

The following staff comment was prepared by the Alaska Department of Fish and Game for use at the Alaska Board of Game meeting, March 18 - 28, 2016 in Fairbanks, Alaska, and is prepared to assist the public and board. The stated staff comments on all proposals should be considered preliminary and subject to change, if or when new information becomes available. Final department positions will be formulated after review of written and oral testimony presented to the board.

PROPOSAL 19 – 5 AAC 92.XXX. Board generated proposals. Establish a regulation for board-generated proposals.

PROPOSED BY: Fairbanks Fish and Game Advisory Committee

WHAT WOULD THE PROPOSAL DO? The proposal seeks to establish a regulation to provide criteria for the board to follow when creating a board-generated proposal (BGP) and specifies 65-days public notice.

WHAT ARE THE CURRENT REGULATIONS? The process for developing BGPs is not in regulation. The Joint Board of Fisheries and Game policy #2013-34-JB sets criteria for the development of board generated proposals. The Administrative Procedures Act (AS 44.62) requires all regulatory making boards and agencies provide a 30-day legal notice for proposed regulatory changes.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL WERE ADOPTED? If the proposal is adopted, the process for creating, submitting, and hearing board-generated proposals will be established in regulation similar to the board’s agenda change request policy, 5 AAC 92.005. The proposal closely matches the language in policy #2013-34-JB except for the requirement to provide 65-day public notice period. If adopted, a 65-day public notice period would be required for all proposals created by the board. This requirement would delay any board action until a future board meeting, which could be the following meeting cycle.

BACKGROUND: Under the current process, the board is required to provide a minimum, 30-day legal notice to the public in accordance with the Administrative Procedures Act prior to acting on proposed changes to regulations. During board meetings, the board has the flexibility to amend proposals, adopt substitute language that captures the intent of a proposal in regulatory language, and create and act upon new proposals (BGPs) if the subject matter has been adequately covered in the legal notice. The board can also create BGPs to address new topics not covered in the legal notice, but is required to schedule them at future meetings to ensure the 30-day legal notice requirement is met.

Both the Board of Game and Board of Fisheries utilize BGPs to reach solutions unforeseen through existing proposals. BGPs can be technical or substantive. Technical BGPs amount to corrections in regulations that represent an efficient use of time and resources. Substantive BGPs

however, can be highly controversial and deserve adequate vetting by the affected public and advisory committees.

Both boards also utilize “agenda change request” (ACR) policies which allow the boards to consider requests for proposed regulatory changes outside the board’s published schedule provided specific criteria are met. Under the Board of Game ACR policy, a request must be sent to the board’s executive director at least sixty days before the first regularly scheduled meeting of that year. Sixty days allows for the board sufficient time to meet to review the ACRs and then provide the minimum 30 days public notice of any that are accepted and scheduled for a meeting that cycle.

DEPARTMENT COMMENTS: The department is **NEUTRAL** on this proposal. If the board chooses to adopt a regulation to guide future development and consideration of BGPs, the board should address the following considerations:

- If adopted, a definition for board generated proposals is needed to clarify whether it includes in cycle or out of cycle proposals, new proposals properly noticed at regular meetings used to address technical and substantive issues, and substitute language or substantive amendments to proposals developed during board meetings.
- The board needs to determine what amount of time is adequate for providing public notice for proposed regulatory changes and if it finds it should be greater than the existing 30 day requirement, should that also be consistent in the ACR policy?
- Depending on how the board chooses to define BGPs, adherence to a 65 day public notice requirement will limit the board’s flexibility to address time sensitive concerns by extending proposals beyond an existing meeting cycle unless the board calls for a special meeting. It may further limit the board’s ability to make technical corrections to regulations which are adequately noticed.
- The current Joint Board’s policy is also utilized by the Board of Fisheries. Creating a regulation for the Board of Game and not the Board of Fisheries could lead to confusion among the public. It may be more appropriate for the Joint Board to consider incorporating the policy under Chapter 96, which includes the process for developing fish and game regulations and the Joint Board Petition Policy.

COST ANALYSIS: Approval of this proposal is expected to result in additional costs to the department if special BOG meetings are needed to comply with the 65-day public notice requirement before the board to consider a BGP.

