

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990

8672

6489 SENATE RESOURCES

893

## BIG GAME COMMERCIAL SERVICES BOARD EXPENSES

The expenses identified in this fiscal note, except where noted, are new costs expected to be incurred by the new Commercial Services Board in addition to those already budgeted for the current Guide Board. The increase in board expenses will be covered by a parallel increase in the division's program receipt authority. The expenses will be paid for by revenues generated by new or increased licensing fees.

FY 90:

### PERSONAL SERVICES:

Occupational Licensing Examiner I, Range 12A 6 months (PPT), Juneau	\$17.0
Investigator II, Range 14A 6 months (PPT), Anchorage	\$22.2
Personal Services Sub-Total:	\$39.2

### BOARD RELATED TRAVEL:

Travel costs are based on nine (9) members from the following locations:

- 2 Anchorage members
- 2 Fairbanks members
- 1 Juneau member
- 1 Kenai member
- 1 King Salmon member
- 1 Kodiak member
- 1 Kotzebue member

and four (4) staff members (three from Juneau, and one from Anchorage)

Travel to board meetings by board members and staff in the first year is based on:

2 Anchorage meetings (\$6330 x 2)	\$12.7
1 Fairbanks meeting	9.6
1 Juneau meeting	8.1
	\$29.8

### SITING PROGRAM (Rural Implementation):

In order to encourage rural resident participation in the big game commercial services industry, it is planned that a Licensing Examiner will travel to seven rural sites for out-reach purposes; Barrow, Kotzebue, McGrath, Bethel, Dillingham, Kodiak, and Ketchikan  
\$5.8

### SITING PROGRAM (Investigational):

Primarily to focus on the licensure of transporters and commercial use permit holders, funds are necessary for an Investigator to travel to three sites for enforcement activity: Fairbanks, King Salmon, Kotzebue, Bethel, Kenai, Cordova, and Bettles  
\$11.0

Travel to be reduced by \$11.0 already built into the Licensing Board component of the division of occupational Licensing operating budget  
[(\$11.0)]

Travel Sub-total:

\$39.7

**CONTRACTUAL**

Printing (Manual, Forms, etc.)	\$5.0
Advertising (meetings and regulations)	1.7
Exam consultation	3.0
Travel, postage	3.0
Travel rent (for meetings)	1.1
	\$16.8

Contractual Sub-Total

\$16.8

**EXPENSES:**

Standard operating supplies such as stationery, envelopes, pens, etc.

\$0.0

**EQUIPMENT: (one time costs only)**

2 - Phone units	1 ea.	1.0
2 - IBM Computer workstations	2 ea.	1.4
2 - Desks, double pedestal, 70x36	2 ea.	1.4
2 - Chairs, swivel with arms	2 ea.	1.4
2 - Chairs, side without arms	2 ea.	1.4
2 - Typewriters, IBM Selectric III	1 ea.	2.4
2 - Desk calculators	1 ea.	1.2
2 - Tables, 72x36	2 ea.	1.4
2 - File cabinets, 5 dr legal with lock	2 ea.	1.6
		\$12.0

Equipment Sub-Total:

\$12.0

**TOTAL FY 90 COSTS:**

98.8

**FY 91:**

Costs in FY 91 are anticipated to be the same as in FY 90, less the one-time FY 90 equipment costs of \$12.0.

**TOTAL FY 91 COSTS:**

\$86.8

**FY 92:**

Cost differences between FY 90 and FY 92 result from a reduction in FY 92 of the number of meetings budgeted under travel. FY 92 expense is based on two meetings, one in Anchorage and one in Fairbanks, while FY 90 was based on four.

Anchorage Board Meeting Deleted	(6.31)	
Juneau Board Meeting Deleted	(9.51)	
	(14.81)	\$14.01

**TOTAL FY 92 COSTS:**

\$72.0

Costs for FY 92 and FY 94 taking into consideration two meetings to be held each year, one in Anchorage and the other to alternate between Fairbanks and Juneau each fiscal year.

**BIG GAME COMMERCIAL SERVICES BOARD PROGRAM RECEIPTS**

The current Guide Board already generate program receipts through its licensing fees. The revenues reflected in this financial report are the amount of **additional** revenue necessary to cover the added costs associated in SB 140 with consulting the Guide Board and creating a new Commercial Services Board. The revenues are based on a projected fee schedule for 1990. The fee schedule is established by the Board of Game and Fish and is subject to change. The fee schedule for 1990 is \$50.00 for a Guide-Outfitter, \$50.00 for a Class-A and Assistant Guide, \$50.00 for a Transporter, and \$50.00 for an Outfitter. The fee schedule for 1991 is \$50.00 for a Guide-Outfitter, \$50.00 for a Class-A and Assistant Guide, \$50.00 for a Transporter, and \$50.00 for an Outfitter. The fee schedule for 1992 is \$50.00 for a Guide-Outfitter, \$50.00 for a Class-A and Assistant Guide, \$50.00 for a Transporter, and \$50.00 for an Outfitter. The fee schedule for 1993 is \$50.00 for a Guide-Outfitter, \$50.00 for a Class-A and Assistant Guide, \$50.00 for a Transporter, and \$50.00 for an Outfitter.

**FY 90**

400 Guide-Outfitters x \$50	\$20.0
1200 Class-A and Assistant Guides x \$50	60.0
300 Transporters x \$50	15.0
300 Outfitters x \$50	15.0
<b>FY 90 Revenue</b>	<b>\$103.0</b>

**FY 91** is based on FY 90 calculations with an additional 50 new licensees added:

457 Guide-Outfitters x \$50	\$22.8
1224 Class-A and Assistant Guides x \$50	61.2
325 Transporters x \$50	16.2
325 Outfitters x \$50	16.2
<b>FY 91 Revenue</b>	<b>105.5</b>

**FY 92** is based on FY 91 calculations with an additional 50 new licensees added:

407 Guide-Outfitters x \$50	\$20.3
1224 Class-A and Assistant Guides x \$50	61.2
350 Transporters x \$50	17.5
350 Outfitters x \$50	17.5
<b>FY 92 Revenue</b>	<b>\$108.0</b>

**FY 93** is based on FY 92 calculations with an additional 50 new licensees added:

407 Guide-Outfitters x \$50	\$20.3
1224 Class-A and Assistant Guides x \$50	61.2
375 Transporters x \$50	18.7
375 Outfitters x \$50	18.7
<b>FY 93 Revenue</b>	<b>\$110.5</b>

FY 94 is based on FY 93 calculations with an additional 50 new licensees added:

127 Guide-Outfitters x \$50	\$63.50
124 Class-A and Assistant Guides x \$50	\$62.00
300 Transporters x \$50	\$150.00
300 Outfitters x \$50	\$150.00
<b>FY 94 Revenue</b>	<b>\$113.00</b>

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Big game hunting and regulation

Agency Affected: Public Safety  
BRU: Fish & Wildlife Protection

Sponsor: Senate Resources  
Requestor: Senator Fahrenkamp

Component: Enforcement & ISU

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

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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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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)

Passage of SB 140 would create a nine-member Big Game Commercial Services Board. One of the board members would be the Commissioner of Public Safety or the Commissioner's designee.

It is anticipated that travel expenses for Board members would be included in the budget of the Department of Commerce and Economic Development, Division of Occupational Licensing. DPS staff time will be devoted to the Board as necessary; no additional fiscal impact is anticipated.

Prepared by: Captain Conrad Seibel  
Division: Fish & Wildlife Protection

Phone: 269-5509  
Date: 1/30/89

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

Date: 2/6/89

*JWC  
2/6/89*

**Samantha Castle**  
1170 Sunnyslope  
Fairbanks, Alaska 99709  
(907) 455-6678

TESTIMONY TO THE SENATE RESOURCES COMMITTEE Feb 8, 1989

Hello, I'm Samantha Castle. I am one of the seven members of the Board of Game. Sidney Huntington and I were asked by that Board to testify in December to the Guide Task Force. I now wish to take this opportunity to speak directly to this committee.

My statement to you deals only with the management of game in Alaska.

On the issue of unregulated commercial users, my reading of the public sentiment, gained through several game board meetings, the public testimony presented at those meetings, working through public proposals submitted through the Board process, and many advisory committees, sportsmens' associations, rural boroughs and round table discussions held before and after game board meetings is that the general public (which includes subsistence hunters, resident hunters and non-resident hunters) has reached a real level of frustration and they will not continue to allow unregulated commercial users. I believe commercial users are people who call themselves guides, outfitters, transporters, air taxi operators or any other similar name. The commercial harvest of big game impacts all categories of Alaska's hunters.

My definition of a commercial user is one who enables groups of hunters to get to or travel in a hunting area and receives money for that service.

When I deal with the public through the Board process, the message is clear to me. Regulate all of them or eliminate the ones who are perceived to be abusing or taking a disproportionate share of the common resource without compensating Alaska for that privilege.

It seems that most hunters in Alaska are acutely aware (as you discovered in the license fee increase bill last year which was submitted by the Department of Fish and Game but made no headway with the public) that the states game management dollars come from the sale of hunting licenses and tags and a figure of up to 80% of these dollars are generated by the sale of non-resident tags and licenses. There is a bill presented to you again this year to increase the non-resident and alien license and tag fees. Remember those dollars are matched by federal funding. Therefore it would be foolhardy to totally eliminate the non-resident hunter when they pay such a large portion of the game management costs in Alaska.

It is still very obvious, however, that unregulated and uncontrolled users have the potential of damaging the resource and thereby affecting all the other user groups. That is not acceptable to consider reduction of subsistence and resident seasons and bag limits if there are any alternatives.

# DON TROUTMAN'S, ALASKA SPORT & RECREATION

February 7, 1989

Senator Bettye Fahrenkamp  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

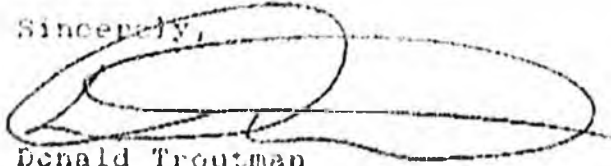
I would like to first express my thanks to you for the support you showed for the guiding industry at the teleconference on the 6th and of course all of the hard work you and your office has done for the past seven months, including listening to the relentless testimony that you have received from the guides, outfitters and air taxi operators. The whole interior delegation seems to truly understand the situation and I hope that they will educate the other legislators on this problem.

I do not intend to let up on the reporting requirements that should be assigned to the air taxi operators. They have one of the biggest impacts on the resource. At present they have no reporting requirements and if they did then we would have probably seen a change in regulations a long time ago. At present everyone else is subject to reporting requirements in regards to big game and I feel that this will even out the reporting requirements and definitely help the fish and game use their judgement in regards to animal populations and whether or not animals are in danger of over harvest in specific areas of Alaska. If the air taxi operators problem is because they do not want to do a little paperwork then maybe they shouldn't be in business at all.

I feel that it is of the utmost importance for this issue to be resolved this year. The task force for the last seven months has done a lot of investigative work in reference to this issue and they now have one packet of information with the facts of the situation. It would be a real shame to see all of this work overlooked for another session, just to have to do it all again.

If we do not act now I feel that it will have a devastating impact on Alaska's resource of big game and ultimately hurt the people of Alaska and the residents who depend upon big game for subsistence. Now is the time to act and act we should before it is too late.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald Troutman". The signature is written in a cursive style with a large, sweeping loop at the end.

Donald Troutman  
Registered Guide #AA541

FH

Tom Hundley  
P.O. Box 2772  
Palmer, Alaska  
99645  
PH#(907)745-2084

Senator Bettye Fahrenkamp  
P.O. Box V, Mail Stop 3100  
Juneau, Alaska

Dear Senator Fahrenkamp:

I have read the recommendations that the Task Force On Guiding And Game submitted to the legislature. (HB 112) (SB 140)

I would like to offer some heartfelt comments on the recommendations.....Find yourself a quiet spot to read this letter, and please accept my thanks for doing so.

I think you will agree that their report is a beautifully written and clearly defined plan. If the proposed changes to the Statutes and Regulations are adopted into law, they will place the commercial hunting industry under the realm of law and order.

I encouraged and lobbied for the creation of the Task Force during last years legislative session. The frustration and intimidation endured practicing my trade under the auspices of the Guide Board, and the mismanagement of the Exclusive Guide Area scheme led me to work toward change.

The Supreme Court made their sound decision in the nick of time. The Task Force responded by working "overtime". I am wholly pleased with their recommendations and applaud their hard work.

\* The level of expertise inherent in the make-up of the membership of the new, "Big Game Commercial Services Board" is obvious. The creation of such a board would allay the public's concern for the welfare of our wildlife resources.

\* The bill is a revenue generating bill. All Guide-Outfitters, and those providing transportation services to hunters (Transporters) would be required to pay a tax of 25% of the cost of a non-resident Big Game Tag, per hunter. This amounts to a substantial increase in revenue for the State.

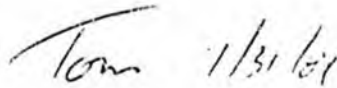
\* From a law and order standpoint this legislation covers every angle. All Guide-Outfitters, and transportation service providers will be held accountable for the failure to report violations. The Statutes and Regulations are clear, and weigh heavy on violators. The definitions are simple and provide no room for deviation.

My thoughts: There is simply no place in this industry for people with such poor reasoning ability, or such a criminal nature that they cannot abide by Game Regulations, and Guiding Statutes and Regulations. This legislation is the answer to my prayers. I have always believed that people ought to make it in this life through personal initiative, diligence, and honest citizenship. I submitted written testimony (and some spoken, at their hearings) to the Task Force. All I wanted is a clearly defined, lawful business

environment in which to practice my trade. Some of the changes I urged are incorporated in the Task Force recommendations.

