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SENATE COMMITTEE REPORT

FURTHER

2/16/89

DATE TURNED INTO OFFICE

2/23/89

Mr. President:

Finance

Committee considered

SB 139

retroactive extension of the termination date of the Task Force on Guiding and Game; efd

and recommended

- replace with CS SB 139 (Res) )  same title
- or adopt CS )  new title
- attached amendment(s) and  technical title change (HB only)
- letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

- FISCAL NOTE(S)  zero <sup>LAA 24.0</sup>  fiscal impact  appropriation no FN
- new <sub>DPS:DFG; DPEB</sub>  updated  previous
- same as previous fiscal note(s) published \_\_\_\_\_

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature] <sub>Shawlett</sub>

[Signature] <sub>Dixon</sub>

[Signature] <sub>Frank</sub>

[Signature] <sub>Pierce</sub>

[Signature] <sub>Uchling</sub> → Co-Chairman

Chairman signature and recommendation

Committee Backup attached

[Signature] <sub>Binkley</sub> Co-Chair

DO PASS

R/O SFC 2-23-89

17/15

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB139 (RES) (b)  
PUBLISH DATE: 2/16/89

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act extending Task force  
on guiding and game  
Sponsor: Resources  
Requestor: Senator Fahrenkamp

Agency Affected: Fish and Game  
BRU: Wildlife Conservation  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: [Signature]  
Division: Wildlife Conservation  
Approved by Commissioner: [Signature]  
Agency: Fish and Game

Phone: 465-4190  
Date: 2/15/89  
Date: 2/15/89

- Distribution (by preparer):
- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management and Budget
  - Impacted Agency(ies)

740 JFC 2-23-89

A/B

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION CSSB 139 (RES) (a)  
PUBLISH DATE 2/16/89

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act providing for retroactive extension of the termination date of the Task...  
Sponsor: Senate Resources  
Requestor: Senate Resources

Affect Agency Legislative Affairs Agency  
BRU: Legislative Council  
Components Council & Subcommittees

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	10.1	10.1	0	0	0	0
Travel	10.5	10.5	0	0	0	0
Contractual	3.4	3.4	0	0	0	0
Supplies	0	0	0	0	0	0
Equipment	0	0	0	0	0	0
Land & Structures						
Grants, Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>24.0</b>	<b>24.0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	24.0	24.0	0	0	0	0
Federal Fund						
Other						
<b>TOTAL</b>	<b>24.0</b>	<b>24.0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	1	1	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

The Task Force on Guiding and Game was established under the jurisdiction of the Legislative Council Committee. This bill version will add 2 members to the Task Force and extend the termination date of the Task Force to Jan. 15, 1990. The Task Force will be composed of 15 members, 3 from the Executive Branch, 2 legislators from the Legislative Branch and 10 public members.

Prepared By: Pamela Stoops, Director *Pamela Stoops* Phone: 465-3850  
Division: Administrative Services Date: 2/14/89

Approved By: Warren Endicott, Executive Director *Warren Endicott*  
Agency: Legislative Affairs Agency Date: 2/14/89

DISTRIBUTION (BY PREPARER)  
LEGISLATIVE FINANCE  
LEGISLATIVE SPONSOR

REQUESTOR  
OFFICE OF MANAGEMENT & BUDGET  
AGENCY (IES)

**CONTINUATION OF FISCAL ANALYSIS**

It is assumed that travel funds for this task force will be paid as follows:

3 Executive Branch members - absorbed within existing executive branch departments.

2 Legislative Branch members - absorbed within existing Legislative Operating Budget or Session Expenses.

10 Public members - paid by Legislative Council funds as projected below.

Projected expenses for the Task Force on Guiding and Game are as follows:

Personal Services - Staff for the Task Force: Secretary, Range 14, Step A	
3 months full-time--	10,100
Travel-	
2 trips @ 366 x 10 members	7,320
2 days per diem (\$80)	
2 trips x 10 members	3,200
Contractual- Transcription of meetings	360
Advertising-Public Notices	3,000
	<hr/>
	23,980

Supplies- Will come from existing Legislative Council and Legislative Operating supplies.

Equipment- Will come from existing Legislative Council and Legislative Operating equipment.

FY 89 costs are for one-half year.

FY 90 costs are for one-half year.

R/O JFC 2-23-89

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 139 (Res)  
PUBLISH DATE: 2/14/89

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Economic Dev.  
Title: An Act providing for retroactive BRU: Occupational Licensing  
extension of the term, date of the Task Force on Guiding and Game...  
Sponsor: Senate Resources Components: \_\_\_\_\_  
Requestor: Senate Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144  
Division: Occupational Licensing Date: February 15, 1989

Approved by Commissioner: Larry Mercurieff Date: 2/15/89  
Agency: Commerce and Economic Development

Distribution (by preparer):

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

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SFC

2-23-89

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 139 (Res)  
PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: 2/15/89  
Title: Retroactive extension of the termination date of the Task Force  
Sponsor: Senate Resources  
Requestor: Senator Fahrenkamp

Agency Affected: Public Safety  
BRU: Fish & Wildlife Protection  
Component: Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This bill continues the existence of the Task Force on Guiding and Game. No additional impact, beyond that already being incurred by DPS to participate in Task Force meetings, is anticipated.

RECEIVED  
FEB 16 1989

Prepared by: Captain Conrad G. Seibel LEGISLATIVE FINANCE Phone: 269-5509  
Division: Fish & Wildlife Protection Date: 2/15/89

Approved by Commissioner: S.A. English Date: 2/15/89  
Agency: Department of Public Safety

Original sponsor: Resources Committee

1 IN THE SENATE BY THE RESOURCES COMMITTEE  
2 CS FOR SENATE BILL NO. 139 (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 providing for retroactive extension of the  
7 termination date of the Task Force on Guiding and  
8 Game; increasing the membership of the Task Force on  
9 Guiding and Game; authorizing certain agencies to  
10 assist the Task Force on Guiding and Game; and  
11 providing for an effective date."

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

13 \* Section 1. Section 14(d), ch. 160, SLA 1988, is repealed and re-  
14 enacted to read:

15 (d) The task force terminates on the earlier of

16 (1) January 15, 1990; or

17 (2) the date of enactment into law of

18 (A) a licensing system for hunting guides and other  
19 persons who provide services to hunters for the purpose of  
20 facilitating the harvest of big game; and

21 (B) a management system for allocating rights of  
22 access to big game to licensed guides.

23 \* Sec. 2. Notwithstanding the qualifications for members of the Task  
24 Force on Guiding and Game set out in sec. 14(a), ch. 160, SLA 1988, the  
25 members of the task force on January 8, 1989, shall continue to serve until  
26 they resign or the task force is terminated.

27 \* Sec. 3. Notwithstanding the number and composition of the Task Force  
28 on Guiding and Game set out in sec. 14(a), ch. 160, SLA 1988, the member-  
29 ship of the task force is increased by two additional members appointed by

1 the governor. Persons appointed to the task force under this section shall  
2 have expertise in research and analysis and, if possible, particular knowl-  
3 edge in resource management or allocation systems. Persons appointed to  
4 the task force under this section may not have a financial interest in any  
5 business involving or related to the commercial taking of game.

6 \* Sec. 4. The Office of the Governor, office of management and budget,  
7 division of policy and the legislature's House Research Agency and Senate  
8 Advisory Council shall provide information, data, research, analysis, and  
9 technical assistance to the task force, as requested by the task force, for  
10 the purpose of developing a management system for allocating rights of  
11 access to big game to licensed guides.

12 \* Sec. 5. Sections 1 - 4 of this Act are retroactive to January 8,  
13 1989.

14 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

# Alaska State Legislature

## Senate Resources Committee

Senator Bettye Fahrenkamp, Chairman

Senator Jay Kerttula, Vice Chairman  
Senator Dick Ellason  
Senator Steve Frank  
Senator Rick Halford  
Senator Arliss Sturgulewski  
Senator Fred Zharoff



P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4907

### M E M O R A N D U M

TO: Sen. Rick Uehling, Co-Chair, Senate Finance  
Committee

FROM: Sen. Bettye Fahrenkamp, <sup>BT</sup>Chair, Senate Resources  
Committee

RE: CS SB 139 (Res) Extension of Task Force on Guiding  
and Game

DATE: February 17, 1989

The Interim Task Force on Guiding and Game ("Task Force") was established by SB 191 last session. Their mission was to study problems and issues concerning the commercial taking of big game in the state and the businesses or professions that provide goods and services to big game hunters in the state. The task force submitted their recommendations to the 16th Legislature on January 15, 1989.

On October 21, 1988, the Alaska Supreme Court issued an opinion on Owsichuk vs. State which decided that the statutes and regulations that underlie the state's exclusive guide area system ("EGA") are unconstitutional. As a result of that decision the Task Force's focus changed as they wrestled with determining a new system for the guiding industry and others involved in providing commercial services to big game hunters.

The Task Force submitted two draft bills as a part of their report which were introduced by both House and Senate Resources Committees as HB 112 and HB 113, and SB 139 and SB 140.

The Departments of Fish and Game, Commerce and Economic Development, Natural Resources, and Public Safety issued a joint department position paper on SB 139, and proposed amendments which would add two additional members to the Task Force, to be appointed by the Governor. It was felt that the role of the Task Force had changed, and it would be of benefit to have members whose expertise is research and analysis, and, if possible, one who has particular knowledge of resource management or allocation systems.

February 17, 1989

Their second amendment proposes specific language mandating that the staff of a number of entities be required to provide research, analysis and technical assistance to the Task Force.

The Senate Resources Committee considered one additional amendment, and changed the date the Task Force reports to the Legislature from January 15, 1991, to January 15, 1990. The Senate Resources Committee adopted those amendments, which are reflected in the Committee Substitute for SB 139, currently before your committee.

The fiscal note prepared by Legislative Affairs Agency reflects travel and per diem projected costs for the public members. It also provides for clerical staff support, advertising for public notification, and transcribing of minutes. All other fiscal notes are zero fiscal notes.

I have provided copies of the Joint Department Position Paper on SB 139, a portion of the final report to the 16th Legislature, and a letter from the Attorney General's office which explains more fully the implications of the Owsichek decision for your review.

