

HB

102

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 102

Revision Date: January 27, 1995 Department: Commerce and Economic Development
 Title: An Act extending the termination date of the BRU: Occupational Licensing
Big Game Commercial Services Board Component: Operations
 Sponsor: House Resources Committee
 Requestor: House Resources Committee COMPONENT SERIAL N 1844

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 95	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	174.0	174.0	174.0	174.0	174.0	174.0
TRAVEL	27.5	27.5	27.5	27.5	27.5	27.5
CONTRACTUAL	56.7	56.7	56.7	56.7	56.7	56.7
SUPPLIES	1.2	1.2	1.2	1.2	1.2	1.2
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	249.2	259.4	259.4	259.4	259.4	259.4

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES	324.1	188.0	324.1	191.1	324.1	194.7
---------------------------	-------	-------	-------	-------	-------	-------

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	249.2	259.4	259.4	259.4	259.4	259.4
1006 GF/MHTIA						
Other						
TOTAL	249.2	259.4	259.4	259.4	259.4	259.4

Estimate of any current year (FY 95) cost: \$ 219.6

POSITIONS	FY 95	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	2	2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 102 extends the termination date of the Big Game Commercial Services Board to June 30, 1998. The expenditures shown above are included in the FY 98 operating budget request and the revenue identified are reflected in revenue projections. The board is in its final year of existence unless legislation is passed to continue the board.

Prepared by: Jennifer Strickler, Admin. Officer Phone: 465-2144
 Division: Occupational Licensing Date: 1/27/95
 Approved by Commissioner: William L. Hensley Date: 1/27/95
 Agency: Commerce and Economic Development

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further dist ative Office

DEPARTMENT OF FISH AND GAME
POSITION PAPER

Bill No: HB 102

Sponsor: House Resources Committee

Division: Wildlife Conservation

Bill Title: An Act extending the termination date of the Big Game Commercial Services Board.

Department Position: Support

Background/Legislative Intent: This bill would extend the termination date of the Big Game Commercial Services Board until June 30, 1998.

Analysis of Bill/Program Effects: A sunset provision in statute resulted in termination of the board in June 1994. This board provides a valuable service by assuring that those individuals licensed as big game guide-outfitters are qualified and capable of providing the services expected of them by their clients. The board also plays an important role in distributing the guided hunting effort so that discrete big game populations are not subjected to excessive hunting pressure.



Commissioner's Signature

22.95

Date

SENATE COMMITTEE REPORT

DATE: 3/2/95

FURTHER: Finance

DATE TURNED INTO OFFICE: 11-24-95

Resources Committee considered HOUSE BILL NO. 102

"An Act extending the termination date of the Big Game Commercial Services Board."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:
 same title
 new title
 House Bill:
 technical change
 new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>					
<i>[Signature]</i>					
<i>[Signature]</i>					
CHAIR: <i>[Signature]</i>	✓				

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
C+ED	2/78		\$249.2

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Hundley v. The Monster Summary

Mr. H believes that the State Division of Occupational Licensing have unlawfully and arbitrarily acted against him due to the regulations put in place by the Big Game Commercial Services Board.

History:

In the Spring of 1993 the Board adopted guide area scheme as a regulations package. Mr. H sees this GAS as a defense to the Boards sunset. He believes that the AK Professional Hunters Association sees the Board as a way to reinvent the old exclusive GAS and to allocate the areas back to the original area holders.

The Board adopted the scheme by stating that the program would require no funding---therefore no scrutiny by the House or Senate Finance Committees and no real eyebrows raised in the administration. The board then taxed the licensed guide-outfitters to pay for the cost of the scheme, about \$700.

Mr. H believes that the St of AK has a constitutional ban against dedicated funds and this funding is against the law.

Problem:

According to regulations adopted by the Board, guide outfitters can only guide within the geographical boundary lines drawn up in a statewide mapping project incorporating 22000 Unified Coding Units. into new guide areas with certain exceptions.

The board will, in its discretion, allow a guide-outfitter who is already registered in three use areas, to register for a portion of an additional use area that is adjacent to a use area in which the guide outfitter is already registered, if the Board finds that because a use area boundary does not coincide with a land ownership boundary, that portion of the adjacent use area would otherwise remain unused.

He met the merits of the regulation and submitted the application for the 4th area. The division notified me that I could not submit a 4th area application and for all intents and purposes, could never hope to be included in the selection process for awarding the area.

Mr. H submitted legal paperwork to a hearing office in response to the A.G.'s office summary judgment against my case. He issued a 9 page decision spelling out that the area scheme was unconstitutional and did not meet legislative intent.

Mr. H was told by Div. of Licensing and by Scott Ogan (board member) to circumvent the regulations and form "co-ops" with other guides to sign each others paperwork. This program is only in its first year and it is already deteriorating to the old elusive guide area scheme.

In Summary:

The legislative letter of intent is very clear, but is not being followed. This compromises and jeopardizes the legality of the programs statutory authority.

Mr. H believes that the limitation of only being able to vie for 3 guide areas with no other option to participate in the selection process in other areas regardless of long term commitments and relationships with landholders, is arbitrary and without justification and is only placed in regulation because " that's the way it is used to be under the exclusive guide area scheme and that's the way its gonna be now."

The Board does not have the funding to adequately carry out their duties and does not disseminate the information concerning the constant rewriting and amending of regulations which have the force of law, thereby denying licensed guides due process in the implementation of these programs.

An industry is being manipulated through shrewdly leveraged political maneuvering by these old guides who want to regain control of their exclusive guide areas.

HB 102

THOMAS N. SCARBOROUGH
1676 TAROKA DRIVE
FAIRBANKS, ALASKA 99709
(907) 479-3412

February 20, 1995

Senator Rick Halford
State Capitol - Room 508
Juneau, Alaska 99801-1182

Re: House Bill No. 102, An Act extending the termination date of the Big Game Commercial Services Board.

Dear Rick:

The providing of Big Game Commercial Services has become an extremely complicated system of rules and regulations administrated by both the State of Alaska and the Federal Government. The State of Alaska Department of Commerce and Economic Development, Division of Occupational Licensing is the Administrative agency assigned to administer Big Game Commercial Services. The Federal Agencies consisting of Bureau of Land Management, U.S. Fish and Wildlife Service, U.S. Forest Service and National Park Service as land managers directly interact with those providing Big Game Commercial Services. Private Land Holders as land managers also are required to provide land use permits.

Big Game Commercial Services is generally viewed by the public as the Big Game Hunting Guide Industry. Actually the State Statutes are much boarder that this. They include any one providing:

1. Ground, water or air transportation to big game hunters. Transporter license required.
2. Guide-outfit hunting for a specific marine mammal. Special license required. (I do not believe any license have ever been issued)
3. Big Game Commercial Services service for compensation, other than a guide-outfitter, marine mammal guide-outfitter or transporter. Commercial use permit required.

A Board consisting of 9 members is appointed by the Governor for the purpose of licensing and regulating the above activities. Make up of Board is stipulated by statute. The State Departments of Fish and Game, Department of Natural Resources and Department of Public Safety are to provide technical assistance.

Sen. Halford Ltr. cont. Re: House Bill No. 102, An Act extending the termination date of the Big Game Commercial Services Board.

The history of previous Big Game Commercial Services prior to 1989 was to create a closed fraternity for a select number of Big Game Guides. This system was found to be unconstitutional by the Alaska Supreme Court. The result was a revised set of statutes for Big Game Commercial Services. These have proved to be very cumbersome to work with by the Board and costly to the industry. Some members of the Big Game Guiding industry have worked diligently to find some legal way to return the system back to that similar to 1989. This has caused confusion and in my opinion a lot of wasted effort.

The Federal Agencies have been quite cooperative with working with the Board. With the exception of the Department of Public Safety, other State agencies have ignored the Big Game Commercial Services industry. This includes the Dept. of Fish and Game. The attitude of ADF&G is hard to understand as approximately 80 % of State of Alaska funds dedicated to wildlife management are generated by this industry.

The Dept. of Commerce has supplied one staff person to deal with Big Game Commercial Services. Overall the fees (taxes) paid by the industry amounts to about \$400,000 per year. Actual expenditures by the Dept. of Commerce including charges by Attorney Generals staff for legal assistance totals only about \$200,000.

The Big Game Guiding industry has been estimated to generate upwards of 100 million dollars of business per year. This must be considered a portion of the tourist industry. Most of this money is spent right here in Alaska. Very different to the major providers of tourist services. The State of Alaska provides the tourist industry with 7 to 10 million dollars each year for advertising. None of these dollars are used to promote the Big Game Guiding (hunting) industry.

It can be concluded very quickly that Big Game Services is an important industry to Alaska. It can also be quickly seen that the State of Alaska Government agencies have little interest in Big Game Guiding even though this is a 100 million dollar renewable industry. Something different must be done.

I believe the only solution is to establish a private (or quasi private) board. This Board could then represent the Big Game industry. It could also have a staff which could truly service the industry and achieve cooperation from

Sen. Halford Ltr. cont. Re: House Bill No. 102, An Act extending the termination date of the Big Game Commercial Services Board.

involved State and Federal agencies. A change in some state statutes may be required to achieve a private board to oversee Big Game Commercial Services. Obviously the fees required of the industry must be revised. A simple way to achieve this would be to sunset the current Board and then set up a process to revise the statutes next legislative session. This would force the industry to reevaluate where it is at today and what might be done to correct the current situation. I believe with proper management this could be a renewable industry to Alaska of several times what it is today. This will not occur unless major changes are made.

Sincerely,


Thomas N. Scarborough

cc to: DOC

Lake Country Lodge

HC-2 Box 852, Soldotna, Alaska 99669

Phone: (907) 283-5821 / (907) 781-2245 FAX: (907) 283-9177

March 17, 1995

Sen. Loren Leman
Juneau, AK

Dear Loren;

Hope things are going well in Juneau, for you. Sounds like you have lots of big problems again as usual.

I am writing you about the Big Game Commercial Services Board. Although, I don't know the Bill #, I understand there is one which would extend it another three years, rather than let it die under the sunset provisions.

