

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
5811 HOUSE JUDICIARY

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES



### REPRESENTATIVE FRAN ULMER

#### MEMORANDUM

March 19, 1990

TO: Rep. Peter Goll, Co-Chair  
Rep. Max Gruenberg, Co-Chair  
House Judiciary Committee

FROM: Rep. Fran Ulmer

RE: HB 438, relating to parental rights after adoption

-----

The purpose of this bill is to clarify the authority of Alaska's courts to grant adoptions on such terms that are in the child's best interest. Currently there is a split of authority in Alaska's trial court system regarding whether the court can permit an adoption where the natural parent's rights are not terminated, when the natural parent is not married to the adoptive parent.

This bill clarifies that the court has the authority to permit a person to adopt a child who is not married to the child's natural or legal parent and, if it is in the child's best interest, to leave the natural/legal parent's rights intact. The bill makes clear that the marital status of the adoptive parent does not preclude an adoption which the court finds is in the child's best interest. The adoption requires the consent of the natural/legal parent.

This bill will be of special benefit to the family which has been split up by death, divorce or cases in which one parent has abandoned the child. An additional, legal (adoptive) parent who is unmarried to the natural parent will ensure that the child is cared for financially and otherwise should anything happen to incapacitate the natural parent. It is in the state's interest to provide this opportunity for willing parties to assume responsibility for minor children.

This bill is consonant with the purposes of Alaska's adoption act which generally permits a court to issue adoptive decrees in accord with the child's best interests.

District 4B — Juneau

P.O. BOX V • Juneau, Alaska 99801-3100 • (907) 465-4947

Rep. Ulmer  
3/19/90

SECTIONAL ANALYSIS -- HB 438

Section 1

Except as provided in Section 2 of the bill, an adoption decree shall have the effect of severing relations between the adopted child and former relatives for all purposes, unless the adoption decree specifically provides for continuation of rights between the adopted child and the child's natural/legal parents or other relatives. The persons whose rights survive the adoption decree must be specifically named.

Section 2

Allows a person unmarried to the natural/legal parent to adopt a child, without terminating the parental rights of the natural parent(s), provided that:

- a) the court makes a specific finding that it is in the best interest of the child;
- b) the natural parent(s) consents.

This applies to all family situations, regardless of whether the parent is the natural parent or the legal parent through a prior adoption.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act Relating to Adoption  
Sponsor: Illmer  
Requestor: \_\_\_\_\_

Agency Affected: DHSS  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact FY 90.

Prepared by: Russell Webb, Director Phone: 465-3170  
Division: Family and Youth Services Date: \_\_\_\_\_  
Approved by Commissioner: Myra M. Munson, Commissioner Date: 2/22/90  
Agency: Department of Health and Social Services

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

# FISCAL NOTE

cc

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Health & Social Services  
 Title: An Act relating to adoption BRU: \_\_\_\_\_  
 Sponsor: Ulmer Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY92	FY93	FY94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

**FUNDING:** (Thousands of Dollars)

GENERAL FUNC						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

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

No fiscal impact in FY 90

Prepared by: *Russell Webb*  
 Russell Webb, Director  
 Division: Family and Youth Services  
 Approved by Commissioner: *Myra M. Munson*  
 Myra M. Munson  
 Agency: Department of Health and Social Services

Phone: 465-3170  
 Date: 3/16/90  
 Date: 3/16/90

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

**STATE OF ALASKA  
1990 LEGISLATIVE SESSION**

Bill Version: **HB 438**

Public Date: **1/24/90**

**FISCAL NOTE**

**REQUEST:**

Revision Date:	Agency Affected:	<u>Alaska Court System</u>
Title: <u>An Act relating to adoption</u>	BRU:	<u>Trial Courts</u>
Sponsor: <u>Ulmer</u>	Components:	
Requestor: <u>Judiciary</u>		

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

Full-time						
Part-time						
Temporary						

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

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel

Division: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director

Agency: Alaska Court System

Phone: 264-8228

Date: 03/20/90

Date: 03/20/90

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management & Budget  
 Impacted Agency(ies)



# Alaska State Legislature

Please enter into the record my testimony to the HES  
 committee name  
 committee on H. B. 438, dated March 1, 1990  
 bill/subject

On behalf of Tanana Chiefs Conference, I would like to express support for H.B. 438. The bill closely tracks Athabascan traditional customary adoption principles which allow adoption without total extinguishment of parental rights. T.C.C. will continue to review bill to determine if the terms are adequate to reflect this custom.

Signed: Michael J. Waller  
 Testifier  
Tanana Chiefs Conference  
 Representing (Optional)  
122 First Ave., Fbks Alc. 99709  
 Address  
(907) 452-8251  
 Phone No.

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES



### REPRESENTATIVE FRAN ULMER

#### MEMORANDUM

February 27, 1990

TO: Rep. Johnny Ellis, Chair  
House Health, Education and Social Services  
Committee

FROM: Rep. Fran Ulmer

RE: HB 438, relating to parental rights after adoption

-----

HB 438 allows a person to adopt a child, at the request of the child's parent, and allows retention of the natural parents' rights and responsibilities unless those rights have been terminated by the court. This will allow multiple, parental relationships to be established and will provide an opportunity for a person who is unable or unwilling to marry the child's legal parent(s) to adopt the child. Under current law, in order for an adoptive decree to be issued, the adoptive parent must be married to the natural or legal parent. The court must also find that the adoption is in the best interests of the child.

This bill is in accord with the purposes of Alaska's adoption act which generally permits a court to issue adoptive decrees in accord with the child's best interests.



# Alaska State Legislature

Please enter into the record my testimony to the HESS  
 committee name  
 committee on HB 438 , dated 12 Mar 90  
 bill/subject

If fewer disrupted adoptions and compliance with federal law are the underlying goals of HB 438, then I suggest you let this bill die and get out into the Native communities to view an alternate perspective from your own.

HB 438 ignores P.L. 95-608, Nov. 8, 1978, Title I, sections 101 (c) and (d), sections 102 (c) and (d), section 104, section 106, and section 107. Your proposed bill ignores the Congressional assurances of continued intervention toward family reunification of Native people.

Your efforts toward a State/Tribal I.C.W.A. agreement signature would ensure fewer disruptive adoptions and compliance with the law including protection of the best interest of the Indian child. Thank you for your time and consideration.

Signed: Karen L. Roberts Strong  
 Testifier

SCA - Human Services Dept.  
 Representing (Optional)

P.O. Box 1450 Sitka, Ak. 99835  
 Address

(907) 747-3207  
 Phone No.

Original sponsor(s): REP. ULMER

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 438 ( )  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to adoption."

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

8 \* Section 1. AS 25.23.130(a) is amended to read:

9 (a) A final decree of adoption, whether issued by a court of  
10 this state or of any other state, has the following effect as to  
11 matters within the jurisdiction or before a court of this state:

12 (1) except with respect to a spouse of the petitioner and  
13 relatives of the spouse and except as provided in (c) and (f) of this  
14 section, to relieve the natural parents of the adopted person of all  
15 parental rights and responsibilities [,] and [, EXCEPT AS PROVIDED IN  
16 (c) OF THIS SECTION,] to terminate all legal relationships between the  
17 adopted person and the natural parents and other relatives of the  
18 adopted person, so that the adopted person thereafter is a stranger to  
19 the former relatives for all purposes including inheritance, unless  
20 the decree of adoption specifically provides for continuation of  
21 inheritance rights, and the interpretation or construction of docu-  
22 ments, statutes, and instruments, whether executed before or after the  
23 adoption is decreed, which do not expressly include the person by name  
24 or by some designation not based on a parent and child or blood rela-  
25 tionship; and

26 (2) to create the relationship of parent and child between  
27 petitioner and the adopted person, as if the adopted person were a  
28 legitimate blood descendant of the petitioner, for all purposes in-  
29 cluding inheritance and applicability of statutes, documents, and

1 instruments, whether executed before or after the adoption is decreed,  
2 which do not expressly exclude an adopted person from their operation  
3 or effect.

4 \* Sec. 2. AS 25.23.130 is amended by adding a new subsection to read:

5 (f) A court may issue an adoption decree granting an adoption by  
6 a petitioner who is not married to a natural parent of the adopted  
7 person without terminating the parental rights and responsibilities of  
8 the natural parent if the court makes a specific finding that re-  
9 tention of the natural parent's rights and responsibilities is in the  
10 best interests of the adopted person and the natural parent consents.  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

H B

4 4 4 1

# HOUSE COMMITTEE REPORT

(7)

Date Referred: February 12, 1990

FURTHER REFERRALS:

Date of Committee Action: 2/20/90

The JUDICIARY Committee considered:

HB 441

HOUSE BILL NO. 441

CONTROLLED SUBSTANCE/IMITATION CON. SUBS.

"An Act amending schedules A - VA of the controlled substance law and the definition of 'imitation controlled substance.'"

RECOMMENDATIONS:

- [ ] be replaced with \_\_\_\_\_ [ ] the same title  
[ ] a new title  
[ ] have attached amendment(s)  
[ ] do pass  
[ ] do not pass  
[ ] no recommendation  
[x] individual recommendations  
[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES .REVIUOUS:

(Date/Dept)

- [ ] fiscal impact \_\_\_\_\_  
[ ] zero fiscal note \_\_\_\_\_  
[ ] zero with analysis \_\_\_\_\_

- [ ] fiscal note(s) \_\_\_\_\_  
[x] zero fiscal note(s) DPS 2/1/90  
[ ] zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not  
PASS  
No REC  
Amend

Ph Ellis  
Larry Martin  
Cliff Davidson

	Do Not PASS	No REC	Amend

Max G. ...  
Chairman's Signature

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION: HB 441  
PUBLISH DATE: HOUSE 2/12/90

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Public Safety  
 Title: Amending the controlled and imitation controlled substances laws  
 Sponsor: Representative Gruenberg  
 Requestor: House Judiciary  
 BRU: \_\_\_\_\_  
 Component: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill revises the State's controlled substance laws. Any fiscal impact is expected to be small, and can be absorbed within the existing budget.

Prepared by: Lt. Thomas Stearns  
 Division: Alaska State Troopers

Phone: 269-5620  
 Date: 2/01/90

Approved by Commissioner: Arthur English  
 Agency: Department of Public Safety

Date: 2-9-90  
 Page 1 of 1

*JHL*  
*2/8/90*

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HOUSE HESS  
HB 441

2/6/90

8:30 AM

# HOUSE COMMITTEE REPORT

(7)

Date Referred: January 24, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: 2/8/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 441

HOUSE BILL NO. 441

CONTROLLED SUBSTANCES SCHEDULES

"An Act amending schedules IA - VA of the controlled substance law and the definition of 'imitation controlled substance.'"

### RECOMMENDATIONS:

- [ ] be replaced with \_\_\_\_\_ [ ] the same title  
[ ] have attached amendment(s) [ ] a new title  
[ X ] do pass  
[ ] do not pass  
[ ] no recommendation  
[ ] individual recommendations  
[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- [ ] fiscal impact \_\_\_\_\_  
[ X ] zero fiscal note DRS  
[ ] zero with analysis \_\_\_\_\_

- [ ] fiscal note(s) \_\_\_\_\_  
[ ] zero fiscal note(s) \_\_\_\_\_  
[ ] zero fn/analysis \_\_\_\_\_

### SIGNING DO PASS:

SIGNING:  
(Check approp. column)

Do Not Pass  
No Rec  
Amend

J. Ellis  
Walter Turnae E  
Max Friedman  
Cheri Davis  
Barbara  
Mark Boyer  
Peter Jure

	Do Not Pass	No Rec	Amend
<del>_____</del>		<input checked="" type="checkbox"/>	
_____			
_____			
_____			
_____			
_____			
_____			

J. Ellis  
Chairman's Signature

# State of Alaska

## Committees

CO-CHAIR, HOUSE JUDICIARY  
VICE-CHAIR, HOUSE LABOR AND COMMERCE  
HOUSE HEALTH, EDUCATION  
AND SOCIAL SERVICES



P O BOX V  
JUNEAU, ALASKA 99811  
(907) 463-4712  
463-4968/4986  
(SESSION)

914 CLAY COURT  
ANCHORAGE, ALASKA 99503  
(907) 276-6844

Representative Max F. Gruenberg, Jr.  
District 11  
Spenard, Upper Midtown Anchorage

## MEMORANDUM

TO: Members of the House  
FROM: Rep. Max F. Gruenberg, Jr.  
DATE: January 18, 1990  
RE: Sectional Analysis of the Controlled Substance Bill.

Note: Unless otherwise indicated, the descriptions of the drugs listed below are based upon materials supplied by the Federal Drug Enforcement Administration (DEA).

### Section 1:

This section removes the substance nalmefene from Alaska's Controlled Substances Act by adding it to the list of exclusions in AS 11.71.140(b)(1). Currently, nalmefene is included in schedule IA (AS 11.71.140) because it is a derivative of the listed opioid thebaine. Nalmefene is also a derivative of the narcotic antagonist naltrexone, currently excepted from the state Controlled Substances Act. The DEA and the Secretary of the U.S. Department of Health

and Human Services have concluded that there is insufficient scientific evidence to demonstrate that nalmeferone possesses sufficient potential for abuse to justify its continued control in any schedule of the federal Controlled Substances Act.

Section 2:

This section adds 16 narcotic substances to schedule IA: alfentanil; alpha-methylfentanyl; bulk dextropropoxyphene; carfentanil; sufentanil; tilidine; para-fluorofentanyl; 3-methylfentanyl; acetyl-alpha-methylfentanyl; alpha-methylthiofentanyl; beta-hydroxyfentanyl; beta-hydroxy-3-methylfentanyl; 3-methylthiofentanyl; thiofentanyl; MPPP; and PEPAP.

Alfentanil was placed in federal schedule I in accordance with U.S. treaty obligations under the Single Convention on Narcotic Drugs. At the request of the World Health Organization, alfentanil was examined by various groups from the Committee of Problems of Drug Dependence. The results of the study showed that alfentanil is a potent morphine-like compound with two to four times the potency of morphine when used as an analgesic.