Passage of CS SB 139 (Res) ensures that the Task Force can continue their work to develop a licensing system for those providing commercial services to big game hunters, and to develop a management system for allocating rights of access to big game by those providers.

THE FOLLOWING DOCUMENT HAS  
NOT BEEN FILMED BUT IS  
AVAILABLE IN THE ORIGINAL  
FILE

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

KENNETH D. OWSICHEK, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF ALASKA, GUIDE )  
 LICENSING AND CONTROL BOARD, )  
 )  
 Appellee. )

File No. S-1650

O P I N I O N

[No. 3389 - October 21, 1988]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Milton Souter, Judge.

Appearances: Charles E. Tulin, Anchorage, for Appellant. Michael G. Hotchkin and Sarah E. McCracken, Assistant Attorneys General, Anchorage, Ronald W. Lorensen, Acting Attorney General, Juneau, for Appellee.

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton, and Moore, Justices.

RABINOWITZ, Chief Justice.

We are called upon to decide whether two statutes, AS 08.54.040(7) & .195, compare with article VIII, section 3 of the

- OPINION -

OWSICHEK V. ALASKA GUIDE LICENSING BOARD

NOTICE TO COUNSEL: This opinion will be released to the press and public at 12:30 p.m. Alaska time on the date indicated. This copy is provided for counsel of record in accordance with the release time. It should not be shown to any persons other than your counsel in this case of the outcome.  
Clerk of the Appellate Courts

Alaska Constitution. These statutes authorize the Guide Licensing and Control Board to grant hunting guides "exclusive guide areas," geographic areas in which only the designated guide may lead hunts and from which all other guides are excluded. Licensed hunters, including other guides, may hunt recreationally in these areas, but only the holder of the exclusive guide area may lead hunts professionally.

I.

In 1973 the legislature created the Guide Licensing and Control Board ("GLCB" or "the Board"). Ch. 17, § 1, SLA 1973. This act set forth the composition, powers and duties of the Board, established guidelines for different classes of guide licenses, defined unlawful acts, and provided for the disciplining of guides. Id. It also authorized the Board generally to "regulate activity" of guides, AS 08.54.040(a)(3), and to adopt regulations "required by this chapter or reasonably necessary for its administration." Id. at 08.54.050. The legislative history reveals that the purposes of the act were "to protect fish and game management" and "to get competent people as guides in Alaska." Alaska Legislative Committee Minutes Microfiche No. 37, House Judiciary Committee, H.B. 1, at 20 (Feb. 2, 1973).

One of the first activities of the Board was to establish a scheme of "exclusive guide areas" (EGAs) and "joint use areas." Under this system, a guide would be able to register his

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camp and be entitled to exclusive guiding privileges in a designated area surrounding it. "Joint use areas" would be assigned where the areas used by two or more guides overlapped.<sup>1</sup> The Board first voted in April 1974 to implement this scheme for Game Management Units 16 and 20.<sup>2</sup> Shortly thereafter, in July 1974, the Board voted to extend the program to Unit 9 (Kodiak Island).

For the following year, the Board considered applications for EGAs but took no action. In July 1975, the Board granted dozens of exclusive and joint use areas in the three Units for which the regulation was passed. The Board further resolved at that time to extend the program to eleven more Units, including Unit 19. In January 1976, the Board voted to grant EGAs to qualified guides anywhere in the state. Applications were to be based on "occupancy, use, financial value, and such other qualifications as the Board may prescribe." The Board set

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1. EGAs and joint use areas will be referred to collectively as EGAs.

2. The Board of Game has divided the state into twenty-six Game Management Units, primarily for purposes of establishing hunting seasons and bag limits for different species. For these purposes, many Units are divided into several subunits with different applicable regulations. See AS 16.05.255; 5 AAC 78.001-.600, 80.001-.600, 83.001-.600, 86.001-.910, 88.001-.910. The Guide Licensing and Control Board has adopted these Units for purposes of licensing hunting guides. 12 AAC 38.200(b) (Eff. 6/28/74). Each licensed guide may be certified to practice in up to three Units. 12 AAC 38.200(d) (Eff. 6/28/74). Unit 16 is in South Central Alaska, near Anchorage, and Unit 20 occupies a large part of Interior Alaska, including Fairbanks.

a deadline of November 1, 1976, for receipt of applications for EGAs. The Board began granting EGAs in Units other than 8, 16 and 20 in December 1976, starting with Units 23-26. EGAs for other Units were granted gradually over the following months.

The Board conducted all of this activity without specific statutory authorization, relying only on the general grant of regulatory power in the 1973 legislation. In 1976 the legislature enacted AS 08.54.040(a)(8) (now AS 08.54.040(a)(7)), which authorized the Board to:

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 procedure for limiting the number of guides to that quota; preference shall be given to qualified available and willing licensed guides who reside within the designated game unit or subunit.

Ch. 133, § 1, SLA 1976. This provision took effect January 1, 1977. Id. at § 5. The legislative history reveals that the intent of this section was to ratify the Board's EGA program. Transcript of Senate Resources Committee Hearing on S.B. 661, at 1, 14-15 (March 12, 1976); Transcript of House Resource Committee Hearing on S.B. 661, at 33-34 (April 27, 1976).

Finally, in 1986 the legislature enacted AS 08.54.195.<sup>3</sup> This statute for the first time imposed procedures and criteria

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3. Alaska Statute 08.54.195 provides:

(footnote continued)

on the Board with respect to the EGA program. This reform was

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(footnote continued)

Restricted guide areas. (a) Under AS 08.54.040(a)(7), the board may establish and assign restricted guide areas for master guides or registered guides. The board shall adopt regulations that establish uniform and consistent criteria, including a point system, to be used by the board when it establishes and assigns a restricted guide area.

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

- (1) the extent to which the guide who has applied for the area has guided in the game management unit in which the area is located;
- (2) the extent to which the guide occupied and invested in the area;
- (3) the effects, including the economic effect, on other guides that would result from creation of the area;
- (4) big game populations in the area;
- (5) the land ownership status of the area; and
- (6) other relevant facts or circumstances.

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

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

- (1) after five years have elapsed from the date of the assignment of the guide area; or
- (2) during the first five years after the date of assignment and the guide has died or suffered a major disability, as defined by the board.

(footnote continued)

.. 3359

enacted in response to a "sunset report" on the GLCB by the Division of Legislative Audit, which was harshly critical of the Board's implementation of the EGA program.<sup>4</sup> See Division of Legislative Audit, A Performance Report on the Department of Commerce and Economic Development Guide Licensing and Control Board, Audit Control No. 08.01253-86-R (Nov. 21, 1985).

## II.

Kenneth D. Cwsichak is a registered guide who was licensed to lead hunts in Game Management Units 17, 18 and 19 in February 1976.<sup>5</sup> He alleges that he had worked as an assistant guide in this area from 1972 to 1976. He claims that in January 1976, upon passing his guide license examination, he invested

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(footnote continued)

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

4. The 1986 legislation also modified AS 08.54.045(S) in response to the sunset report. Specifically, the legislation (1) renumbered it subsection .045(7), (2) required "an equitable, reasonable, and consistent procedure" (emphasized language added in 1986), and (3) provided that "preference may be given" to local resident guides (instead of shall). Ch. 71, § 6, SLA 1986.

5. Units 17, 18 and 19 occupy a large area overlapping parts of Southwest, Western and Interior Alaska. See 5 AAC 83.005(d) (Eff. 7/5/85), 86.005(a) (Eff. 7/5/85), 88.005(b) (Eff. 7/5/85).

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\$300,000 to build a lodge and several cabins together with other facilities for a full-scale guiding operation on Lake Clark. He also claims to have spent \$150,000 on four aircraft to fly in clients.

Owsichek's licensing and concurrent investments occurred at approximately the same time the GLCB decided to extend the EGA program on a statewide basis.<sup>6</sup> Accordingly, Owsichek submitted an application for EGAs in Units 17 and 19 before the November 1, 1976, deadline established by the Board. The Board considered applications for EGAs in Units 17 and 19 in its December 1977 meeting. Owsichek's application was denied on the ground that he had not submitted "evidence of contracts for guided hunts in the area for two of the five years preceding the application."

Owsichek petitioned for review of this decision. In November 1978, the Attorney General's office found that, based on contracts submitted for hunts in 1976, 1977 and 1978, he was qualified to receive an EGA in Units 17 and 19, and recommended that the Board adopt this decision. In its December 1978 meeting, the Board resolved "that the portion of Mr. Owsichek's

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6. As discussed above, the Board had decided to grant EGAs in Unit 19 in July 1975, but did not vote to extend the program to the remainder of the state, including Units 17 and 18, until January 1976, the month Owsichek passed his guide licensing exam and allegedly began building his improvements.

application that is not in conflict with presently granted gide [sic] areas be allowed. That no portion of the application that overlaps or is presently in joint use be granted." By letter dated February 5, 1979, the Board informed Owsichuk of its decision and assigned him area 19:33, in Unit 19. Owsichuk objected to this decision because he was unable to land his planes within the areas granted to him, rendering them "unhunnable."

On April 6, 1979, Owsichuk filed a complaint in superior court challenging the Board's actions. His amended complaint alleged that: (1) prior to January 1, 1977, the Board lacked authority to promulgate regulations creating EGAs; (2) the actions of the Board violated due process and equal protection under the federal and state constitutions; (3) the actions of the Board were an unconstitutional taking of property; (4) AS 08.54.040(a)(8) was an unconstitutional delegation of authority because of the lack of standards; (5) the statutes and regulations constituted an unlawful impairment of contracts under the Alaska Constitution; (6) the regulations did not comply with what standards existed in the statute; and (7) he suffered damages. By way of relief Owsichuk sought a declaration that the Board's assigning of EGAs is unconstitutional and that he is entitled to recover damages against the state in an amount in excess of \$100,000 as a consequence of the state's illegal and unconstitutional actions.

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After considering the briefs and hearing oral arguments,<sup>7</sup> the superior court affirmed the actions of the Board, holding "that the Board did not commit any error or abuse of discretion, that its regulations comport with the governing statutes, and that no constitutional infirmity exists in the statutes, regulations or Board decision."

