

HB

266

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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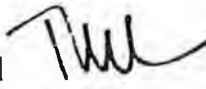
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 27, 1994

SUBJECT: Extension of the Big Game Commercial Services Board (CSHB
266(L&C))

TO: Senator Mike Miller
ATTN: Teresa

FROM: Terri Lauterbach 
Legislative Counsel

You have asked several questions about the Big Game Commercial Services Board:

(1) If the board is allowed to terminate, do current statutes allow the same licensing to be done by another state agency? Answer: No. While current statutes do appear to allow the division of occupational licensing, Department of Commerce and Economic Development, to renew the licenses of current licensees, the division would have no power to issue new licenses. Under current statutes, new licenses can only be issued after examination and approval by the board (which wouldn't exist).

Actually, despite the apparent authority of DCED to renew licenses without the board, even that renewal would have to stop if the board terminates. That's because the state may not constitutionally grant exclusive rights to guiding based on seniority, which would be the result if DCED renewed the licenses of persons who currently hold licenses but could not issue new licenses. Owsichek v. State, 763 P.2d 488 (1988)

So, the effect of terminating the board without transferring its functions to another state agency would be that the state would no longer issue or renew licenses formerly regulated by the board.

(2) What is the likely effect of stopping licensure of persons currently licensed through the board? Answer: Among the effects of a discontinuation of licensing would be that any person could legally guide any hunters anywhere in the state without having to meet board regulations and without any disciplinary actions such as those currently authorized under AS 08.54.500 - 08.54.510.

However, considering that AS 16.05.407 says that a nonresident hunter must be guided by a licensed person or be subject to imprisonment and a large fine, it is questionable whether any nonresidents would continue hunting in the state until the legal questions caused by the board's termination were decided clearly, either by the legislature or the courts. Since nonresident hunting is a large part of the hunting in this state, the economic effect could be substantial, especially on the guiding industry.

Another likely effect of a discontinuation of state licensure under AS 08.54 would be entrance of the federal government into the licensure field. This would probably result in the same kind of situation that occurred with subsistence management, with different rules applicable to federal lands, state lands, etc. Also, the federal government is probably not prepared to immediately take over this function, so the transition period might be rather chaotic.

(3) Could the licensing activities of the board be transferred to another state agency by the governor under an administrative order issued before the board terminates? Answer: No. The governor could not transfer the board's licensing functions except by an executive order under AS 24.08.210, which cannot be issued until the next legislative session starts.

(4) Could HB 266 be amended to transfer the board's activities to another agency? Yes, HB 266 could be the vehicle for transferring the board's functions; however, a title change would be required, thus necessitating the introduction and passage of a concurrent resolution authorizing title changes in the second house.

I hope this memorandum answers all of your questions clearly. If you need more assistance, please contact George Utermohle (X 2450) because HB 266 is assigned to him. Of course, if he is unavailable when you call, feel free to ask me further questions about this matter.

TML:pl
94-347.plm

CSHB 266: "An Act relating to guide-outfitter and master guide-outfitter licenses; extending the termination date of the Big Game Commercial Services Board; and providing for an effective date."


Section 1 extends the Big Game Commercial Services Board to 1997. The board has implemented the use area registration system. The board will need to monitor this new system closely and continue to clarify its operations and other statutory provisions through regulation.

Section 2 helps to strengthen the entry requirements for the guide-outfitter license and eliminates the requirement of having to submit two client recommendations for each of the applicant's most recent three years. This has been the subject of three litigations in the past year, one of which was just overturned by the Superior Court in December 1993. The existing statute, AS 08.54.350(a)(10), may hinder an assistant guide-outfitter with years of experience who may only guide one client the year he/she decides to apply for the guide-outfitter exam. The current amendment in section 2 increases the number of required client recommendations from six to eight but leaves the matter of which years an applicant may submit client recommendations up to the board to define in regulation. The department concurs with this amendment. Regulations will be required to clarify an acceptable time frame in which the applicant would have assisted in guide-outfitting.

Section 3 reinstates the master guide-outfitter category which was repealed in 1989, however, approximately 35 individuals were grandfathered with this title. Master Guide-Outfitters appear to have an advantage when booking clients. The department supports the reinstatement of this category, noting that the requirements are essentially the same as when the category was in effect under the prior law.

The department concurs with the requirement that an applicant for a master guide-outfitter license must have been licensed in the state for at least 12 of the last 15 years preceding application. However, this provision does not mandate that the applicant has actively guide-outfitted during the period -- just holding a current license appears to meet this provision.

In summary, the department supports this bill subject to the comments noted above.



Paul Fuhs, Commissioner

Date: 2-15-94

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

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April 29, 1994

The Honorable Mike Miller
Alaska State Legislature
Capitol Building, Room 423
Juneau, AK 99801-1182

Dear Senator Miller:

I believe that it is absolutely critical to extend the Big Game Commercial Services Board (BGCSB) from a wildlife conservation standpoint as well as the standpoint of the guiding industry itself. I strongly urge you to move CSHB 266 out of your committee as soon as possible.

