

HB

267



Alaska State Legislature

HOUSE RESOURCES COMMITTEE

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3715

MEMORANDUM

To: House Resources Committee
From: Rep. Curt Menard
Re: HB 267, Licensing of Sport Fish Guides
Date: February 16, 1990

In an effort to incorporate changes recommended by the Sport Fishing Community I have drafted a Committee Substitute for the Committee's consideration. The following are the substantive changes between the original bill and the Committee Substitute.

Section 1 Same

Section 2

Page 1, line 20 - Reduced age from 21 to 18 for Sport Fishing Guides.

Page 1, line 22 - Requires a Guide to have a current fishing license.

Page 2, line 4 - Allows a violation in the last 3 years to be raised from \$100 to \$300 for a guide.

Page 2, line 8 - Allows for proof of a Coast Guard License to meet the requirements of boating safety.

Page 2, line 21 - Requires an assistant guide to have a current sport fishing license.

Page 2, line 25 - Allows a violation in the last 3 years to be raised from \$100 to \$300 for an assistant guide.

Page 2, line 29 - If an assistant guide is carrying passengers for hire, the assistant guide must have a coast guard license or pass a boating safety test administered by the Department and pass a test including wilderness survival, fish identification, and sport fishing regulation.

Page 3, line 10 - The department shall administer a minimum proficiency test for guides and assistant guides at least 3

times a year and allow Fish and Game to administer the test through the local sport fish offices in Fish and Game.

Page 3, line 14 - Adds language explaining the duties of the licensee, specifically, in addition to the requirements already required by the U.S. Coast Guard, the licensee shall provide personal flotation devices, first aid supplies and provide an annual report to the Department of Fish and Game.

Page 4, line 14 - Adds language to set up grounds for imposition of disciplinary sanctions.

Page 5, line 3 - Adds language to provide for disciplinary sanctions.

Page 5, line 8 - Allows the department to draft regulations to implement the legislation.

Page 6, line 21 - Adds definitions for license and licensee.

Page 6 line 27 - Changes the definition for sport fish guiding so that persons who guide canoe trips or white water rafting trips are not considered fish guides unless they actually assist the fishing activity.

Section 6

Page 7, Line 16 - Deletes the authority of DNR to establish licensing requirements for sport fish guides on the Kenai River but still authorizes DNR Commissioner to control the activities and operations of sport fish guides on the Kenai River.

Section 7

Page 7, line 28 - Makes the Department of Commerce and Economic Development subject to the adjudicatory procedures set out in the administrative procedures act.

Section 8

Page 8, line 3 - Provides an affective date of April 1, 1991, giving almost 1 year, to implement the regulations and the legislation.

Section 9

Page 8, line 5 - Allows for effective date of section 6, dealing with the Kenai River, to take effect on January 1, 1992.

Original sponsor(s): REP. MENARD, Larson, Hoffman, Goll, Foster,
Swackhammer

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 267 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the licensing of sport fishing
7 guides; and providing for an effective date."

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

9 * Section 1. FINDINGS. Sport fishing is an important part of a sound
10 fisheries resource management system. The state realizes significant
11 social and economic benefits by maintaining a viable sport fishing indus-
12 try. The legislature finds that licensing of sport fishing guides will
13 protect the fishery resources of the state, promote the continued viability
14 of the sport fishing industry in the state, and ensure that consumers of
15 sport fishing guide services have a positive recreational experience.

16 * Sec. 2. AS 08.54 is amended by adding new sections to read:

17 ARTICLE 8. SPORT FISHING GUIDES.

18 Sec. 08.54.600. SPORT FISHING GUIDE LICENSES. (a) The depart-
19 ment shall issue a sport fishing guide license to a natural person who

20 (1) is 18 years of age or older;

21 (2) applies on a form provided by the department;

22 (3) has a current sport fishing license;

23 (4) has a business license to provide sport fishing guide
24 services;

25 (5) provides certification, or other proof, satisfactory to
26 the department, of a practical knowledge of first aid and cardio-
27 pulmonary resuscitation;

28 (6) provides proof of liability insurance in the amounts of
29 at least \$300,000 per occurrence and an aggregate of at least \$500,000

1 per year from an insurance company holding a certificate of authority
2 under AS 21.09 or listed as an eligible nonadmitted insurer under
3 AS 21.34;

4 (7) has not been convicted during the preceding three years
5 for a violation of a statute or regulation relating to fishing or
6 hunting or to sport fishing guide services for which the person was
7 fined \$300 or more or was imprisoned for more than five days;

8 (8) possesses a license issued by the United States Coast
9 Guard to carry passengers for hire or passes a minimum proficiency
10 test in boating safety and boat handling skills developed by the
11 department; and

12 (9) passes a minimum proficiency test developed by the
13 department, in conjunction with the Department of Fish and Game, that
14 includes

- 15 (A) wilderness survival;
16 (B) fish identification; and
17 (C) sport fishing regulations.

18 (b) The department shall issue an assistant sport fishing guide
19 license to a natural person who

- 20 (1) applies on a form provided by the department;
21 (2) has a current sport fishing license;
22 (3) provides certification, or other proof, satisfactory to
23 the department, of a practical knowledge of basic first aid and car-
24 diopulmonary resuscitation;
25 (4) has not been convicted of violating a statute or regu-
26 lation relating to fishing or hunting or to sport fishing guide ser-
27 vices during the preceding three years for which the person was fined
28 \$300 or more or was imprisoned for more than five days;

29 (5) possesses a license issued by the United States Coast

1 Guard to carry passengers for hire or passes a minimum proficiency
2 test in boating safety and boat handling skills developed by the
3 department; and

4 (6) passes a minimum proficiency test developed by the
5 department, in conjunction with the Department of Fish and Game, that
6 includes

- 7 (A) wilderness survival;
8 (B) fish identification; and
9 (C) sport fishing regulations.

10 (c) The department shall administer minimum proficiency tests at
11 least three times each year. The department may enter into agreements
12 with the Department of Fish and Game to administer minimum proficiency
13 tests at or through offices of the Department of Fish and Game.

14 Sec. 08.54.610. DUTIES OF LICENSEES. (a) A licensee shall have
15 a current sport fishing license in actual possession while providing
16 sport fishing guide services.

