

HB

452

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 452(L&C)
(H) Publish Date: 3/22/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish & Game
Title: Guided Sport Fishing RDU: Sport Fisheries
Component: Sport Fisheries
Sponsor: Representative Heinze
Requester: House Labor and Commerce Component No. 464

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	246.8	246.8	246.8	246.8	246.8	246.8
Travel	10.0	10.0	10.0	10.0	10.0	10.0
Contractual	65.0	65.0	65.0	65.0	65.0	65.0
Supplies	6.5	6.5	6.5	6.5	6.5	6.5
Equipment	17.3	5.0	5.0	5.0	5.0	5.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	345.6	333.3	333.3	333.3	333.3	333.3

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES (1024)	355.6	359.1	362.7	366.4	370.0	373.7
----------------------------------	-------	-------	-------	-------	-------	-------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Fish and Game Fund)	345.6	333.3	333.3	333.3	333.3	333.3
TOTAL	345.6	333.3	333.3	333.3	333.3	333.3

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	4	4	4	4	4	4
Part-time	1	1	1	1	1	1
Temporary						

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

The operating expenditures reflect the hiring of four new full-time employees and one new part-time employee necessary to collect and process the data generated annually from licenses sold and reporting requirements. Other expenses associated with the issuing of licenses and collection of data include office supplies, computers, and postage. We assume higher costs in the first year of implementation due to the a-time purchase of equipment such as computers.

We have assumed that the revenues generated by passage of this legislation will increase roughly 1% each year as the number of guides and operators increases from year to year.

(Continued on Page 2)

Prepared by: Kelly Hepler, Director Phone 267-2195
Division: Sport Fish Date/Time 3/16/04 2:31 PM
Approved by: Commissioner Kevin Duffy Date 3/16/2004
Agency: Alaska Department of Fish & Game

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 452(L&C)

ANALYSIS CONTINUATION

Revenues generated by the sale of licenses will be deposited into the Fish and Game Fund and will be used to issue licenses and collect information per the reporting requirements stipulated by the proposed law.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSHB 452(JUD)
(H) Publish Date: 4/5/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title Act relating to lic. and reg. of sport fishing operators RDU Alaska State Troopers
Component Alaska Bureau of Wildlife Enforcement
Sponsor Rep. Heinze
Requester (H) Judiciary Component No. 2746

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSHB 452(JUD) relates to licensing and regulation of sport fishing services operators and fishing guides. Certain provisions of the bill will allow Wildlife Enforcement Troopers to check additional documents during the course of contact with fishing guides, but such activity will occur in the normal course of business.

Section 2 of this proposal would allow the Department of Public Safety access for law enforcement purposes to records maintained by the Alaska Department of Fish & Game to facilitate more timely and complete investigations.

No fiscal impact is anticipated to the Alaska State Troopers as a result of passage of this bill.

Prepared by: Lt. Al Storey Phone 907-269-4532
Division Alaska State Troopers Date/Time 4/1/04 8:42 AM
Approved by: Commissioner William Tandeske Date 4/1/2004
Agency Department of Public Safety

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Adopted
4.14.04

23-LS1619S.1
Utermohle
4/1/04

AMENDMENT |

OFFERED IN THE HOUSE
TO: CSHB 452(JUD)

BY REPRESENTATIVE HEINZE

- 1 Page 6, line 16, following "board.":
- 2 Insert "The department and the board may adopt by regulation requirements for timely
- 3 submission of reports required under this section or under regulations adopted by the
- 4 department or board."
- 5
- 6 Page 6, line 31, following "AS 16.40.270(e)":
- 7 Insert "or who knowingly fails to comply with a requirement for timely submission of
- 8 reports required by a regulation adopted under AS 16.40.280(b)"

Alaska State Legislature



Representative Cheryll Heinze Sponsor Statement HB 452

“An Act relating to licensing and regulation of sport fishing operators and sport fishing guides; authorizing the Department of Fish and Game and the Alaska Commercial Fisheries Entry Commission to release records and reports to the Department of Natural Resources; and providing for an effective date.”

Currently Alaska lacks a unified set of standards for sport fish guiding. This makes it difficult to protect fish habitats and ensure the maximum utilization of Alaska's resources. HB 452 is intended to legitimize and protect the sport fishing industry by establishing professional standards and ensuring accurate reporting of guiding activity throughout the state. This legislation will enhance public confidence in the guided sport fishery and the data upon which management decisions are made. HB 452 will establish licensing and reporting requirements for businesses and guides providing sport fishing guide services in fresh and salt waters of Alaska.

The bill establishes two types of licenses: a sport fishing services operator license and a fishing guide license, and establishes minimum requirements and fees for obtaining each license. Under the provisions of the bill, sport fishing service operators must meet licensing, insurance, and other requirements established by the Board of Fisheries. It requires that fishing guides operate under the authority of a sport fishing service operator license, either by holding that license themselves or by being employed by, or under contract with, a holder of a fishing service operator license. The bill also requires that the licensed guide be certified in first aid, have applicable U.S. Coast Guard vessel licenses, and meet other requirements adopted by the Board of Fisheries.

HB 452 establishes reporting requirements, including where guided sport fishing activities are conducted and the quantity of fish harvested. The bill ensures that sensitive information will be kept confidential. I urge you to support this bill.



Alaska State Legislature

Please enter into the record my testimony to the ___House Finance

Committee on _____HB452_____, dated 041404_____

House Finance - HB 452
Representative Williams

I agreed to send you a copy of my comments on HB 452 during the House Finance Hearings from April 14, 2004, 1:30pm so here they are. I was very disappointed at the way Chairman Williams handled the hearing.

I do not believe that I was the only person prevented from speaking on HB 452.

I was also very disappointed by Representative Heinze's performance at this hearing.
Representative_Cheryl_Heinze@legis.state.ak.us

Representative Heinze did not tell the truth about her "not hearing any opposition to her HB 452 Bill". I have been talking to her in opposition to her Bill for months.

