

HOUSE FINANCE COMMITTEE
February 25, 2004
1:45 P.M.

TAPE HFC 04 - 30, Side A
TAPE HFC 04 - 30, Side B

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 1:45 P.M.

MEMBERS PRESENT

Representative John Harris, Co-Chair
Representative Bill Williams, Co-Chair
Representative Kevin Meyer, Vice-Chair
Representative Eric Croft
Representative Hugh Fate
Representative Richard Foster
Representative Mike Hawker
Representative Reggie Joule
Representative Carl Moses
Representative Bill Stoltze

MEMBERS ABSENT

Representative Mike Chenault

ALSO PRESENT

Representative Pete Kott, Speaker of the House;
Representative Harry Crawford; Sue Stancliff, Staff to
Representative Pete Kott; Tom Wright, Staff to
Representative Bill Williams; Michael Barnhill, Assistant
Attorney General, Commercial/Fair Business Section,
Department of Law; Darwin Biwer, Cabaret Hotel and
Restaurant Retailers; Mike Barnhill, Assistant Attorney
General, Commercial/Fair Business Section, Department of
Law.

PRESENT VIA TELECONFERENCE

Greg Peterson, Allied Charities, Ketchikan; Larry Meyers,
Deputy Director, Tax Division, Department of Revenue; Dave
Lambert, Fairbanks; Greg Petersen, Allied Charities;
Dale Fox, Executive Director, Cabaret Hotel and Restaurant
Retailers (CHARR); Gary Superman, (CHARR), Nikiski; Ed
Moeglein, Alaska Nonprofit Charitable Organization (ANCO),
Soldotna; George Wright, Volunteer ANB on Legislative
Committee.

SUMMARY

HJR 20 Proposing amendments to the Constitution of the State of Alaska repealing the prohibition on dedicated funds.

CS HJR 20(JUD) was REPORTED out of Committee with one fiscal note and individual recommendations.

HB 503 An Act relating to the tobacco product Master Settlement Agreement; and providing for an effective date.

HB 503 was REPORTED out of Committee with a "do pass" recommendation and with a zero fiscal note.

HB 509 An Act relating to establishing the Alaska Gaming Commission.

HB 509 was heard and HELD in Committee for further consideration.

HB 375 An Act making appropriations for the operating and loan program expenses of state government, for certain programs, and to capitalize funds; making appropriations under art. IX, sec. 17(c), Constitution of the State of Alaska; and providing for an effective date.

HB 375 was heard and HELD in Committee for further consideration.

HB 377 An Act making appropriations for the operating and capital expenses of the state's integrated comprehensive mental health program; and providing for an effective date.

HB 377 was heard and HELD in Committee for further consideration.

#HJR20

HOUSE JOINT RESOLUTION NO. 20

Proposing amendments to the Constitution of the State of Alaska repealing the prohibition on dedicated funds.

Co-Chair Harris MOVED to report CS HJR 20(JUD) out of Committee with the accompanying fiscal note and with individual recommendations.

Representative Fate OBJECTED to state that there were questions raised that had not been answered in the committee. He expected that his questions would be answered during the House floor debate, but said he would have

preferred the committee forum for further discussion of the measure. Representative Fate WITHDREW his OBJECTION.

There being NO OBJECTION, CS HJR 20(JUD) was REPORTED out of Committee with the accompanying fiscal note and with individual recommendations.

#HB509

HOUSE BILL NO. 509

An Act relating to establishing the Alaska Gaming Commission.

Co-Chair Harris MOVED to ADOPT the Work Draft for HB 509, 23-LS1768\S.

SUE STANCLIFF, STAFF TO REPRESENTATIVE PETE KOTT, explained that HB 509 establishes the Alaska Gaming Commission. It is intended to establish regulatory oversight of all forms of gaming in Alaska, including current forms and future forms that may be authorized by the legislature under AS 05.15. Gaming currently includes bingo, lotteries, raffles, pull-tabs, pull-tab gaming, and fishing derbies. The oversight presently rests in the Tax Division of the Department of Revenue.

The bill includes protections for legalized gaming. Ms. Stancliff discussed the bill's provisions relating to the commission. She explained that the commission may not administer charitable gaming or any other gaming unless the activity is authorized and enacted into law by the legislature.

Ms. Stancliff explained the changes in the work draft Version S from the Labor & Commerce Committee Substitute. Version S removes the requirement that two members of the commission are involved in charitable gaming and hold permits under AS 05.15.

