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Alaska State Legislature

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Senate

Committee on Resources

TO: Senate Resource Committee Members

March 17, 1986

FROM: Senate Resource Committee Staff

MEL

RE: Committee Substitute for Senate Bill No. 294 (Resources)
"An Act relating to guiding; and providing for an effective date." and
SCR 18 Relating to the Guide Licensing and Control Board.

The guide board will sunset on June 30th of this year unless its term is extended. SB 294, introduced by this committee, extends the life of the board until 1990. The bill also rewrites many of the guide statutes to try to cleanup the problems that have been associated with industry and the board.

SCR 18 is a resolution by Senator Faiks that urges the guide board to make a number of regulatory changes related to its meetings and to the assigning of exclusive guide areas. A number of these changes are statutorily addressed in SB 294, however, there is no conflict between the bill and the resolution and they work well together as companions.

The Alaska Professional Hunters' Association, representatives of the Air Taxi industry, the Division of Fish and Wildlife Protection, the Governor's special assistant for Boards and Commissions, and the Division of Occupational Licensing are some of the groups or people that have been consulted in the

preparation of this bill. This is not to suggest that everyone consulted agrees with all parts of this bill, and it is hoped there will be testimony from a number of these groups at the public hearing where they can point out any specific concerns.

Since the original bill was prepared, Legislative Audit has done a sunset performance report on the guide board. In the audit, a number of recommendations were made to improve the performance of the board. Many of these areas were already addressed in the bill and in the proposed committee substitute, we have tried to address the remainder of those problems that can be helped by statutory change. In the brief sectional analysis later in this memo, each of the audit's statutory recommendations is discussed.

Committee members have previously been given copies of SCR 18, SB 294 and the proposed CS for SB 294 and copies of the sunset performance report on the Guide Board.

An updated brief sectional analysis of the new CS follows. One of the main differences between this CS and the previous one is additional clarification in the definition of "guiding" to make certain that it does not adversely effect legitimate outfitters. Senator Coghill's office also suggested a number of amendments which have been incorporated.

Sectional Analysis

March 17, 1986

Committee Substitute for Senate Bill No. 294 (Resources)

"An Act relating to guiding; and providing for an effective date."

Section 1 - deletes "licensing and control" from the name of the board.

Section 2 - extends the life of the board to June 30, 1990.

Section 3 - adds intent language that increases game management considerations to the section that establishes the guide board. The audit approves of this change (pg 16, item A-1). Additional new language clarifies that for administrative purposes, the board is in the Department of Commerce. In the original bill, the number of guides on the board was changed from no more than three to no less than three. The audit (pg.16, item B-1) said this had the potential of expanding the number of industry members at the expense of public participation. The CS deletes this change.

Section 4 - is a technical revision dealing with terms of office.

Section 5 - is a new section that establishes a quorum requirement of four and requires a majority vote (4) of the full membership of the board for approval of changes to regulations, licenses or restricted guide areas.

Section 6 - amends the powers and duties of the boards. There are three substantive changes. The first amends subsection (a)(1) to allow the board to administer oral examinations to applicants with a limited ability to read or write English. The second adds "consistent" to the requirement in subsection (a)(8) that the procedure for limiting the number of guides operating in a designated game unit be "equitable and reasonable". The audit approves of this change (pg 16, item A-2). The third would require the board to have two meetings per year, one in Anchorage and one in another city.

Section 7 - the special guide license section is repealed and reenacted to provide more detailed criteria for the license.

Section 8 - amends the qualifications for a registered guide license by allowing a person who has served as a special guide for three years and meets all other criteria to become a registered guide.

Section 9 - Clarifies the limitations of an assistant guide license. It specifies that assistant guides may not contract for hunts and that assistant guides must be employed and supervised at all times while the assistant guide is in the field. The audit approves of this change (pg 16, item A - 4).

Section 10 - sets license fee structure for guide licenses in accordance with AS 08.01.065 under the Department by regulation.

Section 11 - is a new section requiring the registered guide exam to be given at least twice a year. At least once every other year the location of the exam has to be somewhere other than Anchorage.

Section 12 - is a new section that specifies licenses expire biennially on a date specified by the department.

Section 13 - is a new section that requires the board to adopt uniform and consistent criteria to be used in assigning restrictive guide areas and specifies a number of the criteria to be used. The assignment and transfer of restricted areas has been a particular problem for the Guide Board in the past. This section also allows a guide to transfer a guide area if the guide has had the area for over five years. This time requirement is designed to limit speculation in guide areas. It would also allow a person to transfer to a son or daughter who had worked in the business and wanted to continue (pg. 16, item A - 2). The section further disallows the sale of restrictive guide areas.

Section 14 - under existing law the board can only consider complaints of unethical or incompetent guide practices after receipt of three separate complaints. The original bill contained a provision that would have required those complaints to be received in the five years prior to the hearing. The audit said this made a bad situation worse. In the CS, the five year requirement has been dropped and the section modified to allow the board to hold a hearing on any complaint. This five year limit was not related to the five year requirement mentioned above. A new subsection has also been added to require the board to hold a hearing on any complaint filed concerning a life threatening situation. See audit (pg 16, item B-2).

Section 15 - sets out the offenses for which the board may revoke, suspend, or deny renewal of a license.

Section 16 - sets out the offenses for which the board is required to revoke a license. The audit (pg.17, item B-4), expressed concern that amendments to this section might unnecessarily restrict the offenses upon which the board can take disciplinary action. This is wrong. Nothing in this section is a limitation on the board's power, the new language adds offenses for which license revocation is mandatory.

Section 17 - clarifies that a person may not engage in guiding during a period of license revocation or other disciplinary action, nor can the person work for another guide during the period. It also forbids someone knowingly hiring a person as a guide while that person's license is revoked or suspended.

Section 18 - This section establishes that a certified copy of judgement of conviction is conclusive evidence of the commission of that crime and upon receipt of two such judgements of a guide for offenses listed under AS 08.54.200(c)(3) the board shall immediately suspend the guide's license until disciplinary proceedings are concluded.

Section 19 - lists a series of specific acts related to guiding that are unlawful and specifies the penalties for these acts.

Section 20 - is the definition section. The definition of "guide" is expanded to to clarify that persons who provide strictly transportation, property, or equipment in connection with locating or taking game are not guiding. The intent of this section is that a person who is physically present in the field while another person locates or takes game and who receives or expects remuneration for this or any other activity connected with the hunt is guiding. The new CS clarifies that "in the field" does not include being present at a lodge or camp. The definition is designed to allow legitimate transportation services and outfitters to continue to provide services but to prohibit them from actually accompanying hunters into the field where illegal guiding may take place. The definition of unethical conduct is expanded, and a definition of big game is added.

Section 21 - Class A assistant guides are added to the list of master guides, registered guides and assistant guides that nonresidents may be accompanied by.

Section 22 - allows the board to expand this list by regulation.

Section 23 - is cleanup drafting related to the repeal of AS 16.05.407(c) (discussed in Section 28).

Section 24 - adds the Guide Board to the list of boards and commissions in AS 39.50.200(b).

Section 25 - is the repealer section. AS 08.54.040(b) deals with oral exams and is replaced in this bill with AS 08.54.040(a)(1). AS 08.54.142-146 were the transporter sections. AS 16.05.407(c) repeals a section that made it unlawful to import polar bear hides into Alaska unless personally accompanied by a guide. Polar bears are currently managed by the federal government.

Section 26 - is a July 1, 1986 effective date.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSSB 294 (Res) am
 Title : An Act relating to guiding

 Sponsor : Resources Committee
 Requestor : House Resources
 Date of Request : 4/17/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : Fish & Wildlife Protection

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY	0	0	0	0	0	0

ANALYSIS : Attach a separate page if necessary

Prepared by : Captain James R. Nutgrass
 Division : Fish & Wildlife Protection
 Approved by Commissioner : [Signature]
 Agency : Public Safety

Phone : 269-5509
 Date : 4/14/86
 Date : 4/16/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CSSB 294 (Res) am

SUPPORT

April 14, 1986

CSSB 294 (Res) am - "An Act relating to guiding."

The Department of Public Safety supports CS for Senate Bill No. 294, an act relating to guiding.

Since the initial inception of the guide statute there has been a substantial increase in the level of professionalism that has been obtained within the guide industry. The state has gained in more recent years an acceptable level of compliance to the hunting and guiding laws. We believe that it is very critical that a guide bill be enacted if we are to maintain a level of professionalism that has been experienced within the guide industry in recent years.

Presently the state is experiencing an increase in the number of outfitters/transporters operating hunting businesses in the state of Alaska.

In addition, there have been individuals who have recently been apprehended for providing guide service without being properly licensed as Alaskan guides. The Division of Fish and Wildlife Protection is closely monitoring and evaluating information and complaints received regarding guiding activities being performed by non-licensed individuals. It is extremely difficult to enforce or apprehend an unlicensed individual who does, in fact, provide all services that a licensed guide can under the provisions of the law. The professional guide is presently highly regulated, and to eliminate the regulatory responsibilities that have been imposed on the guiding industry would more than likely have an adverse affect on the commercial utilization of the state's resource.

Page 1, Line 16-18: We believe the purpose of licensing and regulating the activities of guides should be in the interest of promoting professionalism within the guide industry and to insure that quality, ethical and legal hunts are provided to clients consistent with the management of the state's wildlife resources.

Page 1, Line 24-25: Delete new wording.

Comments: Title 08.01.050(a) 1-18 provides that the Department of Commerce and Economic Development shall provide administrative and budgetary service to the Guide Board.

Page 2, Line 29, Page 3, Line 1 & 2: It is recommended that paragraph (5) collect and maintain records of hunts conducted by guides be deleted.

Comments: This responsibility should be under the authority of the Department of Commerce, as they are already physically maintaining all documentation and records of hunts conducted by guides.

The Guide Board should not have the responsibility or authority by statute or by regulations adopted by the Board to maintain or dictate the use or exclusion of documents relating to guiding to state agencies responsible for the enforcement of the regulations or statutes.

Page 3, Line 20-23: SPECIAL GUIDE LICENSE.

Comments: This bill does not address the responsibility that can be carried out by a special guide. Can a special guide conduct and book guided hunts independent from a registered or master guide, etc.? Is there a listing of specific species of marine mammals that a special guide may guide clients for? AS 16 would not provide for a special guide to conduct guided hunts for polar bear with non-resident clients. It does not appear that the state will in the near future have the management responsibilities for any specified marine mammals.

Page 4, Line 11 (5): We recommend the following wording has not been convicted of a state or federal game or guiding law during the previous five years.

Page 4, Line 17 (2): The residency requirement was repealed, however, in unlawful acts, AS 08.54.210 (5), a registered guide is required to have a resident hunting license.

Page 5, Line 3-4: How does a special guide document or report his guiding activity? Does he submit statements of financial remuneration?

Page 5, Line 14 (10): We recommend that or special guide be inserted after "assistant guide" and before "whose". A special guide should also meet the requirements of being favorably recommended by clients.

Page 8, Line 2-3: AS 08.54.200: Recommend adding the words or federal after "state" and before "hunting".

Page 8, Line 26: (A) Waste of animal.

Comments: There is currently no violation for wanton waste in the guide statute or regulations. A person who kills a wild food animal and fails to salvage the meat per 16.30.010 would be in violation of wanton waste, not the guide.

Page 9, Line 5: (B) An area closed by the board.

Comments: We recommend that the following wording be deleted "The Board". Recommend the following wording: hunting in an area closed to hunting by either state or federal regulations. A professional guide should have to obey and respect closed areas, even if they are federal

regulations. A professional guide should not have immunity from Guide Board action if apprehended in KATMAI NATIONAL PARK, MCKINLEY PARK or any federal park closed to hunting.

Page 9, Line 11: Recommend that the word knowingly be deleted.

Comments: A guide has a professional responsibility to know in hiring a person the status of his guide license. We should not have a greater burden of proof.

Page 10, Line 8: Recommend adding the words or federal after "state" and before "fish".

Section 05.54.210 Unlawful Acts.

Page 10, Line 12 (2): We recommend that the words commit or be added after "to" and before "aid".

Page 10, Line 13 (2): We recommend that .05 be deleted. Delete .05 after "AS 16" and before "or".

By having the wording AS 16, it would then include WANTON WASTE under AS 16.30.010 and be consistent with the proposed section of this bill (c)(3)(A) wanton waste.

Page 10, Line 19 (3): Add having the appropriate license that is issued after "without" and before "under".

Comments: We have experienced where a licensed assistant guide did in fact contract for a guided hunt and did independently guide a client on a guided hunt in 1985. This individual was apprehended and prosecuted through the federal court. The Department of Law declined state prosecution. The current wording of Title 8, Unlawful Acts, does not provide for prosecuting an assistant or Class A guide who is licensed, but does act in the capacity as a master or registered guide.

In this case, the licensed assistant guide did assist the client in taking a brown bear the same day as being airborne and in the middle of Katmai National Monument. On completion of the federal prosecution, this case was presented to the Department of Commerce for civil litigation concerning the assistant guide's license. This is a good example of why federal violations should be included in this bill, otherwise flagrant violations such as this can occur and the licensed assistant guide is immune from civil action by the Guide Board. In addition, this type of individual, once he meets the requirements for registered guide, could, in fact, be so licensed as the federal violation would not be considered.

Page 10, Line 27 (4): Recommend adding having a current and appropriate license after "without".

Page 10, Line 29 - Page 11, Line 2 (5): This paragraph requires a "resident" hunting license, but the residency requirements have been repealed from the bill.

Comments: We presently do have non-residents who are licensed assistant guides. Once they meet the registered guide requirements and pass the necessary test, they can be legally licensed, even though they are non-residents. This bill provides for a person who is a non-resident, but who has obtained a registered guide license, to be convicted of a felony for not having a valid Alaskan resident hunting license. This section appears to be in conflict with other sections which delete the residency requirement for obtaining a guide license. This could create a legal problem which may not be prosecutable.