For my part, I would like you to vote AGAINST extension. The Board is very expensive and serves no good purpose. All its regulations continue to knock at the door of bringing back the "good ol' boys club" of Big Game Guides and their exclusive use areas, which as you know was declared unconstitutional, and the system completely disbanded.

As an active Big Game Guide/Outfitter and operator of Lake Country Lodge, I sure hope you allow the Big Game Commercial Services Board to sunset and die a nice quiet death.

Thank you;


John E. Davis

Lake Country Lodge &
KSRM, Inc.

NOTICE OF ADOPTION OF EMERGENCY REGULATIONS

BIG GAME COMMERCIAL SERVICES BOARD

Use Area Registration

AK
file
w/ their
bill.

As required by AS 44.62.250, notice is given that, under the authority of AS 08.54.310 and AS 08.54.320, the Big Game Commercial Services Board adopted, on March 1, 1995, as an emergency regulation, amendments to 12 AAC 38.820 relating to registration in a guide-outfitter use area, to implement, interpret, and make specific AS 08.54.310 and AS 08.54.320.

The emergency regulation amends 12 AAC 38.820 to provide for a guide-outfitter to register for a use area outside of a regularly scheduled application period under specific circumstances, including obtaining landowner authorization for that area. This amendment creates an exception to existing regulations that limit when a guide-outfitter may register for a use area or surrender one use area registration to register in another use area.

This regulation took effect March 20, 1995. The emergency regulation will expire July 17, 1995, unless it is made permanent by the Big Game Commercial Services Board.

Notice is also given that the Big Game Commercial Services Board intends to make this regulation permanent under AS 44.62.260, and any interested person may present written statements or arguments relevant to that proposed action by writing to:

JoAnne Cummings
Regulations Specialist
P.O. Box 110806
Juneau, AK 99811-0806

Written comments must be received no later than **Monday, April 24, 1995.**

Additionally, any interested person may present oral statements or arguments relevant to the proposed action at a hearing to be held on April 26, 1995, beginning at 9:00 a.m., at the following teleconference sites:

Frontier Building
3601 C Street, Suite 778
Anchorage, Alaska

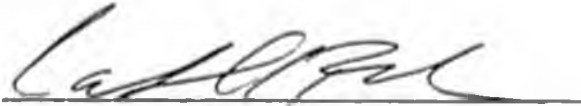
State Office Building
9th Floor, Conference Room B
333 Willoughby Avenue
Juneau, Alaska

State Office Building
Conference Room
675 Seventh Avenue
Fairbanks, Alaska

If you are a person with a disability who may need a special modification in order to comment on the proposed action, please contact JoAnne Cummings at the Division of Occupational Licensing, (907) 465-2537, no later than April 17, 1995, to make any necessary arrangements.

A copy of the emergency regulation may be obtained by writing to the address above or by calling (907) 465-2537.

This action is not expected to require an increased appropriation.



Catherine A. Reardon, Director
Division of Occupational Licensing

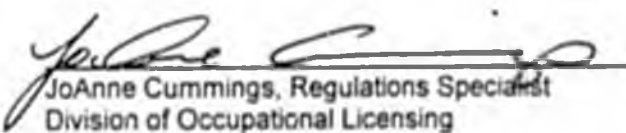
Date: 3/20/95
Juneau, Alaska

ADDITIONAL REGULATIONS NOTICE INFORMATION
AS 44.62.190(d)

1. **Adopting agency:** Department of Commerce and Economic Development, Big Game Commercial Services Board
2. **General subject of regulation:** Registration in a guide-outfitter use area
3. **Citation of regulation:** 12 AAC 38.820
4. **Reason for the proposed action:** Development of program standards
5. **Cost of implementation to the state agency:** No costs are expected in FY 95 or in subsequent years.
6. **Contact person for the regulations:**

JoAnne Cummings, Regulations Specialist
Division of Occupational Licensing
P O Box 110806
Juneau, AK 99811-0806
(907) 465-2537

7. **Origin of the proposed action:** Department of Commerce and Economic Development, Big Game Commercial Services Board

8. 
JoAnne Cummings, Regulations Specialist
Division of Occupational Licensing

Date: 3/20/95

**STATE OF ALASKA - OFFICE OF THE GOVERNOR
Boards and Commissions Office**

Membership Roster

(042) BIG GAME COMMERCIAL SERVICES

Member	Appointed	Reappointed	Term Exp.
Vacant Position Public			06/30/97
Vacant Position Commercial Use Permit Holder/Restricted			06/30/98
Glen Alsworth Transporter/restricted 2425 Merrill Field Drive Anchorage, AK 99501	08/29/89	06/15/90	06/30/94
Peter R. Buist Guide-Outfitter P.O. Box 71561 Fairbanks, AK 99707	08/01/91		06/30/95
Richard Burley Board of Game/Restricted 1165 Coppot Street Fairbanks, AK 99709		11/15/93	06/30/97
Glenn W. Fredericks Native landholders rep. 1400 Virginia Court Anchorage, AK 99510	10/28/92		06/30/96
Paul E. Johnson Guide-outfitter -- Chair P.O. Box 22 Elfin Cove, AK 99825	08/29/89	07/13/92	06/30/96
Thomas N. Scarborough Public P.O. Box 80868 Fairbanks, AK 99708	08/01/91	06/30/93	06/30/97
Eric C. Stirrup Transporter/Restricted P.O. Box 4123 Kodiak, AK 99815	08/24/91		06/30/95



Official Business

Alaska State Senate

Senate Finance Committee

HB 102

Mail Stop 3100
State Capitol
Juneau Alaska 99801-0182

MEMORANDUM

TO: All Senators

FROM: Senator Rick Halford

DATE: April 29, 1995

SUBJECT: House Bill 102 - Big Game Commercial Services Board Extension

Recently Joe Klutch, president of the Alaska Professional Hunters Association sent out the enclosed letter regarding House Bill 102 which extends the Big game Commercial Services Board.

For your information I have enclosed a copy of Mr. Klutch's letter and my response with enclosures. My response was intended to clear up the misleading information in his letter.

If you have any questions or need further information, please call my office at 4958. Thank you.



Official Business

Alaska State Senate

Senate Finance Committee

April 27, 1995

Mail Stop 31001
State Capitol
Juneau, Alaska 99801-0182

Dear Registered Guide,

You may have recently received a letter from Joe Klutch regarding the Big Game Commercial Services Board (BGCSB) which conveys some misleading information.

I would respond to Mr. Klutch personally but he is apparently not available. He is correct that I was unable to change my schedule on short notice to meet with him except briefly while he was in Juneau but failed to mention that he also canceled one of the appointments.

Last year at the end of the session I agreed to a one year extension of the Board without correcting the long-standing statutory areas of concern for two reasons; it was late in the session and the house bill had a narrow title which did not allow significant changes to the law. Now the House has again offered an extension with no amendments or clean-up language permitted under the existing bill title. Legislative rules do not allow an amendment in the second body which is not covered in the title.

Having been through this exercise last year I do not intend to go through it again in the same way. I will not support the continuation of the Board without repeal of a number of unnecessary provisions. It is ridiculous that the BGCSB enforce insurance provisions, requirements of other state agencies, the FAA, the Coast Guard or spend its time and considerable funds trying to recreate the unconstitutional pre-Owsichuk area system. All that the board spends just results in increased license fees.

I would like to see the BGCSB extended with changes and have made this clear to anyone who asked. A simple licensing board can provide licensing and examination without having to be a lawyer to understand it.

I have dealt with these issues for the past 25 years both inside and outside the legislative process. During that time sadly the A.P.H.A. has been a chief defender of many abuses which cost individuals tens of thousands of dollars to overturn in court. Even today large operators support unnecessary regulations in an effort to limit entry and competition. Board efforts to increase apprenticeship time to five years aren't to get better assistance guides but to keep a pool of low cost labor available. The self-serving rhetoric and inflammatory predictions of doom are no more new than they are accurate.

I'm enclosing two opinions from the Department of Law and an amendment to delete the unconstitutional provisions in current law which were proposed jointly by the Commissioners of Commerce, public Safety, Fish and Game and Natural Resources when the provisions were adopted originally.

Arguing the area system is a waste of breath. The false hopes, wasted effort by guides trying to comply and all the mapping, recording and B.S. surrounding that system will fall of their own weight so they can stay in the law as far as I'm concerned. I will not however support all the other provisions which unnecessarily and ineffectively harass the industry.

Sincerely,



RICK HALFORD

RH:kg

Alaska

Professional Hunters Association, Inc.

P.O. Box 91932 • 301 E. 77th • Anchorage, Alaska 99509
(907) 522-3221

4-22-1995

To: All APHA, SCF, FNAWS members and fellow sportsmen of
Alaska

From: Joe Klutsch

Dear Friends,

House Bill 102 which would extend the Big Game Commercial Service Board is now in jeopardy of being killed in the Senate Finance Committee chaired by Senator Rick Halford. The Bill passed the House of Representatives by a 39 yeas - 1 excused absence vote. It moved out of the Senate Resources Committee on Saturday the 22nd and was referred to the Senate Finance Committee chaired by Senator Rick Halford.

Senator Halford has been completely unwilling to discuss any of his specific concerns with me despite numerous attempts to meet with him personally. He has indicated that it is his belief that the BOCSB and the regulation package establishing the registration area system serves no management purpose whatsoever. As chairman of the Finance Committee and Senate Majority Leader, he is in a position to prevent HB 102 from passing.

If HB 102 dies in his Committee, the Big Game Commercial Service Board will cease to exist in July of this year. All the regulations related to guiding will expire also. This means complete open access on State lands and no more registration areas. Chaos in the field, conflicts with other guides and users and excessive harvest on many key big game species will result. This translates into reduced or closed seasons for guided hunters. Make no mistake about it. If the State Board of Game doesn't do it, the Federal Subsistence Board will.

I am asking every one of you who has trusted myself and the APHA Board of Directors to act on your behalf, to respond by calling the following members of the Senate Majority and request in a respectful but urgent and forceful manner that they urge Senator Halford to move HB 102 out of his Committee and on to passage. Your future in the guiding

profession depends on it.

Please call and if possible write in the next week the following Senators and ask them in no uncertain terms to convince Senator Halford to move HB 102 on to passage. It is a simple Board extension bill.