This appeal followed.<sup>8</sup>

### III.

#### A.

Owsichek argues that the EGA statutes and regulations violate the common use clause of the Alaska Constitution, which provides:

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

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7. Before considering the case on the merits, the superior court had dismissed the action as an untimely appeal. This court reversed and remanded, holding that the claim for declaratory relief should have been treated as an independent action rather than an appeal, and that due to surprise and excusable neglect the time limit for appeals should have been relaxed as to the claims for damages and an injunction. *Owsichek v. State, Guide Licensing and Control Board*, 627 P.2d 616 (Alaska 1981).

8. After the parties filed their initial briefs, we requested supplemental briefing on the question of whether AS 08.54.040(7) and AS 08.54.195 violated article VIII, section 3, of the Alaska Constitution.

Alaska Const., art. VIII, § 3. The state argues that this clause is a broad grant of authority to the state to manage these resources, and that it places no limitations on this authority greater than those contained in other constitutional provisions, such as equal protection.<sup>9</sup>

We observe initially that, in guaranteeing people "common use" of fish, wildlife and water resources, the framers of the constitution clearly did not intend to prohibit all regulation of the use of these resources. Licensing requirements, bag limits, and seasonal restrictions, for example, are time-honored methods of conserving the resources that were respected by delegates to the constitutional convention. Questions presented by this case concern the type and extent of permissible regulation consistent with common use.

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9. The state also argues that Owsichuk has no standing to challenge the system as it existed before January 1, 1977, when AS 08.54.040(1)(7) went into effect, because the Board did not establish any EGAs in Owsichuk's Units before that date. In light of our holding that Owsichuk is not entitled to damages, see infra Part IV, we need not address this issue. The declaratory relief to which he is currently entitled is unaffected by the date on which he attained standing.

The state does not argue that Owsichuk lacks standing under the common use clause. We note that we would reject such an argument. We believe that a professional hunting guide's "use" of the wildlife resource is sufficiently direct that he falls within the protection of the common use clause. See infra note 15.

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This court has never considered these questions before. However, in four cases, we have indicated an intent to apply the common use clause in a way that strongly protects public access to natural resources. First, with respect to article VIII generally, we have written, "A careful reading of the constitutional minutes establishes that the provisions in article VIII were intended to permit the broadest possible access to and use of state waters by the general public."<sup>10</sup> Warnberg v. State, 516 P.2d 1191, 1198-99 (Alaska 1973). Given the text of the common use clause, the same policy should apply to wildlife as well.

In CWC Fisheries v. Bunker, 755 P.2d 1115 (Alaska 1988), we addressed the question of whether a state tidelands grant included an exclusive right of fishery, or whether it was subject to a public trust easement. In holding the latter, we relied in part on the common use clause. While specifically declining to determine whether this clause imposed a higher duty than that imposed by common law public trust principles, id. at

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10. Similarly, it has been stated:

The common use clause necessarily contemplates that resources will remain in the public domain, and will not be ceded to private ownership. Since the right of common use is guaranteed expressly by the constitution, it must be viewed as a highly important interest running to each person within the state.

State v. Ostrosky, 667 P.2d 1184, 1196 (Alaska 1983) (Rabinowitz, J., dissenting).

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1120 n.10, we stated, "At least in the absence of some clear evidence to the contrary, we will not presume that the legislature intended to take an action which would, on its face, appear inconsistent with the plain wording of this constitutional mandate." Id. at 1120.

In State v. Ostrosky, 667 P.2d 1184 (Alaska 1983), appeal dismissed, 467 U.S. 1201, 81 L. Ed. 2d 339 (1984), we addressed the constitutionality of limited entry fishing. Limited entry fishing bears an obvious similarity to the EGA scheme in that both place restrictions on the commercial harvesting of a natural resource by giving a special status to a limited number of licensees. In Ostrosky we stated:

[W]e have difficulty squaring the section 3 reservation of fish to the people for common use with a system which grants an exclusive right to fish to a select few who may continue to exercise that right season after season. We accept, therefore, at least for the purposes of this case, the proposition that limited entry is inconsistent with the command of article VIII, section 3.

Id. at 1189. In Ostrosky we held that the Limited Entry Act was not unconstitutional because of a 1972 constitutional amendment explicitly permitting limited entry to fisheries, notwithstanding section 3. Id. at 1190.

In a subsequent limited entry fishing case, Johns v. Commercial Fisheries Entry Comm'n, 758 P.2d 1256 (Alaska 1988), we stated:

In State v. Ostrosky, 667 P.2d 1184 (Alaska 1983), we noted that there is a tension

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between the limited entry clause of the state constitution and the clauses of the constitution which guaranty open fisheries. [Citing sections 3 and 15 of article VIII] We suggested that to be constitutional, a limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely, prevention of economic distress to fishermen and resource conservation.

Id. at 1266.

Since there is no constitutional amendment authorizing EGAs, we must in this case address a common use question similar to that which was not addressed in Ostrosky. We do so, however, in light of our observations in Wernberg, CWC Fisheries, Ostrosky, and Johns that the common use clause was intended to guarantee broad public access to natural resources.

B.

We begin by examining constitutional history to determine the framers' intent in enacting the common use clause. This was a unique provision, not modeled on any other state constitution. Its purpose was anti-monopoly. This purpose was achieved by constitutionalizing common law principles imposing upon the state a public trust duty with regard to the management of fish, wildlife and waters.<sup>11</sup>

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11. Responding to a question about this provision on  
(footnote continued)

added, except to "use"). Because an EGA is clearly a type of monopoly, "exclusive grant," or at least a "special privilege," this history strongly suggests that the statutes at issue here are unconstitutional. However, this history also states that "rights to use are secured by the general laws of the state," clearly giving the legislature some leeway in regulating use of the resources.

The state finds support for its position in a debate that occurred at the convention over registered trap lines. This debate is significant because, like EGAs, registered trap lines would allow a prior existing user to exclude newcomers from the privilege of harvesting the wildlife resource. On the floor of the convention, a delegate asked whether the common use clause would prohibit registered trap lines, and the spokesman for the Resources Committee responded that it would be "arguable." 4 Proceedings of the Alaska Constitutional Convention 2462-63 (Jan. 17, 1956). In response to this concern, the Resources Committee inserted language in the commentary to the common use clause authorizing registered trap lines: "This provision does not apply to the domestication of fur-bearing animals or other animals subject to intensive culture, to fish in private ponds, or to registered trap lines if authorized by law." 6 Proceedings of the Alaska Constitutional Convention app. V, at 98 (Commentary on Article on State Lands and Natural Resources, Jan. 16, 1956)

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(emphasized language added after first draft; cf. id. at 83 (Dec. 16, 1955)).

Resolution of the trap line issue begs the question in the instant case. One might argue that addition of the language excluding registered trap lines from the effect of the common use clause was intended to authorize the legislature to enact this type of regulation generally, and that the reasoning should extend to EGAs. However, the language in the commentary is highly specific, which more likely suggests that the common use clause would prohibit all similar regulation, with registered trap lines as a narrow exception in response to the political pressures of the moment.

In a discussion about fishing in lakes, the Constitutional Convention underscored its intent that the public retain broad access to fish, wildlife and water resources, and that these resources not be the subject of private grants. In floor debates, a question arose about the status of a natural lake falling within the boundaries of someone's private property. The delegates agreed that the common use clause guaranteed the public's right to use the lake for fishing, although it did not authorize a trespass across the landowner's property to get to the lake. 4 Proceedings of the Alaska Constitutional Convention 2460 (Jan. 17, 1956). The Convention made it clear that only fish in small private ponds may be owned free of the public's right of access. See id. at 2460-61; 6 Proceedings of the Alaska

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Constitutional Convention app. V, at 98 (Commentary on Article on State Lands and Natural Resources, Jan. 16, 1956). This confirms the view of the common use clause and the public trust expressed in CWC Fisheries v. Bunker, 755 P.2d 1115 (Alaska 1988), holding that a grant of a fee interest in tidelands remains impressed with a public trust easement. It also reinforces our conclusion that grants of exclusive rights to harvest natural resources listed in the common use clause should be subjected to close scrutiny.

C.

As we have noted, the drafters of the common use clause apparently intended to constitutionalize historic common law principles governing the sovereign's authority over management of fish, wildlife and water resources. A review of the history of wildlife law will therefore shed further light on the central issue in this case.

The Supreme Court traced the history of wildlife law from its roots in ancient Rome through its English common law development and transfer to this country in Geer v. Connecticut, 161 U.S. 519, 522-29, 40 L.Ed. 793, 794-97 (1896). In that case, the Court affirmed the defendant's conviction, upholding a state statute forbidding transportation of certain game birds killed in Connecticut across state lines. The Court noted that in England, the right to hunt and fish "[was] vested in the King alone and

from him derived to such of his subjects as [had] received the grants of a chase, a park, a free warren, or free fishery." Id. at 527, 40 L.Ed. at 796 (quoting 2 W. Blackstone, Commentaries \*410). As a recent authority explains:

Stripped of its many formalities, the essential core of English wildlife law on the eve of the American Revolution was the complete authority of the king and Parliament to determine what rights others might have with respect to the taking of wildlife.

M. Bean, The Evolution of National Wildlife Law 12 (rev. ed. 1983).

The Geer court asserted that this authority to regulate taking of wildlife passed to the states upon separation from England. 161 U.S. at 528, 40 L.Ed. at 796. However, unlike the authority vested in the King, the authority of the states, with their guarantees of democratic government, was not plenary.

Whilst the fundamental principles upon which the common property in game rests have undergone no change, the development of free institutions has led to the recognition of the fact that the power or control lodged in the state, resulting from this common ownership, is to be exercised like all other powers of government as a trust for the benefit of the people, and not as a prerogative for the advantage of the government as distinct from the people, or for the benefit of private individuals as distinguished from the public good.

Id. at 529, 40 L.Ed. at 797 (emphasis added). The Court held that the state's "ownership" of wildlife, in trust for the people, authorized the statute at issue in that case. Id.

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The framers of the common use clause probably relied heavily on Geer. The following statement from the constitutional papers, as quoted above, closely tracks the reasoning of Geer:

The title remained with the sovereign, and in the American system of government with its concept of popular sovereignty this title is reserved to the people or the state on behalf of the people. The expression "for common use" implies that these resources are not to be subject to exclusive grants or special privilege as was so frequently the case in ancient royal tradition.

Alaska Constitutional Convention Papers, Folder 210, paper prepared by Committee on Resources entitled "Terms."

