

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7153 HOUSE RESOURCES

CS FOR HOUSE BILL NO. 65 (RESOURCES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES DAVIDSON, Koponen

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to members of the Board of Fisheries and the Board of Game."

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

3 * Section 1. AS 16.05.221 is amended by adding new subsections to read:

4 (c) Members of the Board of Fisheries or Board of Game serve staggered terms of three
5 years and until a successor is appointed. An appointment to fill a vacancy in the membership
6 of the Board of Fisheries or Board of Game shall be made in the same manner as the original
7 appointment and for the balance of the unexpired term.

8 (d) A member of the Board of Fisheries or the Board of Game who has an interest,
9 financial or otherwise, in a business or organization relating to fish or game resources, shall
10 disclose that interest in the manner provided for in AS 39.52.220.

11 * Sec. 2. AS 16.05.280 is amended to read:

12 Sec. 16.05.280. REMOVAL OF BOARD MEMBERS. The governor may only remove
13 a board member for inefficiency, neglect of duty, [OR] misconduct in office, or because the
14 member has been convicted of a misdemeanor or felony for violating a statute or regulation

1 related to fish or game, by delivering to the member a written copy of the charges and giving
2 the member an opportunity to be heard in person or through counsel at a public hearing before
3 the governor or a designee upon at least 10 days' notice by registered mail. The member may
4 confront and cross-examine adverse witnesses. Upon removal, the governor or a designee shall
5 file in the proper state office the findings and a complete statement of all charges made against
6 the member.

7 * Sec. 3. AS 16.05.290 is amended to read:

8 Sec. 16.05.290. COMPENSATION OF BOARD MEMBERS. Each member of a board
9 is entitled to compensation at a rate equal to Step A, Range 22, of the salary schedule in
10 AS 39.27.011(a) for Juneau, Alaska, [TRAVEL EXPENSES AND \$150 PER DIEM] for each
11 day going to and from and for each day in actual attendance at board meetings. For other
12 meetings or conferences authorized by a board a member shall receive compensation at a rate
13 equal to one-half of Step A, Range 22, of the salary schedule in AS 39.27.011(a) for Juneau,
14 Alaska, for each [\$100 PER] day going to and from and for each day in actual attendance.
15 Each member of a board is also entitled to travel expenses and per diem authorized for
16 boards and commissions under AS 39.20.180.

17 * Sec. 4. APPLICABILITY. A person who is a member of the Board of Fisheries or Board of Game
18 on the effective date of this Act shall serve the term to which the person was appointed, subject to
19 AS 16.05.280, as amended by sec. 2 of this Act. A person who is appointed to the Board of Fisheries
20 or Board of Game after the effective date of this Act shall be appointed for the term provided by
21 AS 16.05.221(c).

22 * Sec. 5. AS 39.05.060(a)(5) and 39.05.060(a)(10) are repealed.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Boards	BILL NUMBER HB65	SPONSOR Davidson
SHORT TITLE OF BILL "An act relating to the members of the Board of Fisheries and the Board of Game."			
DEPARTMENT POSITION Support			
PREPARED BY Beverly Reaume <i>Beverly Reaume</i>	DATE 2/7/91	COMMISSIONER'S SIGNATURE <i>D. H. ...</i>	DATE 2/7/91

SUMMARY

OTHER AGENCIES AFFECTED BY BILL None	CONSTITUENT GROUPS AFFECTED BY BILL Those members of the public affected by quality of regulation promulgated by the boards.
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The Board of Fisheries meets approximately 68 days and the Board of Game meets approximately 48 days per year. The fourteen voluntary board members are unable to sustain themselves away from home at the current compensation rate.

The Board of Fisheries has changed its meeting schedule to review each regions' regulations every three years. This will reduce the number of meeting days, which was not reflected in the prior analysis of January 29, 1991.

ANALYSIS OF BILL/PROGRAM EFFECTS

Section 1 requires board members to disclose financial or other interests in a business or organization relating to fish and game resources.

Section 2 provides the Governor the ability to remove a board member who has been convicted of violating a fish or game statute or regulation. Section 3 provides board members with per diem at a rate authorized in AS 39.20.180 and additional daily compensation equal to a range 22.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 65

Revision Date: 2/7/91

Department Affected: Fish and Game

Title: "An Act Relating to Members of the Board of Fisheries and Game"

BRU: Boards of Fisheries and Game

Sponsor: Rep. Davidson

Component: Board Services

Requestor: Rep. Davidson

COMPONENT SERIAL NO.

1	2	0	4
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL	121.2	126.0	126.0	126.0	126.0	126.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	121.2	126.0	126.0	126.0	126.0	126.0

CAPITAL						
---------	--	--	--	--	--	--

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	121.2	126.0	126.0	126.0	126.0	126.0
FEDERAL FUNDS						
OTHER						
TOTAL	121.2	126.0	126.0	126.0	126.0	126.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Attached

Prepared By: Beverly Reaume *Beverly Reaume* Phone: 465-4120

Division: Administration Date: 2/7/91

Approved by Commissioner: *[Signature]*

Agency: Fish and Game Date: 2/7/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

2/6/91

HB65 BOARDS OF FISHERIES AND GAME

BOARD OF FISHERIES (7 MEMBERS)

CURRENT

65 DAYS AT \$150 PER DAY	\$68,250
3 DAYS AT \$100 PER DAY	\$2,100

TOTAL \$70,350

PROPOSED

65 DAYS AT RANGE 22, STEP A - \$203.93	\$92,788
3 DAYS AT 1/2 RANGE 22, STEP A - \$101.97	\$2,141
68 DAYS AT \$95 PER DAY PER DIEM	\$45,220

TOTAL \$140,150

INCREASED COSTS FOR BOARD OF FISHERIES \$69,800

BOARD OF GAME

CURRENT

45 DAYS AT \$150 PER DAY	\$47,250
3 DAYS AT \$100 PER DAY	\$2,100

TOTAL \$49,350

PROPOSED

48 DAYS AT RANGE 22, STEP A - \$203.93	\$68,520
3 DAYS AT 1/2 RANGE 22, STEP A - \$101.97	\$306
48 DAYS AT \$95 PER DAY PER DIEM	\$31,920

TOTAL \$100,746

INCREASED COSTS FOR BOARD OF GAME \$51,396

GRAND TOTAL \$121,196

STATE OF ALASKA
Office of the Governor
POSITION PAPER
Walter J. Hickel, Governor

P.O. BOX A, JUNEAU, AK 99811-0101

BRUCE KENDALL, LEGISLATIVE LIAISON

FEBRUARY 14, 1991

BILL NUMBER: HB65/CSHB65 (RES) ***SPONSOR:*** DAVIDSON

BILL TITLE: "AN ACT RELATING TO MEMBERS OF THE BOARD OF FISHERIES AND THE BOARD OF GAME."

POSITION STATEMENT:

IT IS THIS ADMINISTRATION'S POSITION THAT THIS BILL, IN ITS PRESENT FORM, IS A DELIBERATE ATTEMPT TO ABROGATE THE GOVERNOR'S CONSTITUTIONAL AUTHORITY AND OBLIGATION TO MANAGE THE RESOURCES AND BUSINESS OF THIS STATE FOR THE PEOPLE OF ALASKA.

IF THIS LEGISLATION PASSES BOTH HOUSES WITHOUT ACCEPTABLE AMENDMENTS TO MAKE THIS BOARD FALL WITHIN THE GENERAL RULES OF ALL OTHER BOARDS AND COMMISSIONS NOW IN EXISTENCE, IT WILL BE VETOED.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Boards	BILL NUMBER HB 65	SPONSOR Davidson
SHORT TITLE OF BILL "An act relating to the members of the Board of Fisheries and the Board of Game."			
DEPARTMENT POSITION Support			
PREPARED BY Beverly Reaume <i>Dung Kone</i>	DATE 1/29/91	COMMISSIONER'S SIGNATURE <i>Steven W. Delaney</i>	DATE 1-29-91

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL Those members of the public affected by quality of regulation promulgated by the boards.
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The Board of Fisheries meets approximately 92 days and the Board of Game meets approximately 48 days per year. The fourteen volunteer board members are unable to sustain themselves away from home at the current compensation rate.

ANALYSIS OF BILL/PROGRAM EFFECTS

Section 2 provides the Governor the ability to remove a board member who has been convicted of violating a fish or game statute or regulation. Section 3 provides board members with per diem at a rate authorized in AS 39.20.180 and additional daily compensation equal to a range 22.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 65

Revision Date: _____

Department Affected: Fish and Game

Title: "An Act Relating to Members of the Board of Fisheries and Game"

BRU: Boards of Fisheries and Game

Sponsor: Davidson

Component: Board Services

Requestor: Davidson

COMPONENT SERIAL NO.

1	2	0	4
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL	144.4	151.0	151.0	151.0	151.0	151.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	144.4	151.0	151.0	151.0	151.0	151.0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	144.4	151.0	151.0	151.0	151.0	151.0
FEDERAL FUNDS						
OTHER						
TOTAL	144.4	151.0	151.0	151.0	151.0	151.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Attached

Prepared By: Beverly Reaume *Beverly Reaume* Phone: 465-4120

Division: Administration Date: 01/29/91

Approved by Commissioner: *James D. Dickey* 1/29/91

Agency: Fish and Game Date: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

1/29/91

SB65 BOARDS OF FISHERIES AND GAME

BOARD OF FISHERIES (7 MEMBERS)

CURRENT

89 DAYS AT \$150 PER DAY	\$93,450
3 DAYS AT \$100 PER DAY	\$2,100
TOTAL	\$95,550

PROPOSED

89 DAYS AT RANGE 22, STEP A - \$203.93	\$127,048
3 DAYS AT 1/2 RANGE 22, STEP A - \$101.97	\$306
92 DAYS AT \$95 PER DAY PER DIEM	\$61,180
TOTAL	\$188,534

INCREASED COSTS FOR BOARD OF FISHERIES	\$92,984 *****
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BOARD OF GAME

CURRENT

45 DAYS AT \$150 PER DAY	\$47,250
3 DAYS AT \$100 PER DAY	\$2,100
TOTAL	\$49,350

PROPOSED

48 DAYS AT RANGE 22, STEP A - \$203.93	\$68,520
3 DAYS AT 1/2 RANGE 22, STEP A - \$101.97	\$306
48 DAYS AT \$95 PER DAY PER DIEM	\$31,920
TOTAL	\$100,746

INCREASED COSTS FOR BOARD OF GAME	\$51,396 *****
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GRAND TOTAL	\$144,381 *****
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DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

February 14, 1991

SUBJECT: Confirmation of appointees to the Boards of Fisheries and Game (Work Order No. 7LS0766)

TO: Representative Cliff Davidson

FROM: Tamara Brandt Cook
Director *TBC*

You have asked whether appointments to the Board of Fisheries and the Board of Game are subject to confirmation under art. III, § 26 of the Alaska Constitution and may be removed as provided by law under that same section. That section provides:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

Note that section 26 applies to three types of boards: those at the head of a principal department, those that are regulatory agencies, and those that are quasi-judicial agencies. The Boards are not at the head of a principal department. That position is occupied by the commissioner of fish and game. (AS 44.39.010) Nor are Boards quasi-judicial agencies in that they do not adjudicate individual rights. The Boards are, however, powerful regulatory agencies. (AS 16.10.190, 16.10.440, 16.20.040, 16.20.510, 16.43.381) As such, members are subject to confirmation and may be removed as provided by law.

To determine the meaning of the term "regulatory agency" we must first look to the views of the framers of our constitution to determine what they thought the term meant or what they intended the term to signify. Art. III, § 26, was proposed by the Committee on the Executive Branch as Committee Proposal 10 (later amended and resubmitted as Committee Proposal 10a), at the Constitutional Convention. (Alaska

Constitutional Convention Proceedings (ACCP), Part 6) In the commentary submitted by the executive branch committee with the proposal the committee explained their recommendations concerning government organization. These recommendations are embodied in secs. 22 - 27 of art. III, of the constitution. The committee said:

A clear distinction is made between the administrative departments, such as public works, health, education, and welfare, and the regulatory, including quasi-judicial, bodies such as a rate-setting public utility commission.

Delegate V. Rivers, chairman of the executive branch committee, summarized the committee proposal and the meaning of a "regulatory board" in this manner:

The purpose of that is that in a regulatory board, regulating the power rates, telephone rates, etc., the power of removal might be the power to make the office ineffective so that removal would be prescribed by the legislature. (ACCP, at p. 1102 - 03)

Discussion of what a "regulatory board" is and does includes these statements by delegates: "To me a utilities board would be regulatory" (ACCP, at p. 2204, Delegate V. Fischer); and Delegate McLaughlin, in response to a question of what is the difference between a "regulatory board" and a "quasi-judicial board" said:

Perhaps I can explain it in the terms best known to Alaskans. Very roughly, the Fish and Wildlife Service and the CAB, the Fish and Wildlife Service can set down regulations. Normally if there is an infraction of those regulations, they pick up the offender and deliver him to a judicial body, that is to the United States Commissioner, or to the United States District Court. They have no power of absolute confiscation on their own, no power to deprive of money or rights. In the case of the CAB, the Fish and Wildlife, in substance then, sets down regulations, but in the case of the CAB, they go further than that. In substance, they determine as between carrier and carrier, who is privileged and who can be deprived of it. (ACCP, at pp. 2204 - 05.)

The delegates also acknowledged that a "regulatory board" could also be a "quasi-judicial board." (ACCP, at p. 2206.) The Limited Entry Commission is an example of this. (AS 16.43.020)

From this discussion it appears that the framers believed that a "regulatory board" was a board that issued rules or regulations to govern the public (Fish and Wildlife Service), segments of the public (public utilities commission), or the use or management of resources (Fish and Wildlife Service). A "regulatory board" would

Representative Cliff Davidson

February 14, 1991

Page 3

seem to control or govern at large or in an area or field as the examples cited by the convention reveal. A board or commission that merely issues rules or regulations that govern or control its own internal conduct would not seem to be a "regulatory board" as that term is used in our constitution as the regulations or rules issued by such a board or commission do not govern or control at large or in an area or field.

