial body, that is to the United States Commissioner, or to the United States District Court. They have no power of absolute confiscation on their own, no power to deprive of money or rights. In the case of the CAB, the Fish and Wildlife, in substance then, sets down regulations, but in the case of the CAB, they go further than that. In substance, they determine as between carrier and carrier, who is privileged and who can be deprived of it. (ACCP, at pp. 2204 - 05.)

The delegates also acknowledged that a "regulatory board" could also be a "quasi-judicial board." (ACCP, at p. 2206.) The Limited Entry Commission is an example of this. (AS 16.43.020)

From this discussion it appears that the framers believed that a "regulatory board" was a board that issued rules or regulations to govern the public (Fish and Wildlife Service), segments of the public (public utilities commission), or the use or management of resources (Fish and Wildlife Service). A "regulatory board" would

Representative Cliff Davidson  
February 14, 1991  
Page 3

seem to control or govern at large or in an area or field as the examples cited by the convention reveal. A board or commission that merely issues rules or regulations that govern or control its own internal conduct would not seem to be a "regulatory board" as that term is used in our constitution as the regulations or rules issued by such a such a board or commission do not govern or control at large or in an area or field.

Such a construction comports with the definitions of the term "regulate." Webster's New World Dictionary defines regulate as "to control, direct, or govern according to a rule. . . ." And Black's Law Dictionary defines regulate as "to fix, establish, or control." While these definitions are broad enough to encompass internal operating rules, rules that govern a board's own conduct, when applied to the examples and statements of the delegates to the constitutional convention, regulate apparently means the act of controlling, directing, or governing the public, segments of the public, or the resources of the state.

Clearly, the Board of Fisheries and the Board of Game qualify as regulatory boards under these principals.

TBC:gc:mi  
91-075.glc

## DIVISION OF LEGAL SERVICES

### LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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FAX (907) 465-2029


Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

#### MEMORANDUM

February 14, 1991

**SUBJECT:** Statutory History of Removal of Members of the Boards of Fisheries and Game (Work Order No. 17LS-0767)

**TO:** Representative Cliff Davidson  
Attn: Jay Nelson

**FROM:** David R. Dierdorff   
Revisor of Statutes

Jay Nelson of your staff has asked that we provide you with the statutory history of the governor's power to remove members of the Boards of Fisheries and Game since statehood.

The first post-statehood enactment dealing with the boards was ch. 64, SLA 1959, the State Organization Act of 1959, which created the principal departments of state government and made related changes. Section 17 of that Act established the Department of Fish and Game and the Board of Fish and Game. Section 6 of that Act (now codified as AS 39.05.060) provided, in part, that board members "hold office at the pleasure of the Governor notwithstanding their respective terms."

The same legislature also enacted ch. 94, SLA 1959, the Fish and Game Code of Alaska. That Act also established the department and the board. The section providing for the department (sec. 3 of Art. I) read:

The Alaska Department of Fish and Game referred to in this Act is the Department of Fish and Game created by the State Organization Act of 1959. [emphasis added]

On the other hand, the section establishing the board (sec. 6, Art. I) provided, in part:

There shall be a Board of Fish and Game composed of eight members having a general knowledge of the fish and game resources of the State and selected without regard to political affiliation or special interest.

Representative Cliff Davidson  
February 14, 1991  
Page 2

Section 7 of Art. I, ch. 94 (now codified with style and grammatical changes as AS 16.05.280) provided for the removal of board members:

**Sec. 7. Removal of Board Members.** The Governor may remove any Board member for inefficiency, neglect of duty, or misconduct in office by delivering to him a written copy of the charges and affording such member the opportunity of being heard in person or through counsel at a public hearing to be held before the Governor or his designee upon not less than ten days' notice by registered mail. The member shall have the right to confrontation by and cross-examination of all witnesses against him. Upon removal as aforesaid, the Governor or his designee shall file in the proper State office a complete statement of all charges made against the member and the findings thereon.

Neither sec. 6 or sec. 7 referred to the State Organization Act of 1959. However, sec. 35, Art. I, ch. 94 provided:

It is the purpose of this Article to further implement the provisions of the State Organization Act of 1959 relating to fish and game. However, in the event the provisions of Sec. 6 and Sec. 7 of this Article are found to be in conflict with the provisions of the State Organization Act of 1959, then the provisions of Sec. 6 and Sec. 7 of this Article shall prevail to the extent of that conflict. [emphasis added]

Section 35, Art. I, ch. 94, SLA 1959 was set out in the Alaska Compiled Laws as sec. 39-10-35. However, when John Bohn (a Benicia, California contract attorney) prepared the first drafts of the Alaska Statutes codification, the section was not codified. Instead, it was set out in a revisor's note at the beginning of AS 16.05.

There is no question but that the provisions of sec. 6, ch. 64, SLA 1959 were intended to apply to the Board of Fish and Game in the context of that Act. However, it is my opinion that when the same legislature subsequently enacted ch. 94, the legislature intended that the provisions of secs. 6 and 7 of Art. I, ch. 94, that related to the board and were inconsistent with ch. 64 were to apply in lieu of ch. 64's provisions. The legislature's reference to the department as, essentially, continuing the department as previously established, while creating the board from whole cloth, coupled with the express provisos of sec. 35, are strong evidence of that intent.

