



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

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June 24, 2024

The Honorable Mike Dunleavy
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: HCS SB 189(RLS) am H: Extending
Boards, Game Concession Permits; Taxes;
Child Care
Our file: 2023200096

Dear Governor Dunleavy:

At the request of your legislative director, we have reviewed the enrolled version of HCS SB 189(RLS) am H, extending the termination date of the Big Game Commercial Services Board; extending the termination date of the Board of Massage Therapists; establishing a big game guide concession area permit program on land in the state; relating to the duties of the Big Game Commercial Services Board, the Board of Game, the Department of Fish and Game, and the Department of Natural Resources; relating to education tax credits for certain payments and contributions for child care and child care facilities; relating to the insurance tax education credit, the income tax education credit, the oil or gas producer education credit, the property tax education credit, the mining business education credit, the fisheries business education credit, and the fisheries resource landing tax education credit; extending the termination date of the Alaska Commission on Aging; extending the termination date of the Marijuana Control Board; renaming the day care assistance program the child care assistance program; relating to the child care assistance program and the child care grant program; requiring the Board of Game to establish an initial big game guide concession area; providing for an effective date by amending the effective date of secs. 1, 2, and 21, ch. 61, SLA 2014; and providing for an effective date.

I. Introduction

This bill would extend the existing statutory sunsets of the Big Game Commercial Services Board, the Board of Massage Therapists, the Marijuana Control

Board, and the Alaska Commission on Aging. It would establish a big game guide concession permit program to be administered by the Department of Natural Resources in concession areas on state land established by the Board of Game.

The bill would also expand the circumstances under which various taxed entities may qualify for education tax credits to include contributions and payments supporting child care for their employees. Finally, the bill would make various adjustments to the child care assistance program, including lowering the cap on family contributions and increasing the income eligibility threshold. Except for section 51 relating to the conditional effectiveness of an amendment to child care assistance eligibility in section 31, this bill would take effect immediately.

II. Board and Commission Extensions

The Alaska Commission on Aging, the Marijuana Control Board, the Board of Massage Therapists, and the Big Game Commercial Services Board will all terminate on June 30, 2024, under existing statutory sunset provisions. This bill would extend the termination date of each of these entities. Section 1 of the bill would extend the Big Game Commercial Services Board to June 30, 2032. Section 2 would extend the Board of Massage Therapists to June 30, 2030. Section 27 would extend the Alaska Commission on Aging to June 30, 2032. And finally, section 28 would extend the Marijuana Control Board to June 30, 2027.

Please note that Executive Order 127 would have eliminated the Board of Massage Therapists and transferred its functions to the Department of Commerce, Community, and Economic Development. The legislature disapproved EO 127 in Senate Special Concurrent Resolution 4.

The bill also contains a provision of uncodified law in section 45 exempting the bill's sunset extensions from AS 44.66.050(e), which prohibits a single bill from continuing or reestablishing more than one board or commission. The bill's sunset extensions would be effective immediately under section 52.

III. Big Game Guide Concession Permits

This bill would create a mechanism to limit the number of commercial hunting guide operations in a given area by establishing a big game guide concession permit program under new statutory provisions. Section 3 would amend the existing duties of the Big Game Commercial Services Board to require that it coordinate and consult with the Board of Game and the Department of Natural Resources to fulfill the duties under these new provisions.

A. Section 4: Establishing concession areas

Section 4 would provide for the establishment of big game guide concession areas by the Board of Game under the newly created AS 16.05.262. The board would only establish a concession area by approving a proposal after 15 days' public notice¹ at the next regular meeting held in the region where the concession area is proposed.

Prior to approving a concession area, the board (which holds regular meetings two or three times each year) must take public comment and consult with the Department of Fish and Game, the Department of Natural Resources, and the Big Game Commercial Services Board. In approving a concession area, the board must find that the establishment of the area would support conservation and management of the state's land and big game resources, aid in enforcement of statutes and regulations relating to big game guided hunts, and be in the public interest.