Such a construction comports with the definitions of the term "regulate." Webster's New World Dictionary defines regulate as "to control, direct, or govern according to a rule. . . ." And Black's Law Dictionary defines regulate as "to fix, establish, or control." While these definitions are broad enough to encompass internal operating rules, rules that govern a board's own conduct, when applied to the examples and statements of the delegates to the constitutional convention, regulate apparently means the act of controlling, directing, or governing the public, segments of the public, or the resources of the state.

Clearly, the Board of Fisheries and the Board of Game qualify as regulatory boards under these principals.

TBC:gc:mi

91-075.glc



Alaska State Legislature

House of Representatives

P.O. BOX 783
GIRDWOOD, ALASKA 99587
(907) 783-2905


WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-2693/2719

REPRESENTATIVE
JIM ZAWACKI
DISTRICT 7

MEMBER
COMMUNITY & REGIONAL
AFFAIRS COMMITTEE
LEGISLATIVE BUDGET &
AUDIT COMMITTEE
FINANCE SUBCOMMITTEE

M E M O R A N D U M

TO: Representative Cliff Davidson, Chairman
House Resources Committee

FROM: Representative Jim Zawacki, Member
House Resources Committee 

DATE: February 7, 1991

RE: Proposed Committee Substitute For House Bill 65

I have reviewed the suggested changes in your proposed CS for HB65 and I am afraid that I must disagree with both your changes in existing law and your intent.

I believe that recommending substantial increases in compensation for board members is highly unwarranted, and in addition, is counterproductive to our common goal of reducing state spending.

In regards to changes in AS 16.05.280, Removal of Board Members, I disagree with your assessment of the need for these particular changes and I have attached several documents for your review.

Your comments to apparently justify the changes to current law: "In light of recent events . . ." is somewhat puzzling, since both of our previous Governors have taken similar action (sometimes to a much greater extent) and not a word of protest was mentioned or changes offered.

It is interesting that it is now crucial to make these changes as a new administration is inaugurated, while it was carefully overlooked in the past.

After careful review, I am of the opinion that CSHB65 is not good public policy.

Thank you for your time and consideration.

Alaska State Legislature



Senate Judiciary Committee

DATE: February 1, 1991
TO: Senator Rick Halford
FROM: Doug Baily,
Counsel, Senate Judiciary Committee
RE: Governor's authority to remove Board members

The governor is expressly authorized by statute to remove any member or members from the Board of Fisheries at any time. No reason need be stated.

AS39.05.060 states in relevent part:

"(d) . . . Each member holds office at the pleasure of the governor notwithstanding the member's term."

This section expressly applies to the Board of Fisheries as well as the Boards of Game, the Local Boundary Commission, Alcoholic Beverage Control Board and certain others.

This unequivocal language on the governor's power of removal first entered Alaska law as Sec. 6 Ch. 64 of the Session Laws of Alaska 1959. It was restated and readopted as the permanent law of Alaska effective January 28, 1963. Ch. 1 SLA 1963.

The "pleasure of the governor" provision became applicable to the Board of Fisheries when that board was first created in 1975. Ch. 206 SLA 1975. This occurred by the legislature adding the Board of Fisheries to the list of boards in AS 39.05.060 to which this power to terminate members is contained.

While the power of the governor to terminate Board of Fisheries members at will is expressly stated in law which some utilized to attempt to cloud the issue. AS 16.05.280, which can also be traced to Ch. 1 SLA 1963, provides that the governor may remove a member of the Board (of Fisheries) for cause in which event certain rights of review attach.

Some have argued that these two statutes are in conflict and that one must prevail to the exclusion of the other. But the

Fisheries it cannot be said that one is more specific and should control over a more general provision.

Because it is apparent that both of these removal processes are in full effect the only remaining legal and logical conclusion is that both apply and that the legislature, for reasons not readily known, has provided the governor an option of acceptable legal methods of removing Board of Fisheries members.

The legal conclusion reached independently by the Legislative Affairs Agency in its report of January 30, 1991 that these two provisions should be read as not being in conflict and that either removal procedure can be used is correct.



**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

*P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2430
FAX (907) 465-2029*

*Delivered to: 210 Main Street
Court Plaza, Room 300
Mail Stop 3101*

MEMORANDUM

January 3, 1991

SUBJECT: Governor's Power to Remove Members of Boards and Commissions (Work Order No. 17-LS0385)

TO: Senator Arliss Sturgulewski

FROM: Gerald P. Luckhaupt
Legislative Counsel

Article III, § 26, of the Alaska Constitution provides:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. . . .

This section clearly provides that the members of art. III, § 26 boards and commissions may only be removed as the legislature has provided by law. The Alaska Supreme Court in Bradner v. Hammond, 553 P.2d 1, 3 (1976) recognized this and said:

Removal of Section 26 board or commission members is as provided by law and, therefore, not necessarily at the governor's pleasure.

To determine how the legislature has provided for the removal of the members of a board or commission that "is at the head of a principal department or a regulatory or quasi-judicial agency" one must look to the specific authorizing legislation for the board or commission to determine if the legislature has provided a specific procedure for removal. For example, AS 14.07.115 provides that members of the Board of Education serve at the pleasure of the governor, while AS 42.05.035 provides that members of the Public Utilities Commission may only be removed by the governor "by and with the consent of a majority of the legislature."

One must also look to the statutes pertaining to boards and commissions generally in AS 39 and AS 08. AS 39.05.060 provides that the members of the various boards

or commissions listed therein serve at the pleasure of the governor. AS 08.01.020 provides that the members of those boards and commissions listed at AS 08.01.010 serve at the pleasure of the governor.

The removal of the members of boards or commissions that do not meet the attributes of art. III, § 26 boards or commissions is not as simple a question. In considering this situation one must look to the appointment and removal authority of the governor and the type of government established by our constitution.

The government of the state of Alaska is divided into three branches, the executive, the legislative, and the judicial. The authority granted to one branch may not be exercised by another. In Alaska, "[t]he executive power of the State is vested in the Governor." Alaska Constitution, art. III, § 1. In Bradner v. Hammond, *supra*, the court found the executive authority of the governor necessarily clothes him "with the power to appoint subordinate executive officers to aid him in carrying out the laws of Alaska" and that "the appointment of executive officers is an executive function." In support of this proposition the court cited Ahearn v. Bailey, 104 Ariz. 250, 451 P.2d 30 (1969). In that case the Arizona Supreme Court found:

The Governor is charged with the duty of taking care that the laws are faithfully executed. . He must, therefore, have the power to select subordinates and to remove them if they are unfaithful. Accordingly, we conclude that the power to remove is an executive function. . . .

And in Myers v. United States, 272 U.S. 52, 117-118, 47 S.Ct. 21, 71 L.Ed.2d 160 (1926) the United States Supreme Court said regarding the powers of the President:

As he is charged specifically to take care that [the laws] be faithfully executed, the reasonable implication even in the absence of express words, was that as part of his executive power he should select those who were to act for him under his direction in the execution of the laws. The further implication must be, in the absence of any express limitation respecting removals, that as his selection of administrative officers is essential to the execution of the laws by him, so must be his power of removing those for whom he cannot continue to be responsible. [Citation omitted.] It was urged that the natural meaning of the term 'executive power' granted the President included the appointment and removal of executive subordinates. If such appointments and removals were not an exercise of the executive power, what were they? They certainly were not the exercise of legislative or judicial power in government as usually understood.

Senator Arliss Sturgulewski
January 3, 1991
Page 3

And generally it has been held in other states that:

[T]he power to remove is incident to the power to appoint and that the authority to appoint an officer carries with it the authority to remove such officer in the absence of any constitutional or statutory restriction.

Gowey v. Siggelkow, 382 P.2d 764, 773 (Idaho 1963); 63 Am.Jur.2d, Public Officers and Employees § 221.

Clearly from this discussion the power to remove a member of a board or commission is as much a part of the executive power of the governor as is the power to appoint as determined by the Alaska Supreme Court in Bradner v. Hammond.

In determining that the confirmation power of the legislature provided in art. III, §§ 25 (principal department heads) and 26, is merely a limited delegation of the executive appointment power to the legislature, the court said:

As to this issue, we think the provisions of Sections 25 and 26 of Article III are clear and unambiguous. Thus, we conclude that Sections 25 and 26 mark the full reach of the delegated, or shared, appointive function to Alaska's legislative branch of government.

Bradner v. Hammond, *supra*, at 7.

Similarly, the legislature's authority to determine how an art. III, § 26 board or commission member may be removed appears to be a limited delegation of the executive appointment power and is limited to those boards or commissions that are "at the head of a principal department or a regulatory or quasi-judicial agency." Under this reasoning, other board or commission members serve at the pleasure of the governor and may be removed at any time despite limitations the legislature may attempt to impose by statute.

There is contrary authority that rejects the notion that an appointee serves at the pleasure of the governor when the legislature has set a specified term of office or has otherwise limited the authority of the executive to remove the appointee by statute.

But the power of removal is not incident to the power of appointment where the extent of the term is fixed by the statute. In the absence of any provision for summary removal, appointments to continue for life or during good behavior, which in contemplation of law is for a fixed term - or for a fixed term of years cannot be terminated except for cause. It is the fixity of the term that destroys the power of removal at pleasure.

Senator Arliss Sturgulewski
January 3, 1991
Page 4

Gowey v. Siggelkow, *supra*, at 774.

While the Alaska Supreme Court could adopt this general rule in Alaska, the likelihood of this appears to be remote based upon the Supreme Court decision in Bradner. The reasoning of the Bradner court appears to require a determination that non-section 26 boards and commissions are not subject to removal provisions enacted by the legislature and that the members of those boards and commissions serve at the pleasure of the governor.

In response to your specific inquiries concerning the Boards of Education, Fisheries, and Game, it appears that all are art. III, § 26 boards and so their members may only be removed as provided by law. AS 14.07.115 provides that members of the Board of Education serve at the pleasure of the governor.

The inquiries concerning the Board of Fisheries and the Board of Game are not as easily answered. AS 16.05.280 provides that "[t]he governor may remove a board member for inefficiency, neglect of duty, or misconduct in office" and provides for notice and a hearing. This section applies to both the Board of Fisheries and the Board of Game and appears to limit the governor to removals for cause only. However, AS 39.05.060 provides that each member of the Boards of Fisheries and Game "holds office at the pleasure of the governor notwithstanding the member's term." AS 39.05.060(d).

Two interpretations are available from the existence of these two seemingly conflicting statutes. One is that they are not in conflict but are merely alternative methods for the removal of board members. The second is that they are in conflict and the later (in time) enactment controls. I will briefly discuss the two interpretations.

That the provisions are not in conflict comports with the general rules governing statutory construction. Generally, repeals of statutes by implication or reach of another statute are disfavored and the statutes will be read in *pari materia* to avoid any such conflict. Peter v. State, 531 P.2d 1263 (Alaska 1975). Here, the statutes do not necessarily pertain to the same subject matter. AS 16.05.280 pertains to removals of board members for cause and AS 39.05.060 deals with removals of board members without cause. AS 16.05.280 also provides that board members "may" be removed for cause. It does not provide that board members may "only" be removed for cause, thereby not providing an exclusive removal procedure. The statutes may be read together to avoid any conflict, though the net result is to allow for the removal of board members at any time and for any reason. Such a result is not absurd, since a removal for cause may occasion public ridicule and injury to reputation necessitating the notice and hearing provisions of AS 16.05.280, while no such effects would normally attend a without cause removal.

Senator Arliss Sturgulewski
January 3, 1991
Page 5

The second alternative, that the two provisions are in conflict and that the provision enacted later in time controls, leads to the result that AS 39.05.060 impliedly repealed AS 16.05.280. Terry, supra. AS 16.05.280 was enacted in 1959 and has not been amended since that time. AS 39.05.060 was also enacted in 1959 and included the Board of Fisheries and Game (when only one combined board existed). In 1975 the Board of Fisheries and Game was split into two separate boards, the Board of Fisheries and the Board of Game, by chapter 206, SLA 1975. That act also amended AS 39.05.060 to include both the Board of Fisheries and the Board of Game. Since the legislature is intended to have knowledge of all its previous enactments, its enactment of AS 39.05.060 to include the Boards of Fisheries and Game acted as an implied repeal of AS 16.05.280 under this interpretation and, therefore, the members of the Boards of Fisheries and Game serve at the pleasure of the governor.

Of these two interpretations the former appears to be the most reasonable. Therefore, I conclude that the members of the Boards of Fisheries and Game serve at the pleasure of the governor subject to removal for cause after notice and hearing as provided by AS 16.05.280.

If you have any further questions, please contact me at your convenience.


GPL:mi
91-002.mai



Alaska State Legislature

HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 468-3718

TO: House Resources Committee Members
FROM: Representative Cliff Davidson, Chairman 
DATE: 6 February 1991
SUBJECT: CS for HB 65

Attached is a proposed Committee Substitute for HB 65 which I am offering for Committee consideration.

The CS would add additional provisions to the fish and game statutes to make it clear that members of the Boards of Fish and Game can be removed from office by the Governor only for cause.

In light of recent events, I feel that this clarification of existing law will be in the best interest of our fish and game resources.

7-LS047SD
Utermohle
1/29/91

CS FOR HOUSE BILL NO. 65 (RESOURCES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Introduced:

Referred:

Sponsor(s): REPRESENTATIVES DAVIDSON, Koponen

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to members of the Board of Fisheries and the Board of Game."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA.

3 * ^{New} Section 1. AS 16.05.221 is amended by adding new subsections to read:

4 *Moved from AS 39* (c) Members of the Board of Fisheries or Board of Game serve staggered terms of three
5 years. An appointment to fill a vacancy in the membership of the Board of Fisheries or Board
6 of Game shall be made in the same manner as the original appointment and for the balance of
7 the unexpired term.