Alpha-methylfentanyl, also known as "China White" or synthetic heroin, is a close structural analog of the Alaska

schedule IA substance fentanyl. It is an analgesic approximately 80 times more potent than morphine. The substance has been placed in federal schedule I because it has a high potential for abuse and currently has no accepted use in medical treatment in the United States.

Bulk dextropropoxyphene (non-dosage form) is a federal schedule II opiate. The scheduling criteria used in Alaska require that all federal schedule I and II narcotics be placed in Alaska's schedule IA. This substance, therefore, is placed in schedule IA. It should be noted that dextropropoxyphene in dosage form is placed in Alaska's schedule IVA and federal schedule IV. Dextropropoxyphene in dosage form is better known as the drug "Darvon." Non-dosage form was placed in federal schedule II in accordance with U.S. treaty obligations under the Single Convention on Narcotic Drugs.

Carfentanil is a narcotic substance approved by the Food and Drug Administration for marketing as a new animal drug. Carfentanil is an opiate, as defined in 21 U.S.C. 802(18), because it has an addiction-forming and addiction-sustaining ability similar to morphine. Because it has been approved for marketing, it has been placed in federal schedule II. However, because it is a narcotic substance, carfentanil is being placed in Alaska's schedule IA.

Sufentanil is contained in the federal schedule II; it is a congener of the federal schedule II narcotic substance fentanyl. Sufentanil is indistinguishable in terms of abuse potential from fentanyl, a drug used mainly in operating rooms and abused primarily by operating room personnel.

Tilidine, also known as tilidate hydrochloride, is a narcotic analgesic used in the control of moderate or severe pain. Tilidine was placed in federal schedule I in accordance with U.S. treaty obligations under the Single Convention on Narcotic Drugs.

Para-fluorofentanyl, 3-methylfentanyl,  
acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl,  
beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl,  
3-methylthiofentanyl, and thiofentanyl are potent analogs of the synthetic narcotic analgesic fentanyl. Each of these fentanyl analogs behaves as a typical morphinelike compound in rodent antinociceptive tests. Each analog substitutes completely for morphine when administered to morphine-dependent withdrawn monkeys. These analogs have been produced in clandestine laboratories, identified in drug evidence submissions, and associated with a number of overdose deaths.

MPPP and PEPAP are potent analogs of meperidine, a synthetic narcotic analgesic. Produced in clandestine laboratories,

MPPP and PEPAP have been identified in illicit drug trafficking. MPPP in particular has been associated with drug-induced Parkinson's disease in a number of users.

Section 3:

This section adds one new drug to schedule IIA. The drug is a hallucinogen, similar to PCP and TCP, and is called "1-[1-(2-thienyl) -cyclohexyl] -pyrrolidine" or "TCPy". TCPy was added to the federal controlled substances schedule in the past year.

Section 4:

This section would add 3,4-methylenedioxymethamphetamine (MDMA) to AS 11.71.150(b), to place it in schedule IIA.

MDMA, the designer drug known as Ecstasy, is an analog of the substance "methamphetamine." It has a high potential for abuse and currently has no accepted medical use in the United States. It is a federal schedule I drug, but because it is a non-narcotic hallucinogenic it has been placed in Alaska schedule IIA.

Section 5:

This section would add six new substances to schedule IIA (AS 11.71.150):           fenethylamine;           N-ethylamphetamine;

3,4-methylenedioxy-N-ethylamphetamine;  
N-hydroxy-3,4-methylenedioxyamphetamine; 4-methylaminorex  
and N,N-dimethylamphetamine.

Fenethylamine is a conjugate of amphetamine and theophyllin (a methylxanthine). The drug produces a delayed, but prolonged, central nervous system stimulatory effect. Fenethylamine has a high potential for abuse, has no recognized medical use in the United States, and has not been tested to determine its safety for use under medical supervision. It is a federal schedule I drug, but it has been placed in Alaska's schedule IIA because the drug is non-narcotic.

N-ethylamphetamine's pharmacological and behavioral effects are similar to those of amphetamine and methamphetamine. It is a federal schedule I substance with a high potential for abuse, and no known medical use in the United States. It has been placed in Alaska's schedule IIA because the drug is non-narcotic.

3,4-methylenedioxy-N-ethylamphetamine and  
N-hydroxy-3,4-methylenedioxyamphetamine are analogs of the  
schedule IIA substance methamphetamine (MDA). 4-methyl-  
aminorex has a pharmacological profile that closely  
resembles that of amphetamine; it has been described as a  
potent central nervous system stimulant.

Because N,N-dimethylamphetamine has no current accepted medical use, it has been placed in federal schedule I. N,N-dimethylamphetamine belongs to the chemical class of compounds known as phenylisopropylamines. Amphetamine and methamphetamine also belong to this class. N,N-dimethylamphetamine is very similar in molecular structure to amphetamine and methamphetamine and produces central nervous system stimulant effects. Because N,N-dimethylamphetamine is a non-narcotic stimulant, it is being placed in Alaska schedule IIA.

The federal 1984 Crime Control Act provided the Drug Enforcement Administration with emergency scheduling authority, to avoid an imminent hazard to the public safety. This scheduling procedure was established with the onset of the illicit manufacture and distribution of designer drugs. Federal law defines a designer drug as:

New chemical analogs or variations of existing controlled substances, or other new substances, which have a psychedelic, stimulant, depressant, or narcotic effect and have a high potential for abuse.

Scheduling under this authority is effective for one year and is not applicable to substances for which there is an exemption under the Federal Food, Drug, and Cosmetic Act (e.g., investigational new drugs and new drug applications). To classify a substance under its emergency powers, the DEA must publish a notice of the classification in the Federal Register; the classification

becomes effective after 30 days. On October 30, 1987, 3,4-methylenedioxy-N-ethylamphetamine and N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex were scheduled in this manner. On October 14, 1988, a proposed rule was published to permanently schedule these three substances. It is anticipated that, by the time this legislation is being considered, a final rule scheduling these substances will have been signed.

On August 3, 1988, the administrator of DEA issued a final rule temporarily placing N,N-dimethylamphetamine into federal schedule I. According to DEA, a final rule permanently scheduling this substance will be published within the next several months.

#### Section 6:

This section places the substance "tiletamine and zolazepam" into schedule IIIA, by adding it to AS 11.71.160(c). Tiletamine is a chemical analog of phencyclidine and has pharmacological properties similar to that substance. Zolazepam is a chemical analog of the schedule IVA benzodiazepines. As a combined substance it is used by veterinarians as a tranquilizer. This scheduling action facilitates the marketing of a veterinary pharmaceutical product and minimizes the likelihood of the product being abused.

#### Section 7:

This section places the following substances into AS 11.71.-160(f), to add them to schedule IIIA: parahexyl, dronabinol, and nabilone. Because these substances are THC analogs that are chemically and pharmacologically similar to THC, they have been placed in Alaska schedule IIIA.

Parahexyl is a synthetic analog of delta-9-tetrahydrocannabinol (THC). Parahexyl has no known medical use in the United States. It has been placed in federal schedule I.

Dronabinol (synthetic) in sesame oil and encapsulated in soft gelatin capsules is a Food and Drug Administration-approved drug product: Dronabinol is the synthetic equivalent of the isomer delta-9-tetrahydrocannabinol, the principal psychoactive substance in marijuana. Dronabinol is used to treat nausea and vomiting associated with cancer chemotherapy in patients who have failed to respond adequately to conventional antiemetic treatment.

Nabilone is a synthetic analog of delta-9-tetrahydrocannabinol (THC). It is used to treat nausea and vomiting associated with cancer chemotherapy. Nabilone has been placed in federal schedule II.

Section 8:

This section adds six benzodiazepines to schedule IVA (AS 11.71.-170): alprazolam, halazepam, temazepam, triazolam, midazolam, and quazepam. Each substance is an anti-anxiety agent substantially similar to other benzodiazepines currently listed in Alaska's schedule IVA. All six substances have been classified into the federal schedule IV.

Section 9::

This section places the substance mazindol in schedule I (AS 11.71.170) (see sec. 11 description, below). Section 8 also adds six other substances to schedule IVA: pipradol, SPA, cathine, fencamfamin, fenproporex and mefenorex.

Pipradol is a mild central nervous system stimulant. Its effects resemble those of the amphetamines, but the usual therapeutic dose of pipradol results in less euphoria, anorexia, and insomnia. It is an effective anti-depressant without the extreme central nervous system stimulation found in the amphetamines.

SPA is a substance marketed in Japan. It exhibits the same properties as morphine and methamphetamine, but with analgesic effects. Results of a study conducted by the University of Michigan showed that SPA has no physical dependence capacity.

Cathine is scheduled in accordance with the 1971 Psychotropic Convention. It is a stimulant derived from the Khat plant and originates in the Middle East.

Fencamfamin, fenproporex, and mefenorex are also stimulants.

Cathine, fencamfamin, fenproporex, and mefenorex are scheduled in accordance with the 1971 Psychotropic Convention. During its February 1986 session, the United Nations Commission on Narcotic Drugs (CND) decided to include 17 phenethylamines in the schedules of the Convention on Psychotropic Substances. These substances are among the 17.

#### Section 10:

This section classifies the substance buprenorphine as a schedule VA drug by placing it in proposed AS 11.71.180(d). The DEA has placed buprenorphine into federal schedule V. It had previously been considered a federal schedule II drug because it is a derivative of the substance thebaine (a schedule IA narcotic in Alaska). The DEA has found that buprenorphine has a low potential for abuse, has a currently accepted medical use, and has limited potential for physical or psychological dependence.

This section also adds propylhexedrine and pyrovalerone to schedule VA by placing them in proposed AS 11.71.180(e).

Propylhexedrine and pyrovalerone are psychotropic substances. Currently pyrovalerone is neither manufactured nor distributed commercially in the United States. Propylhexedrine is marketed over-the-counter as Benzedrex nasal decongestant inhalers. That is why there is an exception for these inhalers. There is also an exception in the federal schedule.

These two substances are being scheduled in accordance with the 1971 Psychotropic Convention, and are among the 17 phenethylamines included in the schedules of the Convention on Psychotropic Substances by the United Nations Commission on Narcotic Drugs (CND) during its February 1986 session.

Section 11:

This section amends the language of existing AS 11.73.099(3), which defines "imitation controlled substance." The minor amendment, substitution of "and" for "or," corrects an oversight in the imitation controlled substances law, which was enacted in 1983. The amendment changes the elements of the crime to require that a person actually make explicit or implied representations about the character of the substance. These representations and the item's appearance are facts that a judge or jury would consider when deciding whether, under all the circumstances of the case, a reasonable person would have believed the substance to be controlled. The law as presently written is vague -- perfectly legal substances sold over a drug store counter might be similar

in appearance to items that are manufactured and sold illicitly. A person should be able to legally possess these substances if the person has no intent to pass them as counterfeit substances.

The Alaska Court of Appeals pointed out the vagueness in the current definition of "imitation controlled substance" in its recent decision in Morrow v. State, 704 P.2d 226, 232 (Ak. App. 1985). The court was not able to determine, under the facts in the record in that particular case, whether the defendant's conviction should be reversed; the appellate court remanded the case to the trial court for factual findings. Although the conviction in the Morrow case was not reversed, it is important to clarify the language of the definition -- both to ensure that the problem does not recur in the future and to give people fair notice of the types of conduct that are prohibited under the law.

Section 12:

This section removes the substance mazindol from Alaska's schedule IIIA (AS 11.71.160). Mazindol has been transferred to schedule IVA (AS 11.71.170) (see sec. 9, above). This change has been made because mazindol is an anorectic substance that has a lower potential for abuse than other schedule IIIA anorectics; it also presents less danger of psychological dependence relative to other anorectics in schedule IIIA.

HB

448

# HOUSE COMMITTEE REPORT

(7)

Date Referred: March 29, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 4-18-90

The JUDICIARY Committee considered:

HB 448

HOUSE BILL NO. 448

GUIDE-OUTFITTER USE AREAS

"An Act relating to guide-outfitter use area permits, the Big Game Commercial Services Board, and guideoutfitters, transporters, and providers of other big game commercial services."

### RECOMMENDATIONS:

- be replaced with CS HB 448 (Jud)  the same title  
 a new title  
 have attached amendment(s)  
 do pass  
 do not pass  
 no recommendation  
 individual recommendations  
 additional referral to the Finance Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact \_\_\_\_\_  
 zero fiscal note \_\_\_\_\_  
 zero with analysis \_\_\_\_\_

- fiscal note(s) 3/29/90 Fish & Game  
 zero fiscal note(s) \_\_\_\_\_  
 zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not  
Pass  
No Rec  
Amend

\_\_\_\_\_  
\_\_\_\_\_  
*[Signature]*  
*[Signature]*  
*[Signature]*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

	Do Not Pass	No Rec	Amend
_____			
_____			
_____			
_____			
_____			
_____			
_____			

*[Signature]*  
Chairman's Signature

Kenneth D. OWSICHEK, Appellant,

v.

STATE of Alaska, GUIDE LICENSING  
AND CONTROL BOARD, Appellee.

No. S-1650.

Supreme Court of Alaska.

Oct. 21, 1988.

Rehearing Denied Dec. 5, 1988.

Hunting guide brought an action for a declaration that the Guide Licensing and Control Board's assigning of exclusive guide areas in which only the designated guide could lead hunts was unconstitutional. Guide also sought damages. Upon remand from the Supreme Court, 627 P.2d 616, the Superior Court, Third Judicial District, Anchorage, Milton Souter, J., upheld the Board's actions, and guide appealed. The Supreme Court, Rabinowitz, C.J., held that: (1) the statutes which allowed such licensing violated the Constitution's public use clause; (2) guide could not recover damages against the State; and (3) guide was not a public interest litigant.

Reversed and remanded.

1. Fish  $\Leftrightarrow$ 10(1)

Game  $\Leftrightarrow$ 5

Grants of exclusive rights to harvest natural resources listed in common use clause of Constitution (fish, wildlife, and waters) should be subjected to close scrutiny. Const. Art. 8, § 3.

2. Game  $\Leftrightarrow$ 5

Constitutional clause reserving fish, wildlife, and waters to people for common use prohibited grant of "exclusive guide areas" to hunting guides in which only the designated guide may lead hunts and from which all other guides are excluded, as such areas were granted essentially on basis of seniority, with no rental or usage fee to State, for unlimited duration, and were administered in such way that guides could transfer them for profit as if they owned them, and statutes and regulations permitting assignment of such areas were uncon-

stitutional. AS 08.54.040(a)(7), 08.54.195; Const. Art. 8, §§ 3, 17.

