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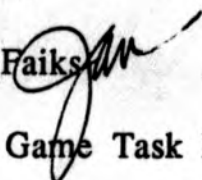
Alaska State Legislature

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3755

June 12, 1989

MEMORANDUM

TO: All Legislators

FROM: Senator Jan Faiks 

SUBJECT: Guiding and Game Task Force Meeting

At the request of Legislative Council, I am coordinating the first organizational meeting this interim of the Guiding and Game Task Force. It will be:

Thursday, June 29th
10 a.m.
Anchorage Legislative Information Office
3111 C Street
First Floor Conference Room

The agenda will include selection of a chairman, discussion of a work plan to meet statutory responsibilities, and establishing a meeting schedule for the remainder of 1989. It is my hope the Task Force's business can be concluded by noon.

For questions or further information, please give my Anchorage office a call at 561-7610.

From the
6-29-89 mtg
of GTF

6-29-89

10: - Jan intro -

Rep. Davidson joined
moved to select Chair — unanimous
nominations -

Johnson nominated - Tom (2nd Burns)

Vernita - Hinman

Jan elected ch - show of hands - 5 (?)

Panglin (Susan Miller to do report)

urgent units since '83 - determined mapped by drainages

The basics are here to form game mgmt plan based on
resources (based)

1 - est. criteria for guide area (2) Public process allowing public input
(3) Formal concurrence of process - report clearly stating TF decision
- (report to legis)

Goat hunting requires guide — F&G - had much outcry fr.
non-residents etc - (have 300-400 yr) been

F&G - has sent ltr to ea non-resident applicant asking if
they'd like to withdraw applic. (Hinman - -

~~Panglin~~ Panglin - doesn't feel situation (goats) is unworkable -
tho expect to take yr or 2 of complaints etc -

Burns -

Transporter gap = Possible Trouble spot - lack of "Port 135" (3PS?) (350)

→ obstacle - Big Game Bd not yet appointed!

XX esp. now require that Asst Guide EXAM.

(2)

6-29-87

proof of
Many questions on 'permission To be on Fed-State etc land
To hunt (guide) - (435-470?)
no plan to ~~do~~ give assist guide exam after July date -
until Bd is seated.

Jan asked Burns To get exam checked for [Ex: vermita
'Cultural Bias' - side 1-580 (610?) Tapel side 1
question)

Jan - re: AG constitutional questions -- goes over to ~~side B~~ side B Tap 1

of Guide-outfitters - ~~out of state~~ non-residents -
Requested by Fanning - (side 2 #063)

Where To Go from here - (#080)

(Lars Hanson - NTL Park mng) - will help Committee - re: Limited Entry

Type concession - open To All -
will have regs here next

Terry O'Sullivan - Blm - Arch - permits - will provide their
regs -

U.S. Fish - Wildlife will help -

Bill Horn - willing To help - consultant - will help draft law etc -

X NTL Park Svc - has Congressional law allowing restrictions
on # of users - (only such law) -

(3)

Navare - would like to look at Feds etc regs - see if/how may apply in AK

Panglin - need system Fed agencies ~~to~~ can sign on with -
non resident hunters/fishermen pay $\frac{3}{4}$ cost of
state management - (end $\pm$ 230 side B Tape 1)

Fanning -

Jam - Fed agencies want to come to TF mtgs - participate
assist etc - (they want state regulator of guides on
their lands ^{Panglin}) (485 + side B Tape 1)

question - can Jam go to Sen - His backing to
allow TF to hire - Bill Horn - as TF resource -
do research etc -

Jam - 500-509 - side 2 Tp 1 -

have options prepared for TF (by Horn) then TF get
together in fall - hit hard.

David - would like

Navare - TF needs to do the work developing options - ^{to} maintain credibility -
maybe - if Horn hired - have maintain TF member(s) included - i.e.
subcommittee -

~~Paul Johnson~~ - Paul Johnson IF needs subcommittee to work w/ Whover =
consultant -

Jam - schedule couple mtgs before Aug 10 (Hunting season)
Vivita will be absent - will proxy vote to Mathew & Co - I will
send someone to report on ^{to her} mtgs -

④

Get AG (Steve White →) at next mtg — prior To Aug 10
next mtg — what shall consultant do?

Tough mtgs —

springer — need a mgmt system — not an infinite # of options —
subcom the assign could

mail copy of TF Report To — in Bethel
L. Hoffmann

Don't know #

July 15 start -

~~Rockwell study~~

X Can pym receipts received - can be RSD'd To F&G For Resource Map project. (need \$45000 more than allocated) Jan - apparently must work thru Budget & audit for any change - increase in funds -

contract - Langlin - wants ~~very~~ in depth effort - esp. working w/ local folks - keep state perspective

X approve boilerplate contract -

(Travel shown at request) authorization of Committee - ?

X reduce Travel To \$3000. (To leave \$126 for TF Travel)
(\$27,000 Total contract) 6 To 4 vote - To reduce -
yes To approve contract at \$27,000.

X Guidance To F&G (Langlin) on Mapping - shall P & on hold T.C. later - or work on it while TF works on other matters since its ~~importance~~ importance parallels the TF effort.

panning motion → ~~old~~ Guide Areas included in consideration of mapping - cause I.D. Private Land Facilities - failed

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*Navarre -
limited entry - Heart Run
pro - Dept of Interior.
Law - system to regulate
big game outfitting.
Does not want to do
nothing.*

Guiding and Game Task Force

Meeting
of
June 29, 1989
10 a.m.

AGENDA

- I. Call to Order - Senator Jan Faiks
- II. Old Business
- III. Verbal Reports -
 - 1) Fish and Game
 - 2) Occupational Licensing
- IV. New Business
 - a) Work Plan
 - b) Meeting Schedule
- ~~V. Selection of Chairman~~
- VI. Members Comments
- VII. Adjournment

STEVE COWPER, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT****DIVISION OF OCCUPATIONAL LICENSING**P.O. BOX D-LIC
JUNEAU, ALASKA 99811-0800
PHONE: (907) 485-2534

DATE: June 26, 1989

TO: All Members, Task Force on
Guiding and Game

FROM: Randall P. Burns, Director *Randall*
Division of Occupational Licensing
Department of Commerce & Economic Development

SUBJECT: Categories of Licensure under
the newly enacted HB 112

Senator Jan Faiks has asked that I briefly detail for the Task Force the entities now regulated by the newly created Big Game Commercial Services Board (hereinafter the "Commercial Services Board" or "CSB"). As you are no doubt aware, HB 112 has replaced the Guide Board with the CSB. In comparison with the scope of activities formerly regulated by the Guide Board, the activities regulated by the CSB have been considerably broadened. Most significantly, the new law provides for better game harvest reports, licenses a greater number of big game commercial users, and establishes a commercial use fee (to "reimburse," as it were, the public for the harvest or use of the State's big game resource).

The bill, Chapter 37 of SLA 1989, establishes the following commercial user groups:

All Classes of "Guide-Outfitter":

- Guide-Outfitters (GO's)
- Marine Mammal Guide-Outfitters (MGO's)
- Class A Assistant Guide Outfitters (CGO's)
- Assistant Guide-Outfitters (AGO's)

"Transporters":

- Air-Taxi Services
- Charter Boat Operators
- All Other Transportation Forms (including Dog-Team,
Pack Horse, etc.)

"Other Big Game Commercial Service Providers":**Persons Who Provide:**

- Accommodations in the Field at a Permanent Lodge,
House, or Cabin
- Hunt Broker Services
- Gear Rental Services
- Photographic or Videographic Services
- Other Services (as defined by the CSB)

**All Members, Task Force
on Guiding and Game**

"Interim Outfitter":

A person who may continue to "outfit" (not "guide") only, pending a final determination of the person's qualifications to become a licensed guide-outfitter

HB 112 requires the following:

Guide-Outfitters and Assistant Guide-Outfitters must take an exam. GO's must take both a written and an oral exam. AGO's need only take a written exam. A Class A Assistant Guide-Outfitter may opt to sit for the exam ordinarily given GO's if the CGO would rather take the exam than work for a guide-outfitter for at least one season.

Both the GO and the MGO must carry general comprehensive insurance (or post a bond), and any class of GO who personally pilots an aircraft to transport clients must have a commercial pilot's rating or show proof of having flown a minimum of 250 hours in the state of Alaska. Also, any aircraft used by any class of GO to transport clients must carry aviation passenger liability insurance.

In order to qualify as a Transporter, the person must provide the CSB with proof of an air taxi/commercial operator certificate issued by the FAA (Part 135), if the person provides air transportation to big game hunters, or proof of licensure by the Coast Guard to carry passengers for hire, if the person provides water transportation services to big game hunters (and licensure is required by the USCG).

Persons other than Guide-Outfitters and Transporters who provide big game commercial services must register with the CSB. This includes the provision of lodging in the field, hunt broker services, gear rental services, photographic or videographic services, or such other services as shall be defined by the CSB.

Transporters and each class of GO are licensed. The providers of "other big game commercial services" are only registered with the CSB. But all groups, whether licensed or registered, must pay the commercial use fee established by the Legislature in HB 112. The commercial use fee is intended to provide a means whereby persons who provide any form of big game commercial hunting services can reimburse Alaskans for the privilege of harvesting or otherwise commercially benefitting from the State's public (i.e., "free") big game resource.

The statute says that the monies generated by the commercial use fee shall be accounted for separately by the state and that the Legislature may make appropriations from that fund to the Departments of Fish and Game and Public Safety for the purposes of enforcement and resource management.

HB 112 also has a modest "grandfather" section. It allows a person not previously licensed as a guide who can meet certain fairly strict criteria to apply for and receive a license as a guide-outfitter. This section allows the outfitter to continue to function as an outfitter "in the field" for a period not to exceed two years. Unless qualified under this transitional section, no one may "outfit" or "guide" without a guide-outfitter license.

**All Members, Task Force
on Guiding and Game**

The law also sets out a variety of civil and criminal penalties for unlawful acts, adds a new species to the list of big game animals requiring a guide-outfitter to accompany nonresident hunters (i.e., mountain goat), and creates a new board with a significantly different membership than was found on the previous Guide Board.

Finally, the bill states that the CSB may establish, "subject to the prior approval of the commissioner of fish and game, a resource-based system for allocating access to big game hunting opportunities among guide-outfitters" [see AS 54.310(b)(1)]. This particular section of the bill takes effect on the "earlier of (1) January 15, 1990; or (2) the date of submission to the legislature of a recommendation by the Task Force on Guiding and Game for a resource-based management system for allocating access to big game hunting opportunities among guide-outfitters licensed under AS 08.54" [see Section 20 of SCS CSHB 112(Rls) am S].

This section of the bill was probably the most controversial. Passage of HB 112 would probably not have occurred had the issue of establishing an allocation system not been postponed for additional review and study. It is important to realize, in light of the Alaska Supreme Court's *Owsichuk* decision, that HB 112 has dealt with the licensing aspects of the guide/outfitting controversy, but that essentially no work has been done on the other aspect of the controversy: the feasibility of establishing an allocation of our big game resource to nonresident hunters, in order to bring some level of stability to the commercial big game hunting industry in Alaska.

I have attached a copy of the Attorney General's review of HB 112, as well as a copy of a recent mailing the Division of Occupational Licensing has done in regard to the requirements of HB 112. I will be happy to answer any questions you might have.

Bill Hoen ?

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 485-3800

May 10, 1989

The Honorable Steve Cowper
Governor
State of Alaska
P.O. Box A
Juneau, Alaska 99811

Re: SCS CSHB 112(Rls) am S
-- big game guides
Our file: 883-89-0032

Dear Governor Cowper:

At Shari Kochman's request on your behalf, we have reviewed SCS CSHB 112(Rls) am S, which deals with the regulation of guide-outfitting, transportation, and other commercial services provided to big game hunters. Although the bill raises a couple of constitutional and interpretation questions, we do not believe that they require a veto. A quick synopsis of the bill's highlights follows.

Sections 1 -- 3 of this bill replace the current Guide Board with a new entity, the Big Game Commercial Services Board. The new, nine-member board's activities will be administered by the Department of Commerce and Economic Development; the board will license and regulate the providers of commercial services to big game hunters. Proposed AS 08.54.300(b)(4), providing for one member of this board to be chosen by the Board of Game from that board's own membership, raises a question of validity under the governor's broad grant of executive-branch appointment authority in art. III of the Alaska Constitution. Proposed AS 08.54.030(b)(5), requiring one member "who represents Native landholders," does not make clear whether that member must be a Native, a Native landholder, or just someone who represents their interests, such as an attorney.

In particular, the board will examine license applicants to test to determine whether they are qualified to provide guide-outfitted hunts in state game management units that

The Honorable Steve Cowper, Governor
Our file: 883-89-0032

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Page 2

they initially select or for which they later wish to be certified. The board will establish qualifications for other classes and types of guide-outfitters and will issue two new kinds of licenses, i.e., transporters licenses and commercial use permits.

The new board may by regulation establish, with the prior approval of the commissioner of fish and game, a resource-based management system for allocating access to big game hunting opportunities among licensed guide-outfitters. This authority, however, will not be effective until the earlier of July 15, 1990, or the submission to the legislature of a recommendation for this system by the Task Force on Guiding and Big Game that was extended by ch. 10, SLA 1989 (derived from HCS CSSB 139(Res)).

Proposed AS 08.54.350, 08.54.360, 08.54.380, and 08.54.390 establish the prerequisites for various types of guide licenses. Beside different requirements for licensing, class-A and assistant guide-outfitters are distinguished by the guiding activities they may pursue. Although both must be supervised by the employing guide-outfitter, the class-A assistant will also be authorized to take charge of and guide from a camp even if his employer is not present.