8 (d) A member of the Board of Fisheries or the Board of Game who has an interest,
9 financial or otherwise, in a business or organization relating to fish or game resources, shall
10 disclose that interest in the manner provided for in AS 39.52.220.

11 * Sec. 2. AS 16.05.280 is amended to read:

12 Sec. 16.05.280. REMOVAL OF BOARD MEMBERS. The governor may only remove
13 a board member for inefficiency, neglect of duty, [OR] misconduct in office, or because the
14 member has been convicted of violating a statute or regulation related to fish or game, by

1 delivering to the member a written copy of the charges and giving the member an opportunity
2 to be heard in person or through counsel at a public hearing before the governor or a designee
3 upon at least 10 days' notice by registered mail. The member may confront and cross-examine
4 adverse witnesses. Upon removal, the governor or a designee shall file in the proper state office
5 the findings and a complete statement of all charges made against the member.

6 * Sec. 3. AS 16.05.290 is amended to read:

7 Sec. 16.05.290. COMPENSATION OF BOARD MEMBERS. Each member of a board
8 is entitled to compensation at a rate equal to Step A, Range 22, of the salary schedule in
9 AS 39.27.011(a) for Juneau, Alaska, [TRAVEL EXPENSES AND \$150 PER DIEM] for each
10 day going to and from and for each day in actual attendance at board meetings. For other
11 meetings or conferences authorized by a board a member shall receive compensation at a rate
12 equal to one-half of Step A, Range 22, of the salary schedule in AS 39.27.011(a) for Juneau,
13 Alaska, for each [\$100 PER] day going to and from and for each day in actual attendance.
14 Each member of a board is also entitled to travel expenses and per diem authorized for
15 boards and commissions under AS 39.20.180.

16 * Sec. 4. APPLICABILITY. A person who is a member of the Board of Fisheries or Board of Game
17 on the effective date of this Act shall serve the term to which the person was appointed, subject to
18 AS 16.05.280, as amended by sec. 2 of this Act. A person who is appointed to the Board of Fisheries
19 or Board of Game after the effective date of this Act shall be appointed for the term provided by
20 AS 16.05.221(c).

21 * Sec. 5. AS 39.05.060(a)(5) and 39.05.060(a)(10) are repealed.

...oked by commission of the offense and the culpability of the offender. Except for murder in the first and second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, the offenses in this title are classified into the following categories:

(1) class A felonies, which characteristically involve conduct resulting in serious physical injury or a substantial risk of serious physical injury to a person;

(2) class B felonies, which characteristically involve conduct resulting in less severe violence against a person than class A felonies, aggravated offenses against property interests, or aggravated offenses against public administration or order;

(3) class C felonies, which characteristically involve conduct serious enough to deserve felony classification but not serious enough to be classified as A or B felonies;

(4) class A misdemeanors, which characteristically involve less severe violence against a person, less serious offenses against property interests, less serious offenses against public administration or order, or less serious offenses against public health and decency than felonies;

(5) class B misdemeanors, which characteristically involve a minor risk or physical injury to a person, minor offenses against property interests, minor offenses against public administration or order, or minor offenses against public health and decency;

(6) violations, which characteristically involve conduct inappropriate to an orderly society but which do not denote criminality in their commission.

(b) The classification of each felony defined in this title, except murder in the first and second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, is designated in the section defining it. A felony under Alaska law defined outside this title for which no penalty is specifically provided is a class C felony.

(c) The classification of each misdemeanor defined in this title is designated in the section defining it. A misdemeanor under Alaska law defined outside this title for which no penalty is provided is a class A misdemeanor. (§ 10 ch 166 SLA 1978; am §§ 9, 10 ch 143 SLA 1982; am §§ 17, 18 ch 37 SLA 1986; am §§ 2, 3 ch 59 SLA 1988)

Effect of amendments. — The 1986 amendment inserted "sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree," in two places in the introductory language of subsection (a) and in the first sentence of subsection (b).

The 1988 amendment inserted "attempted murder in the first degree" in both sentences in the introductory paragraph of subsection (a) and in the first sentence in subsection (b).

Title 12
Code of Criminal
Procedure

Title 13
Decedents Estates
Guardianships and Trusts

Article 11
before the
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does
damages
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a) For purposes of
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I INTRODUCED HOUSE BILL 65 TO ADDRESS THE PROBLEM OF INADEQUATE COMPENSATION FOR MEMBERS OF THE BOARD OF FISHERIES AND BOARD OF GAME. THE BILL IS IDENTICAL TO LEGISLATION I INTRODUCED LAST YEAR ALTHOUGH TODAY I WILL ALSO BE PROPOSING A COMMITTEE SUBSTITUTE. LAST YEAR THE BILL PASSED THE HOUSE 31-7 BUT EVENTUALLY DIED IN THE SENATE FINANCE COMMITTEE.

UNDER CURRENT LAW, BOARD MEMBERS ARE NOT ADEQUATELY COMPENSATED FOR THE TIME THEY INVEST IN BOARD MEETINGS. BOTH THE BOARD OF FISH AND THE BOARD OF GAME WERE ORIGINALLY ESTABLISHED AS CITIZEN BOARDS. BOARD MEMBERS HAVE TRADITIONALLY BEEN EXPECTED TO SERVE WITH NO COMPENASTION. HOWEVER, OVER THE PAST FEW YEARS, THE WORKLOAD FOR THE BOARDS HAS EXPANDED DRAMATICALLY. IT HAS BECOME INCREASINGLY DIFFICULT TO FIND INDIVIDUALS TO SERVE IN THESE CONTROVERSIAL AND TIME CONSUMING POSITIONS. HOUSE BILL 65 IS ONE ATTEMPT TO ADDRESS SOME OF THESE CONCERNS.

TODAY WE ALSO HAVE BEFORE US A PROPOSED COMMITTEE SUBSTITUTE TO HOUSE BILL 65. THE ADDITION LANGUAGE IS INTENDED TO CLARIFY THE EXISTING LAW WITH RESPECT TO THE GOVERNOR'S POWER TO REMOVE MEMBERS OF THESE IMPORTANT REGULATORY BOARDS. UNDER THE PROPOSED COMMITTEE SUBSTITUTE, THE GOVERNOR WILL BE ABLE TO REMOVE MEMBERS ONLY "FOR CAUSE".

IN LIGHT OF THE RECENT CONTROVERSY, I FEEL THAT THIS CLARIFICATION IS BOTH TIMELY AND NECESSARY IN ORDER TO PROPERLY MANAGE OUR FISH AND WILDLIFE RESOURCES.

m



STATE OF ALASKA

HOUSE OF REPRESENTATIVES

Box V, Juneau, Alaska 99811

(907) 465-2487 • 465-2498

REPRESENTATIVE CLIFF DAVIDSON • DISTRICT 27 • Box 746, Kodiak, Alaska 99615 • (907) 486-8250

HOUSE BILL 65

COMPENSATION FOR BOARD OF FISH AND BOARD OF GAME MEMBERS

CURRENT LAW

HB 65

SECTION 1

NO DISCLOSURE
REQUIRED

REQUIRES DISCLOSURE
OF CONFLICT OF
INTEREST

SECTION 2

PROVIDES FOR
REMOVAL OF BOARD
MEMBERS "FOR
CAUSE"

EXPANDS GOVERNOR'S
POWER TO REMOVE BOARD
MEMBERS "FOR CAUSE"

SECTION 3

COMPENSATION:

BOARD MEETINGS

\$150/DAY

\$195/DAY (RANGE 22)

OTHER MEETINGS

\$100/DAY

\$ 98/DAY (1/2 /RANGE 22)

PER DIEM

NONE

\$100/DAY

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

January 21, 1991

SUBJECT: Removal of members of the Board of Fisheries and the Board of Game (Work Order No. 7LS-0475)

TO: Representative Cliff Davidson

FROM: George Utermohle *GU*
Legislative Counsel

Enclosed is the bill requested by Jay Nelson, of your staff, relating to the Board of Fisheries and Board of Game. The bill is identical to CSHB 476 (Resources) Sixteenth Legislature.

Section 2 of the bill amends AS 16.05.280 to provide that a member of either of the boards may be removed for cause on the ground that the board member has been convicted of violating a law related to fish or game. This provision gives the governor an additional procedure for removing a board member who has been convicted of a fish and game violation. The governor already has authority to remove any board member at the governor's pleasure under AS 39.05.060(d). AS 39.05.060 is an obscure statute and is frequently overlooked. I bring this to your attention so that you are aware that sec. 2 of the bill supplements the existing power of the governor but does not necessarily expand the scope of the governor's power to remove members of the Board of Fisheries and the Board of Game.

GU:pl:gc
91-015.plm

Enclosure

HB

72

7-LS0354D ✓
Utermohle
2/26/91

CS FOR HOUSE BILL NO. 72 (TRANSPORTATION)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE TRANSPORTATION COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE KUBINA

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the fee for a transporter license and a commercial use permit; and
2 providing for an effective date."

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

4 * Section 1. AS 08.54.450 is amended by adding a new subsection to read:

5 (d) Notwithstanding AS 08.01.065, AS 08.54.400(a)(2) and (c)(2), and (a) of this section,
6 the transporter license for a United States Coast Guard licensed boat operator for which the
7 carriage of big game hunters, their equipment, or big game animals harvested by hunters is only
8 an incidental portion of the operator's business shall be issued free of charge.

9 * Sec. 2. AS 08.54.470 is amended by adding a new subsection to read:

10 (e) Notwithstanding AS 08.01.065 and (a) and (b) of this section, the commercial use
11 permit fee for a person who receives a transporter license without a charge under
12 AS 08.54.450(d) shall be 50 percent of the usual fee for a commercial use permit.

13 * Sec. 3. This Act takes effect January 1, 1992.

A M E N D M E N T

OFFERED IN THE HOUSE
TO: HB 72

BY REPRESENTATIVE KUBINA

Page 1, line 9, through Page 2, line 3:

Delete all material.

Insert the following material to read:

"(A) on nonstop flights between state or federally maintained airports; or
(B) by an air taxi operator, [OR] air carrier, or United States Coast
Guard licensed boat operator for which the carriage of big game hunters, their
equipment, or big game animals harvested by hunters is only an incidental, as defined by
the board, portion of its business; "

Renumber the following bill section accordingly.

HB 72: An Act amending the definition of transportation services to exempt operators of certain watercraft from the transporter license requirement.

The Department of Commerce and Economic Development opposes passage of HB 72.

In the 1988 Owsichuk decision, the Alaska Supreme Court interpreted the common use clause in the Alaska Constitution. In part, the court said that in development of wildlife law, the clause "constitutionalized" the state's public trust duty toward wildlife. This is a duty to manage these resources for the benefit of all the people. In 1989 a legislative task force on guiding and game made recommendations to the Legislature regarding commercial uses and users of big game. The task force recommendations included licensing of three groups to encompass all the commercial users of big game: Guide Outfitters, Transporters and Commercial Use Permit Holders.

Currently of the 174 licensed transporters, 59 transporters are boat charter operators. These operators are required to be licensed and their watercraft is identified by a transporter decal issued by this department. HB 72 would eliminate all licensing and control over this group of users of game resource. It would eliminate the monetary return to the state for the use of the resource as well as hamper enforcement activities in identifying legal operations versus unlicensed guiding or outfitting.

Glenn A. Olds (Spec Asst)

Glenn A. Olds, Commissioner

Date:

2/6/91

GAO/cw1221d
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FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 72

Revision Date: _____ Department Affected: Commerce & Economic Development
 Title: An Act amending the definition of transportation services to exempt operators of certain watercraft from Transporter License. BRU: Occupational Licensing
 Sponsor: Representative Kubina Component: _____
 Requestor: _____ COMPONENT SERIAL NO.

	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL						
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REVENUE	(14.8)	(14.8)	(14.8)	(14.8)	(14.8)	(14.8)
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

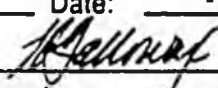
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

This bill would exempt current licensees from future licenses. We currently have 59 licensees who pay the \$150 annual license fee and \$100 Commercial Use Permit fee. (\$250 total annual fee.) $59 \times \$250 = \$14,750$

Prepared By: Barbara Gabier, Licensing Supervisor Phone: 465-3262
 Division: Occupational Licensing Date: February 5, 1991
 Approved by Commissioner: Glenn A. Olds 
 Agency: Department of Commerce and Economic Development Date: February 5, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies)

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSHB 72 (Trans)
 (proposed)

Revision Date: 2/27/91 Department Affected: Fish and Game
 Title: Transporter License: Charter BRU: Div. of Wildlife Conservation
boats exempt Component: Wildlife Conservation
 Sponsor: Representative Kubina
 Requestor: _____ COMPONENT SERIAL NO.

	4	7	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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	(2.9)	(2.9)	(2.9)	(2.9)	(2.9)	(2.9)
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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

Estimate of current year impact: No FY 91 impact.

ANALYSIS: (Attach a separate page if necessary.)

Commercial use permit fees may be used for enforcement purposes by the department and Fish and Wildlife Protection (Public Safety). This fee would be reduced by 50% for the 59 licensees who currently pay a fee of \$100.
 Annual loss = 59 x \$50 = \$2,900

Prepared By: Phil Koehl Phone: 465-4190
 Division: Wildlife Conservation Date: 2/27/91

Approved by Commissioner: _____
 Agency: Department of Fish and Game Date: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Note
* Act amended
or pg 69
and pg 70

§ 08.48.341

ALASKA STATUTES SUPPLEMENT

§ 08.48.341

(10) "practice of land surveying" means any service or work the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related sciences, and the relevant requirements of law for adequate evidence of the act of measuring and locating land, geodetic and cadastral surveys for the location and monumentation of property boundaries, for the platting and planning of land and subdivisions, and for the preparation and perpetuation of maps, record plats, field note records and property descriptions that represent these surveys;

(11) "professional architect" means a person who has been legally registered as a professional architect by the board;

(12) "professional engineer" means a person who has been legally registered as a professional engineer by the board;

(13) "professional land surveyor" means a person who has been legally registered as a professional land surveyor by the board;

(14) "responsible charge" means the direct control and personal supervision of work;

(15) "structure" means a system of materials and components that resists horizontal and vertical loads. (§ 3 ch 179 SLA 1972; am §§ 6 — 8 ch 2 SLA 1990)

Revisor's notes. — Paragraph (3) was enacted as (14). Renumbered in 1990, at which time paragraphs (3)—(13) were renumbered as (4)—(14), respectively.

