

ALASKA STATE LEGISLATURE  
**SENATE LABOR & COMMERCE COMMITTEE**

January 29, 2002  
1:35 p.m.

**MEMBERS PRESENT**

Senator Ben Stevens, Chair  
Senator Alan Austerman  
Senator Loren Leman  
Senator John Torgerson  
Senator Bettye Davis

**MEMBERS ABSENT**

All Members Present

**COMMITTEE CALENDAR**

CS FOR HOUSE BILL NO. 157(JUD) am  
"An Act relating to trust companies and providers of fiduciary services; amending Rules 6 and 12, Alaska Rules of Civil Procedure, Rule 40, Alaska Rules of Criminal Procedure, Rules 204, 403, 502, 602, and 611, Alaska Rules of Appellate Procedure, and Rules 7.2 and 7.3, Alaska Rules of Professional Conduct; and providing for an effective date."

MOVED SCSHB 157(JUD) am OUT OF COMMITTEE

SENATE BILL NO. 175

"An Act providing municipalities with the authority to protest or to recommend conditions on the issuance and renewal of charitable gaming permits and requiring the Department of Revenue to deny or condition the license or permit unless the protest or conditions are arbitrary, capricious, or unreasonable, or the conditions conflict with state law."

MOVED CSSB 175(L&C) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

HB 157 - No previous action to consider.

SB 175 - See Community and Regional Affairs minutes dated 4/27/01.

**WITNESS REGISTER**

SENATE L&C COMMITTEE

-1-

January 29, 2002

Mr. Terry Lutz, Chief Examiner  
Division of Banking, Securities and Corporations  
Department of Community and Economic Development  
P.O. Box 110807  
Juneau AK 99811

**POSITION STATEMENT:** Supported HB 157.

Mr. Dave Shaftel  
Estate Planning  
Anchorage AK

**POSITION STATEMENT:** Supported HB 157.

Mr. John W. Hartle, Deputy City and Borough Attorney  
155 South Seward Street  
Juneau AK 99801

**POSITION STATEMENT:** Supported SB 175.

Mr. Neil Slotnick, Deputy Commissioner  
Department of Revenue  
PO Box 110400  
Juneau, AK 99811-0400

**POSITION STATEMENT:** Supported CSSB 175(L&C).

Mr. John Rice, Attorney  
2 Marine Way  
Juneau AK 99801

**POSITION STATEMENT:** Opposed SB 175.

#### **ACTION NARRATIVE**

#### **TAPE 02-1, SIDE A**

Number 001  
#HB157

#### **HB 157-TRUST COMPANIES & FIDUCIARIES**

**CHAIRMAN BEN STEVENS** called the Senate Labor & Commerce Committee meeting to order at 1:35 p.m. and announced HB 157 to be up for consideration.

REPRESENTATIVE LISA MURKOWSKI, sponsor of HB 157, said that it was an update to the Trust Act that was first instituted in 1949 and had seen very little change. She worked with the Division of Banking and Securities for the past three years on this bill and it passed out of the House with considerable support.

She explained that the Division of Banking and Securities in conjunction with many other states took model acts from the Conference of State Bank Supervisors and drafted the bill before them. Basically the legislation defines who can conduct a trust

business in the state. The statutes presently don't give any guidance as to that. They also define the exemptions to the act, so that a person who has been appointed as a trustee of their family trust or a law firm or lawyer who does an occasional trust is not subject to HB 157. In addition, the bill details the powers of the trust companies, the requirements for chartering and provisions such as minimum statutory capital requirements, confidential handling of the customer information, disclosure of conflicts of interest and provide for mergers, sales, voluntary and involuntary liquidations. "It is to provide the parameters and the guidelines for those trust companies that would choose to do business in the State of Alaska."

REPRESENTATIVE MURKOWSKI said that legislation passed before she came to the legislature makes a concerted effort to attract trust business to the state and this provides guidelines for the companies who decide to come. She said the Mr. Terry Lutz from the Division of Banking and Securities had been working on it all along and could answer questions.

CHAIRMAN STEVENS asked how many entities now manage trusts in Alaska.

