

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8733 HOUSE RESOURCES

1 specified in (a) of this section shall, if requested by the department, first furnish to the
2 department proof of prior authorization to use [STATE, FEDERAL, OR] private land
3 where the permit hunt will occur. The authorization shall be provided to the applicant
4 by the guide-outfitter with whom the applicant has contracted to guide-outfit the permit
5 hunt.

6 * Sec. 17. AS 16.05.408(c) is amended to read:

7 (c) Before obtaining a nonresident hunt permit for the taking of an animal
8 specified in (a) of this section, a nonresident alien shall, if requested by the
9 department, first furnish to the department proof of prior authorization to use [STATE,
10 FEDERAL, OR] private land where the permit hunt will occur. The authorization
11 shall be provided to the nonresident alien by the guide-outfitter or marine mammal
12 guide-outfitter with whom the nonresident alien has contracted to guide-outfit the
13 permit hunt.

14 * Sec. 18. TRANSITION. Notwithstanding the amendment of AS 08.54.300(b) by sec. 2
15 of this Act, the person who, on the effective date of this Act, serves on the Big Game
16 Commercial Services Board as the member who holds a commercial use permit, but does not
17 hold any class of guide-outfitter license or a transporter license shall continue to serve on the
18 board for the term to which the person was appointed. Upon the expiration of the term of that
19 member of the board, the governor shall appoint a public member to serve on the board, in
20 accordance with AS 08.54.300(b), as amended by sec. 2 of this Act.

21 * Sec. 19. AS 08.54.400(c)(3), 08.54.460, 08.54.470, 08.54.590(1), and 08.54.590(12) are
22 repealed.

23 * Sec. 20. This Act takes effect immediately under AS 01.10.070(c).

9-LS1156C
Utermohle
5/7/95

CS FOR HOUSE BILL NO. 335()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE OGAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Big Game Commercial Services Board, guide-outfitters,
2 transporters, and commercial use permit holders; extending the termination date
3 of the Big Game Commercial Services Board; and providing for an effective
4 date."

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

6 * Section 1. AS 08.03.010(c)(5) is amended to read:

7 (5) Big Game Commercial Services Board (AS 08.54.300) - June 30,
8 1999 [1994];

9 * Sec. 2. AS 08.54.300(b) is amended to read:

10 (b) The board consists of nine members:

11 (1) two members who are licensed guide-outfitters;

12 (2) two members who are licensed transporters, one of whom must be
13 engaged in the business of providing air transportation services;

14 (3) [ONE MEMBER WHO HOLDS A COMMERCIAL USE PERMIT,

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1 BUT DOES NOT HOLD ANY CLASS OF GUIDE-OUTFITTER LICENSE OR A
2 TRANSPORTER LICENSE;

3 (4) one member of the Board of Game who is chosen by the Board
4 of Game [AND WHO DOES NOT HOLD A COMMERCIAL USE PERMIT];

5 (4) [(5)] one member who represents Native landholders; and

6 (5) three [(6) TWO] public members.

7 * Sec. 3. AS 08.54.310(a) is amended to read:

8 (a) The board shall

9 (1) prepare, grade, and administer

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

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

21 (2) determine qualifications of applicants for class-A assistant guide-
22 outfitter and [,] marine mammal guide-outfitter [, AND ASSISTANT GUIDE-
23 OUTFITTER] licenses and authorize the issuance of licenses to those who qualify;

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

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

1 (5) prohibit guide-outfitting and [, AND OTHER BIG
2 GAME COMMERCIAL SERVICES] activities that are unsportsmanlike, unethical,
3 unsafe, against principles of game conservation, degrading to a profession subject to
4 this chapter, or that adversely affect natural resources;

5 (6) after a hearing, revoke, suspend, or deny renewal of a license [OR
6 PERMIT] under AS 08.54.500 - 08.54.510;

7 (7) authorize issuance of transporter licenses;

8 (8) [AUTHORIZE ISSUANCE OF COMMERCIAL USE PERMITS;

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

11 (9) [(10) PROVIDE FOR REGISTRATION OF BASE CAMPS AND
12 FACILITIES USED BY PERSONS WHO ARE LICENSED OR WHO HOLD A
13 PERMIT UNDER THIS CHAPTER;

14 (11)] require an applicant for issuance or renewal of any class of guide-
15 outfitter license to state in a written and signed document whether the applicant's right
16 to obtain, or exercise the privileges granted by, a sport fishing, hunting, trapping, or
17 guide-outfitting license is revoked or suspended in another state.

18 * Sec. 4. AS 08.54.350(a) is amended to read:

19 (a) A natural person is entitled to a guide-outfitter license if the person

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

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

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

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

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

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

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

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

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

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

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

20 (12) has paid the license fee [AND COMMERCIAL USE PERMIT
21 FEE].

22 * Sec. 5. AS 08.54.360(a) is amended to read:

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

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

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

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

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

- 1 (A) current fish and game laws and regulations;
2 (B) relevant characteristics of the specific species to be hunted;
3 (C) field preparation of trophies;
4 (D) care of game meat;
5 (E) use of guide-outfitting gear;
6 (F) firearm safety;
7 (G) practical first aid; and
8 (H) booking and contracting hunts;

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

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

13 (7) has paid the license fee [AND COMMERCIAL USE PERMIT
14 FEE].

15 * Sec. 6. AS 08.54.370(a) is amended to read:

16 (a) An applicant for renewal of a guide-outfitter license or a marine mammal
17 guide-outfitter license shall submit with the application for renewal

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

20 (2) the license fee for the next licensing period [; AND

21 (3) THE COMMERCIAL USE PERMIT FEE FOR THE NEXT
22 LICENSING PERIOD].

23 * Sec. 7. AS 08.54.390(a) is amended to read:

24 (a) The department shall issue [A NATURAL PERSON IS ENTITLED TO]
25 an assistant guide-outfitter license to a natural [IF THE] person who

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

27 (2) provides a copy of a written recommendation from a guide-
28 outfitter or master guide-outfitter [PASSES AN EXAMINATION ADMINISTERED
29 BY THE BOARD];

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

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

1 cardiopulmonary resuscitation; and

2 (5) is in sound physical condition [; AND

3 (6) MEETS ADDITIONAL QUALIFICATIONS THAT THE BOARD
4 MAY ESTABLISH].

5 * Sec. 8. AS 08.54.400(a) is amended to read:

6 (a) A person is entitled to a transporter license if the person

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

8 (2) pays the license fee;

9 (3) has not been convicted of a state or federal hunting or guide-
10 outfitting statute or regulation within the last five years for which the person was
11 fined more than \$500 or imprisoned for more than five days [PAYS THE
12 COMMERCIAL USE PERMIT FEE];

13 (4) provides proof of

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

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

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

21 * Sec. 9. AS 08.54.400(b) is amended to read:

22 (b) A transporter may provide transportation services for compensation to big
23 game hunters and accommodations in the field at a permanent lodge, house, or cabin
24 owned by the transporter or on a boat with permanent living quarters located on salt
25 water. [A TRANSPORTER MAY ALSO PROVIDE, UNDER AUTHORITY OF A
26 COMMERCIAL USE PERMIT, OTHER BIG GAME COMMERCIAL SERVICES
27 AS DEFINED UNDER AS 08.54.460.] A transporter may not provide big game
28 commercial hunting services without holding the appropriate license.

29 * Sec. 10. AS 08.54.505 is amended to read:

30 Sec. 08.54.505. *lower case* DISCIPLINE OF TRANSPORTERS [AND COMMERCIAL
31 USE PERMITTEES]. (a) The board may hold a hearing to determine whether

1 disciplinary action is necessary if a written complaint concerning the big game
2 commercial service activities of a transporter who is licensed under AS 08.54.400 [OR
3 A COMMERCIAL USE PERMITTEE WHO HOLDS A PERMIT ISSUED UNDER
4 AS 08.54.460] is filed with the board. The board shall hold a hearing to determine
5 whether a licensee [OR PERMITTEE] should be disciplined within a reasonable time
6 after

7 (1) written complaints concerning a licensee's [OR PERMITTEE'S]
8 activities are filed with the board within a two-year period by three or more of the
9 licensee's [OR PERMITTEE'S] clients from separate hunting parties; or

10 (2) a licensee [OR PERMITTEE] has been convicted of a violation of
11 a federal or state statute or regulation relating to hunting or provision of big game
12 commercial services.

13 (b) After a hearing, the board may revoke, suspend, or deny renewal of a
14 transporter license [OR COMMERCIAL USE PERMIT] issued under this chapter, if
15 the board finds that the licensee [OR PERMITTEE]

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

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

23 (c) The board may not revoke, suspend, or deny renewal of a transporter
24 license [OR COMMERCIAL USE PERMIT] for a violation of a federal or state statute
25 or regulation relating to game or provision of big game commercial services committed
26 by an employee of the licensee [OR PERMITTEE] unless the licensee [OR
27 PERMITTEE] participated or aided in the violation.

28 (d) After a hearing, the board shall revoke a license [OR PERMIT] if the
29 board finds that the licensee [OR PERMITTEE]

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

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

3 (A) waste of a wild food animal;

4 (B) hunting on the same day airborne;

5 (C) hunting during a closed hunting season; or

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

7 (e) If a certified copy of a judgment of conviction of a licensee [OR
8 PERMITTEE] for an offense described under (d)(2) of this section is filed with the
9 board, the board shall immediately suspend the licensee's [OR PERMITTEE'S] license
10 [OR PERMIT]. The suspension may be ordered even if the conviction resulted from
11 a pleas of nolo contendere or if the conviction is under appeal. The suspension
12 remains in effect until after the final disposition of the disciplinary proceeding under
13 this section.

14 * Sec. 11. AS 08.54.510(a) is amended to read:

15 (a) A person who is disciplined under AS 08.54.500 or 08.54.505 may not
16 engage in the provision of big game commercial services during the period of license
17 [OR PERMIT] revocation or other disciplinary action. A person who is licensed under
18 this chapter [, OR WHO HOLDS A PERMIT ISSUED UNDER THIS CHAPTER,]
19 may not hire a person whose license [OP PERMIT] to provide big game commercial
20 services is suspended or revoked under AS 08.54.500 or 08.54.505. A person whose
21 license [OR PERMIT] is suspended or revoked may not be employed by a person who
22 is licensed [OR WHO HOLDS A PERMIT] under this chapter.

23 * Sec. 12. AS 08.54.510(b) is amended to read:

24 (b) If the board revokes a license [OR PERMIT] under AS 08.54.500 or
25 08.54.505, the person whose license [OR PERMIT] has been revoked shall surrender
26 immediately the license [OR PERMIT] to the department.

27 * Sec. 13. AS 08.54.510(c) is amended to read:

28 (c) A certified copy of a judgment of conviction of a licensee [OR
29 PERMITTEE] for an offense is conclusive evidence of the commission of that offense
30 in a disciplinary proceeding instituted against the licensee [OR PERMITTEE] under
31 AS 08.54.500 or 08.54.505 based on that conviction, regardless of whether the

1 conviction resulted from a plea of nolo contendere or the conviction is under appeal,
2 unless the conviction is overturned on appeal.

3 * Sec. 14. AS 08.54.520(a) is amended to read:

4 (a) It is unlawful for a

5 (1) person who is licensed [OR WHO HOLDS A COMMERCIAL USE
6 PERMIT] under this chapter to knowingly fail to timely report to the Department of
7 Public Safety, division of fish and wildlife protection, and in no event later than 30
8 days, a violation of a state fish, game, or big game commercial services statute or
9 regulation that the person reasonably believes was committed by a client or an
10 employee of the person;

11 (2) person who is licensed [OR WHO HOLDS A COMMERCIAL USE
12 PERMIT] under this chapter to knowingly

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

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

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

21 (ii) reporting it,

22 (3) [PERSON WITHOUT A CURRENT COMMERCIAL USE
23 PERMIT ISSUED UNDER THIS CHAPTER TO KNOWINGLY PROVIDE BIG
24 GAME COMMERCIAL SERVICES;

25 (4)] person who is licensed [OR WHO HOLDS A COMMERCIAL
26 USE PERMIT ISSUED] under this chapter to intentionally obstruct or hinder or
27 attempt to obstruct or hinder lawful hunting engaged in by a person who is not a client
28 of the person;

29 (4) [(5)] class-A assistant guide-outfitter or an assistant guide-outfitter
30 to knowingly guide-outfit a hunt except while employed and supervised by a guide-
31 outfitter;

1 (5) [(6)] person who holds any class of guide-outfitter license to
2 knowingly enter or remain on [STATE, FEDERAL, OR] private land without prior
3 authorization during the course of providing guide-outfitting services;

4 (6) [(7)] person to knowingly guide-outfit without having a current
5 guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or
6 assistant guide-outfitter license and hunting license in actual possession;

7 (7) [(8)] person without a current guide-outfitter or marine mammal
8 guide-outfitter license to knowingly advertise as or represent to be a guide-outfitter;

9 (8) [(9)] person to knowingly provide transportation services to big
10 game hunters without holding a transporter license;

11 (9) [(10)] class-A assistant guide-outfitter or an assistant guide-outfitter
12 to knowingly contract for a hunt; or

13 (10) [(11)] person to knowingly engage in a big game commercial
14 services activity during the period for which the person's license to conduct that
15 activity is suspended or revoked.