Effect of amendments. — The 1990 amendment substituted "buildings" for "structures" and "drawings" for "plans",

deleted "functional and aesthetic" following "creative work in the", and made other changes in wording in paragraph (7); deleted "buildings" in two places, substituted "drawings" for "plans" and made other changes in wording in paragraph (8); and added paragraphs (14) and (15).

Chapter 54. Guides and Related Occupations.

Article

1. Big Game Commercial Services Board (§§ 08.54.010 — 08.54.330)
2. Licensing (§§ 08.54.350 — 08.54.470)
3. Discipline and Unlawful Acts (§§ 08.54.500 — 08.54.540)
4. General Provisions (§§ 08.54.550, 08.54.590)

Cross references. — For interim task force on guiding and game, see sec. 14, ch. 160, SLA 1988, as amended by §§ 1 — 3, ch. 10, SLA 1989, in the Temporary and Special Acts.

Legislative history reports. — For House letter of intent relating to the interim task force on guiding and game, es-

tablished by sec. 14, ch. 160, SLA 1988 (HCS CSSB 191 (R1s) am H), see 1988 House Journal 3713-3715; for House letter of intent related to the extension of and changes in the task force by ch. 10, SLA 1989 (HCS CSSB 139 (Res)), see 1989 House Journal 584.

§ 08.48.341

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§ 08.54.010

BUSINESS AND PROFESSIONS

§ 08.54.300

Article 1. Big Game Commercial Services Board.

<p>Section 10 — 240. [Repealed] 300. Creation and membership of board 310. Duties and powers</p>	<p>Section 320. Board regulations 330. Board assistance</p>
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Cross references. — For transitional SLA 1989 in the Temporary and Special provisions, see §§ 13 — 15, and 17, ch. 37, Acts.

Sec. 08.54.010. Guide Board. [Repealed, § 18 ch 37 SLA 1989.]

Sec. 08.54.020. Appointment and term of office. [Repealed, § 49 ch 94 SLA 1987. For current law, see AS 08.01.035.]

Secs. 08.54.030 — 08.54.141. Board powers and duties, etc.; licensing. [Repealed, § 18 ch 37 SLA 1989.]

Secs. 08.54.142 — 08.54.146. Transporter licensing. [Repealed, § 27 ch 71 SLA 1986.]

Secs. 08.54.150 — 08.54.180. Miscellaneous licensing provisions. [Repealed, § 18 ch 37 SLA 1989.]

Sec. 08.54.185. Additional fees. [Repealed, § 27 ch 71 SLA 1986.]

Secs. 08.54.186 — 08.54.240. Exams; restricted areas; prohibitions; general provisions. [Repealed, § 18 ch 37 SLA 1989.]

Sec. 08.54.300. Creation and membership of board. (a) For the purposes of licensing and regulating the activities of providers of commercial services to big game hunters in the interest of the state's wildlife resources there is created the Big Game Commercial Services Board. For administrative purposes, the board is in the Department of Commerce and Economic Development.

(b) The board consists of nine members:

- (1) two members who are licensed guide-outfitters;
- (2) two members who are licensed transporters, one of whom must be engaged in the business of providing air transportation services;
- (3) one member who holds a commercial use permit, but does not hold any class of guide-outfitter license or a transporter license;
- (4) one member of the Board of Game who is chosen by the Board of Game and who does not hold a commercial use permit;
- (5) one member who represents Native landholders; and
- (6) two public members. (§ 3 ch 37 SLA 1989)

Cross references. — For initial appointments to board, see § 16, ch. 37, SLA 1989 in the Temporary and Special Acts.

Sec. 08.54.310. Duties and powers. (a) The board shall

(1) prepare, grade, and administer

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

(B) an oral examination of a guide-outfitter who seeks an amendment of a game management unit certification; the examination must require demonstration that the guide-outfitter is qualified to provide guide-outfitted hunts in each new game management unit for which the guide-outfitter seeks to be certified;

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

(3) establish performance standards for providers of big game commercial services and regulate the activities of these providers;

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

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

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

(7) authorize issuance of transporter licenses;

(8) authorize issuance of commercial use permits;

(9) meet at least twice annually, once in Anchorage and once in another municipality;

(10) provide for registration of base camps and facilities used by persons who are licensed or who hold a permit under this chapter.

(b) The board may

(1) establish, subject to the prior approval of the commissioner of fish and game, a resource-based management system for allocating

§ 08.54.310

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§ 08.54.320

BUSINESS AND PROFESSIONS

§ 08.54.350

access to big game hunting opportunities among guide-outfitters li-
censed under this chapter;

(2) establish the level of supervision that a guide-outfitter shall
provide for class-A assistant guide-outfitters and assistant guide-out-
fitters who are employed by the guide-outfitter. (§ 3 ch 37 SLA 1989)

Effective dates. — Paragraph (b)(1)
took effect on January 15, 1991, under
§ 20, ch. 37, SLA 1989.

Legislative history reports. — For
House and Senate letters of intent related

to the development of a resource-based
management system, under this section,
see 1989 House Journal 917 — 918 and
1989 Senate Journal 1307, respectively.

Sec. 08.54.320. Board regulations. The board shall adopt proced-
dural and substantive regulations required by this chapter or reason-
ably necessary for its administration. (§ 3 ch 37 SLA 1989)

Sec. 08.54.330. Board assistance. The Department of Fish and
Game, Department of Natural Resources, and Department of Public
Safety shall provide the board with information, data, or technical
assistance requested by the board for the purposes of licensing and
regulating the activities of providers of commercial services to big
game hunters. (§ 3 ch 37 SLA 1989)

Article 2. Licensing.

Section	Section
350. Guide-outfitter license	400. Transporter license
360. Marine mammal guide-outfitter li- cense	410. Appeal to commissioner from board on denial of license
370. Renewal of guide-outfitter license and marine mammal guide-outfit- ter license	420. Renewal of licenses
380. Class-A assistant guide-outfitter li- cense	430. Examinations for guide-outfitter li- censes
390. Assistant guide-outfitter license	440. Failure to renew
395. Insurance and other requirements for guide-outfitters	450. License and examination fees
	460. Commercial use permit holder
	470. Commercial use permit and fee

Effective date of article. — Section
22, ch. 37, SLA 1989, makes this article,
except as 08.54.395, effective May 12,

1989, in accordance with AS 01.10.070(c).
Pursuant to section 21, ch. 37, SLA 1989,
AS 08.54.395 is effective July 15, 1989.

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

(1) is 21 years of age or older;

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

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

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

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

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

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

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

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

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

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

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

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

(c) A guide-outfitter may contract to guide-outfit hunts for big game and may provide transportation to, from, or in the field that is incidental to a guide-outfitted hunt. (§ 3 ch 37 SLA 1989)

Cross references. — For transitional provisions related to licenses issued under former AS 08.54.010 — 08.54.240, see § 13, ch. 37, SLA 1989 in the Temporary

and Special Acts; for transitional provisions related to outfitters, see §§ 14 and 15, ch. 37, SLA 1989 in the Temporary and Special Acts.

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Sec. 08.54.370

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§ 08.54.360

BUSINESS AND PROFESSIONS

§ 08.54.370

Sec. 08.54.360. Marine mammal guide-outfitter license.

(a) The board may issue a marine mammal guide-outfitter license to a natural person who applies to guide-outfit a hunt for a specific species of marine mammal in a specifically designated area if the person

(1) is 21 years of age or older;

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

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

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

(A) current fish and game laws and regulations;

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

(C) field preparation of trophies;

(D) care of game meat;

(E) use of guide-outfitting gear;

(F) firearm safety;

(G) practical first aid; and

(H) booking and contracting hunts;

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

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

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

(b) A marine mammal guide-outfitter may contract to guide-outfit hunts for species of marine mammals for which the marine mammal guide-outfitter license is issued. (§ 3 ch 37 SLA 1989)

Sec. 08.54.370. Renewal of guide-outfitter license and marine mammal guide-outfitter license. (a) An applicant for renewal of a guide-outfitter license or a marine mammal guide-outfitter license shall submit with the application for renewal

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

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

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

(b) The department may not renew a license under this section unless all fees have been paid in full and the hunt record has been filed. (§ 3 ch 37 SLA 1989)

Sec. 08.54.380. Class-A assistant guide-outfitter license. (a) A natural person is entitled to a class-A assistant guide-outfitter license if

(1) the person

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

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

(2) the person:

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

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

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

(b) A class-A assistant guide-outfitter

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

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

(3) may take charge of a camp and conduct guide-outfitter activities from it without the guide-outfitter being present in the area if the guide-outfitter is supervising the guide-outfitting activities. (§ 3 ch 37 SLA 1989)

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

(1) is 18 years of age or older;

(2) passes an examination administered by the board;

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

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

(5) is in sound physical condition; and

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

(b) An assistant guide-outfitter

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

(2) shall be employed by a guide-outfitter and under the supervision of a guide-outfitter or class-A assistant guide-outfitter at all times while the assistant guide-outfitter is in the field on guide-outfitted hunts. (§ 3 ch 37 SLA 1989)

§ 08.54.390

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BUSINESS AND PROFESSIONS

§ 08.54.400

Sec. 08.54.395. Insurance and other requirements for guide-outfitters. (a) A guide-outfitter or marine mammal guide-outfitter, while engaged in providing big game commercial hunting services shall carry, as a minimum, comprehensive general liability insurance of \$300,000 per occurrence or \$500,000 per annual aggregate or post a financial bond in those amounts.

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

(c) During the provision of big game commercial hunting services, an aircraft used by a guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter to transport clients must carry aviation passenger liability insurance of at least \$100,000 per seat or must be subject to a financial bond in that amount. (§ 3 ch 37 SLA 1989)

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

- (1) applies on a form provided by the department;
- * (2) pays the license fee;
- (3) pays the commercial use permit fee;
- (4) provides proof of

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

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

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

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

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

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

- ✕(2) the license fee for the next licensing period;
- (3) the commercial use permit fee for the next licensing period; and
- (4) proof of
 - (A) an air taxi/commercial operator certificate issued by the Federal Aviation Administration under 14 C.F.R. Part 135, if the applicant provides air transportation services to big game hunters;
 - (B) licensure by the Coast Guard to carry passengers for hire, if the applicant provides water transportation services to big game hunters and if licensure is required by the Coast Guard.
- (d) The department may not renew a transporter license unless all fees have been paid in full and the activity report required under (c)(1) of this section and the proof required under (c)(4) of this section have been filed.
- (e) A transporter shall place a decal provided by the department on each plane, boat, vehicle, or other equipment used by the transporter to provide transportation services to big game hunters. The decal must bear the transporter's license number. The decal is valid only for the plane, boat, vehicle, or other equipment for which the decal is issued. (§ 3 ch 37 SLA 1989)

Sec. 08.54.410. Appeal to commissioner from board on denial of license. The commissioner of commerce and economic development may order that an applicant for an initial license under AS 08.54.350 — 08.54.400 be allowed to take the license examination or be issued the license if, after reviewing a petition filed by the applicant, the commissioner finds that

- (1) the board denied the applicant an opportunity to take the license examination or refused to approve issuance of the license;
- (2) the board's denial or refusal has been upheld by a final administrative order and the order has not been appealed to the superior court under AS 44.62.560;
- (3) the board's denial or refusal was based on
 - (A) an error of fact by the board; or
 - (B) the applicant's failure of the license examination due to faulty or unfair examination questions or procedures;
- (4) the applicant is otherwise qualified to take the examination or to be issued the license; and
- (5) sustaining the board's denial or refusal would work a substantial injustice on the applicant. (§ 3 ch 37 SLA 1989)

Sec. 08.54.420. Renewal of licenses. Notwithstanding AS 08.01.100(a), guide-outfitter, marine mammal guide-outfitter, and transporter licenses shall be renewed annually on dates set by the department with the approval of the board. (§ 3 ch 37 SLA 1989)

§ 08.54.420

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§ 08.54.430

BUSINESS AND PROFESSIONS

§ 08.54.460

Sec. 08.54.430. Examinations for guide-outfitter licenses.

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

(b) The board shall regularly disseminate information regarding examinations and other qualifications for all classes of guide-outfitter licenses to residents of the rural areas of the state. (§ 3 ch 37 SLA 1989)

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

(b) Notwithstanding (a) of this section, a guide-outfitter who fails to renew a license is not required to requalify under AS 08.54.350(a)(7), unless the license has been lapsed for three or more years. (§ 3 ch 37 SLA 1989)

* **Sec. 08.54.450. License and examination fees.** (a) The department shall set license fees under AS 08.01.065 for each of the following:

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

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

(c) An applicant for a qualifying examination for any class of guide-outfitter license shall pay a fee established by regulations adopted under AS 08.01.065. (§ 3 ch 37 SLA 1989)

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

commercial use permit holder, hunt broker services, gear rental services, photographic or videographic services, and services as defined by the board by regulation.

(b) A commercial use permit may not be issued to a hunting club. A hunting club may not provide other big game commercial services for compensation. (§ 3 ch 37 SLA 1989)

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

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

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

(d) The commissioner of administration shall separately account for commercial use permit fees deposited in the general fund by the department. The annual estimated balance in the account may be used by the legislature to make appropriations to the Department of Fish and Game and the Department of Public Safety to carry out their respective responsibilities for management of game resources and enforcement of game laws. (§ 3 ch 37 SLA 1989)

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Article 3. Discipline and Unlawful Acts.