3. United States  $\Leftrightarrow$ 78(12)

Even if Guide Licensing and Control Board, in granting "exclusive guide areas," in which only designated guide could lead hunts, acted in excess of its authority or failed to comply with requirements of licensing statutes, discretionary function exception to Tort Claims Act prohibited guide from recovering damages which allegedly resulted from such conduct, as licensing program in question was major policy initiative of Board, and there was no evidence that Board acted in bad faith. AS 09.50-250.

4. Costs  $\Leftrightarrow$ 194.42

Hunting guide was not "public interest litigant" in his challenge to statutes which authorized Guide Licensing and Control Board to grant exclusive guide areas to hunting guides in which only the designated guide could lead hunts and from which all other guides were excluded, as guide, who claimed that statute jeopardized \$450,000 he had invested in his guiding operation, and that he suffered over \$100,000 in damages, had sufficient economic incentive to bring lawsuit without regard to public interest.

See publication Words and Phrases for other judicial constructions and definitions.

Charles E. Tulin, Anchorage, for appellant.

Michael G. Hotchkin and Sarah E. McCracken, Asst. Attys. Gen., Anchorage, Ronald W. Lorensen, Acting Atty. Gen., Juneau, for appellee.

OPINION

Before RABINOWITZ, C.J., and  
BURKE, MATTHEWS, COMPTON and  
MOORE, JJ.

RABINOWITZ, Chief Justice.

We are called upon to decide whether two statutes, AS 08.54.040(a)(7) & .195, comport with article VIII, section 3 of the Alaska Constitution. These statutes autho-

ri-  
ze  
to g  
area  
desi  
whir  
cens  
may  
only  
may

I  
Lic  
"th  
act  
dut  
for  
fin  
dis  
rize  
tiv  
ad  
or  
tic  
his  
wa  
in  
gu  
C  
H  
(F

w  
g  
U  
w  
e  
a  
w  
t  
F  
L  
1  
2

rize the Guide Licensing and Control Board to grant hunting guides "exclusive guide areas," geographic areas in which only the designated guide may lead hunts and from which all other guides are excluded. Licensed hunters, including other guides, may hunt recreationally in these areas, but only the holder of the exclusive guide area may lead hunts professionally.

### I.

In 1973 the legislature created the Guide Licensing and Control Board ("GLCB" or "the Board"). Ch. 17, § 1, SLA 1973. This act set forth the composition, powers and duties of the Board, established guidelines for different classes of guide licenses, defined unlawful acts, and provided for the disciplining of guides. *Id.* It also authorized the Board generally to "regulate activity" of guides, AS 08.54.040(a)(3), and to adopt regulations "required by this chapter or reasonably necessary for its administration." *Id.* at 08.54.050. The legislative history reveals that the purposes of the act were "to protect fish and game management" and "to get competent people as guides in Alaska." Alaska Legislative Committee Minutes Microfiche No. 37, House Judiciary Committee, H.B. 1, at 20 (Feb. 2, 1973).

One of the first activities of the Board was to establish a scheme of "exclusive guide areas" (EGAs) and "joint use areas." Under this system, a guide would be able to register his camp and be entitled to exclusive guiding privileges in a designated area surrounding it. "Joint use areas" would be assigned where the areas used by two or more guides overlapped.<sup>1</sup> The Board first voted in April 1974 to implement this scheme for Game Management Units 16 and 20.<sup>2</sup> Shortly thereafter, in

1. EGAs and joint use areas will be referred to collectively as EGAs.

2. The Board of Game has divided the state into twenty-six Game Management Units, primarily for purposes of establishing hunting seasons and bag limits for different species. For these purposes, many Units are divided into several subunits with different applicable regulations. See AS 16.05.255; 5 AAC 78.001-.600, 80.001-.600, 83.001-.600, 86.001-.910, 88.001-.910.

July 1974, the Board voted to extend the program to Unit 8 (Kodiak Island).

For the following year, the Board considered applications for EGAs but took no action. In July 1975, the Board granted dozens of exclusive and joint use areas in the three Units for which the regulation was passed. The Board further resolved at that time to extend the program to eleven more Units, including Unit 19. In January 1976, the Board voted to grant EGAs to qualified guides anywhere in the state. Applications were to be based on "occupancy, use, financial value, and such other qualifications as the Board may prescribe." The Board set a deadline of November 1, 1976, for receipt of applications for EGAs. The Board began granting EGAs in Units other than 8, 16 and 20 in December 1976, starting with Units 23-26. EGAs for other Units were granted gradually over the following months.

The Board conducted all of this activity without specific statutory authorization, relying only on the general grant of regulatory power in the 1973 legislation. In 1976 the legislature enacted AS 08.54.040(a)(8) (now AS 08.54.040(a)(7)), which authorized the Board to:

establish a quota of licensed operating guides who may operate within designated geographical game units or subunits of the state and provide for an equitable and reasonable procedure for limiting the number of guides to that quota; preference shall be given to qualified available and willing licensed guides who reside within the designated game unit or subunit.

Ch. 133, § 1, SLA 1976. This provision took effect January 1, 1977. *Id.* at § 5. The legislative history reveals that the intent of this section was to ratify the

The Guide Licensing and Control Board has adopted these Units for purposes of licensing hunting guides. 12 AAC 38.200(b) (Eff. 6/28/74). Each licensed guide may be certified to practice in up to three Units. 12 AAC 38.200(d) (Eff. 6/28/74). Unit 16 is in South Central Alaska, near Anchorage, and Unit 20 occupies a large part of Interior Alaska, including Fairbanks.

Board's EGA program. Transcript of Senate Resources Committee Hearing on S.B. 661, at 1, 14-15 (March 12, 1976); Transcript of House Resource Committee Hearing on S.B. 661, at 33-34 (April 27, 1976).

Finally, in 1986 the legislature enacted AS 08.54.195.<sup>3</sup> This statute for the first time imposed procedures and criteria on the Board with respect to the EGA program. This reform was enacted in response to a "sunset report" on the GLCB by the Division of Legislative Audit, which was harshly critical of the Board's implementation of the EGA program.<sup>4</sup> See Division of Legislative Audit, *A Performance Report on the Department of Commerce and Economic Development Guide Licensing and Control Board*, Audit Control No. 08.01253-86-R (Nov. 21, 1985).

## II.

Kenneth D. Owsichek is a registered guide who was licensed to lead hunts in

Game Management Units 17, 18 and 19 in February 1976.<sup>5</sup> He alleges that he had worked as an assistant guide in this area from 1972 to 1976. He claims that in January 1976, upon passing his guide license examination, he invested \$300,000 to build a lodge and several cabins together with other facilities for a full-scale guiding operation on Lake Clark. He also claims to have spent \$150,000 on four aircraft to fly in clients.

Owsichek's licensing and concurrent investments occurred at approximately the same time the GLCB decided to extend the EGA program on a statewide basis.<sup>6</sup> Accordingly, Owsichek submitted an application for EGAs in Units 17 and 19 before the November 1, 1976, deadline established by the Board. The Board considered applications for EGAs in Units 17 and 19 in its December 1977 meeting. Owsichek's application was denied on the ground that he had not submitted "evidence of contracts

### 3. Alaska Statute 08.54.195 provides:

*Restricted guide areas.* (a) Under AS 08.54.040(a)(7), the board may establish and assign restricted guide areas for master guides or registered guides. The board shall adopt regulations that establish uniform and consistent criteria, including a point system, to be used by the board when it establishes and assigns a restricted guide area.

(b) The board shall consider the following factors before it assigns a restricted guide area:

(1) the extent to which the guide who has applied for the area has guided in the game management unit in which the area is located;

(2) the extent to which the guide occupied and invested in the area;

(3) the effects, including the economic effect, on other guides that would result from creation of the area;

(4) big game populations in the area;

(5) the land ownership status of the area; and

(6) other relevant facts or circumstances.

(c) The board may adopt regulations limiting the number of clients with which a guide may contract for hunts in a restricted guide area used by more than one guide.

(d) Unless the board determines after a public hearing that it is not in the public interest to do so, the board may transfer a restricted guide area to a person qualified for assignment who has been recommended by the guide to whom the area is assigned, or by a person authorized to represent the guide, if the recommendation is made

(1) after five years have elapsed from the date of the assignment of the guide area; or

(2) during the first five years after the date of assignment and the guide has died or suffered a major disability, as defined by the board.

(e) A guide may not sell or lease a restricted guide area. A guide may sell or otherwise transfer a lodge, camp, or other lawful improvement to property located in a restricted guide area. Sales price may not exceed fair market value.

4. The 1986 legislation also modified AS 08.54.040(a)(8) in response to the sunset report. Specifically, the legislation (1) renumbered it subsection 040(a)(7), (2) required "an equitable, reasonable, and consistent procedure" (emphasized language added in 1986), and (3) provided that "preference may be given" to local resident guides (instead of *shall*). Ch. 71, § 6, SLA 1986.

5. Units 17, 18 and 19 occupy a large area overlapping parts of Southwest, Western and Interior Alaska. See 5 AAC 83.005(d) (Eff. 7/5/85), 86.005(a) (Eff. 7/5/85), 88.005(b) (Eff. 7/5/85).

6. As discussed above, the Board had decided to grant EGAs in Unit 19 in July 1975, but did not vote to extend the program to the remainder of the state, including Units 17 and 18, until January 1976, the month Owsichek passed his guide licensing exam and allegedly began building his improvements.

for guided hunts in the area for two of the five years preceding the application."

Owsichuk petitioned for review of this decision. In November 1978, the Attorney General's office found that, based on contracts submitted for hunts in 1976, 1977 and 1978, he was qualified to receive an EGA in Units 17 and 19, and recommended that the Board adopt this decision. In its December 1978 meeting, the Board resolved "that the portion of Mr. Owsichuk's application that is not in conflict with presently granted guide [sic] areas be allowed. That no portion of the application that overlaps or is presently in joint use be granted." By letter dated February 5, 1979, the Board informed Owsichuk of its decision and assigned him area 19:33, in Unit 19. Owsichuk objected to this decision because he was unable to land his planes within the areas granted to him, rendering them "un-hunttable."

On April 6, 1979, Owsichuk filed a complaint in superior court challenging the board's actions. His amended complaint alleged that: (1) prior to January 1, 1977, the Board lacked authority to promulgate regulations creating EGAs; (2) the actions of the Board violated due process and equal protection under the federal and state constitutions; (3) the actions of the Board were an unconstitutional taking of property; (4) AS 08.54.040(a)(8) was an unconstitutional delegation of authority because of the lack of standards; (5) the statutes and regulations constituted an unlawful impairment of contracts under the

7. Before considering the case on the merits, the superior court had dismissed the action as an untimely appeal. This court reversed and remanded, holding that the claim for declaratory relief should have been treated as an independent action rather than an appeal, and that due to surprise and excusable neglect the time limit for appeals should have been relaxed as to the claims for damages and an injunction. *Owsichuk v. State, Guide Licensing and Control Board*, 627 P.2d 616 (Alaska 1981).

8. After the parties filed their initial briefs, we requested supplemental briefing on the question of whether AS 08.54.040(a)(7) and AS 08.54.195 violated article VIII, section 3, of the Alaska Constitution.

Alaska Constitution; (6) the regulations did not comply with what standards existed in the statute; and (7) he suffered damages. By way of relief Owsichuk sought a declaration that the Board's assigning of EGAs is unconstitutional and that he is entitled to recover damages against the state in an amount in excess of \$100,000 as a consequence of the state's illegal and unconstitutional actions.

After considering the briefs and hearing oral arguments,<sup>7</sup> the superior court affirmed the actions of the Board, holding "that the Board did not commit any error or abuse of discretion, that its regulations comport with the governing statutes, and that no constitutional infirmity exists in the statutes, regulations or Board decision."

This appeal followed.<sup>8</sup>

### III.

#### A.

Owsichuk argues that the EGA statutes and regulations violate the common use clause of the Alaska Constitution, which provides:

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use. Alaska Const., art. VIII, § 3. The state argues that this clause is a broad grant of authority to the state to manage these resources, and that it places no limitations on this authority greater than those contained in other constitutional provisions, such as equal protection.<sup>9</sup>

9. The state also argues that Owsichuk has no standing to challenge the system as it existed before January 1, 1977, when AS 08.54.040(a)(1)(7) went into effect, because the Board did not establish any EGAs in Owsichuk's Units before that date. In light of our holding that Owsichuk is not entitled to damages, *see infra* Part IV, we need not address this issue. The declaratory relief to which he is currently entitled is unaffected by the date on which he attained standing.

The state does not argue that Owsichuk lacks standing under the common use clause. We note that we would reject such an argument. We believe that a professional hunting guide's "use" of the wildlife resource is sufficiently direct that he falls within the protection of the common use clause. *See infra* note 15.

We observe initially that, in guaranteeing people "common use" of fish, wildlife and water resources, the framers of the constitution clearly did not intend to prohibit all regulation of the use of these resources. Licensing requirements, bag limits, and seasonal restrictions, for example, are time-honored methods of conserving the resources that were respected by delegates to the constitutional convention. Questions presented by this case concern the type and extent of permissible regulation consistent with common use.

This court has never considered these questions before. However, in four cases, we have indicated an intent to apply the common use clause in a way that strongly protects public access to natural resources. First, with respect to article VIII generally, we have written, "A careful reading of the constitutional minutes establishes that the provisions in article VIII were intended to permit the broadest possible access to and use of state waters by the general public."<sup>10</sup> *Wernberg v. State*, 516 P.2d 1191, 1198-99 (Alaska 1973). Given the text of the common use clause, the same policy should apply to wildlife as well.

In *CWC Fisheries v. Bunker*, 755 P.2d 1115 (Alaska 1988), we addressed the question of whether a state tidelands grant included an exclusive right of fishery, or whether it was subject to a public trust easement. In holding the latter, we relied in part on the common use clause. While specifically declining to determine whether this clause imposed a higher duty than that imposed by common law public trust principles, *id.* at 1120 n. 10, we stated, "At least in the absence of some clear evidence to the contrary, we will not presume that the legislature intended to take an action which would, on its face, appear inconsistent with the plain wording of this constitutional mandate." *Id.* at 1120.