17 (b) A licensee shall obtain a license from the Coast Guard to
18 carry passengers for hire, if the licensee transports sport fishermen
19 by water and if licensure is required by the United States Coast
20 Guard.

21 (c) A licensee shall provide safety equipment on board a vessel
22 operated by the licensee to provide transportation or sport fishing
23 guide services to sport fishermen, including

- 24 (1) United States Coast Guard approved personal flotation
25 devices of the appropriate size for each person on board;
26 (2) first aid supplies; and
27 (3) other boating safety equipment required by law.

28 (d) A sport fishing guide shall supervise the conduct of sport
29 fishing guide services by assistant sport fishing guides employed by

1 the sport fishing guide.

2 (e) A sport fishing guide shall provide annual reports as are
3 required by the department. The department shall collect information
4 requested by the Department of Fish and Game and shall provide that
5 information to the Department of Fish and Game.

6 Sec. 08.54.620. FEES. The department shall set fees under
7 AS 08.01.065 for licenses issued under AS 08.54.600 - 08.54.690;
8 however, the maximum license fee for residents is \$100. The license
9 fee for nonresidents shall be three times the license fee for resi-
10 dents.

11 Sec. 08.54.630. REGISTER OF SPORT FISHING GUIDES. The depart-
12 ment shall annually compile a register of licensed sport fishing
13 guides and shall make the register available to the public.

14 Sec. 08.54.640. GROUNDS FOR IMPOSITION OF DISCIPLINARY SANC-
15 TIONS. The department may, after a hearing, impose a disciplinary
16 sanction under AS 08.54.650 on a licensee when the department finds
17 that the licensee

18 (1) secured a sport fishing guide license or an assistant
19 sport fishing guide license through deceit, fraud, or intentional mis-
20 representation;

21 (2) engaged in deceit, fraud, or intentional misrepresenta-
22 tion in the course of providing professional services or engaging in
23 professional activities subject to AS 08.54.600 - 08.54.690;

24 (3) advertised professional services subject to AS 08.54.-
25 600 - 08.54.690 in a false or misleading manner;

26 (4) has been convicted of a felony or other crime that
27 affects the licensee's ability to continue to competently and safely
28 provide professional services subject to AS 08.54.600 - 08.54.690;

29 (5) failed to comply with AS 08.54.600 - 08.54.690, with a

1 regulation adopted under AS 08.54.600 - 08.54.690, or with an order of
2 the department.

3 Sec. 08.54.650. DISCIPLINARY SANCTIONS. (a) When the depart-
4 ment finds that a person has violated AS 08.54.610, is subject to a
5 disciplinary sanction under AS 08.54.640, or is guilty of an offense
6 under AS 08.54.660, the department may impose the following sanctions
7 singly or in combination:

- 8 (1) permanently revoke the person's license;
- 9 (2) suspend the license for a determinate period of time;
- 10 (3) deny the issuance or renewal of a license;
- 11 (4) issue a letter of reprimand to the licensee;
- 12 (5) place the licensee on probationary status and impose
13 appropriate conditions on the licensee during the probationary period;
- 14 (6) impose limitations or conditions on the sport fishing
15 guide services of the licensee.

16 (b) The department may withdraw probationary status of a licens-
17 ee if it finds that the deficiencies that required the sanction have
18 been remedied.

19 (c) The department may summarily suspend a license before final
20 hearing or during the appeals process if the department finds that the
21 licensee poses a clear and immediate danger to the public health and
22 safety if the licensee continues to provide sport fishing guide ser-
23 vices. A licensee whose license is suspended under this subsection is
24 entitled to a hearing by the department within seven days after the
25 effective date of the suspension. Following the hearing, the licensee
26 may appeal an adverse decision of the department to the superior
27 court.

28 Sec. 08.54.660. UNLAWFUL ACTS. (a) A person may not provide
29 sport fishing guide services without holding a sport fishing guide

1 license issued under AS 08.54.600 - 08.54.690.

2 (b) A person may not assist, for compensation, in providing
3 sport fishing guide services without holding an assistant sport fish-
4 ing guide license issued under AS 08.54.600 - 08.54.690 and without
5 being employed by a licensed sport fishing guide.

6 (c) A person who violates this section is guilty of a class B
7 misdemeanor.

8 Sec. 08.54.685. REGULATIONS. The department may adopt regula-
9 tions under the Administrative Procedure Act (AS 44.62) necessary to
10 implement AS 08.54.600 - 08.54.690.

11 Sec. 08.54.690. DEFINITIONS. In AS 08.54.600 - 08.54.690

12 (1) "compensation" means payment for services including
13 wages or other remuneration but not including reimbursement for actual
14 expenses incurred;

15 (2) "department" means the Department of Commerce and
16 Economic Development;

17 (3) "field" means an area outside of established year-round
18 dwellings, businesses, or other developments usually associated with a
19 city, town, or village; "field" does not include permanent hotels or
20 roadhouses on the state road system;

21 (4) "license" means a sport fishing guide license or assis-
22 tant sport fishing guide license issued under AS 08.54.600 - 08.-
23 54.690, unless the context requires otherwise;

24 (5) "licensee" means a natural person who holds a sport
25 fishing guide license or an assistant sport fishing guide license
26 issued under AS 08.54.600 - 08.54.690;

27 (6) "sport fishing guide services" means accompanying or
28 being present with and assisting or guiding the fishing activity of a
29 sport fisherman in the field, personally or through an assistant, for

1 compensation or with the intent or agreement to receive compensation.

2 * Sec. 3. AS 08.01.010 is amended by adding a new paragraph to read:

3 (31) regulation of sport fishing guides under AS 08.54.