Section	Section
500. Discipline of guide-outfitters	520. Unlawful acts
505. Discipline of transporters and commercial use permittees	530. Injunction against unlawful action
510. Discipline; general provisions	540. Responsibility of guide-outfitter for violations

Effective date of article. — Section effective May 12, 1989, in accordance with 22, ch. 37, SLA 1989, makes this article AS 01.10.070(c).

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

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

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BUSINESS AND PROFESSIONS

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

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

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

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

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

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

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

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

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

(A) waste of a wild food animal;

(B) hunting on the same day airborne;

(C) hunting during a closed hunting season; or

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

(d) If a certified copy of a judgment of conviction of a licensee who holds any class of guide-outfitter license for an offense described under (c)(3) of this section is filed with the board, the board shall immediately suspend the licensee's license. The suspension may be ordered even if the conviction resulted from a plea of nolo contendere or if the conviction is under appeal. The suspension remains in effect until after the final disposition of the disciplinary proceeding under this section. (§ 3 ch 37 SLA 1989)

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

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

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

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

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

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

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

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

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

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

(A) waste of a wild food animal;

(B) hunting on the same day airborne;

(C) hunting during a closed hunting season; or

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

(e) If a certified copy of a judgment of conviction of a licensee or permittee for an offense described under (d)(2) of this section is filed with the board, the board shall immediately suspend the licensee's or permittee's license or permit. The suspension may be ordered even if the conviction resulted from a pleas of nolo contendere or if the conviction is under appeal. The suspension remains in effect until after the final disposition of the disciplinary proceeding under this section. (§ 3 ch 37 SLA 1989)

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BUSINESS AND PROFESSIONS

§ 08.54.520

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

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

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

(d) Within 30 days after conclusion of a hearing under AS 08.54.500 or 08.54.505, the board shall notify the complainant of the results of the hearing, including written reasons justifying a decision not to take disciplinary action. (§ 3 ch 37 SLA 1989)

Sec. 08.54.520. Unlawful acts. (a) It is unlawful for a

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

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

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

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

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

(ii) reporting it;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Upon conviction of a person for committing an offense set out in (a) of this section, the execution of sentence may not be suspended and probation may not be granted except on the condition that the mini-

imum term of imprisonment be suspended. (§ 3)

Constitutionality of provisions punishing guiding license as felony. — State. Ct. App. Op. No. A-2844, P.2d (1990)

Sec. 08.54.530. In the judgment of the board of AS 08.54.380(b), 08.54.520 or the regulations to the appropriate commission showing by the board shall grant injunctive relief. (§ 3 ch 37 SLA 1989)

Sec. 08.54.540. Repealed. A guide-outfitter who is responsible under AS 08.54.380(b) or guide-outfitting statute as an assistant guide-outfitter or assistant guide-outfitter of the class-A assistant guide-outfitter employment for the

Art

Section
08.54.530 Hunt records; confidential records and activity

Effective date of article
08.54.530 ch 37. SLA 1989, mal

Sec. 08.54.550. Hunt records and activity reports provided to guide-outfitters. A hunt record provided to a person who used the services of a guide-outfitter, the number of persons and information required by the board for reporting hunt records

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BUSINESS AND PROFESSIONS

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NOTES TO DECISIONS

Constitutionality of former provisions punishing guiding without valid license as felony. — See Maeckle v. State, Ct. App. Op. No. 1054 (File No. A-2844), P.2d (1990).

Application of former statute to person guiding with expired license. — See Romero v. State, Ct. App. Op. No. 1051 (File No. A-2980), P.2d (1990).

Sec. 08.54.530. Injunction against unlawful action. When in the judgment of the board a person has engaged in an act in violation of AS 08.54.380(b), 08.54.390(b), 08.54.400(b), 08.54.510(a), and 08.54.520 or the regulations adopted under them, the board may apply to the appropriate court for an order enjoining the action. Upon a showing by the board that the person is engaging in the act, the court shall grant injunctive relief or other appropriate order without bond. (§ 3 ch 37 SLA 1989)

Sec. 08.54.540. Responsibility of guide-outfitter for violations. A guide-outfitter who contracts to guide-outfit a hunt is equally responsible under AS 08.54.500 for a violation of a federal or state game or guide-outfitting statute or regulation committed by a class-A assistant guide-outfitter or an assistant guide-outfitter while in the course of the class-A assistant guide-outfitter's or assistant guide-outfitter's employment for the guide-outfitter. (§ 3 ch 37 SLA 1989)

Article 4. General Provisions.

Section
550. Hunt records; confidentiality of hunt records and activity reports

Section
590. Definitions

Effective date of article. — Section 22, ch. 37, SLA 1989, makes this article effective May 12, 1989, in accordance with AS 01.10.070(c).

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

(b) The department shall make hunt records, and activity reports received under AS 08.54.400, available to state and federal agencies charged with the enforcement of statutes and regulations relating to guide-outfitting or game or with management of game if requested for game management or law enforcement purposes. Aggregated data compiled from hunt records and activity reports may be included in reports by the department. For all other purposes, the hunt records and activity reports are confidential and are not subject to inspection or copying under AS 09.25.110 — 09.25.125. (§ 3 ch 37 SLA 1989)

Sec. 08.54.590. Definitions. In this chapter

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

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

(3) "big game commercial hunting service" means a service for which the provider of the service must obtain a guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter license;

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

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

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

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

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

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

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

§ 08.54.590

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BUSINESS AND PROFESSIONS

§ 08.54.590

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

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

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

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

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

(14) "unethical activity" means

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

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

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

(D) accepting a deposit for big game commercial services without providing before the services are rendered a signed written contract to provide the services. (§ 3 ch 37 SLA 1989)

Chapter 64. Medicine.

Article

1. State Medical Board (§§ 08.64.101, 08.64.130)
2. Licensing (§§ 08.64.170 — 08.64.209, 08.64.225 — 08.64.250, 08.64.270 — 08.64.273, 08.64.326, 08.64.335, 08.64.336, 08.64.345)
4. Miscellaneous Provisions (§ 08.64.369)
5. General Provisions (§ 08.64.380)

Article 1. State Medical Board.

Section

101. Duties
130. Board records

Alaska Statutes

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Page 77*

Title 8. Business and Professions.

Chapter

01. Centralized Licensing (§§ 08.01.010, 08.01.035, 08.01.050, 08.01.065, 08.01.087, 08.01.102, 08.01.110)
02. Miscellaneous Provisions (§§ 08.02.010, 08.02.020, 08.02.030)
03. Termination, Continuation and Reestablishment of Regulatory Boards (§§ 08.03.010)
04. Accountancy Act of 1960 (§§ 08.04.140, 08.04.350, 08.04.390, 08.04.500 — 08.04.540, 08.04.560, 08.04.580, 08.04.590)
06. Acupuncture (§§ 08.06.010 — 08.06.190)
18. Construction Contractors (§§ 08.18.011, 08.18.013, 08.18.024, 08.18.025, 08.18.028, 08.18.041, 08.18.071, 08.18.101, 08.18.116, 08.18.121, 08.18.123, 08.18.141, 08.18.161, 08.18.171)
20. Chiropractors (§§ 08.20.055, 08.20.100, 08.20.120, 08.20.155, 08.20.170, 08.20.220 — 08.20.900)
24. Collection Agencies (§ 08.24.110)
36. Dentistry (§ 08.36.114)
40. Electrical and Mechanical Administrators (§§ 08.40.005, 08.40.011 — 08.40.060, 08.40.080, 08.40.090, 08.40.120, 08.40.135, 08.40.170 — 08.40.490)
45. Naturopaths (§§ 08.45.030, 08.45.200)
48. Architects, Engineers and Land Surveyors (§§ 08.48.081, 08.48.111, 08.48.241, 08.48.255, 08.48.261, 08.48.331, 08.48.341)
54. Guides and Related Occupations (§§ 08.54.010 — 08.54.590)
64. Medicine (§§ 08.64.101, 08.64.130, 08.64.170 — 08.64.209, 08.64.225 — 08.64.250, 08.64.270 — 08.64.279, 08.64.326, 08.64.335, 08.64.336, 08.64.345, 08.64.369, 08.64.380)
66. Motor Vehicle Dealers (§ 08.66.090)
71. Dispensing Opticians (§§ 08.71.110, 08.71.130, 08.71.160)
72. Optometry Law (§§ 08.72.050, 08.72.110, 08.72.120, 08.72.125, 08.72.150 — 08.72.175, 08.72.191, 08.72.240, 08.72.270 — 08.72.274, 08.72.280, 08.72.300)
80. Pharmacy Act (§§ 08.80.110, 08.80.116, 08.80.460, 08.80.480)
84. Physical Therapists and Occupational Therapists (§§ 08.84.030, 08.84.032, 08.84.100, 08.84.150, 08.84.190)
86. Psychologists and Psychological Associates (§ 08.86.200)
87. Real Estate Appraisers (§§ 08.87.010 — 08.87.900)

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Article 4. General Provisions.

Section 550. Hunt records; confidentiality of hunt records and activity reports	Section 590. Definitions
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Effective date of article. — Section 550 effective May 12, 1989, in accordance with 22, ch. 37, SLA 1989, makes this article AS 01.10.070(c).

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

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BUSINESS AND PROFESSIONS

§ 08.54.590

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Chapter 64. Medicine.

Article

1. State Medical Board (§§ 08.64.101, 08.64.130)
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5. General Provisions: (§ 08.64.380)

Article 1. State Medical Board.

Section

101. Duties
130. Board records

Alaska State Legislature

Chairman
State Affairs
Committee

Legislative Council

Transportation
Committee



Representative Eugene Kubina

During Session:
State Capitol
P.O. Box V
Juneau, Alaska 99811
(907) 465-4859

During Interim:
P.O. Box 2463
Valdez, Alaska 99686
(907) 835-2111

SPONSOR STATEMENT

Sponsor: Representative Gene Kubina

Subject: HB 72 - Charter boat operator exemption
from transporter license

Date: February 1, 1991

HB 72 is intended to correct a redundant licensing situation involving charter boat operators. The current law, AS 08.54.590(13), requires charter boat operators, among other transport groups, to obtain a transporter license. Charter boat operators who carry passengers for hire must currently license their boats with the Coast Guard.

HB 72 will amend said law to exempt charter boat operators from having to acquire the transporter license. This redundant licensing places a significant financial burden on the charter boat operator engaged in a minimal amount of hunter/game transport trips per year.

Aside from the issue of revenue procurement, another goal of the transporter license is information collection. Any relevant data could be readily collected through the guides and hunters themselves, who are obligated under current state law to provide hunt/game statistics and information.

- DISTRICT SIX -

• Chenega Bay • Chitina • Cooper Landing • Cordova • Hope • Moose Pass • Seward • Tatitlek • Valdez • Whittier •



Alaska State Legislature



Representative Eugene Kubina

Chairman
State Affairs
Committee

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MEMO

To: Representative Davidson, Chair
Resources Committee

From: Representative Kubina *Eugene*

Re.: HB72, Licensing for Charter Boat Operators

Date: 11 March 1991

I would appreciate your scheduling my bill HB72 for hearing in your at the earliest possible date.

If I can provide you with any additional material, please don't hesitate to contact me. Thank you.

— DISTRICT SIX —

• Chenega Bay • Chitina • Cooper Landing • Cordova • Hope • Moose Pass • Seward • Tatitlek • Valdez • Whittier •



Alaska State Legislature



Representative Eugene Kubina

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MEMO

To: Representative Davidson, Chair
Resources Committee

From: Representative Gene Kubina, Chair
State Affairs Committee *E. Kubina*

Re.: HB72; Transporter License

Date: 5 March 1991

HB recently passed from the Transportation Committee to the Resources Committee. I would appreciate having this bill brought before your committee at the earliest date.

If there is anything I can do to assist, please contact my office.

- DISTRICT SIX -

• Chenega Bay • Chitina • Cooper Landing • Cordova • Hope • Moose Pass • Seward • Tatitlek • Valdez • Whittier •



Alaska State Legislature



Representative Eugene Kubina

Chairman
State Affairs
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MEMO

To: Rep. Davidson, Chair
Resources Committee

From: Rep. Kubina, Chair
State Affairs Committee

Re.: Scheduling HB72

Date: 4 March 1991

A handwritten signature in cursive script, appearing to read "Eugene", written over the "From:" line of the memo.

I would appreciate your scheduling HB 72 in Resources Committee within the near future. If I or my staff can be of any assistance, please don't hesitate to contact us. Thank you.

— DISTRICT SIX —

• Chenega Bay • Chitina • Cooper Landing • Cordova • Hope • Moose Pass • Seward • Tatitlek • Valdez • Whittier •

HB

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4/16/91

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 79 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES BOYER, Gonzales, Moyer

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the Alaska Mental Health Trust Authority and defining its powers
2 and duties; relating to the administration of the trust established by the Alaska Mental
3 Health Enabling Act of 1956 and to appropriations made to it, and to a comprehensive
4 service program for the beneficiaries of the trust; abolishing the Interim Mental Health
5 Trust Commission; relating to the Older Alaskans Commission and the Governor's Council
6 for the Handicapped and Gifted; amending the membership and duties of the Advisory
7 Board on Alcoholism and Drug Abuse and the Alaska Mental Health Board; exempting
8 trust property from municipal taxation; amending Alaska Rule of Civil Procedure 82; and
9 providing for an effective date."

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

11 * Section 1. PURPOSE. (a) It is the purpose of this Act to implement the state's obligation as the
12 trustee of the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat.

1 709, by providing a comprehensive service program for the beneficiaries of the trust and by resolving
2 the serious and significant legal questions attending the status of that trust

3 (1) in accordance with the holding in the decision *State v. Weiss*, 706 P.2d 681 (Alaska
4 1985), and the principles that guided the development and enactment of ch. 48, SLA 1987;

5 (2) in a manner that

6 (A) provides fair compensation to the trust as agreed upon by the parties to the
7 litigation, subject to approval by the court as fair and equitable to the beneficiaries of the trust;

8 (B) provides adequate assurances that the trust will be administered properly and
9 in a way that determines and meets the necessary expenses of a comprehensive service program
10 for the beneficiaries of the trust;

11 (C) assures appropriate expenditures from the trust;

12 (D) establishes an independent trust authority; and

13 (E) is enforceable.

