ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 26, 2005
1:22 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Nancy Dahlstrom
Representative Pete Kott
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 3
Proposing amendments to the Constitution of the State of Alaska relating to appropriations from the budget reserve fund.

- MOVED HJR 3 OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 19
Proposing amendments to the Constitution of the State of Alaska relating to and limiting appropriations from the Alaska permanent fund based on an averaged percent of the fund market value.

- MOVED HJR 19 OUT OF COMMITTEE

HOUSE BILL NO. 272
"An Act relating to card rooms and card operations."

- MOVED CSHB 272(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 268
"An Act relating to overtaking and passing certain stationary vehicles."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 276

"An Act relating to business license endorsements for tobacco products, to holders of business license endorsements for tobacco products, and to the employees and agents of holders of business license endorsements for tobacco products."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HJR 3
SHORT TITLE: CONST AM: BUDGET RESERVE FUND APPROPS.
SPONSOR(S): REPRESENTATIVE(S) ROKEBERG

01/10/05	(H)	PREFILE RELEASED 1/7/05
01/10/05	(H)	READ THE FIRST TIME - REFERRALS
01/10/05	(H)	W&M, JUD, FIN
04/18/05	(H)	W&M AT 8:30 AM CAPITOL 106
04/18/05	(H)	Moved Out of Committee
04/18/05	(H)	MINUTE(W&M)
04/18/05	(H)	W&M RPT 1DP 1DNP 4NR
04/18/05	(H)	DP: WILSON;
04/18/05	(H)	DNP: GRUENBERG;
04/18/05	(H)	NR: SAMUELS, SEATON, MOSES, WEYHRAUCH
04/26/05	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HJR 19
SHORT TITLE: CONST. AM: PERMANENT FUND P.O.M.V.
SPONSOR(S): WAYS & MEANS

04/19/05	(H)	READ THE FIRST TIME - REFERRALS
04/19/05	(H)	W&M, JUD, FIN
04/22/05	(H)	W&M AT 8:30 AM CAPITOL 106
04/22/05	(H)	Moved Out of Committee
04/22/05	(H)	MINUTE(W&M)
04/22/05	(H)	W&M RPT 4DP 1NR
04/22/05	(H)	DP: ROKEBERG, SAMUELS, MOSES, WEYHRAUCH;
04/22/05	(H)	NR: GRUENBERG
04/26/05	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 272
SHORT TITLE: CARD ROOMS & OPERATIONS
SPONSOR(S): REPRESENTATIVE(S) KOTT

04/18/05	(H)	READ THE FIRST TIME - REFERRALS
04/18/05	(H)	L&C, JUD, FIN
04/21/05	(H)	L&C AT 3:15 PM CAPITOL 17

04/21/05	(H)	Moved Out of Committee
04/21/05	(H)	MINUTE(L&C)
04/22/05	(H)	L&C RPT 2DP 2DNP 2NR
04/22/05	(H)	DP: KOTT, ANDERSON;
04/22/05	(H)	DNP: CRAWFORD, GUTTENBERG;
04/22/05	(H)	NR: LEDOUX, ROKEBERG
04/26/05	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE NORMAN ROKEBERG
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HJR 3.

TERRY HARVEY, Staff
to Representative Bruce Weyhrauch
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HJR 19 on behalf of the sponsor, the House Special Committee on Ways and Means, which is chaired by Representative Weyhrauch.

MICHAEL J. BURNS, Executive Director
Alaska Permanent Fund Corporation (APFC)
Department of Revenue (DOR)
Juneau, Alaska
POSITION STATEMENT: During discussion of HJR 19, provided comments, urged the committee to support the resolution, and responded to questions.

LAURA ACHEE, Research and Communications Liaison
Alaska Permanent Fund Corporation (APFC)
Department of Revenue (DOR)
Juneau, Alaska
POSITION STATEMENT: During discussion of HJR 19, provided comments and responded to questions.

MICHAEL O'HARE, Staff
to Representative Pete Kott
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 272 on behalf of the sponsor, Representative Kott.

PERRY GREEN
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 272 and responded to questions.

LINDA KOVAC
Chugiak, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 272.

CHIP WAGONER, Executive Director
Alaska Catholic Conference
Juneau, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 272 and responded to questions.

SUSAN A. BURKE, Attorney at Law
Gross & Burke, PC
Juneau, Alaska
POSITION STATEMENT: On behalf of Perry Green, responded to questions during discussion of HB 272.

KATHRYN L. KURTZ, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska
POSITION STATEMENT: As the drafter, responded to questions during discussion of HB 272.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:22:33 PM. Representatives McGuire, Anderson, Dahlstrom, and Gruenberg were present at the call to order. Representatives Coghill, Kott, and Gara arrived as the meeting was in progress.

HJR 3 - CONST AM: BUDGET RESERVE FUND APPROPS.

1:22:53 PM

CHAIR McGUIRE announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 3, Proposing amendments to the Constitution of the State of Alaska relating to appropriations from the budget reserve fund.

REPRESENTATIVE NORMAN ROKEBERG, Alaska State Legislature, sponsor, relayed that HJR 3 proposes to place before the voters

the question of whether to repeal subsections (b) and (c) of Section 17, Article IX, of the Alaska State Constitution; Section 17 pertains to the Constitutional Budget Reserve Fund (CBRF), which was established in 1990 by the Sixteenth Alaska State Legislature. In 11 out of the subsequent 13 fiscal years, he remarked, the legislature has needed the three-quarter vote required for appropriations from the CBRF in order to balance the budget. He opined that subsections (b) and (c) of Section 17, while intended to restrict spending, have not actually worked to that effect but have instead resulted in increasing the budget; additionally, subsection (b) is complicated, has been misunderstood and litigated, and has caused significant difficulties, historically, as to its purpose. [Subsections (b) and (c) of] Section 17 have failed their public purpose, he concluded, and should therefore be repealed.

1:25:42 PM

CHAIR McGUIRE, after ascertaining that no one else wished to testify, close public testimony on HJR 3.

REPRESENTATIVE GARA asked whether HJR 3 works together with legislation sponsored by Representative Harris.

REPRESENTATIVE ROKEBERG offered his belief that the two pieces of legislation are not compatible; HJR 3 maintains the CBRF, and he strongly supports this concept as sound public policy. He went on to say:

> I believe we need a fund - that's been voted on by the people and established by the people - to allow the legislature to have funds available to balance the budget, when needed, and additionally allow the administration to use the shock-absorber effect and the cash flow available for cash management purposes. I believe the administration, over the past several years, has testified to the fact that the State of Alaska uses approximately $400 million a year and they draw from the funds for their cash management purposes, because of the ebb and flow of cash flow within the state coffers.
>
> So in perpetuity we're going to need a relatively large amount of available cash in order to even meet our daily cash flow requirements. And this ... fund has been used for that purpose. It's saved us significantly because we haven't had to utilize such

devices as tax-anticipation notes to go out and finance cash flow requirements, which is quite common in many states and ... is allowable under our constitution. So we literally would have to borrow money to meet our daily cash flow requirements, without the fund. So the fund in and of itself has a significant public purpose and I support the fund. It's only those provisions of that fund that give weight [to], or require, the three-quarter vote to access the funds for budgeting purposes that I believe that we should repeal.