How this legislation fares depends upon you. I encourage you, for me, and on behalf of the wildlife, wild places, and non-resident hunters that come to this beautiful State to vacation. To see to it that the Task Force recommendations remain true to course through the House and Senate to the Governor's signature.

My highest regards,

A handwritten signature in cursive script that reads "Tom" followed by a date "1/31/61".

Tom Hundley  
Reg. Guide

In addition:

I feel so positive about the outcome of the Task Force's efforts that I hesitate to say anything negative. I agree with the statement that their recommendations are a delicate balance of compromise.

But there is one aspect of the report that ought to raise the eyebrows of anyone familiar with the guide industry. The notion of a "land Based Guide Area System" conjures up the image of a.....  
....Pandora's Box. Tread lightly folks. Every lawyer in town is crackin' his knuckles waitin' to pounce on this baby. If we show continued effort at giving privileged consideration to any one select clique of guides over another in the dispensation of these new "Areas", it'll never pass muster in court. And rightfully so. The Exclusive Guide Area scheme was a disaster of manipulated, abused, and failed policy.

"Negotiated Bid" is a euphemism for "Hanky Panky".  
(Catch-22.....How can I prove past use, or financial investment in order to compete in a negotiated bid process if an unconstitutional law prevented me from practicing my trade in a certain locale)  
Don't use those tattered old maps as the basis of anything, if you do you'll be building on wet sand. Start with a clean slate.

I do agree with the analysis that a properly conceived (within the mandates of the "Owsichuk" decision) and closely administered "Area" system, designed around the principles of sound wildlife management, would add stability and be beneficial to the guide industry. Part of the package we sell to the non-resident tourist hunter is the "Wilderness Experience". Relaxing and hunting in solitude play a large part in the Alaskan vacation appeal. Plus, the various Federal Land management and Fish & Wildlife mngmt agencies are prepared to adopt a State designed and controlled system providing uniformity statewide.



# Alaska State Legislature

Please enter into the record my testimony to the House & Senate Resource committee name

committee on House Bill 112 & Senate Bill 139, dated Feb. 8, 1989  
bill/subject

I have the following comments on this proposed legislation:

1. The Big Game Commercial Services board should include representation from Private, Non-native landowners as well as consumer groups.
2. The Big Game Conservation Fee will be passed on to the hunter and will result in increased expense to the hunter. With the increase in license & tag fees also being proposed will make too much of an increase in one year. This fee is due only if an animal is killed. However the increase fees will probably be charged to the hunter if he kills an animal or not.
3. Adding Mountain Goat to the list of species which a nonresident needs a guide is an obvious attempt to increase income to guides in those areas which have goats. Would an outfitted hunt provided by a licensed guide-outfitter but with out a guide being with you when you killed the animal qualify under this provision?
4. This bill adds additional regulation to the providers of these services. This will increase cost to the hunter and will result in fewer hunters in the state. Then the guides will want a non-resident quota for tags to insure ~~their~~ profitability for their business.
5. The Big Game Commercial Services Board should only be concerned with the licensing and regulating of providers of services to Big Game hunters. Let the Fish and Game regulate the wildlife ~~resource~~ resource. This would be to do away with restricted areas for guides. Fish and Game ~~should~~ should regulate the number of animals taken in each game management unit.

Signed: Harry M. Champlin  
Testifier

Representing (Optional)

Box 428 Delta Jct. AK 99737

Address

895-4241 Day 895-5004 Home

Phone No.

A PERFORMANCE REPORT ON THE  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
GUIDE BOARD

December 11, 1987

Audit Control Number

08-1305-88-R

Commissioner, Department of  
Commerce and Economic Development

J. Anthony Smith

Deputy Commissioners, Department of  
Commerce and Economic Development

John Williams

Members of the  
Guide Board

Chairman  
Member  
Member  
Member  
Member  
Member  
Member

Ray McNutt  
Edward J. Shavings, Sr.  
Ben Ballenger  
Charles Weir  
Stanley Frost  
Edward Gamble, Sr.  
Arthur Clark

# STATE OF ALASKA

THE LEGISLATURE  
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION  
PO BOX W  
JUNEAU, ALASKA 99811-3300

December 18, 1987

Members of the Legislative Budget  
and Audit Committee:


In accordance with the provisions of Titles 24 and 44 of the  
Alaska Statutes (sunset legislation), the attached report is  
submitted for your review.

A PERFORMANCE REPORT ON THE  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
GUIDE BOARD

December 11, 1987

Audit Control Number

03-1305-88-R



Randy S. Welker, CPA  
Acting Legislative Auditor  
Division of Legislative Audit

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## PURPOSE AND SCOPE OF THE REPORT

### Purpose

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Guide Board for the past four fiscal years. Our examination was conducted to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Guide Board should be reestablished. The law now specifies that the Board will terminate June 30, 1988 and will have one year from that date to conclude its affairs.

### Scope

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Interviews with the license examiners.
3. Tests of files and documents of licensees.
4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman Office.
5. Discussions with Board members.
6. Discussions with licensed guides.
7. Minutes of Board meetings and Division correspondence files.
8. Attorney General Opinions applicable to professional boards.

## ORGANIZATION AND FUNCTION

The Guide Board was established by the 1973 Legislature and succeeded the Board of Fish and Game, Department of Fish and Game, which previously had regulated the guiding industry. The seven member Board is appointed by the Governor with confirmation by the Legislature and is restricted to having no more than three members as licensed guides. Board members serve staggered terms of three years or until their successors are appointed.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing. The Division assists the Board in the performance of their duties by providing administrative, licensure, and investigative support.

By law, a nonresident may not hunt, pursue, or take brown bear, grizzly bear, polar bear, or sheep in Alaska unless personally accompanied by a licensed master, registered, or assistant guide. Nonresidents hunting with an Alaskan relative are exempt from this requirement. The Guide Board was appointed in part to protect these nonresident hunters from incompetent individuals holding themselves out to be qualified Alaskan guides.

The function of the Board is primarily regulatory, as mandated by AS 08.54.040. Accordingly, the Board has the capacity to administer examinations, determine qualifications of guides, establish performance standards and regulate activities, maintain guide registers, prohibit harmful guiding activities, conduct hearings regarding licensure, and establish quotas of guides for specified geographical areas (exclusive guiding areas). The Board, through the assignment of exclusive guiding areas, limits hunting pressure by guides within a specific geographical area.

It is this last practice and function of the Board which is the most controversial. The Board's method and policy of assigning exclusive guide areas has become an increasingly contentious procedure. The Board has adopted a policy of eliminating previously allowed joint-use areas and is gradually trying to reestablish exclusive guide areas.

## REPORT CONCLUSION

In our opinion, the Guide Board should be reestablished. The regulation and licensing of qualified guides is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum qualification and experience requirements that provide reasonable assurance that persons licensed are both capable of safely conducting guided hunts and familiar with their prospective guiding areas.

However, we also recommend that the Legislature limit the reestablishment period of the Guide Board to a two year period. The Board's current policy regarding the assignment (see Recommendation No. 1) and transfer of guiding areas (see Prior Audit Recommendation No. 3) along with the pending suit before the Alaska Supreme Court challenging the legal basis of area assignments all involve significant public policy issues.

Resolution of these issues, particularly an adverse ruling in the Supreme Court case, will have an extensive effect on the operations of the Guide Board. We believe that it would be good public policy for the Legislature to limit any statutory extension of the Board to June 30, 1990 in order to provide for formal legislative reevaluation of the Board and its operations within the next two years.

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The Guide Board should discontinue its blanket policy of eliminating joint-use guiding areas.

Joint-use areas, as the name implies, allow more than one guide to conduct or authorize guided hunts in a given geographical area. In contrast, exclusive guide areas are geographic regions assigned by the Board to one individual. Only that individual may legally conduct or authorize guided hunts in the assigned area. Over the past two years the Guide Board has adopted a policy of eliminating previously approved joint-use areas and encouraging the assignment of only exclusive guide areas.

Such a policy unduly restricts entry into the guiding profession without offering any substantial public benefit. The policy primarily serves the interests of established guides who have previously received exclusive areas. The Board indicated that the primary reason for adopting this policy is to lessen hunting pressure on game resources throughout the State.

The Board adopted this policy without consulting the Division of Game within the Department of Fish and Game (DFG) for that agency's assessment of game populations. The Division reported to us that game populations statewide have generally been stable over the past 5 to 7 years. Even though there may be some justification for having strictly exclusive guide areas in some regions of the State, adoption of a blanket policy on a statewide basis, especially without independent consultation with DFG, is not warranted.

We do not believe that game management is the primary responsibility of the Board. If it were, provisions should be made to place it in an executive branch agency that also has such responsibilities. As part of the Division of Occupational Licensing, its primary purpose is the licensing and regulation of qualified individuals to conduct guided hunts.

### Effect of the Policy - Limiting Entry

This policy, in effect, establishes a two-tiered licensing system. Becoming registered is only the first step to becoming an independent, practicing professional guide. An individual must also obtain a viable exclusive guide area in which to conduct business. Essentially, an individual can be licensed but is not allowed to guide in various areas designated as exclusive to other guides.

The implementation of the exclusive area policy; adoption of regulations allowing each guide to have up to three exclusive guiding areas; and the routine approval of guide designated transfers of assigned guiding areas (see discussion in Prior Audit Recommendation 3); all serve to restrict entry into the guiding profession. Such regulations and practices suggest that the Board may be more interested in the protection and development of the proprietary interests of established guides rather than promoting equitable access to the profession for all qualified individuals.

We do not question the Board's legal authority for implementing the exclusive guide area concept, although at the time of this report a lawsuit is pending before the State Supreme Court challenging the Board's authority on this issue. Over the past ten years, the Attorney General has repeatedly stated that assignment of exclusive guide areas is within the Board's statutory authority.

However, the Board should use its authority to the extent necessary to promote hunter safety and consumer protection. Using its authority to restrict effective entry into the profession is not in the best interests of the public. Continued use and even expansion of joint-use guiding areas encourages more competition in the guiding profession and allows an increased number of qualified guides access to viable hunting areas within the State.

#### Prior Audit Recommendations

In our previous review, "A Performance Report on the Department of Commerce and Economic Development, Guide Licensing and Control Board, November 21, 1985," we reported five recommendations. Many of the issues discussed in these prior recommendations still exist although almost all of them have been addressed to some degree by the Board.

#### Prior Audit Recommendation No. 1

The Guide Board should develop a prioritized set of criteria to use in assigning both exclusive and joint-use guiding areas.

In our previous report we stated that the Board did not act consistently when they considered the assignment of exclusive and joint-use guiding areas. The criteria on which any given area assignment was made varied from decision-to-decision. We also noted that the Board often did not adequately document the basis on which they made assignment decisions.

This inconsistency on the part of the Board in its decision-making, along with the lack of proper documentation of its rationale, resulted in the loss of effective control over

the activities and policy of the guiding industry. We felt that the Board's responsibility would be better met if it would identify pertinent criteria to be used in area assignment decisions, assign some priorities to the criteria, and apply them consistently.

#### Legislative Audit's Current Position

Alaska Statute 08.54.040(a)(7) was amended in 1986 and now requires that the Board "provide for an equitable, reasonable, and consistent procedure for limiting the number of guides [in an assigned area]." (Emphasis added.) Additionally, AS 08.54.195 (a) was added and directs the Board to "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."

The Guide Board is currently in the process of implementing this prior recommendation and meeting its statutory responsibility to adopt regulations that provide for uniform and consistent area assignment criteria. A proposed point system is currently being considered by the Board in conjunction with the Division of Occupational Licensing's regulations specialist.

#### Prior Audit Recommendation No. 2

The Board should improve methods of obtaining game management information from independent sources, such as the Alaska Department of Fish and Game (ADFG).

One of the primary justifications for the whole concept of exclusive guiding areas is the enhancement of the overall management of the public's game resources. Guides are awarded exclusive or joint-use areas so that they have a long-term interest in managing the game in their area. The Board has adopted regulations [12 AAC 28.053(d)(1)] that require it to consider an area's ability "... to sustain an additional guided hunting operation, in terms of game populations, terrain, methods of hunting, and use by other guides and hunters."

In our prior audit, we stated that the Board rarely considered independent information regarding game populations and management concerns when assigning areas. The Board relied on information provided by applicants and guides operating in the region under consideration. Although we recognized that the assessment of game populations by an active registered guide was an important consideration, we felt that in many instances it had to be understood that the guide offering such information often had a vested interest in how the information was presented and interpreted.

We recommended that the Board establish better, more formal communications with ADFG in order to better meet their regulatory and statutory obligation to enhance the management of the State's game resources. We encouraged the Board to improve communications and coordination with ADFG and take steps to include that agency's assessment of game populations and hunting pressures when considering assignment of guiding areas.

#### Legislative Audit's Current Position

There has been some improvement by the Board in the use of independent game information from ADFG when making its decisions regarding assignment of guide areas. However, as stated previously, the Board's policy of encouraging the creation of only exclusive guide areas has resulted in making many of the concerns behind this prior recommendation irrelevant. 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.

#### Prior Audit Recommendation No. 3

The Board should take more responsibility for area assignments by repealing regulations that allow a guide to designate to whom their area be reassigned.

Registered and master guides may each have a maximum of three guide areas. Typically, when a guide wishes to retire or perhaps become eligible for another, different guide area, he or she is allowed to turn back an existing area assignment to the Board and designate the recipient of the reassignment. Board regulations allow for, but do not necessarily require, this practice.