MR. LUTZ, Division of Banking, Securities and Corporations, answered that there are two state chartered trust companies at the time and there were other entities out there that advertised in the yellow pages as doing trusts. Right now it doesn't say who must charter; it says, "five or more people may charter a trust company". It doesn't require anybody to have a charter. This bill would require that and gives specific guidelines on how to go about doing that.

SENATOR TORGESRON asked if it was correct that it takes only one person to start a trust.

MR. LUTZ answered yes.

SENATOR TORGERSON asked him to explain why it would help to go from four or five to one person to start a trust (page 8, line 3).

MR. LUTZ replied that they used model acts from a dozen or more states and used areas that seemed consistent and would work in Alaska. He said further down the bill language talks about the operation and running of the trust company. It needs five or more directors, but just one person can form the company.

CHAIRMAN STEVENS said one person can form the company, but to

incorporate, they have to go on to laws of incorporation in the next section.

MR. LUTZ said that was correct.

CHAIRMAN STEVENS asked how many companies in the yellow pages were soliciting that they could manage a trust under the criteria that this bill puts forward.

MR. LUTZ replied that he would be contacting those entities if the act is passed and let them know the requirements.

SENATOR TORGERSON asked if someone gives a down payment to an attorney or a realtor and they say it's going into their trust account, is that what this bill deals with.

MR. LUTZ replied no. There is a specific exemption for that type of trust business.

CHAIRMAN TORGERSON asked if retirement funds would come under this.

MR. LUTZ replied that it would depend on how things were structured.

SENATOR TORGERSON asked if the state was making any money off of this.

MR. LUTZ replied no.

1:45

SENATOR AUSTERMAN asked if he contacted these other people for input.

MR. LUTZ replied that they contacted the Bar Association, the Alaska Bankers Association and the organizations that had a lot of contacts to get as many people involved as they could. They didn't go into the yellow pages.

MR. DAVE SHAFTEL, Estate Planning Attorney, said he is a member of an informal group of attorneys who have been working with the legislature on various estate planning and state trust matters over the last five years. Their emphasis has not been on forming trust companies or trust company businesses, but rather on how this bill would affect residents of Alaska who form trusts and name family members or family friends or charitable organizations as trustees of those trusts.

We are comfortable now that there are appropriate exemptions for those areas I have just mentioned where we find that someone should be allowed to be a trustee of a family trust and not have to go through all of the regulatory and capitalization requirements to form a trust company..."

He said there was one little area that still needed work.

SENATOR TORGERSON asked if the effective dates were correct.

CHAIRMAN STEVENS responded that they were going to do a conceptual amendment for those.

SENATOR TORGERSON asked if the bill was just repealing all of the old trust language. "There's not a secret repealer in here on something else..."

REPRESENTATIVE MURKOWSKI replied that she wouldn't do something like that to him. She wanted to address Senator Austerman's question about who had been contacted. She has worked within the divisions within the Bar Association, the Trust Association informal working group, the two trust companies that are organized right now and any banks that have trust operations. "There has been a relatively broad working group that has gotten together over the past several years. We have made a good effort to alert people and to get their input on this although we have not gone through the yellow pages."

SENATOR AUSTERMAN moved a conceptual amendment that would change page 64, line 8, and page 65, lines 12 and 14 to 2003 from 2002. There were no objections and it was so ordered.

SENATOR TORGERSON moved to pass SCSHB 157(L&C) am from committee with individual recommendations. There were no objections and it was so ordered.

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#SB175

**SB 175-MUNICIPAL PROTESTS OF GAMING PERMITS**

CHAIRMAN STEVENS announced SB 175 to be up for consideration.

SENATOR KIM ELTON, sponsor, said that charitable gaming is big business in our state and in the year 2000 sold more than \$300 million worth of pull tabs and bingo cards. A decade ago when he was on the municipal assembly, they found that the sale of pull

tabs in Juneau amounted to \$474 for every man, woman and child in the municipality. It is a business that has led to some problems in Juneau and has the potential of creating some problems in other communities. Local government now having trouble with the gaming operation is having limited options. It can ban all charitable gaming or ban just pull tabs or forever prohibit a particular individual or group from conducting gaming activities in the municipality.

The problem with those options is that the people who really suffer are the non-profits that are getting revenue from the gaming operation. You might have a bad permittee or a bad operator, but the only option you have is to get at them and that harms the people who may most need the money - whether it's little league or youth football or youth skiers.