In *State v. Ostrosky*, 667 P.2d 1184 (Alaska 1983), *appeal dismissed*, 467 U.S. 1201, 104 S.Ct. 2379, 81 L.Ed.2d 339 (1984),

10. Similarly, it has been stated:

The common use clause necessarily contemplates that resources will remain in the public domain, and will not be ceded to private ownership. Since the right of common use is

we addressed the constitutionality of limited entry fishing. Limited entry fishing bears an obvious similarity to the EGA scheme in that both place restrictions on the commercial harvesting of a natural resource by giving a special status to a limited number of licensees. In *Ostrosky* we stated:

[W]e have difficulty squaring the section 3 reservation of fish to the people for common use with a system which grants a . . . exclusive right to fish to a select few who may continue to exercise that right season after season. We accept, therefore, at least for the purposes of this case, the proposition that limited entry is inconsistent with the command of article VIII, section 3.

*Id.* at 1189. In *Ostrosky* we held that the Limited Entry Act was not unconstitutional because of a 1972 constitutional amendment explicitly permitting limited entry to fisheries, notwithstanding section 3. *Id.* at 1190.

In a subsequent limited entry fishing case, *Johns v. Commercial Fisheries Entry Comm'n*, 758 P.2d 1256 (Alaska 1988), we stated:

In *State v. Ostrosky*, 667 P.2d 1184 (Alaska 1983), we noted that there is a tension between the limited entry clause of the state constitution and the clauses of the constitution which guaranty open fisheries. [Citing sections 3 and 15 of article VIII] We suggested that to be constitutional, a limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely, prevention of economic distress to fishermen and resource conservation.

*Id.* at 1266.

Since there is no constitutional amendment authorizing EGAs, we must in this case address a common use question similar to that which was not addressed in *Ostrosky*. We do so, however, in light of

guaranteed expressly by the constitution, it must be viewed as a highly important interest running to each person within the state. *State v. Ostrosky*, 667 P.2d 1184, 1196 (Alaska 1983) (Rabinowitz, J., dissenting).

our observations in *Wernberg*, *CWC Fisheries*, *Ostrosky*, and *Johns* that the common use clause was intended to guarantee broad public access to natural resources.

### B.

We begin by examining constitutional history to determine the framers' intent in enacting the common use clause. This was a unique provision, not modeled on any other state constitution. Its purpose was anti-monopoly. This purpose was achieved by constitutionalizing common law principles imposing upon the state a public trust duty with regard to the management of fish, wildlife and waters.<sup>11</sup>

The framers' reliance on historic principles regarding state management of wildlife and water resources is evident from a written explanation in the committee materials for the term "reserved to the people for common use." This discussion also highlights an intent to prohibit "exclusive grants or special privilege[s]."

Ancient traditions in property rights have never recognized that a private right and title can be acquired by a private person to wildlife in their natural state or to water in general. The title remained with the sovereign, and in the American system of government with its concept of popular sovereignty this title is reserved to the people or the state on behalf of the people. *The expression "for common use" implies that these resources are not to be subject to exclusive grants or special privilege as was so frequently the case in ancient royal tradition.* Rather rights to use are secured by the general laws of the state. In all English and American legal systems ownership of water cannot be asserted, rights acquire only to the use of water. Once wildlife is captured and removed from their natural state possessory right accrues to the captor, provided that the wildlife was captured in conformity with provisions of law.

11. Responding to a question about this provision on the floor of the convention, a member of the Resources Committee explained, "The language here has a lot of history behind it. . . . The language in this section harks back to the

Alaska Constitutional Convention Papers, Folder 210, paper prepared by Committee on Resources entitled "Terms" (emphasis added, except to "use"). Because an EGA is clearly a type of monopoly, "exclusive grant," or at least a "special privilege," this history strongly suggests that the statutes at issue here are unconstitutional. However, this history also states that "rights to use are secured by the general laws of the state," clearly giving the legislature some leeway in regulating use of the resources.

The state finds support for its position in a debate that occurred at the convention over registered trap lines. This debate is significant because, like EGAs, registered trap lines would allow a prior existing user to exclude newcomers from the privilege of harvesting the wildlife resource. On the floor of the convention, a delegate asked whether the common use clause would prohibit registered trap lines, and the spokesman for the Resources Committee responded that it would be "arguable." 4 Proceedings of the Alaska Constitutional Convention 2462-63 (Jan. 17, 1956). In response to this concern, the Resources Committee inserted language in the commentary to the common use clause authorizing registered trap lines: "This provision does not apply to the domestication of fur-bearing animals or other animals subject to intensive culture, to fish in private ponds, or to registered trap lines if authorized by law." 6 Proceedings of the Alaska Constitutional Convention app. V, at 98 (Commentary on Article on State Lands and Natural Resources, Jan. 16, 1956) (emphasized language added after first draft; cf. *id.* at 83 (Dec. 16, 1956)).

Resolution of the trap line issue begs the question in the instant case. One might argue that addition of the language excluding registered trap lines from the effect of the common use clause was intended to authorize the legislature to enact this type

old tradition whereby wildlife in its natural state was in the presumed ownership of the sovereign until reduced to possession." 4 Proceedings of the Alaska Constitutional Convention 2492 (Jan. 18, 1956).

of regulation generally, and that the reasoning should extend to EGAs. However, the language in the commentary is highly specific, which more likely suggests that the common use clause would prohibit all similar regulation, with registered trap lines as a narrow exception in response to the political pressures of the moment.

[1] In a discussion about fishing in lakes, the Constitutional Convention underscored its intent that the public retain broad access to fish, wildlife and water resources, and that these resources not be the subject of private grants. In floor debates, a question arose about the status of a natural lake falling within the boundaries of someone's private property. The delegates agreed that the common use clause guaranteed the public's right to use the lake for fishing, although it did not authorize a trespass across the landowner's property to get to the lake. 4 Proceedings of the Alaska Constitutional Convention 2460 (Jan. 17, 1956). The Convention made it clear that only fish in small private ponds may be owned free of the public's right of access. See *id.* at 2460-61; 6 Proceedings of the Alaska Constitutional Convention app. V, at 98 (Commentary on Article on State Lands and Natural Resources, Jan. 16, 1956). This confirms the view of the common use clause and the public trust expressed in *CWC Fisheries v. Bunker*, 755 P.2d 1115 (Alaska 1988), holding that a grant of a fee interest in tidelands remains impressed with a public trust easement. It also reinforces our conclusion that grants of exclusive rights to harvest natural resources listed in the common use clause should be subjected to close scrutiny.

### C.

[2] As we have noted, the drafters of the common use clause apparently intended to constitutionalize historic common law principles governing the sovereign's authority over management of fish, wildlife and water resources. A review of the history of wildlife law will therefore shed further light on the central issue in this case.

The Supreme Court traced the history of wildlife law from its roots in ancient Rome through its English common law development and transfer to this country in *Geer v. Connecticut*, 161 U.S. 519, 522-29, 16 S.Ct. 600, 601-04, 40 L.Ed. 793, 794-97 (1896). In that case, the Court affirmed the defendant's conviction, upholding a state statute forbidding transportation of certain game birds killed in Connecticut across state lines. The Court noted that in England, the right to hunt and fish "[was] vested in the King alone and from him derived to such of his subjects as [had] received the grants of a chase, a park, a free warren, or free fishery." *Id.* at 527, 16 S.Ct. at 603, 40 L.Ed. at 796 (quoting 2 W. Blackstone, *Commentaries* \* 410). As a recent authority explains:

Stripped of its many formalities, the essential core of English wildlife law on the eve of the American Revolution was the complete authority of the king and Parliament to determine what rights others might have with respect to the taking of wildlife.

M. Bean, *The Evolution of National Wildlife Law* 12 (rev. ed. 1983).

The *Geer* court asserted that this authority to regulate taking of wildlife passed to the states upon separation from England. 161 U.S. at 528, 16 S.Ct. at 604, 40 L.Ed. at 796. However, unlike the authority vested in the King, the authority of the states, with their guarantees of democratic government, was not plenary.

Whilst the fundamental principles upon which the common property in game rests have undergone no change, the development of free institutions has led to the recognition of the fact that the power or control lodged in the state, resulting from this common ownership, is to be exercised like all other powers of government as a trust for the benefit of the people, and not as a prerogative for the advantage of the government as distinct from the people, or for the benefit of private individuals as distinguished from the public good.

*Id.* at 529, 16 S.Ct. at 604, 40 L.Ed. at 797 (emphasis added). The Court held that the

state's "ownership" of wildlife, in trust for the people, authorized the statute at issue in that case. *Id.*

The framers of the common use clause probably relied heavily on *Geer*. The following statement from the constitutional papers, as quoted above, closely tracks the reasoning of *Geer*:

The title remained with the sovereign, and in the American system of government with its concept of popular sovereignty this title is reserved to the people or the state on behalf of the people. The expression "for common use" implies that these resources are not to be subject to exclusive grants or special privilege as was so frequently the case in ancient royal tradition.

Alaska Constitutional Convention Papers, Folder 210, paper prepared by Committee on Resources entitled "Terms."

Thus, common law principles incorporated in the common use clause impose upon the state a trust duty to manage the fish, wildlife and water resources of the state for the benefit of all the people.<sup>12</sup> We have twice recognized this duty in our prior decisions. In *Mellakatta Indian Community, Annette Island Reserve v. Egan*, 362 P.2d 901, 915 (Alaska 1961), *aff'd*, 369 U.S. 45, 82 S.Ct. 552, 7 L.Ed.2d 562 (1962), we stated:

These migrating schools of fish, while in inland waters, are the property of the state, held in trust for the benefit of all

12. The Court overruled *Geer's* state ownership doctrine in *Hughes v. Oklahoma*, 441 U.S. 322, 99 S.Ct. 1727, 60 L.Ed.2d 250 (1979). That case involved facts almost identical to *Geer*: the Oklahoma statute at issue forbade the export of minnows taken from the waters of the state. See *id.* at 323, 99 S.Ct. at 1729, 60 L.Ed.2d at 254. The Court struck down the statute as violative of the commerce clause. *Id.* at 338, 99 S.Ct. at 1737, 60 L.Ed.2d at 263. The Court found the state ownership doctrine to be a legal fiction that created anomalies and did not conform to "practical realities." *Id.* at 335, 99 S.Ct. at 1735, 60 L.Ed.2d at 261. Nothing in the opinion, however, indicated any retreat from the state's public trust duty discussed in *Geer*. Indeed, the Court stated, "[T]he general rule we adopt in this case makes ample allowance for preserving, in ways not inconsistent with the Commerce Clause, the legitimate state concerns for conservation and protection of wild animals

the people of the state, and the obligation and authority to equitably and wisely regulate the harvest is that of the state.

(Emphasis added.) Similarly, in *Herscher v. State, Department of Commerce*, 568 P.2d 996, 1003 (Alaska 1977), we noted that the state acts "as trustee of the natural resources for the benefit of its citizens."

The extent to which this public trust duty, as constitutionalized by the common use clause, limits a state's discretion in managing its resources is not clearly defined. The state argues that it imposes no limit at all. While acknowledging that the common use clause constitutionalizes the state's trust duty, the state asserts, "The sovereign's power to allow and control use of the resources is broad, and restricted only by other constitutional limitations such as equal protection." This assertion clearly overstates the extent of the state's authority under the public trust duty and the common use clause.

First, as noted above, this court has stated in at least four cases that the common use clause is intended to provide independent protection of the public's access to natural resources. See *Johns v. Commercial Fisheries Entry Comm'n*, 758 P.2d 1256, 1266 & n. 12 (Alaska 1988); *CWC Fisheries v. Bunker*, 755 P.2d 1115, 1120 (Alaska 1988); *State v. Ostrosky*, 667 P.2d 1184, 1189, 1191 (Alaska 1983), *appeal dismissed*, 467 U.S. 1201, 104 S.Ct. 2379, 81

underlying the 19th century legal fiction of state ownership." *Id.* at 335-36, 99 S.Ct. at 1735-36, 60 L.Ed.2d at 261. As one U.S. District Court noted in a post-*Hughes* case:

Under the public trust doctrine, the State of Virginia and the United States have the right and the duty to protect and preserve the public's interest in natural wildlife resources. Such right does not derive from ownership of the resources but from a duty owing to the people.

*In re Stuart Transp. Co.*, 495 F.Supp. 38, 40 (E.D.Va.1980) (allowing federal and state governments to recover damages for migratory waterfowl killed in oil spill).

After *Hughes*, the statements in the Alaska Constitutional Convention regarding sovereign ownership, quoted *supra*, are technically incorrect. Nevertheless, the trust responsibility that accompanied state ownership remains.

L.Ed.2d 339 (1984); *Werberg v. State*, 516 P.2d 1191, 1198-99 (Alaska 1973); see also *Ostrosky*, 667 P.2d at 1196 (Rabinowitz, J., dissenting).

Second, under the state's interpretation, the common use clause would be a nullity. "It is a well accepted principle of judicial construction that, whenever reasonably possible, every provision of the Constitution should be given meaning and effect, and related provisions should be harmonized." *Park v. State*, 528 P.2d 785, 786-87 (Alaska 1974). To give meaning and effect to the common use clause, it must provide protection of the public's use of natural resources distinct from that provided by other constitutional provisions.

Third, the history of the common use clause, as noted above, reveals an anti-monopoly intent to prohibit "exclusive grants" and "special privilege[s]," wholly apart from the limits imposed by other constitutional provisions.

Finally, cases applying the public trust doctrine in navigable waters have frequently struck down state actions in violation of the trust without any reference to either federal or state constitutions. A good example is the lodestar of American public trust law, *Illinois Central Railroad Co. v. Illinois*, 146 U.S. 387, 13 S.Ct. 110, 36 L.Ed. 1018 (1892). In that case, the Illinois legislature purported to grant to a railroad more than 1,000 acres of land underlying Lake Michigan in the harbor of Chicago. The Court applied the doctrine of the public trust in navigable waters to uphold the legislature's later revocation of the grant:

A grant of all the lands under the navigable waters of a State has never been adjudged to be within the legislative power, and any attempted grant of the kind would be held, if not absolutely void on its face, as subject to revocation. The State can no more abdicate its trust over property in which the whole people are interested ... than it can abdicate its police powers in the administration of government and the preservation of the peace.