Senators:

- Steve Frank ... 465-3709
- Lyda Green ... 465-6600
- Tim Kelly ... 465-3822
- Loren Leman ... 465-2095
- Mike Miller ... 465-4976
- Drue Pearce** ... 465-4993 ✓ - Senate President *****
- Steve Rieger ... 465-3879
- Bart Sharp ... 465-3004
- Robin Taylor ... 465-3873
- John Torgerson ... 465-2928

Senator Halford
465-4959

465-4925 fax

You will probably not be able to talk to most of these Senators personally. But you will talk to staff members who will definitely convey your message if you are respectful, credible and make clear the urgency of this situation. Ask them to talk to Senator Halford and urge him to move HB 102 on to passage!

The reasons are as follows:

Sun setting the BGCSS means complete deregulation of commercial hunting activities.

Big Game populations will be over hunted in many areas.

Conflicts with other guides, general residents and subsistence users will occur resulting in low quality hunting opportunities.

An 80 to 100 million dollar a year industry will be further crippled.

The Federal Government will take even more control of hunting activities.

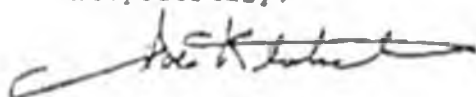
Alaska has one of the better systems in the world for regulating and allocating harvest of game. We cannot afford to throw it away because a few individuals have a personal problem!

It has taken eight years to re-structure a system since
Dmscheck. Its not perfect by any means, but its better
than no regulation at all!

Make follow up calls or Fax PM messages to these Senators.
ASK if they are getting results from Senator Halford. TIME
IS CRITICAL!!! The legislature may adjourn within a week
and our extention bill could die with it.

As the President of APHA, I have asked very little of each
of you except the confidence and trust that you feel I have
earned and nothing could be more important than that. But
now, I am asking you to do as I have requested in this
letter and to do it now! To a great extent, your future in
the guiding profession will hinge on your response to this
request! I am confident that you will respond accordingly.

Respectfully,



Joe Klussch
President - APHA

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 N 4TH AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: 907 276-3550

31 NATIONAL CENTER
100 CUSHMAN ST
SUITE 400
FAIRBANKS ALASKA 99701-4679

November 29, 1988

P O BOX K—STATE CAPITOL
JUNEAU, ALASKA 99801-2300
PHONE: (907) 465-3600

Dear

Thank you for your letter about various guide industry issues. I appreciate your candor and courage in expressing some realities that are often "swept under the rug" by guides who want us to merely resurrect the old exclusive guide area system with a new name and slightly different form.

As you probably know, this office asked that the court's decision invalidating the EGA system be postponed until June 1, 1989. We were directed to make this request due to political pressure exerted by the APHA and to game management concerns raised by the Division of Game.

Although our request may seem that we are endorsing the old system, that is not the case. I believe that this request is the "last hurrah" for a system that was anti-competitive, ridden with abuse, and did not serve game conservation. Thus, it was declared unconstitutional, and I believe that any similar system that allocates game on an exclusive, area wide basis, no matter what it is called, would also be illegal.

As the Assistant Attorney General who advises the Guide Board, I will be encouraging the Department of Commerce and Economic Development and the legislature to limit the board to the sole function of licensing and de-licensing guides. Economic survival within the industry should be determined by the marketplace, like it is with any other occupation. Game conservation issues should be handled by the organization that is better equipped to deal with this responsibility, the Game Board.

Again, thank you for your letter. I sent a copy of it to the director of the Division of Occupational Licensing, and I encourage you to send a copy to Representative Henry Springer, P.O. Box V, Juneau, Alaska 99811, who is the chairman of the Interim Task Force on Guiding and Big Game. I also encourage you

Appendix C-1

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

November 29, 1988

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99801-0000
PHONE: (907) 465-3600

Dear

Thank you for your letter about various guide industry issues. I appreciate your candor and courage in expressing some realities that are often "swept under the rug" by guides who want us to merely resurrect the old exclusive guide area system with a new name and slightly different form.

As you probably know, this office asked that the court's decision invalidating the EGA system be postponed until June 1, 1989. We were directed to make this request due to political pressure exerted by the APHA and to game management concerns raised by the Division of Game.

Although our request may seem that we are endorsing the old system, that is not the case. I believe that this request is the "last hurrah" for a system that was anti-competitive, ridden with abuse, and did not serve game conservation. Thus, it was declared unconstitutional, and I believe that any similar system that allocates game on an exclusive, area wide basis, no matter what it is called, would also be illegal.

As the Assistant Attorney General who advises the Guide Board, I will be encouraging the Department of Commerce and Economic Development and the legislature to limit the board to the sole function of licensing and de-licensing guides. Economic survival within the industry should be determined by the marketplace, like it is with any other occupation. Game conservation issues should be handled by the organization that is better equipped to deal with this responsibility, the Game Board.

Again, thank you for your letter. I sent a copy of it to the director of the Division of Occupational Licensing, and I encourage you to send a copy to Representative Henry Springer, P.O. Box V, Juneau, Alaska 99811, who is the chairman of the Interim Task Force on Guiding and Big Game. I also encourage you

Appendix 5-1

Mr. Tom Hundley

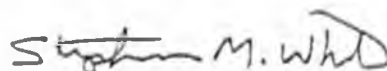
November 28, 1988
Page 2

to express your thoughts to the legislature this winter when the
guide industry will again be an issue.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:



Stephen M. White
Assistant Attorney General

SMW:jf

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 485-3600

February 14, 1989

The Honorable Bettye Fahrenkamp, Chairwoman
Senate Resources Committee
P.O. Box V
Juneau, Alaska

Dear Senator Fahrenkamp:

To assist your committee in its consideration of Senate Bill 140, I am writing to provide a synopsis of the Owsichek decision and its implications for creating an area management system for allocating guide access to big game.

1. SYNOPSIS OF THE OWSICHEK DECISION.

On October 21, 1988, the Alaska Supreme Court decided that the statutes and regulations that underlie the state's exclusive guide area system ("EGA") are unconstitutional. 1/

On December 8, the court granted the state's request that the effect of this decision be postponed until June 1, 1989. Therefore, the EGA system is currently enforceable. Beginning in June, the system will have no legal effect, and any licensed person may guide hunters in a game management unit for which he or she is certified. 2/

1/ The court uses the term "exclusive guide areas" to describe not only joint use areas but also "restricted guide areas," a term used to describe EGA's since 1986 when the term appeared in AS 08.54.195.

2/ When a guide is licensed by the Division of Occupational Licensing, he or she is "certified" to conduct hunts in only those game management units where the guide has experience. Except for older guides who were "grandfathered" into more units, most guides are limited by regulation to certification in not more than three game management units. 12 AAC 38.200.

(Footnote Continued)

The supreme court based the Owsichek decision on its interpretation of the "common use clause," i.e., article VIII, section 3 of the Alaska Constitution. This clause says, "Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

This was the first time the court was called on to interpret the common use clause with respect to wildlife. In earlier decisions, it had discussed the clause in the context of state waters (Wernbergz and CWC Fisheries) and in the context of fish (Ostrosky and Jonns). In light of its earlier decisions, the court declared that the "common use clause was intended to guarantee broad public access to natural resources."

In order to further clarify the meaning of the common use clause, the court looked at the constitutional history of this clause and at the historic development of wildlife law in general. Concerning the constitutional history, the court said that the purpose of the clause was "anti-monopoly." It also found that the framers of the constitution intended to prohibit "exclusive grants or special privileges" and intended that the public "retain broad access to fish, wildlife and water resources."

In discussing the development of wildlife law, the court said that the common use clause "constitutionalized" the state's public trust duty toward wildlife. This is a duty to manage these resources for the benefit of all the people.

The court summarized its interpretation of the common use clause by stating that the clause was intended to put into the constitution "certain trust principles guaranteeing access to

(Footnote Continued)

At the time of the court's decision, 256 licensed guides had been assigned either exclusive or joint use guide areas. One hundred and eighty four licensed guides had no area to guide in. Therefore, after June 1 the Owsichek decision means that 134 more guides will be able to guide hunts in any of the game units for which they are certified. The additional hunting pressure, of course, varies from unit to unit. For example, the number of eligible guides in units 1, 2, 3, and 4 (southeast Alaska) will increase three-fold (from 13 to 33) while the number of eligible guides in unit 17 (Togiak - Dillingham area) will increase over six fold (from 17 to 129).

the fish, wildlife and water resources of the state" and, at a minimum, this meant a "prohibition against any monopolistic grants or special privileges." It also stated that the clause makes no distinction between use for personal purposes and use for professional purposes; common use applies to commercial guiding as well as recreational hunting.

In deciding that the EGA's violated these principles, the court noted the following features of the system:

1. The EGA system gave one guide the right to exclude all other guides from conducting hunts in his or her EGA. This right was based on the area holder's seniority, that is, his or her use, occupancy, and investment in the area.
2. EGA rights had no time limit, and the system of transferring them, based as it was on the selling of "improvements" and a holder's designation of his or her successor, allowed the selling of areas as if they were a property interest.
3. The assignment of EGA's was not based primarily on wildlife management concerns. The system could not be justified as a game management tool and therefore was unlike licensing requirements, bag limitations, and seasonal restrictions which were proper and "time-honored methods of conserving the resources." In this regard, it is important to note that the court said that even if used as a wildlife management tool, this would not "save the EGA system from unconstitutionality under the anti-monopolistic common use clause."

Finally, the court had made a distinction between the EGA's on one hand and state leases and exclusive concessions on the other. The latter are permissible because they are of limited duration, because they are subject to competitive bidding, because they are limited by contract terms and restrictions, and because the state receives compensation for them.

II. IMPLICATIONS FOR A NEW AREA MANAGEMENT SYSTEM

The Legislative Task Force on Guiding and Big Game has recommended that the state develop a new area management system for allocating access to guiding opportunities among licensed guides. It has recommended the establishment of a land-based concession system. While the Department of Law could defend this type of system, we believe that it would ultimately fail a legal challenge.