In our prior audit we found that these designated transfers overrode all other area assignment criteria. Essentially, the Board automatically approved transfers of guiding areas regardless of game management considerations, demonstration of experience in the area by the transfer recipient, and over the objections of affected joint-users. Whereas, the Board evaluated, albeit inconsistently, regular area assignments, our prior audit indicated they gave transfers much less scrutiny.

This lack of scrutiny encouraged the practice of guides selling their assigned areas to other guides in violation of Board regulations. With the Board giving little review to transfers, they greatly increase the potential of area assignments being awarded based solely on economic considerations. This potential abuse is contrary to the Board's statutory responsibility of establishing quotas for guide areas in an equitable and reasonable manner. All qualified guides for an area should receive equal chance at receiving an area assignment regardless of their ability to buy the rights from the previous holder.

It would be a better administrative practice if area assignments were surrendered to the Board; the Board reviewed pertinent and prioritized criteria to determine if the region would support one or more additional guide operations; and then consider all applications for the area under an equitable and reasonable method of allocation. By following such a procedure the Board would promote compliance with its own regulations restricting the transfer of guiding area permits.

#### Legislative Audit's Current Position

The Board continues to automatically approve almost all transfers of area assignments regardless of game management considerations, demonstration of experience, and over the objections of affected joint-users. On several occasions the Board approved the transfer of assigned joint-use areas contrary to the Board's own stated policy of eliminating joint-use area assignments.

The Board often approves transfers to individuals who would not qualify to receive the assignment had they been an original applicant for the area. We reviewed 19 transfers approved by the Board over the past two years. In 8 of those 19 transfers (42%) the approved recipient did not have any documented guiding experience in the transferred area. Had the individual been an original applicant for the assignment, he or she would have been required to have at least 2 years of documented guiding experience in the applied for area.

We again recommend that the Board evaluate transfers of area assignments as they would original area assignments. Such an evaluation would enable all qualified guides a more equal opportunity to receive an assigned area.

#### Prior Audit Recommendation No. 4

The Board should adopt procedures to improve the administration of the oral portion of the registered guide examination.

To qualify for licensure as a registered guide, an applicant must successfully pass the registered guide examination. This examination, which is prepared and administered by the Board, is composed of two parts, a written and an oral section. Passage of the examination requires the applicant to obtain a score of 80% on both sections.

The Board procedures require that the oral portion of the registered guide examination be administered by three examiners, consisting of a Board member and two master guides. In our prior report, we stated that the oral portion of the examination was arbitrary and inconsistent in its content and grading. This was due to the practice of allowing examiners to use their individual discretion in determining examination content and grading guidelines.

We noted that the lack of specific guidelines to dictate the objective administration of the oral examination resulted in inconsistent content and grading between individual examinations. The likelihood of exam passage was as much affected by who the examiners were and their individual judgement as it was by the knowledge and competence of the applicant.

We recommended that the Board adopt structured guidelines for the administration of the oral examination. Any such guidelines needed to provide examiners with specific directions as to examination questions to be asked and their assigned grading values.

#### Legislative Audit's Current Position

The Board has substantially improved administration of the oral portion of the guide examination. The examination score sheet has been redesigned and now includes predetermined categories and assigned grade values. In addition, all oral examinations are tape-recorded which allows objective review of the questions and responses in instances where an applicant may appeal the scoring or content of his or her questions and responses. These changes in the oral examination process has provided the Board with fairer and more consistent administration of the oral examination.

#### Recommendation No. 5

The Board should seek both statutory and regulatory changes in order to improve the protection of the public from unethical guiding practices.

One of the primary purposes of licensing and regulating guides is to protect the public from unethical guiding practices. In our prior report, we identified regulations and statutes that serve to block effective consumer protection action on the part of the Board and serves to protect guides at the expense of the public. We recommended that the Board enhance its consumer protection responsibilities by taking the following actions:

- A. Pursue amendment of statutes that limit the Board's authority to discipline guides for unethical activity.
- B. Adopt regulations and/or recommend legislation to require guides to post licensing/payment bonds.

#### Statutory Constraints to Effective Disciplinary Action

Alaska Statute 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from "... three or more clients [hunters] of separate [hunting] parties."

The Board's effectiveness and visibility would be enhanced if all allegations regarding unethical guide practices was brought to it for review on a case-by-case basis. It appears that the intent of the statute was to keep down the number of frivolous and unfounded complaints against guides. Other professional licensing boards listen to, and sort through, all cases and complaints, no matter how trivial, as a means of keeping apprised of the conduct of their licensees. We recommended that the Board follow the same practice.

#### Bonding of Guides

Almost all hunters who use guiding services are nonresidents; a large number from outside of the United States. As a result, when disputes arise between guides and hunters it is often very difficult and expensive for the complaining hunter to seek legal remedies or implement effective administrative action. This difficulty is compounded by the three complaint requirement of the statutes discussed previously.

We recommended that the Board pursue the necessary statutory and regulatory changes that would implement a mandatory requirement that guides post a licensing or payment bond with the Division of Occupational Licensing. Such a bond would allow hunters, and perhaps even employees of the guides, with legitimate grievances and claims against guides an easier, less expensive alternative in obtaining settlement of their claims.

Guiding is a significant industry in the State. It is important that the Board do all it can to maintain the integrity of the guiding industry and uphold the reputation of the Alaskan guides with hunters outside of the State. The Board should recognize the unique type of consumer for guide services and take steps to adequately protect the interest of the out-of-state hunter/consumer.

#### Legislative Audit's Current Position

Neither of the two parts of this prior report recommendation have been implemented. The same abuses and conditions which led to our previous recommendation still exist. Currently, the Division of Occupational Licensing has three guides who have two complaints each pending against them, but whose cases are being held back from formal report to the Board until another complaint is received. In addition, the Attorney General's Consumer Protection Office is involved with a legal complaint against a guide for receiving money for a contracted hunt without providing services.

### Subsequent Comment

The Department of Commerce and Economic Development, Division of Occupational Licensing indicate in their response to this report that current market conditions have made it extremely difficult to obtain bonding in Alaska. Cost of bonding may be so prohibitive that, if required, it would represent another barrier to entry to the guiding profession. (See the agency's response to our report, pages 30-31 and our final statement on page 37 for further discussion of the issues currently involved in obtaining bonding.)

## ANALYSIS OF PUBLIC NEED

### Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our review.

- I. The extent to which the Board, commission, or program has operated in the public interest.
  - A. The Board is unduly restricting entry by adopting a policy of gradually eliminating all joint-use guide areas (see Recommendation No. 1).
  - B. The Board has adopted regulations defining unethical conduct which clarify and strengthen the guide's responsibility to the public.
  - C. The Board has adopted the Alaska Professional Hunters Association (APHA) first aid training course as a requirement for new applicants prior to receiving a license.
  
- II. The extent to which the operation of the Board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
  - A. Regulation 12 AAC 38.054(b) allows an EGA permit holder to designate the qualified guide to whom he wishes to transfer his guide area. These transfers often take precedence over other guide area assignment criteria such as joint-user objections, experience in the game unit, or game management considerations (see Prior Audit Recommendation No. 3).
  - B. Alaska Statute 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more clients of separate parties (see Prior Audit Recommendation No. 5).
  - C. The Board does not consistently review the Department of Fish and Game game management information prior to assignment or transfer of an exclusive guiding area (EGA) (see Prior Audit Recommendations No. 1-3).

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

A. At the time this report was being prepared, two pieces of legislation affecting guides and the Guides Board, Senate Bill No. 191 (SB 191) and House Bill 183 (HB 183), were pending before the Legislature. The Guides Board informally supports both pieces of legislation. Although subject to revision, they both would generally require:

1. Larger fees (three times as high) for nonresident guides than resident guides.
2. A broader statutory definition of what would constitute guiding. SB 191 would define guiding as:

being present with, or providing an established camp for, a big game hunter in the field, personally or through an assistant, for compensation or with the intent or an agreement to receive compensation; "guide" or "guiding" does not include accompanying or being present with a hunter (a) in a boat with living quarters; (b) at a permanent lodge or structure; or (c) while providing transportation to or from the field, if the persons providing the transportation and the persons being transported do not stalk, pursue, track, kill, or attempt to kill big game.

3. In a position paper on HB 183 the Department of Public Safety (DPS) states that passage of such legislation would provide the agency with:

an important enforcement tool to investigate and prosecute cases against unlicensed guides in Alaska. [HB 183] should reduce the number of unlicensed guiding activities which will allow us to better utilize our manpower to monitor other resource problems in Alaska. [HB 183] will further allow our uniformed officers to better enforce the laws pertaining to guiding in Alaska. Finally, [HB 183] strengthens the guide bill, making it more enforceable when dealing

with unlicensed guiding activities.... In sum, the passage of the amendments will aid [DPS] in carrying out its responsibilities: The enforcement of state laws and the protection of the fish and wildlife resources in the State of Alaska.

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

- A. The public is invited to attend Board meetings and to give their input about the workings of the Board. Notices of meetings are advertised in at least five newspapers throughout the State. In addition, guides are notified by registered mail of meetings that might affect them.
- B. Teleconference meetings are not being noticed publicly. This limits public input at those meetings and may legally jeopardize Board decisions and actions.

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

- A. As stated under IV, the public is invited, by published notices in newspapers, to attend Board meetings to give their input about Board regulations or submit written testimony.
- B. The problem noted in IV. B. above also represents potential problems in this public need area.

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

- A. Since January 1986, nine complaints have been filed with the Ombudsman's Office concerning Board activity. Two of these complaints, (1) alleging guide examination scoring is arbitrary and inconsistent and (2) alleging board's decision to reduce guide area is unfair, are pending administrative proceeding.

B. Since July 1985, 54 complaints against guides have been submitted to the Department of Commerce and Economic Development, Division of Occupational Licensing for investigation. Thirty-three of these cases have been closed, thirteen are currently in administrative hearing proceedings and nine are still pending investigation. Investigations appear to have been conducted in a reasonable fashion.

C. As mentioned in III above and in Recommendation No. 5, AS 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more hunters of separate parties.

VII. The extent to which a Board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. As of October 1987, 51 master guides and 348 registered guides were licensed in Alaska. These individuals were required to pass both a written and an oral exam, as well as obtaining practical experience in the field, prior to licensure.

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

A. The Board established 12 AAC 38.010(c) whereby an applicant for licensure who:

because of a language barrier, is unable to read and competently understand the English language may be excused from the written examination, and may be issued a license based on successful completion of the oral portion of the examination and demonstration of his capabilities and experience.

B. Regulations also provide that when assigning guide area permits,

the board will give preference to qualifying guides whose permanent residence is within the district in which the area is located.

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

Please refer to the previous section, Findings and Recommendations.

APPENDIX A  
GUIDE BOARD  
SCHEDULE OF REVENUES COMPARED WITH EXPENDITURES  
For Fiscal Year 1987  
(UNAUDITED)  
(Note 1)

	<u>FY 87</u>
Revenues (Note 2)	\$153,442
Expenditures (Note 3)	<u>133,205</u>
<u>Excess of Revenues</u> <u>over Expenditures</u>	<u>\$ 20,237</u>

Note 1

The Schedule of Revenues Compared with Expenditures was prepared from available records and discussions with the Division of Occupational Licensing (DOL) personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Schedule of Revenues Compared with Expenditures.

Note 2

Revenue amounts reported do not include revenue obtained from the sale of game tags or hunting licenses. They only include revenue obtained from fees required to obtain and/or renew guide licenses.

Note 3

Expenditures consist of direct costs resulting from board member activities, (i.e., travel and per diem) and an allocation of direct and indirect costs of DOL. The procedures used by DOL for their allocation were not reviewed by us, and we express no opinion regarding their reasonableness. It should be noted, that represented expenditures do not include expenses incurred by other Departments or other divisions of the Department of Commerce and Economic Development in assisting the Board.

APPENDIX B  
GUIDE BOARD  
SCHEDULE OF ESTIMATED REVENUES  
COMPARED WITH BUDGETED EXPENDITURES  
For Fiscal Year 1988  
(UNAUDITED)  
(Note 1)

Average Revenue (Note 2)	\$ 77,675
Less: Expenditures (Note 3)	<u>148,469</u>
<u>Excess of Expenditures over Revenues</u>	<u>\$(70,794)</u>

Schedule 1  
Types of Revenues

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Master Guide License	\$240	Biennially
Registered Guide License	240	Biennially
Class-A Assistant Guide License	50	Biennially
Assistant Guide License	50	Biennially
Transporter License	50	Biennially
Application Fee	30	
Examination Fee	25	

Note 1

The Division of Occupational Licensing (DOL) prepared the above Schedule of Estimated Revenues Compared with Budgeted Expenditures. The schedule is included for informational purposes only and has not been audited by us. Accordingly, we do not express an opinion on the Board's Schedule of Estimated Revenues Compared with Budgeted Expenditures.

Note 2

Revenues were estimated based upon the current licensing fees (see Schedule 1) and projected license renewals and application fees for fiscal years 1988 through 1991. Because of a downward trend in Alaska's economy, the projection for revenues includes a factor representing 20% to 30% decline in the number of licensed professionals.

Note 3

Expenditures consist of direct costs associated with Board member activities (i.e., travel and per diem) and an allocation of direct and indirect costs of DOL. It should be noted that represented expenditures do not include expenses incurred by other Departments or other divisions of the Department of Commerce and Economic Development in assisting the Board. Expenditures for the Board represent an allocation of budgeted expenditures for all Boards in the Department for FY 88.