Page 11, Line 12 (7)(b): Add WITHOUT APPROPRIATE LICENSE OR after "activity" and before "during".

Page 12, Line 11: Delete..."or being present in the field for the purpose of providing meat packing services for the big game animal only after the animal has been killed."

One of the major problems facing Fish and Wildlife Protection today is the increasing number of unlicensed guiding operations developing in the state under the guise of transporting and/or outfitting. To successfully prosecute we must be able to determine what is occurring in the field between the unlicensed guide and the hunter, i.e., is the hunter being personally accompanied and directed by the unlicensed guide. The only way we have been successful in these cases is by placing undercover hunters in the camp of the suspect operation. This is a very time consuming and expensive operation. Under the current guide definition the unlicensed guide can be "in the field" with the hunter providing he is not personally accompanying and directing the hunter.

Consequently, a guide or guiding definition which would allow only a licensed guide to be present in the field with the hunter would greatly enhance our ability to enforce the guiding statutes and regulations and to better prevent the occurrence of unlicensed guiding activity.

We would therefore request the removal of any part of the definition which would allow a person to be present in the field with a hunter if there was a financial or mutual arrangement for hunting services and if that person is not a licensed guide.


Robert J. Sundberg

* = Changes in CS

Hein
4/29/86 ✓

Original sponsor: Resources Committee

out = language out
new = new language
change = different language

1 IN THE SENATE BY THE RESOURCES COMMITTEE
 2 HOUSE CS FOR CS FOR SENATE BILL NO. 294 (Resources)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 FOURTEENTH LEGISLATURE - SECOND SESSION
 5 A BILL

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

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

9 * Section 1. AS 08.01.010(14) is amended to read:

10 (14) Guide [LICENSING AND CONTROL] Board (AS 08.54.010);

11 * Sec. 2. AS 08.03.010(c)(20) is amended to read:

12 (20) Guide [LICENSING AND CONTROL] Board (AS 08.54.010 -
13 June 30, 1990 [1986]).

14 * Sec. 3. AS 08.54.010 is amended to read:

15 ARTICLE 1. GUIDE [LICENSING AND CONTROL] BOARD.

16 Sec. 08.54.010. CREATION AND MEMBERSHIP OF BOARD. For the
 17 purposes of licensing and regulating the activities of guides in the
 18 interest of the state's wildlife resources there [THERE] is created
 19 the Guide [LICENSING AND CONTROL] Board consisting of seven members.
 20 No more than three members of the board shall hold or have held a
 21 * registered, *master, or *class A assistant guide license. The other
 22 members must [SHALL] have a general knowledge of the game resources of
 23 the state and may not have a vested interest in the guiding industry.
 24 A minimum of 10 years residence in the state is required for all
 25 members of the board. For administrative purposes, the board is in
 26 the Department of Commerce and Economic Development.

27 * Sec. 4. AS 08.54.020 is amended to read:

28 Sec. 08.54.020. APPOINTMENT AND TERM OF OFFICE. The members of
29 the board shall be appointed by the governor and confirmed by the

new
*

1 legislature for staggered terms of three years or until their succes-
 2 sors are appointed. [INITIAL TERMS ARE AS FOLLOWS: THREE MEMBERS FOR
 3 ONE YEAR, TWO MEMBERS FOR TWO YEARS, AND TWO MEMBERS FOR THREE YEARS.]
 4 A member may be removed at the pleasure of the governor.

5 * Sec. 5. AS 08.54 is amended by adding a new section to read:

6 Sec. 08.54.035. QUORUM; VOTING REQUIREMENT. Four members of the
 7 board constitute a quorum for the transaction of business, for the
 8 performance of a duty, and for the exercise of any power under this
 9 chapter. The board may not adopt a regulation, revoke, suspend, or
 10 deny renewal of a license, or assign, modify, or revoke a restricted
 11 guide area unless the action is approved by a vote of a majority of
 12 the full membership of the board.

13 * Sec. 6. AS 08.54.040(a) is amended to read:

14 (a) Except as provided in AS 08.54.045, the board shall

15 (1) prepare, grade and administer examinations, which may
 16 include oral examinations of applicants who demonstrate limited abil-
 17 ity to read or write the English language;

18 (2) determine [AND PASS ON] qualifications of applicants
 19 for licenses and authorize the issuance of licenses to those who
 20 qualify;

21 (3) establish guide performance standards and regulate
 22 activity;

23 (4) compile, maintain and publish an annual [A GUIDE]
 24 register of master and registered guides who have not been convicted
 25 of a violation of a *[FEDERAL OR] state *[SPORT FISH,] game [,] or
 26 guiding statute or regulation; a guide listed in the register whose
 27 license is revoked or suspended shall be removed from the register
 28 while the guide's license is revoked or suspended;

29 (5) *[COMPILE, MAINTAIN AND PUBLISH A RECORD OF REGISTERED

out
 * 25
 * 29
 in bill
 relocate

OR MASTER GUIDES WHO HAVE COMPLETED A CONTRACT HUNT IN ANY OF THREE YEARS IMMEDIATELY PRECEDING THE PUBLISHING OF THE RECORD;

(6)] prohibit guiding activities which are unsportsmanlike, unethical, unsafe, against principles of conservation, degrading to the guiding profession, or which adversely affect the natural resources;

(6) [(7)] after a hearing, revoke, suspend or deny renewal of a license in accordance with AS 08.54.200;

(7) [(8)] establish a quota of licensed operating guides who may operate within designated geographical game units or subunits of the state and provide for an equitable, [AND] reasonable, and consistent procedure for limiting the number of guides to that quota; preference may * [SHALL] be given to qualified available and willing licensed guides who reside within the designated game unit or subunit;

(8) meet at least twice annually, once in Anchorage and once in another municipality.

* Sec. 7. AS 08.54.045 is repealed and reenacted to read:

Sec. 08.54.045. SPECIAL GUIDE LICENSE. The board may issue a special guide license to a person who applies to conduct a guided hunt for a specific species of marine mammal in a specifically designated area if the applicant

(1) is 21 years of age or older;

(2) has, for at least 10 years, resided and hunted in the area of the state in which the applicant is to guide;

(3) is able to perform the * duties of a special guide;

(4) has demonstrated knowledge of the following areas to an extent and degree satisfactory to the board:

(A) fish and game laws and regulations;

(B) relevant characteristics of the specific species

* Change

* out (see original Res. 05)

1 to be hunted;

2 (C) field preparation of trophies;

3 (D) care of game meat;

4 (E) use of guiding gear;

5 (F) firearm safety;

6 (G) practical first aid;

7 (H) booking and contracting hunts;

8 (5) has not been convicted of a game or guiding law viola-
9 tion during the previous five years;

*10 new (6) has not been convicted of a crime involving moral
11 turpitude.

12 * Sec. 8. AS 08.54.110 is amended to read:

13 Sec. 08.54.110. QUALIFICATIONS FOR REGISTERED GUIDE LICENSE. A
14 person is entitled to be licensed as a registered guide if the person

15 (1) is 21 years of age or older [MORE];

16 (2) [Repealed

17 (3)] has practical field experience in the handling of
18 firearms, hunting, judging trophies, field preparation of trophies,
19 first aid and photography;

20 (3) [(4)] is familiar with the terrain and transportation
21 problems in the district for which the license is requested;

22 (4) [(5)] has passed the qualification examination prepared
23 and administered by the board;

24 (5) [(6)] has demonstrated to the board sufficient stan-
25 dards of competence and ethical conduct and has not been convicted of
26 a crime involving moral turpitude;

*27 change (6) [(7)] has legally hunted in the state during any * [FOR
28 ALL OR PART OF EACH OF] five years in a manner directly contributing
29 to the person's experience and competency as a guide;

1 (7) [(8)] has been licensed as and performed the services
 2 of an assistant guide in the state for a part of each of three years,
 3 or has guided in the state for a part of each of three years under a
 4 special guide license issued under AS 08.54.045;

5 (8) [(9)] submits a written recommendation to the board
 6 from a registered guide for whom the applicant has worked ^{*}or from two
 7 registered guides; however, the requirements of this paragraph do not
 8 apply to a person who has guided under a special guide license for
 9 three years;

10 (9) [(10)] is capable of performing the ^{*}essential [PHYSI-
 11 CAL] duties associated with guiding [ACTIVITIES];

12 (10) [(11)] has been favorably recommended in writing by two
 13 hunters that the person has guided or assisted in guiding during each
 14 year of the person's three years as an assistant guide, whose recom-
 15 mendations have been solicited by the board from a list provided by
 16 the applicant [;

17 (12) MEETS ADDITIONAL QUALIFICATIONS WHICH THE BOARD MAY
 18 REQUIRE].

19 * Sec. 9. AS 08.54 is amended by adding a new section to read:

20 Sec. 08.54.141. PRIVILEGES AND LIMITATIONS OF ASSISTANT GUIDE
 21 LICENSE. An assistant guide

22 (1) may not contract to conduct a guided hunt; and

23 (2) shall be employed and supervised by a registered or
 24 master guide at all times while the assistant guide is in the field on
 25 guided hunts.

26 * Sec. 10. AS 08.54.170 is amended to read:

27 Sec. 08.54.170. LICENSE FEES. (a) The Department of Commerce
 28 and Economic Development shall set license fees under AS 08.01.065 for
 29 each of the following:

- 1 (1) master guide;
 2 (2) registered guide;
 3 (3) class A assistant guide;
 4 (4) assistant guide;
 5 (5) special guide [TRANSPORTER].

6 (b) The license fee for a master guide, registered guide, spe-
 7 cial guide, class-A assistant guide, or assistant guide license is in
 8 addition to the fee required for a hunting or fishing license.

9 * Sec. 11. AS 08.54 is amended by adding a new section to read:

10 Sec. 08.54.186. REGISTERED GUIDE EXAMINATION. The board shall
 11 administer the qualification examination required under AS 08.54.110
 12 at least twice a year. An examination may not be given within 90 days
 13 after the previous exam. At least once every other year the board
 14 shall give the examination at a location other than Anchorage.

15 * Sec. 12. AS 08.54.190 is amended by adding a new subsection to read:

16 (d) A master guide, registered guide, special guide, class-A
 17 assistant guide, or assistant guide license expires biennially, on a
 18 date set by the Department of Commerce and Economic Development.

19 * Sec. 13. AS 08.54 is amended by adding a new section to read:

20 Sec. 08.54.195. RESTRICTED GUIDE AREAS. (a) Under AS 08.54.-
 21 040(a)(8), the board may establish and assign restricted guide areas
 22 for master guides or registered guides. The board shall adopt regula-
 23 tions "under the Administrative Procedure Act (AS 44.62)" that establish
 24 uniform and consistent criteria, including a point system, to be used
 25 by the board when it establishes and assigns a restricted guide area.

26 (b) The board shall consider the following factors before it
 27 assigns a restricted guide area:

28 (1) the extent to which the guide who has applied for the
 *29 *change* area has *guided in the game management unit in which the area is

1 located;

2 (2) the extent to which the guide occupied and invested in
3 the area;

* 4 *change* (3) the effects, ^{*} including the economic effect, on other
5 guides that would result from creation of the area;

6 (4) big game populations in the area;

7 (5) the land ownership status of the area; and

8 (6) other relevant facts or circumstances.

* 9 *new* * (c) The board may adopt regulations limiting the number of
10 clients with which a guide may contract for hunts in a restricted
11 guide area used by more than one guide.

* 12 *change* (d) Unless the board determines after a public hearing that it
13 is not in the public interest to do so, the board ^{*} may transfer a
14 restricted guide area to a person qualified for assignment who has
15 been recommended by the guide to whom the area was assigned, or by a
16 person authorized to represent the guide, if the recommendation is
17 made

18 (1) after five years have elapsed from the date of the
19 assignment of the guide area; or

20 (2) during the first five years after the date of assign-
21 ment and the guide has died or suffered a major disability, as defined
22 by the board.

* 23 *change* (e) A guide may not sell or ^{*} lease a restricted guide area. A
24 guide may sell or otherwise transfer a lodge, camp, or other lawful
25 improvement to property located in a restricted guide area. Sales
26 price may not exceed fair market value.

27 * Sec. 14. AS 08.54.200(a) is repealed and reenacted to read:

28 (a) The board shall hold a hearing to determine whether a li-
29 censee should be disciplined within a reasonable time after (1)

1 complaints concerning a licensee's guiding activities are filed with
 2 the board by three or more of the licensee's clients from separate
 3 parties; (2) a complaint concerning a guide's conduct during a life-
 4 threatening situation is filed with the board; or (3) a licensee has
 5 been convicted of a violation of a state hunting or guiding statute or
 6 regulation. The board may hold a hearing to determine whether disci-
 7 plinary action is necessary if a complaint concerning a licensee's
 8 guiding activities is filed with the board by a client of the li-
 9 censee.

10 * Sec. 15. AS 08.54.200(b) is amended to read:

11 (b) After a hearing, the board may revoke, suspend, or deny
 12 renewal of a license if the board finds that the licensee

13 (1) engaged in unethical activity, unsafe activity, or
 14 activity that [WHICH] adversely affects the natural resources of the
 15 state when the [SUCH] activity is related [UNRELATED] to the [LEGAL
 16 AND LEGITIMATE] purposes of the contract hunt; or

* 17 *omit* (2) violated a provision of a * [FEDERAL OR] state * [SPORT
 18 FISH,] game or guide statute or regulation.