The statutes enacted in 1959 have been subject to only one relevant amendment since their enactment (if one does not view the 1962 rewrite in connection with codification as an amendment). That amendment was in 1975 and related to the creation of the separate boards of fisheries and game. It could be argued that the intent of that legislation was to reinforce the belief that the "at pleasure" provision of AS 39.05.060 was in addition to the "for cause" provision of AS 16.05.280. However, it can be

Representative Cliff Davidson  
February 14, 1991  
Page 3

equally argued that the amendment was only a housekeeping change consistent with the primary substantive purpose of that enactment.

Because sec. 35, Art. I, ch. 94, SLA 1959 was not codified, it was repealed by the provisions of sec. 2, ch. 1, SLA 1963 (the Act which enacted the newly codified Alaska Statutes as the statutory law of the state). However, that does not lessen its effect on an understanding of the legislative history of AS 16.05.280 and AS 39.05.-060, and the appropriate interpretation of these two apparently inconsistent provisions.

DRD:mi  
91-031.mai

STATE OF ALASKA  
Office of the Governor  
**POSITION PAPER**  
Walter J. Hickel, Governor

P.O. BOX A, JUNEAU, AK 99811-0101

BRUCE KENDALL, LEGISLATIVE LIAISON

*FEBRUARY 14, 1991*

***BILL NUMBER:*** HB65/CSHB65 (RES)    ***SPONSOR:*** DAVIDSON

***BILL TITLE:*** "AN ACT RELATING TO MEMBERS OF THE BOARD OF FISHERIES AND THE BOARD OF GAME."

**POSITION STATEMENT:**

IT IS THIS ADMINISTRATION'S POSITION THAT THIS BILL, IN ITS PRESENT FORM, IS A DELIBERATE ATTEMPT TO ABROGATE THE GOVERNOR'S CONSTITUTIONAL AUTHORITY AND OBLIGATION TO MANAGE THE RESOURCES AND BUSINESS OF THIS STATE FOR THE PEOPLE OF ALASKA.

IF THIS LEGISLATION PASSES BOTH HOUSES WITHOUT ACCEPTABLE AMENDMENTS TO MAKE THIS BOARD FALL WITHIN THE GENERAL RULES OF ALL OTHER BOARDS AND COMMISSIONS NOW IN EXISTENCE, IT WILL BE VETOED.



# STATE OF ALASKA

HOUSE OF REPRESENTATIVES

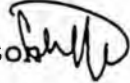
Box V, Juneau, Alaska 99811

(907) 465-2487 • 465-2498

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REPRESENTATIVE CLIFF DAVIDSON • DISTRICT 27 • Box 746, Kodiak, Alaska 99615 • (907) 486-8250

TO: Representative Eileen MacLean  
House Finance Committee

FROM: Representative Cliff Davidson 

DATE: February 25, 1991

SUBJECT: Scheduling HB 65, "An Act relating to membership on and compensation of members of the Board of Fisheries and Board of Game; relating to disclosures under the Alaska Executive Branch Ethics Act by members of the Board of Fisheries and Board of Game; and repealing certain references to the Board of Fisheries and Board of Game"

Last week CSHB 65(RES) passed the Judiciary Committee and is next referred to the Finance Committee. I would appreciate an expeditious hearing on this legislation.

I originally introduced House Bill 65 to address the problem of inadequate compensation for members of the Board of Fisheries and Board of Game. The Boards of Fish and Game were originally established as citizen boards. Board members have traditionally been expected to serve with no monetary compensation. However, over the past few years, the workload for the boards has expanded dramatically. It has become increasingly difficult to find individuals to serve in these controversial and time consuming positions. HB 65 is one attempt to address some of these concerns.

In the Resources Committee HB 65 was substantially amended to clarify existing law with respect to the Governor's authority to remove members of the Boards of Fish and Game. Until recently, most folks believed the Governor did not possess the authority to remove members of the Boards except for cause.

During the recent controversy between the Joint Boards and the Governor, several legal opinions on the subject identified the Governor's authority to remove boards members as a gray area at best. It appears the board members may indeed serve at the pleasure of the Governor. That concept was a surprise to many of us. For this reason and because there exists considerable ambiguity in existing law, I regard the new provisions in CSHB 65(RES) as a simple clarification of the Governor's authority.

If you have any further questions on this legislation, please do not hesitate to contact me. My staff assigned to this bill is Jay Nelson (3715).



# STATE OF ALASKA

HOUSE OF REPRESENTATIVES

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REPRESENTATIVE CLIFF DAVIDSON • DISTRICT 27 • Box 746, Kodiak, Alaska 99615 • (907) 486-8250

25 February 1991

Mr. Dan Joling, Managing Editor  
Fairbanks Daily News-Miner  
200 North Cushman  
Fairbanks, Alaska 99701

Dear Mr. Joling,

Following is a response to your recent editorial (2/22) concerning House Bill 65. Thank you for this opportunity to respond.

To the editor:

Your recent editorial in opposition to House Bill 65 was, like an Iraqi scud missile, way off target. My legislation is intended to clarify the laws that provide for the removal of members of the Boards of Fish and Game.

For 30 years most people familiar with the appointment process for the Fish and Game Boards have felt that, once appointed, members could be removed by a governor only for cause. Several attorneys general, including the current one, advised their bosses that this was a correct interpretation of the law. Only recently, with all of the controversy over the Boards of Fish and Game, did differing legal opinions surface. It now seems that, at best, a governor's power to remove Fish and Game Board members is unclear.