Two licensing prerequisites raise a constitutional issue. Proposed AS 08.54.360(a)(2) and 08.54.380(a)(2)(A) require state residency as a condition for receiving a marine mammal guide-outfitter license or a class-A assistant guide-outfitter license respectively. In 1986, we concluded that the requirement of having an Alaska resident hunting license in order to act as a guide was a violation of the privileges and immunities clause of art. IV, sec. 2, cl. 1, of the United States Constitution. 1986 Op. Att'y Gen. No. 2 (Sept. 29; 661-87-0063). The rationale developed in that opinion applies here. As in the earlier situation, we believe that these conditions can be severed from the remaining requirements that are valid. AS 01.10.030; Lynden Transport, Inc. v. State, 532 P.2d 700, 711 (Alaska 1975).

Proposed AS 08.54.395 sets minimum liability insurance requirements for guide-outfitters and sets pilot licensing, and passenger liability insurance requirements for licensees who plan to transport clients by aircraft. Section 21 of the bill gives

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these requirements a delayed effective date of July 15, 1989. (Under sec. 22, most of the rest of the Act is to take effect immediately, under AS 01.10.070(c).)

Two types of commercial service providers who were previously unregulated by the state will be required to obtain a license or permit. Proposed AS 08.54.400 establishes conditions for issuing and renewing a transporters license for persons who carry big game hunters in aircraft or boats. Proposed AS 08.54.460 requires all other persons who provide commercial services to big game hunters to obtain a permit and pay an annual fee. This group includes lodge owners and persons who rent equipment and provide photographic services, but it does not include hunting clubs, which are specifically prohibited from providing commercial services for compensation. Proposed AS 08.54.470 will require all other licensees to obtain the commercial use permit and pay the fee. These fees will be separately accounted for and may be appropriated by the legislature to the Department of Fish and Game and the Department of Public Safety (i.e., this is the standard "program receipts" language).

Proposed AS 08.54.500 -- 08.54.540 deal with procedures for disciplining guide-outfitters, transporters, and commercial use permittees. They also describe unlawful acts by these persons, and establish penalties for violations. These provisions authorize the enjoining of certain unlawful acts, and establish a guide-outfitter's vicarious liability for violations committed by class-A and assistant guide-outfitters employed by the guide-outfitters.

Section 5 adds mountain goats and deletes polar bears from the list of species for which nonresident hunters must be accompanied by either a class of guide-outfitter or by a resident Alaska relative.

Sections 7 and 9 require accompanied nonresident and nonresident alien hunters to provide proof of authority to use land where their hunt will occur.

Section 14 allows for licensing as guide-outfitters certain persons who have provided unregulated outfitting services during the past three years and who meet other qualifications, including passing the guide-outfitter exam within two years. It also establishes an appeal process for applicants who have been denied a license under this scheme. For the next two years or

The Honorable Steve Cowper, Governor
Our file: 883-89-0032

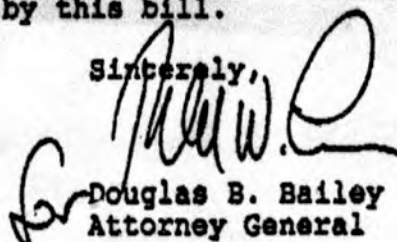
May 10, 1989
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until the person receives or is denied a guide-outfitter license, a former outfitter may hold an "interim outfitter license." This license will enable the outfitter to provide transportation and services other than guiding if the person registers up to two base camps with the Department of Public Safety and reports the game taken by clients. After July 15, 1989, an applicant for an interim outfitter license must also satisfy certain liability insurance and aircraft pilot licensing requirements. Sections 15 and 21 of the bill.

A "letter of intent" offered by Representative Navarre (1989 House Jour., p. 917-18) was adopted by the House (1989 House Jour., p. 919). A Senate Finance Committee letter (1989 Senate Jour., p. 1307) was adopted by the Senate (1989 Senate Jour., p. 1422). Both versions declared an "intent" that the new board consider the implications of the Alaska Supreme Court's decision in Owaichek v. State, Guide Licensing and Control Board, 763 P.2d 488 (Alaska 1988) when establishing the management system authorized in proposed AS 08.54.310(b)(1) (sec. 3 of the bill). And both versions of the letter set out several features that the respective houses of the legislature believe should be in this system. Such letters can provide helpful guidance, but they are not binding. South Central Health Planning and Development, Inc. v. Commissioner of Administration, 628 P.2d 551, 553 (Alaska 1981).

Other than the constitutional and other issues that we have noted above, such as the residency requirements for licensing and the board-member appointment system, we spot no legal problems presented by this bill.

Sincerely,


Douglas B. Bailey
Attorney General

DDB:SMW:jf

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

STEVE COWPER, GOVERNOR

P.O. BOX D-LIC
JUNEAU, ALASKA 99811-0800
PHONE: (907) 485-2534*Guide-
Outfitter*

June 21, 1989

Dear Guide-Outfitter:

As most of you are probably aware by now, HB 112, relating to guide-outfitting, passed this session and was signed into law on May 11, 1989 (copy enclosed). I encourage you to read through the bill carefully, as there are many changes that will affect your operations.

The most urgent issue at hand is the requirement of guide-outfitters or marine mammal guide-outfitters in AS 08.54.395 that they carry comprehensive general liability insurance in the amount of \$300,000 per occurrence or \$500,000 per annual aggregate.

All classes of guide-outfitters (i.e., guide-outfitters, marine mammal guide-outfitters, class A's, and assistants) who transport their clients by aircraft must carry aviation passenger liability insurance of at least \$100,000 per seat. All classes of guide-outfitters who personally pilot an aircraft to transport clients during the provision of big game commercial hunting services must show proof of a commercial pilot's rating or a minimum of 250 hours of flying time in the state.

Insurance verification forms are enclosed. Please note that this section of the law is effective July 15, 1989. You are required to return the forms completed by your insurance company and a notarized copy of your commercial pilot license or verification of 250 hours of flying time in Alaska by July 17, 1989 if you intend to provide air transportation services to your clients.

By way of information, please also note the changes in the requirements for assistant and Class A assistant guide-outfitters. Assistant guide-outfitters must now sit for an examination prior to licensure. No new assistant guide-outfitter licenses will be issued prior to the exam. The exam will be given in Juneau, Anchorage, and Fairbanks on July 21, 1989. Applications must be received by this office no later than July 17, 1989.

Guide-Outfitter

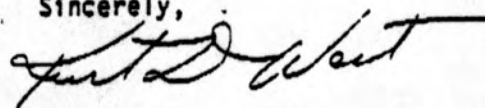
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June 21, 1989

Commercial USE Permit and Fee: Under AS 08.54.470, a person who is licensed as a guide-outfitter or marine mammal guide-outfitter shall obtain an annual commercial use permit and pay the annual commercial use fee. A form for payment of the fee is included and should also be returned no later than July 15, 1989.

If you have any questions concerning the new law, feel free to contact this office at 465-2543.

Sincerely,



Kurt West
Licensing Examiner

KW/dg14454D
062189e
Enclosures

IMPORTANT NOTICE!!! PLEASE READ!!!

FORMAT OF ENCLOSED FORMS:

Attached are forms for your use in complying with the new requirements of HB 112. The new bill sets out specific licensing deadlines and requirements, many of which have to be complied within the very near future. However, appointments to the new Big Game Commercial Services Board have yet to be made; hence, the board has not had an opportunity to review and approve the format of the forms that have been developed. As an interim solution, the Division of Occupational Licensing has developed preliminary forms for your use. Once board appointments are made, the board will have to review and approve the format of all of the forms we have developed during this interim.

As a result, the forms may be revised and additional information may eventually be required by the board. In such cases, persons already licensed will be required to provide the requested additional information. The division will correspond with you directly regarding any additional items the board may require from you.

FEES:

As you are aware, HB 112 provides for the payment of a "commercial use" fee. While the division, by statute, may set licensing fees with the concurrence of the board of the affected profession, the commercial use permit fee is not a licensing fee. Again, because the board is not yet appointed, the division has gone ahead and set interim fees.

While tentative, we believe the licensing fees we have set will likely be concurred with by the board. The licensing fees we have set will be good through December 31, 1990 (approximately a year and one-half), when all persons presently licensed by the now-sunsetted Guide Board must renew their licenses. Thereafter, in accordance with statutory requirements of HB 112, licenses will be issued on an annual basis only.

The division has also set a tentative amount of \$100.00 for the commercial use permit fee. This fee must accompany the enclosed commercial use permit application and is due by July 17, 1989 (the same date that the enclosed insurance forms are due). This fee is only good until December 31 of this year. All licensees will be required to pay a separate commercial use fee for calendar year 1990.

The fee is tentative because a \$100.00 fee is probably insufficient to fully meet the intent of the Legislature in creating and assessing a commercial use fee. The commercial use fee is intended to provide a means whereby persons who provide any form of big game commercial hunting services can reimburse Alaskans for the privilege of harvesting the state's public (i.e., free) big game resource. The statute says that the monies generated by the commercial use fee shall be accounted for separately by the state and that the Legislature may make appropriations from that fund to the Departments of Fish and Game and Public Safety for the purposes of enforcement and resource management. In order for the fund created by commercial user fees to be of sufficient size to benefit the state through protection and management of the resource, the division believes the fee must generate somewhere between \$250,000 to \$500,000 a year. A \$100.00 commercial use fee is not enough to raise this much revenue.

*St. Lawrence
commercial
service
front*

In the meantime, because the statute requires that a commercial use permit fee must be paid before any guide-outfitter, transporter, or commercial use permit holder may provide big game commercial services, we have set the fee at \$100.00 simply as an interim measure. Once Commercial Services Board members are appointed, the board will have to place many matters in regulation form; at that time, the board will take public testimony on the appropriate amount of the big game commercial use fee.

Thank you.

Randall P. Burns, Director
Division of Occupational Licensing

State of Alaska
Department of Commerce and Economic Development
Division of Occupational Licensing
Big Game Commercial Services Board
P.O. Box D-LIC
Juneau, Alaska 99811-0800
(907) 465-2543

**FAA/COAST GUARD LICENSE VERIFICATION
OR PROOF OF EXPERIENCE
(AS 08.54.395(b))**

Applicant Name: _____
Business Name: _____
Mode of Transportation: _____
Number of planes/boats you are using _____
AK Number / Plane Registration Nos. for above: _____
Air Carrier Operator License No. _____
Required under 14 C.F.R. Part 135
Coast Guard License No. _____
List the Game Management Units in which you will be transporting big game hunters: _____

NOTE: A notarized true copy of the above license must be attached to this application.

OR

**AFFIDAVIT OF FLYING EXPERIENCE
(AS 08.54.395(b))**

Applicant Name: _____

Being first duly sworn upon his/her oath, deposes and says:

I make the following voluntary signed statement and no threats, promises, or any form of duress have been used to induce me to make this statement.

I, _____, have personally flown at least 250 hours in Alaska.

List Number of Hours: _____

NOTE: You may be subject to an audit of these hours and a log may be requested.

I have read the above and foregoing statement and have been given an opportunity to make any corrections that I might want to make.

Signature of Applicant

Subscribed and sworn before me at _____ this _____ day of _____, 19____.

Notary Public

My Commission Expires: _____

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

RECEIVED

MEMORANDUM

June 27, 1989

JUN 28 1989

JAN FAIKS
SENATE OFFICE

SUBJECT: Sectional Summary of SCS CSHB 112 (Rules) am S; An Act relating to big game hunting and to the regulation of big game and marine mammal guide-outfitting, transportation, and other commercial services for big game hunters, creating the Big Game Commercial Services Board; relating to presumptive sentences for violation of certain big game commercial services statutes; and providing for an effective date.

TO: Senator Jan Faiks

FROM: George Utermohle *GU*
Legislative Counsel

The following is a sectional summary of SCS CSHB 112 (Rules) am S, as requested by Mark Riehle of your staff.

Please note that a summary of a bill should not be considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill repeals and reenacts AS 08.01.010(10) to provide that the Big Game Commercial Services Board is subject to and benefits from centralized licensing procedures under AS 08.01.

Section 2 of the bill repeals and reenacts AS 08.03.010(c)-(20) to provide that the Big Game Commercial Services Board terminates on June 30, 1993 under the "sunset" provisions of AS 08.03.

Section 3 of the bill amends AS 08.54 by adding new sections creating the Big Game Commercial Services Board and providing for the regulation of guide-outfitting, transportation, and other commercial services for big game hunters.

ARTICLE 4. BIG GAME COMMERCIAL SERVICES BOARD.

Sec. 08.54.300 establishes the Big Game Commercial Services Board (Board) in the Department of Commerce and Economic Development. The Board consists of nine members. Two members of the board are licensed guide-outfitters. Two members of the Board are licensed transporters. One member of the Board is a commercial use permit holder who is not a guide-outfitter or transporter. One member of the Board is a member of the Board of Game who is chosen by the Board of Game. One member is a person who represents Native landholders. Two members of the Board are public members. The guide-outfitter, transporter, commercial use permit holder, and public members of the Board, as well as the representative of Native landholders, are appointed by the governor.

Sec. 08.54.310 sets out the duties and powers of the Board. The Board shall prepare, grade, and administer examinations for guide-outfitters licenses and for game management unit certifications; determine qualifications for class-A assistant guide-outfitter, marine mammal guide-outfitter, and assistant guide-outfitter licenses; establish performance standards for providers of big game commercial services and regulate the activities of these providers; publish an annual list of big game commercial services providers; prohibit big game commercial services that are unsportsmanlike, unethical, unsafe, etc; revoke, suspend, or deny renewal of licenses and permits; authorize issuance of transporter licenses and commercial use permits; meet at least twice each year; and provide for registration of base camps and other facilities.