We may be able to defend a concession system based on an analogy to the state's current shore fisheries lease program. That program enables the Department of Natural Resources to lease small tracts of shoreline for use by persons who hold set net permits under the state's fisheries limited entry program. For a guide area system to qualify for this analogy and answer some of the concerns raised by Owsichuk, the concessions would have to be limited to state owned lands, would have to involve small tracts of land, would have to be limited in duration (one to three years), and would have to provide equal opportunity of access for all qualified guides when the concession was available for reassignment.

Even with these features, we believe that a concession system would still be found unconstitutional because of the severe manner that it would impinge on the common use guarantee as expressed in Owsichuk. The analogy to the shore fisheries lease program is weakened by several factors. That program is tied directly to the state's limited entry program, a system of limiting access to fishery resources that has constitutional underpinning. A guide concession would limit access to game opportunities without an equivalent constitutional basis. 3/

State concessions and leases, as such, are not included in the common use clause. When their purpose is to allocate access to resources like timber and grazing land, the state is free to grant exclusive rights. When allocating exclusive access to fish, wildlife, or waters, however, a land-based system would conflict with the principle of broad public access guaranteed by the common use clause.

3/ In 1972 the Alaska Constitution was amended to allow the state to limit entry into fisheries. Ak. Const. art. VIII, §15. In a later case, the Supreme Court held that although fisheries limited entry is inconsistent with the "common use" clause, this system was validated by the 1972 amendment. State v. Ostrosky, 667 P.2d 1184 (Alaska 1983). appeal dismissed 407 U.S. 1201, 51 L.Ed. 2d 339 (1984).

There is no provision in the constitution that allows for limiting entry to game resources, and currently there is no proposal for such an amendment. (Amendments to the constitution are accomplished by a proposal by each house, passed by at least a 2/3 vote, followed by a majority vote of the public at the next general election. Ak. Const. art. XIII, §1.)

The Honorable Bettye Fahrenkamp
Chairwoman, Senate Resources Committee

February 14, 1980
Page 1

Even if a system were developed that served only game management purposes and not the economic welfare of a segment of the guiding industry, it would not be safe. The Owsichok court noted that the common use clause precluded exclusive guide areas even if they could be justified as a wildlife management tool. In the court's view, the traditional game management tools -- licensing requirements, bag limits, and seasonal restrictions -- apparently are sufficient to protect the resource without conflicting with the clause. A court would recognize that the state can respond to any increased pressure on game resources by requiring hunter registration, permit drawing, or other methods now available to the Board of Game. Although these techniques may bring unprofitability to the business of guiding, we believe that a court would favor them over a system that has inherent constitutional problems.

In conclusion, a constitutional amendment is the only certain step that will guarantee a stable, long-term system that allows some, but not all, qualified guides to have access to game resources in a particular area. We believe that any statutory, land-based system that does not have explicit constitutional underpinning and that resembles even remotely the IGA scheme that was struck down in Owsichok will be destined to the same fate.

Sincerely yours,

GRACE BERG SCHABLE
ATTORNEY GENERAL

By:


Stephen M. Vaita
Assistant Attorney General

¹ Owsichok v. State, Guide Licensing and Control Board, 753 P.2d 438, 497 n.14 (Alaska 1988).

We have proposed instead, two amendments. This first one would remove the three state agency representatives from the Big Game Commercial Services Board (CSB). In their place, we have added one seat for the class of commercial use permit holders discussed in AS 08.54.460, not previously represented on the board, and increased the public membership on the board from one to three.

In addition, we have clarified that the board member appointed by the Board of Game cannot, while serving on the CSB, also hold a commercial use permit. This would ensure that the Board of Game representative did not have a financial interest in the big game hunting industry while on the board, thus attempting to maintain (along with the additional public members) some balance of special interests on the board.

In addition, because we recognize that much of the impetus behind the Task Force's decision to place state agency representation on the CSB came from a desire that the board be assured of receiving adequate information and data from the various departments, we have proposed Amendment No. 4, which will state, in statute, that the Departments of Fish and Game, Natural Resources, and Public Safety must provide the board with technical assistance and information.

Amendment No. 2: Board Duties

This amendment clarifies that the roster of big game commercial services providers maintained by the CSB should list only those qualified to be listed, regardless of the origin (federal or state) of the convictions.

Amendment No. 3: Management System

A majority of the members of the Task Force were fairly clear in their desire to recreate, to the maximum extent possible, an area scheme similar in construction to that which was held unconstitutional in Owsichuk v. State, Guide Licensing and Control Board, 763 P.2d 488 (Alaska 1988). To this end, proposed AS 08.54.310(b)(2) provides that the CSB may "establish, in consultation with the Department of Fish and Game or the Department of Natural Resources, a resource-based management system for allocating access to big game hunting opportunities among guide-outfitters licensed under this chapter" (emphasis added). The inclusion of the Department of Natural Resources makes clear that a land-based, as well as resource-based system is contemplated. We are concerned over the constitutionality of this section.

Article VIII, section 3 of the Alaska Constitution provides: "wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use." In Owsichuk, the Court held that the statutes authorizing the establishment of restricted guide areas were unconstitutional under this common use provision.

The court also noted that the common use provision precluded restricted guide areas even if they could be justified as a wildlife management tool. In the court's view, traditional management tools -- "[l]icensing requirements, bag limits, and seasonal restrictions" -- are apparently

sufficient to protect game resources without conflicting with common use guarantees.

A majority of the Task Force, however, believes that some system of limitation may be available through the granting of leases and concessions on state lands. Inclusion of the commissioner of natural resources (or designee) on the proposed board and the grant of authority to "establish" an allocation system "in consultation" with the Department of Natural Resources signals, we believe, an intent to employ the state's land management authority to recreate, to the extent possible, the type of area system found unconstitutional in Owsichek.

As contemplated by the Task Force, commercial guide-outfitting concessions on state lands would involve fairly large tracts of land for substantial periods of time and would, again to the extent feasible, legally preclude anyone other than the designated concessionaire(s) from leading guided or outfitted hunts in the areas for which the concessions are granted. (Some members of the Task Force also expressed strong support for some form of preference rights under which individuals currently holding restricted guide areas would be given priority in obtaining such concessions.)

Other points must also be considered. First, the scheme presently contemplated by the Task Force would apply only to state land. It could not be applied to federal land or privately owned land (including land owned by Native corporations). It thus would not provide the statewide economic relief the guide-outfitters are seeking, nor would it provide Alaskans with what we most want: a game management system that will extend across all lands and be agreeable to all land owners. If we do not cooperatively develop a game management system acceptable to all land owners, the resulting loss of control over our statewide game resources will defeat any comprehensive attempt to manage our big game resources by the required sustained yield concepts. Finally, even with such a program, the limited duration of the exclusive concessions which could be granted probably would not provide the kind of long-term economic security and certainty the guide-outfitters desire.

In brief, it seems to us that the court has signalled in Owsichek that the common use clause requires that there be equal opportunity of access to the resource for all qualified guide-outfitters, and that traditional fish and game management tools -- e.g., licensing requirements, bag limits, and seasonal restrictions (we also believe these also include random permit drawings for both sport and commercial hunts) -- be used to protect the resource, at least unless and until the Alaska Constitution is amended to authorize exclusive guide areas.

Our proposed amendment removes the language providing the CSB with the authority to "establish" any kind of game management system. We believe that that must be done by the appropriate resource agencies. Instead, we suggest the board be given authority to "consult" with the Departments of Fish and Game and Natural Resources with respect to the creation of a resource-based management system that makes provision for commercial hunting opportunities for guide-outfitters.

We believe any language placing the CSB at the center of the creation of a system to allocate big game hunting opportunities among licensed guide-outfitters will give us the same complex problems that have dogged the Guide Board for so many years.

Amendment No. 4: Board Assistance

Justification for this amendment was previously discussed under Amendment No. 1 above. This new section would require specific state agencies to provide information and technical assistance to the CSB in lieu of those agencies holding seats on the Commercial Services Board itself.

Amendment No. 5: Commercial Use Permit Holders

This amendment clarifies that the class of commercial use permit holders does not include businesses providing accommodations (hotels, motels) within cities, towns and villages. Only lodges and the like situated in the "wild" are required to get a commercial use permit if they provide accommodations (or other big game commercial services) to hunters.

Amendment No. 6: Discipline of Guide-Outfitters

This amendment expands the list of persons who may file a complaint against a guide-outfitter. The present language limits complaints to those filed with the board "by a client of the licensee." By deleting that restriction, other persons may file complaints, including land owners, fish and wildlife protection officers, and any others aware of potential violations.

Amendment No. 7: Discipline of Guide-Outfitters

This amendment would add, as a ground for discipline, the unauthorized use of state, federal, or private land by a licensed guide-outfitter.

Amendment No. 8: Discipline of Guide-Outfitters

This amendment clarifies that hunting in closed areas, whether closed by state or federal regulation, is grounds for the summary suspension of a guide-outfitter license.

Amendment No. 9: Discipline of Transporters/Commercial Use Permittees

This amendment clarifies that hunting in closed areas, whether closed by state or federal regulation, is grounds for the summary suspension of a transporter license or a commercial use permit.

Amendment No. 10: Unlawful Acts

This amendment would make it unlawful for big game commercial service providers to use state, federal, or private land without authorization.

Audit Report

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
BIG GAME COMMERCIAL SERVICES
BOARD

October 8, 1993



Audit Control Number:

08-1408-94

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from each legislative chamber. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$5 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in either Anchorage or Juneau.

BUDGET AND AUDIT COMMITTEE

Senator Randy Phillips, Chairman
Senator Al Adams
Senator Steve Frank
Senator Steve Rieger
Senator Bert Sharp
Senator Jay Kerttula (alternate)

Representative Terry Martin, Vice Chair
Representative John Davies
Representative Mark Hanley
Representative Ron Larson
Representative Eileen MacLean
Representative Sean Parnell (alternate)

DIVISION OF LEGISLATIVE AUDIT

Randy S. Welker, CPA
Legislative Auditor
Merle R. Jenson, CPA
Deputy Legislative Auditor

P.O. Box 113300
Juneau, Alaska 99811-3300

(907) 465-3830, Juneau
(907) 561-1445, Anchorage
(907) 465-2347, Juneau FAX

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

October 8, 1993

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BIG GAME COMMERCIAL SERVICES BOARD

October 8, 1993

Audit Control Number

08-1408-94

The objective of the audit was to determine if the Big Game Commercial Services Board should continue its existence. AS 44.66.010 has scheduled the board for termination on June 30, 1993. As of the date of this report, the board is technically in its one-year "wrap-up" period and, if no action is taken by the legislature, the board will be dissolved at June 30, 1994. We recommend that the legislature extend the board's termination date to June 30, 1997.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.