16 * Sec. 15. AS 08.54.590(4) is amended to read:

17 (4) "big game commercial service" means a service for which the
18 provider of the service must obtain a license issued under this chapter
19 [COMMERCIAL USE PERMIT];

20 * Sec. 16. AS 16.05.407(f) is amended to read:

21 (f) An applicant for a nonresident hunt permit for the taking of an animal
22 specified in (a) of this section shall, if requested by the department, first furnish to the
23 department proof of prior authorization to use [STATE, FEDERAL, OR] private land
24 where the permit hunt will occur. The authorization shall be provided to the applicant
25 by the guide-outfitter with whom the applicant has contracted to guide-outfit the permit
26 hunt.

27 * Sec. 17. AS 16.05.408(c) is amended to read:

28 (c) Before obtaining a nonresident hunt permit for the taking of an animal
29 specified in (a) of this section, a nonresident alien shall, if requested by the
30 department, first furnish to the department proof of prior authorization to use [STATE,
31 FEDERAL, OR] private land where the permit hunt will occur. The authorization

1 shall be provided to the nonresident alien by the guide-outfitter or marine mammal
2 guide-outfitter with whom the nonresident alien has contracted to guide-outfit the
3 permit hunt.

4 * Sec. 18. TRANSITION. Notwithstanding the amendment of AS 08.54.300(b) by sec. 2
5 of this Act, the person who, on the effective date of this Act, serves on the Big Game
6 Commercial Services Board as the member who holds a commercial use permit, but does not
7 hold any class of guide-outfitter license or a transporter license shall continue to serve on the
8 board for the term to which the person was appointed. Upon the expiration of the term of that
9 member of the board, the governor shall appoint a public member to serve on the board, in
10 accordance with AS 08.54.300(b), as amended by sec. 2 of this Act.

11 * Sec. 19. AS 08.54.400(c)(3), 08.54.460, 08.54.470, 08.54.590(1), and 08.54.590(12) are
12 repealed' *cleanup* *Common Permit*

13 * Sec. 20. This Act takes effect immediately under AS 01.10.070(c).

CS FOR HOUSE BILL NO. 335(RES)
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:
 Referred:

Sponsor(s): REPRESENTATIVE OGAN

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the termination date of the Big Game Commercial Services
 2 Board to June 30, 1999; eliminating the requirement for a commercial use permit
 3 and for payment of commercial use permit fees; amending the membership of the
 4 Big Game Commercial Services Board; relating to the qualifications for an
 5 assistant guide-outfitter license; eliminating the requirement for testing of assistant
 6 guide-outfitters; providing for additional licensing requirements for transporters;
 7 eliminating the requirement for prior approval to enter or remain on state and
 8 federal land; eliminating the requirement to register base camps; amending the
 9 definition of 'big game commercial services'; and providing for an effective date."

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

11 * Section 1. AS 08.03.010(c)(5) is amended to read:

12 (5) Big Game Commercial Services Board (AS 08.54.300) - June 30,

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1999 [1994];

* Sec. 2. AS 08.54.300(b) is amended to read:

(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];
- (4) ,(5)] one member who represents Native landholders; and
- (5) three [(6) TWO] public members.

* Sec. 3. AS 08.54.310(a) is amended to read:

(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 and [,] 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

1 commercial services and regulate the activities of these providers;

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

8 (5) prohibit guide-outfitting and [,] transporting [, AND OTHER BIG
9 GAME COMMERCIAL SERVICES] activities that are unsportsmanlike, unethical,
10 unsafe, against principles of game conservation, degrading to a profession subject to
11 this chapter, or that adversely affect natural resources;

12 (6) after a hearing, revoke, suspend, or deny renewal of a license [OR
13 PERMIT] under AS 08.54.500 - 08.54.510;

14 (7) authorize issuance of transporter licenses;

15 (8) [AUTHORIZE ISSUANCE OF COMMERCIAL USE PERMITS;

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

18 (9) [(10) PROVIDE FOR REGISTRATION OF BASE CAMPS AND
19 FACILITIES USED BY PERSONS WHO ARE LICENSED OR WHO HOLD A
20 PERMIT UNDER THIS CHAPTER;

21 (11)] require an applicant for issuance or renewal of any class of guide-
22 outfitter license to state in a written and signed document whether the applicant's right
23 to obtain, or exercise the privileges granted by, a sport fishing, hunting, trapping, or
24 guide-outfitting license is revoked or suspended in another state.

25 * Sec. 4. AS 08.54.350(a) is amended to read:

26 (a) A natural person is entitled to a guide-outfitter license if the person

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

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

31 (3) is familiar with the terrain and transportation problems in the game

1 management unit for which the license is requested;

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

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

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

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

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

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

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

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

27 (12) has paid the license fee [AND COMMERCIAL USE PERMIT
28 FEE].

29 * Sec. 5. AS 08.54.360(a) is amended to read:

30 (a) The board may issue a marine mammal guide-outfitter license to a natural
31 person who applies to guide-outfit a hunt for a specific species of marine mammal in

1 a specifically designated area if the person

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

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

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

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

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

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

10 (C) field preparation of trophies;

11 (D) care of game meat;

12 (E) use of guide-outfitting gear;

13 (F) firearm safety;

14 (G) practical first aid; and

15 (H) booking and contracting hunts;

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

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

20 (7) has paid the license fee [**AND COMMERCIAL USE PERMIT**
21 **FEE**].

22 * Sec. 6. AS 08.54.370(a) is amended to read:

23 (a) An applicant for renewal of a guide-outfitter license or a marine mammal
24 guide-outfitter license shall submit with the application for renewal

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

27 (2) the license fee for the next licensing period [; **AND**

28 (3) **THE COMMERCIAL USE PERMIT FEE FOR THE NEXT**
29 **LICENSING PERIOD**].

30 * Sec. 7. AS 08.54.390(a) is amended to read:

31 (a) **The department shall issue** [A NATURAL PERSON IS ENTITLED TO]

1 an assistant guide-outfitter license to a natural [IF THE] person who

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

3 (2) provides a copy of a written recommendation from a guide-
4 outfitter or master guide-outfitter [PASSES AN EXAMINATION ADMINISTERED
5 BY THE BOARD];

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

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

9 (5) is in sound physical condition [; AND

10 (6) MEETS ADDITIONAL QUALIFICATIONS THAT THE BOARD
11 MAY ESTABLISH].

12 * Sec. 8. AS 08.54.400(a) is amended to read:

13 (a) A person is entitled to a transporter license if the person

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

15 (2) pays the license fee;

16 (3) has not been convicted of a state or federal hunting or guide-
17 outfitting statute or regulation within the last five years for which the person was
18 fined more than \$500 or imprisoned for more than five days [PAYS THE
19 COMMERCIAL USE PERMIT FEE];

20 (4) provides proof of

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

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

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

28 * Sec. 9. AS 08.54 400(b) is amended to read:

29 (b) A transporter may provide transportation services for compensation to big
30 game hunters and accommodations in the field at a permanent lodge, house, or cabin
31 owned by the transporter or on a boat with permanent living quarters located on salt

1 water. [A TRANSPORTER MAY ALSO PROVIDE, UNDER AUTHORITY OF A
2 COMMERCIAL USE PERMIT, OTHER BIG GAME COMMERCIAL SERVICES
3 AS DEFINED UNDER AS 08.54.460.] A transporter may not provide big game
4 commercial hunting services without holding the appropriate license.

5 * Sec. 10. AS 08.54.505 is amended to read:

6 Sec. 08.54.505. DISCIPLINE OF TRANSPORTERS [AND COMMERCIAL
7 USE PERMITTEES]. (a) The board may hold a hearing to determine whether
8 disciplinary action is necessary if a written complaint concerning the big game
9 commercial service activities of a transporter who is licensed under AS 08.54.400 [OR
10 A COMMERCIAL USE PERMITTEE WHO HOLDS A PERMIT ISSUED UNDER
11 AS 08.54.460] is filed with the board. The board shall hold a hearing to determine
12 whether a licensee [OR PERMITTEE] should be disciplined within a reasonable time
13 after

14 (1) written complaints concerning a licensee's [OR PERMITTEE'S]
15 activities are filed with the board within a two-year period by three or more of the
16 licensee's [OR PERMITTEE'S] clients from separate hunting parties; or

17 (2) a licensee [OR PERMITTEE] has been convicted of a violation of
18 a federal or state statute or regulation relating to hunting or provision of big game
19 commercial services.

20 (b) After a hearing, the board may revoke, suspend, or deny renewal of a
21 transporter license [OR COMMERCIAL USE PERMIT] issued under this chapter, if
22 the board finds that the licensee [OR PERMITTEE]

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

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

30 (c) The board may not revoke, suspend, or deny renewal of a transporter
31 license [OR COMMERCIAL USE PERMIT] for a violation of a federal or state statute

1 or regulation relating to game or provision of big game commercial services committed
2 by an employee of the licensee [OR PERMITTEE] unless the licensee [OR
3 PERMITTEE] participated or aided in the violation.

4 (d) After a hearing, the board shall revoke a license [OR PERMIT] if the
5 board finds that the licensee [OR PERMITTEE]

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

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

10 (A) waste of a wild food animal;

11 (B) hunting on the same day airborne;

12 (C) hunting during a closed hunting season; or

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

14 (e) If a certified copy of a judgment of conviction of a licensee [OR
15 PERMITTEE] for an offense described under (d)(2) of this section is filed with the
16 board, the board shall immediately suspend the licensee's [OR PERMITTEE'S] license
17 [OR PERMIT]. The suspension may be ordered even if the conviction resulted from
18 a pleas of nolo contendere or if the conviction is under appeal. The suspension
19 remains in effect until after the final disposition of the disciplinary proceeding under
20 this section.

21 * Sec. 11. AS 08.54.510(a) is amended to read:

22 (a) A person who is disciplined under AS 08.54.500 or 08.54.505 may not
23 engage in the provision of big game commercial services during the period of license
24 [OR PERMIT] revocation or other disciplinary action. A person who is licensed under
25 this chapter [, OR WHO HOLDS A PERMIT ISSUED UNDER THIS CHAPTER,]
26 may not hire a person whose license [OR PERMIT] to provide big game commercial
27 services is suspended or revoked under AS 08.54.500 or 08.54.505. A person whose
28 license [OR PERMIT] is suspended or revoked may not be employed by a person who
29 is licensed [OR WHO HOLDS A PERMIT] under this chapter.

30 * Sec. 12. AS 08.54.510(b) is amended to read:

31 (b) If the board revokes a license [OR PERMIT] under AS 08.54.500 or

1 08.54.505, the person whose license [OR PERMIT] has been revoked shall surrender
2 immediately the license [OR PERMIT] to the department.