House Bill 65 will clear up this confusion. It expands provisions for removal of Board members for cause and clarifies provisions prohibiting a governor from removing members at his pleasure.

There is one very good reason why Board members should be insulated from easy removal: politics. The Alaskan public does not want management decisions by the Board to become a political football. That is why the United Fisherman of Alaska, the National Rifle Association and the Alaska Environmental Lobby all support this bill.

They know that, by and large, the Boards have managed our \$1.5 billion fisheries and vast game resources quite well - without direct political interference.

A governor with the ability to remove members at his pleasure is

a governor with the ability to place Board members under enormous political pressure. That is something no Alaskan should want to see.

As to the assertion that this legislation is directed at Governor Hickel, that is absolutely not true. If I had discovered this confusion in the law last year or the year before, I would have proceeded along these same lines. Furthermore, I expect that any governor would have opposed this legislation. I certainly do not take Governor Hickel's opposition to HB 65 personally.

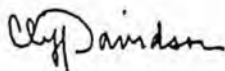
There are many folks that are not especially fond of the current Boards of Fish and Game, but the ones that have spoken to me absolutely do not want these Board members to be subject to easy removal by any governor.

This is not to say a governor cannot eventually place his people on these Boards. Member terms are 3 years so that at the end of Governor Hickel's four years in office he will have had the opportunity to replace any Board members he chooses.

Finally, I would like to make it crystal clear to your readers that there is no question but that the Legislature has the power, under the Constitution, to provide for methods of removal of members of the Boards of Fish and Game. Article III Section 26 of the Constitution clearly states that when a board is a regulatory agency, its members shall be appointed by a governor, "and may be removed as provided by law." (emphasis added)

I intend to "stick to making laws" as you suggested in your editorial. HB 65 will clarify the limits on removal of Fish and Game Board members by a governor. I believe it will also insulate our fish and game management from day-to-day "politics as usual."

Sincerely,



Cliff Davidson  
State Representative

*Editorial Opinion and Comment of*



## **Daily News - Miner**

*"Independent in All Things . . . Neutral in None"*

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

### **Governor's choice**

Legislators got huffy last week when a representative of Gov. Walter Hickel delivered a blunt threat to veto a bill limiting the governor's ability to fire members of boards and pick replacements.

Though the delivery may have lacked tact, the message from the governor was correct: The governor should have the right to pick who serves on the boards within his administration, especially such crucial boards as those overseeing hunting and fishing seasons.

House Bill 65 started out as an attempt to boost the daily pay for members of the Board of Game and the Board of Fisheries. However, legislators added language that listed the "only" reasons for which the governor could remove members—inefficiency, neglect of duty, misconduct in office, or a conviction of fish and game violations. That language goes too far.

Gov. Hickel has raised some eyebrows by making wholesale changes among some boards. Besides changes on the game and fisheries board, Hickel significantly changed membership on the state Board of Education, the Permanent Fund Board and the University of Alaska Board of Regents. However, that's his right.

Our state Constitution spells out a position of strength for our state's chief executive. It's also clear that voters did not elect Hickel to maintain the status quo.

The Legislature should stick to making laws and let the governor administrate them as he sees fit with the boards and commissions he desires.



STATE OF ALASKA  
HOUSE OF REPRESENTATIVES  
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REPRESENTATIVE CLIFF DAVIDSON • DISTRICT 27 • Box 746, Kodiak, Alaska 99615 • (907) 486-8250

CS HOUSE BILL 65 (Judiciary)

COMPENSATION FOR BOARD OF FISH AND BOARD OF GAME MEMBERS

CURRENT LAW

CSHB 65 (JUD)

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<u>SECTION 1</u>	3 YEAR TERM BY CUSTOM	PUTS 3 YEAR TERM LIMIT IN STATUTE
<u>SECTION 2</u>	PROVIDES FOR REMOVAL OF BOARD MEMBERS "FOR CAUSE"	CLARIFIES THAT THE GOVERNOR MAY REMOVE " <u>ONLY</u> FOR CAUSE" AND EXPANDS LIST OF CAUSES FOR REMOVAL
<u>SECTION 3</u>	<u>BOARD COMPENSATION:</u>	
<u>BOARD MEETINGS</u>	\$150/DAY	\$195/DAY (RANGE 22)
<u>OTHER MEETINGS</u>	\$100/DAY	\$ 98/DAY (1/2 /RANGE 22)
<u>PER DIEM</u>	NONE	\$100/DAY
<u>SECTION 4</u>	UNDER EXECUTIVE BRANCH ETHICS ACT	STRENGTHENS REPORTING UNDER EXECUTIVE BRANCH ETHICS ACT
<u>SECTION 5</u>	-----	PROVIDES THAT CURRENT MEMBER TERMS ARE COVERED BY ACT
<u>SECTION 6</u>	MEMBERS SERVE AT PLEASURE OF GOVERNOR	REPEALS REMOVAL PROVISIONS AND MOVES VACANCY PROVISIONS TO AS 16.05.221(c) -(SECTION 1 OF BILL)



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Boards	BILL NUMBER HB65	SPONSOR Davidson
SHORT TITLE OF BILL "An act relating to the members of the Board of Fisheries and the Board of Game."			
DEPARTMENT POSITION Support			
PREPARED BY Beverly Reaume <i>Beverly Reaume</i>	DATE 2/7/91	COMMISSIONER'S SIGNATURE <i>D. H. ...</i>	DATE 2/7/91

SUMMARY

OTHER AGENCIES AFFECTED BY BILL None	CONSTITUENT GROUPS AFFECTED BY BILL Those members of the public affected by quality of regulation promulgated by the boards.
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

**BACKGROUND/LEGISLATIVE INTENT**  
The Board of Fisheries meets approximately 68 days and the Board of Game meets approximately 48 days per year. The fourteen voluntary board members are unable to sustain themselves away from home at the current compensation rate.