The Board may establish a management system for guide-outfitters and establish standards of supervision that a guide-outfitter must exercise over class-A assistant guide-outfitters and assistant guide-outfitters.

Sec. 08.54.320 provides that the Board shall adopt regulations as required by this chapter and as necessary for administration of this chapter.

Sec. 08.54.330 provides that the Department of Fish and Game, Department of Natural Resources, and Department of Public Safety shall provide the Board with information necessary to regulate providers of big game commercial services.

ARTICLE 5. LICENSING.

Sec. 08.54.350 sets out the minimum qualifications necessary for a guide-outfitter license. A person who currently holds a master guide license may receive a master guide-outfitter license, but is in all other respects treated as a guide-outfitter. A guide-outfitter may contract to guide-outfit hunts for big game.

Sec. 08.54.360 sets out the minimum qualifications necessary for a marine mammal guide-outfitter license. A marine mammal guide-outfitter may contract to guide-outfit hunts for marine mammals.

Sec. 08.54.370 sets out the requirements for renewal of guide-outfitter and marine mammal guide-outfitter licenses. The department may not renew a license unless these requirements are satisfied.

Sec. 08.54.380 sets out the minimum qualifications necessary for a class-A assistant guide-outfitter license. A class-A assistant guide-outfitter may not contract to guide-outfit hunts. A class-A assistant guide-outfitter must be under the supervision of a guide-outfitter but may take charge of a camp in the absence of a guide-outfitter.

Sec. 08.54.390 sets out the minimum qualifications necessary for an assistant guide-outfitter license. An assistant guide-outfitter may not contract to guide-outfit hunts and must be employed by a guide-outfitter and supervised by a guide-outfitter or class-A assistant guide-outfitter while in the field on a hunt.

Sec. 08.54.395 sets out additional requirements for guide-outfitters. This section takes effect July 15, 1989.

Guide-outfitters and marine mammal guide-outfitters must carry a minimum amount of comprehensive general liability insurance or post a financial bond.

Any guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter who pilots an aircraft to transport clients shall have a commercial pilot's rating or a minimum of 250 hours of flying time in the state.

All aircraft that transport clients of guide-outfitters during the provision of big game commercial hunting services must carry a minimum amount of aviation passenger liability insurance or be subject to a financial bond in the required amount.

Sec. 08.54.400 sets out the requirements for obtaining and renewing a transporter license.

A transporter may provide transportation services to big game hunters. A transporter may also provide accommodations to big game hunters in the field in certain situations. A transporter must place a decal provided by the department on each piece of transportation equipment that the transporter uses in providing transportation services to big game hunters.

Sec. 08.54.410 provides for an appeal to the commissioner of commerce and economic development if an applicant for any class of guide-outfitter license or transporter license is denied a license by the Board. Specific criteria that an appellant must satisfy in order to file an appeal under this section are set out.

Sec. 08.54.420 provides that guide-outfitter, marine mammal guide-outfitter, and transporter licenses are renewed annually.

Sec. 08.54.430 provides for examinations for any class of guide-outfitter license that may be required under this chapter. The Board shall administer qualification examinations at least twice a year and at least once each two years shall administer the examinations at a location outside of Anchorage. The examinations must be administered at least 90 days apart.

The Board shall regularly provide information on examinations and qualifications for all classes of guide-outfitter licenses to residents of rural areas.

Sec. 08.54.440 provides for renewal of all classes of guide-outfitter licenses after the license has lapsed. If any class of guide-outfitter license has lapsed for two consecutive years, the applicant must satisfy the requirements for initial issuance of the license.

A guide-outfitter who fails to renew a license does not have to repeat the three year apprenticeship as a class-A assistant guide-outfitter or an assistance guide-outfitter unless the guide-outfitter license has been lapsed for three years or more.

Sec. 08.54.450 provides that the department shall set fees for examinations and licenses required under this chapter. A license fee for any class of guide-outfitter license is in addition to the fee paid for a hunting license.

Sec. 08.54.460 requires that a person, other than a licensed guide-outfitter, marine mammal guide-outfitter, or transporter, who provides other big game commercial services for compensation register with the Board, obtain a commercial use permit, and pay the commercial use permit fee. Examples of "other big game commercial services" are listed.

A commercial use permit may not be issued to a hunting club. A hunting club may not provide other big game commercial services for compensation.

Sec. 08.54.470 requires guide-outfitters, marine mammal guide-outfitters, and transporters to obtain an annual commercial use permit and pay the commercial use permit fee.

The department, in consultation with the Board, shall set the amount of the commercial use permit fee.

A guide-outfitter, marine mammal guide-outfitter, or transporter shall pay the commercial use permit fee with the application for issuance or renewal of their license.

The commissioner of administration shall separately account for the fees received for commercial use permits. The legislature may use the money received for commercial use permits to make appropriations to the Department of Fish and Game and the Department of Public Safety for game management and enforcement of game laws.

ARTICLE 6. PENALTIES.

Sec. 08.54.500 sets out the procedures for discipline of a person who holds any class of guide-outfitter license.

The Board may hold a disciplinary hearing upon receiving a written complaint about the guide-outfitter licensee. The

Board shall hold a disciplinary hearing upon receiving three written complaints from members of three separate hunting parties about a licensee's activities or a written complaint about a licensee's conduct in a life-threatening situation or if the licensee is convicted of certain state or federal laws.

The Board may revoke, suspend, or deny renewal of any class of guide-outfitter license after a hearing if the Board finds that the licensee engaged in certain proscribed activities or violated certain state or federal laws.

The Board shall revoke any class of guide-outfitter license after a hearing if the Board finds that the licensee is not qualified for the license held, is incompetent, or has been convicted of certain state or federal laws during the preceding five years.

The Board shall immediately suspend any class of guide-outfitter license if a certified copy of a judgment of conviction of a licensee for certain state or federal crimes is filed with the Board.

Sec. 08.54.505 provides for the discipline of transporters and commercial use permittees.

The Board may hold a disciplinary hearing regarding the activities of a transporter or commercial use permittee upon receipt of a written complaint about the transporter or commercial use permittee. The Board shall hold a disciplinary hearing upon receiving three written complaints from members of three separate hunting parties about the transporter's or permittee's activities or if the transporter or permittee is convicted of certain state or federal laws.

The Board may revoke, suspend, or deny renewal of a transporter license or commercial use permit after a hearing if the Board finds that the licensee or permittee engaged in certain proscribed activities or violated certain state or federal laws.

The Board shall revoke a transporter license or commercial use permit after a hearing if the Board finds that the licensee or permittee is not qualified for the license or permit or has been convicted of certain state or federal laws during the preceding five years.

The Board shall immediately suspend a transporter license or commercial use permit, if a certified copy of a judgment of conviction of licensee or permittee for certain state or federal crimes is filed with the Board.

Sec. 08.54.510 sets out general provisions applicable to disciplinary proceedings.

A person who is disciplined under AS 08.54.500 or 08.54.505 may not engage or be employed in the business of providing big game commercial services during a period of license or permit revocation or other disciplinary action. A person who is licensed under this chapter or who holds a commercial use permit may not employ a person whose license or permit under this chapter is suspended or revoked.

A license or permit that has been revoked must be surrendered immediately to the department.

A certified copy of a judgment of conviction is conclusive evidence of the commission of the offense in a disciplinary proceeding of the Board, regardless of whether the conviction resulted from a plea of nolo contendere or the conviction is under appeal, unless the conviction is overturned on appeal.

The Board shall notify a complainant of the result of the Board's hearing within 30 days after the hearing. The Board must also notify a complainant of its reasons for not taking disciplinary action.

Sec. 08.54.520 sets out unlawful acts involving the provision of big game commercial services and establishes the penalties for those acts.

A person may be punished by a fine of not more than \$30,000 or imprisonment for not more than one year or both for

- (1) failing to report violations of certain laws by a client or employee if the person holds a license or permit issued under this chapter;

- (2) committing, aiding in the commission of, or allowing a violation of certain fish and game laws if the person holds a license or permit issued under this chapter;

- (3) providing big game commercial services without holding a commercial use permit;
- (4) obstructing the lawful hunting activities of hunter who is not a client of the person, if the person holds a license or permit under this chapter;
- (5) providing guide-outfitting services except while employed and supervised by a guide-outfitter, if the person is a class-A assistant guide-outfitter or assistant guide-outfitter;
- (6) entering or remaining on state, federal, or private land without prior authorization, if the person holds any class of guide-outfitter license.

A person may be punished by a fine of not more than \$30,000 or imprisonment for not more than one year or both for a first offense or by a fine of not more than \$50,000 or imprisonment for not more than five years for a second or subsequent offense for

- (1) providing guide-outfitter services without having an appropriate class of guide-outfitter license and hunting license in actual possession;
- (2) advertising or to representing to be a guide-outfitter without holding a guide-outfitter or marine mammal guide-outfitter license;
- (3) providing transportation services to a big game hunter without holding a transporter license;
- (4) contracting to lead a hunt, if the person is a class-A assistant guide-outfitter or assistant guide-outfitter.

A person who provides big game commercial services while the person's license to provide those services is suspended or revoked is punishable by a fine of not more than \$50,000 or by imprisonment for not more than five years.

A person who is convicted of an act set out in this section may also be subject to revocation of the person's license to provide guide-outfitter and transportation services for not more than five years and forfeiture of guns, boats, aircraft, and other equipment used in committing the act.

If a person is convicted of an act set out in this section, a court may not suspend imposition or execution of sentence and the person may not be granted probation until the minimum sentence is served.

Sec. 08.54.530 provides that the Board may obtain an injunction to stop a person from violating certain provisions of this chapter.

Sec. 08.54.540 provides that a guide-outfitter is subject to discipline by the Board under AS 08.54.500 for violations of certain state and federal laws committed during the course of employment by a class-A assistant guide-outfitter or assistant guide who is employed by the guide-outfitter.

ARTICLE 7. GENERAL PROVISIONS.

Sec. 08.54.550 provides for the collection of certain information and reports from guide-outfitters, marine mammal guides, and transporters. This information is confidential except that aggregated information may be released in reports by the department.

Sec. 08.54.590 established definitions for "base camp", "big game", "big game commercial hunting services", "big game commercial service", "board", "compensation", "department", "field", "game management unit", "guide-outfit", "hunting club", "spike camp", "transportation services", and "unethical activity".

Section 4 of the bill amends AS 12.55.125(e), by establishing a one year presumptive sentence for a first felony conviction if the offender is convicted of AS 08.54.520(a)(7) - (10).

Section 5 of the bill amends AS 16.05.407(a) by adding mountain goat to and deleting polar bear from the list of species for which a nonresident hunter is required to utilize the services of a guide-outfitter and by making certain technical changes that are necessary to conform with the remainder of the bill.

Section 6 of the bill amends AS 16.05.407(d) by making a technical change that is necessary to conform to the repeal of AS 16.05.407(e).

Section 7 of the bill amends AS 16.05.407 by adding a new subsection to require that nonresident hunters provide proof of prior authorization to use the land where the hunt will occur, when the nonresident hunter applies for a hunt permit for a big game species listed in AS 16.05.407(a). (See Section 5 of the bill.)

Section 8 of the bill amends AS 16.05.408(a) by making technical changes necessary to conform with Section 3 of the bill.

Section 9 of the bill amends AS 16.05.408 by adding a new subsection to require that nonresident alien hunters provide proof of prior authorization to use the land where the hunt will occur, when the nonresident alien hunter applies for a hunt permit for a big game animal.

Section 10 of the bill amends AS 39.50.200(b)(48) in order that the members of the Big Game Commercial Services Board are subject to the conflict of interest law.

Section 11 of the bill amends AS 41.23.420(d) by making a technical change that is necessary to conform to section 3 of the bill.

Section 12 of the bill amends AS 44.62.330(a)(35) to provide that the Big Game Commercial Services Board is subject to certain provisions of the Administrative Procedure Act.

Section 13 of the bill provides for the transition from the existing classes of guide licenses to the new classes of guide-outfitter licenses.

All classes of guide licenses that are in effect on the effective date of this bill continue to be valid for the period for which the licenses were originally issued.

Persons who currently hold master guide licenses shall be issued master guide-outfitter licenses. Persons who currently hold registered guide licenses shall be issued guide-outfitter licenses. Persons who currently hold class-A assistant guide licenses shall be issued class-A assistant guide-outfitter licenses. Persons who currently hold assistant guide licenses shall receive an assistant guide-outfitter license. The new licenses shall be issued to the current licensee at the time of the next license renewal following the effective date of this bill, if the person is

in good standing at the time of issuance and pays the appropriate fees.

If the Department of Commerce and Economic Development can issue new licenses sooner than is required by this section, the department may do so without charge to the licensee.

Section 14 of this bill provides that natural persons who have provided big game outfitting services in the past may qualify for a guide-outfitter license.

In order to qualify for a guide-outfitter license under this section, the person must have registered a camp, cabin, or lodge under AS 16.05.787 during 1988, engaged in the business of big game outfitting in 1986, 1987, and 1988, passed the guide-outfitter examination within two years from the effective date of this bill, and satisfied other requirements.

A person who is denied a guide-outfitter license under this section by the Big Game Commercial Services Board may under certain circumstances appeal the action of the Board to the commissioner of commerce and economic development.

A person who provides sufficient proof of past history as a big game outfitter may receive an interim outfitter license that is valid for a period not to exceed two years from the effective date of this bill.