At one time, Alaska offered virtually limitless opportunities to guides, but that was before over 140 million acres of land were withdrawn as federal parks, monuments, refuges or corporate lands. There also were far fewer than today's 350 registered guides and 10,000 nonresident hunters competing for space with over 80,000 resident hunters. It was before federal and state subsistence preference laws were passed. It was simply a different era, one that has now passed.

This department's biologists worked with the BGCSB for two years to delineate guide-outfitter use areas. These efforts cost a great amount of time and money. Qualified guides then selected up to three areas each which served to spread out hunting pressure so no single area would be overexploited. The board is currently exploring legal means through which to prevent overharvests of game in the few remaining "hot spots," generally on state land. Federal and private landowners can control numbers of guides on their lands, displacing many guides to suitable state lands.

Much resident hunting opportunity also occurs on our state lands and hunting opportunities are governed by our state subsistence preference law. It is obvious that if excessive harvests of game occur as a result of guided nonresident hunting, reasonable opportunities for resident subsistence hunting will be impacted. State law **requires** the Alaska Board of Game to eliminate nonresident seasons before unreasonably restricting resident subsistence hunters. All Alaskans are potentially qualified to hunt for subsistence purposes. Obviously, this situation will result in an accelerating domino effect as guides

April 29, 1994

and their clients are forced into smaller and smaller areas open for their use. Only the BGCSB can prevent this from occurring. The Alaska Board of Game lacks statutory authority to regulate guiding, as do I.

The BGCSB and the current three area system are supported by most guides in the state who realize that currently there are no reasonable alternatives. They also realize that without a BGCSB, ultimate resolution of still outstanding problems will be impossible. To compete with professional guide competitors in Canada and now Siberia, they realize the need for standards and limitations on the industry and are willing to pay for it.

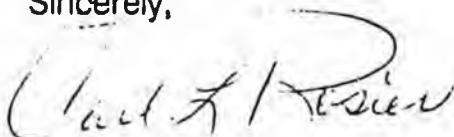
Make no mistake. Alaska's guiding industry is of critical importance to Alaska's economy and to the wildlife management capabilities of this department. Guiding provides over \$80,000,000 annually to the economy, much of it after the "normal" tourist industry ends each summer. Furthermore, the sale of nonresident hunting licenses and big game tags provides over 70 percent of the annual contributions to the wildlife portion of the Fish and Game Fund, over \$4,000,000 in 1993. Given Alaska's fiscal dilemma and the drastic General Fund cuts to the Division of Wildlife Conservation, it is easy to see the importance of nonresident contributions to Alaska's management programs.

All of this could be jeopardized without an extension of the BGCSB and I see no viable alternatives to replace potentially great losses of revenue. This is the gravity of the situation if the 18th Legislature fails to pass this legislation.

We have all long recognized the problem with federal preemption of Alaska's states rights to manage our internal affairs. The federal agencies are ready and willing to absorb yet another chunk of state authorities if we, as a state, absolve ourselves of the responsibility to regulate our guiding industry. They already have made overtures to do so, and are restrained only by progress made to date by the BGCSB. Sunsetting this board would be an open invitation to further federal intervention into Alaska's affairs.

As Chairman of the Senate Resources Committee, it falls to you to explain to your distinguished colleagues the full extent of what is at stake here. Alaska must lead by example in the responsible management of our game resources if we are ever to successfully diversify our economy and achieve the full return of our management authorities. Retention of the BGCSB will be key to achieving both of these objectives.

Sincerely,



Carl L. Rosier
Commissioner

April 29, 1994

*The Honorable Mike Miller, Chair
Senate Resources Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear Mike,

I have been apprised by Commissioner Rosier of a matter of extreme urgency, the sunseting of the Big Game Commercial Services Board (BGCSB) if it is not extended by the passage of CSHB 266. This bill is currently in your committee. It is imperative that this legislation pass this session, and time is of the essence.

The guiding industry currently contributes over \$80 million to Alaska's economy, and nonresident licenses and tags produce over 70 percent of the revenue into the Fish and Game Fund for wildlife management. The Alaska Professional Hunters Association strongly supports CSHB 266 to protect this industry.

Given state and federal subsistence preference laws, regulation by the BGCSB is imperative to protect game resources and to avoid actions by the Board of Game and the Federal Subsistence Board which would preclude nonresident hunting. Such preventable actions have the potential to devastate the guiding industry. The federal agencies would certainly move quickly to fill any void left by sunseting the BGCSB to the detriment of our state.

The Departments of Fish and Game, Commerce and Economic Development, and Law have spent considerable funds to support the BGCSB to date. Alaska now has a broadly supported, well-regulated guiding industry as a result. Progress is being made to make the industry even stronger, but an extension of the board is necessary to finish the job.

I urge you to move CSHB 266 out of Senate Resources as soon as possible.

With best regards.

Sincerely,

S/S WALTER J. HICKEL

*Walter J. Hickel
Governor*

cc: *The Honorable Rick Halford*