The Board of Fisheries has changed its meeting schedule to review each regions' regulations every three years. This will reduce the number of meeting days, which was not reflected in the prior analysis of January 29, 1991.

**ANALYSIS OF BILL/PROGRAM EFFECTS**  
Section 1 requires board members to disclose financial or other interests in a business or organization relating to fish and game resources.  
Section 2 provides the Governor the ability to remove a board member who has been convicted of violating a fish or game statute or regulation. Section 3 provides board members with per diem at a rate authorized in AS 39.20.180 and additional daily compensation equal to a range 22.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

# Alaska's Constitution A Citizen's Guide

GORDON S. HARRISON

Agreed upon by the delegates in Constitutional Convention assembled at the University of Alaska, this fifth day of February, in the year of our Lord one thousand nine hundred and fifty-six, and of the Independence of the United States the one hundred and eightieth.

Wm C. Stow  
PRESIDENT OF THE CONVENTION

*Richard Armstrong* *Douglas Gray* *Steen McCutcheon*  
*Stanley J. Aase* *Thomas C. Morris* *George McChapman* *Nick C. Rives*  
*Frank Barry* *Richard Blalock* *Wm. J. ...* *John H. ...*  
*John C. Bonnell* *Michael R. ...* *John G. ...* *W.D. ...*  
*Seal ...* *Hub ...* *W.C. ...* *B. D. Stewart*  
*John B. ...* *John H. ...* *J. L. ...* *George ...*  
*E. A. ...* *James ...* *Louis ...* *Norman ...*  
*George ...* *Walter ...* *James ...* *Harold ...*  
*John W. ...* *Yule F. ...* *Thomas ...* *H.P. ...*  
*Edward V. ...* *Donald H. ...* *Frank ...* *W.J. ...*  
*James P. ...* *Walter ...* *Chris ...* *Paul ...*  
*Lawrence C. ...* *W.W. ...* *Pat ...* *Alan B. ...*  
*John ...* *Ernest ...* *Luella ...*  
*Vinton ...* *Norman ...* *Paul ...*

ATTEST:

*Shenna K. Stewart*  
SECRETARY OF THE CONVENTION

ORDINANCE NO. 1  
RATIFICATION OF CONSTITUTION

Resolves

SECTION 1. The Constitution for the State of Alaska agreed upon by the delegates to the Alaska Constitutional Convention on February 5, 1956, shall be submitted to the voters of Alaska for ratification at a general election to be held on the first Tuesday after the first Monday of the month of August, 1958. The election shall be conducted according to existing laws regulating primary elections or to any laws enacted therefor.

Ballots

SECTION 2. Each elector who offers to vote upon this constitution shall be given a ballot by the election judges which will be separate from the ballot on which candidates in the primary election are listed. Each of the propositions offered by the Alaska Constitutional Convention shall be set forth separately, but on the same ballot form. The first proposition shall be as follows:

"Shall the Constitution for the State of Alaska prepared and agreed upon by the Alaska Constitutional Convention be adopted?"

Yes   
No

\$2.00

proposal is well beyond the scope of this discussion, but it should be noted that such a change would be a further retreat from the original constitutional objective of a centralized and accountable executive administration.

A notable constitutional law case developed over interpretation of language in this section and Section 26 which gives the legislature authority to confirm the governor's appointments of heads of major departments. Confirmation authority of this type is a traditional legislative "check and balance" on the executive branch. The Alaska legislature asserted that it could by law extend its authority to confirm appointments to deputy department heads as well as department heads, on the ground that these positions involve substantial policy-making authority. The governor refused to submit names of his department deputy heads to the legislature, which sued. The supreme court ruled against the legislature (*Bradner v. Hammond*, 553 P.2d1; 1976). It said that the power to confirm did not extend beyond the express limits of the constitution and that the legislature's action violated the principle of separation of powers. Thus rebuffed, the legislature in 1980 placed a proposed constitutional amendment before the voters that would give the legislature explicit authority to determine which executive appointees would be subject to confirmation. The amendment failed to be ratified by the voters.