A person who holds an interim outfitter license may provide transportation and other big game commercial services to hunters in the field, except that the person may not provide big game guiding services.

A person who holds an interim outfitter license must promptly report violations of certain laws committed by a client or employee of the person.

A person who holds an interim outfitter license must register base camps, cabins, and lodges that the person uses in providing big game outfitting services. The person must report the amount and kinds of big game taken by each hunter who uses the registered camp, cabin, or lodge.

A person who holds an interim outfitter license and who fails to report violations of certain laws by clients and employees is punishable by a fine of not more than \$2,000 or

imprisonment for up to one year or both. Falsification of an affidavit of registration for a base camp, cabin, or lodge constitutes the crime of unsworn falsification under AS 11.56.210.

A person who holds an interim outfitter license must carry a minimum amount of comprehensive general liability insurance or post a financial bond. If a person who holds an interim outfitter license pilots an aircraft to transport clients, then the person must have a commercial pilot's rating or 250 hours of flying time in the state.

An aircraft used to carry clients of an interim outfitter during the provision of outfitting services must carry a minimum amount of aviation passenger liability insurance or be subject to a financial bond.

The terms "base camp", "big game", "field", "guiding", and "outfitting" are defined.

Section 15 of the bill amends Section 14(d) of the bill in order to require that, after July 15, 1989, applicants for an interim outfitters license comply with the insurance and flight training or experience requirements set out in Section 14(j) and (k) of the bill.

Section 16 of the bill allows certain extraordinary appointments to fill the initial vacancies on the Big Game Commercial Services Board.

The guide-outfitter seats on the Board may initially be filled by persons who are either a master guide or registered guide under current law or who registered a camp, cabin, or lodge under AS 16.05.787 during 1988 and engaged in the business of big game outfitting in 1986, 1987, and 1988.

The transporter seats on the Board may initially be filled by persons who engaged in the business of providing transportation to big game hunters in 1986, 1987, and 1988.

Section 17 of the bill provides for the continuance of legal proceedings, hearings, investigations, and regulations during the transition from the current guide statutes (AS 08.-54.010 - 08.54.240) to the guide-outfitter statutes contained in this bill.

Section 18 of the bill provides for the repeal of the current guide statutes (AS 08.54.010 - 08.54.240); the requirement for big game tag harvest reports and big game transporter reports (AS 16.05.370(b) and (c)); the requirement that nonresident hunters provide information on big game hunting services used in taking moose and caribou (AS 16.05.-407(e)); provisions relating to the duty of big game transporters to report violations of certain state law (AS 16.05.-786); and the requirement for registration of big game hunting base camps, cabins, and lodges (AS 16.05.787).

Section 19 of the bill provides for the repeal of certain amendments to AS 08.54 and AS 16.05 that are scheduled to take effect on July 1, 1989.

Section 20 of the bill provides that the power of the Big Game Commercial Services Board to develop a resource based management system for allocating access to big game hunting opportunities among guide-outfitters under AS 08.54.310(b)(1) does not take effect until the earlier of January 15, 1990 or the date of submission of a report on this subject by the Task Force on Guiding and Game.

Section 21 of the bill provides that those provisions of the bill relating to insurance and flight training or experience requirements for all classes of guides-outfitters and interim outfitters take effect July 15, 1989.

Section 22 of the bill provides that the remainder of the bill takes effect immediately after it is signed by the governor.

Except for those provisions of the bill that are subject to secs. 20 and 21 of the bill, the bill took effect May 12, 1989.

GU:mi
wkmi4/039

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 Honorable Bettye Fahrenkamp
Chairwoman, Senate Resources Committee

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Page 2

The supreme court based the Owsichuk 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 (Wernberg and CWC Fisheries) and in the context of fish (Ostrosky and Johns). 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 Owsichuk decision means that 184 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 Honorable Bettye Fahrenkamp
Chairwoman, Senate Resources Committee

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Page 3

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.

The Honorable Bettye Fahrenkamp
Chairwoman, Natural Resources Committee

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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 freer 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 1144 (Alaska 1983), appeal dismissed 467 U.S. 1201, 81 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
Chairman, Senate Resources Committee

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Page 5

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 Owsichuk court noted that the common use clause precluded exclusive guide areas even if they could be justified as a wildlife management tool. 4/ 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 unpredictability 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 EGA scheme that was struck down in Owsichuk will be destined to the same fate.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:

Stephen M. White

Stephen M. White
Assistant Attorney General

SMW:jf

4/ Owsichuk v. State, Guide Licensing and Control Board, 763 P.2d 488, 497 n.14 (Alaska 1988).

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
FAX: (907) 276-3697

☐ 1st NATIONAL CENTER
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

☒ P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

June 28, 1989

The Hon. Jan Faiks
Alaska State Legislature
3111 C Street, Suite 525
Anchorage, Alaska 99503

Dear Senator Faiks:

RECEIVED

JUL 5 1989

JAN FAIKS
SENATE OFFICE

Mark Riehle of your staff has asked me to provide a brief update on the Owsichuk decision for the Interim Task Force on Guiding and Big Game.

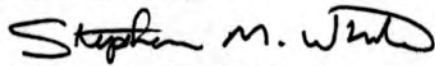
As you may recall, the state obtained a stay of the Alaska Supreme Court's decision that struck down the restricted guide area system. The stay expired at the beginning of this month. Therefore since June 1, the restricted guiding areas that were formerly administered by the Guide Board are no longer enforceable. A licensed guide may now legally guide in any of the game management units for which he or she has been certified by the Board.

The state did not seek a rehearing on the Owsichuk decision and did not appeal it to a higher court. There are several collateral issues concerning attorneys fees and court costs that are still being disputed by this department and Mr. Owsichuk's attorney. Otherwise, the substantive part of this decision stands as published last October.

Please do not hesitate to contact me if I can provide further assistance to the Task Force.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
Stephen M. White
Assistant Attorney General

SMW:jf

Letter of Intent
For
SCS for CS HB 112 (Fin)

It is the intent of the legislature that the Big Game Commercial Services Board, with recommendations from the Task Force on Guiding and Game, established under provisions of CS HB 112 (Finance) am shall consider the implications of the Owsichuk decision issued by the Alaska Supreme Court on October 21, 1988, when establishing the resource-based management system for allocating big game hunting opportunities among guide-outfitters.

It is the intent of the legislature that any management system should:

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.

BY THE SENATE FINANCE COMMITTEE

Senate Adopted 4/25-

LETTER OF INTENT
FOR
CS HB 112 (FINANCE)

It is the intent of the legislature that the Big Game Commercial Services Board established under the provisions of CS HB 112 (Finance) shall consider the implications of the Owsichek decision issued by the Alaska Supreme Court on October 21, 1988 when establishing the resource-based management system for allocating big game hunting opportunities among guide-outfitters.

It is the intent of the legislature that the foremost purpose of any management system should be the conservation of game resources. Any system that places restrictions on free market competition between guides must be based on clear findings that such restrictions are needed to prevent harmful impacts on game populations that cannot be prevented through licensing requirements, bag limits, seasonal restrictions, or other traditional game management tools that are now available to the state.

Without a constitution¹ amendment, a system would have to provide the broad access guaranteed by the "common use" clause of the constitution. The system would have to have access rights that are limited in duration, and the system would have to provide equal opportunity to all qualified guide-outfitters when these rights are reassigned. In order to prevent the development of non-uniform policies by various federal, state and private landowners, the system should have statewide applicability.

ADOPTED BY
THE HOUSE
4-6-89

Adopted 35-2



LAWS OF ALASKA

1989

Source

HCS CSSB 139(Res)

Chapter No.

10

AN ACT

Providing for retroactive extension of the termination date of the Task Force on Guiding and Game; increasing the membership of the Task Force on Guiding and Game; authorizing certain agencies to assist the Task Force on Guiding and Game; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 13

Approved by the Governor: April 5, 1989
Actual Effective Date: April 6, 1989; Sections 1 - 2 are
retroactive to January 8, 1989

Chapter 10

AN ACT

Providing for retroactive extension of the termination date of the Task Force on Guiding and Game; increasing the membership of the Task Force on Guiding and Game; authorizing certain agencies to assist the Task Force on Guiding and Game; and providing for an effective date.

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

(d) The task force terminates on the earlier of

(1) January 15, 1990; or

(2) the date of enactment into law of

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

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

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

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

Chapter 10

1 the governor. Of the two persons appointed to the task force under this
2 section, one person shall have expertise in research and analysis and, if
3 possible, particular knowledge in resource management or allocation systems
4 and may not have a financial interest in a business involving or related to
5 the commercial taking of game and one person shall represent Native village
6 landholders.

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

13 * Sec. 5. Sections 1 - 2 of this Act are retroactive to January 8,
14 1989.

15 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
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LAWS OF ALASKA

1989

Source

SCS CSHB 112(R1s) am S

Chapter No.

37

AN ACT

Relating to big game hunting and to the regulation of big game and marine mammal guide-outfitting, transportation, and other commercial services for big game hunters; creating the Big Game Commercial Services Board; relating to presumptive sentences for violation of certain big game commercial services statutes; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 15

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: May 11, 1989

Actual Effective Date: AS 08.54.310(b)(1), as enacted by sec. 3, is conditional; secs. 14(j), 14(k), 15, and AS 08.54.395 as enacted by sec. 3, take effect July 15, 1989; remainder of Act takes effect May 12, 1989

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AN ACT

Relating to big game hunting and to the regulation of big game and marine mammal guide-outfitting, transportation, and other commercial services for big game hunters; creating the Big Game Commercial Services Board; relating to presumptive sentences for violation of certain big game commercial services statutes; and providing for an effective date.

* Section 1. AS 08.01.010(10) is repealed and reenacted to read:

(10) Big Game Commercial Services Board (AS 08.54.300);

* Sec. 2. AS 08.03.010(c)(20) is repealed and reenacted to read:

(20) Big Game Commercial Services Board (AS 08.54.300) --

June 30, 1993.

* Sec. 3. AS 08.54 is amended by adding new sections to read:

ARTICLE 4. BIG GAME COMMERCIAL SERVICES BOARD.

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;

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(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.

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) an 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;

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(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.

(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.

Sec. 08.54.320. BOARD REGULATIONS. The board shall adopt procedural and substantive regulations required by this chapter or reasonably necessary for its administration.

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.

ARTICLE 5. LICENSING.

Sec. 08.54.350. GUIDE-OUTFITTER LICENSE. (a) A natural person is entitled to a guide-outfitter license if the person

(1) is 21 years of age or older;

(2) has practical field experience in the handling of firearms, hunting, judging trophies, field preparation of meat and trophies, first aid, photography, and related guide-outfitting activities;

(3) is familiar with the terrain and transportation problems in the game management unit for which the license is requested;

(4) has passed the qualification examinations prepared and administered by the board;

(5) has demonstrated to the board sufficient standards of competence and ethical conduct and has not been convicted of a state or federal hunting or guide-outfitting statute or regulation within the last five years for which the person was fined more than \$500 or

imprisoned for more than five days;

(6) has legally hunted in the state for part of each of any five years in a manner directly contributing to the person's experience and competency as a guide-outfitter;

(7) has been licensed as and performed the services of a class-A assistant guide-outfitter or assistant guide-outfitter in the state for a part of each of three years, or has guide-outfitted in the state for a part of each of three years under a marine mammal guide-outfitter license issued under AS 08.54.360;

(8) has demonstrated a current knowledge of fishing, hunting, and guide-outfitting regulations;

(9) is capable of performing the essential duties associated with guide-outfitting;

(10) has 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, when the person has guide-outfitted or assisted in guide-outfitting 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;

(11) possesses a business license to provide guide-outfitting services; and

(12) has paid the license fee and commercial use permit fee.

(b) A person who receives a master guide-outfitter license under sec. 12 of this Act may use the title master guide-outfitter and may annually renew the license unless the license has been revoked or suspended or has lapsed under AS 08.54.440. A master guide-outfitter license is for all purposes under this chapter a guide-outfitter

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license.

(c) A guide-outfitter may contract to guide-outfit hunts for big game and may provide transportation to, from, or in the field that is incidental to a guide-outfitted hunt.

Sec. 08.54.360. MARINE MAMMAL GUIDE-OUTFITTER LICENSE. (a) The board may issue a marine mammal guide-outfitter license to a natural person who applies to guide-outfit a hunt for a specific species of marine mammal in a specifically designated area if the person

(1) is 21 years of age or older;

(2) has, for at least 10 years, resided and hunted in the area of the state in which the applicant is to guide-outfit;

(3) is able to perform the duties of a marine mammal guide-outfitter;

(4) has demonstrated knowledge of the following areas to an extent and degree satisfactory to the board:

(A) current fish and game laws and regulations;

(B) relevant characteristics of the specific species to be hunted;

(C) field preparation of trophies;

(D) care of game meat;

(E) use of guide-outfitting gear;

(F) firearm safety;

(G) practical first aid; and

(H) booking and contracting hunts;

(5) has not been convicted of violating a state or federal game or guide-outfitting statute or regulation during the previous five years for which the person was fined more than \$500 or imprisoned for more than five days;

(6) possesses a business license to provide guide-

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outfitting services; and

(7) has paid the license fee and commercial use permit fee.

(b) A marine mammal guide-outfitter may contract to guide-outfit hunts for species of marine mammals for which the marine mammal guide-outfitter license is issued.