Thus, common law principles incorporated in the common use clause impose upon the state a trust duty to manage the fish, wildlife and water resources of the state for the benefit of all the people.<sup>12</sup> We have twice recognized this duty in our prior

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12. The Court overruled Geer's state ownership doctrine in Hughes v. Oklahoma, 441 U.S. 322, 60 L. Ed. 2d 250 (1979). That case involved facts almost identical to Geer: the Oklahoma statute at issue forbade the export of minnows taken from the waters of the state. See id. at 323, 60 L. Ed. 2d at 254. The Court struck down the statute as violative of the commerce clause. Id. at 338, 60 L. Ed. 2d at 263. The Court found the state ownership doctrine to be a legal fiction that created anomalies and did not conform to "practical realities." Id. at 335, 60 L. Ed. 2d at 261. Nothing in the opinion, however, indicated any retreat from the state's public trust duty discussed in Geer. Indeed, the Court stated, "[T]he general rule we adopt in this case makes ample allowance for preserving, in ways not inconsistent with the Commerce Clause, the legitimate state concerns for conservation and protection of wild animals underlying the 19th century legal fiction of state ownership." Id. at 335-36, 60 L. Ed. 2d at 261. As one U.S. District Court

(footnote continued)

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decisions. In Meelakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901, 915 (Alaska 1961), aff'd, 369 U.S. 45, 7 L. Ed. 2d 562 (1962), we stated:

These migrating schools of fish, while in inland waters, are the property of the state, held in trust for the benefit of all the people of the state, and the obligation and authority to equitably and wisely regulate the harvest is that of the state.

(Emphasis added.) Similarly, in Herscher v. State, Department of Commerce, 568 P.2d 996, 1003 (Alaska 1977), we noted that the state acts "as trustee of the natural resources for the benefit of its citizens."

The extent to which this public trust duty, as constitutionalized by the common use clause, limits a state's discretion in managing its resources is not clearly defined. The state argues that it imposes no limit at all. While

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noted in a post-Hughes case:

Under the public trust doctrine, the State of Virginia and the United States have the right and the duty to protect and preserve the public's interest in natural wildlife resources. Such right does not derive from ownership of the resources but from a duty owing to the people.

In re Steuart Transp. Co., 495 F. Supp. 38, 40 (E.D. Va. 1990) (allowing federal and state governments to recover damages for migratory waterfowl killed in oil spill).

After Hughes, the statements in the Alaska Constitutional Convention regarding sovereign ownership, quoted supra, are technically incorrect. Nevertheless, the trust responsibility that accompanied state ownership remains. 3399

acknowledging that the common use clause constitutionalizes the state's trust duty, the state asserts, "The sovereign's power to allow and control use of the resources is broad, and restricted only by other constitutional limitations such as equal protection." This assertion clearly overstates the extent of the state's authority under the public trust duty and the common use clause.

First, as noted above, this court has stated in at least four cases that the common use clause is intended to provide independent protection of the public's access to natural resources. See Johns v. Commercial Fisheries Entry Comm'n, 758 P.2d 1256, 1266 & n.12 (Alaska 1988); CWC Fisheries v. Bunker, 755 P.2d 1115, 1120 (Alaska 1988); State v. Ostrosky, 667 P.2d 1184, 1189, 1191 (Alaska 1983), appeal dismissed, 467 U.S. 1201, 81 L. Ed. 2d 339 (1984); Warnberg v. State, 516 P.2d 1191, 1198-99 (Alaska 1973); see also Ostrosky, 667 P.2d at 1196 (Rabinowitz, J., dissenting).

Second, under the state's interpretation, the common use clause would be a nullity. "It is a well accepted principle of judicial construction that, whenever reasonably possible, every provision of the Constitution should be given meaning and effect, and related provisions should be harmonized." Park v. State, 528 P.2d 785, 786-87 (Alaska 1974). To give meaning and effect to the common use clause, it must provide protection of

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the public's use of natural resources distinct from that provided by other constitutional provisions.

Third, the history of the common use clause, as noted above, reveals an anti-monopoly intent to prohibit "exclusive grants" and "special privilege(s)," wholly apart from the limits imposed by other constitutional provisions.

Finally, cases applying the public trust doctrine in navigable waters have frequently struck down state actions in violation of the trust without any reference to either federal or state constitutions. A good example is the lodestar of American public trust law, Illinois Central Railroad Co. v. Illinois, 146 U.S. 387, 36 L.Ed. 1018 (1892). In that case, the Illinois legislature purported to grant to a railroad more than 1,000 acres of land underlying Lake Michigan in the harbor of Chicago. The Court applied the doctrine of the public trust in navigable waters to uphold the legislature's later revocation of the grant:

A grant of all the lands under the navigable waters of a State has never been adjudged to be within the legislative power; and any attempted grant of the kind would be held, if not absolutely void on its face, as subject to revocation. The State can no more abdicate its trust over property in which the whole people are interested . . . than it can abdicate its police powers in the administration of government and the preservation of the peace.

Id. at 453, 36 L.Ed. at 1043.

In light of this historical review we conclude that the common use clause was intended to engraft in our constitution

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certain trust principles guaranteeing access to the fish, wild-  
life and water resources of the state. The proceedings of the  
Constitutional Convention, together with the common law tradition  
on which the delegates built, convince us that a minimum require-  
ment of this duty is a prohibition against any monopolistic  
grants or special privileges. Accordingly, we are compelled to  
strike down any statutes or regulations that violate this prin-  
ciple.

D.

We conclude that exclusive guide areas and joint use  
areas fall within the category of grants prohibited by the common  
use clause. These areas allow one guide to exclude all other  
guides from leading hunts professionally in "his" area. These  
grants are based primarily on use, occupancy and investment,  
favoring established guides at the expense of new entrants in the  
market, such as Owsichuk. To grant such a special privilege  
based primarily on seniority runs counter to the notion of  
"common use."

Moreover, the grants are not limited in duration. The  
statutes allow holders of EGAs to sell their "improvements," and  
the GLCE routinely transfers the EGA to the purchaser of the  
improvements or to the guide's designated successor. This prac-  
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property interest. See Division of Legislative Audit, A

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Performance Report on the Department of Commerce and Economic Development Guide Board 10-11, Audit Control No. 08-1305-88-R (Dec. 11, 1987) [hereinafter "1987 Report"].

Although the Board justified the program to the legislature as a means of improving wildlife management, see Transcript of Senate Resources Committee Hearing on S.B. 661 (March 12, 1976); Transcript of House Resource Committee Hearing on S.B. 661 (April 27, 1976), it is apparent that area assignments are not based primarily on wildlife management concerns. Rather, as authorized by AS 08.564.195(b) and 12 AAC 38.220(c) & (d) (eff. 5/12/78, am. 10/15/82), the Board bases its decisions on use, occupancy and investment.<sup>13</sup> See 1987 Report at 9-10. Thus, the EGA program cannot be justified as a wildlife management tool like other restrictions on common use, such as hunting seasons and bag limits.<sup>14</sup>

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13. Both the statute and the regulations require the Board also to consider "big game populations in the area." AS 08.54.195(b)(4); see 12 AAC 38.220(d)(1). The regulations make it clear that this is a secondary consideration. Id. Moreover, the context of this requirement in both the statute and the regulation suggests that it was enacted only to determine how many guides the game would support economically, not to benefit the game resource directly. Finally, it is clear that the Board simply does not pay much attention to this criterion. A recent legislative report concluded, "Use of independent game information for specific regions of the State no longer appears to be a significant factor in the Board's decision-making process." 1987 Report at 10.

14. We acknowledge that the EGA program may facilitate  
(footnote continued)

certain trust principles guaranteeing access to the fish, wild-life and water resources of the state. The proceedings of the Constitutional Convention, together with the common law tradition on which the delegates built, convince us that a minimum requirement of this duty is a prohibition against any monopolistic grants or special privileges. Accordingly, we are compelled to strike down any statutes or regulations that violate this principle.

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We conclude that exclusive guide areas and joint use areas fall within the category of grants prohibited by the common use clause. These areas allow one guide to exclude all other guides from leading hunts professionally in "his" area. These grants are based primarily on use, occupancy and investment, favoring established guides at the expense of new entrants in the market, such as Owsichuk. To grant such a special privilege based primarily on seniority runs counter to the notion of "common use."

Moreover, the grants are not limited in duration. The statutes allow holders of EGAs to sell their "improvements," and the GLCS routinely transfers the EGA to the purchaser of the improvements or to the guide's designated successor. This practice allows a guide to effectively sell his EGA as if it were a property interest. See Division of Legislative Audit. A

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(footnote continued)

The state argues that EGAs do not deny Owsichak common use of the wildlife resources because he, like any other member of the public, may hunt recreationally in these areas. We reject this argument. In CWC Fisheries v. Bunker, 755 P.2d 1115, 1121 n.14 (Alaska 1988), we noted that the public trust doctrine guaranteed fishermen access to public resources for "private commercial purposes" as well as for recreation. The same rationale applies to professional hunting guides under the common use

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wildlife management by giving each guide having an EGA an incentive to conserve wildlife. However, without a specific constitutional provision allowing EGAs, mere usefulness in wildlife management does not suffice to save the EGA program from unconstitutionality under the anti-monopolistic common use clause. In the analogous area of limited entry in commercial fisheries, one purpose of limited entry has always been conservation related. However, this was not sufficient to save precursors to the present limited entry system from findings of unconstitutionality prior to the constitutional amendment allowing limited entry. This history is detailed in State v. Ostrosky, 677 P.2d at 1188, 1189 (Alaska 1983).

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clause.<sup>15</sup> The common use clause makes no distinction between use for personal purposes and use for professional purposes.<sup>16</sup>

Nothing in this opinion is intended to suggest that leases and exclusive concessions on state lands are unconstitutional. The statutes and regulations of the Department of Natural Resources authorize leases and concession contracts of limited duration, subject to competitive bidding procedures and valuable consideration. See AS 38.05.070-.075 (authorizing leases and setting forth procedures); AS 41.21.027 (authorizing concession contracts in state parks); 11 AAC 14.200-.260, 14.010-.130 (establishing procedures for awarding concession contracts); see also Alyeska Ski Corp. v. Holdsworth, 426 P.2d 1006, 1009-11 (Alaska 1967) (discussing procedures required by

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15. Admittedly, there is a difference between commercial fishermen and professional guides: a commercial fisherman takes his catch himself before selling it to others for consumption, while a hunting guide does not actually take the game, a privilege reserved for the client. We view this as an insignificant distinction that does not remove professional hunting guides from protection under the common use clause. The work of a guide is so closely tied to hunting and taking wildlife that there is no meaningful basis for distinguishing between the rights of a guide and the rights of a hunter under the common use clause.