#### Section 26. Boards and Commissions

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, ~~and may be removed as provided by law.~~ They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

Members of boards and commissions are appointed by the governor and confirmed by the legislature. Thus, even though there is a policy-making board at the head of an executive department, the governor retains the power to appoint the members of the board and to veto a board's choice of its principal executive officer. However, the constitution permits the legislature to determine how these board members are removed. The statutes governing the respective boards and commissions specify the terms of removal. In the case of the state board of education, for example, the law provides that the members serve at the pleasure of the governor. ~~In the case of the board of fisheries and game, however, the law restricts the governor's power of removal to cases of "inefficiency, neglect of duty, or misconduct in office."~~

HB65

# SENATE FINANCE COMMITTEE REPORT

DATE: 5/2/92

FURTHER:

DATE TURNED INTO OFFICE: 5/11/92

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

"An Act relating to membership on the Board of Fisheries and Board of Game; relating to disclosures under the Alaska Executive Branch Ethics Act by members of the Board of Fisheries and Board of Game; and repealing certain references to the Board of Fisheries and Board of Game."

and recommends:

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

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

**NEW FISCAL NOTES:** Dept/Date

zero fiscal notes \_\_\_\_\_

\_\_\_\_\_

fiscal notes \_\_\_\_\_

\_\_\_\_\_

appropriation--no fiscal note

**PREVIOUS FISCAL NOTES:** Dept/Date

zero fiscal notes \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**DO PASS:**

*[Handwritten signatures]*

Co-Chair: Signature/Recommendation

**OTHER RECOMMENDATIONS:**

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

Co-Chair: Signature/Recommendation

FISCAL NOTE

No. 4

Bill Version: SCS HB 257A

(S) Publish Date: 5-2-92

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_

Department Affected: Fish and Game

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

BRU: Boards

Component: Board Services

Sponsor: Davidson, Koponen, Moyer

Requestor: Senate Resources

COMPONENT SERIAL NO. 

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

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

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: no fiscal impact

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

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

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

4/27/92

CSHB65 BOARDS OF FISHERIES AND GAME

BOARD OF FISHERIES (7 MEMBERS)

---

CURRENT

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

TOTAL \$66,150

PROPOSED

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

TOTAL \$121,013

INCREASED COST FOR BOARD OF FISHERIES

\$54,863  
\*\*\*\*\*

BOARD OF GAME (7 MEMBERS)

---

CURRENT

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

TOTAL \$45,150

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

TOTAL \$82,608

INCREASED COSTS FOR BOARD OF GAME

\$37,458  
\*\*\*\*\*

GRAND TOTAL

\$92,320  
\*\*\*\*\*

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 5/2/92  
 Referred: Finance

Sponsor(s): REPRESENTATIVES DAVIDSON, Koponen, Moyer

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to membership on the Board of Fisheries and Board of Game; relating  
 2 to disclosures under the Alaska Executive Branch Ethics Act by members of the Board  
 3 of Fisheries and Board of Game; and repealing certain references to the Board of  
 4 Fisheries and Board of Game."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 \* Section 1. AS 16.05.221 is amended to read:

7           Sec. 16.05.221. BOARDS OF FISHERIES AND GAME. (a) For purposes of the  
 8 conservation and development of the fishery resources of the state, there is created the Board of  
 9 Fisheries composed of seven members appointed by the governor, subject to confirmation by a  
 10 majority of the members of the legislature in joint session. The governor shall appoint each  
 11 member on the basis of interest in public affairs, good judgment, knowledge, and ability in  
 12 the field of action of the board, and with a view to providing diversity of interest and points  
 13 of view in the membership. The appointed members shall be residents of the state and shall  
 14 be appointed without regard to political affiliation or geographical location of residence. The

1 commissioner is not a member of the Board of Fisheries, but shall be ex officio secretary.

2 (b) For purposes of the conservation and development of the game resources of the state,  
3 there is created a Board of Game composed of seven members appointed by the governor, subject  
4 to confirmation by a majority of the members of the legislature in joint session. The governor  
5 shall appoint each member on the basis of interest in public affairs, good judgment,  
6 knowledge, and ability in the field of action of the board, and with a view to providing  
7 diversity of interest and points of view in the membership. The appointed members shall be  
8 residents of the state [,] and shall be appointed without regard to political affiliation or  
9 geographical location of residence. The commissioner is not a member of the Board of Game,  
10 but shall be ex officio secretary.

11 \* Sec. 2. AS 16.05.221 is amended by adding a new subsection to read:

12 (c) Members of the Board of Fisheries or Board of Game serve staggered terms of three  
13 years and until a successor is appointed. An appointment to fill a vacancy in the membership  
14 of the Board of Fisheries or Board of Game shall be made in the same manner as the original  
15 appointment and for the balance of the unexpired term.

16 \* Sec. 3. AS 16.05.280 is amended to read:

17 Sec. 16.05.280. REMOVAL OF BOARD MEMBERS. The governor may only remove  
18 a board member for inefficiency, neglect of duty, or misconduct in office, or because the  
19 member while serving on the board is convicted of a misdemeanor for violating a statute  
20 or regulation related to fish or game or of a felony, and shall do so by delivering to the  
21 member a written copy of the charges and giving the member an opportunity to be heard in  
22 person or through counsel at a public hearing before the governor or a designee upon at least 10  
23 days' notice by registered mail. The member may confront and cross-examine adverse witnesses.  
24 Upon removal, the governor or a designee shall file in the proper state office the findings and  
25 a complete statement of all charges made against the member.

26 \* Sec. 4. AS 16.05.290 is amended to read:

27 Sec. 16.05.290. COMPENSATION OF BOARD MEMBERS. Each member of a board  
28 is entitled to compensation at a rate equal to Step A, Range 20, of the salary schedule in  
29 AS 39.27.011(a) for Juneau, Alaska, [TRAVEL EXPENSES AND \$150 PER DIEM] for each  
30 day going to and from and for each day in actual attendance at board meetings. For other  
31 meetings or conferences authorized by a board a member shall receive compensation at a rate

1 equal to one-half of Step A, Range 20, of the salary schedule in AS 39.27.011(a) for Juneau.  
2 Alaska, for each [\$100 PER] day going to and from and for each day in actual attendance.  
3 Each member of a board is also entitled to travel expenses and per diem authorized for  
4 boards and commissions under AS 39.20.180.

