

SB

297

ALASKA STATE SENATE



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Senator Ralph Seekins
District D

Senate Bill 297 Sponsor Statement

“An Act relating to bear predation management and the donation and sale of bear hides and skulls.”

There is no shortage of black or grizzly/brown bears in Alaska. Here, they are neither threatened nor endangered. In some Game Management Units the bear populations are many multiples of the established population objectives. The Alaska Department of Fish and Game estimates statewide black bear populations as high as 200,000 and the grizzly/brown bear population as high as 35,000.

In certain Game Management Units, estimates range from 70–90% of all the moose calves are dead before they reach two months of age due, in large part, to bear predation. As a result, fall recruitment is virtually zero and the reproductive base populations are crashing. The well publicized 2003 McGrath bear relocation experiment clearly demonstrated that a reduction in bear populations has a direct positive effect on increasing calf survivability and thus the long-term health of the resource. But relocation efforts do not solve the underlying problem.

Senate Bill 297 addresses Alaska’s bear over-population problem in those places — called Intensive Management Areas — where the Board of Game has: (1) first determined that consumptive use of the big game population is a preferred use; (2) depletion of the big game population has occurred and may result in a significant reduction in the allowable human harvest of the population; and (3) enhancement of abundance or productivity of the big game prey population is feasibly achievable utilizing recognized and prudent active management techniques.

It is important to understand that the provisions in SB 297 only come into play if the Board of Game, advised by the Department of Fish and Game biologists, finds that bears are a cause of the depletion or reduction of big game productivity.

Once the above findings have been made, SB 297 allows for remediation efforts through the issuance of bear predation management permits. These special-purpose permits relax certain restrictions relative to the taking of bears in those areas where bear predation is identified as a problem. The Bill also provides guidance with respect to bear sealing as well as disposition of hides and skulls taken under this Act.

A strong point of emphasis is that this program in all reality is, and should be viewed as, a predator control program. The provisions of this Act *do not apply* to Game Management Units in which intensive management is not necessary. Furthermore, proactive measures end as soon as the bear populations are once again within the population objectives that have been set by the Board of Game.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 297(RES)
(S) Publish Date: 4/19/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
Title Taking Black, Brown, and Grizzly Bear RDU Wildlife Conservation
Component Wildlife Conservation
Sponsor Senator Seekins
Requester Senate Resources Component No. 473

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						
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CHANGE IN REVENUES ()						
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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)

Passage of this legislation would have no fiscal impact.

Prepared by: Sarah Gilbertson, Legislative Liaison
Division: Alaska Department of Fish & Game
Approved by: Commissioner Kevin Duffy
Agency: Alaska Department of Fish & Game

Phone 465-6137
Date/Time 3/12/04 11:37 AM
Date 3/12/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSB 297(RES)
(S) Publish Date: 4/27/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title Act relating to bear predation management RDU Alaska State Troopers
Sponsor Sen. Seekins Component Bureau of Wildlife Enforcement
Requester (S) Rules 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						
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CHANGE IN REVENUES ()						
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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)

This act will establish policies related to the Department of Fish and Game (ADF&G) being able to issue permits to allow hunters, both resident and non-resident, to harvest black, brown, and grizzly bears within "intensive management" areas. ADF&G will issue bear predation management permits to those hunters who qualify. Nonresident or nonresident aliens will be accompanied by a registered guide or master guide, or by a hunter who is over 21 years of age and who meets other qualifications outlined in the legislation. The taking of bear under authority of a bear predation management permit is subject to all other provisions applicable to the taking of bear such as the regulations governing the method, manner, means, bag limit, or other matters adopted by the board that do not conflict with this legislation.

This legislation is not expected to have a fiscal impact on the Alaska State Troopers.

Prepared by: Lt. Al Storey
Division: Alaska State Troopers
Approved by: Commissioner William Tandeske
Agency: Department of Public Safety

Phone 907-269-4532
Date/Time 4/22/04 10:19 AM
Date 4/22/2004

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Alaska

Professional Hunters Association, Inc.