Note 4

The schedule represents the licensing fees currently in effect. Fees were raised in November 1986 in response to legislative intent to make the Boards more self-supporting.

APPENDIX C  
GUIDE BOARD  
EXAMINATION STATISTICS

Number of Examinations Given in FY 1984-1985 (Note 1)

<u>Fiscal Year</u>	<u>Written Exam</u>		<u>Oral Exam</u>	
	<u>Passes</u>	<u>Fails</u>	<u>Passes</u>	<u>Fails</u>
1985	22	13	26	7
1986	13	16	18	1
1987	16	24	17	0

Note 1

Licensure as a registered guide requires a passing score on both a written and oral examination. Licensure as a master guide requires a passing score on an oral examination only. Licensure as assistant guides and transporters does not require examination.

APPENDIX D  
GUIDE BOARD  
ADMINISTRATIVE STATISTICS  
September 30, 1987

Currently Licensed

Master Guides	51
Registered Guides	348
Class-A Assistant Guides	140
Assistant Guides	854

Board Meetings Between  
July 1, 1985 and June 30, 1987

December 2-7, 1985  
April 7-11, 1986  
December 6-13, 1986  
April 11-17, 1987

# Alaska State Legislature

## Senate Resources Committee

Senator Bettye Fahrenkamp, Chairman

Senator Jay Kerttela, Vice Chairman  
Senator Dick Ellason  
Senator Steve Frank  
Senator Rick Halford  
Senator Arliss Sturgulewski  
Senator Fred Zharoff



P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4907

### M E M O R A N D U M

TO: Committee Members, Senate Resources Committee

FROM: Committee Staff

RE: Committee Meeting, February 6 and 8, 1989

Date: February 4, 1989

On Monday, February 6, 1989, the Senate and House Resources Committee will meet jointly at 1:30 p.m. in the Butrovich Room to consider SB 139, Relating to the Extension of the Task Force on Guiding and Game, and SB 140, Relating to big game hunting and to the regulation of big game and marine mammal guide-outfitting, transportation, and other commercial services for big game hunters, guide-outfitting and other commercial services providers.

Heinrich Springer, who was chairman of the interim Task Force on Guiding and Game, will brief members on the recommendations and the legislation developed by the Task Force. That proposed legislation was introduced by both the House and Senate Resources Committees as House Bills 112 and 113, and Senate Bills 139 and 140.

HB 113 and SB 139 would extend the Interim Task Force on Guiding and Game to continue to work on the complex issue of developing a management system for allocating rights of access to big game among guides (or guide-outfitters under SB 140). It would create a licensing system for commercial services providers for big game hunters.

HB 112 and SB 140 would sunset the existing Guide Board and create an expanded regulatory board whose powers would include those previously charged to the Guide Board. It would allow the board to provide for registration of hunting camps and facilities, and would establish, in consultation with the Departments of Fish and Game or Natural Resources, a resource-based management system for allocating access to big game hunting opportunities among guide-outfitters. Further, the board has authority to establish the level of supervision that guide-outfitters provide to class-A guide-outfitters and assistant guide-outfitters under their employ.

Other provisions in the bill delineate the structure whereby all persons who directly or indirectly receive compensation from the commercial harvest of Alaska's big game would be required to obtain a permit or license. That big game resource belongs to all Alaskans, who value that resource to the extent that a "common use" of game provision is specified in Alaska's constitution.

Several provisions of SB 140 would allow for transition measures for those currently operating as "outfitters" to become licensed as "guide-outfitters".

Among fees established would be a commercial use permit fee, to be paid by all commercial services providers, and a big game conservation fee (head tax). Both fees would be separately accounted for and may be used by the legislature to fund game management and enforcement of game resources.

The bill would provide for disciplinary procedures and penalty provisions for commercial service providers to big game hunters. It adds "mountain goats" to the current species list, brown/grizzly bears and dall sheep, requiring a guide (non-residents and non-resident aliens). The bill defines "guide-outfit" and "field". The bill prohibits "hunting clubs", and provides for confidentiality of hunt records and reports.

A sectional analysis has been prepared by legal services and will explain more fully the provisions in HB 112 and SB 140.

On Wednesday, February 8, the Senate Resources Committee will hold a statewide teleconference on the bills. Additionally, we will hear SCR 5, encouraging citizen participation in state-wide beach cleanup and anti-dumping efforts.

## JOINT DEPARTMENT POSITION PAPER ON SB 140

### A. General Comments

SB 140 basically repeals the existing Guide Board and replaces it with a Big Game Commercial Services Board which is empowered to license and regulate not just one provider of commercial big game hunting services (i.e., guides) but all aspects of the commercial big game hunting industry in Alaska.

SB 140 reflects the work and recommendations of the Legislative Task Force on Guiding and Game, which included representatives from the Departments of Commerce and Economic Development, Fish and Game, and Public Safety, as well as the active (but nonvoting) participation of the Department of Law. The report of the Task Force reflects the position of the Administration on many of the issues addressed in SB 140, and has been endorsed by the departments' representatives. All members of the Task Force deserve thanks for the time, patience, and thought each member brought to the deliberations that resulted in both the final report and this bill.

Because the recommendations generally reflect Administration policy, we will not in detail reiterate here what has already been more than adequately expressed in the report and in this proposed legislation. However, we do wish to emphasize a few particular issues raised in the report and offer, where we believe appropriate or necessary, a number of amendments to SB 140.

First, we wish to stress our belief in and support for the "holistic" approach taken by the Task Force to the commercial taking of Alaska's "big game" resource. We believe it is key to the bill. The intent is clear: if any person directly or indirectly receives compensation from the commercial harvest of Alaska's big game, then that person needs to be identified and regulated. As envisioned by the Task Force and as drafted in SB 140, the degree to which a commercial big game services provider is regulated reflects the level of consumer and resource protection deemed necessary by the Task Force.

Thus, some service providers are only required to register with the Big Game Commercial Services Board, receiving a simple commercial use permit which identifies them as a beneficiary of our game resource but requires no special licensing or admission criteria. Examples of commercial use permit holders include a hunting lodge on a remote lake, a hunt broker, or a sporting goods store renting hunting gear.

Other providers, however, are required to meet certain conditions before they may be licensed and receive compensation for the big game commercial hunting services they provide. There are two classes of these more highly regulated commercial users: guide-outfitters and transporters.

Of these two, transporters (persons who may provide transportation services of any kind) are somewhat less regulated under this act than are guide-outfitters. As you are aware, a majority of the transporters provide air or water transportation services. Under this bill, any person

seeking to provide such services to big game hunters must have a transporter license from the board. However, to qualify for that license, the transporter must first provide proof to the board that the transporter holds the applicable FAA or Coast Guard commercial operator licenses.

For the guide-outfitter (a class which contains a number of subcategories: class A, marine mammal, and assistant), licensure is dependent upon demonstration -- to an extent and degree satisfactory to the board -- of considerable expertise in the field of guide-outfitting. For example, in order to be licensed as an assistant guide-outfitter (an apprentice, of sorts), a person must first pass an exam and meet other established criteria. An assistant must later pass a more rigorous exam to become a licensed guide-outfitter, because the guide-outfitter is the only licensed professional eligible to actually sign contracts to conduct big game hunts.

A license to transport or guide-outfit is conditioned because the activities of these two groups have the most significant impact on the resource. It is especially important to consider the impact of the airplane on the degree and distribution of the harvest of the resource and the impression of that impact (mostly negative) on the Task Force's actions in regulating transporters.

While there may only be some 180 FAA licensed air taxi/commercial air services in the state, there are in excess of 1,000 transportation services providers which have been identified by the Department of Fish and Game. While many of these businesses appear to principally provide outfitting or lodging, or both, almost all also provide transportation to, from, and in the field, and all serve big game hunters. The survey of rural residents and village and Native Corporations done by RurALCAP on behalf of the Task Force makes it clear that the use of the airplane -- because of its easy access to the game in the field -- may contribute substantially to the overharvest and waste of game. This conclusion is also concurred in by Departments of Fish and Game and Public Safety.

By requiring resident and nonresident transporters to have to meet FAA Part 135 requirements, the Task Force hopes to reduce the potential for unregulated overharvest of those big game species that are of great importance to subsistence and resident users as meat animals (i.e., moose and caribou).

This bill also eliminates the distinction between guides and outfitters, and creates a "guide-outfitter" class. Outfitters in the past have been unregulated; this bill now requires that these individuals meet the licensing criteria established for all persons given direct, one-on-one responsibility for the conduct of a big game hunt. By melding guides and outfitters into one license category, the Task Force -- through this bill -- hopes to establish a pool of well-qualified, licensed persons to provide guided or outfitted big game hunts. In addition, these licensing requirements will indirectly serve to regulate the numbers available to conduct guided or outfitted hunts.

(In fairness to the previously unregulated outfitters, the bill does provide some transition -- or grandfather -- provisions, in order that those who have outfitted for the past three years and met the require-

ments of last year's SB 191 might continue to outfit while preparing to take the guide-outfitter exam for which this bill makes them eligible to sit.)

The Task Force also recognized that the commercial harvest of Alaska's big game resource plays a major role in Alaska's economic well-being. The Administration is anxious that this point not be overlooked by the Legislature.

Hunts by nonresidents (whether U.S. citizens or foreigners) for Alaska's big game trophy animals are a significant part of our "tourist" industry. In addition, nonresident tag fees provide 75% or more of the fish and game funds currently supporting the resource management budget within the Division of Wildlife Conservation. Although, unfortunately, no one can currently say with any real authority just exactly how many millions of dollars are spent each year in Alaska as a result of the harvest of Alaska's wildlife resource (including how much is spent on incidentals and gift items while visiting here), no one has contested the \$100 million figure so often used by industry proponents.

It is important to note that, as with our fisheries, the "product" of this industry -- the game -- costs the commercial big game industry absolutely nothing to create: it is growing in the wild, free and available. The fact that such significant sums of money are generated from a public resource mandates that the state:

1. identify and regulate those who financially benefit from the commercial activities associated with big game hunting;
2. receive back from all private sector commercial users a portion of that revenue to assist in game management and enforcement of game laws and regulations; and
3. continue to manage the game resource in order to insure that not only subsistence and resident user needs are met, but that a sufficient yield is maintained to also provide for nonresident hunters and a viable big game commercial services industry.

SB 140 provides us with the tools to accomplish these three important goals.

The bill requires all persons covered by the act to pay a "commercial use permit fee" which will be separately accounted for in the general fund. The bill provides that the Legislature may make appropriations based on the annual estimated balance of that special fund to the Departments of Fish and Game and Public Safety for game management and enforcement. The bill also establishes a "big game conservation fee," which, under certain criteria, is due to the state for each animal taken by a big game hunter. Again, these fees are to be separately accounted for and utilized by Fish and Game and Public Safety.

These fees "reimburse," as it were, the citizens of Alaska for the annual commercial harvest of their game resource, and provide the state with

funds to continue to properly manage the game and adequately enforce game laws and regulations.

We are aware that many previously unregulated persons may well resist the sweeping changes proposed in the bill and resent its tough accountability provisions. We strongly believe, however, that the advantages to Alaskans generally that accrue from this bill outweigh the concerns of those commercial users who must now stand, be counted, assume some responsibility for the resource, and pay.

Finally, there is the issue of proposed amendments. The Administration has a few substantive changes to propose. We also have a number of mostly self-explanatory technical amendments, the majority of which were requested by the Department of Public Safety to clarify the discipline and penalty provisions of the bill. Each of these proposals is separately discussed below.

#### B. Rationale for Proposed Amendments

Attached to this position paper are our proposed amendments. They are numbered 1 through 14 and will be discussed in that order.

##### Amendment No. 1: Board Composition

Proposed AS 08.54.300(b)(1), (2), and (3) would include among the members of the proposed board three representatives of the Administration: the commissioners of fish and game, natural resources, and public safety (or their designees). We believe this is not a good idea.

The proposed board is a regulatory one. Its powers and duties would include the power to discipline those regulated by the proposed board. If a state agency filed a complaint with the proposed board, which might result in the proposed board taking disciplinary action, an obvious due process problem would result: with the agency bringing the complaint also being represented on the proposed board itself, the agency would be serving as both accuser and adjudicator.

A second problem: since the three named state departments are clearly within the executive branch and, therefore, represent the Administration, we believe agency representation on the proposed board might limit the Administration's flexibility in responding to the proposed board's actions and recommendations. A related problem is that, since the Administration always tries to speak with one voice, albeit not always successfully, having three separate agency representatives on the proposed board either would be redundant or, worse, would open the door to having internal disagreement within the Administration aired in a public forum.

None of these situations seem advisable to us. The board's disciplinary/enforcement role could be compromised and, if the agency representatives attempt to speak with but one voice, the board, which needs the benefit of free discussion, would be considerably hampered by the lack of independent viewpoints and perspectives.

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

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

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

#### Amendment No. 2: Board Duties

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

#### Amendment No. 3: Management System

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

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

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

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

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

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

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

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

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

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

Amendment No. 4: Board Assistance

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

Amendment No. 5: Commercial Use Permit Holders

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

Amendment No. 6: Discipline of Guide-Outfitters

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

Amendment No. 7: Discipline of Guide-Outfitters

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

Amendment No. 8: Discipline of Guide-Outfitters

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

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

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

Amendment No. 10: Unlawful Acts

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

Amendment No. 11: Unlawful Acts

This amendment clarifies which of the listed offenses is solely subject to misdemeanor penalties and deletes any specific reference to a required jail term.