She appears to desire to forge the fact that there is opposition out there.

She was very lucky the Chair cancelled HB 452 public testimony because we would have disputed most of what she attempted to convince the committee of.

I do not know why the Alaska Outdoor Council has opposition to HB 452 but my reasons are listed below.

Regardless, Representative Heinze did not tell the committee the truth, I have sent her many letters of opposition and she has also responded so I know she received my letters. I guess she believes she can prevent the opposition from speaking on her Bill. Representative Williams did help her out greatly when he cancelled the HB 452 public testimony.

I was told by the teleconference people at [1 800 395 5073] that there were many persons waiting to testify but apparently the Chair decided to pass the Bill out of committee without hearing from them. I believe HB 452 is a bad idea and that many persons would have told her that if the Chair would have allowed it.

I would like a new HB 452 House Finance Hearing, one which allows the public to speak and Representatives Heinze's to tell the truth.

GUIDED SPORT FISH ANGLERS ARE NOT "management tools".

Guided sport fish anglers are not "management tools" to be manipulated at will by the government. The trust fisheries rights which were conferred on resident Alaskans were given so that similarly situated residents could fish together without neighbor vs neighbor discrimination. Creating similarly situated (sub classes) within the general sport fish class creates illegal exclusive fishing rights. I claim that Sec. 16.05.251(e). attempts to grant nonguided anglers these illegal exclusive fishing rights over guided anglers.

HB 452 seeks to build additional violations on top of the 251(e). violation.

It is unconstitutional to create regulations designed to establish exclusive fishing rights between similarly situated residents. Guided and nonguided anglers do everything the same and they do it at the same time and in the same place therefore they are similarly situated and fully protected by the Alaskan Constitution.

For this reason I believe that Sec. 16.05.251(e). is unconstitutional.

I believe 251(e). attempts to circumvent Article 8, Sec. 3, Common Use and Sec.17. Uniform Application. I therefore believe it to be very unwise to draft any legislation (including HB 452) which is based on 251(e).

I have formed these conclusions from my personal legal research and also the research of my attorney Charles E. Tulin.

I have been asking people for sometime now if they believe that the Alaskan Constitution requires common use within its trust fisheries? Many will say yes but very few will say that it does UNLESS someone figures out a way to increase "professionalism".

Some people do believe HB 452 would create "professionalism" within the guide industry and I have to admit that sounds pretty good attached to just about any subject except when violating the Alaska Constitution.

I believe that Alaska law designed only for the sake of reducing professional User access to Alaska trust fisheries, while private access is allowed, is completely unconstitutional.

I see HB 452 and Sec. 16.05.251(e). are backdoor attempts to prevent resident Alaskans from being able to professionally access Alaska's trust fishery resources while allowing private access.

You may be able to place many totally legal regulations on the general sport fish Use but when you attempt to break the sport fish Use into two separate Uses, (guided & nonguided) you have activated Alaska Fisheries Trust Law.

Alaska trust law brings Constitution Common Use & Uniform Application Clauses into play.

This all comes down to the state attempting to prove that a guided angler somehow does something different from a nonguided angler. I claim that this cannot be legally proved and eventually the Alaska Courts will rule that it cannot be justified and is therefore not Constitutional.

Many people are not aware that most of HB 452 proposed restrictions came from the Kenai River. We never really had safety or business licenses problems but we still got these requirements anyway.

The Kenai River did spawned most of HB 452 and if it becomes law, Kenai River guides would basically have very little to do to comply with it because they basically already have.

Kenai guides would only need to file a couple forms and pay the additional fees.

I am a Kenai River fishing guided and have been meeting these HB 452 type requirements many years.

I have never seen a need to give anyone first aid or ever observed HB 452 type problems on any cr.

I have seen alcohol problems but we will never see alcohol screening by the U.S.C.G..

I have been guiding for 22 years in Alaska and I have never seen the need for these regulations but

someday, somewhere it may come in handy. Is that the standard? "It could be handy once in your life"?

The Kenai River may have generated this "bureaucratic HB 452 maze" but that has done little for its Professional Guide Image.

Even if these requirements did result in professionalism or a better guided public image, that still would not justify the state straying from its fisheries trust duty.

In my opinion there is nothing constitutional about creating a guided sport fish Use. The real problem is that people are attempting to write sport fish "limited entry law" within vehicles like HB 452. These people have a very big problem with the Alaska Constitution. In my opinion these people will invest large amounts of effort just to have it all voided within a future Alaskan Constitutional Court decisions.

People may be able to make these kind of resource changes within subjects like land, timber or other natural resources but "wildlife, waters and fisheries" are Alaska trust resources and cannot be manipulated like this. It is not legal in Alaska.

If there is anyone out there who can prove that a guided angler is somehow not similarly situated to a nonguided angler, I wish they would please speak up? Alaska laws and regulations which govern how we use our trust natural resources must be applied equally to all Alaskans similarly situated with reference to the subject matter and purpose to be served by the law or regulation. Guided and nonguided anglers do everything the same and they do it side by side therefore they are similarly situated and fully protected by the Alaskan Constitution.

The Constitution of the State of Alaska

Adopted by the Constitutional Convention February 5, 1956

Ratified by the People of Alaska April 24, 1956

Became Operative with the Formal Proclamation of Statehood January 3, 1959

Article 8 - Natural Resources

§ 3. Common Use

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

§ 17. Uniform Application

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

AS 16.05.251, guided sport fish regulation.

Alaska Law

Sec. 16.05.251. Regulations of the Board of Fisheries.

(e) The Board of Fisheries may allocate fishery resources among personal use, sport, guided sport, and commercial fisheries. The board shall adopt criteria for the allocation of fishery resources and shall use

the criteria as appropriate to particular allocation decisions. The criteria may include factors such as

- (1) the history of each personal use, sport, guided sport, and commercial fishery;
- (2) the number of residents and nonresidents who have participated in each fishery in the past and the number of residents and nonresidents who can reasonably be expected to participate in the future;
- (3) the importance of each fishery for providing residents the opportunity to obtain fish for personal and family consumption;
- (4) the availability of alternative fisheries resources;
- (5) the importance of each fishery to the economy of the state;
- (6) the importance of each fishery to the economy of the region and local area in which the fishery is located;

(7) the importance of each fishery in providing recreational opportunities for residents and nonresidents.