4 * Sec. 4. AS 08.01.050(a)(4) is amended to read:

5 (4) notify applicants of acceptance or rejection as de-
6 termined by the board or as determined by the department under
7 AS 08.11 for audiologists, under AS 08.45 for naturopaths, under
8 AS 08.54 for sport fishing guides and assistant sport fishing guides,
9 or under AS 08.55 for hearing aid dealers;

10 * Sec. 5. AS 08.01.050(a)(9) is amended to read:

11 (9) issue licenses or temporary licenses as authorized by
12 the board or as authorized by the department under AS 08.11 for audi-
13 ologists, under AS 08.45 for naturopaths, under AS 08.54 for sport
14 fishing guides and assistant sport fishing guides, or under AS 08.55
15 for hearing aid dealers;

16 * Sec. 6. AS 41.21.506(b) is amended to read:

17 (b) The commissioner shall adopt regulations under the Adminis-
18 trative Procedure Act (AS 44.62) that are necessary to achieve the
19 purposes of AS 41.21.500 - 41.21.514 and to implement the plan adopted
20 under (a) of this section. The regulations must [SHALL]

21 (1) designate incompatible uses and prohibit or restrict
22 them, and

23 (2) control the activities and operations of sport fishing
24 guides licensed under AS 08.54 [ESTABLISH A REGISTRATION, LICENSING,
25 OR COMPARABLE PROCEDURE FOR PROFESSIONAL FISHING GUIDES AND SUCH
26 ADDITIONAL FISHING GUIDE CONTROLS] as the commissioner considers
27 necessary.

28 * Sec. 7. AS 44.62.330(a) is amended by adding a new paragraph to read:

29 (55) Department of Commerce and Economic Development concerning

1 the licensing and regulation of sport fishing guides and assistant
2 sport fishing guides under AS 08.54.600 - 08.54.690.

3 * Sec. 8. Except for sec. . of this Act, this Act takes effect April 1,
4 1991.

5 * Sec. 9. Section 6 of this Act takes effect January 1, 1992.
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AMENDMENTS

To CSHB 267 (Re)

On p.2, line 9 - 11, place a semicolon after "for hire", then delete "or passes a minimum proficiency test in boating safety and boat handling skills developed by the department".

On p.2, line 15, delete "wilderness survival", then add "boating safety and handling".

on p.3, line 1 - 3, place a semicolon after "for hire", then delete "or passes a minimum proficiency test in boating safety and boat handling skills developed by the department".

On p.3, line 7, delete "wilderness survival", then add "boating safety and handling".

On p.6, line 5, exchange the period after "fishing guide" for a comma, then add "unless that person is in the direct supervision and physical presence of a sport fishing guide at all times in the field".

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. MENARD

TO: Draft CSHB 267 (Resources) dated 1/31/90

Page 2, line 3, after "AS 21.34":

Insert "or posts a bond in an amount determined to be sufficient by
the department"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. MENARD

TO: Draft CSHB 267 (Resources) dated 1/31/90

Page 1, line 20, after "older":

Insert "and is a citizen of the United States or a resident alien"

Page 2, line 20, after "(1)":

Insert "is a citizen of the United States or a resident alien;
(2)"

Renumber the following paragraphs accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. MENARD

TO: Draft CSHB 267 (Resources) dated 1/31/90

Page 4, line 8:

Delete "residents is \$100"

Insert "a resident sport fishing guide license is \$100 and for a
resident assistant sport fishing guide license is \$25"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. MENARD

TO: Draft CSHB 267 (Resources) dated 1/31/90

Page 1, line 26:

Delete "a practical knowledge of"

Insert "completion of training in"

Page 1, line 27, after "resuscitation":

Insert "within one year before the initial application for the sport fishing guide license"

Page 2, line 23:

Delete "a practical knowledge of"

Insert "completion of training in"

Page 2, line 24, after "resuscitation":

Insert "within one year before the initial application for the assistant sport fishing guide license"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. MENARD

TO: Draft CSHB 267 (Resources) dated 1/31/90

Page 2, line 9, after "hire":

Insert "on navigable water subject to jurisdiction of the United States Coast Guard"

Page 2, line 11, after "department":

Insert "for lakes and water subject to the jurisdiction of the state"

Page 3, line 1, after "hire":

Insert "on navigable water subject to jurisdiction of the United States Coast Guard"

Page 3, line 3, after "department":

Insert "for lakes and water subject to the jurisdiction of the state"

Page 3, line 18, after "hire":

Insert "on navigable water subject to jurisdiction of the United States Coast Guard"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. MENARD

TO: Draft CSHB 267 (Resources) dated 1/31/90

Page 4, line 5, after "Game.":

Insert "Aggregated data compiled from information collected under this section may be included in reports of the department and the Department of Fish and Game, but for all other purposes, the information collected under this section is confidential and is not subject to inspection or copying under AS 09.25.110 - 09.25.125."

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. MENARD

TO: Draft CSHB 267 (Resources) dated 1/31/90

Page 6, line 10, after "08.54.690.":

Insert "The department shall consult with the Department of Fish and Game in developing regulations to be adopted under this section."

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

February 15, 1990

The Honorable Curt Menard
Alaska State Representative
P.O. Box V
Juneau, AK 99811

Re: HB 267

Dear Representative Menard:

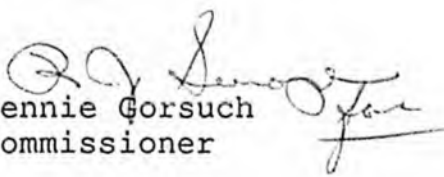
The Department of Natural Resources supports the bill with the following amendment. Insert the following language into Sec. 08.54.310 FEES:

"Fees levied for licenses issued under AS 08.54.300 - 08.54.390 do not eliminate commercial use or access fees or other requirements levied by public or private land management agencies, including commercial use permits for utilizing state park or other state owned land and water."

The purpose of this suggested amendment is to make it clear to sport fish guides that they may still need to pay land or commercial use fees to a public or private landowner or manager.

My staff and I are available to provide you with any additional assistance that you may require on this bill.

Sincerely,


Lennie Gorsuch
Commissioner

cc: Commissioner Larry Mercurieff
Department of Commerce and Economic Development
Commissioner Don Collinworth
Department of Fish and Game

Enclosures

**STATE OF ALASKA
1990 LEGISLATIVE SESSION**

BILL VERSION: HB 267
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 14-Feb-90 Agency Affected: Natural Resources
Title: An Act relating to the licensing BRU: Parks Management
of sport fishing guides.
Sponsor: Menard Components: Parks Management
Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky Phone: 465-2400
Division: Commissioner's Office Date: 14-Feb-90
Approved by Commissioner: Lennie Gorsuch Date: 14-Feb-90
Agency: Department of Natural Resources

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
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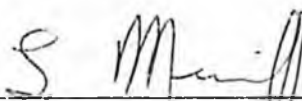
HB 267: An Act relating to the licensing of sport fishing guides.