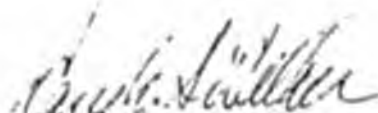

Randy S. Welker, CPA
Legislative Auditor

TABLE OF CONTENTS

	<u>Page</u>
Objectives, Scope, and Methodology	1
Organization and Function	3
Background Information	5
Report Conclusion	9
Findings and Recommendations	11
Analysis of Public Need	15
Appendixes:	
A. Department of Commerce and Economic Development Big Game Commercial Services Board Schedule of Revenues Compared with Expenditures	19
B. Big Game Commercial Services Board Application, License, and Other Fees	21
Agency Response:	
Department of Commerce and Economic Development	23
Legislative Audit's Additional Comments	27

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Titles 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Big Game Commercial Services Board to determine if it should continue in existence as provided for under terms of the State's "sunset" legislation.

As required by legislative intent, this report is part of the oversight function when they consider if a board or commission should be reestablished. The law currently specifies that the board will terminate on June 30, 1993 and will have one year from that date to conclude its affairs. As of the date of this report, the board is technically in its one-year "wrap-up" period.

Objectives

Our specific audit objectives were:

1. To make recommendations to the legislature regarding the continued existence of the board.
2. To determine if the board is performing in compliance with state statutes and regulations.
3. To determine if the board is performing in the interest of the public.

Scope and Methodology

We focused on activities that have occurred since the board was established on May 12, 1989 to determine if it has been operating in the interest of the public. Also, we reviewed the proceedings of the current board to ensure that they are in compliance with Alaska statutes and regulations.

During the course of our audit, we attended a teleconference meeting of the board which focused on the requests for additional guide use areas under state regulations (12 AAC 38.820). During the meeting, we observed the proceedings of the board. We were able to see firsthand how the board operates and interacts with the public.

In order to address our audit objectives, we reviewed the following:

- Applicable sections of Alaska's statutes and regulations.
- Minutes of prior board meetings.
- The director's reading files.

- Investigation and litigation files.
- Office of the Ombudsman closed case file.
- Budget documents, session laws and other legislative information relating to the board's operations.
- Internal reports and documents prepared by the board.
- Other documents as deemed pertinent.
- Financial reports from the state accounting system.
- Prior year audit work papers and audit reports.
- Office of the Governor, Boards and Commissions' files.

In addition, we conducted interviews with the management and staff of the board and Department of Fish and Game employees involved in developing guide-outfitter use areas.

ORGANIZATION AND FUNCTION

In the October 21, 1988 *Owsichek* decision, the Alaska Supreme Court decided that the statutes and regulations establishing the State's exclusive guide area system were unconstitutional. These statutes and regulations had been used by the Guide Licensing Control Board, and later the Guide Board, as an integral part of their oversight function. The Big Game Commercial Services Board was established in the Department of Commerce and Economic Development in May 1989 by Chapter 37, SLA 1989 [House Bill (HB) 112]. It was the intent of the legislature that the board establish a resource-based management system for allocating big game hunting opportunities among guide-outfitters. The management system was to:

1. Provide for the conservation of the game resources.
2. Provide for equal opportunity to all qualified guide-outfitters when access to hunting rights are assigned or reassigned.
3. Provide financial compensation to the State for the commercial harvest of Alaska's big game resources to be used for game management purposes.
4. Designate the Alaska Department of Fish and Game as the lead agency to formulate management areas.
5. Provide for long-term stability and economic health of any commercial industry utilizing big game resources.
6. Include recommendations from private and public land owners in order to ensure statewide applicability.

The provisions of AS 08.54 define the board's authority, purpose, and scope of work. In addition to establishing the resource-based management system above, the primary functions of the board include the following:

1. Determine qualifications of applicants for guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, and assistant guide-outfitter licenses.
2. Establish performance standards for providers of big game commercial services and regulate the activities of these providers.
3. Compile, maintain, and publish an annual register of big game commercial service providers.
4. Prohibit guide-outfitting, transporting, and other big game commercial services activities that are unsportsmanlike, unethical, unsafe, against principles of game conservation, degrading to the professions, or that adversely affect natural resources.

5. After a hearing, revoke, suspend, or deny renewal of a license or permit.
6. Authorize issuance of transporter licenses and commercial use permits.
7. Establish the level of supervision that a guide-outfitter will provide for class-A assistant guide-outfitters and assistant guide-outfitters.

**BIG GAME COMMERCIAL SERVICES BOARD
OCTOBER 1993**

Glen Alsworth, Transporter
 Peter R. Buist, Guide-Outfitter
 Richard Burley, Board of Game Representative
 (pending appointment by the Game Board)
 Glenn W. Fredricks, Native Land Holder
 Robert A. Hinman, Commercial Use Permit Holder
 Paul E. Johnson, Guide-outfitter, Chairman
 Scott Ogan, Public
 Thomas N. Scarborough, Public
 Eric C. Stirrup, Transporter

The board consists of nine members (see inset at above right) who, unless otherwise noted, are appointed by the governor and serve at the pleasure of the governor. By statute, the nine member board must be made up of:

1. two licensed guide-outfitters;
2. two transporters (one in the business of air transport);
3. one commercial use permit holder who does not hold any class of guide-outfitter license or a transport license;
4. one member of the Board of Game who is chosen by the Board of Game and does not hold a commercial use permit;
5. one member who represents Native landholders; and
6. two public members.

Members serve staggered four-year terms.

BACKGROUND INFORMATION

As discussed in the Organization and Function section, the *Owsichek* decision handed down in October 1988 by the Alaska Supreme Court struck down the legality of statutes and regulations related to the exclusive guide area (EGA) system. In many respects, the decision was the culminating blow for the State's guiding industry as it then existed and was regulated. The decision was a watershed event that lent even more urgency to the effort to overhaul how the State's hunting guides were regulated.

Owsichek decision was the major, but not the only critical problem facing guide regulators

The EGA system was an integral part of the administrative responsibility of the former Guide Board. The legal demise of EGA came on the heels of other problems and concerns facing guide regulation in general, and the Guide Board in particular, such as:

1. The lack of regulation of air taxi operators, many calling themselves "outfitters," who in the view of many guides were acting as unlicensed competitors.
2. Complaints by individuals that the guide licensing process was too subjective and that obtaining a license or an EGA depended more on "connections with the right people" and subjective evaluation, than objective consideration of relevant experience.
3. The problem that the Division of Fish and Wildlife Protection was having enforcing guiding laws, due to difficulty in defining what constituted unlicensed guiding activity.

Legislature had already established a task force to consider changes in guide regulation

Even before the *Owsichek* decision brought the problems of the industry to a cataclysmic pitch, the legislature was already considering a public policy response. Chapter 160, SLA 1988 established what was termed the Interim Task Force on Guiding and Game, under the jurisdiction of the legislative council. The task force was to examine these various problems and develop a proposed alternative regulatory method. The task force consisted of:

1. the commissioners of the Departments of Fish and Game, Commerce and Economic Development, and Public Safety, (or their designees);
2. two members of the Senate and two members of the House of Representatives; and
3. six other "special interest" members appointed by the governor as follows:
 - a. one member of the Guide Board;
 - b. one big game licensed guide, not a member of the Guide Board;

- c. two persons engaged in a business, other than guiding, that were involved in transporting big game hunters to and from the field (but only one of the two could be an air taxi operator); and
- d. two public members, neither of whom had a financial interest in any business involving or related to the commercial taking of game.

Chapter 10, SLA 1989 extended the task force's termination date to the earlier of January 15, 1990 or the enactment of legislation establishing:

- 1. A licensing system for hunting guides and other providers of big game services to hunters; and
- 2. A management system for allocating rights of access to big game to licensed guides.

The legislation also added two additional members to board: (1) an individual with expertise in research and analysis, and (2) a representative of Native landholders.

Task force recommended creation of Big Game Commercial Services Board

The task force recommended that a new regulatory board be created. It also recommended expanding the regulatory purview of the new board to cover both the guides and outfitters (classifying a singular group as "guide-outfitters") in addition to a group designated as transporters. The House Resources Committee introduced legislation that incorporated much of what the task force recommended.

The legislature allowed for the reestablishment of what was termed "area assignments" which were, to a very limited degree, analogous to the old EGA concept, whereby certain license holders would be permitted to guide in designated geographic areas. But in various intent statements, the legislature directed that the precepts of the *Owsichek* decision be respected in the development of any new guide area system. The intent from the Senate Finance Committee directed, in part, that

it is the intent of the legislature that the Big Game Commercial Services Board, with recommendation from the Task Force on Guiding and Game, . . . shall consider the implications of the Owsichek decision issued by the Alaska Supreme Court . . . when establishing the resource-based management system for allocating big game hunting opportunities among guide-outfitters.

Regulations for area assignments started adoption process in January 1992

In January 1992, maps of designated use areas were first developed. The first draft of associated regulations which established how license holders could apply and qualify for areas were finished in July. The BGCSB held public hearings on the proposed regulations in late September 1992, after the new rules had been circulated publicly for more than 60 days. At their September 27, 1992 meeting, the board adopted the regulations, as amended based on public comment. The regulations were forwarded to the Department of Law for legal review in early October and were approved in their final form by the lieutenant governor in late January 1993.

Areas began being assigned by the Division of Occupational Licensing (OL) in July of 1993. As of the date of this report, OL has received 845 applications for area assignments from 330 guides. As of the same date, 720 of the area permits had been granted. As discussed in Recommendation No. 1, we have excluded any analysis of the area assignment process from our sunset review. We feel that there has not been enough experience to assess the fairness and objectivity of the area assignment process. However, we are encouraged by the initial role played by the Department of Fish and Game in establishing relevant game management units that serve as the underlying structure for the area assignments.