Alaska Supreme Court

Owsichuk v. State, 763 P. 2d 488 [Alaska 1988]

"The state argues that [exclusive guided areas] do not deny Owsichuk common use of the wildlife resources because he, like any other member of the public, may hunt recreationally in these areas. We reject this argument. In CWC Fisheries v. Bunker, 755 P.2d 1115, 1121 n. 4 [Alaska 1998], we noted that the public trust doctrine guaranteed fishermen access to public resources for "private commercial purposes" as well as for recreation. The same rationale applies to professional hunting guides under the common use clause. The common use clause makes no distinction between use for personal purposes and use for professional purposes."

Don Johnson
Soldotna, Alaska
ccpwow@gci.net

By - Charles E. Tulin & Associates
Attorneys at Law

CONSTITUTIONALITY OF GUIDED FISHING REGULATIONS

This memorandum addresses the concerns of the Alaska Board of Fish in assuring the escapement of King Salmon up the Kenai River, thereby protecting the fish stock and future runs. All agree, and it is undisputed, that the board can adopt regulations and set policy [or make recommendations to the legislature] to meet escapement goals.

The question is how to assure required escapement by adopting regulations which comply with Alaska law and the Alaska State Constitution. Of more immediate concern to the Kenai River Professional Guides Association is the following:

"Can the Board restrict sport fishing guides and their clients in a manner different from the general public?"

The issue presented is the validity, under Article VIII of the Alaska Constitution, of various proposed fishing regulations [discussed herein] relating to guided sport fishing. For the reasons stated, it appears that many of these proposed regulations would be invalid, and would not survive a court challenge.

I. TEXT OF ARTICLE VIII PROVISIONS

Article VIII, Section 3 of the Constitution provides:

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

Article VIII, Section 15, provides:

"No exclusive right or special privilege of fishery shall be created or

authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State."

Article VIII, Section 17, provides:

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

The provisions of Article VIII "were intended to permit the broadest possible access to and use of state waters by the general public." *Wernberg v. State*, 516 P. 2d 1191, 1198-99 [1974], *reg'g denied*, 519 P. 2d 801 [Alaska 1974].

II. CHALLENGE UNDER SECTION 3 [COMMON USE] AND SECTION 15 [EXCLUSIVE RIGHT]

Since the jurisprudence surrounding these sections overlap considerably, they will be treated together. It appears that the proposed regulations involved are invalid under these provisions. Section 15 does allow differential treatment of different groups of users. In *Kenai Pen. Fisherman's Co-op v. State*, 628 P. 2d 897 [Alaska 1981], the Alaska Supreme Court upheld a regulation differentiating between sport and commercial fishermen:

" While section 15 does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment of such diverse user groups as commercial, sports, and subsistence fishermen. To conclude that, because a certain species is made available for sport fishing in a given area, commercial fishing of the same species in the same area must also be allowed, would be to go far beyond the purpose of the section."

Id. at 904.

While decided under the 1924 White Act, and not under the Constitutional Provisions referred to above, *Hynes v. Grimes Packing Co.*, 165 F.2d 323 [9th Cir. 1947], vacated on other grounds, 337 US 86 [1949], is instructive, as it was cited with approval in *Kenai*, 628 P.2d 897, 904 n 17 and in *McDowell v. State*, 785 P.2d 1, 7 [Alaska 1989]. *Hynes* involved the validity of certain exclusive fishing rights granted to certain Native Alaskans. The White Act, like Section 15 of the Constitution, provided that "no exclusive or several right of fishery shall be granted. . ." 165 F.2d at 330. The Ninth Circuit held that this provision did "not permit a monopoly of fishing in these Indian citizens as a conservation measure."

The proponents of the exclusive grants had argued that the grants were valid arguing that "the licensee who share in the monopoly so may be limited because the balance between catch and reproduction of salmon is better maintained." *Id.* at 330

The Ninth Circuit rather summarily disposed of this argument by citing the above-quoted provision of the White Act.

Hynes, given the fact that it was cited with approval in Kenai and McDowell, seems particularly apt to the instant case. It may very well be that the Board of Fisheries may promulgate regulations to promote legitimate conservation interests. But Hynes seems to stand for the proposition that the State may not differentiate between users merely upon the ground that the non-favored user stands to receive a commercial advantage by use of the resource.

McDowell v. State, 785 P. 2d 1 [Alaska 1989] struck down, under the above-quoted provisions of Article VIII, preferences for subsistence fishing prevised partly upon being "a resident domiciled in a rural area of the state." Id. A group of subsistence fishermen, not domiciled in rural areas, challenged the preference. Its rationale seems somewhat apt to the instant situation:

"As noted above, the state seeks to distinguish Hynes on the ground that Hynes involved a closed class of recipients of a special privilege, whereas the 1986 subsistence law does not because anyone who wants to hunt and fish for subsistence purposes can move to a rural area. We find this argument unpersuasive. If it were valid, virtually any discrimination based upon residence would be justified--the residents of the disfavored area could simply move." Id. at 7.

While the instant situation does not involve residence, this language of McDowell is instructive. In the instant situation, the class which may be discriminated against are the fishermen being guided who lack either the expertise as fishermen or the boats and other equipment necessary to engage in the sport. It is indeed true that [if restrictive regulations were passed] guided fishermen would not be banned from the sport of fishing: They could simply be told to acquire more expertise and their own equipment, in which case the services of a guide would be unnecessary. But this seems to be indistinguishable from the implied command in McDowell, where the restricted users were told that they simply needed to move to a rural area. In either case, as a practical matter, a certain group of users is restricted. Such a result is unconstitutional.