The Labor & Commerce CS changed the structure of the commission by reducing the number from 4 to 3 of the 7 members with the same political affiliation, nonaffiliation, or party. Version S removed "nonaffiliation" [page 2, line 12]. Version S retains the appointment of one member from each of the four judicial districts. One member must have law enforcement experience and one must be a certified public accountant in Version S.

Co-Chair Harris asked for clarification of the membership requirement. Ms. Stancliff was not able to answer how "experience in law enforcement," was interpreted by the drafter.

In response to a question by Co-Chair Harris, Ms. Stancliff explained the membership could include, for example, one member who is nonpartisan, undeclared, Libertarian or Republican Moderate.

Ms. Stancliff stated that the staggering of terms isn't defined in the bill because it is defined in AS 39.05.055, Subsection 5.

Ms. Stancliff continued discussing changes in Version S. On page 4, lines 16-17, the language emphasizes that any new gaming must be authorized by the legislature.

Ms. Stancliff noted a change to the original bill prior to its hearing in House Labor & Commerce. Language on Page 7, line 4 was removed that stated an officer or employee of the Office of the Governor could not purchase a gaming product, receive a gaming prize or participate in a gaming activity.

Ms. Stancliff referred to Amendment 1, which reads:

Page 4, line 31:

Delete "and other employees of the commission are"
Insert "is"

Page 8, line 25, through page 9, line 4:

Delete all material and insert:

"*Sec. 7. AS 39.25.110 is amended by adding a new paragraph to read:

(40) the executive director of the
Alaska Gaming Commission."

Ms. Stancliff explained that the first change would move the charitable gaming administrative employees in the Department of Revenue over to the Commission. The seven positions are state employees without exempt status. The sponsor was asked to remove the language from statute and retain the status of those employees, making only the director's an exempt position. She cited a number of commissions with exempt employees.

Co-Chair Harris MOVED to ADOPT Amendment 1.

Representative Croft OBJECTED for purposes of discussion, asking for clarification of the first change on page 4, line 31. Ms. Stancliff explained it's a technical change. Representative Croft WITHDREW his OBJECTION.

There being NO OBJECTION, Amendment 1 was adopted.

In response to a question by Representative Meyer, Ms. Stancliff explained that the correct fiscal note version is a net zero. The first fiscal note was indeterminate, but

the fiscal note dated 2/24/04 more accurately reflects the costs. The commissioners are not paid but their travel and per diem expenses are estimated, as well as expenses related to the director, at \$616 thousand under Personal Services.

Vice-Chair Meyer questioned the creation of a new commission. Ms. Stancliff explained that charitable gaming has grown since 1996 when the division was transferred to the Department of Revenue. This legislation looks ahead at needed regulation of expanded gaming activities.

Vice-Chair Meyer asked about current gaming. Ms. Stancliff noted that 23 pieces of legislation affecting charitable gaming have passed since the Eighteenth Legislature.

In response to a question by Vice-Chair Meyer, Ms. Stancliff affirmed that DOR would move to the new commission, with zero cost.

Vice-Chair Meyer asked the pay range of the executive director. Ms. Stancliff could not answer specifically, but indicated that it would be in line with salaries of other commission directors.

In response to a question by Representative Stoltze Ms. Stancliff advised that generating revenues is not a major responsibility of the commission, but it would analyze gaming in other states and make recommendations relating to new revenue sources.

Representative Stoltze asked the parameters of multi-state gaming on page 4, line 12 of the bill. Ms. Stancliff stated that multi-state gaming would only occur if authorized by the legislature.

Representative Stoltze asked if the language under Gaming Activities on page 6 would authorize on-line gaming. Ms. Stancliff answered that it's one of the sections the sponsor changed because the Labor & Commerce version contained ambiguous language. The language, "in the state," made it unclear if gaming could be done on-line. The new language addresses on-line gaming, which is not authorized.

In response to a question by Representative Stoltze, Ms. Stancliff affirmed that the new language on page 2, line 3, prohibits persons with a liquor license, including bar-owners, from participating in gaming.

Co-Chair Harris asked how many other states have legalized gaming for profit. Ms. Stancliff responded 47, excluding Utah, Hawaii, and Alaska.