3 * Sec. 13. AS 08.54.510(c) is amended to read:

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

10 * Sec. 14. AS 08.54.520(a) is amended to read:

11 (a) It is unlawful for a

12 (1) person who is licensed [OR WHO HOLDS A COMMERCIAL USE
13 PERMIT] under this chapter to knowingly fail to timely report to the Department of
14 Public Safety, division of fish and wildlife protection, and in no event later than 30
15 days, a violation of a state fish, game, or big game commercial services statute or
16 regulation that the person reasonably believes was committed by a client or an
17 employee of the person;

18 (2) person who is licensed [OR WHO HOLDS A COMMERCIAL USE
19 PERMIT] under this chapter to knowingly

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

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

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

28 (ii) reporting it;

29 (3) [PERSON WITHOUT A CURRENT COMMERCIAL USE
30 PERMIT ISSUED UNDER THIS CHAPTER TO KNOWINGLY PROVIDE BIG
31 GAME COMMERCIAL SERVICES;

1 (4)] person who is licensed [OR WHO HOLDS A COMMERCIAL
2 USE PERMIT ISSUED] under this chapter to intentionally obstruct or hinder or
3 attempt to obstruct or hinder lawful hunting engaged in by a person who is not a client
4 of the person;

5 (4) [(5)] class-A assistant guide-outfitter or an assistant guide-outfitter
6 to knowingly guide-outfit a hunt except while employed and supervised by a guide-
7 outfitter;

8 (5) [(6)] person who holds any class of guide-outfitter license to
9 knowingly enter or remain on [STATE, FEDERAL, OR] private land without prior
10 authorization during the course of providing guide-outfitting services;

11 (6) [(7)] person to knowingly guide-outfit without having a current
12 guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or
13 assistant guide-outfitter license and hunting license in actual possession;

14 (7) [(8)] person without a current guide-outfitter or marine mammal
15 guide-outfitter license to knowingly advertise as or represent to be a guide-outfitter;

16 (8) [(9)] person to knowingly provide transportation services to big
17 game hunters without holding a transporter license;

18 (9) [(10)] class-A assistant guide-outfitter or an assistant guide-outfitter
19 to knowingly contract for a hunt; or

20 (10) [(11)] person to knowingly engage in a big game commercial
21 services activity during the period for which the person's license to conduct that
22 activity is suspended or revoked.

23 * Sec. 15. AS 08.54.590(4) is amended to read:

24 (4) "big game commercial service" means a service for which the
25 provider of the service must obtain a license issued under this chapter
26 [COMMERCIAL USE PERMIT];

27 * Sec. 16. AS 16.05.407(f) is amended to read:

28 (f) An applicant for a nonresident hunt permit for the taking of an animal
29 specified in (a) of this section shall, if requested by the department, first furnish to the
30 department proof of prior authorization to use [STATE, FEDERAL, OR] private land
31 where the permit hunt will occur. The authorization shall be provided to the applicant

1 by the guide-outfitter with whom the applicant has contracted to guide-outfit the permit
2 hunt.

3 * Sec. 17. AS 16.05.408(c) is amended to read:

4 (c) Before obtaining a nonresident hunt permit for the taking of an animal
5 specified in (a) of this section, a nonresident alien shall, if requested by the
6 department, first furnish to the department proof of prior authorization to use [STATE,
7 FEDERAL, OR] private land where the permit hunt will occur. The authorization
8 shall be provided to the nonresident alien by the guide-outfitter or marine mammal
9 guide-outfitter with whom the nonresident alien has contracted to guide-outfit the
10 permit hunt.

11 * Sec. 18. TRANSITION. Notwithstanding the amendment of AS 08.54.300(b) by sec. 2
12 of this Act, the person who, on the effective date of this Act, serves on the Big Game
13 Commercial Services Board as the member who holds a commercial use permit, but does not
14 hold any class of guide-outfitter license or a transporter license shall continue to serve on the
15 board for the term to which the person was appointed. Upon the expiration of the term of that
16 member of the board, the governor shall appoint a public member to serve on the board, in
17 accordance with AS 08.54.300(b), as amended by sec. 2 of this Act.

18 * Sec. 19. AS 08.54.400(c)(3), 08.54.460, 08.54.470, 08.54.590(1), and 08.54.590(12) are
19 repealed.

20 * Sec. 20. This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

Resources, Vice Chair
State Affairs, Vice Chair
House Special Committee on Oil & Gas, Vice Chair
House Special Committee on Fisheries



State Capitol
Room 409
Juneau, Alaska 99801-1182
(907) 465-3878

Representative Scott Ogan
House District 27

Revised Sponsor Statement HB 335

The revised version of HB 335 achieves the following:

1. Extends the Big Game Commercial Services Board's expiration date from June 30, 1994 to June 30, 1999.
2. Eliminates entirely the Commercial Use Permit.
3. Eliminates the requirement for written testing of Assistant Guides.
4. Adds language to the Transporter license requirements that requires that the applicant to not have been convicted of violating a state or federal hunting or guide-outfitting regulation or statute within the last five years for which the person as fined more than \$500 or imprisoned for more than five days; (this is the same requirement of a Guide-Outfitter under 08.54.350).
5. Eliminates requirements that a Guide-Outfitter provide the board with permission from the State or Federal land manager in order to obtain a Guide Use Area. The board will still need proof of permission from private land owners.
6. Eliminates the requirement to register base camps. Now base camp locations will only have to be identified and submitted in the Guide-Outfitter's Operations Plan when registering for a Guide Use Area.
7. Eliminates the requirement for a Guide-Outfitter to carry public liability insurance.
8. Eliminates the requirement for a Guide-Outfitter, utilizing aircraft, to carry passenger liability insurance.
9. Eliminates the authority of the board to require additional qualifications of Assistant Guides to qualify for licensing under AS 08.54.390. (This is the only place it occurs.)

If HB 335 is not passed by the 19th legislative body and the board is sunsetted, there will be no authority for any entity to administer examinations, issue new guide licenses or new guide use area permits. All current guide-outfitter licenses will expire on December 31, 1995 and there will be no authority to renew those licenses. The Alaska State Division of Occupational Licensing will not be able to take over board functions without legislative action formally transferring board powers. Consequently, since state law will continue to require individuals to have licenses in order to guide, there will be no way for new applicants to obtain licenses. The guide use area system which was created by regulation will not go out of existence, but no new area permits will be issued and no regulation changes may be made. There is also a possibility that guides may have to get a federal aviation regulations (FAR) Part 135 air taxi license. Due to the fact that the board currently requires minimum standards for pilots to transport hunters, the Federal Aviation Administration (FAA) has exempted guide pilots up until now because of board implemented standards.

There are many implications related to the sunseting of the Big Game Commercial Services Board including the economic impact to the business and the livelihood of so many throughout the state of Alaska. Also, by passing HB 335 it will give the board ample time to resolve other issues that have been a major concern to many in the industry. Your support of this important piece of legislation is greatly appreciated.

FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB 335

1995 LEGISLATIVE SESSION

Revision Date: May 8, 1995 Department: Commerce and Economic Development
 Title: An Act relating to the Big Game Commercial BRU: Occupational Licensing
 Services Board..... Component: Operations
 Sponsor: Representative Ogan
 Requestor: Representative Ogan COMPONENT SERIAL #: 1844

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	174.0	174.0	174.0	174.0	174.0	174.0
TRAVEL	17.3	27.5	27.5	27.5	27.5	27.5
CONTRACTUAL	53.8	53.8	53.8	53.8	53.8	53.8
SUPPLIES	1.2	1.2	1.2	1.2	1.2	1.2
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	246.3	256.5	256.5	256.5	256.5	256.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	321.2	185.2	321.2	188.2	321.2	191.8
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	246.3	256.5	256.5	256.5	256.5	256.5
1006 GF/MHTIA						
Other						
TOTAL	246.3	256.5	256.5	256.5	256.5	256.5

Estimate of any current year (FY 95) cost: \$ 219.6

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

CSHB 335 extends the termination date of the Big Game Commercial Services Board to June 30, 1999 and makes two significant changes having fiscal impact which are included in this fiscal note. The expenditures shown are in the FY 96 operating budget request. The changes consist of the following: 1) An average of 143 assistant guide candidates are tested each fiscal year at a cost of \$20.00 per exam. Elimination of the written test requirement for assistant guides will therefore reduce contractual costs and revenue by \$2.9 each fiscal year. (Continued on next page)

Prepared by: Jennifer Strickler, Admin. Officer Phone: 465-2144
 Division: Occupational Licensing Date: 5/8/95
 Approved by Commissioner: William L. Hensley Date: 5/8/95
 Agency: Commerce and Economic Development

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 335

ANALYSIS: (Continued)

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT FISCAL NOTE CALCULATIONS FOR CSHB 335

2) CSHB 335 also proposes to eliminate the Commercial Use Permit. The Division of Occupational Licensing annually collects the commercial use permit fee as general fund/program receipt revenue which is then transferred to the Department of Fish and Game or the Department of Public Safety for enforcement purposes. Since CSHB 335 proposes to eliminate the commercial use permits, the division anticipates a revenue loss of \$58.6 for enforcement purposes. The revenue is based on 586 commercial use permit applicants paying \$100.00 annually. *(Note: Since this revenue is only collected by the Division of Occupational Licensing, it is not included as part of the board's revenue projections for self-sufficiency purposes.)*

BILL: HB 335

SHORT TITLE: EXTEND BIG GAME COMMERCIAL SERVICES BOARD

BILL VERSION:

SPONSOR(S): REPRESENTATIVE(S) CGAN

CURRENT STATUS: (H) RES

STATUS DATE: 05/05/95

HEARING: (H) FIN MAY 09 04:30 PM HOUSE FINANCE 519 <PENDING REFERRAL>

TITLE: "An Act relating to the Big Game Commercial Services Board, guide-outfitters, transporters, and commercial use permit holders; extending the termination date of the Big Game Commercial Services Board; and providing for an effective date."

05/05/95	1887	(H)	READ THE FIRST TIME - REFERRAL(S)
05/05/95	1887	(H)	RESOURCES

HOUSE COMMITTEE REPORT

(9)

Date Referred: May 5, 1995

FURTHER REFERRALS:

Date of Committee Action: 5/8/95

The RESOURCES Committee considered:

HB 335

HOUSE BILL NO. 335

EXTEND BIG GAME COMMERCIAL SERVICES BOARD

"An Act relating to the Big Game Commercial Services Board, guide-outfitters, transporters, and commercial use permit holders; extending the termination date of the Big Game Commercial Services Board; and providing for an effective date."

recommends it be replaced with the following committee substitute

CS HB 335 (RES)

the same title
 a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)





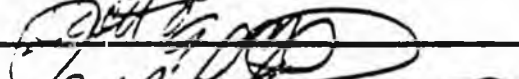
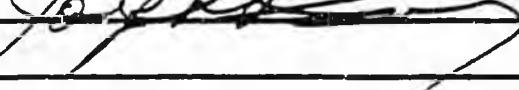
APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) Comm 5/8/95

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
			X	
	X			
	X			
			-	
	X			
	X			

CLERK'S SIGNATURE 

LAW OFFICES
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424 NORTH FRANKLIN STREET
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AVRUM M. GROSS
SUSAN A. BURKE

(907) 586-2777

May 6, 1995

Mr. Joe Klutsch, President
Alaska Professional Hunters Association
P. O. Box 91932
Anchorage, Alaska 99509

Re: Consequences of Termination of the Big
Game Commercial Services Board

Dear Mr. Klutsch:

You have asked us to advise you as to the consequences for future regulation of guides and guide outfitters if the Legislature fails to take action to amend the occupational licensing "sunset" statute (AS 08.03.010) to extend the termination date for the Big Game Commercial Services Board ("BGCSB").

AS 08.03.010(5) currently provides that the BGCSB terminates June 30, 1994. Thus, the Board was "terminated" effective June 30, 1994. Under AS 08.03.020(a), the BGCSB was allowed to continue in existence for a period of only one year following termination, "for the purpose of concluding its affairs," and as of June 30, 1995, the BGCSB will "cease all activities."

For purposes of this opinion I have reviewed a one sheet, undated document from the Division of Occupational Licensing that sets out what the Division believes will be the consequences of final termination of the BGCSB. I have also reviewed an opinion from the Attorney General's office dated June 10, 1992, dealing with the effects of termination of the Board of Electrical Examiners. ^{1/} In my view, based on my review of the applicable statutes, the Attorney General's opinion is a correct statement of the law.

The advice provided by the Division is, in a number of instances, inconsistent with the prior advice given by the Department of Law. The two most significant instances where

^{1/} I have attached a copy of that opinion as well as the one page advice document from the Division.