5 \* Sec. 5. AS 39.52.120 is amended by adding a new subsection to read:

6 (c) In addition to other provisions of this section, a public officer who is a member of  
7 the Board of Fisheries or the Board of Game may not act on a matter before the board if the  
8 public officer has not disclosed in the manner set out in AS 39.52.220 all personal or financial  
9 interests in a business or organization relating to fish or game resources.

10 \* Sec. 6. APPLICABILITY. A person who is a member of the Board of Fisheries or Board of Game  
11 on the effective date of this Act shall serve the term to which the person was appointed, subject to  
12 AS 16.05.280, as amended by sec. 3 of this Act. A person who is appointed to the Board of Fisheries  
13 or Board of Game after the effective date of this Act shall be appointed for the term provided by  
14 AS 16.05.221(c), added by sec. 2 of this Act.

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

No. 3

Bill Version: GSHB 65 (FIN)

(H) Publish Date: 4/8/92

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

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

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

Sponsor: Davidson

Requestor: House Rules

COMPONENT SERIAL NO. 

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

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

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: no current year impact

ANALYSIS: (Attach a separate page if necessary.)

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

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

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

CSHB65 BOARDS OF FISHERIES AND GAME

BOARD OF FISHERIES- (7 MEMBERS)

---

CURRENT

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

PROPOSED

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

INCREASED COST FOR BOARD OF FISHERIES \$66,119  
\*\*\*\*\*

BOARD OF GAME (7 MEMBERS)

---

CURRENT

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

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

INCREASED COSTS FOR BOARD OF GAME \$45,112  
\*\*\*\*\*

GRAND TOTAL \$111,232  
\*\*\*\*\*

COMMITTEE COPY

p. 2 of 2



# Alaska State Legislature

SENATOR RICHARD I. ELIASON

*President of the Senate*

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

## M E M O R A N D U M

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

FROM: Sen. Eliason *Richard I. Eliason*

DATE: May 5, 1992

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

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

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

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

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

Thank you.

STATE OF ALASKA  
House of Representatives  
District 27

Representative Cliff Davidson  
Chairman  
House Resources Committee



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

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

FROM: Representative Cliff Davidson *CD*

DATE: May 4, 1992

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

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

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

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

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

Attachment

SENATE CS FOR CS FOR HOUSE BILL 65 (Resources)

COMPENSATION FOR BOARD OF FISH AND BOARD OF GAME MEMBERS

CURRENT LAW

Senate CSHB 65 (RES)

---

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

STATE OF ALASKA  
House of Representatives  
District 27

Representative Cliff Davidson  
Chairman  
House Resources Committee



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There is one very good reason why Board members should be insulated from easy removal: politics. The Alaskan public does not want management decisions by the Board to become a political football. That is why most fishing organizations support this bill.

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

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

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

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101


### MEMORANDUM

February 14, 1991

**SUBJECT:** Statutory History of Removal of Members of the Boards of Fisheries and Game (Work Order No. 17LS-0767)

**TO:** Representative Cliff Davidson  
Attn: Jay Nelson

**FROM:** David R. Dierdorff  
Revisor of Statutes



Jay Nelson of your staff has asked that we provide you with the statutory history of the governor's power to remove members of the Boards of Fisheries and Game since statehood.

The first post-statehood enactment dealing with the boards was ch. 64, SLA 1959, the State Organization Act of 1959, which created the principal departments of state government and made related changes. Section 17 of that Act established the Department of Fish and Game and the Board of Fish and Game. Section 6 of that Act (now codified as AS 39.05.060) provided, in part, that board members "hold office at the pleasure of the Governor notwithstanding their respective terms."

The same legislature also enacted ch. 94, SLA 1959, the Fish and Game Code of Alaska. That Act also established the department and the board. The section providing for the department (sec. 3 of Art. I) read:

The Alaska Department of Fish and Game referred to in this Act is the Department of Fish and Game created by the State Organization Act of 1959. [emphasis added]

On the other hand, the section establishing the board (sec. 6, Art. I) provided, in part:

There shall be a Board of Fish and Game composed of eight members having a general knowledge of the fish and game resources of the State and selected without regard to political affiliation or special interest.

Section 7 of Art. I, ch. 94 (now codified with style and grammatical changes as AS 16.05.280) provided for the removal of board members:

**Sec. 7. Removal of Board Members.** The Governor may remove any Board member for inefficiency, neglect of duty, or misconduct in office by delivering to him a written copy of the charges and affording such member the opportunity of being heard in person or through counsel at a public hearing to be held before the Governor or his designee upon not less than ten days' notice by registered mail. The member shall have the right to confrontation by and cross-examination of all witnesses against him. Upon removal as aforesaid, the Governor or his designee shall file in the proper State office a complete statement of all charges made against the member and the findings thereon.