SENATOR ELTON said they are trying to set up a system that is analogous to the ABC situation where municipalities can challenge the issuance of a permit in the same way they challenge the issuance of a liquor license.

The most common reasons under the ABC provisions for protesting liquor licenses are failure to meet local safety codes and failure to pay municipal taxes. Lots of times protests by municipalities don't even rise to the level of the ABC Board. What happens, a protest is filed for non-payment of taxes, for example. The liquor license owner will go to the municipality, either pay the taxes that are in dispute or establish an escrow account. That can't happen now with gaming permittees.

To wrap up, the real problem we have here is a problem that occurred in Juneau and can happen elsewhere. That's where three groups refused to pay city sales tax. The arrears amounted to about \$1 million and there was no hammer the municipality had to compel lawful action on the part of the permit holders. This gets around that in much the same way we deal with ABC Board liquor licenses. With that I want to point out, Mr. Chair, this isn't just a Juneau problem. We know other communities including Bethel, Chevak, Dillingham, Hoonah, Kotzebue, North Pole, Palmer and Wasilla also could be in the same position that Juneau has found itself in...

MR. JOHN HARTLE, Deputy City and Borough Attorney for Juneau, supported SB 175.

We think it's a good idea. It would allow municipalities to protest the issuance of gaming licenses and it would implement basically the same system that's now in place for liquor licenses, which periodically come before the city assembly and the city staff determines if the liquor license holder is in arrears on taxes and, if so, protests to the ABC Board and that holds up the liquor license. Our experience has been that the taxes get remitted when the liquor license is held up. This would implement the same idea for a gaming permit. We think that's a good idea - that it would prevent problems. As Senator Elton indicated, we have problems in Juneau where pull tab permittees stopped collecting and remitting the city sales tax and a big arrears built up, which is now being laid on the non-profit organizations - the Rebounders Club, the baseball club and the organizations that are doing terrific things in the community. Now, in my view, because of the actions of their contractor, they're being hit with some sizeable bills.

This legislation would protect them and it would also protect the municipality from getting a large arrears in taxes built up, which helps the municipality set its annual budget as some of you know. I think this would also help the state's gaming regulators. It would provide eyes and ears in the municipalities to check up on these licenses, to see that they're following the law and to report abuses and find problems. There would be some cost; it's a \$10,000 fiscal note. I don't know if that's exactly right, but it looks reasonable to me.

Our example of trying to collect taxes from entities that don't really have any assets and the city doesn't really want to foreclose on bats and basketballs very badly. But what they do have, their main asset - these groups - the multiple beneficiary permittees - they have this valuable permit that allows them to game and sell pull tabs. Our studies have shown that Senator Elton is right in that hundreds of dollars per man, woman, and child in Juneau, Alaska are sold every year...This would give the municipalities a little bit of leverage over that license.

MR. HARTLE said he had talked with Department of Revenue Deputy Commissioner, Neil Slotnick, who may propose some amendments, most of which sounded perfectly acceptable to him. The concepts are fine and would narrow it down a little bit and get the

Department out of adjudicating municipal concerns.

SENATOR TORGERSON said his problem with the bill is the broad based language that has to do with conditions. "It doesn't say taxes. Taxes I think is a no-brainer. They should pay."

He said that there had been a court fight over this issue and that they had also had discussions about smoking in facilities and that the CBJ has an ordinance and they are trying to go around it. He could see them passing a resolution banning smoking as a condition; it could be anything. "It's way too broad based..."

He said the back taxes concern was very legitimate adding that was all they could do at the ABC Board.

MR. HARTLE responded that it would make sense to say something like "conditions relating to payment of taxes or compliance with the municipal code" - something that narrows it down from general complaints. He added that they had to go to court to try to collect the taxes and they won at every level. That they have to pay is now the law of the land. During the appeals a huge arrears built up and this would address that.

SENATOR TORGERSON said that goes to the heart of the problem.