16. The right to lead hunts professionally is a significant one. Nonresidents of Alaska are required to hire a guide in order to hunt brown bear, polar bear, and sheep, AS 16.05.407, and nonresident aliens must hire a guide to hunt any big game. AS 16.05.408. Thus, the holder of an EGA has a monopoly over this market, which is a substantial one in Alaska, for his geographic area.

law for leasing of state lands); CWC Fisheries v. Bunker, 755 P.2d 1115, 1120-21 (Alaska 1988) (stating in dictum that shore fisheries leasing program would not violate public trust, in part because leases were of finite duration and required annual rental). In contrast, EGAs are not subject to competitive bidding, provide no remuneration to the state, are of unlimited duration, and are not subject to any other contractual terms or restrictions. Rather, as discussed above, they are granted essentially on the basis of seniority, with no rental or usage fee, for an unlimited duration, and are administered in such a way that guides may transfer them for a profit as if they owned them. In these respects the EGAs resemble the types of royal grants the common use clause expressly intended to prohibit. Leases and concession contracts do not share these characteristics.

For these reasons, we hold that AS 08.54.040(7), AS 08.54.195, and the regulations of the Board permitting the assignment of exclusive guide areas are in contravention of article VIII, section 3 of the Alaska Constitution.<sup>17</sup>

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17. We note that EGAs may also violate article VIII, section 17. This section of Alaska's constitution provides:

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law

(footnote continued)

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Accordingly, Owsichuk is entitled to relief declaring the EGAs that have been granted by the Board to be without legal force.<sup>18</sup>

#### IV.

In addition to declaratory relief, Owsichuk seeks damages against the state. Because the superior court did not reach this issue, we would ordinarily remand for further proceedings. However, when an issue is raised in the trial court and is adequately briefed by all concerned parties on appeal, this court may consider it. Mullen v. Christiansen, 642 P.2d 1345, 1350-51 (Alaska 1982).

Owsichuk bases his claim for damages on allegations that the Board acted without authority in enacting the EGA

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(footnote continued)

or regulation.

In Gilman v. Martin, 662 P.2d 120, 126 (Alaska 1983), we noted that this provision may require "more stringent review" of a statute than does the equal protection clause in cases involving natural resources. There is much less constitutional history of this clause than of the common use clause. The commentary states in full, "This section is intended to exclude any especially privileged status for any person in the use of natural resources subject to disposition by the state." 6 Proceedings of the Alaska Constitutional Convention app. V, at 99 (Commentary on Article on State Lands and Natural Resources, Jan. 16, 1956) (emphasis added). Because the parties have not briefed the issue and since we are able to decide the case on other grounds, we need not decide this question.

18. Our resolution of this issue makes it unnecessary for us to decide Owsichuk's other challenges to the statutes and to the actions of the Board.

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regulations initially and that the regulations failed to comply with the legislation that was later passed.<sup>19</sup> We need not decide whether these allegations are true. Even if the Board acted without authority or failed to comply with statutory standards, it is immune from suit under the discretionary function exception provided for in the Tort Claims Act,<sup>20</sup> as interpreted by our prior decisions.

In at least two cases, we have held that acts of public officials who in good faith misinterpret the law and act in excess of their authority are immune from suit. Earth Movers of Fairbanks, Inc. v. State, 691 P.2d 281, 283-84 (Alaska 1984)

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19. Owsichek does not base his claim for damages on the legislature's enactment of an unconstitutional statute. We note that such a claim would fail under our holding in Vest v. Schafer, 757 P.2d 588, 598 (Alaska 1988), where we wrote, "[W]e do not believe it proper for the judiciary to assess damages against the State on the ground that the legislature enacted a law later held unconstitutional, in the absence of a statute allowing or requiring such damages."

20. Alaska Statute 09.50.250 provides in part:

A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state in the superior court. . . . However, no action may be brought under this section if the claim

(1) . . . is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused. . . .

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(police officer lacked authority to temporarily reduce speed limit); Bridges v. Alaska Housing Authority, 375 P.2d 696, 698, 702 (Alaska 1962) (housing authority lacked power to use declaration of taking). We have also held that decisions involving the formulation of basic policy are entitled to immunity. See Industrial Indemnity Co. v. State, 669 P.2d 561, 563 (Alaska 1983).

The EGA program was a major policy initiative of the GLCB. Therefore, even if the Board acted in excess of its authority or failed to comply with the requirements of the statute, it is immune from suit under the discretionary function exception provided for in AS 09.50.250. Furthermore, there is no evidence that the Board acted in bad faith.

V.

Owsichek argues that it was improper for the superior court to assess attorney's fees against him, on the ground that he is a public interest litigant. See Southeast Alaska Conservation Council v. State, 665 P.2d 544, 553-54 (Alaska 1983). Because the state is no longer the prevailing party, the fee award must be vacated and remanded for redetermination.

We note, however, that successful public interest litigants may be entitled to full attorney's fees. City of Anchorage v. McCabe, 568 P.2d 986, 993-94 (Alaska 1977). Thus, the question of whether Owsichek is a public interest litigant may be

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relevant on remand. Since the parties have fully briefed the issue, we will address it here.<sup>21</sup>

We have consistently held that a party will not be deemed a public interest litigant where the party had sufficient economic incentive to bring the lawsuit without regard to the public interest. E.g., Rosen v. State Board of Public Accountancy, 689 P.2d 478, 480 (Alaska 1984). As discussed above, Owsichuk claims that the EGAs in his Units jeopardized the \$450,000 he had invested in his guiding operation, and that he suffered over \$100,000 in damages. This was clearly sufficient economic incentive to bring the suit. Therefore, we conclude that he is not a public interest litigant.

REVERSED and REMANDED.

Appellant 1000.00  
Appellant  
10-31-88  
Rabinowitz  
S. Beck

21. The parties' briefing assumes that the state was the prevailing party, which is no longer true. However, we have never distinguished between successful and unsuccessful parties in applying our standards for determining whether a party is a public interest litigant, and we see no reason to make such a distinction. Thus, the public interest analysis does not change if Owsichuk, rather than the state, is viewed as the prevailing party.

3330

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IN THE SUPREME COURT OF THE STATE OF ALASKA

KENNETH D. OWSICHEK, )  
 )  
Appellant, )  
 )  
v. )  
 )  
STATE OF ALASKA, GUIDE )  
LICENSING AND CONTROL BOARD, )  
 )  
Appellee. )  
 )

Supreme Court No. S-1650

O R D E R

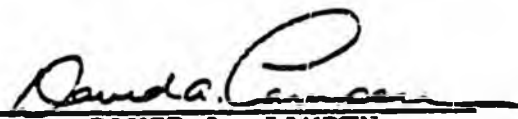
Trial Court No. 3AN 79-2387 Civil

On consideration of the motion for stay of decision, filed on November 18, 1988, and the opposition to the motion, filed on November 28, 1988,

IT IS ORDERED:

The motion for stay is granted. The portion of Opinion No. 3389, filed on October 21, 1988, which declares that the exclusive guide areas granted by the appellee State of Alaska Guide Licensing and Control Board are without legal force is stayed until June 1, 1989.

Entered by direction of Justice Jay A. Rabinowitz at Anchorage, Alaska on December 8, 1988.

  
\_\_\_\_\_  
DAVID A. LAMPEN  
Clerk of the Supreme Court

## JOINT DEPARTMENT POSITION PAPER ON SB 139

SB 139 provides for the continuation of the Legislative Task Force on Guiding and Game. Under this bill, the Task Force -- despite the requirements of SB 191 -- would continue with the same membership and terminate on the earlier of either January 15, 1991 or the date of enactment into law of two systems: one for the licensing of the state's big game commercial service providers and another for the management of game in order to allocate hunting rights to licensed guides (or guide-outfitters).

SB 139 reflects the recommendation of the Legislative Task Force on Guiding and Game, which included representatives from the Departments of Commerce and Economic Development, Fish and Game, and Public Safety, as well as the active (but nonvoting) participation of the Department of Law.

Because the recommendation to continue the Task Force generally reflects Administration policy, we will not reiterate here justification for the continuation that has already been addressed in the report of the Task Force. However, because we do quarrel with some provisions of SB 139, we wish to propose a number of amendments and discuss our reasons for the proposed changes.

First, however, we wish to emphasize our belief that the Owsichek decision has made it abundantly clear that the state must develop and put into place a game management system that is sensitive to the needs of Alaska's big game commercial services industry. We support in full the Task Force's conclusion that a method for the commercial allocation of our wildlife resource is vital and needs to be established. Without the assurance of a commercial allocation, the resultant instability and negative national and international publicity will deal a significant blow to Alaska's world famous and highly respected big game industry.

Nevertheless, the state remains anxious over the nature of the management system contemplated by a number of the members of the Task Force. Any attempt to create a management scheme that parallels the former guide area system declared unconstitutional by the Alaska Supreme Court in Owsichek will only delay and otherwise obstruct progress toward a viable management system that must meet these identified needs:

1. ensure a commercial allocation;
2. provide a measure of economic stability;
3. provide for wildlife management on a statewide basis.

Therefore, while we believe the present members of the Task Force deserve praise for their work to date, we are concerned that the goals they have set for themselves vis a vis creation of a resource-based management system are potentially beyond the immediate expertise of those members. Please recall that the present members were appointed with a specific task in mind: consideration of appropriate regulation for persons involved in the commercial taking of game in Alaska. It was the effects of the Owsichek decision which greatly expanded the Task Force's role and made consideration of a management system a must. Besides the very

obvious constraints on its time, unfamiliarity may also explain why the management system was not fully addressed by the Task Force.

Our first proposed amendment to SB 139, then, is that two additional members be added to the Task Force, to be appointed by the Governor, neither of whom may have financial interest in any business involving or related to the commercial taking of game, and who have recognized expertise in research and analysis with, if possible, particular knowledge in resource management or allocation systems.