Neither sec. 6 or sec. 7 referred to the State Organization Act of 1959. However, sec. 35, Art. I, ch. 94 provided:

It is the purpose of this Article to further implement the provisions of the State Organization Act of 1959 relating to fish and game. However, in the event the provisions of Sec. 6 and Sec. 7 of this Article are found to be in conflict with the provisions of the State Organization Act of 1959, then the provisions of Sec. 6 and Sec. 7 of this Article shall prevail to the extent of that conflict. [emphasis added]

Section 35, Art. I, ch. 94, SLA 1959 was set out in the Alaska Compiled Laws as sec. 39-10-35. However, when John Bohn (a Benicia, California contract attorney) prepared the first drafts of the Alaska Statutes codification, the section was not codified. Instead, it was set out in a revisor's note at the beginning of AS 16.05.

There is no question but that the provisions of sec. 6, ch. 64, SLA 1959 were intended to apply to the Board of Fish and Game in the context of that Act. However, it is my opinion that when the same legislature subsequently enacted ch. 94, the legislature intended that the provisions of secs. 6 and 7 of Art. I, ch. 94, that related to the board and were inconsistent with ch. 64 were to apply in lieu of ch. 64's provisions. The legislature's reference to the department as, essentially, continuing the department as previously established, while creating the board from whole cloth, coupled with the express provisos of sec. 35, are strong evidence of that intent.

The statutes enacted in 1959 have been subject to only one relevant amendment since their enactment (if one does not view the 1962 rewrite in connection with codification as an amendment). That amendment was in 1975 and related to the creation of the separate boards of fisheries and game. It could be argued that the intent of that legislation was to reinforce the belief that the "at pleasure" provision of AS 39.05.060 was in addition to the "for cause" provision of AS 16.05.280. However, it can be

Representative Cliff Davidson

February 14, 1991

Page 3

equally argued that the amendment was only a housekeeping change consistent with the primary substantive purpose of that enactment.

Because sec. 35, Art. I, ch. 94, SLA 1959 was not codified, it was repealed by the provisions of sec. 2, ch. 1, SLA 1963 (the Act which enacted the newly codified Alaska Statutes as the statutory law of the state). However, that does not lessen its effect on an understanding of the legislative history of AS 16.05.280 and AS 39.05.-060, and the appropriate interpretation of these two apparently inconsistent provisions.

DRD:mi

91-031.mai

# Alaska State Legislature



## Senate Judiciary Committee

*Riis*

### MEMORANDUM

TO: David R. Dierdorff  
Revisor of Statutes

FROM: Doug Baily, Staff Counsel  
Senate Judiciary Committee

DATE: February 21, 1991

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

---

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

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

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

February 21, 1991  
page 2

provisions, constitutes legislative reinforcement of the conclusion that the "at pleasure" termination provision of AS 39.05.060 have full force and effect at present<sup>1</sup> as concluded in your agency's legal opinion of January 3, 1991.

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

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

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

---

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

February 21, 1991  
page 3

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

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

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

February 14, 1991

**SUBJECT:** Confirmation of appointees to the Boards of Fisheries and Game (Work Order No. 7LS0766)

**TO:** Representative Cliff Davidson

**FROM:** Tamara Brandt Cook  
Director *TBC*

You have asked whether appointments to the Board of Fisheries and the Board of Game are subject to confirmation under art. III, § 26 of the Alaska Constitution and may be removed as provided by law under that same section. That section provides:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

Note that section 26 applies to three types of boards: those at the head of a principal department, those that are regulatory agencies, and those that are quasi-judicial agencies. The Boards are not at the head of a principal department. That position is occupied by the commissioner of fish and game. (AS 44.39.010) Nor are Boards quasi-judicial agencies in that they do not adjudicate individual rights. The Boards are, however, powerful regulatory agencies. (AS 16.10.190, 16.10.440, 16.20.040, 16.20.510, 16.43.381) As such, members are subject to confirmation and may be removed as provided by law.

To determine the meaning of the term "regulatory agency" we must first look to the views of the framers of our constitution to determine what they thought the term meant or what they intended the term to signify. Art. III, § 26, was proposed by the Committee on the Executive Branch as Committee Proposal 10 (later amended and resubmitted as Committee Proposal 10a), at the Constitutional Convention. (Alaska

Representative Cliff Davidson  
February 14, 1991  
Page 2

Constitutional Convention Proceedings (ACCP), Part 6) In the commentary submitted by the executive branch committee with the proposal the committee explained their recommendations concerning government organization. These recommendations are embodied in secs. 22 - 27 of art. III, of the constitution. The committee said:

A clear distinction is made between the administrative departments, such as public works, health, education, and welfare, and the regulatory, including quasi-judicial, bodies such as a rate-setting public utility commission.

Delegate V. Rivers, chairman of the executive branch committee, summarized the committee proposal and the meaning of a "regulatory board" in this manner:

The purpose of that is that in a regulatory board, regulating the power rates, telephone rates, etc., the power of removal might be the power to make the office ineffective so that removal would be prescribed by the legislature. (ACCP, at p. 1102 - 03)

Discussion of what a "regulatory board" is and does includes these statements by delegates: "To me a utilities board would be regulatory" (ACCP, at p. 2204, Delegate V. Fischer); and Delegate McLaughlin, in response to a question of what is the difference between a "regulatory board" and a "quasi-judicial board" said:

Perhaps I can explain it in the terms best known to Alaskans. Very roughly, the Fish and Wildlife Service and the CAB, the Fish and Wildlife Service can set down regulations. Normally if there is an infraction of those regulations, they pick up the offender and deliver him to a judicial body, that is to the United States Commissioner, or to the United States District Court. They have no power of absolute confiscation on their own, no power to deprive of money or rights. In the case of the CAB, the Fish and Wildlife, in substance then, sets down regulations, but in the case of the CAB, they go further than that. In substance, they determine as between carrier and carrier, who is privileged and who can be deprived of it. (ACCP, at pp. 2204 - 05.)