14 (b) It is the further purpose of this Act that the trust serve, at a minimum, the mentally ill, the
15 mentally defective and retarded, chronic alcoholics suffering from psychoses, and senile people who as
16 a result of their senility suffer major mental illness. In using money from the trust, the needs of persons
17 most impaired cannot be sacrificed to provide services to the less impaired. The trust must provide
18 necessary services to persons most impaired as a first priority and to persons less impaired as a second
19 priority.

20 * Sec. 2. AS 09.25.050(a) is amended to read:

21 (a) The uninterrupted adverse notorious possession of real property under color and claim
22 of title for seven years or more is conclusively presumed to give title to the property except as
23 against the state or the United States. For the purpose of this section, land that is included
24 in the corpus of the trust established by the Alaska Mental Health Enabling Act of 1956,
25 P.L. 84-830, 70 Stat. 709, is land owned by the state.

26 * Sec. 3. AS 29.45.030(a) is amended to read:

27 (a) The following property is exempt from general taxation:

28 (1) municipal, state, or federally owned property, or land that is incorporated
29 in the corpus of the trust established by the Alaska Mental Health Enabling Act of 1956,
30 P.L. 84-830, 70 Stat. 709, except that a private leasehold, contract, or other interest in the
31 property is taxable to the extent of the interest;

1 (2) household furniture and personal effects of members of a household;

2 (3) property used exclusively for nonprofit religious, charitable, cemetery,
3 hospital, or educational purposes;

4 (4) property of a nonbusiness organization composed entirely of persons with 90
5 days or more of active service in the armed forces of the United States whose conditions of
6 service and separation were other than dishonorable, or the property of an auxiliary of that
7 organization;

8 (5) money on deposit;

9 (6) the real property of certain residents of the state to the extent and subject to
10 the conditions provided in (e) of this section;

11 (7) real property or an interest in real property that is exempt from taxation under
12 43 U.S.C. 1620(d), as amended.

13 * Sec. 4. AS 36.30.850(b) is amended to read:

14 (b) This chapter applies to every expenditure of state money by the state, acting through
15 an agency, under a contract, except that this chapter does not apply to

16 (1) grants;

17 (2) contracts for professional witnesses to provide for professional services or
18 testimony relating to existing or probable lawsuits in which the state is or may become a party;

19 (3) contracts of the University of Alaska where the work is to be performed
20 substantially by students enrolled in the university;

21 (4) contracts for medical doctors and dentists;

22 (5) acquisitions or disposals of real property or interest in real property, except
23 as provided in AS 36.30.080;

24 (6) disposals under AS 38.05;

25 (7) contracts for the preparation of ballots under AS 15.15.030;

26 (8) acquisitions or disposals of property and other contracts relating to airports
27 under AS 02.15.070, 02.15.090, and 02.15.091;

28 (9) disposals of obsolete property under AS 19.05.060;

29 (10) disposals of obsolete material or equipment under AS 35.20.060;

30 (11) agreements with providers of services under AS 44.47.250; AS 47.07;
31 AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195, and 47.25.310;

1 (12) contracts of the Department of Fish and Game for flights that involve
2 specialized flying and piloting skills and are not point-to-point;

3 (13) purchases of income-producing assets for the state treasury or a public
4 corporation of the state;

5 (14) operation of the state boarding school established under AS 14.16, if the
6 State Board of Education or the commissioner of education adopts regulations for use by the state
7 boarding school in procurement and contracting;

8 (15) a contract that is a delegation, in whole or in part, of investment powers held
9 by the commissioner of revenue under AS 14.25.180, AS 14.40.400, AS 14.42.200, 14.42.210,
10 AS 18.56.095, AS 22.25.048, AS 26.05.228, AS 37.10.070, 37.10.071, AS 37.14, or
11 AS 39.35.080;

12 (16) a contract that is a delegation, in whole or in part, of investment powers of
13 (A) the Board of Trustees of the Alaska Permanent Fund Corporation
14 under AS 37.13;

15 (B) the Alaska Mental Health Trust Authority under AS 37.14.001 -
16 37.14.099;

17 (17) the purchase of books, book binding services, newspapers, periodicals,
18 audio-visual materials, network information services access, approval plans, professional
19 memberships, archival materials, objects of art, and items for museum or archival acquisition
20 having cultural, historical, or archaeological significance; in this paragraph

21 (A) "approval plans" means book selection services in which current book
22 titles meeting an agency's customized specifications are provided to the agency subject
23 to the right of the agency to return those books that do not meet with the agency's
24 approval;

25 (B) "archival materials" means the noncurrent records of an agency that are
26 preserved after appraisal because of their value;

27 (C) "audio-visual materials" means nonbook prerecorded materials,
28 including records, tapes, slides, transparencies, films, filmstrips, cassettes, videos, compact
29 discs, laser discs, and items that require the use of equipment to render them usable;

30 (D) "network information services" means a group of resources from which
31 cataloging information, holdings records, inter-library loans, acquisitions information, and

1 other reference resources can be obtained;

2 (18) contracts for the purchase of standardized examinations for licensure under
3 AS 08;

4 (19) contracts for home health care and adult residential and foster care services
5 provided under regulations adopted by the Department of Health and Social Services;

6 (20) contracts for supplies or services for research projects funded by money
7 received from the federal government or private grants; [OR]

8 (21) guest speakers or performers for an educational or cultural activity; or

9 (22) contracts for services that are entered into by the Alaska Mental Health
10 Trust Authority under AS 47.30.061.

11 * Sec. 5. AS 37.05.146 is amended to read:

12 Sec. 37.05.146. DEFINITION OF PROGRAM RECEIPTS. In AS 37.05.142 - 37.05.146
13 and AS 37.07.080, "program receipts" means fees, charges, income earned on assets, and other
14 state money received by a state agency in connection with the performance of its functions; all
15 program receipts except the following are general fund program receipts:

16 (1) federal receipts;

17 (2) University of Alaska receipts (AS 14.40.491);

18 (3) individual, foundation, or corporation gifts, grants, or bequests that by their
19 terms are restricted to a specific purpose;

20 (4) receipts of the following funds:

21 (A) highway working capital fund (AS 44.68.210);

22 (B) correctional industries fund (AS 33.32.020);

23 (C) loan funds;

24 (D) international airport revenue fund (AS 37.15.430);

25 (E) funds managed by the Alaska State Housing Authority (AS 18.55.020),
26 the Alaska Housing Finance Corporation (AS 18.56.020), the Medical Indemnity
27 Corporation of Alaska (AS 21.88.020), the Alaska Railroad Corporation (AS 42.40.010),
28 the Municipal Bond Bank Authority (AS 44.85.020), or the Alaska Industrial
29 Development and Export Authority (AS 44.88.020);

30 (F) fish and game fund (AS 16.05.100);

31 (G) school fund (AS 43.50.140);

1 (H) training and building fund (AS 23.20.130);

2 (I) retirement funds (AS 14.25, AS 22.25, AS 26.05.222, AS 39.35, and
3 former AS 39.37);

4 (J) permanent fund (art. IX, sec. 15, Alaska Constitution);

5 (K) public school trust fund (AS 37.14.110);

6 (L) second injury fund (AS 23.30.040);

7 (M) fishermen's fund (AS 23.35.060);

8 (N) FICA administration fund (AS 39.30.050);

9 (5) mental health trust receipts (AS 37.14.001).

10 * Sec. 6. AS 37.05.540(b) is amended to read:

11 (b) Except for appropriations to the permanent fund or for Alaska permanent fund
12 dividends, appropriations to the budget reserve fund, appropriations of revenue bond proceeds,
13 appropriations required to pay the principal and interest on general obligation bonds, [AND]
14 appropriations of money received from a nonstate source in trust for a specific purpose, including
15 revenue of a public enterprise or public corporation of the state that issues revenue bonds, and
16 appropriations made under AS 37.14.013(a)(5) and 37.14.017, appropriations from the treasury
17 made in a fiscal year may not exceed appropriations made in the preceding fiscal year by more
18 than five percent plus the change in population and inflation since the beginning of the preceding
19 fiscal year. For purposes of applying this limit an appropriation is considered to be made in the
20 fiscal year in which it is enacted and a reappropriation remains attributed to the fiscal year in
21 which the original appropriation is enacted. The determination of the change in population for
22 purposes of this subsection shall be based on an annual estimate of population by the Department
23 of Labor. The determination of the change in inflation for purposes of this subsection shall be
24 based on the Consumer Price Index for all urban consumers for Anchorage prepared by the
25 United States Bureau of Labor Statistics. The amount of money received by the state that is
26 subject to the appropriation limit includes the balance in the general fund carried forward from
27 the preceding fiscal year.

28 * Sec. 7. AS 37.14 is amended by adding new sections to read:

29 Sec. 37.14.001. TRUSTEE. (a) The Alaska Mental Health Trust Authority, established
30 by AS 47.30.011, is the trustee of

31 (1) the trust established under the Alaska Mental Health Enabling Act of 1956,

1 P.L. 84-830, 70 Stat. 709; and

2 (2) the mental health trust income account established under AS 37.14.021.

3 (b) In its capacity as the trustee of the trust established by the enabling Act, the authority
4 may

5 (1) receive, manage, and invest money or other real, personal, or mixed property
6 for the purpose of the trust, its improvement, or the aid or advantage of its beneficiaries; and

7 (2) act as trustee on behalf of the trust for any of these purposes.

8 Sec. 37.14.006. TRUST MANAGEMENT. (a) The Alaska Mental Health Trust
9 Authority

10 (1) shall manage the assets of the trust according to the prudent-person rule; the
11 prudent-person rule as applied to investments of the authority means that in making investments
12 the board shall exercise the judgment and care under the circumstances then prevailing that an
13 institutional investor of ordinary prudence, discretion, and intelligence exercises in the
14 management of large investments entrusted to it not for speculation but for the permanent
15 disposition of funds, considering probable safety of capital as well as probable income; an
16 evaluation to determine whether the board has exercised the requisite judgment and care in its
17 management of the investments of the trust must be

18 (A) based on the facts and circumstances prevailing at the time the asset
19 was incorporated into the trust; and

20 (B) made on an asset-by-asset basis taking into account the entire
21 investment portfolio of the trust;

22 (2) may, notwithstanding (1) of this subsection, retain assets of the trust that have
23 been incorporated into the trust with the trust's establishment until the board determines that it
24 is in the best interests of the trust to exchange or otherwise dispose of those assets;

25 (3) may, notwithstanding (1) of this subsection, use land that is an asset of the
26 trust directly for a comprehensive service program for the trust beneficiaries; and

27 (4) shall delegate management of trust land described in AS 37.14.013(a)(3) to
28 the Department of Natural Resources.

29 (b) The authority shall

30 (1) at the end of each fiscal year, calculate the amount that must be transferred
31 from the trust income account established in AS 37.14.021 to the mental health trust corpus in

1 order to offset the effect of inflation on the money in the trust corpus during that year, as
2 measured by the change in the calendar year average United States Consumer Price Index for all
3 urban consumers or, if that index does not exist, an equivalent index; and

4 (2) transfer from the trust income account to the mental health trust corpus 1/12th
5 of the amount determined under (1) of this subsection each month.

6 (c) At least annually, the authority shall prepare, publish, and distribute to the legislature
7 and make available to the public a financial report indicating trust revenue and expenditures, and
8 including a statement of its method of allocating the assets of the trust among appropriate
9 investment vehicles. The asset allocation policy shall be designed to provide for prudent
10 diversification and to meet the investment objectives and needs of the authority.

11 * Sec. 8. AS 37.14.011 is repealed and reenacted to read:

12 Sec. 37.14.011. MENTAL HEALTH TRUST CORPUS VALUE. The value as of
13 September 7, 1987, of all land granted under the enabling Act is \$

14 * Sec. 9. AS 37.14 is amended by adding new sections to read:

15 Sec. 37.14.013. TRUST CORPUS RECONSTITUTED. (a) On the effective date of this
16 section, the mental health trust corpus is reconstituted to include

17 (1) land granted to the state under the enabling Act and not transferred or
18 encumbered by the state;

19 (2) land granted to the state under the enabling Act that, on the effective date of
20 this section, is subject to a land use permit issued by the Department of Natural Resources under
21 AS 38.05;

22 (3) land granted to the state under the enabling Act and subsequently established
23 as legislatively-designated land;

24 (4) money appropriated by the legislature on or before the effective date of this
25 section and paid by the state to the trust in partial satisfaction of the value of land granted under
26 the enabling Act and not retained by the trust; and

27 (5) money owed by the state to pay for the value of land granted under the
28 enabling Act and not retained by the trust.

29 (b) The value of land granted to the state under the enabling Act and reconstituted as part
30 of the mental health trust corpus by (a) of this section is the amount determined under the
31 procedures approved by the Interim Mental Health Trust Commission established by sec. 1, ch.

1 132, SLA 1986, as set out in the commission's November 7, 1989, resolution.

2 (c) For purposes of (a)(1) of this section, land granted under the enabling Act is
3 encumbered land not to be included in the trust if the land

4 (1) is a municipal land selection made under AS 29.65 or under former
5 AS 29.18.190 - 29.18.200 and on the effective date of this section, the land

6 (A) has been conveyed by patent to the selecting municipality;

7 (B) is an approved selection, as that term is defined by AS 29.65.130,
8 approved in writing by the director of lands, Department of Natural Resources; or

9 (C) has been selected by a municipality and the municipal selection has
10 been neither approved nor disapproved by the director of lands, Department of Natural
11 Resources; or

12 (2) has been encumbered before the effective date of this section when
13 specifically authorized by law or under terms and conditions established by law.

