

HB

182

MEMORANDUM

State of Alaska
Department of Law

To: Larry Persily
Deputy Commissioner
Department of Revenue

DATE: February 15, 2000

FILE NO.: 663-000-0108

TELEPHONE NO.: (907) 465-3600

FROM: Dan Branch *D-B*
Assistant Attorney General
Commercial Section

SUBJECT: Impact of HB 182 on Indian
gaming in Alaska

I was asked to review the impact on Indian gaming in Alaska if HB 182 became law. HB 182 would sanction the use of "video lottery machines" on ferries operated by the Alaska Marine Highway¹ and in bars, fraternal clubs, bingo parlors and pull-tab shops in the state.² Video lottery machines are defined as electronic video game machines able to play video games, including video poker, keno, and blackjack.³

If it passes, HB 182 will expand the gaming opportunities for some Alaska tribes. Federal law permits Indian tribes to conduct certain gaming activities on "Indian lands" without state approval. The tribe may only carry out Class III type gaming if the state permits such gaming for any purpose by any entity, person or organization.⁴ No class III gaming may take place until the state enters into a compact with the tribe. The state may not block an otherwise proper Indian gaming activity by refusing to compact with the tribe.⁵ However, the state is under no duty to compact with a tribe for gaming activities that are not otherwise permitted under state law.⁶

If HB 182 becomes law, tribes able to demonstrate jurisdiction over Indian lands, as defined by the Indian Gaming Regulatory Act, could seek a compact with the state for the operation of video poker, blackjack and keno gambling. The definition of "video lottery machine" provided in HB 182 does not exclude the use of other forms of similar video game machines.

¹ See HB 182, Section 32.

² See HB 182, Section 21.

³ See HB 182, Section 28.

⁴ 25 USC 2710(d)(1)(B) of Indian Gaming Regulation Act.

⁵ See for example, *Chemehuevi Indian Tribe v. Wilson*, 987 F.Supp. 804 (N.D. Ca. 1997). The ability of a tribe to enforce this right is doubt following an U.S. Supreme Court decision concerning the 11th amendment and tribes.

⁶ *Rumsey Indian Rancheria of Wintun v. Wilson*, 64 F.3d 1250 (9th Cir. 1995).

Therefore, it is possible that tribes could seek tribal state compacts covering such other forms of video game machines.

It is clear that HB 182 would open the door to expanded Indian gaming in Alaska. The extent of the expansion would depend upon the final language of the bill. It would also depend upon federal court interpretation of the Indian Gaming Regulatory Act.

Federal Indian Gaming Law: In 1990, the United States Court of Appeals for the Second Circuit found that since Connecticut permitted charities to engage in episodic casino like gaming at "Las Vegas nights," the state had to compact with a tribe concerning the conduct of casino-type games of chance on the reservation.⁷ If the same interpretation of law were applied in Alaska, the state would be required to negotiate with tribes for casino type gaming on Indian lands if HB 182 became law. This is not the case.

Since the Ninth Circuit U.S. Court of Appeals has jurisdiction of Alaska matters, it is proper to look first to decisions of that court concerning Indian gaming issues. Four years after the Second Circuit issued its "Las Vegas nights" decision, the Ninth Circuit issued a decision which reached a more restrictive result. The case was *Rumsey Indian Rancheria of Wintun Ind. v. Wilson*.⁸ In *Rumsey*, the court held that even though California allows some forms of gambling, the state had no duty to negotiate with a tribe over the tribe's ability to conduct any game that is illegal under state law.⁹

The U.S. Supreme Court denied the tribes' petition for *certiorari* (review) of *Rumsey*. In 1999, the Ninth Circuit affirmed its holding in *Rumsey* in a case concerning Washington State.¹⁰ Therefore, unless overturned by a subsequent U.S. Supreme Court case, the Ninth Circuit's interpretation of Indian gaming law in *Rumsey* should control the outcome of Indian gaming issues in Alaska.

At the current time, Alaska prohibits anyone from gaming with video machines. Therefore, under *Rumsey*, it is not possible for a tribe to operate a video gaming operation. That may change if HB 182 becomes law. However, passage of the bill is not likely to open the door to Indian casinos where customers gamble at card table versions of the games that will be available on video machines.

⁷ *Mashantucket Pequot Tribe. v. Connecticut*, 913 F.2d 1024,1032 (2nd Cir.1990).

⁸ *Id.*

⁹ *Id.* at 1253.