This reasoning gains support from Owsichuk v. State, 763 P. 2d 488 [Alaska 1988], a case involving hunting guides. Without the services of a guide, many individuals would be denied access to sport hunting and fishing. And public access to Alaska's natural resources is the paramount policy of Article VIII of the Constitution. As the Court stated in Owsichuk:

"[In previous cases,] we have indicated an intent to apply the common use clause in a way that strongly protects public access to natural resources. First, with respect to article VIII generally, we have written, "A careful reading of the constitutional minutes establishes that the provisions in article VIII were intended to permit the broadest possible access to and use of state waters by the general public."

Id. at 492.

Since [under proposed regulations] individual sport fishermen who lack skill and equipment and require a guide would be precluded from

participation in sport fishing on certain days or certain days or between certain hours, public access is greatly restricted by differentiating between sport fishermen and guided sport fishermen.

While it did not explicitly so hold, it appears that Owsichuk is supportive of a sportsman's right to the common use of resources while guided. The court states:

" The state argues that [exclusive guided areas] do not deny Owsichuk common use of the wildlife resources because he, like any other member of the public, may hunt recreationally in these areas. We reject this argument. In *CWC Fisheries v. Bunker*, 755 P.2d 1115, 1121 n, 4 [Alaska 1998] , we noted that the public trust doctrine guaranteed fishermen access to public resources for "private commercial purposes" as well as for recreation. The same rationale applies to professional hunting guides under the common use clause. The common use clause makes no distinction between use for personal purposes and use for professional purposes."

Id. at 497.

The Court also noted in a footnote:

" The work of a guide is so closely tied to hunting and taking wildlife that there is no meaningful basis for distinguishing between the rights of a guide and the rights of a hunter under the common use clause."

Id. at 497 n. 15.

The Alaska Supreme Court has made clear that regulation of the "means or method" of taking fish is valid [assuming, of course, that the regulation promotes the ideals of conservation and sustainability mandated by the constitution], whereas restrictions placed upon a particular class of users are invalid. For example, in *Alaska Fish Spotters v. State*, 838, P. 2d 798 [Alaska 1992], the Court held valid a prohibition against airborne spotters. It held this prohibition valid in that it applied "equally to all persons in the state," but prohibited only the use of a certain "tool" [i.e. aircraft]. Id. at 802.

" The Court did acknowledge that by banning this "tool", a certain group of users would necessarily be restricted. "Although applying equally to all persons in the state, each ban directly affected only a small number of people who had previously used the banned tool. Each ban precluded a preferred use of the fisheries resource. However, neither precluded all uses of the resource." Id. at 802.

The Court catalogued a number of restrictions which, like aircraft, would clearly come within the "tool" category: For example, it cited regulations relating to the size of boats in certain operations, the use of explosives or poisons, the use of seine drums or reels, the use of certain monofilament seines, and the use of artificial lights. Id. at 802

The Court in *Alaska Fish Spotters* upheld the ban against the use of aircraft because the aircraft were clearly another "tool" such as those previously listed. In other words, while the regulation did discriminate against a certain class of users [i.e. persons employed as fish spotters], this claim of discrimination arose only incidentally from a permissible discrimination against a certain class of tools [i.e. the aircraft being

operated by those spotters].

In the situation before us, the Board of Fisheries is clearly cognizant of its need to regulate "means or method" of taking fish. At least one Board member attempted to find some "means or method" which could be regulated. For example, he questioned whether fishing could be restricted from boats bearing commercial licenses [since presumably a commercial guide's boat bears such a license]. While these ideas were apparently rejected, this evidence does indicate that the Board is searching, perhaps in vain, for a "means or method" which could be regulated.

III. CHALLENGE UNDER SECTION 17 (UNIFORM APPLICATION)

Under Section 17's uniform application clause, the "means used to further the important state interest [i.e. conservation and sustainability] must be carefully drawn and designed for the " least possible infringement on article VIII's open access values." Gilbert v. State Dept. of Fish and Game, 803 P. 2d 391 [Alaska 1990].

In order to prevail in a challenge under Section 17, the State must show that sport fishermen and guided sport fishermen are not "similarly situated." In analyzing this issue, the Court has looked primarily at a regulation's necessity in relation to natural resource issues. For example, in upholding a regulation differentiating between two fisheries in Gilbert, the court noted the natural differences between the two fisheries, the size of the populations, and traditional harvest levels. Distinctions between users [as opposed to naturally occurring distinctions between resources] were apparently given little consideration.

The application of the Common-Use clause, Article VIII, Section 3, to guided hunting was before the Supreme Court in , Owsichek v. State, Guide Licensing and Control Board, 763 P. 2d 488 [Alaska 1988]. Even though Owsichek involved hunting, and not fishing, the case is relevant to the instant case, as the court held that the same policies applies to both fish and wildlife. Id. at 492.

IV. OTHER OBSERVATIONS APPLICABLE TO THIS CASE

The various quoted provisions of Article VIII are somewhat overlapping. Taken together, they might be summarized as follows:

1. In general, the state may not discriminate arbitrarily against a particular class of users.
2. The state may, however, in order to carry out the policies of conservation and sustainability, discriminate against particular methods and means of taking fish and wildlife.

In this situation, it is clear that the State would argue that it is only discriminating against a particular method or means: Taking fish or wildlife with the assistance of a commercial guide. I believe, however, that this argument would fail.

The State cannot point to any particular "tool" that is being used, other than the guide himself or herself. It should be noted, however, that this "tool" is not really being banned by the regulations.

To see this, consider a hypothetical fishing party of two sport fishermen,

one a novice with no equipment, and the other an experienced fisherman who owns and supplies all of the equipment.

In this hypothetical, the novice fisherman is using the same "tool" or "method and means" of taking fish as is supposedly banned by the regulations. The only difference is that the "guide" is not acting for profit. And as noted above, the distinction between commercial activities and non-commercial activities has been held insufficient to uphold restrictive regulations. In other words, the proposed regulations do not really prohibit a certain method or means of fishing. Instead, they restrict a particular class of persons who lack the proper expertise or equipment.