*Id.* at 453, 13 S.Ct. at 118, 36 L.Ed. at 1043.

In light of this historical review we conclude that the common use clause was in-

tended to engraft in our constitution certain trust principles guaranteeing access to the fish, wildlife and water resources of the state. The proceedings of the Constitutional Convention, together with the common law tradition on which the delegates built, convince us that a minimum requirement of this duty is a prohibition against any monopolistic grants or special privileges. Accordingly, we are compelled to strike down any statutes or regulations that violate this principle.

#### D.

We conclude that exclusive guide areas and joint use areas fall within the category of grants prohibited by the common use clause. These areas allow one guide to exclude all other guides from leading hunts professionally in "his" area. These grants are based primarily on use, occupancy and investment, favoring established guides at the expense of new entrants in the market, such as Owsichek. To grant such a special privilege based primarily on seniority runs counter to the notion of "common use."

Moreover, the grants are not limited in duration. The statutes allow holders of EGAs to sell their "improvements," and the GLCB routinely transfers the EGA to the purchaser of the improvements or to the guide's designated successor. This practice allows a guide to effectively sell his EGA as if it were a property interest. See Division of Legislative Audit, *A Performance Report on the Department of Commerce and Economic Development Guide Board* 10-11, Audit Control No. 08-1305-88-R (Dec. 11, 1987) [hereinafter "1987 Report"].

Although the Board justified the program to the legislature as a means of improving wildlife management, see Transcript of Senate Resources Committee Hearing on S.B. 661 (March 12, 1976); Transcript of House Resource Committee Hearing on S.B. 661 (April 27, 1976), it is apparent that area assignments are not based primarily on wildlife management concerns. Rather, as authorized by AS 08.564.195(b) and 12 AAC 38.220(c) & (d)

(eff. 5/12/78, am. 10/15/82), the Board bases its decisions on use, occupancy and investment.<sup>13</sup> See 1987 Report at 9-10. Thus, the EGA program cannot be justified as a wildlife management tool like other restrictions on common use, such as hunting seasons and bag limits.<sup>14</sup>

The state argues that EGAs do not deny Owsichuk common use of the wildlife resources because he, like any other member of the public, may hunt recreationally in these areas. We reject this argument. In *CWC Fisheries v. Bunker*, 755 P.2d 1115, 1121 n. 14 (Alaska 1988), we noted that the public trust doctrine guaranteed fishermen access to public resources for "private commercial purposes" as well as for recreation. The same rationale applies to professional hunting guides under the common use clause.<sup>15</sup> The common use clause makes no distinction between use for personal purposes and use for professional purposes.<sup>16</sup>

Nothing in this opinion is intended to suggest that leases and exclusive concessions on state lands are unconstitutional. The statutes and regulations of the Department of Natural Resources authorize leases and concession contracts of limited dura-

tion, subject to competitive bidding procedures and valuable consideration. See AS 38.05.070-.075 (authorizing leases and setting forth procedures); AS 41.21.027 (authorizing concession contracts in state parks); 11 AAC 14.200-.260, 14.010-.130 (establishing procedures for awarding concession contracts); see also *Alyeska Ski Corp. v. Holdsworth*, 426 P.2d 1006, 1009-11 (Alaska 1967) (discussing procedures required by law for leasing of state lands); *CWC Fisheries v. Bunker*, 755 P.2d 1115, 1120-21 (Alaska 1988) (stating in dictum that shore fisheries leasing program would not violate public trust, in part because leases were of finite duration and required annual rental). In contrast, EGAs are not subject to competitive bidding, provide no remuneration to the state, are of unlimited duration, and are not subject to any other contractual terms or restrictions. Rather, as discussed above, they are granted essentially on the basis of seniority, with no rental or usage fee, for an unlimited duration, and are administered in such a way that guides may transfer them for a profit as if they owned them. In these respects the EGAs resemble the types of royal

13. Both the statute and the regulations require the Board also to consider "big game populations in the area." AS 08.54.195(b)(4); see 12 AAC 38.220(d)(1). The regulations make it clear that this is a secondary consideration. *Id.* Moreover, the context of this requirement in both the statute and the regulation suggests that it was enacted only to determine how many guides the game would support economically, not to benefit the game resource directly. Finally, it is clear that the Board simply does not pay much attention to this criterion. A recent legislative report concluded, "Use of independent game information for specific regions of the State no longer appears to be a significant factor in the Board's decision-making process." 1987 Report at 10.

14. We acknowledge that the EGA program may facilitate wildlife management by giving each guide having an EGA an incentive to conserve wildlife. However, without a specific constitutional provision allowing EGAs, mere usefulness in wildlife management does not suffice to save the EGA program from unconstitutionality under the anti-monopolistic common use clause. In the analogous area of limited entry in commercial fisheries, one purpose of limited entry has always been conservation related. However, this was not sufficient to save precursors

to the present limited entry system from findings of unconstitutionality prior to the constitutional amendment allowing limited entry. This history is detailed in *State v. Ostrasky*, 667 P.2d 1184, 1188, 1189 (Alaska 1983).

15. Admittedly, there is a difference between commercial fishermen and professional guides: a commercial fisherman takes his catch himself before selling it to others for consumption, while a hunting guide does not actually take the game, a privilege reserved for the client. We view this as an insignificant distinction that does not remove professional hunting guides from protection under the common use clause. The work of a guide is so closely tied to hunting and taking wildlife that there is no meaningful basis for distinguishing between the rights of a guide and the rights of a hunter under the common use clause.

16. The right to lead hunts professionally is a significant one. Nonresidents of Alaska are required to hire a guide in order to hunt brown bear, polar bear, and sheep, AS 16.05.407, and nonresident aliens must hire a guide to hunt any big game. AS 16.05.408. Thus, the holder of an EGA has a monopoly over this market, which is a substantial one in Alaska, for his geographic area.

grants the common use clause expressly intended to prohibit. Leases and concession contracts do not share these characteristics.

For these reasons, we hold that AS 08.54.040(a)(7), AS 08.54.195, and the regulations of the Board permitting the assignment of exclusive guide areas are in contravention of article VIII, section 3 of the Alaska Constitution.<sup>17</sup> Accordingly, Owsichuk is entitled to relief declaring the EGAs that have been granted by the Board to be without legal force.<sup>18</sup>

#### IV.

[3] In addition to declaratory relief, Owsichuk seeks damages against the state. Because the superior court did not reach this issue, we would ordinarily remand for further proceedings. However, when an issue is raised in the trial court and is adequately briefed by all concerned parties on appeal, this court may consider it. *Mullen v. Christiansen*, 642 P.2d 1345, 1350-51 (Alaska 1982).

Owsichuk bases his claim for damages on allegations that the Board acted without authority in enacting the EGA regulations initially and that the regulations failed to comply with the legislation that was later

17. We note that EGAs may also violate article VIII, section 17. This section of Alaska's constitution provides:

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

In *Gilman v. Martin*, 662 P.2d 120, 126 (Alaska 1983), we noted that this provision may require "more stringent review" of a statute than does the equal protection clause in cases involving natural resources. There is much less constitutional history of this clause than of the common use clause. The commentary states in full, "This section is intended to exclude any especially privileged status for any person in the use of natural resources subject to disposition by the state." 6 Proceedings of the Alaska Constitutional Convention app. V, at 99 (Commentary on Article on State Lands and Natural Resources, Jan. 16, 1956) (emphasis added). Because the parties have not briefed the issue and since we are able to decide the case on other grounds, we need not decide this question.

18. Our resolution of this issue makes it unnecessary for us to decide Owsichuk's other chal-

passed.<sup>19</sup> We need not decide whether these allegations are true. Even if the Board acted without authority or failed to comply with statutory standards, it is immune from suit under the discretionary function exception provided for in the Tort Claims Act,<sup>20</sup> as interpreted by our prior decisions.

In at least two cases, we have held that acts of public officials who in good faith misinterpret the law and act in excess of their authority are immune from suit. *Earth Movers of Fairbanks, Inc. v. State*, 691 P.2d 281, 283-84 (Alaska 1984) (police officer lacked authority to temporarily reduce speed limit); *Bridges v. Alaska Housing Authority*, 375 P.2d 696, 698, 702 (Alaska 1962) (housing authority lacked power to use declaration of taking). We have also held that decisions involving the formulation of basic policy are entitled to immunity. See *Industrial Indemnity Co. v. State*, 669 P.2d 561, 563 (Alaska 1983).

The EGA program was a major policy initiative of the GLCB. Therefore, even if the Board acted in excess of its authority or failed to comply with the requirements of the statute, it is immune from suit under the discretionary function exception provid-

enges to the statutes and to the actions of the Board.

19. Owsichuk does not base his claim for damages on the legislature's enactment of an unconstitutional statute. We note that such a claim would fail under our holding in *Vest v. Schafer*, 757 P.2d 588, 598 (Alaska 1988), where we wrote, "[W]e do not believe it proper for the judiciary to assess damages against the State on the ground that the legislature enacted a law later held unconstitutional, in the absence of a statute allowing or requiring such damages."

20. Alaska Statute 09.50.250 provides in part:

A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state in the superior court.... However, no action may be brought under this section if the claim (1) ... is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused....

ed for in AS 09.50.250. Furthermore, there is no evidence that the Board acted in bad faith.

[4] Owsichek argues that it was improper for the superior court to assess attorney's fees against him, on the ground that he is a public interest litigant. See *Southeast Alaska Conservation Council v. State*, 665 P.2d 544, 553-54 (Alaska 1983). Because the state is no longer the prevailing party, the fee award must be vacated and remanded for redetermination.

We note, however, that successful public interest litigants may be entitled to full attorney's fees. *City of Anchorage v. McCabe*, 568 P.2d 986, 993-94 (Alaska 1977). Thus, the question of whether Owsichek is a public interest litigant may be relevant on remand. Since the parties have fully briefed the issue, we will address it here.<sup>21</sup>

We have consistently held that a party will not be deemed a public interest litigant where the party had sufficient economic incentive to bring the lawsuit without regard to the public interest. *E.g.*, *Rosen v. State Board of Public Accountancy*, 689 P.2d 478, 480 (Alaska 1984). As discussed above, Owsichek claims that the EGAs in his Units jeopardized the \$450,000 he had invested in his guiding operation, and that he suffered over \$100,000 in damages. This was clearly sufficient economic incentive to bring the suit. Therefore, we conclude that he is not a public interest litigant.

REVERSED AND REMANDED.



21. The parties' briefing assumes that the state was the prevailing party, which is no longer true. However, we have never distinguished between successful and unsuccessful parties in applying our standards for determining whether

KOEHRING MANUFACTURING  
COMPANY, Appellant and  
Cross-Appellee,

v.

EARTHMOVERS OF FAIRBANKS,  
INC., Appellee and  
Cross-Appellant.

Nos. S-1910, S-1921 and S-1946.

Supreme Court of Alaska.

Oct. 21, 1988.

Rehearing Denied Nov. 16, 1988.

Action was brought against owner/lessor of crane under strict products liability theory, and owner filed third-party complaint against manufacturer for indemnity. The Superior Court, Fourth Judicial District, Fairbanks, Mary E. Greene, J., found owner entitled to indemnification, and parties appealed. The Supreme Court, Compton, J., held that: (1) manufacturer was required to indemnify owner; (2) trial court did not abuse its discretion in refusing to permit manufacturer to amend pleading to assert affirmative defense of owner's independent negligence; (3) trial court did not abuse its discretion in limiting sanction imposed against manufacturer for discovery violations; and (4) trial court did not err in its award of attorney fees.

Affirmed.

Matthews, C.J., dissented and filed opinion, in which Rabinowitz, J., joined.

1. Indemnity ⇐15(9)

Whether manufacturer was obligated to indemnify owner/lessor of product for strict products liability judgment against it was question of law.

2. Indemnity ⇐13.1(3)

Retailer or lessor found liable on strict products liability theory may obtain indemnity from manufacturer, provided that re-

a party is a public interest litigant, and we see no reason to make such a distinction. Thus, the public interest analysis does not change if Owsichek, rather than the state, is viewed as the prevailing party.

164

33



# Alaska State Legislature

Please enter into the record my testimony to the (H) JUD.  
committee name

committee on CS FOR HB448, dated 4-10-90  
bill/subject

The section, 08.54.650 used to establish  
QUALIFICATIONS FOR A GUIDE AREA WILL PRESENT  
LEGAL PROBLEMS IN ITS PRESENT FORM. ANY  
REFERENCE TO HISTORY, EXPERIENCE, OR PRIOR  
USE SHOULD NOT BE RETAINED. SOME GUIDES  
WERE UNLAWFULLY DEPRIVED OF THE OPPORTUNITY  
TO ESTABLISH EQUAL EXPERIENCE UNDER THE  
OLD UNLAWFUL GUIDE SYSTEM.

DON'T FORCE THE CITIZENS OF ALASKA TO  
RELY ON THE COURTS TO REFEREE WHEN SIMPLE  
DELETIONS CAN BE MADE AT THIS TIME.

Signed: VERN PORTER  
Testifier

Representing (Optional)  
P.O. BOX 4478 SOLDOTNA, 99669  
Address  
907-262-3224  
Phone No.

RESOLUTION NO. 90-50-BOG

ALASKA BOARD OF GAME

RELATING TO REPORTING OF HUNTER USAGE OF AIR TAXI OPERATIONS

WHEREAS, it is of critical importance to the Board of Game in its role of protecting the wildlife resources of the State and allocating uses of these resources to the public, to know the location, numbers and timing of game harvest by hunters utilizing air taxi transportation; and

WHEREAS, the Board recognizes that air transportation is a very important means of access to game resources by many citizens of Alaska as well as non-residents, and

WHEREAS, the Board has received many reports from the public of excessive local harvest in certain areas by hunters transported by air taxi, and

WHEREAS, the lack of legal requirements for reporting of hunters transported by air taxi operators prevents the Board from having the information necessary to objectively determine whether a problem exists and whether corrective action is necessary,

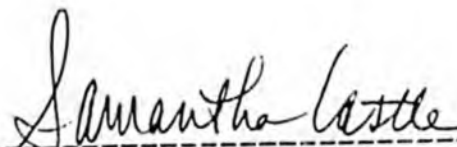
NOW THEREFORE BE IT RESOLVED,

the Alaska Board of Game urges the Alaska State Legislature to pass legislation that would require all air taxi operators to report the number of hunters and big game animals transported; and

RESOLUTION NO. 90-50-BOG  
Alaska Board of Game  
Page Two

BE IT FURTHER RESOLVED,

that copies of this Resolution be promptly transmitted to the Governor, the President of the Senate, the Speaker of the House, the Chairmen of the Senate and House Resources, and Transportation, committees, and to the Commissioner of the Department of Fish and Game.