This amendment, and the following two (numbers 12 and 13), follow suggestions provided to the Task Force by the Department of Law's Criminal Division, which deals regularly with these provisions in handling unlawful guiding activities.

Amendment No. 12: Unlawful Acts

This amendment clarifies which of the listed offenses is subject, on first offense, to misdemeanor penalties, and which, on a second or subsequent offense, is deemed serious enough to warrant escalation to felony penalties. The amendment also deletes the words "two months" in favor of "sixty consecutive days," which more tightly defines the sentencing conditions.

Amendment No. 13: Unlawful Acts

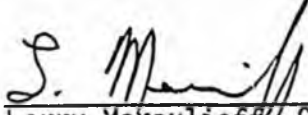
This amendment does not change the intent of this section in the bill, but adds language which specifically references the statutes which apply to the suspension or reduction of penalties during sentencing; the bill intends to limit the court's sentencing discretion in cases involving unlawful acts by big game commercial services providers.

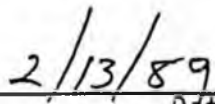
Amendment No. 14: Definitions of "Guide-Outfit"

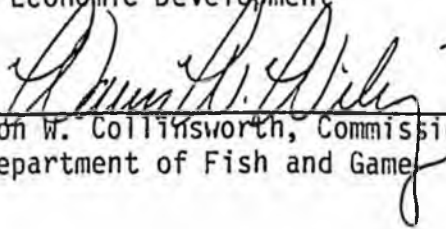
This amendment substantially rewrites the definition of "guide outfit" in the bill. The changes add language that exists in the definition of "guide" or "guiding" in the present statutes. We believe much important language was unintentionally left out during the drafting of the definition for guide-outfitting and, primarily for enforcement purposes, we are recommending that this definition be expanded to include portions of the language that presently exists in statute.

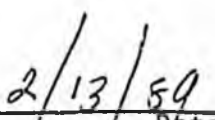
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In the final analysis, the Administration is very supportive of SB 140 and urges its passage. We would appreciate consideration of our proposed amendments as well.

  
\_\_\_\_\_  
Larry Mercurieff, Commissioner  
Department of Commerce &  
Economic Development

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Don W. Collinsworth, Commissioner  
Department of Fish and Game

  
\_\_\_\_\_  
Date

*R. J. ... for*  
Lennie Boston-Gorsuch, Commissioner  
Department of Natural Resources

*F. B. 13 89*  
Date

*Wayne A. H. ...*  
for Arthur English, Commissioner  
Department of Public Safety

*2-13-89*  
Date

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PROPOSED AMENDMENTS TO SB 140

Page/Lines

Amendments

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Page 1, Lines 26  
through 29; Page 2,  
Lines 1 through 10

1. Repeal and reenact AS 08.54.300(b) to read:

(b) The board consists of nine members:

(1) two members who are either a licensed guide-outfitter or class-A guide-outfitter;

(2) one member who is a licensed transporter;

(3) one member who is a commercial use permit holder, as defined in AS 08.54.460;

(4) one member of the Board of Game who is chosen by the Board of Game, but who cannot hold a commercial use permit while serving on the board;

(5) one member who represents Native land holders; and

(6) three public members.

Page 3, Lines 4  
through 10

2. Amend AS 08.54.310(a)(4) to read:

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

Page 3, Lines 26  
through 29

3. Amend AS 08.54.310(b)(2) to read:

(2) consult [ESTABLISH, IN CONSULTATION] with the Departments of Fish and Game and [OR DEPARTMENT OF] Natural Resources [,] with respect to a resource-based management system for allocating access to big game hunting opportunities among guide-outfitters licensed under this chapter;

Page 4, Line 7

4. Amend Article 4 ("Big Game Commercial Services Board") by adding a new section to read:

AS 08.54.330. BOARD ASSISTANCE. The departments of fish and game, natural resources, and public safety shall provide the board with any information, data, or technical assistance requested by the board for the pur-

poses of licensing and regulating the activities of the providers of commercial services subject to this chapter.

Page 12, Lines 1 through 10

5. Amend AS 08.54.460 to read:

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

Page 12, Line 29;  
Page 13, Lines 1 through 6

6. Amend AS 08.54.500(a) to read:

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

Page 13, Lines 15 through 24

7. Amend AS 08.54.500(b) to read:

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

(1) engaged in unethical activity, unsafe activity, or activity that adversely affects the natural resources of the state when the activity is related to the purposes of providing guide-outfitting services; [OR]

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

(3) used state, federal, or private land without authorization, when such authorization is required by state or federal law, regulation, or other authority.

Page 14, Lines 3 through 9

8. Amend AS 08.54.500(c)(3) to read:

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

- (A) waste of a wild food animal;
- (B) hunting on the same day airborne;
- (C) hunting during a closed hunting season; or
- (D) hunting in an area closed by state or federal regulation.

Page 15, Lines 18 through 24

9. Amend AS 08.54.505(c)(2) to read:

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

- (A) waste of a wild food animal;
- (B) hunting on the same day airborne;
- (C) hunting during a closed hunting season; or
- (D) hunting in an area closed by state or federal regulation.

Page 18, Lines 13 through 15

10. Amend AS 08.54.520(a) to add a new subparagraph to read:

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

(12) person who is licensed or holds a commercial use permit under this chapter to use state, federal, or private land without authorization, when such authorization is required by federal or state law, regulation, or other authority.

Page 18, Lines 16 through 19

11. Amend AS 08.54.520(b) to read:

(b) A person who commits an offense set out in (a)(1), (4) and (5) [(a)(1) - (5)] of this section is guilty of a misdemeanor and is punishable by a fine of not more than \$30,000 or by imprisonment for not [LESS THAN TWO MONTHS OR] more than one year, or both.

Page 18, Lines 20 through 27

12. Amend AS 08.54.520(c) to read:

(c) A person who commits an offense set out in (a)(2) and (3) and (6) - (12) [(a)(7) - (10)] of this section is guilty,

(1) for a first offense, of a misdemeanor and is punishable by a fine of not more than \$30,000 or by imprisonment for not less than sixty consecutive days [TWO MONTHS] or more than one year, or both;

(2) for a second or subsequent offense, of a felony and is punishable by a fine of not more than \$50,000 or by imprisonment for not less than one year or more than three years, or both.

Page 19, Lines 12  
through 14

13. Amend AS 08.54.520(f) to read:

(f) Upon conviction of a person for committing an offense set out in (a) of this section, [THE COURT MAY NOT SUSPEND IMPOSITION OF SENTENCE] the imposition or execution of the minimum sentence prescribed in this section may not be suspended or reduced in accordance with AS 12.55.080 or 12 55.085.

Page 20, Lines 25  
through 27

14. Amend AS 08.54.590(4) to read:

(4) "guide-outfit" means to provide, for compensation, or with the intent or with an agreement to receive compensation, big game commercial hunting services in the field, [FOR COMPENSATION, IN THE FIELD BUT DOES NOT INCLUDE TRANSPORTATION SERVICES,] including accompanying or being present with a big game hunter in the field either personally or through an assistant; "guide-outfit" does not include providing transportation services to, from, or in the field if the persons providing transportation services and the persons being transported do not stalk, pursue, track, kill, or attempt to kill big game during the provision of those services;

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# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

P. O. BOX D  
JUNEAU, ALASKA 99811-0800  
PHONE: (907) 465-2500

OFFICE OF THE COMMISSIONER

January 20, 1988

RECEIVED  
JAN 26 1988

LEGISLATIVE  
AUDIT

Mr. Randy Welker  
Acting Legislative Auditor  
Division of Legislative Audit  
Budget and Audit Committee  
P.O. Box W  
Juneau, AK 99811

Dear Mr. Welker:

This letter is written in response to the Budget and Audit Committee's (hereinafter "Committee") report of its sunset performance review of the Guide Board (hereinafter "Board"). Below is the Department of Commerce and Economic Development's (hereinafter "Department") comments on the Committee's findings and recommendations.

### Recommendation No. 1

The Committee has found that "over the past two years, the Guide Board has adopted a policy of eliminating previously approved joint-use areas and encouraging the assignment of only exclusive guide areas." As a result, the Committee recommends that the Guide Board "discontinue its policy of eliminating joint-use guiding areas." After careful consideration, the Department finds that the Committee's recommendation is overbroad. The issues raised by this recommendation are very complicated, and solutions are not readily apparent. In the final analysis, it is our opinion that the very painful and muddled processes that are evident at the meetings of the Guide Board are an accurate reflection of the difficulty in finding any wholly acceptable public solutions to the issues surrounding the assignment of joint-use or restricted guide areas.

For instance, while the Guide Board is created for "the purposes of licensing and regulating the activities of guides in the interest of the state's wildlife resources" (see AS 08.54.010; emphasis added), and while the audit report states that the Committee found the Board adopted this policy without consulting the Division of Game, it is also well known that the Division of Game, for whatever reason(s), is most reluctant to become involved in providing the Guide Board with necessary data. Currently, the Division of Game is under no specific requirement to provide the Board with accurate or pertinent data regarding game populations.

The established guiding system creates specific guide areas across the state. A resident hunter, however, may hunt in any area of the state, irrespective of what guide or guides may also have been assigned that area. In addition, "outfitters," unlike Alaska's guides, are not limited to taking clients to particular regions of the state. An outfitter can transport clients anywhere, allow those individuals to hunt in an area until the number, size, or quality of the game coming out seems to be depleted, then move on to other areas which, perhaps, have not been over-hunted. It is important to realize that a guide can conduct hunts only in his or her assigned area(s), and is at the mercy, if you will, of resident hunters and outfitters.

The Department believes that a variety of special and public interests are presently fighting over a limited public resource that generates lucrative business through the provision of wilderness hunting (with outfitters) or guiding experiences. The pressures on the Guide Board have never been higher than right now. In its defense, the Guide Board has never received adequate support from the executive branch, having been avoided by Fish and Game, abandoned by Public Safety, seriously neglected by Commerce and Economic Development, and alternately ignored or criticized by the Department of Law. On the other hand, it is probably equally true that, until very recently, the Guide Board (and the guiding industry) would not have wanted and would have probably attempted to reject any proffered consistent, active administrative oversight of its activities.

The continued implementation of restricted or "exclusive" guide areas has brought the rather fragile guiding industry to a crisis point, with its flaws now being highlighted and focused on by its frustrated critics. But the fact remains, having created the Guide Board and statutorily agreed to regulate the guiding industry, the results of that decision are complex and the recent legislation recognizing the Board's creation of restricted areas only further complicates the matter. The legislation requires the promulgation in regulation of a "point system to be used by the board when it establishes and assigns a restricted guide area" [see AS 08.54.195(a)]. The legislation also establishes criteria that the Board must consider before it may assign a restricted area. These conditions, however, only further indicate that the Legislature recognizes that both resource and economic factors [see AS 08.54.195(b)(2), (3), (4), (5) and (e)] play an important part in determining the viability of the guiding industry.

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

# STATE OF ALASKA

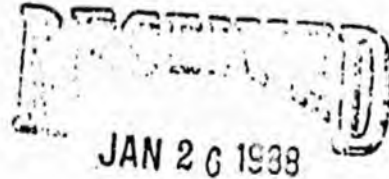
STEVE COWPER, GOVERNOR

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

P. O. BOX D  
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OFFICE OF THE COMMISSIONER

January 20, 1988



Mr. Randy Welker  
Acting Legislative Auditor  
Division of Legislative Audit  
Budget and Audit Committee  
P.O. Box W  
Juneau, AK 99811

LEGISLATIVE  
AUDIT

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For instance, while the Guide Board is created for "the purposes of licensing and regulating the activities of guides in the interest of the state's wildlife resources" (see AS 08.54.010; emphasis added), and while the audit report states that the Committee found the Board adopted this policy without consulting the Division of Game, it is also well known that the Division of Game, for whatever reason(s), is most reluctant to become involved in providing the Guide Board with necessary data. Currently, the Division of Game is under no specific requirement to provide the Board with accurate or pertinent data regarding game populations.

The issue, however, is not simply game "populations," but also the size and quality of the game within each area. While Alaskans most frequently are hunting for subsistence or personal use, with "trophy-sized" game not a prerequisite to a successful hunt, being able to offer large trophy animals is relatively more important to guides whose clients are paying thousands of dollars to come to Alaska from Europe, Asia, and the "Lower 48" for the big game hunt.

Before the Department can reasonably assess the validity of the recommendation that the Guide Board discontinue its policy of eliminating joint-use guiding areas, the Department believes the Legislature must consider the nature of the agency it has created and the concept of requiring nonresidents and nonresident aliens who wish to "hunt, pursue or take" big game to be accompanied by a licensed guide (see AS 16.05.407 and AS 16.05.408).

As recently as 1986, the Legislature saw fit to formalize Alaska's guiding system by specifically providing for the establishment and assignment of "restricted" (or exclusive) guide areas (see Chapter 71, SLA 1986). It seems somewhat contrary to legislative intent to have the Legislature specifically provide for the establishment of restricted guide areas in one year and the Guide Board to be criticized in practically the next year for establishing such areas.

This is not to say that the Department does not appreciate the concerns which have given rise to the Committee's recommendation. Indeed, the Department is particularly sensitive to allegations that the Guide Board is, as suggested, "more interested in the protection and development of the proprietary interests of established guides rather than promoting equitable access to the profession for all qualified individuals." However, the recommendation also seems somehow "too easy." It has not taken into account the ultimate issue: despite Alaska's size, there is not -- and will never be -- sufficient hunting areas or big game animals in those areas to give every registered guide joint-use -- let alone exclusive use -- of an area.