Co-Chair Harris asked if this legislation is modeled after that of other states. Ms. Stancliff affirmed, the bill is

modeled after Idaho and Colorado gaming statutes, which are more in line with Alaska's direction, and these states have rectified their mistakes.

Co-Chair Harris asked if the commission would be allowed to impose taxation levels on gaming. Ms. Stancliff replied that the legislature would have to authorize taxation, but the commission may recommend it.

Co-Chair Harris questioned if the legislature authorizes full casino gambling, would the commission or the legislature recommend and set taxation levels. Ms. Stancliff replied that this bill would give the commission authority to do what is needed to regulate gaming, but taxation would be addressed separately.

Through discussion, Representative Hawker noted that his question about enforcement is answered on page 3, line 25, which states that the authority of the commissioner is to enforce the charitable gaming laws.

Representative Fate asked if the "Statement of Odds" on page 7 is "boilerplate" language taken from other statutes. Ms. Stancliff affirmed. She pointed out that nothing is authorized under AS 05.18.350.

Co-Chair Harris asked if the fiscal note dated 2/23/04 showing \$548 thousand from program receipts is derived from operators of charitable gaming. Ms. Stancliff affirmed, and discussed the shift from the Department of Revenue, commenting that \$616 thousand reflects the department's personal services.

GREG PETERSON, ALLIED CHARITIES, KETCHIKAN, VIA TELECONFERENCE, expressed that the current laws are working fine and he feels that the intent of this bill is only to introduce video poker machines.

DAVE LAMBERT, VIA TELECONFERENCE, FAIRBANKS, expressed concern over the change in commission membership in the work draft, stating that there should be people in the industry involved in the meetings and decision-making process. He discussed multi-state gaming.

ED MOEGLEIN, ALASKA NONPROFIT CHARITABLE ORGANIZATION (ANCO), VIA TELECONFERENCE, SOLDOTNA, listed all the groups that his organization represents, and indicated that the ANCO would like to meet with legislative committees to be involved with current and future gaming legislation.

GARY SUPERMAN, CABARET HOTEL and RESTAURANT RETAILERS (CHARR), VIA TELECONFERENCE, NIKISKI, expressed support for the legislature's shift to look at gaming in the state. He noted that HB 240 did not move through the process last

year. He said that passage of this bill would bring a rational scrutiny of gaming, and would identify a revenue stream if gaming were expanded.

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Mr. Superman continued his testimony. He agreed with a previous testifier that people involved in gaming should be a part of the commission.

In response to a question by Representative Stoltze, Mr. Superman clarified that he hopes the legislature is afforded a wider perspective on gaming.

DALE FOX, EXECUTIVE DIRECTOR, CHARR, VIA TELECONFERENCE, spoke in support of creating a commission in a legitimate body to establish oversight in the same way that other states have addressed gaming. He expressed that it seems logical to make a cohesive package out of the many bills that address gaming.

DARWIN BIWER, CHARR, JUNEAU, expressed that CHARR is totally in favor of HB 509 that would create the commission. He recommended looking first at consolidating pull-tabs, bingo, and raffles, and the \$300 million in total reported sales. He noted the current ten bills on gaming. The CHARR regards HB 509 as a housekeeping bill, not a pro-gambling bill. He concluded, "run it like a business" and ensure strict enforcement.

In response to a question by Representative Hawker, Mr. Biwer stated that CHARR feels the commission should include members of the industry to deal with the practicalities.

REPRESENTATIVE HARRY CRAWFORD asked whether the bill would fix the gaming system or make the shift to new gaming. Mr. Biwar replied that CHARR feels that the gaming industry is not well run. Representative Crawford asked for instances of the state or charities not receiving their share. Mr. Biwar replied that there is no accurate reporting without enforcement.

Representative Crawford followed up by asking if those organizations in violation would be issued licenses for electronic video machines. Mr. Biwar pointed out that the commission would make that decision.

GEORGE WRIGHT, VOLUNTEER, ALASKA NATIVE BROTHERHOOD (ANB) LEGISLATIVE COMMITTEE, spoke in favor of the commission. He felt that the fiscal note is too low, but he supported the idea of the commission if it has a balanced representation and the legislature makes the decisions on new gaming.