The statute, AS 160.05.251, is probably not unconstitutional on its face, as the statute only refers to a class of fishermen, "guided sport" but does not specifically regulate them. Since there might be some valid, regulatory purpose for this classification, it is probably not invalid per se.

A number of the regulations I have considered, however, appear to be unconstitutional. For example, 05 AAC 052.37 and 05 AAC 061.36 have a blanket prohibition on guided fishing. For the reasons stated above, they are probably unconstitutional.

Similarly, regulations such as 11 AAC 056.36 [j] and [k] [no guides on Sundays in July or after 6:00 PM] are unconstitutional, as they again prohibit a class of users, albeit for limited times. [It would be absurd to say that "Sunday fishing in July" is a "method or means", although it could be argued that "night time fishing" is a different "method or means" from "daytime fishing".]

For these reasons, I believe that the proposed regulations are unconstitutional.

Some thought should be given to who should challenge these regulations. Owsicnek appears to hold that a guide would have standing to sue. However, since one strong argument is that a certain class of sport fishermen are being excluded, it would probably be wise to include as a plaintiff at least one of the guide's clients or potential clients.

Respectfully submitted this 19 day of July, 1999

Kenai River Professional Guide Association
P.O. Box 3674
Soldotna, Alaska 99669

STATEMENT

For Professional Services Rendered re: Constitutional of Proposed Guided Sport Fishing Regulations

Conferences, telephone calls,
Research, legal writing,
Review drafts, revisions,
Prepare brief for clients

Charles E. Tulin
Attorney at Law
529 West Third Avenue
Anchorage, Alaska 99501
907 272-9546
fax 907 272-6405

Signed:

Don Johnson,
Soldotna, AK

Kenai River Professional Guide Association

March 18, 2004

Rep. Cheryl Heinze
State Capitol, Room 108
Juneau, AK 99801-182
907-465-4930
800-331-4930
fax: 907-465-3834

The Kenai River Professional Guide Association would like to extend its support for CSHB452. This long overdue legislation represents a huge step toward legitimizing the professional sport fish guide industry in Alaska. Measures within the bill requiring statewide guide licensing, data collection, operator fees and insurance liability requirements are nothing new to us as commercial operators on the Kenai River but applying these an industry standards statewide is something we wholly support.

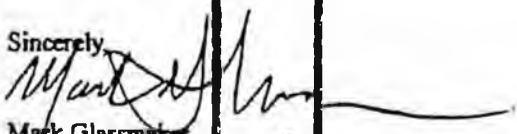
Requiring all sport fish guides and sport fish business owners to be licensed with the state and to keep records regarding various services they provide, will produce more accurate and inclusive information to the Alaska Board of Fisheries and other state agencies, which will greatly assist them in making future management decisions.

Moreover, Kenai River Guides have been abiding by stringent State Park Stipulations since 1985 and we are glad to see the remainder of the state adhere to the same standards of professionalism and safety.

Finally, one aspect of the bill we would like to see altered is a possible amendment or deferment of fees based on the fact that Kenai River Guides are already required to pay substantial registration fees through the Department of Natural Resources, division of State Parks. We were recently informed that our fees could possibly double for the 2005 season and this, combined with registration fees contained in CSHB452, would represent an inequitable financial burden on Kenai River Guides. We would like to respectfully request that any fees required by Department of Natural Resources, division of State Parks, of Kenai River Guides, be adjusted, reduced or credited to account for any additional fees required by CSHB452.

Thank you for your time and consideration regarding this important piece of legislation. If we can be of any assistance in constructing the final draft, please feel free to contact us at anytime.

Sincerely,


Mark Glassmaker
KRPGA Vice President

PO Box 3674
Soldotna, Alaska 99669
www.krpga.org

Subject: Support for CSHB452

Date: Sun, 21 Mar 2004 12:19:38 -0900

From: Mark Glassmaker Fishing <mgfish@gci.net>

To: Representative_Cheryll_Heinze@legis.state.ak.us

Rep. Cheryll Heinze
State Capitol, Room 108
Juneau, AK 99801-1182
907-465-4930
800-331-4930
fax: 907-465-3834

Dear Rep. Heinze,

The Kenai River Professional Guide Association would like to extend its support for CSHB452. This long overdue legislation represents a huge step toward legitimizing the professional sport fish guide industry in Alaska. Measures within the bill requiring statewide guide licensing, data collection, operator fees and insurance liability requirements are nothing new to us as commercial operators on the Kenai River but applying these as industry standards statewide is something we wholly support.

Requiring all sport fish guides and sport fish business owners to be licensed with the state and to keep records regarding various services they provide, will produce more accurate and inclusive information to the Alaska Board of Fisheries and other state agencies, which will greatly assist them in making future management decisions.

Moreover, Kenai River Guides have been abiding by stringent State Park Stipulations since 1985 and we are glad to see the remainder of the state adhere to the same standards of professionalism and safety.

Finally, one aspect of the bill we would like to see altered is a possible amendment or deferment of fees based on the fact that Kenai River Guides are already required to pay substantial registration fees through the Department of Natural Resources, division of State Parks. We were recently informed that our fees could possibly double for the 2005 season and this, combined with registration fees contained in CSHB452, would represent an inequitable financial burden on Kenai River Guides. We would like to respectfully request that any fees required by Department of Natural Resources, division of State Parks, of Kenai River Guides, be adjusted, reduced or credited to account for any additional fees required by CSHB452.

Thank you for your time and consideration regarding this important piece of legislation. If we can be of any assistance in constructing the final draft, please feel free to contact us at anytime.

Sincerely,

Mark Glassmaker
KRPGA Vice President



Kenai River Sportfishing Association, inc.

PO Box 1228 • 224 Kenai Avenue, Suite 102

Soldotna, Alaska 99669

907.262.8588 phone 907.262.8582 fax

www.kenairiversportfishing.org kenairiv@ptialaska.net

Dedicated to preserving the greatest sportfishing river in the world, the Kenai.