HB 267 proposes to establish a new program for the licensing of sport fishing guides. The guides would be licensed in two categories: sport fishing guide, and assistant sport fishing guide. (Information on file indicates there may be in excess of 2,500 sport fishing guides presently doing business in Alaska.) The bill also proposes to ensure competency of sport fishing guides by establishing certain licensing requirements, including examination, proof of liability insurance, and a record free of fishing, hunting or sport fishing guide convictions in the last three years.

The bill places responsibility for licensing both classes of sport fishing guides under the department, not under a board. Because of significant problems that have occurred where the department -- not a board -- has had responsibility for licensing a profession or occupation but not had specific authority to adopt regulations, we recommend that the bill be amended to provide that the department have the authority to adopt regulations required by the chapter or which are reasonably necessary for its administration.

Section 2 of the bill requires a sport fishing guide to provide proof of liability insurance in the amount of at least \$300,000 per occurrence and an aggregate of at least \$500,000 per year. Information obtained from the Division of Insurance informs us that this fish guide requirement would not be overly burdensome (\$700 - \$1000 per year).

The department does not oppose the licensing of sport fishing guides but does request that the bill be amended to provide the department with the authority to adopt regulations.



Larry Mercurieff, Commissioner
Department of Commerce and Economic
Development
Date: 4/19/89

LM/RPB/dgl3902D
041989a

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 267
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
Title: An Act relating to the licensing BRU: Occupational Licensing
of sport fishing guides
Sponsor: Menard, Larson, Hoffman, Components: Admin.
Requester: Goll, Foster and Swackhammer

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	25.5	25.5	25.5	25.5	25.5
TRAVEL	0	1.4	1.4	1.4	1.4	1.4
CONTRACTUAL	0	18.0	18.0	18.0	18.0	18.0
SUPPLIES	0	2.2	2.2	2.2	2.2	2.2
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	47.1	47.1	47.1	47.1	47.1

CAPITAL	0	0	0	0	0	0
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REVENUE	0	375.0	18.8	393.8	19.7	413.4
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FUNDING: (Thousands of dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER GF/PR	0	47.1	47.1	47.1	47.1	47.1
TOTAL	0	47.1	47.1	47.1	47.1	47.1

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

The bill establishes the licensing of sport fishing guides in two categories: sport fishing guide, and assistant sport fishing guide. The bill places the sport fishing guide act under AS 08.54; however, the bill also assigns the responsibility of licensing sport fishing guides to the department.

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
Division: Occupational Licensing Date: April 11, 1989

Approved by Commissioner: Larry Mercurieff Phone: 465-2500
Agency: Department of Commerce & Economic Development Date: 4/11/89

Distribution (by preparer):

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

3810D-1/041189a

CONTINUATION of FISCAL NOTE ANALYSIS

For HB 267

Information on file indicates there may be in excess of 2,500 sport fishing guides doing business in Alaska. This figure, however, does not include individuals who may seek licensure as assistant sport fishing guides. Since there is no way of knowing the number of assistant sport fishing guides who may seek licensure under this bill, calculations in this fiscal note are based specifically on the 2,500 sport fishing guides. Expenditures are based on the following:

Personal Services: \$25.5

60% of a Licensing Examiner position (\$23.7)
2% of a Investigator position (\$1.8)

(The percentages used are based on an occupation with similar number of licensees.)

Travel: \$ 1.4

This will provide funding for examinations to be administered twice a year at sites other than Juneau; e.g., Kenai, where large numbers of sport fishing guides operate their services.

Contractual: \$18.0

This funding will provide for examination development, communication expenses, public notices, and printing costs of applications, statutes, etc.

Supplies: \$2.2

This will provide funds for necessary operating supplies, such as desk top material (pens, stationary, envelopes, etc.).

The expenditures identified in this fiscal note are based on new costs which are anticipated as a result of the new licensing program. Once the program is placed in occupational licensing, like all other occupations, sport fishing guides will be expected to cover a portion of the overall administrative costs based on the number of licensees. Based on 2,500 licensees, this will translate into 8.49% totalling approximately \$130.0 in administrative overhead. In summary, the total program cost to be covered by licensing fees is \$177.1:

\$ 47.1	new costs
<u>\$130.0</u>	administrative overhead based on 2,500 licensees
<u>\$177.1</u>	

REVENUES:

The revenues were calculated based on 2,500 sport fishing guides seeking licensure in the first year, and paying a biennial license fee of \$150.00. Since we are unable to identify the number of assistant sport fishing guides who may be eligible for licensure, revenues identified are based exclusively on the 2,500 sport fishing guides, not including assistant sport fishing guides.

FY 90:

2,500 x \$150 (biennial) \$375.0

FY 91: Based on 5% increase of new applicants over the 2,500

125 x \$150 (biennial) \$18.8

FY 92: Renewal year -

2,625 x \$150 (biennial) \$393.8

FY 93: Based on 5% increase of new applicants over the 2,625

131 x \$150 (biennial) \$19.7

FY 94: Renewal year -

2,756 x \$150 (biennial) \$413.4

Note that the average annual revenues are sufficient to cover the costs of the licensing program. During a nonrenewal year, like all other licensed occupations, costs of the sport fishing guide license program will be covered by other occupations renewing in that year.



1987-88

Oregon Wildlife And Commercial Fishing Codes

Includes amendments and new statutes passed by
The Oregon Legislature through the 1987 session.

Oregon Dept. of Fish and Wildlife
PO Box 59
506 SW Mill St.
Portland, OR
97207

them by poisoning, trapping or other appropriate and effective means. [Amended by 1971 c.658 §30]

OUTFITTERS AND GUIDES

GENERALLY

704.010 Definitions. As used in this chapter:

(1) "Board" means the State Marine Board.

(2) "Employe" means an individual who, in exchange for compensation or other pecuniary gain, provides outfitting and guiding services exclusively under the direction, supervision and control of an outfitter and guide or an ocean guide.

(3) "Ocean guide" means any individual who carries passengers for hire for outdoor recreational activities only on the waters of the Pacific Ocean over which the State of Oregon has jurisdiction and who possesses therefor a valid United States Coast Guard vessel operator license.