SPEAKER KOTT commented that the bill is irrelevant to the expansion of gaming activities. He addressed the issue of taxation. The Commission would make recommendations if there were options available throughout the State. Currently, the Governor has legislation regarding the pull-tabs. Both the voluntary unpaid members on the commission and the provision of the quarterly reports would benefit the state. The accounting of annual revenues currently does not exist. He added that currently there are not many problems in the pull-tab and bingo industries. The legislation is a framework to oversee the industry and to control current and potential activities. The number of members on the commission should be left to the discretion of the committee. Other states do not have industry members.

Co-Chair Harris thought it would be a good idea to have at least one or two members with industry experience, and asked if the Speaker had a personal position on that concern. Speaker Kott deferred that consideration to the committee. He agreed that there should be some industry representation but he questioned how the determination would be made. He did not want to see industry dominate the membership.

Co-Chair Williams noted that HB 509 would be HELD in committee for further consideration.

#HB503

HOUSE BILL NO. 503

An Act relating to the tobacco product Master Settlement Agreement; and providing for an effective date.

CO-CHAIR HARRIS, SPONSOR, briefly introduced HB 503. The bill addresses the Master Settlement Agreement (MSA) with the tobacco industry and would close a current loophole with the non-participating tobacco manufacturers and place money into an escrow account held by the state.

TOM WRIGHT, STAFF TO REPRESENTATIVE JOHN HARRIS, explained that the legislation was suggested by the National Association of Attorneys General. The statutory change would ensure that the non-participating manufacturers (NPMs) in the MSA place in escrow approximately 1.5 cents per cigarette sold in the state, rather than an allocable share. Alaska's allocable share nationwide is .34%. Currently, the NPMs are able to take out of escrow any amount that exceeds its allocable share, which in some states may be a significant amount. Mr. Wright commented that the bill sections are confusing. He explained that Section 1 is the "heart" of the bill, and Section 2 and Section 3 contain conditional language in the event that either Section 1 or Section 2 is found to be unconstitutional.

Co-Chair Harris asked for an explanation of the Master Settlement Agreement and the loophole.

MIKE BARNHILL, ASSISTANT ATTORNEY GENERAL, COMMERCIAL/FAIR BUSINESS SECTION, DEPARTMENT OF LAW, provided background on the Master Settlement Agreement (MSA). In 1997 most of the states sued the four principal tobacco manufacturers and the litigation was settled in 1998 under the MSA. Under the agreement, all manufacturers that have signed onto it pay a certain amount of money on every cigarette sold and the money is distributed on an annual basis to all the states that participated in the MSA. It has generated about \$100 million in revenue for the state of Alaska.

Mr. Barnhill explained that some manufacturers were not going to participate in the MSA, which created an "unlevel playing field". The participating members raise the price of their cigarettes by the amount they estimate they'll need to contribute to the MSA revenues, while the non-participating members don't raise their price. This undermines the MSA because the non-participating members can capture market share by undercutting. The MSA proposed that all participating states would enact legislation to level the economic playing field and require all non-participating manufacturers to deposit money into an escrow account. The money is calculated on an annual basis, at about 2 cents per cigarette this year. The amount is designed to reflect what the non-participating members would have paid in the MSA. All the manufacturers in the participating states either pay into an escrow account or the MSA revenues that are approximately the same amount of money per cigarette.

Mr. Barnhill explained the circumstances in which the non-participating manufacturers (NPMs) can request that money be released from escrow:

- * If the state sues the NPM, recovers a judgment and that manufacturer is judgment-proof, the money can be claimed from the escrow account; or
- * If more is paid into a state's escrow account than the NPM would have paid as a participating manufacturer under the MSA; or
- * If the money has been sitting in the escrow account for twenty-five years.

Mr. Barnhill noted the spreadsheet in the packets, "NPM Escrow Release Calculations for hypothetical non participating manufacturer Cheap Smokes, Inc." (copy on file.) The spreadsheet indicates that under current law, the market advantage has shifted to the non-participating manufacturer who pays less than a penny per cigarette. This is the loophole that HB 503 is trying to solve.

Representative Croft thought that the amount would keep sliding. There would be more sales by NPMs and a big Alaska market share that would grow. Mr. Barnhill acknowledged that was correct. He stated that the good news for Alaska is that the State ranks last in the country in terms of the size of the NPM market. Alaskans smoke brand cigarettes. Mr. Barnhill noted that specialty non-participating manufacturers cater to price because a percentage of the market buys the lowest cost cigarettes that are available.