Sec. 08.54.370. RENEWAL OF GUIDE-OUTFITTER LICENSE AND MARINE MAMMAL GUIDE-OUTFITTER LICENSE. (a) An applicant for renewal of a guide-outfitter license or a marine mammal guide-outfitter license shall submit with the application for renewal

(1) the hunt record required under AS 08.54.550 for the period covered by the current license;

(2) the license fee for the next licensing period; and

(3) the commercial use permit fee for the next licensing period.

(b) The department may not renew a license under this section unless all fees have been paid in full and the hunt record has been filed.

Sec. 08.54.380. CLASS-A ASSISTANT GUIDE-OUTFITTER LICENSE. (a) A natural person is entitled to a class-A assistant guide-outfitter license if

(1) the person

(A) has been employed for at least one season as a licensed assistant guide-outfitter; and

(B) has had at least 10 years hunting experience in the game management units in which the person is to be employed; military service outside the state for not more than three years shall be accepted as part of the required 10 years hunting experience; or

(2) the person

(A) physically resides in the game management unit in which the person is to be employed;

(B) has had at least 15 years hunting experience in the game management unit in which the person is to be employed; military service outside of the state for not more than three years shall be accepted as part of the required 15 years hunting experience; and

(C) has passed qualification examinations prepared and administered by the board.

(b) A class-A assistant guide-outfitter

(1) may not contract to guide-outfit hunts;

(2) shall be under the supervision of a guide-outfitter who has contracted with the client for whom the class-A assistant guide-outfitter is conducting the hunt; and

(3) may take charge of a camp and conduct guide-outfitter activities from it without the guide-outfitter being present in the area if the guide-outfitter is supervising the guide-outfitting activities.

Sec. 08.54.390. ASSISTANT GUIDE-OUTFITTER LICENSE. (a) A natural person is entitled to an assistant guide-outfitter license if the person

(1) is 18 years of age or older;

(2) passes an examination administered by the board;

(3) has hunted in the state in two of the last five years;

(4) has demonstrated practical knowledge of first aid and cardiopulmonary resuscitation;

(5) is in sound physical condition; and

(6) meets additional qualifications that the board may establish.

(b) An assistant guide-outfitter

(1) may not contract to guide-outfit hunts; and

(2) shall be employed by a guide-outfitter and under the supervision of a guide-outfitter or class-A assistant guide-outfitter at all times while the assistant guide-outfitter is in the field on guide-outfitted hunts.

Sec. 08.54.395. INSURANCE AND OTHER REQUIREMENTS FOR GUIDE-OUTFITTERS. (a) A guide-outfitter or marine mammal guide-outfitter, while engaged in providing big game commercial hunting services shall carry, as a minimum, comprehensive general liability insurance of \$300,000 per occurrence or \$500,000 per annual aggregate or post a financial bond in those amounts.

(b) If a guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or an assistant guide-outfitter personally pilots an aircraft to transport clients during the provision of big game commercial hunting services, the guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter shall have a commercial pilot's rating or a minimum of 250 hours of flying time in the state.

(c) During the provision of big game commercial hunting services, an aircraft used by a guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter to transport clients must carry aviation passenger liability insurance of at least \$100,000 per seat or must be subject to a financial bond in that amount.

Sec. 08.54.400. TRANSPORTER LICENSE. (a) A person is entitled to a transporter license if the person

(1) applies on a form provided by the department;

(2) pays the license fee;

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(3) pays the commercial use permit fee;

(4) provides proof of

(A) an air taxi/commercial operator certificate issued by the Federal Aviation Administration under 14 C.F.R. Part 135, if the person provides air transportation services to big game hunters;

(B) licensure by the Coast Guard to carry passengers for hire, if the person provides water transportation services to big game hunters and if licensure is required by the Coast Guard; and

(5) has a business license to transport big game hunters.

(b) A transporter may provide transportation services for compensation to big game hunters and accommodations in the field at a permanent lodge, house, or cabin owned by the transporter or on a boat with permanent living quarters located on salt water. A transporter may also provide, under authority of a commercial use permit, other big game commercial services as defined under AS 08.54.460. A transporter may not provide big game commercial hunting services without holding the appropriate license.

(c) An applicant for renewal of a transporter license shall submit with the application for renewal

(1) an activity report on a form provided by the department for the period covered by the current license; an activity report shall contain information required by the board by regulation;

(2) the license fee for the next licensing period;

(3) the commercial use permit fee for the next licensing period; and

(4) proof of

(A) an air taxi/commercial operator certificate issued

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by the Federal Aviation Administration under 14 C.F.R. Part 135, if the applicant provides air transportation services to big game hunters;

(B) licensure by the Coast Guard to carry passengers for hire, if the applicant provides water transportation services to big game hunters and if licensure is required by the Coast Guard.

(d) The department may not renew a transporter license unless all fees have been paid in full and the activity report required under (c)(1) of this section and the proof required under (c)(4) of this section have been filed.

(e) A transporter shall place a decal provided by the department on each plane, boat, vehicle, or other equipment used by the transporter to provide transportation services to big game hunters. The decal must bear the transporter's license number. The decal is valid only for the plane, boat, vehicle, or other equipment for which the decal is issued.

Sec. 08.54.410. APPEAL TO COMMISSIONER FROM BOARD ON DENIAL OF LICENSE. The commissioner of commerce and economic development may order that an applicant for an initial license under AS 08.54.350 - 08.54.400 be allowed to take the license examination or be issued the license if, after reviewing a petition filed by the applicant, the commissioner finds that

(1) the board denied the applicant an opportunity to take the license examination or refused to approve issuance of the license;

(2) the board's denial or refusal has been upheld by a final administrative order and the order has not been appealed to the superior court under AS 44.62.560;

(3) the board's denial or refusal was based on

(A) an error of fact by the board; or

(B) the applicant's failure of the license examination due to faulty or unfair examination questions or procedures;

(4) the applicant is otherwise qualified to take the examination or to be issued the license; and

(5) sustaining the board's denial or refusal would work a substantial injustice on the applicant.

Sec. 08.54.420. RENEWAL OF LICENSES. Notwithstanding AS 08.01.100(a), guide-outfitter, marine mammal guide-outfitter, and transporter licenses shall be renewed annually on dates set by the department with the approval of the board.

Sec. 08.54.430. EXAMINATIONS FOR GUIDE-OUTFITTER LICENSES. (a) The board shall administer the qualification examinations required under this chapter at least twice a year. An examination may not be given within 90 days after the previous examination. At least once every other year the board shall give the examination at a location other than Anchorage.

(b) The board shall regularly disseminate information regarding examinations and other qualifications for all classes of guide-outfitter licenses to residents of the rural areas of the state.

Sec. 08.54.440. FAILURE TO RENEW. (a) A license may not be issued to a guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter who has failed to renew a license issued under this chapter for two consecutive years unless the guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter again meets the qualifications for initial issuance of the license.

(b) Notwithstanding (a) of this section, a guide-outfitter who fails to renew a license is not required to requalify under

AS 08.54.350(a)(7), unless the license has been lapsed for three or more years.

Sec. 08.54.450. LICENSE AND EXAMINATION FEES. (a) The department shall set license fees under AS 08.01.065 for each of the following:

- (1) guide-outfitter
- (2) class-A assistant guide-outfitter;
- (3) assistant guide-outfitter;
- (4) marine mammal guide-outfitter;
- (5) transporter.

(b) The license fee for the guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter license is in addition to the fee required for a hunting license.

(c) An applicant for a qualifying examination for any class of guide-outfitter license shall pay a fee established by regulations adopted under AS 08.01.065.

Sec. 08.54.460. COMMERCIAL USE PERMIT HOLDER. (a) A person, other than a guide-outfitter, marine mammal guide-outfitter, or a transporter, who provides other big game commercial services for compensation shall register with the board on a form provided by the board and shall obtain a commercial use permit and pay the annual commercial use permit fee set under AS 08.54.470. In this section "other big game commercial services" includes provision of accommodations in the field at a permanent lodge, house, or cabin owned by the commercial use permit holder, hunt broker services, gear rental services, photographic or videographic services, and services as defined by the board by regulation.

(b) A commercial use permit may not be issued to a hunting club.

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A hunting club may not provide other big game commercial services for compensation.

Sec. 08.54.470. COMMERCIAL USE PERMIT AND FEE. (a) A person who is licensed under this chapter as a guide-outfitter, marine mammal guide-outfitter, or transporter shall obtain an annual commercial use permit and pay an annual commercial use permit fee.

(b) The department, in consultation with the board, shall set the amount of the commercial use permit fee.

(c) A guide-outfitter, marine mammal guide-outfitter, and transporter shall pay the commercial use permit fee at the time of application for issuance or renewal of a guide-outfitter license, marine mammal guide-outfitter license, or transporter license.

(d) The commissioner of administration shall separately account for commercial use permit fees deposited in the general fund by the department. The annual estimated balance in the account may be used by the legislature to make appropriations to the Department of Fish and Game and the Department of Public Safety to carry out their respective responsibilities for management of game resources and enforcement of game laws.

ARTICLE 6. PENALTIES.

Sec. 08.54.500. DISCIPLINE OF GUIDE-OUTFITTERS. (a) The board may hold a hearing to determine whether disciplinary action is necessary if a written complaint concerning the guide-outfitting activities of a licensee who holds any class of guide-outfitter license is filed with the board. The board shall hold a hearing to determine whether a licensee should be disciplined within a reasonable time after

(1) written complaints concerning a licensee's guide-outfitting activities are filed with the board within a two-year period by three or more of the licensee's clients from separate hunting

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parties;

(2) a written complaint concerning a licensee's conduct during a life-threatening situation is filed with the board; or

(3) a licensee has been convicted of a violation of a federal or state statute or regulation relating to hunting or provision of big game commercial services.

(b) After a hearing, the board may revoke, suspend, or deny renewal of any class of guide-outfitter license, if the board finds that the licensee

(1) engaged in unethical activity, unsafe activity, or activity that adversely affects the natural resources of the state when the activity is related to the purposes of providing guide-outfitting services, however the board may not discipline a licensee under this paragraph for unsafe operation of an aircraft; or

(2) violated a provision of a federal or state statute or regulation relating to hunting or provision of big game commercial services.

(c) After a hearing, the board shall revoke any class of guide-outfitter license if the board finds that the licensee

(1) does not meet the qualifications specified by statute or regulation for the license held;

(2) is incompetent as a guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter; or

(3) during the five years immediately preceding the hearing has been convicted of a violation of a federal or state statute or regulation prohibiting

(A) waste of a wild food animal;

(B) hunting on the same day airborne;

- (C) hunting during a closed hunting season; or
- (D) hunting in an area closed by state or federal regulation.

(d) If a certified copy of a judgment of conviction of a licensee who holds any class of guide-outfitter license for an offense described under (c)(3) of this section is filed with the board, the board shall immediately suspend the licensee's license. The suspension may be ordered even if the conviction resulted from a plea of nolo contendere or if the conviction is under appeal. The suspension remains in effect until after the final disposition of the disciplinary proceeding under this section.

Sec. 08.54.505. DISCIPLINE OF TRANSPORTERS AND COMMERCIAL USE PERMITTEES. (a) The board may hold a hearing to determine whether disciplinary action is necessary if a written complaint concerning the big game commercial service activities of a transporter who is licensed under AS 08.54.400 or a commercial use permittee who holds a permit issued under AS 08.54.460 is filed with the board. The board shall hold a hearing to determine whether a licensee or permittee should be disciplined within a reasonable time after

(1) written complaints concerning a licensee's or permittee's activities are filed with the board within a two-year period by three or more of the licensee's or permittee's clients from separate hunting parties; or

(2) a licensee or permittee has been convicted of a violation of a federal or state statute or regulation relating to hunting or provision of big game commercial services.

(b) After a hearing, the board may revoke, suspend, or deny renewal of a transporter license or commercial use permit issued under this chapter, if the board finds that the licensee or permittee

(1) engaged in unethical activity, unsafe activity, or activity that adversely affects the natural resources of the state when the activity is related to the purposes of providing big game commercial services, however the board may not discipline a licensee or permittee under this paragraph for unsafe operation of an aircraft; or

(2) violated a provision of a federal or state statute or regulation relating to hunting or provision of big game commercial services.

(c) The board may not revoke, suspend, or deny renewal of a transporter license or commercial use permit for a violation of a federal or state statute or regulation relating to game or provision of big game commercial services committed by an employee of the licensee or permittee unless the licensee or permittee participated or aided in the violation.

(d) After a hearing, the board shall revoke a license or permit if the board finds that the licensee or permittee

(1) does not meet the qualifications specified by statute or regulation for the license held; or

(2) during the five years immediately preceding the hearing has been convicted of a violation of a federal or state statute or regulation prohibiting

(A) waste of a wild food animal;

(B) hunting on the same day airborne;

(C) hunting during a closed hunting season; or

(D) hunting in an area closed by state or federal regulation.

(e) If a certified copy of a judgment of conviction of a licensee or permittee for an offense described under (d)(2) of this section

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is filed with the board, the board shall immediately suspend the licensee's or permittee's license or permit. The suspension may be ordered even if the conviction resulted from a plea of nolo contendere or if the conviction is under appeal. The suspension remains in effect until after the final disposition of the disciplinary proceeding under this section.

Sec. 08.54.510. DISCIPLINE; GENERAL PROVISIONS. (a) A person who is disciplined under AS 08.54.500 or 08.54.505 may not engage in the provision of big game commercial services during the period of license or permit revocation or other disciplinary action. A person who is licensed under this chapter, or who holds a permit issued under this chapter, may not hire a person whose license or permit to provide big game commercial services is suspended or revoked under AS 08.54.500 or 08.54.505. A person whose license or permit is suspended or revoked may not be employed by a person who is licensed or who holds a permit under this chapter.