Mr. Joe Klutsch
May 6, 1995
Page -2-

I believe the Division's advice is simply incorrect are the following:

"The result will be that state law will continue to require individuals to have licenses in order to guide, but there will be no way for new applicants to obtain those licenses. After December 31, 1995, no one will be able to legally guide."

* * * * *

"The guide use area system which was created by regulation will not go out of existence, but no new area permits will be issued and no regulation changes may be made."

Since the 1992 Department of Law opinion deals more directly with the second statement, I will address it first. In my opinion (and apparently that of the Department of Law), once a Board's existence has been finally terminated, regulations adopted by the Board are impliedly repealed. The reason for that is that the legal force and effect of regulations derives solely from the statutory authorization to a board to adopt regulations.

As the Department of Law advised the Division in 1992, "Your staff should provide to me a list of all regulations adopted by the board, so that, as regulations attorney, I can instruct the publisher of the Alaska Administrative Code to delete them." The only authority for the establishment of use areas contained in AS 08.54 is contained in AS 08.54.310(b)(1). That authority is granted only to the BGCSB. Thus, under the advice given by the Attorney General's office, the regulations that establish the guide use area system will be of no force or effect as of June 30, 1995, and presumably she will advise the publisher of the Alaska Administrative Code to delete not only those regulations but all others that have been adopted by the BGCSB to implement its exclusive authority over guide licensing, discipline, and guiding activities.

The Division's advice assumes that following termination of the BGCSB, persons will continue to be required to have guide licenses before they can engage in guiding activities, but that since the Division will have no authority to issue licenses, "no one will be able to legally guide" after December 31, 1995 when all current guide licenses will expire. The 1992 Attorney General's opinion does not address directly the issue of the practical effect of a board's termination on the State's ability to continue to require that a person be licensed before being able to engage in the occupation previously regulated by the

terminated board. Nonetheless I think the only possible interpretation of that opinion leads to the conclusion that where the statutes place discretionary authority for licensing and discipline of an occupation in a board (as opposed to the Division), the effect of terminating the board is that there is simply no longer any State regulation of that occupation. 2/ Guiding and guide-outfitting would simply be like any other occupation that is currently not licensed or regulated as an occupation -- like operating a grocery store or being a janitor. 3/ In other words, if the BGCSB terminates on June 30, 1995, there will be no requirement that a person must have a license before engaging in commercial guiding activity. Any person will be able to conduct guided hunts, regardless of qualifications.

In summary, in my view, the primary and most drastic consequences of the failure of the legislature to adopt legislation this session extending the termination date of the BGCSB will be as follows, effective June 30, 1995:

- In the absence of legislation amending AS 08.54 to expressly transfer BGCSB functions to the Division there will be no authority for any State agency to issue guide licenses or to discipline licensed guides.
- Most, if not all, regulations currently on the books that were adopted by the BGCSB to implement its licensing and disciplinary authority will cease to have the force and effect of law and will be effectively repealed.

2/ This is particularly true under the licensing statutes governing guiding activities. Many of the most significant qualifications for obtaining a guide license are, under the statute, to be judged by the Board in the exercise of its discretion. These include such matters as demonstrating "sufficient standards of competence and ethical conduct" and the ability to perform "the essential duties associated with guide-outfitting."

3/ Persons who conduct guided hunts would, of course, continue to be subject to all applicable statutes and regulations of the Board of Game or the Board of Fish governing hunting and fishing. But unlike the current law, which allows the BGCSB to revoke the guiding license of a person violating certain fish or game regulations, following termination of the BGCSB, a person convicted of even the most serious fish and game laws and regulations could continue to conduct guided hunts.


Mr. Joe Klutsch
May 6, 1995
Page -4-

- There will be no restrictions on any person in the State conducting guided hunts. Anyone may do so. Guides with licenses that do not expire until December 31, 1995 will technically still have them, but they will be meaningless pieces of paper.
- The guide use area system, created by regulations under statutory authority given exclusively to the BGCSB, will cease to exist. Any person, licensed or not, will be able to conduct guided hunts in any area of the State, without regard to existing limitations on the number of areas in which a guide may operate.

I hope this answers your questions. Please let me know if you require additional information. 4/

Very truly yours,

GROSS & BURKE



Susan A. Burke

SAB:ps

4/ It is my understanding that the Legal Services Division of the Legislative Affairs Agency would, if asked, agree with both the conclusions reached by the Department of Law in its June 10, 1992 opinion and with the conclusions I have reached.

MEMORANDUM

State of Alaska
Department of Law

TO: Ann Boudreaux
Director
Div. of Occupational Licensing
Dep't of Commerce and
Economic Development

DATE: June 10, 1992

FILE NO: 663-92-0591

TEL NO: 465-3600

SUBJECT: Assumption of licensing
functions of the Board of
Electrical Examiners

FROM: Deborah Behr /S/
Legislation/Regulations Attorney

You have asked whether the Department of Commerce and Economic Development (department) may lawfully assume the licensing functions assigned to the sunset Board of Electrical Examiners (board), under your department's existing statutory authority. If not, may the department continue to collect fees from existing licenses under this program, and does the department itself have the authority to revoke or suspend licenses issued before July 1, 1992 for violations of licensing requirements occurring after that date?

SHORT ANSWER

The department does not have the statutory authority to adopt regulations to assume the licensing functions assigned to the sunset Board of Electrical Examiners. If the department wishes to assume these functions, the department will need to obtain additional statutory authority from the legislature. If the department does not wish to assume these functions, we recommend that the department pursue legislation to remove obsolete references to the licensing program for electrical administrators. Also, the department should review occupational licensing regulations to make or recommend necessary changes in accordance with this advice.¹

As to the collection of fees, the department should not accept new license applications after July 1, 1992, and therefore, no new application fees should be accepted after that date. Persons who submitted pending applications should be informed of the status of the board and be given an opportunity to receive a refund of fees paid. Because the electrical administrator license cannot be renewed without board involvement, renewal fees

¹ For example, we note that the Board of Mechanical Examiners has recently adopted regulations regarding controls and control wiring that appear to need revision due to the expiration of the Board of Electrical Examiners. 12 AAC 39.940.

Ann Boudreaux, Director
Div. of Occupational Licensing
Dep't of Commerce & Economic Development

June 10, 1992
Page 2
Our file: 663-92-0591

should not be accepted after July 1, 1992. The valid licenses issued before July 1, 1992 continue in effect until their renewal date.

As to enforcement, the department can only enforce statutes and regulations not assigned to the board to enforce. Since most of the key licensing requirements involve board enforcement, the department may have to look to other statutes and other departments, discussed below, to enforce safety concerns.

OVERVIEW

In 1977, the Alaska State Legislature created the Board of Electrical Examiners. Ch. 53, SLA 1977. The purpose of the board was "to protect the safety of people and property in the state from the danger of improperly installed electrical wiring and equipment" AS 08.40.005. The board sets qualifications for licensure of electrical administrators. AS 08.40.045; 08.40.050.

The board is subject to routine "sunset" review by the legislature under AS 44.66.050. In the "sunset" review, the board carries "the burden of demonstrating a public need for its continued existence" AS 44.66.050(b). A board that is not continued in existence by the legislature is allowed one year after the date of termination to wind up licensing activities before ceasing all activities. AS 08.03.020(a).

The Board of Electrical Examiners has undergone "sunset" review by the legislature twice since 1985. On June 30, 1986, the legislature allowed the board to terminate. During the board's wind-up year of operations in 1987, the legislature transferred the board's functions to the department. Secs. 22-31, ch. 94, SLA 1987.

In 1988, the legislature recreated the Board of Electrical Examiners. Ch. 98, SLA 1988. In recreating the board, the legislature expressly removed the department's authority to adopt regulations "establishing categories of electrical administrators, establishing qualifications for those categories and the content of examinations for applicants for each category." Sec. 5, ch. 98, SLA 1988. Additionally, the legislature expressly removed and transferred to the board the department's authority to adopt regulations "relating to the examination and licensing of electrical administrators, the establishing of the continued competency of an applicant for license renewal and reinstatement, and the suspension and

revocation of licenses." Id. at sec. 6. The department retained certain ministerial functions related to this licensing activity, such as issuing licenses to applicants approved by the board or prescribing forms for applicants to apply for licensure. AS 08.40.090. Also, the department retained the authority to inspect or investigate the work of licensees. AS 08.40.070. Additionally, the department performed certain centralized licensing functions related to this board's activities under AS 08.01. Finally, the recreated Board of Electrical Examiners was again scheduled for sunset review to avoid termination on June 30, 1991. Sec. 3, ch. 98, SLA 1988.

In 1991, the governor requested that HB 159 be introduced to extend the board for four years, until June 30, 1995. Hearings were held on HB 159 before the House Labor and Commerce Committee. A committee substitute, CSHB 159(L&C), was adopted to extend the board only until June 30, 1992. That bill passed the House of Representatives on May 3, 1991. 1991 House Journal 1122. The bill was forwarded to the Senate and referred to the Senate Labor and Commerce Committee. 1991 Senate Journal 1112. The bill did not pass out of committee or the Senate during the 1991 and 1992 sessions.

As a result, the statutes were not amended to continue the board in existence. By operation of law, the board "shall cease all activities" effective July 1, 1992. AS 08.03.010(a)(11) and AS 08.03.020.

DISCUSSION

The Department of Commerce and Economic Development was created by statute and assigned certain duties by the legislature. AS 44.33. The department must look to its general and specific statutory authority to see if it has the authority to assume the duties of the sunset board. The department may not act beyond the scope of its statutorily assigned duties without, in essence, legislating new functions and running afoul of separation-of-powers principles. Also, the Alaska court has recognized that administrative agencies are creatures of statute deriving from the legislature the authority for the exercise of any power they claim. *Rutter v. State*, 668 P.2d 1343, 1349 (Alaska 1983).

AS 44.33.020 sets out the general power and duties of the department. Nowhere does that statute authorize the department to set qualifications for licensure of electrical administrators. Likewise, in centralized licensing statutes in

Ann Boudreaux, Director
Div. of Occupational Licensing
Dep't of Commerce & Economic Development

June 10, 1992

Page 4

Our file: 663-92-0591

AS 08.01.050, the department is not assigned these duties.² Since the setting of qualifications was not transferred to the department at the end of the existence of the board, the legislature did not provide authority for the department to assume these duties.³

While AS 08.40.090 states that a "person may not act as an electrical administrator in the state without a license issued by the department," this language by itself does not give the department the authority to adopt regulations to set qualifications, offer examinations, and take other actions previously assigned to the board.⁴ AS 08.40.045; 08.40.060.

Finally, you have asked about the department's authority to collect fees for this licensing program. Since the department is without statutory authorization to conduct licensing examinations or evaluate qualifications of applicants, new applicant fees should not be accepted on or after July 1, 1992. Already pending applicants who are scheduled for examinations in June 1992 should be informed of the status of the board and given an opportunity to request a refund of application fees submitted.

As to renewal fees, the department can only renew licenses on dates set by the department "with the approval of the respective board." AS 08.01.100(a). Also, AS 08.40.135(a) provides that licenses may be renewed by the department "upon proof of continued competence," the standards which are established by the board, by regulation, under AS 08.40.050. Since

² AS 08.01.050 does assign to the department the authority to authorize license "for acupuncturists, audiologists, contractors, naturopaths, or hearing aid dealers." AS 08.01.050(a)(9).

³ Since the legislature knows how to transfer functions of the board to the department, as it did in 1987, the legislature's failure to act supports this conclusion.

⁴ We interpret "license issued by the department" to merely reflect the ministerial role assigned to the department to issue licenses based on board approval.

Also, since no new or renewal license may be issued by the department after July 1, 1992, we believe that the court would interpret the requirement of AS 08.40.090 as a nullity; a court would likely not require a person to complete the impossible act of obtaining a license that must be authorized by a nonexistent board.