MR. NEIL SLOTNICK, Deputy Commissioner, Department of Revenue, said they are neutral to negative position on this bill. He said:

Certainly it's a good idea to have municipal involvement in charitable gaming, but as Senator Elton did point out, there already is the opportunity for municipalities to be involved in charitable gaming. In addition to this statute, unamended, which would allow municipalities to protest licenses due to the lack of qualifications under the charitable gaming statutes, there is also an opportunity for municipalities to ban gaming by operators or vendors (AS 05.15.124) and there's a local election option under AS 05.15.620 and 635 that would allow a municipality to ban charitable gaming throughout the municipality. So, if there was a big objection to charitable gaming, you can already take care of it.

The Department is not looking for more work in the charitable gaming section. It is a very large industry to police and this is a very open ended statute allowing municipalities to protest for almost any reason. They would then be in the position of having to enforce those protests or enforce the conditions that they want to impose on a license - with no guidelines as to what those conditions

could be other than that they can't be in violation of state law. "That would give us one more list of things to have to enforce against one pull tab shop and not against all the others. We frankly don't have the staff to do that."

MR. SLOTNICK said Mr. Hartle's suggestion of putting specific grounds in the bill for a municipal protest would be acceptable to the Department of Revenue.

So that we didn't have to make a ruling as to whether this was an arbitrary or capricious action by the assembly - so that it's very clear - for non-payment of taxes or perhaps what Mr. Hartle just handed me, "relating to municipal taxes and violations of municipal code...That could be grounds for protest. As to conditions, because the second part of this allows the municipalities to suggest conditions placed upon a permit. I would probably still rather not see an open-ended ability of municipalities to impose conditions that we would be in the position of having to enforce.

SENATOR TORGERSON agreed that they should just focus on taxes and asked if the CBJ officially protested to them when the permit was being reissued.

MR. SLOTNICK replied that they were probably aware of it. They get renewals from everybody in December and the permits have to get issued before the end of January, which isn't enough time to do the accounting. They can go back and do audits, which take years. The audit of this organization did find a violation and administrative action was taken by the Department, but it takes a long time.

SENATOR TORGERSON said he didn't think the ABC Board could put conditions on licensing like paying back over time. Rather they have to pay their taxes or they're out. He asked if instead of a condition, wouldn't it be better to make that a rule.

MR. SLOTNICK said it would be from their point of view.

CHAIRMAN STEVENS asked how many violations they had in gaming permits annually.

MR. SLOTNICK said he would have to check. In the renewal process, the one thing they enforce is minimum payout percentages that a permittee has to pay to the charity.

CHAIRMAN STEVENS said they have the permission from the charity that has the gaming permit for the multiple beneficiary permittee to run that permit for them for some percentage

MR. SLOTNICK said that was correct.

CHAIRMAN STEVENS asked if that was a negotiable percentage.

MR. SLOTNICK replied that it is a set percentage. Every December they try to look through the first three quarters reports, figure out who's in danger of being in violation, target them and try to get some accounting, just to make sure they have met with the minimum payout percentage.

CHAIRMAN STEVENS asked if they have additional obligations to the municipalities or boroughs that they operate in .

MR. SLOTNICK replied that was true in Juneau.

CHAIRMAN STEVENS asked if it was true in other areas of the state that had a sales tax as well.

MR. SLOTNICK said he wasn't sure.

CHAIRMAN STEVENS said there was only two ways to be in violation. One is if you don't pay the beneficiary and two is if you don't pay your taxes.

MR. SLOTNICK responded that there were lots of ways to be in violation of the charitable gaming laws. You could run too many sessions of bingo or sell pull tabs that are above the prize limit, for instance. He said there are a number of violations in a year and some of them result in a notice of violation and nothing more than a letter. Some of them result in denial of renewal, but generally that is based only on failure to make the minimum payouts to the charity. This is all they have time to enforce during the renewal period.

CHAIRMAN STEVENS asked if this bill added not paying taxes to the reasons for denial.

MR. SLOTNICK said that wasn't clear now.

2:13

SENATOR AUSTERMAN commented that he didn't think this bill went far enough and that pull tabs should be eliminated altogether, but he thought this was a good bill and asked if Senator Torgerson had a suggestion.

SENATOR TORGERSON said he was thinking they could delete section 2 on page 2 and give them a remedy to fix it, like paying the taxes or remedying the violation.