¹⁰ *U.S. v. Shoalwater Bay Indian Tribe et.al.*, 1999 WL 1269343 (9th Cir. 1999) (The tribes were operating video gambling machines that offer video poker, blackjack, and video eight-liner in violation of Washington law)

Eligible Alaska Native tribes: The Metlakatla Indian Community, located on the Annette Island Reserve, has jurisdiction over Indian lands upon which it could operate gaming if HB 182 becomes law. Native communities in Akiachak, Barrow, Kenaitze, and Klawock have made claims to governmental jurisdiction over "Indian lands" enabling them to offer gaming under the Indian Gaming Regulatory Act. There may be more such claims raised.

Conclusion: If HB 182 becomes law in its present form, it will open the door to the use of video poker, blackjack and keno machines on "Indian lands" in Alaska, as defined by the Indian Gaming Regulatory Act. The result would be the same, even if the bill were amended so that the machines could not be used on vessels of the Alaska Marine Highway. It is highly unlikely that the bill would be interpreted by a court to allow card table-casino type versions of the games.

DNB:rgw

Sponsor Statement
HB 182
Transportation Issues

HB 182 also allows machines to be used on vessels of the Alaska marine highway. It allows the Commissioner of Revenue to adopt the necessary regulations for use of electronic machines on vessels of the Alaska marine highway. Revenues generated from this use go to the general fund and may be appropriated for funding the Alaska marine Highway.

HB 182 does not require that the Alaska Marine Highway System to install electronic gaming machines, but it would only permit or allow their existence. There are several benefits for permitting electronic gaming machines on our ferries.

- Increased revenue, mostly from out of state passengers.
- The ferry system presently allows video games, but adult entertainment is minimal.
- The charitable beneficiaries of gaming would receive increased revenue, which would be a benefit to the overall public good.

Alaska State Legislature

House of Representatives

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ETHICS



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SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801

Memorandum

TO: Representative Beverly Masek, Chairman
House Transportation Committee

FROM: Representative Pete Kott

SUBJECT: Request for Hearing, HB 182

DATE: April 22, 1999

I request that HB 182, an Act relating to charitable gaming and to gaming on state ferries; and providing for an effective date, be heard as soon as possible. Enclosed with this request is the following:

- Current version of the bill
- Sponsor Statement
- Sectional Analysis

Backup material and teleconference requirements will be provided well before the hearing. Pat Harman of my staff will be handling this bill, he may be reach at x6841



Representative Pete Kott

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Sponsor Statement, HB 182

House Bill 182 is reform charitable gaming legislation. It allows for electronic gaming in Alaska and it changes the way that gaming proceeds are distributed in Alaska. Under HB 182 the distribution of revenue is as follows: Cities and Boroughs receive 20% of the proceeds, the State receives 20% of the proceeds, Vendors receive 30% of the proceeds, and Permittees receive 30% of the proceeds. Under current statutes, the state receives minimal revenues from charitable gaming and cities and boroughs receive nothing other than the amount they might tax locally.

House Bill 182 does not in any way restrict the current charitable gaming activity in the state. Bingo and pull-tab activity will be allowed to continue in its current form. It does allow pull-tab parlors and bingo halls to use a limited number of electronic gaming machines.

House Bill 182 is reform legislation because it allows the State to track through a central computer the exact activity of every electronic gaming machine in the state. The State will know exactly how much is being played on each machine, how much is being paid out on each machine, and how much money should be distributed to the state, cities and boroughs, and permittees from each machine. The only party with control over the machines will be the state. There will no longer be any arguments over how much money belongs to permittees. Electronic machines don't lie and can't be manipulated by anyone.

Each electronic machine will provide the state's computer with a report on all transactions, revenue put in the machines and revenue paid out in prizes etc. This data will be accumulated in the central computer and when quarterly reports are due the state can generate this data eliminating the need for permittees to complete the reports they currently have difficulty completing.

Each electronic machine is secure. The state's computer is capable of determining if anyone has tampered with any machine at any location in the state. The state has the ability through the central computer to shut down a machine immediately. Each electronic machine will have a built in security system as well as secure lines of communications to the central computer.

HB 182 also allows machines to be used on vessels of the Alaska marine highway. It allows the Commissioner of Revenue to adopt the necessary regulations for use of electronic machines on vessels of the Alaska marine highway. Revenues generated from this use go to the general fund and may be appropriated for funding the Alaska marine Highway.

In summary, HB 182 does not restrict current permittees or operators. It allows them to participate in a new secure form of electronic charitable gaming. It

generates revenue for local governments and the state. It is a much more secure form of charitable gaming than currently exists in the state.