Alaska must realize that big game is a limited resource. A report that states there has been a stable game population statewide for the past five years does not describe -- by guide area -- the impact over the past years in the number, size, and quality of the big game animals found in that area.

The established guiding system creates specific guide areas across the state. A resident hunter, however, may hunt in any area of the state, irrespective of what guide or guides may also have been assigned that area. In addition, "outfitters," unlike Alaska's guides, are not limited to taking clients to particular regions of the state. An outfitter can transport clients anywhere, allow those individuals to hunt in an area until the number, size, or quality of the game coming out seems to be depleted, then move on to other areas which, perhaps, have not been over-hunted. It is important to realize that a guide can conduct hunts only in his or her assigned area(s), and is at the mercy, if you will, of resident hunters and outfitters.

The Department believes that a variety of special and public interests are presently fighting over a limited public resource that generates lucrative business through the provision of wilderness hunting (with outfitters) or guiding experiences. The pressures on the Guide Board have never been higher than right now. In its defense, the Guide Board has never received adequate support from the executive branch, having been avoided by Fish and Game, abandoned by Public Safety, seriously neglected by Commerce and Economic Development, and alternately ignored or criticized by the Department of Law. On the other hand, it is probably equally true that, until very recently, the Guide Board (and the guiding industry) would not have wanted and would have probably attempted to reject any proffered consistent, active administrative oversight of its activities.

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Therefore, while the Committee's report finds that the Guide Board's actions to encourage the assignment of restricted areas serve to "unduly restrict entry into the guiding profession," the Guide Board can point to AS 08.54.195 as requiring the Board to weigh economic factors in deciding on the "quota of licensed operating guides who may operate within designated geographical game units" [AS 08.54.040(a)(2)]. This language would seem to recognize that the Guide Board may well have to limit the number of guides with assigned areas. We read this to mean, so long as the Board is guided by regulations creating a point system that will provide applicants with protection from subjective or arbitrary Board decisions, that the Guide Board may well limit the number of registered guides holding areas through the assignment of restricted guide areas.

The Department believes the Committee is right to find serious fault with the Guide Board for the Board's failure to develop regulations establishing area quotas and the point system, but we suggest the Committee should hesitate to fault the Board for attempting to solve what the guiding industry sees as an increasingly difficult situation (i.e., the increasing pressure on the big game resource) when the Legislature recently formalized the Board's authority to meet this problem through restricting area assignments.

As you note, the constitutionality of the guide area concept is currently before the court. In the meantime, so long as the Legislature believes the well-being of a guide's economic interest in an area is an important factor in setting quotas for a particular guide area, then the Department is hard put to unqualifiedly support the Committee's broad recommendation that the Guide Board simply "discontinue" the elimination of joint-use guiding areas.

The Department believes, before it can support such a recommendation, that more research needs to be done and regulations need to be put into place establishing proper assessment criteria for guide area assignments, whether joint-use or restricted. There may well be justification for some restricted areas, and there may well be justification for either opening up some presently restricted areas or adding additional users to current joint-use areas. The Department presently has no way of objectively or independently evaluating either the petitions brought before the Board or the validity of the current area assignments.

Until the Division of Occupational Licensing can provide the level of administrative support truly necessary to assist the Guide Board in reaching more objective evaluations, the experience and testimony of Board members and guides who appear before the Board should continue to

be relied upon. It is, after all, the job the statute gives the Board to do. The fact that the executive branch has, up until now, failed to provide the necessary support to the Board to professionalize its activities and decision-making process is no reason to suddenly tie its hands.

Prior Audit Recommendation No. 1

As stated above, the Department concurs in the Committee's recommendation that the Board place in regulation its criteria for establishing guide area quotas. Such regulations are currently being developed. It is expected that this project will be both time-consuming and very controversial. We hope the Board will complete this project by the end of 1988. We believe the Board appreciates the serious need for these guidelines and will work hard to put a quota and point system in place by year's end. The staff of the Division of Occupational Licensing will work closely with the Board in developing these regulations.

Prior Audit Recommendation No. 2

The Department concurs with the recommendation that the Board "improve" its methods of obtaining game management information from independent sources, including the Alaska Department of Fish and Game. However, as you are aware, the Division of Game is most reluctant to become actively involved in this area of game regulation. If the Board is to "improve," then we believe that there must be more than the anticipation of cooperation by executive branch agencies on the part of the Legislature. One possible solution would be statutory language mandating the provision of game management data from Fish and Game to the Guide Board. The data should be made available in ways that are useful to the Board and in a time frame that will meet the Guide Board's needs. The presence of game biologist expertise at Board meetings would also be more than helpful; it would assist in professionalizing Board decisions.

Prior Audit Recommendation No. 3

The Department concurs with the recommendation that the Board prohibit the transfer of an area from one guide to another. The Department fully supports your belief that all qualified guides should receive an equal chance at receiving an area assignment, as long as some mechanism is created that guarantees the guide relinquishing an area adequate compensation for the lawful property improvements he or she made while holding the area.

The current system is no doubt in place because the guide relinquishing an area certainly does not intend to simply walk away from what is, in many cases, tens of thousands of dollars in improvements in the area, leaving it for the next lucky guide who comes along. The statute says that 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" [AS 08.54.195(e)]. If the Board could create a system wherein all applicants for a relinquished area were required to post proof of an ability to compensate the former guide for any improvements at fair market value, then all applicants could be considered equally and the area awarded according to the established criteria.

One matter that deserves further discussion, however, concerns the transfer of a guide area to a guide's heir. The guiding industry very much supports transfer to an heir. Whether the Legislature would condone such a practice should be made clear in statute. Otherwise, the Department would most likely continue to believe that all transfers should be prohibited.

#### Prior Audit Recommendation No. 4

We are pleased by the Committee's finding in this recommendation that the Board has done much to improve the oral examination of the Guide Board. The Department will continue to work with the Guide Board to improve the quality and objectivity of the guide exam.

#### Prior Audit Recommendation No. 5

The Department concurs with the recommendation that the Board pursue an amendment to AS 18.54, eliminating the need to receive three separate complaints before the Board can pursue an investigation against a guide for unethical or incompetent practices. We would support such action by the Legislature in the bill which reestablishes the Guide Board.

The recommendation that the Board pursue the posting of a performance bond by guides is more difficult to evaluate. On its face, the Department understands the Committee's reasons for seeking such bonding, and concurs with the suggestion that such a practice might well provide a more efficient, less expensive claim settlement process. However, the Division of Occupational Licensing's experience with contractor bonding has also led us to recognize that the impact of a bonding requirement on the guiding industry might be very severe.

As you are no doubt aware, the current economic situation in Alaska has made it extremely difficult to get bonding. It is possible, but current bonding companies often require the provision of unencumbered assets totalling in excess of \$100,000 for a \$10,000 bond. The current poor bonding market in Alaska has effectively eliminated some persons from the contractor industry because they cannot meet the requirements imposed by the bonding companies. This would, no doubt, have the same affect in the guiding industry.

This might also mean that guides who are holding little used areas might relinquish the areas rather than meet the bonding requirement, which would be all to the good, as it would free up areas for guides without areas who are seriously interested in guiding. At the same time, the bonding requirement might discourage or keep out some younger, less well-established guides who do not have adequate assets or resources, the very same guides for whom the Committee is interested in providing better access to the system. (This problem is partially countered in the construction area by allowing a contractor to make a cash deposit in the amount of the bond, but often a cash deposit is difficult for the smaller contractor to make.)

The Department appreciates this recommendation by the Committee and believes it certainly deserves consideration, but its potential impact on guides should probably be more thoroughly evaluated prior to any formal action by either the Board (through regulations) or the Legislature (through legislation) to require bonding of guides.

#### Final Comments

The Department is committed to improving the workings of the Guide Board. We have identified the following as areas where we believe immediate improvements are necessary:

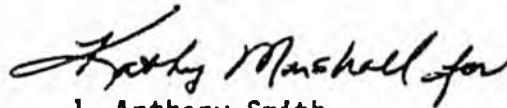
1. the general administrative support provided by the Division of Occupational Licensing;
2. better technical data from the Division of Game;
3. the Board's maps of the guide areas and assignments; and
4. guide area application or guide area transfer procedures.

January 20, 1988

In conjunction with the guiding industry, the Department will be approaching the Legislature for funding to provide more adequate staffing to the Board and for some form of computerized mapping of the guide areas. In the meantime, we are in the process of temporarily transferring the Guide Board's licensing examiner to Juneau so that that position will have the benefit of additional staff assistance and supervisory support while the Department attempts to more adequately support the difficult work of the Guide Board.

This audit has been another mechanism utilized by us to assist the Department in proper administration of the guide statutes and in helping the Guide Board to review its role. We have appreciated its independent evaluation of the Guide Board's performance.

Sincerely,



J. Anthony Smith  
Commissioner

JAS/mst.7074m  
011988b

cc: All Members of the Guide Board

**DEPARTMENT OF COMMERCE &  
ECONOMIC DEVELOPMENT**

*DIVISION OF OCCUPATIONAL LICENSING*

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RECEIVED  
FEB - 5 1988

February 2, 1988

Mr. Gerald L. Wilkerson  
Legislative Auditor  
Legislative Audit Division  
Pouch W  
Juneau, Alaska 99811

LEGISLATIVE  
AUDIT

ATTN: Jim Griffin

Recommendation #1

The Guide Board did not adopt a blanket policy of eliminating all joint use guide area permits.

The guide Board did adopt a policy to eliminate joint use guide area permits as much as possible and in situations that involve small overlaps of boundaries. The board will grant transfers to an heir of a guide or to another guide who inherits a guide's permit. In just about all cases when this occurs, the guide inheriting the permit has worked for the guide holding the area for a number of years. This criteria is applied to a retiring guide. In these cases as well as regular transfers small overlaps are eliminated as much as possible. This is the area that brings the criticisms of the board not acting in a consistent manner on reassigning guide area permits. In most cases each transfer is different.

The board has on numerous cases asked the Department of Fish & Game for biological information with limited success. We do ask the applicant for a transfer or a new assignment to get this information if they can. This also isn't always possible because the board doesn't know what areas are to be involved in a given meeting. As Chairman I have asked our Director, Randall Burns, to see what could be done to relieve this situation.

While game management is not the primary responsibility of the guide board, it is in the criteria of issuing guide area permits. 12AAC 38.210 (b) (2) addresses that, not only in the area involved but also adjoining areas.

Regarding the effect of the policy being a limited entry. The situation probably would be better if it was on a limited entry scale such as commercial Fisheries. Both industries involves renewal resources that belong to everyone. Limited entry for the guiding industry would make the guide board's job much easier.

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Page 2.

Mr. Gerald L. Wilkerson;

We have in the neighborhood of 400 registered and Master Guides and we are licensing around 10 to 15 twice per year. There is just not the clientele or suitable areas available for that number of guides. Federal withdrawals sure haven't helped the situation. Even though we have that demand on areas there are still some open and can be used by any registered guide. Granted, these aren't the best areas for guiding operations but they are a start. I do admit that there are some guides who hold very large areas. I believe these should be looked at closely and should they not be utilized to their potential, divided to make room for some of the younger guides to get into the guiding business. This was a stated policy of the previous board after they had covered the state with assignments. This never happened with the previous board. The work load that this was never attempted. I have wanted to do this ever since I have been a member of the board. Budget and time has precluded that happening. I believe if a value was put on a guiding area permit, we would see guides applying for what they actually need for a realistic use of the area. I realize this will have to be accomplished through the legislature.

Recommendation #2

As mentioned above, I have asked our Director to address this issue.

Recommendation #3

I still do not agree that an area holder should surrender his guide area to the board when he wishes to transfer whether he be retiring getting out because of health or what ever reason. There is no other business that a man can't sell or give it to whoever he wants to. While our statues and regulations do not allow selling an area permit they do allow for a guide to sell his improvements that supported his guide area permit. The assigned area permit has done more to elevate the quality of the guiding industry in Alaska than anything that's taken place in the past. The responsibility it gives to the permit holder for the game resource, prompts a guide to upgrade their business and increase his investments in the area he has. As investments in both time and monetary increases so does the guides financial responsibility increase. After years working to build a high quality business it's only right that upon retirement, the permit holder be able to choose his successor. This, in just about all cases is the most qualified person for the transfer no matter what selection criteria is used. There have been abuses of this in the past as there were transfers that seemed to be nothing

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Page 3

Mr. Gerald L. Wilkerson:

more than real estate sales. The Guide Board is aware of this situation and is taking a firm stance against these kind of dealings.

If your recommendation is adopted, assigning areas regardless of their ability to buy the rights of the previous holder, Since it is illegal to buy the rights of the holder, I assume that this would take in the previous holder's improvements. Should this be implemented, it could mean a man working to improve the area both resource and manatory wise could lose evrything he worked for.

I do agree that in some cases people that weren't as well qualified as others have gotten area permits through transfers. I would like to see a regulation put in that the transferee be required to work with the permit holder a certain number of years to qualify for the transfer. I think this should be for at least two years, would prefer longer.

Recommendation #4

The current oral examination is as fair as an oral examination can be. The oral portion of the examination is the most important of the two parts.

Recommendation #5

The guide board did address this issue during the last guide bill (294) passage to no avail. We also tried to get an outfitter section included. Both were deleted by the legislature. We are faced with getting another bill through the legislature this session. So far none has been introduced to my knowledge. We plan to push for each individual complaint to come before the board for a hearing. I beleive this will alleviate the need for bonding guides.