June 10, 1992

Page 5

Our file: 663-92-0591

the Board of Electrical Administrators will not exist after July 1, 1992, to approve license renewal dates or to address continued competency requirements, electrical administrator licenses cannot be renewed after that date. Therefore, no renewal fees should be collected after July 1, 1992. Fees received after that date to renew licenses after July 1, 1992, should be returned. A valid license issued before July 1, 1992, continues in existence until its expiration date.⁵

Finally, you have asked what authority the department may have to suspend or revoke a license issued before July 1, 1992, for a license violation occurring after July 1, 1992. Again, the function of disciplining licensees was assigned to the board under AS 08.40.170. The legislature did not transfer this function to the department. Therefore, the department may not discipline licensees⁶ under AS 08.40.170. The department may conduct limited investigations under AS 08.01.087(a). Since no board is available to act on the violations or for the commissioner to notify, the department would have to seek an action in the superior court to obtain compliance. We would alert the department that it may only attempt to obtain compliance with the statutes or regulations remaining that do not involve the board.⁷ Since most safety statutes in AS 08.40.005 -- 08.40.200, and regulations adopted under them, will no longer be effective after July 1, 1992, the remedy for safety violations would likely be based on other statutes.⁸

⁵ We understand that the valid licenses issued before July 1, 1992 are due to expire in 1993.

⁶ We assume that disciplinary actions would have relevance only for licensees who possess valid licenses on July 1, 1992, but have expiration dates after July 1, 1992. Since the licenses cannot be renewed, the problem should not exist after 1993.

⁷ For example, AS 08.40.140 requires a licensee to prominently display a certificate of license, while in effect, in the holder's principal place of business. If the department investigated and determined that a person validly licensed before July 1, 1992, is not displaying that certificate, the department apparently could attempt to seek compliance through court action.

⁸ For example, the commissioner of the Department of Labor issues a certificate of fitness for a person involved in the electrical wiring trade. AS 18.62.070. Also, the Department of Commerce and Economic Development generally issues certificates of registration for construction contractors. AS 08.18. These
(continued...)

Ann Boudreaux, Director
Div. of Occupational Licensing
Dep't of Commerce & Economic Development

June 10, 1992

Page 6

Our file: 663-92-0591

CONCLUSION

For the reasons stated above, the department cannot adopt regulations to assume the licensing functions assigned to the Board of Electrical Examiners before its termination under "sunset" review.⁹ If the department wishes to assume these functions, it will need to obtain statutory authority from the legislature. If it does not wish to do so, the department should pursue legislation to clean up the statutes relating to licensing of electrical administrators. Additionally, the department should review occupational licensing regulations for appropriate amendment or repeal in accordance with this advice. Your staff should provide to me a list of all regulations adopted by the board, so that, as regulations attorney, I can instruct the publisher of the Alaska Administrative Code to delete them.

As to fees, the department should not be collecting fees from new applicants after July 1, 1992, because there is no legal means for these applicants to become licensed as electrical administrators. As to renewal fees, we believe that the department has no authority to renew licenses without board concurrence and therefore no renewal fees should be collected after July 1, 1992.

As to enforcement, the department can only pursue enforcement of very limited responsibilities not assigned to the board to enforce. As a practical matter, this will likely mean that complaints against persons holding licenses on July 1, 1992, until those licenses expire in 1993, will likely have to be pursued under other statutory authorities (and then perhaps by the Department of Labor).

If we may be of further assistance, please contact us.

DB:tg

cc: Hon. Glenn Olds, Commissioner
Department of Commerce & Economic Development

⁸(...continued)

statutes, and regulations adopted under them, might provide some additional authority to enforce safety concerns.

⁹ We reached a similar conclusion regarding the Board of Welder Examiners, after it was sunset. See 1982 Inf. Op. Att'y Gen. at 1 (July 16; 366-756-82).

Ann Boudreaux, Director
Div. of Occupational Licensing
Dep't of Commerce & Economic Development

June 10, 1992
Page 7

Our file: 663-92-0591

Hon. Charles W. Mahlen, Commissioner
Department of Labor

Donald Parks, Chairperson
Board of Electrical Examiners

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

TOM KNOWLES, GOVERNOR

Anthony P. ...

P.O. BOX 110806
JUNEAU, ALASKA 99811-0806
PHONE: (907) 465-2534

Consequences of BGCS BD Sunset

AS 08.54.310 gives the board the authority to prepare, grade and administer examinations for all categories of guide licenses, the authority to issue licenses, the authority to revoke or suspend licenses, and the authority to establish a resource based management system.

If the BGCS Bd is sunsetted, there will be no authority for any entity to administer examinations, issue new guide licenses or new guide use area permits. All current guide-outfitter licenses will expire on 12/31/95 and there will be no authority to renew those licenses.

The Division will not be able to take over board functions without legislative action formally transferring board powers.

The result will be that state law will continue to require individuals to have licenses in order to guide, but there will be no way for new applicants to obtain those licenses. After December 31, 1995, no one will be able to legally guide.

The guide use area system which was created by regulation will not go out of existence, but no new area permits will be issued and no regulation changes may be made.

Alaska State Legislature

Resources, Vice Chair
State Affairs, Vice Chair
House Special Committee on Oil & Gas, Vice Chair
House Special Committee on Fisheries



State Capitol
Room 409
Juneau, Alaska 99801-1182
(907) 465-3678

Representative Scott Ogan
House District 27

Revised Sponsor Statement HB 335

The revised version of HB 335 achieves the following:

1. Extends the Big Game Commercial Services Board's expiration date from June 30, 1994 to June 30, 1999.
2. Eliminates entirely the Commercial Use Permit.
3. Eliminates the requirement for written testing of Assistant Guides.
4. Adds language to the Transporter and assistant guide license requirements that requires that the applicant to not have been convicted of violating a state or federal hunting or guide-outfitting regulation or statute within the last five years for which the person as fined more than \$500 or imprisoned for more than five days; (this is the same requirement of a Guide-Outfitter under 08.54.350).
5. Eliminates requirements that a Guide-Outfitter provide the board with permission from the State or Federal land manager in order to obtain a Guide Use Area. The board will still need proof of permission from private land owners.
6. Eliminates the requirement to register base camps. Now base camp locations will only have to be identified and submitted in the Guide-Outfitter's Operations Plan when registering for a Guide Use Area.
7. Eliminates the authority of the board to require additional qualifications of Assistant Guides to qualify for licensing under AS 08.54.390. (This is the only place it occurs.)

If HB 335 is not passed by the 19th legislative body and the board is sunsetted, there will be no authority for any entity to administer examinations, issue new guide licenses or new guide use area permits. All current guide-outfitter licenses will expire on December 31, 1995 and there will be no authority to renew those licenses. The Alaska State Division of Occupational Licensing

**Position of the Alaska Professional Hunters Association
on issues related to HB-335**

Commercial Use Permit and Fee Re: CS for HB-335(RES)

This idea was originally suggested by the industry that all users paid \$100.00 to help fund the guide outfitter use area mapping project. The mapping project was assigned to John Morrison of the Dept. of Fish and Game. Authority was given to the Dept. of Commerce route the funds to the Department of Fish and Game. The mapping project was completed nearly two years ago. ADF&G who is still receiving the funds,(approx. \$45,000 per year) and naturally found other uses for the moneys coming from the industry, originally for the mapping project.

Position: The funds and the requirement to purchase the commercial use permit were the industries solution to fund the mapping project. That project is complete and the requirement for the additional fee is no longer needed. It is time to delete the permit requirement, rather than encouraging the government to spend it.

Land Use Authorization Re: CS for HB-335(RES) Sec. 17

Currently land use authorization is required by the Department of Commerce, prior to the issuance of a Guide-Outfitter Use Area. This has been a cumbersome requirement for guide-outfitters to comply with. Many federal agencies require the guide-outfitter to provide a state Guide Use Area registration before they will issue their permit, other agencies are very slow to process written authorization further complicating the issue.

As an example: In a letter to the industry dated Sept. 9, 1994, the Department of Commerce, Div. of Occupational Licensing stated that 95% of the Guides had not submitted proof of land use authorization for the fall 1994 season, which started as ~~early~~ as August in many areas.

The fact is, ~~all federal~~ agencies, Park Service, Wildlife Refuge, BLM and Forest Service, as well as the Alaska Dept. of Natural Resources all have their own regulations for land use authorization and permits. Each land manager also has it's own enforcement program for those regulations.

Deleting this requirement would simply lessen the burden of the Dept. of Commerce and the Board from enforcing regulations of other land managers, thus simplifying the guide-outfitter use area registration process for both the Dept. and the guide-outfitter

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

Alaska State Legislature

Resources, Vice Chair
State Affairs, Vice Chair
House Special Committee on Oil & Gas, Vice Chair
House Special Committee on Fisheries



State Capitol
Room 409
Juneau, Alaska 99801-1182
(907) 465-3878

Representative Scott Ogan
House District 27

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7. Eliminates the authority of the board to require additional qualifications of Assistant Guides to qualify for licensing under AS 08.54.390. (This is the only place it occurs.)

If HB 335 is not passed by the 19th legislative body and the board is sunsetted, there will be no authority for any entity to administer examinations, issue new guide licenses or new guide use area permits. All current guide-outfitter licenses will expire on December 31, 1995 and there will be no authority to renew those licenses. The Alaska State Division of Occupational Licensing

will not be able to take over board functions without legislative action formally transferring board powers. Consequently, since state law will continue to require individuals to have licenses in order to guide, there will be no way for new applicants to obtain licenses. The guide use area system which was created by regulation will not go out of existence, but no new area permits will be issued and no regulation changes may be made. There is also a possibility that guides may have to get a federal aviation regulations (FAR) Part 135 air taxi license. Due to the fact that the board currently requires minimum standards for pilots to transport hunters, the Federal Aviation Administration (FAA) has exempted guide pilots up until now because of board implemented standards.

There are many implications related to the sunseting of the Big Game Commercial Services Board including the economic impact to the business and the livelihood of so many throughout the state of Alaska. Also, by passing HB 335 it will give the board ample time to resolve other issues that have been a major concern to many in the industry. Your support of this important piece of legislation is greatly appreciated.

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on issues related to HB-335**

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The fact is, **all** federal agencies, Park Service, Wildlife Refuge, BLM and Forest Service, as well as the Alaska Dept. of Natural Resources all have their own regulations for land use authorization and permits. Each land manager also has it's own enforcement program for those regulations.

Deleting this requirement would simply lessen the burden of the Dept. of Commerce and the Board from enforcing regulations of other land managers, thus simplifying the guide-outfitter use area registration process for both the Dept. and the guide-outfitter

Insurance requirements of Guide-Outfitters

Public liability insurance required under Sec. 08.54.395 was repealed July 1994 as a result of last years board extension bill.

Problem: Many Guide-Outfitters renew their licenses each year but may be inactive. Why do they need insurance? Other licensed Guide-Outfitters are employed by a Guide-Outfitter who has registered for a Guide Use Area and is actually running the guiding business. It is the Guide Outfitter who is running the business who is expected to be insured.

Solution: The requirement of public liability insurance is best required of a Guide-Outfitter who applies for a Guide-Use area. This provision can be taken care of by the board, in regulation requirements of registering for a Guide Use Area.

Reasons to pass HB-335 vs. HB102

1. Both will extend the board however HB-102 has a tight title, can not be changed easily and will most likely die in the Senate Finance Committee.
2. HB-335 will make some much needed improvements in the statutes, that the industry needs now rather than next year. This is what will happen if the board is extended without any ammendments. This may be why the Senate Finance Committee is holding HB-102. One of the most important changes is the elimination of the written exam for assistant guides.

This requirement has discouraged an untold number new applicants from our industry. This written examination is preventing many Guide-Outfitters from employing some very qualified ALASKAN people, as assistant guides.

3. HB-335 is most likely to succeed on the Senate side if we can only get it through the ~~house~~ during the time restraints at hand.

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

P.O. BOX 110806
JUNEAU, ALASKA 99811-0806
PHONE: (907) 485-2534

September 9, 1994

Dear Interested Party:

Enclosed please find the Fall 1994 Guide-Outfitter Use Area registration Approved List. The list was generated on 8/31/94. Guide-Outfitters may conduct guided hunts only in those use areas that they are approved in. The State of Alaska, Big Game Commercial Services Board has broken down the 28 Game Management Units (GMU) into smaller Guide Use Areas (GUA). For example, use area 01-01 is GMU 1, use area 1, and 08-30 is GMU 8, use area 30.

Effective July 1, 1993, Guide-Outfitters are limited to conducting guide-outfitting activities in a maximum of three use areas. Guide Use Area applications may be submitted during open enrollment, which is from mid-October to December 31 each year. There is a total of 593 approved registrations for Fall 1994.