Once the board has established a concession area, it would be required to determine the number of big game guide concession area permits, including "full" and "limited" big game guide concession area permits, that the Department of Natural Resources will make available for the area. A concession permit grants a big game guide the right to conduct commercial big game hunts within a geographic area defined by the Department of Natural Resources. The difference between a full permit and a limited permit is that a limited permit is available through a random draw application process and a full permit is competitively bid. Also, a limited permit is more restrictive than a full permit in terms of the number of allowable clients and species for which the guide may provide guided hunts in the concession area.

In determining the number of allowable permits, the board would be able to establish advisory boards to assist it, consisting of interested members of the public and members of the Board of Game, the Big Game Commercial Services Board, and the Department of Fish and Game and the Department of Natural Resources. The board may not combine more than three guide use areas into a concession area, nor may it establish more than one concession area in a single guide use area.

Although AS 16.05.262 contemplates that the board would designate a concession area only in response to a proposal submitted by a person seeking to establish such an area, section 46 of the bill would require in uncodified law that the board establish an initial concession area on its own initiative, based on its own determination

¹ Note, this is shorter than the notice period normally provided for under the Administrative Procedure Act for taking public comments to a proposed action. AS 44.62.190(a). The Board of Game sets its agenda and currently addresses each of the five regions every three years on an alternating cycle.

of which game management unit or subunit would benefit most from the establishment of a concession area. Under section 48, the board may not accept or consider a proposal submitted by a person to establish a concession area until it has already established a concession area under section 46 and the Department of Natural Resources has operated the concession area permit program for at least three years.

B.. Section 8: Administering the concession permit program

Section 8 would create another new statute, AS 38.05.022, directing the commissioner of natural resources to implement a permit program for big game guide concession areas established by the Board of Game. In administering the program, the commissioner would be required to encourage conservation of natural resources, provide superior big game hunting experiences by limiting the number of guided hunts in the same area, reduce user conflict, ensure a responsible, professional, and economically healthy big game guide industry, and incentivize long-term planning and conservation by big game guides.

The commissioner, in consultation with the Big Game Commercial Services Board, the Board of Game, and the Department of Fish and Game, would be directed to adopt regulations to implement the permit program.

The department would issue permits through an open, public, and competitive process under established permit standards and scoring criteria. In considering a permit application, the commissioner must consider the applicant's professional history and reputation. Permits would not be issued based solely on the highest bid amount. Big game guides would be limited to three concession permits at a time.

Concession permits would be valid for 10 years and only subject to extension or renewal through the same competitive process applicable to issuance of new permits. Permits would be transferrable, subject to approval by the commissioner based on the same principles applicable to issuance of new permits.

The commissioner or commissioner's designee would be responsible for program administration and enforcement, with the authority to issue citations for violations. Section 8 requires the commissioner to keep confidential proprietary information received in in the process of considering permit applications. It would also require the commissioner, in consultation with the Game and Big Game Commercial Services Boards and the Department of Fish and Game and Department of Natural Resources, to adopt regulations necessary to establish and administer the program. The commissioner would be authorized to suspend or revoke a concession permit, after consultation with the same state entities. The commissioner could suspend or revoke a permit if the permittee violates its terms, subject to the requirement of written notice and a hearing.

C. *Constitutional considerations*

In 1988, the Alaska Supreme Court struck down a previous attempt to establish exclusive guide areas in *Owsichek v. State of Alaska*.² The court held that the program violated art. VIII, sec. 3 of the Alaska Constitution, the common use clause.³ The court found it significant that guides were granted exclusive access based on "use, occupancy and investment," which tipped the scales in favor of established guides and against new guides.⁴ In addition, exclusive use grants were not limited in duration and could be transferred at will by the grantee.⁵ Finally, the state charged no rental or usage fees for the grants.⁶ These "special privileges" could not be justified, the court determined, in terms of wildlife management concerns.⁷

In establishing the concession area permit program that would restrict access by commercial big game hunting guides, this bill addresses the factors that the *Owsichek* court found fatal to the prior exclusive guide areas. There is no preference for existing permittees. Instead, the bill establishes a competitive, multi-factor procedure for award and renewal of permits, based on principles of responsible resource use and management. Permits are durationally limited to 10 years and transfers must be approved by the commissioner, based on the same factors relevant to award. The bill expressly directs the commissioner of natural resources to adopt regulations for the "determination and collection of reasonable concession permit fees."