Our second amendment proposes specific language mandating that the staff of a number of specifically identified entities be required to provide information, data, research, analysis, and technical assistance to the Task Force.

Attached are draft amendments to SB 139 accomplishing the proposals outlined above. We urge their consideration.

Finally, please hear our concern for the time it will take to successfully and competently meet the requirements of SB 139. We do not believe a comprehensive and thorough analysis of the complexities involved in establishing a game management system that provides for a commercial allocation acceptable to all state, federal, and private land owners in Alaska will be easily accomplished. We expect it, in fact, to be very hard but important work.

There has been some concern expressed that the management system must be in place when -- and if -- the licensing scheme envisioned in SB 140 is enacted. We do not believe this needs be the case. First, to rush establishment of the management system may doom it to mediocrity. Second, unless we can demonstrate that the system is fair, well thought-out, and reasonable, we anticipate that federal (and private) land owners will reject the plan outright, chilling any hope of creating an integrated management system that will apply statewide.

Third, while the Board of Game is legitimately concerned for the potential impact of additional registered guides being able to conduct hunts in areas previously not available to them, we believe passage of SB 140, with its licensing scheme intact, will go far in curtailing unregulated commercial hunts until the management system is in place. Under SB 140, only outfitters able to meet the requirements of the bill's transition provisions will be able to provide commercial big game hunting services directly to hunters. This appears to be less than 50 people. And only air and boat operators with proper FAA and Coast Guard licenses will be able to transport hunters into the field. We believe this will also significantly reduce pressure on the game.

We believe there are sufficient protections in SB 140 to give the Task Force the time it needs to develop a quality management system without Alaska's big game resource suffering from overharvesting in the interim.

\* \* \*

We support passage of SB 139 and urge consideration of our proposed amendments.

S. Merrill  
Larry Mercurieff, Commissioner  
Department of Commerce &  
Economic Development

2/13/89  
Date

Don W. Collinsworth  
Don W. Collinsworth, Commissioner  
Department of Fish and Game

2/13/89  
Date

Lennie Boston-Gorsuch  
Lennie Boston-Gorsuch, Commissioner  
Department of Natural Resources

2/13/89  
Date

Arthur English  
Arthur English, Commissioner  
Department of Public Safety

2-13-89  
Date

RB/cw9375c  
21389c

PROPOSED AMENDMENTS TO SB 139

Amend SB 139 by adding a new section to read:

\*Sec. 3. Notwithstanding the number and composition of members of the Task Force on Guiding and Game set out in Sec. 14(a), ch. 160, SLA 1988, two additional members will be added to the Task Force, to be appointed by the Governor, neither of whom may have a financial interest in any business involving or related to the commercial taking of game, who shall have expertise in research and analysis and, if possible, particular knowledge in resource management or allocation systems.

Amend SB 139 by adding a new section to read:

\*Sec. 4. In addition to the departments represented on the Task Force, the staff of the Legislature's House Research Agency and Senate Advisory Council and the Governor's Division of Policy shall provide information, data, research, analysis and technical assistance to the Task Force, as requested by the Task Force, for the purpose of developing the statewide game management system described in Section 14(d)(2)(B) of ch. 160, SLA 1988.

Amend SB 139 as follows:

\*Sec. 5 [SEC. 3]. Sections 1 - 5 of this Act are retroactive to January 8, 1989.

\*Sec. 6 [SEC. 4]. This Act takes effect immediately under AS 01.10.070(c).

RB/cw9376c  
21289b

ALASKA'S BIG GAME

A Report on the Commercial Aspects of  
its Uses and Users

A Final Report to  
the 16th Legislature

Legislative Task Force on  
Guiding and Game  
January 1989

*FINAL REPORT - LEG. TASK FORCE ON GUIDING + GAME*

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PREFACE

The Task Force has addressed the points mandated by Legislative Letter of Intent dated May 9, 1988.

The State Supreme Court decision in the Owsichek case dated October 21, 1988, has forced the issue of commercial use of game into a broader perspective. Originally the main emphasis was to clarify the relationship and role of "outfitters". After the court's decision it became clear that all aspects needed to be reexamined, especially the role of "guides", "outfitters", and "transporters". As a result the Task Force recommends some sweeping changes. We tried hard to establish a system that accommodates the constitutional "common use" clause, puts game management and the welfare of game on sound footing, provides a viable economic base for the industry, is cost effective and enforceable, and is simple enough for effective administration.

Big game is one of Alaska's outstanding values, both from a consumptive and non-consumptive use perspective. These recommendations should assist the legislature to formulate laws that fulfill the stated objectives.

We include with our report draft legislation which we feel should be enacted immediately, as well as recommendations for formulating an area-based management concept. We recommend that the Task Force be extended to assist the legislature in defining such a system and creating enabling legislation.

---

Heinrich Springer, Chairman

TASK FORCE ACTIVITY SUMMARY

The 13 member Task Force on Guiding and Game was created by the legislature through SB 191. Subjects to be covered were contained in a "Letter of Intent" for HCS CS SB 191 (Rules) dated May 9, 1988.

The Task Force conducted the following meetings and work sessions:

July 18, 1988, at Anchorage, Legislative Information Office (LIO), 3111 "C" Street.

October 24-25, 1988, at Fairbanks, LIO, 119 N. Cushman Street.

November 15-16 at Soldotna, Kenai Borough Assembly Chambers.

December 12-15 at Anchorage, LIO, 3111 "C" Street.

Work sessions by teleconference:

January 4, 9, 10, 11, and 13, 1989.

A subcommittee on rural issues held two public meetings at Kotzebue on October 4, 1988, and at King Salmon on October 5, 1988. A subcommittee on data management held two work sessions at Anchorage.

The meetings were preceded by extensive advertisement on radio and in newspapers throughout the state and in all cases allowed access through the communications network of the Legislative Information Office plus toll free numbers for persons in remote locations. In addition, Rural CAP did an extensive survey collecting opinions from rural residents; and Senator Fanning provided survey data submitted by guides and air taxi operators. All public hearings were well attended.

The Task Force appreciates the cooperation and testimony from many individuals and organizations. Many have given freely of their time and expertise. We want to thank particularly the Alaska State Board of Game; the Alaska State Guide Board; the Alaska Professional Hunter's Association; the Alaska Outfitter's Association; Ray DeMarchi, Canada, British Columbia Ministry of the Environment, Wildlife Branch; and Steve White, Alaska State Department of Law.

The 15th Legislature addressed the problems in the field caused by unregulated "outfitters" through SB 191 and the initial work of the Task Force went in that direction.

Task Force on Guiding and Game -4-

On October 21, 1988, a couple of days prior to our Fairbanks meeting, the Supreme Court issued its decision on the Owsichek case. The timing was excellent from the Task Force's work standpoint. And basically the emphasis shifted from "outfitting" to commercial use in general. This is reflected in the recommendations. Some sweeping changes are envisioned and submitted as recommendations for consideration. Although the court decision disallows several logical approaches to game management, we believe it still allows creation of systems that reach the stated objectives.

The Task Force represented a broad cross-section of state agencies and user group viewpoints with varying and often conflicting opinions. The extensive public hearings, research, and in-depth discussions provided not only the forum, but also the background to make careful, enlightened, and fair recommendations for immediate and long-term action which will ensure proper wildlife conservation as well as a stable environment for offering commercial services for big game hunting. A fragile, but important balance has been struck. Our recommendations represent a compromise in which each specific recommendation is important to the effectiveness of the overall policy changes.

The main points of our findings and recommendations are:

- a. Support for "commercial use" of game. Throughout this report the term "commercial use" refers to the providing of hunting services for compensation.
- b. Necessity to regulate all commercial users.
- c. Recognition of three main user groups: Guide-Outfitters, Transporters, and Commercial Permit Holders and establishment of licensure requirements for Guide-Outfitters.
- d. Replace the present Guide Board with a Big Game Commercial Services Board.
- e. Create a state established and controlled area management plan.
- f. Distribute use privileges to the commercial big game industry within the framework of the State's regulations and the Supreme Court's criteria.
- g. Concentrate on long-term plans, but address interim functions.

These recommendations are described in more detail as follows.

## RECOMMENDATIONS

The Task Force adopted protection of game resources as its highest priority and as an umbrella policy. All deliberations and recommendations incorporated this principle. While various agency or user group interests were sometimes compromised, wildlife conservation never was.

The Task Force closely followed the topics stated in the "Letter of Intent" for HCS CS SB 191 (Rules), albeit the Owsichek decision considerably broadened the scope of our review in some areas. The Task Force makes the recommendations listed below:

1. Commercial use of game is a valid principle.

The Task Force on Guiding and Game recognizes that the commercial utilization of big game is an important part of a sound wildlife resource management system and that the State of Alaska realizes significant social and economic benefits from maintaining a viable commercial big game hunting industry. Alaska's big game hunting opportunities draw international attention and contribute a substantial amount to the state's tourism economy. As the world's human population continues to increase, and the resource base continues to decline, the economic and social value of these hunting opportunities will grow.

The Task Force recognizes and supports the validity of the commercial utilization of game in Alaska, within the existing framework of resource priority allocation.

2. All commercial users need to be regulated.

The State of Alaska should develop a regulatory system which ensures the health of the big game resource and permits the commercial big game hunting industry. For this to occur all commercial users must be subject to consistent and stable regulations.

### 3. Owsichek Case

On October 21, 1988, the Alaska Supreme Court issued its ruling on the constitutionality of the exclusive or restricted guide area system. It clearly stated that the present exclusive guide area system violates the "common use" clause of the state constitution.

Any system needs to address the following points:

1. Open access to the system;
2. Limited duration of use privilege;
3. Validity of a management principle; and,
4. Compensation to the state.

On November 1, 1988, assistant Attorney General, Stephen M. White, issued an analysis of this decision.

On December 8, 1988, the Alaska Supreme Court issued a "stay" of its decision until June 1, 1989, thus allowing the legislative and executive branches time to address the problem.

### 4. Examination of other states and countries.

The Task Force has examined statutes and regulations which apply to other states and countries relating to commercial aspects of game and finds them of limited value. While other areas have faced similar problems as Alaska and have found applicable solutions, their charters and constitutions contain clauses different from ours. Alaska is unique in respect to the constitutional provisions for "common use" of game, subsistence priority, and sustained yield mandate for the taking of game. (Article VIII, Sections 3 and 4, Alaska Constitution.)