HB 182

SECTION BY SECTION REVIEW

House Bill 182

By: Representative Kott

Introduced: 4/8/99

Referred: Transportation, Judiciary, Finance

"An act relating to charitable gaming and to gaming on state ferries; and providing for an effective date."

Section 1. AS 05.15.020(b) is amended to read:

Net proceeds from video lottery gaming activities will not be subject to the annual fee, one percent of net proceeds, required for all other gaming activities.

Section 2. AS 05.15.060(a) is amended to read:

Adds video lottery vendors to existing statute on issuance, renewal and revocation of all gaming permits. Changes existing statute from the general term "vendor" to pull-tab vendor and video lottery vendor.

Section 3. AS 05.15.070 is amended to read:

Examination of books and records. Adds pull-tab vendor, video lottery vendor and video lottery machines to existing statute for examination by the department.

Section 4. AS 05.15.095(a) is amended to read:

Adds licensed video lottery machine distributor or agent, licensed video lottery machine manufacturer or agent, registered video lottery vendor or agent, registered pull-tab vendor or agent, to existing statute requiring applications to the state.

Section 5. AS 05.15.100 is amended by adding a new subsection to read:

Adds new subsection (e) allowing video lotteries through the use of video lottery machines and the authority to issue permits.

Section 6. AS 05.15.105(a) is amended to read:

Adds pull-tab and video lottery vendors to existing statute regarding restrictions on persons not eligible to participate in gaming activities.

Section 7. AS 05.15.115(c) is amended to read:

Adds exception for operators, as defined under existing statutes, to contract with permittees to conduct video lottery gaming activities.

Section 8. AS 05.15.124 is amended to read:

Adds pull-tab vendor and video lottery vendor to existing language that allows municipalities to prohibit gaming activities.

Section 9. AS 05.15.128(a) is amended to read:

Adds video lottery language to existing language concerning operators.

Section 10. AS 05.15.150(a) is amended to read:

Deletes "Political" from text preventing net proceeds from being used for political uses. Adds video lottery proceeds with bingo and pull-tab proceeds to prevent use for payment of lobbyists.

Section 11. AS 05.15.160(d) is amended to read:

Adds video lotteries with existing pull-tab language regarding maximum authorized expenses to operate gaming activities.

Section 12. AS 05.15.170 is amended to read:

Adds pull-tab or video lottery under existing statute for suspension or revocation conditions.

Section 13. AS 05.15.180(a) is amended to read:

This will allow the use of coin/cash operated machines for gaming activities. It includes video lottery machines and pull-tab dispensing machines that accept coin/cash.

Section 14. AS 05.15.180(b) is amended to read:

Adds video lotteries as another exception to conduct activities that may be licensed if it did not exist as a gaming activity before 1 January 1959.

Section 15. AS 05.15.180(g) is amended to read:

Adds video lotteries with bingo under existing language which excludes maximum prize awards per year.

Section 16. AS 05.15.183(e) is amended to read:

Adds the word "pull-tab" before the word "vendor" where written in existing statute.

Section 17. AS 05.15.187(h) is amended to read:

Adds the words "pull-tab" before the word "vendor" where written in existing statute.

Section 18. AS 05.15.187(i) is amended to read:

REMOVES a requirement that a winner of a pull-tab price of \$50 or more to sign a state approved receipt. Allows the winner to sign the winning pull-tab as a receipt.

Section 19. AS 05.15.187 is amended by adding a new section to read:

(i) The department may approve the use of coin-operated machines for the sale of pull-tabs.

This allows the use of coin/cash machines to sell pull/tabs.

Section 20. AS 05.15.188 is amended to read:

Adds the word "pull-tab" before the word "vendor" where written in existing statute.

SECTION 21. AS 05.15 IS AMENDED BY ADDING NEW SECTIONS TO READ:

Article 2A. Video Lotteries.

Sec> 05.15.300 Video lottery

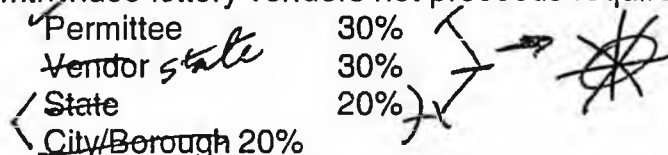
This allows the department to issue video lottery endorsements to a permittee. The permittee may conduct video lotteries in pull-tab parlors or bingo halls where the permittee **directly** sells pull-tabs or conducts bingo sessions; or may contract with a video lottery vendor; or use video lottery machines in their private clubs licensed under Title IV statutes.