(4) "Outdoor recreational activities" include, but are not limited to, boating, angling, hunting, jeep touring, backpacking, alpine mountain climbing, camping, trips utilizing pack animals, dog sled trips, helicopter skiing, whitewater float trips, rafting trips, drift boat trips, kayak trips, inflatable canoe trips and canoe trips. The duration of any outdoor recreational activities may be for a few hours or for several days or weeks.

(5)(a) "Outfitter and guide" means any person:

(A) Who provides, or who offers to provide, for compensation or other pecuniary gain:

(i) Outfitting and guiding services in Oregon; or

(ii) Outfitting and guiding services and either equipment, supplies, livestock or materials for use in Oregon; or

(B) Who holds one or more federal permits for commercial outfitting and guiding services for use in any forest or wilderness or on any river in Oregon.

(b) "Outfitter and guide" does not include:

(A) An ocean guide or an employe of an outfitter and guide or ocean guide; or

(B) An individual who, for compensation or other pecuniary gain, provides outfitting and guiding services for the conduct of outdoor recreational activities exclusively upon property owned or controlled by the individual.

(6) "Outfitting and guiding services" include,

but are not limited to, leading, protecting, instructing, training, cooking, packing, guiding, transporting, supervising, interpreting or otherwise assisting any person in the conduct of outdoor recreational activities. The rental of equipment alone does not constitute outfitting and guiding services.

(7) Outfitting and guiding services are not offered or provided for compensation or pecuniary gain if:

(a) No individual receives any dues, fee, salary, commission, bonus, tip, compensation, equipment, materials, livestock, supplies, rental payment, amortization payment, depreciation payment or other financial gain; and

(b) No money or other remuneration is in any manner paid or collected except as a sharing by trip participants of the costs or expenses for the trip. [1983 c.655 §1]

704.020 Registration required; liability insurance; fees. (1) Any person who acts, or who offers to act, as an outfitter and guide must first register with the board. Each registration shall be submitted annually on a form provided by the board and shall include the following information:

(a) The name, residence address, and residence telephone number of the person providing outfitting and guiding services, and all business names, addresses and telephone numbers under which outfitting and guiding services are provided.

(b) If the outfitting and guiding services are to be performed in the business name of an individual, proof of possession of a current certificate issued to the individual:

(A) By the American Red Cross upon completion of its multimedia course; or

(B) Upon completion of any equivalent medical or American Red Cross training course approved by the board.

(c) If the outfitting and guiding services are to be performed in the business name of a person other than an individual, the outfitter and guide must provide the names of all employes, agents and parties in interest who physically provide, or who directly assist in physically providing, outfitting and guiding services in Oregon, together with the affidavit of the outfitter and guide that each such employe, agent or party in interest possesses a current certificate issued to the employe, agent or party in interest:

(A) By the American Red Cross upon completion of its multimedia course; or

(B) Upon completion of any equivalent medical or American Red Cross training course approved by the board.

(d) A description of:

(A) The outfitting and guiding services, and any equipment, supplies, livestock and materials provided by the outfitter and guide;

(B) The geographic area in which the outfitter and guide provides the outfitting and guiding services, and any equipment, supplies, livestock and materials; and

(C) The experience of the outfitter and guide in providing the outfitting and guiding services, and equipment, supplies, livestock and materials.

(e) Proof that the outfitter and guide has liability insurance covering occurrences by the outfitter and guide, and the employes of the outfitter and guide, which result in bodily injury or property damage. Such insurance shall be not less than the following amounts:

(A) \$300,000 per occurrence general liability coverage; or

(B) Bodily injury liability coverage of at least \$100,000 per person to a total of \$300,000 per occurrence, and \$10,000 property damage per occurrence.

(f) Certification by the outfitter and guide that the outfitter and guide will maintain the insurance required by paragraph (e) of this subsection continuously in full force and effect for a period of not less than one year from the date the certificate of registration described in subsection (3) of this section is issued by the board.

(g) The affidavit of the outfitter and guide stating that for a period of not less than 24 months immediately prior to making the registration application the outfitter and guide and each person who provides or assists in directly providing outfitting and guiding services:

(A) Have not been convicted of:

(i) Any violation of ORS 496.992 (2); or

(ii) Any violation of the wildlife laws which occurred while acting as an outfitter and guide and which resulted in court ordered revocation of the hunting or fishing license of the outfitter and guide;

(B) Have not had an outfitting and guiding license, permit or certificate revoked by another state or by an agency of the government of the United States; and

(C) Have not been denied the right to apply for an outfitting and guiding license, permit or certificate by another state.

(2) Each annual registration shall be accompanied by a fee of \$50.

(3) Upon the submission to the board of the appropriate filing fee in subsection (2) of this section and the registration information required by this section, the board shall issue to the applicant an Oregon Outfitter and Guide certificate of registration. The board shall also issue to each registrant proof of compliance with the requirements of this section, which the registrant must have in possession and submit for examination by any person authorized to enforce this chapter while the registrant is engaged in providing outfitting and guiding services. [1983 c.655 §2; 1985 c.452 §1; 1987 c.400 §1]

704.030 False statements in registration application prohibited. No person shall make any false statement of material fact submitted pursuant to ORS 704.020. [1983 c.655 §5]

704.040 Revocation of registration; restriction on registration application after revocation. (1) When any person is convicted of any violation of ORS 704.020 or 704.030 or any rule promulgated pursuant to ORS 704.500, forfeits bail in connection with any such offense, or pleads nolo contendere to any such offense, the court having jurisdiction of the offense may order the board to revoke the certificate of registration issued to that person pursuant to ORS 704.020.

(2) When a court orders revocation of a certificate of registration pursuant to this section, the court shall take up the certificate of registration and forward it with a copy of the revocation order to the board. Upon receipt thereof, the board shall cause revocation of the certificate of registration in accordance with the court order.

(3) A person who has had a certificate of registration revoked pursuant to this section is ineligible to register under ORS 704.020 for a period of 24 months from the date the court ordered the revocation. [1983 c.655 §7]

704.050 Cancellation of liability insurance; notice to board; suspension of registration. (1) If an insurance company cancels or refuses to renew insurance for an outfitter and guide required by ORS 704.020, the insurance company, not less than 30 days prior to the effective date of termination of the coverage, shall notify the board in writing of the termination and its effective date.

