

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: SB 175  
 (S) Publish Date: 2/1/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title Municipal Protests of Gaming Permits BRU Revenue Operations  
 Component Tax Division  
 Sponsor Senator Elton  
 Requester Senate Labor and Commerce Component No. 2476

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual	10.0	10.0	10.0	10.0	10.0	10.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	10.0	10.0	10.0	10.0	10.0	10.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

\* This fiscal note anticipates that two charitable gaming license cases would go to formal hearing each year. The \$10.0 contractual expense is to cover the cost of a contracted hearing officer for those cases. The actual costs would vary and the actual number of cases would determine the amount needed.

Prepared by: Carl Meyer  
 Division: Tax Division  
 Approved by: Larry Persily, Deputy Commissioner  
 Agency: Department of Revenue

Phone 465-2343  
 Date/Time 1/28/02 12:13 PM  
 Date 01/28/2002

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- **Section 1** amends AS 05.15.030(a) to permit a municipality to protest, by resolution, the issuance of a permit or license to an applicant for the authority to conduct a gaming activity within the jurisdiction of the municipality, or to recommend conditions to be placed on the permit or license. The resolution must state the reasons for the protest. The Department of Revenue shall deny the permit or license, or condition the permit or license as recommended by the resolution, unless the department finds following a hearing that the protest or conditions are arbitrary, capricious or unreasonable, or that the conditions conflict with state law.

A municipality may file a protest with the department only after it has provided the applicant a hearing to present a defense (*Line 11, Page 1*). Although we believe the sponsor intends that this first hearing be held by the municipality, and not the department, it is not entirely clear in the draft legislation, and we recommend that the language be clarified.

The department then must hold its own hearing on the municipality's protest against the license issuance or renewal (*Line 3, Page 2*).

- **Section 2** provides that a municipality holding a license or permit that competes with the applicant may only protest the issuance of the permit or license based upon the applicant's failure to pay municipal taxes, and may not otherwise recommend conditions on the permit or license.

### Analysis

The draft bill as written would require two hearings. The first hearing would be at the municipal level. Following that hearing, a municipality may protest the license issuance or renewal to the department. That would then initiate a second hearing — this time at the department level — to consider the protest.

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Each department hearing will require a hearing examiner to hear, decide and issue a written decision in the matter. Each hearing will also require an appeals officer from the Tax Division, as well as a representative from the Gaming Section. There are more than 1,000 licensed organizations statewide, authorized to conduct charitable gaming, and more than 40 licensed operators and multiple-beneficiary permittees in business across the state. The volume of protests, and therefore the volume of hearings, generated by this legislation could be sizable, although we do not expect that municipalities would protest very many licenses.

Under this draft legislation, the department must deny the application unless it finds a protest or recommended conditions to be arbitrary, capricious or unreasonable. The department would prefer more parameters within the legislation to direct us in deciding these cases. We believe any adverse decision to an applicant is likely to be litigated, considering the department's experiences with the gaming industry.

The legislation also would allow municipalities to recommend conditions for a permit or license, something that the department finds problematic. This will have the effect of inserting the state between disputes of the municipalities and applicants, which is something the department would prefer to avoid.

There is only a narrow time frame between the application filing and the beginning of the new gaming year. Therefore, the department's experience is that denying or conditioning a permit will mean that everything related to that action must be expedited within that narrow time frame. Furthermore, Alaska courts have enjoined actions that deny a permit until the applicant is afforded due process, which includes appeal rights. Thus, all actions related to the application are undertaken on a compressed schedule. In the interim, the department may not be able to deny or condition the permit or license until the dispute is finally resolved.