SENATOR ELTON said he understood Senator Torgerson's concern with broadness and suggested on page 1, line 11 to insert "holding" after the word "after". This restates that the municipality holds the first hearing.

Page 1, line 13, they might want to read: "protest the conduct of the activity in its jurisdiction by resolution" and say something like "the conduct must violate municipal code."

He added that if there was a no-smoking in public places ordinance in place that would also give the municipality a right to protest the permit.

SENATOR TORGERSON said he wouldn't go there.

SENATOR ELTON said it's important to note the history. The Department will not deny a permit on a failure to pay municipal taxes. They would deny on a failure to pay the state taxes, but they have no authority to deny a permit to somebody who fails to pay municipal taxes and that's the issue here.

He noted that the Department was aware of what was going on in Juneau and ought to have been aware that on paperwork filed by these permittees they said they were paying the taxes, despite the fact that a specially appointed judge by the court system had found otherwise. They are trying to give the Department the authority to do what they need to do.

SENATOR TORGERSON said he would delete all the municipal hearings. "If you're in violation of paying taxes, what's the hearing going to do? Make this as cut and dry as you can..."

He said they are trying to have the Department deny the permit if they are in violation of municipal code and sales tax is municipal codes so he didn't know that they even had to put sales tax in there. The license would not be issued until that's remedied. He didn't think there needed to be a lot of hearing officers trying to figure this out.

SENATOR ELTON said he didn't disagree and cautioned that the only option the municipality has now is to close the activity. While that gets to the problem of a bad person who is running the gaming operation, the net effect is no the charities that are benefiting from the activity. He is concerned if there is no hearing on the public level, they are shutting out from any discussion what the net effect is going to be on the charities. "I am more comfortable forcing some kind of a dialogue at the community level between those who are going to be most affected, which are the non-profits and the taxing authority of the municipality."

**TAPE 02-1, SIDE B**

MR. SLOTNICK said he was concerned with the rights of the permittees who have a right to notice and be heard before a value given by the state is taken away. They have had this problem before. He'd rather stay out of that briar patch and would rather not have the Department adjudicating municipal law if it's possible to avoid it. He would rather have some positive finding come to them from the municipality where they don't have the discretion to interpret municipal law at all and that would probably be after a hearing.

SENATOR TORGERSON asked if they notify the municipality of the gaming permits when it's renewed.

MR. SLOTNICK replied that the law says that the applicants are supposed to notify the municipality when they apply.

SENATOR TORGERSON asked if they do that.

MR. SLOTNICK said he didn't know.

SENATOR TORGERSON asked if the ABC Board had a hearing when they pull a license.

MR. SLOTNICK said yes and they would have to, also.

SENATOR TORGERSON said they could have all the hearings they want, but he was just talking about denying it and they can't release it until it reaches a certain point. "I don't expect you to be interpreting municipal code..."

2:25

SENATOR AUSTERMAN said he didn't know if they were forcing the state into a position of having to defend itself as well, if the municipality hasn't had a hearing.

SENATOR TORGERSON said the burden is not on the municipality to prove someone didn't pay their taxes; the person is supposed to prove what their liability is. A municipality does that through audits.

SENATOR ELTON suggested on page 1, line 13 to insert: "protest the conduct of the activity in its jurisdiction by resolution stating the municipal code violation in the protest filed with the department."

This would still allow some discretion within the Department of Revenue to judge whether or not the municipality acted precipitously.

CHAIRMAN STEVENS asked what they would do with section 2.

SENATOR ELTON responded that they could delete section 2.

SENATOR LEMAN wondered if they were giving some additional benefit beyond due process. He wanted to say, "after following the procedures of due process, which may include holding a hearing..."

MR. SLOTNICK responded that generally due process requires notice and an opportunity to be heard and what the hearing consists of is flexible depending on the size of the right being taken away.

MR. HARTLE commented that this could mean simply that there be a hearing on the resolution of protest. This language would not take away the due process rights that tax payers are going to have before they have to pay a tax bill.

This would be some sort of hearing on the protest. And so the resolution has to be passed by the governing body of the municipality. So they would do it at a public meeting with a hearing and notice to the permit holder. If the resolution passed, they would have had their hearing, got their due process and the notice would go to the department to take action on the license.