(2) Upon receipt of an insurance coverage termination notice, the board shall send written notice to the outfitter and guide that on the effective date of the insurance coverage termina-

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tion, the board will suspend the certificate of registration of the outfitter and guide unless proof of insurance required by ORS 704.020 is filed with the board prior to the effective date of the proposed insurance coverage termination.

(3) The board may suspend the certificate of registration issued to an outfitter and guide if the outfitter and guide fails to maintain in full force and effect the insurance required by ORS 704.020. A certificate of registration that has been suspended pursuant to this section may not be reinstated until proof of insurance required by ORS 704.020 has been filed with the board. [1983 c.655 §8]

ADMINISTRATION

704.500 Rules. In accordance with any applicable provisions of ORS 183.310 to 183.550, the board may promulgate rules to carry out the provisions of this chapter. [1983 c.655 §3]

704.510 Outfitters and Guides Account. The Outfitters and Guides Account is established in the General Fund of the State Treasury. Except as otherwise provided by law, all moneys received by the State Marine Board pursuant to ORS 704.020 shall be paid into the State Treasury and credited to the account. All moneys in the account are appropriated continu-

ously to the board to carry out the provisions of this section, ORS 704.020 and 704.500. [1983 c.655 §4]

704.520 Board to submit list of registrants to tourism promotion agency. The board will submit annually to the state agency given the responsibility of state tourism promotion a registration list of outfitters and guides and the following information:

(a) The name, business names, addresses and telephone numbers under which outfitting and guiding services are provided;

(b) A description of the outfitting and guiding service;

(c) The geographic area in which the outfitting and guiding service is provided; and

(d) The experience of the outfitter and guide in providing the outfitting and guiding service. [1983 c.655 §9]

PENALTIES

704.990 Penalties. (1) Failure to comply with ORS 704.020 is a Class B misdemeanor.

(2) Violation of ORS 704.030 is a Class B misdemeanor. [1983 c.655 §6]

6-0804E
Utermohle
4/17/89

Original sponsors: Menard, Larson,
Hoffman, et al.

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 267 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the licensing of sport fishing
7 guides."

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

9 * Section 1. FINDINGS. Sport fishing is an important part of a sound
10 fisheries resource management system. The state realizes significant
11 social and economic benefits by maintaining a viable sport fishing indus-
12 try. The legislature finds that licensing of sport fishing guides will
13 protect the fishery resources of the state, ensure the continued viability
14 of the sport fishing industry in the state, and ensure that consumers of
15 sport fishing guide services have a positive recreational experience.

16 * Sec. 2. AS 08.54 is amended by adding new sections to read:

17 ARTICLE 4. SPORT FISHING GUIDES.

18 Sec. 08.54.300. QUALIFICATIONS FOR LICENSES. (a) The depart-
19 ment shall issue a sport fishing guide license to a natural person who

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

21 (2) applies on a form provided by the department;

22 (3) has a business license to provide sport fishing guide
23 services;

24 (4) provides proof, satisfactory to the department, of a
25 practical knowledge of advanced first aid and advanced cardiopulmonary
26 resuscitation;

27 (5) provides proof of liability insurance in the amounts of
28 at least \$300,000 per occurrence and an aggregate of at least \$500,000
29 per year;

1 (6) has not been convicted of violating a statute or regu-
2 lation relating to fishing or hunting or to sport fishing guide ser-
3 vices during the preceding three years for which the person was fined
4 \$100 or more or was imprisoned; and

5 (7) passes a minimum proficiency test developed by the
6 department, in conjunction with the Department of Fish and Game, that
7 includes

8 (A) boating safety and boat handling skills;

9 (B) wilderness survival;

10 (C) fish identification; and

11 (D) sport fishing regulations.

12 (b) The department shall issue an assistant sport fishing guide
13 license to a natural person who

14 (1) is 18 years of age or older;

15 (2) applies on a form provided by the department;

16 (3) provides proof, satisfactory to the department, of a
17 practical knowledge of advanced first aid and advanced cardiopulmonary
18 resuscitation; and

19 (4) has not been convicted of violating a statute or regu-
20 lation relating to fishing or hunting or to sport fishing guide ser-
21 vices during the preceding three years for which the person was fined
22 \$100 or more or was imprisoned.

23 Sec. 08.54.310. FEES. The department shall set fees under
24 AS 08.01.065 for licenses issued under AS 08.54.300 - 08.54.390;
25 however, the minimum license fee for residents is \$100. The license
26 fee for nonresidents shall be three times the license fee for resi-
27 dents.

28 Sec. 08.54.320. REGISTER OF SPORT FISHING GUIDES. The depart-
29 ment shall annually compile a register of licensed sport fishing

1 guides and shall make the register available to the public.

2 Sec. 08.54.330. REGULATIONS. The department may adopt regula-
3 tions under the Administrative Procedure Act (AS 44.62) necessary to
4 implement AS 08.54.300 - 08.54.390.

5 Sec. 08.54.340. UNLAWFUL ACTS. (a) A person may not provide
6 sport fishing guide services without holding a sport fishing guide
7 license issued under AS 08.54.300 - 08.54.390.

8 (b) A person may not assist, for compensation, in providing
9 sport fishing guide services without holding an assistant sport fish-
10 ing guide license issued under AS 08.54.300 - 08.54.390 and without
11 being employed by a licensed sport fishing guide.

12 (c) A person who violates this section is guilty of a class B
13 misdemeanor.

14 Sec. 08.54.390. DEFINITIONS. In AS 08.54.300 - 08.54.390

15 (1) "compensation" means payment for services including
16 wages or other remuneration but not including reimbursement for actual
17 expenses incurred;

18 (2) "department" means the Department of Commerce and
19 Economic Development;

20 (3) "field" means an area outside of established year-round
21 dwellings, businesses, or other developments usually associated with a
22 city, town, or village; "field" does not include permanent hotels or
23 roadhouses on the state road system;

24 (4) "sport fishing guide services" means accompanying or
25 being present with a sport fisherman in the field, personally or
26 through an assistant, for compensation or with the intent or agreement
27 to receive compensation.