March 31, 2004

Kenai River Sportfishing Association
PO Box 1228
Soldotna, AK 99669

The Honorable Cheryl Heinze
Alaska State Legislature
State Capitol, Room 108
Juneau, AK 99801-1182

Dear Representative Heinze:

The Kenai River Sportfishing Association promotes responsible sportfishing in the state of Alaska. We strongly support HB 452, which would license and regulate sportfishing service operators and fishing guides in the state of Alaska.

We support this bill for the following reasons:

1. Since 1985, the sportfishing service operators and fishing guides on the Kenai River have had such regulation, which provides minimum requirements for the industry, provides assurance to clients of minimum standards and has not proved to be an undo burden on businesses.
2. The bill will provide statewide regulation for the sportfishing industry, bringing the rest of the state up to standards followed by the Kenai River Special Management Area, the state's most popular sportfishing region.
3. The bill is the right step in having legitimate statewide standards for the sportfishing industry, on par with the big game guide industry, where clients have recourse when minimum standards are not met.

We urge you to pass HB 452 and bring the rest of the state up to the professional standards set by the Kenai River Special Management Area. The bill assures minimum standards for the sportfishing industry, and will be beneficial for both businesses and clients.

Thank you for your consideration on this important bill.

Sincerely,

Ron Rainey, Board Chair
Kenai River Sportfishing Association

Ricky Gease, Executive Director
Kenai River Sportfishing Association

Subject: [Fwd: HB 452]

Date: Mon, 23 Feb 2004 13:52:22 -0900

From: Cheryll Heinze <Representative_Cheryll_Heinze@Legis.state.ak.us>

Organization: Alaska State Legislature

To: Jon Bittner <Jon_Bittner@legis.state.ak.us>

fyi

Subject: HB 452

Date: Mon, 23 Feb 2004 14:11:48 -0800

From: catchalot@alaska.com

To: Representative_Cheryll_Heinze@legis.state.ak.us

Email For: Representative Cheryll Heinze
From: catchalot@alaska.com
Name: George \"Mike\" Patterson
Street: 8052 Queen Victoria Drive
City: Anchorage
Zip Code: 99518

Subject: HB 452

Rep Cheryll Heize

I agree with a processing fee for

\"Sport Guides Permits\" I would

like to see HB 452 expanded to include Rafting all sight-seeing

Guides with fee of \$75.00 resident and non-resident fee at

3-times \$225.00. I firmly believe

its time for non residents seasonal workers pay for the wages taken out of

Alaska. Outdoor Industry drains millions of Alaskan dollars to lower 48 every summer.

Thank You,

George m. Patterson

1-800-478-9190

Please Add My Email Address to your distribution list. Thank You.

Kodiak Association of Charter Boat Operators
P.O. Box 3206
Kodiak, Alaska 99615

March 6, 2004

Representative
Dan Ogg

The Kodiak Association of Charterboat Operators (KACO) is a non-profit organization located in Kodiak, Alaska. The purpose of our organization is to promote marine safety and provide charter boat operators a unified voice in the development, growth and regulation of the fishing and marine tour operations in Kodiak. To this end we have reviewed **HB 452**, which is described as, "An Act relating to licensing and regulation of sport fishing services operators and fishing guides; and providing for and effective date." As worded, HB 452 "...is intended to legitimize and protect the sport fishing industry by establishing professional standards and ensuring accurate reporting of guiding activity throughout the State".

In theory KACO is in support of the objectives of HB 452, but the current draft by Representative Cheryll Heinze contains some stipulations that raise concerns in our organization, and we feel these should be addressed. These concerns are listed below:

Currently all charterboat operators are required to submit Saltwater Vessel Logbook sheets on a weekly basis to the Alaska Department of Fish and Game. The vessel logbooks detail the date, number of anglers, hours fished, catch and the ADF&G statistical area where the catch occurred. This information is for all salt-water sport species except halibut. This is a mandated event for all charterboat operators who fish in saltwater. The information is utilized by ADF&G fishery managers for in-season harvest management and post-season evaluation. Under the draft language in HB 452 (AS 16.40.280) the operator will also be required to report the names of clients, and sport fishing license number of each client. We feel this requirement is in excess of that needed for effective management of sport fisheries and will place an undue additional burden on the charterboat operator. We would request that this requirement, Sec.16.40. 280 (a) (1) and (2) be deleted from the draft.

Finally, we feel that the proposed cost of the Sport Fishing Services Operators License (\$100) and Fishing Guide License (\$50) as described in AS 16.05.340 (a) (26) (A) & (B) is excessive. Currently these licenses are issued by the State at no cost to the operator. We feel that a 50% reduction in the proposed fees (\$50) and (\$25) respectively would be appropriate to initiate the program.

In conclusion, the Kodiak Association of Charterboat Operators cannot support HB 452 as drafted unless some of our concerns are addressed. If you have any questions please feel free to contact me (tchatto@ptialaska.net) (907) 486-5301, or our Vice President, Roger Aulabaugh (dutchman@ptialaska.net) (907) 486-2955 here in Kodiak

Sincerely,

Tony Chatto
President



Deep Creek Charterboat Association

P.O. Box 423—Ninilchik, AK 99639

Board of Directors

President
Tim Evers
567-3631
tmevers@alaska.com

Vice President
(Vacant)

Secretary/Treasurer
Perry Flotre
Phone/Fax 262-7631
arctictern@alaska.com

Member-at-Large
Mel Erickson
262-2980
gamefish@alaska.net

Member-at-Large
Marc Smith
567-4368
aomn@gsi.net

Member-at-Large
John Baker
567-3393
info@afishhunt.com

March 29, 2004

Representative Cheryll Heinze
State Capital, Room 108
Juneau, AK 99801-1182
907-465-4930
800-331-4930
fax: 907-3834

Dear Representative Heinze,

The Deep Creek Charterboat Association is a trade association of 50 paid member Companies that represent over 70 charter boats that operate in Ninilchik, AK. The DCCA supports CSHB452 as it is now written. This legislation is long over due and will now legitimize the Professional Sport Fish Guiding Industry in Alaska. Our organization is familiar with many of the measures in the bill as we have participated in these measures for the last few years. Applying these industry standards statewide is essential. This bill will provide the Department of Fish & Game, the Board of Fish and many other organizations much needed data to better manage our resources and some extra funding to do so.