REPRESENTATIVE GARA offered his understanding that in past years, the minority has used the three-quarter vote requirement to increase education funding, and said he is concerned that without the leverage offered via the three-quarter vote requirement, the minority will no longer be able to get extra funding for education.

REPRESENTATIVE ROKEBERG opined that any policy formations on the part of the legislature should be based on merit, not on a constitutionally constructed "leverage." He added:

I think that's the point of this resolution. Why should we create a constitutional mechanism to give one group within the legislature additional leverage, which historically is not found in most other legislatures. There are a few states - there's a report from the "Alaska Budget Report" - that have supermajority requirements for budgeting, ... [and] even such conservative groups at the Cato Institute [think] that that might help reduced spending. Well, there was study done in California, apparently, that verifies, I believe, the position of most Alaskans, recognizing that it tends to increase spending rather than decrease it. But in terms of specific use of the leverage mechanism as to a specific area of spending - and you sited education needs - I don't believe that that's appropriate.

You seem to make the statement that but for the leverage, that funding would not have been forthcoming. I take exception to that, significantly. You could say that ... any bargaining was artificially constructed for the mere purpose of gaining the vote, whether or not it ultimately would have had the actual impact in the budget or not. Absent that leverage, I

suspect and believe the legislature would act appropriately and fund the needed amounts of educational monies. As a matter of fact, this year, the legislature, in the House, has enacted a $70 million K-12 educational budget appropriation without the leverage ... [or] requirement of the three-quarter vote. And you can debate whether that's adequate or inadequate, [but] the fact is, it's historically one of the highest amounts ever appropriated, and not affected at all by the leverage mechanism.

1:31:33 PM

REPRESENTATIVE GARA disagreed with Representative Rokeberg, adding:

We don't have a three-quarter vote this year. There are members of your party that have come to us and asked us to use our leverage to get the "fifty-one twenty" amount, the amount that we just determined was appropriate. Without the three-quarter vote, though, we're stuck at "forty-nine nineteen." And that's exactly the circumstance where ... I think it's important to have the leverage as a minority party. To move up education funding to the point where you can actually make some progress, I think, would happen this year if we had the three-quarter vote. We've had enough majority members come to us who (indisc. - coughing) join us for the " fifty-one twenty" vote on the floor, but I think would if we had the three-quarter vote.

REPRESENTATIVE ROKEBERG replied:

I believe Representative Gara makes my case. If you in fact had 21 votes to meet that purpose, you could prevail within the body of the House. You wouldn't have to have the supermajority vote, then, so conversely it works against you. That's the curious thing about it. ... And you also indicate that without the leverage of a three-quarter vote this year you're not able to extort a policy position using the minority leverage mechanism. ... That again makes my case.

REPRESENTATIVE GARA remarked, "Just not able get adequate education funding."

REPRESENTATIVE ROKEBERG pointed out that adequacy is in the eye of the beholder. "I'm looking at this from a constitutional, overall, more-global macro-view, if you will; you're bringing it down to a specific point, which is all well and good, but I think you give substance to my argument by even acknowledging on the record that you're using it for this purpose," he concluded.

1:33:34 PM

CHAIR McGUIRE surmised, then, that Representative Rokeberg is of the belief that when the [three-quarter vote] requirement was originally passed, the idea was that it would restrain state spending.

REPRESENTATIVE ROKEBERG concurred with that summation, that the requirement would make access to the additional funding more difficult and thereby create more fiscal discipline. But that has not been the case, he opined, since the way it's been used, more money is actually spent, and so its very purpose is defeated.

CHAIR McGUIRE suggested setting HJR 3 aside.

REPRESENTATIVE GARA offered his belief that without the three-quarter vote, the minority party won't be able to "extract some sort of equity for their own districts." He asked why he should be comfortable that HJR 3 will ensure party equity with regard to [capital projects].

REPRESENTATIVE ROKEBERG noted that historically, until two years ago, there were no monies available to majority members for their districts, whereas minority members received "tens of millions of dollars" for various projects. Therefore he would argue that the minority benefited significantly while the majority "got zero."

REPRESENTATIVE GARA remarked, "The majority gets their money in the regular budget process, and then it's only with the three-quarters vote that the minority ever gets any projects in their districts."

REPRESENTATIVE ROKEBERG disagreed, and opined that appropriations to districts have been based on merit and have been justifiable; for example, the school deferred maintenance list, produced by the Department of Education and Early Development (DEED), has taken precedence. He offered his view

that the legislature has shown a markedly nonpartisan allocation of funds, though he acknowledged that certain chairs of certain committees have sometimes arranged for [larger] allocations for their districts.

1:39:14 PM

REPRESENTATIVE ANDERSON opined that Representative Rokeberg makes good points, and remarked on some of the funding allocations made last year to certain districts in Anchorage.

REPRESENTATIVE ANDERSON moved to report HJR 3 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GARA objected. He said:

> If we're going to give up the three-quarters vote, to protect ourselves and allow some sort of fairness between parties so that one party doesn't take all the money, I would like something in the [Alaska State] Constitution that says the majority party can only take so much more capital money than the minority party, so that we don't have sort of this "money-feed." I proposed some language yesterday that said: "On average, you shouldn't allow the majority party, per district, to take more than ... 20 percent than the minority takes." It seemed a little bit cumbersome, but I would ask you, if you're going ask us to give up ... the tool that we have to ask for equity, then I would ask you to think about something that would allow us to retain at least some measure of equity in the future so that all the money doesn't end up in republican districts, and [so] we don't have what happened last year, which was this $125,000 allocation that just went to majority members.

REPRESENTATIVE ROKEBERG pointed out that $11 million was paid specifically to minority projects as a result of what he characterized as the leverage mechanism. He added:

> I think the ultimate leveler ... between minority and majority, whoever maintains that power, is something that in the House the voters speak to every two years. To put additional superstructures, either in the [Alaska State] Constitution or in statute, I think is inappropriate. You're taking the dynamic away by

binding future legislators about what they do, and which is a constitutional violence, in my opinion.

CHAIR McGUIRE indicated that Representative Gara's suggested [language change] seems attractive to her because she has seen all of the minority members receive millions of dollars in the past while her district didn't receive anything until just last year. She remarked, however, that she agrees that "we shouldn't be micromanaging it when it comes to a constitutional amendment."

1:42:53 PM

REPRESENTATIVE GRUENBERG, in response to a question, said he objects [to the motion to report the resolution from committee], adding that he thinks it is important to protect the rights of the minority in this particular case. He referred to language in the sponsor statement that says, "If those in the minority have the goal of budget reduction, the three-quarter vote provides them with little or no power," and opined that such is not true; rather, the three-quarter vote requirement can provide even more power to a conservative minority.