(Intentionally left blank)

REPORT CONCLUSION

Alaska Statute 44.66.010 requires that the Big Game Commercial Services Board be terminated on June 30, 1993. As of the date of this report, the board is technically in its one-year "wrap-up" period and, if no action is taken by the legislature, the board will be dissolved at June 30, 1994. We recommend that the legislature extend the board's termination date until June 30, 1997 (see Recommendation No. 1).

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The statutory sunset provision for the Big Game Commercial Services Board should be extended until June 30, 1997.

Under Alaska Statute [AS 08.03.01(k)(5)], the termination date for the Big Game Commercial Services Board (BGCSB) was June 30, 1993. As of the date of this report, the BGCSB is technically in its one-year "wrap-up" period. If no action is taken by the legislature, the BGCSB will be dissolved at June 30, 1994.

We have reviewed the activities of the BGCSB since it was created as the successor to the Guide Board. In our view, the BGCSB is operating in the public's interest. The board, through the licensing and supervision of big game guides is adequately protecting the hunting public. Accordingly, we recommend that the board continue operations through FY 97.

The establishment and allocation of designated guiding areas between licensed guides was still very much in its "start-up" phase at the time of our audit fieldwork. The use, trading, and allocation of previous exclusive guiding areas was the central issue in the 1988 *Owsichuk v. State* court decision. The *Owsichuk* decision determined that the statutes under which the Guide Board was issuing and designating exclusive guide areas were unconstitutional.

The BGCSB and the Division of Occupational Licensing (OL) has just recently started the allocation and distribution of guide areas (on a non-exclusive basis) using regulations formally adopted in January 1993. Since this critical function is in the "start-up" phase, we suggest extending the board's "sunset" date for three years. By doing so, our agency can better assess and consider the manner the original area allocation process was carried out by OL and the board. At that time there would be two years of actual experience to analyze and consider when we conducted the subsequent BGCSB "sunset" review in the summer or fall of 1996.

Recommendation No. 2

The Department of Commerce and Economic Development (DCEDE) and OL should continue to work with the Office of the Governor, Office of Management and Budget (OMB) in establishing fee levels for occupational licensees that are more reflective of the actual regulatory cost of the occupation.

OL's methodology for determining FY 93 fees allocates costs to a board or occupation in one of two ways. Some costs, termed direct costs by OL, are directly distributed to a specific licensing program. Direct costs include personnel assigned to one specific occupation, travel associated with board business, public notices of board proceedings, and

printing of board applications and statute booklets. Other costs, termed indirect costs, are allocated based upon the percentage of licensees in each occupation compared to the total number of occupational licensees. These costs include the expenditures associated with licensing examiners', investigators', hearing officers', management's, and clerical staff's time.

Effective August 24, 1992, DCED was required to establish fee levels so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for that occupation [AS 08.01.065(c)]. Prior to FY 93, DCED could establish fees that reflected, but did not exceed, the actual costs of the activity for which the fee was charged and could establish a fee at less than full cost if they deemed it unreasonable to impose the full cost of the activity on the licensee.

Our office and OMB have both reviewed OL's cost allocation methodology to determine if it is sufficient to meet the requirements of AS 08.01.065(c). Both our office and OMB do not believe that OL's cost allocation methodology distributes costs reflective of the actual effort spent. The primary disparity involves the classification of licensing examiners', investigators', and hearing officers' time. The manner in which these three categories of employees' cost have been allocated prior to FY 94 can cause occupations with a large number of licensees to absorb costs that are not reflective of the actual effort spent regulating their profession.

In addition to our concerns with OL's cost allocation methodology, we found problems in how they distributed costs in their calculation of a two-year average of expenditures used in determining FY 93 license fees. The percentages applied to allocate indirect costs were not always correct. These inconsistencies were caused by formula errors on spreadsheets prepared by OL staff. Also, documentation supporting some expenditures on the spreadsheets has not been retained. Review of the selected current information available does not confirm these numbers. As discussed with OL staff, we recommend that OL retain original supporting documentation in their future distributions of costs.

In their September 1993 report, *Occupational Licensing Fee-Setting Policy Assessment*, OMB made seven recommendations to OL on how to allocate costs so that the intent of AS 08.01.065(c) is met. According to OMB's report, "A follow-up review for this project will be scheduled for March 1994." DCED has recently indicated that, for the determination of the FY 94 fees, they will allocate costs for licensing examiners, investigators, and hearing officers based on estimated time spent by those employees, with periodic adjustments to actual time spent in accordance with our office and OMB's recommendations. As of October 1993, the allocation of direct and indirect costs using FY 93 expenditure data has not been performed.

DCED should continue to work with OMB in establishing fee levels for occupational licensees that are more reflective of actual regulatory cost of the occupation.

Recommendation No. 3

OL should request statutory changes to AS 08.01.050 and AS 08.01.070 to clarify responsibilities for the taking of board meeting minutes and production of an annual report.

Alaska Statute 08.01.050 establishes DCED's administrative duties for professional licensing boards. Alaska Statute 08.01.070 identifies the administrative duties of the boards. Included in the board's responsibilities are the taking of minutes and records of all proceedings, forwarding of a draft of the minutes of proceedings to the department within 20 days after the proceedings, and submission of an annual performance report to the department before the end of the fiscal year. However, we found that OL rather than the Big Game Commercial Services Board performed these duties.

For example, the licensing examiner is responsible for tape recording the board proceedings, recording votes, taking notes, and preparing the minutes. OL also compiles much of the information in the board's annual report. OL has the records needed to determine statistics such as the number of licenses issued and examinations given and passed.

We recommend that OL review the statutes and request changes that reflect actual responsibilities and timelines that are both practical and timely.

Recommendation No. 4

DCED, OL should, in conjunction with the Equal Employment Office, review the licensure application for each professional occupation to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

The guide-outfitter, class-A assistant guide-outfitter, and assistant guide-outfitter applications require the height and weight of the candidate. The Equal Employment Office (EEO) within the Department of Administration, Division of Personnel discourages agencies from asking applicants information on height and weight. If an applicant were denied a license, the board or OL may find it difficult to prove that there was no discrimination involved if this type of information had been provided to the persons reviewing the application for licensure.

The application forms used by OL should be reviewed with EEO to make sure that the height and weight are pertinent to the licensure of guide-outfitter candidates. One of the reasons height and weight were requested was for identification. However, the information has not been used for identification, it is no longer printed on licenses, and it is no longer entered into the licensing data base. If this information is considered necessary for identification or other reasons, it should be separated from the application prior to review of the application for licensure. If the information is not necessary, the request for it should be removed from the application.

Recommendation No. 5

DCED, OL should develop and implement written policies and procedures for reporting potential violations of the Executive Branch Ethics Act to the Department of Law.

The Alaska Executive Branch Ethics Act (AS 39.52) requires members of boards and commissions to disclose potential violations of that Act to their designated supervisor. The designated supervisor for members of a board is the chair or acting chair of the board. Functionally, OL staff advise the professional licensing boards associated with them as to the reporting necessary for compliance with the Ethics Act, as does the Department of Law (Law). Disclosures by board members are compiled by OL for submission to Law. These reports are required to be submitted on a quarterly basis. Law reviews these submissions and makes available to the public a summary of the reports received with sufficient deletions to prevent disclosure of a person's identity.

These reports have not been submitted in a timely manner. In 1991, no reports were submitted to Law. In 1992, reports were submitted three to six months after the end of the quarter. In 1993, the first two quarters' reports were submitted in July. In addition division personnel have indicated that there is some confusion as to what should be reported. While staff at the Department of Law believe that OL understands what should be reported, written policies and procedures governing the reporting of potential ethical violations would benefit OL as well as board members. There would be clear criteria for OL staff to follow as to what should be reported as well as when it should be reported.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of board activities relate to the public need factors defined in the "sunset" law, Alaska Statute 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

The extent to which the board, commission, or program has operated in the public interest.

1. The board adopted regulations concerning guide-outfitter qualifications, guide-outfitter operations, professional conduct, transporters, guide-outfitter use areas, and use area registration to insure the public of qualified practitioners. The public is notified about upcoming examinations and meetings and is invited to provide input at board meetings.
2. The board has developed goals and objectives. Some of the goals the board achieved in FY 93 include:
 - a. The board continued to place a strong emphasis on maintaining a consistent discipline program to ensure compliance with the new statutes and regulations.
 - b. With the exception of the assistant guide-outfitter examinations, many board members actively participated in the administration of the registered guide-outfitter written and oral examinations offered in Anchorage.
 - c. The board continued to define current regulations relating to transporters, commercial use permit holders, and guide-outfitters, and worked in conjunction with the Department of Natural Resources and the Department of Fish and Game with the implementation of the guide-outfitter use area registration system.
3. The board has conducted guide-outfitter examinations twice a year, and the exam for class-A assistant guide-outfitters and assistant guide-outfitter 6 times a year.

The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

See the following section.

The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

The board has been seeking further definition from the legislature on several issues:

1. Alaska Statute 08.54.350(a)(10) requires a guide-outfitter candidate to have

been favorably recommended in writing by six big game hunters, two for each year of the person's most recent three years as a class-A assistant guide-outfitter or assistant guide-outfitter, whose recommendations have been solicited by the board from a list provided by the applicant.

In several cases, an assistant guide-outfitter or class-A assistant guide-outfitter has been injured after working for one client. As a result that year is the most recent year, but there is no way s/he can be licensed as a guide-outfitter until three years later. This is not fair.

Under House Bill 266 eight recommendations will be required, one of which must be for a grizzly hunt and another for a mountain or Dall sheep or mountain goat hunt. Also, the applicant must have spent at least 90 days in the field during three of the last five years.

This will help assure: (1) that the guide is qualified by having been on the type of hunt guide-outfitters are hired for and, (2) eliminate the incompetent but not the unfortunate.