(b) If the board revokes a license or permit under AS 08.54.500 or 08.54.505, the person whose license or permit has been revoked shall surrender immediately the license or permit to the department.

(c) A certified copy of a judgment of conviction of a licensee or permittee for an offense is conclusive evidence of the commission of that offense in a disciplinary proceeding instituted against the licensee or permittee under AS 08.54.500 or 08.54.505 based on that conviction, regardless of whether the conviction resulted from a plea of nolo contendere or the conviction is under appeal, unless the conviction is overturned on appeal.

(d) Within 30 days after conclusion of a hearing under AS 08.54.500 or 08.54.505, the board shall notify the complainant of the results of the hearing, including written reasons justifying a

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decision not to take disciplinary action.

Sec. 08.54.520. UNLAWFUL ACTS. (a) It is unlawful for a

(1) person who is licensed or who holds a commercial use permit under this chapter to knowingly fail to timely report to the Department of Public Safety, division of fish and wildlife protection, and in no event later than 30 days, a violation of a state fish, game, or big game commercial services statute or regulation that the person reasonably believes was committed by a client or an employee of the person;

(2) person who is licensed or who holds a commercial use permit under this chapter to knowingly

(A) commit or aid the commission of a violation of this chapter, a regulation adopted under this chapter, or a state fish or game statute or regulation; or

(B) permit the commission of a violation of this chapter, a regulation adopted under this chapter, or a state fish or game statute or regulation that the person knows or reasonably believes is being or will be committed without

(i) attempting to prevent it, short of using force; and

(ii) reporting it;

(3) person without a current commercial use permit issued under this chapter to knowingly provide big game commercial services;

(4) person who is licensed or who holds a commercial use permit issued under this chapter to intentionally obstruct or hinder or attempt to obstruct or hinder lawful hunting engaged in by a person who is not a client of the person;

(5) class-A assistant guide-outfitter or an assistant guide-outfitter to knowingly guide-outfit a hunt except while employed

and supervised by a guide-outfitter;

(6) person who holds any class of guide-outfitter license to knowingly enter or remain on state, federal, or private land without prior authorization during the course of providing guide-outfitting services;

(7) person to knowingly guide-outfit without having a current guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter license and hunting license in actual possession;

(8) person without a current guide-outfitter or marine mammal guide-outfitter license to knowingly advertise as or represent to be a guide-outfitter;

(9) person to knowingly provide transportation services to big game hunters without holding a transporter license;

(10) class-A assistant guide-outfitter or an assistant guide-outfitter to knowingly contract for a hunt; or

(11) person to knowingly engage in a big game commercial services activity during the period for which the person's license to conduct that activity is suspended or revoked.

(b) A person who commits an offense set out in (a)(1) - (6) of this section is guilty of a misdemeanor and is punishable by a fine of not more than \$30,000 or by imprisonment up to one year, or both.

(c) A person who commits an offense set out in (a)(7) - (10) of this section is guilty.

(1) for a first offense, of a misdemeanor and is punishable by a fine of not more than \$30,000 or by imprisonment up to one year, or both;

(2) for a second or subsequent offense, of a class C felony.

(d) A person who violates (a)(11) of this section, is guilty of a class C felony.

(e) In addition to the penalties set out in (b), (c) and (d) of this section,

(1) the court may revoke the person's license to provide guide-outfitting or transportation services for not more than five years; and

(2) all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear, and other equipment and paraphernalia used in, or in aid of, a violation of (a) of this section may be seized by persons authorized to enforce this chapter and may be forfeited to the state as provided under AS 16.05.195.

(f) Upon conviction of a person for committing an offense set out in (a) of this section, the execution of sentence may not be suspended and probation may not be granted except on the condition that the minimum term of imprisonment is served. Imposition of sentence may not be suspended.

Sec. 08.54.530. INJUNCTION AGAINST UNLAWFUL ACTION. When in the judgment of the board a person has engaged in an act in violation of AS 08.54.380(b), 08.54.390(b), 08.54.400(b), 08.54.510(a), and 08.54.520 or the regulations adopted under them, the board may apply to the appropriate court for an order enjoining the action. Upon a showing by the board that the person is engaging in the act, the court shall grant injunctive relief or other appropriate order without bond.

Sec. 08.54.540. RESPONSIBILITY OF GUIDE-OUTFITTER FOR VIOLATIONS. A guide-outfitter who contracts to guide-outfit a hunt is equally responsible under AS 08.54.500 for a violation of a federal or state game or guide-outfitting statute or regulation committed by a class-A assistant guide-outfitter or an assistant guide-outfitter

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while in the course of the class-A assistant guide-outfitter's or assistant guide-outfitter's employment for the guide-outfitter.

ARTICLE 7. GENERAL PROVISIONS.

Sec. 08.54.550. HUNT RECORDS; CONFIDENTIALITY OF HUNT RECORDS AND ACTIVITY REPORTS. (a) The department shall collect and maintain hunt records provided by guide-outfitters and marine mammal guide-outfitters. A hunt record must include a list of all big game hunters who used the services of the guide-outfitter or marine mammal guide-outfitter, the number of each big game species taken, and other information required by the board. The department shall provide forms for reporting hunt records.

(b) The department shall make hunt records, and activity reports received under AS 08.54.400, available to state and federal agencies charged with the enforcement of statutes and regulations relating to guide-outfitting or game or with management of game if requested for game management or law enforcement purposes. Aggregated data compiled from hunt records and activity reports may be included in reports by the department. For all other purposes, the hunt records and activity reports are confidential and are not subject to inspection or copying under AS 09.25.110 - 09.25.125.

Sec. 08.54.590. DEFINITIONS. In this chapter

(1) "base camp" means a guide-outfitter's or marine mammal guide-outfitter's primary base of operations in the field; "base camp" does not include a spike camp;

(2) "big game" means brown bear, grizzly bear, caribou, mouse, black bear, bison, Sitka blacktail deer, elk, mountain goat, musk-ox, wolf, wolverine, mountain or Dall sheep;

(3) "big game commercial hunting service" means a service for which the provider of the service must obtain a guide-outfitter,

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marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter license;

(4) "big game commercial service" means a service for which the provider of the service must obtain a commercial use permit;

(5) "board" means the Big Game Commercial Services Board;

(6) "compensation" means payment for services including wages or other remuneration but not including reimbursement for actual expenses incurred;

(7) "department" means the Department of Commerce and Economic Development;

(8) "field" means an area outside of established year-round dwellings, businesses, or other developments usually associated with a city, town, or village; "field" does not include permanent hotels or roadhouses on the state road system or state or federally maintained airports;

(9) "game management unit" means one of the 26 geographic areas defined by the Board of Game for game management purposes;

(10) "guide-outfit" means to provide, for compensation or with the intent or with an agreement to receive compensation, big game commercial hunting services in the field; "guide-outfit" includes accompanying or being present with a big game hunter in the field either personally or through an assistant; "guide-outfit" does not include the provision of transportation to, from, or in the field if the person providing the transportation and the person being transported do not stalk, pursue, track, kill, or attempt to kill big game during the provision of transportation;

(11) "hunting club" means an organization that offers use of property or services to individuals who pay a membership fee for the privilege of using the property or services for hunting;

(12) "spike camp" means a camp in the field other than a base camp and includes a fly camp or an overnight camp;

(13) "transportation services" means the carriage for compensation of big game hunters, their equipment, or big game animals harvested by hunters to, from, or in the field; "transportation services" does not include the carriage by aircraft of big game hunters, their equipment, or big game animals harvested by hunters

(A) on nonstop flights between state or federally maintained airports; or

(B) by an air taxi operator or air carrier for which the carriage of big game hunters, their equipment, or big game animals harvested by hunters is only an incidental, as defined by the board, portion of its business;

(14) "unethical activity" means

(A) deception or misrepresentation involving prospective or actual clients either before, during, or following the provision of big game commercial services, including misrepresentations through private or public advertising of the type, duration, cost, or conditions of the services;

(B) making a guaranty that a species or certain number of species of game will be taken on a hunt;

(C) engaging in unsafe or unsportsmanlike activities that are detrimental to the game resources of the state, as defined by regulations of the board, including violations of state hunting or big game commercial services statutes or regulations; or

(D) accepting a deposit for big game commercial services without providing before the services are rendered a signed written contract to provide the services.

* Sec. 4. AS 12.55.125(e) is amended to read:

(e) A defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a second felony conviction, two years;

(2) if the offense is a third felony conviction, three years;

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, one year;

(4) if the offense is a first felony conviction, and the defendant violated AS 08.54.520(a)(7) - (10), one year.

* Sec. 5. AS 16.05.407(a) is amended to read:

(a) It is unlawful for a nonresident to hunt, pursue, or take brown bear, grizzly bear, mountain goat [POLAR BEAR], or sheep in this state, unless personally accompanied by

(1) a person who is licensed as a guide-outfitter [MASTER GUIDE, REGISTERED GUIDE], class-A assistant guide-outfitter, [GUIDE] or assistant guide-outfitter [GUIDE] by the Big Game Commercial Services [GUIDE] Board; or

(2) a resident over 19 years of age who is

(A) the spouse of the nonresident; or

(B) related to the nonresident, within and including the second degree of kindred, by marriage or blood.

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* Sec. 6. AS 16.05.407(d) is amended to read:

(d) A nonresident who violates (a) of this section, or who fails to furnish an affidavit under (b) [OR (e)] of this section, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$5,000, or by both.

* Sec. 7. AS 16.05.407 is amended by adding a new subsection to read:

(f) An applicant for a nonresident hunt permit for the taking of an animal specified in (a) of this section shall, if requested by the department, first furnish to the department proof of prior authorization to use state, federal, or private land where the permit hunt will occur. The authorization shall be provided to the applicant by the guide-outfitter with whom the applicant has contracted to guide-outfit the permit hunt.

* Sec. 8. AS 16.05.408(a) is amended to read:

(a) It is a class A misdemeanor for a nonresident alien

(1) to hunt, pursue, or take marine mammals unless personally accompanied by a licensed marine mammal guide-outfitter [GUIDE]; or

(2) to hunt, pursue, or take a big game animal as defined by the Board of Game unless personally accompanied by a guide-outfitter, a [LICENSED MASTER GUIDE, REGISTERED GUIDE, OR] class-A assistant guide-outfitter, or an assistant guide-outfitter licensed [GUIDE] under AS 08.54.

* Sec. 9. AS 16.05.408 is amended by adding a new subsection to read:

(c) Before obtaining a nonresident hunt permit for the taking of an animal specified in (a) of this section, a nonresident alien shall, if requested by the department, first furnish to the department proof of prior authorization to use state, federal, or private land where

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the permit hunt will occur. The authorization shall be provided to the nonresident alien by the guide-outfitter or marine mammal guide-outfitter with whom the nonresident alien has contracted to guide-outfit the permit hunt.

* Sec. 10. AS 39.50.200(b)(48) is amended to read:

(48) Big Game Commercial Services [GUIDE] Board AS 08.54.-300 [(AS 08.54.010)]; and

* Sec. 11. AS 41.23.420(d) is amended to read:

(d) The provisions of AS 41.23.400 - 41.23.510 do not affect the authority of

(1) the Department of Fish and Game, the Board of Fisheries, the Board of Game, or the Big Game Commercial Services [GUIDE LICENSING AND CONTROL] Board under AS 08.54, AS 16, or AS 41.99.010;

(2) the Department of Environmental Conservation under AS 46.03; or

(3) state agencies and municipalities under AS 44.19.145(a)-(11) and AS 46.40.100.

* Sec. 12. AS 44.62.330(a)(35) is amended to read:

(35) Big Game Commercial Services [GUIDE LICENSING AND CONTROL] Board

* Sec. 13. TRANSITION, GUIDE-OUTFITTER LICENSES. (a) Notwithstanding the repeal of AS 08.54.010 - 08.54.240, all licenses issued under AS 08.54.010 - 08.54.240 are valid for the period for which the licenses were issued.

(b) For the purposes of AS 08.54.300 - 08.54.590 as enacted by sec. 3 of this Act, until new licenses are issued under this section, a

(1) master guide license issued under former AS 08.54.100 and a registered guide license issued under former AS 08.54.110 shall be considered a guide-outfitter license issued under AS 08.54.350;

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(2) class-A assistant guide license issued under former AS 08.54.120 shall be considered a class-A assistant guide-outfitter license issued under AS 08.54.380;

(3) an assistant guide license issued under former AS 08.54.140 shall be considered an assistant guide-outfitter license issued under AS 08.54.390.

(c) At the time of the next license renewal following the effective date of this Act, each person licensed as

(1) a master guide shall receive a master guide-outfitter license if the person

(A) is in good standing at the time of issuance of the license; and

(B) has paid the guide-outfitter license fee and the commercial use permit fee;

(2) a registered guide shall receive a guide-outfitter license if the person

(A) is in good standing at the time of issuance of the license; and

(B) has paid the guide-outfitter license fee and the commercial use permit fee;

(3) a class-A assistant guide shall receive a class-A assistant guide-outfitter license if the person

(A) is in good standing at the time of issuance of the license; and

(B) has paid the class-A assistant guide-outfitter license fee;

(4) an assistant guide shall receive an assistant guide-outfitter license if the person

(A) is in good standing at the time of issuance of the

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license; and

(B) pays the assistant guide-outfitter license fee.

(d) Notwithstanding (c) of this section, the Department of Commerce and Economic Development may issue a new license under AS 08.54.300 - 08.54.590, without an additional fee, to a person licensed under former AS 08.54.010 - 08.54.240 before the next renewal period following the effective date of this Act, if the person satisfies the requirements for the license and the license is valid only for the same period for which the replaced license was issued.