14 Sec. 37.14.015. PAYMENT BY STATE FOR LAND NOT RETAINED IN THE TRUST.

15 (a) For the land granted under the enabling Act that is not retained by the trust, the state shall
16 pay to the authority an amount calculated to fully pay, in equal annual installments, by July 1,
17 2021, the principal amount together with interest on the unpaid balance at 10.5 percent per
18 annum. The state shall make the payments due under this subsection on a monthly installment
19 payment schedule.

20 (b) The state and the authority may agree on land, and the value of it, that may be
21 conveyed by the state to the authority in partial satisfaction of the amount due the trust under
22 AS 37.14.013(a)(5).

23 (c) When a principal payment in addition to a payment required under (a) of this section
24 is made by the state or when land is conveyed by the state to the trust under (b) of this section,

25 (1) the amount due the trust under AS 37.14.013(a)(5) shall be reduced by the
26 amount of the payment or the value of the land conveyed; and

27 (2) the state and the authority shall recalculate the amounts due as equal annual
28 installments under (a) of this section, the recalculated payment to be effective as of the date of
29 the first installment payable to the trust under (a) of this section during the following fiscal year.

30 (d) The value of land granted to the state under the enabling Act and not retained by the
31 trust for which payment is due the trust under AS 37.14.013(a)(5) is the amount determined

1 under the procedures approved by the Interim Mental Health Trust Commission established by
2 sec. 1, ch. 132, SLA 1986, as set out in the commission's November 7, 1989, resolution.

3 Sec. 37.14.017. RENT PAYABLE FOR LEGISLATIVELY-DESIGNATED LAND. (a)
4 On July 1 of each year, for trust land identified in AS 37.14.013(a)(3) the state shall pay rent for
5 that fiscal year to the authority.

6 (b) The annual rent payable for the land identified in (a) of this section is equal to eight
7 percent of the value of the land. At least every five years the value of the land shall be
8 redetermined as follows:

9 (1) the state assessor in the Department of Community and Regional Affairs shall
10 assign the land identified in (a) of this section to geographic areas; in making the assignment,
11 the assessor shall assign trust land outside a municipality to the nearest municipality;

12 (2) the number of acres of land identified in (a) of this section in each geographic
13 area to which the land is assigned by the state assessor shall be divided by the total number of
14 acres identified in AS 37.14.013(a)(3) to determine the weighting factor;

15 (3) the weighting factor for each area shall be multiplied by the average
16 percentage change in land values in the geographic area since the last valuation, as determined
17 by the Department of Community and Regional Affairs under the full value determination
18 procedure specified in AS 14.17.140, to determine the weighted value change for that area;

19 (4) all of the weighted value changes shall be added together to determine the
20 revaluation factor, expressed as a decimal; and

21 (5) one plus the revaluation factor shall be multiplied by the previous total value
22 of the land identified in AS 37.14.013(a)(3) to arrive at the redetermined value of the land
23 identified in AS 37.14.013(a)(3).

24 Sec. 37.14.019. ENFORCEMENT OF PAYMENTS DUE THE TRUST. (a) If the state
25 fails to make a payment required under AS 37.14.015 or 37.14.017, the chief executive officer
26 of the authority shall notify each of the following of the state's failure to make the payment:

27 (1) the governor;

28 (2) the commissioner of revenue;

29 (3) the president of the senate; and

30 (4) the speaker of the house of representatives.

31 (b) The notice shall be in writing and must include a statement of the remedies available

1 to the authority to secure enforcement of its claim for payment.

2 (c) If payment is not made within 15 days after giving notice under (a) of this section,
3 the chair of the board shall convene the board to determine whether the authority shall exercise
4 its rights under this section to collect the payment.

5 (d) If authorized by the board, the authority may apply to the superior court to require
6 payment. If the court determines that a payment due has not been made, the court shall issue
7 a judgment and order to the state, determining the amount of the payment that is due and
8 directing that payment be made. In a proceeding under this subsection, the court is limited to
9 a determination of whether a payment due the authority is due and unpaid and the amount that
10 is due and unpaid. The court shall include in the judgment the authority's full attorney fees. The
11 judgment bears interest at the rate of 10.5 percent per year. The clerk of the court shall provide
12 copies of a judgment and order entered under this subsection to the officials named in (a) of this
13 section.

14 (e) If a judgment and order is issued under (d) of this section while the legislature is in
15 session, the state shall make the payment required by the order within 30 days of the date of the
16 order. If the judgment and order is issued while the legislature is not in session, the state shall
17 make the payment required by the order within 60 days of the date of the order.

18 * Sec. 10. AS 37.14.021 is repealed and reenacted to read:

19 Sec. 37.14.021. TRUST INCOME ACCOUNT. (a) The mental health trust income
20 account is established as an account separate from the trust corpus.

21 (b) The mental health trust income account consists of money

22 (1) earned by the authority on its investment of the assets of the trust corpus
23 during the fiscal year;

24 (2) received from the state during the fiscal year as interest on the amount paid
25 by the state under AS 37.14.015;

26 (3) received from the state during the fiscal year under AS 37.14.017; and

27 (4) transferred to the account by the board from any source.

28 (c) The authority may establish subaccounts within the mental health trust income
29 account.

30 (d) Expenditure of money from the mental health trust income account is subject to
31 AS 37.07 (Executive Budget Act). The legislature shall appropriate money in the account first

1 to meet the necessary expenses of the comprehensive program of services required by
2 AS 47.30.061. In making annual appropriations, the legislature shall consider the budget
3 prepared and submitted by the authority. If the legislature does not appropriate from the account
4 in the manner submitted by the authority, the legislature shall prepare a report showing how, in
5 the judgment of the legislature, the necessary expenses of the comprehensive program of services
6 required by AS 47.30.061 will be met.

7 * Sec. 11. AS 37.14 is amended by adding new sections to read:

8 Sec. 37.14.026. TRUST LAND CONVEYANCES. (a) The authority may convey trust
9 land to the state or to a person in exchange for land or money.

10 (b) Before the authority conveys land that is part of the trust, and in addition to any other
11 requirements of law, the authority shall negotiate with the conveyee to establish

12 (1) the value of the land to be conveyed and the value of replacement land, if any,
13 to be incorporated into the trust; if the conveyee proposes to exchange trust land for other land,
14 the conveyee shall make available to the trust replacement land that is of at least equal value and
15 with at least equal income production potential at the time of its transfer or conveyance to the
16 trust; or

17 (2) the amount of compensation due the trust for the land conveyed based on the
18 value of that land at the time of its transfer or conveyance from the trust.

19 Sec. 37.14.099. DEFINITIONS. In AS 37.14.001 - 37.14.099,

20 (1) "authority" means the Alaska Mental Health Trust Authority established under
21 AS 47.30.011;

22 (2) "board" means the board of trustees of the authority;

23 (3) "enabling Act" means the Alaska Mental Health Enabling Act of 1956, P.L.
24 84-830, 70 Stat. 709;

25 (4) "land granted under the enabling Act" means

26 (A) that land identified by the Department of Natural Resources to be
27 valued by the commissioner of natural resources under procedures approved by the
28 Interim Mental Health Trust Commission more specifically described in documents
29 labeled "Exhibit A" and attached to each of the re-notices of lis pendens that were
30 recorded in September 1990 at

31 (i) book 2073, pages 388 - 416, Anchorage Recording Office;

- 1 (ii) book 62, pages 394 - 399, Cordova Recording Office;
2 (iii) book 677, pages 62 - 100, Fairbanks Recording Office;
3 (iv) book 19, pages 926 - 954, Haines Recording Office
4 (v) book 201, pages 488 - 491, Homer Recording Office;
5 (vi) book 335, pages 748 - 765, Juneau Recording Office;
6 (vii) book 371, pages 117 - 158, Kenai Recording Office;
7 (viii) book 181, pages 728 - 757, Ketchikan Recording Office;
8 (ix) book 102, pages 869 - 872, Kodiak Recording Office;
9 (x) book 25, pages 195 - 198, McKinley Recording Office;
10 (xi) book 46, pages 001 - 023, Nenana Recording Office;
11 (xii) book 16, pages 393 - 397, Nulato Recording Office;
12 (xiii) book 629, pages 869 - 916, Palmer Recording Office;
13 (xiv) book 35, pages 518 - 534, Petersburg Recording Office;
14 (xv) book 31, pages 621 - 626, Seldovia Recording Office;
15 (xvi) book 90, pages 524 - 538, Sitka Recording Office;
16 (xvii) book 6, pages 286 - 294, Skagway Recording Office;
17 (xviii) book 131, pages 585 - 590, Talkeetna Recording Office;
18 (xix) book 18, pages 643 - 650, Wrangell Recording Office; and

19 (B) all land approved for conveyance and patented under sec. 202 of the
20 enabling Act after September 7, 1987;

21 (5) "legislatively-designated land" means land granted under the enabling Act and
22 subsequently designated by law as a state park, state forest, state game refuge, state wildlife
23 refuge, state game sanctuary, state recreational area, state recreational river, state wilderness park,
24 state marine park, state special management area, state public use area, critical habitat area, bald
25 eagle preserve, bison range, or moose range.

26 * Sec. 12. AS 38.05.800 is repealed and reenacted to read:

27 Sec. 38.05.800. ADMINISTRATION OF CERTAIN LAND WITHIN THE MENTAL
28 HEALTH TRUST. The department shall manage land identified in AS 37.14.013(a)(3) on behalf
29 of the Alaska Mental Health Trust Authority and under the provisions of AS 37.14.017 for the
30 land's legislatively-designated purpose. The state shall continue to manage the land and its
31 resources in accordance with state law and policy. The management authority of the state

1 includes

2 (1) the right to issue permits, rights-of-ways, mining leases, oil and gas leases,
3 coal leases, and timber contracts;

4 (2) the right to take other actions that do not constitute a conveyance in fee
5 simple; and

6 (3) the right to receive the income from the land managed.

7 * Sec. 13. AS 39.25.120(c)(9) is amended to read:

8 (9) the principal executive officer of the following boards, councils, or
9 commissions:

10 (A) Alaska Public Broadcasting Commission;

11 (B) Professional Teaching Practices Commission;

12 (C) Parole Board;

13 (D) Board of Nursing;

14 (E) Real Estate Commission;

15 (F) Alaska Royalty Oil and Gas Development Advisory Board;

16 (G) Alaska Historical Commission;

17 (H) Alaska State Council on the Arts;

18 (I) Alaska Police Standards Council;

19 (J) Older Alaskans Commission;

20 (K) Alaska Mental Health Board;

21 (L) State Medical Board;

22 (M) Governor's Council for the Handicapped and Gifted;

23 (N) Advisory Board on Alcoholism and Drug Abuse;

24 * Sec. 14. AS 41.15 is amended by adding a new section to read:

25 Sec. 41.15.025. FIRE PROTECTION ON MENTAL HEALTH TRUST LAND. Land
26 that is included in the corpus of the trust established by the Alaska Mental Health Enabling Act
27 of 1956 is, for the purpose of wild fire suppression, land owned by the state, and the state
28 remains responsible for providing and paying for suppression of wild fires on that land.

29 * Sec. 15. AS 44.21.230(a) is amended to read:

30 (a) The commission shall

31 (1) formulate a comprehensive statewide plan that identifies the concerns and

1 needs of older Alaskans and, with reference to the plan adopted, prepare and submit to the
2 governor and legislature an annual analysis and evaluation of the services that are provided to
3 older Alaskans;

4 (2) make recommendations directly to the governor and legislature with respect
5 to legislation, regulations, and appropriations for programs or services that benefit older Alaskans;

6 (3) encourage and aid the development of municipal commissions serving older
7 Alaskans and community-oriented programs and services for the benefit of older Alaskans;

8 (4) employ an executive director who serves at the pleasure of the commission;

9 (5) help older Alaskans lead dignified, independent, and useful lives;

10 (6) request and receive reports and audits from state agencies and local institutions
11 concerned with the conditions and needs of older Alaskans;

12 (7) administer, with the approval of the commissioner of administration, federal
13 programs as provided under 42 U.S.C. 3001 - 3045i (Older Americans Act), as amended;

14 (8) administer, with the approval of the commissioner of administration, state
15 programs as provided under AS 47.65; [AND]

16 (9) give assistance, on request, to the senior housing office in the Department of
17 Community and Regional Affairs in administration of the senior housing loan program under
18 AS 44.47.587 - 44.47.609 and in the performance of the office's other duties under
19 AS 44.47.585; and

20 (10) provide recommendations to the Alaska Mental Health Trust Authority
21 concerning the necessary expenses of the comprehensive service program for the
22 beneficiaries of the trust who are described in AS 47.30.061(c)(4) and the use of the money
23 in the mental health trust income account in a manner consistent with AS 47.30.061; in
24 making recommendations affecting the trust, members of the commission assume a duty of
25 loyalty to the trust equivalent to the responsibilities of a private trustee.

26 * Sec. 16. AS 44.29.020 is amended to read:

27 Sec. 44.29.020. DUTIES OF DEPARTMENT. The Department of Health and Social
28 Services shall administer the state programs of public health and social services, including:

29 (1) maternal and child health services;

30 (2) preventive medical services;

31 (3) public health nursing services;

- 1 (4) nutrition services;
2 (5) health education;
3 (6) laboratories;
4 (7) mental health in a manner consistent with the comprehensive service
5 program plan adopted by the Alaska Mental Health Trust Authority [TREATMENT AND
6 DIAGNOSIS];
7 (8) management of state institutions, except for adult penal institutions;
8 (9) medical facilities;
9 (10) adult public assistance;
10 (11) aid to families with dependent children;
11 (12) child welfare services;
12 (13) general relief; and
13 (14) licensing and supervision of child care facilities.

14 * Sec. 17. AS 44.29.022 is amended by adding a new subsection to read:

15 (d) A regulation that establishes a fee for services under AS 44.29.020(a)(7) that affect
16 the comprehensive service program for beneficiaries of the trust established under the Alaska
17 Mental Health Enabling Act of 1956 may not be adopted under this section unless it has been
18 approved by the Alaska Mental Health Trust Authority.