The gaming permit, video lottery gaming endorsement and machine permit must be posted at the establishment clearly visible to the public.

Requires contracts between permittee and video lottery vendor(s).

Only video lottery machines **owned or leased by the department** may be used for video lottery charitable gaming.

Contracts with video lottery vendors net proceeds requirements:



Locations outside organized cities or boroughs – 40% to the state.

The odds of winning must be posted on each video lottery machine – the department determines the manner in which odds are calculated.

Video lottery machines cannot be played or accessible to persons under the age of 21; can only be played during regular business hour or, if licensed under Title IV, played during the legal hours of operation allowed the licensee under applicable municipal ordinance.

No more than 10 video lottery machines per permittee endorsement.
No more than 10 video lottery machines located in the same location in the building.
No more than 10 video lottery machines in the building where bingo or pull-tab games are conducted.

A permittee may contract with five video lottery vendors.
A video lottery vendor may not have more than 10 video lottery machines at each video lottery vendor location.
A permittee may not have endorsements cumulatively totaling more than 50 machines.

All video lottery machines must be monitored during business hours.
Cannot advertise in any manner the availability of video lottery machines at locations.

Allows municipalities where alcohol beverages are not allowed to conduct video lottery charitable gaming activities under written specifications.

The department may by regulation exempt a permittee under this

section from REPORTING REQUIREMENTS of AS 05.15.080 if the

information required to be submitted in the report CAN BE OBTAINED

DIRECTLY by the department from the video lottery machines.

Sec> 05.15.310. Video lottery machines.

The department approves all machines and games to be used. The machines accept cash and pay out winnings through a receipt or ticket voucher stating the value of the prize.

The machines have accounting software that keep electronic records and are linked to a central communications system approved by the department. A machine total payoff of at least 85% of the value of one \$.25 credit.

Maximum \$1.00 (four credits) played per game. Award a maximum of \$25 per credit value of \$.25 played.

The department shall purchase or lease video lottery machines and provide permittees to use.

The department shall contract for the installation and maintenance of the video lottery machines.

Contractors must be qualified and be able to respond to malfunction or repair problems within 24 hours.

Sec> 05.15.320. Video lottery machine manufacturers.

Manufacturers must pay a \$5,000 annual license fee.

May manufacture only those machines approved by the department for use in Alaska.

May only distribute video lottery machines to state licensed video lottery distributors.

Complete monthly reporting requirements.

Sec> 05.15.330. Video lottery machine distributors.

Video lottery machine distributors pay a \$5,000 annual license fee.

May not take an order from or sell a video lottery machine to a permittee of video lottery vendor.

Sec> 05.14.340. Distribution of net income from video lottery charitable gaming.
60% to the permittee

or, if the permittee used a video lottery vendor

30% Permittee

30% Video lottery vendor

20% State

20% Municipality in which the machine
is located, or to the state if the
machine is located in the
unorganized borough outside of
municipalities.

Sec> 05.15.350. Video lottery revenues may be appropriated for education.
The state's percentage of adjusted gross income may be appropriated to
provide for education.

Sec> 05.15.360. Department to contract.

The department, to the extent possible, will contract for the
performance of duties required to monitor and conduct video
lottery charitable gaming activities.

Section 22. AS 05.15.620(c) is amended to read:

This section allows municipalities to have an election to eliminate
charitable gaming pull-tab or video lottery gaming activities.

Section 23. AS 05.15.620 is amended by adding a new subsection to read:

This section provides ballot language for municipalities to take
action noted in the previous section.

Section 24. AS 05.15.680 is amended to read:

Describes penalties and provides definitions for Article 2, Video
lottery gaming.

Section 25. AS 05.15.680 is amended by adding new subsections to read:

Describes and defines activities not allowed in video lottery gaming.

Section 26. AS 05.15.690(36) is amended to read:

Deletes Labor and Political organizations from the definition of
"qualified organization".

Section 27. AS 05.15.690(44) is amended to read:

Adds the word "pull-tab" in front of the word "vendor".

Section 28. AS 05.15.690 is amended by adding new paragraphs to read:

Defines (46) net machine income; (47) video lottery; (48) video
lottery machine and (49) video lottery vendor.

Video lottery vendor includes an OPERATOR licensed by the department to conduct bingo or pull-tab games on the effective date of this Act.

Section 29. AS 11.66.280(2) is amended to read:

Defines "gambling" – adds AS 19.65.035 as an activity authorized by the Department of Revenue under AS 05.15.
AS 19.65.035 is video lottery machines on the Alaska Marine Highway System.