28 * Sec. 3. AS 08.01.010 is amended by adding a new paragraph to read:

29 (31) regulation of sport fishing guides under AS 08.54.

1 * Sec. 4. AS 08.01.050(a)(4) is amended to read:

2 (4) notify applicants of acceptance or rejection as de-
3 termined by the board or as determined by the department under
4 AS 08.11 for audiologists, under AS 08.45 for naturopaths, under
5 AS 08.54 for sport fishing guides, or under AS 08.55 for hearing aid
6 dealers;

7 * Sec. 5. AS 08.01.050(a)(9) is amended to read:

8 (9) issue licenses or temporary licenses as authorized by
9 the board or as authorized by the department under AS 08.11 for audi-
10 ologists, under AS 08.45 for naturopaths, under AS 08.54 for sport
11 fishing guides, or under AS 08.55 for hearing aid dealers;

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STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 8, 1989

SUBJECT: Constitutionality of residency requirements
 related to regulation of sport fishing guides
 and sport fishermen (Work Order No. 6-1147)

TO: Representative Curt Menard

FROM: George Utermohle *GU*
 Legislative Counsel

This memorandum is in response to your request for information on the constitutionality of certain residency based requirements related to the regulation of sport fishing guides and sport fishermen.

State imposed residency requirements must be consistent with the privileges and immunities clause of the federal constitution and the equal protection clauses of the state and federal constitutions. Because these constitutional provisions are relevant to the questions that you have asked, they will be discussed briefly before answering your specific questions.

The privileges and immunities clause provides that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. Article IV, sec. 2, U.S. Constitution. This clause was intended to "fuse into one Nation a collection of independent, sovereign states." Toomer v. Witsell, 92 L.Ed 1460, 1471 (1948). In order for a state to violate the privileges and immunities clause, it must deny a nonresident equal treatment with respect to a fundamental right or privilege that is essential "to the promotion of interstate harmony." Supreme Court of New Hampshire v. Piper, 84 L.Ed2d 205, 210 (1985) One of the fundamental privileges that is protected by the clause is the privilege of doing business in other states on terms of substantial equality with residents of those states. States are not precluded from discriminating against nonresidents if (1) "there is a substantial reason for the difference in treatment" and (2) "the discrimination

Representative Curt Menard
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practiced against nonresidents bears a substantial relationship to the State's objective." Id. at 213. In determining whether there is a substantial relationship to the states objective the court will consider the availability of less restrictive means. Id.

Under the equal protection clauses of the state and federal constitutions, the state must treat similarly situated individuals the same unless there is a valid reason for making the distinction. The state may not create distinctions based on suspect classifications or that impinge on fundamental constitutional rights. In examining a statute under equal protection, the court will first determine which individual rights are at stake and whether the distinction created relies on a suspect classification. State v. Erickson, 574 P.2d 1, 12 (Alaska 1978) If the court finds that a fundamental constitutional right, such as the right to vote or freedom of speech or religion, or a suspect classification, such as race, religion, or alienage, are involved the statute will be unconstitutional unless the statute directly fosters a compelling state interest and is narrowly tailored to protect that interest. Id. In analyzing an issue that does not involve fundamental rights or suspect classifications, the Alaska courts utilize a sliding scale of judicial review ranging from relaxed to strict scrutiny. State v. Ostrosky, 607 P.2d 1184, 1192 (Alaska 1984). The appropriate level of scrutiny is determined by the importance of the individual interests affected by the statute and the nature of the classification. Id. Having determined the level of scrutiny the court examines the goals of the statute and the relationship of the means chosen to achieve the goal and the goal itself. Id. at 1193. As the degree of scrutiny applied increases, the more compelling must be the governmental goal and the closer the relationship between the means and the goal of the statute must be. At the lowest level of scrutiny less important governmental goals will suffice and a greater degree of imprecision in the relationship between means and goals will be tolerated.

May the state limit licensure as sport fishing guides to Alaska residents?

Among the fundamental rights protected by the privileges and immunities clause is the right to engage in a livelihood or pursue a profession. Nonresidents who wish to engage in

the business or profession of sport fish guiding would be protected by the clause.

The state is not completely prevented from regulating the licensure of nonresidents as sport fishing guides, but the state must be able to show substantial justification for "discrimination against nonresidents and that the discrimination is substantially related to a problem created by the nonresidents. Mere residency in another state and economic protection of residents are not acceptable justifications for discrimination. Toomer at 1471. To satisfy the first requirement the state must be able to show that allowing nonresidents to become sport fishing guides would create a problem for the state and that the problem is appropriately addressed by the residency requirement. To satisfy the second requirement the state must be able to show that the residency requirement is the least restrictive means available to alleviate the problem posed by nonresident sport fishing guides.

The Supreme Court of Wyoming addressed this issue in regard to hunting guides and found that the probability that residents were more familiar with the terrain, hunting conditions, and species to be hunted than were nonresidents was not sufficient justification for preventing nonresidents from becoming hunting guides and thus the Wyoming residency requirement violated the privileges and immunities clause. Powell v. Daily, 712 P.2d 356 (Wyo. 1986). Likewise the Alaska Attorney General has decided that a residency requirement for hunting guides could not be justified merely because a resident would be more likely to know and abide by the local laws and regulations than were nonresidents. (1986 Alaska A.G.Op. No. 2) As a result hunting guides in the state are no longer required to hold a resident hunting license.

Though the privileges and immunities clause does allow the possibility that the state could use residence as criteria in licensing sport fishing guides if sufficient justification exists and if an appropriate licensing scheme could be developed, it is difficult to hypothesize a fact situation in which the state could validly bar nonresidents from the sport fishing guide profession in the state.

A residency requirement for sport fishing guides would also be subject to challenge as a violation of the right to equal protection. Under equal protection the right to practice a

profession is considered to affect only the economic interests of a person and as a result receives a relatively low level of protection. In such a case the state need only to show that it is pursuing a valid governmental goal by prohibiting nonresidents from obtaining a sport fish guiding license and that prohibiting nonresidents from obtaining the license was a reasonable means to accomplish that goal. If a residency requirement was able to survive a challenge under the privileges and immunities clause, it is highly likely that it could survive a challenge on equal protection grounds.