### 5. User Group Definition.

The Task Force recommends three commercial user groups: Guide-Outfitter, Transporter, and Commercial Permit Holder.

The Guide-Outfitter can provide a broad range of services statewide, ranging from guiding to outfitting. Guide-Outfitters are the only user group who can provide services in "the field". They should be limited to selecting and operating in no more than three (3) Game Management Units (GMU's).

"The field" means any area outside of established, year-around dwellings, businesses, and other developments normally associated with villages, towns, or cities, excluding hotels and roadhouses located on the state highway system.

The Transporter is limited to providing transportation directly servicing big game hunts.

The Commercial Permit Holder is a third group consisting of service providers such as lodge operators/hunt brokers, expeditors, gear renters and commercial photographers, all of whom need to be identified and regulated. Since most of these already require some form of commercial registration, a commercial use permit will suffice to identify them. "Clubs" present a specific problem which is addressed under separate legislation.

#### 6. User Group Qualifications and Licensure.

##### QUALIFICATIONS:

When appropriate, all commercial users listed below must pass an appropriate examination.

Guide-Outfitter must comply with the requirements under current law for registered or master guides and the term master guide shall be deleted. The Task Force recommends that guide-outfitter licenses shall be issued to a natural person (not an entity).

Class A Guide-Outfitter must comply with the requirements under current law for Class A Assistant Guides, with the following change: reduce the experience requirement from 20 to 10 years. It is recommended that the requirement for a letter of recommendation be deleted. It is further recommended that the state retain the special class of Marine Mammal Guide-Outfitter.

Assistant Guide-Outfitter must be at least 18 years of age, have hunting experience in the state for at least two of the past five years, possess a first aid card and have completed CPR training or equivalent (e.g., EMT or MD). It is recommended that the requirement for a letter of recommendation be deleted.

Transporter must comply with federal and state requirements for operation (transporter utilizing aircraft must have complied with Part 135; transporter utilizing boats must have U.S. Coast Guard license.)

Commercial Permit Holder must comply with federal and state requirements for operation.

All commercial users must comply with all federal and state requirements for operation, including holding lawful permits for lands occupied by the service provider.

USER GROUP LICENSES REQUIRED:

Guide-Outfitter:

1. Alaska business license
2. Guide-Outfitter license (in the appropriate category)
3. Commercial Use permit

Transporter:

1. Alaska business license
2. Transporter license
3. Commercial Use permit

Commercial Permit Holder:

1. Alaska business license
2. Commercial Use permit

Aircraft Operation Requirements:

The Task Force recommends deletion of AS 08.54.210 (a)(6) relating to Federal Aviation regulations (FAR) Part 135 requirements.

Although the Task Force is recommending that the Part 135 portion of SB 191 be deleted, this is not to indicate that the guides are being given a green light to continue using aircraft in their guiding businesses beyond what would be considered "incidental" flying. The Task Force merely feels that the regulation of commercial air commerce is under the authority of the Federal Aviation Administration.

It is suggested that those guides using aircraft for flying beyond that which is considered incidental should begin the process of application for Part 135, or should hire an existing air taxi for that portion of their flying. It is recognized that the maintenance program, the annual check rides and the inspections required for Part 135 are conducive to a safe operation.

In regards to the provisions of Part 135, the Task Force saw no need to develop a legal definition for "incidental", but rather allow the federal agencies to impose a definition as it pertains to aircraft operations (FAR Part 135).

### Rural Concerns:

Rural residents often have excellent guide-outfitter capabilities from a practical standpoint, but sometimes lack the educational and theoretical aspects of the examination process to qualify for a guide-outfitter license.

In addition to recognizing traditional difficulties in rural communities, the Task Force believes that the new board needs to substantially increase its information dissemination activities to enable rural residents interested in becoming licensed guide-outfitters greater access to the licensing procedures. Enabling legislation needs to accommodate this situation.

#### 7. User Group Reporting Requirements.

Those engaged in providing commercial services for the purpose of taking game as Guide-Outfitter, Transporter or Commercial Permit Holder must comply with annual reporting requirements based on Department of Fish and Game (ADF&G) and Public Safety final recommendations. Completion of the annual reporting requirement is a prerequisite for licensing (base camp registration).

Individual reports which pertain to the commercial aspects of game shall be confidential.

Decals, for the purpose of law enforcement identification of commercial users, should be required on all aircraft, boats, etc.

#### 8. Fee Structure.

The Task Force has considered and established a list of suggested fees as follows:

1. Fixed Commercial Use Permit Fee - \$25 to \$50;
2. Big Game Conservation Fee - 25% of existing big game tag fee (also known as "head tax"); and,
3. License fee

Not less than 50% of the fees collected should be designated for game management.

## 9. Insurance and Bonding.

The Task Force has reviewed the concept, cost and availability of insurance and bonding for commercial users and has determined that, while they support and encourage having insurance, whenever possible, the market condition and difficulty of acquiring insurance and bonding may pose extreme hardships on a great number of commercial users.

Transporters and some service providers are required to have insurance in their respective fields by other regulations.

## 10. Penalty.

The Task Force has reviewed the statute, AS 08.54.210, and recommends the following changes, as detailed under Article 6 of the recommended legislation for unlicensed guiding, which imposes a felony penalty, and recommends the following changes:

1. Eliminate the mandatory one year sentence;
2. Make first time offenses a misdemeanor with a minimum incarceration of two months, and raise the maximum fine that may be imposed to \$30,000;
3. Make some second time offenses a felony;
4. Do not allow the judge to impose a Suspended Imposition of Sentence (SIS); and
5. Encourage continued cooperation between the Department of Public Safety, Division of Fish and Wildlife Protection and the District Attorney's office.

## 11. Transitional Measures for User Groups.

Those outfitters who have been engaged in the big game commercial services industry as "outfitters", and have complied with current requirements under SB 191 (registered base camps, etc.) and can show financial proof of activity in 1986, 1987, and 1988 (business license, financial documentation, IRS) may continue to operate, in the interim, until new laws have been adopted. Within one year of the effective date of passage of a new law, they must pass the guide-outfitter exam and may continue to operate as outfitters under SB 191 requirements, during that transitional period.

12. Role of State Employee.

The Task Force has examined the question of whether state employees shall be allowed to participate in the commercial taking of game and has determined that the ADF&G and DPS have policies and procedures (P&P) to administer ethics and conflict of interest statutes and that strict adherence must be enforced. They further recommend that the agencies (ADF&G and DPS) request an Attorney General's opinion on the appropriateness of state employees' participation in the commercial game industry.

13. Guide Required Species.

The Task Force has considered the question of adding species to the required guide list and recommends that mountain goats be added to the required guide list.

Based on testimony, this will go a long way to provide some compatibility with the present demand that non-residents require "guides" for hunting of sheep and brown/grizzly bear. Climate, terrain, and nature of these species necessitate assistance to the non-resident hunter.

14. Creation of a new Big Game Commercial Services Board.

The Task Force has reviewed the Legislative Budget and Audit reports for 1985 and 1987. Some problems with the Guide Board are apparent. The Task Force recommends that the Guide Board sunset upon the creation of an expanded board whose function is to regulate the activity and licensing of commercial big game user groups. That board membership shall consist of two Guide-Outfitters, one Transporter, one representative from ADF&G, and one from FWP, one State land manager (DNR), one Native land manager, one public member and one Game Board member. The board shall be administered by the Department of Commerce and Economic Development (DCED).

15. Extension of Task Force on Guiding and Game.

The Supreme Court decision on the Owsichek case shifted the emphasis of the Task Force's work from regulation of "outfitters" to a much broader scope. Since a "management system" is of paramount importance and consequence, the Task Force recommends that it be extended in order to assist the legislature in the formulation of laws pertaining to management system and area concept schemes.

16. Management System.

Due to the resulting time constraints the Task Force was unable to analyze and present a complete recommendation on the management system.

The Supreme Court issued a "stay" of its decision until June 1, 1989, which will allow the legislature to act in a deliberate manner to address this situation. In order to assist the legislature in the formulation of such a law, we recommend to extend this Task Force to capitalize on work already done.

The following preliminary recommendations are given, realizing that additional information is needed:

The Task Force finds that some kind of an area based game management concept is of utmost importance. Nearly all countries and states in the world that manage game have adopted some kind of land based management system. It is necessary to integrate the guiding-outfitting operations into Alaska's well established game management system.

Our constitutional requirements and our complex game resource allocation system (subsistence, resident and non-resident hunting) makes development and administration of an area based system a very difficult task indeed.

The obvious option to allow unrestricted access is not viable, as it would only recreate the conditions that existed in the 60's, which prompted the establishment of an assigned area system in the first place. Subsistence priority rights have been established and need to be incorporated in any management scheme. Although the game is under state jurisdiction, land surface right holders indirectly control access to game. Checkerboard distribution of land holdings further complicates this. Furthermore, federal agencies, who control the majority of land, have different regulations. The major land owners need to participate in the formulation of the management system.

Following their discussions of a management system, the Task Force recommends for immediate action, that:

1. ADF&G be designated as lead agency, whose purpose is to formulate and designate management areas within the present GMU framework; and,
2. DNR needs ability to expeditiously adopt a concession or use system that is compatible with other land uses and the practices of other land areas.

The Task Force also recommends for consideration:

The state should establish a lease, concession, or allocation system on a staggered schedule;

The state should derive some financial benefits from the commercial utilization of a public resource; such revenue should be at least partially (not less than 50%) used for game management purposes;

Allocation methods of such use privileges need to be established (lottery, negotiated, competitive bidding, etc.).

Implementation of such legislation requires close work with the Alaska Departments of Law, Natural Resources, Fish and Game, and Public Safety. The Task Force has spent considerable time on these matters and is most willing to assist.



Official Business

# Alaska State Legislature

House of Representatives

Committee on Rules

P. O. Box V  
Juneau, Alaska 998

Phone:  
(907) 465-3764  
465-3765

Letter of Intent  
For  
HCS CS SB 191 (Rules)

It is the intent of the Legislature that the task force established under the provisions of SB 191 have full powers to investigate and establish recommendations.