19 * Sec. 16. AS 08.54.200(c) is amended to read:

20 (c) After a hearing, the board shall revoke a license if the
 21 board finds that the licensee

22 (1) does not meet the qualifications specified by statute
 23 or regulation for the class of license held;

24 (2) is incompetent as a master guide, registered guide,
 25 special guide, class-A assistant guide, or ~~assistant~~ guide;

26 (3) during the five years immediately preceding the hearing
 27 has been convicted of a violation [TWO VIOLATIONS] of a federal or
 28 state statute or regulation prohibiting

29 (A) waste of a wild food animal;

1 (B) hunting on the same day airborne; or
 2 (C) hunting during a closed hunting season; or
 3 (4) during the five years immediately preceding the hear-
 4 ing, has been convicted of two violations of a state statute or regu-
 5 lation prohibiting hunting in a restricted area not assigned to the
 6 licensee and without proper written permission * [SPORT FISH, GAME OR
 7 GUIDE STATUTES OR REGULATIONS].

8 * Sec. 17. AS 08.54.200(d) is repealed and reenacted to read:

9 (d) A person who is disciplined under this section may not
 10 engage in a guiding activity during the period of license revocation
 11 or disciplinary action. A person licensed under this chapter may not
 12 hire as a guide a person whose guide license is suspended or revoked
 13 under this section. A guide whose license is suspended or revoked may
 14 not guide in the employ of a person licensed under this chapter.

15 * Sec. 18. AS 08.54.200 is amended by adding new subsections to read:

16 (f) If a certified copy of ^{*}a judgment of conviction of a guide
 17 for an offense described under (c)(3) of this section, or for each of
 18 ^{*}two offenses under (c)(4) of this section, is filed with the board,
 19 the board shall immediately suspend the guide's license. The suspen-
 20 sion may be ordered even if the conviction resulted from a plea of
 21 nolo contendere or if the conviction is under appeal. The order
 22 remains in effect until after the final disposition of the disciplin-
 23 ary proceeding under this section.

24 (g) A certified copy of a judgment of conviction of a guide for
 25 an offense is conclusive evidence of the commission of that offense in
 26 a disciplinary proceeding instituted against the guide or outfitter
 27 under this section based on that conviction.

28 * (h) Within 30 days after a hearing under this section, the board
 29 shall notify the complainant of the results of the hearing, including

* out

* change

* change

* new

1 written reasons justifying a decision not to take disciplinary action.
 2 If the board decides not to hold a discretionary hearing, the board
 3 shall give the complainant written notice of its reasons within 30
 4 days after making the decision.

5 (i) In this section "two violations of a state statute or regu-
 6 lation" means two violations of a single statute or a single regu-
 7 lation, or violations of two statutes or two regulations, or one
 * 8 violation of a statute and one violation of a * regulation.

9 * Sec. 19. AS 08.54.210(a) is repealed and reenacted to read:

10 Sec. 08.54.210. UNLAWFUL ACTS. (a) It is unlawful for

11 (1) a master guide, registered guide, special guide, class
 12 A assistant guide, or assistant guide to fail to timely report to the
 13 Department of Public Safety, division of fish and wildlife protection,
 14 and in no event later than 30 days, a violation of a state fish, game,
 15 or guiding statute or regulation that the guide reasonably believes
 16 was committed by a client or an employee of the guide;

17 (2) a guide to aid the commission of a violation of this
 18 chapter or of a state game or guiding statute or regulation or to
 19 permit the commission of a violation that the guide knows or reason-
 20 ably believes is being or will be committed without attempting to
 21 prevent it, short of using force, and without reporting it;

* 22 Rewrite (3) a person to guide without having a current valid guide
 23 license and resident hunting license in actual possession;

24 (4) a person to advertise as or represent to be a guide
 25 without holding a current valid guide license;

26 (5) a guide to intentionally obstruct or hinder or attempt
 27 to obstruct or hinder lawful hunting engaged in by a person who is not
 28 a client of the guide;

29 (6) a person to guide without being validly licensed as a

1 guide under this chapter and as a resident hunter under AS 16;

* 2 *New* * (7) an assistant guide to contract to conduct a guided
3 hunt;

* 4 *New* * (8) an assistant guide to be in the field on a guided hunt
5 except while employed and supervised by a registered or master guide.

6 * Sec. 20. AS 08.54.210(b) is amended to read:

* 7 *Change* (b) A person who violates * (a)(1) - (5) [(6)] of this section is
8 guilty of a misdemeanor and upon conviction is punishable by a fine of
9 not more than \$1,000 or by imprisonment for not more than one year, or
10 by both, and the person's license may be revoked for a period up to
11 five years. However, a person who engages in guiding [OR TRANSPORT-
12 ING] activity during the period for which the person's license is
* 13 *Change* suspended or revoked under this chapter, or who violates * (a)(6) - (8)
14 of this section, is guilty of a felony punishable, upon conviction, by
15 a fine of not more than \$5,000 and by imprisonment for not less than
16 one year nor more than three years. In addition to punishment for a
17 felony, all guns, fishing tackle, boats, aircraft, automobiles or
18 other vehicles, camping gear and other equipment and paraphernalia
19 used in, or in aid of, guiding [OR TRANSPORTING] activity engaged in
20 during the period of suspension or revocation shall be seized [CON-
21 FISCATED] by persons authorized to enforce this chapter. [A PERSON
22 WHO VIOLATES (a)(7) OF THIS SECTION, UPON CONVICTION, IS SUBJECT TO
23 THE SAME LICENSE REVOCATION PROVISION AS FOR A VIOLATION OF (a)(1) -
24 (6) OF THIS SECTION AND, IN ADDITION, IS PUNISHABLE BY A FINE OF NOT
25 MORE THAN \$5,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY
26 BOTH.]

27 * Sec. 21. AS 08.54 is amended by adding a new section to art. 3 to
28 read:

* 29 *Change* * Sec. 08.54.230. RECORDS OF GUIDED HUNTS. The Department of

1 Commerce and Economic Development shall collect and maintain records
 2 of hunts conducted by guides. The department shall make the records
 3 available to state and federal agencies charged with the enforcement
 4 of statutes and regulations relating to guiding or game if requested
 5 for enforcement purposes. For all other purposes, the records are
 6 confidential and are not subject to inspection or copying under
 7 AS 09.25.110 - 09.25.121.

8 * Sec. 22. AS 08.54.240 is amended to read:

9 Sec. 08.54.240. DEFINITIONS. In this chapter

10 (1) "big game" means brown bear, grizzly bear, polar bear,
 11 caribou, moose, black bear, bison, Sitka blacktail deer, elk, mountain
 12 goat, musk-ox, wolf, wolverine, mountain or Dall sheep, and walrus;

13 (2) "board" means the Guide [LICENSING AND CONTROL] Board;

14 (3) [(2)] "guide" [, "GUIDES"] or "guiding" means accompan-
 15 ying or directing a hunter in the field, personally or through an
 16 assistant, for compensation or with the intent or an agreement to
 17 receive compensation, while the hunter or the person accompanying or
 18 directing the hunter spots, stalks, pursues, tracks, kills, or at-
 19 tempts to kill big game; in this paragraph, "in the field" does not
 20 include being present in a boat with living quarters or at a lodge or
 21 base camp [ASSISTING ANOTHER PERSON TO TAKE GAME WITH THE INTENT OF
 22 RECEIVING MONETARY OR MATERIAL REMUNERATION FOR THE SERVICES, BY
 23 ACCOMPANYING AND DIRECTING THAT PERSON PERSONALLY OR THROUGH A LI-
 24 CENSED ASSISTANT GUIDE FOR THE DURATION OF A HUNT, AND NOT SOLELY FOR
 25 THE PURPOSE OF PROVIDING TRANSPORTATION SERVICES];

26 (4) [(3)] "resident" has the meaning given in AS 16.05.940
 27 [MEANS A PERSON WHO

28 (A) MAINTAINS A PLACE OF RESIDENCE WITHIN THE STATE;

29 (B) REPEALED

* Rewrite

(C) SHOWS BY ALL ATTENDING CIRCUMSTANCES THE INTENTION TO PERMANENTLY RESIDE IN THIS STATE];

new { (5) [(4)] "restricted guide area" is a geographical area of the state the boundaries of which are determined by the board, and in which guided hunts may be conducted only by the guides to whom the area is assigned under AS 08.54.195 ["TRANSPORTING" OR THE "ACTIVITY OF TRANSPORTING" MEANS CONVEYING A PERSON BY ANY LAWFUL MEANS TO AN AREA FOR REMUNERATION OR MATERIAL BENEFIT IN EXCESS OF NORMAL OPERATING COSTS, WHEN THE PRIMARY PURPOSE OF THE PERSON BEING CONVEYED IS THE TAKING OF BIG GAME AND THE ASSOCIATED REMOVING OF BIG GAME MEAT AND PARTS OF BIG GAME AFTER BIG GAME HAS BEEN TAKEN; BIG GAME AS USED IN THIS PARAGRAPH MEANS GAME WHICH, IF TAKEN BY A NONRESIDENT, WOULD REQUIRE A BIG GAME TAG];

(6) [(5)] "unethical activity" means

(A) deception or misrepresentation [IN ANY DEGREE] involving prospective or actual clients either before, during, or following a contract hunt, including misrepresentation through private or public advertising of the type, duration, cost or conditions of the contract hunt [HUNTS];

(B) [MISREPRESENTATION EITHER THROUGH PRIVATE COMMUNICATION OR PUBLIC ADVERTISING OF THE NATURE, TYPE, DURATION, COST, OR OTHER CONDITIONS OF CONTRACT HUNTS;

(C)] making a guaranty that a species or certain number of species of game will be taken on a contract hunt;

change (C) engaging in unsafe or unsportsmanlike activities that are detrimental to the game resources of the state, as defined by regulations of the board, including violations of state hunting or guiding statutes or regulations; or

change * (D) accepting a deposit for guiding services without

1 providing before the hunt a signed contract to provide the ser-
2 vices.

3 * Sec. 23. AS 16.05.407(a) is amended to read:

4 (a) It is unlawful for a nonresident to hunt, pursue or take
5 brown bear, grizzly bear, polar bear, or sheep in this state, unless
6 personally accompanied by

7 (1) a person who is licensed as a master guide, registered
8 guide, class-A assistant guide or assistant guide by the Guide [LI-
9 CENSING AND CONTROL] Board; or

10 (2) a resident over 19 years of age who is

11 (A) the spouse of the nonresident; or

12 (B) is related to the nonresident, within and includ-
13 ing the second degree of kindred, by marriage or blood.

14 * Sec. 24. AS 16.05.407(d) is amended to read:

* 15 *act* (d) A nonresident who violates (a) [OR (c)] of this section, or *
16 who fails to furnish an affidavit under (b) of this section, is guilty
17 of a misdemeanor and upon conviction is punishable by imprisonment for
18 not more than one year, or by a fine of not more than \$5,000, or by
19 both.

20 * Sec. 25. AS 39.50.200(b) is amended by adding a new paragraph to
21 read:

22 (48) the Guide Board.

23 * Sec. 26. AS 08.54.040(b), 08.54.142 - 08.54.146, 08.54.185; AS 16.-
24 05.340(e) and 16.05.407(c) are repealed.

25 * Sec. 27. This Act takes effect July 1, 1986.
26
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28
29

* = Difference in CS

Hein
5/1/86 ✓

Original sponsor: Resources Committee

1 IN THE SENATE BY THE RESOURCES COMMITTEE
 2 HOUSE CS FOR CS FOR SENATE BILL NO. 294 (Resources)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 FOURTEENTH LEGISLATURE - SECOND SESSION
 5 A BILL

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

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

9 * Section 1. AS 08.01.010(14) is amended to read:

10 (14) Guide [LICENSING AND CONTROL] Board (AS 08.54.010);

11 * Sec. 2. AS 08.03.010(c)(20) is amended to read:

12 (20) Guide [LICENSING AND CONTROL] Board (AS 08.54.010 -
 13 June 30, 1990 [1986].

14 * Sec. 3. AS 08.54.010 is amended to read:

15 ARTICLE 1. GUIDE [LICENSING AND CONTROL] BOARD.

16 Sec. 08.54.010. CREATION AND MEMBERSHIP OF BOARD. For the
 17 purposes of licensing and regulating the activities of guides in the
 18 interest of the state's wildlife resources there [THERE] is created
 19 the Guide [LICENSING AND CONTROL] Board consisting of seven members.
 20 No more than three members of the board shall hold or have held a
 21 registered, master, or class A assistant guide license. The other
 22 members must [SHALL] have a general knowledge of the game resources of
 23 the state and may not have a vested interest in the guiding industry.
 24 A minimum of 10 years residence in the state is required for all
 25 members of the board. For administrative purposes, the board is in
 26 the Department of Commerce and Economic Development.

27 * Sec. 4. AS 08.54.020 is amended to read:

28 Sec. 08.54.020. APPOINTMENT AND TERM OF OFFICE. The members of
 29 the board shall be appointed by the governor and confirmed by the

1 legislature for staggered terms of three years or until their succes-
2 sors are appointed. [INITIAL TERMS ARE AS FOLLOWS: THREE MEMBERS FOR
3 ONE YEAR, TWO MEMBERS FOR TWO YEARS, AND TWO MEMBERS FOR THREE YEARS.]
4 A member may be removed at the pleasure of the governor.

5 * Sec. 5. AS 08.54 is amended by adding a new section to read:

6 Sec. 08.54.035. QUORUM; VOTING REQUIREMENT. Four members of the
7 board constitute a quorum for the transaction of business, for the
8 performance of a duty, and for the exercise of any power under this
9 chapter. The board may not adopt a regulation, revoke, suspend, or
10 deny renewal of a license, or assign, modify, or revoke a restricted
11 guide area unless the action is approved by a vote of a majority of
12 the full membership of the board.