* Sec. 14. TRANSITION; OUTFITTERS. (a) Notwithstanding AS 08.54.350, as enacted by sec. 3 of this Act, a natural person is entitled to receive a guide-outfitter license if the person

(1) applies on a form provided by the Department of Commerce and Economic Development;

(2) lawfully registered a camp, cabin, or lodge under AS 16.05.787 during 1988;

(3) provides evidence satisfactory to the Big Game Commercial Services Board that the person has legally engaged in the business of big game outfitting in 1986, 1987, and 1988;

(4) passes the guide-outfitter examination administered by the Big Game Commercial Services Board within two years after the effective date of this Act;

(5) has not been convicted of violating a state or federal game or guide-outfitting statute or regulation during the previous five years for which the person was fined more than \$500 or imprisoned for more than five days;

(6) has legally hunted in the state for part of each of any five years in a manner directly contributing to the person's experience and competency as a guide-outfitter;

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(7) has been favorably recommended in writing by six big game hunters, two for each year of the person's most recent three years as a big game outfitter, whose recommendations have been solicited by the Big Game Commercial Services Board from a list provided by the applicant;

(8) pays the guide-outfitter license fee and the commercial use permit fee; and

(9) possesses a business license to provide recreational services.

(b) A person who is denied a guide-outfitter license under (a) of this section by the Big Game Commercial Services Board may appeal to the commissioner of commerce and economic development. The commissioner may order that the applicant be allowed to take the license examination or be issued the license if, after reviewing a petition filed by the applicant, the commissioner finds that

(1) the board denied the applicant an opportunity to take the license examination or refused to approve issuance of the license;

(2) the board's denial or refusal has been upheld by a final administrative order and the order has not been appealed to the superior court under AS 44.62.560;

(3) the board's denial or refusal was based on

(A) an error of fact by the board; or

(B) the applicant's failure of the license examination due to faulty or unfair examination questions or procedures;

(4) the applicant is otherwise qualified to take the examination or to be issued the license; and

(5) sustaining the board's denial or refusal would work a substantial injustice on the applicant.

(c) A guide-outfitter license issued under (a) of this section is for all purposes a license issued under AS 08.54.350, as enacted by sec. 3 of

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this Act.

(d) A person who satisfies (a)(1) - (3) of this section, holds a business license as a big game outfitter, and pays a license fee set by the Department of Commerce and Economic Development and the commercial use permit fee is entitled to receive an interim outfitter license pending a final determination of a person's eligibility for a guide-outfitter license under (a) of this section. The right to receive and hold an interim outfitter license terminates on the earlier of

(1) the date of issuance of a guide-outfitter license to the person;

(2) a final determination under (a) of this section that the person is not eligible to receive a guide-outfitter license; or

(3) two years from the effective date of this Act.

(e) A person who holds an interim outfitter license, notwithstanding contrary provisions of AS 08.54, may provide transportation to, from, and in the field to big game hunters and supply other services in the field to big game hunters. The person may not provide guiding services.

(f) A person who holds an interim outfitter license shall promptly report to the Department of Public Safety, division of fish and wildlife protection, but not later than 30 days after the violation, a violation of a state fish, game, or big game commercial services statute or regulation that the person reasonably believes was committed by a client or employee of the person.

(g) A person who holds an interim outfitter license may accompany or be present with a hunter at a base camp, cabin, or permanent lodge in connection with a big game hunt for compensation only if the person has furnished an affidavit to the Department of Public Safety, division of fish and wildlife protection, at least two weeks in advance. The person may not register more than two base camps. The affidavit must be signed by the

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person and must provide the following information:

- (1) the specific location of the camp, cabin, or lodge;
- (2) the number of big game hunters in each party that will use the camp, cabin, or lodge; and
- (3) the kinds or species of big game that will be hunted.

(h) A person who furnishes an affidavit under (g) of this section shall notify the Department of Public Safety of the amount and kinds or species of big game taken by each hunter who uses the base camp, cabin, or permanent lodge to which the affidavit relates. Notice shall be given within 30 days after the game is taken. The Department of Public Safety shall provide the information received under this subsection to the Department of Fish and Game.

(i) A person who

(1) violates (f) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$2,000 or by imprisonment for not more than one year, or by both; or

(2) falsifies an affidavit under (g) of this section is guilty of unsworn falsification under AS 11.56.210.

(j) A person who holds an interim outfitter license shall

(1) carry, while engaged in providing outfitting services, comprehensive general liability insurance of at least \$300,000 per occurrence or at least \$500,000 per annual aggregate or post a financial bond in those amounts; and

(2) if the person personally pilots aircraft to transport clients during the provision of outfitting services, have a commercial pilot's rating or a minimum of 250 hours of flying time in the state.

(k) During the provision of outfitting services, an aircraft used by a person who holds an interim outfitter license or that person's employee to transport clients of the outfitter must carry aviation passenger

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liability insurance of at least \$100,000 per seat or must be subject to a financial bond in that amount.

(1) In this section,

(1) "base camp" does not include spike camp, fly camp, or overnight camp;

(2) "big game" and "field" have the meaning given in AS 08.54.-590, as enacted by sec. 3 of this Act;

(3) "guiding" means accompanying or being present with a big game hunter in the field, personally or through an assistant, for compensation or with the intent or an agreement to receive compensation; "guiding" does not include

(A) providing transportation to or from the field, if the person providing transportation and the persons being transported do not stalk, pursue, track, kill, or attempt to kill big game during the transportation; or

(B) selling, leasing, or renting goods, if the transaction does not take place in the field;

(4) "outfitting" means the provision of services, other than guiding services, to big game hunters in the field for compensation.

* Sec. 15. Section 14(d) of this Act is repealed and reenacted to read:

(d) A person who satisfies (a)(1) - (3), (j), and (k) of this section, holds a business license as a big game outfitter, and pays a license fee set by the Department of Commerce and Economic Development and the commercial use permit fee is entitled to receive an interim outfitter license pending a final determination of a person's eligibility for a guide-outfitter license under (a) of this section. The right to receive and hold an interim outfitter license terminates on the earlier of

(1) the date of issuance of a guide-outfitter license to

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the person;

(2) a final determination under (a) of this section that

the person is not eligible to receive a guide-outfitter license; or

(3) two years from the effective date of this Act.

* Sec. 16. INITIAL APPOINTMENTS TO BIG GAME COMMERCIAL SERVICES BOARD.

Notwithstanding AS 08.54.300(b), as enacted by sec. 3 of this Act, the initial appointments to the Big Game Commercial Services Board under

(1) AS 08.54.300(b)(1) may also be filled by the appointment of a master guide or registered guide licensed under former AS 08.54.010 - 08.54.240 or a person who lawfully registered a camp, cabin, or lodge under AS 16.05.787 during 1988 and legally engaged in the business of big game outfitting in 1986, 1987, and 1988;

(2) AS 08.54.300(b)(2) may also be filled by the appointment of a person who engaged in the business of providing transportation to big game hunters in 1986, 1987, and 1988.

* Sec. 17. TRANSITION. Litigation, hearings, investigations, and other proceedings pending under a law amended or repealed by this Act continue in effect and may be continued and completed notwithstanding an amendment or repeal provided for in this Act. Licenses, orders, and regulations issued or adopted under authority of a law amended or repealed by this Act remain in effect for the term issued or until revoked, vacated, or otherwise modified under the provisions of this Act.

* Sec. 18. AS 08.54.010, 08.54.030, 08.54.035, 08.54.040, 08.54.045, 08.54.050, 08.54.060, 08.54.070, 08.54.100, 08.54.110, 08.54.120, 08.54.130, 08.54.140, 08.54.141, 08.54.150, 08.54.160, 08.54.170, 08.54.180, 08.54.186, 08.54.190, 08.54.195, 08.54.200, 08.54.210, 08.54.220, 08.54.230, 08.54.240; AS 16.05.370(b), 16.05.370(c), 16.05.407(e), 16.05.786, and 16.05.787 are repealed.

* Sec. 19. Sections 4, 6, 12, and 13, ch. 160, SLA 1988 are repealed.

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* Sec. 20. AS 08.54.310(b)(1), as enacted by sec. 3 of this Act, takes effect on the earlier of

(1) January 15, 1990; or

(2) the date of submission to the legislature of a recommendation by the Task Force on Guiding and Game for a resource-based management system for allocating access to big game hunting opportunities among guide-outfitters licensed under AS 08.54.

* Sec. 21. AS 08.54.395, as enacted by sec. 3 of this Act, and secs. 14(j), 14(k), and 15 of this Act take effect July 15, 1989.

* Sec. 22. Except for AS 08.54.310(b)(1) and 08.54.395, as enacted by sec. 3 of this Act, and secs. 14(j), 14(k), and 15 of this Act, this Act takes effect immediately under AS 01.10.070(c).

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Possible Criteria for Developing the Guide-Outfitter
Resource Area Maps*

In order of priority

1. Wildlife management concerns
 - Species abundance and diversity
 - Administrative wildlife management boundaries (Game Management Unit/Subunits)
 - Harvest history (target number of potential hunt opportunities)
2. Enforcement concerns
3. Land ownership
4. Administrative restrictions
5. Easily recognizable (in the field) boundary features
6. Access availability and transportation considerations (methods and means restrictions)
7. General approach to the size and number of individual areas
8. The number of guide-outfitters per area
9. Other land uses
10. Existing facilities
11. Others considerations

X
* Provided to the Legislative Task Force on Guiding and Game
by Lew Pamplin, ADF&G, June 29, 1989

copy

June 29, 1989

PRESS RELEASE

Subject: Legislative Task Force on Guiding and Game

Senator Jan Faiks was elected Chairman of the Legislative Task Force on Guiding and Game during an organizational meeting in Anchorage Friday, June 29th.

The panel is made up of 15 members who represent the general public, Alaska natives, industry, the legislature and state agencies. The task force will develop a resource-based management system for allocating big game hunting opportunities among guide-outfitters.

Under the chairmanship of former Representative Henry Springer, in January the task force presented the Legislature with a package of recommendations. The effort resulted in the passage of House Bill 112 and Senate Bill 139. Both have been signed by the Governor. HB 112 provides for changes in regulations pertaining to the commercial big game industry in Alaska. SB 139 extended the task force for another year to develop recommendations for a statewide big game management plan.

The task force will conduct meetings throughout the legislative interim.

For additional information please call 561-7610.

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

P.O. BOX Y, STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

MEMORANDUM

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JUL 13 1989

JAN FAIKS
SENATE OFFICE

TO: Senator Jan Faiks, Chair
Task Force on Guiding and Game

FROM: Pamela Stoops, Director
Administrative Services

DATE: July 10, 1989

SUBJECT: FY 90 Task Force on Guiding and Game

The Task Force on Guiding and Game's FY 90 funding will have two separate appropriations:

1. FY 90 Guiding and Game

HB 100 - New Legislation - SB 139 \$24,000
Collocation Code: 31925603

2. FY 90 Guiding and Game Lapse 89

HB 163 - Reappr. Bill - Balance as of 7/11/89 \$15,280
Collocation Code: 31925604

We would like to spend the FY 89 funding first which is collocation code 31925604. The Governor vetoed sections in the reappropriations bill that carried forward funding for two consecutive years. It is best to spend the 89 funding first and 90 second in case there is any carryforward for the reappropriations bill next year.

Representative Davis is in charge of these funds as Legislative Council Chair. Any bills will need to be sent to his attention.

I hope this clarifies your funding for the Task Force.

For your information FY 89 expenditures as of 7/11/89 are as follows:

Personal Services	219
Travel	11,195
Contractual	<u>4,725</u>
	16,140

For your tracking purposes we will send you and Representative Davis monthly reports on both accounts.

RECEIVED

JUL 12 1989

LAW OFFICES

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155 CONNECTICUT AVENUE, N.W. • SUITE 1200 • WASHINGTON, D.C. 20036 • (202) 659-5800 • TELECOPIER (202) 659-1027

JAN FAIKS

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STEVEN PRADELL
MICHAEL V. REUSING
ELISABETH H. ROSS**
E. BUDD SIMPSON
STEPHEN F. SORENSEN
SHERIDAN STRICKLAND**
JONATHAN K. TILLINGHAST
DANIEL W. WESTERBURG
T. HENRY WILSON

OF COUNSEL
JAMES D. NORDALE

*D.C. BAR ONLY
**D.C. AND ALASKA BAR

1127 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 276-1550
TELECOPIER (907) 276-2822

ONE SEALASKA PLAZA, SUITE 301
JUNEAU, ALASKA 99801
(907) 586-2890
TELECOPIER (907) 586-9814

KEY BANK BUILDING
100 CUSHMAN STREET, SUITE 311
FAIRBANKS, ALASKA 99701
(907) 452-1666
TELECOPIER (907) 456-5055

July 11, 1989

The Honorable Jan Faiks
Chairman
Legislative Task Force
on Guiding and Game
3111 C Street, Suite 525
Anchorage, Alaska 99503

Dear Senator Faiks:

On behalf of our firm, we would be honored to assist you and the Legislative Task Force on Guiding and Game in your efforts to develop a new guide district program in conformance with the recent Owsichek decision (763 P2d 488 (1988)).

We possess substantial expertise in a variety of areas and are prepared to provide counsel to the committee. As a former Assistant Secretary of the U.S. Department of the Interior, I have extensive experience involving recreational services franchising and licensing programs as well as fish and wildlife allocation arrangements. Other members of the firm are knowledgeable regarding Alaska fish and wildlife law as well as State administrative statutes.

