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4 0 9

File

COMMITTEE REPORT SENATE

4/7/82

FURTHER: None

Date: April 3, 1982

Mr. President:

The Committee on JUDICIARY has had CSSSHB 409(R1s) relating to hunting

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HR 119 same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

John G. Anderson, District

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

AMENDMENT TO SCSSSB 409(Resources)

Page 1, Line 13:

Insert the words "Class A" between "or" and "assistant".

Original sponsors: Hurlbert, Zharoff
and Grussendorf

Offered: 4/7/82
Referred: Judiciary

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 409 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to hunting; and providing for an
7 effective date."

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

9 * Section 1. AS 16.05.407 is amended by adding new subsections to read:

10 (d) It is a class A misdemeanor for a nonresident alien to hunt,
11 pursue or take walrus or a big game animal as defined by the Board of
12 Game unless personally accompanied by a person who is licensed as a
13 master guide, registered guide, or ^{11/25/82} assistant guide under AS 08.54.

14 (e) A nonresident alien when purchasing a big game tag for the
15 taking of an animal specified in this section shall first furnish to the
16 state, on a form provided by the state, an affidavit showing that he
17 will be accompanied in his hunt by a person who is qualified under the
18 terms of this section. A nonresident alien shall have a copy of the
19 affidavit in his possession while in the field hunting. A person who
20 falsifies the required affidavit is guilty of perjury under AS 11.56.200.

21 * Sec. 2. AS 16.05.940 is amended by adding a new paragraph to read:

22 (29) "nonresident alien" means a person who is not a citizen
23 of the United States and whose permanent place of abode is not in the
24 United States.

25 * Sec. 3. This Act takes effect July 1, 1982.

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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 26, 1982

SUBJECT: Big game hunting by nonresidents
(SCS CSSSHB 409 (Judiciary))

TO: Senator Patrick M. Rodey
Chairman, Senate Judiciary Committee

FROM: Edward H. Hein *EH*
Legislative Counsel

Enclosed is the Judiciary Committee Substitute for HB 409. After discussions with your administrative assistant, Kevin Bruce, I made certain changes to the bill, for the reasons noted below.

1. The title of the bill has been changed to more accurately express the subject of the bill, as required by Article II, Sec. 13 of the Alaska Constitution.
2. An amendment to AS 16.05.407(a) has been inserted as a new Section 1 of the bill to make clear that the affidavit required under (a) relates only to the animals and guides listed in (a), not the animals and guides specified in (d). Also, a reference to AS 11.56.200 was inserted to be consistent with the language of (d).
3. Subsection (e) was amended to clarify that the affidavit refers to animals and guides listed in (d), not the ones listed in (a).
4. It should be noted that this bill raises substantial constitutional questions.

Section 2 of the bill would amend AS 16.05.407 to discriminate against nonresident aliens, as opposed to other nonresidents, in at least five ways. First, the list of big game species for which nonresident aliens must be accompanied is expanded to include not only the four species that apply

to nonresidents, but also black bear, bison, caribou, Sitka black tail deer, elk, mountain goat, moose, musk oxen, walrus, wolf and wolverine. 5 AAC 90.020(3). Second, a violation by a nonresident alien carries a maximum \$5,000 fine -- twice the amount that other nonresidents could be fined for the same offense. Third, unlike other nonresidents, nonresident aliens must be accompanied by a licensed guide, not merely a relative who is 19 and an Alaska resident. Fourth, nonresident aliens may not comply with the law by being accompanied by an assistant guide, whereas other nonresidents may do so. Fifth, nonresident aliens must carry the affidavit required by AS 16.05.407(e) with them in the field, whereas other nonresidents are not required to do so.

The Fourteenth Amendment to the United States Constitution provides, "[N]or shall any State . . . deny to any person within its jurisdiction the equal protection of its laws". It has long been settled that the term "person" in this context encompasses aliens as well as citizens of the United States and entitles both citizens and aliens to the equal protection of the laws of the state. Yick Wo v. Hopkins, 118 U.S. 356 (1886); Truax v. Raich, 239 U.S. 33 (1915); Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948). In addition, the United States Supreme Court's opinions have established that classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to strict judicial scrutiny. Graham v. Richardson, 403 U.S. 365 (1971); Nyquist v. Mauclet, 432 U.S. 1 (1977). The court has stated that aliens as a class are a prime example of a "discrete and insular" minority (see United States v. Carolene Products Co., 304 U.S. 144 (1938)) for whom such heightened judicial solicitude is appropriate. Graham, U.S., at 372.