He supported Senator Torgerson's effort to narrow this down to failure to pay taxes or violations of the municipal code, because as he said, failure to pay taxes is a violation of the municipal code. He would put it on line 13 after "protest". It would say, "a municipality may protest violations of municipal code" and delete "the reasons for".

CHAIRMAN STEVENS recapped on line 11 to insert "holding" after "after" and on page 2, line 1 after "the" to insert "municipal code violation", delete "reasons for" and insert "in".

MR. HARTLE said he would insert on line 10, "a municipality may, after holding a hearing, at which the applicant is afforded the opportunity to make a defense, (1) protest the issuance of a permit or license based on violations of municipal code."

SENATOR LEMAN moved that amendment along with inserting "holding" on line 11. There were no objections and it was so ordered.

SENATOR TORGERSON said he didn't think they wanted "arbitrary, capricious and unreasonable" on page 2, line 3, because the department would then be adjudicating the municipal code.

MR. SLOTNICK said he would prefer not to be in between the municipality and the permittee. He would like a resolution from the municipality allowing them to grant a license.

SENATOR AUSTERMAN said he thought leaving those words out would allow a broader interpretation.

SENATOR TORGERSON said that municipal law cannot be found to be arbitrary, capricious or unreasonable by a commissioner of the state.

SENATOR ELTON asked if it was necessary for the department to hold a hearing if in fact there has been a determination that there is a violation of municipal code. If that is the case, the committee could say on line 2 after "shall deny the permit or license." and delete the rest of the language.

MR. SLOTNICK commented that an applicant for a permit or a license will always have the opportunity for a hearing before the department, because if a permit is denied, it can be appealed, an action that is covered elsewhere in statute. Requiring a hearing in this section is confusing. If they deny a permit on the basis that there was a protest from a municipality, a person could still appeal that and they would receive a full due process hearing before the Department of Revenue.

CHAIRMAN STEVENS asked if he was suggesting that they don't even need that language.

SENATOR ELTON said that meant saying "permit or license." and deleting the rest.

SENATOR TORGERSON explained they are saying if they are in violation, that their license is denied, but they are not giving a remedy and he thought they should insert if they paid their back taxes, the department would issue them a license.

CHAIRMAN STEVENS said they would no longer be in violation of a municipal code if they paid their back taxes.

MR. SLOTNICK said there would still be a protest and until that is rescinded it doesn't look like the department can give them back their license. They should make the municipality withdraw its protest.

SENATOR LEMAN offered a conceptual amendment on page 2, deleting everything after "license" through the end of line 3 and inserting "until notified by the municipality that the violation has been remedied." There were no objections and it was adopted.

SENATOR TORGERSON said he didn't think they needed section 2 on page 2, lines 4 - 17.

SENATOR ELTON explained that there are some municipalities that also hold gaming permits. In previous language, they were trying to make sure they wouldn't get a competitive advantage by arbitrarily protesting licenses. He thought the tightened language took care of that concern and it is not necessary now.

SENATOR TORGERSON moved to delete line 4 - 17 on page 2. There were no objections and it was adopted.

SENATOR AUSTERMAN asked what taxes the state got from the pull tab tax.

SENATOR TORGERSON replied that it is around \$27 million including bingo and everything.

MR. JOHN RICE, Juneau Charities, said they fought long and hard over the ability of municipalities to tax charitable gaming. He thought a lot was not understood about charitable gaming. Money that is received through charitable gaming goes solely to non-profit charities, which take the money and distribute it to families who need housing, clothing, medical care and to children. He thought it was poor public policy to allow municipalities to impose a sales tax.

CHAIRMAN STEVENS said they wanted to hear from him if he would address the bill or its amendments, but they were not discussing the policies of charitable gaming. He asked if his clients are the ones who are in violation of the municipal tax payment to the City of Juneau.

MR. RICE said that was true.

SENATOR AUSTERMAN moved to pass CSSB 175 (L&C) with individual recommendations from committee with a zero fiscal note. He explained that eliminating the necessity to hold hearings changed the fiscal note.

SENATOR LEMAN asked that the Department of Revenue prepare a new fiscal note. There were no objections and it was so ordered.

CHAIRMAN STEVENS adjourned the meeting at 3:00 p.m.