We are not able to predict with certainty that a court would find the concession area permit program that this bill creates to be constitutional. This program is distinguished, however, from the earlier exclusive use areas features that the *Owsichek* court found unconstitutional.

² 763 P.2d 488 (Alaska 1988).

³ *Id.*, at 498.

⁴ *Id.*, at 496.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

IV. Child Care

This bill would add child care tax credits to existing statutes providing for education tax credits applicable to various entities. The credits would be available to taxpaying entities that make expenditures to operate child care facilities for their employees, contributions of cash or equipment to nonprofit child care facilities attended by children of their employees, and payments directly to their employees to offset child care costs.

Eligible for the credit are taxes on insurers, income taxes on corporations, oil and gas production taxes, oil and gas exploration, production, and pipeline property taxes, mining business taxes, fisheries taxes, and floating fisheries business taxes. The bill would also increase the cap on these credits from \$1 million to \$3 million and provide for inflation adjustment of the cap based on the Consumer Price Index for all urban consumers for urban Alaska. In addition, section 50 of this bill would extend these tax credit statutes until January 1, 2028.

Please note that HB 148 would also amend these same tax provisions to authorize an additional tax credit for contributions to the operation of a nonprofit educational resource center that promotes academic achievement in certain subject areas and also to increase the credit cap to \$3 million, as this bill would. In addition, it would extend the credits until January 1, 2029, while this bill would only do so until 2028.

The bill would also amend criteria relating to eligibility for child care assistance and child care grants under article 1 of AS 47.25. The bill would replace references to "day care" throughout this article with the term "child care." Section 44 repeals the definition of a "day care facility" found in AS 47.25.095.

Section 31 of the bill would amend the eligibility criteria for state child care assistance to low and moderate income families by capping the maximum monthly household income at 105 percent of the median monthly household income in the state, adjusted for family size. Section 31 further directs the Department of Health to establish a program to partner with private sector entities to create incentives for employers to develop on- and near-site child care.

Under section 49, however, the effectiveness of section 31 is contingent upon the federal approval of an amendment to Alaska's state plan for its child care assistance program under federal law, or a determination by the federal government that a plan amendment is not necessary. Section 47 directs the Department of Health to submit an appropriate amendment to implement the plan change. Under section 51, section 31 would be effective on the day after the federal government approves the state plan amendment or determines the amendment is not necessary.

Section 35 of the bill would cap contributions of families receiving child care assistance at seven percent of a family's monthly income. Section 37 would require the department to use a market rate or cost of care study to establish a subsidy rate for each region served by the child care assistance program to determine the amount of benefits payable under the program.

Section 38 would require that recipients of child care grants under the state's child care grant program be designated as "quality" child care facilities by the department. Section 39 would require that a grantee child care facility prioritize children from low-income families when filling available spaces at the facility. Section 40 would require that the department identify criteria for designating "quality" child care facilities eligible for program grants.

Section 41 would prohibit program grantees from denying children based on disability or socioeconomic statute. It would also authorize the department, subject to appropriation, to award additional grants to the highest performing and highest quality child care facilities in the state. Section 42 would amend the definition of a "child care facility" to eliminate certain enumerated facilities and include establishments recognized by the federal government for the care of children. Section 44 would repeal the \$50 cap on child care grants.

V. Single Subject Rule

Article II, sec. 13 of the Alaska Constitution provides that "[e]very bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws." In *Croft v. Parnell*, the Alaska Supreme Court interpreted the single subject clause to require that every

act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.⁸

The court explained that one of the primary motivations for the single subject requirement was to prevent "log-rolling," which is "appealing to different constituencies by including distinct provisions calculated to obtain sufficient votes to pass a measure."⁹

⁸ 236 P.3d 369, 373 (Alaska 2010).

⁹ *Id.*, at 374.

We cannot identify any one general subject that unites the extension of these four boards and commissions, the establishment of big game guide concession area permits, child care tax incentives, and eligibility for state child care assistance. These different provisions are not related logically or in popular understanding as to be parts of or germane to one general subject. Consequently, we believe that HCS SB 189(RLS) am H is unconstitutional because it violates art. II, sec. 13 of the Alaska Constitution.

Sincerely.

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