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May 3, 2004

Honorable Bruce Weyrauch, Chairman
State Affairs Committee
Alaska House of Representatives
State Capitol
Juneau, AK 99801

RE: SB 297

Dear Chairman Weyrauch:

We have reviewed the revised version of SB 297 relating to bear predation management and conclude that it continues to represent a threat to the guide requirement in State law for non-resident hunting of bears and other big game species. This conclusion arises from analysis of the bill and review of applicable case law.

Alaska's guide requirement is predicated on considerations of hunter welfare and safety, resource management, and enforcement of hunting regulations. AS 16.05.407-408. Federal and state courts have upheld as legitimate and rational similar restrictions concerning nonresident hunters. See *O'Brien v. State*, 711 P.2d 1144, 1151 (Wyoming 1986) (upholding guide requirement for hunting big or trophy game as rational means of ensuring "proper game management, protection of hunter welfare and safety, or better enforcement of the game [and] fish laws"); *Clajon Production Corp. v. Petera*, 854 F.Supp 843 (D. Wyoming 1994) (upholding a resident license preference regulation that reserved a certain percentage of big game hunting licenses for state residents); *DeMasters v. State*, 656 F.Supp. 21 (D. Montana 1986) (upholding Montana statute limiting the number of yearly nonresident elk hunting licenses as an effective management tool for the purpose of wildlife conservation).

Any action that says, in essence, that these considerations are legitimate and compelling with respect to one area (where the guide requirement is in effect) but are not compelling (and are waived) in another, weakens the rational basis of the requirement. As a result, differential treatment of non-residents in different areas within the state is likely to expose Alaska's guide requirement to federal constitutional equal protection challenge.

B. Weyrauch

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5/3/04

SB 297 would establish such differential treatment. The measure would amend AS 16.05.781 to eliminate the guide requirement for non-residents hunting bears in designated bear predation management area. The revised version of the bill attempts to address the differential treatment issue by requiring non-residents to be accompanied by residents that satisfy certain criteria and receive special training. Although the purposes and objectives behind criteria are not specified, the emphasis on "experience" seems to be an effort to facilitate safety and in that sense, mirror or replicate one of the purposes underlying the guide requirement. Put another way, the bill seeks to establish these special residents as de facto guides operating in a non-commercial or quasi-commercial manner. ¹ We presume that the thinking is that the differences between commercial and non-commercial "guides" would be considered minimal and not arbitrary or irrational.

This raises two issues. First, certifying a specific set of residents as stand-ins for guides raises questions about the basis for retaining guide requirements in other areas or for different big game species. If the State determines that the objectives of public safety resource management, and enforcement related to bear hunting can be secured via non-commercial means (i.e., using specially qualified non-compensated individuals as de facto guides), it indicates that commercial or economic purposes are the remaining rationale for guide requirements in other venues. Once guide requirements are rendered fundamentally commercial, these requirements become subject to attack under a commerce clause analysis. *See Conservation Force v. Manning*, 301 F.3d 985 (9th Cir. 2002). Application of the commerce clause/commercial analysis case law standards usually results in striking down guide requirements. *Id.*; *O'Brien* at 1152.

Second, requiring non-residents to hunt with specially qualified residents (i.e., de facto guides) appears to thwart the purpose of the bill—to facilitate killing bears. If the existing guide requirement is considered an obstacle to bear management, the special resident requirement constitutes a comparable obstacle. It raises this question: how many additional bears are likely to be taken by switching to a de facto guide requirement as compared to a certified professional guide requirement? It is likely that the benefits (in terms of facilitating the take of problem bears) of the de facto guide arrangement will be extremely minimal. Only a handful of residents are likely to qualify and go through the testing process to be able to "guide" non-resident hunters. On balance, such minimal benefits do not appear to outweigh the risks the revised scheme poses to the existing guide requirement.

¹ The bill allows these resident "guides" to recover costs and expenses.

B. Weyrauch

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5/3/04

To preserve the constitutionality of Alaska's guide requirement for non-resident hunters, we would strongly counsel against authorizing any exception to the guide requirement or a scheme in which special residents act as de facto guides in a non-commercial or quasi-commercial manner.

Sincerely,



Joe Klutsch, President
Alaska Professional Hunter's Association