To apply for a use area, guide-outfitters are required to fill out guide use area applications, complete with base/spike camp location, estimated number of clients, estimated animal harvest, and land owners/managers in the use area. Applications are held in a "pending" status until a copy of a final land use permit has been submitted to the division, verifying that the guide-outfitter has land use authorization from the land owners/managers.

* Please note that there are still 170 pending GUA applications on file with the division. 95% of these applications are still pending because we have not received a final land use permit from the guide-outfitter.

If you have questions in general about the guide use area registration process, please call Phil Breuser at 465-5470 or myself at 465-2543.

Sincerely,



Kaylene Wirth, Licensing Examiner
Big Game Commercial Services Board

Alaska

Professional Hunters Association, Inc.

P.O. Box 91932 • 301 E. 77th • Anchorage, Alaska 99509
(907) 522-3221

5-8-1995

Members of the Alaska State Legislature

RE: HB 335 - Extending the Big Game Commercial Services
Board

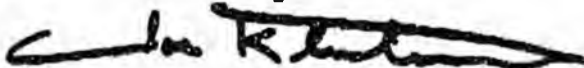
Dear Members of the Legislature:

The Big Game Commercial Services Board is now in imminent danger of being sunsetted. Should this occur, the management of Alaska's game resources and those commercial entities which rely on them would be thrown into a state of chaos. This situation is un-necessary and unacceptable especially in light of developments of the last several days.

We are now extremely pleased that Senator Halford has conveyed his specific concerns related to the current law. HB 335 has been introduced by Representative Ogan and has been crafted to address those concerns. APHA believes these changes will improve and streamline the current regulatory scheme. We therefore urge you to move HB-335 on to passage during the short time remaining in the session.

Your support is critical at this juncture and time is of the essence! We trust you understand the ramifications of a sunset of the BGCSB. Now that positive changes in the law have been offered, this need not occur. Although time is critically short, we are confident you will take expedient action and extend the Board.

Sincerely,



Joe Klutsch
President - APHA



ALASKA AIR CARRIERS ASSOCIATION

1117 E. 35th Avenue, Suite 102
Anchorage, Alaska 99508
(907) 277-0071 Fax (907) 277-0072

MEMORANDUM

TO: House Resources Committee Members
Green, Williams, Ogan, Barnes, Kott,
Austerman, Davies,
MacLean and Nicholia

FROM: Kim Daniels *Kim*
Executive Director

- VIA FAX -

SUBJECT: HB335 Guide-Outfitter
Passenger Liability Insurance

DATE: Sunday evening, May 7, 1995

It has come to our attention on this Sunday evening that the resources committee is considering an amendment to HB335, The Big Game Commercial Services Board that would eliminate or repeal legislation requiring guide-outfitters to carry liability insurance during the transportation of passengers by air.

The Alaska Air Carriers Association, representing 141 commercial air carriers in Alaska, *strongly opposes* such an action. It is the belief of the commercial aviation industry that all guide-outfitter operations utilizing aircraft should carry passenger liability insurance not less than the amount of \$100,000 or be subject to a financial bond in that amount.

The general welfare of the traveling public would be at risk without the regulation in place requiring insurance coverage.

Please feel free to contact me at 277-0071 or 344-0333 for further information. Thank you for your consideration and good evening.

ALASKA AIR CARRIERS ASSOCIATION
MEMORANDUM
TO: HOUSE RESOURCES COMMITTEE MEMBERS
FROM: KIM DANIELS, EXECUTIVE DIRECTOR
SUBJECT: HB 335 GUIDE-OUTFITTER PASSENGER LIABILITY INSURANCE
DATE: SUNDAY EVENING, MAY 7, 1995

Extend Big Game Commercial Services Board.

House Finance Committee Waiver Request

HB335

I have no objection to the waiver of _____ from a House Finance Committee hearing.

Richard Foster Eldon Mulder
Rep. Richard Foster Rep. Eldon Mulder

Ben Grussendorf Pete Kelly
Rep. Ben Grussendorf Rep. Pete Kelly

Vic Kohring Terry Martin
Rep. Vic Kohring Rep. Terry/Martin

Mike Navarre Sean Parnell
Rep. Mike Navarre Rep. Sean Parnell

Gene Therriault Kay Brown
Rep. Gene Therriault Rep. Kay Brown

OK Jimmy Miller

SUCCESS!

HOUSE COMMITTEE REPORT

(9)

Date Referred: May 5, 1995

FURTHER REFERRALS:

Date of Committee Action: 5/8/95

The RESOURCES Committee considered:

HB 335

HOUSE BILL NO. 335

EXTEND BIG GAME COMMERCIAL SERVICES BOARD

"An Act relating to the Big Game Commercial Services Board, guide-outfitters, transporters, and commercial use permit holders; extending the termination date of the Big Game Commercial Services Board; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 335 (RES) the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

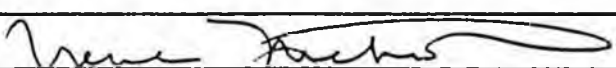
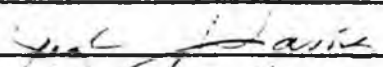



APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) Comm 5/8/95

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
			X	
	X			
	X			
			X	
	X			

CHAIR'S SIGNATURE  _____

HOUSE RESOURCES COMMITTEE
Roll Call and Members' Bill Votes

* (indicates first public hearing)

Room 124, Capitol Bldg.

Mon., Wed., Fri.

Date: 5-8-95

Tape# 95-67 Joint _____

Time: 9:20 am/pm Time Adjourned: _____ am/pm

ROLL CALL:	PRES	ABS	TIME	AR	_____	_____	_____
Rep. Joe Green	✓	_____	_____	_____	_____	_____	_____
Rep. Bill Williams	_____	_____	✓	_____	_____	_____	_____
Rep. Scott Ogan	✓	_____	_____	_____	_____	_____	_____
Rep. Alan Austerman	✓	_____	_____	_____	_____	_____	_____
Rep. Ramona Barnes	_____	_____	_____	_____	_____	_____	_____
Rep. John Davies	✓	_____	_____	_____	_____	_____	_____
Rep. Pete Kott	✓	_____	_____	_____	_____	_____	_____
Rep. Eileen MacLean	_____	_____	_____	_____	_____	_____	_____
Rep. Irene Nicholia	_____	_____	✓	_____	_____	_____	_____

Other Legislators Present _____

AGENDA:

Bill No.	Short Title	Action Taken
<u>H.R. 335</u>	<u>Extend Big Game Commercial Species Act</u>	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

OTHER

HOUSE RESOURCES COMMITTEE
Roll Call and Members' Bill Votes

* (indicates first public hearing)

Room 124, Capitol Bldg.

Mon., Wed., Fri.

Date: 5-7-95 Sun.

Tape# 95-46 Joint _____

Time: 6:02 am/pm Time Adjourned: _____ am/pm

ROLL CALL:	PRES	ABS	TIME	AR	_____	_____	_____
Rep. Joe Green	✓	_____	_____	_____	_____	_____	_____
Rep. Bill Williams	_____	_____	_____	_____	_____	_____	_____
Rep. Scott Ogan	✓	_____	_____	_____	_____	_____	_____
Rep. Alan Austerman	✓	_____	_____	_____	_____	_____	_____
Rep. Ramona Barnes	_____	_____	_____	_____	_____	_____	_____
Rep. John Davies	✓	_____	_____	_____	_____	_____	_____
Rep. Pete Kott	✓	_____	_____	_____	_____	_____	_____
Rep. Eileen MacLean	_____	_____	_____	_____	_____	_____	_____
Rep. Irene Nicholia	_____	_____	_____	_____	_____	_____	_____

Other Legislators Present _____

AGENDA:

Bill No.	Short Title	Action Taken
<u>HB 335</u>	<u>Extend Exp Game Commercial Service Board</u>	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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Mary Pagenkopf

House Resources
5-7-95 6:02pm
Tape #95-66
HB 335

House Resources
5-8-95 9:20am
Tape #95-67
HB 335



HOUSE RESOURCES COMMITTEE

DATE: 5/7/95

PLACE: Capitol, Room 124

SUBJECT OF MEETING:
 HB 335 - extend Big Game
 Commercial Services Board

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Catherine Feardon	DCEI OCC licensing	Dept of Commerce Juneau AK		463-5256	465-2586	(Y) N	HB 335
Gary King Jr.	Alaska Professional Hunters Assoc.	Anchorage AK 99503 302 E. Northern Lights Blvd.			276-5435	Y N	HB 335
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

Alaska State Legislature

Resources, Vice Chair
State Affairs, Vice Chair
House Special Committee on Oil & Gas, Vice Chair
House Special Committee on Fisheries



State Capitol
Room 409
Juneau, Alaska 99801-1182
(907) 465-3878

Representative Scott Ogan
House District 27

Revised Sponsor Statement HB 335

The revised version of HB 335 achieves the following:

1. Extends the Big Game Commercial Services Board's expiration date from June 30, 1994 to June 30, 1999.
2. Eliminates entirely the Commercial Use Permit.
3. Eliminates the requirement for written testing of Assistant Guides.
4. Adds language to the Transporter license requirements that requires that the applicant to not have been convicted of violating a state or federal hunting or guide-outfitting regulation or statute within the last five years for which the person was fined more than \$500 or imprisoned for more than five days; (this is the same requirement of a Guide-Outfitter under 08.54.350).
5. Eliminates requirements that a Guide-Outfitter provide the board with permission from the State or Federal land manager in order to obtain a Guide Use Area. The board will still need proof of permission from private land owners.
6. Eliminates the requirement to register base camps. Now base camp locations will only have to be identified and submitted in the Guide-Outfitter's Operations Plan when registering for a Guide Use Area.
7. Eliminates the requirement for a Guide-Outfitter to carry public liability insurance.
8. Eliminates the requirement for a Guide-Outfitter, utilizing aircraft, to carry passenger liability insurance.
9. Eliminates the authority of the board to require additional qualifications of Assistant Guides to qualify for licensing under AS 08.54.390. (This is the only place it occurs.)

If HB 335 is not passed by the 19th legislative body and the board is sunsetted, there will be no authority for any entity to administer examinations, issue new guide licenses or new guide use area permits. All current guide-outfitter licenses will expire on December 31, 1995 and there will be no authority to renew those licenses. The Alaska State Division of Occupational Licensing will not be able to take over board functions without legislative action formally transferring board powers. Consequently, since state law will continue to require individuals to have licenses in order to guide, there will be no way for new applicants to obtain licenses. The guide use area system which was created by regulation will not go out of existence, but no new area permits will be issued and no regulation changes may be made. There is also a possibility that guides may have to get a federal aviation regulations (FAR) Part 135 air taxi license. Due to the fact that the board currently requires minimum standards for pilots to transport hunters, the Federal Aviation Administration (FAA) has exempted guide pilots up until now because of board implemented standards.