In response to a question by Representative Croft, Mr. Barnhill advised that taxing has no constitutional problems. There have been proposals for a tax credit scheme; however, the department tends to follow the National Association of Attorneys General on these proposals, and strives for uniformity with other states.

Representative Croft thought that the simplest solution would involve raising the price to ten cents per cigarette, giving everyone a credit for MSA participation, and leveling the price. Mr. Barnhill acknowledged that there have been similar proposals and stated that he did not know the specific problems.

Representative Croft noted that he was attempting to understand the details of the bill.

In response to a comment by Co-Chair Harris, Mr. Barnhill stated that there is no direct financial impact to the state as a result of the legislation. However, an indirect financial impact resulted from implementation of the MSA that raised cigarette prices and provided the NPM market advantage. He added that it will have an indirect effect on the state revenues when the market share of NPMs increases on an aggregate basis.

In response to a question by Co-Chair Harris, Mr. Barnhill affirmed that the NPMs and the MSA participants pay the same tax to the state of Alaska.

Co-Chair Harris asked about taxing the non-participating members more than the participants. Mr. Barnhill thought it might cause equal protection problems. He offered to follow up regarding the query.

Representative Croft noted his support for the bill.

Representative Croft referred to Mr. Barnhill's spreadsheet and the hypothetical escrow of \$20 thousand, asking how the state could continue to escrow that amount when the MSA would bring about \$6800. Mr. Barnhill explained that the amount is placed into escrow for 25 years unless a lawsuit or judgment is filed, or the manufacturer is eligible for a release. There are a variety of adjustments under the MSA

that can be implemented against a state. Alaska is obligated to diligently enforce state law relating to NPMs and the department has filed several lawsuits to force noncompliant NPMs to deposit money into escrow.

Mr. Barnhill commented that there is not an economic incentive for the State of Alaska to file suit against a NPM. The total escrow account is less than \$100 thousand dollars spread between 30 manufacturers. The NPM market is small so the corresponding escrow deposit requirement is small. The state has only sued the big manufacturers as the principal cause of alleged harm.

Representative Croft questioned the legality of holding \$20 thousand in escrow when the NPM only owes the state \$6800. Mr. Barnhill advised that the state does not keep the money; rather, the NPM opens an escrow account in their own name and makes deposits. Commonly an NPM with nationwide sales deposits money into segregated sub-accounts for each of the states. Alaska is a potential beneficiary of that money.

In response to a question by Representative Croft, Mr. Barnhill explained the three options of the contingency language:

* Section 1 would require the NPM to pay the MSA amount into escrow with no release, putting it on equal par with the participating member. In Mr. Barnhill's opinion, the legal drafters have been very cautious in the event the states are sued and that provision is found to be unconstitutional.

* Section two eliminates any ability of the NPMs to request a release from escrow. The escrow amount is only released after 25 years or to pay the state's lawsuit or judgment.

* Section three reverts back to current law if Sections 1 and 2 are found to be unconstitutional. Mr. Barnhill reiterated that it is cautious drafting.

Mr. Barnhill explained for Representative Croft how the NPM sliding scale has the ultimate effect of undermining the MSA.

Representative Hawker asked if this legislation ties into the MSA issues of last session. Mr. Barnhill replied that complementary legislation was designed to heighten enforcement of Alaska's NPM statute. To prevent non-compliance, a law was passed requiring all sellers of cigarettes in the state to register with the Department of Revenue.

Co-Chair Harris asked if the tobacco tax could be added to this bill. Mr. Wright advised that the title would need to be expanded.

Representative Foster MOVED to report HB 503 out of Committee with individual recommendations and a zero fiscal note. There being NO OBJECTION, it was so ordered.

#HB375

HOUSE BILL NO. 375

An Act making appropriations for the operating and loan program expenses of state government, for certain programs, and to capitalize funds; making appropriations under art. IX, sec. 17(c), Constitution of the State of Alaska; and providing for an effective date."

Representative Foster MOVED to ADOPT HB 375 with the accompanying subcommittee reports. There being NO OBJECTION, it was so ordered.

#HB377

HOUSE BILL NO. 377

An Act making appropriations for the operating and capital expenses of the state's integrated comprehensive mental health program; and providing for an effective date.

Representative Foster MOVED to ADOPT HB 377 with the accompanying subcommittee reports. There being no objection, it was so ordered.

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ADJOURNMENT

The meeting was adjourned at 3:22 P.M.