-----  
Samantha Castle, Chairman  
Alaska Board of Game

ADOPTED: April 2, 1990  
Anchorage, Alaska  
VOTE: 7 Favor 0 Oppose

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Economic Dev.  
 Title: An Act relating to guide-outfitter BRU: Occupational Licensing  
use area permits; . . .  
 Sponsor: House Rules by Request Components: \_\_\_\_\_  
 Requestor: House Resources

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	85.3	85.3	85.3	85.3	85.3	85.3
TRAVEL	26.4	26.4	26.4	26.4	26.4	26.4
CONTRACTUAL	8.0	8.0	8.0	8.0	8.0	8.0
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	17.6	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>139.3</b>	<b>121.7</b>	<b>121.7</b>	<b>121.7</b>	<b>121.7</b>	<b>121.7</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>	<b>32.2</b>	<b>32.2</b>	<b>32.2</b>	<b>32.2</b>	<b>32.2</b>	<b>32.2</b>

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER (GF/PR)	139.3	121.7	121.7	121.7	121.7	121.7
<b>TOTAL</b>	<b>139.3</b>	<b>121.7</b>	<b>121.7</b>	<b>121.7</b>	<b>121.7</b>	<b>121.7</b>

**POSITIONS:**

FULL-TIME	2	2	2	2	2	2
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

The bill requires the Big Game Commercial Services Board to establish guide-outfitter use areas throughout the state, to adopt procedures for evaluating qualifications of use area applicants, and to annually offer available use areas to qualified guide outfitters. (CONTINUED ON ATTACHED)

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144  
 Division: Occupational Licensing Date: 2/9/90  
 Approved by Commissioner: Larry Merculieff Date: 2/9/90  
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

**CONTINUATION OF FISCAL NOTE  
FOR HB 448**

In addition, the bill authorizes the board to issue use area permits; monitor and limit the number of clients that may be guide-outfitted in a use area each year; suspend or revoke a use area permit; and publish a comprehensive list of all unawarded guide-outfitter areas. The staff work involved in processing the highly complex operational plans will be submitted for competing use area applications and in adequately preparing for board meetings where use areas will be awarded will require an additional Licensing Examiner position. In addition, keeping track of use areas awarded or unawarded will consume extensive staff time. Finally, coordination with ADF&G staff will also require additional time.

The Investigator position is required to beef up enforcement. If we are to properly manage the commercial industry's use of our big game resource, then the state must adequately enforce the licensing requirements contained in HB 448. To assist the board with the responsibilities mandated in the bill, the fiscal note provides for:

1	Occupational Licensing Examiner I, 12 months, GGU, Range 12A	\$ 35.0
1	Investigator III, 12 months, GGU, Range 18A	<u>50.3</u>
	Sub-Total:	\$ 85.3

Travel:

Funding provides two additional meetings annually for the Big Game Commercial Services Board and staff to conduct its business, including review of qualified applicants for issuance of use area permits.

\$ 16.4

This funding will also provide travel for the Investigator III to assist the board in enforcing the use area permit requirements and to conduct rural area education regarding the new big game commercial services statutes and to encourage rural resident participation in the big game commercial services industry.

10.0

Sub-Total: \$ 26.4

Contractual Services:

This funding will cover the expense of public noticing regulations, publishing comprehensive lists of unawarded use areas, postage, and other communications.

\$ 8.0

**Supplies:**

Provides for daily operating desk top supplies for the two positions. \$ 2.0

**Equipment: (One time expense)**

2 - Strata III telephone units and lines	\$1.2	
2 - Wang DP/WP Workstations	4.4	
2 - Desks, double pedestal	1.6	
2 - Chairs, swivel with arms	.8	
2 - Chairs, side without arms	.5	
2 - Typewriters	1.4	
2 - File Cabinets, 5-drawer, legal with lock	1.2	
2 - Workstations (modular furniture)	<u>6.5</u>	
	Sub-Total:	\$ 17.6
	GRAND TOTAL	<u>\$139.3</u>

**Revenues**

The revenue identified is based on 1,286 guide-outfitters and transporters paying the \$25 Wildlife Conservation Fee required in Section 6 of the bill at least once annually.

Presently, we are unable to more accurately predict the amount of revenues generated each year by this bill. However, revenues collected are anticipated to be more than the amount shown in this fiscal note as a result of the use area permit application fee (yet to be established by the Big Game Commercial Services Board) and the \$25 and \$5 Wildlife Conservation Fees for each big game animal taken annually.

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

P.O. BOX D  
JUNEAU, ALASKA 99811-0800  
PHONE: (907) 465-2534

### DIVISION OF OCCUPATIONAL LICENSING

March 26, 1990

Honorable Bettye Fahrenkamp  
Chairman  
Senate Resources Committee  
P.O. Box V  
Juneau, AK 99811

Dear Senator Fahrenkamp:

I have met with the Alaska Air Carriers Association regarding the future implementation of the reporting requirements contained in Section 15 of the proposed committee substitute for SB 422, which the commercial air carriers have agreed to support for the purposes of assisting the Department of Fish and Game in obtaining information which may be helpful in future harvest decisions and the Commercial Services Board in the regulation of the commercial big game hunting industry.

The report required of this section will be a one-page form which will ask for the number of hunters flown to, from, or in the "field," as defined in current law; the type of transportation provided; the big game harvested; and the area in which the hunt was conducted. It will be designed to be as simple as possible, to avoid putting undue administrative burden on air carrier employees and their customers (i.e., big game hunters). Data will not be requested from carriers for hunters flown between federal, state, and municipal airports or air strips. The report will be filed once a year (by January 31) for the previous year's activity.

Transporters are being defined in Section 16 of the bill as those air carriers which advertise to attract big game hunters and those which charge more than customary charter rates to hunters. The amendment in Section 16 of SB 422 removes the controversial "incidental" standard in present law. The new standard will be easier to enforce than the existing vague language.

The term "advertise" will require definition through regulation. Advertising in newspapers and brochures, on television and radio, and through participation at hunting shows and expositions exemplifies the kind of advertising on which the Commercial Services Board will focus.

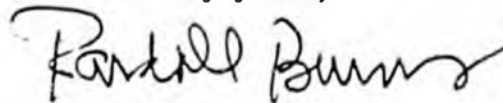
Honorable Bettye Fahrenkamp

-2-

March 26, 1990

I am pleased that we have been able to reach agreement on this matter with the air carriers. I also want to take the opportunity to thank you, the members of the Senate Resources Committee, and your staff assistant, Nancy Peterson, for the time and work the committee has put in again this year on big game commercial services legislation.

Sincerely yours,

A handwritten signature in cursive script that reads "Randall Burns".

Randall P. Burns  
Director

RPB/wfd  
LGJOBS  
32690a

cc: All Members, Big Game Commercial Services Board



# Alaska State Legislature

## HOUSE RESOURCES COMMITTEE

P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3715

### MEMORANDUM

TO: HOUSE RESOURCES COMMITTEE MEMBERS  
FROM: CO-CHAIR CURT MENARD  
CO-CHAIR CLIFF DAVIDSON  
DATE: MARCH 15, 1990  
RE: PROPOSED AMENDMENTS TO HB 448

The amendments attached are lettered and segmented into two stapled documents. They begin with 6-2021Ac and continue through 6-2021Ai. They are all a result of the combined efforts and recommendations of the Administration, our offices, Senator Fahrenkamp's office and other legislators and interest groups, including the Alaska Professional Hunters Association.



# Alaska State Legislature

## HOUSE RESOURCES COMMITTEE

P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3715

To: House Resources Committee members

From: Johanna Munson  
Staff, House Resources Committee

Re: List with Section changes from the original version HB  
448 to CS HB 448 (Res) dated 3/26/90 6-2021J

Date: March 28, 1990

<u>CS HB 448 (Res)</u>	<u>HB 448</u>
Sec. 1 Findings and Purpose	Sec. 1
Sec. 2 Guide-Outfitter Use Areas	Sec. 2
Sec. 3 AS 08.54.310	Sec. 3
Sec. 4 AS 08.54.350 (a)	
Sec. 5 GMU Certification	Sec. 4
Sec. 6 (Ai) AS 08.54.360 (a) Guide Outfitter C.U.P. initial fee	
Sec. 7 (Ai) AS 08.54.370 (a) Guide Outfitter C.U.P. renewal fee	
Sec. 8 (Ai) AS 08.54.400 (a) Transporter C.U.P. initial fee	
Sec. 9 (Ai) AS 08.54.400 (c) Transporter C.U.P. renewal fee	
Sec. 10 (Ai) AS 08.54.460 (a) Other C.U. providers, C.U.P. fee	
Sec. 11 (Ai) AS 08.54.470 (a) Annual C.U. P.	
Sec. 12 (Ai) AS 08.54.470 (b) Progressive fee for transporters Progressive fee for guide-outfitters	
Sec. 13 (Ai) AS 08.54.470 (c) Collection of C.U.P. fee	
Sec. 14 (Ag) AS 08.54.470 Exemption provision for retired or inactive Guide-Outfitters	

Page 2

<u>CS HB 448 (Res)</u>	<u>HB 448</u>
	was:
Sec. 15 (Ja) AS 08.54.560 Transporter Reports	
Sec. 16 Definition of transportation services	Sec. 7
Sec. 17 Identification of Proposed Guide-Outfitter Use Areas	Sec. 8
Sec. 18 Preliminary Determination of Eligibility for Guide-Outfitters	Sec. 9
Sec. 19 Offering of Areas	Sec. 10
Sec. 20 (Ac) AS 08.54.440 effective date	
Sec. 21 (Ai) Transition; C.U.P. fee	
Sec. 22 Severability	Sec. 11
Sec. 23 Sec. 20 retro date	Sec. 13
Sec. 24 Repealer	Sec. 12
Sec. 25 Sec. 20 & 23, efd.	Sec. 15



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Wildlife Conservation	BILL NUMBER HB 448	SPONSOR Rules Committee
SHORT TITLE OF BILL An act relating to guide outfitter use area permits...			
DEPARTMENT POSITION The department supports the provisions of this bill as endorsed in the report of the Legislative Task Force on Guiding and Game dated January 1990.			
PREPARED BY	DATE	COMMISSIONER'S SIGNATURE <i>James W. Nelson</i>	DATE 2/10/90

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Dept. of Commerce and Economic Dev. Div. of Occupational Licensing Dept. of Public Safety Div. of Fish and Wildlife Protection	CONSTITUENT GROUPS AFFECTED BY BILL Licensed big game guide/outfitters Transporters Providers of other big game commercial services
ORGANIZATIONAL SUPPORT FOR BILL Alaska Professional Hunters Association USF&WS, USFS, and USNPS U.S. Bureau of Land Management	ORGANIZATIONAL OPPOSITION TO BILL Some guide/outfitters and transporters

FISCAL IMPACT  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT  
The Legislative Task Force on Guiding and Game developed this bill proposing that the state establish a new wildlife resource-based system of allocating access to big game hunting opportunities among guide/outfitters. The proposed permit-based system differs from the previous system in that it: a) is founded on wildlife conservation and management concerns; b) provides specific selection criteria to ensure broad access and equal opportunity among applicants;

Continued on Page 2

ANALYSIS OF BILL/PROGRAM EFFECTS  
The Department of Fish and Game (ADF&G) would propose guide/outfitter use areas for the state. These recommendations would be forwarded to the Big Game Commercial Services Board for adoption, and subsequent permitting. ADF&G would base the proposed use areas primarily on wildlife management and enforcement concerns, with additional consideration of public comment, land ownership, administrative boundaries, recognizable field boundary features, access, land uses, and existing facilities. The initial mapping project would be completed during FY 92, with continuing but reduced levels of support to maintain the area boundary maps and to provide statewide wildlife information on a regular basis to the Big Game Commercial Services Board.

The department will need to continue normal biological surveys and analyses of big game as well as harvest data management in order to assess and manage ongoing effects of commercial use on wildlife. The proposed wildlife conservation fee would potentially be available for legislative allocation to ADF&G, Division of Wildlife Conservation to help offset costs of managing big game populations for all uses.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

Legislative Intent Continued:

c) provides annual compensation in the form of wildlife conservation fees to the people of the state, based upon actual use of the wildlife resource; d) limits terms of the authorizations (permits); e) requires contractual terms (operations plans) for commercial use of the state's wildlife resource; f) is based on joint use rather than exclusive use; and g) precludes any "property value" accruing to the permittee for the use of a public resource held in common use.

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: An Act Relating to Guide  
Outfitters Use Area Permits...  
Sponsor: Rules Committee  
Requestor: \_\_\_\_\_

Agency Affected: Fish and Game  
BRU: Wildlife Conservation  
Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	67.5	71.7	43.5	43.5	43.5	43.5
TRAVEL	3.0	3.0	1.0	1.0	1.0	1.0
CONTRACTUAL	.5	7.5	1.0	1.0	1.0	1.0
SUPPLIES	1.0	1.5	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>72.0</b>	<b>83.7</b>	<b>46.5</b>	<b>46.5</b>	<b>46.5</b>	<b>46.5</b>

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE						
---------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary) No FY 90 impact.  
The FY 91 and FY 92 expenditures reflect the development of a computerized area-based management system for use in administering the guide/outfitting industry. Expenditures for FY 93 and beyond would maintain this system and provide necessary big game information to the Big Game Commercial Services Board.

