

SB

175

REVISED: APR. 25, 2001
Wid

FISCAL NOTE

STATE OF ALASKA
 2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 175
 () Publish Date: _____

Revision Date/Time (Note if correction): April 25, 2001, 9 a.m. Dept. Affected: Revenue
 Title: Municipal Protests of Gaming Permits BRU: Revenue Operations
 Component: Tax Division

Sponsor: Senator Elton
 Requester: Senate Community and Regional Affairs Component Number: 2476

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual	5.0 - 10.0 *	5.0 - 10.0 *	5.0 - 10.0 *	5.0 - 10.0 *	5.0 - 10.0 *	5.0 - 10.0 *
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	5.0 - 10.0 *	5.0 - 10.0 *	5.0 - 10.0 *	5.0 - 10.0 *	5.0 - 10.0 *	5.0 - 10.0 *

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	5.0 - 10.0 *	5.0 - 10.0 *	5.0 - 10.0 *	5.0 - 10.0 *	5.0 - 10.0 *	5.0 - 10.0 *
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	5.0 - 10.0 *	5.0 - 10.0 *	5.0 - 10.0 *	5.0 - 10.0 *	5.0 - 10.0 *	5.0 - 10.0 *

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

* This fiscal note anticipates that one or two charitable gaming license cases would go to formal hearing each year. The \$5.0 to \$10.0 contractual expense is to cover the cost of a contracted hearing officer for those cases. The actual costs would vary and the actual number of cases would determine the amount needed.

Prepared by: Carl Meyer Phone 465-2343
 Division: Tax Division Date/Time April 24, 2001, 1:30 p.m.
 Approved by: Larry Persily, Deputy Commissioner Date 04/25/2001
 Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office

Department of Revenue Fiscal Note and Bill Analysis

SB 175 — April 25, 2001

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

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

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

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

Analysis

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

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

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

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

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

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 - [Signature]

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SENATOR KIM ELTON

SB 175
Granting Local Governments the Right to Protest Gaming Permits

Sponsor Statement

Charitable gaming in Alaska is big business. In 1999 Alaskans bought more than \$293,838,500 worth of pull tabs and bingo cards. While some of the money goes to nonprofit organizations, vendors and operators also see significant revenue from Alaskans who like to gamble. Local governments sometimes find themselves without the tools they need to handle disputes with gambling operations that function under state law.

Without this bill, a local government having trouble with a gaming operation has limited options: it could ban all charitable gaming, ban only pull-tabs, or forever prohibit a particular individual or group from conducting gaming activities in the municipality. SB 175 allows an intermediate step before such drastic action must be taken by giving local governments the right to protest charitable gaming permits, just as they can alcohol licenses.

According to the Alcoholic Beverage Control board, the most common reasons for protesting liquor licenses are failure to meet local safety codes and failure to pay municipal taxes. When taxes are in dispute, the protest mechanism lets municipalities insist the disputed amount go into an escrow account before the city lifts its protest. Recent experiences with tax disputes over charitable gaming have showed the need for this tool. One incident involving three permittees resulted in a tax arrearage of nearly \$1 million, a debt that threatens the solvency of the nonprofits involved, and the services they provide to their communities.

SB 175 also allows municipalities to condition licenses to mitigate problems that arise. Since local governments may also hold charitable gaming permits, SB 175 precludes municipalities that hold gaming permits from protesting or conditioning for any reason except nonpayment of taxes.

Presented by: The Manager
Introduced: 02/05/2001
Drafted by: J.R. Corso

RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2077

A Resolution Urging the Alaska Legislature to Provide for Effective Local Protest of Pull-Tab Licenses and to Require Licensing of Pull-Tab Employees.

WHEREAS, recent experience has shown that substantial volumes of money flow through pull-tab operations, and any failure to collect and remit sales taxes on this volume can have a substantial effect on local revenues, and

WHEREAS, it is essential that the City and Borough be equipped with effective tools to enforce sales tax laws and other local laws applicable to pull-tabs, and

WHEREAS, a tool that has proved its effectiveness in a similar context is AS 04.11.480, by which the State of Alaska authorizes local governments to protest the issuance or renewal of a state liquor license, and

WHEREAS, unless the protest is arbitrary, capricious or unreasonable, it will be honored by the State and the liquor license will be denied, or will be granted with conditions requested by the local governing body, and

WHEREAS, this statute gives local governments a clear voice in the alcohol regulation process, allowing them to point out those few licensees who are delinquent in the payment of local taxes, who serve minors, or who otherwise operate in an unlawful manner, and