1:44:38 PM

A roll call vote was taken. Representatives McGuire, Anderson, Coghill, Kott, and Dahlstrom voted in favor of reporting HJR 3 from committee. Representatives Gruenberg and Gara voted against it. Therefore, HJR 3 was reported from the House Judiciary Standing Committee by a vote of 5-2.

HJR 19 - CONST. AM: PERMANENT FUND P.O.M.V.

1:45:03 PM

CHAIR McGUIRE announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 19, Proposing amendments to the Constitution of the State of Alaska relating to and limiting appropriations from the Alaska permanent fund based on an averaged percent of the fund market value.

1:45:14 PM

TERRY HARVEY, Staff to Representative Bruce Weyhrauch, Alaska State Legislature, relayed on behalf of the House Special Committee on Ways and Means, sponsor of HJR 19, that the resolution proposes changing the Alaska State Constitution to

require inflation proofing of the entire permanent fund through the use of a system known as percent of market value (POMV). After noting that this is the same legislation that passed the house last year as House Joint Resolution 26, he explained that if passed by the legislature, HJR 19 would place an initiative on the next statewide ballot for approval. This is not about the permanent fund dividend (PFD), he assured the committee; rather, this is about using the most effective modern means to manage $30 billion. The goal of the resolution is to ensure that the fund is invested prudently and without interference. The resolution aims to achieve this goal by giving fund managers a target to hit, the flexibility to hit it, and the independence to do it efficiently. In conclusion, he relayed that representatives from the Alaska Permanent Fund Corporation (APFC) were available to answer questions.

1:46:49 PM

MICHAEL J. BURNS, Executive Director, Alaska Permanent Fund Corporation (APFC), Department of Revenue (DOR), offered the following comments:

> First of all, I would like to emphasize that the [Board of Trustees of the Alaska Permanent Fund Corporation] do not see POMV as a "fiscal plan"; POMV would not allow the legislature greater access to the earnings of the fund, and, in fact, in most years, would lower the amount available for appropriations compared to our current system. The trustees believe that the implementation of POMV and the use of permanent fund earnings are two separate issues. [Percent of market value] is, one, predictable, but much more importantly we think it is understandable by the people of Alaska. Is it any wonder that people are confused and easily mislead by the arcane nature of our fund's distribution formula?
>
> We manage the fund with a methodology simply based upon real return. This is quite simply the total return of the fund minus inflation - [this] gives us a real return. This is how public and private foundations, pension funds, and endowments, and their trustees, directors, and managers view their fiduciary duty and assignment. What is broken then? The current statutory "realized income-based distribution formula" is the culprit. As opposed to the "real return" methodology, we are using the confusing and

misunderstood formula, or the Alaska version of, "return" and "income."

MR. BURNS continued:

Let me walk you through that calculation just for a moment. This starts with income, which is dividends, interest, and rent. To that we add or subtract gains and losses, both realized and unrealized. From that we subtract operating expenses, from that we subtract any appropriations, and we get to what is referred to as "accounting net income." From this, we subtract unrealized net income, and this gets us to realized net income. From that we subtract any earnings associated [with] ... the Amerada Hess [litigation] monies. This gets us to statutory net income; this is what's used in the distribution formula.

Confusing, out of date, and unworkable are but a few of the adjectives that come to mind. How did we get to this state of confusion? When the fund was created it was prudent to restrict its investment authority to a "bond only" strategy. That being the case, it is important to remember that a bond portfolio generates income in two ways: interest or coupon income received, and capital gains from bonds sold at appreciated prices. These are both traditional realized income, and the distribution formula based upon this concept made perfect sense - at the time.

However, because the fund's asset allocation now incorporates investments that generate significant unrealized gains as well as realized income, the current payout methodology and protection of principal no longer serve the fund as well as they once did. The trustees believe that only a percent of market value payout, limited by the sustainable yield from the fund, can provide the necessary protection for the fund while allowing current generations their equitable share of fund earnings. Furthermore, they believe that the only way to ensure full protection for the fund is to place this limit in the Constitution.

MR. BURNS concluded:

> The percent of market value proposal is simple: no more than 5 percent of the market value of the fund, averaged over the previous five years, may be appropriated from the fund. This leaves a minimum of 95 percent of the fund protected from spending in any given year. As I noted earlier, POMV is not a fiscal plan. And I must admit, with oil in the $50 range, your interest [in] and focus on a fiscal plan may well be elsewhere. But is this not the opportune time to modernize and increase the transparency of the fund so that it can not only be managed in harmony with its distribution formula, but also understood by Alaskans when other decisions have to be made? Modernization, clarity, better protection - I urge the committee members to support this proposal, and [I'm] prepared to answer any questions that you may have.

1:52:03 PM

REPRESENTATIVE GARA suggested that a POMV proposal might pass if people were assured that their PFDs wouldn't be reduced as a result, and offered his understanding that such a stipulation could be part of a POMV methodology.

MR. BURNS said that the APFC will do whatever the legislature requires, but would prefer that it not be forced into realizing income when doing so would not be in the best interest of the investment performance of the fund. In response to a question, he explained that the APFC does not wish to become involved in the legislature's policy decision regarding PFD payout amounts.

CHAIR McGUIRE said that all the significant, major trusts in the world of which she is aware have been managed for years and years with great success in the way that HJR 19 is proposing for the permanent fund. She indicated that although some are concerned with how to assure the voters that adopting a POMV methodology will not result in a decrease in their PFDs, her concern centers on the financial aspects of managing the fund, and remarked that she would rather the APFC focus on managing the fund in such a way that it continues to grow and benefit all of Alaska. She suggested that perhaps the two seemingly differing concerns could both be addressed via a POMV methodology that contains stipulations with regard to PFD payouts.

1:58:25 PM

LAURA ACHEE, Research and Communications Liaison, Alaska Permanent Fund Corporation (APFC), Department of Revenue (DOR), remarked that under the APFC's point of view, a POMV methodology gets to the issue of how money is paid out of the fund while also limiting the amount paid out of the fund to what the trustees believe is a sustainable yield. Therefore, although it is possible that a POMV methodology might have an effect on PFD amounts during years when the PFD calculation results in a figure greater than 5 percent, it would be accurate to say that the actual calculation for the PFD is not changing. She offered her belief that the most logical approach is to change the dividend statutes to conform to a POMV methodology so that the APFC will no longer have to keep two sets of books as is currently the case. She concluded by noting, however, that the APFC will accommodate the legislature's wishes regardless of whether they involve keeping two sets of books or maintaining PFD payouts at a specific amount even under a POMV methodology.

CHAIR McGUIRE offered a hypothetical example wherein the current PFD calculation results in payouts that exceed the proposed 5 percent amount, and asked what kind of an effect making those higher payouts would have on future generations.

MR. BURNS offered his belief that the endowment concept coupled with a POMV distribution formula will provide the fairest way for all generations to benefit from the fund, that such will result in generational equity.

MS. ACHEE indicated that for at least the next 10 years, the APFC is not anticipating that the payout calculation will result in an amount even close to 5 percent.

