

LEGAL SERVICES

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MEMORANDUM

March 27, 2015

SUBJECT: Authority of the commissioner of fish and game or a designee to close an antlerless moose hunt under SB 68 (Work Order No. 29-LS0604\W)

TO: Senator Cathy Giessel
Attn: Vivian Stiver

FROM: Alpheus Bullard *ALB*
Legislative Counsel

Ms. Stiver asked me to clarify whether, under the provisions of SB 68, the commissioner of fish and game (commissioner) or a designee may close an antlerless moose season by emergency order.

Short answer

If SB 68 becomes law, the commissioner and certain designees of the commissioner¹ may close an antlerless moose hunt by emergency order.

Summary of applicable provisions of SB 68

Sections 1, 3, and 4 of SB 68 relate to who may close an antlerless moose season.²

Section 1 Conforms AS 16.05.260 to the changes made by secs. 3 and 4 of the bill to AS 16.05.780.

Section 3 Amends AS 16.05.780(b), adding language that states, in part, "[i]f the board [of game] adopts a regulation allowing the taking of antlerless moose in a game management unit or subunit, the season or area may not be closed until the next regularly scheduled game board meeting for the region[.]"

¹ While the bill does not limit the power of the commissioner or a designee to close an antlerless moose season by emergency order under AS 16.05.060, it does prohibit an advisory committee or the board of game from closing an antlerless moose season in certain situations. Accordingly, legal issues might arise if the commissioner selected one of these entities to act as the commissioner's "authorized designee" in closing certain antlerless moose hunts by emergency order. It is also possible that the bill's provisions will be interpreted to prohibit these entities from serving as "authorized designees" in situations under which their powers are limited by the bill.

² The bill has two other sections. Section 2 relates to resident big game tags. Section 5 provides the bill with an effective date.

Section 4 Adds a new subsection to AS 16.05.780. The new subsection "(c)" prohibits an advisory committee from closing an antlerless moose season in a game unit or subunit if the department has collected application fees for that antlerless moose season in that unit or subunit.

Discussion

While the language added to AS 16.05.780(b) by sec. 3 of the bill reads as if no one may close an antlerless moose season that has been authorized by regulation for a unit or subunit until the next regularly scheduled game board meeting for the region in which that unit or subunit is located -- this subsection does not affect the commissioner's statutory authority to close the antlerless moose season by emergency order in that unit or subunit.

The changes to AS 16.05.780 must be read in the context of the entirety of chapter AS 16.05. The commissioner's power to issue emergency orders is codified at AS 16.05.060.³ That section provides in relevant part "[t]his chapter [AS 16.05] does not limit the power of the commissioner or an authorized designee, when circumstances require, to summarily open or close seasons . . . by means of emergency orders." Accordingly, while the provisions of the bill limit the authority of advisory committees and the board of game to close an antlerless moose season in certain situations, the bill's provisions, as statutory sections codified in AS 16, are still subject to the power of the commissioner or an authorized designee,⁴ to close an antlerless moose season by emergency order.

If you have further questions, please do not hesitate to contact me.

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³ That section provides:

Sec. 16.05.060. Emergency orders. (a) This chapter does not limit the power of the commissioner or an authorized designee, when circumstances require, to summarily open or close seasons or areas or to change weekly closed periods on fish or game by means of emergency orders.

(b) The commissioner or an authorized designee may, under criteria adopted by the Board of Fisheries, summarily increase or decrease sport fish bag limits or modify methods of harvest for sport fish by means of emergency orders.

(c) An emergency order has the force and effect of law after field announcement by the commissioner or an authorized designee. An emergency order adopted under this section is not subject to AS 44.62 (Administrative Procedure Act).

⁴ See note 1.