13 * Sec. 6. AS 08.54.040(a) is amended to read:

14 (a) Except as provided in AS 08.54.045, the board shall

15 (1) prepare, grade and administer examinations, which may
16 include oral examinations of applicants who demonstrate limited abil-
17 ity to read or write the English language;

18 (2) determine [AND PASS ON] qualifications of applicants
19 for licenses and authorize the issuance of licenses to those who
20 qualify;

21 (3) establish guide performance standards and regulate
22 activity;

23 (4) compile, maintain and publish an annual [A GUIDE]
24 register of master and registered guides who have not been convicted
25 of a violation of a [FEDERAL OR] state [SPORT FISH,] game [,] or
26 guiding statute or regulation; a guide listed in the register whose
27 license is revoked or suspended shall be removed from the register
28 while the guide's license is revoked or suspended;

29 (5) [COMPILE, MAINTAIN AND PUBLISH A RECORD OF REGISTERED

1 OR MASTER GUIDES WHO HAVE COMPLETED A CONTRACT HUNT IN ANY OF THREE
2 YEARS IMMEDIATELY PRECEDING THE PUBLISHING OF THE RECORD;

3 (6)] prohibit guiding activities which are unsportsmanlike,
4 unethical, unsafe, against principles of conservation, degrading to
5 the guiding profession, or which adversely affect the natural re-
6 sources;

7 (6) [(7)] after a hearing, revoke, suspend or deny renewal
8 of a license in accordance with AS 08.54.200;

9 (7) [(8)] establish a quota of licensed operating guides
10 who may operate within designated geographical game units or subunits
11 of the state and provide for an equitable, [AND] reasonable, and
12 consistent procedure for limiting the number of guides to that quota;
13 preference may [SHALL] be given to qualified available and willing
14 licensed guides who reside within the designated game unit or subunit;

15 (8) meet at least twice annually, once in Anchorage and
16 once in another municipality.

17 * Sec. 7. AS 08.54.045 is repealed and reenacted to read:

18 Sec. 08.54.045. SPECIAL GUIDE LICENSE. The board may issue a
19 special guide license to a person who applies to conduct a guided hunt
20 for a specific species of marine mammal in a specifically designated
21 area if the applicant

22 (1) is 21 years of age or older;

23 (2) has, for at least 10 years, resided and hunted in the
24 area of the state in which the applicant is to guide;

25 (3) is able to perform the duties of a special guide;

26 (4) has demonstrated knowledge of the following areas to an
27 extent and degree satisfactory to the board:

28 (A) fish and game laws and regulations;

29 (B) relevant characteristics of the specific species

1 to be hunted;

2 (C) field preparation of trophies;

3 (D) care of game meat;

4 (E) use of guiding gear;

5 (F) firearm safety;

6 (G) practical first aid;

7 (H) booking and contracting hunts;

8 (5) has not been convicted of a game or guiding law viola-
9 tion during the previous five years;

10 (6) has not been convicted of a crime involving moral
11 turpitude.

12 * Sec. 8. AS 08.54.110 is amended to read:

13 Sec. 08.54.110. QUALIFICATIONS FOR REGISTERED GUIDE LICENSE. A
14 person is entitled to be licensed as a registered guide if the person

15 (1) is 21 years of age or older [MORE];

16 (2) [Repealed

17 (3)] has practical field experience in the handling of
18 firearms, hunting, judging trophies, field preparation of trophies,
19 first aid and photography;

20 (3) [(4)] is familiar with the terrain and transportation
21 problems in the district for which the license is requested;

22 (4) [(5)] has passed the qualification examination prepared
23 and administered by the board;

24 (5) [(6)] has demonstrated to the board sufficient stan-
25 dards of competence and ethical conduct and has not been convicted of
26 a crime involving moral turpitude;

27 (6) [(7)] has legally hunted in the state during any [FOR
28 ALL OR PART OF EACH OF] five years in a manner directly contributing
29 to the person's experience and competency as a guide;

1 (7) [(8)] has been licensed as and performed the services
 2 of an assistant guide in the state for a part of each of three years,
 3 or has guided in the state for a part of each of three years under a
 4 special guide license issued under AS 08.54.045;

5 (8) [(9)] submits a written recommendation to the board
 6 from a registered guide for whom the applicant has worked or from two
 7 registered guides; however, the requirements of this paragraph do not
 8 apply to a person who has guided under a special guide license for
 9 three years;

10 (9) [(10)] is capable of performing the essential [PHYSI-
 11 CAL] duties associated with guiding [ACTIVITIES];

12 (10) [(11)] has been favorably recommended in writing by two
 13 hunters that the person has guided or assisted in guiding during each
 14 year of the person's three years as an assistant guide, whose recom-
 15 mendations have been solicited by the board from a list provided by
 16 the applicant [;

17 (12) MEETS ADDITIONAL QUALIFICATIONS WHICH THE BOARD MAY
 18 REQUIRE].

19 * Sec. 9. AS 08.54.110 is amended by adding a new subsection to read:

20 (b) The commissioner of commerce and economic development may
 21 order that an applicant for an initial license under this section be
 22 allowed to take the license examination or be issued the license if,
 23 after reviewing a petition filed by the applicant, the commissioner
 24 finds that

25 (1) the board denied the applicant an opportunity to take
 26 the license examination, or refused to approve issuance of the li-
 27 cense;

28 (2) the board's denial or refusal was based on

29 (A) an error of fact by the board;

New

new }
* out

(B) the applicant's failure of the license examination due to faulty or unfair examination questions or procedures; or

(C) an erroneous or false statement in a recommendation submitted under (a)(8) of this section;

(3) the applicant is otherwise qualified to take the examination or to be issued the license; and

(4) sustaining the board's denial or refusal would work a substantial injustice on the applicant.

* Sec. 10. AS 08.54 is amended by adding a new section to read:

Sec. 08.54.141. PRIVILEGES AND LIMITATIONS OF ASSISTANT GUIDE LICENSE. An assistant guide

(1) may not contract to conduct a guided hunt; and

(2) shall be employed and supervised by a registered or master guide at all times while the assistant guide is in the field on guided hunts.

* Sec. 11. AS 08.54.170 is amended to read:

Sec. 08.54.170. LICENSE FEES. (a) The Department of Commerce and Economic Development shall set license fees under AS 08.01.065 for each of the following:

- (1) master guide;
- (2) registered guide;
- (3) class A assistant guide;
- (4) assistant guide;
- (5) special guide [TRANSPORTER].

(b) The license fee for a master guide, registered guide, special guide, class-A assistant guide, or assistant guide license is in addition to the fee required for a hunting license.

* Sec. 12. AS 08.54 is amended by adding a new section to read:

Sec. 08.54.186. REGISTERED GUIDE EXAMINATION. The board shall

1 administer the qualification examination required under AS 08.54.110
 2 at least twice a year. An examination may not be given within 90 days
 3 after the previous exam. At least once every other year the board
 4 shall give the examination at a location other than Anchorage.

5 * Sec. 13. AS 08.54.190 is amended by adding a new subsection to read:

6 (d) A master guide, registered guide, special guide, class-A
 7 assistant guide, or assistant guide license expires biennially, on a
 8 date set by the Department of Commerce and Economic Development.

9 * Sec. 14. AS 08.54 is amended by adding a new section to read:

10 Sec. 08.54.195. RESTRICTED GUIDE AREAS. (a) Under AS 08.54.-
 11 040(a)(7), the board may establish and assign restricted guide areas
 12 for master guides or registered guides. The board shall adopt regula-
 13 tions* that establish uniform and consistent criteria, including a
 14 point system, to be used by the board when it establishes and assigns
 15 a restricted guide area.

16 (b) The board shall consider the following factors before it
 17 assigns a restricted guide area:

18 (1) the extent to which the guide who has applied for the
 19 area has guided in the game management unit in which the area is
 20 located;

21 (2) the extent to which the guide occupied and invested in
 22 the area;

23 (3) the effects, including the economic effect, on other
 24 guides that would result from creation of the area;

25 (4) big game populations in the area;

26 (5) the land ownership status of the area; and

27 (6) other relevant facts or circumstances.

28 (c) The board may adopt regulations limiting the number of
 29 clients with which a guide may contract for hunts in a restricted

*
 Dept
 Commerce

1 guide area used by more than one guide.

2 (d) Unless the board determines after a public hearing that it
3 is not in the public interest to do so, the board may transfer a
4 restricted guide area to a person qualified for assignment who has
5 been recommended by the guide to whom the area is assigned, or by a
6 person authorized to represent the guide, if the recommendation is
7 made

8 (1) after five years have elapsed from the date of the
9 assignment of the guide area; or

10 (2) during the first five years after the date of assign-
11 ment and the guide has died or suffered a major disability, as defined
12 by the board.

13 (e) A guide may not sell or lease a restricted guide area. A
14 guide may sell or otherwise transfer a lodge, camp, or other lawful
15 improvement to property located in a restricted guide area. Sales
16 price may not exceed fair market value.

17 * Sec. 15. AS 08.54.200(a) is repealed and reenacted to read:

18 (a) The board shall hold a hearing to determine whether a li-
19 censee should be disciplined within a reasonable time after (1) com-
20 plaints concerning a licensee's guiding activities are filed with the
21 board by three or more of the licensee's clients from separate
22 parties; (2) a complaint concerning a guide's conduct during a life-
23 threatening situation is filed with the board; or (3) a licensee has
24 been convicted of a violation of a federal or state hunting or guiding
25 statute or regulation. The board may hold a hearing to determine
26 whether disciplinary action is necessary if a complaint concerning a
27 licensee's guiding activities is filed with the board by a client of
28 the licensee.

29 * Sec. 16. AS 08.54.200(b) is amended to read:

* Change (was)

* in public safety

1 (b) After a hearing, the board may revoke, suspend, or deny
 2 renewal of a license, * and may withdraw a licensee's restricted guide
 3 area assignment, if the board finds that the licensee

4 (1) engaged in unethical activity, unsafe activity, or
 5 activity that [WHICH] adversely affects the natural resources of the
 6 state when the [SUCH] activity is related [UNRELATED] to the [LEGAL
 7 AND LEGITIMATE] purposes of the contract hunt; or

8 (2) violated a provision of a federal or state [SPORT
 9 FISH,] game or guide statute or regulation.

10 * Sec. 17. AS 08.54.200(c) is amended to read:

11 (c) After a hearing, the board shall revoke a license * and shall
 12 withdraw a licensee's restricted guide area assignment if the board
 13 finds that the licensee

14 (1) does not meet the qualifications specified by statute
 15 or regulation for the class of license held;

16 (2) is incompetent as a master guide, registered guide,
 17 special guide, class-A assistant guide, or assistant guide;

18 (3) during the five years immediately preceding the hearing
 19 has been convicted of a violation [TWO VIOLATIONS] of a federal or
 20 state statute or regulation prohibiting

21 (A) waste of a wild food animal;

22 (B) hunting on the same day airborne;

23 (C) hunting during a closed hunting season; or

24 * (D) hunting in an area closed by federal regulation;

25 or

26 (4) during the five years immediately preceding the hear-
 27 ing, has been convicted of two violations of a state statute or regu-
 28 lation prohibiting hunting in a restricted area not assigned to the
 29 licensee and without proper written permission [SPORT FISH, GAME OR

* new

* new

* new public safety

1 GUIDE STATUTES OR REGULATIONS].

2 * Sec. 18. AS 08.54.200(d) is repealed and reenacted to read:

3 (d) A person who is disciplined under this section may not
4 engage in a guiding activity during the period of license revocation
5 or disciplinary action. A person licensed under this chapter may not
6 hire as a guide a person whose guide license is suspended or revoked
7 under this section. A guide whose license is suspended or revoked may
8 not guide in the employ of a person licensed under this chapter.

9 * Sec. 19. AS 08.54.200 is amended by adding new subsections to read:

10 (f) If a certified copy of a judgment of conviction of a guide
11 for an offense described under (c)(3) of this section, or for each of
12 two offenses under (c)(4) of this section, is filed with the board,
13 the board shall immediately suspend the guide's license. The suspen-
14 sion may be ordered even if the conviction resulted from a plea of
15 nolo contendere or if the conviction is under appeal. The order
16 remains in effect until after the final disposition of the disciplin-
17 ary proceeding under this section.

* 18 *out* (outfitting) (g) A certified copy of a judgment of conviction of a guide *
19 an offense is conclusive evidence of the commission of that offense in
20 a disciplinary proceeding instituted against the guide under this
21 section based on that conviction.

22 (h) Within 30 days after a hearing under this section, the board
23 shall notify the complainant of the results of the hearing, including
24 written reasons justifying a decision not to take disciplinary action.
25 If the board decides not to hold a discretionary hearing, the board
26 shall give the complainant written notice of its reasons within 30
27 days after making the decision.

28 (i) In this section "two violations of a state statute or regu-
29 lation" means two violations of a single statute or a single

1 regulation, or violations of two statutes or two regulations, or one
2 violation of a statute and one violation of a regulation.

3 * Sec. 20. AS 08.54.210(a) is repealed and reenacted to read:

4 (a) It is unlawful for

5 (1) a master guide, registered guide, special guide, class
6 A assistant guide, or assistant guide to fail to timely report to the
7 Department of Public Safety, division of fish and wildlife protection,
8 and in no event later than 30 days, a violation of a state fish, game,
9 or guiding statute or regulation that the guide reasonably believes
10 was committed by a client or an employee of the guide;

11 (2) a guide^{*} to commit or aid the commission of a violation
12 of this chapter or of a state game or guiding statute or regulation or
13 to permit the commission of a violation that the guide knows or rea-
14 sonably believes is being or will be committed without attempting to
15 prevent it, short of using force, and without reporting it;

16 (3) a person to guide without having a current valid guide
17 license and resident hunting license in actual possession;

18 (4) a person to advertise as or represent to be a guide
19 without holding a current valid guide license;

20 (5) a guide to intentionally obstruct or hinder or attempt
21 to obstruct or hinder lawful hunting engaged in by a person who is not
22 a client of the guide;

23 (6) a person to guide without being validly licensed as a
24 guide under this chapter and as a resident hunter under AS 16;

25 (7) an assistant guide to contract to conduct a guided
26 hunt;

27 (8) an assistant guide to be in the field on a guided hunt
28 except while employed and supervised by a registered or master guide.