There are many implications related to the sunseting of the Big Game Commercial Services Board including the economic impact to the business and the livelihood of so many throughout the state of Alaska. Also, by passing HB 335 it will give the board ample time to resolve other issues that have been a major concern to many in the industry. Your support of this important piece of legislation is greatly appreciated.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 335

Revision Date: May 8, 1995 Department: Commerce and Economic Development
 Title: An Act relating to the Big Game Commercial BRU: Occupational Licensing
 Services Board..... Component: Operations
 Sponsor: Representative Ogan
 Requestor: Representative Ogan COMPONENT SERIAL #: 1844

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	174.0	174.0	174.0	174.0	174.0	174.0
TRAVEL	17.3	27.5	27.5	27.5	27.5	27.5
CONTRACTUAL	53.8	53.8	53.8	53.8	53.8	53.8
SUPPLIES	1.2	1.2	1.2	1.2	1.2	1.2
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	246.3	256.5	256.5	256.5	256.5	256.5

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES	321.2	185.2	321.2	188.2	321.2	191.8
--------------------	-------	-------	-------	-------	-------	-------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	246.3	256.5	256.5	256.5	256.5	256.5
1006 GF/MHTIA						
Other						
TOTAL	246.3	256.5	256.5	256.5	256.5	256.5

Estimate of any current year (FY 95) cost: \$ 219.6

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

CSHB 335 extends the termination date of the Big Game Commercial Services Board to June 30, 1999 and makes two significant changes having fiscal impact which are included in this fiscal note. The expenditures shown are in the FY 96 operating budget request. The changes consist of the following: 1) An average of 143 assistant guide candidates are tested each fiscal year at a cost of \$20.00 per exam. Elimination of the written test requirement for assistant guides will therefore reduce contractual costs and revenue by \$2.9 each fiscal year. (Continued on next page)

Prepared by: Jennifer Strickler, Admin. Officer Phone: 465-2144
 Division: Occupational Licensing Date: 5/8/95
 Approved by Commissioner: William L. Hensley Date: 5/8/95
 Agency: Commerce and Economic Development

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 335

ANALYSIS: (Continued)

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT FISCAL NOTE CALCULATIONS FOR CSHB 335

2) CSHB 335 also proposes to eliminate the Commercial Use Permit. The Division of Occupational Licensing annually collects the commercial use permit fee as general fund/program receipt revenue which is then transferred to the Department of Fish and Game or the Department of Public Safety for enforcement purposes. Since CSHB 335 proposes to eliminate the commercial use permits, the division anticipates a revenue loss of \$58.6 for enforcement purposes. The revenue is based on 586 commercial use permit applicants paying \$100.00 annually. *(Note: Since this revenue is only collected by the Division of Occupational Licensing, it is not included as part of the board's revenue projections for self-sufficiency purposes.)*

A M E N D M E N T

OFFERED IN THE HOUSE
TO: HB 335

BY REPRESENTATIVE OGAN

- 1 Page 1, following line 8:
- 2 Insert a new bill section to read:
- 3 "* Sec. 2. AS 08.54.310(a)(10), 08.54.590(1), and 08.54.590(12) are repealed."
- 4 Renumber the following bill section accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE OGAN

TO: HB 335

- 1 Page 1, following line 8:
- 2 Insert a new bill section to read:
- 3 "* Sec. 2. AS 08.54.395(a) and 08.54.395(c) are repealed."

- 4 Renumber the following bill section accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE OGAN

TO: HB 335

Page 1, following line 8:

Insert new bill sections to read:

"* Sec. 2. AS 08.54.400(a) is amended to include a new subsection (6) to read:

(6) 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.

* Sec. 3. AS 08.54.460 and AS 08.54.470 are repealed."

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE OGAN

TO: HB 335

1 Page 1, following line 8:

2 Insert new bill sections to read:

3 ** Sec. 2. AS 08.54.520(a) is amended to read:

4 (a) It is unlawful for a

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

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

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

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

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

21 (ii) reporting it;

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

24 (4) person who is licensed or who holds a commercial use permit
25 issued under this chapter to intentionally obstruct or hinder or attempt to obstruct or

1 hinder lawful hunting engaged in by a person who is not a client of the person;

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

5 (6) person who holds any class of guide-outfitter license to knowingly
6 enter or remain on [STATE, FEDERAL, OR] private land without prior authorization
7 during the course of providing guide-outfitting services;

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

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

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

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

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

20 * Sec. 3. AS 16.05.407(f) is amended to read:

21 (f) An applicant for a nonresident hunt permit for the taking of an animal
22 specified in (a) of this section shall, if requested by the department, first furnish to the
23 department proof of prior authorization to use [STATE, FEDERAL, OR] private land
24 where the permit hunt will occur. The authorization shall be provided to the applicant
25 by the guide-outfitter with whom the applicant has contracted to guide-outfit the
26 permit hunt.

27 * Sec. 4. AS 16.05.408(c) is amended to read:

28 (c) Before obtaining a nonresident hunt permit for the taking of an animal
29 specified in (a) of this section, a nonresident alien shall, if requested by the
30 department, first furnish to the department proof of prior authorization to use [STATE,
31 FEDERAL, OR] private land where the permit hunt will occur. The authorization
32 shall be provided to the nonresident alien by the guide-outfitter or marine mammal

1 guide-outfitter with whom the nonresident alien has contracted to guide-outfit the
2 permit hunt."

3 Renumber the following bill section accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE OGAN

TO: HB 335

1 Page 1, following line 8:

2 Insert new bill sections to read:

3 **** Sec. 2.** AS 08.54.310(a) is amended to read:

4 (a) The board shall

5 (1) prepare, grade, and administer

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

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

17 (2) determine qualifications of applicants for class-A assistant guide-
18 outfitter and [,] marine mammal guide-outfitter [, AND ASSISTANT GUIDE-
19 OUTFITTER] licenses and authorize the issuance of licenses to those who qualify;

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

22 (4) compile, maintain, and publish an annual register of big game
23 commercial service providers subject to this chapter who have not been convicted of
24 a violation of a state or federal statute or regulation relating to the provision of big
25 game commercial services; a big game commercial services provider listed in the

1 register whose license or permit is revoked or suspended shall be removed from the
2 register while the provider's license or permit is revoked or suspended;

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

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

9 (7) authorize issuance of transporter licenses;

10 (8) authorize issuance of commercial use permits;

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

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

15 (11) require an applicant for issuance or renewal of any class of guide-
16 outfitter license to state in a written and signed document whether the applicant's right
17 to obtain, or exercise the privileges granted by, a sport fishing, hunting, trapping, or
18 guide-outfitting license is revoked or suspended in another state.

19 * Sec. 3. AS 08.54.390(a) is amended to read:

20 (a) The department shall issue [A NATURAL PERSON IS ENTITLED TO]
21 an assistant guide-outfitter license to a natural [IF THE] person who

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

23 (2) provides a copy of a written recommendation from a guide-
24 outfitter or master guide-outfitter [PASSES AN EXAMINATION
25 ADMINISTERED BY THE BOARD];

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

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

29 (5) is in sound physical condition [; AND

30 (6) MEETS ADDITIONAL QUALIFICATIONS THAT THE BOARD
31 MAY ESTABLISH]."

- 1 Renumber the following bill section accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE OGAN

TO: HB 335

Page 1, lines 1 though 4, delete all material on and insert the following:

"An Act extending the termination date of the Big Game Commercial Services Board to June 30, 1999; eliminating the requirement for a commercial use permit and for payment of commercial use permit fees; relating to the qualifications for an assistant guide-outfitter license; eliminating the requirement for written testing of assistant guide-outfitters; providing for additional licensing requirements for transporters; eliminating the requirement for submitting proof to the board of land use permission on state and federal lands; eliminating the requirement to register base camps;

and providing for an effective date."

HOUSE BILL NO. 102

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Introduced: 1/20/95

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the termination date of the Big Game Commercial Services
2 Board."

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

4 * Section 1. AS 08.03.010(c)(5) is amended to read:

5 (5) Big Game Commercial Services Board (AS 08.54.300) - June 30,
6 1998 [1994];

HB

341

Reading record 1

TESTIMONY OF
BP EXPLORATION (ALASKA) INC.
TO THE
HOUSE RESOURCES COMMITTEE
REGARDING
HOUSE BILL NO. 341

January 24, 1996

Good morning, Mr. Chairman and Members of the Committee. My name is Tom Williams, and I am Alaska Tax Counsel for BP Exploration (Alaska) Inc. Thank you for this opportunity today to testify on behalf of BP regarding House Bill No. 341 and, in particular, on work draft "K" of a Committee Substitute for the Bill, which is dated January 17, 1996.

Alaska's present system of tax appeals needs reform. Present law makes the Commissioner of Revenue responsible for acting as prosecutor, judge and jury in tax appeals. In other states these functions may also be combined within one agency. But in those states the potential problems from combining all three functions is avoided in practice by delegating and dividing them up among several different people or divisions within the agency. In Alaska, with fewer than a dozen taxpayers paying some 80% of the State's total unrestricted General Fund revenues, the stakes in the tax appeals have often been so material to the State that the delegations of authority here have failed to maintain a necessary division of these three functions.

The dangerous overlapping, in practice, of prosecutorial, judicial and juror roles within the Department has been worsened by the considerable deference given by the courts to formal hearing decisions issued by the Department. On issues where the facts are in dispute, the factual findings by the hearing officer are upheld unless they are "not supported by ... substantial evidence in light of the whole record" in the appeal. This does not mean that *most* of the evidence has to support the hearing officer's findings, only that there be *some* credible evidence — some evidence *of substance* — which supports them. This puts an all but impossible burden of proof on the taxpayer, despite the fact that the hearing officer's findings cannot become final without the signature of the person who is statutorily responsible for taking "all steps necessary and proper to enforce full and complete compliance with the tax ... laws of the state[.]" And the fact that hearing officers serve at the pleasure of the Commissioner further undercuts their independence as fact-finders. Moreover, even on questions of legal interpretation, which the judiciary normally views as its

own particular province, the courts defer to the Department's interpretation if they decide it involves the special expertise of the agency, and few other areas of the law are so technical and subject to agency expertise as tax.

Reform of the present system can proceed along two avenues. One is to increase the actual independence of the people hearing tax appeals from influence by the Commissioner of Revenue. The other is to make the standard for reviewing the Department's decisions in court less deferential to the agency's positions.

So There are now no less than three different proposals before the Legislature to reform the present tax appeals system, each of which goes varying distances down the two avenues for reform. The first is HB 341 originally introduced. In that version, the Bill would create a new tax court in the Judicial Branch to hear tax cases. This clearly goes as far as possible toward making the tax tribunal independent of the Department's influence, and minimizes the need and opportunity for judicial deference to agency interpretations of the law.

The second proposal is the draft CS that is before the Committee today. The key feature of the CS is the opportunity for taxpayers to opt for a trial *de novo* in Superior Court after an informal conference with the Department, instead of the present process of having a formal hearing before a departmental hearing officer with a subsequent appeal to the courts to review the hearing decision. Trial *de novo* is a legal term that means having a trial of the facts as if there had been no earlier fact-finding by the agency. The CS would ensure that the "jury" role will be played by an impartial judge, instead of a departmental employee. But trial *de novo* would still allow the courts to defer to the agency's expertise in interpreting the law whenever they felt the matter was one involving agency expertise, so in this sense the draft CS does not go as far as the original Bill in providing for independence in the adjudication of tax cases.

The third proposal on the table is the legislation recently introduced by the Governor, HB 427 and SB 224. That legislation would create a panel of administrative law judges within the Department of Administration to hold the formal hearings in tax cases, and those hearings would be on a *de novo* basis. Being in a separate department, these ALJs would be considerably more independent of the Commissioner of Revenue than the hearing officers are under the present system, although they would appear to be less absolutely independent of Executive Branch influences than actual judges in the Judicial Branch would be. Offsetting this, however, is the fact that the ALJs would have tax expertise to match that of the Department of Revenue itself, so there should be less occasion to defer to the Department's interpretations of the law on the grounds of agency expertise than there would be with trial *de novo* in Superior Court.

Let me make BP's position as clear as possible. All three proposals as currently drafted have some technical issues that should be addressed before being enacted. But assuming those technical matters can be taken care of, any one of the three proposals would significantly reform and improve the tax appeals system from what Alaska has now. This means that the most important

thing, from BP's perspective, is to pass one of these reforms. Which one it is is less important than the fact that it pass. The worst possible outcome this Session would be to fail to pass anything, or to pass one and have it vetoed.

We in BP are confident in your ability to find a reasonable accommodation that will provide true reform in tax appeal procedures. We look forward to helping you in that effort in whatever way we can.

Thank you again for this opportunity to testify.

1070

**Testimony of Daniel M. Seckers
Before the House Resources Committee**

On CS for HB 341 and the Tax Dispute Resolution Process in Alaska

January 24, 1996

Mr. Chairman, members of the Committee, my name is Dan Seckers. I am Exxon's tax counsel here in Alaska. I want to thank you and the Committee for allowing me the opportunity to testify before you today.

At the onset, I would like to say that Exxon appreciates the willingness of this Committee to address at today's hearing the important issue of how the current tax dispute resolution process in Alaska can be improved. We believe that with certain changes a fairer and more efficient tax appeal process can be achieved that would benefit all parties to the process. We also believe that any substantive reform to the current tax dispute resolution process would be a step towards improving the business and investment climate in the state. A fair and impartial tax appeal process would enhance the working relationship between the state and the oil and gas industry and would send a clear signal to potential investors that Alaska wants to be viewed as a state willing to resolve tax disputes in a straightforward and impartial way.