CHAIR McGUIRE indicated, however, that the possibility that a payout calculation could exceed 5 percent in the future is still of concern to her.

MS. ACHEE, in response to questions, explained what the various charts provided in members' packets illustrate, and that at the end of every month, the APFC accounts for both unrealized gains and realized gains.

REPRESENTATIVE COGHILL asked whether, in converting to a POMV methodology, the APFC will have to reevaluate the value of the fund and, if so, whether there is the possibility that the value of the fund will change.

MR. BURNS explained that the only unrealized gains that are changed during the end-of-month accounting are marketable securities, and that real estate is carried at cost plus improvements, though for performance measures, the APFC does mark up real estate internally. In response to a further question, he said that [realized gains] from real estate are not listed in the books until the real estate is sold, adding that such is considered to be a generally accepted accounting practice.

MS. ACHEE, in response to questions, reiterated her earlier comments regarding the aforementioned charts and the fact that a POMV methodology would not in and of itself change the current dividend calculation.

MR. BURNS added that all a POMV methodology does is measure how much permanent fund money is made available for appropriation by the legislature.

REPRESENTATIVE COGHILL characterized the change proposed by HJR 19 as a spending limit, and concluded that as such, passage and adoption of the proposed change could result in a lower dividend for Alaskans.

2:12:44 PM

MR. BURNS concurred with that summation, adding that both the current distribution formula and the proposed POMV methodology make calculations based on five-year averages, and this acts to buffer [the payout] from market swings.

REPRESENTATIVE GRUENBERG mentioned that his concern is that HJR 19 allows the legislature to invade the principal of the permanent fund, and therefore he does not support [the resolution].

MR. BURNS said that the concept of "principal" and "earnings reserve" do go away under an endowment concept, and that is the reason for using a conservative number to base the distribution formula on. He went on to say:

> Most of the projections that we put forth assumed a 5 percent real return after inflation, which is almost 8 percent. ... If you take a five-year growing fund at that basis and have a five-year average, you're really not paying out 5 percent. The math on a fund that grows just at the rate of inflation is about 4.65. ...

So ... I think it falls within a very acceptable range of not invading the historical concept of principal. But that's not to say it certainly couldn't happen.

REPRESENTATIVE GRUENBERG opined that the people won't draw that distinction, and concurred that under a POMV methodology, the permanent fund will no longer have a dividing line between principal and earnings.

MR. BURNS opined that a POMV methodology will provide the permanent fund with more protection than it currently receives, since the amount currently available for appropriation is markedly higher than what it would be under the proposed POMV calculation.

2:17:08 PM

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HJR 19.

CHAIR McGUIRE relayed that she has been asked to forward the resolution on to the House Finance Committee.

REPRESENTATIVE GRUENBERG mentioned that the House Special Committee on Ways and Means might introduce a bill that would institute a POMV methodology via statute.

2:18:54 PM

REPRESENTATIVE GARA mentioned municipal revenue sharing via a municipal dividend; indicated that he doesn't want to impact the principal of the permanent fund; and offered his understanding that even under a POMV methodology using 5 percent, depending on market conditions, it would still be possible to decrease the principal of the permanent fund. He asked members to consider incorporating a provision that stipulates there will be no invasion of the principal.

2:21:03 PM

REPRESENTATIVE COGHILL offered his belief that simply saying no more than 5 percent will be available for appropriations will be sufficient, particularly if the APFC uses a prudent method of evaluating the fund. He pointed out that nothing in the resolution says that the entirety of that 5 percent must be appropriated. In conclusion, he said he doesn't want to put in

the constitution items that are appropriately matters of legislative policy discussion.

REPRESENTATIVE COGHILL moved to report HJR 19 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE DAHLSTROM objected.

2:23:20 PM

A roll call vote was taken. Representatives McGuire, Coghill, Kott, and Gruenberg voted in favor of reporting HJR 19 from committee. Representatives Dahlstrom and Gara voted against it. Therefore, HJR 19 was reported from the House Judiciary Standing Committee by a vote of 4-2.

HB 272 - CARD ROOMS & OPERATIONS

2:23:46 PM

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 272, "An Act relating to card rooms and card operations."

2:24:48 PM

MICHAEL O'HARE, Staff to Representative Pete Kott, Alaska State Legislature, sponsor of HB 272, relayed on behalf of Representative Kott that the growing popularity of poker is obvious to everyone who's "surfed" television channels. Many networks, from ESPN (Entertainment and Sports Programming Network) to the Travel Channel, are regularly televising "Texas Hold 'em" tournaments and enjoying skyrocketing popularity and revenues. Men and women, old and young, are joining the poker trend, which shows no sign of slowing down. Due to this growth in interest, the intent of HB 272 is to allow social card games to be played in a tightly controlled public environment. Alaska can address the trend and [move] this popular pastime into compliance with the safety and revenue laws of the state.

MR. O'HARE said that the types of games that would be allowed would be non-banking card games, those games where players play against one another rather than against the "house." Additionally, the games - limited in the bill to poker, pan, rummy, bridge, and cribbage - would be played using tokens or chips, not negotiable currency. Licenses to own a card room may

only be issued in municipalities with a population of at least 30,000, and the total number of such licenses issued in any given municipality may not exceed the total population of that municipality divided by 30,000. The licensee will be required to pay a nonrefundable application fee of $25,000 to the Department of Revenue (DOR), post a cash bond of $500,000 with the DOR at least 60 days in advance of commencing card room operations, pay an annual license fee of $10,000 for each card table, be fingerprinted, pay for all investigative costs incurred over the initial $25,000 application fee, and host quarterly tournaments with the proceeds to be distributed to a nonprofit educational institution or group designated by the licensee.

MR. O'HARE relayed that the licenses are good for five years and will not be issued to an individual who has been convicted of a felony; who has knowingly falsified an application; who, at the time of application, is an officer, director, or managerial employee of a person [who has been convicted of a felony or who has knowingly falsified an application]; or who employs a person [who has been convicted of a felony or who has knowingly falsified an application or who has been an officer, director, or managerial employee of such a person] in the management or operation of card game operations authorized under the bill. The bill allows the DOR to strictly enforce regulations imposed on card room operations, while allowing card players to enjoy a safe, regulated playing environment. The bill also gives back to the community by creating jobs and supporting nonprofit educational charities. He concluded by mentioning that members' packets contain a fiscal note, a legal opinion regarding the possible effects of HB 272 on "Indian gaming," and a spreadsheet illustrating possible gross sales and employee information for card room operations.

2:28:09 PM

REPRESENTATIVE KOTT, speaking as the sponsor of HB 272, added that card rooms can now be found in 44 states, and suggested that social card games are already occurring in most communities in Alaska. He characterized HB 272 as very stringent with regard to licensing requirements, the goal being to have only reputable operators that will ensure successful operations during the course of a license's five-year period. The $25,000 [application] fee is probably one of the most significant in the state, he remarked, particularly given that it is nonrefundable - the department can reject the application and still retain the fee. Recapping some of the bill's requirements regarding

licensure, he explained that the criteria regarding population is intended to ensure that a community has a sufficient population base to support a card room operation.