Thank you for your time & support of CSHB452. If we can be of assistance in any manner please feel free to contact us.

Sincerely,

Tim Evers
President, Deep Creek Charterboat Association

Cc: Senator Gene Therriault
Representative Pete Kott
Senator Tom Wagoner
Representative Mike Chenault

HB 452 TALKING POINTS
(as of 2-19-04)

This bill is intended to legitimize and protect the sport fishing industry by establishing professional standards and ensuring accurate reporting of guiding activity throughout the state.

This legislation will enhance public confidence in the guided sport fishery and the data upon which management decisions are made.

The bill establishes two types of licenses; a sport fishing services operator license and a fishing guide license; and establishes minimum requirements and fees for obtaining each license.

The number of guide businesses has remained nearly constant. The average number of registered guide businesses from 1998 through 2003 is 2,135 and has ranged from 2,065 to 2,242.

The number of fishing guides is increasing. The average number of registered guides from 1998 through 2003 is 4,559 and has ranged from 3,823 to 4,826.

The average percentage of guide businesses owned by Alaska residents from 1998 through 2003 is 90% and has ranged from 89% to 91%.

The percentage of nonresident fishing guides is increasing. The average percentage of guides who are Alaska residents from 1998 through 2003 is 72% and has ranged from 70% to 76%.

This bill establishes mandatory reporting requirements for all sport fishing businesses and sets license fees that cover the cost of the licensing program and reporting requirements.



Deep Creek Charterboat Association

P.O. Box 423—Ninilchik, AK 99639

Board of Directors

President

Tim Evers
567-3631
tnevers@alaska.com

**Vice President
(Vacant)**

Secretary/Treasurer

Perry Flotre
Phone/Fax 262-7631
arcticern@alaska.com

Member-at-Large

Mel Erickson
262-2980
gamefish@alaska.net

Member-at-Large

Marc Smith
567-4368
aomn@gci.net

Member-at-Large

John Baker
567-3393
info@afishhunt.com

March 29, 2004

Representative Cheryll Heinze
State Capital, Room 108
Juneau, AK 99801-1182
907-465-4930
800-331-4930
fax: 907-3834

Dear Representative Heinze,

The Deep Creek Charterboat Association is a trade association of 50 paid member Companies that represent over 70 charter boats that operate in Ninilchik, AK. The DCCA supports CSHB452 as it is now written. This legislation is long over due and will now legitimize the Professional Sport Fish Guiding Industry in Alaska. Our organization is familiar with many of the measures in the bill as we have participated in these measures for the last few years. Applying these industry standards statewide is essential. This bill will provide the Department of Fish & Game, the Board of Fish and many other organizations much needed data to better manage our resources and some extra funding to do so.

Thank you for your time & support of CSHB452. If we can be of assistance in any manner please feel free to contact us.

Sincerely,

Tim Evers
President, Deep Creek Charterboat Association

Cc: Senator Gene Therriault
Representative Pete Kott
Senator Tom Wagoner
Representative Mike Chenault

Markel Insurance Company. Rates were approved effective 5/1/99, Minimum Premium for Guides and Outfitter's Policy is \$750.

	<u>100K/300K</u>	<u>500K/1,000K</u>	<u>1,000K/2,000K</u>
Hiking Backpacking Guide	\$175 Flat	\$225 Flat	\$275 Flat
Each Additional Guide	\$100	\$125	\$200
Dogsled Guide, same as Hiking Backing			
Cross Country Skiing Guide	\$275 Flat	\$325 Flat	\$375 Flat
Each Additional Guide	\$175	\$225	\$275

Great Divide Insurance Company. Rates were approved effective 8/6/97, Minimum Premium for all limits is \$500.

Hiking Backpacking Guide	\$175 Flat	\$225	\$375 Flat
Each Additional Guide	\$100	\$125	\$200
Dog Sled Guide	\$175 Flat	\$225 Flat	\$275 Flat
Each Additional Guide	\$100	\$125	\$200
Cross Country Skiing Guide	\$275 Flat	\$325 Flat	\$375 Flat
Each Additional Guide	\$175	\$225	\$275

DEPARTMENT OF FISH AND GAME COMMENTS

ON GUIDE LICENSING BILL HB 452

Representative Heinze introduced HB 452 on February 16. This bill would require sport fishing business owners and guides to be licensed with the State. The bill is based on an earlier bill developed by a Board of Fisheries Guide Licensing Task Force in the mid-1990s and introduced by Representative Austerman in 1997.

After discussing HB 452 with department staff, fellow legislators, and hearing comments from various sport fishing charter/guide groups and individuals from around the state the Representative made several changes to the original bill. These changes were incorporated into CS (Committee Substitute) HB 452 which is dated February 27, 2004.

The four major areas affected by the language changes in CSHB 452 are:

1. The reporting provisions that required fishing guides to record the names of their clients on a daily basis, along with their sport fishing license number, the number of fish they harvested, and associated confidentiality provisions have been removed.
2. Sport fishing outfitters and transporters have been removed from the provisions of this bill. The CS language only speaks to licensing sport fishing guide businesses (lodges, charter vessel companies, etc.) and sport fishing guides that provide direct assistance and personal direction to their clients.
3. Businesses and guides that only assist personal use or subsistence fishermen in their fishing activities have been removed from the provisions of this bill. The CS language only speaks to licensing those businesses and guides that provide services of direct assistance and personal direction to sport anglers.
4. The definitions have been modified to only include sport fishing guide businesses and guides. Definitions of outfitters, transporters, and fishing clubs have been removed. A definition of a sport fishing guide was added.