Section 30. AS 11.66.280(3) is amended to read:

Defines "gambling device" – adds (C) a video lottery machine or a pull tab sales machine permitted or authorized by the Commissioner of Revenue under AS 05.15 or AS 19.65.035.

Section 31. AS 11.66.290(4) is amended to read:

Defines "gambling enterprise" exempts (i) vessels of the Alaska Marine Highway System or the Department of Transportation and Public Facilities when they are under AS 19.65.035 activities.

Section 32. AS 19.65 is amended by adding new sections to article 1 to read:

Allows video lottery machines on vessels of the Alaska Marine Highway System and stipulations. May contract under AS 36.30 to conduct video gaming operations. Allows Commissioner of Revenue to adopt the necessary operation regulations specific to Alaska Marine Highway System.

Describes penalties and prohibitions for video lottery machines and operations on Alaska Marine Highway System vessels.

Revenues go to general fund and legislators may appropriate the revenues generated from video gaming activities on the Alaska Marine Highway System to the Alaska Marine Highway System. Nothing in this section creates a dedicated fund.

Section 33. AS 29.10.200(47) is amended to read:

Adds (i) to (47).

Section 34. AS 29.42.650 is amended to read:

Disallows a borough, home rule and general municipalities, from the levy or collection of sales tax or use tax on video lottery machines and video lottery charitable gaming.

Section 35. AS 29.45.700(d) is amended to read:

Further defines home rule and general municipality authority to tax video lottery machines or video lottery charitable gaming.

Section 36. Repeal and reenactment of applicable statutes required to enact this bill and (c) allows an operator to conduct video lottery charitable gaming for a permittee.

Section 37. Repeal and reenactment of applicable statutes required to enact this bill.

Section 38. AS 05.15.960(25) and 05.15.690(34) are repealed.

Section 39. REGULATIONS

All regulations for this act take effect January 1, 2000 or as soon thereafter as possible.

Section 40. Except for sec. 39 of this Act, this Act takes effect January 1, 2000

Section 41. Section 39 take effect immediately under AS 01.10.070(c)

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 182

Revision Date/Time (Note if correction) _____ Dept. Affected DOT&PF
 Title Charitable gaming and gaming on state ferries BRU Alaska Marine Highway System
 Component Southeast Vessel Operations
 Sponsor Representative Kott
 Requester (H) TRA Component No. 630

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	13.5	27.1	27.1	27.1	27.1	27.1
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	13.5	27.1	27.1	27.1	27.1	27.1

CAPITAL EXPENDITURES	160.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	90.5	181.0	181.0	181.0	131.0	181.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Alaska Marine Highway System Fund	13.5	27.1	27.1	27.1	27.1	27.1
TOTAL	13.5	27.1	27.1	27.1	27.1	27.1

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHED

Prepared by: Dennis Poshard, Special Assistant to the Commissioner Phone 465-3904
 Division Commissioner's Office Date/Time 1/31/00 8:22 AM
 Approved by Commissioner *Joseph L. Perkins* Date _____
 Agency Joseph L. Perkins, DOT&PF

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**Fiscal Note Analysis
HB 182**

“An Act relating to charitable gaming and to gaming on state ferries; and providing for an effective date.”

Department of Transportation and Public Facilities

This bill would permit the use of video lottery machines aboard the Alaska marine highway system vessels. If the Department of Transportation were to implement the use of these machines, we estimate a total of 16 machines would be purchased for use aboard the vessels. These machines would be placed in the bar areas of the vessels which is restricted to those ages 21 and older. It is assumed an implementation date of January 1, 2001. Cost and revenue estimates follow:

Capital Costs:

Video lottery machines cost about \$10,000 each. The total initial capital cost would therefore be 16 X \$10,000 or \$160,000.

Operating costs:

The cost of maintaining the machines is estimated at 15 % of the net machine revenues. We estimate a total yearly net revenue of \$181,000. The cost of maintenance would therefore be \$27,100 per year in contractual services.

Other operating costs would include power, telecommunications, and perhaps fees to the Dept. of Revenue. It is estimated these costs would be negligible.

Revenue:

Estimates from other states indicate we can expect \$400 in net machine revenue for each week a machine is in operation. The total number of machine operating weeks for the Marine Highway fleet would be approximately 452. This takes into account the number of weeks the vessels are in service as well as how many machines are aboard each vessel. Our total annual revenue is therefore 452 X \$400 or \$181,000.

Note: The operating costs and revenues for FY 2001 are half the yearly total because of a start date of January 1, 2001, which would only provide six months of service the first year.