Prepared by: W. Lewis Pamplin, Jr., Director Phone: 465-4190  
Division: Wildlife Conservation Date: 2/9/90

Approved by Commissioner: *Thomas G. Miller* Date: 2/10/90  
Agency: Fish and Game

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Fiscal Note for House Bill 448  
Page 2 of 2

	FY 91	FY 92	FY 93	FY 94
	Mos. Cost	Mos. Cost	Mos. Cost	Mos. Cost
LINE 100 *				
WB III @ \$4.5/mo	11 49.5			
@ \$4.7/mo		12 56.4	6 28.2	6 28.2
AP II @ \$3.3/mo	3 9.9	3 9.9	1 9.9	1 9.9
DPC II @ \$2.7/mo	3 8.1	2 5.4	2 5.4	2 5.4
<u>SUB TOTAL</u>	<u>67.5</u>	<u>71.7</u>	<u>43.5</u>	<u>43.5</u>
LINE 200 TRAVEL	3.0	3.0	1.0	1.0
LINE 300 CONTRACTUAL SERVICES	.5	7.5	1.0	1.0
LINE 400 SUPPLIES	1.0	1.5	1.0	1.0
LINE 500 EQUIPMENT	0	0	0	0
<u>TOTAL</u>	<u>72.0</u>	<u>83.7</u>	<u>46.5</u>	<u>46.5</u>

Note: The total for FY 92 is greater than previously projected, and subsequent years totals are lower. This is due to additional mapping work necessitated under the proposed legislation, with less work anticipated after FY 92.

\* These positions are existing PCNs.

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802-2000  
PHONE: (907) 465-4100

March 23, 1990

The Honorable Bettye Fahrenkamp  
Chair  
Senate Resources Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Senator Fahrenkamp:

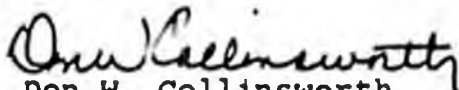
We appreciate your efforts toward accommodating concerns regarding Senate Bill 422 to enable its passage out of the Senate Resources Committee. Toward that end, we would like to clarify our intent regarding the reporting requirement for air taxi operators who commercially transport big game hunters, their equipment, or harvested big game animals to, from, or in the field (CS for Senate Bill 422, Section 16, work draft of March 21, 1990).

We support the intent of language in Section 16 that all air carriers subject to AS 42.30.200 shall annually submit an activity report regarding the commercial transport of big game hunters, related gear, and harvested animals. This would include licensed transporters as required under AS 08.54.400, as well as those air taxi operators who transport hunters but are not required to obtain a transporter license.

The department needs the information that would be provided in the activity reports to help assess the effort and resulting harvest of big game animals associated with commercial transportation services, versus other modes of access. The information we desire are such items as the number of big game hunters, their destination by game management unit or subunit, and the species and number of harvested big game animals that were transported.

We appreciate the opportunity to comment, and commend the committee for its thorough analysis and consideration of SB 422. Please do not hesitate to contact Molly McCammon of my office if we can be of further assistance.

Sincerely,

  
Don W. Collinsworth  
Commissioner

cc: Lew Pamplin, Director, Division of Wildlife Conservation

and payment by the licensee of a fee established by regulation adopted by the department;

- (11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;
- (12) compile and maintain a current register of licensees;
- (13) answer routine inquiries;
- (14) maintain files relating to individual licensees;
- (15) arrange for printing and advertising;
- (16) purchase supplies;
- (17) employ additional help when needed;
- (18) perform other services that may be requested by the board;
- (19) provide inspection, enforcement, and investigative services to the boards and for the occupations listed in AS 08.01.010, regarding all licenses issued by or through the department;
- (20) retain and safeguard the official seal of a board and prepare, sign, and affix a board seal, as appropriate, for licenses approved by a board;
- (21) issue business licenses under AS 43.70.

(b) The form and content of a license, authorized by a board listed in AS 08.01.010, including any document evidencing renewal of a license, shall be determined by the department after consultation with and consideration of the views of the board concerned.

(c) *[Repealed, § 49 ch 94 SLA 1987.]* (1) § 1 ch 59 SLA 1966; am § 1 ch 102 SLA 1976; am § 39 ch 218 SLA 1976; am § 2 ch 258 SLA 1976; am §§ 1, 2 ch 49 SLA 1980; am § 1 ch 82 SLA 1980; am § 2 ch 141 SLA 1980; am § 1 ch 166 SLA 1980; am § 1 ch 48 SLA 1983; am § 3 ch 56 SLA 1986; am § 3 ch 131 SLA 1986; am § 2 ch 74 SLA 1987; am § 21 ch 87 SLA 1987; am §§ 4, 49 ch 94 SLA 1987; am § 2 ch 45 SLA 1988; am § 2 ch 98 SLA 1988)

**Effect of amendments.** — The first 1988 amendment, effective July 1, 1988, inserted subsection (a)(21).

The second 1988 amendment, effective July 1, 1988, deleted "under AS 08.40 for electrical administrators" preceding "un-

der AS 08.45" in subsections (a)(4) and (a)(9).

While neither amendment gave effect to the other, both have been given effect to this section as set out above.

**Sec. 08.01.065. Establishment of fees.** (a) Except for business licenses, the department shall adopt regulations that establish the amount and manner of payment of application fees, examination fees, license fees, registration fees, permit fees, investigation fees, and all other fees as appropriate for the occupations covered by this chapter.

(b) The department may not adopt a regulation under (a) of this section unless the board responsible for regulating the affected occupation concurs.

(c) A fee established under (a) of this section should reflect, but should not exceed, the actual costs to the department of the activity

for which the fee is charged except that the department may establish a fee that is less than the cost of the activity for which the fee is charged if the department determines that it is not reasonable to impose the full cost of the activity on the applicant or licensee.

(d) The license fee for a business license is set by AS 43.70.030(a). The department shall adopt regulations that establish the manner of payment of the license fee.

(e) The commissioner of administration shall separately account for business license and occupational licensing 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 to carry out the activities of the division of occupational licensing. (5 2 ch 37 SLA 1985; am § 4 ch 138 SLA 1986; am § 3 ch 74 SLA 1987; am § 1 ch 87 SLA 1987; am § 5 ch 94 SLA 1987; am § 3 ch 45 SLA 1988; am § 14 ch 85 SLA 1988)

**Effect of amendments.** — The first 1988 amendment, effective July 1, 1988, added "Except for business licenses" at the beginning of subsection (a), in subsection (c), deleted the former second sentence, relating to the cost reflecting the amount of fees collected, and inserted "(a) of" in the remaining language; inserted present subsection (d); and redesignated

former subsection (d) as present subsection (e) and inserted "business license and" in the first sentence thereof.

The second 1988 amendment, effective June 2, 1988, also deleted the former second sentence in subsection (c).

While neither amendment gave effect to the other, both have been given effect in this section as set out above.

**Sec. 08.01.087. Powers and duties of department.** (a) The department may, upon its own motion, conduct investigations

(1) to determine whether a person has violated a provision of this chapter or a regulation adopted under it, or a provision of AS 43.70, or a provision of this title or regulation adopted under this title dealing with an occupation or board listed in AS 08.01.010; or

(2) to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or a provision of AS 43.70, or a provision of this title or regulation adopted under this title dealing with an occupation or board listed in AS 08.01.010, the commissioner may, if the commissioner considers it in the public interest, and after notification of a proposed order or action by telephone or telegraph to all board members, if a board regulates the act or practice involved, unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains

A M E N D M E N T #1

OFFERED IN THE HOUSE

TO: CSHB 448 (Resources)

Page 1, lines 9 - 10:

Delete ", and commercial use permits"

Page 11, line 8, through page 12, line 18:

Delete all material.

Renumber the following bill section accordingly.

Page 13, line 2, through page 14, line 1:

Delete all material.

Renumber the following bill section accordingly.

Page 14, line 9:

Delete "[NEXT LICENSING]"

Insert "next licensing"

Page 14, line 10:

Delete "covered by the current permit"

Page 14, line 13, through page 17, line 2:

Delete all material.

Renumber the following bill sections accordingly.

Page 20, line 21:

Delete "sec. 5"

Insert "sec. 4"

Page 21, lines 7 - 21:

Delete all material.

Renumber the following bill sections accordingly.

Page 21, line 26:

Delete "Section 21"

Insert "Section 13"

Page 21, line 28:

Delete "21 and 24"

Insert "13 and 15"

STATE OF ALASKA  
THE LEGISLATURE

POUCH - STATE CAPITOL  
TUNEA ALASKA 945  
RST 465 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 27, 1990

SUBJECT: Proposed amendment relating to assignments  
of use area permits (6-2021Jc to  
CSHB 448(Resources))

TO: Representative Curt Menard  
Co-Chair, House Resources Committee

FROM: George Utermohle *GU*  
Legislative Counsel

Amendment 6-2021Jc to CSHB 448(Resources) deletes subsection (b) from AS 08.54.670 as contained in HB 448, as introduced.

The material deleted would prevent a guide-outfitter from selling lodges, cabins, boats, aircraft, and other equipment to another guide-outfitter who is the assignee of a use area permit formerly held by the seller of the property and equipment at a price that exceeded the replacement value of the property.

One of the objections that the Alaska Supreme Court had to the former exclusive guiding area system in the Owsichek decision was that the guides could treat an exclusive guiding area as personal property and sell it to other guides. The ability of a guide to sell an exclusive guiding area was one of those attributes of an exclusive franchise to use game that the court found to violate the common use clause of the Alaska Constitution. The Task Force on Guiding and Game addressed this issue in its proposal for guide-outfitter use areas by allowing guide-outfitters to assign their use areas to other guide-outfitters but prohibited them from selling the permit or otherwise receiving anything of value in exchange for the assignment of the permit. In order to prevent a guide-outfitter from receiving a payment for the assignment of the permit under the guise of selling other property to the assignee, the Task Force prohibited the guide-outfitter from receiving more than the replacement value for the property. The assumption was that if the assignee of the permit paid more than the replacement value of

Representative Curt Menard  
Page 2  
March 27, 1990

the property then the excess was really a payment for the assignment of the permit. The assignment of the permit was void if the amount paid for the property exceeded the replacement value of the property.

During further consideration of this issue, the Task Force decided to further restrict the procedure for the assignment of use area permits by taking away the power of guide-outfitters to determine who would succeed them as assignees of the use area. Use area permits may be assigned only by the Big Game Commercial Services Board. Guide-outfitters would no longer have an opportunity to determine who their successors would be. This approach eliminated the possibility of collusion between the assignor and assignee of use area permit.

This approach also eliminated the need for the Board to monitor the transfer of property between a former permit holder and the new assignee of the permit. Since the former permit holders do not determine who will succeed them, there is no opportunity for the former permittees to receive payment for assigning the permit to particular persons.

Thus AS 08.54.670(b), in the original version of the bill, can be deleted without affecting the integrity of the use area permit system proposed by the bill. Deletion of this provision would also ease the burden on the Board by eliminating the responsibility of the Board to monitor the sales of property between former permit holders and assignees of use area permits.

GU:lmb  
L10/031

Enclosure

A M E N D M E N T #2

OFFERED IN THE HOUSE

TO: CSHB 448 (Resources)

Page 6, line 8, through page 8, line 9:

Delete all material and insert:

"Sec. 08.54.650. PROCEDURES FOR AWARDING GUIDE-OUTFITTER USE AREA PERMIT. (a) The board shall adopt by regulation procedures for evaluating and ranking the qualifications of applicants for guide-outfitter use area permits. The procedures must appropriately balance the criteria included under (b) of this section to ensure that all applicants are afforded a fair opportunity to obtain a use area permit in those game management units for which the applicant is certified by the board. The board may adopt regulations to define or clarify the criteria set out in (b) of this section.

(b) The board shall evaluate each application to determine whether the applicant is qualified for a guide-outfitter use area permit using the following criteria:

(1) the applicant's ability and means to provide the guide-outfitting services proposed in the applicant's operations plan;

(2) whether the applicant has the financial capability to carry out the guide-outfitting services proposed in the applicant's operations plan;

(3) the applicant's history of safety in guide-outfitting hunts or demonstrated ability to guide-outfit hunts safely;

(4) the applicant's history of compliance with state and federal fish and game and guide-outfitting statutes and regulations;

(5) the applicant's

(A) experience, including experience as a guide-outfitter, an assistant guide-outfitter, or as a participant in activities directly related to guide-outfitting operations; or

(B) knowledge of the use area, including knowledge of the geography, climatic conditions, flora and fauna, and similar knowledge, including knowledge obtained by big game hunting in the use area, that would assist the applicant in guide-outfitting hunts in the use area;

(6) the applicant's history of compliance with AS 08.54.-520(a) in regard to prior authorization to enter or remain on state, federal, or private land;

(7) whether the applicant has obtained those prior authorizations to guide-outfit hunts on state, federal, or private land in the use area from the significant or major landowners in the use area or has demonstrated the ability to acquire those authorizations;

(8) whether the applicant holds all permits and licenses necessary to guide-outfit hunts in the use area or has demonstrated the ability to obtain the necessary permits and licenses.

(c) In balancing the criteria under (b)(5)(A) and (B) of this section, the board shall give appropriate weight to each criterion to ensure fair consideration of all applicants.

(d) The board shall award a use area permit only to a qualified applicant. If the board determines that more applicants are qualified

to receive a use area permit for a use area than there are use area permits available, then the board shall rank all applicants for the use area permit and shall select the best qualified applicants to receive the available permits. The best qualified applicants are those who receive the highest ranking under the criteria set out in (b) of this section and regulations adopted under (a) of this section.

(e) If a successful applicant does not provide, at the time the board awards the use area permit, proof of the permits and licenses necessary to guide-outfit hunts on state, federal, or private land in the use area from the significant or major landowners in the use area, the board shall issue a conditional use area permit that is valid for 120 days. A conditional use area permit does not entitle the permittee to guide-outfit hunts within the use area. If the successful applicant provides proof satisfactory to the board within 120 days after issuance of the conditional use area permit that the applicant has received the necessary permits and licenses and land use authorizations, the applicant shall be awarded a use area permit. If the successful applicant does not provide the required proof within 120 days after issuance of the conditional use area permit, the conditional use area permit is void. If a conditional use area permit is voided under this subsection, the board shall offer the use area permit to the next best qualified applicant for the use area."