REPRESENTATIVE KOTT noted, however, that currently there is no limit to the number of card tables an operation may have, and suggested that it will be the number of tables available in a community which will have the most influence on revenue. Referring to the federal Indian Gaming Regulatory Act (IGRA), he characterized HB 272 as doing nothing more than expanding what are considered Class II gaming activities under the IGRA to include non-banking card games. He offered his belief that the card games listed in HB 272 would not be considered Class III gaming activities under the IGRA.

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REPRESENTATIVE KOTT opined that those who participate in card games are quite a bit different than those who play bingo or pull-tabs; they are a different caliber of player. One wins at pull-tabs or bingo strictly by chance; in contrast, one wins at card games by a combination of chance and strategy. He also opined that card games are not true gambling, and that HB 272 will provide those that wish to participate in that level of activity the opportunity to do so in a very safe, structured environment.

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REPRESENTATIVE KOTT, in response to a question, offered his understanding that [under the IGRA] there are three levels of gaming operations, and that the state has authorized two of those levels. The first level under the IGRA - class I gaming - includes social gaming for minimal prizes and traditional Indian gaming conducted at ceremonies or celebrations. The second level under the IGRA - class II gaming - includes bingo, lotto, pull-tabs, punch boards, tip jars, and non-banking card games, as well as banking card games operated on or before May 1, 1988. The third level under the IGRA - class III gaming - includes casino-type gambling, pari-mutual horse and dog racing, lotteries, and all other forms of gaming that are not class I or II gaming. He relayed that in banking card games one plays against the house, whereas in non-banking card games the house simply distributes the cards [and chips or tokens] and takes a percentage of each hand played.

REPRESENTATIVE DAHLSTROM said that although she respects the sponsor and many of those who are in favor of HB 272, and recognizes its revenue-raising potential, she is opposed to the bill. She said she hasn't come across any information that specifically delineates the differences between class II and class III gaming, and so surmises from this lack that the language used to describe a particular game could simply be tailored to enable it to qualify under either class II gaming or class III gaming, whichever the operator wished. She also mentioned that she has read several articles and heard many debates regarding the issue of Indian gaming - some say that the bill won't "open anything up," and some say that it absolutely will "open things up."

REPRESENTATIVE DAHLSTROM pointed out that Indian tribes retain their authority to conduct, license, and regulate class II gaming so long as the state in which the tribe is located permits such gaming for any purpose. She opined that this authority, depending on how a particular game is defined, could be used to justify any type of gaming. She offered her belief that once the state legalizes the type of games referred to in HB 272, it will open up the Indian gaming issue. She said she also strongly believes that the cost of the social ills associated with gambling will outweigh any purported revenue gain to the state. She concluded by saying:

> I don't want to see our state becoming dependent on the income that comes from this, becoming addicted to that income, whether it be for nonprofit organizations ... [or] for education. ... I don't feel comfortable, at all, doing that. And, again, I just think that the issues that our state will take on, with addiction [and] abuse of all types - all forms - are going to have a huge monetary cost to our state as well as a demoralizing cost to our state and our society and [to] ... the message that we send to our young people.

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REPRESENTATIVE KOTT said he shares a lot of Representative Dahlstrom's concerns, particularly those pertaining to the ills society may face as a consequence of gaming activities, but added that his research indicates to him that non-banking card game operations are not in the same category as gaming operations involving machines. He offered his belief that because of the nature of the player involved in card room games, an addiction component won't be present, and that those who play

card room games will generally be older individuals who understand the game and therefore the same social ills that can be found with other forms of gambling won't be present. On the issue of Indian gaming, he opined that the legal opinion written by Susan A. Burke of the law firm Gross & Burke indicates that currently non-banking card games could already operate under the IGRA even without the proposed legislation. He suggested that after passage of the bill, should a tribe wish to engage in the type of gaming the bill authorizes, the tribe would still have to comply with all the bill's licensing requirements including those pertaining to population.

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REPRESENTATIVE DAHLSTROM concurred with Representative Kott with regard to the age of those who are most likely to engage in card room gaming. Nonetheless, that doesn't make it right, she remarked, particularly given how likely youth are to copy the behavior of their elders. Cards games are games of luck, she opined, and so the concept of relying on luck rather than on a good education and hard work is a far inferior message to send to Alaska's youth. She said she hopes that no one on the committee is fooled into believing that the bill won't open up gambling in the state.

CHAIR McGUIRE offered her understanding that the IGRA would only apply to tribes in "Indian country"; that according to the Venetie case, there is very little Indian country in Alaska; and that class II gaming is already allowed in the state. Therefore, she concluded, from a legal standpoint, the bill doesn't open up the state to class III gaming issues, since it only applies to non-banking card games, which are listed in the IGRA's definition of class II gaming.

REPRESENTATIVE ANDERSON offered his understanding that almost all 50 states allow some form of gaming or gambling, and that nationally, almost $200 million is spent on Internet gambling.

REPRESENTATIVE KOTT, in response to a question, said he has no intention of expanding the bill to include any other types of gaming. He noted that one can currently use his/her credit card to gamble on the Internet, and suggested that the state is losing revenue because of this.

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REPRESENTATIVE ANDERSON said he supports the bill, and then sought confirmation that the intent of the bill is to make sure that those who play non-banking card games for entertainment purposes are doing so in a safe and legal fashion. He also raised the issue of alcohol consumption.

REPRESENTATIVE KOTT offered his belief that card games are a form of entertainment; remarked that currently there are a number of "underground" operations in existence; and suggested that by ensuring that gaming operations are above board and conducted in a limited, structured environment, with licensed operators, and in the public light, they will then become more profitable. And some of that profit will go to the state, he reminded members; furthermore, passage of the bill will allow the state to capture a good portion of the profit that is currently flowing out of state via Internet [gambling]. He concluded by surmising that although sometimes the stakes in such games are quite high, no one wants to have 21-year-olds going into card rooms with the intention of becoming professional gamblers, since card games, after all, are still, to some degree, games of chance.

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REPRESENTATIVE DAHLSTROM made reference to organized crime syndicates. She then asked about the status of the Eklutna corporation.

CHAIR McGUIRE offered her belief that the IGRA would not apply to the Eklutna corporation, and said she would provide Representative Dahlstrom with a copy of a legal opinion to that effect.

REPRESENTATIVE DAHLSTROM surmised that the legal question on this issue might still have to be settled, and remarked that the Eklutna corporation has land everywhere.

REPRESENTATIVE KOTT offered his understanding that Ms. Burke's legal opinion indicates that the only lands to which the IGRA might apply are those within the Metlakatla reservation. He suggested that one of the core issues is whether the bill will create an expansion within Indian land and, if it does, then the question of what constitutes Indian land will still have to be settled.

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CHAIR McGUIRE offered her understanding that the root of that question pertains to which groups chose to be a part of the Alaska Native Claims Settlement Act (ANCSA); those that did gave up the original boundaries of their land in terms of reservation status.