29 * Sec. 21. AS 08.54.210(b) is amended to read:

* new public safety

1 (b) A person who violates (a)(1) - (5) [(6)] of this section is
 2 guilty of a misdemeanor and upon conviction is punishable by a fine of
 3 not more than \$1,000 or by imprisonment for not more than one year, or
 4 by both, and the person's license may be revoked for a period up to
 5 five years. However, a person who engages in guiding [OR TRANSPORT-
 6 ING] activity during the period for which the person's license is
 7 suspended or revoked under this chapter, or who violates (a)(6) - (8)
 8 of this section, is guilty of a felony punishable, upon conviction, by
 9 a fine of not more than \$5,000 and by imprisonment for not less than
 10 one year nor more than three years. In addition to punishment for a
 11 felony, all guns, fishing tackle, boats, aircraft, automobiles or
 12 other vehicles, camping gear and other equipment and paraphernalia
 13 used in, or in aid of, guiding [OR TRANSPORTING] activity engaged in
 14 during the period of suspension or revocation ^{*}may [SHALL] be seized
 15 [CONFISCATED] by persons authorized to enforce this chapter and may be
 16 forfeited to the state as provided under AS 16.05.195. [A PERSON WHO
 17 VIOLATES (a)(7) OF THIS SECTION, UPON CONVICTION, IS SUBJECT TO THE
 18 SAME LICENSE REVOCATION PROVISION AS FOR A VIOLATION OF (a)(1) - (6)
 19 OF THIS SECTION AND, IN ADDITION, IS PUNISHABLE BY A FINE OF NOT MORE
 20 THAN \$5,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY
 21 BOTH.]

22 * Sec. 22. AS 08.54 is amended by adding a new section to art. 3 to
 23 read:

24 Sec. 08.54.230. RECORDS OF GUIDED HUNTS. The Department of
 25 Commerce and Economic Development shall collect and maintain records
 26 of hunts conducted by guides. The department shall make the records
 27 available to state and federal agencies charged with the enforcement
 28 of statutes and regulations relating to guiding or game if requested
 29 for enforcement purposes. For all other purposes, the records are

1 confidential and are not subject to inspection or copying under
2 AS 09.25.110 - 09.25.121.

3 * Sec. 23. AS 08.54.240 is amended to read:

4 Sec. 08.54.240. DEFINITIONS. In this chapter

5 (1) "big game" means brown bear, grizzly bear, polar bear,
6 caribou, moose, black bear, bison, Sitka blacktail deer, elk, mountain
7 goat, musk-ox, wolf, wolverine, mountain or Dall sheep, and walrus;

8 (2) "board" means the Guide [LICENSING AND CONTROL] Board;

9 (3) [(2)] "guide" [, "GUIDES"] or "guiding" means accompan-
10 ying or directing a hunter in the field, personally or through an
11 assistant, for compensation or with the intent or an agreement to
12 receive compensation, while the hunter or the person accompanying or
13 directing the hunter spots, stalks, pursues, tracks, kills, or at-
14 tempts to kill big game; in this paragraph, "in the field" does not
15 include being present in a boat with living quarters or at a lodge or
16 base camp [ASSISTING ANOTHER PERSON TO TAKE GAME WITH THE INTENT OF
17 RECEIVING MONETARY OR MATERIAL REMUNERATION FOR THE SERVICES, BY
18 ACCOMPANYING AND DIRECTING THAT PERSON PERSONALLY OR THROUGH A LI-
19 CENSED ASSISTANT GUIDE FOR THE DURATION OF A HUNT, AND NOT SOLELY FOR
20 THE PURPOSE OF PROVIDING TRANSPORTATION SERVICES];

21 (4) [(3)] "resident" has the meaning given in AS 16.05.940
22 [MEANS A PERSON WHO

23 (A) MAINTAINS A PLACE OF RESIDENCE WITHIN THE STATE;

24 (B) REPEALED

25 (C) SHOWS BY ALL ATTENDING CIRCUMSTANCES THE INTENTION
26 TO PERMANENTLY RESIDE IN THIS STATE];

27 (5) [(4)] "restricted guide area" is a geographical area of
28 the state the boundaries of which are determined by the board, and in
29 which guided hunts may be conducted only by the guides to whom the

1 area is assigned under AS 08.54.195 ["TRANSPORTING" OR THE "ACTIVITY
2 OF TRANSPORTING" MEANS CONVEYING A PERSON BY ANY LAWFUL MEANS TO AN
3 AREA FOR REMUNERATION OR MATERIAL BENEFIT IN EXCESS OF NORMAL OPERAT-
4 ING COSTS, WHEN THE PRIMARY PURPOSE OF THE PERSON BEING CONVEYED IS
5 THE TAKING OF BIG GAME AND THE ASSOCIATED REMOVING OF BIG GAME MEAT
6 AND PARTS OF BIG GAME AFTER BIG GAME HAS BEEN TAKEN; BIG GAME AS USED
7 IN THIS PARAGRAPH MEANS GAME WHICH, IF TAKEN BY A NONRESIDENT, WOULD
8 REQUIRE A BIG GAME TAG];

9 (6) [(5)] "unethical activity" means

10 (A) deception or misrepresentation [IN ANY DEGREE]
11 involving prospective or actual clients either before, during, or
12 following a contract hunt, including misrepresentation through
13 private or public advertising of the type, duration, cost or
14 conditions of the contract hunt [HUNTS];

15 (B) [MISREPRESENTATION EITHER THROUGH PRIVATE COMMU-
16 NICATION OR PUBLIC ADVERTISING OF THE NATURE, TYPE, DURATION,
17 COST, OR OTHER CONDITIONS OF CONTRACT HUNTS;

18 (C)] making a guaranty that a species or certain
19 number of species of game will be taken on a contract hunt;

20 (C) engaging in unsafe or unsportsmanlike activities
21 that are detrimental to the game resources of the state, as
22 defined by regulations of the board, including violations of
23 state hunting or guiding statutes or regulations; or

24 (D) accepting a deposit for guiding services without
25 providing before the hunt a signed contract to provide the ser-
26 vices.

27 * Sec. 24. AS 16.05.407(a) is amended to read:

28 (a) It is unlawful for a nonresident to hunt, pursue or take
29 brown bear, grizzly bear, polar bear, or sheep in this state, unless

1 personally accompanied by

2 (1) a person who is licensed as a master guide, registered
3 guide, class-A assistant guide or assistant guide by the Guide [LI-
4 CENSING AND CONTROL] Board; or

5 (2) a resident over 19 years of age who is

6 (A) the spouse of the nonresident; or

7 (B) is related to the nonresident, within and includ-
8 ing the second degree of kindred, by marriage or blood.

9 * Sec. 25. AS 16.05.407(d) is amended to read:

10 (d) A nonresident who violates (a) [OR (c)] of this section, or
11 who fails to furnish an affidavit under (b) of this section, is guilty
12 of a misdemeanor and upon conviction is punishable by imprisonment for
13 not more than one year, or by a fine of not more than \$5,000, or by
14 both.

15 * Sec. 26. AS 39.50.200(b) is amended by adding a new paragraph to
16 read:

17 (48) the Guide Board.

18 * Sec. 27. AS 08.54.040(b), 08.54.142 - 08.54.146, 08.54.185; AS 16.-
19 05.340(e) and 16.05.407(c) are repealed.

20 * Sec. 28. This Act takes effect July 1, 1986.
21
22
23
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27
28
29

SECTIONAL ANALYSIS
HCS CSSB 294 (Res)

- Section 1: Deletes language in the title of the Board, so that it reads Guide Board. This deletion is contained throughout the bill.
- Section 2: Extends the sunset date for the Guide Board to June 30, 1990.
- Section 3: States the purpose of the Guide Board, including new language relating to wildlife conservation, and puts it under the Department of Commerce and Economic Development.
- Section 4: Gives the length for a term of office for members serving on the Guide Board.
- Section 5: Outlines the requirements for the Board to conduct business.
- Section 6: Outlines the duties and responsibilities of the Board in conducting its business for the purpose of regulating the guiding industry. This section includes new language intended to bring more consistency to the licensing and regulating of guides. It also provides for guidelines in areas of testing requirements where applicants do not have a good grasp of the English language and insures the meetings of the Board will be more accessible to members of the industry by requiring at least one meeting a year outside of Anchorage.
- Section 7: This section puts into statute existing regulatory language allowing for residents of the Arctic Coastal region to acquire a special guide license for the purposes of guiding marine mammals.
- Section 8: Outlines the requirements for obtaining a registered guide license. This section includes some new language which makes more specific certain requirements and also provides for a new alternative making the requirements for qualifying to go through the testing procedures more reasonable.
- Section 9: Allows for a procedure for qualified applicants wishing to obtain a registered guide license to go through the Commissioner if through administrative procedures it is found the Board erred in disqualifying the applicant.

- Section 10: This section outlines the privileges and limitations of an assistant guide.
- Section 11: This section relates to the Department's responsibilities in setting fees for the various categories of guide licenses.
- Section 12: Outlines the procedures by which qualification examinations will be conducted.
- Section 13: Puts the licensing of guides on a biennially basis.
- Section 14: This is a new section relating to restricted guide areas. This allows the guide industry to be regulated for purposes of wildlife conservation by restricting guides to certain geographic areas; thereby creating the need for the guide to become involved in wildlife management in order to perpetuate his or her economic future. This section also requires the Board to use consistent and equitable criteria whenever transferring or creating restricted guide areas and also bars a guide from selling his or her guide area.
- Section 15: Outlines the requirements under which the Board must follow when disciplinary action is to be taken against a guide.
- Section 16: This section states the reasons for which the Board may revoke or suspend a guide's license and also adds new language which allows the Board to withdraw the guide's restricted area at the time of a license revocation.
- Section 17: Section 17 is the same as Section 16, except that it provides the guidelines for which a guide's license shall be revoked and his or her restricted guide area withdrawn.
- Section 18: This section provides the factors where a person who's license has been revoked or suspended may not act in the capacity of a guide, nor be hired to work for someone who is licensed as a guide.
- Section 19: Provides new language which allows the board to suspend a guide's license during disciplinary proceedings if a judgement of conviction is filed with the Board. It further adds that a judgement of conviction is conclusive evidence that an offense was

committed. Section 19 also requires the Board to give notice of the results of a hearing held under AS 08.54.200(a) or a written statement giving reasons for not taking disciplinary action within 30 days after the decision to the complainant.

- Section 20: This section outlines those acts which are unlawful under AS 08.54.210(a). Most of this section is similar to existing statutes and regulations governing the guide industry; however, there is also some new language. Under this section, it would now become illegal for a guide to obstruct or hinder other hunters out in the field. It would also become illegal for someone to act as a guide without being licensed both as a registered guide and a resident hunter.
- Section 21: Provides for the penalties associated with those acts designated as unlawful under AS 08.54.210(a). New language in this section makes it a felony to guide or act as a guide without holding a registered or master guide license or resident hunting license.
- Section 22: Adds a new section requiring the Department to keep a record of all hunts conducted by guides and to keep them confidential except to appropriate state agencies for purposes of enforcement.
- Section 23: Contains the definitions for terms used within this section. The major changes are in the definition of guiding. The new definition would disallow persons not licensed to personally accompany another person while hunting and receive compensation for such services. The other significant definition with new language is under unethical activity. The new language here would remedy most of the circumstances of unethical business activities promulgated by a guide over a client.
- Section 24: This section adds class-A assistant guides to the list of guides required for nonresidents to hunt dall sheep, polar bear and brown/grizzly bear.
- Section 25: Provides for the penalty received by a nonresident who violates the conditions outlined in AS 08.54.407(a).
- Section 26: Adds Guide Board to the list of Boards and Commissions under AS 39.50.200(b)

Section 27: This section repeals various statutes related to the guide industry which no longer apply or are no longer necessary.

Section 28: Provides for the effective date.

HOUSE
COMMITTEE REPORT

5/2

(9)

Date referred: 4/18/86

FURTHER REFERRALS:

Rules

DATE: May 2, 1986

The RESOURCES Committee has considered CSSB 294 (Res) an
"An Act relating to guiding; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with HCS CSSB 294 (Resources) same title
- new title

and recommends do pass

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Shultz *Dick Shultz*

Herrmann *Altheid Herrmann*

Jenkins *Roger Jenkins*

Pearce *Altheid Herrmann*

Cato *Bette Cato*

Thompson *David W. Thompson*

John Sund *no rec*

Dick Shultz
Co-Chairman *shultz*

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

BUREAU OF FISH & WILDLIFE PROTECTION

BILL SHEFFIELD, GOVERNOR

ROBERT J. SUNDBERG
COMMISSIONER

P. O. BOX 5188, ANNEX
ANCHORAGE, ALASKA 99502

February 28, 1983

Clark Engel, Master Guide
4129 Lana Court
Anchorage, Alaska 99504

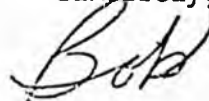
Dear Clark:

During the past few years the guiding industry through the Guide Board has made substantial improvements in cleaning up the industry and improving the image of guiding in Alaska. The Guide Board distribution of exclusive guide areas and it's thorough investigations of accusations made against members of the guiding industry have gone a long way to improving the guiding business in Alaska.

With over 1,100 licensed guides, ranging from Master Guides to Assistants it takes a well coordinated effort to ensure that the same standards are applied by the guiding industry throughout the state. The industry has an impact upon tourism and upon the image of the state of Alaska through the sportsmen that it caters to. This Board has helped standardize the practices and procedures through which the guides have operated thereby giving the guiding industry in Alaska a good image on the outside. From a law enforcement standpoint, during the past few years we have seen a steady decline in the number of guide related violations. In fact, in FY-82 of the commercial users of the resource, the guiding industry had one of the lowest of violation rates of any in the state. I think this speaks highly on the industry and this trend should be continued. Guiding has a role in Alaska and how big that role will be will depend entirely upon the activities and the image of the industry.