Given that there have been two proposals introduced this session which address the tax dispute resolution process in Alaska, I plan to address general principles rather than comment on a specific bill. I would like to share with you some key elements that we will use to evaluate any proposal designed to improve the tax dispute resolution process in the state of Alaska.

First, Exxon believes that an appeal from the Department of Revenue's informal conference decision on a tax dispute must be heard, and the facts and law must be

developed, outside the control of the Department of Revenue. Having the collection of taxes and resolving tax disputes within the same agency can fuel the perception of unfairness. Moving the tax appeal process outside the Department of Revenue would go a long way towards persuading Alaska taxpayers that the tax appeal process contains the essential element of fairness.

Second, the person presiding over the appeal must be independent. Currently, the person assigned to hear an appeal works for the Commissioner and can be dismissed for any reason by the Commissioner. If the person presiding over the appeal believes that his or her decision may impact his or her future job security, then that person's judgment has been compromised because such person is not free to decide the appeal based solely on the weight of the evidence presented and the applicable law. To maintain his or her independence, the person presiding over the appeal should be appointed for a fixed term of years and be subject to termination during that term only for cause.

Third, the person presiding over the appeal must be required to resolve all questions of fact based on the majority of the weight of the evidence presented during the appeal. This preponderance of the evidence standard should be used to resolve all questions of fact unless another standard has been established by law for a particular question.

Fourth, we believe the standards by which questions of law will be resolved should be clearly stated. To be truly impartial, the person presiding over the appeal must be required to resolve all questions of law under the person's own independent interpretation of what the law means after hearing all the evidence submitted by the parties. The only exception to this should be for those areas of law legislatively delegated to the Commissioner by you, the members of the Legislature. With regard to these areas, deference should be given to the position taken by the Department of Revenue but only if the position has a reasonable basis in law. Any areas where judicial deference is to be

given to the Department of Revenue should be codified by you so that both the taxpayer and the Department of Revenue know such areas of deference.

Fifth, the appeal process should allow all parties to the appeal to gather relevant evidence through a fair and reasonable discovery process.

Sixth, the appeal process should allow the introduction of fair and reasonable evidence. The admissibility of any evidence should rest with the discretion of the person presiding over the appeal. No evidence should be statutorily determined to be irrelevant or inadmissible for all purposes.

Finally, it is possible to argue that it may be helpful if the person presiding over the appeal is experienced in the field of tax law. While such experience may not be essential to providing taxpayers with an impartial tax appeal process in Alaska, it could be helpful towards the efficient and speedy conduct of the appeal. Such experience, however, is not of sufficient importance to override impartiality in any appeals process.

Mr. Chairman and members of the Committee, Exxon stands ready to work with you, the Legislature, the Governor and his Administration in achieving meaningful reform to the current appeal process through incorporation of the key elements I have discussed here today. Working together we can further our objective of obtaining a fair, impartial and efficient tax dispute resolution process, one that sends a positive signal about the business climate in Alaska.

Mr. Chairman, thank you again for allowing me this time to address you and your Committee.

*read out
re cond*

**ALASKA HOUSE RESOURCES COMMITTEE
CSHB 341**

January 24, 1996

Good morning Chairman Green and members of the House Resources Committee. My name is Norma Calvert and I am here today representing Marathon Oil Company. Chairman Green, before I share with you Marathon's comments on the committee substitute to House Bill 341 (the Tax Court Bill), I would like to thank you and your staff, along with the committee members, for your dedicated efforts to improve the tax appeals process in Alaska. We believe the system can be modified for the benefit of the taxpayers and the State of Alaska.

As stated in Marathon's testimony given at the October hearing, we strongly support the modification of the appeals process. Although we believe a tax court as proposed in H.B. 341, as originally introduced, would provide the most impartial process of resolving tax disputes, we also understand the concerns raised at the October hearing by the Supreme Court system with respect to establishing a specialty court in Alaska due to the small number of taxpayers and cases to be resolved.

Our testimony in October gave a detailed synopsis of our concerns of the current system. To review, our number one concern is the empowerment within the Department of Revenue to audit, issue assessments and govern the hearings for dispute resolution. If the taxpayer does feel it necessary to appeal the DOR's decision, a de novo review is not given at the Superior Court level and great deference is given to the DOR's decision, making it nearly impossible to obtain an impartial review of the case.

Recognizing the complications in forming a tax court in Alaska, we support the Committee's substitute bill to allow for a de novo hearing outside the Department of Revenue at the Superior Court level. In continuing your efforts to improve the tax appeals process, we would like for you to consider the essential characteristics of an unbiased system: the appeals process should be independent of the audit and assessment process, outside the Department of Revenue; taxpayers should be

CSHB 341: page 2
Marathon Oil Company

allowed a de novo hearing before an impartial tribunal; and the burden of proof on questions of fact should be a preponderance of evidence standard. We believe a de novo review at the Superior Court level provides resolution to the concerns we have expressed and is a great step in moving toward an impartial tax appeals process.

There are a number of ways the current system could be improved and we support the committee substitute as an alternative to the Tax Court bill as originally introduced. We encourage this committee, the Alaska legislature and the administration to work toward a resolution that truly provides an impartial appeal process in Alaska. Such changes will lead to expedited resolution of tax issues, with benefit to all parties involved. Most importantly, it sends a message of tax fairness that is critical in encouraging future investments in Alaska.

Thank you for this opportunity to share our comments with you this morning.

Read into Record

**Testimony of ARCO Alaska, Inc. before the
House Resources Committee
January 24, 1996**

ARCO Alaska, Inc. appreciates the opportunity to present its views regarding legislation to change the procedures for hearing tax disputes and looking for ways to improve that process. This has been an area of great concern to ARCO for more than twenty years and we applaud the efforts of Representative Green and the efforts of the Knowles Administration to deal with this complex issue in a thoughtful and fair-minded manner.

ARCO believes that the present system for tax hearings is broken. It is so broken that it is rarely used because taxpayers go to great lengths to avoid it. ARCO has used the existing formal hearing process only once in the past ten years. There is a widely held perception among taxpayers that the existing system does not provide taxpayers with the opportunity for a fair and independent hearing.

In the past few weeks, we have looked at three different proposals for changing the tax hearing process: House Bill No. 341 introduced by Representative Green would establish a separate Tax Court; a newly adopted CS for House Bill No. 341 also presented by Representative Green would provide for tax hearings before the Superior Court; and House Bill No. 427 introduced by the Governor would establish an Administrative Law Court outside of the Department of Revenue.

While these bills each take different approaches, each of these proposals would be much fairer than the present system and we urge the legislature to give each of these bills a full hearing.

In judging these three proposals and any other proposals which might emerge, ARCO urges the legislature to critically examine the proposals against nine criteria which ARCO believes should be present in any tax hearing process:

- The hearing should be outside the control of the Department of Revenue.
- The hearing officer or judge should serve for a term of years rather than be subject to termination at will.
- The hearing officer or judge should be specifically required to have experience in the area of tax law.
- The hearing should be a de novo proceeding where the hearing officer or judge has original jurisdiction and hears evidence without regard to the proceedings below.
- The burden of proof on questions of fact should be preponderance of the evidence.
- The standard of review of questions of law should be substitution of judgment.
- Where authority has been legally vested in the Commissioner of Revenue to interpret a revenue provision, a reasonable basis standard should apply.
- A taxpayer should have the opportunity to conduct legitimate discovery but neither the taxpayer nor the Department of Revenue should be permitted to abuse the discovery process.
- The hearing process structure should, to the extent possible, take into account the uniqueness of Alaska's situation of very few taxpayers and tax appeals. The

hearing system should be tailored to Alaska's needs and be as efficient as possible.

ARCO urges this committee to apply these criteria to all three proposals as well as to the existing law. We believe a proposal might emerge which meets all of these criteria and is acceptable to the stakeholders — the legislature, the administration, the court system and the Alaska taxpayers.

In closing, ARCO would like to stress two points. The first is that from our perspective this is a very important issue which has long term implications for how taxpayers will view the business climate in the state and the fairness of the playing field. The second is that this is a major opportunity where all of the stakeholders are making a bona fide attempt to establish a fair tax hearing system and every bill that has been proposed is a significant improvement over the existing system.

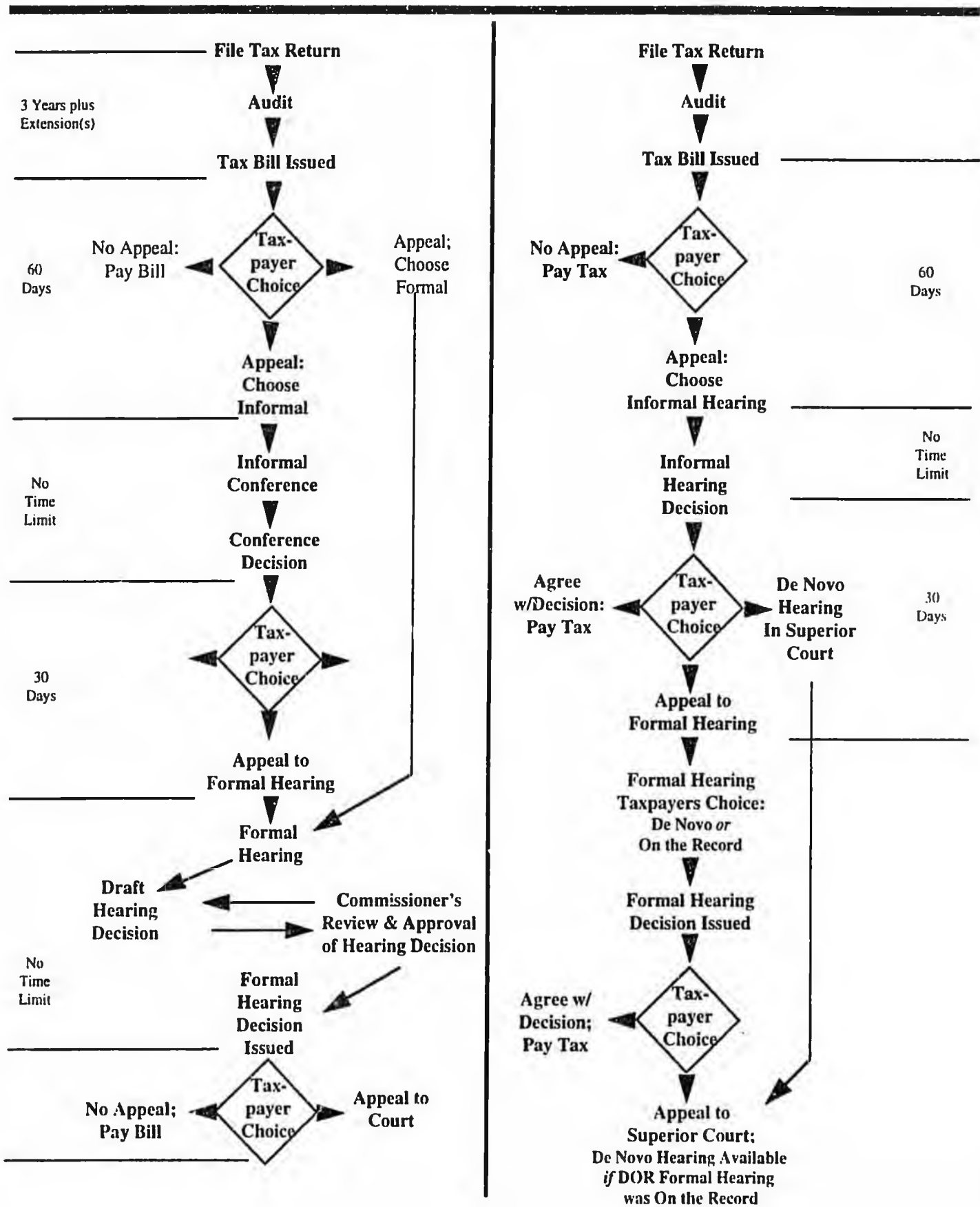
Once again, we applaud your efforts and the efforts of the administration. We stand ready to do whatever we can to facilitate the enactment of fair tax hearing legislation.

House Resources Committee

Alaska's Present Tax Audit & Appeals Process

Comparison of

RES CS HB341 (Version "K")



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