REPRESENTATIVE COGHILL referred to page 2 [lines 1-7], subsection (b), and suggested that the games listed therein ought to be defined. He said one of his concerns is that passage of the bill will not ensure that underground operations will disappear.

REPRESENTATIVE KOTT said that although he doesn't know what "pan" is, for example, there are those that do, and noted that bill establishes a five-member card room [advisory] board that will provide guidelines for the department. Additionally, the department will regulate the amount that can be wagered.

REPRESENTATIVE COGHILL said his concern is that if they are going to legalize something, then it ought to be defined.

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REPRESENTATIVE GARA said his concern is that passage of the bill will lead to the establishment of large scale casinos, which can lead to dirty politics at the local and state level. He asked Representative Kott to comment on that issue. He also asked why, as a matter of state policy, is there a need for state sponsored/regulated card rooms. What is wrong with the current system wherein friends can simply gather together and play cards?

REPRESENTATIVE KOTT noted that playing cards for money is currently illegal, whether it happens among friends or among those that are strangers to each other. He suggested that card rooms offer a competitive environment wherein one can play against those one doesn't know. With regard to large-scale casinos, he pointed out that such businesses would have to approach the legislature for a change in state law and a [state gaming] commission would have to be established to provide stringent oversight of any class III gaming. He characterized HB 272 as innocuous because the department will be able to handle everything that the bill currently requires, and because he doesn't believe the bill leaves any room for corruption. He also said he doesn't see that Alaska has the population base to support a large-scale casino.

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REPRESENTATIVE GARA asked whether, under the bill, there is a limit on the amount that one could lose in one of the games authorized under the bill.

REPRESENTATIVE KOTT reiterated that the department will establish minimum and maximum betting limits, and suggested that typically in a card room, it is difficult to lose large amounts of money.

REPRESENTATIVE ANDERSON noted that the bill contains language regarding the Department of Public Safety (DPS), and that other forms of class II gaming currently have no limit on wagers.

REPRESENTATIVE KOTT concurred [with the latter point], and offered his belief that if one begins to lose consistently at a particular card table, he/she will move to a different table. He said he envisions that signup lists will be made available in order for people to join in a particular game. He predicted that there won't be any dramatic losses among players at card room operations.

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CHAIR McGUIRE referred to the language stipulating that the department will be setting the minimum and maximum wager amounts, and surmised that the bill could be altered to further stipulate that the department will set a limit on the amount of tokens or chips that may be purchased. Such a change could go towards ensuring that no one ends up mortgaging his/her house, for example.

REPRESENTATIVE DAHLSTROM remarked that assisting the DOR with card room issues is not going to be at the top of the DPS's list of things to spend its limited resources on.

REPRESENTATIVE KOTT suggested that perhaps off-duty DPS personnel could be hired by card room operators to provide oversight. He then made reference to the bill's stipulation that card room operators must host quarterly tournaments wherein the proceeds are donated to a nonprofit educational institution or group of the operator's choosing - though no institution or group may be designated to receive those proceeds more often than once a year - and mentioned that there will be an amendment forthcoming that will stipulate that the donation would be gross proceeds rather than net proceeds.

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PERRY GREEN offered to share his experiences regarding how card rooms operate, and mentioned family members in an example. He remarked that California and Washington have had card rooms operating without incident for many years, and that television networks are now televising poker games. He then claimed that there are 60 million new poker players in Alaska, went on to explain that pan is a Filipino card game similar to rummy, and opined that passage of HB 272 will result in less need for police because "after-hours places" will no longer be operating. He offered his understanding that the only thing a card room operator does is facilitate the game in a safe environment with security available, characterized employee wages as very descent, and suggested that card rooms provide an entertainment venue for those who can no longer partake of outdoor recreational activities.

MR. GREEN stated that he is "an expert in card rooms," characterized "this" as a wonderful idea, and went on to describe the card rooms that he is familiar with and the type of people that he has seen frequenting such places:

> The card rooms in California have the same people going all the time. The retired people go in the morning, they play four or five hours - the average age is between 70 and 75 - and then as people get off work, you have a different group of people who come in, and, on the weekends, you have people who come there weekends. I've never seen an incident in a poker room, as long as I've been around poker rooms, that ... [has] anything to do with any kind of addiction - not addiction ... as you ... know it.

MR. GREEN opined that card rooms are nothing more than a form of entertainment that people are drawn to because they are tired of watching [reality shows on television]. He relayed that Alaska Airlines Magazine has an article on "hold 'em" poker, and he then made the claim that 60 billion people now play that game. He opined that it is not very American to deny a person the ability to play cards, and then showed members a magazine devoted to poker. After relaying that he played poker for money both as a child and in the U.S. Army, he again asserted that there is no addiction among those who play cards. He predicted that passage of HB 272 will result in those who now participate

in illegal gambling and drug use going to state-regulated card rooms instead.

MR. GREEN mentioned that a few years ago, he organized a poker tournament for the Anchorage Chamber of Commerce so that it could raise money for a memorial statue; he went on to describe that tournament, and mentioned that he helped raise $60,000. He offered his understanding that Bill Gates started on-line gaming, and explained that "right now, they're forming leagues" around the country, adding that each state will have a professional league. He then listed names of people he said he has played cards with.

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MR. GREEN, in conclusion, opined that [the bill] will be good for Alaska because it will provide job opportunities for people to make as much as $30 per hour when working as a dealer. Mentioning the issue of Indian gaming, he too noted that the bill merely addresses non-banking games - in other words, just class II gaming. He opined that playing cards is wonderful entertainment, particularly for those who are older, and said he hasn't seen anyone who plays poker on welfare, and suggested that nonprofits will benefit from the passage of HB 272. He concluded by offering his belief that those who frequent card rooms do so not because of gambling habits but because such establishments are fun places to be.

REPRESENTATIVE GARA asked why it's important to play cards in a commercial setting in which one doesn't know the other players.

MR. GREEN said that the players do get to know each other, but suggested that one is better able to test one's ability by playing against unknown players. In response to further questions, he claimed that passage of the bill could create over 400 new jobs, and that it will expand the tourism industry, particularly with regard to Asian tourists.

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CHAIR McGUIRE noted that representatives from the DOR were available to answer questions.

LINDA KOVAC opined that all the possible damages associated with legalized gambling far outweigh any possible benefits, and that [adoption of the bill] would just be a baby step towards full-blown gambling, eventually even for the Eklutna corporation.

She offered that the legislature should instead focus on putting a ban on Internet gambling. She relayed that she grew up in Colorado and that when gambling was allowed in her neighborhood, it went downhill with the influx of a bad element. The same can be said of the neighborhood in upper Michigan where her folks were from, she added, noting that older people are losing their homes to gambling casinos. She suggested that members should keep in mind all the terrible results that could come about should the bill be adopted.

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CHIP WAGONER, Executive Director, Alaska Catholic Conference, relayed that his organization's position is generally to not be in favor of extending gambling in Alaska because of the harm that can come to those who play. He asked how many people would be allowed to play at a table and who decides that issue.