WHEREAS, the state system for regulating pull-tabs provides under AS 05.15.030 that local governments may protest the issuance of pull-tab licenses, but only on the grounds that a licensee lacks the qualifications prescribed by the State, and even then the protest is merely advisory, and

WHEREAS, local governments deserve better than this rudimentary control over gambling in their jurisdiction, and

WHEREAS, the people who operate and manage pull-tab operations are crucial to the effectiveness and efficiency of any regulatory system, whether these people are employed by permittees, vendors, operators, or otherwise, and,

WHEREAS, there is presently no system under Alaska statutes to license pull-tab employees, and

WHEREAS, licensing of pull-tab employees would allow training and examination as a means of ensuring compliance with the regulations applicable to pull-tab operations;

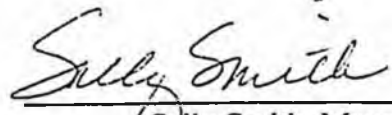
NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Request for Legislation. The Assembly respectfully requests that the Alaska Legislature undertake statutory reform of AS 05.15 for the purpose of establishing an effective local protest of gambling licenses, for licensing of pull-tab employees, and for such other regulation as may serve the public interest.

Section 2. Distribution. The Clerk shall deliver copies of this resolution to the legislative delegation.

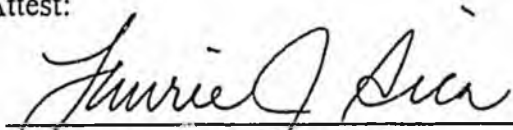
Section 3. Effective Date. This resolution shall be effective immediately upon adoption.

Adopted this 5th day of February, 2001.



Sally Smith, Mayor

Attest:



Laurie J. Sica, Clerk

Feb. 1, 2001 Juneau Empire

City scores on pulltabs

Judge says operators must pay up

By FERNAND CHANDONNET
THE JUNEAU EMPIRE

The latest round in a \$900,000 battle between Juneau and pulltab operators who refuse to pay sales taxes has been decided in favor of the city.

On Wednesday, retired Justice Jay Rabinowitz turned down the appeal by Last Chance Co-op, Multiple Charities Association Co-op and Alaska Native Brotherhood Camp 2 of a city administrative decision that the 1996 1 percent sales tax increase applies to the pulltabs and that the tax was to be collected on gross receipts.

Rabinowitz also threw out the pulltabs' request for a trial to determine the facts of the case, and granted the city's request for a summary judgment for payment of about \$900,000 in back taxes, inter-

These are gamblers. They know when to hold 'em and when to fold 'em.

— City Attorney
John Corso

est and penalties.

"It rules in favor of the city on all issues," said Assistant City Attorney John Hartle, who represented the city in oral arguments
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Continued from Page 1

before Rabinowitz last Friday. "It shows me the (city) sales tax administrator made a good call in her original determination" that the pulltab operators had to pay the tax in the manner requested by the city. "The city has been saying this from Day One."

The operators - dubbed Multiple Beneficiary Permittees by the state - have the right to appeal the Superior Court decision to the state Supreme Court, according to City Attorney John Corso. "But these are gamblers," he said. "They know when to hold 'em and when to fold 'em."

Asked about an assertion by MBP attorney John Rice that the city was ready to foreclose on the Alaska Native Brotherhood Hall, Hartle said the city's collections de-

partment routinely establishes such liens, but that the city is more likely to try to formulate a "reasonable payment plan" to recover the money.

But whether the city can legally collect from an MBP's current revenues to redress past violations may need to be clarified by a change in state regulations, said Juneau Assembly member Cathy Munoz. Munoz is also chairwoman of the assembly Finance Committee and has been emphatic about collecting from MBPs that are past due.

A measure to be introduced at Monday's assembly meeting may take the form of a resolution going to Juneau's legislative delegation and asking state legislators to change Gaming Division regulations to allow municipalities to collect from present revenues for debts established in the past.

"We will also review an ordi-

nance that won't allow organizations to appeal delinquencies unless they pay the arrears first," Munoz said. "You can't blatantly ignore the tax that is due."

The MBPs did in fact appeal the city decision last summer without paying the disputed tax first.

"The assembly is also interested in having input into the gaming permit before the gaming board issues it" to the MBP, Munoz said. Munoz likened the process to state-issued liquor licenses, which routinely come under city review before they are granted or renewed - or rejected if the license is found by the assembly's Human Resources Committee not to be in compliance with city code.

A reinterpretation of state regulations to allow collection from current revenues for past debts may still not be enough to precipitate collection - at least from Last Chance Co-op. In January, the state

took away that MBP's 2001 pulltab permit after finding Last Chance hadn't distributed enough of its take to charities since 1995, as mandated by state regulation.