May the state prohibit non-U.S. citizens from becoming sport fishing guides?

For all practical purposes the answer is no. Under the equal protection clauses of the state and federal constitution discrimination against a person because the person is an alien is viewed in the same light as discrimination against a person because of the person's religion or race. Under equal protection analysis, alienage is considered a suspect class. In order to validly discriminate against a member of a suspect class the state must have a compelling state interest to be protected and the means chosen to achieve that goal must specifically address that goal without being over inclusive or under inclusive.

Protection of the state's fish and game resources may well be a compelling state interest. Article VIII of the Alaska Constitution requires the legislature to do so. However it is very unlikely that the state can identify a risk to state sport fishing resources that arises solely from the fact that a person is an alien or that can be reasonably addressed by preventing aliens from becoming sport fishing guides.

The U.S. Supreme Court has held that a state may not deny a commercial fishing license to aliens; the state's interest in conserving its fishery resources was not sufficient to justify excluding aliens from making a living. Takahashi v. Fish and Game Commission, 92 L.Ed 1478 (1948).

May the state require that nonresidents pay a higher license fee for a sport fishing guide license and, if so, how much?

A state may charge substantially higher fees for nonresident sport hunters than for resident hunters, but the state's

Representative Curt Menard
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interest in protecting its fish and wildlife resources does not permit it, without reason, to interfere with the right of a nonresident to pursue a profession in a state other than his own. Baldwin v. Montana Fish and Game Commission, 56 L.Ed2d 354, 366-67 (1978). Differential fees imposed on nonresidents are subject to review under the privileges and immunities clause under the same standards as were the residency requirements discussed above. A license fee imposed on nonresident commercial fishermen that was 100 times that imposed on resident commercial fishermen was invalid under the privileges and immunities clause. Toomer at 1476. The Toomer court found that the privileges and immunities clause prohibited discrimination against nonresidents where there was not a substantial reason for discrimination, but "it does not preclude disparity of treatment where there are perfectly valid independent reasons for it." Id. at 1471.

Thus the state may impose a higher license fee for nonresident sport fishing guides if it can establish that the higher fee would compensate the state for any additional enforcement cost attributable to nonresidents or for any conservation expenditures from taxes that only residents pay. Id. at 1473. Whether the state can justify a nonresident fee differential and the actual amount of the differential is a function of the evidence that the state can put forward in support of the fee differential.

The nonresident fee differential for commercial fishing limited entry permits is three times the fee paid by residents. AS 16.43.160(b). This fee differential has not been reviewed by the Alaska Supreme Court, but has survived challenges in two lower court decisions. Carlson v. State, Superior Court, Third Judicial District, Anchorage No. 3AN-84-5790 Civ; State v. Cameron, District Court, First Judicial District, Juneau No. 1JU- S82-1094 Cr. The success of the state in these cases may well be due to the ability of the state to show that residents pay more for the conservation of fishery resources than do nonresidents and thus a higher permit fee for nonresidents is valid.

May the state require nonresident sport fishermen to employ sport fishing guides?

Unlike preceding questions which related to regulation of the practice of a profession by nonresidents and which must be addressed under the privileges and immunities clause,

Representative Curt Menard
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this question relates to regulation of the recreational activities of nonresidents and would involve the equal protection clauses of the state and federal constitutions. Baldwin at 362 - 370. Under equal protection the recreational activities of nonresidents are protected from unreasonable and arbitrary regulations. However in order to impose regulations on the recreational activities of nonresidents the state need only show that it is seeking to achieve a valid governmental goal and that the means chosen to achieve this goal is rationally related to the goal. Goals that the state could seek to achieve would include protection of sport fish resources, enforcement of sport fishing laws, and safety of nonresident sport fishermen, but the state must be able to show that there is reasonable basis for requiring that a nonresident sport fishermen be accompanied by a guide when a resident does not need a guide. The state must be able to show that nonresidents are more likely to violate sport fishing laws than residents or that nonresidents are more at risk of injury while sport fishing in the state than are residents. Given that nonresidents have to this date been able to fish in this state on the same basis as residents the state must be prepared to justify the change.

A guide requirement for nonresident hunters in state and federal wilderness areas was upheld by the Supreme Court of Wyoming because the purpose of the requirement was to promote proper game management, protection of hunter welfare and safety, and better enforcement of game and fish laws and, in the opinion of the court, the guide requirement was sufficiently related to these purposes so as to be constitutional. O'Brien v. State, 711 P.2d 1144 (Wyo. 1986). A dissenting opinion in this case questioned whether the guide requirement was rationally related to the stated purposes because (1) there was no evidence that nonresidents were more likely to violate the law than were residents, (2) the law did not require guides for small game hunters and fishermen who were just as likely to be injured in the field or to violate the law as were big game hunters, and (3) nonresidents could be guided by an uncompensated resident who did not have to meet the training and experience requirements of licensed guides. Id. at 1154-1155.

If I may be of further assistance, please advise.

GU:kb
wkk3/081



ALASKA STATE LEGISLATURE

REPRESENTATIVE CURT MENARD

165 E. Parks Hwy.
Wasilla, Alaska 99687
(907) 373-2878

P.O. Box V
Juneau, Alaska 99811
(907) 465-2679



MEMORANDUM

To: House Resources Committee
From: Rep. Menard
Date: April 20, 1989
Re: Bill to require licensing of Sport Fish Guides

I have been working with fish guides statewide to develop legislation to license sport fish guides. Licensing sport fish guides will protect the fishery resources of the state, ensure the continued viability of the sport fishing guide industry and ensure that consumers of sport fishing guide services have a positive recreational experience.

HB 267 sets up certain requirements that fish guides have to meet in order to receive a sport fish guide license. Some of these include: first aid, knowledge of sport fish regulations and boating safety. Sport fish guide licenses would have to be renewed every two years. Fish guides would also be required to pay a small fee and obtain minimal liability insurance. It is the intent of the bill to have the fees be used for implementing the fish guide licensing program.

HB 267 is supported by sport fishing guides throughout the state as well as the Alaska Department of Fish and Game.



Representing the
Matanuska-Susitna Borough

Co-Chair
House Resources Committee
Member
State Affair Committee
Budget Subcommittee