REPRESENTATIVE KOTT offered his understanding that there wouldn't be any more than or six or seven people.

MR. GREEN clarified that generally nine people sit at a "hold 'em" table.

REPRESENTATIVE KOTT, in response to a question, clarified that the bill does not limit how many tables an operation may have, but suggested that an operation would need to have at least 70 or 80 percent of its seats filled at all times in order to make a profit; thus the number of tables an operation has would be limited only by how many tables the operator wanted to pay for - at $10,000 per table - and by how many tables a particular population base could support.

MR. WAGONER said that according to the catholic church's teachings, gambling in and of itself is not a sin, but if someone gambles to the point of self-ruination or the ruination of his/her family, then it is considered to be a sin. He suggested that the question which must still be answered is, what will be the effect on those who participate in the gaming taking place in card rooms. He noted that there has been testimony both that engaging in such behavior is addictive and that it is not; however, there are very few credible gambling studies that can show which social effects are the result of gambling. He surmised that most social ills related to gambling come about as a combination of gambling and some other factor.

MR. WAGONER indicated that his organization's concern is related to the fact that there is a certain small percentage of gamblers who are considered to be problem gamblers and/or pathological gamblers; such gamblers are the ones causing all of the social problems associated with gambling, including increased costs in the realm of health and social services. So the concern is that it is not yet known what those costs will be - the costs to individuals, to families, to the Department of Health and Social Services (DHSS), and to the Medicaid system.

MR. WAGONER characterized HB 272 as proposing a sea change from current law with regard to gambling. He elaborated:

> Right now you have charitable gaming, where the charity takes a certain percentage of the take so to speak. This bill doesn't do that. They have a quarterly game once in a while, but they don't take a certain percentage. It's different than anything else you currently have on the books. If you're going to allow card rooms, why don't you keep it within the current statutory scheme as opposed to straying outside of the boundaries that you currently have?
>
> Another option would be, if you want to limit social costs but you want to allow this kind of gaming, ... to then stop one of the current forms of gaming, [such as] ... pull-tabs, [which], certainly to my way of thinking, [don't] have the same social amenities as card rooms [do] - most of the people I see at the ... pull-tab parlors are sitting all by themselves. So you might consider that: ... balance out the social costs by eliminating pull-tabs and having card rooms. I would like to see studies that show ... who uses pull-tabs. When somebody walks into a card room or when somebody walks into a pull-tab [parlor], however, just because of the way they're dressed, you can't tell what their economic situation is.

MR. WAGONER relayed that a study conducted by the Governmental Accounting Office (GAO) indicated that with the more sophisticated type of gambling, different types of crimes tend to be committed; for example, instead of a breaking-and-entering crime taking place, an embezzlement would occur. He remarked that were he a member of the committee, he would want to see more facts and figures before striving to institute such a huge policy change for the state. He again indicated that he has not

seen any evidence that card rooms won't cause any ill effects or increase the state's social costs.

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REPRESENTATIVE DAHLSTROM said she has done extensive research on the effects of gambling, particularly with regard to two states - Louisiana and Florida - and relayed that she would pass the information she's gathered on to Mr. Wagoner.

REPRESENTATIVE KOTT mentioned that there have been studies done regarding the social ramifications associated with gambling via electronic machines, but added that he's not seen anything similar specifically related to card rooms. Given the catholic church's involvement with bingo, he remarked, it is ironic that the catholic church has taken the position it has regarding card rooms. He opined that bingo is a more addictive form of gambling than card rooms, and ventured that those who generally play pull-tabs probably aren't in any position, financially, to be playing. He reiterated his belief that those who frequent card rooms are not the same type of people who play pull-tabs.

REPRESENTATIVE GARA asked whether regulating card rooms in the same fashion as bingo halls are being regulated would alleviate the Alaska Catholic Conference's concerns.

MR. WAGONER said that the Alaska Catholic Conference is concerned about those that could be hurt by gambling, and reiterated that he has not yet seen any research pertaining specifically to card rooms and that if he were a member of the committee, he would want to see such information before making a decision on the bill.

REPRESENTATIVE GARA asked whether the proceeds from bingo halls go to nonprofits.

MR. WAGONER said that according to his understanding, a certain percentage does go to charity.

REPRESENTATIVE KOTT concurred, but pointed out that other forms of class II gaming are not required to pay the large licensing and application fees that are being proposed for card room operations.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 272.

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SUSAN A. BURKE, Attorney at Law, Gross & Burke, PC, offering to respond to questions, relayed that she has expertise in the area of Indian gaming and that the aforementioned legal opinion was one she'd provided Mr. Green in response to his hiring her firm to research the question of what effect HB 272 would have on Indian gaming in Alaska.

REPRESENTATIVE DAHLSTROM asked the bill drafter to comment on the discussion she's heard thus far regarding the possible expansion of Indian gaming in Alaska and the Eklutna corporation.

KATHRYN L. KURTZ, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), said:

> There are two issues there that I heard come up. The first one is the distinction between class II gaming and class III gaming. Class II gaming includes non-banking card games only; it's defined in the federal statute saying it includes non-banking card games. Class III includes the banking card games. There may be ... some room for interpretation as to what constitutes a banking or a non-banking card game, and the Indian Gaming Regulatory Commission has issued opinions classifying particular proposed activities as one or the other. ... The Alaska Supreme Court may or may not fall right in line with them, [since] ... those are regulatory opinions.

REPRESENTATIVE DAHLSTROM surmised, then, that there is room for interpretation, that this issue would go to a court, and that it is not yet known how the issue would be interpreted.

MS. KURTZ concurred, and offered her understanding that a distinction made earlier regarding what constitutes non-banking card games and what constitutes banking card games is whether players are playing against each other or against a banker, which might be another player. Therefore, any forthcoming interpretation would depend on how a particular game or proposed game is played. On the question regarding the Eklutna corporation, she said that the IGRA contains a definition of Indian [land] such that Indian [land] includes not only lands within the limits of an Indian reservation, but also any lands title to which is either held in trust by the United States for

the benefit of an Indian tribe or individual, or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power. However, although there has been a good deal of case law regarding the question of what constitutes Indian country, it is not all specific to that definition, she cautioned, and so she is not sure that there is a clear answer to the question of whether the definition applies to the Eklutna tribe or any other tribe. She added: "I cannot tell you that Metlakatla is it; looking at this definition, there may be more, and it's legally a very contentious area."

REPRESENTATIVE DAHLSTROM said those comments confirm her concern that they do not as yet have a definite answer regarding what effect HB 272 will have on Indian gaming in Alaska. Representative Dahlstrom asked Ms. Kurtz whether she's heard anything during the hearing that she knows is not true.

MS. KURTZ, noting that she hadn't been monitoring the hearing with the goal of ascertaining the truth of everyone's statements, said she was not prepared to answer that question.

REPRESENTATIVE GARA asked whether playing cards among friends for money is illegal under current law.