2. House Bill 87 and Senate Bill 52 make amendments to AS.08.54.395 regarding insurance requirements for guide-outfitter, marine mammal guide-outfitters, class-A assistant guide-outfitters, and assistant guide-outfitters.
3. The board also requested legislation relating to commercial users other than guide-outfitters and transporters. This includes people who sell wildlife photos and videos, military bases that use wildlife resources and brokerage firms, and "ecotourism" operators who commercially exploit big game resources without board overview and without compensation to the State. The legislation did not pass.

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

The public is invited to attend board meetings. Notices of meetings and examinations are published in at least three major newspapers and a time for public comment is reserved at board meetings.

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

Public notices of proposed regulations are published in major newspapers. Public comment to proposed regulations, both written and oral, are considered at board meetings.

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

The Division of Occupational Licensing (OL) receives more complaints regarding the activities of license holders regulated by the Big Game Commercial Services Board (BGCSB) than for any other profession for which the agency is responsible. Since FY 89, OL investigators have opened more than 100 complaint investigations involving guide-outfitters. When added with other guiding-related complaints and those involving assistant guides, guide applicants, and unlicensed guides the total comes to more than 180.

More than half of these complaints have originated from the Department of Law and state or federal officials responsible for enforcement of laws protecting wildlife resources. Seventeen complaint cases since December 1988 have resulted in the revocation of licenses for four or more years.

We reviewed a sample of cases that were both currently open or had recently been closed by OL in consultation with the Department of Law (Law). For those cases reviewed, particularly those involving consumer complaints regarding guide services we felt OL and Law resolved the complaints in a timely and appropriate manner considering the resources available.

Further, review of recently closed Ombudsman's case files and inquiries with the Human Rights Commission, Equal Employment Opportunities Office, and the Attorney General indicated that no significant complaints were either unresolved or outstanding involving the BGCSB or their licensing activities.

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

As of June 30, 1993, the board regulated 423 guide-outfitters, 116 class-A assistant guide-outfitters, 551 assistant guide-outfitters, 134 transporters, and 31 commercial use permit holders.

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

The Equal Employment Opportunity Office has not received any complaints related to the board's activities.

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

See above.

APPENDIX A

Department of Commerce and Economic Development
Big Game Commercial Services Board
Schedule of Revenues Compared with Expenditures
(Unaudited)
(Note 1)

Revenues (Note 2)	\$190,270
Expenditures (Note 3)	<u>205,707</u>
Excess of Expenditures over Revenues (Note 3)	<u>\$(15,437)</u>

Note 1

The Schedule of Revenues Compared with Expenditures was prepared from discussions with Division of Occupational Licensing (OL) personnel and from OL prepared documents comparing revenue and expenditures for fee determination. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Schedule of Revenues Compared with Expenditures.

Note 2

A significant portion of revenues is comprised of license renewal fees. For the current fee structure, see Appendix B. Most licenses are renewed biennially. Because of the renewals, revenues vary substantially year to year. Therefore, OL combined revenues collected in FY 90 and FY 91 and calculated an average in order to obtain a representative amount of annualized revenues collected for comparison with expenditures.

Note 3

Expenditures consist of direct costs resulting from board member activities, (i.e., travel and per diem) and an allocation of overhead costs of OL. Our understanding of the allocation methodology is discussed in Recommendation No. 2 of this report and is the subject of a September 1993 Office of Management and Budget (OMB), Division of Audit and Management Services report entitled *Occupational Licensing Fee-Setting Policy Assessment*. Both our office and OMB do not believe that OL's method of allocating costs to a professional licensing board distributes costs reflective of the actual effort spent regulating their profession.

(Intentionally left blank)

Appendix B
Big Game Commercial Services Board
Application, License, and Other Fees¹

Application and Other Fees ²			
Type of Fee	Guide- Outfitter	Class-A Assistant and Assistant Guide- outfitters	Commercial Use Permits and Transporter Licenses
Application	\$50	\$50	\$50
Examination	50	50	N/A
Unit examination for taking initial examination, retaking examination, or adding units	50/per unit	N/A	N/A
Use area registration application for each use area	50	N/A	N/A
License Fees			
License Category	Initial	Renewal ³	
Guide-outfitter	\$200	\$200	
Class-A Assistant and Assistant Guide Outfitter	200	200	
Use area registration for each use area (The fee is due for each year of the registration)	100	N/A	
Transporter license	150	150	
Commercial Use Permit	100	100	

¹The licensing fees charged by the Division of Occupational Licensing for Big Game Commercial Services Board are set out in the Alaska Administrative Code at § 12 AAC 02.230. The last change to the board's fee regulations became effective February 25, 1993. According to Division of Occupational Licensing staff, at this time there are no planned fee changes for this board.

²The Division of Occupational Licensing is also authorized to charge administrative fees. Administrative fees include duplicate license fee, photocopying fee, and penalty for reinstatement of a registration, license, permit, or certificate which remains lapsed for more than 60 days.

³The renewal periods for the Big Game Commercial Services Board license categories are as follows: Annual guide-outfitters, December 31, 1993; biennial Class-A Assistant and Assistant Guide-outfitter license, December 31, 1994; annual Transporter license, December 31, 1993; and annual Commercial Use Permit, December 31, 1993.

(Intentionally left blank)

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

P.O. BOX 110800
JUNEAU, ALASKA 99811 0800
PHONE: (907) 465 2500
FAX: (907) 463-3841

November 24, 1993

Mr. Randy Welker
Legislative Auditor
Legislative Budget and
Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Dear Mr. Welker:

Thank you for the opportunity to review the preliminary audit report regarding whether the Big Game Commercial Services Board (BGCSB) should be continued or terminated under AS 44.66.010.

The department concurs with **Recommendation No. 1**, The statutory sunset provision for the Big Game Commercial Services Board should be extended until June 30, 1997. The department believes that the Big Game Commercial Services Board is operating in the public's interest and protecting the hunting public. The establishment of the nonexclusive guide-outfitter use area system in 1993 has helped to stabilize the industry which has been troubled since the Owsichuk Decision in 1988 which declared the exclusive guide area system unconstitutional. The Big Game Commercial Services Board is also working toward regulation of the transporter industry and revision of the examination process.

Recommendation No. 2, The Department of Commerce and Economic Development (DCED) and the Division of Occupational Licensing (DOL) should continue to work with the Office of the Governor, Office of Management and Budget (OMB) in establishing fee levels for occupational licenses that are more reflective of the actual regulatory cost of the occupation.

During 1993, the division accomplished fee revisions for all program areas to reflect program expenses. The calculations were based upon all available data regarding direct and indirect program costs.

Concerns were voiced by various boards regarding their fee increases/program costs. Based on these concerns, the department requested an independent review by OMB of the procedures used in calculating expenses by the Office of Management and Budget. The OMB

audit was completed early October. OMB's recommendations for defining direct costs, including the implementation of timekeeping records for licensing staff, investigators, and hearing officers has been implemented effective July 1, 1993 by the division.

The OMB audit recommended a cap on incremental fee increases of no more than 10-25% per licensing period. This is problematic inasmuch as it places a limit on recovering the actual cost of licensing the industry. OMB budget reviewers placed an even more restrictive cap of 7% on the license fee this fiscal year. Unpredictable and unforeseen program expenses occur due to, investigations, litigation and legal challenges which are not controlled by the board or the division. Limiting expenditures in order to comply with these caps is anticipated to have serious effects on the boards' abilities to comply with their statutory mandates. Under the present scheme, once a program has expended its "acceptable" limit for fee increase adjustments under the OMB recommendations and in accordance with AS 08.01.065, the board will effectively be shut down for the remainder of the fiscal year. The consequences have potential health and safety risks as well as potential economic hardships for licensees who wish to renew their licenses, complete area applications, etc. The division will make requests for additional spending allocation to Legislative Budget and Audit to alleviate these harsh consequences, but failing favorable consideration, the division must control its expenditures.

The division does not fully concur with the audit findings that errors were made in the calculation of a two-year average of expenditures used to determine the FY 93 license fees, and as a result, license fees did not truly reflect the cost of providing regulatory services to each occupation. Detailed expenditure information used in calculating a two-year average was based on information obtained from the state accounting system. It is a real possibility that data generated from the state accounting system for the purposes of this audit has changed from data obtained by division staff at the end of the fiscal year. Since appropriate division staff was not consulted regarding specific financial information, the division cannot agree with this finding until both audit and division staff has had the opportunity to discuss this matter.

The recommendation of estimating time spent by certain job classes of employees stated in the OMB fee-setting policy assessment audit was implemented on July 1, 1993; and at the start of FY 94, the division prepared an FY 94 budget allocation for each licensing program.

In conclusion, DCED has attempted to work with the OMB auditor regarding this issue, but we have been informed that the audit is over and no more time will be allocated to this issue.

The department concurs with Recommendation No. 3, the Division of Occupational Licensing should request statutory changes to AS 08.01.050 and AS 08.01.070 to clarify responsibilities for the taking of board meeting minutes and production of an annual report.

A rewrite of AS 08.01 is available, and we are seeking legislative support to introduce it. This rewrite makes numerous revisions including amendments to the statutes cited in this recommendation.

The rewrite includes revisions which make drafting minutes a department responsibility. It also provides for annual report deadline submission of August 1. The annual report deadline revision is necessary as many statistics needed for the annual report are not available until June 30, thus making it impossible for the boards to meet the existing deadline of submission by June 30.

The department strongly disagrees that the annual report authorship should be amended to make annual report submission a department responsibility. We recognize that division staff are instrumental in assisting boards when completing reports. Staff provide statistical and clerical assistance, however, this report must be reflective of the boards' position on various matters involving the profession regulated including legislative and regulatory needs, budget requests, and upcoming goals. These are areas which the board is solely responsible for developing.

The department disagrees with **Recommendation No. 4, DCED, DOL** should, in conjunction with the Equal Employment Office, review the licensure application for each professional occupation to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

Height and weight questions continue to be reflected on the initial applications for Guide-Outfitters, Assistant Guide-Outfitters, and Class A Assistant Guide-Outfitters. The data from initial applications is entered in the computer and is considered appropriate for identification purposes. Height and weight information is printed on the wallet card portion of the license; the wallet card is typically the document carried in the field and shown to protection officers as proof of licensure.