The delegates also acknowledged that a "regulatory board" could also be a "quasi-judicial board." (ACCP, at p. 2206.) The Limited Entry Commission is an example of this. (AS 16.43.020)

From this discussion it appears that the framers believed that a "regulatory board" was a board that issued rules or regulations to govern the public (Fish and Wildlife Service), segments of the public (public utilities commission), or the use or management of resources (Fish and Wildlife Service). A "regulatory board" would

Representative Cliff Davidson  
February 14, 1991  
Page 3

seem to control or govern at large or in an area or field as the examples cited by the convention reveal. A board or commission that merely issues rules or regulations that govern or control its own internal conduct would not seem to be a "regulatory board" as that term is used in our constitution as the regulations or rules issued by such a board or commission do not govern or control at large or in an area or field.

Such a construction comports with the definitions of the term "regulate." Webster's New World Dictionary defines regulate as "to control, direct, or govern according to a rule. . . ." And Black's Law Dictionary defines regulate as "to fix, establish, or control." While these definitions are broad enough to encompass internal operating rules, rules that govern a board's own conduct, when applied to the examples and statements of the delegates to the constitutional convention, regulate apparently means the act of controlling, directing, or governing the public, segments of the public, or the resources of the state.

Clearly, the Board of Fisheries and the Board of Game qualify as regulatory boards under these principals.

TBC:gc:mi  
91-075.glc

RECEIVED MAR 3 1992

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

---

(907) 225-5156

---

March 5, 1992

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

Dear Cliff,

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

Posting of Fish Price - HB 369

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

Regional Board of Fish - HB 413

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

Subsistence - HB 552 & SB 443

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

Guided Sport - SB 397 and HB 504

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

Salmon Marketing - HB 477, HB 414 and SB 386

Support HB 477 with modification.

Oppose HB 414 and SB 386.

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

Legislative Hatchery Review

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

State Board of Fish and Game - HB 65

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

Instream Flow for Fish and Wildlife - HB 355

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

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

Sincerely,



Kathryn Troll  
Executive Director

Distribution list:  
Members of House Resources Committee

RECEIVED MAR 16 1992



**UCIDA**

**UNITED COOK INLET DRIFT ASSOCIATION**

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

(907) 283-3600 • FAX (907) 283-3306

March 11, 1992

Dear Legislator,

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

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

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

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

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

2) HB 411 - Restoration Projects - Exxon Valdez

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

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

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

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

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

UCIDA does not support a salmon marketing tax on commercial



"MIKE & SHIRLEY CHIHULY"

## **SALMON & HALIBUT FISHING AT IT'S BEST**

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P.O. BOX 39294, NINILCHIK, ALASKA 99639

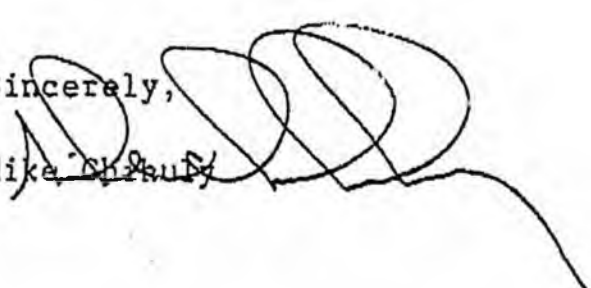
*On Sterling Highway next to Chinook Service.*

Representative Cliff Davidson  
State Capitol  
Juneau, Alaska 99801

Dear Cliff:

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

Sincerely,

  
Mike Chihuly

**WORLD'S LARGEST KING SALMON!**

1-907-567-3374

April 7, 1992

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

Dear Representative Davidson,

RE: HB 65

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

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

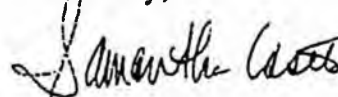
"The governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the board, and with a view to providing DIVERSITY OF INTEREST AND POINTS OF VIEW in the membership."

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

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

I fully support HB 65.

Sincerely,



Samantha Castle  
Former Chair, Boards of F&G

Representative Cliff Davidson  
State Capitol  
Juneau, Alaska 99801

April 7, 1992

Subject: HB 65

Dear Representative Davidson,

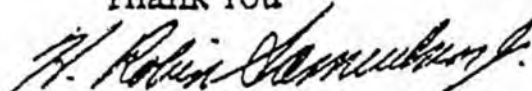
As a past board of fish member I want to state that I fully support HB 65, an act for additional compensation for members of the Board of Fisheries and Board of Game. I know from my three years (1988-1992) on the Alaska Board of Fish I have personally dug into my own pocket for expenses occurred while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

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

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

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

Thank You



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

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

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

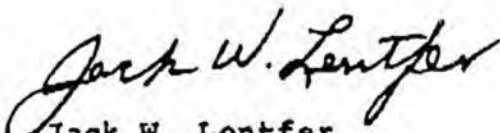
Dear Representative Davidson:

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

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

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

Sincerely,

  
Jack W. Lentfer

HB66