Prior to the Graham decision, the court had upheld statutes that, in the absence of overriding treaties, limited the right of noncitizens to engage in exploitation of a state's natural resources. McCready v. Virginia, 94 U.S. 391 (1877); Patsone v. Pennsylvania, 232 U.S. 138 (1914). The theory underlying those cases was that the state had a "special public interest" in favoring its own citizens over aliens in the distribution of limited resources. The special public interest doctrine was heavily grounded on the notion that "[w]hatever is a privilege, rather than a right, may be made dependent upon citizenship". People v. Crane, 214 N.Y. 154, 164 (1915). However as the court noted in Graham,

This Court now has rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a "right" or as a "privilege".

403 U.S. at 374.

Classifications based on alienage are inherently suspect and subject to strict judicial scrutiny regardless of whether a fundamental right is involved.

For this bill to be upheld as constitutional under the Equal Protection Clause, the state would have to demonstrate to the court that the discriminations against nonresident aliens are necessary to achieve a compelling state interest.

The state has a legitimate and perhaps compelling interest in preserving and conserving its natural resources, including wildlife. The Alaska Constitution requires the legislature to do so. Article VIII. It is reasonable to conclude, however, that the discrimination against nonresident aliens provided for in this bill is not necessary in order to conserve big game and that the discriminatory provisions of the bill would be struck down as unconstitutional if challenged in court.

EHH:ljb



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 23, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- SB 437 - "An Act relating to the confidential communications between students and teachers."
- HB 409 - "An Act relating to hunting; and providing for an effective date."
- SB 861 - "An Act relating to rights of persons who report violations of law; and providing for an effective date."
- SJR 61 - Proposing amendments to the Constitution of the State of Alaska relating to appropriations and the retention, investment and expenditure of certain state revenues; and superseding the amendments proposed by Legislative Resolve No. 1, First Special Session of the Twelfth Legislature (FSS FCCS SJR 4).

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:05 P.M. Committee members present were: Senators Rodey, Ray, Parr, and Anderson. Senator Bennett was absent.

003 - Call to order.

009 - Chairman Rodey brought SJR 61 before the committee.

013 - Mr. Bruce explains the changes in the committee substitute.

088 - Representative Malone testified stating that the language in the committee substitute was somewhat limiting and offered attached amendments.

120 - Tom Williams, Commissioner of Revenue, testified, answering questions by the committee.

560 - Senator Parr asked for opinions from the Attorney General's office and Legislative Affairs regarding the need for Sec. 26 of Sec. 4.

SIDE TWO

235 - Senator Ray moved the Representative Malone's amendment #1 be adopted. There was no objection. (see attached amendments.)

245 - Senator Ray reconsidered his motion. There was no objection. Senator Rodey moved that on Page 2, Line 3, "or appropriations are" be inserted between the words "appropriation" and the word "approved". The word "is" is to be struck. There was no objection and it was adopted.

673 - The committee discussed the other amendments at length, but took no further action.

678 - SJR 61 returned to file for committee review.

687 - Chairman Rodey brought SB 437 before the committee.

736 - Bob Cooksey, NEA, testified in favor of SB 437.

TAPE #2

106 - Mr. Kirk, Ak. Statewide Student Assoc., testified in favor of the bill and submitted written testimony.

180 - Senator Anderson states that this legislation would be a threat to parents. Senator Ray objected to the confidentiality privilege being extended to teachers.

210 - Senator Anderson requested that SB 437 be tabled at this time. There was no objection.

244 - SB 437 laid on the table.

252 - Chairman Rodey next brought HB 206 before the committee.

268 - Senator Ray moved that HB 206 be passed from committee with individual recommendations. There was no objection.

277 - Chairman Rodey brought HB 409 before the committee.

323 - Senator Ray moved that on Pg. 1, Line 3, the word "alien" be inserted after "non-resident". There was no objection.

362 - Mr. Zibel, Department of Public Safety testified in favor of HB 409, and requested that the words "Class A" be inserted between the words "or" and "guide" on Line 13, Page 1. Senator Ray moved the amendment. There was no objection.

383 - Senator Anderson moved to include Sec. 2 of the House Rules Committee substitute. There was no objection and it was adopted. Senator Anderson moved to pass the Judiciary committee substitute as amended. There was no objection.