MS. KURTZ relayed that statute currently contains a definition of gambling, and suggested that members research that statute to determine whether a poker game among friends for money constitutes gambling in terms of it being an illegal activity.

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REPRESENTATIVE GARA asked whether, if a location is classified as Indian land, [passage of the bill] would open the door to class III gaming on Indian land.

MS. KURTZ relayed that a 4/21/05 memorandum she'd written for Representative Kott does not address whether HB 272 would expand the permissible scope of class II gaming in the state of Alaska, adding that she is not prepared to offer a legal opinion on that issue. She noted that [according to Ms. Burke's opinion], the 1995 9th Circuit Court of Appeals case, Rumsey Indian Rancheria of Wintun Indians v. Wilson, speaks to the issue of scope of gaming, class III; mentioned a possible circuit [court] split; and reiterated that it is a complex issue and therefore she doesn't want to try and give a definitive answer.

REPRESENTATIVE GARA rephrased his question.

MS. KURTZ posited that this is a subject about which lawyers might disagree.

CHAIR McGUIRE offered her understanding that Ms. Burke's opinion suggests that an Indian tribe cannot engage in class III gaming at all unless the state in which the tribe is located permits class III gaming. Furthermore, she surmised, according to the Rumsey case, even if a state does permit class III gaming, an Indian tribe may only engage in such if it does so in conformity with a negotiated tribal-state compact entered into by the tribe and the state.

MS. KURTZ suggested that Ms. Burke's reference to that case was merely a caution that the state has a legal obligation to negotiate a compact "once the door is open." In response to a question, Ms. Kurtz clarified that her memorandum is merely pointing out that the bill provides for non-banking card games while the [federal] statute says that non-banking card games are class II games.

CHAIR McGUIRE surmised, then, that since class II gaming is already permitted in Alaska, passage of the bill - assuming that the games listed therein are only class II games - would not raise the issue of whether expansion is possible.

MS. KURTZ said she doesn't have an answer to the question of whether "this" would permit an Indian tribe to engage in class II gaming other than what is currently authorized under Alaska statutes.

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MS. BURKE, in response to questions, offered that the aforementioned split in the circuit courts has to do with whether a state that allows one kind of class III gaming and one kind of class III gaming only opens the door for Indian tribes to engage in or to negotiate with the state over all kinds of class III gaming. The 8th Circuit Court of Appeals has ruled that if a state allows any single form of class III gaming, regardless of what type of game it is, then that state would be obligated to negotiate with an Indian tribe for a compact that would cover any class III game. The 9th Circuit Court of Appeals, however, has taken a much narrower view, saying that the state has no obligation to negotiate with an Indian tribe over any kind of class III type of game that the state doesn't

permit anyone else to engage in. For example, if California allowed anybody to operate a keno game or if the state lottery itself operated a keno game, California would be authorized to negotiate with an Indian tribe for keno but not for other types of class III gaming.

MS. BURKE pointed out, however, that this just addresses the issue of class III gaming, and since the state of Alaska doesn't allow any form of class III gaming, the state has no obligation to negotiate with a tribe over class III gaming - the door is closed and will remain closed as long as the state does not authorize any class III game. Furthermore, in Alaska, since it falls under the purview of the 9th Circuit Court of Appeals, any negotiations with Indian tribes regarding class III gaming would be limited to only those kinds of class III game the state chooses to permit in the future.

4:03:01 PM

MS. BURKE, in response to comments regarding the Venetie case, relayed that the IGRA does not make reference to "Indian country," which is a term used in other federal statutes dealing with the extent to which tribes have civil and criminal jurisdiction to prosecute crimes within tribal territory and to provide civil courts. The Venetie case was all about the latter, with whether [the tribe] had taxing power; the court ruled that it did not. The IGRA, in contrast only speaks to "Indian lands" and has it's own definition. One of the qualifications for being Indian land for purposes of the IGRA is that the tribe has to exercise governmental power over the particular land on which the tribe wants to engage in Indian Gaming. So, for example, if there was a native allotment in an area and it was held by an individual subject to restrictions against alienation, that might qualify as Indian land under the two criteria [stated by Ms. Kurtz], but it would be an open question as to whether [that person/entity] is actually exercising governmental powers over that land. Is it possible that there are lands that would qualify under all three criteria as Indian land? Sure, she remarked, but pointed out that the bill does not pertain to slot machines or traditional Las Vegas/Atlantic City type casinos; rather it only pertains to class II gaming.

MS. BURKE said she has concluded from her research that HB 272 would not open the door to Indian gaming with regard to card games any further than it already is. The IGRA says that tribes may operate card games that are either explicitly authorized by

state law or not explicitly prohibited by state law. She opined that even without passage of HB 272, assuming a tribe could find land that qualifies under the IGRA's definition of Indian land, the tribe could apply to the Indian Gaming [Regulatory] Commission for a permit to operate non-banking card games. She also reiterated her belief that the bill would in no way open up class III gaming on Indian lands.

REPRESENTATIVE GARA asked whether it would be a good argument to say that Indian gaming for profit wouldn't be allowed in the state because currently class II gaming in the state is limited to "the nonprofit sector."

MS. BURKE said no, adding that there is case law which says that engaging in class III gaming even for nonprofit purposes is enough to open up all class III Indian gaming. She relayed that federal statute says that an Indian tribe can engage in a particular class of gaming if the tribe is located in a state that permits that type of gaming for any purpose by any person, organization, or entity.

The committee took an at-ease from 4:12 p.m. to 4:13 p.m.

MS. BURKE, in response to a question, assured the committee that she believes all of her legal opinions are sound, solid, accurate opinions.

4:14:11 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, which read [original punctuation provided though some formatting changes have been made]:

> Page 1 Change Title to Read:
> "An Act Allowing Certain Municipalities to Adopt Ordinances Allowing Card Rooms and Card Operations"
>
> Page 9 line 12 after "information" insert:
> "if the municipality has adopted an ordinance, ratified by a majority of the municipal voters voting on the question, authorizing card rooms and card games in that municipality"

CHAIR McGUIRE asked whether there were any objections to Amendment 1. There being none, Amendment 1 was adopted.

REPRESENTATIVE KOTT made a motion to adopt Amendment 2, to insert the word "gross" at the end of line 6 on page 12; Amendment 2 would clarify that the designated charity receives the gross proceeds. There being no objection, Amendment 2 was adopted.

REPRESENTATIVE KOTT made a motion to adopt Amendment 3, to replace the word "annually" on page 14, line 2, with the word "biennially". There being no objection, Amendment 3 was adopted.

4:16:05 PM

REPRESENTATIVE ANDERSON moved to report HB 272, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE DAHLSTROM objected.

A roll call vote was taken. Representatives McGuire, Anderson, Kott, Gruenberg, and Gara voted in favor of reporting HB 272, as amended, from committee. Representative Dahlstrom voted against it. Therefore, CSHB 272(JUD) was reported from the House Judiciary Standing Committee by a vote of 5-1.

ADJOURNMENT

4:17:12 PM

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:17 p.m.