Clark, this isn't much but I hope this will give you and your members some idea of how I felt the industry has progressed and the usefulness of the Board during my few years of association with them.

Sincerely,



Colonel Robert J. Stickles
Director

RJS/rt

Illegal Commercial Operations Affecting the Alaska Professional Guide

by Robert Boutang
Alaska Department of Public Safety
Fish and Wildlife Protection
Statewide Investigations

In 1973 the Guide Licensing and Control Board was formulated as the regulatory body for the guiding industry. In the mid 1960's to the mid 1970's, drastic regulation changes in seasons, bag limits and methods of taking game had a direct impact on many of the guiding operations.

These ten years of regulation changes had the most direct impact on the guiding industry. During these ten years, the brown bear season on the Alaska Peninsula was cut from nine months per year to four weeks every two years. The use of aircraft was also severely limited by regulation. It was understandable with the numerous statute and regulation changes that did occur in such a short period of time, that some guides found it difficult at best to adapt their guiding operations to meet the changing times. What were legal methods of hunting

one day were all of a sudden illegal the next.

In many cases, however, some guides did operate as though there were no restrictions on the methods and means of taking big game. We did, in fact, have guides who operated with little fear of being apprehended in the commission of a crime.

In 1972, one of the enforcement priorities established within the Division of Fish and Wildlife Protection was the illegal guides who persisted in continually taking big game animals unlawfully.

Through the efforts of the Guide Licensing and Control Board in establishing standards, regulations and exclusive and joint use areas, in conjunction with a concerted enforcement effort taken by the Division of Fish and Wildlife Protection in the 1970's, we have seen a dramatic decline of the flagrant illegal guide operations.

The State of Alaska can take pride in the fact that we now have a professional guiding industry that provides an outstanding service to a clientele from all

over the world and the revenue that is generated from the guiding industry is one that benefits many people and businesses inside the State of Alaska.

Today, we face a new problem that concerns and affects the professional Alaskan guides, the public and State of Alaska. This concern is the unlicensed individuals who are in fact booking clients and acting as guides. It is now known that there is more illegal unlicensed guiding activity than anyone thought existed.

This is one concept of illegal guiding which virtually has never before been worked by Alaska Fish and Wildlife Protection. The Investigative section of Fish and Wildlife Protection is now developing intelligence regarding this problem. The Division has established unlicensed guiding operations as one of our main enforcement priorities.

We found some of these so-called outfitters (unlicensed guides), who provided drop-off type hunts, were actually going so far as to personally accompany the clients in the field; calling in

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moose, using aircraft to drive and herd animals and using radio communications to aid and take animals.

Once such unlicensed guide showed a client (undercover hunter) a check which was two times the amount of a regular hunt and he said, "This is what I get for my hunts and I produce more record book animals than anyone in Alaska and I don't even have a guide license."

Another unlicensed guide, who recently pled guilty, took a client (undercover hunter) in Game Management Unit 9, Katmai National Park, during the off season and killed a brown bear the same day he was airborne. He also tried to solicit our hunter into getting him more clients. This is the type of people we are dealing with; they have no respect for the legal guides or the resources.

This year our Investigative section investigated two outfitters (unlicensed guides) who took approximately 40-50 moose each in a two-year period. That is putting a serious dent in someone's exclusive guiding area and in Alaska's moose population. These illegal non-licensed guides are going into honest hard-working professional guides' areas and stealing the resources and giving hunting and the professional guides, through the publicity, a bad name. The licensed guides, hunters, the general



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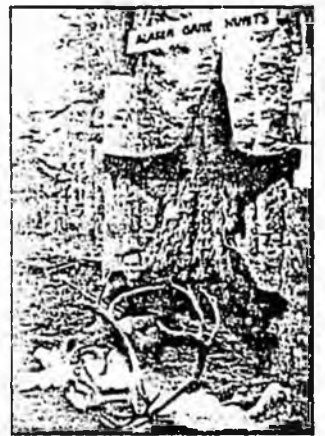
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public and the wildlife are all the victims

These types of illegal operations have a direct effect on the licensed professional guide whereas the licensed guide must adhere to statutes and regulations which affect his operations.

While we do have the problem of unlicensed guides in Alaska, we first have to identify the people involved. To do this, we need all the help we can get from the Guide Board, professional guides and the concerned citizens.

In addition, it is extremely important that the Guide Board, professional guides, concerned public, and our Division continue to mutually cooperate in identifying individuals who are unlicensed and are acting in the capacity of licensed guides.

The unlicensed guides do not have to follow any laws. They are not bound by restrictions or ethics and in many cases, they have a total disregard for the resources and other guides. They take game anytime and place and use any methods they want to.

Only through the continuing cooperation of all of us working together can we hope to reduce the illegal unlicensed guiding operations that exist in the State of Alaska.

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New Life Sustaining Members

Charter Life Sustaining membership's final issuance was December 31, 1984. However, another classification was created which is referred to as Life Sustaining membership offered for \$250.00 instead of the \$200.00 Charter Life Sustaining offer. The following person has joined as a Life Sustaining member:

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A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
GUIDE LICENSING AND CONTROL BOARD

November 21, 1985

Audit Control Number

08-1253-86-R

Commissioner, Department of
Commerce and Economic Development

Loren H. Lounsbury

Deputy Commissioners, Department of
Commerce and Economic Development

Terry Elder
Greg Baker

Members of the
Guide Licensing and Control Board

Chairman
Member
Member
Member
Member
Member
Member

Ray McNutt
Edward J. Shavings, Sr.
Douglas Pope
Charles Weir
Poldine Carlo
Ralph G. Fenner
James Harrower

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

November 22, 1985

Members of the Legislative Budget
and Audit Committee:

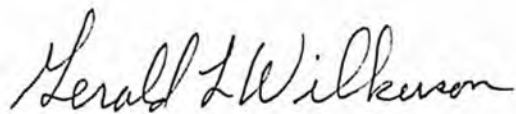
In accordance with the provisions of Titles 24 and 44 of the
Alaska Statutes (sunset legislation), the attached report is
submitted for your review.

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
GUIDE LICENSING AND CONTROL BOARD

November 21, 1985

Audit Control Number

08-1253-86-R



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REPORT

Purpose

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Guide Licensing and Control Board for the past four fiscal years. Our examination was conducted to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Guide Licensing and Control Board should be reestablished. The law now specifies that the Board will terminate June 30, 1986 and will have one year from that date to conclude its affairs.

Scope

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Interviews with the license examiners.
3. Tests of files and documents of licensees.
4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman Office.
5. Discussions with Board members.
6. Minutes of Board meetings and Division correspondence files.
7. Attorney General Opinions applicable to professional boards.

(Intentionally left blank)

ORGANIZATION AND FUNCTION

The Guide Licensing and Control Board was established by the 1973 Legislature and succeeded the Board of Fish and Game, Department of Fish and Game, which previously had regulated the guiding industry. The seven member Board is appointed by the Governor with confirmation by the Legislature and is restricted to having no more than three members as licensed guides. Board members serve staggered terms of three years or until their successors are appointed.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing. The Division assists the Board in the performance of their duties by providing administrative, licensure, and investigative support.

By law, a nonresident may not hunt, pursue, or take brown bear, grizzly bear, polar bear, or sheep in Alaska unless personally accompanied by a licensed master, registered, or assistant guide. Nonresidents hunting with an Alaskan relative are exempt from this requirement. The Guide Licensing and Control Board was appointed in part to protect these nonresident hunters from incompetent individuals holding themselves out to be qualified Alaskan guides.

The function of the Board is primarily regulatory, mandated by AS 08.54.040. Accordingly, the Board has the capacity to administer examinations, determine qualifications of guides, establish performance standards and regulate activities, maintain guide registers, prohibit harmful guiding activities, conduct hearings regarding licensure, and establish quotas of guides for specified geographical areas (exclusive guiding areas). The Board, through the assignment of exclusive guiding areas, limits hunting pressure by guides within a specific geographical area.

In addition, the Board licenses "transporters"; a licensed "transporter" is a person who transports hunters for hire.

(Intentionally left blank)

REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Guide Licensing and Control Board should be reestablished. The regulation and licensing of qualified guides is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum qualification and experience requirements that provide reasonable assurance that persons licensed are both capable of safely conducting guided hunts and familiar with their prospective guiding areas. Assurance that those licensed act in a competent manner is also provided by active investigation of complaints and revocation or suspension of licenses where appropriate.

However, the following findings describe areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board.

(Intentionally left blank)

2. Demonstration of Experience - When applying for an EGA, applicants must demonstrate that they have had guiding experience in the applicable game unit. Guides demonstrate their experience through the submittal to GLCB of a Statement of Financial Remuneration (SFR) for each guided hunt. SFRs list the names of hunters, guides assisting in the hunt, game units hunted, and the type of game taken.

Under the Board's regulations, SFRs are the primary evidence of a guide's activity and familiarity with the game unit involved. However, we found instances where the Board awarded EGAs to guides with no SFRs in the appropriate game unit, while denying other EGA applicants because they had no SFRs on file demonstrating their experience or activity.

3. Transfers of guiding areas - GLCB has been essentially approving transfers of guiding areas with little or no consideration of any other criteria such as game management, objections of joint users, or experience of the guide receiving the transferred area (see Recommendation No. 3).

This inconsistency on the part of GLCB in its decision-making, along with the lack of proper documentation of its rationale, ultimately results in a loss of effective control over the activities and policy of the guiding industry.

During the past four years, hearing officers have repeatedly found Board decisions to be arbitrary and capricious with little or no support. In effect, the Board has abdicated much of its control over area assignments through its inconsistent application of criteria. Hearing officer decisions are beginning to effectively replace GLCB in setting quotas for guides. Essentially, GLCB has not fully met its statutory responsibility to adopt an equitable and reasonable procedure for the assignment of guide areas.

We believe GLCB's responsibility would be better met by identifying pertinent criteria to be used in area assignment decisions, assigning some priorities to those criteria, and applying them consistently.

Recommendation No. 2

GLCB should improve methods of obtaining game management information from independent sources, such as the Alaska Department of Fish and Game (ADFG).

One of the primary justifications for the whole concept of EGAs is to enhance overall management of the public's game resources. Guides are awarded exclusive or joint-use areas so that they have a long-term interest in managing the game

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Guide Licensing and Control Board (GLCB) should develop a prioritized set of criteria to use in assigning both exclusive and joint-use guiding areas (EGAs).

Alaska Statute 08.54.040(a)(8) allows GLCB to:

Establish a quota of licensed operating guides who may operate within designated geographical units or subunits of the state and provide for an equitable and reasonable procedure for limiting the number of guides to that quota; preference shall be given to qualified available guides who reside within the designated game unit or subunit.

GLCB has implemented this provision through the establishment of both exclusive and joint-use guide areas (EGAs), which limit the number of guides who can conduct hunts in various regions of the State. The GLCB's authority to assign EGAs is supported by an April 1977 Attorney General memorandum which determined that GLCB's regulations and activities implementing exclusive guiding areas were within their statutory powers.

This limitation on the practice of guiding ostensibly provides public benefits by providing for better game management; promotion and enforcement of ethical guiding practices; enhancing the "wilderness" aspect of big game hunting experience by separating guided hunting parties; and allows for the separation of non-compatible forms of hunting. The limits are also designed to provide for a greater degree of safety to the guided hunter by allowing guides to become familiar with the terrain and seasonal weather conditions of their assigned area.

GLCB does not act consistently when considering the assignment of exclusive and joint-use guiding areas. The criteria on which any given area assignment decision is made varies from decision to decision. Additionally, GLCB often does not adequately document the basis on which they make their assignments. We found inconsistencies and contradictions in the way that GLCB applied the following criteria when awarding EGAs:

1. Game Management Information - GLCB does not consistently review game management information in their area assignment decisions. What game information they do consider usually is second hand and anecdotal, provided by applicants or current users (see Recommendation No. 2).

in their EGA. GLCB has adopted regulations [12 AAC 38.053(d) (1)] that require it to consider an area's ability "... to sustain an additional guided hunting operation, in terms of game populations, terrain, methods of hunting, and use by other guides and hunters."

As stated in Recommendation No. 1, we found that GLCB rarely considers independent information regarding game populations and management concerns when assigning EGAs. GLCB relies on information provided by applicants and guides operating in the region under consideration. Certainly, the assessment of an active registered guide is important and should be considered. However, whether coming from an applicant or current user, it must be recognized that the guide has a vested interest in how the information is presented and interpreted.

Oftentimes, information presented to the Board is conflicting, depending on the desire of the guide. New applicants for areas claim game is plentiful, and the area is underutilized. Current users, on the other hand, emphasize game scarcity and hunting pressures.

If GLCB established better, more formal communications with ADFG they would better meet their regulatory and statutory obligation to enhance the management of the State's game resources. ADFG information may be no better than that of guides; however, it is more independent and more objectively developed. ADFG is charged with management of the State's game resources, and guided, non-resident hunters take up to an estimated 40% of the game in the State. We believe GLCB should attempt to improve communications and coordination with ADFG while taking steps to include their assessment of game populations and hunting pressures when considering assignment of EGAs.

Recommendation No. 3

GLCB should take more responsibility for area assignments by repealing regulations that allow a guide to designate to whom his EGA be reassigned.

Registered and master guides may each have a maximum of three EGAs. Typically, when a guide wishes to retire or perhaps become eligible for another, different EGA, he is allowed to turn back an existing EGA to the Board and designate the recipient of this reassignment. GLCB regulations currently allow, but do not necessarily require, this practice.

We found that these designated transfers override all other area assignment criteria. Essentially, GLCB has been automatically approving transfers of EGAs regardless of game management considerations, demonstration of experience

in the area by the transferee, and over the objections of affected joint users. Whereas GLCB evaluates, albeit inconsistently, regular area assignments, our review indicated they gave transfers much less scrutiny.