A M E N D M E N T #3

OFFERED IN THE HOUSE

TO: CSHB 448 (Resources)

Page 8, following line 9:

Insert a new section to read:

"Sec. 08.54.655. GUIDE-OUTFITTER USE AREA PERMIT FEE. (a) Notwithstanding AS 08.01.065, the department, in consultation with the board, shall set a fee for a guide-outfitter use area permit that

(1) reflects the economic value of the privileges conferred by the use area permit, taking into consideration the term for which the use area permit is issued, the number of clients that may be guide-outfitted in the use area under the use area permit, the big game species for which hunts may be guide-outfitted under the use area permit, and whether the use area permit is for sole or joint use of the use area; and

(2) ensures a fair return to the people of the state for the commercial use of the big game species in the use area.

(b) The commissioner of administration shall separately account for the use area 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."

# HOUSE COMMITTEE REPORT

(9)

Date Referred: January 26, 1990

FURTHER REFERRALS:

JUDICIARY  
FINANCE

Date of Committee Action: 3/28/90

The RESOURCES Committee considered:

HB 448

HOUSE BILL NO. 448

GUIDE-OUTFITTER USE AREAS

"An Act relating to guide-outfitter use area permits, the Big Game Commercial Services Board, and guide-outfitters, transporters, and providers of other big game commercial services."

**RECOMMENDATIONS:**

- be replaced with CS HB 448 (Resources)  the same title  a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- (2)  fiscal impact ADFHG - CED
- zero fiscal note \_\_\_\_\_
- zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) \_\_\_\_\_
- zero fn/analysis \_\_\_\_\_

**SIGNING DO PASS:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SIGNING:**

(Check appropr column)

	Do Not Pass	No Rec	Amend
<u>Bill Hudson</u>		<input checked="" type="checkbox"/>	
<u>Best Tracy</u>		<input checked="" type="checkbox"/>	
<u>Wf unal</u>		<input checked="" type="checkbox"/>	
_____			
_____			
_____			
_____			
_____			

\_\_\_\_\_  
 Chairman's Signature

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Economic Dev.  
Title: An Act relating to guide-outfitter BRU: Occupational Licensing  
use area permits; . . .  
Sponsor: House Rules by Request  
Requestor: House Resources Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	85.3	85.3	85.3	85.3	85.3	85.3
TRAVEL	26.4	26.4	26.4	26.4	26.4	26.4
CONTRACTUAL	8.0	8.0	8.0	8.0	8.0	8.0
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	17.6	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>139.3</b>	<b>121.7</b>	<b>121.7</b>	<b>121.7</b>	<b>121.7</b>	<b>121.7</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>	<b>32.2</b>	<b>32.2</b>	<b>32.2</b>	<b>32.2</b>	<b>32.2</b>	<b>32.2</b>

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER (GF/PR)	139.3	121.7	121.7	121.7	121.7	121.7
<b>TOTAL</b>	<b>139.3</b>	<b>121.7</b>	<b>121.7</b>	<b>121.7</b>	<b>121.7</b>	<b>121.7</b>

**POSITIONS:**

FULL-TIME	2	2	2	2	2	2
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

The bill requires the Big Game Commercial Services Board to establish guide-outfitter use areas throughout the state, to adopt procedures for evaluating qualifications of use area applicants, and to annually offer available use areas to qualified guide outfitters. (CONTINUED ON ATTACHED)

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144  
Division: Occupational Licensing Date: 2/9/90  
Approved by Commissioner: Larry Merculieff Date: 2/9/90  
Agency: Department of Commerce & Economic Development

**Distribution (by preparer):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION OF FISCAL NOTE  
FOR HB 448

In addition, the bill authorizes the board to issue use area permits; monitor and limit the number of clients that may be guide-outfitted in a use area each year; suspend or revoke a use area permit; and publish a comprehensive list of all unawarded guide-outfitter areas. The staff work involved in processing the highly complex operational plans will be submitted for competing use area applications and in adequately preparing for board meetings where use areas will be awarded will require an additional Licensing Examiner position. In addition, keeping track of use areas awarded or unawarded will consume extensive staff time. Finally, coordination with ADF&G staff will also require additional time.

The Investigator position is required to beef up enforcement. If we are to properly manage the commercial industry's use of our big game resource, then the state must adequately enforce the licensing requirements contained in HB 448. To assist the board with the responsibilities mandated in the bill, the fiscal note provides for:

1 Occupational Licensing Examiner I, 12 months, GGU, Range 12A	\$ 35.0
1 Investigator III, 12 months, GGU, Range 18A	<u>50.3</u>
Sub-Total:	\$ 85.3

Travel:

Funding provides two additional meetings annually for the Big Game Commercial Services Board and staff to conduct its business, including review of qualified applicants for issuance of use area permits.

\$ 16.4

This funding will also provide travel for the Investigator III to assist the board in enforcing the use area permit requirements and to conduct rural area education regarding the new big game commercial services statutes and to encourage rural resident participation in the big game commercial services industry.

10.0

Sub-Total: \$ 26.4

Contractual Services:

This funding will cover the expense of public noticing regulations, publishing comprehensive lists of unawarded use areas, postage, and other communications.

\$ 8.0

**Supplies:**

Provides for daily operating desk top supplies for the two positions. \$ 2.0

**Equipment: (One time expense)**

2 - Strata III telephone units and lines	\$1.2
2 - Wang DP/WP Workstations	4.4
2 - Desks, double pedestal	1.6
2 - Chairs, swivel with arms	.8
2 - Chairs, side without arms	.5
2 - Typewriters	1.4
2 - File Cabinets, 5-drawer, legal with lock	1.2
2 - Workstations (modular furniture)	<u>6.5</u>
Sub-Total:	\$ 17.6
GRAND TOTAL	<u>\$139.3</u>

**Revenues**

The revenue identified is based on 1,286 guide-outfitters and transporters paying the \$25 Wildlife Conservation Fee required in Section 6 of the bill at least once annually.

Presently, we are unable to more accurately predict the amount of revenues generated each year by this bill. However, revenues collected are anticipated to be more than the amount shown in this fiscal note as a result of the use area permit application fee (yet to be established by the Big Game Commercial Services Board) and the \$25 and \$5 Wildlife Conservation Fees for each big game animal taken annually.



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Wildlife Conservation	BILL NUMBER HB 448	SPONSOR Rules Committee
SHORT TITLE OF BILL An act relating to guide outfitter use area permits...			
DEPARTMENT POSITION The department supports the provisions of this bill as endorsed in the report of the Legislative Task Force on Guiding and Game dated January 1990.			
PREPARED BY	DATE	COMMISSIONER'S SIGNATURE <i>Larry W. Kelly</i>	DATE 2/10/90

SUMMARY

AGENCIES AFFECTED BY BILL Dept. of Commerce and Economic Dev. Div. of Occupational Licensing Dept. of Public Safety Div. of Fish and Wildlife Protection	CONSTITUENT GROUPS AFFECTED BY BILL Licensed big game guide/outfitters Transporters Providers of other big game commercial services
ORGANIZATIONAL SUPPORT FOR BILL Alaska Professional Hunters Association USF&WS, USFS, and USNPS U.S. Bureau of Land Management	ORGANIZATIONAL OPPOSITION TO BILL Some guide/outfitters and transporters

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT  
The Legislative Task Force on Guiding and Game developed this bill proposing that the state establish a new wildlife resource-based system of allocating access to big game hunting opportunities among guide/outfitters. The proposed permit-based system differs from the previous system in that it: a) is founded on wildlife conservation and management concerns; b) provides specific selection criteria to ensure broad access and equal opportunity among applicants;  
Continued on Page 2

ANALYSIS OF BILL/PROGRAM EFFECTS  
The Department of Fish and Game (ADF&G) would propose guide/outfitter use areas for the state. These recommendations would be forwarded to the Big Game Commercial Services Board for adoption, and subsequent permitting. ADF&G would base the proposed use areas primarily on wildlife management and enforcement concerns, with additional consideration of public comment, land ownership, administrative boundaries, recognizable field boundary features, access, land uses, and existing facilities. The initial mapping project would be completed during FY 92, with continuing but reduced levels of support to maintain the area boundary maps and to provide statewide wildlife information on a regular basis to the Big Game Commercial Services Board.

The department will need to continue normal biological surveys and analyses of big game as well as harvest data management in order to assess and manage ongoing effects of commercial use on wildlife. The proposed wildlife conservation fee would potentially be available for legislative allocation to ADF&G, Division of Wildlife Conservation to help offset costs of managing big game populations for all uses.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

Legislative Intent Continued:

c) provides annual compensation in the form of wildlife conservation fees to the people of the state, based upon actual use of the wildlife resource; d) limits terms of the authorizations (permits); e) requires contractual terms (operations plans) for commercial use of the state's wildlife resource; f) is based on joint use rather than exclusive use; and g) precludes any "property value" accruing to the permittee for the use of a public resource held in common use.

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: An Act Relating to Guide  
 Outfitters Use Area Permits...  
 Sponsor: Rules Committee  
 Requestor: \_\_\_\_\_

Agency Affected: Fish and Game  
 BRU: Wildlife Conservation  
 Components: \_\_\_\_\_

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	67.5	71.7	43.5	43.5	43.5	43.5
TRAVEL	3.0	3.0	1.0	1.0	1.0	1.0
CONTRACTUAL	.5	7.5	1.0	1.0	1.0	1.0
SUPPLIES	1.0	1.5	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>72.0</b>	<b>83.7</b>	<b>46.5</b>	<b>46.5</b>	<b>46.5</b>	<b>46.5</b>

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE						
---------	--	--	--	--	--	--

**FUNDING:** (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary) No FY 90 impact.  
 The FY 91 and FY 92 expenditures reflect the development of a computerized area-based management system for use in administering the guide/outfitting industry. Expenditures for FY 93 and beyond would maintain this system and provide necessary big game information to the Big Game Commercial Services Board.

Prepared by: W. Lewis Pamplin, Jr., Director Phone: 465-4190  
 Division: Wildlife Conservation Date: 2/9/90

Approved by Commissioner: *W. Lewis Pamplin, Jr.* Date: 2/10/90  
 Agency: Fish and Game

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

Fiscal Note for House Bill 448  
Page 2 of 2

	FY 91 Mos. Cost	FY 92 Mos. Cost	FY 93 Mos. Cost	FY 94 Mos. Cost
LINE 100 *				
WB III @ \$4.5/mo	11 49.5			
@ \$4.7/mo		12 56.4	6 28.2	6 28.2
AP II @ \$3.3/mo	3 9.9	3 9.9	1 9.9	1 9.9
DPC II @ \$2.7/mo	3 8.1	2 5.4	2 5.4	2 5.4
<u>SUB TOTAL</u>	<u>67.5</u>	<u>71.7</u>	<u>43.5</u>	<u>43.5</u>
LINE 200 TRAVEL	3.0	3.0	1.0	1.0
LINE 300 CONTRACTUAL SERVICES	.5	7.5	1.0	1.0
LINE 400 SUPPLIES	1.0	1.5	1.0	1.0
LINE 500 EQUIPMENT	0	0	0	0
<u>TOTAL</u>	<u>72.0</u>	<u>83.7</u>	<u>46.5</u>	<u>46.5</u>

Note: The total for FY 92 is greater than previously projected, and subsequent years totals are lower. This is due to additional mapping work necessitated under the proposed legislation, with less work anticipated after FY 92.

\* These positions are existing PCNs.

Ann. 1

p. 17, line 28

Add: after "docks"

unless the person providing  
transportation services  
advertises as defined  
in 08.54.590.

Am. 2

p. 18, line 3

Add: after "hunters"

Unless the person providing  
transportation services  
advertises as defined in  
08.54.590

Am. 3

Sec. 08.54.590. Definitions

add and renumber

(1) <sup>e.g. advertising big game</sup> ~~"advertising"~~ means to make <sup>big game</sup> hunting and related transportation services publicly and generally known through the use of any media or indirectly through hunt broker services or promotional services.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 448

Page 1, line <sup>10</sup>~~8~~, after "services":

Insert "; and providing for an effective date"

Page <sup>20</sup>~~16~~, ~~following~~ line ~~27~~:

Insert a new bill section to read:

"\* Sec. <sup>20</sup>~~11~~. The operation of AS 08.54.440 is suspended until January 1, 1991."

Renumber the following bill section accordingly.

Page <sup>21</sup>~~16~~, ~~following~~ line <sup>19</sup>~~8~~:

Insert a new bill section to read:

"\* Sec. <sup>23</sup>~~13~~. Section <sup>20</sup>~~11~~ of this Act is retroactive to May 12, 1989."

Renumber the following bill section accordingly.

Page <sup>21</sup>~~16~~, ~~following~~ line <sup>21-22</sup>~~7~~:

Insert a new bill section to read:

"\* Sec. <sup>2</sup>~~15~~. Sections <sup>20</sup>~~11~~ and <sup>2</sup>~~13~~ of this Act take effect immediately under AS 01.10.070(c)."

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 448

Page 3, following lines <sup>7-20</sup> 18:

Insert a new subsection to read:

"(c) AS 08.54.620 - 08.54.690 do not apply within an area or to the activities of a guide-outfitter within an area of the state that is not included within the boundary of a guide-outfitter use area adopted by the board."

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 448

Page 4, line 8:

Delete "or"

Insert ", "

Page 4, lines <sup>14,15</sup> 9:

After "permittee":

Insert ", automatically revoked under AS 08.54.660,"

After "offered":

Insert "by the board"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 448

Page 9, following lines <sup>21,22</sup> ~~lines~~ 17:

Insert a new subsection to read:

"(a) Except as provided in this section, a use area may not be sold, leased, or otherwise assigned."

Reletter the following subsections accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 448

Page <sup>17</sup>/~~2~~, following line 3<sup>-9</sup>:

Insert a new bill section to read:

"\* Sec. <sup>14</sup>/~~6~~. AS 08.54.470 is amended by adding a new subsection to read:

(e) Notwithstanding (a) of this section and AS 08.54.370, a person who is licensed under this chapter as a guide-outfitter but who is retired from or does not engage in guide-outfitting activities is exempt from requirements to obtain a commercial use permit and to pay the commercial use permit fee. The department shall adopt regulations to implement this subsection."

Renumber the following bill sections accordingly.