We can offer an array of services including consultation regarding the development of options the committee may wish to consider, comparative research regarding other similar programs, legal drafting, and the preparation of briefing materials. Attorneys including myself would be available to attend such meetings as you deem necessary.

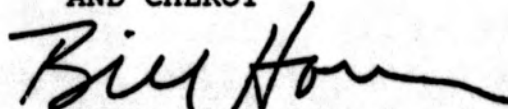
As you described the effort, we estimate that we can provide the requisite services for a monthly retainer of \$4000 for the next six months. Travel costs would be additional, but we would expect such to be minimal.

The Honorable Jan Faiks
July 11, 1989
Page Two

Once again, we would be honored to provide counsel to the committee. Please let me know if you have any questions or we can provide additional information. Thank you for your attention.

Sincerely,

BIRCH, HORTON, BITTNER
AND CHEROT


William P. Horn

WPH:tf

wph22.1tr

TASK FORCE ON GUIDING AND GAME
Anchorage, Alaska
June 29, 1989
10:00 a.m.

MEMBERS PRESENT

Pete Buist
Randall Burns
Vernita Cassidy
Ralph Eluska
Ken Fanning
Phillip Gilson
Bob Hinman
Paul Johnson
Matthew Lya
Lew Pamplin
Representative Lyman Hoffman
Representative Mike Navarre
Senator Jan Faiks

MEMBERS ABSENT

Nick Pierskalla
Gayle Ranney

OBSERVING

Representative Cliff Davidson
Former Representative Heinrich Springer

TAPE ONE, SIDE ONE
June 29, 1989

Number 001

The Task Force on Guiding and Game was called to order in the main conference room at the Anchorage Legislative Information Office at 10:00 a.m. by Acting Chair, Senator Jan Faiks. It was noted that task force member Matthew Lya of Nome was participating in the meeting via the teleconference network.

The meeting was for organizational purposes of the task force, which was established in 1988. Legislation passed during the 1989 legislative session extended the termination date of the task force and increased the membership by two persons to be appointed by the governor.

Number 184

Vernita Cassidy moved that the first order of business be the selection of a chairman. The motion was seconded and passed unanimously.

The nominations for chairman were opened. Paul Johnson nominated Senator Jan Faiks; Vernita Cassidy nominated Bob Hinman. There being no further nominations, the nominations were closed. By a show of hands of those present, Senator Jan Faiks was elected chairman.

Number 275

The next order of business were verbal reports by the Department of Fish and Game and the Division of Occupational Licensing on the effects of HB 112.

Number 285

Lew Pamplin, Department of Fish and Game, introduced Suzanne Miller of the department, who is charge of their information management program in the Division of Wildlife Conservation. He asked Ms. Miller to summarize where they are in the mapping of geographic areas and resource information into one composite map. He added the reason this is so important is that the charge of the task force is to develop a administrative resource-based system to manage big game guide-outfitting in the state, and only after all the mapping is done, can a system be developed.

Ms. Miller said that in 1983 they initiated a uniform coding for recording of all big game harvest information. It consists of a geographic system based primarily on drainages. This past year they digitized the game management unit boundaries and the boundaries of the harvest recording units, which she pointed out on the map. They are now in the process of doing some editing and anticipate having the mapping completed by the end of the this summer, Ms. Miller stated.

Number 490

Mr. Pamplin commented that the key point on this is that there is geographic-based resource management that ties right now directly into the management of big game that can be used if some kind of a system can be developed.

Number 500

Mr. Pamplin noted that the task force requested the Department of Fish and Game to go for funding that would allow them to put people on line to coordinate development of a resource-based area mapping project. The department requested funding for FY 90 in the amount of \$90,000 to accomplish this, however, the funding was reduced by the

legislature to \$45,000. He suggested that perhaps at the next meeting the task force should seriously look at how they are going to accomplish the task from a technical standpoint with the reduced funding.

Pamplin said that their Division of Administration has modified the hunting license form to include the affidavit of nonresident hunting of moose and caribou as well as modifying their harvest recording forms to include informational commercial services used. He added that the Department of Fish and Game has accomplished all the recommendations previously made by the task force.

Pamplin outlined three areas that he feels should be of priority to the task force: (1) the need to establish criteria in which the guide-outfitting resource areas will be defined; (2) the need to establish a public input process; and (3) develop a report to the legislature that clearly states what is going on and has the unanimous support of the task force members so that it can be successfully implemented.

There was brief discussion on the new law that requires a hunter must be accompanied by a licensed guide when goat hunting. Pamplin said the Department of Fish and Game has sent out a large amount of information on the new law and they feel that the law is working.

Number 725

Randall Burns, Division of Occupational Licensing, Department of Commerce and Economic Development, said the Division of Occupational Licensing has been spending their time getting out information and forms on the new transporter requirements and commercial use requirements contained in HB 112. They have also communicated directly with the guide-outfitters regarding the new requirements for insurance, which is effective July 15.

Burns said they are moving fairly quickly, but the major obstacle that they are encountering is the fact that a Big Game Services Board has not yet been appointed, and they have had to move forward on some of the duties that the board will administer.

The most ticklish situation that has resulted in terms of not having the board has to do with the requirement that assistant guides have to take a written and oral exam before they can be licensed. The exam has been updated, and applicants will be given a form stating that they understand there isn't a board, and if the individual fails the exam, he can't come back and say that there wasn't a board to approve it, etc., Burns said.

Number 872

Ms. Cassidy asked if would be possible to see a copy of the exam. Burns responded that none of their exams are open to anyone, however, he would check into the matter.

Number 890

Continuing, Burns said they have had numerous inquiries about the new section of the law concerning permission to be on state, federal or private lands, and what is going to happen if an individual does trespass. The department's position, at this point, is that they should let them know, and then they will contact the person who is licensed.

Number 910

Bob Hinman commented that he is impressed with the amount of information that has been put out by the department on this new section.

Number 920

Ken Fanning asked if the department has scheduled other dates or other locations for applicants taking the assistant guide exam. Burns responded that the exam will be given in Anchorage, Fairbanks and Juneau in July, and they currently do not plan on giving it again until a new board is established and they have had an opportunity to evaluate it.

Mr. Fanning asked if an individual does trespass on state, federal or private land, will the department contact not only that individual, but the landowner as well. Burns replied, to date, it has been the landowners that have been contacting them, not anyone else, and they had not contemplated that.

Number 996

Paul Johnson said he thought that individuals were going to have to show the department that they had approval from the landholder or that their license continued to be valid. Burns responded that they do that with the Department of Fish and Game. The law just says that before an individual lands on a piece of property, he must have prior authorization, but they don't have to show that to the Department of Commerce. There are some provisions in the law that say before a nonresident can get a permit, Fish and Game may require that the nonresident show proof that they have permission to be on that land. Pamplin commented that it is a discretionary authority.

Number 1038

Ms. Cassidy restated her request to see a copy of the exam for assistant guides to see how it looks from a villager's perspective. She asked if Mr. Burns had anyone on his staff looking at the exam from a villager's perspective to make sure it is not a totally unpassable exam. Burns answered that they do not. Senator Faiks suggested that perhaps someone from the Department of Education, who specializes in cross-cultural delineation of exams, could look at it to see if there is a cultural problem or bias built into the exam for the villagers. Burns agreed it was a good idea and he didn't have any problem with the suggestion.

Number 1084

Senator Faiks called the members' attention to a memorandum from the Department of Law to the Governor concerning three issues that the department thought were mildly unconstitutional or they had a question about in HB 112, but not enough to recommend a veto.

One of the questions concerns the membership of the Big Game Commercial Services Board. One of the board members was to be chosen by the Board of Game, and that does interfere with the governor's authority to make appointments on the executive branch, she said.

The Department of Law also has question as to what is meant by a Native landholder representative. Senator Faiks suggested the task force may want to put in an amendment to clarify what the task force meant so that there is a specific-type person in that slot.

Senator Faiks also pointed out there was constitutional question raised with the residency requirement on a class A assistant guide.

Number 1116

Ms. Cassidy commented that she couldn't understand why there would be a question on the Native landholder representative. If it is someone who represents Native landholders, she said it wouldn't matter to her if they were Native or non-Native as long as they were competent in representing the Native landholders' interests.

TAPE ONE, SIDE TWO
June 29, 1989

Number 010

Matthew Lya raised a question concerning the requirement that a hunter needs a licensed guide to hunt goats. Lew Pamplin clarified that the law requires that nonresidents

will have a guide-outfitter for certain species - brown bears, goats and sheep. He added that nonresidents can be guides, and that is legal. Lya commented that we're asking nonresidents to be guided by Alaska residents, and then we turn around and ask nonresidents to guide nonresidents.

Number 175

Ken Fanning asked Mr. Burns if he had a listing on the number of guide-outfitters and the how many of them are nonresidents. Burns responded that he didn't have that information, but he could get it.

Number 290

The next order of business was discussion on a course of action for the task force and future meetings.

Senator Faiks briefed the task force on where the state is right now in the area of fish and game, guide areas, subsistence laws, etc. She said she has spoken to Lars Handlin, a Park Service concessionaire lawyer in the Department of Interior, who has offered his assistance as well as the department's assistance to the task force. The Bureau of Land Management, and Fish and Wildlife have also offered to put information at the task force's disposal and help coordinate a restricted or a concessionaire system across the state that would mesh with the federal government. Former Deputy Secretary of the Interior Bill Horn has also offered his expertise and assistance.

Number 460

Senator Faiks asked for the members comments.

Number 462

Representative Navarre said as far as he was concerned, the idea of going with a limited entry type of program causes him problems; however, he may be willing to accept it in the final analysis after looking at some of the alternatives. He added that he would like to see information from the Department of Interior and the other agencies to see how it may be applied to Alaska.

Number 493

Lew Pamplin commented, to him, where the task force is based on what the legislature did with the recommendations of forming a task force. There is really not an option in here, he said, and the Department of Fish and Game and the Department of Commerce can only go with what is under the law now.

Pamplin said the task force can possibly come up with a two-step system. One is going to be where from the state's perspective, we are in control of how big game guiding is conducted in this state on all land, regardless of who owns the land, and that is the real key point, he said.

Pamplin noted that the Park Service has announced that it fully intends to restrict guiding and use on their lands, and he said if we do not come up with a system where they join with us and let us implement, then from an enforcement perspective and wildlife management perspective, it is going to be utter chaos.

Pamplin proposed that the task force in coming up with options, come up with three or four systems that can be tried and tested. Because as soon as one system is implemented, it is going to be tried in court, he cautioned.

Number 650

Ken Fanning said that the task force should have before it, as quickly as possible, information on the federal resources outlined by Senator Faiks. He said he thought the task force should have their assistance and expertise, but he certainly wouldn't want to even consider adopting carte blanche some of their proposals.

Fanning further said he thinks it is absolutely imperative that the task force develop a plan as quickly as possible. He suggested having an independent source provide information and research that takes into account all of the comments of the different federal agencies and compile proposed legislation by October that the task force could consider.

Number 821

Vernita Cassidy said she is optimistic that the task force can come up with something for the legislature to consider, and she doesn't think the task force should spend time worrying about whether what it comes up with is lawsuit proof. Also, she thinks the task force should keep in mind that the resource is what is important.

Number 940

Paul Johnson said he had noted that the Forest Service wasn't on the list of agencies contacted and he thought it was important to have their input.

Number 955

Randall Burns said he thought it would be advantageous to the task force if the various agencies could send individuals who could sit at the table and participate in the meetings on a regular basis. Bob Hinman said he wasn't sure that was a good way to proceed because all of them go in their own direction and it would necessitate having a representative from each group which could get to be quite cumbersome.

Number 1030

Senator Faiks asked for comments on giving her permission to address the House and Senate leadership or the Legislative Council about hiring a consultant to help draft legislation and to coordinate with the federal agencies.

Representative Davis believes that the committee needs someone with perspective from the task force, but just to take a draft document from someone with a federal perspective, such as Bill Horn, would be counterproductive. Senator Faiks clarified that Mr. Horn would present the task force with options in setting criteria and that are constitutional and not just with a single document.

Lew Pamplin said, as he sees it, the task force has two main functions. One is how does it want to proceed in terms of developing options, and Senator Faiks is proposing hiring someone to help develop those options for the consideration of the task force. The other is that in order to have any kind of system at all within the next ten years, we're going to have to have this resource-based management system, he said.

Number 1162

Representative Navarre said he thought it was very important that when these recommendations are developed that the members of the task force who are going to be going before the legislature be able to answer the questions, otherwise they are not likely going to be very successful at getting something pushed through the legislature. He also suggested appointing a sub-committee that could give direction and an outline to whomever is hired as a consultant.

TAPE TWO, SIDE ONE
June 29, 1989

Number 050

Paul Johnson agreed that a sub-committee should be appointed to work with the consultant on developing alternatives, and suggested that when a package is ready,

there should be a meeting of the full task force for perhaps a two or three-day period.

Number 127

Ken Fanning said he thought it was absolutely essential that all the task members have the knowledge and be fully supportive, and that the legislature be fully aware so that something can be implemented.

Number 210

Following further discussion, it was agreed that Senator Faiks would schedule two meetings before August 10. Discussion ensued on meeting more frequently and for longer periods of time in the fall.

Number 530

Senator Faiks asked Heinrich Springer if had any comments. Mr. Springer said, since we are basically talking about a management system, there are not an infinitive number of possibilities and there are maybe two or three systems that can seriously be taken under consideration. He suggested a full meeting of the task force in mid-July to crystallize some possibilities that could be pursued and studied by a sub-committee.

There being no further business to come before the task force, Senator Faiks adjourned the meeting.