Under the Alaska Constitution, fish and game resources are the common property of the people of Alaska, to be managed by the state in trust for the people's use. During all deliberations of the task force relating to regulating the commercial use of game, the first and highest priority of the task force shall be protection of the game resource. In this context, the task force shall examine how the commercial taking of big game by both residents and nonresidents conforms with the needs of all Alaskans.

Currently, there are numerous types of big game hunting services being provided in Alaska by various commercial operators. The task force shall examine this situation and make recommendations for the appropriate role of guides, gear providers, air taxi operators and other transporters in providing commercial hunting services.

Other states and Canadian provinces have experienced similar commercial hunting pressures and problems. In an effort to assure that Alaska not duplicate the mistakes of others, the task force should obtain as much information as possible about the problems these other jurisdictions have experienced. If solutions were found for problems similar to existing problems in this state, the task force shall review those solutions and recommend accordingly for Alaska.

The Alaska Supreme Court will soon decide *Owsichuk v. the State of Alaska*, dealing with the constitutionality of restricted guide areas. The task force shall analyze this decision, and recommend methods of accommodating the court's decision.

The task force shall work closely with the Department of Fish and Game and the Board of Game to create a link between the commercial take of big game and game management, for the protection and benefit of all user groups.

The task force shall examine the potential effects of adding other species to the guide-required list.

The task force shall examine the licensing of transporters, and make recommendations as to whether such a system ought to be renewed, and, if so, under what conditions.

The Legislative Budget and Audit Committee completed audits of the Guide Board in 1985 and 1987. The task force shall review the audits and recommend what provisions shall be implemented. Specifically, the task force shall analyze if the guide board is functioning at a level that ensures that the present allocation system is fair and is following the Administrative Procedures Act.

The legislature recognizes that the current big game guide system in Alaska is dependent on the restricted guide area concept for its success. Accordingly, the task force shall examine all aspects of this system, and make recommendations pertaining to its openness and accessibility, including to the question of selling or otherwise transferring the use of restricted guide areas. The task force shall also examine whether the state should lease or permit commercial use areas, or in some other manner establish a restricted use "concessionaire" approach to commercial game management. Throughout these deliberations, the task force shall review the compatibility of the current restricted area system, or any such system proposed, with the state's game allocation system.

The task force shall analyze the joint use concept and supporting agreements between guides in joint use areas, and gauge whether these agreements are in the best interest of all game users, as well as in the best interest of the game resource. In doing so, the task force shall investigate whether one consistent policy for determining guide areas is appropriate, the goal being that all areas are treated equally. The task force shall also examine whether rural residents from remote communities are being afforded an adequate and equal opportunity to participate in the guiding system.

The violation of statutes regulating almost all other professions in Alaska is generally a misdemeanor offense, whereas the act of illegal guiding is a felony offense. The task force shall review this section of law, determine whether this is proper, and make recommendations for any appropriate changes.

The task force shall investigate and make recommendations concerning the propriety of fish and wildlife protection officers, or other state employees whose responsibilities include managing game resources or enforcing the state's guiding and game management laws, holding guide licenses or otherwise participating in the commercial taking of game.

The legislature recognizes that the role of federal agencies in managing and permitting commercial uses of federal parks, reserves,

and other federal lands has a significant direct impact in how the state's guide laws are monitored and enforced. The task force is directed to examine the role of federal agencies in monitoring and permitting these activities.

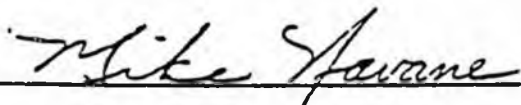
The legislature recognizes that hunting, flying and other travel in Alaska involves certain inherent risks. The task force shall review the issue of differing safety and insurance requirements for air transportation and make a recommendation on the establishment of minimal insurance and safety requirements for guides, lodge owners, and others who are not now regulated.

The task force should review the possibility of bonding requirements for providers of big game hunting services.

The task force should examine all aspects of a head tax, the problems with its use in the past, and what would be the ramifications to game management if it were reinstated.

The task force should work to clarify the definitions of "camp", "in the field", and "big game hunting services". The task force should describe which commercial providers should be allowed in "camps" and "in the field." "Compensation", and "monetary consideration" should also be further defined and explained by the task force. The task force should also provide further explanation of what constitutes a "boat with permanent living quarters."

The task force should also look at the use of dog sleds in big game hunts, and when dogs should be allowed in camps.



Rep. Mike Navarre, Chair  
House Rules Committee  
May 9, 1988

A/B

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Economic Dev.  
 Title: An Act providing for retro. exten. BRU: Occupational Licensing  
of the term. date of the Task Force on Guiding and Game...  
 Sponsor: Senate Resources Committee Components: \_\_\_\_\_  
 Requestor: Senate Resources Committee

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS:**

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

**ANALYSIS :** (Attach a separate page if necessary)

Prepared by: Jennifer Strickler, Administrative Officer  
 Division: Occupational Licensing

Phone: 465-2144  
 Date: February 14, 1989

Approved by Commissioner: Larry Merculieff  
 Agency: Commerce and Economic Development

Date: 2/14/89

Distribution (by preparer):

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

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: SB 139 (c)  
PUBLISH DATE: 2/16/89

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Retroactive extension of the termination date of the Task Force  
Sponsor: Senate Resources  
Requestor: Senator Fahrenkamp

Agency Affected: Public Safety  
BRU: Fish & Wildlife Protection  
Component: Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill continues the existence of the Task Force on Guiding and Game. No additional impact, beyond that already being incurred by DPS to participate in Task Force meetings, is anticipated.

Prepared by: Captain Conrad G. Seibel  
Division: Fish & Wildlife Protection

Phone: 269-5509  
Date: 1/27/89

Approved by Commissioner: Arthur English  
Agency: Department of Public Safety

Date: 2/6/89

JMM  
2/6/89

*DAH*

A/B

A/B

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Fish and Game  
 Title: Exrension of Task Force on Guiding and Game BRU: Wildlife Conservation  
 Sponsor: Resources Committee Components: \_\_\_\_\_  
 Requestor: Senator Fahrenkamp

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	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						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

Prepared by: Wavne Regelin Phone: 465-4190  
 Division: Wildlife Conservation Date: 2/8/89  
 Approved by Commissioner: *W. W. Miller* Date: 2/8/89  
 Agency: Fish and Game

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
BILL ANALYSIS

DEPARTMENT Fish & Game	DIVISION Wildlife Conservation	BILL NUMBER SB 139	SPONSOR Resources Committee
SHORT TITLE OF BILL Extension of Task Force on Guiding and Game			
DEPARTMENT POSITION Support			
PREPARED BY Wayne Regelin	DATE 2/3/89	COMMISSIONER'S SIGNATURE <i>James H. Dilley</i>	DATE 2/5/89

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Public Safety Department of Commerce & Economic Development	CONSTITUENT GROUPS AFFECTED BY BILL Big game commercial service providers Resident and nonresident hunters using commercial services
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

**BACKGROUND/LEGISLATIVE INTENT**  
The 1988 Legislature created a task force on guiding and game to recommend changes in the licensing of big game guides and outfitters. After creation of the task force, the Alaska Supreme Court ruled that guides could not be granted exclusive rights to guide in an area. The task force broadened their mission to examine ways to manage the guide/outfitter industry. The task force made numerous recommendations for change in the licensing of commercial users of big game that are reflected in SB 140. The task force did not have adequate time to formulate recommendations for a new management system.

**ANALYSIS OF BILL/PROGRAM EFFECTS**  
Passage of this bill will result in extension of the task force on game and guiding until January 15, 1991. Membership on the task force will remain the same. The task force will devise potential solutions for administering the guide/outfitter industry on state lands and all other lands in Alaska. Solutions will be based on an area management system using existing game management unit boundaries and consideration of the abundance and distribution of big game resources.

**AMENDMENTS PROPOSED**

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act providing for retroactive extension of the termination date of the Task...  
Sponsor: Senate Resources  
Requestor: Senate Resources

Affect Agency Legislative Affairs Agency  
BRU: Legislative Council  
Components Council & Subcommittees

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services						
Travel	8.4	16.8	8.4	0	0	0
Contractual	0.1	0.3	0.1	0	0	0
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>8.5</b>	<b>17.1</b>	<b>8.5</b>	<b>0</b>	<b>0</b>	<b>0</b>

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	8.5	17.1	8.5	0	0	0
Federal Fund						
Other						
<b>TOTAL</b>	<b>8.5</b>	<b>17.1</b>	<b>8.5</b>	<b>0</b>	<b>0</b>	<b>0</b>

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

The Task Force on Guiding and Game was established under the jurisdiction of the Legislative Council Committee. The Task Force is composed of 13 members, 3 from the Executive Branch, 2 legislators from the Legislative Branch and 8 public members (2 are ex-legislators as of 1-9-89).

Prepared By: Pamela Stoops, Director  
Division: Administrative Services

*Pamela Stoops*

Phone: 465-3850  
Date: 2/1/89

Approved By: Warren Endicott, Executive Director  
Agency: Legislative Affairs Agency

*Warren Endicott*

Date: 2/1/89

DISTRIBUTION (BY PREPARER)  
LEGISLATIVE FINANCE  
LEGISLATIVE SPONSOR

REQUESTOR  
OFFICE OF MANAGEMENT & BUDGET  
AGENCY (IES)

**CONTINUATION OF FISCAL ANALYSIS**

It is assumed that travel funds for this task force will be paid as follows:

3 Executive Branch members - absorbed within existing executive branch departments.

2 Legislative Branch members - absorbed within existing Legislative Operating Budget or Session Expenses.

8 Public members - paid by Legislative Council funds as projected below.

Projected expenses for the Task Force on Guiding and Game are as follows:

Personal Services - Staff for the Task Force will come from existing staff under the Legislative Operating Budget.

Travel-	4 trips @ 366 x 8 members	11,712
	2 days per diem (\$80)	
	4 trips x 8 members	5,120

Contractual-	Transcription of meetings	300
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Supplies- Will come from existing Legislative Council and Legislative Operating supplies.

Equipment- Will come from existing Legislative Council and Legislative Operating equipment.

FY 89 costs are for one-half year.  
FY 90 costs are for full fiscal year.  
FY 91 costs are for one-half year.