We believe that this lack of scrutiny encourages the practice of guides selling their EGAs to other guides in violation of GLCB regulations. With the Board giving little review to transfers, they greatly increase the potential of EGAs being awarded based solely on economic consideration; i.e., can the designated recipient afford to buy the area from its holder? This potential abuse is contrary to GLCB's statutory responsibility of establishing quotas for guide areas in an equitable and reasonable manner. We feel that all qualified guides for the area should receive equal chance at receiving an EGA, regardless of their ability to "buy" the rights from the previous holder.

By not adequately reviewing transfers of guide areas, the GLCB is missing an opportunity to achieve one of its stated policy goals. In the Board's FY 85 annual report, they state one of their policy objectives is to not allow additional joint use in areas that already have enough guides operating.

We feel that it would be better if the EGAs were surrendered to the Board; the Board review pertinent and prioritized criteria to determine if the region would support one or more additional guide operations; then consider all applications for the area under a equitable and reasonable method of allocation. Such a method could take into consideration unique qualifications such as a son or daughter who had worked as an assistant to their father, or perhaps a registered guide, who had "apprenticed" in the region under the surrendering EGA holder and accordingly, is more knowledgeable of the area than other applicants. By following such a procedure the Board would promote compliance with its own regulation restricting the transfer of guiding area permits.

Recommendation No. 4

GLCB should adopt procedures to improve the administration of the oral portion of the registered guide examination.

The oral portion of the registered guide examination is arbitrary and inconsistent in content and grading. This is because the examination content and grading guidelines are left to the discretion of the individual examiners.

To qualify for licensure as a registered guide, an applicant must successfully pass the registered guide examination. This examination, which is prepared and administered by GLCB, is composed of two parts, a written and an oral section. Passage of the examination requires the applicant to obtain a score of 80% on both sections.

GLCB procedures require the oral portion of the registered guide examination to be administered by three examiners, consisting of a Board member and two master guides. Questions asked by the examiners are based on an oral exam sheet, which does not limit examiners to specific questions nor does it provide predetermined question grading values.

This allows individual examiners to emphasize whatever subject areas they wish in the questioning of applicants. Despite the lack of specific grading criteria on which to base examination scores, instances were noted in which applicants narrowly failed exams by combined examiner scores as high as 79%.

The inconsistency of exam content and grading is demonstrated by the following example. In February 1985, an applicant failed the oral portion of the examination. The reason for failure noted by the examiners was that the applicant needed more hunting experience in the field. Examiners recommended the applicant obtain specific area experience along with spring, late fall, and winter experience. One month later, the applicant took the oral examination again, and was passed by an examination committee made up of three different examiners.

GLCB appears to have demonstrated its own doubts regarding the validity of oral examination results. GLCB's regulation 12 AAC 38.010(c), states the failure to achieve a passing score on either section of the examination constitutes failure of the entire examination. However, on several occasions, after having been petitioned by applicants who passed the written portion of the exam while failing the oral portion, the Board waived the requirement that the written portion of the examination be retaken.

The lack of specific guidelines dictating the objective administration of the oral portion of the registered guide examination has resulted in inconsistent content and grading between individual examinations. The likelihood of exam passage is as much affected by who the examiners are and their individual judgement as it is by the knowledge and competence of the applicant.

Structured guidelines governing the administration of the oral portion of the registered guide examination should be implemented by GLCB. These guidelines need to provide examiners with specific directions as to examination questions to be asked and their assigned grading values. If implemented, structured guidelines will provide a more objective means of administering the examination. This will provide the Board with more of a fair and consistent test of applicant competence.

Recommendation No. 5

GLCB should seek both statutory and regulatory changes in order to improve the protection of the public from unethical guiding practices.

One of the primary purposes of licensing and regulating guides is to protect the public from unethical guiding practices. We identified regulations and statutes that serve to block effective consumer protection action on the part of GLCB and serves to protect guides at the expense of the public. We recommend that GLCB enhance its consumer protection responsibilities by taking the following actions:

- A. Pursue amendment of statutes that limit GLCB's authority to discipline guides for unethical activity.
- B. Adopt regulations and/or recommend legislation to require guides to post performance bonds.

Statutory Constraints to Effective Disciplinary Action

Alaska Statute 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from "... three or more clients [hunters] of separate [hunting] parties."

In the course of our review we found four instances where guides had two allegations of unethical guiding activity, as defined by GLCB's regulations, but still had not been brought before the Board for review. Law enforcement officials told us that the statute requiring three separate complaints was particularly onerous for effective resolution of consumer complaints. Law enforcement officials are put in the position of consumer ombudsman, trying to mediate and negotiate settlements of hunter-and-guide or guide-and-guide disputes.

GLCB's effectiveness and visibility would be enhanced if all allegations regarding unethical guide practices was brought to it for review on a case-by-case basis. It appears that the intent of the statute was to keep down the number of frivolous and unfounded complaints against guides. Other professional licensing boards listen to, and sort through, all cases and complaints, no matter how trivial, as a means of keeping apprised of the conduct of their licensees. We recommend that GLCB begin doing the same.

Bonding of Guides

Almost all hunters who use guiding services are non-residents, a large number from outside of the United States. As a result, when disputes arise between guides and hunters it is often very difficult and expensive for the complaining

hunter to seek legal remedies or implement administrative action. This difficulty is compounded by the three complaint requirement of the statutes discussed previously.

In the course of our review, we noted four cases where a non-resident hunter and guide were disputing the refundability of a deposit. One example, two out-of-state hunters sent in deposits of \$2,500 six months in advance of a hunt. Just prior to their departure for Alaska, the guide notified them that he would have to cancel their hunt. He offered to apply their deposits to a hunt the next year, but the hunters decided they wanted a refund. The guide did not respond to requests, and due to the statutory three complaint requirement, law enforcement officials were not able to bring the dispute before GLCB. The two hunters retained a Fairbanks attorney to pursue legal remedies, but soon abandoned the effort due to costs of litigation.

We recommend that GLCB pursue the necessary statutory and regulatory changes that would implement a mandatory requirement that guides post performance bonds. Performance bonds would allow hunters with legitimate grievances and claims against guides an easier, less expensive alternative in obtaining settlement of their claims. Guiding is a large industry in the State. It is important that GLCB do all it can to maintain the integrity of the guiding industry and uphold the reputation of the Alaskan guides with hunters outside of the State. The Board should recognize the unique type of consumer for guide services and take steps to adequately protect the interest of the out-of-state hunter/consumer.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our review.

- I. The extent to which the board, commission, or program has operated in the public interest.
 - A. The Board has adopted regulations defining unethical conduct which clarify and strengthen the professional's responsibility to the public.
 - B. The Board does not consistently review the Department of Fish and Game game management information prior to assignment or transfer of an exclusive guiding area (EGA) (see Recommendation No. 1).
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
 - A. Regulation 12 AAC 38.054(b) allows an EGA permit holder to designate the qualified guide to whom he wishes to transfer his guide area. These transfers often take precedence over other guide area assignment criteria such as joint user objections, experience in the game unit, or game management considerations (see Recommendation No. 3).
 - B. Alaska Statute 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more clients of separate parties regardless of the potential magnitude of the unethical act (see Recommendation No. 5).
- III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.
 - A. Senate Bill No. 294, which was introduced in April 1985 by the Resources Committee, contains the following items which should enhance public protection if ratified:

1. An amendment to AS 08.54.010 would increase game management considerations in regulating guide activities (see Recommendation No. 2).
 2. An amendment to AS 08.54.040 and a proposed new section (AS 08.54.195) would require consistency in procedures used in allocating EGAs (see Recommendation No. 1).
 3. New sections would require those guides that contract with more than one client at a time (an outfitter) to maintain a surety bond of \$5,000 (see Recommendation No. 5).
 4. The bill would require closer supervision over assistant guides while in the field.
 5. Unethical activities would be amended to include unsafe or unsportsmanlike actions that are detrimental to the game resources of the State.
 6. Statutes dictating qualifications for, and restrictions on, transporters would be repealed. Many of the services now being provided by transporters would be subject to the proposed outfitter statutes contained in this bill.
- B. Additional portions of SB 294 which do not appear to us to be in the public's best interest are as follows:
1. Current law limits the number of Board members that have guide licenses to no more than three of the seven members. SB 294's amendment of AS 08.54.010 would require that at least three Board members be active guides. This amendment would increase the potential for expanding the number of industry members on the Board at the expense of public participation.
 2. Currently, AS 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more hunters of separate parties. SB 294 contains an amendment of this statute which would require that these complaints be received within five years prior to the hearing date. This would compound those problems outlined in Recommendation No. 5.

3. Currently, AS 08.54.210(a)(6) makes it unlawful for a master or registered guide to employ or supervise more than three assistant guides at the same time.

SB 294 would repeal this statute and could allow a master or registered guide to employ more assistants than they are capable of effectively supervising. The experience and professional judgement of the master or registered guide may not be available to clients when needed.

Alaska Statute 08.54.141 of this bill also provides that assistant guides shall be supervised at all times while in the field on guided hunts. The potential problem noted above will depend on enactment of this new section and on the Board's interpretation of the term "supervised."

4. Enactment of amendments to AS 08.54.200(c)(3) may unnecessarily restrict those hunting statutes or regulations upon which the Board can take disciplinary action.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

- A. The public is invited to attend Board meetings and to give their input about the workings of the Board. Notices of meetings are advertised in at least five newspapers throughout the State. In addition, guides are notified by registered mail of meetings that might affect them.
- B. Publication of meeting information does not always precede the meeting by a reasonable time period. We found that the public was given less than a one week notice for two of the last eleven Board meetings.
- C. Teleconference meetings are not being noticed publicly. This limits public input at those meetings and may legally jeopardize Board decisions and actions.

V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

- A. As stated under IV, the public is invited, by published notices in newspapers, to attend Board meetings to give their input about Board regulations or submit written testimony.
- B. Those problems noted in IV B and C above also represent potential problems in this public need area.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

- A. Since July 1983, ten complaints have been filed with the Ombudsman's Office concerning Board activity. Only one of these complaints, alleging improper denial of a registered guide license, was found to be justified.
- B. Since August 1984, 19 complaints against guides have been submitted to the Department of Commerce and Economic Development, Division of Occupational Licensing for investigation. These cases appear to have been investigated in a reasonable fashion and are pending Board action or court rulings.
- C. As mentioned in III above and in Recommendation No. 5, AS 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more hunters of separate parties.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

- A. As of September 1985, 46 master guides and 361 registered guides were licensed in Alaska. These individuals were required to pass both a written and an oral exam, as well as obtaining practical experience in the field, prior to licensure.
- B. The oral portion of the registered guide examination is arbitrary and inconsistent in content and grading. This is because the examination content and grading guidelines are left to the discretion of the individual examiners (see Recommendation No. 4).

VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity of interest.

A. The Board established 12 AAC 38.010(c) whereby an applicant for licensure who:

because of a language barrier, is unable to read and competently understand the English language may be excused from taking the written examination, and may be issued a license based on successful completion of the oral portion of the examination and demonstration of his capabilities and experience.

B. Regulations also provide that when assigning guide area permits,

the board will give preference to qualifying guides whose permanent residence is within the district in which the area is located.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

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APPENDIX A

GUIDE LICENSING AND CONTROL BOARD
REVENUES COMPARED WITH EXPENDITURES

June 30, 1985
(UNAUDITED)
(Note 1)

	<u>FY 83</u>	<u>FY 84</u>	<u>FY 85</u>
Revenues (Schedule 1, Note 2)	\$46,000	\$53,735	\$88,678
Expenditures (Note 3)	<u>21,663</u>	<u>13,483</u>	<u>11,777</u>
Excess of Revenues over Expenditures	<u>\$24,337</u>	<u>\$40,252</u>	<u>\$76,901</u>

Schedule 1
Types of Revenues
(Note 4)

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Master Guide License	\$150	Biennially
Registered Guide License	150	Biennially
Class-A Assistant Guide License	30	Biennially
Assistant Guide License	20	Biennially
Transporter License	10	Biennially
Application For A Guide Examination	25	With Application

Note 1

This revenue/expenditure comparison was prepared from available reports prepared by Occupational Licensing personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

Revenue amounts reported do not include revenue obtained from the sale of game tags or hunting licenses. They only include revenue obtained from fees required to obtain and/or renew guide licenses.

Note 3

Expenditures consist of direct costs resulting from Board activities. These include miscellaneous contractual, travel, and per diem costs incurred by Board members and the Board's licensing examiner. The amounts do not include the administrative expenditures of the Division of Occupational Licensing such as employee salaries or the expenditures made to other departments such as the Department of Law, which assist the boards and the Division.

Note 4

Amounts reflected are those established by statute for FY 85. Chapter 37, SLA 1985 provides that the Department of Commerce and Economic Development shall set license fees effective upon adoption of said regulations.

APPENDIX B
GUIDE LICENSING AND CONTROL BOARD
EXAMINATION STATISTICS

Number of Examinations Given in FY 1984-1985 (Note 1)

<u>Fiscal Year</u>	<u>Written Exam</u>		<u>Oral Exam</u>		<u>Total</u>
	<u>Passes</u>	<u>Fails</u>	<u>Passes</u>	<u>Fails</u>	
1984	22	13	26	7	41
1985	19	9	17	4	30

Note 1

Licensure as a registered guide requires a passing score on both a written and oral examination. Licensure as a master guide requires a passing score on an oral examination only. Licensure as assistant guides and transporters does not require examination.

APPENDIX C

GUIDE LICENSING AND CONTROL BOARD
ADMINISTRATIVE STATISTICS
September 30, 1985

Currently Licensed

Master Guides	46
Registered Guides	361
Class-A Assistant Guides	139
Assistant Guides	829
Transporters	141

Board Meetings Between
July 1, 1983 and June 30, 1985

July 17-22, 1983
October 25-26, 1983
December 7-13, 1983
March 12-17, 1984
December 13-14, 1984
February 9-17, 1985
March 18-19, 1985

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 465-2534

December 23, 1985

Mr. Gerald L. Wilkerson
Legislative Auditor
Legislative Audit Division
Pouch W
Juneau, AK 99811

RECEIVED
DEC 24 1985
**LEGISLATIVE
AUDIT**

Dear Mr. Wilkerson:

Re: Preliminary Audit Findings
Guide Licensing and Control Board

Thank you for the opportunity to comment on your preliminary audit report on the Guide Licensing and Control Board.