We also need to pursue Senate bill 191 regarding outfitters & unlicensed guiding. This unregulated activity is causing a lot of the complaints against the guiding industry as well as a detriment to the game resources of the state. The resource being the more important. This is one reason the guide board has to limit the guides operating in some areas of the state. The well populated area around King Salmon with moose and caribou is one as well as some areas on the north slope.

One other thought. I don't beleive a time limit should be put on the life of the guide board. Changes takes time and some regulations as long as two years.

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# STATE OF ALASKA

AUDIT DIVISION  
P.O. BOX W  
JUNEAU, ALASKA 99811-3300

## THE LEGISLATURE BUDGET AND AUDIT COMMITTEE

January 29, 1988

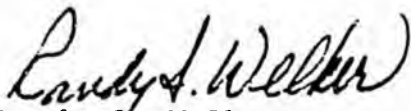
Members of the Legislative Budget  
and Audit Committee:

We have reviewed the Department of Commerce and Economic Development, Division of Occupational Licensing's response to our preliminary report. Our comments regarding the response follows:

### Prior Audit Recommendation No. 5

As pointed out in the Division of Occupational Licensing (DOL's) response, it currently does appear that our prior audit recommendation regarding the bonding of guides is problematical. DOL indicates in their response that imposition of a bonding requirement may have a very severe impact on individuals both in the guiding industry and those trying to enter the profession. One of our primary concerns when evaluating the performance of any professional licensing board is the degree to which the board provides equitable and fair entry into the regulated profession.

Certainly, given DOL's experience in this area with other professions and their assessment of the current market situation for obtaining bonding, their comments regarding the advisability of requiring bonds are well-founded. If current market conditions are so severe that obtaining performance bonding would have an adverse impact on individuals trying to enter or stay in the guiding profession, thus serve to limit competition in the industry, then we concur with DOL's assessment.

  
Randy S. Welker, CPA  
Acting Legislative Auditor  
Division of Legislative Audit

ALASKA'S BIG GAME

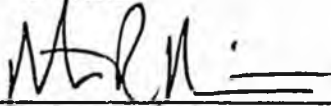
A Report on the Commercial Aspects of  
its Uses and Users

A Final Report to  
the 16th Legislature

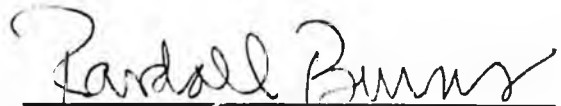
Legislative Task Force on  
Guiding and Game  
January 1989

INTERIM TASK FORCE ON  
GUIDING AND GAME

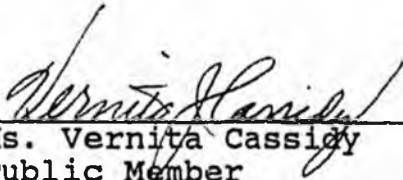
TASK FORCE MEMBERS



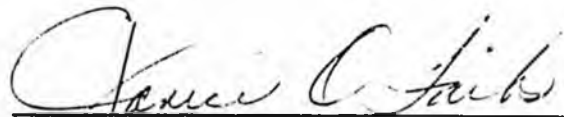
Mr. Pete Buist  
Alaska Guide Board



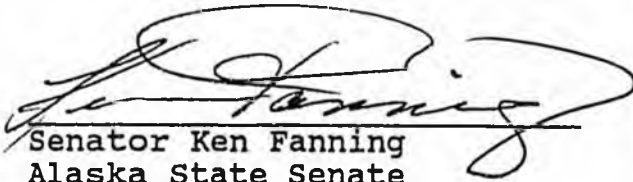
Mr. Randall Burns  
Alaska Dept. of Commerce &  
Economic Development



Ms. Vernita Cassidy  
Public Member



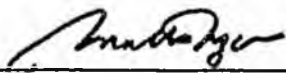
Senator Jan Faiks  
Alaska State Senate



Senator Ken Fanning  
Alaska State Senate



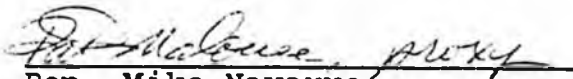
Mr. Phil Gilson  
Alaska Department of  
Public Safety



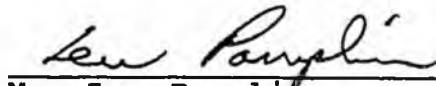
Mr. Matthew Iya  
Public Member



Mr. Paul Johnson  
Guide Member



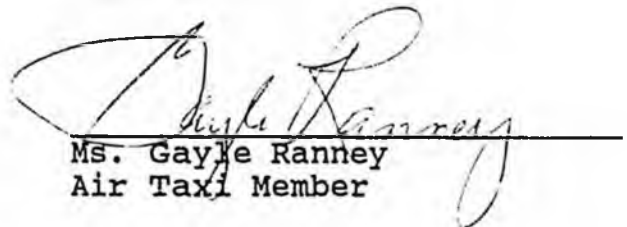
Rep. Mike Navarre  
Alaska State House of  
Representatives



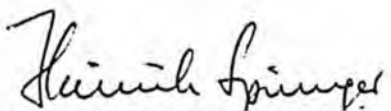
Mr. Lew Pamplin  
Alaska Department of  
Fish & Game



Mr. Nick Pierskalla  
Non-Guide Member



Ms. Gayle Ranney  
Air Taxi Member



Rep. Heinrich Springer  
Alaska State House of  
Representatives

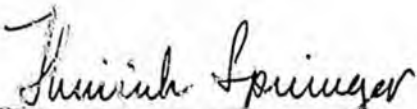
## PREFACE

The Task Force has addressed the points mandated by Legislative Letter of Intent dated May 9, 1988.

The State Supreme Court decision in the Owsichek case dated October 21, 1988, has forced the issue of commercial use of game into a broader perspective. Originally the main emphasis was to clarify the relationship and role of "outfitters". After the court's decision it became clear that all aspects needed to be reexamined, especially the role of "guides", "outfitters", and "transporters". As a result the Task Force recommends some sweeping changes. We tried hard to establish a system that accommodates the constitutional "common use" clause, puts game management and the welfare of game on sound footing, provides a viable economic base for the industry, is cost effective and enforceable, and is simple enough for effective administration.

Big game is one of Alaska's outstanding values, both from a consumptive and non-consumptive use perspective. These recommendations should assist the legislature to formulate laws that fulfill the stated objectives.

We include with our report draft legislation which we feel should be enacted immediately, as well as recommendations for formulating an area-based management concept. We recommend that the Task Force be extended to assist the legislature in defining such a system and creating enabling legislation.

  
\_\_\_\_\_  
Heinrich Springer, Chairman

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## TASK FORCE ACTIVITY SUMMARY

The 13 member Task Force on Guiding and Game was created by the legislature through SB 191. Subjects to be covered were contained in a "Letter of Intent" for HCS CS SB 191 (Rules) dated May 9, 1988.

The Task Force conducted the following meetings and work sessions:

July 18, 1988, at Anchorage, Legislative Information Office (LIO), 3111 "C" Street.

October 24-25, 1988, at Fairbanks, LIO, 119 N. Cushman Street.

November 15-16 at Soldotna, Kenai Borough Assembly Chambers.

December 12-15 at Anchorage, LIO, 3111 "C" Street.

Work sessions by teleconference:

January 4, 9, 10, 11, and 13, 1989.

A subcommittee on rural issues held two public meetings at Kotzebue on October 4, 1988, and at King Salmon on October 5, 1988. A subcommittee on data management held two work sessions at Anchorage.

The meetings were preceded by extensive advertisement on radio and in newspapers throughout the state and in all cases allowed access through the communications network of the Legislative Information Office plus toll free numbers for persons in remote locations. In addition, RURAL CAP did an extensive survey collecting opinions from rural residents; and Senator Fanning provided survey data submitted by guides and air taxi operators. All public hearings were well attended.

The Task Force appreciates the cooperation and testimony from many individuals and organizations. Many have given freely of their time and expertise. We want to thank particularly the Alaska State Board of Game; the Alaska State Guide Board; the Alaska Professional Hunter's Association; the Alaska Outfitter's Association; Ray DeMarchi, Canada, British Columbia Ministry of the Environment, Wildlife Branch; and Steve White, Alaska State Department of Law.

The 15th Legislature addressed the problems in the field caused by unregulated "outfitters" through SB 191 and the initial work of the Task Force went in that direction.

On October 21, 1988, a couple of days prior to our Fairbanks meeting, the Supreme Court issued its decision on the Owsichek case. The timing was excellent from the Task Force's work standpoint. And basically the emphasis shifted from "outfitting" to commercial use in general. This is reflected in the recommendations. Some sweeping changes are envisioned and submitted as recommendations for consideration. Although the court decision disallows several logical approaches to game management, we believe it still allows creation of systems that reach the stated objectives.

The Task Force represented a broad cross-section of state agencies and user group viewpoints with varying and often conflicting opinions. The extensive public hearings, research, and in-depth discussions provided not only the forum, but also the background to make careful, enlightened, and fair recommendations for immediate and long-term action which will ensure proper wildlife conservation as well as a stable environment for offering commercial services for big game hunting. A fragile, but important balance has been struck. Our recommendations represent a compromise in which each specific recommendation is important to the effectiveness of the overall policy changes.

The main points of our findings and recommendations are:

- a. Support for "commercial use" of game. Throughout this report the term "commercial use" refers to the providing of hunting services for compensation.
- b. Necessity to regulate all commercial users.
- c. Recognition of three main user groups: Guide-Outfitters, Transporters, and Commercial Permit Holders and establishment of licensure requirements for Guide-Outfitters.
- d. Replace the present Guide Board with a Big Game (Commercial Services Board.
- e. Create a state established and controlled area management plan.
- f. Distribute use privileges to the commercial big game industry within the framework of the State's regulations and the Supreme Court's criteria.
- g. Concentrate on long-term plans, but address interim functions.

These recommendations are described in more detail as follows.

## RECOMMENDATIONS

The Task Force adopted protection of game resources as its highest priority and as an umbrella policy. All deliberations and recommendations incorporated this principle. While various agency or user group interests were sometimes compromised, wildlife conservation never was.

The Task Force closely followed the topics stated in the "Letter of Intent" for HCS CS SB 191 (Rules), albeit the Owsichek decision considerably broadened the scope of our review in some areas. The Task Force makes the recommendations listed below:

1. Commercial use of game is a valid principle.

The Task Force on Guiding and Game recognizes that the commercial utilization of big game is an important part of a sound wildlife resource management system and that the State of Alaska realizes significant social and economic benefits from maintaining a viable commercial big game hunting industry. Alaska's big game hunting opportunities draw international attention and contribute a substantial amount to the state's tourism economy. As the world's human population continues to increase, and the resource base continues to decline, the economic and social value of these hunting opportunities will grow.

The Task Force recognizes and supports the validity of the commercial utilization of game in Alaska, within the existing framework of resource priority allocation.

2. All commercial users need to be regulated.

The State of Alaska should develop a regulatory system which ensures the health of the big game resource and permits the commercial big game hunting industry. For this to occur all commercial users must be subject to consistent and stable regulations.

### 3. Owsichek Case

On October 21, 1988, the Alaska Supreme Court issued its ruling on the constitutionality of the exclusive or restricted guide area system. It clearly stated that the present exclusive guide area system violates the "common use" clause of the state constitution.

Any system needs to address the following points:

1. Open access to the system;
2. Limited duration of use privilege;
3. Validity of a management principle; and,
4. Compensation to the state.

On November 1, 1988, assistant Attorney General, Stephen M. White, issued an analysis of this decision.

On December 8, 1988, the Alaska Supreme Court issued a "stay" of its decision until June 1, 1989, thus allowing the legislative and executive branches time to address the problem.

#### 4. Examination of other states and countries.

The Task Force has examined statutes and regulations which apply to other states and countries relating to commercial aspects of game and finds them of limited value. While other areas have faced similar problems as Alaska and have found applicable solutions, their charters and constitutions contain clauses different from ours. Alaska is unique in respect to the constitutional provisions for "common use" of game, subsistence priority, and sustained yield mandate for the taking of game. (Article VIII, Sections 3 and 4, Alaska Constitution.)

#### 5. User Group Definition.

The Task Force recommends three commercial user groups: Guide-Outfitter, Transporter, and Commercial Permit Holder.

The Guide-Outfitter can provide a broad range of services statewide, ranging from guiding to outfitting. Guide-Outfitters are the only user group who can provide services in "the field". They should be limited to selecting and operating in no more than three (3) Game Management Units (GMU's).

"The field" means any area outside of established, year-around dwellings, businesses, and other developments normally associated with villages, towns, or cities, excluding hotels and roadhouses located on the state highway system.

The Transporter is limited to providing transportation directly servicing big game hunts.

The Commercial Permit Holder is a third group consisting of service providers such as lodge operators/hunt brokers, expeditors, gear renters and commercial photographers, all of whom need to be identified and regulated. Since most of these already require some form of commercial registration, a commercial use permit will suffice to identify them. "Clubs" present a specific problem which is addressed under separate legislation.

## 6. User Group Qualifications and Licensure.

### QUALIFICATIONS:

When appropriate, all commercial users listed below must pass an appropriate examination.

Guide-Outfitter must comply with the requirements under current law for registered or master guides and the term master guide shall be deleted. The Task Force recommends that guide-outfitter licenses shall be issued to a natural person (not an entity).

Class A Guide-Outfitter must comply with the requirements under current law for Class A Assistant Guides, with the following change: reduce the experience requirement from 20 to 10 years. It is recommended that the requirement for a letter of recommendation be deleted. It is further recommended that the state retain the special class of Marine Mammal Guide-Outfitter.