Asked about repeated complaints by MBP operators that the combination of the city's 5 percent sales tax and the high prize payout - in some cases, 80 percent - was ruinous to the pulltab operations and prevented them from distributing money to charities, Hartle said, "As for the tax, that's a policy call for the assembly."

And as for the prize payout, "that's completely at the discretion of the sellers," he said.

MBP attorney Rice did not return calls requesting comment.

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Fernand Chandonnet can be reached at fchandonnet@juneau-empire.com.

City may give break to pulltabs

02/20/01
Juneau
Empire

Assembly weighs plans to collect back taxes

By BILL McALLISTER
THE JUNEAU EMPIRE

The Juneau Assembly must decide whether to seek all of the nearly \$1 million the city is owed by three gaming groups. But for now, it is not going after most of the nonprofit organizations that benefited from the pulltab operations in dispute.

"If we hold firm (on the total amount), we run the risk of getting zip." Deputy Mayor John MacKinnon said during an informal fi-

nance subcommittee meeting Monday at the Capital Cafe.

That's because the gaming groups don't have assets to seize, aside from their gaming revenue, and could fold up shop at any time without paying, MacKinnon said. After an unfavorable court ruling, the groups reportedly have offered to pay the principal they owe if the city changes its tax policy.

In figuring out its collection strategy, city officials also should

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Pulltabs...

Continued from Page 1

try to clean up charitable gambling, says a gaming manager for three other local charities.

David Sanden, gaming manager for nonprofit organizations Juneau Dance Unlimited, Juneau Montessori Center and Juneau Lighthouse Association, told MacKinnon and assembly member Don Etheridge that they should take a comprehensive look at gambling and ask the state for regulatory authority.

"We want this industry to be a clean, reputable revenue stream" for charities, Sanden said. His clients don't like the guilt by association that comes from being in the gaming industry, he said, and he's worried the Legislature might put an end to charitable gambling if problems persist. Etheridge said city officials might approach the Legislature about making changes in the law.

This month, former Supreme Court Justice Jay Rabinowitz turned down an appeal by Last Chance Co-op, Multiple Charities Association Co-op and Alaska Native Brotherhood Camp 2 Inc. of a city administrative decision on a 1 percent sales tax increase from 1996. Rabinowitz, acting as a Superior Court judge, ruled that the tax applies to pulltabs and is to be collected on the gross amount wagered.

There is a past due bill of \$627,871 in sales taxes, plus another

\$348,764 in interest, penalties and attorney's fees, said Assistant City Attorney John Hartle. The three gaming groups, managed by George Wright, stopped paying the sales tax in October 1998, although there has been a \$53,000 lump sum payment since the judge's ruling, Hartle said. Last Chance just lost its state gaming license for not meeting minimum contributions to charity.

The groups can appeal to the state Supreme Court, but would have to post a bond equal to the amount they owe in order to keep the city from seeking to enforce the judgment, Hartle said. He said the city will ask Rabinowitz to issue an enforceable judgment, which will start the clock running on a 30-day appeal period.

For now, Hartle said, the city has no plans to go after the 12 nonprofit organizations that benefited from pulltab proceeds generated by Last Chance and Multiple Charities, which are known as multiple-beneficiary permittees.

"Politically, you don't want to go after soccer balls," Sanden agreed. But he said he wouldn't want to see the city pursue less than the princi-

pal it's owed, either. If a negotiated settlement comes in at less than what the three groups should have paid in sales taxes, "We'd probably be there with our hands out, saying, 'What about us?'" he said.

There is no bad blood among the nonprofit groups, Sanden emphasized, but he said it wouldn't be fair to give a tax break to gaming groups who haven't complied with the law.

"He could come with his hand out, but I don't think he would be received very warmly," MacKinnon said later. "Unfortunately, you're being penalized for being

honest."

The gaming groups who are in arrears have offered to pay the principal over four years if the city changes its tax policy during that period, Hartle said. They have asked that the 5 percent tax be applied to the "ideal net," the amount left after prizes are paid out, rather than the gross amount wagered.

In effect, that would be taxing 20 percent of the money that is now taxable, because that policy would have to be applied to all gaming groups, MacKinnon said. It's doubtful whether the back taxes would be enough even to offset the lower revenue from that change in policy, although a formal analysis still needs to be done, he said.

Wright could not be reached for comment, nor could his attorney, John Rice.

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Bill McAllister can be reached at billm@juneauempire.com.