The department has received a number of comments from sport fish guide groups and individuals in Southeast and Southcentral Alaska pertaining to both the original bill language and the CS language. We would like to respond to some of these comments so everyone has the same understanding on various aspects of this licensing bill.

1. Some guides believe that if the guide licensing program is administered by the Division of Sport Fish it will clearly designate the guided sport fishery as a sport fishery, not a commercial fishery.

We agree with this concept. The Board of Fisheries has received numerous proposals and testimony over the years that the guided sport fishery is a commercial fishery and should be regulated as such. Having a sport guide licensing program administered by the Division of Sport Fish will designate that these fisheries are sport fisheries.

2. Some guides believe that if this bill passes the Board of Fisheries will have to make separate allocations for all species to this new user group.

We do not agree with this idea. First of all the Board already has the authority to regulate guided sport fisheries differently than unguided sport fisheries. Secondly, this bill would not change the makeup of the various guided sport fisheries, it would only require them to be licensed and to report on their guiding activities.

3. Some guides believe that if the Division of Sport Fish administers the guide licensing program, they will become "allocative advocates" for this user group at Board of Fisheries meetings.

This is not true. Both fisheries divisions are tasked with providing the board and the public the most accurate and complete information regarding fishing issues. However, both divisions are strictly prohibited from entering into allocation discussions or debates. The Division of Sport Fish will continue to operate in this manner regardless of whether we administer the guide licensing program or not.

4. Some guides believe that the funds generated from the license fees associated with this bill will go into the General Fund or will be viewed as just another source of revenue by the Division of Sport Fish.

This is not true. All funds generated by this bill's license fees will go into the dedicated Fish and Game Fund, just like funds from the sale of sport fishing licenses and king salmon tags. These funds will be used to administer the provisions of the licensing bill including the reporting requirements.

The Division of Sport Fish is currently spending \$80,000 per year to operate the existing business and guide registration and saltwater charter vessel logbook programs, which have no fees associated with them. We estimate that this bill would generate approximately \$356,000 and we would expend \$346,000 to administer the licensing and reporting programs.

5. Some guides are requesting higher license fees for nonresident sport fishing business owners and fishing guides.

Due to a recent court ruling, the department has been advised by the Department of Law that the State must be able to prove that it is more costly to administer the licensing program for nonresident owners or guides than it is for residents before we can increase costs for nonresidents. Based on an analysis of such costs, there does not appear to be significant differences between the two groups to merit a differential fee structure.

The department welcomes any comments you may have on CSHB 452 and its provisions. Please contact:

Rob Bentz
Deputy Director
Division of Sport Fish
at: rob_bentz@fishgame.state.ak.us

**DEPARTMENT RESPONSES TO ISSUES RAISED DURING LABOR AND
COMMERCE COMMITTEE HEARING FOR HB 452 ON MARCH 17**

- 1. During public testimony several individuals stated that the proposed license fees are either too high or not necessary at all.*

The license fees proposed in HB 452 are:

- a sport fishing guide services operator license for the owner of the guiding business for \$100;
- a sport fishing guide license for the person providing direct assistance to the clients for \$50; and
- a combined operator/guide license for a person who is both the owner of the business and the guide who accompanies the clients for \$100.

Right now owners of sport fishing businesses and sport fishing guides do not pay the Department of Fish and Game anything. The current registration requirements for businesses and guides are free. The saltwater charter vessel logbook is free. The proposed license fees will cover the cost of the licensing program and reporting requirements. The department is not proposing this legislation as a revenue generating mechanism.

The proposed reporting requirements will provide the department and the Board of Fisheries with comprehensive information on the impacts of guided sport fishing activities in both saltwater and freshwater. Better information will lead to better regulations that will protect and improve the state's sport fishing resources.

We believe that these fees are a small price to pay for individuals that are making money by aiding in the harvest of public property resources owned by everyone.

- 2. Several people testifying stated that the paperwork that would be necessary according to the reporting requirements in HB 452 would be duplicative and unreasonably burdensome.*

We are assuming that the "duplicative" comments coming from saltwater charter vessel operators indicates they believe they will have to continue filling out the existing charter logbook, along with whatever reporting requirements are required within HB 452. This is not the case.

We envision that the reporting requirements within HB 452 for saltwater charter operations will be very similar to the current logbook forms. However, there will only be ONE reporting document, not two.

Freshwater guide operators, that currently have no reporting requirements other than on the Kenai River, will also have only ONE type of reporting document to complete.

We do not believe that requiring sport fishing guides to record their catch, harvest, and effort information in an accurate, timely, and enforceable manner is burdensome. We view it as an obligation for anyone involved in the harvest of public property resources.

- 3. One individual asked about how the provisions of HB 452 would be enforced?*

We envision that enforcement of the license and reporting requirements would be very similar to the existing enforcement of the sport fishing business and guide registration programs and the charter vessel logbook program. Business owners and guides would have to present their licenses to enforcement agents when contacted on the water and would have to have their reporting form filled out while the fish and clients are still on site.

- 4. Several people testified that they felt a \$500 fine for the first violation for a sport fishing guide not having all of the required documents on their physical person while guiding was too high.*

The wording in HB 452 states: "... is guilty of a violation and upon conviction is punishable by a fine of not more than \$500."

The MAXIMUM fine is \$500. A judge will decide the amount of the fine, on a case by case basis, depending on the circumstances of the case.

- 5. One person testified that they did not believe transporters of personal use fishermen should be included within the provisions of HB 452.*

The original language of HB 452 did include transporters and outfitters as well as guides who provided services to individuals engaged in subsistence, personal use, and sport fisheries.

The language of CSHB 452 (the current version before the Labor and Commerce Committee) has all references to transporters and outfitters removed. It also has no mention of subsistence or personal use fisheries. Only businesses and guides working with sport fishing clients are impacted by the provisions of CSHB 452.