491 - The last item on the calendar was SB 861.

512 - After brief discussion, it was moved to return SB 861 to State Affairs committee.

532 - Adjourned at 3:00 P.M.

RESOURCE FUND
SEC. 17 CONSTITUTION

P2 L3

DELETE [IF THE APPROPRIATION IS]

(MAKES IT CLEAR THAT
SEVERAL APPROPRIATIONS
ARE POSSIBLE)

L6-7 DELETE [WHICH ARE OWNED BY STATE]
L13 " [OWNED BY STATE]

(MAY WANT TO INSERT
PUBLICLY OWNED INSTEAD)

— PROVIDES MORE FLEXIBILITY

P2 L8

DELETE [AMOUNT]
INSERT VALUE

(MAKES SURE VALUE OF
INVESTMENT IS REPAYED
IN DOLLARS THAT ARE
OF EQUAL VALUE — THAT IS,
ADJUSTED FOR INFLATION)

P17, AFTER THE WORD " FUND "
INSERT: IN EXCESS OF THE AMOUNT
NECESSARY TO PRESERVE THE VALUE OF THE FUND
AGAINST THE EFFECTS OF INFLATION AND
REALIZED LOSSES

SEC 16

GENERAL FUND

PAGE 1
LINE 26ADD A NEW SENTENCE
TO READ:

ALL REVENUES IN EXCESS
OF APPROPRIATIONS UNDER THIS
SECTION SHALL BE INVESTED
AT NATIONALLY COMPETITIVE
MARKET RATES.

PERMANENT FUND
SEC 15PAGE 3
LINE 16

AFTER THE WORD "FUND"

ADD: , IN EXCESS OF THE AMOUNT
NECESSARY TO PRESERVE THE
VALUE OF THE FUND AGAINST
THE EFFECTS OF INFLATION
AND REALIZED LOSSES,

409

CLASS A ASSISTANTS 08.54.
SPECIAL GUIDE

407(a)

SUBSECTION A

LICENSED UNDER 08.54

*

LINE 13 [MASTER ASSISTANT] GUIDE

FISCAL NOTE

I. REQUEST CSSSHB 409(R1s)
 Bill/Resolution No. CSSSHB 409(R1s)
 Title An act relating to non-resicent hunters and providing an effective date
 Requested by _____ Date _____

II. FISCAL DETAIL
 Agency Affected Dept. of Public Safety
 Program Category Affected NRMEC
 BRU, Program, Or Subprogram(s) Affected Fish & Wildlife Protection
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	0	0	0	0	0	0

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

IV. DATE 4/15/82 PREPARED BY Colonel Robert J. Stickles
 AGENCY Fish & Wildlife Protection
 Original: Legislative Finance PHONE 29-5534
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)



Alaska State Legislature

POUCH Y, STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

March 29, 1982

To: Senator Fahrenkamp, Chairwoman, Senate Resources Committee
Senator Pat Rodley, Chairman, Senate Judiciary Committee
Representative Charles Anderson, House Judiciary Committee

From: Representative Vern Hurbert

Re: HB 409

In regard to the above bill which your committee is reviewing, I would like to offer the following for your consideration in your reviewing process:

I received a telephone call yesterday from the Director of Nunam Kitlutsiski, a regional organization serving the Yukon and Kuskokwim River areas. He informed me that the village of Line Village had contacted the Association of Village Council Presidents in Bethel (of which Nunam Kitlutsiski is a subsidiary) for assistance. The village of Line Village was concerned with the devastating depletion of their game resources by hunter fly-ins. My concern is not with the Alaskan hunters, but with unguided non-resident hunters who are flown into rural Alaska and are dropped off in an environment they are not familiar with, to take and kill Alaskan game.

Line Village is a community of about sixty people on the Stony River. It has mail plane service from McGrath once or twice a week, and is otherwise totally isolated from the outside world. Because of its geographic isolation, the cost of flying fuel, food and other supplies into the village is extremely high. The economic base and the per-capita income level of the community is extremely low.

If this situation continues, with unguided non-resident hunters being dropped off near and around the community of Line Village, and hunting and taking large numbers of game, the depletion of the game resources could create devastating circumstances for the residents of the village. As the Representative from District 18, which includes Line Village, I am extremely concerned about this situation.

Thank you for your consideration in this matter.