19 * Sec. 18. AS 44.29.024 is amended by adding a new subsection to read:

20 (c) A regulation that establishes a schedule of reasonable fees for services provided by
21 a contractor or grantee that affect the comprehensive service program for beneficiaries of the trust
22 established under the Alaska Mental Health Enabling Act of 1956 may not be adopted under this
23 section unless it has been approved by the Alaska Mental Health Trust Authority.

24 * Sec. 19. AS 44.29.100 is amended to read:

25 Sec. 44.29.100. ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE. There
26 is established in the Department of Health and Social Services an advisory board on alcoholism
27 and drug abuse. [THE BOARD SHALL FUNCTION AS A STANDING COMMITTEE OF THE
28 STATEWIDE HEALTH COORDINATING COUNCIL ESTABLISHED UNDER AS 18.07.011.]

29 * Sec. 20. AS 44.29.110 is amended to read:

30 Sec. 44.29.110. COMPOSITION. The board consists of 10 [12] members appointed by
31 the governor.

1 * Sec. 21. AS 44.29.115 is amended to read:

2 Sec. 44.29.115. QUALIFICATIONS OF BOARD MEMBERS. The governor shall
3 appoint the 10 [12] members so that the board consists of:

4 (1) one member [TWO MEMBERS] who is [ARE] licensed to practice medicine
5 in the state [, ONE OF WHOM IS CERTIFIED IN PSYCHIATRY BY THE AMERICAN
6 BOARD OF PSYCHIATRY AND NEUROLOGY];

7 (2) one member who is admitted to practice law in the state [ALASKA];

8 (3) four members who are chronic alcoholics with psychoses who are
9 recovering; and

10 (4) four [EIGHT] members who have shown an interest in the problems of
11 alcoholism or drug abuse and who have knowledge of the social problems associated with
12 alcoholism or drug abuse [; AND

13 (4) ONE MEMBER WHO IS A REPRESENTATIVE OF THE LIQUOR INDUSTRY].

14 * Sec. 22. AS 44.29 is amended by adding a new section to read:

15 Sec. 44.29.135. OFFICERS AND STAFF. (a) The board, by a majority of its
16 membership, shall annually elect a chair and other officers it considers necessary from among
17 its membership.

18 (b) The board shall have a paid staff provided by the department, including an executive
19 director who shall be selected by the board. The executive director is in the partially exempt
20 service and shall be compensated at no less than range 21 of the pay plan for state employees
21 under AS 39.27.011(a). The executive director may hire additional employees in the classified
22 service of the state. The department shall provide for the assignment of personnel to the board
23 to ensure the board has the capacity to fulfill its responsibilities. The executive director of the
24 board shall be directly responsible to the board in the performance of the director's duty.

25 * Sec. 23. AS 44.29.140 is amended to read:

26 Sec. 44.29.140. DUTIES. The board shall

27 (1) act in an advisory capacity to the legislature, the governor, and state
28 agencies [COMMISSIONER OF HEALTH AND SOCIAL SERVICES] in the following matters:

29 (A) [(1)] special problems affecting mental health that alcoholism or drug
30 abuse may present;

31 (B) [(2)] educational research and public informational activities

[CONDUCTED BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES AND OTHERS] in respect to the problems presented by alcoholism or drug abuse;

(C) [(3)] social problems that affect rehabilitation of alcoholics and drug abusers;

(D) [(4)] legal processes that affect the treatment and rehabilitation of alcoholics and drug abusers;

(E) [(5)] development of programs of prevention, treatment, and rehabilitation for alcoholics and drug abusers; and

(F) [(6)] REVIEW OF APPLICATIONS AND SUBSEQUENT RECOMMENDATIONS TO THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES ON USE OF FUNDS FOR GRANTS FOR LOCAL ALCOHOLISM OR DRUG ABUSE PROJECTS AND PROGRAMS;

(7)] evaluation of effectiveness of alcoholism and drug abuse programs in the state;

(2) make recommendations to the Alaska Mental Health Trust Authority concerning the use of money in the mental health trust income account for the benefit of chronic alcoholics suffering from psychosis; in making recommendations affecting the mental health trust, the members of the board assume a duty of loyalty to the mental health trust equivalent to the responsibilities of a private trustee.

* Sec. 24. AS 44.29.140 is amended by adding new subsections to read:

(b) The board is the state planning and coordinating body for purposes of federal and state laws relating to alcohol and drug abuse prevention and treatment services.

(c) The board shall prepare and maintain a comprehensive plan of services for the prevention and treatment of alcohol and drug abuse.

* Sec. 25. AS 47.30 is amended by adding new sections to read:

Sec. 47.30.011. ALASKA MENTAL HEALTH TRUST AUTHORITY. (a) The Alaska Mental Health Trust Authority is established as a public corporation of the state that has a legal existence independent of and separate from the state.

(b) The purpose of the authority is to ensure an integrated comprehensive mental health program for the people of the state.

(c) The authority

1 (1) serves under AS 37.14.001 - 37.14.099 as the trustee of the trust established
2 under the Alaska Mental Health Enabling Act of 1956, and of the mental health trust income
3 account established under AS 37.14.021;

4 (2) may sue and be sued;

5 (3) may retain the services of independent counsel when, in the judgment of the
6 authority's board of trustees, independent counsel is needed;

7 (4) shall insure or indemnify and protect the board, a member of the board, or an
8 agent or employee of the authority against financial loss and expense, including reasonable legal
9 fees and costs, arising out of a claim, demand, suit, or judgment by reason of alleged negligence,
10 alleged violation of civil rights, or alleged wrongful act resulting in death or bodily injury to a
11 person or accidental damage to or destruction of property if the board member, agent, or
12 employee, at the time of the occurrence, was acting under the direction of the authority within
13 the course or scope of the duties of the board member, agent, or employee; and

14 (5) is exempt from AS 36.30 (State Procurement Code).

15 (d) The provisions of AS 44.62.330 - 44.62.630 do not apply to the Alaska Mental Health
16 Trust Authority.

17 Sec. 47.30.016. MEMBERSHIP OF THE BOARD. (a) The authority shall be governed
18 by its board of trustees.

19 (b) The board consists of nine members appointed by the governor. The members shall
20 be appointed

21 (1) based upon their recognized expertise or experience in financial management
22 and investment, in land management, or in services for the beneficiaries of the trust;

23 (2) from a list of persons prepared by a panel of five persons who are
24 beneficiaries, or who are the guardians, family members, or representatives of beneficiaries; the
25 panel consists of

26 (A) one person selected by the Alaska Mental Health Board
27 (AS 47.30.661);

28 (B) one person selected by the Governor's Council for the Handicapped
29 and Gifted (AS 47.80.030);

30 (C) one person selected by the Advisory Board on Alcoholism and Drug
31 Abuse (AS 44.29.110);

1 (D) one person selected by the Older Alaskans Commission
2 (AS 44.21.200); and

3 (E) one person selected by the authority.

4 (c) A member of the board may not

5 (1) be an officer or employee of the state; or

6 (2) within the preceding year or during the member's term of office have had an
7 interest in, served on the governing board of, or been employed by an organization that has an
8 interest in, a contract entered into by the authority.

9 (d) A quorum of the board is five members.

10 (e) Members of the board

11 (1) receive an honorarium of \$400 for each day or any part of a day spent at a
12 meeting of the board, at a meeting of a subcommittee of the board, or as a representative of the
13 board; the honorarium under this paragraph shall be adjusted annually for the effect of inflation
14 as measured by the change in the calendar year average United States Consumer Price Index for
15 all urban consumers or, if that index no longer exists, an equivalent index; and

16 (2) are entitled to per diem and travel expenses authorized for boards and
17 commissions under AS 39.20.180.

18 Sec. 47.30.021. TERM OF OFFICE, VACANCIES, AND REMOVAL. (a) Members
19 of the board serve staggered five-year terms. A member shall continue to serve until the
20 member's successor is appointed and confirmed.

21 (b) A vacancy occurring in the membership of the board of trustees of the authority shall
22 be filled within 60 days by appointment of the governor for the unexpired portion of the vacated
23 term.

24 (c) The governor may remove a member of the board only for cause, including
25 incompetence, neglect of duty, misconduct in office, poor attendance, or lack of contribution to
26 the board's work. A member being removed for cause shall be given a copy of the charges and
27 afforded an opportunity to publicly present a defense in person or by counsel upon not less than
28 10 days' written notice. If a member is removed for cause, the governor shall file with the
29 lieutenant governor a complete statement of all charges made against the member and the
30 governor's findings based on the charges, together with a complete record of the proceedings.
31 The removal of a member for cause constitutes a final administrative order. A member seeking

1 to appeal the governor's removal of a member for cause under this subsection shall file a notice
2 of appeal with the superior court under AS 44.62.560.

3 (d) Except for a trustee who has served two consecutive five-year terms, a member of
4 the board may be reappointed. A member of the board who has served two consecutive five-year
5 terms is not eligible for reappointment to the board until one year has intervened.

6 Sec. 47.30.026. OFFICERS AND STAFF. (a) The board shall annually elect a chair
7 and other officers it considers necessary from among its membership.

8 (b) The board shall employ a chief executive officer who shall be selected by the board.
9 The chief executive officer shall be compensated at no less than range 26 of the pay plan for
10 state employees under AS 39.27.011(a). The chief executive officer may

11 (1) hire additional employees;

12 (2) appoint hearing officers to perform the responsibilities set out in
13 AS 47.30.031(b)(7); and

14 (3) contract for the services of consultants and others.

15 (c) The chief executive officer is directly responsible to the board for the performance
16 of the director's duties.

17 Sec. 47.30.031. REGULATIONS. (a) The board shall adopt regulations under the
18 Administrative Procedure Act (AS 44.62) consistent with state law and the fiduciary
19 responsibilities imposed by law on members of boards of directors of corporations having trust
20 responsibilities.

21 (b) The regulations shall address, but are not limited to,

22 (1) the requirements of AS 47.30.061(i) and (k);

23 (2) provisions governing the administration and management of the mental health
24 trust corpus and mental health trust income account under AS 37.14.001 - 37.14.099;

25 (3) provisions concerning the equitable distribution of the earnings of the trust;

26 (4) procedures by which an aggrieved person or group who believe they have not
27 received services that should be provided from the trust may apply to the authority for the
28 provision of the service from trust funds;

29 (5) procedures by which income earned through the provision of trust funded
30 services by any entity can be used to augment or enhance the entity's services;

31 (6) provisions that allow and encourage entities providing trust funded services

1 to integrate those services with other community human services funded by other sources;

2 (7) administrative adjudication procedures, including but not limited to

3 (A) the acceptance of applications under (4) of this subsection;

4 (B) investigations;

5 (C) hearings; and

6 (D) the issuance of administrative orders, as necessary; and

7 (8) procurement procedures.

8 Sec. 47.30.036. DUTIES OF THE BOARD. The board shall

9 (1) preserve and protect the trust corpus in perpetuity;

10 (2) use the trust income to

11 (A) defray the necessary operating and capital expenses of the trust
12 program under AS 47.30.061(a)(1); and

13 (B) meet the annual administrative expenses of the authority;

14 (3) determine and budget for the necessary expenses of the comprehensive service
15 program for the beneficiaries of the trust by producing and annually updating a long range
16 comprehensive trust program plan including

17 (A) forecasts of the number of persons needing services;

18 (B) projections of the resources required to provide the necessary services
19 and facilities;

20 (C) reviews of the status of the comprehensive service program for the
21 beneficiaries of the trust and evaluations of its effectiveness; and

22 (D) program goals, objectives, targets, and time lines;

23 (4) coordinate with other state agencies involved with programs affecting persons
24 in need of mental health services;

25 (5) adopt bylaws governing its meetings, selection of officers, proceedings, and
26 other aspects of board procedure; and

27 (6) make an annual written report of its activities to the legislature, governor, and
28 the public.

29 Sec. 47.30.041. INDIVIDUAL RESPONSIBILITIES OF TRUSTEES. (a) By accepting
30 appointment to the board a person accepts the position as co-trustee of the trust and recognizes
31 that, in exercising its powers, duties, and responsibilities, the board is under a duty to the public

1 and the trust beneficiaries to

2 (1) administer the trust solely in the interests of the beneficiaries;

3 (2) keep and render clear and accurate accounts with respect to the administration
4 of the trust;

5 (3) make public and available complete and accurate information as to the nature
6 and amount of the trust property;

7 (4) exercise an equal or higher degree of care in administering the trust than in
8 the management of the person's own personal business;

9 (5) take reasonable steps to take and keep control of the trust property;

10 (6) use care and skill to preserve the trust property;

11 (7) take reasonable steps to realize on claims that are held in the trust;

12 (8) defend against actions that may result in a loss to the trust estate, unless under
13 all the circumstances, considering the other duties owed to the trust, it is reasonable not to make
14 that defense;

15 (9) keep trust property separate from the person's own property;

16 (10) keep trust property separate from other property not subject to the trust so
17 far as it is reasonable to do so;

18 (11) see that trust property is designated as property of the trust;

19 (12) use care in selecting the bank when making general deposits of trust money
20 in a bank, and properly identify the deposit as a deposit by the authority as trustee;

21 (13) use care and skill to make the trust property productive; however, nothing
22 in this paragraph shall prevent the authority from using trust property directly or indirectly, by
23 contractual stipulation or otherwise as a component of the state's mental health program;

24 (14) use the income of the trust to pay for the necessary expenses of the
25 comprehensive service program for the beneficiaries of the trust;

26 (15) deal impartially with the different trust beneficiaries under the priorities set
27 out in AS 47.30.061; and

28 (16) participate in the administration of the trust with the other members of the
29 board, and use care to prevent a co-trustee from committing a breach of trust or to compel a co-
30 trustee to redress a breach of trust.

31 (b) By accepting appointment to the board, a person accepts the position as co-trustee