We have removed height and weight questions from renewal applications for the following reasons: 1) typically, a licensee's height is not expected to change; 2) an individual's weight generally does not fluctuate a great deal and the administrative benefits of not being required to make minor weight alterations annually on each license screen overrides the need for "exact" weight at renewal; and 3) if the height/weight questions were left blank at renewal, the renewal would be processed with data already noted in the computer and reflected on the wallet card. Our experience in other license programs is that if a person's weight has greatly changed due to weight loss, we are notified by the licensee who wants his/her wallet card corrected to reflect the new weight; weight increase is not always reported.

Your suggestion of separating the information from applications before the board reviews them is troublesome for two reasons: 1) licensing applications are public records, and we believe it would be inappropriate for division staff to withhold public information from the board; and 2) the mandate for an oral exam prior to guide-outfitter licensure would defeat any

meaningful attempt to conceal the height and weight of an applicant since applicants are visually observed by board members.

License denials must be based upon a provision in boards' statutes or regulations. Denial notices must list the specific authority for rejection. We believe the procedures for denying an applicant, and the practice of listing the specific reasons for denial in the notice to the applicant provides adequate protection for the board from being subject to discrimination complaints based on the height/weight questions.

Recommendation No. 5, DCED, DOL should develop and implement written policies and procedures for reporting potential violations of conflict of Executive Branch Ethics Act to the Department of Law.

The department agrees and will comply with this recommendation. A written procedure developed by staff will be limited to include directives for staff follow-up at each meeting with collection of ethic reports as well as clarifying dates which quarterly reports must be compiled and forwarded to the Attorney General's Office. We concur that staff is responsible for the timely submission to the Department of Law. This is the limit of responsibility recognized on behalf of the department.

All other policy, procedures, interpretations, and written directives for what must be reported must come from the Department of Law. Guidance on when a member must report a conflict, what should be reported, confirmation of what constitutes a conflict, and who has authority to rule/overrule a decision made by a designated supervisor are all matters which are beyond the scope of DCED staff expertise. Consequently, the department disagrees with the statement in the text of recommendation #5 which states "Functionally, DOL staff advise the professional licensing boards associated with them as to the reporting necessary for compliance with the Ethic Act"

The department has asked for a written directive, from the Department of Law, in layman's terms which clarify these matters. Any forthcoming directives from the Department of Law will be distributed to board members.

Sincerely,


Paul Fuhs
Commissioner

PF/sh033.fuh
112493a

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

December 16, 1993

Members of the Legislative Budget
and Audit Committee:

We have reviewed the Department of Commerce and Economic Development, Division of Occupational Licensing (OL) response to our preliminary audit report on the Big Game Commercial Services Board. For those areas where they do not agree, we have considered their responses and in one case have modified the report because we believe that additional clarification was warranted. In particular, the section of Recommendation No. 2 regarding OL's cost allocation methodology was changed. After review by audit and OL staff, it was found that the percentages applied to allocate indirect costs were not always correct due to formula errors on spreadsheets prepared by OL staff. Also documentation supporting some expenditures on the spreadsheets has not been retained. Review of selected current information available does not confirm these numbers. As discussed with OL staff, we recommend that OL retain original supporting documentation in their future distribution of costs.

This change is considered minor and does not lead us to change our overall stated position. We therefore reaffirm our conclusions and recommendations as contained in this report.

Sincerely,

A handwritten signature in cursive script, appearing to read "Randy S. Welker".

Randy S. Welker, CPA
Legislative Auditor



Alaska State Legislature
HOUSE OF REPRESENTATIVES
Committee on Resources

State Capitol
Juneau, Alaska
99801

Sponsor Statement

HB 102 - Big Game Commercial Services Board

HB 102 extends the Big Game Commercial Services Board whose duties are set forth in AS 08.54.300-330.

In 1989 the Legislature passed HB 112 (Ch. 37, SLA 89), which repealed the Big Game Guide Board and replaced it with the Big Game Commercial Services Board. HB 112 was the product of work by the Legislative Task Force on Guiding and Game. The Task Force was created to address conflicts between different groups profiting from the harvest of Alaska's big game.

The primary conflicts were between guides, who were highly regulated, and outfitters, who were unregulated. HB 112 eliminated the distinction between guides and outfitters and created a new "guide-outfitter" class. Under the system created in Ch. 37, the degree to which a commercial big game services provider is regulated depends on the level of interface with consumers and the resource.

Some service providers - hunt brokers, or sporting goods stores that rent hunting gear - are required only to register with the Board. Other service providers are required to meet certain conditions before they may be licensed and receive compensation for their services.

HB 112 included language to sunset the Board in 1993, but the Legislature allowed a one-year extension last year with HB 266. Title 8, which regulates Boards & Commissions, allows the board one year after the sunset date to terminate its operation. Unless the legislature passes HB 102 this session, those who receive compensation from the commercial harvest of Alaska's big game resources will not be regulated.

Prepared by House Resources Committee Staff Jan. 95

Sponsor Statement

Article 1. Big Game Commercial Services Board.

Section	Section
200. Creation and membership of board	220. Board regulations
210. Duties and powers	230. Board assistance

Cross references. — For transitional provisions, see §§ 13 — 15, and 17, ch. 37, SLA 1989 in the Temporary and Special Acts.

Sec. 08.54.010. Guide Board. (Repealed. § 18 ch 37 SLA 1989.)

Sec. 08.54.020. Appointment and term of office. (Repealed. § 49 ch 94 SLA 1987.)

Secs. 08.54.030 — 08.54.141. Board powers and duties, etc.; licensing. (Repealed. § 18 ch 37 SLA 1989.)

Secs. 08.54.142 — 08.54.146. Transporter licensing. (Repealed. § 27 ch 71 SLA 1986.)

Secs. 08.54.150 — 08.54.190. Miscellaneous licensing provisions. (Repealed. § 18 ch 37 SLA 1989.)

Sec. 08.54.195. Additional fees. (Repealed. § 27 ch 71 SLA 1986.)

Secs. 08.54.186 — 08.54.240. Exams; restricted areas; prohibitions; general provisions. (Repealed. § 18 ch 37 SLA 1989.)

Sec. 08.54.300. Creation and membership of board. (a) For the purposes of licensing and regulating the activities of providers of commercial services to big game hunters in the interest of the state's wildlife resources there is created the Big Game Commercial Services Board. For administrative purposes, the board is in the Department of Commerce and Economic Development.

(b) The board consists of nine members:

- (1) two members who are licensed guide-outfitters;
- (2) two members who are licensed transporters, one of whom must be engaged in the business of providing air transportation services;
- (3) one member who holds a commercial use permit, but does not hold any class of guide-outfitter license or a transporter license;
- (4) one member of the Board of Game who is chosen by the Board of Game and who does not hold a commercial use permit;
- (5) one member who represents Native landholders; and
- (6) two public members. (§ 3 ch 37 SLA 1989)

Chapter 54. Guides and Related Occupations.

Article

1. Big Game Commercial Services Board § 08.54.310)
2. Licensing §§ 08.54.350 — 08.54.395)

Article 1. Big Game Commercial Services Board.

Section

310. Duties and powers

Sec. 08.54.310. Duties and powers. a) The board shall

1) prepare, grade, and administer

A) a written and oral examination of an applicant for a guide-outfitter license that requires demonstration that the applicant is qualified generally to provide guide-outfitted hunts and, in particular, to guide-outfit in each game management unit the applicant has selected; if an applicant demonstrates limited ability to read or write the English language, the entire examination shall be administered orally; and

B) in oral examination of a guide-outfitter who seeks an amendment of a game management unit certification; the examination must require demonstration that the guide-outfitter is qualified to provide guide-outfitted hunts in each new game management unit for which the guide-outfitter seeks to be certified;

2) determine qualifications of applicants for class-A assistant guide-outfitter, marine mammal guide-outfitter, and assistant guide-outfitter licenses and authorize the issuance of licenses to those who qualify;

3) establish performance standards for providers of big game commercial services and regulate the activities of these providers;

4) compile, maintain, and publish an annual register of big game commercial service providers subject to this chapter who have not been convicted of a violation of a state or federal statute or regulation relating to the provision of big game commercial services; a big game commercial services provider listed in the register whose license or permit is revoked or suspended shall be removed from the register while the provider's license or permit is revoked or suspended;

5) prohibit guide-outfitting, transporting, and other big game commercial services activities that are unsportsmanlike, unethical, unsafe, against principles of game conservation, degrading to a profession subject to this chapter, or that adversely affect natural resources;

6) after a hearing, revoke, suspend, or deny renewal of a license or permit under AS 08.54.500 — 08.54.510;

7) authorize issuance of transporter licenses;

8) authorize issuance of commercial use permits;

9) meet at least twice annually, once in Anchorage and once in another municipality;

(10) provide for registration of base camps and facilities used by persons who are licensed or who hold a permit under this chapter;

(11) require an applicant for issuance or renewal of any class of guide-outfitter license to state in a written and signed document whether the applicant's right to obtain, or exercise the privileges granted by, a sport fishing, hunting, trapping, or guide-outfitting license is revoked or suspended in another state.

b) The board may

(1) establish, subject to the prior approval of the commissioner of fish and game, a resource-based management system for allocating access to big game hunting opportunities among guide-outfitters licensed under this chapter;

(2) establish the level of supervision that a guide-outfitter shall provide for class-A assistant guide-outfitters and assistant guide-outfitters who are employed by the guide-outfitter. (§ 3 ch 37 SLA 1989; am § 1 ch 106 SLA 1992)

Effect of amendments. — The 1992 amendment added paragraph (a)(11) and made a related stylistic change. The 1993 amendment added paragraph (a)(11) and made a related stylistic change.

Sec. 08.54.320. Board regulations. The board shall adopt procedural and substantive regulations required by this chapter or reasonably necessary for its administration. (§ 3 ch 37 SLA 1989)

Sec. 08.54.330. Board assistance. The Department of Fish and Game, Department of Natural Resources, and Department of Public Safety shall provide the board with information, data, or technical assistance requested by the board for the purposes of licensing and regulating the activities of providers of commercial services to big game hunters. (§ 3 ch 37 SLA 1989)