Our position remains the same from previous correspondence in that, we concur with your findings and recommendations, and also support continuation of the board. We once again offer the following comments regarding your recommendations:

In reference to recommendation #1, it is important to note that many of the actions or decisions made by the Guide Licensing and Control Board were made upon advice and support of counsel from the Department of Law. This is done especially in relation to your finding that hearing officer decisions are replacing that of the Guide Licensing and Control Board where setting quotas for guides are concerned. However, we believe the board has demonstrated an honest effort to act accordingly within the parameters of what they perceived to be correct, based on legal advice.

Regarding recommendation #4, this matter was brought to the attention of the board by staff of the Division of Occupational Licensing during previous board meetings. Although the board did acknowledge the need to address this issue, no time was given to address the oral examination for registered guides.

Mr. Gerald L. Wilkerson

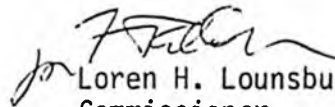
-2-

December 23, 1985

We strongly support your suggestions in recommendation #5 and feel that, although performance bonds posted by master and registered guides may not be entirely adequate to rectify all complaints, it would certainly allow some means of restitution for injured parties from receiving unethical services.

Thank you once again for the opportunity to comment on your findings and for your cooperation.

Sincerely,


Loren H. Lounsbury
Commissioner

LHL/sal444s
122385b

The Legislature
Budget and Audit Committee
Jim Griffin, Auditor

DEC 19 1985

LEGISLATIVE
AUDIT

Recommendation #1

The Guide Licensing and Control Board (GLCB) uses the Statements of Financial Remunerations as proof of use and experience in areas when assigning Exclusive Guide Areas (EGA). There have been discrepancies in the past, the last year the GLCB have been adhering closely to the criteria of using SFRS. The GLCB seeks biological and Fish & Game surveys when they are available. This cannot always be done. Some areas Fish & Game haven't run surveys or recent surveys. Most of the time, the GLCB doesn't know which areas will be before them until the applicant comes before the GLCB with his application. This doesn't allow enough time to obtain the information. In cases that are held over and coming before the GLCB at a later date do allow time for soliciting biological information from the Fish & Game biologist located in the area involved. I have solicited Fish & Game information in several cases that are coming before the GLCB this next meeting in December 1985.

I hope to get a regulation passed that requires an applicant applying for an EGA to obtain this information from the Fish & Game for presentation to the GLCB.

Along these lines there also should be a regulation requiring the same criteria for a transfer be the same as a new applicant. That is to show proof of experience in the area as would a new applicant. And going farther, an applicant for a transfer from an EGA holder to himself show proof of working with the EGA holder for a certain time. One or two years. Co-signing SFRS could be used as proof as well as additional proof, either in EGAS or joint use areas.

Recommendation #2

Regulation (12 AAC 38.053 (D) (1) applies mostly to applications for joint use areas and EGAs being applied for by more than one guide. The proposal to pass a regulation requiring the applicant to obtain Fish & Game biological information on the area applied for will help in this area.

Recommendation #3

I do not agree that an EGA holder should have to surrender his EGA to the GLCB and not have the opportunity to transfer the EGA to a guide of his choice with the approval of the GLCB.

There are many cases where an EGA holder has farmed his area, carefully not to over harvest, so has improved both game populations and size of the animals in the area. To enhance game populations and sportsmen enjoyment is one purpose of the GLCB.

Financial investments should also be considered in transfers, land, buildings and equipment related to guiding in the area.

A guide who has spent many years building up an area with improvements to game populations should certainly have something to say about who's care the area ~~XXXXXX~~ comes under. Son, ~~XXXXXX~~ Daughter, apprentice or a guide who is well qualified to guide in the area.

The GLCB has a policy not to issue a new applicant an area ~~X~~ in joint use. In other words filing over an area that is already in joint use, or use by only one EGA holder. The GLCB is working to eliminate as much joint use as possible. This can only be done through natural attrition. The GLCB cannot choose two permit holders out of six joint users and pull their permits without due cause. I do think, and it has been the GLCB's policy the last two years. A Ega holder is convicted of some violation that merits revoking his area that is in joint use with others, that area will not be reassigned ~~XXXXXX~~ ..

Where the area is extremely large and doesn't have many joint users some leeway should apply to a new applicant. The guide losing the area should not have a say one way or the other in the matter. However, in cases such as this very careful scrutiny in all criteria must be made. One thing along these lines. At one time the intent of GLCB to review and reassess all EGAS. Considering size, utilization and condition of game populations. This was never done, primarily because time and budget restrictions wouldn't allow it.

Recommendation #4

Oral guide examinations;

There are inconsistencies in administering oral tests. The purpose of the oral test is to determine the applicant's practical field experience and knowledge of game habits, size and the area he is being tested for. Most of this is impossible to determine with a ~~X~~ tightly held oral tests with set questions and answers. The examiner should have some flexibility but should not be allowed to wander far afield and asking impertinent questions. There should also be a standard time for the test, say 1 or 1½ hours. One ~~XX~~ problem that keeps cropping up is first aid. I propose that an applicant be required to have passed a first aid course within the year prior to taking the guide exam.

The GLCB has been trying to upgrade this portion of the guide test. Here again, the increasing number of applications for testing each meeting is also increasing the work load of the GLCB.

Recommendation #5

There should be some changes in Statute 08.54.200 (A) (1). The change should give the GLCB some flexibility on guide complaints. Taking in consideration of the severity of the complaint. Endangering life, flagrant game violations, and unethical practices, etc. The GLCB does have a guiding ethics regulation (12AAC 38.190) The complaints are slowly being corrected since the administration was consolidated in the Department of Commerce, Division of Occupational Licensing. The GLCB investigator is investigating all complaints that come in now.

We are trying to get a section in the new guide bill, (Senate Bill #294) to satisfy the change mentioned above. Bonding is already addressed in S294.

The bill also creates an outfitter's license and repeals the transporters license. This should help to alleviate the wide spread unlicensed guiding. These unlicensed guides are a big factor in guiding complaints.

The bill also goes into more detail on what guiding is. Enforcement people say the present bill doesn't explain guiding enough for them to make a case on ~~unlicensed~~ unlicensed guiding. The new bill should give them the tools they need to enforce that section.

The GLCB would like to conduct more work on all these programs and others as well.

It is very important to the guiding industry that the GLCB not be sun setted. If the guide bill is not extended or a new bill passed, the guiding industry will be plunged into a chaos that it could never recover from. Just about everyone with a super cub or 185 will become instant guides creating an impossible situation for game populations and sportsmen safety.

An addition to recommendation #4.

At this last GLCB meeting we appointed 2 master guides and a registered guide to study the oral test and make up a new one that would standardize the test. These men ~~are~~ all have an educational background.

Comments Regarding Interim Letter #1
Sunset review GLCB

Recommendation # 1.

I agree with all of Mr. McNutt's comments. In addition I might add. There have been a number of meetings to establish a point for awarding and transferring guiding areas. The suggested method that had the most merit was to award points for criteria relating to use of the area, financial investment in the area, residence alternate areas, etc. I would suggest that those who did so much work on this system be contacted and a system be finalized and approved. This will eliminate most of the criticism related to transfers.

Recommendation # 2.

Agree with Mr. McNutt.

Recommendation #3.

I completely agree with Mr. McNutt's comments and would like to add emphasis here. The assigned area concept will do more to elevate the quality of guiding in Alaska than any change in years. It gives the area holders a responsibility toward the area and game. Now through leases from the state and permits from the federal government, it will be possible for guides to build permanent structures in many areas. The guides will continue to increase their investments in areas. As the investment both in time and monetary increases so does the guides financial responsibility increase. After working for years to build a high quality operation it seems only just that upon retirement the permit holder would be able to choose his successor, who in nearly every case would be the most qualified person for the transfer no matter what selection criteria were used. There have been abuses of this in the past as there were some transactions that seemed to be merely real estate sales. The GLCB is aware of this and is taking a firm stance against real estate dealers. It would seem that guiding like any other business would allow a successful and ambitious business man to build some value into his business so that when it came time for retirement he would have something to sell. Because the guiding business involves land and resources that belong to the public, the burden of responsibility upon the area permit holder is great. aside from his investment in property and equipment the value lies in his concessionary right to the area and it's wildlife. If he has treated these right with regard and respect and obeyed all covenants both moral and legal it seems only right that he should be able to sell this right to another qualified individual of his choosing. This would allow him to maximize the return for his investment.

Recommendation #4.

The GLCB commented on this in addition to Mr. McNutt's comments and covered it quite thoroughly.

Recommendation # 5.

Agreed with Mr. McNutt.

Testimony: Mr Ed Whitecough
 GLENNVILLE, ALASKA.

I will begin by stating that many of the following ideas are not only my own but those of long established guides, law enforcement officials and state employees.

We believe the only ^{WAY} to have proper control with fair and unbiased decisions would be to put the guiding industry back under the control of F&G. These would be full time paid professionals who would be unbiased and objective in their decisions. Since they end up enforcing the laws it would make sense to give them control. The present system is biased, self serving and unfair not only to many guides but to the general public. We can't continue to let the foxes watch the chickens.

I would ask the resources committee and this legislature to delay passage of S.B. 294 until a complete, professional, and objective investigation can be made of the complete guiding industry. The present guide statutes, regulations, S.B. 294, and many of the decisions made by the guide bd. are biased, discriminatory, and unfair. Since the present system will continue for a year it will give the state time to develop a new system to clean up the existing mess.

I propose that a panel consisting of guides, reg. and assist. F&G, and ~~public~~ public sector people review and rewrite a complete new set of laws to regulate the guiding industry. Then and only then can we have laws that are fair and can be administered objectively. The guiding industry has had it's chance to police itself and failed miserably. Greed and utter disregard for individual rights have caused the guiding industry to cut it's own throat.

The present system is VERY COSTLY to the state and individuals who must resort to administrative hearings and court hearings with expensive attorney fees to attempt to obtain justice in a fair and equitable way. The bd. constantly makes mistakes and pleads ignorance of the laws which govern it.

Please review s.b. 294, the ~~existing~~ statutes and regs. and the minutes of previous gd. bd. meetings looking for discriminatory and unfair laws and decisions. I will cite a couple examples.

08.54.200 Why should a guide be allowed TWO violations before his license is revoked? What citizen is allowed two violations? It also states may revoke n ot shall revoke. You can bet if you are a good ol boy it won't be revoked. Proposed legislation 12 AAC 38.140 Applicant must hold a current first aid certification. Why not ALL guides must hold such certification. In the minutes you will find more than one reference to guide areas being sold. I believe all transfers of guide areas that were sold should be void.

No member of a bd. except for the 3 guides is supposed to have a vested interest in the profession the bd. regulates. Check the occupation of the gd. bd. members.

The laws also establish a double standard within the industry. Many assist. ⁺ class a guides are exploited by the good ol boys. Many of these are native guides. Also many guides make no attempt to train the assist. guides to help them move up; in fact many of them attempt to restrict their attempts to obtain a reg. license.

The practices of the guiding industry can and do erode public confidence in state government. Do not let the high pressure lobbying efforts of the guiding ^{industry} cause you to overlook the abuses fostered by the present system. S.B. ²⁹⁴ is only a continuation of the present unequatable system. There must be a set of laws that treat all citizens fairly and a bd. that administers those laws objectively. S.B. 294 and the present guide bd. does neither.

If you doubt what I say send a questioner[?] to ALL guides requesting their opinions and comments. Keep it confidential as many of the guides fear repercussions

I have not bothered going into extensive and detailed account of either the discriminatory laws or biased decisions I have personally seen. I will not waste your time with war stories. I only ask for no gd. bill to pass so as to allow those of us who are interested to have an input in an objective set of laws that will not only protect guides but be fair to all citizens and protect our wildlife resources. To allow these abuses to continue by passage of the presently introduced gd. bill would be a grave injustice not only to good guides but to all citizens of our state and to the clients who bring a lot of money into the state. The existing laws and decisions are probably unconstitutional and are definitely discriminatory and biased to a select few.

I have personally been a victim of both a reg. guides illegal operation and the discriminatory practices of the bd. There is presently an investigation into my case by the division of occup. licensing. Mine is only one of many such incidents which have occurred over the years. Since the gd. bd. has moved from the control of W&G it has had a very poor record and image. This is not to say that there have not been well meaning people who have given their time. I have never seen an occupation such as guiding with the ability to govern itself fairly and objectively. Our government is filled with checks and balances to avoid the situation we have with guiding.

The guiding industry is facing a very uncertain future. The native land claims and their right to manage their own lands plus declining game populations and increased resident pressure will make it much more important to have a system that all citizens have confidence in.

The day of the GOOD OL BOYS and their monopoly of our resources is over and must be replaced with a fair and equitable system.

Integrity has a price and we must have the courage to pay it
Now.

More money must be given to the enforcement division also. Each guide must believe each of his clients is an undercover agent. Because of the isolation where the hunts take place it is too easy to violate the law. There are too many illegal guides that serve too many illegal hunters and cheat everyone. The laws must be rewritten to force these outlaws out of business once and for all. Illegal guiding is too lucrative and the penalties must be severe enough to eliminate this practice. Too many guides are unable or rather unwilling to adapt to the new laws. They continue to operate as they did in the good ol days. The existing laws are also left over from the past and must have a through overhaul. Please insure this by not passing S.B. 294. This bill will insure we continue to have the problems that now exist. Please don't force us to put up with this un fair system another four years.