Assistant Guide-Outfitter must be at least 18 years of age, have hunting experience in the state for at least two of the past five years, possess a first aid card and have completed CPR training or equivalent (e.g., EMT or MD). It is recommended that the requirement for a letter of recommendation be deleted.

Transporter must comply with federal and state requirements for operation (transporter utilizing aircraft must have complied with Part 135; transporter utilizing boats must have U.S. Coast Guard license.)

Commercial Permit Holder must comply with federal and state requirements for operation.

All commercial users must comply with all federal and state requirements for operation, including holding lawful permits for lands occupied by the service provider.

USER GROUP LICENSES REQUIRED:

Guide-Outfitter:

1. Alaska business license
2. Guide-Outfitter license (in the appropriate category)
3. Commercial Use permit

Transporter:

1. Alaska business license
2. Transporter license
3. Commercial Use permit

Commercial Permit Holder:

1. Alaska business license
2. Commercial Use permit

Aircraft Operation Requirements:

The Task Force recommends deletion of AS 08.54.210 (a)(6) relating to Federal Aviation regulations (FAR) Part 135 requirements.

Although the Task Force is recommending that the Part 135 portion of SB 191 be deleted, this is not to indicate that the guides are being given a green light to continue using aircraft in their guiding businesses beyond what would be considered "incidental" flying. The Task Force merely feels that the regulation of commercial air commerce is under the authority of the Federal Aviation Administration.

It is suggested that those guides using aircraft for flying beyond that which is considered incidental should begin the process of application for Part 135, or should hire an existing air taxi for that portion of their flying. It is recognized that the maintenance program, the annual check rides and the inspections required for Part 135 are conducive to a safe operation.

In regards to the provisions of Part 135, the Task Force saw no need to develop a legal definition for "incidental", but rather allow the federal agencies to impose a definition as it pertains to aircraft operations (FAR Part 135).

### Rural Concerns:

Rural residents often have excellent guide-outfitter capabilities from a practical standpoint, but sometimes lack the educational and theoretical aspects of the examination process to qualify for a guide-outfitter license.

In addition to recognizing traditional difficulties in rural communities, the Task Force believes that the new board needs to substantially increase its information dissemination activities to enable rural residents interested in becoming licensed guide-outfitters greater access to the licensing procedures. Enabling legislation needs to accommodate this situation.

### 7. User Group Reporting Requirements.

Those engaged in providing commercial services for the purpose of taking game as Guide-Outfitter, Transporter or Commercial Permit Holder must comply with annual reporting requirements based on Department of Fish and Game (ADF&G) and Public Safety final recommendations. Completion of the annual reporting requirement is a prerequisite for licensing (base camp registration).

Individual reports which pertain to the commercial aspects of game shall be confidential.

Decals, for the purpose of law enforcement identification of commercial users, should be required on all aircraft, boats, etc.

### 8. Fee Structure.

The Task Force has considered and established a list of suggested fees as follows:

1. Fixed Commercial Use Permit Fee - \$25 to \$50;
2. Big Game Conservation Fee - 25% of existing big game tag fee (also known as "head tax"); and,
3. License fee

Not less than 50% of the fees collected should be designated for game management.

## 9. Insurance and Bonding.

The Task Force has reviewed the concept, cost and availability of insurance and bonding for commercial users and has determined that, while they support and encourage having insurance, whenever possible, the market condition and difficulty of acquiring insurance and bonding may pose extreme hardships on a great number of commercial users.

Transporters and some service providers are required to have insurance in their respective fields by other regulations.

## 10. Penalty.

The Task Force has reviewed the statute, AS 08.54.210, and recommends the following changes, as detailed under Article 6 of the recommended legislation for unlicensed guiding, which imposes a felony penalty, and recommends the following changes:

1. Eliminate the mandatory one year sentence;
2. Make first time offenses a misdemeanor with a minimum incarceration of two months, and raise the maximum fine that may be imposed to \$30,000;
3. Make some second time offenses a felony;
4. Do not allow the judge to impose a Suspended Imposition of Sentence (SIS); and
5. Encourage continued cooperation between the Department of Public Safety, Division of Fish and Wildlife Protection and the District Attorney's office.

## 11. Transitional Measures for User Groups.

Those outfitters who have been engaged in the big game commercial services industry as "outfitters", and have complied with current requirements under SB 191 (registered base camps, etc.) and can show financial proof of activity in 1986, 1987, and 1988 (business license, financial documentation, IRS) may continue to operate, in the interim, until new laws have been adopted. Within one year of the effective date of passage of a new law, they must pass the guide-outfitter exam and may continue to operate as outfitters under SB 191 requirements, during that transitional period.

12. Role of State Employee.

The Task Force has examined the question of whether state employees shall be allowed to participate in the commercial taking of game and has determined that the ADF&G and DPS have policies and procedures (P&P) to administer ethics and conflict of interest statutes and that strict adherence must be enforced. They further recommend that the agencies (ADF&G and DPS) request an Attorney General's opinion on the appropriateness of state employees' participation in the commercial game industry.

13. Guide Required Species.

The Task Force has considered the question of adding species to the required guide list and recommends that mountain goats be added to the required guide list.

Based on testimony, this will go a long way to provide some compatibility with the present demand that non-residents require "guides" for hunting of sheep and brown/grizzly bear. Climate, terrain, and nature of these species necessitate assistance to the non-resident hunter.

14. Creation of a new Big Game Commercial Services Board.

The Task Force has reviewed the Legislative Budget and Audit reports for 1985 and 1987. Some problems with the Guide Board are apparent. The Task Force recommends that the Guide Board sunset upon the creation of an expanded board whose function is to regulate the activity and licensing of commercial big game user groups. That board membership shall consist of two Guide-Cutfitters, one Transporter, one representative from ADF&G, and one from FWP, one State land manager (DNR), one Native land manager, one public member and one Game Board member. The board shall be administered by the Department of Commerce and Economic Development (DCED).

15. Extension of Task Force on Guiding and Game.

The Supreme Court decision on the Owsichek case shifted the emphasis of the Task Force's work from regulation of "outfitters" to a much broader scope. Since a "management system" is of paramount importance and consequence, the Task Force recommends that it be extended in order to assist the legislature in the formulation of laws pertaining to management system and area concept schemes.

16. Management System.

Due to the resulting time constraints the Task Force was unable to analyze and present a complete recommendation on the management system.

The Supreme Court issued a "stay" of its decision until June 1, 1989, which will allow the legislature to act in a deliberate manner to address this situation. In order to assist the legislature in the formulation of such a law, we recommend to extend this Task Force to capitalize on work already done.

The following preliminary recommendations are given, realizing that additional information is needed:

The Task Force finds that some kind of an area based game management concept is of utmost importance. Nearly all countries and states in the world that manage game have adopted some kind of land based management system. It is necessary to integrate the guiding-outfitting operations into Alaska's well established game management system.

Our constitutional requirements and our complex game resource allocation system (subsistence, resident and non-resident hunting) makes development and administration of an area based system a very difficult task indeed.

The obvious option to allow unrestricted access is not viable, as it would only recreate the conditions that existed in the 60's, which prompted the establishment of an assigned area system in the first place. Subsistence priority rights have been established and need to be incorporated in any management scheme. Although the game is under state jurisdiction, land surface right holders indirectly control access to game. Checkerboard distribution of land holdings further complicates this. Furthermore, federal agencies, who control the majority of land, have different regulations. The major land owners need to participate in the formulation of the management system.

Following their discussions of a management system, the Task Force recommends for immediate action, that:

1. ADF&G be designated as lead agency, whose purpose is to formulate and designate management areas within the present GMU framework; and,
2. DNR needs ability to expeditiously adopt a concession or use system that is compatible with other land uses and the practices of other land areas.

The Task Force also recommends for consideration:

The state should establish a lease, concession, or allocation system on a staggered schedule;

The state should derive some financial benefits from the commercial utilization of a public resource; such revenue should be at least partially (not less than 50%) used for game management purposes;

Allocation methods of such use privileges need to be established (lottery, negotiated, competitive bidding, etc.).

Implementation of such legislation requires close work with the Alaska Departments of Law, Natural Resources, Fish and Game, and Public Safety. The Task Force has spent considerable time on these matters and is most willing to assist.

6-0401A  
Utermohle  
1/14/89

1 IN THE HOUSE

2

HOUSE BILL NO.

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to big game hunting and to the  
7 regulation of big game and marine mammal guide-out-  
8 fitting, transportation, and other commercial ser-  
9 vices for big game hunters; creating the Big Game  
10 Commercial Services Board; and providing for an  
11 effective date."

12

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

13

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

14

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

15

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

16

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

17

June 30, 1993.

18

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

19

ARTICLE 4. BIG GAME COMMERCIAL SERVICES BOARD.

20

Sec. 08.54.300. CREATION AND MEMBERSHIP OF BOARD. (a) For the

21

purposes of licensing and regulating the activities of providers of

22

commercial services to big game hunters in the interest of the state's

23

wildlife resources there is created the Big Game Commercial Services

24

Board. For administrative purposes, the board is in the Department of

25

Commerce and Economic Development.

26

(b) The board consists of nine members:

27

(1) the commissioner of fish and game or the commissioner's

28

designee;

29

(2) the commissioner of natural resources or the

1 commissioner's designee;

2 (3) the commissioner of public safety or the commissioner's  
3 designee;

4 (4) two members who are either a licensed guide-outfitter  
5 or class-A guide-outfitter;

6 (5) one member who is a licensed transporter;

7 (6) one member of the Board of Game who is chosen by the  
8 Board of Game;

9 (7) one member who represents Native landholders; and

10 (8) one public member.

11 Sec. 08.54.310. DUTIES AND POWERS. (a) The board shall

12 (1) prepare, grade, and administer

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

20 (B) an oral examination of a guide-outfitter who seeks  
21 an amendment of a game management unit certification; the examin-  
22 ation must require demonstration that the guide-outfitter is  
23 qualified to provide guide-outfitted hunts in each new game  
24 management unit for which the guide-outfitter seeks to be certi-  
25 fied;

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

1 (3) establish performance standards for providers of big  
2 game commercial services and regulate the activities of these provid-  
3 ers;

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

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

16 (6) after a hearing, revoke, suspend, or deny renewal of a  
17 license or permit under AS 08.54.500 - 08.54.510;

18 (7) authorize issuance of transporter licenses;

19 (8) authorize issuance of commercial use permits;

20 (9) meet at least twice annually, once in Anchorage and  
21 once in another municipality.

22 (b) The board may

23 (1) provide for registration of hunting camps and facil-  
24 ities used by persons who are licensed or who hold a permit under this  
25 chapter;

26 (2) establish, in consultation with the Department of Fish  
27 and Game or Department of Natural Resources, a resource-based manage-  
28 ment system for allocating access to big game hunting opportunities  
29 among guide-outfitters licensed under this chapter;

1 (3) establish the level of supervision that a guide-out-  
2 fitter shall provide for class-A guide-outfitters and assistant  
3 guide-outfitters who are employed by the guide-outfitter.

4 Sec. 08.54.320. BOARD REGULATIONS. The board shall adopt proce-  
5 dural and substantive regulations required by this chapter or reason-  
6 ably necessary for its administration.

7 ARTICLE 5. LICENSING.

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

10 (1) is 21 years of age or older;

11 (2) has practical field experience in the handling of  
12 firearms, hunting, judging trophies, field preparation of meat and  
13 trophies, first aid, photography, and related guide-outfitting activi-  
14 ties;

15 (3) is familiar with the terrain and transportation prob-  
16 lems in the game management unit for which the license is requested;

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

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

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

27 (7) has been licensed as and performed the services of a  
28 class-A guide-outfitter or assistant guide-outfitter in the state for  
29 a part of each of three years, or has guide-outfitted in the state for

1 a part of each of three years under a marine mammal guide-outfitter  
2 license issued under AS 08.54.360;

3 (8) has demonstrated a current knowledge of fishing, hunt-  
4 ing, and guide-outfitting regulations;

5 (9) is capable of performing the essential duties associ-  
6 ated with guide-outfitting;

7 (10) has been favorably recommended in writing by six big  
8 game hunters, two for each year of the person's most recent three  
9 years as a class-A guide-outfitter or assistant guide-outfitter, when  
10 the person has guide-outfitted or assisted in guide-outfitting as a  
11 class-A guide-outfitter or assistant guide-outfitter, whose recommen-  
12 dations have been solicited by the board from a list provided by the  
13 applicant;

14 (11) possesses a business license to provide guide-out-  
15 fitting services; and

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

18 (b) A guide-outfitter may contract to guide-outfit hunts for big  
19 game.

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

24 (1) is 21 years of age or older;

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

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

29 (4) has demonstrated knowledge of the following areas to an

1 extent and degree satisfactory to the board:

2 (A) current fish and game laws and regulations;

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

5 (C) field preparation of trophies;

6 (D) care of game meat;

7 (E) use of guide-outfitting gear;

8 (F) firearm safety;

9 (G) practical first aid; and

10 (H) booking and contracting hunts;

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

15 (6) possesses a business license to provide guide-out-  
16 fitting services; and

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

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

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

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

27 (2) the big game conservation fees due for the period  
28 covered by the current license;

29 (3) the license fee for the next licensing period; and

1 (4) the commercial use permit fee for the next licensing  
2 period.

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

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

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

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

14 (b) A class-A guide-outfitter

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

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

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

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

26 (1) is 18 years of age or older;

27 (2) passes an examination administered by the board;

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

29 (4) has demonstrated practical knowledge of first aid and